

State of Arizona  
House of Representatives  
Forty-sixth Legislature  
Second Regular Session  
2004

CHAPTER 208

# HOUSE BILL 2399

AN ACT

AMENDING SECTIONS 32-2304, 32-2313, 32-2317, 32-2321, 32-2323, 32-2324, 32-2324.01, 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, a qualifying party  
29 or an 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  
37 at 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  
7 to 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 ~~an office~~ OFFICES it deems necessary to carry out the  
22 purposes of 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 certified LICENSED  
3 applicator of all requests for review of the business licensee's, qualifying  
4 party's or certified LICENSED applicator's records within ten business days  
5 of the request.
- 6           11. Require inspectors to be licensed applicators in all categories  
7 within their scope of work during their probationary period. Inspectors  
8 shall attend and complete an investigative training class that is prescribed  
9 by the commission within their probationary period.
- 10          12. Investigate alleged violations of all applicable federal and state  
11 statutes and rules adopted or orders issued by the commission or alleged  
12 violations of any condition imposed by the commission in connection with a  
13 license.
- 14          13. Provide general technical advice, support and information  
15 concerning structural pest control to the public and the licensees.
- 16          14. Pursuant to section 32-2329, summarily suspend a license issued  
17 under this chapter to protect the health, safety and welfare of the public.
- 18          15. Issue a corrective work order requiring a licensee to remedy  
19 deficiencies in treatment or to comply with this chapter or any rules adopted  
20 pursuant to this chapter before or after a formal hearing.
- 21          16. Do at least one of the following in relation to unlicensed  
22 structural pest control business operations:  
23           (a) Issue a cease and desist order requiring an unlicensed structural  
24 pest control business to immediately cease operations.  
25           (b) Impose on an unlicensed structural pest control business a civil  
26 penalty of not more than one thousand dollars for the first offense  
27 OCCURRENCE and of not more than two thousand dollars for the second or  
28 subsequent offense OCCURRENCE.
- 29          17. Refer all cases for formal hearing to the office of administrative  
30 hearings.
- 31          18. Refuse to issue a business license in a name that is likely to be  
32 misleading or to imply any distorted representation about the business.
- 33          19. Issue a renewable and revocable temporary qualifying party license  
34 to a licensed applicator who is a representative of a business licensee if  
35 the qualifying party becomes disassociated with the business licensee.
- 36          20. Provide and conduct classes to train applicators and qualifying  
37 parties in preparation for license tests. The commission may assess a fee  
38 for each class. The commission may contract with a commercial enterprise or  
39 an accredited institution to conduct the class.
- 40          21. Provide and conduct continuing education classes quarterly. The  
41 commission may assess a fee for each credit hour. The commission may  
42 contract with a commercial enterprise or an accredited institution to conduct  
43 the class under the supervision of commission staff.

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

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

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

10          25. Approve proposed consent orders.

11          26. Annually prepare a strategic plan.

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

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

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

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

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

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

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

5           Sec. 2. Section 32-2313, Arizona Revised Statutes, is amended to read:  
6           32-2313. Business license; renewal; financial security;  
7                                   definition

8           A. A person who wishes to engage in the business of structural pest  
9 control shall first obtain a business license from the commission as provided  
10 in this article. A person who is not exempt under this article and who  
11 advertises for, solicits or holds himself out as willing to engage in the  
12 business of structural pest control is presumed to be in the business of  
13 structural pest control.

14           B. An application for a business license shall:

15           1. Be in a form prescribed by the commission.

16           2. Be accompanied by the prescribed fee.

17           3. Include the name and address of the qualifying party and written  
18 documentation of how the qualifying party will be active in the day-to-day  
19 management of the business licensee.

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

22           C. A business licensee shall register each primary and branch office  
23 with the commission before it opens for business.

24           D. An applicant shall furnish the following to the commission:

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

44           2. Either of the following if the business licensee performs termite  
45 treatments:

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

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

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

14 4. If an insurance policy provides for a deductible, the deductible  
15 amount shall be limited to ten thousand dollars for each occurrence. If the  
16 deductible amount is in excess of ten thousand dollars for each occurrence,  
17 the business licensee shall provide other security as provided in this  
18 subsection or other evidence of financial security for the excess deductible  
19 amount.

