

State of Arizona
Senate
Fifty-first Legislature
First Regular Session
2013

SENATE BILL 1290

AN ACT

AMENDING SECTION 32-2301, ARIZONA REVISED STATUTES; RENUMBERING SECTION 32-2302, ARIZONA REVISED STATUTES, AS SECTION 32-2303; AMENDING TITLE 32, CHAPTER 22, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 32-2302; AMENDING 32-2303, ARIZONA REVISED STATUTES, AS RENUMBERED BY THIS ACT; AMENDING SECTIONS 32-2304 AND 32-2305, ARIZONA REVISED STATUTES; REPEALING SECTION 32-2306, ARIZONA REVISED STATUTES; AMENDING TITLE 32, CHAPTER 22, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 32-2306; AMENDING SECTION 32-2307, ARIZONA REVISED STATUTES; TRANSFERRING AND RENUMBERING SECTION 32-2308, ARIZONA REVISED STATUTES, FOR PLACEMENT IN TITLE 32, CHAPTER 22, ARTICLE 3, ARIZONA REVISED STATUTES, AS SECTION 32-2323; AMENDING SECTION 32-2311, ARIZONA REVISED STATUTES; AMENDING TITLE 32, CHAPTER 22, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 32-2311.01 AND 32-2311.02; REPEALING SECTION 32-2312, ARIZONA REVISED STATUTES; AMENDING TITLE 32, CHAPTER 22, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 32-2312; AMENDING SECTION 32-2313, ARIZONA REVISED STATUTES; REPEALING SECTION 32-2314, ARIZONA REVISED STATUTES; AMENDING TITLE 32, CHAPTER 22, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 32-2314 AND SECTION 32-2315; AMENDING SECTION 32-2317, ARIZONA REVISED STATUTES; REPEALING SECTION 32-2319, ARIZONA REVISED STATUTES; AMENDING SECTION 32-2321, ARIZONA REVISED STATUTES; AMENDING TITLE 32, CHAPTER 22, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 4; TRANSFERRING AND RENUMBERING SECTIONS 32-2323 AND 32-2324, ARIZONA REVISED STATUTES, FOR PLACEMENT IN TITLE 32, CHAPTER 22, ARTICLE 4, ARIZONA REVISED STATUTES, AS ADDED BY THIS ACT, AS SECTIONS 32-2332 AND 32-2333, RESPECTIVELY; AMENDING SECTION 32-2323, ARIZONA REVISED STATUTES, AS TRANSFERRED AND RENUMBERED BY THIS ACT; AMENDING

TITLE 32, CHAPTER 22, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 32-2324; REPEALING SECTION 32-2324.01, ARIZONA REVISED STATUTES; AMENDING SECTION 32-2325, ARIZONA REVISED STATUTES; AMENDING TITLE 32, CHAPTER 22, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 32-2326; AMENDING SECTION 32-2327, ARIZONA REVISED STATUTES; REPEALING SECTION 32-2329, ARIZONA REVISED STATUTES; AMENDING TITLE 32, CHAPTER 22, ARTICLE 4, ARIZONA REVISED STATUTES, AS ADDED BY THIS ACT, BY ADDING A NEW SECTION 32-2331; AMENDING SECTIONS 32-2332 AND 32-2333, ARIZONA REVISED STATUTES, AS TRANSFERRED AND RENUMBERED BY THIS ACT; AMENDING SECTION 41-1092, ARIZONA REVISED STATUTES; REPEALING LAWS 2008, CHAPTER 309, SECTION 24, AS AMENDED BY LAWS 2011, CHAPTER 20, SECTION 5; AMENDING LAWS 2011, CHAPTER 20, SECTIONS 4 AND 7; RELATING TO PEST MANAGEMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 32-2301, Arizona Revised Statutes, is amended to
3 read:

4 32-2301. Definitions

5 In this chapter, unless the context otherwise requires:

6 ~~1. "Acting director" means the person appointed pursuant to section~~
7 ~~32-2302 to serve as the acting director of the office.~~

8 ~~2.~~ 1. "Branch office" means any fixed place of business, other than
9 the primary office, where records are kept, mail is received, statements are
10 rendered, money is collected, requests for service or bids are received, ~~or~~
11 information pertaining to the business of ~~structural~~ pest ~~control~~ MANAGEMENT
12 is given ~~and from which the use of pesticides and devices is supervised by a~~
13 ~~licensed applicator or qualifying party~~ OR PESTICIDES ARE STORED OR DISPOSED
14 OF.

15 2. "BRANCH SUPERVISOR" MEANS A CERTIFIED APPLICATOR WORKING AT OR FROM
16 A BRANCH OFFICE WHO IS RESPONSIBLE FOR ENSURING THE TRAINING, EQUIPPING AND
17 SUPERVISION OF ALL APPLICATORS OF THE BRANCH OFFICE.

18 3. "Business license" means a license that is issued pursuant to this
19 chapter OR RULES ADOPTED PURSUANT TO THIS CHAPTER to a person and that
20 entitles that person and the person's employees to engage in the business of
21 ~~structural~~ pest ~~control~~ MANAGEMENT.

22 4. "Business of ~~structural~~ pest ~~control~~ MANAGEMENT" means engaging in,
23 offering to engage in, advertising for, soliciting or performing ~~structural~~
24 pest ~~control~~ MANAGEMENT, including any of the following:

25 (a) Identifying infestations or making inspections for the purpose of
26 identifying or attempting to identify infestations. ~~of households or other~~
27 ~~structures and the surrounding area by any of the following:~~

28 ~~(i) Public health pests.~~

29 ~~(ii) Aquatic pests.~~

30 ~~(iii) Household pests.~~

31 ~~(iv) Wood destroying insects.~~

32 ~~(v) Pests, including weeds, existing around structures, in ornamental~~
33 ~~shrubs and trees, on golf courses, along rights of way or in lawns and~~
34 ~~cemeteries.~~

35 ~~(vi) Fungi.~~

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

38 (c) The application of pesticides or the making of contracts or
39 submitting of bids for the application of pesticides or the use of devices
40 for the purpose of eliminating, exterminating, controlling or preventing
41 infestations.

42 5. "CERTIFIED APPLICATOR" MEANS AN INDIVIDUAL WHO IS LICENSED BY THE
43 OFFICE TO PROVIDE PEST MANAGEMENT SERVICES IN ACCORDANCE WITH THIS CHAPTER.

44 6. "CERTIFIED QUALIFIED APPLICATOR" MEANS A CERTIFIED APPLICATOR WHO
45 IS ELIGIBLE TO ACT AS A QUALIFYING PARTY.

1 7. "CHILD CARE FACILITY" MEANS A FACILITY THAT IS REGULATED PURSUANT
2 TO TITLE 36, CHAPTER 7.1.

3 ~~5.~~ 8. "De minimis violation" means a violation that, although
4 undesirable, has no direct or immediate relationship to safety, health or
5 property damage.

6 ~~6.~~ 9. "Department" means, ~~through December 31, 2013,~~ the Arizona
7 department of agriculture.

8 ~~7.~~ 10. "Device" means any ~~mechanical, pesticide or electrical~~
9 ~~apparatus used in conjunction with, in place of or to supplement, disperse or~~
10 ~~dispense pesticides~~ INSTRUMENT OR CONTRIVANCE THAT IS INTENDED TO BE USED FOR
11 TRAPPING, DESTROYING, REPELLING OR MITIGATING ANY PEST OR OTHER FORM OF PLANT
12 OR ANIMAL LIFE.

13 ~~8.~~ 11. "Direct supervision" means THE use of a pesticide under the
14 instructions, control and responsibility of a ~~licensed~~ CERTIFIED applicator
15 who is available if needed for consultation or assistance even though the
16 ~~licensed~~ CERTIFIED applicator is not physically present at the time and place
17 the pesticide is used.

18 ~~9.~~ 12. "Director" means, ~~through December 31, 2013,~~ the director of
19 the Arizona department of agriculture.

20 ~~10.~~ 13. "Final grade treatment" means THE establishment of A COMPLETE
21 vertical ~~barriers~~ BARRIER at the exterior of foundation walls in stem wall OR
22 MONOLITHIC construction ~~or at the exterior of grade beams in monolithic~~
23 ~~construction.~~

24 ~~11. "Fungi inspection report" means a written inspection report on a~~
25 ~~form approved by the office.~~

26 14. "FINANCIAL SECURITY" MEANS LIABILITY INSURANCE, A DEPOSIT OF CASH
27 OR CERTIFIED MONIES, A SURETY BOND OR AN IRREVOCABLE AND UNCONDITIONAL LETTER
28 OF CREDIT FROM AN ARIZONA OR FEDERALLY CHARTERED FINANCIAL INSTITUTION.

29 ~~12.~~ 15. "Household pests" means pests, other than wood-destroying
30 ~~insects~~ ORGANISMS, that invade households or other structures, including
31 rodents, vermin and insects.

32 ~~13.~~ 16. "Immediate supervision" means THE use of a pesticide by an
33 ~~employee~~ INDIVIDUAL acting under the instructions, control and responsibility
34 of a ~~licensed~~ CERTIFIED applicator who is within the direct line of sight or
35 within hearing distance of the ~~employee~~ INDIVIDUAL and who is available for
36 consultation or assistance at the time and place the pesticide is used.

37 ~~14.~~ 17. "Initial ~~termite~~ corrective treatment" means the first
38 POSTCONSTRUCTION treatment of any kind performed by a licensee ~~after a~~
39 ~~treatment made prior to or during construction,~~ excluding a treatment
40 performed under warranty by a licensee who has performed the PRETREATMENT OR
41 NEW-CONSTRUCTION treatment ~~prior to or during construction.~~

42 ~~15.~~ 18. "Inquiry" means ~~information from the public or office staff~~ AN
43 INITIAL INVESTIGATION of possible violations of this chapter, ~~or rules~~
44 adopted pursuant to this chapter BASED ON INFORMATION RECEIVED FROM THE
45 PUBLIC OR OFFICE STAFF.

1 ~~16.~~ 19. "Integrated pest management" means a sustainable approach to
2 managing pests that combines biological, cultural, physical and ~~pesticide~~
3 ~~CHEMICAL~~ tools in a way that minimizes economic, health and environmental
4 risks.

5 ~~17. "License" means an approval granted by the office to act as an~~
6 ~~applicator or qualifying party or to operate a business of structural pest~~
7 ~~control in this state.~~

8 ~~18. "Licensed applicator" means a person who is licensed by the office~~
9 ~~to apply pesticides in accordance with this chapter.~~

10 20. "NEW-CONSTRUCTION TREATMENT" MEANS A TREATMENT THAT PROTECTS ALL
11 CELLULOSE COMPONENTS OF A STRUCTURE FROM SUBTERRANEAN TERMITES AND THAT IS
12 PERFORMED AFTER A PERMANENT CONCRETE SLAB FOUNDATION IS INSTALLED OR FOOTINGS
13 AND SUPPORTS FOR A RAISED FOUNDATION ARE INSTALLED, BUT BEFORE THE STRUCTURE
14 OR A FINAL GRADE TREATMENT IS COMPLETED.

15 ~~19.~~ 21. "Office" means the office of pest management established by
16 section ~~32-2302~~ 32-2303.

17 ~~20.~~ 22. "Other structures" includes railroad cars, boats, docks, motor
18 vehicles or airplanes and their contents.

19 ~~21.~~ 23. "Pest management":

20 (a) Means the management of ~~public~~ health-RELATED pests, aquatic pests,
21 household pests, wood-destroying ~~insects, fungi~~ ORGANISMS or other pests,
22 including weeds, that exist IN, near or around structures, in ornamental
23 shrubs and trees, ~~on golf courses~~, along rights-of-way or in lawns or
24 cemeteries and all pesticide ~~application~~ APPLICATIONS that could be harmful
25 to public health or the environment. ~~Pest management~~

26 (b) INCLUDES THE MANAGEMENT BY PERSONS FOR HIRE OF HEALTH-RELATED
27 PESTS, AQUATIC PESTS, HOUSEHOLD PESTS, WOOD-DESTROYING ORGANISMS OR OTHER
28 PESTS, INCLUDING WEEDS, THAT EXIST ON GOLF COURSES.

29 (c) Does not include pesticide applications used directly in the
30 commercial production of crops and animals ~~if those applications are governed~~
31 ~~by the Arizona department of agriculture pursuant to title 3, chapter 2,~~
32 ~~articles 6 and 6.1~~ OR USED NOT FOR HIRE ON GOLF COURSES.

33 24. "PEST MANAGEMENT SERVICES" MEANS IDENTIFYING INFESTATIONS OR MAKING
34 INSPECTIONS FOR THE PURPOSE OF IDENTIFYING OR ATTEMPTING TO IDENTIFY
35 INFESTATIONS, MAKING WRITTEN OR ORAL INSPECTION REPORTS OR RECOMMENDATIONS
36 WITH RESPECT TO INFESTATIONS AND THE APPLICATION OF PESTICIDES OR THE USE OF
37 DEVICES NOT EXEMPT BY SECTION 32-2304, SUBSECTION B, PARAGRAPH 18 FOR THE
38 PURPOSE OF ELIMINATING, EXTERMINATING, CONTROLLING OR PREVENTING
39 INFESTATIONS.

