Senate Engrossed

FILED
MICHELE REAGAN
SECRETARY OF STATE

State of Arizona
Senate
Fifty-second Legislature
Second Regular Session
2016

CHAPTER 221

SENATE BILL 1270

AN ACT

AMENDING SECTION 3-102, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2015, CHAPTER 244, SECTION 3; AMENDING SECTIONS 3-363 AND 3-374, ARIZONA REVISED STATUTES; AMENDING TITLE 3, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 20; PROVIDING FOR TRANSFERRING AND RENUMBERING; AMENDING SECTIONS 3-3601, 3-3603, 3-3604, 3-3605, 3-3606, 3-3611, 3-3612, 3-3613, 3-3615, 3-3616, 3-3618, 3-3621, 3-3623, 3-3624, 3-3625 AND 3-3631, ARIZONA REVISED STATUTES, AS TRANSFERRED AND RENUMBERED; AMENDING SECTION 32-1121, ARIZONA REVISED STATUTES; REPEALING SECTION 32-2303, ARIZONA REVISED STATUTES; AMENDING SECTIONS 36-606, 36-898 AND 41-1092, ARIZONA REVISED STATUTES; RELATING TO PEST MANAGEMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 3-102, Arizona Revised Statutes, as amended by Laws 2015, chapter 244, section 3, is amended to read:

3-102. Department organization

A. The Arizona department of agriculture is established consisting of the following divisions:

1. The animal services division, which is responsible for milk, dairy, livestock and aquaculture regulation, the state veterinarian, meat, poultry and egg inspection and performing the administrative functions authorized or contracted pursuant to law for the Arizona beef council.

2. The plant services division, which is responsible for the fruit and vegetable standardization program and entomological services.

3. The environmental services division, which is responsible for regulating seed, feed and agricultural chemicals, including pesticides and fertilizers, and for native plant protection.

4. The weights and measures services division, which is responsible for the inspection, testing and licensing of commercial weighing and measuring devices.

5. THE PEST MANAGEMENT DIVISION, WHICH IS RESPONSIBLE FOR REGULATING PEST MANAGEMENT AND PEST MANAGEMENT SERVICES AS DEFINED IN SECTION 3-3601.

B. The following are established in addition to and separate from the divisions of the department:

1. A state agricultural laboratory.

2. An office of agriculture safety.

3. An office of inspections.

4. An office of commodity development and promotion.

C. The department shall have a central administrative service office providing:

1. Data processing, accounting and budgeting, records management, publications, property control and personnel services and training.

2. A program to cross-train appropriate personnel to enable them to perform similar functions or comparable work for different administrative units in the department.

Sec. 2. Section 3-363, Arizona Revised Statutes, is amended to read:

3-363. Rules

The director shall adopt rules to regulate pesticides that include provisions to:

1. Administer and implement this article.

2. Prescribe measures to control, monitor, inspect and govern pesticide use.

3. Prohibit or restrict pesticide use.

4. Restrict the areas in which pesticide use may occur.

5. Prescribe minimum qualifications for all persons who engage in pesticide use, including, as appropriate, requirements that the persons have valid licenses, permits or certificates, have adequate training, including

continuing education requirements, and meet financial responsibility standards.

6. Prescribe appropriate ~~record keeping~~ RECORDKEEPING and reporting requirements regarding pesticide use, except that the ~~record keeping~~ RECORDKEEPING and reporting requirements for growers and certified private applicators who apply pesticides shall be equivalent to, but not more stringent than, the requirements prescribed under the federal insecticide, fungicide and rodenticide act (61 Stat. 163) and the food, agriculture, conservation and trade act of 1990 (P.L. 101-624; 104 Stat. 3359).

7. Prohibit pesticide use that is inconsistent with the pesticide label as required under the federal insecticide, fungicide and rodenticide act (61 Stat. 163).

8. Exempt from regulation under this article pesticide use that is regulated in ~~title 32,~~ chapter ~~22~~ 20 OF THIS TITLE.

9. Issue licenses, permits and certificates for pesticide use, as appropriate, having terms of one or more years.

10. Charge and collect the following fees for each permit, license and certification under this article:

(a) Not ~~to exceed~~ MORE THAN twenty dollars per year for a grower permit.

(b) Not ~~to exceed~~ MORE THAN one hundred dollars per year for a seller permit.

(c) Not ~~to exceed~~ MORE THAN one hundred dollars per year for a custom applicator license.

(d) Not ~~to exceed~~ MORE THAN fifty dollars per year for a pilot license.

(e) Not ~~to exceed~~ MORE THAN fifty dollars per year for a pest control advisor license.

(f) Not ~~to exceed~~ MORE THAN twenty-five dollars per year for a piece of equipment used to apply pesticides by a custom applicator.

(g) Not ~~to exceed~~ MORE THAN fifty dollars per year for restricted use certification.

(h) Not ~~to exceed~~ MORE THAN the amount set by the director by rule for a license or certificate for pesticide use on golf courses.

11. Establish a nonexclusive list of acts and omissions that constitute serious, nonserious and de minimis violations of this article.

12. Establish a system of administrative penalties and fines for violations of this article and any rules adopted under this article. Under this system:

(a) Violators shall be assessed a number of points for each violation, depending on such factors as:

(i) Potential and actual consequences of the violation on public and worker health and safety and the environment.

(ii) The wrongfulness of the conduct.

(iii) The degree of culpability of the violator.

(iv) The duration of the violation.

(v) Prior violations or citations.

(b) Penalties shall be assessed depending on the number of points accrued by the violator.

Sec. 3. Section 3-374, Arizona Revised Statutes, is amended to read:

3-374. Availability of information to the public

A. Any records, reports or information obtained from any person under this article, including records, reports or information obtained or prepared by the department, shall be available to the public, except that the information, or a particular part of the information, shall be considered confidential on either:

1. A showing, satisfactory to the director, by any person that the information, or a particular part of the information, if made public, would divulge the trade secrets of the person.

2. A determination by the attorney general that disclosure of the information, or a particular part of the information, would be detrimental to an ongoing investigation by the director.

3. A determination by the attorney general that disclosure of the information or a particular part of the information would be detrimental to an ongoing criminal investigation or to an ongoing or contemplated civil enforcement action under this article in superior court.

B. Notwithstanding subsection A OF THIS SECTION, the following information shall be available to the public:

1. The name and address of any permit applicant or permittee.

2. Information contained in or derivable from the pesticide label or the relevant ~~material~~ safety data sheet.

C. Notwithstanding subsection A OF THIS SECTION, the director may disclose any records, reports or information obtained from any person under this article, including records, reports or information obtained by the department, to:

1. Other state employees concerned with administering this article or if relevant to any administrative or judicial proceeding under this article.

2. Employees of the United States environmental protection agency if such information is necessary or required to administer and implement or comply with applicable federal law.

