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H.B. No. 2458

A BILL TO BE ENTITLED

AN ACT

relating to the licensing and regulation of structural pest control
by the Department of Agriculture and the abolition of the Texas
Structural Pest Control Board.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. CHANGES TO THE TEXAS STRUCTURAL PEST CONTROL ACT

SECTION 1.01. Section 1951.002, Occupations Code, is
amended by amending Subdivision (14) and adding Subdivisions (5-a),
(5-b), and (6-a) to read as follows:

(5-a) "Commissioner" means the commissioner of
agriculture.

(5-b) "Committee" means the structural pest control
advisory committee.

(6-a) "Department" means the Department of
Agriculture.

(14) "State-limited-use pesticide" means a pesticide
classified for restricted or limited use by the commissioner [~~of
agriculture~~].

SECTION 1.02. Section 1951.053, Occupations Code, is
amended to read as follows:

Sec. 1951.053. PERSON PERFORMING PEST CONTROL WORK
OTHERWISE REGULATED BY DEPARTMENT [~~OF AGRICULTURE~~]. (a) Except as
provided by Sections 1951.212 and 1951.457(c), this chapter does
not apply to:

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

4 (A) holds a florist or nursery registration
5 certificate from the department [~~Department of Agriculture~~] under
6 Section 71.043, Agriculture Code, other than a registration
7 certificate that permits the sale, lease, or distribution of
8 nursery products or floral items only at a temporary market; and

9 (B) holds a commercial or noncommercial
10 applicator license from the department and issued under Chapter 76,
11 Agriculture Code, [~~Department of Agriculture~~] that covers the pest
12 control work; or

13 (2) a person who performs pest control work on growing
14 plants, trees, shrubs, grass, or other horticultural plants or
15 rights-of-way if the person:

16 (A) is employed by a political subdivision or a
17 cemetery;

18 (B) is engaged in pest control work or vegetation
19 management for the political subdivision or cemetery;

20 (C) holds a commercial or noncommercial
21 applicator license from the department and issued under Chapter 76,
22 Agriculture Code, [~~Department of Agriculture~~] that covers pest
23 control work or is under the direct supervision of a person who
24 holds a commercial or noncommercial applicator license from the
25 department and issued under Chapter 76, Agriculture Code,
26 [~~Department of Agriculture~~] that covers pest control work; and

27 (D) complies with annual continuing education

1 required by the department [~~Department of Agriculture~~].

2 (b) A person described by Subsection (a) is not considered
3 to be engaged in the business of structural pest control.

4 (c) Neither this section nor any other law shall prohibit a
5 political subdivision from reducing the number of hours of training
6 or other requirements for an employee conducting larval mosquito
7 control on property owned or controlled by the political
8 subdivision using biological pesticides approved for general use by
9 the [~~Texas~~] Department of State Health Services, provided the
10 employee is given instructions adequate to ensure the safe and
11 effective use of such pesticides.

12 SECTION 1.03. Section 1951.055(a), Occupations Code, is
13 amended to read as follows:

14 (a) Except as provided by Sections 1951.212 and
15 1951.457(c), this chapter does not apply to a person who uses pest
16 control chemicals that are for household use and are available for
17 purchase in retail food stores, such as aerosol bombs and spray
18 cans, if the insecticide is used in accordance with the label
19 directions on the insecticide or with department [~~board~~] rules or
20 guidelines or as provided by Section 1951.303 and is:

21 (1) used by the owner of a building or the owner's
22 employee or agent in an area occupied by the owner in a residential
23 building; or

24 (2) used in a place that is vacant, unused, and
25 unoccupied.

26 SECTION 1.04. Section 1951.056(a), Occupations Code, is
27 amended to read as follows:

1 (a) Except as provided by Sections 1951.212 and
2 1951.457(c), this chapter does not apply to a person acting as a
3 beekeeper, as defined by Section 131.001, Agriculture Code, who:

4 (1) is registered with the [~~board and with the~~] chief
5 apiary inspector as provided by Subchapter C, Chapter 131,
6 Agriculture Code;

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

10 (3) collects, removes, or destroys honey bees [~~not~~
11 ~~attached to a dwelling or structure occupied by the public~~].

12 SECTION 1.05. The heading to Subchapter C, Chapter 1951,
13 Occupations Code, is amended to read as follows:

14 SUBCHAPTER C. [~~TEXAS~~] STRUCTURAL PEST CONTROL ADVISORY COMMITTEE
15 [~~BOARD~~]

16 SECTION 1.06. Section 1951.101, Occupations Code, is
17 amended to read as follows:

18 Sec. 1951.101. COMMITTEE [~~BOARD~~] MEMBERSHIP. (a) The
19 committee [~~Texas Structural Pest Control Board~~] consists of the
20 [~~nine~~] members appointed by the commissioner, including:

21 (1) experts in structural pest control; and

22 (2) representatives of the public.

23 (b) Members of the committee serve at the pleasure of the
24 commissioner [~~Six members are appointed by the governor with the~~
25 ~~advice and consent of the senate as follows:~~

26 [~~(1) three members who:~~

27 [~~(A) have been engaged in the business of~~

1 ~~structural pest control for at least the five years preceding the~~
2 ~~date of appointment; and~~

3 ~~[(B) are not representatives of the same business~~
4 ~~entity; and~~

5 ~~[(2) three public members].~~

6 (c) Service on the committee by a state officer or employee
7 is an additional duty of the member's office or employment [~~The~~
8 ~~commissioner of agriculture, the commissioner of public health, and~~
9 ~~the chair of the Department of Entomology at Texas A&M University or~~
10 ~~their designated representatives are also members of the board].~~

11 (d) Appointments to the committee [~~board~~] shall be made
12 without regard to the race, color, disability, sex, religion, age,
13 or national origin of the appointee.

14 SECTION 1.07. Section 1951.102, Occupations Code, is
15 amended to read as follows:

16 Sec. 1951.102. ELIGIBILITY OF PUBLIC MEMBERS. A person is
17 not eligible for appointment as a public member of the committee
18 [~~board~~] if:

19 (1) the person is licensed under this chapter; or

20 (2) the person or the person's spouse:

21 (A) is registered, certified, or licensed by an
22 occupational regulatory agency in the field of pest control;

23 (B) is employed by or participates in the
24 management of a business entity or other organization regulated by
25 the department [~~board~~] or receiving funds from the department
26 [~~board~~];

27 (C) owns or controls, directly or indirectly,

1 more than a 10 percent interest in a business entity or other
2 organization regulated by the department [~~board~~] or receiving funds
3 from the department [~~board~~]; or

4 (D) uses or receives a substantial amount of
5 tangible goods, services, or funds from the department [~~board~~],
6 other than compensation or reimbursement authorized by law for
7 committee [~~board~~] membership, attendance, or expenses.

8 SECTION 1.08. Section 1951.103, Occupations Code, is
9 amended to read as follows:

10 Sec. 1951.103. MEMBERSHIP [~~AND EMPLOYEE~~] RESTRICTIONS. (a)
11 In this section, "Texas trade association" means a [~~nonprofit,~~
12 cooperative~~[-]~~] and voluntarily joined statewide association of
13 business or professional competitors in this state designed to
14 assist its members and its industry or profession in dealing with
15 mutual business or professional problems and in promoting their
16 common interest.

17 (b) A person may not be a member of the committee if:

18 (1) the person is an officer, employee, or paid
19 consultant of a Texas trade association in the field of pest
20 control; or

21 (2) the person's spouse is an officer, manager, or paid
22 consultant of a Texas trade association in the field of pest control

23 [~~An officer, employee, or paid consultant of a Texas trade~~
24 ~~association in the field of pest control may not be a member of the~~
25 ~~board and may not be an employee of the board who is exempt from the~~
26 ~~state's position classification plan or is compensated at or above~~
27 ~~the amount prescribed by the General Appropriations Act for step 1,~~

1 salary group A17, of the position classification salary schedule].

2 (c) A person may not be a member of the committee if the
3 person is required to register as a lobbyist under Chapter 305,
4 Government Code, because of the person's activities for
5 compensation on behalf of a profession related to the operation of
6 the department [~~who is the spouse of an officer, manager, or paid~~
7 ~~consultant of a Texas trade association in the field of pest control~~
8 ~~may not be a member of the board and may not be an employee of the~~
9 ~~board who is exempt from the state's position classification plan~~
10 ~~or is compensated at or above the amount prescribed by the General~~
11 ~~Appropriations Act for step 1, salary group A17, of the position~~
12 ~~classification salary schedule)].~~

13 [~~(d) A person may not serve as a member of the board or act~~
14 ~~as the general counsel to the board if the person is required to~~
15 ~~register as a lobbyist under Chapter 305, Government Code, because~~
16 ~~of the person's activities for compensation on behalf of a~~
17 ~~profession related to the operation of the board.].~~

18 SECTION 1.09. Section 1951.104, Occupations Code, is
19 amended to read as follows:

20 Sec. 1951.104. DUTIES OF COMMITTEE [~~TERMS~~]. The committee
21 shall:

22 (1) gather and provide information relating to the
23 practice of structural pest control at the request of the
24 department or the commissioner; and

25 (2) advise the department and the commissioner on:
26 (A) the education and curricula requirements for
27 applicants;

1 (B) the content of examinations under this
2 chapter;

3 (C) proposed rules and standards on technical
4 issues related to structural pest control and rules related to
5 enforcement; and

6 (D) other issues affecting the practice of
7 structural pest control [~~Appointed members of the board serve~~
8 ~~staggered six-year terms, with the terms of one business and one~~
9 ~~public member expiring February 1 of each odd-numbered year~~].

