

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1213

2001 HOUSE JUDICIARY

HB 1213

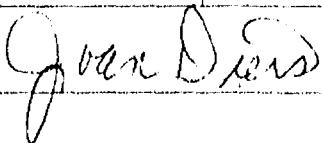
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1213

House Judiciary Committee

Conference Committee

Hearing Date 01-24-01

Tape Number	Side A	Side B	Meter #
Tape I	x		5478 to 6249
		x	01 to 6240
TAPE II	x		01 to 218
Committee Clerk Signature			

Minutes: Chr DeKrey opened the hearing on HB 1213. Relating to fees for bail bondsmen and bail bond forfeiture.

Rep Clark: District 44, Fargo, North Dakota. When I first started working on this bill, I didn't know much about bail bonding. Bail bonding in the code is rather vague as to what the judges may or may not do. He gave an example that he thought might be an abuse of the system. The changes are to the fees and forfeiture of indemnitors collateral, section 3 page 2 lines 4 thru 9 would clarify the section.

TAPE I SIDE B

Rep Clark continues to give examples how a bonds works and the notification of the bond. Continues to explain the amendments to the bill.

Chr DeKrey: For those of us involved in business, this is surely the cost of doing business, and isn't that the risk of doing business?

Rep Clark: Yes, it is, but is this right when the defendant was in custody?

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House Judiciary Committee
Bill/Resolution Number HB 1213
Hearing Date 01-24-01

Rep Delmore: Are you duplication some of the fees, why would you use both in that part rather than one or the other?

Rep Clark: I am not sure, this bill may need an amendment.

Rep Delmore: I don't think you need both.

Rep Mahoney: I have never heard of such a thing as the bond being forfeited when a defendant is being held in another jurisdiction and does not make the court appearance. I don't know of any court in the state that would do that.

Rep Clark: I agree, I thought it was ridiculous.

Rep Mahoney: And that bond was never exonerated?

Rep Clark: Not to my knowledge.

Rep Mahoney: You are putting the burden on the court, with the five days.

Rep Clark: I don't think that any bondsman would do that. It is not in his best interest to let that person get away.

Chr DeKrey: Thank you for appearing in front of this committee.

Judge Graf: South Central Judicial District, testifying in opposition of this bill. Many times that we are aware of a person being held, we make arrangement to have that person brought to our court. We just send our sheriff to get them. Forfeiture of bond does not go into our court, it goes into the general fund. I am here to speak to section one and section two. I am here to speak to the obligation of someone who places a cash bond and to put them on equal footing, it would exempt bail bondsmen from certain things. He went through the amendments, some he agreed with and most he did not. He said that this would reduce the number of bonds that would be allowed in his court. He was opposed to this bill.

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Chr DeKrey: Thank you for appearing before this committee. We will now take testimony for those in favor of this bill.

Jason Armstrong: Bondsman for Young Bonding (see testimony attached).

Rep Delmore: How many cases do you have going at one time?

Jason Armstrong: I have 500 client for the year 2000, 50 to 150 bonds out at one time.

Rep Delmore: Isn't there a risk and cost of doing your kind of business. Isn't this covered by the fees?

Jason Armstrong: Our business is unique, we do face risks. Risks don't end with the money and financial lose, we also face physical risks.

Rep Mahoney: The .6% you quoted, I am wondering what is that?

Jason Armstrong: Less then .6% are those that I did not get back.

Rep Mahoney: That would be the per cent that you pay out.

Sharon Honrud: Bailbond agent spoke in support of this bill.

Chr DeKrey: Thank you for appearing in front of this committee. Anyone else who wishes to appear in opposition to this bill?

TAPE II SIDE A.

John Olson: I have no opinion but I ask that you remove sections three and four of the bill.

Sections three and four are the same as expressed as Judge Graf.

Bob Martin: Defense attorney out of Bismarck, I am also indigent defense councils for the South Central Judicial District. He spoke in opposition to HB 1213.

Chr DeKrey: Are there any questions for Mr Martin If not thank you for appearing before this committee. We will close the hearing on HB 1213 and be in recess until 10:45 am..