Sec. 4. Title 3, Arizona Revised Statutes, is amended by adding chapter 20, to read:

CHAPTER 20

PEST MANAGEMENT DIVISION

Sec. 5. Transfer and renumber

Title 32, chapter 22, articles 1, 2, 3 and 4, Arizona Revised Statutes, are transferred and renumbered for placement in title 3, chapter 20, Arizona Revised Statutes, as added by this act, as articles 1, 2, 3 and 4, respectively. The following sections are transferred and renumbered for placement in title 3, chapter 20, article 1:

Former Sections	New Sections
32-2301	3-3601
32-2302	3-3602
32-2304	3-3603
32-2305	3-3604
32-2306	3-3605
32-2307	3-3606

The following sections are transferred and renumbered for placement in title 3, chapter 20, article 2:

Former Sections	New Sections
32-2311	3-3611
32-2311.01	3-3612
32-2311.02	3-3613
32-2312	3-3614
32-2313	3-3615
32-2314	3-3616
32-2315	3-3617
32-2317	3-3618

The following sections are transferred and renumbered for placement in title 3, chapter 20, article 3:

Former Sections	New Sections
32-2321	3-3621
32-2323	3-3622
32-2324	3-3623
32-2325	3-3624
32-2326	3-3625
32-2327	3-3626

The following sections are transferred and renumbered for placement in title 3, chapter 20, article 4:

Former Sections	New Sections
32-2331	3-3631
32-2332	3-3632
32-2333	3-3633

Sec. 6. Section 3-3601, Arizona Revised Statutes, as transferred and renumbered, is amended to read:

3-3601. Definitions

In this chapter, unless the context otherwise requires:

1. "Branch office" means any fixed place of business, other than the primary office, where records are kept, mail is received, statements are rendered, money is collected, requests for service or bids are received, information pertaining to the business of pest management is given or pesticides are stored or disposed of.

2. "Branch supervisor" means a certified applicator working at or from a branch office who is responsible for ensuring the training, equipping and supervision of all applicators of the branch office.

3. "Business license" means a license that is issued pursuant to this chapter or rules adopted pursuant to this chapter to a person and that entitles that person and the person's employees to engage in the business of pest management.

4. "Business of pest management" means engaging in, offering to engage in, advertising for, soliciting or performing pest management, including any of the following:

(a) Identifying infestations or making inspections for the purpose of identifying or attempting to identify infestations.

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

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

5. "Certified applicator" means an individual who is licensed by the ~~office~~ DIVISION to provide pest management services in accordance with this chapter.

6. "Certified qualified applicator" means a certified applicator who is eligible to act as a qualifying party.

7. "Child care facility" means a facility that is regulated pursuant to title 36, chapter 7.1.

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

~~9. "Department" means the Arizona department of agriculture.~~

~~10.~~ 9. "Device" means any instrument or contrivance that is intended to be used for trapping, destroying, repelling or mitigating any pest or other form of plant or animal life.

~~11.~~ 10. "Direct supervision" means the use of a pesticide under the instructions, control and responsibility of a certified applicator who is available if needed for consultation or assistance even though the certified applicator is not physically present at the time and place the pesticide is used.

~~12. "Director" means the director of the Arizona department of agriculture.~~

11. "DIVISION" MEANS THE PEST MANAGEMENT DIVISION OF THE DEPARTMENT.

~~13.~~ 12. "Final grade treatment" means the establishment of a complete vertical barrier at the exterior of foundation walls in stem wall or monolithic construction.

~~14.~~ 13. "Financial security" means liability insurance, a deposit of cash or certified monies, a surety bond or an irrevocable and unconditional letter of credit from ~~an Arizona or~~ A federally chartered financial institution OR A FINANCIAL INSTITUTION AS DEFINED IN SECTION 6-101.

~~15.~~ 14. "Household pests" means pests, other than wood-destroying organisms, that invade households or other structures, including rodents, vermin and insects.

~~16.~~ 15. "Immediate supervision" means the use of a pesticide by an individual acting under the instructions, control and responsibility of a certified applicator who is within the direct line of sight or within hearing distance of the individual and who is available for consultation or assistance at the time and place the pesticide is used.

~~17.~~ 16. "Initial corrective treatment" means the first postconstruction treatment of any kind performed by a licensee, excluding a treatment performed under warranty by a licensee who has performed the pretreatment or new-construction treatment.

~~18.~~ 17. "Inquiry" means an initial investigation of possible violations of this chapter or rules adopted pursuant to this chapter based on information received from the public or ~~office~~ DIVISION staff.

~~19.~~ 18. "Integrated pest management" means a sustainable approach to managing pests that combines biological, cultural, physical and chemical tools in a way that minimizes economic, health and environmental risks.

~~20.~~ 19. "New-construction treatment" means a treatment that protects all cellulose components of a structure from subterranean termites and that is performed after a permanent concrete slab foundation is installed or footings and supports for a raised foundation are installed, but before the structure or a final grade treatment is completed.

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

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

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

(a) Means the management of health-related pests, aquatic pests, household pests, wood-destroying organisms or other pests, including weeds, that exist in, near or around structures, in ornamental shrubs and trees, along rights-of-way or in lawns or cemeteries and all pesticide applications that could be harmful to public health or the environment.

(b) Includes the management by persons for hire of health-related pests, aquatic pests, household pests, wood-destroying organisms or other pests, including weeds, that exist on golf courses.

(c) Does not include pesticide applications used directly in the commercial production of crops and animals or used not for hire on golf courses.

~~24.~~ 22. "Pest management services" means identifying infestations or making inspections for the purpose of identifying or attempting to identify infestations, making written or oral inspection reports or recommendations with respect to infestations and the application of pesticides or the use of devices not exempt by section ~~32-2304~~ 3-3603, subsection B, paragraph ~~18~~ 17

for the purpose of eliminating, exterminating, controlling or preventing infestations.

~~25.~~ 23. "Pesticide" means any substance or mixture of substances intended to be used for preventing, destroying, repelling or mitigating insects, fungi, bacteria, microbes, weeds, rodents, predatory animals or any form of plant or animal life that is, or that the director may declare to be, a pest and that may infest or be detrimental to vegetation, humans, animals or households or be present in any environment.

~~26.~~ 24. "Political subdivision" means a state agency, county, city, town, municipal corporation or school district or a special district formed pursuant to title 48.

~~27.~~ 25. "Postconstruction treatment" means a treatment to control wood-destroying organisms in or around an existing structure performed after all soil disturbance associated with construction is complete and after an applicator has completed an inspection of the structure and a treatment proposal under section ~~32-2332~~ 3-3632, subsections A and B.

~~28.~~ 26. "Pretreatment" means a termite treatment that protects all cellulose components of a structure from subterranean termites, that is performed before a permanent concrete slab foundation is installed or in conjunction with establishing footings and supports for a raised foundation and that establishes thorough and complete horizontal and vertical treated barriers.

~~29.~~ 27. "Prior violation" means any violation for which disciplinary action was taken within a five-year period before the date of the violation for which current disciplinary action is sought.

~~30.~~ 28. "Qualifying party" means a certified qualified applicator registered with the ~~office~~ DIVISION as the individual responsible for ensuring the training, equipping and supervision of all applicators of a business licensee or school district.

