

ACT 84

S.B. NO. 1515

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

“**§460J-8 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 or is excluded from the requirements of 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 3. Section 460J-12, Hawaii Revised Statutes, is amended to read as follows:

“**§460J-12 Classification of branches of pest control; examinations; rules [and regulations]; 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 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 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) [(b) 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) (c) The board shall make rules [and regulations] for the purpose of securing fair, impartial, and proper examinations.

[(e) (d) 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) (e) 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 passing grade on the examination in each of the subjects of such branch or branches.”

SECTION 4. Section 460J-14, Hawaii Revised Statutes, is amended to read as follows:

“§460J-14 Fees; biennial renewal[.]; inactive license. (a) The biennial renewal fee shall be paid to the board on or before June 30 of each even-numbered year. Failure, neglect, or refusal of any duly licensed operator to pay the biennial renewal fee shall constitute a forfeiture of the person’s license. Any license may be restored upon written application therefor within one year from the due date of the renewal fee and the payment of the delinquent fee plus an amount equal to ten per cent thereof.

(b) Upon written request of a licensee, the board may place the licensee’s active license on an inactive status. The licensee, upon request and payment of the inactive license fee may continue on inactive status. The license may be reactivated at any time by making a written request to the board and by fulfilling the requirements established by the board, including the payment of the appropriate fees. During the inactive period, a licensee on inactive status shall not engage in the practice of pest control that would require a license. Any person who violates this prohibition shall be subject to discipline under this chapter and the board’s rules.

(c) For purposes of this chapter, the dishonoring of any check upon first deposit shall constitute a failure to meet the fee requirements. Failure, neglect, or refusal of any licensee on inactive status to pay the inactive license fee shall constitute a forfeiture of the license.”

SECTION 5. Section 460J-15, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(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~~] Violation of any law of the State or any county relating to building, pesticide use, safety, or labor, including [any] violation of any applicable law or rule of the [department of] departments of agriculture, health, or [of any applicable safety or labor law;] labor and industrial relations;
- (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 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 relating to any infestation or infection of termites found in property or structures, or respecting any conditions of the structure that would ordinarily subject structures to attack by 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 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, or when not excluded from the requirements of 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 pest control operator."

SECTION 6. Section 460J-17, Hawaii Revised Statutes, is amended to read as follows:

“[[§460J-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] pest control operator 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.”

SECTION 7. Section 460J-26, Hawaii Revised Statutes, is amended to read as follows:

“**§460J-26 Exemptions.** This chapter shall not apply to [officials]:

- (1) Officials of the federal government on military reservations; [or to personnel]
- (2) 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 other]
- (3) Other government employees who conduct research on pesticides or pest control or who use pesticides in the performance of their duties; [or to qualified]
- (4) Qualified scientific personnel specially exempted by the board; [or to persons]
- (5) Persons engaged in pest control for agricultural purposes[.]; or
- (6) Engineers or architects licensed under chapter 464 who:
 - (A) Draft or prepare design documents that prescribe anti-termite or anti-pest measures, including the specification of termiticides, that are required by the building code and other governmental agencies;
 - (B) Conduct building condition or assessment surveys to observe and evaluate the condition of the building or structure, if the primary purpose of these surveys is not to report on the identification of infestations; or
 - (C) Prepare reports based on the results of the surveys specified in subparagraph (B) that identify the location, extent, and probable cause of the pest damage (e.g., “termite damage”); provided that where a report concerns termite damage, the particular type or species of termite shall not be specified unless the report is written in consultation with a licensed pest control operator licensed in termite control or other duly recognized expert in urban entomology, such as an insect taxonomist or urban entomologist with expertise in the identification or control of termites; and provided further that if a licensed pest control operator is not consulted, the report shall include a recommendation that a li-

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censed pest control operator be contracted for further assessment or treatment.’’

SECTION 8. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 9. This Act shall take effect upon its approval.

(Approved April 29, 1997.)