

§ 3-363. Rules

The director shall adopt rules to regulate pesticides which shall 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 and reporting requirements regarding pesticide use, except that the record keeping 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 which 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.
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 twenty dollars per year for a grower permit.
 - (b) Not to exceed one hundred dollars per year for a seller permit.
 - (c) Not to exceed one hundred dollars per year for a custom applicator license.
 - (d) Not to exceed fifty dollars per year for a pilot license.
 - (e) Not to exceed fifty dollars per year for a pest control advisor license.
 - (f) Not to exceed twenty-five dollars per year for a piece of equipment used to apply pesticides by a custom applicator.
 - (g) Not to exceed fifty dollars per year for restricted use certification.
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 upon such factors as:
 - (i) Potential and actual consequences of the violation on public and worker health and safety and the environment.
 - (ii) Wrongfulness of the conduct.
 - (iii) Degree of culpability of the violator.
 - (iv) Duration of the violation.
 - (v) Prior violations or citations.
 - (b) Penalties shall be assessed depending upon the number of points accrued by the violator.

13. CHARGE AND COLLECT A FEE FOR ISSUING LICENSES AND CERTIFICATES FOR PESTICIDE USE ON GOLF COURSES.

ARTICLE 1. GENERAL PROVISIONS

§ 32-2301. Scope

THIS CHAPTER PERTAINS TO PEST MANAGEMENT. PEST MANAGEMENT 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, FOR HIRE ON GOLF COURSES AND ALL PESTICIDE APPLICATIONS THAT COULD BE HARMFUL TO PUBLIC HEALTH OR THE ENVIRONMENT. THIS CHAPTER DOES NOT PERTAIN TO PESTICIDE APPLICATIONS USED DIRECTLY IN THE COMMERCIAL PRODUCTION OF CROPS AND ANIMALS OR USED, IF NOT FOR HIRE, ON GOLF COURSES.

§ ~~32-2301~~, 32-2302. Definitions

In this chapter, unless the context otherwise requires:

1. "Acting director" means the person appointed pursuant to section 32-2302 to serve as the acting director of the office.

~~2. 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 or RECEIVED, information pertaining to the business of structural pest control MANAGEMENT is given and from which the use of pesticides and devices is supervised by a licensed applicator or qualifying party~~ 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 ~~structural pest control~~ MANAGEMENT.

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

(a) Identifying infestations or making inspections for the purpose of identifying or attempting to identify ~~infestations of households or other structures, and the surrounding area by any of the following:~~ INFESTATIONS.

(i) ~~Public health pests.~~

(ii) ~~Aquatic pests.~~

(iii) ~~Household pests.~~

(iv) ~~Wood-destroying insects.~~

(v) ~~Pests, Other pests, including weeds, existing around structures, in ornamental shrubs and trees, on golf courses, along rights-of-way or in lawns and cemeteries.~~

(vi) ~~Fungi.~~

(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 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 REGULATED PURSUANT TO TITLE 36, CHAPTER 7.1.

- ~~5.~~ 8. "De minimis violation" means a violation that, although undesirable, has no direct or immediate relationship to safety, health or property damage.
- ~~6.~~ 9. "Department" means, ~~through December 31, 2013,~~ the Arizona department of agriculture.
- ~~7.~~ 10. "Device" means any ~~mechanical, pesticide or electrical apparatus used in conjunction with, in place of or to supplement, disperse or dispense pesticides~~ INSTRUMENT OR CONTRIVANCE THAT IS INTENDED TO BE USED FOR TRAPPING, DESTROYING, REPELLING, OR MITIGATING ANY PEST OR ANY OTHER FORM OF PLANT OR ANIMAL LIFE.
- ~~8.~~ 11. "Direct supervision" means use of a pesticide under the instructions, control and responsibility of a ~~licensed~~ CERTIFIED applicator who is available if needed for consultation or assistance even though the ~~licensed~~ CERTIFIED applicator is not physically present at the time and place the pesticide is used.
- ~~9.~~ 12. "Director" means, ~~through December 31, 2013,~~ the director of the Arizona department of agriculture.
- ~~10.~~ 13. "Final grade treatment" means establishment of A COMPLETE vertical barriers BARRIER at the exterior of foundation walls in stem wall OR MONOLITHIC construction ~~or at the exterior of grade beams in monolithic construction.~~
14. "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 FEDERALLY CHARTERED FINANCIAL INSTITUTION.
- ~~11.~~ "Fungi inspection report" ~~means a written inspection report on a form approved by the office.~~
- ~~12.~~ 15. "Household pests" means pests, other than wood-destroying ~~insects,~~ ORGANISMS, that invade households or other structures, including rodents, vermin and insects.
- ~~13.~~ 16. "Immediate supervision" means use of a pesticide by an ~~employee~~ INDIVIDUAL acting under the instructions, control and responsibility of a ~~licensed~~ CERTIFIED applicator who is within the direct line of sight or within hearing distance of the ~~employee~~ INDIVIDUAL and who is available for consultation or assistance at the time and place the pesticide is used.
- ~~14.~~ 17. "Initial ~~termite~~ corrective treatment" means the first POST-CONSTRUCTION treatment of any kind performed by a licensee ~~after a treatment made prior to or during construction,~~ excluding a treatment performed under warranty by a licensee who has performed the PRETREATMENT OR NEW-CONSTRUCTION treatment ~~prior to or during construction.~~
- ~~15.~~ 18. "Inquiry" means ~~information from the public or office staff~~ AN INITIAL INVESTIGATION of possible violations of this ~~chapter,~~ CHAPTER or rules adopted pursuant to this chapter BASED ON INFORMATION RECEIVED FROM THE PUBLIC OR OFFICE STAFF.
- ~~16.~~ 19. "Integrated pest management" means a sustainable approach to managing pests that combines biological, cultural, physical and ~~pesticide~~ CHEMICAL tools in a way that minimizes economic, health and environmental risks.
- ~~17.~~ "License" ~~means an approval granted by the office to act as an applicator or qualifying party or to operate a business of structural pest control in this state.~~
- ~~18.~~ "Licensed applicator" ~~means a person who is licensed by the office to apply pesticides in accordance with this chapter.~~
20. "NEW-CONSTRUCTION TREATMENT" MEANS A TREATMENT THAT PROTECTS ALL CELLULOSE COMPONENTS OF A STRUCTURE FROM SUBTERRANEAN TERMITES AND 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.
- ~~19.~~ 21. "Office" means the office of pest management established by section ~~32-2302~~ 32-2303.
- ~~20.~~ 22. "Other structures" includes railroad cars, boats, docks, motor vehicles or airplanes and their contents.
- ~~21.~~ 23. "Pest management" means the management of ~~public health~~ HEALTH RELATED pests, aquatic pests, household pests, wood-destroying ~~insects, fungi~~ ORGANISMS, or other pests, including weeds, that exist IN, near or around structures, in ornamental shrubs and trees, ~~on golf courses,~~ along rights-of-way or in lawns or cemeteries, FOR HIRE ON

GOLF COURSES and all pesticide ~~application~~ APPLICATIONS that could be harmful to public health or the environment. Pest management does not include pesticide applications used directly in the commercial production of crops and animals ~~if those applications are governed by the Arizona department of agriculture pursuant to title 3, chapter 2, articles 6 and 6-1~~ OR USED, IF NOT FOR HIRE, ON GOLF COURSES.

24. "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, SUBSECTION B, PARAGRAPH 18, FOR THE PURPOSE OF ELIMINATING, EXTERMINATING, CONTROLLING OR PREVENTING INFESTATIONS.

~~22.~~ 25. "Pesticide" means any substance or mixture of substances intended to be used ~~for defoliating plants or 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 may infest or be detrimental to vegetation, humans, animals or households or be present in any environment.

26. "POLITICAL SUBDIVISION" MEANS A STATE AGENCY, COUNTY, CITY, TOWN, MUNICIPAL CORPORATION OR SCHOOL DISTRICT, OR A SPECIAL DISTRICT FORMED PURSUANT TO TITLE 48.

27. "POST-CONSTRUCTION TREATMENT" MEANS A TREATMENT TO CONTROL WOOD-DESTROYING INSECTS 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 32-2323(A) & (B).

