

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2158

2007 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2158

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2158**

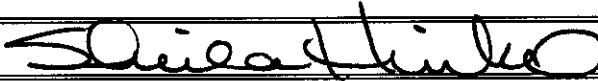
Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: **January 24, 2007**

Recorder Job Number: **1816**

Committee Clerk Signature



Minutes:

Al Jaeger – Secretary of State - In Favor

TESTIMONY #1 Covers testimony

To provide work over \$2000, you need a contractors license. You need proof of WSI, liability insurance and pay the fees.

S Potter: If the Supreme Court decision that has already ruled on this, why do we need this?

A Jaeger: I'm not an attorney

S Potter: What if the action is to grant him a license.

A Jaeger: I don't understand the question

Parrell Grossman – Director CP & ATD Attorney Generals Office - In Favor

TESTIMONY # 2 Covers testimony

Ammendment suggested.

S Behm: [provides example 15:40m] What if I did work at home?

P Grossman: It would have to be the conduct fraud. Act would be fraudulent.

If the project is over \$2000, need a license. Unlicensed contractors are not doing their work but taking the money.

Doreen Redman - In Favor

S Klein: Do we have a lot of contractor Problems. Do you police this on your own.

D Redman: We have calls to the Secretary of States Office a few times.

S Klein: What is your procedure?

D Redman: The contractors can call the States Attorney's office with complaints.

A Jaeger: We don't have problems with the organizations.

MOTION TO PASS AMMENDMENT

Motion – Hacker, Second – Wanzek Vote 5-0 Motion Passed Amendment

MOTION TO PASS AS AMMENDED

Motion – Hacker, Second – Wanzek Vote 5 – 0 Bill Passed as Amended

78209.0101
Title.0200

Adopted by the Industry, Business and Labor
Committee

January 24, 2007

JB
1-24-07

PROPOSED AMENDMENTS TO SENATE BILL NO. 2158

Page 1, line 9, replace "the" with "that"

Renumber accordingly

Date: 1-24-07

Roll Call Vote : 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2150

Senate INDUSTRY BUSINESS & LABOR Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DP Amendment

Motion Made By Hacker Seconded By Wanzek

Senators	Yes	No	Senators	Yes	No
Chairman Jerry Klein	✓		Senator Arthur Behm	✓	
Vice Chair Nicholas Hacker	✓		Senator Joel Heitkamp		
Senator John Andrist	✓		Senator Tracy Potter	✓	
Senator Terry Wanzek	✓				

Total Yes 5 No _____

Absent _____

Floor Assignment _____

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

Date: 1-24-07

Roll Call Vote: 2

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2150

Senate INDUSTRY BUSINESS & LABOR Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken

DO PASS AS AM

Motion Made By

Hacker

Seconded By

Wanzek

Senators	Yes	No	Senators	Yes	No
Chairman Jerry Klein	✓		Senator Arthur Behm	✓	
Vice Chair Nicholas Hacker	✓		Senator Joel Heitkamp	✓	
Senator John Andrist	✓		Senator Tracy Potter	✓	
Senator Terry Wanzek	✓				

Total Yes 5 No 0

Absent _____

Floor Assignment

HACKER

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

REPORT OF STANDING COMMITTEE

SB 2158: Industry, Business and Labor Committee (Sen. Kleln, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). SB 2158 was placed on the Sixth order on the calendar.

Page 1, line 9, replace "the" with "that"

Renumber accordingly

2007 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2158

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2158

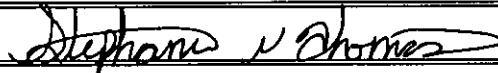
House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: February 21, 2007

Recorder Job Number: 3604

Committee Clerk Signature



Minutes:

Chair Keiser opened the hearing on SB 2158.

