

State of Arizona
Senate
Fifty-fourth Legislature
First Regular Session
2019

SB 1397

Introduced by
Senator Mesnard

AN ACT

AMENDING SECTIONS 32-1101, 32-1104, 32-1105, 32-1107, 32-1121, 32-1122, 32-1123, 32-1123.01, 32-1124, 32-1125, 32-1125.01, 32-1126 AND 32-1127, ARIZONA REVISED STATUTES; AMENDING TITLE 32, CHAPTER 10, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 32-1127.01; AMENDING SECTIONS 32-1131 AND 32-1132, ARIZONA REVISED STATUTES; AMENDING TITLE 32, CHAPTER 10, ARTICLE 2.1, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 32-1132.01, 32-1133 AND 32-1133.01; AMENDING SECTIONS 32-1134 AND 32-1134.02, ARIZONA REVISED STATUTES; REPEALING SECTION 32-1136, ARIZONA REVISED STATUTES; AMENDING SECTIONS 32-1137, 32-1151.02, 32-1152, 32-1152.01, 32-1154 AND 32-1155, ARIZONA REVISED STATUTES; REPEALING SECTION 32-1155.01, ARIZONA REVISED STATUTES; AMENDING SECTIONS 32-1156, 32-1156.01 AND 32-1161, ARIZONA REVISED STATUTES; AMENDING TITLE 32, CHAPTER 10, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 32-1162; AMENDING SECTION 32-1165, ARIZONA REVISED STATUTES; REPEALING SECTIONS 32-1166 AND 32-1166.01, ARIZONA REVISED STATUTES; AMENDING TITLE 32, CHAPTER 10, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 32-1166 AND A NEW SECTION 32-1166.01; AMENDING SECTIONS 32-1166.02, 32-1168, 32-1169 AND 32-1170.02, ARIZONA REVISED STATUTES; PROVIDING FOR TRANSFERRING AND RENUMBERING; AMENDING TITLE 32, CHAPTER 10, ARIZONA REVISED STATUTES, BY ADDING A NEW ARTICLE 5; AMENDING SECTIONS 32-1181, 32-1182, 32-1183, 32-1185, 32-1186, 32-1187 AND 32-1188, ARIZONA REVISED STATUTES, AS TRANSFERRED AND RENUMBERED; 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~~ A combination OF ANY OF THEM, that, for compensation, undertakes to
15 or offers to undertake to, purports to have the capacity to undertake to,
16 submits a bid OR RESPONDS TO A REQUEST FOR QUALIFICATION OR A REQUEST FOR
17 PROPOSALS FOR CONSTRUCTION SERVICES to, does himself or by or through
18 others, or directly or indirectly supervises others, except within
19 residential property lines, to:

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

25 (b) Connect such a structure or improvements to utility service
26 lines and metering devices and the sewer line.

27 (c) Provide mechanical or structural service for any such structure
28 or improvements.

29 3. "Contractor":

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

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

42 ~~(b)~~ (ii) Connect such a structure or improvements to utility
43 service lines and metering devices and the sewer line.

44 ~~(c)~~ (iii) Provide mechanical or structural service for any such
45 structure or improvements.

1 (b) INCLUDES SUBCONTRACTORS, SPECIALTY CONTRACTORS, FLOOR COVERING
2 CONTRACTORS, HARDSCAPE CONTRACTORS AND CONSULTANTS WHO REPRESENT THAT THEY
3 ARE ABLE TO SUPERVISE OR MANAGE A CONSTRUCTION PROJECT FOR THE PROPERTY
4 OWNER'S BENEFIT, INCLUDING HIRING AND FIRING SPECIALTY CONTRACTORS,
5 SCHEDULING WORK ON THE PROJECT AND SELECTING AND PURCHASING CONSTRUCTION
6 MATERIAL.

7 4. "Dual licensed contractor" is synonymous with the term
8 "commercial and residential builder" and means any person, firm,
9 partnership, corporation, association or other organization, or ~~any~~ A
10 combination OF ANY OF THEM, that FOR COMPENSATION undertakes to or offers
11 to undertake to, purports to have the capacity to undertake to, submits a
12 bid OR RESPONDS TO A REQUEST FOR QUALIFICATION OR A REQUEST FOR PROPOSALS
13 FOR CONSTRUCTION SERVICES to, does himself or by or through others, or
14 directly or indirectly supervises others under a single license on
15 commercial or residential property to:

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

19 (b) Connect such a structure or improvements to utility service
20 lines and metering devices and the sewer line.

21 (c) Provide mechanical or structural service for any such structure
22 or improvements.

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

26 6. "Named on a license" means required to be identified pursuant to
27 section 32-1122, subsection B.

28 7. "Person" means a corporation, company, partnership, firm,
29 association, trust, society or natural person.

30 8. "QUALIFYING PARTY" MEANS A PERSON WHO IS RESPONSIBLE FOR A
31 LICENSEE'S ACTIONS AND CONDUCT PERFORMED UNDER THE LICENSE AND WHO EITHER:

32 (a) HAS AN OWNERSHIP INTEREST IN THE LICENSE.

33 (b) IS REGULARLY EMPLOYED BY THE LICENSEE.

34 ~~8.~~ 9. "Registrar" means the registrar of contractors.

35 ~~9.~~ 10. "Residential contractor":

36 (a) Is synonymous with the term "residential builder" and means any
37 person, firm, partnership, corporation, association or other organization,
38 or a combination of any of them, that FOR COMPENSATION undertakes to or
39 offers to undertake to, purports to have the capacity to undertake to,
40 submits a bid OR RESPONDS TO A REQUEST FOR QUALIFICATION OR A REQUEST FOR
41 PROPOSALS FOR CONSTRUCTION SERVICES to, or does himself or by or through
42 others, within residential property lines:

43 ~~(a)~~ (i) Construct, alter, repair, add to, subtract from, improve,
44 move, wreck or demolish any residential structure, such as houses,
45 townhouses, condominiums or cooperative units. ~~Residential structures~~

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

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

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

7 (b) DOES NOT INCLUDE AN OWNER MAKING IMPROVEMENTS TO THE OWNER'S
8 PROPERTY PURSUANT TO SECTION 32-1121, SUBSECTION A, PARAGRAPH 5.

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

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

19 ~~D.~~ B. Only contractors as defined in this section are licensed and
20 regulated by this chapter.

21 Sec. 2. Section 32-1104, Arizona Revised Statutes, is amended to
22 read:

23 32-1104. Powers and duties

24 A. The registrar, in addition to other duties and rights provided
25 for in this chapter, shall:

26 1. Maintain an office in Phoenix and in such other cities and towns
27 in the state as the registrar deems advisable and necessary.

28 2. Maintain a complete indexed record of all applications and
29 licenses issued, renewed, terminated, cancelled, revoked or suspended
30 under this chapter, including timely notation of any judicial disposition
31 on appeal, for a period of not less than seven years.

32 3. Furnish a certified copy of any license issued or an affidavit
33 that no license exists or that a license has been cancelled or suspended,
34 including information as to the status on appeal of such A cancellation or
35 suspension, ~~upon~~ ON receipt of the prescribed fee, and ~~such~~ THAT certified
36 copy OR AFFIDAVIT shall be received in all courts and elsewhere as prima
37 facie evidence of the facts stated therein. The registrar shall also
38 furnish certified copies of license bonds or cash deposit certificates
39 ~~upon~~ ON receipt of the prescribed fee. Fees charged pursuant to this
40 paragraph ~~shall be at a rate of ten dollars~~ ARE \$10 per hour, except that
41 the minimum fee charged pursuant to this paragraph ~~shall be ten dollars~~
42 IS \$10.

43 4. Employ such deputies, investigators and assistants subject to
44 title 41, chapter 4, article 4, and procure such equipment and records, as
45 are necessary to enforce this chapter. With respect to the enforcement of

1 section 32-1164, the registrar or the registrar's investigators are vested
2 with the authority to issue a citation to any violators of this chapter in
3 accordance with section 13-3903. When the registrar or the registrar's
4 investigators conduct investigations they are authorized to receive
5 criminal history record information from the department of public safety
6 and other law enforcement agencies.

7 5. Make rules the registrar deems necessary to effectually carry
8 out the provisions and intent of this chapter. Such rules shall include
9 the adoption of minimum standards for good and workmanlike construction.
10 In ~~the adoption of~~ ADOPTING such rules of minimum standards, the registrar
11 shall be guided by established usage and procedure as found in the
12 construction business in this state AND BY A MANUFACTURER'S INSTALLATION
13 SPECIFICATIONS. If the rules of minimum standards adopted by the
14 registrar are in any manner inconsistent with a building or other code of
15 ~~the~~ THIS state, a county, city or other political subdivision or local
16 authority of ~~the~~ THIS state, compliance with such code shall constitute
17 good and workmanlike construction for the purposes of this chapter.

18 6. Apply the following to proposed rule changes:

19 (a) The registrar of contractors, at the time the registrar files
20 notice of proposed rule change with the secretary of state in compliance
21 with title 41, chapter 6, shall mail to each trade association that
22 qualifies in accordance with subdivision (b) OF THIS PARAGRAPH, and any
23 other individual holding a bona fide contractor's license who qualifies in
24 accordance with subdivision (b) OF THIS PARAGRAPH, a copy of the notice of
25 proposed rule change.

26 (b) Every trade association in this state allied with the
27 contracting business that files a written request that a notice be mailed
28 to it and shows that the association has an interest in the rules of the
29 registrar of contractors shall receive a copy thereof, as set forth in
30 subdivision (a) OF THIS PARAGRAPH. Such filing of a request ~~shall~~ MAY be
31 made every two years during the month of January, and it shall contain
32 information as to the nature of the association and its mailing address.
33 Any duly licensed contractor who files a written request shall receive a
34 copy of the proposed rule changes in accordance with this paragraph. Each
35 such request ~~shall~~ MAY be made every two years during the month of
36 January.

37 7. Prepare and furnish decals and business management books when
38 deemed advisable by the registrar. A reasonable fee may be charged for
39 such decals and business management books.

40 8. Refer criminal violations of this chapter ~~committed by persons~~
41 ~~previously named on a license which has been revoked~~ to the appropriate
42 law enforcement agency or prosecuting authority.

1 B. The registrar may develop and institute programs to do any of
2 the following:

3 1. Educate the public and contractors licensed pursuant to this
4 chapter regarding statutes, rules, policies and operations of the agency.

5 2. Assist in ~~the resolution of~~ RESOLVING disputes in an informal
6 process before a reportable written complaint is filed. The registrar
7 ~~shall~~ MUST notify the licensed contractor in an alleged dispute before a
8 written complaint is filed and allow the contractor the opportunity to be
9 present at any inspection regarding the alleged dispute. The registrar
10 ~~shall~~ MUST give the contractor at least five days' notice before the
11 inspection. Issues in the alleged dispute under this section shall not be
12 limited in number and shall not be considered formal written
13 complaints. The homeowner reserves the right to deny access to the
14 contractor under this informal complaint process. The registrar ~~shall~~
15 MUST notify the contractor and the homeowner in writing of the registrar's
16 findings within five days after the date of the inspection. The registrar
17 ~~shall~~ MAY not post any information regarding the informal complaint
18 process as part of a licensee's record on the registrar's ~~web site~~
19 WEBSITE.

20 3. Develop, manage, operate and sponsor construction related
21 programs designed to benefit the public in conjunction with other private
22 and public entities.

23 ~~C. The registrar may adopt rules for the posting of names of
24 applicants and personnel of applicants for contractors' licenses and
25 furnish copies of such posting lists upon written request. The name and
26 address of the applicant, together with the names and addresses and
27 official capacity of all persons associated with the applicant who have
28 signed the application, shall be publicly posted in the place and manner
29 to be prescribed by the registrar for a period of not less than twenty
30 days, except as otherwise provided in this subsection, commencing on the
31 day designated by the registrar of contractors. The registrar may waive a
32 part of the posting period when the records reflect that the applicant or
33 qualifying party has previously undergone the twenty day posting for a
34 previous license. A reasonable charge of not to exceed two dollars per
35 month may be made for compilation, printing and postage for such posting
36 lists.~~

37 C. THE REGISTRAR SHALL PUBLICLY POST A LIST OF APPLICANTS FOR A
38 CONTRACTOR LICENSE ON ITS WEBSITE FOR AT LEAST TWENTY DAYS, COMMENCING ON
39 THE DAY DESIGNATED BY THE REGISTRAR. THE REGISTRAR SHALL ISSUE A LICENSE
40 IF THE APPLICANT MEETS ALL REQUIREMENTS REGARDLESS OF THE TWENTY-DAY
41 POSTING PERIOD. THE REGISTRAR SHALL FURNISH COPIES OF THE POSTING LIST ON
42 WRITTEN REQUEST. A REASONABLE CHARGE, NOT TO EXCEED \$2 PER MONTH, MAY BE
43 MADE FOR COMPILATION, PRINTING AND POSTAGE FOR THE POSTING LIST. THE LIST
44 SHALL CONTAIN THE FOLLOWING INFORMATION:

45 1. THE NAME AND ADDRESS OF THE APPLICANT.

1 2. THE NAMES, ADDRESSES AND OFFICIAL CAPACITY OF ALL PERSONS
2 REQUIRED TO SIGN THE APPLICATION UNDER SECTION 32-1122.

3 D. The registrar may accept voluntary gifts, grants or matching
4 monies from public agencies or enterprises for the conduct of programs
5 that are authorized by this section or that are consistent with the
6 purpose of this chapter.

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

9 32-1105. Rulemaking powers for purposes of classifying and
10 reclassifying contractors

11 A. The registrar may adopt rules necessary to ~~effect the~~
12 ~~classification of~~ CLASSIFY contractors in a manner consistent with
13 established usage and procedure as found in the construction business, and
14 may limit the field and scope of operations of a licensed contractor
15 within any of the branches of the contracting business, as described in
16 this chapter, ~~to those divisions thereof~~ in which the contractor is
17 classified and qualified to engage.

18 B. The registrar shall establish by rule license classifications
19 for dual licensed contractors. A contractor classified as a dual licensed
20 contractor may perform equivalent construction work on both commercial and
21 residential projects under a single license. The registrar shall adopt
22 rules necessary to establish the scope of work that may be done under the
23 dual license classifications.

24 C. A licensee may apply for classification and be classified in
25 more than one classification ~~or division thereof~~ after the licensee meets
26 the qualifications prescribed by the registrar for such additional
27 classification or classifications. ~~A single form of application shall be~~
28 ~~adopted for all licenses issued by the registrar.~~

29 D. ~~Nothing in~~ This chapter ~~shall prohibit~~ DOES NOT PROHIBIT a
30 specialty contractor from taking and executing a contract involving the
31 use of two or more crafts or trades if the performance of the work in the
32 crafts or trades other than those in which the specialty contractor is
33 licensed is incidental and supplemental to the performance of work in the
34 craft for which the specialty contractor is licensed.

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

37 32-1107. Registrar of contractors fund

38 A. The registrar of contractors fund is established. The registrar
39 of contractors shall administer the fund. The registrar shall deposit,
40 pursuant to sections 35-146 and 35-147, **NINETY PERCENT OF** all monies
41 collected under this chapter **IN THE REGISTRAR OF CONTRACTORS FUND AND TEN**
42 **PERCENT OF ALL MONIES COLLECTED UNDER THIS CHAPTER IN THE STATE GENERAL**
43 **FUND**, except monies collected for the residential contractors' recovery
44 fund and the contractors' cash bond fund and monies received from civil
45 penalties. ~~, as follows:~~

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

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

5 ~~3. For all fiscal years that begin after June 30, 1996, ninety per~~
6 ~~cent in the registrar of contractors fund and ten per cent in the state~~
7 ~~general fund.~~

8 B. The registrar shall use monies in the registrar of contractors
9 fund for carrying out the powers and duties of the registrar and for the
10 purposes of this chapter. Monies deposited in the registrar of
11 contractors fund are subject to section 35-143.01.

12 Sec. 5. Section 32-1121, Arizona Revised Statutes, is amended to
13 read:

14 32-1121. Persons not required to be licensed; penalties;
15 applicability

16 A. This chapter ~~shall~~ DOES not ~~be construed to~~ apply to:

17 1. An authorized representative of the United States government,
18 this state or any county, incorporated city or town, reclamation district,
19 irrigation district or other municipality or political subdivision of this
20 state.

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

24 3. Public utilities operating under regulation of the corporation
25 commission or construction, repair or operation incidental to discovering
26 or producing petroleum or gas, or the drilling, testing, abandoning or
27 other operation of a petroleum or gas well, if performed by an owner or
28 lessee.

29 4. EXCEPT AS PROVIDED IN SUBSECTION D OF THIS SECTION, any
30 materialman, manufacturer or retailer who INFORMS THE PURCHASER THAT THE
31 INSTALLATION MAY ALSO BE PERFORMED BY A LICENSED CONTRACTOR WHOSE NAME AND
32 ADDRESS THE PURCHASER MAY REQUEST AND WHO furnishes finished products,
33 materials or articles of merchandise and who:

34 (a) Does not install or attach such items. ~~or~~

35 (b) Installs or attaches such items if the total value of the sales
36 contract or transaction involving such items and the cost of the
37 installation or attachment of such items to a structure does not exceed
38 ~~one thousand dollars~~ \$1,000, including labor, materials and all other
39 items, but excluding any electrical fixture or appliance that MEETS ALL OF
40 THE FOLLOWING:

41 (i) Was designed by the manufacturer. ~~, that~~

42 (ii) Is unaltered, unchanged or unmodified by any person. ~~, that~~

43 (iii) Can be plugged into a common ~~household~~ electrical outlet
44 ~~utilizing a two-pronged or three-pronged electrical connector and that~~
45 ~~does not use any other form of energy, including natural gas, propane or~~

~~1 other petroleum or gaseous fuel, to operate or is attached by a nail,
2 screw or other fastening device to the frame or foundation of any
3 residential structure. The materialman, manufacturer or retailer shall
4 inform the purchaser that the installation may also be performed by a
5 licensed contractor whose name and address the purchaser may request.~~

6 5. Owners of property who improve such property or who build or
7 improve structures or appurtenances on such property and who do the work
8 themselves, with their own employees or with duly licensed contractors, if
9 the structure, group of structures or appurtenances, including the
10 improvements thereto, are intended for occupancy solely by the owner and
11 are not intended for occupancy by members of the public as the owner's
12 employees or business visitors and the structures or appurtenances are not
13 intended for sale or for rent. In all actions brought under this chapter,
14 except an action against an owner-occupant as defined in section 33-1002,
15 proof of the sale or rent or the offering for sale or rent of any such
16 structure by the owner-builder within one year after completion or
17 issuance of a certificate of occupancy is prima facie evidence that such
18 project was undertaken for the purpose of sale or rent. For the purposes
19 of this paragraph, "sale" or "rent" includes any arrangement by which the
20 owner receives compensation in money, provisions, chattels or labor from
21 the occupancy or the transfer of the property or the structures on the
22 property.

