An Act

ENROLLED HOUSE
BILL NO. 2407

By: Bennett of the House

and

Allen and Shortey of the Senate

An Act relating to bail bondsman; amending 59 O.S. 2011, Section 1301, which relates to definitions; adding definition; amending 59 O.S. 2011, Section 1305, as amended by Section 1, Chapter 82, O.S.L. 2012 (59 O.S. Supp. 2013, Section 1305), which relates to application for licensure; adding fee for multicounty agent bondsman; stating procedure for licensure and qualifications for multicounty agent bondsman; requiring certain deposit; providing procedure for release of deposit; authorizing transfer of certain license upon certain conditions; providing no limitation on number of bonds for certain licensee; amending 59 O.S. 2011, Section 1309, as last amended by Section 3, Chapter 150, O.S.L. 2013 (59 O.S. Supp. 2013, Section 1309), which relates to renewal of licenses; adding new fee; requiring annual financial statement for certain licenses; amending 59 O.S. 2011, Section 1314, which relates to reports; requiring monthly reports; providing for codification; providing an effective date; and declaring an emergency.

SUBJECT: Bail bondsmen

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

SECTION 1. AMENDATORY 59 O.S. 2011, Section 1301, is amended to read as follows:

Section 1301. A. ~~This act~~ Sections 1301 through 1340 of this title shall only apply to the regulation of bail bonds for crimes, the punishment of which may be in excess of Twenty Dollars ($20.00) fine or twenty (20) days in jail, or both such fine and imprisonment.

B. As used in ~~this act~~ Sections 1301 through 1340 of this title:

1. "Commissioner" means the Insurance Commissioner of the State of Oklahoma;

2. "Clerk" means the district or municipal court clerk;

3. "Insurer" means any domestic, foreign or alien surety company which has qualified generally to transact surety business and specifically to transact bail bond business in this state;

4. "Bail bondsman" means a surety bondsman, professional bondsman, property bondsman, or a cash bondsman as hereinafter defined;

5. "Surety bondsman" means any person who has been approved by the Commissioner and appointed by an insurer or a professional bondsman, by power of attorney, to execute or countersign bail bonds for the insurer or a professional bondsman, in connection with judicial proceedings and charges and receives money for his or her services;

6. "Managing general agent" (M.G.A.) means any person acting in the capacity of supervisor or manager over a licensed bondsman, who has been granted the authority or responsibility by a surety company to conduct surety business on its behalf, and to oversee the activities and conduct of the surety's appointed licensed bondsman agents, and who generally functions as an intermediate manager between the surety and its licensed bondsman agents. A managing general agent fulfilling these functions shall be a natural person, shall meet the qualifications of paragraph 5 of this subsection and shall be licensed as a bondsman;

7. "Professional bondsman" means any person who has been approved by the Commissioner and who pledges cash as security for a bail bond in connection with a judicial proceeding and charges and receives money for his or her services;

8. "Property bondsman" means any person who has been approved by the Commissioner and who pledges real property as security for a bail bond in a judicial proceeding and charges and receives money for his or her services;

9. "Cash bondsman" means any person who has been approved by the Commissioner and who deposits cash money as security for a bail bond in a judicial proceeding and charges and receives money for his or her services;

10. "Escrow deposit" means cash or valuable security deposited by an insurer of a surety bondsman or professional bondsman to secure the face amount of forfeiture pending appeal;

11. "Solicitation" means to ask for earnestly, seek to obtain by persuasion or entreaty, implore, beseech, tempt or entice a person directly or through another person by personal, mechanical, printed or published means to purchase a bail bond. Solicitation shall not include mass communication advertising, which shall include, but not be limited to, television, newspapers, magazines and billboards; ~~and~~

12. "Bond" means an appearance bond for a specified monetary amount which is executed by the defendant and a licensed bondsman pursuant to the provisions of Section 1301 et seq. of this title and which is issued to a court clerk as security for the subsequent court appearance of the defendant upon release from actual custody pending the appearance; and

13. "Multicounty agent bondsman" means a professional bondsman who has been approved by the Commissioner and who otherwise complies with the provisions of Section 1306 of this title.

