SENATE FLOOR VERSION
February 21, 2013

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 849 By: Marlatt of the Senate

and

Echols of the House

[bail bondsmen - Insurance Commissioner - surety bondsmen permitted to write bail - forfeiture procedure - effective date]

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 <u>or pledge</u> 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 <u>or demonstrating financial irresponsibility</u> 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,~~ email 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 more than Two Thousand Five Hundred Dollars ($2,500.00) for each occurrence. This fine may be enforced in the same manner in which civil judgments may be enforced. Any order for civil penalties entered by the Commissioner or authorized decision maker for the Insurance Department which has become final may be filed with the court clerk of Oklahoma County and shall then be enforced by the judges of Oklahoma County.

C. No bail bondsman or bail bond agency shall advertise as or hold itself out to be a surety company.

D. If any bail bondsman is convicted by any court of a violation of any of the provisions of this act, the license of the individual shall therefore be deemed to be immediately revoked, without any further procedure relative thereto by the Commissioner.

E. For one (1) year after notification by the Commissioner of an alleged violation, or for two (2) years after the last day the person was licensed, whichever is the lesser period of time, the Commissioner shall retain jurisdiction as to any person who cancels his bail bondsman’s license or allows the license to lapse, or otherwise ceases to be licensed, if the person while licensed as a bondsman allegedly violated any provision of this title. Notice and opportunity for hearing shall be conducted in the same manner as if the person still maintained a bondsman’s license. If the Commissioner or a hearing examiner determines that a violation of the provisions of Sections 1301 through 1340 of this title occurred, any order issued pursuant to the determination shall become a permanent record in the file of the person and may be used if the person should request licensure or reinstatement.

F. Any law enforcement agency, district attorney’s office, court clerk’s office, or insurer that is aware that a licensed bail bondsman has been convicted of or has pleaded guilty or nolo contendere to any crime, shall notify the Insurance Commissioner of that fact.

SECTION 5. AMENDATORY 59 O.S. 2011, Section 1315, as amended by Section 3, Chapter 82, O.S.L. 2012 (59 O.S. Supp. 2012, Section 1315), is amended to read as follows:

Section 1315. A. 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:

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;

4. Committing judges;

5. Municipal or district court judges;

6. Prisoners;

7. Sheriffs, deputy sheriffs and any person having the power to arrest or having anything to do with the control of federal, state, county or municipal prisoners;

8. Any person who possesses a permit pursuant to the provisions of Section 163.11 of Title 37 of the Oklahoma Statutes or is an officer, director or stockholder of any corporation holding such a permit;

9. Any person who is an agent or owner of any establishment at which low-point beer as defined by Section 163.2 of Title 37 of the Oklahoma Statutes is sold for on-premises consumption;

10. Any person who holds any license provided for in Section 518 of Title 37 of the Oklahoma Statutes or is an agent or officer of any such licensee, except for an individual holding an employee license pursuant to paragraph 20 of subsection A of Section 518 of Title 37 of the Oklahoma Statutes;

11. Any person who holds any license or permit from any city, town, county, or other governmental subdivision for the operation of any private club at which alcoholic beverages are consumed or provided; ~~and~~

12. Any person or agent of a retail liquor package store; and

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

B. This section shall not apply to a sheriff, deputy sheriff, police officer, or officer of the law who is not on duty and who assists in the apprehension of a defendant.

C. The provisions of this section shall not apply to persons possessing permits or licenses pertaining to low-point beer or alcoholic beverages, as defined in Sections 163.2 and 506 of Title 37 of the Oklahoma Statutes, which were issued prior to May 23, 1984. No one shall be permitted to maintain an office for conducting bail bonds business where low-point beer or alcoholic beverages are sold for on-premises consumption.

SECTION 6. AMENDATORY 59 O.S. 2011, Section 1316, is amended to read as follows:

Section 1316. A. 1. 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 ~~directly employed~~ appointed by a licensed professional bondsman giving the power of attorney. The professional bondsman shall submit to the Insurance Commissioner the agreement between the professional bondsman and the ~~employed~~ appointed bondsman. The agreement shall be submitted to the Commissioner prior to the ~~employed~~ appointed bondsman writing bonds on behalf of the professional. The professional bondsman shall notify the Commissioner whenever any ~~agreement~~ appointment is canceled. If the bondsman surrenders the professional qualification, or the professional qualification is suspended or revoked, or if an insurer authorized to write bail bond business surrenders their bail surety line of authority, or this line of authority is suspended or revoked, then the Commissioner shall suspend the appointment of all of the bail agents of the professional bondsman or insurer. The Commissioner shall immediately notify any bail agent whose license is affected and the court clerk of the agent's resident county upon the suspension or revocation of the qualification of the professional bondsman. If the professional qualification or the bail surety line of authority is reinstated within twenty-four (24) hours, the Commissioner shall not be required to suspend the bail agent appointments. If the Commissioner reinstates the professional qualification within twenty-four (24) hours, the Commissioner shall also reinstate the appointment of the bail agents of the professional bondsman or bail insurer. If more than twenty-four (24) hours elapse following the suspension or revocation, then the professional bondsman or insurer shall submit new agent appointments to the Commissioner.

