

## **CHAPTER 43-07 CONTRACTORS**

### **43-07-01. Definitions.**

In this chapter, unless the context or subject matter otherwise requires:

1. "Contractor" means any person engaged in the business of construction, repair, alteration, dismantling, or demolition of bridges, highways, roads, streets, buildings, airports, dams, drainage or irrigation ditches, sewers, water or gas mains, water filters, tanks, towers, oil, gas, or water pipelines, and every other type of structure, project, development, or improvement coming within the definition of real or personal property, including the construction, alteration, or repair of property to be held either for sale or rental, and includes subcontractor, public contractor, and nonresident contractor.
2. "Contractor year" means March second through March first.
3. "Nonresident contractor" means any contractor who does not have an established and maintained place of business within this state, or who has not made reports to North Dakota workforce safety and insurance within the previous year of employees within this state, and who has not made contributions to the North Dakota workforce safety and insurance fund accordingly, or who, during a like period has not made an income tax return in this state.
4. "Public contract" means a contract with the state of North Dakota or any board, commission, or department thereof, or with any board of county commissioners, or with any city council or board of city commissioners, board of township supervisors, school board, or with any state or municipal agency, or with any other public board, body, commission, or agency authorized to let or award contracts for the construction or reconstruction of public work when the contract cost, value, or price exceeds the sum of four thousand dollars and includes subcontracts undertaken to perform work covered by the original contract or any part thereof when the contract cost, value, or price of the work included in the subcontract exceeds the sum of four thousand dollars.
5. "Registrar" means the secretary of state.

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

1. 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 four thousand dollars nor may that person maintain any claim, action, suit, or proceeding in any court of this state related to the person's business or capacity as a contractor without first having a license as provided in this chapter.
2. Any person acting in the capacity of a contractor without a license is guilty of a class A misdemeanor. Regardless of whether a person is subjected to criminal prosecution under this subsection, and in addition to the license fee that may be assessed when the person 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.
3. A person commits construction fraud if:
  - a. The person receives payment for a construction project by intentionally using deception as defined in section 12.1-23-10.
  - b. The person receives payment for the purchase of materials or supplies and willfully fails to pay the supplier for the goods received.
  - c. The person willfully abandons a construction project after receiving payment for services or materials. Abandonment under this subdivision arises if:
    - (1) A contractor fails substantially to commence any work agreed upon:
      - (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

- (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.
4. It is a defense to prosecution under subsection 3 if:
  - a. The person returned all of the payment received for work not performed or materials not supplied. If the person provided materials to the jobsite but did not pay suppliers for those materials, this defense does not apply. This defense is only valid if the payment was provided before criminal charges were filed.
  - b. The person had a legitimate legal excuse for nonperformance.
  - c. The person was not able to begin or complete the project because there were factors outside of the person's control and the person made substantial efforts to resolve any dispute.
5. The grade of the offense for violating subsection 3 is based on the amount of payment received. Payment of under ten thousand dollars is a class C felony; more than ten thousand dollars but not more than fifty thousand dollars is a class B felony; and more than fifty thousand dollars is a class A felony.

**43-07-03. Registrar authority.**

The registrar may employ assistance and procure records, supplies, and equipment as necessary to carry out this chapter.

**43-07-04. License - How obtained - Failure to grant - Revocation for not in good standing.**

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 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. If the registrar deems it appropriate or necessary, the registrar may also require any other information to assist the registrar in determining the applicant's eligibility 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 incomplete information, or the applicant fails or refuses to authorize or pay for criminal history information requested by the registrar. 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:
  - a. Maintain liability insurance coverage required by this section or by section 43-07-10;
  - b. File, renew, or properly amend any fictitious name certificate required by chapter 45-11;
  - c. Maintain an active status of a corporation or registration as a foreign corporation;

- d. Maintain an active status of a limited liability company or registration as a foreign limited liability company;
  - e. File or renew a trade name registration as required by chapter 47-25;
  - f. Maintain a limited liability partnership registration or foreign limited liability partnership registration as required by chapter 45-22; or
  - g. Maintain a limited partnership certificate of limited partnership or foreign limited partnership certificate of authority.
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 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 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.

