

An Act

ENROLLED SENATE
BILL NO. 525

By: Leewright of the Senate

and

Rogers of the House

An Act relating to bail bondsmen; amending 59 O.S. 2011, Sections 1305, as last amended by Section 2, Chapter 53, O.S.L. 2014, 1308, 1315, as last amended by Section 33, Chapter 210, O.S.L. 2016, 1320, as last amended by Section 10, Chapter 110, O.S.L. 2015 and 1332, as last amended by Section 1, Chapter 187, O.S.L. 2015 (59 O.S. Supp. 2016, Sections 1305, 1315, 1320 and 1332), which relate to applications, examinations, prohibited persons, registration of license, and forfeiture; changing requirements for fingerprints and photographs; reducing time for validity of application; prohibiting offices in certain places; construing marriage between certain persons for certain purpose; setting time to notify of address change; directing certain list be posted in certain place; requiring certain list be distributed monthly; adding provisions for bond exoneration; and providing an effective date.

SUBJECT: Bail bondsmen

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 59 O.S. 2011, Section 1305, as last amended by Section 2, Chapter 53, O.S.L. 2014 (59 O.S. Supp. 2016, Section 1305), is amended to read as follows:

Section 1305. A. The application for license to serve as a bail bondsman shall affirmatively show that the applicant:

1. Is a person who has reached the age of twenty-one (21) years;

2. Is competent, trustworthy, financially responsible, and is of good personal and business reputation and character;

3. Has not been previously convicted of, or pled guilty or nolo contendere to, any felony, or to a misdemeanor involving moral turpitude or dishonesty;

4. Is a citizen of the United States;

5. Has been a bona fide resident of the state for at least one (1) year;

6. Will actively engage in the bail bond business;

7. Has knowledge or experience, or has received instruction in the bail bond business; and

8. Has a high school diploma or its equivalent; provided, however, the provisions of this paragraph shall apply only to initial applications for license submitted on or after November 1, 1997, and shall not apply to renewal applications for license.

B. The applicant shall apply electronically on forms approved by the Insurance Commissioner, and the Commissioner may propound any reasonable interrogatories to an applicant for a license pursuant to Sections 1301 through ~~1340~~ 1341 of this title, or on any renewal thereof, relating to qualifications, residence, prospective place of business and any other matters which, in the opinion of the Commissioner, are deemed necessary or expedient in order to protect the public and ascertain the qualifications of the applicant. The Commissioner may also conduct any reasonable inquiry or investigation relative to the determination of the fitness of the applicant to be licensed or to continue to be licensed including, but not limited to, requiring a national criminal history record check as defined by Section 150.9 of Title 74 of the Oklahoma Statutes. The Commissioner may require any documents reasonably necessary to verify the information in the application.

C. An applicant shall furnish to the Commissioner a license fee of Two Hundred Fifty Dollars (\$250.00) with the application, ~~a two~~ complete ~~set~~ sets of the fingerprints of the applicant and ~~two a~~ recent credential-size full face ~~photographs~~ photograph of the applicant. The fingerprints of the applicant shall be certified by an authorized law enforcement officer. The applicant shall provide with the application an investigative fee of One Hundred Dollars (\$100.00) with which the Commissioner will conduct an investigation of the applicant. All fees shall be nonrefundable.

D. In addition to the license fee set forth in subsection C of this section, an applicant for a multicounty agent bondsman license shall furnish to the Commissioner a license fee of Seven Hundred Fifty Dollars (\$750.00).

E. Failure of the applicant to secure approval of the Commissioner shall not preclude the applicant from reapplying, but a second application shall not be considered by the Commissioner within three (3) months after denial of the last application.

F. The fee for a duplicate pocket license shall be Twenty-five Dollars (\$25.00).

SECTION 2. AMENDATORY 59 O.S. 2011, Section 1308, is amended to read as follows:

Section 1308. A. The applicant for bail bondsman shall be required to appear in person and take an examination prepared by the Insurance Commissioner, testing the applicant's ability and qualifications to be a bail bondsman. Applications are valid for ~~six (6)~~ three (3) months after submission. If an applicant has not acted upon the application within that period, a new application and fees shall be submitted for the applicant to be considered for licensure.

