

Sixty-fourth  
Legislative Assembly  
of North Dakota

ENGROSSED HOUSE BILL NO. 1126

Introduced by

Judiciary Committee

(At the request of the Insurance Commissioner)

1 A BILL for an Act to ~~create and enact section 26.1-26.6-07.1 of the North Dakota Century Code,~~  
2 ~~relating to registered recovery agents;~~ to amend and reenact sections 26.1-26.6-01,  
3 26.1-26.6-04, 26.1-26.6-05, ~~and~~ 26.1-26.6-07, 43-30-01, 43-30-02, 43-30-03, 43-30-04,  
4 53-30-05, 43-30-10, 43-30-11, and 43-30-16 of the North Dakota Century Code, relating to bail  
5 bond agents, ~~recovery agents, and~~ defendant retrieval, and licensure and regulation of recovery  
6 agents; and to provide a 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 is  
9 amended and reenacted as follows:

10 **26.1-26.6-01. DefinitionDefinitions.**

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

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

16 2. ~~"Registered recovery~~Recovery agent" means ~~any person that has been registered by~~  
17 ~~the commissioner under this~~an individual who is licensed as a recovery agent under  
18 chapter 43-30 and to whom the bail bond agent or security has transferred ~~arrest~~  
19 ~~authority to take into custody a defendant on a bail bond~~recovery service authority.

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

1           **26.1-26.6-04. ~~Qualification~~Appointment and license as bail bond agent - Pledge of**  
2 **property as security - Penalty.**

3           A person may not act in the capacity of a bail bond agent or perform any of the functions,  
4 duties, or powers prescribed for a bail bond agent under this chapter unless that person is  
5 ~~qualified~~appointed and licensed as provided in this chapter. However, this section does not  
6 prohibit any individual from pledging real or other property as security for a bail bond in judicial  
7 proceedings if the individual does not receive, or is not promised, money or other things of  
8 value therefor. Violation of this section is a class BA misdemeanor.

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

11           **26.1-26.6-05. Violations - Penalties.**

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

1           the bond. Such collateral security or other indemnity required by the bail bond  
2           agent must be reasonable in relation to the amount of the bond.

3           g. Willfully failing to return collateral security to the principal when the principal is  
4           entitled to the security.

5           h. Knowingly employing a person whose insurance producer license has been  
6           revoked, suspended, or denied in this or any other state.

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

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

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

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

19          ~~3.4.~~ A bail bond agent may not sign nor countersign any blank in any bond, nor give up  
20          power of attorney to or otherwise authorize, anyone to countersign the bail bond  
21          agent's name to bonds.

22          ~~4.5.~~ When a bail bond agent accepts collateral, the bail bond agent shall give a written  
23          receipt for the collateral and this receipt must contain a full description of the collateral  
24          received in the terms of redemption. The bail bond agent shall keep copies of all  
25          receipts of the bonds to be placed in business to be available to the commissioner for  
26          the commissioner's review.

27          ~~5.6.~~ The provisions and penalties under this section are in addition to those provided under  
28          chapter 26.1-26.

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

1        **26.1-26.6-07. Surrender of defendant prior to breach- Penalty.**

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

4        1. ~~At any time after a defendant has been released from custody pursuant to a bail bond,~~  
5        ~~the surety or, bail bond agent, or registered-recovery agent may surrender the~~  
6        ~~defendant, or the defendant may surrender, to the official to whose custody the~~  
7        ~~defendant would have been given had the defendant been committed. The defendant~~  
8        ~~may be surrendered without the return of premium for the bond if the defendant has~~  
9        ~~been guilty of nonpayment of premium, changing address without notifying the bail~~  
10       ~~bond agent, self-concealment, or leaving the jurisdiction of the court without the~~  
11       ~~permission of the bail bond agent, or of violating the defendant's contract with the bail~~  
12       ~~bond agent in any way that does harm to the bail bond agent, the registered-recovery~~  
13       ~~agent, or the surety, or violates the obligation to the court.~~

14       2. For the purpose of surrendering the defendant, the surety, bail bond agent acting as  
15       an agent for the surety, or registered-recovery agent may arrest the defendant before  
16       ~~the forfeiture of the undertaking~~, or by written authority endorsed on a certified copy of  
17       the undertaking, may empower any peace officer to make arrest, first paying the lawful  
18       fees therefor.

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

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

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

23       c. Is a registered-recovery agent.