**43-07-04.1. Denial, suspension, or revocation of license - Eligibility.**

1. The registrar may deny any application for license, deny any application for renewal of license, or suspend or revoke any license, based on the applicant's or licensee's lack of eligibility to act in the capacity of a contractor, upon proof of one or more of the following:
  - a. The application for a license contains false or misleading information;
  - b. The applicant or licensee has been convicted of an offense that has direct bearing upon the applicant's or licensee's ability to serve the public as a contractor; or
  - c. The licensee or applicant has engaged in conduct as a contractor which is dishonest or fraudulent and which the registrar finds injurious to the welfare of the public.
2. Notwithstanding subdivision b of subsection 1, conviction of an offense does not make a person ineligible for licensure under this chapter unless, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.
3. Any applicant denied a license or denied renewal of a license may appeal the decision to the district court of the applicant's county of residence or Burleigh County.
4. Section 43-07-15 applies to any decision by the registrar to revoke or suspend a license.

**43-07-05. Classes of licenses.**

Repealed by S.L. 2015, ch. 291, § 7.

**43-07-06. Administrative and governing bodies may impose requirements.**

Any administrative body or governing body, agency, or commission having power to enter into public contracts may impose reasonable requirements and conditions as conditions precedent to the awarding of a contract for the construction or reconstruction of public works in addition to the requirements imposed by this chapter.

**43-07-07. Classes of licenses - License fees - License renewal fees.**

1. Four classes of licenses may be issued under this chapter, which must be designated as class A, B, C, and D licenses. A holder of a license may engage in the contracting business within this state subject to the following limitations:
  - a. The holder of a class A license is subject to no limitation as to the value of any single contract project.
  - b. The holder of a class B license is not entitled to engage in the construction of any single contract project of a value in excess of five hundred thousand dollars.
  - c. The holder of a class C license is not entitled to engage in the construction of any single contract project of a value in excess of three hundred thousand dollars.

- d. The holder of a class D license is not entitled to engage in the construction of any single contract project of a value in excess of one hundred thousand dollars.
2. If applying for a license as described and required in this chapter, the applicant shall pay to the registrar the following fees:
  - a. For a class A license, the sum of four hundred fifty dollars.
  - b. For a class B license, the sum of three hundred dollars.
  - c. For a class C license, the sum of two hundred twenty-five dollars.
  - d. For a class D license, the sum of one hundred dollars.
3. For a renewal of a license, the licensee shall pay to the registrar the following fees:
  - a. For a class A license, the sum of ninety dollars.
  - b. For a class B license, the sum of sixty dollars.
  - c. For a class C license, the sum of forty-five dollars.
  - d. For a class D license, the sum of thirty dollars.
4. Twenty-five percent of all moneys collected by the registrar under this chapter must be deposited in the secretary of state's general services operating fund to pay the cost to administer this chapter and the balance of the moneys collected must be deposited with the state treasurer, who shall credit that amount to the general fund of the state.
5. A nonprofit entity that is constructing or rehabilitating a single-family dwelling that will be given to or sold below the appraised value to a low-income person, may not be charged a fee by the secretary of state for a license or renewal of license as described and required under this chapter.

#### **43-07-08. Exceptions.**

This chapter does not apply to:

1. Any authorized representative of the United States government, the state of North Dakota, or any county, municipality, irrigation district, reclamation district, or other political corporation.
2. Any person that furnishes any fabricated or finished product, material, or article of merchandise that is not incorporated into or attached to real property by such person so as to become affixed thereto.

#### **43-07-09. Duty of registrar - Expiration of license.**

Within fifteen days from the date of application, the registrar may investigate and determine each applicant's eligibility to act in the capacity of a contractor as provided in section 43-07-04.1, and no license may be issued to such applicant until the registrar receives all documentation necessary to obtain a license and the appropriate fee. The license issued on an original application entitles the licensee to act as a contractor within this state, subject to the limitations of such license, until the expiration of the then current contractor year ending March first, except that an initial license issued to a licensee in January or February is valid until March first of the subsequent year.

