

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1999

SESSION LAW 1999-381
HOUSE BILL 1233

AN ACT TO AMEND THE STRUCTURAL PEST CONTROL ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 106-65.23 reads as rewritten:

"§ 106-65.23. Structural Pest Control Division of Department of Agriculture and Consumer Services recreated; Director; powers and duties of Commissioner; Structural Pest Control Committee created; appointment; terms; powers and duties; quorum.

(a) There is recreated, within the North Carolina Department of Agriculture and Consumer Services, a Division to be known as the Structural Pest Control Division. The Commissioner of Agriculture may appoint a Director of the ~~Division~~ Division, chosen from a list of nominees submitted to him by the Structural Pest Control Committee created in this section, whose duties and authority shall be determined by the ~~Commissioner~~ Commissioner in consultation with the Committee. The Director shall be responsible for and answerable to the Commissioner of Agriculture and the Structural Pest Control Committee as to the operation and conduct of the Structural Pest Control Division. The Director shall act as secretary to the Structural Pest Control ~~Committee created in this section~~ Committee.

(b) The Commissioner shall have the following powers and duties under this Article:

- (1) To administer and enforce the provisions of this Article and the rules adopted thereunder by the Structural Pest Control Committee. In order to carry out these powers and duties, the Commissioner may delegate to the Director of the Structural Pest Control Division the powers and duties assigned to him under this Article.
- (2) To assign the administrative and enforcement duties assigned to him in this Article.
- (3) To direct, in consultation with the Structural Pest Control Committee, the work of the personnel employed by the Structural Pest Control Committee and the work of the personnel of the Department assigned to perform the administrative and enforcement functions of this Article.
- (4) To develop, for the Structural Pest Control Committee's consideration for adoption, proposed rules, policies, new programs, and revisions of existing programs under this Article.

- (5) To monitor existing enforcement programs and to provide evaluations of these programs to the Structural Pest Control Committee.
- (6) To attend all meetings of the Structural Pest Control Committee, but without the power to vote unless the Commissioner attends as the designee on the Committee from the Department of Agriculture and Consumer Services.
- (7) To keep an accurate and complete record of all meetings of the Structural Pest Control Committee and to have legal custody of all books, papers, documents, and other records of the Committee.
- (8) To perform such other duties as may be assigned to him by the Structural Pest Control Committee.

(c) There is hereby created a Structural Pest Control Committee to be composed of the following members. The Commissioner shall appoint one member of the Committee who is not in the structural pest control business for a four-year term. The Commissioner of Agriculture shall designate an employee of the Department of Agriculture and Consumer Services to serve on the Committee at the pleasure of the Commissioner. The dean of the School of Agriculture of North Carolina State University at Raleigh shall appoint one member of the Committee who shall serve for one term of two years and who shall be a member of the entomology faculty of the University. The vacancy occurring on the Committee by the expired term of the member from the entomology faculty of the University shall be filled by the dean of the School of Agriculture of North Carolina State University at Raleigh who shall designate any person of the dean's choice from the entomology faculty of the University to serve on the Committee at the pleasure of the dean. The Secretary of Health and Human Services shall appoint one member of the Committee who shall be an epidemiologist and who shall serve at the pleasure of the Secretary. The Governor shall appoint two members of the Committee who are actively engaged in the pest control industry, who are licensed in at least two phases of structural pest control as provided under G.S. 106-65.25(a), and who are residents of the State of North Carolina but not affiliates of the same company.

One member of the Committee shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, and one member of the Committee shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121. Vacancies in such appointments shall be filled in accordance with G.S. 120-122.

The initial Committee members from the pest control industry shall be appointed as follows: one for a two-year term and one for a three-year term. The Governor shall appoint one member of the Committee who is a public member and who is unaffiliated with the structural pest control industry, the pesticide industry, the Department of Agriculture and Consumer Services, the Department of Health and Human Services and the School of Agriculture at North Carolina State University at Raleigh. The initial public member shall be appointed for a term of two years, commencing July 1, 1991. After the initial appointments by the Governor, all ensuing appointments by the Governor shall be for terms of four years. Appointments made by the General

Assembly shall be for terms of two years. Any vacancy occurring on the Committee by reason of death, resignation, or otherwise shall be filled by the Governor or the Commissioner of Agriculture, as the case may be, for the unexpired term of the member whose seat is vacant.

