

ACT 134

S. B. NO. 1649-72

A Bill for an Act Relating to Pest Control, Regulating Pest Control Operators and the Use of Fumigation and Other Means of Pest Control.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. A new chapter is added to the Hawaii Revised Statutes, to be appropriately numbered and to read as follows:

**“CHAPTER
PEST CONTROL OPERATORS**

Sec. -1 Definitions. As used in this chapter:

- (1) ‘Board’ means the pest control board.
- (2) ‘Director’ means the director of regulatory agencies.
- (3) ‘Fumigation’ means the use of any substance or substances that emit or liberate gases, fumes, or vapors which may be used for the destruction or control of insects, vermin, rodents, or other pests, which, in the opinion of the board, may be lethal, poisonous, noxious, or dangerous to human life.
- (4) ‘Fumigator’ means any person licensed by the board as a pest control operator who shall have been qualified by the board in the branch of pest control which includes fumigation.
- (5) ‘Pest control operator’ means any person licensed by the board to practice pest control and who does so for compensation as a business, regardless of the cost of the job.
- (6) ‘Pest control’ means, with respect to household pests and woods destroying pests, or such other pests which may invade households or other structures, including railroad cars, ships, docks, trucks, airplanes, or the contents thereof, the engaging in, offering to engage in, advertising for, soliciting, or performing the following:
 - (A) Identifying infestations or infections;

- (B) Making an inspection for the purpose of identifying or attempting to identify infestations or infections of household or other structures by such pests;
 - (C) Making inspection reports, recommendations, estimates, and bids, whether oral or written, with respect to such infestations or infections; and
 - (D) Making contracts, or submitting bids for, or the use of insecticides, pesticides, rodenticides, fumigants, or allied chemicals or substances, or mechanical devices, for the purpose of eliminating, exterminating, controlling, or preventing infestations or infections of such pests or organisms.
- (7) 'Household pests' means those pests other than wood destroying pests which invade households and other structures, including, but not limited to, rodents, vermin, and insects.

Sec. -2. Pest control board. (a) There shall be a pest control board of seven members. Four members of the board shall be appointed by the governor, pursuant to section 26-34, and shall have been for a period of not less than five years preceding the date of their appointment, operators actively engaged in the business of pest control with a pest control contractors license. Three members of the board shall serve on an ex-officio voting basis: the director of the department of agriculture or his representative, the director of the department of health or his representatives, and the chairman of the department of entomology of the college of tropical agriculture of the University of Hawaii or his representative. No two members of the board shall be employed by or associated with the same business firm engaged in pest control.

(b) Except for members of the board first appointed, no one, except the ex-officio members, shall be eligible for appointment who does not at the time of his appointment hold a valid and unexpired license to operate as a pest control operator.

(c) Immediately upon the appointment and qualification of the original members, and annually thereafter, the board shall organize by the election of one member as chairman and one member as vice-chairman. The board shall keep a complete record of all proceedings and shall present annually to the governor through the director of regulatory agencies a detailed statement of the receipts and disbursements of the board during the preceding year, with a statement of its acts and proceedings and such recommendations as the board may deem proper. The board is placed within the department of regulatory agencies for administrative purposes.

(d) No member of the board shall receive any compensation for his services, but each shall be reimbursed for his necessary expenses, including travel expenses, incurred in the performance of his duties."

Sec. -3. Powers and duties of board. In addition to any other duties and powers granted by this chapter the board shall:

- (1) Grant licenses to operators pursuant to this chapter;
- (2) Make, amend, or repeal such rules and regulations as it may deem necessary to effectuate this chapter and carry out the purpose thereof which purpose is the protection of the general public. All such rules

and regulations shall be adopted pursuant to chapter 91. Such rules and regulations may:

- (A) Forbid acts or practices deemed by the board to be detrimental to the accomplishment of the purpose of this chapter;
 - (B) Require operators to make reports to the board containing such items of information as will better enable the board to enforce this chapter and rules and regulations or more fully to effectuate the purposes of this chapter;
 - (C) Require operators to furnish reports to owners containing such matters of information as the board deems necessary to promote the purpose of this chapter;
- (3) Enforce this chapter and rules and regulations adopted pursuant thereto;
 - (4) Suspend or revoke any license for any cause prescribed by this chapter, or for any violation of the rules and regulations, and refuse to grant any license for any cause which would be grounds for revocation or suspension of a license;
 - (5) Direct the executive secretary to publish and distribute pamphlets and circulars containing such information as it deems proper to further the accomplishment of the purpose of this chapter.

