

1 **SENATE FLOOR VERSION**

2 February 27, 2023

3 SENATE BILL NO. 805

By: Coleman

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5
6 An Act relating to bondsmen; amending 59 O.S. 2021,
7 Section 1332, which relates to forfeiture procedure;
8 allowing a bond to be exonerated by law following
9 written request of the prosecuting attorney by the
10 bondsman or insurer under certain conditions; and
11 providing an effective date.

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

13 SECTION 1. AMENDATORY 59 O.S. 2021, Section 1332, is
14 amended to read as follows:

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

1 shall, within thirty (30) days after the order and judgment of
2 forfeiture is filed in the court, by mail with return receipt
3 requested, mail a true and correct copy of the order and judgment of
4 forfeiture to the bondsman, and if applicable, the insurer, whose
5 risk it is, and keep at least one copy of the order and judgment of
6 forfeiture on file; provided, the clerk shall not be required to
7 mail the order and judgment of forfeiture to the bondsman or insurer
8 if, within fifteen (15) days from the date of forfeiture, the
9 defendant is returned to custody, the bond is reinstated by the
10 court with the bondsman's approval, or the order of forfeiture is
11 vacated or set aside by the court. Failure of the clerk of the
12 trial court to comply with the thirty-day notice provision in this
13 subsection shall exonerate the bond by operation of law.

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

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

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

1 in this state, the bondsman may seek the assistance of another
2 licensed bondsman in this state who is appointed by the same
3 insurer.

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

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

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

1 wherein the forfeiture lies and has guaranteed
2 reasonable travel expenses for the return of the
3 defendant.

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

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

14 b. the defendant has been arrested outside of this state
15 and the court record shows the prosecuting attorney
16 has declined to proceed with extradition, ~~or~~

17 c. the defendant's bondsman or insurer has requested in
18 writing of the prosecuting attorney to file felony
19 bond jumping charges against the defendant when the
20 defendant fails to surrender within thirty (30) days
21 from failing to appear in court and the prosecuting
22 attorney has not filed such charges within thirty (30)
23 business days of the receipt of the written request,
24 or

1 d. the warrant issued by the court has not been entered
2 into an active warrant database available to law
3 enforcement within five (5) business days after its
4 issued date.

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

- 8 a. the defendant's failure to appear, or
- 9 b. the bondsman's failure to return the defendant to
10 custody within ninety (90) days.

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

23 2. After the order and judgment has been paid within ninety-one
24 (91) days from receipt of the order and judgment of forfeiture from

1 the court clerk, or mailing of the notice if no receipt is made, as
2 required in paragraph 1 of this subsection, the bondsman and, if
3 applicable, the insurer whose risk it is shall have one (1) year
4 from the date payment is due to return the defendant to custody as
5 defined by paragraph 4 of subsection C of this section. In the
6 event the defendant is returned to custody and all expenses for the
7 defendant's return have been paid by the bondsman or insurer, the
8 bondsman's or insurer's property shall be returned; provided, the
9 request for remitter be made by motion filed within one (1) year
10 from the date payment is due.

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

19 4. The Insurance Commissioner shall:

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

- 3 b. in the case of a professional bondsman, withdraw the
4 face amount of the forfeiture from the deposit
5 provided in Section 1306 of this title. The
6 Commissioner shall then immediately direct the
7 professional bondsman, by mail with return receipt
8 requested, to make additional deposits to bring the
9 original deposit to the required level. Should the
10 professional bondsman, after being notified, fail to
11 make an additional deposit within ten (10) days from
12 the receipt of notice, or mailing of notice if no
13 receipt is made, the license shall be revoked and all
14 sums presently on deposit shall be held by the
15 Commissioner to secure the face amounts of bonds
16 outstanding. Upon release of the bonds, any amount of
17 deposit in excess of the bonds shall be returned to
18 the bondsman; provided, the bail bondsman shall have
19 had notice as required by the court, at the place of
20 the bondsman's business, of the trial or hearing of
21 the defendant named in the bond. The notice shall
22 have been at least ten (10) days before the required
23 appearance of the defendant, unless the appearance is
24 scheduled at the time of execution of the bond.

1 Notwithstanding the foregoing, the bondsman shall be
2 deemed to have had notice of the trial or hearing if
3 the defendant named in the bond shall have been
4 recognized back in open court to appear at a date
5 certain for the trial or hearing.

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

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

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

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

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

21 H. For municipal courts of record, the above procedures are
22 criminal in nature and ancillary to the criminal procedures before
23 the trial court and shall be subject to the bondsman's right of
24 appeal. The bondsman or insurer may appeal an order and judgment of

1 forfeiture by the municipal courts of record to the Court of
2 Criminal Appeals.

3 I. Upon a motion to the court, any person executing a bail bond
4 as principal or as surety shall be exonerated after three (3) years
5 have elapsed from the posting of the bond, unless a judgment has
6 been entered against the surety or the principal for the forfeiture
7 of the bond, or unless the court grants an extension of the three-
8 year time period for good cause shown, upon motion by the
9 prosecuting attorney.

10 SECTION 2. This act shall become effective November 1, 2023.

11 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS AND COMMERCE
12 February 27, 2023 - DO PASS

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