(d) The Structural Pest Control Committee shall have the following powers and duties:

- (1) To adopt rules and make policies as provided in this Article.
- (2) To issue, deny, suspend, revoke, modify, or restrict licenses, certified applicator cards, and registered technician cards under the provisions of this Article. In all matters affecting licensure, the decision of the Committee shall constitute the final agency decision.

~~make final decisions under this Article concerning licenses, certified applicator cards, and identification cards. The Committee shall~~

- (3) To report annually to the Board of Agriculture the action taken in the Committee's final decisions and the financial status of the Structural Pest Control Division.

~~The Director shall be responsible for and answerable to the Commissioner of Agriculture as to the operation and conduct of the Structural Pest Control Division.~~

(e) Each member of the Committee who is not an employee of the State shall receive as compensation for services per diem and necessary travel expenses and registration fees in accordance with the provisions as outlined for members of occupational licensing boards and currently provided for in G.S. 93B-5. Such per diem and necessary travel expenses and registration fees shall apply to the same effect that G.S. 93B-5 might hereafter be amended.

Five members of the Committee shall constitute a quorum but no action at any meeting of the Committee shall be taken without four votes in accord. The chairman shall be entitled to vote at all times.

The Committee shall meet at such times and such places in North Carolina as the chairman shall direct; provided, however, that four members of the Committee may call a special meeting of the Committee on five days' notice to the other members thereof.

Except as otherwise provided herein, all members of the Committee shall be appointed or designated, as the case may be, prior to and shall commence their respective terms on July 1, 1967.

At the first meeting of the Committee they shall elect a chairman who shall serve as such at the pleasure of the Committee."

Section 2. G.S. 106-65.24 reads as rewritten:

"§ 106-65.24. Definitions.

~~For the purposes of this Article, the following terms, when used in the Article or the rules and regulations, or orders made pursuant thereto, shall be construed respectively to mean:~~ As used in this Article:

- (1) 'Animal' means all vertebrate and invertebrate species, including but not limited to man and other mammals, birds, fish, and shellfish.

- (1a) 'Applicant for a certified applicator's identification card' means any person making application to use restricted use pesticides in any phase of structural pest control.
- (2) 'Applicant for a license' means any person in charge of any individual, firm, partnership, corporation, association, or any other organization or any combination thereof, making application for a license to engage in structural pest control, control of structural pests or household pests, or fumigation operations, or any person qualified under the terms of this Article.
- (3) 'Attractants' means substances, under whatever name known, which may be toxic to insects and other pests but are used primarily to induce insects and other pests to eat poisoned baits or to enter traps.
- (3a) Repealed by Session Laws 1989, c. 725.
- (3b) 'Branch Office' means any office under the management of a licensee that is not a home office. 'Call office' means any office or telephone answering service other than a licensee's home office which is used by a licensee to conduct structural pest control work and which employs no more than one individual engaged in structural pest control work.
- (4) 'Certified applicator' means any individual who is certified under G.S. 106-65.25 as authorized to use or supervise the use of any pesticide which is classified for restricted use.
- (5) 'Commissioner' means the Commissioner of Agriculture of the State of North Carolina.
- (6) 'Committee' means the Structural Pest Control Committee.
- (6a) 'Deviation' means failure of the licensee or certified applicator or registered technician card holder to follow any rule adopted by the Committee under provisions of this Article.
- (7) 'Device' means any instrument or contrivance (other than a firearm) which is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and other than bacteria, virus, or other microorganism on or in living man or other living animals); but not including equipment used for the application of pesticides when sold separately therefrom.
- (8) Repealed by Session Laws 1975, c. 570, s. 4.
- (8a) 'Director' means the Director of the Structural Pest Control Division of the Department of Agriculture and Consumer Services.
- (9) 'Employee' means any person employed by a licensee with the exceptions of clerical, janitorial, or office maintenance employees, or those employees performing work completely disassociated with the control of insect pests, rodents or the control of wood-destroying organisms.
- (9a) 'Enforcement agency' means the Structural Pest Control Division of the Department of Agriculture and Consumer Services.

