

REFERENCE TITLE: pest management; unlicensed business activities

State of Arizona
Senate
Fifty-fourth Legislature
Second Regular Session
2020

SB 1304

Introduced by
Senator Pratt

AN ACT

AMENDING SECTIONS 3-3603 AND 3-3624, ARIZONA REVISED STATUTES; 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 3-3603, Arizona Revised Statutes, is amended to
3 read:

4 3-3603. Powers and duties of director

5 A. The director is responsible for administering this chapter and
6 shall:

7 1. Adopt rules that are necessary or proper to administer and
8 implement this chapter, including rules that may be more stringent than a
9 corresponding federal law for:

10 (a) Administrative provisions.

11 (b) Licensure, certification and registration requirements and
12 qualifications, including training and education requirements and
13 financial security standards.

14 (c) Health and safety provisions.

15 (d) Duties and responsibilities.

16 (e) Recordkeeping and production of records requirements.

17 (f) Licensee inspection and treatment report requirements.

18 (g) Disciplinary action provisions.

19 (h) Equipment provisions.

20 (i) Advertising requirements.

21 (j) ~~The use, storage~~ USING, STORING and ~~application of~~ APPLYING
22 pesticides and devices used in pest management.

23 2. Notify the business licensee, applicator and qualifying party in
24 writing of any inquiry into possible violations by the business licensee,
25 applicator or qualifying party by the close of business on the tenth
26 business day after the day on which the director initiated the inquiry if
27 the director anticipates an enforcement action. If in the course of the
28 investigation the division identifies any alleged violations by a
29 different business licensee, applicator or qualified party, the director
30 shall notify the additional alleged violator by the close of business on
31 the tenth business day after the day on which the director initiated the
32 new inquiry.

33 3. Develop and either conduct or contract to conduct certified
34 applicator and certified qualified applicator tests at locations
35 throughout this state. If the director contracts for these tests, the
36 contracts may provide for specific examination fees or a reasonable range
37 of fees determined by the director to be paid directly to the contractor
38 by the applicant. The director shall make all efforts to contract with
39 private parties to electronically administer the tests.

40 4. Maintain a computer system ~~for the~~ TO benefit and ~~protection of~~
41 PROTECT the public that includes the following information on
42 pretreatments, new-construction treatments, final grade treatments,
43 initial corrective treatments and wood-destroying insect inspection
44 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 5. Establish offices the director deems necessary to carry out the
9 purposes of this chapter.

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

13 7. Oversee the approval, content and method of delivery of
14 continuing education courses.

15 8. Deny a license to any person who has had a license revoked for a
16 period of five years from the time of revocation.

17 9. License applicators and qualified applicators and license
18 businesses in accordance with this chapter and rules adopted pursuant to
19 this chapter.

20 10. Register qualifying parties, branch supervisors and branch
21 offices in accordance with this chapter and rules adopted pursuant to this
22 chapter.

23 11. Require the payment of a penalty for any late license renewal.

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

27 13. Adopt a wood-destroying insect inspection report form for use by
28 business licensees.

29 14. Receive monies authorized under this chapter for deposit,
30 pursuant to sections 35-146 and 35-147, in the appropriate funds.

31 B. The director may:

32 1. Compel attendance of witnesses, administer oaths or affirmations
33 and take testimony concerning all matters coming within the director's
34 jurisdiction.

35 2. Issue subpoenas for the taking of depositions, the production of
36 documents and things and the entry on land for inspection and measuring,
37 surveying, photographing, testing or sampling the property or any
38 designated object or operation on the property relevant to an inquiry or
39 complaint.

40 3. Contract and enter into interagency and intergovernmental
41 agreements with any private party or public agency.

42 4. With at least twenty-four hours' notice, unless there may be an
43 immediate risk to public health and safety, require a business licensee,
44 qualifying party or applicator to produce specific records. On a showing

1 of good cause by the business licensee, qualifying party or applicator,
2 the director may excuse failure to timely comply.

3 5. Deny or revoke a license based on the information in the
4 application.

5 6. Issue advisory notices for de minimis violations.

6 7. Investigate alleged violations of this chapter, rules adopted
7 pursuant to this chapter, consent agreements, orders and any condition
8 imposed in connection with a license.

9 8. Require the public to provide notices regarding alleged
10 violations in writing.

11 9. Pursuant to section 41-1092.11, summarily suspend a license
12 issued under this chapter to protect the health, safety and welfare of the
13 public.

