

Fifty-sixth Legislative Assembly, State of North Dakota, begun in the Capitol in the City of Bismarck, on Tuesday, the fifth day of January, one thousand nine hundred and ninety-nine

HOUSE BILL NO. 1382
(Representative Hawken)
(Senator W. Stenejem)

AN ACT to create and enact a new section to chapter 29-08 of the North Dakota Century Code, relating to bail as the defendant's property; to amend and reenact subsections 3 and 4 of section 27-05.2-02 of the North Dakota Century Code as created by section 50 of House Bill No. 1275, as approved by the fifty-sixth legislative assembly, relating to options for state funding of clerk of district court services; and to amend and reenact section 29-22-31 of the North Dakota Century Code, relating to refund of bail money.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. If House Bill No. 1275 becomes effective, subsections 3 and 4 of section 27-05.2-02 of the North Dakota Century Code, as created by section 50 of House Bill No. 1275, as approved by the fifty-sixth legislative assembly, are amended and reenacted as follows:

3. In a county in which the supreme court determines that at least ~~two~~ five full-time employees are necessary to provide adequate clerk of district court services, the elected clerk of district court and clerk of court staff designated by the supreme court shall become employees of the state judicial system if the board of county commissioners consents to the transition after consultation with the elected clerk. This subsection applies upon receipt by the supreme court of a resolution adopted by the board of county commissioners indicating its consent. Any equipment, including ~~technology-related~~ technology-related equipment, and furnishings in the control and custody of the clerk of district court on the date the clerk becomes a state employee must remain in the control and custody of the clerk until the state court administrator determines the items are no longer needed. The clerk, upon becoming a state employee, shall receive a salary in an amount not less than the salary received as a county employee and shall remain an employee of the state judicial system until the clerk retires, resigns, or the term for which the clerk was initially elected expires, whichever occurs earlier. Thereafter, the clerk of district court must be appointed in the manner provided by supreme court rule. The bond for the clerk of district court must be set by the supreme court. If the board of county commissioners does not consent to the clerk and designated staff becoming employees of the state judicial system, the county must provide clerk of district court services at its own expense in accordance with subsection 2.
4. In a county in which the supreme court determines that one or more, but less than ~~two~~ five, full-time employees are necessary to provide clerk of district court services, the elected clerk of district court and clerk of court staff designated by the supreme court shall become employees of the state judicial system in the manner described in subsection 3. If the board of county commissioners does not consent to the clerk and designated staff becoming employees of the state judicial system, the county may provide clerk of district court services at its own expenses under subsection 2 or the supreme court may provide funding for clerk of district court services in accordance with an agreement under subsection 6.

SECTION 2. A new section to chapter 29-08 of the North Dakota Century Code is created and enacted as follows:

Bail - Defendant's property. Except as otherwise provided in this section, moneys deposited as bail are the property of the defendant, whether deposited by the defendant or by a third person on the defendant's behalf. If bail moneys are deposited by a third person, the person must be notified at

the time of deposit that the moneys may be paid to the defendant upon final disposition of the case or applied to any fine, cost, or restitution imposed on the defendant. The person may direct, subject to further order of the judge, that the deposited moneys be released to that person upon final disposition of the case. When moneys are accepted by the court as bail, the judge shall order that the moneys received be deposited with the clerk of court. The clerk shall retain the moneys until the final order of the court disposing of the case. Upon release of the moneys held by the clerk, the moneys must be paid to the defendant or pursuant to the defendant's written direction or, unless otherwise ordered by the judge, as directed by a person who deposited moneys on behalf of the defendant. In the case of a conviction, the judge may order the moneys to be applied to any fine, cost, or restitution imposed on the defendant. The balance of the deposit, if any, must be paid to the defendant. Moneys deposited with the court or clerk of court as bail are exempt from garnishment, attachment, or execution.

SECTION 3. AMENDMENT. Section 29-22-31 of the North Dakota Century Code is amended and reenacted as follows:

29-22-31. Verdict of guilty - Procedure. If a general verdict is rendered against the defendant, or a special verdict is given, ~~he~~ the defendant must be remanded, if in custody, or, if ~~he~~ the defendant is at large on bail, ~~he~~ may be committed to the proper officer of the county to await the judgment of the court upon the verdict. When committed, ~~his~~ the defendant's bail is exonerated, or if money is deposited instead of bail, it must be refunded ~~to the defendant~~ in accordance with section 2 of this Act.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-sixth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1382.

House Vote: Yeas 97 Nays 0 Absent 1

Senate Vote: Yeas 37 Nays 10 Absent 2

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 1999.

Approved at _____ M. on _____, 1999.

Governor

Filed in this office this _____ day of _____, 1999,

at _____ o'clock _____ M.

Secretary of State