

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 57th Legislature (2019)

4 ENGROSSED SENATE
5 BILL NO. 717

 By: Leewright of the Senate

 and

 Manger of the House

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9 An Act relating to bail bondsmen; amending 59 O.S.
10 2011, Section 1314, as last amended by Section 8,
11 Chapter 203, O.S.L. 2016, Section 1, Chapter 212,
12 O.S.L. 2015, Sections 1327, as last amended by
13 Section 2, Chapter 16, O.S.L. 2016, and 1328, as last
14 amended by Section 11, Chapter 203, O.S.L. 2016 (59
15 O.S. Supp. 2018, Sections 1314, 1315.1, 1327 and
16 1328), which relate to description of collateral,
17 bondsmen owner of restaurant, exonerated of bonds;
18 requiring cash deposits within certain time; deleting
19 language and definition; stating when bond premium is
20 earned; allowing certain fee upon return of certain
21 premium; defining term; clarifying where certain
22 filings are made; and providing an effective date.

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

24 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

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

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

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

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

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

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

23 1. A monthly report showing every bond written, amount of bond,
24 whether released or revoked during each month, showing the court and

1 county, and the style and number of the case, premiums charged and
2 collateral received; and

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

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

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

1 examination or market conduct survey during any investigation of a
2 licensee.

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

8 SECTION 2. AMENDATORY Section 1, Chapter 212, O.S.L.
9 2015 (59 O.S. Supp. 2018, Section 1315.1), is amended to read as
10 follows:

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

1 ~~three and two-tenths percent (3.2%) alcohol by weight, and all mixed~~
2 ~~beverage coolers, as defined by Section 506 of Title 37 of the~~
3 ~~Oklahoma Statutes, regardless of percent of alcohol content, and all~~
4 ~~beverages containing more than one-half of one percent (1/2 of 1%)~~
5 ~~alcohol by volume and not more than three and two-tenths percent~~
6 ~~(3.2%) alcohol by weight.~~

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

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

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

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

11 SECTION 3. AMENDATORY 59 O.S. 2011, Section 1327, as
12 last amended by Section 2, Chapter 16, O.S.L. 2016 (59 O.S. Supp.
13 2018, Section 1327), is amended to read as follows:

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

1 herself, leaves the jurisdiction of the court without the permission
2 of his or her bondsman, or violates his or her contract with the
3 bondsman in any way that does harm to the bondsman, or the surety,
4 or violates his or her obligation to the court. When a bondsman or
5 surety, or a licensed bail enforcer, surrenders a defendant pursuant
6 to this subsection, the bondsman or surety shall file written
7 notification of the surrender. After surrender, and upon filing of
8 written notification of the surrender with the court clerk, the bond
9 shall be exonerated and the clerk shall enter a minute in the case
10 exonerating the bond.

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

19 2. The premium for a bail bond shall be considered earned by
20 the bondsman or the insurer, as applicable, when the defendant on
21 the bond is released from custody and is not incarcerated in any
22 capacity. If the bond premium has not been earned pursuant to the
23 terms of this section, the payor of the premium or the depositor of
24 any collateral, as applicable, may request the return of the premium

1 or collateral given to the bondsman for the bond. The bondsman
2 shall return any premium and collateral without delay. If a
3 bondsman returns the premium to the payor pursuant to this section,
4 he or she may charge a usual, customary, and reasonable fee for his
5 or her services provided in the transaction.

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;

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

22 SECTION 4. AMENDATORY 59 O.S. 2011, Section 1328, as
23 last amended by Section 11, Chapter 203, O.S.L. 2016 (59 O.S. Supp.
24 2018, Section 1328), is amended to read as follows:

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

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

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

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

- 10 a. the bondsman or insurer has posted a bond or bonds for
11 the defendant and is hereby presented to the official
12 in whose custody the defendant was at the time bail
13 was taken,
14 b. the case number, if any, assigned to each bond, and
15 c. the specific charges and bond amount or amounts;

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

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

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

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

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12 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS AND COMMERCE, dated
13 04/03/2019 - DO PASS.

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