STATE OF ARIZONA
OFFICE OF THE GOVERNOR

DOUGLAS A. DUCEY
GOVERNOR

EXECUTIVE OFFICE

April 29, 2019

The Honorable Katie Hobbs
Secretary of State
1700 W. Washington, 7th Floor
Phoenix, AZ 85007

Re: S.B. 1397 registrar of contractors omnibus

Dear Secretary Hobbs:

Today, I signed Senate Bill 1397. This bill contains important reforms of Arizona's complex licensing laws for building contractors.

This bill also contains language changing the responsibilities of contractors under the prompt pay statutes. Prompt pay is a powerful tool with an important purpose: to ensure workers are paid on time for delivering on their contractual commitments. However, like anything else, it requires that all parties behave responsibly, and the current law establishes accountability for both consumers and builders. I believe it is important to maintain this balance.

My expectation is that any language to change this balance of responsibilities be construed as narrowly as possible. I have instructed the Registrar of Contractors to monitor implementation of this legislation, to identify remaining issues with this or any other part of the state's prompt pay statutes, and to take any corrective action warranted.

Sincerely,

Douglas A. Ducey
Governor
State of Arizona

cc: The Honorable Karen Fann
The Honorable Rusty Bowers
The Honorable J.D. Mesnard

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House Engrossed Senate Bill

FILED
KATIE HOBBS
SECRETARY OF STATE

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

CHAPTER 145
SENATE BILL 1397

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 NEW SECTIONS 32-1166 AND 32-1166.01; REPEALING SECTIONS 32-1166.02 AND 32-1167, ARIZONA REVISED STATUTES; AMENDING SECTIONS 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)

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

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

32-1101. Definitions

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

1. "Advertisement" means any written or oral publication, dissemination, solicitation or circulation that is intended to directly or indirectly induce any person to enter into an agreement for contracting services with a contractor, including business cards and telephone directory display advertisements.

2. "Commercial contractor" is synonymous with the terms "commercial builder", "industrial builder" and "public works builder" and means any person, firm, partnership, corporation, association or other organization, or ~~any~~ A combination OF ANY OF THEM, that, for compensation, undertakes to or offers to undertake to, purports to have the capacity to undertake to, submits a bid OR RESPONDS TO A REQUEST FOR QUALIFICATION OR A REQUEST FOR PROPOSALS FOR CONSTRUCTION SERVICES to, does himself or by or through others, or directly or indirectly supervises others, except within residential property lines, to:

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

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

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

3. "Contractor":

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) HAS AN OWNERSHIP INTEREST IN THE LICENSE.

(b) IS REGULARLY EMPLOYED BY THE LICENSEE.

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

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

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

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

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

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

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

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

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

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

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

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

32-1104. Powers and duties

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

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

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

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

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

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

5. Make rules the registrar deems necessary to effectually carry out the provisions and intent of this chapter. Such rules shall include the adoption of minimum standards for good and workmanlike construction. In ~~the adoption of~~ ADOPTING such rules of minimum standards, the registrar shall be guided by established usage and procedure as found in the construction business in this state. If the rules of minimum standards adopted by the registrar are in any manner inconsistent with a building or other code of ~~the~~ THIS state, a county, city or other political subdivision or local authority of ~~the~~ THIS state, compliance with such code shall constitute good and workmanlike construction for the purposes of this chapter.

6. Apply the following to proposed rule changes:

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

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

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

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

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

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

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

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

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

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

1. THE NAME AND ADDRESS OF THE APPLICANT.

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

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

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

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

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

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

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

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

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

32-1107. Registrar of contractors fund

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

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

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

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

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

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

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

A. This chapter ~~shall~~ DOES 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. OFFICERS OF A COURT OR 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~~ OFFICE or ~~office~~ TRUST.

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

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

(b) 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 ~~one thousand dollars~~ $1,000, including labor, materials and all other items, but excluding any electrical fixture or appliance that MEETS ALL OF THE FOLLOWING:

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

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

(iii) 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, except an action against an owner-occupant as defined in section 33-1002, 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. 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~~ MUST 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 title 3, chapter 20 or a person working under the direct supervision of a person certified or qualified pursuant to title 3, chapter 20 to the extent the person is engaged in pest management.

9. EXCEPT AS PROVIDED IN SUBSECTION D OF THIS SECTION, the sale or installation of finished products, materials or articles of merchandise that 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 REMOVAL OF THE FINISHED PRODUCT, MATERIAL OR ARTICLE OF MERCHANDISE CAUSES DAMAGE TO THE STRUCTURE OR RENDERS THE STRUCTURE UNFIT FOR ITS INTENDED USE OR if the total price of the finished product, material or article of merchandise IS MORE THAN $1,000, including labor but excluding any electrical fixture or appliance that MEETS ALL OF THE FOLLOWING:

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

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

(c) 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 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 that are authorized to transact business in this state and that undertake to complete a contract on which they issued a performance or completion bond, ~~provided all~~ IF construction work is performed by duly licensed contractors.

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

14. EXCEPT AS PROVIDED IN SUBSECTION D OF THIS SECTION, 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 IS LESS THAN $1,000, 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~~,~~ AND 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 one thousand dollars~~. The work or operations that are exempt under this paragraph ~~shall~~ MUST 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 ~~one thousand dollars~~ $1,000, excluding any electrical fixture or appliance that was designed by the manufacturer, that is unaltered, unchanged or unmodified by any person~~,~~ AND 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 37, article 4 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.

