

State of Arizona
Senate
Forty-eighth Legislature
First Regular Session
2007

SENATE BILL 1483

AN ACT

AMENDING SECTIONS 32-1154, 32-1155, 32-1158, 32-1164 AND 32-1169, 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 32-1154, Arizona Revised Statutes, is amended to
3 read:

4 32-1154. Grounds for suspension or revocation of license;
5 continuing jurisdiction; civil penalty; recovery
6 fund award

7 A. The holder of a license or any person listed on a license pursuant
8 to this chapter shall not commit any of the following acts or omissions:

9 1. Abandonment of a contract or refusal to perform after submitting a
10 bid on work without legal excuse for the abandonment or refusal.

11 2. Departure from or disregard of plans or specifications or any
12 building codes of the state or any political subdivision of the state in any
13 material respect which is prejudicial to another without consent of the owner
14 or the owner's duly authorized representative and without the consent of the
15 person entitled to have the particular construction project or operation
16 completed in accordance with such plans and specifications and code.

17 3. Violation of any rule adopted by the registrar.

18 4. Failure to comply with the statutes or rules governing social
19 security, workers' compensation or unemployment insurance.

20 5. Failure to pay income taxes, withholding taxes or any tax imposed
21 by title 42, chapter 5, articles 1 and 4 and incurred in the operation of the
22 licensed business.

23 6. Misrepresentation of a material fact by the applicant in obtaining
24 a license.

25 7. The doing of a wrongful or fraudulent act by the licensee as a
26 contractor resulting in another person being substantially injured.

27 8. Conviction of a felony.

28 9. Failure in a material respect by the licensee to complete a
29 construction project or operation for the price stated in the contract, or in
30 any modification of the contract.

31 10. Aiding or abetting a licensed or unlicensed person to evade this
32 chapter, knowingly **OR RECKLESSLY** combining or conspiring with a licensed or
33 unlicensed person, allowing one's license to be used by a licensed or
34 unlicensed person or acting as agent, partner, associate or otherwise of a
35 licensed or unlicensed person with intent to evade this chapter.

36 11. Failure by a licensee or agent or official of a licensee to pay
37 monies in excess of seven hundred fifty dollars when due for materials or
38 services rendered in connection with the licensee's operations as a
39 contractor when the licensee has the capacity to pay or, if the licensee
40 lacks the capacity to pay, when the licensee has received sufficient monies
41 as payment for the particular construction work project or operation for
42 which the services or materials were rendered or purchased.

43 12. Failure of a contractor to comply with any safety or labor laws or
44 codes of the federal government, state or political subdivisions of the
45 state.

1 13. Failure in any material respect to comply with this chapter.

2 14. Knowingly entering into a contract with a contractor for work to be
3 performed for which a license is required with a person not duly licensed in
4 the required classification.

5 15. Acting in the capacity of a contractor under any license issued
6 under this chapter in a name other than as set forth upon the license.

7 16. False, misleading or deceptive advertising whereby any member of
8 the public may be misled and injured.

9 17. Knowingly contracting beyond the scope of the license or licenses
10 of the licensee.

11 18. Contracting or offering to contract or submitting a bid while the
12 license is under suspension or while the license is on inactive status.

13 19. Failure to notify the registrar in writing within a period of
14 fifteen days of any disassociation of the person who qualified for the
15 license. Such licensee shall have sixty days from the date of such
16 disassociation to qualify through another person.

17 20. Subsequent discovery of facts which if known at the time of
18 issuance of a license or the renewal of a license would have been grounds to
19 deny the issuance or renewal of a license.

20 21. Having a person named on the license who is named on any other
21 license in this state or in another state which is under suspension or
22 revocation unless the prior revocation was based solely on a violation of
23 this paragraph.

24 22. Continuing a new single family residential construction project
25 with actual knowledge that a pretreatment wood-destroying pests or organisms
26 application was either:

27 (a) Not performed at the required location.

28 (b) Performed in a manner inconsistent with label requirements, state
29 law or rules.