40 ~~22.~~ 25. "Pesticide" means any substance or mixture of substances
41 intended to be used for ~~defoliating plants or for~~ preventing, destroying,
42 repelling or mitigating insects, fungi, bacteria, microbes, weeds, rodents,
43 predatory animals or any form of plant or animal life that is, ~~OR THAT THE~~
44 ~~DIRECTOR MAY DECLARE TO BE~~, a pest and ~~THAT~~ may infest or be detrimental to
45 vegetation, humans, animals or households or be present in any environment.

26. "POLITICAL SUBDIVISION" MEANS A STATE AGENCY, COUNTY, CITY, TOWN, MUNICIPAL CORPORATION OR SCHOOL DISTRICT OR A SPECIAL DISTRICT FORMED PURSUANT TO TITLE 48.

27. "POSTCONSTRUCTION TREATMENT" MEANS A TREATMENT TO CONTROL WOOD-DESTROYING ORGANISMS IN OR AROUND AN EXISTING STRUCTURE PERFORMED AFTER ALL SOIL DISTURBANCE ASSOCIATED WITH CONSTRUCTION IS COMPLETE AND AFTER AN APPLICATOR HAS COMPLETED AN INSPECTION OF THE STRUCTURE AND A TREATMENT PROPOSAL UNDER SECTION 32-2332, SUBSECTIONS A AND B.

28. "PRETREATMENT" MEANS A TERMITE TREATMENT THAT PROTECTS ALL CELLULOSE COMPONENTS OF A STRUCTURE FROM SUBTERRANEAN TERMITES, THAT IS PERFORMED BEFORE A PERMANENT CONCRETE SLAB FOUNDATION IS INSTALLED OR IN CONJUNCTION WITH ESTABLISHING FOOTINGS AND SUPPORTS FOR A RAISED FOUNDATION AND THAT ESTABLISHES THOROUGH AND COMPLETE HORIZONTAL AND VERTICAL TREATED BARRIERS.

~~23.~~ 29. "Prior violation" means any violation for which disciplinary action was taken within a five-year period ~~prior to~~ BEFORE the date of the violation for which current disciplinary action is sought.

~~24.~~ 30. "Qualifying party" means ~~an individual who is licensed by the office to ensure the supervision and training~~ A CERTIFIED QUALIFIED APPLICATOR REGISTERED WITH THE OFFICE AS THE INDIVIDUAL RESPONSIBLE FOR ENSURING THE TRAINING, EQUIPPING AND SUPERVISION of all ~~employees~~ APPLICATORS of a business licensee ~~in the business of structural pest control~~ OR SCHOOL DISTRICT.

31. "SCHOOL" MEANS ANY PUBLIC OR NONPUBLIC INSTITUTION, OTHER THAN A CHILD'S HOME, THAT IS ESTABLISHED FOR THE PURPOSE OF OFFERING INSTRUCTION TO PUPILS IN PROGRAMS FOR PRESCHOOL CHILDREN WITH DISABILITIES, KINDERGARTEN PROGRAMS OR ANY COMBINATION OF GRADES ONE THROUGH TWELVE AND THAT QUALIFIES AS A SCHOOL PURSUANT TO SECTION 15-802.

32. "SERVICE VEHICLE" MEANS A MOTOR VEHICLE, INCLUDING A TRAILER ATTACHED TO THE MOTOR VEHICLE, THAT IS USED TO TRANSPORT EQUIPMENT OR PESTICIDES FOR THE BUSINESS OF PEST MANAGEMENT.

33. "STERILANT" MEANS A PRODUCT THAT IS DESIGNED FOR KILLING ALL LIVE VEGETATION AND PREVENTING ALL VEGETATION GROWTH FOR TWELVE OR MORE MONTHS.

~~25.~~ 34. "Weed" means any plant that grows where it is not wanted.

~~26.~~ 35. "Wood-destroying insect inspection report" means a written inspection report on a form approved by the ~~acting~~ director that is prepared in connection with the sale or refinancing of real property whether or not the report is used as part of the transaction.

~~27.~~ 36. "Wood-destroying ~~insects~~ ORGANISMS" means ~~insects~~ ORGANISMS that attack, damage or destroy wood or wood-derivative products, BUT DOES NOT INCLUDE BIRDS OR MAMMALS.

Sec. 2. Renumber

Section 32-2302, Arizona Revised Statutes, is renumbered as section 32-2303.

1 Sec. 3. Title 32, chapter 22, article 1, Arizona Revised Statutes, is
2 amended by adding a new section 32-2302, to read:

3 32-2302. Applicability of chapter; state preemption

4 A. THIS CHAPTER APPLIES TO PEST MANAGEMENT. THIS CHAPTER DOES NOT
5 APPLY TO PESTICIDE APPLICATIONS USED DIRECTLY IN THE COMMERCIAL PRODUCTION OF
6 CROPS AND ANIMALS OR USED, IF NOT FOR HIRE, ON GOLF COURSES.

7 B. THE REGULATION OF PEST MANAGEMENT IS OF STATEWIDE CONCERN. THE
8 REGULATION OF PEST MANAGEMENT PURSUANT TO THIS CHAPTER IS NOT SUBJECT TO
9 FURTHER REGULATION BY A COUNTY, CITY, TOWN OR OTHER POLITICAL SUBDIVISION OF
10 THIS STATE.

11 Sec. 4. Section 32-2303, Arizona Revised Statutes, as renumbered by
12 this act, is amended to read:

13 32-2303. Office of pest management; management and
14 administrative services; reimbursement

15 A. The office of pest management is established.

16 ~~B. The director of the department of agriculture shall appoint an~~
17 ~~acting director of the office who has administrative experience and~~
18 ~~experience in pest management to serve at the director's pleasure through~~
19 ~~December 31, 2013.~~

20 B. THE DEPARTMENT SHALL PROVIDE, THROUGH AN INTERAGENCY AGREEMENT,
21 NECESSARY MANAGEMENT AND ADMINISTRATIVE SERVICES TO THE OFFICE IN CONDUCTING
22 ITS ACTIVITIES, INCLUDING:

23 1. PROVIDING FINANCIAL AND ACCOUNTING SERVICES, INCLUDING ISSUING
24 CHECKS, PAYING BILLS APPROVED BY THE OFFICE, PREPARING BUDGETS AND ANY OTHER
25 ACTIVITIES REQUIRED BY THE OFFICE.

26 2. RECEIVING MONIES AUTHORIZED UNDER THIS CHAPTER FOR DEPOSIT,
27 PURSUANT TO SECTIONS 35-146 AND 35-147, IN THE APPROPRIATE FUNDS.

28 3. MANAGING THE OFFICE'S INFORMATION TECHNOLOGY SYSTEMS.

29 4. RECEIVING MAIL AND OTHER COMMUNICATIONS FOR THE OFFICE.

30 5. RULE MAKING, PREPARING REPORTS FOR THE GOVERNOR'S REGULATORY REVIEW
31 COUNCIL AND PREPARING REGULATORY AGENDAS.

32 6. PROVIDING HUMAN RESOURCES SERVICES, INCLUDING EMPLOYEE RELATIONS,
33 STAFFING AND RECRUITMENT, CLASSIFICATION AND COMPENSATION ADVICE AND
34 PERSONNEL POLICY ASSISTANCE.

35 7. PROVIDING OTHER SERVICES REQUESTED BY THE OFFICE AND APPROVED BY
36 THE DIRECTOR.

37 C. THE OFFICE SHALL REIMBURSE THE DEPARTMENT FOR NECESSARY MANAGEMENT
38 AND ADMINISTRATIVE SERVICES, INCLUDING THE DIRECTOR'S SERVICES, RENDERED FOR
39 THE BENEFIT OF THE OFFICE FROM THE MONIES RECEIVED UNDER THIS CHAPTER IN AN
40 AMOUNT AGREED ON BY THE OFFICE AND DEPARTMENT.

41 Sec. 5. Section 32-2304, Arizona Revised Statutes, is amended to read:

42 32-2304. Powers and duties of director

43 A. The ~~acting~~ director is responsible for administering this chapter
44 and shall:

1 1. Adopt rules that are necessary or proper ~~for the administration of~~
2 TO ADMINISTER AND IMPLEMENT this chapter, including RULES THAT MAY BE MORE
3 STRINGENT THAN A CORRESPONDING FEDERAL LAW FOR:

4 (a) Administrative provisions. ~~—~~

5 (b) LICENSURE, CERTIFICATION AND REGISTRATION REQUIREMENTS AND
6 QUALIFICATIONS, INCLUDING TRAINING AND education requirements, ~~—~~ AND FINANCIAL
7 SECURITY STANDARDS.

8 (c) Health and safety provisions. ~~and provisions for~~

9 (d) DUTIES AND RESPONSIBILITIES.

10 (e) RECORDKEEPING AND PRODUCTION OF RECORDS REQUIREMENTS.

11 (f) LICENSEE INSPECTION AND TREATMENT REPORT REQUIREMENTS.

12 (g) DISCIPLINARY ACTION PROVISIONS.

13 (h) EQUIPMENT PROVISIONS.

14 (i) ADVERTISING REQUIREMENTS.

15 (j) The use, storage and application of pesticides and devices used in
16 ~~structural~~ pest ~~control~~ MANAGEMENT.

17 ~~2. Administer and enforce this chapter and rules adopted pursuant to~~
18 ~~this chapter.~~

19 ~~3.~~ 2. Notify the business licensee, applicator and qualifying party
20 in writing of any ~~complaint against~~ INQUIRY INTO POSSIBLE VIOLATIONS BY the
21 business licensee, APPLICATOR OR qualifying party ~~or employee of the business~~
22 ~~licensee~~ by the close of business on the tenth business day after the day on
23 which the ~~acting~~ director initiated the ~~complaint~~ INQUIRY IF THE DIRECTOR
24 ANTICIPATES AN ENFORCEMENT ACTION. IF IN THE COURSE OF THE INVESTIGATION THE
25 OFFICE IDENTIFIES ANY ALLEGED VIOLATIONS BY A DIFFERENT BUSINESS LICENSEE,
26 APPLICATOR OR QUALIFIED PARTY, THE DIRECTOR SHALL NOTIFY THE ADDITIONAL
27 ALLEGED VIOLATOR BY THE CLOSE OF BUSINESS ON THE TENTH BUSINESS DAY AFTER THE
28 DAY ON WHICH THE DIRECTOR INITIATED THE NEW INQUIRY.

29 ~~4. Issue subpoenas for the taking of depositions, the production of~~
30 ~~documents and things and the entry on land for inspection and measuring,~~
31 ~~surveying, photographing, testing or sampling the property or any designated~~
32 ~~object or operation on the property relevant to the complaint.~~

33 ~~5.~~ 3. DEVELOP AND EITHER conduct or contract to conduct CERTIFIED
34 applicator ~~license~~ and ~~qualifying party license~~ CERTIFIED QUALIFIED
35 APPLICATOR tests at locations throughout this state. If the ~~acting~~ director
36 contracts for these tests, the contracts may provide for specific examination
37 fees or a reasonable range of fees determined by the ~~acting~~ director to be
38 paid directly to the contractor by the applicant. The ~~acting~~ director shall
39 make all efforts to contract with private parties to electronically
40 administer the ~~applicator and qualifying party license~~ tests.

41 ~~6.~~ 4. Maintain a computer system for the benefit and protection of
42 the public that includes the following information on ~~termite~~ PRETREATMENTS,
43 NEW-CONSTRUCTION TREATMENTS, FINAL GRADE treatments ~~that are done before or~~
44 ~~during construction~~, initial ~~termite~~ corrective ~~projects, preventative~~
45 ~~termite~~ treatments and wood-destroying insect inspection reports:

- 1 (a) The name of the individual who performed the work.
- 2 (b) The address or location of the work or project.
- 3 (c) The name of the pest management company.
- 4 (d) The name of the qualifying party.
- 5 (e) The applicator license numbers.
- 6 (f) The nature and date of the work performed.
- 7 (g) Any other information that is required by rule.

8 ~~7.~~ 5. Establish offices the ~~acting~~ director deems necessary to carry
9 out the purposes of this chapter.

10 ~~8.~~ 6. Subject to title 41, chapter 4, article 4, employ personnel the
11 ~~acting~~ director deems necessary to carry out the purposes of this chapter and
12 designate their duties.

13 ~~9. Investigate violations of this chapter and rules adopted pursuant~~
14 ~~to this chapter.~~

15 ~~10.~~ 7. Oversee the approval, content and method of delivery of
16 continuing education courses.

17 ~~11.~~ 8. Deny a license to any person who has had a license revoked for
18 a period of five years from the time of revocation.

19 ~~12.~~ 9. License applicators, ~~qualifying parties~~ AND QUALIFIED
20 APPLICATORS and LICENSE businesses in accordance with this chapter and rules
21 adopted pursuant to this chapter.

22 10. REGISTER QUALIFYING PARTIES, BRANCH SUPERVISORS AND BRANCH OFFICES
23 IN ACCORDANCE WITH THIS CHAPTER AND RULES ADOPTED PURSUANT TO THIS CHAPTER.

