

CHAPTER 432

H.B. No. 1262

AN ACT

relating to the regulation of pest control services by the Texas Structural Pest Control Board.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. Section 2(b)(10), Texas Structural Pest Control Act (Article 135b-6, Vernon's Texas Civil Statutes), is amended to read as follows:

(10) "Technician" means an individual employed by a business licensee to engage in supervised pesticide applications, maintain or utilize structural pest control devices, make sales presentations, or identify pest infestation or damage *or an individual who works under the direct supervision of a certified noncommercial applicator and engages in supervised pesticide applications, maintains or utilizes structural pest control devices, or identifies pest infestation or damage.* The term does not include an individual whose duties are solely clerical [~~or janitorial,~~] or are otherwise completely disassociated with pest control.

SECTION 2. Section 3, Texas Structural Pest Control Act (Article 135b-6, Vernon's Texas Civil Statutes), is amended by adding Subsection (m) to read as follows:

*(m) The executive director shall employ a legal counsel who shall report to the executive director and be responsible for the enforcement of the rules adopted under this Act.*

SECTION 3. Section 4, Texas Structural Pest Control Act (Article 135b-6, Vernon's Texas Civil Statutes), is amended by adding Subsection (i) to read as follows:

*(i) The board may enter into a memorandum of agreement with another political subdivision, not to include institutions of public or private education, concerning licensure requirements.*

SECTION 4. Sections 4B(a), (b), (c), (d), and (f), Texas Structural Pest Control Act (Article 135b-6, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) In this section:

(1) "Apartment[~~, "apartment]~~ building" means a building that contains two or more dwelling units that are rented primarily for nontransient permanent dwelling purposes, with rental paid by intervals of one week or longer.

(2) "Incidental use situation" means a pesticide application on an occasional, isolated, site-specific basis that is incidental to the performance of a primary duty by an employee that is not pest control and involves the use of general use pesticides after instruction as provided by rules adopted by the board. *Incidental use situations include treating wasps in an area adjacent to a utility meter, treating fire ants in a transformer box, or the treating of ants by a janitor or clerical employee in a break area.*

(b) An individual must be licensed as a certified noncommercial applicator *or technician* if the individual is not licensed as a certified commercial applicator and the individual:

(1) is an employee of the state or a *political subdivision of the state* [~~city or county~~] and engages in the business of structural pest control *other than applying a general use pesticide in an incidental use situation;* or

(2) is an employee of a person who owns, operates, or maintains a building, the individual engages in the business of structural pest control [~~in the building~~], and the building is an apartment building; day-care center; hospital; nursing home; hotel; motel; lodge; ware-

house; food-processing establishment, other than a restaurant, retail food, or food service establishment; school or educational institution.

(c) An individual licensed as a certified noncommercial applicator *or technician* may not engage in the business of structural pest control outside the scope of the employment for which the individual has been licensed as a certified noncommercial applicator *or technician* unless the individual becomes licensed as otherwise provided by this Act.

(d) An owner of a building that is an apartment building; day-care center; hospital; nursing home; hotel; motel; lodge; warehouse; food-processing establishment, other than a restaurant, retail food, or food service establishment; school or educational institution, may obtain pest control services [~~for the building~~] from a person only by:

(1) contracting with a business that has a structural pest control business license; or

(2) requiring an employee of the owner, who is licensed as a certified noncommercial applicator *or technician*, to perform the services.

(f) An individual licensed as a certified noncommercial applicator *or technician* may engage in the business of structural pest control as provided by this section without association with a business that has been issued a structural pest control business license. The board may adopt insurance requirements for certified noncommercial applicators *or technicians*.

SECTION 5. Section 5(b), Texas Structural Pest Control Act (Article 135b-6, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) An individual without a license may, on his own premises or on premises in which he owns a partnership or joint venture interest, or on the premises other than an apartment building as defined in Section 4B of this Act, day-care center, hospital, nursing home, hotel, motel, lodge, warehouse, food-processing establishment, *facility owned by the state or a political subdivision of the state except as provided by Section 4B of this Act*, or school or educational institution, of an employer by whom he was hired primarily to perform other services, use insecticides, pesticides, rodenticides, fumigants, or allied chemicals or substances or mechanical devices designed to prevent, control, or eliminate pest infestations unless that use is prohibited by state law or rule or by rule of the United States Environmental Protection Agency or unless the substance used is labeled as a restricted-use pesticide or a state-limited-use pesticide.

SECTION 6. Section 7(a), Texas Structural Pest Control Act (Article 135b-6, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) An applicant for an initial or renewal Structural Pest Control Endorsement of License or Business License shall accompany his application with a fee of not more than \$180 each, as determined by the board, and a fee of not more than \$84, as determined by the board, for the license of each technician employed by the applicant. An applicant for an initial or renewal Certified [~~Commercial~~] Applicator's License shall accompany his application with a fee of not more than \$112.50 each, as determined by the board, and a fee of not more than \$84, as determined by the board, for the license of each technician employed by the applicant.

SECTION 7. Section 11, Texas Structural Pest Control Act (Article 135b-6, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 11. Except for Section 4H(d) of this Act, the provisions of this Act shall not apply to nor shall the following persons be deemed to be engaging in the business of structural pest control:

(1) a person who performs pest control work upon property which he owns, leases, or rents as his dwelling;

(2) a person who performs pest control work on growing plants, trees, shrubs, grass, or other horticultural plants if the person:

(A) holds a Class 1, Class 2, Class 3, or Class 4 registration certificate from the Department of Agriculture under Section 71.043, Agriculture Code; and

(B) holds a certified commercial or noncommercial applicator's license from the Department of Agriculture that covers that pest control work;

(3) a person or his employee who is engaged in the business of agriculture or aerial application or custom application of pesticides to agricultural lands; [~~and~~]

(4) a person who uses pest control chemicals that are for household use and are available for purchase in retail food stores, such as aerosol bombs and spray cans, if the insecticide is used in accordance with *the label directions on the insecticide* or board rules or guidelines, or as provided by Section 4B of this Act and is:

(A) used by the owner or his employee or agent in space occupied by the building owner in a residential building[, ~~office building, retail building, or industrial building~~]; or

(B) used in a place that is vacant, unused, and unoccupied; and

(5) a person acting as a beekeeper, as defined by Section 131.001, Agriculture Code, who:

(A) is registered with the chief apiary inspector as provided by Chapter 131, Agriculture Code, and the board;

(B) does not use pesticides or electrical devices other than conventional bee smokers or other equipment as defined by Section 131.001, Agriculture Code; and

(C) collects, removes, or destroys honey bees not attached to a dwelling or structure occupied by the public.

SECTION 8. This Act takes effect September 1, 1993.

SECTION 9. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 4, 1993, by a non-record vote; passed by the Senate on May 18, 1993, by a viva-voce vote.

Approved June 6, 1993.

Effective Sept. 1, 1993.