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

26 E. If the financial security is in the form of liability insurance,  
27 the business license is automatically suspended until a current certificate  
28 of insurance or proof of financial responsibility is furnished to the  
29 commission.

30 F. Each business licensee shall annually renew the business license  
31 and each office registration on or before January 1 by filing renewal forms  
32 prescribed by the commission and paying the prescribed renewal fees. If a  
33 business licensee fails to renew the business license as required by this  
34 subsection, the licensee shall not engage in the business of structural pest  
35 control.

36 G. Each branch office of a business licensee shall be supervised by  
37 a ~~certified~~ LICENSED applicator or qualifying party who is ~~certified or~~  
38 ~~qualified~~ LICENSED in all categories in which the branch office operates.

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

42 Sec. 3. Section 32-2317, Arizona Revised Statutes, is amended to read:

43 32-2317. Fees

44 A. The commission shall establish and collect fees that may include  
45 service charges allowed pursuant to section 32-2304 for persons who pay with

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

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

21 B. The commission may charge additional fees for services that the  
22 commission deems appropriate to carry out its intent and purpose. These  
23 additional fees shall not exceed the costs of rendering the services.

24 Sec. 4. Section 32-2321, Arizona Revised Statutes, is amended to read:

25 32-2321. Disciplinary action; grounds; procedure; judicial  
26 review

27 A. After a formal hearing or pursuant to a consent order, the  
28 commission may take any of the following disciplinary actions, in combination  
29 or alternatively:

- 30 1. Revoke a license.
- 31 2. Suspend a license.
- 32 3. Refuse to renew a license.
- 33 4. Impose probation requirements that require a business licensee,  
34 licensed applicator or qualifying party to comply with one or more specific  
35 provisions of this chapter or rules adopted pursuant to this chapter and that  
36 require reporting by or monitoring of the business licensee, licensed  
37 applicator or qualifying party.
- 38 5. Impose a civil penalty in an amount of not more than one thousand  
39 dollars for each violation except for grounds prescribed in subsection B,  
40 paragraphs 8 and 9 of this section.
- 41 6. Issue an administrative warning.
- 42 7. Require a qualifying party to report to the commission the  
43 qualifying party's role in the management of a business license.

44 B. The following acts are grounds for disciplinary action:

1           1. Violating this chapter, rules adopted pursuant to this chapter or  
2 a written order of the commission.

3           2. Making false or fraudulent records or reports.

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

5           4. Applying pesticides in a manner that is inconsistent with the label  
6 requirements of the pesticide or that may cause undue harm to the public.

7           5. Misuse of a pesticide if the misuse is due to training received or  
8 not received or lack of appropriate supervision. Proper training includes  
9 training to read and understand the label and labeling and to understand the  
10 proper use of application equipment. Proper supervision includes oversight  
11 of applicators to ensure general compliance with the label, labeling and all  
12 applicable laws.

13           6. Authorizing, directing or abetting the publication, advertisement,  
14 distribution or circulation of any false statement or material  
15 misrepresentation concerning a business of structural pest control.

16           7. Conviction of a felony or misdemeanor arising from or in connection  
17 with a license issued pursuant to this chapter after issuance of the license.

18           8. Conviction of a felony.

19           9. Having had a license, or the equivalent, to apply pesticides or  
20 engage in the business of structural pest control suspended or revoked in  
21 another jurisdiction for cause.

22           10. Making a fraudulent statement or an intentional material  
23 misrepresentation in connection with a wood treatment proposal or a  
24 wood-destroying insect inspection report.

25           11. Repeated de minimis violations of this chapter or rules adopted  
26 under this chapter.

27           12. Failure to provide the commission with a current certificate of  
28 insurance or proof of financial responsibility.

29           13. Failure to establish a complete vertical barrier at the exterior  
30 of foundation walls in stem wall construction or exterior of grade beams in  
31 monolithic construction within twelve months of the original treatment made  
32 before or during construction.

33           14. Immediately supervising more than one unlicensed applicator at a  
34 time.