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1213a

House Judiciary Committee

Conference Committee

Hearing Date 02-06-01

Tape Number	Side A	Side B	Meter #
TAPE I		x	01 to 385
Committee Clerk Signature		<i>Jean DeKrey</i>	

Minutes: Chairman DeKrey called the committee to order, we will take up HB 1213.

DISCUSSION

Chairman DeKrey: what are the wishes of the committee.

Rep Grande moved a DO NOT PASS, seconded by Rep Mahoney.

The clerk will call the roll on a DO NOT PASS motion. The motion passes 13 YES, 1 NO, 1 ABSENT. Carrier Rep Mahoney.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1213

Page 1, line 11, replace "fees" with "costs"

Page 2, line 12, remove "a"

Page 2, line 13, remove "finding of guilty, a plea of guilty," and after the third "guilty" Insert "a pronouncement of sentence"

Page 2, remove line 14

Page 2, line 15, remove "notification and written approval of the bondsman,"

Renumber accordingly

Date: 02-06-01

Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB-1213

House JUDICIARY Committee

- Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass

Motion Made By Rep. Grande Seconded By Rep Mahoney

Representatives	Yes	No	Representatives	Yes	No
CHR - Duane DeKrey	✓				
VICE CHR -- Wm E Kretschmar	✓				
Rep Curtis E Brekke	✓				
Rep Lois Delmore	✓				
Rep Rachael Disrud	✓				
Rep Bruce Eckre		✓			
Rep April Fairfield	✓				
Rep Bette Grande	✓				
Rep G. Jane Gunter	✓				
Rep Joyce Kingsbury	✓				
Rep Lawrence R. Klemin	✓				
Rep John Mahoney	✓				
Rep Andrew G Maragos					
Rep Kenton Onstad	✓				
Rep Dwight Wrangham	✓				

Total (Yes) 13 No 1

Absent 1

Floor Assignment Rep Mahoney

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
February 6, 2001 4:56 p.m.

Module No: HR-21-2541
Carrier: Mahoney
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

**HB 1213: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO NOT PASS
(13 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). HB 1213 was placed on the
Eleventh order on the calendar.**

2001 TESTIMONY

HB 1213

Young Bonding

Box 1861
Fargo, ND 58107
Phn (701) 232-2606
Fax (701) 237-3539

December 11, 2000

House Judiciary Committee
57th Legislative Assembly
Bismarck, ND

Subject: House Bill No. 1213

Dear Honorable Representatives:

With this document I hope to provide an understanding of the Professional Bail Industry and its benefit and contributions to the Criminal Justice System.

The professional bail bondsman is one of the least understood entities in the Criminal Justice System, even for those with whom we come in contact on a regular basis. The bail industry provides the opportunity for an accused defendant to post their bail without placing the entire amount in cash with the court. This may at first seem to benefit only the accused; however, it also benefits their families, the courts, the community, state, and law enforcement. The bondsman's overriding goal is the same as the rest of the Criminal Justice System, that of maintaining public order and the efficient administration of justice. For the bondsman this is achieved by ensuring that the defendant appears for their scheduled court dates.

If a defendant is released either on their own recognizance or through the posting of the entire amount of the bail in cash, then there is no real further control of the defendant before their sentencing. The bondsman provides supervision of the defendant before trial and if the defendant "fails to appear" endeavors to locate and return them to the proper authorities. All of this is done at no cost to the taxpayer. The only persons who bear any costs are the defendants themselves and those who have freely chosen, of their own volition, to assist the defendant in securing bail.

By the nature of the undertaking of a private bail contract, freely entered into by the defendant and indemnitors, the bondsman may exert a high level of control over the defendant's behavior and movements. This control is kept consistent with the severity of the alleged crime, possible threat to the community, and risk of flight. A competent bondsman can save State, County, and Municipal government many thousands of taxpayer dollars that would otherwise be spent on jail facilities, staff, food, transport, and healthcare of a presumed innocent individual. In the event of "ball jumping", the bondsman may return the defendant and/or assist law enforcement in their apprehension at no cost or greatly reduced cost to the government. Further, with pre-trial custody it is much less likely that a defendant will be able to finance their own defense and a great burden is placed on the family, particularly when the defendant is the primary income provider or both incomes are essential. The posting of bond allows the defendant to participate more fully in his or her own defense and arrive at a just disposition to their case. These conditions are that much more important in hindsight if the defendant is found "not guilty" or does not receive jail time as part of their sentence. It serves no one to have a defendant lose a job or a family, a situation which makes it that much more difficult for the defendant to conform to society's standards.

