

# Oklahoma Bondsman Association Continuing Education 2013 Insurance Department Update

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## About me

- Attorney assigned to Bail Bonds Division
- All areas of bail regulation: statutory interpretation and application, licensing, discipline
- At the Department since November, 2011
- Originally from Tahlequah

# OBA CE 2013

## Insurance Department Update

- Bail statute changes
- Bail rules changes
- Random topics
- Bounty Hunter Bill
- Questions

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# Statute changes: HB 2167

- Representative Jon Echols, R-Oklahoma City



- Senator Bryce Marlatt, R-Woodward



- Effective November 1, 2013

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## 59 O.S. § 1306(A)(1)

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

- ***ALL license applicants must be Oklahoma residents***
- Cash license applicants must be an Oklahoma resident for **6 months** before applying
- All other license applicants must be an Oklahoma resident for **1 year** before applying

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## 59 O.S. § 1306(A)(3)

“If a bondsman exceeds the above limitation, the bondsman shall be notified by the Commissioner ~~by mail with return receipt requested~~ that the excess shall be reduced or the deposit increased within ten (10) days of notification, or the license of the bondsman shall be suspended immediately after the ten-day period, pending a hearing on the matter.”

- If a professional goes over his/her writing limit, **any** notification starts the 10-day window. Professional must either reduce their liability or increase their deposit
- ***Notification does not have to be by mail***

## 59 O.S. § 1306(D)

“Notwithstanding any other provision of Sections 1301 through 1340 of this title, the license of a professional bondsman is transferable upon the death or legal or physical incapacitation of the bondsman to the spouse of the bondsman, or to such other transferee as the professional bondsman may designate in writing, and the transferee may elect to act as a professional bondsman ~~until the expiration of the license or for a period of one hundred eighty (180) days, whichever is greater,~~ if the following conditions are met:

1. The transferee shall hold a valid license as a surety bondsman in this state; and
  2. The asset and deposit requirements set forth in this section continue to be met.”
- If a professional license is transferred to someone else, that person may only act as a professional bondsman for 180 days
  - After 180 days, they must obtain their own professional line of authority

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## 59 O.S. § 1310 - Summary

- Section 1310 contains all of the general bail violations, such as:
  - committing fraud in obtaining the license,
  - soliciting business improperly,
  - failing to return collateral,
  - untrustworthiness or incompetency, etc.
- Violations of § 1310 can result in a censure, suspension, revocation, refusal to renew, or a fine of \$250 - \$2,500.



## 59 O.S. § 1310(A)(6)

“Fraudulent or dishonest practices or demonstrating financial irresponsibility in conducting business under the license;”

- Law passed in 2012 requires license *applicants* to show that they are “financially responsible” in order to get a license (59 O.S. § 1305(A)(2))
- This change requires the same thing from license *holders*.
- If a bondsman must be financially responsible in order to get a license, they must remain financially responsible to keep the license.

## 59 O.S. § 1310(A)(23)

“For failing to notify the Commissioner of a change of legal name, mailing address, ~~as noted on the license~~, e-mail address, or telephone number within five (5) days after a change is made, or failing to respond to a properly mailed notification within a reasonable amount of time;”

- Any change in mailing address, e-mail address, or telephone number must be updated on the Department website within 5 days of the change
- Changes in legal name require proper documentation sent to the Department (i.e. court order, marriage license, or divorce decree) (OAC 365:1-9-18(j)). Department staff will change it for you.
- Get an e-mail address and check it.

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## 59 O.S. § 1310(A)(32)

“For failing to accept or claim a certified mailing from the Insurance Department, addressed to the bondsman’s mailing address on file with the Insurance Department.”

- *Do not ignore certified mail from the Department. It will only make things worse*
- If you have a P.O. Box, check it often
- If you receive a notice from USPS that they have mail for you, go get it

## 59 O.S. § 1315(A)(13)

The following persons or classes shall not be bail bondsmen and shall not directly or indirectly receive any benefits from the execution of any bail bond:

.....

13. Any person whose bail bondsman license has been revoked by the Insurance Commissioner.

- If any bondsman has his/her license revoked, they may not be a bondsman again
- ***May not “directly or indirectly receive any benefits from the execution of any bail bond”***



## 59 O.S. § 1316(A)(2)

“Bail bondsmen shall not allow other licensed bondsmen to present bonds that have previously been signed and completed. The ~~individual~~ bail bondsman that presents the bond shall sign the form in the presence of the official that receives the bond.”

