

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 58th Legislature (2021)

4 ENGROSSED SENATE
5 BILL NO. 792

By: Leewright of the Senate

and

Manger of the House

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10 An Act relating to bail bondsmen; amending 59 O.S.
11 2011, Sections 1306, as last amended by Section 3,
12 Chapter 203, O.S.L. 2016, 1314, as last amended by
13 Section 8, Chapter 203, O.S.L. 2016, Section 1,
14 Chapter 212, O.S.L. 2015, 1327, as last amended by
15 Section 1, Chapter 270, O.S.L. 2019 and 1328, as last
16 amended by Section 11, Chapter 203, O.S.L. 2016 (59
17 O.S. Supp. 2020, Sections 1306, 1314, 1315.1, 1327
18 and 1328), which relate to cash bondsman,
19 requirements for accepting collateral, exception to
20 bondsman licensing prohibitions and exoneration of
21 bonds; providing for state of emergency; requiring
22 cash deposits within certain time; deleting language
23 and definition; stating when bond premium is earned;
24 allowing fee to be charged upon return of certain
 premium; defining term; clarifying where certain
 filings are made; updating statutory references and
 language; providing for exoneration of bond by
 operation of law under certain conditions; and
 providing an effective date.

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

1 SECTION 1. AMENDATORY 59 O.S. 2011, Section 1306, as
2 last amended by Section 3, Chapter 203, O.S.L. 2016 (59 O.S. Supp.
3 2020, Section 1306), is amended to read as follows:

4 Section 1306. A. 1. An applicant for a cash bondsman license
5 shall meet all requirements set forth in Section 1305 of this title
6 with exception of the one-year residence requirement. An applicant
7 for a cash bondsman license shall affirmatively show that the
8 applicant has been a bona fide resident of the state for six (6)
9 months.

10 2. In addition to the requirements prescribed in Section 1305
11 of this title, an applicant for a professional bondsman license
12 shall have been continually licensed as a surety, cash or property
13 bondsman in the State of Oklahoma for a minimum of two (2) years
14 immediately prior to the date of application and shall submit to the
15 Insurance Commissioner an audited financial statement prepared by an
16 accounting firm or individual holding a permit to practice public
17 accounting in this state in accordance with the Statements on
18 Auditing Standards promulgated by the Auditing Standards Board of
19 the American Institute of Certified Public Accountants setting forth
20 the total assets of the bondsman less liabilities and debts as
21 follows: For all applications made prior to November 1, 2006, and
22 the subsequent renewals of a license issued upon the application
23 when continuously maintained in effect as required by law, the
24 statement shall show a net worth of at least Fifty Thousand Dollars

1 (\$50,000.00). For all applications made on and after November 1,
2 2006, and the subsequent renewals of a license issued upon the
3 application when continuously maintained in effect as required by
4 law, or for the renewal or reinstatement of any license that is
5 expired pursuant to subsection D of Section 1309 of this title,
6 suspended or revoked, the statement shall show a net worth of at
7 least One Hundred Fifty Thousand Dollars (\$150,000.00), the
8 statements to be current as of a date not earlier than ninety (90)
9 days prior to submission of the application and the statement shall
10 be attested to by an unqualified opinion of the accountant.

11 3. Professional bondsman applicants shall make a deposit with
12 the Insurance Commissioner in the same manner as required of
13 domestic insurance companies of an amount to be determined by the
14 Commissioner. For all applications made prior to November 1, 2006,
15 and the subsequent renewals of a license issued upon the application
16 when continuously maintained in effect as required by law, the
17 deposit shall not be less than Twenty Thousand Dollars (\$20,000.00).
18 For all applications made on and after November 1, 2006, and the
19 subsequent renewals of a license issued upon the application when
20 continuously maintained in effect as required by law, or for the
21 renewal or reinstatement of any license that is expired pursuant to
22 subsection D of Section 1309 of this title, suspended or revoked,
23 the deposit shall not be less than Fifty Thousand Dollars
24 (\$50,000.00). The deposits shall be subject to all laws, rules and

