

OKLAHOMA INSURANCE DEPARTMENT
BUDDY COMBS, DIRECTOR OF PUBLIC POLICY & ASSISTANT GENERAL COUNSEL
OBA CONTINUING EDUCATION 2016
LEGISLATIVE CHANGES FOR 2016

HB2922 - Becomes effective November 1, 2016. Summary as follows:

Terminology Clean Up

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

Investigation Files - Amends 59 O.S. §1302(C)

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

Professional Bondsman Licensing - Amends 59 O.S. §1306(A)(2)

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

Prohibited Conduct - Amends 59 O.S. §1310(A)(29) & (32)

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

Suspended or Former Bondsmen - Amends 59 O.S. §1311.3(C)

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

Assisting a Bondsman - Amends 59 O.S. §1311.4

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

Records Retention - Amends 59 O.S. §1314(C)

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

Documents to Payors - Amends 59 O.S. §1316(C)

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

Appointment Forms - Amends 59 O.S. §1317(A)

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

Carrying Your License - Amends 59 O.S. §1328(B)

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

SB976 - Becomes effective November 1, 2016. Summary as follows:

MCA Requirements - Amends 59 O.S. §1306.1(A)(1)

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

Deferred Prosecutions - Amends 59 O.S. §1327(D)

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

SB952 - Becomes effective November 1, 2016: Summary as follows:

***NOTE* - Changes made in Bail Enforcement & Licensing Act not Bail Bond Code**

Peace Officers - Amends 59 O.S. § 1350.4(B)

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

Identifying Clothing - Amends 59 O.S. §1350.12(C)

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

RULES - REQUESTED EFFECTIVE SEPTEMBER 15, 2016 - AWAITING GOVERNOR'S APPROVAL

- Most rule changes are simply language clean ups
 - Added multicounty agent bondsman where appropriate

OAC 365:25-5-37. Usual and Customary Records

- Records must be maintained for 3 years following
 - (1) the date the liability of the bondsman on the bond is discharged by the court or
 - (2) the date collateral is returned by the bondsman to its lawful owner, whichever is later
- If an appearance bond is never executed and filed with the court, then records must be maintained for 3 years following the date the documents were prepared

GENERAL INFORMATION

- o Minimum fine for violations of the Bail Bond Code is \$250
- o Respond to the OID Bail Bond Division
- o Read your email. Every bondsman is required by law to keep an updated email address, and the Department uses it to get information to you. There is no excuse.
- o Review your reports before submitting them to OID. Simple, easily identifiable mistakes cause most of the required amended reports
- o Submitting an insufficient funds EFT to the Department is a violation. You face a \$25 fee and could be fined at least \$250
- o OAC 365:25-5-44

Notice of return to custody -

- o Following a forfeiture, if the defendant has been returned to custody as defined in 59 O.S. § 1332(C)(4), the bondsman shall file notice with the court clerk of the county where the forfeiture occurred by the ninety-first day after receipt of the order and judgment of forfeiture, certifying the defendant was returned to custody by the ninetieth day after receipt of the order and judgment of forfeiture. Failure to provide notice prior to the ninety-first day shall be a violation of 59 O.S. §1310(A)(2).
- o 59 O.S. §1316(C)

Any receipt provided by a bondsman shall be individually numbered and include:

- a. the precise amount of the fees, premium, collateral, or other payments received by the bondsman,
- b. the full name of the defendant,
- c. the defendant's case number if it is available, and
- d. full name of the individual(s) presenting the payment