

STATE OF OKLAHOMA

1st Session of the 57th Legislature (2019)

SENATE BILL NO. 717

By: Leewright

AS INTRODUCED

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 2, Chapter 16, O.S.L. 2016, and 1328, as last amended by Section 11, Chapter 203, O.S.L. 2016 (59 O.S. Supp. 2018, Sections 1314, 1315.1, 1327 and 1328), which relate to description of collateral, bondsman owner of restaurant, exoneration of bonds; requiring cash deposits within certain time; deleting language and definition; stating when bond premium is earned; allowing certain fee 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. 2018, Section 1314), is amended to read as follows:

Section 1314. A. When a bail bondsman or managing general agent accepts collateral, the bail bondsman or managing general agent shall give a written receipt for same, and this receipt shall give in detail a full description of the collateral received. A description of the collateral shall be listed on the undertaking by

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

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

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

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

12 When collateral security is received in the form of cash, or
13 check or other negotiable instrument, the bondsman shall deposit,
14 the cash or instrument, within two banking days after receipt, in an
15 established, separate non-interest bearing trust account in any bank
16 located in Oklahoma. The trust account funds under this section
17 shall not be commingled with other operating funds.

18 B. Every licensed bondsman shall file monthly electronically
19 with the Insurance Commissioner and on forms approved by the
20 Commissioner as follows:

21 1. A monthly report showing every bond written, amount of bond,
22 whether released or revoked during each month, showing the court and
23 county, and the style and number of the case, premiums charged and
24 collateral received; and

1 2. Professional bondsmen and multicounty agent bondsmen shall
2 submit electronic monthly reports showing total current liabilities,
3 all bonds written during the month by the professional bondsman or
4 multicounty agent bondsman and by any licensed bondsman who may
5 countersign for the professional bondsman or multicounty agent
6 bondsman, all bonds terminated during the month, and the total
7 liability and a list of all bondsmen currently employed by the
8 professional bondsman or multicounty agent bondsman.

9 Monthly reports shall be submitted electronically to the
10 Insurance Commissioner by the fifteenth day of each month. The
11 records shall be maintained by the Commissioner as public records.

12 C. Every licensee shall keep at the place of business of the
13 licensee the usual and customary records pertaining to transactions
14 authorized by the license. All of the records shall be available
15 and open to the inspection of the Commissioner at any time during
16 business hours during the three (3) years immediately following the
17 date the liability of the bondsman on the bond is discharged by the
18 court or the date collateral is returned by the bondsman to its
19 lawful owner, whichever is later. If an appearance bond is never
20 executed and filed with the court, then all records shall be
21 maintained for three (3) years immediately following the date the
22 documents were prepared. The Commissioner may require a financial
23 examination or market conduct survey during any investigation of a
24 licensee.

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

6 SECTION 2. AMENDATORY Section 1, Chapter 212, O.S.L.
7 2015 (59 O.S. Supp. 2018, Section 1315.1), is amended to read as
8 follows:

9 Section 1315.1. A. On and after ~~the effective date of this act~~
10 November 1, 2015, as an exception to the provisions in paragraph 8,
11 9, 10 or 11 of Section 1315 of ~~Title 59 of the Oklahoma Statutes~~
12 this title prohibiting a person from being a bail bondsman or
13 receiving any benefit from the execution of any bail bond, a person
14 who holds an ownership interest in a restaurant establishment where
15 alcoholic beverages are lawfully sold ~~incidental to the sale of food~~
16 or who is an officer, director or stockholder of a corporation that
17 owns or operates a restaurant where alcoholic beverages are lawfully
18 sold ~~incidental to the sale of food~~, may be a licensed bail
19 bondsman. ~~For purposes of this section, "incidental to the sale of~~
20 ~~food" means the sale of all alcoholic beverages is not more than~~
21 ~~fifty percent (50%) of the monthly gross sales of the establishment,~~
22 ~~and "alcoholic beverages" means all beverages containing more than~~
23 ~~three and two-tenths percent (3.2%) alcohol by weight, and all mixed~~
24 ~~beverage coolers, as defined by Section 506 of Title 37 of the~~

1 ~~Oklahoma Statutes, regardless of percent of alcohol content, and all~~
2 ~~beverages containing more than one half of one percent (1/2 of 1%)~~
3 ~~alcohol by volume and not more than three and two-tenths percent~~
4 ~~(3.2%) alcohol by weight.~~

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

12 C. No exception authorized in this section for a licensed
13 bondsman to additionally hold a license issued by the ABLE
14 Commission or a permit issued by a governmental subdivision pursuant
15 to paragraph 8, 9, 10 or 11 of Section 1315 of ~~Title 59 of the~~
16 ~~Oklahoma Statutes~~ this title shall apply to or be construed as an
17 exception for a bail enforcer.

18 D. The ABLE Commission shall be authorized to investigate all
19 provisions authorized by this section and shall certify in writing
20 to the Insurance Commissioner, upon written request, that a person
21 is eligible for an exception to the prohibitions of Section 1315 of
22 ~~Title 59 of the Oklahoma Statutes~~ this title. The ABLE Commission
23 shall immediately notify the Insurance Commissioner, in writing, if
24 a person becomes disqualified for an exception to the prohibitions

1 of paragraph 8, 9, 10 or 11 of Section 1315 of ~~Title 59 of the~~
2 ~~Oklahoma Statutes~~ this title. If, after an investigation of a
3 violation of the provisions of this section, the bail bondsman is
4 found to be disqualified to be licensed as a bail bondsman, the ABLE
5 Commission shall be entitled to reimbursement for all costs,
6 expenses and attorney fees and in addition, the person shall have
7 the bail bondsman license permanently revoked by the Insurance
8 Commissioner.