23 6. Owners of property who are acting as developers and who build
24 structures or appurtenances to structures on their property for the
25 purpose of sale or rent and who contract for such a project with a general
26 contractor licensed pursuant to this chapter and owners of property who
27 are acting as developers, who improve structures or appurtenances to
28 structures on their property for the purpose of sale or rent and who
29 contract for such a project with a general contractor or specialty
30 contractors licensed pursuant to this chapter. To qualify for the
31 exemption under this paragraph, the licensed contractors' names and
32 license numbers ~~shall~~ MUST be included in all sales documents.

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

37 (a) Subsurface utility location and designation services.

38 (b) Potholing.

39 (c) Drilling for any of the following:

40 (i) Soil samples.

41 (ii) Rock samples.

42 (iii) Pavement samples.

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

1 8. A person licensed, certified or registered pursuant to title 3,
2 chapter 20 or a person working under the direct supervision of a person
3 certified or qualified pursuant to title 3, chapter 20 to the extent the
4 person is engaged in pest management.

5 9. **EXCEPT AS PROVIDED IN SUBSECTION D OF THIS SECTION**, the sale or
6 installation of finished products, materials or articles of merchandise
7 that are not fabricated into and do not become a permanent fixed part of
8 the structure. This exemption does not apply if a local building permit
9 is required, **IF THE REMOVAL OF THE FINISHED PRODUCT, MATERIAL OR ARTICLE**
10 **OF MERCHANDISE CAUSES DAMAGE TO THE STRUCTURE OR RENDERS THE STRUCTURE**
11 **UNFIT FOR ITS INTENDED USE OR** if the total price of the finished product,
12 material or article of merchandise **IS MORE THAN \$1,000**, including labor
13 but excluding any electrical fixture or appliance that **MEETS ALL OF THE**
14 **FOLLOWING:**

15 (a) Was designed by the manufacturer. ~~, that~~

16 (b) Is unaltered, unchanged or unmodified by any person. ~~, that~~

17 (c) Can be plugged into a common ~~household~~ electrical outlet
18 ~~utilizing a two-pronged or three-pronged electrical connector and that~~
19 ~~does not use any other form of energy, including natural gas, propane or~~
20 ~~other petroleum or gaseous fuel, to operate or is attached by a nail,~~
21 ~~screw or other fastening device to the frame or foundation of any~~
22 ~~residential structure, is more than one thousand dollars or if the removal~~
23 ~~of the finished product, material or article of merchandise causes damage~~
24 ~~to the structure or renders the structure unfit for its intended use.~~

25 10. Employees of the owners of condominiums, townhouses,
26 cooperative units or apartment complexes of four units or less or the
27 owners' management agent or employees of the management agent repairing or
28 maintaining structures owned by them.

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

32 12. A surety company or companies that are authorized to transact
33 business in this state and that undertake to complete a contract on which
34 they issued a performance or completion bond, ~~provided that~~ **IF** construction
35 work is performed by duly licensed contractors.

36 13. Insurance companies that are authorized to transact business in
37 this state and that undertake to perform repairs resulting from casualty
38 losses pursuant to the provisions of a policy, ~~provided that~~ **IF**
39 construction work is performed by duly licensed contractors.

40 14. **EXCEPT AS PROVIDED IN SUBSECTION D OF THIS SECTION**, any person
41 other than a licensed contractor engaging in any work or operation on one
42 undertaking or project by one or more contracts, for which the aggregate
43 contract price **IS LESS THAN \$1,000**, including labor, materials and all
44 other items, but excluding any electrical fixture or appliance that was
45 designed by the manufacturer, that is unaltered, unchanged or unmodified

1 by any person, ~~AND~~ that can be plugged into a common ~~household~~ electrical
2 outlet ~~utilizing a two-pronged or three-pronged electrical connector and~~
3 ~~that does not use any other form of energy, including natural gas, propane~~
4 ~~or other petroleum or gaseous fuel, to operate or is attached by a nail,~~
5 ~~screw or other fastening device to the frame or foundation of any~~
6 ~~residential structure, is less than one thousand dollars.~~ The work or
7 operations that are exempt under this paragraph ~~shall~~ **MUST** be of a casual
8 or minor nature. This exemption does not apply:

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

11 (b) In any case in which the work or construction is only a part of
12 a larger or major operation, whether undertaken by the same or a different
13 contractor, or in which a division of the operation is made in contracts
14 of amounts less than ~~one thousand dollars~~ **\$1,000**, excluding any electrical
15 fixture or appliance that was designed by the manufacturer, that is
16 unaltered, unchanged or unmodified by any person, ~~AND~~ that can be plugged
17 into a common ~~household~~ electrical outlet ~~utilizing a two-pronged or~~
18 ~~three-pronged electrical connector and that does not use any other form of~~
19 ~~energy, including natural gas, propane or other petroleum or gaseous fuel,~~
20 ~~to operate or is attached by a nail, screw or other fastening device to~~
21 ~~the frame or foundation of any residential structure, for the purpose of~~
22 ~~evasion of this chapter or otherwise.~~

23 (c) To a person who utilizes any form of advertising to the public
24 in which the person's unlicensed status is not disclosed by including the
25 words "not a licensed contractor" in the advertisement.

26 15. A person who is licensed, certified or registered pursuant to
27 title 41, chapter 37, article 4 and who is not otherwise required to be
28 licensed under this chapter or an employee of such person.

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

31 17. Alarm agents as defined in section 32-101.

32 B. A person who is licensed to perform work in a particular trade
33 pursuant to this chapter ~~shall~~ **IS** not ~~be~~ required to obtain and maintain a
34 separate license for mechanical or structural service work performed
35 within the scope of such trade by such person.

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

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

44 1. All fire safety and mechanical, electrical and plumbing work
45 that is done in connection with fire safety installation and fire safety

1 maintenance and repair. For the purposes of this paragraph, "fire safety
2 installation" means hardwired or interconnected smoke alarms and fire
3 sprinklers and does not include an individual device that is attached by a
4 nail, screw or other fastening device to the frame or foundation of any
5 residential unit. For the purposes of this paragraph, fire safety
6 maintenance and repair does not include routine work that is conducted by
7 an employee of an apartment or condominium complex and that is incidental
8 to the fire safety equipment.

9 2. All work that is done, including the installation, maintenance
10 and repair of devices, appliances or equipment, that involves the
11 connecting to any supply of natural gas, propane or other petroleum or
12 gaseous fuel. Nothing in this paragraph impacts the effect of section
13 36-1624.01.

14 Sec. 6. Section 32-1122, Arizona Revised Statutes, is amended to
15 read:

16 32-1122. Qualifications for license

17 A. A contractor's license ~~shall~~ MAY be issued only by act of the
18 registrar of contractors. The registrar shall:

19 1. Classify and qualify applicants for a license.

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

23 3. Conduct investigations the registrar deems necessary.

24 4. Establish written examinations ~~if deemed necessary~~ to protect
25 the health and safety of the public.

26 B. To obtain, renew or maintain a license under this chapter, the
27 applicant or licensee shall:

28 1. Submit to the registrar of contractors a verified application on
29 forms that are prescribed by the registrar of contractors and that contain
30 the following information:

31 (a) A designation of the classification of license that is sought
32 by the applicant.

33 (b) If the applicant is a sole proprietorship, the applicant's name
34 and address.

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

37 (d) If the applicant is a limited liability company, the names and
38 addresses of all of the following, as applicable:

39 (i) If the applicant is a manager-managed limited liability
40 company, all managers.

41 (ii) If the applicant is a member-managed limited liability
42 company, all members.

43 (iii) All owners of twenty-five percent or more of the stock or
44 beneficial interest.

1 (e) If the applicant is a corporation, an association or any other
2 organization, the names and addresses of all of the following:

3 (i) The president, vice president, secretary and treasurer or the
4 names and addresses of the functional equivalent of all of these officers.

5 (ii) The directors.

6 (iii) The owners of twenty-five percent or more of the stock or
7 beneficial interest.

8 (f) The name and address of the qualifying party.

9 (g) If the applicant is a limited liability company or corporation,
10 ~~evidence~~ AN ATTESTATION that the limited liability company or corporation
11 is in good standing with the corporation commission.

12 (h) The address or location of the applicant's place of business
13 and the mailing address if it is different from the applicant's place of
14 business.

15 (i) ~~Proof~~ AN ATTESTATION that the applicant has complied with the
16 statutes or rules governing workers' compensation insurance.

17 (j) IF THE APPLICANT IS A TRUST, THE NAMES AND ADDRESSES OF ALL
18 TRUSTEES.

19 2. Submit the appropriate fee required under this chapter.

20 3. Submit and maintain the appropriate bond required under this
21 chapter.

22 4. Notify the registrar of any change in the information required
23 by this section within thirty days after the change occurs.

24 C. To obtain, renew or maintain a license under this chapter, each
25 person who is named on a license ~~shall~~ MUST be of good character and
26 reputation. Lack of good character and reputation may be established by
27 showing that a person ~~has~~ engaged in contracting without a license or
28 committed any act that, if committed or done by any licensed contractor,
29 would be grounds for suspension or revocation of a contractor's license or
30 by showing that the person was named on a license that was suspended or
31 revoked in THIS STATE OR another state.

32 D. To obtain a license under this chapter, a person ~~shall~~ MAY not
33 have had a license DENIED, refused or revoked, ~~within one year before the~~
34 ~~person's application, or shall not have engaged in the contracting~~
35 ~~business, nor shall the person have submitted a bid without first having~~
36 ~~been licensed within one year before the person's application, nor shall a~~
37 ~~person act as a contractor between the filing of the application and~~
38 ~~actual issuance of the license.~~ The registrar may find ~~any of those~~
39 ~~actions or~~ circumstances to be BEHIND THE DENIAL, REFUSAL OR REVOCATION
40 excusable if ~~there was reasonable doubt as to the need for licensure or~~
41 ~~the actions of~~ the applicant APPLICANT'S ACTIONS did not result in an
42 unremedied hardship or danger or loss to the public. A person who has
43 been convicted of contracting without a license is not eligible to obtain
44 a license under this chapter for one year after the date of the last
45 conviction.

1 E. Before a license is issued, the qualifying party ~~shall~~ MUST:

2 1. Have a minimum of four years' practical or management trade
3 experience, at least two of which must have been within the last ten
4 years, dealing specifically with the type of construction, or its
5 equivalent, for which the applicant is applying for a license. Technical
6 training in an accredited college or university or in a manufacturer's
7 accredited training program may be substituted for a portion of such
8 experience, but in no case may credited technical training exceed two
9 years of the required four years' experience. The registrar of
10 contractors may reduce the four years' practical or management experience
11 requirement if in the registrar's opinion it has been conclusively shown
12 by custom and usage in the particular industry or craft involved that the
13 four-year requirement is excessive. The registrar shall waive the work
14 experience documentation and verification if the records reflect that the
15 qualifying party is currently or has previously been a qualifying party
16 for a licensee in this state in the same classification and meets all
17 other qualifications.

18 2. Successfully show, by written examination taken not more than
19 two years before application, if required, qualification in the kind of
20 work for which the applicant proposes to contract, the applicant's general
21 knowledge of the building, safety, health and lien laws of the state,
22 administrative principles of the contracting business and the rules
23 adopted by the registrar of contractors pursuant to this chapter,
24 demonstrate knowledge and understanding of construction plans and
25 specifications applicable to the particular industry or craft and of the
26 standards of construction work and techniques and practices in the
27 particular industry or craft and demonstrate a general understanding of
28 other related construction trades, in addition to any other matters as may
29 be deemed appropriate by the registrar to determine that the qualifying
30 party meets the requirements of this chapter.

31 F. The registrar shall maintain multiple versions of examinations
32 for each type of license that requires an examination. The registrar
33 shall waive the examination requirement if the records reflect that the
34 qualifying party is currently or has previously been a qualifying party
35 for a licensee in this state in the same classification within the
36 preceding five years.

37 ~~F.~~ G. A license ~~shall~~ MAY not be issued to a minor, to any
38 partnership in which one of the partners is a minor or to any corporation
39 in which a corporate officer is a minor.

40 ~~G.~~ H. Before receiving, renewing and holding a license pursuant to
41 this chapter, the registrar may require a license applicant or licensee to
42 submit to the registrar a full set of fingerprints and the fees required
43 in section 41-1750. The registrar shall submit the fingerprints and fees
44 to the department of public safety for the purpose of obtaining a state
45 and federal criminal records check pursuant to section 41-1750 and Public

1 Law 92-544. The department of public safety may exchange this fingerprint
2 data with the federal bureau of investigation.

3 Sec. 7. Section 32-1123, Arizona Revised Statutes, is amended to
4 read:

5 32-1123. Unlicensed contractors; contract bidding; license
6 denial; exemptions; warning

7 A. Except as provided in subsection D of this section, if an entity
8 that is not licensed pursuant to this chapter bids on a contract for a
9 project with an aggregate worth of more than ~~one thousand dollars~~ \$1,000,
10 ~~excluding~~ THE REGISTRAR MAY NOT ISSUE THE ENTITY A LICENSE FOR ONE YEAR
11 AFTER THE BID DATE. FOR THE PURPOSES OF THIS SUBSECTION, AGGREGATE WORTH
12 DOES NOT INCLUDE any electrical fixture or appliance that MEETS ALL OF THE
13 FOLLOWING:

- 14 1. Was designed by the manufacturer. ~~, that~~
- 15 2. Is unaltered, unchanged or unmodified by any person. ~~, that~~
- 16 3. Can be plugged into a common ~~household~~ electrical outlet.
17 ~~utilizing a two pronged or three pronged electrical connector and that~~
- 18 4. Does not ~~use any other form of energy, including~~ INVOLVE THE
19 CONNECTION TO A SUPPLY OF natural gas, propane or other petroleum or
20 gaseous fuel; ~~to operate or is attached by a nail, screw or other~~
21 ~~fastening device to the frame or foundation of any residential structure;~~
22 ~~the registrar shall not issue the entity a license pursuant to this~~
23 ~~chapter for one year after the date of the bid.~~

24 B. This section does not apply to an entity that bids on a contract
25 for either of the following:

- 26 1. A department of transportation project.
- 27 2. A project that is subject to the federal acquisition regulation,
28 title 48 Code of Federal Regulations, including the department of defense
29 federal acquisition regulation.

30 C. This section does not affect the licensing exemptions prescribed
31 in section 32-1121.

32 D. ~~if an~~ THE REGISTRAR SHALL ISSUE AN ENTITY A WRITTEN WARNING
33 RELATING TO UNLICENSED ACTIVITY IF THE REGISTRAR HAS NOT PREVIOUSLY ISSUED
34 THE ENTITY A WARNING AND IF THE entity bids on a contract for a project
35 pursuant to subsection A of this section and the project has an aggregate
36 worth of more than ~~one thousand dollars~~ \$1,000 BUT LESS THAN \$20,000,
37 excluding any electrical fixture or appliance that MEETS ALL OF THE
38 FOLLOWING:

- 39 1. Was designed by the manufacturer. ~~, that~~
- 40 2. Is unaltered, unchanged or unmodified by any person. ~~, that~~
- 41 3. Can be plugged into a common ~~household~~ electrical outlet
42 ~~utilizing a two pronged or three pronged electrical connector and that~~
43 ~~does not use any other form of energy, including natural gas, propane or~~
44 ~~other petroleum or gaseous fuel, to operate or is attached by a nail,~~
45 ~~screw or other fastening device to the frame or foundation of any~~

1 ~~residential structure, and less than twenty thousand dollars, the~~
2 ~~registrar shall issue the entity a written warning relating to the~~
3 ~~unlicensed activity if the registrar has not previously issued the entity~~
4 ~~a warning.~~

5 4. DOES NOT INVOLVE THE CONNECTION TO A SUPPLY OF NATURAL GAS,
6 PROPANE OR OTHER PETROLEUM OR GASEOUS FUEL.

7 Sec. 8. Section 32-1123.01, Arizona Revised Statutes, is amended to
8 read:

9 32-1123.01. Staggered periods of licensure; biennial renewal

10 A. The registrar shall maintain a system of staggered licensure to
11 distribute the work of licensure throughout the twelve months of the year.

12 B. ~~From and after January 1, 1993,~~ The registrar shall implement a
13 system for biennial license renewal and provide for proration of license
14 renewal fees for that purpose.

15 C. The registrar may grant an exception to the biennial licensing
16 or biennial renewal requirements of this section and may allow an annual
17 renewal based on a written petition by a contractor claiming that the
18 biennial requirements would cause a real and immediate hardship. ~~The~~
19 ~~written petition shall include a detailed statement of the contractor's~~
20 ~~current financial condition containing information that is required by the~~
21 ~~registrar on a form furnished by or acceptable to the registrar. The~~
22 ~~registrar shall notify the contractor in writing of the decision and shall~~
23 ~~specify the terms of the exception if granted. Failure of the contractor~~
24 ~~to provide a detailed statement of current financial condition is grounds~~
25 ~~for denial.~~

26 Sec. 9. Section 32-1124, Arizona Revised Statutes, is amended to
27 read:

28 32-1124. License issuance

29 A. On receipt by the registrar of the fee required by this chapter
30 and an application furnishing complete information as required by the
31 registrar, the registrar shall notify the applicant within sixty days ~~from~~
32 **AFTER** the date of the filing of a complete application of the action taken
33 on the application, and if the registrar determines that the applicant is
34 qualified to hold a license in accordance with this chapter, the registrar
35 shall issue a license to the applicant permitting the applicant to engage
36 in business as a contractor under the terms of this chapter.

