

COMMITTEE ON COMMERCE
HOUSE OF REPRESENTATIVES AMENDMENTS TO H.B. 2261
(Reference to printed bill)

1 Strike everything after the enacting clause and insert:

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 that 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 combination of any of them, that, for compensation, undertakes to or offers~~
30 ~~to undertake to, purports to have the capacity to undertake to, submits a bid~~
31 ~~or responds to a request for qualification or a request for proposals for~~
32 ~~construction services to, does himself or by or through others, or directly~~
33 ~~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.~~

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

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

5 2. "APPURTENANCE" MEANS ALL STRUCTURES AND IMPROVEMENTS THAT ARE
6 SUBORDINATE TO ONE OR MORE OTHER STRUCTURES AND INCLUDES DRIVEWAYS, FENCES,
7 PATIOS, SWIMMING POOLS, LANDSCAPING, SPORT COURTS AND GAZEBOS.

8 ~~4.~~ 3. "Dual-licensed Contractor" is synonymous with the term
9 "~~commercial and residential~~ builder" and means any person, firm, partnership,
10 corporation, association or other organization, or any combination, that
11 undertakes to or offers to undertake to, purports to have the capacity to
12 undertake to, submits a bid to, does himself or by or through others, or
13 directly or indirectly supervises others ~~under a single license on commercial~~
14 ~~or residential property~~ to:

15 (a) Construct, alter, repair, add to, subtract from, improve, move,
16 wreck or demolish any building, HOUSE, TOWNHOUSE, CONDOMINIUM, COOPERATIVE
17 UNIT, APARTMENT COMPLEX, HIGHWAY, ROADWAY, RAILROAD, excavation or other
18 structure or improvement, including any appurtenances, or to do any part
19 thereof, INCLUDING THE ERECTION OF SCAFFOLDING OR ANY OTHER STRUCTURE OR WORK
20 IN CONNECTION WITH THE CONSTRUCTION.

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

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

25 ~~5.~~ 4. "License" means an authorization for the person who is listed
26 on the electronic, paper or other records maintained by the registrar to act
27 in the capacity of a contractor.

28 ~~6.~~ 5. "Person" means an applicant, an individual, A PARTNERSHIP, A
29 LIMITED LIABILITY COMPANY, A CORPORATION, a member of a limited liability
30 company, a qualifying party, any partner of a partnership or limited
31 liability partnership or any officer, director, qualifying party, trustee of
32 a trust, beneficiary of a trust or owner of at least twenty-five per cent of
33 the stock or beneficial interest of a corporation.

34 ~~7.~~ 6. "Registrar" means the registrar of contractors.

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

41 ~~(a) Construct, alter, repair, add to, subtract from, improve, move,~~
42 ~~wreck or demolish any residential structure, such as houses, townhouses,~~

1 ~~condominiums or cooperative units. Residential structures also include~~
2 ~~apartment complexes of four units or less and any appurtenances on or within~~
3 ~~residential property lines.~~

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

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

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

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

18 D. "RESIDENTIAL STRUCTURE" INCLUDES ANY HOUSE, TOWNHOUSE, CONDOMINIUM,
19 COOPERATIVE UNIT, APARTMENT COMPLEX CONSISTING OF FOUR UNITS OR LESS AND
20 APPURTENANCE ON OR WITHIN RESIDENTIAL PROPERTY LINES.

21 ~~D.~~ E. Only contractors as defined in this section are licensed and
22 regulated by this chapter.

23 Sec. 2. Section 32-1102, Arizona Revised Statutes, is amended to read:
24 32-1102. Classification of licenses: contracting business

25 For the purpose of license classification, the contracting business
26 shall include:

27 ~~1. General commercial building contracting, which is engaging in the~~
28 ~~contracting business in connection with any structure built, being built or~~
29 ~~to be built on commercial property for the support, shelter and enclosure of~~
30 ~~persons, animals, chattels or movable property of any kind, or superintending~~
31 ~~the whole or any part thereof, and which includes the management or direct or~~
32 ~~indirect supervision of any work performed by a contractor but does not~~
33 ~~include a person who merely furnishes materials or supplies as provided in~~
34 ~~section 32-1121 without fabricating them into or consuming them in performing~~
35 ~~the work of the general contractor.~~

36 ~~2.~~ 1. General ~~dual-licensed~~ contracting, which is engaging in the
37 contracting business **REQUIRING THE USE OF AT LEAST TWO UNRELATED BUILDING**
38 **TRADES** in connection with any structure built, being built or to be built ~~on~~
39 ~~residential or commercial property~~ for the support, shelter and enclosure of
40 persons, animals, chattels or movable property of any kind, or superintending
41 the whole or any part thereof, and which includes the management or direct or
42 indirect supervision of any work performed by a contractor but does not

1 include a person who merely furnishes materials or supplies as provided in
2 section 32-1121 without fabricating them into or consuming them in performing
3 the work of the general contractor.

4 ~~3.~~ 2. General engineering contracting, which is engaging in the
5 contracting business ~~other than residential contracting~~ in connection with
6 fixed works requiring specialized engineering knowledge and skills and
7 includes irrigation, drainage, water power, water supply, flood control,
8 inland waterways, harbors, railroads, highways, tunnels, airport runways,
9 sewerage, bridges, earth moving projects, paving and transmission lines.

10 ~~4. General residential contracting, which is engaging in the~~
11 ~~contracting business by any general contractor or subcontractor who~~
12 ~~undertakes to construct, alter, repair, add to, subtract from, improve, move,~~
13 ~~wreck or demolish any residential structure or appurtenances including~~
14 ~~swimming pools on or within residential property lines.~~

15 ~~5. Specialty commercial contracting, which is engaging in the~~
16 ~~contracting business in the performance of construction work requiring~~
17 ~~special skill and involving the use of specialized construction trades or~~
18 ~~crafts other than residential contracting.~~

19 ~~6.~~ 3. Specialty ~~dual licensed~~ contracting, which is engaging in the
20 contracting business in the performance of construction work requiring
21 special skill and involving the use of specialized construction trades or
22 crafts ~~in residential and commercial contracting.~~

23 ~~7. Specialty residential contracting, which is engaging in the~~
24 ~~residential contracting business by the performance of construction work~~
25 ~~requiring special skill and involving the use of specialized construction~~
26 ~~trades or crafts within residential property lines.~~

27 Sec. 3. Section 32-1105, Arizona Revised Statutes, is amended to read:

28 32-1105. Rulemaking powers for purposes of classifying and
29 reclassifying contractors

30 A. The registrar may adopt rules necessary to effect the
31 classification of contractors in a manner consistent with established usage
32 and procedure as found in the construction business, and may limit the field
33 and scope of operations of a licensed contractor within any of the branches
34 of the contracting business, as described in this chapter, to those divisions
35 thereof in which the contractor is classified and qualified to engage.