Sen. Nick Hacker, District 42: This bill specifically deals with unlicensed contractors, in a sense that the Attorney General cannot prosecute an unlicensed contractor. As a protecting item, this would grant them the ability. They are finding out some unlicensed contractors were doing some work specifically in my home town, that there's no real retribution that can take place, because they don't have a license, so the state had no position on the visuals. The very first piece of the bill deals with claims in court; if you're unlicensed you cannot hold a claim against another individual contractor in the state of ND. This does not affect Joe trying to fix a door, because they are usually doing jobs under \$2,000.

Mary Feist, On behalf of the Secretary of State, Al Jaeger: Support SB 2158. See written testimony #1.

Rep. Zaiser: Did we have a bill go through like this last session?

Mary: Yes, we did.

Rep. Zaiser: Joe that fixes doors, let's say he messed it up, and he didn't have a contractors license. Shortly after he made an attempt to fix my door he actually worsened it, then he filed for bankruptcy. What avenues are there given that situation?

Mary: If the project was not over \$2,000 a contractor license would not be required for that job.

Parrell Grossman, Consumer Protection & Antitrust Division: Support SB 2158. See written testimony #2.

Rep. Keiser: Is it constitutional to put that in to the language that you have no right of action, unless you have a license? Are we denying them the rights to access the courts?

Parrell: I'm not a constitutional expert, but I'm inclined to think it probably is. There really is no constitutional right to do business; the legislature really gets to decide who does business.

Rep. Keiser: I don't disagree with that, but the right to relief of the court, I don't think constitutionally we can do this.

Mary: We were going to put this language in last session, and we were told by Legislative Council that it was not constitutional, so we took it out. We're putting it back in, because since that time there's been this Supreme Court attachment, and we've gone through Legislative Council, and through our attorney who has said that it is fine.

Rep. Keiser: So, we're basically saying is that if you don't have a license, they can't take action against someone else, and we can prosecute them for consumer fraud, correct?

Parrell: That is correct.

Rep. Keiser: What is the penalty on that?

Parrell: The penalty is up to a \$5,000 fine.

Rep. Keiser: The consumer is still going to be hurt in this deal.

Parrell: I think we can get restitution, in addition to the penalties, which usually is our primary goal. In so many cases, it is unrealistic, and it isn't going to happen. Do you maybe want to impose stricter standards on unlicensed contractors, and I would certainly be an advocate of

that, and I think the Attorney General would be. The problem is frankly we have a difficult time in getting the states attorneys to prosecute these cases.

Rep. Thorpe: If this gets passed, would this give anymore teeth to small claims court proceedings?

Parrell: I don't believe it would. I think this is an action that would be limited to either the Secretary of State in acting to revoke a license, or the Attorney General in bringing a consumer fraud claim for one of these very limited, and specific enumerated violations.

Rep. Boe: I can think of examples on both sides of this issue. Say a college student just typically paints just a few bedrooms for a summertime job here and there, and stumbles across somebody's farmstead where they want him to paint the entire farm, and all of a sudden the job ends up over \$2,000. They normally wouldn't need the contractor's license, and then all of a sudden they do under this?

Parrell: No, that really doesn't change anything. Without any of these changes here, that individual should have a contractor's license. I frankly doubt that the Secretary of State would spend his resources going after a college student who might have gone a few dollars over \$2,000 on a painting job, but theoretically something like that could happen.

Rep. Keiser: The one section says the Attorney General could take action. Where are you going to take action? Don't you have to go through the States Attorney to take action?

Parrell: No, the Attorney General could bring up a consumer fraud action.

Rep. Boe: If the contractor is residing on a reservation, do you have the authority for prosecution?

Parrell: I would think we would probably have to bring our claim in front of the tribal court and ask for that relief, and the tribal court would have to decide.

Doreen Riedman, ND Association of Builders: Support SB 2158.

Page 4

House Industry, Business and Labor Committee

Bill/Resolution No. SB 2158

Hearing Date: February 21, 2007

Rep. Thorpe: I move a do pass.

Rep. Zaiser: Second.