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

B. A person who is licensed to perform work in a particular trade pursuant to this chapter ~~shall~~ IS 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.

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

1. All fire safety and mechanical, electrical and plumbing work that is done in connection with fire safety installation and fire safety maintenance and repair. For the purposes of this paragraph, "fire safety installation" means hardwired or interconnected smoke alarms and fire sprinklers and does not include an individual device that is attached by a nail, screw or other fastening device to the frame or foundation of any residential unit. For the purposes of this paragraph, fire safety maintenance and repair does not include routine work that is conducted by an employee of an apartment or condominium complex and that is incidental to the fire safety equipment.

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

E. A JOINT VENTURE OR OTHER COMBINATION OF PERSONS, FIRMS, PARTNERSHIPS, CORPORATIONS, ASSOCIATIONS OR OTHER ORGANIZATIONS IS NOT REQUIRED TO OBTAIN A SEPARATE CONTRACTOR'S LICENSE IN ITS OWN NAME IF ALL OF THE FOLLOWING APPLY:

1. AT LEAST ONE MEMBER OF THE JOINT VENTURE OR COMBINATION HOLDS A CONTRACTOR'S LICENSE IN GOOD STANDING WITH THE REGISTRAR.

2. EACH MEMBER OF THE JOINT VENTURE OR COMBINATION THAT ACTS AS A CONTRACTOR HOLDS A LICENSE IN GOOD STANDING WITH THE REGISTRAR.

3. EACH LICENSED MEMBER OF THE JOINT VENTURE OR COMBINATION ONLY PERFORMS WORK WITHIN THE SCOPE OF THAT MEMBER'S CONTRACTOR'S LICENSE OR LICENSES.

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

32-1122. Qualifications for license

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

1. Classify and qualify applicants for a license.

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

3. Conduct investigations the registrar deems necessary.

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

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

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

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

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

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

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

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

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

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

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

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

(ii) The directors.

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

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

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

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

(i) ~~Proof~~ AN ATTESTATION that the applicant has complied with the statutes ~~or~~ AND rules governing workers' compensation insurance. IF THE APPLICANT IS REQUIRED BY LAW TO SECURE WORKERS' COMPENSATION INSURANCE PURSUANT TO SECTION 23-961, THE ATTESTATION MUST CONTAIN THE WORKERS' COMPENSATION INSURANCE POLICY NUMBER OR BE ACCOMPANIED BY PROOF OF SELF-INSURANCE.

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

2. Submit the appropriate fee required under this chapter.

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

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

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

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

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

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

2. Successfully show, by written examination taken not more than two years before application, if required, qualification in the kind of work for which the applicant proposes to contract, the applicant's general knowledge of the building, safety, health and lien laws of the state, administrative principles of the contracting business and the rules adopted by the registrar of contractors pursuant to this chapter,

demonstrate knowledge and understanding of construction plans and specifications applicable to the particular industry or craft and of the standards of construction work and techniques and practices in the particular industry or craft and demonstrate a general understanding of other related construction trades, in addition to any other matters as may be deemed appropriate by the registrar to determine that the qualifying party meets the requirements of this chapter.

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

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

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

Sec. 7. 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 OR NOT PROPERLY LICENSED pursuant to this chapter bids on a contract for a project with an aggregate worth of more than ~~one thousand dollars~~ $1,000, ~~excluding~~ THE REGISTRAR MAY NOT ISSUE THE ENTITY A LICENSE FOR ONE YEAR AFTER THE BID DATE. FOR THE PURPOSES OF THIS SUBSECTION, AGGREGATE WORTH DOES NOT INCLUDE any electrical fixture or appliance that MEETS ALL OF THE FOLLOWING:

1. Was designed by the manufacturer. ~~, that~~

2. Is unaltered, unchanged or unmodified by any person. ~~, that~~

3. Can be plugged into a common ~~household~~ electrical outlet. ~~utilizing a two pronged or three pronged electrical connector and that~~

4. Does not ~~use any other form of energy, including~~ INVOLVE THE CONNECTION TO A SUPPLY OF 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~~ THE REGISTRAR SHALL ISSUE AN ENTITY A WRITTEN WARNING RELATING TO UNLICENSED ACTIVITY IF THE REGISTRAR HAS NOT PREVIOUSLY ISSUED THE ENTITY A WARNING AND IF THE 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 ~~one thousand dollars~~ $1,000 BUT LESS THAN $20,000, excluding any electrical fixture or appliance that MEETS ALL OF THE FOLLOWING:

1. Was designed by the manufacturer. ~~, that~~

2. Is unaltered, unchanged or unmodified by any person. ~~, that~~

3. 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~~.

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

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

32-1123.01. Staggered periods of licensure; biennial renewal

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

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

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

~~to provide a detailed statement of current financial condition is grounds for denial.~~

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

32-1124. License issuance

A. On 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~~ AFTER 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~~ IS nontransferable, and satisfactory evidence of possession shall be exhibited by the licensee on demand. The license number appearing on any licenses held by the licensee ~~shall~~ MUST 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 12, 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~~ IS forfeited and SHALL BE 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 that 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~~ MAY 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~~ SUFFICIENT FUNDS as payment for the license fees and assessments.