SECTION 2. AMENDATORY 59 O.S. 2011, Section 1305, as amended by Section 1, Chapter 82, O.S.L. 2012 (59 O.S. Supp. 2013, Section 1305), is amended to read as follows:

Section 1305. A. The application for license to serve as a bail bondsman shall affirmatively show that the applicant:

1. Is a person who has reached the age of twenty-one (21) years;

2. Is competent, trustworthy, financially responsible, and is of good personal and business reputation and character;

3. Has not been previously convicted of, or pled guilty or nolo contendere to, any felony, or to a misdemeanor involving moral turpitude or dishonesty;

4. Is a citizen of the United States;

5. Has been a bona fide resident of the state for at least one (1) year;

6. Will actively engage in the bail bond business;

7. Has knowledge or experience, or has received instruction in the bail bond business; and

8. Has a high school diploma or its equivalent; provided, however, the provisions of this paragraph shall apply only to initial applications for license submitted on or after November 1, 1997, and shall not apply to renewal applications for license.

B. The applicant shall apply electronically on forms approved by the Insurance Commissioner, and the Commissioner may propound any reasonable interrogatories to an applicant for a license pursuant to Sections 1301 through 1340 of this title, or on any renewal thereof, relating to qualifications, residence, prospective place of business and any other matters which, in the opinion of the Commissioner, are deemed necessary or expedient in order to protect the public and ascertain the qualifications of the applicant. The Commissioner may also conduct any reasonable inquiry or investigation relative to the determination of the fitness of the applicant to be licensed or to continue to be licensed including, but not limited to, requiring a national criminal history record check as defined by Section 150.9 of Title 74 of the Oklahoma Statutes. The Commissioner may require any documents reasonably necessary to verify the information in the application.

C. An applicant shall furnish to the Commissioner a license fee of Two Hundred Fifty Dollars ($250.00) with the application, a complete set of the fingerprints of the applicant and two recent credential-size full face photographs of the applicant. The fingerprints of the applicant shall be certified by an authorized law enforcement officer. The applicant shall provide with the application an investigative fee of One Hundred Dollars ($100.00) with which the Commissioner will conduct an investigation of the applicant. All fees shall be nonrefundable.

D. In addition to the license fee set forth in subsection C of this section, an applicant for a multicounty agent bondsman license shall furnish to the Commissioner a license fee of Seven Hundred Fifty Dollars ($750.00).

E. Failure of the applicant to secure approval of the Commissioner shall not preclude the applicant from reapplying, but a second application shall not be considered by the Commissioner within three (3) months after denial of the last application.

~~E.~~ F. The fee for a duplicate pocket license shall be Twenty-five Dollars ($25.00).

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1306A of Title 59, unless there is created a duplication in numbering, reads as follows:

A. 1. An applicant for a multicounty agent bondsman license shall have been continually licensed as a professional bondsman in the State of Oklahoma for a minimum of two (2) years immediately prior to the date of application.

2. In addition to the requirements prescribed in Sections 1305 and 1306 of Title 59 of the Oklahoma Statutes, an applicant for a multicounty agent bondsman license shall submit to the Insurance Commissioner a financial statement prepared by an accounting firm or individual holding a permit to practice public accounting in this state in accordance with the generally accepted principles of accounting procedures setting forth the total assets of the bondsman less liabilities and debts. For initial applications and for subsequent renewals of the license, the statement shall show a net worth of at least Two Hundred Fifty Thousand Dollars ($250,000.00). The statement shall 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. Multicounty agent bondsman applicants shall make a deposit with the Insurance Commissioner in the same manner as required of domestic insurance companies. The deposit shall not be less than One Hundred Thousand Dollars ($100,000.00). Provided however, any and all deposits made pursuant to paragraph 3 of subsection A of Section 1306 of Title 59 of the Oklahoma Statutes shall count toward the fulfillment of any deposit amount required by this section. The deposit shall be subject to all laws, rules, and regulations as

deposits by domestic insurance companies but in no instance, except as provided herein, shall a multicounty agent bondsman write bonds which equal more than twelve times the amount of the deposit which the bondsman has submitted to the Commissioner; provided however, any currently licensed professional bondsman in good standing with the Department and who, on the effective date of this act, meets the provisions of the grandfather clause set forth in Section 1306 of Title 59 of the Oklahoma Statutes and who otherwise meets the requirements of this section shall be afforded the same liability ratio as that of such grandfathered professional bondsman. 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 multicounty agent 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 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 multicounty agent bondsman pursuant to this section shall be released and returned by the Commissioner to the multicounty agent 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 multicounty agent 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 multicounty agent 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 multicounty agent 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 multicounty agent 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. Notwithstanding any other provision of Sections 1301 through 1340 of Title 59 of the Oklahoma Statutes, the license of a multicounty agent 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 multicounty agent bondsman may designate in writing, and the transferee may elect to act as a multicounty agent bondsman for a period of one hundred eighty (180) days 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.