Roll call vote was taken. 13 Yeas, 0 Nays, 1 Absent, Carrier: Rep. Gruchalla

Hearing closed.

Date: 2-21-07
Roll Call Vote #: _____

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2158

House Industry Business & Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Rep Thorpe Seconded By Rep Zaiser

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep. Amerman	X	
Vice Chairman Johnson	X		Rep. Boe	X	
Rep. Clark	X		Rep. Gruchalla	X	
Rep. Dietrich	X		Rep. Thorpe	X	
Rep. Dosch	X		Rep. Zaiser	X	
Rep. Kasper	X				
Rep. Nottestad					
Rep. Ruby	X				
Rep. Vigasaa	X				

Total Yes 13 No 0

Absent 1

Floor Assignment Rep Gruchalla

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

REPORT OF STANDING COMMITTEE

SB 2158, as engrossed: Industry, Business and Labor Committee (Rep. Kelser, Chairman) recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2158 was placed on the Fourteenth order on the calendar.

2007 TESTIMONY

SB 2158

ALVIN A. JAEGER
SECRETARY OF STATE

1E PAGE www.nd.gov/sos



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January 24, 2007

TO: Senator Klein, Chairman,
and Members of the Senate Industry, Business and Labor Committee

FR: Al Jaeger, Secretary of State

RE: SB 2158 – Contractors

Section 1, page 1, lines 9 and 10: Inserts the provision that a contractor must be properly licensed in order to maintain any claim against another person in court (supported by Supreme Court case Preference Personnel Inc v Peterson, 2006 ND 35)

Section 2, page 2, lines 2 thru 5: Inserts the terminology applicable to the entity's identified

Section 3, page 2, lines 25 thru 27 – Allows the Secretary of State to refuse the renewal of a contractor's license to be consistent with the provisions in the previous section of this bill

Section 3, page 3, lines 22 and 23 – Allows for the Secretary of State to destroy renewals records after six years

Section 4, page 3, lines 27 thru 30 – Allows Attorney General to bring action against a contractor who is doing business as an unlicensed contractor under the consumer fraud provisions in Chapter 51-15 (the law currently allows the Attorney General to bring similar action against a licensed contractor)

#1
2158

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

2006 ND 35

Preference Personnel, Inc., Plaintiff and Appellant

v.

Craig Peterson, Defendant and Appellee

No. 20050255

Appeal from the District Court of Cass County, East Central Judicial District, the Honorable Steven L. Marquart, Judge.

AFFIRMED.

Opinion of the Court by VandeWalle, Chief Justice.

Michelle M. Donarski, Anderson & Bottrell, P.O. Box 10247, Fargo, ND 58106-0247, for plaintiff and appellant.

C. Charles Chinquist, P.O. Box 1466, Fargo, ND 58107-1466, for defendant and appellee.

Preference Personnel, Inc. v. Peterson

No. 20050255

VandeWalle, Chief Justice.

[¶1] Preference Personnel appealed from a district court judgment dismissing its complaint against Craig Peterson for the alleged breach of an employment agreement. The district court's judgment dismissed Preference Personnel's complaint and awarded Craig Peterson costs and disbursements. We affirm.

I

[¶2] This action arises from an alleged breach of an employment agreement between Preference Personnel and Craig Peterson. Preference Personnel is a North Dakota corporation with a physical location in Fargo, North Dakota. On July 12, 2002, Peterson entered into an employment agreement with Preference Personnel under which Preference Personnel would assist Peterson in finding work. Peterson, an attorney and CPA, was looking for full-time work in the tax law field. The employment agreement provided the employer would pay the placement fee but if the employee voluntarily quit the position found by Preference Personnel within 90 days, the employee was solely responsible for the placement fee required under the agreement. The placement fee for Preference Personnel's services, under the agreement, was 20% of one year's gross salary.

