

1 SB94
2 156052-1
3 By Senator Whatley
4 RFD: Agriculture, Conservation, and Forestry
5 First Read: 14-JAN-14
6 PFD: 01/10/2014

2
3
4
5
6
7
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.