24 ~~13.~~ 11. Require the payment of a penalty for any late license renewal.

25 ~~14. Require either completion of the continuing education requirement~~
26 ~~or successful completion of the license examination for failure to renew a~~
27 ~~license on time.~~

28 ~~15. Suspend a license if a licensee fails to renew the license within~~
29 ~~thirty calendar days after the renewal date.~~

30 ~~16.~~ 12. Refuse to issue a business license in a name that is not
31 registered with the secretary of state or filed with the Arizona corporation
32 commission.

33 ~~17.~~ 13. Adopt a wood-destroying insect inspection report form for use
34 by business licensees.

35 ~~B. The acting director may charge to the holder of a business license~~
36 ~~the actual cost of providing mailed copies of rules, forms or policies that~~
37 ~~are proposed for adoption and for educational materials.~~

38 ~~C. The acting director shall administer and enforce this chapter and~~
39 ~~the rules adopted pursuant to this chapter.~~

40 ~~D.~~ B. The ~~acting~~ director may:

41 1. Compel attendance of witnesses, administer oaths or affirmations
42 and take testimony concerning all matters coming within the ~~acting~~ director's
43 jurisdiction.

44 ~~2. Require a person who seeks a license pursuant to this chapter to~~
45 ~~submit to the office a full set of fingerprints and the fees required by~~

~~section 41-1750. The acting director shall submit the fingerprints and fees to the department of public safety for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.~~

2. ISSUE SUBPOENAS FOR THE TAKING OF DEPOSITIONS, THE PRODUCTION OF DOCUMENTS AND THINGS AND THE ENTRY ON LAND FOR INSPECTION AND MEASURING, SURVEYING, PHOTOGRAPHING, TESTING OR SAMPLING THE PROPERTY OR ANY DESIGNATED OBJECT OR OPERATION ON THE PROPERTY RELEVANT TO AN INQUIRY OR COMPLAINT.

3. CONTRACT AND enter into INTERAGENCY AND intergovernmental agreements WITH ANY PRIVATE PARTY OR PUBLIC AGENCY.

4. With at least twenty-four hours' notice, ~~request specific records from~~ UNLESS THERE MAY BE AN IMMEDIATE RISK TO PUBLIC HEALTH AND SAFETY, REQUIRE a business licensee, qualifying party or applicator ~~at the person's place of business during normal business hours~~ TO PRODUCE SPECIFIC RECORDS. ON A SHOWING OF GOOD CAUSE BY THE BUSINESS LICENSEE, QUALIFYING PARTY OR APPLICATOR, THE DIRECTOR MAY EXCUSE FAILURE TO TIMELY COMPLY.

5. Deny or revoke a license based on the information in the application ~~or information that the acting director receives from the criminal background check.~~

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

~~7.~~ 6. Issue advisory notices for de minimis violations.

~~8. Require inspectors to be licensed applicators in all categories within their scope of work during their probationary period. Inspectors shall attend and complete an investigative training class that is prescribed by the acting director.~~

~~9.~~ 7. Investigate alleged violations of ~~all applicable federal and state statutes,~~ THIS CHAPTER, rules ADOPTED PURSUANT TO THIS CHAPTER, CONSENT AGREEMENTS, ~~or orders or alleged violations of~~ AND any condition imposed in connection with a license.

8. REQUIRE THE PUBLIC TO PROVIDE NOTICES REGARDING ALLEGED VIOLATIONS IN WRITING.

~~10.~~ 9. Pursuant to section ~~32-2329~~ 41-1092.11, summarily suspend a license issued under this chapter to protect the health, safety and welfare of the public.

~~11.~~ 10. Issue a corrective work order requiring a BUSINESS licensee OR APPLICATOR to remedy deficiencies in treatment or to comply with this chapter or any rules adopted pursuant to this chapter before or after a formal hearing.

~~12.~~ 11. Do at least one of the following in relation to unlicensed pest management business operations, UNLESS THE OPERATIONS DO NOT REQUIRE LICENSURE:

(a) Issue a cease and desist order requiring ~~an unlicensed pest management~~ THE business to immediately cease operations.

(b) ~~Except as provided in section 32-2311, subsection D,~~ Impose on an ~~unlicensed pest management~~ THE OWNER OF THE business a civil penalty of not more than one thousand dollars for the first occurrence and not more than two thousand dollars for the second or subsequent occurrence.

~~13. Refer all cases for formal hearing to the office of administrative hearings.~~

~~14.~~ 12. Refuse to issue a business license in a name that is likely to be misleading or to imply any distorted representation about the business.

~~15. 13. Issue a renewable and revocable temporary qualifying party license to a licensed~~ REGISTER A CERTIFIED applicator who is a representative of a business licensee AS A TEMPORARY QUALIFYING PARTY if the qualifying party becomes disassociated with the business licensee.

~~16. 14. Provide and conduct classes to train applicators and qualifying parties~~ INDIVIDUALS in preparation for ~~license~~ CERTIFIED APPLICATOR AND CERTIFIED QUALIFIED APPLICATOR tests. The ~~acting~~ director may assess a fee for each class. The ~~acting~~ director may contract with a commercial enterprise or an accredited institution to conduct the class.

~~17. 15. Provide and conduct continuing education classes quarterly.~~ The ~~acting~~ director may assess a fee for each credit hour. The ~~acting~~ director may contract with a commercial enterprise or an accredited institution to conduct the class under the supervision of office staff.

~~18. Appoint an employee of the office to conduct an informal settlement conference with a licensee against whom an inquiry is received or a complaint is filed.~~

~~19. Prepare a consent order only after either an informal settlement conference is conducted pursuant to section 32-2321 or a formal hearing is conducted pursuant to title 41, chapter 6, article 10.~~

~~20.~~ 16. Apply to the appropriate court, through the attorney general or county attorney, for an order enjoining any act or practice that constitutes a violation of this chapter or any rule adopted pursuant to this chapter.

~~21. Approve proposed consent orders.~~

17. ENTER INTO CONSENT AGREEMENTS AND ISSUE CONSENT ORDERS.

18. DESIGNATE BY RULE DEVICES THAT ARE EXEMPT FROM THE LICENSURE, CERTIFICATION AND REGISTRATION REQUIREMENTS OF THIS CHAPTER.

19. CHARGE A PERSON FOR PROVIDING COPIES OF RULES, FORMS OR POLICIES PROPOSED FOR ADOPTION AND FOR EDUCATIONAL MATERIALS.

20. REQUIRE A BUSINESS LICENSEE OR QUALIFYING PARTY TO REGISTER WITH THE OFFICE OR OTHERWISE IDENTIFY ALL OF THE LICENSED OR UNLICENSED APPLICATORS OF THE BUSINESS OR SUPERVISED BY THE QUALIFYING PARTY.

21. REQUIRE A BUSINESS LICENSEE TO PRODUCE RECORDS FOR THE PURPOSE OF VERIFYING THAT AN INDIVIDUAL IS AN APPLICATOR OF THE BUSINESS LICENSEE.

22. CHARGE A HANDLING FEE IN ADDITION TO THE TRANSACTION AMOUNT FOR ANY TRANSACTION THAT COULD HAVE BEEN COMPLETED ELECTRONICALLY AND WAS NOT.

1 23. DENY OR REFUSE TO RENEW A LICENSE OF A PERSON WHO OWES UNPAID FEES
2 OR CIVIL PENALTIES TO THE OFFICE.

3 ~~E. Each completed form for a termite treatment that is done before or~~
4 ~~during construction, initial termite corrective treatment project or~~
5 ~~wood destroying insect inspection report shall be accompanied by a fee. The~~
6 ~~initial fee is eight dollars. The acting director may:~~

7 ~~1. Adjust the fee upward or downward to a level that is calculated to~~
8 ~~produce sufficient revenue to carry out the functions prescribed under this~~
9 ~~section.~~

10 ~~2. Establish tiered fees according to the means of submission to~~
11 ~~encourage electronic submission of the termite action registration form.~~

12 ~~3. Assess a penalty of not to exceed one hundred dollars per form for~~
13 ~~failing to submit the required form or fee, or both, within thirty calendar~~
14 ~~days.~~

15 ~~F. Subject to the limitations of section 41-2544, the acting director~~
16 ~~may enter into agreements for the purpose of enabling the office to accept~~
17 ~~payment for fees imposed under this chapter by alternative payment methods,~~
18 ~~including credit cards, charge cards, debit cards and electronic funds~~
19 ~~transfers. Before the monies are transferred to the acting director pursuant~~
20 ~~to section 32-2305, the person collecting the fees shall deduct any amount~~
21 ~~charged or withheld by a company providing the alternative payment method~~
22 ~~under an agreement with the office.~~

23 ~~G. C. In the enforcement of this article, the acting~~ THE director or
24 any duly authorized agents may enter ~~with the authority of a warrant issued~~
25 ~~by a court of competent jurisdiction at reasonable times on~~ any private or
26 public property, INCLUDING A SERVICE VEHICLE, on which pesticides are located
27 or are reasonably believed to be located to be used for purposes related to
28 pest management OR ANY OFFICE OF A BUSINESS ENGAGED IN PEST MANAGEMENT. The
29 owner, managing agent or occupant of the property OR OFFICE shall permit
30 entry for the purpose of inspecting and investigating conditions relating to
31 the use, storage, application and disposal of pesticides, INCLUDING WORKER
32 SAFETY MATERIALS AND RECORDS PERTAINING TO PEST MANAGEMENT. IF A PERSON
33 REFUSES TO ADMIT THE DIRECTOR OR THE AUTHORIZED AGENT IN ACCORDANCE WITH THIS
34 SUBSECTION, THE DIRECTOR MAY OBTAIN A WARRANT FROM A COURT OF COMPETENT
35 JURISDICTION. IF A LICENSED OR CERTIFIED PERSON REFUSES TO ADMIT THE
36 DIRECTOR OR AN AUTHORIZED AGENT IN ACCORDANCE WITH THIS SUBSECTION DURING
37 REGULAR BUSINESS HOURS, THE DIRECTOR MAY IMPOSE DISCIPLINARY ACTION ON THE
38 PERSON.

39 D. THE DIRECTOR OR ANY DULY AUTHORIZED AGENTS MAY MONITOR COMPLIANCE
40 BY A PERSON WITH THIS CHAPTER AND RULES ADOPTED PURSUANT TO THIS CHAPTER
41 WHILE THE PERSON IS PROVIDING PEST MANAGEMENT SERVICES.

1 Sec. 6. Section 32-2305, Arizona Revised Statutes, is amended to read:
2 32-2305. Pest management fund; exemption

3 A. ~~A.~~ THE pest management fund is established FOR THE EXCLUSIVE
4 PURPOSE OF IMPLEMENTING, CONTINUING AND SUPPORTING THE OFFICE AND ITS
5 OBJECTIVES AS ESTABLISHED BY THIS CHAPTER.

6 B. Pursuant to sections 35-146 and 35-147, the ~~acting~~ director shall
7 deposit ten per cent of all fees in the state general fund and deposit the
8 remaining ninety per cent in the pest management fund. All monies collected
9 from civil penalties shall be deposited, pursuant to sections 35-146 and
10 35-147, in the state general fund.

11 C. Monies deposited in the pest management fund are exempt from the
12 provisions of section 35-190 relating to lapsing of appropriations.

13 Sec. 7. Repeal

14 Section 32-2306, Arizona Revised Statutes, is repealed.

15 Sec. 8. Title 32, chapter 22, article 1, Arizona Revised Statutes, is
16 amended by adding a new section 32-2306, to read:

17 32-2306. Pest management advisory committee; members

18 THE DIRECTOR SHALL ESTABLISH BY RULE A PEST MANAGEMENT ADVISORY
19 COMMITTEE TO ASSIST AND MAKE RECOMMENDATIONS TO THE DIRECTOR REGARDING THE
20 ADMINISTRATION AND IMPLEMENTATION OF THIS CHAPTER. THE DIRECTOR SHALL
21 APPOINT FIVE MEMBERS TO THE COMMITTEE, INCLUDING ONE PUBLIC MEMBER.

22 Sec. 9. Section 32-2307, Arizona Revised Statutes, is amended to read:

23 32-2307. Pesticide applications at schools and child care
24 facilities; notifications; exemptions

25 A. ONLY A CERTIFIED APPLICATOR MAY APPLY PESTICIDES AT A SCHOOL OR
26 CHILD CARE FACILITY.

27 ~~A.~~ B. A business licensee or ~~licensed~~ CERTIFIED applicator shall
28 notify a school or a child care facility at least seventy-two hours in
29 advance of any pesticide application in order to permit the school to comply
30 with section 15-152 and the child care facility to comply with section
31 36-898. The seventy-two hour advance notice shall include the date and time
32 the application is to occur. The seventy-two hour advance notice shall also
33 include the brand name, concentration, rate of application, pesticide label
34 and material safety data sheet and any use restrictions required by the
35 pesticide label. ~~Only an individual holding an applicator license may make~~
36 ~~pesticide applications at schools and child care facilities.~~

37 ~~B.~~ C. Immediately ~~prior to~~ BEFORE application of a pesticide, a
38 business licensee or ~~licensed~~ CERTIFIED applicator shall provide the school
39 or child care facility with a written preapplication notification containing
40 the following information:

- 41 1. The brand name, concentration and rate of application and any use
42 restrictions required by the label of the herbicide or specific pesticide.
- 43 2. The area or areas where the pesticide is to be applied.
- 44 3. The date and time the application is to occur.
- 45 4. The pesticide label and the material safety data sheet.

