

October 2004

Introduced by

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 or
18 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, must be filed with the
22 application and the contractor shall submit a statement from North Dakota
23 workforce safety and insurance that the contractor has secured workforce safety
24 and insurance coverage satisfactory to workforce safety and insurance ~~along with~~

1 ~~such.~~ The registrar may also require any other information as may be required by
2 ~~the registrar~~ necessary to assist the registrar in determining the applicant's fitness
3 to act in the capacity of a contractor, including, at the expense of the applicant,
4 criminal history record information of the applicant or the officers, members, or
5 partners of the applicant which is held or maintained by the bureau of criminal
6 investigation or a similar entity in another state. The application must contain a
7 statement that the applicant desires the issuance of a license under this chapter
8 and must specify the class of license sought.

9 2. The registrar may refuse to grant a license if the registrar determines the
10 application contains false, misleading, or incomplete information; the applicant fails
11 or refuses to authorize or pay for criminal history information requested by the
12 registrar; or as otherwise provided in sections 12-1-33-02.1 and 43-07-04.1. The
13 registrar shall notify the applicant in writing if the registrar does not grant the
14 license and shall provide the applicant an opportunity to respond to or cure the
15 defect in the application for a period of ten days from the date of the written
16 notification. An applicant aggrieved by a decision of the registrar to not grant the
17 license may appeal the decision to the district court of the applicant's county of
18 residence or Burleigh County.

19 3. No sooner than twenty days after sending written notice to a contractor at the
20 contractor's last-known address, the registrar shall classify as not in good standing
21 the license of any contractor who fails to:

22 4. a. Maintain liability insurance coverage required by this section or by section
23 43-07-10;

24 2. b. File, renew, or properly amend any fictitious name certificate required by
25 chapter 45-11;

26 3. c. Maintain an active status of a corporation or registration as a foreign
27 corporation;

28 4. d. Maintain an active status of a limited liability company or registration as a
29 foreign limited liability company;

30 5. e. File or renew a trade name registration as required by chapter 47-25;

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

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

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

- 1 **43-07-14. Complaint for license revocation - Consumer fraud action.**
- 2 1. Any person, ~~including an employee or agent of the registrar,~~ may file a duly verified
- 3 complaint with the registrar charging that the licensee is guilty of ~~one or more~~ any
- 4 of the following acts or omissions:
- 5 ~~4.~~ a. Abandonment of any contract without legal excuse. A rebuttable presumption
- 6 of abandonment arises if:
- 7 a. (1) A contractor fails to substantially commence any work agreed upon in
- 8 writing ~~within:~~
- 9 (a) Within sixty days of a starting date agreed upon in writing; or
- 10 (b) Within ninety days of the contract date if no starting date is
- 11 agreed upon in writing; or
- 12 ~~b.~~ (2) A contractor fails to complete any work agreed upon in writing within
- 13 ninety days of a completion date agreed upon in writing, or within one
- 14 hundred eighty days of the contract date if no completion date is agreed
- 15 upon in writing, unless the failure is due to circumstances beyond the
- 16 control of the contractor.
- 17 ~~2.~~ b. Diversion of funds or property received under express agreement for the
- 18 prosecution or completion of a specific contract under this chapter, or for a
- 19 specified purpose in the prosecution or completion of any contract, and their
- 20 application or use for any other contract obligation or purpose to defraud or
- 21 deceive creditors or the owner.
- 22 ~~3.~~ c. Engaging in any fraudulent or deceptive acts or practices or misrepresentation
- 23 as a contractor in consequence of which one or more persons is injured in a
- 24 total amount exceeding three thousand dollars.
- 25 ~~4.~~ d. The making of any false or misleading statement in any application for a
- 26 license or renewal ~~thereof~~ or by violating ~~any provisions of~~ this chapter or
- 27 being convicted of an offense the registrar determines has a direct bearing on
- 28 the applicant's or licensee's ability to serve the public as a contractor as set
- 29 out in section 12.1-33-02.1.
- 30 ~~5.~~ e. Engaging in work without any trade or professional license as required for
- 31 ~~such~~ the work pursuant to local, state, or federal law.

