

Introduced: 2/16/82
Referred: Labor & Commerce and
Finance

BY THE LABOR AND
COMMERCE COMMITTEE

1 IN THE HOUSE

2 HOUSE BILL NO. 832

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the regulation of contractors; and
7 providing for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 08.01.010 is amended by adding a new paragraph to read:

10 (24) regulation of general contractors, specialty contractors,
11 general home contractors, and specialty home contractors.

12 * Sec. 2. AS 08.18.021 is amended to read:

13 Sec. 08.18.021. APPLICATION FOR REGISTRATION. (a) An applicant
14 for registration as a contractor shall submit an application under
15 penalty of perjury [OATH] upon a form to be prescribed by the commis-
16 sioner and which shall include the following information pertaining to
17 the applicant:

18 (1) employer social security number;

19 (2) type of contracting activity, whether a general, [OR] a
20 specialty, a general home, or a specialty home contractor and if a
21 specialty or a specialty home contractor [THE LATTER], the type of
22 specialty;

23 (3) the name and address of each partner if the applicant is
24 a firm or partnership, or the name and address of the owner if the
25 applicant is an individual proprietorship, or the name and address of
26 the corporate officers, registered [AND STATUTORY] agent, and person
27 actually responsible for the supervision of the contracting activity [IF
28 ANY,] if the applicant is a corporation;

29 (4) if the applicant is a general home or specialty home con-

1 tractor, the construction experience and business history of the appli-
2 cant, including

3 (A) the name of any officer, principal, partner, or
4 supervisory employee of the applicant who is, or who was, registered
5 or licensed as a contractor;

6 (B) the states or jurisdictions in which a person named
7 under (A) of this paragraph is, or was, licensed or registered,
8 and the dates of licensure or registration; and

9 (C) whether a license or registration named under (B)
10 of this paragraph is, or was, suspended or revoked, and the reasons
11 for suspension or revocation;

12 (5) all other names under which the applicant is registered,
13 or has ever been registered, as a contractor.

14 (b) The information contained in the application shall be main-
15 tained by the department in that applicant's file and shall be a matter
16 of public record and open to public inspection.

17 * Sec. 3. AS 08.18.031 is amended to read:

18 Sec. 08.18.031. CERTIFICATE OF REGISTRATION -- ISSUANCE, DURATION,
19 RENEWAL. A certificate of registration shall be renewed biennially and
20 lapses as provided by AS 08.01.100 [EXPIRES ON JUNE 30 OF EACH YEAR
21 FOLLOWING THE DATE OF ISSUANCE OR RENEWAL AND SHALL BE RENEWED UNDER THE
22 SAME REQUIREMENTS AS FOR AN ORIGINAL REGISTRATION]. The commissioner
23 shall issue to the applicant a certificate of registration upon compli-
24 ance with the registration, insurance, and surety requirements of this
25 chapter, unless registration is denied as provided by AS 08.18.125.

26 * Sec. 4. AS 08.18.041 is amended to read:

27 Sec. 08.18.041. REGISTRATION AND RENEWAL FEES. The applicant
28 shall pay to the commissioner a registration or renewal fee as follows:

29 (1) general contractor.....\$200 [\$100]

- 1 (2) specialty contractor.....\$100 [50]
- 2 (3) general home contractor.....\$100
- 3 (4) specialty home contractor.....\$50

4 * Sec. 5. AS 08.18.101 is amended to read:

5 Sec. 08.18.101. INSURANCE REQUIRED. Each applicant, at the time
6 of applying for registration, shall file with the commissioner satisfac-
7 tory evidence that the applicant has in effect

8 (1) public liability and property damage insurance covering
9 his contracting operations in the sum of not less than \$20,000 for
10 damage to property, \$50,000 for injury, including death, to any one
11 person and \$100,000 for injury, including death, to more than one person;

12 (2) workers' compensation insurance as required by AS 23.30-
13 045 - 23.30.095.

14 * Sec. 6. AS 08.18 is amended by adding new sections to read:

15 Sec. 08.18.102. HOME CONSTRUCTION SURETY ACCOUNT. (a) The home
16 construction surety account is established as a special account in the
17 general fund to carry out the purposes of this chapter. The account
18 consists of surety fees paid by registered general home and specialty
19 home contractors under this section. The department may spend money in
20 the account to satisfy claims filed under this chapter. The department
21 may also spend money in the account, in an amount not to exceed \$25,000
22 annually, for home construction educational purposes. "Home construction
23 educational purposes", as used in this section, includes

24 (1) production and distribution of educational materials and
25 programs for home contractors and consumers; and

26 (2) development and distribution of forms for contractors,
27 customer evaluation, and complaints.

