

**2015 SENATE INDUSTRY, BUSINESS AND LABOR**

**SB 2188**

# 2015 SENATE STANDING COMMITTEE MINUTES

## Industry, Business and Labor Committee

Roosevelt Park Room, State Capitol

SB 2188


1/20/2015

Job Number 22202

☐ Subcommittee

☐ Conference Committee

Committee Clerk Signature



### Explanation or reason for introduction of bill/resolution:

Relating to the penalty for operating without a contractor's license

### Minutes:

Attachments

**Chairman Klein:** Opened the hearing.

**Parrell D. Grossman, Director, Consumer Protection and Antitrust Division, Office of the Attorney General:** Written Testimony Attached: (1). (:01-20:30)

**Senator Poolman:** Said she is glad to see this bill come forward. On page 3, line two, do we need a "more" in there or is it assumed because of the phrase right before it?

**Parrell D. Grossman:** It should be, "more then fifty thousand dollars is a class a felony".

**Ladd Erickson, Mclean and Sheridan County States Attorney:** He talked about the victims across North Dakota. He said there are already civil judgments that are not affective and evidence shows they are dropping the ball here. (24:48-45:42)

**Russ Hanson Associated General Contractors and the Association of General Contractors:** In support of the bill. He concurs with their comments that this will have no effect on legitimate contractors.

**Bill Kalanek, National Electrical Contractors Association and North Dakota Association of Plumbing, Heating and Mechanical:** In support of the bill.

**Nancy R. Willis, Government Affairs Director for the Association of Realtors:** In support of the bill. They represent over sixteen hundred realtor members and two hundred and fifty affiliate members.

**Mary Feist, on behalf of Secretary of State Al Jaeger:** Written Testimony (2).

**Chairman Klein:** Closed the hearing.

# 2015 SENATE STANDING COMMITTEE MINUTES

## Industry, Business and Labor Committee

Roosevelt Park Room, State Capitol

SB 2188

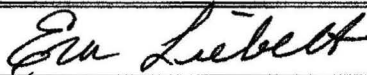
1/27/2015

Job Number 22640

☐ Subcommittee

☐ Conference Committee

Committee Clerk Signature



### Explanation or reason for introduction of bill/resolution:

Relating to the penalty for operating without a contractor's license

### Minutes:

Attachments

**Chairman Klein:** Go to 2188. I believe Mr. Grossman brought some amendments to that. It was the bill dealing with fraudulent construction and creating the penalty. Amendments and Amendments in context attached (1&2)

**Senator Sinner:** Asked if this was the bill we discussed putting in an emergency clause in and would there be any need to put an emergency clause into this bill.

**Chairman Klein:** I like that idea.

**Senator Poolman:** Moved the amendment proposed by Parrell Grossman and Consumer Protection.

**Senator Sinner:** Seconded the motion.

**Chairman Klein:** Went over the amendment.

Roll Call Vote: Yes-7 No-0 Absent-0

**Senator Sinner:** Moved to adopt an Emergency Clause.

**Senator Miller:** Seconded the motion.

Roll Call Vote: Yes-7 No-0 Absent-0

**Senator Poolman:** Moved a do pass as amended.

**Senator Sinner:** Seconded the motion.

Roll Call Vote: Yes-7 No-0 Absent-0

**Chairman Klein will carry the bill.**

**Chairman Klein closed the hearing.**

January 27, 2015

TP  
1/27/15

PROPOSED AMENDMENTS TO SENATE BILL NO. 2188

Page 1, line 4, remove "and"

Page 1, line 5, after "penalty" insert "; and to declare an emergency"

Page 2, line 10, remove ", unless"

Page 2, line 11, remove "the failure is due to circumstances beyond the control of the contractor"

Page 2, line 18, remove ", unless the failure is due to circumstances beyond the"

Page 2, line 19, remove "control of the contractor"

Page 2, line 27, after the first "to" insert "begin or"

Page 3, line 1, remove "under fifty thousand dollars but"

Page 3, line 1, after the second "dollars" insert "but not more than fifty thousand dollars"

Page 3, line 2, after the first "and" insert "more"

Page 3, after line 26, insert:

"SECTION 4. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

**2015 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2188**

Senate Industry, Business and Labor Committee

☐ Subcommittee

Amendment LC# or Description: Parrell Grossman Amendments

Recommendation: ☒ Adopt Amendment  
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☐ As Amended ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar  
Other Actions: ☐ Reconsider ☐ \_\_\_\_\_

Motion Made By Senator Poolman Seconded By Senator Sinner

Senators	Yes	No	Senators	Yes	No
Chairman Klein	x		Senator Murphy	x	
Vice Chairman Campbell	x		Senator Sinner	x	
Senator Burckhard	x				
Senator Miller	x				
Senator Poolman	x				

Total (Yes) 7 No 0

Absent 0

Floor Assignment \_\_\_\_\_

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

**2015 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2188**

Senate Industry, Business and Labor Committee

☐ Subcommittee

Amendment LC# or Description: Emergency Clause

Recommendation: ☒ Adopt Amendment  
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☐ As Amended ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar  
Other Actions: ☐ Reconsider ☐ \_\_\_\_\_

Motion Made By Senator Sinner Seconded By Senator Miller

Senators	Yes	No	Senators	Yes	No
Chairman Klein	x		Senator Murphy	x	
Vice Chairman Campbell	x		Senator Sinner	x	
Senator Burckhard	x				
Senator Miller	x				
Senator Poolman	x				

Total (Yes) 7 No 0

Absent 0

Floor Assignment \_\_\_\_\_

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

**2015 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2188**

Senate Industry, Business and Labor Committee

☐ Subcommittee

Amendment LC# or Description:

Recommendation: ☐ Adopt Amendment  
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☒ As Amended ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ \_\_\_\_\_

Motion Made By Senator Poolman Seconded By Senator Sinner

Senators	Yes	No	Senators	Yes	No
Chairman Klein	x		Senator Murphy	x	
Vice Chairman Campbell	x		Senator Sinner	x	
Senator Burckhard	x				
Senator Miller	x				
Senator Poolman	x				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Klein

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

**REPORT OF STANDING COMMITTEE**

**SB 2188: Industry, Business and Labor Committee (Sen. Klein, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2188 was placed on the Sixth order on the calendar.

Page 1, line 4, remove "and"

Page 1, line 5, after "penalty" insert "; and to declare an emergency"

Page 2, line 10, remove ", unless"

Page 2, line 11, remove "the failure is due to circumstances beyond the control of the contractor"

Page 2, line 18, remove ", unless the failure is due to circumstances beyond the"

Page 2, line 19, remove "control of the contractor"

Page 2, line 27, after the first "to" insert "begin or"

Page 3, line 1, remove "under fifty thousand dollars but"

Page 3, line 1, after the second "dollars" insert "but not more than fifty thousand dollars"

Page 3, line 2, after the first "and" insert "more"

Page 3, after line 26, insert:

**"SECTION 4. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly .

**2015 HOUSE INDUSTRY, BUSINESS AND LABOR**


**SB 2188**

# 2015 HOUSE STANDING COMMITTEE MINUTES

## Industry, Business and Labor Committee Peace Garden Room, State Capitol

SB 2188  
3/17/2015  
Job Number 24974

☐ Subcommittee  
☐ Conference Committee



### Explanation or reason for introduction of bill/resolution:

Penalty for operating without a contractor's license, provide a penalty and declare an emergency.

### Minutes:

Attachments 1, 2

**Chairman Keiser:** Opens the hearing of SB 2188.

**Parrell Grossman~Director-Consumer Protection & Antitrust Division:** (Attachment 1)

(14:30)

**Representative Becker:** I have three concerns. Page 1, line 15 refers to a contractor. Contractor in 43-07-02 is defined as anyone that does repair, construction, etc. of real property. If I want a handy man for a small job, do I have to get a licensed contractor?

**Parrell Grossman:** The threshold in law is \$2,000 on a single job.

**Representative Becker:** If that threshold is in law, what is the penalty? Then this language wouldn't be needed.

**Parrell Grossman:** We shifted that section from 43-07-18 of the law. Nothing in that section has changed.

**Representative Becker:** My second concern is on page 2, lines 14-17. Is the delay of greater than 90 days past the agreed upon date standard?

**Parrell Grossman:** If there is a legal reason they can't do it, they would be excused from them. This is in a limited number of cases. We had to find a way to define abandonment. It is always the circumstances involved.

**Representative Becker:** My third concern is on page 2, lines 28-31 dealing with the penalties. I am remiss to increase penalties or charges up to Class B and Class A felony. What area of code are we looking at where \$50,000 is a Class A and more than \$10,000 is a Class B?

**Parrell Grossman:** It's in the penalties provisions of the criminal code and they mirror that. It is just like someone stealing your car. We are trying to make it fit with what exists. Under the current statute, if a prosecutor could successfully prosecute one of these cases under theft by deception, those would be the penalties. We are not changing it, just making it clearer.

**Representative Kasper:** If a legitimate complaint is filed with a prosecutor, the prosecutor investigates and finds the complaint is legitimate regardless of the dollar amount, will this now require the prosecutor to prosecute as opposed to saying this is too small and we will not proceed?

**Parrell Grossman:** Prosecutors have the option to determine when and what they will prosecute. This will make it easier for prosecutors.

**Representative Beadle:** In Section 1, subsections 1 & 2 deal with an individual that is acting without a license. But subsections 3, 4, & 5 don't seem to be related to someone operating without a license. Is this the correct section for this language? These three sections seem to apply to someone who is licensed but really bad at their job.

**Parrell Grossman:** Yes, it's just a reiteration of how we treat contractors that are unlicensed. Within this same statute which houses the contractor licensing laws, Chapter 43-07, we thought it was appropriate.

**Representative Beadle:** Does it need to be in 43-07-02 specifically dealing with licensing and not being licensed?

**Parrell Grossman:** I don't think so because we aren't dealing with the license. It is whether you took money and didn't do the work.

**Representative Beadle:** So subsections 3, 4, 5 shouldn't be in 43-07-02 because that is dealing with licensing.

**Parrell Grossman:** We amended the title to say license required construction fraud penalties. We do think that's the best place to put that.

**Representative Beadle:** What is the difference between the levels of felonies for being prosecuted as an individual or a corporation?

**Parrell Grossman:** You can't put a corporation in jail. You can impose fines.

**Representative Beadle:** Let's say I established an LLC and I willfully commit construction fraud under subsection 3, would that be prosecuted as a corporate felony?

**Parrell Grossman:** You can usually pierce the corporate veil and get to the individual that showed up and took the money.

**Representative Ruby:** In the language it says "any person acting in the capacity of a contractor." If I do a small job, I'm acting in the "capacity." Is the term "contractor" defined?

**Parrell Grossman:** Reads the definition of a contractor. That would not include you unless you are hiring your services out over the \$2,000.

**Representative Ruby:** Does the \$2,000 include labor and materials?

**Parrell Grossman:** That is total--services and labor.

**Representative Ruby:** How long since that has been raised?

**Parrell Grossman:** I don't know if it's ever been raised. You as a legislature can raise those amounts.

**Representative M Nelson:** Page 2, number 3, letter a uses "intentionally" where letters b and c use "willfully." Where would there be a case where somebody paid for the material and supplies, started and finished the work on time yet he is still guilty of "intentionally" committing deception?

**Parrell Grossman:** I don't think you would have that situation. "Intentionally" is the current standard that is available. The contractor had no intent of doing the work.

**Representative M Nelson:** You are not guilty if you didn't take the money. We have the defense that if you return the money, you are not guilty. Are they guilty if they are soliciting work?

**Parrell Grossman:** No, there was nothing paid and if he hasn't promised to do any work. The Attorney General might look at it and ask what he is up to. We may be able to ban him civilly from engaging in that kind of work if we could establish to the court that he is not a legitimate contractor.

**Representative M Nelson:** If you return the money before criminal charges are filed, all the charges go away?

**Parrell Grossman:** That would be true. Prosecutors would be reluctant and juries would be reluctant to convict. We are trying to make sure the contractor has the ability to return the money. If they return the money, there is no harm.

**Chairman Keiser:** We currently have all the civil remedies that we need. What this bill does is add the criminal penalty.

**Ladd Erickson, McLean County State's Attorney:** The provisions of this bill are evidence driven. Working with the Secretary of State's Office, the Attorney General's Office, criminal investigators, etc. we found signatures and patterns in the evidence from cases that came in. We have civil remedies that the victims can't use because the scammers know that no one will ever collect. These guys don't care if someone has a judgment against them. Not many states attorneys have been taking these cases.

**Representative Kasper:** Under this bill would the part-time contractors be required to be licensed if he doesn't charge for his services to friends/family?

**Ladd Erickson:** No, he's helping you as a friend. If this bill passes, a contractor will know the rules. We are trying to stop the "rip and runs."

**Representative Becker:** Are you opposed to a one word amendment that would change the \$2,000 to \$5,000 or other number?

**Ladd Erickson:** In drafting the bill, I suggested that but the Secretary of State didn't like that. If someone is doing more than hobby work and they are not going through the licensing process, they are putting themselves at risk.

**Representative Becker:** It seems that they are at greater risk now. Because now they will be a criminal.

**Ladd Erickson:** This is the current law just restated.

**Representative Becker:** A change would decriminalize someone who you are just trying to help and have a good community concept. We don't need licensing and government to help each other with small jobs.

**Ladd Erickson:** You would have to change current law and kill the bill. The bill here is just reenacting current law. If this bill dies, there is still a criminal law affecting that.

**Representative Kasper:** If we raise the threshold above \$2,000, there would be a higher level where there would be no criminal potential.

**Ladd Erickson:** That is correct.

**Representative Kasper:** We know people and we don't want to make criminals if we don't fix the statute.

**Ladd Erickson:** The feedback I receive is they are really frustrated under current law. The State's Attorney will not charge non-licensed contractors.

**Colleen Vetter, Elgin, ND:** (Attachment 2).

(51:15)

**Representative Beadle:** You mentioned Mr. McRae's partner said he is up to the same tricks but with truck drivers. Did you get any specifics of what he is doing there?

**Colleen Vetter:** It is more of an issue that his character is to defraud people. Mr. McRae is in the Minot area. He was advertising on Craig's List for truck drivers and wording it that he would supply the loads in the oil field. All the driver had to do was come. The amount owed to one truck driver was getting higher. Every time he would go to the office the check was not there. Finally the bill was up to \$60,000 that McRae owed him. McRae used the money to pay off individuals that he owed money to in Arizona. The truck driver never did receive his money. From visiting with people in Minot, they are a lot of people upset with him.

**Ladd Erickson:** I will support the \$5,000 if that would address the concerns. It makes a great deal of sense when you are talking about criminalizing conduct.

**Representative M Nelson:** When these contractors are prosecuted, are their licenses pulled?

**Ladd Erickson:** Yes, their license would get pulled through a revocation and they would be denied an application in the future.

**Opposition:**  
None.

**Neutral:**  
None.

**Chairman Keiser:** Closed the hearing.

**Representative Becker:** Moved an amendment to raise the amount to \$6,000 before a license is needed. Page 1, line 11.

**Representative Ruby:** Seconded the motion

**Voice vote.** Motion carried.

**Representative Beadle:** On page 2, subsection 5 I have some issues with the mandatory sentencing.

**Representative Becker:** Last session I voted against making a Class A felony out of over \$50,000. This is consistent with theft by deception.

**Representative Ruby:** It's more definitive on what class of penalty it is. But the sentencing is still somewhat flexible.

**Chairman Keiser:** These are really bad operators.

**Representative Ruby:** Moved Do Pass as amended.

**Representative Lefor:** Seconded the motion.

**A Roll Call vote was taken: Yes 14, No 0, Absent 1.**

**Do Pass as amended** carries.

**Representative M. Nelson** will carry the bill.

15.8183.02001  
Title.03000

Adopted by the Industry, Business and Labor  
Committee

March 17, 2015

8/3/17/15

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2188

Page 1, line 11, overstrike "two" and insert immediately thereafter "six"

Renumber accordingly

Roll Call Vote: 1

**Page 1, line 11 change \$2,000 to \$6,000**

Date: 3/17/15Roll Call Vote: 2

**2015 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2188**

House Industry, Business & Labor Committee
☐ Subcommittee
                         
 ☐ Conference Committee

Amendment LC# or Description: \_\_\_\_\_

Recommendation:    ☐ Adopt Amendment  
                              ☒ Do Pass    ☐ Do Not Pass    ☐ Without Committee Recommendation  
                              ☒ As Amended    ☐ Rerefer to Appropriations

Other Actions:    ☐ Reconsider    ☐ \_\_\_\_\_Motion Made By Rep. Ruby Seconded By Rep. Lefor

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	<u>X</u>		Representative Lefor	<u>X</u>	
Vice Chairman Sukut	<u>X</u>		Representative Louser	<u>X</u>	
Representative Beadle	<u>X</u>		Representative Ruby	<u>X</u>	
Representative Becker	<u>X</u>		Representative Amerman	<u>X</u>	
Representative Devlin	<u>X</u>		Representative Boschee	<u>X</u>	
Representative Frantsvog	<u>AB</u>		Representative Hanson	<u>X</u>	
Representative Kasper	<u>X</u>		Representative M Nelson	<u>X</u>	
Representative Laning	<u>X</u>				

Total (Yes) 14 No 0Absent 1Floor Assignment Nelson

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

**REPORT OF STANDING COMMITTEE**

**SB 2188, as engrossed: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2188 was placed on the Sixth order on the calendar.

Page 1, line 11, overstrike "two" and insert immediately thereafter "six"

Renumber accordingly

**2015 CONFERENCE COMMITTEE**

**SB 2188**

# 2015 SENATE STANDING COMMITTEE MINUTES

## Industry, Business and Labor Committee

Roosevelt Park Room, State Capitol

SB 2188


4/2/2015

Job # 25777

☐ Subcommittee

☒ Conference Committee

Committee Clerk Signature



### Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact section 43-07-02 and subsection 3 of section 43-07-10 of the North Dakota Century Code, relating to providing penalties for operating without a contractor's license and committing construction fraud; to repeal section 43-07-18 of the North Dakota Century Code, relating to the penalty for operating without a contractor's license; to provide a penalty; and to declare an emergency.

### Minutes:

No Attachments

**Committee Members:** Chairman Klein, Senator Poolman, Senator Sinner  
Representative Laning, Representative Sukut, Representative Nelson  
All were present.

**Chairman Klein:** Opened the Conference Committee on HB 2188. The House changed the \$2000 to \$6000. It did create some issues with the Secretary of State whom I have a letter from. Maybe we could discuss why we would go from \$2000 to \$6000. This was in a line of things that we wanted to do to fix these rogue contractors to get a better handle on it.