30 23. Failure to take appropriate corrective action to comply with this
31 chapter or with rules adopted pursuant to this chapter without valid
32 justification within a reasonable period of time after receiving a written
33 directive from the registrar. The written directive shall set forth the time
34 within which the contractor is to complete the remedial action. The time
35 permitted for compliance shall not be less than fifteen days from the date of
36 issuance of the directive. A license shall not be revoked or suspended nor
37 shall any other penalty be imposed for a violation of this paragraph until
38 after a hearing has been held.

39 24. Prohibit, threaten to prohibit, retaliate, threaten to retaliate or
40 otherwise intimidate any contractor or materialman from serving a preliminary
41 notice pursuant to section 33-992.01.

42 B. The registrar may on the registrar's own motion, and shall on the
43 written complaint of any person, investigate the acts of any contractor
44 within this state and may temporarily suspend, with or without imposition of
45 specific conditions in addition to increased surety bond or cash deposit

1 requirements, or permanently revoke any or all licenses issued under this
2 chapter if the holder of the license issued pursuant to this chapter is
3 guilty of or commits any of the acts or omissions set forth in subsection A
4 of this section.

5 C. The expiration, cancellation, suspension or revocation of a license
6 by operation of law or by decision and order of the registrar or a court of
7 law or the voluntary surrender of a license by a licensee shall not deprive
8 the registrar of jurisdiction to proceed with any investigation of or action
9 or disciplinary proceeding against such licensee, or to render a decision
10 suspending or revoking such a license, or denying the renewal or right of
11 renewal of such license.

12 D. The registrar may impose a civil penalty of not to exceed five
13 hundred dollars on a contractor for each violation of subsection A, paragraph
14 23 of this section. Civil penalties collected pursuant to this subsection
15 shall be deposited in the residential contractors' recovery fund. The
16 failure by the licensee to pay any civil penalty imposed under this
17 subsection results in the automatic revocation of the license thirty days
18 after the effective date of the order providing for the civil penalty. No
19 future license may be issued to an entity consisting of a person associated
20 with the contractor, as defined in section 32-1101, subsection A, paragraph
21 5, unless payment of any outstanding civil penalty is tendered.

22 E. The registrar shall impose a civil penalty of not to exceed one
23 thousand dollars on a contractor for each violation of subsection A,
24 paragraph 18 of this section. Civil penalties collected pursuant to this
25 subsection shall be deposited in the residential contractors' recovery fund.
26 The failure by the licensee to pay any civil penalty imposed under this
27 subsection results in the automatic permanent revocation of the license
28 thirty days after the effective date of the order providing for the civil
29 penalty. No future license may be issued to an entity consisting of a person
30 associated with the contractor, as defined in section 32-1101, subsection A,
31 paragraph 5, unless payment of any outstanding civil penalty is tendered.

32 F. Notwithstanding any other provisions in this chapter, if a
33 contractor's license has been revoked or has been suspended as a result of an
34 order to remedy a violation of this chapter, and the contractor refuses or is
35 unable to comply with the order of the registrar to remedy the violation, the
36 registrar may order payment from the residential contractors' recovery fund
37 to remedy the violation. The registrar shall serve the contractor with a
38 notice setting forth the amount claimed or to be awarded. If the contractor
39 contests the amount or propriety of the payment, the contractor shall respond
40 within ten days of the date of service by requesting a hearing to determine
41 the amount or propriety of the payment. Failure by the contractor to respond
42 in writing within ten days of the date of service shall be deemed a waiver by
43 the contractor of the right to contest the amount claimed or to be awarded.
44 Service may be made by personal service to the contractor or by mailing a
45 copy of the notice by registered mail with postage prepaid to the

1 contractor's latest address of record on file in the registrar's office. If
2 service is made by registered mail, it is effective five days after the
3 notice is mailed. Except as provided in section 41-1092.08, subsection H,
4 the contractor or injured person may seek judicial review of the registrar's
5 final award pursuant to title 12, chapter 7, article 6.