28 (b) A general home contractor, when applying for or renewing his
29 registration, shall pay to the department, in addition to the registra-

1 tion fee, a surety fee not to exceed \$1,000. A specialty home contrac-
2 tor, when applying for or renewing his registration, shall pay to the
3 department, in addition to the registration fee, a surety fee not to
4 exceed \$500. A surety fee shall be paid for each name under which a
5 contractor registers to do business as a home contractor. When the
6 amount paid into the home construction surety account reaches \$500,000,
7 the department shall by regulation adjust the surety fees so that the
8 account is maintained at a level of approximately \$500,000. All surety
9 fees collected by the department shall be paid at least once a month by
10 the department into the general fund. These payments shall be credited
11 to the home construction surety account.

12 Sec. 08.18.103. CLAIMS. (a) A person who has a complaint against
13 a home contractor for loss of money, personal property, or real property
14 may file a claim with the department. Claims may be made for a loss
15 resulting from the following actions:

- 16 (1) misrepresentation;
- 17 (2) nonpayment to materialmen, subcontractors, or laborers;
- 18 (3) defective materials or negligent workmanship;
- 19 (4) conversion of interim construction loan funds;
- 20 (5) violation of this chapter;
- 21 (6) an unfair or deceptive act or practice under AS 45.-

22 50.471 - 45.50.561.

23 (b) A claim shall be made on a form furnished by the department
24 and shall be executed under penalty of perjury. The person making the
25 claim shall supply the following information:

- 26 (1) the name and last known address of the home contractor;
- 27 (2) the amount of the loss;
- 28 (3) the date or period of time during which the loss occurred;
- 29 (4) the date upon which the loss was discovered;

1 (5) the name and address of the claimant; and
2 (6) a description of the transaction that resulted in the
3 loss claimed.

4 (c) A copy of a claim filed with the department under this section
5 shall be sent to the last known address of the home contractor against
6 whom the claim is filed.

7 (d) Upon receipt of a claim filed under this section, the depart-
8 ment may

- 9 (1) take and hear evidence on the claim;
10 (2) administer oaths and affirmations;
11 (3) compel, by subpoena, the attendance of witnesses and the
12 production of books, papers, and documents;
13 (4) hire an investigator, accountant, contractor, or other
14 expert;
15 (5) hold a hearing, in accordance with the Administrative
16 Procedure Act (AS 44.62), on the claim.

17 (e) The home contractor shall be given an opportunity, within 20
18 days after receipt of notification of a claim filed under this section,
19 to file a written statement and to present evidence in opposition to the
20 claim.

21 Sec. 08.18.104. FINDINGS AND AWARD. At the conclusion of its
22 consideration of a claim filed under AS 08.18.103, the department shall
23 make written findings and conclusions. If the department finds that the
24 claimant has suffered a loss in a transaction as a result of an action
25 described in AS 08.18.103(a)(1) - (6) by a home contractor, the depart-
26 ment may award a claimant an amount out the home construction surety
27 account not to exceed \$20,000 on a claim against a general home contrac-
28 tor and not to exceed \$10,000 on a claim against a specialty home con-
29 tractor.

1 Sec. 08.18.105. MAXIMUM LIABILITY AND PAYMENT PRIORITY. (a) The
2 maximum liability of the home construction surety account for claims
3 filed in each biennial registration period may not exceed \$60,000 for
4 one general home contractor or \$30,000 for one specialty home contractor.
5 This maximum liability amount applies to all names under which a person
6 is registered to do business as a home contractor.

7 (b) If the maximum liability of the home construction surety
8 account as provided in (a) of this section is insufficient to pay in
9 full the valid claims of all persons who have filed claims against one
10 home contractor, the maximum liability amount shall be distributed among
11 the claimants on a pro rata basis. Distribution shall be made among the
12 claimants without regard to the order of time in which the claims were
13 filed.

