

Fifty-ninth  
Legislative Assembly  
of North Dakota

## ENGROSSED SENATE BILL NO. 2026

Introduced by

Legislative Council

(Commerce Committee)

1 A BILL for an Act to amend and reenact sections 43-07-02, 43-07-04, 43-07-10, 43-07-14, and  
2 43-07-18 of the North Dakota Century Code, relating to licensure and regulation of contractors;  
3 and to provide a penalty.

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

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

7 **43-07-02. License required** ~~–Enjoining operation without license.~~ No A person  
8 may not engage in the business nor act in the capacity of a contractor within this state when the  
9 cost, value, or price per job exceeds the sum of two thousand dollars without first having a  
10 license as provided in this chapter. ~~The secretary of state may request the attorney general to~~  
11 ~~bring an action to enjoin any person from engaging in the business or acting in the capacity of a~~  
12 ~~contractor within this state when the cost, value, or price per job exceeds the sum of two~~  
13 ~~thousand dollars, unless the person is properly licensed.~~

14 **SECTION 2. AMENDMENT.** Section 43-07-04 of the North Dakota Century Code is  
15 amended and reenacted as follows:

16 **43-07-04. License - How obtained - Failure to grant - Revocation.**

17 1. To obtain a license under this chapter, an applicant who is eighteen years of age  
18 or older shall submit, on forms the registrar prescribes, an application under oath  
19 containing a statement of the applicant's experience and qualifications as a  
20 contractor. A copy of a certificate of insurance indicating liability coverage, as  
21 proof that the applicant has secured liability insurance, a bond, or a letter of credit  
22 must be filed with the application and the contractor shall submit a statement from  
23 North Dakota workforce safety and insurance that the contractor has secured  
24 workforce safety and insurance coverage satisfactory to workforce safety and

- 1            ~~insurance along with such.~~ If a bond or letter of credit is provided in lieu of liability  
2            insurance, the bond or letter of credit must be payable to the registrar, with a  
3            cancellation notice provided to the registrar. A letter of credit must be irrevocable.  
4            The amount of a bond or letter of credit must be five hundred thousand dollars for  
5            a class A license, four hundred thousand dollars for a class B license, three  
6            hundred thousand dollars for a class C license, and two hundred thousand dollars  
7            for a class D license. If the registrar deems it appropriate or necessary, the  
8            registrar may also require any other information as may be required by the  
9            ~~registrar~~ to assist the registrar in determining the applicant's fitness to act in the  
10           capacity of a contractor, including, at the expense of the applicant, criminal history  
11           record information of the applicant or the officers, members, or partners of the  
12           applicant which is held or maintained by the bureau of criminal investigation or a  
13           similar entity in another state. The application must contain a statement that the  
14           applicant desires the issuance of a license under this chapter and must specify the  
15           class of license sought.
- 16           2. The registrar may refuse to grant a license if the registrar determines the  
17           application contains false, misleading, or incomplete information; the applicant fails  
18           or refuses to authorize or pay for criminal history information requested by the  
19           registrar; or as otherwise provided in sections 12.1-33-02.1 and 43-07-04.1. The  
20           registrar shall notify the applicant in writing if the registrar does not grant the  
21           license and shall provide the applicant an opportunity to respond to or cure the  
22           defect in the application for a period of ten days from the date of the written  
23           notification. An applicant aggrieved by a decision of the registrar not to grant the  
24           license may appeal the decision to the district court of the applicant's county of  
25           residence or Burleigh County.
- 26           3. No sooner than twenty days after sending written notice to a contractor at the  
27           contractor's last-known address, the registrar shall classify as not in good standing  
28           the license of any contractor who fails to:
- 29           4. a. Maintain liability insurance coverage, a bond, or a letter of credit required by  
30           this section or by section 43-07-10;



1           indicating liability coverage as proof that the applicant has secured liability  
2           insurance unless the registrar has a current valid certificate of insurance on file, a  
3           bond, or a letter of credit, and a certification that the applicant has submitted all  
4           payroll taxes, including North Dakota income tax, workforce safety and insurance  
5           premiums, and unemployment insurance premiums due at the time of renewal,  
6           which documents need not be notarized.

7           2. The registrar may refuse to renew a license if the registrar determines the  
8           application contains false, misleading, or incomplete information. The registrar  
9           shall notify the applicant in writing if the registrar does not grant the license and  
10           shall provide the applicant an opportunity to respond to or cure the defect in the  
11           application for a period of ten days from the date of the written notification. An  
12           applicant aggrieved by a decision of the registrar not to grant the license may  
13           appeal the decision to the district court of the applicant's county of residence or  
14           Burleigh County.

