

STATE OF OKLAHOMA

2nd Session of the 57th Legislature (2020)

COMMITTEE SUBSTITUTE

FOR ENGROSSED

SENATE BILL NO. 717

By: Leewright of the Senate

and

Manger of the House

COMMITTEE SUBSTITUTE

An Act relating to bail bondsmen; amending 59 O.S. 2011, Section 1314, as last amended by Section 8, Chapter 203, O.S.L. 2016, Section 1, Chapter 212, O.S.L. 2015, Sections 1327, as last amended by Section 1, Chapter 270, O.S.L. 2019 and 1328, as last amended by Section 11, Chapter 203, O.S.L. 2016 (59 O.S. Supp. 2019, Sections 1314, 1315.1, 1327 and 1328), which relate to requirements for accepting collateral, exception to bondsman licensing prohibitions and exoneration of bonds; requiring cash deposits within certain time; deleting language and definition; stating when bond premium is earned; allowing fee to be charged upon return of certain premium; defining term; clarifying where certain filings are made; and providing an effective date.

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

SECTION 1. AMENDATORY 59 O.S. 2011, Section 1314, as last amended by Section 8, Chapter 203, O.S.L. 2016 (59 O.S. Supp. 2019, Section 1314), is amended to read as follows:

1 Section 1314. A. When a bail bondsman or managing general
2 agent accepts collateral, the bail bondsman or managing general
3 agent shall give a written receipt for same, and this receipt shall
4 give in detail a full description of the collateral received. A
5 description of the collateral shall be listed on the undertaking by
6 affidavit. All property taken as collateral, whether personal,
7 intangible or real, shall be receipted for and deemed, for all
8 purposes, to be in the name of, and for the use and benefit of, the
9 insurer. Every receipt, encumbrance, mortgage or other evidence of
10 the custody, possession or claim shall facially indicate that it has
11 been taken or made on behalf of the insurer through its authorized
12 agent, the individual licensed bondsman or managing general agent
13 who has transacted the undertaking with the bond principal. Any
14 mortgage or other encumbrance against real property taken under the
15 provisions of this section which does not indicate beneficial
16 ownership of the claim to be in favor of the insurer shall be deemed
17 to constitute a cloud on the title to real estate and shall subject
18 the person filing, or causing same to be filed, in the real estate
19 records of the county, to a penalty of treble damages or One
20 Thousand Dollars (\$1,000.00), whichever is greater, in an action
21 brought by the person, organization or corporation injured thereby.
22 For collateral taken, or liens or encumbrances taken or made
23 pursuant to the provisions of this section, the individual bondsman
24 or managing general agent taking possession of the property or

1 making the lien, claim or encumbrance shall do so on behalf of the
2 insurer, and the individual licensed bondsman shall be deemed to act
3 in the capacity of fiduciary in relation to both:

4 1. The principal or other person from whom the property is
5 taken or claimed against; and

6 2. The insurer whose agent is the licensed bondsman.

7 As fiduciary and bailee for hire, the individual bondsman shall
8 be liable in criminal or civil actions at law for failure to
9 properly receipt or account for, maintain or safeguard, release or
10 deliver possession upon lawful demand, in addition to any other
11 penalties set forth in this subsection. No person who takes
12 possession of property as collateral pursuant to this section shall
13 use or otherwise dissipate the asset, or do otherwise with the
14 property than to safeguard and maintain its condition pending its
15 return to its lawful owner, or deliver to the insurer, upon lawful
16 demand pursuant to the terms of the bailment.

17 When collateral security is received in the form of cash or
18 check or other negotiable instrument, the bondsman shall deposit the
19 cash or instrument within two (2) banking days after receipt in an
20 established, separate non-interest-bearing trust account in any bank
21 located in Oklahoma. The trust account funds required under this
22 section shall not be commingled with other operating funds.
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1 B. Every licensed bondsman shall file monthly electronically
2 with the Insurance Commissioner and on forms approved by the
3 Commissioner as follows:

4 1. A monthly report showing every bond written, amount of bond,
5 whether released or revoked during each month, showing the court and
6 county, and the style and number of the case, premiums charged and
7 collateral received; and

8 2. ~~Professional bondsmen and multicounty agent bondsmen shall~~
9 ~~submit electronic monthly~~ Monthly reports showing total current
10 liabilities, all bonds written during the month by the professional
11 bondsman or multicounty agent bondsman and by any licensed bondsman
12 who may countersign for the professional bondsman or multicounty
13 agent bondsman, all bonds terminated during the month, and the total
14 liability and a list of all bondsmen currently employed by the
15 professional bondsman or multicounty agent bondsman.