37 B. Licenses issued under this chapter and any renewals shall be
38 signed by the registrar or the registrar's designated representative and
39 by the licensee. The license ~~shall be~~ **IS** nontransferable, and
40 satisfactory evidence of possession shall be exhibited by the licensee on
41 demand. The license number appearing on any licenses held by the licensee
42 ~~shall~~ **MUST** be preceded by the acronym "ROC" and shall be posted in a
43 conspicuous place on premises where any work is being performed, shall be
44 placed on all written bids submitted by the licensee and shall be placed
45 on all broadcast, published, internet or billboard advertising,

1 letterheads and other documents used by the licensee to correspond with
2 the licensee's customers or potential customers in the conduct of business
3 regulated by this chapter. A violation of this subsection relating to
4 posting and placement of license numbers shall be, at the discretion of
5 the registrar, grounds for disciplinary action pursuant to section
6 32-1154, subsection A, paragraph 12, but not grounds for preventing the
7 award of a contract, voiding an awarded contract, or any other claim or
8 defense against the licensee. For the purposes of this subsection,
9 advertising does not include a trade association directory listing that is
10 distributed solely to the members of the association and not to the
11 general public.

12 C. If an application for a license is denied for any reason
13 provided in this chapter, the application fee paid by the applicant ~~shall~~
14 ~~be~~ IS forfeited and SHALL BE deposited pursuant to section 32-1107. A
15 reapplication for a license shall be accompanied by the fee fixed by this
16 chapter.

17 D. On issuance or renewal of a license, the registrar, at the
18 request of a licensee, shall issue a single license certificate showing
19 all contracting licenses held by the licensee that are currently in good
20 standing and their dates of expiration.

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

25 F. The registrar ~~shall~~ MAY suspend by operation of law a license
26 issued under this chapter if any of the following occurs:

27 1. The licensed entity is dissolved. The dissolution of the
28 licensed entity includes the death of a sole owner, a change to the
29 partnership by either adding or removing a partner, the revocation or
30 dissolution of corporate authority or the dissolution of a limited
31 liability company or limited liability partnership.

32 2. The licensed entity does not have authority to do business in
33 this state.

34 3. The license is obtained or renewed with an insufficient funds
35 check. The license remains suspended until the registrar receives
36 ~~a certified check, a money order or cash~~ SUFFICIENT FUNDS as payment for
37 the license fees and assessments.

38 Sec. 10. Section 32-1125, Arizona Revised Statutes, is amended to
39 read:

40 32-1125. Renewal of license; qualifying party

41 A. Except as provided in section 32-4301, a license issued under
42 this chapter ~~shall be~~ IS suspended on the NEXT BUSINESS day following its
43 renewal date by operation of law. An application for renewal of any
44 current contracting license addressed to the registrar, with a valid bond
45 or cash deposit on file with the registrar, accompanied by the required

1 fee and received by the registrar or deposited in the United States mail
2 postage prepaid on or before the renewal date ~~shall authorize~~ AUTHORIZES
3 the licensee to operate as a contractor until actual issuance of the
4 renewal license. The registrar may refuse to renew a license if a
5 licensee or person has committed or been found guilty of any act listed in
6 section 32-1154.

7 B. A license ~~which~~ THAT has been suspended by operation of law for
8 failure to renew may be reactivated and renewed within one year of its
9 suspension by filing the required application and ~~payment of~~ PAYING the
10 application fee in the amount provided for renewal in this chapter in
11 addition to a ~~fifty dollar~~ \$50 fee. When a license has been suspended for
12 ~~one or more years~~ THAN ONE YEAR for failure to renew, a new application
13 for a license must be made and a new license issued in accordance with
14 this chapter.

15 C. A licensee may ~~make written application~~ APPLY IN WRITING to the
16 registrar for exemption from a qualifying party. The ~~applicant shall~~
17 LICENSEE MUST show to the satisfaction of the registrar that during the
18 past five years THE LICENSEE:

- 19 ~~1. The license has been in effect.~~
20 ~~2. A transfer of ownership of fifty per cent or more of the stock,~~
21 ~~if applicable, or beneficial interest, in the licensee has not occurred.~~
22 ~~3. No more than five valid complaints which have not been resolved~~
23 ~~by the licensee, as determined by the registrar, have been filed against~~
24 ~~the licensee.~~

25 1. HELD A VALID AND ACTIVE LICENSE AND COULD LEGALLY CONTRACT UNDER
26 THIS CHAPTER FOR THE ENTIRE FIVE-YEAR PERIOD.

27 2. DID NOT TRANSFER FIFTY PERCENT OR MORE OF ITS STOCK OR
28 BENEFICIAL INTEREST.

29 3. DID NOT COMMIT A VIOLATION OF SECTION 32-1154, SUBSECTION A THAT
30 HAS NOT BEEN REMEDIED.

31 D. The REGISTRAR shall APPROVE OR DENY THE application ~~be approved~~
32 ~~or denied~~ within thirty days after its receipt. If the application is not
33 approved, the licensee, ~~may~~ within thirty days, MAY request a hearing to
34 be held pursuant to section 32-1156. If the application is approved, the
35 exemption takes effect immediately.

36 ~~D.~~ E. A licensee ~~which~~ THAT is exempt from the requirement for a
37 qualifying party pursuant to subsection C of this section may be required
38 by the registrar after a hearing to obtain a qualifying party within sixty
39 days on a finding that:

40 1. A transfer of ownership of fifty ~~per cent~~ PERCENT or more of the
41 stock, if applicable, or beneficial interest, in the licensee has
42 occurred.

43 2. A violation of section 32-1154 has occurred.

1 Sec. 11. Section 32-1125.01, Arizona Revised Statutes, is amended
2 to read:

3 32-1125.01. Inactive license

4 A. A contractor may request the registrar, on forms prescribed by
5 the registrar, to inactivate ~~his~~ THE CONTRACTOR'S current license for a
6 period not to exceed five years at one time by giving written notice to
7 the registrar. The registrar ~~may~~, in the absence of any disciplinary
8 proceeding or disciplinary suspension and ~~upon~~ ON payment of reasonable
9 fees determined by the registrar, MAY issue to the contractor an inactive
10 license certificate. The inactive license certificate may consist of an
11 endorsement ~~upon~~ ON the contractor's license stating that the license is
12 inactive. The registrar may not refund any of the license renewal fee
13 ~~which~~ a contractor paid ~~prior to~~ BEFORE requesting inactive status.

14 B. A contractor's license ~~which~~ THAT is not suspended or revoked
15 and THAT is inactive may be reactivated as an active license ~~upon~~ ON
16 payment of the current renewal fee and thirty days' written notice to the
17 registrar. ~~No~~ AN examination may NOT be required to reactivate an
18 inactive license. If the license is not reactivated within five years, a
19 new application for licensing must be made unless the contractor requests,
20 on forms prescribed by the registrar, to inactivate the license for an
21 additional period not to exceed five years. ~~No~~ A contractor may NOT
22 inactivate the license more than twice.

23 C. The holder of an inactive license ~~shall~~ MAY not practice as a
24 contractor until ~~his~~ THE license is reactivated as an active license.

25 D. The inactive status of a contractor's license ~~shall~~ DOES not ~~bar~~
26 PREVENT THE REGISTRAR FROM TAKING any disciplinary action ~~by the registrar~~
27 against a licensed contractor for any of the grounds stated in this
28 chapter.

29 Sec. 12. Section 32-1126, Arizona Revised Statutes, is amended to
30 read:

31 32-1126. Fees

32 A. The license fees prescribed by this chapter ~~shall be~~ ARE as
33 follows:

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

35 (a) For general residential contracting and subclassifications of
36 general residential contracting, not more than ~~five hundred dollars~~ \$500.

37 (b) For general commercial contracting and subclassifications of
38 general commercial contracting, not more than ~~one thousand five hundred~~
39 ~~dollars~~ \$1,500.

40 (c) For general dual licensed contracting, not more than ~~two~~
41 ~~thousand dollars~~ \$2,000.

42 (d) For specialty residential contracting, not more than ~~three~~
43 ~~hundred fifty dollars~~ \$350.

44 (e) For specialty commercial contracting, not more than ~~one~~
45 ~~thousand dollars~~ \$1,000.

1 (f) For specialty dual licensed contracting, not more than ~~one~~
2 ~~thousand three hundred fifty dollars~~ \$1,350.

3 2. Biennial license renewal fee:

4 (a) For general residential contracting and subclassifications of
5 general residential contracting, not more than ~~three hundred twenty~~
6 ~~dollars~~ \$320.

7 (b) For general commercial contracting and subclassifications of
8 general commercial contracting, not more than ~~one thousand dollars~~ \$1,000.

9 (c) For general dual licensed contracting, not more than ~~one~~
10 ~~thousand three hundred twenty dollars~~ \$1,320.

11 (d) For specialty residential contracting, not more than ~~two~~
12 ~~hundred seventy dollars~~ \$270.

13 (e) For specialty commercial contracting, not more than ~~nine~~
14 ~~hundred dollars~~ \$900.

15 (f) For specialty dual licensed contracting, not more than ~~one~~
16 ~~thousand one hundred seventy dollars~~ \$1,170.

17 B. The fee for an annual license renewal granted pursuant to
18 section 32-1123.01 ~~shall be~~ IS one-half of the biennial license renewal
19 fee.

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

24 D. The penalty for failure to apply for renewal of a license within
25 the time prescribed by this chapter ~~shall be fifty dollars~~ IS \$50.

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

27 F. The registrar may contract with private testing services to
28 establish and administer such examinations and may authorize the payment
29 of the examination fee to the private testing service.

30 G. EXCEPT AS PROVIDED IN SECTION 32-1152, SUBSECTION C, A PERSON
31 APPLYING FOR A CONTRACTOR LICENSE OR FOR RENEWAL OF A CONTRACTOR LICENSE
32 TO ENGAGE IN RESIDENTIAL CONTRACTING SHALL PAY AN ASSESSMENT OF NOT MORE
33 THAN \$600 DURING THE BIENNIAL LICENSE PERIOD FOR DEPOSIT IN THE
34 RESIDENTIAL CONTRACTORS' RECOVERY FUND ESTABLISHED BY SECTION 32-1132. IF
35 THE REGISTRAR DOES NOT ISSUE THE LICENSE, THE ASSESSMENT SHALL BE RETURNED
36 TO THE APPLICANT.

37 Sec. 13. Section 32-1127, Arizona Revised Statutes, is amended to
38 read:

39 32-1127. Qualifying party; responsibility

40 ~~The terms "responsible managing employee" and "qualifying party"~~
41 ~~shall, for the purpose of administering this chapter, be synonymous, and~~
42 ~~shall mean an employee who is regularly employed by the licensee and is~~
43 ~~actively engaged in the classification of work for which such responsible~~
44 ~~managing employee qualifies in behalf of the licensee.~~

1 A. While engaged as a qualifying party for a licensee, the
2 qualifying party ~~shall~~ MAY not take other employment that would conflict
3 with his duties as qualifying party or conflict with his ability to
4 adequately supervise the work performed by the licensee. Such person may
5 act in the capacity of the qualifying party for one additional licensee if
6 one of the following conditions exists:

7 1. There is a common ownership of at least twenty-five per cent of
8 each licensed entity for which the person acts in a qualifying capacity.

9 2. One licensee is a subsidiary of another licensee for which the
10 same person acts in a qualifying capacity. "Subsidiary" as used in this
11 ~~section~~ PARAGRAPH means a corporation of which at least twenty-five ~~per~~
12 ~~cent~~ PERCENT is owned by the other licensee.

13 B. WHILE ENGAGED AS THE QUALIFYING PARTY FOR A LICENSEE, THE
14 QUALIFYING PARTY IS RESPONSIBLE FOR ANY VIOLATION OF THIS CHAPTER BY THE
15 LICENSEE.

16 Sec. 14. Title 32, chapter 10, article 2, Arizona Revised Statutes,
17 is amended by adding section 32-1127.01, to read:

18 32-1127.01. Qualifying parties; disassociation with license;
19 requalification

20 A. IF A PERSON WHO QUALIFIED FOR A LICENSE CEASES TO BE CONNECTED
21 WITH THE LICENSEE, BOTH THE LICENSEE AND THE QUALIFYING PARTY SHALL NOTIFY
22 THE REGISTRAR IN WRITING WITHIN FIFTEEN DAYS AFTER THE DISASSOCIATION.

23 B. A LICENSEE SHALL REQUALIFY THROUGH ANOTHER PERSON WITHIN SIXTY
24 DAYS AFTER THE DATE OF A DISASSOCIATION.

25 C. IF A LICENSEE FAILS TO REQUALIFY THROUGH ANOTHER PERSON WITHIN
26 SIXTY DAYS, THE LICENSE IS AUTOMATICALLY SUSPENDED BY OPERATION OF LAW AT
27 THE END OF THE PERIOD UNTIL THE LICENSEE QUALIFIES THROUGH ANOTHER PERSON.

28 Sec. 15. Section 32-1131, Arizona Revised Statutes, is amended to
29 read:

30 32-1131. Definitions

31 In this article, unless the context otherwise requires:

32 1. "Assessment" means the contribution by a contractor to the
33 residential contractors' recovery fund.

34 2. "Fund" means the residential contractors' recovery fund.

35 ~~3. "Person injured":~~

36 ~~(a) Means any owner of residential real property that is either~~
37 ~~noncommercial historic property as defined in section 42-12101 or~~
38 ~~classified as class three property under section 42-12003. The property~~
39 ~~must also be actually occupied or intended to be occupied by the owner as~~
40 ~~a residence including community property, tenants in common or joint~~
41 ~~tenants who are damaged by the failure of a residential contractor or a~~
42 ~~dual licensed contractor to adequately build or improve a residential~~
43 ~~structure or appurtenance on that real property.~~

44 ~~(b) Includes lessees of residential real property who contract~~
45 ~~directly with a residential contractor or indirectly with a subcontractor~~

1 ~~of that contractor and homeowners' or unit owners' associations after~~
2 ~~transfer of control from the builder or developer for damages to the~~
3 ~~common elements within the complex.~~

4 ~~4.~~ 3. "Residential contractor" means a contractor as defined in
5 section 32-1101 who is licensed to perform work on residential property
6 pursuant to this chapter and who engages in residential contracting.

7 Sec. 16. Section 32-1132, Arizona Revised Statutes, is amended to
8 read:

9 32-1132. Residential contractors' recovery fund; claimants;
10 eligibility; definition

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

42 B. ~~Except as provided in section 32-1152, subsection C, every~~
43 ~~person making application for a contractor's license or for renewal of a~~
44 ~~contractor's license to engage in residential contracting shall pay an~~
45 ~~assessment of not more than six hundred dollars during the biennial~~

~~1 license period for deposit in the fund. In the event that the registrar
2 does not issue the license, this assessment shall be returned to the
3 applicant.~~

4 B. ONLY THE FOLLOWING CLAIMANTS ARE ELIGIBLE FOR AN AWARD FROM THE
5 RESIDENTIAL CONTRACTORS' RECOVERY FUND:

6 1. AN INDIVIDUAL WHO BOTH:

7 (a) OWNS RESIDENTIAL REAL PROPERTY THAT IS DAMAGED BY THE FAILURE
8 OF A RESIDENTIAL CONTRACTOR TO ADEQUATELY BUILD OR IMPROVE A RESIDENTIAL
9 STRUCTURE OR APPURTENANCE.

10 (b) ACTUALLY OCCUPIES OR INTENDS TO OCCUPY THE RESIDENTIAL REAL
11 PROPERTY DESCRIBED IN SUBDIVISION (a) OF THIS PARAGRAPH AS THE
12 INDIVIDUAL'S PRIMARY RESIDENCE.

13 2. A LIMITED LIABILITY COMPANY TO WHICH ALL OF THE FOLLOWING APPLY:

14 (a) THE LIMITED LIABILITY COMPANY OWNS THE RESIDENTIAL REAL
15 PROPERTY THAT IS DAMAGED BY THE FAILURE OF A RESIDENTIAL CONTRACTOR TO
16 ADEQUATELY BUILD OR IMPROVE A RESIDENTIAL STRUCTURE OR APPURTENANCE.

17 (b) ALL OF THE LIMITED LIABILITY COMPANY'S MEMBERS ACTUALLY OCCUPY
18 OR INTEND TO OCCUPY THE RESIDENTIAL REAL PROPERTY AS DESCRIBED IN
19 SUBDIVISION (a) OF THIS PARAGRAPH AS THEIR PRIMARY RESIDENCE.

20 (c) A MEMBER OF THE LIMITED LIABILITY COMPANY HAS NOT RECEIVED
21 MONIES FROM THE FUND IN THE LAST TWO YEARS.

22 3. A TRUST TO WHICH ALL OF THE FOLLOWING APPLY:

23 (a) THE TRUST IS A REVOCABLE LIVING TRUST.

24 (b) THE TRUST OWNS THE RESIDENTIAL REAL PROPERTY THAT IS DAMAGED BY
25 THE FAILURE OF A RESIDENTIAL CONTRACTOR TO ADEQUATELY BUILD OR IMPROVE A
26 RESIDENTIAL STRUCTURE OR APPURTENANCE.

27 (c) ALL OF THE TRUST'S TRUSTORS ACTUALLY OCCUPY OR INTEND TO OCCUPY
28 THE RESIDENTIAL REAL PROPERTY DESCRIBED IN SUBDIVISION (b) OF THIS
29 PARAGRAPH AS THEIR PRIMARY RESIDENCE.

30 (d) A TRUSTOR HAS NOT RECEIVED MONIES FROM THE FUND IN THE LAST TWO
31 YEARS.

32 4. A PLANNED COMMUNITY OR UNIT OWNERS' ASSOCIATION IF BOTH:

33 (a) THE BUILDER OR DEVELOPER TRANSFERRED CONTROL TO THE PLANNED
34 COMMUNITY AS DEFINED IN SECTION 33-1802 OR UNIT OWNERS' ASSOCIATION AS
35 DEFINED IN SECTION 33-1202.