36 ~~B. The registrar shall establish by rule license classifications for~~
37 ~~dual licensed contractors. A contractor classified as a dual licensed~~
38 ~~contractor may perform equivalent construction work on both commercial and~~
39 ~~residential projects under a single license. The registrar shall adopt rules~~
40 ~~necessary to establish the scope of work that may be done under the dual~~
41 ~~license classifications.~~

1 ~~B.~~ B. A licensee may apply for classification and be classified in
2 more than one classification or division thereof after the licensee meets the
3 qualifications prescribed by the registrar for such additional classification
4 or classifications. A single form of application shall be adopted for all
5 licenses issued by the registrar.

6 ~~C.~~ C. Nothing in this chapter shall prohibit a specialty contractor
7 from taking and executing a contract involving the use of two or more crafts
8 or trades if the performance of the work in the crafts or trades other than
9 those in which the specialty contractor is licensed is incidental and
10 supplemental to the performance of work in the craft for which the specialty
11 contractor is licensed.

12 Sec. 4. Section 32-1107, Arizona Revised Statutes, is amended to read:

13 32-1107. Registrar of contractors fund

14 A. The registrar of contractors fund is established. The registrar of
15 contractors shall administer the fund. ~~The registrar shall deposit, pursuant~~
16 ~~to sections 35-146 and 35-147, all monies collected under this chapter,~~
17 Except monies collected for the ~~residential contractors'~~ recovery fund
18 ESTABLISHED BY SECTION 32-1132 and the contractors' cash bond fund and monies
19 received from civil penalties, ~~as follows:~~

20 ~~1. For fiscal year 1994-1995, seventy per cent in the registrar of~~
21 ~~contractors fund and thirty per cent in the state general fund.~~

22 ~~2. For fiscal year 1995-1996, eighty per cent in the registrar of~~
23 ~~contractors fund and twenty per cent in the state general fund.~~

24 ~~3. For all fiscal years that begin after June 30, 1996, PURSUANT TO~~
25 ~~SECTIONS 35-146 AND 35-147, THE REGISTRAR SHALL DEPOSIT~~ ninety per cent OF
26 ALL MONIES COLLECTED UNDER THIS CHAPTER in the registrar of contractors fund
27 and ten per cent in the state general fund.

28 B. The registrar shall use monies in the registrar of contractors fund
29 for carrying out the powers and duties of the registrar and for the purposes
30 of this chapter. Monies deposited in the registrar of contractors fund are
31 subject to section 35-143.01.

32 Sec. 5. Section 32-1122, Arizona Revised Statutes, is amended to read:

33 32-1122. Qualifications for license

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

36 1. Classify and qualify applicants for a license.

37 2. If necessary, change the license classification of a licensee in
38 the case of a title reclassification, with or without a bond rider for the
39 purpose of continuing liability on the bond.

40 3. Conduct investigations the registrar deems necessary.

41 4. Establish written examinations if deemed necessary to protect the
42 health and safety of the public.

1 B. To obtain or renew a license under this chapter, the applicant
2 shall:

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

7 (a) A designation of the classification of license that is sought by
8 the applicant.

9 (b) If the applicant is an individual, the applicant's name and
10 address.

11 (c) If the applicant is a partnership, the names and addresses of all
12 partners with a designation of any limited partners.

13 (d) If the applicant is a corporation, an association or any other
14 organization, the names and addresses of the president, vice-president, if
15 any, secretary and treasurer or the names and addresses of the functional
16 equivalent of these officers, the directors and the owners of twenty-five per
17 cent or more of the stock or beneficial interest.

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

19 (f) If the applicant is a corporation, evidence that the corporation
20 is in good standing with the corporation commission.

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

24 (h) The applicant's current privilege license number issued pursuant
25 to section 42-5005.

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

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

29 C. To obtain a contractor's license under this chapter ~~other than a~~
30 ~~residential contractor's license~~, the applicant shall submit a detailed
31 statement of current financial condition containing information required by
32 the registrar of contractors on a form furnished by or acceptable to the
33 registrar of contractors. ~~Notwithstanding any other law, a swimming pool~~
34 ~~contractor shall also submit a detailed statement of current financial~~
35 ~~condition as required by this subsection.~~

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

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

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

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

30 2. Successfully show, by written examination taken not more than two
31 years before application, if required, qualification in the kind of work for
32 which the applicant proposes to contract, the applicant's general knowledge
33 of the building, safety, health and lien laws of the state, administrative
34 principles of the contracting business and the rules adopted by the registrar
35 of contractors pursuant to this chapter, demonstrate knowledge and
36 understanding of construction plans and specifications applicable to the
37 particular industry or craft and of the standards of construction work and
38 techniques and practices in the particular industry or craft and demonstrate
39 a general understanding of other related construction trades, in addition to
40 any other matters as may be deemed appropriate by the registrar to determine
41 that the qualifying party meets the requirements of this chapter. The

1 registrar shall maintain multiple versions of examinations for each type of
2 license that requires an examination.

3 G. No license shall be issued to a minor, to any partnership in which
4 one of the partners is a minor or to any corporation in which a corporate
5 officer is a minor.

6 H. Before receiving, renewing and holding a license pursuant to this
7 chapter, the registrar may require a license applicant or licensee to submit
8 to the registrar a full set of fingerprints and the fees required in section
9 41-1750. The registrar shall submit the fingerprints and fees to the
10 department of public safety for the purpose of obtaining a state and federal
11 criminal records check pursuant to section 41-1750 and Public Law 92-544.
12 The department of public safety may exchange this fingerprint data with the
13 federal bureau of investigation.

14 Sec. 6. Section 32-1126, Arizona Revised Statutes, is amended to read:

15 ~~32-1126.~~ Fees

16 A. The license fees prescribed by this chapter shall be as follows:

17 1. Application and license fees for an original biennial license:

18 ~~(a) For general residential contracting and subclassifications of~~
19 ~~general residential contracting, not more than five hundred dollars.~~

20 ~~(b) For general commercial contracting and subclassifications of~~
21 ~~general commercial contracting, not more than one thousand five hundred~~
22 ~~dollars.~~

23 ~~(c)~~ (a) For general ~~dual-licensed~~ contracting **AND GENERAL ENGINEERING**
24 **CONTRACTING**, not more than two thousand dollars.

25 ~~(d) For specialty residential contracting, not more than three hundred~~
26 ~~fifty dollars.~~

27 ~~(e) For specialty commercial contracting, not more than one thousand~~
28 ~~dollars.~~

29 ~~(f)~~ (b) For specialty ~~dual-licensed~~ contracting, not more than one
30 thousand three hundred fifty dollars.