Sec. -4 Executive secretary; other assistants.

(a) Subject to chapters 76 and 77 and section 78-1, the department of regulatory agencies may employ and remove such administrative and clerical assistants as the board may require and prescribe their powers and duties;

- (b) (1) The department shall employ an executive secretary of the board whose position shall be subject to chapters 76 and 77 and section 78-1. The executive secretary shall be employed with due regard to his fitness and administrative ability. He shall devote his entire time to the duties of his office and shall not be actively engaged or employed in any other business, vocation, or employment, nor shall he have any pecuniary interest, direct or indirect, in any pest control enterprise or enterprises conducted or carried on within the State.
- (2) The executive secretary shall, under the supervision of the board:
 - (A) Administer this chapter and the rules and regulations and orders established thereunder and perform such other duties as the board may require;
 - (B) Be in charge of the offices of the board for the preparation of reports and the collection and dissemination of data and other public information relating to pest control.
- (3) The board may, by written order filed in its office, delegate to the executive secretary such of its powers or duties as it deems reasonable and proper for the effective administration of this chapter, except the power to make rules and regulations. The delegated powers and duties may be exercised by the executive secretary in the name of the board.

Sec. -5 Place of meeting. The director of regulatory agencies shall

provide suitable quarters for meetings of the board and for transaction of its other business.

Sec. -6 Licenses required. No person within the purview of this chapter shall act or assume to act, or advertise, as a pest control operator or fumigator without a license previously obtained under and in compliance with this chapter and the rules and regulations of the board. No person required to be licensed under this chapter shall be subject to chapter 444.

Sec. -7 Investigation permitted. The board may investigate, classify, and qualify applicants for operators' licenses.

Sec. -8 No license issued when. No license shall be issued to:

- (1) Any person unless he has filed an application therefor;
- (2) Any person who does not possess a good reputation for honesty, truthfulness, financial integrity, and fair dealing;
- (3) Any partnership or joint venture unless one member of the partnership or joint venture who actively participates in the pest control business thereof holds an appropriate license;
- (4) Any corporation unless the pest control business thereof is under the direct management of an officer who holds an appropriate license;
- (5) Any individual unless he is of the age of eighteen years or more;
- (6) Any person unless he submits satisfactory proof to the board that he has obtained workmen's compensation insurance or has been authorized to act as a self-insurer as required by chapter 386.

Sec. -9 Application; fees. (a) Every applicant for a license under this chapter shall file an application with the board in such form and setting forth such information as may be prescribed or required by the board, and shall furnish such additional information bearing upon the issuance of the license as the board requires. Every application shall be sworn to before an officer authorized to administer oaths. In the case of a copartnership, joint venture, or corporation, any licensed member or officer therefore may sign the application and verify the same on behalf of the applicant.

(b) Every application, in the case of an individual, shall be accompanied by sworn certificates of not less than two persons who have known the applicant for a period of not less than six months, certifying that the applicant bears a good reputation for honesty, truthfulness, and fair dealing.

(c) Every application for a license hereunder shall be accompanied by an application fee of \$25.

Sec. -10 Form for licenses. The form of every license shall be prescribed by the board and shall be issued in the name of the board.

Sec. -11 Place of business and posting of license. A licensed operator shall have and maintain a definite place of business in the State and shall display therein his operator's license.