10 SECTION 1.10. Section 1951.105, Occupations Code, is
11 amended to read as follows:

12 Sec. 1951.105. RULES GOVERNING COMMITTEE [~~PRESIDING~~
13 ~~OFFICER~~]. The department shall adopt rules for the operation of the
14 committee, including rules governing:

15 (1) the purpose, role, responsibility, and goals of
16 the committee;

17 (2) the size of and quorum requirements for the
18 committee;

19 (3) the qualifications required for members of the
20 committee, which may include experience and geographic
21 representation requirements;

22 (4) the appointment process for the committee;

23 (5) the members' terms;

24 (6) the training requirements;

25 (7) a process to regularly evaluate the effectiveness
26 of the committee; and

27 (8) a requirement that the committee comply with

1 Chapter 551, Government Code [~~The governor shall designate a member~~
2 ~~of the board as presiding officer. The presiding officer serves in~~
3 ~~that capacity at the pleasure of the governor~~].

4 SECTION 1.11. The heading to Section 1951.106, Occupations
5 Code, is amended to read as follows:

6 Sec. 1951.106. APPLICABILITY OF OTHER LAW TO COMMITTEE
7 [~~GROUND FOR REMOVAL~~].

8 SECTION 1.12. Section 1951.106(a), Occupations Code, is
9 amended to read as follows:

10 (a) Section 2110.008, Government Code, does not apply to the
11 committee [~~It is a ground for removal from the board that a member:~~

12 [~~(1) does not have at the time of appointment the~~
13 ~~qualifications required by Section 1951.101 or 1951.102, as~~
14 ~~applicable,~~

15 [~~(2) does not maintain during service on the board the~~
16 ~~qualifications required by Section 1951.101 or 1951.102, as~~
17 ~~applicable,~~

18 [~~(3) violates a prohibition established by Section~~
19 ~~1951.103,~~

20 [~~(4) cannot, because of illness or disability,~~
21 ~~discharge the member's duties for a substantial part of the member's~~
22 ~~term, or~~

23 [~~(5) is absent from more than half of the regularly~~
24 ~~scheduled meetings of the board that the member is eligible to~~
25 ~~attend during a calendar year unless that absence is excused by a~~
26 ~~majority vote of the board~~].

27 SECTION 1.13. The heading to Subchapter E, Chapter 1951,

1 Occupations Code, is amended to read as follows:

2 SUBCHAPTER E. [~~BOARD~~] POWERS AND DUTIES OF DEPARTMENT RELATING TO
3 STRUCTURAL PEST CONTROL

4 SECTION 1.14. Section 1951.201, Occupations Code, is
5 amended to read as follows:

6 Sec. 1951.201. SOLE LICENSING AUTHORITY; FEES. (a) The
7 department [~~board~~] is the sole authority in this state for
8 licensing persons engaged in the business of structural pest
9 control.

10 (b) The department shall establish fees under this chapter
11 in amounts reasonable and necessary to cover the costs of
12 administering the department's programs and activities under this
13 chapter.

14 SECTION 1.15. Section 1951.202, Occupations Code, is
15 amended to read as follows:

16 Sec. 1951.202. BYLAWS. The department [~~board~~] shall adopt
17 bylaws governing the conduct of the department's [~~board's~~] affairs
18 under this chapter.

19 SECTION 1.16. Section 1951.203, Occupations Code, is
20 amended to read as follows:

21 Sec. 1951.203. STANDARDS AND CRITERIA FOR LICENSES. The
22 department [~~board~~] shall develop standards and criteria for
23 issuing:

24 (1) a structural pest control business license to a
25 person engaged in the business of structural pest control;

26 (2) a certified commercial applicator's license to an
27 individual engaged in the business of structural pest control;

1 (3) a certified noncommercial applicator's license to
2 an individual; and

3 (4) a technician license to an individual.

4 SECTION 1.17. Sections 1951.204(a), (b), and (c),
5 Occupations Code, are amended to read as follows:

6 (a) As part of an investigation under this chapter, the
7 commissioner [~~The board~~] may request and, if necessary, compel by
8 subpoena:

9 (1) the attendance of witnesses for examination under
10 oath; and

11 (2) the production for inspection and copying of
12 records, documents, and other evidence relevant to the
13 investigation of an alleged violation of this chapter.

14 (b) The commissioner [~~board~~], acting through the attorney
15 general, may bring an action to enforce a subpoena issued under
16 Subsection (a) against a person who fails to comply with the
17 subpoena.

18 (c) Venue for an action brought under Subsection (b) is in a
19 district court in:

20 (1) Travis County; or

21 (2) the county in which the alleged violation occurred
22 [~~board may hold a hearing~~].

23 SECTION 1.18. Section 1951.205, Occupations Code, is
24 amended to read as follows:

25 Sec. 1951.205. ENVIRONMENTAL RULES. (a) The department
26 [~~board~~] shall adopt rules governing the methods and practices of
27 structural pest control that the department [~~board~~] determines are

1 necessary to protect the public's health and welfare and prevent
2 adverse effects on human life and the environment.

3 (b) A rule relating to the use of economic poisons must
4 comply with applicable standards of the federal government and the
5 commissioner [~~of agriculture~~] governing the use of such substances.

6 SECTION 1.19. Section 1951.206, Occupations Code, is
7 amended to read as follows:

8 Sec. 1951.206. RULES RESTRICTING ADVERTISING OR
9 COMPETITIVE BIDDING. (a) Except as provided by Subsection (b), the
10 department [~~board~~] may not adopt a rule restricting advertising or
11 competitive bidding by a person regulated by the department under
12 this chapter [~~board~~].

13 (b) The department [~~board~~] may adopt rules restricting
14 advertising or competitive bidding to prohibit false, misleading,
15 or deceptive practices by a person regulated by the department
16 under this chapter [~~board~~]. A rule adopted under this subsection
17 may not:

- 18 (1) restrict the use of any medium for advertising;
19 (2) restrict a person's personal appearance or use of a
20 person's voice in an advertisement;
21 (3) relate to the size or duration of an advertisement
22 by a person; or
23 (4) restrict a person's advertisement under a trade
24 name.

25 SECTION 1.20. Section 1951.207, Occupations Code, is
26 amended to read as follows:

27 Sec. 1951.207. INSPECTION OF LICENSE HOLDERS. (a) The

1 department [~~board~~] by rule shall adopt a policy that:

2 (1) requires a business holding a structural pest
3 control business license to be inspected by a field inspector at
4 least once:

5 (A) in the business's first year of operation;

6 and

7 (B) every four [~~two~~] years after the first year
8 of operation;

9 (2) provides for additional inspections based on a
10 schedule of risk-based inspections using the following criteria:

11 (A) the type and nature of the business;

12 (B) whether there has been a prior violation by
13 the business;

14 (C) the inspection history of the business;

15 (D) any history of complaints involving the
16 business; and

17 (E) any other factor determined by the department
18 by rule [~~initiating inspections more frequently than once every two~~
19 ~~years for a business or an applicator that has violated this chapter~~
20 ~~or a rule adopted under this chapter~~]; and

21 (3) provides that the department [~~executive director~~]
22 may waive the inspection requirement on a case-by-case basis if an
23 emergency arises or to accommodate complaint investigation
24 schedules.

25 (b) The department [~~board~~] by rule shall adopt a policy and
26 guidelines for conducting an investigation under this chapter,
27 including:

1 (1) procedures for investigating a complaint
2 concerning misuse of pesticides, including contamination by
3 pesticides and human exposure to pesticides;

4 (2) the circumstances in which a case should be
5 referred to the:

6 (A) [~~Department of Agriculture,~~
7 [~~(B) Texas~~] Department of State Health Services;
8 (B) [~~(C)~~] Texas Commission on Environmental
9 Quality [~~Natural Resource Conservation Commission~~]; or

10 (C) [~~(D)~~] United States Environmental Protection
11 Agency;

12 (3) recommendations to consumers and applicators
13 regarding cleanup after a spill or misapplication; and

14 (4) procedures for residue sampling, including the
15 circumstances in which to take a residue sample and the time in
16 which the sample should be taken.

17 SECTION 1.21. Section 1951.208, Occupations Code, is
18 amended to read as follows:

19 Sec. 1951.208. MISAPPLICATION OF PESTICIDES. (a) If an
20 investigation shows that a misapplication of pesticides has
21 occurred on the premises of a consumer, the department [~~board~~]
22 shall immediately notify the consumer and the applicator of the
23 misapplication.

24 (b) On a finding of misapplication, the department [~~board~~]
25 shall keep records of health injuries and property damages
26 resulting from the misapplication reported to the department
27 [~~board~~] by a:

- 1 (1) certified applicator;
- 2 (2) physician;
- 3 (3) person holding a structural pest control business
- 4 license;
- 5 (4) technician;
- 6 (5) consumer; or
- 7 (6) state agency.