14 (c) If the balance of the home construction surety account is
15 insufficient at a given time to satisfy a claim that has been granted by
16 the department, the department shall, when additional amounts have been
17 deposited in the account, satisfy unpaid claims in the order that the
18 claims were originally filed, plus interest at the rate of 10 percent a
19 year.

20 Sec. 08.18.106. SUBROGATION RIGHTS. When the department has made
21 a payment to a claimant from the home construction surety account, the
22 department shall be subrogated to all of the rights of the claimant and
23 the claimant shall assign all of his rights in that portion of the claim
24 to the department. Amounts subsequently realized by the department on
25 the claim shall be deposited in the home construction surety account.

26 Sec. 08.18.107. REQUIRED PRACTICES FOR HOME CONTRACTORS. Each
27 home contractor, registered or required to be registered under this
28 chapter, shall

29 (1) pay all subcontractors and materialmen so that no liens

1 are filed against the customer's property, and furnish the customer,
2 upon request, waivers of liens from all subcontractors and materialmen
3 within 30 days of completing a job or within 30 days of notice of a
4 lien, unless the subcontractor's or materialman's claim is the subject
5 of a bona fide dispute; in that case, the contractor is not required to
6 furnish a waiver until the dispute is settled;

7 (2) furnish to the customer, at the time of signing, a copy
8 of all written documents signed by the customer;

9 (3) notify the department, within 10 days, of any change in
10 ownership or management control or of change of address or business
11 name;

12 (4) provide the customer with a written contract, if the
13 total contract price for materials, labor, and service exceeds \$200,
14 containing the following information:

15 (A) total contract price or a statement of the hourly
16 labor charge and an estimate of total cost;

17 (B) a description of work to be done;

18 (C) materials to be used, described by brand name,
19 weight, size and color;

20 (D) any guarantee or warranty made to the owner, and any
21 exclusions, exceptions, and limitations;

22 (E) the estimated date of completion;

23 (F) a payment schedule;

24 (G) an agreement to restore or repair any part of the
25 customer's home or personal property destroyed or damaged as a
26 result of the acts of the home contractor, his agent, or subcon-
27 tractor; and

28 (H) the signatures of the customer and the home contrac-
29 tor and the registered business name, address and telephone number

1 of the home contractor;

2 (5) provide to the customer, at the time the work is com-
3 pleted, a copy of a dated invoice listing the costs of all materials and
4 labor;

5 (6) provide to a prospective customer a brochure which the
6 department shall prepare providing the following information:

7 (A) a statement that the department's registration of a
8 contractor is not an endorsement or an evaluation of that con-
9 tractor's qualifications;

10 (B) an evaluation form;

11 (C) the address and phone number of at least two of the
12 department's offices where copies of all customer home contractor
13 evaluations, complaints, and claims regarding the contractor are
14 maintained and open to public inspection;

15 (D) an explanation of complaint procedures, including a
16 description of the home construction surety account established by
17 AS 08.18.102.

18 Sec. 08.18.108. PROHIBITED PRACTICES. (a) A home contractor may
19 not misrepresent, directly or by implication,

20 (1) the cost of construction or repair authorized by the
21 customer;

22 (2) the terms or conditions of a warranty;

23 (3) that construction, repairs, or alterations are necessary
24 if they are not necessary;

25 (4) that construction, repairs, or alterations have been
26 made if they have not been made; or

27 (5) that the home is in a dangerous condition or in a con-
28 dition not in compliance with building codes.

29 (b) A home contractor may not collect or attempt to collect for

1 (1) construction, repairs, or alterations not authorized
2 either orally or in writing by the customer;

3 (2) unnecessary construction, repairs, or alterations;

4 (3) construction, repairs, or alterations that have not been
5 made.

6 (c) A home contractor who warrants his work may not refuse to
7 repair a home in accordance with the terms and conditions of the
8 warranty.

9 (d) A home contractor may not file a lien on a customer's home
10 because the customer has refused to pay for unauthorized construction,
11 repairs, or alterations, or because the customer has refused to pay
12 construction, repair, or alteration charges in excess of the price
13 authorized in the written work agreement, if the customer pays the
14 authorized price for authorized construction, repairs, or alterations.

15 (e) A home contractor may not alter any part or fixture of a home
16 with intent to create a condition requiring repairs.

