

Conference Engrossed

State of Arizona
House of Representatives
Forty-seventh Legislature
Second Regular Session
2006

HOUSE BILL 2585

AN ACT

AMENDING SECTIONS 32-1121, 32-1123 AND 32-1158, ARIZONA REVISED STATUTES;
RELATING TO CONTRACTORS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 32-1121, Arizona Revised Statutes, is amended to
3 read:

4 32-1121. Persons not required to be licensed; penalties

5 A. This chapter shall not be construed to apply to:

6 1. An authorized representative of the United States government, this
7 state or any county, incorporated city or town, reclamation district,
8 irrigation district or other municipality or political subdivision of this
9 state.

10 2. Trustees of an express trust that is not formed for the purpose of
11 conducting business as a contractor or officers of a court, if they are
12 acting within the terms of their trust or office.

13 3. Public utilities operating under regulation of the corporation
14 commission or construction, repair or operation incidental to discovering or
15 producing petroleum or gas, or the drilling, testing, abandoning or other
16 operation of a petroleum or gas well, if performed by an owner or lessee.

17 4. Any materialman, manufacturer or retailer furnishing finished
18 products, materials or articles of merchandise who does not install or attach
19 such items or installs or attaches such items if the total value of the sales
20 contract or transaction involving such items and the cost of the installation
21 or attachment of such items to a structure does not exceed ~~seven hundred~~
22 ~~fifty~~ ONE THOUSAND dollars, including labor, materials and all other items,
23 BUT EXCLUDING ANY ELECTRICAL FIXTURE OR APPLIANCE THAT WAS DESIGNED BY THE
24 MANUFACTURER, THAT IS UNALTERED, UNCHANGED OR UNMODIFIED BY ANY PERSON, THAT
25 CAN BE PLUGGED INTO A COMMON HOUSEHOLD ELECTRICAL OUTLET UTILIZING A TWO
26 PRONGED OR THREE PRONGED ELECTRICAL CONNECTOR AND THAT DOES NOT USE ANY OTHER
27 FORM OF ENERGY, INCLUDING NATURAL GAS, PROPANE OR OTHER PETROLEUM OR GASEOUS
28 FUEL, TO OPERATE OR IS ATTACHED BY A NAIL, SCREW OR OTHER FASTENING DEVICE TO
29 THE FRAME OR FOUNDATION OF ANY RESIDENTIAL STRUCTURE. The materialman,
30 manufacturer or retailer shall inform the purchaser that the installation may
31 also be performed by a licensed contractor whose name and address the
32 purchaser may request.

33 5. Owners of property who improve such property or who build or
34 improve structures or appurtenances on such property and who do the work
35 themselves, with their own employees or with duly licensed contractors, if
36 the structure, group of structures or appurtenances, including the
37 improvements thereto, are intended for occupancy solely by the owner and are
38 not intended for occupancy by members of the public as the owner's employees
39 or business visitors and the structures or appurtenances are not intended for
40 sale or for rent. In all actions brought under this chapter, proof of the
41 sale or rent or the offering for sale or rent of any such structure by the
42 owner-builder within one year after completion or issuance of a certificate
43 of occupancy is prima facie evidence that such project was undertaken for the
44 purpose of sale or rent. ~~As used in~~ FOR THE PURPOSES OF this paragraph,
45 "sale" or "rent" includes any arrangement by which the owner receives

1 compensation in money, provisions, chattels or labor from the occupancy or
2 the transfer of the property or the structures on the property.

3 6. Owners of property who are acting as developers and who build
4 structures or appurtenances to structures on their property for the purpose
5 of sale or rent and who contract for such a project with a general contractor
6 licensed pursuant to this chapter and owners of property who are acting as
7 developers, who improve structures or appurtenances to structures on their
8 property for the purpose of sale or rent and who contract for such a project
9 with a general contractor or specialty contractors licensed pursuant to this
10 chapter. To qualify for the exemption under this paragraph, the licensed
11 contractors' names and license numbers shall be included in all sales
12 documents.

13 7. Architects or engineers who are engaging in their professional
14 practice as defined in chapter 1 of this title and who hire or offer to hire
15 the services of a contractor for preconstruction activities relating to
16 investigation and discovery including:

17 (a) Subsurface utility location and designation services.

18 (b) Potholing.

19 (c) Drilling for any of the following:

20 (i) Soil samples.

21 (ii) Rock samples.

22 (iii) Pavement samples.

23 (d) Locating existing features of a building or structure including
24 existing electrical, mechanical, plumbing and structural members.

25 8. A person licensed, certified or registered pursuant to chapter 22
26 of this title or a person working under the direct supervision of a person
27 certified or qualified pursuant to chapter 22 of this title to the extent the
28 person is engaged in structural pest control.

