

Fifty-eighth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2252

Introduced by

Senators Cook, Freborg

Representatives Carlson, Wald

1 A BILL for an Act to amend and reenact sections 43-07-04, 43-07-14, 43-07-15, and 43-07-19
2 of the North Dakota Century Code, relating to contractor's license, license complaints, hearings,
3 revocations, civil penalties, remedies, and service of process; to provide for a legislative council
4 study; and to provide a penalty.

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

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

8 **43-07-04. License - How obtained - Revocation.** To obtain a license under this
9 chapter, an applicant who is eighteen years of age or older shall submit, on forms the registrar
10 prescribes, an application under oath containing a statement of the applicant's experience and
11 qualifications as a contractor. A copy of a certificate of insurance indicating liability coverage,
12 as proof that the applicant has secured liability insurance, must be filed with the application and
13 the contractor shall submit a statement from the North Dakota workers compensation bureau
14 that the contractor has secured workers' compensation coverage satisfactory to the bureau
15 along with such other information as may be required by the registrar to assist the registrar in
16 determining the applicant's fitness to act in the capacity of a contractor. The application must
17 contain a statement that the applicant desires the issuance of a license under this chapter and
18 must specify the class of license sought. No sooner than twenty days after sending written
19 notice to a contractor at the contractor's last-known address, the registrar shall classify as not in
20 good standing the license of any 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
24 chapter 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 Any contractor who has been notified by the registrar that the contractor's license is not in good
9 standing shall cease soliciting or entering into new contract projects. If the contractor fails to
10 correct the deficiency specified in the notice by evidence satisfactory to the registrar within
11 thirty days of the date of the notice or if the contractor solicits or enters into new contract
12 projects while the contractor's license is not in good standing, the registrar shall use the
13 procedures of chapter 28-32 to revoke the license of the contractor.

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

16 **43-07-14. Complaint for license revocation.** Any person, including an employee or
17 agent of the registrar, may file a duly verified complaint with the registrar charging that the
18 licensee is guilty of one or more of the following acts or omissions:

- 19 1. Abandonment of any contract without legal excuse. A rebuttable presumption of
20 abandonment arises if:
 - 21 a. A contractor fails to commence any work agreed upon in writing within sixty
 - 22 days of a starting date agreed upon in writing; or
 - 23 b. A contractor fails to complete any work agreed upon in writing within ninety
 - 24 days of a completion date agreed upon in writing, unless the failure is due to
 - 25 circumstances beyond the control of the contractor.
- 26 2. Diversion of funds or property received under express agreement for the
27 prosecution or completion of a specific contract under this chapter, or for a
28 specified purpose in the prosecution or completion of any contract, and their
29 application or use for any other contract obligation or purpose to defraud or
30 deceive creditors or the owner.

- 1 3. ~~The doing of any fraudulent act by the licensee~~ Engaging in any fraudulent or
2 deceptive acts or practices or misrepresentation as a contractor in consequence of
3 which ~~another~~ is one or more persons is injured in an a total amount exceeding
4 the amount set forth in subsection 1 of section 27-08.1-01 three thousand dollars.
- 5 4. The making of any false statement in any application for a license of renewal
6 thereof or by violating any provisions of this chapter or being convicted of an
7 offense the registrar determines has a direct bearing on the applicant's or
8 licensee's ability to serve the public as a contractor as set out in section
9 12.1-33-02.1.
- 10 5. Engaging in work without any trade or professional license as required for such
11 work pursuant to local, state, or federal law.
- 12 6. Failure to fully refund the contracting party's advance payment if a rebuttable
13 presumption of abandonment has arisen under subsection 1 and the contracting
14 party has made a request to the licensee for a refund.

