

By: Isett

H.B. No. 2038

Substitute the following for H.B. No. 2038:

By: Hardcastle

C.S.H.B. No. 2038

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of structural pest control.

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

SECTION 1. Section 1951.002(16), Occupations Code, is amended to read as follows:

(16) "Technician" means a person who holds a license under this chapter and who, under ~~the~~ direct supervision of a certified noncommercial applicator or, as an employee of a holder of a structural pest control business license, performs supervised pesticide applications, maintains or uses structural pest control devices, makes sales presentations, or identifies pest infestation or damage. The term does not include a person whose duties are solely clerical or are otherwise completely disassociated with pest control.

SECTION 2. Section 1951.003, Occupations Code, is amended to read as follows:

Sec. 1951.003. BUSINESS OF STRUCTURAL PEST CONTROL. (a) In this chapter, a person is engaged in the "business of structural pest control" if the person performs~~[, offers to perform, or advertises for or solicits the person's performance of]~~ any of the following services for compensation, including services performed as a part of the person's employment:

(1) identifying infestations or making inspections for the purpose of identifying or attempting to identify

1 infestations of:

2 (A) arthropods, including insects, spiders,
3 mites, ticks, and related pests, wood-infesting organisms,
4 rodents, weeds, nuisance birds, and any other obnoxious or
5 undesirable animals that may infest households, railroad cars,
6 ships, docks, trucks, airplanes, or other structures or their
7 contents; or

8 (B) pests or diseases of trees, shrubs, or other
9 plantings in a park or adjacent to a residence, business
10 establishment, industrial plant, institutional building, or
11 street;

12 (2) making oral or written inspection reports,
13 recommendations, estimates, or bids with respect to an infestation
14 described by Subdivision (1); or

15 (3) making contracts, or submitting bids based on an
16 inspection for services or performing services designed to prevent,
17 control, or eliminate an infestation described by Subdivision (1)
18 by the use of insecticides, pesticides, rodenticides, fumigants,
19 allied chemicals or substances, or mechanical devices.

20 (b) A person is not engaged in the business of structural
21 pest control if the person is a clerical employee or a manual
22 laborer and the person does not:

23 (1) identify pests;

24 (2) make inspections, recommendations, estimates,
25 bids, or contracts;

26 (3) provide estimates, bids, or contracts based on an
27 inspection; or

1 (4) apply insecticides, pesticides, rodenticides,
2 fumigants, allied chemicals, or other related substances regulated
3 by the department.

4 SECTION 3. Section 1951.101(a), Occupations Code, is
5 amended to read as follows:

6 (a) The committee consists of nine members appointed by the
7 commissioner as follows:

8 (1) two members who are experts in structural pest
9 control application;

10 (2) three members who represent the public;

11 (3) one member from an institution of higher education
12 who is knowledgeable in the science of pests and pest control;

13 (4) one member who represents the interests of
14 structural pest control operators and who is appointed based on
15 recommendations provided by a trade association of operators;

16 (5) one member who represents the interests of
17 consumers [~~and who is appointed based on recommendations provided~~
18 ~~by consumer advocacy groups or associations~~]; and

19 (6) the commissioner of state health services or the
20 commissioner's designee.

21 SECTION 4. Section 1951.105, Occupations Code, is amended
22 to read as follows:

23 Sec. 1951.105. RULES GOVERNING COMMITTEE; COMMITTEE
24 MEETINGS. (a) The department shall adopt rules for the operation
25 of the committee, including rules governing:

26 (1) the purpose, role, responsibility, and goals of
27 the committee;

- 1 (2) the quorum requirements for the committee;
- 2 (3) the qualifications required for members of the
- 3 committee, which may include experience and geographic
- 4 representation requirements;
- 5 (4) the appointment process for the committee;
- 6 (5) the members' terms;
- 7 (6) the training requirements;
- 8 (7) a process to regularly evaluate the effectiveness
- 9 of the committee; and
- 10 (8) a requirement that the committee comply with
- 11 Chapter 551, Government Code.

12 (b) The committee shall:

- 13 (1) meet quarterly;
- 14 (2) operate under Robert's Rules of Order; and
- 15 (3) record the minutes of each meeting.

16 SECTION 5. Section 1951.205(a), Occupations Code, is
17 amended to read as follows:

18 (a) The department, with the advice of the committee, shall
19 adopt rules as authorized under this chapter governing the methods
20 and practices of structural pest control that the department
21 determines are necessary to protect the public's health and welfare
22 and prevent adverse effects on human life and the environment. Each
23 rule adopted must cite the section of this chapter that authorizes
24 the rule.

25 SECTION 6. Section 1951.212(b), Occupations Code, is
26 amended to read as follows:

27 (b) The department shall use the structural pest control [~~an~~

1 ~~existing~~] advisory committee [~~or create a new advisory committee~~]
2 to assist the department in developing the standards for the
3 integrated pest management program. In developing the standards,
4 the advisory committee shall consult with a person knowledgeable in
5 the area of integrated pest management in schools.

