

State of Arizona  
Senate  
Forty-seventh Legislature  
Second Regular Session  
2006

# SENATE BILL 1221

AN ACT

AMENDING SECTIONS 32-2304 AND 32-2311, ARIZONA REVISED STATUTES; RELATING TO  
THE STRUCTURAL PEST CONTROL COMMISSION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 32-2304, Arizona Revised Statutes, is amended to  
3 read:

4 32-2304. Powers and duties; executive director

5 A. The commission shall:

6 1. Adopt rules that are necessary or proper for the administration of  
7 this chapter, including administrative provisions, health and safety  
8 provisions and provisions for the use, storage and application of pesticides  
9 and devices used in structural pest control.

10 2. Administer and enforce this chapter and rules adopted pursuant to  
11 this chapter.

12 3. Maintain a record of its acts and proceedings, including the  
13 issuance, refusal, renewal, suspension or revocation of licenses.

14 4. At least thirty calendar days before adoption of a rule, form or  
15 policy, mail a copy of notice of a proposed rule, form or policy adoption,  
16 including the text of the proposed rule, form or policy, to each business  
17 licensee who has made a request to the commission, except that if the  
18 commission finds that adoption of a rule is necessary for immediate  
19 preservation of the public peace, health and safety and that notice is  
20 impractical, unnecessary or contrary to public interest it may adopt a rule  
21 without prior notice. Within thirty calendar days after the adoption of a  
22 statute by the legislature or approval of a rule by the governor's regulatory  
23 review council, the commission shall notify all business licensees in  
24 writing.

25 5. Hire inspectors as needed, considering recommendations of the  
26 executive director.

27 6. Notify the business licensee, applicator and qualifying party in  
28 writing of any complaint against the business licensee, qualifying party or  
29 employee of the business licensee by the close of business on the tenth  
30 business day after the day on which the commission initiated the complaint.

31 7. Receive and appropriately respond to any inquiry.

32 8. Issue subpoenas for the taking of depositions, the production of  
33 documents and things and the entry on land for inspection and measuring,  
34 surveying, photographing, testing or sampling the property or any designated  
35 object or operation on the property relevant to the complaint.

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

38 10. Make applicator license and qualifying party license test study  
39 materials available, at the commission's actual costs, to any interested  
40 person.

41 11. Conduct or contract to conduct applicator license and qualifying  
42 party license tests at locations throughout this state. If the commission  
43 contracts for these tests, the contracts may provide for specific examination  
44 fees or a reasonable range of fees determined by the commission to be paid  
45 directly to the contractor by the applicant. The commission shall make all

1 efforts to contract with private parties to electronically administer the  
2 applicator and qualifying party license tests.

3 12. Refer all cases of termite treatments that are done before or  
4 during construction and that involve alleged criminal fraud to the criminal  
5 fraud division of the attorney general's office and refer any case the  
6 commission determines to contain information relating to a possible felony to  
7 the proper law enforcement agency.

8 13. Maintain a computer system for the benefit and protection of the  
9 public that includes the following information on termite treatments that are  
10 done before or during construction, initial termite corrective projects,  
11 preventative termite treatments and wood-destroying insect inspection  
12 reports:

13 (a) The name of the individual who performed the work.

14 (b) The address or location of the work or project.

15 (c) The name of the pest control company.

16 (d) The name of the qualifying party.

17 (e) The applicator license numbers.

18 (f) The nature and date of the work performed.

19 (g) Any other information that is required by the commission in its  
20 rules.

21 14. Establish offices it deems necessary to carry out the purposes of  
22 this chapter.

23 15. Employ an executive director and other permanent or temporary  
24 personnel it deems necessary to carry out the purposes of this chapter and  
25 designate their duties.

26 16. Investigate violations of this chapter and rules adopted pursuant  
27 to this chapter.

28 17. Oversee the approval, content and method of delivery of continuing  
29 education courses.

30 18. Deny a license to any person who has had a license revoked for a  
31 period of five years from the time of revocation.