31 2. Biennial license renewal fee:

32 ~~(a) For general residential contracting and subclassifications of~~
33 ~~general residential contracting, not more than three hundred twenty dollars.~~

34 ~~(b) For general commercial contracting and subclassifications of~~
35 ~~general commercial contracting, not more than one thousand dollars.~~

36 ~~(c)~~ (a) For general ~~dual-licensed~~ contracting **AND GENERAL ENGINEERING**
37 **CONTRACTING**, not more than one thousand three hundred twenty dollars.

38 ~~(d) For specialty residential contracting, not more than two hundred~~
39 ~~seventy dollars.~~

40 ~~(e) For specialty commercial contracting, not more than nine hundred~~
41 ~~dollars.~~

1 ~~(f)~~ (b) For specialty ~~dual-licensed~~ contracting, not more than one
2 thousand one hundred seventy dollars.

3 B. The fee for an annual license renewal granted pursuant to section
4 32-1123.01 shall be one-half of the biennial license renewal fee.

5 C. The registrar may establish reasonable fees for services performed
6 by the registrar relating to reexaminations, processing of applications,
7 changes of qualifying party and approval of name changes on licenses.

8 D. The penalty for failure to apply for renewal of a license within
9 the time prescribed by this chapter shall be fifty dollars.

10 E. The registrar may establish a separate fee for examination.

11 F. The registrar may contract with private testing services to
12 establish and administer such examinations and may authorize the payment of
13 the examination fee to the private testing service.

14 Sec. 7. Heading change

15 The article heading of title 32, chapter 10, article 2.1, Arizona
16 Revised Statutes, is changed from "RESIDENTIAL CONTRACTORS' RECOVERY FUND" to
17 "RECOVERY FUND".

18 Sec. 8. Section 32-1131, Arizona Revised Statutes, is amended to read:

19 32-1131. Definitions

20 In this article, unless the context otherwise requires:

21 1. "Assessment" means the contribution by a contractor to the
22 ~~residential contractors'~~ recovery fund.

23 2. "Fund" means the ~~residential contractors'~~ recovery fund.

24 3. "Person injured" means any owner of residential real property which
25 is classified as class three property under section 42-12003 and which is
26 actually occupied or intended to be occupied by the owner as a residence
27 including community property, tenants in common or joint tenants who are
28 damaged by the failure of a ~~residential contractor or a dual-licensed~~
29 ~~contractor~~ RECOVERY FUND PARTICIPANT to adequately build or improve a
30 residential structure ~~or appurtenance~~ on that real property. Included in
31 this definition are lessees of residential real property who contract
32 directly with a ~~residential contractor~~ RECOVERY FUND PARTICIPANT or
33 indirectly with a subcontractor of that contractor and homeowners' or unit
34 owners' associations after transfer of control from the builder or developer
35 for damages to the common elements within the complex.

36 ~~4. "Residential contractor" means a contractor as defined in section~~
37 ~~32-1101 who is licensed to perform work on residential property pursuant to~~
38 ~~this chapter and who engages in residential contracting.~~

39 4. "RECOVERY FUND PARTICIPANT" MEANS A CONTRACTOR WHO HAS ELECTED TO
40 PARTICIPATE IN THE RECOVERY FUND PURSUANT TO SECTION 32-1152, SUBSECTION C.

1 Sec. 9. Section 32-1132, Arizona Revised Statutes, is amended to read:
2 32-1132. Recovery fund

3 A. The ~~residential contractors'~~ recovery fund is established, to be
4 administered by the registrar, from which any person injured by an act,
5 representation, transaction or conduct of a ~~residential contractor~~ RECOVERY
6 FUND PARTICIPANT licensed pursuant to this chapter that is in violation of
7 this chapter or the rules adopted pursuant to this chapter may be awarded in
8 the county where the violation occurred an amount of not more than thirty
9 thousand dollars for damages sustained by the act, representation,
10 transaction or conduct. An award from the fund is limited to the actual
11 damages suffered by the claimant as a direct result of the ~~contractor's~~
12 RECOVERY FUND PARTICIPANT'S violation but shall not exceed an amount
13 necessary to complete or repair a residential structure or appurtenance
14 within residential property lines. Actual damages shall not be established
15 by bids supplied by or the value of work performed by a person or entity that
16 is not licensed pursuant to this chapter and that is required to be licensed
17 pursuant to this chapter. If the claimant has paid a deposit or down payment
18 and no actual work is performed or materials are delivered, the award of
19 actual damages shall not exceed the exact dollar amount of the deposit or
20 down payment plus interest at the rate of ten per cent a year from the date
21 the deposit or down payment is made or not more than thirty thousand dollars,
22 whichever is less. Interest shall not be paid from the fund on any other
23 awards under this chapter unless ordered by a court of competent
24 jurisdiction. An award from the fund shall not be available to persons
25 injured by an act, representation, transaction or conduct of a ~~residential~~
26 contractor who was not licensed pursuant to this chapter or whose license was
27 in an inactive status, expired, cancelled, revoked, suspended or not issued
28 at the time of the contract. No more than the maximum individual award from
29 the fund shall be made on any individual residence or to any injured person.
30 Notwithstanding any other provision of law, monies in the ~~residential~~
31 ~~contractors'~~ recovery fund shall not be directly awarded for attorney fees or
32 costs except in contested cases appealed to the superior court.

33 B. Except as provided in section 32-1152, subsection C, every person
34 ~~making application~~ WHO APPLIES for a contractor's license or for renewal of a
35 contractor's license ~~to engage in residential contracting~~ AND WHO PERFORMS
36 WORK ON RESIDENTIAL STRUCTURES shall pay an assessment of not more than six
37 hundred dollars during the biennial license period for deposit in the fund.
38 In the event that the registrar does not issue the license, this assessment
39 shall be returned to the applicant.

1 Sec. 10. Section 32-1134.02, Arizona Revised Statutes, is amended to
2 read:

3 32-1134.02. Insufficiency of fund

4 If at any time the monies deposited in the ~~residential-contractors'~~
5 recovery fund are insufficient to satisfy any duly authorized claim or
6 portion thereof, the registrar shall, when sufficient monies have been
7 deposited in the ~~residential-contractors'~~ recovery fund, SHALL satisfy any
8 unpaid claims or portion of unpaid claims with priority for payment based on
9 the time of filing a certified copy of the court order with the registrar.

10 Sec. 11. Section 32-1136, Arizona Revised Statutes, is amended to
11 read:

12 32-1136. Statute of limitations; recovery from fund

13 A. An action for a judgment that may subsequently result in an order
14 for collection from the fund shall not be commenced later than two years from
15 the date of the commission of the act by the contractor that is the cause of
16 the injury or from the date of occupancy. When any injured person commences
17 action for a judgment that may result in collection from the fund, the
18 injured person shall notify the registrar in writing to this effect at the
19 time of the commencement of the action. The registrar at any time may
20 intervene in and defend any such action.