~~31.~~ 29. "School" means any public or nonpublic institution, other than a child's home, that is established for the purpose of offering instruction to pupils in programs for preschool children with disabilities, kindergarten programs or any combination of grades one through twelve and that qualifies as a school pursuant to section 15-802.

~~32.~~ 30. "Service vehicle" means a motor vehicle, including a trailer attached to the motor vehicle, that is used to transport equipment or pesticides for the business of pest management.

~~33.~~ 31. "Sterilant" means a product that is designed for killing all live vegetation and preventing all vegetation growth for twelve or more months.

~~34.~~ 32. "Weed" means any plant that grows where it is not wanted.

~~35.~~ 33. "Wood-destroying insect inspection report" means a written inspection report on a form approved by the director that is prepared in connection with the sale or refinancing of real property whether or not the report is used as part of the transaction.

~~36.~~ 34. "Wood-destroying organisms" means organisms that attack, damage or destroy wood or wood-derivative products, but does not include birds or mammals.

Sec. 7. Section 3-3603, Arizona Revised Statutes, as transferred and renumbered, is amended to read:

3-3603. Powers and duties of director

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

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

(a) Administrative provisions.

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

(c) Health and safety provisions.

(d) Duties and responsibilities.

(e) Recordkeeping and production of records requirements.

(f) Licensee inspection and treatment report requirements.

(g) Disciplinary action provisions.

(h) Equipment provisions.

(i) Advertising requirements.

(j) The use, storage and application of pesticides and devices used in pest management.

2. Notify the business licensee, applicator and qualifying party in writing of any inquiry into possible violations by the business licensee, applicator or qualifying party by the close of business on the tenth business day after the day on which the director initiated the inquiry if the director anticipates an enforcement action. If in the course of the investigation the ~~office~~ DIVISION identifies any alleged violations by a different business licensee, applicator or qualified party, the director shall notify the additional alleged violator by the close of business on the tenth business day after the day on which the director initiated the new inquiry.

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

4. Maintain a computer system for the benefit and protection of the public that includes the following information on pretreatments, new-construction treatments, final grade treatments, initial corrective 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 management 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 rule.

5. Establish offices the director deems necessary to carry out the purposes of this chapter.

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

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

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

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

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

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

12. 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.

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

14. RECEIVE MONIES AUTHORIZED UNDER THIS CHAPTER FOR DEPOSIT, PURSUANT TO SECTIONS 35-146 AND 35-147, IN THE APPROPRIATE FUNDS.

B. The director may:

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

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

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

4. With at least twenty-four hours' notice, unless there may be an immediate risk to public health and safety, require a business licensee, qualifying party or applicator to produce specific records. On a showing of good cause by the business licensee, qualifying party or applicator, the director may excuse failure to timely comply.

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

6. Issue advisory notices for de minimis violations.

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

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

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

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

11. ~~Do at least one of the following in relation to unlicensed pest management business operations, unless the operations do not require licensure~~ ON RECEIPT OF A COMPLAINT OR ON INITIATION OF A COMPLAINT BY THE DIVISION, INVESTIGATE ANY ALLEGED VIOLATION OF UNLICENSED ACTIVITY PURSUANT TO THIS CHAPTER. IF THE DIRECTOR DETERMINES THAT AN UNLICENSED PERSON IS PERFORMING AN ACT THAT IS REQUIRED TO BE PERFORMED BY A PERSON LICENSED PURSUANT TO THIS CHAPTER, THE DIRECTOR SHALL TAKE ONE OR MORE OF THE FOLLOWING ENFORCEMENT ACTIONS:

(a) Issue a cease and desist order requiring the ~~business~~ PERSON to immediately cease operations.

(b) Impose on the ~~owner of the business~~ PERSON 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.

(c) FILE AN ACTION TO ENJOIN THE PERSON FROM ENGAGING IN THE UNLICENSED ACTIVITY.

(d) REQUEST THAT THE COUNTY ATTORNEY OR ATTORNEY GENERAL FILE CHARGES AGAINST THE PERSON.

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

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

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

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

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

~~17.~~ 16. Enter into consent agreements and issue consent orders.

~~18.~~ 17. Designate by rule devices that are exempt from the licensure, certification and registration requirements of this chapter.

~~19.~~ 18. Charge a person for providing copies of rules, forms or policies proposed for adoption and for educational materials.

~~20.~~ 19. Require a business licensee or qualifying party to register with the ~~office~~ DIVISION or TO otherwise identify all of the licensed or unlicensed applicators of the business or supervised by the qualifying party.

~~21.~~ 20. Require a business licensee to produce records for the purpose of verifying that an individual is an applicator of the business licensee.

~~22~~. 21. Charge a handling fee in addition to the transaction amount for any transaction that could have been completed electronically and was not.

~~23.~~ 22. Deny or refuse to renew a license of a person who owes unpaid fees or civil penalties to the ~~office~~ DIVISION.

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

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

Sec. 8. Section 3-3604, Arizona Revised Statutes, as transferred and renumbered, is amended to read:

3-3604. Pest management trust fund

A. The pest management TRUST fund is established for the exclusive purpose of implementing, continuing and supporting the ~~office~~ DIVISION and its objectives as established by this chapter.

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

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

B. THE DIRECTOR SHALL ADMINISTER THE TRUST FUND AS TRUSTEE. THE STATE TREASURER SHALL ACCEPT, SEPARATELY ACCOUNT FOR AND HOLD IN TRUST ANY MONIES DEPOSITED IN THE STATE TREASURY, WHICH ARE CONSIDERED TO BE TRUST MONIES AS DEFINED IN SECTION 35-310 AND WHICH SHALL NOT BE COMMINGLED WITH ANY OTHER MONIES IN THE STATE TREASURY EXCEPT FOR INVESTMENT PURPOSES. ON NOTICE FROM THE DIRECTOR, THE STATE TREASURER SHALL INVEST AND DIVEST ANY TRUST FUND MONIES DEPOSITED IN THE STATE TREASURY AS PROVIDED BY SECTIONS 35-313 AND 35-314.03, AND MONIES EARNED FROM THE INVESTMENT SHALL BE CREDITED TO THE TRUST FUND.

C. THE BENEFICIARIES OF THE TRUST ARE THE DIVISION PROGRAMS ESTABLISHED BY THIS CHAPTER. MONIES IN THE TRUST FUND SHALL BE DISBURSED AS APPROVED BY THE DIRECTOR EXCLUSIVELY FOR THE PURPOSES PRESCRIBED IN THIS CHAPTER.

D. SURPLUS MONIES, INCLUDING ANY UNEXPENDED AND UNENCUMBERED BALANCE AT THE END OF THE FISCAL YEAR, DO NOT REVERT TO THE STATE GENERAL FUND.

E. IF THE DIVISION IS TERMINATED, ANY MONIES IN THE TRUST FUND SHALL BE EXPENDED TO MEET EXISTING LEGAL OBLIGATIONS OF THE DIVISION. THE DIRECTOR SHALL EXPEND ANY REMAINING MONIES ON ANY PROGRAM CONSISTENT WITH THIS CHAPTER.

