

STATE OF OKLAHOMA

1st Session of the 57th Legislature (2019)

SENATE BILL NO. 794

By: Leewright

AS INTRODUCED

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 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, except for instances in  
21 which the defendant is transported by a contracted transport  
22 company, the actual miles traveled in transporting the defendant at  
23 a rate equal to the IRS Federal Mileage Rate. Upon application, the  
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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  
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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. 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  
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1           b.     the bondsman's failure to return the defendant to  
2                 custody within ninety (90) days.

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

15           2.   After the order and judgment has been paid within ninety-one  
16 (91) days from receipt of the order and judgment of forfeiture from  
17 the court clerk, or mailing of the notice if no receipt is made, as  
18 required in paragraph 1 of this subsection, the bondsman and, if  
19 applicable, the insurer whose risk it is shall have one (1) year  
20 from the date payment is due to return the defendant to custody as  
21 defined by paragraph 4 of subsection C of this section. In the  
22 event the defendant is returned to custody and all expenses for the  
23 defendant's return have been paid by the bondsman or insurer, the  
24 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.

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

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