8 SECTION 1.22. Section 1951.209, Occupations Code, is
9 amended to read as follows:

10 Sec. 1951.209. AVAILABILITY OF CERTAIN INFORMATION. The
11 department [~~board~~] may make available to the [~~Texas~~] Department of
12 State Health Services under the occupational condition reporting
13 program established under Chapter 84, Health and Safety Code, any
14 information the department [~~board~~] receives concerning an exposure
15 to a pesticide caused by a person licensed under this chapter that
16 results in a medically verifiable illness. The department [~~board~~]
17 and the executive commissioner of the Health and Human Services
18 Commission [~~Texas Board of Health~~] shall adopt joint rules for
19 making that information available to the [~~Texas~~] Department of
20 State Health Services. The rules must require the department
21 [~~board~~] to make that information available to an institution of
22 higher education that conducts research in urban entomology,
23 epidemiology, or other areas related to structural pest control.

24 SECTION 1.23. Section 1951.210, Occupations Code, is
25 amended to read as follows:

26 Sec. 1951.210. PRETREATMENT INSPECTION SERVICE; FEES;
27 LIABILITY. (a) The department [~~board~~] may provide a pretreatment

1 inspection service to consumers. A pretreatment inspection is
2 limited to a determination of whether there is an infestation of
3 pests on the premises inspected.

4 (b) On the request of a consumer, the department [~~board~~] may
5 make available an inspector employed by the department [~~board~~] to
6 inspect the premises of the consumer if the consumer has obtained,
7 from at least two pest control companies:

8 (1) a determination that there is an infestation of
9 pests on the premises; and

10 (2) an estimate of the cost of the treatment.

11 (c) The department [~~board~~] shall charge a fee for a
12 pretreatment inspection in an amount sufficient to pay the cost of
13 providing the service.

14 (d) The department [~~board~~] is not liable for any damages
15 that may arise as a result of an inspection made under this section
16 that is subsequently found to be incorrect.

17 SECTION 1.24. Section 1951.211, Occupations Code, is
18 amended to read as follows:

19 Sec. 1951.211. CONSULTATION WITH INTEGRATED PEST
20 MANAGEMENT TECHNIQUES EXPERT. The department [~~board~~] may contract
21 with [~~the Department of Agriculture or~~] an institution of higher
22 education for the services of an expert in integrated pest
23 management to consult with the department [~~board~~], department [~~the~~
24 ~~board's~~] staff, license holders, and the public regarding
25 integrated pest management techniques.

26 SECTION 1.25. Section 1951.212, Occupations Code, is
27 amended to read as follows:

1 Sec. 1951.212. INTEGRATED PEST MANAGEMENT PROGRAMS FOR
2 SCHOOL DISTRICTS. (a) The department [~~board~~] shall establish
3 standards for an integrated pest management program for the use of
4 pesticides, herbicides, and other chemical agents to control pests,
5 rodents, insects, and weeds at the school buildings and other
6 facilities of school districts.

7 (b) The department [~~board~~] shall use an existing advisory
8 committee or create a new advisory committee to assist the
9 department [~~board~~] in developing the standards for the integrated
10 pest management program. In developing the standards, the advisory
11 committee shall consult with a person knowledgeable in the area of
12 integrated pest management in schools.

13 (c) The department [~~board~~] shall include in standards
14 adopted under this section[+]

15 [~~(1)~~] a requirement to use the least toxic methods
16 available to control pests, rodents, insects, and weeds[~~, and~~

17 [~~(2) a list of products that a school district is~~
18 ~~allowed to use in its applications~~].

19 (d) The department by rule shall establish categories of
20 pesticides that a school district is allowed to apply. For each
21 category, the department shall specify:

22 (1) the minimum distance a school district must
23 maintain between an area where pesticides are being applied and an
24 area where students are present at the time of application;

25 (2) the minimum amount of time a school district is
26 required to wait before allowing students to enter an indoor or
27 outdoor area in a school building or on school grounds for normal

1 academic instruction or organized extracurricular activities after
2 pesticides have been applied;

3 (3) the requirements for posting notice of the indoor
4 and outdoor use of pesticides;

5 (4) the requirements for obtaining approval before
6 applying the pesticide; and

7 (5) the requirements for maintaining records of the
8 application of pesticides [~~board shall require that a pesticide may~~
9 ~~be applied to a school building or on school grounds only when~~
10 ~~students are not expected to be present for normal academic~~
11 ~~instruction or organized extracurricular activities for at least 12~~
12 ~~hours after the application].~~

13 (e) Each [A] school district shall:

14 (1) adopt an integrated pest management program that
15 incorporates the standards established by the department [~~board~~]
16 under this section;

17 (2) designate an integrated pest management
18 coordinator for the district; and

19 (3) report to the department not later than the 90th
20 day after the date the district designates or replaces an
21 integrated pest management coordinator the name, address,
22 telephone number, and e-mail address of the district's current
23 coordinator.

24 (f) Each person who is designated as the integrated pest
25 management coordinator for a school district shall successfully
26 complete six hours of continuing education in integrated pest
27 management every three years.

1 (g) The department shall inspect each school district at
2 least once every five years for compliance with this section and may
3 conduct additional inspections based on a schedule of risk-based
4 inspections using the following criteria:

5 (1) whether there has been a prior violation by the
6 school district;

7 (2) the inspection history of the school district;

8 (3) any history of complaints involving the school
9 district; and

10 (4) any other factor determined by the department by
11 rule.

12 SECTION 1.26. Section 1951.251, Occupations Code, is
13 amended to read as follows:

14 Sec. 1951.251. PUBLIC INTEREST INFORMATION. (a) The
15 department [~~board~~] shall prepare information of public interest
16 describing the functions of the department under this chapter
17 [~~board~~] and the procedures by which complaints are filed with and
18 resolved by the department under this chapter [~~board~~].

19 (b) The department [~~board~~] shall make the information
20 available to the public and appropriate state agencies.

21 SECTION 1.27. Section 1951.252, Occupations Code, is
22 amended to read as follows:

23 Sec. 1951.252. COMPLAINTS. (a) The department [~~board~~] by
24 rule shall establish methods by which consumers and service
25 recipients are notified of the name, mailing address, and telephone
26 number of the department [~~board~~] for the purpose of directing
27 complaints to the department under this chapter [~~board~~]. The

1 department [~~board~~] may provide for that notice:

2 (1) on each license form, application, or written
3 contract for services of a person regulated under this chapter;

4 (2) on a sign prominently displayed in the place of
5 business of each person regulated under this chapter; or

6 (3) in a bill for services provided by a person
7 regulated under this chapter.

8 (b) The department [~~board~~] shall keep an information file
9 about each complaint filed with the department under this chapter
10 [~~board~~] that the department [~~board~~] has authority to resolve.

11 (c) If a written complaint is filed with the department
12 under this chapter [~~board~~] that the department [~~board~~] has
13 authority to resolve, the department [~~board~~], at least quarterly
14 and until final disposition of the complaint, shall notify the
15 parties to the complaint of the status of the complaint unless the
16 notice would jeopardize an undercover investigation.

17 (d) The department shall provide to a license holder against
18 whom a complaint has been filed under this chapter:

19 (1) the allegations made against the license holder in
20 the complaint; and

21 (2) on the license holder's request, any information
22 obtained by the department in its investigation of the complaint.

23 (e) The department shall provide the information required
24 under Subsection (d) in a timely manner to allow the license holder
25 time to respond to the complaint.

26 (f) The commissioner may allow an authorized employee of the
27 department to dismiss a complaint if an investigation demonstrates

1 that:

2 (1) a violation did not occur; or

3 (2) the subject of the complaint is outside the
4 department's jurisdiction under this chapter.

5 (g) An employee who dismisses a complaint under Subsection
6 (f) shall report the dismissal to the commissioner. The report must
7 include a sufficient explanation of the reason the complaint was
8 dismissed.

9 SECTION 1.28. Section 1951.253, Occupations Code, is
10 amended to read as follows:

11 Sec. 1951.253. PUBLIC PARTICIPATION. (a) The department
12 [~~board~~] shall develop and implement policies that provide the
13 public with a reasonable opportunity to appear before the
14 department [~~board~~] and to speak on any issue under the [~~board's~~]
15 jurisdiction of the department under this chapter.

16 (b) The department [~~board~~] shall prepare and maintain a
17 written plan that describes how a person who does not speak English
18 or who has a physical, mental, or developmental disability can be
19 provided reasonable access to the department's [~~board's~~] programs
20 under this chapter.

21 SECTION 1.29. Section 1951.254, Occupations Code, is
22 amended to read as follows:

23 Sec. 1951.254. PUBLIC INFORMATION PROGRAM. (a) The
24 department [~~board~~] shall establish a public information program as
25 provided by this section and Sections 1951.453-1951.456 to inform
26 the public about the practice and regulation of structural pest
27 control.

1 (b) The department [~~board~~] may create a public information
2 program advisory committee to assist in the development of a public
3 information program.

4 (c) The department [~~board~~] shall make available to the
5 public and other appropriate state agencies the information
6 compiled as part of the program.

