

1 **SENATE FLOOR VERSION**

2 February 28, 2017

3 SENATE BILL NO. 535

By: Shortey

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6
7 An Act relating to the Bail Enforcement and Licensing
8 Act; amending 59 O.S. 2011, Sections 1303, as amended
9 by Section 22, Chapter 407, O.S.L. 2013, 1311.3, as
10 last amended by Section 6, Chapter 203, O.S.L. 2016,
11 Section 7, Chapter 407, O.S.L. 2013, Section 10,
12 Chapter 407 O.S.L. 2013, as amended by Section 5,
13 Chapter 373, O.S.L. 2014 (59 O.S. Supp. 2016,
14 Sections 1303, 1311.3, 1350.6 and 1350.9), which
15 relate to licenses required, unlawful acts,
16 prohibition to breaking and entering and
17 qualifications for licensure; updating references;
18 modifying certain exceptions; stating penalty for
19 certain violation; prohibiting use of unlicensed
20 persons; stating penalty; making language gender
21 neutral; exonerating bond under certain conditions;
22 expanding authority to break and enter dwelling under
23 certain conditions; providing for out-of-state
24 licensure; authorizing residency waiver; providing
for certain rules; providing for disciplinary action
for violations; and declaring an emergency.

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

SECTION 1. AMENDATORY 59 O.S. 2011, Section 1303, as
amended by Section 22, Chapter 407, O.S.L. 2013 (59 O.S. Supp. 2016,
Section 1303), is amended to read as follows:

Section 1303. A. No person shall act in the capacity of a bail
bondsman or perform any of the functions, duties or powers

1 prescribed for bail bondsmen under the provisions of Section 1301 et
2 seq. of this title, unless that person shall be qualified and
3 licensed as provided in Section 1301 et seq. of this title or as
4 authorized pursuant to the Bail Enforcement and Licensing Act.

5 Provided, however, none of the provisions or terms of this section
6 shall prohibit any individual or individuals from:

7 1. Pledging real or other property as security for a bail bond
8 for himself, herself or another in judicial proceedings who does not
9 receive, or is not promised, a fee or charge for his or her services
10 provided such person shall not be permitted to make in excess of ten
11 bonds per year; or

12 2. Executing any bail bond for an insurer, pursuant to a bail
13 bond service agreement entered into between such insurer and any
14 automobile club or association, financing institution, insurance
15 company or other organization or association, on behalf of a person
16 required to furnish bail in connection with any violation of law
17 arising out of the use of a motor vehicle.

18 B. No bail bondsman license shall be issued except in
19 compliance with Section 1301 et seq. of this title and none shall be
20 issued except to an individual. License renewals shall be granted
21 subject to all other provisions of Section 1301 et seq. of this
22 title.

23 A corporation as such shall not be licensed. Nothing herein
24 contained shall be construed as repealing Section 11 of Title 5 of

1 the Oklahoma Statutes; and it is further provided that licensed
2 attorneys are prohibited from signing any bonds as surety in any
3 civil or criminal action pending or about to be filed in any court
4 of this state.

5 C. Any person violating the provisions of subsection A of this
6 section shall be guilty of a felony and shall be punished by a fine
7 in an amount not exceeding Five Thousand Dollars (\$5,000.00), upon
8 conviction.

9 SECTION 2. AMENDATORY 59 O.S. 2011, Section 1311.3, as
10 last amended by Section 6, Chapter 203, O.S.L. 2016 (59 O.S. Supp.
11 2016, Section 1311.3), is amended to read as follows:

12 Section 1311.3. A. It shall be unlawful for any person whose
13 license to act as a bail bondsman has been suspended, revoked,
14 surrendered, or refused, to do or perform any of the acts of a bail
15 bondsman. Any person convicted of violating the provisions of this
16 subsection shall be guilty of a felony and shall be punished by a
17 fine in an amount not exceeding Five Thousand Dollars (\$5,000.00).

18 B. It shall be unlawful for any bail bondsman to assist, aid,
19 or conspire with a person whose license as a bail bondsman has been
20 suspended, revoked, surrendered, or refused, to engage in any acts
21 as a bail bondsman. Any person convicted of violating the
22 provisions of this subsection shall be guilty of a felony and shall
23 be punished by a fine in an amount not to exceed Five Thousand
24 Dollars (\$5,000.00).