#### **43-07-09.1. Name changes.**

Not later than ten days after the date of a change in a contractor's name, the licensee shall notify the registrar of the name change on a form provided by the registrar. A name change must be accompanied by a ten dollar fee. A licensee may not change the name of the licensee if the change is associated with a change in the legal status other than a change in marital status. A corporation, limited liability company, limited liability partnership, or limited partnership registered with the registrar is not subject to this section.

#### **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 contractor year by obtaining from the registrar a certificate for the current contractor year. To obtain a certificate for the current contractor year, the licensee shall file with the registrar an application that 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 and the nature of the work of each project, contract, or subcontract. The registrar, within a reasonable time, shall forward a copy of the list to the state tax commissioner. The applicant shall include with the application a copy of a certificate of liability insurance naming the registrar as the certificate holder 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 or if the contractor's license is not in good standing for any of the reasons listed in subsection 3 of section 43-07-04. 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 for the current contractor year must be made to the registrar before March second of each year, except as provided otherwise under this chapter. At the time of filing the application for a certificate for the current contractor year, the applicant shall pay to the registrar the renewal 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 for the current contractor year by the March first deadline, the contractor's license is not in good standing and the contractor is deemed to be unlicensed within the meaning of section 43-07-02. Within sixty days after March first, the registrar shall notify the contractor 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 fifty dollars, filing an application for a certificate for the current contractor year, and paying the renewal fee. A contractor who applies for a certificate for the current contractor year 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 expired. Any application for a certificate for the current contractor year must be fully completed within sixty days of the date the application is received by the registrar or the registrar shall return the application to the contractor who then is subject to section 43-07-09. The registrar may destroy all renewals provided for in this section after the renewals have been on file for six years.

#### **43-07-11. Contractor's bond - Requirements.**

Repealed by S.L. 1995, ch. 397, § 9.

#### **43-07-11.1. Contracts with state.**

1. A contractor, resident or nonresident, is not eligible to enter a public contract with any department of the state of North Dakota, or any political or governmental subdivision of the state until satisfactory showing is made that the contractor has paid all delinquent income, sales or use taxes, if any, owed to the state pursuant to the provisions of the income, sales or use tax laws, and which have been assessed either by the filing of an income or sales and use tax return by the contractor, or by an assessment of additional income, sales or use taxes against the contractor by the commissioner which has become finally and irrevocably fixed, before the date that the contract was executed by the parties to the contract.

2. A certificate from and by the tax commissioner satisfies the requirement of subsection 1. Upon failure to file such a certificate, the department or political or governmental subdivision shall refuse to execute the public contract.
3. The provisions of this section apply to contracts executed after July 1, 1965.

**43-07-12. Bids to show license issued.**

All bids and proposals for the construction of any public contract project subject to this chapter must contain a copy of the license or certificate for the current contractor year of the license issued by the registrar, enclosed in the required bid bond envelope. A contract may not be awarded to any contractor unless the contractor is the holder of a license in the class within which the value of the project falls as provided under this section. A contractor must be the holder of a license at least ten days before the date set for receiving bids, to be a qualified bidder. A bid submitted without this information properly enclosed in the bid bond envelope may not be read or considered and must be returned to the bidder. This section does not apply to bids submitted:

1. To the department of transportation;
2. For use of municipal, rural, and industrial water supply funds authorized by Public Law No. 99-294 [100 Stat. 418];
3. To the public service commission; or
4. For use of federal aid highway funds authorized by Public Law No. 85-767 [72 Stat. 885; 23 U.S.C. 101 et seq.].

**43-07-13. Records and certified copies of records.**

The registrar shall maintain in the registrar's office, open to public inspection during office hours, a complete indexed record of all applications, licenses, certificates for the current contractor year, revocations, expirations, and other information maintained on contractors. The registrar may dispose of an inactive contractor file after two years if no attempts have been made to apply for a new license or renew the license. Disposal of the license will proceed according to the provisions of chapter 54-46. Before disposal and upon request, the registrar shall furnish a certified copy of any information maintained upon receipt of the fees prescribed in section 54-09-04. Any certificate or certified copy issued by the registrar under this section has the same force and effect as provided in section 54-09-02.1.

