

**FIRST ENGROSSMENT
with House Amendments
ENGROSSED SENATE BILL NO. 2188**

Introduced by

Senators Klein, Luick, Oehlke

Representatives Louser, Monson, Schreiber Beck

1 A BILL for an Act to amend and reenact section 43-07-02 and subsection 3 of section 43-07-10
2 of the North Dakota Century Code, relating to providing penalties for operating without a
3 contractor's license and committing construction fraud; to repeal section 43-07-18 of the North
4 Dakota Century Code, relating to the penalty for operating without a contractor's license; to
5 provide a penalty; and to declare an emergency.

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

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

9 **43-07-02. License required - Construction fraud - Penalty.**

- 10 1. A person may not engage in the business nor act in the capacity of a contractor within
11 this state when the cost, value, or price per job exceeds the sum of ~~two~~six thousand
12 dollars nor may that person maintain any claim, action, suit, or proceeding in any court
13 of this state related to the person's business or capacity as a contractor without first
14 having a license as provided in this chapter.
- 15 2. Any person acting in the capacity of a contractor without a license is guilty of a class A
16 misdemeanor. Regardless of whether a person is subjected to criminal prosecution
17 under this subsection, and in addition to the license fee that may be assessed when
18 the person applies for a license, the person may be assessed a civil penalty by the
19 registrar, following written notice to the person of an intent to assess the penalty, in an
20 amount not to exceed three times the amount set forth in section 43-07-07. Any civil
21 penalty must be assessed and collected before a person is issued a license. The
22 assessment of a civil penalty may be appealed in the same manner as appeals under
23 section 43-07-04, but only on the basis that the registrar's administrative determination

1 that the person acted as a contractor when not licensed as a contractor was clearly
2 erroneous.

3 3. A person commits construction fraud if:

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

6 b. The person receives payment for the purchase of materials or supplies and
7 willfully fails to pay the supplier for the goods received.

8 c. The person willfully abandons a construction project after receiving payment for
9 services or materials. Abandonment under this subdivision arises if:

10 (1) A contractor fails substantially to commence any work agreed upon:

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

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

14 (2) A contractor fails to complete any work agreed upon in writing within
15 ninety days of a completion date agreed upon in writing, or within one
16 hundred eighty days of the contract date if no completion date is agreed
17 upon in writing.

18 4. It is a defense to prosecution under subsection 3 if:

19 a. The person returned all of the payment received for work not performed or
20 materials not supplied. If the person provided materials to the jobsite but did
21 not pay suppliers for those materials, this defense does not apply. This
22 defense is only valid if the payment was provided before criminal charges
23 were filed.

24 b. The person had a legitimate legal excuse for nonperformance.

25 c. The person was not able to begin or complete the project because there were
26 factors outside of the person's control and the person made substantial efforts
27 to resolve any dispute.

28 5. The grade of the offense for violating subsection 3 is based on the amount of
29 payment received. Payment of under ten thousand dollars is a class C felony;
30 more than ten thousand dollars but not more than fifty thousand dollars is a
31 class B felony; and more than fifty thousand dollars is a class A felony.

1 **SECTION 2. AMENDMENT.** Subsection 3 of section 43-07-10 of the North Dakota
2 Century Code is amended and reenacted as follows:

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

24 **SECTION 3. REPEAL.** Section 43-07-18 of the North Dakota Century Code is repealed.

25 **SECTION 4. EMERGENCY.** This Act is declared to be an emergency measure.