**Representative Laning:** In our committee part of the discussion was primarily that we did not have any objection to this bill but we had two different people that testified that they had hired a friend to come and help them to do a small remodeling job and actually if you look at this bill as it was with a \$2000 limit it makes that practice illegal. It says that if the entire project exceeds \$2000 you must have a licensed contractor. We thought that was unfair. Most of you that have done remodeling in your homes and had a friend help you out that you paid a little something it would require a license if it was over \$2000. We thought that for small projects around the home that was not fair to the individual. We decided to raise that dollar amount to accommodate those types of things more. The two that testified were at \$3000 to \$4000 on their projects so we made it \$6000. There is nothing really magic about the \$6000 number.

**Senator Poolman:** Can we split the difference at \$4000.

**Chairman Klein:** There is certainly some discussion as to where that level should be. I think \$2000 may be too low and \$6000 is certainly too high. There is obviously a reason why we need the number there.

**Senator Sinner:** I don't know where that number ought to be but if there is some way to fix that little problem that would be a better solution.

**Representative Laning:** I have had some discussions with the Secretary of State recently regarding that number and he has a real problem with the \$6000 number. He indicated that there are some enforcement issues of going that high and he would rather see the number somewhat lower. The \$4000 may be the correct number. I have no discussed this with my other conference members.

**Chairman Klein:** Asked the Secretary of State to come to the podium and let us know what he would be comfortable with.

**Al Jaeger, Secretary of State:** The \$2000 has been in law for a long time. At one time it was only \$500.

**Chairman Klein:** So these people were all breaking the law way back then?

**Al Jaeger:** That is not quite correct. The thing is that you can have all kinds of friends help you. It is when you are holding yourself out as a contractor and there is a contractual agreement. If you just help out and get a little bit of compensation but there is not a contract it is fine. I would suspect that friends don't necessarily get into that. In my discussion with Parrell Grossman, this is an enforcement thing. This is not about hitting someone that is running around in a pickup. That \$6000 creates a threshold where they cannot go below in an enforcement action to really go after the people that we want to go after. That is the purpose of this bill. Parrell Grossman and I thought that \$4000 would be a nice level. The reason is that even in that \$2000 difference you start getting into a guy that is coming out and doing a contract and doesn't do the work but takes the money. The Attorney General has that \$2000 difference to give him more enforcement clout. From our standpoint, we would be comfortable with \$4000.

**Chairman Klein:** What you are saying is if the project is \$4000 then it would be your lid and anything that is above that you can go after the scoundrel a lot easier than you could if it was set at \$6000.

**Al Jaeger:** Once you start getting up over \$6000 you are getting at a little higher level. That \$2000 might not seem like a lot but based on the calls and things that come to our office it would make a difference.

**Senator Sinner:** When we talk about these contracts, normally we have an individual contract with each person who comes and I think \$2000 is a fair amount.

**Al Jaeger:** \$2000 is the current law and since the House raised it to \$6000 we are suggesting is just to reduce it to \$4000.

**Representative Sukut:** If anyone is interested in getting these contractors in line we are because we are working with a lot of those issues out there. The other side of that is that

\$2000 you are not going to get anyone to take his tool out of the bag for that. Raising that to \$4000 is a reasonable offer and I would support that.

**Chairman Klein:** That was the discussion on the one issue.

**Al Jaeger:** The other issue is the issue that Parrell Grossman had about some missing wording.

**Representative Laning:** This was an amendment proposed during our committee by Parrell Grossman which we did not incorporate. On Page 1, Line 23, after the 43-07-04, it is proposed to put a period there and then delete the rest of that line, and line 1 and 2 of page 2. Essentially the proposal is to delete that. I don't see that it damages anything.

**Chairman Klein:** Clarified the amendment.

**Al Jaeger:** My understanding from Parrell was that he had come into the committee and they were discussing other things and he had offered it to the committee and then realized later that what he had offered to the committee was inadvertently overlooked. From what he wanted for enforcement and some feedback that he was getting from the industry, the amendment would clarify the position.

**Senator Sinner:** Moved that the House Recede from the House Amendments and amend with changing the two to four on Page 1, Line 11 and removing language after 43-07-04 on Page 1, Line 23 to Page 2, Lines 1 and 2.

**Representative Laning:** Seconded.

**A Roll Call Vote Was Taken:** 6 yeas, 0 nays, 0 absent.

**Motion Carried.**

**Senator Klein and Representative Laning will be the carriers to their prospective houses.**

April 2, 2015

4/2/15  
JWC

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2188

That the House recede from its amendments as printed on page 885 of the Senate Journal and pages 1034 and 1035 of the House Journal and that Engrossed Senate Bill No. 2188 be amended as follows:

Page 1, line 11, overstrike "two" and insert immediately thereafter "four"

Page 1, line 23, remove ", but only on the basis that the registrar's administrative determination"

Page 2, remove line 1

Page 2, line 2, remove "erroneous"

Renumber accordingly

Date: 4/2/2015

Roll Call Vote #: |

# **2015 SENATE CONFERENCE COMMITTEE ROLL CALL VOTES**

BILL/RESOLUTION NO. SB 2188 as (re) engrossed

Senate "Enter committee name" Committee

- Action Taken    ☐ SENATE accede to House Amendments  
☐ SENATE accede to House Amendments and further amend  
☐ HOUSE recede from House amendments  
☒ HOUSE recede from House amendments and amend as follows
- ☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Senator Sinner Seconded by: Representative Laning

Senators	4/2			Yes	No	Representatives	4/2			Yes	No
Klein	✓			✓		Laning	✓			✓	
Poolman	✓			✓		Sukut	✓			✓	
Sinner	✓			✓		Nelson	✓			✓	
Total Senate Vote						Total Rep. Vote					

Vote Count      Yes: 6      No: 0      Absent: 0

Senate Carrier Senator Klein House Carrier Representative Laning

LC Number 15.8183.02002 . 04000 of amendment

LC Number \_\_\_\_\_ . \_\_\_\_\_ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

Line 11 change "two" to "four"  
 Remove Line 23, pg1 but only ... to end of  
 Line 2 pg2

**REPORT OF CONFERENCE COMMITTEE**

**SB 2188, as engrossed:** Your conference committee (Sens. Klein, Poolman, Sinner and Reps. Laning, Sukut, M. Nelson) recommends that the **HOUSE RECEDE** from the House amendments as printed on SJ page 885, adopt amendments as follows, and place SB 2188 on the Seventh order:

That the House recede from its amendments as printed on page 885 of the Senate Journal and pages 1034 and 1035 of the House Journal and that Engrossed Senate Bill No. 2188 be amended as follows:

Page 1, line 11, overstrike "two" and insert immediately thereafter "four"

Page 1, line 23, remove ", but only on the basis that the registrar's administrative determination"

Page 2, remove line 1

Page 2, line 2, remove "erroneous"

Renumber accordingly

Engrossed SB 2188 was placed on the Seventh order of business on the calendar.

**2015 TESTIMONY**

**SB 2188**

SENATE INDUSTRY, BUSINESS AND LABOR COMMITTEE  
JERRY KLEIN, CHAIRMAN  
JANUARY 20, 2015

TESTIMONY BY  
PARRELL D. GROSSMAN  
DIRECTOR, CONSUMER PROTECTION AND ANTITRUST DIVISION  
OFFICE OF ATTORNEY GENERAL  
IN SUPPORT OF  
SENATE BILL NO. 2188

Mr. Chairman and members of the Senate Industry, Business and Labor Committee. I am Parrell Grossman, and it is my privilege to be the Director of the Attorney General's Consumer Protection and Antitrust Division. I appear on behalf of the Attorney General in support of Senate Bill 2188.

The North Dakota Association of Home Builders and the Association of General Contractors have informed the Attorney General that they are supporting this legislation he greatly appreciates the working relationship his office has with these organizations and their members.

The contractors I am discussing today frequently are unlicensed contractors from out-of-state, although this proposed legislation by law must treat all similarly situated persons alike.

The Attorney General's Consumer Protection Division, working closely with the Secretary of State, conducts contractor licensing enforcement. Our actions include, whenever possible, seeking consumer restitution for consumers for monies paid in advance in circumstances in which the materials were not provided or work was not completed. It should be helpful background information for you to understand our experience and expertise. Of course, this enforcement involves only a very small percentage of total contractors in North Dakota and is not a reflection on the large majority of contractors and home builders in this state that are very legitimate.

Since July 2011, the Consumer Protection Division has brought 241 legal actions and recovered almost \$900,000 in consumer restitution and civil penalties. The civil penalties portion is about \$157,000. Total restitution and penalties ordered by the court are approximately \$1.4M, and some restitution is very difficult to recover, despite a judgment. I have attached as an Exhibit our Contractor Compliance Enforcement Statistics Report through November 2014.

This legislation and my comments are not in any way intended to be critical of contractors. In fact, instead of "construction fraud," this legislation might be better titled, "The people who take your money and do nothing" legislation. It focuses on untrustworthy and dishonest individuals, who undeservingly call themselves contractors. Instead, they really are just people who take your money and do nothing. Unfortunately,

they have chosen an important and reputable "profession" which allows them to take large amounts of money, and do little or nothing. Some of these individuals are smooth talkers and are just con artists, who tell their victims what they want to hear. Now, this problem requires a unique fix. For the individuals that keep taking money and not doing the work it is almost a Ponzi scheme.

When we ask consumers why they paid thousands of dollars to someone from outside the community or state, and a person they knew nothing about, the most frequent response is: "The price was just such a good deal, or so reasonable." Of course, the prices were so good. One can charge half the price for a Harley Davidson motorcycle, if you never intend to deliver the motorcycle, and make far more money than a legitimate business that has to provide the actual product or service.

The contractors that take money and do nothing can be prosecuted to some extent under the current "theft by deception" laws, although there typically has to be a pattern, and the cases still can be very difficult. More problematic are the contractors that take \$50,000 or more from multiple victims, and provide only a small amount of materials or work for each victim. The classic example is the person that brings out a Bobcat and moves some dirt around, or delivers a few building materials with negligible value. Then, the work stops, and the person moves on to take another \$50,000 advance payment and does a similar amount of work. Most prosecutors will not prosecute a case in which any work was done, as they determine the case is civil. We are not critical of prosecutors that do not prosecute these cases. Judges often will not allow these cases to go forward, because they now have become civil matters. Case law has developed over time suggesting these matters are "civil matters" and should be resolved in civil court. The Legislature can change the laws and redefine this conduct as criminal, and prosecutors, judges, and juries will act accordingly. I have worked with prosecutors in this state for many years. They will require law enforcement officers and investigators to consider and eliminate all legal and reasonable defenses applicable to these contractors, and then carefully scrutinize the cases that merit prosecution.

Sometimes the suggestion is: "Why not have the victims simply bring a civil legal action against these individuals and obtain a money judgment?" When victims already have paid and lost thousands of dollars, it is expensive and almost pointless to sue these scoundrels. These individuals are judgment proof. They have no money to pay these judgments and they never do pay. Usually, the victims cannot even locate the perpetrators, because they have left the state. Often, The Attorney General's Office cannot locate these individuals. Based upon our research and experiences, they frequently are engaged in the same conduct elsewhere, as close as one or two states away. This is demonstrated by my first example of "construction fraud."

The Attorney General's records contain many instances of fraudulent individuals engaged in "construction fraud," most of who are never prosecuted. By way of example, I will discuss a few relevant cases in detail.

Incident # 1. Jonathan Lee Oliver d/ba/ Western Steel Structures-Missoula, Montana.

Conducted business in North Dakota and Montana, including the alias "Jon Walker," in order to prevent consumers from uncovering his prior criminal conviction in Oregon for aggravated theft and identity theft in a construction fraud case. Attached as an Exhibit is the June 18, 2007 Oregonian news article. Oregon prosecutor Paul Maloney stated, "They gave him \$34,000 and he left them a \$7,000 pile of dirt." In a prophetic statement at that time, the Oregon victim said, "The most disappointing thing is that three years from now, he [Oliver] can be back doing the same thing." As you will learn, the Oregon victims got off easy by comparison to the North Dakota victims.

Oliver was not licensed as a contractor in North Dakota for his transactions, although he ultimately applied for and obtained a contractor's license from the Secretary of State in November, 2011, when he filed a false application omitting his prior criminal history in Oregon. At that time, the Secretary of State and Attorney General did not have any consumer complaints and were not aware of any of Oliver's conduct in North Dakota.

In December 2011, Attorney General Wayne Stenehjem discovered that Oliver had solicited and accepted advance payments from consumers for steel buildings. He entered into contracts with the victims, received millions of dollars in advance payments, and failed to complete their buildings. Oliver directed employees to tell victims a certain phase of construction had been completed in order to induce the consumers to send additional installment payments when, in fact, the phases had not been completed and Oliver's business lacked the materials necessary to complete the project because Oliver had diverted so many of the funds for personal expenditures. He diverted the monies for personal possessions including, his house, several vehicles, jet skis, a motor home and a diamond engagement ring.

The Attorney General issued a Cease and Desist Order on December 22, 2011. (Copy attached as an Exhibit.) Despite Oliver's transactions in many North Dakota counties, Oliver was not criminally prosecuted in North Dakota. The Attorney General's Consumer Protection Division, however, reviewed Oliver's many business records and, upon completion of its investigation, sued Oliver for consumer restitution for North Dakota victims, because it was undetermined whether Oliver would face any criminal consequences for his actions. The Attorney General, in February 2013, received a \$3.6M judgment against Oliver in Williams County District Court. Thereafter, the Montana United States Attorney received a judgment against Oliver for \$6.4M, including North Dakota and Montana victims and, in June 2103, Oliver was sentenced in the federal prosecution to one hundred months in jail. Oliver will never be able to pay \$3.4M to North Dakota consumers, and not likely any portion thereof. A number of Oliver's victims in North Dakota were farmers and ranchers.

Incident # 2. George and Karla Nelson d/b/a Baron Buildings Inc. and Ag Pro Buildings, Pierre, South Dakota

The Nelsons operated their business under various names, including in Georgia, Tennessee, Iowa, Ohio, Nebraska, Minnesota, Montana, South Dakota, and North Dakota, conducting transactions in nine counties including McLean County. They, however, picked the wrong county, with States Attorney Ladd Erickson in McLean County. The Nelsons solicited advance payments of thousands of dollars for pole barns, showed up on site with a Bobcat, moved some dirt around, dropped off a few poles and never completed the jobs. They obtained an attorney to represent them with the Attorney General, stalled us for a while trying to suggest it was a civil issue they would clear up, and eventually the attorney quit communicating with this office. The Attorney General issued a Cease and Desist Order on January 24, 2013. (Copy attached.) The Bureau of Criminal Investigations (BCI) and Ladd Erickson became involved, and the rest is history. The Nelsons were convicted of theft and sentenced to ten years, with five suspended, and ordered to pay about \$58,000 in consumer restitution in McLean and Benson Counties. It is not the usual result. The large majority of such cases are not prosecuted. It was a difficult case to prosecute, albeit successful. The other counties did not prosecute. Mr. Erickson is a credit to his profession and the victims in McLean County probably do not realize how rarely criminal prosecution occurs or is successful. BCI agent Tim Erickson and other law enforcement personnel documented about \$1.1M the Nelsons took from consumers in multiple states, mostly farmers and ranchers.

South Dakota attempted to prosecute and the case was dismissed because that Court would not allow evidence of the Nelsons' prior similar conduct occurring elsewhere. The Nelsons aren't really an example of "the system works," as much as a huge exception to the rule. It should serve as a model of the illegal conduct and the importance to be able to prosecute these cases with some predictability.

For cases that were not prosecuted, I have attached three other Cease and Desist Orders by the Attorney General involving substantial advance payments to individuals or contractors with the completion of no work, or incomplete work. As far as we know, these cases were not criminally prosecuted, and little if any monies have been recovered by the consumers.

In order to present a workable solution and an appropriate law to the building industry and the Legislature, the Attorney General recently reached out to McLean County State's Attorney Ladd Erickson for his support and involvement in drafting this statute. Mr. Erickson recognizes these individuals should not be able to avoid criminal prosecution by "moving some dirt around." Mr. Erickson has a reputation for prosecuting difficult cases, including theft by contractors. He understands which cases can be prosecuted, which cases are problematic, and which cases probably cannot be prosecuted under the "civil dispute doctrine." For clarification the "civil dispute doctrine" is not an independent law with a life of its own. It is a doctrine, issue, or defense that has arisen in application to the current law. This new proposed law does not remove

the many legal defenses available to legitimate contractors. However, it places potential bad actors on notice and more clearly defines the specifically prohibited conduct in a manner that the courts or juries will continue to interpret. If a prosecutor has a case that warrants charges, the Courts or juries will decide whether to convict. Courts also can continue to dismiss charges at the preliminary hearing stages, if it determines probable cause does not exist.

The Attorney General's objective is to get contractors in violation licensed, when appropriate, and get the work completed for the consumers, or get refunds when possible. When necessary and appropriate we ban the bad contractors to prevent more consumer injury.

The Attorney General's practices will not change. I review and approve every referral to a State's Attorney. In this time period ending in 2014, the Consumer Protection Division probably considered or referred 10 or less individuals for criminal prosecution. For the reasons explained, most of these cases were not prosecuted, or simply were not good cases for prosecution. Two were successfully prosecuted including the Nelsons and a person in Morton County that took \$100,000 from an elderly consumer. All of the cases involved egregious conduct that would fall within "construction fraud." In addition to Ladd Erickson and Morton County State's Attorney Al Koppy, the Attorney General wants to thank the many state's attorneys that evaluate and prosecute these cases whenever possible.

I will try and quickly explain the Bill's new provisions. In Section 1, the Bill adds a new subsection 2 to 43-07-02, which specifies the penalty of class A misdemeanor for acting without a contractor's license.

On page 2, a new subsection 3, specifies what conduct constitutes construction fraud. The abandonment provisions in subdivision c of subsection 3 of section 43-07-02, page 2, lines 8 through 18, closely parallel the abandonment provisions in current section 43-07-14, in which the Secretary of State or Attorney General can bring an action for license revocation or other enforcement action. In those instances in which there is not egregious criminal conduct, the Attorney General would continue to apply the civil remedies of license revocation, etc. when more appropriate. I have attached a copy of chapter 43-07 for your reference,

Explain the legal defenses in the new subsection 4. Explain the grading of contractor fraud offenses in the new subsection 5.

In Section 3, explain the minor change to remove the reference to 43-07-18, because it has been replaced by subsection 2 of 43-07-02 and Section 3 of the Bill repeals 43-07-18 since the offense is now specified in subsection 2, of Section 1 of the Bill.

The Attorney General respectfully asks the Senate Industry, Business and Labor Committee adopt the proposed amendments and give SB 2188 a "Do Pass" recommendation.

We are proposing some amendments to prevent confusion between the new elements of this offense and the related jury instructions.

