

**CHAPTER 460J**  
**PEST CONTROL OPERATORS**

**SECTION**

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**§460J-1 Definitions.** As used in this chapter:

"Board" means the pest control board.

"Director" means the director of commerce and consumer affairs.

"Efficacy and safety data" means data from experiments conducted by qualified scientists to determine the efficacy and safety of a nonchemical pest control device.

"Fumigation" means the use of any substance or substances that emit or liberate gases, fumes, or vapors which may be used for the destruction or control of insects, vermin, rodents, or other pests, which, in the opinion of the board, may be lethal, poisonous, noxious, or dangerous to human life.

"Household pests" means those pests other than wood-destroying pests which invade households and other structures, including, but not limited to, rodents, vermin, insects, and birds.

"Nonchemical pest control device" means any device that purports to eliminate or control pests by attracting, repelling, or killing pests without the use of chemicals. The device shall include, but not be limited to, electromagnetic waves, sound and ultrasound, cosmic, and other waves.

"Pest control" means, with respect to wood-destroying pests, or other pests which may invade households or other structures, including railroad cars, ships, docks, trucks, airplanes, or the contents thereof, the engaging in, offering to engage in, advertising for, soliciting, or performing the following for hire:

- (1) Identifying pests or infestations;
- (2) Making an inspection for the purpose of identifying or attempting to identify infestations of household or other structures by pests;
- (3) Making inspection reports, recommendations, estimates, and bids, whether oral or written, with respect to infestations; or
- (4) Making contracts, or submitting bids for, or the use of avicides, insecticides, pesticides, rodenticides, fumigants, or allied chemicals or substances, or mechanical devices, for the purpose of eliminating, exterminating, controlling, or preventing infestations of pests or organisms.

"Pest control operator" means any person who personally or through others offers to undertake or practice, or holds oneself out as being able to undertake or practice, or does undertake or practice pest control.

**§460J-2 Pest control board.** (a) There shall be a pest control board of nine members. Six members of the board shall be appointed by the governor; of which four shall have been for a period of not less than five years preceding the date of their appointment, licensed pest control operators actively engaged in the business of pest control; and two shall be public members. Three members of the board shall serve on an ex officio voting basis: the chairperson of the board of agriculture or the chairperson's representative, the director of health or the director's representative, and the chairperson of the department of entomology of the college of tropical agriculture and human resources of the University of Hawaii or the chairperson's representative. No two members of the board shall be employed by or associated with the same business firm engaged in pest control.

(b) Except for members of the board first appointed, no one, except the ex officio and public members, shall be eligible for appointment who does not at the time of the member's appointment hold a valid and unexpired license to operate as a pest control operator.

**§460J-3 Powers and duties of board.** In addition to any other powers and duties authorized by law, the board shall:

- (1) Grant licenses to operators pursuant to this chapter;
- (2) Adopt, amend, or repeal rules as it may deem necessary to effectuate this chapter and carry out the purpose thereof which purpose is the protection of the general public. All rules shall be adopted pursuant to chapter 91. The rules shall:
  - (A) Forbid acts or practices deemed by the board to be detrimental to the accomplishment of the purpose of this chapter;
  - (B) Require operators to make reports to the board containing items of information that will enable the board to improve the enforcement of this chapter and its rules to fully effectuate the purposes of this chapter;
  - (C) Require operators to furnish reports to owners containing matters of information as the board deems necessary to promote the purpose of this chapter;
  - (D) Require liability and worker' compensation insurance verification for license renewals; and
  - (E) Provide for the development of an enforcement information reporting system;
- (3) Enforce this chapter and rules adopted pursuant thereto;
- (4) Suspend or revoke any license for any cause prescribed by this chapter, or for any violation of the rules, and refuse to grant any license for any cause that would be grounds for revocation or suspension of a license; and
- (5) Direct the executive secretary to publish and distribute pamphlets and circulars containing information as it deems proper to further the accomplishment of the purpose of this chapter.