Sec. -12 Group license; classification of branches of pest control; designation of groups; examinations; rules and regulations; licenses in other groups; subjects of examination; passing grade. (a) Licenses issued to opera-

tors or field representatives shall be limited to the branch or branches of pest control for which the applicant has qualified by application and examination. For the purpose of delimiting the type and character of work authorized by the various branch licenses hereinafter set forth, the practice of pest control is classified into the following branches:

- (1) Branch 1. Fumigation. The practice relating to the control of household and wood destroying pests by fumigation with poisonous or lethal gases.
- (2) Branch 2. General Pest. The practice relating to the control of household pests, other than termites, excluding fumigation with poisonous or lethal gases.
- (3) Branch 3. Termite. The practice relating to the control of wood destroying pests by the use of insecticides and corrections, excluding fumigation with poisonous or lethal gases.

The board may issue a license for a combination of two or more branches for which an applicant qualifies under this chapter, and such combination license shall be considered one license for the purpose of determining the fee to be charged under section -14.

(b) Any person who, on or after January 1, 1951, was operating as a fumigator or a pest control operator under a permit issued by the department of health or operating under a license issued by the contractors license board, shall, without requirement or examination, receive a license commensurate to the class of active permit or license presently held by him.

(c) Unless otherwise authorized by the board, all written examinations shall be in ink in books supplied by the board. All examination papers shall be kept for a period of one year, upon the expiration of which such papers may be destroyed on order of the board. Each applicant for license shall be designated by a number instead of by name and the identity thereof shall not be disclosed until the examination papers are graded. No person shall be admitted to the examination room except the examining personnel and the applicants for license.

(d) The board shall make rules and regulations for the purpose of securing fair, impartial, and proper examinations.

(e) Licensees of any branch may be licensed in other branches upon complying with the requirements for qualification and by examination in such other branches. No failure of the licensee to pass examination in such other branches shall have any effect on existing licenses.

(f) The examinations shall be in each of the subjects specified in the branch or branches relating to the respective applications. A license according to such applications shall be granted to any applicant who scores a general average on the examination of not less than seventy per cent on each of the subjects of such branch or branches.

Sec. -13 Examination; operator's license. The board shall ascertain by written examination that an applicant for a license as operator is qualified in the use and understanding of all of the following:

- (1) The English language, including reading, writing, and spelling.
- (2) The building and safety laws of the State and any of its political sub-

divisions, if the branch or branches of pest control for which he is applying require such knowledge.

- (3) The labor laws of the State.
- (4) The provisions of this chapter.
- (5) Poisonous and other dangerous chemicals used in pest control, if the branch license or licenses for which he is applying, require such knowledge.
- (6) The theory and practice of pest control in the branch or branches for which the applicant desires to be licensed.
- (7) Such other state laws, safety or health measures, or practices as are reasonably within the scope of pest control in the various branches.

Sec. -14 Fees; annual renewal. The fee for each original license and renewal prescribed by this chapter shall be \$25.

The annual renewal fee shall be paid to the board on or before June 30 of each year. Failure, neglect, or refusal of any duly licensed operator to pay the annual renewal fee shall constitute a forfeiture of his license. Any such license may be restored upon written application therefor within one year from such date and the payment of the required fee plus an amount equal to ten per cent thereof.

All fees and other money collected or received under this chapter shall be deposited by the director of regulatory agencies with the director of finance to the credit of the general fund.

Sec. -15 Revocation, suspension, and refusal of renewal of licenses; prohibition against certain offenses, etc.

(a) The board may revoke, suspend, or refuse to renew any license issued hereunder, for any of the following causes:

- (1) Conviction of any felony or misdemeanor involving moral turpitude;
- (2) Departure from, or disregard of, plans or specifications in the performance of pest control work in any material respect, without consent of the owner or his authorized representative;
- (3) Disregard and violation of any law of the State, or of any political subdivision thereof, relating to building, including any violation of any applicable rule or regulation of the department of health, or of any applicable safety or labor law;
- (4) Misrepresentation of a material fact by the applicant in obtaining a license;
- (5) Failure on the part of a licensee to complete any operation or construction repairs for the price stated in the contract for such operation or construction repairs or in any modification of such contract;
- (6) Failure to comply with this chapter, or any rule or regulation adopted by the board, or the furnishing of a report of inspection without the making of a bona fide inspection of the premises for wood-destroying pests;
- (7) The commission of any grossly negligent or fraudulent act by the licensee as an operator;

