

REFERENCE TITLE: pest control; department of agriculture

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

HB 2822

Introduced by
Representatives Crandall: Biggs, Boone

AN ACT

AMENDING TITLE 3, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 19; TRANSFERRING AND RENUMBERING SECTIONS 32-2301, 32-2304, 32-2305, 32-2306, 32-2307 AND 32-2308, ARIZONA REVISED STATUTES, FOR PLACEMENT IN TITLE 3, CHAPTER 19, ARTICLE 1, ARIZONA REVISED STATUTES, AS ADDED BY THIS ACT, AS SECTIONS 3-3501, 3-3502, 3-3503, 3-3504, 3-3505 AND 3-3506, RESPECTIVELY; TRANSFERRING AND RENUMBERING SECTIONS 32-2311, 32-2312, 32-2313, 32-2314, 32-2317 AND 32-2319, ARIZONA REVISED STATUTES, FOR PLACEMENT IN TITLE 3, CHAPTER 19, ARTICLE 2, ARIZONA REVISED STATUTES, AS ADDED BY THIS ACT, AS SECTIONS 3-3531, 3-3532, 3-3533, 3-3534, 3-3535 AND 3-3536, RESPECTIVELY; TRANSFERRING AND RENUMBERING SECTIONS 32-2321, 32-2323, 32-2324, 32-2324.01, 32-2325, 32-2327 AND 32-2329, ARIZONA REVISED STATUTES, FOR PLACEMENT IN TITLE 3, CHAPTER 19, ARTICLE 3, ARIZONA REVISED STATUTES, AS ADDED BY THIS ACT, AS SECTIONS 3-3561, 3-3562, 3-3563, 3-3564, 3-3565, 3-3566 AND 3-3567, RESPECTIVELY; REPEALING SECTIONS 32-2302, 32-2303, 32-2320 AND 41-3008.07, ARIZONA REVISED STATUTES; REPEALING THE CHAPTER HEADING OF TITLE 32, CHAPTER 22, ARIZONA REVISED STATUTES; REPEALING THE ARTICLE HEADINGS OF TITLE 32, CHAPTER 22, ARTICLES 1, 2 AND 3, ARIZONA REVISED STATUTES; AMENDING SECTIONS 3-102 AND 3-363, ARIZONA REVISED STATUTES; AMENDING SECTIONS 3-3501, 3-3502, 3-3503, 3-3504, 3-3506, 3-3531, 3-3532, 3-3533, 3-3534, 3-3535, 3-3536, 3-3561, 3-3562, 3-3563, 3-3564, 3-3565, 3-3566 AND 3-3567, ARIZONA REVISED STATUTES, AS TRANSFERRED AND RENUMBERED BY THIS ACT; AMENDING SECTIONS 32-1121, 36-606, 36-898 AND 41-1092, ARIZONA REVISED STATUTES; RELATING TO STRUCTURAL PEST CONTROL.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Title 3, Arizona Revised Statutes, is amended by adding
3 chapter 19, to read:

4 CHAPTER 19

5 STRUCTURAL PEST CONTROL REGULATION

6 ARTICLE 1. STRUCTURAL PEST CONTROL ADMINISTRATION

7 ARTICLE 2. STRUCTURAL PEST CONTROL CERTIFICATION,
8 REGISTRATION AND LICENSURE

9 ARTICLE 3. STRUCTURAL PEST CONTROL REGULATION

10 Sec. 2. Transfer and renumber

11 A. Sections 32-2301, 32-2304, 32-2305, 32-2306, 32-2307 and 32-2308,
12 Arizona Revised Statutes, are transferred and renumbered for placement in
13 title 3, chapter 19, article 1, Arizona Revised Statutes, as added by this
14 act, as sections 3-3501, 3-3502, 3-3503, 3-3504, 3-3505 and 3-3506,
15 respectively.

16 B. Sections 32-2311, 32-2312, 32-2313, 32-2314, 32-2317 and 32-2319,
17 Arizona Revised Statutes, are transferred and renumbered for placement in
18 title 3, chapter 19, article 2, Arizona Revised Statutes, as added by this
19 act, as sections 3-3531, 3-3532, 3-3533, 3-3534, 3-3535 and 3-3536,
20 respectively.

21 C. Sections 32-2321, 32-2323, 32-2324, 32-2324.01, 32-2325, 32-2327
22 and 32-2329, Arizona Revised Statutes, are transferred and renumbered for
23 placement in title 3, chapter 19, article 3, Arizona Revised Statutes, as
24 added by this act, as sections 3-3561, 3-3562, 3-3563, 3-3564, 3-3565, 3-3566
25 and 3-3567, respectively.

26 Sec. 3. Repeal

27 A. Sections 32-2302, 32-2303, 32-2320 and 41-3008.07, Arizona Revised
28 Statutes, are repealed.

29 B. The chapter heading of title 32, chapter 22, Arizona Revised
30 Statutes, is repealed.

31 C. The article headings of title 32, chapter 22, articles 1, 2 and 3,
32 Arizona Revised Statutes, are repealed.

33 Sec. 4. Section 3-102, Arizona Revised Statutes, is amended to read:

34 3-102. Department organization

35 A. The Arizona department of agriculture is established consisting of
36 the following divisions:

37 1. The animal services division, which is responsible for milk, dairy,
38 livestock and aquaculture regulation, the state veterinarian, meat, poultry
39 and egg inspection and performing the administrative functions authorized or
40 contracted pursuant to law for the Arizona beef council.

41 2. The plant services division, which is responsible for the fruit and
42 vegetable standardization program and entomological services.

43 3. The environmental services division, which is responsible for:

44 (a) Regulating seed, feed and agricultural chemicals, including
45 ~~pesticides and fertilizers. , and for~~

1 (b) SECTIONS REGULATING AGRICULTURAL PESTICIDES AND STRUCTURAL PEST
2 MANAGEMENT.

3 (c) Native plant protection.

4 B. The following are established in addition to and separate from the
5 divisions of the department:

- 6 1. A state agricultural laboratory.
- 7 2. An office of agriculture safety.
- 8 3. An office of inspections.
- 9 4. An office of commodity development and promotion.

10 C. The department shall have a central administrative service office
11 providing:

- 12 1. Data processing, accounting and budgeting, records management,
13 publications, property control and personnel services and training.
- 14 2. A program to cross-train appropriate personnel to enable them to
15 perform similar functions or comparable work for different administrative
16 units in the department.

17 Sec. 5. Section 3-363, Arizona Revised Statutes, is amended to read:
18 3-363. Rules

19 The director shall adopt rules to regulate pesticides ~~which shall~~ THAT
20 include provisions to:

- 21 1. Administer and implement this article.
- 22 2. Prescribe measures to control, monitor, inspect and govern
23 pesticide use.
- 24 3. Prohibit or restrict pesticide use.
- 25 4. Restrict the areas in which pesticide use may occur.
- 26 5. Prescribe minimum qualifications for all persons who engage in
27 pesticide use, including, as appropriate, requirements that the persons have
28 valid licenses, permits or certificates, have adequate training, including
29 continuing education requirements and meet financial responsibility
30 standards.
- 31 6. Prescribe appropriate record keeping and reporting requirements
32 regarding pesticide use, except that the record keeping and reporting
33 requirements for growers and certified private applicators who apply
34 pesticides shall be equivalent to, but not more stringent than, the
35 requirements prescribed under the federal insecticide, fungicide and
36 rodenticide act (61 Stat. 163) and the food, agriculture, conservation and
37 trade act of 1990 (P.L. 101-624; 104 Stat. 3359).
- 38 7. Prohibit pesticide use ~~which~~ THAT is inconsistent with the
39 pesticide label as required under the federal insecticide, fungicide and
40 rodenticide act (61 Stat. 163).
- 41 8. Exempt from regulation under this article pesticide use that is
42 regulated in ~~title 32~~, chapter ~~22~~ 19 OF THIS TITLE.
- 43 9. Issue licenses, permits and certificates for pesticide use, as
44 appropriate, having terms of one or more years.

1 10. Charge and collect the following fees for each permit, license and
2 certification under this article:

- 3 (a) Not to exceed twenty dollars per year for a grower permit.
- 4 (b) Not to exceed one hundred dollars per year for a seller permit.
- 5 (c) Not to exceed one hundred dollars per year for a custom applicator
6 license.
- 7 (d) Not to exceed fifty dollars per year for a pilot license.
- 8 (e) Not to exceed fifty dollars per year for a pest control advisor
9 license.
- 10 (f) Not to exceed twenty-five dollars per year for a piece of
11 equipment used to apply pesticides by a custom applicator.
- 12 (g) Not to exceed fifty dollars per year for restricted use
13 certification.

14 11. Establish a nonexclusive list of acts and omissions that constitute
15 serious, nonserious and de minimis violations of this article.

16 12. Establish a system of administrative penalties and fines for
17 violations of this article and any rules adopted under this article. Under
18 this system:

- 19 (a) Violators shall be assessed a number of points for each violation,
20 depending ~~upon~~ ON such factors as:
 - 21 (i) Potential and actual consequences of the violation on public and
22 worker health and safety and the environment.
 - 23 (ii) Wrongfulness of the conduct.
 - 24 (iii) Degree of culpability of the violator.
 - 25 (iv) Duration of the violation.
 - 26 (v) Prior violations or citations.
- 27 (b) Penalties shall be assessed depending ~~upon~~ ON the number of points
28 accrued by the violator.

29 Sec. 6. Section 3-3501, Arizona Revised Statutes, as transferred and
30 renumbered by this act, is amended to read:

31 3-3501. Definitions

32 In this chapter, unless the context otherwise requires:

33 1. "ASSOCIATE DIRECTOR" MEANS THE ASSOCIATE DIRECTOR OF THE
34 ENVIRONMENTAL SERVICES DIVISION.

35 ~~1-~~ 2. "Branch office" means any fixed place of business, other than
36 the primary office, where records are kept, mail is received, statements are
37 rendered, money is collected, requests for service or bids are received or
38 information pertaining to the business of structural pest control is given
39 and from which the use of pesticides and devices is supervised by a ~~certified~~
40 LICENSED applicator or qualifying party.

41 ~~2-~~ 3. "Business license" means a license that is issued pursuant to
42 this chapter to a person and that entitles that person and the person's
43 employees to engage in the business of structural pest control.

1 ~~3-~~ 4. "Business of structural pest control" means engaging in,
2 offering to engage in, advertising for, soliciting or performing structural
3 pest control, including any of the following:

4 (a) Identifying infestations or making inspections for the purpose of
5 identifying or attempting to identify infestations of households or other
6 structures and the surrounding area by any of the following:

7 (i) Public health pests.

8 (ii) Aquatic pests.

9 (iii) Household pests.

10 (iv) Wood-destroying insects.

11 (v) Pests, including weeds, existing around structures, in ornamental
12 shrubs and trees, on golf courses, along rights-of-way or in lawns and
13 cemeteries.

14 (vi) Fungi.

15 (b) Making written or oral inspection reports, recommendations,
16 estimates or bids with respect to infestations.

17 (c) The application of pesticides or the making of contracts or
18 submitting of bids for the application of pesticides or the use of devices
19 for the purpose of eliminating, exterminating, controlling or preventing
20 infestations.

21 ~~4. "Commission" means the structural pest control commission~~
22 ~~established by section 32-2302.~~

23 5. "De minimis violation" means a violation that, although
24 undesirable, has no direct or immediate relationship to safety, health or
25 property damage.

26 6. "Device" means any mechanical, pesticide or electrical apparatus
27 used in conjunction with, in place of or to supplement, disperse or dispense
28 pesticides.

