

1 ENGROSSED SENATE
2 BILL NO. 792

By: Leewright of the Senate

3 and

4 Manger of the House

5
6
7 An Act relating to bail bondsmen; amending 59 O.S.
8 2011, Sections 1306, as last amended by Section 3,
9 Chapter 203, O.S.L. 2016, 1314, as last amended by
10 Section 8, Chapter 203, O.S.L. 2016, Section 1,
11 Chapter 212, O.S.L. 2015, 1327, as last amended by
12 Section 1, Chapter 270, O.S.L. 2019 and 1328, as last
13 amended by Section 11, Chapter 203, O.S.L. 2016 (59
14 O.S. Supp. 2020, Sections 1306, 1314, 1315.1, 1327
15 and 1328), which relate to cash bondsman,
16 requirements for accepting collateral, exception to
17 bondsman licensing prohibitions and exoneration of
18 bonds; providing for state of emergency; requiring
19 cash deposits within certain time; deleting language
20 and definition; stating when bond premium is earned;
21 allowing fee to be charged upon return of certain
22 premium; defining term; clarifying where certain
23 filings are made; updating statutory references and
24 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:

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

Section 1306. A. 1. An applicant for a cash bondsman license
shall meet all requirements set forth in Section 1305 of this title

1 with exception of the one-year residence requirement. An applicant
2 for a cash bondsman license shall affirmatively show that the
3 applicant has been a bona fide resident of the state for six (6)
4 months.

5 2. In addition to the requirements prescribed in Section 1305
6 of this title, an applicant for a professional bondsman license
7 shall have been continually licensed as a surety, cash or property
8 bondsman in the State of Oklahoma for a minimum of two (2) years
9 immediately prior to the date of application and shall submit to the
10 Insurance Commissioner an audited financial statement prepared by an
11 accounting firm or individual holding a permit to practice public
12 accounting in this state in accordance with the Statements on
13 Auditing Standards promulgated by the Auditing Standards Board of
14 the American Institute of Certified Public Accountants setting forth
15 the total assets of the bondsman less liabilities and debts as
16 follows: For all applications made prior to November 1, 2006, and
17 the subsequent renewals of a license issued upon the application
18 when continuously maintained in effect as required by law, the
19 statement shall show a net worth of at least Fifty Thousand Dollars
20 (\$50,000.00). For all applications made on and after November 1,
21 2006, and the subsequent renewals of a license issued upon the
22 application when continuously maintained in effect as required by
23 law, or for the renewal or reinstatement of any license that is
24 expired pursuant to subsection D of Section 1309 of this title,

1 suspended or revoked, the statement shall show a net worth of at
2 least One Hundred Fifty Thousand Dollars (\$150,000.00), the
3 statements to be current as of a date not earlier than ninety (90)
4 days prior to submission of the application and the statement shall
5 be attested to by an unqualified opinion of the accountant.

6 3. Professional bondsman applicants shall make a deposit with
7 the Insurance Commissioner in the same manner as required of
8 domestic insurance companies of an amount to be determined by the
9 Commissioner. For all applications made prior to November 1, 2006,
10 and the subsequent renewals of a license issued upon the application
11 when continuously maintained in effect as required by law, the
12 deposit shall not be less than Twenty Thousand Dollars (\$20,000.00).
13 For all applications made on and after November 1, 2006, and the
14 subsequent renewals of a license issued upon the application when
15 continuously maintained in effect as required by law, or for the
16 renewal or reinstatement of any license that is expired pursuant to
17 subsection D of Section 1309 of this title, suspended or revoked,
18 the deposit shall not be less than Fifty Thousand Dollars
19 (\$50,000.00). The deposits shall be subject to all laws, rules and
20 regulations as deposits by domestic insurance companies but in no
21 instance shall a professional bondsman write bonds which equal more
22 than ten times the amount of the deposit which the bondsman has
23 submitted to the Commissioner. Such deposit shall require the
24 review and approval of the Insurance Commissioner prior to exceeding

1 the maximum amount of Federal Deposit Insurance Corporation basic
2 deposit coverage for any one bank or financial institution. In
3 addition, a professional bondsman may make the deposit by purchasing
4 an annuity through a licensed domestic insurance company in the
5 State of Oklahoma. The annuity shall be in the name of the bondsman
6 as owner with legal assignment to the Insurance Commissioner. The
7 assignment form shall be approved by the Commissioner. If a
8 bondsman exceeds the above limitation, the bondsman shall be
9 notified by the Commissioner that the excess shall be reduced or the
10 deposit increased within ten (10) days of notification, or the
11 license of the bondsman shall be suspended immediately after the
12 ten-day period, pending a hearing on the matter. The limitation may
13 be exceeded with Commissioner approval when a state of emergency or
14 disaster is declared by the Governor, the Oklahoma Legislature or by
15 the United States Presidential Declaration of a Federal Emergency or
16 Major Disaster.