- (10) 'Fumigants' means any substance which by itself or in combination with any other substance emits or liberates a gas or gases, fumes or vapors and which gas or gases, fumes or vapors when liberated and when used will destroy vermin, rodents, insects, and other pests; but may be lethal, poisonous, noxious, or dangerous to human life.
- (11) 'Fungi' means wood-decaying fungi.
- (11a) 'Home office' means the licensee's principal place of business. office identified to the enforcement agency by a licensee as his or her principal place of business.
- (12) 'Insect' means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class Insects, comprising six-legged, usually winged forms, as for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as for example, spiders, mites, ticks, centipedes, and sowbugs.
- (13) 'Insecticides' means substances, not fumigants, under whatever name known, used for the destruction or control of insects and similar pests.
- (14) 'Label' means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.
- (14a) The term 'labeling' means all labels and other written, printed, or graphic matter:
 - a. Upon the pesticide (or device) or any of its containers or wrappers;
 - b. Accompanying the pesticide (or device) at any time;
 - c. To which reference is made on the label or in literature accompanying the pesticide (or device) except when accurate nonmisleading reference is made to current official publications of the United States Department of Agriculture or Interior, the United States Public Health Service, state experiment stations, state agricultural colleges, or other similar federal institutions or official agencies of this State or other states authorized by the law to conduct research in the field of pesticides.
- (15) 'Licensee' means ~~the designated person in charge of the business establishment or business entity, whether it be individual, firm, partnership, corporation, association or any organization, or any combination thereof, engaged in pest control work covered under the provisions of this Article. Each branch office of a business establishment is to be in charge of a person who has a license herein provided for.~~ any person qualified for and holding a license for any phase of structural pest control pursuant to this Article.
- (16) 'Person' means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

- (17) 'Pest' means any living organism, including but not limited to, insects, rodents, birds, and fungi, which the Commissioner declares to be a pest.
- (18) 'Pesticide' means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.
- (19) 'Registered pesticide' means a pesticide which has been registered by federal and/or State agency responsible for registering pesticides.
- (19a) 'Registered technician' means any individual who is required to be registered with the Structural Pest Control Division under G.S. 106-65.31.
- (20) 'Repellents' means substances, not fumigants, under whatever name known, which may be toxic to insects and related pests, but are generally employed because of capacity for preventing the entrance or attack of pests.
- (21) 'Restricted use pesticide' means a pesticide which has been designated as such by the federal and/or State agency responsible for registering pesticides.
- (22) 'Rodenticides' means substances, not fumigants, under whatever name known, whether poisonous or otherwise, used for the destruction or control of rodents.
- (23) 'Structural pest control' means the control of wood-destroying organisms or household pests (including, but not limited to, animals such as moths, cockroaches, ants, beetles, flies, mosquitoes, ticks, wasps, bees, fleas, mites, silverfish, millipedes, centipedes, sowbugs, crickets, termites, wood borers, etc.), including the identification of infestations or infections, the making of inspections, the use of pesticides, including insecticides, repellents, attractants, rodenticides, fungicides, and fumigants, as well as all other substances, mechanical devices or structural modifications under whatever name known, for the purpose of preventing, controlling and eradicating insects, vermin, rodents and other pests in household structures, commercial buildings, and other structures (including household structures, commercial buildings and other structures in all stages of construction), and outside areas, as well as all phases of fumigation, including treatment of products by vacuum fumigation, and the fumigation of railroad cars, trucks, ships, and airplanes, or any one or any combination thereof.
- (24) 'Under the direct supervision of a certified applicator' means, unless otherwise prescribed by its labeling, a pesticide shall be considered to be applied under the direct supervision of a certified applicator if it is applied by a competent person acting under the instructions and control of a certified applicator who is available if and when needed, even though such certified applicator is not physically present at the time and place the pesticide is applied."

Section 3. G.S. 106-65.25 reads as rewritten:

"§ 106-65.25. Phases of structural pest control; prohibited acts; license required; exceptions.

(a) The Committee shall classify license phases to be issued under this Article. Separate phases or subphases shall be specified for:

- (1) Control of household pests by any method other than fumigation ('P' phase);
- (2) Control of wood-destroying organisms by any method other than fumigation ('W' phase); and
- (3) Fumigation ('F' phase).

(b) It shall be unlawful for any person ~~to act in the capacity of a structural pest control licensee, to:~~

