

Oklahoma Bondsman Association Continuing Education 2015

Legislation & Rules Update

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HB 1033

- Authored by Rep. Dan Kirby (R-Tulsa) and Sen. John Sparks (D-Norman)
- Insurance Department request
- Input from OBA leadership
- Effective Nov. 1, 2015

HB 1033

59 O.S. §§ 1306, 1306A, 1309

- For professional and MCA financial statements, GAAP standards replaced with “Statements on Accounting Standards”
- CPAs are familiar with these changes

“. . . An applicant for a professional bondsman [or MCA] license [or renewal] shall submit to the Insurance Commissioner an audited financial statements statement . . . in accordance with ~~generally accepted principles of accounting procedures~~ the Statements on Auditing Standards promulgated by the Auditing Standards Board of the American Institute of Certified Public Accountants”

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HB 1033

MCA license transferees

Current law → an MCA license is transferable upon death or incapacitation of the bondsman, and the transferee may elect to operate as an MCA for up to 180 days.

What happens if the transferee wants to apply to become an MCA bondsman permanently?

An applicant for an MCA license must be licensed as a professional for at least 2 years immediately prior to application.

A transferee who is licensed only as a surety bondsman is barred.

HB 1033

59 O.S. § 1306A(C)(2)

- If the transferee of an MCA license applies to become an MCA permanently, they only have to have been a surety bondsman for 5 years.
 - They DO NOT have to be licensed as a professional

“At the end of the one-hundred-eighty-day period, the transferee shall be allowed to apply for a license as a multicounty agent bondsman, provided he or she has been continually licensed as a surety bondsman for at least five (5) years immediately prior to the date of application, notwithstanding the requirements of paragraph 1 of subsection A of this section.”

HB 1033

59 O.S. § 1310(A)(21)

- Nonpayment of premium does not give the bondsman the right to hold onto collateral.

A bail bondsman may “. . . accept collateral security or other indemnity from the principal which shall be returned immediately upon final termination of liability on the bond and upon satisfaction of all terms, conditions, and obligations contained within the indemnity agreement; provided, however, a bondsman shall not refuse to return collateral or other indemnity because of nonpayment of premium. Collateral security or other indemnity required by the bondsman shall be reasonable in relation to the amount of the bond”

HB 1033

59 O.S. § 1310(A)(23)

- A bondsman must keep his or her residence and business address up to date with the Commissioner

A bail bondsman may face administrative action for “failing to notify the Commissioner of a change of legal name, residence address, business address, mailing address, 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”

HB 1033

59 O.S. § 1310(A)(33)

- You cannot bond someone out of custody without some prior agreement
- Agreement can be with the defendant or the cosigner of the bond
- Agreement does not have to be written → “come get me out of jail”

A bail bondsman may face administrative action for “posting a bond for any defendant without first obtaining a written or oral agreement with the defendant or cosigner of the bond”

HB 1033

59 O.S. § 1311.3(C)

- A bondsman whose license has been suspended or revoked may contract with a licensed bail enforcer to apprehend skips

It is unlawful for a person whose bondsman license has been surrendered, refused, suspended, or revoked to perform the acts of a bail bondsman. It is also unlawful for someone to aid such a person in performing the acts of a bondsman.

“The provisions of this section shall not apply to a person ~~who within ninety (90) days of the date their~~ whose bail bondsman license is suspended or revoked in this state and who contracts with a licensed bail enforcer pursuant to the Bail Enforcement and Licensing Act to cause the apprehension and surrender of his or her defendant clients to the appropriate authority.”

