

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 847

Short Title: Monument Contractors Act.

(Public)

Sponsors: Representatives Mercer and Barbee.

Referred to: State Government.

April 12, 1995

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH LICENSING OF MONUMENT CONTRACTORS.

3 The General Assembly of North Carolina enacts:

4 Section 1. Chapter 87 of the General Statutes is amended by adding a new
5 Article to read:

6 **"ARTICLE 9.**
7 **"MONUMENT CONTRACTORS.**

8 **"§ 87-120. Short title.**

9 This Article shall be known and may be cited as the North Carolina Monument
10 Contractors Act.

11 **"§ 87-121. Policy and purpose.**

12 The purpose of this Article is to protect the health, welfare, and safety of the public
13 through the regulation of monument contractors in the State of North Carolina; to prevent
14 the sale of inferior products to the public; to prevent the improper installation of
15 monuments in private and public areas; and to protect the public consumer from being
16 defrauded by illegitimate dealers of related products.

17 **"§ 87-122. Definitions.**

18 (1) 'Board' means the North Carolina Board of Monument Contractors
19 Examiners.

- 1 (2) 'Cemetery work' means work performed on monuments erected or
2 placed in cemeteries, such as leveling, cleaning, and installing
3 monuments.
- 4 (3) 'Manufacture' means sawing, sandblasting, etching, polishing,
5 designing, carving, and producing monuments, utilizing equipment
6 machinery and mechanical lifting devices.
- 7 (4) 'Monument' means any type of granite, marble, bronze, or other type of
8 product placed or erected to designate where a body is interred or to
9 preserve and perpetuate the memory and name of any person.
- 10 (5) 'Monument contractor' means any person, firm, corporation, or
11 partnership that manufactures, sells, erects, installs, repairs, cleans, or
12 moves monuments.

13 **"§ 87-123. Board of Examiners created; appointment; term of office.**

14 (a) Creation. – The North Carolina Board of Monument Contractors Examiners is
15 created.

16 (b) Membership. – The Board shall consist of seven members as follows:

- 17 (1) Two members appointed by the General Assembly, upon the
18 recommendation of the President Pro Tempore of the Senate, one of
19 whom is a member of the North Carolina Chapter of the Monument
20 Builders of the Carolinas and is involved in the basic training and
21 education of monument contractors, and one of whom is knowledgeable
22 of the industry. The member of the private industry shall be appointed
23 from a list of three persons recommended by the Board of Directors of
24 the Monument Builders of the Carolinas.
- 25 (2) Two members appointed by the General Assembly, upon the
26 recommendation of the Speaker of the House of Representatives, one of
27 whom is in the private industry and is involved in basic training and
28 education of monument contractors, and one of whom is knowledgeable
29 of the industry. The member of the private industry shall be appointed
30 from a list of three persons recommended by the membership of the
31 North Carolina Chapter of the Monument Builders of the Carolinas.
- 32 (3) Three members appointed by the Governor, two of whom shall be
33 monument contractors who have at least five years' experience in the
34 construction of monuments that are erected, installed, or placed on
35 public property and one of whom is a member of the general public.

36 (c) Terms. – Members shall serve three-year terms, except initial appointments
37 shall be for terms as follows:

- 38 (1) The General Assembly, upon recommendation of the President Pro
39 Tempore of the Senate, shall initially appoint one member for a term of
40 two years and one member for a term of one year.
- 41 (2) The General Assembly, upon recommendation of the Speaker of the
42 House of Representatives, shall initially appoint one member for a term
43 of three years and one member for a term of two years.

1 (3) The Governor shall initially appoint three members for terms of four
2 years.

3 Initial terms shall commence on August 1, 1995. Members shall serve until a
4 successor is appointed and may serve more than one consecutive term.

5 (d) Qualifications. – Each member shall be a resident of North Carolina. The
6 monument contractor members shall hold current licences and must remain in active
7 practice and in good standing with the Board licensees during their terms. The initial
8 monument contractor members shall, upon their appointment and qualification,
9 immediately become licensed by complying with the provisions of this Article.

10 (e) Vacancies. – A vacancy shall be filled in the same manner as the original
11 appointment except that all unexpired terms on the Board shall be filled in accordance
12 with G.S. 120-122 and shall be filled within 45 days after the vacancy occurs.
13 Appointees to fill vacancies shall serve the remainder of the unexpired term and until
14 their successors have been duly appointed and qualified.

15 (f) Removal. – The Board may remove any of its members for neglect of duty,
16 misconduct, misfeasance, incompetence, or unprofessional conduct. A member subject
17 to disciplinary proceedings as a licensee shall be disqualified from Board business until
18 the charges are resolved.

