

1 **SENATE FLOOR VERSION**

2 March 26, 2019

3 ENGROSSED HOUSE
4 BILL NO. 1107

By: West (Kevin) of the House

5 and

6 Leewright of the Senate

7
8
9 An Act relating to professions and occupations;
10 amending 59 O.S. 2011, Sections 1327, as last amended
11 by Section 2, Chapter 16, O.S.L. 2016 and 1332, as
12 last amended by Section 5, Chapter 161, O.S.L. 2017
13 (59 O.S. Supp. 2018, Sections 1327 and 1332), which
14 relate to bail bondsmen; specifying rate for certain
15 travel costs which bail bondsmen bear under certain
16 circumstances; modifying placement of certain
17 exoneration requirement; requiring exoneration of
18 bond under certain circumstances; requiring credit
19 for certain premiums paid; and providing an effective
20 date.

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

22 SECTION 1. AMENDATORY 59 O.S. 2011, Section 1327, as
23 last amended by Section 2, Chapter 16, O.S.L. 2016 (59 O.S. Supp.
24 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
bondsmen or a licensed bail enforcer pursuant to a client contract

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

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

1 company, reasonable expenses shall mean the actual miles traveled in
2 transporting the defendant at a rate equal to the current Internal
3 Revenue Service standard mileage rate. Upon application, the bond
4 in the original court shall be exonerated when the hold order is
5 placed and upon proof of payment of expenses by the bondsman.

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

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

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

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

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

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

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

22 F. The bond shall be exonerated by operation of law in any case
23 in which the defendant has been arrested and there is an added
24 charge to a case that would result in a higher fine or longer term

1 of sentence if convicted, or an amendment to a charge that would
2 result in a higher fine or longer term of sentence if convicted;
3 provided, however, any premium paid by the defendant to the bondsman
4 or insurer from the original charge shall be at the same premium
5 rate and shall be credited to the defendant if the same bondsman or
6 insurer posts the appearance bond or bonds on the added or amended
7 charge.

8 SECTION 2. AMENDATORY 59 O.S. 2011, Section 1332, as
9 last amended by Section 5, Chapter 161, O.S.L. 2017 (59 O.S. Supp.
10 2018, Section 1332), is amended to read as follows:

11 Section 1332. A. If there is a breach of an undertaking, the
12 court before which the cause is pending shall issue, within ten (10)
13 days, an arrest warrant for the defendant and declare the
14 undertaking and any money, property, or securities that have been
15 deposited as bail, forfeited on the day the defendant failed to
16 appear. Within fifteen (15) days from the date of the forfeiture,
17 the order and judgment of forfeiture shall be filed with the clerk
18 of the trial court. Failure to timely issue the arrest warrant or
19 file the order and judgment of forfeiture as provided in this
20 subsection shall exonerate the bond by operation of law. In the
21 event of the forfeiture of a bail bond the clerk of the trial court
22 shall, within thirty (30) days after the order and judgment of
23 forfeiture is filed in the court, by mail with return receipt
24 requested, mail a true and correct copy of the order and judgment of

1 forfeiture to the bondsman, and if applicable, the insurer, whose
2 risk it is, and keep at least one copy of the order and judgment of
3 forfeiture on file; provided, the clerk shall not be required to
4 mail the order and judgment of forfeiture to the bondsman or insurer
5 if, within fifteen (15) days from the date of forfeiture, the
6 defendant is returned to custody, the bond is reinstated by the
7 court with the bondsman's approval, or the order of forfeiture is
8 vacated or set aside by the court. Failure of the clerk of the
9 trial court to comply with the thirty-day notice provision in this
10 subsection shall exonerate the bond by operation of law.

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

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

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

1 3. When the court record indicates that the defendant is
2 returned to custody in the jurisdiction where forfeiture occurred,
3 within the ninety-day period, the court clerk shall enter minutes
4 vacating the forfeiture and exonerating the bond. If the defendant
5 has been timely returned to custody, but this fact is not reflected
6 by the court record, the court shall vacate the forfeiture and
7 exonerate the bond.

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

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

1 5. In addition to the provisions set forth in paragraphs 3 and
2 4 of this subsection, the bond shall be exonerated by operation of
3 law in any case in which:

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

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

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

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

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

- 4 a. the defendant's failure to appear, or
- 5 b. the bondsman's failure to return the defendant to
6 custody within ninety (90) days.

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

19 2. After the order and judgment has been paid within ninety-one
20 (91) days from receipt of the order and judgment of forfeiture from
21 the court clerk, or mailing of the notice if no receipt is made, as
22 required in paragraph 1 of this subsection, the bondsman and, if
23 applicable, the insurer whose risk it is shall have one (1) year
24 from the date payment is due to return the defendant to custody as

1 defined by paragraph 4 of subsection C of this section. In the
2 event the defendant is returned to custody and all expenses for the
3 defendant's return have been paid by the bondsman or insurer, the
4 bondsman's or insurer's property shall be returned; provided, the
5 request for remitter be made by motion filed within one (1) year
6 from the date payment is due.

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

15 4. The Insurance Commissioner shall:

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

22 b. in the case of a professional bondsman, withdraw the
23 face amount of the forfeiture from the deposit
24 provided in Section 1306 of this title. The

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

1 5. If the actions of any bail bondsman force the Insurance
2 Commissioner to withdraw monies, deposited pursuant to Section 1306
3 of this title, to pay pastdue executions more than two (2) times in
4 a consecutive twelve-month period, then the license of the
5 professional bondsman shall, in addition to other penalties, be
6 suspended automatically for one (1) year or until a deposit equal to
7 all outstanding forfeitures due is made. The deposit shall be
8 maintained until the Commissioner deems it feasible to reduce the
9 deposit. In no case shall an increased deposit exceed two (2) years
10 unless there is a recurrence of withdrawals as stated herein.

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

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

3 F. The district attorney or municipal attorney shall not
4 receive any bonuses or other monies or property for or by reason of
5 services or actions in connection with or collection of bond
6 forfeitures under the provisions of Section 1301 et seq. of this
7 title, except that the court may award a reasonable attorney fee in
8 favor of the prevailing party for legal services in any civil action
9 or proceeding to collect upon a judgment of forfeiture.

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

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

23 I. Upon a motion to the court, any person executing a bail bond
24 as principal or as surety shall be exonerated after three (3) years

1 have elapsed from the posting of the bond, unless a judgment has
2 been entered against the surety or the principal for the forfeiture
3 of the bond, or unless the court grants an extension of the three-
4 year time period for good cause shown, upon motion by the
5 prosecuting attorney.

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

7 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
8 March 26, 2019 - DO PASS
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