

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 591

Introduced by Crawford, 45.

Read first time January 18, 2017

Committee:

1 A BILL FOR AN ACT relating to the Contractor Registration Act; to amend
2 sections 48-2102, 48-2103, 48-2105, 48-2110, 48-2111, 48-2112,
3 48-2113, 48-2114, and 81-1616, Reissue Revised Statutes of Nebraska;
4 to define a term; to provide compliance requirements for registered
5 contractors; to provide for enforcement of certain building and
6 construction codes; to harmonize provisions; to provide an operative
7 date; and to repeal the original sections.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 48-2102, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 48-2102 It is the intent of the Legislature that all contractors
4 doing business in Nebraska be registered with the department and comply
5 with applicable state and local building codes. It is not the intent of
6 the Legislature to endorse the quality or performance of services
7 provided by any individual contractor.

8 Sec. 2. Section 48-2103, Reissue Revised Statutes of Nebraska, is
9 amended to read:

10 48-2103 For purposes of the Contractor Registration Act:

11 (1) Commissioner means the Commissioner of Labor;

12 (2) Construction means work on real property and annexations,
13 including new work, additions, alterations, reconstruction,
14 installations, and repairs performed at one or more different sites which
15 may be dispersed geographically;

16 (3) Contractor means an individual, firm, partnership, limited
17 liability company, corporation, or other association of persons engaged
18 in the business of the construction, alteration, repairing, dismantling,
19 or demolition of buildings, roads, bridges, viaducts, sewers, water and
20 gas mains, streets, disposal plants, water filters, tanks and towers,
21 airports, dams, levees and canals, water wells, pipelines, transmission
22 and power lines, and every other type of structure, project, development,
23 or improvement within the definition of real property and personal
24 property, including such construction, repairing, or alteration of such
25 property to be held either for sale or rental. Contractor also includes
26 any subcontractor engaged in the business of such activities and any
27 person who is providing or arranging for labor for such activities,
28 either as an employee or as an independent contractor, for any contractor
29 or person;

30 (4) Department means the Department of Labor;

31 (5) Nonresident contractor means a contractor who neither is

1 domiciled in nor maintains a permanent place of business in this state or
2 who, being so domiciled or maintaining such permanent place of residence,
3 spends in the aggregate less than six months of the year in this state;
4 and

5 (6) State and local building codes means:

6 (a) The state building code adopted under section 71-6403;

7 (b) The Nebraska Energy Code adopted under section 81-1611; and

8 (c) A local building or construction code adopted under section
9 71-6406; and

10 (7) ~~(6)~~ Working days means Mondays through Fridays but does not
11 include Saturdays, Sundays, or federal or state holidays. In computing
12 fifteen working days, the day of receipt of any notice is not included
13 and the last day of the fifteen working days is included.

14 Sec. 3. Section 48-2105, Reissue Revised Statutes of Nebraska, is
15 amended to read:

16 48-2105 Each contractor shall apply to the department for a
17 registration number on an application form provided by the department.
18 The application shall contain the following information:

19 (1) The name and federal employer identification number or, if the
20 applicant is an individual, the social security number of the contractor;

21 (2) The principal place of business of the contractor in Nebraska.
22 If the contractor's principal place of business is outside Nebraska, the
23 application shall state the address of the contractor's principal place
24 of business and the name and address of the contractor's registered agent
25 in Nebraska;

26 (3) The telephone number of the contractor in the State of Nebraska.
27 If the contractor's principal place of business is outside Nebraska, the
28 application shall state the telephone number of the contractor's
29 principal place of business and the telephone number of the contractor's
30 registered agent in Nebraska;

31 (4) The type of business entity of the contractor such as

1 corporation, partnership, limited liability company, sole proprietorship,
2 or trust;

3 (5) The contractor option election to collect and remit sales and
4 use tax on purchases of building materials and fixtures annexed to real
5 property;

6 (6) The following information about the business entity:

7 (a) If the contractor is a corporation, the name, address, telephone
8 number, and position of each officer of the corporation; and

9 (b) If the contractor is other than a corporation, the name,
10 address, and telephone number of each owner;

11 (7) If the contractor has previously been revoked from the registry
12 for failure to comply with applicable state and local business codes, the
13 date of the previous revocation and documentation from a building
14 inspector, code official, the State Energy Office, or other qualified
15 source that the contractor has taken corrective steps to come into
16 compliance for such revocation;

17 (8) {7} Proof of (a) a certificate or policy of insurance written by
18 an insurance carrier duly authorized to do business in this state which
19 gives the effective dates of workers' compensation insurance coverage
20 indicating that it is in force, (b) a certificate evidencing approval of
21 self-insurance privileges as provided by the Nebraska Workers'
22 Compensation Court pursuant to section 48-145, or (c) a signed statement
23 indicating that the contractor is not required to carry workers'
24 compensation insurance pursuant to the Nebraska Workers' Compensation
25 Act; and

26 (9) {8} A description of the business which includes the employer's
27 standard industrial classification code or the principal products and
28 services provided, including whether the business is engaged in the
29 construction, reconstruction, alteration, and repair of buildings.

