

New Bills (3) and Rules and Regulations (1) for 2009

**Effective July 1, 2009**

On May 22, 2009, Governor Brad Henry signed language supported by the Oklahoma Insurance Department and authored by Representative Ken Miller, Representative Scott Martin, Senator Mike Johnson and Senator David Myers. The stricken language found in Enrolled House Bill 1275 regarding Section 1314 – RECEIPT FOR COLLATERAL – DUTIES – REPORTS – RECORDS - FEES and Section 1337 – DEPOSITION OF FEES, RECEIPTS AND MONIES of Title 59 became effective on July 1, 2009.

Please note the deleted language which was ~~stricken~~ found in §1314(D) as follows:

D. Each bail bondsman shall submit each month with his or her monthly report, a reviewal fee equal to two-tenths of one percent (2/10 of 1%) of the new liability written for that month. Such fee shall be payable to the Insurance Commissioner who shall deposit same with the State Treasurer, ~~who shall place the monies to the credit of the Bail Bondsmen Revolving Fund. The monies so deposited shall be used for the further regulation of bail bonds pursuant to the provisions of this act.~~

Section 1314 now reads:

**Section 1314. RECEIPT FOR COLLATERAL – DUTIES – REPORTS – RECORDS - FEES**

A. When a bail bondsman or managing general agent accepts collateral, he or she 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, as the case may be. Every receipt, encumbrance, mortgage or other evidence of such custody, possession or claim shall facially indicate that it has been taken or made on behalf of the surety company or professional 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 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 his or her surety company or professional bondsman, as the case may be, and such 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 such property is taken or claimed against, and

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

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 such subsection. No person who takes possession of property as collateral pursuant to this section shall use or otherwise dissipate such asset, or do otherwise with such 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 by mail with return receipt requested with the Insurance Commissioner and on forms prescribed by the Commissioner as follows:

1. A notarized 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 shall submit by mail with return receipt requested notarized monthly reports showing total current liabilities, all bonds written during the month by the professional bondsman and by any licensed bondsman who may countersign for him or her, all bonds terminated during the month, and the total liability and a list of all bondsmen currently employed by such professional bondsmen.

Monthly reports shall be postmarked or stamped "received" by the Insurance Commissioner by the fifteenth day of each month. Said records shall be maintained by the Commissioner as public records.

C. Every licensee shall keep at his or her place of business the usual and customary records pertaining to the transactions authorized by his or her license. All such 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 his or her monthly report, a reviewal fee equal to two-tenths of one percent (2/10th of 1%) of the new liability written for that month. Such fee shall be payable to the Insurance Commissioner who shall deposit same with the State Treasurer.

Amended Laws 2009, eff. July 1, 2009.

Please note the deleted language which was ~~stricken~~ found in §1337 as follows:

~~A. All fees, receipts and monies collected by the Commissioner under and pursuant to this act shall be deposited with the State Treasurer, who shall place the same to the credit of the Bail Bondsmen Revolving Fund created in this section. The amount so deposited is hereby dedicated and appropriated to the Commissioner for the payment of the expense of examinations, licensing, investigations, the providing of forms, the operating expenses of the Department, and other related expenses necessitated by this act. All payments out of said fund shall be made by the State Treasurer on warrants issued against claims approved by the Insurance Commissioner and submitted to the Director of State Finance for audit and payment. These funds are in addition to other appropriations made to the office of Insurance Commissioner.~~

~~B. There is hereby created in the State Treasury a revolving fund for the State Insurance Commissioner to be designated the "Bail Bondsmen Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations.~~

~~C.~~ Any funds payable to the court clerk or other officer pursuant to this act, by any licensed bondsman, managing general agent, surety company or professional bondsman shall be issued a receipt in the name of the surety company or professional bondsman, as the case may be, and when such funds are refunded or otherwise disbursed, they shall be made payable to such surety company or professional bondsman, as the case may be.

Section 1337 now reads:

**Section 1337. DISPOSITION OF FEES, RECEIPTS AND MONIES COLLECTED**

Any funds payable to the court clerk or other officer pursuant to this act, by any licensed bondsman, managing general agent, surety company or professional bondsman shall be issued a receipt in the name of the surety company or professional bondsman, as the case may be, and when such funds are refunded or otherwise disbursed, they shall be made payable to such surety company or professional bondsman, as the case may be.

Amended Laws 2009, eff. July 1, 2009.

**Effective November 1, 2009**

On May 13, 2009, Governor Brad Henry signed language supported by the Oklahoma Bondsman Association and authored by Senator Brian Crain, Representative Randy Terrill and Representative Richard Morrissette. The new language found in Enrolled Senate Bill 406 regarding Section 1306 – CASH BONDSMAN – PROFESSIONAL BONDSMAN of Title 59 becomes effective November 1, 2009.

Please note the new language which is underlined found in Section 1306(A)(5), which reads as follows:

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.