14 10. Issue a corrective work order requiring a business licensee or
15 applicator to remedy deficiencies in treatment or to comply with this
16 chapter or any rules adopted pursuant to this chapter before or after a
17 formal hearing.

18 11. On receipt of a complaint or on initiation of a complaint by the
19 division, investigate any alleged violation of unlicensed activity
20 pursuant to this chapter. If the director determines that an unlicensed
21 person is performing an act that is required to be performed by a person
22 licensed pursuant to this chapter, the director shall take one or more of
23 the following enforcement actions:

24 (a) Issue a cease and desist order requiring the person to
25 immediately cease operations.

26 (b) Impose on the person a civil penalty of not more than ~~one~~
27 ~~thousand dollars~~ \$1,000 for the first occurrence and not more than ~~two~~
28 ~~thousand dollars~~ \$2,000 for the second occurrence.

29 (c) File an action to enjoin the person from engaging in the
30 unlicensed activity.

31 (d) Request that the county attorney or attorney general file
32 charges against the person.

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

35 13. Register a certified applicator who is a representative of a
36 business licensee as a temporary qualifying party if the qualifying party
37 becomes disassociated with the business licensee.

38 14. Provide and conduct classes to train individuals in preparation
39 for certified applicator and certified qualified applicator tests. The
40 director may assess a fee for each class. The director may contract with
41 a commercial enterprise or an accredited institution to conduct the class.

42 15. Provide and conduct continuing education classes quarterly. The
43 director may assess a fee for each credit hour. The director may contract
44 with a commercial enterprise or an accredited institution to conduct the
45 class under the supervision of division staff.

1 16. Enter into consent agreements and issue consent orders.

2 17. Designate by rule devices that are exempt from the licensure,
3 certification and registration requirements of this chapter.

4 18. Charge a person for providing copies of rules, forms or policies
5 proposed for adoption and for educational materials.

6 19. Require a business licensee or qualifying party to register with
7 the division or to otherwise identify all of the licensed or unlicensed
8 applicators of the business or supervised by the qualifying party.

9 20. Require a business licensee to produce records for the purpose
10 of verifying that an individual is an applicator of the business licensee.

11 21. Charge a handling fee in addition to the transaction amount for
12 any transaction that could have been completed electronically and was not.

13 22. Deny or refuse to renew a license of a person who owes unpaid
14 fees or civil penalties to the division.

15 23. EDUCATE THE PUBLIC REGARDING THE LICENSURE, CERTIFICATION AND
16 REGISTRATION REQUIREMENTS OF THIS CHAPTER.

17 C. The director or any duly authorized agents may enter any private
18 or public property, including a service vehicle, on which pesticides are
19 located or are reasonably believed to be located to be used for purposes
20 related to pest management or any office of a business engaged in pest
21 management. The owner, managing agent or occupant of the property or
22 office shall permit entry for the purpose of inspecting and investigating
23 conditions relating to the use, storage, application and disposal of
24 pesticides, including worker safety materials and records pertaining to
25 pest management. If a person refuses to admit the director or the
26 authorized agent in accordance with this subsection, the director may
27 obtain a warrant from a court of competent jurisdiction. If a licensed or
28 certified person refuses to admit the director or an authorized agent in
29 accordance with this subsection during regular business hours, the
30 director may impose disciplinary action on the person.

31 D. The director or any duly authorized agents may monitor
32 compliance by a person with this chapter and rules adopted pursuant to
33 this chapter while the person is providing pest management services.

34 E. THE DIRECTOR MAY MAINTAIN A LIST OF PERSONS WHO HAVE VIOLATED
35 SECTION 3-3624, SUBSECTION A, PARAGRAPH 1. THE LIST SHALL INCLUDE ANY
36 KNOWN RELATED BUSINESS NAMES USED BY THOSE PERSONS. THE LIST SHALL BE
37 POSTED ON THE DEPARTMENT'S WEBSITE. THE DIRECTOR SHALL REMOVE A PERSON
38 AND ANY KNOWN RELATED BUSINESS NAMES THAT THE PERSON USED FROM THE LIST
39 WITHIN TEN BUSINESS DAYS AFTER THE PERSON BECOMES LICENSED PURSUANT TO
40 THIS CHAPTER AND SUBMITS A WRITTEN REQUEST TO THE DIRECTOR TO REMOVE THE
41 PERSON'S NAME FROM THE LIST. THE DIRECTOR SHALL PROVIDE A COPY OF THE LIST
42 TO ANY MEMBER OF THE PUBLIC THAT REQUESTS A COPY.

