

North Dakota Bail Laws

1. Applicable Statutes.

- A. NDCC, 26.1-26.6-07 NORTH DAKOTA CENTURY CODE TITLE 26.1. INSURANCE CHAPTER 26.1-26.6. BAIL BONDSMEN.
- B. N.D.R.Crim.P. NORTH DAKOTA COURT RULES ANNOTATED NORTH DAKOTA RULES OF CRIMINAL PROCEDURE X. GENERAL PROVISIONS. Rule 46. Release from custody.

2. Licensing Requirements for Agents.

*** Apparently, the North Dakota statutes contemplated further licensing provisions to be added at a future date. Currently, however, the following provisions are the only slim guidelines for the licensing of "bondsmen" or any other bail agents. No legislation on this subject is currently pending. ***

- A. NDCC, 26.1-26.6-01 NORTH DAKOTA CENTURY CODE TITLE 26.1. INSURANCE CHAPTER 26.1-26.6. BAIL BONDSMEN 26.1-26.6-01 Definition.
 - "Bail bondsman" means any person who has been approved by the [Insurance] 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.
- B. 26.1-26.6-02 Licensing and continuing education requirements.
 - The licensing and continuing education requirements under chapter 26.1-26 apply to bail bondsmen.

3. Notice of Forfeiture

- A. NDCC, 26.1-26.6-09 NORTH DAKOTA CENTURY CODE TITLE 26.1. INSURANCE CHAPTER 26.1-26.6. BAIL BONDSMEN 26.1-26.6-09 Failure to appear.
 - If a defendant fails to appear for a scheduled court appearance, the clerk of court will notify the bondsman.
- B. N.D.R.Crim.P. NORTH DAKOTA COURT RULES ANNOTATED NORTH DAKOTA RULES OF CRIMINAL PROCEDURE X. GENERAL PROVISIONS. Rule 46. Release from custody.
 - Declaration. If there is a breach of condition of a bond, the court shall declare a forfeiture of the bail.
 - If a forfeiture has not been set aside, the court on motion shall enter a judgment of default and execution may issue thereon. By entering into a bond Allegheny Casualty - International Fidelity - Associated Bond

the obligors submit to the jurisdiction of any appropriate court and irrevocably appoint the clerk of the court as their agent upon whom any papers affecting their liability may be served. Their liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail or send by third-party commercial carrier copies to the obligors at their respective last-known addresses.

4. Allotted Time between Forfeiture Declaration and Payment Due Date.

- (The North Dakota statutes do not contain any provisions regarding allotted time between forfeiture declaration and payment due other than those given above).

5. Forfeiture Defenses.

A. NDCC, 26.1-26.6-09 NORTH DAKOTA CENTURY CODE TITLE 26.1. INSURANCE CHAPTER 26.1-26.6. BAIL BONDSMEN 26.1-26.6-09 Failure to appear.

- If the bondsman returns the defendant to the jurisdiction of the court, the bondsman may petition the court for a return of the forfeiture, less five percent for court costs.

B. N.D.R.Crim.P. NORTH DAKOTA COURT RULES ANNOTATED NORTH DAKOTA RULES OF CRIMINAL PROCEDURE X. GENERAL PROVISIONS. Rule 46. Release from custody.

- (2) Setting aside. The court may direct a forfeiture be set aside, upon such conditions as the court may impose, if it appears justice does not require enforcement of the forfeiture.
- (h) Exoneration. If the condition of the bond has been satisfied or the forfeiture thereof has been set aside or remitted, the court shall exonerate the obligor and release any bail. A surety may be exonerated by a deposit of cash in the amount of the bond or by a timely surrender of the defendant into custody.

6. Remission.

A. N.D.R.Crim.P. NORTH DAKOTA COURT RULES ANNOTATED NORTH DAKOTA RULES OF CRIMINAL PROCEDURE X. GENERAL PROVISIONS. Rule 46. Release from custody.

- (2) Setting aside. The court may direct a forfeiture be set aside, upon such conditions as the court may impose, if it appears justice does not require enforcement of the forfeiture.
- (4) Remission. After entry of judgment, the court may remit it in whole or in part under the conditions applying to the setting aside of forfeiture in paragraph (2) of this subdivision.

7. Bail Agent's Arrest Authority.

A. NDCC, 26.1-26.6-07 NORTH DAKOTA CENTURY CODE TITLE 26.1. INSURANCE CHAPTER 26.1-26.6. BAIL BONDSMEN 26.1-26.6-07 Surrender of defendant prior to breach.