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

32-1125. Renewal of license; qualifying party

A. Except as provided in section 32-4301, a license issued under this chapter ~~shall be~~ IS suspended on the NEXT BUSINESS day following its renewal date by operation of law. An application for renewal of any current contracting license addressed to the registrar, with a valid bond or cash deposit on file with the registrar, accompanied by the required fee and received by the registrar or deposited in the United States mail postage prepaid on or before the renewal date ~~shall authorize~~ AUTHORIZES the licensee to operate as a contractor until actual issuance of the renewal license. The registrar may refuse to renew a license if a licensee or person has committed or been found guilty of any act listed in section 32-1154.

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

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

~~1. The license has been in effect.~~

~~2. A transfer of ownership of fifty per cent or more of the stock, if applicable, or beneficial interest, in the licensee has not occurred.~~

~~3. No more than five valid complaints which have not been resolved by the licensee, as determined by the registrar, have been filed against the licensee.~~

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

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

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

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

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

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

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

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

32-1125.01. Inactive license

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

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

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

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

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

32-1126. Fees

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

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

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

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

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

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

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

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

2. Biennial license renewal fee:

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

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

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

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

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

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

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

C. The registrar may establish reasonable fees for services performed by the registrar relating to reexaminations, processing of

applications, changes of qualifying party and approval of name changes on licenses.

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

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

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

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

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

32-1127. Qualifying party; responsibility

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

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

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

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

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

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

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

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

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

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

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

32-1131. Definitions

In this article, unless the context otherwise requires:

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

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

~~3. "Person injured":~~

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

~~(b) Includes lessees of residential real property who contract directly with a residential contractor or indirectly with a subcontractor of that contractor and homeowners' or unit owners' associations after transfer of control from the builder or developer for damages to the common elements within the complex.~~

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

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

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

A. The residential contractors' recovery fund is established, to be administered by the registrar, ~~from which any person injured~~ FOR THE BENEFIT OF A CLAIMANT DAMAGED by an act, representation, transaction or conduct of a residential contractor licensed pursuant to this chapter that is in violation of this chapter or the rules adopted pursuant to this chapter. ~~may be awarded in the county where the violation occurred an amount of not more than thirty thousand dollars for damages sustained by the act, representation, transaction or conduct. An award from the fund is limited to the actual damages suffered by the claimant as a direct result of the contractor's violation but shall not exceed an amount necessary to complete or repair a residential structure or appurtenance within residential property lines. Actual damages shall not be~~

~~established by bids supplied by or the value of work performed by a person or entity that is not licensed pursuant to this chapter and that is required to be licensed pursuant to this chapter. If the claimant has paid a deposit or down payment and no actual work is performed or materials are delivered, the award of actual damages shall not exceed the exact dollar amount of the deposit or down payment plus interest at the rate of ten per cent a year from the date the deposit or down payment is made or not more than thirty thousand dollars, whichever is less. Interest shall not be paid from the fund on any other awards under this chapter unless ordered by a court of competent jurisdiction. An award from the fund shall not be available to persons injured by an act, representation, transaction or conduct of a residential contractor who was not licensed pursuant to this chapter or whose license was in an inactive status, expired, cancelled, revoked, suspended or not issued at the time of the contract. No more than the maximum individual award from the fund shall be made on any individual residence or to any injured person. Notwithstanding any other provision of law, monies in the residential contractors' recovery fund shall not be directly awarded for attorney fees or costs except in contested cases appealed to the superior court.~~

~~B. Except as provided in section 32-1152, subsection C, every person making application for a contractor's license or for renewal of a contractor's license to engage in residential contracting shall pay an assessment of not more than six hundred dollars during the biennial license period for deposit in the fund. In the event that the registrar does not issue the license, this assessment shall be returned to the applicant.~~

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

1. AN INDIVIDUAL WHO BOTH:

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

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

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

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

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

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

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

(a) THE TRUST IS A REVOCABLE LIVING TRUST.

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

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

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

4. A PLANNED COMMUNITY AS DEFINED IN SECTION 33-1802 OR UNIT OWNERS' ASSOCIATION AS DEFINED IN SECTION 33-1202 IF BOTH:

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

(b) A LICENSED RESIDENTIAL CONTRACTOR'S FAILURE TO ADEQUATELY BUILD OR IMPROVE A RESIDENTIAL STRUCTURE OR APPURTENANCE CAUSED DAMAGE TO THE COMMON ELEMENTS WITHIN THE COMPLEX.

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

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

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

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

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

1. THE DATE THAT THE UNDERLYING CONTRACT WAS SIGNED.

2. THE DATE THAT THE FIRST PAYMENT WAS MADE.

3. THE DATE THAT THE UNDERLYING WORK FIRST COMMENCED.

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

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

32-1132.01. <u>Actual damages; fund; limitations; definition</u>

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

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

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

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

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

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

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

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

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

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

32-1133. <u>Civil recovery; statute of limitations</u>

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

B. WHEN A CLAIMANT COMMENCES AN ACTION FOR A JUDGMENT THAT MAY RESULT IN COLLECTION FROM THE FUND, THE CLAIMANT MUST NOTIFY THE REGISTRAR IN WRITING TO THIS EFFECT WITHIN THIRTY CALENDAR DAYS AFTER THE COMMENCEMENT OF THE ACTION. THE REGISTRAR AT ANY TIME MAY INTERVENE IN AND DEFEND THE ACTION.

