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CHAPTER 88

S.B. 1375

CONTRACTORS—LICENSES AND PERMITS

AN ACT AMENDING SECTIONS 32-1101, 32-1122, 32-1151.01 AND 32-1154, ARIZONA REVISED STATUTES; RELATING TO CONTRACTORS.

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

Section 1. Section 32-1101, Arizona Revised Statutes, is amended to read:

<< AZ ST § 32-1101 >>

§ 32-1101. Definitions

A. In this chapter, unless the context otherwise requires:

1. "Advertisement" means any written or oral publication, dissemination, solicitation or circulation that is intended to directly or indirectly induce any person to enter into an agreement for contracting services with a contractor, including business cards and telephone directory display advertisements.

2. "Commercial contractor" is synonymous with the terms "commercial builder", "industrial builder" and "public works builder" and means any person, firm, partnership, corporation, association or other organization, or any combination, that, for compensation, undertakes to or offers to undertake to, purports to have the capacity to undertake to, submits a bid to, does himself or by or through others, or directly or indirectly supervises others, except within residential property lines, to:

(a) Construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, railroad, excavation or other structure, project, development or improvement, or to do any part thereof, including the erection of scaffolding or any other structure or work in connection with the construction.

(b) Connect such a structure or improvements to utility service lines and metering devices and the sewer line.

(c) Provide mechanical or structural service for any such structure or improvements.

3. "Contractor" is synonymous with the term "builder" and means any person, firm, partnership, corporation, association or other organization, or a combination of any of them, that, for compensation, undertakes to or offers to undertake to, purports to have the capacity to undertake to, submits a bid or responds to a request for qualification

or a request for proposals for construction services to, does himself or by or through others, or directly or indirectly supervises others to:

(a) Construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, railroad, excavation or other structure, project, development or improvement, or to do any part thereof, including the erection of scaffolding or any other structure or work in connection with the construction.

(b) Connect such a structure or improvements to utility service lines and metering devices and the sewer line.

(c) Provide mechanical or structural service for any such structure or improvements.

4. “Dual licensed contractor” is synonymous with the term “commercial and residential builder” and means any person, firm, partnership, corporation, association or other organization, or any combination, that undertakes to or offers to undertake to, purports to have the capacity to undertake to, submits a bid to, does himself or by or through others, or directly or indirectly supervises others under a single license on commercial or residential property to:

(a) Construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, excavation or other structure or improvement, including any appurtenances, or to do any part thereof.

(b) Connect such a structure or improvements to utility service lines and metering devices and the sewer line.

(c) Provide mechanical or structural service for any such structure or improvements.

5. “License” means an authorization for the person who is listed on the electronic, paper or other records maintained by the registrar to act in the capacity of a contractor.

6. “Named on a license” means required to be identified pursuant to section 32–1122, subsection B.

~~6.~~ **7. “Person” means an applicant, an individual, a member of a limited liability company, a qualifying party, any partner of a partnership or limited liability partnership or any officer, director, qualifying party, trustee of a trust, beneficiary of a trust or owner of at least twenty-five percent of the stock or beneficial interest of a corporation, company, partnership, firm, association, trust, society or natural person.**

~~7.~~ **8. “Registrar” means the registrar of contractors.**

~~8.~~ **9. “Residential contractor” is synonymous with the term “residential builder” and means any person, firm, partnership, corporation, association or other organization, or a combination of any of them, that undertakes to or offers to undertake to, purports to have the capacity to undertake to, submits a bid to, or does himself or by or through others, within residential property lines:**

(a) Construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any residential structure, such as houses, townhouses, condominiums or cooperative units. Residential structures also include apartment complexes of four units or less and any appurtenances on or within residential property lines.

(b) Connect such a residential structure to utility service lines, metering devices or sewer lines.

(c) Provide mechanical or structural service for any such residential structure.

B. “Contractor” includes subcontractors, specialty contractors, floor covering contractors, landscape contractors, other than gardeners, and consultants representing themselves as having the ability to supervise or manage a construction project for the benefit of the property owner, including the hiring and firing of specialty contractors, the scheduling of work on the project and the selection and purchasing of construction material.

C. For the purposes of this chapter, residential contractor does not include an owner making improvements pursuant to section 32–1121, subsection A, paragraph 5.