30 Each application shall be renewed annually upon payment of the fee
31 prescribed in section 48-2107.

1 Sec. 4. Section 48-2110, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 48-2110 (1) The commissioner shall issue a notice of revocation of
4 registration to a contractor when an investigation reveals that the
5 contractor no longer meets the conditions of registration set out in
6 section 48-2105 by failure to maintain compliance with the laws of this
7 state relating to workers' compensation insurance coverage. If the
8 commissioner receives a notice of cancellation of workers' compensation
9 insurance coverage, the commissioner shall revoke the registration as of
10 the time of cancellation unless the contractor provides a new
11 certification of insurance prior to the cancellation date.

12 (2) The commissioner may issue a notice of revocation of
13 registration to a contractor when an investigation reveals that the
14 contractor has willfully failed to take corrective action to bring one or
15 more buildings into compliance with applicable state and local building
16 codes according to the timeframe in a citation issued under section
17 48-2114. For purposes of this subsection, there shall be a rebuttable
18 presumption that the contractor has not willfully failed to take
19 corrective action to bring a building into compliance with applicable
20 state and local building codes if a certificate of occupancy for the
21 building has been granted by a local code official.

22 Sec. 5. Section 48-2111, Reissue Revised Statutes of Nebraska, is
23 amended to read:

24 48-2111 (1) The commissioner shall serve notice of revocation on
25 the contractor by mailing such notice by certified mail or any other
26 manner of delivery by which the United States Postal Service can verify
27 delivery to the address of the contractor or the contractor's registered
28 agent listed in the application.

29 (2) Upon a showing of compliance with the application requirements
30 set out in section 48-2105, the commissioner may temporarily reinstate
31 the registration pending a hearing on the revocation.

1 (3) Upon a showing of corrective action to bring the building or
2 buildings into compliance with applicable state and local building codes
3 following a citation issued under subsection (3) of section 48-2114, the
4 commissioner may temporarily reinstate the registration pending a hearing
5 on the revocation.

6 (4) A registration revoked under this section shall not be
7 permanently reinstated. To receive a new registration number, the
8 contractor shall reapply to the commissioner.

9 Sec. 6. Section 48-2112, Reissue Revised Statutes of Nebraska, is
10 amended to read:

11 48-2112 (1) The commissioner may make investigations he or she finds
12 necessary or appropriate to determine if there is compliance with the
13 Contractor Registration Act. Investigations shall take place at the times
14 and places as the commissioner directs. For purposes of any investigation
15 under this section, the commissioner may interview persons at the
16 worksite, take photographs, review building plans or construction
17 drawings, and utilize other reasonable investigatory techniques. The
18 conduct of the investigation shall be such as to preclude unreasonable
19 disruption of the operations of the worksite. Investigations may be
20 conducted, without prior notice, by correspondence, telephone
21 conversations, or review of materials submitted to the department.

22 (2) No investigation for the failure of a contractor to comply with
23 applicable state and local building codes shall be initiated by the
24 commissioner unless (a) a written complaint is filed pursuant to section
25 48-2113, (b) such complaint includes signed substantiation of a potential
26 building code violation from a building inspector, a code official, the
27 State Energy Office, or a certified building official credentialed by the
28 International Code Council, and (c) the complainant has taken reasonable
29 steps to obtain compliance with applicable state and local building codes
30 through local code officials, where applicable.

31 (3) {2} For purposes of any investigation or proceeding under this

1 section, the commissioner or any officer designated by him or her may
2 administer oaths and affirmations, subpoena witnesses, compel their
3 attendance, take evidence, and require the production of any books,
4 papers, correspondence, memoranda, agreements, or other documents or
5 records which the commissioner deems relevant or material to the inquiry.