36 (b) THE PLANNED COMMUNITY OR UNIT OWNERS' ASSOCIATION OWNS THE
37 RESIDENTIAL REAL PROPERTY THAT IS DAMAGED BY THE FAILURE OF A LICENSED
38 RESIDENTIAL CONTRACTOR TO ADEQUATELY BUILD OR IMPROVE A RESIDENTIAL
39 STRUCTURE OR APPURTENANCE.

40 5. A LESSEE OF RESIDENTIAL REAL PROPERTY THAT MEETS ALL OF THE
41 FOLLOWING:

42 (a) CONTRACTS DIRECTLY WITH A RESIDENTIAL CONTRACTOR OR INDIRECTLY
43 WITH A SUBCONTRACTOR OF THE RESIDENTIAL CONTRACTOR.

1 (b) ACTUALLY OCCUPIES OR INTENDS TO OCCUPY THE RESIDENTIAL REAL
2 PROPERTY DESCRIBED IN SUBDIVISION (a) OF THIS PARAGRAPH AS THE LESSEE'S
3 PRIMARY RESIDENCE.

4 (c) IS DAMAGED BY THE LICENSED RESIDENTIAL CONTRACTOR'S FAILURE TO
5 ADEQUATELY BUILD OR IMPROVE A RESIDENTIAL STRUCTURE OR APPURTENANCE.

6 C. IN ORDER FOR A CLAIMANT TO BE ELIGIBLE FOR AN AWARD FROM THE
7 RESIDENTIAL CONTRACTORS' RECOVERY FUND, THE CONTRACTOR WHOSE ACTIONS
8 DAMAGED THE CLAIMANT MUST HAVE BEEN APPROPRIATELY LICENSED AT ONE OF THE
9 FOLLOWING TIMES:

10 1. THE DATE THAT THE UNDERLYING CONTRACT WAS SIGNED.

11 2. THE DATE THAT THE FIRST PAYMENT WAS MADE.

12 3. THE DATE THAT THE UNDERLYING WORK FIRST COMMENCED.

13 D. FOR THE PURPOSES OF THIS SECTION, "APPROPRIATELY LICENSED" MEANS
14 THE RESIDENTIAL CONTRACTOR HELD A VALID RESIDENTIAL CONTRACTOR LICENSE
15 THAT WAS ISSUED PURSUANT TO THIS CHAPTER AND THAT WAS NOT CANCELED, IN
16 INACTIVE STATUS, EXPIRED, SUSPENDED OR REVOKED.

17 Sec. 17. Title 32, chapter 10, article 2.1, Arizona Revised
18 Statutes, is amended by adding sections 32-1132.01, 32-1133 and
19 32-1133.01, to read:

20 32-1132.01. Actual damages; fund; limitations; definition

21 A. AN AWARD FROM THE RESIDENTIAL CONTRACTORS' RECOVERY FUND IS
22 LIMITED TO RESIDENTIAL REAL PROPERTIES. THE FUND MAY NOT ISSUE AN AWARD
23 COVERING DAMAGES TO COMMERCIAL PROPERTY.

24 B. THE RESIDENTIAL CONTRACTORS' RECOVERY FUND MAY NOT EXCEED THE
25 ACTUAL DAMAGES SUFFERED BY THE CLAIMANT AS A DIRECT RESULT OF A
26 CONTRACTOR'S VIOLATION. ACTUAL DAMAGES:

27 1. MAY NOT EXCEED AN AMOUNT NECESSARY TO COMPLETE OR REPAIR A
28 RESIDENTIAL STRUCTURE OR APPURTENANCE WITHIN RESIDENTIAL PROPERTY LINES.

29 2. MUST BE ESTABLISHED BY BIDS SUPPLIED BY OR THE VALUE OF WORK
30 PERFORMED BY A PERSON THAT IS LICENSED PURSUANT TO THIS CHAPTER IF THE
31 PERSON IS REQUIRED TO BE LICENSED PURSUANT TO THIS CHAPTER.

32 C. IF THE CLAIMANT PAID A DEPOSIT OR DOWN PAYMENT AND NO ACTUAL
33 WORK IS PERFORMED OR MATERIALS ARE DELIVERED, THE CLAIMANT'S DAMAGES ARE
34 THE EXACT DOLLAR AMOUNT OF THE DEPOSIT OR DOWN PAYMENT PLUS INTEREST AT
35 THE RATE OF TEN PERCENT A YEAR FROM THE DATE THE DEPOSIT OR DOWN PAYMENT
36 IS MADE, BUT MAY NOT EXCEED \$30,000. INTEREST MAY NOT BE PAID FROM THE
37 FUND ON ANY OTHER AWARDS UNDER THIS CHAPTER UNLESS ORDERED BY A COURT OF
38 COMPETENT JURISDICTION.

39 D. THE MAXIMUM INDIVIDUAL AWARD FROM THE RESIDENTIAL CONTRACTORS'
40 RECOVERY FUND IS \$30,000. AN INDIVIDUAL CLAIMANT MAY NOT BE AWARDED MORE
41 THAN THE MAXIMUM INDIVIDUAL AWARD.

42 E. MONIES IN THE RESIDENTIAL CONTRACTORS' RECOVERY FUND MAY NOT BE
43 AWARDED FOR ATTORNEY FEES OR COSTS, EXCEPT IN CONTESTED CASES APPEALED TO
44 THE SUPERIOR COURT.

1 F. IF THE CLAIMANT HAS RECOVERED A PORTION OF THE CLAIMANT'S LOSS
2 FROM SOURCES OTHER THAN THE FUND, THE REGISTRAR SHALL DEDUCT THE AMOUNT
3 RECOVERED FROM OTHER SOURCES FROM THE AMOUNT OF ACTUAL DAMAGES SUFFERED
4 PURSUANT TO SUBSECTION B OF THIS SECTION AND DIRECT THE DIFFERENCE, NOT TO
5 EXCEED \$30,000, TO BE PAID FROM THE FUND.

6 G. THE CLAIMANT MAY NOT BE THE SPOUSE OF THE RESIDENTIAL CONTRACTOR
7 OR THE PERSONAL REPRESENTATIVE OF THE SPOUSE OF THE RESIDENTIAL
8 CONTRACTOR.

9 H. FOR THE PURPOSES OF THIS SECTION, "ACTUAL DAMAGES" MEANS THE
10 REASONABLE COST OF COMPLETING THE CONTRACT AND REPAIRING THE CONTRACTOR'S
11 DEFECTIVE PERFORMANCE, MINUS THE PART OF THE CONTRACT PRICE STILL UNPAID.

12 32-1133. Civil recovery; statute of limitations

13 A. AN ACTION FOR A JUDGMENT THAT MAY SUBSEQUENTLY RESULT IN AN
14 ORDER FOR COLLECTION FROM THE RESIDENTIAL CONTRACTORS' RECOVERY FUND MAY
15 NOT BE COMMENCED LATER THAN TWO YEARS AFTER THE DATE OF THE COMMISSION OF
16 THE ACT BY THE CONTRACTOR THAT IS THE CAUSE OF THE INJURY OR FROM THE DATE
17 OF OCCUPANCY.

18 B. WHEN A CLAIMANT COMMENCES AN ACTION FOR A JUDGMENT THAT MAY
19 RESULT IN COLLECTION FROM THE FUND, THE CLAIMANT MUST NOTIFY THE REGISTRAR
20 IN WRITING TO THIS EFFECT AT THE TIME OF THE COMMENCEMENT OF THE ACTION.
21 THE REGISTRAR AT ANY TIME MAY INTERVENE IN AND DEFEND THE ACTION.

22 C. WHEN ANY CLAIMANT RECOVERS A VALID JUDGMENT AGAINST ANY
23 RESIDENTIAL CONTRACTOR FOR AN ACT, REPRESENTATION, TRANSACTION OR CONDUCT
24 THAT IS IN VIOLATION OF THIS CHAPTER OR THE RULES ADOPTED PURSUANT TO THIS
25 CHAPTER, THE CLAIMANT, ON TWENTY DAYS' WRITTEN NOTICE TO THE REGISTRAR,
26 MAY APPLY TO THE COURT FOR AN ORDER DIRECTING PAYMENT OUT OF THE FUND, OF
27 THE AMOUNT UNPAID ON THE JUDGMENT, SUBJECT TO THE LIMITS STATED IN THIS
28 ARTICLE. IF THE CLAIMANT FAILS TO NOTIFY THE REGISTRAR AT THE TIME OF
29 COMMENCEMENT OF THE ACTION AS REQUIRED BY THIS SUBSECTION, THE COURT MAY
30 DIRECT PAYMENT OUT OF THE FUND ON RECEIPT OF A CONSENT TO PAYMENT SIGNED
31 ON BEHALF OF THE REGISTRAR. IF THE CLAIMANT GIVES NOTICE TO THE REGISTRAR
32 AS REQUIRED BY THIS SUBSECTION, THE COURT MAY DIRECT PAYMENT OUT OF THE
33 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
35 PERIOD REQUIRED BY THIS SUBSECTION. IF THE COURT RECEIVES WRITTEN
36 OBJECTIONS BY THE REGISTRAR, THE COURT MAY NOT DIRECT PAYMENT FROM THE
37 FUND WITHOUT AFFORDING THE REGISTRAR A REASONABLE OPPORTUNITY TO PRESENT
38 AND SUPPORT THE REGISTRAR'S OBJECTIONS.

39 D. THE COURT MAY PROCEED ON AN APPLICATION IN A SUMMARY MANNER AND,
40 ON THE HEARING, THE CLAIMANT IS REQUIRED TO SHOW THAT THE CLAIMANT HAS
41 DONE ALL OF THE FOLLOWING:

- 42 1. GIVEN NOTICE AS REQUIRED BY SUBSECTION C OF THIS SECTION.
- 43 2. OBTAINED A JUDGMENT THAT HAS BECOME FINAL, AS PROVIDED IN
44 SUBSECTION C OF THIS SECTION, STATING THE AMOUNT AND THE AMOUNT OWING AT
45 THE DATE OF THE APPLICATION.

1 3. PROCEEDED AGAINST ANY EXISTING BOND COVERING THE RESIDENTIAL
2 CONTRACTOR.

3 E. THE COURT MAY MAKE AN ORDER DIRECTED TO THE REGISTRAR REQUIRING
4 PAYMENT FROM THE FUND OF WHATEVER SUM IT FINDS TO BE PAYABLE ON THE CLAIM,
5 IN ACCORDANCE WITH THIS SECTION, IF THE COURT IS SATISFIED ON THE HEARING
6 OF THE TRUTH OF ALL MATTERS REQUIRED TO BE SHOWN BY THE CLAIMANT BY
7 SUBSECTION D OF THIS SECTION. THE RECOVERY LIMITS ESTABLISHED UNDER THIS
8 ARTICLE APPLY TO ALL JUDGMENTS AWARDED BEGINNING SEPTEMBER 1, 2002. IF
9 THE CLAIMANT HAS RECOVERED A PORTION OF THE CLAIMANT'S LOSS FROM SOURCES
10 OTHER THAN THE FUND, THE COURT SHALL DEDUCT THE AMOUNT RECOVERED FROM
11 OTHER SOURCES FROM THE AMOUNT OF ACTUAL DAMAGES SUFFERED PURSUANT TO
12 SECTION 32-1132.01, SUBSECTION A AND DIRECT THE DIFFERENCE, NOT TO EXCEED
13 \$30,000, TO BE PAID FROM THE FUND.

14 F. ON RECEIPT OF A CERTIFIED COPY OF THE ORDER SPECIFIED IN
15 SUBSECTION E OF THIS SECTION, THE REGISTRAR MAY AUTHORIZE PAYMENT FROM THE
16 RESIDENTIAL CONTRACTORS' RECOVERY FUND EVEN IF AN APPEAL HAS BEEN
17 INSTITUTED BUT NOT COMPLETED.

18 32-1133.01. Administrative recovery; statute of limitations

19 A. NOTWITHSTANDING ANY OTHER PROVISION IN THIS CHAPTER, IF A
20 CONTRACTOR LICENSE HAS BEEN REVOKED OR HAS BEEN SUSPENDED AS A RESULT OF
21 AN ORDER TO REMEDY A VIOLATION OF THIS CHAPTER, THE REGISTRAR MAY ORDER
22 PAYMENT FROM THE RESIDENTIAL CONTRACTORS' RECOVERY FUND TO REMEDY THE
23 VIOLATION.

24 B. THE REGISTRAR MUST SERVE THE CONTRACTOR WITH A NOTICE SETTING
25 FORTH THE AMOUNT CLAIMED OR TO BE AWARDED.

26 C. IF THE CONTRACTOR CONTESTS THE AMOUNT OR PROPRIETY OF THE
27 PAYMENT, THE CONTRACTOR MUST RESPOND WITHIN TEN DAYS AFTER THE DATE OF
28 SERVICE BY REQUESTING A HEARING TO DETERMINE THE AMOUNT OR PROPRIETY OF
29 THE PAYMENT. THE CONTRACTOR'S FAILURE TO RESPOND IN WRITING WITHIN TEN
30 DAYS AFTER THE DATE OF SERVICE MAY BE DEEMED A WAIVER BY THE CONTRACTOR OF
31 THE RIGHT TO CONTEST THE AMOUNT CLAIMED OR TO BE AWARDED.

32 D. SERVICE MAY BE MADE BY PERSONAL SERVICE TO THE CONTRACTOR OR BY
33 MAILING A COPY OF THE NOTICE BY CERTIFIED MAIL WITH POSTAGE PREPAID TO THE
34 CONTRACTOR'S LATEST ADDRESS OF RECORD ON FILE IN THE REGISTRAR'S OFFICE.

35 E. IF SERVICE IS MADE BY CERTIFIED 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 CLAIMANT MAY SEEK JUDICIAL REVIEW OF THE
38 REGISTRAR'S FINAL AWARD PURSUANT TO TITLE 12, CHAPTER 7, ARTICLE 6.

39 F. A CLAIMANT TO THE RESIDENTIAL CONTRACTORS' RECOVERY FUND
40 PURSUANT TO THIS SECTION MUST SHOW THAT THE CLAIMANT HAS PROCEEDED AGAINST
41 ANY EXISTING BOND COVERING THE RESIDENTIAL CONTRACTOR.

42 G. A CLAIM FOR PAYMENT FROM THE RESIDENTIAL CONTRACTOR'S RECOVERY
43 FUND MUST BE SUBMITTED WITHIN TWO YEARS AFTER ALL PROCEEDINGS, REVIEWS AND
44 APPEALS CONNECTED WITH THE REGISTRAR'S FINAL ORDER TERMINATE.

1 Sec. 18. Section 32-1134, Arizona Revised Statutes, is amended to
2 read:

3 32-1134. Powers and duties of registrar

4 A. The registrar shall:

5 1. Establish assessments and maintain the fund balance at a level
6 sufficient to pay operating costs and anticipated claims using the cash
7 basis of accounting.

8 2. Cause an examination of the fund to be made every three years by
9 an independent certified public accountant.

10 3. File with the department of insurance an annual statement of the
11 condition of the fund.

12 4. Employ accountants and attorneys from monies in the fund, but
13 not to exceed ten thousand dollars in any fiscal year, that are necessary
14 for the performance of the duties prescribed in this section.

15 5. Employ or contract with individuals and procure equipment and
16 operational support, to be paid from or purchased with monies in the fund,
17 but not to exceed in any fiscal year fourteen ~~per cent~~ PERCENT of the
18 total amount deposited in the fund in the prior fiscal year as may be
19 necessary to monitor, process or oppose claims filed by ~~injured persons~~
20 CLAIMANTS, which may result in collection from the recovery fund.

21 B. Notwithstanding section 32-1135, the registrar may expend
22 interest monies from the fund to increase public awareness of the
23 fund. This expenditure ~~shall~~ MAY not exceed ~~fifty thousand dollars~~
24 \$50,000 in any fiscal year.

25 Sec. 19. Section 32-1134.02, Arizona Revised Statutes, is amended
26 to read:

27 32-1134.02. Insufficiency of fund

28 If at any time the monies deposited in the residential contractors'
29 recovery fund are insufficient to satisfy any duly authorized claim or
30 portion thereof, the registrar shall, when sufficient monies have been
31 deposited in the residential contractors' recovery fund, satisfy any
32 unpaid claims or portion of unpaid claims with priority for payment based
33 on EITHER:

34 1. The time of filing a certified copy of the court order with the
35 registrar.

36 2. THE DATE OF THE ADMINISTRATIVE ORDER DIRECTING PAYMENT FROM THE
37 RESIDENTIAL CONTRACTORS' RECOVERY FUND.

38 Sec. 20. Repeal

39 Section 32-1136, Arizona Revised Statutes, is repealed.

40 Sec. 21. Section 32-1137, Arizona Revised Statutes, is amended to
41 read:

42 32-1137. Notice of authorized payment to claimant

43 On authorization of payment from the residential contractors'
44 recovery fund, the registrar shall notify the ~~injured person~~ CLAIMANT
45 that:

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

3 2. It is the responsibility of the ~~recipient~~ CLAIMANT to respond to
4 an appeal from the judgment.

5 3. On appeal from the judgment, postponement of acceptance by the
6 ~~injured person~~ CLAIMANT of the amount authorized for payment does not
7 operate as a waiver of any rights of the ~~injured person~~ CLAIMANT.

8 Sec. 22. Section 32-1151.02, Arizona Revised Statutes, is amended
9 to read:

10 32-1151.02. List of unlicensed contractors; website
11 publication

12 A. The registrar shall maintain a list of persons who have been
13 convicted of contracting without a license in violation of section 32-1151
14 or administratively adjudicated to have been contracting without a license
15 after ~~having been~~ BEING issued a civil citation pursuant to section
16 ~~32-1166~~ 32-1166.01. THE LIST SHALL INCLUDE ANY KNOWN RELATED BUSINESS
17 NAMES THAT THE PERSONS DESCRIBED IN THIS SUBSECTION HAVE USED. The list
18 shall be published on the registrar's ~~web site~~ WEBSITE.

19 B. The registrar shall remove a person AND ANY KNOWN RELATED
20 BUSINESS NAMES THAT PERSON USED from the list within ten business days
21 when the person becomes licensed pursuant to this chapter and submits a
22 written request to the registrar requesting the person's name to be
23 removed from the list.