29 7. "Direct supervision" means use of a pesticide under the
30 instructions, control and responsibility of a licensed applicator who is
31 available if needed for consultation or assistance even though the licensed
32 applicator is not physically present at the time and place the pesticide is
33 used.

34 8. "DIVISION" MEANS THE ENVIRONMENTAL SERVICES DIVISION OF THE ARIZONA
35 DEPARTMENT OF AGRICULTURE.

36 ~~8-~~ 9. "Final grade treatment" means establishment of vertical
37 barriers at the exterior of foundation walls in stem wall construction or at
38 the exterior of grade beams in monolithic construction.

39 ~~9-~~ 10. "Fungi inspection report" means a written inspection report on
40 a form approved by the ~~commission~~ DIVISION.

41 ~~10-~~ 11. "Household pests" means pests, other than wood-destroying
42 insects, that invade households or other structures, including rodents,
43 vermin and insects.

1 ~~11.~~ 12. "Immediate supervision" means use of a pesticide by an
2 employee acting under the instructions, control and responsibility of a
3 licensed applicator who is within the direct line of sight or within hearing
4 distance of the employee and who is available for consultation or assistance
5 at the time and place the pesticide is used.

6 ~~12.~~ 13. "Initial termite corrective treatment" means the first
7 treatment of any kind performed by a licensee after a treatment made prior to
8 or during construction, excluding a treatment performed by a licensee who has
9 performed the treatment prior to or during construction and is performed
10 under warranty.

11 ~~13.~~ 14. "Inquiry" means information from the public or ~~commission~~
12 DEPARTMENT staff of possible violations of this chapter, or rules adopted
13 pursuant to this chapter.

14 ~~14.~~ 15. "Integrated pest management" means a sustainable approach to
15 managing pests that combines biological, cultural, physical and pesticide
16 tools in a way that minimizes economic, health and environmental risks.

17 ~~15.~~ 16. "License" means an approval granted by the ~~commission~~
18 DEPARTMENT to act as an applicator or qualifying party or to operate a
19 business of structural pest control in this state.

20 ~~16.~~ 17. "Licensed applicator" means a person who is licensed by the
21 ~~commission~~ DEPARTMENT to apply pesticides in accordance with this chapter.

22 ~~17.~~ 18. "Other structures" includes railroad cars, boats, docks, motor
23 vehicles or airplanes and their contents.

24 ~~18.~~ 19. "Pesticide" means any substance or mixture of substances
25 intended to be used for defoliating plants or for preventing, destroying,
26 repelling or mitigating insects, fungi, bacteria, microbes, weeds, rodents,
27 predatory animals or any form of plant or animal life that is a pest and may
28 infest or be detrimental to vegetation, humans, animals or households or be
29 present in any environment.

30 ~~19.~~ 20. "Prior violation" means any violation for which disciplinary
31 action was taken within a five-year period prior to the date of the violation
32 for which current disciplinary action is sought.

33 ~~20.~~ 21. "Qualifying party" means an individual who is licensed by the
34 ~~commission~~ DEPARTMENT to ensure the supervision and training of all employees
35 of a business licensee in the business of structural pest control.

36 ~~21.~~ 22. "Structural pest control" means controlling public health
37 pests, aquatic pests, household pests, wood-destroying insects, fungi or
38 other pests, including weeds, that exist near or around structures, in
39 ornamental shrubs and trees, on golf courses, along rights-of-way or in lawns
40 or cemeteries and all pesticide application that could be harmful to public
41 health or the environment. Structural pest control does not include
42 pesticide applications used directly in the commercial production of crops
43 and animals if such applications are governed by the ~~Arizona~~ department ~~of~~
44 ~~agriculture~~ pursuant to ~~title 3,~~ chapter 2, articles 6 and 6.1 ~~OF THIS TITLE.~~

1 ~~22.~~ 23. "Weed" means any plant that grows where it is not wanted.
2 ~~23.~~ 24. "Wood-destroying insect INSPECTION report" means a written
3 inspection report on a form approved by the ~~commission~~ DIRECTOR that is
4 prepared in connection with the sale or refinancing of real property whether
5 or not the report is used as part of the transaction.
6 ~~24.~~ 25. "Wood-destroying insects" means insects that attack, damage or
7 destroy wood or wood-derivative products.
8 Sec. 7. Section 3-3502, Arizona Revised Statutes, as transferred and
9 renumbered by this act, is amended to read:
10 3-3502. Powers and duties
11 A. The ~~commission~~ DIRECTOR IS RESPONSIBLE FOR ADMINISTERING THIS
12 CHAPTER AND shall:
13 1. Adopt rules that are necessary or proper for the administration of
14 this chapter, including administrative provisions, EDUCATION REQUIREMENTS,
15 health and safety provisions and provisions for the use, storage and
16 application of pesticides and devices used in structural pest control.
17 ~~2. Administer and enforce this chapter and rules adopted pursuant to~~
18 ~~this chapter.~~
19 ~~3. Maintain a record of its acts and proceedings, including the~~
20 ~~issuance, refusal, renewal, suspension or revocation of licenses.~~
21 ~~4. At least thirty calendar days before adoption of a rule, form or~~
22 ~~policy, mail a copy of notice of a proposed rule, form or policy adoption,~~
23 ~~including the text of the proposed rule, form or policy, to each business~~
24 ~~licensee who has made a request to the commission, except that if the~~
25 ~~commission finds that adoption of a rule is necessary for immediate~~
26 ~~preservation of the public peace, health and safety and that notice is~~
27 ~~impractical, unnecessary or contrary to public interest it may adopt a rule~~
28 ~~without prior notice. Within thirty calendar days after the adoption of a~~
29 ~~statute by the legislature or approval of a rule by the governor's regulatory~~
30 ~~review council, the commission shall notify all business licensees in~~
31 ~~writing.~~
32 ~~5. Hire inspectors as needed, considering recommendations of the~~
33 ~~executive director.~~
34 ~~6.~~ 2. Notify the business licensee, applicator and qualifying party
35 in writing of any complaint against the business licensee, qualifying party
36 or employee of the business licensee by the close of business on the tenth
37 business day after the day on which the ~~commission~~ DIRECTOR initiated the
38 complaint.
39 ~~7. Receive and appropriately respond to any inquiry.~~
40 ~~8. Issue subpoenas for the taking of depositions, the production of~~
41 ~~documents and things and the entry on land for inspection and measuring,~~
42 ~~surveying, photographing, testing or sampling the property or any designated~~
43 ~~object or operation on the property relevant to the complaint.~~

1 ~~9. List any complaint, inquiry, issue or matter it plans to discuss at~~
2 ~~a public meeting in the agenda for the meeting.~~

3 ~~10. Make applicator license and qualifying party license test study~~
4 ~~materials available, at the commission's actual costs, to any interested~~
5 ~~person.~~

6 ~~11.~~ 3. Conduct or contract to conduct applicator license and
7 qualifying party license tests at locations throughout this state. If the
8 ~~commission~~ DIRECTOR contracts for these tests, the contracts may provide for
9 specific examination fees or a reasonable range of fees determined by the
10 ~~commission~~ DIRECTOR to be paid directly to the contractor by the applicant.
11 The ~~commission~~ DIRECTOR shall make all efforts to contract with private
12 parties to electronically administer the applicator and qualifying party
13 license tests.

14 ~~12. Refer all cases of termite treatments that are done before or~~
15 ~~during construction and that involve alleged criminal fraud to the criminal~~
16 ~~fraud division of the attorney general's office and refer any case the~~
17 ~~commission determines to contain information relating to a possible felony to~~
18 ~~the proper law enforcement agency.~~

19 ~~13.~~ 4. Maintain a computer system for the benefit and protection of
20 the public that includes the following information on termite treatments that
21 are done before or during construction, initial termite corrective projects,
22 preventative termite treatments and wood-destroying insect inspection
23 reports:

- 24 (a) The name of the individual who performed the work.
- 25 (b) The address or location of the work or project.
- 26 (c) The name of the pest control company.
- 27 (d) The name of the qualifying party.
- 28 (e) The applicator license numbers.
- 29 (f) The nature and date of the work performed.
- 30 (g) Any other information that is required by ~~the commission in its~~
31 ~~rules~~ RULE.

32 ~~14. Establish offices it deems necessary to carry out the purposes of~~
33 ~~this chapter.~~

34 ~~15. Employ an executive director and other permanent or temporary~~
35 ~~personnel it deems necessary to carry out the purposes of this chapter and~~
36 ~~designate their duties.~~

37 ~~16.~~ 5. Investigate violations of this chapter and rules adopted
38 pursuant to this chapter.

39 ~~17.~~ 6. Oversee the approval, content and method of delivery of
40 continuing education courses.

41 ~~18.~~ 7. Deny a license to any person who has had a license revoked for
42 a period of five years from the time of revocation.

43 ~~19.~~ 8. License applicators, qualifying parties and businesses in
44 accordance with this chapter and rules adopted pursuant to this chapter.

1 ~~20. Prepare guidelines for an integrated pest management program for~~
2 ~~structural pest control practices at schools. On or before December 1 of~~
3 ~~each year, the commission shall report on the progress of preparing the~~
4 ~~guidelines to the governor, the president of the senate and the speaker of~~
5 ~~the house of representatives and shall provide a copy of the report to the~~
6 ~~secretary of state and the director of the Arizona state library, archives~~
7 ~~and public records. The guidelines shall include the following:~~

8 ~~(a) The identification of pests.~~

9 ~~(b) The establishment of a monitoring and record keeping system for~~
10 ~~regular sampling and assessment of pest populations.~~

11 ~~(c) The determination of the pest population levels that can be~~
12 ~~tolerated based on aesthetic, economic and health concerns and setting action~~
13 ~~thresholds if pest populations or environmental conditions warrant remedial~~
14 ~~action.~~

15 ~~(d) A plan to prevent pest problems through improved sanitation, waste~~
16 ~~management, physical barriers and the modification of habitats that attract~~
17 ~~or harbor pests.~~

18 ~~(e) The reliance on nontoxic, biological, cultural or natural control~~
19 ~~agents.~~

20 ~~(f) The use of pesticides, if necessary, with preference for products~~
21 ~~that are the least harmful to human health and the environment.~~

22 ~~21.~~ 9. Require the payment of a penalty for any late license renewal.

23 ~~22.~~ 10. Require either completion of the continuing education
24 requirement or successful completion of the license examination for failure
25 to renew a license on time.

26 ~~23.~~ 11. Suspend a license if a licensee fails to renew the license
27 within thirty calendar days ~~of~~ AFTER the renewal date.

28 ~~24.~~ 12. Refuse to issue a business license in a name that is not
29 registered with the secretary of state or filed with the Arizona corporation
30 commission.

31 ~~25.~~ 13. Adopt a wood-destroying insect inspection report form for use
32 by business licensees.

33 B. THE DIRECTOR MAY CHARGE TO THE HOLDER OF A BUSINESS LICENSE THE
34 ACTUAL COST OF PROVIDING MAILED COPIES OF RULES, FORMS OR POLICIES THAT ARE
35 PROPOSED FOR ADOPTION AND FOR EDUCATIONAL MATERIALS.

36 C. THE ASSOCIATE DIRECTOR SHALL ADMINISTER AND ENFORCE THIS CHAPTER
37 AND THE RULES ADOPTED PURSUANT TO THIS CHAPTER.

38 ~~B.~~ D. The ~~commission~~ DIRECTOR may:

39 1. Compel attendance of witnesses, administer oaths or affirmations
40 and take testimony concerning all matters coming within ~~it's~~ THE DIRECTOR'S
41 jurisdiction.

