

An Act

ENROLLED SENATE
BILL NO. 1013

By: Shortey of the Senate

and

Joyner of the House

An Act relating to professions and occupations; creating the Bail Enforcement and Licensing Act; providing short title; defining terms; requiring licensure; stating penalty; providing enhanced penalty; prohibiting certain persons from licensure; allowing certain dual licensing; prohibiting acting under suspension, revocation or denial; stating certain exceptions; providing for defense from forced entry; authorizing civil action for damages; stating penalty; prohibiting excessive or unreasonable force; requiring training on force continuum; allowing certain force under certain conditions; providing for prosecutions; prohibiting breaking and entering; stating penalty; directing the Council on Law Enforcement Education and Training to enforce certain duties as peace officers; construing authority to appoint staff as peace officers; providing certain powers and duties to the Council; providing for rules and forms; requiring minimum training and continuing education; allowing certain training waivers and credits; allowing investigations of violations and disciplinary actions; providing for administration through use of certain resources and funds; requiring certain personality assessment and procedures for licensure; providing for retired peace officers exemption; prohibiting certain peace officers from application; stating qualifications for licensure; requiring certain liability insurance or bond; stating procedure for license application; setting fees; allowing retention of certain percentage for processing application refunds; requiring national

criminal history check by fingerprints; providing for suspensions, denials and revocations; stating term of license; allowing duplicate licenses for a fee; authorizing disciplinary action; requiring surrender of license upon suspension or revocation; prohibiting use of certain words and phrases; prohibiting certain conduct; prohibiting disclosure of certain information; providing exception; requiring certain identification and information while performing as bail enforcer; directing report of firearm discharge; requiring report of administration of certain substances; requiring certain words on badge, clothing and vehicles; prohibiting certain vehicle equipment; providing procedure for approving training schools and instructors; setting fee; requiring CLEET to approve curriculum and training courses; prohibiting use of weapon and substances without training; granting access to jails; creating the CLEET Bail Enforcement Revolving Fund; providing for funding, deposits and expenditures; amending 59 O.S. 2011, Sections 1303, 1327, 1328, 1329, 1332, as amended by Section 9 of Enrolled House Bill No. 2167 of the 1st Session of the 54th Oklahoma Legislature, and 1332.1, which relate to bail bondsmen; modifying references; updating language; allowing licensed bail enforcer to contract with surety or bondsman to recover defendants; amending 59 O.S. 2011, Sections 1750.2A, 1750.5, as amended by Section 1 of Enrolled House Bill No. 1413 of the 1st Session of the 54th Oklahoma Legislature, and 1750.14, which relate to private investigators, security guards, and CLEET; authorizing injunction for certain violations; granting certain license authority to CLEET; allowing dual licensing of certain professions; providing for concealed or open carry for licensed bail enforcers; stating requirements for firearms; prohibiting conditional license for bail enforcers; requiring nonresident bail enforcers to be licensed or contracted with licensed bail enforcer to apprehend certain persons; exempting law enforcement officers; providing for codification; and providing an effective date.

SUBJECT: Bail enforcement and licensing

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1350 of Title 59, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Bail Enforcement and Licensing Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1350.1 of Title 59, unless there is created a duplication in numbering, reads as follows:

As used in the Bail Enforcement and Licensing Act:

1. "Armed bail enforcer" means a bail enforcer having a valid license issued by the Council on Law Enforcement Education and Training authorizing the holder to carry an approved pistol or weapon in the recovery of a defendant pursuant to the Bail Enforcement and Licensing Act;

2. "Bail enforcer" means a 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.