B. Each applicant shall become eligible for examination if the applicant has completed sixteen (16) hours of education as required by Section 1308.1 of this title prior to the examination. Examinations shall be held at times and places as designated by the Commissioner.

C. The fee for the examination shall be One Hundred Dollars (\$100.00). Results will be provided after the applicant is examined.

D. The failure of an applicant to pass an examination shall not preclude the applicant from taking subsequent examinations; provided, however, that at least thirty (30) days shall intervene between examinations; and provided further, after a third or subsequent examination failure, an applicant may not be examined for at least one (1) year after the last examination failure.

SECTION 3. AMENDATORY 59 O.S. 2011, Section 1315, as last amended by Section 33, Chapter 210, O.S.L. 2016 (59 O.S. Supp. 2016, Section 1315), is amended to read as follows:

Section 1315. A. The following persons or classes shall not be bail bondsmen, shall not perform the acts of a bail bondsman and shall not directly or indirectly receive any benefits from the execution of any bail bond:

1. Persons convicted of, or who have pled guilty or nolo contendere to, any felony or to a misdemeanor involving dishonesty or moral turpitude;

2. Jailers;

3. Police officers;

4. Committing judges;

5. Municipal or district court judges;

6. Prisoners;

7. Sheriffs, deputy sheriffs and any person having the power to arrest or having anything to do with the control of federal, state, county or municipal prisoners;

8. Any person who possesses a permit pursuant to the provisions of Section 163.11 of Title 37 of the Oklahoma Statutes or is an officer, director or stockholder of any corporation holding such a

permit, except as specifically authorized for a licensed bondsman in Section 1315.1 of this title;

9. Any person who is an agent or owner of any establishment at which low-point beer as defined by Section 163.2 of Title 37 of the Oklahoma Statutes is sold for on-premises consumption, except as specifically authorized for a licensed bondsman in Section 1315.1 of this title;

10. Any person who holds any license provided for in Section 518 of Title 37 of the Oklahoma Statutes or is an agent or officer of any such licensee, except for an individual holding an employee license pursuant to paragraph 20 of subsection A of Section 518 of Title 37 of the Oklahoma Statutes or as specifically authorized for a licensed bondsman in Section 1315.1 of this title;

11. Any person who holds any license or permit from any city, town, county, or other governmental subdivision for the operation of any private club at which alcoholic beverages are consumed or provided, except as specifically authorized for a licensed bondsman in Section 1315.1 of this title;

12. Any person or agent of a retail liquor package store; and

13. Any person whose bail bondsman license has been revoked by the Insurance Commissioner.

B. This section shall not apply to a sheriff, deputy sheriff, police officer, or officer of the law who is not on duty and who assists in the apprehension of a defendant.

C. The provisions of this section shall not apply to persons possessing permits or licenses pertaining to low-point beer or alcoholic beverages, as defined in Sections 163.2 and 506 of Title 37 of the Oklahoma Statutes, which were issued prior to May 23, 1984. No one shall be permitted to maintain an office for conducting bail bonds business where low-point beer or alcoholic beverages are sold for on-premises consumption.

D. No person shall be permitted to maintain an office for conducting a bail bond business where persons disqualified pursuant

to paragraph 1 of subsection A of this section are present, except as necessary for such persons to obtain a personal bail bond.

E. For purposes of this section, the marriage or cohabitation of a bail bond licensee or license applicant with a person disqualified pursuant to paragraph 1 of subsection A of this section does not, as a matter of fact, constitute the receipt of benefits from the execution of a bail bond. In such circumstances, the receipt of benefits from the execution of a bail bond shall be subject to a factual determination by the Commissioner.

