



**STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL**

<p>ATTORNEY GENERAL OPINION</p> <p>by</p> <p>THOMAS C. HORNE ATTORNEY GENERAL</p> <p>July 11, 2013</p>	<p>No. I13-001 (R13-006)</p> <p>Re: Board of Technical Registration with Regulating the Alarm Industry</p>
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To: Melissa Cornelius,¹ Executive Director
Arizona Board of Technical Registration

Pursuant to Arizona Revised States (“A.R.S.”) § 41-193(A)(7), this Opinion addresses questions from the Executive Director of the Arizona Board of Technical Registration (the “Board”) regarding implementation of H.B. 2748, as amended by H.B. 2176, (collectively the “alarm legislation”) which authorizes the Board to certify and regulate alarm businesses and agents.

Questions Presented

- (1) Are businesses that install alarms and are already licensed by the Registrar of Contractors (the “Registrar”) required to also register with the Board?
- (2) Can the Board require that a firm registered only with the Registrar sign off on alarm agent applications? Can the Board request that a firm licensed only by the Registrar designate a “controlling person”?

¹ Ronald Dalrymple submitted the Opinion request as Executive Director for the Board. Effective June 14, however, Melissa Cornelius is the Board’s new Executive Director.

(3) Can the Board deny an alarm business's application if the controlling person has been convicted of any felony? What is the Board's time frame for issuing or denying an alarm business certification?

(4) In the event that an alarm business decides to add or replace a controlling person after initial certification, must the new person submit fingerprints?

(5) How should the Board construe the requirement in A.R.S. § 32-122.06(A) that the Board act on an alarm agent application within 10 days so that it is consistent with the requirement in A.R.S. § 32-122.06(B) that the Board obtain a criminal background check on applicants?

Summary Answer

The Board's authority to certify and regulate alarm businesses and agents is determined by reading the alarm legislation in the context of the Board's existing statutes at A.R.S. §§ 32-101 through -152. An alarm business may be licensed by either the Registrar or the Board. Alarm agents and alarm businesses certified by the Board are subject to the requirements of the alarm legislation and the Board's other statutes.

Background

Effective August 2, 2012, the Legislature passed H.B. 2748, which amended portions of A.R.S. §§ 32-101 through -152 to empower the Board to regulate alarm businesses and agents in addition to the professions that the Board already regulates.² Effective September 13, 2013, H.B. 2176 amends certain portions of H.B. 2748 involving alarm agents.³ Beginning October 1, 2013,

² The Board also regulates architects, assayers, drug laboratory site remediation firms, engineers, geologists, home inspectors, land surveyors, and landscape architects.

³ This opinion treats H.B. 2176 as already in effect.

a business is required to be certified by the Board to operate an alarm business. A.R.S. § 32-122.05(A).

Analysis

1. Alarm Businesses Registered with the Registrar Do Not Also Have to Register with the Board to Install Alarms.

An alarm business may install alarms if the alarm business has been certified⁴ by the Board or if it has been licensed as a contractor by the Registrar. A.R.S. §§ 32-121 and -122.05(A). There is no authority for the Board to require that businesses that only install alarms and are already licensed with the Registrar also become licensed with the Board.⁵ Nothing in A.R.S. §§ 32-121 or -122.05(A), however, prevents a business from being licensed both with the Registrar and with the Board. Where an alarm business provides products or services beyond installation, that alarm business is required to be licensed with the Board. A.R.S. §§ 32-121 and -122.05(A).

2. If the Alarm Business Installing Alarms Is Registered Only with the Registrar, No Designated Person from the Alarm Business Is Required to Sign the Forms Required of an Individual Alarm Agent Applicant.

Under H.B. 2748, each alarm agent is required to apply for certification with the Board. A.R.S. § 32-122.06(A). An “alarm agent” means a “person, whether an employee, an independent contractor or otherwise, who acts on behalf of an alarm business.” A.R.S. § 32-101(B)(3)(a).

⁴ Arizona Revised Statutes Section 32-121 states that an alarm business may install alarms if it has *submitted an application* to the Board. However, this provision is clarified by A.R.S. § 32-122.05(A), which states that a “person shall not operate an alarm business unless the person obtains an alarm business certificate from the Board.”