42 2. Require a person who seeks a license pursuant to this chapter to
43 submit to the ~~commission~~ DEPARTMENT OF AGRICULTURE a full set of fingerprints
44 and the fees required by section 41-1750. The ~~commission~~ DIRECTOR shall
45 submit the fingerprints and fees to the department of public safety for the

1 purpose of obtaining a state and federal criminal records check pursuant to
2 section 41-1750 and Public Law 92-544. The department of public safety may
3 exchange this fingerprint data with the federal bureau of investigation.

4 3. Enter into intergovernmental agreements.

5 4. With at least twenty-four hours' notice, request specific records
6 from a business licensee, qualifying party or applicator at the person's
7 place of business during normal business hours.

8 5. Deny or revoke a license based on the information in the
9 application or information that the ~~commission~~ DIRECTOR receives from the
10 criminal background check.

11 6. On a showing of good cause by the business licensee, excuse a
12 failure to timely comply with a records request.

13 ~~7. Charge to the holder of a business license the actual cost of~~
14 ~~providing mailed copies of rules, forms or policies that are proposed for~~
15 ~~adoption.~~

16 ~~8. Hire independent contractors to conduct inspections and take~~
17 ~~pesticide samples, soil samples or any other samples for purposes of testing~~
18 ~~the type and quantity of pesticides that are used in connection with pest~~
19 ~~control treatment.~~

20 ~~9.~~ 7. Issue advisory notices for de minimis violations.

21 ~~10. Notify a business licensee, qualifying party or licensed applicator~~
22 ~~of all requests for review of the business licensee's, qualifying party's or~~
23 ~~licensed applicator's records within ten business days of after the request.~~

24 ~~11.~~ 8. Require inspectors to be licensed applicators in all categories
25 within their scope of work during their probationary period. Inspectors
26 shall attend and complete an investigative training class that is prescribed
27 by the ~~commission within their probationary period~~ DIRECTOR.

28 ~~12.~~ 9. Investigate alleged violations of all applicable federal and
29 state statutes, and rules adopted or orders issued by the ~~commission~~ or
30 alleged violations of any condition imposed by the ~~commission~~ in connection
31 with a license.

32 ~~13. Provide general technical advice, support and information~~
33 ~~concerning structural pest control to the public and the licensees.~~

34 ~~14.~~ 10. Pursuant to section ~~32-2329~~ 3-3567, summarily suspend a
35 license issued under this chapter to protect the health, safety and welfare
36 of the public.

37 ~~15.~~ 11. Issue a corrective work order requiring a licensee to remedy
38 deficiencies in treatment or to comply with this chapter or any rules adopted
39 pursuant to this chapter before or after a formal hearing.

40 ~~16.~~ 12. Do at least one of the following in relation to unlicensed
41 structural pest control business operations:

42 (a) Issue a cease and desist order requiring an unlicensed structural
43 pest control business to immediately cease operations.

44 (b) Except as provided in section ~~32-2311~~ 3-3531, subsection C, impose
45 on an unlicensed structural pest control business a civil penalty of not more

1 than one thousand dollars for the first occurrence and not more than two
2 thousand dollars for the second or subsequent occurrence.

3 ~~17. Refer all cases for formal hearing to the office of administrative~~
4 ~~hearings.~~

5 ~~18.~~ 13. Refuse to issue a business license in a name that is likely to
6 be misleading or to imply any distorted representation about the business.

7 ~~19.~~ 14. Issue a renewable and revocable temporary qualifying party
8 license to a licensed applicator who is a representative of a business
9 licensee if the qualifying party becomes disassociated with the business
10 licensee.

11 ~~20.~~ 15. Provide and conduct classes to train applicators and
12 qualifying parties in preparation for license tests. The ~~commission~~ DIRECTOR
13 may assess a fee for each class. The ~~commission~~ DIRECTOR may contract with a
14 commercial enterprise or an accredited institution to conduct the class.

15 ~~21.~~ 16. Provide and conduct continuing education classes quarterly.
16 The ~~commission~~ DIRECTOR may assess a fee for each credit hour. The
17 ~~commission~~ DIRECTOR may contract with a commercial enterprise or an
18 accredited institution to conduct the class under the supervision of
19 ~~commission~~ DIVISION staff.

20 ~~22. Appoint a member or employee of the commission to conduct an~~
21 ~~informal settlement conference with a licensee against whom an inquiry is~~
22 ~~received or a complaint is filed.~~

23 ~~23. Prepare a consent order only after either an informal settlement~~
24 ~~conference is conducted pursuant to section 32-2321 or a formal hearing is~~
25 ~~conducted pursuant to title 41, chapter 6, article 10.~~

26 ~~24.~~ 17. Apply to the appropriate court, through the attorney general
27 or county attorney, for an order enjoining any act or practice that
28 constitutes a violation of this chapter or any rule adopted pursuant to this
29 chapter.

30 ~~25. Approve proposed consent orders.~~

31 ~~26. Annually prepare a strategic plan.~~

32 ~~6.~~ E. Each completed form for a termite treatment that is done before
33 or during construction, initial termite corrective treatment project or
34 wood-destroying insect inspection report shall be accompanied by a fee. The
35 initial fee is eight dollars. The ~~commission~~ DIRECTOR may:

36 1. Adjust the fee upward or downward to a level that is calculated to
37 produce sufficient revenue to carry out the functions prescribed under this
38 section. ~~The commission may~~

39 2. Establish tiered fees according to the means of submission to
40 encourage electronic submission of the termite action registration form. ~~The~~
41 ~~commission may~~

42 3. Assess a penalty of not to exceed one hundred dollars per form for
43 failing to submit the required form or fee, or both, within thirty calendar
44 days.

1 ~~D. The executive director serves at the pleasure of the commission.~~
2 ~~Compensation for the executive director and employees shall be determined~~
3 ~~pursuant to section 38-611.~~

4 ~~E. Subject to the limitations of section 41-2544, the executive~~
5 ~~director may enter into agreements for the purpose of enabling the commission~~
6 ~~to accept payment for fees imposed under this chapter by alternative payment~~
7 ~~methods, including credit cards, charge cards, debit cards and electronic~~
8 ~~funds transfers. Before the monies are transferred to the executive director~~
9 ~~pursuant to section 32-2305, the person collecting the fees shall deduct any~~
10 ~~amount charged or withheld by a company providing the alternative payment~~
11 ~~method under an agreement with the commission.~~

12 F. In the enforcement of this article, the ~~commission~~ DIRECTOR or any
13 ~~of its~~ duly authorized agents may enter with the authority of a warrant
14 issued by a court of competent jurisdiction at reasonable times on any
15 private or public property on which pesticides are located or are reasonably
16 believed to be located to be used for purposes related to structural pest
17 control. The owner, managing agent or occupant of the property shall permit
18 entry for the purpose of inspecting and investigating conditions relating to
19 the use, storage, application and disposal of pesticides.

20 ~~G. The commission shall not delegate to its staff the powers and~~
21 ~~duties listed under:~~

22 ~~1. Subsection A, paragraphs 1, 2, 12, 14, 18, 19, 20, 23 and 25 of~~
23 ~~this section.~~

24 ~~2. Subsection B, paragraphs 3, 5, 7, 8, 14, 17, 18, 24 and 25 of this~~
25 ~~section.~~

26 Sec. 8. Section 3-3503, Arizona Revised Statutes, as transferred and
27 renumbered by this act, is amended to read:

28 3-3503. Structural pest control fund

29 A. A structural pest control ~~commission~~ fund is established.

30 B. Pursuant to sections 35-146 and 35-147, the ~~executive~~ director
31 shall deposit ten per cent of all fees in the state general fund and deposit
32 the remaining ninety per cent in the structural pest control ~~commission~~
33 fund. All monies collected from civil penalties shall be deposited, pursuant
34 to sections 35-146 and 35-147, in the state general fund.

35 C. Monies deposited in the structural pest control ~~commission~~ fund are
36 ~~subject to section 35-143.01~~ EXEMPT FROM THE PROVISIONS OF SECTION 35-190
37 RELATING TO LAPSING OF APPROPRIATIONS.

38 Sec. 9. Section 3-3504, Arizona Revised Statutes, as transferred and
39 renumbered by this act, is amended to read:

40 3-3504. Annual and informational reports

41 A. On or before ~~April 30~~ SEPTEMBER 30 of each year, the ~~commission~~
42 ASSOCIATE DIRECTOR shall submit a report regarding the number and types of
43 termite treatments as ~~reported on termite action reports~~ MAINTAINED pursuant
44 to section ~~32-2304~~ 3-3502, ~~subsections A and C~~ SUBSECTION E. The information
45 shall be categorized according to the general type of treatment used,

1 including pesticide, bait, mechanical, temperature and other methods of
2 treatment. If pesticide treatment is used, the report shall include the
3 active ingredient or trade name of the pesticide used.

4 B. The ~~commission~~ ASSOCIATE DIRECTOR shall submit COPIES OF the report
5 to the speaker of the house of representatives, the president of the senate,
6 ~~and the governor, and shall provide a copy of the report to~~ the secretary of
7 state and the director of the Arizona state library, archives and public
8 records.

9 C. If a buyer of real property makes a request to the ~~commission~~
10 DIRECTOR, the ~~commission~~ DIRECTOR shall make available to the buyer an
11 information report listing all termite treatments reported ~~to the commission~~
12 for the property. The wood-destroying insect inspection report shall state
13 that a buyer may obtain the information report from the ~~commission~~ DIRECTOR.

14 Sec. 10. Section 3-3506, Arizona Revised Statutes, as transferred and
15 renumbered by this act, is amended to read:

16 3-3506. Joint responsibility for supervised persons

17 A. A business licensee, qualifying party or applicator may be held
18 jointly responsible for the acts or omissions of another person who is under
19 the supervision of the business licensee, qualifying party or applicator if
20 the supervising licensee fails to properly train, equip or supervise the
21 other person or fails to maintain records of proper training, equipping or
22 supervising.

23 B. Failure to timely and fully respond to ~~commission~~ requests BY THE
24 DIRECTOR for information relating to training, equipping and supervising is a
25 prima facie showing of a failure to properly train, equip or supervise. The
26 supervising licensee has the burden of proof by a preponderance of the
27 evidence that the business licensee, qualifying party or applicator has
28 fulfilled the required duties as prescribed by this chapter, rules adopted
29 pursuant to this chapter or a written order of the ~~commission~~ ASSOCIATE
30 DIRECTOR.

31 Sec. 11. Section 3-3531, Arizona Revised Statutes, as transferred and
32 renumbered by this act, is amended to read:

33 3-3531. Persons not required to be licensed; civil penalties

34 A. This ~~article and articles 1 and 3 of this~~ chapter ~~do~~ DOES not apply
35 to:

36 1. Persons licensed or certified pursuant to ~~title 3,~~ chapter 2,
37 article 6 OF THIS TITLE.

38 2. Persons applying pesticides on property that they own and occupy.

39 3. Authorized representatives of any educational institution engaged
40 in research in the study of pest control or a state agency engaged in
41 research or the study of pest control.

42 4. Employees of political subdivisions or their designated agents
43 while ~~performing emergency response or rescue services~~ ACTING IN THEIR
44 OFFICIAL CAPACITY.

1 5. Persons using a nonrestricted, ready to use disinfectant, sanitizer
2 or deodorizer.

3 6. Except as provided in section ~~32-2307~~ 3-3505, persons who are
4 conducting lawn, garden, shrub or tree maintenance and who apply herbicides
5 for the purpose of weed control. This exemption does not apply to:

6 (a) The use of herbicides that are labeled with the words "restricted
7 use" or "danger" and that are not commercially available to the general
8 public.