[¶3] About December 19, 2003, Preference Personnel placed Peterson with the Tax Law Office. Peterson's annual gross salary with the Tax Law Office was \$60,000. Therefore, the placement fee was \$12,000. Peterson worked at the Tax Law Office part-time beginning on February 2, 2004, but voluntarily quit at the end of that same month. The Tax Law Office initially paid the placement fee but when Peterson quit his position at the Tax Law Office, Preference Personnel reimbursed the Tax Law Office for the fee it had paid. Preference Personnel then requested

payment of the fee from Peterson. Peterson refused to pay the fee and Preference Personnel sued Peterson arguing his refusal to pay the fee is a breach of the employment agreement.

[¶4] As an employment agency, Preference Personnel is required to obtain a license from the Commissioner of Labor. Preference Personnel's license expired on October 27, 2001, and it did not apply for renewal until October 2002. Preference Personnel and Peterson entered into the contract on July 12, 2002, at a time when Preference Personnel was not licensed. Although there is no requirement that the Department of Labor give notice to employment agencies to remind them to renew their license, it has been the Department of Labor's customary practice to mail reminder notices to private employment agencies prior to the license expiration date. Each year the Department of Labor would send Preference Personnel a written notice and application form. The Department of Labor did not send Preference Personnel this courtesy notice in 2001 and Preference Personnel neglected to renew its license. In an attempt to remedy the situation, in October of 2002, the Department of Labor issued Preference Personnel a retroactive license for the period of October 28, 2001 to October 27, 2002. At the same time, the Department of Labor renewed Preference Personnel's license extending the license from October 28, 2002 to October 27, 2003. It is this retroactive license issuance which is at issue in this case.

[¶5] The district court found Peterson's actions were a breach of the contract and under the terms of the contract, Peterson would be required to pay Preference Personnel the \$12,000 placement fee. However, the district court held that N.D.C.C. ch. 34-13 does not allow the Department of Labor to issue retroactive licenses and thus Preference Personnel was not licensed at the time the contract was entered into. Therefore, the district court found the employment agreement unenforceable as a matter of public policy and dismissed Preference Personnel's complaint and awarded Peterson costs and disbursements.

II

[¶6] Preference Personnel argues N.D.C.C. ch. 34-13 allows the Department of Labor to issue retroactive licenses. The construction of a statute is a question of law, fully reviewable on appeal. Pratt v. Altendorf, 2005 ND 32, ¶ 12, 692 N.W.2d 115. Questions of law are subject to de novo review. Landis v. CNA Ins., 1999 ND 35, ¶ 4, 589 N.W.2d 590. "When a statute is clear and unambiguous 'it is improper for courts to attempt to go behind the express terms of the provision so as to legislate that which the words of the statute do not themselves provide.'" Cervantes v. Drayton Foods, L.L.C., 1998 ND 138, ¶ 9, 582 N.W.2d 2. "In interpreting a statute, words must be given their plain, ordinary, and commonly understood meaning; and consideration should be given to the ordinary sense of the statutory words, the context in which they are used, and the purpose which prompted their enactment." County of Stutsman v. State Historical Soc'y, 371 N.W.2d 321, 327 (N.D. 1985). "If the language of a statute is clear and unambiguous, the letter of the statute cannot be disregarded under the pretext of pursuing its spirit because the legislative intent is presumed clear from the face of the statute." Id. at 325.

[¶7] In Haugen v. City of Berthold, 267 N.W.2d 198 (N.D. 1978), this Court considered an argument similar to Preference Personnel's in a case involving a licensing statute. Haugen argued that under N.D.C.C. § 43-07-10 (1978), licenses were retroactively effective. Id. at 198. The 1978 version of N.D.C.C. § 43-07-10 allowed contractors to renew their licenses "on or before the first day of April of each successive calendar year." The statute further provided the "renewal certificate shall be good for the then current calendar year." N.D.C.C. § 43-07-10 (1978). Haugen argued if he received his license renewal on March 16, 1978, his license was retroactive to January 1 of that year thus covering any business he conducted before obtaining his renewal. Haugen, 267 N.W.2d at 198. This Court disagreed with Haugen's argument and held the language of the statute was plain and did not work to retroactively provide a contractor with a license for the entire year. Id. at 199.

