

REFERENCE TITLE: **contractor licensure**

State of Arizona
Senate
Fifty-third Legislature
Second Regular Session
2018

SB 1375

Introduced by
Senator Fann

AN ACT

AMENDING SECTIONS 32-1101, 32-1122, 32-1151.01 AND 32-1154, ARIZONA
REVISED STATUTES; RELATING TO CONTRACTORS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 32-1101, Arizona Revised Statutes, is amended to
3 read:

4 32-1101. Definitions

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

6 1. "Advertisement" means any written or oral publication,
7 dissemination, solicitation or circulation 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
10 directory 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,
14 or any combination, that, for compensation, undertakes to or offers to
15 undertake to, purports to have the capacity to undertake to, submits a bid
16 to, does himself or by or through others, or directly or indirectly
17 supervises others, 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
20 other structure, project, development or improvement, or to do any part
21 thereof, including the erection of scaffolding or any other structure or
22 work in connection with the construction.

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

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

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

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

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

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

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

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

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

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

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

12 5. "License" means an authorization for the person who is listed on
13 the electronic, paper or other records maintained by the registrar to act
14 in the capacity of a contractor.

15 6. "NAMED ON A LICENSE" MEANS REQUIRED TO BE IDENTIFIED PURSUANT TO
16 SECTION 32-1122, SUBSECTION B.

17 ~~6.~~ 7. "Person" means ~~an applicant, an individual, a member of a~~
18 ~~limited liability company, a qualifying party, any partner of a~~
19 ~~partnership or limited liability partnership or any officer, director,~~
20 ~~qualifying party, trustee of a trust, beneficiary of a trust or owner of~~
21 ~~at least twenty-five per cent of the stock or beneficial interest of a~~
22 corporation, COMPANY, PARTNERSHIP, FIRM, ASSOCIATION, TRUST, SOCIETY OR
23 NATURAL PERSON.

24 ~~7.~~ 8. "Registrar" means the registrar of contractors.

25 ~~8.~~ 9. "Residential contractor" is synonymous with the term
26 "residential builder" and means any person, firm, partnership,
27 corporation, association or other organization, or a combination of any of
28 them, that undertakes to or offers to undertake to, purports to have the
29 capacity to undertake to, submits a bid to, or does himself or by or
30 through others, within residential property lines:

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

36 (b) Connect such A residential structure to utility service lines,
37 metering devices or sewer lines.

38 (c) Provide mechanical or structural service for any such
39 residential structure.

40 B. "Contractor" includes subcontractors, specialty contractors,
41 floor covering contractors, landscape contractors, other than gardeners,
42 and consultants representing themselves as having the ability to supervise
43 or manage a construction project for the benefit of the property owner,
44 including the hiring and firing of specialty contractors, the scheduling

1 of work on the project and the selection and purchasing of construction
2 material.

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

6 D. Only contractors as defined in this section are licensed and
7 regulated by this chapter.

8 Sec. 2. Section 32-1122, Arizona Revised Statutes, is amended to
9 read:

10 32-1122. Qualifications for license

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

13 1. Classify and qualify applicants for a license.

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

17 3. Conduct investigations the registrar deems necessary.

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

20 B. To obtain, ~~or~~ renew OR MAINTAIN a license under this chapter,
21 the applicant OR LICENSEE shall:

22 1. Submit to the registrar of contractors a verified application on
23 forms that are prescribed by the registrar of contractors and that contain
24 the following information ~~and shall advise the registrar of any change in~~
25 ~~the information within thirty days:~~

26 (a) A designation of the classification of license that is sought
27 by the applicant.

28 (b) If the applicant is ~~an individual~~ A SOLE PROPRIETORSHIP, the
29 applicant's name and address.

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

32 (d) IF THE APPLICANT IS A LIMITED LIABILITY COMPANY, THE NAMES AND
33 ADDRESSES OF ALL OF THE FOLLOWING, AS APPLICABLE:

34 (i) IF THE APPLICANT IS A MANAGER-MANAGED LIMITED LIABILITY
35 COMPANY, ALL MANAGERS.

36 (ii) IF THE APPLICANT IS A MEMBER-MANAGED LIMITED LIABILITY
37 COMPANY, ALL MEMBERS.

38 (iii) ALL OWNERS OF TWENTY-FIVE PERCENT OR MORE OF THE STOCK OR
39 BENEFICIAL INTEREST.

