

BILL ANALYSIS

C.S.H.B. 2038
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Agriculture & Livestock
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Outdated and impractical structural pest control laws have led to poor practices and unnecessary burdens in the pest control industry. Specifically, some pest control operators who currently are licensed to a company also practice independently without the required insurance to protect the customer. In addition, many employees of pest control companies who have nothing to do with the actual practice of pest control still must be licensees just to answer the phone or perform other non-pest control functions. Current provisions outlining the structural pest control advisory committee have led to an ineffective and unrepresentative board. Current posting requirements also create inefficiencies in the market.

C.S.H.B. 2038 clarifies that licensed operators must be licensed with every business under which they operate and that only those employees that deal directly with pest control operations must be licensed. In addition, the bill makes improvements to the language outlining the structural pest control advisory committee. The bill makes minor changes to posting requirements.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Department of Agriculture in SECTION 5 of this bill.

ANALYSIS

C.S.H.B. 2038 amends the Occupations Code to modify provisions relating to the regulation of structural pest control.

C.S.H.B. 2038 redefines "technician," retaining the description of such a person and retaining certain exclusions but limiting the term to a person who is licensed under structural pest control laws.

C.S.H.B. 2038 removes from the itemized activities that constitute being engaged in the business of structural pest control, the offering to perform, or advertising or soliciting the person's performance of, certain pest control services for compensation, including services performed as a part of the person's employment. The bill clarifies, in that itemization of activities that constitute being engaged in the business of structural pest control, that the making of contracts or submitting of bids for services to prevent, control, or eliminate an infestation by use of insecticides, pesticides, rodenticides, fumigants, allied chemicals or substances, or mechanical devices is done so based on an inspection. The bill specifies that a person is not engaged in the business of structural pest control if the person is a clerical employee or a manual laborer and does not: identify pests; make inspections, recommendations, estimates, bids, or contracts; provide estimates, bids, or contracts based on an inspection; or apply insecticides, pesticides, rodenticides, fumigants, allied chemicals, or other related substances.

C.S.H.B. 2038 amends the qualifications for appointment to the structural pest control advisory committee for the member who represents the interest of consumers by removing the conditions that such appointment be based on recommendations provided by consumer advocacy groups or associations. The bill requires the committee to meet quarterly, to operate under Roberts Rules of

Order, and to record the minutes of each meeting. The bill requires the Texas Department of Agriculture (TDA) to use the structural pest control advisory committee to assist in developing standards for the integrated pest management program and removes the option of creating a new advisory committee for that purpose.

C.S.H.B. 2038 requires rules governing the methods and practices of structural pest control, adopted by TDA with the advice of the committee, to be authorized under the structural pest control chapter of the Occupations Code and requires that each rule adopted cite the section of that chapter that authorizes the rule.

C.S.H.B. 2038 provides that a certified commercial applicator, certified noncommercial applicator, or licensed technician is not required to obtain a separate license for each branch office of an employer. The bill requires a certified commercial applicator or technician license to be associated with a business license holder and requires the employer's name to be printed on the face of the license issued to a commercial applicator or technician.

C.S.H.B. 2038 provides for the expiration of a structural pest control license at the end of the license period as determined by TDA rule and removes the provision authorizing TDA by rule to adopt a system under which licenses expire on various dates during the year and the provision requiring proration of license fees payable on December 31 for the year in which the license expiration date is changed.

