

ACT 74

S.B. NO. 1665

A Bill for an Act Relating to Pest Control Operators.

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

SECTION 1. Section 460J-1, Hawaii Revised Statutes, is amended by:

1. Deleting the definition of “fumigator”.  
[““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.”]
2. Amending the definition of “household pests” to read as follows:

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““Household pests” means those pests other than wood-destroying [insects and microbes] pests which invade households and other structures, including, but not limited to, rodents, vermin, insects, and birds.”

3. Amending the definition of “pest control” to read as follows:

““Pest control” means, with respect to wood-destroying pests, or 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[.] for hire:

- (1) Identifying pests or infestations;
- (2) Making an inspection for the purpose of identifying or attempting to identify infestations of household or other structures by pests;
- (3) Making inspection reports, recommendations, estimates, and bids, whether oral or written, with respect to infestations; [and] or
- (4) Making contracts, or submitting bids for, or the use of avicides, insecticides, pesticides, rodenticides, fumigants, or allied chemicals or substances, or mechanical devices, for the purpose of eliminating, exterminating, controlling, or preventing infestations of pests or organisms.”

SECTION 2. Section 460J-6, Hawaii Revised Statutes, is amended to read as follows:

“**§460J-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] or be engaged in the business of pest control without a license previously obtained under and in compliance with this chapter and the rules of the board. No person required to be licensed under this chapter shall be subject to chapter 444.”

SECTION 3. Section 460J-8, Hawaii Revised Statutes, is amended to read as follows:

“**§460J-8 [No license issued when.** No license shall be issued to:

- (1) Any person unless the person has filed an application therefor;
- (2) Any person who does not possess a history of honesty, truthfulness, financial integrity, and fair dealing;
- (3) Any partnership, joint venture, corporation or sole proprietorship, unless it is under the direct management of an operator or responsible managing employee with an appropriate license;
- (4) Any individual unless the individual is of the age of eighteen years or more;
- (5) Any person unless the person submits satisfactory proof to the board that the person has obtained workers' compensation insurance or has been authorized to act as a self-insurer as required by chapter 386.]

**License requirements.** To obtain an operator's license, a person shall fulfill the following requirements:

- (1) File an application as prescribed by the board;
- (2) Possess a history of honesty, truthfulness, financial integrity, and fair dealing;
- (3) Be at least eighteen years of age;
- (4) Satisfy the board's examination and experience requirements;
- (5) If a partnership, joint venture, corporation, or sole proprietorship, be under the direct management of a responsible managing employee or operator with an appropriate license;

- (6) Submit satisfactory proof to the board that the person has obtained workers' compensation insurance or has been authorized to act as a self-insurer as required by chapter 386;
- (7) Submit satisfactory proof to the board that the person has obtained liability insurance, pursuant to section 460J-25; and
- (8) Provide other documentation as required by the board.”

SECTION 4. Section 460J-12, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§460J-12]] [Group license; classification]~~ 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 operators 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] 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] 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 460J-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 the person.

(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] passing grade on the examination [of not less than seventy per cent on] in each of the subjects of such branch or branches.”

SECTION 5. Section 460J-15, Hawaii Revised Statutes, is amended to read as follows:

**“§460J-15 Revocation, suspension, and refusal of renewal of licenses; prohibition against certain offenses, etc.** (a) In addition to any other actions authorized by law, the board may revoke, suspend, or refuse to renew any license issued hereunder, for any cause authorized by law, including but not limited to the following:

- (1) 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 the owner's authorized representative;
- (2) Disregard and violation of any law of the State or any county relating to building, including any violation of any applicable rule of the department of health, or of any applicable safety or labor law;
- (3) Misrepresentation of a material fact by the applicant in obtaining a license;
- (4) Failure on the part of a licensee to complete any operation or construction repairs for the price stated in the contract for the operation or construction repairs or in any modification of the contract;
- (5) Failure to comply with this chapter, or any rule 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;] termites;
- (6) The commission of any grossly negligent or fraudulent act by the licensee as an operator;
- (7) The negligent handling or use of any poisonous exterminating agent without regard to public safety;
- (8) Fraud or misrepresentation, after inspection, by any licensee engaged in pest control work [or] relating to any infestation or infection of [wood-destroying pests] termites found in property or structures, or respecting any conditions of the structure that would ordinarily subject structures to attack by [wood-destroying pests] termites whether or not a report was made pursuant to sections 460J-19 and 460J-20;
- (9) 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;] termites;
- (10) Wilful failure to pay when due a debt incurred for services or materials rendered or purchased in connection with the operator's operations as an operator when the operator has the ability to pay or when the operator has received sufficient funds therefor as payment for the particular operation for which the services or materials were rendered or purchased;
- (11) The false denial of any debt due or the validity of the claim therefor with intent to secure for the licensee, the licensee's employer, or other person, any discount of the debt or with intent to hinder, delay, or defraud the person to whom the debt is due;
- (12) Failure to secure or maintain workers' compensation insurance when not authorized to act as a self-insurer under chapter 386;
- (13) Knowingly entering into a contract with an unlicensed operator involving work or activity for the performance of which licensing is required under this chapter; or

- (14) Conviction of any offense described in chapter 708 committed while in the performance of the person's regular occupation as a [fumigator or] pest control operator.

