

HOUSE BILL NO. 1178

Introduced by

Representatives Maragos, N. Johnson

Senator Krebsbach

1 A BILL for an Act to create and enact a new section to chapter 26.1-26.6 of the North Dakota
2 Century Code, relating to house arrest services provided by a bail bond agent; to amend and
3 reenact sections 26.1-26.6-01, 26.1-26.6-02, 26.1-26.6-03, 26.1-26.6-04, 26.1-26.6-05,
4 26.1-26.6-06, 26.1-26.6-07, 26.1-26.6-08, and 26.1-26.6-09 of the North Dakota Century Code,
5 relating to the regulation of the bail bond agent profession and a state fee for bail bond; and to
6 provide penalty.

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

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

10 **26.1-26.6-01. Definition.** As use in this chapter, unless the context otherwise requires,
11 "~~Bail bondsman~~ bail bond agent" means any person who has been ~~approved~~ licensed by the
12 commissioner and appointed by an insurer by power of attorney to execute or countersign bail
13 bonds for the insurer in connection with the judicial proceedings and charges and receives
14 money for the services.

15 **SECTION 2. AMENDMENT.** Section 26.1-26.6-02 of the North Dakota Century Code
16 is amended and reenacted as follows:

17 **26.1-26.6-02. Licensing ~~and continuing~~ - Reciprocity - Continuing education**
18 **requirements.** The licensing and continuing education requirements under chapter 26.1-26
19 apply to bail ~~bondsmen~~ bond agents. The commissioner may not grant licensure reciprocity to
20 a nonresident bail bond agent unless the nonresident agent's home state grants the same
21 reciprocity to a North Dakota bail bond agent.

22 **SECTION 3. AMENDMENT.** Section 26.1-26.6-03 of the North Dakota Century Code
23 is amended and reenacted as follows:

1 **26.1-26.6-03. Persons disqualified as bail ~~bondsmen~~ bond agents - Limitations of**
2 **courts - Penalty.** The following persons or classes may not be bail ~~bondsmen~~ bond agents
3 and may not directly or indirectly receive any benefits from the execution of any bail bond:
4 jailers, police officers, committing magistrates, magistrate court judges, sheriffs, deputy sheriffs
5 and constables, or any person having the power to arrest or having anything to do with the
6 control of federal, state, county, or municipal prisoners. A court may not accept a bail bond
7 premium but may accept a cash bond and may release a defendant on the defendant's own
8 personal recognizance. A violation of this section is a class B misdemeanor.

9 **SECTION 4. AMENDMENT.** Section 26.1-26.6-04 of the North Dakota Century Code
10 is amended and reenacted as follows:

11 **26.1-26.6-04. Qualification and license as bail ~~bondsman~~ bond agent - Pledge of**
12 **property as security - Penalty.** ~~No~~ A person may not act in the capacity of a bail ~~bondsman~~
13 bond agent or perform any of the functions, duties, or powers prescribed for a bail ~~bondsmen~~
14 bond agent under ~~the provisions of~~ this chapter unless that person is qualified and licensed as
15 provided in this chapter. However, ~~none of the provisions of~~ this section does not prohibit any
16 individual from pledging real or other property as security for a bail bond in judicial proceedings
17 if the ~~person~~ individual does not receive, or is not promised, money or other things of value
18 therefor. Violation of this section is a class B misdemeanor.

19 **SECTION 5. AMENDMENT.** Section 26.1-26.6-05 of the North Dakota Century Code
20 is amended and reenacted as follows:

21 **26.1-26.6-05. Violations - Penalties.**

- 22 1. The commissioner may suspend, revoke, or refuse to continue, issue, or renew
23 any license issued under this chapter if, after notice to the licensee and hearing,
24 the commissioner finds as to the licensee any of the following conditions:
- 25 a. Recommending any particular attorney at law to handle the case in which the
26 bail ~~bondsman~~ bond agent has caused a bond to be issued under ~~the terms~~
27 of this chapter.
 - 28 b. Forging the name of another to a bond or application for bond.
 - 29 c. Soliciting business in or about any place for prisoners or confined, arraigned,
30 or in custody.

