

By: Isett

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, Occupations Code, is amended by amending Subdivisions (4) and (16) to read as follows:

(4) "Certified commercial applicator" means a person who holds a certified commercial applicator's license and, for each business with which the applicator is associated, a structural pest control business license.

(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

1 following services for compensation, including services performed  
2 as a part of the person's employment:

3 (1) identifying infestations or making inspections  
4 for the purpose of identifying or attempting to identify  
5 infestations of:

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

12 (B) pests or diseases of trees, shrubs, or other  
13 plantings in a park or adjacent to a residence, business  
14 establishment, industrial plant, institutional building, or  
15 street;

16 (2) making oral or written inspection reports,  
17 recommendations, estimates, or bids with respect to an infestation  
18 described by Subdivision (1); or

19 (3) making contracts, or submitting bids for services  
20 or performing services designed to prevent, control, or eliminate  
21 an infestation described by Subdivision (1) by the use of  
22 insecticides, pesticides, rodenticides, fumigants, allied  
23 chemicals or substances, or mechanical devices.

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

27 (1) identify pests;

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

3           (3) apply insecticides, pesticides, rodenticides,  
4 fumigants, allied chemicals, or other related substances.

5           SECTION 3. Section 1951.053(a), Occupations Code, is  
6 amended to read as follows:

7           (a) Except as provided by Sections 1951.212 and  
8 1951.457(c), this chapter does not apply to:

9           (1) a person who performs pest control work on growing  
10 plants, trees, shrubs, grass, or other horticultural plants if the  
11 person~~+~~

12           ~~[(A) holds a florist or nursery registration~~  
13 ~~certificate from the department under Section 71.043, Agriculture~~  
14 ~~Code, other than a registration certificate that permits the sale,~~  
15 ~~lease, or distribution of nursery products or floral items only at a~~  
16 ~~temporary market; and~~

17           ~~[(B)]~~ holds a commercial or noncommercial  
18 applicator license from the department and issued under Chapter 76,  
19 Agriculture Code, that covers the pest control work; or

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

23           (A) is employed by a political subdivision or a  
24 cemetery;

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

27           (C) holds a commercial or noncommercial

1 applicator license from the department and issued under Chapter 76,  
2 Agriculture Code, that covers pest control work or is under the  
3 direct supervision of a person who holds a commercial or  
4 noncommercial applicator license from the department and issued  
5 under Chapter 76, Agriculture Code, that covers pest control work;  
6 and

7 (D) complies with annual continuing education  
8 required by the department.

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

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

13 (1) four [~~two~~] members who are experts in structural  
14 pest control application;

15 (2) three members who represent the public;

16 (3) [~~one member from an institution of higher~~  
17 ~~education who is knowledgeable in the science of pests and pest~~  
18 ~~control,~~

19 [~~(4)~~] one member who represents the interests of  
20 structural pest control operators and who is appointed based on  
21 recommendations provided by a trade association of operators;

22 [~~(5) one member who represents the interests of~~  
23 ~~consumers and who is appointed based on recommendations provided by~~  
24 ~~consumer advocacy groups or associations,~~] and

25 (4) [(6)] the commissioner of state health services or  
26 the commissioner's designee.

27 SECTION 5. Section 1951.105, Occupations Code, is amended

1 to read as follows:

2           Sec. 1951.105. RULES GOVERNING COMMITTEE; COMMITTEE

3 MEETINGS. (a) The department shall adopt rules for the operation  
4 of the committee, including rules governing:

5           (1) the purpose, role, responsibility, and goals of  
6 the committee;

7           (2) the quorum requirements for the committee;

8           (3) the qualifications required for members of the  
9 committee, which may include experience and geographic  
10 representation requirements;

11           (4) the appointment process for the committee;

12           (5) the members' terms;

13           (6) the training requirements;

14           (7) a process to regularly evaluate the effectiveness  
15 of the committee; and

16           (8) a requirement that the committee comply with  
17 Chapter 551, Government Code.

18           (b) The committee shall:

19                   (1) meet quarterly;

20                   (2) operate under Roberts Rules of Order; and

21                   (3) record the minutes of each meeting.

22           SECTION 6. Section 1951.205(a), Occupations Code, is  
23 amended to read as follows:

24           (a) The department, with the advice of the committee, shall  
25 adopt rules as authorized under this chapter governing the methods  
26 and practices of structural pest control that the department  
27 determines are necessary to protect the public's health and welfare

1 and prevent adverse effects on human life and the environment. Each  
2 rule adopted must cite the section of this chapter that authorizes  
3 the rule.

4 SECTION 7. Section 1951.210(d), Occupations Code, is  
5 amended to read as follows:

6 (d) The department or pest control operator is not liable  
7 for any damages that may arise as a result of an inspection made  
8 under this section that is subsequently found to be incorrect.

9 SECTION 8. Section 1951.212(b), Occupations Code, is  
10 amended to read as follows:

11 (b) The department shall use the structural pest control [~~an~~  
12 ~~existing~~] advisory committee [~~or create a new advisory committee~~]  
13 to assist the department in developing the standards for the  
14 integrated pest management program. In developing the standards,  
15 the advisory committee shall consult with a person knowledgeable in  
16 the area of integrated pest management in schools.

