

State of Arizona
Senate
Forty-eighth Legislature
Second Regular Session
2008

SENATE BILL 1417

AN ACT

AMENDING SECTIONS 32-1121, 32-1154 AND 32-1155, ARIZONA REVISED STATUTES;
AMENDING TITLE 32, CHAPTER 10, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 5;
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~~ WHO FURNISHES
18 finished products, materials or articles of merchandise AND who does not
19 install or attach such items or installs or attaches such items if the total
20 value of the sales contract or transaction involving such items and the cost
21 of the installation or attachment of such items to a structure does not
22 exceed 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, EXCEPT AN
41 ACTION AGAINST AN OWNER-OCCUPANT AS DEFINED IN SECTION 33-1002, proof of the
42 sale or rent or the offering for sale or rent of any such structure by the
43 owner-builder within one year after completion or issuance of a certificate
44 of occupancy is prima facie evidence that such project was undertaken for the
45 purpose of sale or rent. For the purposes of this paragraph, "sale" or

1 "rent" includes any arrangement by which the owner receives compensation in
2 money, provisions, chattels or labor from the occupancy or the transfer of
3 the property or the structures on the property.

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

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

18 (a) Subsurface utility location and designation services.

19 (b) Potholing.

20 (c) Drilling for any of the following:

21 (i) Soil samples.

22 (ii) Rock samples.

23 (iii) Pavement samples.

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

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

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

1 10. Employees of the owners of condominiums, townhouses, cooperative
2 units or apartment complexes of four units or less or the owners' management
3 agent or employees of the management agent repairing or maintaining
4 structures owned by them.

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

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

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

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

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

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

43 (c) To a person who utilizes any form of advertising to the public in
44 which the person's unlicensed status is not disclosed by including the words
45 "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 32-1154, Arizona Revised Statutes, is amended to read:

16 32-1154. Grounds for suspension or revocation of license;
17 continuing jurisdiction; civil penalty; recovery
18 fund award; summary suspension

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

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

23 2. Departure from or disregard of plans or specifications or any
24 building codes of the state or any political subdivision of the state in any
25 material respect which is prejudicial to another without consent of the owner
26 or the owner's duly authorized representative and without the consent of the
27 person entitled to have the particular construction project or operation
28 completed in accordance with such plans and specifications and code.

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

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

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

35 6. Misrepresentation of a material fact by the applicant in obtaining
36 a license.

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

39 8. Conviction of a felony.

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

43 10. Aiding or abetting a licensed or unlicensed person to evade this
44 chapter, knowingly or recklessly combining or conspiring with a licensed or
45 unlicensed person, allowing one's license to be used by a licensed or

1 unlicensed person or acting as agent, partner, associate or otherwise of a
2 licensed or unlicensed person with intent to evade this chapter.

3 11. Failure by a licensee or agent or official of a licensee to pay
4 monies in excess of seven hundred fifty dollars when due for materials or
5 services rendered in connection with the licensee's operations as a
6 contractor when the licensee has the capacity to pay or, if the licensee
7 lacks the capacity to pay, when the licensee has received sufficient monies
8 as payment for the particular construction work project or operation for
9 which the services or materials were rendered or purchased.

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

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

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

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

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

21 17. Knowingly contracting beyond the scope of the license or licenses
22 of the licensee.

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

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

29 20. Subsequent discovery of facts which if known at the time of
30 issuance of a license or the renewal of a license would have been grounds to
31 deny the issuance or renewal of a license.

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

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

39 (a) Not performed at the required location.

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

42 23. Failure to take appropriate corrective action to comply with this
43 chapter or with rules adopted pursuant to this chapter without valid
44 justification within a reasonable period of time after receiving a written
45 directive from the registrar. The written directive shall set forth the time

1 within which the contractor is to complete the remedial action. The time
2 permitted for compliance shall not be less than fifteen days from the date of
3 issuance of the directive. A license shall not be revoked or suspended nor
4 shall any other penalty be imposed for a violation of this paragraph until
5 after a hearing has been held.