C. WHEN ANY CLAIMANT RECOVERS A VALID JUDGMENT AGAINST ANY RESIDENTIAL CONTRACTOR FOR AN ACT, REPRESENTATION, TRANSACTION OR CONDUCT THAT IS IN VIOLATION OF THIS CHAPTER OR THE RULES ADOPTED PURSUANT TO THIS CHAPTER, THE CLAIMANT, ON TWENTY DAYS' WRITTEN NOTICE TO THE REGISTRAR, MAY APPLY TO THE COURT FOR AN ORDER DIRECTING PAYMENT OUT OF THE FUND, OF THE AMOUNT UNPAID ON THE JUDGMENT, SUBJECT TO THE LIMITS STATED IN THIS ARTICLE. IF THE CLAIMANT FAILS TO NOTIFY THE REGISTRAR WITHIN THIRTY CALENDAR DAYS AFTER COMMENCEMENT OF THE ACTION AS REQUIRED BY THIS SUBSECTION, THE COURT MAY DIRECT PAYMENT OUT OF THE FUND ON RECEIPT OF A CONSENT TO PAYMENT SIGNED ON BEHALF OF THE REGISTRAR. IF THE CLAIMANT GIVES NOTICE TO THE REGISTRAR AS REQUIRED BY THIS SUBSECTION, THE COURT MAY DIRECT PAYMENT OUT OF THE FUND EITHER ON RECEIPT OF A CONSENT TO PAYMENT SIGNED ON BEHALF OF THE REGISTRAR OR, IN THE ABSENCE OF ANY WRITTEN CONSENT, AFTER THE NOTICE PERIOD REQUIRED BY THIS SUBSECTION. IF THE COURT RECEIVES WRITTEN OBJECTIONS BY THE REGISTRAR, THE COURT MAY NOT DIRECT PAYMENT FROM THE FUND WITHOUT AFFORDING THE REGISTRAR A REASONABLE OPPORTUNITY TO PRESENT AND SUPPORT THE REGISTRAR'S OBJECTIONS.

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

1. GIVEN NOTICE AS REQUIRED BY SUBSECTIONS B AND C OF THIS SECTION.

2. OBTAINED A JUDGMENT THAT HAS BECOME FINAL, AS PROVIDED IN SUBSECTION C OF THIS SECTION, STATING THE AMOUNT AND THE AMOUNT OWING AT THE DATE OF THE APPLICATION.

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

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

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

32-1133.01. <u>Administrative recovery; statute of limitations</u>

A. NOTWITHSTANDING ANY OTHER PROVISION IN THIS CHAPTER, IF A CONTRACTOR LICENSE HAS BEEN REVOKED OR SUSPENDED AS A RESULT OF AN ORDER

TO REMEDY A VIOLATION OF THIS CHAPTER, THE REGISTRAR MAY ORDER PAYMENT FROM THE RESIDENTIAL CONTRACTORS' RECOVERY FUND TO REMEDY THE VIOLATION.

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

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

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

E. IF SERVICE IS MADE BY CERTIFIED MAIL, IT IS EFFECTIVE FIVE DAYS AFTER THE NOTICE IS MAILED. EXCEPT AS PROVIDED IN SECTION 41-1092.08, SUBSECTION H, THE CONTRACTOR OR CLAIMANT MAY SEEK JUDICIAL REVIEW OF THE REGISTRAR'S FINAL AWARD PURSUANT TO TITLE 12, CHAPTER 7, ARTICLE 6.

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

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

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

32-1134. <u>Powers and duties of registrar</u>

A. The registrar shall:

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

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

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

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

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

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

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

32-1134.02. Insufficiency of fund

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

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

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

Sec. 20. Repeal

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

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

32-1137. Notice of authorized payment to claimant

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

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

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

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

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

32-1151.02. List of unlicensed contractors; website publication

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

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

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

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

32-1152. Bonds

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

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

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

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

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

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

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

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

(f) If the estimated annual volume of construction work of the applicant is less than one hundred fifty thousand dollars, the applicant shall furnish a surety bond or cash deposit of five thousand dollars.

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

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

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

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

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

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

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

3. The total amount of the surety bond or cash deposit required of a licensee who holds more than one license under paragraphs 1 and 2 of this subsection ~~shall be~~ IS the sum of the surety bond or cash deposit required for each license based on the estimated annual volume of construction work of the applicant allocated to and performed under each

license. The applicant at his option may post a single surety bond or cash deposit that is the sum of the bonds or deposits determined under this subsection for all such licenses.

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

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

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

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

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

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

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

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

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

E. The bonds or deposit required by subsection B of this section ~~shall be~~ ARE for the benefit of and ~~shall be~~ ARE subject to claims by the registrar of contractors for failure to pay any sum required pursuant to this chapter. The bond or deposit required by subsection B, paragraphs 1, 2 and 3 of this section is for the benefit of and subject to claims by a licensee under this chapter or a lessee, owner or co-owner of nonresidential real property including, but not limited to, a tenant in common or joint tenant, or their successors in interest, who has a direct contract with the licensee against whose bond or deposit the claim is made and who is damaged by the failure of the licensee to build or improve a structure or appurtenance on that real property at the time the work was performed in a manner not in compliance with the requirements of any building or construction code applicable to the construction work under the laws of this state or any political subdivision, or if no such code was applicable, in accordance with the standards of construction work approved by the registrar. The residential bond or deposit required by subsection B, paragraphs 4 through 8 of this section is for the benefit of and subject to claims by any person furnishing labor, materials or construction equipment on a rental basis used in the direct performance of a construction contract involving a residential structure or by ~~persons injured~~ CLAIMANTS as ~~defined~~ DESCRIBED in section ~~32-1131~~ 32-1132. The bond or deposit required by subsection C, paragraph 1 of this section is for the benefit of and is subject to claims only by ~~persons injured~~ CLAIMANTS as described in section ~~32-1131~~ 32-1132. The person seeking recovery from the bond or cash deposit shall maintain an action at law against the contractor if claiming against the cash deposit or against the contractor and surety if claiming against the surety bond. If the person seeking recovery is required to give the notice pursuant to section 33-992.01, he is entitled to seek recovery only if he has given such notice and has made proof of service. The surety bond or cash deposit