D. Only contractors as defined in this section are licensed and regulated by this chapter.

Sec. 2. Section 32–1122, Arizona Revised Statutes, is amended to read:

<< AZ ST § 32–1122 >>

§ 32–1122. Qualifications for license

A. A contractor's license shall be issued only by act of the registrar of contractors. The registrar shall:

1. Classify and qualify applicants for a license.
2. If necessary, change the license classification of a licensee in the case of a title reclassification, with or without a bond rider for the purpose of continuing liability on the bond.
3. Conduct investigations the registrar deems necessary.
4. Establish written examinations if deemed necessary to protect the health and safety of the public.

B. To obtain, ~~or~~ **renew or maintain** a license under this chapter, the applicant **or licensee** shall:

1. Submit to the registrar of contractors a verified application on forms that are prescribed by the registrar of contractors and that contain the following information ~~and shall advise the registrar of any change in the information within thirty days~~ :

- (a) A designation of the classification of license that is sought by the applicant.
- (b) If the applicant is ~~an individual~~ **a sole proprietorship**, the applicant's name and address.
- (c) If the applicant is a partnership, the names and addresses of all partners with a designation of any limited partners.
- (d) If the applicant is a limited liability company, the names and addresses of all of the following, as applicable:**
 - (i) If the applicant is a manager-managed limited liability company, all managers.**
 - (ii) If the applicant is a member-managed limited liability company, all members.**
 - (iii) All owners of twenty-five percent or more of the stock or beneficial interest.**
- (~~d~~) (e) If the applicant is a corporation, an association or any other organization, the names and addresses of all of the following:**

(i) The president, ~~vice-president, if any~~ **vice president**, secretary and treasurer or the names and addresses of the functional equivalent of **all of** these officers.

(ii) The directors.

(iii) and The owners of twenty-five percent or more of the stock or beneficial interest.

(e) (f) The name and address of the qualifying party.

(f) (g) If the applicant is a **limited liability company** or corporation, evidence that the **limited liability company** or corporation is in good standing with the corporation commission.

(g) (h) The address or location of the applicant's place of business and the mailing address if it is different from the applicant's place of business.

(h) (i) Proof that the applicant has complied with the statutes or rules governing workers' compensation insurance.

2. Submit the appropriate ~~bond and~~ fee required under this chapter.

3. Submit and maintain the appropriate bond required under this chapter.

4. Notify the registrar of any change in the information required by this section within thirty days after the change occurs.

C. To obtain, or renew or maintain a license under this chapter, each person who is named on a license shall be of good character and reputation. Lack of good character and reputation may be established by showing that a person has engaged in contracting without a license or committed any act that, if committed or done by any licensed contractor, would be grounds for suspension or revocation of a contractor's license or by showing that the person was named on a contractor's license that was suspended or revoked in another state.

D. To obtain a license under this chapter, a person shall not have had a license refused or revoked, within one year before the person's application, or shall not have engaged in the contracting business, nor shall the person have submitted a bid without first having been licensed within one year before the person's application, nor shall a person act as a contractor between the filing of the application and actual issuance of the license. The registrar may find any of those actions or circumstances to be excusable if there was reasonable doubt as to the need for licensure or the actions of the applicant did not result in an unremedied hardship or danger or loss to the public. A person who has been convicted of contracting without a license is not eligible to obtain a license under this chapter for one year after the date of the last conviction.

E. Before a license is issued, the qualifying party shall:

1. Have a minimum of four years' practical or management trade experience, at least two of which must have been within the last ten years, dealing specifically with the type of construction, or its equivalent, for which the applicant is applying for a license. Technical training in an accredited college or university or in a manufacturer's accredited training program may be substituted for a portion of such experience, but in no case may credited technical training exceed two years of the required four years' experience. The registrar of contractors may reduce the four years' practical or management experience requirement if in the registrar's opinion it has been conclusively shown by custom and usage in the particular industry or craft involved that the four-year requirement is excessive. The registrar may waive the work experience documentation and verification or the examination requirement if the records reflect that the qualifying party is currently or has previously been a qualifying party for a licensee in this state in the same classification within the preceding five years.

2. Successfully show, by written examination taken not more than two years before application, if required, qualification in the kind of work for which the applicant proposes to contract, the applicant's general knowledge of the building, safety, health and lien laws of the state, administrative principles of the contracting business and the rules adopted by the registrar of contractors pursuant to this chapter, demonstrate knowledge and understanding of construction plans and specifications applicable to the particular industry or craft and of the standards of construction work and techniques and practices in the particular industry or craft and demonstrate a general understanding of other related construction trades, in addition to any other matters as may be deemed appropriate by the registrar to determine that the qualifying party meets the requirements of this chapter. The registrar shall maintain multiple versions of examinations for each type of license that requires an examination.