Sec. 9. Section 3-3605, Arizona Revised Statutes, as transferred and renumbered, is amended to read:

3-3605. Pest management division council; members; duties

A. The director shall establish by rule a pest management ~~advisory committee~~ DIVISION COUNCIL to assist and make recommendations to the director regarding the administration and implementation of this chapter. The director shall appoint five members to the ~~committee~~ COUNCIL, including one public member.

B. THE PEST MANAGEMENT DIVISION COUNCIL SHALL:

1. REVIEW PEST MANAGEMENT POLICY IN THIS STATE AS ESTABLISHED BY LAW AND ADMINISTERED BY THE DIVISION.

2. ASSIST THE DIRECTOR IN FORMULATING ADMINISTRATIVE RULES FOR THE DIVISION, INCLUDING REVIEWING, ADVISING AND MAKING RECOMMENDATIONS TO THE DIRECTOR ON PROPOSED RULES BEFORE THE RULES ARE ADOPTED AND RECOMMENDING AND INITIATING THE RULEMAKING PROCESS FOR RULES RELATING TO THIS CHAPTER.

3. ASSIST THE DIRECTOR IN DEVELOPING PROPOSED BUDGETS FOR THE DIVISION.

4. PROVIDE ADDITIONAL ASSISTANCE AS THE DIRECTOR DEEMS NECESSARY.

C. IF THE DIRECTOR DETERMINES THAT THE RULEMAKING RECOMMENDATIONS OF THE PEST MANAGEMENT DIVISION COUNCIL ARE PRACTICABLE AND IN THE BEST INTERESTS OF THE PEST MANAGEMENT INDUSTRY AND THE PUBLIC, THE DIRECTOR SHALL ACCEPT THE RULEMAKING RECOMMENDATIONS. IF THE DIRECTOR REJECTS THE RULEMAKING RECOMMENDATIONS OF THE PEST MANAGEMENT DIVISION COUNCIL, THE DIRECTOR SHALL PROVIDE A WRITTEN EXPLANATION OF THE REASONS FOR THE REJECTION TO THE DIVISION COUNCIL NOT MORE THAN FIFTEEN DAYS AFTER THE DIRECTOR'S DECISION TO REJECT THE RECOMMENDATIONS.

D. THE DIRECTOR SHALL INCLUDE THE COMMENTS OF THE PEST MANAGEMENT DIVISION COUNCIL IN THE OFFICIAL RECORD WHEN ADOPTING RULES OR BUDGETS FOR THE DIVISION.

Sec. 10. Section 3-3606, Arizona Revised Statutes, as transferred and renumbered, is amended to read:

3-3606. Pesticide applications at schools and child care facilities; advance notification; exemptions

A. Only a certified applicator may apply pesticides at a school or child care facility.

B. A business licensee or certified applicator shall notify a school or a child care facility at least seventy-two hours in advance of any pesticide application in order to permit the school to comply with section 15-152 and the child care facility to comply with section 36-898. The ~~seventy-two hour~~ SEVENTY-TWO-HOUR advance notice shall include:

1. The SCHEDULED date and time the application is to occur. ~~The seventy-two hour advance notice shall also include the brand name, concentration, rate of application, pesticide label and material safety data sheet and any use restrictions required by the pesticide label.~~

~~C. Immediately before application of a pesticide, a business licensee or certified applicator shall provide the school or child care facility with a written preapplication notification containing the following information:~~

~~1. The brand name, concentration and rate of application and any use restrictions required by the label of the herbicide or specific pesticide.~~

~~2. The area or areas where the pesticide is to be applied.~~

~~3. The date and time the application is to occur.~~

~~4. The pesticide label and the material safety data sheet.~~

~~D. The pesticide label and material safety data sheet may be used in place of any information required pursuant to subsections B and C of this section if the information is already contained on the pesticide label or material safety data sheet.~~

2. THE LOCATION AND AREA OF THE APPLICATION AND THE BRAND NAME OF THE PESTICIDE OR PESTICIDES TO BE APPLIED.

3. THE NAME, ADDRESS, PHONE NUMBER AND CONTACT PERSON OF THE BUSINESS LICENSEE OR CERTIFIED APPLICATOR.

4. A STATEMENT THAT FURTHER INFORMATION, THE PRODUCT LABEL OR THE SAFETY DATA SHEET IS AVAILABLE BY CONTACTING THE BUSINESS LICENSEE OR CERTIFIED APPLICATOR.

~~E.~~ C. The following pesticide applications are exempt from the notification requirement prescribed by ~~subsections~~ SUBSECTION B ~~and C~~ of this section:

1. Nonresidual pesticide applications performed or contracted by public health agencies for adult vector control, provided that oral notification is attempted at least seventy-two hours before the application, when possible, to the school office or child care facility office with a

statement of the pest problem, treatment procedure, area to be treated and approximate time of the application.

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

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

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

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

3. Disinfectants or swimming pool chemicals.

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

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

(b) Applied to a crack or crevice that is inaccessible to children.

5. Block-type bait that is a toxicity level III or IV formulation of rodenticide pursuant to 40 Code of Federal Regulations section 156.62 and that is secured in an enclosed, tamper-resistant bait station placed in an area that is inaccessible to children.

6. Personal repellants.

7. Nonrestricted use sanitizers and deodorizers.

Sec. 11. Section 3-3611, Arizona Revised Statutes, as transferred and renumbered, is amended to read:

3-3611. <u>License and registration exemptions</u>

A. The provisions of this chapter requiring licensure and registration do not apply to:

1. Persons applying nonrestricted use pesticides on residential property that they own and occupy or that they own and that is not occupied.

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

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

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

5. Persons using an over-the-counter antimicrobial to treat a swimming pool.

6. Persons using a device that is exempt pursuant to section ~~32-2304~~ 3-3603, subsection B, paragraph ~~18~~ 17.

7. Persons who are exempt pursuant to section ~~32-2311.01~~ 3-3612 or ~~32-2311.02~~ 3-3613.

B. An individual is not required to have a separate business license to engage in the business of pest management on behalf of a business licensee or as an employee of a political subdivision.

C. The director by rule may exempt from sections ~~32-2313~~ 3-3615 and ~~32-2314~~ 3-3616 a certified applicator who performs inspections but does not make recommendations, estimates, bids or contracts for treatment or use pesticides or devices for pest management and may prescribe alternative requirements and conditions.

Sec. 12. Section 3-3612, Arizona Revised Statutes, as transferred and renumbered, is amended to read:

3-3612. Political subdivisions; exemptions; definition

A. A political subdivision that uses pesticides to conduct pest management on property that is owned, leased or managed by the political subdivision, including easements:

1. Is not required to be licensed under section ~~32-2313~~ 3-3615.

2. Must provide the department with the name and telephone number of the primary contact person or persons responsible for responding to department inquiries or concerns regarding compliance with this chapter. The primary contact person or persons at a minimum shall demonstrate to the department:

(a) Where the records are retained.

(b) Where the personal protective equipment is located.

(c) Where the pesticides are stored.

(d) That all applicators are properly certified.

B. A school district is exempt from subsection A, paragraph 2 of this section, but shall have a qualifying party who is registered in the appropriate categories.

