

**2015 HOUSE JUDICIARY**

**HB 1126**

# 2015 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee  
Prairie Room, State Capitol

HB1126  
2/9/2015  
Job #23506

- Subcommittee  
 Conference Committee

Committee Clerk Signature

*Kenneth M. Terhune*

## Explanation or reason for introduction of bill/resolution:

Relating to bail bond agents and defendant retrieval; and to provide a penalty.

## Minutes:

Attachments: #1, #2.

Chairman K. Koppelman called the committee to order, and called for testimony in support of HB 1126.

**Jeff Ubben, General Counsel, ND Insurance Department:** (See Testimony #1) (:40-5:35)  
HB 1126 does three things. It clarifies that a bail bond agent must be licensed by the Insurance Department and appointed by a surety company before acting in the capacity of a bail bond agent. It requires bail bond agents to monitor the status of the bonds they write in order to insure timely return of the collateral that they have taken. And it defines who can participate in the practice of defendant retrieval, which is a practice less formally known as bounty hunting.

**Rep. L. Klemin:** On page 1, line 14; are you changing Class B misdemeanor to a Class A misdemeanor? You didn't cover that in your testimony. What is the reason for that increase in the penalty?

**Jeff Ubben:** We have an A misdemeanor in another part of Chapter 26.1-26.6 that is not on the bill before you, and we thought we would make it consistent with the A misdemeanor in the other section of that chapter of the Code. I do not have the other section in front of me right now.

**Rep. L. Klemin:** Class B misdemeanor is currently 30 days and/or \$1500 for an individual. I didn't recall what an organizational fine for this would be. Some of these bond agents would be companies? When it says a person, it's not necessarily an individual, is it? What is the organizational fine for a Class A and Class B?

**Jeff Ubben:** I believe the Century Code does say "individual." I believe it is 30 years and a fine of either \$1000 or \$2000 or both, and for a Class A misdemeanor penalty would be one year maximum penalty. For an organization, there would be an individual linked to the business entity.

**Vice Chairman Karls:** Would you describe what a surety company would be versus a bond company?

**Jeff Ubben:** Surety and bond companies would be the folks that financially back the bail bonds that are issued in the state. If a defendant gets a \$10,000 cash or surety bond, typically the bail bond company requires them to put up \$1000 of their own money, and the bail bond company puts up the remaining \$9000.

**Vice Chairman Karls:** Is the surety company the same thing? It seems to be different in your testimony.

**Jeff Ubben:** Yes, they are the same thing.

**Rep. G. Paur:** On page 2 there are also three instances of "person" and on page 4. Should that be person or individual?

**Rep. L. Klemin:** The organizational fines for an organization: Class B misdemeanor is a maximum fine of \$10,000, and Class A misdemeanor is a maximum fine of \$15,000. We can't send an organization to jail, so we just have fines. So it looks like what you're proposing here for an organization on line 14 is to increase the penalty from \$10,000 to \$15,000.

**Jeff Ubben:** That was not something I considered when we proposed to move that penalty up, but that's the effect of the law.

**Chairman K. Koppelman:** For an individual, we're going from a Class B to a Class A misdemeanor, which is a difference of 30 days in jail up to one year in jail potentially, and doubling of the fine from \$1500 to \$3000. Had you really considered the amount of increase? Or were you just trying to be consistent with the other section?

**Jeff Ubben:** I was trying to be consistent with the other section.

**Rep. L. Klemin:** I mis-spoke on the organizational fines. Actually, we amended that in 2013. The maximum fine for a Class B misdemeanor is \$20,000. And the Class A misdemeanor, the maximum is \$30,000.

**Rep. Maragos:** How does the bond process work? When they bond someone out to the court, don't they have to pay out the full amount of the bond?

**Jeff Ubben:** What this individual was doing, was writing a phony bail bond on his own bail bond business that did not have the funds to back it. He wrote on the bail bond that this bond is good for \$400,000 in one case. But there wasn't \$400,000 backing that bond, had the court called it in. Nobody verified that the funds exist.

**Chairman K. Koppelman:** Clarify what a bail bond is?

**Jeff Ubben:** It is a piece of paper that proclaims to be a bail bond. It's an instrument saying that we, the bail bond company, stand indebted for the amount of the bail bond, and we're pledging this to you to make sure the defendant shows up, makes his appearances, follows the orders of the court. When they hand that piece of paper over to the jail or the court, we've come to see that the jail or the court system doesn't verify that there's actually \$400,000 behind that bail bond.

**Chairman K. Koppelman:** They work like an insurance company. If a bail bond is written for \$400,000 and submitted to the court, that is the assurance of the writer of the bond or the company backing it that the money is there, and that if this individual doesn't show up for trial or whatever the scenario is, that is forfeited and the court could come back to that individual or that entity for those funds, and if everything is working correctly, then that would be paid off just like a claim on an insurance policy. They do that because the defendant doesn't have \$400,000, so they're pledging their house or something else.

**Jeff Ubben:** That is exactly correct. It's house or land or something of value.

**Rep. Brabandt:** If you have a \$400,000 bond, doesn't that mean the defendant has to come up with \$40,000, ten percent? Is that normally the percentage?

**Jeff Ubben:** It is typically ten percent of the bond amount that has to be paid in cash.

**Rep. D. Larson:** When the whole thing is over and the defendant shows up in court, what does the bail bondsman charge the person for putting that surety up for them?

**Jeff Ubben:** There is currently a cap up to 10% on the bond that they can charge. So, if you're selling a \$400,000 bond, you're making \$40,000 off that.

**Rep. K. Wallman:** The jails aren't verifying that these bonds are backed with actual dollars? Maybe they should be checking.

**Jeff Ubben:** Yes; this could have been prevented in the county where this particular bond was issued.

**Rep. K. Wallman:** Is there any reason why an assurance is not in this bill? That the jails would do that? It seems like the onus should certainly be on the people who are providing the bonds. And the surety companies not to extend themselves in ways that they aren't backed. On the other hand, it seems like the jails should also be doing their part to make sure they're not taking faulty bonds.

**Jeff Ubben:** We didn't go that far because we are limited to the things the Insurance Department has regulatory control over, and we probably can't be telling the sheriff's departments how to operate.

**Rep. P. Anderson:** How many bail bondsmen do we have and how many would you say are bad actors?

**Jeff Ubben:** We have 30 licensed resident bail bondsmen, and 35 licensed non-resident bail bondsmen. We've had administrative actions against three or four of those folks in the last two years.

**Rep. P. Anderson:** Are they rated at all? So that if someone needs a bail bondsman and there are three in a row, how can they know which is a good one?

**Jeff Ubben:** No, it is word of mouth and reputation among the folks that use those services.

**Rep. Maragos:** When somebody goes to the sheriff's office and purports to be a bail bondsman, what does the sheriff's office do to be sure this is a licensed bondsman?

**Jeff Ubben:** I do not know because I am not at the sheriff's office when they go in to present that.

**Rep. G. Paur:** In your example, I take it that the person requiring the bond did show up?

**Jeff Ubben:** They have made all their court proceedings to date, that we know of. I don't know if they have made it to trial yet.

**Rep. G. Paur:** What would have happened to the bail bondsman if he would have skipped the state and the bail had to be forfeited, and it wasn't the money?

**Jeff Ubben:** I did talk to the judge in this case. He brought the defendant back before the court, and issued a new bond in that case. Basically he discarded his previous bond order, where they had accepted that bond. So they did have a separate bond in place after they discovered that the bond was fraudulent.

**Rep. G. Paur:** But there probably would have been some criminal liability for the bail bondsman for not having the assets?

**Jeff Ubben:** It is possible there could have been criminal charges filed against them.

**Chairman K. Koppelman:** You begin your testimony saying the Insurance Commissioner's office is responsible for licensing bail bondsmen, and especially in light of the issues that you brought forward, and since you're the licensing entity, I would encourage you to inquire a little more about the bonding process and see more dialog with law enforcement or the court system on how that linkage goes? On the last page of the bill, you say you have to be a bail bondsman; is that a perfect fit. Maybe there are people engaged in that activity who are not necessarily bail bondsmen, or who might be the agent of a bail bondsman? We have another board in our state that regulates private investigators, for example. Have you talked with anyone else about this?

**Jeff Ubben:** This bill is to protect the public. We want to make sure the folks engaging in these activities are reputable people. We're looking at it from a different point of view. We have had some scary instances in the last few years where peoples' homes have been invaded by folks proclaiming to be bounty hunters who are actually fugitives awaiting criminal charges in other states. We had several complaints, and said what can the department do about this? The laws, as they are now, are piecemeal. They have to be patched together to find some kind of criminal offense for this kind of criminal conduct. So we tried to address it from that point of view.

**Chairman K. Koppelman:** You have tied that to being either the surety or bond agent who is appointed by the surety? An option would be that you could still license these folks, since there is a connection, but maybe not put the language in there that so tightly ties them with that. In other words, that they have to be one to do the other. Please think and talk that through, and maybe let us know. We have no objection to your getting them licensed, no objection to the insurance commissioner's office doing it. I'm just wondering if tying those two together, the way this language does, is the best way.

**Jeff Ubben:** We wanted to make sure there was a legitimate link between the bail bond company and the person going out on their behalf and trying to find folks, as opposed to, you know, you could come in to North Dakota and get a bail bond agent license quite easily, and that just adds a little bit of extra protection there for folks, when you have an actual link to the surety company as well. Then they have an interest too.

**Chairman K. Koppelman:** Private investigators and private security are linked. How difficult is it to get a bail bond license?

**Jeff Ubben;** There is a \$100 licensing fee and a background check, and an investigation as well. As long as that checked out and you paid the fee, you would become licensed.

**Rep. L. Klemin:** On the penalties on page 4; you make a violation of this section a Class C felony. You did also say this could be a company. So we're looking at an organizational fine. That is \$50,000 for a Class C felony. Why did you chose Class C there?

**Jeff Ubben:** We think an unauthorized person going into someone's home is a very serious act, and that it should have serious consequences. To us, it felt like a criminal trespass. If you do that, under the law it is a Class C felony.

**Rep. L. Klemin:** So you moved it up from a Class A misdemeanor to a Class C felony?

**Jeff Ubben:** We decided to go with the higher of the two; a Class C felony. The law right now doesn't make a penalty for bounty hunting. There is not a criminal penalty associated with that right now.

**Rep. K. Hawken:** It says this was introduced by the Judiciary Committee. I'm assuming that's the *interim* Judiciary Committee.

**Chairman K. Koppelman:** I believe the Insurance Commissioner requested a bill and it was sent to us. If you have \$100 and a clean criminal record, you can pretty much become a bail bondsman.

**Jeff Ubben:** You can become licensed as a bail bondsman. You would also need to be appointed with a surety company.

**Chairman K. Koppelman:** There's nothing that verifies my financial wherewithal to be licensed or verifies that I have that kind of relationship with a surety company. So it kind of invites the mis-use that you talked about, unless we tighten that up? So does the bail bond physically have the bond person or the bond company's name on it, or does it have the surety company's name, or both?

**Jeff Ubben:** It isn't necessarily as easy to get appointed as an agent of a surety company. If you are just a bail bond agency then you are not a surety company. It does have the company's name right on the bond.