28. "PRETREATMENT" MEANS A TERMITE TREATMENT THAT PROTECTS ALL CELLULOSE COMPONENTS OF A STRUCTURE FROM SUBTERRANEAN TERMITES, IS PERFORMED BEFORE A PERMANENT CONCRETE SLAB FOUNDATION IS INSTALLED OR IN CONJUNCTION WITH ESTABLISHING FOOTINGS AND SUPPORTS FOR A RAISED FOUNDATION, AND ESTABLISHES THOROUGH AND COMPLETE HORIZONTAL AND VERTICAL TREATED BARRIERS.

~~23.~~ 29. "Prior violation" means any violation for which disciplinary action was taken within a five-year period prior to the date of the violation for which current disciplinary action is sought.

~~24.~~ 30. "Qualifying party" means ~~an individual who is licensed by the office to ensure the supervision and training~~ A CERTIFIED QUALIFIED APPLICATOR REGISTERED WITH THE OFFICE AS THE INDIVIDUAL RESPONSIBLE FOR ENSURING THE TRAINING, EQUIPPING AND SUPERVISION of all employees APPLICATORS of a business licensee LICENSEE OR POLITICAL SUBDIVISION in the business of structural pest control.

31. "SCHOOL" MEANS ANY PUBLIC OR NONPUBLIC INSTITUTION, OTHER THAN A CHILD'S HOME, ESTABLISHED FOR THE PURPOSES OF OFFERING INSTRUCTION TO PUPILS IN PROGRAMS FOR PRESCHOOL CHILDREN WITH DISABILITIES, KINDERGARTEN PROGRAMS OR ANY COMBINATION OF GRADES ONE THROUGH TWELVE THAT QUALIFIES AS A SCHOOL PURSUANT TO SECTION 15-802.

32. "SERVICE VEHICLE" MEANS A MOTOR VEHICLE, INCLUDING A TRAILER ATTACHED TO THE MOTOR VEHICLE, USED TO TRANSPORT EQUIPMENT OR PESTICIDES FOR THE BUSINESS OF PEST MANAGEMENT.

33. "STERILANT" MEANS A PRODUCT THAT IS DESIGNED FOR KILLING ALL LIVE VEGETATION AND PREVENTING ALL VEGETATION GROWTH FOR TWELVE OR MORE MONTHS.

~~25.~~ 34. "Weed" means any plant that grows where it is not wanted.

~~26.~~ 35. "Wood-destroying insect inspection report" means a written inspection report on a form approved by the ~~acting~~ 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.

~~27.~~ 36. "Wood-destroying ~~insects~~ ORGANISMS" means ~~insects~~ ORGANISMS that attack, damage or destroy wood or wood-derivative products, BUT DOES NOT INCLUDE BIRDS OR MAMMALS.

§ 32-2302. 32-2303. Office of pest management; ~~acting director~~ management and administrative services

A. The office of pest management is established.

~~B. The director of the department of agriculture shall appoint an acting director of the office who has administrative experience and experience in pest management to serve at the director's pleasure through December 31, 2013.~~

B. THE DEPARTMENT SHALL PROVIDE THROUGH AN INTERAGENCY AGREEMENT NECESSARY MANAGEMENT AND ADMINISTRATIVE SERVICES TO THE OFFICE OF PEST MANAGEMENT IN CONDUCTING ITS ACTIVITIES INCLUDING:

1. PROVIDING FINANCIAL AND ACCOUNTING SERVICES INCLUDING ISSUING CHECKS, PAYING BILLS APPROVED BY THE OFFICE, PREPARING BUDGETS, AND ANY OTHER ACTIVITIES REQUESTED BY THE OFFICE.

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

3. MANAGING THE OFFICE'S INFORMATION TECHNOLOGY SYSTEMS.

4. RECEIVING MAIL AND OTHER COMMUNICATIONS FOR THE OFFICE.

5. RULEMAKING, PREPARING REPORTS FOR THE GOVERNOR'S REGULATORY REVIEW COUNCIL, AND PREPARING REGULATORY AGENDAS.

6. PROVIDING HUMAN RESOURCES SERVICES INCLUDING EMPLOYEE RELATIONS, STAFFING AND RECRUITMENT, CLASSIFICATION AND COMPENSATION ADVICE, AND PERSONNEL POLICY ASSISTANCE.

7. PROVIDING OTHER SERVICES REQUESTED BY THE OFFICE AND APPROVED BY THE DEPARTMENT.

C. THE OFFICE SHALL REIMBURSE THE DEPARTMENT FOR NECESSARY MANAGEMENT AND ADMINISTRATIVE SERVICES, INCLUDING FOR THE DIRECTOR'S SERVICES, RENDERED FOR THE BENEFIT OF THE OFFICE FROM THE MONIES RECEIVED UNDER THIS CHAPTER IN AN AMOUNT AGREED ON BY THE OFFICE AND DEPARTMENT.

§ 32-2304. Powers and duties

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

1. Adopt rules that are necessary or proper ~~for the administration of~~ TO ADMINISTER AND IMPLEMENT this chapter, including administrative provisions, LICENSE AND REGISTRATION REQUIREMENTS AND QUALIFICATIONS, TRAINING AND education requirements, health and safety provisions, DUTIES AND RESPONSIBILITIES, RECORDKEEPING AND PRODUCTION OF RECORDS REQUIREMENTS, FINANCIAL SECURITY STANDARDS, LICENSEE INSPECTION AND TREATMENT REPORTS REQUIREMENTS, DISCIPLINARY ACTION PROVISIONS, EQUIPMENT PROVISIONS, ADVERTISING REQUIREMENTS, and provisions for the use, storage and application of pesticides and devices used in ~~structural pest control~~ MANAGEMENT, THAT MAY BE MORE STRINGENT THAN A CORRESPONDING FEDERAL LAW.

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

3. Notify the business licensee, applicator and qualifying party in writing of any ~~complaint against~~ INQUIRY INTO POSSIBLE VIOLATIONS BY the business licensee, APPLICATOR OR qualifying party ~~or employee of the business licensee~~ by the close of business on the tenth business day after the day on which the ~~acting~~ director initiated the ~~complaint.~~ INQUIRY IF THE DIRECTOR ANTICIPATES AN ENFORCEMENT ACTION. IF IN THE COURSE OF THE INVESTIGATION THE OFFICE IDENTIFIES ANY ALLEGED VIOLATIONS BY A DIFFERENT BUSINESS LICENSEE, APPLICATOR OR QUALIFYING 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.

~~4. 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.~~

~~5. 4. Conduct DEVELOP AND EITHER CONDUCT or contract to conduct CERTIFIED applicator license and CERTIFIED qualifying party license QUALIFIED APPLICATOR tests at locations throughout this state. If the acting director contracts for these tests, the contracts may provide for specific examination fees or a reasonable range of fees determined by the acting director to be paid directly to the contractor by the applicant. The acting director shall make all efforts to contract with private parties to electronically administer the applicator and qualifying party license tests.~~

~~6. 5. Maintain a computer system for the benefit and protection of the public that includes the following information on termite PRETREATMENTS, NEW-CONSTRUCTION TREATMENTS, FINAL GRADE 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 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.~~

~~7. 6. Establish offices the acting director deems necessary to carry out the purposes of this chapter.~~

~~8. 7. Subject to title 41, chapter 4, article 4, employ personnel the acting director deems necessary to carry out the purposes of this chapter and designate their duties.~~

~~9. Investigate violations of this chapter and rules adopted pursuant to this chapter.~~

~~10. 8. Oversee the approval, content and method of delivery of continuing education courses.~~

~~11. 9. Deny a license to any person who has had a license revoked for a period of five years from the time of revocation.~~

~~12. 10. License applicators, qualifying parties QUALIFIED APPLICATORS and businesses in accordance with this chapter and rules adopted pursuant to this chapter.~~

11. REGISTER QUALIFYING PARTIES AND BRANCH SUPERVISORS IN ACCORDANCE WITH THIS CHAPTER AND RULES ADOPTED PURSUANT TO THIS CHAPTER.