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

20 5. Any deposit made by a professional bondsman pursuant to this
21 section shall be released and returned by the Commissioner to the
22 professional bondsman only upon extinguishment of all liability on
23 outstanding bonds. Provided, however, the Commissioner shall have
24 the authority to review specific financial circumstances and history

1 of a professional bondsman, on a case-by-case basis, and may release
2 a portion of the deposit if warranted. The Commissioner may
3 promulgate rules to effectuate the provisions of this paragraph.

4 6. No release of deposits to a professional bondsman shall be
5 made by the Commissioner except upon written application and the
6 written order of the Commissioner. The Commissioner shall have no
7 liability for any such release to a professional bondsman provided
8 the release was made in good faith.

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

17 C. Currently licensed professional bondsmen may maintain their
18 aggregate liability limits upon presentation of documented proof
19 that they have previously been granted a limitation greater than the
20 requirements of subsection A of this section.

21 D. Notwithstanding any other provision of Sections 1301 through
22 1341 of this title, the license of a professional bondsman is
23 transferable upon the death or legal or physical incapacitation of
24 the bondsman to the spouse of the bondsman, or to such other

1 transferee as the professional bondsman may designate in writing,
2 and the transferee may elect to act as a professional bondsman for a
3 period of one hundred eighty (180) days if the following conditions
4 are met:

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

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

9 SECTION 2. AMENDATORY 59 O.S. 2011, Section 1314, as
10 last amended by Section 8, Chapter 203, O.S.L. 2016 (59 O.S. Supp.
11 2020, Section 1314), is amended to read as follows:

12 Section 1314. A. When a bail bondsman or managing general
13 agent accepts collateral, the bail bondsman or managing general
14 agent shall give a written receipt for same, and this receipt shall
15 give in detail a full description of the collateral received. A
16 description of the collateral shall be listed on the undertaking by
17 affidavit. All property taken as collateral, whether personal,
18 intangible or real, shall be receipted for and deemed, for all
19 purposes, to be in the name of, and for the use and benefit of, the
20 insurer. Every receipt, encumbrance, mortgage or other evidence of
21 the custody, possession or claim shall facially indicate that it has
22 been taken or made on behalf of the insurer through its authorized
23 agent, the individual licensed bondsman or managing general agent
24 who has transacted the undertaking with the bond principal. Any

1 mortgage or other encumbrance against real property taken under the
2 provisions of this section which does not indicate beneficial
3 ownership of the claim to be in favor of the insurer shall be deemed
4 to constitute a cloud on the title to real estate and shall subject
5 the person filing, or causing same to be filed, in the real estate
6 records of the county, to a penalty of treble damages or One
7 Thousand Dollars (\$1,000.00), whichever is greater, in an action
8 brought by the person, organization or corporation injured thereby.
9 For collateral taken, or liens or encumbrances taken or made
10 pursuant to the provisions of this section, the individual bondsman
11 or managing general agent taking possession of the property or
12 making the lien, claim or encumbrance shall do so on behalf of the
13 insurer, and the individual licensed bondsman shall be deemed to act
14 in the capacity of fiduciary in relation to both:

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

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

18 As fiduciary and bailee for hire, the individual bondsman shall
19 be liable in criminal or civil actions at law for failure to
20 properly receipt or account for, maintain or safeguard, release or
21 deliver possession upon lawful demand, in addition to any other
22 penalties set forth in this subsection. No person who takes
23 possession of property as collateral pursuant to this section shall
24 use or otherwise dissipate the asset, or do otherwise with the

1 property than to safeguard and maintain its condition pending its
2 return to its lawful owner, or deliver to the insurer, upon lawful
3 demand pursuant to the terms of the bailment.

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

10 B. Every licensed bondsman shall file monthly electronically
11 with the Insurance Commissioner and on forms approved by the
12 Commissioner as follows:

13 1. A monthly report showing every bond written, amount of bond,
14 whether released or revoked during each month, showing the court and
15 county, and the style and number of the case, premiums charged and
16 collateral received; and

17 2. ~~Professional bondsmen and multicounty agent bondsmen shall~~
18 ~~submit electronic monthly~~ Monthly reports showing total current
19 liabilities, all bonds written during the month by the professional
20 bondsman or multicounty agent bondsman and by any licensed bondsman
21 who may countersign for the professional bondsman or multicounty
22 agent bondsman, all bonds terminated during the month, and the total
23 liability and a list of all bondsmen currently employed by the
24 professional bondsman or multicounty agent bondsman.