**Chairman K. Koppelman:** If I called it an ABC bonding and surety. If I create a bond and bring it in, is there any checking to make sure there is any financial wherewithal behind ABC company? I could have \$200 in the bank. If I go into the jail and spring somebody with that \$50,000 bond, how do they know that's real?

**Jeff Ubben:** You have to have a surety company backing your bond. When you become a licensed surety company, then you've got the insurance community regulating your reserves and your financial solvency.

**Chairman K. Koppelman:** When they see that bond, are these companies people they are familiar with? Would they know these are valid?

**Jeff Ubben:** Typically, the jailers are familiar with the bonding companies or the actual insurance companies because there aren't that many of them. There's only three or four in the Dakotas.

**Rep. G. Paur:** In your \$400,000 example, if that bond would have been forfeited, the surety company would have had to come up with the \$400,000. Right?

**Jeff Ubben:** There was no surety company. It was just the bail bondsman saying that his business had the \$400,000 when he wrote that bond.

**Chairman K. Koppelman:** Maybe you can just walk us through what you know, based on what you've heard about how it works on your side of the equation.

**Pat Heinert, Burleigh County Sheriff:** First of all, we back up to the bail bondsman and the surety company that they're supposed to be working for. In our judicial district we get notified by the judicial district that this bonding company is a viable bonding company for us. We, as the sheriff's department or the detention center, do not call these companies. We do not follow up on that, so I'm assuming some things here, and probably shouldn't be; and I've learned a couple things this morning, so I will do some more checking at our site.

Typically we get notified by the courts or not whether they are good or not. We have been notified by the courts that this company has been suspended for a period of time and/or is no longer capable of filing a bond for a person in this judicial district.

**Chairman K. Koppelman:** Do you know whether a surety company needs to register with the court, or in some way communicate? There must be some way for them to know who's real and who isn't.

**Pat Heinert:** Yes, our head justice in our judicial district requires that they pre-notify the courts and show their certificate that they are a viable company in North Dakota, and do have a surety backing.

Any further testimony in support? None.

Opposition: None

Neutral:

**Pat Bohn, Director for Transitional Planning Services, N.D. Dept. of Corrections.** (Refers to Att. #2) I'm here mainly to raise some awareness that enhancing criminal penalties over time incrementally increases the entire workload on the entire criminal justice system, resulting in the growth depicted below. We're not talking about a lot of people, but pieces here and there, it all starts to add up. I'm not saying penalties should never be enhanced or added; just in the context of this, just considering what is really necessary to accomplish the goals.

**Chairman K. Koppelman:** Any further testimony on HB 1126?

Hearing closed.

# 2015 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee  
Prairie Room, State Capitol

HB 1126  
2/18/2015  
24097

- Subcommittee  
 Conference Committee

Committee Clerk Signature



## Minutes:

Proposed amendment #1, Handout #2

**Chairman K. Koppelman:** (See proposed amendment #1) (See handout #2) This looks at a side by side; legislative counsel gives us this and they researched it. It talks about what various states have done with recovery agents, which are essentially bounty hunters. The original bill deals mostly with surety and the idea bail bondsmen need to have appropriate surety etc. That is the intent of the bill. Had met with the private investigators and private security board; and repeatedly with the Attorney General and a couple times with the insurance department and this is a work in progress. We asked legislative counsel for a placeholder amendment that we would put on the bill and as it goes to the Senate we would continue to confer with the various interested parties and ensure that we had something that would work going forward, but it will probably also be amended. Went through the amendment and handout. (2:48-3:48) There are other bail bondsmen who will be their own bounty hunter in affect and go out and catch those folks and bring them back if they need to get them to court. There are also people who are free lancers and they come into our state and go after bail bond agents. In those cases we have no handle on how to follow those people; how to register them; and how to make sure they are in our state; and it does occur where all of a sudden they will hear about a case where somebody came in and broke into a place and apprehended somebody and they are all up in arms because is this a kidnapping or assault or what is this and it is somebody chasing a bale bond.

**Rep. Maragos moved the amendment 01001 to HB 1126; Seconded by Rep. P. Anderson:**

**Rep. L. Klemin:** This definition of bail bond agent and registered recovery agent; both say it means an individual and bail bond agent could be a company, which is not an individual, it is a person. You go to the bill the existing law on page 1, line 9 starts out a person may not act in the capacity of bail bond agent so this change here is inconsistent with the line I just read. Finally there is a big difference in the penalties because the penalty we are changing this from a Class B to a Class A misdemeanor so the organizational fines are significant if we are dealing with a person here who violates this thing which is the company so I am not too surer deleting person under bail bond agent and putting individual is the right thing to do there.

**Chairman K. Koppelman:** That is a good catch. I would certainly consider that friendly if the maker and seconded of the motion would agree to change that. Agreed so that changes to remove the overstrike over person and over strike individual on section 1 subsection 1 of the amendment. Also will do that on subsection 2 also.

**Rep. Lois Delmore:** Discussed the Sections and it was considered a drafting question and the intern will check on this will Legislative Counsel. Are the penalties staying in there? I don't see the Class B to a misdemeanor on page 1 and I don't see the felony in Section 3?

**Rep. L. Klemin:** They are not taken out so they remain. Also the penalties remain the same too.

**Voice vote to adopt amendments 15.8094.01001 and overstrike section 1 and 2:  
Motion carried.**

**Rep. Karls moves a do pass as amended. Seconded by Rep. P. Anderson:**

**Roll Call Vote: 13 Yes 0 No 0 Absent Carrier: Rep. P. Anderson:**

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1126

Page 1, line 1, after "to" insert "create and enact section 26.1-26.6-07.1 of the North Dakota Century Code, relating to registered recovery agents; to"

Page 1, line 1, after "sections" insert "26.1-26.6-01,"

Page 1, line 2, after "agents" insert ", recovery agents,"

Page 1, after line 4, insert:

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

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

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

1. "Bail bond agent" means any ~~person~~individual who has been licensed by the commissioner and appointed by an insurer by power of attorney to execute or countersign bail bonds for the insurer in connection with the judicial proceedings and charges and receives money for the services.
2. "Registered recovery agent" means an individual who has been registered by the commissioner under this chapter and to whom the security has transferred arrest authority to take into custody a defendant on a bail bond."

Page 3, line 19, overstrike the first "or" and insert immediately thereafter an underscored comma

Page 3, line 19, after "agent" insert ", or registered recovery agent"

Page 3, line 26, after the first comma insert "the registered recovery agent."

Page 3, line 27, replace "or licensed" with an underscored comma

Page 3, line 28, after "surety" insert ", or registered recovery agent"

Page 4, line 2, replace "is" with ":

a. Is"

Page 4, line 2, remove "or"

Page 4, line 3, replace "is a person licensed as" with ":

b. Is"

Page 4, line 3, after "surety" insert: ", or

c. Is a registered recovery agent"

Page 4, line 3, remove "This"

Page 4, remove line 4

Page 4, after line 5, insert:

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

**26.1-26.6-07.1. Registered recovery agents.**

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

Renumber accordingly

ed  
2/18/15  
1/2

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1126

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c. Is a registered recovery agent"

Page 4, line 3, remove "This"

27

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Renumber accordingly

Date: 2-18-15  
Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1126

House JUDICIARY Committee

Subcommittee  Conference Committee

Amendment LC# or Description: 15.8094.01001

Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
Other Actions:  Reconsider  \_\_\_\_\_

Motion Made By Rep. Maragos Seconded By Rep. Anderson

Representative	Yes	No	Representative	Yes	No
Chairman K. Koppelman			Rep. Pamela Anderson		
Vice Chairman Karls			Rep. Delmore		
Rep. Brabandt			Rep. K. Wallman		
Rep. Hawken					
Rep. Mary Johnson					
Rep. Klemin					
Rep. Kretschmar					
Rep. D. Larson					
Rep. Maragos					
Rep. Paur					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

+ over Section 172  
Motion carried.

Date: 2-18-15  
Roll Call Vote #: 2

2015 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1126

House JUDICIARY Committee

Subcommittee  Conference Committee

Amendment LC# or Description: 15.8094.01001 + restructure section 1+2

Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
Other Actions:  Reconsider  \_\_\_\_\_

Motion Made By Rep. Karls Seconded By Rep. Anderson

Representative	Yes	No	Representative	Yes	No
Chairman K. Koppelman	✓		Rep. Pamela Anderson	✓	
Vice Chairman Karls	✓		Rep. Delmore	✓	
Rep. Brabandt	✓		Rep. K. Wallman	✓	
Rep. Hawken	✓				
Rep. Mary Johnson	✓				
Rep. Klemin	✓				
Rep. Kretschmar	✓				
Rep. D. Larson	✓				
Rep. Maragos	✓				
Rep. Paur	✓				

Total (Yes) 13 No 0

Absent 0

Floor Assignment Rep. Anderson

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

REPORT OF STANDING COMMITTEE

HB 1126: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1126 was placed on the Sixth order on the calendar.

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

Renumber accordingly

**2015 SENATE JUDICIARY**

**HB 1126**

# 2015 SENATE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Fort Lincoln Room, State Capitol

HB 1126  
3/16/2015  
24920

- Subcommittee  
 Conference Committee

Committee Clerk Signature

*Kate Oliver for Dawn Penrose*

**Minutes:**

1,2

Chairman Hogue called the committee to order and opened the hearing on HB 1126. Jeff Ubben was on hand to introduce the bill.

Jeff Ubben: General Counsel and Director of Legal Division for the North Dakota Insurance Department. See attachment #1/#2. /

Chairman Hogue: So this amendments dated 3/16/2015 those put the bill back in its original form, correct?

Jeff Ubben: Yes with one exception, the original bill had a provision in it that stated that these provisions do not affect the provisions of chapter 29-06 of the Code.

Chairman Hogue: With the bill in its current form you say we are laying out the welcome mat for these self-style bounty hunters. In what way would they be incentivized to come to North Dakota by the 2000 version of this bill?

Jeff Ubben: Currently bounty hunting is illegal so this would legalize the practice of bounty hunting. It would allow people to come in, register as a bounty hunter and undertake the task. The thing that the insurance is concerned about is these self-style bounty hunters coming in and basically running around and chasing people down.

Senator Grabinger: The original intent of the bill, when say who can participate in practices did there need to be clarification under the law? Are you saying that if we needed to clarify and you are not happy with how the House clarified?

Jeff Ubben: Yes, they opened bounty hunting to allow anyone to come in and bounty hunt. The insurance department's intent is to limit who can participate in the practice of bounty hunting.

Senator Grabinger: The law as it was before this bill, what is the difference between the law then and the law as it is proposed in this bill?

Jeff Ubben: The original bill only allowed security companies to engage in defendant retrieval. This bill, as it is written with the House amendments, allows everyone to do it.

Senator Armstrong: Page 4 line 17, it becomes a felony immediately. Why is it a felony?

Jeff Ubben: Some pretty serious acts have been committed by these self-style bounty hunters.

Senator Casper: Can you describe what you have been calling 'self-style' bounty hunter?