C. An employee of a political subdivision who provides pest management services must be a certified applicator except as provided by subsection D of this section.

D. The following individuals are exempt from the certification requirements of this chapter:

1. An employee of a political subdivision who applied pesticides for the political subdivision no more than ninety calendar days before certification. This exemption does not apply to an employee who applies pesticides at a school or child care facility.

2. An employee of a political subdivision or designated agent while performing emergency response or rescue services.

3. A volunteer of a political subdivision while applying herbicides for the purpose of the eradication and control of noxious weeds as defined in section 3-201 and who is under the immediate supervision of a certified applicator. This exemption does not apply to a volunteer of a political subdivision who:

(a) Applies herbicides at a school or child care facility.

(b) Uses herbicides that are labeled with the words "restricted use" or "danger".

(c) Uses sterilants.

(d) Uses application equipment that holds more than four gallons of total mixed liquid herbicide.

(e) Has not completed an herbicide application training program conducted by the political subdivision and approved by the ~~office~~ DIVISION.

E. For the purposes of this section, "volunteer" means a person who works without compensation other than reimbursement of actual expenses incurred or disbursement of meals or other incidental benefits.

Sec. 13. Section 3-3613, Arizona Revised Statutes, as transferred and renumbered, is amended to read:

3-3613 Landscapers; records; civil penalties

A. The provisions of this chapter requiring licensure~~,~~ and registration do not apply to a person who conducts lawn, garden, shrub or tree maintenance and who applies herbicides for the purpose of weed management, except as otherwise provided in this section.

B. Notwithstanding subsection A of this section, the licensure~~, certification~~ and registration requirements of this chapter apply to a person who:

1. Uses herbicides that are labeled with the words "restricted use" or "danger".

2. Uses sterilants or preemergent herbicides.

3. Offers weed management as the person's primary service or advertises weed management services.

4. Uses application equipment that collectively holds more than ~~four~~ FIVE gallons of total mixed liquid herbicide at an address or project on the same day.

5. Uses more than twenty-five pounds of nonliquid herbicide at an address or project on the same day.

6. Uses or is part of a crew of two or more herbicide applicators at an address or project on the same day.

7. Uses an herbicide at a school or child care facility.

8. Uses an herbicide at an address or project without performing lawn, garden, shrub or tree maintenance at that address or project on the same day.

C. A person who is exempt from licensure~~, certification~~ and registration pursuant to this section shall provide treatment records to each customer on application of herbicides for the purpose of weed management and shall retain records containing the same information provided to customers for at least six months after the date of the treatment. For the purposes of this subsection, treatment records must include 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.

4. The amount of the herbicide applied.

5. The name of the individual who performed the treatment.

D. If a person is exempt from licensure~~, certification~~ and registration pursuant to subsection A of this section but does not comply with subsection C of this section, the director shall:

1. ~~On~~ FOR a first violation, issue a written notice of correction that contains a warning and a copy of this section.

2. ~~On~~ FOR a second violation, impose a civil penalty of at least fifty dollars.

3. ~~On~~ FOR a third or any subsequent violation, impose a civil penalty of not more than one thousand dollars.

E. If a person is not exempt from licensure~~, certification~~ and registration but uses an herbicide for the purpose of weed management, the director may:

1. Issue a cease and desist order and an administrative warning.

2. ~~On~~ FOR a first violation, impose a civil penalty of not more than one thousand dollars.

3. ~~On~~ FOR a second or any subsequent violation, impose a civil penalty of not more than two thousand dollars.

Sec. 14. Section 3-3615, Arizona Revised Statutes, as transferred and renumbered, is amended to read:

3-3615. Business license; financial security

A. A person who engages in the business of pest management shall obtain a valid business license from the ~~office~~ DIVISION. A person who is not exempt under this chapter and who advertises for, solicits or claims to be willing to engage in the business of pest management is presumed to be engaging in the business of pest management.

B. An application for an original or a renewal business license shall:

1. Be in a form and include the information prescribed by the director.

2. Be accompanied by the prescribed fee.

3. Include the following proof of financial security:

(a) Either a deposit of money, liability insurance, self-insured retention, a surety bond or a certified check protecting persons who may suffer bodily injury or property damage as a result of the operations of the applicant. The director shall not accept a bond or a liability insurance policy unless it is issued by an insurer that holds a valid certificate of authority or that is permitted to transact surplus lines insurance in this state. The amount of the deposit, insurance, self-insured retention or bond shall be at least five hundred thousand dollars and shall be maintained at not less than that amount at all times during the licensing period. The license of a business licensee whose financial security falls below the minimum five hundred thousand dollars shall be suspended by the director and shall remain suspended until the security meets the minimum financial security requirement. The financial security need only cover those particular operations in which the licensee is engaged at any time. If the financial security is in the form of liability insurance or a surety bond, the licensee shall furnish the director with a certificate of coverage that indicates the coverages and endorsements required by this subsection on a form prescribed by the director.

(b) Either of the following if the business licensee performs termite treatments:

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

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

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

C. If an insurance policy provides for a deductible, the deductible amount shall not exceed one ~~per cent~~ PERCENT of the total financial security for each occurrence. If the deductible amount is in excess of one ~~per cent~~ PERCENT of the total financial security for each occurrence, the business licensee shall provide other security as provided in this section or other evidence of financial security for the excess deductible amount.

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

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

Sec. 15. Section 3-3616, Arizona Revised Statutes, as transferred and renumbered, is amended to read:

3-3616. Qualifying party; registration

A. A person shall not engage in the business of pest management in any category without a qualifying party registered in that category.

B. To be a qualifying party, an individual must:

1. Be a certified qualified applicator.

2. Register as a qualifying party with the ~~office~~ DIVISION using a form and including the information prescribed by the director.

Sec. 16. Section 3-3618, Arizona Revised Statutes, as transferred and renumbered, is amended to read:

3-3618. Fees

A. The director shall establish by rule and collect application and renewal fees for the following:

1. A business license.

2. A branch office registration.

3. A branch supervisor registration.

4. A qualifying party registration.

5. A temporary qualifying party registration.

6. A temporary qualifying party renewal registration.

7. AN applicator certification.

8. A qualified applicator certification.

9. An applicator registration.

10. A duplicate license.

B. The director may charge and collect late fees in addition to the fees listed in subsection A of this section.

C. The director may establish tiered fees for business licenses.

D. The director may charge and collect additional fees for GOODS AND services that the director considers to be appropriate to carry out the intent and purpose of this chapter. These additional fees shall not exceed the costs of PROVIDING THE GOODS OR rendering the services.

Sec. 17. Section 3-3621, Arizona Revised Statutes, as transferred and renumbered, is amended to read:

3-3621. Disciplinary action; grounds; procedure

A. If the director finds that a person has violated this chapter, a rule adopted pursuant to this chapter or a written order of the director, the director may issue a notice of violation and a cease and desist order to the person and, after an opportunity for a hearing, take any of the following disciplinary actions, in combination or alternatively:

1. Revoke a license or registration.

2. Suspend a license or registration.

3. Refuse to renew a license or registration.

4. Impose probation requirements that require a person to comply with one or more specific provisions of this chapter or rules adopted pursuant to this chapter and that require reporting by or monitoring of the person.