~~13. 12. Require the payment of a penalty for any late license renewal.~~

~~14. Require either completion of the continuing education requirement or successful completion of the license examination for failure to renew a license on time.~~

~~15. Suspend a license if a licensee fails to renew the license within thirty calendar days after the renewal date.~~

~~16. 13. 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.~~

~~17. 14. Adopt a wood-destroying insect inspection report form for use by business licensees.~~

~~B. The acting director may 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 and for educational materials.~~

~~C. The acting director shall administer and enforce this chapter and the rules adopted pursuant to this chapter.~~

~~D. B. The acting director may:~~

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

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

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' HOURS notice, request specific records from~~ UNLESS THERE MAY BE AN IMMEDIATE RISK TO HEALTH OR SAFETY, REQUIRE a business licensee, qualifying party or CERTIFIED applicator ~~at the person's place of business during normal business hours~~ TO PRODUCE SPECIFIC RECORDS. ON A SHOWING OF GOOD CAUSE BY THE PERSON, THE DIRECTOR MAY EXCUSE A FAILURE TO TIMELY COMPLY.

~~5. Deny or revoke a license based on the information in the application or information that the acting director 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. 6.~~ Issue advisory notices for de minimis violations.

~~8. 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 acting director.~~

~~9. 7.~~ Investigate alleged violations of all applicable federal and state statutes, THIS CHAPTER, rules or ADOPTED PURSUANT TO THIS CHAPTER, CONSENT AGREEMENTS, orders ~~or alleged violations of~~ AND any condition imposed in connection with a license.

8. REQUIRE THE PUBLIC TO PROVIDE ALLEGED VIOLATIONS IN WRITING.

~~10. 9.~~ Pursuant to section ~~32-2329~~ 41-1092.11, summarily suspend a license issued under this chapter to protect the health, safety and welfare of the public.

~~11. 10.~~ 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.

~~12. 11.~~ Do at least one of the following in relation to unlicensed pest management business operations, EXCEPT AS TO OPERATIONS NOT REQUIRING LICENSURE:

(a) Issue a cease and desist order requiring ~~an unlicensed pest management~~ THE business to immediately cease operations.

(b) ~~Except as provided in section 32-2311, subsection D, impose on an unlicensed pest management~~ IMPOSE ON THE OWNER OF THE 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.

~~13. Refer all cases for formal hearing to the office of administrative hearings.~~

~~14. 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.

~~15. 13.~~ Issue a renewable and revocable temporary qualifying party license to a licensed 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.

~~16. 14.~~ Provide and conduct classes to train ~~applicators and qualifying parties~~ INDIVIDUALS in preparation for license tests CERTIFIED APPLICATOR AND CERTIFIED QUALIFIED APPLICATOR EXAMS. The acting director may assess a fee for each class. The acting director may contract with a commercial enterprise or an accredited institution to conduct the class.

~~17. 15. Provide and conduct continuing education classes quarterly. The acting director may assess a fee for each credit hour. The acting director may contract with a commercial enterprise or an accredited institution to conduct the class under the supervision of office staff.~~

~~18. Appoint an employee of the office to conduct an informal settlement conference with a licensee against whom an inquiry is received or a complaint is filed.~~

~~19. 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.~~

~~20. 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.~~

~~21. Approve proposed consent orders.~~

17. ENTER INTO CONSENT AGREEMENTS AND ISSUE CONSENT ORDERS.

18. DESIGNATE BY RULE DEVICES THAT ARE EXEMPT FROM THE LICENSURE AND REGISTRATION REQUIREMENTS UNDER THIS CHAPTER.

19. CHARGE A PERSON FOR PROVIDING COPIES OF RULES, FORMS OR POLICIES THAT ARE PROPOSED FOR ADOPTION AND EDUCATIONAL MATERIALS.

20. REQUIRE BUSINESS LICENSEES OR QUALIFYING PARTIES TO REGISTER WITH THE OFFICE OR OTHERWISE IDENTIFY ALL OF THE LICENSED AND UNLICENSED APPLICATORS OF THE BUSINESS OR SUPERVISED BY THE QUALIFYING PARTY.

21. REQUIRE A BUSINESS LICENSEE TO PRODUCE RECORDS FOR THE PURPOSE OF VERIFYING THAT AN INDIVIDUAL IS AN APPLICATOR OF THE BUSINESS LICENSEE.

22. CHARGE A HANDLING FEE IN ADDITION TO THE TRANSACTION AMOUNT FOR ANY TRANSACTION THAT COULD HAVE BEEN COMPLETED ELECTRONICALLY AND WAS NOT.

23. DENY A LICENSE TO OR REFUSE TO RENEW THE LICENSE OF A PERSON WHO OWES UNPAID FEES OR CIVIL PENALTIES TO THE OFFICE.

~~E. 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 acting director may:~~

~~1. 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.~~

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

~~3. 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.~~

~~F. Subject to the limitations of section 41-2544, the acting director may enter into agreements for the purpose of enabling the office 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 acting 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 office.~~

G. C. In the enforcement of this article, the acting THE director or any 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 PROPERTY, INCLUDING SERVICE VEHICLES, 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.~~ PESTICIDES, INCLUDING WORKER SAFETY MATERIALS, AND RECORDS PERTAINING TO PEST MANAGEMENT. IF A PERSON REFUSES TO ADMIT THE DIRECTOR OR AN AGENT IN ACCORDANCE WITH

THIS SUBSECTION, THE DIRECTOR MAY OBTAIN A WARRANT FROM A COURT OF COMPETENT JURISDICTION. IF A LICENSED PERSON REFUSES TO ADMIT THE DIRECTOR OR AN AGENT IN ACCORDANCE WITH THIS SUBSECTION DURING REGULAR BUSINESS HOURS, THE DIRECTOR MAY ALSO IMPOSE DISCIPLINARY ACTION ON THE PERSON.

D. THE DIRECTOR OR ANY DULY AUTHORIZED AGENTS MAY MONITOR COMPLIANCE BY A PERSON WITH THIS CHAPTER AND THE RULES ADOPTED UNDER THIS CHAPTER WHILE THE PERSON IS PROVIDING PEST MANAGEMENT SERVICES.

§ 32-2305. Pest management fund; exemption

A. A THE pest management TRUST fund is established FOR THE EXCLUSIVE PURPOSE OF IMPLEMENTING, CONTINUING AND SUPPORTING THE PROGRAM ESTABLISHED BY THIS CHAPTER. ALL MONIES COLLECTED UNDER THE PROVISIONS OF THIS CHAPTER SHALL BE DEPOSITED IN THE TRUST FUND.

B. Pursuant to sections 35-146 and 35-147, the acting 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. 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 INVESTMENT SHALL BE CREDITED TO THE TRUST FUND.

C. THE BENEFICIARY OF THE TRUST IS THE PROGRAM ESTABLISHED BY THIS CHAPTER. THE TRUST FUND SHALL BE USED SOLELY FOR THE PURPOSES OF THIS CHAPTER ON THE ORDER OF THE DIRECTOR.

~~C. D. Monies deposited in the THE pest management TRUST fund are SHALL BE~~ exempt from the provisions of section § 35-190 relating to lapsing of appropriations. SURPLUS MONIES, INCLUDING ANY UNEXPENDED AND UNENCUMBERED BALANCE AT THE END OF THE FISCAL YEAR, DO NOT REVERT TO THE STATE GENERAL FUND.

§ 32-2306. Annual and informational reports

REPEAL

§ 32-2306. Pest management advisory committee

A. A PEST MANAGEMENT ADVISORY COMMITTEE IS ESTABLISHED CONSISTING OF FIVE MEMBERS APPOINTED BY THE DIRECTOR. THE MEMBERS SHALL BE APPOINTED AS FOLLOWS:

1. THREE INDUSTRY MEMBERS WHO ARE BUSINESS LICENSEES OR QUALIFYING PARTIES AND WHO HAVE A MINIMUM OF FIVE YEARS OF PEST MANAGEMENT EXPERIENCE. AT LEAST ONE INDUSTRY MEMBER SHALL BE A BUSINESS LICENSEE WHO HAS FIVE OR FEWER APPLICATORS AND AT LEAST ONE INDUSTRY MEMBER SHALL BE FROM OUTSIDE OF MARICOPA AND PIMA COUNTIES.