19 (g) Compensation. – Each member of the Board shall receive per diem
20 compensation and reimbursement for travel and subsistence as provided in G.S. 93B-5.
21 All salaries, compensation, and expenses incurred or allowed for the purpose of carrying
22 out the purposes of this Article shall be paid by the Board exclusively out of the fees
23 received by the Board as authorized by this Article, or funds received from other sources.
24 In no case shall any salary, expense, or other obligation of the Board be charged against
25 the State treasury.

26 (h) Officers. – The officers of the Board shall be a chair, who shall be a licensed
27 monument contractor, a vice-chair, a secretary-treasurer, and other officers deemed
28 necessary by the Board to carry out the purposes of this Article. All officers shall be
29 elected annually by the Board for one-year terms and shall serve until their successors are
30 elected and qualified. The secretary-treasurer shall give bond approved by the Board in
31 an amount determined by the Board.

32 (i) Immunity from Suit. – Individual Board members shall be immune from civil
33 liability arising from activities performed within the scope of their official duties.

34 (j) Meetings. – Within 30 days after the appointment of the initial Board, the
35 Board shall hold a meeting to elect the officers. The Board shall hold at least four
36 meetings each year, one each quarter, to conduct business and to review the standards and
37 rules for improving the business and practice of monument contracting. The Board shall
38 adopt rules governing the calling, holding, and conducting of regular and special
39 meetings. Special meetings may be held at times and at places as the bylaws or rules
40 provide, or as may be required in carrying out the provisions of this Article. A quorum of
41 the Board shall consist of not less than five members.

42 "**§ 87-124. Powers and duties of the Board.**"

43 (a) The Board shall have the following general powers and duties:

- 1 (1) Administer this Article.
- 2 (2) Issue interpretations of this Article.
- 3 (3) Adopt, amend, or repeal rules as may be necessary to carry out the
4 provisions of this Article in accordance with Chapter 150B of the
5 General Statutes.
- 6 (4) Employ and fix the compensation of personnel that the Board
7 determines is necessary to carry into effect the provisions of this Article
8 and incur other expenses necessary to effectuate this Article.
- 9 (5) Examine, determine qualifications and fitness, and renew the license of
10 duly qualified applicants for licensure or relicensure. In determining the
11 qualification of applicants, the Board shall consider the technical and
12 practical knowledge of the applicant concerning the analysis of
13 specifications, estimation costs, fundamentals of layout and design,
14 rudiments of installation, and related subjects relevant to the industry.
- 15 (6) Issue, renew, deny, suspend, or revoke licenses and carry out any of the
16 disciplinary actions authorized by this Article.
- 17 (7) Conduct investigations for the purpose of determining whether
18 violations of this Article or grounds for disciplining licensees exist.
- 19 (8) Maintain a record of all proceedings and make available to licensees and
20 other concerned parties an annual report of all Board action.
- 21 (9) Maintain a register of all applicants for examination showing the date of
22 each application, the name, the age, and other qualifications, and place
23 of business and residence of each applicant.
- 24 (10) In accordance with G.S. 87-130, set fees for licensure, license renewal,
25 examination, reexamination, and other services deemed necessary to
26 carry out the purposes of this Article.
- 27 (11) Adopt a seal containing the name of the Board for use on all certificates,
28 licenses, and official reports issued by it.
- 29 (12) Develop standards and adopt rules for the improvement of monument
30 contracting in the State.

31 (b) The powers and duties enumerated above are granted for the purpose of
32 enabling the Board to protect the public health, welfare, and safety against unqualified or
33 incompetent monument contractors and shall be liberally construed to accomplish this
34 objective.

35 (c) On or before the first day of March of each year the Board shall submit to the
36 Governor and to the General Assembly a report of its activities for the preceding year and
37 file with the Secretary of State a copy of the report with a statement of receipts and
38 expenditures of the Board attested by the chair and secretary-treasurer.

39 **"§ 87-125. License required; exemptions.**

40 (a) On or after January 1, 1996, no person, firm, corporation or partnership may
41 manufacture, sell, erect, install, repair, inscribe, move, or remove a monument without
42 first having been licensed under this Article.

43 (b) The provisions of this Article do not apply to:

- 1 (1) Funeral homes when performing cemetery work required for interment,
2 including the removal of small stones to dig a grave.
- 3 (2) Individuals who own memorials and personally clean and fill around
4 their memorials.
- 5 (3) Cemetery caretakers whose jobs require filling in around memorials,
6 cleaning, and normal care of cemeteries.

