

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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HOUSE BILL 1099

Short Title: Substitute Letter of Credit for Surety Bond. (Public)

Sponsors: Representatives Church and Wainwright (Primary Sponsors).

Referred to: Judiciary II.

April 11, 2001

A BILL TO BE ENTITLED

1 AN ACT TO ALLOW LETTERS OF CREDIT TO SUBSTITUTE FOR SURETY
2 BONDS TO MEET CERTAIN STATUTORY REQUIREMENTS.

3 The General Assembly of North Carolina enacts:

4 **SECTION 1.** G.S. 1-339.25 reads as rewritten:

5 **"§ 1-339.25. Public sale; upset bid on real property; compliance bond.**

6 (a) An upset bid is an advanced, increased or raised bid in a public sale by
7 auction whereby a person offers to purchase real property theretofore sold for an
8 amount exceeding the reported sale price by a minimum of five percent (5%) thereof,
9 but in any event with a minimum increase of seven hundred fifty dollars (\$750.00). An
10 upset bid shall be made by delivering to the clerk of superior court, with whom the
11 report of the sale was filed, a deposit in cash or by certified check or cashier's check
12 satisfactory to the clerk in an amount greater than or equal to five percent (5%) of the
13 amount of the upset bid but in no event less than seven hundred fifty dollars (\$750.00).
14 The deposit required by this section shall be filed with the clerk of the superior court,
15 with whom the report of sale was filed, by the close of normal business hours on the
16 tenth day after the filing of the report of sale, and if the tenth day shall fall upon a
17 Sunday or legal holiday or upon a day in which the office of the clerk is not open for the
18 regular dispatch of its business, the deposit may be made on the day following when the
19 office is open for the regular dispatch of its business. An upset bid need not be in
20 writing, and the timely deposit with the clerk of the required amount, together with an
21 indication to the clerk as to the sale to which it is applicable, is sufficient to constitute
22 the upset bid, subject to the provisions of subsection (b) of this section.

23 (b) The clerk of the superior court may require a person submitting an upset bid
24 also to deposit a cash bond, or, in lieu thereof at the option of the bidder, a surety bond
25 or letter of credit, approved by the clerk, conditioned on compliance with the upset bid.
26 The letter of credit shall be an irrevocable letter of credit from a bank or savings
27 institution insured by the Federal Deposit Insurance Corporation. The amount of such
28

1 bond or letter of credit shall not exceed the amount of the upset bid less the amount of
2 the required deposit.

3 (c) The clerk of the superior court may in the order of resale require the highest
4 bidder at a resale had pursuant to an upset bid to deposit with the clerk a cash bond, or,
5 in lieu thereof at the option of the bidder, a surety bond or letter of credit, approved by
6 the clerk, conditioned on compliance with his bid. The letter of credit shall be an
7 irrevocable letter of credit from a bank or savings institution insured by the Federal
8 Deposit Insurance Corporation. The bond shall be in such amount as the clerk deems
9 adequate, but in no case greater than the amount of the bid of the person being required
10 to furnish the bond.

11 (d) A compliance bond or letter of credit, such as is provided for by subsections
12 (b) and (c), shall be payable to the State of North Carolina for the use of the parties in
13 interest and shall be conditioned on the principal obligor's compliance with his bid.

14 (e) The provisions of this section do not apply to public sales of timber by sealed
15 bid."

16 **SECTION 2.** G.S. 1-339.64 reads as rewritten:

17 "**§ 1-339.64. Upset bid on real property; compliance bond.**

18 (a) An upset bid is an advanced, increased or raised bid whereby a person offers
19 to purchase real property theretofore sold for an amount exceeding the reported sale
20 price by a minimum of five percent (5%) thereof, but in any event with a minimum
21 increase of seven hundred fifty dollars (\$750.00). An upset bid shall be made by
22 delivering to the clerk of superior court, with whom the report of sale was filed, a
23 deposit in cash or by certified check or cashier's check satisfactory to the clerk in an
24 amount greater than or equal to five percent (5%) of the amount of the upset bid but in
25 no event less than seven hundred fifty dollars (\$750.00). The deposit required by this
26 section shall be filed with the clerk of the superior court, with whom the report of sale
27 was filed, by the close of normal business hours on the tenth day after the filing of the
28 report of sale, and if the tenth day shall fall upon a Sunday or legal holiday or upon a
29 day in which the office of the clerk is not open for the regular dispatch of its business,
30 the deposit may be made and the upset bid filed on the day following when said office is
31 open for the regular dispatch of its business. An upset bid need not be in writing, and
32 the timely deposit with the clerk of the required amount, together with an indication to
33 the clerk as to the sale to which it is applicable, is sufficient to constitute the upset bid,
34 subject to the provisions of subsection (b).

35 (b) The clerk of the superior court may require the person submitting an upset bid
36 also to deposit a cash bond, or, in lieu thereof at the option of the bidder, a surety bond
37 or letter of credit, approved by the clerk, conditioned on compliance with the upset bid.
38 The amount of such bond or letter of credit shall not exceed the amount of the upset bid
39 less the amount of the required deposit. The letter of credit shall be an irrevocable letter
40 of credit from a bank or savings institution insured by the Federal Deposit Insurance
41 Corporation.

42 (c) The clerk of the superior court may in the order of resale require the highest
43 bidder at a resale had pursuant to an upset bid to deposit with the clerk a cash bond, or,
44 in lieu thereof at the option of the bidder, a surety bond or letter of credit, approved by

1 the clerk, conditioned on compliance with his bid. The bond or letter of credit shall be in
2 such amount as the clerk deems adequate but in no case greater than the amount of the
3 bid of the person being required to furnish the ~~bond~~ bond or letter of credit. The letter
4 of credit shall be an irrevocable letter of credit from a bank or savings institution
5 insured by the Federal Deposit Insurance Corporation.

