

Fifty-sixth Legislative Assembly, State of North Dakota, begun in the Capitol in the City of Bismarck, on Tuesday, the fifth day of January, one thousand nine hundred and ninety-nine

SENATE BILL NO. 2149
(Industry, Business and Labor Committee)
(At the request of the Secretary of State)

AN ACT to amend and reenact sections 43-07-04, 43-07-09, 43-07-10, 43-07-17, 43-07-18, and 43-07-19 of the North Dakota Century Code, relating to licensing of contractors, revoking a contractor's license, appointing an agent for service of process for a nonresident contractor, and civil penalties.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-07-04 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-07-04. License - How obtained - Revocation. To obtain a license under this chapter, an applicant shall submit, on forms the registrar prescribes, an application under oath containing a statement of the applicant's experience and qualifications as a contractor. A copy of a certificate of insurance indicating liability coverage as proof that the applicant has secured liability insurance, must be filed with the application and the contractor shall submit a statement from the North Dakota workers compensation bureau that the contractor has secured workers' compensation coverage satisfactory to the bureau along with such other information as may be required by the registrar to assist the registrar in determining the applicant's fitness to act in the capacity of a contractor. The application must contain a statement that the applicant desires the issuance of a license under this chapter, and must specify the class of license sought. No sooner than ~~ten~~ twenty days after sending written notice to a contractor at the contractor's last known address, the registrar shall use procedures of chapter 28-32 to revoke the license of any contractor who fails to:

1. Maintain liability insurance coverage required by this section or by section 43-07-10;
2. File, renew, or properly amend any fictitious name certificate required by chapter 45-11;
3. Maintain an active status of a corporation or registration as a foreign corporation;
4. Maintain an active status of a limited liability company or registration as a foreign limited liability company;
5. File or renew a trade name registration as required by chapter 47-25;
6. File or renew a limited liability partnership or foreign limited liability partnership as required by chapter 45-22; or
7. File or renew a limited partnership or foreign limited partnership.

SECTION 2. AMENDMENT. Section 43-07-09 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-07-09. Duty of registrar - Expiration of license. Within fifteen days from the date of application, the registrar may investigate and determine each applicant's fitness to act in the capacity of contractor as defined in this chapter, and no license may be issued to such applicant until the registrar receives all documentation necessary to obtain a license and the appropriate fee. The license issued on an original application entitles the licensee to act as a contractor within this state, subject to the limitations of such license, until the expiration of the then current fiscal year ending March first, except that an initial license issued to a licensee in January or February is valid until March first of the subsequent year.

SECTION 3. AMENDMENT. Section 43-07-10 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-07-10. Renewal of license - Time requirements - Invalidity of license for failure to renew. Any license issued under this chapter may be renewed for each successive fiscal year by obtaining from the registrar a certificate of renewal. To obtain a certificate of renewal, the licensee shall file with the registrar an application, which includes a listing of each project, contract, or subcontract completed by the licensee during the preceding calendar year in this state over the amount of ten thousand dollars, the nature of the work of each project, contract, or subcontract, and, if a performance bond was required, the name and address of the corporation, limited liability company, or other person who issued the bond. The registrar shall within a reasonable time forward a copy of the list to the state tax commissioner. The applicant shall include with the application a copy of a certificate of insurance indicating liability coverage as proof that the applicant has secured liability insurance unless the registrar has a current valid certificate of insurance on file, and a certification that the applicant has submitted all payroll taxes including North Dakota income tax, workers' compensation premiums, and unemployment insurance premiums due at the time of renewal, which documents need not be notarized. The application for a certificate of renewal must be made to the registrar on or before the first day of March of each year. At the time of filing the application for a certificate of renewal, the applicant shall pay to the registrar a renewal fee equal to twenty percent of the license fee established in section 43-07-07. If any contractor applies for a renewal under a class different from the license previously issued, the new class license may be issued upon the payment of the fee required for the issuance of the license of the class applied for. If any contractor fails to file an application for a certificate of renewal by the March first deadline, the contractor's license is not in good standing and the contractor must be deemed to be unlicensed within the meaning of sections 43-07-02 and 43-07-18. Within sixty days after March first, the contractor must be notified by mail that the contractor's license is not in good standing. The contractor then has until June first to renew by paying a penalty fee of seventy-five percent of the renewal fee, filing an application for a certificate of renewal, and paying the renewal fee. A contractor who applies for a certificate of renewal before or within ninety days of the filing deadline is not subject to the investigation authorized in section 43-07-09. After the June first deadline any licenses not renewed are revoked. Any application for a certificate of renewal must be fully completed within sixty days of the date the application is received by the registrar or it will be returned to the contractor who will then be subject to the provisions of section 43-07-09.

