

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

HOUSE BILL NO. 1152
(Representative Carlson)
(At the request of the Secretary of State)

AN ACT to amend and reenact sections 43-07-02, 43-07-04, 43-07-09, 43-07-09.1, 43-07-10, 43-07-13, 43-07-14, 43-07-15, and 43-07-17 of the North Dakota Century Code, relating to licensing of contractors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

SECTION 2. AMENDMENT. Section 43-07-04 of the 1995 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 ~~such forms as the registrar shall prescribe~~ 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 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 maintain:

1. Maintain liability insurance coverage required by this section or by section 43-07-10, ~~or who fails to file;~~
2. File, renew, or properly amend any fictitious name certificate required by chapter 45-11 ~~for any contractor.~~

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

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 3. AMENDMENT. Section 43-07-09 of the 1995 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 ~~February~~ March first.

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

43-07-09.1. Name changes. Not later than ten days after the date of a change in a contractor's name, the licensee must notify the registrar of the name change on a form provided by the registrar. A name change must be accompanied by a ten dollar fee. A licensee may not change its name if the change is associated with a change in the legal status other than a change in marital status. A corporation, limited liability company, limited liability partnership, or limited partnership registered with the secretary of state is not subject to this section.

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

43-07-10. Renewal of license - Time requirements - ~~Revocation~~ 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 ~~obtained~~ completed by the licensee during the preceding calendar year in this state over the amount of ten thousand dollars, the nature of the work ~~contracted~~ of each project, contract, or subcontracted subcontract, and, if a performance bond was required ~~by the contract~~, 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, 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 ~~when due, the registrar shall revoke by the March first deadline, the contractor's license. The registrar shall notify by mail a contractor whose license is revoked of the revocation within sixty days after the filing deadline~~ 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 may then renew the license within ninety days after the filing deadline 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 6. AMENDMENT. Section 43-07-13 of the North Dakota Century Code is amended and reenacted as follows:

43-07-13. Records and certified copies thereof. The registrar shall maintain in ~~his~~ the registrar's office, open to public inspection during office hours, a complete indexed record of all applications ~~and all~~ licenses issued ~~and all~~ certificates of renewal ~~and of cancellations or suspensions, revocations, and other information maintained on contractors.~~ The registrar may dispose of an inactive contractor license, ~~cancellation, or suspension 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, ~~he~~ the registrar shall furnish a certified copy of any ~~license issued, of any renewal certificate, or of the cancellation or suspension thereof,~~ information maintained upon receipt of the sum of ~~five~~ ten dollars. Such certified copy must be received in all courts and elsewhere as prima facie evidence of the facts stated therein.

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

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

1. Abandonment of any contract without legal excuse. A rebuttable presumption of abandonment arises if:
 - a. A contractor fails to commence any work agreed upon in writing within sixty 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 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 ~~canceled 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.

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

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

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-fifth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1152.

House Vote: Yeas 89 Nays 0 Absent 8

Senate Vote: Yeas 44 Nays 5 Absent 0

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 1997.

Approved at _____ M. on _____, 1997.

Governor

Filed in this office this _____ day of _____, 1997,

at _____ o'clock _____ M.

Secretary of State