

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 1254

Short Title: Homebuilder Responsibility.

(Public)

Sponsors: Representative Earle.

Referred to: Rules, Calendar and Operations of the House.

April 15, 1999

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)~~ five thousand dollars (\$5,000) 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 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

1 building is intended solely for occupancy by that person and his family, firm, or
2 corporation after completion; and provided further that, if such building is not occupied
3 solely by such person and his family, firm, or corporation for at least 12 months
4 following completion, it shall be presumed that the person, firm, or corporation did not
5 intend such building solely for occupancy by that person and his family, firm, or
6 corporation.

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

10 Section 2. G.S. 87-11(a) reads as rewritten:

11 "(a) The Board shall have the power to ~~revoke~~revoke, suspend, or refuse to renew
12 the certificate of license of any general contractor licensed hereunder who is found guilty
13 ~~of~~of:

- 14 (1) ~~any~~Any fraud or deceit in obtaining a ~~license, or~~license.
15 (2) ~~gross~~Gross negligence, incompetency or misconduct in the practice of
16 his ~~profession, or~~profession.
17 (3) Violation of the State Building Code that creates a significant risk of
18 personal injury or property damage.
19 (4) Failure to take corrective action ordered by the Board. The Board may
20 order a licensee to take corrective action to comply with the provisions
21 of this Article. The Board may also order a licensee to take corrective
22 action in those cases involving residential construction in which State or
23 local code enforcement officials have substantiated violations of the
24 North Carolina State Building Code. For purposes of this section,
25 residential construction is defined as any construction activity required
26 to conform with the requirements of the Residential Code of the North
27 Carolina State Building Code.
28 (5) ~~willful~~Willful violation of any provisions of this Article.

29 Any person may prefer charges of such fraud, deceit, negligence or misconduct against
30 any general contractor licensed hereunder; such charges shall be in writing and sworn to
31 by the complainant and submitted to the Board. Such charges, unless dismissed without
32 hearing by the Board as unfounded or trivial, shall be heard and determined by the Board
33 in accordance with the provisions of Chapter 150B of the General Statutes."

34 Section 3. Article 1 of Chapter 87 of the General Statutes is amended by
35 adding a new section to read:

36 "§ 87-11.1. Civil penalties.

37 (a) In addition to suspending, revoking, or refusing to renew the certificate of
38 license of a general contractor under G.S. 87-11, the Board may assess a civil penalty of
39 not more than one thousand dollars (\$1,000) per violation against a licensee who has
40 engaged in an activity prohibited under G.S. 87-11(a) or who has violated another
41 provision of this Article or a rule adopted by the Board.

42 (b) In determining the amount of a civil penalty, the Board shall consider:

1 (1) The degree and extent of harm to persons, the public safety, or to
2 property, or the potential for harm.

3 (2) The duration and gravity of the violation.

4 (3) Whether the violation was committed willfully or intentionally, or
5 reflects a continuing pattern.

6 (4) Whether the violation involved elements of fraud or deception.

7 (5) The violator's prior disciplinary record with the Board.

8 (6) Whether and the extent to which the violator profited by the violation.

9 (c) The Board shall notify any licensee assessed a civil penalty of the assessment
10 and the specific reasons therefor by registered or certified mail, or by any means
11 authorized by G.S. 1A-1, Rule 4. A licensee who wishes to contest the assessment of a
12 civil penalty shall be entitled to an administrative hearing pursuant to Chapter 150B of
13 the General Statutes and shall file a petition for a contested case hearing within 30 days
14 of the receipt of the notice of assessment.

15 (d) The clear proceeds of civil penalties assessed by the Board pursuant to this
16 section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S.
17 115C-457.2."

18 Section 4. G.S.143-139 is amended by adding a new subdivision (b2) to read:

19 "(b2) If, within 10 years of the issuance of a certificate of compliance by a local
20 building code enforcement officer, a residential building is found to have been erected or
21 constructed in violation of the North Carolina State Building Code, the code enforcement
22 official discovering the violation shall notify the State Licensing Board for General
23 Contractors of the existence and nature of the violation found. For purposes of this
24 subsection, a residential building is one that is required to be constructed in accordance
25 with the requirements of the Residential Code of the North Carolina State Building
26 Code."

27 Section 5. G.S. 87-15.6(b) reads as rewritten:

28 "(b) Whenever a general contractor applies for the issuance of a permit for the
29 construction of any single-family residential dwelling unit or for the alteration of an
30 existing single-family residential dwelling unit, a city or county building inspector shall
31 collect from the general contractor a fee in the amount of ~~five-ten~~ dollars ~~(\$5.00)-(\$10.00)~~
32 for each dwelling unit to be constructed or altered under the permit. The city or county
33 inspector shall forward ~~four-eight~~ dollars ~~(\$4.00)-(\$8.00)~~ of each fee collected to the
34 Board on a quarterly basis and the city or county may retain ~~one dollar~~ ~~(\$1.00)-two dollars~~
35 ~~(\$2.00)~~ of each fee collected. The Board shall deposit the fees received into the Fund.
36 The Board may accept donations and appropriations to the Fund. G.S. 87-7 shall not
37 apply to the Fund.