32 19. License applicators, qualifying parties and businesses in  
33 accordance with this chapter and rules adopted pursuant to this chapter.

34 20. Prepare guidelines for an integrated pest management program for  
35 structural pest control practices at schools. On or before December 1 of  
36 each year, the commission shall report on the progress of preparing the  
37 guidelines to the governor, the president of the senate and the speaker of  
38 the house of representatives and shall provide a copy of the report to the  
39 secretary of state and the director of the Arizona state library, archives  
40 and public records. The guidelines shall include the following:

41 (a) The identification of pests.

42 (b) The establishment of a monitoring and record keeping system for  
43 regular sampling and assessment of pest populations.

44 (c) The determination of the pest population levels that can be  
45 tolerated based on aesthetic, economic and health concerns and setting action

1 thresholds if pest populations or environmental conditions warrant remedial  
2 action.

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

6 (e) The reliance on nontoxic, biological, cultural or natural control  
7 agents.

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

10 21. Require the payment of a penalty for any late license renewal.

11 22. Require either completion of the continuing education requirement  
12 or successful completion of the license examination for failure to renew a  
13 license on time.

14 23. Suspend a license if a licensee fails to renew the license within  
15 thirty calendar days of the renewal date.

16 24. Refuse to issue a business license in a name that is not registered  
17 with the secretary of state or filed with the Arizona corporation commission.

18 25. Adopt a wood-destroying insect inspection report form for use by  
19 business licensees.

20 B. The commission may:

21 1. Compel attendance of witnesses, administer oaths or affirmations  
22 and take testimony concerning all matters coming within its jurisdiction.

23 2. Require a person who seeks a license pursuant to this chapter to  
24 submit to the commission a full set of fingerprints and the fees required by  
25 section 41-1750. The commission shall submit the fingerprints and fees to  
26 the department of public safety for the purpose of obtaining a state and  
27 federal criminal records check pursuant to section 41-1750 and Public Law  
28 92-544. The department of public safety may exchange this fingerprint data  
29 with the federal bureau of investigation.

30 3. Enter into intergovernmental agreements.

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

34 5. Deny or revoke a license based on the information in the  
35 application or information that the commission receives from the criminal  
36 background check.

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

39 7. Charge to the holder of a business license the actual cost of  
40 providing mailed copies of rules, forms or policies that are proposed for  
41 adoption.

42 8. Hire independent contractors to conduct inspections and take  
43 pesticide samples, soil samples or any other samples for purposes of testing  
44 the type and quantity of pesticides that are used in connection with pest  
45 control treatment.

- 1           9. Issue advisory notices for de minimis violations.
- 2           10. Notify a business licensee, qualifying party or licensed applicator
- 3 of all requests for review of the business licensee's, qualifying party's or
- 4 licensed applicator's records within ten business days of the request.
- 5           11. Require inspectors to be licensed applicators in all categories
- 6 within their scope of work during their probationary period. Inspectors
- 7 shall attend and complete an investigative training class that is prescribed
- 8 by the commission within their probationary period.
- 9           12. Investigate alleged violations of all applicable federal and state
- 10 statutes and rules adopted or orders issued by the commission or alleged
- 11 violations of any condition imposed by the commission in connection with a
- 12 license.
- 13           13. Provide general technical advice, support and information
- 14 concerning structural pest control to the public and the licensees.
- 15           14. Pursuant to section 32-2329, summarily suspend a license issued
- 16 under this chapter to protect the health, safety and welfare of the public.
- 17           15. Issue a corrective work order requiring a licensee to remedy
- 18 deficiencies in treatment or to comply with this chapter or any rules adopted
- 19 pursuant to this chapter before or after a formal hearing.
- 20           16. Do at least one of the following in relation to unlicensed
- 21 structural pest control business operations:
- 22           (a) Issue a cease and desist order requiring an unlicensed structural
- 23 pest control business to immediately cease operations.
- 24           (b) **EXCEPT AS PROVIDED IN SECTION 32-2311, SUBSECTION C,** impose on an
- 25 unlicensed structural pest control business a civil penalty of not more than
- 26 one thousand dollars for the first occurrence and not more than two thousand
- 27 dollars for the second or subsequent occurrence.
- 28           17. Refer all cases for formal hearing to the office of administrative
- 29 hearings.
- 30           18. Refuse to issue a business license in a name that is likely to be
- 31 misleading or to imply any distorted representation about the business.
- 32           19. Issue a renewable and revocable temporary qualifying party license
- 33 to a licensed applicator who is a representative of a business licensee if
- 34 the qualifying party becomes disassociated with the business licensee.
- 35           20. Provide and conduct classes to train applicators and qualifying
- 36 parties in preparation for license tests. The commission may assess a fee
- 37 for each class. The commission may contract with a commercial enterprise or
- 38 an accredited institution to conduct the class.
- 39           21. Provide and conduct continuing education classes quarterly. The
- 40 commission may assess a fee for each credit hour. The commission may
- 41 contract with a commercial enterprise or an accredited institution to conduct
- 42 the class under the supervision of commission staff.
- 43           22. Appoint a member or employee of the commission to conduct an
- 44 informal settlement conference with a licensee against whom an inquiry is
- 45 received or a complaint is filed.