35           15. Failure to make and maintain true and accurate records of  
36 treatments performed, including those performed under warranty or guarantee,  
37 for at least ~~five~~ THREE years from date of treatment and EXCEPT ANY RECORD  
38 OF A TERMITE TREATMENT, A WOOD-DESTROYING INSECT INSPECTION REPORT OR A FUNGI  
39 INSPECTION REPORT, WHICH SHALL BE MADE AND MAINTAINED FOR AT LEAST FIVE YEARS  
40 FROM THE DATE OF TREATMENT OR INSPECTION.

41           16. Failure to make these TREATMENT records available within three  
42 business days on request of the property owner, THE property owner's  
43 authorized agent or a commission representative.

44           C. Except as provided in section 32-2329, the commission may proceed  
45 against a business licensee pursuant to subsection A, paragraphs 1 through

1 5 of this section only if, after a hearing, it has been shown that any of the  
2 following applies:

3 1. The business licensee has committed a prior violation of the same  
4 type including any violation by any employee of the business licensee.

5 2. The business licensee failed to follow a written order of the  
6 commission directing it to correct a deficiency or problem within the time  
7 specified.

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

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

13 5. The business licensee is determined by the commission to have  
14 committed a violation in connection with a treatment before or during  
15 construction.

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

18 (a) Report to the commission within thirty calendar days the status  
19 of all warranties issued by the licensee.

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

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

27 8. The business licensee performing pest control treatments on an  
28 ongoing basis to locations other than residential structures of four or fewer  
29 units fails to provide written notice to the person who requested the  
30 treatments or the person's designated agent. Notice shall be given before the  
31 first application of the pesticide and when new or additional pesticides are  
32 used or immediately after each treatment.

33 9. If the treatments are performed in the interior of residential  
34 units, the licensee shall FAILS TO leave a notice in the interior of each  
35 treated unit immediately after each treatment. The notice shall include the  
36 pesticide by trade name and any other information as required by the  
37 pesticide label or local ordinance.

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

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

1           11. The business licensee fails within thirty calendar days of  
2 completion of a termite treatment that is done before or during construction,  
3 an initial termite corrective treatment project or a wood-destroying insect  
4 inspection report, to file with the commission, in a form approved by the  
5 commission, all data required by the commission. The data shall include:

- 6           (a) The name of the individual who performed the work.
- 7           (b) The address or location of the work or project.
- 8           (c) The type and the date of the work.
- 9           (d) The name of the business licensee.
- 10          (e) The name of the qualifying party.
- 11          (f) The applicator's license number.
- 12          (g) Any other information required by the commission in its rules.

13           12. The business licensee, within twelve months of completion of a  
14 termite treatment that is done before or during construction, fails either  
15 to file a supplemental termite action report in a form provided by the  
16 commission that indicates the completion of the final grade treatment or to  
17 report in writing why the treatment has not been completed and when it will  
18 be completed.

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

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

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

- 32           1. Pay renewal fees.
- 33           2. Pay civil penalties.
- 34           3. Demonstrate the completion of required continuing education.

35           G. The holder of a license suspended under subsection F of this  
36 section must apply to the commission for reinstatement.

37           H. Licenses suspended under subsection F of this section are  
38 automatically revoked without a hearing after one year of suspension.  
39 Licenses revoked under this section are not subject to section 32-2304,  
40 subsection A, paragraph 18.

41           I. All complaints shall be in writing.

42           J. If the commission appoints a member or employee of the commission  
43 to conduct an informal settlement conference with the complaining party  
44 pursuant to section 32-2304, the purpose of the informal settlement  
45 conference is to reach agreement as to the disposition of all or a portion

1 of the complaint, including any agreement providing for repairing or  
2 rectifying the conditions specified in the complaint. The settlement  
3 conference shall be conducted informally and the rules of evidence do not  
4 apply. The settlement conference shall not be recorded. Participants in the  
5 settlement conference may ask questions of the complainant and may review any  
6 materials or reports compiled by the commission with respect to the  
7 complaint.

8 K. If the commission prepares a consent order pursuant to section  
9 32-2304, after either an informal settlement conference conducted pursuant  
10 to subsection J of this section or a formal hearing by the commission  
11 conducted pursuant to title 41, chapter 6, article 10, the consent order  
12 shall only set forth the general nature of the inquiry or complaint, the  
13 specific action to be taken by the licensee or business licensee, the  
14 penalty, if any, and the time for compliance, if any, for any corrective  
15 action to be taken.