⁵ Alarm agents are specifically exempted in H.B. 2176 as persons required to be licensed by the Registrar. *See* A.R.S. § 32-1121(A)(17) (effective September 13, 2013).

Licensed contractors are not required to be licensed with the Board in order to install alarms. A.R.S. § 32-121. However, if an alarm business applies for certification from the Board and is a corporation, partnership, limited liability company or other legal entity, it is required to designate one of its “controlling persons”⁶ to have full authority and act as principal. A.R.S. § 32-122.05(B)(2). That designated controlling person is then required to sign all application forms required of an individual alarm agent. *Id.* However, A.R.S. § 32-122.05 contains no provision requiring a principal of a firm licensed only with the Registrar to sign the application form of an individual alarm agent.

Statutory provisions are read and construed in context with related provisions and in light of their place in the statutory scheme. *State v. Seyrafi*, 201 Ariz. 147, 150, 32 P.3d 430, 434 (App. 2001). The Legislature’s intent is determined by reading the statute as a whole and by considering its context, subject matter, historical background, consequences, and effects. *Bunker Glass Co. v. Pilkington, PLC*, 202 Ariz. 481, 485, 47 P.3d 1119, 1123 (App. 2002).

Because licensed contractors are not required to be licensed with the Board to install alarms, the Board has no jurisdiction over them. As a result, the Board has no authority to require a licensed contractor to designate a controlling person or persons and also has no authority to require that a licensed contractor designate one of its controlling persons as a principal to sign alarm agent applications.

Moreover, the requirement that a designated controlling person sign off on an alarm agent’s application is located in the section of the alarm legislation that concerns the Board’s certification of alarm businesses. Consequently, the context of this requirement also makes it

⁶ A “controlling person” means a person who is designated by an alarm business. A.R.S. § 32-101(B)(14).

apparent that it applies only to those alarm businesses that are certified by the Board and not to entities that are only licensed by the Registrar.

3. The Board May Deny an Alarm Business's Application for Certification Based upon Conviction of the Crimes Listed in A.R.S. § 32-122.07, and the Board's Typical Time Frames Apply to Processing Alarm Business Applications.

Arizona Revised Statutes Section 32-122.07(A) provides a list of convictions for which the Board "shall deny" an application for certification as an alarm business or alarm agent. This is the only place in the Board's statutes that addresses the qualifications for certification as an alarm agent or an alarm business.⁷ As a result, the Board must necessarily deny an application for certification if an alarm agent or person designated as a controlling person for an alarm business has been convicted of one of the listed crimes.

There is no requirement for expedited processing of an alarm business's application for certification. See A.R.S. § 32-122.05. As a result, the typical time frames for processing applications established in Board rule apply to the processing of applications for alarm business certification. See A.A.C. R4-30-209.

4. Any Additional or Replacement Controlling Persons Are Required to Submit Fingerprints.

The statute requires that to obtain an alarm business certificate, each controlling person of the alarm business must submit a completed fingerprint card and a fingerprint background check fee to the Board. A.R.S. § 32-122.05(A). "On receipt of the application and each year thereafter on the anniversary of the initial certification" the Board is required to submit the fingerprints of

⁷ The qualifications for professional registration as an architect, engineer, geologist, and landscape architect are set out separately at A.R.S. § 32-122.01, and the qualifications for certification of home inspectors are set out at A.R.S. § 32-122.02.

each controlling person to the Department of Public Safety for the purpose of obtaining a criminal records check. *Id.*

Because each controlling person is required to submit a fingerprint card and a fee to the Board, any additional or replacement controlling person would also have to submit a fingerprint card and a fee when that person becomes a controlling person for the alarm business. This is the only tenable interpretation of Section 122.05(A). If replacement or additional controlling persons were not required to submit a background check, an unqualified person could become a controlling person immediately after certification and then resign as controlling person a year later when fingerprints were again required. Under such an interpretation, an unqualified person could serve as controlling person notwithstanding a disqualifying conviction under A.R.S. § 32-122.07(A).