7 (d) The public information program must:

8 (1) include the adoption and distribution, in a manner
9 that the department [~~board~~] considers appropriate, of a standard
10 [~~complaint~~] form for complaints under this chapter; [and]

11 (2) inform prospective applicants for licensing under
12 this chapter about the qualifications and requirements for
13 licensing;

14 (3) inform applicants, license holders, and the public
15 on the department's Internet website, in department brochures, and
16 on any other available information resource about the department's
17 enforcement process under this chapter, including each step in the
18 complaint investigation and resolution process, from initial
19 filing thorough final appeal; and

20 (4) inform license holders that a license holder may
21 obtain information about a complaint made against the license
22 holder and may obtain on request a copy of the complaint file.

23 (e) The department [~~board~~] shall develop a clear, factual,
24 and balanced information sheet of one or more pages containing
25 information on:

26 (1) the pest control industry;

27 (2) chemicals used in structural pest control;

1 (3) general health and safety issues relating to
2 structural pest control;

3 (4) precautions to take before, during, and after
4 application;

5 (5) steps to take if a misapplication, including an
6 underapplication or an overapplication, is suspected; and

7 (6) any other matters determined by the department
8 [~~board~~].

9 (f) The information sheet must include:

10 (1) the names and telephone numbers of the department
11 [~~board, the Department of Agriculture,~~] and the [~~Texas~~] Department
12 of State Health Services;

13 (2) the telephone number of any pesticide hotline
14 established by a state or federal agency or by a state university;

15 (3) a statement of a consumer's rights under Chapter
16 39, Business & Commerce Code, to cancel a home solicitation
17 transaction; and

18 (4) information concerning the availability of any
19 pretreatment inspection service that may be provided by the
20 department [~~board~~] under Section 1951.210.

21 (g) The department [~~board~~] shall develop a sign to be posted
22 in the area of an indoor treatment that contains:

23 (1) the date of the planned treatment; and

24 (2) any other information required by the department
25 [~~board~~].

26 SECTION 1.30. Subchapter F, Chapter 1951, Occupations Code,
27 is amended by adding Section 1951.255 to read as follows:

1 Sec. 1951.255. ENFORCEMENT INFORMATION. (a) The
2 department shall make available to the public information about
3 each final enforcement action taken by the department against a
4 person under this chapter. The department shall provide this
5 information on its Internet website and in other appropriate
6 publications.

7 (b) The department may determine the format in which it will
8 provide the information required under this section.

9 SECTION 1.31. Section 1951.301(b), Occupations Code, is
10 amended to read as follows:

11 (b) A person may not engage in the business of structural
12 pest control unless the person:

13 (1) meets the standards set by the department under
14 this chapter [~~board~~]; and

15 (2) holds a structural pest control business license
16 issued under this chapter.

17 SECTION 1.32. Section 1951.302, Occupations Code, is
18 amended to read as follows:

19 Sec. 1951.302. CERTIFIED COMMERCIAL APPLICATOR'S LICENSE.
20 The department [~~board~~] must determine that an individual is
21 competent to use or supervise the use of a restricted-use pesticide
22 or state-limited-use pesticide covered by the individual's
23 certified commercial applicator's license.

24 SECTION 1.33. Section 1951.303(a), Occupations Code, is
25 amended to read as follows:

26 (a) In this section, "incidental use situation" means a
27 pesticide application, including treating wasps in an area adjacent

1 to a utility meter, treating fire ants in a transformer box, or the
2 treating of ants by a janitor or clerical employee in a break area,
3 that:

4 (1) is on an occasional, isolated, site-specific
5 basis;

6 (2) is incidental to the performance of a primary duty
7 that is not pest control by an employee; and

8 (3) involves the use of general use pesticides after
9 instruction, as provided by rules adopted by the department
10 [~~board~~].

11 SECTION 1.34. Section 1951.304, Occupations Code, is
12 amended to read as follows:

13 Sec. 1951.304. TECHNICIAN LICENSE. The department [~~board~~]
14 may designate different classes or categories for technicians.

15 SECTION 1.35. Section 1951.305, Occupations Code, is
16 amended to read as follows:

17 Sec. 1951.305. APPLICATION. (a) A person must apply for a
18 license under this chapter on a form prescribed and provided by the
19 department [~~board~~].

20 (b) Each applicant must provide the information the
21 department [~~board~~] requires to determine the applicant's
22 qualifications.

23 SECTION 1.36. Section 1951.306, Occupations Code, is
24 amended to read as follows:

25 Sec. 1951.306. WAIVER FOR APPLICANT LICENSED IN ANOTHER
26 STATE. (a) The department [~~board~~] may waive any license
27 requirement under this chapter for an applicant who holds a license

1 issued by another state that has license requirements substantially
2 equivalent to those of this state.

3 (b) The department [~~board~~] may issue an endorsement of
4 license to a person who:

5 (1) establishes residence in this state; and

6 (2) has been determined by the department [~~board~~] to
7 meet the qualifications of a certified applicator by taking the
8 appropriate examination in another state.

9 SECTION 1.37. Section 1951.307, Occupations Code, is
10 amended to read as follows:

11 Sec. 1951.307. LICENSE RENEWAL. A person may renew a
12 license by submitting an application to the department [~~board~~] and
13 paying the required renewal fees.

14 SECTION 1.38. Section 1951.308(a), Occupations Code, is
15 amended to read as follows:

16 (a) The department [~~board~~] by rule may adopt a system under
17 which licenses expire on various dates during the year.

18 SECTION 1.39. Section 1951.309, Occupations Code, is
19 amended to read as follows:

20 Sec. 1951.309. FEE FOR INITIAL OR RENEWAL LICENSE. (a) An
21 applicant for an initial or renewal structural pest control
22 business license or for an initial or renewal endorsement of
23 license under Section 1951.306 must submit with the person's
24 application a fee in an amount established by department rule for:

25 (1) a [~~fee of not more than \$180, as determined by the~~
26 ~~board, for each~~] license or endorsement; and

27 (2) [~~a fee of not more than \$84, as determined by the~~

1 ~~board, for]~~ a license for each technician the applicant employs.

2 (b) An applicant for an initial or renewal certified
3 applicator's license must deliver with the person's application a
4 fee in an amount established by department rule for:

5 (1) a ~~[fee of not more than \$112.50, as determined by~~
6 ~~the board, for each]~~ license; and

7 (2) ~~[a fee of not more than \$84, as determined by the~~
8 ~~board, for]~~ a license for each technician the applicant employs.

9 SECTION 1.40. Section 1951.310, Occupations Code, is
10 amended to read as follows:

11 Sec. 1951.310. LATE RENEWAL OF LICENSE. (a) The department
12 ~~[board]~~ may retroactively renew a license issued under this
13 chapter.

14 (b) If the person files a renewal application with the
15 department ~~[board]~~ not later than the 30th day after the date the
16 person's license expires, the person must pay a ~~[late]~~ renewal fee
17 that is equal to 1-1/2 times the normally required renewal fee ~~[of~~
18 ~~\$37.50]~~.

19 (c) If the person files a renewal application with the
20 department ~~[board]~~ later than the 30th day but not later than the
21 60th day after the date the person's license expires, the person
22 must pay a ~~[late]~~ renewal fee that is equal to two times the
23 normally required renewal fee ~~[of \$75]~~.

24 (d) A person who applies for a renewal license after the
25 60th day after the date the person's license expires must be
26 reexamined by the department ~~[board]~~ to obtain a license.

27 SECTION 1.41. Section 1951.311, Occupations Code, is

1 amended to read as follows:

2 Sec. 1951.311. REPLACEMENT LICENSE; FEE. The department
3 [~~board~~] shall issue to a license holder whose license has been lost
4 or destroyed or whose name has been changed a replacement license if
5 the license holder submits to the department [~~board~~]:

- 6 (1) an appropriate application; and
7 (2) a fee in an amount established by department rule
8 [~~of not more than \$30, as determined by the board~~].

9 SECTION 1.42. Sections 1951.312(a) through (d),
10 Occupations Code, are amended to read as follows:

11 (a) The department [~~board~~] may not issue or renew a
12 structural pest control business license until the license
13 applicant:

14 (1) files with the department [~~board~~] a policy or
15 contract of insurance, approved as sufficient by the department
16 [~~board~~], in an amount not less than \$200,000 for bodily injury and
17 property damage coverage, with a minimum total aggregate of
18 \$300,000 for all occurrences, insuring the applicant against
19 liability for damage to persons or property occurring as a result of
20 operations performed in the course of the business of structural
21 pest control on premises or any other property under the
22 applicant's care, custody, or control;

23 (2) in the case of an applicant who has an unexpired
24 and uncanceled insurance policy or contract on file with the
25 department [~~board~~], files with the department [~~board~~] a certificate
26 or other evidence from an insurance company stating that:

27 (A) the policy or contract insures the applicant

1 against liability for acts and damage as described in Subdivision
2 (1); and

3 (B) the amount of insurance coverage is in the
4 amount approved by the department [~~board~~];

5 (3) files with the department [~~board~~] a bond,
6 certificate of deposit, or other proof acceptable to the department
7 [~~board~~] of sufficient funds in an amount not less than \$300,000 for
8 payment of claims of damage to persons or property occurring as a
9 result of operations performed negligently in the course of the
10 business of structural pest control on premises or any other
11 property under the applicant's care, custody, or control; or

12 (4) files with the department [~~board~~] evidence
13 satisfactory to the department [~~board~~] of coverage under a general
14 liability insurance policy, in an amount not less than \$200,000 for
15 bodily injury and property damage coverage, with a minimum total
16 aggregate of \$300,000 for all occurrences, if the applicant
17 operates solely as a wood treater who treats wood on commercial
18 property owned by the applicant.