6 (d) A compliance bond, such as is provided for by subsections (b) and (c), shall
7 be payable to the State of North Carolina for the use of the parties in interest and shall
8 be conditioned on the principal obligor's compliance with his bid."

9 **SECTION 3.** G.S. 20-288(e) reads as rewritten:

10 "(e) Each applicant approved by the Division for license as a motor vehicle dealer,
11 manufacturer, factory branch, distributor, distributor branch, or wholesaler shall furnish
12 a corporate surety ~~bond~~ bond, letter of credit, ~~or~~ cash bond or fixed value equivalent of
13 the bond. The amount of the bond or letter of credit for an applicant for a motor vehicle
14 dealer's license is twenty-five thousand dollars (\$25,000) for one established salesroom
15 of the applicant and ten thousand dollars (\$10,000) for each of the applicant's additional
16 established salesrooms. The amount of the bond or letter of credit for other applicants
17 required to furnish a bond is twenty-five thousand dollars (\$25,000) for one place of
18 business of the applicant and ten thousand dollars (\$10,000) for each of the applicant's
19 additional places of business.

20 A corporate surety bond or letter of credit shall be approved by the Commissioner as
21 to form and shall be conditioned that the obligor will faithfully conform to and abide by
22 the provisions of this Article and Article 15. A cash bond or fixed value equivalent
23 thereof shall be approved by the Commissioner as to form and terms of deposits as will
24 secure the ultimate beneficiaries of the bond; and such bond shall not be available for
25 delivery to any person contrary to the rules of the Commissioner. The letter of credit
26 shall be an irrevocable letter of credit from a bank or savings institution insured by the
27 Federal Deposit Insurance Corporation. Any purchaser of a motor vehicle who shall
28 have suffered any loss or damage by any act of a license holder subject to this
29 subsection that constitutes a violation of this Article or Article 15 shall have the right to
30 institute an action to recover against the license holder and the surety. Every license
31 holder against whom an action is instituted shall notify the Commissioner of the action
32 within 10 days after served with process. A corporate surety bond or letter of credit shall
33 remain in force and effect and may not be canceled by the surety unless the bonded
34 person stops engaging in business or the person's license is denied, suspended, or
35 revoked under G.S. 20-294. Such cancellation may be had only upon 30 days' written
36 notice to the Commissioner and shall not affect any liability incurred or accrued prior to
37 the termination of such 30-day period. This subsection does not apply to a license
38 holder who deals only in trailers having an empty weight of 4,000 pounds or less. This
39 subsection does not apply to manufacturers of, or dealers in, mobile or manufactured
40 homes who furnish a corporate surety bond, cash bond, or fixed value equivalent
41 thereof, pursuant to G.S. 143-143.12."

42 **SECTION 4.** G.S. 20-361 reads as rewritten:

43 "**§ 20-361. Application for permit and permit fee.**

1 Application for a permit to move a structure must be made to the division or district
2 engineer having jurisdiction at least two days prior to the date of the move. For good
3 cause shown, this time may be waived by the district or division engineer. A travel plan
4 and a permit application fee of twenty dollars (\$20.00) shall accompany the application.
5 Division or district engineers are authorized to issue permits for individual moves of a
6 structure or building whose width does not exceed 36 feet. The travel plan will show the
7 proposed route, the time estimated for each segment of the move, a plan to handle
8 traffic so that no one delay to other highway users shall exceed 20 minutes. The division
9 or district engineers shall review the travel plan and if the route cannot accommodate
10 the move due to roadway weight limits, bridge size or weight limits, or will cause undue
11 interruption of traffic flow, the permit shall not be issued. The applicant may submit
12 alternate plans if desired until an acceptable route is determined. If the width of the
13 building or structure to be relocated is more than 36 feet, or if no acceptable travel plan
14 has been filed, and the denial of the permit would cause a hardship, the application and
15 travel plan may be submitted to the Department on appeal. After reviewing the route
16 and travel plan, the Department may in its discretion issue the permit after considering
17 the practical physical limitations of the route, the nature and purpose of the move, the
18 size and weight of the structure, the distance the structure is to be moved, and the safety
19 and convenience of the traveling public. A surety bond or irrevocable letter of credit
20 from a bank or savings institution insured by the Federal Deposit Insurance Corporation
21 in an amount to cover the cost of any damage to the pavement, structures, bridges,
22 roadway or other damages that may occur can be required if deemed necessary by the
23 Department."

24 **SECTION 5.** G.S. 34-9 reads as rewritten:

25 "**§ 34-9. Qualifications of guardian; surety bond.**

26 Before making an appointment under the provisions of this Chapter the court shall
27 be satisfied that the guardian whose appointment is sought is a fit and proper person to
28 be appointed. Upon the appointment being made the guardian shall execute and file a
29 surety bond or irrevocable letter of credit from a bank or savings institution insured by
30 the Federal Deposit Insurance Corporation to be approved by the court in an amount not
31 less than the sum then due and estimated to become payable during the ensuing year.
32 The said bond or letter of credit shall be in the form and be conditioned as required of
33 guardians appointed under the guardianship laws of this State. The court shall have
34 power from time to time to require the guardian to file an additional bond or letter of
35 credit.

36 No bond or letter of credit shall be required of the banks and trust companies
37 licensed to do trust business in North Carolina."