1 Sec. 2. Section 3-3624, Arizona Revised Statutes, is amended to
2 read:

3 3-3624. Unlawful acts; violations; classification

4 A. A person ~~shall~~ MAY not:

5 1. Engage in the business of pest management, commence work on a
6 contract or sign, issue or deliver any document expressing an opinion or
7 statement relating to pest management without a business license issued
8 pursuant to this chapter, unless the person is otherwise exempt pursuant
9 to this chapter.

10 2. Engage in the business of pest management in any category
11 without a qualifying party who is registered in that category.

12 3. Operate a branch office without a registered branch supervisor
13 under whose direct supervision pesticide applications are made out of that
14 office.

15 4. Apply pesticides in any category other than wood-destroying
16 organism management or fumigation unless the person is an applicator
17 certified in that category or applies the pesticides under the direct
18 supervision of an applicator certified in that category.

19 5. Apply pesticides in the category of wood-destroying organism
20 management, aquatic pest management or fumigation unless the person is an
21 applicator certified in that category or the person applies the pesticides
22 under the immediate supervision of an applicator certified in that
23 category.

24 6. Make recommendations regarding pest management unless the person
25 is a certified applicator.

26 7. Deny the director or any agent of the director the right to be
27 present on a jobsite in connection with a contemporaneous pest management
28 treatment, including for the purpose of taking pesticide samples and soil
29 samples.

30 B. The following nonexclusive acts are grounds for disciplinary
31 action:

32 1. Violating this chapter, rules adopted pursuant to this chapter
33 or a written order of the director.

34 2. Making false or fraudulent records or reports.

35 3. Misrepresenting a material fact in obtaining a license.

36 4. Applying pesticides in a manner that is inconsistent with the
37 label and labeling of the pesticide or that may cause harm to the public,
38 the environment or nontarget animals.

39 5. Misusing a pesticide if the misuse is due to the failure of the
40 person to properly train or supervise. Proper training includes training
41 to read and understand the label and labeling and to understand the proper
42 use of application equipment. Proper supervision includes oversight of
43 applicators to ensure general compliance with the label and labeling and
44 all applicable laws.

1 6. Authorizing, directing or abetting the publication,
2 advertisement, distribution or circulation of any false statement or
3 material misrepresentation concerning a business of pest management.

4 7. Engaging in the business of pest management or providing pest
5 management services under a suspended license.

6 8. Being convicted of a felony, a misdemeanor arising from or in
7 connection with a license issued pursuant to this chapter after issuance
8 of the license or a misdemeanor involving moral turpitude.

9 9. Having had a license, or the equivalent, to apply pesticides or
10 engage in the business of pest management suspended or revoked in another
11 jurisdiction for cause.

12 10. Making a fraudulent statement or an intentional material
13 misrepresentation in connection with a wood treatment proposal or a
14 wood-destroying insect inspection report.

15 11. Having three or more de minimis violations of this chapter or
16 rules adopted under this chapter.

17 12. Failing to provide the director with a current certificate of
18 insurance or proof of financial responsibility.

19 13. Failing to provide a proper final grade treatment within twelve
20 months after the original pretreatment or new-construction treatment.

21 14. Providing immediate supervision of more uncertified applicators
22 at a time than is authorized by rule.

23 15. Failing to make and maintain true and accurate records of
24 treatments performed or wood-destroying insect inspection reports,
25 including those performed under warranty or guarantee, for at least three
26 years after the date of treatment or inspection.

27 16. Failing to make treatment records available on request of the
28 property owner or the property owner's authorized agent within three
29 business days.

30 17. Failing to ~~permit~~ ALLOW the director or any duly authorized
31 agent to promptly inspect records pertaining to pest management located at
32 an office of a business licensee when an employee or the owner of the
33 business licensee is present at the business office and has access to the
34 records.

35 18. Failing to timely produce specific records requested pursuant to
36 section 3-3603, subsection B, paragraph 4.

37 19. Violating the terms of a consent agreement or written order of
38 the director.

39 C. A PERSON WHO VIOLATES SUBSECTION A, PARAGRAPH 1 OF THIS SECTION
40 IS GUILTY OF A CLASS 2 MISDEMEANOR.

41 ~~C.~~ D. NOTWITHSTANDING SUBSECTION C OF THIS SECTION, a person who
42 violates subsection A, paragraph 1 of this section with reckless disregard
43 for the health and safety of other persons or property is guilty of a
44 class 6 felony.