Conference Engrossed

FILED

JANICE K. BREWER
SECRETARY OF STATE

State of Arizona
House of Representatives
Forty-seventh Legislature
Second Regular Session
2006

CHAPTER 274

HOUSE BILL 2585

AN ACT

AMENDING SECTIONS 32-1121, 32-1123 AND 32-1158, ARIZONA REVISED STATUTES; RELATING TO CONTRACTORS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 32-1121, Arizona Revised Statutes, is amended to read:

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

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

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

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

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

4. Any materialman, manufacturer or retailer furnishing finished products, materials or articles of merchandise who does not install or attach such items or installs or attaches such items if the total value of the sales contract or transaction involving such items and the cost of the installation or attachment of such items to a structure does not exceed ~~seven hundred fifty~~ ONE THOUSAND dollars, including labor, materials and all other items, BUT EXCLUDING ANY ELECTRICAL FIXTURE OR APPLIANCE THAT WAS DESIGNED BY THE MANUFACTURER, THAT IS UNALTERED, UNCHANGED OR UNMODIFIED BY ANY PERSON, THAT CAN BE PLUGGED INTO A COMMON HOUSEHOLD ELECTRICAL OUTLET UTILIZING A TWO PRONGED OR THREE PRONGED ELECTRICAL CONNECTOR AND THAT DOES NOT USE ANY OTHER FORM OF ENERGY, INCLUDING NATURAL GAS, PROPANE OR OTHER PETROLEUM OR GASEOUS FUEL, TO OPERATE OR IS ATTACHED BY A NAIL, SCREW OR OTHER FASTENING DEVICE TO THE FRAME OR FOUNDATION OF ANY RESIDENTIAL STRUCTURE. The materialman, manufacturer or retailer shall inform the purchaser that the installation may also be performed by a licensed contractor whose name and address the purchaser may request.

5. Owners of property who improve such property or who build or improve structures or appurtenances on such property and who do the work themselves, with their own employees or with duly licensed contractors, if the structure, group of structures or appurtenances, including the improvements thereto, are intended for occupancy solely by the owner and are not intended for occupancy by members of the public as the owner's employees or business visitors and the structures or appurtenances are not intended for sale or for rent. In all actions brought under this chapter, proof of the sale or rent or the offering for sale or rent of any such structure by the owner-builder within one year after completion or issuance of a certificate of occupancy is prima facie evidence that such project was undertaken for the purpose of sale or rent. ~~As used in~~ FOR THE PURPOSES OF this paragraph, "sale" or "rent" includes any arrangement by which the owner receives

compensation in money, provisions, chattels or labor from the occupancy or the transfer of the property or the structures on the property.

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

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

(a) Subsurface utility location and designation services.

(b) Potholing.

(c) Drilling for any of the following:

(i) Soil samples.

(ii) Rock samples.

(iii) Pavement samples.

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

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

9. The sale or installation of finished products, materials or articles of merchandise which are not fabricated into and do not become a permanent fixed part of the structure. This exemption does not apply if a local building permit is required, if the total price of the finished product, material or article of merchandise, including labor BUT EXCLUDING ANY ELECTRICAL FIXTURE OR APPLIANCE THAT WAS DESIGNED BY THE MANUFACTURER, THAT IS UNALTERED, UNCHANGED OR UNMODIFIED BY ANY PERSON, THAT CAN BE PLUGGED INTO A COMMON HOUSEHOLD ELECTRICAL OUTLET UTILIZING A TWO PRONGED OR THREE PRONGED ELECTRICAL CONNECTOR AND THAT DOES NOT USE ANY OTHER FORM OF ENERGY, INCLUDING NATURAL GAS, PROPANE OR OTHER PETROLEUM OR GASEOUS FUEL, TO OPERATE OR IS ATTACHED BY A NAIL, SCREW OR OTHER FASTENING DEVICE TO THE FRAME OR FOUNDATION OF ANY RESIDENTIAL STRUCTURE, is more than ~~seven hundred fifty~~ ONE THOUSAND dollars or if the removal of the finished product, material or article of merchandise causes damage to the structure or renders the structure unfit for its intended use.

10. Employees of the owners of condominiums, townhouses, cooperative units or apartment complexes of four units or less or the owners' management

agent or employees of the management agent repairing or maintaining structures owned by them.

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

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

13. Insurance companies which are authorized to transact business in this state and which undertake to perform repairs resulting from casualty losses pursuant to the provisions of a policy, provided all construction work is performed by duly licensed contractors.