19 (b) A structural pest control business license holder shall
20 at all times maintain the insurance policy or contract or the
21 security described by Subsection (a)(3) in the amount approved by
22 the department [~~board~~]. Failure to renew the policy or contract or
23 maintain it or the security in the required amount is a ground for
24 suspension or revocation of the license and a violation of this
25 section.

26 (c) The department [~~board~~] by rule may require different
27 amounts of insurance coverage for different classifications of

1 operations under this chapter.

2 (d) The department [~~board~~] may adopt insurance requirements
3 for certified noncommercial applicators or technicians.

4 SECTION 1.43. Section 1951.313, Occupations Code, is
5 amended to read as follows:

6 Sec. 1951.313. MEMORANDUM OF AGREEMENT. The department
7 [~~board~~] may enter into a memorandum of agreement with a political
8 subdivision other than an institution of public or private
9 education concerning licensing requirements.

10 SECTION 1.44. Section 1951.314, Occupations Code, is
11 amended to read as follows:

12 Sec. 1951.314. LICENSE NOT TRANSFERABLE. A license issued
13 by the department under this chapter [~~board~~] is not transferable.

14 SECTION 1.45. Section 1951.351, Occupations Code, is
15 amended to read as follows:

16 Sec. 1951.351. TECHNICIAN TRAINING PROGRAM. (a) The
17 department [~~board~~] shall:

18 (1) develop or approve a training program for licensed
19 technicians and for applicants to become licensed technicians; and

20 (2) require that an applicant for a technician license
21 complete the training program.

22 (b) The department [~~board~~] shall develop the educational
23 and training materials for the training program with the Texas
24 Agricultural Extension Service or any other institution of higher
25 education. The department [~~board~~] shall publish and distribute, in
26 conjunction with the Texas Agricultural Extension Service, the
27 materials developed as a part of the training program.

1 (c) The training program must include instruction in:

- 2 (1) recognition of pests and pest damage;
- 3 (2) pesticide labels and label comprehension;
- 4 (3) pesticide safety;
- 5 (4) environmental protection;
- 6 (5) procedures for the immediate reporting of spills
7 and misapplications;
- 8 (6) application equipment and techniques;
- 9 (7) pesticide formulations and actions;
- 10 (8) emergency procedures and pesticide cleanup;
- 11 (9) state and federal law relating to structural pest
12 control;
- 13 (10) basic principles of mathematics, chemistry,
14 toxicology, and entomology;
- 15 (11) nonchemical pest control techniques, including
16 biological, mechanical, and prevention techniques; and
- 17 (12) any other topic the department [~~board~~] considers
18 necessary.

19 (d) The department [~~board~~] may create a technician training
20 program advisory committee to assist the department [~~board~~] in
21 developing the training program required by this section.

22 (e) The department [~~board~~] may approve a training program
23 that has not been developed by the department [~~board~~] if the program
24 meets the standards adopted by the department [~~board~~] for the
25 program. Completion of a training program approved by the
26 department [~~board~~] under this subsection satisfies Subsection
27 (a)(2).

1 SECTION 1.46. Section 1951.352, Occupations Code, is
2 amended to read as follows:

3 Sec. 1951.352. NEW DEVELOPMENTS; PROOF OF STUDY. If the
4 department [~~board~~] determines that new developments in pest control
5 have occurred that are so significant that proper knowledge of the
6 developments is necessary to protect the public, the department
7 [~~board~~] may require of each applicant proof of study by:

- 8 (1) attending approved training courses; or
9 (2) taking additional examinations on the new
10 developments only.

11 SECTION 1.47. Section 1951.353, Occupations Code, is
12 amended to read as follows:

13 Sec. 1951.353. FEES RELATED TO TRAINING PROGRAMS. (a) The
14 department [~~board~~] may charge a fee to a person to purchase or
15 borrow materials developed for the technician training program
16 under Section 1951.351. The department [~~board~~] shall set the fee in
17 an amount that will recover the costs of the program.

18 (b) The department [~~board~~] may charge a fee in an amount
19 established by rule [~~not to exceed \$75~~] for each course considered
20 for approval under Section 1951.352.

21 SECTION 1.48. Section 1951.401, Occupations Code, is
22 amended to read as follows:

23 Sec. 1951.401. EXAMINATION FOR CERTIFIED APPLICATOR'S
24 LICENSE. The department [~~board~~] may require a person to qualify for
25 a certified applicator's license by passing an examination
26 demonstrating the person's competence in the field of structural
27 pest control.

1 SECTION 1.49. Section 1951.402, Occupations Code, is
2 amended to read as follows:

3 Sec. 1951.402. EXAMINATION FOR TECHNICIAN LICENSE. The
4 department [~~board~~] shall require an applicant for a technician
5 license to pass an examination developed and administered by the
6 department [~~board~~] or a person designated by the department
7 [~~board~~].

8 SECTION 1.50. Section 1951.403, Occupations Code, is
9 amended to read as follows:

10 Sec. 1951.403. EXAMINATION FEE. Each time a person applies
11 to take an examination for a license, the person shall pay the
12 department [~~board~~] an examination fee [~~of not more than \$50~~], in an
13 amount established [~~as determined~~] by [~~the~~] department rule
14 [~~board~~], for each category of examination to be taken. Except as
15 provided by department [~~board~~] rule, an examination fee is not
16 refundable.

17 SECTION 1.51. Section 1951.404, Occupations Code, is
18 amended to read as follows:

19 Sec. 1951.404. LIST OF STUDY MATERIALS AND SEMINARS. The
20 department [~~board~~] shall make public a list of study materials and
21 educational seminars that are available to help applicants
22 successfully complete any examination administered under this
23 chapter.

24 SECTION 1.52. Section 1951.405, Occupations Code, is
25 amended to read as follows:

26 Sec. 1951.405. EXAMINATION RESULTS. (a) Not later than the
27 30th day after the date a licensing examination is administered

1 under this chapter, the department [~~board~~] shall notify each
2 examinee of the results of the examination. If an examination is
3 graded or reviewed by a national testing service, the department
4 [~~board~~] shall notify each examinee of the results of the
5 examination not later than the 14th day after the date the
6 department [~~board~~] receives the results from the testing service.

7 (b) If notice of the results of an examination graded or
8 reviewed by a national testing service will be delayed for more than
9 90 days after the examination date, the department [~~board~~] shall
10 notify each examinee of the reason for the delay before the 90th
11 day.

12 (c) If requested in writing by a person who fails a
13 licensing examination administered under this chapter, the
14 department [~~board~~] shall provide to the person an analysis of the
15 person's performance on the examination.

16 SECTION 1.53. Subchapter I, Chapter 1951, Occupations Code,
17 is amended by adding Section 1951.406 to read as follows:

18 Sec. 1951.406. EXAMINATION POLICY. (a) The department
19 shall develop a written policy governing licensing examinations
20 under this subchapter that prescribes:

21 (1) procedures to improve the design and construction
22 of examinations;

23 (2) procedures for administering the examinations;
24 and

25 (3) the process for evaluating examinations in use.

26 (b) The policy must include:

27 (1) a procedure for seeking assistance in the

1 development of examinations from experts in:

2 (A) structural pest control;

3 (B) structural pest control education; and

4 (C) examination creation and validation;

5 (2) a schedule that provides for examination revision
6 and maintenance, including the regular update of examinations;

7 (3) a procedure to routinely analyze and validate
8 examinations;

9 (4) a procedure for the development of a bank of
10 questions for each examination;

11 (5) guidelines for developing examinations from the
12 bank of questions;

13 (6) the number and type of questions for each
14 examination; and

15 (7) a requirement that the person responsible for
16 examination development make periodic reports on examination
17 issues to the commissioner.

18 SECTION 1.54. Section 1951.451, Occupations Code, is
19 amended to read as follows:

20 Sec. 1951.451. CONTRACT FOR PEST CONTROL SERVICES. A
21 written contract under which a license holder under this chapter
22 agrees to perform structural pest control services in this state
23 must include:

24 (1) the department's [~~board's~~] mailing address and
25 telephone number; and

26 (2) a statement that the department [~~board~~] has
27 jurisdiction over individuals licensed under this chapter.

1 SECTION 1.55. Section 1951.452, Occupations Code, is
2 amended to read as follows:

3 Sec. 1951.452. RECORDS OF LICENSE HOLDER. (a) The
4 department [~~board~~] may require each license holder to make records,
5 as prescribed by the department [~~board~~], of the license holder's
6 use of pesticides.

7 (b) Subject to Subsection (c), a record required under
8 Subsection (a) shall be:

9 (1) maintained for at least two years on the license
10 holder's business premises; and

11 (2) made available for inspection by the department
12 [~~board~~] and its authorized agents during normal business hours.

13 (c) A certified noncommercial applicator shall maintain
14 required records on the premises of the person's employer for at
15 least two years. The records shall be made available for inspection
16 by the department [~~board~~] and its authorized agents during the
17 employer's normal operating hours.