16 L. Except as provided in section 41-1092.08, subsection H, final  
17 decisions of the commission are subject to judicial review pursuant to title  
18 12, chapter 7, article 6.

19 M. The commission shall consider only an inquiry received or complaint  
20 filed within five years of the date of the alleged act or omission.

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

26 O. If the commission finds a violation or the commission enters into  
27 a consent agreement, the commission:

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

30 2. Shall include information from the inquiry in the record of  
31 complaint. If no violation is found, the information from the inquiry shall  
32 be deleted.

33 P. Only this chapter applies to, regulates and determines all  
34 requirements regarding licensure, licensure fees, testing and education  
35 related to structural pest control in this state. Only this chapter applies  
36 to, regulates and determines all requirements regarding the business of  
37 structural pest control, including the application or notification of use or  
38 disposal of pesticides for structural pest control in this state.

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

42 Sec. 5. Section 32-2323, Arizona Revised Statutes, is amended to read:  
43 32-2323. Wood-destroying insects; treatment proposal

44 A. A business licensee shall not commence work on a contract or sign,  
45 issue or deliver any documents expressing an opinion or making a statement

1 relating to the presence or absence of wood-destroying insects in a structure  
2 until an inspection is made.

3 B. Only an applicator licensed in the categories of wood-destroying  
4 insects INSECT CONTROL and wood-destroying insect inspection shall prepare  
5 a treatment proposal on a form approved by the commission and shall deliver  
6 a copy of the treatment proposal to the person requesting the proposal, or  
7 the person's designated agent, before beginning treatment. The structural  
8 treatment proposal shall include the following information:

9 1. The address of the property to be treated.

10 2. A statement describing that the work is preventative or corrective.

11 3. A statement describing the evidence of infestation or damage.

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

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

17 6. The price for the work.

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

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

22 C. A licensee shall also give to the person requesting a proposal a  
23 written recommendation that verifies a particular problem and, in addition  
24 to the licensee's recommendation for treatment, shall advise the person of  
25 alternative treatments and methods, including integrated pest management  
26 methods ~~as provided in section 32-2304, subsection A, paragraph 21,~~ to  
27 alleviate the problem.

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

32 E. A treatment proposal shall be prepared by a licensed applicator who  
33 has received at least five hours of instruction from the commission or an  
34 in-house education program of a business licensee on the subject of  
35 wood-destroying insect inspections. An examination on the instruction is not  
36 required. The business licensee shall keep a record of completion of the  
37 training and shall make the record available on the commission's request.

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

41 G. WITHIN THIRTY CALENDAR DAYS AFTER COMPLETION OF A TERMITE TREATMENT  
42 OR ON THE NEXT BUSINESS DAY AFTER THE THIRTY CALENDAR DAYS, A BUSINESS  
43 LICENSEE SHALL FILE WITH THE COMMISSION IN A FORM OR FORMAT APPROVED BY THE  
44 COMMISSION A COMPLETE AND ACCURATE TERMITE ACTION REGISTRATION FORM AND A FEE  
45 AS PRESCRIBED BY THE COMMISSION. THE TERMITE ACTION REGISTRATION FORM SHALL

1 INCLUDE INFORMATION PRESCRIBED IN SECTION 32-2321, SUBSECTION C, PARAGRAPH  
2 11 AND THIS SECTION. THIS SUBSECTION ONLY APPLIES TO THE FOLLOWING:

3 1. ANY TREATMENTS DONE BEFORE OR DURING CONSTRUCTION, INCLUDING FINAL  
4 GRADE TREATMENTS.

5 2. THE FIRST PREVENTATIVE OR CORRECTIVE TERMITE TREATMENT BY A  
6 BUSINESS LICENSEE TO A SITE. IF THE BUSINESS LICENSEE WHO PERFORMED THIS  
7 TERMITE TREATMENT PERFORMED THE BEFORE OR DURING CONSTRUCTION TREATMENT AT  
8 THE SAME SITE AND FILED A TERMITE ACTION REPORT FORM WITH THE COMMISSION  
9 DOCUMENTING THE BEFORE OR DURING CONSTRUCTION TREATMENT, THE BUSINESS  
10 LICENSEE IS EXEMPT FROM THIS PARAGRAPH.

