Fifty-ninth Legislative Assembly of North Dakota FIRST DRAFT: Prepared by the Legislative Council staff for the Commerce Committee October 2004

Introduced by

- 1 A BILL for an Act to amend and reenact sections 43-07-02, 43-07-04, 43-07-10, 43-07-14, and
- 2 43-07-18 of the North Dakota Century Code, relating to licensure and regulation of contractors;
- 3 and to provide a penalty.

## 4 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

5 **SECTION 1. AMENDMENT.** Section 43-07-02 of the North Dakota Century Code is 6 amended and reenacted as follows:

7 43-07-02. License required - Enjoining operation without license. No A person 8 may not engage in the business nor act in the capacity of a contractor within this state when the 9 cost, value, or price per job exceeds the sum of two thousand dollars without first having a 10 license as provided in this chapter. The secretary of state may request the attorney general to 11 bring an action to enjoin any person from engaging in the business or acting in the capacity of a 12 contractor within this state when the cost, value, or price per job exceeds the sum of two 13 thousand dollars, unless the person is properly licensed. 14 SECTION 2. AMENDMENT. Section 43-07-04 of the North Dakota Century Code is

15 amended and reenacted as follows:

16

43-07-04. License - How obtained - Failure to grant - Revocation.

17 1. To obtain a license under this chapter, an applicant who is eighteen years of age or 18 older shall submit, on forms the registrar prescribes, an application under oath 19 containing a statement of the applicant's experience and qualifications as a 20 contractor. A copy of a certificate of insurance indicating liability coverage, as 21 proof that the applicant has secured liability insurance, must be filed with the 22 application and the contractor shall submit a statement from North Dakota 23 workforce safety and insurance that the contractor has secured workforce safety 24 and insurance coverage satisfactory to workforce safety and insurance along with

1		suct	a. The registrar may also require any other information as may be required by		
2		the registrar necessary to assist the registrar in determining the applicant's fitness			
3		to a	ct in the capacity of a contractor, including, at the expense of the applicant,		
4		<u>crim</u>	criminal history record information of the applicant or the officers, members, or		
5		part	ners of the applicant which is held or maintained by the bureau of criminal		
6		<u>inve</u>	stigation or a similar entity in another state. The application must contain a		
7		state	statement that the applicant desires the issuance of a license under this chapter		
8		and	and must specify the class of license sought.		
9	<u>2.</u>	The	registrar may refuse to grant a license if the registrar determines the		
10		appl	lication contains false, misleading, or incomplete information; the applicant fails		
11		<u>or re</u>	efuses to authorize or pay for criminal history information requested by the		
12		regis	strar; or as otherwise provided in sections 12-1-33-02.1 and 43-07-04.1. The		
13		regis	registrar shall notify the applicant in writing if the registrar does not grant the		
14		licer	nse and shall provide the applicant an opportunity to respond to or cure the		
15		<u>defe</u>	defect in the application for a period of ten days from the date of the written		
16		<u>notif</u>	fication. An applicant aggrieved by a decision of the registrar to not grant the		
17		licer	license may appeal the decision to the district court of the applicant's county of		
18		resid	residence or Burleigh County.		
19	<u>3.</u>	No s	No sooner than twenty days after sending written notice to a contractor at the		
20		cont	contractor's last-known address, the registrar shall classify as not in good standing		
21		the license of any contractor who fails to:			
22	<del>1.</del>	<u>a.</u>	Maintain liability insurance coverage required by this section or by section		
23			43-07-10;		
24	<del>2.</del>	<u>b.</u>	File, renew, or properly amend any fictitious name certificate required by		
25			chapter 45-11;		
26	<del>3.</del>	<u>C.</u>	Maintain an active status of a corporation or registration as a foreign		
27			corporation;		
28	<del>4.</del>	<u>d.</u>	Maintain an active status of a limited liability company or registration as a		
29			foreign limited liability company;		
30	<del>5.</del>	<u>e.</u>	File or renew a trade name registration as required by chapter 47-25;		