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HB 1033

59 O.S. § 1315(A)

- Individuals who fall into one of the listed categories cannot be licensed as a bail bondsman and also cannot “perform the acts of a bail bondsman”

“The following persons or classes shall not be bail bondsmen, shall not perform the acts of a bail bondsman and shall not directly or indirectly receive any benefits from the execution of any bail bond:

1. Persons convicted of, or who have pled guilty or nolo contendere to, any felony or to a misdemeanor involving dishonesty or moral turpitude;
2. Jailers;
3. Police officers;”

HB 1033

59 O.S. § 1316(A)(1)

- Agreements between professionals and their appointed bondsmen will no longer be submitted to OID

“A bail bondsman shall neither sign nor countersign in blank any bond, nor shall the bondsman give a power of attorney to, or otherwise authorize, anyone to countersign the name of the bail bondsman to bonds unless the person so authorized is a licensed surety bondsman or managing general agent appointed by a licensed professional bondsman or multicounty agent bondsman giving the power of attorney. ~~The professional bondsman shall submit to the Insurance Commissioner the agreement between the professional bondsman and the appointed bondsman. The agreement shall be submitted to the Commissioner prior to the appointed bondsman writing bonds on behalf of the professional. . .~~”

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HB 1033

59 O.S. § 1320

- Current law: a bail bondsman must pay a \$10 fee every year to the clerk in each county in which they file their license (counties other than your county)
- **New law: must pay a \$20 fee every other year by the date of the bondsman's license renewal**

HB 1033

59 O.S. § 1341 (New Law)

- Bondsman reports and applications are currently filed with OID electronically
- Most, if not all, other bondsman forms and payments are going to be electronic

“Notwithstanding any other provision of law that requires a particular form and associated payment to be filed with the Insurance Department in paper form or mailed or hand-delivered to the Insurance Department, the Insurance Commissioner may, by appropriate order, require that all filings or payments of that specific type be filed or delivered in an electronic format.”

SB 101

- Authored by Sen. Mark Allen (R-Spiro) and Rep. Leslie Osborn (R-Mustang)
- OBA request
- Input from OID
- Effective Nov. 1, 2015

SB 101

59 O.S. § 1315.1 (New Law)

- A person who owns a restaurant where alcohol is sold incidental to the sale of food may hold a license as a bail bondsman.
- Exception to 59 O.S. § 1315(A)(8), (9), (10), and (11)
- “Incidental to the sale of food” → alcohol is not more than 50% of the monthly gross sales of the restaurant.
- The bondsman may not perform bail bondsman duties or have a bondsman office on the premises of the restaurant.
- DOES NOT APPLY TO BAIL ENFORCERS

SB 101

59 O.S. § 1315.1 (New Law)

“. . . a person who holds an ownership interest in a restaurant establishment where alcoholic beverages are lawfully sold incidental to the sale of food or who is an officer, director or stockholder of a corporation that owns or operates a restaurant where alcoholic beverages are lawfully sold incidental to the sale of food, may be a licensed bail bondsman.”

“No licensed bondsman . . . may execute the duties of a bondsman or have a bondsman office on the premises of such establishment.”

“No exception authorized in this section . . . shall apply to or be construed as an exception for a bail enforcer.”

SB 586

- Authored by Sen. Ralph Shortey (R-Oklahoma City) and Rep. James Leewright (R-Bristow)
- OBA request
- Input from OID
- Effective Nov. 1, 2015

SB 586

59 O.S. § 1332(C)(2)

- Current law → if you have a skip you can:
 - Apprehend them yourself, or
 - Hire a licensed bail enforcer, or
 - Get help from another bondsman, provided he or she has been continuously licensed for at least 5 years
- New law → you can also get help from another bondsman who is appointed with the same insurer (company, professional, or MCA).

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

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Rules changes – Oklahoma Administrative Code, Title 365, Chapter 25

- The relevant rules can be found in the back of your statute books.
- Rule changes should* be effective September 15, 2015

* Awaiting governor's approval

365:25-5-31. ~~Residence, business, mailing, and e-mail addresses~~ Information to be included on applications

“(a) Original and renewal applications shall include the ~~following~~ applicant’s:

- (1) ~~applicant’s~~ residence address,
- (2) ~~applicant’s~~ business address,
- (3) ~~applicant’s~~ mailing address, ~~and~~
- (4) ~~applicant’s~~ e-mail address, ~~2~~
- (5) telephone number, and
- (6) legal name.