1 Monthly reports shall be submitted electronically to the
2 Insurance Commissioner by the fifteenth day of each month. The
3 records shall be maintained by the Commissioner as public records.

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

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

22 SECTION 3. AMENDATORY Section 1, Chapter 212, O.S.L.
23 2015 (59 O.S. Supp. 2020, Section 1315.1), is amended to read as
24 follows:

1 Section 1315.1. A. On and after ~~the effective date of this act~~
2 November 1, 2015, as an exception to the provisions in paragraph 8,
3 9, 10 or 11 of subsection A of Section 1315 of ~~Title 59 of the~~
4 ~~Oklahoma Statutes~~ this title prohibiting a person from being a bail
5 bondsman or receiving any benefit from the execution of any bail
6 bond, a person who holds an ownership interest in a restaurant
7 establishment where alcoholic beverages are lawfully sold ~~incidental~~
8 ~~to the sale of food~~ or who is an officer, director or stockholder of
9 a corporation that owns or operates a restaurant where alcoholic
10 beverages are lawfully sold ~~incidental to the sale of food~~, may be a
11 licensed bail bondsman. ~~For purposes of this section, "incidental~~
12 ~~to the sale of food" means the sale of all alcoholic beverages is~~
13 ~~not more than fifty percent (50%) of the monthly gross sales of the~~
14 ~~establishment, and "alcoholic beverages" means all beverages~~
15 ~~containing more than three and two-tenths percent (3.2%) alcohol by~~
16 ~~weight, and all mixed beverage coolers, as defined by Section 506 of~~
17 ~~Title 37 of the Oklahoma Statutes, regardless of percent of alcohol~~
18 ~~content, and all beverages containing more than one-half of one~~
19 ~~percent (1/2 of 1%) alcohol by volume and not more than three and~~
20 ~~two-tenths percent (3.2%) alcohol by weight.~~

21 B. No licensed bondsman who holds any license issued from the
22 ABLE Commission or any permit issued from any governmental
23 subdivision or who has any ownership interest, employment or
24 interest in any business identified by the provisions of paragraph

1 8, 9, 10 or 11 of subsection A of Section 1315 of ~~Title 59 of the~~
2 ~~Oklahoma Statutes~~ this title may execute the duties of a bondsman or
3 have a bondsman office on the premises of such establishment.

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

10 D. The ABLE Commission shall be authorized to investigate all
11 provisions authorized by this section and shall certify in writing
12 to the Insurance Commissioner, upon written request, that a person
13 is eligible for an exception to the prohibitions of Section 1315 of
14 ~~Title 59 of the Oklahoma Statutes~~ this title. The ABLE Commission
15 shall immediately notify the Insurance Commissioner, in writing, if
16 a person becomes disqualified for an exception to the prohibitions
17 of paragraph 8, 9, 10 or 11 of subsection A of Section 1315 of ~~Title~~
18 ~~59 of the Oklahoma Statutes~~ this title. If, after an investigation
19 of a violation of the provisions of this section, the bail bondsman
20 is found to be disqualified to be licensed as a bail bondsman, the
21 ABLE Commission shall be entitled to reimbursement for all costs,
22 expenses and attorney fees and in addition, the person shall have
23 the bail bondsman license permanently revoked by the Insurance
24 Commissioner.

1 SECTION 4. AMENDATORY 59 O.S. 2011, Section 1327, as
2 last amended by Section 1, Chapter 270, O.S.L. 2019 (59 O.S. Supp.
3 2020, Section 1327), is amended to read as follows:

4 Section 1327. A. At any time before there has been a breach of
5 the undertaking in any type of bail provided herein, the surety or
6 bondsman or a licensed bail enforcer pursuant to a client contract
7 authorized by the Bail Enforcement and Licensing Act may surrender
8 the defendant, or the defendant may surrender himself or herself, to
9 the official to whose custody the defendant was committed at the
10 time bail was taken, or to the official into whose custody the
11 defendant would have been given had he or she been committed. The
12 defendant may be surrendered without the return of premium for the
13 bond if he or she has been guilty of nonpayment of premium, changes
14 address without notifying his or her bondsman, conceals himself or
15 herself, leaves the jurisdiction of the court without the permission
16 of his or her bondsman, or violates his or her contract with the
17 bondsman in any way that does harm to the bondsman, or the surety,
18 or violates his or her obligation to the court. When a bondsman or
19 surety, or a licensed bail enforcer, surrenders a defendant pursuant
20 to this subsection, the bondsman or surety shall file written
21 notification of the surrender. After surrender, and upon filing of
22 written notification of the surrender with the court clerk, the bond
23 shall be exonerated and the clerk shall enter a minute in the case
24 exonerating the bond.