24 C. If a member of the public requests a copy of the list prescribed
25 by subsection A OF THIS SECTION, the registrar shall provide a copy of the
26 list.

27 Sec. 23. Section 32-1152, Arizona Revised Statutes, is amended to
28 read:

29 32-1152. Bonds

30 A. Before granting an original contractor's license, the registrar
31 shall require of the applicant a surety bond in a form acceptable to the
32 registrar or a cash deposit as provided in this section. No contractor's
33 license may be renewed unless the applicant's surety bond or cash deposit
34 is in full force and effect.

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

39 1. General commercial building contractors and subclassifications
40 of general commercial contractors shall furnish a surety bond or cash
41 deposit in an amount that is determined as follows:

42 (a) If the estimated annual volume of construction work of the
43 applicant is ~~ten million dollars~~ \$10,000,000 or more, the applicant ~~shall~~
44 **MUST** furnish a surety bond or cash deposit of not less than ~~fifty thousand~~
45 ~~dollars~~ \$50,000 or more than ~~one hundred thousand dollars~~ \$100,000.

1 (b) If the estimated annual volume of construction work of the
2 applicant is more than ~~five million dollars~~ \$5,000,000 and less than ~~ten~~
3 ~~million dollars~~ \$10,000,000, the applicant shall furnish a surety bond or
4 cash deposit of not less than ~~thirty-five thousand dollars~~ \$35,000 or more
5 than ~~seventy-five thousand dollars~~ \$75,000.

6 (c) If the estimated annual volume of construction work of the
7 applicant is more than ~~one million dollars~~ \$1,000,000 and less than ~~five~~
8 ~~million dollars~~ \$5,000,000, the applicant shall furnish a surety bond or
9 cash deposit of not less than ~~fifteen thousand dollars~~ \$15,000 or more
10 than ~~fifty thousand dollars~~ \$50,000.

11 (d) If the estimated annual volume of construction work of the
12 applicant is more than ~~five hundred thousand dollars~~ \$500,000 and less
13 than ~~one million dollars~~ \$1,000,000, the applicant shall furnish a surety
14 bond or cash deposit of not less than ~~ten thousand dollars~~ \$10,000 or more
15 than ~~twenty-five thousand dollars~~ \$25,000.

16 (e) If the estimated annual volume of construction work of the
17 applicant is more than ~~one hundred fifty thousand dollars~~ \$150,000 and
18 less than ~~five hundred thousand dollars~~ \$500,000, the applicant shall
19 furnish a surety bond or cash deposit of not less than ~~five thousand~~
20 ~~dollars~~ \$5,000 or more than ~~fifteen thousand dollars~~ \$15,000.

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 five thousand dollars.

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

26 (a) If the estimated annual volume of construction work of the
27 applicant is ~~ten million dollars~~ \$10,000,000 or more, the applicant shall
28 furnish a surety bond or cash deposit of not less than ~~thirty-seven~~
29 ~~thousand five hundred dollars~~ \$37,500 or more than ~~fifty thousand dollars~~
30 \$50,000.

31 (b) If the estimated annual volume of construction work of the
32 applicant is more than ~~five million dollars~~ \$5,000,000 and less than ~~ten~~
33 ~~million dollars~~ \$10,000,000, the applicant shall furnish a surety bond or
34 cash deposit of not less than ~~seventeen thousand five hundred dollars~~
35 \$17,500 or more than ~~thirty-seven thousand five hundred dollars~~ \$37,500.

36 (c) If the estimated annual volume of construction work of the
37 applicant is more than ~~one million dollars~~ \$1,000,000 and less than ~~five~~
38 ~~million dollars~~ \$5,000,000, the applicant shall furnish a surety bond or
39 cash deposit of not less than ~~seven thousand five hundred dollars~~ \$7,500
40 or more than ~~twenty-five thousand dollars~~ \$25,000.

41 (d) If the estimated annual volume of construction work of the
42 applicant is more than ~~five hundred thousand dollars~~ \$500,000 and less
43 than ~~one million dollars~~ \$1,000,000, the applicant shall furnish a surety
44 bond or cash deposit of not less than ~~five thousand dollars~~ \$5,000 or more
45 than ~~seventeen thousand five hundred dollars~~ \$17,500.

1 (e) If the estimated annual volume of construction work of the
2 applicant is more than ~~one hundred fifty thousand dollars~~ \$150,000 and
3 less than ~~five hundred thousand dollars~~ \$500,000, the applicant shall
4 furnish a surety bond or cash deposit of not less than ~~two thousand five~~
5 ~~hundred dollars~~ \$2,500 or more than ~~seven thousand five hundred dollars~~
6 \$7,500.

7 (f) If the estimated annual volume of construction work of the
8 applicant is less than ~~one hundred fifty thousand dollars~~ \$150,000, the
9 applicant shall furnish a surety bond or cash deposit of ~~two thousand five~~
10 ~~hundred dollars~~ \$2,500.

11 3. The total amount of the surety bond or cash deposit required of
12 a licensee who holds more than one license under paragraphs 1 and 2 of
13 this subsection ~~shall be~~ IS the sum of the surety bond or cash deposit
14 required for each license based on the estimated annual volume of
15 construction work of the applicant allocated to and performed under each
16 license. The applicant at his option may post a single surety bond or
17 cash deposit that is the sum of the bonds or deposits determined under
18 this subsection for all such licenses.

19 4. General dual licensed contractors and subclassifications of
20 general dual licensed contractors shall furnish a single surety bond or
21 cash deposit with amounts for each classification of license that are
22 determined based on the volume of commercial work as determined under
23 paragraph 1 of this subsection and the volume of residential work as
24 determined under paragraph 5 of this subsection. Liability under the bond
25 or cash deposit ~~shall be~~ IS limited to the amount established for each
26 commercial or residential license and is subject to the ~~limitations~~ LIMITS
27 and requirements set forth in subsection E of this section.

28 5. General residential contractors and subclassifications of
29 general residential contractors shall furnish a surety bond or cash
30 deposit in an amount of not more than ~~fifteen thousand dollars~~ \$15,000 and
31 not less than ~~five thousand dollars~~ \$5,000.

32 6. Specialty dual licensed contractors shall furnish a single
33 surety bond or cash deposit with amounts for each classification of
34 license that are determined based on the volume of commercial work as
35 determined under paragraph 2 of this subsection and the volume of
36 residential work as determined under paragraph 7 of this subsection.
37 Liability under the bond or cash deposit ~~shall be~~ IS limited to the amount
38 established for each commercial or residential license and is subject to
39 the ~~limitations~~ LIMITS and requirements set forth in subsection E of this
40 section.

41 7. Specialty residential contractors shall furnish a surety bond or
42 cash deposit in an amount of not more than ~~seven thousand five hundred~~
43 ~~dollars~~ \$7,500 and not less than ~~one thousand dollars~~ \$1,000.

1 8. Dual licensed swimming pool contractors and residential swimming
2 pool general contractors shall furnish a surety bond or cash deposit in
3 the same amounts based on the volume of work as determined under paragraph
4 1 of this subsection for a general commercial contractor.

5 C. Dual licensed contractors and residential contractors shall also
6 either:

7 1. Furnish an additional surety bond or cash deposit in the amount
8 of ~~two hundred thousand dollars~~ \$200,000 solely for actual damages
9 suffered by ~~persons injured~~ CLAIMANTS as described in section ~~32-1131~~
10 32-1132. This bond ~~shall be~~ IS subject to the ~~limitations~~ LIMITS on the
11 amounts that may be awarded to individual claimants as established in
12 section 32-1132.

13 2. Participate in the residential contractors' recovery fund and
14 pay the assessment prescribed by section ~~32-1132~~ 32-1126, SUBSECTION G.

15 D. The surety bonds shall be executed by the contractor as
16 principal with a corporation duly authorized to transact surety business
17 in this state. Evidence of a surety bond shall be submitted to the
18 registrar in a form acceptable to the registrar. The contractor in the
19 alternative may establish a cash deposit in the amount of the bond with
20 the state treasurer in accordance with rules adopted by the registrar.
21 Such cash bond monies shall be deposited, pursuant to sections 35-146 and
22 35-147, in the contractors' cash bond fund. The state treasurer shall
23 invest and divest monies in the fund as provided by section 35-313, and
24 monies earned from investment shall be credited to the state general fund.
25 Such cash deposits may be withdrawn, if there are no outstanding claims
26 against them, two years after the termination of the license in connection
27 with which the cash is deposited. The cash deposit may be withdrawn two
28 years after the filing of a commercial surety bond as a replacement to the
29 cash deposit.

30 E. The bonds or deposit required by subsection B of this section
31 ~~shall be~~ ARE for the benefit of and ~~shall be~~ ARE subject to claims by the
32 registrar of contractors for failure to pay any sum required pursuant to
33 this chapter. The bond or deposit required by subsection B, paragraphs 1,
34 2 and 3 of this section is for the benefit of and subject to claims by a
35 licensee under this chapter or a lessee, owner or co-owner of
36 nonresidential real property including, but not limited to, a tenant in
37 common or joint tenant, or their successors in interest, who has a direct
38 contract with the licensee against whose bond or deposit the claim is made
39 and who is damaged by the failure of the licensee to build or improve a
40 structure or appurtenance on that real property at the time the work was
41 performed in a manner not in compliance with the requirements of any
42 building or construction code applicable to the construction work under
43 the laws of this state or any political subdivision, or if no such code
44 was applicable, in accordance with the standards of construction work
45 approved by the registrar. The residential bond or deposit required by

1 subsection B, paragraphs 4 through 8 of this section is for the benefit of
2 and subject to claims by any person furnishing labor, materials or
3 construction equipment on a rental basis used in the direct performance of
4 a construction contract involving a residential structure or by ~~persons~~
5 ~~injured~~ CLAIMANTS as defined DESCRIBED in section ~~32-1131~~ 32-1132. The
6 bond or deposit required by subsection C, paragraph 1 of this section is
7 for the benefit of and is subject to claims only by ~~persons injured~~
8 CLAIMANTS as described in section ~~32-1131~~ 32-1132. The person seeking
9 recovery from the bond or cash deposit shall maintain an action at law
10 against the contractor if claiming against the cash deposit or against the
11 contractor and surety if claiming against the surety bond. If the person
12 seeking recovery is required to give the notice pursuant to section
13 33-992.01, he is entitled to seek recovery only if he has given such
14 notice and has made proof of service. The surety bond or cash deposit
15 ~~shall be~~ IS subject to claims until the full amount thereof is exhausted.
16 The court may award reasonable attorney fees in a judgment against a
17 contractor's surety bond or cash deposit. ~~No~~ A suit may NOT be commenced
18 on the bond or for satisfaction from the cash deposit after the expiration
19 of two years following the commission of the act or delivery of goods or
20 rendering of services on which the suit is based, except that time for
21 purposes of claims for fraud ~~shall be~~ IS measured as provided in section
22 12-543. The surety bond or cash deposit shall be continuous in form and
23 ~~shall be~~ conditioned so that the total aggregate liability of the surety
24 or cash deposit for all claims, including reasonable attorney fees, ~~shall~~
25 ~~be~~ IS limited to the face amount of the surety bond or cash deposit
26 irrespective of the number of years the bond or cash deposit is in
27 force. If the corporate surety desires to make payment without awaiting
28 court or registrar action, the amount of any bond filed in compliance with
29 this chapter shall be reduced to the extent of any payment or payments
30 made by the corporate surety in good faith thereunder. Any such payments
31 shall be based on priority of written claims received by the corporate
32 surety before court or registrar action. If more than one cash deposit
33 exists, the judgment against the contractor shall state which cash deposit
34 ~~shall be~~ IS used to satisfy the judgment. A certified copy of the
35 judgment shall then be filed with the registrar, and such judgment ~~shall~~
36 MUST specify that it may be satisfied from the contractor's cash
37 deposit. Priority for payment ~~shall be~~ IS based on the time of filing
38 with the registrar. On receipt of a certified copy of the judgment or on
39 a final disciplinary order of the registrar, the registrar may authorize
40 payment from the cash deposit of the amount claimed or of whatever lesser
41 amount remains on file. In any action against a cash deposit, the
42 claimant, at the time of filing suit, may notify the registrar in writing
43 of the action against the cash deposit, but ~~shall~~ MAY not name as a
44 defendant in the action the registrar, the treasurer or the state. A
45 CLAIMANT'S failure to ~~so~~ notify the registrar at the time of filing suit

1 may result in the cash deposit being withdrawn by the licensee before
 2 judgment pursuant to subsection D of this section.

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

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

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

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

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

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

1 Sec. 24. Section 32-1152.01, Arizona Revised Statutes, is amended
2 to read:

3 32-1152.01. Alternatives to cash deposit

4 A. As an alternative to the cash deposit provided for in section
5 32-1152, subsection B, a contractor may substitute any of the following:

6 1. Certificates of deposit assigned to the registrar, issued by
7 banks doing business in this state and insured by the federal deposit
8 insurance corporation.

9 2. Investment certificates or share accounts assigned to the
10 registrar and issued by a savings and loan association doing business in
11 this state and insured by the federal deposit insurance corporation.

12 B. The terms and conditions surrounding each of such types of
13 security ~~shall~~ MAY be prescribed by the registrar.

14 Sec. 25. Section 32-1154, Arizona Revised Statutes, is amended to
15 read:

16 32-1154. Grounds for suspension or revocation of license;
17 continuing jurisdiction; civil penalty

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

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

23 2. Departure from or disregard of:

24 (a) ~~Plans or specifications or any building codes of this state or~~
25 ~~any political subdivision of this state~~ in any material respect that is
26 prejudicial to another without consent of the owner or the owner's duly
27 authorized representative and without the consent of the person entitled
28 to have the particular construction project or operation completed in
29 accordance with such plans and specifications and code.

30 (b) A BUILDING CODE OF THIS STATE OR ANY POLITICAL SUBDIVISION OF
31 THIS STATE IN ANY MATERIAL RESPECT THAT IS PREJUDICIAL TO ANOTHER.

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

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

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

37 6. The doing of a fraudulent act by the licensee as a contractor
38 resulting in another person being substantially injured. FOR THE PURPOSES
39 OF THIS PARAGRAPH, "FRAUDULENT ACT" MEANS A MATERIAL MISREPRESENTATION
40 THAT A LICENSEE MAKES, THAT IS RELIED ON BY ANOTHER PERSON AND THAT
41 RESULTS IN DAMAGE TO THAT PERSON OR THAT PERSON'S PROPERTY.

42 7. Conviction of a felony.

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

- 1 9. ATTEMPTING TO EVADE THIS CHAPTER BY:
- 2 (a) Aiding or abetting a licensed or unlicensed person. ~~to evade~~
- 3 ~~this chapter, knowingly or recklessly combining~~
- 4 (b) ACTING or conspiring with a licensed or unlicensed person. ~~;~~
- 5 (c) Allowing one's license to be used by a licensed or unlicensed
- 6 person. ~~or~~
- 7 (d) Acting as agent, partner, associate or otherwise of a licensed
- 8 or unlicensed person ~~with intent to evade this chapter.~~
- 9 10. Failure by a licensee or agent or official of a licensee to pay
- 10 monies in excess of ~~seven hundred fifty dollars~~ \$750 when due for
- 11 materials or services rendered in connection with the licensee's
- 12 operations as a contractor ~~when the licensee has the capacity to pay or,~~
- 13 ~~if~~ UNLESS the licensee PROVES THAT THE LICENSEE lacks the capacity to
- 14 pay, ~~when the licensee~~ AND has NOT received sufficient monies as payment
- 15 for the particular construction work project or operation for which the
- 16 services or materials were rendered or purchased.
- 17 11. Failure of a contractor to comply with any safety or labor laws
- 18 or codes of the federal government, this state or political subdivisions
- 19 of this state.
- 20 12. Failure in any material respect to comply with this chapter.
- 21 13. Knowingly entering into a contract with a contractor for work
- 22 to be performed for which a license is required with a person that is not
- 23 duly licensed in the required classification.
- 24 14. Acting in the capacity of a contractor under any license issued
- 25 under this chapter in a name other than as set forth on the license.
- 26 15. False, misleading or deceptive advertising whereby any member
- 27 of the public ~~may be~~ WAS misled and injured.
- 28 16. Knowingly contracting beyond the scope of the license or
- 29 licenses of the licensee.
- 30 17. Contracting or offering to contract or submitting a bid while
- 31 the license is under suspension or while the license is on inactive
- 32 status.
- 33 18. Failure to notify the registrar in writing within a period of
- 34 fifteen days of any disassociation of the person who qualified for the
- 35 license. The licensee ~~shall have~~ MUST QUALIFY THROUGH ANOTHER PERSON
- 36 WITHIN sixty days ~~from~~ AFTER the date of disassociation ~~to qualify through~~
- 37 ~~another person.~~
- 38 19. Subsequent discovery of facts that if known at the time of
- 39 issuance of a license or the renewal of a license would have been grounds
- 40 to deny the issuance or renewal of the license.
- 41 20. Having a person named on the license who is or was named on any
- 42 other license in this state or in another state that is under suspension
- 43 or revocation for any act or omission that occurs while the person is or
- 44 was named on the license unless the prior revocation was based solely on a
- 45 violation of this paragraph.

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

4 (a) Not performed at the required location.

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

7 22. Failure to take appropriate corrective action to comply with
8 this chapter or with rules adopted pursuant to this chapter without valid
9 justification within a reasonable period of time after receiving a written
10 directive from the registrar. The written directive ~~shall~~ MUST set forth
11 the time within which the contractor is to complete the remedial action.
12 The time permitted for compliance ~~shall~~ MAY not be less than fifteen days
13 from the date of issuance of the directive. A license ~~shall~~ MAY not be
14 revoked or suspended nor ~~shall~~ MAY any other penalty be imposed for a
15 violation of this paragraph until after a hearing has been held.

16 23. Prohibit, threaten to prohibit, retaliate against, threaten to
17 retaliate against or otherwise intimidate any contractor or materialman
18 from serving a preliminary notice pursuant to section 33-992.01.

19 24. For contractors, failure to comply with title 44, chapter 11,
20 article 11.