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

8. Other Noteworthy Provisions.

A. NDCC, 26.1-26.6-03 NORTH DAKOTA CENTURY CODE TITLE 26.1. INSURANCE CHAPTER 26.1-26.6. BAIL BONDSMEN 26.1-26.6-03 Persons disqualified as bail bondsmen -- Violation is misdemeanor.

- The following persons or classes may not be bail bondsmen and may not directly or indirectly receive any benefits from the execution of any bail bond: jailers, police officers, committing magistrates, magistrate court judges, sheriffs, deputy sheriffs and constables, or any person having the power to arrest or having anything to do with the control of federal, state, county, or municipal prisoners. A violation of this section is a class B misdemeanor.

B. 26.1-26.6-05 Violations -- Penalties.

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

d. Paying a fee or rebate, or giving or promising anything of value to a jailer, trustee, police officer or officer of the law, or any other person who has power to arrest or hold in custody or to any public official or public employee in order to secure a settlement, compromise, remission, or reduction of the amount of any bail bond or entreatment thereof, or to secure, delay, or other advantage. This does not apply to a jailer, police officer, or officer of the law who is not on duty and who assists in the apprehension of a defendant.

e. Paying a fee or rebating or giving anything of value to an attorney in bail bond matters, except in defense of any action on a bond.

f. Accepting anything of value from a principal other than a premium. Provided, the bondsman may accept collateral security or other indemnity from the principal which must be returned immediately upon final termination of liability on the bond. Such collateral security or other indemnity required by the bondsman must be reasonable in relation to the amount of the bond.

g. Willful failure to return collateral security to the principal when the principal is entitled thereto.

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

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

j. Failing to pay any forfeiture as directed by a court and as required by this title.

- 2. A bail bondsman or bail bond agency may not advertise as or hold itself out to be a surety company.
- 3. A bail bondsman may not sign nor countersign any blank in any bond, nor give up power of attorney to or otherwise authorize, anyone to countersign the bail bondsman's name to bonds.
- 4. When a bondsman accepts collateral, the bondsman shall give a written receipt for the collateral and this receipt must contain a full description of the collateral received in the terms of redemption. The bondsman shall keep copies of all receipts of the bonds to be placed in business to be available to the commissioner for the commissioner's review.
- 5. The provisions and penalties under this section are in addition to those provided under chapter 26.1-26.

9. Noteworthy State Appellate Decisions.

A. State v. Owens

Allegheny Casualty - International Fidelity - Associated Bond

570 N.W.2d 217, 1997 ND 212

N.D.

Nov 06, 1997

- Defendant filed postconviction motion for return of bond money. The District Court, Burleigh County, South Central Judicial District, Thomas J. Schneider, J., denied motion, and defendant appealed. The Supreme Court, Neumann, J., held that: (1) order denying motion was appealable, and (2) defendant was entitled to return of bond money despite payment to wife. Reversed.

B. State v. Williams

48 N.D. 1259, 189 N.W. 625

N.D.

Jul 12, 1922

- Appeal from District Court, Cass County; Chas. M. Cooley, Judge. In Cass county defendant was accused of carrying concealed weapons and bound over to the district court. His wife borrowed and deposited in court \$1,400 as bail for his appearance at the November term of court; but when his case was called he was in the state's prison at Stillwater, Minn., and his appearance was impossible. He was civilly dead. Hence the court erred in denying a motion to undo the forfeiture of his bail.

C. State v. Funk

20 N.D. 145, 127 N.W. 722, 30 L.R.A.N.S. 211, Am. Ann. Cas. 1912C, 743

N.D.

Jun 24, 1910

- Appeal from District Court, McLean County; W. H. Winchester, Judge. Action by the State against Frank E. Funk and another. Judgment for plaintiff, and defendants appeal. It is a good defense to an action against the sureties on a bail bond that the state, intermediate the date of such bond and the time when by the terms thereof the principal was obligated to appear in court, caused the arrest of such principal on a criminal charge in another county, and kept him confined in the county jail thereof until after the date designated in the bond for his appearance. By such arrest and detention of the principal, performance of the conditions of the bail bond was rendered impossible by the state, the obligee in the bond, and therefore the default of the principal in failing to appear is excusable. Reversed, with directions.

10. Bounty Hunter Provisions.

- At this time, there appear to be no specific regulations for "Bounty Hunters" in the North Dakota statutes.