~~shall be~~ IS subject to claims until the full amount thereof is exhausted. The court may award reasonable attorney fees in a judgment against a contractor's surety bond or cash deposit. ~~No~~ A suit may NOT be commenced on the bond or for satisfaction from the cash deposit after the expiration of two years following the commission of the act or delivery of goods or rendering of services on which the suit is based, except that time for purposes of claims for fraud ~~shall be~~ IS measured as provided in section 12-543. The surety bond or cash deposit shall be continuous in form and ~~shall be~~ conditioned so that the total aggregate liability of the surety or cash deposit for all claims, including reasonable attorney fees, ~~shall be~~ IS limited to the face amount of the surety bond or cash deposit irrespective of the number of years the bond or cash deposit is in force. If the corporate surety desires to make payment without awaiting court or registrar action, the amount of any bond filed in compliance with this chapter shall be reduced to the extent of any payment or payments made by the corporate surety in good faith thereunder. Any such payments shall be based on priority of written claims received by the corporate surety before court or registrar action. If more than one cash deposit exists, the judgment against the contractor shall state which cash deposit ~~shall be~~ IS used to satisfy the judgment. A certified copy of the judgment shall then be filed with the registrar, and such judgment ~~shall~~ MUST specify that it may be satisfied from the contractor's cash deposit. Priority for payment ~~shall be~~ IS based on the time of filing with the registrar. On receipt of a certified copy of the judgment or on a final disciplinary order of the registrar, the registrar may authorize payment from the cash deposit of the amount claimed or of whatever lesser amount remains on file. In any action against a cash deposit, the claimant, at the time of filing suit, may notify the registrar in writing of the action against the cash deposit, but ~~shall~~ MAY not name as a defendant in the action the registrar, the treasurer or the state. A CLAIMANT'S failure to ~~so~~ notify the registrar at the time of filing suit may result in the cash deposit being withdrawn by the licensee before judgment pursuant to subsection D of this section.

F. When a corporate surety cancels a bond, the surety, not less than thirty days before the effective date of the cancellation, shall give the principal and the registrar a written notice of the cancellation. Notice to the principal shall be by certified mail in a sealed envelope with postage fully prepaid. Proof of notice to the principal shall be made available to the registrar on request. On reduction or depletion of the cash deposit, the registrar shall immediately notify the licensee of said reduction or depletion and that the licensee must replenish the cash deposit or furnish a surety bond on or before thirty days from the date of said reduction or depletion or the contractor's license ~~shall be~~ IS suspended on the thirtieth day without further notice or hearing. Notice to the contractor shall be by certified mail in a sealed envelope with

postage fully prepaid thereon, addressed to the contractor's latest address of record in the registrar's office. The contractor's license ~~shall be~~ IS suspended by operation of law on the date the bond is canceled or thirty days from the date of reduction or depletion of the cash deposit unless a replacement bond or cash deposit is on file with the registrar.

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

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

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

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

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

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

32-1152.01. <u>Alternatives to cash deposit</u>

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

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

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

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

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

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

A. The holder of a license or any person ~~listed~~ NAMED on a license pursuant to this chapter ~~shall~~ MAY 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:

(a) Plans or specifications ~~or any building codes of this state or any political subdivision of this state~~ in any material respect that 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.

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

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

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

7. Conviction of a felony.

8. 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.

9. ATTEMPTING TO EVADE THIS CHAPTER BY:

(a) Aiding or abetting a licensed or unlicensed person. ~~to evade this chapter, knowingly or recklessly combining~~

(b) ACTING or conspiring with a licensed or unlicensed person. ~~,~~

(c) Allowing one's license to be used by a licensed or unlicensed person. ~~or~~

(d) Acting as agent, partner, associate or otherwise of a licensed or unlicensed person ~~with intent to evade this chapter~~.

10. Failure by a licensee or agent or official of a licensee to pay monies in excess of ~~seven hundred fifty dollars~~ $750 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~~ UNLESS the licensee PROVES THAT THE LICENSEE lacks the capacity to

pay~~, when the licensee~~ AND has NOT received sufficient monies as payment for the particular construction work project or operation for which the services or materials were rendered or purchased.

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

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

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

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

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

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

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

18. Failure to notify the registrar in writing within a period of fifteen days of any disassociation of the person who qualified for the license. The licensee ~~shall have~~ MUST QUALIFY THROUGH ANOTHER PERSON WITHIN sixty days ~~from~~ AFTER the date of disassociation ~~to qualify through another person~~.

19. Subsequent discovery of facts that 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 the license.

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

21. 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.