1 C. It shall be unlawful for any licensed bail bondsman to
2 employ, seek assistance from or conspire with an unlicensed person
3 or a person whose license as a bail enforcer has been suspended,
4 revoked, surrendered or refused to engage in any acts as a bail
5 enforcer or bail bondsman. Any person convicted of violating the
6 provisions of this subsection shall be guilty of a felony and shall
7 be punished by a fine in an amount not to exceed Five Thousand
8 Dollars (\$5,000.00).

9 D. The provisions of this section shall not apply to a
10 suspended or formerly licensed bail bondsman who continues to submit
11 monthly reports to the Insurance Department pursuant to subsection B
12 of Section 1314 of this title or who contracts with a licensed bail
13 enforcer pursuant to the Bail Enforcement and Licensing Act to cause
14 the apprehension and surrender of his or her defendant clients to
15 the appropriate authority. The defendant client must have a current
16 undertaking or bail contract with the suspended or formerly licensed
17 bail bondsman and such undertaking or bail contract must have been
18 made in this state by the suspended or formerly licensed bail
19 bondsman. No acts other than those listed in this subsection shall
20 be authorized or recognized after a bail bondsman is suspended or no
21 longer licensed in this state.

22 SECTION 3. AMENDATORY Section 7, Chapter 407, O.S.L.
23 2013 (59 O.S. Supp. 2016, Section 1350.6), is amended to read as
24 follows:

1 Section 1350.6. A. Notwithstanding any other provision of law,
2 it shall be unlawful for a bail enforcer to break into and enter the
3 dwelling house of any defendant or third-party for purposes of
4 recovery or attempted recovery of a defendant either:

5 1. By forcibly bursting or breaking the wall, or an outer door,
6 window, or shutter of a window of such house or the lock or bolts of
7 such door, or the fastening of such window or shutter;

8 2. By breaking in any other manner, being armed with a weapon
9 or being assisted or aided by one or more persons then actually
10 present; or

11 3. By unlocking an outer door by means of false keys or by
12 picking the lock thereof, or by lifting a latch or opening a window.

13 B. A person violating the provisions of this section shall be
14 guilty of burglary in the first degree and, upon conviction,
15 punished as provided in Section 1436 of Title 21 of the Oklahoma
16 Statutes. Provided, however, the offense and penalty stated in this
17 section shall not apply to a licensed bail enforcer during an active
18 attempt at recovery of a felony defendant and may not apply to a
19 licensed bail enforcer during an active attempt at recovery of a
20 misdemeanor defendant under the following conditions:

21 a. the bail enforcer has first-hand or eyes-on knowledge
22 that the defendant entered the dwelling house during
23 an attempt to recover the defendant and the defendant
24 after reasonable request is refusing to surrender,

- 1 b. the bail enforcer has first-hand or eyes-on knowledge
2 that the defendant is actually within the dwelling
3 house and after reasonable request is refusing to
4 surrender, ~~or~~
- 5 c. the bail enforcer has obtained knowledge confirming
6 beyond a reasonable doubt that the defendant is
7 actually within the dwelling house and after
8 reasonable request refuses to surrender, or
- 9 d. if the defendant is subject to a misdemeanor offense,
10 the defendant has been subject to a prior arrest and
11 release on a bail undertaking which terms or
12 conditions have been breached.

13 For purposes of this subsection, "first-hand knowledge" means
14 information received from direct eye-witness testimony, actual
15 visual contact with and confirmed identification of the defendant by
16 a person who knows the defendant or resides at the dwelling house,
17 or other factual evidence provided directly to the licensed bail
18 enforcer that confirms the identity and presence of the defendant
19 within the dwelling house.