2. ONE POLITICAL SUBDIVISION MEMBER.

3. ONE PUBLIC MEMBER WHO DOES NOT PROVIDE PEST MANAGEMENT SERVICES OR WORK FOR A BUSINESS LICENSED BY THE OFFICE.

B. COMMITTEE MEMBERS SHALL BE APPOINTED FOR THREE YEAR STAGGERED TERMS. MEMBERS MAY NOT SERVE CONSECUTIVE TERMS OF OFFICE, EXCEPT THAT A MEMBER WHO IS APPOINTED TO

FILL A VACANCY MAY SERVE THE UNEXPIRED TERM THAT FILLS THE VACANCY PLUS ONE REGULAR TERM. A MEMBER WHO COMPLETES A TERM IS INELIGIBLE FOR REAPPOINTMENT FOR THREE YEARS.

C. THE OFFICE OF A MEMBER IS DEEMED VACANT UNDER ANY OF THE FOLLOWING CIRCUMSTANCES:

1. THE MEMBER NO LONGER SATISFIES THE QUALIFICATION IN SUBSECTION A.

2. THE MEMBER IS UNABLE TO PERFORM THE DUTIES OF THE OFFICE.

3. THE ABSENCE OF THE MEMBER FROM THREE CONSECUTIVE COMMITTEE MEETINGS IF THE ABSENCES HAVE NOT BEEN EXCUSED BY THE COMMITTEE.

D. THE COMMITTEE SHALL SELECT A CHAIRMAN AND VICE-CHAIRMAN FROM AMONG ITS MEMBERS. THE COMMITTEE SHALL ASSIST AND MAKE RECOMMENDATIONS TO THE DIRECTOR REGARDING THE ADMINISTRATION AND IMPLEMENTATION OF THIS CHAPTER.

E. MEMBERS OF THE COMMITTEE ARE NOT ELIGIBLE TO RECEIVE COMPENSATION BUT ARE ELIGIBLE FOR REIMBURSEMENT OF TRAVEL AND OTHER EXPENSES PURSUANT TO TITLE 38, CHAPTER 4, ARTICLE 2.

§ 32-2307. Local regulation

The provisions of this chapter and the rules which implement this chapter are of statewide concern and are not subject to further local regulation.

ARTICLE 2. CERTIFICATION, REGISTRATION AND LICENSURE

§ 32-2311. Certification categories

AN INDIVIDUAL MAY APPLY FOR CERTIFICATION AS AN APPLICATOR OR QUALIFIED APPLICATOR IN ANY ONE OR A COMBINATION OF THE FOLLOWING CATEGORIES:

1. INDUSTRIAL, INSTITUTIONAL, STRUCTURAL AND HEALTH RELATED PEST MANAGEMENT.
2. WOOD-DESTROYING ORGANISM MANAGEMENT.
3. ORNAMENTAL AND TURF PEST MANAGEMENT.
4. RIGHT-OF-WAY PEST MANAGEMENT.
5. AQUATIC PEST MANAGEMENT.
6. FUMIGATION.
7. OTHER CATEGORIES OR SUBCATEGORIES ESTABLISHED BY RULE.

~~§ 32-2312. Applicator licenses; application; categories; renewal; inactive licenses~~

REPEAL

~~§ 32-2313. 32-2312. Business license; renewal; financial security; definition~~

A. A person who ~~wishes to engage~~ ENGAGES in the business of pest management shall ~~first obtain~~ POSSESS a VALID business license OBTAINED from the office ~~as provided in this article~~. A person who is not exempt under this ~~article~~ CHAPTER and who advertises for, solicits or holds himself out as 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 OF a business license shall:

1. Be in a form AND INCLUDE THE INFORMATION prescribed by the ~~acting~~ director.
2. Be accompanied by the prescribed fee.
- ~~3. Include the name and address of the qualifying party and written documentation of how the qualifying party will be active in the day-to-day management of the business licensee.~~
- ~~4. List all owners with more than a ten per cent ownership interest in the company, all corporate officers and members of the board of directors.~~

~~C. A business licensee shall register each primary and branch office with the acting director before it opens for business.~~

~~D.~~ 3. An applicant shall furnish INCLUDE the following to the acting director PROOF OF FINANCIAL SECURITY:

- ~~1. (a) Proof of financial responsibility consisting of either EITHER a deposit of money, liability insurance, self-insured retention, a surety bond or a certified check protecting persons who may suffer legal damages BODILY INJURY OR PROPERTY DAMAGE as a result of the operations of the applicant. The acting director shall not accept a bond or a liability insurance policy unless 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 acting 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 acting director with a certificate of coverage that indicates the coverages and endorsements required by this subsection on a form prescribed by the acting director.~~
2. (b) Either of the following if the business licensee performs termite treatments:

~~(a) (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.

~~(b) (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.

~~3. (c)~~ If the business licensee provides wood-destroying insect inspection reports ~~or fungi 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.

~~4. C.~~ If an insurance policy provides for a deductible, the deductible amount shall not exceed one per cent of the total financial security for each occurrence. If the deductible amount is in excess of one per cent of the total financial security for each occurrence, the business licensee shall provide other security as provided in this ~~subsection~~ SECTION or other evidence of financial security for the excess deductible amount.

~~5. 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, ~~fungi 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 expires, the business license is automatically suspended until a current certificate of insurance or proof of financial responsibility is furnished to the ~~acting~~ director.

~~F. Except as provided in section 32-4301, each business licensee shall renew the business license and each office registration on or before the expiration date of the license by filing renewal forms prescribed by the acting director and paying the prescribed renewal fees. If a business licensee fails to renew the business license as required by this subsection, the licensee shall not engage in the business of pest management.~~

~~G. Each branch office of a business licensee shall be supervised by a licensed applicator or qualifying party who is licensed in all categories in which the branch office operates.~~

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

~~§ 32-2314. Qualifying party; license; examination; inactive status; temporary license~~

REPEAL

§ 32-2313. Qualifying party

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 SHALL:

1. BE A CERTIFIED QUALIFIED APPLICATOR.

2. REGISTER AS A QUALIFYING PARTY WITH THE OFFICE USING A FORM AND INCLUDING THE INFORMATION PRESCRIBED BY THE DIRECTOR.

§ 32-2314. Branch office; branch supervisor

A. A BUSINESS LICENSEE SHALL REGISTER EACH BRANCH OFFICE WITH THE DIRECTOR BEFORE THE BRANCH OFFICE OPENS FOR BUSINESS.

B. EACH BRANCH OFFICE SHALL BE SUPERVISED BY A REGISTERED BRANCH SUPERVISOR.

§ 32-2311. 32-2315. Persons not required to be licensed; civil penalties; definition License exemptions

A. ~~This~~ THE PROVISIONS OF THIS chapter ~~does~~ REQUIRING LICENSURE AND REGISTRATION DO not apply to:

1. ~~Persons licensed or certified pursuant to title 3, chapter 2, article 6.~~
2. ~~Persons applying~~ NONRESTRICTED USE pesticides on RESIDENTIAL property that they ~~own and~~ occupy or that they own which is unoccupied.
3. ~~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.
4. ~~Employees of political subdivisions or their designated agents while performing emergency response or rescue services.~~
5. ~~3.~~ 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 management. 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 management 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.~~
7. ~~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.
8. ~~Except as provided in section 32-2307, volunteers of political subdivisions who apply herbicides for the purpose of the eradication and control of noxious weeds as defined in section 3-201 and who are under the immediate supervision of a licensed applicator. 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) ~~Volunteers of political subdivisions who use application equipment that holds more than eight gallons of total mixed liquid herbicide.~~
 - (d) ~~Volunteers of political subdivisions who use more than twenty five pounds of a nonliquid herbicide.~~
 - (e) ~~Volunteers of political subdivisions who do not follow label and labeling directions.~~
 - (f) ~~Volunteers of political subdivisions who have not completed an office of pest management approved herbicide application training program conducted by the political subdivision.~~

5. PERSONS USING AN OVER-THE-COUNTER ANTI-MICROBIAL TO TREAT A SWIMMING POOL.

6. PERSONS USING A DEVICE THAT IS EXEMPT PURSUANT TO SECTION 32-2304, SUBSECTION B, PARAGRAPH 18.

7. PERSONS EXEMPT PURSUANT TO SECTIONS 32-2316 OR 32-2317.

B. ~~An employee of a political subdivision who engages in pest management:~~

1. ~~Is not required to be licensed under section 32-2313 or 32-2314.~~
2. ~~Must be licensed as an applicator under section 32-2312, except as provided by subsection A, paragraph 4 of this section.~~