22. 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~~ MUST set forth the time within which the contractor is to complete the remedial action. The time permitted for compliance ~~shall~~ MAY not be less than fifteen days from the date of issuance of the directive. A license ~~shall~~ MAY not be

revoked or suspended nor ~~shall~~ MAY any other penalty be imposed for a violation of this paragraph until after a hearing has been held.

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

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

B. The registrar:

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

2. SHALL INVESTIGATE THE ACTS OF A CONTRACTOR IN THIS STATE 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~~ PARAGRAPH:

~~1.~~ (a) "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.~~ (b) "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.

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

D. 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~~ DOES not deprive the registrar of jurisdiction to proceed with any investigation of or action or disciplinary proceeding against such a licensee, or to render a decision suspending or revoking such a license, or denying the renewal or right of renewal of such a license.

E. The registrar may impose a civil penalty of not to exceed ~~five hundred dollars~~ $500 on a contractor for each violation of subsection A, paragraph 22 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. A person who is or was named on a license of a contractor when an act or omission occurs that results in a civil penalty may not receive a new license under this chapter until the entire civil penalty is paid.

F. The registrar ~~shall~~ MAY impose a civil penalty of not to exceed ~~one thousand dollars~~ $1,000 on a contractor for each violation of subsection A, paragraph 17 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. A person who is or was named on a license of a contractor when an act or omission occurs that results in a civil penalty may not receive a new license under this chapter until the entire civil penalty is paid.

~~G. 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, 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. An applicant to the residential contractors' recovery fund pursuant to this subsection must show that the applicant has proceeded against any existing bond covering the residential contractor and has not collected on the bond in an amount of thirty thousand dollars or more.~~

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

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

A. On the filing of a written complaint with the registrar charging a licensee with the commission~~, within two years before the date of filing the complaint,~~ of an act that is cause for suspension or revocation of a license, including an act that is in violation of title 44, chapter 11, article 11, the registrar after investigation, in its sole discretion, may issue a citation directing the licensee, within ten days after service of the citation on 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. THE COMPLAINT MUST BE FILED WITHIN THE STATUTE OF LIMITATIONS PRESCRIBED BY 32-1162.

B. Service of THE citation on the licensee ~~shall be~~ IS fully effected by personal service or by mailing a true copy thereof, together with a true copy of the complaint, by ~~registered~~ CERTIFIED 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~~ IS 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.~~ 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~~.~~ UNLESS THE REGISTRAR DETERMINES, IN ITS SOLE DISCRETION, THAT THE FAILURE TO ANSWER WITHIN SUCH PERIOD IS ATTRIBUTABLE TO EXCUSABLE NEGLECT ON THE PART OF THE LICENSEE.

~~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.

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

32-1161. Rights of contractor after suspension of license

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

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

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

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

32-1162. Statute of limitations; remedy violations

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

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

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

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

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

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

32-1165. Advertising; violation; classification

Except as authorized by section 32-1121, subsection A, ~~paragraph 14, subdivision (c),~~ it is a class 1 misdemeanor for any person to advertise that ~~he~~ THE PERSON is able to perform any service or contract for compensation subject to regulation by the registrar under the terms of this chapter unless THE PERSON FIRST OBTAINS a license under the terms of this chapter ~~is first obtained regardless of whether his operations as a contractor are otherwise exempt~~.

Sec. 33. Repeal

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

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

32-1166. Cease and desist orders

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

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

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

1. THE PERSON'S LAST KNOWN BUSINESS ADDRESS.

2. THE PERSON'S RESIDENTIAL ADDRESS.

32-1166.01. Citation; civil penalties

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

1. THIS CHAPTER.

2. A RULE ADOPTED BY THE REGISTRAR.

3. AN ORDER ISSUED BY THE REGISTRAR.

B. A CITATION ISSUED PURSUANT TO THIS SECTION SHALL:

1. BE IN WRITING.

2. CLEARLY DESCRIBE THE VIOLATION FOR WHICH THE CITATION WAS ISSUED.

3. CONTAIN AN ORDER TO CEASE AND DESIST.

4. CONTAIN A CIVIL PENALTY OF AT LEAST $200 FOR EACH VIOLATION BUT NOT MORE THAN $2,500 FOR MULTIPLE VIOLATIONS COMMITTED ON THE SAME DAY.

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

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

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

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

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

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

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

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

Sec. 35. Repeal

Sections 32-1166.02 and 32-1167, Arizona Revised Statutes, are repealed.

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

32-1168. Proof of valid license

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

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

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

A. Each county, city or other political subdivision or authority of this state or any agency, department, board or commission of this state ~~which~~ THAT requires the issuance of a building permit as a condition precedent to the construction, alteration, improvement, demolition or repair of a building, structure or other improvement to real property for which a license is required under this chapter, as part of the application procedures which it ~~utilizes~~ USES, shall require that each applicant for a building permit file a signed statement that the applicant is ~~currently~~ PROPERLY licensed TO PERFORM THE WORK DESCRIBED IN THE PERMIT under this

chapter with the applicant's license number. If the applicant purports to be exempt from the licensing requirements of this chapter, the statement shall contain the basis of the asserted exemption and the name and license number of any general, mechanical, electrical or plumbing contractor who will be employed on the work. The local issuing authority may require from the applicant a statement signed by the registrar to verify any purported exemption.