SECTION 1. AMENDMENT.

The instatement of a maximum commission or fee was presumably to protect the consumer from usury at the hands of the bondsman. However, this limitation frequently has the effect of denying otherwise deserving clientele of services due to the inability of the bondsman to profit on that bond.

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The bondsman does not retain the entire premium of the bond; a portion is sent to the underwriter and to a reserve fund for forfeitures. The bondsman does, however, maintain one hundred percent liability for the bond. Many of the bonds in North Dakota are for smaller offenses and hence smaller bonds. These bonds require nearly the same amount of work as larger bonds, yet the profit margin is minimal and, at times, after phone calls, travel, and fixed expenses, almost non-existent. It is easy to say, "Well, those are businesses expenses and written off." However, a write off is a poor substitute for profit and there is no motivation to provide services merely at an expense. Also, the bondsman must accept collect calls from the jail at a rate of nearly two dollars to connect, whether local or long distance, and nearly one dollar each additional minute. This is an expense that the bondsman has no control over, as it is a result of government contracts. Further, like so many other businesses, there is a great deal of work that goes on "behind the scenes". It is not a simple matter of showing up at the jail, dropping off a bond, and making a hundred dollars. There is the handling of collateral, monitoring clients, and transporting clients home, to cash machines, etc.

Revision to a maximum of fifteen percent would not necessitate the charging of that level of premium, it would allow the bondsman flexibility to manage expenses against income in each individual case. Free enterprise and competition would keep premiums around ten percent, especially in larger bonds where the premium is larger and therefore provides for more reasonable profit after expenses. If one agency were to attempt to charge fifteen percent for a \$10,000 bond, the client would no doubt call someone else who would post it for a much lower premium. By the very nature of this business each case is unique and individual assessment of risk is left to the bondsman's judgment, based on experience and instinct. Even when good collateral can be obtained, much time and effort may be required to cover the cost of a forfeiture or apprehension. Most businesses are allowed to set their own prices based on what the market will bear. Call a plumber or tow truck at three a.m. to travel fifty miles and the cost will be higher than at three p.m. for five miles.

SECTION 2. NEW SECTION.

This section formerly adds to the century code what is already addressed in any bail contract I am aware of.

SECTION 3. AMENDMENT.

A bondsman does not desire for a defendant to escape justice, not only for the obvious monetary reasons, but also as a matter of principle. When a defendant fails to appear and the bondsman can return them to custody it bolsters their appearance in the eyes of the court and law enforcement, and serves to discourage other defendants from attempting the same thing. Requiring the court to notify the bondman of a failure to appear ensures that an immediate search for the fugitive may begin when they are most likely to be caught.

As it currently stands the bondsman may be afforded little or no time to locate the fugitive, and with immediate or nearly immediate forfeiture of the bond, there is little incentive to invest considerable time and money in seeking the fugitives apprehension, as a return of even part of the forfeiture may not be relied upon in many courts. As already stated the ability of the bondsman to apprehend the fugitive can save government considerable sums of money. Ninety days is a reasonable amount of time when it is considered that the fugitive may be in another state or otherwise making a strong attempt to conceal them self. It takes time to gather reliable information, and in the case of interstate flight, there is considerable planning that must occur; such as dealing with varying state laws and agencies, and of course the travel time required. The ninety days would allow the bondsman to overcome this barrier.

By mandating a continuance of the bond during a defendant's confinement in another facility and then allowing the bondsman to transport them back to local authorities again can save the local authorities considerable monies and ensure the administration of justice.