9 SECTION 3. AMENDATORY 59 O.S. 2011, Section 1327, as
10 last amended by Section 2, Chapter 16, O.S.L. 2016 (59 O.S. Supp.
11 2018, Section 1327), is amended to read as follows:

12 Section 1327. A. At any time before there has been a breach of
13 the undertaking in any type of bail provided herein, the surety or
14 bondsman or a licensed bail enforcer pursuant to a client contract
15 authorized by the Bail Enforcement and Licensing Act may surrender
16 the defendant, or the defendant may surrender himself or herself, to
17 the official to whose custody the defendant was committed at the
18 time bail was taken, or to the official into whose custody the
19 defendant would have been given had he or she been committed. The
20 defendant may be surrendered without the return of premium for the
21 bond if he or she has been guilty of nonpayment of premium, changes
22 address without notifying his or her bondsman, conceals himself or
23 herself, leaves the jurisdiction of the court without the permission
24 of his or her bondsman, or violates his or her contract with the

1 bondsman in any way that does harm to the bondsman, or the surety,
2 or violates his or her obligation to the court. When a bondsman or
3 surety, or a licensed bail enforcer, surrenders a defendant pursuant
4 to this subsection, the bondsman or surety shall file written
5 notification of the surrender. After surrender, and upon filing of
6 written notification of the surrender with the court clerk, the bond
7 shall be exonerated and the clerk shall enter a minute in the case
8 exonerating the bond.

9 B. 1. If the defendant has been placed in custody of another
10 jurisdiction, the district attorney shall direct a hold order to the
11 official, judge or law enforcement agency where the defendant is in
12 custody. All reasonable expenses accrued in returning the defendant
13 to the original court shall be borne by the bondsman who posted the
14 bond with that court. Upon application, the bond in the original
15 court shall be exonerated when the hold order is placed and upon
16 proof of payment of expenses by the bondsman.

17 2. The premium for a bail bond shall be considered earned by
18 the bondsman or the insurer, as applicable, when the defendant on
19 the bond is released from custody and is not incarcerated in any
20 capacity. If the bond premium has not been earned pursuant to the
21 terms of this section, the payor of the premium or the depositor of
22 any collateral, as applicable, may request the return of the premium
23 or collateral given to the bondsman for the bond. The bondsman
24 shall return any premium and collateral without delay. If a

1 bondsman returns the premium to the payor pursuant to this section,
2 he or she may charge a usual, customary, and reasonable fee for his
3 or her services provided in the transaction.

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

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

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

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

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

19 SECTION 4. AMENDATORY 59 O.S. 2011, Section 1328, as
20 last amended by Section 11, Chapter 203, O.S.L. 2016 (59 O.S. Supp.
21 2018, Section 1328), is amended to read as follows:

22 Section 1328. A. The bondsman or insurer, or a licensed bail
23 enforcer pursuant to a client contract authorized by the Bail
24 Enforcement and Licensing Act, desiring to make a surrender of the
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1 defendant shall procure or have in his or her possession a certified
2 copy of the undertakings and deliver such documents together with
3 the defendant to the official in whose custody the defendant was at
4 the time bail was taken, or to the official into whose custody he or
5 she would have been given had he or she been committed, who shall
6 detain the defendant in custody thereon, as upon a commitment, and
7 by a certificate in writing acknowledge the surrender.

8 Upon the presentation of a certified copy of the undertaking and
9 the certificate of the official, the court before which the
10 defendant has been held to answer, or the court in which the
11 preliminary examination, indictment, information or appeal is
12 pending, shall upon notice of three (3) days given by the person
13 making the surrender to the prosecuting officer of the court having
14 jurisdiction of the offense, together with a copy of the
15 undertakings and certificate, order that the obligors be exonerated
16 from liability on their undertakings; and, if money has been
17 deposited as bail, that such money or bonds be refunded. If
18 property pledged, a certificate of exoneration be issued and the
19 lien previously filed be released and the undertakings of whatever
20 nature be canceled.

21 If certified copies of bonds are not reasonably available, the
22 bondsman or insurer may recommit the defendant to be held in custody
23 on the charges for which the bondsman or insurer has previously
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1 posted appearance bonds thereon in accordance with the following
2 procedure:

3 1. On a Recommitment of Defendant by Bondsman form approved by
4 the Administrative Office of the Courts, the bondsman or insurer
5 shall personally affix his or her signature to an affidavit
6 attesting to the following:

7 a. the bondsman or insurer has posted a bond or bonds for
8 the defendant and is hereby presented to the official
9 in whose custody the defendant was at the time bail
10 was taken,

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

12 c. the specific charges and bond amount or amounts;

13 2. The bondsman or insurer shall present the Recommitment of
14 Defendant by Bondsman form to the official in whose custody the
15 defendant is being surrendered, and the official shall detain the
16 defendant in his or her custody thereon, as upon a commitment, and
17 by a certificate in writing acknowledging the surrender; and

18 3. When a bondsman or insurer recommitts a defendant pursuant to
19 this subsection, the bondsman or insurer shall file a written
20 notification thereof to the ~~courts~~ court clerk, and after such
21 notification, the bond or bonds shall be exonerated and the clerk
22 shall enter a minute in the case exonerating the bond or bonds.

23 B. Any bail bondsman engaged in the apprehension or surrender
24 of his or her defendant client, and any bail bondsman assisting

1 another bondsman pursuant to Section 1311.4 of this title, shall at
2 all times while engaged in the apprehension or surrender of the
3 defendant client have his or her bail bondsman license in his or her
4 possession and shall present the license to any law enforcement
5 officer immediately upon request.

6 SECTION 5. This act shall become effective November 1, 2019.

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