

**FIRST ENGROSSMENT
with Conference Committee Amendments
ENGROSSED HOUSE BILL NO. 1126**

Introduced by

Judiciary Committee

(At the request of the Insurance Commissioner)

1 A BILL for an Act to amend and reenact sections 26.1-26.6-01, 26.1-26.6-04, 26.1-26.6-05,
2 26.1-26.6-07, 43-30-01, 43-30-02, 43-30-03, 43-30-04, 53-30-05, 43-30-10, 43-30-11, and
3 43-30-16 of the North Dakota Century Code, relating to bail bond agents, defendant retrieval,
4 and licensure and regulation of recovery agents; and to provide a penalty.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Section 26.1-26.6-01 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **26.1-26.6-01. ~~Definition~~Definitions.**

9 As used in this chapter, unless the context otherwise requires, "~~bail~~":

10 1. "Bail bond agent" means any person ~~who~~that has been licensed by the commissioner
11 and appointed by an insurer by power of attorney to execute or countersign bail bonds
12 for the insurer in connection with the judicial proceedings and charges and receives
13 money for the services.

14 2. "Recovery agent" means an individual who is licensed as a recovery agent under
15 chapter 43-30 and to whom the bail bond agent or security has transferred recovery
16 service authority.

17 **SECTION 2. AMENDMENT.** Section 26.1-26.6-04 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **26.1-26.6-04. ~~Qualification~~Appointment and license as bail bond agent - Pledge of**
20 **property as security - Penalty.**

21 A person may not act in the capacity of a bail bond agent or perform any of the functions,
22 duties, or powers prescribed for a bail bond agent under this chapter unless that person is
23 ~~qualified~~appointed and licensed as provided in this chapter. However, this section does not
24 prohibit any individual from pledging real or other property as security for a bail bond in judicial

1 proceedings if the individual does not receive, or is not promised, money or other things of
2 value therefor. Violation of this section is a class BA misdemeanor.

3 **SECTION 3. AMENDMENT.** Section 26.1-26.6-05 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **26.1-26.6-05. Violations - Penalties.**

- 6 1. The commissioner may suspend, revoke, or refuse to continue, issue, or renew any
7 license issued under this chapter if, after notice to the licensee and hearing, the
8 commissioner finds as to the licensee any of the following conditions:
- 9 a. Recommending any particular attorney at law to handle the case in which the bail
10 bond agent has caused a bond to be issued under this chapter.
 - 11 b. Forging the name of another to a bond or application for bond.
 - 12 c. Soliciting business in or about any place for prisoners or persons confined,
13 arraigned, or in custody.
 - 14 d. Paying a fee or rebate, or giving or promising anything of value to a jailer, trustee,
15 police officer or officer of the law, or any other person who has power to arrest or
16 hold in custody or to any public official or public employee in order to secure a
17 settlement, compromise, remission, or reduction of the amount of any bail bond
18 or entreatment thereof, or to secure, delay, or other advantage. This subdivision
19 does not apply to a jailer, police officer, or officer of the law who is not on duty
20 and who assists in the apprehension of a defendant.
 - 21 e. Paying a fee or rebating or giving anything of value to an attorney in bail bond
22 matters, except in defense of any action on a bond.
 - 23 f. Accepting anything of value from a principal other than a premium. Provided, the
24 bail bond agent may accept collateral security or other indemnity from the
25 principal which must be returned immediately upon final termination of liability on
26 the bond. Such collateral security or other indemnity required by the bail bond
27 agent must be reasonable in relation to the amount of the bond.
 - 28 g. Willfully failing to return collateral security to the principal when the principal is
29 entitled to the security.
 - 30 h. Knowingly employing a person whose insurance producer license has been
31 revoked, suspended, or denied in this or any other state.

1 i. Knowingly or intentionally executing a bail bond without collecting in full a
2 premium for the bond, at the premium rate as filed with and approved by the
3 commissioner.

4 j. Failing to pay any forfeiture as directed by a court and as required by this
5 chapter.

6 2. For purposes of subdivisions f and g of subsection 1, a bail bond agent shall monitor
7 the status of bonds written by the bail bond agent to make timely return of the
8 collateral security to the principal. It is not a defense to administrative action under this
9 section that the bail bond agent did not know liability on the bond had been terminated
10 or that the principal was entitled to return of the security.

11 3. A bail bond agent or bail bond agency may not advertise as or hold itself out to be a
12 surety company.