40 ~~(d)~~ (e) If the applicant is a corporation, an association or any
41 other organization, the names and addresses of ALL OF THE FOLLOWING:

42 (i) The president, ~~vice-president, if any~~ VICE PRESIDENT, secretary
43 and treasurer or the names and addresses of the functional equivalent of
44 ALL OF these officers. ~~,~~

45 (ii) The directors.

1 (iii) ~~and~~ The owners of twenty-five percent or more of the stock or
2 beneficial interest.

3 ~~(e)~~ (f) The name and address of the qualifying party.

4 ~~(f)~~ (g) If the applicant is a LIMITED LIABILITY COMPANY OR
5 corporation, evidence that the LIMITED LIABILITY COMPANY OR corporation is
6 in good standing with the corporation commission.

7 ~~(g)~~ (h) The address or location of the applicant's place of
8 business and the mailing address if it is different from the applicant's
9 place of business.

10 ~~(h)~~ (i) Proof that the applicant has complied with the statutes or
11 rules governing workers' compensation insurance.

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

13 3. SUBMIT AND MAINTAIN THE APPROPRIATE BOND REQUIRED UNDER THIS
14 CHAPTER.

15 4. NOTIFY THE REGISTRAR OF ANY CHANGE IN THE INFORMATION REQUIRED
16 BY THIS SECTION WITHIN THIRTY DAYS AFTER THE CHANGE OCCURS.

17 C. To obtain, ~~or~~ renew OR MAINTAIN a license under this chapter,
18 each person WHO IS NAMED ON A LICENSE shall be of good character and
19 reputation. Lack of good character and reputation may be established by
20 showing that a person has engaged in contracting without a license or
21 committed any act that, if committed or done by any licensed contractor,
22 would be grounds for suspension or revocation of a contractor's license or
23 by showing that the person was named on a ~~contractor's~~ license that was
24 suspended or revoked in another state.

25 D. To obtain a license under this chapter, a person shall not have
26 had a license refused or revoked, within one year before the person's
27 application, or shall not have engaged in the contracting business, nor
28 shall the person have submitted a bid without first having been licensed
29 within one year before the person's application, nor shall a person act as
30 a contractor between the filing of the application and actual issuance of
31 the license. The registrar may find any of those actions or circumstances
32 to be excusable if there was reasonable doubt as to the need for licensure
33 or the actions of the applicant did not result in an unremedied hardship
34 or danger or loss to the public. A person who has been convicted of
35 contracting without a license is not eligible to obtain a license under
36 this chapter for one year after the date of the last conviction.

37 E. Before a license is issued, the qualifying party shall:

38 1. Have a minimum of four years' practical or management trade
39 experience, at least two of which must have been within the last ten
40 years, dealing specifically with the type of construction, or its
41 equivalent, for which the applicant is applying for a license. Technical
42 training in an accredited college or university or in a manufacturer's
43 accredited training program may be substituted for a portion of such
44 experience, but in no case may credited technical training exceed two
45 years of the required four years' experience. The registrar of

1 contractors may reduce the four years' practical or management experience
2 requirement if in the registrar's opinion it has been conclusively shown
3 by custom and usage in the particular industry or craft involved that the
4 four-year requirement is excessive. The registrar may waive the work
5 experience documentation and verification or the examination requirement
6 if the records reflect that the qualifying party is currently or has
7 previously been a qualifying party for a licensee in this state in the
8 same classification within the preceding five years.

9 2. Successfully show, by written examination taken not more than
10 two years before application, if required, qualification in the kind of
11 work for which the applicant proposes to contract, the applicant's general
12 knowledge of the building, safety, health and lien laws of the state,
13 administrative principles of the contracting business and the rules
14 adopted by the registrar of contractors pursuant to this chapter,
15 demonstrate knowledge and understanding of construction plans and
16 specifications applicable to the particular industry or craft and of the
17 standards of construction work and techniques and practices in the
18 particular industry or craft and demonstrate a general understanding of
19 other related construction trades, in addition to any other matters as may
20 be deemed appropriate by the registrar to determine that the qualifying
21 party meets the requirements of this chapter. The registrar shall
22 maintain multiple versions of examinations for each type of license that
23 requires an examination.

24 F. ~~No~~ A license shall NOT be issued to a minor, to any partnership
25 in which one of the partners is a minor or to any corporation in which a
26 corporate officer is a minor.

