

REFERENCE TITLE: licensed contractors; developers; exemption

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

SB 1194

Introduced by
Senator Flake

AN ACT

AMENDING SECTIONS 32-1101 AND 32-1121, 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 32-1101, Arizona Revised Statutes, is amended to
3 read:

4 32-1101. Definitions

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

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

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

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

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

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

27 3. "Contractor" is synonymous with the term "builder" and means any
28 person, firm, partnership, corporation, association or other organization, or
29 ~~a~~ ANY combination of any of them, that, for compensation, undertakes to or
30 offers to undertake to, purports to have the capacity to undertake to,
31 submits a bid or responds to a request for qualification or a request for
32 proposals for construction services to, does himself or by or through others,
33 or directly or indirectly supervises others to:

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

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

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

43 4. "Dual licensed contractor" is synonymous with the term "commercial
44 and residential builder" and means any person, firm, partnership,
45 corporation, association or other organization, or any combination, that

1 undertakes to or offers to undertake to, purports to have the capacity to
2 undertake to, submits a bid to, does himself or by or through others, or
3 directly or indirectly supervises others under a single license on commercial
4 or residential property to:

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

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

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

12 5. "Person" means an applicant, an individual, a member of a limited
13 liability company, a qualifying party, any partner of a partnership or
14 limited liability partnership or any officer, director, qualifying party,
15 trustee of a trust, beneficiary of a trust or owner of at least twenty-five
16 per cent of the stock or beneficial interest of a corporation.

17 6. "Registrar" means the registrar of contractors.

18 7. "Residential contractor" is synonymous with the term "residential
19 builder" and means any person, firm, partnership, corporation, association or
20 other organization, or ~~a~~ ANY combination of any of them, that undertakes to
21 or offers to undertake to, purports to have the capacity to undertake to,
22 submits a bid to, or does himself or by or through others, within residential
23 property lines:

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

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

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

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

39 C. For the purposes of this chapter, ~~"residential contractor"~~ does
40 not include an owner making improvements pursuant to section 32-1121,
41 subsection A, paragraph 5 OR 17.

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

1 Sec. 2. Section 32-1121, Arizona Revised Statutes, is amended to read:
2 32-1121. Persons not required to be licensed; penalties

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

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

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

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

15 4. Any materialman, manufacturer or retailer furnishing finished
16 products, materials or articles of merchandise who does not install or attach
17 such items or installs or attaches such items if the total value of the sales
18 contract or transaction involving such items and the cost of the installation
19 or attachment of such items to a structure does not exceed one thousand
20 dollars, including labor, materials and all other items, but excluding any
21 electrical fixture or appliance that was designed by the manufacturer, that
22 is unaltered, unchanged or unmodified by any person, that can be plugged into
23 a common household electrical outlet utilizing a two pronged or three pronged
24 electrical connector and that does not use any other form of energy,
25 including natural gas, propane or other petroleum or gaseous fuel, to operate
26 or is attached by a nail, screw or other fastening device to the frame or
27 foundation of any residential structure. The materialman, manufacturer or
28 retailer shall inform the purchaser that the installation may also be
29 performed by a licensed contractor whose name and address the purchaser may
30 request.

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

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

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

15 (a) Subsurface utility location and designation services.

16 (b) Potholing.

17 (c) Drilling for any of the following:

18 (i) Soil samples.

19 (ii) Rock samples.

20 (iii) Pavement samples.

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

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

27 9. The sale or installation of finished products, materials or
28 articles of merchandise which are not fabricated into and do not become a
29 permanent fixed part of the structure. This exemption does not apply if a
30 local building permit is required, if the total price of the finished
31 product, material or article of merchandise, including labor but excluding
32 any electrical fixture or appliance that was designed by the manufacturer,
33 that is unaltered, unchanged or unmodified by any person, that can be plugged
34 into a common household electrical outlet utilizing a two pronged or three
35 pronged electrical connector and that does not use any other form of energy,
36 including natural gas, propane or other petroleum or gaseous fuel, to operate
37 or is attached by a nail, screw or other fastening device to the frame or
38 foundation of any residential structure, is more than one thousand dollars or
39 if the removal of the finished product, material or article of merchandise
40 causes damage to the structure or renders the structure unfit for its
41 intended use.

