

OKLAHOMA INSURANCE DEPARTMENT



2016 Legislative & Rule Changes Bail Bonds



1985-2003

About Me



2008-2011



2003-2008



2011 - present



Cara, Abigail, me

Topics

- Legislative Process Overview
- Legislative Changes
 - HB 2922
 - SB 976
 - SB 952
- Rule Changes
 - OAC 365:25-5-34, 36, 37, 40, 42, 47, & 48
- General Information
- Questions

Legislative Process

- Legislative/Rule ideas – constant process
 - Mostly from OID staff, but also from bondsmen, attorneys, and legislators
- Summer/Fall: Listing of ideas
- Fall: Discussions with OBA leadership & lobbyist
- November: Meeting of OID decision makers and OBA leadership
- October-December: Drafting of language
- Dialogue continues throughout legislative session

HB 2922 – OID Omnibus



*Representative Dan Kirby
Republican – Tulsa
District 75*



*Senator John Sparks
Democrat – Norman
District 16*

Effective November 1, 2016

HB 2922 – Terminology Clean Up

- Clarifies confusing uses of the terms “surety” and “insurer”
 - “Insurer” now defined as any surety company, multicounty agent bondsman, or professional bondsman
 - “Surety” now used only to describe a surety company or surety bondsman
- “Multicounty agent bondsman” inserted into the code where appropriate
- References to new Section 1341 inserted where appropriate

HB 2922 – Investigation Files

- *Old Law*: Open bail bondsman investigative files were confidential. Closed files were public record
- *New Law*: All bail bondsman investigative files are **confidential** and not subject to open records request
- Treats OID investigations of bail bondsmen the same as investigations of agents, adjusters, and brokers
- Exception: If properly ordered by a hearing examiner, the Commissioner, a judge, or legislative committee
- Final administrative actions are always open records

HB 2922 – Pro Bondsman Licensing

- An applicant for a professional bondsman license shall have been continuously licensed as a surety, cash, or property bondsman in Oklahoma for a minimum of 2 years immediately prior to the date of application
- A professional bondsman license is an advanced license type that should require a certain level of experience in the industry

HB 2922 – Prohibited Conduct

- Now a violation to submit an “uncollected” check or EFT to the Department
 - Uncollected means there is money in your account but it cannot be transferred for some reason – usually encumbered elsewhere
 - Already a violation for “insufficient” checks or EFTs
- Now a violation to fail to accept or claim a certified mailing from any district or municipal court clerk
 - Already a violation to fail to accept or claim certified mail from the Department
- Subject to censure, suspension, revocation, or denial of a license, or a fine of \$250-\$2,500



HB 2922 – Suspended or Former Bondsmen

- *Current Law:* It is a felony to perform the acts of a bondsman without a license or to aid another in performing the acts of a bondsman without a license
- *Current exception:* A suspended or revoked bondsman may contract with a licensed bail enforcer to apprehend and surrender clients
- *New exception:* A suspended or formerly licensed bondsman may continue to submit monthly reports to the Department in order to monitor his or her outstanding liability
- Monitoring and discharging outstanding liability is a prerequisite for reinstatement of a suspended bondsman

HB 2922 – Assisting a Bondsman

- *Current Law*: A bondsman may assist another bondsman in apprehending and surrendering clients if he or she has been a licensed bondsman for at least 5 years **prior to July 1, 2014** (effective date of the law)
- *New Law*: **May assist if he or she:**
 - (1) has been continuously licensed as a bondsman in Oklahoma for at least 5 years immediately prior to providing assistance, or
 - (2) is duly appointed by the same insurer as the licensed bondsman **seeking assistance** (already allowed within the 90-day window pursuant to 59 O.S. § 1332(C)(2))
- The burden is on the bondsman seeking assistance to verify the assisting bondsman's eligibility

HB 2922 – Records Retention

- *Current Law*: A bondsman must maintain all usual and customary records at his or her place of business for 3 years following “the date of the transaction”
- *New Law*: Records must be maintained for 3 years following (1) the date the liability of the bondsman on the bond is discharged by the court or (2) the date collateral is returned by the bondsman to its lawful owner, whichever is later
- If an appearance bond is never executed and filed with the court, then records must be maintained for 3 years following the date the documents were prepared

HB 2922 – Documents to Payors

- In addition to providing a payor or indemnitor with a proper receipt, a bondsman must also provide them copies of any agreements executed relating to the appearance bond
- This means any document signed by that person
- You do not have to provide them any document that does not relate to them

HB 2922 – Appointment Forms

- “~~If the surety changes the liability limitations of the surety bondsman or the managing general agent, or any other provisions of the appointment~~ there is a change in any information submitted by the insurer on the appointment form, the ~~surety~~ insurer shall submit an amended appointment form”
- What information is on the appointment form?

