

State of Arizona  
Senate  
Fifty-first Legislature  
Second Regular Session  
2014

# SENATE BILL 1160

AN ACT

AMENDING SECTIONS 32-1124, 32-1154 AND 32-1164, ARIZONA REVISED STATUTES;  
RELATING TO CONTRACTORS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 32-1124, Arizona Revised Statutes, is amended to  
3 read:

4 32-1124. Issuance and display of license; suspension

5 A. ~~Upon~~ ON receipt by the registrar of the fee required by this  
6 chapter and an application furnishing complete information as required by the  
7 registrar, the registrar shall notify the applicant within sixty days from  
8 the date of the filing of a complete application of the action taken on the  
9 application, and if the registrar determines that the applicant is qualified  
10 to hold a license in accordance with this chapter, the registrar shall issue  
11 a license to the applicant permitting the applicant to engage in business as  
12 a contractor under the terms of this chapter.

13 B. Licenses issued under this chapter and any renewals shall be signed  
14 by the registrar or the registrar's designated representative and by the  
15 licensee. The license shall be nontransferable, and satisfactory evidence of  
16 possession shall be exhibited by the licensee ~~upon~~ ON demand. The license  
17 number appearing on any licenses held by the licensee shall be preceded by  
18 the acronym "ROC" and shall be posted in a conspicuous place on premises  
19 where any work is being performed, shall be placed on all written bids  
20 submitted by the licensee and shall be placed on all broadcast, published,  
21 internet or billboard advertising, letterheads and other documents used by  
22 the licensee to correspond with the licensee's customers or potential  
23 customers in the conduct of business regulated by this chapter. A violation  
24 of this subsection relating to posting and placement of license numbers shall  
25 be, at the discretion of the registrar, grounds for disciplinary action  
26 pursuant to section 32-1154, subsection A, paragraph ~~13~~ 12, but not grounds  
27 for preventing the award of a contract, voiding an awarded contract, or any  
28 other claim or defense against the licensee. For the purposes of this  
29 subsection, advertising does not include a trade association directory  
30 listing that is distributed solely to the members of the association and not  
31 to the general public.

32 C. If an application for a license is denied for any reason provided  
33 in this chapter, the application fee paid by the applicant shall be forfeited  
34 and deposited pursuant to section 32-1107. A reapplication for a license  
35 shall be accompanied by the fee fixed by this chapter.

36 D. On issuance or renewal of a license, the registrar, at the request  
37 of a licensee, shall issue a single license certificate showing all  
38 contracting licenses held by the licensee ~~which~~ THAT are currently in good  
39 standing and their dates of expiration.

40 E. The registrar may establish procedures to allow a licensee to  
41 establish a common expiration or renewal date for all licenses issued to the  
42 licensee and may provide for proration of license fees for that purpose.

43 F. The registrar shall suspend by operation of law a license issued  
44 under this chapter if any of the following occurs:

1           1. The licensed entity is dissolved. The dissolution of the licensed  
2 entity includes the death of a sole owner, a change to the partnership by  
3 either adding or removing a partner, the revocation or dissolution of  
4 corporate authority or the dissolution of a limited liability company or  
5 limited liability partnership.

6           2. The licensed entity does not have authority to do business in this  
7 state.

8           3. The license is obtained or renewed with an insufficient funds  
9 check. The license remains suspended until the registrar receives a  
10 certified check, a money order or cash as payment for the license fees and  
11 assessments.

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

13           ~~32-1154.~~ Grounds for suspension or revocation of license;  
14 continuing jurisdiction; civil penalty; recovery  
15 fund award; summary suspension

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

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

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

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

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

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

32           ~~6.~~ 5. Misrepresentation of a material fact by the applicant in  
33 obtaining a license.

34           ~~7.~~ 6. The doing of a fraudulent act by the licensee as a contractor  
35 resulting in another person being substantially injured.

36           ~~8.~~ 7. Conviction of a felony.

37           ~~9.~~ 8. Failure in a material respect by the licensee to complete a  
38 construction project or operation for the price stated in the contract, or in  
39 any modification of the contract.

40           ~~10.~~ 9. Aiding or abetting a licensed or unlicensed person to evade  
41 this chapter, knowingly or recklessly combining or conspiring with a licensed  
42 or unlicensed person, allowing one's license to be used by a licensed or  
43 unlicensed person or acting as agent, partner, associate or otherwise of a  
44 licensed or unlicensed person with intent to evade this chapter.

~~11.~~ 10. Failure by a licensee or agent or official of a licensee to pay monies in excess of seven hundred fifty dollars when due for materials or services rendered in connection with the licensee's operations as a contractor when the licensee has the capacity to pay or, if the licensee lacks the capacity to pay, when the licensee has received sufficient monies as payment for the particular construction work project or operation for which the services or materials were rendered or purchased.

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

~~13.~~ 12. Failure in any material respect to comply with this chapter.

~~14.~~ 13. Knowingly entering into a contract with a contractor for work to be performed for which a license is required with a person not duly licensed in the required classification.

~~15.~~ 14. Acting in the capacity of a contractor under any license issued under this chapter in a name other than as set forth on the license.

~~16.~~ 15. False, misleading or deceptive advertising whereby any member of the public may be misled and injured.

~~17.~~ 16. Knowingly contracting beyond the scope of the license or licenses of the licensee.