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

25       ~~— **SECTION 5.** Section 26.1-26.6-07.1 of the North Dakota Century Code is created and~~  
26       ~~enacted as follows:~~

27       ~~— **26.1-26.6-07.1. Registered recovery agents.**~~

28       ~~— The commissioner shall register recovery agents. The licensing and continuing education~~  
29       ~~requirements under chapter 26.1-26 do not apply to registered recovery agents. The~~  
30       ~~commissioner shall adopt rules establishing a registration fee, qualifications for registration, and~~  
31       ~~the process and terms for registration renewal and revocation.~~

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

3 | **43-30-01. Definitions.**

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

- 5 | 1. "Board" means the private investigative and security board.
- 6 | 2. "Employee" means an employee under a contract of employment as defined in  
7 | chapter 34-01, and not an independent contractor as defined by the common-law test.
- 8 | 3. "License" includes a registration issued by the board.
- 9 | 4. "Licensee" includes an individual who is registered by the board.
- 10 | 5. "Private investigative service" means, for a fee, reward, or other consideration,  
11 | undertaking any of the following acts for the purpose of obtaining information for  
12 | others:
  - 13 | a. Investigating the identity, habits, conduct, movements, whereabouts,  
14 | transactions, reputation, or character of any person or organization;
  - 15 | b. Investigating the credibility of persons;
  - 16 | c. Investigating the location or recovery of lost or stolen property, missing persons,  
17 | owners of abandoned property or escheated property, or heirs to estates;
  - 18 | d. Investigating the origin of and responsibility for libels, losses, accidents, or  
19 | damage or injuries to persons or property;
  - 20 | e. Investigating the affiliation, connection, or relationship of any person, firm, or  
21 | corporation with any organization, society, or association, or with any official,  
22 | representative, or member thereof;
  - 23 | f. Investigating the conduct, honesty, efficiency, loyalty, or activities of employees,  
24 | persons seeking employment, agents, or contractors and subcontractors;
  - 25 | g. Investigating or obtaining evidence to be used before any authorized  
26 | investigating committee, board of award, board of arbitration, administrative body,  
27 | or officer or in preparation for trial of civil or criminal cases; or
  - 28 | h. Investigating the identity or location of persons suspected of crimes or  
29 | wrongdoing.
- 30 | 6. "Private security service" means furnishing for hire security officers or other persons  
31 | to:

- a. Protect persons or property;
- b. Prevent or detect theft or the unlawful taking of goods, wares, or merchandise, or to prevent the misappropriation or concealment of goods, wares, merchandise, money, bonds, stocks, choses in action, notes, or other valuable documents or papers;
- c. Control, regulate, or direct the flow of or movements of the public, whether by vehicle or otherwise, to assure protection of private property;
- d. Prevent or detect intrusion, unauthorized entry or activity, vandalism, or trespass on private property;
- e. Perform the service of a security officer or other person for any of these purposes; or
- f. Transport money or negotiable securities to or from a financial institution or between business locations on a regular or daily basis, except for mail delivery.

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

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

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

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

This chapter does not apply to:

1. Any investigator or officer directly employed by or under any direct contract with the federal government, state, or any county or city thereof, appointed, elected, or contracted with, by due authority of law, while engaged in the performance of official duties. Subcontractors of agencies directly contracted with these entities are not exempted.
2. Any state's attorney.

- 1       3. Any attorneys or counselors at law in the regular practice of their profession and any  
2       paralegal or legal assistant employed by an attorney or law firm when the attorney or  
3       law firm retains complete responsibility for the work product of the paralegal or legal  
4       assistant.
- 5       4. Any person engaged exclusively in obtaining and furnishing information as to the  
6       financial standing, rating, and credit responsibility of persons or as to the personal  
7       habits and financial responsibilities of applicants for insurance, indemnity bonds, or  
8       commercial credit.
- 9       5. A collection agency or finance company licensed to do business under the laws of this  
10      state, or an employee of one of those companies, while acting within the scope of  
11      employment when making an investigation incidental to the business of the agency,  
12      including an investigation as to location of a debtor and of the debtor's assets or  
13      property, provided the client has a financial interest in or a lien upon the assets or  
14      property of the debtor.
- 15     6. Any person making any investigation of any matter in which that person or the person  
16     by whom that person is solely employed is interested or involved.
- 17     7. A person whose sole investigative business is obtaining or furnishing information  
18     about acts or individuals from public records, other than those investigating the  
19     location or recovery of abandoned or escheated property, owners of abandoned or  
20     escheated property, or heirs to estates.
- 21     8. An expert who specializes in a specific, limited area of practice, including automotive  
22     accident reconstructions, fire origin and cause investigations, technical surveillance  
23     countermeasures, handwriting analysis, auditor, accountant or accounting clerk  
24     performing audits or accounting functions, or other areas of practice covered by other  
25     licensure in the state, and other areas determined by the board, that fall within the  
26     individual's scope of employment, incidental to the investigative profession.
- 27     9. Persons reporting for any media, including news reporters or news investigators.
- 28     10. A person providing mystery or secret shopping services, or providing a similar service,  
29     used for evaluating customer service, products, services, pricing, locations, or  
30     consumer issues so long as the evaluation is not for purposes of litigation or  
31     discovering violations of law.