**§460J-4 REPEALED.**

**§460J-5 REPEALED.**

**§460J-6 Licenses required.** No person within the purview of this chapter shall act or assume to act, or advertise, as a pest control operator or be engaged in the business of pest control without a license previously obtained under and in compliance with this chapter and the rules of the board.

**[§460J-7] Investigation permitted.** The board may investigate, classify, and qualify applicants for operators' licenses.

**§460J-8 License requirements.** To obtain an operator's license, a person shall fulfill the following requirements:

- (1) File an application as prescribed by the board;
- (2) Possess a history of honesty, truthfulness, financial integrity, and fair dealing;
- (3) Be at least eighteen years of age;
- (4) Satisfy the board's examination and experience requirements;
- (5) If a partnership, joint venture, corporation, or sole proprietorship, be under the direct management of a responsible managing employee or operator with an appropriate license;
- (6) Submit satisfactory proof to the board that the person has obtained workers' compensation insurance or has been authorized to act as a self-insurer as required by chapter 386 or is excluded from the requirements of chapter 386;
- (7) Submit satisfactory proof to the board that the person has obtained liability insurance, pursuant to section 460J-25; and
- (8) Provide other documentation as required by the board.

**[§460J-8.5] Requirements to maintain license.** (a) A licensed pest control operator shall have and maintain in full force and effect the following:

- (1) Workers' compensation insurance, unless the licensee is authorized to act as a self-insurer under chapter 386 or is excluded from the requirements of chapter 386; and
- (2) Liability insurance from an insurance company or agency for comprehensive personal injury and property damage liability in an amount prescribed by the board through its rules.

(b) Failure, refusal, or neglect of any licensed pest control operator to maintain in full force and effect the required workers' compensation insurance or liability insurance shall cause the automatic forfeiture of the license of the pest control operator effective as of the date of expiration or cancellation of the pest control operator's workers' compensation insurance or liability insurance.

(c) The pest control operator shall immediately notify the board of termination or cancellation of any insurance required under the chapter. Failure to notify the board shall subject the licensee to discipline pursuant to section 460J-15.

(d) The board shall not restore the forfeited license until satisfactory proof of continuous or replacement insurance coverage is submitted to the board as required by this section.

(e) Failure to submit proof of continuous or replacement coverage required by subsection (d) within sixty days after the date of forfeiture shall result in the forfeiture of all fees and shall require the person to apply as a new applicant.

(f) A licensee, within sixty days after receipt of the notification of the forfeiture, may request an administrative hearing to review the forfeiture pursuant to chapter 91. A request for an administrative hearing shall not stay or affect the provisions of subsection (d) and (e).

**§460J-9 Application; fees.** (a) Every applicant for a license under this chapter shall file an application on forms prescribed or required by the board, and shall furnish any additional information bearing upon the issuance of the license as the board requires. Every application shall be accompanied by the application and examination fees. In the case of a partnership, joint venture, or corporation, any licensed member or officer therefor may sign the application on behalf of the applicant and every application shall be accompanied by the application and license fees. In the case of a proprietorship, every application shall be accompanied by the application and license fees.

(b) Every application for a license by an individual who passed the examination shall be accompanied by a license fee.

**[§460J-10] Form for licenses.** The form of every license shall be prescribed by the board and shall be issued in the name of the board.

**[§460J-11] Place of business and posting of license.** A licensed operator shall have and maintain a definite place of business in the State and shall display therein his operator's license.

**§460J-12 Classification of branches of pest control; examinations; rules; subjects of examination; passing grade.** (a) Licenses issued to operators or field representatives shall be limited to the branch or branches of pest control for which the applicant has qualified by application and examination. For the purpose of delimiting the type and character of work authorized by the various branch licenses hereinafter set forth, the practice of pest control is classified into the following branches:

- (1) Branch 1. Fumigation. The practice relating to the control of household and wood-destroying pests by fumigation with poisonous or lethal gases.
- (2) Branch 2. General Pest. The practice relating to the control of household pests, other than termites, excluding fumigation with poisonous or lethal gases.
- (3) Branch 3. Termite. The practice relating to the control of wood-destroying pests by the use of insecticides and corrections, excluding fumigation with poisonous or lethal gases.