6 G. A LICENSEE SHALL VERIFY WITH THE REGISTRAR THE LICENSE NUMBERS OF
7 ALL CONTRACTORS AND SUBCONTRACTORS. A LICENSEE SHALL MAINTAIN A LIST OF THE
8 LICENSE NUMBERS OF ALL CONTRACTORS AND SUBCONTRACTORS FOR THREE YEARS AFTER
9 PROJECT COMPLETION.

10 Sec. 2. Section 32-1155, Arizona Revised Statutes, is amended to read:

11 32-1155. Filing of complaint; resolution of complaint; service
12 of notice; failure to answer

13 A. Upon the filing of a written complaint with the registrar charging
14 a licensee with the commission, within two years prior to the date of filing
15 the complaint, of an act that is cause for suspension or revocation of a
16 license, the registrar after investigation may issue a citation or upon
17 written request of the complainant may issue a citation directing the
18 licensee, within ten days after service of the citation upon the licensee, to
19 appear by filing with the registrar the licensee's written answer to the
20 citation and complaint showing cause, if any, why the licensee's license
21 should not be suspended or revoked. Service of citation upon the licensee
22 shall be fully effected by personal service or by mailing a true copy
23 thereof, together with a true copy of the complaint, by registered mail in a
24 sealed envelope with postage prepaid and addressed to the licensee at the
25 licensee's latest address of record in the registrar's office. Service of
26 the citation and complaint shall be complete at the time of personal service
27 or five days after deposit in the mail. **THE TWO YEAR PERIOD PRESCRIBED BY**
28 **THIS SUBSECTION SHALL BE TWO YEARS AFTER THE CLOSE OF ESCROW OR ACTUAL**
29 **OCCUPANCY WHICHEVER OCCURS FIRST.**

30 B. Failure of the licensee to answer within ten days after service
31 shall be deemed an admission by the licensee of the licensee's commission of
32 the act or acts charged in the complaint and the registrar may then suspend
33 or revoke the licensee's license.

34 Sec. 3. Section 32-1158, Arizona Revised Statutes, is amended to read:

35 32-1158. Minimum elements of a contract

36 A. From and after December 31, 1992, any contract in an amount of more
37 than one thousand dollars ~~and less than one hundred fifty thousand dollars~~
38 entered into between a contractor and the owner of a property to be improved
39 shall contain in writing at least the following information:

40 1. The name of the contractor and the contractor's business address
41 and license number.

42 2. The name and mailing address of the owner and the jobsite address
43 or legal description.

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

1 4. The estimated date of completion of all work to be performed under
2 the contract.

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

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

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

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

12 9. THAT THE PROPERTY OWNER HAS RIGHTS UNDER THE CONTRACT, INCLUDING
13 RIGHTS FOR RECOURSE. THE CONTRACT SHALL STATE THAT THE PROPERTY OWNER MAY
14 CONTACT THE REGISTRAR FOR SPECIFIC INFORMATION ON ALL OF THE PROPERTY OWNER'S
15 RIGHTS AND SHALL CONTAIN THE REGISTRAR'S TELEPHONE NUMBER AND WEBSITE
16 ADDRESS. THE CONTRACT SHALL DISCLOSE THAT COMPLAINTS ON WORKMANSHIP ISSUES
17 MAY BE MADE TO THE REGISTRAR'S OFFICE AND THAT COMPLAINTS MUST BE MADE WITHIN
18 TWO YEARS AFTER THE CLOSE OF ESCROW OR ACTUAL OCCUPANCY, WHICHEVER OCCURS
19 FIRST. THE INFORMATION IN THIS PARAGRAPH MUST BE INCLUDED IN THE CONTRACT IN
20 FOURTEEN POINT BOLD FACED TYPE AND SHALL BE SIGNED BY THE PROPERTY OWNER AND
21 THE CONTRACTOR.

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

25 C. The requirements of this section shall not constitute prerequisites
26 to the formation or enforcement of a contract. Failure to comply with the
27 requirements of this section shall not constitute a defense by either party
28 to an action for compensation, damages, breach, enforcement or other cause of
29 action based on the contract.