29 9. The sale or installation of finished products, materials or
30 articles of merchandise which are not fabricated into and do not become a
31 permanent fixed part of the structure. This exemption does not apply if a
32 local building permit is required, if the total price of the finished
33 product, material or article of merchandise, including labor **BUT EXCLUDING**
34 **ANY ELECTRICAL FIXTURE OR APPLIANCE THAT WAS DESIGNED BY THE MANUFACTURER,**
35 **THAT IS UNALTERED, UNCHANGED OR UNMODIFIED BY ANY PERSON, THAT CAN BE PLUGGED**
36 **INTO A COMMON HOUSEHOLD ELECTRICAL OUTLET UTILIZING A TWO PRONGED OR THREE**
37 **PRONGED ELECTRICAL CONNECTOR AND THAT DOES NOT USE ANY OTHER FORM OF ENERGY,**
38 **INCLUDING NATURAL GAS, PROPANE OR OTHER PETROLEUM OR GASEOUS FUEL, TO OPERATE**
39 **OR IS ATTACHED BY A NAIL, SCREW OR OTHER FASTENING DEVICE TO THE FRAME OR**
40 **FOUNDATION OF ANY RESIDENTIAL STRUCTURE,** is more than ~~seven hundred fifty~~ **ONE**
41 **THOUSAND** dollars or if the removal of the finished product, material or
42 article of merchandise causes damage to the structure or renders the
43 structure unfit for its intended use.

44 10. Employees of the owners of condominiums, townhouses, cooperative
45 units or apartment complexes of four units or less or the owners' management

1 agent or employees of the management agent repairing or maintaining
2 structures owned by them.

3 11. Any person who engages in the activities regulated by this chapter,
4 as an employee of an exempt property owner or as an employee with wages as
5 the person's sole compensation.

6 12. A surety company or companies which are authorized to transact
7 business in this state and which undertake to complete a contract on which
8 they issued a performance or completion bond, provided all construction work
9 is performed by duly licensed contractors.

10 13. Insurance companies which are authorized to transact business in
11 this state and which undertake to perform repairs resulting from casualty
12 losses pursuant to the provisions of a policy, provided all construction work
13 is performed by duly licensed contractors.

14 14. Any person other than a licensed contractor engaging in any work or
15 operation on one undertaking or project by one or more contracts, for which
16 the aggregate contract price, including labor, materials and all other items,
17 BUT EXCLUDING ANY ELECTRICAL FIXTURE OR APPLIANCE THAT WAS DESIGNED BY THE
18 MANUFACTURER, THAT IS UNALTERED, UNCHANGED OR UNMODIFIED BY ANY PERSON, THAT
19 CAN BE PLUGGED INTO A COMMON HOUSEHOLD ELECTRICAL OUTLET UTILIZING A TWO
20 PRONGED OR THREE PRONGED ELECTRICAL CONNECTOR AND THAT DOES NOT USE ANY OTHER
21 FORM OF ENERGY, INCLUDING NATURAL GAS, PROPANE OR OTHER PETROLEUM OR GASEOUS
22 FUEL, TO OPERATE OR IS ATTACHED BY A NAIL, SCREW OR OTHER FASTENING DEVICE TO
23 THE FRAME OR FOUNDATION OF ANY RESIDENTIAL STRUCTURE, is less than ~~seven~~
24 ~~hundred-fifty~~ ONE THOUSAND dollars. The work or operations which are exempt
25 under this paragraph shall be of a casual or minor nature. This exemption
26 does not apply:

27 (a) In any case in which the performance of the work requires a local
28 building permit.

29 (b) In any case in which the work or construction is only a part of a
30 larger or major operation, whether undertaken by the same or a different
31 contractor, or in which a division of the operation is made in contracts of
32 amounts less than ~~seven-hundred-fifty~~ ONE THOUSAND dollars, EXCLUDING ANY
33 ELECTRICAL FIXTURE OR APPLIANCE THAT WAS DESIGNED BY THE MANUFACTURER, THAT
34 IS UNALTERED, UNCHANGED OR UNMODIFIED BY ANY PERSON, THAT CAN BE PLUGGED INTO
35 A COMMON HOUSEHOLD ELECTRICAL OUTLET UTILIZING A TWO PRONGED OR THREE PRONGED
36 ELECTRICAL CONNECTOR AND THAT DOES NOT USE ANY OTHER FORM OF ENERGY,
37 INCLUDING NATURAL GAS, PROPANE OR OTHER PETROLEUM OR GASEOUS FUEL, TO OPERATE
38 OR IS ATTACHED BY A NAIL, SCREW OR OTHER FASTENING DEVICE TO THE FRAME OR
39 FOUNDATION OF ANY RESIDENTIAL STRUCTURE, for the purpose of evasion of this
40 chapter or otherwise.

41 (c) To a person who utilizes any form of advertising to the public in
42 which the person's unlicensed status is not disclosed by including the words
43 "not a licensed contractor" in the advertisement.

1 15. A person who is licensed, certified or registered pursuant to
2 title 41, chapter 16 and who is not otherwise required to be licensed under
3 this chapter or an employee of such person.

4 16. A person who functions as a gardener by performing lawn, garden,
5 shrub and tree maintenance.