- (8) The negligent handling or use of any poisonous exterminating agent without regard to public safety;
- (9) Fraud or misrepresentation, after inspection, by any licensee engaged in pest control work or any infestation or infection of wood-destroying pests found in property or structures, or respecting any conditions of the structure that would ordinarily subject structures to attack by wood-destroying pests whether or not a report was made pursuant to sections -19 and -20;
- (10) Failure of an operator to make and keep all inspection reports, contracts, documents, and records, other than financial records, for a period of not less than two years after completion of any work or operation for the control of wood-destroying pests;
- (11) Wilful failure to pay when due a debt incurred for services or materials rendered or purchased in connection with his operations as an operator when he has the ability to pay or when he has received sufficient funds therefor as payment for the particular operation for which the services or materials were rendered or purchased;
- (12) The false denial of any debt due or the validity of the claim therefore with intent to secure for the licensee, his employer, or other person, any discount of such debt or with intent to hinder, delay or defraud the person to whom such debt is due;
- (13) Failure to secure or maintain workmen's compensation insurance when not authorized to act as a self-insurer under chapter 386;
- (14) Knowingly entering into a contract with an unlicensed operator involving work or activity for the performance of which licensing is required under this chapter.

No license shall be suspended for longer than two years and no person whose license is revoked shall be eligible to apply for a new license until the expiration of two years.

(b) Any person who has been denied a license for any of the reasons specified in section -8, or who has had his license revoked, or whose license is under suspension, or who has failed to renew his license while it was under suspension, or who has been a member, officer, director, associate, or responsible managing employee of any partnership, corporation, firm, or association whose application for a license has been denied for any of the reasons specified in section -8, or whose license has been revoked, or whose license is under suspension, or who has failed to renew a license while it was under suspension, and while acting as such a member, officer, director, associate, or responsible managing employee had knowledge of or participated in any of the prohibited acts for which the license was denied, suspended, or revoked, shall be prohibited from serving as an officer, director, associate, partner, or responsible managing employee of a licensee.

Sec. -16 Hearings. In every case where it is proposed to refuse to grant a license or to revoke or suspend a license or to refuse to renew a license, the board shall give the person concerned notice and hearing in conformity with chapter 91. The notice shall be given in writing by registered or certified mail with return receipt requested at least fifteen days before the hearing.

The hearing whenever possible shall be held on the island on which the aggrieved party resides.

In all proceedings before it, the board and each member thereof shall have the same powers respecting administering oaths, compelling the attendance of witnesses, and the production of documentary evidence, and examining witnesses as are possessed by circuit judges at chambers. In case of disobedience by any person of any order of the board, or any member thereof, or of any subpoena issued by it, or such member, or the refusal of any witness to testify to any matter regarding which he may be questioned lawfully, any circuit judge, on application by the board, or a member thereof, shall compel obedience as in the case of disobedience of the requirements of a subpoena issued by a circuit court, or a refusal to testify therein.

Sec. -17 Death or dissociation. No partnership, joint venture, or corporation shall be deemed to have violated this chapter by acting or assuming to act as a contractor after the death or dissociation of a licensee who had the direct management of the pest control business thereof prior to final disposition by the board of an application for a license made within thirty days from the date of the death or dissociation.

Sec. -18 Accusations against licensees, when to be filed. All accusations against licensees shall be filed within two years after the act or omission alleged as the ground for revocation or suspension of a license, except that with respect to accusations alleging a violation of section -15(4), the accusation may be filed within two years after the discovery by the board of the alleged facts constituting the fraud or misrepresentation prohibited by section -15(4).

The lapsing or suspension of a license by operation of law or by order of the board or a court of law or the voluntary suspension of a license by a licensee shall not deprive the board of jurisdiction to proceed with an investigation of or action or proceeding against the licensee, or to render a decision suspending or revoking the license.

Sec. -19 Wood-destroying pests or inspection required; field reports; inspection reports; form and contents; filing and delivery; statement of guarantee; control service; control service contract. (a) This section shall apply only to wood-destroying pests.