On page 2, lines 10-11, we would like to remove, starting with the comma after "upon," the language : "unless the failure is due to circumstances beyond the control of the contractor." We would like to make a similar change in lines 18-19 and, after "writing" on line 18, removing the "comma through contractor."

Then, on page 2, we would like to make a change that affects the legal defense in lines 27-29. On line 27, we would like to insert, after "to," the language "begin or complete."

With these changes, subdivision c on lines 27-29, would provide a legal defense if: "The person was not able to begin or complete the project because there were factors outside of the person's control and the person made substantial efforts to resolve any dispute." We have made sure that the conduct of legitimate contractors will not be unwittingly captured within the new provisions for contractor fraud. The persons I have described don't make any efforts to resolve the dispute. They just don't do the work, or they move on to other victims.

These proposed changes will prevent confusion and clarify the legal defenses. The changes will not affect the protections provided to legitimate contractors in this legislation

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

11/25/2014

LEGAL ACTIONS

<u>Company Name</u>	<u>City, State</u>	<u>Settlement Document</u>	<u>Date - Notice of Entry</u>	<u>Penalty Amount</u>	<u>Restitution Ordered</u>	<u>Restitution Received</u>	<u>Sec. of State Referral</u>	<u>Notes</u>
	Big Lake, MN	AVC	8/25/2011	\$500.00				
	Milaca, MN	AVC	9/13/2011	\$500.00				
	Cheyenne, WY	AVC	10/26/2011	\$500.00	\$2,375.00	\$2,375.00		
	Aberdeen, SD	AVC	11/17/2011	\$500.00				
	Aberdeen, SD	AVC Enforcement		\$500.00				
	Mandan, ND	COJ	11/15/2011	\$1,033.50	\$8,149			
	Lonsdale, MN	AVC	11/18/2011	\$500.00				
	Greeley, CO	AVC	11/28/2011	\$500.00				
	Grand Junction, CO	AVC	12/9/2011	\$500.00				
	Berthold, ND	AVC	12/12/2011	\$500.00	\$9,280.00	\$9,280.00		
	Burlington, ND	AVC	12/12/2011	\$500.00				
	Aberdeen, SD	AVC / Judgment	12/12/2011	\$2,650.00	\$8,746.51			
	Wichita, KS	AVC	1/13/2012	\$500.00				
	Twin Falls, ID	AVC	1/24/2012	\$2,000.00				
	Wahpeton, ND	Default Judgment	2/2/2012	\$7,800.00	\$234,443			Elin's
	Missoula, MT	AVC	2/9/2012	\$1,000.00	\$26,200.00	\$26,200.00		
	St. Peter, MN	AVC	3/26/2012	\$1,000.00				
	Des Moines, IA	AVC	3/29/2012	\$1,000.00				
	Minot, ND	AVC	4/12/2012	\$1,000.00				
	Miles City, MT	AVC	6/12/2012	\$2,000.00			x	
	Fargo, ND	AVC	6/12/2012	\$250.00				
	Dickinson, ND	AVC	7/5/2012	\$1,000.00			x	
	Tioga, ND	AVC	7/5/2012	\$1,000.00				
	Tower City, ND	COJ	7/10/2012	\$1,000.00	\$33,036.26	\$28,650.00		
	Glyndon, MN	AVC	7/18/2012	\$1,000.00				
	Herriman, UT	AVC	7/23/2012	\$1,000.00				
	Boise, ID	AVC	7/23/2012	\$1,000.00				
	Mott, ND	AVC	7/23/2012	\$500.00			x	
	Ferndale, WA	AVC	7/25/2012	\$500.00			x	
	Mendon, UT	AVC	7/27/2012	\$500.00				
	McAlester, OK	AVC	7/31/2012	\$1,000.00				
	Powers Lake, ND	AVC	8/3/2012	\$500.00			x	
	Livingston, MT	AVC	8/6/2012	\$1,500.00				
	Sioux City, IA	AVC / Judgment	8/7/2012	\$1,000.00	\$17,855.68			
	Foley, MN	AVC	8/7/2012	\$500.00				
	Minot, ND	AVC	8/7/2012	\$500.00			x	
	Boise, ID	AVC	8/8/2012	\$500.00			x	
	Perham, MN	AVC	8/9/2012	\$500.00				
	Bismarck, ND	AVC	8/9/2012	\$500.00				
	Little Rock, AR	AVC	8/14/2012	\$500.00				
	Ross, ND	AVC	8/21/2012	\$500.00			x	
	Sumner, WA	AVC	8/24/2012	\$500.00			x	
	Powers Lake, ND	AVC	8/29/2012	\$500.00			x	
	Moorhead, MN	AVC	8/29/2012	\$500.00			x	
	Dickinson, ND	AVC	9/5/2012	\$500.00			x	
	Hettinger, ND	AVC	9/13/2012	\$500.00				
	De Pere, WI	AVC	9/13/2012	\$500.00			x	
	Wishek, ND	AVC	9/13/2012	\$500.00			x	
	Plano, TX	AVC	9/14/2012	\$500.00	\$33,000	\$33,000	x	
	Spiro, OK	AVC	9/14/2012	\$500.00	\$4,000	\$4,000		
	Prior Lake, MN	AVC	9/24/2012	\$1,000.00			x	
	Jamestown, ND	AVC	10/2/2012	\$1,000.00				

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Eudora, KS	AVC	10/3/2012	\$500.00				x	
Moran, WY	AVC	10/5/2012	\$500.00				x	
Great Falls, MT	AVC	10/5/2012	\$500.00	\$1,000	\$1,000			
Billings, MT	AVC	10/12/2012	\$1,000					
Williston, ND	AVC	10/16/2012	\$500				x	
Williston, ND	AVC	10/16/2012	\$500				x	
Billings, MT	AVC	10/17/2012	\$1,000				x	
New England, ND	AVC	10/19/2012	\$500				x	
Minot, ND	C&D	10/26/2012						
Minot, ND	C&D	10/26/2012					x	
Brighton, CO	C&D	10/26/2012						
Salt Lake City, UT	Warrant for Arrest	10/30/2012						
Merrill, WI	AVC	11/1/2012	\$500				x	
Missoula, MT	AVC	11/2/2012	\$500				x	
Eden Prairie, MN	AVC	11/5/2012	\$500					
Becker, MN	AVC	11/8/2012	\$1,000				x	
Minot, ND	AVC	11/8/2012	\$500					
Branson, MO	AVC	11/28/2012	\$500				x	
Fargo, ND	AVC	11/29/2012	\$500				x	
Denver, CO	AVC	11/29/2012	\$1,500					DNC & Contractor
Fisher, MN	AVC	12/11/2012	\$500				x	
Sheldon, ND	AVC	12/27/2012	\$500				x	
Grand Forks, ND	AVC	1/7/2013	\$500				x	
Minneapolis, MN	AVC	1/7/2013	\$500					
Zimmerman, MN	AVC	1/10/2013	\$500					
	C&D	1/24/2013						
Salt Lake City, UT	Warrant for Arrest	1/30/2013						
Luck, WI	AVC	1/30/2013	\$1,000	\$42,200	\$42,200		x	\$29,400 check. Materials delivered & contract cancelled
Missoula, MT	Default Judgment	2/12/2013			\$8,500			\$3,436,058 jdmt. \$11,896 in atty fees + \$70,000 civ pens, rest is restitution
Clark Fork, ID	AVC	2/26/2013	\$1,000				x	
Dickinson, ND	AVC	2/28/2013	\$500.00				x	
Killdeer, ND	AVC	2/28/2013	\$1,000				x	
Minot, ND	Default Judgment	3/19/2013	\$7,506.60	\$26,634	\$0			Nothing has been paid
Bear, DE	AVC	4/4/2013	\$500					
Lincoln, NE	C&D	4/2/2013						
Minot, ND	AVC	4/2/2013	\$500					
Stanley, ND	AVC	4/18/2013	\$1,000				x	
Durango, CO	AVC	4/26/2013	\$500				x	
Hayden, ID	AVC	5/9/2013	\$500				x	
Barnesville, MN	AVC	5/13/2013	\$1,000				x	
Houston, TX	AVC	5/13/2013	\$2,000					
Mishawaka, IN	AVC	5/20/2013	\$1,000				x	
Bismarck, ND	AVC	5/22/2013	\$500				x	
Underwood, ND	AVC	5/29/2013	\$1,000				x	
Silt, CO	AVC	5/29/2013	\$500					
Watford City, ND	AVC	5/31/2013	\$1,000				x	
Bismarck, ND	AVC Enforcement	6/3/2013	\$500					
Sioux Falls, SD	AVC	6/5/2013	\$500				x	
Williston, ND	AVC	6/5/2013	\$500				x	
Williston, ND	AVC	6/10/2013	\$500				x	
Houston, TX	AVC	6/10/2013	\$500				x	

Great Falls, MT	AVC	6/13/2013	\$500				x
Great Falls, MT	AVC	6/13/2013	\$500				x
Minot, ND	AVC	6/20/2013	\$500				
Bay City, MI	AVC	6/20/2013	\$500				
Sauk Rapids, MN	AVC	7/8/2013	\$500				
St. Joseph, MN	AVC	7/8/2013	\$500				
Weyauwega, WI	AVC	7/8/2013	\$500				
Payson, UT	AVC	7/10/2013	\$500				
St. Cloud, MN	AVC	7/10/2013	\$500				
McDonough, GA	AVC	7/10/2013	\$500				
Bemidji, MN	AVC	7/10/2013	\$500				
Lawrenceville, GA	AVC	7/11/2013	\$500				
St. Cloud, MN	AVC	7/11/2013	\$500				
Trenton, ND	AVC	7/12/2013	\$500				
Cokato, MN	AVC	7/12/2013	\$500				
Mount Holly, NC	AVC	7/12/2013	\$500				
Olathe, CO	AVC	7/12/2013	\$500				
St. Cloud, MN	AVC	7/12/2013	\$500				
Minot, ND	AVC	7/12/2013	\$500				x
Bemidji, MN	AVC	7/15/2013	\$500				
Minot, ND	AVC	7/18/2013	\$500				
Regent, ND	AVC	7/18/2013	\$500				x
Williston, ND	AVC	7/23/2013	\$500				x
Aurora, IL	AVC	7/24/2013	\$500				
Middleton, WI	AVC	7/26/2013	\$500				x
Marietta, GA	AVC	7/26/2013	\$500				
Bismarck, ND	AVC	8/2/2013	\$500				x
Everett, WA	AVC	8/2/2013	\$500				
Wilmar, MN	AVC	8/2/2013	\$500				x
Bismarck, ND	AVC	8/6/2013	\$250				
Greenfield, MN	AVC	8/6/2013	\$500				
Fairview, MT	AVC	8/6/2013	\$500				x
Park River, ND	AVC	8/8/2013	\$500				x
Bemidji, MN	AVC	8/8/2013	\$500				
Jamestown, ND	AVC	8/12/2013	\$500	\$9,000	\$11,000	Agreed to 2nd refund after AVC signed	
Minot, ND	AVC	8/12/2013	\$500				
Holly, MI	AVC	8/15/2013	\$500				x
Miles City, MT	AVC	8/20/2013	\$500				
Williston, ND	AVC	8/20/2013	\$1,500			10-32 and 43-07	
Kallispell, MT	AVC	8/23/2013	\$1,000			lic surrendered	x
Bismarck, ND	AVC	8/26/2013	\$500				x
Minot, ND	AVC	8/26/2013	\$500				
Denver, CO	AVC	9/6/2013	\$500				
Dickinson, ND	AVC	9/6/2013	\$0			\$500 suspended	x
Locust, NC	AVC	9/11/2013	\$500				x
Great Falls, MT	AVC	9/11/2013	\$500				
Williston, ND	AVC	9/11/2013	\$500				
Williston, ND	AVC Enforcement	9/16/2013	\$1,000				
Minot, ND	AVC	9/19/2013	\$200			Waiting on \$450	
Bismarck, ND	AVC	9/23/2013	\$0	\$2,336	1,000	Jdmt, plus \$500 to us as Jdmt	
Houston, TX	AVC	9/27/2013	\$500				x
Hartland, WI	AVC	10/1/2013	\$500				x
Spokane, WA	AVC	10/3/2013	\$500				x
Lake Mary, FL	AVC	10/3/2013	\$1,000				x
Carpio, ND	AVC	10/10/2013	\$1,000				
Upton, WY	AVC	10/16/2013	\$500				x
Devils Lake, ND	AVC	10/16/2013	\$500				x
Junction City, OR	AVC	10/16/2013	\$500				x

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Bismarck, ND	AVC	10/23/2013	\$500	\$250	\$250	x	
New Rockford, ND	AVC	10/23/2013	\$250				
Cedar, MN	AVC	10/23/2013	\$500			x	
Maple Grove, MN	AVC	10/23/2013	\$500			x	
Benedict, ND	AVC	10/28/2013	\$500				
Mohall, ND	C&D	10/31/2013				x	
Williston, ND	C&D	10/31/2013				x	
Minot, ND	AVC	11/5/2013	\$500				
Harvey, ND	AVC	12/4/2013	\$500			x	
Elmwood, NE	AVC	12/6/2013	\$500			x	
Moran, WY	AVC Enforcement	12/11/2013	\$1,000			x	
Bear, DE	AVC	12/19/2013	\$500	\$2,500	\$2,500		
Moorhead, MN	AVC	1/10/2014	\$500	29,574	0		
Lockport, IL	AVC	1/24/2014	\$500			x	
Valley City, ND	AVC	1/24/2014	\$500			x	
Bismarck, ND	AVC	1/28/2014	\$500				
Mandan, ND	AVC / Jdmt	1/28/2014	\$0	\$148,390			plus \$500 civ pens jdmt
Bangs, TX	AVC	2/6/2014	\$500				
Bismarck, ND	AVC / Jdmt	2/6/2014	\$0	\$2,000			plus \$500 civ pens jdmt
Fargo, ND	AVC	2/7/2014	\$500				
Miles City, MT	C&D	2/12/2014					
Michigan, ND	C&D	2/12/2014					
Millbank, SD	AVC	2/13/2014	\$500				
Altoona, IA	C&D	3/18/2014					
Mandan, ND	C&D	3/18/2014					
Bigfork, MT	C&D	3/18/2014					
Big Lake, MN	C&D	3/18/2014					
Ditwork, MN	C&D	3/18/2014				x	
Dickinson, ND	C&D	3/18/2014				x	
Minot, ND	C&D	3/18/2014	\$500			x	payment no AVC
Bismarck, ND	AVC	3/24/2014	\$500				
New Town, ND	AVC	3/26/2014	\$500				
Mandan, ND	AVC	3/31/2014	\$0	\$2,500	\$2,500		satisfaction of jdmt
Williston, ND	AVC	4/2/2014	\$500				
Provo, UT	AVC	4/2/2014	\$500				
Bismarck, ND	AVC	4/2/2014	\$500				
Bismarck, ND	AVC	4/25/2014	\$1,000	\$543,934	543,934		
West Fargo, ND	AVC	4/25/2014	\$500				
San Antonio, TX	AVC	5/16/2014	\$1,000	\$5,000	\$5,000		Stramers
Spiro, OK	AVC	6/16/2014	\$5,000	\$5,000	\$5,000		Eszlinger
Emerado, ND	C&D	6/16/2014				x	
Harrison, MT	C&D	6/16/2014					
Pine Bluff, AR	AVC	6/18/2014	\$1,000				
Pine Bluff, AR	AVC	6/18/2014	\$500				
Pine Bluff, AR	AVC	6/18/2014	\$500				
Pine Bluff, AR	AVC	6/18/2014	\$500				
Fargo, ND	AVC	6/20/2014	\$500			x	
Minot, ND	AVC	6/23/2014	\$750			x	
Bismarck, ND	AVC	6/23/2014	\$500				
Minot, ND	AVC	6/19/2014	\$500	\$5,000	\$5,000		Halvorson
Bismarck, ND	AVC	6/5/2014	\$500				
Houston, TX	AVC	7/9/2014	\$500				
Mandan, ND	AVC	7/18/2014	\$500			x	
Everett, WA	AVC - Vio	7/18/2014	\$300				moved out of state never paid remaining \$200
Williston, ND	AVC	7/22/2014	\$500				Williston/Wat Taskforce
Watertown, SD	AVC	7/22/2014	\$500				Williston/Wat Taskforce
Burnsville, MN	AVC	7/25/2014	\$500				Williston/Wat Taskforce
Kimball, MN	AVC	7/25/2014	\$500				Williston/Wat Taskforce
Big Lake, MN	AVC	7/25/2014	\$500				Williston/Wat Taskforce

10

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Billings, MT	AVC	7/31/2014	\$500			Williston/Wat Taskforce
Bozeman, MT	AVC	7/31/2014	\$500			Williston/Wat Taskforce
Mandan, ND	AVC	8/5/2014	\$500	\$800	\$800	Lance Vogel
Zimmerman, MN	AVC	8/6/2014	\$500			Williston/Wat Taskforce
Wyndmere, ND	AVC	8/6/2014	\$500			x
Underwood, ND	AVC	8/6/2014	\$500			x
Alvarado, TX	AVC	8/7/2014	\$500			
Fargo, ND	AVC	8/15/2014	\$500			
New Rockford, ND	AVC	8/19/2014	\$500			x
Monticello, MN	AVC	8/20/2014	\$500			x
Williston, ND	AVC	9/4/2014	\$500			Williston/Wat Taskforce
Minot, ND	AVC	9/15/2014	\$500			x
Bismarck, ND	AVC	9/18/2014	\$500			
Dent, MN	AVC	10/9/2014	\$500			
St. John, ND	AVC	10/13/2014	\$500			
Bismarck, ND	AVC	10/14/2014	\$500			x
Bear, DE	AVC	10/23/2014	\$2,500			
Bear, DE	AVC	10/23/2014	\$2,500			
Williston, ND	AVC	10/23/2014	\$500			
Cando, ND	AVC	11/3/2014	\$500			
Lincoln, ND	AVC	11/12/2014	\$250			x
Mandan, ND	AVC	11/21/2014	\$250			
Duluth, MN	AVC	11/21/2014	\$500			
Horace, ND	C&D	11/25/2014	\$0			

<b>Total Legal Actions</b>	<b>241</b>	<b>\$156,990.10</b>	<b>\$1,203,203.04</b>	<b>\$732,189.00</b>
<b>Total Restitution(ordered) and Penalties</b>	<b>\$1,360,193.14</b>			
<b>Total Restitution(recieved) and Penalties</b>	<b>\$889,179.10</b>			

<b>Legal Actions Aug - Dec 2011</b>	<b>12</b>	<b>\$8,683.50</b>	<b>\$28,550.10</b>	<b>\$11,655.00</b>
<b>Legal Action 2012</b>	<b>62</b>	<b>\$49,550.00</b>	<b>\$349,534.94</b>	<b>\$92,850.00</b>
<b>Legal Actions in 2013</b>	<b>99</b>	<b>\$60,706.60</b>	<b>\$82,920.00</b>	<b>\$65,450.00</b>
<b>Legal Actions in 2014</b>	<b>68</b>	<b>\$38,050.00</b>	<b>\$742,198.00</b>	<b>\$562,234.00</b>

CORRESPONDENCE

x  
x  
x  
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x

#1

Total Correspondence

39

PENDING ACTIONS

AVC offered  
preparing App Inj  
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contacting  
contacting  
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contacting  
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Total Pending Legal Actions

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([http://ads.oregonlive.com/RealMedia/ads/click\\_lx.ads/blog.oregonlive.com/breakingnews/2007/06/fraudulent\\_contractor\\_sent\\_to.h](http://ads.oregonlive.com/RealMedia/ads/click_lx.ads/blog.oregonlive.com/breakingnews/2007/06/fraudulent_contractor_sent_to.h))

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(<http://www.oregonlive.com/>)

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comments

## Fraudulent contractor sent to jail for 13 months

Print ([http://blog.oregonlive.com/breakingnews/print.html?entry=/2007/06/fraudulent\\_contractor\\_sent\\_to.html](http://blog.oregonlive.com/breakingnews/print.html?entry=/2007/06/fraudulent_contractor_sent_to.html))

(<http://connect.oregonlive.com/staff/tmaurer/index.html>) By Tom Maurer | [tmaurer@oregonian.com](mailto:tmaurer@oregonian.com)  
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on June 18, 2007 at 5:15 PM, updated June 18, 2007 at 5:28 PM

**HILLSBORO -- A 33-year-old contractor who took the money and ran was sentenced Monday to 13 months in jail.**

**Jonathan Lee Oliver also cannot work as a contractor for two years after his release,** said Washington County Circuit Judge Marco A. Hernandez.