16 Monthly reports shall be submitted electronically to the
17 Insurance Commissioner by the fifteenth day of each month. The
18 records shall be maintained by the Commissioner as public records.

19 C. Every licensee shall keep at the place of business of the
20 licensee the usual and customary records pertaining to transactions
21 authorized by the license. All of the records shall be available
22 and open to the inspection of the Commissioner at any time during
23 business hours during the three (3) years immediately following the
24 date the liability of the bondsman on the bond is discharged by the

1 court or the date collateral is returned by the bondsman to its
2 lawful owner, whichever is later. If an appearance bond is never
3 executed and filed with the court, then all records shall be
4 maintained for three (3) years immediately following the date the
5 documents were prepared. The Commissioner may require a financial
6 examination or market conduct survey during any investigation of a
7 licensee.

8 D. Each bail bondsman shall submit each month with the monthly
9 report of the bondsman, a renewal fee equal to two-tenths of one
10 percent (2/10 of 1%) of the new liability written for that month.
11 The fee shall be payable to the Insurance Commissioner who shall
12 deposit same with the State Treasurer.

13 SECTION 2. AMENDATORY Section 1, Chapter 212, O.S.L.
14 2015 (59 O.S. Supp. 2019, Section 1315.1), is amended to read as
15 follows:

16 Section 1315.1 A. On and after ~~the effective date of this act~~
17 November 1, 2015, as an exception to the provisions in paragraph 8,
18 9, 10 or 11 of subsection A of Section 1315 of ~~Title 59 of the~~
19 ~~Oklahoma Statutes~~ this title prohibiting a person from being a bail
20 bondsman or receiving any benefit from the execution of any bail
21 bond, a person who holds an ownership interest in a restaurant
22 establishment where alcoholic beverages are lawfully sold ~~incidental~~
23 ~~to the sale of food~~ or who is an officer, director or stockholder of
24 a corporation that owns or operates a restaurant where alcoholic

1 beverages are lawfully sold ~~incidental to the sale of food~~, may be a
2 licensed bail bondsman. ~~For purposes of this section, "incidental~~
3 ~~to the sale of food" means the sale of all alcoholic beverages is~~
4 ~~not more than fifty percent (50%) of the monthly gross sales of the~~
5 ~~establishment, and "alcoholic beverages" means all beverages~~
6 ~~containing more than three and two-tenths percent (3.2%) alcohol by~~
7 ~~weight, and all mixed beverage coolers, as defined by Section 506 of~~
8 ~~Title 37 of the Oklahoma Statutes, regardless of percent of alcohol~~
9 ~~content, and all beverages containing more than one-half of one~~
10 ~~percent (1/2 of 1%) alcohol by volume and not more than three and~~
11 ~~two-tenths percent (3.2%) alcohol by weight.~~

12 B. No licensed bondsman who holds any license issued from the
13 ABLE Commission or any permit issued from any governmental
14 subdivision or who has any ownership interest, employment or
15 interest in any business identified by the provisions of paragraph
16 8, 9, 10 or 11 of subsection A of Section 1315 of ~~Title 59 of the~~
17 ~~Oklahoma Statutes~~ this title may execute the duties of a bondsman or
18 have a bondsman office on the premises of such establishment.

19 C. No exception authorized in this section for a licensed
20 bondsman to additionally hold a license issued by the ABLE
21 Commission or a permit issued by a governmental subdivision pursuant
22 to paragraph 8, 9, 10 or 11 of subsection A of Section 1315 of ~~Title~~
23 ~~59 of the Oklahoma Statutes~~ this title shall apply to or be
24 construed as an exception for a bail enforcer.

