

1 HB651
2 139417-1
3 By Representatives Sessions, Millican, Faust and Brown
4 RFD: Boards, Agencies and Commissions
5 First Read: 05-APR-12

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8 SYNOPSIS: Under existing law, persons engaging in
9 professional work or services pertaining to
10 entomological work, including structural pest
11 control, pathological work, horticultural and
12 floricultural work, and tree surgery work as
13 defined in Section 2-28-1, Code of Alabama 1975,
14 are regulated by the Commissioner of Agriculture
15 and Industries.

16 This bill would add landscape irrigation
17 work and require that it be regulated by the
18 Commissioner of Agriculture and Industries.

19 This bill would require a landscape
20 irrigation contractor to obtain a permit and
21 prohibit him or her from supervising more than one
22 office.

23 This bill would also add definitions related
24 to landscape irrigation and pest control and would
25 provide that applicants for examination for a
26 permit to engage in structural pest control work
27 who have been convicted of certain felonies are not

1 eligible to take the examination unless their civil
2 rights have been restored.

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4 A BILL
5 TO BE ENTITLED
6 AN ACT

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8 To amend Sections 2-28-1, 2-28-2, 2-28-3, 2-28-4,
9 2-28-5, and 2-28-7, Code of Alabama 1975, to require that
10 landscape irrigation work be examined by the Commissioner of
11 Agriculture and Industries; to require a landscape irrigation
12 contractor to obtain a permit and to provide supervisory
13 restrictions; and to provide prohibition for structural pest
14 control permit applicants.

15 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

16 Section 1. Sections 2-28-1, 2-28-2, 2-28-3, 2-28-4,
17 2-28-5, and 2-28-7, Code of Alabama 1975, are amended to read
18 as follows:

19 "§2-28-1.

20 "When used in this chapter, the following terms
21 shall have the following meanings, respectively, unless the
22 context clearly indicates otherwise:

23 "~~(6)~~ (1) BRANCH OFFICE. A place of business at an
24 established location other than the main office having
25 equipment and three or more employees directly engaged in
26 structural pest control work from the place of business, which

1 is a subdivision or branch of the main office, point of
2 headquarters, or principal operation of the firm.

3 ~~"(9)~~ (2) BRANCH SUPERVISOR. A person who has been
4 certified by the commissioner as qualified to supervise the
5 operation of a branch office only. In no event shall the
6 person be qualified to supervise structural pest control work
7 from a main office.

8 ~~"(15)~~ (3) BUSINESS LOCATION. Any location in or from
9 which professional work or services are solicited, accepted,
10 or conducted, and identified as a main office, branch office,
11 or suboffice by permit.

12 ~~"(13)~~ (4) CERTIFICATION. The recognition by the
13 commissioner that a person is competent and thus authorized to
14 perform and/or supervise professional work or services in the
15 category or categories listed on said certification permit.

16 ~~"(14)~~ (5) CERTIFICATION PERMIT. A document issued by
17 the commissioner attesting that all standards have been met in
18 competency in one or more categories and/or subcategories of
19 professional work or services.

20 ~~"(8)~~ (6) CERTIFIED OPERATOR. A person who has been
21 certified by the commissioner as qualified to supervise the
22 operation of a main office or a branch office.

23 ~~"(10)~~ (7) COMMISSIONER. The Commissioner of
24 Agriculture and Industries.

25 ~~"(11)~~ (8) DEPARTMENT. The Department of Agriculture
26 and Industries.

1 "(9) EMPLOYEE. A person who is employed by a
2 permittee who provides that person with necessary training,
3 supervision, pesticides, equipment, and insurance and who
4 receives compensation from and is under the personal
5 supervision and direct control of the permittee's certified
6 operator or supervisor, or both, in charge and from whose
7 compensation the permittee regularly deducts federal income
8 and Social Security taxes.

9 "~~(1)~~ (10) ENTOMOLOGICAL WORK. Receiving fees for
10 advice or prescriptions for the control or eradication of any
11 insect pest or rodent or for actual spraying, dusting,
12 fumigating, or any other methods used for the control or
13 eradication of any insect pest or rodent.

14 "~~(3)~~ (11) HORTICULTURAL AND FLORICULTURAL WORK.
15 Receiving fees for landscaping and setting of plants, or for
16 the sale of any plants for which the seller contracts to
17 render future services.