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

42 Section 6. Chapter 87 of the General Statutes is amended by adding a new
43 Article 1B to read:

“ARTICLE 1B.**"HOMEBUILDER RESPONSIBILITY ACT.****"§ 87-15.13. Title, purpose.**

The General Assembly finds that the outstanding natural and cultural resources, educational, employment, and recreational opportunities, and other values of the State have made it one of the most attractive places in the nation to live. The General Assembly finds that the present population growth and anticipated future growth of the State has created tremendous opportunities in the residential construction business. This growth also has placed pressure on existing resources, including trained labor, appropriate home sites, and governmental inspection agencies, resulting in an increase in complaints from homebuyers regarding construction defects and building code violations. The General Assembly finds that a home constitutes one of the largest purchases most consumers will ever make and that the general welfare and public interest require that newly constructed homes be free from material construction defects. The General Assembly also finds that the existing statutory scheme does not provide adequate avenues of relief for homebuyers who have discovered construction defects or code violations. It is the purpose of this act, therefore to protect homebuyers from the losses that result when general contractors and new home vendors engage in dishonest or incompetent conduct and to ensure that newly constructed residential homes are constructed in a workmanlike manner and are free from material construction defects or material violations of the North Carolina State Building Code.

"§ 87-15.14. Definitions. The following definitions apply to this Article:

- (1) 'Board'. – The State Licensing Board for General Contractors.
- (2) 'Building Standards'. – The structural, mechanical, electrical, and quality standards of the home building industry for the geographic area in which the dwelling is located.
- (3) 'Dwelling' or 'newly constructed home'. – A new building that has not been previously occupied that was constructed for the purpose of habitation by a single family. This term does not include appurtenant recreational facilities, detached garages, driveways, walkways, patios, boundary walls, nor retaining walls that are not necessary for the structural stability of the dwelling, nor does it include landscaping, fences, nonpermanent construction materials, off-site improvements, or other similar items.
- (4) 'Initial vendee'. – The person who first contracts to purchase a dwelling from a vendor for the purpose of habitation and not for resale in the ordinary course of trade.
- (5) 'Major construction defect'. – Actual damage to the load-bearing portion of the dwelling or the home improvement, including damage due to subsidence, expansion or lateral movement of the soil, which affects the load-bearing function and which vitally affects or is imminently likely to vitally affect use of the dwelling for residential purposes. This term

1 does not include damage due to the movement of the soil caused by
2 flood, earthquake, or other natural disaster.

3 (6) 'Residential construction'. – Any construction activity required to meet
4 the requirements of the Residential Code of the North Carolina State
5 Building Code.

6 (7) 'Vendee'. – Any purchaser of a dwelling. This term includes the initial
7 vendee, any of the vendee's heirs or devisees that become successors in
8 interest in the dwelling, and any subsequent purchasers.

9 (8) 'Vendor'. – Any person or entity that constructs dwellings for the
10 purpose of sale, including the construction of dwellings on land owned
11 by vendees.

12 (9) 'Warranty date'. – The dates from and after which the warranties
13 provided for in G.S. 87-15.16 become effective. This date shall be the
14 earliest of:

15 a. The date of the initial vendee's first occupancy of the dwelling;

16 or

17 b. The date on which the initial vendee takes legal or equitable title
18 in the dwelling."

19 **"§ 87-15.15. Additional licensing requirements; experience.**

20 Any person who undertakes to perform any type of residential construction for which
21 a general contractor's license is required pursuant to Article 1 of this Chapter must have,
22 as a prerequisite to obtaining a license as a general contractor, a minimum of four years
23 practical or management experience in the residential construction field. The Board may
24 credit up to two years of experience for technical training or certification from an
25 accredited program approved by the Board and may credit up to three years of experience
26 for a bachelors or graduate degree from an accredited college or university in
27 architecture, engineering, construction management, or related area. This section shall
28 not apply to persons to whom the Board has issued a certificate to engage as a general
29 contractor in the State in either the classification of building contractor or residential
30 contractor pursuant to G.S.87-10(b) on or before January 1, 2000.

31 **"§ 87-15.16. Homeowner warranties; insurance.**

32 (a) Home Warranties Required. In every sale of a newly constructed residential
33 home, the vendor shall purchase a commercial homeowners warranty that warrants to the
34 vendee that:

35 (1) During the one-year period from and after the warranty date, the
36 dwelling shall be free from defects caused by faulty workmanship and
37 defective materials due to noncompliance with building standards or the
38 building code.

39 (2) During the two-year period from and after the warranty date, the
40 dwelling shall be free from defects caused by faulty installation of
41 plumbing, electrical, heating, and cooling systems.

42 (3) During the ten-year period from and after the warranty date, the
43 dwelling shall be free from major construction defects.

1 In order to comply with this section, a vendor must purchase a warranty that, by its
2 terms, survives the passage of legal or equitable title to subsequent vendees during the
3 warranty period.

4 (b) Waiver of Rights Void. – Any agreement to waive, release, or commute the
5 provisions of this Article shall be void.

6 (c) Liability Insurance Required. – Every general contractor licensed under this
7 Article that works on newly constructed residential homes shall at all times maintain
8 insurance coverage in the amount of at least one million dollars (\$1,000,000) through a
9 commercial general liability insurance policy or professional liability insurance policy.

10 **"§ 87-15.17. Homebuilders to list license number.**

11 Any person who undertakes to perform residential construction and who must be
12 licensed as a general contractor pursuant to Article 1 of this Chapter, and who advertises
13 their services in any publication, shall include in the publication in legible type the
14 license number issued to them by the Board.

15 **"§ 87-15.18. Substantial identity/revoked or suspended licenses.**

16 The Board may suspend, revoke, refuse to renew, or refuse to issue a certificate of
17 license to any contractor who is shown to have a substantial identity of interest with a
18 contractor whose license has been suspended, revoked, or not renewed by the Board. A
19 substantial identity of interest includes:

- 20 (1) A controlling financial interest by the individual or corporate principals
21 of the contractor whose license has been revoked, suspended, or not
22 renewed by the Board;
23 (2) Substantially identical principals or officers; or
24 (3) The same designated employee as the contractor whose license has been
25 suspended, revoked, or not renewed by the Board."

26 Section 7. This act becomes effective January 1, 2000.