

1 HB131  
2 156052-1  
3 By Representative Sessions  
4 RFD: Agriculture and Forestry  
5 First Read: 14-JAN-14  
6 PFD: 01/10/2014

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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.

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

6  
7 A BILL  
8 TO BE ENTITLED  
9 AN ACT

10  
11 To amend Sections 2-28-1, 2-28-2, 2-28-3, 2-28-4,  
12 2-28-5, 2-28-7, and 2-28-12, Code of Alabama 1975, to require  
13 that landscape irrigation work be examined by the Commissioner  
14 of Agriculture and Industries; to require a landscape  
15 irrigation contractor to obtain a permit and to provide  
16 supervisory restrictions; to provide prohibition for  
17 structural pest control permit applicants; and to exclude  
18 persons engaging in the custom application of pesticides from  
19 the requirements.

20 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

21 Section 1. Sections 2-28-1, 2-28-2, 2-28-3, 2-28-4,  
22 2-28-5, 2-28-7, and 2-28-12, Code of Alabama 1975, are amended  
23 to read as follows:

24 "§2-28-1.

25 "When used in this chapter, the following terms  
26 shall have the following meanings, respectively, unless the  
27 context clearly indicates otherwise:

1           "~~(6)~~(1) BRANCH OFFICE. A place of business at an  
2 established location other than the main office having  
3 equipment and three or more employees directly engaged in  
4 structural pest control work from the place of business, which  
5 is a subdivision or branch of the main office, point of  
6 headquarters, or principal operation of the firm.

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

12           "~~(15)~~(3) BUSINESS LOCATION. Any location in or from  
13 which professional work or services are solicited, accepted,  
14 or conducted, and identified as a main office, branch office,  
15 or suboffice by permit.

16           "~~(13)~~(4) CERTIFICATION. The recognition by the  
17 commissioner that a person is competent and thus authorized to  
18 perform and/or supervise professional work or services in the  
19 category or categories listed on said certification permit.

20           "~~(14)~~(5) CERTIFICATION PERMIT. A document issued by  
21 the commissioner attesting that all standards have been met in  
22 competency in one or more categories and/or subcategories of  
23 professional work or services.

24           "~~(8)~~(6) CERTIFIED OPERATOR. A person who has been  
25 certified by the commissioner as qualified to supervise the  
26 operation of a main office or a branch office.

1           "~~(10)~~(7) COMMISSIONER. The Commissioner of  
2           Agriculture and Industries.

3           "~~(11)~~(8) DEPARTMENT. The Department of Agriculture  
4           and Industries.

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

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

18           "~~(3)~~ (11) HORTICULTURAL AND FLORICULTURAL WORK.  
19           Receiving fees for landscaping and setting of plants, or for  
20           the sale of any plants for which the seller contracts to  
21           render future services.

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

25           "(13) LANDSCAPE IRRIGATION WORK. Work for which  
26           compensation or other consideration is received for the

1 design, construction, repair, maintenance, improvement, or  
2 alteration of any portion of a landscape irrigation system.

3 "(2)(14) PATHOLOGICAL WORK. Receiving fees for  
4 advice or prescriptions for the control or eradication of any  
5 plant disease, for actual spraying, or any other methods used  
6 for the control or eradication of any plant disease.

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

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

25 "(5)(17) STRUCTURAL PEST CONTROL WORK. That branch  
26 or type of entomological, pest control, or eradication work  
27 which involves the performance of work or giving advice or

1 prescriptions for compensation for the prevention, control, or  
2 eradication of insects, vermin, rodents, pest animals, fungi,  
3 or other wood destroying organisms in household structures,  
4 commercial buildings, or other structures by the use of  
5 insecticides, rodenticides, repellants, chemicals, mechanical  
6 devices, or structural modifications, as well as a fumigation  
7 of products, containers, structures, or transportation  
8 vehicles.

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

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

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

1                   "§2-28-2.

2                   "Persons engaging in professional work or services  
3                   pertaining to entomological work, pathological work,  
4                   horticultural and floricultural work, landscape irrigation  
5                   work, and tree surgery work as defined in Section 2-28-1 shall  
6                   be examined by the commissioner.