[¶8] The controlling statute in this case, N.D.C.C. § 34-13-02, provides:

A person may not open or carry on an employment agency if that person has a physical presence or location within the state, unless that person first procures a license from the commissioner. A person opening or conducting any such agency without first procuring a license is guilty of a class B misdemeanor.

The statute plainly provides that an employment agency with a physical presence in the State must first be licensed before conducting any business within the state. N.D.C.C. § 34-13-02. A plain reading of the statute does not give the Department of Labor the authority to issue licenses retroactively. N.D.C.C. § 1-02-03; Cervantes v. Drayton Foods, L.L.C., 1998 ND 138, ¶9, 582 N.W.2d 2; Haugen, 267 N.W.2d at 199. Because the statute does not provide the authority for retroactive licenses, Preference Personnel was unlicensed at the time of the contract.

[¶9] Although our statutory law does not specifically prohibit the enforcement of a contract between an individual and an unlicensed employment agency, the statutes are clearly intended to provide protection to our citizens by establishing extensive licensing requirements before operating as an employment agency with a physical presence in North Dakota. N.D.C.C. ch. 34-13; See Ranta v. McCarney, 391 N.W.2d 161, 163 (N.D. 1986) (holding although statutory law did not specifically prohibit compensation of unlicensed attorneys, the statute was clearly intended to provide protection to citizens from the unlicensed and unauthorized practice of law). The purpose of the statute is to determine, before an employment agency operates in this State, whether that agency is fit to do so. N.D.C.C. § 34-13-03; Ranta, 391 N.W.2d at 163. The statute allows for an annual examination of employment agencies by requiring license renewal each year. N.D.C.C. § 34-13-03.

[¶10] In enacting N.D.C.C. ch. 34-13 the North Dakota Legislature established the policy of requiring licensure prior to conducting any activities as an employment agency in this State when the agency has a physical presence in the State. See also Ranta, 391 N.W.2d at 164 (holding a fair reading of N.D.C.C. § 27-11-01 and a prior decision of this Court indicated a legislative and Supreme Court policy preference of furthering the public policy concerns for prohibiting the unauthorized practice of law in this State by barring compensation for the unlicensed practice of law). If public policy considerations require employment agencies to undergo extensive licensing requirements before being allowed to legally conduct business in this State, it follows that it is against the public policy of this State to enforce a contract between an individual and an unlicensed employment agency. Ranta, 391 N.W.2d at 164. To conclude otherwise would undermine the purpose of the licensing requirement. We therefore agree with the district court that although Peterson may have breached the contract, the contract is unenforceable because Preference Personnel was an unlicensed employment agency at the time the parties entered into the contract.

III

[¶11] Affirmed.

[¶12]

Gerald W. VandeWalle, C.J.
Carol Ronning Kapsner
Mary Muehlen Maring
Daniel J. Crothers
Bruce E. Bohlman, S.J.

[¶13] The Honorable Bruce E. Bohlman, S. J., sitting in place of Sandstrom, J., disqualified.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2158

Page 1, line 9, replace "the" with "that"

Renumber accordingly

1B
2158

SENATE INDUSTRY, BUSINESS AND LABOR COMMITTEE
SENATOR JERRY KLEIN, CHAIRMAN
JANUARY 24, 2007

TESTIMONY BY
PARRELL D. GROSSMAN
DIRECTOR, CONSUMER PROTECTION AND ANTITRUST DIVISION
OFFICE OF ATTORNEY GENERAL
IN SUPPORT OF
SENATE BILL NO. 2158

Mr. Chairman and members of the Senate Industry, Business, and Labor Committee. I am Parrell Grossman, Director of the Attorney General's Consumer Protection and Antitrust Division. I appear on the Attorney General's behalf in support of Senate Bill 2158.