17 SECTION 9. Section 1951.312, Occupations Code, is amended  
18 by amending Subsection (a) and adding Subsection (f) to read as  
19 follows:

20 (a) The department may not issue or renew a structural pest  
21 control business license until the license applicant:

22 (1) files with the department a policy or contract of  
23 insurance, approved as sufficient by the department, in an amount  
24 not less than \$200,000 for bodily injury and property damage  
25 coverage, with a minimum total aggregate of \$200,000 [~~\$300,000~~] for  
26 all occurrences, insuring the applicant against liability for  
27 damage to persons or property occurring as a result of operations

1 performed in the course of the business of structural pest control  
2 on premises or any other property under the applicant's care,  
3 custody, or control;

4 (2) in the case of an applicant who has an unexpired  
5 and uncanceled insurance policy or contract on file with the  
6 department, files with the department a certificate or other  
7 evidence from an insurance company stating that:

8 (A) the policy or contract insures the applicant  
9 against liability for acts and damage as described in Subdivision  
10 (1); and

11 (B) the amount of insurance coverage is in the  
12 amount approved by the department;

13 (3) files with the department a bond, certificate of  
14 deposit, or other proof acceptable to the department of sufficient  
15 funds in an amount not less than \$200,000 [~~\$300,000~~] for payment of  
16 claims of damage to persons or property occurring as a result of  
17 operations performed [~~negligently~~] in the course of the business of  
18 structural pest control on premises or any other property under the  
19 applicant's care, custody, or control; or

20 (4) files with the department evidence satisfactory to  
21 the department of coverage under a general liability insurance  
22 policy, in an amount not less than \$200,000 for bodily injury and  
23 property damage coverage, with a minimum total aggregate of  
24 \$200,000 [~~\$300,000~~] for all occurrences, if the applicant operates  
25 solely as a wood treater who treats wood on commercial property  
26 owned by the applicant.

27 (f) This section does not require insurance coverage for

1 errors and omissions.

2 SECTION 10. Section 1951.453, Occupations Code, is amended  
3 to read as follows:

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

8 [~~(1) give~~] a pest control information sheet developed  
9 under Section 1951.254 to the owner of the residence before each  
10 treatment begins[; or

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

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

19 (c) For an indoor treatment at a residential rental property  
20 with five or more rental units, a certified applicator or  
21 technician shall make available [~~provide~~] a pest control  
22 information sheet developed under Section 1951.254 and a pest  
23 control sign developed under that section to the owner or manager of  
24 the property. The owner or manager or an employee or agent of the  
25 owner or manager, other than the certified applicator or  
26 technician, shall notify residents who live in the direct area of  
27 the treatment or in an adjacent area by:

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

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

6           SECTION 11. Section 1951.454, Occupations Code, is amended  
7 to read as follows:

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

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

20           (2) providing the information sheet to any person  
21 working in the building on a request made by the person during  
22 normal business hours.

23           SECTION 12. Section 1951.455(a), Occupations Code, is  
24 amended to read as follows:

25           (a) For an indoor treatment at a building that is a  
26 hospital, nursing home, hotel, motel, lodge, warehouse,  
27 food-processing establishment, school, or day-care center, a

1 certified applicator or technician shall make available [~~provide~~] a  
2 pest control information sheet developed under Section 1951.254 and  
3 a pest control sign developed under that section to the chief  
4 administrator or building manager. The chief administrator or  
5 building manager shall notify the persons who work in the building  
6 of the treatment by:

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

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

12 SECTION 13. Sections 1951.457(a) and (b), Occupations Code,  
13 are amended to read as follows:

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

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

23 SECTION 14. Section 1951.459, Occupations Code, is amended  
24 to read as follows:

25 Sec. 1951.459. PEST CONTROL SERVICES FOR CERTAIN BUILDINGS.  
26 The owner of a building where persons other than the owner are  
27 employed [~~that is an apartment building, day-care center, hospital,~~

1 ~~nursing home, hotel, motel, lodge, warehouse, school, or~~  
2 ~~food-processing establishment, other than a restaurant, retail~~  
3 ~~food, or food service establishment,]~~ may obtain pest control  
4 services for that building from a person only by:

5 (1) contracting with a person who holds a license to  
6 perform the services; or

7 (2) requiring a person employed by the owner who is  
8 licensed as a certified noncommercial applicator or technician to  
9 perform the services.

10 SECTION 15. Section 1951.456(d), Occupations Code, is  
11 repealed.

12 SECTION 16. The change in law made by this Act to the  
13 structural pest control advisory committee does not affect the  
14 entitlement of a member serving on the committee immediately before  
15 the effective date of this Act to serve the remainder of the  
16 member's term. The commissioner of agriculture shall appoint  
17 members to the advisory committee in the manner provided by Section  
18 1951.101, Occupation Code, as amended by this Act, as the terms of  
19 the members serving immediately before the effective date of this  
20 Act expire.

21 SECTION 17. This Act takes effect September 1, 2009.