(b) [Any] During a period of disciplinary sanction, a person [who has been denied a license for any of the reasons specified in section 460J-8, or who has had the person's license revoked, or whose license is under suspension, or who has failed to renew the person's 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 460J-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[.] under the following circumstances:

- (1) The person's license has been revoked and the person has not been granted a new license;
- (2) The person's license is under suspension; or
- (3) The person has been a member, officer, director, associate, or responsible managing employee of any partnership, corporation, firm, or association whose license is revoked or is under suspension, and while acting as such a member, officer, director, associate, or responsible managing employee, the person had knowledge of or participated in any of the prohibited acts for which the license was suspended or revoked."

SECTION 6. Section 460J-19, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) No licensee shall commence work on a contract for the control of termites until an inspection has been made and a written inspection report and a written estimate have been approved by the person requesting the work; provided that no written inspection report shall be required in the event that a live infestation exists. The written inspection report shall be on a PC-9 form prescribed by the board and shall include the following:

- (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; and
- (6) The location of visible termite infestations apparent to the licensee.

The licensee shall not be responsible for [subsequent infestations] an infestation unless [their] its presence was visible at the time of the inspection. There shall be no guarantees or warranties on the written inspection report."

SECTION 7. Section 460J-20, Hawaii Revised Statutes, is amended to read as follows:

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“**[§460J-20]** Document expressing an opinion or making statement regarding the presence or absence of [wood-destroying pests;] termites; 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] termites shall refer to the report defined in section 460J-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.”

SECTION 8. Section 460J-21, Hawaii Revised Statutes, is amended to read as follows:

“**[§460J-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.] an applicator certified for structural fumigation by the department of agriculture.”

SECTION 9. Section 460J-24, Hawaii Revised Statutes, is amended to read as follows:

“**[§460J-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] from 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] shall be done by a licensed pest control operator.”

SECTION 10. Section 460J-24.5, Hawaii Revised Statutes, is amended to read as follows:

“**[§460J-24.5]** **Nonchemical pest control devices efficacy and safety data; examination and testing; approval prior to sale, lease, or transfer of devices in the State.** (a) All manufacturers or their representatives intending to sell, lease, or provide through other means a nonchemical pest control device in the State shall submit efficacy and safety data prior to sale, lease, or transfer to the department of agriculture; provided such requirement for submission of efficacy and safety [data] may include the furnishing of specimen devices or samples. The department of agriculture or its designated representative shall conduct such examination and testing as may be necessary to ascertain the reliability, efficacy and safety data and actual or potential adverse effects upon human health and safety of such device. The costs of conducting such test shall be borne by the manufacturer or the manufacturer's representative. The department of agriculture shall adopt and enforce rules pursuant to chapter 91 to carry out this section.

(b) Any person including a wholesaler, retailer, or pest control operator who sells, leases, or provides through other means a device which has not been approved [for sale in the State] as provided in subsection (a) shall be subject to penalty as provided in section 460J-27.”

SECTION 11. Section 460J-25, Hawaii Revised Statutes, is amended to read as follows:

“**§460J-25 Insurance.** No person shall engage in the business of pest control unless the person has filed with the director of commerce and consumer affairs 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, and for fumigation work, in the minimum amount of \$50,000, for all claims arising during a policy term of one year. If a 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;] in an amount prescribed by the board through its rules; 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 the employee is employed. This section shall not apply to vault fumigation.”

SECTION 12. Section 460J-26, Hawaii Revised Statutes, is amended to read as follows:

“**[[§460J-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,] Department of Agriculture, the state department of agriculture, or state department of land and natural resources, or the United States [public health service] Public Health Service in the performance of their official duties; or other government employees who conduct research on pesticides or pest control or who use pesticides in the performance of their duties; or to qualified scientific personnel specially exempted by the board; or to persons engaged in pest control for agricultural purposes.”

SECTION 13. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 14. This Act shall take effect upon its approval; provided that SECTION 10 shall take effect one year from the effective date of this Act.

(Approved April 26, 1993.)

**Note**

1. No end bracket.