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

9 B. The registrar may on the registrar's own motion, and shall on the
10 written complaint of any ~~person~~ OWNER OR CONTRACTOR THAT IS A PARTY TO A
11 CONSTRUCTION CONTRACT OR A PERSON WHO SUFFERS A MATERIAL LOSS OR INJURY AS A
12 RESULT OF A CONTRACTOR'S FAILURE TO PERFORM WORK IN A PROFESSIONAL AND
13 WORKMANLIKE MANNER OR IN ACCORDANCE WITH ANY APPLICABLE BUILDING CODES AND
14 PROFESSIONAL INDUSTRY STANDARDS, investigate the acts of any contractor
15 within this state and may temporarily suspend, with or without imposition of
16 specific conditions in addition to increased surety bond or cash deposit
17 requirements, or permanently revoke any or all licenses issued under this
18 chapter if the holder of the license issued pursuant to this chapter is
19 guilty of or commits any of the acts or omissions set forth in subsection A
20 of this section. FOR THE PURPOSES OF THIS SUBSECTION:

21 1. "CONSTRUCTION CONTRACT" MEANS A WRITTEN OR ORAL AGREEMENT RELATING
22 TO THE CONSTRUCTION, ALTERATION, REPAIR, MAINTENANCE, MOVING OR DEMOLITION OF
23 ANY BUILDING, STRUCTURE OR IMPROVEMENT OR RELATING TO THE CONTRACTOR'S
24 EXCAVATION OF OR OTHER DEVELOPMENT OR IMPROVEMENT TO LAND IF THE REGISTRAR
25 INVESTIGATES THE CONTRACTOR'S ACTIONS UNDER THIS SUBSECTION.

26 2. "OWNER" MEANS ANY PERSON, FIRM, PARTNERSHIP, CORPORATION,
27 ASSOCIATION OR OTHER ORGANIZATION, OR A COMBINATION OF ANY OF THEM, THAT
28 CAUSES A BUILDING, STRUCTURE OR IMPROVEMENT TO BE CONSTRUCTED, ALTERED,
29 REPAIRED, MAINTAINED, MOVED OR DEMOLISHED OR THAT CAUSES LAND TO BE EXCAVATED
30 OR OTHERWISE DEVELOPED OR IMPROVED, WHETHER THE INTEREST OR ESTATE OF THE
31 PERSON IS IN FEE, AS VENDEE UNDER A CONTRACT TO PURCHASE, AS LESSEE OR
32 ANOTHER INTEREST OR ESTATE LESS THAN FEE, PURSUANT TO A CONSTRUCTION
33 CONTRACT.

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

41 D. The registrar may impose a civil penalty of not to exceed five
42 hundred dollars on a contractor for each violation of subsection A, paragraph
43 23 of this section. Civil penalties collected pursuant to this subsection
44 shall be deposited in the residential contractors' recovery fund. The
45 failure by the licensee to pay any civil penalty imposed under this

1 subsection results in the automatic revocation of the license thirty days
2 after the effective date of the order providing for the civil penalty. No
3 future license may be issued to an entity consisting of a person associated
4 with the contractor, as defined in section 32-1101, subsection A, paragraph
5 5, unless payment of any outstanding civil penalty is tendered.

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

16 F. Notwithstanding any other provisions in this chapter, if a
17 contractor's license has been revoked or has been suspended as a result of an
18 order to remedy a violation of this chapter, and the contractor refuses or is
19 unable to comply with the order of the registrar to remedy the violation, the
20 registrar may order payment from the residential contractors' recovery fund
21 to remedy the violation. The registrar shall serve the contractor with a
22 notice setting forth the amount claimed or to be awarded. If the contractor
23 contests the amount or propriety of the payment, the contractor shall respond
24 within ten days of the date of service by requesting a hearing to determine
25 the amount or propriety of the payment. Failure by the contractor to respond
26 in writing within ten days of the date of service shall be deemed a waiver by
27 the contractor of the right to contest the amount claimed or to be awarded.
28 Service may be made by personal service to the contractor or by mailing a
29 copy of the notice by registered mail with postage prepaid to the
30 contractor's latest address of record on file in the registrar's office. If
31 service is made by registered mail, it is effective five days after the
32 notice is mailed. Except as provided in section 41-1092.08, subsection H,
33 the contractor or injured person may seek judicial review of the registrar's
34 final award pursuant to title 12, chapter 7, article 6.

35 Sec. 3. Section 32-1155, Arizona Revised Statutes, is amended to read:

36 32-1155. Filing of complaint; resolution of complaint; service
37 of notice; failure to answer; prohibited citations

38 A. Upon the filing of a written complaint with the registrar charging
39 a licensee with the commission, within two years prior to the date of filing
40 the complaint, of an act that is cause for suspension or revocation of a
41 license, the registrar after investigation may issue a citation ~~or upon~~
42 ~~written request of the complainant may issue a citation~~ directing the
43 licensee, within ten days after service of the citation upon the licensee, to
44 appear by filing with the registrar the licensee's written answer to the
45 citation and complaint showing cause, if any, why the licensee's license

1 should not be suspended or revoked. Service of citation upon the licensee
2 shall be fully effected by personal service or by mailing a true copy
3 thereof, together with a true copy of the complaint, by registered mail in a
4 sealed envelope with postage prepaid and addressed to the licensee at the
5 licensee's latest address of record in the registrar's office. Service of
6 the citation and complaint shall be complete at the time of personal service
7 or five days after deposit in the mail. The two year period prescribed by
8 this subsection shall commence on the earlier of the close of escrow or
9 actual occupancy for new home or other new building construction and
10 otherwise shall commence on completion of the specific project.