38 **SECTION 6.** G.S. 44A-16(6) reads as rewritten:

39 "(6) Whenever a corporate surety bond or irrevocable letter of credit from a
40 bank or savings institution insured by the Federal Deposit Insurance
41 Corporation, in a sum equal to one and one-fourth times the amount of
42 the lien or liens claimed and conditioned upon the payment of the
43 amount finally determined to be due in satisfaction of said lien or liens,

1 is deposited with the clerk of court, whereupon the clerk of superior
2 court shall cancel the lien or liens of record."

3 **SECTION 7.** G.S. 45-21.17A(g) reads as rewritten:

4 "(g) Action for Damages from Foreclosure Sale for Failure to Comply. – A person
5 entitled to notice of sale by virtue of this section shall not bring any action for damages
6 resulting from the sale on grounds that he was not mailed the notice unless such action
7 is brought within six months of the date of the filing of the final report and account as
8 provided in G.S. 45-21.33. The party bringing such an action shall also deposit with the
9 clerk a cash or surety bond or irrevocable letter of credit from a bank or savings
10 institution insured by the Federal Deposit Insurance Corporation approved by the clerk
11 and in such amount as the clerk deems adequate to secure the party defending the action
12 for such costs, expenses, and reasonable attorneys' fees to be incurred in the action."

13 **SECTION 8.** G.S. 45-21.27 reads as rewritten:

14 "**§ 45-21.27. Upset bid on real property; compliance bonds.**

15 (a) An upset bid is an advanced, increased, or raised bid whereby any person
16 offers to purchase real property theretofore sold, for an amount exceeding the reported
17 sale price or last upset bid by a minimum of five percent (5%) thereof, but in any event
18 with a minimum increase of seven hundred fifty dollars (\$750.00). Subject to the
19 provisions of subsection (b) of this section, an upset bid shall be made by delivering to
20 the clerk of superior court, with whom the report of sale or last notice of upset bid was
21 filed, a deposit in cash or by certified check or cashier's check satisfactory to the clerk in
22 an amount greater than or equal to five percent (5%) of the amount of the upset bid but
23 in no event less than seven hundred fifty dollars (\$750.00). The deposit required by this
24 section shall be filed with the clerk of the superior court, with whom the report of the
25 sale or the last notice of upset bid was filed by the close of normal business hours on the
26 tenth day after the filing of the report of the sale or the last notice of upset bid, and if the
27 tenth day shall fall upon a Sunday or legal holiday, or upon a day in which the office of
28 the clerk is not open for the regular dispatch of its business, the deposit may be made
29 and the notice of upset bid filed on the day following when said office is open for the
30 regular dispatch of its business. Subject to the provisions of G.S. 45-21.30, there shall
31 be no resales; rather, there may be successive upset bids each of which shall be followed
32 by a period of 10 days for a further upset bid. When an upset bid is not filed following a
33 sale, resale, or prior upset bid within the time specified, the rights of the parties to the
34 sale or resale become fixed.

35 (b) The clerk of the superior court may require an upset bidder or the highest
36 bidder at a resale held pursuant to G.S. 45-21.30 also to deposit with the clerk a cash
37 bond, or, in lieu thereof at the option of the bidder, a surety bond or irrevocable letter of
38 credit from a bank or savings institution insured by the Federal Deposit Insurance
39 Corporation, approved by the clerk. The compliance bond or letter of credit shall be in
40 such amount as the clerk deems adequate, but in no case greater than the amount of the
41 bid of the person being required to furnish the bond or letter of credit, less the amount of
42 any required deposit. The compliance bond or letter of credit shall be payable to the
43 State of North Carolina for the use of the parties in interest and shall be conditioned on
44 the principal obligor's compliance with the bid.

1 (c), (d) Repealed by Session Laws 1993, c. 305, s. 16.

2 (e) At the same time that an upset bid on real property is submitted to the court as
3 provided for in subsection (a) above, together with a compliance bond or letter of credit
4 if one is required, the upset bidder shall simultaneously file with the clerk a notice of
5 upset bid. The notice of upset bid shall:

6 (1) State the name, address, and telephone number of the upset bidder;

7 (2) Specify the amount of the upset bid;

8 (3) Provide that the sale shall remain open for a period of 10 days after the
9 date on which the notice of upset bid is filed for the filing of additional
10 upset bids as permitted by law; and

11 (4) Be signed by the upset bidder or the attorney or the agent of the upset
12 bidder.

13 (e1) When an upset bid is made as provided in this section, the clerk shall notify
14 the trustee or mortgagee who shall thereafter mail a written notice of upset bid by
15 first-class mail to the last known address of the last prior bidder and the current record
16 owner(s) of the property.

17 (f) When an upset bid is made as provided in this section, the last prior bidder,
18 regardless of how the bid was made, shall be released from any further obligation on
19 account of the bid and any ~~deposit~~ deposit, letter of credit, or bond provided by him
20 shall be released.

21 (g) Any person offering to purchase real property by upset bid as permitted in
22 this Article shall be subject to and bound by the terms of the original notice of sale
23 except as modified by court order or the provisions of this Article.

24 (h) The clerk of superior court shall make all such orders as may be just and
25 necessary to safeguard the interests of all parties, and shall have the authority to fix and
26 determine all necessary procedural details with respect to upset bids in all instances in
27 which this Article fails to make definite provisions as to that procedure."