6 B. A person who is licensed to perform work in a particular trade
7 pursuant to this chapter shall not be required to obtain and maintain a
8 separate license for mechanical or structural service work performed within
9 the scope of such trade by such person.

10 C. Any person who does not have an exemption from licensure pursuant
11 to subsection A, paragraph 14, subdivision (c) of this section is subject to
12 prosecution for a violation of section 44-1522. The attorney general may
13 investigate the act or practice and take appropriate action pursuant to title
14 44, chapter 10, article 7.

15 Sec. 2. Section 32-1123, Arizona Revised Statutes, is amended to read:

16 32-1123. Unlicensed contractors; contract bidding; license
17 denial; exemptions; warning

18 A. Except as provided in subsection D of this section, if an entity
19 that is not licensed pursuant to this chapter bids on a contract for a
20 project with an aggregate worth of more than ~~seven hundred fifty~~ ONE THOUSAND
21 dollars, EXCLUDING ANY ELECTRICAL FIXTURE OR APPLIANCE THAT WAS DESIGNED BY
22 THE MANUFACTURER, THAT IS UNALTERED, UNCHANGED OR UNMODIFIED BY ANY PERSON,
23 THAT CAN BE PLUGGED INTO A COMMON HOUSEHOLD ELECTRICAL OUTLET UTILIZING A TWO
24 PRONGED OR THREE PRONGED ELECTRICAL CONNECTOR AND THAT DOES NOT USE ANY OTHER
25 FORM OF ENERGY, INCLUDING NATURAL GAS, PROPANE OR OTHER PETROLEUM OR GASEOUS
26 FUEL, TO OPERATE OR IS ATTACHED BY A NAIL, SCREW OR OTHER FASTENING DEVICE TO
27 THE FRAME OR FOUNDATION OF ANY RESIDENTIAL STRUCTURE, the registrar shall not
28 issue the entity a license pursuant to this chapter for one year after the
29 date of the bid.

30 B. This section does not apply to an entity that bids on a contract
31 for either of the following:

32 1. A department of transportation project.

33 2. A project that is subject to the federal acquisition regulation,
34 title 48 Code of Federal Regulations, including the department of defense
35 federal acquisition regulation.

36 C. This section does not affect the licensing exemptions prescribed in
37 section 32-1121.

38 D. If an entity bids on a contract for a project pursuant to
39 subsection A of this section and the project has an aggregate worth of more
40 than ~~seven hundred fifty~~ ONE THOUSAND dollars, EXCLUDING ANY ELECTRICAL
41 FIXTURE OR APPLIANCE THAT WAS DESIGNED BY THE MANUFACTURER, THAT IS
42 UNALTERED, UNCHANGED OR UNMODIFIED BY ANY PERSON, THAT CAN BE PLUGGED INTO A
43 COMMON HOUSEHOLD ELECTRICAL OUTLET UTILIZING A TWO PRONGED OR THREE PRONGED
44 ELECTRICAL CONNECTOR AND THAT DOES NOT USE ANY OTHER FORM OF ENERGY,
45 INCLUDING NATURAL GAS, PROPANE OR OTHER PETROLEUM OR GASEOUS FUEL, TO OPERATE

1 OR IS ATTACHED BY A NAIL, SCREW OR OTHER FASTENING DEVICE TO THE FRAME OR
2 FOUNDATION OF ANY RESIDENTIAL STRUCTURE, and less than twenty thousand
3 dollars, the registrar shall issue the entity a written warning relating to
4 the unlicensed activity if the registrar has not previously issued the entity
5 a warning.

6 Sec. 3. Section 32-1158, Arizona Revised Statutes, is amended to read:
7 32-1158. Minimum elements of a contract

8 A. From and after December 31, 1992, any contract in an amount of more
9 than ~~seven hundred fifty~~ ONE THOUSAND dollars and less than one hundred fifty
10 thousand dollars entered into between a contractor and the owner of a
11 property to be improved shall contain in writing at least the following
12 information:

13 1. The name of the contractor and the contractor's business address
14 and license number.

15 2. The name and mailing address of the owner and the jobsite address
16 or legal description.

17 3. The date the parties entered into the contract.

18 4. The estimated date of completion of all work to be performed under
19 the contract.

20 5. A description of the work to be performed under the contract.

21 6. The total dollar amount to be paid to the contractor by the owner
22 for all work to be performed under the contract, including all applicable
23 taxes.

24 7. The dollar amount of any advance deposit paid or scheduled to be
25 paid to the contractor by the owner.

26 8. The dollar amount of any progress payment and the stage of
27 construction at which the contractor will be entitled to collect progress
28 payments during the course of construction under the contract.

29 B. At the time of signing a contract the owner shall be provided a
30 legible copy of all documents signed and a written and signed receipt for and
31 in the true amount of any cash paid to the contractor by the owner.

32 C. The requirements of this section shall not constitute prerequisites
33 to the formation or enforcement of a contract. Failure to comply with the
34 requirements of this section shall not constitute a defense by either party
35 to an action for compensation, damages, breach, enforcement or other cause of
36 action based on the contract.