Jeff Ubben: We had a person from South Carolina come into Fargo, round up a bunch of locals telling them that he was making a reality television show. It turned out that he himself was wanted in Indiana and South Carolina.

Senator Casper: You are asking us as a legislature to make a policy decision if we want to allow folks to come in and fulfill a bond without having a contractual relationship.

Jeff Ubben: We are only allowing people who have a contractual relationship to become a bounty hunter.

Senator Casper: Do you have any idea how many people are in North Dakota that are in violation of their bond agreement?

Jeff Ubben: I do not.

Chairman Hogue: The commissioner is in support of the bill as originally written but not in it's current form, is that correct?

Jeff Ubben: That is correct.

Senator Nelson: If the commissioner is opposed to the bill in its current form what are the ramifications to killing the bill?

Jeff Ubben: The first two provisions of the bill, the one that clarifies the language that states you have to be appointed as well as be licensed as a bail bondsman that would go out. The second piece is that we would lose the piece that says that the bail bondsman has a duty to monitor the collateral to ensure timely return. The last piece is that we have these self-style bounty hunters in the state operating without there being a law against bounty hunting.

Senator Nelson: Can't you set rules about the collateral without putting it in statute?

Jeff Ubben: That is a tough question. I think we would rather have nothing, honestly.

Senator Grabinger: For a bounty hunter to come in, catch somebody and try to claim on the bond that person must already have an agreement with the bonding company.

Jeff Ubben: A lot of the time they do not have a relationship with the bonding agency, they are just out there to make a name for themselves.

Senator Grabinger: How did they find out that this individual was wanted in those states?

Jeff Ubben: I do not know.

Senator Armstrong: If you are an unlicensed bounty hunter and you do not have the authority to do it in North Dakota you have no legal protections to the various offenses that you are committing. Without the underlying prohibition you still have about 15-20 things in 12.1 that you could charge an unlicensed bounty hunter for am I correct?

Jeff Ubben: Depending on their conduct yes, there would be offenses that they could charge.

Senator Armstrong: If bounty hunting is illegal in North Dakota they have no legal protection for anything they are doing.

Jeff Ubben: They can try and make the argument that they do, I have seen arguments made that they are acting under the citizen's arrest chapter.

There was no further testimony and Chairman Hogue closed the hearing on HB 1126.

# 2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee  
Fort Lincoln Room, State Capitol

HB 1126

3/25/2015

25428

Subcommittee

Conference Committee

Committee Clerk Signature

*A. Penrose*

Minutes:

1

Ch. Hogue: Let's take a look at HB 1126. In this bill, the Insurance Dept. brought this bill to the House and they looked at it and added their own issues in regard to recovery agents or bounty hunters. Sen. Armstrong had amendments.

Sen. Armstrong: Explained the amendments (see attached #1). These are the Insurance Dept.'s amendments with the addition of page 4, line 117. The first violation of this section is an A misdemeanor and the 2<sup>nd</sup> or subsequent violations are a felony. The reason that I put that in there, because the way this is worded it could be a bad actor or it could be that somebody forgot to file paperwork. I don't think we need to make felons out of people who forgot to file paperwork. If you made an innocent mistake the first time, the reason you're being charged with it again the second time, is because you didn't get the point. It dropped the first offense to an A misdemeanor and raised it to a C felony on the second offense. The rest of the amendments seem to make some sense to me. I didn't look at the original draft but according to the Insurance Dept. this is the original language and the amendment they offered which seemed to make sense to me, especially if they reduced the first offense from a felony to a misdemeanor. I was concerned about the felony language immediately.

Ch. Hogue: The Insurance Commissioner has made it clear that they do not wish to regulate bounty hunters. They think it is beyond their realm so I think that's why they objected to the house amendments.

Sen. Grabinger: Can you clarify for me, are bounty hunters allowed in ND, to go after the bonds, if they aren't included in here.

Ch. Hogue: They aren't bonded.

Sen. Grabinger: For a bonding agent to go after a person and arrest them. Do we have the authority?

Ch. Hogue: The bail bondsman can.

Sen. Grabinger: But people outside of those cannot work for them.

Ch. Hogue: Not that I'm aware of. I don't have any experience in this area.

Sen. Armstrong: If you look at the bill on page 4, subsection 3, that tells you what you have to do in order to meet the requirements to do that; "you may not engage in the business of taking or attempting to take unless the person: is the surety that issued the bail bond, or is a bail bond agent and is an appointed agent of the surety".

Sen. Grabinger: So then essentially the state is not involved with it at all. It's between the surety company and the bail bondsman.

Sen. Armstrong: Yes they are going to hold both the individual and the bonding company liable if they bring "Dog" in here and he doesn't do it the way it's supposed to be done.

Sen. Nelson: On page 4, line 114 and 115. That is not reading right. Is there something missing.

Ch. Hogue: On line 115, "the" should be "that".

Sen. Armstrong: I move the amendments.

Sen. Grabinger: Second the motion.

Ch. Hogue: Voice vote, motion carried. We now have the bill before us as amended.

Sen. Luick: I move a Do Pass as Amended.

Sen. Armstrong: Second the motion.

**6 YES 0 NO 0 ABSENT DO PASS AS AMENDED CARRIER: Sen. Luick**

March 25, 2015

TW  
3/25/15

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1126

Page 1, line 1, remove "to create and enact section 26.1-26.6-07.1 of the North Dakota Century Code,"

Page 1, line 2, remove "relating to registered recovery agents;"

Page 1, line 4, remove ", recovery agents,"

Page 1, line 8, remove the overstrike over "~~Definition~~"

Page 1, line 8, remove "Definitions"

Page 1, line 9, remove the overstrike over ", ~~bail~~"

Page 1, line 9, remove the underscored colon

Page 1, line 10, remove "1. "Bail"

Page 1, remove lines 14 through 16

Page 3, line 29, remove the overstrike over "~~or~~"

Page 3, line 29, remove the first underscored comma

Page 3, line 29, remove ", or registered recovery agent"

Page 4, line 5, remove ", the registered recovery"

Page 4, line 6, remove "agent."

Page 4, line 7, replace the underscored comma with "or licensed"

Page 4, line 8, remove ", or registered recovery agent"

Page 4, line 14, after the underscored semicolon insert "or"

Page 4, line 15, replace "; or" with "that issued the bail bond."

Page 4, remove line 16

Page 4, line 17, replace "Violation of" with "A first offense under"

Page 4, line 17, after "section" insert "is a class A misdemeanor. A second offense under this section"

Page 4, remove lines 18 through 24

Renumber accordingly

Date: 3/25/15  
Voice Vote # 1

2015 SENATE STANDING COMMITTEE  
VOICE VOTE  
BILL/RESOLUTION NO. 1126

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: Insurance Dept Amendments (#1)

Recommendation:  Adopt Amendment

Do Pass     Do Not Pass     Without Committee Recommendation

As Amended     Rerefer to Appropriations

Place on Consent Calendar

Other Actions:  Reconsider     \_\_\_\_\_

Seconded By

Motion Made By Sen. Armstrong

Sen. Grabinger

Senators	Yes	No	Senators	Yes	No
Ch. Hogue			Sen. Grabinger		
Sen. Armstrong			Sen. C. Nelson		
Sen. Casper					
Sen. Luick					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

Voice Vote: Carried

Date: 3/25/15  
Roll Call Vote #: 2

2015 SENATE STANDING COMMITTEE  
ROLL CALL VOTE

BILL/RESOLUTION NO. 1126

Senate JUDICIARY Committee

Subcommittee

Amendment LC# or Description: 15.8094.02001 03000

Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
 Place on Consent Calendar  
Other Actions:  Reconsider  \_\_\_\_\_

Motion Made By Sen. Luick Seconded By Sen. Armstrong

Senators	Yes	No	Senators	Yes	No
Chairman Hogue	✓		Sen. Grabinger	✓	
Sen. Armstrong	✓		Sen. C. Nelson	✓	
Sen. Casper	✓				
Sen. Luick	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Luick

**REPORT OF STANDING COMMITTEE**

**HB 1126, as engrossed: Judiciary Committee (Sen. Hogue, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1126 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "to create and enact section 26.1-26.6-07.1 of the North Dakota Century Code,"

Page 1, line 2, remove "relating to registered recovery agents;"

Page 1, line 4, remove ", recovery agents,"

Page 1, line 8, remove the overstrike over "~~Definition~~"

Page 1, line 8, remove "**Definitions**"

Page 1, line 9, remove the overstrike over "; ~~bail~~"

Page 1, line 9, remove the underscored colon

Page 1, line 10, remove "1.     "Bail"

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Page 4, line 15, replace "; or" with "that issued the bail bond."

Page 4, remove line 16

Page 4, line 17, replace "Violation of" with "A first offense under"

Page 4, line 17, after "section" insert "is a class A misdemeanor. A second offense under this section"

Page 4, remove lines 18 through 24

Renumber accordingly

**2015 CONFERENCE COMMITTEE**

**HB 1126**

# 2015 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee  
Prairie Room, State Capitol

HB 1126  
4/21/2015  
26308

- Subcommittee  
 Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to bail bond agents and defendant retrieval; and to provide a penalty.

## Minutes:

**Rep. Brabandt, Chair:** Opened the conference committee meeting on HB 1126.  
All members were present.

**Senator Armstrong:** We essentially returned the bill to its original form. The testimony we had on the bill was from the insurance department and they thought some of the language that came back through the House side dealt with registration, but not necessarily control. They were concerned that the registration language would possibly open the door a little more than we were willing to do for these out of state bounty hunters to come into ND so we restored it back to the original language.

**Rep. K. Koppelman:** This is something we have been looking at how to best resolve since early in the session. We understand what the insurance department is attempting to do with respect to bail bondsmen. I don't know if a lot of us have a lot of concern about that. The whole issue of bounty hunters and the insurance departments attempt to deal with them was to simply have them be licensed as bail bondsmen. I think it misses the mark because a bounty hunter and bail bondsman are different. I would like the committee to consider meeting another time with some ideas I have. I think we should look at a better way to resolve this so I would like to meet another time. The main issue I think the scope of what a bounty hunter does goes well beyond what the insurance department is involved in. Certainly the work of a bounty hunter and the work of a bail bondsman intersect at some point; but to say therefore they are the same animal and we are going to regulate them the same is short sighted and bad public policy so we should look at a better way to harness that entity and perhaps license them.

**Senator Armstrong:** My question what does bounty hunters do but aren't they almost always employed by a bail bondsman? These are usually more substantial bonds; they are not hired by the courts, but by a private entity and the only private entity I can think that would hire them would be the bail bondsmen.

**Rep. K. Koppelman:** The idea that these folks coming in from out of state are necessarily going to have anything to do with a bail bondsmen in the state of ND is a flawed concept as well. If they do that I don't know if we have a handle on who they are working for either. We had the human trafficking bills and I have a constituent that she testified telling a story about her daughter was abducted almost swept into human trafficking and she was in another state and this constituent was fanatic and trying to find a way to locate her daughter and working through law enforcement and other channels and in the end she was able to rescue her but just prior to that she hired a bounty hunter. We asked her why she hired a bounty hunter and she said because they know how to find people. So I suspect bounty hunters are used for other types of things at other times and that is just one example of how that might occur.