7 **"§ 87-126. License classifications.**

8 A monument contractors license shall be issued in one of the following
9 classifications:

- 10 (1) Class A: a license to operate as a sales agent of monuments in public
11 and private cemeteries under the supervision of a monument contractor
12 with a class C license.
- 13 (2) Class B: a license to operate a cemetery or retail sales office or to install
14 monuments within that cemetery. A class B license requires a Federal
15 Employer's Identification number, bond, workers' compensation, and
16 general liability insurance.
- 17 (3) Class C: a license to manufacture, sell, erect, install monuments, or
18 perform cemetery work and utilize heavy industrial equipment pertinent
19 to the industry. To obtain a class C license, an applicant must meet the
20 requirements of G.S. 87-127. A class C licensee shall maintain
21 manufacturing facilities, a sales office, or a display yard or showroom,
22 and may operate lifting devices, operational crane trucks, or other
23 devices used to erect or install memorials.

24 **"§ 87-127. Qualifications for license.**

25 (a) An applicant for a class C license shall submit an application on a form
26 approved by the Board and demonstrate proof of good moral character and proof of the
27 following:

- 28 (1) That the applicant has successfully completed the training required by
29 the Board.
- 30 (2) That the applicant has a Federal Employer's Identification number.
- 31 (3) That there are no tax liens filed against the applicant by the Internal
32 Revenue Service or the North Carolina Department of Revenue.
- 33 (4) That the applicant has obtained a bonding ability statement completed
34 by a bonding company licensed to do business in North Carolina,
35 verifying the applicant's ability to furnish performance bonds for
36 monument contracting projects having a value determined by the Board.
37 In lieu of furnishing the bonding ability statement, the applicant may
38 submit for evaluation and specific approval of the Board other
39 information certifying the adequacy of the applicant's financial ability to
40 engage in projects of the license classification for which the applicant
41 has applied. The bonding ability statement or other financial
42 information must be submitted in the same name as the license to be
43 issued. If the firm for which a license application is filed is owned by a

1 sole proprietor, the bonding ability statement or other financial
2 information may be furnished in either the firm name or the name of the
3 proprietor. However, if the application is submitted in the name of a
4 sole proprietor, the applicant shall submit information verifying that the
5 person in whose name the application is made is in fact the sole
6 proprietor of the firm.

7 (b) An applicant who applies to the Board for licensure on or before January 1,
8 1996, may be licensed without examination if the applicant provides evidence
9 satisfactory to the Board that the applicant has operated as a monument contractor for a
10 period of three years prior to application and meets the requirements of subsection (a) of
11 this section.

12 (c) A license shall indicate the names and classifications of all listed qualified
13 individuals employed by the applicant. A license shall be cancelled if at any time no
14 listed qualified individual is regularly employed by the applicant; provided that work
15 begun prior to cancellation may be completed under conditions established by the Board,
16 and no work for which a license is required under this Article may be bid for, contracted
17 for, or initiated subsequent to the cancellation until the license is reinstated by the Board.

18 (d) The Board shall issue a license to all applicants who pass the examination, pay
19 the required fee, and qualify under this Article. Each application for examination shall be
20 accompanied by a check, money order, or other certified funds in the amount of the
21 annual examination fee required by G.S. 87-130. Examinations shall be given at least
22 twice a year.

23 (e) All licensees shall post the current license in the licensees' business locations,
24 and shall indicate the license number on all proposals, contracts, and work orders.

25 (f) A new license to replace a license that is lost or destroyed may be issued
26 pursuant to rules adopted by the Board.

27 **§ 87-128. Reexamination.**

28 An applicant who fails to pass the first licensure examination may take subsequent
29 examinations in accordance with rules adopted by the Board and shall be required to pay
30 a new examination fee.

31 **§ 87-129. License renewal.**

32 Every license issued under this Article shall be renewed during the month of January.
33 On or before the date the current license expires, every individual who wishes to continue
34 practice shall apply for a license renewal and submit the required fee. It shall be the duty
35 of the secretary-treasurer to mail to each licensee notice of the amount of fee required for
36 renewal of license at least 60 days prior to the expiration of the license. In the event of
37 failure on the part of any licensee to make a timely application for renewal of license and
38 pay the required fee, the Board shall increase the license fee by ten percent (10%) for
39 each month or fraction of a month that payment is delayed; provided that the penalty for
40 nonpayment shall not exceed the amount of the annual fee. Licenses that are not renewed
41 shall automatically lapse. The Board shall require reexamination upon failure of a
42 licensee to renew within one year after expiration. The Board may adopt rules requiring
43 attendance at programs or continuing education as a condition of license renewal.

"§ 87-130. Fees.

