

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 2nd Session of the 56th Legislature (2018)

3 HOUSE BILL 2621

 By: West (Kevin)

7 AS INTRODUCED

8 An Act relating to professions and occupations;
9 amending 59 O.S. 2011, Sections 1327, as last amended
10 by Section 2, Chapter 16, O.S.L. 2016 and 1332, as
11 last amended by Section 5, Chapter 161, O.S.L. 2017
12 (59 O.S. Supp. 2017, Sections 1327 and 1332), which
13 relate to bail bondsmen; specifying rate for certain
14 travel costs for which bail bondsmen bear; requiring
15 certain computerized records be without limitation
16 and accessible to law enforcement agencies
17 nationwide; and providing an effective date.

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

19 SECTION 1. AMENDATORY 59 O.S. 2011, Section 1327, as
20 last amended by Section 2, Chapter 16, O.S.L. 2016 (59 O.S. Supp.
21 2016, Section 1327), is amended to read as follows:

22 Section 1327. A. At any time before there has been a breach of
23 the undertaking in any type of bail provided herein, the surety or
24 bondsmen or a licensed bail enforcer pursuant to a client contract
 authorized by the Bail Enforcement and Licensing Act may surrender
 the defendant, or the defendant may surrender himself or herself, to
 the official to whose custody the defendant was committed at the

1 time bail was taken, or to the official into whose custody the
2 defendant would have been given had he or she been committed. The
3 defendant may be surrendered without the return of premium for the
4 bond if he or she has been guilty of nonpayment of premium, changes
5 address without notifying his or her bondsman, conceals himself or
6 herself, leaves the jurisdiction of the court without the permission
7 of his or her bondsman, or violates his or her contract with the
8 bondsman in any way that does harm to the bondsman, or the surety,
9 or violates his or her obligation to the court. When a bondsman or
10 surety, or a licensed bail enforcer, surrenders a defendant pursuant
11 to this subsection, the bondsman or surety shall file written
12 notification of the surrender. After surrender, and upon filing of
13 written notification of the surrender, the bond shall be exonerated
14 and the clerk shall enter a minute in the case exonerating the bond.

15 B. If the defendant has been placed in custody of another
16 jurisdiction, the district attorney shall direct a hold order to the
17 official, judge or law enforcement agency where the defendant is in
18 custody. All reasonable expenses accrued in returning the defendant
19 to the original court shall be borne by the bondsman who posted the
20 bond with that court, which shall include the actual miles travelled
21 in transporting the defendant at a rate equal to the IRS Federal
22 Mileage Rate. Upon application, the bond in the original court
23 shall be exonerated when the hold order is placed and upon proof of
24 payment of expenses by the bondsman.

1 C. If the defendant has been arrested on new charges and is in
2 the custody of the same jurisdiction in which the bondsman or surety
3 has posted an appearance bond or bonds for the defendant, and the
4 bond or bonds have not been exonerated, and certified copies of
5 bonds are not reasonably available, the bondsman or surety may
6 recommit the defendant to be held in custody on the charges for
7 which the bondsman or surety has previously posted appearance bonds
8 thereon, in accordance with the following procedure:

9 1. On a Recommitment of Defendant by Bondsman form approved by
10 the Administrative Office of the Courts, the bondsman or surety
11 shall personally affix his or her signature to an affidavit
12 attesting to the following:

- 13 a. the defendant is presently in the custody of the
- 14 jurisdiction in which the bondsman or surety has
- 15 posted a bond or bonds,
- 16 b. the case number, if any, assigned to each bond,
- 17 c. that the bond or bonds have not been exonerated, and
- 18 d. the specific charges and bond amount or amounts;

19 2. The bondsman or surety shall present the Recommitment of
20 Defendant by Bondsman form to the official in whose custody the
21 defendant is being held, and the official shall detain the defendant
22 in his or her custody, thereon, as upon a commitment, and by a
23 certificate in writing acknowledging the surrender; and
24

1 3. When a bondsman or surety recommitts a defendant pursuant to
2 this subsection, the bondsman or surety shall file a written
3 notification thereof to the court, and after such notification, the
4 bond or bonds shall be exonerated, and the clerk shall enter a
5 minute in the case exonerating the bond or bonds.

6 D. When a defendant does appear before the court as required by
7 law and enters a plea of guilty or nolo contendere, is sentenced or
8 a deferred sentence is granted as provided for in Section 991c of
9 Title 22 of the Oklahoma Statutes, or deferred prosecution is
10 granted as provided by law, in such event the undertaking and
11 bondsman and insurer shall be exonerated from further liability.

12 SECTION 2. AMENDATORY 59 O.S. 2011, Section 1332, as
13 last amended by Section 5, Chapter 161, O.S.L. 2017 (59 O.S. Supp.
14 2016, Section 1332), is amended to read as follows:

15 Section 1332. A. If there is a breach of an undertaking, the
16 court before which the cause is pending shall issue, within ten (10)
17 days, an arrest warrant for the defendant and declare the
18 undertaking and any money, property, or securities that have been
19 deposited as bail, forfeited on the day the defendant failed to
20 appear. Within fifteen (15) days from the date of the forfeiture,
21 the order and judgment of forfeiture shall be filed with the clerk
22 of the trial court. Failure to timely issue the arrest warrant or
23 file the order and judgment of forfeiture as provided in this
24 subsection shall exonerate the bond by operation of law. In the

1 event of the forfeiture of a bail bond the clerk of the trial court
2 shall, within thirty (30) days after the order and judgment of
3 forfeiture is filed in the court, by mail with return receipt
4 requested, mail a true and correct copy of the order and judgment of
5 forfeiture to the bondsman, and if applicable, the insurer, whose
6 risk it is, and keep at least one copy of the order and judgment of
7 forfeiture on file; provided, the clerk shall not be required to
8 mail the order and judgment of forfeiture to the bondsman or insurer
9 if, within fifteen (15) days from the date of forfeiture, the
10 defendant is returned to custody, the bond is reinstated by the
11 court with the bondsman's approval, or the order of forfeiture is
12 vacated or set aside by the court. Failure of the clerk of the
13 trial court to comply with the thirty-day notice provision in this
14 subsection shall exonerate the bond by operation of law.