BAIL BOND

ENTER BAIL BONDSMAN LICENSE NUMBER <input style="width: 150px;" type="text"/>	PLEASE ENTER Surety <input type="checkbox"/> New Appt. <input type="checkbox"/> Amended Appt. <input type="checkbox"/>																					
Bail Bondsman:																						
Name: <input style="width: 300px;" type="text"/> <div style="display: flex; justify-content: space-around; font-size: small;"> (Last) (First) (Middle) </div>																						
Mailing Address: <input style="width: 250px;" type="text"/> <input style="width: 350px;" type="text"/>																						
County: <input style="width: 250px;" type="text"/>	Surety Co NAIC # / Prof Lic # / MCA Lic#																					
<div style="text-align: center; border-top: 1px solid black; border-bottom: 1px solid black; margin: 0 0 10px 0;"> SURETY COMPANY/PROFESSIONAL/MULTI COUNTY AGENT ENDORSEMENT </div> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 80%;"></th> <th style="width: 10%; text-align: center;">Yes</th> <th style="width: 10%; text-align: center;">No</th> </tr> </thead> <tbody> <tr> <td>1. Are you aware if the Bail Bondsman has been convicted of, pled guilty or nolo contendere to, a felony or a misdemeanor involving moral turpitude of dishonesty? If answer is "Yes", explain on a separate sheet of paper.</td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td>2. Has this Bail Bondsman committed a violation of any State bail bond Law, or do you believe that he (she) has violated or may be currently violating any such law? If answer is "Yes", explain on a separate sheet of paper.</td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td>3. Provide the name, address and license number of the Managing General Agent (must be a licensed Oklahoma Bail Bondsman) through which Bail Bondsman will be working. <input style="width: 300px;" type="text"/></td> <td></td> <td></td> </tr> <tr> <td>4. Included is a qualifying power of attorney for the agent to act under my Professional or Multi County Agent license.</td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td>5. I have investigated his (her) character and background and am satisfied that he (she) is trustworthy and qualified to represent the Surety Company/Prof/MCA in Oklahoma. I hereby certify the individual named above is duly appointed as indicated from the date accepted by the Insurance Department, and I accept full responsibility for his/her actions.</td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td colspan="3">6. Must include an affidavit from the Bail Bondsman regarding premiums, forfeitures and fees. See 59 O.S. 1317(C).</td> </tr> </tbody> </table> <div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div style="width: 45%;"> <p>Dated this <input style="width: 50px;" type="text"/> day of <input style="width: 100px;" type="text"/>, <input style="width: 50px;" type="text"/></p> <p>Surety Co/Prof/MCA <input style="width: 150px;" type="text"/></p> <p>Mailing Address <input style="width: 150px;" type="text"/> <input style="width: 150px;" type="text"/></p> <p>Check No. <input style="width: 100px;" type="text"/> for \$ <input style="width: 100px;" type="text"/></p> </div> <div style="width: 45%; text-align: center;"> <p>_____ (Signature Agent)</p> <p>_____ (Authorized Signature of Surety Co/Prof/MCA)</p> <p>Name (Print) <input style="width: 150px;" type="text"/></p> <p>Title (Print) <input style="width: 150px;" type="text"/></p> </div> </div>			Yes	No	1. Are you aware if the Bail Bondsman has been convicted of, pled guilty or nolo contendere to, a felony or a misdemeanor involving moral turpitude of dishonesty? If answer is "Yes", explain on a separate sheet of paper.	<input type="checkbox"/>	<input type="checkbox"/>	2. Has this Bail Bondsman committed a violation of any State bail bond Law, or do you believe that he (she) has violated or may be currently violating any such law? If answer is "Yes", explain on a separate sheet of paper.	<input type="checkbox"/>	<input type="checkbox"/>	3. Provide the name, address and license number of the Managing General Agent (must be a licensed Oklahoma Bail Bondsman) through which Bail Bondsman will be working. <input style="width: 300px;" type="text"/>			4. Included is a qualifying power of attorney for the agent to act under my Professional or Multi County Agent license.	<input type="checkbox"/>	<input type="checkbox"/>	5. I have investigated his (her) character and background and am satisfied that he (she) is trustworthy and qualified to represent the Surety Company/Prof/MCA in Oklahoma. I hereby certify the individual named above is duly appointed as indicated from the date accepted by the Insurance Department, and I accept full responsibility for his/her actions.	<input type="checkbox"/>	<input type="checkbox"/>	6. Must include an affidavit from the Bail Bondsman regarding premiums, forfeitures and fees. See 59 O.S. 1317(C).		
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HB 2922 – Carrying Your License

