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

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

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

This bill would also add definitions related to landscape irrigation and pest control and would provide that applicants for examination for a permit to engage in structural pest control work who have been convicted of certain felonies are not
eligible to take the examination unless their civil
rights have been restored.

This bill would exclude persons engaging in
the custom application of pesticides from these
requirements.

A BILL
TO BE ENTITLED
AN ACT

To amend Sections 2-28-1, 2-28-2, 2-28-3, 2-28-4,
2-28-5, 2-28-7, and 2-28-12, Code of Alabama 1975, to require
that landscape irrigation work be examined by the Commissioner
of Agriculture and Industries; to require a landscape
irrigation contractor to obtain a permit and to provide
supervisory restrictions; to provide prohibition for
structural pest control permit applicants; and to exclude
persons engaging in the custom application of pesticides from
the requirements.
BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 2-28-1, 2-28-2, 2-28-3, 2-28-4,
2-28-5, 2-28-7, and 2-28-12, Code of Alabama 1975, are amended
to read as follows:

"§2-28-1.

"When used in this chapter, the following terms
shall have the following meanings, respectively, unless the
context clearly indicates otherwise:
"(6)(1) BRANCH OFFICE. A place of business at an established location other than the main office having equipment and three or more employees directly engaged in structural pest control work from the place of business, which is a subdivision or branch of the main office, point of headquarters, or principal operation of the firm.

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

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

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

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

"(8)(6) CERTIFIED OPERATOR. A person who has been certified by the commissioner as qualified to supervise the operation of a main office or a branch office.
COMMISSIONER. The Commissioner of Agriculture and Industries.

DEPARTMENT. The Department of Agriculture and Industries.

EMPLOYEE. A person who is employed by a permittee who provides that person with necessary training, supervision, pesticides, equipment, and insurance and who receives compensation from and is under the personal supervision and direct control of the permittee's certified operator or supervisor, or both, in charge and from whose compensation the permittee regularly deducts federal income and Social Security taxes.

ENTOMOLOGICAL WORK. Receiving fees for advice or prescriptions for the control or eradication of any insect pest or rodent or for actual spraying, dusting, fumigating, or any other methods used for the control or eradication of any insect pest or rodent.

HORTICULTURAL AND FLORICULTURAL WORK. Receiving fees for landscaping and setting of plants, or for the sale of any plants for which the seller contracts to render future services.

LANDSCAPE IRRIGATION CONTRACTOR. A person certified by the commissioner to perform landscape irrigation work as defined in this chapter.

LANDSCAPE IRRIGATION WORK. Work for which compensation or other consideration is received for the
design, construction, repair, maintenance, improvement, or
alteration of any portion of a landscape irrigation system.

"(2)(14) PATHOLOGICAL WORK. Receiving fees for
advice or prescriptions for the control or eradication of any
plant disease, for actual spraying, or any other methods used
for the control or eradication of any plant disease.

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

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

"(5)(17) STRUCTURAL PEST CONTROL WORK. That branch
or type of entomological, pest control, or eradication work
which involves the performance of work or giving advice or
prescriptions for compensation for the prevention, control, or eradication of insects, vermin, rodents, pest animals, fungi, or other wood destroying organisms in household structures, commercial buildings, or other structures by the use of insecticides, rodenticides, repellants, chemicals, mechanical devices, or structural modifications, as well as a fumigation of products, containers, structures, or transportation vehicles.

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

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

"(12)(20) WEED CONTROL WORK. Receiving fees for advice or prescription for the control or eradication of any weed or for actual spraying or other methods used for the control and eradication of any plant which grows where not wanted.
§2-28-2.
Persons engaging in professional work or services pertaining to entomological work, pathological work, horticultural and floricultural work, landscape irrigation work, and tree surgery work as defined in Section 2-28-1 shall be examined by the commissioner.

§2-28-3.
The commissioner with the approval of the State Board of Agriculture and Industries may adopt and promulgate rules and regulations that are reasonable and necessary to carry out the intent and purpose of this chapter and to regulate persons engaged in professional services or work defined in this chapter to prevent fraudulent and unauthorized practices of those professional services or work.

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

1. The qualifications and residency requirements of an applicant for certification and a permit to engage in any one or more phases of professional work or service.
"2. The type, frequency, and passing score of any examination given an applicant for certification and a permit under this chapter.

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

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

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

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

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

"§2-28-4.

"(a) Permits generally; fees; delinquent penalty; subcategories of structural pest control permits and fees. Before any person engages in professional work or services as defined in this chapter or before any person may solicit
professional work or services through advertising or in any other manner, the person shall apply for and obtain from the commissioner an annual permit on forms furnished for this purpose accompanied with the annual permit fee which shall be established by the Board of Agriculture and Industries not to exceed $200. Structural pest control work as defined in subdivision (5) of Section 2-28-1 shall be divided in the following subcategories: (1) Control of wood-destroying organisms by any method other than fumigation, (2) Control of industrial, institutional, and household pests by any method other than fumigation, (3) Fumigation pest control. The annual permit fee for persons engaged in the type of entomological work known as structural pest control work as defined in subdivision (5) of Section 2-28-1 shall be established by the board for each subcategory of work a person is qualified to perform. Any person engaged in structural pest control work who conducts the work from more than one location or place of business that is a branch office as defined in subdivision (6) of Section 2-28-1 shall be required to obtain a branch office permit for each branch office, and the permit fee shall be established by the board for each branch office and for each subcategory of work a person is qualified to perform. If a person conducts structural pest control work from an additional location designated as a suboffice as defined in subdivision (7) of Section 2-28-1, the person shall be required to obtain a suboffice permit for each suboffice, and the permit fee shall be established by the board for each
suboffice and for each subcategory of work a person is qualified to perform. A person qualified as a landscape irrigation contractor shall be required to obtain a permit for landscape irrigation work and shall not supervise more than one office. All permits shall expire on September 30 and shall be renewed by October 1 upon payment of the annual permit fee prescribed by this subsection and upon compliance with the other requirements of this chapter. If the permit fee is not paid by November 1 or within 31 days from the date on which the fee is due, a delinquent penalty established by the board shall be added to the amount.