17 (f) A home contractor may not make a material misrepresentation in
18 the procurement of a home construction contract, or make a false promise
19 likely to influence, persuade, or induce a customer to enter into a home
20 construction contract.

21 (g) A home contractor may not gain entry or access into a prospec-
22 tive customer's home or onto his property under the guise of a govern-
23 mental inspection, right or duty, or under the guise that the home
24 contractor or his agent is a government or public utility inspector or
25 representative.

26 (h) A home contractor may not ask or require a customer to sign a
27 completion form before the work or job is completed in accordance with
28 the provisions of the construction contract.

29 (i) A home contractor may not advertise that the advertised price

1 or offer includes delivery or installation, if delivery or installation
2 is not included.

3 (j) A home contractor may not fraudulently execute or alter a
4 building contract, mortgage, promissory note, or other document made in
5 connection with a home contracting transaction.

6 (k) A home contractor may not perform work or use any materials in
7 violation of the building, housing, sanitary, health, or fire laws or
8 ordinances of the state or the local jurisdiction in which the home is
9 located.

10 (l) A home contractor may not transact business under any name
11 other than the one under which he is registered.

12 (m) A home contractor may not alter plans or specifications made
13 in a home construction contract in any material respect without prior
14 written consent of the customer.

15 (n) A home contractor may not display a false or forged registra-
16 tion.

17 Sec. 08.18.109. UNFAIR METHODS OF COMPETITION AND UNFAIR AND
18 DECEPTIVE TRADE PRACTICES. An act or practice by a home contractor that
19 does not comply with the requirements of this chapter constitutes an
20 unfair method of competition and an unfair and deceptive act or practice
21 for the purposes of AS 45.50.471 - 45.50.561.

22 * Sec. 7. AS 08.18.121 is amended to read:

23 Sec. 08.18.121. SUSPENSION AND REVOCATION OF REGISTRATION. (a)
24 If the insurance required by [IN] AS 08.18.101 ceases to be in effect,
25 the registration of the contractor shall be suspended until the insurance
26 has been reinstated.

27 [(b) IF A FINAL JUDGMENT IMPAIRS THE LIABILITY OF THE SURETY UPON
28 THE BOND OR DEPLETES THE CASH DEPOSIT SO THAT THERE IS NOT IN EFFECT A
29 BOND UNDERTAKING OR CASH DEPOSIT IN THE FULL AMOUNT PRESCRIBED IN

1 AS 08.18.071, THE REGISTRATION OF THE CONTRACTOR INVOLVED SHALL BE
2 SUSPENDED UNTIL THE BOND LIABILITY IN THE REQUIRED AMOUNT, UNIMPAIRED BY
3 UNSATISFIED JUDGMENT CLAIMS, HAS BEEN FURNISHED.

4 (c) IF A BONDING COMPANY CANCELS ITS BOND OF A CONTRACTOR THE
5 CONTRACTOR'S REGISTRATION SHALL BE REVOKED. HE MAY AGAIN OBTAIN REGIS-
6 TRATION BY COMPLYING WITH THE REQUIREMENTS OF THIS CHAPTER.]

7 (d) If a registered [LICENSED] contractor fails to fulfill his
8 obligations under this chapter [AS SET OUT IN AS 08.18.071] his registra-
9 tion [LICENSE] shall be suspended for a period of time the commissioner
10 determines is appropriate. After two [THREE] suspensions his registra-
11 tion [LICENSE] may be permanently revoked.

12 (e) Proceedings to suspend or revoke a registration [LICENSE]
13 issued under this section [CHAPTER] are governed by the Administrative
14 Procedure Act (AS 44.62).

15 [(f) IF THE COMMISSIONER OF LABOR DETERMINES THAT A PERSON IS
16 ACTING AS A CONTRACTOR IN VIOLATION OF THIS CHAPTER, HE SHALL GIVE
17 WRITTEN NOTICE PROHIBITING FURTHER ACTION BY THE PERSON AS A CONTRACTOR.
18 THE PROHIBITION CONTINUES UNTIL THE PERSON HAS SUBMITTED EVIDENCE ACCEPT-
19 ABLE TO THE COMMISSIONER OF LABOR SHOWING THAT THE VIOLATION HAS BEEN
20 CORRECTED.