**Senator Armstrong:** We didn't change much up to section 4 in the bill so the first three sections anyone has an issue with. Are you going to bring proposed amendments later?

**Rep. K. Koppelman:** I don't. I have had legislative counsel start working on some amendments but I see a few things that need to be adjusted a little bit so I might need another meeting.

**Adjourned.**

# 2015 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee  
Prairie Room, State Capitol

HB 1126  
4/22/2015  
Job #26363

Subcommittee  
 Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to bail bond agents and defendant retrieval; and to provide a penalty.

## Minutes:

Proposed amendment #1, Handout #2

**Rep. Brabandt, Chair:** Reopened the conference committee meeting on HB 1126.  
All members were present.

**Rep. K. Koppelman:** I have some amendments that I will hand out. (See handouts #1 & 2). I have the amendment and also the Christmas tree version. Since our last meeting I have visited with the Attorney General; folks at the bureau of criminal investigation. The issue is not with the insurance department wanting to insure that there is proper surety for bonds. The issue is really with the recovery agents or bounty hunters as they are commonly known. The nature of their work is really is much more related that intersects with law enforcement. It is related to what a private investigator does, although I know it is different. What I am hearing from law enforcement is they need to know who these people are; why they are in our state and what they are doing. Right now they don't and what happens is somebody comes in and grabs somebody and the local police or the sheriff's office doesn't know what to do with that and there is no licensing. This would create that. The insurance department was not comfortable in doing it there. A bounty hunter is not necessarily a bail bondsman or vice versa and secondly the problem seems to be mostly with people from out of the state coming in. So there are some people that do operate within the state in this capacity, but some of the trouble spots have been people coming who we don't know who they are and these incidents occur. We could create a new board or commission but that seems silly since this is a small enterprise right now. I visited with the board the licenses private investigators and private security folks and they weren't real excited about doing this. They will do what the legislature tells them to do. We feel the fit is best there so what the amendment does is it puts them there with respect to licensure. Explained the proposed amendment. (5:05-6:03)

**Motion made that the Senate recede from the Senate amendments and amend as follows by Rep. K. Koppelman: Seconded by Rep. Karls:**

Discussion:

**Senator Luick:** You had mentioned there that there weren't a lot of bail bondsmen. Any idea number wise what we are looking at?

**Rep. K. Koppelman:** No I really don't know a number. My understanding is it is not that many. What we seeing are people coming into the state; doing this work and so the amendment cares for that too. It might not even be a North Dakota bondsman's bond that they are acting on. It might be somebody from Minneapolis or Chicago or somewhere else and they are coming into ND to grab somebody and that is why we want to make sure we have a handle on it.

**Rep. Brabandt:** There are 30 resident bail bondmen and 35 non-residents.

**Rep. K. Koppelman:** That is bail bondsmen, but not recovery agents.

**Senator Armstrong:** I think I will go forward with the amendment but I am going to talk to some stake holders in the intern and may try and send us back here within the next couple of days.

**Senator Grabinger:** Do I understand now we are going to create a security board under the Governor's to do this and is there a fiscal note?

**Rep. K. Koppelman:** No we are not creating a new board. What we are doing is asking the board that currently licenses private investigators and private security people to also license bounty hunters in effect. We call them recovery agents in the bill. They charge fees and they are not a tax payer funded entity. The board will make the rules that will govern this.

**Senator Armstrong:** Right now there was an incident where a person came in who was not licensed anywhere and is being charged with felony kidnapping in Cass County. So there are still avenues for prosecuting these people. This would just clarify it.

**Roll Call Vote: 6 Yes 0 No 0 Absent**

Adjourned.

SK  
4/22/15  
116

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1126

That the Senate recede from its amendments as printed on pages 1251 and 1252 of the House Journal and page 969 of the Senate Journal and that Engrossed House Bill No. 1126 be amended as follows:

Page 1, line 1, remove "create and enact section 26.1-26.6-07.1 of the North Dakota Century Code,"

Page 1, line 2, remove "relating to registered recovery agents; to"

Page 1, line 3, remove "and"

Page 1, line 3, after "26.1-26.6-07" insert ", 43-30-01, 43-30-02, 43-30-03, 43-30-04, 53-30-05, 43-30-10, 43-30-11, and 43-30-16"

Page 1, line 4, remove "recovery agents, and"

Page 1, line 4, after "retrieval" insert ", and licensure and regulation of recovery agents"

Page 1, line 14, replace "Registered recovery" with "Recovery"

Page 1, line 14, remove "any person that has been registered by the"

Page 1, line 15, replace "commissioner under this" with "an individual who is licensed as a recovery agent under"

Page 1, line 15, after "chapter" insert "43-30"

Page 1, line 15, after "the" insert "bail bond agent or"

Page 1, line 15, remove "arrest"

Page 1, line 16, replace "authority to take into custody a defendant on a bail bond" with "recovery service authority"

Page 3, line 29, remove "registered"

Page 4, line 5, remove "registered"

Page 4, line 8, remove "registered"

Page 4, line 12, replace "A" with "Subject to chapter 43-30, a"

Page 4, line 16, remove "registered"

Page 4, replace lines 18 through 24 with:

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

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

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

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

2. "Employee" means an employee under a contract of employment as defined in chapter 34-01, and not an independent contractor as defined by the common-law test.
3. "License" includes a registration issued by the board.
4. "Licensee" includes an individual who is registered by the board.
5. "Private investigative service" means, for a fee, reward, or other consideration, undertaking any of the following acts for the purpose of obtaining information for others:
  - a. Investigating the identity, habits, conduct, movements, whereabouts, transactions, reputation, or character of any person or organization;
  - b. Investigating the credibility of persons;
  - c. Investigating the location or recovery of lost or stolen property, missing persons, owners of abandoned property or escheated property, or heirs to estates;
  - d. Investigating the origin of and responsibility for libels, losses, accidents, or damage or injuries to persons or property;
  - e. Investigating the affiliation, connection, or relationship of any person, firm, or corporation with any organization, society, or association, or with any official, representative, or member thereof;
  - f. Investigating the conduct, honesty, efficiency, loyalty, or activities of employees, persons seeking employment, agents, or contractors and subcontractors;
  - g. Investigating or obtaining evidence to be used before any authorized investigating committee, board of award, board of arbitration, administrative body, or officer or in preparation for trial of civil or criminal cases; or
  - h. Investigating the identity or location of persons suspected of crimes or wrongdoing.
6. "Private security service" means furnishing for hire security officers or other persons 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.
- 3. Any attorneys or counselors at law in the regular practice of their profession and any paralegal or legal assistant employed by an attorney or law firm when the attorney or law firm retains complete responsibility for the work product of the paralegal or legal assistant.
- 4. Any person engaged exclusively in obtaining and furnishing information as to the financial standing, rating, and credit responsibility of persons or as to the personal habits and financial responsibilities of applicants for insurance, indemnity bonds, or commercial credit.
- 5. A collection agency or finance company licensed to do business under the laws of this state, or an employee of one of those companies, while acting within the scope of employment when making an investigation incidental to the business of the agency, including an investigation as to location of a debtor and of the debtor's assets or property, provided the client has a financial interest in or a lien upon the assets or property of the debtor.
- 6. Any person making any investigation of any matter in which that person or the person by whom that person is solely employed is interested or involved.
- 7. A person whose sole investigative business is obtaining or furnishing information about acts or individuals from public records, other than those

investigating the location or recovery of abandoned or escheated property, owners of abandoned or escheated property, or heirs to estates.

- 8. An expert who specializes in a specific, limited area of practice, including automotive accident reconstructions, fire origin and cause investigations, technical surveillance countermeasures, handwriting analysis, auditor, accountant or accounting clerk performing audits or accounting functions, or other areas of practice covered by other licensure in the state, and other areas determined by the board, that fall within the individual's scope of employment, incidental to the investigative profession.
- 9. Persons reporting for any media, including news reporters or news investigators.
- 10. A person providing mystery or secret shopping services, or providing a similar service, used for evaluating customer service, products, services, pricing, locations, or consumer issues so long as the evaluation is not for purposes of litigation or discovering violations of law.
- 11. As it relates to providing a recovery service, a bail bond agent licensed under chapter 26.1-26.6.

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

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

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

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

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

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

commissioner, the board shall provide information regarding recovery agent licensees.

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

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

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

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

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

1. Any person ~~whethat~~ violates this chapter or rules adopted under this chapter, or any person ~~whethat~~ provides a private investigative service or private security service, or recovery service without a current license issued by the board, or falsely states or represents that the person has been or is a recovery agent or an investigative officer or employed by an investigative or security officer or agency is guilty of a class B misdemeanor.
2. In addition to the criminal penalties provided, the civil remedy of an injunction is available to restrain and enjoin violations of any provisions of this chapter, without proof of actual damages sustained by any person. An injunction does not preclude criminal prosecution and punishment of a violator.
3. The board is not liable for the lost income, costs, or any other expenses that may be incurred by a person against whom an injunction is sought, and the board may not be required to provide security or a bond. The board may seek costs for reimbursement of expenses for obtaining an injunction, including attorney's fees.
4. In addition to issuing the injunction, the court may impose an administrative fee consistent with section 43-30-10.1 if the person has violated a provision of this chapter.

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

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

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

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

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

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

1. The fee to be paid by an applicant for an examination to determine the applicant's fitness to receive a license as a private investigator or a license to provide private security services, or a license as a recovery agent may not exceed one hundred dollars.
2. The fee to be paid by an applicant for the initial issuance or the renewal of a license as a private investigator or a license to provide private security services, or a license as a recovery agent may not exceed one hundred fifty dollars. A late fee not to exceed fifty dollars may be charged for each month the renewal fee is due and unpaid.
3. The fee to be paid by an applicant to apply for a license to conduct a private security or detective agency may not exceed one hundred dollars.
4. The fee for the issuance or the renewal of a license to conduct a private security or detective agency may not exceed three hundred dollars. A late fee not to exceed one hundred dollars may be charged for each month the renewal fee is due and unpaid.
5. The one-time fee to be paid by an applicant for the issuance of a private security training certificate may not exceed twenty-five dollars.
6. The annual fee to be paid by an applicant for the issuance of an armed private security certificate may not exceed twenty-five dollars. A late fee not to exceed ten dollars may be charged for each month the renewal fee is due and unpaid.
7. The fee to be paid for the issuance of a duplicate license may not exceed twenty dollars.
8. The initial registration fee to provide private investigative service or private security service may not exceed twenty-five dollars. The fee for the renewal of a registration to provide private investigative service or private security service may not exceed twenty-five dollars. A late fee not to exceed ten dollars may be charged for each month the renewal fee is due and unpaid.