"(b) Number of permits required. When a person has qualified for a permit to perform more than one type or branch of professional work or services, other than structural pest control work and landscape irrigation work, only one permit shall be required to be obtained by the person, and the permit shall specify each type of professional work or service that the person is authorized to perform. When a person has qualified for a permit to perform more than one type or branch of structural pest control work or landscape irrigation work, the person shall be required to obtain only one permit, that shall specify each type of work that the person is authorized to perform. Any person who performs structural pest control work from a branch office as defined in this section shall also be required to obtain a branch office permit for each branch office. Any person who performs structural pest control
work from a suboffice as defined in this section shall also be
required to obtain a suboffice permit for each suboffice.

"(c) Statements of applicants as to training and
experience; testing and examination; issuance of permits;
disposition of fees. The commissioner, pursuant to rules and
regulations promulgated pursuant to this chapter, may require
applicants for a permit to submit statements as to training
and experience in professional work or services, and
applicants shall be required to pass any test or examination
for each type of professional service or work as the
commissioner may prescribe. An examination fee established by
the board shall accompany each application for each
examination taken by the applicant. All permit fees and
examination fees collected under this section shall be
deposited in the State Treasury to the credit of the
Agricultural Fund for the administration and enforcement of
this chapter. Before a permit is issued to any applicant, the
applicant shall be certified by the commissioner as qualified
to perform the type of professional work or services for which
a permit is desired. A full-time employee of an applicant who
has been certified by the commissioner as qualified to perform
the type or branch of professional work or service in which
the applicant desires to engage may be designated by the
applicant as a supervisor to be in charge of and responsible
for the applicant's professional work or services, and the
permit may be issued designating the employee as a supervisor.

§2-28-5.
"(a) Every applicant for examination for a permit to engage in structural pest control work, including those who will be designated as certified operators or branch supervisors as provided for in Section 2-28-8, shall have a knowledge of the practical and scientific facts underlying the practice of structural pest control work and the necessary knowledge and ability to recognize and control those hazardous conditions which may affect human life and health. Applicants for certified operators' or branch supervisors' permits, before being eligible to take an examination for structural pest control work, shall present satisfactory evidence to the commissioner relative to his or her qualifications.

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

"(b)(c) Before a permit is issued to any applicant, the applicant shall be certified by the commissioner as qualified to perform the type or branch of professional work or service for which a permit is desired. Any full-time employee of the applicant who has been certified by the commissioner as qualified to perform the type or branch of
1 professional work or service in which the applicant will
2 engage may be designated by the applicant as a certified
3 operator or branch supervisor to be in charge of and
4 responsible for the applicant's professional work or service,
5 and the permit may be issued naming that employee as certified
6 operator or branch supervisor.
7
8 "§2-28-7.
9
10 "Upon determination by the commissioner that any
11 person certified or having a permit issued under the
12 provisions of this chapter or any person who has applied for
13 such certification or a permit has violated or failed to
14 comply with any of the provisions or requirements of this
15 chapter or any rules and regulations promulgated thereunder,
16 the commissioner shall be authorized to revoke such
17 certification or permit, or both, or he shall refuse to issue
18 a certification or a permit, or both, to an applicant
19 therefor. The performance of unauthorized work not covered by
20 a permit, making misrepresentations or any fraudulent
21 practices, failure to perform a contract, failure to have in
22 its employ, when required, a certified operator or branch
23 supervisor or use or continued use of ineffective methods or
24 materials shall also be valid grounds for revocation of a
25 certification or a permit; provided, however, that no
26 certification or permit shall be revoked unless the holder
27 thereof shall be given at least 10 days' notice that such
28 action is to be considered by the commissioner with an
29 opportunity being given for a hearing before the commissioner.
Any applicant refused or denied a certification or permit, or both, or any person whose certification or permit, or both, are revoked shall be entitled to appeal such action of the commissioner to the State Board of Agriculture and Industries by filing with the commissioner within a period of 15 days a written notice or demand for review of the action of the commissioner in denying or revoking a certification or permit, or both. The State Board of Agriculture and Industries shall review the action of the commissioner and make a finding as to whether the certification or permit, or both, shall be issued or revoked. Any person denied or refused a certification or permit or any person whose certification or permit has been revoked by action of the commissioner shall have the right to appear before the board and be heard in support of his appeal. Any person whose certification or permit to perform work or services as regulated under this chapter has been revoked shall not be eligible to have such a certification or permit again issued to him for a period of not less than one year following the date on which such a certification or permit was revoked. Nothing contained in this chapter shall require the commissioner to issue a certification or permit to any person who has been convicted for a violation of this chapter or any person who has been convicted of any felony listed under subsection (b) of Section 2-28-5 unless the person's civil rights have been restored.

§2-28-12.
"The provisions of this chapter shall apply only to persons who solicit work and to persons engaging in a business or profession regulated under the provisions of this chapter, but in no event shall it be construed so as to apply to any person employed by the owners or others in possession of property to work under their supervision as an employee in grafting, spraying, dusting cotton or other similar work or the custom application of pesticides as defined in subdivision (6) of Section 2-27-50."

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