21 (g) A PERSON AFFECTED BY AN ORDER ISSUED UNDER THIS CHAPTER MAY
22 SEEK EQUITABLE RELIEF PREVENTING THE COMMISSIONER OF LABOR FROM ENFORC-
23 ING THE ORDER.]

24 * Sec. 8. AS 08.18 is amended by adding a new section to read:

25 Sec. 08.18.125. TEMPORARY ORDERS. (a) If the commissioner has
26 reasonable cause to believe that a contractor has engaged in or is about
27 to engage in an act or practice in violation of this chapter or a regu-
28 lation adopted under it, he may, if he considers it in the public
29 interest,

1 (1) issue a temporary order directing the contractor to stop
2 the act or practice;

3 (2) issue a temporary order denying, suspending, limiting, or
4 conditioning the contractor's registration;

5 (3) bring an action in the superior court to enjoin the act
6 or practice and to enforce compliance with this chapter, a regulation
7 adopted under it, or an order issued under it;

8 (4) examine the books and records of the contractor;

9 (5) issue subpoenas for the attendance of witnesses, and the
10 production of books, records and other documents.

11 (b) A temporary order under (a)(1) or (a)(2) of this section may
12 be issued without written or oral notice to the contractor if the commis-
13 sioner believes that immediate and irreparable injury, loss, or damage
14 will result if the order is delayed. If an order is issued without
15 notice, the order shall define the injury, describe why the injury is
16 irreparable, and explain why the order was issued without notice. The
17 order shall also state the date and hour of issuance, and prescribe a
18 place and time within five days of issuance for a hearing by the commis-
19 sioner or his designee to determine whether the temporary order should
20 be continued. The commissioner shall place in his file at the time he
21 issues the order a memorandum that describes the evidence on which he
22 bases his belief for issuing the order without notice.

23 (c) The commissioner or his designee may extend the time for a
24 hearing under (b) of this section an additional five days on his own
25 motion or may shorten or extend the time before hearing at the request
26 of the contractor.

27 (d) A temporary order under (a)(1) or (a)(2) of this section
28 expires unless continued by the order of the commissioner or his
29 designee at a hearing under (b) of this section. At the hearing, whether

1 or not the contractor appears, the commissioner or his designee may
2 continue the order in effect for up to one year or until a hearing is
3 held under the Administrative Procedure Act (AS 44.62), whichever is
4 earlier.

5 (e) The commissioner or his designee shall be the hearing officer
6 at the hearing under (b) of this section. If the commissioner or his
7 designee designates a person to serve as hearing officer, the person
8 must have the qualifications prescribed by AS 44.62.350(c).

9 * Sec. 9. AS 08.18.131 is amended to read:

10 Sec. 08.18.131. INJUNCTION. In an action instituted in the
11 superior court by the commissioner, [OF LABOR OR] his representative,
12 or the attorney general, a person acting in the capacity of a contractor
13 in violation of this chapter may be enjoined from doing so.

14 * Sec. 10. AS 08.18.171 is amended by adding new paragraphs to read:

15 (4) "a construction trade" means a skill or craft commonly
16 used in the construction, repair, or alteration of homes, including
17 electrical work, heating and plumbing, carpentry, masonry, paving, sheet-
18 rocking, excavation, painting, roofing, fencing, landscaping, well-
19 drilling, and septic or sewage system installation;

20 (5) "department" means the Department of Commerce and Economic
21 Development;

22 (6) "general home contractor" means a general contractor as
23 defined in (2) of this section who builds or offers to build, for hire
24 or for sale, a home or homes, except that a contractor who builds for
25 hire or for sale no more than one home in each calendar year is not a
26 general home contractor;

27 (7) "home" means a one-to-four family residence or dwelling
28 and the real property on which the residence is located;

29 (8) "specialty home contractor" means a specialty contractor

1 as defined in (2) of this section, who for hire, constructs, alters,
2 repairs, demolishes, paints, roofs, landscapes, paves, or fences a home
3 or any part of a home, but whose business operations require the use of
4 no more than two distinct construction trades; a contractor who performs
5 this type of work for hire on no more than one home in each calendar
6 year is not a specialty home contractor.

7 * Sec. 11. The following laws are repealed: AS 08.18.061, 08.18.071,
8 08.18.081, 08.18.091, 08.18.111, and 08.18.141.

9 * Sec. 12. This Act takes effect July 1, 1982.

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