

BILL ANALYSIS

S.B. 768
By: Hegar
Agriculture & Livestock
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Pesticide regulation is the Texas Department of Agriculture's (TDA) largest and most complex regulatory program and makes up more than half of TDA's total licenses. Applicants for a pesticide applicator license are required to meet education, experience, and examination requirements, in addition to paying license fees.

Many activities that do not involve pesticide application are subject to the requirements of the Texas Structural Pest Control Act. Activities such as the removal of an animal using a live trap or the removal of a pest or pest habitat while cleaning a chimney do not necessitate the use of pesticides and therefore should not require a structural pest control license.

S.B. 768 exempts activities that do not involve pesticide application, certain consulting services, and certain activities involving minimal risk of harm from licensing requirements.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Department of Agriculture in SECTION 1 (Section 1951.060, Occupations Code) of this bill

ANALYSIS

SECTION 1. Amends Subchapter B, Chapter 1951, Occupations Code, by adding Sections 1951.058, 1951.059, and 1951.060, as follows:

Sec. 1951.058. **ACTIVITIES NOT INVOLVING PESTICIDES.** Provides that this chapter, when performed without the use of a pesticide, does not apply to the:

- (1) use of a raptor to control or relocate other birds;
- (2) physical removal of pests or the habitat of pests while cleaning a chimney;
- (3) use of a live trap to remove an animal from the premises of a residence, agricultural operation, or business structure;
- (4) removal by mechanical means of weeds or other obstructing vegetation from a sewer, drainage system, body of water, or similar area; or
- (5) installation, maintenance, or use of a non-pesticidal barrier to remove or prevent infestation by nuisance animals.

Sec. 1951.059. **CONSULTING SERVICES.** Provides that this chapter does not apply to a person who, as an independent consultant, provides information to a restaurant, medical facility, or food or meal delivery operation regarding general pest control methods and general or specific pest control products or services and who does not:

- (1) identify specific pests or infestations;
- (2) perform, agree to perform, or bid on a job to perform pest control services; or
- (3) supply, agree to supply, or bid on a job to supply pest control products.

Sec. 1951.060. ACTIVITIES INVOLVING MINIMAL RISK OF HARM. (a) Authorizes the Department of Agriculture (TDA) by rule to exempt an activity from all or part of the requirements of this chapter if TDA determines that the activity presents only a minimal risk of harm to the health, safety, and welfare of the public, the person performing the activity, pets and other domesticated animals, and the environment.

(b) Requires that a business that performs an activity exempted from regulation under this section and that is not otherwise required to hold a license issued under this chapter to provide each customer a written notice, as prescribed by TDA rule, that informs the customer of the customer's rights under the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code), provides contact information for the consumer protection division of the office of the attorney general, and contains other information required by TDA.

(c) Provides that failure to provide the notice required by Subsection (b) is a violation of this chapter. Authorizes TDA to impose an administrative penalty or take any other enforcement action provided by this chapter or the Agriculture Code to deter, restrain, or punish a person who violates this section. Provides that an enforcement action by TDA under this section is in addition to remedies and penalties provided by the Deceptive Trade Practices-Consumer Protection Act.

EFFECTIVE DATE

SECTION 2. Effective date: upon passage or September 1, 2009.