(<http://blog.oregonlive.com/breakingnews/Jonathan%20Lee%20Oliver.JPG>) Jonathan Lee Oliver

Jonathan Lee Oliver

Oliver, who owned Country Property Services Inc. out of Tualatin, must repay \$26,000 to Tim and Sharon McCarthy.

**A jury earlier this month convicted Oliver of two counts of first-degree aggravated theft for taking \$34,000 from the McCarthys in 2004 and failing to build their Beaverton-area outdoor horse arena. He was arrested in February 2005.**

**"They gave him \$34,000 and he left them a \$7,000 pile of dirt," said Paul Maloney, Washington County deputy district attorney.**

Jurors also found Oliver guilty of identity theft for using another contractor's license number in the advertisement that attracted the McCarthy's attention in the first place.

"I find his life sad and wasteful, that he would con people and really not show any remorse," Sharon McCarthy said after the sentencing. "He never told us he was sorry, he never said he'd make every effort to get us our money back."

**Instead, Oliver fled Oregon, failing to appear at a court hearing in December 2005. He wasn't found until last December in North Carolina.**

**"The most disappointing thing is that three years from now he can be back doing the same thing," said Tim McCarthy, a veterinarian who owns four horses. "I wish he could get 20 years' probation so he wouldn't be able to be a contractor again."**

Other jurisdictions, however, will have say in how soon Oliver can go back to work. **He is charged with first-degree aggravated theft in Klamath Falls on a similar contract case** and the Oregon Construction Contractors Board is investigating other complaints.

Oliver could not get an Oregon construction contractors license because of felony convictions for criminal threatening and reckless conduct in 2000 for firing a gun during a dispute with a plumber in New Hampshire.

([http://ads.oregonlive.com/RealMedia/ads/click\\_lx.ads/blog.oregonlive.c](http://ads.oregonlive.com/RealMedia/ads/click_lx.ads/blog.oregonlive.c))



([http://insight.adsrvr.org/track/clk?imp=098b7f9f-1c2b-4691-b444-d31bc2fc9191&ag=tmty7fw&cid=v21189hy&fq=0&td\\_s=www.advanced20States&rgre=North%20Dakota&rgme=687&rgci=Bismarck&dt=PC&osf=Windows&os=Wind3D&crel=&r=http://www.stopfraudcolorado.gov/?utm\\_source=HOG&utm\\_medium=Display&utm\\_campaign=300x250](http://insight.adsrvr.org/track/clk?imp=098b7f9f-1c2b-4691-b444-d31bc2fc9191&ag=tmty7fw&cid=v21189hy&fq=0&td_s=www.advanced20States&rgre=North%20Dakota&rgme=687&rgci=Bismarck&dt=PC&osf=Windows&os=Wind3D&crel=&r=http://www.stopfraudcolorado.gov/?utm_source=HOG&utm_medium=Display&utm_campaign=300x250))

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(<http://www.oregonlive.com/pacific-northwest>)

Maloney said the New Hampshire attorney general's office also determined that Oliver "engaged in fraud and wrongdoing" when he failed to deliver heating oil to more than 1,300 customers who had pre-paid to keep the price low. As part of a civil judgment, Oliver was ordered to pay the state more than \$600,000 for the victims, but instead he came to Oregon.

Oliver testified at his trial that he always intended to build the McCarthys' horse arena, but they fired him after two months. He said didn't have a contractor's license because he had a phobia about taking tests and he didn't have the money to give back because it wasn't placed in an escrow account.

Witnesses testified that Oliver took in more jobs than he could ever finish and didn't pay his subcontractors.

"I believe this is a case of Mr. Oliver recklessly overextending himself," public defender Thomas MacNair told the judge.

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utm\_source=outbrain&utm\_medium=c&utm\_campaign=top)

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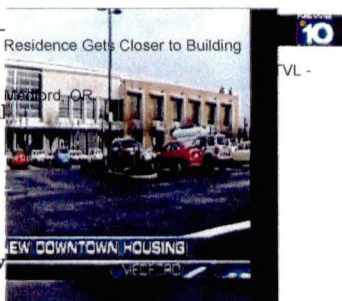


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- 3 Jalen Moore, under-the-radar safety, commits to Oregon State Beavers  
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(19 comments)

([http://www.facebook.com/sharer.php?u=http%3A%2F%2Fblog.oregonlive.com%2Fbreakingnews%2F2007%2F06%2Ffraudulent\\_contractor\\_sent\\_to.html](http://www.facebook.com/sharer.php?u=http%3A%2F%2Fblog.oregonlive.com%2Fbreakingnews%2F2007%2F06%2Ffraudulent_contractor_sent_to.html)) ([http://twitter.com/share?url=http%3A%2F%2Fblog.oregonlive.com%2Fbreakingnews%2F2007%2F06%2Ffraudulent\\_contractor\\_sent\\_to.html](http://twitter.com/share?url=http%3A%2F%2Fblog.oregonlive.com%2Fbreakingnews%2F2007%2F06%2Ffraudulent_contractor_sent_to.html)) (<mailto:>)

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December 22, 2011

**CEASE AND DESIST ORDER ISSUED AGAINST  
JONATHAN OLIVER, DBA "WESTERN STEEL STRUCTURES, INC"**

BISMARCK – Attorney General Wayne Stenehjem today issued a Cease & Desist Order against Jonathan Lee Oliver of Missoula, MT and Salem, OR, doing business as Western Steel Structures, Inc., for violations of North Dakota's consumer fraud law.

Stenehjem's Consumer Protection Division is investigating Western Steel Structures and Jonathan Lee Oliver for fraudulent transactions relating to erecting steel buildings, based on information that Western Steel Structures, Inc. solicited and accepted over \$1.5 million in consumer deposits and advance payments over the past nine months, and has failed to deliver the products or complete the construction projects.

Although Oliver was issued a North Dakota contractor's license, it appears he used an alias and provided false information on the application to conceal his criminal history in New Hampshire and Oregon. Oliver did not apply for a transient merchant license.

According to Parrell Grossman, director of the Attorney General's Consumer Protection Division, the Attorney General's investigation will help determine the extent of Oliver's fraudulent conduct in North Dakota. "We will be initiating legal action against Oliver for a permanent injunction against selling, as well as seeking civil penalties and restitution," Grossman said.

Oliver was arrested earlier this week and is currently being held in the Stutsman county jail. In addition to facing charges in North Dakota, Oliver is wanted in Oregon and New Hampshire.

"Unfortunately, prior to his arrest, my office had not received any consumer complaints about Mr. Oliver. In view of the information we have uncovered this week, I am immediately banning Oliver from conducting any further business in North Dakota," Stenehjem said.

Stenehjem reminds consumers to be very cautious about paying large up-front fees to contractors before completion deadlines and to never hire a contractor without a signed contract that provides all of the details.

Consumers who wish to make a complaint against Jonathan Lee Oliver also known as Jon Walker, John Walker, Jon Oliver, J.L. Oliver, or Western Steele Structures, Inc., can download the complaint form on the Attorney General's website at [www.ag.nd.gov](http://www.ag.nd.gov) or call the Consumer Protection Division at 701-328-3404 to request a complaint form.

###

Cease & Desist Order Western Steel Structures

January 24, 2013

**ATTORNEY GENERAL ISSUES CEASE & DESIST ORDER AGAINST GEORGE AND KARLA NELSON, BARON BUILDINGS, AND AG PRO BUILDINGS**

BISMARCK – Attorney General Wayne Stenehjem today issued a Cease and Desist Order against George Donald Nelson III and Karla Ann Nelson, doing business as Baron Buildings, LLC, and AG Pro Buildings, LLC, for violations of the consumer fraud laws and for providing contractor services without a North Dakota contractor's license.

The Attorney General's Bureau of Criminal Investigations and Consumer Protection Division initiated criminal and consumer fraud investigations of George and Karla Nelson after complaints indicated the Nelsons had engaged in criminal and fraudulent activity throughout the state. According to Stenehjem, the Nelsons took money from consumers in at least nine counties.

"The Nelsons not only operated without a contractor's license, it appears they also defrauded many North Dakota consumers," Stenehjem said. Stenehjem noted that in the majority of transactions, the Nelsons took thousands of dollars in advance deposits from consumers and performed little or no work. "The Nelsons' blatant disregard for the contractor licensing laws are criminal violations and their pattern of fraudulent conduct, including misrepresentations that the work would be completed for payments received, has harmed many North Dakota consumers," said Stenehjem.

According to Parrell Grossman, director of the Consumer Protection Division, it may be difficult to get refunds from unlicensed contractors, and consumers need to be vigilant in ensuring that contractors are licensed. "If a contractor is not licensed it often is the hallmark of a disreputable contractor and may be the first sign of serious problems with that contractor," Grossman said. "Consumers should never do business with an unlicensed contractor." Grossman reminds consumers to:

- Get two or three written bids for the project. Never accept a verbal estimate.
- Make sure the potential contractor is properly licensed, bonded and insured. Contractors engaging in contracts exceeding \$2,000 must be licensed by the North Dakota Secretary of State, at <http://www.nd.gov/sos/>.
- Be cautious if the contractor insists on full payment or a large down payment before any work begins.

North Dakota consumers who paid money to the Nelsons, Baron Buildings, LLC, or AG Pro Buildings, LLC, can submit a complaint form from the Attorney General's website at [www.ag.nd.gov](http://www.ag.nd.gov), or by contacting the Consumer Protection Division at 701-328-3404.

###

Cease & Desist

## NEWS RELEASE

Contact: Liz Brocker  
(701) 328-2213

November 25, 2014

**STENEHJEM BANS CONVICTED FELON FROM DOING BUSINESS IN THE STATE**

BISMARCK, ND – Attorney General Wayne Stenehjem has issued a cease and desist order banning **Chad Peda** and **Somer Hilleboe**, doing business as **CS Companies, Inc.**, of Horace, North Dakota, from conducting business in the state. Peda, who is a convicted felon, appears to have fled North Dakota.

The Consumer Protection division conducted an investigation after receiving a complaint from a consumer who had made an advance payment of \$11,000 to Peda to demolish a garage and construct a new one. Peda never completed the work.

"Before paying any money to a contractor, check to make sure the contractor is legitimate and is properly licensed and bonded. It only takes a couple of minutes to check, but it could save you from losing both money and time," said Stenehjem.

The investigators found that neither Peda nor Hilleboe had ever been licensed as contractors in North Dakota. After being contacted by investigators, Peda made a partial refund to the consumer who had filed the complaint.

Court records show that Peda has previous convictions in Ransom and Benson counties for theft of property for soliciting and accepting advance payments for construction projects and then failing to complete the work. He owes over \$130,000 in restitution on those criminal cases.

Parrell Grossman, director of the Consumer Protection Division, reminded consumers that contractors must be licensed with the Secretary of State's office if they perform work valued at \$2,000 or more. Consumers can check the Secretary of State's list of licensed contractors online at <http://www.nd.gov/sos/> or by calling (701) 328-2900. Complaints about unlicensed contractors can be filed with the Secretary of State or by contacting the Attorney General's Consumer Protection Division at 701-328-3404.

###

Cease and Desist Order

**ATTORNEY GENERAL ISSUES CEASE AND DESIST ORDER AGAINST WILMA MILLER AND DAN MILLER D/B/A DOUBLE DIAMOND CONSTRUCTION AND DOUBLE DIAMOND BUILDINGS**

April 2, 2013

BISMARCK, ND – Attorney General Wayne Stenehjem today issued a Cease and Desist Order against Wilma Miller and Dan Miller, doing business as Double Diamond Construction and Double Diamond Buildings of Lincoln, Nebraska for misrepresentations and engaging in contractor services without a North Dakota contractor's license and a North Dakota Transient Merchant's License.

According to Stenehjem, his Consumer Protection Division initiated an investigation of Wilma Miller and Dan Miller after receiving consumer complaints that the mother and son victimized multiple North Dakota consumers in a total amount exceeding \$100,000. Dan Miller identified his mother, Wilma Miller, as the owner of the business and then lied to the Attorney General's investigator by falsely stating the company had not performed any contracting work or accepted any advance payments from North Dakota consumers. "The Millers fleeced at least three consumers out of more than \$100,000 total. The Millers were not licensed, did not deliver the materials, erect any buildings, or pay their subcontractors or suppliers," Stenehjem said.

According to the investigation, the Millers have a history of travelling state-to-state and have since fled North Dakota. "Wilma Miller and Dan Miller are a menace to consumers and they will be held accountable if they ever return to North Dakota's jurisdiction," Stenehjem said.

Parrell Grossman, director of the Attorney General's Consumer Protection Division, said the Millers falsely represented their business as a North Dakota business by using a mail forwarding facility in Bismarck. "Before putting any money down, consumers should check that the contractor is properly licensed in North Dakota, verify how long the business has been located in North Dakota, and check references from previous customers," Grossman said. Contractors must be licensed with the Secretary of State's office if they perform work valued at \$2,000 or more. Consumers can check the Secretary of State's list of licensed contractors online at <http://www.nd.gov/sos/> or by calling (701) 328-2900. "It's often impossible to recover any money from these unlicensed businesses once they have left the state," said Grossman.

North Dakota consumers who paid money to the Millers or their businesses can submit a complaint form from the Attorney General's website at [www.ag.nd.gov](http://www.ag.nd.gov), or by contacting the Consumer Protection Division at 701-328-3404.

###

Cease & Desist

**ATTORNEY GENERAL ISSUES CEASE & DESIST ORDER AGAINST PJD CONSTRUCTION, LLC AND PATRICK J. DELARE**

April 9, 2013

BISMARCK – Attorney General Wayne Stenehjem today issued a Cease and Desist Order against Patrick J. Delare, doing business as PJD Construction, LLC, of Becker, Minnesota, for violating North Dakota's consumer fraud laws, failing to have the required Transient Merchant license, and for providing contractor services without first obtaining a North Dakota contractor's license.

The Attorney General's office initiated a consumer fraud investigation of Delare and his business after receiving complaints that he had taken advance deposits of more than \$120,000 from two consumers to build pole barns but had failed to do any substantial work on one project and failed to complete the work on another project. The investigators found that Delare also had been involved in a home construction project for a third consumer, which he failed to complete. Delare, whose business is located in Minnesota, does not have a transient merchant license or a North Dakota contractor's license.

"It is unacceptable for Patrick Delare to operate in this state without the required licenses, take money from North Dakota consumers, and then fail to provide the materials or services as promised," Stenehjem said. "As a result, Delare and his business, PJD Construction, are now banned from all future construction or business in the state of North Dakota."

Any contractor performing work in North Dakota valued at \$2,000 or more must first have a contractor's license issued by the Secretary of State's office. Any individual conducting temporary or transient business within this state is required to obtain a Transient Merchant's License from the Attorney General's Office.

According to Parrell Grossman, director of the consumer protection division, this situation is another expensive and unfortunate example of the perils of hiring unlicensed contractors or contractors that require large up-front payments. "Never do business with an unlicensed contractor," said Grossman. He urged consumers to exercise caution before paying thousands of dollars to a contractor before it delivers the materials or provides the construction services. "Once the money has been paid, these contractors have little or no incentive to complete the work. It is almost impossible to recover any money from an unlicensed, out of state, contractor," he continued.

Consumers can find tips from the Consumer Protection division on how to choose a contractor, online at <http://www.ag.nd.gov/Brochures/FactSheet/ChoosingContractor.pdf>.

###

Cease & Desist

## CHAPTER 43-07 CONTRACTORS

### 43-07-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Contractor" means any person engaged in the business of construction, repair, alteration, dismantling, or demolition of bridges, highways, roads, streets, buildings, airports, dams, drainage or irrigation ditches, sewers, water or gas mains, water filters, tanks, towers, oil, gas, or water pipelines, and every other type of structure, project, development, or improvement coming within the definition of real or personal property, including the construction, alteration, or repair of property to be held either for sale or rental, and shall include subcontractor, public contractor, and nonresident contractor.
2. "Nonresident contractor" means any contractor who has not an established and maintained place of business within this state, or who has not made reports to North Dakota workforce safety and insurance within the previous year of employees within this state, and who has not made contributions to the North Dakota workforce safety and insurance fund accordingly, or who, during a like period has not made an income tax return in this state.
3. "Person" includes any individual, firm, copartnership, association, corporation, limited liability company, or other group or combination thereof acting as a unit, and the plural as well as the singular number, unless the intent to give a more limited meaning is disclosed clearly by the context thereof.
4. "Public contract" means a contract with the state of North Dakota or any board, commission, or department thereof, or with any board of county commissioners, or with any city council or board of city commissioners, board of township supervisors, school board, or with any state or municipal agency, or with any other public board, body, commission, or agency authorized to let or award contracts for the construction or reconstruction of public work when the contract cost, value, or price exceeds the sum of two thousand dollars and includes subcontracts undertaken to perform work covered by the original contract or any part thereof when the contract cost, value, or price of the work included in such subcontract exceeds the sum of two thousand dollars.
5. "Registrar" means the secretary of state of the state of North Dakota.