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

Renumber accordingly

**2015 HOUSE CONFERENCE COMMITTEE  
 ROLL CALL VOTES**

BILL HB 1126 as (re) engrossed

**House Judiciary Committee**

- Action Taken**
- HOUSE accede to Senate Amendments
  - HOUSE accede to Senate Amendments and further amend
  - SENATE recede from Senate amendments
  - SENATE recede from Senate amendments and amend as follows
  - Unable to agree, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Rep. K. Koppelman Seconded by: Rep. Kusala

Representatives			Yes	No	Senators			Yes	No
	4/21	4/22				4/21	4/22		
Rep. Brabandt (Chair)	✓	✓	✓		Senator Luick	✓	✓	✓	
Rep. K. Koppelman	✓	✓	✓		Senator Armstrong	✓	✓	✓	
Rep. L. Delmore	✓	✓	✓		Senator Grabinger	✓	✓	✓	
Total Rep. Vote					Total Senate Vote				

Vote Count Yes: 6 No: 0 Absent: 0

House Carrier No Carrier Senate Carrier No Carrier

LC Number 15.8094.02003. of amendment

LC Number \_\_\_\_\_ . 04000 of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

**REPORT OF CONFERENCE COMMITTEE**

**HB 1126, as engrossed:** Your conference committee (Sens. Luick, Armstrong, Grabinger and Reps. Brabandt, K. Koppelman, Delmore) recommends that the **SENATE RECEDE** from the Senate amendments as printed on HJ pages 1251-1252, adopt amendments as follows, and place HB 1126 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1251 and 1252 of the House Journal and page 969 of the Senate Journal and that Engrossed House Bill No. 1126 be amended as follows:

Page 1, line 1, remove "create and enact section 26.1-26.6-07.1 of the North Dakota Century Code,"

Page 1, line 2, remove "relating to registered recovery agents; to"

Page 1, line 3, remove "and"

Page 1, line 3, after "26.1-26.6-07" insert ", 43-30-01, 43-30-02, 43-30-03, 43-30-04, 53-30-05, 43-30-10, 43-30-11, and 43-30-16"

Page 1, line 4, remove "recovery agents, and"

Page 1, line 4, after "retrieval" insert ", and licensure and regulation of recovery agents"

Page 1, line 14, replace "Registered recovery" with "Recovery"

Page 1, line 14, remove "any person that has been registered by the"

Page 1, line 15, replace "commissioner under this" with "an individual who is licensed as a recovery agent under"

Page 1, line 15, after "chapter" insert "43-30"

Page 1, line 15, after "the" insert "bail bond agent or"

Page 1, line 15, remove "arrest"

Page 1, line 16, replace "authority to take into custody a defendant on a bail bond" with "recovery service authority"

Page 3, line 29, remove "registered"

Page 4, line 5, remove "registered"

Page 4, line 8, remove "registered"

Page 4, line 12, replace "A" with "Subject to chapter 43-30, a"

Page 4, line 16, remove "registered"

Page 4, replace lines 18 through 24 with:

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

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

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

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

2. "Employee" means an employee under a contract of employment as defined in chapter 34-01, and not an independent contractor as defined by the common-law test.
3. "License" includes a registration issued by the board.
4. "Licensee" includes an individual who is registered by the board.
5. "Private investigative service" means, for a fee, reward, or other consideration, undertaking any of the following acts for the purpose of obtaining information for others:
  - a. Investigating the identity, habits, conduct, movements, whereabouts, transactions, reputation, or character of any person or organization;
  - b. Investigating the credibility of persons;
  - c. Investigating the location or recovery of lost or stolen property, missing persons, owners of abandoned property or escheated property, or heirs to estates;
  - d. Investigating the origin of and responsibility for libels, losses, accidents, or damage or injuries to persons or property;
  - e. Investigating the affiliation, connection, or relationship of any person, firm, or corporation with any organization, society, or association, or with any official, representative, or member thereof;
  - f. Investigating the conduct, honesty, efficiency, loyalty, or activities of employees, persons seeking employment, agents, or contractors and subcontractors;
  - g. Investigating or obtaining evidence to be used before any authorized investigating committee, board of award, board of arbitration, administrative body, or officer or in preparation for trial of civil or criminal cases; or
  - h. Investigating the identity or location of persons suspected of crimes or wrongdoing.
6. "Private security service" means furnishing for hire security officers or other persons 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.
3. Any attorneys or counselors at law in the regular practice of their profession and any paralegal or legal assistant employed by an attorney or law firm when the attorney or law firm retains complete responsibility for the work product of the paralegal or legal assistant.
4. Any person engaged exclusively in obtaining and furnishing information as to the financial standing, rating, and credit responsibility of persons or as to the personal habits and financial responsibilities of applicants for insurance, indemnity bonds, or commercial credit.
5. A collection agency or finance company licensed to do business under the laws of this state, or an employee of one of those companies, while acting within the scope of employment when making an investigation incidental to the business of the agency, including an investigation as to location of a debtor and of the debtor's assets or property, provided the client has a financial interest in or a lien upon the assets or property of the debtor.
6. Any person making any investigation of any matter in which that person or the person by whom that person is solely employed is interested or involved.
7. A person whose sole investigative business is obtaining or furnishing information about acts or individuals from public records, other than those investigating the location or recovery of abandoned or escheated property, owners of abandoned or escheated property, or heirs to estates.
8. An expert who specializes in a specific, limited area of practice, including automotive accident reconstructions, fire origin and cause investigations, technical surveillance countermeasures, handwriting analysis, auditor, accountant or accounting clerk performing audits or accounting functions,

or other areas of practice covered by other licensure in the state, and other areas determined by the board, that fall within the individual's scope of employment, incidental to the investigative profession.

9. Persons reporting for any media, including news reporters or news investigators.
10. A person providing mystery or secret shopping services, or providing a similar service, used for evaluating customer service, products, services, pricing, locations, or consumer issues so long as the evaluation is not for purposes of litigation or discovering violations of law.
11. As it relates to providing a recovery service, a bail bond agent licensed under chapter 26.1-26.6.

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

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

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

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

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

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

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

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

A person may not provide private investigative ~~or~~ security, ~~or~~ recovery services without a license issued by the board. Notwithstanding any other law or ordinance, a person may not be required to obtain a license to provide private

investigative or security services in this state other than the license required by this chapter.

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

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

1. Any person ~~whethat~~ violates this chapter or rules adopted under this chapter, or any person ~~whethat~~ provides a private investigative service ~~or~~ private security service, or recovery service without a current license issued by the board, or falsely states or represents that the person has been or is a recovery agent or an investigative officer or employed by an investigative or security officer or agency is guilty of a class B misdemeanor.
2. In addition to the criminal penalties provided, the civil remedy of an injunction is available to restrain and enjoin violations of any provisions of this chapter, without proof of actual damages sustained by any person. An injunction does not preclude criminal prosecution and punishment of a violator.
3. The board is not liable for the lost income, costs, or any other expenses that may be incurred by a person against whom an injunction is sought, and the board may not be required to provide security or a bond. The board may seek costs for reimbursement of expenses for obtaining an injunction, including attorney's fees.
4. In addition to issuing the injunction, the court may impose an administrative fee consistent with section 43-30-10.1 if the person has violated a provision of this chapter.

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

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

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

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

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

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

1. The fee to be paid by an applicant for an examination to determine the applicant's fitness to receive a license as a private investigator ~~or~~ a license to provide private security services, or a license as a recovery agent may not exceed one hundred dollars.
2. The fee to be paid by an applicant for the initial issuance or the renewal of a license as a private investigator ~~or~~ a license to provide private security services, or a license as a recovery agent may not exceed one hundred fifty dollars. A late fee not to exceed fifty dollars may be charged for each month the renewal fee is due and unpaid.

3. The fee to be paid by an applicant to apply for a license to conduct a private security or detective agency may not exceed one hundred dollars.
4. The fee for the issuance or the renewal of a license to conduct a private security or detective agency may not exceed three hundred dollars. A late fee not to exceed one hundred dollars may be charged for each month the renewal fee is due and unpaid.
5. The one-time fee to be paid by an applicant for the issuance of a private security training certificate may not exceed twenty-five dollars.
6. The annual fee to be paid by an applicant for the issuance of an armed private security certificate may not exceed twenty-five dollars. A late fee not to exceed ten dollars may be charged for each month the renewal fee is due and unpaid.
7. The fee to be paid for the issuance of a duplicate license may not exceed twenty dollars.
8. The initial registration fee to provide private investigative service or private security service may not exceed twenty-five dollars. The fee for the renewal of a registration to provide private investigative service or private security service may not exceed twenty-five dollars. A late fee not to exceed ten dollars may be charged for each month the renewal fee is due and unpaid.

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

Renumber accordingly

Engrossed HB 1126 was placed on the Seventh order of business on the calendar.

**2015 TESTIMONY**

**HB 1126**

HOUSE BILL NO. 1126

#1  
HB 1126  
2-9-15

**Presented by:** Jeff Ubben  
General Counsel  
North Dakota Insurance Department

**Before:** House Judiciary Committee  
Representative Kim Koppelman, Chairman

**Date:** February 9, 2015

**TESTIMONY**

Good Morning Chairman Koppelman and members of the committee. My name is Jeff Ubben and I am the General Counsel and Director of the Legal Division for the North Dakota Insurance Department. I appear before you today in support of House Bill No. 1126.

Pursuant to Title 26.1 of the Century Code, the Insurance Commissioner is responsible for licensing bail bond agents and for regulating their conduct in the state. House Bill No. 1126 does three things: (1) it clarifies that a bail bond agent must be licensed by the Insurance Department and appointed by a surety company before acting in the capacity of a bail bond agent; (2) it requires bail bond agents to monitor the status of the bonds they write to ensure timely return of collateral; and (3) it defines who can participate in the practice of defendant retrieval, a practice less formally known as "bounty hunting."

Section 1 of the bill clarifies that a bail bond agent must be licensed by the Insurance Department and appointed by a surety company before acting in the capacity of a bail bond agent. Currently, Section 26.1-26.6-01 defines a bail bond agent as a person who is licensed by the Commissioner and appointed by an insurer. The amendment in Section 1 would align the requirement section (§ 26.1-26.6-04) with the definition section (§ 26.1-26.6-01) so the language used in both sections is consistent.

In the past year, the Insurance Department investigated and took administrative action against individuals selling and issuing bail bonds that were licensed by the Department

as bail bond agents but were not appointed with a surety company. One of these individuals wrote over 30 bail bonds on his bail bond business instead of a surety company. The bail bond business completely lacked the funds to support the bail bonds in the event the bond were to be forfeited by the court.

Section 2 would require bail bond agents to monitor the status of the bonds they write to ensure timely return of the collateral being used to secure the bond. The Department has received multiple credible complaints in the last two years from individuals claiming a bail bond agent did not make timely return of collateral provided to the agent to secure a bail bond. Two investigations into these claims revealed agents that said they did not timely return the collateral because they did not know the status of the bond they issued. In other words, they claimed they did not know the Court had released the defendant from the bond order for which the bond was issued. This change requires them to monitor the status of the bond order.

Section 3 of the bill details who can participate in the business of defendant retrieval or what is commonly known as bounty hunting. The bill states a person who is a licensed bail bond agent and an appointed agent of the surety company that issued the bail bond for the defendant may participate in the business of taking or attempting to take that particular defendant into custody on the bail bond. The bill also allows the surety company that issued the bail bond for the defendant to engage in defendant retrieval.