21 B. When any injured person recovers a valid judgment against any
22 ~~residential-contractor~~ RECOVERY FUND PARTICIPANT for such act,
23 representation, transaction or conduct that is in violation of this chapter
24 or the rules adopted pursuant to this chapter, the injured person, on twenty
25 days' written notice to the registrar, may apply to the court for an order
26 directing payment out of the fund, of the amount unpaid on the judgment,
27 subject to the limitations stated in this article. If the injured person
28 failed to give notice to the registrar at the time of commencement of the
29 action as required by subsection A of this section, the court may direct
30 payment out of the fund on receipt of a consent to payment signed on behalf
31 of the registrar. If the injured person has given notice to the registrar as
32 required by subsection A of this section, the court may direct payment out of
33 the fund either on receipt of a consent to payment signed on behalf of the
34 registrar or, in the absence of any written consent, after the notice period
35 required by this subsection. If the court receives written objections by the
36 registrar, the court shall not direct payment from the fund without affording
37 the registrar a reasonable opportunity to present and support his objections.

38 C. The injured person shall not be the spouse of the ~~residential~~
39 ~~contractor~~ RECOVERY FUND PARTICIPANT or the personal representative of the
40 spouse of the ~~residential-contractor~~ RECOVERY FUND PARTICIPANT.

41 D. The court shall proceed on an application in a summary manner and,
42 on the hearing, the injured person is required to show that he:

1 1. Has given notice as required by subsections A and B of this
2 section.

3 2. Has obtained a judgment that has become final, as provided in
4 subsection B of this section, stating the amount and the amount owing at the
5 date of the application.

6 3. Has proceeded against any existing bond covering the ~~residential~~
7 ~~contractor~~ RECOVERY FUND PARTICIPANT and has not collected on such bond an
8 amount of thirty thousand dollars or more.

9 4. Is not aware of any personal or real property or other assets of
10 the debtor that can be applied in satisfaction of the judgment.

11 E. The court shall make an order directed to the registrar requiring
12 payment from the fund of whatever sum it finds to be payable on the claim, in
13 accordance with this section, if the court is satisfied on the hearing of the
14 truth of all matters required to be shown by the injured person by subsection
15 D of this section. The recovery limits established under this article apply
16 to all judgments awarded after September 1, 2002. If the injured person has
17 recovered a portion of his loss from sources other than the fund, the
18 registrar, if the award is made pursuant to section 32-1154, or the court
19 shall deduct the amount recovered from other sources from the amount of
20 actual damages suffered pursuant to section 32-1132, subsection A and direct
21 the difference, not to exceed thirty thousand dollars, to be paid from the
22 fund.

23 F. On receipt of a certified copy of the order specified in subsection
24 E of this section, the registrar may authorize payment from the ~~residential~~
25 ~~contractors'~~ recovery fund even if an appeal has been instituted but not
26 completed.

27 Sec. 12. Section 32-1137, Arizona Revised Statutes, is amended to
28 read:

29 32-1137. Notice of authorized payment to injured person

30 On authorization of payment from the ~~residential-contractors'~~ recovery
31 fund, the registrar shall notify the injured person that:

32 1. The amount authorized for payment is subject to repayment by the
33 recipient if the judgment of the court is finally reversed.

34 2. It is the responsibility of the recipient to respond to an appeal
35 from the judgment.

36 3. On appeal from the judgment, postponement of acceptance by the
37 injured person of the amount authorized for payment does not operate as a
38 waiver of any rights of the injured person.

1 Sec. 13. Section 32-1138, Arizona Revised Statutes, is amended to
2 read:

3 32-1138. Subrogation

4 The state has the right of subrogation to the extent of payments made
5 from the ~~residential-contractors'~~ recovery fund, including the right to
6 collect from a bond, cash payment or alternative to cash payment made
7 pursuant to section 32-1152 or 32-1152.01. The registrar and the attorney
8 general shall promptly enforce all subrogation claims.

9 Sec. 14. Section 32-1139, Arizona Revised Statutes, is amended to
10 read:

11 32-1139. Liability of fund for each recovery fund participant's
12 license; suspension of license; repayment

13 A. The liability of the fund shall not exceed two hundred thousand
14 dollars for any one ~~residential-contractor's~~ RECOVERY FUND PARTICIPANT'S
15 license. If claims against the fund on behalf of any one ~~residential-~~
16 ~~contractor's~~ RECOVERY FUND PARTICIPANT'S license exceed two hundred thousand
17 dollars, the claims shall be paid based on a pro rata share of the common
18 liability, and the registrar or a court entering an order for payment after
19 the sum of two hundred thousand dollars has been paid from the fund shall
20 modify the order indicating that no further recovery from the fund shall be
21 allowed.

22 B. If any amount is paid from the fund in settlement of a claim
23 arising from the act, representation, transaction or conduct of a ~~residential-~~
24 ~~contractor~~ RECOVERY FUND PARTICIPANT, the license of the ~~contractor~~ RECOVERY
25 FUND PARTICIPANT shall be automatically suspended by operation of law until
26 the amount paid from the fund is repaid in full, plus interest at the rate of
27 ten per cent a year. Any person who is or was, at the time of the act or
28 omission, named on a license that has been suspended because of a payment
29 from the recovery fund is not eligible to receive a new license or retain
30 another existing license that also shall be suspended by operation of law,
31 nor shall any suspended license be reactivated, until the amount paid from
32 the fund is repaid as provided in this subsection.

33 C. After receiving an award from the fund pursuant to this article a
34 person is deemed to have assigned to the registrar the person's rights for
35 recovery against the responsible ~~residential-contractor~~ RECOVERY FUND
36 PARTICIPANT licensed pursuant to this chapter to the extent of the person's
37 award from the fund.

38 Sec. 15. Section 32-1152, Arizona Revised Statutes, is amended to
39 read:

40 32-1152. Bonds

41 A. Before granting an original contractor's license, the registrar
42 shall require of the applicant a surety bond in a form acceptable to the

1 registrar or a cash deposit as provided in this section. No contractor's
2 license may be renewed unless the applicant's surety bond or cash deposit is
3 in full force and effect.