### 43-07-02. License required.

A person may not engage in the business nor act in the capacity of a contractor within this state when the cost, value, or price per job exceeds the sum of two thousand dollars nor may that person maintain any claim, action, suit, or proceeding in any court of this state related to the person's business or capacity as a contractor without first having a license as provided in this chapter.

### 43-07-03. Registrar designated.

The secretary of state as registrar has authority to employ such assistance and procure such records, supplies, and equipment as may be necessary to carry out the provisions of this chapter.

### 43-07-04. License - How obtained - Failure to grant - Revocation.

1. To obtain a license under this chapter, an applicant who is eighteen years of age or older shall submit, on forms the registrar prescribes, an application under oath containing a statement of the applicant's experience and qualifications as a contractor. A copy of a certificate of liability insurance must be filed with the application and the contractor shall submit a statement from North Dakota workforce safety and insurance that the contractor has secured workforce safety and insurance coverage satisfactory to workforce safety and insurance. If the registrar deems it appropriate or necessary, the registrar may also require any other information to assist the registrar in

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- determining the applicant's fitness to act in the capacity of a contractor, including, at the expense of the applicant, criminal history record information of the applicant or the officers, members, or partners of the applicant which is held or maintained by the bureau of criminal investigation or a similar entity in another state. 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.
2. The registrar may refuse to grant a license if the registrar determines the application contains false, misleading, or incomplete information; the applicant fails or refuses to authorize or pay for criminal history information requested by the registrar; or as otherwise provided in sections 12.1-33-02.1 and 43-07-04.1. The registrar shall notify the applicant in writing if the registrar does not grant the license and shall provide the applicant an opportunity to respond to or cure the defect in the application for a period of ten days from the date of the written notification. An applicant aggrieved by a decision of the registrar not to grant the license may appeal the decision to the district court of the applicant's county of residence or Burleigh County.
  3. No sooner than twenty days after sending written notice to a contractor at the contractor's last-known address, the registrar shall classify as not in good standing the license of any contractor who fails to:
    - a. Maintain liability insurance coverage required by this section or by section 43-07-10;
    - b. File, renew, or properly amend any fictitious name certificate required by chapter 45-11;
    - c. Maintain an active status of a corporation or registration as a foreign corporation;
    - d. Maintain an active status of a limited liability company or registration as a foreign limited liability company;
    - e. File or renew a trade name registration as required by chapter 47-25;
    - f. Maintain a limited liability partnership registration or foreign limited liability partnership registration as required by chapter 45-22; or
    - g. Maintain a limited partnership certificate of limited partnership or foreign limited partnership certificate of authority.
  4. Any contractor who has been notified by the registrar that the contractor's license is not in good standing shall cease soliciting or entering new contract projects. If the contractor fails to correct the deficiency specified in the notice by evidence satisfactory to the registrar within thirty days of the date of the notice or if the contractor solicits or enters new contract projects while the contractor's license is not in good standing, the registrar shall use the procedures of chapter 28-32 to revoke the license of the contractor.

#### **43-07-04.1. Conviction not bar to licensure - Exceptions.**

Conviction of an offense does not disqualify a person from licensure under this chapter unless the secretary of state determines that the offense has a direct bearing upon a person's ability to serve the public as a contractor or that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

#### **43-07-05. Classes of licenses.**

Four classes of licenses must be issued under this chapter, which must be designated as class A, B, C, and D licenses. The holders of such licenses are entitled to engage in the contracting business within this state subject to the following limitations:

1. The holder of a class A license is subject to no limitation as to the value of any single contract project.
2. The holder of a class B license is not entitled to engage in the construction of any single contract project of a value in excess of two hundred fifty thousand dollars.
3. The holder of a class C license is not entitled to engage in the construction of any single contract project of a value in excess of one hundred twenty thousand dollars.
4. The holder of a class D license is not entitled to engage in the construction of any single contract project of a value in excess of fifty thousand dollars.

**43-07-06. Administrative and governing bodies may impose requirements.**

Any administrative body or governing body, agency, or commission having power to enter into public contracts may impose reasonable requirements and conditions as conditions precedent to the awarding of a contract for the construction or reconstruction of public works in addition to the requirements imposed by this chapter.

**43-07-07. License fees.**

At the time of making application for a license as described and required in this chapter, the applicant shall pay to the registrar the following fees:

1. For a class A license, the sum of three hundred dollars.
2. For a class B license, the sum of two hundred dollars.
3. For a class C license, the sum of one hundred fifty dollars.
4. For a class D license, the sum of fifty dollars.

All moneys collected by the registrar under this chapter must be deposited by the registrar with the state treasurer, who shall credit them to the general fund of the state.

**43-07-08. Exceptions.**

This chapter does not apply to:

1. Any authorized representative or representatives of the United States government, the state of North Dakota, or any county, municipality, irrigation district, reclamation district, or other political corporation.
2. Any person who furnishes any fabricated or finished product, material, or article of merchandise which is not incorporated into or attached to real property by such person so as to become affixed thereto.

**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 March first, except that an initial license issued to a licensee in January or February is valid until March first of the subsequent year.

**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.

**43-07-10. Renewal of license - Grounds for nonrenewal - Time requirements - Invalidity of license for failure to renew.**

1. 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 that includes a listing of each project, contract, or subcontract completed by the licensee during the preceding calendar year in this state over the amount of twenty-five thousand dollars and the nature of the work of each project, contract, or subcontract. 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 liability insurance unless the registrar has a current valid certificate of insurance on file, and a certification that the applicant has submitted all payroll taxes, including North Dakota income tax, workforce

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- safety and insurance premiums, and unemployment insurance premiums due at the time of renewal, which documents need not be notarized.
2. The registrar may refuse to renew a license if the registrar determines the application contains false, misleading, or incomplete information or if the contractor's license is not in good standing for any of the reasons listed in subsection 3 of section 43-07-04. The registrar shall notify the applicant in writing if the registrar does not grant the license and shall provide the applicant an opportunity to respond to or cure the defect in the application for a period of ten days from the date of the written notification. An applicant aggrieved by a decision of the registrar not to grant the license may appeal the decision to the district court of the applicant's county of residence or Burleigh County.
  3. 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 by the March first deadline, the contractor's license 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 then 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 the registrar shall return the application to the contractor who then is subject to section 43-07-09. The registrar may destroy all renewals provided for in this section after they have been on file for six years.

#### **43-07-11. Contractor's bond - Requirements.**

Repealed by S.L. 1995, ch. 397, § 9.

#### **43-07-11.1. Contracts with state.**

1. No contractor, resident or nonresident, is eligible to enter into a public contract with any department of the state of North Dakota, nor any political or governmental subdivision of the state until satisfactory showing is made that said contractor has paid all delinquent income, sales or use taxes, if any, owed to the state pursuant to 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 July 1, 1965.

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#### **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 fees prescribed in section 54-09-04. Any certificate or certified copy issued by the secretary of state under this section has the same force and effect as provided in section 54-09-02.1.

#### **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.

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- 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 against the licensee or any unlicensed person engaging in the business or acting in the capacity of a contractor in violation of section 43-07-02 and subjects the licensee or any such unlicensed person 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.

**43-07-16. Cancellation of license - Appeal.**

Repealed by S.L. 1963, ch. 304, § 16.

**43-07-17. Revocation of license - Relicensing.**

A licensee whose license has been revoked may not be relicensed for a period of up to five years.

**43-07-18. Penalty.**

Any person acting in the capacity of a contractor without a license is guilty of a class A misdemeanor. Whether a person is subjected to criminal prosecution under this section, and in addition to the license fee that may be assessed when the person applies for a license, the person may be assessed a civil penalty by the registrar, following written notice to the person of an intent to assess the penalty, in an amount not to exceed three times the amount set forth in section 43-07-07. Any civil penalty must be assessed and collected before a person is issued a license. The assessment of a civil penalty may be appealed in the same manner as appeals under section 43-07-04, but only on the basis that the registrar's administrative determination that the person acted as a contractor when not licensed as a contractor was clearly erroneous.

**43-07-19. Nonresident contractors - Agent for service of process.**

Every applicant for a contractor's license who is not a resident of the state of North Dakota, by signing and filing the application, appoints the secretary of state as the applicant's true and lawful agent upon whom may be served all lawful process in any action or proceeding against such nonresident contractor. Such appointment in writing is evidence of the contractor's consent that any such process against the contractor which is so served upon the secretary of state shall be of the same legal force and effect as if served upon the contractor personally within this state. Registered foreign corporations entitled to do business in this state according to chapter 10-19.1, registered foreign limited liability companies entitled to do business in the state according to chapter 10-32, foreign limited liability partnerships entitled to do business in the state according to chapter 45-22, and foreign limited partnerships entitled to do business in the state according to chapter 45-10.2 and having a current registered agent and registered address on file in the secretary of state's office need not appoint the secretary of state as agent for service of process under this section. Within ten days after service of the summons upon the secretary of state, notice of such service with the summons and complaint in the action shall be sent to the defendant contractor at the defendant contractor's last-known address by registered or certified mail with return receipt requested and proof of such mailing shall be attached to the summons. The secretary of state shall keep a record of all process served upon the secretary of state under this section, showing the day and hour of service. Whenever service of process was made under this section, the court, before entering a default judgment, or at any stage of the proceeding, may order such continuance as may be necessary to afford the defendant contractor reasonable opportunity to defend any action pending against the defendant contractor.

**43-07-20. Employment preference in contract.**

In all contracts, except those which involve federal-aid funds and when a preference or discrimination would be contrary to a federal law or regulation, hereafter let for state, county, city, school district, or township construction, repair, or maintenance work under any laws of this state, there shall be inserted a provision by which the contractor must give preference to the employment of bona fide North Dakota residents, as determined by section 54-01-26, with preference given first to honorably discharged disabled veterans and veterans of the armed forces of the United States, as defined in section 37-19.1-01, who are deemed to be qualified in the performance of that work. The preference shall not apply to engineering, superintendence, management, or office or clerical work.

No contract shall be let to any person, firm, association, cooperative, corporation, or limited liability company refusing to execute an agreement containing the aforementioned provisions.

**43-07-21. Penalty - Injunction proceedings.**

Any person violating any provisions of section 43-07-20 is guilty of a class B misdemeanor. A repeated violation constitutes legal grounds for a court, on proper application by the labor commissioner, to grant an injunction without requiring the posting of a bond or undertaking.

**43-07-22. Enforcement responsibility.**

The labor commissioner has the primary responsibility of enforcing sections 43-07-20 and 43-07-21 and may make reciprocal agreements or arrangements with any other state or territory exempting the application of sections 43-07-20 through 43-07-22, and may examine records of employment relative to public contracts for such purposes. However, any person being adversely affected because of noncompliance with section 43-07-20 may also institute an appropriate civil action, and any person having knowledge of a violation may file a criminal complaint with the proper official.

**43-07-23. Allowable retention of estimates - Interest on retainage.**

Contracts entered between persons for the performance of work to be done by a contractor, except those contracts subject to section 40-22-37 or 48-01.2-13, or contracts governed by federal statutes or regulations which require other provisions with respect to retention, are

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subject to a maximum retention on amounts due under the contract as follows: retention of ten percent of each estimate presented is allowable until such time as the project is fifty percent complete, with no further retainage on estimates during the continuance of the contract. If the owner, governing board, or authorized committee invests the retained estimate funds, the interest earned on those retained funds is payable at the time of final payment on the contract to the contractor on whose account the moneys were held.

**43-07-24. Duty to supply license number when applying for building permit - Display of number.**

When applying for a building permit, a contractor shall supply the permit issuing official that contractor's license number. That official shall enter those numbers on the permit. A person performing general contractor's work on that person's own property, even if exempt from the licensing requirements of this chapter, shall, when applying for a building permit, supply the building permit issuing official the license number, as soon as available, of each subcontractor engaged on the project and doing work covered by the permit. That official shall enter each number so supplied before inspection of the work.

**43-07-25. Licensed contractors' list.**

On request, the registrar shall provide city and county enforcement officials with a list of contractors licensed under this chapter. The registrar shall also provide similar information to persons governed by section 43-07-24. Whenever the registrar obtains information on the activities of a contractor doing business in this state of which officials of workforce safety and insurance, job service North Dakota, or tax commissioner may be unaware and that may be relevant to the duties of those officials, the registrar shall provide any relevant information to those officials for the purpose of administering their duties.

**43-07-26. Warranty repairs - Required notice.**

Before undertaking any repair, other than emergency repair, or instituting any action for breach of warranty in the construction of a one-family or two-family dwelling, or an improvement with a value exceeding two thousand dollars to a dwelling, the purchaser or owner shall give the contractor written notice by mail, within six months after knowledge of the defect, advising the contractor of any defect and giving the contractor a reasonable time to comply with this section. Within a reasonable time after receiving the notice, the contractor shall inspect the defect and provide a response to the purchaser or owner, and, if appropriate, remedy the defect within a reasonable time thereafter. The contractor shall provide the purchaser or owner written notice of the requirements of this section at the time of closing for the property or, in the case of an improvement, at the time of completion of the improvement. For the purposes of this section, "reasonable time" means within thirty business days after the notice is mailed or any shorter period of time as may be appropriate under the circumstances.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2188  
SENATE INDUSTRY, BUSINESS, AND LABOR COMMITTEE  
JERRY KLEIN, CHAIRMAN  
JANUARY 20, 2015

PRESENTED BY  
PARRELL D. GROSSMAN, DIRECTOR  
CONSUMER PROTECTION & ANTITRUST DIVISION  
OFFICE OF ATTORNEY GENERAL

Page 2, line 10, remove ", unless"

Page 3, line 11, remove "the failure is due to circumstances beyond the control of the contractor"

Page 2, line 18, remove ", unless the failure is due to circumstances beyond the"

Page 2, line 19, remove "control of the contractor"

Page 2, line 27, after "to" insert "begin or"

Renumber accordingly

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ALVIN A. JAEGER  
SECRETARY OF STATE

HOME PAGE [www.nd.gov/sos](http://www.nd.gov/sos)



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**SECRETARY OF STATE**  
STATE OF NORTH DAKOTA  
600 EAST BOULEVARD AVENUE DEPT 108  
BISMARCK ND 58505-0500

January 20, 2015

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

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

RE: SB 2188 – Operating without a Contractor's License

Since the 1997 Grand Forks flood, the Secretary of State and the Attorney General have collaborated closely on issues related to the licensing of contractors and enforcement of laws related to contractors. These two agencies, along with other state agencies, have cooperated in two one-stop licensing centers after the Grand Forks and Minot floods. And, they have cooperated on compliance inspections conducted in Dickinson, Williston, Minot, and surrounding areas.

The attached graph illustrates the growth in the number of contractors licensed by the Secretary of State and shows a significant jump beginning in June 2009.

While most contractors conduct their business according to state law and follow good business practices with their customers, there are exceptions. In 2005, the legislature adopted laws that increased the authority of the Secretary of State and the Attorney General to address the issues of contractor non-compliance with state law. But, based on experience during the past few years, it has been documented that more is needed.

This particular bill has been under development for several months. It, along with a related contractor licensing bill introduced yesterday by Senator Poolman on behalf of the Secretary of State, will significantly enhance the ability of the Attorney General, State's Attorneys, and the Secretary of State to protect the public and the many legitimate licensed contractors that follow the law.

The Secretary of State encourages the committee to give this bill a solid Do Pass recommendation.

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## Summary

- From June 30, 2011 to June 30, 2013, the number of contractors licensed increased by 2,877 or 32.6%
- From June 30, 2009 to June 30, 2011, the number of contractors licensed increased by 1,458 or 19.8%
- Combined increase from June 30, 2009 to June 30, 2013 was 4,335 or 58.9%

PROPOSED AMENDMENTS TO SENATE BILL NO. 2188  
SENATE INDUSTRY, BUSINESS, AND LABOR COMMITTEE  
JERRY KLEIN, CHAIRMAN  
JANUARY 20, 2015

PRESENTED BY  
PARRELL D. GROSSMAN, DIRECTOR  
CONSUMER PROTECTION & ANTITRUST DIVISION  
OFFICE OF ATTORNEY GENERAL

Page 2, line 10, remove "unless"

Page 3, line 11, remove "the failure is due to circumstances beyond the control of the contractor"

Page 2, line 18, remove "unless the failure is due to circumstances beyond the"

Page 2, line 19, remove "control of the contractor"

Page 2, line 27, after "to" insert "begin or"

Page 3, line 1, remove "under fifty thousand dollars but"

Page 3 line 1, after the second "dollars" insert "but not more than fifty thousand dollars"

Page 3, line 2, after "and" insert "more"

Renumber accordingly

Senate Bill 2188

With the proposed amendments, subsection 5 of section 43-07-02 would read:

5. The grade of the offense for violating subsection 3 is based on the amount of payment received. Payment of under ten thousand dollars is a class C felony; more than ten thousand dollars but not more than fifty thousand dollars is a class B felony; and more than fifty thousand dollars is a class A felony.

**PROPOSED AMENDMENTS TO SB 2188**

1 A BILL for an Act to amend and reenact section 43-07-02 and subsection 3 of  
 2 section 43-07-10 of the North Dakota Century Code, relating to providing  
 3 penalties for operating without a contractor's license and committing  
 4 construction fraud; to repeal section 43-07-18 of the North Dakota Century  
 5 Code, relating to the penalty for operating without a contractor's license; and  
 6 to provide a penalty.

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

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

9 **43-07-02. License required - Construction fraud - Penalty**

10 1. A person may not engage in the business nor act in the capacity of  
 11 a contractor within this state when the cost, value, or price per job  
 12 exceeds the sum of two thousand dollars nor may that person  
 13 maintain any claim, action, suit, or proceeding in any court of this  
 14 state related to the person's business or capacity as a contractor  
 15 without first having a license as provided in this chapter.

16 2. Any person acting in the capacity of a contractor without a license  
 17 is guilty of a class A misdemeanor. Regardless of whether a person  
 18 is subjected to criminal prosecution under this subsection, and in  
 19 addition to the license fee that may be assessed when the person  
 20 applies for a license, the person may be assessed a civil penalty by  
 21 the registrar, following written notice to the person of an intent to  
 22 assess the penalty, in an amount not to exceed three times the  
 23 amount set forth in section 43-07-07. Any civil penalty must be  
 24 assessed and collected before a person is issued a license. The  
 25 assessment of a civil penalty may be appealed in the same manner  
 26 as appeals under section 43-07-04, but only on the basis that the  
 27 registrar's administrative determination that the person acted as a

1 contractor when not licensed as a contractor was clearly erroneous.

2 3. A person commits construction fraud if:

3 a. The person receives payment for a construction project by  
4 intentionally using deception as defined in section 12.1-23-  
5 10.

6 b. The person receives payment for the purchase of materials  
7 or supplies and willfully fails to pay the supplier for the goods  
8 received.