28 **SECTION 9.** G.S. 66-94.1(a) reads as rewritten:

29 "(a) The provisions of Article 19 shall not apply to the sale or lease of any
30 products, equipment, supplies or services where:

31 (1) The seller has not derived net income from such sales within the State
32 during either of its two previous fiscal years, and does not intend to
33 derive net income from such sales during its current fiscal year; and

34 (2) The primary commercial activity of the seller or its affiliate is
35 substantially different from the sale of the goods or services to the
36 purchaser, and the gross revenues received by the seller from all such
37 sales during the current and each of the two previous fiscal years do
38 not exceed ten percent (10%) of the total gross revenues from all
39 operations for the same period of the seller and any other affiliated
40 entity contractually obligated to compensate the purchaser for the
41 purchaser's business activities arising from the sale; and

42 (3) The sale results in an improvement to realty owned or leased by the
43 purchaser which enables the purchaser to receive goods on
44 consignment from the seller or its affiliate. An "improvement to realty"

1 occurs when a building or other structure is constructed or when
2 significant improvements to an existing building or structure are made;
3 and

- 4 (4) The seller has either a net worth on a consolidated basis, according to
5 its most recent audited financial statement, of not less than five million
6 dollars (\$5,000,000) or has obtained a surety bond from a surety
7 company authorized to do business in this State or an irrevocable letter
8 of credit from a bank or savings institution insured by the Federal
9 Deposit Insurance Corporation in an amount equal to or greater than
10 the gross revenues received from the sale or lease of products,
11 equipment, supplies or services in this State during the preceding
12 12-month period which enabled the purchaser to start a business."

13 **SECTION 10.** G.S. 66-96 reads as rewritten:

14 **"§ 66-96. Bond or trust account required.**

15 If the business opportunity seller makes any of the representations set forth in G.S.
16 66-94(3), the seller must either have obtained a surety bond issued by a surety company
17 authorized to do business in this State or an irrevocable letter of credit from a bank or
18 savings institution insured by the Federal Deposit Insurance Corporation or have
19 established a trust account with a licensed and insured bank or savings institution
20 located in the State of North Carolina. The amount of the ~~bond~~ bond, letter of credit, or
21 trust account shall be an amount not less than fifty thousand dollars (\$50,000). The ~~bond~~
22 bond, letter of credit, or trust account shall be in favor of the State of North Carolina.
23 Any person who is damaged by any violation of this Article, or by the seller's breach of
24 the contract for the business opportunity sale or of any obligation arising therefrom may
25 bring an action against the bond or trust account to recover damages suffered; provided,
26 however, that the aggregate liability of the ~~surety~~ surety, letter of credit, or trustee shall
27 be only for actual damages and in no event shall exceed the amount of the ~~bond~~ bond,
28 letter of credit, or trust account."

29 **SECTION 11.** G.S. 66-108(a) reads as rewritten:

30 "(a) Every loan broker must obtain a surety bond issued by a surety company
31 authorized to do business in this State, an irrevocable letter of credit from a bank or
32 savings institution insured by the Federal Deposit Insurance Corporation or establish a
33 trust account with a licensed and insured bank or savings institution located in the State
34 of North Carolina. The amount of the ~~bond~~ bond, letter of credit, or trust account shall
35 be ten thousand dollars (\$10,000). The ~~bond~~ bond, letter of credit, or trust account shall
36 be in favor of the State of North Carolina. Any person damaged by the loan broker's
37 breach of contract or of any obligation arising therefrom, or by any violation of this
38 Article, may bring an action against the ~~bond~~ bond, letter of credit, or trust account to
39 recover damages suffered. The aggregate liability of the ~~surety~~ surety, issuer of the
40 letter of credit, or trustee shall be only for actual damages and in no event shall exceed
41 the amount of the bond or trust account."

42 **SECTION 12.** G.S. 66-168 reads as rewritten:

43 **"§ 66-168. Bond or trust account required.**

1 Before any permit shall be issued to a dealer pursuant to G.S. 66-165, the dealer
2 shall execute a satisfactory cash or surety bond or establish a trust account ~~with~~ with, or
3 obtain an irrevocable letter of credit from a licensed and insured bank or savings
4 institution located in the State of North Carolina in the sum of ten thousand dollars
5 (\$10,000). The ~~bond~~ bond, letter of credit, or trust account shall be in favor of the State
6 of North Carolina. A surety bond is to be executed by the dealer and by two responsible
7 sureties or a surety company licensed to do business in the State of North Carolina and
8 shall be on a form approved by the Department of Crime Control and Public Safety.
9 Any bond shall be kept in full force and effect and shall be delivered to the law
10 enforcement agency which first issued a current permit to the dealer. A ~~bond~~ bond,
11 letter of credit, or trust account shall be for the faithful performance of the requirements
12 and obligations of the dealer's business in conformity with this Article. Any law
13 enforcement agency shall have full power and authority to revoke the permit and sue for
14 forfeiture of the ~~bond~~ bond, letter of credit, or trust account upon a breach thereof. Any
15 person who shall have suffered any loss or damage by any act of the permittee that
16 constitutes a violation of this Article shall have the right to institute an action to recover
17 against such permittee and the surety or trust account. Upon termination of the ~~bond~~
18 bond, letter of credit, or trust account the permit shall become void."

19 **SECTION 13.** G.S. 66-222 reads as rewritten:

20 **"§ 66-222. Bond or trust account required.**

21 Every credit repair business shall obtain a surety bond issued by a surety company
22 authorized to do business in this State, or shall establish a trust account ~~with~~ with, or
23 obtain an irrevocable letter of credit from a licensed and insured bank or savings
24 institution located in the State of North Carolina. The amount of the ~~bond~~ bond, letter of
25 credit, or trust account shall be ten thousand dollars (\$10,000). The ~~bond~~ bond, letter of
26 credit, or trust account shall be in favor of the State of North Carolina. Any person
27 damaged by the credit repair business' breach of contract or of any obligation arising
28 therefrom, or by any violation of this Article, may bring an action against the ~~bond~~
29 bond, letter of credit, or trust account to recover damages suffered. The aggregate
30 liability of the ~~surety~~ surety, letter of credit, or trustee shall be only for actual damages
31 and in no event shall exceed the amount of the ~~bond~~ bond, letter of credit, or trust
32 account."