13 ~~3.4.~~ A bail bond agent may not sign nor countersign any blank in any bond, nor give up
14 power of attorney to or otherwise authorize, anyone to countersign the bail bond
15 agent's name to bonds.

16 ~~4.5.~~ When a bail bond agent accepts collateral, the bail bond agent shall give a written
17 receipt for the collateral and this receipt must contain a full description of the collateral
18 received in the terms of redemption. The bail bond agent shall keep copies of all
19 receipts of the bonds to be placed in business to be available to the commissioner for
20 the commissioner's review.

21 ~~5.6.~~ The provisions and penalties under this section are in addition to those provided under
22 chapter 26.1-26.

23 **SECTION 4. AMENDMENT.** Section 26.1-26.6-07 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **26.1-26.6-07. Surrender of defendant prior to breach- Penalty.**

26 ~~At any time before there has been a breach of the undertaking in any type of bail provided~~
27 ~~herein~~

28 1. At any time after a defendant has been released from custody pursuant to a bail bond,
29 the surety or, bail bond agent, or recovery agent may surrender the defendant, or the
30 defendant may surrender, to the official to whose custody the defendant would have
31 been given had the defendant been committed. The defendant may be surrendered

1 without the return of premium for the bond if the defendant has been guilty of
2 nonpayment of premium, changing address without notifying the bail bond agent,
3 self-concealment, or leaving the jurisdiction of the court without the permission of the
4 bail bond agent, or of violating the defendant's contract with the bail bond agent in any
5 way that does harm to the bail bond agent, the recovery agent, or the surety, or
6 violates the obligation to the court.

7 2. For the purpose of surrendering the defendant, the surety, bail bond agent acting as
8 an agent for the surety, or recovery agent may arrest the defendant ~~before the~~
9 ~~forfeiture of the undertaking~~, or by written authority endorsed on a certified copy of the
10 undertaking, may empower any peace officer to make arrest, first paying the lawful
11 fees therefor.

12 3. Subject to chapter 43-30, a person may not engage in the business of taking or
13 attempting to take into custody a defendant on a bail bond, unless the person:

14 a. Is the surety that issued the bail bond;

15 b. Is a bail bond agent and is an appointed agent of the surety; or

16 c. Is a recovery agent.

17 4. Violation of this section is a class C felony.

18 **SECTION 5. AMENDMENT.** Section 43-30-01 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **43-30-01. Definitions.**

21 As used in this chapter, unless the context or subject matter otherwise requires:

22 1. "Board" means the private investigative and security board.

23 2. "Employee" means an employee under a contract of employment as defined in
24 chapter 34-01, and not an independent contractor as defined by the common-law test.

25 3. "License" includes a registration issued by the board.

26 4. "Licensee" includes an individual who is registered by the board.

27 5. "Private investigative service" means, for a fee, reward, or other consideration,
28 undertaking any of the following acts for the purpose of obtaining information for
29 others:

30 a. Investigating the identity, habits, conduct, movements, whereabouts,
31 transactions, reputation, or character of any person or organization;

- 1 b. Investigating the credibility of persons;
- 2 c. Investigating the location or recovery of lost or stolen property, missing persons,
3 owners of abandoned property or escheated property, or heirs to estates;
- 4 d. Investigating the origin of and responsibility for libels, losses, accidents, or
5 damage or injuries to persons or property;
- 6 e. Investigating the affiliation, connection, or relationship of any person, firm, or
7 corporation with any organization, society, or association, or with any official,
8 representative, or member thereof;
- 9 f. Investigating the conduct, honesty, efficiency, loyalty, or activities of employees,
10 persons seeking employment, agents, or contractors and subcontractors;
- 11 g. Investigating or obtaining evidence to be used before any authorized
12 investigating committee, board of award, board of arbitration, administrative body,
13 or officer or in preparation for trial of civil or criminal cases; or
- 14 h. Investigating the identity or location of persons suspected of crimes or
15 wrongdoing.
- 16 6. "Private security service" means furnishing for hire security officers or other persons
17 to:
 - 18 a. Protect persons or property;
 - 19 b. Prevent or detect theft or the unlawful taking of goods, wares, or merchandise, or
20 to prevent the misappropriation or concealment of goods, wares, merchandise,
21 money, bonds, stocks, choses in action, notes, or other valuable documents or
22 papers;
 - 23 c. Control, regulate, or direct the flow of or movements of the public, whether by
24 vehicle or otherwise, to assure protection of private property;
 - 25 d. Prevent or detect intrusion, unauthorized entry or activity, vandalism, or trespass
26 on private property;
 - 27 e. Perform the service of a security officer or other person for any of these
28 purposes; or
 - 29 f. Transport money or negotiable securities to or from a financial institution or
30 between business locations on a regular or daily basis, except for mail delivery.