42 10. Employees of the owners of condominiums, townhouses, cooperative
43 units or apartment complexes of four units or less or the owners' management
44 agent or employees of the management agent repairing or maintaining
45 structures owned by them.

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

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

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

12 14. Any person other than a licensed contractor engaging in any work or
13 operation on one undertaking or project by one or more contracts, for which
14 the aggregate contract price, including labor, materials and all other items,
15 but excluding any electrical fixture or appliance that was designed by the
16 manufacturer, that is unaltered, unchanged or unmodified by any person, that
17 can be plugged into a common household electrical outlet utilizing a two
18 pronged or three pronged electrical connector and that does not use any other
19 form of energy, including natural gas, propane or other petroleum or gaseous
20 fuel, to operate or is attached by a nail, screw or other fastening device to
21 the frame or foundation of any residential structure, is less than one
22 thousand dollars. The work or operations which are exempt under this
23 paragraph shall be of a casual or minor nature. This exemption does not
24 apply:

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

27 (b) In any case in which the work or construction is only a part of a
28 larger or major operation, whether undertaken by the same or a different
29 contractor, or in which a division of the operation is made in contracts of
30 amounts less than one thousand dollars, excluding any electrical fixture or
31 appliance that was designed by the manufacturer, that is unaltered, unchanged
32 or unmodified by any person, that can be plugged into a common household
33 electrical outlet utilizing a two pronged or three pronged electrical
34 connector and that does not use any other form of energy, including natural
35 gas, propane or other petroleum or gaseous fuel, to operate or is attached by
36 a nail, screw or other fastening device to the frame or foundation of any
37 residential structure, for the purpose of evasion of this chapter or
38 otherwise.

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

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

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

3 17. OWNERS OF PROPERTY WHO ARE ACTING AS DEVELOPERS, WHO BUILD
4 STRUCTURES OR APPURTENANCES TO STRUCTURES ON THEIR PROPERTY FOR THE PURPOSE
5 OF SALE OR RENT AND WHO DO NOT CONTRACT FOR SUCH A PROJECT WITH A GENERAL
6 CONTRACTOR LICENSED PURSUANT TO THIS CHAPTER AND OWNERS OF PROPERTY WHO ARE
7 ACTING AS DEVELOPERS, WHO IMPROVE STRUCTURES OR APPURTENANCES TO STRUCTURES
8 ON THEIR PROPERTY FOR THE PURPOSE OF SALE OR RENT AND WHO DO NOT CONTRACT FOR
9 SUCH A PROJECT WITH A GENERAL CONTRACTOR OR SPECIALTY CONTRACTORS LICENSED
10 PURSUANT TO THIS CHAPTER. TO QUALIFY FOR THE EXEMPTION UNDER THIS PARAGRAPH,
11 BOTH OF THE FOLLOWING MUST APPLY:

12 (a) THE PROPERTY DOES NOT CONTAIN MORE THAN FOUR DWELLING UNITS. FOR
13 THE PURPOSES OF THIS SUBDIVISION, "DWELLING UNIT" MEANS A STRUCTURE OR THE
14 PART OF A STRUCTURE THAT IS USED AS A HOME, RESIDENCE OR SLEEPING PLACE BY
15 ONE PERSON WHO MAINTAINS A HOUSEHOLD OR BY TWO OR MORE PERSONS WHO MAINTAIN A
16 COMMON HOUSEHOLD.

17 (b) THE OWNERS APPLY FOR AND RECEIVE ALL OF THE INSPECTIONS AND PERMITS
18 FOR THE PROJECT AS REQUIRED BY LAW.

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

23 C. Any person who does not have an exemption from licensure pursuant
24 to subsection A, paragraph 14, subdivision (c) of this section is subject to
25 prosecution for a violation of section 44-1522. The attorney general may
26 investigate the act or practice and take appropriate action pursuant to title
27 44, chapter 10, article 7.