

SENATE BILL NO. 2149

Introduced by

Industry, Business and Labor Committee

(At the request of the Secretary of State)

1 A BILL for an Act to amend and reenact sections 43-07-04, 43-07-09, 43-07-10, 43-07-17,
2 43-07-18, and 43-07-19 of the North Dakota Century Code, relating to licensing of contractors,
3 revoking a contractor's license, appointing an agent for service of process for a nonresident
4 contractor, and civil penalties.

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

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

8 **43-07-04. License - How obtained - Revocation.** To obtain a license under this
9 chapter, an applicant shall submit, on forms the registrar prescribes, an application under oath
10 containing a statement of the applicant's experience and qualifications as a contractor. A copy
11 of a certificate of insurance indicating liability coverage as proof that the applicant has secured
12 liability insurance, must be filed with the application and the contractor shall submit a statement
13 from the North Dakota workers compensation bureau that the contractor has secured workers'
14 compensation coverage satisfactory to the bureau along with such other information as may be
15 required by the registrar to assist the registrar in determining the applicant's fitness to act in the
16 capacity of a contractor. The application must contain a statement that the applicant desires
17 the issuance of a license under this chapter, and must specify the class of license sought. No
18 sooner than ~~ten~~ twenty days after sending written notice to a contractor at the contractor's last
19 known address, the registrar shall use procedures of chapter 28-32 to revoke the license of any
20 contractor who fails to:

- 21 1. Maintain liability insurance coverage required by this section or by section
22 43-07-10;
- 23 2. File, renew, or properly amend any fictitious name certificate required by chapter
24 45-11;

- 1 3. Maintain an active status of a corporation or registration as a foreign corporation;
- 2 4. Maintain an active status of a limited liability company or registration as a foreign
- 3 limited liability company;
- 4 5. File or renew a trade name registration as required by chapter 47-25;
- 5 6. File or renew a limited liability partnership or foreign limited liability partnership as
- 6 required by chapter 45-22; or
- 7 7. File or renew a limited partnership or foreign limited partnership.

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

10 **43-07-09. Duty of registrar - Expiration of license.** Within fifteen days from the date
11 of application, the registrar may investigate and determine each applicant's fitness to act in the
12 capacity of contractor as defined in this chapter, and no license may be issued to such
13 applicant until the registrar receives all documentation necessary to obtain a license and the
14 appropriate fee. The license issued on an original application entitles the licensee to act as a
15 contractor within this state, subject to the limitations of such license, until the expiration of the
16 then current fiscal year ending March first, except that an initial license issued to a licensee in
17 January or February is valid until March first of the subsequent year.

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

20 **43-07-10. Renewal of license - Time requirements - Invalidity of license for failure**
21 **to renew.** Any license issued under this chapter may be renewed for each successive fiscal
22 year by obtaining from the registrar a certificate of renewal. To obtain a certificate of renewal,
23 the licensee shall file with the registrar an application, which includes a listing of each project,
24 contract, or subcontract completed by the licensee during the preceding calendar year in this
25 state over the amount of ten thousand dollars, the nature of the work of each project, contract,
26 or subcontract, and, if a performance bond was required, the name and address of the
27 corporation, limited liability company, or other person who issued the bond. The registrar shall
28 within a reasonable time forward a copy of the list to the state tax commissioner. The applicant
29 shall include with the application a copy of a certificate of insurance indicating liability coverage
30 as proof that the applicant has secured liability insurance unless the registrar has a current
31 valid certificate of insurance on file, and a certification that the applicant has submitted all