The term "bail enforcer" does not include any law enforcement officer actively employed by a law enforcement agency recognized in this state, or any of its political subdivisions, another state or the United States, while such officer is engaged in the lawful

performance of duties authorized by his or her employing law enforcement agency, 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;

3. "Bail recovery contract" or "client contract" means an agreement to perform the services of a bail enforcer for a client. Only a bail enforcer licensed by the Council may enter into a client contract to perform the services of a bail enforcer. A bail enforcer is liable for his or her acts and omissions while executing a recovery of a defendant pursuant to a client contract;

4. "Client" means a bondsman or surety on an undertaking or bail bond contract issued in this state, another state or the United States that enters into a contract for the services of a bail enforcer;

5. "Council" or "CLEET" means the Council on Law Enforcement Education and Training;

6. "Defendant" means the principal on an undertaking or bail bond contract;

7. "License" means authorization issued by the Council pursuant to the Bail Enforcement and Licensing Act permitting the holder to perform functions and services as a bail enforcer;

8. "Weapon" means taser, stun gun, baton, night stick or any other device used to subdue a defendant, or any noxious substances as defined in paragraph 10 of this subsection;

9. "Recovery" or "surrender" means the presentation of a defendant to the public officer competent to receive the defendant into custody; and

10. "Noxious substance" means OC spray, pepper spray, mace or any substance used as a physiological irritant.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1350.2 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. On and after July 1, 2014, no person shall act or engage in, solicit or offer services, or represent himself or herself, as a bail enforcer as defined by the Bail Enforcement and Licensing Act without first having been issued a valid license by the Council on Law Enforcement Education and Training.

B. On or after July 1, 2014, any person who shall act or engage in, solicit or offer services, or represent himself or herself, as a bail enforcer without a valid license issued by the Council shall be guilty of a felony, upon conviction, punishable by a fine in an amount not exceeding Ten Thousand Dollars (\$10,000.00), or by imprisonment in the custody of the Department of Corrections for a term of not more than three (3) years, or by both such fine and imprisonment.

C. Any person violating the provisions of subsection B of this section while having in his or her possession or under his or her control any firearm or weapon, including a firearm under the authority of the Oklahoma Self-Defense Act, shall be punished, upon conviction, by an additional fine in an amount not exceeding Five Thousand Dollars (\$5,000.00), or by an additional term of imprisonment up to three (3) years, or by both such fine and imprisonment. In addition, the authority to carry the firearm may be permanently revoked by the issuing authority.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1350.3 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. To prevent a conflict of interest or the appearance of any conflict of interest, and in addition to the qualifications for a bail enforcer pursuant to Section 10 of this act, a person whose employment prohibits such person from being licensed as a bail bondsman as provided in subsection A of Section 1315 of Title 59 of the Oklahoma Statutes shall be prohibited from being licensed as a bail enforcer pursuant to the Bail Enforcement and Licensing Act. In addition, a district attorney, or any employee of an office of a district attorney, or any employee of the Department of Corrections shall be prohibited from being licensed as a bail enforcer or bail recovery agency while employed in such capacity.

B. Nothing in the Bail Enforcement and Licensing Act shall be construed to prohibit a bail bondsman, private investigator or security guard licensed in this state from being dual-licensed pursuant to the Bail Enforcement and Licensing Act.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1350.4 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. It shall be unlawful for any person whose license as a bail enforcer has been suspended, revoked, surrendered or denied, to perform, or assist in the performance of, any function or service as a bail enforcer.

B. It shall be unlawful for a bail enforcer licensed in this state to assist, aid or conspire with an unlicensed person, or a person whose license as a bail enforcer or bail bondsman has been suspended, revoked, surrendered or denied, to engage in any function or service as a bail enforcer. Provided, however, an active duty commissioned peace officer who is off-duty may assist a bail enforcer without having been issued a bail enforcer license.

C. Any violation of this section shall be a violation of the Bail Enforcement and Licensing Act which is punishable as provided in Section 3 of this act.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1350.5 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. Notwithstanding any provision in Section 643 of Title 21 of the Oklahoma Statutes, the use or attempt to use force by a bail enforcer in the recovery of a defendant as defined in the Bail Enforcement and Licensing Act is prohibited when unnecessarily committed or when the force is excessive or unreasonable in manner, degree or duration.

B. Every bail enforcer shall be trained on the use of force continuum and the rules for use of force promulgated for the Bail Enforcement and Licensing Act.

C. No force shall be authorized which is more than sufficient to temporarily restrain a defendant who has refused to obey a lawful command to surrender to the bail enforcer. The duration and manner of any force used by a bail enforcer shall be only that reasonably necessary to surrender the defendant to the public officer competent to receive such person into custody.