1 regulations as deposits by domestic insurance companies but in no
2 instance shall a professional bondsman write bonds which equal more
3 than ten times the amount of the deposit which the bondsman has
4 submitted to the Commissioner. Such deposit shall require the
5 review and approval of the Insurance Commissioner prior to exceeding
6 the maximum amount of Federal Deposit Insurance Corporation basic
7 deposit coverage for any one bank or financial institution. In
8 addition, a professional bondsman may make the deposit by purchasing
9 an annuity through a licensed domestic insurance company in the
10 State of Oklahoma. The annuity shall be in the name of the bondsman
11 as owner with legal assignment to the Insurance Commissioner. The
12 assignment form shall be approved by the Commissioner. If a
13 bondsman exceeds the above limitation, the bondsman shall be
14 notified by the Commissioner that the excess shall be reduced or the
15 deposit increased within ten (10) days of notification, or the
16 license of the bondsman shall be suspended immediately after the
17 ten-day period, pending a hearing on the matter. The limitation may
18 be exceeded with Commissioner approval when a state of emergency or
19 disaster is declared by the Governor, the Oklahoma Legislature or by
20 the United States Presidential Declaration of a Federal Emergency or
21 Major Disaster.

22 4. The deposit provided for in this section shall constitute a
23 reserve available to meet sums due on forfeiture of any bonds or
24 recognizance executed by the bondsman.

1 5. Any deposit made by a professional bondsman pursuant to this
2 section shall be released and returned by the Commissioner to the
3 professional bondsman only upon extinguishment of all liability on
4 outstanding bonds. Provided, however, the Commissioner shall have
5 the authority to review specific financial circumstances and history
6 of a professional bondsman, on a case-by-case basis, and may release
7 a portion of the deposit if warranted. The Commissioner may
8 promulgate rules to effectuate the provisions of this paragraph.

9 6. No release of deposits to a professional bondsman shall be
10 made by the Commissioner except upon written application and the
11 written order of the Commissioner. The Commissioner shall have no
12 liability for any such release to a professional bondsman provided
13 the release was made in good faith.

14 B. The deposit provided in this section shall be held in
15 safekeeping by the Insurance Commissioner and shall only be used if
16 a bondsman fails to pay an order and judgment of forfeiture after
17 being properly notified or shall be used if the license of a
18 professional bondsman has been revoked. The deposit shall be held
19 in the name of the Insurance Commissioner and the bondsman. The
20 bondsman shall execute an assignment or pledge of the deposit to the
21 Insurance Commissioner for the payment of unpaid bond forfeitures.

22 C. Currently licensed professional bondsmen may maintain their
23 aggregate liability limits upon presentation of documented proof
24

1 that they have previously been granted a limitation greater than the
2 requirements of subsection A of this section.

3 D. Notwithstanding any other provision of Sections 1301 through
4 1341 of this title, the license of a professional bondsman is
5 transferable upon the death or legal or physical incapacitation of
6 the bondsman to the spouse of the bondsman, or to such other
7 transferee as the professional bondsman may designate in writing,
8 and the transferee may elect to act as a professional bondsman for a
9 period of one hundred eighty (180) days if the following conditions
10 are met:

11 1. The transferee shall hold a valid license as a surety
12 bondsman in this state; and

13 2. The asset and deposit requirements set forth in this section
14 continue to be met.

15 SECTION 2. AMENDATORY 59 O.S. 2011, Section 1314, as
16 last amended by Section 8, Chapter 203, O.S.L. 2016 (59 O.S. Supp.
17 2020, Section 1314), is amended to read as follows:

18 Section 1314. A. When a bail bondsman or managing general
19 agent accepts collateral, the bail bondsman or managing general
20 agent shall give a written receipt for same, and this receipt shall
21 give in detail a full description of the collateral received. A
22 description of the collateral shall be listed on the undertaking by
23 affidavit. All property taken as collateral, whether personal,
24 intangible or real, shall be receipted for and deemed, for all

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

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

23 2. The insurer whose agent is the licensed bondsman.
24

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

11 When collateral security is received in the form of cash or
12 check or other negotiable instrument, the bondsman shall deposit the
13 cash or instrument within two (2) business days after receipt in an
14 established, separate non-interest-bearing trust account in any bank
15 located in Oklahoma. The trust account funds required under this
16 section shall not be commingled with other operating funds.