- Only a licensed bondsman can present a bond!
- Do not send your assistant or spouse to do it
- All bonds must be signed by the bondsman in front of the person who receives it



## 59 O.S. § 1316(C)

A At the time of payment, a bail bondsman shall provide the indemnitors with a proper receipt which shall include fees, premium or other payments and copies of any agreements executed relating to the appearance bond.

- You must provide a receipt for any payment ***as soon as you receive it***
- Do not wait until there is a dispute to provide a receipt
- Proper paperwork can keep you out of trouble

## 59 O.S. § 1317(C)

“Prior to issuance of a new surety appointment for a surety bondsman or managing general agent, the bondsman or agent shall file an affidavit with the Commissioner stating that no forfeitures are owed to any court, no fines are owed to the insurance department, and no premiums or indemnification for forfeitures or fines are owed to any insurer, insureds, or others received in the conduct of business under the license. If any statement made on the affidavit is found by the Commissioner to be false, the Commissioner may deny the new surety appointment or apply the sanctions set forth in Section 1310 of this title. This provision shall not require that all outstanding liabilities have been exonerated, but may provide that the liabilities are still being monitored by the bondsman or agent.”

- If you are trying to get a new surety appointment, you cannot owe any money to your old professional, company, MGA, or to anyone else (i.e. defendants or indemnitors)
- ***False statement: Commissioner may deny your appointment, and you may be subject to the penalties from Section 1310 (fine, censure, suspension, revocation)***

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## 59 O.S. § 1320(A)

No bail bondsman shall become a surety on an undertaking unless he has first registered his license in the office of the sheriff and with the clerk of the district court in the county in which the bondsman resides or offices, but not both. In the county in which a bondsman registers his license, he shall provide the court clerk with proof that he is a resident of said county or that he offices in said county. The court clerk of the county shall provide a list of bondsmen permitted to write surety bail in that county to the judges and law enforcement offices of that county. The list shall consist of professional, property, cash and surety bail bondsmen. Only surety bail bondsmen with a current surety appointment shall be on the list. In any county not having a licensed bondsman authorized to do business within said county, the court having jurisdiction shall allow and fix bail.

A surety bondsman shall also file a certified copy of his appointment by power of attorney from the insurer which he represents as agent with each of said officers. A fee of ~~Ten Dollars (\$10.00)~~ Twenty Dollars (\$20.00) shall be paid to the district court clerk for each county in which the bail bondsman registers his license. The fee shall be payable ~~annually~~ biennially by the date of license renewal. The clerk of the district court and the sheriff shall not permit the registration of a bail bondsman unless such bondsman is currently licensed by the Insurance Commissioner under the provisions of Section 1301 et seq. of this title.

## 59 O.S. § 1332(A)

- Amended as the result of case from Nowata County



# Nowata County CF-2008-51

- July 9 – FTA – court issues bench warrant, declares forfeiture
- August 22 – O&JF filed – mailed in early September
- Bondsman argued that notice was sent past 30 days, so bond exonerated by operation of law (59 O.S. § 1332(A))
- Trial court ruled against bondsman on a procedural technicality – bondsman’s objection not timely
- Unpublished opinion from Oklahoma Court of Civil Appeals (Appellate case 107025)



# Appellate case # 107025

- Bondsman's objection too late
- “Bondsman’s argument ignores the fact that the clerk could not have sent a copy of the judgment at that time, because the judgment did not yet exist, and did not exist until it was memorialized in August. Furthermore, we need not engage in a lengthy discussion of the numerous decisions dealing with oral pronouncements and minute orders versus memorialized decisions, . . . because we note that section 1031.1(B) clearly expresses the rule that ***it is the judgment’s filing, and not its announcement from the bench, that “starts the clock” for statutory time periods.*** The court clerk complied with the statute when she mailed notice within thirty days from the judgment’s filing.”

