

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 ~~who~~that violates this chapter or rules adopted under this chapter, or any person ~~who~~that 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