9 c. The person willfully abandons a construction project after  
10 receiving payment for services or materials. Abandonment  
11 under this subdivision arises if:

12 (1) A contractor fails substantially to commence any work  
13 agreed upon, ~~unless the failure is due to~~  
14 ~~circumstances beyond the control of the contractor.~~

15 (a) Within sixty days of a starting date agreed  
16 upon in writing; or

17 (b) Within ninety days of the contract date if no  
18 starting date is agreed upon in writing; or

19 (2) A contractor fails to complete any work agreed upon  
20 in writing within ninety days of a completion date  
21 agreed upon in writing, or within one hundred eighty  
22 days of the contract date if no completion date is  
23 agreed upon in writing, ~~unless the failure is due to~~  
24 ~~circumstances beyond the control of the contractor.~~

25 4. It is a defense to prosecution under subsection 3 if:

26 a. The person returned all of the payment received for work not  
27 performed or materials not supplied. If the person provided  
28 materials to the jobsite but did not pay suppliers for those  
29 materials, this defense does not apply. This defense is only  
30 valid if the payment was provided before criminal charges  
31 were filed.

- 1           b.     The person had a legitimate legal excuse for  
2                 nonperformance.
- 3           c.     The person was not able to begin or complete the project  
4                 because there were factors outside of the person's control  
5                 and the person made substantial efforts to resolve any  
6                 dispute.
- 7           5.     The grade of the offense for violating subsection 3 is based on the  
8                 amount of payment received. Payment of under ten thousand  
9                 dollars is a class C felony; ~~under fifty thousand dollars but~~ more  
10                than ten thousand dollars but not more than fifty thousand dollars is  
11                a class B felony; and more than fifty thousand dollars is a class A  
12                felony.

13           **SECTION 2. AMENDMENT.** Subsection 3 of section 43-07-10 of the North  
14     Dakota Century Code is amended and reenacted as follows:

- 15           3.     The application for a certificate of renewal must be made to the  
16                 registrar on or before the first day of March of each year. At the  
17                 time of filing the application for a certificate of renewal, the  
18                 applicant shall pay to the registrar a renewal fee equal to twenty  
19                 percent of the license fee established in section 43-07-07. If any  
20                 contractor applies for a renewal under a class different from the  
21                 license previously issued, the new class license may be issued  
22                 upon the payment of the fee required for the issuance of the license  
23                 of the class applied for. If any contractor fails to file an application  
24                 for a certificate of renewal by the March first deadline, the  
25                 contractor's license is not in good standing and the contractor must  
26                 be deemed to be unlicensed within the meaning of ~~sections~~section  
27                 43-07-02 ~~and 43-07-18~~. Within sixty days after March first, the  
28                 contractor must be notified by mail that the contractor's license is  
29                 not in good standing. The contractor then has until June first to  
30                 renew by paying a penalty fee of seventy-five percent of the  
31                 renewal fee, filing an application for a certificate of renewal, and

Sixty-fourth  
Legislative Assembly

1 paying the renewal fee. A contractor who applies for a certificate of  
2 renewal before or within ninety days of the filing deadline is not  
3 subject to the investigation authorized in section 43-07-09. After the  
4 June first deadline any licenses not renewed are revoked. Any  
5 application for a certificate of renewal must be fully completed  
6 within sixty days of the date the application is received by the  
7 registrar or the registrar shall return the application to the contractor  
8 who then is subject to section 43-07-09. The registrar may destroy  
9 all renewals provided for in this section after they have been on file  
10 for six years.

11 **SECTION 3. REPEAL.** Section 43-07-18 of the North Dakota Century  
12 Code is repealed.

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**PROPOSED AMENDMENTS TO SENATE BILL NO. 2188**

Page 2, line 10, remove ", unless"

Page 2, line 11, remove "the failure is due to circumstances beyond the control of the contractor"

Page 2, line 18, remove ", unless the failure is due to circumstances beyond the"

Page 2, line 19, remove "control of the contractor"

Page 2, line 27, after "to" insert "begin or"

Page 3, line 1, remove "under fifty thousand dollars but"

Page 3, line 1, after the second "dollars" insert "but not more than fifty thousand dollars"

Page 3, line 2, after "and" insert "more"

Renumber accordingly

# 1

HOUSE INDUSTRY, BUSINESS AND LABOR COMMITTEE  
GEORGE KEISER, CHAIRMAN

MARCH 17, 2015

TESTIMONY BY

PARRELL D. GROSSMAN

DIRECTOR, CONSUMER PROTECTION AND ANTITRUST DIVISION  
OFFICE OF ATTORNEY GENERAL  
IN SUPPORT OF  
ENGROSSED SENATE BILL NO. 2188

Mr. Chairman and members of the House Industry, Business and Labor Committee. I am Parrell Grossman, and it is my privilege to be the Director of the Attorney General's Consumer Protection and Antitrust Division. I appear on behalf of the Attorney General in support of Engrossed Senate Bill 2188 and to present a proposed amendment for your consideration.

I want to thank Representative Louser for co-sponsoring this legislation and I am aware that he had some very negative experiences with a contractor that the Consumer Protection Division investigated, sued, and put out of business. I believe this particular contractor should have been criminally prosecuted.

This proposed legislation has broad industry support. The North Dakota Association of Home Builders, the Association of General Contractors, and the Associated Builders and Contractors of North Dakota and Minnesota have informed the Attorney General that they support this legislation and this Office greatly appreciates the working relationship we have with these organizations and their members.

The contractors I am discussing today frequently are unlicensed contractors from out-of-state, although this proposed legislation by law must treat all similarly situated persons alike.

I know this Committee previously heard my testimony about companion legislation Engrossed Senate Bill Number 2278 and I will try to avoid repeating duplicative testimony about contractor licensing issues. Instead, I will focus on illegitimate contractors stealing from our ranchers and farmers, small businesses, and homeowners.

The Attorney General's Consumer Protection Division, working closely with the Secretary of State, conducts contractor licensing enforcement. Our actions include, whenever possible, seeking consumer restitution for consumers for monies paid in advance in circumstances in which the materials were not provided or work was not completed. It should be helpful background information for you to understand our experience and expertise. Of course, this enforcement involves only a very small percentage of total contractors in North Dakota and is not a reflection on the majority of contractors and home builders in this state that are very legitimate.

pg 1

Since July 2011, the Consumer Protection Division has brought 241 legal actions and recovered almost \$900,000 in consumer restitution and civil penalties. The civil penalties portion is about \$157,000. Total restitution and penalties ordered by the court are approximately \$1.4M, and some restitution is very difficult to recover, despite a judgment. I have attached as an Exhibit our Contractor Compliance Enforcement Statistics Report through November 2014.

This legislation and my comments are not in any way intended to be critical of contractors. In fact, instead of "construction fraud," this legislation might be better titled, "The people who take your money and do nothing" legislation. It focuses on untrustworthy and dishonest individuals, who undeservingly call themselves contractors. Instead, they really are just people who take your money and do nothing. Unfortunately, they have chosen an important and reputable "profession" which allows them to take large amounts of money, and do little or nothing. Some of these individuals are smooth talkers and are just con artists, who tell their victims what they want to hear. Now, this problem requires a unique fix. For the individuals that keep taking money and not doing the work it is almost a Ponzi scheme.

When we ask consumers why they paid thousands of dollars to someone from outside the community or state, and a person they knew nothing about, the most frequent response is: "The price was just such a good deal, or so reasonable." Of course, the prices were so good. One can charge half the price for a Harley Davidson motorcycle, if you never intend to deliver the motorcycle, and make far more money than a legitimate business that has to provide the actual product or service.

The contractors that take money and do nothing can be prosecuted to some extent under the current "theft by deception" laws, although there typically has to be a pattern, and the cases still can be very difficult. More problematic are the contractors that take \$50,000 or more from multiple victims, and provide only a small amount of materials or work for each victim. The classic example is the person that brings out a Bobcat and moves some dirt around, or delivers a few building materials with negligible value. Then, the work stops, and the person moves on to take another \$50,000 advance payment and does a similar amount of work. Most prosecutors will not prosecute a case in which any work was done, as they determine the case is civil. We are not critical of prosecutors that do not prosecute these cases. Judges often will not allow these cases to go forward, because they now have become civil matters. Case law has developed over time suggesting these matters are "civil matters" and should be resolved in civil court. The Legislature can change the laws and redefine this conduct as criminal, and prosecutors, judges, and juries will act accordingly. I have worked with prosecutors in this state for many years. They will require law enforcement officers and investigators to consider and eliminate all legal and reasonable defenses applicable to these contractors, and then carefully scrutinize the cases that merit prosecution.

Sometimes the suggestion is: "Why not have the victims simply bring a civil legal action against these individuals and obtain a money judgment"? When victims already have

paid and lost thousands of dollars, it is expensive and almost pointless to sue these scoundrels. These individuals are judgment proof. They have no money to pay these judgments and they never do pay. Usually, the victims cannot even locate the perpetrators, because they have left the state. Often, the Attorney General's Office cannot locate these individuals. Based upon our research and experiences, they frequently are engaged in the same conduct elsewhere, as close as one or two states away. This is demonstrated by my first example of "construction fraud."

The Attorney General's records contain many instances of fraudulent individuals engaged in "construction fraud," most of who are never prosecuted. By way of example, I will discuss a few relevant cases in detail.

Incident # 1. Jonathan Lee Oliver d/ba/ Western Steel Structures-Missoula, Montana.

Conducted business in North Dakota and Montana, including the alias "Jon Walker," in order to prevent consumers from uncovering his prior criminal conviction in Oregon for aggravated theft and identity theft in a construction fraud case. Attached as an Exhibit is the June 18, 2007 Oregonian news article. Oregon prosecutor Paul Maloney stated, "They gave him \$34,000 and he left them a \$7,000 pile of dirt." In a prophetic statement at that time, the Oregon victim said, "The most disappointing thing is that three years from now, he [Oliver] can be back doing the same thing." As you will learn, the Oregon victims got off easy by comparison to the North Dakota victims.

Oliver was not licensed as a contractor in North Dakota for his transactions, although he ultimately applied for and obtained a contractor's license from the Secretary of State in November, 2011, when he filed a false application omitting his prior criminal history in Oregon. At that time, the Secretary of State and Attorney General did not have any consumer complaints and were not aware of any of Oliver's conduct in North Dakota.

In December 2011, Attorney General Wayne Stenehjem discovered that Oliver had solicited and accepted advance payments from consumers for steel buildings. He entered into contracts with the victims, received millions of dollars in advance payments, and failed to complete their buildings. Oliver directed employees to tell victims a certain phase of construction had been completed in order to induce the consumers to send additional installment payments when, in fact, the phases had not been completed and Oliver's business lacked the materials necessary to complete the project because Oliver had diverted so many of the funds for personal expenditures. He diverted the monies for personal possessions including, his house, several vehicles, jet skis, a motor home and a diamond engagement ring.

The Attorney General issued a Cease and Desist Order on December 22, 2011. (Copy attached as an Exhibit.) Despite Oliver's transactions in many North Dakota counties, Oliver was not criminally prosecuted in North Dakota. The Attorney General's Consumer Protection Division, however, reviewed Oliver's many business records and, upon completion of its investigation, sued Oliver for consumer restitution for North

Dakota victims, because it was undetermined whether Oliver would face any criminal consequences for his actions. The Attorney General, in February 2013, received a \$3.6M judgment against Oliver in Williams County District Court. Thereafter, the Montana United States Attorney received a judgment against Oliver for \$6.4M, including North Dakota and Montana victims and, in June 2103, Oliver was sentenced in the federal prosecution to one hundred months in jail. Oliver will never be able to pay \$3.4M to North Dakota consumers, and not likely any portion thereof. A number of Oliver's victims in North Dakota were farmers and ranchers.

Incident # 2. George and Karla Nelson d/b/a Baron Buildings Inc. and Ag Pro Buildings, Pierre, South Dakota

The Nelsons operated their business under various names, including in Georgia, Tennessee, Iowa, Ohio, Nebraska, Minnesota, Montana, South Dakota, and North Dakota, conducting transactions in nine counties including McLean County. They, however, picked the wrong county, with States Attorney Ladd Erickson in McLean County. The Nelsons solicited advance payments of thousands of dollars for pole barns, showed up on site with a Bobcat, moved some dirt around, dropped off a few poles and never completed the jobs. They obtained an attorney to represent them with the Attorney General, stalled us for a while trying to suggest it was a civil issue they would clear up, and eventually the attorney quit communicating with this office. The Attorney General issued a Cease and Desist Order on January 24, 2013. (Copy attached.) The Bureau of Criminal Investigations (BCI) and Ladd Erickson became involved, and the rest is history. The Nelsons were convicted of theft and sentenced to ten years, with five suspended, and ordered to pay about \$58,000 in consumer restitution in McLean and Benson Counties. It is not the usual result. The large majority of such cases are not prosecuted. It was a difficult case to prosecute, albeit successful. The other counties did not prosecute. Mr. Erickson is a credit to his profession and the victims in McLean County probably do not realize how rarely criminal prosecution occurs or is successful. BCI agent Tim Erickson and other law enforcement personnel documented about \$1.1M the Nelsons took from consumers in multiple states, mostly farmers and ranchers.

South Dakota attempted to prosecute and the case was dismissed because that Court would not allow evidence of the Nelsons' prior similar conduct occurring elsewhere. The Nelsons aren't really an example of "the system works," as much as a huge exception to the rule. It should serve as a model of the illegal conduct and the importance to be able to prosecute these cases with some predictability.

For cases that were not prosecuted, I have attached three other Cease and Desist Orders by the Attorney General involving substantial advance payments to individuals or contractors with the completion of no work, or incomplete work. As far as we know, these cases were not criminally prosecuted, and little if any monies have been recovered by the consumers.

In order to present a workable solution and an appropriate law to the building industry and the Legislature, the Attorney General recently reached out to McLean County State's Attorney Ladd Erickson for his support and involvement in drafting this statute. Mr. Erickson recognizes these individuals should not be able to avoid criminal prosecution by "moving some dirt around." Mr. Erickson has a reputation for prosecuting difficult cases, including theft by contractors. He understands which cases can be prosecuted, which cases are problematic, and which cases probably cannot be prosecuted under the "civil dispute doctrine." For clarification the "civil dispute doctrine" is not an independent law with a life of its own. It is a doctrine, issue, or defense that has arisen only in its application to existing law. In other words, if the Legislature now changes the law, the courts will then interpret the law in accordance with the changes and new law.

This new proposed law does not remove the many legal defenses available to legitimate contractors. However, it places potential bad actors on notice and more clearly defines the specifically prohibited conduct in a manner that the courts or juries will continue to interpret. If a prosecutor has a case that warrants charges, the Courts or juries will decide whether to convict. Courts also can continue to dismiss charges at the preliminary hearing stages, if it determines probable cause does not exist.

The Attorney General's objective is to get contractors in violation licensed, when appropriate, and get the work completed for the consumers, or get refunds when possible. When necessary and appropriate we ban the bad contractors to prevent more consumer injury.

The Attorney General's practices will not change. I review and approve every referral to a State's Attorney. In this time period ending in 2014, the Consumer Protection Division probably considered or referred 10 or less individuals for criminal prosecution. For the reasons explained, most of these cases were not prosecuted, or simply were not good cases for prosecution. Two were successfully prosecuted including the Nelsons and a person in Morton County that took \$100,000 from an elderly consumer. All of the cases involved egregious conduct that would fall within "construction fraud." In addition to Ladd Erickson and Morton County State's Attorney Al Koppy, the Attorney General wants to thank the many state's attorneys that evaluate and prosecute these cases whenever possible.

I will try and quickly explain the Bill's new provisions. In Section 1, Page 1 lines 15 through 23 and Page 2, lines 1 through 2, the Bill adds a new subsection 2 to 43-07-02, which specifies the penalty of class A misdemeanor for acting without a contractor's license and provides for civil penalties for operating as a contractor without a contractor's license. These provisions replace section 43-07-18 which is being repealed in Section 3 of this Bill.

The Attorney General, however, is now proposing amendments on Page 1, lines 21 through 23 and Page 2, lines 1 through 2. The amendments clarify the standard of proof for the appeal of the civil penalty so that in any appeals the person assessed a

civil penalty would not have to prove that the Secretary of State's decision was "clearly erroneous" and, instead, would allow the person to show the court that the Secretary of State didn't have a "preponderance of the evidence" that the person acted as a contractor without a license and was subject to the imposition of the civil penalty. It is a more favorable standard for the person appealing the Secretary of State's determination. The clarification is consistent with the current law in section 43-07-18 that is being repealed and replaced by this new subsection 2. In current law, appeals already are subject to a "preponderance of the evidence" under chapter 28-32, the Administrative Agencies Practices Act.

On page 2, a new subsection 3, specifies what conduct constitutes construction fraud. The abandonment provisions in subdivision c of subsection 3 of section 43-07-02, page 2, lines 8 through 18, closely parallel the abandonment provisions in current section 43-07-14, in which the Secretary of State or Attorney General can bring an action for license revocation or other enforcement action. In those instances in which there is not egregious criminal conduct, the Attorney General would continue to apply the civil remedies of license revocation, etc. when more appropriate. I have attached a copy of chapter 43-07 for your reference,

Explain the legal defenses in the new subsection 4. Explain the grading of contractor fraud offenses in the new subsection 5.

In Section 3, explain the minor change to remove the reference to 43-07-18, because it has been replaced by subsection 2 of 43-07-02 and Section 3 of the Bill repeals 43-07-18 since the offense is now specified in subsection 2, of Section 1 of the Bill.

The National Center for the Prevention of Home Improvement Fraud contacted the Attorney General after the Senate passed Senate Bill 2188 and informed him that they "applaud his efforts to hold fraudulent contractors more accountable for taking advantage of homeowners." We hope this Committee, too, will look favorably on this legislation.

Senate Bill 2278 regulating contractor licensing is the first prong and Senate Bill 2188 on prosecuting construction fraud is the second prong of addressing fraudulent contractors. Together these two Bills and the combined legislation will have a significant impact and will greatly help consumers.

The Attorney General respectfully asks the House Industry, Business and Labor Committee adopt the Attorney General's proposed amendment and give Engrossed SB 2188 a "Do Pass" recommendation.

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

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2188  
HOUSE INDUSTRY, BUSINESS, AND LABOR COMMITTEE  
GEORGE KEISER, CHAIRMAN  
MARCH 17, 2015

PRESENTED BY  
PARRELL D. GROSSMAN, DIRECTOR  
CONSUMER PROTECTION & ANTITRUST DIVISION  
OFFICE OF ATTORNEY GENERAL

Page 1, line 23, replace but only on the basis that the registrar's administrative determination  
with a period.

Page 2, remove lines 1 through 2.