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.

B. Premium charged shall be indicated on the appearance bond prior to the filing of the bond.

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.

D. All surety bondsmen or managing general agents shall attach a completed power of attorney to the appearance bond that is filed with the court clerk on each bond written.

E. Any bond written in this state shall contain the name and last-known mailing address of the bondsman and, if applicable, of the insurer.

SECTION 7. AMENDATORY 59 O.S. 2011, Section 1317, is amended to read as follows:

Section 1317. A. Every surety or professional bondsman who appoints a surety bondsman or managing general agent in the state, shall give notice thereof to the Insurance Commissioner. The filing fee for appointment of each surety bondsman or managing general agent shall be Ten Dollars ($10.00), payable to the Commissioner and shall be submitted with the appointment. The appointment shall remain in effect until the surety or professional bondsman submits a notice of cancellation to the Commissioner, the license of the bail bondsman expires, or the Commissioner cancels the appointment. The Commissioner may cancel a bail surety appointment if the license of the bondsman is suspended, revoked or nonrenewed. If the surety changes the liability limitations of the surety bondsman or the managing general agent, or any other provisions of the appointment, the surety shall submit an amended appointment form and a filing fee of Ten Dollars ($10.00) payable to the Commissioner.

B. A surety terminating the appointment of a surety bondsman or managing general agent immediately shall file written notice thereof with the Commissioner, together with a statement that it has given or mailed notice to the surety bondsman or managing general agent.

The notice filed with the Commissioner shall state the reasons, if any, for the termination.

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<u>, 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</u>. 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.

D. Every bail bondsman who negotiates and posts a bond shall, in any controversy between the defendant, indemnitor, or guarantor and the bail bondsman or surety, be regarded as representing the surety. This provision shall not affect the apparent authority of a bail bondsman as an agent for the insurer.

SECTION 8. AMENDATORY 59 O.S. 2011, Section 1320, is amended to read as follows:

Section 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~~ <u>bail</u> in that county to the judges and law enforcement offices of that county. <u>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.</u> 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)~~ <u>Twenty Dollars ($20.00)</u> 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~~ <u>biennially</u> 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.

B. Notwithstanding the foregoing provisions of this section, a bondsman may write bonds on no more than ten defendants per year in each of the remaining seventy-six counties of this state in which the bondsman cannot register his license. Provided, however, a bondsman shall not be limited to writing bonds on only ten defendants per year in a county which does not have a licensed bondsman registered in said county. The bondsman shall advise the court clerk of each such county in writing of his intention to write bonds in the county and shall file a certified copy of his license with and pay a fee of Ten Dollars ($10.00) to each such court clerk.

SECTION 9. AMENDATORY 59 O.S. 2011, Section 1332, is amended to read as follows:

Section 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 <u>order and judgment of</u> forfeiture <u>is filed in the court</u>, 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; provided, the clerk shall not be required to mail the order and judgment of forfeiture to the bondsman or insurer if, within fifteen (15) days from the date of forfeiture, the defendant is returned to custody, the bond is reinstated by the court with the bondsman's approval, or the order of forfeiture is vacated or set aside by the court. Failure of the clerk of the trial court to comply with the thirty-day notice provision in this subsection shall exonerate the bond by operation of law.

B. The order and judgment of forfeiture shall be on forms prescribed by the Administrative Director of the Courts.

C. 1. The bail bondsman shall have ninety (90) days from receipt of the order and judgment of forfeiture from the court clerk or mailing of the notice if no receipt is made, to return the defendant to custody.

2. When the court record indicates that the defendant is returned to custody in the jurisdiction where forfeiture occurred, within the ninety-day period, the court clerk shall enter minutes vacating the forfeiture and exonerating the bond. If the defendant has been timely returned to custody, but this fact is not reflected by the court record, the court shall vacate the forfeiture and exonerate the bond.

3. For the purposes of this section, "return to custody" means:

a. the return of the defendant to the appropriate Oklahoma law enforcement agency by the bondsman,

b. an appearance of the defendant in open court in the court where charged,

c. arrest or incarceration within this state of the defendant by law enforcement personnel, or

d. arrest or incarceration of the defendant in any other jurisdiction, provided the bondsman has requested that a hold be placed on the defendant in the jurisdiction wherein the forfeiture lies and has guaranteed reasonable travel expenses for the return of the defendant.

4. In addition to the provisions set forth in paragraphs 2 and 3 of this subsection, the bond shall be exonerated by operation of law in any case in which:

a. the bondsman has requested in writing of the sheriff's department in the county where the forfeiture occurred that the defendant be entered into the computerized records of the National Crime Information Center, and the request has not been honored within fourteen (14) business days of the receipt of the written request by the department, or

b. the defendant has been arrested outside of this state and the court record shows the prosecuting attorney has declined to proceed with extradition.

5. The court may, in its discretion, vacate the order of forfeiture and exonerate the bond where good cause has been shown for:

a. the defendant's failure to appear, or

b. the bondsman's failure to return the defendant to custody within ninety (90) days.