18 "(12) LANDSCAPE IRRIGATION CONTRACTOR. A person
19 certified by the commissioner to perform landscape irrigation
20 work as defined in this chapter.

21 "(13) LANDSCAPE IRRIGATION WORK. Work for which
22 compensation or other consideration is received for the
23 design, construction, repair, maintenance, improvement, or
24 alteration of any portion of a landscape irrigation system.

25 "~~(2)~~ (14) PATHOLOGICAL WORK. Receiving fees for
26 advice or prescriptions for the control or eradication of any

1 plant disease, for actual spraying, or any other methods used
2 for the control or eradication of any plant disease.

3 "(15) REGISTERED EMPLOYEE. A person registered with
4 the department by a permittee who is employed to perform,
5 sell, solicit, or estimate work or services defined in this
6 chapter and has not been certified by the commissioner to
7 apply pesticides. In no event shall the person be allowed to
8 perform, sell, solicit, or estimate the application of
9 pesticides unless under the direct, on-site supervision of a
10 certified operator, branch supervisor, or registered
11 technician qualified for the same type of pesticide
12 application.

13 "(16) REGISTERED TECHNICIAN. A person certified by
14 the commissioner through examination or completion of the
15 registered technician training program, or both, or an
16 approved equivalent training program in one or more categories
17 or subcategories, or both, of professional work or services
18 which involves the application of pesticides. In no event
19 shall the person be qualified to supervise the operation of a
20 main office or a branch office.

21 "~~(5)~~ (17) STRUCTURAL PEST CONTROL WORK. That branch
22 or type of entomological, pest control, or eradication work
23 which involves the performance of work or giving advice or
24 prescriptions for compensation for the prevention, control, or
25 eradication of insects, vermin, rodents, pest animals, fungi,
26 or other wood destroying organisms in household structures,
27 commercial buildings, or other structures by the use of

1 insecticides, rodenticides, repellants, chemicals, mechanical
2 devices, or structural modifications, as well as a fumigation
3 of products, containers, structures, or transportation
4 vehicles.

5 "~~(7)~~ (18) SUBOFFICE. A place at an established
6 location other than the main office or branch office having
7 equipment and less than three employees directly engaged in
8 structural pest control work from the location, which shall
9 not be more than 100 road miles from the branch office or main
10 office of the firm. It is not required that any employee of a
11 suboffice be certified by the commissioner for the structural
12 pest control work performed from the office.

13 "~~(4)~~ (19) TREE SURGERY WORK. Receiving fees for tree
14 surgery, including but not limited to, cavity filling or
15 repair, bracing, cabling, and wound treatment of shrubs and
16 trees. Tree surgery work shall not include pruning, feeding,
17 budding, or grafting of trees, shrubs, or wounds made and
18 treated during pruning.

19 "~~(12)~~ (20) WEED CONTROL WORK. Receiving fees for
20 advice or prescription for the control or eradication of any
21 weed or for actual spraying or other methods used for the
22 control and eradication of any plant which grows where not
23 wanted.

24 "§2-28-2.

25 "Persons engaging in professional work or services
26 pertaining to entomological work, pathological work,
27 horticultural and floricultural work, landscape irrigation

1 work, and tree surgery work as defined in Section 2-28-1 shall
2 be examined by the commissioner.

3 "§2-28-3.

4 "The commissioner with the approval of the State
5 Board of Agriculture and Industries may adopt and promulgate
6 rules and regulations that are reasonable and necessary to
7 carry out the intent and purpose of this chapter and to
8 regulate persons engaged in professional services or work
9 defined in this chapter to prevent fraudulent and unauthorized
10 practices of those professional services or work.

11 In order to ensure that persons issued a permit or
12 certified under this chapter are capable of performing a high
13 quality of workmanship and continue to meet the requirements
14 of a changing technology and assure a continued level of
15 competence and ability, the commissioner with the approval of
16 the State Board of Agriculture and Industries, is hereby
17 authorized and empowered to make rules and regulations with
18 respect to:

19 "1. The qualifications and residency requirements of
20 an applicant for certification and a permit to engage in any
21 one or more phases of professional work or service.

22 "2. The type, frequency, and passing score of any
23 examination given an applicant for certification and a permit
24 under this chapter.

25 "3. The methods and materials to be used in
26 performing any work authorized by issuance of a permit and
27 certification under this chapter.