4 B. The bonds, or the cash deposit as provided in this section, shall
5 be in the name of the licensee in amounts fixed by the registrar with the
6 following schedules after giving due consideration to the volume of work and
7 the classification contemplated by the applicant:

8 1. General ~~commercial building~~ contractors and subclassifications of
9 general ~~commercial~~ contractors shall furnish a surety bond or cash deposit in
10 an amount that is determined as follows:

11 ~~(a) If the estimated annual volume of construction work of the~~
12 ~~applicant is ten million dollars or more, the applicant shall furnish a~~
13 ~~surety bond or cash deposit of not less than fifty thousand dollars or more~~
14 ~~than one hundred thousand dollars.~~

15 ~~(b) If the estimated annual volume of construction work of the~~
16 ~~applicant is more than five million dollars and less than ten million~~
17 ~~dollars, the applicant shall furnish a surety bond or cash deposit of not~~
18 ~~less than thirty-five thousand dollars or more than seventy-five thousand~~
19 ~~dollars.~~

20 ~~(c) (a) If the estimated annual volume of construction work of the~~
21 ~~applicant is more than one million dollars and less than five million~~
22 ~~dollars, the applicant shall furnish a surety bond or cash deposit of not~~
23 ~~less than fifteen thousand dollars or more than fifty thousand dollars.~~

24 ~~(d) (b) If the estimated annual volume of construction work of the~~
25 ~~applicant is more than five hundred thousand dollars and less than one~~
26 ~~million dollars, the applicant shall furnish a surety bond or cash deposit of~~
27 ~~not less than ten thousand dollars or more than twenty-five thousand dollars.~~

28 ~~(e) If the estimated annual volume of construction work of the~~
29 ~~applicant is more than one hundred fifty thousand dollars and less than five~~
30 ~~hundred thousand dollars, the applicant shall furnish a surety bond or cash~~
31 ~~deposit of not less than five thousand dollars or more than fifteen thousand~~
32 ~~dollars.~~

33 ~~(f) If the estimated annual volume of construction work of the~~
34 ~~applicant is less than one hundred fifty thousand dollars, the applicant~~
35 ~~shall furnish a surety bond or cash deposit of five thousand dollars.~~

36 2. Specialty ~~commercial~~ contractors shall furnish a surety bond or
37 cash deposit in an amount that is determined as follows:

38 ~~(a) If the estimated annual volume of construction work of the~~
39 ~~applicant is ten million dollars or more, the applicant shall furnish a~~
40 ~~surety bond or cash deposit of not less than thirty-seven thousand five~~
41 ~~hundred dollars or more than fifty thousand dollars.~~

1 ~~(b) If the estimated annual volume of construction work of the~~
2 ~~applicant is more than five million dollars and less than ten million~~
3 ~~dollars, the applicant shall furnish a surety bond or cash deposit of not~~
4 ~~less than seventeen thousand five hundred dollars or more than thirty-seven~~
5 ~~thousand five hundred dollars.~~

6 (e) (a) If the estimated annual volume of construction work of the
7 applicant is more than one million dollars ~~and less than five million~~
8 ~~dollars~~, the applicant shall furnish a surety bond or cash deposit of ~~not~~
9 ~~less than seven thousand five hundred dollars or more than~~ twenty-five
10 thousand dollars.

11 ~~(d)~~ (b) If the estimated annual volume of construction work of the
12 applicant is ~~more than five hundred thousand dollars and~~ less than one
13 million dollars, the applicant shall furnish a surety bond or cash deposit of
14 ~~not less than five thousand dollars or more than seventeen~~ FIFTEEN thousand
15 ~~five hundred~~ dollars.

16 ~~(e) If the estimated annual volume of construction work of the~~
17 ~~applicant is more than one hundred fifty thousand dollars and less than five~~
18 ~~hundred thousand dollars, the applicant shall furnish a surety bond or cash~~
19 ~~deposit of not less than two thousand five hundred dollars or more than seven~~
20 ~~thousand five hundred dollars.~~

21 ~~(f) If the estimated annual volume of construction work of the~~
22 ~~applicant is less than one hundred fifty thousand dollars, the applicant~~
23 ~~shall furnish a surety bond or cash deposit of two thousand five hundred~~
24 ~~dollars.~~

25 3. The total amount of the surety bond or cash deposit required of a
26 licensee who holds more than one license under paragraphs 1 and 2 of this
27 subsection shall be the sum of the surety bond or cash deposit required for
28 each license based on the estimated annual volume of construction work of the
29 applicant allocated to and performed under each license. The applicant at
30 his option may post a single surety bond or cash deposit that is the sum of
31 the bonds or deposits determined under this subsection for all such licenses.

32 ~~4. General dual licensed contractors and subclassifications of general~~
33 ~~dual licensed contractors shall furnish a single surety bond or cash deposit~~
34 ~~with amounts for each classification of license that are determined based on~~
35 ~~the volume of commercial work as determined under paragraph 1 of this~~
36 ~~subsection and the volume of residential work as determined under paragraph 5~~
37 ~~of this subsection. Liability under the bond or cash deposit shall be~~
38 ~~limited to the amount established for each commercial or residential license~~
39 ~~and is subject to the limitations and requirements set forth in subsection E~~
40 ~~of this section.~~

41 ~~5. General residential contractors and subclassifications of general~~
42 ~~residential contractors shall furnish a surety bond or cash deposit in an~~

1 ~~amount of not more than fifteen thousand dollars and not less than five~~
2 ~~thousand dollars.~~

3 ~~6. Specialty dual licensed contractors shall furnish a single surety~~
4 ~~bond or cash deposit with amounts for each classification of license that are~~
5 ~~determined based on the volume of commercial work as determined under~~
6 ~~paragraph 2 of this subsection and the volume of residential work as~~
7 ~~determined under paragraph 7 of this subsection. Liability under the bond or~~
8 ~~cash deposit shall be limited to the amount established for each commercial~~
9 ~~or residential license and is subject to the limitations and requirements set~~
10 ~~forth in subsection E of this section.~~

11 ~~7. Specialty residential contractors shall furnish a surety bond or~~
12 ~~cash deposit in an amount of not more than seven thousand five hundred~~
13 ~~dollars and not less than one thousand dollars.~~

14 ~~8. Dual licensed swimming pool contractors and residential swimming~~
15 ~~pool general contractors shall furnish a surety bond or cash deposit in the~~
16 ~~same amounts based on the volume of work as determined under paragraph 1 of~~
17 ~~this subsection for a general commercial contractor.~~

18 C. ~~Dual licensed contractors and residential~~ Contractors WHO PERFORM
19 WORK ON RESIDENTIAL STRUCTURES shall also either:

20 1. Furnish an additional surety bond or cash deposit in the amount of
21 two hundred thousand dollars solely for actual damages suffered by persons
22 injured as described in section 32-1131. This bond shall be subject to the
23 limitations on the amounts that may be awarded to individual claimants as
24 established in section 32-1132. THE BOND OR DEPOSIT REQUIRED BY THIS
25 PARAGRAPH IS FOR THE BENEFIT OF AND IS SUBJECT TO CLAIMS ONLY BY PERSONS
26 INJURED AS DEFINED IN SECTION 32-1131.

27 2. Participate in the ~~residential contractors'~~ recovery fund
28 ESTABLISHED BY SECTION 32-1132 and pay the assessment prescribed by section
29 32-1132.