D. Any force used by a bail enforcer in self-defense while recovering a defendant or to defend another from injury or threat of injury while recovering a defendant shall be not more than sufficient to prevent an offense.

E. Any force deemed by the district attorney to be unnecessarily committed or excessive or unreasonable in manner, degree or duration may be prosecuted as a crime committed without justification or excusable cause under an existing provision of law.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1350.6 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. Notwithstanding any other provision of law, it shall be unlawful for a bail enforcer to break into and enter the dwelling house of any defendant or third-party for purposes of recovery or attempted recovery of a defendant either:

1. By forcibly bursting or breaking the wall, or an outer door, window, or shutter of a window of such house or the lock or bolts of such door, or the fastening of such window or shutter;

2. By breaking in any other manner, being armed with a weapon or being assisted or aided by one or more persons then actually present; or

3. By unlocking an outer door by means of false keys or by picking the lock thereof, or by lifting a latch or opening a window.

B. A person violating the provisions of this section shall be guilty of burglary in the first degree and, upon conviction, punished as provided in Section 1436 of Title 21 of the Oklahoma Statutes. Provided, however, the offense and penalty stated in this section shall not apply to a licensed bail enforcer during an active

attempt at recovery of a felony defendant under the following conditions:

- a. the bail enforcer has first-hand or eyes-on knowledge that the defendant entered the dwelling house during an attempt to recover the defendant and the defendant after reasonable request is refusing to surrender,
- b. the bail enforcer has first-hand or eyes-on knowledge that the defendant is actually within the dwelling house and after reasonable request is refusing to surrender, or
- c. the bail enforcer has obtained knowledge confirming beyond a reasonable doubt that the defendant is actually within the dwelling house and after reasonable request refuses to surrender.

For purposes of this subsection, "first-hand knowledge" means information received from direct eye-witness testimony, actual visual contact with and confirmed identification of the defendant by a person who knows the defendant or resides at the dwelling house, or other factual evidence provided directly to the licensed bail enforcer that confirms the identity and presence of the defendant within the dwelling house.

The exceptions to the offense and penalty in this section shall not limit or restrict another person within or without the dwelling house, or owning the dwelling house, from taking any action in response to or to defend a forced entry into such dwelling house, including use of a firearm as may be authorized by law. The use of an exception provided in this subsection by a licensed bail enforcer shall be a fact to be determined by the district attorney in considering whether to prosecute an offense under this section. Any person exercising his or her right to respond or protect the dwelling house or its occupants shall not be liable for injury to another who was forcing entry into such dwelling house. An owner or occupant of a dwelling house may seek damages to his or her property in a civil action if such damage resulted from a forced entry by a licensed bail enforcer.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1350.7 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. The Director of the Council on Law Enforcement Education and Training, and any staff member designated by the Director, shall have all the powers and authority of peace officers of this state for the purposes of enforcing the provisions of the Bail Enforcement and Licensing Act, and all other duties which are or may be conferred upon the Council by the Bail Enforcement and Licensing Act. The powers and duties conferred on the Director or any staff member appointed by the Director as a peace officer shall not limit the powers and duties of other peace officers of this state or any political subdivision thereof. Nothing in the Bail Enforcement and Licensing Act shall be construed to restrict the Director from appointing the same staff members as peace officers to enforce both the Oklahoma Security Guard and Private Investigator Act and the Bail Enforcement and Licensing Act.

B. The Council shall have the following powers and duties:

1. To promulgate rules and forms to implement, enforce and carry out the purposes of the Bail Enforcement and Licensing Act;

2. To establish and enforce standards governing the training of persons required to be licensed pursuant to the Bail Enforcement and Licensing Act with respect to:

- a. issuing, denying, or revoking certificates of approval to bail enforcement training schools, and programs administered by the state, a county, a municipality, a private corporation, or an individual,
- b. certifying instructors at approved bail enforcement training schools,
- c. establishing minimum requirements for bail enforcement training schools and periodically reviewing these standards, and
- d. providing for periodic inspection of all bail enforcement training schools or programs;