5. Impose a civil penalty in an amount of not more than one thousand dollars for each violation except for grounds prescribed in section ~~32-2325~~ 3-3624, subsection B, paragraphs 8 and 9.

6. Require a qualifying party to report to the director the qualifying party's role in the management of a business license.

7. Require an individual to take supplemental continuing education within a time period set by the director.

B. Instead of taking disciplinary action for a violation pursuant to subsection A of this section, the director may issue an administrative warning.

C. Except as provided in section 41-1092.11, the director may take disciplinary action against a business licensee pursuant to subsection A of this section only if any of the following applies:

1. The business licensee has committed a prior violation of the same type, including any violation by any applicator of the business licensee.

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

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

4. The business licensee is convicted of a felony.

5. The business licensee is determined by the director to have committed a violation in connection with a pretreatment, new-construction treatment or final grade treatment.

6. The business licensee uses applicators to provide pest management services that are not registered pursuant to the requirements established under section ~~32-2304~~ 3-3603, subsection B, paragraph ~~20~~ 19.

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

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

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

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

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

11. The business licensee fails within thirty calendar days after completion of a pretreatment, a new-construction treatment, a final grade treatment, an initial corrective treatment project or a wood-destroying insect inspection report to file with the ~~office~~ DIVISION, in a form approved by the director, the termite action report form and prescribed fee.

12. The business licensee, within twelve months after completion of a termite pretreatment or new-construction treatment, fails either to file a supplemental termite action report in a form provided by the director that indicates the completion of the final grade treatment or to report in writing why the treatment has not been completed and when it will be completed.

13. The business licensee's applicator applies a pesticide that causes harm to the public, the environment or a nontarget animal.

14. The business licensee fails within thirty calendar days to pay civil penalties imposed under this chapter or rules adopted pursuant to this chapter.

15. The business licensee engages in the business of pest management while the business license is suspended.

D. The director shall commence an inquiry only within five years after the date of the alleged act or omission.

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

F. The license of a person who does not renew the license and who has been advised in writing that an investigation or complaint is pending at the time the license is due to expire or terminate does not expire or terminate until the investigation or complaint is resolved. The license is suspended on the date it would otherwise expire or terminate until the person renews the license or the investigation or complaint is resolved.

G. The director may summarily suspend a person's license while there is a pending criminal charge against the person for a felony or a misdemeanor involving moral turpitude.

Sec. 18. Section 3-3623, Arizona Revised Statutes, as transferred and renumbered, is amended to read:

3-3623. Civil penalties; suspension

A. The ~~office~~ DIRECTOR may suspend a license, certification or registration without a hearing if the licensee fails within thirty calendar days to pay civil penalties imposed under this chapter or rules adopted pursuant to this chapter.

B. A licensee whose license is suspended under subsection A of this section must apply to the director for reinstatement.

C. A license, certification or registration suspended under subsection A of this section shall be revoked without a hearing after one year of suspension. Revocations under this subsection are not subject to section ~~32-2304~~ 3-3603, subsection A, paragraph ~~8.~~ 7.

D. The ~~office~~ DIVISION shall not renew a license, certification or registration or broaden a certification until the person suspended under subsection A of this section is reinstated.

Sec. 19. Section 3-3624, Arizona Revised Statutes, as transferred and renumbered, is amended to read:

3-3624. Unlawful acts; violations; classification

A. A person shall not:

1. Engage in the business of pest management, COMMENCE WORK ON A CONTRACT OR SIGN, ISSUE OR DELIVER ANY DOCUMENT EXPRESSING AN OPINION OR STATEMENT RELATING TO PEST MANAGEMENT without a business license issued pursuant to this chapter, unless the person is otherwise exempt pursuant to this chapter.

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

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

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

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

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

7. Deny ~~to an authorized inspector~~ THE DIRECTOR OR ANY AGENT OF THE DIRECTOR the right to be present on a jobsite in connection with a

contemporaneous pest management treatment, including for the purpose of taking pesticide samples and soil samples.

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

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

2. Making false or fraudulent records or reports.

3. Misrepresenting a material fact in obtaining a license.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18. Failing to timely produce specific records requested pursuant to section ~~32-2304~~ 3-3603, subsection B, paragraph 4.

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

C. A PERSON WHO VIOLATES SUBSECTION A, PARAGRAPH 1 OF THIS SECTION WITH RECKLESS DISREGARD FOR THE HEALTH AND SAFETY OF OTHER PERSONS OR PROPERTY IS GUILTY OF A CLASS 6 FELONY.

Sec. 20. Section 3-3625, Arizona Revised Statutes, as transferred and renumbered, is amended to read:

3-3625. Business license; principals; definition

A. The ~~office~~ DIRECTOR shall deny an application for a new business license or a renewal of an existing business license if a principal of the applicant was also a principal of another business that currently owes past due termite action registration form fees, owes civil penalties to the ~~office~~ DIVISION or has had its business license suspended or revoked within the last five years and was a principal at the time the fees became due or the acts resulting in the disciplinary action occurred.

B. For the purposes of this section, "principal" means a person who owns at least a ten ~~per cent~~ PERCENT interest in a business. Principal includes an owner that is itself a business as well as owners of a principal.

Sec. 21. Section 3-3631, Arizona Revised Statutes, as transferred and renumbered, is amended to read:

3-3631. Termite action report form; exemption

A. Within thirty calendar days after completion of a pretreatment, a new-construction treatment, a final grade treatment, an initial corrective treatment or a wood-destroying insect inspection report, a business licensee or certified applicator shall file with the ~~office~~ DIVISION in a form approved by the director a termite action report form and the prescribed fee. A termite action report is required for termite action only and does not include all wood-destroying organisms.

B. The termite action report form shall include:

1. The address or location of the work or project.

2. The type and date of the work.

3. The name of the business licensee.

4. Any other information required by rule.

C. The director may:

1. Adjust the fee upward or downward to a level that is calculated to produce sufficient revenue to carry out the functions of wood-destroying organism regulation.

2. Establish tiered fees according to the means of submission to encourage electronic submission of the termite action report form.

3. Assess a penalty of not more than one hundred dollars per form for failing to submit the required form or fee, or both, within thirty calendar days.

D. If the business licensee who performs an initial corrective treatment performed the pretreatment or new-construction treatment at the same site and filed a termite action report form with the ~~office~~ DIVISION documenting the pretreatment or new-construction treatment, the business licensee is exempt from this section with respect to the initial corrective treatment.

Sec. 22. Section 32-1121, Arizona Revised Statutes, is amended to read:

32-1121. Persons not required to be licensed; penalties; applicability

A. This chapter shall not be construed to apply to:

1. An authorized representative of the United States government, this state or any county, incorporated city or town, reclamation district, irrigation district or other municipality or political subdivision of this state.

2. Trustees of an express trust that is not formed for the purpose of conducting business as a contractor or officers of a court, if they are acting within the terms of their trust or office.