20 The exceptions to the offense and penalty in this section shall
21 not limit or restrict another person within or without the dwelling
22 house, or owning the dwelling house, from taking any action in
23 response to or to defend a forced entry into such dwelling house,
24 including use of a firearm as may be authorized by law. The use of

1 an exception provided in this subsection by a licensed bail enforcer
2 shall be a fact to be determined by the district attorney in
3 considering whether to prosecute an offense under this section. Any
4 person exercising his or her right to respond or protect the
5 dwelling house or its occupants shall not be liable for injury to
6 another who was forcing entry into such dwelling house. An owner or
7 occupant of a dwelling house may seek damages to his or her property
8 in a civil action if such damage resulted from a forced entry by a
9 licensed bail enforcer.

10 SECTION 4. AMENDATORY Section 10, Chapter 407, O.S.L.
11 2013, as amended by Section 5, Chapter 373, O.S.L. 2014 (59 O.S.
12 Supp. 2016, Section 1350.9), is amended to read as follows:

13 Section 1350.9. A. Except as prohibited by Section 4 1350.3
14 ~~this act~~ title, a bail enforcer license or an armed bail enforcer
15 license may be issued to an applicant meeting the following
16 qualifications. The applicant shall:

17 1. Be a citizen of the United States or an alien legally
18 residing in the United States and have a minimum of six (6) ~~months~~
19 months' legal residence documented in this state or be a citizen of
20 the United States or an alien legally residing in the United States
21 and have a minimum of five-years' legal residence documented in
22 another state and approved for a residency waiver by CLEET as
23 authorized by subsection E of this section;

24 2. Be at least twenty-one (21) years of age;

1 3. Have a high school diploma or GED, or offer proof sufficient
2 to CLEET of equivalent GED qualifications, and have successfully
3 completed the training and psychological evaluation requirements for
4 the license applied for, as prescribed by the Council on Law
5 Enforcement Education and Training;

6 4. Be of good moral character;

7 5. Have no final victim protection orders issued in any state
8 as a defendant;

9 6. Have no record of a felony conviction or any expungement or
10 a deferred judgment or suspended sentence for a felony offense,
11 unless at least fifteen (15) years has passed since the completion
12 of the sentence and no other convictions have occurred or are
13 pending. Provided, no person convicted of a felony offense shall be
14 eligible for an armed bail enforcer license;

15 7. Have no record of conviction for assault or battery,
16 aggravated assault or battery, larceny, theft, false pretense,
17 fraud, embezzlement, false personation of an officer, any offense
18 involving moral turpitude, any offense involving a minor as a
19 victim, any nonconsensual sex offense, any offense involving the
20 possession, use, distribution, or sale of a controlled dangerous
21 substance, any offense of driving while intoxicated or driving under
22 the influence of intoxicating substance, any offense involving a
23 firearm, or any other offense as prescribed by the Council.

24

- 1 a. If any conviction which disqualifies an applicant
2 occurred more than five (5) years prior to the
3 application date and the Council is convinced the
4 offense constituted an isolated incident and the
5 applicant has been rehabilitated, the Council may, in
6 its discretion, waive the conviction disqualification
7 as provided for in this paragraph and issue an unarmed
8 bail enforcer license, but shall not issue an armed
9 bail enforcer license if the offense involved the use
10 of a firearm, was violent in nature, or was a felony
11 offense other than a driving offense.
- 12 b. Under oath, the applicant shall certify that he or she
13 has no disqualifying convictions as specified in the
14 Bail Enforcement and Licensing Act or by rule of the
15 Council, or that more than five (5) years have lapsed
16 since the completion of the sentence for a
17 disqualifying conviction.
- 18 c. The applicant shall further meet all other
19 qualifications, including, but not limited to, the
20 requirement to provide CLEET and the Oklahoma State
21 Bureau of Investigation with individual fingerprints
22 for a state and national criminal history records
23 search and a current individual photograph with the
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1 completed CLEET application for a bail enforcer
2 license.