- (1) ~~advertise~~ Advertise as, offer to engage in, or engage in or supervise work as a manager, owner, or owner-operator in any phase of structural pest control or otherwise act in the capacity of a structural pest control licensee unless he the person is licensed as provided for in pursuant to this Article. Article or has engaged the services of a licensee as a full-time regular employee who is responsible for the structural pest control performed by the company. A license is required for each phase of structural pest control. No person may hold
- (2) ~~Hold more than one license for each phase. phase of structural pest control. The licensee shall be responsible for the supervision of the work performed under his license.~~
- (3) Use a restricted use pesticide in any phase of structural pest control, whether it be on the person's own property or on the property of another, unless the person:
 - a. Qualifies as a certified applicator for that phase of structural pest control; or
 - b. Is under the direct supervision of a certified applicator who possesses a valid certified applicator's identification card for that phase of structural pest control.
- (4) Use or supervise the use of restricted use pesticides in demonstrating or supervising a demonstration to the public of the proper use and techniques of the application of pesticides or conducting field research with pesticides unless:
 - a. The person possesses a valid certified applicator's identification card;
 - b. The person is conducting laboratory research involving restricted use pesticides; or
 - c. The person is a doctor of medicine or a doctor of veterinary medicine applying restricted use pesticides as drugs or medication during the course of his or her normal professional practice.

This subdivision applies to all persons, including cooperative extension specialists demonstrating pesticide products, individuals

demonstrating methods used in public programs, and local, State, federal, commercial, and other persons conducting field research on or using restricted use pesticides.

~~(c) A licensee may not establish any office other than his home office from which more than one employee is performing structural pest control work unless a separate licensee is placed in charge of that office. It shall be unlawful for any licensee to do any of the following:~~

- ~~(1) Establish, be in charge of, or manage any branch office in excess of the number of branch offices that may be established, supervised, or managed by a licensee as set forth in rules adopted by the Committee.~~
- ~~(2) Fail to supervise the structural pest control performed out of the licensee's home office or any branch office under the licensee's management.~~
- ~~(3) Allow his or her license to be used by any person or company for which he or she is not a full-time regular employee actively and personally engaged in the supervision of the structural pest control performed under the license.~~
- ~~(4) Use any pesticide, material, or device prohibited by the Committee or use any approved pesticide, material, or device in a manner prohibited by the Committee.~~
- ~~(5) Use or supervise the use of restricted use pesticides in a phase of structural pest control for which the person is not licensed or qualified as a certified applicator unless the person's use is under the supervision of a licensee or certified applicator certified in that phase of structural pest control.~~

~~(c1) The Committee shall adopt rules that permit a licensee to establish branch offices in addition to a home office. In no event shall the rules adopted restrict the number of branch offices a licensee can establish, supervise, or manage to fewer than two branch offices. The rules shall include provisions to ensure that the licensee can adequately supervise all structural pest control performed from the offices and under his or her license.~~

~~(d) A license is not required for any person (or his the person's full-time regular employees) doing structural pest control work on his the person's own property: provided, however, that no property. No fee may be charged for structural pest control work performed by any such person.~~

~~(e) Any person who uses a restricted use pesticide in any phase of structural pest control, whether it be on his own property or on the property of another, must:~~

- ~~(1) Qualify as a certified applicator for that phase of structural pest control; or~~
- ~~(2) Be under the direct supervision of a certified applicator possessing a valid identification card for that phase of structural pest control.~~

~~(f) Persons who demonstrate to the public the proper use and techniques of application of pesticides or supervise such demonstration or conduct field research with pesticides, and in doing so, use or supervise the use of restricted use pesticides must~~

~~possess a valid certified applicator's identification card. Included in the first group are such persons as extension representatives demonstrating pesticide products and those individuals demonstrating methods used on public programs. The second group includes local, State, federal, commercial, and other persons conducting field research on or utilizing restricted use pesticides.~~

~~This subsection does not apply to the following persons:~~

- ~~(1) Persons conducting laboratory type research involving restricted use pesticides; or~~
- ~~(2) Doctors of medicine and doctors of veterinary medicine applying restricted use pesticides as drugs or medication during the course of their normal practice.~~

(g) Any person issued a license for any one or any combination of the phases of structural pest control shall be deemed to be a 'certified applicator' to use or supervise the use of restricted use pesticides so long as the pesticides are being used only in the ~~phase(s)~~ phase of structural pest control for which the person is licensed.

(h) Licenses and certified applicator's identification cards may only be issued to individuals. License certificates and certified applicator's identification cards shall be issued in the name of the individual, shall bear the name and address of ~~his~~ the individual's business or employer's business and shall indicate the phase or phases for which the individual is qualified and such other information as the Committee may specify."