- 1 d. Paying a fee or rebate, or giving or promising anything of value to a jailer,
2 trustee, police officer or officer of the law, or any other person who has power
3 to arrest or hold in custody or to any public official or public employee in order
4 to secure a settlement, compromise, remission, or reduction of the amount of
5 any bail bond or entreatment thereof, or to secure, delay, or other advantage.
6 This subdivision does not apply to a jailer, police officer, or officer of the law
7 who is not on duty and who assists in the apprehension of a defendant.
- 8 e. Paying a fee or rebating or giving anything of value to an attorney in bail bond
9 matters, except in defense of any action on a bond.
- 10 f. Accepting anything of value from a principal other than a premium. Provided,
11 the ~~bondsman~~ bail bond agent may accept collateral security or other
12 indemnity from the principal which must be returned immediately upon final
13 termination of liability on the bond. Such collateral security or other indemnity
14 required by the ~~bondsman~~ bail bond agent must be reasonable in relation to
15 the amount of the bond.
- 16 g. ~~Willful failure~~ Willfully failing to return collateral security to the principal when
17 the principal is entitled ~~thereto~~ to the security.
- 18 h. Knowingly employing a person whose insurance producer license has been
19 revoked, suspended, or denied in this or any other state.
- 20 i. Knowingly or intentionally executing a bail bond without collecting in full a
21 premium ~~therefor~~ for the bond, at the premium rate as filed with and approved
22 by the commissioner.
- 23 j. Failing to pay any forfeiture as directed by a court and as required by this ~~title~~
24 chapter.
- 25 2. A bail ~~bondsman~~ bond agent or bail bond agency may not advertise as or hold
26 itself out to be a surety company.
- 27 3. A bail ~~bondsman~~ bond agent may not sign nor countersign any blank in any bond,
28 nor give up power of attorney to or otherwise authorize, anyone to countersign the
29 bail ~~bondsman's~~ bond agent's name to bonds.
- 30 4. When a ~~bondsman~~ bail bond agent accepts collateral, the ~~bondsman~~ bail bond
31 agent shall give a written receipt for the collateral and this receipt must contain a

1 full description of the collateral received in the terms of redemption. The
2 ~~bondsman~~ bail bond agent shall keep copies of all receipts of the bonds to be
3 placed in business to be available to the commissioner for the commissioner's
4 review.

5 5. The provisions and penalties under this section are in addition to those provided
6 under chapter 26.1-26.

7 **SECTION 6. AMENDMENT.** Section 26.1-26.6-06 of the North Dakota Century Code
8 is amended and reenacted as follows:

9 **26.1-26.6-06. Access to jails.** Every person who holds a valid bail ~~bondsman~~ bond
10 agent license issued by the insurance commissioner is entitled to equal access to the jails of
11 the state for the purpose of making bond, subject to the provisions of this chapter and the rules
12 adopted in the manner provided by law. Jail personnel, law enforcement officers, and court
13 personnel may not suggest, recommend, advise, or promote a particular ~~bondsman~~ bail bond
14 agent. Each jail shall furnish a space convenient to the telephones in the booking area to be
15 used to hold business cards of ~~bondsmen~~ bail bond agents.

16 **SECTION 7. AMENDMENT.** Section 26.1-26.6-07 of the North Dakota Century Code
17 is amended and reenacted as follows:

18 **26.1-26.6-07. Surrender of defendant prior to breach.** At any time before there has
19 been a breach of the undertaking in any type of bail provided herein, the surety or ~~bondsman~~
20 bail bond agent may surrender the defendant, or the defendant may surrender, to the official to
21 whose custody the defendant would have been given had the defendant been committed. The
22 defendant may be surrendered without the return of premium for the bond if the defendant has
23 been guilty of nonpayment of premium, changing address without notifying the ~~bondsman~~ bail
24 bond agent, self-concealment, or leaving the jurisdiction of the court without the permission of
25 the ~~bondsman~~ bail bond agent, or of violating the defendant's contract with the ~~bondsman~~ bail
26 bond agent in any way that does harm to the ~~bondsman~~ bail bond agent, or the surety, or
27 violates the obligation to the court. For the purpose of surrendering the defendant, the surety
28 may arrest the defendant before the forfeiture of the undertaking, or by written authority
29 endorsed on a certified copy of the undertaking, may empower any peace officer to make
30 arrest, first paying the lawful fees therefor.

1 **SECTION 8. AMENDMENT.** Section 26.1-26.6-08 of the North Dakota Century Code
2 is amended and reenacted as follows:

3 **26.1-26.6-08. Maximum commission ~~or fee~~ - Bonding schedule - State fees.**

- 4 1. A ~~professional bondsman~~ bail bond agent may not charge a premium, commission,
5 or fee for a bond in an amount more than ten percent of the amount of bail
6 furnished by the ~~bondsman~~ bail bond agent, or ~~seventy-five~~ one hundred
7 twenty-five dollars, whichever is greater.
- 8 2. If an individual is charged with multiple offenses, the court shall require bond as to
9 each offense, with state fees collected only once. In addition to any applicable
10 state fees, the court shall set bail according to the following bond schedule:
- 11 a. For a class A, B, or C felony, the court shall use its discretion to set bond, with
12 a minimum of fifty dollars from the bond to be paid to the state and deposited
13 in the general fund of the state treasury.
- 14 b. For a class A misdemeanor, the court shall set bond at a minimum of one
15 thousand five hundred dollars, with a minimum of twenty-five dollars from the
16 bond to be paid to the state and deposited in the general fund of the state
17 treasury.
- 18 c. For a class B misdemeanor and all other alcohol-related offenses, the court
19 shall set bond at a minimum of one thousand dollars, with a minimum of
20 twenty-five dollars from the bond to be paid to the state and deposited in the
21 general fund of the state treasury.

22 **SECTION 9. AMENDMENT.** Section 26.1-26.6-09 of the North Dakota Century Code
23 is amended and reenacted as follows:

24 **26.1-26.6-09. Failure to appear.** If a defendant fails to appear for a scheduled court
25 appearance, the clerk of court shall notify the ~~bondsman~~. ~~If the bondsman returns~~ bail bond
26 agent in writing of the bond forfeiture. The bail bond agent has ninety days following the failure
27 to appear in which to either pay the forfeiture or return the defendant. In the case in which a
28 bail bond agent pays the forfeiture, if after the ninety days expires the defendant is returned or
29 returns to the jurisdiction of the court; and the ~~bondsman may petition~~ bail bond agent petitions
30 the court for a return of the forfeiture, the court shall return the forfeiture, less five percent for
31 court costs. If the ~~bondsman returns the defendant to the jurisdiction of the court within six~~

1 ~~months of receiving notice of the failure to appear, the court shall return the forfeiture upon~~
2 ~~petition by the bondsman, less five percent for court costs. If the bondsman returns the~~
3 ~~defendant to the jurisdiction of the court beyond six months of receiving notice of the failure to~~
4 ~~appear, the court may return the forfeiture upon receipt of a petition from the bondsman, less~~
5 ~~five percent for court costs~~ a bail bond agent petitions the court, the court may assess
6 restitution against the defendant on behalf of the bail bond agent.

7 **SECTION 10.** A new section to chapter 26.1-26.6 of the North Dakota Century Code is
8 created and enacted as follows:

9 **House arrest.** Before prosecution a court may utilize a bail bond agent for the
10 provision of house arrest services in lieu of county or state incarceration if doing so would not
11 have a negative fiscal impact on the state and if the house arrest services provided by the bail
12 bond agent follow established policies and procedures for referral, placement, and monitoring
13 for house arrest programs which meet the needs of the court.