1 ~~C.~~ D. The pesticide label and material safety data sheet may be used
2 in place of ~~the~~ ANY information required pursuant to subsections ~~A-and~~ B AND
3 C of this section if ~~all-of~~ the information ~~required by those subsections~~ is
4 already contained on the PESTICIDE label or material safety data sheet.

5 ~~D.~~ E. The following pesticide applications are exempt from the
6 notification requirement prescribed ~~in~~ BY subsections ~~A-and~~ B AND C of this
7 section:

8 1. Nonresidual pesticide applications performed or contracted by
9 public health agencies for adult vector control, provided that oral
10 notification is attempted at least seventy-two hours before the application,
11 when possible, to the school office or child care facility office with a
12 statement of the pest problem, treatment procedure, area to be treated and
13 approximate time of the application.

14 2. Emergency applications of a pesticide that has a toxicity category
15 of III or IV pursuant to 40 Code of Federal Regulations section 156.62 to
16 control harmful pests that pose an immediate threat to the public health.
17 Under the circumstances described in this paragraph or paragraph 1 of this
18 subsection, the business licensee or ~~licensed~~ CERTIFIED applicator shall do
19 all of the following:

20 (a) Notify the school office or child care facility office before the
21 application with a statement of the pest problem, treatment procedure, area
22 to be treated and approximate time of application.

23 (b) Immediately after the application has been completed, notify the
24 school office or the child care facility office of the name of the pesticide
25 applied, the formulation, the strength and dosage and the date and time of
26 application and provide the pesticide label.

27 (c) Post the treated area immediately after the application. The
28 posting shall be at least eight and one-half inches by eleven inches and
29 shall include the name of the pesticide, the registration number issued by
30 the United States environmental protection agency, the date and time of
31 application and the name and telephone number of the business licensee and
32 ~~licensed~~ CERTIFIED applicator. A copy of the posting shall also be placed at
33 the main entrance to the school or child care facility. The posting and the
34 copy of the posting shall remain in place for at least forty-eight hours
35 after the application.

36 3. Disinfectants or swimming pool chemicals.

37 4. Block, gel or paste-type bait that is a toxicity category III or IV
38 formulation of insecticide pursuant to 40 Code of Federal Regulations section
39 156.62 and that is either of the following:

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

42 (b) Applied to a crack or crevice THAT IS inaccessible to children.

43 5. Block-type bait that is a toxicity level III or IV formulation of
44 rodenticide pursuant to 40 Code of Federal Regulations section 156.62 and

1 that is secured in an enclosed, tamper-resistant bait station placed in an
2 area ~~THAT IS~~ inaccessible to children.

3 6. Personal repellants.

4 **7. NONRESTRICTED USE SANITIZERS AND DEODORIZERS.**

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

8 ~~E. The provisions of this chapter shall regulate and determine all~~
9 ~~requirements regarding licenses, fees, testing, education, and all other~~
10 ~~requirements regarding the business of pest control for persons licensed~~
11 ~~pursuant to this chapter.~~

12 ~~F. For the purposes of this section:~~

13 ~~1. "Child care facility" means a facility regulated pursuant to title~~
14 ~~36, chapter 7.1.~~

15 ~~2. "Pesticides" does not include nonrestricted use disinfectants,~~
16 ~~sanitizers or deodorizers.~~

17 ~~3. "School" means an educational institution that provides instruction~~
18 ~~in prekindergarten programs, kindergarten programs or any of grades one~~
19 ~~through twelve.~~

20 Sec. 10. Transfer and renumber

21 Section 32-2308, Arizona Revised Statutes, is transferred and
22 renumbered for placement in title 32, chapter 22, article 3, Arizona Revised
23 Statutes, as section 32-2323.

24 Sec. 11. Section 32-2311, Arizona Revised Statutes, is amended to
25 read:

26 32-2311. License and registration exemptions

27 A. **THE PROVISIONS OF** this chapter ~~does~~ **REQUIRING LICENSURE AND**
28 **REGISTRATION DO** not apply to:

29 ~~1. Persons licensed or certified pursuant to title 3, chapter 2,~~
30 ~~article 6.~~

31 ~~2.~~ 1. Persons applying **NONRESTRICTED USE** pesticides on **RESIDENTIAL**
32 property that they own and occupy **OR THAT THEY OWN AND THAT IS NOT OCCUPIED.**

33 ~~3.~~ 2. Authorized representatives of any educational institution
34 engaged in research in the study of pest management or a state agency engaged
35 in research or the study of pest management.

36 ~~4. Employees of political subdivisions or their designated agents~~
37 ~~while performing emergency response or rescue services.~~

38 ~~5.~~ 3. Persons using a nonrestricted, ready-to-use disinfectant,
39 sanitizer or deodorizer.

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

43 ~~(a) The use of herbicides that are labeled with the words "restricted~~
44 ~~use" or "danger" and that are not commercially available to the general~~
45 ~~public.~~

~~(b) The use of sterilants.~~

~~(c) Persons who offer weed management as their primary service.~~

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

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

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

~~7.~~ 4. A utility and the utility's employees if pest management services are needed for an employee's health and safety in order for the employee to continue performing work tasks.

~~8. Except as provided in section 32-2307, volunteers of political subdivisions who apply herbicides for the purpose of the eradication and control of noxious weeds as defined in section 3-201 and who are under the immediate supervision of a licensed applicator. This exemption does not apply to:~~

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

~~(b) The use of sterilants.~~

~~(c) Volunteers of political subdivisions who use application equipment that holds more than eight gallons of total mixed liquid herbicide.~~

~~(d) Volunteers of political subdivisions who use more than twenty five pounds of a nonliquid herbicide.~~

~~(e) Volunteers of political subdivisions who do not follow label and labeling directions.~~

~~(f) Volunteers of political subdivisions who have not completed an office of pest management approved herbicide application training program conducted by the political subdivision.~~

5. PERSONS USING AN OVER-THE-COUNTER ANTIMICROBIAL TO TREAT A SWIMMING POOL.

6. PERSONS USING A DEVICE THAT IS EXEMPT PURSUANT TO SECTION 32-2304, SUBSECTION B, PARAGRAPH 18.

7. PERSONS WHO ARE EXEMPT PURSUANT TO SECTION 32-2318 OR 32-2319.

~~B. An employee of a political subdivision who engages in pest management:~~

~~1. Is not required to be licensed under section 32-2313 or 32-2314.~~

~~2. Must be licensed as an applicator under section 32-2312, except as provided by subsection A, paragraph 4 of this section.~~

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

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

~~2. The date of the herbicide application.~~

1 ~~3. The trade name or common name of the herbicide applied.~~
2 ~~D. If a person is exempt pursuant to subsection A, paragraph 6 of this~~
3 ~~section but does not comply with subsection C of this section or if a person~~
4 ~~is not licensed under this chapter and the person is not exempt pursuant to~~
5 ~~subsection A, paragraph 6 of this section as a result of doing something~~
6 ~~prescribed in subsection A, paragraph 6, subdivisions (a) through (f) of this~~
7 ~~section, the acting director shall:~~
8 ~~1. On a first violation, issue a written notice of correction that~~
9 ~~contains a warning and a copy of this section and that provides full notice~~
10 ~~of the exemption requirements.~~
11 ~~2. On a second violation, impose a civil penalty of not more than two~~
12 ~~hundred fifty dollars.~~
13 ~~3. On a third or any subsequent violation, impose a civil penalty of~~
14 ~~not more than five hundred dollars.~~
15 ~~E. Volunteers of political subdivisions who are not working under the~~
16 ~~immediate supervision of a licensed applicator may be subject to section~~
17 ~~32-2304, subsection D, paragraph 12.~~
18 ~~F. For the purposes of this section, "volunteers of political~~
19 ~~subdivisions" means persons who work without compensation other than~~
20 ~~reimbursement of actual expenses incurred or disbursement of meals or other~~
21 ~~incidental benefits.~~
22 B. AN INDIVIDUAL IS NOT REQUIRED TO HAVE A SEPARATE BUSINESS LICENSE
23 TO ENGAGE IN THE BUSINESS OF PEST MANAGEMENT ON BEHALF OF A BUSINESS LICENSEE
24 OR AS AN EMPLOYEE OF A POLITICAL SUBDIVISION.
25 C. THE DIRECTOR BY RULE MAY EXEMPT FROM SECTIONS 32-2313 AND 32-2314 A
26 CERTIFIED APPLICATOR WHO PERFORMS INSPECTIONS BUT DOES NOT MAKE
27 RECOMMENDATIONS, ESTIMATES, BIDS OR CONTRACTS FOR TREATMENT OR USE PESTICIDES
28 OR DEVICES FOR PEST MANAGEMENT AND MAY PRESCRIBE ALTERNATIVE REQUIREMENTS AND
29 CONDITIONS.
30 Sec. 12. Title 32, chapter 22, article 2, Arizona Revised Statutes, is
31 amended by adding sections 32-2311.01 and 32-2311.02, to read:
32 32-2311.01. Political subdivisions; exemptions; definition
33 A. A POLITICAL SUBDIVISION THAT USES PESTICIDES TO CONDUCT PEST
34 MANAGEMENT ON PROPERTY THAT IS OWNED, LEASED OR MANAGED BY THE POLITICAL
35 SUBDIVISION, INCLUDING EASEMENTS:
36 1. IS NOT REQUIRED TO BE LICENSED UNDER SECTION 32-2313.
37 2. MUST PROVIDE THE DEPARTMENT WITH THE NAME AND TELEPHONE NUMBER OF
38 THE PRIMARY CONTACT PERSON OR PERSONS RESPONSIBLE FOR RESPONDING TO
39 DEPARTMENT INQUIRIES OR CONCERNS REGARDING COMPLIANCE WITH THIS CHAPTER. THE
40 PRIMARY CONTACT PERSON OR PERSONS AT A MINIMUM SHALL DEMONSTRATE TO THE
41 DEPARTMENT:
42 (a) WHERE THE RECORDS ARE RETAINED.
43 (b) WHERE THE PERSONAL PROTECTIVE EQUIPMENT IS LOCATED.
44 (c) WHERE THE PESTICIDES ARE STORED.
45 (d) THAT ALL APPLICATORS ARE PROPERLY CERTIFIED.

1 B. A SCHOOL DISTRICT IS EXEMPT FROM SUBSECTION A, PARAGRAPH 2 OF THIS
2 SECTION, BUT SHALL HAVE A QUALIFYING PARTY WHO IS REGISTERED IN THE
3 APPROPRIATE CATEGORIES.

4 C. AN EMPLOYEE OF A POLITICAL SUBDIVISION WHO PROVIDES PEST MANAGEMENT
5 SERVICES MUST BE A CERTIFIED APPLICATOR EXCEPT AS PROVIDED BY SUBSECTION D OF
6 THIS SECTION.

7 D. THE FOLLOWING INDIVIDUALS ARE EXEMPT FROM THE CERTIFICATION
8 REQUIREMENTS OF THIS CHAPTER:

9 1. AN EMPLOYEE OF A POLITICAL SUBDIVISION WHO APPLIED PESTICIDES FOR
10 THE POLITICAL SUBDIVISION FOR THE FIRST TIME NO MORE THAN NINETY DAYS BEFORE
11 CERTIFICATION. THIS EXEMPTION DOES NOT APPLY TO AN EMPLOYEE WHO APPLIES
12 PESTICIDES AT A SCHOOL OR CHILD CARE FACILITY.

13 2. AN EMPLOYEE OF A POLITICAL SUBDIVISION OR DESIGNATED AGENT WHILE
14 PERFORMING EMERGENCY RESPONSE OR RESCUE SERVICES.

15 3. A VOLUNTEER OF A POLITICAL SUBDIVISION WHILE APPLYING HERBICIDES
16 FOR THE PURPOSE OF THE ERADICATION AND CONTROL OF NOXIOUS WEEDS AS DEFINED IN
17 SECTION 3-201 AND WHO IS UNDER THE IMMEDIATE SUPERVISION OF A CERTIFIED
18 APPLICATOR. THIS EXEMPTION DOES NOT APPLY TO A VOLUNTEER OF A POLITICAL
19 SUBDIVISION WHO:

20 (a) APPLIES HERBICIDES AT A SCHOOL OR CHILD CARE FACILITY.

21 (b) USES HERBICIDES THAT ARE LABELED WITH THE WORDS "RESTRICTED USE"
22 OR "DANGER".

23 (c) USES STERILANTS.

24 (d) USES APPLICATION EQUIPMENT THAT HOLDS MORE THAN FOUR GALLONS OF
25 TOTAL MIXED LIQUID HERBICIDE.

26 (e) HAS NOT COMPLETED AN HERBICIDE APPLICATION TRAINING PROGRAM
27 CONDUCTED BY THE POLITICAL SUBDIVISION AND APPROVED BY THE OFFICE.