14. Any person other than a licensed contractor engaging in any work or operation on one undertaking or project by one or more contracts, for which the aggregate contract price, including labor, materials and all other items, BUT EXCLUDING ANY ELECTRICAL FIXTURE OR APPLIANCE THAT WAS DESIGNED BY THE MANUFACTURER, THAT IS UNALTERED, UNCHANGED OR UNMODIFIED BY ANY PERSON, THAT CAN BE PLUGGED INTO A COMMON HOUSEHOLD ELECTRICAL OUTLET UTILIZING A TWO PRONGED OR THREE PRONGED ELECTRICAL CONNECTOR AND THAT DOES NOT USE ANY OTHER FORM OF ENERGY, INCLUDING NATURAL GAS, PROPANE OR OTHER PETROLEUM OR GASEOUS FUEL, TO OPERATE OR IS ATTACHED BY A NAIL, SCREW OR OTHER FASTENING DEVICE TO THE FRAME OR FOUNDATION OF ANY RESIDENTIAL STRUCTURE, is less than ~~seven hundred fifty~~ ONE THOUSAND dollars. The work or operations which are exempt under this paragraph shall be of a casual or minor nature. This exemption does not apply:

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

(b) In any case in which the work or construction is only a part of a larger or major operation, whether undertaken by the same or a different contractor, or in which a division of the operation is made in contracts of amounts less than ~~seven hundred fifty~~ ONE THOUSAND dollars, EXCLUDING ANY ELECTRICAL FIXTURE OR APPLIANCE THAT WAS DESIGNED BY THE MANUFACTURER, THAT IS UNALTERED, UNCHANGED OR UNMODIFIED BY ANY PERSON, THAT CAN BE PLUGGED INTO A COMMON HOUSEHOLD ELECTRICAL OUTLET UTILIZING A TWO PRONGED OR THREE PRONGED ELECTRICAL CONNECTOR AND THAT DOES NOT USE ANY OTHER FORM OF ENERGY, INCLUDING NATURAL GAS, PROPANE OR OTHER PETROLEUM OR GASEOUS FUEL, TO OPERATE OR IS ATTACHED BY A NAIL, SCREW OR OTHER FASTENING DEVICE TO THE FRAME OR FOUNDATION OF ANY RESIDENTIAL STRUCTURE, for the purpose of evasion of this chapter or otherwise.

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

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

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

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

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

Sec. 2. Section 32-1123, Arizona Revised Statutes, is amended to read:

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

A. Except as provided in subsection D of this section, if an entity that is not licensed pursuant to this chapter bids on a contract for a project with an aggregate worth of more than ~~seven hundred fifty~~ ONE THOUSAND dollars, EXCLUDING ANY ELECTRICAL FIXTURE OR APPLIANCE THAT WAS DESIGNED BY THE MANUFACTURER, THAT IS UNALTERED, UNCHANGED OR UNMODIFIED BY ANY PERSON, THAT CAN BE PLUGGED INTO A COMMON HOUSEHOLD ELECTRICAL OUTLET UTILIZING A TWO PRONGED OR THREE PRONGED ELECTRICAL CONNECTOR AND THAT DOES NOT USE ANY OTHER FORM OF ENERGY, INCLUDING NATURAL GAS, PROPANE OR OTHER PETROLEUM OR GASEOUS FUEL, TO OPERATE OR IS ATTACHED BY A NAIL, SCREW OR OTHER FASTENING DEVICE TO THE FRAME OR FOUNDATION OF ANY RESIDENTIAL STRUCTURE, the registrar shall not issue the entity a license pursuant to this chapter for one year after the date of the bid.

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

1. A department of transportation project.

2. A project that is subject to the federal acquisition regulation, title 48 Code of Federal Regulations, including the department of defense federal acquisition regulation.

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

D. If an entity bids on a contract for a project pursuant to subsection A of this section and the project has an aggregate worth of more than ~~seven hundred fifty~~ ONE THOUSAND dollars, EXCLUDING ANY ELECTRICAL FIXTURE OR APPLIANCE THAT WAS DESIGNED BY THE MANUFACTURER, THAT IS UNALTERED, UNCHANGED OR UNMODIFIED BY ANY PERSON, THAT CAN BE PLUGGED INTO A COMMON HOUSEHOLD ELECTRICAL OUTLET UTILIZING A TWO PRONGED OR THREE PRONGED ELECTRICAL CONNECTOR AND THAT DOES NOT USE ANY OTHER FORM OF ENERGY, INCLUDING NATURAL GAS, PROPANE OR OTHER PETROLEUM OR GASEOUS FUEL, TO OPERATE

OR IS ATTACHED BY A NAIL, SCREW OR OTHER FASTENING DEVICE TO THE FRAME OR FOUNDATION OF ANY RESIDENTIAL STRUCTURE, and less than twenty thousand dollars, the registrar shall issue the entity a written warning relating to the unlicensed activity if the registrar has not previously issued the entity a warning.

Sec. 3. Section 32-1158, Arizona Revised Statutes, is amended to read:

32-1158. Minimum elements of a contract

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

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

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

3. The date the parties entered into the contract.

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

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

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

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

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

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

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

APPROVED BY THE GOVERNOR MAY 15, 2006.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 15, 2006.

HOUSE FINAL PASSAGE
as per Joint Conference

Passed the House May 4, 20 06

by the following vote: 34 Ayes,

23 Nays, 3 Not Voting

Speaker of the House
Pro Tempore

Cheryl Laube
Asst. Chief Clerk of the House

SENATE FINAL PASSAGE
as per Joint Conference

Passed the Senate May 8, 20 06

by the following vote: 24 Ayes,

5 Nays, 1 Not Voting

President of the Senate

Lena Scott
assistant Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

9th day of May, 20 06

at 2:49 o'clock P M.

Veronica Barra
Secretary to the Governor

Approved this 15 day of

May 2006

at 10:00 o'clock A. M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 15th day of May, 20 06

at 3:24 o'clock P. M.

Janice K. Brewer
Secretary of State

H.B. 2585