(b) An applicant’s business address and mailing address shall be in the same county.”

- All applications will include the bondsman’s phone number and legal name

365:25-5-48. Acts of a bail bondsman

Pursuant to 59 O.S. § 1311.3(A), it is unlawful for any individual whose license to act as a bail bondsman has been suspended, revoked, surrendered, or refused, to do or perform any of the acts of a bail bondsman. Likewise, pursuant to 59 O.S. § 1311.3(B), it is unlawful for any bail bondsman to assist, aid, or conspire with a person whose license as a bail bondsman has been suspended, revoked, surrendered, or refused, to engage in any acts as a bail bondsman. **For the purposes of 59 O.S. § 1311.3, the "acts of a bail bondsman" include, but are not limited to:**

365:25-5-48. Acts of a bail bondsman

- (1) Soliciting for a bond as defined in 59 O.S. § 1301(B)(11);
- (2) Accepting collateral and providing a written receipt for collateral pursuant to 59 O.S. § 1314(A);
- (3) Collecting premiums in person at a location other than the bondsman's recorded place of business pursuant to 59 O.S. § 1316(C);
- (4) Providing a written receipt for premium pursuant to 59 O.S. § 1316(C);
- (5) Negotiating or posting bonds pursuant to 59 O.S. § 1317(D);
- (6) Surrendering a defendant into custody pursuant to 59 O.S. § 1327(A);
- (7) Returning a defendant to custody prior to forfeiture pursuant to 59 O.S. §§ 1327 & 1328;

365:25-5-48. Acts of a bail bondsman

- (8) Filing or signing with the court clerk a notice of return to custody;
- (9) Signing or filing with the court clerk a guarantee to pay travel expenses;
- (10) Signing and presenting a request that a defendant be entered into the records of the National Crime Information Center (NCIC);
- (11) Submitting monthly reports to the Insurance Department pursuant to 59 O.S. § 1314(B);
- (12) Providing to the Oklahoma Insurance Department required documentation regarding Notice of Appointment, Filing Fee, and Notice of Termination pursuant to 59 O.S. § 1317; and
- (13) Any other act that imposes any duty or obligation upon a licensed bail bondsman or surety.

General Reminders

- Reports can be filed any day after the 1st of the month
- Do not be late
- Late reports are a violation no matter what happened

General Reminders

- You must have an email address
- OID uses this as the primary method of communication with you
- You must keep your email address up to date with OID

General Reminders

59 O.S. § 1316(C)

1. **At the time of payment**, a bail bondsman shall provide the indemnitors with a proper receipt.
2. Any receipt provided by a bondsman shall be **individually numbered** and include:
 - a. the precise amount of the fees, premium, collateral, or other payments received by the bondsman,
 - b. copies of **any agreements** executed relating to the appearance bond,
 - c. the **full name** of the defendant,
 - d. the **defendant's case number** if it is available, and
 - e. **full name** of the individual(s) presenting the payment.

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General Reminders

59 O.S. § 1314(C)

“Every licensee shall keep at the place of business of the licensee the **usual and customary records** pertaining to transactions authorized by the license. All of the records shall be available and open to the inspection of the Commissioner at any time during business hours during the three (3) years immediately following the date of the transaction. The Commissioner may require a financial examination or market conduct survey during any investigation of a licensee.”

What is a “usual and customary record?”

General Reminders

365:25-5-37. Usual and customary records

- (1) bail bond application,
- (2) indemnity agreement,
- (3) promissory note,
- (4) credit agreement,
- (5) copies of deeds or mortgages received or released,
- (6) description of personal properties received or released,
- (7) accounting of monies received and receipted,
- (8) copy of appearance bond,
- (9) copy of individually numbered power of attorney,
- (10) picture of defendant, and
- (11) bank records on escrow accounts.

Questions?

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