SECTION 4. AMENDATORY 59 O.S. 2011, Section 1320, as last amended by Section 10, Chapter 110, O.S.L. 2015 (59 O.S. Supp. 2016, Section 1320), is amended to read as follows:

Section 1320. A. No bail bondsman shall become a surety on an undertaking unless he or she has first registered his or her license in the office of the sheriff and with the court clerk in the county in which the bondsman resides or offices, but not both. In the county in which a bondsman registers his or her license, ~~he the bondsman~~ shall provide the court clerk with proof that he or she is a resident of ~~said the~~ county or that ~~he the bondsman~~ offices in ~~said the~~ county, and shall provide notice to the court clerk in writing of any change in residence or business address within five (5) business days after a change. The court clerk of the county shall provide a list of bondsmen permitted to write bail in that county to the judges and law enforcement offices of that county. Law enforcement shall ~~provide the list to any incarcerated individual upon request~~ post the list conspicuously near all telephones used by prisoners. The list shall be updated and distributed to law enforcement by the court clerk at least monthly, provided there has been a change to the list, and shall consist of professional, multicounty agent, property, cash and surety bail bondsmen. Any surety bondsman without a current surety appointment shall be removed from the list. In any county not having a licensed bondsman authorized to do business within ~~said the~~ county, the court having jurisdiction shall allow and fix bail.

B. Notwithstanding the foregoing provisions of this section, a bondsman may write bonds on no more than ten defendants per year in each of the remaining seventy-six counties of this state in which the bondsman cannot register his license. Provided, however, a

bondsman shall not be limited to writing bonds on only ten defendants per year in a county which does not have a licensed bondsman registered in said county. The bondsman shall advise the court clerk of each such county in writing of his intention to write bonds in the county and shall file a certified copy of his license with such court clerk.

C. A surety bondsman shall also file with the court clerk a certified copy of his or her appointment by power of attorney from the insurer whom he or she represents as an agent.

D. A fee of Twenty Dollars (\$20.00) shall be paid to the court clerk for each county in which the bail bondsman registers or files his or her license. The fee shall be payable biennially by the date of license renewal. The court clerk and the sheriff shall not permit the registration or filing of a bail bondsman unless such bondsman is currently licensed by the Insurance Commissioner under the provisions of Section 1301 et seq. of this title.

SECTION 5. AMENDATORY 59 O.S. 2011, Section 1332, as last amended by Section 1, Chapter 187, O.S.L. 2015 (59 O.S. Supp. 2016, Section 1332), is amended to read as follows:

Section 1332. A. If there is a breach of an undertaking, the court before which the cause is pending shall issue, within ten (10) days, an arrest warrant for the defendant and declare the undertaking and any money, property, or securities that have been deposited as bail, forfeited on the day the defendant failed to appear. Within fifteen (15) days from the date of the forfeiture, the order and judgment of forfeiture shall be filed with the clerk of the trial court. Failure to timely issue the arrest warrant or file the order and judgment of forfeiture as provided in this subsection shall exonerate the bond by operation of law. In the event of the forfeiture of a bail bond the clerk of the trial court shall, within thirty (30) days after the order and judgment of forfeiture is filed in the court, by mail with return receipt requested, mail a true and correct copy of the order and judgment of forfeiture to the bondsman, and if applicable, the insurer, whose risk it is, and keep at least one copy of the order and judgment of forfeiture on file; provided, the clerk shall not be required to mail the order and judgment of forfeiture to the bondsman or insurer if, within fifteen (15) days from the date of forfeiture, the

defendant is returned to custody, the bond is reinstated by the court with the bondsman's approval, or the order of forfeiture is vacated or set aside by the court. Failure of the clerk of the trial court to comply with the thirty-day notice provision in this subsection shall exonerate the bond by operation of law.

B. The order and judgment of forfeiture shall be on forms prescribed by the Administrative Director of the Courts.

C. 1. The bail bondsman shall have ninety (90) days from receipt of the order and judgment of forfeiture from the court clerk or mailing of the notice if no receipt is made, to return the defendant to custody.