28 E. FOR THE PURPOSES OF THIS SECTION, "VOLUNTEER" MEANS A PERSON WHO
29 WORKS WITHOUT COMPENSATION OTHER THAN REIMBURSEMENT OF ACTUAL EXPENSES
30 INCURRED OR DISBURSEMENT OF MEALS OR OTHER INCIDENTAL BENEFITS.

31 32-2311.02. Landscapers; records; civil penalties

32 A. THE PROVISIONS OF THIS CHAPTER REQUIRING LICENSURE, AND
33 REGISTRATION DO NOT APPLY TO A PERSON WHO CONDUCTS LAWN, GARDEN, SHRUB OR
34 TREE MAINTENANCE AND WHO APPLIES HERBICIDES FOR THE PURPOSE OF WEED
35 MANAGEMENT, EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION.

36 B. NOTWITHSTANDING SUBSECTION A OF THIS SECTION, THE LICENSURE,
37 CERTIFICATION AND REGISTRATION REQUIREMENTS OF THIS CHAPTER APPLY TO A PERSON
38 WHO:

39 1. USES HERBICIDES THAT ARE LABELED WITH THE WORDS "RESTRICTED USE" OR
40 "DANGER".

41 2. USES STERILANTS OR PREEMERGENT HERBICIDES.

42 3. OFFERS WEED MANAGEMENT AS THE PERSON'S PRIMARY SERVICE OR
43 ADVERTISES WEED MANAGEMENT SERVICES.

1 4. USES APPLICATION EQUIPMENT THAT COLLECTIVELY HOLDS MORE THAN FOUR
2 GALLONS OF TOTAL MIXED LIQUID HERBICIDE AT AN ADDRESS OR PROJECT ON THE SAME
3 DAY.

4 5. USES MORE THAN TWENTY-FIVE POUNDS OF NONLIQUID HERBICIDE AT AN
5 ADDRESS OR PROJECT ON THE SAME DAY.

6 6. USES OR IS PART OF A CREW OF TWO OR MORE HERBICIDE APPLICATORS AT
7 AN ADDRESS OR PROJECT ON THE SAME DAY.

8 7. USES AN HERBICIDE AT A SCHOOL OR CHILD CARE FACILITY.

9 8. USES AN HERBICIDE AT AN ADDRESS OR PROJECT WITHOUT PERFORMING LAWN,
10 GARDEN, SHRUB OR TREE MAINTENANCE AT THAT ADDRESS OR PROJECT ON THE SAME DAY.

11 C. A PERSON WHO IS EXEMPT FROM LICENSURE, CERTIFICATION AND
12 REGISTRATION PURSUANT TO THIS SECTION SHALL PROVIDE TREATMENT RECORDS TO EACH
13 CUSTOMER ON APPLICATION OF HERBICIDES FOR THE PURPOSE OF WEED MANAGEMENT AND
14 SHALL RETAIN RECORDS CONTAINING THE SAME INFORMATION PROVIDED TO CUSTOMERS
15 FOR AT LEAST SIX MONTHS AFTER THE DATE OF THE TREATMENT. FOR THE PURPOSES OF
16 THIS SUBSECTION, TREATMENT RECORDS MUST INCLUDE THE FOLLOWING:

17 1. THE ADDRESS OF THE LOCATION OF THE HERBICIDE APPLICATION.

18 2. THE DATE OF THE HERBICIDE APPLICATION.

19 3. THE TRADE NAME OR COMMON NAME OF THE HERBICIDE APPLIED.

20 4. THE AMOUNT OF THE HERBICIDE APPLIED.

21 5. THE NAME OF THE INDIVIDUAL WHO PERFORMED THE TREATMENT.

22 D. IF A PERSON IS EXEMPT FROM LICENSURE, CERTIFICATION AND
23 REGISTRATION PURSUANT TO SUBSECTION A OF THIS SECTION BUT DOES NOT COMPLY
24 WITH SUBSECTION C OF THIS SECTION, THE DIRECTOR SHALL:

25 1. ON A FIRST VIOLATION, ISSUE A WRITTEN NOTICE OF CORRECTION THAT
26 CONTAINS A WARNING AND A COPY OF THIS SECTION.

27 2. ON A SECOND VIOLATION, IMPOSE A CIVIL PENALTY OF AT LEAST FIFTY
28 DOLLARS.

29 3. ON A THIRD OR ANY SUBSEQUENT VIOLATION, IMPOSE A CIVIL PENALTY OF
30 NOT MORE THAN ONE THOUSAND DOLLARS.

31 E. IF A PERSON IS NOT EXEMPT FROM LICENSURE, CERTIFICATION AND
32 REGISTRATION BUT USES AN HERBICIDE FOR THE PURPOSE OF WEED MANAGEMENT, THE
33 DIRECTOR MAY:

34 1. ISSUE A CEASE AND DESIST ORDER AND AN ADMINISTRATIVE WARNING.

35 2. ON A FIRST VIOLATION, IMPOSE A CIVIL PENALTY OF NOT MORE THAN ONE
36 THOUSAND DOLLARS.

37 3. ON A SECOND OR ANY SUBSEQUENT VIOLATION, IMPOSE A CIVIL PENALTY OF
38 NOT MORE THAN TWO THOUSAND DOLLARS.

39 Sec. 13. Repeal

40 Section 32-2312, Arizona Revised Statutes, is repealed.

41 Sec. 14. Title 32, chapter 22, article 2, Arizona Revised Statutes, is
42 amended by adding a new section 32-2312, to read:

43 32-2312. Applicator certification; categories

44 A. AN APPLICATION FOR APPLICATOR CERTIFICATION SHALL BE IN A FORM
45 PRESCRIBED BY THE DIRECTOR AND BE ACCOMPANIED BY THE PRESCRIBED FEE.

1 B. AN INDIVIDUAL MAY APPLY FOR CERTIFICATION AS AN APPLICATOR OR
2 QUALIFIED APPLICATOR IN ANY ONE OR A COMBINATION OF THE FOLLOWING CATEGORIES:

3 1. INDUSTRIAL, INSTITUTIONAL, STRUCTURAL AND HEALTH RELATED PEST
4 MANAGEMENT.

5 2. WOOD-DESTROYING ORGANISM MANAGEMENT.

6 3. ORNAMENTAL AND TURF PEST MANAGEMENT.

7 4. RIGHT-OF-WAY PEST MANAGEMENT.

8 5. AQUATIC PEST MANAGEMENT.

9 6. FUMIGATION.

10 7. OTHER CATEGORIES OR SUBCATEGORIES ESTABLISHED BY RULE.

11 Sec. 15. Section 32-2313, Arizona Revised Statutes, is amended to
12 read:

13 32-2313. Business license; financial security

14 A. A person who ~~wishes to engage~~ ENGAGES in the business of pest
15 management shall ~~first~~ obtain a VALID business license from the office ~~as~~
16 ~~provided in this article~~. A person who is not exempt under this ~~article~~
17 CHAPTER and who advertises for, solicits or ~~holds himself out as~~ CLAIMS TO BE
18 willing to engage in the business of pest management is presumed to be
19 ENGAGING in the business of pest management.

20 B. An application for AN ORIGINAL OR a RENEWAL business license shall:

21 1. Be in a form AND INCLUDE THE INFORMATION prescribed by the ~~acting~~
22 director.

23 2. Be accompanied by the prescribed fee.

24 ~~3. Include the name and address of the qualifying party and written~~
25 ~~documentation of how the qualifying party will be active in the day to day~~
26 ~~management of the business licensee.~~

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

29 ~~C. A business licensee shall register each primary and branch office~~
30 ~~with the acting director before it opens for business.~~

31 ~~D. An applicant shall furnish the following to the acting director:~~

32 3. INCLUDE THE FOLLOWING PROOF OF FINANCIAL SECURITY:

33 ~~1. (a) Proof of financial responsibility consisting of~~ Either a
34 deposit of money, liability insurance, self-insured retention, a surety bond
35 or a certified check protecting persons who may suffer ~~legal damages~~ BODILY
36 INJURY OR PROPERTY DAMAGE as a result of the operations of the applicant.
37 The ~~acting~~ director shall not accept a bond or a liability insurance policy
38 unless IT IS issued by an insurer that holds a valid certificate of authority
39 or that is permitted to transact surplus lines insurance in this state. The
40 amount of the deposit, insurance, self-insured retention or bond shall be at
41 least five hundred thousand dollars and shall be maintained at not less than
42 that amount at all times during the licensing period. The license of a
43 business licensee whose financial security falls below the minimum five
44 hundred thousand dollars shall be suspended by the ~~acting~~ director and shall
45 remain suspended until the security meets the minimum financial security

1 requirement. The financial security need only cover those particular
2 operations in which the licensee is engaged at any time. If the financial
3 security is in the form of liability insurance or a surety bond, the licensee
4 shall furnish the ~~acting~~ director with a certificate of coverage that
5 indicates the coverages and endorsements required by this subsection on a
6 form prescribed by the ~~acting~~ director.

7 ~~2-~~ (b) Either of the following if the business licensee performs
8 termite treatments:

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

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

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

22 ~~4-~~ C. If an insurance policy provides for a deductible, the
23 deductible amount shall not exceed one per cent of the total financial
24 security for each occurrence. If the deductible amount is in excess of one
25 per cent of the total financial security for each occurrence, the business
26 licensee shall provide other security as provided in this ~~subsection~~ SECTION
27 or other evidence of financial security for the excess deductible amount.

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

34 E. If the proof of financial security on file with the office expires,
35 the business license is automatically suspended until a current certificate
36 of insurance or proof of financial responsibility is furnished to the ~~acting~~
37 director.

38 ~~F. Except as provided in section 32-4301, each business licensee shall~~
39 ~~renew the business license and each office registration on or before the~~
40 ~~expiration date of the license by filing renewal forms prescribed by the~~
41 ~~acting director and paying the prescribed renewal fees. If a business~~
42 ~~licensee fails to renew the business license as required by this subsection,~~
43 ~~the licensee shall not engage in the business of pest management.~~

1 ~~G. Each branch office of a business licensee shall be supervised by a~~
2 ~~licensed applicator or qualifying party who is licensed in all categories in~~
3 ~~which the branch office operates.~~

4 ~~H. For the purposes of this section, "financial security" means~~
5 ~~liability insurance, a deposit of cash or certified monies, a surety bond or~~
6 ~~other equivalent item.~~

7 Sec. 16. Repeal

8 Section 32-2314, Arizona Revised Statutes, is repealed.

9 Sec. 17. Title 32, chapter 22, article 2, Arizona Revised Statutes, is
10 amended by adding a new section 32-2314 and section 32-2315, to read:

11 32-2314. Qualifying party; registration

12 A. A PERSON SHALL NOT ENGAGE IN THE BUSINESS OF PEST MANAGEMENT IN ANY
13 CATEGORY WITHOUT A QUALIFYING PARTY REGISTERED IN THAT CATEGORY.

14 B. TO BE A QUALIFYING PARTY, AN INDIVIDUAL MUST:

15 1. BE A CERTIFIED QUALIFIED APPLICATOR.

16 2. REGISTER AS A QUALIFYING PARTY WITH THE OFFICE USING A FORM AND
17 INCLUDING THE INFORMATION PRESCRIBED BY THE DIRECTOR.

18 32-2315. Branch office; branch supervisor

19 A. A BUSINESS LICENSEE SHALL REGISTER EACH BRANCH OFFICE WITH THE
20 DIRECTOR BEFORE THE BRANCH OFFICE OPENS FOR BUSINESS.

21 B. EACH BRANCH OFFICE SHALL BE SUPERVISED BY A REGISTERED BRANCH
22 SUPERVISOR.

23 Sec. 18. Section 32-2317, Arizona Revised Statutes, is amended to
24 read:

25 32-2317. Fees

26 A. The ~~acting~~ director shall establish BY RULE and collect APPLICATION
27 AND RENEWAL fees ~~that may include service charges allowed pursuant to section~~
28 ~~32-2304 for persons who pay with alternative payment methods, including~~
29 ~~credit cards, charge cards, debit cards and electronic transfers, but that~~
30 ~~may not exceed the following amounts~~ FOR THE FOLLOWING:

31 ~~1. Qualifying party license application fee, one hundred fifty~~
32 ~~dollars.~~

33 ~~2. Qualifying party license renewal fee, one hundred fifty dollars.~~

34 ~~3. Qualifying party license renewal fee, inactive status, twenty five~~
35 ~~dollars.~~

36 ~~4. Temporary qualifying party license application fee, twenty-five~~
37 ~~dollars.~~

38 ~~5. 1. A business license, application fee, one hundred dollars.~~

39 ~~6. Business license renewal fee, one hundred dollars.~~

40 ~~7. 2. A branch office registration application fee, fifty dollars.~~

41 ~~8. Branch office registration renewal fee, fifty dollars.~~

42 ~~9. Late renewal penalty fee, double the prescribed renewal fee.~~

43 3. A BRANCH SUPERVISOR REGISTRATION.