18 SECTION 1.56. Sections 1951.456(a), (b), and (d),
19 Occupations Code, are amended to read as follows:

20 (a) The department [~~board~~] shall develop a policy to
21 implement and enforce Sections 1951.453-1951.455.

22 (b) Under rules adopted by the department [~~board~~], a
23 requirement under Sections 1951.453-1951.455 that notice of a
24 treatment be given at least 48 hours before the treatment may be
25 waived for emergency treatments.

26 (d) For the purposes of Sections 1951.453-1951.455, a
27 treatment is an indoor treatment even though the treatment may

1 include an outside perimeter treatment of the building if the
2 primary purpose of the treatment is to treat the inside of the
3 building. The department [~~board~~] shall by rule define a perimeter
4 treatment and shall adopt the definitions provided in federal law.

5 SECTION 1.57. Section 1951.457(c), Occupations Code, is
6 amended to read as follows:

7 (c) The department [~~board~~] may adopt rules to require the
8 distribution of a pest control information sheet for an outdoor
9 treatment other than an outdoor treatment described by this section
10 if the department [~~board~~] determines that the distribution or
11 posting, or both, would protect the public's health, safety, and
12 welfare.

13 SECTION 1.58. Section 1951.501, Occupations Code, is
14 amended to read as follows:

15 Sec. 1951.501. DISCIPLINARY POWERS OF COMMISSIONER
16 RELATING TO STRUCTURAL PEST CONTROL [~~BOARD~~]. (a) In this section,
17 "parent company" means an individual or a partnership, corporation,
18 or other business entity holding one or more structural pest
19 control business licenses.

20 (b) On a determination that an applicant or structural pest
21 control business license holder under a parent company has
22 substantially failed to comply with the standards and rules
23 established by the department under this chapter [~~board~~], after
24 notice and a hearing, the commissioner [~~board~~] may refuse to:

- 25 (1) examine the applicant;
26 (2) issue a license to the applicant; or
27 (3) issue a business license to the parent company.

1 (c) On a determination that a person has violated this
2 chapter or a ~~[board]~~ rule adopted by the department under this
3 chapter, the commissioner ~~[board]~~ may:

- 4 (1) revoke the person's license;
5 (2) suspend the person's license;
6 (3) place on probation a person whose license has been
7 suspended; or
8 (4) reprimand a license holder.

9 (d) The commissioner ~~[board]~~ may require a person whose
10 license suspension is probated to:

- 11 (1) report regularly to the department ~~[board]~~ on
12 matters that are the basis of the probation;
13 (2) limit practice to the areas prescribed by the
14 department ~~[board]~~; or
15 (3) continue or renew professional education until the
16 license holder attains a degree of skill satisfactory to the
17 department ~~[board]~~ in those areas that are the basis of the
18 probation.

19 SECTION 1.59. Section 1951.502, Occupations Code, is
20 amended to read as follows:

21 Sec. 1951.502. RIGHT TO HEARING. (a) If the commissioner
22 ~~[board]~~ proposes to suspend or revoke a person's license, the
23 person is entitled to a hearing before the commissioner ~~[board]~~ or a
24 hearings officer appointed by the commissioner ~~[board]~~.

25 (b) The commissioner ~~[board]~~ shall establish procedures by
26 which a decision to suspend or revoke a license is made by or is
27 appealable to the commissioner ~~[board]~~.

1 SECTION 1.60. Sections 1951.503(a) and (b), Occupations
2 Code, are amended to read as follows:

3 (a) An applicant or license holder may appeal from an order
4 or other action of the commissioner under this chapter [~~board~~] by
5 bringing an action in a district court of Travis County.

6 (b) Notice of appeal must be filed not later than the 30th
7 day after the date the commissioner [~~board~~] issues the order.

8 SECTION 1.61. Sections 1951.504(a), (b), (c), and (e),
9 Occupations Code, are amended to read as follows:

10 (a) A settlement of a contested case under Chapter 2001,
11 Government Code, must be approved by the commissioner [~~board~~].

12 (b) The department [~~board~~] by rule shall establish
13 guidelines for the settlement of a contested case under Chapter
14 2001, Government Code.

15 (c) The commissioner [~~board~~] may authorize the department
16 [~~its representatives~~] to conduct informal settlement negotiations
17 between the department [~~board~~] and a license holder to resolve a
18 complaint, other than a complaint involving a misapplication, by a
19 consumer against the license holder.

20 (e) The department [~~board~~] by rule shall establish
21 guidelines for the informal settlement of consumer complaints as
22 provided by Subsections (c) and (d).

23 SECTION 1.62. Sections 1951.505(b) and (c), Occupations
24 Code, are amended to read as follows:

25 (b) A person whose license is revoked may not apply for a new
26 license until the first anniversary of the effective date of the
27 revocation. A new license may not be issued without the approval of

1 the department [~~board~~].

2 (c) If the commissioner [~~board~~] revokes the license of a
3 certified applicator in one category, the commissioner [~~board~~] may
4 place the applicator on probation for any other category in which
5 the applicator is licensed.

6 SECTION 1.63. Subchapter K, Chapter 1951, Occupations Code,
7 is amended by adding Section 1951.506 to read as follows:

8 Sec. 1951.506. EMERGENCY SUSPENSION. (a) The commissioner
9 shall temporarily suspend the license of a person licensed under
10 this chapter if the commissioner determines from the evidence or
11 information presented to the commissioner that continued practice
12 by the person would constitute a continuing and imminent threat to
13 the public welfare or environment.

14 (b) A license may be suspended under this section without
15 notice or hearing on the complaint if:

16 (1) action is taken to initiate proceedings for a
17 hearing before the State Office of Administrative Hearings
18 simultaneously with the temporary suspension; and

19 (2) a hearing is held as soon as practicable under this
20 chapter and Chapter 2001, Government Code.

21 (c) The State Office of Administrative Hearings shall hold a
22 preliminary hearing not later than the 14th day after the date of
23 the temporary suspension to determine if there is probable cause to
24 believe that a continuing and imminent threat to the public welfare
25 or environment still exists. A final hearing on the matter shall be
26 held not later than the 61st day after the date of the temporary
27 suspension.

1 SECTION 1.64. Section 1951.551, Occupations Code, is
2 amended to read as follows:

3 Sec. 1951.551. IMPOSITION OF ADMINISTRATIVE PENALTY. The
4 commissioner [~~board~~] may impose an administrative penalty on a
5 person who violates this chapter, [~~or~~] a rule adopted or order
6 issued under this chapter, or a cease and desist order issued under
7 Section 1951.604 [~~by the board~~].

8 SECTION 1.65. Section 1951.552(b), Occupations Code, is
9 amended to read as follows:

10 (b) In determining the amount of the penalty, the
11 commissioner [~~board~~] shall consider:

- 12 (1) the seriousness of the violation, including:
13 (A) the nature, circumstances, extent, and
14 gravity of any prohibited act; and
15 (B) the hazard or potential hazard created to the
16 health or safety of the public;
17 (2) the economic damage to property or the environment
18 caused by the violation;
19 (3) the history of previous violations;
20 (4) the amount necessary to deter future violations;
21 (5) efforts to correct the violation; and
22 (6) any other matter that justice may require.

23 SECTION 1.66. Section 1951.553, Occupations Code, is
24 amended to read as follows:

25 Sec. 1951.553. REPORT AND NOTICE OF VIOLATION AND PENALTY.

26 (a) If, after investigation of a possible violation and the facts
27 surrounding that possible violation, the commissioner [~~executive~~

1 ~~director]~~ determines that a violation has occurred, the
2 commissioner [~~executive director~~] may issue a violation report:

3 (1) stating the facts on which the conclusion that a
4 violation occurred is based;

5 (2) recommending that an administrative penalty under
6 this subchapter be imposed on the person charged; and

7 (3) recommending the amount of the proposed penalty.

8 (b) The commissioner [~~executive director~~] must base the
9 recommended amount of the proposed penalty on the seriousness of
10 the violation determined after considering the factors set forth in
11 Section 1951.552(b).

12 (c) Not later than the 14th day after the date on which the
13 report is issued, the commissioner [~~executive director~~] shall give
14 written notice of the report to the person charged. The notice must
15 include:

16 (1) a brief summary of the charges;

17 (2) a statement of the amount of the penalty
18 recommended; and

19 (3) a statement of the right of the person charged to a
20 hearing on the occurrence of the violation, the amount of the
21 penalty, or both.

22 SECTION 1.67. Section 1951.554, Occupations Code, is
23 amended to read as follows:

24 Sec. 1951.554. PENALTY TO BE PAID OR HEARING REQUESTED. (a)
25 Not later than the 20th day after the date the person receives the
26 notice, the person may:

27 (1) accept the commissioner's [~~executive director's~~]

1 determination, including the recommended administrative penalty;
2 or

3 (2) make a written request for a hearing on the
4 determination.

5 (b) If the person charged accepts the commissioner's
6 [~~executive director's~~] determination, the commissioner [~~board~~]
7 shall issue an order approving the determination and ordering the
8 payment of the recommended penalty.

9 SECTION 1.68. Section 1951.555, Occupations Code, is
10 amended to read as follows:

11 Sec. 1951.555. HEARING; DECISION BY COMMISSIONER [~~BOARD~~].

12 (a) If the person requests a hearing or fails to respond in a timely
13 manner to the notice, the commissioner [~~board~~] shall set a hearing
14 and give notice of the hearing.