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

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

1 2. ~~Professional bondsmen and multicounty agent bondsmen shall~~
2 ~~submit electronic monthly~~ Monthly reports showing total current
3 liabilities, all bonds written during the month by the professional
4 bondsman or multicounty agent bondsman and by any licensed bondsman
5 who may countersign for the professional bondsman or multicounty
6 agent 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 3. AMENDATORY Section 1, Chapter 212, O.S.L.
7 2015 (59 O.S. Supp. 2020, 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 subsection A of Section 1315 of ~~Title 59 of the~~
12 ~~Oklahoma Statutes~~ this title prohibiting a person from being a bail
13 bondsman or receiving any benefit from the execution of any bail
14 bond, a person who holds an ownership interest in a restaurant
15 establishment where alcoholic beverages are lawfully sold ~~incidental~~
16 ~~to the sale of food~~ or who is an officer, director or stockholder of
17 a corporation that owns or operates a restaurant where alcoholic
18 beverages are lawfully sold ~~incidental to the sale of food~~, may be a
19 licensed bail bondsman. ~~For purposes of this section, "incidental~~
20 ~~to the sale of food" means the sale of all alcoholic beverages is~~
21 ~~not more than fifty percent (50%) of the monthly gross sales of the~~
22 ~~establishment, and "alcoholic beverages" means all beverages~~
23 ~~containing more than three and two-tenths percent (3.2%) alcohol by~~
24 ~~weight, and all mixed beverage coolers, as defined by Section 506 of~~

1 ~~Title 37 of the Oklahoma Statutes, regardless of percent of alcohol~~
2 ~~content, and all beverages containing more than one half of one~~
3 ~~percent (1/2 of 1%) alcohol by volume and not more than three and~~
4 ~~two tenths percent (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 subsection A of Section 1315 of ~~Title 59 of the~~
10 ~~Oklahoma Statutes~~ this title may execute the duties of a bondsman or
11 have a bondsman 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 subsection A of Section 1315 of ~~Title~~
16 ~~59 of the Oklahoma Statutes~~ this title shall apply to or be
17 construed as an 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 subsection A of Section 1315 of ~~Title~~
2 ~~59 of the Oklahoma Statutes~~ this title. If, after an investigation
3 of a violation of the provisions of this section, the bail bondsman
4 is found to be disqualified to be licensed as a bail bondsman, the
5 ABLE 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 4. AMENDATORY 59 O.S. 2011, Section 1327, as
10 last amended by Section 1, Chapter 270, O.S.L. 2019 (59 O.S. Supp.
11 2020, 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; provided, however, except for instances
15 whereby the defendant is transported by a contracted transport
16 company, reasonable expenses shall mean the actual miles traveled in
17 transporting the defendant at a rate equal to the current Internal
18 Revenue Service standard mileage rate. Upon application, the bond
19 in the original court shall be exonerated when the hold order is
20 placed and upon proof of payment of expenses by the bondsman.

21 2. Except as provided for in paragraph 3 of this subsection,
22 the premium for a bail bond shall be considered earned by the
23 bondsman or the insurer, as applicable, when the defendant on the
24 bond is released from custody and is not incarcerated in any

1 capacity. If the bond premium has not been earned pursuant to the
2 terms of this section, the payor of the premium or the depositor of
3 any collateral, as applicable, may request the return of the premium
4 or collateral given to the bondsman for the bond. The bondsman
5 shall return any premium and collateral without delay. If a
6 bondsman returns the premium to the payor pursuant to this section,
7 he or she may charge a usual, customary, and reasonable fee for his
8 or her services provided in the transaction.

9 3. The premium for a bail bond shall be considered earned by
10 the bondsman, regardless of whether the defendant on the bond is
11 released from custody, if the bondsman and the payor of the bond
12 premium have agreed in writing that the purpose of the bond is to
13 secure the transfer of the defendant to another jurisdiction and the
14 defendant is in fact transferred to that jurisdiction.

