

An Act

ENROLLED HOUSE
BILL NO. 2167

By: Echols of the House

and

Marlatt of the Senate

An Act relating to bail bondsmen; amending 59 O.S. 2011, Sections 1304, 1306, 1309, as amended by Section 2, Chapter 82, O.S.L. 2012, 1310, 1315, as amended by Section 3, Chapter 82, O.S.L. 2012, 1316, 1317, 1320 and 1332 (59 O.S. Supp. 2012, Sections 1309 and 1315), which relate to licensure of bail bondsmen; modifying in what circumstances a license can expire; modifying qualifications for licensure; deleting that certain notification be made by mail; modifying dates; clarifying license reinstatement requirement; modifying grounds for denying, suspending, revoking or refusing to renew a license; prohibiting certain persons from being bail bondsmen; clarifying surety bondsmen appointment and when bail bondsmen should provide receipts for payments; modifying affidavit requirements; authorizing the Insurance Commissioner to deny new surety appointment or apply sanctions; providing content requirements for list of surety bondsmen permitted to write bail in a county; modifying forfeiture procedure; and providing an effective date.

SUBJECT: Bail bondsmen

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

SECTION 1. AMENDATORY 59 O.S. 2011, Section 1304, is amended to read as follows:

Section 1304. Each bail bondsman license issued shall expire biennially at 12:00 o'clock midnight on the last day of the birth month of the bondsman, unless revoked or suspended prior thereto by the Insurance Commissioner, ~~or upon notice served upon the Commissioner that the insurer or employer of any bail bondsman has canceled the licensee's authority to act for such insurer or employer.~~

SECTION 2. AMENDATORY 59 O.S. 2011, Section 1306, is amended to read as follows:

Section 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.

2. In addition to the requirements prescribed in Section 1305 of this title, an applicant for a professional bondsman license shall submit to the Insurance Commissioner financial statements prepared by an accounting firm or individual holding a permit to practice public accounting in this state in accordance with generally accepted principles of accounting procedures setting forth the total assets of the bondsman less liabilities and debts as follows: For all applications made prior to November 1, 2006, and the subsequent renewals of a license issued upon the application when continuously maintained in effect as required by law, the statement shall show a net worth of at least Fifty Thousand Dollars (\$50,000.00). For all applications made on and after November 1, 2006, and the subsequent renewals of a license issued upon the application when continuously maintained in effect as required by law, or for the renewal or reinstatement of any license that is expired pursuant to subsection D of Section 1309 of this title, suspended or revoked, the statement shall show a net worth of at least One Hundred Fifty Thousand Dollars (\$150,000.00), the statements to be current as of a date not earlier than ninety (90) days prior to submission of the application and the statement shall be attested to by an unqualified opinion of the accountant.

3. Professional bondsman applicants shall make a deposit with the Insurance Commissioner in the same manner as required of domestic insurance companies of an amount to be determined by the Commissioner. For all applications made prior to November 1, ~~1996~~ 2006, and the subsequent renewals of a license issued upon the

application when continuously maintained in effect as required by law, the deposit shall not be less than Twenty Thousand Dollars (\$20,000.00). For all applications made on and after November 1, ~~1996~~ 2006, and the subsequent renewals of a license issued upon the application when continuously maintained in effect as required by law, or for the renewal or reinstatement of any license that is expired pursuant to subsection D of Section 1309 of this title, suspended or revoked, the deposit shall not be less than Fifty Thousand Dollars (\$50,000.00). The deposits shall be subject to all laws, rules and regulations as deposits by domestic insurance companies but in no instance shall a professional bondsman write bonds which equal more than ten times the amount of the deposit which the bondsman has submitted to the Commissioner. Such deposit shall require the review and approval of the Insurance Commissioner prior to exceeding the maximum amount of Federal Deposit Insurance Corporation basic deposit coverage for any one bank or financial institution. In addition, a professional bondsman may make the deposit by purchasing an annuity through a licensed domestic insurance company in the State of Oklahoma. The annuity shall be in the name of the bondsman as owner with legal assignment to the Insurance Commissioner. The assignment form shall be approved by the Commissioner. 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.