6 (4) ~~(3)~~ In case of contumacy by or refusal to obey a subpoena issued
7 to any person, any court of competent jurisdiction, upon application by
8 the commissioner, may issue to such person an order requiring him or her
9 to appear before the commissioner or the officer designated by the
10 commissioner and produce documentary evidence if so ordered or give
11 evidence touching the matter under investigation or in question. Any
12 failure to obey the order of the court may be punished by the court as a
13 contempt.

14 Sec. 7. Section 48-2113, Reissue Revised Statutes of Nebraska, is
15 amended to read:

16 48-2113 Written complaints which are made regarding the registration
17 of a contractor or the failure of a contractor to comply with applicable
18 state and local building codes, which are made to the commissioner, and
19 in which the complainant provides his or her name and address shall
20 receive a written response as to the results of the investigation. A
21 complainant's name and other identifying information shall not be
22 released if the complaint was included as a part of another complaint
23 when the complainant's identity would be protected under other statutes
24 or rules and regulations.

25 Sec. 8. Section 48-2114, Reissue Revised Statutes of Nebraska, is
26 amended to read:

27 48-2114 (1) The commissioner shall issue a citation to a contractor
28 when an investigation reveals that the contractor has violated:

29 (a) The requirement that the contractor be registered; ~~or~~

30 (b) The requirement that the contractor's registration information
31 be substantially complete and accurate; or ~~or~~

1 (c) The requirement that the contractor comply with applicable state
2 and local building codes.

3 (2) When a citation is issued, the commissioner shall notify the
4 contractor of the proposed administrative penalty, if any, by certified
5 mail or any other manner of delivery by which the United States Postal
6 Service can verify delivery. The administrative penalty shall be not more
7 than five hundred dollars in the case of a first violation and not more
8 than five thousand dollars in the case of a second or subsequent
9 violation.

10 (3) If a citation is issued for failure to comply with applicable
11 state and local building codes, the commissioner shall provide the
12 contractor with a proposed timeframe for taking corrective action to
13 bring the building or buildings into compliance with the applicable
14 codes. The timeframe shall commence on the date the citation was issued
15 or upon resolution of a contest to the citation under subsection (4) of
16 this section. The commissioner shall notify the contractor of the
17 proposed timeframe by certified mail or by any other manner of delivery
18 by which the United States Postal Service can verify delivery.

19 (4) (3) The contractor shall have fifteen working days from the date
20 of the citation or penalty to contest such citation, or penalty, or
21 timeframe. Notice of contest shall be sent to the commissioner who shall
22 provide a hearing pursuant to the Administrative Procedure Act. Following
23 the hearing, the commissioner may modify the proposed timeframe upon
24 presentation of evidence by the contractor that the timeframe would be
25 unreasonable.

26 ~~(4) If the contractor has never been registered under the Contractor~~
27 ~~Registration Act, the contractor shall have sixty working days from the~~
28 ~~date of the citation to register. No administrative penalty shall be~~
29 ~~assessed if the contractor registers within such sixty day period. This~~
30 ~~subsection shall remain in effect until March 1, 2009.~~

31 (5) In any civil action to enforce the Contractor Registration Act,

1 the commissioner and the state may be represented by any qualified
2 attorney who is employed by the commissioner and is designated by him or
3 her for this purpose or at the commissioner's request by the Attorney
4 General.

5 Sec. 9. Section 81-1616, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 81-1616 (1) For purposes of insuring compliance with section
8 81-1614:

9 (a) ~~(1)~~ The office, or its authorized agent, may conduct such
10 inspections and investigations as are necessary to make a determination
11 pursuant to section 81-1625 and may issue an order containing and
12 resulting from the findings of such inspections and investigations; and

13 (b) ~~(2)~~ A building owner may submit a written request that the
14 office undertake a determination pursuant to subdivision (1)(a) ~~(1)~~ of
15 this section. Such request shall include a list of reasons why the
16 building owner believes such a determination is necessary.

17 (2) If the office makes a finding that a building does not comply
18 with section 81-1614, the office shall transmit the finding to the
19 Department of Labor for enforcement action under the Contractor
20 Registration Act.

21 (3) A building owner aggrieved by the office's determination, or
22 refusal to make such determination, may appeal such determination or
23 refusal. The appeal shall be as provided in the Administrative Procedure
24 Act.

25 (4) The office may charge an amount sufficient to recover the costs
26 of providing such determinations.

27 Sec. 10. This act becomes operative on January 1, 2018.

28 Sec. 11. Original sections 48-2102, 48-2103, 48-2105, 48-2110,
29 48-2111, 48-2112, 48-2113, 48-2114, and 81-1616, Reissue Revised Statutes
30 of Nebraska, are repealed.