The board may issue a license for a combination of two or more branches for which an applicant qualifies under this chapter, and such combination license shall be considered one license for the purpose of determining the fee to be charged under section 460J-14.

(b) Unless otherwise authorized by the board, all written examinations shall be in ink in books supplied by the board. All examination papers shall be kept for a period of one year, upon the expiration of which such papers may be destroyed on order of the board. Each applicant for license shall be designated by a number instead of by name and the identity thereof

shall not be disclosed until the examination papers are graded. No person shall be admitted to the examination room except the examining personnel and the applicants for license.

(c) The board shall make rules for the purpose of securing fair, impartial, and proper examinations.

(d) Licensees of any branch may be licensed in other branches upon complying with the requirements for qualification and by examination in such other branches. No failure of the licensee to pass examination in such other branches shall have any effect on existing licenses.

(e) The examinations shall be in each of the subjects specified in the branch or branches relating to the respective applications. A license according to such applications shall be granted to any applicant who scores a passing grade on the examination in each of the subjects of such branch or branches.

**§460J-13 Examination; operator's license.** The board shall ascertain by written examination that an applicant for a license as operator is qualified in the use and understanding of all of the following:

- (1) The English language, including reading, writing, and spelling.
- (2) The building and safety laws of the State and any of its political subdivisions, if the branch or branches of pest control for which the applicant is applying require such knowledge.
- (3) The labor laws of the State.
- (4) The provisions of this chapter.
- (5) Poisonous and other dangerous chemicals used in pest control, if the branch license or licenses for which the applicant is applying, require such knowledge.
- (6) The theory and practice of pest control in the branch or branches for which the applicant desires to be licensed.
- (7) Such other state laws, safety or health measures, or practices as are reasonably within the scope of pest control in the various branches.

**§460J-14 Fees; biennial renewal; inactive license.** (a) The biennial renewal fee shall be paid to the board on or before June 30 of each even-numbered year. Failure, neglect, or refusal of any duly licensed operator to pay the biennial renewal fee shall constitute a forfeiture of the person's license. Any license may be restored upon written application therefor within one year from the due date of the renewal fee and the payment of the delinquent fee plus an amount equal to ten per cent thereof.

(b) Upon written request of a licensee, the board may place the licensee's active license on an inactive status. The licensee, upon request and payment of the inactive license fee may continue on inactive status. The license may be reactivated at any time by making a written request to the board and by fulfilling the requirements established by the board, including the payment of the appropriate fees. During the inactive period, a licensee on inactive status shall not engage in the practice of pest control that would require a license. Any person who violates this prohibition shall be subject to discipline under this chapter and the board's rules.

(c) For purposes of this chapter, the dishonoring of any check upon first deposit shall constitute a failure to meet the fee requirements. Failure, neglect, or refusal of any licensee on inactive status to pay the inactive license fee shall constitute a forfeiture of the license.

**§460J-15 Revocation, suspension, and refusal of renewal of licenses; prohibition against certain offenses, etc.** (a) In addition to any other actions authorized by law, the board may revoke, suspend, or refuse to renew any license issued hereunder, for any cause authorized by law, including but not limited to the following:

- (1) Departure from, or disregard of, plans or specifications in the performance of pest control work in any material respect, without consent of the owner or the owner's authorized representative;
- (2) Violation of any law or rule of the State or any county relating to building, pesticide use, safety, or labor, where the law or rule has a rational relationship to the qualifications, functions, duties, or responsibilities of the pest control operator, including but not limited to a violation of the Hawaii pesticides law;
- (3) Misrepresentation of a material fact by the applicant in obtaining a license;
- (4) Failure on the part of a licensee to complete any operation for the price stated in the contract or in any agreed upon modification to the contract;
- (5) Failure to comply with this chapter, or any rule adopted by the board, or the furnishing of a report of inspection without the making of a bona fide inspection of the premises for termites;
- (6) The commission of any grossly negligent or fraudulent act by the licensee as an operator;
- (7) The negligent handling or use of any poisonous exterminating agent without regard to public safety;
- (8) Fraud or misrepresentation, after inspection, by any licensee engaged in pest control work relating to any infestation or infection of termites found in property or structures, or respecting any conditions of the structure that would ordinarily subject structures to attack by termites whether or not a report was made pursuant to sections 460J-19 and 460J-20;
- (9) Failure of an operator to make and keep all inspection reports, contracts, documents, and records, other than financial records, for a period of not less than two years after completion of any work or operation for the control of termites;
- (10) Wilful failure to pay when due a debt incurred for services or materials rendered or purchased in connection with the operator's operations as an operator when the operator has the ability to pay or when the operator has received sufficient funds therefor as payment for the particular operation for which the services or materials were rendered or purchased;
- (11) The false denial of any debt due or the validity of the claim therefor with intent to secure for the licensee, the licensee's employer, or other person, any discount of the debt or with intent to hinder, delay, or defraud the person to whom the debt is due;

- (12) Failure to secure or maintain liability insurance or workers' compensation insurance when not authorized to act as a self-insurer under chapter 386, or when not excluded from the requirements of chapter 386; or
- (13) Knowingly entering into a contract with an unlicensed operator involving work or activity for the performance of which licensing is required under this chapter.
  - (b) During a period of disciplinary sanction, a person shall be prohibited from serving as an officer, director, associate, partner, or responsible managing employee of a licensee under the following circumstances:
    - (1) The person's license has been revoked and the person has not been granted a new license;
    - (2) The person's license is under suspension; or
    - (3) The person has been a member, officer, director, associate, or responsible managing employee of any partnership, corporation, firm, or association whose license is revoked or is under suspension, and while acting as such a member, officer, director, associate, or responsible managing employee, the person had knowledge of or participated in any of the prohibited acts for which the license was suspended or revoked.

**§460J-16 Hearings.** In all proceedings before it, the board and each member thereof shall have the same powers respecting administering oaths, compelling the attendance of witnesses and the production of documentary evidence, and examining witnesses as are possessed by circuit judges at chambers. In case of disobedience by any person of any order of the board or of any member thereof, or of any subpoena issued by it or a member, or the refusal of any witness to testify to any matter regarding which the witness may be questioned lawfully, any circuit judge, on application by the board or a member thereof, shall compel obedience as in the case of disobedience of the requirements of a subpoena issued by a circuit court, or a refusal to testify therein.

**§460J-17 Death or dissociation.** No partnership, joint venture, or corporation shall be deemed to have violated this chapter by acting or assuming to act as a pest control operator after the death or dissociation of a licensee who had the direct management of the pest control business thereof prior to final disposition by the board of an application for a license made within thirty days from the date of the death or dissociation.

**§460J-18 REPEALED.**

**§460J-19 Termite control contracts and written inspection reports; form and contents; filing and delivery; control service; control service contract.** (a) This section shall apply to contracts for the control of termites and written inspection reports.

(b) No licensee shall commence work on a contract for the control of termites until an inspection has been made and a written inspection report and a written estimate have been



approved by the person requesting the work; provided that no written inspection report shall be required in the event that a live infestation exists. The written inspection report shall be on a PC-9 form prescribed by the board and shall include the following:

- (1) The date of the inspection and the name of the person making the inspection;
- (2) The name and address of the person or firm ordering the report;
- (3) The name and address of any person who is a party in interest to whom the licensee is to send certified copies of inspection reports and completion notices;
- (4) The address or location of the property;
- (5) A general description of the building or premises inspected; and
- (6) The location of visible termite infestations apparent to the licensee.

The licensee shall not be responsible for an infestation unless its presence was visible at the time of the inspection. There shall be no guarantees or warranties on the written inspection report.