**NOTE:** Section 1306 will be printed with all new provisions after review of new language found in Senate Bill 1022.

**Effective November 1, 2009**

On May 11, 2009, Governor Brad Henry signed language supported by the Oklahoma Insurance Department and authored by Senator Bill Brown and Representative Daniel Sullivan. The new language found in Enrolled Senate Bill 1022 regarding Section 6103.2 of Title 36 becomes effective November 1, 2009.

**(NOTE: This new and deleted language is found in Title 36 (Insurance Code) not Title 59 (Bail Bond Code).**

Please note the new language which is underlined and the deleted language which is ~~stricken~~ found in Section 6103.2, which reads as follows:

D. The definition of a bail bond shall be the same as the definition of a bond in Section 1301 of Title 59 of the Oklahoma Statutes. The business of bail bonds shall be all

aspects of acting as a bail bondsman including, but not limited to, depositing or pledging cash or real property as security for an appearance bond in a criminal judicial proceeding, or executing or countersigning bail bonds for an insurer or professional bondsman in connection with an appearance bond in criminal judicial proceedings, and charging and receiving money for these services. The business of bail bonds shall also include solicitation for a bail bond, as defined in Section 1301 of Title 59 of the Oklahoma Statutes.

- E. The provisions of this section do not apply to:
1. The lawful transaction of surplus lines insurance;
  2. Life, accident and health insurance or annuities provided to educational or scientific institutions organized and operated without profit to any private shareholder or individual for the benefit of such institutions or individuals engaged in the service of such institutions;
  3. The lawful transaction of reinsurance by insurers; ~~or~~
  4. Transactions in this state involving a policy lawfully solicited, written and delivered outside of this state covering only subjects of insurance not resident, located or expressly to be performed in this state at the time of issuance, and which transactions are subsequent to the issuance of such policy; or
  5. Any individual who is not required to have a bail bondsman license, as provided in Section 1303 of Title 59 of the Oklahoma Statutes.

Please note new language which is underlined found in Section 6103.3, which reads as follows:

- G. The remedies provided in Sections 6103.1 through 6103.11 of this title for administrative action against unauthorized insurers shall also apply to unauthorized individuals or persons engaged in the business of bail bonds.

Please note new language which is underlined and deleted language which is ~~stricken~~ found in Section 6103.5, which reads as follows:

1. The Commissioner believes:
  - a. an unauthorized person is engaging in the business of insurance in violation of Section 6103.2 of this title or in violation of a rule promulgated pursuant to Sections 6103.1 through 6103.11 of this title, or
  - b. an authorized person engaged in the business of insurance acting in violation of Section 6103.3 of this title is committing an unfair method of competition or an unfair or deceptive act or practice in violation of Section 1201 et seq. of this title or in violation of any rule promulgated pursuant thereto; ~~or~~
  - c. an unauthorized person or individual is engaging in the business of bail bonds in violation of Section 6103.2 of this title or in violation of a rule promulgated pursuant to Sections 6103.1 through 6103.11 of this title; or
2. It appears to the Commissioner that the alleged conduct is fraudulent or hazardous or creates an immediate danger to the public safety or is causing or can be reasonably expected to cause significant, imminent and irreparable public injury.

Please note new language which is underlined and deleted language which is ~~stricken~~ found in Section 1306(A) (2) and (3) of Title 59, which reads as follows:

- A.
1. An applicant for a cash bondsman license shall meet all requirements set forth in Section 1305 of this title with exception of residence.
  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 ~~the effective date of the act~~ November 1, 2006, and the subsequent renewals of a license issued upon such 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 ~~the effective date of this act~~ November 1, 2006, and the subsequent renewals of a license issued upon such 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), said 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 ~~the effective date of this act~~ November 1, 2006, and the subsequent renewals of a license issued upon such 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 ~~the effective date of this act~~ November 1, 2006, and the subsequent renewals of a license issued upon such 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). Such 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 such 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.

Section 1306 now reads:

**Section 1306. CASH BONDSMAN - PROFESSIONAL BONDSMAN**

A. 1. An applicant for a cash bondsman license shall meet all requirements set forth in Section 1305 of this title with exception of residence.

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 such 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 such 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), said 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, 2006, and the subsequent renewals of a license issued upon such 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, 2006, and the subsequent renewals of a license issued upon such 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). Such 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 such 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 herein provided for shall constitute a reserve available to meet sums due on forfeiture of any bonds or recognizance executed by such 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 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 Section 1301 et seq. of this title, the license of a professional bondsman is transferable upon the death or legal or physical incapacitation of the bondsman to the bondsman's spouse, 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 must 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.

Amended Laws 2009, eff. November 1, 2009.

Please note the deleted language which was ~~stricken~~ found in §1316(A)(2) as follows:

2. Bail bondsmen shall not allow other licensed bondsmen to present bonds that have previously been signed and completed ~~by other licensed bondsmen unless a written authorization is on file with the court clerk where the bond is filed.~~ The individual that presents the bond shall sign the form in the presence of the official that receives the bond.