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Some objections to this were brought to my attention, namely, that this would preclude the Court from informing the bondsman that a defendant has not kept contact with the court prior to their failure to appear. This is not the case. I cannot imagine any bondsman not welcoming such information. They could then proactively approach the problem and inform the court of the defendant's presence or absence, allowing for the timely cancellation of a jury trial if it is not likely the defendant will be present. A search for the defendant may then begin that much sooner. It was also noted that this legislation would allow the bondsman to ignore the demand to produce the defendant on the trial date. This is not the case. Bondsman want their clients to appear at the appointed time or as quickly thereafter as they can be located. Some defendants are very crafty; they fulfill all the requirements of the release agreement until the very last minute when they flee a few days or even the very day of their scheduled appearance, so simply checking in on them a couple of weeks before their appearance is not a guarantee that they will not flee. Apprehending a fugitive is a costly and time-consuming undertaking and one, which almost never brings any level of income to the bondsman, rather it serves to limit loss. The sooner we may begin looking for a fugitive the sooner we will find them, therefore incurring less cost.

This legislation would also not make it more likely that the "family farm" pledged as collateral be placed in jeopardy. Indeed it would make it less likely to be placed in jeopardy. The Indemnitor on a bond guarantees appearance of the defendant or reimbursement of the forfeited bond. If a fugitive can be located at a cost of \$1000.00 on a \$5000.00 bond then the bondsman has effectively saved the indemnitor \$4000.00 and the government a considerable sum in locating and transporting the fugitive. Instead of the \$5000.00 the indemnitor would have lost had they posted a cash bail. A bondsman does not desire to seize collateral of an indemnitor unless absolutely necessary, it is much better for business and all involved if costs can be kept to a minimum. That is what we are here for.

This amendment would also serve to prevent the court from hearing petitions for remittance of the bond when the bondsman apprehends the fugitive since the bond has not already been forfeit. Communication is a key element to ensuring efficient administration of justice. I feel confident in saying that any bondsman greatly appreciates any and all notice that the court may provide in regards to one of their clients.

The court is still maintains discretion after the ninety days and if the defendant is not located still receives the forfeiture. Communication is the key. The courts are the first to find out of any changes in scheduling or pleas, as they are the ones to enter them into the record. Because of the nature of this business we may not rely on the word of our clients and without good communication from the court the only way to verify information is to needlessly and frequently call the Clerk of Courts, drawing them away from other business and perhaps affording a defendant the precious hours needed to get one step ahead. It is not our goal to encumber or in any create a greater level of work for the courts. In my experience making someone else's day more difficult has never made mine any easier.

SECTION 4. NEW SECTION.

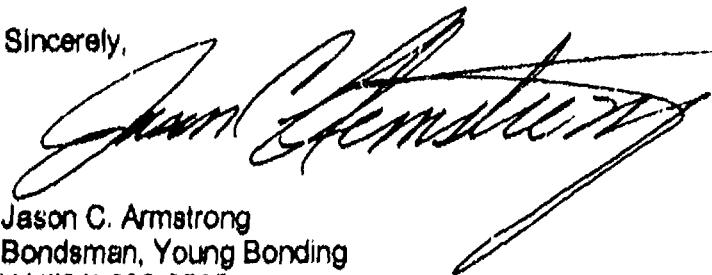
The most important part of this section is that again communication is key. A bondsman desires to be informed of significant changes in the risk a defendant poses. If a defendant has been found guilty of a charge carrying the possibility of considerable jail or prison time then the risk of flight increases enormously. It is also very important for the bondsman to be notified of the exoneration of the bond so as to return collateral if necessary to the indemnitor. Some courts do send discharge notices, others do not and I must call and verify that a number of bonds have been discharged. This takes a clerk away from other work as they pull up the criminal files in question and verify that the bond has been discharged. With every bond I write I provide a detachable discharge slip that may be sent out to notify us of the bonds discharge. This last requirement I believe would actually save the Clerk of Courts time.

December 11, 20001

CLOSING.

While I am sure there will be some objections raised to these proposals, I sincerely believe that their adoption would save the Courts time and money, and prevent some individuals from evading justice. The benefits would reach many people in the Criminal Justice System and society as a whole. Any practicing bondsman knows that cooperation between the court and themselves will increase the system's effectiveness, making everyone's day easier, and it is greatly appreciated. I have listed my phone numbers below, should anyone have questions in the future it would be my sincere pleasure to discuss them.

Sincerely,



Jason C. Armstrong
Bondsman, Young Bonding
W (701) 232-2505
C (701) 799-2669
H (701) 288-2954