~~18.~~ 17. Contracting or offering to contract or submitting a bid while the license is under suspension or while the license is on inactive status.

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

~~20.~~ 19. Subsequent discovery of facts that if known at the time of issuance of a license or the renewal of a license would have been grounds to deny the issuance or renewal of a license.

~~21.~~ 20. Having a person named on the license who is or was named on any other license in this state or in another state that is under suspension or revocation for any act or omission that occurs while the person is or was named on the license unless the prior revocation was based solely on a violation of this paragraph.

~~22.~~ 21. Continuing a new single family residential construction project with actual knowledge that a pretreatment wood-destroying pests or organisms application was either:

(a) Not performed at the required location.

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

~~23.~~ 22. Failure to take appropriate corrective action to comply with this chapter or with rules adopted pursuant to this chapter without valid justification within a reasonable period of time after receiving a written directive from the registrar. The written directive shall set forth the time within which the contractor is to complete the remedial action. The time

1 permitted for compliance shall not be less than fifteen days from the date of  
2 issuance of the directive. A license shall not be revoked or suspended nor  
3 shall any other penalty be imposed for a violation of this paragraph until  
4 after a hearing has been held.

5 ~~24.~~ 23. Prohibit, threaten to prohibit, retaliate, threaten to  
6 retaliate or otherwise intimidate any contractor or materialman from serving  
7 a preliminary notice pursuant to section 33-992.01.

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

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

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

33 C. PURSUANT TO THIS CHAPTER, THE REGISTRAR SHALL TEMPORARILY SUSPEND  
34 OR PERMANENTLY REVOKE THE LICENSE ISSUED TO A PERSON UNDER THIS CHAPTER UPON  
35 NOTICE FROM THE DEPARTMENT OF REVENUE THAT A TAX DEBT RELATED TO INCOME  
36 TAXES, WITHHOLDING TAXES OR ANY TAX IMPOSED OR ADMINISTERED BY TITLE 42,  
37 CHAPTER 5 THAT WAS INCURRED IN THE OPERATION OF THE LICENSED BUSINESS HAS  
38 BECOME FINAL AND THE PERSON NEGLECTS TO PAY OR REFUSES TO PAY THE TAX DEBT.

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

1       ~~D.~~ E. The registrar may impose a civil penalty of not to exceed five  
2 hundred dollars on a contractor for each violation of subsection A, paragraph  
3 ~~23~~ 22 of this section. Civil penalties collected pursuant to this subsection  
4 shall be deposited in the residential contractors' recovery fund. The  
5 failure by the licensee to pay any civil penalty imposed under this  
6 subsection results in the automatic revocation of the license thirty days  
7 after the effective date of the order providing for the civil penalty. No  
8 future license may be issued to an entity consisting of a person, as defined  
9 in section 32-1101, subsection A, paragraph 6, who is associated with the  
10 contractor, unless payment of any outstanding civil penalty is tendered.

11       ~~E.~~ F. The registrar shall impose a civil penalty of not to exceed one  
12 thousand dollars on a contractor for each violation of subsection A,  
13 paragraph ~~18~~ 17 of this section. Civil penalties collected pursuant to this  
14 subsection shall be deposited in the residential contractors' recovery fund.  
15 The failure by the licensee to pay any civil penalty imposed under this  
16 subsection results in the automatic permanent revocation of the license  
17 thirty days after the effective date of the order providing for the civil  
18 penalty. No future license may be issued to an entity consisting of a  
19 person, as defined in section 32-1101, subsection A, paragraph 6, who is  
20 associated with the contractor, unless payment of any outstanding civil  
21 penalty is tendered.

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

1           Sec. 3. Section 32-1164, Arizona Revised Statutes, is amended to read:  
2           ~~32-1164.~~ Violation; classification; probation; conditions  
3           A. Commission by a contractor of any of the following acts is a class  
4           1 misdemeanor:  
5           1. Any act specified in section 32-1154, subsection A, paragraph ~~7~~ 6  
6           or ~~10~~ 9.  
7           2. Acting in the capacity of a contractor within the meaning of this  
8           chapter without a license.  
9           B. For the first offense under subsection A of this section, a  
10          contractor shall be fined not less than one thousand dollars. For the second  
11          or any subsequent offense under subsection A of this section, a contractor  
12          shall be fined not less than two thousand dollars.  
13          C. If a person is convicted of a ~~violation of~~ MISDEMEANOR PURSUANT TO  
14          subsection A of this section and the court sentences the person to a term of  
15          probation, the court shall order that as conditions of probation the person  
16          ~~does DO~~ all of the following:  
17          1. ~~Pays~~ PAY in full all transaction privilege tax or use tax amounts  
18          that are due under title 42, chapter 5, article 2 or 4 and that arise from  
19          the acts or omissions constituting the ~~violation~~ OFFENSE.  
20          2. ~~Pays~~ PAY in full all transaction privilege or use tax amounts that  
21          are due to the county in which the ~~violation~~ OFFENSE occurred and that arise  
22          from the acts or omissions constituting the ~~violation~~ OFFENSE.  
23          3. ~~Pays~~ PAY in full all transaction privilege or use tax amounts that  
24          are owed to the local municipal government, city or town in which the  
25          ~~violation~~ OFFENSE occurred and that arise from the acts or omissions  
26          constituting the ~~violation~~ OFFENSE.