## 59 O.S. § 1332(A)

“If there is a breach of an undertaking, the court before which the cause is pending shall issue an arrest warrant for the defendant and declare the undertaking and any money, property, or securities that have been deposited as bail, forfeited on the day the defendant failed to appear. In the event of the forfeiture of a bail bond the clerk of the trial court shall, within thirty (30) days after the order and judgment of forfeiture is filed in the court, by mail with return receipt requested, mail a true and correct copy of the order and judgment of forfeiture to the bondsman, and if applicable, the insurer, whose risk it is, and keep at least one copy of the order and judgment of forfeiture on file; . . . .”

- The court clerk has 30 days to mail out a copy of the order and judgment of forfeiture to the bondsman and professional/company. But when does that 30 days start?
- ***It starts the day after the O&JF is filed in the court, NOT after the judge declares the forfeiture***

## 59 O.S. § 1332(D)(2)

- Amended as the result of a case from Oklahoma County

## State v. Tate – 2012 OK 31

- Bondsman paid forfeiture on 92<sup>nd</sup> day
- Defendant was returned to custody one month later
- Bondsman filed motion for remitter pursuant to 59 O.S. § 1332(D)(2)
- State objected: not paid by 91<sup>st</sup> day
- Trial judge ruled for bondsman, remits forfeiture payment
- State appealed

# State v. Tate

- Oklahoma Court of Civil Appeals affirmed decision



# State v. Tate

- Oklahoma Court of Civil Appeals affirmed decision
- Oklahoma Supreme Court granted cert

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- Oklahoma Court of Civil Appeals affirmed decision
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  - Bondsman must pay forfeiture within 91 days to get money back

# State v. Tate

- Oklahoma Court of Civil Appeals affirmed decision
- Oklahoma Supreme Court granted cert
  - Bondsman must pay forfeiture within 91 days to get money back
  - “Under the current forfeiture statute, unless the bondsman complies with (D)(1), he may not may seek the remitter provided in (D)(2). Integral to the statutory procedure applicable to this case is deposit of the face amount of the bond with the court clerk by the ninety-first day. If not so deposited, the Insurance Commissioner is notified and the matter proceeds according to § 1332(D)(3). The trial court erred in granting the bondsman's motion for remitter.”

## 59 O.S. § 1332(D)(2)

“After the order and judgment has been paid within ninety-one (91) days from receipt of the order and judgment of forfeiture from the court clerk, or mailing of the notice if no receipt is made, as required in paragraph 1 of this subsection, the bondsman and, if applicable, the insurer whose risk it is shall have one year from the date payment is due to return the defendant to custody as defined by paragraph 3 of subsection C of this section. In the event the defendant is returned to custody and all expenses for the defendant's return have been paid by the bondsman or insurer, the bondsman's or insurer's property shall be returned; provided, the request for remitter be made by motion filed within one year from the date payment is due.”

- In order to receive your forfeiture payment back later, you must make that payment on or before the 91<sup>st</sup> day after receipt of the O&JF
- Don't wait until the 91<sup>st</sup> day. Too many things can go wrong to make you miss the day
- ***Any payment made on or after the 92<sup>nd</sup> day should not be remitted.***

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## **Rules changes – Oklahoma Administrative Code, Title 365, Chapters 1 and 25**

- The relevant rules can be found in the back of your statute books.
- 2013 rule changes should be effective July 14, 2013.
- Most rule changes are minor. We will only address the ones you really need to know right now.



## 365:1-9-18(j)

“Name change on an individual license. Name changes for an individual license require proper documentation at the time of the written request, such as a copy of a court order, marriage license, or divorce decree. A duplicate license fee shall be submitted for a new license to be issued”

- A change of legal name requires proper documentation be sent to the Department.
- Department staff will change the information for you.
- If you have any problems, the Bail Bond Division can help you.

**365:25-5-47**

“If the license of a professional bondsman is transferred pursuant to 59 O.S. § 1306(D), the transferee shall submit a financial statement to the Department within 180 days after the date of the transfer.”

- Goes along with the change to 59 O.S. § 1306(D) we talked about earlier.
- If a professional license is transferred to someone else, that person must submit a new financial statement within 180 days.

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## 365:25-5-51(c)

“A bondsman whose license is suspended or has been revoked shall not be allowed to apply for a partial return of a deposit.”

- Partial returns of professional deposits are reserved for bondsmen with limited to no administrative history.
- If you’ve ever been suspended or revoked, you may not apply for a partial return.
- Full return still available to professional with zero liability.