1 7. "Recovery agent" means an individual who is licensed under this chapter to provide a
2 recovery service.

3 8. "Recovery service" means to enforce the terms and conditions of a defendant's
4 release on bail in a civil or criminal proceeding or to apprehend a defendant or
5 surrender a defendant to custody, or both, in accordance with chapter 26.1-26.6. The
6 term includes presenting a defendant for a required court appearance, apprehending
7 or surrendering a defendant to a court, or keeping the defendant under necessary
8 surveillance.

9 **SECTION 6. AMENDMENT.** Section 43-30-02 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **43-30-02. Exemptions.**

12 This chapter does not apply to:

- 13 1. Any investigator or officer directly employed by or under any direct contract with the
14 federal government, state, or any county or city thereof, appointed, elected, or
15 contracted with, by due authority of law, while engaged in the performance of official
16 duties. Subcontractors of agencies directly contracted with these entities are not
17 exempted.
- 18 2. Any state's attorney.
- 19 3. Any attorneys or counselors at law in the regular practice of their profession and any
20 paralegal or legal assistant employed by an attorney or law firm when the attorney or
21 law firm retains complete responsibility for the work product of the paralegal or legal
22 assistant.
- 23 4. Any person engaged exclusively in obtaining and furnishing information as to the
24 financial standing, rating, and credit responsibility of persons or as to the personal
25 habits and financial responsibilities of applicants for insurance, indemnity bonds, or
26 commercial credit.
- 27 5. A collection agency or finance company licensed to do business under the laws of this
28 state, or an employee of one of those companies, while acting within the scope of
29 employment when making an investigation incidental to the business of the agency,
30 including an investigation as to location of a debtor and of the debtor's assets or

1 property, provided the client has a financial interest in or a lien upon the assets or
2 property of the debtor.

3 6. Any person making any investigation of any matter in which that person or the person
4 by whom that person is solely employed is interested or involved.

5 7. A person whose sole investigative business is obtaining or furnishing information
6 about acts or individuals from public records, other than those investigating the
7 location or recovery of abandoned or escheated property, owners of abandoned or
8 escheated property, or heirs to estates.

9 8. An expert who specializes in a specific, limited area of practice, including automotive
10 accident reconstructions, fire origin and cause investigations, technical surveillance
11 countermeasures, handwriting analysis, auditor, accountant or accounting clerk
12 performing audits or accounting functions, or other areas of practice covered by other
13 licensure in the state, and other areas determined by the board, that fall within the
14 individual's scope of employment, incidental to the investigative profession.

15 9. Persons reporting for any media, including news reporters or news investigators.

16 10. A person providing mystery or secret shopping services, or providing a similar service,
17 used for evaluating customer service, products, services, pricing, locations, or
18 consumer issues so long as the evaluation is not for purposes of litigation or
19 discovering violations of law.

20 11. As it relates to providing a recovery service, a bail bond agent licensed under chapter
21 26.1-26.6.

22 **SECTION 7. AMENDMENT.** Section 43-30-03 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **43-30-03. Private investigative and security board.**

25 The governor shall appoint a private investigative and security board. The board must
26 consist of not less than five nor more than eleven members appointed for staggered four-year
27 terms. Appointees to the board must be knowledgeable in private investigative or private
28 security, or recovery matters. A majority of the members of the board must be actively engaged
29 in the private investigative or security, or recovery profession, with at least one member actively
30 engaged in law enforcement. Members of the board may not receive any compensation for their

1 service on the board, but they are entitled to be reimbursed for their expenses incurred in
2 performing their duties in the amounts provided by law for state employees.