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

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

32-1170.02. Qualification examination

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

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

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

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

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

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

Sec. 39. Transfer and renumber

Section 32-1129, 32-1129.01, 32-1129.02, 32-1129.03, 32-1129.04, 32-1129.05, 32-1129.06 and 32-1129.07, Arizona Revised Statutes, are transferred and renumbered for placement in title 32, chapter 10, article 5, as added by this act, as follows:

Former Sections	New Sections
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

Sec. 40. Heading repeal

The article heading of former title 32, chapter 10, article 5, Arizona Revised Statutes, is repealed.

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

ARTICLE 5. PROMPT PAY

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

32-1181. Definitions; applicability

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

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 excavation of or other development or improvement to land.

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

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

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

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

4. "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.

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

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

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

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

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

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

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

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

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

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

A. By mutual agreement with a contractor, an owner may make progress payments on construction contracts of less than sixty days. An owner shall make progress payments to a contractor on all other construction contracts. Progress payments shall be made on the basis of a duly certified and approved billing or estimate of the work performed and the materials supplied ~~during the preceding thirty day billing cycle, or such other billing cycle as stated in the construction contract. If billings or estimates are to~~. THE BILLING OR ESTIMATE FOR A PROGRESS PAYMENT SHALL be submitted ~~in other than~~ ON A thirty day billing ~~cycles,~~ CYCLE UNLESS the construction contract and each page of the plans, including bid plans and construction plans, shall specifically identify ~~such other~~ A DIFFERENT billing cycle in a clear and conspicuous manner as prescribed in subsection B of this section. If any work is performed during ~~the preceding~~ A billing cycle, a contractor shall timely submit a billing or estimate to the owner ~~covering the work performed during that billing cycle~~. Except as provided in subsection C of this section, the

owner shall make progress payments to the contractor within seven days after the date the billing or estimate is certified and approved pursuant to subsection D of this section. Except as provided in subsection C of this section, an owner shall release retention to the contractor within seven days after the date the billing or estimate for release of retention is certified and approved pursuant to subsection H of this section. Except as provided in subsection C of this section, an owner shall make final payment to the contractor within seven days after the billing or estimate for final payment is certified and approved pursuant to subsection K of this section.

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

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

Notice of Alternate Billing Cycle

This contract allows the owner to require the submission of billings or estimates in billing cycles other than thirty days. Billings or estimates for this contract shall be submitted as follows:

_____

_____

_____

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

Notice of Alternate Billing Cycle

This contract allows the owner to require the submission of billings or estimates in billing cycles other than thirty days. A written description of such other billing cycle applicable to the project is available from the owner or the owner's designated agent at (telephone number or address, or both), and the owner or its designated agent shall provide this written description on request.

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

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

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

Notice of Extended Payment Provision

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

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

1. Unsatisfactory job progress.

2. Defective construction work or materials not remedied.

3. Disputed work or materials.

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

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

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

7. Damage to the owner.

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

E. An owner may withhold from a progress payment only an amount that is sufficient to pay the direct costs and expenses the owner reasonably expects to incur to protect the owner from loss for which the contractor is responsible and that results from any reasons set forth in writing pursuant to subsection D of this section.

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

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

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

Notice of Extended Certification and
Approval Period Provision

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

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

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

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

2. Withhold from retention to be released only an amount not to exceed one hundred fifty ~~per cent~~ PERCENT of the direct costs and expenses the owner reasonably expects to incur to protect the owner from loss for which the contractor is responsible and that results from the contractor's failure to complete portions of the work at the time of substantial completion or for any reasons set forth in writing pursuant to this subsection.

I. Except as provided in subsections C and H of this section, the owner shall pay the retention to the contractor within seven days after the date the billing or estimate for release of retention is certified and approved. If the owner has declined to certify or approve a billing or

estimate for release of retention or a portion of a billing or estimate for release of retention pursuant to subsection H of this section, when any reason as stated in the owner's written statement has been removed, the contractor may submit a supplemental billing or estimate for all or a portion of the withheld amounts of retention pursuant to subsection H of this section. Unless otherwise agreed, the contractor may submit only one billing or estimate during each billing cycle.

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

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

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

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

L. Except as provided in subsection C of this section, the owner shall make final payment to the contractor within seven days after the date the billing or estimate for final payment is certified and approved. If the owner has declined to certify or approve a billing or estimate for final payment or a portion of a billing or estimate for final payment pursuant to subsection K of this section, when any reason as stated in the owner's written statement has been removed, the contractor may submit a billing or estimate for all or a portion of the withheld amounts of final payment pursuant to subsection K of this section. Unless otherwise agreed, the contractor may submit only one billing or estimate during each billing cycle.

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

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

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

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

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

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

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

T. If the owner and contractor are a single entity, that entity shall pay its subcontractors or material suppliers within fourteen days after the billing or estimate is certified and approved unless the deadlines for certification and approval or for payment have been modified pursuant to subsection C or F of this section.

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

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

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

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

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

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

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

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

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

Notice of Alternate Arrangements for
Release of Retention and Final Payment

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

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

32-1183. <u>Performance and payment by contractor, subcontractor or material supplier; conditions; interest</u>

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

B. If a subcontractor or material supplier has performed in accordance with the provisions of a construction contract, the contractor

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

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

1. Unsatisfactory job progress.

2. Defective construction work or materials not remedied.

3. Disputed work or materials.

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

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

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

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

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

9. The owner has withheld retention from the contractor, in which case the amount of the retention withholding by the contractor shall not

exceed the actual amount of the retention retained by the owner pertaining to the subcontractor's work.