27 G. Before receiving, renewing and holding a license pursuant to
28 this chapter, the registrar may require a license applicant or licensee to
29 submit to the registrar a full set of fingerprints and the fees required
30 in section 41-1750. The registrar shall submit the fingerprints and fees
31 to the department of public safety for the purpose of obtaining a state
32 and federal criminal records check pursuant to section 41-1750 and Public
33 Law 92-544. The department of public safety may exchange this fingerprint
34 data with the federal bureau of investigation.

35 Sec. 3. Section 32-1151.01, Arizona Revised Statutes, is amended to
36 read:

37 32-1151.01. Change in ownership; notice to registrar

38 A corporation, association or other organization ~~which~~ THAT is a
39 licensed contractor shall immediately notify the registrar of any transfer
40 of ownership of ~~fifty per cent~~ TWENTY-FIVE PERCENT or more of the stock or
41 beneficial interest in the company.

1 Sec. 4. 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
7 pursuant to this chapter shall not commit any of the following acts or
8 omissions:

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

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

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

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

21 5. Misrepresentation of a material fact by the applicant in
22 obtaining a license.

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

25 7. Conviction of a felony.

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

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

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

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

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

1 13. Knowingly entering into a contract with a contractor for work
2 to be performed for which a license is required with a person **THAT IS** not
3 duly licensed in the required classification.

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

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

8 16. Knowingly contracting beyond the scope of the license or
9 licenses of the licensee.

10 17. Contracting or offering to contract or submitting a bid while
11 the license is under suspension or while the license is on inactive
12 status.

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

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

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

25 21. Continuing a new ~~single-family~~ **SINGLE-FAMILY** residential
26 construction project with actual knowledge that a pretreatment
27 wood-destroying pests or organisms application was either:

28 (a) Not performed at the required location.

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

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

40 23. Prohibit, threaten to prohibit, retaliate **AGAINST**, threaten to
41 retaliate **AGAINST** or otherwise intimidate any contractor or materialman
42 from serving a preliminary notice pursuant to section 33-992.01.

43 24. For contractors ~~as defined in section 32-1101~~, failure to
44 comply with title 44, chapter 11, article 11.

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

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

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

26 C. Pursuant to this chapter, the registrar shall temporarily
27 suspend or permanently revoke the license issued to a person under this
28 chapter on notice from the department of revenue that a tax debt related
29 to income taxes, withholding taxes or any tax imposed or administered by
30 title 42, chapter 5 that was incurred in the operation of the licensed
31 business has become final and the person neglects to pay or refuses to pay
32 the tax debt.

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

40 E. The registrar may impose a civil penalty of not to exceed five
41 hundred dollars on a contractor for each violation of subsection A,
42 paragraph 22 of this section. Civil penalties collected pursuant to this
43 subsection shall be deposited in the residential contractors' recovery
44 fund. The failure by the licensee to pay any civil penalty imposed under
45 this subsection results in the automatic revocation of the license thirty

1 days after the effective date of the order providing for the civil
2 penalty. ~~No future license may be issued to an entity consisting of a~~
3 ~~person, as defined in section 32-1101, who is associated with the~~
4 ~~contractor, unless payment of any outstanding civil penalty is tendered.~~ A
5 PERSON WHO IS OR WAS NAMED ON A LICENSE OF A CONTRACTOR WHEN AN ACT OR
6 OMISSION OCCURS THAT RESULTS IN A CIVIL PENALTY MAY NOT RECEIVE A NEW
7 LICENSE UNDER THIS CHAPTER UNTIL THE ENTIRE CIVIL PENALTY IS PAID.

8 F. The registrar shall impose a civil penalty of not to exceed one
9 thousand dollars on a contractor for each violation of subsection A,
10 paragraph 17 of this section. Civil penalties collected pursuant to this
11 subsection shall be deposited in the residential contractors' recovery
12 fund. The failure by the licensee to pay any civil penalty imposed under
13 this subsection results in the automatic permanent revocation of the
14 license thirty days after the effective date of the order providing for
15 the civil penalty. ~~No future license may be issued to an entity~~
16 ~~consisting of a person, as defined in section 32-1101, who is associated~~
17 ~~with the contractor, unless payment of any outstanding civil penalty is~~
18 ~~tendered.~~ A PERSON WHO IS OR WAS NAMED ON A LICENSE OF A CONTRACTOR WHEN
19 AN ACT OR OMISSION OCCURS THAT RESULTS IN A CIVIL PENALTY MAY NOT RECEIVE
20 A NEW LICENSE UNDER THIS CHAPTER UNTIL THE ENTIRE CIVIL PENALTY IS PAID.

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