30 D. The surety bonds shall be executed by the contractor as principal
31 with a corporation duly authorized to transact surety business in this state.
32 Evidence of a surety bond shall be submitted to the registrar in a form
33 acceptable to the registrar. The contractor in the alternative may establish
34 a cash deposit in the amount of the bond with the state treasurer in
35 accordance with rules adopted by the registrar. Such cash bond monies shall
36 be deposited, pursuant to sections 35-146 and 35-147, in the contractors'
37 cash bond fund. The state treasurer shall invest and divest monies in the
38 fund as provided by section 35-313, and monies earned from investment shall
39 be credited to the state general fund. Such cash deposits may be withdrawn,
40 if there are no outstanding claims against them, two years after the
41 termination of the license in connection with which the cash is deposited.

1 The cash deposit may be withdrawn two years after the filing of a commercial
2 surety bond as a replacement to the cash deposit.

3 E. The bonds or deposit required by subsection B of this section shall
4 be for the benefit of and shall be subject to claims by ~~ANY OF the registrar~~
5 ~~of contractors for failure to pay any sum required pursuant to this chapter.~~
6 ~~The bond or deposit required by subsection B, paragraphs 1, 2 and 3 of this~~
7 ~~section is for the benefit of and subject to claims by a licensee under this~~
8 ~~chapter or a lessee, owner or co-owner of nonresidential real property~~
9 ~~including, but not limited to, a tenant in common or joint tenant, or their~~
10 ~~successors in interest, who has a direct contract with the licensee against~~
11 ~~whose bond or deposit the claim is made and who is damaged by the failure of~~
12 ~~the licensee to build or improve a structure or appurtenance on that real~~
13 ~~property at the time the work was performed in a manner not in compliance~~
14 ~~with the requirements of any building or construction code applicable to the~~
15 ~~construction work under the laws of this state or any political subdivision,~~
16 ~~or if no such code was applicable, in accordance with the standards of~~
17 ~~construction work approved by the registrar. The residential bond or deposit~~
18 ~~required by subsection B, paragraphs 4 through 8 of this section is for the~~
19 ~~benefit of and subject to claims by any person furnishing labor, materials or~~
20 ~~construction equipment on a rental basis used in the direct performance of a~~
21 ~~construction contract involving a residential structure or by persons injured~~
22 ~~as defined in section 32-1131. The bond or deposit required by subsection C,~~
23 ~~paragraph 1 of this section is for the benefit of and is subject to claims~~
24 ~~only by persons injured as described in section 32-1131. FOLLOWING:~~

25 1. THE REGISTRAR FOR FAILURE TO PAY ANY SUM REQUIRED PURSUANT TO THIS
26 CHAPTER.

27 2. A LICENSEE UNDER THIS CHAPTER WHO HAS A DIRECT CONTRACT WITH THE
28 LICENSEE AGAINST WHOSE BOND OR DEPOSIT THE CLAIM IS MADE AND WHO IS DAMAGED
29 BY THE FAILURE OF THE LICENSEE TO BUILD OR IMPROVE A STRUCTURE OR
30 APPURTENANCE ON THAT REAL PROPERTY AT THE TIME THE WORK WAS PERFORMED IN A
31 MANNER IN COMPLIANCE WITH THE REQUIREMENTS OF ANY BUILDING OR CONSTRUCTION
32 CODE APPLICABLE TO THE CONSTRUCTION WORK UNDER THE LAWS OF THIS STATE OR ANY
33 POLITICAL SUBDIVISION, OR IF NO SUCH CODE WAS APPLICABLE, IN ACCORDANCE WITH
34 THE STANDARDS OF CONSTRUCTION WORK APPROVED BY THE REGISTRAR.

35 3. A LESSEE OWNER OR CO-OWNER OF REAL PROPERTY, INCLUDING A TENANT IN
36 COMMON OR A JOINT TENANT OR THE SUCCESSORS IN INTEREST OF A TENANT IN COMMON
37 OR A JOINT TENANT, WHO HAS A DIRECT CONTRACT WITH THE LICENSEE AGAINST WHOSE
38 BOND OR DEPOSIT THE CLAIM IS MADE AND WHO IS DAMAGED BY THE FAILURE OF THE
39 LICENSEE TO BUILD OR IMPROVE A STRUCTURE OR APPURTENANCE ON THAT REAL
40 PROPERTY AT THE TIME THE WORK WAS PERFORMED IN A MANNER IN COMPLIANCE WITH
41 THE REQUIREMENTS OF ANY BUILDING OR CONSTRUCTION CODE APPLICABLE TO THE
42 CONSTRUCTION WORK UNDER THE LAWS OF THIS STATE OR ANY POLITICAL SUBDIVISION,

1 OR IF NO SUCH CODE WAS APPLICABLE, IN ACCORDANCE WITH THE STANDARDS OF
2 CONSTRUCTION WORK APPROVED BY THE REGISTRAR.

3 4. A PERSON FURNISHING LABOR, MATERIALS OR CONSTRUCTION EQUIPMENT ON A
4 RENTAL BASIS USED IN THE DIRECT PERFORMANCE OF A CONSTRUCTION CONTRACT.

5 5. PERSONS INJURED AS DEFINED IN SECTION 32-1131.

6 F. The person seeking recovery from the bond or cash deposit shall
7 maintain an action at law against the contractor if claiming against the cash
8 deposit or against the contractor and surety if claiming against the surety
9 bond. If the person seeking recovery is required to give the notice pursuant
10 to section 33-992.01, he is entitled to seek recovery only if he has given
11 such notice and has made proof of service. The surety bond or cash deposit
12 shall be subject to claims until the full amount thereof is exhausted. The
13 court may award reasonable attorney fees in a judgment against a contractor's
14 surety bond or cash deposit. No suit may be commenced on the bond or for
15 satisfaction from the cash deposit after the expiration of two years
16 following the commission of the act or delivery of goods or rendering of
17 services on which the suit is based, except that time for purposes of claims
18 for fraud shall be measured as provided in section 12-543. The surety bond
19 or cash deposit shall be continuous in form and shall be conditioned so that
20 the total aggregate liability of the surety or cash deposit for all claims,
21 including reasonable attorney fees, shall be limited to the face amount of
22 the surety bond or cash deposit irrespective of the number of years the bond
23 or cash deposit is in force. If the corporate surety desires to make payment
24 without awaiting court or registrar action, the amount of any bond filed in
25 compliance with this chapter shall be reduced to the extent of any payment or
26 payments made by the corporate surety in good faith thereunder. Any such
27 payments shall be based on priority of written claims received by the
28 corporate surety before court or registrar action. If more than one cash
29 deposit exists, the judgment against the contractor shall state which cash
30 deposit shall be used to satisfy the judgment. A certified copy of the
31 judgment shall then be filed with the registrar, and such judgment shall
32 specify that it may be satisfied from the contractor's cash deposit.
33 Priority for payment shall be based on the time of filing with the registrar.
34 On receipt of a certified copy of the judgment or on a final disciplinary
35 order of the registrar, the registrar may authorize payment from the cash
36 deposit of the amount claimed or of whatever lesser amount remains on file.
37 In any action against a cash deposit, the claimant, at the time of filing
38 suit, may notify the registrar in writing of the action against the cash
39 deposit, but shall not name as a defendant in the action the registrar, the
40 treasurer or the state. Failure to so notify the registrar at the time of
41 filing suit may result in the cash deposit being withdrawn by the licensee
42 before judgment pursuant to subsection D of this section.