33 **SECTION 14.** G.S. 78C-72 reads as rewritten:

34 **"§ 78C-72. Registration requirements; renewal.**

35 (a) An athlete agent must register with the Secretary of State before the athlete
36 agent may contact an athlete, either directly or indirectly, while the athlete is located in
37 this State. An athlete agent may make those contacts only in accordance with this
38 Article.

39 (b) An applicant for registration as an athlete agent must submit a written
40 application for registration to the Secretary of State on a form prescribed by the
41 Secretary of State. The applicant must provide the information required by the Secretary
42 of State, which shall include:

- 43 (1) The name of the applicant and the address of the applicant's principal
44 place of business;

- 1 (2) The business or occupation engaged in by the applicant for the five
2 years immediately preceding the date of application;
- 3 (3) A description of the applicant's formal training, practical experience,
4 and educational background relating to the applicant's professional
5 activities as an athlete agent;
- 6 (4) If requested by the Secretary of State, the names and addresses of five
7 professional references; and
- 8 (5) The names and addresses of all persons, except bona fide employees
9 on stated salaries, that are financially interested as partners, associates,
10 or profit sharers in the operation of the business of the athlete agent,
11 except that an application for registration or renewal by any member of
12 the North Carolina State Bar must state only the names and addresses
13 of those persons that are involved in the activities of the athlete agent
14 and is not required to state the names and addresses of all persons who
15 may be financially interested as members of a law firm or professional
16 corporation but who do not become involved in the business of the
17 athlete agent.

18 (c) If the applicant is a corporation, the information required by subsection (b) of
19 this section must be provided by each officer of the corporation. If the applicant is an
20 association or a partnership, the information must be provided by each associate or
21 partner.

22 (d) A certificate of registration issued under this Article is valid for one year
23 from the date of issuance. The Secretary of State by rule may adopt a system under
24 which certificates of registration expire on various dates during the year. For the year in
25 which the registration expiration date is changed, the renewal fee payable on the
26 anniversary of the date of issuance shall be prorated so that each registrant pays only
27 that portion of the fee that is allocable to the number of months during which the
28 registration is valid. On the renewal of the certificate of registration on the new
29 expiration date, the total registration renewal fee is payable.

30 (e) A registered athlete agent may renew the registration by filing a renewal
31 application in the form prescribed by the Secretary of State, accompanied by the
32 renewal fee. The renewal application must include the information prescribed by the
33 Secretary of State, which shall include:

- 34 (1) The names and addresses of all athletes for whom the athlete agent is
35 providing professional services as an athlete agent for compensation at
36 the time of the renewal; and
- 37 (2) The names and addresses of all athletes not currently represented by
38 the athlete agent for whom the athlete agent has performed
39 professional services as an athlete agent for compensation during the
40 three years preceding the date of the application.

41 (f) The fee for issuing a certificate of registration or renewing a registration is
42 two hundred dollars (\$200.00). The fee is payable when an application for a certificate
43 or the renewal of a certificate is filed and is not refundable to the applicant if the

1 certificate or renewal is denied. No fee is imposed for a temporary certificate of
2 registration.

3 (g) When an application for registration or renewal is made and the registration
4 process has not been completed, the Secretary of State may issue a temporary or
5 provisional registration certificate that is valid for no more than 90 days.

6 (h) Before the issuance or renewal of a certificate of registration, an athlete agent
7 that enters into a financial services contract with an athlete must deposit with the
8 Secretary of State a surety bond or an irrevocable letter of credit from a bank or savings
9 institution insured by the Federal Deposit Insurance Corporation in the sum of one
10 hundred thousand dollars (\$100,000), payable to the State and conditioned that the
11 person applying for the registration will comply with this Article, will pay all amounts
12 due any individual or group of individuals when the person or the person's
13 representative or agent has received those amounts, and will pay all damages caused to
14 any athlete by reason of the intentional misrepresentation, fraud, deceit, or any unlawful
15 or negligent act or omission by the registered athlete agent or the agent's representative
16 or employee while acting within the scope of the financial services contract. The athlete
17 agent shall maintain the bond or letter of credit until two years after the date on which
18 the athlete agent ceases to engage in the provision of financial services for an athlete.
19 This subsection does not limit the recovery of damages to the amount of the surety
20 bond.

21 (i) If an athlete agent that has entered into a financial services contract with an
22 athlete fails to file a new bond or letter of credit with the Secretary of State not later
23 than the 30th day after date of receipt of a notice of cancellation issued by the surety of
24 the ~~bond~~, bond or the issuer of the letter of credit, the Secretary of State shall suspend
25 the certificate of registration issued to that athlete agent under the bond or letter of
26 credit until the athlete agent files a new surety bond with the Secretary of State.

27 (j) An athlete agent that enters into an agent contract only is not required to meet
28 the bond requirements of this section.

29 (k) The registration requirements of this section do not apply to a North Carolina
30 licensed and resident attorney who:

31 (1) Neither advertises directly for, nor solicits, any athlete by representing
32 to any person that he has special experience or qualifications with
33 regard to representing athletes; and

34 (2) Represents no more than two athletes."

35 **SECTION 15.** G.S. 97-170(e) reads as rewritten:

36 "(e) Every applicant shall execute and file with the Commissioner an agreement,
37 as part of the application, in which the applicant agrees to deposit with the
38 Commissioner cash, acceptable securities, an irrevocable letter of credit from a bank or
39 savings institution insured by the Federal Deposit Insurance Corporation, or a surety
40 bond issued by a corporate surety that will guarantee the applicant's compliance with
41 this Article and the Act pursuant to G.S. 97-185."