F. No A license shall **not** be issued to a minor, to any partnership in which one of the partners is a minor or to any corporation in which a corporate officer is a minor.

G. Before receiving, renewing and holding a license pursuant to this chapter, the registrar may require a license applicant or licensee to submit to the registrar a full set of fingerprints and the fees required in section 41-1750. The registrar shall submit the fingerprints and fees to the department of public safety for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.

Sec. 3. Section 32-1151.01, Arizona Revised Statutes, is amended to read:

<< AZ ST § 32-1151.01 >>

§ 32-1151.01. Change in ownership; notice to registrar

A corporation, association or other organization ~~which~~ **that** is a licensed contractor shall immediately notify the registrar of any transfer of ownership of ~~fifty per cent~~ **twenty-five percent** or more of the stock or beneficial interest in the company.

Sec. 4. Section 32-1154, Arizona Revised Statutes, is amended to read:

<< AZ ST § 32-1154 >>

§ 32-1154. Grounds for suspension or revocation of license; continuing jurisdiction; civil penalty; recovery fund award; summary suspension

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

1. Abandonment of a contract or refusal to perform after submitting a bid on work without legal excuse for the abandonment or refusal.
2. Departure from or disregard of plans or specifications or any building codes of ~~the~~ **this** state or any political subdivision of ~~the~~ **this** state in any material respect that is prejudicial to another without consent of the owner or the owner's duly authorized representative and without the consent of the person entitled to have the particular construction project or operation completed in accordance with such plans and specifications and code.
3. Violation of any rule adopted by the registrar.

4. Failure to comply with the statutes or rules governing social security, workers' compensation or unemployment insurance.
5. Misrepresentation of a material fact by the applicant in obtaining a license.
6. The doing of a fraudulent act by the licensee as a contractor resulting in another person being substantially injured.
7. Conviction of a felony.
8. Failure in a material respect by the licensee to complete a construction project or operation for the price stated in the contract, or in any modification of the contract.
9. Aiding or abetting a licensed or unlicensed person to evade this chapter, knowingly or recklessly combining or conspiring with a licensed or unlicensed person, allowing one's license to be used by a licensed or unlicensed person or acting as agent, partner, associate or otherwise of a licensed or unlicensed person with intent to evade this chapter.
10. Failure by a licensee or agent or official of a licensee to pay monies in excess of seven hundred fifty dollars when due for materials or services rendered in connection with the licensee's operations as a contractor when the licensee has the capacity to pay or, if the licensee lacks the capacity to pay, when the licensee has received sufficient monies as payment for the particular construction work project or operation for which the services or materials were rendered or purchased.
11. Failure of a contractor to comply with any safety or labor laws or codes of the federal government, **this** state or political subdivisions of ~~the~~ **this** state.
12. Failure in any material respect to comply with this chapter.
13. Knowingly entering into a contract with a contractor for work to be performed for which a license is required with a person **that is** not duly licensed in the required classification.
14. Acting in the capacity of a contractor under any license issued under this chapter in a name other than as set forth on the license.
15. False, misleading or deceptive advertising whereby any member of the public may be misled and injured.
16. Knowingly contracting beyond the scope of the license or licenses of the licensee.
17. Contracting or offering to contract or submitting a bid while the license is under suspension or while the license is on inactive status.
18. Failure to notify the registrar in writing within a period of fifteen days of any disassociation of the person who qualified for the license. ~~Such~~ **The** licensee shall have sixty days from the date of ~~such~~ disassociation to qualify through another person.
19. Subsequent discovery of facts that if known at the time of issuance of a license or the renewal of a license would have been grounds to deny the issuance or renewal of a ~~a~~ **the** license.
20. Having a person named on the license who is or was named on any other license in this state or in another state that is under suspension or revocation for any act or omission that occurs while the person is or was named on the license unless the prior revocation was based solely on a violation of this paragraph.

21. Continuing a new ~~single-family~~ **single-family** residential construction project with actual knowledge that a pretreatment wood-destroying pests or organisms application was either:

(a) Not performed at the required location.

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

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

23. Prohibit, threaten to prohibit, retaliate **against**, threaten to retaliate **against** or otherwise intimidate any contractor or materialman from serving a preliminary notice pursuant to section 33-992.01.