3 d. If upon completion of the required background
4 investigation it is discovered that a disqualifying
5 conviction exists, the Council shall immediately
6 revoke or deny the bail enforcer license of the
7 applicant;

8 8. Make a statement that the applicant is not currently
9 undergoing treatment for a mental illness, condition, or disorder,
10 make a statement whether the applicant has ever been adjudicated
11 incompetent or committed to a mental institution, and make a
12 statement regarding any history of illegal drug use or alcohol
13 abuse. Upon presentation by the Council of the name, gender, date
14 of birth, and address of the applicant to the Department of Mental
15 Health and Substance Abuse Services, the Department of Mental Health
16 and Substance Abuse Services shall notify the Council within ten
17 (10) days whether the computerized records of the Department
18 indicate the applicant has ever been involuntarily committed to an
19 Oklahoma state mental institution. For purposes of this subsection,
20 "currently undergoing treatment for a mental illness, condition, or
21 disorder" means the person has been diagnosed by a licensed
22 physician or psychologist as being afflicted with a substantial
23 disorder of thought, mood, perception, psychological orientation, or
24 memory that significantly impairs judgment, behavior, capacity to

1 recognize reality, or ability to meet the ordinary demands of life
2 and such condition continues to exist;

3 9. Make a statement regarding any misdemeanor domestic violence
4 charges;

5 10. Provide proof of liability insurance or an individual bond
6 in a minimum amount established by the Bail Enforcement and
7 Licensing Act; and

8 11. Provide a statement of self-employment as a sole proprietor
9 bail enforcer.

10 B. 1. A bail enforcer shall be required to maintain a physical
11 address and phone number publically available and published in the
12 city or county where the physical address is located. Only a
13 licensed bail enforcer may accept a client contract to perform the
14 services of a bail enforcer.

15 2. A licensed bail enforcer shall be required to maintain
16 complete records of all clients, defendants, and apprehensions, and
17 agree such records shall be available to CLEET for inspection at any
18 time during regular business hours.

19 C. 1. All bail enforcers shall obtain and maintain either a
20 liability insurance policy or a surety bond that allows persons to
21 recover for actionable injuries, loss, or damage as a result of the
22 willful, or wrongful acts or omissions of the licensee and protects
23 this state, its agents, officers, and employees from judgments
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1 against the licensee, and is further conditioned upon the faithful
2 and honest conduct of the licensee.

3 2. The liability insurance policy or surety bond required in
4 this subsection shall be in the minimum amount of Ten Thousand
5 Dollars (\$10,000.00).

6 3. Liability insurance policies or bonds issued pursuant to
7 this subsection shall not be modified or canceled unless ten (10)
8 days' prior written notice is given to the Council. All persons
9 insured or bonded pursuant to this subsection shall be insured by an
10 insurance carrier or bonded by a surety company licensed and
11 authorized to do business in the state. Failure to obtain and
12 maintain sufficient liability insurance or bond as provided in the
13 Bail Enforcement and Licensing Act shall be grounds for revocation
14 of a license.

15 D. Upon written notice, any license may be placed on inactive
16 status.

17 E. A person who is a citizen of the United States or an alien
18 legally residing in the United States, who has a minimum of five-
19 years' legal residence documented in another state, may seek a
20 residency waiver from CLEET to obtain a license as a bail enforcer
21 in this state upon proper application and documentation; provided,
22 the person meets all other requirements for a bail enforcer in this
23 state. CLEET shall promulgate rules governing residency waivers for
24 licensure in this state. The rules shall require reasonable and

1 sufficient grounds for licensure in this state and may include, but
2 are not limited to, authorizing a licensed bail bondsman from an
3 adjoining state jurisdiction to be licensed in this state as a bail
4 enforcer, authorizing a person from another state to be a licensed
5 bail enforcer in this state when such license would, in the sole
6 discretion of CLEET, be reasonable under the circumstances,
7 determining whether or not persons granted a residency waiver may be
8 licensed in this state as armed bail enforcers, and determining
9 whether or not out-of-state licensees shall be subject to any
10 special duties, protocols or conditions. CLEET shall have absolute
11 discretion to grant, deny, suspend or revoke any out-of-state
12 application, license or residency waiver at any time. Any violation
13 of the Bail Enforcement and Licensing Act or any rules promulgated
14 pursuant thereto shall require prompt disciplinary action by CLEET
15 against the out-of-state person, applicant or licensee.

16 SECTION 5. It being immediately necessary for the preservation
17 of the public peace, health or safety, an emergency is hereby
18 declared to exist, by reason whereof this resolution shall take
19 effect and be in full force from and after its passage and approval.

20 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
21 February 28, 2017 - DO PASS
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