30 Sec. 4. Section 32-1164, Arizona Revised Statutes, is amended to read:
31 32-1164. Violation: classification

32 A. Commission by a contractor of ~~any~~ EITHER of the following acts is a
33 class 1 misdemeanor:

34 1. Any act specified in section 32-1154, subsection A, paragraph 7 or
35 10.

36 2. Acting in the capacity of a contractor within the meaning of this
37 chapter without a license.

38 B. For the first offense under subsection A of this section, a
39 contractor shall be fined not less than one thousand dollars. For the second
40 or any subsequent offense under subsection A of this section, a contractor
41 shall be fined not less than two thousand dollars.

42 C. IF A LICENSEE FAILS TO COMPLY WITH SECTION 32-1154, SUBSECTION G:
43 1. FOR AN INITIAL VIOLATION, THE REGISTRAR SHALL NOTIFY THE LICENSEE
44 OF THE VIOLATION AND SHALL GIVE THE LICENSEE WRITTEN INFORMATION RELATING TO
45 THE LICENSEE'S OBLIGATIONS UNDER THIS CHAPTER.

1 2. FOR A SECOND VIOLATION, THE LICENSEE IS GUILTY OF A CLASS 2
2 MISDEMEANOR IF BOTH OF THE FOLLOWING APPLY:

3 (a) THE VIOLATION OCCURS AT LEAST THIRTY DAYS AFTER THE INITIAL
4 VIOLATION OCCURS AND THE LICENSEE RECEIVED INFORMATION FROM THE REGISTRAR
5 PURSUANT TO PARAGRAPH 1 OF THIS SUBSECTION.

6 (b) THE VIOLATION RESULTS FROM A DIFFERENT SET OF FACTS AND
7 CIRCUMSTANCES THAN THE INITIAL VIOLATION.

8 3. FOR A THIRD OR SUBSEQUENT VIOLATION, THE LICENSEE IS GUILTY OF A
9 CLASS 1 MISDEMEANOR IF BOTH OF THE FOLLOWING APPLY:

10 (a) THE VIOLATION OCCURS AT LEAST THIRTY DAYS AFTER THE SECOND
11 VIOLATION OCCURS.

12 (b) THE VIOLATION RESULTS FROM A DIFFERENT SET OF FACTS AND
13 CIRCUMSTANCES THAN A PRIOR VIOLATION.

14 Sec. 5. Section 32-1169, Arizona Revised Statutes, is amended to read:
15 32-1169. Local proof of valid license; violation; penalty

16 A. Each county, city or other political subdivision or authority of
17 this state or any agency, department, board or commission of this state which
18 requires the issuance of a building permit as a condition precedent to the
19 construction, alteration, improvement, demolition or repair of a building,
20 structure or other improvement to real property for which a license is
21 required under this chapter, as part of the application procedures which it
22 utilizes, shall require that each applicant for a building permit file a
23 signed statement that the applicant is currently licensed under the
24 provisions of this chapter with the applicant's license number and the
25 applicant's privilege license number required pursuant to section 42-5005.
26 **BEFORE ISSUING ANY BUILDING PERMIT, THE COUNTY, CITY OR OTHER POLITICAL**
27 **SUBDIVISION OR AUTHORITY OF THIS STATE OR ANY AGENCY, DEPARTMENT, BOARD OR**
28 **COMMISSION OF THIS STATE SHALL VERIFY THE APPLICANT'S LICENSE NUMBER AND**
29 **STATUS WITH THE REGISTRAR.** If the applicant purports to be exempt from the
30 licensing requirements of this chapter, the statement shall contain the basis
31 of the asserted exemption and the name and license number of any general,
32 mechanical, electrical or plumbing contractor who will be employed on the
33 work. The local issuing authority may require from the applicant a statement
34 signed by the registrar to verify any purported exemption.

35 B. The filing of an application containing false or incorrect
36 information concerning an applicant's contractor's license or transaction
37 privilege license with the intent to avoid the licensing requirements of this
38 chapter is unsworn falsification pursuant to section 13-2704.