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

15 C. THE REGISTRAR SHALL NOT ISSUE A CITATION FOR FAILURE TO PERFORM
16 WORK IN A PROFESSIONAL AND WORKMANLIKE MANNER OR IN ACCORDANCE WITH ANY
17 APPLICABLE BUILDING CODES AND PROFESSIONAL INDUSTRY STANDARDS IF EITHER:

18 1. THE CONTRACTOR IS NOT PROVIDED AN OPPORTUNITY TO INSPECT THE WORK
19 WITHIN FIFTEEN DAYS AFTER RECEIVING A WRITTEN NOTICE FROM THE REGISTRAR.

20 2. THE CONTRACTOR'S WORK HAS BEEN SUBJECT TO NEGLECT, MODIFICATION OR
21 ABNORMAL USE.

22 Sec. 4. Title 32, chapter 10, Arizona Revised Statutes, is amended by
23 adding article 5, to read:

24 ARTICLE 5. GENERAL REMODELING AND REPAIR CONTRACTORS

25 32-1171. Workers' compensation violation; license suspension;
26 complaints; summary suspension

27 A. NOTWITHSTANDING ANY OTHER LAW, IF THE REGISTRAR FINDS THAT A
28 GENERAL REMODELING AND REPAIR CONTRACTOR AS PRESCRIBED BY RULE ADOPTED BY THE
29 REGISTRAR FAILS TO SECURE WORKERS' COMPENSATION PURSUANT TO TITLE 23, CHAPTER
30 6, ARTICLE 4, THE REGISTRAR SHALL ORDER A SUMMARY SUSPENSION OF THE
31 CONTRACTOR'S LICENSE PENDING PROCEEDINGS FOR REVOCATION OR OTHER ACTION. THE
32 REGISTRAR SHALL SERVE THE LICENSEE WITH A WRITTEN NOTICE OF COMPLAINT AND
33 FORMAL HEARING, SETTING FORTH THE CHARGES MADE AGAINST THE LICENSEE AND THE
34 LICENSEE'S RIGHT TO A FORMAL HEARING BEFORE THE REGISTRAR PURSUANT TO TITLE
35 41, CHAPTER 6, ARTICLE 10.

36 B. A GENERAL REMODELING AND REPAIR CONTRACTOR AS PRESCRIBED BY RULE
37 ADOPTED BY THE REGISTRAR WHO IS THE SUBJECT OF AT LEAST FIVE UNRESOLVED AND
38 SUBSTANTIATED ABANDONMENT COMPLAINTS AS DETERMINED BY THE REGISTRAR IN A
39 TWELVE MONTH PERIOD SHALL NOT ACCEPT NEW PROJECTS UNTIL THE NUMBER OF
40 UNRESOLVED AND SUBSTANTIATED ABANDONMENT COMPLAINTS RELATING TO THE
41 CONTRACTOR'S WORK PERFORMANCE IS BELOW FIVE IN A TWELVE MONTH PERIOD.

1 C. NOTWITHSTANDING SECTION 32-1154, IF THE REGISTRAR FINDS, BASED ON
2 ITS INVESTIGATION, THAT THE PUBLIC HEALTH AND SAFETY REQUIRES IMMEDIATE
3 ACTION, THE REGISTRAR SHALL ORDER A SUMMARY SUSPENSION OF A GENERAL
4 REMODELING AND REPAIR CONTRACTOR LICENSE AS PRESCRIBED BY RULE ADOPTED BY THE
5 REGISTRAR PENDING PROCEEDINGS FOR REVOCATION OR OTHER ACTION. THE REGISTRAR
6 SHALL SERVE THE LICENSEE WITH A WRITTEN NOTICE OF COMPLAINT AND FORMAL
7 HEARING, SETTING FORTH THE CHARGES MADE AGAINST THE LICENSEE AND THE
8 LICENSEE'S RIGHT TO A FORMAL HEARING BEFORE THE REGISTRAR PURSUANT TO TITLE
9 41, CHAPTER 6, ARTICLE 10.