44 ~~10. 4. A qualifying party license status change, inactive to active~~
45 ~~REGISTRATION, one hundred twenty-five dollars.~~

1 5. A TEMPORARY QUALIFYING PARTY REGISTRATION.
2 6. TEMPORARY QUALIFYING PARTY RENEWAL REGISTRATION.
3 ~~11.~~ 7. Applicator ~~license application, thirty~~ CERTIFICATION dollars.
4 ~~12.~~ ~~Applicator license annual renewal, twenty five dollars.~~
5 8. A QUALIFIED APPLICATOR CERTIFICATION.
6 9. AN APPLICATOR REGISTRATION.
7 ~~13.~~ 10. A duplicate license ~~identification card, ten dollars.~~
8 B. THE DIRECTOR MAY CHARGE AND COLLECT LATE FEES IN ADDITION TO THE
9 FEES LISTED IN SUBSECTION A OF THIS SECTION.
10 C. THE DIRECTOR MAY ESTABLISH TIERED FEES FOR BUSINESS LICENSES.
11 ~~B.~~ D. The ~~office~~ DIRECTOR may charge and collect additional fees for
12 services that the ~~acting~~ director considers to be appropriate to carry out
13 the intent and purpose of this chapter. These additional fees shall not
14 exceed the costs of rendering the services.
15 Sec. 19. Repeal
16 Section ~~32-2319~~, Arizona Revised Statutes, is repealed.
17 Sec. 20. Section 32-2321, Arizona Revised Statutes, is amended to
18 read:
19 ~~32-2321.~~ Disciplinary action; grounds; procedure
20 A. ~~After an opportunity for a formal hearing or pursuant to a consent~~
21 ~~order,~~ IF THE DIRECTOR FINDS THAT A PERSON HAS VIOLATED THIS CHAPTER, A RULE
22 ADOPTED PURSUANT TO THIS CHAPTER OR A WRITTEN ORDER OF THE DIRECTOR, the
23 ~~acting~~ director may ISSUE A NOTICE OF VIOLATION AND A CEASE AND DESIST ORDER
24 TO THE PERSON AND, AFTER AN OPPORTUNITY FOR A HEARING, take any of the
25 following disciplinary actions, in combination or alternatively:
26 1. Revoke a license OR REGISTRATION.
27 2. Suspend a license OR REGISTRATION.
28 3. Refuse to renew a license OR REGISTRATION.
29 4. Impose probation requirements that require a ~~business licensee,~~
30 ~~licensed applicator or qualifying party~~ PERSON to comply with one or more
31 specific provisions of this chapter or rules adopted pursuant to this chapter
32 and that require reporting by or monitoring of the ~~business licensee,~~
33 ~~licensed applicator or qualifying party~~ PERSON.
34 5. Impose a civil penalty in an amount of not more than one thousand
35 dollars for each violation except for grounds prescribed in ~~subsection B,~~
36 ~~paragraphs 8 and 9 of this~~ section 32-2325, SUBSECTION B, PARAGRAPHS 8 AND 9.
37 6. Require a qualifying party to report to the ~~acting~~ director the
38 qualifying party's role in the management of a business license.
39 ~~7. Issue an administrative warning.~~
40 7. REQUIRE AN INDIVIDUAL TO TAKE SUPPLEMENTAL CONTINUING EDUCATION
41 WITHIN A TIME PERIOD SET BY THE DIRECTOR.
42 B. INSTEAD OF TAKING DISCIPLINARY ACTION FOR A VIOLATION PURSUANT TO
43 SUBSECTION A OF THIS SECTION, THE DIRECTOR MAY ISSUE AN ADMINISTRATIVE
44 WARNING.

- 1 ~~B. The following acts are grounds for disciplinary action:~~
- 2 ~~1. Violating this chapter, rules adopted pursuant to this chapter or a~~
- 3 ~~written order of the acting director.~~
- 4 ~~2. Making false or fraudulent records or reports.~~
- 5 ~~3. Misrepresenting a material fact in obtaining a license.~~
- 6 ~~4. Applying pesticides in a manner that is inconsistent with the label~~
- 7 ~~requirements of the pesticide or that may cause undue harm to the public.~~
- 8 ~~5. Misuse of a pesticide if the misuse is due to training received or~~
- 9 ~~not received or lack of appropriate supervision. Proper training includes~~
- 10 ~~training to read and understand the label and labeling and to understand the~~
- 11 ~~proper use of application equipment. Proper supervision includes oversight~~
- 12 ~~of applicators to ensure general compliance with the label, labeling and all~~
- 13 ~~applicable laws.~~
- 14 ~~6. Authorizing, directing or abetting the publication, advertisement,~~
- 15 ~~distribution or circulation of any false statement or material~~
- 16 ~~misrepresentation concerning a business of pest management.~~
- 17 ~~7. Conviction of a felony or misdemeanor arising from or in connection~~
- 18 ~~with a license issued pursuant to this chapter after issuance of the license.~~
- 19 ~~8. Conviction of a felony.~~
- 20 ~~9. Having had a license, or the equivalent, to apply pesticides or~~
- 21 ~~engage in the business of pest management suspended or revoked in another~~
- 22 ~~jurisdiction for cause.~~
- 23 ~~10. Making a fraudulent statement or an intentional material~~
- 24 ~~misrepresentation in connection with a wood treatment proposal or a~~
- 25 ~~wood destroying insect inspection report.~~
- 26 ~~11. Three or more de minimis violations of this chapter or rules~~
- 27 ~~adopted under this chapter.~~
- 28 ~~12. Failure to provide the acting director with a current certificate~~
- 29 ~~of insurance or proof of financial responsibility.~~
- 30 ~~13. Failure to establish a complete vertical barrier at the exterior of~~
- 31 ~~foundation walls in stem wall construction or exterior of grade beams in~~
- 32 ~~monolithic construction within twelve months of the original treatment made~~
- 33 ~~before or during construction.~~
- 34 ~~14. Immediately supervising more than one unlicensed applicator at a~~
- 35 ~~time.~~
- 36 ~~15. Failure to make and maintain true and accurate records of~~
- 37 ~~treatments performed, including those performed under warranty or guarantee,~~
- 38 ~~for at least three years from date of treatment except any record of a~~
- 39 ~~termite treatment, a wood destroying insect inspection report or a fungi~~
- 40 ~~inspection report, which shall be made and maintained for at least five years~~
- 41 ~~from the date of treatment or inspection.~~
- 42 ~~16. Failure to make treatment records available within three business~~
- 43 ~~days on request of the property owner, the property owner's authorized agent~~
- 44 ~~or a representative of the office.~~

1 C. Except as provided in section ~~32-2329~~ 41-1092.11, the ~~acting~~
2 director may ~~proceed~~ TAKE DISCIPLINARY ACTION against a business licensee
3 pursuant to subsection A, ~~paragraphs 1 through 5~~ of this section only
4 if, ~~after an opportunity for a hearing, it has been shown that~~ any of the
5 following applies:

6 1. The business licensee has committed a prior violation of the same
7 type, including any violation by any ~~employee~~ APPLICATOR of the business
8 licensee.

9 2. The business licensee failed to follow a written order of the
10 ~~acting~~ director directing it to correct a deficiency or problem within the
11 time specified.

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

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

17 5. The business licensee is determined by the ~~acting~~ director to have
18 committed a violation in connection with a PRETREATMENT, NEW-CONSTRUCTION
19 TREATMENT OR FINAL GRADE treatment ~~before or during construction~~.

20 ~~6. The business licensee changes its name or majority ownership of the~~
21 ~~business and fails to:~~

22 ~~(a) Report to the acting director within thirty calendar days the~~
23 ~~status of all warranties issued by the licensee.~~

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

26 6. THE BUSINESS LICENSEE USES APPLICATORS TO PROVIDE PEST MANAGEMENT
27 SERVICES THAT ARE NOT REGISTERED PURSUANT TO THE REQUIREMENTS ESTABLISHED
28 UNDER SECTION 32-2304, SUBSECTION B, PARAGRAPH 20.

29 7. The business licensee fails to provide written notice immediately
30 following a pest management treatment in or around residential structures of
31 four or fewer units to the person requesting the treatment or to the person's
32 designated agent. The notice shall include the specific pesticide by trade
33 name used in the treatment.

34 8. The business licensee performing pest management treatments on an
35 ongoing basis to locations other than residential structures of four or fewer
36 units fails to provide written notice to the person who requested the
37 treatments or the person's designated agent. Notice shall be given before
38 the first application of the pesticide and when new or additional pesticides
39 are used or immediately after each treatment.

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

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

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

11. The business licensee fails within thirty calendar days after completion of a ~~termite~~ PRETREATMENT, A NEW-CONSTRUCTION TREATMENT, A FINAL GRADE treatment ~~that is done before or during construction~~, an initial ~~termite~~ corrective treatment project or a wood-destroying insect inspection report to file with the office, in a form approved by the ~~acting~~ director, ~~all data required by the acting director. The data shall include: THE~~ TERMITE ACTION REPORT FORM AND PRESCRIBED FEE.

- ~~(a) The name of the individual who performed the work.~~
- ~~(b) The address or location of the work or project.~~
- ~~(c) The type and the date of the work.~~
- ~~(d) The name of the business licensee.~~
- ~~(e) The name of the qualifying party.~~
- ~~(f) The applicator's license number.~~
- ~~(g) Any other information required by rule.~~

12. The business licensee, within twelve months after completion of a ~~termite~~ PRETREATMENT OR NEW-CONSTRUCTION treatment ~~that is done before or during construction~~, fails either to file a supplemental termite action report in a form provided by the ~~acting~~ director that indicates the completion of the final grade treatment or to report in writing why the treatment has not been completed and when it will be completed.

13. THE BUSINESS LICENSEE'S APPLICATOR APPLIES A PESTICIDE THAT CAUSES HARM TO THE PUBLIC, THE ENVIRONMENT OR A NONTARGET ANIMAL.

14. THE BUSINESS LICENSEE FAILS WITHIN THIRTY CALENDAR DAYS TO PAY CIVIL PENALTIES IMPOSED UNDER THIS CHAPTER OR RULES ADOPTED PURSUANT TO THIS CHAPTER.

15. THE BUSINESS LICENSEE ENGAGES IN THE BUSINESS OF PEST MANAGEMENT WHILE THE BUSINESS LICENSE IS SUSPENDED.

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

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

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

~~1. Pay renewal fees.~~

~~2. Pay civil penalties.~~

~~3. Demonstrate the completion of required continuing education.~~

~~G. The holder of a license suspended under subsection F of this section must apply to the acting director for reinstatement.~~

~~H. Licenses suspended under subsection F of this section are automatically revoked without a hearing after one year of suspension. Licenses revoked under this section are not subject to section 32-2304, subsection A, paragraph 11.~~

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

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

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

~~L. Except as provided in section 41-1092.08, subsection H, final decisions of the acting director are subject to judicial review pursuant to title 12, chapter 7, article 6.~~

~~M. D. The acting director shall consider only COMMENCE an inquiry received or complaint filed ONLY within five years after the date of the alleged act or omission.~~

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

~~O. If the office finds a violation or the office enters into a consent agreement, the office:~~

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

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

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

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

13 F. THE LICENSE OF A PERSON WHO DOES NOT RENEW THE LICENSE AND WHO HAS
14 BEEN ADVISED IN WRITING THAT AN INVESTIGATION OR COMPLAINT IS PENDING AT THE
15 TIME THE LICENSE IS DUE TO EXPIRE OR TERMINATE DOES NOT EXPIRE OR TERMINATE
16 UNTIL THE INVESTIGATION OR COMPLAINT IS RESOLVED. THE LICENSE IS SUSPENDED
17 ON THE DATE IT WOULD OTHERWISE EXPIRE OR TERMINATE UNTIL THE PERSON RENEWS
18 THE LICENSE OR THE INVESTIGATION OR COMPLAINT IS RESOLVED.

19 G. THE DIRECTOR MAY SUMMARILY SUSPEND A PERSON'S LICENSE WHILE THERE
20 IS A PENDING CRIMINAL CHARGE AGAINST THE PERSON FOR A FELONY OR A MISDEMEANOR
21 INVOLVING MORAL TURPITUDE.

22 Sec. 21. Title 32, chapter 22, Arizona Revised Statutes, is amended by
23 adding article 4, to read:

24 ARTICLE 4. WOOD-DESTROYING ORGANISMS

25 Sec. 22. Transfer and renumber

26 Sections 32-2323 and 32-2324, Arizona Revised Statutes, are transferred
27 and renumbered for placement in title 32, chapter 22, article 4, Arizona
28 Revised Statutes, as added by this act, as sections 32-2332 and 32-2333,
29 respectively.

30 Sec. 23. Section 32-2323, Arizona Revised Statutes, as transferred and
31 renumbered by this act, is amended to read:

32 32-2323. Joint responsibility; burden of proof

33 A. A business licensee, qualifying party, BRANCH SUPERVISOR or
34 applicator may be held jointly responsible for the acts or omissions of
35 another person who is under the supervision of the business licensee,
36 qualifying party, BRANCH SUPERVISOR or applicator if the supervising licensee
37 fails to properly train, equip or supervise the other person or fails to
38 maintain records of proper training, equipping or supervising.

