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February 26, 2019

SENATE BILL NO. 794

By: Leewright of the Senate

and

West (Kevin) of the House

An Act relating to professions and occupations; amending 59 O.S. 2011, Sections 1327, as last amended by Section 2, Chapter 16, O.S.L. 2016 and 1332, as last amended by Section 5, Chapter 161, O.S.L. 2017 (59 O.S. Supp. 2018, Sections 1327 and 1332), which relate to bail bondsmen; specifying rate for certain travel costs which bail bondsmen bear under certain circumstances; modifying placement of certain exoneration requirement; requiring exoneration of bond under certain circumstances; requiring credit for certain premiums paid; and providing an effective date.

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

SECTION 1. AMENDATORY 59 O.S. 2011, Section 1327, as last amended by Section 2, Chapter 16, O.S.L. 2016 (59 O.S. Supp. 2018, Section 1327), is amended to read as follows:

Section 1327. A. At any time before there has been a breach of the undertaking in any type of bail provided herein, the surety or bondsman 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

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

16 B. 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, which shall include, except for instances in
22 which the defendant is transported by a contracted transport
23 company, the actual miles traveled in transporting the defendant at
24 a rate equal to the IRS Federal Mileage Rate. Upon application, the

1 bond in the original court shall be exonerated when the hold order
2 is placed and upon proof of payment of expenses by the bondsman.

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

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

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

21 2. The bondsman or surety shall present the Recommitment of
22 Defendant by Bondsman form to the official in whose custody the
23 defendant is being held, and the official shall detain the defendant
24

1 in his or her custody, thereon, as upon a commitment, and by a
2 certificate in writing acknowledging the surrender; and

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

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

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

19 F. The bond shall be exonerated by operation of law in any case
20 in which the defendant has been arrested and there is an added
21 charge to a case that would result in a higher fine or longer term
22 of sentence if convicted, or an amendment to a charge that would
23 result in a higher fine or longer term of sentence if convicted;
24 provided, however, any premium paid by the defendant to the bondsman

1 or insurer from the original charge shall be at the same premium
2 rate and shall be credited to the defendant if the same bondsman or
3 insurer posts the appearance bond or bonds on the added or amended
4 charge.

5 SECTION 2. AMENDATORY 59 O.S. 2011, Section 1332, as
6 last amended by Section 5, Chapter 161, O.S.L. 2017 (59 O.S. Supp.
7 2018, Section 1332), is amended to read as follows:

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

1 mail the order and judgment of forfeiture to the bondsman or insurer
2 if, within fifteen (15) days from the date of forfeiture, the
3 defendant is returned to custody, the bond is reinstated by the
4 court with the bondsman's approval, or the order of forfeiture is
5 vacated or set aside by the court. Failure of the clerk of the
6 trial court to comply with the thirty-day notice provision in this
7 subsection shall exonerate the bond by operation of law.

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

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

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

22 3. When the court record indicates that the defendant is
23 returned to custody in the jurisdiction where forfeiture occurred,
24 within the ninety-day period, the court clerk shall enter minutes

1 vacating the forfeiture and exonerating the bond. If the defendant
2 has been timely returned to custody, but this fact is not reflected
3 by the court record, the court shall vacate the forfeiture and
4 exonerate the bond.

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

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

22 5. In addition to the provisions set forth in paragraphs 3 and
23 4 of this subsection, the bond shall be exonerated by operation of
24 law in any case in which:

1 a. the bondsman has requested in writing of the sheriff's
2 department in the county where the forfeiture occurred
3 that the defendant be entered into the computerized
4 records of the National Crime Information Center, and
5 the request has not been honored within fourteen (14)
6 business days of the receipt of the written request by
7 the department,

8 b. the defendant has been arrested outside of this state
9 and the court record shows the prosecuting attorney
10 has declined to proceed with extradition, or

11 c. the warrant issued by the court has not been entered
12 into an active warrant database available to law
13 enforcement within five (5) business days after its
14 issued date,~~or~~

15 ~~d. the defendant has been arrested on new charges in the~~
16 ~~same jurisdiction in which the bondsman or insurer has~~
17 ~~posted the appearance bond or bonds for the defendant,~~
18 ~~and the defendant has been subsequently released on~~
19 ~~his or her own personal recognizance.~~

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

23 a. the defendant's failure to appear, or
24

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 (1) 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

1 request for remitter be made by motion filed within one (1) year
2 from the date payment is due.

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

11 4. The Insurance Commissioner shall:

12 a. in the case of a surety bondsman, immediately cancel
13 the license privilege and authorization of the insurer
14 to do business within the State of Oklahoma and cancel
15 the appointment of all surety bondsman agents of the
16 insurer who are licensed by Section 1301 et seq. of
17 this title, and

18 b. in the case of a professional bondsman, withdraw the
19 face amount of the forfeiture from the deposit
20 provided in Section 1306 of this title. The
21 Commissioner shall then immediately direct the
22 professional bondsman, by mail with return receipt
23 requested, to make additional deposits to bring the
24 original deposit to the required level. Should the

1 professional bondsman, after being notified, fail to
2 make an additional deposit within ten (10) days from
3 the receipt of notice, or mailing of notice if no
4 receipt is made, the license shall be revoked and all
5 sums presently on deposit shall be held by the
6 Commissioner to secure the face amounts of bonds
7 outstanding. Upon release of the bonds, any amount of
8 deposit in excess of the bonds shall be returned to
9 the bondsman; provided, the bail bondsman shall have
10 had notice as required by the court, at the place of
11 the bondsman's business, of the trial or hearing of
12 the defendant named in the bond. The notice shall
13 have been at least ten (10) days before the required
14 appearance of the defendant, unless the appearance is
15 scheduled at the time of execution of the bond.
16 Notwithstanding the foregoing, the bondsman shall be
17 deemed to have had notice of the trial or hearing if
18 the defendant named in the bond shall have been
19 recognized back in open court to appear at a date
20 certain for the trial or hearing.

21 5. If the actions of any bail bondsman force the Insurance
22 Commissioner to withdraw monies, deposited pursuant to Section 1306
23 of this title, to pay ~~past-due~~ past-due executions more than two (2)
24 times in a consecutive twelve-month period, then the license of the

1 professional bondsman shall, in addition to other penalties, be
2 suspended automatically for one (1) year or until a deposit equal to
3 all outstanding forfeitures due is made. The deposit shall be
4 maintained until the Commissioner deems it feasible to reduce the
5 deposit. In no case shall an increased deposit exceed two (2) years
6 unless there is a recurrence of withdrawals as stated herein.

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

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

22 F. The district attorney or municipal attorney shall not
23 receive any bonuses or other monies or property for or by reason of
24 services or actions in connection with or collection of bond

1 forfeitures under the provisions of Section 1301 et seq. of this
2 title, except that the court may award a reasonable attorney fee in
3 favor of the prevailing party for legal services in any civil action
4 or proceeding to collect upon a judgment of forfeiture.

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

12 H. For municipal courts of record, the above procedures are
13 criminal in nature and ancillary to the criminal procedures before
14 the trial court and shall be subject to the bondsman's right of
15 appeal. The bondsman or insurer may appeal an order and judgment of
16 forfeiture by the municipal courts of record to the Court of
17 Criminal Appeals.

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

SECTION 3. This act shall become effective November 1, 2019.

COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
February 26, 2019 - DO PASS