1 D. The ABLE Commission shall be authorized to investigate all
2 provisions authorized by this section and shall certify in writing
3 to the Insurance Commissioner, upon written request, that a person
4 is eligible for an exception to the prohibitions of Section 1315 of
5 ~~Title 59 of the Oklahoma Statutes~~ this title. The ABLE Commission
6 shall immediately notify the Insurance Commissioner, in writing, if
7 a person becomes disqualified for an exception to the prohibitions
8 of paragraph 8, 9, 10 or 11 of subsection A of Section 1315 of ~~Title~~
9 ~~59 of the Oklahoma Statutes~~ this title. If, after an investigation
10 of a violation of the provisions of this section, the bail bondsman
11 is found to be disqualified to be licensed as a bail bondsman, the
12 ABLE Commission shall be entitled to reimbursement for all costs,
13 expenses and attorney fees and in addition, the person shall have
14 the bail bondsman license permanently revoked by the Insurance
15 Commissioner.

16 SECTION 3. AMENDATORY 59 O.S. 2011, Section 1327, as
17 last amended by Section 1, Chapter 270, O.S.L. 2019 (59 O.S. Supp.
18 2019, Section 1327), is amended to read as follows:

19 Section 1327. A. At any time before there has been a breach of
20 the undertaking in any type of bail provided herein, the surety or
21 bondsman or a licensed bail enforcer pursuant to a client contract
22 authorized by the Bail Enforcement and Licensing Act may surrender
23 the defendant, or the defendant may surrender himself or herself, to
24 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 with the court clerk, the bond
14 shall be exonerated and the clerk shall enter a minute in the case
15 exonerating the bond.

16 B. 1. If the defendant has been placed in custody of another
17 jurisdiction, the district attorney shall direct a hold order to the
18 official, judge or law enforcement agency where the defendant is in
19 custody. All reasonable expenses accrued in returning the defendant
20 to the original court shall be borne by the bondsman who posted the
21 bond with that court; provided, however, except for instances
22 whereby the defendant is transported by a contracted transport
23 company, reasonable expenses shall mean the actual miles traveled in
24 transporting the defendant at a rate equal to the current Internal

1 Revenue Service standard mileage rate. Upon application, the bond
2 in the original court shall be exonerated when the hold order is
3 placed and upon proof of payment of expenses by the bondsman.

4 2. Except as provided for in paragraph 3 of this subsection,
5 the premium for a bail bond shall be considered earned by the
6 bondsman or the insurer, as applicable, when the defendant on the
7 bond is released from custody and is not incarcerated in any
8 capacity. If the bond premium has not been earned pursuant to the
9 terms of this section, the payor of the premium or the depositor of
10 any collateral, as applicable, may request the return of the premium
11 or collateral given to the bondsman for the bond. The bondsman
12 shall return any premium and collateral without delay. If a
13 bondsman returns the premium to the payor pursuant to this section,
14 he or she may charge a usual, customary, and reasonable fee for his
15 or her services provided in the transaction.

16 3. The premium for a bail bond shall be considered earned by
17 the bondsman, regardless of whether the defendant on the bond is
18 released from custody, if the bondsman and the payor of the bond
19 premium have agreed in writing that the purpose of the bond is to
20 secure the transfer of the defendant to another jurisdiction and the
21 defendant is in fact transferred to that jurisdiction.

22 C. If the defendant has been arrested on new charges and is in
23 the custody of the same jurisdiction in which the bondsman or surety
24 has posted an appearance bond or bonds for the defendant, and the

1 bond or bonds have not been exonerated, and certified copies of
2 bonds are not reasonably available, the bondsman or surety may
3 recommit the defendant to be held in custody on the charges for
4 which the bondsman or surety has previously posted appearance bonds
5 thereon, in accordance with the following procedure:

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

10 a. the defendant is presently in the custody of the
11 jurisdiction in which the bondsman or surety has
12 posted a bond or bonds,

13 b. the case number, if any, assigned to each bond,

14 c. that the bond or bonds have not been exonerated, and

15 d. the specific charges and bond amount or amounts;

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

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

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

9 E. The bond shall be exonerated by operation of law in any case
10 in which the defendant has been arrested on new charges in the same
11 jurisdiction in which the bondsman or insurer has posted the
12 appearance bond or bonds for the defendant, and the defendant has
13 been subsequently released on his or her own personal recognizance.