The Consumer Protection Division works closely with the Secretary of State in enforcement issues regarding violations of the contractors law and consumer protection issues. Prior to the 2005 legislative session we worked jointly with Secretary Jaeger in addressing these issues before the interim Commerce Committee which sponsored Senate Bill No. 2026 in that 2005 legislative session.

That legislation amended section 43-07-14. Senate Bill No. 2026 provided both the Secretary of State and the Attorney General with enhanced enforcement authority in regard to problem contractors that defraud consumers, among other things, by taking advance payments and failing to perform the work promised and agreed upon with the consumer.

That legislation significantly enhanced the Secretary of State's ability to deny a license to a questionable contractor that refuses or fails to disclose his criminal background. It clarifies the Secretary of State's ability to obtain information relevant to the applicant's fitness to act as a contractor.

That legislation also strengthened the Secretary of State's ability to revoke a license for misleading or deceptive practices, and further provided the Attorney General the ability to bring a consumer fraud action against such contractors engaged in fraudulent activity.

The previous amendments to subsection 3 of section 43-07-14, however, provided the Attorney General authority to take action against a "licensee" and omitted any reference to an "unlicensed" contractor. The proposed changes set forth in page 3, lines 26 through 31, of Senate Bill 2158 now provide the Attorney General with authority to take action against "unlicensed" contractors. Actually, unlicensed contractors often would be more likely to engage in the acts prohibited by licensed contractors, pursuant to subsection 1, section 43-07-14.

#2
2158

Senate Bill No. 2158 should further enhance the Attorney General's ability to work jointly with the Secretary of State in enforcing license requirements and protecting consumers from fraudulent practices.

The Attorney General respectfully asks the Senate Industry, Business and Labor Committee to give Senate Bill 2158, a "Do Pass" recommendation.

Thank you for your time and consideration. I would be pleased to try and answer any questions.

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the provisions of the income, sales or use tax laws, and which have been assessed either by the filing of an income or sales and use tax return by the contractor, or by an assessment of additional income, sales or use taxes against the contractor by the commissioner that has become finally and irrevocably fixed, before the date that the contract was executed by the parties thereto. "Contractor" and "public contract" have the same definition for purposes of this section as in chapter 43-07 relating to issuance of licenses to contractors.

2. A certificate from and by the tax commissioner shall satisfy the requirement of subsection 1. Upon failure to file such a certificate, such department or political or governmental subdivision shall refuse to execute said public contract.
3. The provisions of this section apply only to contracts executed after the effective date of this section.

43-07-12. Bids to show license issued. All bids and proposals for the construction of any public contract project subject to the provisions of this chapter must contain a copy of the license or certificate of renewal thereof issued by the secretary of state enclosed in the required bid bond envelope. No contract may be awarded to any contractor unless the contractor is the holder of a license in the class within which the value of the project falls as hereinbefore provided. A contractor must be the holder of a license at least ten days prior to the date set for receiving bids, to be a qualified bidder. A bid submitted without this information properly enclosed in the bid bond envelope may not be read nor considered and must be returned to the bidder. This section does not apply to bids submitted:

1. To the department of transportation;
2. For use of municipal, rural, and industrial water supply funds authorized by Public Law No. 99-294 [100 Stat. 418];
3. To the public service commission; or
4. For use of federal aid highway funds authorized by Public Law No. 85-767 [72 Stat. 885; 23 U.S.C. 101 et seq.].

43-07-13. Records and certified copies thereof. The registrar shall maintain in the registrar's office, open to public inspection during office hours, a complete indexed record of all applications, licenses, certificates of renewal, revocations, and other information maintained on contractors. The registrar may dispose of an inactive contractor file after two years if no attempts have been made to apply for a new license or renew the license. Disposal of the license will proceed according to the provisions of chapter 54-46. Before disposal and upon request, the registrar shall furnish a certified copy of any information maintained upon receipt of the sum of ten dollars. Such certified copy must be received in all courts and elsewhere as prima facie evidence of the facts stated therein.