Section 1316 now reads:

**Section 1316. SIGNING IN BLANK PROHIBITED – INDICATION OF PREMIUM CHARGE – RECEIPT – POWER OF ATTORNEY – INITIAL FILING FEE**

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 his or her name to bonds unless the person so authorized is a licensed surety bondsman or managing general agent directly employed by a licensed professional bondsman giving such power of attorney. The professional bondsman shall submit to the Insurance Commissioner the agreement between the professional bondsman and the employed bondsman. The agreement shall be submitted to the Commissioner prior to the employed bondsman writing bonds on behalf of the professional. The professional bondsman shall notify the Commissioner whenever any agreement is canceled. If the bondsman surrenders the professional qualification, or the professional qualification is suspended or revoked, then the Commissioner shall suspend the appointment of all of the professional bondsman's bail agents. The Commissioner shall immediately notify any bail agent whose license is affected and the court clerk of the agent's resident county upon such suspension or revocation of the professional bondsman's qualification. If the professional qualification 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 professional bondsman's bail agents. If more than twenty-four (24) hours elapse following the suspension or revocation, then the professional bondsman 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 that presents the bond shall sign the form in the presence of the official that receives the bond.

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

C. 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.

Amended Laws 2009, effective November 1, 2009.

### **Effective November 1, 2009**

Emergency Rules received Governor Brad Henry's approval and emergency adoption adding Part 7 to Title 365 Oklahoma Insurance Department of Chapter 25 Licensure of Producers, Adjusters, Bail Bondsmen, Companies, Prepaid Funeral Benefits, and Viatical and Life Settlements Providers and Brokers of Subchapter 5 Bail Bondsmen. New language establishes standards and guidelines for the specific circumstances the Insurance Commissioner may consider when reviewing a professional bail bondsmen's request for the partial release of deposit as now allowed by amendments to Section 1306(A)(5) of Title 59 enacted in Senate Bill 406 effective November 1, 2009.

## **SUBCHAPTER 5. BAIL BONDSMEN**

### **PART 7. SPECIFIC FINANCIAL CIRCUMSTANCES WARRANTING RELEASE OF PROFESSIONAL DEPOSIT**

#### **365:25-5-50. Authority and scope**

This regulation is promulgated by the Insurance Commissioner pursuant to Section 1306(A)(5) of Title 59 of the laws of this state to describe the nature and scope of the specific financial circumstances warranting a release of a bail bondsman's professional deposit.

#### **365:25-5-51. Specific financial circumstances enumerated**

(a) For purposes of Section 1306(A)(5) of Title 59 of the laws of this state, the specific financial circumstances warranting release of a professional deposit are:

- (1) Fire that damages or destroys either the office or residence of the bondsman;
- (2) Flood that damages or destroys either the office or residence of the bondsman;
- (3) Other natural disaster that damages or destroys either office or residence of the bondsman;
- (4) Medical problem or illness sustained by either the bondsman or a member of the immediate family of the bondsman.

(5) The bondsman has unused bail writing capacity of at least forty percent (40%) of their liability limit, and has at least twelve (12) consecutive months of being at sixty percent (60%) or below this writing limit.

(b) The bondsman shall have the burden of showing the Commissioner by clear and convincing evidence the existence or occurrence of the circumstances, as well as providing to the Commissioner any necessary supporting documentation or other evidence the Commissioner requires.

**365:25-5-52. Time governing release of professional deposit**

The Commissioner shall release the professional deposit no earlier than ninety (90) days following the receipt of the request for release.

**365:25-5-53. Limitations upon release of professional deposit below applicable limits**

The Commissioner shall not release any portion of the professional bondsman deposit that results in the deposit dropping below the applicable limit set by Section 1306(A)(2) of Title 59 of the laws of this state.

**365:25-5-54. Review of bail bondsmen's administrative history before release of professional deposit**

The Commissioner shall review the bondsman's administrative history to determine if the bondsman owes any outstanding fines to the Commissioner or has any pending or concluded disciplinary action for unpaid bail bond forfeitures. The Commissioner shall not release the deposit if outstanding fines are owed or if forfeitures were unpaid in the time allowed by Section 1332 of Title 59 of the laws of this state. The Commissioner also shall not release the deposit if there are more than three (3) final Insurance Department administrative actions in the twelve (12) months preceding the release request.

**365:25-5-55. Denial of request if bail bondsman has prior forfeitures**

The Commissioner shall refuse the bondsman's deposit release request if the Commissioner was ever ordered by a Hearing Examiner to pay any forfeiture from the bondsman's professional deposit.

**365:25-5-56. Limits on outstanding liabilities**

The bondsman's outstanding liabilities cannot exceed sixty percent (60%) of the professional deposit writing limit for at least one year prior to making application for partial release of deposit.

**365:25-5-57. Commissioner discretion to release amount less than requested**

The Commissioner shall have the authority to release an amount less than requested by the professional bondsman, if the bondsman's requested amount will cause the remaining deposit to be insufficient to cover additional bail liabilities incurred by the bondsman.

**365:25-5-58. Approval of final order by Commissioner**

The final deposit release order shall be approved by the Commissioner or the Commissioner's designee, pursuant to Section 1306(A)(6) of Title 59 of the laws of this state.

Effective November 1, 2009.