2. The bondsman may contract with a licensed bail enforcer pursuant to the Bail Enforcement and Licensing Act to recover and return the defendant to custody within the ninety-day period, or as agreed, or notwithstanding the Bail Enforcement and Licensing Act if the bondsman is duly appointed in this state by an insurer operating in this state, the bondsman may seek the assistance of another licensed bondsman in this state who is appointed by the same insurer.

3. When the court record indicates that the defendant is returned to custody in the jurisdiction where forfeiture occurred, within the ninety-day period, the court clerk shall enter minutes vacating the forfeiture and exonerating the bond. If the defendant has been timely returned to custody, but this fact is not reflected by the court record, the court shall vacate the forfeiture and exonerate the bond.

4. For the purposes of this section, "return to custody" means:

- a. the return of the defendant to the appropriate Oklahoma law enforcement agency by the bondsman,
- b. an appearance of the defendant in open court in the court where charged,
- c. arrest or incarceration within this state of the defendant by law enforcement personnel, provided the bondsman has requested that a hold be placed on the

defendant in the jurisdiction wherein the forfeiture lies and has guaranteed reasonable travel expenses for the return of the defendant, or

- d. arrest or incarceration of the defendant in any other jurisdiction, provided the bondsman has requested that a hold be placed on the defendant in the jurisdiction wherein the forfeiture lies and has guaranteed reasonable travel expenses for the return of the defendant.

5. In addition to the provisions set forth in paragraphs 3 and 4 of this subsection, the bond shall be exonerated by operation of law in any case in which:

- a. the bondsman has requested in writing of the sheriff's department in the county where the forfeiture occurred that the defendant be entered into the computerized records of the National Crime Information Center, and the request has not been honored within fourteen (14) business days of the receipt of the written request by the department, ~~or~~
- b. the defendant has been arrested outside of this state and the court record shows the prosecuting attorney has declined to proceed with extradition,
- c. the warrant issued by the court has not been entered into an active warrant database available to law enforcement within five (5) business days after its issued date, or
- d. the defendant has been arrested on new charges in the same jurisdiction in which the bondsman or insurer has posted the appearance bond or bonds for the defendant, and the defendant has been subsequently released on his or her own personal recognizance.

6. The court may, in its discretion, vacate the order of forfeiture and exonerate the bond where good cause has been shown for:

- a. the defendant's failure to appear, or
- b. the bondsman's failure to return the defendant to custody within ninety (90) days.

D. 1. If, within ninety (90) days from receipt of the order and judgment of forfeiture from the court clerk, or mailing of the notice if no receipt is made, the defendant is not returned to custody, or the forfeiture has not been stayed, the bondsman and, if applicable, the insurer whose risk it is shall deposit cash or other valuable securities in the face amount of the bond with the court clerk ninety-one (91) days from receipt of the order and judgment of forfeiture from the court clerk, or mailing of the notice if no receipt is made; provided, this provision shall not apply if the defendant has been returned to custody within the ninety-day period and the court has failed to vacate the forfeiture pursuant to paragraphs 3 through 6 of subsection C of this section.

2. After the order and judgment has been paid within ninety-one (91) days from receipt of the order and judgment of forfeiture from the court clerk, or mailing of the notice if no receipt is made, as required in paragraph 1 of this subsection, the bondsman and, if applicable, the insurer whose risk it is shall have one year from the date payment is due to return the defendant to custody as defined by paragraph 4 of subsection C of this section. In the event the defendant is returned to custody and all expenses for the defendant's return have been paid by the bondsman or insurer, the bondsman's or insurer's property shall be returned; provided, the request for remitter be made by motion filed within one (1) year from the date payment is due.

3. If the additional cash or securities are not deposited with the court clerk on or before the ninety-first day after the date of service of the order and judgment of forfeiture from the court clerk, or mailing of the notice if no receipt is made, then the court clerk shall notify the Insurance Commissioner by sending a certified copy of the order and judgment of forfeiture and proof that the bondsman and, if applicable, the insurer have been notified by mail with return receipt requested.