~~C. 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 management 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.~~

~~D. If a person is exempt pursuant to subsection A, paragraph 6 of this section but does not comply with subsection C of this section or if a person is not licensed under this chapter and the 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 acting director shall:~~

- ~~1. On a first violation, issue a written notice of correction that contains a warning and a copy of this section and that provides full notice of the exemption requirements.~~
- ~~2. On a second violation, impose a civil penalty of not more than two hundred fifty dollars.~~
- ~~3. On a third or any subsequent violation, impose a civil penalty of not more than five hundred dollars.~~

~~E. Volunteers of political subdivisions who are not working under the immediate supervision of a licensed applicator may be subject to section 32-2304, subsection D, paragraph 12.~~

~~F. For the purposes of this section, "volunteers of political subdivisions" means persons who work without compensation other than reimbursement of actual expenses incurred or disbursement of meals or other incidental benefits.~~

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 MAY EXEMPT BY RULE FROM SECTIONS 32-2312 AND 32-2313 AND PRESCRIBE ALTERNATE REQUIREMENTS AND CONDITIONS FOR CERTIFIED APPLICATORS WHO PERFORM INSPECTIONS BUT DO NOT MAKE RECOMMENDATIONS, ESTIMATES, BIDS OR CONTRACTS FOR TREATMENT OR USE PESTICIDES OR DEVICES FOR PEST MANAGEMENT.

§ 32-2316. Political subdivisions; exemptions

A. A POLITICAL SUBDIVISION THAT USES PESTICIDES TO CONDUCT PEST MANAGEMENT ON PROPERTY OWNED, LEASED OR MANAGED BY THE POLITICAL SUBDIVISION, INCLUDING EASEMENTS:

1. IS NOT REQUIRED TO BE LICENSED UNDER SECTION 32-2312.
2. MUST HAVE A QUALIFYING PARTY REGISTERED IN THE APPROPRIATE CATEGORIES.

B. A POLITICAL SUBDIVISION MAY ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH ANOTHER POLITICAL SUBDIVISION FOR THE PURPOSE OF OBTAINING THE SERVICES OF THE OTHER POLITICAL SUBDIVISION'S QUALIFYING PARTY. A QUALIFYING PARTY FOR POLITICAL SUBDIVISIONS SHALL SEPARATELY REGISTER AS A QUALIFYING PARTY FOR EACH POLITICAL SUBDIVISION SERVED, BUT MAY NOT REGISTER AS A QUALIFYING PARTY FOR MORE THAN ONE POLITICAL SUBDIVISION WITHOUT APPROVAL FROM THE DIRECTOR.

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:

1. EMPLOYEES OF POLITICAL SUBDIVISIONS WHO APPLIED PESTICIDES FOR THE POLITICAL SUBDIVISION FOR THE FIRST TIME NO MORE THAN NINETY DAYS PRIOR, BUT THIS EXEMPTION DOES NOT APPLY TO EMPLOYEES WHO APPLY PESTICIDES AT A SCHOOL OR CHILD CARE FACILITY.

2. EMPLOYEES OF POLITICAL SUBDIVISIONS OR THEIR DESIGNATED AGENTS WHILE PERFORMING EMERGENCY RESPONSE OR RESCUE SERVICES.

3. VOLUNTEERS OF POLITICAL SUBDIVISIONS WHILE APPLYING HERBICIDES FOR THE PURPOSE OF THE ERADICATION AND CONTROL OF NOXIOUS WEEDS AS DEFINED IN SECTION 3-201 AND WHO ARE UNDER THE IMMEDIATE SUPERVISION OF A CERTIFIED APPLICATOR. THIS EXEMPTION DOES NOT APPLY TO VOLUNTEERS OF POLITICAL SUBDIVISIONS WHO:

(a) APPLY HERBICIDES AT A SCHOOL OR CHILD CARE FACILITY.

(b) USE HERBICIDES THAT ARE LABELED WITH THE WORDS "RESTRICTED USE" OR "DANGER."

(c) USE STERILANTS.

(d) USE APPLICATION EQUIPMENT THAT HOLDS MORE THAN FOUR GALLONS OF TOTAL MIXED LIQUID HERBICIDE.

(e) HAVE NOT COMPLETED A OFFICE APPROVED HERBICIDE APPLICATION TRAINING PROGRAM CONDUCTED BY THE POLITICAL SUBDIVISION.

E. FOR THE PURPOSES OF THIS SECTION, "VOLUNTEERS" MEANS PERSONS WHO WORK WITHOUT COMPENSATION OTHER THAN REIMBURSEMENT OF ACTUAL EXPENSES INCURRED OR DISBURSEMENT OF MEALS OR OTHER INCIDENTAL BENEFITS.

§ 32-2317. 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, THE LICENSURE 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 PRE-EMERGENT HERBICIDES.

3. OFFERS WEED MANAGEMENT AS THE PERSON'S PRIMARY SERVICE OR WHO ADVERTISES WEED MANAGEMENT SERVICES.

4. USES APPLICATION EQUIPMENT THAT COLLECTIVELY HOLDS MORE THAN FOUR GALLONS OF TOTAL MIXED LIQUID HERBICIDE AT AN ADDRESS OR PROJECT ON THE SAME DAY.

5. USES MORE THAN TWENTY-FIVE POUNDS OF A 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 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 NOT LESS THAN SIX MONTHS FROM THE DATE OF THE TREATMENT. 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.

4. THE AMOUNT OF HERBICIDE APPLIED.

5. THE NAME OF THE INDIVIDUAL WHO PERFORMED THE TREATMENT.

D. IF A PERSON IS EXEMPT FROM LICENSURE AND REGISTRATION PURSUANT TO SUBSECTION A OF THIS SECTION BUT DOES NOT COMPLY WITH SUBSECTION C OF THIS SECTION, THE DIRECTOR SHALL:

1. ON A FIRST VIOLATION, ISSUE A WRITTEN NOTICE OF CORRECTION THAT CONTAINS A WARNING AND A COPY OF THIS SECTION.

2. ON A SECOND VIOLATION, IMPOSE A CIVIL PENALTY OF NOT LESS THAN FIFTY DOLLARS.

3. ON 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 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 A FIRST VIOLATION, IMPOSE A CIVIL PENALTY OF NOT MORE THAN ONE THOUSAND DOLLARS.

3. ON A SECOND OR ANY SUBSEQUENT VIOLATION, IMPOSE A CIVIL PENALTY OF NOT MORE THAN TWO THOUSAND DOLLARS.

§ ~~32-2317~~ 32-2318. Fees

A. The acting director shall establish and collect APPLICATION AND RENEWAL fees ~~that may include service charges allowed pursuant to section 32-2304 for persons who pay with alternative payment methods, including credit cards, charge cards, debit cards and electronic transfers, but~~ that may not exceed the following amounts PER YEAR:

~~1. Qualifying party license application fee, one hundred fifty dollars.~~

~~2. Qualifying party license renewal fee, one hundred fifty dollars.~~

~~3. Qualifying party license renewal fee, inactive status, twenty five dollars.~~

~~4. Temporary qualifying party license application fee, twenty five dollars.~~

~~5. 1. Business license application fee, one hundred five thousand dollars.~~

~~6. Business license renewal fee, one hundred dollars.~~

~~7. 2. Branch office registration ~~application~~ fee, two hundred fifty dollars.~~

~~8. Branch office registration renewal fee, fifty dollars.~~

~~9. Late renewal penalty fee, double the prescribed renewal fee.~~

~~10. 3. Qualifying party license status change, inactive to active, one hundred twenty five REGISTRATION, ONE HUNDRED dollars.~~

4. TEMPORARY QUALIFYING PARTY INITIAL REGISTRATION, ONE HUNDRED DOLLARS.

5. TEMPORARY QUALIFYING PARTY RENEWAL REGISTRATION, ONE HUNDRED DOLLARS.

6. BRANCH SUPERVISOR REGISTRATION, ONE HUNDRED DOLLARS.

~~11. 7. Applicator license application, thirty CERTIFICATION, FIVE HUNDRED dollars.~~

~~12. Applicator license annual renewal, twenty five dollars.~~

8. QUALIFIED APPLICATOR CERTIFICATION, FIVE HUNDRED DOLLARS.

9. APPLICATOR REGISTRATION, ONE HUNDRED DOLLARS PER APPLICATOR.

~~13. 10. Duplicate license identification card, ten~~ OR REGISTRATION, FIFTY dollars.