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

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

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

G. If the owner issues a written statement pursuant to section ~~32-1129.01~~ 32-1182, subsection D, H or K stating that the owner declines to certify or approve a billing or estimate or a portion of a billing or estimate for defective construction work or materials not remedied and if the contractor as a result does not receive sufficient payment from the owner to pay subcontractors and material suppliers for work included in the contractor's billing or estimate, the contractor shall nevertheless pay any subcontractor or material supplier whose work was not the basis of the owner's withholding for defective construction work or materials not remedied within twenty-one days after payment would otherwise have been made by the owner under section ~~32-1129.01~~ 32-1182, subsection A. This subsection does not limit a subcontractor's rights to suspend performance under a construction contract or terminate a construction contract under section ~~32-1129.04~~ 32-1185, subsection D.

H. If a progress or final payment or release of retention to a subcontractor or material supplier is delayed by more than seven days after receipt of progress or final payment or release of retention by the

contractor or subcontractor pursuant to this section, the contractor or subcontractor shall pay its subcontractor or material supplier interest, except for periods of time during which payment is withheld pursuant to subsection C of this section, beginning on the eighth day, at the rate of one and one-half ~~per cent~~ PERCENT per month or a fraction of a month on the unpaid balance or at such higher rate as the parties agree.

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

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

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

32-1185. <u>Construction contracts; suspension of performance; termination</u>

A. A contractor may suspend performance under a construction contract or terminate a construction contract for failure by the owner to make timely payment of the amount certified and approved pursuant to section ~~32-1129.01~~ 32-1182. A contractor shall provide written notice to the owner at least seven calendar days before the contractor's intended suspension or termination unless a shorter notice period is prescribed in the construction contract between the owner and contractor. A contractor

shall not be deemed in breach of the construction contract for suspending performance or terminating a construction contract pursuant to this subsection. A construction contract shall not extend the time period for a contractor to suspend performance or terminate a construction contract under this subsection.

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

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

D. A subcontractor may suspend performance under a construction contract or terminate a construction contract if the owner declines to approve and certify portions of the contractor's billing or estimate pursuant to section ~~32-1129.01~~ 32-1182 for that subcontractor's work but the reasons for that failure by the owner to approve and certify are not the fault of or directly related to the subcontractor's work. A subcontractor shall provide written notice to the contractor and the owner at least seven calendar days before the subcontractor's intended suspension or termination unless a shorter notice period is prescribed in the construction contract between the contractor and subcontractor. A subcontractor shall not be deemed in breach of a construction contract for suspending performance or terminating a construction contract pursuant to

this subsection. A construction contract shall not extend the time period for a subcontractor to suspend performance or terminate a construction contract under this subsection.

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

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

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

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

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

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

32-1186. Construction contracts; void provisions

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

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

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

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

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

32-1187. Applicability to state and political subdivisions

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

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

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

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

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

Attention: Your obligations to pay your contractor are subject to the Arizona prompt pay act. That act is set forth in ~~section 32-1129, Arizona Revised Statutes, and sections 32-1129.01 through 32-1129.07~~ TITLE 32, CHAPTER 10, ARTICLE 5, Arizona Revised Statutes. The full text of the statutes are available at your local public law library or ON the internet. Under that act, you have the right to withhold all or a portion of a payment to a contractor for a variety of reasons, including defective construction work that has not been corrected. However, in order to do so, you must issue a written statement setting forth in reasonable detail your reasons for withholding payments within fourteen (14) days after the date you receive a billing or estimate. If you fail to issue the written statement within that period, the billing or estimate will be deemed approved. Once the billing or estimate is deemed approved, you must pay the billing or estimate within seven (7) days. Generally, you are limited by the act to withholding only an amount that is sufficient to pay the direct costs and expenses you reasonably expect to incur to protect you from loss for which the contractor is responsible. You are encouraged to read the act in full to know your obligations and rights.

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

Sec. 49. Legislative findings

The Arizona Court of Appeals misconstrued the language of the prompt pay act in S.K. Builders, Inc. v. Smith. (2 CA-CV 2018-0008 (filed January 29, 2019)). The purpose of the change to section 32-1182, subsection A, Arizona Revised Statutes, is to make the legislative's original intent clear and to overrule legislatively the S.K. Builders decision.

APPROVED BY THE GOVERNOR APRIL 29, 2019.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 29, 2019.

Passed the House April 17, 2019,

by the following vote: 59 Ayes,

0 Nays, 1 Not Voting

Speaker of the House
Pro Tempore

Jim Drake
Chief Clerk of the House

Passed the Senate February 25, 2019,

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

Karen Fann
President of the Senate

Susan Aceves
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR
This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

_____
Secretary to the Governor

Approved this _____ day of

_____, 20_____,

at _____ o'clock _____ M.

_____
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

_____
Secretary of State

S.B. 1397

SENATE CONCURS IN HOUSE AMENDMENTS AND FINAL PASSAGE

Passed the Senate April 23, 2019

by the following vote: 30 Ayes,

0 Nays, 0 Not Voting

Karen Fann
President of the Senate

Susan Aceves
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

23rd day of April, 2019

at 3:02 o'clock P M.

Secretary to the Governor

Approved this 29th day of

April 2019

at 10:10 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 29 day of April, 2019

at 4:46 o'clock P. M.

Secretary of State

S.B. 1397