D. A multicounty agent bondsman may appoint by power of attorney a licensed surety bondsman as his or her agent to execute bail bonds within any county in the State of Oklahoma. The number of bail bonds a multicounty agent bondsman may insure in counties other than the county he or she registers his or her license, pursuant to subsection A of Section 1320 of Title 59 of the Oklahoma Statutes, shall not be limited by subsection B of Section 1320 of Title 59 of the Oklahoma Statutes.

SECTION 4. AMENDATORY 59 O.S. 2011, Section 1309, as last amended by Section 3, Chapter 150, O.S.L. 2013 (59 O.S. Supp. 2013, 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 <u>cash, property, surety, or professional</u> bail bondsman <u>or One Thousand Dollars ($1,000.00) for a multicounty agent bondsman,</u> 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 or multicounty agent 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 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 5. AMENDATORY 59 O.S. 2011, Section 1314, is amended to read as follows:

Section 1314. A. When a bail bondsman or managing general agent accepts collateral, the bail bondsman or managing general agent shall give a written receipt for same, and this receipt shall give in detail a full description of the collateral received. A

description of the collateral shall be listed on the undertaking by affidavit. All property taken as collateral, whether personal, intangible or real, shall be receipted for and deemed, for all purposes, to be in the name of, and for the use and benefit of, the surety company or licensed professional bondsman or multicounty agent bondsman, as the case may be. Every receipt, encumbrance, mortgage or other evidence of the custody, possession or claim shall facially indicate that it has been taken or made on behalf of the surety company or professional bondsman or multicounty agent bondsman through its authorized agent, the individual licensed bondsman or managing general agent who has transacted the undertaking with the bond principal. Any mortgage or other encumbrance against real property taken under the provisions of this section which does not indicate beneficial ownership of the claim to be in favor of the surety company or professional bondsman or multicounty agent bondsman shall be deemed to constitute a cloud on the title to real estate and shall subject the person filing, or causing same to be filed, in the real estate records of the county, to a penalty of treble damages or One Thousand Dollars ($1,000.00), whichever is greater, in an action brought by the person, organization or corporation injured thereby. For collateral taken, or liens or encumbrances taken or made pursuant to the provisions of this section, the individual bondsman or managing general agent taking possession of the property or making the lien, claim or encumbrance shall do so on behalf of the surety company or professional bondsman or multicounty agent bondsman, as the case may be, and the individual licensed bondsman shall be deemed to act in the capacity of fiduciary in relation to both:

1. The principal or other person from whom the property is taken or claimed against; and

2. The surety company or professional bondsman or multicounty agent bondsman whose agent is the licensed bondsman.

As fiduciary and bailee for hire, the individual bondsman shall be liable in criminal or civil actions at law for failure to properly receipt or account for, maintain or safeguard, release or deliver possession upon lawful demand, in addition to any other penalties set forth in this subsection. No person who takes possession of property as collateral pursuant to this section shall use or otherwise dissipate the asset, or do otherwise with the property than to safeguard and maintain its condition pending its return to its lawful owner, or deliver to the surety company or

professional bondsman, upon lawful demand pursuant to the terms of the bailment.

B. Every licensed bondsman shall file monthly electronically with the Insurance Commissioner and on forms approved by the Commissioner as follows:

1. A monthly report showing every bond written, amount of bond, whether released or revoked during each month, showing the court and county, and the style and number of the case, premiums charged and collateral received; and

2. Professional bondsmen and multicounty agent bondsmen shall submit electronic monthly reports showing total current liabilities, all bonds written during the month by the professional bondsman or multicounty agent bondsman and by any licensed bondsman who may countersign for the professional bondsman or multicounty agent bondsman, all bonds terminated during the month, and the total liability and a list of all bondsmen currently employed by the professional bondsmen.

Monthly reports shall be submitted electronically to the Insurance Commissioner by the fifteenth day of each month. The records shall be maintained by the Commissioner as public records.

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.

D. Each bail bondsman shall submit each month with the monthly report of the bondsman, a reviewal fee equal to two-tenths of one percent (2/10 of 1%) of the new liability written for that month. The fee shall be payable to the Insurance Commissioner who shall deposit same with the State Treasurer.

SECTION 6. This act shall become effective July 1, 2014.

SECTION 7. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby

declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 24th day of February, 2014.

Presiding Officer of the House of Representatives

Passed the Senate the 10th day of April, 2014.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 14th day of April, 20 14, at 5:16 o'clock P M.

By: _____

Approved by the Governor of the State of Oklahoma this 16th day of April, 20 14, at 3:58 o'clock P M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 16th day of April, 20 14, at 4:45 o'clock P M.

By: Chris Benge