

Sixty-fifth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1399

Introduced by

Representatives Magrum, Brandenburg, Jones

Senator Erbele

1 A BILL for an Act to amend and reenact section 43-07-02 of the North Dakota Century Code,
2 relating to contractor license requirements; and to provide a penalty.

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

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

6 **43-07-02. License required - Construction fraud - Penalty.**

7 1. A person may not engage in the business nor act in the capacity of a contractor within
8 this state when the cost, value, or price per job exceeds the sum of ~~four~~two~~three~~
9 thousand dollars nor may that person maintain any claim, action, suit, or proceeding in
10 any court of this state related to the person's business or capacity as a contractor
11 without first having a license as provided in this chapter.

12 2. Any person acting in the capacity of a contractor without a license is guilty of a class A
13 misdemeanor. Regardless of whether a person is subjected to criminal prosecution
14 under this subsection, and in addition to the license fee that may be assessed when
15 the person applies for a license, the person may be assessed a civil penalty by the
16 registrar, following written notice to the person of an intent to assess the penalty, in an
17 amount not to exceed three times the amount set forth in section 43-07-07. Any civil
18 penalty must be assessed and collected before a person is issued a license. The
19 assessment of a civil penalty may be appealed in the same manner as appeals under
20 section 43-07-04.

21 3. A person commits construction fraud if:

22 a. The person receives payment for a construction project by intentionally using
23 deception as defined in section 12.1-23-10.

- 1 b. The person receives payment for the purchase of materials or supplies and
- 2 willfully fails to pay the supplier for the goods received.
- 3 c. The person willfully abandons a construction project after receiving payment for
- 4 services or materials. Abandonment under this subdivision arises if:
- 5 (1) A contractor fails substantially to commence any work agreed upon:
- 6 (a) Within sixty days of a starting date agreed upon in writing; or
- 7 (b) Within ninety days of the contract date if no starting date is agreed
- 8 upon in writing; or
- 9 (2) A contractor fails to complete any work agreed upon in writing within
- 10 ninety days of a completion date agreed upon in writing, or within one
- 11 hundred eighty days of the contract date if no completion date is agreed
- 12 upon in writing.
- 13 4. It is a defense to prosecution under subsection 3 if:
- 14 a. The person returned all of the payment received for work not performed or
- 15 materials not supplied. If the person provided materials to the jobsite but did
- 16 not pay suppliers for those materials, this defense does not apply. This
- 17 defense is only valid if the payment was provided before criminal charges
- 18 were filed.
- 19 b. The person had a legitimate legal excuse for nonperformance.
- 20 c. The person was not able to begin or complete the project because there were
- 21 factors outside of the person's control and the person made substantial efforts
- 22 to resolve any dispute.
- 23 5. The grade of the offense for violating subsection 3 is based on the amount of
- 24 payment received. Payment of under ten thousand dollars is a class C felony;
- 25 more than ten thousand dollars but not more than fifty thousand dollars is a
- 26 class B felony; and more than fifty thousand dollars is a class A felony.