1 ~~F.~~ G. When a corporate surety cancels a bond, the surety, not less
2 than thirty days before the effective date of the cancellation, shall give
3 the principal and the registrar a written notice of the cancellation. Notice
4 to the principal shall be by certified mail in a sealed envelope with postage
5 fully prepaid. Proof of notice to the principal shall be made available to
6 the registrar on request. On reduction or depletion of the cash deposit, the
7 registrar shall immediately notify the licensee of said reduction or
8 depletion and that the licensee must replenish the cash deposit or furnish a
9 surety bond on or before thirty days from the date of said reduction or
10 depletion or the contractor's license shall be suspended on the thirtieth day
11 without further notice or hearing. Notice to the contractor shall be by
12 certified mail in a sealed envelope with postage fully prepaid thereon,
13 addressed to the contractor's latest address of record in the registrar's
14 office. The contractor's license shall be suspended by operation of law on
15 the date the bond is canceled or thirty days from the date of reduction or
16 depletion of the cash deposit unless a replacement bond or cash deposit is on
17 file with the registrar.

18 ~~G.~~ H. The registrar and the state treasurer shall have no personal
19 liability for the performance of duties relating to the bonds, cash deposits,
20 certificates of deposit, investment certificates or share accounts required
21 or permitted by this chapter as long as such duties are performed in good
22 faith.

23 ~~H.~~ I. In the following instances the registrar, after a hearing, may
24 require, as a condition precedent to issuance, renewal, continuation or
25 removal of suspension of a license, a surety bond or cash deposit in an
26 amount and duration to be fixed by the registrar based on the seriousness of
27 the violations, which shall be not more than ten times the amount required by
28 subsection B of this section:

29 1. When a license of either the applicant or the qualifying party has
30 been suspended or revoked or a surety bond or cash deposit requirement has
31 been increased under section 32-1154 previously as the result of disciplinary
32 action for a violation of this chapter.

33 2. When either the applicant or qualifying party was an officer,
34 member, partner or qualifying party for a licensee at any time during which
35 cause for disciplinary action occurred resulting in suspension or revocation
36 of such licensee's license and such applicant or qualifying party had
37 knowledge of or participated in the act or omission that was the cause of
38 such disciplinary action for a violation of this chapter.

39 3. The bonds required by this subsection shall be in addition to any
40 other bond or cash deposit required by this chapter or any other bond
41 required of a contractor by an owner or any other contracting party on any
42 contract undertaken by him pursuant to the authority of such license.

1 Sec. 16. Section 32-1154, Arizona Revised Statutes, is amended to
2 read:

3 32-1154. Grounds for suspension or revocation of license:
4 continuing jurisdiction; civil penalty; recovery
5 fund award; summary suspension

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

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

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

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

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

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

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

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

26 8. Conviction of a felony.

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

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

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

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

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

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

8 15. Acting in the capacity of a contractor under any license issued
9 under this chapter in a name other than as set forth on the license.

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

12 17. Knowingly contracting beyond the scope of the license or licenses
13 of the licensee.

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

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

20 20. Subsequent discovery of facts that if known at the time of issuance
21 of a license or the renewal of a license would have been grounds to deny the
22 issuance or renewal of a license.

23 21. Having a person named on the license who is or was named on any
24 other license in this state or in another state that is under suspension or
25 revocation for any act or omission that occurs while the person is or was
26 named on the license unless the prior revocation was based solely on a
27 violation of this paragraph.

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

31 (a) Not performed at the required location.

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

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

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

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

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

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

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

36 D. The registrar may impose a civil penalty of not to exceed five
37 hundred dollars on a contractor for each violation of subsection A, paragraph
38 23 of this section. Civil penalties collected pursuant to this subsection
39 shall be deposited in the ~~residential contractors'~~ recovery fund ESTABLISHED
40 BY SECTION 32-1132. The failure by the licensee to pay any civil penalty
41 imposed under this subsection results in the automatic revocation of the
42 license thirty days after the effective date of the order providing for the

1 civil penalty. No future license may be issued to an entity consisting of a
2 person, as defined in section 32-1101, ~~subsection A, paragraph 6,~~ who is
3 associated with the contractor, unless payment of any outstanding civil
4 penalty is tendered.

5 E. The registrar shall impose a civil penalty of not to exceed one
6 thousand dollars on a contractor for each violation of subsection A,
7 paragraph 18 of this section. Civil penalties collected pursuant to this
8 subsection shall be deposited in the ~~residential contractors'~~ recovery fund
9 ESTABLISHED BY SECTION 32-1132. The failure by the licensee to pay any civil
10 penalty imposed under this subsection results in the automatic permanent
11 revocation of the license thirty days after the effective date of the order
12 providing for the civil penalty. No future license may be issued to an
13 entity consisting of a person, as defined in section 32-1101, ~~subsection A,~~
14 ~~paragraph 6,~~ who is associated with the contractor, unless payment of any
15 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, the registrar may order payment
19 from the ~~residential contractors'~~ recovery fund ESTABLISHED BY SECTION
20 32-1132 to remedy the violation. The registrar shall serve the contractor
21 with a notice setting forth the amount claimed or to be awarded. If the
22 contractor contests the amount or propriety of the payment, the contractor
23 shall respond within ten days of the date of service by requesting a hearing
24 to determine the amount or propriety of the payment. Failure by the
25 contractor to respond in writing within ten days of the date of service shall
26 be deemed a waiver by the contractor of the right to contest the amount
27 claimed or to be awarded. Service may be made by personal service to the
28 contractor or by mailing a copy of the notice by registered mail with postage
29 prepaid to the contractor's latest address of record on file in the
30 registrar's office. If service is made by registered mail, it is effective
31 five days after the notice is mailed. Except as provided in section
32 41-1092.08, subsection H, the contractor or injured person may seek judicial
33 review of the registrar's final award pursuant to title 12, chapter 7,
34 article 6. An applicant to the ~~residential contractors'~~ recovery fund
35 pursuant to this subsection must show that the applicant has proceeded
36 against any existing bond covering the ~~residential contractor~~ RECOVERY FUND
37 PARTICIPANT and has not collected on the bond in an amount of thirty thousand
38 dollars or more.