# Unreported Bonds

- OID has discovered over \$3,600,000 in unreported bonds for 2012.
- Most bondsmen forget to report 1 or 2—that's understandable.
- Many bondsmen have not reported 10-15 bonds—that's not understandable.
- Failing to properly report bonds is a violation of 59 O.S. § 1314, and will result in the bondsman having to report the bond on their next report. Can result in a fine.

# Insufficient checks & EFTs

- Violation of 59 O.S. § 1310(A)(29)
- Bail Bond Division will send written notice
- If you replace funds quickly after notification—probably only a censure
- Fail to replace the funds—probably a fine



# Transfer Bonds

- No such thing!
- If your company asks you to write a bond, but they handle the paperwork, it's still your bond
- If you sign a bond, you are responsible for everything that comes with it
  - Reporting premium, collateral, etc.
  - Forfeitures

# License Renewals

- Licenses expire every 2 years
- OID will send you an e-mail 45 days before your license expires (last day of your birth month)
- You can renew at any time after being notified—\$200
- Expired licenses can be reinstated at 2x the original fee—\$500

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# Reports

- Due on or before the 15<sup>th</sup> of each month
- You don't have to wait until the 15th
- Even 1 day late is still late
- Can result in censure or fine

# SB 1013 – “Bounty Hunter Bill”

- The Bail Enforcement and Licensing Act is an entirely new section of law, found at 59 O.S. § 1350.
- Deals mostly with CLEET certification and regulation of bail enforcers.
- Bill also changes portions of the bail bond statutes.
- Some effects on bail bondsmen.
- Doesn't go into effect until July 1, 2014, so could still be changed

# Bail enforcers generally

- After July 1, 2014, all bounty hunters (bail enforcers) in Oklahoma must be licensed by CLEET to recover fugitive defendants. § 1350.2
- Defined as any “person who acts, engages in, solicits or offers services to:
  - a. execute a prior to breach recovery of a defendant on an undertaking or bail bond contract, or
  - b. execute a recovery of a defendant for failure to appear on an undertaking or bail bond contract issued in this state, another state or the United States.” § 1350.1.2



## Violations – § 1350.2

- Acting as a bail enforcer without a license will be a felony
  - fine up to \$10,000, and/or
  - prison sentence up to 3 years.
- Violating the Act while in possession of a firearm or other weapon (“taser, stun gun, baton, night stick or any other device used to subdue a defendant, or any noxious substances”):
  - Additional \$5,000 fine, and/or
  - 3 additional years on prison sentence.
  - Applies even if your firearm is authorized by the Oklahoma Self-Defense Act.
  - May permanently lose firearm license.

## What can a bondsman do?

- “The term "bail enforcer" does not include . . . a bondsman licensed in this state and acting under the authority of his or her undertaking or bail contract or a licensed bondsman appointed by an insurer in this state with regard to a defendant on a bond posted by that insurer.” § 1350.1.2

# My interpretation

- Starting July 1, 2014, only three groups can recover defendants
  - Bail bondsmen enforcing their own bonds
  - Bail bondsmen enforcing any other bond for their insurer\*
  - Licensed bail enforcers
- A person can hold both a bail bondsman license and a bail enforcer license. § 1350.3(B)

## Who cannot be a bail enforcer? §§ 1350.3 and 1350.4

- Anyone barred from being a bondsman by 59 O.S. § 1315(A)
  - Felons, judges, revoked bondsmen, law enforcement, etc.
- District Attorneys and their employees
- DOC employees
- Off-duty law enforcement officers *may assist* in recovering a fugitive without needing a bail enforcer license.

# Changes to bail statutes

- Section 1327 amended to allow bail enforcers to return defendants to custody before a breach
  - Bondsman or surety still has to file written notification of the surrender
- Sections 1328 and 1332 amended to allow a bondsman to hire a bail enforcer to recover and surrender a defendant
- Bottom line: Rules for when you can surrender a defendant will remain the same, but you can hire a bail enforcer to do it

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# Summary

- Starting July 1, 2014, only three groups can recover defendants
  - Bail bondsmen enforcing their own bonds
  - Bail bondsmen enforcing any other bond for their insurer
  - Licensed bail enforcers
- Don't take a family member, friend, or anyone else unless they have the proper license.
- Don't even take another bondsman unless they work for the company/professional who insured the bond.
- Violations are a felony. With a weapon: extra punishment

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# Questions?

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