(a) The schedule of fees shall not exceed the following:

- (1) Each application for examination (including the cost of examination)\$25.00
- (2) Each application for reexamination (including the cost of examination)50.00
- (3) Issue, renew a class A license 100.00
- (4) Issue, renew a class B license 200.00
- (5) Issue, renew a class C license 300.00
- (6) Reasonable charges for duplication services and material.

(b) In the event the Board refuses to license an applicant, the license fee is refundable but the examination fee is not refundable. Each application for examination shall be accompanied by a check, money order, or other certified funds in the amount of the annual examination fee required by this Article. All license fees shall be paid in advance to the secretary-treasurer of the Board and shall be held in a fund for the use of the Board.

"§ 87-131. Corporations, partnerships, and persons doing business under a trade name.

(a) A class C license may be issued in the name of a corporation if one or more officers or directors are active and qualified monument contractors and execute business in accordance with this Article.

(b) A class B license may be issued in the name of a corporation if one or more officers or directors are active and qualified monument contractors and execute business in accordance with this Article.

(c) A class A license may be issued in the name of an individual if the individual is a trained and qualified monument contractor and executes business under the license of a class C licensee, and the individual executes contracts in the trade name.

(d) Any person, firm, corporation, or partnership licensed in accordance with the provisions of this Article shall comply with the provisions of this Article and shall supervise contracts of sale to completion.

"§ 87-132. Disciplinary authority of the Board; administrative proceedings.

(a) Grounds for disciplinary action shall include the following:

- (1) Giving false or forged information or withholding material information from the Board in procuring or attempting to procure a license under this Article.
- (2) Having been convicted of or pled guilty or no contest to a crime that indicates that the person is unfit or incompetent to contract for monuments or that indicates that the person has deceived or defrauded the public.
- (3) Having pled guilty or no contest to or having been found guilty of an offense under State or federal narcotic or controlled substance laws.
- (4) Engaging in professional conduct that endangers the public health.

1 (5) Being unfit or incompetent to perform as a monument contractor by
2 reason of deliberate acts or omissions.

3 (6) Willfully violating any provision of this Article or rules adopted by the
4 Board.

5 In accordance with the provisions of Chapter 150B of the General Statutes, the Board
6 may require remedial education, issue a letter of reprimand, restrict, revoke, or suspend
7 any license or deny any application for licensure if the Board determines that the
8 applicant or licensee has committed any of the above acts or is no longer qualified. The
9 Board may not revoke or suspend a license for negligence or breach of contract,
10 including failure to pay a supplier for materials.

11 (b) The Board may reinstate a revoked license or remove licensure restrictions
12 when it finds that the reasons for revocation or restriction no longer exist and a majority
13 of the Board votes in favor of the reissuance of the license. A person whose application is
14 denied, suspended, or revoked is entitled to a hearing before the Board if the person
15 submits a written request to the Board. Proceedings for denial, revocation, or suspension
16 of a license shall be conducted consistent with Chapter 150B of the General Statutes.

17 **"§ 87-133. Enjoining illegal practices.**

18 If the Board finds that a person is violating any of the provisions in this Article, it may
19 apply in its own name to the superior court for a temporary or permanent restraining
20 order or injunction to prevent the person from continuing illegal practices. The court is
21 empowered to grant injunctions regardless of whether criminal prosecution or other
22 action has been or may be instituted as a result of a violation. All actions by the Board
23 shall be governed by the Rules of Civil Procedure and Article 37 of Chapter 1 of the
24 General Statutes.

25 The venue for actions brought under this Article shall be the Superior Court of Wake
26 County.

27 **"§ 87-134. Violations; penalties.**

28 A person who violates any provision of this Article is guilty of a Class 1
29 misdemeanor, including engaging in or offering to engage in the business of a monument
30 contractor without a license, with an expired, suspended or revoked license, or with
31 another person's license. Each act constitutes a distinct and separate offense.

32 **"§ 87-135. Reports; immunity from suit.**

33 A person who has reasonable cause to suspect misconduct or incapacity of a licensee,
34 or who has reasonable cause to suspect that a person is in violation of this Article, shall
35 report the relevant facts to the Board. Upon receipt of a charge, or upon its own
36 initiative, the Board may give notice of an administrative hearing or may, after diligent
37 investigation, dismiss unfounded charges. A person making a report pursuant to this
38 section shall be immune from any criminal prosecution or civil liability resulting
39 therefrom. The Board shall establish and maintain a system for keeping detailed records
40 of complaints against licensees.

41 **"§ 87-136. Audit.**

42 The State Auditor may perform audits of the North Carolina Board of Monument
43 Contractors Examiners pursuant to Article 5A of Chapter 147 of the General Statutes."

1 Sec. 2. This act is effective upon ratification.