39 B. Failure to timely and fully respond to requests by the ~~acting~~
40 director for information relating to training, equipping and supervising is a
41 prima facie showing of a failure to properly train, equip or supervise. ~~The~~
42 ~~A supervising licensee has the burden of proof by a preponderance of the~~
43 ~~evidence that the~~ business licensee, qualifying party, BRANCH SUPERVISOR or
44 applicator HAS THE BURDEN OF PROOF BY A PREPONDERANCE OF THE EVIDENCE THAT
45 THE SUPERVISING PERSON has fulfilled the required duties as prescribed by

1 this chapter, rules adopted pursuant to this chapter or a written order of
2 the ~~acting~~ director.

3 Sec. 24. Title 32, chapter 22, article 3, Arizona Revised Statutes, is
4 amended by adding a new section 32-2324, to read:

5 32-2324. Civil penalties: suspension

6 A. THE OFFICE MAY SUSPEND A LICENSE, CERTIFICATION OR REGISTRATION
7 WITHOUT A HEARING IF THE LICENSEE FAILS WITHIN THIRTY CALENDAR DAYS TO PAY
8 CIVIL PENALTIES IMPOSED UNDER THIS CHAPTER OR RULES ADOPTED PURSUANT TO THIS
9 CHAPTER.

10 B. A LICENSEE WHOSE LICENSE IS SUSPENDED UNDER SUBSECTION A OF THIS
11 SECTION MUST APPLY TO THE DIRECTOR FOR REINSTATEMENT.

12 C. A LICENSE, CERTIFICATION OR REGISTRATION SUSPENDED UNDER SUBSECTION
13 A OF THIS SECTION SHALL BE REVOKED WITHOUT A HEARING AFTER ONE YEAR OF
14 SUSPENSION. REVOCATIONS UNDER THIS SUBSECTION ARE NOT SUBJECT TO SECTION
15 32-2304, SUBSECTION A, PARAGRAPH 8.

16 D. THE OFFICE SHALL NOT RENEW A LICENSE, CERTIFICATION OR REGISTRATION
17 OR BROADEN A CERTIFICATION UNTIL THE PERSON SUSPENDED UNDER SUBSECTION A OF
18 THIS SECTION IS REINSTATED.

19 Sec. 25. Repeal

20 Section 32-2324.01, Arizona Revised Statutes, is repealed.

21 Sec. 26. Section 32-2325, Arizona Revised Statutes, is amended to
22 read:

23 32-2325. Unlawful acts

24 A. A person shall not:

25 1. Engage in the business of pest management without ~~holding~~ a
26 business license issued pursuant to this chapter, UNLESS THE PERSON IS
27 OTHERWISE EXEMPT PURSUANT TO THIS CHAPTER.

28 2. Engage in the business of pest management in any category without a
29 qualifying party ~~licensed~~ WHO IS REGISTERED in that category.

30 3. Operate a branch office without ~~employing a licensed applicator or~~
31 ~~qualifying party~~ A REGISTERED BRANCH SUPERVISOR under whose direct
32 supervision pesticide applications are made out of that office.

33 4. Apply pesticides in any category other than ~~the control of~~
34 wood-destroying ~~insects~~ ORGANISM MANAGEMENT OR FUMIGATION unless the person
35 is an applicator ~~or qualifying party licensed~~ CERTIFIED in that category
36 ~~pursuant to this chapter~~ or applies the pesticides under the direct
37 supervision of an applicator ~~or qualifying party licensed~~ CERTIFIED in that
38 category ~~pursuant to this chapter.~~

39 5. Apply pesticides ~~for the management~~ IN THE CATEGORY of
40 wood-destroying ~~insects~~ ORGANISM MANAGEMENT, AQUATIC PEST MANAGEMENT OR
41 FUMIGATION unless ~~both of the following apply:~~

42 ~~(a)~~ the person is an applicator ~~or qualifying party licensed~~ CERTIFIED
43 in that category ~~pursuant to this chapter~~ or the person applies the
44 pesticides under the immediate supervision of ~~a licensed~~ AN applicator
45 CERTIFIED IN THAT CATEGORY.

~~(b) The person has received at least five hours of instruction from the office or the former structural pest control commission or an in-house education program of a business licensee on the subject of management of wood destroying insects that is appropriate for the specific type of application performed. An examination on the instruction is not required. A business licensee shall keep a record of completion of the training and shall make it available on the acting director's request.~~

6. Make recommendations regarding pest management unless the person is a ~~licensed~~ CERTIFIED applicator ~~or qualifying party~~.

7. Deny to an authorized inspector the right to be present on a jobsite in connection with a contemporaneous pest management treatment ~~for the purpose of taking samples~~, including FOR THE PURPOSE OF TAKING pesticide samples and soil samples.

B. THE FOLLOWING NONEXCLUSIVE ACTS ARE GROUNDS FOR DISCIPLINARY ACTION:

1. VIOLATING THIS CHAPTER, RULES ADOPTED PURSUANT TO THIS CHAPTER OR A WRITTEN ORDER OF THE DIRECTOR.

2. MAKING FALSE OR FRAUDULENT RECORDS OR REPORTS.

3. MISREPRESENTING A MATERIAL FACT IN OBTAINING A LICENSE.

4. APPLYING PESTICIDES IN A MANNER THAT IS INCONSISTENT WITH THE LABEL AND LABELING OF THE PESTICIDE OR THAT MAY CAUSE HARM TO THE PUBLIC, THE ENVIRONMENT OR NONTARGET ANIMALS.

5. MISUSING A PESTICIDE IF THE MISUSE IS DUE TO THE FAILURE OF THE PERSON TO PROPERLY TRAIN OR SUPERVISE. PROPER TRAINING INCLUDES TRAINING TO READ AND UNDERSTAND THE LABEL AND LABELING AND TO UNDERSTAND THE PROPER USE OF APPLICATION EQUIPMENT. PROPER SUPERVISION INCLUDES OVERSIGHT OF APPLICATORS TO ENSURE GENERAL COMPLIANCE WITH THE LABEL AND LABELING AND ALL APPLICABLE LAWS.

6. AUTHORIZING, DIRECTING OR ABETTING THE PUBLICATION, ADVERTISEMENT, DISTRIBUTION OR CIRCULATION OF ANY FALSE STATEMENT OR MATERIAL MISREPRESENTATION CONCERNING A BUSINESS OF PEST MANAGEMENT.

7. ENGAGING IN THE BUSINESS OF PEST MANAGEMENT OR PROVIDING PEST MANAGEMENT SERVICES UNDER A SUSPENDED LICENSE.

8. BEING CONVICTED OF A FELONY, A MISDEMEANOR ARISING FROM OR IN CONNECTION WITH A LICENSE ISSUED PURSUANT TO THIS CHAPTER AFTER ISSUANCE OF THE LICENSE OR A MISDEMEANOR INVOLVING MORAL TURPITUDE.

9. HAVING HAD A LICENSE, OR THE EQUIVALENT, TO APPLY PESTICIDES OR ENGAGE IN THE BUSINESS OF PEST MANAGEMENT SUSPENDED OR REVOKED IN ANOTHER JURISDICTION FOR CAUSE.

10. MAKING A FRAUDULENT STATEMENT OR AN INTENTIONAL MATERIAL MISREPRESENTATION IN CONNECTION WITH A WOOD TREATMENT PROPOSAL OR A WOOD-DESTROYING INSECT INSPECTION REPORT.

11. HAVING THREE OR MORE DE MINIMIS VIOLATIONS OF THIS CHAPTER OR RULES ADOPTED UNDER THIS CHAPTER.

12. FAILING TO PROVIDE THE DIRECTOR WITH A CURRENT CERTIFICATE OF INSURANCE OR PROOF OF FINANCIAL RESPONSIBILITY.

13. FAILING TO PROVIDE A PROPER FINAL GRADE TREATMENT WITHIN TWELVE MONTHS AFTER THE ORIGINAL PRETREATMENT OR NEW-CONSTRUCTION TREATMENT.

14. PROVIDING IMMEDIATE SUPERVISION OF MORE UNCERTIFIED APPLICATORS AT A TIME THAN IS AUTHORIZED BY RULE.

15. FAILING TO MAKE AND MAINTAIN TRUE AND ACCURATE RECORDS OF TREATMENTS PERFORMED OR WOOD-DESTROYING INSECT INSPECTION REPORTS, INCLUDING THOSE PERFORMED UNDER WARRANTY OR GUARANTEE, FOR AT LEAST THREE YEARS AFTER THE DATE OF TREATMENT OR INSPECTION.

16. FAILING TO MAKE TREATMENT RECORDS AVAILABLE ON REQUEST OF THE PROPERTY OWNER OR THE PROPERTY OWNER'S AUTHORIZED AGENT WITHIN THREE BUSINESS DAYS.

17. FAILING TO PERMIT THE DIRECTOR OR ANY DULY AUTHORIZED AGENT TO PROMPTLY INSPECT RECORDS PERTAINING TO PEST MANAGEMENT LOCATED AT AN OFFICE OF A BUSINESS LICENSEE WHEN AN EMPLOYEE OR THE OWNER OF THE BUSINESS LICENSEE IS PRESENT AT THE BUSINESS OFFICE AND HAS ACCESS TO THE RECORDS.

18. FAILING TO TIMELY PRODUCE SPECIFIC RECORDS REQUESTED PURSUANT TO SECTION 32-2304, SUBSECTION B, PARAGRAPH 4.

19. VIOLATING THE TERMS OF A CONSENT AGREEMENT OR WRITTEN ORDER OF THE DIRECTOR.

Sec. 27. Title 32, chapter 22, article 3, Arizona Revised Statutes, is amended by adding section 32-2326, to read:

32-2326. Business license; principals; definition

A. THE OFFICE SHALL DENY AN APPLICATION FOR A NEW BUSINESS LICENSE OR A RENEWAL OF AN EXISTING BUSINESS LICENSE IF A PRINCIPAL OF THE APPLICANT WAS ALSO A PRINCIPAL OF ANOTHER BUSINESS THAT CURRENTLY OWES PAST DUE TERMITE ACTION REGISTRATION FORM FEES, OWES CIVIL PENALTIES TO THE OFFICE OR HAS HAD ITS BUSINESS LICENSE SUSPENDED OR REVOKED WITHIN THE LAST FIVE YEARS AND WAS A PRINCIPAL AT THE TIME THE FEES BECAME DUE OR THE ACTS RESULTING IN THE DISCIPLINARY ACTION OCCURRED.

B. FOR THE PURPOSES OF THIS SECTION, "PRINCIPAL" MEANS A PERSON WHO OWNS AT LEAST A TEN PER CENT INTEREST IN A BUSINESS. PRINCIPAL INCLUDES AN OWNER THAT IS ITSELF A BUSINESS AS WELL AS OWNERS OF A PRINCIPAL.

Sec. 28. Section 32-2327, Arizona Revised Statutes, is amended to read:

32-2327. Injunctive relief

In addition to all other remedies, the ~~acting~~ director, either through the attorney general or the county attorney, may apply to the appropriate court for an order enjoining any act or practice that appears to constitute a violation of this chapter or rules adopted pursuant to this chapter. On a proper showing, a temporary restraining order, a preliminary injunction or a permanent injunction shall be granted without bond.

Sec. 29. Repeal

Section ~~32-2329~~, Arizona Revised Statutes, is repealed.

1 Sec. 30. Title 32, chapter 22, article 4, Arizona Revised Statutes, as
2 added by this act, is amended by adding a new section 32-2331, to read:

3 32-2331. Termite action report form; exemption

4 A. WITHIN THIRTY CALENDAR DAYS AFTER COMPLETION OF A PRETREATMENT, A
5 NEW-CONSTRUCTION TREATMENT, A FINAL GRADE TREATMENT, AN INITIAL CORRECTIVE
6 TREATMENT OR A WOOD-DESTROYING INSECT INSPECTION REPORT, A BUSINESS LICENSEE
7 OR CERTIFIED APPLICATOR SHALL FILE WITH THE OFFICE IN A FORM APPROVED BY THE
8 DIRECTOR A TERMITE ACTION REPORT FORM AND THE PRESCRIBED FEE.

9 B. THE TERMITE ACTION REPORT FORM SHALL INCLUDE:

- 10 1. THE ADDRESS OR LOCATION OF THE WORK OR PROJECT.
11 2. THE TYPE AND DATE OF THE WORK.
12 3. THE NAME OF THE BUSINESS LICENSEE.
13 4. ANY OTHER INFORMATION REQUIRED BY RULE.

14 C. THE DIRECTOR MAY:

15 1. ADJUST THE FEE UPWARD OR DOWNWARD TO A LEVEL THAT IS CALCULATED TO
16 PRODUCE SUFFICIENT REVENUE TO CARRY OUT THE FUNCTIONS OF WOOD DESTROYING
17 ORGANISM REGULATION.

18 2. ESTABLISH TIERED FEES ACCORDING TO THE MEANS OF SUBMISSION TO
19 ENCOURAGE ELECTRONIC SUBMISSION OF THE TERMITE ACTION REPORT FORM.

20 3. ASSESS A PENALTY OF NOT MORE THAN ONE HUNDRED DOLLARS PER FORM FOR
21 FAILING TO SUBMIT THE REQUIRED FORM OR FEE, OR BOTH, WITHIN THIRTY CALENDAR
22 DAYS.