C.S.H.B. 2038 modifies requirements relating to pest control information that is supplied in conjunction with the indoor treatment of residential property. The bill eliminates a requirement that, for indoor treatment at a private residence that is not rental property, the certified applicator or technician give the owner a pest control information sheet before each treatment or leave the information sheet in a conspicuous place if the owner is not available. The bill instead requires only that the sheet be made available to the owner. The bill makes a similar change with respect to indoor treatment at residential multi-unit rental properties, requiring the certified applicator or technician to make the information sheet available to each tenant in the case of a property with five or fewer units, or make it available to the owner or manager in the case of a property with five or more units. The bill, in so doing, replaces provisions requiring that an information sheet be provided to each tenant, or to the owner or manager, in such cases. The bill makes a similar change, requiring that an information sheet be made available, rather than given, to the employer or building manager in the case of indoor treatment at a workplace, or to the chief administrator or building manager in the case of indoor treatment at a building, nursing home, hotel, motel, lodge, warehouse, food-processing establishment, school, or day-care center. The bill makes a similar change with respect to outdoor treatment at a private residence or outdoor treatment at a residential rental property with fewer than five rental units.

C.S.H.B. 2038 repeals provisions relating to indoor treatment that specify that a treatment is an indoor treatment, even though the treatment may include an outside perimeter treatment of the building, if the primary purpose of the treatment is to treat the inside of the building and that require TDA by rule to define a perimeter treatment and to adopt the definitions provided in federal law.

C.S.H.B. 2038 repeals Section 1951.456(d), Occupations Code.

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 2038 removes a provision included in the original redefining "certified commercial applicator."

C.S.H.B. 2038 adds a provision not included in the original clarifying, in the itemization of activities that constitute being engaged in the business of structural pest control, that the making of contracts or submitting of bids for services to prevent, control, or eliminate an infestation by use of insecticides, pesticides, rodenticides, fumigants, allied chemicals or substances, or mechanical devices is done so based on an inspection.

C.S.H.B. 2038 adds a provision not included in the original establishing that a person is not engaged in the business of structural pest control if the person is a clerical employee or manual laborer and the person does not provide estimates, bids, or contracts based on an inspection.

C.S.H.B. 2038 removes a provision included in the original deleting an exemption from the applicability of structural pest control laws for a person who performs pest control work on growing plants, trees, shrubs, grass, or other horticultural plants if the person holds a florist or nursery registration certificate.

C.S.H.B. 2038 removes provisions included in the original changing the composition of the structural pest control advisory committee by providing that four, instead of two, of the nine members be experts in structural pest control application and removing the positions for a member from an institution of higher education who is knowledgeable in the science of pests and pest control and for a member who represents the interests of consumers. The substitute instead amends the qualifications for appointment to the advisory committee for the member who represents the interest of consumer by removing the conditions that such appointment be based on recommendations provided by consumer advocacy groups or associations.

C.S.H.B. 2038 removes a provision included in the original establishing that a pest control operator is not liable for any damages that may arise as a result of a pretreatment inspection, made as part of a Texas Department of Agriculture (TDA) inspection service under the law on the subject, that is subsequently found to be incorrect.

C.S.H.B. 2038 removes a provision included in the original decreasing the requisite amount of certain types of insurance or proof of sufficient funds for payment of claims of damage to persons or property occurring as a result of operations performed in the course of the business of structural pest control that a person must file before being issued a license of license renewal and establishing that statutory provisions on the subject do not require insurance coverage for errors and omissions.

C.S.H.B. 2038 adds provisions not included in the original establishing that a certified commercial applicator, certified noncommercial applicator, or licensed technician is not required to obtain a separate license for each branch office of an employer; requiring a certified commercial applicator or technician license to be associated with a business license holder; and requiring the employer's name to be printed on the face of the license issued to a commercial applicator or technician.

C.S.H.B. 2038 adds a provision not included in the original providing for the expiration of a structural pest control license at the end of the license period as determined by TDA rule and deleting the statutory provisions authorizing TDA by rule to adopt a system under which licenses expire on various dates during the year and requiring the proration of license fees payable on December 31 for the year in which the license expiration date is changed.

C.S.H.B. 2038 removes a provision included in the original eliminating certain restrictions on the owner of an apartment building, day-care center, hospital, nursing home, hotel, motel, lodge, warehouse, school, or food-processing establishment, other than a restaurant, retail food, or food services establishment in obtaining pest control services for that building and instead applying those restrictions to the owner of a building where persons other than the employer are employed.