If statutory language is susceptible of two constructions, an interpretation that will carry out the manifest objective of the legislation should be adopted. *State v. Jacobson*, 15 Ariz. App. 604, 606, 490 P.2d 433, 435 (1971). A common sense approach should be applied, and a statute should be read in terms of its stated purpose and the system of related statutes of which it is a part. *In re Marabella P.*, 223 Ariz. 159, 161, 221 P.3d 38, 40 (App. 2009). A statute should not be construed in an absurd manner, but rather must be construed so that it is reasonable and workable. *Rasmussen v. Indus. Comm'n*, 162 Ariz. 384, 386, 783 P.2d 830, 832 (App. 1989). As a result, A.R.S. § 32-122.05(A) should be interpreted to require submission of a fingerprint card and fee by any additional or replacement controlling person upon that person's becoming a controlling person for the alarm business.

You have further inquired whether an additional or replacement controlling person would be required to submit a second set of fingerprints when the alarm business certification is subject

to renewal, even if that occurs just a few months after they submitted their first set of fingerprints. For alarm businesses, the statute requires that the Board conduct a criminal records check each year on the anniversary of certification. A.R.S. § 32-122.05(A). As a result, criminal records checks must be performed for all controlling persons on the anniversary of certification even if the Board has only recently performed a background check on a particular controlling person.

5. The Board Should Obtain the Results of the Criminal Background Check Before Taking Action on an Alarm Agent Application, and Once a Certification Has Been Issued the Board Must Provide Due Process Before Taking Disciplinary Action on the Certification.

The Board is required to issue or deny an alarm agent certification card or a renewal certification card within ten business days after receiving the application. A.R.S. § 32-122.06(A). However, the Board is also required to submit an applicant's fingerprints to the Department of Public Safety for the purposes of obtaining a criminal records check. A.R.S. § 32-122.06(B). To construe these two provisions consistently and to prevent certification of statutorily disqualified applicants, the application is not complete until the Board receives the results of the criminal background check, and the Board then has ten business days to take action on the application. *See State v. Seyrafi*, 201 Ariz. 147, 150, 32 P.3d 430, 434 (App. 2001) (stating statutory provisions are read and construed in context with related provisions and in light of their place in the statutory scheme).

Once the Board issues an alarm agent certification, the person may work as an alarm agent without being directly supervised by another certified alarm agent. A.R.S. § 32-122.06(C). Due process is required before an agency can take away a person's property interest, such as an existing license to practice a profession. *Comeau v. Ariz. Bd. of Dental Exam'rs*, 196 Ariz. 102,

106, 993 P.2d 1066, 1070 (App. 1999); *see also Schillerstrom v. State*, 180 Ariz. 468, 471, 885 P.2d 156, 159 (App. 1994). When a professional license is at stake, the State's interest must justify the degree of infringement that ensues from the sanction, and appropriate procedures must be used to guard against arbitrary action. *Comeau*, 196 Ariz. at 106, 993 P.2d at 1070. As a result, once the Board has issued the alarm agent certification, it would need to hold a formal hearing to revoke or take other disciplinary action with regard to the certification.

Under A.R.S. § 32-128(C), the Board may take disciplinary action against the holder of a certificate or registration for gross negligence, incompetence, bribery, or other misconduct in the practice of the profession. A.R.S. § 32-128(C)(2). "Other misconduct" is defined in the Board's rules and includes "being convicted of a felony or misdemeanor, if the offense has a reasonable relationship to the functions of the registration." A.A.C. R4-30-101(16)(b). For alarm agents and controlling persons of an alarm business, the thirteen convictions listed in A.R.S. § 32-122.07(A) necessarily subject a certificate holder to revocation because they disqualify the person from certification. *See* A.R.S. § 32-122.07(A). In the event an alarm agent or controlling person for an alarm business is convicted of some other offense, the Board may take action as appropriate under its statutes. *See* A.R.S. § 32-128(C).

Conclusion

Alarm businesses must be licensed by either the Registrar or the Board. Where alarm businesses are certified by the Board, they are subject to the requirements of the alarm legislation and the Board's other statutes. If an alarm business is licensed only through the Registrar, the Board has no authority to require that alarm business to take any action. Alarm agents are certified by the Board and are also subject to the requirements of the alarm legislation and the Board's other statutes.

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