Fifty-ninth

Legislative Assembly

1	<del>6.</del>	<u>f.</u> File or renew a limited liability partnership or foreign limited liability partnership				
2		as required by chapter 45-22; or				
3	<del>7.</del>	g. File or renew a limited partnership or foreign limited partnership.				
4	<u>4.</u>	Any contractor who has been notified by the registrar that the contractor's license				
5		is not in good standing shall cease soliciting or entering into new contract projects.				
6		If the contractor fails to correct the deficiency specified in the notice by evidence				
7		satisfactory to the registrar within thirty days of the date of the notice or if the				
8		contractor solicits or enters into new contract projects while the contractor's license				
9		is not in good standing, the registrar shall use the procedures of chapter 28-32 to				
10		revoke the license of the contractor.				
11	SE	CTION 3. AMENDMENT. Section 43-07-10 of the North Dakota Century Code is				
12	amended a	nd reenacted as follows:				
13	43-	07-10. Renewal of license - Grounds for nonrenewal - Time requirements -				
14	Invalidity	of license for failure to renew.				
15	<u>1.</u>	Any license issued under this chapter may be renewed for each successive fiscal				
16		year by obtaining from the registrar a certificate of renewal. To obtain a certificate				
17		of renewal, the licensee shall file with the registrar an application, which includes a				
18		listing of each project, contract, or subcontract completed by the licensee during				
19		the preceding calendar year in this state over the amount of twenty-five thousand				
20		dollars, the nature of the work of each project, contract, or subcontract, and, if a				
21		performance bond was required, the name and address of the corporation, limited				
22		liability company, or other person who issued the bond. The registrar shall within a				
23		reasonable time forward a copy of the list to the state tax commissioner. The				
24		applicant shall include with the application a copy of a certificate of insurance				
25		indicating liability coverage as proof that the applicant has secured liability				
26		insurance unless the registrar has a current valid certificate of insurance on file,				
27		and a certification that the applicant has submitted all payroll taxes, including North				
28		Dakota income tax, workforce safety and insurance premiums, and unemployment				
29		insurance premiums due at the time of renewal, which documents need not be				
30		notarized.				

Fifty-ninth Legislative Assembly

1 The registrar may refuse to renew a license if the registrar determines the 2. 2 application contains false, misleading, or incomplete information. The registrar 3 shall notify the applicant in writing if the registrar does not grant the license and 4 shall provide the applicant an opportunity to respond to or cure the defect in the 5 application for a period of ten days from the date of the written notification. An 6 applicant aggrieved by a decision of the registrar to not grant the license may 7 appeal the decision to the district court of the applicant's county of residence or 8 Burleigh County.

9 The application for a certificate of renewal must be made to the registrar on or 3. 10 before the first day of March of each year. At the time of filing the application for a 11 certificate of renewal, the applicant shall pay to the registrar a renewal fee equal to 12 twenty percent of the license fee established in section 43-07-07. If any contractor 13 applies for a renewal under a class different from the license previously issued, the 14 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 15 16 application for a certificate of renewal by the March first deadline, the contractor's 17 license is not in good standing and the contractor must be deemed to be 18 unlicensed within the meaning of sections 43-07-02 and 43-07-18. Within sixty 19 days after March first, the contractor must be notified by mail that the contractor's 20 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 21 22 for a certificate of renewal, and paying the renewal fee. A contractor who applies 23 for a certificate of renewal before or within ninety days of the filing deadline is not 24 subject to the investigation authorized in section 43-07-09. After the June first 25 deadline any licenses not renewed are revoked. Any application for a certificate of 26 renewal must be fully completed within sixty days of the date the application is 27 received by the registrar or it will be returned the registrar shall return the 28 application to the contractor who will then be is subject to the provisions of section 29 43-07-09.