42 **SECTION 16.** G.S. 143-129(b) reads as rewritten:

43 "(b) Advertisement of the letting of such contracts shall be as follows:

1 Where the contract is to be let by a board or governing body of the State
2 government, or of a State institution, as distinguished from a board or governing body
3 of a subdivision of the State, proposals shall be invited by advertisement at least one
4 week before the time specified for the opening of said proposals in a newspaper having
5 general circulation in the State of North Carolina. Provided that the advertisements for
6 bidders required by this section shall be published at such a time that at least seven full
7 days shall lapse between the date of publication of notice and the date of the opening of
8 bids.

9 Where the contract is to be let by a county, city, town or other subdivision of the
10 State, proposals shall be invited by advertisement at least one week before the time
11 specified for the opening of said proposals in a newspaper having general circulation in
12 such county, city, town or other subdivision.

13 Such advertisement shall state the time and place where plans and specifications of
14 proposed work or a complete description of the apparatus, supplies, materials or
15 equipment may be had, and the time and place for opening of the proposals, and shall
16 reserve to said board or governing body the right to reject any or all such proposals.

17 Proposals shall not be rejected for the purpose of evading the provisions of this
18 Article. No board or governing body of the State or subdivision thereof shall assume
19 responsibility for construction or purchase contracts, or guarantee the payments of labor
20 or materials therefor except under provisions of this Article.

21 All proposals shall be opened in public and shall be recorded on the minutes of the
22 board or governing body and the award shall be made to the lowest responsible bidder
23 or bidders, taking into consideration quality, performance and the time specified in the
24 proposals for the performance of the contract. In the event the lowest responsible bids
25 are in excess of the funds available for the project, the responsible board or governing
26 body is authorized to enter into negotiations with the lowest responsible bidder above
27 mentioned, making reasonable changes in the plans and specifications as may be
28 necessary to bring the contract price within the funds available, and may award a
29 contract to such bidder upon recommendation of the Department of Administration in
30 the case of the State government or of a State institution or agency, or upon
31 recommendation of the responsible commission, council or board in the case of a
32 subdivision of the State, if such bidder will agree to perform the work at the negotiated
33 price within the funds available therefor. If a contract cannot be let under the above
34 conditions, the board or governing body is authorized to readvertise, as herein provided,
35 after having made such changes in plans and specifications as may be necessary to bring
36 the cost of the project within the funds available therefor. The procedure above
37 specified may be repeated if necessary in order to secure an acceptable contract within
38 the funds available therefor.

39 No proposal shall be considered or accepted by said board or governing body unless
40 at the time of its filing the same shall be accompanied by a deposit with said board or
41 governing body of cash or a cashier's check, or a certified check on some bank or trust
42 company insured by the Federal Deposit Insurance Corporation in an amount equal to
43 not less than five percent (5%) of the proposal. In lieu of making the cash deposit as
44 above provided, such bidder may file a bid bond executed by a corporate surety licensed

1 under the laws of North Carolina to execute such bonds, or an irrevocable letter of credit
2 from a bank or savings institution insured by the Federal Deposit Insurance
3 Corporation, conditioned that the surety will upon demand forthwith make payment to
4 the obligee upon said bond or letter of credit if the bidder fails to execute the contract in
5 accordance with the bid bond. This deposit shall be retained if the successful bidder
6 fails to execute the contract within 10 days after the award or fails to give satisfactory
7 surety as required herein. In the case of proposals for the purchase of apparatus,
8 supplies, materials, or equipment, the board or governing body may waive the
9 requirement for a bid ~~bond~~ bond, letter or credit, or other deposit.

10 Bids shall be sealed and the opening of an envelope or package with knowledge that
11 it contains a bid or the disclosure or exhibition of the contents of any bid by anyone
12 without the permission of the bidder prior to the time set for opening in the invitation to
13 bid shall constitute a Class 1 misdemeanor."

14 **SECTION 17.** G.S. 143-139.1 reads as rewritten:

15 **"§ 143-139.1. Certification of manufactured buildings, structures or components**
16 **by recognized independent testing laboratory.**

17 The State Building Code may provide, in circumstances deemed appropriate by the
18 Building Code Council, for testing, evaluation, inspection, and certification of
19 buildings, structures or components manufactured off the site on which they are to be
20 erected, by a recognized independent testing laboratory having follow-up inspection
21 services approved by the Building Code Council. Approval of such buildings, structures
22 or components shall be evidenced by labels or seals acceptable to the Council. All
23 building units, structures or components bearing such labels or seals shall be deemed to
24 meet the requirements of the State Building Code and this Article without further
25 inspection or payment of fees, except as may be required for the enforcement of the
26 Code relative to the connection of units and components and enforcement of local
27 ordinances governing zoning, utility connections, and foundations permits. The
28 Building Code Council shall adopt and may amend from time to time such reasonable
29 and appropriate rules and regulations as it deems necessary for approval of agencies
30 offering such testing, evaluation, inspection, and certification services and for
31 overseeing their operations. Such rules and regulations shall include provisions to insure
32 that such agencies are independent and free of any potential conflicts of interest which
33 might influence their judgment in exercising their functions under the Code. Such rules
34 and regulations may include a schedule of reasonable fees to cover administrative
35 expenses in approving and overseeing operations of such agencies and may require the
36 posting of a bond or other security satisfactory to the Council guaranteeing faithful
37 performance of duties under the Code.