B. THE DIRECTOR MAY CHARGE AND COLLECT LATE FEES AS A PENALTY IN ADDITION TO THE FEES LISTED IN SUBSECTION A OF THIS SECTION.

C. THE DIRECTOR MAY ESTABLISH TIERED FEES FOR BUSINESS LICENSES.

D. The office DIRECTOR may charge and collect additional fees for services that the ~~acting~~ director considers to be appropriate to carry out the intent and purpose of this chapter. These additional fees shall not exceed the costs of rendering the services.

~~§ 32-2319. Continuing education~~

REPEAL

ARTICLE 3. REGULATION SCHOOLS; WOOD-DESTROYING ORGANISMS

§ 32-2307. 32-2321. Notification of pesticide applications to schools and child care facilities; notification; exemptions; definitions

A. ONLY A CERTIFIED APPLICATOR MAY APPLY PESTICIDES AT A SCHOOL OR CHILD CARE FACILITY.

B. A business licensee or ~~licensed~~ 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 advance notice shall include the 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. ~~Only an individual holding an applicator license may make pesticide applications at schools and child care facilities.~~

~~B. C.~~ C. Immediately prior to application of a pesticide PESTICIDE, a business licensee or ~~licensed~~ 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.

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

~~D. E.~~ E. The following pesticide applications are exempt from the notification requirement prescribed in subsections ~~A and 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 ~~licensed~~ 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 ~~licensed~~ 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 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).~~

7. NONRESTRICTED USE SANITIZERS AND DEODORIZERS.

~~E. The provisions of this chapter shall regulate and determine all requirements regarding licenses, fees, testing, education, and all other requirements regarding the business of pest control for persons licensed pursuant to this chapter.~~

~~F. For the purposes of this section:~~

- ~~1. "Child care facility" means a facility regulated pursuant to title 36, chapter 7.1.~~
- ~~2. "Pesticides" does not include nonrestricted use disinfectants, sanitizers or deodorizers.~~
- ~~3. "School" means an educational institution that provides instruction in prekindergarten programs, kindergarten programs or any of grades one through twelve.~~

§ 32-2322. Termite Action Report Form

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 IN A FORM APPROVED BY THE DIRECTOR A TERMITE ACTION REPORT FORM AND THE PRESCRIBED FEE.

B. THE TERMITE ACTION REPORT FORM SHALL INCLUDE:

- 1. THE ADDRESS OR LOCATION OF THE WORK OR PROJECT.
- 2. THE TYPE AND THE 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 THE OFFICE PRESCRIBED UNDER THIS CHAPTER.
- 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 TO EXCEED 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 DOCUMENTING THE PRETREATMENT OR NEW-CONSTRUCTION TREATMENT, THE BUSINESS LICENSEE IS EXEMPT FROM THIS SECTION WITH RESPECT TO THE INITIAL CORRECTIVE TREATMENT.

§ 32-2323. Wood-destroying insects; organisms; treatment proposal; registration form; fee

A. A business licensee shall not commence work on a contract or sign, issue or deliver any documents expressing an opinion or making a statement relating to the presence or absence of wood-destroying ~~insects~~ ORGANISMS in a structure until an inspection is made.

B. Only an applicator ~~or qualifying party licensed~~ CERTIFIED in the categories CATEGORY of wood-destroying ~~insect~~ ORGANISM management and wood-destroying ~~insect inspection~~ shall prepare a treatment proposal on a form approved by the ~~acting director and~~ DIRECTOR. THE APPLICATOR shall deliver a copy of the treatment proposal to the person requesting the ~~proposal,~~ PROPOSAL OR TREATMENT, or the person's designated agent, before beginning treatment. The treatment proposal shall include the following information:

1. The address of the property to be treated.
2. A statement describing that the work is preventative or corrective.
3. A statement describing the evidence of infestation or damage.
4. A diagrammatic description showing the nature and location of evidence of infestation or damage, or both, if applicable.
5. A statement describing the treatment or repair method, including the name of the pesticide, ~~agent~~ or device to be used and a diagrammatic description showing where the treatment or repair will be rendered.
6. The price for the work.
7. The terms for the service agreement provided by the business licensee.
8. The signature and license number of the person who made the inspection of the structure to be treated.

C. A licensee CERTIFIED APPLICATOR shall also give to the person requesting a proposal OR TREATMENT a written recommendation that verifies a particular problem and, in addition to the licensee's CERTIFIED APPLICATOR'S recommendation for treatment, shall advise the person of alternative treatments and methods, including integrated pest management methods to alleviate the problem.

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

E. A treatment proposal shall be prepared by a licensed CERTIFIED applicator ~~or qualifying party~~ who has received at least five hours of instruction from ~~the office or~~ an in-house education program of a THE business licensee on the subject of wood-destroying ~~insect~~ ORGANISM inspections. An examination on the instruction is not required. The business licensee shall keep a record of completion of the training and shall make the record available on the ~~acting director's~~ request. THE INSTRUCTION REQUIREMENT DOES NOT APPLY TO CERTIFIED QUALIFIED APPLICATORS.

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

~~G. Within thirty calendar days after completion of a termite treatment or on the next business day after the thirty calendar days, a business licensee shall file with the office in a form or format approved by the acting director a complete and accurate termite action registration form and a fee as prescribed by the acting director. The termite action registration form shall include information prescribed in section 32-2321, subsection C, paragraph 11 and this section. This subsection only applies to the following:~~

- ~~1. Any treatments done before or during construction, including final grade treatments.~~
- ~~2. The first preventative or corrective termite treatment by a business licensee to a site. If the business licensee who performed this termite treatment performed the before or during construction treatment at the same site and filed a termite action report form with the office documenting the before or during construction treatment, the business licensee is exempt from this paragraph.~~
- ~~3. A wood-destroying insect inspection report.~~

G. THIS SECTION DOES NOT APPLY TO THE APPLICATION OF PESTICIDES DIRECTLY TO STRUCTURAL COMPONENTS OF WOOD OR WOOD PRODUCTS, WHICH ARE NOT PART OF AN EXISTING STRUCTURE

NORMALLY HABITABLE BY PERSONS, TO PREVENT OR MANAGE WOOD DEGRADATION BY WOOD-DESTROYING ORGANISMS.

§ 32-2324. Wood-destroying insect inspection reports

A. Wood-destroying insect inspection reports may only be completed by an applicator ~~or qualifying party~~ who is licensed CERTIFIED in the ~~categories of management~~ CATEGORY of wood-destroying insects and ORGANISM MANAGEMENT OR wood-destroying insect inspection and who has received at least five hours of instruction from ~~the office or the former structural pest control commission~~ or an in-house education program of a THE business licensee on the subject of wood-destroying insect inspection reports. An examination on the instruction is not required. The business licensee shall keep a record of completion of the training and shall make the record available on the ~~acting~~ director's request. THE INSTRUCTION REQUIREMENT DOES NOT APPLY TO CERTIFIED QUALIFIED APPLICATORS.

B. Wood-destroying insect inspection reports shall be on file in the office of the business licensee within seven calendar days after the completion of an inspection. The business licensee shall retain a copy of all completed wood-destroying insect inspection reports for ~~five~~ THREE years and make the reports available on the ~~acting~~ director's request.

C. Wood-destroying insect inspection reports are evidence of BOTH the existence or absence of wood-destroying insects AND CONDITIONS CONDUCTIVE TO WOOD-DESTROYING INSECTS that were visible and accessible to an inspector ~~on the date~~ AT THE TIME the inspection was made. A business licensee remains responsible for the accuracy of the inspection and the report as evidence of the presence or absence of infestation AND CONDITIONS CONDUCTIVE TO INFESTATION on the date of inspection, except that a wood-destroying insect inspection report shall not be construed as a guarantee as to the presence or absence of wood-destroying insects OR CONDITIONS CONDUCTIVE TO WOOD-DESTROYING INSECTS in a structure after the date of inspection.