1 "4. Records to be made and maintained by persons
2 issued a permit and persons certified under this chapter
3 necessary for the commissioner to determine whether such
4 persons are performing a high quality of workmanship.

5 "5. Methods and procedures necessary and reasonable
6 to protect the environment and the interests, health, safety,
7 and welfare of the public and persons engaging in professional
8 work or services ~~where such work or services involve the use~~
9 ~~of pesticides~~ defined in this chapter.

10 "6. The amount, kind, and frequency of training
11 required of any employee of persons issued a permit or
12 certification ~~where such~~ for professional work or services
13 ~~involves the application of pesticides~~ defined in this
14 chapter.

15 "7. Any other matter deemed necessary to be
16 regulated.

17 "§2-28-4.

18 "(a) Permits generally; fees; delinquent penalty;
19 subcategories of structural pest control permits and fees.
20 Before any person engages in professional work or services as
21 defined in this chapter or before any person may solicit
22 professional work or services through advertising or in any
23 other manner, the person shall apply for and obtain from the
24 commissioner an annual permit on forms furnished for this
25 purpose accompanied with the annual permit fee which shall be
26 established by the Board of Agriculture and Industries not to
27 exceed \$200. Structural pest control work as defined in

1 subdivision (5) of Section 2-28-1 shall be divided in the
2 following subcategories: (1) Control of wood-destroying
3 organisms by any method other than fumigation, (2) Control of
4 industrial, institutional, and household pests by any method
5 other than fumigation, (3) Fumigation pest control. The annual
6 permit fee for persons engaged in the type of entomological
7 work known as structural pest control work as defined in
8 subdivision (5) of Section 2-28-1 shall be established by the
9 board for each subcategory of work a person is qualified to
10 perform. Any person engaged in structural pest control work
11 who conducts the work from more than one location or place of
12 business that is a branch office as defined in subdivision (6)
13 of Section 2-28-1 shall be required to obtain a branch office
14 permit for each branch office, and the permit fee shall be
15 established by the board for each branch office and for each
16 subcategory of work a person is qualified to perform. If a
17 person conducts structural pest control work from an
18 additional location designated as a suboffice as defined in
19 subdivision (7) of Section 2-28-1, the person shall be
20 required to obtain a suboffice permit for each suboffice, and
21 the permit fee shall be established by the board for each
22 suboffice and for each subcategory of work a person is
23 qualified to perform. A person qualified as a landscape
24 irrigation contractor shall be required to obtain a permit for
25 landscape irrigation work and shall not supervise more than
26 one office. All permits shall expire on September 30 and shall
27 be renewed by October 1 upon payment of the annual permit fee

1 prescribed by this subsection and upon compliance with the
2 other requirements of this chapter. If the permit fee is not
3 paid by November 1 or within 31 days from the date on which
4 the fee is due, a delinquent penalty established by the board
5 shall be added to the amount.

6 "(b) Number of permits required. When a person has
7 qualified for a permit to perform more than one type or branch
8 of professional work or services, other than structural pest
9 control work and landscape irrigation work, only one permit
10 shall be required to be obtained by the person, and the permit
11 shall specify each type of professional work or service that
12 the person is authorized to perform. When a person has
13 qualified for a permit to perform more than one type or branch
14 of structural pest control work or landscape irrigation work,
15 the person shall be required to obtain only one permit, that
16 shall specify each type of work that the person is authorized
17 to perform. Any person who performs structural pest control
18 work from a branch office as defined in this section shall
19 also be required to obtain a branch office permit for each
20 branch office. Any person who performs structural pest control
21 work from a suboffice as defined in this section shall also be
22 required to obtain a suboffice permit for each suboffice.

23 "(c) Statements of applicants as to training and
24 experience; testing and examination; issuance of permits;
25 disposition of fees. The commissioner, pursuant to rules and
26 regulations promulgated pursuant to this chapter, may require
27 applicants for a permit to submit statements as to training

1 and experience in professional work or services, and
2 applicants shall be required to pass any test or examination
3 for each type of professional service or work as the
4 commissioner may prescribe. An examination fee established by
5 the board shall accompany each application for each
6 examination taken by the applicant. All permit fees and
7 examination fees collected under this section shall be
8 deposited in the State Treasury to the credit of the
9 Agricultural Fund for the administration and enforcement of
10 this chapter. Before a permit is issued to any applicant, the
11 applicant shall be certified by the commissioner as qualified
12 to perform the type of professional work or services for which
13 a permit is desired. A full-time employee of an applicant who
14 has been certified by the commissioner as qualified to perform
15 the type or branch of professional work or service in which
16 the applicant desires to engage may be designated by the
17 applicant as a supervisor to be in charge of and responsible
18 for the applicant's professional work or services, and the
19 permit may be issued designating the employee as a supervisor.