(b) No licensee shall commence work on a contract, or sign, issue, or deliver any documents expressing an opinion or statement relating to the absence or presence of wood-destroying pests until an inspection has been made. A written inspection report conforming to this section and on a form prescribed by the board shall be prepared and delivered to the person requesting the inspection or his designated agent, before work is commenced. The following shall be set forth in the report:

- (1) The date of the inspection and the name of the person making the inspection;
- (2) The name and address of the person or firm ordering the report;
- (3) The name and address of any person who is a party in interest to

whom the licensee is to send certified copies of inspection reports and completion notices;

- (4) The address or location of the property;
- (5) A general description of the building or premises inspected.

Any contract entered into, shall state specifically when any guarantee for the work is made, and if so, the specific terms of the guarantee and the period of time for which the guarantee shall be in effect.

(c) Control service is defined as the regular reinspection of a property after a report has been made in compliance with this section and such corrections as have been agreed upon have been completed. Under a control service agreement, a licensee shall refer to the original report and contract in such manner as to identify them clearly, and the report shall be assumed to be a true report of conditions as originally issued, except it may be modified after a control service inspection. A licensee is not required to issue a report as outlined in paragraph (1) to (5) after each control service inspection. If after control service inspection, no modification of the original report is made in writing, then it will be assumed that conditions are originally reported. A control service contract shall state specifically the particular wood-destroying pests and the portions of the buildings or structures covered by the contract.

Sec. -20 Document expressing an opinion or making statement regarding the presence or absence of wood-destroying pests; contents. Any work contract, billing, agreement, letter of work completed, or other correspondence or document, expressing an opinion or making a statement relating to the presence or absence of wood-destroying pests shall refer to the report defined in section -19(b). Such documents shall indicate specifically whether all of the recommended work as set forth in the inspection report was completed, or, if not, it shall indicate specifically which recommendations were not completed.

Sec. -21 Fumigation under supervision. Fumigation shall be performed only under the direct and personal supervision of an individual who is licensed by the board as an operator in the branch of pest control which includes fumigation.

Sec. -22 Fumigation job log; preservation and inspection. A licensee shall maintain a log of each fumigation job performed by him in this State. The log shall be in the form required by the regulations of the board and shall be preserved for a period of at least two years, during which time it shall be available at all times during business hours for inspection by the board and its authorized representatives.

Sec. -23 Pest control. A pest control operator may secure pest control work, identify infestations or infections, make inspections, and submit bids or otherwise contract for pest control work. A pest control operator may hire or employ individuals who are not licensed under this chapter to perform work on contracts.

Sec. -24 Application of soil treatment pest control work. A licensed contractor may contract for the performance of any soil treatment pest control

work to eliminate, exterminate, control, or prevent infestations or infections of pests in the ground beneath or adjacent to any existing building or structure or in or upon any site upon which any building or structure is to be constructed, but the actual performance of any such work must be done by a pest control operator.

Sec. -25 Insurance. No person shall engage in the business of pest control unless he has filed with the director of finance, a general liability insurance policy approved by the director in the minimum amount of \$20,000 for any one claim and a minimum aggregate of not less than \$50,000 for all claims arising during a policy term of one year. In the event such policy cannot be obtained, the licensee may file with the director in lieu thereof a verified statement providing proof satisfactory to the director of financial responsibility equivalent to that provided for by any such insurance policy; provided, that no employee of any company need have such policy in effect with respect to work covered by a policy of the company by which he is employed. This section shall not apply to vault fumigation.

Sec. -26 Exemptions. This chapter shall not apply to officials of the federal government on military reservations; or to personnel of the United States department of agriculture, the state department of agriculture, or state department of land and natural resources, or the United States public health service in the performance of their official duties; or to qualified scientific personnel specially exempted by the board; or to persons engaged in pest control for agricultural purposes.

Sec. -28 Violation of chapter; penalty. Any person who violates this chapter, or who conspires with another person to violate this chapter shall be fined not less than \$500 or imprisoned for not more than six months, or both.”

SECTION 2. This Act shall take effect upon its approval.

(Approved May 30, 1972.)