15 C. If the defendant has been arrested on new charges and is in
16 the custody of the same jurisdiction in which the bondsman or surety
17 has posted an appearance bond or bonds for the defendant, and the
18 bond or bonds have not been exonerated, and certified copies of
19 bonds are not reasonably available, the bondsman or surety may
20 recommit the defendant to be held in custody on the charges for
21 which the bondsman or surety has previously posted appearance bonds
22 thereon, in accordance with the following procedure:

23 1. On a Recommitment of Defendant by Bondsman form approved by
24 the Administrative Office of the Courts, the bondsman or surety

1 shall personally affix his or her signature to an affidavit
2 attesting to the following:

- 3 a. the defendant is presently in the custody of the
- 4 jurisdiction in which the bondsman or surety has
- 5 posted a bond or bonds,
- 6 b. the case number, if any, assigned to each bond,
- 7 c. that the bond or bonds have not been exonerated, and
- 8 d. the specific charges and bond amount or amounts;

9 2. The bondsman or surety shall present the Recommitment of
10 Defendant by Bondsman form to the official in whose custody the
11 defendant is being held, and the official shall detain the defendant
12 in his or her custody, thereon, as upon a commitment, and by a
13 certificate in writing acknowledging the surrender; and

14 3. When a bondsman or surety recommits a defendant pursuant to
15 this subsection, the bondsman or surety shall file a written
16 notification thereof to the court, and after such notification, the
17 bond or bonds shall be exonerated, and the clerk shall enter a
18 minute in the case exonerating the bond or bonds.

19 D. 1. When a defendant does appear before the court as
20 required by law and enters a plea of guilty or nolo contendere, is
21 sentenced or a deferred sentence is granted as provided for in
22 Section 991c of Title 22 of the Oklahoma Statutes, or deferred
23 prosecution is granted as provided by law, in such event the

1 undertaking and bondsman and insurer shall be exonerated from
2 further liability.

3 2. A bond posted for a petition for revocation of a suspended
4 sentence, a petition for acceleration of a deferred sentence or any
5 violation of a probationary term shall be exonerated by operation of
6 law when:

7 a. the defendant has confessed, stipulated or otherwise
8 agreed to the factual basis of the violation of
9 probation,

10 b. the suspended sentence is revoked in whole or part,

11 c. the deferred sentence is accelerated in whole or part,
12 or

13 d. any additional sanction is imposed by the court.

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

10 SECTION 5. AMENDATORY 59 O.S. 2011, Section 1328, as
11 last amended by Section 11, Chapter 203, O.S.L. 2016 (59 O.S. Supp.
12 2020, Section 1328), is amended to read as follows:

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

23 Upon the presentation of a certified copy of the undertaking and
24 the certificate of the official, the court before which the

1 defendant has been held to answer, or the court in which the
2 preliminary examination, indictment, information or appeal is
3 pending, shall upon notice of three (3) days given by the person
4 making the surrender to the prosecuting officer of the court having
5 jurisdiction of the offense, together with a copy of the
6 undertakings and certificate, order that the obligors be exonerated
7 from liability on their undertakings⁺, and, if money has been
8 deposited as bail, that such money or bonds be refunded. If
9 property pledged, a certificate of exoneration be issued and the
10 lien previously filed be released and the undertakings of whatever
11 nature be canceled.

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

17 1. On a Recommitment of Defendant by Bondsman form approved by
18 the Administrative Office of the Courts, the bondsman or insurer
19 shall personally affix his or her signature to an affidavit
20 attesting to the following:

- 21 a. the bondsman or insurer has posted a bond or bonds for
22 the defendant and is hereby presented to the official
23 in whose custody the defendant was at the time bail
24 was taken,

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

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

3 2. The bondsman or insurer shall present the Recommitment of
4 Defendant by Bondsman form to the official in whose custody the
5 defendant is being surrendered, and the official shall detain the
6 defendant in his or her custody thereon, as upon a commitment, and
7 by a certificate in writing acknowledging the surrender; and

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

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

20 SECTION 6. This act shall become effective November 1, 2021.

21
22 COMMITTEE REPORT BY: COMMITTEE ON PUBLIC SAFETY, dated 04/06/2021 -
23 DO PASS.
24