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

1. Any person may file a duly verified complaint with the registrar charging that the licensee is guilty of any of the following acts or omissions:
  - 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:
    - (1) A contractor fails substantially to commence any work agreed upon, 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
    - (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.
  - 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.

- 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.
  - d. The making of any false or misleading statement in any application for a license or renewal or by violating 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.
  - e. Engaging in work without any trade or professional license as required for the work pursuant to local, state, or federal law.
  - f. Failure to refund fully the contracting party's advance payment if a rebuttable presumption of abandonment has arisen 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 individual could conclude that any of the 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 against the licensee or any unlicensed person engaging in the business or acting in the capacity of a contractor in violation of section 43-07-02 and subjects the licensee or any such unlicensed person to all provisions, procedures, remedies, and penalties provided for in chapter 51-15.

**43-07-15. Procedure for revocation or suspension of license - Restitution - Civil penalties - Appeal.**

The registrar shall review each complaint filed under section 43-07-14. If the registrar determines a written complaint filed under section 43-07-14 provides sufficient facts upon which a reasonable person could conclude that one or more of the acts or omissions set forth in section 43-07-14 has been committed, the registrar may initiate an adjudicative proceeding in accordance with chapter 28-32. If, after an adjudicative proceeding or as part of an informal disposition under chapter 28-32, the registrar determines the licensee is guilty of an act or omission charged or if the licensee admits guilt to an act or omission charged, the registrar may suspend or revoke the contractor's license, order a civil penalty of not more than one thousand dollars, order restitution in an amount not more than five thousand dollars, or impose some lesser sanction or remedy. The registrar may suspend the contractor's license for a period of not more than sixty months. The registrar may not renew, reinstate, or issue a new license until the licensee has paid any civil penalty or restitution imposed under this section. The registrar may bring an action in district court to recover restitution or penalties under this section. A contractor aggrieved by a decision of the registrar in revoking or suspending the contractor's license or ordering restitution or penalties may appeal the decision to the district court of that person's county of residence or Burleigh County. Any licensee may not obtain a license under any name during the period of revocation or suspension. A "licensee" whose license is revoked or suspended includes any officer, director, agent, member, or employee of the licensee. The provisions of chapter 28-32 govern any appeal and proceedings under this section.

**43-07-16. Cancellation of license - Appeal.**

Repealed by S.L. 1963, ch. 304, § 16.

**43-07-17. Revocation of license - Relicensing.**

A licensee whose license has been revoked may not be relicensed for a period of up to five years.

**43-07-18. Penalty.**

Repealed by S.L. 2015, ch. 290, § 3.

#### **43-07-19. Nonresident contractors - Agent for service of process.**

Every applicant for a contractor's license who is not a resident of the state of North Dakota, by signing and filing the application, appoints the registrar as the applicant's true and lawful agent upon whom may be served all lawful process in any action or proceeding against such nonresident contractor. The appointment in writing is evidence of the contractor's consent that any process against the contractor which is so served upon the registrar is of the same legal force and effect as if served upon the contractor personally within this state. Registered foreign corporations entitled to do business in this state according to chapter 10-19.1, registered foreign limited liability companies entitled to do business in the state according to chapter 10-32.1, foreign limited liability partnerships entitled to do business in the state according to chapter 45-22, and foreign limited partnerships entitled to do business in the state according to chapter 45-10.2 and having a current registered agent and registered address on file in the registrar's office do not need to appoint the registrar as agent for service of process under this section. Within ten days after service of the summons upon the registrar, notice of the service with the summons and complaint in the action must be sent to the defendant contractor at the defendant contractor's last-known address by registered mail with return receipt requested and proof of the mailing must be attached to the summons. The registrar shall keep a record of all process served upon the registrar under this section, showing the day and hour of service. If service of process was made under this section, the court, before entering a default judgment, or at any stage of the proceeding, may order the continuance as may be necessary to afford the defendant contractor reasonable opportunity to defend any action pending against the defendant contractor.