7                   "§2-28-3.

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

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

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



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

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

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

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

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

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

23           "§2-28-4.

24           "(a) Permits generally; fees; delinquent penalty;  
25 subcategories of structural pest control permits and fees.  
26 Before any person engages in professional work or services as  
27 defined in this chapter or before any person may solicit

1 professional work or services through advertising or in any  
2 other manner, the person shall apply for and obtain from the  
3 commissioner an annual permit on forms furnished for this  
4 purpose accompanied with the annual permit fee which shall be  
5 established by the Board of Agriculture and Industries not to  
6 exceed \$200. Structural pest control work as defined in  
7 subdivision (5) of Section 2-28-1 shall be divided in the  
8 following subcategories: (1) Control of wood-destroying  
9 organisms by any method other than fumigation, (2) Control of  
10 industrial, institutional, and household pests by any method  
11 other than fumigation, (3) Fumigation pest control. The annual  
12 permit fee for persons engaged in the type of entomological  
13 work known as structural pest control work as defined in  
14 subdivision (5) of Section 2-28-1 shall be established by the  
15 board for each subcategory of work a person is qualified to  
16 perform. Any person engaged in structural pest control work  
17 who conducts the work from more than one location or place of  
18 business that is a branch office as defined in subdivision (6)  
19 of Section 2-28-1 shall be required to obtain a branch office  
20 permit for each branch office, and the permit fee shall be  
21 established by the board for each branch office and for each  
22 subcategory of work a person is qualified to perform. If a  
23 person conducts structural pest control work from an  
24 additional location designated as a suboffice as defined in  
25 subdivision (7) of Section 2-28-1, the person shall be  
26 required to obtain a suboffice permit for each suboffice, and  
27 the permit fee shall be established by the board for each

1 suboffice and for each subcategory of work a person is  
2 qualified to perform. A person qualified as a landscape  
3 irrigation contractor shall be required to obtain a permit for  
4 landscape irrigation work and shall not supervise more than  
5 one office. All permits shall expire on September 30 and shall  
6 be renewed by October 1 upon payment of the annual permit fee  
7 prescribed by this subsection and upon compliance with the  
8 other requirements of this chapter. If the permit fee is not  
9 paid by November 1 or within 31 days from the date on which  
10 the fee is due, a delinquent penalty established by the board  
11 shall be added to the amount.

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

1 work from a suboffice as defined in this section shall also be  
2 required to obtain a suboffice permit for each suboffice.

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

27 "§2-28-5.

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

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

22           "~~(b)~~ (c) Before a permit is issued to any applicant,  
23 the applicant shall be certified by the commissioner as  
24 qualified to perform the type or branch of professional work  
25 or service for which a permit is desired. Any full-time  
26 employee of the applicant who has been certified by the  
27 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 "§2-28-7.

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

1           "Any applicant refused or denied a certification or  
2 permit, or both, or any person whose certification or permit,  
3 or both, are revoked shall be entitled to appeal such action  
4 of the commissioner to the State Board of Agriculture and  
5 Industries by filing with the commissioner within a period of  
6 15 days a written notice or demand for review of the action of  
7 the commissioner in denying or revoking a certification or  
8 permit, or both. The State Board of Agriculture and Industries  
9 shall review the action of the commissioner and make a finding  
10 as to whether the certification or permit, or both, shall be  
11 issued or revoked. Any person denied or refused a  
12 certification or permit or any person whose certification or  
13 permit has been revoked by action of the commissioner shall  
14 have the right to appear before the board and be heard in  
15 support of his appeal. Any person whose certification or  
16 permit to perform work or services as regulated under this  
17 chapter has been revoked shall not be eligible to have such a  
18 certification or permit again issued to him for a period of  
19 not less than one year following the date on which such a  
20 certification or permit was revoked. Nothing contained in this  
21 chapter shall require the commissioner to issue a  
22 certification or permit to any person who has been convicted  
23 for a violation of this chapter or any person who has been  
24 convicted of any felony listed under subsection (b) of Section  
25 2-28-5 unless the person's civil rights have been restored.

26           "§2-28-12.

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

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