9 (b) The use of sterilants.

10 (c) Persons who offer weed control as their primary service.

11 (d) Persons who use application equipment that holds more than eight
12 gallons of total mixed liquid herbicide.

13 (e) Persons who use more than twenty-five pounds of a nonliquid
14 herbicide.

15 (f) Persons who do not follow label and labeling directions.

16 7. A utility and the utility's employees if both of the following
17 apply:

18 (a) Pest control services are immediately needed for an employee's
19 health and safety in order for the employee to continue performing work
20 tasks.

21 (b) A qualifying party ensures that employees who conduct pest control
22 services are properly trained, supervised and equipped.

23 B. A person who is exempt pursuant to subsection A, paragraph 6 of
24 this section shall provide treatment records to each customer on application
25 of herbicides for the purpose of weed control and shall retain records
26 containing the same information provided to customers. For the purposes of
27 this subsection, treatment records shall include all of the following:

28 1. The address of the location of the herbicide application.

29 2. The date of the herbicide application.

30 3. The trade name or common name of the herbicide applied.

31 C. If a person is exempt pursuant to subsection A, paragraph 6 of this
32 section but does not comply with subsection B of this section or if a **PERSON**
33 **IS NOT LICENSED UNDER THIS CHAPTER AND THE** person is not exempt pursuant to
34 subsection A, paragraph 6 of this section as a result of doing something
35 prescribed in subsection A, paragraph 6, subdivisions (a) through (f) of this
36 section, the ~~commission~~ **DIRECTOR** shall:

37 1. On a first violation, issue a written notice of correction that
38 contains a warning and a copy of this section and that provides full notice
39 of the exemption requirements.

40 2. On a second violation, impose a civil penalty of not more than two
41 hundred fifty dollars.

42 3. On a third or any subsequent violation, impose a civil penalty of
43 not more than five hundred dollars.

1 Sec. 12. Section 3-3532, Arizona Revised Statutes, as transferred and
2 renumbered by this act, is amended to read:

3 3-3532. Applicator licenses; application; categories; renewal;
4 inactive licenses

5 A. An application for an applicator license shall be in a form
6 prescribed by the ~~commission~~ DIRECTOR and accompanied by the prescribed fee.
7 The application shall set forth whether the applicant has ever been convicted
8 of a felony and, if so, the nature of the felony, when and where it was
9 committed and the disposition of the conviction.

10 B. An applicant may apply for a license in any one or a combination of
11 the following categories:

12 1. General and public health pest control, excluding control of
13 wood-destroying insects, wood-destroying insect inspection, antimicrobial
14 pest control, fungi inspection, right-of-way and weed control, fumigation,
15 aquatic pest control and turf and ornamental horticulture pest control.

16 2. Control of wood-destroying insects.

17 3. Right-of-way and weed control.

18 4. Fumigation.

19 5. Turf and ornamental horticulture pest control.

20 6. Antimicrobial pest control.

21 7. Fungi inspection.

22 8. Wood-destroying insect inspection.

23 9. Aquatic pest control.

24 10. Other categories or subcategories based on practice in the industry
25 and established by ~~the commission in its rules~~ RULE.

26 C. An applicator shall pass an examination, given under the direction
27 of the ~~commission~~ DIRECTOR, with a score of at least seventy-five per cent
28 for each category in which the applicator is seeking licensure.

29 D. An applicator shall be of good moral character. A felony
30 conviction may demonstrate a lack of good moral character.

31 E. Except as provided in subsection F of this section, each employee
32 of a business licensee applying pesticides shall be licensed in all
33 applicable categories within ninety calendar days ~~of~~ AFTER employment.

34 F. An unlicensed employee of a business licensee applying pesticides,
35 other than for the treatment of termites, shall work under the direct
36 supervision of a licensed applicator at all times.

37 G. An unlicensed employee of a business licensee applying pesticides
38 for the treatment of termites shall work under the immediate supervision of a
39 licensed applicator at all times. Only one unlicensed employee at a time may
40 be immediately supervised by a licensed applicator.

41 H. A licensed applicator desiring to work in a category for which the
42 applicator is not licensed shall become licensed in the category within
43 thirty calendar days ~~of~~ AFTER beginning work.

44 I. Each applicator license shall be renewed ~~annually~~ by submitting a
45 form prescribed by the ~~commission~~ DIRECTOR and paying the prescribed fee.

1 J. An applicator may apply to the ~~commission~~ DIRECTOR for inactive
2 license status. To reactivate an inactive license that has been inactive for
3 one year or less, an applicator shall apply to the ~~commission~~ DIRECTOR. To
4 reactivate an inactive license that has been inactive for more than one year,
5 an applicator shall apply to the ~~commission~~ DIRECTOR and shall either
6 successfully complete the applicator license examination or, within twelve
7 months preceding application for reactivation, complete continuing education
8 as required pursuant to section ~~32-2319~~ 3-3536.

9 Sec. 13. Section 3-3533, Arizona Revised Statutes, as transferred and
10 renumbered by this act, is amended to read:

11 3-3533. Business license; renewal; financial security;
12 definition

13 A. A person who wishes to engage in the business of structural pest
14 control shall first obtain a business license from the ~~commission~~ DIRECTOR as
15 provided in this article. A person who is not exempt under this article and
16 who advertises for, solicits or holds himself out as willing to engage in the
17 business of structural pest control is presumed to be in the business of
18 structural pest control.

19 B. An application for a business license shall:

- 20 1. Be in a form prescribed by the ~~commission~~ DIRECTOR.
- 21 2. Be accompanied by the prescribed fee.

22 3. Include the name and address of the qualifying party and written
23 documentation of how the qualifying party will be active in the day-to-day
24 management of the business licensee.

25 4. List all owners with more than a ten per cent ownership interest in
26 the company, all corporate officers and members of the board of directors.

27 C. A business licensee shall register each primary and branch office
28 with the ~~commission~~ DEPARTMENT before it opens for business.

29 D. An applicant shall furnish the following to the ~~commission~~
30 DEPARTMENT:

31 1. Proof of financial responsibility consisting of either a deposit of
32 money, liability insurance, a surety bond or a certified check protecting
33 persons who may suffer legal damages as a result of the operations of the
34 applicant. ~~The commission shall not accept a bond or a liability insurance~~
35 ~~policy unless issued by an insurer that holds a valid certificate of~~
36 ~~authority or that is permitted to transact surplus lines insurance in this~~
37 ~~state. The amount of the deposit, insurance or bond shall be at least three~~
38 ~~hundred thousand dollars for property damage and public liability insurance,~~
39 ~~each separately, and shall be maintained at not less than that amount at all~~
40 ~~times during the licensing period. The license of a business licensee who~~
41 ~~permits the security of either property damage or public liability insurance~~
42 ~~to fall below the sum of three hundred thousand dollars shall be suspended by~~
43 ~~the commission and shall remain suspended until the security meets the~~
44 ~~minimum financial requirement. The property damage and public liability~~
45 ~~insurance need only cover those particular operations in which the licensee~~

1 ~~is engaged at any time. If the financial security is in the form of~~
2 ~~liability insurance or a surety bond, the insurer or surety shall provide a~~
3 ~~certificate of coverage that indicates the coverages and endorsements~~
4 ~~required by this subsection.~~

5 2. Either of the following if the business licensee performs termite
6 treatments:

7 (a) Proof of a surety bond in the amount of one hundred thousand
8 dollars per business license for actual damages, including reasonable costs
9 of collection suffered by persons as a result of termite damage due to
10 negligent treatment.

11 (b) Proof of a liability insurance policy rider in the amount of one
12 hundred thousand dollars per business license that covers termite damage due
13 to negligent treatment.

14 3. If the business licensee provides wood-destroying insect inspection
15 reports or fungi inspection reports, proof of a surety bond or a liability
16 insurance policy rider in the amount of one hundred thousand dollars per
17 business license for actual damages plus reasonable costs of collection
18 suffered by persons as a result of errors and omissions contained in the
19 reports.

20 4. If an insurance policy provides for a deductible, the deductible
21 amount shall be limited to ten thousand dollars for each occurrence. If the
22 deductible amount is in excess of ten thousand dollars for each occurrence,
23 the business licensee shall provide other security as provided in this
24 subsection or other evidence of financial security for the excess deductible
25 amount.

26 5. If the financial security is in the form of liability insurance, a
27 licensee shall maintain a coverage endorsement for pesticides and herbicides,
28 fumigation, care, custody and control, rights-of-way, wood-destroying insect
29 inspection report errors and omissions, fungi inspection report errors and
30 omissions and pollution transit for its applicable license categories.

31 E. If the financial security is in the form of liability insurance,
32 the business license is automatically suspended until a current certificate
33 of insurance or proof of financial responsibility is furnished to the
34 ~~commission~~ DIRECTOR.

35 F. Each business licensee shall ~~annually~~ renew the business license
36 and each office registration on or before ~~January 1~~ THE EXPIRATION DATE OF
37 THE LICENSE by filing renewal forms prescribed by the ~~commission~~ DIRECTOR and
38 paying the prescribed renewal fees. If a business licensee fails to renew
39 the business license as required by this subsection, the licensee shall not
40 engage in the business of structural pest control.

41 G. Each branch office of a business licensee shall be supervised by a
42 licensed applicator or qualifying party who is licensed in all categories in
43 which the branch office operates.

1 H. For the purposes of this section, "financial security" means
2 liability insurance, a deposit of cash or certified monies, a surety bond or
3 other equivalent item.

4 Sec. 14. Section 3-3534, Arizona Revised Statutes, as transferred and
5 renumbered by this act, is amended to read:

6 3-3534. Qualifying party; license; examination; inactive
7 status; temporary license

8 A. An application for a qualifying party license shall be in a form
9 prescribed by the ~~commission~~ DIRECTOR and accompanied by the prescribed fee.
10 The application shall set forth whether the applicant has ever been convicted
11 of a felony and, if so, the nature of the felony, when and where it was
12 committed and the disposition of the conviction.

13 B. A qualifying party may apply for a license in any one or a
14 combination of the following categories:

15 1. General and public health pest control, excluding control of
16 wood-destroying insects, wood-destroying insect inspection, antimicrobial
17 pest control, fungi inspection, right-of-way and weed control, fumigation,
18 aquatic pest control and turf and ornamental horticulture pest control.

19 2. Control of wood-destroying insects.

20 3. Right-of-way and weed control.

21 4. Fumigation.

22 5. Turf and ornamental horticulture pest control.

23 6. Antimicrobial pest control.

24 7. Fungi inspection.

25 8. Wood-destroying insect inspection.

26 9. Aquatic pest control.

27 10. Other categories or subcategories based on practice in the industry
28 and established by ~~the commission in its rules~~ RULE.

29 C. An applicant for qualifying party licensure shall:

30 1. Pass an examination, given under the direction of the ~~commission~~
31 DIRECTOR, with a score of seventy-five per cent or more.

32 2. Present evidence satisfactory to the ~~commission~~ DIRECTOR that the
33 person has sufficient education or experience in the use of or supervising
34 the use of a pesticide covered by each category for which the person is
35 applying as demonstrated by having had within five years immediately
36 preceding application either:

37 (a) Three thousand verifiable hours of practical experience in the
38 business of structural pest control.

39 (b) Two thousand verifiable hours of practical field experience in the
40 business of structural pest control and have successfully completed at least
41 twelve semester hours or its equivalent in entomology, the eradication or
42 control of weeds, general horticulture, plant pathology or any combination of
43 these subjects directly related to each category for which the person is
44 applying.