There have been multiple disturbing instances in North Dakota over the past two years involving the actions of self-styled "bounty hunters" engaging in the practice of defendant retrieval. Self-styled bounty hunters can create safety risks for people legitimately engaging in the practice of defendant retrieval and for legitimate law enforcement agents. Requiring them to secure bail bond licenses and oversight by a surety company is one way in which to maintain the safety of law enforcement and the public at large.

In conclusion, I respectfully request a "do pass" recommendation from this committee on House Bill No. 1126 and am happy to take any questions.

#2  
HB 1126  
2/9/2015

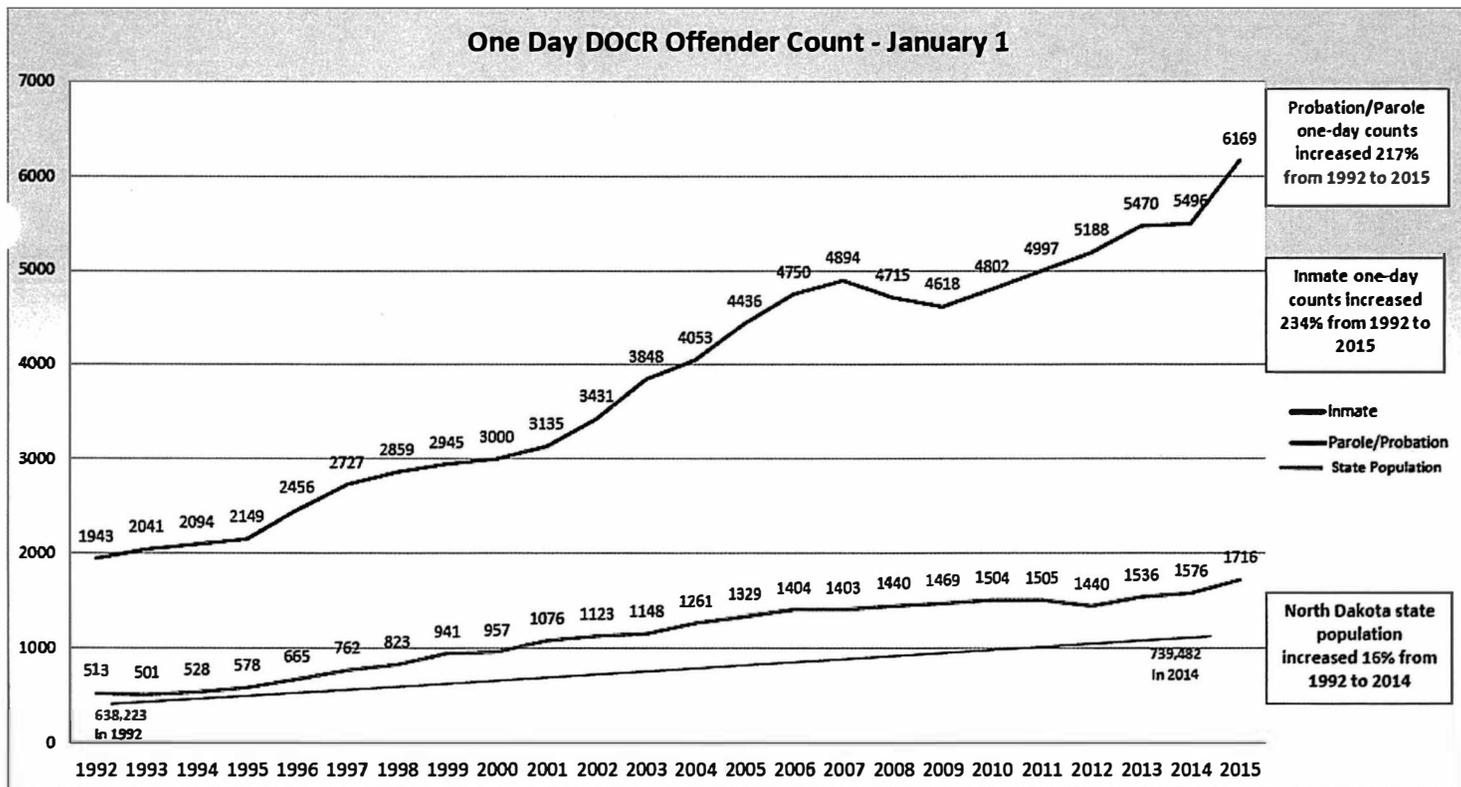
**HOUSE JUDICIARY COMMITTEE  
 REPRESENTATIVE KIM KOPPELMAN, CHAIRMAN  
 FEBRUARY 9, 2015**

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**PATRICK N. BOHN, DIRECTOR FOR TRANSITIONAL PLANNING SERVICES,  
 NORTH DAKOTA DEPARTMENT OF CORRECTIONS & REHABILITATION  
 PRESENTING TESTIMONY RE: HB 1126**

My name is Pat Bohn and I am the Director for Transitional Planning Services for the North Dakota Department of Corrections and Rehabilitation (DOCR). I am here to testify neutral on HB 1126.

Adding or enhancing criminal penalties over time incrementally increases the workload on the ENTIRE criminal justice system resulting in the growth depicted in the graph below.



#1  
HB 1126  
2-17-15

15.8094.01001  
Title.

Prepared by the Legislative Council staff for  
Representative K. Koppelman  
February 18, 2015

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1126

Page 1, line 1, after "to" insert "create and enact section 26.1-26.6-07.1 of the North Dakota Century Code, relating to registered recovery agents; to"

Page 1, line 1, after "sections" insert "26.1-26.6-01,"

Page 1, line 2, after "agents" insert ", recovery agents,"

Page 1, after line 4, insert:

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

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

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

1. "Bail bond agent" means any ~~person~~ individual who has been licensed by the commissioner and appointed by an insurer by power of attorney to execute or countersign bail bonds for the insurer in connection with the judicial proceedings and charges and receives money for the services.
2. "Registered recovery agent" means an individual who has been registered by the commissioner under this chapter and to whom the security has transferred arrest authority to take into custody a defendant on a bail bond."

Page 3, line 19, overstrike the first "or" and insert immediately thereafter an underscored comma

Page 3, line 19, after "agent" insert ", or registered recovery agent"

Page 3, line 26, after the first comma insert "the registered recovery agent."

Page 3, line 27, replace "or licensed" with an underscored comma

Page 3, line 28, after "surety" insert ", or registered recovery agent"

Page 4, line 2, replace "is" with ":

a. Is"

Page 4, line 2, remove "or"

Page 4, line 3, replace "is a person licensed as" with ":

b. Is"

Page 4, line 3, after "surety" insert: ", or

c. Is a registered recovery agent"

Page 4, line 3, remove "This"

Page 4, remove line 4

Page 4, after line 5, insert:

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

**26.1-26.6-07.1. Registered recovery agents.**

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

Re-number accordingly

#2  
HB1126  
2-18-15

## RECOVERY AGENTS

5/2/2013

Amber Widgery



When a defendant fails to appear in court after release on financial bail, their surety—the person guaranteeing their appearance—must pay the cash bond to the court. To avoid or mitigate financial liability, the surety can attempt to arrest and return the defendant. Sureties often work with a recovery agent, a person whose profession it is to lawfully apprehend fugitive defendants. Sureties transfer arrest authority to recovery agents by signing over to them a certified copy of the bond. Recovery agents, also called bounty hunters and bail enforcement agents, and now they arrest fugitive defendants, are subject to regulations provided by state law.

### PRETRIAL POLICY

This is part of a collection of pretrial laws. To learn more [click here](#)

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### Standards and Licensure

At least 22 states require licenses for professional recovery agents. California and Kansas also have provisions that regulate recovery agents, but do not require licenses. California's law mandates recovery agents carry certificates of completion for certain training courses and Kansas outlines several requirements to act as an "agent of a surety" including not having been convicted of enumerated crimes in the last 10 years.

In addition to license requirements, state statutes also regulate the conduct of recovery agents while executing their duties. Issues addressed in these laws include disclosure of association with bail agents, regulation of their attire while performing their duties, and their ability to enter private dwellings or property to make an arrest.

### Affiliation with Bail Agents

At least 15 States, including Georgia and Indiana, address how commercial sureties work with and identify recovery agents they use to arrest fugitive defendants. In Georgia, professional bondsmen are required to register a list of all bail recovery agents who may be employed by that particular bondsman to the appropriate county's sheriff. Under Indiana law, a bail agent can use any licensed recovery agent to arrest a defendant. When the bail agent renews their license, they must provide a list of all recovery agents they used during the previous year to the commissioner of insurance.

### Regulation of Attire

In at least nine states, laws address how a recovery agent can represent themselves with the attire they wear. In Iowa, for example, a recovery agent can only wear a uniform within the specifications given by the commissioner of Public Safety and cannot wear a uniform or make any statement that gives the impression they are a member of law enforcement. Washington law requires recovery agents to wear a shirt or vest with the words "Bail Bond Recovery Agent," "Bail Enforcement," or "Bail Enforcement Agent" during an arrest.

### Procedure for Entering Dwellings

Laws in at least 10 states address if, when and how recovery agents can enter private property. Arizona law only allows bail recovery agents to go into a dwelling with the consent of people inside at the time of entry. In Missouri, state law authorizes a surety recovery agent, who has probable grounds to believe someone has absconded on their bond agreement, to enter private property in order to arrest the fugitive.

Washington law provides detailed requirements for bail bond recovery agents who plan to enter a defendant's home to arrest them. The law requires recovery agents to have a "reasonable cause to believe that the defendant is inside" the dwelling or other building, to notify local law enforcement with specific details of the defendant and premises.

While in Georgia Code, penalties are provided for bail recovery agents and who enter the wrong property and causes damage or injury to any person or property. And in Virginia, the law requires a bail enforcement agent to verbally notify those inside before they enter.

### Notification to Law Enforcement

All states that address recovery agents require law enforcement to be notified when, or near when, they intend to arrest a defendant. For example, Connecticut and New York law similarly require that recovery agents, prior to attempting to

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arrest a person, notify a local law enforcement agency where the person is believed to be located and of the "bail enforcement agent's intentions."

Virginia law requires that a bail enforcement agent give law enforcement at least 24 hours notice before arresting a bail fugitive. In addition, the bail enforcement agent must report the arrest to local law enforcement within 60 minutes of apprehension.