21 B. The registrar:

22 1. May ~~on the registrar's own motion, and shall~~ INVESTIGATE THE
23 ACTS OF A CONTRACTOR IN THIS STATE ON THE REGISTRAR'S OWN MOTION.

24 2. SHALL INVESTIGATE THE ACTS OF A CONTRACTOR IN THIS STATE on the
25 written complaint of any owner or contractor that is a party to a
26 construction contract or a person who suffers a material loss or injury as
27 a result of a contractor's failure to perform work in a professional and
28 workmanlike manner or in accordance with any applicable building codes and
29 professional industry standards, ~~investigate the acts of any contractor~~
30 ~~within this state and may temporarily suspend, with or without imposition~~
31 ~~of specific conditions in addition to increased surety bond or cash~~
32 ~~deposit requirements, or permanently revoke any or all licenses issued~~
33 ~~under this chapter if the holder of the license issued pursuant to this~~
34 ~~chapter is guilty of or commits any of the acts or omissions set forth in~~
35 ~~subsection A of this section.~~ For the purposes of this subsection
36 PARAGRAPH:

37 ~~1-~~ (a) "Construction contract" means a written or oral agreement
38 relating to the construction, alteration, repair, maintenance, moving or
39 demolition of any building, structure or improvement or relating to the
40 contractor's excavation of or other development or improvement to land if
41 the registrar investigates the contractor's actions under this subsection.

42 ~~2-~~ (b) "Owner" means any person, firm, partnership, corporation,
43 association or other organization, or a combination of any of them, that
44 causes a building, structure or improvement to be constructed, altered,
45 repaired, maintained, moved or demolished or that causes land to be

1 excavated or otherwise developed or improved, whether the interest or
 2 estate of the person is in fee, as vendee under a contract to purchase, as
 3 lessee or another interest or estate less than fee, pursuant to a
 4 construction contract.

5 3. MAY TEMPORARILY SUSPEND, WITH OR WITHOUT IMPOSITION OF SPECIFIC
 6 CONDITIONS IN ADDITION TO INCREASED SURETY BOND OR CASH DEPOSIT
 7 REQUIREMENTS, OR PERMANENTLY REVOKE ANY OR ALL LICENSES ISSUED UNDER THIS
 8 CHAPTER IF THE HOLDER OF THE LICENSE ISSUED PURSUANT TO THIS CHAPTER IS
 9 GUILTY OF OR COMMITS ANY OF THE ACTS OR OMISSIONS SET FORTH IN SUBSECTION
 10 A OF THIS SECTION.

11 C. Pursuant to this chapter, the registrar shall ~~temporarily~~
 12 ~~suspend or permanently revoke the license~~ SUSPEND BY OPERATION OF LAW A
 13 LICENSE issued to a person under this chapter on notice from the
 14 department of revenue that a tax debt related to income taxes, withholding
 15 taxes or any tax imposed or administered by title 42, chapter 5 that was
 16 incurred in the operation of the licensed business has become final and
 17 the person neglects to pay or refuses to pay the tax debt.

18 D. The expiration, cancellation, suspension or revocation of a
 19 license by operation of law or by decision and order of the registrar or a
 20 court of law or the voluntary surrender of a license by a licensee ~~shall~~
 21 DOES not deprive the registrar of jurisdiction to proceed with any
 22 investigation of or action or disciplinary proceeding against such a
 23 licensee, or to render a decision suspending or revoking such a license,
 24 or denying the renewal or right of renewal of such a license.

25 E. The registrar may impose a civil penalty of not to exceed ~~five~~
 26 ~~hundred dollars~~ \$500 on a contractor for each violation of subsection A,
 27 paragraph 22 of this section. Civil penalties collected pursuant to this
 28 subsection shall be deposited in the residential contractors' recovery
 29 fund. The failure by the licensee to pay any civil penalty imposed under
 30 this subsection results in the automatic revocation of the license thirty
 31 days after the effective date of the order providing for the civil
 32 penalty. A person who is or was named on a license of a contractor when
 33 an act or omission occurs that results in a civil penalty may not receive
 34 a new license under this chapter until the entire civil penalty is paid.

35 F. The registrar ~~shall~~ MAY impose a civil penalty of not to exceed
 36 ~~one thousand dollars~~ \$1,000 on a contractor for each violation of
 37 subsection A, paragraph 17 of this section. Civil penalties collected
 38 pursuant to this subsection shall be deposited in the residential
 39 contractors' recovery fund. The failure by the licensee to pay any civil
 40 penalty imposed under this subsection results in the automatic permanent
 41 revocation of the license thirty days after the effective date of the
 42 order providing for the civil penalty. A person who is or was named on a
 43 license of a contractor when an act or omission occurs that results in a
 44 civil penalty may not receive a new license under this chapter until the
 45 entire civil penalty is paid.

1 ~~G. Notwithstanding any other provisions in this chapter, if a~~
 2 ~~contractor's license has been revoked or has been suspended as a result of~~
 3 ~~an order to remedy a violation of this chapter, the registrar may order~~
 4 ~~payment from the residential contractors' recovery fund to remedy the~~
 5 ~~violation. The registrar shall serve the contractor with a notice setting~~
 6 ~~forth the amount claimed or to be awarded. If the contractor contests the~~
 7 ~~amount or propriety of the payment, the contractor shall respond within~~
 8 ~~ten days of the date of service by requesting a hearing to determine the~~
 9 ~~amount or propriety of the payment. Failure by the contractor to respond~~
 10 ~~in writing within ten days of the date of service shall be deemed a waiver~~
 11 ~~by the contractor of the right to contest the amount claimed or to be~~
 12 ~~awarded. Service may be made by personal service to the contractor or by~~
 13 ~~mailing a copy of the notice by registered mail with postage prepaid to~~
 14 ~~the contractor's latest address of record on file in the registrar's~~
 15 ~~office. If service is made by registered mail, it is effective five days~~
 16 ~~after the notice is mailed. Except as provided in section 41-1092.08,~~
 17 ~~subsection H, the contractor or injured person may seek judicial review of~~
 18 ~~the registrar's final award pursuant to title 12, chapter 7, article 6.~~
 19 ~~An applicant to the residential contractors' recovery fund pursuant to~~
 20 ~~this subsection must show that the applicant has proceeded against any~~
 21 ~~existing bond covering the residential contractor and has not collected on~~
 22 ~~the bond in an amount of thirty thousand dollars or more.~~

23 Sec. 26. Section 32-1155, Arizona Revised Statutes, is amended to
 24 read:

25 32-1155. Filing of complaint; resolution of complaint;
 26 service of notice; failure to answer; prohibited
 27 citations

28 A. On the filing of a written complaint with the registrar charging
 29 a licensee with the commission, ~~within two years before the date of filing~~
 30 ~~the complaint,~~ of an act that is cause for suspension or revocation of a
 31 license, including an act that is in violation of title 44, chapter 11,
 32 article 11, the registrar after investigation, in its sole discretion, may
 33 issue a citation directing the licensee, within ten days after service of
 34 the citation on the licensee, to appear by filing with the registrar the
 35 licensee's written answer to the citation and complaint showing cause, if
 36 any, why the licensee's license should not be suspended or revoked. **THE**
 37 **COMPLAINT MUST BE FILED WITHIN THE STATUTE OF LIMITATIONS PRESCRIBED BY**
 38 **32-1162.**

39 B. Service of **THE** citation on the licensee ~~shall be~~ **IS** fully
 40 effected by personal service or by mailing a true copy thereof, together
 41 with a true copy of the complaint, by ~~registered~~ **CERTIFIED** mail in a
 42 sealed envelope with postage prepaid and addressed to the licensee at the
 43 licensee's latest address of record in the registrar's office. Service of
 44 the citation and complaint ~~shall be~~ **IS** complete at the time of personal
 45 service or five days after deposit in the mail. ~~The two-year period~~

~~prescribed by this subsection shall commence on the earlier of the close of escrow or actual occupancy for new home or other new building construction and otherwise shall commence on completion of the specific project.~~

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

~~C.~~ D. The registrar ~~shall~~ MAY not issue a citation for failure to perform work in a professional and workmanlike manner or in accordance with any applicable building codes and professional industry standards if either:

1. The contractor is not provided an opportunity to inspect the work within fifteen days after receiving a written notice from the registrar.

2. The contractor's work has been subject to neglect, modification or abnormal use.

~~D.~~ E. Notwithstanding subsection ~~C.~~ D of this section, the registrar may investigate the complaint without waiting fifteen days.

Sec. 27. Repeal

Section 32-1155.01, Arizona Revised Statutes, is repealed.

Sec. 28. Section 32-1156, Arizona Revised Statutes, is amended to read:

32-1156. Hearings

A. Title 41, chapter 6, article 10 applies to hearings under this chapter.

B. In a hearing or rehearing conducted pursuant to this section a ~~corporation~~ COMPANY may be represented by ~~a corporate~~ AN officer or employee who is not a member of the state bar if BOTH:

1. The ~~corporation~~ COMPANY has specifically authorized the officer or employee to represent it.

2. The representation is not the officer's or employee's primary duty to the ~~corporation~~ COMPANY but is secondary ~~or incidental~~ to the officer's or employee's duties relating to the management or operation of the ~~corporation~~ COMPANY.

Sec. 29. Section 32-1156.01, Arizona Revised Statutes, is amended to read:

32-1156.01. Restitution; prohibition

A. After a hearing pursuant to this article, an administrative law judge may recommend that a licensee provide restitution to any person who is injured or whose property is damaged by an action of the licensee.

B. A RESTITUTION AWARD MADE PURSUANT TO THIS SECTION MAY NOT INCLUDE ATTORNEY FEES.

1 Sec. 30. Section 32-1161, Arizona Revised Statutes, is amended to
2 read:

3 32-1161. Rights of contractor after suspension of license

4 A. After ~~suspension of~~ SUSPENDING the license ~~upon~~ ON any of the
5 grounds set forth in section 32-1154, the registrar shall renew it ~~upon~~ ON
6 proof of compliance by the contractor with provisions of the judgment
7 relating to renewal of the license, or in the absence of a judgment or
8 provisions therein as to renewal, ~~upon~~ ON proper showing that all loss
9 caused by the act or omission for which the license was suspended has been
10 fully satisfied.

11 B. After ~~suspension of~~ SUSPENDING the license pursuant to ~~the~~
12 ~~provisions of~~ section 32-1154, the licensee may perform, without
13 compensation, warranty work or other corrective work.

14 C. After ~~revocation of~~ REVOKING a license ~~upon~~ ON any of the
15 grounds set forth in section 32-1154, the license ~~shall~~ MAY not be renewed
16 or reissued for one year after final determination of revocation and then
17 only on proper showing that all loss caused by the act or omission for
18 which the license was revoked has been fully satisfied. FOR THE PURPOSES
19 OF THIS SUBSECTION, A PROPER SHOWING MAY BE MADE BY DEMONSTRATING, TO THE
20 SATISFACTION OF THE REGISTRAR, THAT THE LICENSEE EXHAUSTED ALL REASONABLE
21 MEANS TO REMEDY THE UNDERLYING LOSS CAUSED BY THE ACT OR OMISSION.

22 Sec. 31. Title 32, chapter 10, article 3, Arizona Revised Statutes,
23 is amended by adding section 32-1162, to read:

24 32-1162. Statute of limitations; remedy violations

25 A. A PERSON MAY FILE A WRITTEN COMPLAINT WITH THE REGISTRAR
26 ALLEGING A LICENSEE HAS COMMITTED A VIOLATION OF THIS CHAPTER PURSUANT TO
27 SECTION 32-1155. THE COMPLAINT MUST BE FILED:

28 1. FOR NEW HOME BUILDS OR OTHER NEW BUILDING CONSTRUCTION, WITHIN
29 TWO YEARS AFTER THE EARLIER OF THE CLOSE OF ESCROW OR ACTUAL OCCUPANCY.

30 2. FOR ALL OTHER PROJECTS, WITHIN TWO YEARS AFTER THE COMPLETION OF
31 THE SPECIFIC PROJECT.

32 B. A LICENSEE'S QUALIFYING PARTY IS RESPONSIBLE FOR ANY VIOLATION
33 OF THIS CHAPTER COMMITTED BY THE LICENSEE DURING THE PERIOD OF TIME THAT
34 THE QUALIFYING PARTY IS NAMED ON THE LICENSE.

35 C. A PERSON NAMED ON A LICENSE IS RESPONSIBLE FOR ANY VIOLATION OF
36 THIS CHAPTER COMMITTED BY THE LICENSEE DURING THE PERIOD OF TIME THAT
37 PERSON WAS NAMED ON THE LICENSE.

38 Sec. 32. Section 32-1165, Arizona Revised Statutes, is amended to
39 read:

40 32-1165. Advertising; violation; classification

41 Except as authorized by section 32-1121, subsection A, ~~paragraph 14,~~
42 ~~subdivision (c)~~, it is a class 1 misdemeanor for any person to advertise
43 that ~~he~~ THE PERSON is able to perform any service or contract for
44 compensation subject to regulation by the registrar under the terms of
45 this chapter unless THE PERSON FIRST OBTAINS a license under the terms of

1 this chapter ~~is first obtained regardless of whether his operations as a~~
2 ~~contractor are otherwise exempt.~~

3 Sec. 33. Repeal

4 Sections 32-1166 and 32-1166.01, Arizona Revised Statutes, are
5 repealed.

6 Sec. 34. Title 32, chapter 10, article 3, Arizona Revised Statutes,
7 is amended by adding a new section 32-1166 and a new section 32-1166.01,
8 to read:

9 32-1166. Cease and desist orders

10 A. THE REGISTRAR MAY ISSUE A CEASE AND DESIST ORDER TO ANY PERSON
11 WHO IS REQUIRED TO BE LICENSED BY THIS CHAPTER BUT WHO IS NOT LICENSED AND
12 WHO ENGAGED IN AN ACT OF CONTRACTING, A PRACTICE OR A TRANSACTION THAT
13 VIOLATES THIS CHAPTER, A RULE ADOPTED BY THE REGISTRAR OR AN ORDER ISSUED
14 BY THE REGISTRAR.

15 B. THE CEASE AND DESIST ORDER MAY REQUIRE THE PERSON TO IMMEDIATELY
16 CEASE AND DESIST FROM ENGAGING IN AN ACT, PRACTICE OR TRANSACTION ON
17 RECEIPT OF THE ORDER.

18 C. SERVICE OF THE CEASE AND DESIST ORDER IS FULLY EFFECTED BY
19 PERSONAL SERVICE OR BY MAILING A TRUE COPY OF THE CEASE AND DESIST ORDER
20 BY CERTIFIED MAIL IN A SEALED ENVELOPE, WITH POSTAGE PREPAID, ADDRESSED TO
21 EITHER:

- 22 1. THE PERSON'S LAST KNOWN BUSINESS ADDRESS.
- 23 2. THE PERSON'S RESIDENTIAL ADDRESS.

24 32-1166.01. Citation: civil penalties

25 A. IN CONJUNCTION WITH THE REGISTRAR'S AUTHORITY TO ISSUE A CEASE
26 AND DESIST ORDER UNDER SECTION 32-1166, SUBSECTION A, THE REGISTRAR MAY
27 ISSUE A CITATION FOR CONTRACTING PRACTICING OR TRANSACTING THAT
28 CONSTITUTES A VIOLATION OF ANY OF THE FOLLOWING:

- 29 1. THIS CHAPTER.
- 30 2. A RULE ADOPTED BY THE REGISTRAR.
- 31 3. AN ORDER ISSUED BY THE REGISTRAR.
- 32 B. A CITATION ISSUED PURSUANT TO THIS SECTION SHALL:

33 1. BE IN WRITING.
34 2. CLEARLY DESCRIBE THE VIOLATION FOR WHICH THE CITATION WAS
35 ISSUED.

36 3. CONTAIN AN ORDER TO CEASE AND DESIST.
37 4. CONTAIN A CIVIL PENALTY OF AT LEAST \$200 FOR EACH VIOLATION BUT
38 NOT MORE THAN \$2,500 FOR MULTIPLE VIOLATIONS COMMITTED ON THE SAME DAY.

39 C. EACH VIOLATION OF THIS CHAPTER OR A RULE OR ORDER OF THE
40 REGISTRAR BY A PERSON WHO IS REQUIRED TO BE LICENSED BY THIS CHAPTER AND
41 WHO DOES NOT POSSESS THE REQUIRED LICENSE CONSTITUTES A SEPARATE OFFENSE
42 AND THE REGISTRAR MAY IMPOSE A CIVIL PENALTY NOT TO EXCEED \$2,500 FOR EACH
43 VIOLATION EXCEPT THAT THE CIVIL PENALTY MAY NOT EXCEED \$2,500 FOR ALL
44 VIOLATIONS COMMITTED ON THE SAME DAY.

1 D. THE REGISTRAR SHALL ISSUE A CITATION UNDER THIS SECTION WITHIN
2 ONE HUNDRED AND EIGHTY DAYS AFTER ACTUAL DISCOVERY OF THE OFFENSE BY THIS
3 STATE OR THE POLITICAL SUBDIVISION HAVING JURISDICTION. SERVICE OF THE
4 CITATION IS FULLY EFFECTED BY PERSONAL SERVICE OR BY MAILING A TRUE COPY
5 OF THE CITATION BY CERTIFIED MAIL IN A SEALED ENVELOPE WITH POSTAGE
6 PREPAID AND ADDRESSED TO EITHER:

7 1. THE PERSON'S LAST KNOWN BUSINESS ADDRESS.

8 2. THE PERSON'S RESIDENTIAL ADDRESS.

9 E. THE REGISTRAR MAY ISSUE CITATIONS CONTAINING ORDERS TO CEASE AND
10 DESIST AND CIVIL PENALTIES AGAINST PERSONS WHO HAVE NEVER BEEN LICENSED
11 UNDER THIS CHAPTER WHO ARE ACTING IN THE CAPACITY OF OR ENGAGING IN THE
12 BUSINESS OF A CONTRACTOR IN THIS STATE.