1 B. 1. If the defendant has been placed in custody of another
2 jurisdiction, the district attorney shall direct a hold order to the
3 official, judge or law enforcement agency where the defendant is in
4 custody. All reasonable expenses accrued in returning the defendant
5 to the original court shall be borne by the bondsman who posted the
6 bond with that court; provided, however, except for instances
7 whereby the defendant is transported by a contracted transport
8 company, reasonable expenses shall mean the actual miles traveled in
9 transporting the defendant at a rate equal to the current Internal
10 Revenue Service standard mileage rate. Upon application, the bond
11 in the original court shall be exonerated when the hold order is
12 placed and upon proof of payment of expenses by the bondsman.

13 2. Except as provided for in paragraph 3 of this subsection,
14 the premium for a bail bond shall be considered earned by the
15 bondsman or the insurer, as applicable, when the defendant on the
16 bond is released from custody and is not incarcerated in any
17 capacity. If the bond premium has not been earned pursuant to the
18 terms of this section, the payor of the premium or the depositor of
19 any collateral, as applicable, may request the return of the premium
20 or collateral given to the bondsman for the bond. The bondsman
21 shall return any premium and collateral without delay. If a
22 bondsman returns the premium to the payor pursuant to this section,
23 he or she may charge a usual, customary, and reasonable fee for his
24 or her services provided in the transaction.

1 3. The premium for a bail bond shall be considered earned by
2 the bondsman, regardless of whether the defendant on the bond is
3 released from custody, if the bondsman and the payor of the bond
4 premium have agreed in writing that the purpose of the bond is to
5 secure the transfer of the defendant to another jurisdiction and the
6 defendant is in fact transferred to that jurisdiction.

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

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

- 19 a. the defendant is presently in the custody of the
20 jurisdiction in which the bondsman or surety has
21 posted a bond or bonds,
22 b. the case number, if any, assigned to each bond,
23 c. that the bond or bonds have not been exonerated, and
24 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 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. 1. When a defendant does appear before the court as
12 required by law and enters a plea of guilty or nolo contendere, is
13 sentenced or a deferred sentence is granted as provided for in
14 Section 991c of Title 22 of the Oklahoma Statutes, or deferred
15 prosecution is granted as provided by law, in such event the
16 undertaking and bondsman and insurer shall be exonerated from
17 further liability.

18 2. A bond posted for a petition for revocation of a suspended
19 sentence, a petition for acceleration of a deferred sentence or any
20 violation of a probationary term shall be exonerated by operation of
21 law when:

22 a. the defendant has confessed, stipulated or otherwise
23 agreed to the factual basis of the violation of
24 probation,

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

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

3 or

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

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

10 F. The bond shall be exonerated by operation of law in any case
11 in which the defendant has been arrested and there is an added
12 charge to a case that would result in a higher fine or longer term
13 of sentence if convicted, or an amendment to a charge that would
14 result in a higher fine or longer term of sentence if convicted;
15 provided, however, any premium paid by the defendant to the bondsman
16 or insurer from the original charge shall be at the same premium
17 rate and shall be credited to the defendant if the same bondsman or
18 insurer posts the appearance bond or bonds on the added or amended
19 charge.

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

1 SECTION 5. AMENDATORY 59 O.S. 2011, Section 1328, as
2 last amended by Section 11, Chapter 203, O.S.L. 2016 (59 O.S. Supp.
3 2020, Section 1328), is amended to read as follows:

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

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

1 | lien previously filed be released and the undertakings of whatever
2 | nature be canceled.

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

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

12 | a. the bondsman or insurer has posted a bond or bonds for
13 | the defendant and is hereby presented to the official
14 | in whose custody the defendant was at the time bail
15 | was taken,

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

17 | c. the specific charges and bond amount or amounts;

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

23 | 3. When a bondsman or insurer recommits a defendant pursuant to
24 | this subsection, the bondsman or insurer shall file a written

1 notification thereof to the ~~courts~~ court clerk, and after such
2 notification, the bond or bonds shall be exonerated and the clerk
3 shall enter a minute in the case exonerating the bond or bonds.

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

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

12 Passed the Senate the 9th day of March, 2021.

13
14 _____
15 Presiding Officer of the Senate

16 Passed the House of Representatives the ____ day of _____,
17 2021.

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19 _____
20 Presiding Officer of the House
21 of Representatives
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