SECTION 4. AMENDMENT. Section 43-07-17 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-07-17. Revocation of license - Relicensing. A licensee whose license has been revoked may not be relicensed ~~during the current calendar year in which the decision to revoke the license was made~~ for a period of up to five years.

SECTION 5. AMENDMENT. Section 43-07-18 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-07-18. Penalty. Any person acting in the capacity of a contractor within the meaning of this chapter without a license as herein provided is guilty of a class B misdemeanor. Whether a person is subjected to criminal prosecution under this section, and in addition to the license fee that may be assessed when the person makes application for a license, the person may be assessed a civil penalty by the registrar, following written notice to the person of an intent to assess the penalty, in an amount not to exceed three times the amount set forth in section 43-07-07. Any civil penalty must be assessed and collected before a person is issued a license. The assessment of a civil penalty may be appealed in the same manner as appeals under section 43-07-04, but only on the basis that the registrar's administrative determination that the person acted as a contractor when not licensed as a contractor was clearly erroneous.

SECTION 6. AMENDMENT. Section 43-07-19 of the North Dakota Century Code is amended and reenacted as follows:

43-07-19. Nonresident contractors - Agent for service of process. Every applicant for a contractor's license who is not a resident of the state of North Dakota shall furnish to the secretary of state of the state of North Dakota a written appointment by which ~~such~~ the applicant appoints the

secretary of state of the state of North Dakota as ~~his~~ the applicant's true and lawful agent upon whom may be served all lawful process in any action or proceeding against such nonresident contractor. Such appointment in writing shall be evidence of ~~said~~ the contractor's consent that any such process against ~~him~~ the contractor which is so served upon the secretary of state shall be of the same legal force and effect as if served upon ~~him~~ the contractor personally within this state. Registered foreign corporations entitled to do business in this state according to chapter 10-22 ~~and~~, registered foreign limited liability companies entitled to do business in the state according to chapter 10-32, foreign limited liability partnerships entitled to do business in the state according to chapter 45-22, and foreign limited partnerships entitled to do business in the state according to chapter 45-10.1 and having a current registered agent and registered address on file in the ~~corporate division of the~~ secretary of state's office need not appoint the secretary of state as agent for service of process under the provisions of this section. Within ten days after service of the summons upon the secretary of state, notice of such service ~~together~~ with the summons and complaint in the action shall be sent to the defendant contractor at ~~his~~ the contractor's last known address by registered or certified mail with return receipt requested and proof of such mailing shall be attached to the summons. The secretary of state shall keep a record of all process served upon ~~him~~ the secretary of state under ~~the provisions of~~ this section. Such record shall show the day and hour of service. Whenever service of process shall have been made as provided in this section, the court, before entering a default judgment, or at any stage of the proceeding, may order such continuance as may be necessary to afford the defendant contractor reasonable opportunity to defend any action pending against ~~him~~ the defendant contractor.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-sixth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2149.

Senate Vote: Yeas 48 Nays 1 Absent 0

House Vote: Yeas 96 Nays 1 Absent 1

Secretary of the Senate

Received by the Governor at _____ M. on _____, 1999.

Approved at _____ M. on _____, 1999.

Governor

Filed in this office this _____ day of _____, 1999,

at _____ o'clock _____ M.

Secretary of State