13 F. IF THE REGISTRAR ISSUES A CITATION AGAINST A PERSON AND THE
14 PERSON FAILS TO COMPLY WITH THE CEASE AND DESIST ORDER AND CITATION, THE
15 REGISTRAR MAY ASSESS AN ADDITIONAL CIVIL PENALTY OF UP TO \$2,500 FOR EACH
16 DAY THE VIOLATION CONTINUES.

17 G. THE REGISTRAR MAY ADOPT RULES RELATING TO THE CIVIL PENALTY THAT
18 GIVE DUE CONSIDERATION TO THE GRAVITY OF THE VIOLATION AND ANY HISTORY OF
19 PREVIOUS VIOLATIONS.

20 H. THE PENALTIES AUTHORIZED UNDER THIS SECTION ARE SEPARATE FROM,
21 AND IN ADDITION TO, ALL OTHER REMEDIES PROVIDED BY LAW, EITHER CIVIL OR
22 CRIMINAL.

23 I. THE REGISTRAR SHALL DEPOSIT, PURSUANT TO SECTIONS 35-146 AND
24 35-147, ALL MONIES COLLECTED FROM CIVIL PENALTIES UNDER THIS SECTION IN
25 THE STATE GENERAL FUND.

26 Sec. 35. Section 32-1166.02, Arizona Revised Statutes, is amended
27 to read:

28 32-1166.02. Time for issuance of citation

29 A citation under section ~~32-1166~~ 32-1166.01 shall be issued by the
30 registrar within ninety days after actual discovery of the offense by this
31 state or the political subdivision having jurisdiction.

32 Sec. 36. Section 32-1168, Arizona Revised Statutes, is amended to
33 read:

34 32-1168. Proof of valid license

35 At the request of the registrar, and after ~~the issuance of~~ ISSUING a
36 citation pursuant to section 32-1104, subsection A, paragraph 4, or a
37 cease and desist order pursuant to section 32-1166, ~~subsection A,~~ the
38 county, city or authority of the state may cause work on a construction
39 project to cease or be suspended on that project until there is compliance
40 with the licensing requirements of section 32-1151 by those contractors
41 employed on that project.

1 Sec. 37. Section 32-1169, Arizona Revised Statutes, is amended to
2 read:

3 32-1169. Building permits; local proof of valid license;
4 violation

5 A. Each county, city or other political subdivision or authority of
6 this state or any agency, department, board or commission of this state
7 ~~which~~ THAT requires the issuance of a building permit as a condition
8 precedent to the construction, alteration, improvement, demolition or
9 repair of a building, structure or other improvement to real property for
10 which a license is required under this chapter, as part of the application
11 procedures which it ~~utilizes~~ USES, shall require that each applicant for a
12 building permit file a signed statement that the applicant is ~~currently~~
13 PROPERLY licensed TO PERFORM THE WORK DESCRIBED IN THE PERMIT under this
14 chapter with the applicant's license number. If the applicant purports to
15 be exempt from the licensing requirements of this chapter, the statement
16 shall contain the basis of the asserted exemption and the name and license
17 number of any general, mechanical, electrical or plumbing contractor who
18 will be employed on the work. The local issuing authority may require
19 from the applicant a statement signed by the registrar to verify any
20 purported exemption.

21 B. The filing of an application containing false or incorrect
22 information concerning an applicant's contractor's license with the intent
23 to avoid the licensing requirements of this chapter is unsworn
24 falsification pursuant to section 13-2704.

25 Sec. 38. Section 32-1170.02, Arizona Revised Statutes, is amended
26 to read:

27 32-1170.02. Qualification examination

28 A. To qualify as a solar contractor under this article, the
29 applicant shall:

30 1. Submit to the registrar an application on forms prescribed by
31 the registrar, identifying the applicant and the classification of license
32 held or sought by the applicant, and pay the prescribed fee.

33 2. Pass an examination approved and conducted by the registrar that
34 is specific to the solar requirements of the classification of license
35 held or sought by the applicant.

36 3. Meet all other provisions of this chapter relating to obtaining
37 and ~~retaining~~ MAINTAINING an appropriate license.

38 B. The examination shall be given by the registrar at the times and
39 places prescribed by the registrar.

40 C. The license of a successful applicant shall be appropriately
41 marked or supplemented by the registrar to indicate qualification as a
42 solar contractor within the scope of that license.

1 Sec. 39. Transfer and renumber
2 Section 32-1129, 32-1129.01, 32-1129.02, 32-1129.03, 32-1129.04,
3 32-1129.05, 32-1129.06 and 32-1129.07, Arizona Revised Statutes, are
4 transferred and renumbered for placement in title 32, chapter 10, article
5 5, as added by this act, as follows:

<u>Former Sections</u>	<u>New Sections</u>
32-1129	32-1181
32-1129.01	32-1182
32-1129.02	32-1183
32-1129.03	32-1184
32-1129.04	32-1185
32-1129.05	32-1186
32-1129.06	32-1187
32-1129.07	32-1188

15 Sec. 40. Heading repeal
16 The article heading of former title 32, chapter 10, article 5,
17 Arizona Revised Statutes, is repealed.

18 Sec. 41. Title 32, chapter 10, Arizona Revised Statutes, is amended
19 by adding a new article 5, to read:

ARTICLE 5. PROMPT PAY

21 Sec. 42. Section 32-1181, Arizona Revised Statutes, as transferred
22 and renumbered, is amended to read:

32-1181. Definitions; applicability

24 A. In ~~sections 32-1129.01, 32-1129.02, 32-1129.03, 32-1129.04,~~
25 ~~32-1129.05 and 32-1129.07~~ THIS ARTICLE, unless the context otherwise
26 requires:

27 1. "Construction contract" means a written or oral agreement
28 relating to the construction, alteration, repair, maintenance, moving or
29 demolition of any building, structure or improvement or relating to the
30 excavation of or other development or improvement to land.

31 2. "Contractor" means any person, firm, partnership, corporation,
32 association or other organization, or a combination of any of them, that
33 has a direct contract with an owner to perform work under a construction
34 contract.

35 3. "Final completion" means the earliest of the following:

36 (a) When the work, or the work under a portion of a construction
37 contract for which the contract states a separate price, has been
38 completed in accordance with the terms and conditions of the construction
39 contract.

40 (b) The date of final inspection and final written acceptance by
41 the governmental body that issues the building permit for the building,
42 structure or improvement.

43 4. "Owner" means any person, firm, partnership, corporation,
44 association or other organization, or a combination of any of them, that
45 causes a building, structure or improvement to be constructed, altered,

1 repaired, maintained, moved or demolished or that causes land to be
2 excavated or otherwise developed or improved, whether the interest or
3 estate of the person is in fee, as vendee under a contract to purchase, as
4 lessee or another interest or estate less than fee.

5 5. "Retention" means a portion of a progress payment otherwise due
6 from the owner to the contractor that is withheld pursuant to the terms
7 and conditions of a construction contract to ensure proper performance of
8 the construction contract.

9 6. "Subcontractor" means any person, firm, partnership,
10 corporation, association or other organization, or a combination of any of
11 them, that has a direct contract with a contractor or another
12 subcontractor to perform a portion of the work under a construction
13 contract.

14 7. "Substantial completion" or "substantially complete" means the
15 earliest of the following events:

16 (a) The stage in the progress of the work on a construction
17 contract when the work, or the work under a portion of a construction
18 contract for which the contract states a separate price, is sufficiently
19 complete in accordance with the terms and conditions of the construction
20 contract so that the owner can occupy and use the work or such portion of
21 the work for its intended purpose. When substantial completion occurs for
22 a portion of a construction contract for which the contract states a
23 separate price, substantial completion occurs only to the work under that
24 portion of the contract.

25 (b) The stage in the progress of the work on a construction
26 contract when the contractor has sufficiently completed the work or the
27 work under a portion of a construction contract for which the contract
28 states a separate price in accordance with the terms and conditions of the
29 construction contract to allow the owner to occupy and use the work or
30 such portion of the work for its intended purpose but the owner is unable
31 to or does not occupy or use the work or such portion of the work for its
32 intended purpose through no fault of the contractor.

33 (c) The date on which the governmental body that issues the
34 building permit, if any, for a building, structure or improvement issues
35 the written acceptance allowing the owner to occupy and use the work under
36 a construction contract.

37 8. "Work" means the labor, materials, equipment and services to be
38 provided by a contractor or subcontractor under a construction contract.

39 B. The definitions in this section do not apply to section 12-552.

40 Sec. 43. Section 32-1182, Arizona Revised Statutes, as transferred
41 and renumbered, is amended to read:

42 32-1182. Progress payments by owner; conditions; interest

43 A. By mutual agreement with a contractor, an owner may make
44 progress payments on construction contracts of less than sixty days. An
45 owner shall make progress payments to a contractor on all other

1 construction contracts. Progress payments shall be made on the basis of a
2 duly certified and approved billing or estimate of the work performed and
3 the materials supplied during the preceding thirty day billing cycle, or
4 such other billing cycle as stated in the construction contract. If
5 billings or estimates are to be submitted in other than thirty day billing
6 cycles, the construction contract and each page of the plans, including
7 bid plans and construction plans, shall specifically identify such other
8 billing cycle in a clear and conspicuous manner as prescribed in
9 subsection B of this section. If any work is performed during the
10 preceding billing cycle, a contractor shall timely submit a billing or
11 estimate to the owner covering the work performed during that billing
12 cycle. Except as provided in subsection C of this section, the owner
13 shall make progress payments to the contractor within seven days after the
14 date the billing or estimate is certified and approved pursuant to
15 subsection D of this section. Except as provided in subsection C of this
16 section, an owner shall release retention to the contractor within seven
17 days after the date the billing or estimate for release of retention is
18 certified and approved pursuant to subsection H of this section. Except
19 as provided in subsection C of this section, an owner shall make final
20 payment to the contractor within seven days after the billing or estimate
21 for final payment is certified and approved pursuant to subsection K of
22 this section.

23 B. A construction contract may provide for a billing cycle other
24 than a thirty day billing cycle if the construction contract specifically
25 sets forth such other billing cycle and either of the following applies:

26 1. The following legend or substantially similar language setting
27 forth the other billing cycle appears in clear and conspicuous type on
28 each page of the plans, including bid plans and construction plans:

29 Notice of Alternate Billing Cycle

30 This contract allows the owner to require the submission
31 of billings or estimates in billing cycles other than thirty
32 days. Billings or estimates for this contract shall be
33 submitted as follows:
34 _____
35 _____
36 _____

37 2. The following legend or substantially similar language setting
38 forth the other billing cycle appears in clear and conspicuous type on
39 each page of the plans, including bid plans and construction plans:

40 Notice of Alternate Billing Cycle

41 This contract allows the owner to require the submission
42 of billings or estimates in billing cycles other than thirty
43 days. A written description of such other billing cycle
44 applicable to the project is available from the owner or the
45 owner's designated agent at (telephone number or address, or

1 both), and the owner or its designated agent shall provide
2 this written description on request.

3 C. An owner may make progress payments, release of retention and
4 final payment later than seven days after the date the billing or estimate
5 is certified and approved if both:

6 1. The construction contract in a clear and conspicuous manner
7 specifically provides for a later payment defined by a specified number of
8 days after certification and approval.

9 2. The following legend or substantially similar language setting
10 forth the specified number of days appears in clear and conspicuous type
11 on each page of the plans, including bid plans and construction plans:

12 Notice of Extended Payment Provision

13 This contract allows the owner to make payment within
14 _____ days after certification and approval of billings and
15 estimates for progress payments, within _____ days after
16 certification and approval of billings and estimates for
17 release of retention and within ____ days after certification
18 and approval of billings and estimates for final payment.

19 D. Except as provided in subsection F of this section, a billing or
20 estimate for a progress payment shall be deemed certified and approved
21 fourteen days after the owner receives the billing or estimate, unless
22 before that time the owner or the owner's agent prepares and issues a
23 written statement stating in reasonable detail the owner's reasons for not
24 certifying or approving all or a portion of the billing or estimate. The
25 owner is deemed to have received the billing or estimate when the billing
26 or estimate is submitted to any person designated by the owner for receipt
27 or for certification and approval of the billing or estimate. The owner
28 may withhold from a progress payment a reasonable amount for retention.
29 An owner may decline to certify and approve a billing or estimate or
30 portion of a billing or estimate for any of the following reasons:

- 31 1. Unsatisfactory job progress.
- 32 2. Defective construction work or materials not remedied.
- 33 3. Disputed work or materials.
- 34 4. Failure to comply with other material provisions of the
35 construction contract.

36 5. ~~Third party~~ THIRD-PARTY claims filed or reasonable evidence that
37 a claim will be filed.

38 6. Failure of the contractor or a subcontractor to make timely
39 payments for labor, equipment and materials.

40 7. Damage to the owner.

41 8. Reasonable evidence that the construction contract cannot be
42 completed for the unpaid balance of the construction contract sum.

43 E. An owner may withhold from a progress payment only an amount
44 that is sufficient to pay the direct costs and expenses the owner
45 reasonably expects to incur to protect the owner from loss for which the

1 contractor is responsible and that results from any reasons set forth in
2 writing pursuant to subsection D of this section.

3 F. An owner may extend the period within which the billing or
4 estimate for progress payments, release of retention and final payment is
5 certified and approved if both:

6 1. The construction contract in a clear and conspicuous manner
7 specifically provides for an extended time period within which a billing
8 or estimate shall be certified and approved defined by a specified number
9 of days after the owner has received the billing or estimate.

10 2. The following legend or substantially similar language, setting
11 forth the specified number of days, appears in clear and conspicuous type
12 on each page of the plans, including bid plans and construction plans:

13 Notice of Extended Certification and
14 Approval Period Provision

15 This contract allows the owner to certify and approve
16 billings and estimates for progress payments within ____ days
17 after the billings and estimates are received from the
18 contractor, for release of retention within ____ days after
19 the billings and estimates are received from the contractor
20 and for final payment within ____ days after the billings and
21 estimates are received from the contractor.

22 G. After the effective date of a construction contract, an owner
23 and contractor may change the number of specified days after certification
24 and approval for the owner to make payment to the contractor or within
25 which a billing or estimate must be certified and approved. Any
26 contractor or subcontractor that does not provide written consent to the
27 change will continue to be paid as previously agreed.

28 H. On substantial completion of the work, a contractor shall submit
29 a billing or estimate for release of retention. Except as provided in
30 subsection F of this section, the billing or estimate for release of
31 retention shall be deemed certified and approved within fourteen days
32 after the owner receives the billing or estimate, unless before that time
33 the owner or the owner's agent issues a written statement stating in
34 reasonable detail the owner's reasons for not certifying or approving all
35 or a portion of the billing or estimate. The owner is deemed to have
36 received the billing or estimate when the billing or estimate is submitted
37 to any person designated by the owner for receipt or for certification and
38 approval of the billing or estimate. The owner may:

39 1. Decline to certify and approve a billing or estimate for release
40 of retention or a portion of a billing or estimate for release of
41 retention for failure of the contractor to complete a material requirement
42 of the construction contract or to complete portions of the work or for
43 any reason permitted under subsection D of this section.

44 2. Withhold from retention to be released only an amount not to
45 exceed one hundred fifty ~~percent~~ PERCENT of the direct costs and expenses

1 the owner reasonably expects to incur to protect the owner from loss for
2 which the contractor is responsible and that results from the contractor's
3 failure to complete portions of the work at the time of substantial
4 completion or for any reasons set forth in writing pursuant to this
5 subsection.

6 I. Except as provided in subsections C and H of this section, the
7 owner shall pay the retention to the contractor within seven days after
8 the date the billing or estimate for release of retention is certified and
9 approved. If the owner has declined to certify or approve a billing or
10 estimate for release of retention or a portion of a billing or estimate
11 for release of retention pursuant to subsection H of this section, when
12 any reason as stated in the owner's written statement has been removed,
13 the contractor may submit a supplemental billing or estimate for all or a
14 portion of the withheld amounts of retention pursuant to subsection H of
15 this section. Unless otherwise agreed, the contractor may submit only one
16 billing or estimate during each billing cycle.

17 J. When a contractor substantially completes all work under a
18 portion of a construction contract for which the contract states a
19 separate price, the contractor shall submit a billing or estimate for
20 release of retention on that portion of the construction contract pursuant
21 to subsection H of this section.

22 K. On final completion of the work, a contractor shall submit a
23 billing or estimate for final payment. Except as provided in subsection F
24 of this section, a billing or estimate for final payment shall be deemed
25 certified and approved fourteen days after the owner receives the billing
26 or estimate, unless before that time the owner or owner's agent prepares
27 and issues a written statement stating in reasonable detail the reasons
28 the billing or estimate has not been certified or approved. The owner is
29 deemed to have received the billing or estimate for final payment when the
30 billing or estimate is submitted to any person designated by the owner for
31 receipt of or for certification and approval of the billing or estimate.
32 The owner may:

33 1. Decline to certify and approve a billing or estimate for final
34 payment or a portion of a billing or estimate for final payment for
35 failure of the contractor to complete a requirement of the construction
36 contract or to complete portions of the work or for any reason permitted
37 under subsection D of this section.

38 2. Withhold from final payment only an amount not to exceed one
39 hundred fifty ~~per cent~~ PERCENT of the direct costs and expenses the owner
40 reasonably expects to incur to protect the owner from loss for which the
41 contractor is responsible and that results from any reasons set forth in
42 writing pursuant to this subsection.

43 L. Except as provided in subsection C of this section, the owner
44 shall make final payment to the contractor within seven days after the
45 date the billing or estimate for final payment is certified and approved.

1 If the owner has declined to certify or approve a billing or estimate for
2 final payment or a portion of a billing or estimate for final payment
3 pursuant to subsection K of this section, when any reason as stated in the
4 owner's written statement has been removed, the contractor may submit a
5 billing or estimate for all or a portion of the withheld amounts of final
6 payment pursuant to subsection K of this section. Unless otherwise
7 agreed, the contractor may submit only one billing or estimate during each
8 billing cycle.

9 M. Except as provided in subsection C of this section, on projects
10 that require a federal agency's final certification or approval, the owner
11 shall make payment in full on the construction contract within seven days
12 after the federal agency's final certification or approval.