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

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

7           25. Approve proposed consent orders.

8           26. Annually prepare a strategic plan.

9           C. Each completed form for a termite treatment that is done before or  
10 during construction, initial termite corrective treatment project or  
11 wood-destroying insect inspection report shall be accompanied by a fee. The  
12 initial fee is eight dollars. The commission may adjust the fee upward or  
13 downward to a level that is calculated to produce sufficient revenue to carry  
14 out the functions prescribed under this section. The commission may  
15 establish tiered fees according to the means of submission to encourage  
16 electronic submission of the termite action registration form. The  
17 commission may assess a penalty of not to exceed one hundred dollars per form  
18 for failing to submit the required form or fee, or both, within thirty  
19 calendar days.

20           D. The executive director serves at the pleasure of the  
21 commission. Compensation for the executive director and employees shall be  
22 determined pursuant to section 38-611.

23           E. Subject to the limitations of section 41-2544, the executive  
24 director may enter into agreements for the purpose of enabling the commission  
25 to accept payment for fees imposed under this chapter by alternative payment  
26 methods, including credit cards, charge cards, debit cards and electronic  
27 funds transfers. Before the monies are transferred to the executive director  
28 pursuant to section 32-2305, the person collecting the fees shall deduct any  
29 amount charged or withheld by a company providing the alternative payment  
30 method under an agreement with the commission.

31           F. In the enforcement of this article, the commission or any of its  
32 duly authorized agents may enter with the authority of a warrant issued by a  
33 court of competent jurisdiction at reasonable times on any private or public  
34 property on which pesticides are located or are reasonably believed to be  
35 located to be used for purposes related to structural pest control. The  
36 owner, managing agent or occupant of the property shall permit entry for the  
37 purpose of inspecting and investigating conditions relating to the use,  
38 storage, application and disposal of pesticides.

39           G. The commission shall not delegate to its staff the powers and  
40 duties listed under:

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

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



- 1           1. ON A FIRST VIOLATION, ISSUE A WRITTEN NOTICE OF CORRECTION THAT
- 2           CONTAINS A WARNING AND A COPY OF THIS SECTION AND THAT PROVIDES FULL NOTICE
- 3           OF THE EXEMPTION REQUIREMENTS.
- 4           2. ON A SECOND VIOLATION, IMPOSE A CIVIL PENALTY OF NOT MORE THAN TWO
- 5           HUNDRED FIFTY DOLLARS.
- 6           3. ON A THIRD OR ANY SUBSEQUENT VIOLATION, IMPOSE A CIVIL PENALTY OF
- 7           NOT MORE THAN FIVE HUNDRED DOLLARS.