House Engrossed Senate Bill

FILED
JANICE K. BREWER
SECRETARY OF STATE

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CHAPTER 263

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)

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

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

32-2304. Powers and duties; executive director

A. The commission shall:

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

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

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

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

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

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

7. Receive and appropriately respond to any inquiry.

8. 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 the complaint.

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

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

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

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

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

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

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

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

(c) The name of the pest control company.

(d) The name of the qualifying party.

(e) The applicator license numbers.

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

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

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

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

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

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

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

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

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

(a) The identification of pests.

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

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

thresholds if pest populations or environmental conditions warrant remedial action.

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

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

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

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

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

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

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

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

B. The commission may:

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

2. Require a person who seeks a license pursuant to this chapter to submit to the commission a full set of fingerprints and the fees required by section 41-1750. The commission 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.

3. Enter into intergovernmental agreements.

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

5. Deny or revoke a license based on the information in the application or information that the commission 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. Charge to the holder of a business license the actual cost of providing mailed copies of rules, forms or policies that are proposed for adoption.

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

9. Issue advisory notices for de minimis violations.

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

11. 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 commission within their probationary period.

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

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

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

15. Issue a corrective work order requiring a licensee 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.

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

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

(b) EXCEPT AS PROVIDED IN SECTION 32-2311, SUBSECTION C, impose on an unlicensed structural pest control 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.

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

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

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

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

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

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

23. 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.

24. 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.

25. Approve proposed consent orders.

26. Annually prepare a strategic plan.

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

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

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

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

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

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

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

Sec. 2. Section 32-2311, Arizona Revised Statutes, is amended to read:

32-2311. Persons not required to be licensed; violation; civil penalties

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

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

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

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

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

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

6. EXCEPT AS PROVIDED IN SECTION 32-2307, PERSONS WHO ARE CONDUCTING LAWN, GARDEN, SHRUB OR TREE MAINTENANCE AND WHO APPLY HERBICIDES FOR THE PURPOSE OF WEED CONTROL. 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) PERSONS WHO OFFER WEED CONTROL 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.

B. 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 CONTROL 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.

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

C. IF A PERSON IS EXEMPT PURSUANT TO SUBSECTION A, PARAGRAPH 6 OF THIS SECTION BUT DOES NOT COMPLY WITH SUBSECTION B OF THIS SECTION OR IF A PERSON IS NOT EXEMPT PURSUANT TO SUBSECTION A, PARAGRAPH 6 OF THIS SECTION AS A RESULT OF DOING SOMETHING PRESCRIBED IN SUBSECTION A, PARAGRAPH 6, SUBDIVISIONS (a) THROUGH (f) OF THIS SECTION, THE COMMISSION SHALL:

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.

APPROVED BY THE GOVERNOR MAY 8, 2006.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 8, 2006.