1 3. Be of good moral character. A felony conviction may demonstrate a
2 lack of good moral character.

3 D. The examination shall test the qualifying party's knowledge of
4 pests and the use, storage and application of pesticides and other devices
5 used in the eradication of pests within the category for which the person is
6 applying.

7 E. A qualifying party shall have an inactive qualifying party license
8 status if the qualifying party is not currently acting as a qualifying party
9 for a business licensee. To reactivate an inactive license that has been
10 inactive for one year or less, a qualifying party shall apply to the
11 ~~commission~~ DIRECTOR to qualify a business license. To reactivate an inactive
12 license that has been inactive for more than one year, a qualifying party
13 shall apply to the ~~commission~~ DIRECTOR to qualify a business license and
14 shall either successfully complete the license examination or, within twelve
15 months preceding application for reactivation, complete continuing education
16 as required pursuant to section ~~32-2319~~ 3-3536.

17 F. If the ~~commission~~ DIRECTOR issues a renewable and revocable
18 temporary qualifying party license pursuant to section ~~32-2304~~ 3-3502, the
19 temporary qualifying party ~~qualification~~ LICENSE is valid for sixty calendar
20 days and may be renewed only on approval of the ~~commission~~ DIRECTOR if good
21 cause is established for delay in the procurement of a qualifying party
22 license. Under the temporary qualifying party license, a business licensee
23 shall otherwise fully comply with the requirements of this chapter and rules
24 adopted pursuant to this chapter.

25 G. A person acting as a qualifying party shall:

26 1. Be active in the management of the business licensee by being
27 present at the business office location each month to review pesticide use,
28 storage and disposal and by ensuring the supervision and training of the
29 employees of the business.

30 2. During normal business hours, be readily available to the licensed
31 applicators and employees of the business licensee.

32 H. A qualifying party shall renew a qualifying party license ~~annually~~
33 by submitting a form prescribed by the ~~commission~~ DIRECTOR and a fee
34 prescribed by section ~~32-2317~~ 3-3535. A qualifying party shall furnish to
35 the ~~commission~~ DIRECTOR proof of completion of continuing education as
36 prescribed by section ~~32-2319~~ 3-3536. Successful completion of the
37 qualifying party license examination for each category may be substituted for
38 the continuing education requirement. Continuing education hours used for
39 renewal of a qualifying party's applicator license may be used for the
40 qualifying party's license renewal.

41 Sec. 15. Section 3-3535, Arizona Revised Statutes, as transferred and
42 renumbered by this act, is amended to read:

43 3-3535. Fees

44 A. The ~~commission~~ DIRECTOR shall establish and collect fees that may
45 include service charges allowed pursuant to section ~~32-2304~~ 3-3502 for

1 persons who pay with alternative payment methods, including credit cards,
2 charge cards, debit cards and electronic transfers, but that may not exceed
3 the following amounts:

- 4 1. Qualifying party license application fee, one hundred fifty
5 dollars.
- 6 2. Qualifying party license renewal fee, one hundred fifty dollars.
- 7 3. Qualifying party license renewal fee, inactive status, twenty-five
8 dollars.
- 9 4. Temporary qualifying party license application fee, twenty-five
10 dollars.
- 11 5. Business license application fee, one hundred dollars.
- 12 6. Business license renewal fee, one hundred dollars.
- 13 7. Branch office registration application fee, fifty dollars.
- 14 8. Branch office registration renewal fee, fifty dollars.
- 15 9. Late renewal penalty fee, double the prescribed renewal fee.
- 16 10. Qualifying party license status change, inactive to active, one
17 hundred twenty-five dollars.
- 18 11. Applicator license application, thirty dollars.
- 19 12. Applicator license annual renewal, twenty-five dollars.
- 20 13. Duplicate license identification card, ten dollars.

21 B. The ~~commission~~ DEPARTMENT may charge AND COLLECT additional fees
22 for services that the ~~commission deems~~ DIRECTOR CONSIDERS TO BE appropriate
23 to carry out ~~its~~ THE intent and purpose OF THIS CHAPTER. These additional
24 fees shall not exceed the costs of rendering the services.

25 Sec. 16. Section 3-3536, Arizona Revised Statutes, as transferred and
26 renumbered by this act, is amended to read:

27 3-3536. Continuing education

28 A. In order to satisfy continuing education requirements, a licensee
29 shall verify attendance at programs of instruction that are overseen and
30 approved by the ~~commission~~ DIRECTOR and that are designed to augment the
31 proficiency of the licensed applicator or qualifying party relating to
32 structural pest control.

33 B. If one individual holds both an applicator license and a qualifying
34 party license, the completion of a minimum of six hours of continuing
35 education in the preceding year for the applicator license satisfies the
36 continuing education requirements for both the applicator license and
37 qualifying party license.

38 Sec. 17. Section 3-3561, Arizona Revised Statutes, as transferred and
39 renumbered by this act, is amended to read:

40 3-3561. Disciplinary action; grounds; procedure; judicial
41 review

42 A. After AN OPPORTUNITY FOR a formal hearing or pursuant to a consent
43 order, the ~~commission~~ DIRECTOR may take any of the following disciplinary
44 actions, in combination or alternatively:

- 45 1. Revoke a license.

- 1 2. Suspend a license.
- 2 3. Refuse to renew a license.
- 3 4. Impose probation requirements that require a business licensee,
4 licensed applicator or qualifying party to comply with one or more specific
5 provisions of this chapter or rules adopted pursuant to this chapter and that
6 require reporting by or monitoring of the business licensee, licensed
7 applicator or qualifying party.
- 8 5. Impose a civil penalty in an amount of not more than one thousand
9 dollars for each violation except for grounds prescribed in subsection B,
10 paragraphs 8 and 9 of this section.
- 11 ~~7.~~ 6. Require a qualifying party to report to the ~~commission~~ DIRECTOR
12 the qualifying party's role in the management of a business license.
- 13 ~~6.~~ 7. Issue an administrative warning.
- 14 B. The following acts are grounds for disciplinary action:
 - 15 1. Violating this chapter, rules adopted pursuant to this chapter or a
16 written order of the ~~commission~~ DIRECTOR.
 - 17 2. Making false or fraudulent records or reports.
 - 18 3. Misrepresenting a material fact in obtaining a license.
 - 19 4. Applying pesticides in a manner that is inconsistent with the label
20 requirements of the pesticide or that may cause undue harm to the public.
 - 21 5. Misuse of a pesticide if the misuse is due to training received or
22 not received or lack of appropriate supervision. Proper training includes
23 training to read and understand the label and labeling and to understand the
24 proper use of application equipment. Proper supervision includes oversight
25 of applicators to ensure general compliance with the label, labeling and all
26 applicable laws.
 - 27 6. Authorizing, directing or abetting the publication, advertisement,
28 distribution or circulation of any false statement or material
29 misrepresentation concerning a business of structural pest control.
 - 30 7. Conviction of a felony or misdemeanor arising from or in connection
31 with a license issued pursuant to this chapter after issuance of the license.
 - 32 8. Conviction of a felony.
 - 33 9. Having had a license, or the equivalent, to apply pesticides or
34 engage in the business of structural pest control suspended or revoked in
35 another jurisdiction for cause.
 - 36 10. Making a fraudulent statement or an intentional material
37 misrepresentation in connection with a wood treatment proposal or a
38 wood-destroying insect inspection report.
 - 39 11. ~~Repeated~~ THREE OR MORE de minimis violations of this chapter or
40 rules adopted under this chapter.
 - 41 12. Failure to provide the ~~commission~~ DIRECTOR with a current
42 certificate of insurance or proof of financial responsibility.
 - 43 13. Failure to establish a complete vertical barrier at the exterior of
44 foundation walls in stem wall construction or exterior of grade beams in

1 monolithic construction within twelve months of the original treatment made
2 before or during construction.

3 14. Immediately supervising more than one unlicensed applicator at a
4 time.

5 15. Failure to make and maintain true and accurate records of
6 treatments performed, including those performed under warranty or guarantee,
7 for at least three years from date of treatment except any record of a
8 termite treatment, a wood-destroying insect inspection report or a fungi
9 inspection report, which shall be made and maintained for at least five years
10 from the date of treatment or inspection.

11 16. Failure to make treatment records available within three business
12 days on request of the property owner, the property owner's authorized agent
13 or a ~~commission~~ representative OF THE DIVISION.

14 C. Except as provided in section ~~32-2329~~ 3-3567, the ~~commission~~
15 DIRECTOR may proceed against a business licensee pursuant to subsection A,
16 paragraphs 1 through 5 of this section only if, after AN OPPORTUNITY FOR a
17 hearing, it has been shown that any of the following applies:

18 1. The business licensee has committed a prior violation of the same
19 type, including any violation by any employee of the business licensee.

20 2. The business licensee failed to follow a written order of the
21 ~~commission~~ DIRECTOR directing it to correct a deficiency or problem within
22 the time specified.

23 3. The business licensee has knowingly assumed operations for a
24 business licensee whose license has been revoked and during the first three
25 years after revocation allows the former licensee to play an active role in
26 company policy, decisions, sales or supervision of employees.

27 4. The business licensee is convicted of a felony.

28 5. The business licensee is determined by the ~~commission~~ DIRECTOR to
29 have committed a violation in connection with a treatment before or during
30 construction.

31 6. The business licensee changes its name or majority ownership of the
32 business and fails to:

33 (a) Report to the ~~commission~~ DIRECTOR within thirty calendar days the
34 status of all warranties issued by the licensee.

35 (b) Notify within thirty calendar days all persons who hold warranties
36 issued by the licensee regarding the change.

37 7. The business licensee fails to provide written notice immediately
38 following a pest control treatment in or around residential structures of
39 four or fewer units to the person requesting the treatment or to the person's
40 designated agent. The notice shall include the specific pesticide by trade
41 name used in the treatment.

42 8. The business licensee performing pest control treatments on an
43 ongoing basis to locations other than residential structures of four or fewer
44 units fails to provide written notice to the person who requested the
45 treatments or the person's designated agent. Notice shall be given before

1 the first application of the pesticide and when new or additional pesticides
2 are used or immediately after each treatment.

3 9. If the treatments are performed in the interior of residential
4 units, the licensee fails to leave a notice in the interior of each treated
5 unit immediately after each treatment. The notice shall include the
6 pesticide by trade name and any other information as required by the
7 pesticide label or local ordinance.

8 10. A statement of precaution does not accompany each notification of
9 treatment required in paragraphs 7, 8 and 9 of this subsection. Each
10 statement of precaution shall be printed conspicuously, in not less than
11 eight point type, and shall include the words:

12 Warning--pesticides can be harmful. Keep children and
13 pets away from pesticide applications until dry, dissipated or
14 aerated. For more information contact [business license name
15 and business license number] at [telephone number].

16 11. The business licensee fails within thirty calendar days ~~of~~ AFTER
17 completion of a termite treatment that is done before or during construction,
18 an initial termite corrective treatment project or a wood-destroying insect
19 inspection report, ~~to~~ file with the ~~commission~~ DIVISION, in a form approved
20 by the ~~commission~~ DIRECTOR, all data required by the ~~commission~~ DIRECTOR.
21 The data shall include:

- 22 (a) The name of the individual who performed the work.
- 23 (b) The address or location of the work or project.
- 24 (c) The type and the date of the work.
- 25 (d) The name of the business licensee.
- 26 (e) The name of the qualifying party.
- 27 (f) The applicator's license number.
- 28 (g) Any other information required by ~~the commission in its rules~~

29 RULE.

30 12. The business licensee, within twelve months ~~of~~ AFTER completion of
31 a termite treatment that is done before or during construction, fails either
32 to file a supplemental termite action report in a form provided by the
33 ~~commission~~ DIRECTOR that indicates the completion of the final grade
34 treatment or to report in writing why the treatment has not been completed
35 and when it will be completed.