D. 1. If, within ninety (90) days from receipt of the order and judgment of forfeiture from the court clerk, or mailing of the notice if no receipt is made, the defendant is not returned to custody, or the forfeiture has not been stayed, the bondsman and, if applicable, the insurer whose risk it is shall deposit cash or other valuable securities in the face amount of the bond with the court clerk 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; provided, this provision shall not apply if the defendant has been returned to custody within the ninety-day period and the court has failed to vacate the forfeiture pursuant to paragraphs 2 through 5 of subsection C of this section.

2. After the order and judgment has been paid <u>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</u>, 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.

3. If the additional cash or securities are not deposited with the court clerk on or before the ninety-first day after the date of service of the order and judgment of forfeiture from the court clerk, or mailing of the notice if no receipt is made, then the court clerk shall notify the Insurance Commissioner by sending a certified copy of the order and judgment of forfeiture and proof that the bondsman and, if applicable, the insurer have been notified by mail with return receipt requested.

4. The Insurance Commissioner shall:

a. in the case of a surety bondsman, immediately cancel the license privilege and authorization of the insurer to do business within the State of Oklahoma and cancel the appointment of all surety bondsman agents of the insurer who are licensed by Section 1301 et seq. of this title, and

b. in the case of a professional bondsman, withdraw the face amount of the forfeiture from the deposit provided in Section 1306 of this title. The

Commissioner shall then immediately direct the professional bondsman, by mail with return receipt requested, to make additional deposits to bring the original deposit to the required level. Should the professional bondsman, after being notified, fail to make an additional deposit within ten (10) days from the receipt of notice, or mailing of notice if no receipt is made, the license shall be revoked and all sums presently on deposit shall be held by the Commissioner to secure the face amounts of bonds outstanding. Upon release of the bonds, any amount of deposit in excess of the bonds shall be returned to the bondsman; provided, the bail bondsman shall have had notice as required by the court, at the place of the bondsman's business, of the trial or hearing of the defendant named in the bond. The notice shall have been at least ten (10) days before the required appearance of the defendant, unless the appearance is scheduled at the time of execution of the bond. Notwithstanding the foregoing, the bondsman shall be deemed to have had notice of the trial or hearing if the defendant named in the bond shall have been recognized back in open court to appear at a date certain for the trial or hearing.

5. If the actions of any bail bondsman force the Insurance Commissioner to withdraw monies, deposited pursuant to Section 1306 of this title, to pay past due executions more than two (2) times in a consecutive twelve-month period, then the license of the professional bondsman shall, in addition to other penalties, be suspended automatically for one (1) year or until a deposit equal to all outstanding forfeitures due is made. The deposit shall be maintained until the Commissioner deems it feasible to reduce the deposit. In no case shall an increased deposit exceed two (2) years unless there is a recurrence of withdrawals as stated herein.

E. 1. If the defendant's failure to appear was the result of the defendant's death or of being in the custody of a court other than the court in which the appearance was scheduled, forfeiture shall not lie. Upon proof to the court that the bondsman paid the order and judgment of forfeiture without knowledge that the defendant was deceased or in custody of another court on the day the defendant was due to appear, and all expenses for the defendant's return have been paid by the bondsman, the bondsman's property shall be returned.

2. Where the defendant is in the custody of another court, the district attorney or municipal attorney shall direct a hold order to the official, judge, court or law enforcement agent wherein the defendant is in custody; provided, that all expenses accrued as a

result of returning the custody of the defendant shall be borne by the bondsman.

F. The district attorney or municipal attorney shall not receive any bonuses or other monies or property for or by reason of services or actions in connection with or collection of bond forfeitures under the provisions of Section 1301 et seq. of this title, except that the court may award a reasonable attorney fee in favor of the prevailing party for legal services in any civil action or proceeding to collect upon a judgment of forfeiture.

G. The above procedures shall be subject to the bondsman's rights of appeal. The bondsman or insurer may appeal an order and judgment of forfeiture pursuant to the procedures for appeal set forth in Section 951 et seq. of Title 12 of the Oklahoma Statutes. To stay the execution of the order and judgment of forfeiture, the bondsman or insurer shall comply with the provisions set forth in Section 990.4 of Title 12 of the Oklahoma Statutes.

H. For municipal courts of record, the above procedures are criminal in nature and ancillary to the criminal procedures before the trial court and shall be subject to the bondsman's right of appeal. The bondsman or insurer may appeal an order and judgment of forfeiture by the municipal courts of record to the Court of Criminal Appeals.

I. Upon a motion to the court, any person executing a bail bond as principal or as surety shall be exonerated after three (3) years have elapsed from the posting of the bond, unless a judgment has been entered against the surety or the principal for the forfeiture of the bond, or unless the court grants an extension of the three-year time period for good cause shown, upon motion by the prosecuting attorney.

SECTION 10. This act shall become effective November 1, 2013.

COMMITTEE REPORT BY: COMMITTEE ON BUSINESS AND COMMERCE
February 21, 2013 - DO PASS AS AMENDED