

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE DRH80318-RF-11 (5/13)

Short Title: Homebuilder Responsibility. (Public)

Sponsors: Representative Earle.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE LAWS REGULATING GENERAL CONTRACTORS AND TO INCREASE THE LICENSURE REQUIREMENTS FOR RESIDENTIAL BUILDING CONTRACTORS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 87-1 reads as rewritten:

"§ 87-1. "General contractor" defined; exceptions.

For the purpose of this Article any person or firm or corporation who for a fixed price, commission, fee, or wage, undertakes to bid upon or to construct or who undertakes to superintend or manage, on his own behalf or for any person, firm, or corporation that is not licensed as a general contractor pursuant to this Article, the construction of any building, highway, public utilities, grading or any improvement or structure where the cost of the undertaking is ~~thirty thousand dollars (\$30,000)~~ fifteen thousand dollars (\$15,000) or more, or undertakes to erect a North Carolina labeled manufactured modular building meeting the North Carolina State Building Code, shall be deemed to be a "general contractor" engaged in the business of general contracting in the State of North Carolina.

This section shall not apply to persons or firms or corporations furnishing or erecting industrial equipment, power ~~plan~~ plant equipment, radial brick chimneys, and monuments.

This section shall not apply to any person or firm or corporation who constructs or alters a building on land owned by that person, firm or corporation provided such building is intended solely for occupancy by that person and his family, firm, or corporation after completion; and provided further that, if such building is not occupied solely by such person and his family, firm, or corporation for at least 12 months following completion, it shall be presumed that the person, firm, or corporation did not

1 intend such building solely for occupancy by that person and his family, firm, or
2 corporation.

3 This section shall not apply to any person engaged in the business of farming who
4 constructs or alters a building on land owned by that person and used in the business of
5 farming, when such building is intended for use by that person after completion."

6 **SECTION 2.** G.S. 87-11(a) reads as rewritten:

7 "(a) The Board shall have the power to refuse to issue or renew or revoke,
8 suspend, or restrict a certificate of license or to issue a reprimand or take other
9 disciplinary action if a general contractor licensed under this Article is found guilty of
10 ~~any fraud or deceit in obtaining a license, or gross negligence, incompetency, or~~
11 ~~misconduct in the practice of his or her profession, or willful violation of any provision~~
12 ~~of this Article.~~ of:

13 (1) Any fraud or deceit in obtaining a license.

14 (2) Gross negligence, incompetency, or misconduct in the practice of his
15 or her profession.

16 (3) Violation of the State Building Code that creates a substantial risk of
17 personal injury or substantial property damage.

18 (4) Failure to take corrective action ordered by the Board. With the
19 consent of the complainant, the Board may order a licensee to take
20 corrective action in those cases involving residential construction
21 where the Board finds, after notice and hearing as provided for in
22 Chapter 150B of the General Statutes, a violation of subdivision (2) or
23 (3) of this subsection. Corrective action may not be ordered by the
24 Board during the pendency of any civil action arising from the same
25 facts or circumstances alleged in the notice of hearing. For purposes of
26 this section, residential construction is defined as any construction
27 activity required to conform to the residential building code adopted
28 by the North Carolina State Building Code Council pursuant to G.S.
29 143-138.

30 (5) Willful violation of any provisions of this Article.

31 The Board shall also have the power to revoke, suspend, or otherwise restrict the
32 ability of any person to act as a qualifying party for a license to practice general
33 contracting, as provided in G.S. 87-10(c), for any copartnership, corporation or any
34 other organization or combination, if that person committed any act in violation of the
35 provisions of this section and the Board may take disciplinary action against the
36 individual license held by that person."

37 **SECTION 3.** G.S. 87-15.5(6) reads as rewritten:

38 "(6) Reimbursable loss. – A monetary loss that meets all of the following
39 requirements:

40 a. Results from dishonest or incompetent conduct by a general
41 contractor in constructing or altering a single-family residential
42 dwelling unit.

43 b. Is not paid, in whole or in part, by or on behalf of the general
44 contractor whose conduct caused the loss. For purposes of this

1 sub-subdivision, a monetary loss is not paid in whole or in part
2 where the applicant has recovered less than ten percent (10%)
3 of the judgment against the general contractor or the applicant's
4 claim in bankruptcy.