Renumber accordingly

## Company Name

## LEGAL ACTIONS

11/25/2014

City, State	Settlement Document	Date - Notice of Entry	Penalty Amount	Restitution Ordered	Restitution Received	Sec. of State Referral	Notes
Big Lake, MN	AVC	8/25/2011	\$500.00				*
Milaca, MN	AVC	9/13/2011	\$500.00				
Cheyenne, WY	AVC	10/26/2011	\$500.00	\$2,375.00	\$2,375.00		
Aberdeen, SD	AVC	11/17/2011	\$500.00				
Aberdeen, SD	AVC Enforcement		\$500.00				
Mandan, ND	COJ	11/15/2011	\$1,033.50	\$8,149			
Lonsdale, MN	AVC	11/18/2011	\$500.00				
Greeley, CO	AVC	11/28/2011	\$500.00				
Grand Junction, CO	AVC	12/9/2011	\$500.00				
Berthold, ND	AVC	12/12/2011	\$500.00	\$9,280.00	\$9,280.00		
Burlington, ND	AVC	12/12/2011	\$500.00				
Aberdeen, SD	AVC / Judgment	12/12/2011	\$2,650.00	\$8,746.51			
Wichita, KS	AVC	1/13/2012	\$500.00				
Twin Falls, ID	AVC	1/24/2012	\$2,000.00				
Wahpeton, ND	Default Judgment	2/2/2012	\$7,800.00	\$234,443		Elin's	
Missoula, MT	AVC	2/9/2012	\$1,000.00	\$26,200.00	\$26,200.00		
St. Peter, MN	AVC	3/26/2012	\$1,000.00				
Des Moines, IA	AVC	3/29/2012	\$1,000.00				
Minot, ND	AVC	4/12/2012	\$1,000.00				
Miles City, MT	AVC	6/12/2012	\$2,000.00			x	
Fargo, ND	AVC	6/12/2012	\$250.00				
Dickinson, ND	AVC	7/5/2012	\$1,000.00			x	
Tioga, ND	AVC	7/5/2012	\$1,000.00				
Tower City, ND	COJ	7/10/2012	\$1,000.00	\$33,036.26	\$28,650.00		
Glyndon, MN	AVC	7/18/2012	\$1,000.00				
Herriman, UT	AVC	7/23/2012	\$1,000.00				
Boise, ID	AVC	7/23/2012	\$1,000.00				
Mott, ND	AVC	7/23/2012	\$500.00			x	
Ferndale, WA	AVC	7/25/2012	\$500.00			x	
Mendon, UT	AVC	7/27/2012	\$500.00				
McAlester, OK	AVC	7/31/2012	\$1,000.00				
Powers Lake, ND	AVC	8/3/2012	\$500.00			x	
Livingston, MT	AVC	8/6/2012	\$1,500.00				
Sioux City, IA	AVC / Judgment	8/7/2012	\$1,000.00	\$17,855.68			
Foley, MN	AVC	8/7/2012	\$500.00				
Minot, ND	AVC	8/7/2012	\$500.00			x	
Boise, ID	AVC	8/8/2012	\$500.00			x	
Perham, MN	AVC	8/9/2012	\$500.00				
Bismarck, ND	AVC	8/9/2012	\$500.00				
Little Rock, AR	AVC	8/14/2012	\$500.00				
Ross, ND	AVC	8/21/2012	\$500.00			x	
Sumner, WA	AVC	8/24/2012	\$500.00			x	
Powers Lake, ND	AVC	8/29/2012	\$500.00			x	
Moorhead, MN	AVC	8/29/2012	\$500.00			x	
Dickinson, ND	AVC	9/5/2012	\$500.00			x	
Hettinger, ND	AVC	9/13/2012	\$500.00				
De Pere, WI	AVC	9/13/2012	\$500.00			x	
Wishek, ND	AVC	9/13/2012	\$500.00			x	
Plano, TX	AVC	9/14/2012	\$500.00	\$33,000	\$33,000	x	
Spiro, OK	AVC	9/14/2012	\$500.00	\$4,000	\$4,000		
Prior Lake, MN	AVC	9/24/2012	\$1,000.00			x	
Jamestown, ND	AVC	10/2/2012	\$1,000.00				

Eudora, KS	AVC	10/3/2012	\$500.00				x	
Moran, WY	AVC	10/5/2012	\$500.00				x	
Great Falls, MT	AVC	10/5/2012	\$500.00	\$1,000		\$1,000		
Billings, MT	AVC	10/12/2012	\$1,000					
Williston, ND	AVC	10/16/2012	\$500				x	
Williston, ND	AVC	10/16/2012	\$500				x	
Billings, MT	AVC	10/17/2012	\$1,000				x	
New England, ND	AVC	10/19/2012	\$500				x	
Minot, ND	C&D	10/26/2012						
Minot, ND	C&D	10/26/2012					x	
Brighton, CO	C&D	10/26/2012						
Salt Lake City, UT	Warrant for Arrest	10/30/2012						
Merrill, WI	AVC	11/1/2012	\$500				x	
Missoula, MT	AVC	11/2/2012	\$500				x	
Eden Prairie, MN	AVC	11/5/2012	\$500					
Becker, MN	AVC	11/8/2012	\$1,000				x	
Minot, ND	AVC	11/8/2012	\$500					
Branson, MO	AVC	11/28/2012	\$500				x	
Fargo, ND	AVC	11/29/2012	\$500				x	
Denver, CO	AVC	11/29/2012	\$1,500					DNC & Contractor
Fisher, MN	AVC	12/11/2012	\$500				x	
Sheldon, ND	AVC	12/27/2012	\$500				x	
Grand Forks, ND	AVC	1/7/2013	\$500				x	
Minneapolis, MN	AVC	1/7/2013	\$500					
Zimmerman, MN	AVC	1/10/2013	\$500					
	C&D	1/24/2013						
Salt Lake City, UT	Warrant for Arrest	1/30/2013						
Luck, WI	AVC	1/30/2013	\$1,000	\$42,200		\$42,200	x	\$29,400 check. Materials delivered & contract cancelled
Missoula, MT	Default Judgment	2/12/2013				\$8,500		\$3,436,058 jdmr. \$11,896 in atty fees + \$70,000 civ pens, rest is restitution
Clark Fork, ID	AVC	2/26/2013	\$1,000				x	
Dickinson, ND	AVC	2/28/2013	\$500.00				x	
Killdeer, ND	AVC	2/28/2013	\$1,000				x	
Minot, ND	Default Judgment	3/19/2013	\$7,506.60	\$26,634		\$0		Nothing has been paid
Bear, DE	AVC	4/4/2013	\$500					
Lincoln, NE	C&D	4/2/2013						
Minot, ND	AVC	4/2/2013	\$500					
Stanley, ND	AVC	4/18/2013	\$1,000				x	
Durango, CO	AVC	4/26/2013	\$500				x	
Hayden, ID	AVC	5/9/2013	\$500				x	
Barnesville, MN	AVC	5/13/2013	\$1,000				x	
Houston, TX	AVC	5/13/2013	\$2,000					
Mishawaka, IN	AVC	5/20/2013	\$1,000				x	
Bismarck, ND	AVC	5/22/2013	\$500				x	
Underwood, ND	AVC	5/29/2013	\$1,000				x	
Silt, CO	AVC	5/29/2013	\$500					
Watford City, ND	AVC	5/31/2013	\$1,000				x	
Bismarck, ND	AVC Enforcement	6/3/2013	\$500					
Sioux Falls, SD	AVC	6/5/2013	\$500				x	
Williston, ND	AVC	6/5/2013	\$500				x	
Williston, ND	AVC	6/10/2013	\$500				x	
Houston, TX	AVC	6/10/2013	\$500				x	

Great Falls, MT	AVC	6/13/2013	\$500				x	
Great Falls, MT	AVC	6/13/2013	\$500				x	
Minot, ND	AVC	6/20/2013	\$500					
Bay City, MI	AVC	6/20/2013	\$500					
Sauk Rapids, MN	AVC	7/8/2013	\$500					
St. Joseph, MN	AVC	7/8/2013	\$500					
Weyauwega, WI	AVC	7/8/2013	\$500					
Payson, UT	AVC	7/10/2013	\$500					
St. Cloud, MN	AVC	7/10/2013	\$500					
McDonough, GA	AVC	7/10/2013	\$500					
Bemidji, MN	AVC	7/10/2013	\$500					
Lawrenceville, GA	AVC	7/11/2013	\$500					
St. Cloud, MN	AVC	7/11/2013	\$500					
Trenton, ND	AVC	7/12/2013	\$500					
Cokato, MN	AVC	7/12/2013	\$500					
Mount Holly, NC	AVC	7/12/2013	\$500					
Olathe, CO	AVC	7/12/2013	\$500					
St. Cloud, MN	AVC	7/12/2013	\$500					
Minot, ND	AVC	7/12/2013	\$500				x	
Bemidji, MN	AVC	7/15/2013	\$500					
Minot, ND	AVC	7/18/2013	\$500					
Regent, ND	AVC	7/18/2013	\$500				x	
Williston, ND	AVC	7/23/2013	\$500				x	
Aurora, IL	AVC	7/24/2013	\$500					
Middleton, WI	AVC	7/26/2013	\$500				x	
Marietta, GA	AVC	7/26/2013	\$500					
Bismarck, ND	AVC	8/2/2013	\$500				x	
Everett, WA	AVC	8/2/2013	\$500					
Wilmar, MN	AVC	8/2/2013	\$500				x	
Bismarck, ND	AVC	8/6/2013	\$250					
Greenfield, MN	AVC	8/6/2013	\$500					
Fairview, MT	AVC	8/6/2013	\$500				x	
Park River, ND	AVC	8/8/2013	\$500				x	
Bemidji, MN	AVC	8/8/2013	\$500					
Jamestown, ND	AVC	8/12/2013	\$500	\$9,000	\$11,000			Agreed to 2nd refund after AVC signed
Minot, ND	AVC	8/12/2013	\$500					
Holly, MI	AVC	8/15/2013	\$500				x	
Miles City, MT	AVC	8/20/2013	\$500					
Williston, ND	AVC	8/20/2013	\$1,500					10-32 and 43-07
Kalispell, MT	AVC	8/23/2013	\$1,000				x	lic surrendered
Bismarck, ND	AVC	8/26/2013	\$500				x	
Minot, ND	AVC	8/26/2013	\$500					
Denver, CO	AVC	9/6/2013	\$500					
Dickinson, ND	AVC	9/6/2013	\$0				x	\$500 suspended
Locust, NC	AVC	9/11/2013	\$500				x	
Great Falls, MT	AVC	9/11/2013	\$500					
Williston, ND	AVC	9/11/2013	\$500					
Williston, ND	AVC Enforcement	9/16/2013	\$1,000					
Minot, ND	AVC	9/19/2013	\$200					Waiting on \$450
Bismarck, ND	AVC	9/23/2013	\$0	\$2,336	1,000			Jdmt, plus \$500 to us as Jdmt
Houston, TX	AVC	9/27/2013	\$500				x	
Hartland, WI	AVC	10/1/2013	\$500				x	
Spokane, WA	AVC	10/3/2013	\$500				x	
Lake Mary, FL	AVC	10/3/2013	\$1,000				x	
Carpio, ND	AVC	10/10/2013	\$1,000					
Upton, WY	AVC	10/16/2013	\$500				x	
Devils Lake, ND	AVC	10/16/2013	\$500				x	
Junction City, OR	AVC	10/16/2013	\$500				x	

Bismarck, ND	AVC	10/23/2013	\$500	\$250	\$250	x	
New Rockford, ND	AVC	10/23/2013	\$250				
Cedar, MN	AVC	10/23/2013	\$500			x	
Maple Grove, MN	AVC	10/23/2013	\$500			x	
Benedict, ND	AVC	10/28/2013	\$500				
Mohall, ND	C&D	10/31/2013				x	
Williston, ND	C&D	10/31/2013				x	
Minot, ND	AVC	11/5/2013	\$500				
Harvey, ND	AVC	12/4/2013	\$500			x	
Elmwood, NE	AVC	12/6/2013	\$500			x	
Moran, WY	AVC Enforcement	12/11/2013	\$1,000			x	
Bear, DE	AVC	12/19/2013	\$500	\$2,500	\$2,500		
Moorhead, MN	AVC	1/10/2014	\$500	29,574	0		
Lockport, IL	AVC	1/24/2014	\$500			x	
Valley City, ND	AVC	1/24/2014	\$500			x	
Bismarck, ND	AVC	1/28/2014	\$500				
Mandan, ND	AVC / Jdmt	1/28/2014	\$0	\$148,390			plus \$500 civ pens jdmt
Bangs, TX	AVC	2/6/2014	\$500				
Bismarck, ND	AVC / Jdmt	2/6/2014	\$0	\$2,000			plus \$500 civ pens jdmt
Fargo, ND	AVC	2/7/2014	\$500				
Miles City, MT	C&D	2/12/2014					
Michigan, ND	C&D	2/12/2014					
Milbank, SD	AVC	2/13/2014	\$500				
Altoona, IA	C&D	3/18/2014					
Mandan, ND	C&D	3/18/2014					
Bigfork, MT	C&D	3/18/2014					
Big Lake, MN	C&D	3/18/2014					
Dilworth, MN	C&D	3/18/2014				x	
Dickinson, ND	C&D	3/18/2014				x	
Minot, ND	C&D	3/18/2014	\$500			x	payment no AVC
Bismarck, ND	AVC	3/24/2014	\$500				
New Town, ND	AVC	3/26/2014	\$500				
Mandan, ND	AVC	3/31/2014	\$0	\$2,500	\$2,500		satisfaction of jdmt
Williston, ND	AVC	4/2/2014	\$500				
Provo, UT	AVC	4/2/2014	\$500				
Bismarck, ND	AVC	4/2/2014	\$500				
Bismarck, ND	AVC	4/25/2014	\$1,000	\$543,934	543,934		
West Fargo, ND	AVC	4/25/2014	\$500				
San Antonio, TX	AVC	5/16/2014	\$1,000	\$5,000	\$5,000		Stramers
Spiro, OK	AVC	6/16/2014	\$5,000	\$5,000	\$5,000		Eszlinger
Emerado, ND	C&D	6/16/2014				x	
Harrison, MT	C&D	6/16/2014					
Pine Bluff, AR	AVC	6/18/2014	\$1,000				
Pine Bluff, AR	AVC	6/18/2014	\$500				
Pine Bluff, AR	AVC	6/18/2014	\$500				
Pine Bluff, AR	AVC	6/18/2014	\$500				
Fargo, ND	AVC	6/20/2014	\$500			x	
Minot, ND	AVC	6/23/2014	\$750			x	
Bismarck, ND	AVC	6/23/2014	\$500				
Minot, ND	AVC	6/19/2014	\$500	\$5,000	\$5,000		Halvorson
Bismarck, ND	AVC	6/5/2014	\$500				
Houston, TX	AVC	7/9/2014	\$500				
Mandan, ND	AVC	7/18/2014	\$500			x	
Everett, WA	AVC - Vio	7/18/2014	\$300				moved out of state never paid remaining \$200
Williston, ND	AVC	7/22/2014	\$500				Williston/Wat Taskforce
Watertown, SD	AVC	7/22/2014	\$500				Williston/Wat Taskforce
Burnsville, MN	AVC	7/25/2014	\$500				Williston/Wat Taskforce
Kimball, MN	AVC	7/25/2014	\$500				Williston/Wat Taskforce
Big Lake, MN	AVC	7/25/2014	\$500				Williston/Wat Taskforce

Billings, MT	AVC	7/31/2014	\$500				Williston/Wat Taskforce
Bozeman, MT	AVC	7/31/2014	\$500				Williston/Wat Taskforce
Mandan, ND	AVC	8/5/2014	\$500	\$800	\$800		Lance Vogel
Zimmerman, MN	AVC	8/6/2014	\$500				Williston/Wat Taskforce
Wyndmere, ND	AVC	8/6/2014	\$500			x	
Underwood, ND	AVC	8/6/2014	\$500			x	
Alvarado, TX	AVC	8/7/2014	\$500				
Fargo, ND	AVC	8/15/2014	\$500				
New Rockford, ND	AVC	8/19/2014	\$500			x	
Monticello, MN	AVC	8/20/2014	\$500			x	
Williston, ND	AVC	9/4/2014	\$500				Williston/Wat Taskforce
Minot, ND	AVC	9/15/2014	\$500			x	
Bismarck, ND	AVC	9/18/2014	\$500				
Dent, MN	AVC	10/9/2014	\$500				
St. John, ND	AVC	10/13/2014	\$500				
Bismarck, ND	AVC	10/14/2014	\$500			x	
Bear, DE	AVC	10/23/2014	\$2,500				
Bear, DE	AVC	10/23/2014	\$2,500				
Williston, ND	AVC	10/23/2014	\$500				
Cando, ND	AVC	11/3/2014	\$500				
Lincoln, ND	AVC	11/12/2014	\$250			x	
Mandan, ND	AVC	11/21/2014	\$250				
Duluth, MN	AVC	11/21/2014	\$500				
Horace, ND	C&D	11/25/2014	\$0				

<u>Total Legal Actions</u>	241		\$156,990.10	\$1,203,203.04	\$732,189.00
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<u>Total Restitution(ordered) and Penalties</u>		\$1,360,193.14			
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<u>Total Restitution(received) and Penalties</u>		\$889,179.10			
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<u>Legal Actions Aug - Dec 2011</u>	12		\$8,683.50	\$28,550.10	\$11,655.00
<u>Legal Action 2012</u>	62		\$49,550.00	\$349,534.94	\$92,850.00
<u>Legal Actions In 2013</u>	99		\$60,706.60	\$82,920.00	\$65,450.00
<u>Legal Actions In 2014</u>	68		\$38,050.00	\$742,198.00	\$562,234.00

CORRESPONDENCE

x  
x  
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12

.....  
Total Correspondence

39

PENDING ACTIONS

AVC offered  
preparing App Inj  
contacting  
contacting  
contacting  
contacting  
contacting  
contacting  
contacting  
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Total Pending Legal Actions

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## Fraudulent contractor sent to jail for 13 months

Print ([http://blog.oregonlive.com/breakingnews/print.html?entry=2007/06/fraudulent\\_contractor\\_sent\\_to.html](http://blog.oregonlive.com/breakingnews/print.html?entry=2007/06/fraudulent_contractor_sent_to.html))



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on June 18, 2007 at 5:15 PM, updated June 18, 2007 at 5:28 PM

**HILLSBORO -- A 33-year-old contractor who took the money and ran was sentenced Monday to 13 months in jail.**

Jonathan Lee Oliver also cannot work as a contractor for two years after his release, said Washington County Circuit Judge Marco A. Hernandez.