(c) Control service is defined as the regular reinspection of a property after a written inspection report has been made in compliance with this section and such corrections as have been agreed upon have been completed. Under a control service agreement, a licensee shall refer to the original written inspection report and contract in such manner as to identify them clearly, and the original written inspection report shall be assumed to be a true report of conditions as originally issued, except it may be modified after a control service inspection. A licensee is not required to issue a report as outlined in paragraphs (1) to (6) after each control service inspection. If after control service inspection, no modification of the original written inspection report is made in writing, then it will be assumed that conditions are as originally reported. A control service contract shall identify the particular types of termites and the portions of the buildings or structures covered by the contract.

**§460J-20 Document expressing an opinion or making statement regarding the presence or absence of termites; contents.** Any work contract, billing, agreement, letter of work completed, or other correspondence or document, expressing an opinion or making a statement relating to the presence or absence of termites shall refer to the report defined in section 460J-19(b). Such documents shall indicate specifically whether all of the recommended work as set forth in the inspection report was completed, or, if not, it shall indicate specifically which recommendations were not completed.

**§460J-21 Fumigation under supervision.** Fumigation shall be performed only under the direct supervision of an individual who is an applicator certified for structural fumigation by the department of agriculture.

**[§460J-22] Fumigation job log; preservation and inspection.** A licensee shall maintain a log of each fumigation job performed by the licensee in this State. The log shall be in the form required by the regulations of the board and shall be preserved for a period of at least two years, during which time it shall be available at all times during business hours for inspection by the board and its authorized representatives.

**[§460J-23] Pest control.** A pest control operator may secure pest control work, identify infestations or infections, make inspections, and submit bids or otherwise contract for pest control work. A pest control operator may hire or employ individuals who are not licensed under this chapter to perform work on contracts.

**[§460J-23.5] Subcontracting.** Notwithstanding any provisions of this chapter, any individual who is licensed by the board as an operator in both the branches of general pest and termite control may subcontract for the actual performance of fumigation with an individual who is licensed by the board as an operator in the branch of fumigation.

Nothing herein contained shall permit or authorize any licensee to perform, or attempt to perform, advertise, or hold out to the public or to any person that the licensee is authorized, qualified, or licensed to perform, pest control work in any branch, or by any method, for which the licensee is not licensed.

Subcontracting of work, as permitted herein, shall not relieve the prime contractor or the subcontractor from responsibility for, or from disciplinary action because of, any act or omission on the contractor's or subcontractor's part, which would otherwise be a ground for disciplinary action.

**§460J-24 Application of soil treatment pest control work.** A licensed contractor may contract for the performance of any soil treatment pest control work to eliminate, exterminate, control, or prevent infestations or infections of pests from the ground beneath or adjacent to any existing building or structure or in or upon any site upon which any building or structure is to be constructed, but the actual performance of any such work shall be done by a licensed pest control operator.

**§460J-24.5 Nonchemical pest control devices efficacy and safety data; examination and testing; approval prior to sale, lease, or transfer of devices in the State.** (a) All manufacturers or their representatives intending to sell, lease, or provide through other means a nonchemical pest control device in the State shall submit efficacy and safety data prior to sale, lease, or transfer to the department of agriculture; provided such requirement for submission of efficacy and safety data may include the furnishing of specimen devices or samples. The department of agriculture or its designated representative shall conduct such examination and testing as may be necessary to ascertain the reliability, efficacy and safety data and actual or potential adverse effects upon human health and safety of such device. The costs of conducting such tests shall be borne by the manufacturer or the manufacturer's representative. The department of agriculture shall adopt and enforce rules pursuant to chapter 91 to carry out this section.

(b) Any person including a wholesaler, retailer, or pest control operator who sells, leases, or provides through other means a device which has not been approved as provided in subsection (a) shall be subject to penalty as provided in section 460J-27.

**§460J-25 Insurance.** No person shall engage in the business of pest control unless the person has filed with the board a general liability and worker' compensation insurance policy approved by the board in an amount prescribed by the board through its rules; provided that no employee of any company need have such policy in effect with respect to work covered by a policy of the company by which the employee is employed. This section shall not apply to vault fumigation.