38 The Building Code Council may also adopt rules to insure that any person that is not
39 licensed, in accordance with G.S. 87-1, and that undertakes to erect a North Carolina
40 labeled manufactured modular building, meets the manufacturer's installation
41 instructions and applicable provisions of the State Building Code. Any such person,
42 before securing a permit to erect a modular building, shall provide the code enforcement
43 official proof that he has in force for each modular building to be erected a \$5,000
44 surety bond or an irrevocable letter of credit from a bank or savings institution insured

1 by the Federal Deposit Insurance Corporation insuring compliance with the regulations
2 of the State Building Code governing installation of modular buildings."

3 **SECTION 18.** G.S. 143-143.12 reads as rewritten:

4 "**§ 143-143.12. Bond required.**

5 (a) A person licensed as a manufactured home salesperson shall not be required
6 to furnish a bond, but each applicant approved by the Board for license as a
7 manufacturer, dealer, or setup contractor shall furnish a corporate surety bond, cash
8 ~~bond~~ bond, irrevocable letter of credit from a bank or savings institution insured by the
9 Federal Deposit Insurance Corporation or fixed value equivalent in the following
10 amounts:

- 11 (1) For a manufacturer, two thousand dollars (\$2,000) per manufactured
12 home manufactured in the prior license year, up to a maximum of one
13 hundred thousand dollars (\$100,000). When no manufactured homes
14 were produced in the prior year, the amount required shall be based on
15 the estimated number of manufactured homes to be produced during
16 the current year.
- 17 (2) For a dealer who has one place of business, the amount shall be
18 thirty-five thousand dollars (\$35,000).
- 19 (3) For a dealer who has more than one place of business, the amount shall
20 be twenty-five thousand dollars (\$25,000) for each additional place of
21 business.
- 22 (4) For a setup contractor, the amount shall be ten thousand dollars
23 (\$10,000).

24 (b) A corporate surety bond or letter of credit shall be approved by the Board as
25 to form and shall be conditioned upon the obligor faithfully conforming to and abiding
26 by the provisions of this Article. A cash bond or fixed value equivalent shall be
27 approved by the Board as to form and terms of deposits in order to secure the ultimate
28 beneficiaries of the bond. A corporate surety bond or letter of credit shall be for a
29 one-year period, and a new ~~bond~~ bond, letter of credit, or a proper continuation
30 certificate shall be delivered to the Board at the beginning of each subsequent one-year
31 period.

32 (c) Any buyer of a manufactured home who suffers any loss or damage by any
33 act of a licensee that constitutes a violation of this Article may institute an action to
34 recover against the licensee and the ~~surety~~ letter of credit.

35 (d) The Board may adopt rules to assure satisfaction of claims."

36 **SECTION 19.** G.S. 143-143.13(a) reads as rewritten:

37 "(a) A license may be denied, suspended or revoked by the Board on any one or
38 more of the following grounds:

- 39 (1) Making a material misstatement in application for license.
- 40 (2) Failing to post an adequate corporate surety ~~bond~~ bond, irrevocable
41 letter of credit from a bank or savings institution insured by the
42 Federal Deposit Insurance Corporation, cash bond or fixed value
43 equivalent.

- 1 (3) Engaging in the business of manufactured home manufacturer, dealer,
2 salesperson, or setup contractor without first obtaining a license from
3 the Board.
- 4 (4) Failing to comply with the warranty service obligations and claims
5 procedure established by this Article.
- 6 (5) Failing to comply with the setup requirements established by this
7 Article.
- 8 (6) Failing or refusing to account for or to pay over moneys or other
9 valuables belonging to others that have come into licensee's possession
10 arising out of the sale of manufactured homes.
- 11 (7) Using unfair methods of competition or committing unfair or deceptive
12 acts or practices.
- 13 (8) Failing to comply with any provision of this Article.
- 14 (9) Failing to appear for a hearing before the Board or for a prehearing
15 conference with a person or persons designated by the Board after
16 proper notice or failing to comply with orders of the Board issued
17 pursuant to this Article.
- 18 (10) Employing unlicensed salespersons.
- 19 (11) Offering for sale manufactured homes manufactured or assembled by
20 unlicensed manufacturers or selling manufactured homes to unlicensed
21 dealers for sale to buyers in this State.
- 22 (12) Conviction of a felony or any crime involving moral turpitude.
- 23 (13) Having had a license revoked, suspended or denied by the Board; or
24 having had a license revoked, suspended or denied by a similar entity
25 in another state; or engaging in conduct in another state which
26 conduct, if committed in this State, would have been a violation under
27 this Article.
- 28 (14) Employing or contracting with any person to perform setups who is
29 not licensed by the Board as a setup contractor."

30 **SECTION 20.** G.S. 65-66(g) reads as rewritten:

31 "(g) In lieu of the deposits required under subsection (b) of this section, the
32 cemetery company or other entity may post with the Commission a good and sufficient
33 performance bond by surety company licensed to do business in North Carolina
34 Carolina, or an irrevocable letter of credit from a bank or savings institution insured by
35 the Federal Deposit Insurance Corporation, and in an amount sufficient to cover all
36 payments made directly or indirectly by or on account of purchasers who have not
37 received the purchased property and services. Money received from the sale or
38 assignment of notes entered into by the purchasers, or otherwise, shall be treated as
39 payments made by the purchasers."

40 **SECTION 21.** G.S. 65-70(f) reads as rewritten:

41 "(f) In lieu of the payments outlined hereunder to the preconstruction trust
42 account the cemetery company may deliver to the Commission a good and sufficient
43 completion or performance bond in an amount and by surety companies acceptable to

1 the ~~Commission~~. Commission, or an irrevocable letter of credit from a bank or savings
2 institution insured by the Federal Deposit Insurance Corporation."