14 F. The bond shall be exonerated by operation of law in any case
15 in which the defendant has been arrested and there is an added
16 charge to a case that would result in a higher fine or longer term
17 of sentence if convicted, or an amendment to a charge that would
18 result in a higher fine or longer term of sentence if convicted;
19 provided, however, any premium paid by the defendant to the bondsman
20 or insurer from the original charge shall be at the same premium
21 rate and shall be credited to the defendant if the same bondsman or
22 insurer posts the appearance bond or bonds on the added or amended
23 charge.

1 G. For purposes of this section, a "usual, customary, and
2 reasonable fee" means a charge to the payor that is based on the
3 amount of time spent by the bondsman or his or her employees
4 researching, drafting, and executing the bail bond. Such fee shall
5 be detailed in a written document provided to the payor.

6 SECTION 4. AMENDATORY 59 O.S. 2011, Section 1328, as
7 last amended by Section 11, Chapter 203, O.S.L. 2016 (59 O.S. Supp.
8 2019, Section 1328), is amended to read as follows:

9 Section 1328. A. The bondsman or insurer, or a licensed bail
10 enforcer pursuant to a client contract authorized by the Bail
11 Enforcement and Licensing Act, desiring to make a surrender of the
12 defendant shall procure or have in his or her possession a certified
13 copy of the undertakings and deliver such documents together with
14 the defendant to the official in whose custody the defendant was at
15 the time bail was taken, or to the official into whose custody he or
16 she would have been given had he or she been committed, who shall
17 detain the defendant in custody thereon, as upon a commitment, and
18 by a certificate in writing ~~acknowledge~~ acknowledging the surrender.

19 Upon the presentation of a certified copy of the undertaking and
20 the certificate of the official, the court before which the
21 defendant has been held to answer, or the court in which the
22 preliminary examination, indictment, information or appeal is
23 pending, shall upon notice of three (3) days given by the person
24 making the surrender to the prosecuting officer of the court having

1 jurisdiction of the offense, together with a copy of the
2 undertakings and certificate, order that the obligors be exonerated
3 from liability on their undertakings⁺, and, if money has been
4 deposited as bail, that such money or bonds be refunded. If
5 property pledged, a certificate of exoneration be issued and the
6 lien previously filed be released and the undertakings of whatever
7 nature be canceled.

8 If certified copies of bonds are not reasonably available, the
9 bondsman or insurer may recommit the defendant to be held in custody
10 on the charges for which the bondsman or insurer has previously
11 posted appearance bonds thereon in accordance with the following
12 procedure:

13 1. On a Recommitment of Defendant by Bondsman form approved by
14 the Administrative Office of the Courts, the bondsman or insurer
15 shall personally affix his or her signature to an affidavit
16 attesting to the following:

- 17 a. the bondsman or insurer has posted a bond or bonds for
18 the defendant and is hereby presented to the official
19 in whose custody the defendant was at the time bail
20 was taken,
- 21 b. the case number, if any, assigned to each bond, and
- 22 c. the specific charges and bond amount or amounts;

23 2. The bondsman or insurer shall present the Recommitment of
24 Defendant by Bondsman form to the official in whose custody the

1 defendant is being surrendered, and the official shall detain the
2 defendant in his or her custody thereon, as upon a commitment, and
3 by a certificate in writing acknowledging the surrender; and

4 3. When a bondsman or insurer recommitts a defendant pursuant to
5 this subsection, the bondsman or insurer shall file a written
6 notification thereof to the ~~courts~~ court clerk, and after such
7 notification, the bond or bonds shall be exonerated and the clerk
8 shall enter a minute in the case exonerating the bond or bonds.

9 B. Any bail bondsman engaged in the apprehension or surrender
10 of his or her defendant client, and any bail bondsman assisting
11 another bondsman pursuant to Section 1311.4 of this title, shall at
12 all times while engaged in the apprehension or surrender of the
13 defendant client have his or her bail bondsman license in his or her
14 possession and shall present the license to any law enforcement
15 officer immediately upon request.

16 SECTION 5. This act shall become effective November 1, 2020.

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