15           3. The application for a certificate of renewal must be made to the registrar on or  
16           before the first day of March of each year. At the time of filing the application for a  
17           certificate of renewal, the applicant shall pay to the registrar a renewal fee equal to  
18           twenty percent of the license fee established in section 43-07-07. If any contractor  
19           applies for a renewal under a class different from the license previously issued, the  
20           new class license may be issued upon the payment of the fee required for the  
21           issuance of the license of the class applied for. If any contractor fails to file an  
22           application for a certificate of renewal by the March first deadline, the contractor's  
23           license is not in good standing and the contractor must be deemed to be  
24           unlicensed within the meaning of sections 43-07-02 and 43-07-18. Within sixty  
25           days after March first, the contractor must be notified by mail that the contractor's  
26           license is not in good standing. The contractor then has until June first to renew by  
27           paying a penalty fee of seventy-five percent of the renewal fee, filing an application  
28           for a certificate of renewal, and paying the renewal fee. A contractor who applies  
29           for a certificate of renewal before or within ninety days of the filing deadline is not  
30           subject to the investigation authorized in section 43-07-09. After the June first  
31           deadline any licenses not renewed are revoked. Any application for a certificate of

1 renewal must be fully completed within sixty days of the date the application is  
2 received by the registrar or ~~it will be returned~~ the registrar shall return the  
3 application to the contractor who ~~will then be~~ is subject to ~~the provisions of~~ section  
4 43-07-09.

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

7 **43-07-14. Complaint for license revocation - Consumer fraud action.**

8 1. Any person, ~~including an employee or agent of the registrar,~~ may file a duly verified  
9 complaint with the registrar charging that the licensee is guilty of ~~one or more~~ any  
10 of the following acts or omissions:

11 ~~4.~~ a. Abandonment of any contract without legal excuse. A rebuttable presumption  
12 of abandonment arises if:

13 ~~a.~~ (1) A contractor fails substantially to commence any work agreed upon ~~in~~  
14 ~~writing within,~~ unless the failure is due to circumstances beyond the  
15 control of the contractor:

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

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

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

24 ~~2.~~ b. Diversion of funds or property received under express agreement for the  
25 prosecution or completion of a specific contract under this chapter, or for a  
26 specified purpose in the prosecution or completion of any contract, and their  
27 application or use for any other contract obligation or purpose to defraud or  
28 deceive creditors or the owner.

29 ~~3.~~ c. Engaging in any fraudulent or deceptive acts or practices or  
30 misrepresentation as a contractor in consequence of which one or more  
31 persons is injured in a total amount exceeding three thousand dollars.

- 1           4- d. The making of any false or misleading statement in any application for a  
2           license or renewal ~~thereof~~ or by violating ~~any provisions of~~ this chapter or  
3           being convicted of an offense the registrar determines has a direct bearing on  
4           the applicant's or licensee's ability to serve the public as a contractor as set  
5           out in section 12.1-33-02.1.
- 6           5- e. Engaging in work without any trade or professional license as required for  
7           ~~such~~ the work pursuant to local, state, or federal law.
- 8           6- f. Failure to ~~fully~~ refund fully the contracting party's advance payment if a  
9           rebuttable presumption of abandonment has arisen ~~under subsection 4~~ and  
10          the contracting party has made a request to the licensee for a refund.
- 11          2. The complaint must be on a form approved by the registrar and must set forth  
12          sufficient facts upon which a reasonable ~~person~~ individual could conclude that ~~one~~  
13          ~~or more~~ any of the ~~above~~ acts or omissions in subsection 1 has been committed.
- 14          3. Any act or omission under this section may also constitute grounds for the attorney  
15          general to bring an action under chapter 51-15 and subjects the licensee to all  
16          provisions, procedures, remedies, and penalties provided for in chapter 51-15.

17           **SECTION 5. AMENDMENT.** Section 43-07-18 of the North Dakota Century Code is  
18 amended and reenacted as follows:

19           **43-07-18. Penalty.** Any person acting in the capacity of a contractor ~~within the~~  
20 ~~meaning of this chapter~~ without a license ~~as herein provided~~ is guilty of a class ~~B~~ A  
21 misdemeanor. Whether a person is subjected to criminal prosecution under this section, and in  
22 addition to the license fee that may be assessed when the person ~~makes application~~ applies for  
23 a license, the person may be assessed a civil penalty by the registrar, following written notice to  
24 the person of an intent to assess the penalty, in an amount not to exceed three times the  
25 amount set forth in section 43-07-07. Any civil penalty must be assessed and collected before  
26 a person is issued a license. The assessment of a civil penalty may be appealed in the same  
27 manner as appeals under section 43-07-04, but only on the basis that the registrar's  
28 administrative determination that the person acted as a contractor when not licensed as a  
29 contractor was clearly erroneous.