36 D. Nothing in subsection C, paragraph 3 of this section shall be
37 deemed to prohibit a business licensee from directly purchasing accounts from
38 a licensee whose license has been revoked if the purchase is made within such
39 time after the revocation as the ~~commission~~ DIRECTOR by rule may establish.

40 ~~E. Before taking any action pursuant to this section, the commission~~
41 ~~shall notify in writing interested persons and the licensee before the date~~
42 ~~of the hearing pursuant to title 41, chapter 6, article 10 either personally~~
43 ~~or by certified mail at the last address known to the commission. The~~
44 ~~written notice shall contain the nature of the charge or charges against the~~

1 ~~licensee and the time and place of the hearing before the commission on the~~
2 ~~charges.~~

3 ~~F.~~ E. A license may be suspended without a hearing as prescribed in
4 section ~~32-2329~~ 3-3567 or if its holder fails within thirty calendar days to:

- 5 1. Pay renewal fees.
- 6 2. Pay civil penalties.
- 7 3. Demonstrate the completion of required continuing education.

8 ~~G.~~ F. The holder of a license suspended under subsection ~~F~~ E of this
9 section must apply to the ~~commission~~ ASSOCIATE DIRECTOR for reinstatement.

10 ~~H.~~ G. Licenses suspended under subsection ~~F~~ E of this section are
11 automatically revoked without a hearing after one year of suspension.
12 Licenses revoked under this section are not subject to section ~~32-2304~~
13 ~~3-3502~~, subsection A, paragraph ~~18~~ 7.

14 ~~I.~~ H. All complaints shall be in writing.

15 ~~J. If the commission appoints a member or employee of the commission~~
16 ~~to conduct an informal settlement conference with the complaining party~~
17 ~~pursuant to section 32-2304, the purpose of the informal settlement~~
18 ~~conference is to reach agreement as to the disposition of all or a portion of~~
19 ~~the complaint, including any agreement providing for repairing or rectifying~~
20 ~~the conditions specified in the complaint. The settlement conference shall~~
21 ~~be conducted informally and the rules of evidence do not apply. The~~
22 ~~settlement conference shall not be recorded. Participants in the settlement~~
23 ~~conference may ask questions of the complainant and may review any materials~~
24 ~~or reports compiled by the commission with respect to the complaint.~~

25 ~~K. If the commission prepares a consent order pursuant to section~~
26 ~~32-2304, after either an informal settlement conference conducted pursuant to~~
27 ~~subsection J of this section or a formal hearing by the commission conducted~~
28 ~~pursuant to title 41, chapter 6, article 10, the consent order shall only set~~
29 ~~forth the general nature of the inquiry or complaint, the specific action to~~
30 ~~be taken by the licensee or business licensee, the penalty, if any, and the~~
31 ~~time for compliance, if any, for any corrective action to be taken.~~

32 ~~L.~~ I. Except as provided in section 41-1092.08, subsection H, final
33 decisions of the ~~commission~~ DIRECTOR are subject to judicial review pursuant
34 to title 12, chapter 7, article 6.

35 ~~M.~~ J. The ~~commission~~ DIRECTOR shall consider only an inquiry received
36 or complaint filed within five years ~~of~~ AFTER the date of the alleged act or
37 omission.

38 ~~N.~~ K. The ~~commission~~ DIRECTOR may issue an advisory notice stating de
39 minimis violations of statutes or rules that carry no penalty, unless the
40 person subject to this chapter wilfully and repeatedly violates the statute
41 or rule. For wilful and repeated violations, the ~~commission~~ DIRECTOR may
42 take disciplinary action against the person for a violation.

43 ~~O. If the commission finds a violation or the commission enters into a~~
44 ~~consent agreement, the commission:~~

1 ~~1. Shall not delete the record of the complaint for at least five~~
2 ~~years following the filing of the complaint.~~

3 ~~2. Shall include information from the inquiry in the record of~~
4 ~~complaint. If no violation is found, the information from the inquiry shall~~
5 ~~be deleted.~~

6 ~~P.~~ L. Only this chapter applies to, regulates and determines all
7 requirements regarding licensure, licensure fees, testing and education
8 related to structural pest control in this state. Only this chapter applies
9 to, regulates and determines all requirements regarding the business of
10 structural pest control, including the application or notification of use or
11 disposal of pesticides for structural pest control in this state.

12 ~~Q.~~ M. For purposes of filing or submitting all documents or fees
13 required under this chapter, service is considered complete if postmarked on
14 the proper date and delivered by first class mail or a higher class.

15 Sec. 18. Section 3-3562, Arizona Revised Statutes, as transferred and
16 renumbered by this act, is amended to read:

17 3-3562. Wood-destroying insects; treatment proposal;
18 registration form; fee

19 A. A business licensee shall not commence work on a contract or sign,
20 issue or deliver any documents expressing an opinion or making a statement
21 relating to the presence or absence of wood-destroying insects in a structure
22 until an inspection is made.

23 B. Only an applicator **OR QUALIFYING PARTY** licensed in the categories
24 of wood-destroying insect control and wood-destroying insect inspection shall
25 prepare a treatment proposal on a form approved by the ~~commission~~ **DIRECTOR**
26 and shall deliver a copy of the treatment proposal to the person requesting
27 the proposal, or the person's designated agent, before beginning treatment.
28 The treatment proposal shall include the following information:

- 29 1. The address of the property to be treated.
- 30 2. A statement describing that the work is preventative or corrective.
- 31 3. A statement describing the evidence of infestation or damage.
- 32 4. A diagrammatic description showing the nature and location of
33 evidence of infestation or damage, or both, if applicable.
- 34 5. A statement describing the treatment or repair method, including
35 the name of the pesticide, agent or device to be used and a diagrammatic
36 description showing where the treatment or repair will be rendered.
- 37 6. The price for the work.
- 38 7. The terms for the service agreement provided by the business
39 licensee.
- 40 8. The signature and license number of the person who made the
41 inspection of the structure to be treated.

42 C. A licensee shall also give to the person requesting a proposal a
43 written recommendation that verifies a particular problem and, in addition to
44 the licensee's recommendation for treatment, shall advise the person of

1 alternative treatments and methods, including integrated pest management
2 methods to alleviate the problem.

3 D. A treatment proposal shall not be in the same form or be construed
4 as a wood-destroying insect inspection report. A treatment proposal that
5 does not identify infestation by wood-destroying insects is not a binding
6 statement as to the presence or absence of wood-destroying insects.

7 E. A treatment proposal shall be prepared by a licensed applicator OR
8 QUALIFYING PARTY who has received at least five hours of instruction from the
9 ~~commission~~ DEPARTMENT or an in-house education program of a business licensee
10 on the subject of wood-destroying insect inspections. An examination on the
11 instruction is not required. The business licensee shall keep a record of
12 completion of the training and shall make the record available on the
13 ~~commission's~~ DIRECTOR'S request.

14 F. If a business licensee performs a treatment pursuant to a treatment
15 proposal, the business licensee shall maintain for five years a record of the
16 treatment and the name and quantity of the pesticide used.

17 G. Within thirty calendar days after completion of a termite treatment
18 or on the next business day after the thirty calendar days, a business
19 licensee shall file with the ~~commission~~ DEPARTMENT in a form or format
20 approved by the ~~commission~~ DIRECTOR a complete and accurate termite action
21 registration form and a fee as prescribed by the ~~commission~~ DIRECTOR. The
22 termite action registration form shall include information prescribed in
23 section ~~32-2321~~ 3-3561, subsection C, paragraph 11 and this section. This
24 subsection only applies to the following:

25 1. Any treatments done before or during construction, including final
26 grade treatments.

27 2. The first preventative or corrective termite treatment by a
28 business licensee to a site. If the business licensee who performed this
29 termite treatment performed the before or during construction treatment at
30 the same site and filed a termite action report form with the ~~commission~~
31 DEPARTMENT documenting the before or during construction treatment, the
32 business licensee is exempt from this paragraph.

33 3. A wood-destroying insect inspection report.

34 Sec. 19. Section 3-3563, Arizona Revised Statutes, as transferred and
35 renumbered by this act, is amended to read:

36 3-3563. Wood-destroying insect inspection reports

37 A. Wood-destroying insect inspection reports may only be completed by
38 an applicator OR QUALIFYING PARTY who is licensed in the categories of
39 control of wood-destroying insects and wood-destroying insect inspection and
40 who has received at least five hours of instruction from the ~~commission~~
41 DEPARTMENT OR THE FORMER STRUCTURAL PEST CONTROL COMMISSION or an in-house
42 education program of a business licensee on the subject of wood-destroying
43 insect inspection reports. An examination on the instruction is not
44 required. The business licensee shall keep a record of completion of the

1 training and shall make the record available on the ~~commission's~~ DIRECTOR'S
2 request.

3 B. Wood-destroying insect inspection reports shall be on file in the
4 office of the business licensee within seven calendar days after the
5 completion of an inspection. The business licensee shall retain a copy of
6 all completed wood-destroying insect inspection reports for five years and
7 make the reports available on the ~~commission's~~ DIRECTOR'S request.

8 C. Wood-destroying insect inspection reports are evidence of the
9 existence or absence of wood-destroying insects that were visible and
10 accessible to an inspector on the date the inspection was made. A business
11 licensee remains responsible for the accuracy of the inspection and the
12 report as evidence of the presence or absence of infestation on the date of
13 inspection, except that a wood-destroying insect inspection report shall not
14 be construed as a guarantee as to the presence or absence of wood-destroying
15 insects in a structure after the date of inspection.

16 Sec. 20. Section 3-3564, Arizona Revised Statutes, as transferred and
17 renumbered by this act, is amended to read:

18 3-3564. Fungi inspection reports

19 A. Fungi inspection reports may only be completed by a licensed
20 applicator OR QUALIFYING PARTY who is licensed in the fungi category and who
21 has received at least eight hours of instruction from the ~~commission~~
22 DEPARTMENT OR THE FORMER STRUCTURAL PEST CONTROL COMMISSION or an in-house
23 education program of a business licensee on the subject of fungi inspection
24 and inspection reports. An examination on the instruction is not required.
25 The business licensee shall keep a record of the completion of the training
26 and shall make the record available on the ~~commission's~~ DIRECTOR'S request.

27 B. Fungi inspection reports shall be on file in the office of the
28 business licensee within seven calendar days after the completion of an
29 inspection. The business licensee shall retain a copy of all completed fungi
30 inspection reports for five years and make the reports available on the
31 ~~commission's~~ DIRECTOR'S request.

32 C. Fungi inspection reports are evidence of the existence or absence
33 of fungi that was visible and accessible to an inspector on the date the
34 inspection was made. A business licensee remains responsible for the
35 accuracy of the inspection and the report as evidence of the presence or
36 absence of fungi on the date of inspection, except that a fungi inspection
37 report shall not be construed as a guarantee as to the presence or absence of
38 fungi in a structure after the date of inspection.

39 ~~D. Licensees who are licensed in the wood-destroying organism category~~
40 ~~by September 18, 2003, are permitted to perform the business of structural~~
41 ~~pest control in the fungi category until June 30, 2004. After that date, any~~
42 ~~person performing a fungi inspection shall be licensed in the fungi category.~~

43 E. D. The ~~commission~~ DIRECTOR shall approve a fungi inspection report
44 FORM for use in fungi inspections.

1 Sec. 21. Section 3-3565, Arizona Revised Statutes, as transferred and
2 renumbered by this act, is amended to read:

3 3-3565. Unlawful acts

4 A person shall not:

5 1. Engage in the business of structural pest control without holding a
6 business license issued pursuant to this chapter.

