Senate Engrossed House Bill

FILED
KEN BENNETT
SECRETARY OF STATE

State of Arizona
House of Representatives
Forty-ninth Legislature
First Regular Session
2009

CHAPTER 99

HOUSE BILL 2173

AN ACT

AMENDING SECTIONS 12-1365, 32-1124, 32-1154 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 12-1365, Arizona Revised Statutes, is amended to read:

12-1365. Notification; right to file a complaint with the registrar of contractors

A. A written contract for the sale of a newly constructed dwelling between a buyer of a newly constructed dwelling and the seller responsible for the original construction of the dwelling shall contain, or provide separate notice of, the following provision:

> Under Arizona Revised Statutes section 32-1155, a buyer of a dwelling has the right to file a written complaint against the homebuilder with the Arizona registrar of contractors within two years ~~of~~ AFTER THE CLOSE OF ESCROW OR ACTUAL OCCUPANCY, WHICHEVER OCCURS FIRST, FOR the commission of an act in violation of Arizona Revised Statutes section 32-1154, subsection A.

B. The notice required in subsection A of this section shall be prominently displayed and appear in at least ten point bold type.

C. The buyer of the dwelling is not deemed to have received the notice required pursuant to subsection A of this section~~,~~ unless the buyer initials the notice provision.

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

32-1124. Issuance and display of license; suspension

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

B. Licenses issued under this chapter and any renewals shall be signed by the registrar or the registrar's designated representative and by the licensee. The license shall be nontransferable, and satisfactory evidence of possession shall be exhibited by the licensee upon demand. The license number appearing on any licenses held by the licensee shall be preceded by the acronym "ROC" and shall be posted in a conspicuous place on premises where any work is being performed, shall be placed on all written bids submitted by the licensee and shall be placed on all BROADCAST, PUBLISHED, INTERNET OR BILLBOARD advertising, letterheads and other documents used by the licensee TO CORRESPOND WITH THE LICENSEE'S CUSTOMERS OR POTENTIAL CUSTOMERS in the conduct of business regulated by this chapter. A violation of this subsection relating to posting and placement of license numbers shall be, at the discretion of the registrar, grounds for disciplinary action pursuant to section 32-1154, subsection A, paragraph 13, but not grounds for

preventing the award of a contract, voiding an awarded contract, or any other claim or defense against the licensee. For the purposes of this subsection, advertising does not include a trade association directory listing that is distributed solely to the members of the association and not to the general public.

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

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

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

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

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

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

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

Sec. 3. Section 32-1154, Arizona Revised Statutes, is amended to read:

32-1154. <u>Grounds for suspension or revocation of license; continuing jurisdiction; civil penalty; recovery fund award; summary suspension</u>

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 owner or contractor that is a party to a construction contract or a person who suffers a material loss or injury as a result of a contractor's failure to perform work in a professional and workmanlike manner or in accordance with any applicable building codes and professional industry standards, 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. For the purposes of this subsection:

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

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

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

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. 4. 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 AT LEAST 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.

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.

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 JULY 10, 2009.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JULY 13, 2009.

Passed the House May 28, 20 09

by the following vote: 55 Ayes,

1 Nays, 4 Not Voting

Speaker of the House

Cheryl Laube

Asst. Chief Clerk of the House

Passed the Senate June 22, 20 09

by the following vote: 27 Ayes,

2 Nays, 1 Not Voting

President of the Senate

Chairman Billington

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. 2173

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

June 29, 2009,

by the following vote: 51 Ayes,

3 Nays, 6 Not Voting

Speaker of the House

Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

1st day of July, 2009,

at 8:25 o'clock A. M.

Secretary to the Governor

Approved this 10th day of

July, 2009,

at 4:20 o'clock P M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 13 day of July, 2009,

at 9:15 o'clock A. M.

Secretary of State

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