**§460J-26 Exemptions.** This chapter shall not apply to:

- (1) Officials of the federal government on military reservations;
- (2) Personnel of the United States Department of Agriculture, the state department of agriculture, or state department of land and natural resources, or the United States Public Health Service in the performance of their official duties;
- (3) Other government employees who conduct research on pesticides or pest control or who use pesticides in the performance of their duties;
- (4) Qualified scientific personnel specially exempted by the board;
- (5) Persons engaged in pest control for agricultural purposes; or
- (6) Engineers or architects licensed under chapter 464 who:
  - (A) Draft or prepare design documents that prescribe anti-termite or anti-pest measures, including the specification of termiticides, that are required by the building code and other governmental agencies;
  - (B) Conduct building condition or assessment surveys to observe and evaluate the condition of the building or structure, if the primary purpose of these surveys is not to report on the identification of infestations; or
  - (C) Prepare reports based on the results of the surveys specified in subparagraph (B) that identify the location, extent, and probable cause of the pest damage (e.g., "termite damage"); provided that where a report concerns termite damage, the particular type or species of termite shall not be specified unless the report is written in consultation with a licensed pest control operator licensed in termite control or other duly recognized expert in urban entomology, such as an insect taxonomist or urban entomologist with expertise in the identification or control of termites; and provided further that if a licensed pest control operator is not consulted, the report shall include a recommendation that a licensed pest control operator be contracted for further assessment or treatment.

**§460J-27 Penalties for unlicensed acts.** Any person or business organization that violates the provisions of section 460J-6 shall not be fined less than \$5,000.

**[§460J-27.5] Advertising.** (a) It is a misdemeanor for any person, including a person who is exempt by section 460J-26 from this chapter, to advertise with or without any limiting qualifications as a pest control operator unless the person holds a valid license under this chapter for the goods and services advertised.

"Advertise" as used in this section includes but is not limited to:

- (1) The issuance of any card, sign, or device to any person;
- (2) The causing, permitting, or allowing of any sign or marking on or in any building, vehicle, or structure;
- (3) Advertising in any newspaper or magazine;
- (4) Any listing or advertising in any directory under a classification or heading that includes the word "pest control"; or
- (5) Commercials broadcast by airwave transmission.

(b) A pest control operator may advertise in print or broadcast medium, as defined in subsection (a) only if the pest control operator includes in the advertisement or listing the pest control operator's applicable and current license number, and provides proof of the number's validity to the publisher or producer of the advertising medium. The publisher or producer of a print or broadcast advertising medium shall refuse to publish or broadcast an advertisement or listing for a pest control operator who does not comply with the provisions of this subsection. A publisher or producer who obtains a signed statement from the pest control operator that states that the pest control operator:

- (1) Has read the text of the advertisement or listing;
- (2) Has an applicable and current pest control operator's license for the goods and services advertised;
- (3) Has included all applicable and current license numbers in the advertisement or listing; and
- (4) Is aware of civil and criminal penalties for advertising as a pest control operator without a valid license;

shall be entitled to a rebuttable presumption of compliance with this subsection.

(c) Upon entry of either a final order of the pest control board pursuant to chapter 91 or a judgment by a court of competent jurisdiction finding that a person has advertised in violation of subsection (a), the public utility furnishing telephone service to the person shall disconnect the telephone number contained in the advertisement or listing.

(d) The publisher or producer of a print or broadcast advertising medium shall not be liable in any suit, action, or claim arising from its refusal to list or accept advertisements pursuant to subsection (b). Good faith compliance by a public utility with subsection (c) is a complete defense to any civil or criminal action brought against it arising from the termination of telephone service.

**[§460J-28] Administrative penalties.** Any person who violates this chapter or the rules adopted pursuant thereto may be fined not more than \$2,500 for each violation.

**§460J-29 Penal sanctions.** Any person who violates this chapter, or who conspires with another to violate this chapter, shall be fined not more than \$2,500 or imprisoned for not more than six months, or both.

**[§460J-30] Remedies or penalties cumulative.** Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this State.

**§460J-31 REPEALED.**