30 SECTION 4. AMENDMENT. Section 43-07-14 of the North Dakota Century Code is
31 amended and reenacted as follows:

Fifty-ninth Legislative Assembly

1	43-	07-14	l. Cor	nplaint for license revocation <u>- Consumer fraud action</u> .					
2	<u>1.</u>	Any	, perso	on <del>, including an employee or agent of the registrar,</del> may file a duly verified					
3		con	complaint with the registrar charging that the licensee is guilty of one or more any						
4		of tl	of the following acts or omissions:						
5	<del>1.</del>	a. Abandonment of any contract without legal excuse. A rebuttable presumption							
6			of ab	pandonment arises if:					
7		<del>a.</del>	<u>(1)</u>	A contractor fails to substantially commence any work agreed upon in					
8				writing within:					
9				(a) <u>Within</u> sixty days of a starting date agreed upon in writing; or					
10				(b) Within ninety days of the contract date if no starting date is					
11				agreed upon in writing; or					
12		<del>b.</del>	<u>(2)</u>	A contractor fails to complete any work agreed upon in writing within					
13				ninety days of a completion date agreed upon in writing, or within one					
14				hundred eighty days of the contract date if no completion date is agreed					
15				upon in writing, unless the failure is due to circumstances beyond the					
16				control of the contractor.					
17	<del>2.</del>	<u>b.</u>	Dive	rsion of funds or property received under express agreement for the					
18			pros	ecution or completion of a specific contract under this chapter, or for a					
19			spec	ified purpose in the prosecution or completion of any contract, and their					
20			appli	cation or use for any other contract obligation or purpose to defraud or					
21			dece	vive creditors or the owner.					
22	<del>3.</del>	<u>C.</u>	Enga	aging in any fraudulent or deceptive acts or practices or misrepresentation					
23			as a	contractor in consequence of which one or more persons is injured in a					
24			total	amount exceeding three thousand dollars.					
25	<del>4.</del>	<u>d.</u>	The	making of any false or misleading statement in any application for a					
26			licen	se or renewal <del>thereof</del> or by violating <del>any provisions of</del> this chapter or					
27			bein	g convicted of an offense the registrar determines has a direct bearing on					
28			the a	applicant's or licensee's ability to serve the public as a contractor as set					
29			out i	n section 12.1-33-02.1.					
30	<del>5.</del>	<u>e.</u>	Enga	aging in work without any trade or professional license as required for					
31			such	the work pursuant to local, state, or federal law.					

Fifty-ninth Legislative Assembly

1 <del>6.</del> f. Failure to fully refund the contracting party's advance payment if a rebuttable 2 presumption of abandonment has arisen under subsection 1 and the 3 contracting party has made a request to the licensee for a refund. 4 2. The complaint must be on a form approved by the registrar and must set forth 5 sufficient facts upon which a reasonable person individual could conclude that one 6 or more any of the above acts or omissions in subsection 1 has been committed. 7 3. Any act or mission under this section may also constitute grounds for the attorney 8 general to bring an action under chapter 51-15 and subjects the licensee to all 9 provisions, procedures, remedies, and penalties provided for in chapter 51-15. 10 SECTION 5. AMENDMENT. Section 43-07-18 of the North Dakota Century Code is 11 amended and reenacted as follows: 12 **43-07-18.** Penalty. Any person acting in the capacity of a contractor within the 13 meaning of this chapter without a license as herein provided is guilty of a class B A 14 misdemeanor. Whether a person is subjected to criminal prosecution under this section, and in 15 addition to the license fee that may be assessed when the person makes application applies for 16 a license, the person may be assessed a civil penalty by the registrar, following written notice to 17 the person of an intent to assess the penalty, in an amount not to exceed three times the 18 amount set forth in section 43-07-07. Any civil penalty must be assessed and collected before 19 a person is issued a license. The assessment of a civil penalty may be appealed in the same 20 manner as appeals under section 43-07-04, but only on the basis that the registrar's 21 administrative determination that the person acted as a contractor when not licensed as a 22 contractor was clearly erroneous.