#### **43-07-20. Employment preference in contract.**

In all contracts, except those which involve federal-aid funds and when a preference or discrimination would be contrary to a federal law or regulation, hereafter let for state, county, city, school district, or township construction, repair, or maintenance work under any laws of this state, there shall be inserted a provision by which the contractor must give preference to the employment of bona fide North Dakota residents, as determined by section 54-01-26, with preference given first to honorably discharged disabled veterans and veterans of the armed forces of the United States, as defined in section 37-19.1-01, who are deemed to be qualified in the performance of that work. The preference shall not apply to engineering, superintendence, management, or office or clerical work.

No contract shall be let to any person, firm, association, cooperative, corporation, or limited liability company refusing to execute an agreement containing the aforementioned provisions.

#### **43-07-21. Penalty - Injunction proceedings.**

Any person violating any provisions of section 43-07-20 is guilty of a class B misdemeanor. A repeated violation constitutes legal grounds for a court, on proper application by the labor commissioner, to grant an injunction without requiring the posting of a bond or undertaking.

#### **43-07-22. Enforcement responsibility.**

The labor commissioner has the primary responsibility of enforcing sections 43-07-20 and 43-07-21 and may make reciprocal agreements or arrangements with any other state or territory exempting the application of sections 43-07-20 through 43-07-22, and may examine records of employment relative to public contracts for such purposes. However, any person being adversely affected because of noncompliance with section 43-07-20 may also institute an appropriate civil action, and any person having knowledge of a violation may file a criminal complaint with the proper official.

#### **43-07-23. Allowable retention of estimates - Interest on retainage.**

Contracts entered between persons for the performance of work to be done by a contractor, except those contracts subject to section 40-22-37 or 48-01.2-13, or contracts governed by federal statutes or regulations which require other provisions with respect to retention, are subject to a maximum retention on amounts due under the contract as follows: retention of ten

percent of each estimate presented is allowable until such time as the project is fifty percent complete, with no further retainage on estimates during the continuance of the contract. If the owner, governing board, or authorized committee invests the retained estimate funds, the interest earned on those retained funds is payable at the time of final payment on the contract to the contractor on whose account the moneys were held.

**43-07-24. Duty to supply license number when applying for building permit - Display of number.**

When applying for a building permit, a contractor shall supply the permit issuing official that contractor's license number. That official shall enter those numbers on the permit. A person performing general contractor's work on that person's own property, even if exempt from the licensing requirements of this chapter, shall, when applying for a building permit, supply the building permit issuing official the license number, as soon as available, of each subcontractor engaged on the project and doing work covered by the permit. That official shall enter each number so supplied before inspection of the work.

**43-07-25. Licensed contractors' list.**

On request, the registrar shall provide city and county enforcement officials with a list of contractors licensed under this chapter. The registrar shall also provide similar information to persons governed by section 43-07-24. Whenever the registrar obtains information on the activities of a contractor doing business in this state of which officials of workforce safety and insurance, job service North Dakota, or tax commissioner may be unaware and that may be relevant to the duties of those officials, the registrar shall provide any relevant information to those officials for the purpose of administering their duties.

**43-07-26. Warranty repairs - Required notice.**

Before undertaking any repair, other than emergency repair, or instituting any action for breach of warranty in the construction of a one-family or two-family dwelling, or an improvement with a value exceeding two thousand dollars to a dwelling, the purchaser or owner shall give the contractor written notice by mail, within six months after knowledge of the defect, advising the contractor of any defect and giving the contractor a reasonable time to comply with this section. Within a reasonable time after receiving the notice, the contractor shall inspect the defect and provide a response to the purchaser or owner, and, if appropriate, remedy the defect within a reasonable time thereafter. The contractor shall provide the purchaser or owner written notice of the requirements of this section at the time of closing for the property or, in the case of an improvement, at the time of completion of the improvement. For the purposes of this section, "reasonable time" means within thirty business days after the notice is mailed or any shorter period of time as may be appropriate under the circumstances.