13 N. When a contractor completes all work under a portion of a
14 construction contract for which the contract states a separate price, the
15 contractor may timely submit a billing or estimate for final payment on
16 that portion of the construction contract pursuant to subsection K of this
17 section.

18 O. Payment shall not be required pursuant to this section unless the
19 contractor provides the owner with a billing or estimate in accordance
20 with the terms of the construction contract between the parties.

21 P. A construction contract shall not alter the rights of any
22 contractor, subcontractor or material supplier to receive prompt and
23 timely payments as provided under this article.

24 Q. If an owner or a third party designated by an owner as the person
25 responsible for making progress payments, releasing retention or making
26 final payment on a construction contract does not make a timely payment on
27 amounts due pursuant to this section, the owner shall pay the contractor
28 interest at the rate of one and one-half ~~per cent~~ PERCENT a month or
29 fraction of a month on the unpaid balance, or at a higher rate as the
30 parties to the construction contract agree.

31 R. On the written request of a subcontractor, the owner shall notify
32 the subcontractor within five days after the issuance of a progress
33 payment to the contractor. On the written request of a subcontractor, the
34 owner shall notify the subcontractor within five days after the owner
35 releases retention or makes the final payment to the contractor on the
36 construction contract. A subcontractor's request pursuant to this
37 subsection shall remain in effect for the duration of the subcontractor's
38 work on the project.

39 S. In any action or arbitration brought to collect payments or
40 interest pursuant to this section, the successful party shall be awarded
41 costs and attorney fees in a reasonable amount.

42 T. If the owner and contractor are a single entity, that entity
43 shall pay its subcontractors or material suppliers within fourteen days
44 after the billing or estimate is certified and approved unless the

1 deadlines for certification and approval or for payment have been modified
2 pursuant to subsection C or F of this section.

3 U. Notwithstanding anything to the contrary in this section, an
4 owner may define "retention", "substantial completion" and "final
5 completion" to have meanings different than those stated in section
6 ~~32-1129~~ 32-1181, if:

7 1. The construction contract in a clear and conspicuous manner
8 defines the terms.

9 2. The legend set forth in subsection W of this section or
10 substantially similar language appears in clear and conspicuous type on
11 each page of the plans, including bid plans and construction plans.

12 3. The different meanings of "retention", "substantial completion"
13 and "final completion" are set forth in the plans, including on bid plans
14 and construction plans, and the legend required by paragraph 2 of this
15 subsection designates the sheet number of the plans on which the different
16 meanings of the terms can be found.

17 V. Notwithstanding anything to the contrary in this section, an
18 owner may establish different timing and conditions for when the
19 contractor may submit a billing or estimate for release of retention or
20 for final payment and for when such payments shall be due, if:

21 1. The construction contract in a clear and conspicuous manner
22 establishes different timing for when the contractor may submit a billing
23 or estimate for release of retention or for final payment, or both, and
24 for when such payments shall be due.

25 2. The legend set forth in subsection W of this section or
26 substantially similar language appears in clear and conspicuous type on
27 each page of the plans, including bid plans and construction plans.

28 3. The different timing and conditions for when the contractor may
29 submit a billing or estimate for release of retention or for final payment
30 and for when such payments shall be due are set forth in the plans,
31 including on bid plans and construction plans, and the legend required by
32 paragraph 2 of this subsection designates the sheet number of the plans on
33 which the different timing and conditions can be found.

34 W. The legend for making one or more of the modifications set forth
35 in subsections U and V of this section shall be as follows:

36 Notice of Alternate Arrangements for
37 Release of Retention and Final Payment

38 This contract allows the owner to make alternate
39 arrangements for the occurrence of substantial completion, the
40 release of retention and making of final payment. Such
41 alternate arrangements are disclosed on sheet no. _____ of
42 these plans.

1 Sec. 44. Section 32-1183, Arizona Revised Statutes, as transferred
2 and renumbered, is amended to read:

3 32-1183. Performance and payment by contractor, subcontractor
4 or material supplier; conditions; interest

5 A. Notwithstanding the other provisions of this article,
6 performance by a contractor, subcontractor or material supplier in
7 accordance with the provisions of a construction contract entitles the
8 contractor, subcontractor or material supplier to payment from the party
9 with whom the contractor, subcontractor or material supplier contracts.

10 B. If a subcontractor or material supplier has performed in
11 accordance with the provisions of a construction contract, the contractor
12 shall pay to its subcontractors or material suppliers and each
13 subcontractor shall pay to its subcontractors or material suppliers,
14 within seven days of receipt by the contractor or subcontractor of each
15 progress payment, retention release or final payment, the full amount
16 received for such subcontractor's work and materials supplied based on
17 work completed or materials supplied under the subcontract. Payment shall
18 not be required pursuant to this subsection unless the subcontractor or
19 material supplier provides to the contractor or subcontractor a billing or
20 invoice for the work performed or material supplied in accordance with the
21 terms of the construction contract between the parties. Each
22 subcontractor or material supplier shall provide a waiver of any
23 mechanic's or materialman's lien conditioned on payment for the work
24 completed or material supplied. The contractor or subcontractor may
25 require that such conditional waivers of lien be notarized. Any diversion
26 by the contractor or subcontractor of payments received for work performed
27 pursuant to a contract, or failure to reasonably account for the
28 application or use of such payments, constitutes grounds for disciplinary
29 action by the registrar of contractors. Violations of this section shall
30 be grounds for suspension or revocation of a license or other disciplinary
31 action by the registrar pursuant to section 32-1154, subsections B, C and
32 D. The subcontractor or material supplier may notify the registrar of
33 contractors and the owner in writing of any payment less than the amount
34 or percentage approved for the class or item of work as set forth in this
35 section.

36 C. Nothing in this section prevents the contractor or
37 subcontractor, at the time of application or certification to the owner or
38 contractor, from withholding such application or certification to the
39 owner or contractor for payment to the subcontractor or material supplier
40 for any of the following reasons:

- 41 1. Unsatisfactory job progress.
- 42 2. Defective construction work or materials not remedied.
- 43 3. Disputed work or materials.

1 4. Failure to comply with other material provisions of the
2 construction contract.

3 5. ~~Third party~~ THIRD-PARTY claims filed or reasonable evidence that
4 a claim will be filed.

5 6. Failure of the subcontractor to make timely payments for labor,
6 equipment and materials.

7 7. Damage to a contractor or another subcontractor or material
8 supplier.

9 8. Reasonable evidence that the subcontract cannot be completed for
10 the unpaid balance of the subcontract sum.

11 9. The owner has withheld retention from the contractor, in which
12 case the amount of the retention withholding by the contractor shall not
13 exceed the actual amount of the retention retained by the owner pertaining
14 to the subcontractor's work.

15 D. A contractor or subcontractor shall not withhold retention from
16 a subcontractor in an amount greater than the actual amount of the
17 retention retained by the owner pertaining to the work of the
18 subcontractor.

19 E. If the contractor or subcontractor chooses to withhold the
20 application or certification for all or a portion of a subcontractor's or
21 material supplier's billing or estimates as permitted by subsection C of
22 this section, the contractor or subcontractor must prepare and issue a
23 written statement within fourteen days to the applicable subcontractors or
24 material suppliers stating in reasonable detail the contractor's or
25 subcontractor's reasons for withholding the application or certification
26 from the owner or contractor.

27 F. If the owner issues a written statement pursuant to section
28 ~~32-1129.01~~ 32-1182, subsection D, H or K stating that the owner declines
29 to certify or approve all or a portion of the contractor's billing or
30 estimate and if the amounts to be paid from that billing or estimate by
31 the contractor to any subcontractors or material suppliers are affected by
32 the owner's decision not to certify or approve, the contractor shall send
33 a copy of that written statement within seven days after receipt to any
34 affected subcontractors or material suppliers. If the contractor sends a
35 copy of the owner's written statement to a subcontractor and if the
36 amounts to be paid from that billing or estimate by a subcontractor to any
37 of its subcontractors or material suppliers are affected by the owner's
38 decision not to certify or approve, then the subcontractor shall send a
39 copy of that written statement within seven days after receipt to any of
40 its affected subcontractors or material suppliers.

41 G. If the owner issues a written statement pursuant to section
42 ~~32-1129.01~~ 32-1182, subsection D, H or K stating that the owner declines
43 to certify or approve a billing or estimate or a portion of a billing or
44 estimate for defective construction work or materials not remedied and if
45 the contractor as a result does not receive sufficient payment from the

1 owner to pay subcontractors and material suppliers for work included in
2 the contractor's billing or estimate, the contractor shall nevertheless
3 pay any subcontractor or material supplier whose work was not the basis of
4 the owner's withholding for defective construction work or materials not
5 remedied within twenty-one days after payment would otherwise have been
6 made by the owner under section ~~32-1129.01~~ 32-1182, subsection A. This
7 subsection does not limit a subcontractor's rights to suspend performance
8 under a construction contract or terminate a construction contract under
9 section ~~32-1129.04~~ 32-1185, subsection D.

10 H. If a progress or final payment or release of retention to a
11 subcontractor or material supplier is delayed by more than seven days
12 after receipt of progress or final payment or release of retention by the
13 contractor or subcontractor pursuant to this section, the contractor or
14 subcontractor shall pay its subcontractor or material supplier interest,
15 except for periods of time during which payment is withheld pursuant to
16 subsection C of this section, beginning on the eighth day, at the rate of
17 one and one-half ~~per cent~~ PERCENT per month or a fraction of a month on
18 the unpaid balance or at such higher rate as the parties agree.

19 I. Any licensed contractor, licensed subcontractor or material
20 supplier who files a complaint with the registrar of contractors under
21 this section shall be required to post a surety bond or cash deposit of
22 ~~five hundred dollars~~ \$500 or one-half of the amount due, whichever is
23 less, with the registrar to secure the payment of claims under this
24 section. If the complaint is determined by the registrar to be without
25 merit and frivolous, the registrar shall order the person who filed the
26 complaint to pay one-half of the amount of the required surety bond or
27 cash deposit to the respondent and one-half to the registrar for deposit
28 into the state general fund. If no claim may be made under this section
29 against the surety bond or cash deposit, the surety bond or cash deposit
30 shall be returned to the complainant. The surety bond or cash deposit
31 shall be in the name of the licensee or material supplier who files the
32 complaint and shall be subject to claims by the registrar of contractors
33 and the respondent licensee as provided in this section. The surety bond
34 or cash deposit shall be conditioned on and provide for payment on the
35 presentation of a certified copy of the order of the registrar and a
36 certification by the complainant of nonpayment within thirty days after
37 the order becomes final. The surety bond shall be executed by the
38 complainant as principal with a corporation duly authorized to transact
39 surety business in this state. Evidence of the surety bond shall be
40 submitted to the registrar in a form acceptable to the registrar. The
41 cash deposit shall be deposited, pursuant to sections 35-146 and 35-147,
42 by the registrar in the contractors prompt pay complaint fund and shall be
43 held for the payment of claims.

1 J. In any action or arbitration brought to collect payments or
2 interest pursuant to this section, the successful party shall be awarded
3 costs and attorney fees in a reasonable amount.

4 Sec. 45. Section 32-1185, Arizona Revised Statutes, as transferred
5 and renumbered, is amended to read:

6 32-1185. Construction contracts; suspension of performance;
7 termination

8 A. A contractor may suspend performance under a construction
9 contract or terminate a construction contract for failure by the owner to
10 make timely payment of the amount certified and approved pursuant to
11 section ~~32-1129.01~~ 32-1182. A contractor shall provide written notice to
12 the owner at least seven calendar days before the contractor's intended
13 suspension or termination unless a shorter notice period is prescribed in
14 the construction contract between the owner and contractor. A contractor
15 shall not be deemed in breach of the construction contract for suspending
16 performance or terminating a construction contract pursuant to this
17 subsection. A construction contract shall not extend the time period for
18 a contractor to suspend performance or terminate a construction contract
19 under this subsection.

20 B. A subcontractor may suspend performance under a construction
21 contract or terminate a construction contract if the owner fails to make
22 timely payment of amounts certified and approved pursuant to section
23 ~~32-1129.01~~ 32-1182 for the subcontractor's work and the contractor fails
24 to pay the subcontractor for the certified and approved work. A
25 subcontractor shall provide written notice to the contractor and owner at
26 least three calendar days before the subcontractor's intended suspension
27 or termination unless a shorter notice period is prescribed in the
28 construction contract between the contractor and subcontractor. A
29 subcontractor shall not be deemed in breach of a construction contract for
30 suspending performance or terminating a construction contract pursuant to
31 this subsection. A construction contract shall not extend the time period
32 for a subcontractor to suspend performance or terminate a construction
33 contract under this subsection.

34 C. A subcontractor may suspend performance under a construction
35 contract or terminate a construction contract if the owner makes timely
36 payment of amounts certified and approved pursuant to section ~~32-1129.01~~
37 32-1182 for the subcontractor's work but the contractor fails to pay the
38 subcontractor for the certified and approved work. A subcontractor shall
39 provide written notice to the contractor and owner at least seven calendar
40 days before the subcontractor's intended suspension or termination unless
41 a shorter notice period is prescribed in the construction contract between
42 the contractor and subcontractor. A subcontractor shall not be deemed in
43 breach of a construction contract for suspending performance or
44 terminating a construction contract pursuant to this subsection. A
45 construction contract shall not extend the time period for a subcontractor

1 to suspend performance or terminate a construction contract under this
2 subsection.

3 D. A subcontractor may suspend performance under a construction
4 contract or terminate a construction contract if the owner declines to
5 approve and certify portions of the contractor's billing or estimate
6 pursuant to section ~~32-1129.01~~ 32-1182 for that subcontractor's work but
7 the reasons for that failure by the owner to approve and certify are not
8 the fault of or directly related to the subcontractor's work. A
9 subcontractor shall provide written notice to the contractor and the owner
10 at least seven calendar days before the subcontractor's intended
11 suspension or termination unless a shorter notice period is prescribed in
12 the construction contract between the contractor and subcontractor. A
13 subcontractor shall not be deemed in breach of a construction contract for
14 suspending performance or terminating a construction contract pursuant to
15 this subsection. A construction contract shall not extend the time period
16 for a subcontractor to suspend performance or terminate a construction
17 contract under this subsection.

18 E. A contractor or subcontractor that suspends performance as
19 provided in this section is not required to furnish further labor,
20 materials or services until the contractor or subcontractor is paid the
21 amount that was certified and approved, together with any costs incurred
22 for mobilization resulting from the shutdown or start-up of a project.

23 F. In any action or arbitration brought pursuant to this section,
24 the successful party shall be awarded costs and attorney fees in a
25 reasonable amount.

26 G. Written notice required under this section shall be deemed to
27 have been provided if either of the following occurs:

28 1. The written notice is delivered in person to the individual or a
29 member of the entity or to an officer of the corporation for which it was
30 intended.

31 2. The written notice is delivered at or sent by any means that
32 provides written, ~~third party~~ THIRD-PARTY verification of delivery to the
33 last business address known to the party giving notice.

34 Sec. 46. Section 32-1186, Arizona Revised Statutes, as transferred
35 and renumbered, is amended to read:

36 32-1186. Construction contracts; void provisions

37 A. The following are against this state's public policy and are
38 void and unenforceable:

39 1. A provision, covenant, clause or understanding in, collateral to
40 or affecting a construction contract that makes the contract subject to
41 the laws of another state or that requires any litigation arising from the
42 contract to be conducted in another state.

1 2. A provision, covenant, clause or understanding in, collateral to
2 or affecting a construction contract stating that a party to the contract
3 cannot suspend performance under the contract or terminate the contract if
4 another party to the contract fails to make prompt payments under the
5 contract pursuant to section ~~32-1129~~ 32-1181, ~~32-1129.01~~ 32-1182 or
6 ~~32-1129.02~~ 32-1183.

7 B. Any mediation, arbitration or other dispute resolution
8 proceeding arising from a construction contract for work performed in this
9 state shall be conducted in this state.

10 Sec. 47. Section 32-1187, Arizona Revised Statutes, as transferred
11 and renumbered, is amended to read:

12 32-1187. Applicability to state and political subdivisions

13 Sections ~~32-1129.01~~ 32-1182, ~~32-1129.02~~ 32-1183, ~~32-1129.04~~ 32-1185
14 and ~~32-1129.05~~ 32-1186 do not apply to this state or political
15 subdivisions of this state.

16 Sec. 48. Section 32-1188, Arizona Revised Statutes, as transferred
17 and renumbered, is amended to read:

18 32-1188. Applicability to construction of a dwelling for an
19 owner-occupant; definitions

20 A. The requirements in section ~~32-1129.01~~ 32-1182 do not apply to
21 construction contracts for the construction of a dwelling for an
22 owner-occupant unless the following legend or substantially similar
23 language appears in clear and conspicuous type on the front page of each
24 billing or estimate from the contractor to the owner-occupant:

25 Notice to owner of applicability of Arizona prompt pay act
26 (Notice required by Arizona Revised Statutes
27 section ~~32-1129.07~~ 32-1188)

28 Attention: Your obligations to pay your contractor are
29 subject to the Arizona prompt pay act. That act is set forth
30 in ~~section 32-1129, Arizona Revised Statutes, and sections~~
31 ~~32-1129.01 through 32-1129.07~~ TITLE 32, CHAPTER 10, ARTICLE 5,
32 Arizona Revised Statutes. The full text of the statutes are
33 available at your local public law library or ON the internet.
34 Under that act, you have the right to withhold all or a
35 portion of a payment to a contractor for a variety of reasons,
36 including defective construction work that has not been
37 corrected. However, in order to do so, you must issue a
38 written statement setting forth in reasonable detail your
39 reasons for withholding payments within fourteen (14) days
40 after the date you receive a billing or estimate. If you fail
41 to issue the written statement within that period, the billing
42 or estimate will be deemed approved. Once the billing or
43 estimate is deemed approved, you must pay the billing or
44 estimate within seven (7) days. Generally, you are limited by
45 the act to withholding only an amount that is sufficient to

1 pay the direct costs and expenses you reasonably expect to
2 incur to protect you from loss for which the contractor is
3 responsible. You are encouraged to read the act in full to
4 know your obligations and rights.

5 B. For the purposes of this section, "dwelling" and
6 "owner-occupant" have the same meanings prescribed in section 33-1002.