5 c. Is not covered by a bond, a surety agreement, or an insurance
6 contract."

7 **SECTION 4.** G.S. 87-15.6(b) reads as rewritten:

8 "(b) Whenever a general contractor applies for the issuance of a permit for the
9 construction of any single-family residential dwelling unit or for the alteration of an
10 existing single-family residential dwelling unit, a city or county building inspector shall
11 collect from the general contractor a fee in the amount of ~~five-ten~~ dollars ~~(\$5.00)~~
12 (\$10.00) for each dwelling unit to be constructed or altered under the permit. The city or
13 county inspector shall forward ~~four-eight~~ dollars ~~(\$4.00)~~ (\$8.00) of each fee collected to
14 the Board on a quarterly basis and the city or county may retain ~~one dollar (\$1.00)~~ two
15 dollars (\$2.00) of each fee collected. The Board shall deposit the fees received into the
16 Fund. The Board may accept donations and appropriations to the Fund. G.S. 87-7 shall
17 not apply to the Fund.

18 The Board may suspend collection of this fee for any year upon a determination that
19 the amount in the Fund is sufficient to meet likely disbursements from the Fund for that
20 year. The Board shall notify city and county building inspectors when it suspends
21 collection of the fee."

22 **SECTION 5.** Chapter 87 of the General Statutes is amended by adding a
23 new Article 1B to read:

24 "Article 1B.

25 "Homebuilder Responsibility Act.

26 **"§ 87-15.13. Title; purpose.**

27 The General Assembly finds that the outstanding natural and cultural resources,
28 educational, employment, and recreational opportunities, and other values of the State
29 have made it one of the most attractive places in the nation to live. The General
30 Assembly finds that the present population growth and anticipated future growth of the
31 State has created tremendous opportunities in the residential construction business. This
32 growth also has placed pressure on existing resources, including trained labor,
33 appropriate homesites, and governmental inspection agencies. The General Assembly
34 finds that a home constitutes one of the largest purchases most consumers will ever
35 make and that it is material to the general welfare and public interest that homes be
36 constructed free from major construction defects and substantial building code
37 violations. It is the purpose of this act, therefore, to help protect homebuyers from the
38 losses that result when general contractors and new home vendors engage in dishonest
39 or incompetent conduct and to ensure that residential homes are constructed in a
40 workmanlike manner and are free from major construction defects or substantial
41 violations of the North Carolina State Building Code.

42 **"§ 87-15.14. Definitions.**

43 The following definitions apply in this Article:

44 (1) Board. – The State Licensing Board for General Contractors.

1 (2) Building contractor. – Defined in G.S. 87-10.

2 (3) Licensed contractor. – Any person required to obtain a license as a
3 general contractor pursuant to Article 1 of Chapter 87 of the General
4 Statutes.

5 (4) Residential construction. – Any construction activity required to
6 conform to the residential building code adopted by the North Carolina
7 State Building Code Council pursuant to G.S. 143-138.

8 (5) Residential contractor. – Defined in G.S. 87-10.

9 **"§ 87-15.15. Additional licensing requirements; experience.**

10 The Board shall develop and implement rules establishing minimum experience
11 requirements for applicants for licensure as general contractors. In establishing the
12 experience requirements, the Board shall consider both practical and management
13 experience. The rules adopted by the Board regarding experience requirements shall
14 provide credit for a portion of any experience requirement for technical training or
15 certification or for a bachelors or graduate degree in architecture, engineering,
16 construction management, or related field. The experience requirement shall not exceed
17 a total of four years. This section shall not apply to persons to whom the Board has
18 issued a license prior to the effective date of the rules adopted by the Board pursuant to
19 this section.

20 **"§ 87-15.16. Insurance.**

21 (a) Each contractor licensed as a building contractor or a residential contractor
22 shall at all times maintain at least the minimum commercial general liability insurance
23 coverage established by the Board pursuant to subsection (b) of this section.

24 (b) The Board shall adopt rules establishing the amounts of commercial general
25 liability insurance that a licensee performing residential construction shall be required to
26 carry. In no event shall the Board require insurance coverage in excess of five hundred
27 thousand dollars (\$500,000) per occurrence. Verification of insurance coverage shall be
28 made in a manner satisfactory to the Board.