6 SECTION 7. Section 1951.301, Occupations Code, is amended
7 by amending Subsection (d) and adding Subsection (f) to read as
8 follows:

9 (d) A person engaged in the business of structural pest
10 control must hold a structural pest control business license for
11 each place of business, including each branch office. A certified
12 commercial applicator, certified noncommercial applicator, or
13 licensed technician is not required to obtain a separate license
14 for each branch office of an employer.

15 (f) A certified commercial applicator or technician license
16 must be associated with a business license holder. The name of the
17 employer of a licensed commercial applicator or technician must be
18 printed on the face of the license issued to a commercial applicator
19 or technician.

20 SECTION 8. Section 1951.308, Occupations Code, is amended
21 to read as follows:

22 Sec. 1951.308. LICENSE EXPIRATION. A license issued under
23 this chapter expires at the end of the license period as determined
24 by department rule. [~~(a) The department by rule may adopt a system~~
25 ~~under which licenses expire on various dates during the year.~~

26 [~~(b) For the year in which the license expiration date is~~
27 ~~changed, license fees payable on December 31 shall be prorated on a~~

1 ~~monthly basis so that each license holder pays only that portion of~~
2 ~~the license fee that is allocable to the number of months during~~
3 ~~which the license is valid. On renewal of the license on the new~~
4 ~~expiration date, the total license renewal fee is payable.]~~

5 SECTION 9. Section 1951.453, Occupations Code, is amended
6 to read as follows:

7 Sec. 1951.453. PEST CONTROL INFORMATION FOR INDOOR
8 TREATMENTS: RESIDENTIAL PROPERTY. (a) For an indoor treatment at
9 a private residence that is not rental property, a certified
10 applicator or technician shall make available [+

11 [~~(1) give~~] a pest control information sheet developed
12 under Section 1951.254 to the owner of the residence before each
13 treatment begins [~~, or~~

14 [~~(2) if the owner is not available at the time~~
15 ~~treatment begins, leave the information sheet in a conspicuous~~
16 ~~place in the residence]~~.

17 (b) For an indoor treatment at a residential rental property
18 with fewer than five rental units, a certified applicator or
19 technician shall make available [~~leave~~] a pest control information
20 sheet developed under Section 1951.254 to the tenant of [~~in~~] each
21 unit [~~at the time of each treatment]~~.

22 (c) For an indoor treatment at a residential rental property
23 with five or more rental units, a certified applicator or
24 technician shall make available [~~provide~~] a pest control
25 information sheet developed under Section 1951.254 and a pest
26 control sign developed under that section to the owner or manager of
27 the property. The owner or manager or an employee or agent of the

1 owner or manager, other than the certified applicator or
2 technician, shall notify residents who live in the direct area of
3 the treatment or in an adjacent area by:

4 (1) posting the sign in an area of common access at
5 least 48 hours before each planned treatment; or

6 (2) leaving the information sheet on the front door of
7 each unit or in a conspicuous place inside each unit at least 48
8 hours before each planned treatment.

9 SECTION 10. Section 1951.454, Occupations Code, is amended
10 to read as follows:

11 Sec. 1951.454. PEST CONTROL INFORMATION FOR INDOOR
12 TREATMENTS: WORKPLACE. For an indoor treatment at a workplace, a
13 certified applicator or technician shall make available [~~provide~~]
14 pest control information sheet developed under Section 1951.254 and
15 a pest control sign developed under that section to the employer or
16 the building manager. The employer or building manager or an
17 employee or agent of the owner or manager, other than the certified
18 applicator or technician, shall notify the persons who work at the
19 workplace of the date of the planned treatment by:

20 (1) posting the sign in an area of common access that
21 the persons are likely to check on a regular basis at least 48 hours
22 before each planned treatment; and

23 (2) providing the information sheet to any person
24 working in the building on a request made by the person during
25 normal business hours.

26 SECTION 11. Section 1951.455(a), Occupations Code, is
27 amended to read as follows:

1 (a) For an indoor treatment at a building that is a
2 hospital, nursing home, hotel, motel, lodge, warehouse,
3 food-processing establishment, school, or day-care center, a
4 certified applicator or technician shall make available [~~provide~~] a
5 pest control information sheet developed under Section 1951.254 and
6 a pest control sign developed under that section to the chief
7 administrator or building manager. The chief administrator or
8 building manager shall notify the persons who work in the building
9 of the treatment by:

10 (1) posting the sign in an area of common access that
11 the persons are likely to check on a regular basis at least 48 hours
12 before each planned treatment; and

13 (2) providing the information sheet to a person
14 working in the building on request of the person.

15 SECTION 12. Sections 1951.457(a) and (b), Occupations Code,
16 are amended to read as follows:

17 (a) For an outdoor treatment at a private residence that is
18 not rental property, a certified applicator or technician shall
19 make available [~~leave~~] a pest control information sheet developed
20 under Section 1951.254 at the residence before the treatment
21 begins.

22 (b) For an outdoor treatment at a residential rental
23 property with fewer than five rental units, a certified applicator
24 or technician shall make available [~~leave~~] a pest control
25 information sheet at each unit at the time of treatment.

26 SECTION 13. Section 1951.456(d), Occupations Code, is
27 repealed.

1 SECTION 14. This Act takes effect September 1, 2009.