3. Public utilities operating under regulation of the corporation commission or construction, repair or operation incidental to discovering or producing petroleum or gas, or the drilling, testing, abandoning or other operation of a petroleum or gas well, if performed by an owner or lessee.

4. Any materialman, manufacturer or retailer who furnishes finished products, materials or articles of merchandise and who does not install or attach such items or installs or attaches such items if the total value of the sales contract or transaction involving such items and the cost of the installation or attachment of such items to a structure does not exceed one thousand dollars, including labor, materials and all other items, but excluding any electrical fixture or appliance that was designed by the manufacturer, that is unaltered, unchanged or unmodified by any person, that can be plugged into a common household electrical outlet utilizing a ~~two pronged~~ TWO-PRONGED or ~~three pronged~~ THREE-PRONGED electrical connector and that does not use any other form of energy, including natural gas, propane or other petroleum or gaseous fuel, to operate or is attached by a nail, screw or other fastening device to the frame or foundation of any residential structure. The materialman, manufacturer or retailer shall inform the

purchaser that the installation may also be performed by a licensed contractor whose name and address the purchaser may request.

5. Owners of property who improve such property or who build or improve structures or appurtenances on such property and who do the work themselves, with their own employees or with duly licensed contractors, if the structure, group of structures or appurtenances, including the improvements thereto, are intended for occupancy solely by the owner and are not intended for occupancy by members of the public as the owner's employees or business visitors and the structures or appurtenances are not intended for sale or for rent. In all actions brought under this chapter, except an action against an owner-occupant as defined in section 33-1002, proof of the sale or rent or the offering for sale or rent of any such structure by the owner-builder within one year after completion or issuance of a certificate of occupancy is prima facie evidence that such project was undertaken for the purpose of sale or rent. For the purposes of this paragraph, "sale" or "rent" includes any arrangement by which the owner receives compensation in money, provisions, chattels or labor from the occupancy or the transfer of the property or the structures on the property.

6. Owners of property who are acting as developers and who build structures or appurtenances to structures on their property for the purpose of sale or rent and who contract for such a project with a general contractor licensed pursuant to this chapter and owners of property who are acting as developers, who improve structures or appurtenances to structures on their property for the purpose of sale or rent and who contract for such a project with a general contractor or specialty contractors licensed pursuant to this chapter. To qualify for the exemption under this paragraph, the licensed contractors' names and license numbers shall be included in all sales documents.

7. Architects or engineers who are engaging in their professional practice as defined in chapter 1 of this title and who hire or offer to hire the services of a contractor for preconstruction activities relating to investigation and discovery, including:

(a) Subsurface utility location and designation services.

(b) Potholing.

(c) Drilling for any of the following:

(i) Soil samples.

(ii) Rock samples.

(iii) Pavement samples.

(d) Locating existing features of a building or structure, including existing electrical, mechanical, plumbing and structural members.

8. A person licensed, certified or registered pursuant to TITLE 3, chapter ~~22 of this title~~ 20 or a person working under the direct supervision of a person certified or qualified pursuant to TITLE 3, chapter ~~22 of this title~~ 20 to the extent the person is engaged in pest management.

9. The sale or installation of finished products, materials or articles of merchandise that are not fabricated into and do not become a permanent fixed part of the structure. This exemption does not apply if a local building permit is required, if the total price of the finished product, material or article of merchandise, including labor but excluding any electrical fixture or appliance that was designed by the manufacturer, that is unaltered, unchanged or unmodified by any person, that can be plugged into a common household electrical outlet utilizing a ~~two pronged~~ TWO-PRONGED or ~~three pronged~~ THREE-PRONGED electrical connector and that does not use any other form of energy, including natural gas, propane or other petroleum or gaseous fuel, to operate or is attached by a nail, screw or other fastening device to the frame or foundation of any residential structure, is more than one thousand dollars or if the removal of the finished product, material or article of merchandise causes damage to the structure or renders the structure unfit for its intended use.

10. Employees of the owners of condominiums, townhouses, cooperative units or apartment complexes of four units or less or the owners' management agent or employees of the management agent repairing or maintaining structures owned by them.

11. Any person who engages in the activities regulated by this chapter, as an employee of an exempt property owner or as an employee with wages as the person's sole compensation.

12. A surety company or companies that are authorized to transact business in this state and that undertake to complete a contract on which they issued a performance or completion bond, provided all construction work is performed by duly licensed contractors.

13. Insurance companies that are authorized to transact business in this state and that undertake to perform repairs resulting from casualty losses pursuant to the provisions of a policy, provided all construction work is performed by duly licensed contractors.

14. Any person other than a licensed contractor engaging in any work or operation on one undertaking or project by one or more contracts, for which the aggregate contract price, including labor, materials and all other items, but excluding any electrical fixture or appliance that was designed by the manufacturer, that is unaltered, unchanged or unmodified by any person, that can be plugged into a common household electrical outlet utilizing a ~~two pronged~~ TWO-PRONGED or ~~three pronged~~ THREE-PRONGED electrical connector and that does not use any other form of energy, including natural gas, propane or other petroleum or gaseous fuel, to operate or is attached by a nail, screw or other fastening device to the frame or foundation of any residential structure, is less than one thousand dollars. The work or operations that are exempt under this paragraph shall be of a casual or minor nature. This exemption does not apply:

(a) In any case in which the performance of the work requires a local building permit.

(b) In any case in which the work or construction is only a part of a larger or major operation, whether undertaken by the same or a different contractor, or in which a division of the operation is made in contracts of amounts less than one thousand dollars, excluding any electrical fixture or appliance that was designed by the manufacturer, that is unaltered, unchanged or unmodified by any person, that can be plugged into a common household electrical outlet utilizing a ~~two-pronged~~ TWO-PRONGED or ~~three-pronged~~ THREE-PRONGED electrical connector and that does not use any other form of energy, including natural gas, propane or other petroleum or gaseous fuel, to operate or is attached by a nail, screw or other fastening device to the frame or foundation of any residential structure, for the purpose of evasion of this chapter or otherwise.

(c) To a person who utilizes any form of advertising to the public in which the person's unlicensed status is not disclosed by including the words "not a licensed contractor" in the advertisement.

15. A person who is licensed, certified or registered pursuant to title 41, chapter 16 and who is not otherwise required to be licensed under this chapter or an employee of such person.

16. A person who functions as a gardener by performing lawn, garden, shrub and tree maintenance.

17. Alarm agents as defined in section 32-101.

B. A person who is licensed to perform work in a particular trade pursuant to this chapter shall not be required to obtain and maintain a separate license for mechanical or structural service work performed within the scope of such trade by such person.

C. Any person who does not have an exemption from licensure pursuant to subsection A, paragraph 14, subdivision (c) of this section is subject to prosecution for a violation of section 44-1522. The attorney general may investigate the act or practice and take appropriate action pursuant to title 44, chapter 10, article 7.