43-07-14. Complaint for license revocation - Consumer fraud action.

1. Any person may file a duly verified complaint with the registrar charging that the licensee is guilty of any of the following acts or omissions:
 - a. Abandonment of any contract without legal excuse after a deposit of money or other consideration has been provided to the licensee. A rebuttable presumption of abandonment arises if:
 - (1) A contractor fails substantially to commence any work agreed upon, unless the failure is due to circumstances beyond the control of the contractor:
 - (a) Within sixty days of a starting date agreed upon in writing; or

- (b) Within ninety days of the contract date if no starting date is agreed upon in writing; or
- (2) A contractor fails to complete any work agreed upon in writing within ninety days of a completion date agreed upon in writing, or within one hundred eighty days of the contract date if no completion date is agreed upon in writing, unless the failure is due to circumstances beyond the control of the contractor.
- b. Diversion of funds or property received under express agreement for the prosecution or completion of a specific contract under this chapter, or for a specified purpose in the prosecution or completion of any contract, and their application or use for any other contract obligation or purpose to defraud or deceive creditors or the owner.
- c. Engaging in any fraudulent or deceptive acts or practices or misrepresentation as a contractor in consequence of which one or more persons is injured in a total amount exceeding three thousand dollars.
- d. The making of any false or misleading statement in any application for a license or renewal or by violating this chapter or being convicted of an offense the registrar determines has a direct bearing on the applicant's or licensee's ability to serve the public as a contractor as set out in section 12.1-33-02.1.
- e. Engaging in work without any trade or professional license as required for the work pursuant to local, state, or federal law.
- f. Failure to refund fully the contracting party's advance payment if a rebuttable presumption of abandonment has arisen and the contracting party has made a request to the licensee for a refund.
- 2. The complaint must be on a form approved by the registrar and must set forth sufficient facts upon which a reasonable individual could conclude that any of the acts or omissions in subsection 1 has been committed.
- 3. Any act or omission under this section may also constitute grounds for the attorney general to bring an action under chapter 51-15 and subjects the licensee to all provisions, procedures, remedies, and penalties provided for in chapter 51-15.

43-07-15. Revocation or suspension of license - Restitution - Civil penalties - Appeal - Procedure. The registrar shall review each complaint filed under section 43-07-14. If the registrar determines a written complaint filed under section 43-07-14 provides sufficient facts upon which a reasonable person could conclude that one or more of the acts or omissions set forth in section 43-07-14 has been committed, the registrar may initiate an adjudicative proceeding in accordance with chapter 28-32. If, after an adjudicative proceeding or as part of an informal disposition under chapter 28-32, the registrar determines that the licensee is guilty of an act or omission charged or if the licensee admits guilt to an act or omission charged, the registrar may suspend or revoke the contractor's license, order a civil penalty of not more than one thousand dollars, order restitution in an amount not more than five thousand dollars, or impose some lesser sanction or remedy. The registrar may suspend the contractor's license for a period of not more than sixty months. The registrar may not renew, reinstate, or issue a new license until the licensee has paid any civil penalty or restitution imposed under this section. The registrar may bring an action in district court to recover restitution or penalties under this section. A contractor aggrieved by a decision of the registrar in revoking or suspending the contractor's license or ordering restitution or penalties may appeal the decision to the district court of that person's county of residence or Burleigh County. Any licensee may not obtain a license under any name during the period of revocation or suspension. A "licensee" whose license is revoked or suspended includes any officer, director, agent, member, or employee of the licensee. The provisions of chapter 28-32 govern any appeal and proceedings hereunder.

