Senate Engrossed House Bill

FILED

JANICE K. BREWER
SECRETARY OF STATE

State of Arizona
House of Representatives
Forty-eighth Legislature
First Regular Session
2007

CHAPTER 224

HOUSE BILL 2200

AN ACT

AMENDING SECTIONS 32-1154, 32-1155 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 32-1154, Arizona Revised Statutes, is amended to read:

32-1154. Grounds for suspension or revocation of license; continuing jurisdiction; civil penalty; recovery fund award

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

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

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

3. Violation of any rule adopted by the registrar.

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

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

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

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

8. Conviction of a felony.

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

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

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

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

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

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

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

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

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

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

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

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

21. Having a person named on the license who is named on any other license in this state or in another state which is under suspension or revocation unless the prior revocation was based solely on a violation of this paragraph.

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

(a) Not performed at the required location.

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

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

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

B. The registrar may on the registrar's own motion, and shall on the written complaint of any person, investigate the acts of any contractor within this state and may temporarily suspend, with or without imposition of specific conditions in addition to increased surety bond or cash deposit

requirements, or permanently revoke any or all licenses issued under this chapter if the holder of the license issued pursuant to this chapter is guilty of or commits any of the acts or omissions set forth in subsection A of this section.

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

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

E. The registrar shall impose a civil penalty of not to exceed one thousand dollars on a contractor for each violation of subsection A, paragraph 18 of this section. Civil penalties collected pursuant to this subsection shall be deposited in the residential contractors' recovery fund. The failure by the licensee to pay any civil penalty imposed under this subsection results in the automatic permanent revocation of the license thirty days after the effective date of the order providing for the civil penalty. No future license may be issued to an entity consisting of a person associated with the contractor, as defined in section 32-1101, subsection A, paragraph 5, unless payment of any outstanding civil penalty is tendered.

F. Notwithstanding any other provisions in this chapter, if a contractor's license has been revoked or has been suspended as a result of an order to remedy a violation of this chapter, and the contractor refuses or is unable to comply with the order of the registrar to remedy the violation, the registrar may order payment from the residential contractors' recovery fund to remedy the violation. The registrar shall serve the contractor with a notice setting forth the amount claimed or to be awarded. If the contractor contests the amount or propriety of the payment, the contractor shall respond within ten days of the date of service by requesting a hearing to determine the amount or propriety of the payment. Failure by the contractor to respond in writing within ten days of the date of service shall be deemed a waiver by the contractor of the right to contest the amount claimed or to be awarded. Service may be made by personal service to the contractor or by mailing a copy of the notice by registered mail with postage prepaid to the

contractor's latest address of record on file in the registrar's office. If service is made by registered mail, it is effective five days after the notice is mailed. Except as provided in section 41-1092.08, subsection H, the contractor or injured person may seek judicial review of the registrar's final award pursuant to title 12, chapter 7, article 6.

Sec. 2. Section 32-1155, Arizona Revised Statutes, is amended to read:

32-1155. Filing of complaint; resolution of complaint; service of notice; failure to answer

A. Upon the filing of a written complaint with the registrar charging a licensee with the commission, within two years prior to the date of filing the complaint, of an act that is cause for suspension or revocation of a license, the registrar after investigation may issue a citation or upon written request of the complainant may issue a citation directing the licensee, within ten days after service of the citation upon the licensee, to appear by filing with the registrar the licensee's written answer to the citation and complaint showing cause, if any, why the licensee's license should not be suspended or revoked. Service of citation upon the licensee shall be fully effected by personal service or by mailing a true copy thereof, together with a true copy of the complaint, by registered mail in a sealed envelope with postage prepaid and addressed to the licensee at the licensee's latest address of record in the registrar's office. Service of the citation and complaint shall be complete at the time of personal 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. Failure of the licensee to answer within ten days after service shall 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.

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 UNTIL DECEMBER 31, 2007, any contract in an amount of more than 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. FROM AND AFTER DECEMBER 31, 2007, ANY CONTRACT IN AN AMOUNT OF MORE THAN ONE 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.

9. THAT THE PROPERTY OWNER HAS THE RIGHT TO FILE A WRITTEN COMPLAINT WITH THE REGISTRAR FOR AN ALLEGED VIOLATION OF SECTION 32-1154, SUBSECTION A. THE CONTRACT SHALL CONTAIN THE REGISTRAR'S TELEPHONE NUMBER AND WEBSITE ADDRESS AND SHALL STATE THAT COMPLAINTS MUST BE MADE WITHIN THE APPLICABLE TIME PERIOD AS SET FORTH IN SECTION 32-1155, SUBSECTION A. THE INFORMATION IN THIS PARAGRAPH MUST BE PROMINENTLY DISPLAYED IN THE CONTRACT IN TEN POINT BOLD TYPE, AND THE CONTRACT SHALL BE SIGNED BY THE PROPERTY OWNER AND THE CONTRACTOR OR THE CONTRACTOR'S DESIGNATED REPRESENTATIVE. THIS PARAGRAPH DOES NOT APPLY TO A PERSON WHO IS SUBJECT TO AND COMPLIES WITH SECTION 12-1365.

~~B.~~ C. 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.~~ D. 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 23, 2007.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 23, 2007.

Passed the House February 19, 20 07

by the following vote: 49 Ayes,

6 Nays, 5 Not Voting

Speaker of the House

Chief Clerk of the House

Passed the Senate May 14, 20 07

by the following vote: 23 Ayes,

5 Nays, 2 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

_____ day of _____, 20_____

at _____ o'clock _____M.

Secretary to the Governor

Approved this _____day of

at _____o'clock _____M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this _____ day of _____, 20_____

at _____ o'clock _____M.

Secretary of State

H.B. 2200

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

May 17, 2007,

by the following vote: 47 Ayes,

0 Nays, 13 Not Voting

Speaker of the House

Pro Tempore

Herman L. Moore

Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

17th day of May, 2007

at 2:45 o'clock P. M.

Jennifer Ybarra

Secretary to the Governor

Approved this 23 day of

May, 2007,

at 9:30 o'clock A. M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 23 day of May, 2007,

at 10:17 o'clock A. M.

Janice K. Brewer

Secretary of State

H.B. 2200