

**Fifty-ninth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 4, 2005**

SENATE BILL NO. 2026
(Legislative Council)
(Commerce Committee)

AN ACT to amend and reenact sections 43-07-02, 43-07-04, 43-07-10, 43-07-14, and 43-07-18 of the North Dakota Century Code, relating to licensure and regulation of contractors; 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 ~~—Enjoining operation without license.~~ No 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 without first having a license as provided in this chapter. ~~The secretary of state may request the attorney general to bring an action to enjoin any person from engaging in the business or acting in the capacity of a contractor within this state when the cost, value, or price per job exceeds the sum of two thousand dollars, unless the person is properly licensed.~~

SECTION 2. 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.

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 ~~insurance indicating liability coverage, as proof that the applicant has secured 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 ~~along with such.~~ If the registrar deems it appropriate or necessary, the registrar may also require any other information as may be required by the registrar to assist the registrar in 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:
 4. a. Maintain liability insurance coverage required by this section or by section 43-07-10;
 2. b. File, renew, or properly amend any fictitious name certificate required by chapter 45-11;
 3. c. Maintain an active status of a corporation or registration as a foreign corporation;
 4. d. Maintain an active status of a limited liability company or registration as a foreign limited liability company;
 5. e. File or renew a trade name registration as required by chapter 47-25;
 6. f. File or renew a limited liability partnership or foreign limited liability partnership as required by chapter 45-22; or
 7. g. File or renew a limited partnership or foreign limited partnership.
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 ~~into~~ 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 ~~into~~ 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 3. 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 - Invalidation 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, which 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, the nature of the work of each project, contract, or subcontract, and, if a performance bond was required, the name and address of the ~~corporation, limited liability company, or other~~ person who issued the bond. 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 ~~insurance indicating liability coverage as proof that the applicant has secured~~ 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 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. 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 it ~~will be returned~~ the registrar shall return the application to the contractor who ~~will then be~~ is subject to ~~the provisions of~~ section 43-07-09.

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

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

1. Any person, ~~including an employee or agent of the registrar,~~ may file a duly verified complaint with the registrar charging that the licensee is guilty of ~~one or more~~ any of the following acts or omissions:
 - 4- 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:
 - a- (1) A contractor fails substantially to commence any work agreed upon ~~in writing within,~~ 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
 - b- (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.
 - 2- 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.
 - 3- 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.
 - 4- d. The making of any false or misleading statement in any application for a license or renewal ~~thereof~~ or by violating ~~any provisions of~~ 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.

- ~~5.~~ e. Engaging in work without any trade or professional license as required for ~~such~~ the work pursuant to local, state, or federal law.
- ~~6.~~ f. Failure to ~~fully~~ refund fully the contracting party's advance payment if a rebuttable presumption of abandonment has arisen ~~under subsection 4~~ 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 ~~person~~ individual could conclude that ~~one or more~~ any of the ~~above~~ 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 and subjects the licensee to all provisions, procedures, remedies, and penalties provided for in chapter 51-15.

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

43-07-18. Penalty. Any person acting in the capacity of a contractor ~~within the meaning of this chapter~~ without a license ~~as herein provided~~ is guilty of a class ~~B~~ 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 ~~makes application~~ 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.

SECTION 6. 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 Fifty-ninth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2026 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 86 Nays 6 Absent 2

Speaker of the House

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2005.

Approved at _____ M. on _____, 2005.

Governor

Filed in this office this _____ day of _____, 2005,

at ___ o'clock _____ M.

Secretary of State