1 11. As it relates to providing a recovery service, a bail bond agent licensed under chapter  
2 26.1-26.6.

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

5 **43-30-03. Private investigative and security board.**

6 The governor shall appoint a private investigative and security board. The board must  
7 consist of not less than five nor more than eleven members appointed for staggered four-year  
8 terms. Appointees to the board must be knowledgeable in private investigative ~~or~~, private  
9 security, or recovery matters. A majority of the members of the board must be actively engaged  
10 in the private investigative ~~or~~, security, or recovery profession, with at least one member actively  
11 engaged in law enforcement. Members of the board may not receive any compensation for their  
12 service on the board, but they are entitled to be reimbursed for their expenses incurred in  
13 performing their duties in the amounts provided by law for state employees.

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

16 **43-30-04. Powers of the board.**

17 1. The board shall establish by rule the qualifications and procedures for classifying,  
18 qualifying, licensing, bonding, and regulating persons providing private investigative  
19 ~~and~~, security, and recovery services, including armed security personnel. All rules  
20 adopted by the board and appeals therefrom must be in accordance with chapter  
21 28-32.

22 2. The board may hire office personnel ~~deemed~~the board deems necessary ~~by it~~ for  
23 carrying ~~on its~~out the board's official duties and shall set the compensation to be paid  
24 to the personnel.

25 3. Upon initial licensure and annually thereafter, the board shall provide the attorney  
26 general and the insurance commissioner with a list of the recovery agent licensees.  
27 Upon request of the attorney general or the insurance commissioner, the board shall  
28 provide information regarding recovery agent licensees.

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



1        **43-30-05. License required to provide private investigative ~~or~~, security, or recovery**  
2 **services - Exclusivity.**

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

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

9        **43-30-10. Penalty - Injunction - Unlicensed activity.**

10        1. Any person ~~who~~that violates this chapter or rules adopted under this chapter, or any  
11 person ~~who~~that provides a private investigative service ~~or~~, private security service, or  
12 recovery service without a current license issued by the board, or falsely states or  
13 represents that the person has been or is a recovery agent or an investigative officer  
14 or employed by an investigative or security officer or agency is guilty of a class B  
15 misdemeanor.

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

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

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

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

1       **43-30-11. Renewal of licenses.**

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

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

7       **43-30-16. Examination, license, and registration fees.**

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

- 9       1. The fee to be paid by an applicant for an examination to determine the applicant's  
10       fitness to receive a license as a private investigator-~~or~~, a license to provide private  
11       security services, or a license as a recovery agent may not exceed one hundred  
12       dollars.
- 13       2. The fee to be paid by an applicant for the initial issuance or the renewal of a license as  
14       a private investigator-~~or~~, a license to provide private security services, or a license as a  
15       recovery agent may not exceed one hundred fifty dollars. A late fee not to exceed fifty  
16       dollars may be charged for each month the renewal fee is due and unpaid.
- 17       3. The fee to be paid by an applicant to apply for a license to conduct a private security  
18       or detective agency may not exceed one hundred dollars.
- 19       4. The fee for the issuance or the renewal of a license to conduct a private security or  
20       detective agency may not exceed three hundred dollars. A late fee not to exceed one  
21       hundred dollars may be charged for each month the renewal fee is due and unpaid.
- 22       5. The one-time fee to be paid by an applicant for the issuance of a private security  
23       training certificate may not exceed twenty-five dollars.
- 24       6. The annual fee to be paid by an applicant for the issuance of an armed private security  
25       certificate may not exceed twenty-five dollars. A late fee not to exceed ten dollars may  
26       be charged for each month the renewal fee is due and unpaid.
- 27       7. The fee to be paid for the issuance of a duplicate license may not exceed twenty  
28       dollars.
- 29       8. The initial registration fee to provide private investigative service or private security  
30       service may not exceed twenty-five dollars. The fee for the renewal of a registration to  
31       provide private investigative service or private security service may not exceed

1           twenty-five dollars. A late fee not to exceed ten dollars may be charged for each month  
2           the renewal fee is due and unpaid.

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