11 3. A WOOD-DESTROYING INSECT INSPECTION REPORT.

12 Sec. 6. Section 32-2324, Arizona Revised Statutes, is amended to read:  
13 32-2324. Wood-destroying insect inspection reports

14 A. Wood-destroying insect inspection reports may only be completed by  
15 an applicator who is licensed in the category CATEGORIES of control of  
16 wood-destroying insects and wood-destroying insect inspection and who has  
17 received at least five hours of instruction from the commission or an  
18 in-house education program of a business licensee on the subject of  
19 wood-destroying insect inspection reports. An examination on the instruction  
20 is not required. The business licensee shall keep a record of completion of  
21 the training and shall make the record available on the commission's request.

22 B. Wood-destroying insect inspection reports shall be on file in the  
23 office of the business licensee within seven calendar days after the  
24 completion of an inspection. The business licensee shall retain a copy of  
25 all completed wood-destroying insect inspection reports for ~~three~~ FIVE years  
26 and make the reports available on the commission's request.

27 C. Wood-destroying insect inspection reports are evidence of the  
28 existence or absence of wood-destroying insects that were visible and  
29 accessible to an inspector on the date the inspection was made. A business  
30 licensee remains responsible for the accuracy of the inspection and the  
31 report as evidence of the presence or absence of infestation on the date of  
32 inspection, except that a wood-destroying insect inspection report shall not  
33 be construed as a guarantee as to the presence or absence of wood-destroying  
34 insects in a structure after the date of inspection.

35 Sec. 7. Section 32-2324.01, Arizona Revised Statutes, is amended to  
36 read:

37 32-2324.01. Fungi inspection reports

38 A. Fungi inspection reports may only be completed by a licensed  
39 applicator who is licensed in the fungi category and who has received at  
40 least eight hours of instruction from the commission or an in-house education  
41 program of a business licensee on the subject of fungi inspection and  
42 inspection reports. An examination on the instruction is not required. The  
43 business licensee shall keep a record of the completion of the training and  
44 shall make the record available on the commission's request.

1           B. Fungi inspection reports shall be on file in the office of the  
2 business licensee within seven calendar days after the completion of an  
3 inspection. The business licensee shall retain a copy of all completed fungi  
4 inspection reports for ~~three~~ FIVE years and make the reports available on the  
5 commission's request.

6           C. Fungi inspection reports are evidence of the existence or absence  
7 of fungi that was visible and accessible to an inspector on the date the  
8 inspection was made. A business licensee remains responsible for the  
9 accuracy of the inspection and the report as evidence of the presence or  
10 absence of fungi on the date of inspection, except that a fungi inspection  
11 report shall not be construed as a guarantee as to the presence or absence  
12 of fungi in a structure after the date of inspection.

13           D. Licensees who are licensed in the wood-destroying organism category  
14 by ~~the effective date of this section~~ SEPTEMBER 18, 2003, are permitted to  
15 perform the business of structural pest control in the fungi category until  
16 June 30, 2004. After that date, any person performing a fungi inspection  
17 shall be licensed in the fungi category.

18           E. ~~By December 31, 2003,~~ The commission shall approve a fungi  
19 inspection report for use in fungi inspections.

APPROVED BY THE GOVERNOR MAY 10, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 10, 2004.





HOUSE CONCURS IN SENATE  
AMENDMENTS AND FINAL PASSAGE

May 4, 2004

by the following vote: 44 Ayes,

8 Nays, 8 Not Voting

Jake Flake  
Speaker of the House  
Spencer L. Moore  
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this

4th day of May, 2004,

at 4:45 o'clock P. M.

Wennifer Ybarra  
Secretary to the Governor

Approved this 10 day of

May, 2004,

at 11<sup>35</sup> o'clock A. M.

J. R. Nagel  
Governor of Arizona

H.B. 2399

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 10 day of May, 2004,

at 1:22 o'clock P. M.

Janice K. Brewer  
Secretary of State