4. The Insurance Commissioner shall:

- a. in the case of a surety bondsman, immediately cancel the license privilege and authorization of the insurer to do business within the State of Oklahoma and cancel the appointment of all surety bondsman agents of the insurer who are licensed by Section 1301 et seq. of this title, and
- b. in the case of a professional bondsman, withdraw the face amount of the forfeiture from the deposit provided in Section 1306 of this title. The Commissioner shall then immediately direct the professional bondsman, by mail with return receipt requested, to make additional deposits to bring the original deposit to the required level. Should the professional bondsman, after being notified, fail to make an additional deposit within ten (10) days from the receipt of notice, or mailing of notice if no receipt is made, the license shall be revoked and all sums presently on deposit shall be held by the Commissioner to secure the face amounts of bonds outstanding. Upon release of the bonds, any amount of deposit in excess of the bonds shall be returned to the bondsman; provided, the bail bondsman shall have had notice as required by the court, at the place of the bondsman's business, of the trial or hearing of the defendant named in the bond. The notice shall have been at least ten (10) days before the required appearance of the defendant, unless the appearance is scheduled at the time of execution of the bond. Notwithstanding the foregoing, the bondsman shall be deemed to have had notice of the trial or hearing if the defendant named in the bond shall have been recognized back in open court to appear at a date certain for the trial or hearing.

5. If the actions of any bail bondsman force the Insurance Commissioner to withdraw monies, deposited pursuant to Section 1306 of this title, to pay past due executions more than two (2) times in a consecutive twelve-month period, then the license of the professional bondsman shall, in addition to other penalties, be suspended automatically for one (1) year or until a deposit equal to all outstanding forfeitures due is made. The deposit shall be

maintained until the Commissioner deems it feasible to reduce the deposit. In no case shall an increased deposit exceed two (2) years unless there is a recurrence of withdrawals as stated herein.

E. 1. If the defendant's failure to appear was the result of the defendant's death or of being in the custody of a court other than the court in which the appearance was scheduled, forfeiture shall not lie. Upon proof to the court that the bondsman paid the order and judgment of forfeiture without knowledge that the defendant was deceased or in custody of another court on the day the defendant was due to appear, and all expenses for the defendant's return have been paid by the bondsman, the bondsman's property shall be returned.

2. Where the defendant is in the custody of another court, the district attorney or municipal attorney shall direct a hold order to the official, judge, court or law enforcement agent wherein the defendant is in custody; provided, that all expenses accrued as a result of returning the custody of the defendant shall be borne by the bondsman.

F. The district attorney or municipal attorney shall not receive any bonuses or other monies or property for or by reason of services or actions in connection with or collection of bond forfeitures under the provisions of Section 1301 et seq. of this title, except that the court may award a reasonable attorney fee in favor of the prevailing party for legal services in any civil action or proceeding to collect upon a judgment of forfeiture.

G. The above procedures shall be subject to the bondsman's rights of appeal. The bondsman or insurer may appeal an order and judgment of forfeiture pursuant to the procedures for appeal set forth in Section 951 et seq. of Title 12 of the Oklahoma Statutes. To stay the execution of the order and judgment of forfeiture, the bondsman or insurer shall comply with the provisions set forth in Section 990.4 of Title 12 of the Oklahoma Statutes.

H. For municipal courts of record, the above procedures are criminal in nature and ancillary to the criminal procedures before the trial court and shall be subject to the bondsman's right of appeal. The bondsman or insurer may appeal an order and judgment of

forfeiture by the municipal courts of record to the Court of Criminal Appeals.

I. Upon a motion to the court, any person executing a bail bond as principal or as surety shall be exonerated after three (3) years have elapsed from the posting of the bond, unless a judgment has been entered against the surety or the principal for the forfeiture of the bond, or unless the court grants an extension of the three-year time period for good cause shown, upon motion by the prosecuting attorney.

SECTION 6. This act shall become effective November 1, 2017.

Passed the Senate the 7th day of March, 2017.

Presiding Officer of the Senate

Passed the House of Representatives the 24th day of April, 2017.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____