Section 4. G.S. 106-65.26(d) reads as rewritten:

"(d) All applicants for license must have practical experience and knowledge of practical and scientific facts underlying the practice of structural pest control, control of wood-destroying ~~organisms~~ organisms, or fumigation. ~~No person who has within five years of his application been convicted of or has entered a plea of guilty or a plea of nolo contendere to a crime involving moral turpitude, or who has forfeited bond to a charge involving moral turpitude, shall be entitled to take an examination or the issuance of a license under the provisions of this Article. No applicant is entitled to take an examination for the issuance of a license pursuant to this Article who has within five years of the date of application been convicted, entered a plea of guilty or of nolo contendere, or forfeited bond in any State or federal court for a violation of G.S. 106-65.25(b), any felony, or any crime involving moral turpitude.~~"

Section 5. G.S. 106-65.27(c1) reads as rewritten:

"(c1) When there is a transfer of ownership, management, operation of a structural pest control business or in the event of the death or disability of a licensee there shall be not more than a total of 90 days during any 12-month period in which said business shall operate without a licensee assigned to ~~it~~ it; provided that, in the event of the death or disability of a licensee, the Committee shall have the authority to grant up to an additional 90 days within the 12-month period in which a business may operate without a licensee assigned to it.

The owner, partnership, corporation, or other entity operating said business shall, within 10 days of such transfer or disability or within 30 days of death, designate in writing to the Division a certified applicator who shall be responsible for and in charge

of the structural pest control operations of said business during the 90-day period. If the owner, partnership, corporation, or other entity operating the business fails to designate a certified applicator who shall be responsible for the operation of the business during the 90-day period, the business shall cease all structural pest control activities upon expiration of the applicable notification period and shall not resume operations until a certified applicator is so designated.

During the 90-day period the use of any restricted use pesticide shall be by or under the direct supervision of the certified applicator designated in writing to the Division. The designated certified applicator shall be responsible for correcting all deviations on all existing contracts and for all work performed under his supervision.

The new licensee shall be responsible for correcting all deviations on all existing contracts and for all work performed under his supervision."

Section 6. G.S. 106-65.28 is amended by adding a new subsection to read:

"(g) Any pesticide, material, or device for which such information is requested by the Committee pursuant to G.S. 106-65.29(9a) and denied by the registrant or manufacturer shall not be used in any structural pest control performed for compensation and may only be used by an individual performing structural pest control on the individual's own property."

Section 7. G.S. 106-65.29 reads as rewritten:

"§ 106-65.29. Rules and regulations.

In order to ensure that persons licensed and certified under this Article are capable of performing a high quality of workmanship, the Committee ~~is hereby authorized and empowered to make~~ may adopt rules and regulations with respect to:

- (1) The amount and kind of training required of an applicant for a license and certified applicator's card to engage in any one or more of the three phases of structural pest control, and the amount and kind of training required of an applicant for a registered technician's identification card.
- (2) The type, frequency and passing score of any examination given an applicant for a license and certified applicator's card under this Article.
- (3) The amount, kind and frequency of continuing education required of a licensee and certified applicator.
- (4) The methods and materials to be used in performing any work authorized by the issuance of a license and certified applicator's card under this Article.
- (5) The business records to be made and maintained by licensees and certified applicators under this Article necessary for the Committee to determine whether the licensee and certified applicator is performing a high quality of workmanship.
- (6) The credentials and identification required of licensees and certified applicators, their employees and equipment, including service vehicles, when engaged in any work defined under this Article.
- (7) Safety methods and procedures for structural pest control work.

- (8) Fees for reinspection following a finding of a deviation, as defined by the Committee.
- (9) Fees for training materials provided by the Committee or the Division. Such fees may be placed in a revolving fund to be used for training and continuing education purposes and shall not revert to the General Fund.
- (9a) Efficacy data and other technical information to be submitted by registrants and manufacturers of pesticides and other materials or devices for review and approval, in order for the Committee and the enforcement agency to ensure the efficacy of pesticides and other materials or devices used in structural pest control in this State. This subdivision does not require either the Committee or the enforcement agency to disclose any information that is confidential information within the meaning of G.S. 132-1.2.
- (10) The policies and programs set forth in this Article."

Section 8. G.S. 106-65.30 reads as rewritten:

"§ 106-65.30. Inspectors; inspections and reports of violations; designation of resident agent.

(a) For the enforcement of the provisions of this Article the Commissioner is authorized to appoint one or more qualified inspectors and such other employees as are necessary in order to carry out and enforce the provisions of this Article. The inspectors shall be known as "structural pest control inspectors." The Commissioner ~~shall~~may enforce compliance with the provisions of this Article by making or causing to be made periodical and unannounced inspections of work done by licensees and certified applicators under this Article who engage in or supervise any one or more phases of structural pest control as defined in G.S. 106-65.25. The Commissioner shall cause the prompt and diligent investigation of all reports of violations of the provisions of this Article and all rules and regulations adopted pursuant to the provisions hereof; provided, however, no inspection shall be made by a representative of the Commissioner of any property without first securing the permission of the owner or occupant thereof.