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

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

21 2. The bondsman may contract with a licensed bail enforcer
22 pursuant to the Bail Enforcement and Licensing Act to recover and
23 return the defendant to custody within the ninety-day period, or as
24 agreed, or notwithstanding the Bail Enforcement and Licensing Act if

1 the bondsman is duly appointed in this state by an insurer operating
2 in this state, the bondsman may seek the assistance of another
3 licensed bondsman in this state who is appointed by the same
4 insurer.

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

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

- 13 a. the return of the defendant to the appropriate
14 Oklahoma law enforcement agency by the bondsman,
- 15 b. an appearance of the defendant in open court in the
16 court where charged,
- 17 c. arrest or incarceration within this state of the
18 defendant by law enforcement personnel, provided the
19 bondsman has requested that a hold be placed on the
20 defendant in the jurisdiction wherein the forfeiture
21 lies and has guaranteed reasonable travel expenses for
22 the return of the defendant, or
- 23 d. arrest or incarceration of the defendant in any other
24 jurisdiction, provided the bondsman has requested that

1 a hold be placed on the defendant in the jurisdiction
2 wherein the forfeiture lies and has guaranteed
3 reasonable travel expenses for the return of the
4 defendant.

5 5. In addition to the provisions set forth in paragraphs 3 and
6 4 of this subsection, the bond shall be exonerated by operation of
7 law in any case in which:

- 8 a. the bondsman has requested in writing of the sheriff's
9 department in the county where the forfeiture occurred
10 that the defendant be entered into the computerized
11 records of the National Crime Information Center
12 without any limitations and be accessible by law
13 enforcement agencies nationwide, and the request has
14 not been honored within fourteen (14) business days of
15 the receipt of the written request by the department,
16 b. the defendant has been arrested outside of this state
17 and the court record shows the prosecuting attorney
18 has declined to proceed with extradition,
19 c. the warrant issued by the court has not been entered
20 into an active warrant database available to law
21 enforcement within five (5) business days after its
22 issued date, or
23 d. the defendant has been arrested on new charges in the
24 same jurisdiction in which the bondsman or insurer has

1 posted the appearance bond or bonds for the defendant,
2 and the defendant has been subsequently released on
3 his or her own personal recognizance.

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

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

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

22 2. After the order and judgment has been paid within ninety-one
23 (91) days from receipt of the order and judgment of forfeiture from
24 the court clerk, or mailing of the notice if no receipt is made, as

1 required in paragraph 1 of this subsection, the bondsman and, if
2 applicable, the insurer whose risk it is shall have one year from
3 the date payment is due to return the defendant to custody as
4 defined by paragraph 4 of subsection C of this section. In the
5 event the defendant is returned to custody and all expenses for the
6 defendant's return have been paid by the bondsman or insurer, the
7 bondsman's or insurer's property shall be returned; provided, the
8 request for remitter be made by motion filed within one (1) year
9 from the date payment is due.

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

18 4. The Insurance Commissioner shall:

19 a. in the case of a surety bondsman, immediately cancel
20 the license privilege and authorization of the insurer
21 to do business within the State of Oklahoma and cancel
22 the appointment of all surety bondsman agents of the
23 insurer who are licensed by Section 1301 et seq. of
24 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

1 the defendant named in the bond shall have been
2 recognized back in open court to appear at a date
3 certain for the trial or hearing.

4 5. If the actions of any bail bondsman force the Insurance
5 Commissioner to withdraw monies, deposited pursuant to Section 1306
6 of this title, to pay past due executions more than two (2) times in
7 a consecutive twelve-month period, then the license of the
8 professional bondsman shall, in addition to other penalties, be
9 suspended automatically for one (1) year or until a deposit equal to
10 all outstanding forfeitures due is made. The deposit shall be
11 maintained until the Commissioner deems it feasible to reduce the
12 deposit. In no case shall an increased deposit exceed two (2) years
13 unless there is a recurrence of withdrawals as stated herein.

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

23 2. Where the defendant is in the custody of another court, the
24 district attorney or municipal attorney shall direct a hold order to

1 the official, judge, court or law enforcement agent wherein the
2 defendant is in custody; provided, that all expenses accrued as a
3 result of returning the custody of the defendant shall be borne by
4 the bondsman.

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

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

19 H. For municipal courts of record, the above procedures are
20 criminal in nature and ancillary to the criminal procedures before
21 the trial court and shall be subject to the bondsman's right of
22 appeal. The bondsman or insurer may appeal an order and judgment of
23 forfeiture by the municipal courts of record to the Court of
24 Criminal Appeals.

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

8 SECTION 3. This act shall become effective November 1, 2018.

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10 COMMITTEE REPORT BY: COMMITTEE ON INSURANCE, dated 02/26/2018 - DO
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