15 (b) The hearing shall be held by a hearings examiner
16 designated by the commissioner [~~board~~]. The hearings examiner
17 shall make findings of fact and conclusions of law and promptly
18 issue to the commissioner [~~board~~] a proposal for a decision as to
19 the occurrence of the violation, including a recommendation as to
20 the amount of any proposed administrative penalty.

21 (c) Based on the findings of fact, conclusions of law, and
22 recommendations of the hearings examiner, the commissioner [~~board~~]
23 by order may:

24 (1) determine that a violation occurred and impose a
25 penalty; or

26 (2) determine that a violation did not occur.

27 (d) A proceeding under this section is subject to Chapter

1 2001, Government Code.

2 SECTION 1.69. Section 1951.556, Occupations Code, is
3 amended to read as follows:

4 Sec. 1951.556. NOTICE OF ORDER. The commissioner [~~board~~]
5 shall give notice of the order to the person. The notice must
6 include:

7 (1) the findings of fact and conclusions of law,
8 separately stated;

9 (2) the amount of any administrative penalty imposed;

10 (3) a statement of the person's right to judicial
11 review of the commissioner's [~~board's~~] order; and

12 (4) any other information required by law.

13 SECTION 1.70. Section 1951.557, Occupations Code, is
14 amended to read as follows:

15 Sec. 1951.557. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.

16 (a) Not later than the 30th day after the date the commissioner's
17 [~~board's~~] order becomes final, the person shall:

18 (1) pay the administrative penalty; or

19 (2) file a petition for judicial review contesting the
20 fact of the violation, the amount of the penalty, or both.

21 (b) Within the period prescribed by Subsection (a), a person
22 who acts under Subsection (a)(2) may stay enforcement of the
23 penalty by:

24 (1) paying the penalty to the department [~~board~~] for
25 placement in an escrow account;

26 (2) giving the department [~~board~~] a supersedeas bond
27 in a form approved by the department [~~board~~] that:

1 (A) is for the amount of the penalty; and

2 (B) is effective until judicial review of the
3 commissioner's [~~board's~~] order is final; or

4 (3) filing with the department [~~board~~] an affidavit
5 stating that the person is financially unable to either pay the
6 penalty or give the bond.

7 (c) A person who fails to take action as provided by this
8 section waives the right to judicial review of the commissioner's
9 [~~board's~~] order.

10 SECTION 1.71. Section 1951.558, Occupations Code, is
11 amended to read as follows:

12 Sec. 1951.558. COLLECTION OF PENALTY. If the person does
13 not pay the administrative penalty and the enforcement of the
14 penalty is not stayed, the department [~~board~~] may refer the matter
15 to the attorney general for collection of the penalty.

16 SECTION 1.72. Section 1951.559(a), Occupations Code, is
17 amended to read as follows:

18 (a) If, after judicial review, the administrative penalty
19 is reduced or is not upheld by the court, the department [~~board~~]
20 shall:

21 (1) remit the appropriate amount, plus accrued
22 interest, to the person against whom the penalty is imposed, if the
23 person paid the penalty; or

24 (2) execute a release of the bond, if the person gave a
25 supersedeas bond.

26 SECTION 1.73. Section 1951.601, Occupations Code, is
27 amended to read as follows:

1 Sec. 1951.601. ENFORCEMENT ACTION FOR MISAPPLICATION OF
2 PESTICIDES. If the commissioner [~~board~~] finds that an applicator
3 has misapplied pesticides, the commissioner [~~board~~] shall
4 institute an enforcement action against the applicator. The
5 department [~~board~~] by rule shall adopt a policy to implement this
6 section.

7 SECTION 1.74. Section 1951.602, Occupations Code, is
8 amended to read as follows:

9 Sec. 1951.602. CIVIL PENALTY; INJUNCTION. (a) A person who
10 violates this chapter or a rule, license, or order of the
11 commissioner [~~board~~] is subject to a civil penalty of not less than
12 \$50 or more than \$2,000 for each act of violation and for each day of
13 violation.

14 (b) If it appears that a person has violated or is
15 threatening to violate this chapter or a rule, license, or order of
16 the commissioner [~~board~~], the commissioner [~~board, or the executive~~
17 ~~director if authorized by the board,~~] may have a civil action
18 instituted in a district court for:

19 (1) injunctive relief to restrain the person from
20 continuing the violation or threat of violation;

21 (2) the assessment and recovery of a civil penalty
22 under Subsection (a); or

23 (3) both injunctive relief and the civil penalty.

24 (c) On application for injunctive relief and a finding that
25 a person is violating or threatening to violate this chapter or a
26 rule, license, or order of the commissioner [~~board~~], the district
27 court shall grant injunctive relief as the facts warrant.

1 (d) At the request of the commissioner [~~board, or the~~
2 ~~executive director if authorized by the board~~], the attorney
3 general shall institute and conduct an action in the name of the
4 state for the injunctive relief, to recover the civil penalty, or
5 both.

6 SECTION 1.75. Subchapter M, Chapter 1951, Occupations Code,
7 is amended by adding Section 1951.604 to read as follows:

8 Sec. 1951.604. CEASE AND DESIST ORDER. If it appears to the
9 commissioner that a person who is not licensed under this chapter is
10 violating this chapter, a rule adopted under this chapter, or
11 another state statute or rule relating to the practice of
12 structural pest control, the commissioner after notice and
13 opportunity for a hearing may issue a cease and desist order
14 prohibiting the person from engaging in the activity.

15 SECTION 1.76. Subchapter M, Chapter 1951, Occupations Code,
16 is amended by adding Section 1951.605 to read as follows:

17 Sec. 1951.605. STOP USE ORDER. (a) If the department has
18 reason to believe that a person licensed under this chapter is using
19 or is in possession of a pesticide that is in violation of Chapter
20 76, Agriculture Code, the department may issue and enforce a
21 written or printed order to stop the use of the pesticide. The
22 department shall present the order to the owner or custodian of the
23 pesticide. The person who receives the order may not use the
24 pesticide until the department determines that the pesticide:

25 (1) is in compliance with this chapter; or
26 (2) does not present a hazard to the public health,
27 safety, or welfare.

1 (b) This section does not limit the right of the department
2 or commissioner to proceed as authorized by another section of this
3 chapter, including in the assessment of an administrative penalty
4 under this chapter.

5 (c) A person may appeal an order issued under this section
6 in the manner provided by Subchapters K and L.

7 SECTION 1.77. The following provisions of the Occupations
8 Code are repealed:

- 9 (1) Section 1951.002(2);
10 (2) Section 1951.007;
11 (3) Sections 1951.106(b) and (c);
12 (4) Section 1951.107; and
13 (5) Subchapter D, Chapter 1951.

14 ARTICLE 2. CONFORMING AMENDMENTS

15 SECTION 2.01. Section 88.215(b), Education Code, is amended
16 to read as follows:

17 (b) The advisory committee consists of 11 [~~12~~] members
18 appointed as follows:

19 (1) one representative of Texas A & M University
20 appointed by the director of the Texas Agricultural Experiment
21 Station;

22 (2) one representative of Texas Tech University
23 appointed by the dean of the College of Agriculture of Texas Tech
24 University;

25 (3) one representative of The University of Texas
26 appointed by the vice president for research of The University of
27 Texas System;

1 (4) one representative of the Department of
2 Agriculture appointed by the commissioner of agriculture;

3 (5) one representative of the Parks and Wildlife
4 Department appointed by the director of the department;

5 (6) one representative of the Public Utility
6 Commission of Texas appointed by the executive director of the
7 commission;

8 (7) one representative of municipal governments
9 appointed by the governor;

10 (8) one representative of the general public appointed
11 by the governor;

12 (9) one representative of the agribusiness industry
13 appointed by the governor;

14 (10) [~~one representative of the Texas Structural Pest~~
15 ~~Control Board appointed by the executive director of the board,~~

16 [~~(11)~~] one representative of the chemical industry
17 appointed by the Texas Chemical Council; and

18 (11) [~~(12)~~] one representative of the oil and gas
19 industry appointed by the Texas Mid-Continent Oil and Gas
20 Association.