D. IF A CERTIFIED APPLICATOR IS EXEMPT FROM THE BUSINESS LICENSE REQUIREMENT WITH RESPECT TO WOOD-DESTROYING INSECT INSPECTIONS BY RULES ESTABLISHED BY THE DIRECTOR, THE CERTIFIED APPLICATOR SHALL FULFILL THE RESPONSIBILITIES PLACED ON BUSINESS LICENSEES IN THIS SECTION.

E. A PERSON SHALL NOT COMPLETE A WOOD-DESTROYING INSECT INSPECTION REPORT FOR A PROPERTY THAT THE PERSON OWNS OR OCCUPIES.

~~§ 32-2324.01. Fungi inspection reports~~

REPEAL

ARTICLE 4. REGULATION

~~§ 32-2325~~ 32-2331. Unlawful acts

A. A person shall not:

1. Engage in the business of pest management without ~~holding~~ a business license issued pursuant to this chapter UNLESS EXEMPT.
2. Engage in the business of pest management in any category without a qualifying party ~~licensed~~ REGISTERED in that category.
3. Operate a branch office without ~~employing a licensed applicator or qualifying party~~ A REGISTERED BRANCH SUPERVISOR under whose direct supervision pesticide applications are made out of that office.
4. Apply pesticides in any category other than ~~the control of wood-destroying insects~~ ORGANISMS MANAGEMENT OR FUMIGATION unless the person is an A CERTIFIED applicator ~~or qualifying party licensed~~ in that category ~~pursuant to this chapter~~ or applies the pesticides under the direct supervision of an A CERTIFIED applicator ~~or qualifying party licensed~~ in that category ~~pursuant to this chapter~~.
5. Apply pesticides ~~for the management~~ IN THE CATEGORY of wood-destroying insects ORGANISM MANAGEMENT, AQUATIC PEST MANAGEMENT, OR FUMIGATION unless both of the following apply:
 - (a) ~~The~~ THE person is an A CERTIFIED applicator ~~or qualifying party licensed~~ in that category ~~pursuant to this chapter~~ or the person applies the pesticides under the immediate supervision of a ~~licensed~~ AN applicator CERTIFIED IN THAT CATEGORY.
 - (b) ~~The person has received at least five hours of instruction from the office or the former structural pest control commission or an in-house education program of a business licensee on the subject of management of wood-destroying insects that is appropriate for the specific type of application performed. An examination on the instruction is not required. A business licensee shall keep a record of completion of the training and shall make it available on the acting director's request.~~
6. Make recommendations regarding pest management unless the person is a ~~licensed~~ CERTIFIED applicator ~~or qualifying party~~.
7. Deny to an authorized inspector the right to be present on a jobsite in connection with a contemporaneous pest management treatment ~~for the purpose of taking samples~~, 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 REQUIREMENTS OF THE PESTICIDE OR THAT MAY CAUSE HARM TO THE PUBLIC, THE ENVIRONMENT OR NON-TARGET ANIMALS.
5. MISUSE OF 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, 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. CONVICTION 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. THREE OR MORE DE MINIMIS VIOLATIONS OF THIS CHAPTER OR RULES ADOPTED UNDER THIS CHAPTER.

12. FAILURE TO PROVIDE THE DIRECTOR WITH A CURRENT CERTIFICATE OF INSURANCE OR PROOF OF FINANCIAL RESPONSIBILITY.

13. FAILURE TO PROVIDE A PROPER FINAL GRADE TREATMENT WITHIN TWELVE MONTHS OF THE ORIGINAL PRETREATMENT OR NEW-CONSTRUCTION TREATMENT.

14. IMMEDIATELY SUPERVISING MORE UNLICENSED APPLICATORS AT A TIME THAN AUTHORIZED BY RULE.

15. FAILURE 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 FROM DATE OF TREATMENT OR INSPECTION.

16. FAILURE TO MAKE TREATMENT RECORDS AVAILABLE WITHIN THREE BUSINESS DAYS ON REQUEST OF THE PROPERTY OWNER OR THE PROPERTY OWNER'S AUTHORIZED AGENT.

17. FAILURE 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 OWNER OF THE BUSINESS LICENSEE IS PRESENT AT THE BUSINESS OFFICE AND HAS ACCESS TO THOSE RECORDS.

18. FAILURE TO TIMELY PRODUCE SPECIFIC RECORDS REQUESTED PURSUANT TO SECTION 32-2304, SUBSECTION B, PARAGRAPH 4.

19. VIOLATING THE TERMS OF A CONSENT AGREEMENT OR ORDER.

§ 32-2321 32-2332. Disciplinary action; grounds; procedure; judicial review

A. After an opportunity for a formal hearing or pursuant to a consent order, the acting IF THE DIRECTOR FINDS THAT A PERSON HAS VIOLATED THIS CHAPTER, A RULE ADOPTED PURSUANT TO THIS CHAPTER, OR A WRITTEN ORDER, 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 ~~business licensee, licensed applicator or qualifying party~~ 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 ~~business licensee, licensed applicator or qualifying party~~ PERSON.

5. Impose a civil penalty in an amount of not more than one thousand dollars for each violation except for grounds prescribed in subsection B, paragraphs 8 and 9 of ~~this section~~ 32-2331.
6. Require a qualifying party to report to the ~~acting~~ director the qualifying party's role in the management of a business license.
7. ~~Issue an administrative warning.~~ REQUIRE AN INDIVIDUAL TO TAKE SUPPLEMENTAL CONTINUING EDUCATION WITHIN A PERIOD SET BY THE DIRECTOR.

B. IN LIEU OF TAKING DISCIPLINARY ACTION FOR A VIOLATION PURSUANT TO SUBSECTION A OF THIS SECTION, THE DIRECTOR MAY ISSUE AN ADMINISTRATIVE WARNING.

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

- ~~1. Violating this chapter, rules adopted pursuant to this chapter or a written order of the acting 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 requirements of the pesticide or that may cause undue harm to the public.~~
- ~~5. Misuse of a pesticide if the misuse is due to training received or not received or lack of appropriate supervision. 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, 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. Conviction of a felony or misdemeanor arising from or in connection with a license issued pursuant to this chapter after issuance of the license.~~
- ~~8. Conviction of a felony.~~
- ~~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. Three or more de minimis violations of this chapter or rules adopted under this chapter.~~
- ~~12. Failure to provide the acting director with a current certificate of insurance or proof of financial responsibility.~~
- ~~13. Failure to establish a complete vertical barrier at the exterior of foundation walls in stem wall construction or exterior of grade beams in monolithic construction within twelve months of the original treatment made before or during construction.~~
- ~~14. Immediately supervising more than one unlicensed applicator at a time.~~
- ~~15. Failure to make and maintain true and accurate records of treatments performed, including those performed under warranty or guarantee, for at least three years from date of treatment except any record of a termite treatment, a wood-destroying insect inspection report or a fungi inspection report, which shall be made and maintained for at least five years from the date of treatment or inspection.~~
- ~~16. Failure to make treatment records available within three business days on request of the property owner, the property owner's authorized agent or a representative of the office.~~

C. Except as provided in section ~~32-2329, 41-1092.11~~, the ~~acting~~ director may ~~proceed~~ TAKE DISCIPLINARY ACTION against a business licensee pursuant to subsection A, paragraphs ~~1 through 5~~ A of this section only if, after an opportunity for a hearing, it has been shown that IF any of the following applies: APPLY:

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

2. The business licensee failed to follow a written order of the ~~acting~~ 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 ~~employees~~ APPLICATORS.
4. The business licensee is convicted of a felony.
5. The business licensee is determined by the ~~acting~~ director to have committed a violation in connection with a PRETREATMENT, NEW-CONSTRUCTION TREATMENT, OR FINAL GRADE treatment ~~before or during construction.~~

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

- ~~(a) Report to the acting director within thirty calendar days the status of all warranties issued by the licensee.~~
- ~~(b) Notify within thirty calendar days all persons who hold warranties issued by the licensee regarding the change.~~

6. THE BUSINESS LICENSEE USES APPLICATORS TO PROVIDE PEST MANAGEMENT SERVICES THAT ARE NOT REGISTERED PURSUANT TO REQUIREMENTS ESTABLISHED UNDER SECTION 32-2304(B)(20).