ALVIN A. JAEGER
SECRETARY OF STATE

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February 21, 2007

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TO: Rep. Kaiser, Chairman,
and Members of the House Business, Industry and Labor Committee

FR: Mary Feist, Director, Licensing Division, on behalf of Al Jaeger, Secretary of State

RE: SB 2158 – Contractors

Section 1, page 1, lines 9 and 10: Inserts provision stating a contractor must have a license issued by the Secretary of State in order to maintain any claim against another person in court (supported by Supreme Court case Preference Personnel Inc v Peterson, 2006 ND 35 – see [10] on last page on reverse side)

Section 2, page 2, lines 2 thru 5: In the subsection in Chapter 43-07 pertaining to the "not good standing" status of a contractor's license, text is inserted to apply the correct terminology applicable to the business entities listed

Section 3, page 2, lines 25 thru 27: Allows the Secretary of State to refuse renewal of a contractor's license if the contractor has a "not good standing" status as provided for in the provisions of Section 2 of this bill

Section 3, page 3, lines 22 and 23: Allows the Secretary of State to destroy renewal records after six years

Section 4, page 3, lines 27 thru 30: Allows Attorney General to bring action under the consumer fraud provisions in Chapter 51-15 against a contractor who is doing business as an unlicensed contractor (the law currently only allows the Attorney General to bring similar action against a licensed contractor)

HOUSE INDUSTRY, BUSINESS AND LABOR COMMITTEE
REPRESENTATIVE GEORGE J. KEISER, CHAIRMAN
FEBRUARY 21, 2007

TESTIMONY BY
PARRELL D. GROSSMAN
DIRECTOR, CONSUMER PROTECTION AND ANTITRUST DIVISION
OFFICE OF ATTORNEY GENERAL
IN SUPPORT OF
ENGROSSED SENATE BILL NO. 2158

Mr. Chairman and members of the House Industry, Business, and Labor Committee. I am Parrell Grossman, Director of the Attorney General's Consumer Protection and Antitrust Division. I appear on the Attorney General's behalf in support of Engrossed Senate Bill 2158.

The Consumer Protection Division works closely with the Secretary of State in enforcement issues regarding violations of the contractors law and consumer protection issues. Prior to the 2005 legislative session we worked jointly with Secretary Jaeger in addressing these issues before the interim Commerce Committee which sponsored Senate Bill No. 2026 in that 2005 legislative session.

That legislation amended section 43-07-14. Senate Bill No. 2026 in the fifty-ninth legislative assembly provided both the Secretary of State and the Attorney General with enhanced enforcement authority in regard to problem contractors that defraud consumers, among other things, by taking advance payments and failing to perform the work promised and agreed upon with the consumer.

That legislation significantly enhanced the Secretary of State's ability to deny a license to a questionable contractor that refuses or fails to disclose his criminal background. It clarifies the Secretary of State's ability to obtain information relevant to the applicant's fitness to act as a contractor.

That legislation also strengthened the Secretary of State's ability to revoke a license for misleading or deceptive practices, and further provided the Attorney General the ability to bring a consumer fraud action against such contractors engaged in fraudulent activity.

The previous amendments to subsection 3 of section 43-07-14, however, provided the Attorney General authority to take action against a "licensee" and omitted any reference to an "unlicensed" contractor. The proposed changes set forth in page 3, lines 26 through 31, of Senate Bill 2158 now provide the Attorney General with authority to take action against "unlicensed" contractors. Actually, unlicensed contractors often would be more likely to engage in the acts prohibited by licensed contractors, pursuant to subsection 1, section 43-07-14.

Senate Bill No. 2158 should further enhance the Attorney General's ability to work jointly with the Secretary of State in enforcing license requirements and protecting consumers from fraudulent practices.

The Attorney General respectfully asks the House Industry, Business and Labor Committee to give Engrossed Senate Bill 2158, a "Do Pass" recommendation.

Thank you for your time and consideration. I would be pleased to try and answer any questions.

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