21 SECTION 2.02. Section 232.002, Family Code, is amended to
22 read as follows:

23 Sec. 232.002. LICENSING AUTHORITIES SUBJECT TO
24 CHAPTER. The following are licensing authorities subject to this
25 chapter:

26 (1) Department of Agriculture;

27 (2) Texas Alcoholic Beverage Commission;

- 1 (3) Texas Appraiser Licensing and Certification
- 2 Board;
- 3 (4) Texas Board of Architectural Examiners;
- 4 (5) Texas Board of Chiropractic Examiners;
- 5 (6) Comptroller of Public Accounts;
- 6 (7) Court Reporters Certification Board;
- 7 (8) State Board of Dental Examiners;
- 8 (9) Texas State Board of Examiners of Dietitians;
- 9 (10) Texas Funeral Service Commission;
- 10 (11) Department of State Health Services;
- 11 (12) Department of Aging and Disability Services;
- 12 (13) Texas Board of Professional Land Surveying;
- 13 (14) Texas Department of Licensing and Regulation;
- 14 (15) Texas State Board of Examiners of Marriage and
- 15 Family Therapists;
- 16 (16) Texas [~~State Board of~~] Medical Board [~~Examiners~~];
- 17 (17) Midwifery Board;
- 18 (18) Texas Commission on Environmental Quality;
- 19 (19) Board of Nurse Examiners;
- 20 (20) Texas Board of Occupational Therapy Examiners;
- 21 (21) Texas Optometry Board;
- 22 (22) Parks and Wildlife Department;
- 23 (23) Texas State Board of Examiners of Perfusionists;
- 24 (24) Texas State Board of Pharmacy;
- 25 (25) Texas Board of Physical Therapy Examiners;
- 26 (26) Texas State Board of Plumbing Examiners;
- 27 (27) Texas State Board of Podiatric Medical Examiners;

- 1 (28) Polygraph Examiners Board;
- 2 (29) Texas Private Security Board;
- 3 (30) Texas State Board of Examiners of Professional
- 4 Counselors;
- 5 (31) Texas Board of Professional Engineers;
- 6 (32) Department of Family and Protective Services;
- 7 (33) Texas State Board of Examiners of Psychologists;
- 8 (34) Texas State Board of Public Accountancy;
- 9 (35) Department of Public Safety of the State of
- 10 Texas;
- 11 (36) Public Utility Commission of Texas;
- 12 (37) Railroad Commission of Texas;
- 13 (38) Texas Real Estate Commission;
- 14 (39) State Bar of Texas;
- 15 (40) Texas State Board of Social Worker Examiners;
- 16 (41) State Board of Examiners for Speech-Language
- 17 Pathology and Audiology;
- 18 (42) [~~Texas Structural Pest Control Board,~~
- 19 [~~43~~] Board of Tax Professional Examiners;
- 20 (43) [~~44~~] Secretary of State;
- 21 (44) [~~45~~] Supreme Court of Texas;
- 22 (45) [~~46~~] Texas Transportation Commission;
- 23 (46) [~~47~~] State Board of Veterinary Medical
- 24 Examiners;
- 25 (47) [~~48~~] Texas Ethics Commission;
- 26 (48) [~~49~~] Advisory Board of Athletic Trainers;
- 27 (49) [~~50~~] State Committee of Examiners in the

1 Fitting and Dispensing of Hearing Instruments;

2 (50) [~~(51)~~] Texas Board of Licensure for Professional
3 Medical Physicists;

4 (51) [~~(52)~~] Texas Department of Insurance;

5 (52) [~~(53)~~] Texas Board of Orthotics and Prosthetics;

6 (53) [~~(54)~~] savings and mortgage lending [~~loan~~]
7 commissioner;

8 (54) [~~(55)~~] Texas Juvenile Probation Commission; and

9 (55) [~~(56)~~] Texas Lottery Commission under Chapter
10 466, Government Code.

11 SECTION 2.03. Section 2054.352(a), Government Code, is
12 amended to read as follows:

13 (a) The following licensing entities shall participate in
14 the system established under Section 2054.353:

15 (1) Texas Board of Chiropractic Examiners;

16 (2) Court Reporters Certification Board;

17 (3) State Board of Dental Examiners;

18 (4) Texas Funeral Service Commission;

19 (5) Texas Board of Professional Land Surveying;

20 (6) Texas [~~State Board of~~] Medical Board [~~Examiners~~];

21 (7) Board of Nurse Examiners;

22 (8) Texas Optometry Board;

23 (9) Department of Agriculture, for licenses issued
24 under Chapter 1951, Occupations Code [~~Texas Structural Pest Control~~
25 ~~Board~~];

26 (10) Texas State Board of Pharmacy;

27 (11) Executive Council of Physical Therapy and

- 1 Occupational Therapy Examiners;
- 2 (12) Texas State Board of Plumbing Examiners;
- 3 (13) Texas State Board of Podiatric Medical Examiners;
- 4 (14) Board of Tax Professional Examiners;
- 5 (15) Polygraph Examiners Board;
- 6 (16) Texas State Board of Examiners of Psychologists;
- 7 (17) State Board of Veterinary Medical Examiners;
- 8 (18) Texas Real Estate Commission;
- 9 (19) Texas Appraiser Licensing and Certification
- 10 Board;
- 11 (20) Texas Department of Licensing and Regulation;
- 12 (21) Texas State Board of Public Accountancy;
- 13 (22) State Board for Educator Certification;
- 14 (23) Texas Board of Professional Engineers;
- 15 (24) Department of State Health Services;
- 16 (25) Texas Board of Architectural Examiners;
- 17 (26) Texas Racing Commission;
- 18 (27) Commission on Law Enforcement Officer Standards
- 19 and Education; and
- 20 (28) Texas Private Security Board.

21 SECTION 2.04. Section 411.101, Government Code, is

22 repealed.

23 ARTICLE 3. TRANSITION AND EFFECTIVE DATE

24 SECTION 3.01. (a) The Texas Structural Pest Control Board

25 is abolished but continues in existence until March 1, 2008, for the

26 sole purpose of transferring obligations, property, full-time

27 equivalent positions, rights, powers, and duties to the Department

1 of Agriculture. The Department of Agriculture assumes all of the
2 obligations, property, full-time equivalent positions, rights,
3 powers, and duties of the Texas Structural Pest Control Board, as it
4 exists immediately before the effective date of this Act. All
5 unexpended funds appropriated to the Texas Structural Pest Control
6 Board are transferred to the Department of Agriculture. The
7 transfer of the obligations, property, full-time equivalent
8 positions, rights, powers, and duties of the Texas Structural Pest
9 Control Board to the Department of Agriculture must be completed
10 not later than March 1, 2008.

11 (b) All rules of the Texas Structural Pest Control Board are
12 continued in effect as rules of the Department of Agriculture until
13 superseded by a rule of the Department of Agriculture. A
14 certificate, license, or permit issued by the Texas Structural Pest
15 Control Board is continued in effect as provided by the law in
16 effect immediately before the effective date of this Act. A
17 complaint, investigation, contested case, or other proceeding
18 pending on the effective date of this Act is continued without
19 change in status after the effective date of this Act. An
20 inspection or other activity conducted by the Texas Structural Pest
21 Control Board is considered to be an inspection or activity
22 conducted by the Department of Agriculture.

23 (c) A reference in another law or an administrative rule to
24 the Texas Structural Pest Control Board means the Department of
25 Agriculture.

26 SECTION 3.02. (a) The Texas Structural Pest Control Board,
27 in cooperation with and at the direction of the Department of

1 Agriculture, shall complete all necessary computer programming and
2 other tasks to ensure that the agency numbers assigned by the
3 comptroller to the board and the department are not necessary for
4 any fiscal year after 2007, except to complete earlier fiscal year
5 revenue and expenditure transactions and reporting. The number
6 assigned by the comptroller to the Department of Agriculture shall
7 be used to record transactions related to the regulation of
8 structural pest control beginning in fiscal year 2008.

9 (b) Not later than July 1, 2007, the Texas Structural Pest
10 Control Board shall request that the comptroller grant the
11 Department of Agriculture inquiry-only security access to the
12 uniform statewide accounting system, the state property accounting
13 system, the uniform statewide payroll system, and the human
14 resources information system for the board. The Department of
15 Agriculture and the comptroller may coordinate implementation of
16 this section.

17 (c) Not later than July 15, 2007, the Department of
18 Agriculture shall provide to the Texas Structural Pest Control
19 Board detailed information regarding the board's responsibilities
20 under Subsection (a) of this section.

21 SECTION 3.03. The change in law made by this Act with
22 respect to conduct that is grounds for imposition of a disciplinary
23 sanction, including an emergency suspension or a cease and desist
24 order, applies only to conduct that occurs on or after September 1,
25 2007. Conduct that occurs before September 1, 2007, is governed by
26 the law in effect on the date the conduct occurred, and the former
27 law is continued in effect for that purpose.

1 SECTION 3.04. Not later than September 1, 2008, the
2 Department of Agriculture shall adopt rules and policies required
3 under:

4 (1) Section 1951.105, Occupations Code, as amended by
5 this Act;

6 (2) Section 1951.207(a)(2), Occupations Code, as
7 amended by this Act;

8 (3) Section 1951.212(d), Occupations Code, as amended
9 by this Act; and

10 (4) Section 1951.406, Occupations Code, as added by
11 this Act.

12 SECTION 3.05. Not later than September 1, 2008, the
13 commissioner of agriculture shall appoint the initial members of
14 the structural pest control advisory committee under Section
15 1951.101, Occupations Code, as amended by this Act.

16 SECTION 3.06. Not later than September 1, 2008, each school
17 district shall provide the name, address, telephone number, and
18 e-mail address of the district's integrated pest management
19 coordinator to the Department of Agriculture as required by Section
20 1951.212(e), Occupations Code, as amended by this Act.

21 SECTION 3.07. (a) Except as provided by Subsection (b) of
22 this section, this Act takes effect September 1, 2007.

23 (b) Section 3.02 of this Act takes effect immediately if
24 this Act receives a vote of two-thirds of all the members elected to
25 each house, as provided by Section 39, Article III, Texas
26 Constitution. If this Act does not receive the vote necessary for
27 immediate effect, Section 3.02 does not take effect.