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

18 **SECTION 3. AMENDMENT.** Section 43-07-15 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **43-07-15. Revocation or suspension of license - Restitution - Civil penalties -**
21 **Appeal - Procedure.** ~~Upon the filing of such complaint, the registrar shall follow the~~
22 ~~procedures prescribed by chapter 28-32. A written complaint filed under section 43-07-14,~~
23 ~~which provides sufficient facts upon which a reasonable person could conclude that one or~~
24 ~~more of the acts or omissions set forth in section 43-07-14 has been committed, meets the~~
25 ~~requirements of subsection 1 of section 28-32-21. The registrar shall review each complaint~~
26 filed under section 43-07-14. If the registrar determines a written complaint filed under section
27 43-07-14 provides sufficient facts upon which a reasonable person could conclude that one or
28 more of the acts or omissions set forth in section 43-07-14 has been committed, the registrar
29 may initiate an adjudicative proceeding in accordance with chapter 28-32. If, after an
30 adjudicative proceeding or as part of an informal disposition under chapter 28-32, the registrar
31 determines that the licensee ~~has been~~ is guilty of ~~any of the acts~~ an act or ~~omissions~~ omission

1 charged ~~or if the licensee admits guilt to an act or omission charged~~, the registrar ~~shall~~ may
2 ~~suspend or revoke the contractor's license, order a civil penalty of not more than one thousand~~
3 ~~dollars, order restitution in an amount not more than five thousand dollars, or imposes some~~
4 ~~lesser sanction or remedy. The registrar may suspend the contractor's license for a period of~~
5 ~~not more than sixty months. The registrar may not renew, reinstate, or issue a new license until~~
6 ~~the licensee has paid any civil penalty or restitution imposed under this section. The registrar~~
7 ~~may bring an action in district court to recover restitution or penalties under this section. A~~
8 contractor aggrieved by a decision of the registrar in revoking ~~or suspending~~ the contractor's
9 license ~~or ordering restitution or penalties~~ may appeal the decision to the district court of that
10 person's county of residence or Burleigh County. Any licensee may not obtain a license under
11 any name during the period of revocation ~~or suspension~~. A "licensee" whose license is revoked
12 ~~or suspended~~ includes any officer, director, agent, member, or employee of the licensee. The
13 provisions of chapter 28-32 govern any appeal and proceedings hereunder.

14 **SECTION 4. AMENDMENT.** Section 43-07-19 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **43-07-19. Nonresident contractors - Agent for service of process.** Every applicant
17 for a contractor's license who is not a resident of the state of North Dakota ~~shall furnish to the~~
18 ~~secretary of state a written appointment by which the applicant, by signing and filing the~~
19 ~~application,~~ appoints the secretary of state as the applicant's true and lawful agent upon whom
20 may be served all lawful process in any action or proceeding against such nonresident
21 contractor. Such appointment in writing ~~shall be~~ is evidence of the contractor's consent that
22 any such process against the contractor which is so served upon the secretary of state shall be
23 of the same legal force and effect as if served upon the contractor personally within this state.
24 Registered foreign corporations entitled to do business in this state according to chapter
25 10-19.1, registered foreign limited liability companies entitled to do business in the state
26 according to chapter 10-32, foreign limited liability partnerships entitled to do business in the
27 state according to chapter 45-22, and foreign limited partnerships entitled to do business in the
28 state according to chapter 45-10.1 and having a current registered agent and registered
29 address on file in the secretary of state's office need not appoint the secretary of state as agent
30 for service of process under this section. Within ten days after service of the summons upon
31 the secretary of state, notice of such service with the summons and complaint in the action

1 shall be sent to the defendant contractor at the defendant contractor's last-known address by
2 registered or certified mail with return receipt requested and proof of such mailing shall be
3 attached to the summons. The secretary of state shall keep a record of all process served
4 upon the secretary of state under this section, showing the day and hour of service. Whenever
5 service of process was made under this section, the court, before entering a default judgment,
6 or at any stage of the proceeding, may order such continuance as may be necessary to afford
7 the defendant contractor reasonable opportunity to defend any action pending against the
8 defendant contractor.

9 **SECTION 5. CONTRACTOR COMPETENCY - LEGISLATIVE COUNCIL STUDY.**

10 The legislative council shall consider studying, during the 2003-04 interim, consumer protection
11 in regard to contractor competency and out-of-state contractors licensed in the state. The
12 legislative council shall report its findings and recommendations, together with any legislation
13 required to implement the recommendations, to the fifty-ninth legislative assembly.