Back: Bail Forfeiture Procedures

Forward: Victims' Rights and Protections

50 STATE CHART | ENFORCEMENT AGENT LICENSURE AND REGULATION\*

STATE & STATUTE	LICENSING OR REGULATORY OVERSIGHT?	ASSOCIATION WITH BAIL AGENT	REGULATION REGARDING ATTIRE	PROVISIONS RE: DWELLINGS
Arizona § 20-340.04	X <sup>2</sup>	X		
California Penal Code § 1299.01 Penal Code § 1299.09 Penal Code § 1299.07		X	X	X
Connecticut § 29-152f § 29-152i	X <sup>3</sup>		X	
Delaware 24 Del. C. § 5502	X <sup>4</sup>			
Georgia § 17-6-56 § 17-6-57 § 17-6-58	X <sup>1</sup>	X	X	X
Indiana § 27-10-3-1 § 27-10-3-14	X <sup>1</sup>	X		
Iowa § 80A.3A § 80A.9	X <sup>5</sup>		X	
Kansas § 22-2809a		X		
Louisiana § 22:1581 § 22:1583	X <sup>2</sup>			
Mississippi § 83-39-5	X <sup>1</sup>			
Missouri § 374.783 § 374.788	X <sup>1</sup>		X	X
Nevada § 697.173 § 697.260	X <sup>1</sup>	X		
New Hampshire § 597:7-b	X <sup>5</sup>			
New Jersey § 45:19-30 § 45:19-37	X			X
New Mexico § 59A-51-6 § 59A-51-12	X <sup>1</sup>	X		
New York Gen. Bus. Law § 70  Gen. Bus. Law § 84	X <sup>1</sup> See also Gen. Bus. Law § 71		X	
North Carolina § 58-71-40  § 58-71-125	X <sup>1</sup>	X See also § 58-71-65		

2

<b>South Carolina</b>					
§ 38-53-90		X			
§ 38-53-120					
<b>South Dakota</b>	X <sup>1</sup>				
§ 58-22-1					
<b>Tennessee</b>	X <sup>2</sup>	X			
§ 40-11-318					
§ 40-11-320				X	
<b>Utah</b>	X <sup>6</sup>	X			
§ 53-11-111			X		
§ 53-11-121					
§ 53-11-123					X
<b>Virginia</b>	X <sup>1</sup>				
§ 9.1-186.4	See also				
	§ 9.1-186.5				
§ 9.1-186.10			X		
§ 9.1-186.12					
		X			X
<b>Washington</b>	X <sup>3</sup>				
§18.185.250					
§18.185.300			X		X
§18.185.280					
		X			
<b>West Virginia</b>	X <sup>5</sup>	X			
§ 51-10A-2					
§ 51-10A-4		X	X		X

+ No statute located for states not listed

- 1 Same / similar to bail bond agent licensure
- 2 Same regulatory authority as bail agent, lesser requirements
- 3 Same regulatory authority as bail agent, more requirements
- 4 Different regulatory authority as bail agent, lesser requirements
- 5 Different regulatory authority as bail agent, more requirements
- 6 Bail agent not licensed

Source: National Conference of State Legislatures, 2013

Court rule is not included in this chart unless a statute authorizes or is superseded by the rules and case law is not included

Back: Bail Forfeiture Procedures

Forward: Victims' Rights and Protections

Full text of statutes can be retrieved using NCSL's State Legislatures Internet Links database.

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 Denver, CO 80230  
 Tel: 303-364-7700 | Fax: 303-364-7800

**Washington**

444 North Capitol Street, N.W., Suite  
 Washington, D.C. 20001  
 Tel: 202-624-5400 | Fax: 202-737-1000

3

**HOUSE BILL NO. 1126**

**Presented by:** Jeff Ubben  
General Counsel  
North Dakota Insurance Department

**Before:** Senate Judiciary Committee  
Senator David Hogue, Chairman

**Date:** March 16, 2015

**TESTIMONY**

Good Morning Chairman Hogue and members of the committee. My name is Jeff Ubben and I am the General Counsel and Director of the Legal Division for the North Dakota Insurance Department. House Bill No. 1126 was introduced at the request of the Insurance Commissioner; however, amendments were placed on the bill in the House and the Insurance Department does not support this bill as currently written. I have prepared amendments to the bill that would restore the bill to its original form.

The bill in its original form had no opposition when it had its hearing in the House Judiciary Committee. One member of that committee introduced "placeholder amendments" to this bill before it was voted on in the House Judiciary Committee. These amendments were not provided to the Department before they were voted on by the House Judiciary Committee.

After having the opportunity to review the amendments, the Insurance Department opposes the amendments because the amendments change the intent of the defendant retrieval portion of this bill. The original bill allowed individuals to engage in defendant retrieval or "bounty hunting" if they have a relationship with the surety insurance company that issued the bail bond that allowed the defendant to be released from custody. The amendments from the House attempt to create a new term called a "registered recovery agent" which is open to anyone and requires the Department to be in charge of a registration process. This is troublesome because the intent of this bill

was never to lay out the welcome mat for self-styled bounty hunters to come to North Dakota.

The Department is also concerned by the House amendments because they do not detail the criteria or procedures for registering, suspending or revoking a recovery agent. Finally, the Department would incur additional expenses we have not budgeted for in registering recovery agents and investigating and enforcing violations committed by registered recovery agents.

Pursuant to Title 26.1 of the Century Code, the Insurance Commissioner is responsible for licensing bail bond agents and for regulating their conduct in the state. The original intent of House Bill No. 1126 does three things: (1) it clarifies that a bail bond agent must be licensed by the Insurance Department and appointed by a surety company before acting in the capacity of a bail bond agent; (2) it requires bail bond agents to monitor the status of the bonds they write to ensure timely return of collateral; and (3) it defines who can participate in the practice of defendant retrieval, a practice less formally known as "bounty hunting."

Section 2 of the bill clarifies that a bail bond agent must be licensed by the Insurance Department and appointed by a surety company before acting in the capacity of a bail bond agent. Currently, Section 26.1-26.6-01 defines a bail bond agent as a person who is licensed by the Commissioner and appointed by an insurer. The amendment in Section 2 would align the requirement section (Section 26.1-26.6-04) with the definition section (Section 26.1-26.6-01) so the language used in both sections is consistent. This portion of the bill was untouched by the House amendments.

In the past year, the Insurance Department investigated and took administrative action against individuals selling and issuing bail bonds that were licensed by the Department as bail bond agents but were not appointed with a surety insurance company. One of these individuals wrote over 30 bail bonds on his bail bond agency instead of a surety insurance company. The bail bond agency completely lacked the funds to support the bail bonds in the event the bonds were to be forfeited by the court.

Section 3 of the bill would require bail bond agents to monitor the status of the bonds they write to ensure timely return of the collateral being used to secure the bond. The Department has received multiple credible complaints in the last two years from individuals claiming a bail bond agent did not make timely return of collateral provided to the agent to secure a bail bond. Two investigations into these claims revealed bail bond agents that said they did not timely return the collateral because they did not know the status of the bond they issued. In other words, they claimed they did not know the Court had released the defendant from the bond order for which the bond was issued. This bill requires them to monitor the status of the bond order. This section of the bill was also untouched by the House amendments.

Section 4 of the bill details who can participate in the business of defendant retrieval or what is commonly known as bounty hunting. The bill in its original form stated a person who is a licensed bail bond agent and an appointed agent of the surety company that issued the bail bond for the defendant may participate in the business of taking or attempting to take that particular defendant into custody on the bail bond. The bill also allows the surety company that issued the bail bond for the defendant to engage in defendant retrieval.

There have been multiple disturbing instances in North Dakota over the past two years involving the actions of self-styled bounty hunters engaging in the practice of defendant retrieval. Self-styled bounty hunters can create safety risks for people legitimately engaging in the practice of defendant retrieval and for legitimate law enforcement agents. Requiring them to secure bail bond licenses and oversight by a surety insurance company are effective ways in which to maintain the safety of law enforcement and the public at large. Again, laying out the welcome mat for these self-styled bounty hunters was not the intent of this bill.

In conclusion, I respectfully request the amendments I have presented be adopted on the bill and if that occurs, I respectfully request a "do pass" recommendation from this committee on an amended version of House Bill No. 1126. I am happy to take any questions.

**PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1126**

Page 1, line 1, remove "to create and enact section 26.1-26.6-07.1 of the North Dakota Century Code,"

Page 1, line 2, remove "relating to registered recovery agents;"

Page 1, line 4, remove ", recovery agents,"

Page 1, line 8, remove the overstrike from "~~Definition~~" and remove "Definitions"

Page 1, line 9, remove the overstrike from "~~;~~ bail" and remove the underscored colon

Page 1, line 10, remove "1.        Bail"

Page 1, remove lines 14-16

Page 3, line 29, remove the overstrike from "~~or~~", remove the first underscored comma, and remove ", or registered recovery agent"

Page 4, line 5, remove "the registered recovery"

Page 4, line 6, remove "agent."

Page 4, line 7, replace the underscored comma with "or licensed"

Page 4, line 8, remove ", or registered recovery agent"

Page 4, line 14, after the underscored semicolon, insert "or"

Page 4, line 15, replace "; or" with "that issued the bail bond."

Page 4, remove line 16

Page 4, remove lines 18-24

Renumber accordingly

# 1-1  
3/25/15

**ENGROSSED HOUSE BILL NO. 1126**  
**(Insurance Department)**

1 A BILL for an Act ~~to create and enact section 26.1-26.6-07.1 of the North Dakota~~  
2 ~~Century Code, relating to registered recovery agents;~~ to amend and reenact sections  
3 26.1-26.6-01, 26.1-26.6-04, 26.1-26.6-05, and 26.1-26.6-07 of the North Dakota Century  
4 Code, relating to bail bond agents, ~~recovery agents,~~ and defendant retrieval; and to  
5 provide a penalty.

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

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

9 **26.1-26.6-01. Definition**~~Definitions.~~

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

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

15 ~~2.~~ "Registered recovery agent" means any person that has been registered  
16 by the commissioner under this chapter and to whom the security has  
17 transferred arrest authority to take into custody a defendant on a bail  
18 bond.

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

21 **26.1-26.6-04. Qualification**~~Appointment~~ **and license as bail bond agent -**  
22 **Pledge of property as security - Penalty.**

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

1-2

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

32                   **26.1-26.6-05. Violations - Penalties.**

33                   1.       The commissioner may suspend, revoke, or refuse to continue, issue, or  
34 renew any license issued under this chapter if, after notice to the licensee  
35 and hearing, the commissioner finds as to the licensee any of the  
36 following conditions:

- 37                   a.       Recommending any particular attorney at law to handle the case  
38 in which the bail bond agent has caused a bond to be issued  
39 under this chapter.
- 40                   b.       Forging the name of another to a bond or application for bond.
- 41                   c.       Soliciting business in or about any place for prisoners or persons  
42 confined, arraigned, or in custody.
- 43                   d.       Paying a fee or rebate, or giving or promising anything of value to  
44 a jailer, trustee, police officer or officer of the law, or any other  
45 person who has power to arrest or hold in custody or to any public  
46 official or public employee in order to secure a settlement,  
47 compromise, remission, or reduction of the amount of any bail  
48 bond or entreatment thereof, or to secure, delay, or other  
49 advantage. This subdivision does not apply to a jailer, police  
50 officer, or officer of the law who is not on duty and who assists in  
51 the apprehension of a defendant.
- 52                   e.       Paying a fee or rebating or giving anything of value to an attorney  
53 in bail bond matters, except in defense of any action on a bond.
- 54                   f.       Accepting anything of value from a principal other than a premium.  
55 Provided, the bail bond agent may accept collateral security or  
56 other indemnity from the principal which must be returned  
57 immediately upon final termination of liability on the bond. Such  
58 collateral security or other indemnity required by the bail bond  
59 agent must be reasonable in relation to the amount of the bond.
- 60                   g.       Willfully failing to return collateral security to the principal when the  
61 principal is entitled to the security.
- 62                   h.       Knowingly employing a person whose insurance producer license  
63 has been revoked, suspended, or denied in this or any other state.