7 2. Engage in the business of structural pest control in any category
8 without a qualifying party licensed in that category.

9 3. Operate a branch office without employing a licensed applicator or
10 qualifying party under whose direct supervision pesticide applications are
11 made out of that office.

12 4. Apply pesticides in any category other than the control of
13 wood-destroying insects unless the person is an applicator **OR QUALIFYING**
14 **PARTY** licensed in that category pursuant to this chapter or applies the
15 pesticides under the direct supervision of an applicator **OR QUALIFYING PARTY**
16 licensed in that category pursuant to this chapter.

17 5. Apply pesticides for the control of wood-destroying insects unless
18 both of the following apply:

19 (a) The person is an applicator **OR QUALIFYING PARTY** licensed in that
20 category pursuant to this chapter or the person applies the pesticides under
21 the immediate supervision of a licensed applicator.

22 (b) The person has received at least five hours of instruction from
23 the ~~commission~~ **DEPARTMENT OR THE FORMER STRUCTURAL PEST CONTROL COMMISSION** or
24 an in-house education program of a business licensee on the subject of
25 control of wood-destroying insects that is appropriate for the specific type
26 of application performed. An examination on the instruction is not required.
27 A business licensee shall keep a record of completion of the training and
28 shall make it available on the ~~commission's~~ **DIRECTOR'S** request.

29 6. Make recommendations regarding structural pest control unless the
30 person is a licensed applicator **OR QUALIFYING PARTY**.

31 7. Deny to ~~a commission~~ **AN AUTHORIZED** inspector the right to be
32 present on a jobsite in connection with a contemporaneous pest control
33 treatment for the purpose of taking samples, including pesticide samples and
34 soil samples.

35 Sec. 22. Section 3-3566, Arizona Revised Statutes, as transferred and
36 renumbered by this act, is amended to read:

37 3-3566. Injunctive relief

38 In addition to all other remedies, the ~~commission~~ **DIRECTOR**, either
39 through the attorney general or the county attorney, may apply to the
40 appropriate court for an order enjoining any act or practice ~~which~~ **THAT**
41 appears to constitute a violation of this chapter or rules adopted pursuant
42 to this chapter. On a proper showing, a temporary restraining order, a
43 preliminary injunction or a permanent injunction shall be granted without
44 bond.

1 Sec. 23. Section 3-3567, Arizona Revised Statutes, as transferred and
2 renumbered by this act, is amended to read:

3 3-3567. Summary suspension

4 ~~At a public meeting,~~ The ~~commission~~ DIRECTOR may summarily suspend,
5 without a formal hearing, any license issued ~~by the commission~~ PURSUANT TO
6 THIS CHAPTER if the ~~commission deems it~~ DIRECTOR CONSIDERS IT TO BE necessary
7 to protect the health, safety and welfare of the public. ~~A summarily~~
8 ~~suspended license remains suspended until the next meeting of the commission.~~
9 ~~The commission may remove a summary suspension or continue a summary~~
10 ~~suspension after a review at a commission meeting or may revoke a license as~~
11 ~~provided in section 32-2321.~~

12 Sec. 24. Section 32-1121, Arizona Revised Statutes, is amended to
13 read:

14 32-1121. Persons not required to be licensed; penalties

15 A. This chapter shall not be construed to apply to:

16 1. An authorized representative of the United States government, this
17 state or any county, incorporated city or town, reclamation district,
18 irrigation district or other municipality or political subdivision of this
19 state.

20 2. Trustees of an express trust that is not formed for the purpose of
21 conducting business as a contractor or officers of a court, if they are
22 acting within the terms of their trust or office.

23 3. Public utilities operating under regulation of the corporation
24 commission or construction, repair or operation incidental to discovering or
25 producing petroleum or gas, or the drilling, testing, abandoning or other
26 operation of a petroleum or gas well, if performed by an owner or lessee.

27 4. Any materialman, manufacturer or retailer furnishing finished
28 products, materials or articles of merchandise who does not install or attach
29 such items or installs or attaches such items if the total value of the sales
30 contract or transaction involving such items and the cost of the installation
31 or attachment of such items to a structure does not exceed one thousand
32 dollars, including labor, materials and all other items, but excluding any
33 electrical fixture or appliance that was designed by the manufacturer, that
34 is unaltered, unchanged or unmodified by any person, that can be plugged into
35 a common household electrical outlet utilizing a two pronged or three pronged
36 electrical connector and that does not use any other form of energy,
37 including natural gas, propane or other petroleum or gaseous fuel, to operate
38 or is attached by a nail, screw or other fastening device to the frame or
39 foundation of any residential structure. The materialman, manufacturer or
40 retailer shall inform the purchaser that the installation may also be
41 performed by a licensed contractor whose name and address the purchaser may
42 request.

43 5. Owners of property who improve such property or who build or
44 improve structures or appurtenances on such property and who do the work
45 themselves, with their own employees or with duly licensed contractors, if

1 the structure, group of structures or appurtenances, including the
2 improvements thereto, are intended for occupancy solely by the owner and are
3 not intended for occupancy by members of the public as the owner's employees
4 or business visitors and the structures or appurtenances are not intended for
5 sale or for rent. In all actions brought under this chapter, proof of the
6 sale or rent or the offering for sale or rent of any such structure by the
7 owner-builder within one year after completion or issuance of a certificate
8 of occupancy is prima facie evidence that such project was undertaken for the
9 purpose of sale or rent. For the purposes of this paragraph, "sale" or
10 "rent" includes any arrangement by which the owner receives compensation in
11 money, provisions, chattels or labor from the occupancy or the transfer of
12 the property or the structures on the property.

13 6. Owners of property who are acting as developers and who build
14 structures or appurtenances to structures on their property for the purpose
15 of sale or rent and who contract for such a project with a general contractor
16 licensed pursuant to this chapter and owners of property who are acting as
17 developers, who improve structures or appurtenances to structures on their
18 property for the purpose of sale or rent and who contract for such a project
19 with a general contractor or specialty contractors licensed pursuant to this
20 chapter. To qualify for the exemption under this paragraph, the licensed
21 contractors' names and license numbers shall be included in all sales
22 documents.

23 7. Architects or engineers who are engaging in their professional
24 practice as defined in chapter 1 of this title and who hire or offer to hire
25 the services of a contractor for preconstruction activities relating to
26 investigation and discovery including:

27 (a) Subsurface utility location and designation services.

28 (b) Potholing.

29 (c) Drilling for any of the following:

30 (i) Soil samples.

31 (ii) Rock samples.

32 (iii) Pavement samples.

33 (d) Locating existing features of a building or structure including
34 existing electrical, mechanical, plumbing and structural members.

35 8. A person licensed, certified or registered pursuant to ~~chapter 22~~
36 ~~of this~~ title 3, CHAPTER 19 or a person working under the direct supervision
37 of a person certified or qualified pursuant to ~~chapter 22 of this~~ title 3,
38 CHAPTER 19 to the extent the person is engaged in structural pest control.

39 9. The sale or installation of finished products, materials or
40 articles of merchandise which are not fabricated into and do not become a
41 permanent fixed part of the structure. This exemption does not apply if a
42 local building permit is required, if the total price of the finished
43 product, material or article of merchandise, including labor but excluding
44 any electrical fixture or appliance that was designed by the manufacturer,
45 that is unaltered, unchanged or unmodified by any person, that can be plugged

1 into a common household electrical outlet utilizing a two pronged or three
2 pronged electrical connector and that does not use any other form of energy,
3 including natural gas, propane or other petroleum or gaseous fuel, to operate
4 or is attached by a nail, screw or other fastening device to the frame or
5 foundation of any residential structure, is more than one thousand dollars or
6 if the removal of the finished product, material or article of merchandise
7 causes damage to the structure or renders the structure unfit for its
8 intended use.

9 10. Employees of the owners of condominiums, townhouses, cooperative
10 units or apartment complexes of four units or less or the owners' management
11 agent or employees of the management agent repairing or maintaining
12 structures owned by them.

13 11. Any person who engages in the activities regulated by this chapter,
14 as an employee of an exempt property owner or as an employee with wages as
15 the person's sole compensation.

16 12. A surety company or companies which are authorized to transact
17 business in this state and which undertake to complete a contract on which
18 they issued a performance or completion bond, provided all construction work
19 is performed by duly licensed contractors.

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

24 14. Any person other than a licensed contractor engaging in any work or
25 operation on one undertaking or project by one or more contracts, for which
26 the aggregate contract price, including labor, materials and all other items,
27 but excluding any electrical fixture or appliance that was designed by the
28 manufacturer, that is unaltered, unchanged or unmodified by any person, that
29 can be plugged into a common household electrical outlet utilizing a two
30 pronged or three pronged electrical connector and that does not use any other
31 form of energy, including natural gas, propane or other petroleum or gaseous
32 fuel, to operate or is attached by a nail, screw or other fastening device to
33 the frame or foundation of any residential structure, is less than one
34 thousand dollars. The work or operations which are exempt under this
35 paragraph shall be of a casual or minor nature. This exemption does not
36 apply:

37 (a) In any case in which the performance of the work requires a local
38 building permit.

39 (b) In any case in which the work or construction is only a part of a
40 larger or major operation, whether undertaken by the same or a different
41 contractor, or in which a division of the operation is made in contracts of
42 amounts less than one thousand dollars, excluding any electrical fixture or
43 appliance that was designed by the manufacturer, that is unaltered, unchanged
44 or unmodified by any person, that can be plugged into a common household
45 electrical outlet utilizing a two pronged or three pronged electrical

1 connector and that does not use any other form of energy, including natural
2 gas, propane or other petroleum or gaseous fuel, to operate or is attached by
3 a nail, screw or other fastening device to the frame or foundation of any
4 residential structure, for the purpose of evasion of this chapter or
5 otherwise.

6 (c) To a person who utilizes any form of advertising to the public in
7 which the person's unlicensed status is not disclosed by including the words
8 "not a licensed contractor" in the advertisement.

9 15. A person who is licensed, certified or registered pursuant to
10 title 41, chapter 16 and who is not otherwise required to be licensed under
11 this chapter or an employee of such person.

12 16. A person who functions as a gardener by performing lawn, garden,
13 shrub and tree maintenance.

14 B. A person who is licensed to perform work in a particular trade
15 pursuant to this chapter shall not be required to obtain and maintain a
16 separate license for mechanical or structural service work performed within
17 the scope of such trade by such person.

18 C. Any person who does not have an exemption from licensure pursuant
19 to subsection A, paragraph 14, subdivision (c) of this section is subject to
20 prosecution for a violation of section 44-1522. The attorney general may
21 investigate the act or practice and take appropriate action pursuant to title
22 44, chapter 10, article 7.

23 Sec. 25. Section 36-606, Arizona Revised Statutes, is amended to read:
24 36-606. Pesticide illness; medical education; reports

25 A. The director of the department of health services shall develop and
26 implement, in cooperation with rural health clinics, county health
27 departments, state and local medical associations, poison control centers and
28 other appropriate health care professionals, a system for reporting and
29 preventing pesticide provoked illnesses. This program shall include:

30 1. Medical education programs to alert health care professionals to
31 the symptoms, diagnosis, treatment and reporting of pesticide provoked
32 illnesses.

33 2. A statewide reporting network, which shall:

34 (a) Require health care professionals and poison control centers to
35 file incident reports of an illness ~~which~~ THAT they reasonably believe, based
36 on professional judgment, to be caused by or related to documented exposure
37 to a pesticide.

