Sixty-fourth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2015

SENATE BILL NO. 2188
(Senators Klein, Luick, Oehlke)
(Representatives Louser, Monson, Schreiber Beck)

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.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

1. 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~~four 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.

2. Any person acting in the capacity of a contractor without a license is guilty of a class A misdemeanor. Regardless of whether a person is subjected to criminal prosecution under this subsection, 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.

3. A person commits construction fraud if:

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

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

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

      (1) A contractor fails substantially to commence any work agreed upon:

         (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.

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

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

   b. The person had a legitimate legal excuse for nonperformance.

   c. 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.

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.

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

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~~section 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.

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 Section 43-07-18 of the North Dakota Century Code is repealed.

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

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-fourth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2188 and that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote: Yeas 47 Nays 0 Absent 0

President of the Senate

Secretary of the Senate

This certifies that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 90 Nays 0 Absent 4

Speaker of the House

Chief Clerk of the House

Received by the Governor at 4:12 P. M. on April 13, 2015.

Approved at 11:10 A. M. on April 15, 2015.

Governor

Filed in this office this 15th day of April, 2015,

at 2:49 o'clock P M.

Secretary of State