D. The exemptions from licensure pursuant to subsection A, paragraphs 4, 9 and 14 of this section do not apply to either of the following:

1. All fire safety and mechanical, electrical and plumbing work that is done in connection with fire safety installation and fire safety maintenance and repair. For the purposes of this paragraph, "fire safety installation" means hardwired or interconnected smoke alarms and fire sprinklers and does not include an individual device that is attached by a nail, screw or other fastening device to the frame or foundation of any residential unit. For the purposes of this paragraph, fire safety maintenance and repair does not include routine work that is conducted by an employee of an apartment or condominium complex AND that is incidental to the fire safety equipment.

2. All work that is done, including the installation, maintenance and repair of devices, appliances or equipment, that involves the connecting to

any supply of natural gas, propane or other petroleum or gaseous fuel. Nothing in this paragraph impacts the effect of section 36-1624.01.

Sec. 23. Heading repeal

The chapter heading of title 32, chapter 22, Arizona Revised Statutes, is repealed.

Sec. 24. Repeal

Section 32-2303, Arizona Revised Statutes, is repealed.

Sec. 25. Section 36-606, Arizona Revised Statutes, is amended to read:

36-606. Pesticide illness; medical education; reports

A. The director of the department of health services shall develop and implement, in cooperation with rural health clinics, county health departments, state and local medical associations, poison control centers and other appropriate health care professionals, a system for reporting and preventing pesticide provoked illnesses. This program shall include:

1. Medical education programs to alert health care professionals to the symptoms, diagnosis, treatment and reporting of pesticide provoked illnesses.

2. A statewide reporting network, which shall:

(a) Require health care professionals and poison control centers to file incident reports of an illness that they reasonably believe, based on professional judgment, to be caused by or related to documented exposure to a pesticide.

(b) Catalogue and retrieve data regarding pesticide poisoning for use in worker and public health education programs to prevent pesticide poisoning.

B. The health care professional or poison control center required to file an incident report required pursuant to subsection A, paragraph 2, subdivision (a) OF THIS SECTION shall specifically indicate in the incident report the reason for believing that the illness is caused by or related to documented exposure to a pesticide and shall specify if the illness is caused by the documented exposure or is related to the documented exposure. All incident reports shall be filed with the director. The director shall provide to the Arizona department of agriculture all records, reports and information of all illnesses resulting from documented exposure to agriculture pesticides and ~~shall provide to the office of pest management all records, reports and information of all illnesses resulting from documented exposure to~~ structural pesticides.

Sec. 26. Section 36-898, Arizona Revised Statutes, is amended to read:

36-898. Licensees; pesticide application; notice; definitions

A. The director, in consultation with licensees, personnel of licensees, parents, guardians, administrators, members of the public, a qualifying party and at least one health professional, shall develop and adopt a policy to provide parents, guardians, children and personnel with at least forty-eight hours' notice before pesticides are applied on licensee property.

B. The policy shall include at least the following:

1. Procedures for providing the notification, including:

(a) Procedures for written notification to parents, guardians or an individual authorized by a parent or guardian during a regular child care session.

(b) Procedures for requiring the licensee to post signs to identify pesticide application areas.

2. Procedures for requiring any contracted pest control applicator to provide detailed and sufficient information to licensees for the purpose of completing the posting materials.

C. The policy shall include exemptions for the following pesticide applications:

1. Nonresidual pesticide applications performed or contracted by public health agencies for adult vector control.

2. Emergency pesticide applications of a pesticide that has a toxicity category of III or IV pursuant to 40 Code of Federal Regulations section 156.62 to control harmful pests that pose an immediate threat to the public health.

3. Disinfectants or swimming pool chemicals.

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

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

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

5. Block-type bait that is a toxicity level III or IV formulation of rodenticide pursuant to 40 Code of Federal Regulations section 156.62 and that is secured in an enclosed, tamper-resistant bait station placed in an area inaccessible to children.

6. Personal repellants.

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

D. Each licensee shall maintain written records of pesticide application notifications for a period of at least three years after the application. The licensee may delegate to the pest control applicator the duty to fill out and post notices required by department policy. A licensee is not required to maintain records of pesticides that are exempt pursuant to subsection C of this section.

E. For the purposes of this section:

1. "Child care" has the same meaning prescribed in section 36-881.

2. "Department" means the department of health services.

3. "Licensee" means a person who is regulated pursuant to this chapter.

4. "Pesticides" includes pesticides regulated under the federal insecticide, fungicide and rodenticide act (P.L. 100-532; 102 Stat. 2654; 7 United States Code section 136) except for nonrestricted use disinfectants, sanitizers or deodorizers regulated by the federal insecticide, fungicide and rodenticide act.

5. "Qualifying party" has the same meaning prescribed in section ~~32-2301~~ 3-3601.

Sec. 27. Section 41-1092, Arizona Revised Statutes, is amended to read:

41-1092. Definitions

In this article, unless the context otherwise requires:

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

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

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

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

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

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

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

(a) The Arizona state board of accountancy.

(b) The state board of appraisal.

(c) The board of barbers.

(d) The board of behavioral health examiners.

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

(f) The state board of chiropractic examiners.

(g) The board of cosmetology.

(h) The state board of dental examiners.

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

(j) The Arizona game and fish commission.
(k) The board of homeopathic and integrated medicine examiners.
(l) The Arizona medical board.
(m) The naturopathic physicians medical board.
(n) The state board of nursing.
(o) The board of examiners of nursing care institution administrators and adult care home managers.
(p) The board of occupational therapy examiners.
(q) The state board of dispensing opticians.
(r) The state board of optometry.
(s) The Arizona board of osteopathic examiners in medicine and surgery.
(t) The Arizona peace officer standards and training board.
(u) The Arizona state board of pharmacy.
(v) The board of physical therapy.
(w) The state board of podiatry examiners.
(x) The state board for private postsecondary education.
(y) The state board of psychologist examiners.
(z) The board of respiratory care examiners.
~~(aa) The office of pest management.~~
~~(bb)~~ (aa) The state board of technical registration.
~~(cc)~~ (bb) The Arizona state veterinary medical examining board.
~~(dd)~~ (cc) The acupuncture board of examiners.
~~(ee)~~ (dd) The Arizona regulatory board of physician assistants.
~~(ff)~~ (ee) The board of athletic training.
~~(gg)~~ (ff) The board of massage therapy.

Sec. 28. Exemption from rulemaking

For the purposes of this act, the Arizona department of agriculture is exempt from the rulemaking requirements of title 41, chapter 6, Arizona Revised Statutes, for one year after the effective date of this act.

Sec. 29. Effective date; retroactivity

This act is effective and applies retroactively to from and after June 30, 2016.

APPROVED BY THE GOVERNOR MAY 12, 2016.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 12, 2016.

Passed the House May 6, 2016,

by the following vote: 54 Ayes,

0 Nays, 6 Not Voting

Speaker of the House

Jim Drake

Chief Clerk of the House

Passed the Senate February 16, 2016,

by the following vote: 27 Ayes,

0 Nays, 3 Not Voting

President of the Senate

Susan Craves

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

10th day of May, 2016,

at 5:56 o'clock P. M.

Secretary to the Governor

Approved this 12th day of

May, 2016,

at 8:37 o'clock A. M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 12TH day of May, 2016

at 12:18 o'clock P M.

Michele Reagan

Secretary of State

S.B. 1270