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

SENATE BILL NO. 2278
(Senators Poolman, Luick)
(Representatives Devlin, Ruby, Sukut)

AN ACT to amend and reenact sections 43-07-04, 43-07-04.1, 43-07-07, 43-07-09, 43-07-10, and 43-07-15 of the North Dakota Century Code, relating to contractor licensing and fees; to repeal section 43-07-05 of the North Dakota Century Code, relating to contractor license fees; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

43-07-04. License - How obtained - Failure to grant - Revocation <u>for not in good standing</u>.

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 determining the applicant's ~~fitness~~<u>eligibility</u> 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~~;~~<u>, or</u> 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.

SECTION 2. AMENDMENT. Section 43-07-04.1 of the North Dakota Century Code is amended and reenacted as follows:

43-07-04.1. ~~Conviction not bar to licensure - Exceptions~~Denial, suspension, or revocation of license - Eligibility.

~~Conviction~~

1. The registrar may deny any application for license, deny any application for renewal of license, or suspend or revoke any license, based on the applicant's or licensee's lack of eligibility to act in the capacity of a contractor, upon proof of one or more of the following:

   a. The application for a license contains false or misleading information;

   b. The applicant or licensee has been convicted of an offense that has direct bearing upon the applicant's or licensee's ability to serve the public as a contractor; or

   c. The licensee or applicant has engaged in conduct as a contractor which is dishonest or fraudulent and which the registrar finds injurious to the welfare of the public.

2. Notwithstanding subdivision b of subsection 1, conviction of an offense does not ~~disqualify~~make a person ~~from~~ineligible for 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.

3. Any applicant denied a license or denied renewal of a license may appeal the decision to the district court of the applicant's county of residence or Burleigh County.

4. Section 43-07-15 applies to any decision by the registrar to revoke or suspend a license.

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

43-07-07. Classes of licenses - License fees - License renewal fees.

~~At the time of making application~~

1. Four classes of licenses may be issued under this chapter, which must be designated as class A, B, C, and D licenses. A holder of a license may engage in the contracting business within this state subject to the following limitations:

   a. The holder of a class A license is subject to no limitation as to the value of any single contract project.

b. 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 five hundred thousand dollars.

c. 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 three hundred thousand dollars.

d. 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 one hundred thousand dollars.

2. When applying for a license as described and required in this chapter, the applicant shall pay to the registrar the following fees:

~~1.~~a. For a class A license, the sum of ~~three~~four hundred fifty dollars.

~~2.~~b. For a class B license, the sum of ~~two~~three hundred dollars.

~~3.~~c. For a class C license, the sum of ~~one~~two hundred ~~fifty~~twenty-five dollars.

~~4.~~d. For a class D license, the sum of ~~fifty~~one hundred dollars.

3. For a certificate of renewal for a license, the licensee shall pay to the registrar the following fees:

a. For a class A license the sum of ninety dollars.

b. For a class B license the sum of sixty dollars.

c. For a class C license the sum of forty-five dollars.

d. For a class D license the sum of thirty dollars.

4. ~~All~~Twenty-five percent of all moneys collected by the registrar under this chapter must be deposited ~~by the registrar~~in the secretary of state's general services operating fund to pay the cost to administer this chapter and the balance of the moneys collected must be deposited with the state treasurer, who shall credit them to the general fund of the state.

SECTION 4. AMENDMENT. Section 43-07-09 of the North Dakota Century Code is amended and reenacted as follows:

43-07-09. Duty of registrar - Expiration of license.

Within fifteen days from the date of application, the registrar may investigate and determine each applicant's ~~fitness~~eligibility to act in the capacity of a contractor as ~~defined in this chapter~~provided in section 43-07-04.1, 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.

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

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 naming the secretary of state as the certificate holder 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 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~~the 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~~fifty dollars, 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 6. AMENDMENT. Section 43-07-15 of the North Dakota Century Code is amended and reenacted as follows:

43-07-15. ~~Revocation~~Procedure for 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~~under this section.

SECTION 7. REPEAL. Section 43-07-05 of the North Dakota Century Code is repealed.

SECTION 8. EMERGENCY. Section 2 of 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. 2278 and that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote: Yeas 45 Nays 2 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 78 Nays 12 Absent 4

Speaker of the House

Chief Clerk of the House

Received by the Governor at 3:11 P. M. on April 15, 2015.

Approved at 3:13 P. M. on April 16, 2015.

Governor

Filed in this office this 16th day of April, 2015,

at 4:26 o'clock P M.

Secretary of State