

REFERENCE TITLE: registrar of contractors; licenses; contracts

State of Arizona
House of Representatives
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2013

HB 2189

Introduced by
Representatives Fann: Dial

AN ACT

AMENDING SECTIONS 32-1121 AND 32-1158, ARIZONA REVISED STATUTES; RELATING TO
THE REGISTRAR OF 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 applicability

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

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

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

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

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

34 5. Owners of property who improve such property or who build or
35 improve structures or appurtenances on such property and who do the work
36 themselves, with their own employees or with duly licensed contractors, if
37 the structure, group of structures or appurtenances, including the
38 improvements thereto, are intended for occupancy solely by the owner and are
39 not intended for occupancy by members of the public as the owner's employees
40 or business visitors and the structures or appurtenances are not intended for
41 sale or for rent. In all actions brought under this chapter, except an
42 action against an owner-occupant as defined in section 33-1002, proof of the
43 sale or rent or the offering for sale or rent of any such structure by the
44 owner-builder within one year after completion or issuance of a certificate
45 of occupancy is prima facie evidence that such project was undertaken for the

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

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

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

19 (a) Subsurface utility location and designation services.

20 (b) Potholing.

21 (c) Drilling for any of the following:

22 (i) Soil samples.

23 (ii) Rock samples.

24 (iii) Pavement samples.

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

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

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

1 "not a licensed contractor" AND "MAXIMUM JOB LESS THAN ONE THOUSAND DOLLARS"
2 IN AT LEAST TWELVE-POINT TYPE in the advertisement.

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

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

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

12 C. Any person who does not have an exemption from licensure pursuant
13 to subsection A, paragraph 14, subdivision (c) of this section is subject to
14 prosecution for a violation of section 44-1522. The attorney general may
15 investigate the act or practice and take appropriate action pursuant to title
16 44, chapter 10, article 7.

17 D. The exemptions from licensure pursuant to subsection A, paragraphs
18 4, 9 and 14 of this section do not apply to either of the following:

19 1. All fire safety and mechanical, electrical and plumbing work that
20 is done in connection with fire safety installation and fire safety
21 maintenance and repair. For the purposes of this paragraph, "fire safety
22 installation" means hardwired or interconnected smoke alarms and fire
23 sprinklers and does not include an individual device that is attached by a
24 nail, screw or other fastening device to the frame or foundation of any
25 residential unit. For the purposes of this paragraph, fire safety
26 maintenance and repair does not include routine work that is conducted by an
27 employee of an apartment or condominium complex that is incidental to the
28 fire safety equipment.

29 2. All work that is done, including the installation, maintenance and
30 repair of devices, appliances or equipment, that involves the connecting to
31 any supply of natural gas, propane or other petroleum or gaseous fuel.
32 Nothing in this paragraph impacts the effect of section 36-1624.01.

33 Sec. 2. Section 32-1158, Arizona Revised Statutes, is amended to read:

34 32-1158. Minimum elements of a contract

35 ~~A. From and after December 31, 1992 until December 31, 2007, any~~
36 ~~contract in an amount of more than one thousand dollars and less than one~~
37 ~~hundred fifty thousand dollars entered into between a contractor and the~~
38 ~~owner of a property to be improved shall contain in writing at least the~~
39 ~~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 ~~B.~~ A. ~~From and after December 31, 2007,~~ Any contract in an amount of
13 more than one thousand dollars entered into between a LICENSED contractor and
14 the owner of a property to be improved shall contain in writing at least the
15 following information:

16 1. The name of the contractor and the contractor's business address
17 and license number.

18 2. The name and mailing address of the owner and the jobsite address
19 or legal description.

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

21 4. The estimated date of completion of all work to be performed under
22 the contract.

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

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

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

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

32 9. That the property owner has the right to file a written complaint
33 with the registrar for an alleged violation of section 32-1154, subsection A.
34 The contract shall contain the registrar's telephone number and website
35 address and shall state that complaints must be made within the applicable
36 time period as set forth in section 32-1155, subsection A. The information
37 in this paragraph must be prominently displayed in the contract in at least
38 ten point bold type, and the contract shall be signed by the property owner
39 and the contractor or the contractor's designated representative. This
40 paragraph does not apply to a person who is subject to and complies with
41 section 12-1365.

42 ~~C.~~ B. At the time of signing a contract the owner shall be provided a
43 legible copy of all documents signed and a written and signed receipt for and
44 in the true amount of any cash paid to the contractor by the owner.

1 ~~D.~~ C. The requirements of this section shall not constitute
2 prerequisites to the formation or enforcement of a contract. Failure to
3 comply with the requirements of this section shall not constitute a defense
4 by either party to an action for compensation, damages, breach, enforcement
5 or other cause of action based on the contract.