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

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

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

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

77 ~~3.4.~~ A bail bond agent may not sign nor countersign any blank in any bond,  
78 nor give up power of attorney to or otherwise authorize, anyone to  
79 countersign the bail bond agent's name to bonds.

80 4.5. When a bail bond agent accepts collateral, the bail bond agent shall give  
81 a written receipt for the collateral and this receipt must contain a full  
82 description of the collateral received in the terms of redemption. The bail  
83 bond agent shall keep copies of all receipts of the bonds to be placed in  
84 business to be available to the commissioner for the commissioner's  
85 review.

86 ~~5.6.~~ The provisions and penalties under this section are in addition to those  
87 provided under chapter 26.1-26.

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

90 **26.1-26.6-07. Surrender of defendant prior to breach- Penalty.**

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

93 1. At any time after a defendant has been released from custody pursuant to  
94 a bail bond, the surety ~~or~~, bail bond agent, ~~or registered recovery agent~~  
95 may surrender the defendant, or the defendant may surrender, to the  
96 official to whose custody the defendant would have been given had the  
97 defendant been committed. The defendant may be surrendered without

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98 the return of premium for the bond if the defendant has been guilty of  
99 nonpayment of premium, changing address without notifying the bail bond  
100 agent, self-concealment, or leaving the jurisdiction of the court without the  
101 permission of the bail bond agent, or of violating the defendant's contract  
102 with the bail bond agent in any way that does harm to the bail bond agent,  
103 ~~the registered recovery agent~~, or the surety, or violates the obligation to  
104 the court.

105 2. For the purpose of surrendering the defendant, the surety, ~~or licensed bail~~  
106 ~~bond~~  
107 ~~agent acting as an agent for the surety, or registered recovery agent~~ may  
108 arrest the defendant before the forfeiture of the undertaking, or by written  
109 authority endorsed on a certified copy of the undertaking, may empower  
110 any peace officer to make arrest, first paying the lawful fees therefor.

111 3. A person may not engage in the business of taking or attempting to take  
112 into custody a defendant on a bail bond, unless the person :

113 a. Is the surety that issued the bail bond ; or

114 b. Is a bail bond agent and is an appointed agent of the surety; ~~or~~  
115 that ~~the~~ issued the bail bond.

116 c. Is a registered recovery agent.

117 4. Violation of A first offense under this section is a class A misdemeanor. A  
118 second of subsequent offense under this section is a class C felony.

119 ~~SECTION 5. Section 26.1-26.6-07.1 of the North Dakota Century Code is created~~  
120 ~~and enacted as follows:~~

121 ~~26.1 – 26.6 – 07.1. Registered recovery agents.~~

122 ~~The commissioner shall register recovery agents. The licensing and continuing~~

123 ~~education requirements under chapter 26.1 – 26 do not apply to registered recovery~~

124 ~~agents. The commissioner shall adopt rules establishing a registration fee, qualifications~~

125 ~~for registration, and the process and terms for registration renewal and revocation.~~

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#1  
HB1121  
4-22-15

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1126

That the Senate recede from its amendments as printed on pages 1251-1252 of the House Journal and page 969 of the Senate Journal and that Engrossed House Bill No. 1126 be amended as follows:

Page 1, line 1, remove "create and enact section 26.1-26.6-07.1 of the North Dakota Century Code,"

Page 1, line 2, remove "relating to registered recovery agents; to"

Page 1, line 3, remove "and"

Page 1, line 3, after "26.1-26.6-07" insert ", 43-30-01, 43-30-02, 43-30-03, 43-30-04, 53-30-05, 43-30-10, 43-30-11, and 43-30-16"

Page 1, line 4, remove "recovery agents, and"

Page 1, line 4, after "retrieval" insert ", and licensure and regulation of recovery agents"

Page 1, line 14, replace "Registered recovery" with "Recovery"

Page 1, line 14, remove "any person that has been registered by the"

Page 1, line 15, replace "commissioner under this" with "an individual who is licensed as a recovery agent under"

Page 1, line 15, after "chapter" insert "43-30"

Page 1, line 15, after "the" insert "bail bond agent or"

Page 1, line 15, remove "arrest"

Page 1, line 16, replace "authority to take into custody a defendant on a bail bond" with "recovery service authority"

Page 3, line 29, remove "registered"

Page 4, line 5, remove "registered"

Page 4, line 8, remove "registered"

Page 4, line 12, replace "A" with "Subject to chapter 43-30, a"

Page 4, line 16, remove "registered"

Page 4, replace lines 18 through 24 with:

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

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

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

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

2. "Employee" means an employee under a contract of employment as defined in chapter 34-01, and not an independent contractor as defined by the common-law test.
3. "License" includes a registration issued by the board.
4. "Licensee" includes an individual who is registered by the board.
5. "Private investigative service" means, for a fee, reward, or other consideration, undertaking any of the following acts for the purpose of obtaining information for others:
  - a. Investigating the identity, habits, conduct, movements, whereabouts, transactions, reputation, or character of any person or organization;
  - b. Investigating the credibility of persons;
  - c. Investigating the location or recovery of lost or stolen property, missing persons, owners of abandoned property or escheated property, or heirs to estates;
  - d. Investigating the origin of and responsibility for libels, losses, accidents, or damage or injuries to persons or property;
  - e. Investigating the affiliation, connection, or relationship of any person, firm, or corporation with any organization, society, or association, or with any official, representative, or member thereof;
  - f. Investigating the conduct, honesty, efficiency, loyalty, or activities of employees, persons seeking employment, agents, or contractors and subcontractors;
  - g. Investigating or obtaining evidence to be used before any authorized investigating committee, board of award, board of arbitration, administrative body, or officer or in preparation for trial of civil or criminal cases; or
  - h. Investigating the identity or location of persons suspected of crimes or wrongdoing.
6. "Private security service" means furnishing for hire security officers or other persons 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.
3. Any attorneys or counselors at law in the regular practice of their profession and any paralegal or legal assistant employed by an attorney or law firm when the attorney or law firm retains complete responsibility for the work product of the paralegal or legal assistant.
4. Any person engaged exclusively in obtaining and furnishing information as to the financial standing, rating, and credit responsibility of persons or as to the personal habits and financial responsibilities of applicants for insurance, indemnity bonds, or commercial credit.
5. A collection agency or finance company licensed to do business under the laws of this state, or an employee of one of those companies, while acting within the scope of employment when making an investigation incidental to the business of the agency, including an investigation as to location of a debtor and of the debtor's assets or property, provided the client has a financial interest in or a lien upon the assets or property of the debtor.
6. Any person making any investigation of any matter in which that person or the person by whom that person is solely employed is interested or involved.
7. A person whose sole investigative business is obtaining or furnishing information about acts or individuals from public records, other than those

investigating the location or recovery of abandoned or escheated property, owners of abandoned or escheated property, or heirs to estates.

8. An expert who specializes in a specific, limited area of practice, including automotive accident reconstructions, fire origin and cause investigations, technical surveillance countermeasures, handwriting analysis, auditor, accountant or accounting clerk performing audits or accounting functions, or other areas of practice covered by other licensure in the state, and other areas determined by the board, that fall within the individual's scope of employment, incidental to the investigative profession.
9. Persons reporting for any media, including news reporters or news investigators.
10. A person providing mystery or secret shopping services, or providing a similar service, used for evaluating customer service, products, services, pricing, locations, or consumer issues so long as the evaluation is not for purposes of litigation or discovering violations of law.
11. As it relates to providing a recovery service, a bail bond agent licensed under chapter 26.1-26.6.

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

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

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

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

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

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

commissioner, the board shall provide information regarding recovery agent licensees.

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

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

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

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

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

1. Any person ~~whethat~~ violates this chapter or rules adopted under this chapter, or any person ~~whethat~~ provides a private investigative service or, private security service, or recovery service without a current license issued by the board, or falsely states or represents that the person has been or is a recovery agent or an investigative officer or employed by an investigative or security officer or agency is guilty of a class B misdemeanor.
2. In addition to the criminal penalties provided, the civil remedy of an injunction is available to restrain and enjoin violations of any provisions of this chapter, without proof of actual damages sustained by any person. An injunction does not preclude criminal prosecution and punishment of a violator.
3. The board is not liable for the lost income, costs, or any other expenses that may be incurred by a person against whom an injunction is sought, and the board may not be required to provide security or a bond. The board may seek costs for reimbursement of expenses for obtaining an injunction, including attorney's fees.
4. In addition to issuing the injunction, the court may impose an administrative fee consistent with section 43-30-10.1 if the person has violated a provision of this chapter.

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

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

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

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

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

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

1. The fee to be paid by an applicant for an examination to determine the applicant's fitness to receive a license as a private investigator or a license to provide private security services, or a license as a recovery agent may not exceed one hundred dollars.
2. The fee to be paid by an applicant for the initial issuance or the renewal of a license as a private investigator or a license to provide private security services, or a license as a recovery agent may not exceed one hundred fifty dollars. A late fee not to exceed fifty dollars may be charged for each month the renewal fee is due and unpaid.
3. The fee to be paid by an applicant to apply for a license to conduct a private security or detective agency may not exceed one hundred dollars.
4. The fee for the issuance or the renewal of a license to conduct a private security or detective agency may not exceed three hundred dollars. A late fee not to exceed one hundred dollars may be charged for each month the renewal fee is due and unpaid.
5. The one-time fee to be paid by an applicant for the issuance of a private security training certificate may not exceed twenty-five dollars.
6. The annual fee to be paid by an applicant for the issuance of an armed private security certificate may not exceed twenty-five dollars. A late fee not to exceed ten dollars may be charged for each month the renewal fee is due and unpaid.
7. The fee to be paid for the issuance of a duplicate license may not exceed twenty dollars.
8. The initial registration fee to provide private investigative service or private security service may not exceed twenty-five dollars. The fee for the renewal of a registration to provide private investigative service or private security service may not exceed twenty-five dollars. A late fee not to exceed ten dollars may be charged for each month the renewal fee is due and unpaid.

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

Renumber accordingly

#2  
HB 1126  
4-22-15

Sixty-fourth  
Legislative Assembly  
of North Dakota

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. ~~Definition~~Definitions.**

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

12 1. "Bail bond agent" means any person ~~whethat~~ 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:

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

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

15 recovery service.

16 8. "Recovery service" means to enforce the terms and conditions of a defendant's

17 release on bail in a civil or criminal proceeding or to apprehend a defendant or

18 surrender a defendant to custody, or both, in accordance with chapter 26.1-26.6. The

19 term includes presenting a defendant for a required court appearance, apprehending

20 or surrendering a defendant to a court, or keeping the defendant under necessary

21 surveillance.

22 **SECTION 6. AMENDMENT.** Section 43-30-02 of the North Dakota Century Code is

23 amended and reenacted as follows:

24 **43-30-02. Exemptions.**

25 This chapter does not apply to:

- 26 1. Any investigator or officer directly employed by or under any direct contract with the
- 27 federal government, state, or any county or city thereof, appointed, elected, or
- 28 contracted with, by due authority of law, while engaged in the performance of official
- 29 duties. Subcontractors of agencies directly contracted with these entities are not
- 30 exempted.
- 31 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.