4. The deposit provided for in this section shall constitute a reserve available to meet sums due on forfeiture of any bonds or recognizance executed by the bondsman.

5. Any deposit made by a professional bondsman pursuant to this section shall be released and returned by the Commissioner to the professional bondsman only upon extinguishment of all liability on outstanding bonds. Provided, however, the Commissioner shall have the authority to review specific financial circumstances and history of a professional bondsman, on a case-by-case basis, and may release a portion of the deposit if warranted. The Commissioner may promulgate rules to effectuate the provisions of this paragraph.

6. No release of deposits to a professional bondsman shall be made by the Commissioner except upon written application and the written order of the Commissioner. The Commissioner shall have no

liability for any such release to a professional bondsman provided the release was made in good faith.

B. The deposit provided in this section shall be held in safekeeping by the Insurance Commissioner and shall only be used if a bondsman fails to pay an order and judgment of forfeiture after being properly notified or shall be used if the license of a professional bondsman has been revoked. The deposit shall be held in the name of the Insurance Commissioner and the bondsman. The bondsman shall execute an assignment or pledge of the deposit to the Insurance Commissioner for the payment of unpaid bond forfeitures.

C. Currently licensed professional bondsmen may maintain their aggregate liability limits upon presentation of documented proof that they have previously been granted a limitation greater than the requirements of subsection A of this section.

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.

SECTION 3. AMENDATORY 59 O.S. 2011, Section 1309, as amended by Section 2, Chapter 82, O.S.L. 2012 (59 O.S. Supp. 2012, Section 1309), is amended to read as follows:

Section 1309. A. A renewal license shall be issued by the Insurance Commissioner to a licensee who has continuously maintained same in effect, without further examination, upon payment of a renewal fee of Two Hundred Dollars (\$200.00) for a bail bondsman and proof of completion of sixteen (16) hours of continuing education as required by Section 1308.1 of this title. The renewal fee for licenses expiring September 15, 2012, shall be prorated to the birth month of the bondsman. Thereafter the renewal fee shall be

submitted biennially by the last day of the birth month of the bondsman. Such licensee shall in all other respects be required to comply with and be subject to the provisions of Section 1301 et seq. of this title.

B. An individual holding a professional bondsman license shall also provide an annual financial statement prepared by an accounting firm or individual holding a permit to practice public accounting in this state in accordance with generally accepted principles of accounting procedures showing assets, liabilities, and net worth, the annual statement to be as of a date not earlier than ninety (90) days prior to September 30. The statements shall be attested to by an unqualified opinion of the accounting firm or individual holding a permit to practice public accounting in this state that prepared the statement or statements. The statement shall be submitted annually by the last day of September.

C. An individual holding a property bondsman license shall also provide an annual county assessor's written statement stating the property's assessed value for each property used to post bonds and a written statement from any lien holder stating the current payoff amount on each lien for each property used to post bonds. The written statements shall be submitted annually by the last day of September.

D. If the license is not renewed or the renewal fee is not paid by the last day of the birth month of the bondsman, the license shall expire automatically pursuant to Section 1304 of this title. After expiration, the license may be reinstated for up to one (1) year following the expiration date. If after the one-year date the license has not been ~~renewed~~ reinstated, the licensee shall be required to apply for a license as a new applicant.

E. Reinstatement fees shall be double the original fee.

SECTION 4. AMENDATORY 59 O.S. 2011, Section 1310, is amended to read as follows:

Section 1310. A. The Insurance Commissioner may deny, censure, suspend, revoke, or refuse to renew any license issued under Sections 1301 through 1340 of this title for any of the following causes:

1. For any cause for which issuance of the license could have been refused;

2. Violation of any laws of this state or any lawful rule, regulation, or order of the Commissioner relating to bail;

3. Material misstatement, misrepresentation, or fraud in obtaining the license;

4. Misappropriation, conversion, or unlawful withholding of monies or property belonging to insurers, insureds, or others received in the conduct of business under the license;

5. Conviction of, or having entered a plea of guilty or nolo contendere to, any felony or to a misdemeanor involving moral turpitude or dishonesty;