3 **SECTION 8. AMENDMENT.** Section 43-30-04 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **43-30-04. Powers of the board.**

- 6 1. The board shall establish by rule the qualifications and procedures for classifying,
7 qualifying, licensing, bonding, and regulating persons providing private investigative
8 ~~and, security, and recovery~~ services, including armed security personnel. All rules
9 adopted by the board and appeals therefrom must be in accordance with chapter
10 28-32.
- 11 2. The board may hire office personnel ~~deemed~~the board deems necessary ~~by it~~ for
12 carrying on ~~its~~out the board's official duties and shall set the compensation to be paid
13 to the personnel.
- 14 3. Upon initial licensure and annually thereafter, the board shall provide the attorney
15 general and the insurance commissioner with a list of the recovery agent licensees.
16 Upon request of the attorney general or the insurance commissioner, the board shall
17 provide information regarding recovery agent licensees.

18 **SECTION 9. AMENDMENT.** Section 43-30-05 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **43-30-05. License required to provide private investigative ~~or, security, or recovery~~**
21 **services - Exclusivity.**

22 A person may not provide private investigative ~~or, security, or recovery~~ services without a
23 license issued by the board. Notwithstanding any other law or ordinance, a person may not be
24 required to obtain a license to provide private investigative or security services in this state
25 other than the license required by this chapter.

26 **SECTION 10. AMENDMENT.** Section 43-30-10 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **43-30-10. Penalty - Injunction - Unlicensed activity.**

- 29 1. Any person ~~whethat~~ violates this chapter or rules adopted under this chapter, or any
30 person ~~whethat~~ provides a private investigative service ~~or, private security service, or~~
31 recovery service without a current license issued by the board, or falsely states or

1 represents that the person has been or is a recovery agent or an investigative officer
2 or employed by an investigative or security officer or agency is guilty of a class B
3 misdemeanor.

4 2. In addition to the criminal penalties provided, the civil remedy of an injunction is
5 available to restrain and enjoin violations of any provisions of this chapter, without
6 proof of actual damages sustained by any person. An injunction does not preclude
7 criminal prosecution and punishment of a violator.

8 3. The board is not liable for the lost income, costs, or any other expenses that may be
9 incurred by a person against whom an injunction is sought, and the board may not be
10 required to provide security or a bond. The board may seek costs for reimbursement
11 of expenses for obtaining an injunction, including attorney's fees.

12 4. In addition to issuing the injunction, the court may impose an administrative fee
13 consistent with section 43-30-10.1 if the person has violated a provision of this
14 chapter.

15 **SECTION 11. AMENDMENT.** Section 43-30-11 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **43-30-11. Renewal of licenses.**

18 A license to provide private investigative or, security, or recovery services must be renewed
19 on an annual basis ending on September thirtieth of each year. License fees must be prorated
20 for the portion of each license period the license is in effect.

21 **SECTION 12. AMENDMENT.** Section 43-30-16 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **43-30-16. Examination, license, and registration fees.**

24 The board may establish by rule and charge the following fees:

25 1. The fee to be paid by an applicant for an examination to determine the applicant's
26 fitness to receive a license as a private investigator or, a license to provide private
27 security services, or a license as a recovery agent may not exceed one hundred
28 dollars.

29 2. The fee to be paid by an applicant for the initial issuance or the renewal of a license as
30 a private investigator or, a license to provide private security services, or a license as a

1 recovery agent may not exceed one hundred fifty dollars. A late fee not to exceed fifty
2 dollars may be charged for each month the renewal fee is due and unpaid.

3 3. The fee to be paid by an applicant to apply for a license to conduct a private security
4 or detective agency may not exceed one hundred dollars.

5 4. The fee for the issuance or the renewal of a license to conduct a private security or
6 detective agency may not exceed three hundred dollars. A late fee not to exceed one
7 hundred dollars may be charged for each month the renewal fee is due and unpaid.

8 5. The one-time fee to be paid by an applicant for the issuance of a private security
9 training certificate may not exceed twenty-five dollars.

10 6. The annual fee to be paid by an applicant for the issuance of an armed private security
11 certificate may not exceed twenty-five dollars. A late fee not to exceed ten dollars may
12 be charged for each month the renewal fee is due and unpaid.

13 7. The fee to be paid for the issuance of a duplicate license may not exceed twenty
14 dollars.

15 8. The initial registration fee to provide private investigative service or private security
16 service may not exceed twenty-five dollars. The fee for the renewal of a registration to
17 provide private investigative service or private security service may not exceed
18 twenty-five dollars. A late fee not to exceed ten dollars may be charged for each month
19 the renewal fee is due and unpaid.

20 **SECTION 13. EFFECTIVE DATE.** Sections 1, 4, 5, 6, 7, 8, 9, 10, 11, and 12 of this Act
21 become effective on January 1, 2016.