3 **SECTION 22.** G.S. 130A-255(b) reads as rewritten:

4 "(b) The Secretary shall require the permittee within five days after issuance of the
5 provisional permit to file with the Secretary a performance bond, irrevocable letter of
6 credit from a bank or savings institution insured by the Federal Deposit Insurance
7 Corporation, or other surety to be executed to the State in the amount of five thousand
8 dollars (\$5,000) for up to 10,000 persons and an additional one thousand dollars
9 (\$1,000) for each additional 5,000 persons or fraction reasonably estimated to attend the
10 mass gathering. The bond or letter of credit shall be conditioned on full compliance with
11 this Part and the rules of the Commission and shall be forfeitable upon noncompliance
12 and a showing by the Secretary of injury, damage or other loss to the State or local
13 governmental agencies caused by the noncompliance."

14 **SECTION 23.** G.S. 130A-256(d) reads as rewritten:

15 "(d) If the Secretary installs facilities or makes arrangements or provisions for
16 cleanup pursuant to subsection (c), the Secretary may apply to a court of competent
17 jurisdiction prior to or within 60 days after the action to order forfeiture of the
18 permittee's performance ~~bond~~ bond, letter of credit, or surety for violation of this Part or
19 the rules of the Commission. The court may order that the proceeds shall be applied to
20 the extent necessary to reimburse State and local governmental agencies for
21 expenditures made pursuant to the action taken by the Secretary upon the permittee's
22 failure to comply with the order. Any excess proceeds shall be returned to the insurer of
23 the bond or to the surety after deducting court costs."

24 **SECTION 24.** G.S. 160A-37.3(c) reads as rewritten:

25 "(c) The city may require that the contract contain:

- 26 (1) A requirement that the private firm post a performance ~~bond~~ bond or
27 irrevocable letter of credit from a bank or savings institution insured
28 by the Federal Deposit Insurance Corporation, and maintain public
29 liability insurance coverage;
- 30 (2) A requirement that the private firm agree to service customers in the
31 annexed area that were not served by that firm on the effective date of
32 annexation;
- 33 (3) A provision that divides the annexed area into service areas if there
34 were more than one firm being contracted within the area, such that the
35 entire area is served by the private firms, or by the city as to customers
36 not served by the private firms;
- 37 (4) A provision that the city may serve customers not served by the firm
38 on the effective date of annexation;
- 39 (5) A provision that the contract can be cancelled for substantial violations
40 of the contract, but no contract may be cancelled on these grounds
41 unless the Local Government Commission finds that substantial
42 violations have occurred, except that the city may suspend the contract
43 for up to 30 days if it finds substantial violation of health laws;

1 (6) Performance standards, not exceeding city standards, with provision
2 that the contract may be cancelled for substantial violations of those
3 standards, but no contract may be cancelled on those grounds unless
4 the Local Government Commission finds that substantial violations
5 have occurred;

6 (7) A provision for monetary damages if there are violations of the 10
7 business days following receipt of the written request for information
8 from the city, provided that the city's written request states that
9 statutory rights will be forfeited in the absence of a timely response
10 and includes a specific reference to this section."

11 **SECTION 25.** G.S. 160A-49.3(c) reads as rewritten:

12 "(c) The city may require that the contract contain:

13 (1) A requirement that the private firm post a performance ~~bond~~ bond or
14 irrevocable letter of credit from a bank or savings institution insured
15 by the Federal Deposit Insurance Corporation, and maintain public
16 liability insurance coverage;

17 (2) A requirement that the private firm agree to service customers in the
18 annexed area that were not served by that firm on the effective date of
19 annexation;

20 (3) A provision that divides the annexed area into service areas if there
21 were more than one firm being contracted within the area, such that the
22 entire area is served by the private firms, or by the city as to customers
23 not served by the private firms;

24 (4) A provision that the city may serve customers not served by the firm
25 on the effective date of annexation;

26 (5) A provision that the contract can be cancelled for substantial violations
27 of the contract, but no contract may be cancelled on these grounds
28 unless the Local Government Commission finds that substantial
29 violations have occurred, except that the city may suspend the contract
30 for up to 30 days if it finds substantial violation of health laws;

31 (6) Performance standards, not exceeding city standards, with provision
32 that the contract may be cancelled for substantial violations of those
33 standards, but no contract may be cancelled on those grounds unless
34 the Local Government Commission finds that substantial violations
35 have occurred;

36 (7) A provision for monetary damages if there are violations of the
37 contract or of performance standards."

38 **SECTION 26.** G.S. 160A-324(c) reads as rewritten:

39 "(c) The city may require that the contract contain:

40 (1) A requirement that the private firm post a performance ~~bond~~ bond or
41 irrevocable letter of credit from a bank or savings institution insured
42 by the Federal Deposit Insurance Corporation, and maintain public
43 liability insurance coverage;

- 1 (2) A requirement that the private firm agree to service customers in the
2 annexed area that were not served by that firm on the effective date of
3 annexation;
4 (3) A provision that divides the annexed area into service areas if there
5 were more than one firm being contracted within the area, such that the
6 entire area is served by the private firms, or by the city as to customers
7 not served by the private firms;
8 (4) A provision that the city may serve customers not served by the firm
9 on the effective date of annexation;
10 (5) A provision that the contract can be cancelled for substantial violations
11 of the contract, but no contract may be cancelled on these grounds
12 unless the Local Government Commission finds that substantial
13 violations have occurred, except that the city may suspend the contract
14 for up to 30 days if it finds substantial violation of health laws;
15 (6) Performance standards, not exceeding city standards, with provision
16 that the contract may be cancelled for substantial violations of those
17 standards, but no contract may be cancelled on those grounds unless
18 the Local Government Commission finds that substantial violations
19 have occurred;
20 (7) A provision for monetary damages if there are violations of the
21 contract or of performance standards."

22 **SECTION 27.** This act becomes effective December 1, 2001.