- “Any bail bondsman engaged in the apprehension or surrender of his or her defendant client, and any bail bondsman assisting another bondsman pursuant to Section 1311.4 of this title, shall at all times while engaged in the apprehension or surrender of the defendant client have his or her bail bondsman license in his or her possession and shall present the license to any law enforcement officer immediately upon request.”
- Engaged in an apprehension or surrender? You better have your license on you

SB 976 – MCAs and Deferred Prosecutions



*Senator Mark Allen
Republican – Spiro
District 4*



*Representative Leslie Osborn
Republican – Mustang
District 47*

Effective November 1, 2016

SB 976 – MCA Requirements

- An applicant for an MCA license shall have been continuously licensed as a professional bondsman for at least 2 years **without suspension or having any unpaid forfeitures** prior to the date of application
- Unpaid forfeitures means forfeitures for which the professional bondsman has been subject to a final administrative action by the Department for not paying the forfeiture within the appropriate time period

SB 976 – Deferred Prosecutions

- When a deferred prosecution is granted as provided by law, the undertaking and bondsman and insurer shall be exonerated from further liability

SB 952 – Peace Officers



Senator Susan Paddack
Democrat – Ada
District 13



Representative Todd Thomsen
Republican – Ada
District 25

Effective November 1, 2016

SB 952 – Peace Officers

- If an Oklahoma peace officer or reserve peace officer is engaged in the recovery or surrender of a defendant, he or she shall wear clothing clearly marked “bail enforcer” or “bail enforcement” and shall not wear any clothing marked “police” or use any other words or phrases that imply that such person is associated with law enforcement or a government agency
- Shall also not use any vehicle marked “police” or with any other words or phrases that imply that such a person is associated with law enforcement or a government agency, or display an official peace officer badge, except when the policies of the officer’s employing law enforcement agency, and the agency in whose jurisdiction the officer is engaged in a recovery and surrender, allows the officer to do so

SB 952 – Identifying Clothing

- Any person duly licensed, or authorized to engage in a recovery and surrender pursuant to the Bail Enforcement and Licensing Act, shall wear apparel bearing the words "bail enforcer" or "bail enforcement" during the recovery and surrender as provided in paragraph B of Section 1350.4 of this title.
- Takeaway: OID position is that this **does not apply to bail bondsmen**, whose authority to apprehend and surrender defendants derives from the Bail Bond Code, not from the Bail Enforcement and Licensing Act

Rules

- Most rule changes are simply language clean ups
 - Added multicounty agent bondsman where appropriate
- OAC 365:25-5-37. Usual and Customary Records
 - Records must be maintained for 3 years following (1) the date the liability of the bondsman on the bond is discharged by the court or (2) the date collateral is returned by the bondsman to its lawful owner, whichever is later
 - If an appearance bond is never executed and filed with the court, then records must be maintained for 3 years following the date the documents were prepared

General Information

- Minimum fine for violations of the Bail Bond Code is \$250
- Respond to the OID Bail Bond Division
- Read your email. Every bondsman is required by law to keep an updated email address, and the Department uses it to get information to you. There is no excuse.
- Review your reports before submitting them to OID. Simple, easily identifiable mistakes cause most of the required amended reports
- Submitting an insufficient funds EFT to the Department is a violation. You face a \$25 fee and could be fined at least \$250.

General Information

Notice of return to custody

Following a forfeiture, if the defendant has been returned to custody as defined in 59 O.S. § 1332(C)(4), the bondsman shall file notice with the court clerk of the county where the forfeiture occurred by the ninety-first day after receipt of the order and judgment of forfeiture, certifying the defendant was returned to custody by the ninetieth day after receipt of the order and judgment of forfeiture. Failure to provide notice prior to the ninety-first day shall be a violation of 59 O.S. § 1310(A)(2).

General Information

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. the full name of the defendant,
- c. the defendant's case number if it is available, and
- d. full name of the individual(s) presenting the payment.

Questions

Buddy Combs

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