(<http://blog.oregonlive.com/breakingnews/Jonathan%20Lee%20Oliver.JPG>) Jonathan Lee Oliver

Jonathan Lee Oliver

Oliver, who owned Country Property Services Inc. out of Tualatin, must repay \$26,000 to Tim and Sharon McCarthy.

A jury earlier this month convicted Oliver of two counts of first-degree aggravated theft for taking \$34,000 from the McCarthys in 2004 and failing to build their Beaverton-area outdoor horse arena. He was arrested in February 2005.

"They gave him \$34,000 and he left them a \$7,000 pile of dirt," said Paul Maloney, Washington County deputy district attorney.

Jurors also found Oliver guilty of identity theft for using another contractor's license number in the advertisement that attracted the McCarthy's attention in the first place.

"I find his life sad and wasteful, that he would con people and really not show any remorse," Sharon McCarthy said after the sentencing. "He never told us he was sorry, he never said he'd make every effort to get us our money back."

Instead, Oliver fled Oregon, failing to appear at a court hearing in December 2005. He wasn't found until last December in North Carolina.

"The most disappointing thing is that three years from now he can be back doing the same thing," said Tim McCarthy, a veterinarian who owns four horses. "I wish he could get 20 years' probation so he wouldn't be able to be a contractor again."

Other jurisdictions, however, will have say in how soon Oliver can go back to work. He is charged with first-degree aggravated theft in Klamath Falls on a similar contract case and the Oregon Construction Contractors Board is investigating other complaints.

Oliver could not get an Oregon construction contractors license because of felony convictions for criminal threatening and reckless conduct in 2000 for firing a gun during a dispute with a plumber in New Hampshire.

([http://ads.oregonlive.com/RealMedia/ads/click\\_lx.ads/blog.oregonlive.com/breakingnews/2007/06/fraudulent\\_contractor\\_sent\\_to.html/410122759/Tower/ORE](http://ads.oregonlive.com/RealMedia/ads/click_lx.ads/blog.oregonlive.com/breakingnews/2007/06/fraudulent_contractor_sent_to.html/410122759/Tower/ORE))



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Maloney said the New Hampshire attorney general's office also determined that Oliver "engaged in fraud and wrongdoing" when he failed to deliver heating oil to more than 1,300 customers who had pre-paid to keep the price low. As part of a civil judgment, Oliver was ordered to pay the state more than \$600,000 for the victims, but instead he came to Oregon.

Oliver testified at his trial that he always intended to build the McCarthys' horse arena, but they fired him after two months. He said didn't have a contractor's license because he had a phobia about taking tests and he didn't have the money to give back because it wasn't placed in an escrow account.

Witnesses testified that Oliver took in more jobs than he could ever finish and didn't pay his subcontractors.

"I believe this is a case of Mr. Oliver recklessly overextending himself," public defender Thomas MacNair told the judge.

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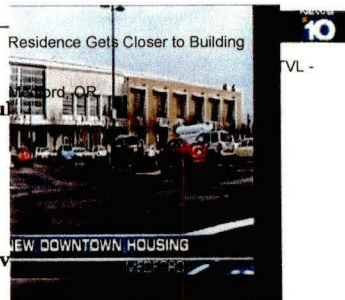


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(19 comments)

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December 22, 2011

**CEASE AND DESIST ORDER ISSUED AGAINST  
JONATHAN OLIVER, DBA "WESTERN STEEL STRUCTURES, INC"**

BISMARCK – Attorney General Wayne Stenehjem today issued a Cease & Desist Order against Jonathan Lee Oliver of Missoula, MT and Salem, OR, doing business as Western Steel Structures, Inc., for violations of North Dakota's consumer fraud law.

Stenehjem's Consumer Protection Division is investigating Western Steel Structures and Jonathan Lee Oliver for fraudulent transactions relating to erecting steel buildings, based on information that Western Steel Structures, Inc. solicited and accepted over \$1.5 million in consumer deposits and advance payments over the past nine months, and has failed to deliver the products or complete the construction projects.

Although Oliver was issued a North Dakota contractor's license, it appears he used an alias and provided false information on the application to conceal his criminal history in New Hampshire and Oregon. Oliver did not apply for a transient merchant license.

According to Parrell Grossman, director of the Attorney General's Consumer Protection Division, the Attorney General's investigation will help determine the extent of Oliver's fraudulent conduct in North Dakota. "We will be initiating legal action against Oliver for a permanent injunction against selling, as well as seeking civil penalties and restitution," Grossman said.

Oliver was arrested earlier this week and is currently being held in the Stutsman county jail. In addition to facing charges in North Dakota, Oliver is wanted in Oregon and New Hampshire.

"Unfortunately, prior to his arrest, my office had not received any consumer complaints about Mr. Oliver. In view of the information we have uncovered this week, I am immediately banning Oliver from conducting any further business in North Dakota," Stenehjem said.

Stenehjem reminds consumers to be very cautious about paying large up-front fees to contractors before completion deadlines and to never hire a contractor without a signed contract that provides all of the details.

Consumers who wish to make a complaint against Jonathan Lee Oliver also known as Jon Walker, John Walker, Jon Oliver, J.L. Oliver, or Western Steele Structures, Inc., can download the complaint form on the Attorney General's website at [www.ag.nd.gov](http://www.ag.nd.gov) or call the Consumer Protection Division at 701-328-3404 to request a complaint form.

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Cease & Desist Order Western Steel Structures

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January 24, 2013

**ATTORNEY GENERAL ISSUES CEASE & DESIST ORDER AGAINST GEORGE AND KARLA NELSON, BARON BUILDINGS, AND AG PRO BUILDINGS**

BISMARCK – Attorney General Wayne Stenehjem today issued a Cease and Desist Order against George Donald Nelson III and Karla Ann Nelson, doing business as Baron Buildings, LLC, and AG Pro Buildings, LLC, for violations of the consumer fraud laws and for providing contractor services without a North Dakota contractor's license.

The Attorney General's Bureau of Criminal Investigations and Consumer Protection Division initiated criminal and consumer fraud investigations of George and Karla Nelson after complaints indicated the Nelsons had engaged in criminal and fraudulent activity throughout the state. According to Stenehjem, the Nelsons took money from consumers in at least nine counties.

"The Nelsons not only operated without a contractor's license, it appears they also defrauded many North Dakota consumers," Stenehjem said. Stenehjem noted that in the majority of transactions, the Nelsons took thousands of dollars in advance deposits from consumers and performed little or no work. "The Nelsons' blatant disregard for the contractor licensing laws are criminal violations and their pattern of fraudulent conduct, including misrepresentations that the work would be completed for payments received, has harmed many North Dakota consumers," said Stenehjem.

According to Parrell Grossman, director of the Consumer Protection Division, it may be difficult to get refunds from unlicensed contractors, and consumers need to be vigilant in ensuring that contractors are licensed. "If a contractor is not licensed it often is the hallmark of a disreputable contractor and may be the first sign of serious problems with that contractor," Grossman said. "Consumers should never do business with an unlicensed contractor." Grossman reminds consumers to:

- Get two or three written bids for the project. Never accept a verbal estimate.
- Make sure the potential contractor is properly licensed, bonded and insured. Contractors engaging in contracts exceeding \$2,000 must be licensed by the North Dakota Secretary of State, at <http://www.nd.gov/sos/>.
- Be cautious if the contractor insists on full payment or a large down payment before any work begins.

North Dakota consumers who paid money to the Nelsons, Baron Buildings, LLC, or AG Pro Buildings, LLC, can submit a complaint form from the Attorney General's website at [www.ag.nd.gov](http://www.ag.nd.gov), or by contacting the Consumer Protection Division at 701-328-3404.

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Cease & Desist

## **ATTORNEY GENERAL ISSUES CEASE & DESIST ORDER AGAINST PJD CONSTRUCTION, LLC AND PATRICK J. DELARE**

April 9, 2013

BISMARCK – Attorney General Wayne Stenehjem today issued a Cease and Desist Order against Patrick J. Delare, doing business as PJD Construction, LLC, of Becker, Minnesota, for violating North Dakota's consumer fraud laws, failing to have the required Transient Merchant license, and for providing contractor services without first obtaining a North Dakota contractor's license.

The Attorney General's office initiated a consumer fraud investigation of Delare and his business after receiving complaints that he had taken advance deposits of more than \$120,000 from two consumers to build pole barns but had failed to do any substantial work on one project and failed to complete the work on another project. The investigators found that Delare also had been involved in a home construction project for a third consumer, which he failed to complete. Delare, whose business is located in Minnesota, does not have a transient merchant license or a North Dakota contractor's license.

"It is unacceptable for Patrick Delare to operate in this state without the required licenses, take money from North Dakota consumers, and then fail to provide the materials or services as promised," Stenehjem said. "As a result, Delare and his business, PJD Construction, are now banned from all future construction or business in the state of North Dakota."

Any contractor performing work in North Dakota valued at \$2,000 or more must first have a contractor's license issued by the Secretary of State's office. Any individual conducting temporary or transient business within this state is required to obtain a Transient Merchant's License from the Attorney General's Office.

According to Parrell Grossman, director of the consumer protection division, this situation is another expensive and unfortunate example of the perils of hiring unlicensed contractors or contractors that require large up-front payments. "Never do business with an unlicensed contractor," said Grossman. He urged consumers to exercise caution before paying thousands of dollars to a contractor before it delivers the materials or provides the construction services. "Once the money has been paid, these contractors have little or no incentive to complete the work. It is almost impossible to recover any money from an unlicensed, out of state, contractor," he continued.

Consumers can find tips from the Consumer Protection division on how to choose a contractor, online at <http://www.ag.nd.gov/Brochures/FactSheet/ChoosingContractor.pdf>.

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Cease & Desist

**ATTORNEY GENERAL ISSUES CEASE AND DESIST ORDER AGAINST WILMA MILLER AND DAN MILLER D/B/A DOUBLE DIAMOND CONSTRUCTION AND DOUBLE DIAMOND BUILDINGS**

April 2, 2013

BISMARCK, ND – Attorney General Wayne Stenehjem today issued a Cease and Desist Order against Wilma Miller and Dan Miller, doing business as Double Diamond Construction and Double Diamond Buildings of Lincoln, Nebraska for misrepresentations and engaging in contractor services without a North Dakota contractor's license and a North Dakota Transient Merchant's License.

According to Stenehjem, his Consumer Protection Division initiated an investigation of Wilma Miller and Dan Miller after receiving consumer complaints that the mother and son victimized multiple North Dakota consumers in a total amount exceeding \$100,000. Dan Miller identified his mother, Wilma Miller, as the owner of the business and then lied to the Attorney General's investigator by falsely stating the company had not performed any contracting work or accepted any advance payments from North Dakota consumers. "The Millers fleeced at least three consumers out of more than \$100,000 total. The Millers were not licensed, did not deliver the materials, erect any buildings, or pay their subcontractors or suppliers," Stenehjem said.

According to the investigation, the Millers have a history of travelling state-to-state and have since fled North Dakota. "Wilma Miller and Dan Miller are a menace to consumers and they will be held accountable if they ever return to North Dakota's jurisdiction," Stenehjem said.

Parrell Grossman, director of the Attorney General's Consumer Protection Division, said the Millers falsely represented their business as a North Dakota business by using a mail forwarding facility in Bismarck. "Before putting any money down, consumers should check that the contractor is properly licensed in North Dakota, verify how long the business has been located in North Dakota, and check references from previous customers," Grossman said. Contractors must be licensed with the Secretary of State's office if they perform work valued at \$2,000 or more. Consumers can check the Secretary of State's list of licensed contractors online at <http://www.nd.gov/sos/> or by calling (701) 328-2900. "It's often impossible to recover any money from these unlicensed businesses once they have left the state," said Grossman.

North Dakota consumers who paid money to the Millers or their businesses can submit a complaint form from the Attorney General's website at [www.ag.nd.gov](http://www.ag.nd.gov), or by contacting the Consumer Protection Division at 701-328-3404.

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Cease & Desist

## NEWS RELEASE

Contact: Liz Brocker  
(701) 328-2213

June 16, 2014

### **MORE UNLICENSED CONTRACTORS BANNED FROM WORKING IN ND**

- **Raymond Knuppel, dba Sealtite Restoration, and Matt Martin are banned**

BISMARCK, ND – Attorney General Wayne Stenehjem today issued Cease and Desist Orders against unlicensed contractors **Raymond Knuppel of Harrison, Montana, doing business as Sealtite Restoration**, and **Matt Martin of Emerado & Devils Lake, ND**, for misrepresentations and engaging in contractor services without the required state licenses. Knuppel and Martin are both banned from working or doing business in North Dakota.

According to Stenehjem, his Consumer Protection Division initiated an investigation of Sealtite Restoration after receiving a complaint from a general contractor that Knuppel refused to replace blown off shingles improperly installed on an apartment complex roof or to complete the remainder of the job. Knuppel admitted to the investigators that he had solicited work in Williston and been hired as a sub-contractor even though he was not licensed in this state.

"Hiring an unlicensed contractor is risky. You have no guarantee that the contractor even knows what he is doing and no recourse if the work is not done or not done properly, other than paying out more money to have a reputable licensed contractor fix it," said Stenehjem.

Although initially cooperative, Knuppel stopped communicating with investigators and appears to have returned to Montana. While he was in North Dakota, information indicates that Knuppel had been paid almost \$40,000 for work, some of which was unfinished when he left. Investigators understand that the Williston general contractor had to hire a licensed contractor to redo the work Knuppel had improperly done and to complete the remainder of the job.

Martin admitted to investigators that he was not licensed and also that he had performed work in the Devils Lake area on a steel roof in the amount of \$4,000, but thereafter failed to respond to communications from the Consumer Protection Division.

Parrell Grossman, director of the Consumer Protection Division, reminded general contractors of the requirement that they must ensure all their subcontractors are properly licensed and bonded with the state. He urged private individuals and businesses not to make any down payment until they have proof that all contractors and subcontractors have the required licenses. "It's your hard-earned money, so take the time to check the paperwork and references from previous customers, and don't risk losing more than you can afford," he said.

Contractors, subcontractors, and employees of those companies, must be licensed with the Secretary of State's office if the company performs work valued at \$2,000 or more. Consumers can check the Secretary of State's list of licensed contractors online at <http://www.nd.gov/sos/> or by calling (701) 328-2900. Complaints about unlicensed contractors can be filed with the Secretary of State or by contacting the Attorney General's Consumer Protection Division at 701-328-3404.

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Matt Martin C&D

Raymond Knuppel

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# 2  
3/17/15

### Testimony to House of Representatives

RE: Engrossed Senate Bill NO 2188 – Holding dishonest contractors accountable

Mr. Chairman and Members of the Committee. My name is Colleen Vetter of Elgin, ND. I am here to testify in support of Engrossed Senate Bill 2188.

My husband, Charles, recently saw an article regarding the Stewart family who were defrauded by an Arizona contractor. The article did not mention the name of the contractor but the course of events was very similar as to what happened to us. My husband and I were defrauded by Matt McRae in 2012 – 2013 and suffered a loss of approximately \$36,000 while operating under the name of Northern Elite Contracting LLC. McRae moved into our area offering all types of construction services. These types of services are rare to find in our rural area and many consumers were getting on the list to get their jobs completed by Northern Elite Contracting. We had wanted to build a shop for several years so we contracted McRae for a 48' x 104' shop, with doors, windows, insulation, and cement and inside finish work. When McRae was finished, all we had was a shell with tin; no doors, no cement, no insulation nor any inside finish work. Once we discovered we had been defrauded, we visited our County States Attorney, Todd Schwarz to see what could be done. Schwarz indicated he and others would be on our case as well as assisting others from the area that McRae had defrauded. Nothing ever happened. We visited with an attorney from Bismarck, who basically said Northern Elite Contracting LLC/ Mc Rae had no assets and that many others are after him and that it was in our best interest to apply the \$40,000 - \$50,000 attorney and court costs, toward finishing our shop. Since we are not wealthy people we elected to swallow our loss and finish it on our own. We tried to put pressure on McRae to pay the money back but it never happened.

McRae had a partner in Minot who was defrauded also. He was seeing our emails the whole time the building was being put up. Once the partner (Derrick) realized McRae had stolen money from their partnership, he contacted me to find out what McRae was doing in the Elgin area as he was hearing McRae owed money to many people in our area. I visited with Derrick last fall and he indicated McRae is still up to his tricks only at that time, McRae was defrauding truck drivers. In my last conversation with Derrick, he said he still had emails from McRae to employees instructing them what to say to us when he needed more money. Derrick said the intent to fraud was evident and felt he needed to be stopped somehow. I responded that we do not have the money to fight him.

As I mentioned before, we are not wealthy people. We waited until we were somewhat financially secure to start the project even though we needed the shop many years ago. The item that finally broke the relationship with McRae was when we had to pay his employees and rent equipment to finish the basics of getting the tin on the building as McRae had no financial resources. The time came to order the doors and my husband called the supplier to see if he wanted the check made payable directly to him or McRae, as McRae was writing bad checks by this time. The supplier hesitated but then instructed u to write the check to McRae. We did. In return McRae wrote the supplier a bum check. The supplier then wanted to place a lien on our farm because of the bad check McRae wrote; however,

legally he had no right to this action. Needless to say, we ended up paying for doors again, along with concrete, insulation and finish work.

Addition consumers in the area were also defrauded. A business in a neighboring town was left hanging with a bill of \$34,600 for materials for our shop. The check we paid to McRae for materials was cashed but never applied to the materials for our building. A second consumer in Elgin hired Northern Elite for a cement job through McRae's foreman. This Consumer paid Northern Elite \$6,000 to start the project. The project was abandoned shortly after the check was cashed.

A third consumer built a large shop similar to ours. While the majority of the shop was completed, this consumer also had to rent equipment and pay the workers as McRae was issuing bad checks. This consumer is still waiting for McRae to come and finish items in the building and feels he lost about \$34,000. A fourth consumer hired McRae to build a house. Again, a large amount of money was paid to McRae; however, the consumer ended up hiring another contractor to finish his house.

You may wonder why we did not sever the relationship with McRae. While we had gut feeling things were not quite right, McRae had a gift to sell people a parcel of goods. We researched McRae on line and found positive articles of his business in Arizona. I contacted the Attorney General office and they had no complaints on him. His records were legitimate with the ND Secretary of State.

I ask from you a legal system that will prosecute licensed contractors like McRae who have the intent to fraud individuals. My husband and I do not want our nightmare to become someone else's nightmare; however, we keep hearing McRae's games are still occurring. Mr. Chairman and Members of the Committee, passing this bill would help protect North Dakota citizens from construction fraud and I respectfully ask that you give engrossed Senate Bill 2188 a "Do Pass" recommendation. People like Matt McRae need to be stopped.



**Northern Elite Contracting**  
New Builds • Remodels • Framing • Concrete  
LICENSED - INSURED  
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