6. Fraudulent or dishonest practices or demonstrating financial irresponsibility in conducting business under the license;

7. Failure to comply with, or violation of any proper order, rule, or regulation of the Commissioner;

8. Recommending any particular attorney-at-law to handle a case in which the bail bondsman has caused a bond to be issued under the terms of Sections 1301 through 1340 of this title;

9. When, in the judgment of the Commissioner, the licensee has, in the conduct of affairs under the license, demonstrated incompetency, or untrustworthiness, or conduct or practices rendering the licensee unfit to carry on the bail bond business or making continuance in the business detrimental to the public interest, ~~or that;~~

10. When the licensee is no longer in good faith carrying on the bail bond business, ~~or that;~~

11. When the licensee is guilty of rebating, or offering to rebate, or dividing with someone other than a licensed bail bondsman, or offering to divide commissions in the case of limited surety agents, or premiums in the case of professional bondsmen, and for this conduct is found by the Commissioner to be a source of detriment, injury, or loss to the public;

~~10.~~ 12. For any materially untrue statement in the license application;

~~11.~~ 13. Misrepresentation of the terms of any actual or proposed bond;

~~12.~~ 14. For forging the name of another to a bond or application for bond;

~~13.~~ 15. Cheating on an examination for licensure;

~~14.~~ 16. Soliciting business in or about any place where prisoners are confined, arraigned, or in custody;

~~15.~~ 17. For paying a fee or rebate, or giving or promising anything of value to a jailer, trustee, police officer, law enforcement officer, or other officer of the law, or any other person who has power to arrest or hold in custody, or to any public official or public employee in order to secure a settlement, compromise, remission, or reduction of the amount of any bail bond or estreatment thereof, or to secure delay or other advantage. This shall not apply to a jailer, police officer, or officer of the law who is not on duty and who assists in the apprehension of a defendant;

~~16.~~ 18. For paying a fee or rebating or giving anything of value to an attorney in bail bond matters, except in defense of an action on a bond;

~~17.~~ 19. For paying a fee or rebating or giving or promising anything of value to the principal or anyone in the behalf of the principal;

~~18.~~ 20. Participating in the capacity of an attorney at a trial or hearing for one on whose bond the licensee is surety;

~~19.~~ 21. Accepting anything of value from a principal, other than the premium; provided, the bondsman shall be permitted to 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. Collateral security or other indemnity required by the bondsman shall be reasonable in relation to the amount of the bond;

~~20.~~ 22. Willful failure to return collateral security to the principal when the principal is entitled thereto;

~~21.~~ 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;

~~22.~~ 24. For failing to file a report as required by Section 1314 of this title;

~~23.~~ 25. For filing a materially untrue monthly report;

~~24.~~ 26. For filing false affidavits regarding cancellation of the appointment of an insurer;

~~25.~~ 27. Forcing the Commissioner to withdraw deposited monies to pay forfeitures or any other outstanding judgments;

~~26.~~ 28. For failing to pay any fees to a district court clerk as are required by this title or failing to pay any fees to a municipal court clerk as are required by this title or by Section 28-127 of Title 11 of the Oklahoma Statutes;

~~27.~~ 29. For uttering an insufficient check or electronic funds transfer to the Insurance Commissioner for any fees, fines or other payments received by the Commissioner from the bail bondsman;

~~28.~~ 30. For failing to pay travel expenses for the return of the defendant to custody once having guaranteed the expenses pursuant to the provisions of subparagraph d of paragraph 3 of subsection C of Section 1332 of this title; ~~and~~

~~29.~~ 31. The Commissioner may also refuse to renew a licensed bondsman for failing to file all outstanding monthly bail reports, pay any outstanding fines, pay any outstanding monthly report reviewal fees owed to the Commissioner, or respond to a current order issued by the Commissioner; and

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.

B. In addition to any applicable denial, censure, suspension, or revocation of a license, any person violating any provision of Sections 1301 through 1340 of this title may be subject to a civil penalty of not less than Two Hundred Fifty Dollars (\$250.00) nor

