

Fifty-fifth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1152

Introduced by

Representative Carlson

(At the request of the Secretary of State)

1 A BILL for an Act to amend and reenact sections 43-07-02, 43-07-04, 43-07-09, 43-07-09.1,
2 43-07-10, 43-07-13, 43-07-14, 43-07-15, and 43-07-17 of the North Dakota Century Code,
3 relating to licensing of contractors.

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

5 **SECTION 1. AMENDMENT.** Section 43-07-02 of the 1995 Supplement to the North
6 Dakota Century Code is amended and reenacted as follows:

7 **43-07-02. License required - Enjoining operation without license.** No person may
8 engage in the business nor act in the capacity of a contractor within this state when the ~~original~~
9 ~~contract or subcontract~~ cost, value, or price exceeds the sum of two thousand dollars without
10 first having a license as provided in this chapter. The secretary of state may request the
11 attorney general to bring an action to enjoin any person from engaging in the business or acting
12 in the capacity of a contractor within this state when the original contract or subcontract cost,
13 value, or price exceeds the sum of two thousand dollars, unless the person is properly licensed.

14 **SECTION 2. AMENDMENT.** Section 43-07-04 of the 1995 Supplement to the North
15 Dakota Century Code is amended and reenacted as follows:

16 **43-07-04. License - How obtained - Revocation.** To obtain a license under this
17 chapter, an applicant shall submit, on ~~such forms as the registrar shall prescribe~~ prescribes, an
18 application under oath containing a statement of the applicant's experience and qualifications
19 as a contractor. A copy of a certificate of insurance indicating liability coverage as proof that
20 the applicant has secured liability insurance, must be filed with the application and the
21 contractor shall submit a statement from the North Dakota workers compensation bureau that
22 the contractor has secured workers' compensation coverage satisfactory to the bureau along
23 with such other information as may be required by the registrar to assist the registrar in
24 determining the applicant's fitness to act in the capacity of a contractor. The application must

1 contain a statement that the applicant desires the issuance of a license under this chapter, and
2 must specify the class of license sought. No sooner than ten days after sending written notice
3 to a contractor at the contractor's last known address, the registrar shall revoke the license of
4 any contractor who fails to ~~maintain~~:

- 5 1. Maintain liability insurance coverage required by this section or by section
6 43-07-10, ~~or who fails to file~~;
- 7 2. File, renew, or properly amend any fictitious name certificate required by chapter
8 45-11 ~~for any contractor~~;
- 9 3. Maintain an active status of a corporation or registration as a foreign corporation;
- 10 4. Maintain an active status of a limited liability company or registration as a foreign
11 limited liability company;
- 12 5. File or renew a trade name registration as required by chapter 47-25;
- 13 6. File or renew a limited liability partnership or foreign limited liability partnership as
14 required by chapter 45-22; or
- 15 7. File or renew a limited partnership or foreign limited partnership.

16 Any person refused a license by the registrar or whose license is revoked pursuant to this
17 section may appeal to the district court of Burleigh County, if a nonresident, or to the district
18 court of the county of residence, if a resident of this state.

19 **SECTION 3. AMENDMENT.** Section 43-07-09 of the 1995 Supplement to the North
20 Dakota Century Code is amended and reenacted as follows:

21 **43-07-09. Duty of registrar - Expiration of license.** Within fifteen days from the date
22 of application, the registrar may investigate and determine each applicant's fitness to act in the
23 capacity of contractor as defined in this chapter, and no license may be issued to such
24 applicant until the registrar receives all documentation necessary to obtain a license and the
25 appropriate fee. The license issued on an original application entitles the licensee to act as a
26 contractor within this state, subject to the limitations of such license, until the expiration of the
27 then current fiscal year ending ~~February~~ March first.

28 **SECTION 4. AMENDMENT.** Section 43-07-09.1 of the North Dakota Century Code is
29 amended and reenacted as follows:

30 **43-07-09.1. Name changes.** Not later than ten days after the date of a change in a
31 contractor's name, the licensee must notify the registrar of the name change on a form provided

1 by the registrar. A name change must be accompanied by a ten dollar fee. A licensee may not
2 change its name if the change is associated with a change in the legal status other than a
3 change in marital status. A corporation, limited liability company, limited liability partnership, or
4 limited partnership registered with the secretary of state is not subject to this section.

5 **SECTION 5. AMENDMENT.** Section 43-07-10 of the 1995 Supplement to the North
6 Dakota Century Code is amended and reenacted as follows:

7 **43-07-10. Renewal of license - Time requirements - Revocation of license for**
8 **failure to renew.** Any license issued under this chapter may be renewed for each successive
9 fiscal year by obtaining from the registrar a certificate of renewal. To obtain a certificate of
10 renewal, the licensee shall file with the registrar an application, which includes a listing of each
11 contract or subcontract ~~obtained~~ completed by the licensee during the preceding calendar year
12 in this state over the amount of ten thousand dollars, the nature of the work contracted or
13 subcontracted, and, if a performance bond was required by the contract, the name and address
14 of the corporation, limited liability company, or other person who issued the bond. The registrar
15 shall within a reasonable time forward a copy of the list to the state tax commissioner. The
16 applicant shall include with the application a copy of a certificate of insurance indicating liability
17 coverage as proof that the applicant has secured liability insurance, and a certification that the
18 applicant has submitted all payroll taxes including North Dakota income tax, workers'
19 compensation premiums, and unemployment insurance premiums due at the time of renewal,
20 which documents need not be notarized. The application for a certificate of renewal must be
21 made to the registrar on or before the first day of March of each year. At the time of filing the
22 application for a certificate of renewal, the applicant shall pay to the registrar a renewal fee
23 equal to twenty percent of the license fee established in section 43-07-07. If any contractor
24 applies for a renewal under a class different from the license previously issued, the new class
25 license may be issued upon the payment of the fee required for the issuance of the license of
26 the class applied for. If any contractor fails to file an application for a certificate of renewal
27 ~~when due, the registrar shall revoke by the March first deadline, the contractor's license. The~~
28 ~~registrar shall notify by mail a contractor whose license is revoked of the revocation within sixty~~
29 ~~days after the filing deadline~~ is not in good standing. Within sixty days after March first the
30 contractor must be notified by mail that the contractor's license is not in good standing. The
31 contractor ~~may then renew the license within ninety days after the filing deadline~~ has until

1 June first to renew by paying a penalty fee of seventy-five percent of the renewal fee, filing an
2 application for a certificate of renewal, and paying the renewal fee. A contractor who applies for
3 a certificate of renewal before or within ninety days of the filing deadline is not subject to the
4 investigation authorized in section 43-07-09. After the June first deadline any licenses not
5 renewed are revoked. Any application for a certificate of renewal must be fully completed within
6 sixty days of the date the application is received by the registrar or it will be returned to the
7 contractor who will then be subject to the provisions of section 43-07-09.

8 **SECTION 6. AMENDMENT.** Section 43-07-13 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **43-07-13. Records and certified copies thereof.** The registrar shall maintain in ~~his~~
11 the registrar's office, open to public inspection during office hours, a complete indexed record of
12 all applications ~~and all~~ licenses ~~issued and all~~ certificates of renewal ~~and of cancellations or~~
13 suspensions, revocations, and other information maintained on contractors. The registrar may
14 dispose of an inactive contractor ~~license, cancellation, or suspension~~ file after two years if no
15 attempts have been made to apply for a new license or renew the license. Disposal of the
16 license will proceed according to the provisions of chapter 54-46. Before disposal and upon
17 request, ~~he~~ the registrar shall furnish a certified copy of any ~~license issued, of any renewal~~
18 ~~certificate, or of the cancellation or suspension thereof,~~ information maintained upon receipt of
19 the sum of ~~five~~ ten dollars. Such certified copy must be received in all courts and elsewhere as
20 prima facie evidence of the facts stated therein.

21 **SECTION 7. AMENDMENT.** Section 43-07-14 of the 1995 Supplement to the North
22 Dakota Century Code is amended and reenacted as follows:

23 **43-07-14. Complaint for license ~~cancellation~~ revocation.** Any person, including an
24 employee or agent of the registrar, may file a duly verified complaint with the registrar charging
25 that the licensee is guilty of one or more of the following acts or omissions:

- 26 1. Abandonment of any contract without legal excuse. A rebuttable presumption of
27 abandonment arises if:
 - 28 a. A contractor fails to commence any work agreed upon in writing within sixty
29 days of a starting date agreed upon in writing; or

b. A contractor fails to complete any work agreed upon in writing within ninety days of a completion date agreed upon in writing, unless the failure is due to circumstances beyond the control of the contractor.

2. 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.

3. The doing of any fraudulent act by the licensee as a contractor in consequence of which another is injured in an amount exceeding the amount set forth in subsection 1 of section 27-08.1-01.

4. The making of any false statement in any application for a license or renewal thereof.

The complaint must be on a form approved by the registrar and must set forth sufficient facts upon which a reasonable person could conclude that one or more of the above acts or omissions has been committed.

SECTION 8. AMENDMENT. Section 43-07-15 of the North Dakota Century Code is amended and reenacted as follows:

43-07-15. ~~Cancellation~~ Revocation of license - Appeal - Procedure. Upon the filing of such complaint, the registrar shall follow the procedures prescribed by chapter 28-32. A written complaint filed under section 43-07-14, which 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, meets the requirements of subsection 1 of section 28-32-05. If the registrar determines that the licensee has been guilty of any of the acts or omissions charged, ~~he the registrar shall cancel or suspend~~ revoke the contractor's license. A contractor aggrieved by a decision of the registrar in ~~suspending or canceling his~~ revoking the contractor's license may appeal ~~such the~~ that person's decision to the district court of ~~his~~ that person's county of residence or Burleigh County. Any licensee may not obtain a license under any name during the period of ~~cancellation or~~ revocation. A "licensee" whose license is ~~cancelled or~~ revoked includes any officer, director, agent, member, or employee of the licensee. The provisions of chapter 28-32 govern any appeal and proceedings hereunder.

1 **SECTION 9. AMENDMENT.** Section 43-07-17 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **43-07-17. ~~Cancellation~~ Revocation of license - Relicensing.** A licensee whose
4 license has been ~~cancelled~~ revoked may not be relicensed during the current calendar year in
5 which the decision to ~~cancel~~ revoke the license was made.