23 D. IF THE BUSINESS LICENSEE WHO PERFORMS AN INITIAL CORRECTIVE
24 TREATMENT PERFORMED THE PRETREATMENT OR NEW-CONSTRUCTION TREATMENT AT THE
25 SAME SITE AND FILED A TERMITE ACTION REPORT FORM WITH THE OFFICE DOCUMENTING
26 THE PRETREATMENT OR NEW-CONSTRUCTION TREATMENT, THE BUSINESS LICENSEE IS
27 EXEMPT FROM THIS SECTION WITH RESPECT TO THE INITIAL CORRECTIVE TREATMENT.

28 Sec. 31. Section 32-2332, Arizona Revised Statutes, as transferred and
29 renumbered by this act, is amended to read:

30 32-2332. Wood-destroying organisms; treatment proposal; form;
31 retention; exception

32 A. A business licensee shall not commence work on a contract or sign,
33 issue or deliver any documents expressing an opinion or making a statement
34 relating to the presence or absence of wood-destroying ~~insects~~ ORGANISMS in a
35 structure until an inspection is made.

36 B. Only an applicator ~~or-qualifying party-licensed~~ CERTIFIED in the
37 ~~categories~~ CATEGORY of wood-destroying ~~insect~~ ORGANISM management ~~and~~
38 ~~wood-destroying insect inspection~~ shall prepare a treatment proposal on a
39 form approved by the ~~acting~~ director. ~~and~~ THE APPLICATOR shall deliver a copy
40 of the treatment proposal to the person requesting the proposal OR TREATMENT,
41 or the person's designated agent, before beginning treatment. The treatment
42 proposal shall include the following information:

- 43 1. The address of the property to be treated.
44 2. A statement describing that the work is preventative or corrective.
45 3. A statement describing the evidence of infestation or damage.

1 4. A diagrammatic description showing the nature and location of
2 evidence of infestation or damage, or both, if applicable.

3 5. A statement describing the treatment or repair method, including
4 the name of the pesticide, ~~agent~~ or device to be used and a diagrammatic
5 description showing where the treatment or repair will be rendered.

6 6. The price for the work.

7 7. The terms for the service agreement provided by the business
8 licensee.

9 8. The signature and license number of the person who made the
10 inspection of the structure to be treated.

11 C. A ~~licensee~~ CERTIFIED APPLICATOR shall also give to the person
12 requesting a proposal OR TREATMENT a written recommendation that verifies a
13 particular problem and, in addition to the ~~licensee's~~ CERTIFIED APPLICATOR'S
14 recommendation for treatment, shall advise the person of alternative
15 treatments and methods, including integrated pest management methods, to
16 alleviate the problem.

17 D. A treatment proposal shall not be in the same form or be construed
18 as a wood-destroying insect inspection report. A treatment proposal that
19 does not identify infestation by wood-destroying ~~insects~~ ORGANISMS is not a
20 binding statement as to the presence or absence of wood-destroying ~~insects~~
21 ORGANISMS.

22 E. A treatment proposal shall be prepared by a ~~licensed~~ CERTIFIED
23 applicator ~~or qualifying party~~ who has received at least five hours of
24 instruction from ~~the office or~~ an in-house education program of ~~a~~ THE
25 business licensee on the subject of wood-destroying ~~insect~~ ORGANISMS
26 inspections. An examination on the instruction is not required. The
27 business licensee shall keep a record of completion of the training and shall
28 make the record available on the ~~acting~~ director's request. THE INSTRUCTION
29 REQUIREMENT DOES NOT APPLY TO CERTIFIED QUALIFIED APPLICATORS.

30 F. If a business licensee performs a treatment pursuant to a treatment
31 proposal, the business licensee shall maintain for ~~five~~ THREE years a record
32 of the treatment and the name and quantity of the pesticide used.

33 ~~G. Within thirty calendar days after completion of a termite treatment~~
34 ~~or on the next business day after the thirty calendar days, a business~~
35 ~~licensee shall file with the office in a form or format approved by the~~
36 ~~acting director a complete and accurate termite action registration form and~~
37 ~~a fee as prescribed by the acting director. The termite action registration~~
38 ~~form shall include information prescribed in section 32-2321, subsection C,~~
39 ~~paragraph 11 and this section. This subsection only applies to the~~
40 ~~following:~~

41 ~~1. Any treatments done before or during construction, including final~~
42 ~~grade treatments.~~

43 ~~2. The first preventative or corrective termite treatment by a~~
44 ~~business licensee to a site. If the business licensee who performed this~~
45 ~~termite treatment performed the before or during construction treatment at~~

~~the same site and filed a termite action report form with the office documenting the before or during construction treatment, the business licensee is exempt from this paragraph.~~

~~3. A wood-destroying insect inspection report.~~

G. THIS SECTION DOES NOT APPLY TO THE APPLICATION OF PESTICIDES DIRECTLY TO STRUCTURAL COMPONENTS OF WOOD OR WOOD PRODUCTS, WHICH ARE NOT PART OF AN EXISTING STRUCTURE NORMALLY HABITABLE BY PERSONS, TO PREVENT OR MANAGE WOOD DEGRADATION BY WOOD-DESTROYING ORGANISMS.

Sec. 32. Section 32-2333, Arizona Revised Statutes, as transferred and renumbered by this act, is amended to read:

32-2333. Wood-destroying insect inspection reports

A. Wood-destroying insect inspection reports may ~~only~~ be completed ~~ONLY~~ by an applicator ~~or qualifying party~~ who is ~~licensed~~ CERTIFIED in the ~~categories of management~~ CATEGORY of wood-destroying ~~insects and wood-destroying insect inspection~~ ORGANISM MANAGEMENT and who has received at least five hours of instruction from ~~the office or the former structural pest control commission or~~ an in-house education program of ~~a~~ THE business licensee on the subject of wood-destroying insect inspection reports. An examination on the instruction is not required. The business licensee shall keep a record of completion of the training and shall make the record available on the ~~acting~~ director's request. THE INSTRUCTION REQUIREMENT DOES NOT APPLY TO CERTIFIED QUALIFIED APPLICATORS.

B. Wood-destroying insect inspection reports shall be on file in the office of the business licensee within seven calendar days after the completion of an inspection. The business licensee shall retain a copy of all completed wood-destroying insect inspection reports for ~~five~~ THREE years and make the reports available on the ~~acting~~ director's request.

C. Wood-destroying insect inspection reports are evidence of BOTH the existence or absence of wood-destroying insects AND CONDITIONS CONDUCIVE TO WOOD-DESTROYING INSECTS that were visible and accessible to an inspector ~~on the date~~ AT THE TIME the inspection was made. A business licensee remains responsible for the accuracy of the inspection and the report as evidence of the presence or absence of infestation AND CONDITIONS CONDUCIVE TO INFESTATION on the date of inspection, except that a wood-destroying insect inspection report shall not be construed as a guarantee as to the presence or absence of wood-destroying insects AND CONDITIONS CONDUCIVE TO WOOD-DESTROYING INSECTS in a structure after the date of inspection.

D. IF A CERTIFIED APPLICATOR IS EXEMPT FROM THE BUSINESS LICENSE REQUIREMENT WITH RESPECT TO WOOD-DESTROYING INSECT INSPECTIONS PURSUANT TO RULES ESTABLISHED BY THE DIRECTOR, THE CERTIFIED APPLICATOR SHALL FULFILL THE RESPONSIBILITIES PLACED ON BUSINESS LICENSEES IN THIS SECTION.

E. A PERSON SHALL NOT COMPLETE A WOOD-DESTROYING INSECT INSPECTION REPORT FOR A PROPERTY THAT THE PERSON OWNS OR OCCUPIES.

1 Sec. 33. Section 41-1092, Arizona Revised Statutes, is amended to
2 read:

3 41-1092. Definitions

4 In this article, unless the context otherwise requires:

5 1. "Administrative law judge" means an individual or an agency head,
6 board or commission that sits as an administrative law judge, that conducts
7 administrative hearings in a contested case or an appealable agency action
8 and that makes decisions regarding the contested case or appealable agency
9 action.

10 2. "Administrative law judge decision" means the findings of fact,
11 conclusions of law and recommendations or decisions issued by an
12 administrative law judge.

13 3. "Appealable agency action" means an action that determines the
14 legal rights, duties or privileges of a party and that is not a contested
15 case. Appealable agency actions do not include interim orders by
16 self-supporting regulatory boards, rules, orders, standards or statements of
17 policy of general application issued by an administrative agency to
18 implement, interpret or make specific the legislation enforced or
19 administered by it or clarifications of interpretation, nor does it mean or
20 include rules concerning the internal management of the agency that do not
21 affect private rights or interests. For the purposes of this paragraph,
22 administrative hearing does not include a public hearing held for the purpose
23 of receiving public comment on a proposed agency action.

24 4. "Director" means the director of the office of administrative
25 hearings.

26 5. "Final administrative decision" means a decision by an agency that
27 is subject to judicial review pursuant to title 12, chapter 7, article 6.

28 6. "Office" means the office of administrative hearings.

29 7. "Self-supporting regulatory board" means any one of the following:

30 (a) The Arizona state board of accountancy.

31 (b) The state board of appraisal.

32 (c) The board of barbers.

33 (d) The board of behavioral health examiners.

34 (e) The Arizona state boxing and mixed martial arts commission.

35 (f) The state board of chiropractic examiners.

36 (g) The board of cosmetology.

37 (h) The state board of dental examiners.

38 (i) The state board of funeral directors and embalmers.

39 (j) The Arizona game and fish commission.

40 (k) The board of homeopathic and integrated medicine examiners.

41 (l) The Arizona medical board.

42 (m) The naturopathic physicians medical board.

43 (n) The state board of nursing.

44 (o) The board of examiners of nursing care institution administrators
45 and adult care home managers.

- 1 (p) The board of occupational therapy examiners.
- 2 (q) The state board of dispensing opticians.
- 3 (r) The state board of optometry.
- 4 (s) The Arizona board of osteopathic examiners in medicine and
- 5 surgery.
- 6 (t) The Arizona peace officer standards and training board.
- 7 (u) The Arizona state board of pharmacy.
- 8 (v) The board of physical therapy ~~examiners~~.
- 9 (w) The state board of podiatry examiners.
- 10 (x) The state board for private postsecondary education.
- 11 (y) The state board of psychologist examiners.
- 12 (z) The board of respiratory care examiners.
- 13 (aa) The office of pest management.
- 14 (bb) The state board of technical registration.
- 15 (cc) The Arizona state veterinary medical examining board.
- 16 (dd) The acupuncture board of examiners.
- 17 (ee) The Arizona regulatory board of physician assistants.
- 18 (ff) The board of athletic training.
- 19 (gg) The board of massage therapy.

20 Sec. 34. Repeal

21 Laws 2008, chapter 309, section 24, as amended by Laws 2011, chapter

22 20, section 5, is repealed.

23 Sec. 35. Laws 2011, chapter 20, section 4 is amended to read:

24 Sec. 4. Repeal

25 ~~A. Sections 32-2301 and 32-2302, Arizona Revised Statutes, are~~

26 ~~repealed from and after December 31, 2013.~~

27 ~~B.~~ Laws 2008, chapter 309, sections 23, 25 and 26 are repealed.

28 Sec. 36. Laws 2011, chapter 20, section 7 is amended to read:

29 Sec. 7. Interim succession

30 ~~A.~~ As provided by sections 32-2301 and ~~32-2302~~ 32-2303, Arizona

31 Revised Statutes, as amended by this act, the director of the Arizona

32 department of agriculture succeeds to the administrative supervision of the

33 office of pest management, ~~including supervision of the pest management~~

34 ~~advisory committee established by Laws 2008, chapter 309, section 24, for the~~

35 ~~period~~ from the effective date of this act ~~through December 31, 2013.~~

36 ~~B. On the effective date of this act the office of pest management~~

37 ~~shall vacate its current office facilities and relocate to quarters furnished~~

38 ~~by the Arizona department of agriculture. Notwithstanding section 41-791.02,~~

39 ~~Arizona Revised Statutes, the office of pest management is relieved of any~~

40 ~~further obligation for payment of rent to the department of administration on~~

41 ~~the vacated premises.~~

42 ~~C. The directors of the Arizona department of agriculture and the~~

43 ~~department of administration may enter into any necessary memoranda of~~

44 ~~understanding and other agreements necessary to accomplish the relocation,~~

45 ~~transfer and succession of administration provided by this act.~~

1 Sec. 37. Exemption from rule making

2 For the purpose of this act, the Arizona department of agriculture and
3 the office of pest management are exempt from rule making requirements of
4 title 41, chapter 6, Arizona Revised Statutes, until July 1, 2014.

5 Sec. 38. Delayed enforcement; registered qualifying parties of
6 school districts

7 The office of pest management shall not take disciplinary action
8 against a school district for failure to comply with section 32-2311.01,
9 subsection B, Arizona Revised Statutes, as added by this act, before January
10 1, 2015.

11 Sec. 39. Office of pest management; continuing fee authority

12 Notwithstanding any other law, through the effective date of the rules
13 adopted by the director of the Arizona department of agriculture pursuant to
14 this act, the office of pest management is authorized to collect the
15 following fees:

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