(b) Prior to the issuance or renewal of a license or certified applicator's identification card, every nonresident owner of a business performing any phase of structural pest control work shall designate in writing to the Commissioner or his authorized agent a resident agent upon whom service of notice or process may be made to enforce the provisions of this Article and rules and regulations adopted pursuant to the provisions hereof or any civil or criminal liabilities arising hereunder.

(c) The Commissioner shall have authority to appoint personnel of the Structural Pest Control Division as special inspectors and said special inspectors are hereby vested with the authority to arrest with a warrant, or to arrest without a warrant when a violation of this Article is being committed in their presence or they have reasonable grounds to believe that a violation of this Article is being committed in their presence. Said special inspectors shall take offenders before the several courts of this State for prosecution or other proceedings. The provisions of this section do not apply to any

person holding a valid structural pest control license, or a certified applicator's identification card, or a registered technician's identification card as issued under the provisions of this Article. Special inspectors shall not be entitled to the benefits of the Law Enforcement Officers' Benefit and Retirement Fund or the benefits of the Law Enforcement Officers' and Others Death Benefit Act as provided for in Articles 12 and 12A of Chapter 143 of the General Statutes, respectively."

Section 9. G.S. 106-65.31(b) reads as rewritten:

"(b) License. – The fee for the issuance or renewal of a license for any one phase of structural pest control shall be ~~one hundred twenty five dollars (\$125.00).~~ one hundred fifty dollars (\$150.00). Each additional phase shall be ~~fifty dollars (\$50.00).~~ sixty-five dollars (\$65.00). The fee for each subphase shall be ~~ten dollars (\$10.00).~~ fifteen dollars (\$15.00). Licenses shall expire on June 30 of each year and shall be renewed annually. All licensees who fail or neglect to renew their license on or before June 30, but who make application before January 1 of the following year, may have their license renewed without having to be reexamined, unless the applicant is scheduled for periodic reexamination under regulations adopted pursuant to G.S. 106-65.27(d)(3). No structural pest control work may be performed until the license has been renewed or until a new license has been issued.

Any licensee whose employment is terminated by his employer or any licensee who is transferred to another company or location other than the company or location shown on his license certificate, may at any time, have his license reissued for the remainder of the license year for a fee of ten dollars (\$10.00).

Any licensee whose license is lost or destroyed may secure a duplicate license for a fee of ten dollars (\$10.00)."

Section 10. G.S. 106-65.33 reads as rewritten:

"§ 106-65.33. Violation of Article, falsification of records, or misuse of registered pesticide a misdemeanor.

(a) Any person who shall be adjudged to have violated any provision of this Article or who falsifies any records required to be kept by this Article or by the rules and regulations pursuant to this Article or who uses a registered pesticide in a manner inconsistent with its labeling shall be guilty of a Class 2 misdemeanor. In addition, if any person continues to violate or further violates any provision of this Article after written notice from the Committee, the court may determine that each day during which the violation continued or is repeated constitutes a separate violation subject to the foregoing penalties.

(b) Nothing in this Article shall be construed to require the Committee or the Commissioner to initiate, or attempt to initiate, any criminal or administrative proceedings under this Article for a minor violation of this Article whenever the Committee or Commissioner determines that the public interest will be adequately served in the circumstances by a suitable written notice or warning."

Section 11. G.S. 106-65.41 reads as rewritten:

"§ 106-65.41. Civil penalties.

A civil penalty of not more than two thousand dollars (\$2,000) may be assessed by the Committee against any person for any one or more of the causes set forth in G.S.

106-65.28(a)(1) through ~~(12)~~-(12) and G.S. 106-65.28(a)(14) and (15), or who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article. In determining the amount of any penalty, the Committee shall consider the degree and extent of harm caused by the violation. No civil penalty may be assessed under this section unless the person has been given an opportunity for a hearing pursuant to Chapter 150B of the General Statutes. Assessments may be collected, following judicial review, if any, of the Committee's final decision imposing the assessment, in any lawful manner for the collection of a debt.

The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

Section 12. This act becomes effective October 1, 1999.

In the General Assembly read three times and ratified this the 19th day of July, 1999.

s/ Dennis A. Wicker
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 9:54 p.m. this 4th day of August, 1999