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 termite PRETREATMENT, A NEW-CONSTRUCTION TREATMENT, A FINAL GRADE treatment ~~that is done before or during construction,~~ an initial termite corrective treatment project or a wood-destroying insect inspection report to file with the office, in a form approved by the ~~acting~~ director, ~~all data required by the acting director~~ THE TERMITE ACTION REPORT FORM AND PRESCRIBED FEE. ~~The data shall include:~~

- ~~(a) The name of the individual who performed the work.~~
- ~~(b) The address or location of the work or project.~~
- ~~(c) The type and the date of the work.~~
- ~~(d) The name of the business licensee.~~
- ~~(e) The name of the qualifying party.~~
- ~~(f) The applicator's license number.~~
- ~~(g) Any other information required by rule.~~

12. The business licensee, within twelve months after completion of a termite PRETREATMENT OR NEW-CONSTRUCTION treatment ~~that is done before or during construction,~~ fails either to file a supplemental termite action

report in a form provided by the acting 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 NON-TARGET ANIMAL.

14. THE BUSINESS LICENSEE FAILS WITHIN THIRTY CALENDAR DAYS TO PAY CIVIL PENALTIES IMPOSED UNDER THIS CHAPTER OR THE RULES ADOPTED PURSUANT TO THIS CHAPTER.

15. THE BUSINESS LICENSEE ENGAGES IN THE BUSINESS OF PEST MANAGEMENT WHILE THE BUSINESS LICENSE IS SUSPENDED.

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

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

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

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

~~G. The holder of a license suspended under subsection F of this section must apply to the acting director for reinstatement.~~

~~H. Licenses suspended under subsection F of this section are automatically revoked without a hearing after one year of suspension. Licenses revoked under this section are not subject to section 32-2304, subsection A, paragraph 11.~~

~~I. All complaints shall be in writing.~~

~~J. If the acting director appoints an employee of the office to conduct an informal settlement conference with the complaining party pursuant to section 32-2304, the purpose of the informal settlement conference is to reach agreement as to the disposition of all or a portion of the complaint, including any agreement providing for repairing or rectifying the conditions specified in the complaint. The settlement conference shall be conducted informally and the rules of evidence do not apply. The settlement conference shall not be recorded. Participants in the settlement conference may ask questions of the complainant and may review any materials or reports compiled by the office with respect to the complaint.~~

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

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

~~M. D. The acting director shall consider only COMMENCE an inquiry received or complaint filed within five years after the date of the alleged act or omission.~~

~~N. E. The acting 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 acting director may take disciplinary action against the person for a violation.~~

~~O. If the office finds a violation or the office enters into a consent agreement, the office:~~

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

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

~~P. Only this chapter applies to, regulates and determines all requirements regarding licensure, licensure fees, testing and education related to pest management in this state. Only this chapter applies to, regulates and determines all requirements regarding the business of pest management, including the application or notification of use or disposal of pesticides for pest management in this state.~~

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

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 LICENSEE RENEWS THE LICENSE OR THE INVESTIGATION OR COMPLAINT IS RESOLVED.

G. THE DIRECTOR MAY SUMMARILY SUSPEND A LICENSE WHILE THERE IS A PENDING CRIMINAL CHARGE AGAINST THE LICENSEE FOR A FELONY OR A MISDEMEANOR INVOLVING MORAL TURPITUDE.

§ 32-2308. 32-2333. Joint responsibility for supervised persons

A. A business licensee, qualifying party, BRANCH SUPERVISOR, or applicator may be held jointly responsible for the acts or omissions of another person who is under the supervision of the business licensee, qualifying party, BRANCH SUPERVISOR, or applicator if the supervising licensee fails to properly train, equip or supervise the other person or fails to maintain records of proper training, equipping or supervising.

B. Failure to timely and fully respond to requests by the ~~acting~~ director for information relating to training, equipping and supervising is a prima facie showing of a failure to properly train, equip or supervise. ~~The A supervising licensee has the burden of proof by a preponderance of the evidence that the~~ business licensee, qualifying party, BRANCH SUPERVISOR or applicator HAS THE BURDEN OF PROOF BY A PREPONDERANCE OF THE EVIDENCE THAT THE SUPERVISING PERSON has fulfilled the required duties as prescribed by this chapter, rules adopted pursuant to this chapter or a written order of the ~~acting~~ director.

§ 32-2334. Civil penalties; suspension

A. THE OFFICE 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 THE RULES ADOPTED PURSUANT TO THIS CHAPTER.

B. A LICENSEE 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, SUBSECTION A, PARAGRAPH 9.

D. THE OFFICE SHALL NOT RENEW A LICENSE, CERTIFICATION OR REGISTRATION OR BROADEN A CERTIFICATION IF THE LICENSEE IS SUSPENDED UNDER SUBSECTION A OF THIS SECTION.

§ 32-2335. Business license; principals

A. THE OFFICE SHALL DENY AN APPLICATION FOR A NEW BUSINESS LICENSE OR TO RENEW AN EXISTING BUSINESS LICENSE IF A PRINCIPAL OF THE APPLICANT WAS ALSO A PRINCIPAL OF ANOTHER BUSINESS THAT CURRENTLY OWES PAST DUE TERMITE ACTION REPORT FORM FEES, OWES CIVIL PENALTIES TO THE OFFICE, HAS ITS LICENSE SUSPENDED, OR HAS HAD ITS BUSINESS LICENSE

REVOKED WITHIN THE LAST FIVE YEARS AND WAS A PRINCIPAL AT THE TIME THE FEES BECAME DUE OR THE ACTS RESULTING IN DISCIPLINARY ACTION OCCURRED.

B. FOR THE PURPOSES OF THIS SECTION, PRINCIPAL MEANS A PERSON WHO OWNS AT LEAST A TEN PERCENT INTEREST IN A BUSINESS. PRINCIPAL INCLUDES AN OWNER THAT IS ITSELF A BUSINESS AS WELL AS OWNERS OF A PRINCIPAL.

~~§ 32-2327.~~ 32-2336. Injunctive relief

In addition to all other remedies, the ~~acting~~ director, either through the attorney general or the county attorney, may apply to the appropriate court for an order enjoining any act or practice that appears to constitute a violation of this chapter or rules adopted pursuant to this chapter. On a proper showing, a temporary restraining order, a preliminary injunction or a permanent injunction shall be granted without bond.

~~§ 32-2329.~~ Summary suspension

REPEAL

Session Laws

Sec. X1. Exemption from rule making

The Arizona Department of Agriculture and the Office of Pest Management are exempt from the rule making requirements of title 41, chapter 6, Arizona Revised Statutes, for the purpose of implementing this act until July 1, 2014.

Sec. X2. Repeal

A. Laws 2008, chapter 309, section 24 is repealed.

B. Laws 2011, chapter 20, section 4, subsection (A) is repealed, and sections 32-2301 and 32-2302, Arizona Revised Statutes, shall not be repealed as provided in that subsection.

C. Laws 2011, chapter 20, section 5 is repealed.

Sec. X3. Laws 2011, chapter 20, section 7 is amended to read:

A. As provided by sections ~~32-2301 and~~ 32-2302 and 32-2303, Arizona Revised Statutes, as amended by this act, the director of the Arizona department of agriculture succeeds to the administrative supervision of the office of pest management, ~~including supervision of the pest management advisory committee established by Laws 2008, chapter 309, section 24, for the period from the effective date of this act through December 31, 2013.~~

~~B. On the effective date of this act the office of pest management shall vacate its current office facilities and relocate to quarters furnished by the Arizona department of agriculture. Notwithstanding section 41-791.02, Arizona Revised Statutes, the office of pest management is relieved of any further obligation for payment of rent to the department of administration on the vacated premises.~~

~~C. The directors of the Arizona department of agriculture and the department of administration may enter into any necessary memoranda of understanding and other agreements necessary to accomplish the relocation, transfer and succession of administration provided by this act.~~

Sec. X4. Staggering of committee member terms

For the initial membership of the Pest Management Advisory Committee established under section 32-2306, Arizona Revised Statutes:

1. One industry member shall have a term of one year.
2. One industry and the political subdivision member shall have a term of two years.
3. One industry and the public member shall have a term of three years.

Sec. X5. Delayed enforcement of registered qualifying parties of political subdivisions

The Office of Pest Management shall not take disciplinary action against a political subdivision for a failure to comply with section 32-2316, subsection (A), paragraph (2) prior to January 1, 2015.