29 **"§ 87-15.17. Homebuilders to list license number.**

30 A contractor licensed as a building contractor or a residential contractor who
31 advertises the contractor's services in a publication shall include in the publication in
32 legible type the license number issued to the contractor by the Board."

33 **SECTION 6.** State and local code enforcement officials inspecting existing
34 residential buildings are encouraged to report to the State Licensing Board for General
35 Contractors substantial violations of the North Carolina State Building Code found
36 during the conduct of their inspections. For purposes of this section, a residential
37 building is one that is required to be constructed in accordance with the requirements of
38 the Residential Code of the North Carolina State Building Code.

39 **SECTION 7.(a)** The Construction Defects Litigation Study Commission is
40 created. The Commission shall consist of 16 members, eight to be appointed by the
41 Speakers of the House of Representatives and eight to be appointed by the President Pro
42 Tempore of the Senate. No more than five of the members appointed by the Speakers
43 of the House of Representatives and no more than five of the members appointed by the
44 President Pro Tempore of the Senate may be members of the General Assembly. Any

1 vacancy in the membership of the Commission shall be filled by the officer making the
2 original appointment.

3 **SECTION 7.(b)** The Speakers of the House of Representatives and the
4 President Pro Tempore of the Senate shall designate Cochairs of the Commission from
5 among their respective appointees. The Commission shall meet on the call of the
6 Cochairs. Nine members of the Commission shall constitute a quorum.

7 **SECTION 7.(c)** The Commission shall examine the existing statutes of
8 repose and limitations for actions arising out of defective or unsafe conditions of
9 improvements to real property and issues raised by the recent court decisions
10 interpreting those statutes. In particular, the Commission may study the following
11 issues:

- 12 (1) Extension and modification of the statutes of repose.
- 13 (2) Modification of the time when the statutes of repose begins to run.
- 14 (3) Clarification and modification of the statutes of repose applicable to
15 defective products used in the construction process.
- 16 (4) Extension of time in which general contractors may bring an action
17 against potentially responsible third parties, such as subcontractors,
18 architects, and manufacturers.
- 19 (5) Whether the "economic loss" rule should not apply to homes.
- 20 (6) Prohibiting waiver of the implied warranty of habitability.
- 21 (7) Revision of the composition of the North Carolina Licensing Board for
22 General Contractors to provide for greater representation by citizens
23 and homeowners.

24 **SECTION 7.(d)** Members of the Commission shall receive per diem,
25 subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as
26 appropriate.

27 **SECTION 7.(e)** The Legislative Services Commission, through the
28 Legislative Services Officer, shall assign professional staff to assist the Commission in
29 its work. The House of Representatives' and the Senate's Directors of Legislative
30 Assistants shall assign clerical staff to the Commission, and the expenses related to the
31 clerical employees shall be borne by the Commission. The Commission may employ
32 consultants to assist with the study as provided in G.S. 120-32.02. Before expending
33 any funds for a consultant, the Commission shall report to the Joint Legislative
34 Commission on Governmental Operations on the consultant selected, the work products
35 to be provided by the consultant, and the total cost of the contract, including an
36 itemization of the cost components.

37 **SECTION 7.(f)** The Commission may file an interim report, including
38 proposed legislation, to the 2004 Regular Session of the 2003 General Assembly and
39 shall file a final report on or before the convening of the 2005 General Assembly. Upon
40 the earlier of the filing of the final report or the convening of the 2005 General
41 Assembly, the Commission shall terminate.

42 **SECTION 7.(g)** There is appropriated from the General Fund to the
43 Legislative Services Commission the amount of twenty thousand dollars (\$20,000) for

1 fiscal year 2003-2004 and twenty thousand dollars (\$20,000) for fiscal year 2004-2005
2 for the expenses of the Commission in conducting the study authorized in this section.

3 **SECTION 8.** Sections 1 through 6 of this act constitute a recent act of the
4 General Assembly within the meaning of G.S. 150B-21.1. The State Licensing Board
5 for General Contractors may adopt temporary rules to implement the provisions of this
6 act.

7 **SECTION 9.** This act becomes effective January 1, 2004.