38 (b) Catalogue and retrieve data regarding pesticide poisoning for use
39 in worker and public health education programs to prevent pesticide
40 poisoning.

41 B. The health care professional or poison control center required to
42 file an incident report required pursuant to subsection A, paragraph 2,
43 subdivision (a), ~~shall~~ specifically indicate in the incident report the
44 reason for believing that the illness is caused by or related to documented
45 exposure to a pesticide and shall specify if the illness is caused by the

1 documented exposure or is related to the documented exposure. All incident
2 reports shall be filed with the director. The director shall provide to the
3 Arizona department of agriculture all records, reports and information of all
4 illnesses resulting from documented exposure to agriculture pesticides and
5 ~~shall provide to the structural pest control commission all records, reports~~
6 ~~and information of all illnesses resulting from documented exposure to~~
7 structural pesticides.

8 Sec. 26. Section 36-898, Arizona Revised Statutes, is amended to read:

9 36-898. Licensees; pesticide application; notice; definitions

10 A. The director, in consultation with licensees, personnel of
11 licensees, parents, guardians, administrators, members of the public, a
12 qualifying party and at least one health professional, shall develop and
13 adopt a policy to provide parents, guardians, children and personnel with at
14 least forty-eight hours' notice before pesticides are applied on licensee
15 property.

16 B. The policy shall include at least the following:

17 1. Procedures for providing the notification, including:

18 (a) Procedures for written notification to parents, guardians or an
19 individual authorized by a parent or guardian during a regular child care
20 session.

21 (b) Procedures for requiring the licensee to post signs to identify
22 pesticide application areas.

23 2. Procedures for requiring any contracted pest control applicator to
24 provide detailed and sufficient information to licensees for the purpose of
25 completing the posting materials.

26 C. The policy shall include exemptions for the following pesticide
27 applications:

28 1. Nonresidual pesticide applications performed or contracted by
29 public health agencies for adult vector control.

30 2. Emergency pesticide applications of a pesticide that has a toxicity
31 category of III or IV pursuant to 40 Code of Federal Regulations section
32 156.62 to control harmful pests that pose an immediate threat to the public
33 health.

34 3. Disinfectants or swimming pool chemicals.

35 4. Block, gel or paste-type bait that is a toxicity category III or IV
36 formulation of insecticide pursuant to 40 Code of Federal Regulations section
37 156.62 and that is either of the following:

38 (a) Secured in an enclosed, tamper-resistant bait station and placed
39 in an area that is inaccessible to children.

40 (b) Applied to a crack or crevice inaccessible to children.

41 5. Block-type bait that is a toxicity level III or IV formulation of
42 rodenticide pursuant to 40 Code of Federal Regulations section 156.62 and
43 that is secured in an enclosed, tamper-resistant bait station placed in an
44 area inaccessible to children.

45 6. Personal repellants.

1 7. Any pesticide exempt from regulation by the United States
2 environmental protection agency pursuant to the federal insecticide,
3 fungicide and rodenticide act (7 United States Code section 136w).

4 D. Each licensee shall maintain written records of pesticide
5 application notifications for a period of at least three years after the
6 application. The licensee may delegate to the pest control applicator the
7 duty to fill out and post notices required by department policy. A licensee
8 is not required to maintain records of pesticides that are exempt pursuant to
9 subsection C of this section.

10 E. For the purposes of this section:

11 1. "Child care" has the same meaning prescribed in section 36-881.

12 2. "Department" means the department of health services.

13 3. "Licensee" means a person who is regulated pursuant to this
14 chapter.

15 4. "Pesticides" includes pesticides regulated under the federal
16 insecticide, fungicide and rodenticide act (P.L. 100-532; 102 Stat. 2654; 7
17 United States Code section 136) except for nonrestricted use disinfectants,
18 sanitizers or deodorizers regulated by the federal insecticide, fungicide and
19 rodenticide act.

20 5. "Qualifying party" has the same meaning prescribed in section
21 ~~32-2301~~ 3-3501.

22 Sec. 27. Section 41-1092, Arizona Revised Statutes, is amended to
23 read:

24 41-1092. Definitions

25 In this article, unless the context otherwise requires:

26 1. "Administrative law judge" means an individual or an agency head,
27 board or commission that sits as an administrative law judge, that conducts
28 administrative hearings in a contested case or an appealable agency action
29 and that makes decisions regarding the contested case or appealable agency
30 action.

31 2. "Administrative law judge decision" means the findings of fact,
32 conclusions of law and recommendations or decisions issued by an
33 administrative law judge.

34 3. "Appealable agency action" means an action that determines the
35 legal rights, duties or privileges of a party and that is not a contested
36 case. Appealable agency actions do not include interim orders by
37 self-supporting regulatory boards or rules, orders, standards or statements
38 of policy of general application issued by an administrative agency to
39 implement, interpret or make specific the legislation enforced or
40 administered by it, nor does it mean or include rules concerning the internal
41 management of the agency that do not affect private rights or interests. For
42 the purposes of this paragraph, administrative hearing does not include a
43 public hearing held for the purpose of receiving public comment on a proposed
44 agency action.

- 1 4. "Director" means the director of the office of administrative
2 hearings.
- 3 5. "Final administrative decision" means a decision by an agency that
4 is subject to judicial review pursuant to title 12, chapter 7, article 6.
- 5 6. "Office" means the office of administrative hearings.
- 6 7. "Self-supporting regulatory board" means any one of the following:
7 (a) The ARIZONA state board of accountancy.
8 (b) The state board of appraisal.
9 (c) The board of barbers.
10 (d) The board of behavioral health examiners.
11 (e) The Arizona state boxing commission.
12 (f) The state board of chiropractic examiners.
13 (g) The board of cosmetology.
14 (h) The state board of dental examiners.
15 (i) The state board of funeral directors and embalmers.
16 (j) The Arizona game and fish commission.
17 (k) The board of homeopathic medical examiners.
18 (l) The Arizona medical board.
19 (m) The naturopathic physicians board of medical examiners.
20 (n) The state board of nursing.
21 (o) The board of examiners of nursing care institution administrators
22 and adult care home managers.
23 (p) The board of occupational therapy examiners.
24 (q) The state board of dispensing opticians.
25 (r) The state board of optometry.
26 (s) The Arizona board of osteopathic examiners in medicine and
27 surgery.
28 (t) The Arizona peace officer standards and training board.
29 (u) The Arizona state board of pharmacy.
30 (v) The board of physical therapy examiners.
31 (w) The state board of podiatry examiners.
32 (x) The state board for private postsecondary education.
33 (y) The state board of psychologist examiners.
34 (z) The board of respiratory care examiners.
35 ~~(aa) The structural pest control commission.~~
36 ~~(bb)~~ (aa) The state board of technical registration.
37 ~~(cc)~~ (bb) The Arizona state veterinary medical examining board.
38 ~~(dd)~~ (cc) The acupuncture board of examiners.
39 ~~(ee)~~ (dd) The Arizona regulatory board of physician assistants.
40 ~~(ff)~~ (ee) The board of athletic training.
41 ~~(gg)~~ (ff) The board of massage therapy.
- 42 Sec. 28. Structural pest management advisory council
43 A. The structural pest management advisory council is established
44 consisting of the following members who are appointed by the director of the
45 Arizona department of agriculture:

- 1 1. Two industry members who hold active qualifying party licenses
2 issued by the department or by the structural pest control commission.
- 3 2. One member who has at least a baccalaureate degree and is an
4 entomologist, plant pathologist, toxicologist or individual holding a degree
5 in public health or occupational health.
- 6 3. Two members of the general public.
- 7 B. The director may consult with any recognized state organizations
8 representing the structural pest control and landscaping industries and golf
9 course superintendents in making appointments to the council.
- 10 C. Members of the council are not eligible to receive compensation but
11 are eligible for reimbursement of expenses pursuant to title 38, chapter 4,
12 article 2, Arizona Revised Statutes, from the structural pest control fund
13 established by section 3-3503, Arizona Revised Statutes, as transferred,
14 renumbered and amended by this act.
- 15 D. The council shall:
 - 16 1. Annually elect a chairperson and vice-chairperson from among its
17 members.
 - 18 2. Meet at least once each calendar quarter and at other times as
19 called by the chairperson or if requested by four or more members of the
20 council.
 - 21 3. Keep a permanent record of its proceedings, which shall be
22 available for public inspection for lawful purposes.
- 23 E. The council shall advise the director on all matters pertaining to
24 the regulation of structural pest management and title 3, chapter 19, Arizona
25 Revised Statutes, as added by this act, including:
 - 26 1. Review all statutes and rules relating to title 3, chapter 19,
27 Arizona Revised Statutes, as added by this act.
 - 28 2. Make recommendations concerning inspection procedures and training
29 concerning title 3, chapter 19, Arizona Revised Statutes, as added by this
30 act.
 - 31 3. Make recommendations for changes to existing statutes and other
32 legislative proposals related to structural pest control.
 - 33 4. Review all changes proposed by the department to statutes relating
34 to structural pest control.
 - 35 5. Make recommendations concerning additions, modification or repeals
36 of rules relating to structural pest control, including suggesting the
37 initiation of rule making.
 - 38 6. Make general recommendations for procedures and levels for
39 enforcement actions to be followed under title 3, chapter 19, Arizona Revised
40 Statutes, as added by this act.
 - 41 7. Review education, curricula and other requirements for applicants
42 for licensure.
 - 43 8. Review and make recommendations about the content of examinations
44 under title 3, chapter 19, Arizona Revised Statutes, as added by this act.

1 9. Recommend other issues relating to the practice of structural pest
2 management that council members consider to be relevant.

3 F. If the council makes any recommendations under this section, the
4 director or associate director, as appropriate, shall accept the
5 recommendations if they are found to be practicable and in the best interests
6 of the public and the structural pest control industry. Recommendations
7 shall not include actions relating to individual inspection personnel. The
8 director shall provide a written statement of reasons to the advisory council
9 within twenty business days if the director does not accept the council's
10 recommendations.

11 Sec. 29. Delayed repeal

12 Section 28 of this act, relating to the structural pest control
13 advisory council, is repealed from and after September 30, 2010.

14 Sec. 30. Succession

15 A. As provided by this act the Arizona department of agriculture
16 succeeds to the authority, powers, duties and responsibilities of the
17 structural pest control commission.

18 B. This act does not alter the effect of any action or impair the
19 valid obligations of the structural pest control commission taken before the
20 effective date of this act.

21 C. Administrative rules and orders adopted by the structural pest
22 control commission continue in effect until superseded by administrative
23 action by the Arizona department of agriculture.

24 D. All administrative matters, contracts and judicial and
25 quasi-judicial actions, whether completed, pending or in process, of the
26 structural pest control commission on the effective date of the act are
27 transferred to and retain the same status with the Arizona department of
28 agriculture.

29 E. All certificates, licenses, registrations, permits and other
30 indicia of qualification and authority that were issued by the structural
31 pest control commission retain their validity for the duration of their terms
32 of validity as provided by law.

33 F. All equipment, records, furnishings and other property, all data
34 and investigative findings and all appropriated monies that remain unexpended
35 and unencumbered on the effective date of this act of the structural pest
36 control commission are transferred to the Arizona department of agriculture.

37 G. All personnel who are under the state personnel system and employed
38 by the structural pest control commission are transferred to comparable
39 positions and pay classification in the Arizona department of agriculture on
40 the effective date of this act.

41 Sec. 31. Emergency

42 This act is an emergency measure that is necessary to preserve the
43 public peace, health or safety and is operative immediately as provided by
44 law.