20 "§2-28-5.

21 "(a) Every applicant for examination for a permit to
22 engage in structural pest control work, including those who
23 will be designated as certified operators or branch
24 supervisors as provided for in Section 2-28-8, shall have a
25 knowledge of the practical and scientific facts underlying the
26 practice of structural pest control work and the necessary
27 knowledge and ability to recognize and control those hazardous

1 conditions which may affect human life and health. Applicants
2 for certified operators' or branch supervisors' permits,
3 before being eligible to take an examination for structural
4 pest control work, shall present satisfactory evidence to the
5 commissioner relative to his or her qualifications.

6 "(b) No applicant for examination for a permit to
7 engage in structural pest control work who has been convicted
8 of any felony under state or federal law involving robbery,
9 bribery, extortion, embezzlement, grand larceny, burglary,
10 arson, murder, rape, assault with intent to kill, assault that
11 inflicts grievous bodily injury, kidnapping, prostitution,
12 child abuse, child pornography, sexual assault, or indecent
13 exposure shall be eligible to take an examination unless the
14 applicant's civil rights have been restored.

15 ~~"(b)~~ (c) Before a permit is issued to any applicant,
16 the applicant shall be certified by the commissioner as
17 qualified to perform the type or branch of professional work
18 or service for which a permit is desired. Any full-time
19 employee of the applicant who has been certified by the
20 commissioner as qualified to perform the type or branch of
21 professional work or service in which the applicant will
22 engage may be designated by the applicant as a certified
23 operator or branch supervisor to be in charge of and
24 responsible for the applicant's professional work or service,
25 and the permit may be issued naming that employee as certified
26 operator or branch supervisor.

27 "§2-28-7.

1 "Upon determination by the commissioner that any
2 person certified or having a permit issued under the
3 provisions of this chapter or any person who has applied for
4 such certification or a permit has violated or failed to
5 comply with any of the provisions or requirements of this
6 chapter or any rules and regulations promulgated thereunder,
7 the commissioner shall be authorized to revoke such
8 certification or permit, or both, or he shall refuse to issue
9 a certification or a permit, or both, to an applicant
10 therefor. The performance of unauthorized work not covered by
11 a permit, making misrepresentations or any fraudulent
12 practices, failure to perform a contract, failure to have in
13 its employ, when required, a certified operator or branch
14 supervisor or use or continued use of ineffective methods or
15 materials shall also be valid grounds for revocation of a
16 certification or a permit; provided, however, that no
17 certification or permit shall be revoked unless the holder
18 thereof shall be given at least 10 days' notice that such
19 action is to be considered by the commissioner with an
20 opportunity being given for a hearing before the commissioner.

21 "Any applicant refused or denied a certification or
22 permit, or both, or any person whose certification or permit,
23 or both, are revoked shall be entitled to appeal such action
24 of the commissioner to the State Board of Agriculture and
25 Industries by filing with the commissioner within a period of
26 15 days a written notice or demand for review of the action of
27 the commissioner in denying or revoking a certification or

1 permit, or both. The State Board of Agriculture and Industries
2 shall review the action of the commissioner and make a finding
3 as to whether the certification or permit, or both, shall be
4 issued or revoked. Any person denied or refused a
5 certification or permit or any person whose certification or
6 permit has been revoked by action of the commissioner shall
7 have the right to appear before the board and be heard in
8 support of his appeal. Any person whose certification or
9 permit to perform work or services as regulated under this
10 chapter has been revoked shall not be eligible to have such a
11 certification or permit again issued to him for a period of
12 not less than one year following the date on which such a
13 certification or permit was revoked. Nothing contained in this
14 chapter shall require the commissioner to issue a
15 certification or permit to any person who has been convicted
16 for a violation of this chapter or any person who has been
17 convicted of any felony listed under subsection (b) of Section
18 2-28-5 unless the person's civil rights have been restored."

19 Section 2. This act shall become effective on the
20 first day of the third month following its passage and
21 approval by the Governor, or its otherwise becoming law.