1 payroll taxes including North Dakota income tax, workers' compensation premiums, and
2 unemployment insurance premiums due at the time of renewal, which documents need not be
3 notarized. The application for a certificate of renewal must be made to the registrar on or
4 before the first day of March of each year. At the time of filing the application for a certificate of
5 renewal, the applicant shall pay to the registrar a renewal fee equal to twenty percent of the
6 license fee established in section 43-07-07. If any contractor applies for a renewal under a
7 class different from the license previously issued, the new class license may be issued upon the
8 payment of the fee required for the issuance of the license of the class applied for. If any
9 contractor fails to file an application for a certificate of renewal by the March first deadline, the
10 contractor's license is not in good standing and the contractor must be deemed to be
11 unlicensed within the meaning of sections 43-07-02 and 43-07-18. Within sixty days after
12 March first, the contractor must be notified by mail that the contractor's license is not in good
13 standing. The contractor then has until June first to renew by paying a penalty fee of
14 seventy-five percent of the renewal fee, filing an application for a certificate of renewal, and
15 paying the renewal fee. A contractor who applies for a certificate of renewal before or within
16 ninety days of the filing deadline is not subject to the investigation authorized in section
17 43-07-09. After the June first deadline any licenses not renewed are revoked. Any application
18 for a certificate of renewal must be fully completed within sixty days of the date the application
19 is received by the registrar or it will be returned to the contractor who will then be subject to the
20 provisions of section 43-07-09.

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

23 **43-07-17. Revocation of license - Relicensing.** A licensee whose license has been
24 revoked may not be relicensed ~~during the current calendar year in which the decision to revoke~~
25 ~~the license was made~~ for a period of up to five years.

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

28 **43-07-18. Penalty.** Any person acting in the capacity of a contractor within the
29 meaning of this chapter without a license as herein provided is guilty of a class B misdemeanor.
30 Whether a person is subjected to criminal prosecution under this section, and in addition to the
31 license fee that may be assessed when the person makes application for a license, the person

1 may be assessed a civil penalty by the registrar, following written notice to the person of an
2 intent to assess the penalty, in an amount not to exceed three times the amount set forth in
3 section 43-07-07. Any civil penalty must be assessed and collected before a person is issued a
4 license. The assessment of a civil penalty may be appealed in the same manner as appeals
5 under section 43-07-04, but only on the basis that the registrar's administrative determination
6 that the person acted as a contractor when not licensed as a contractor was clearly erroneous.

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

9 **43-07-19. Nonresident contractors - Agent for service of process.** Every applicant
10 for a contractor's license who is not a resident of the state of North Dakota shall furnish to the
11 secretary of state of the state of North Dakota a written appointment by which ~~such~~ the
12 applicant appoints the secretary of state of the state of North Dakota as ~~his~~ the applicant's true
13 and lawful agent upon whom may be served all lawful process in any action or proceeding
14 against such nonresident contractor. Such appointment in writing shall be evidence of ~~said~~ the
15 contractor's consent that any such process against ~~him~~ the contractor which is so served upon
16 the secretary of state shall be of the same legal force and effect as if served upon ~~him~~ the
17 contractor personally within this state. Registered foreign corporations entitled to do business
18 in this state according to chapter 10-22 ~~and~~, registered foreign limited liability companies
19 entitled to do business in the state according to chapter 10-32, foreign limited liability
20 partnerships entitled to do business in the state according to chapter 45-22, and foreign limited
21 partnerships entitled to do business in the state according to chapter 45-10.1 and having a
22 current registered agent and registered address on file in the ~~corporate division of the~~ secretary
23 of state's office need not appoint the secretary of state as agent for service of process under
24 the provisions of this section. Within ten days after service of the summons upon the secretary
25 of state, notice of such service ~~together~~ with the summons and complaint in the action shall be
26 sent to the defendant contractor at ~~his~~ the contractor's last known address by registered or
27 certified mail with return receipt requested and proof of such mailing shall be attached to the
28 summons. The secretary of state shall keep a record of all process served upon ~~him~~ the
29 secretary of state under ~~the provisions of~~ this section. Such record shall show the day and hour
30 of service. Whenever service of process shall have been made as provided in this section, the
31 court, before entering a default judgment, or at any stage of the proceeding, may order such

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- 1 continuance as may be necessary to afford the defendant contractor reasonable opportunity to
- 2 defend any action pending against ~~him~~ the defendant contractor.