24. For contractors ~~as defined in section 32-1101~~, failure to comply with title 44, chapter 11, article 11.

B. The registrar may on the registrar's own motion, and shall on the written complaint of any owner or contractor that is a party to a construction contract or a person who suffers a material loss or injury as a result of a contractor's failure to perform work in a professional and workmanlike manner or in accordance with any applicable building codes and professional industry standards, investigate the acts of any contractor within this state and may temporarily suspend, with or without imposition of specific conditions in addition to increased surety bond or cash deposit requirements, or permanently revoke any or all licenses issued under this chapter if the holder of the license issued pursuant to this chapter is guilty of or commits any of the acts or omissions set forth in subsection A of this section. For the purposes of this subsection:

1. "Construction contract" means a written or oral agreement relating to the construction, alteration, repair, maintenance, moving or demolition of any building, structure or improvement or relating to the contractor's excavation of or other development or improvement to land if the registrar investigates the contractor's actions under this subsection.

2. "Owner" means any person, firm, partnership, corporation, association or other organization, or a combination of any of them, that causes a building, structure or improvement to be constructed, altered, repaired, maintained, moved or demolished or that causes land to be excavated or otherwise developed or improved, whether the interest or estate of the person is in fee, as vendee under a contract to purchase, as lessee or another interest or estate less than fee, pursuant to a construction contract.

C. Pursuant to this chapter, the registrar shall temporarily suspend or permanently revoke the license issued to a person under this chapter on notice from the department of revenue that a tax debt related to income taxes, withholding taxes or any tax imposed or administered by title 42, chapter 5 that was incurred in the operation of the licensed business has become final and the person neglects to pay or refuses to pay the tax debt.

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

E. The registrar may impose a civil penalty of not to exceed five hundred dollars on a contractor for each violation of subsection A, paragraph 22 of this section. Civil penalties collected pursuant to this subsection shall be deposited in the residential contractors' recovery fund. The failure by the licensee to pay any civil penalty imposed under this subsection results in the automatic revocation of the license thirty days after the effective date of the order providing for the civil penalty. ~~No future license may be issued to an entity consisting of a person, as defined in section 32-1101, who is associated with the contractor, unless payment of any outstanding civil penalty is tendered.~~ **A person who is or was named on a license of a contractor when an act or omission occurs that results in a civil penalty may not receive a new license under this chapter until the entire civil penalty is paid.**

F. The registrar shall impose a civil penalty of not to exceed one thousand dollars on a contractor for each violation of subsection A, paragraph 17 of this section. Civil penalties collected pursuant to this subsection shall be deposited in the residential contractors' recovery fund. The failure by the licensee to pay any civil penalty imposed under this subsection results in the automatic permanent revocation of the license thirty days after the effective date of the order providing for the civil penalty. ~~No future license may be issued to an entity consisting of a person, as defined in section 32-1101, who is associated with the contractor, unless payment of any outstanding civil penalty is tendered.~~ **A person who is or was named on a license of a contractor when an act or omission occurs that results in a civil penalty may not receive a new license under this chapter until the entire civil penalty is paid.**

G. Notwithstanding any other provisions in this chapter, if a contractor's license has been revoked or has been suspended as a result of an order to remedy a violation of this chapter, the registrar may order payment from the residential contractors' recovery fund to remedy the violation. The registrar shall serve the contractor with a notice setting forth the amount claimed or to be awarded. If the contractor contests the amount or propriety of the payment, the contractor shall respond within ten days of the date of service by requesting a hearing to determine the amount or propriety of the payment. Failure by the contractor to respond in writing within ten days of the date of service shall be deemed a waiver by the contractor of the right to contest the amount claimed or to be awarded. Service may be made by personal service to the contractor or by mailing a copy of the notice by registered mail with postage prepaid to the contractor's latest address of record on file in the registrar's office. If service is made by registered mail, it is effective five days after the notice is mailed. Except as provided in section 41-1092.08, subsection H, the contractor or injured person may seek judicial review of the registrar's final award pursuant to title 12, chapter 7, article 6. An applicant to the residential contractors' recovery fund pursuant to this subsection must show that the applicant has proceeded against any existing bond covering the residential contractor and has not collected on the bond in an amount of thirty thousand dollars or more.

Approved by the Governor, March 27, 2018.

Filed in the Office of the Secretary of State, March 27, 2018.