1 Sec. 17. Section 32-1155.01, Arizona Revised Statutes, is amended to
2 read:

3 32-1155.01. Arbitration process: applicability

4 A. Notwithstanding title 41, chapter 6, article 10 and any other
5 provision of this article, if a person files a written complaint with the
6 registrar pursuant to section 32-1155 and any party to the complaint disputes
7 the registrar's corrective work order, within thirty calendar days after the
8 corrective work order is made, the complaint, at the sole discretion of the
9 registrar, may be referred to arbitration if the cost of repairs is five
10 thousand dollars or less. If the cost of repairs is more than five thousand
11 dollars, the contesting parties, within thirty calendar days after the
12 corrective work order, may opt into arbitration if all of the parties
13 agree. For the purposes of this subsection, the estimated cost of repairs
14 shall be determined at the time of investigation by the registrar. If either
15 party disputes the cost of the repairs, the party objecting shall submit to
16 the registrar within ten calendar days two separate bids from qualified
17 contractors on the cost of the repairs. Failure to provide two bids within
18 this time will result in the ~~party's~~ PARTY waiving ~~their~~ ITS right to object
19 to mandatory arbitration.

20 B. The registrar shall serve the parties notice whether the matter has
21 been referred to arbitration within ten calendar days after a request for
22 arbitration has been received. If the matter has been referred to
23 arbitration, the notice also shall identify the arbitrator selected by the
24 registrar, who shall be a member in good standing of the construction law
25 section of the state bar of Arizona. Service shall be made by personal
26 service or by mailing a copy of the notice by certified mail to the
27 licensee's latest address of record on file in the registrar's office. If
28 service is made by certified mail, it is effective five calendar days after
29 the notice is mailed.

30 C. Section 12-3012 applies and the parties have the right to remove an
31 arbitrator at any time on discovery of grounds set forth in section 12-3011,
32 subsection B. If an arbitrator is removed pursuant to this subsection, the
33 registrar shall notify the parties of the new arbitrator selected within
34 seven calendar days. The arbitrator has immunity as prescribed in section
35 12-3014.

36 D. The licensee may post a bond in the amount of the estimated cost of
37 repairs within fourteen calendar days after service of the registrar's notice
38 referring the matter to arbitration. The registrar may not suspend or revoke
39 any of the licenses held by a licensee that posts a bond in the amount of the
40 claim subject to arbitration.

41 E. The arbitration process is governed by section 12-3015.

1 F. Except as otherwise provided in this section, sections 12-3010,
2 12-3016 and 12-3017 apply to arbitrations under this section.

3 G. The arbitration hearing shall be held within sixty calendar days
4 after the registrar's notice referring the matter to arbitration. The
5 arbitrator may extend the deadline to hold the hearing for an additional
6 thirty calendar days on agreement of the parties or for good cause shown.

7 H. The arbitrator is prohibited from ordering the suspension or
8 revocation of any license, awarding monetary damages, assessing civil
9 penalties or awarding any legal fees or costs in any amount.

10 I. The arbitrator shall issue a recommended order with findings of
11 fact and conclusions of law including necessary repairs no later than fifteen
12 calendar days after the close of the arbitration hearing. The arbitrator
13 shall serve a copy of the recommended order to each party to the arbitration
14 proceeding as well as the registrar by personal service or by mailing a copy
15 of the recommended order by certified mail to the licensee's latest address
16 of record on file in the registrar's office. If service is made by certified
17 mail, it is effective five calendar days after the notice is mailed. The
18 arbitrator's recommended order shall become an order of the registrar,
19 subject to acceptance, modification or rejection by the registrar, within
20 twenty calendar days from the date of the arbitrator's recommended order.
21 The registrar's order becomes final thirty calendar days after the date of an
22 order by the registrar. The arbitrator or registrar shall not grant requests
23 to rehear the matter. A party waives any objection that ~~a~~ AN order was not
24 timely made unless the party gives notice of the objection to the registrar
25 before receiving notice of the order.

26 J. Notwithstanding any other provision in this chapter, before an
27 order of the registrar becomes final pursuant to subsection I of this
28 section, if a contractor fails to comply with the order:

29 1. The registrar may order that the cash bond posted pursuant to
30 subsection D of this section be discharged within twenty-five calendar
31 days. The complainant is not eligible for any additional award from the
32 ~~residential-contractors'~~ recovery fund pursuant to section 32-1132 and may
33 not seek the same award, claim or remedy through civil court.

34 2. If a bond is not posted by the licensee pursuant to subsection D of
35 this section, the registrar may suspend or revoke the licensee's license by
36 operation of law and order payment from the recovery fund for claimants who
37 are eligible.

38 K. Compliance with the order shall be determined by the following:

39 1. If a complainant fails to notify the registrar within ten calendar
40 days of the order becoming final, the respondent shall be deemed to have
41 complied with the order.

1 2. If a complainant notifies the registrar ~~of contractors~~ that the
2 respondent has failed to comply with the order, the registrar shall make a
3 final determination of compliance.

4 L. This section applies to all complaints filed with the registrar on
5 or after ~~the effective date of this section~~ JULY 20, 2011.

6 Sec. 18. Section 32-1158, Arizona Revised Statutes, is amended to
7 read:

8 32-1158. Minimum elements of a contract

9 ~~A. From and after December 31, 1992 until December 31, 2007, any~~
10 ~~contract in an amount of more than one thousand dollars and less than one~~
11 ~~hundred fifty thousand dollars entered into between a contractor and the~~
12 ~~owner of a property to be improved shall contain in writing at least the~~
13 ~~following information:~~

14 ~~1. The name of the contractor and the contractor's business address~~
15 ~~and license number.~~

16 ~~2. The name and mailing address of the owner and the jobsite address~~
17 ~~or legal description.~~

18 ~~3. The date the parties entered into the contract.~~

19 ~~4. The estimated date of completion of all work to be performed under~~
20 ~~the contract.~~

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

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

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

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

30 ~~B. A. From and after December 31, 2007, Any contract in an amount of~~
31 ~~more than one thousand dollars entered into between a contractor and the~~
32 ~~owner of a property to be improved shall contain in writing at least the~~
33 ~~following information:~~

34 ~~1. The name of the contractor and the contractor's business address~~
35 ~~and license number.~~

36 ~~2. The name and mailing address of the owner and the jobsite address~~
37 ~~or legal description.~~

38 ~~3. The date the parties entered into the contract.~~

39 ~~4. The estimated date of completion of all work to be performed under~~
40 ~~the contract.~~

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

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

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

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

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

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

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

27 Sec. 19. Requirements for enactment: two-thirds vote

28 Pursuant to article IX, section 22, Constitution of Arizona, this act
29 is effective only on the affirmative vote of at least two-thirds of the
30 members of each house of the legislature and is effective immediately on the
31 signature of the governor or, if the governor vetoes this act, on the
32 subsequent affirmative vote of at least three-fourths of the members of each
33 house of the legislature."

34 Amend title to conform

and, as so amended, it do pass

THOMAS FORESE
Chairman

2261-se-com
2/19/14
H:laa