

PART XXV. STRUCTURAL PEST CONTROL BOARD

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Authority: The provisions of this Part XXV issued under Acts 1971, 62nd Leg., p. 2363, ch. 726, effective August 30, 1971, as amended (Texas Civil Statutes article 1356-6).

CHAPTER 591. GENERAL PROVISIONS

Section No.

Section Name

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§591.1. Origin and Purpose of the Board.

The board will carry out the right and duty of the state to protect the health and welfare of its citizens, to protect the environment against the misuse of pesticide, and to promote a more professional standard for the structural pest control industry.

Source: The provisions of this §591.1 adopted to be effective June 1, 1984, 9 TexReg 2307.

§591.2. Rule- Making.

The board may adopt, repeal, or amend sections under the authority of the Act at any time; provided, however, that notice of such amendment or new section shall be given in the manner of such amendment or new section shall be given in the manner required by law. When there are proposed changes to regulations, there shall be at least one public member and one *ex officio* member present at the board meeting when such proposed changes are made.

Source: The provisions of this §591.2 adopted to be effective June 1, 1984, 9 TexReg 2307.

§591.3. Suspension of Rules.

The board may suspend or waive any section, in whole or in part, for good cause shown, when the particular facts or circumstances justify.

Source: The provisions of this §591.3 adopted to be effective June 1, 1984, 9 TexReg 2307.

§591.4. Board Office.

The office of the board will be located in Austin, Texas.

Source: The provisions of this §591.4 adopted to be effective June 1, 1984, 9 TexReg 2307.

§591.5. Board Meetings.

- (a) The board shall hold at least four regular meetings each year as authorized by the chairman. A special meeting shall be called when two or more members petition the chairman, in writing, to call such meeting.
- (b) All board meetings will be held in Austin, Texas, in the office of the board, unless a change of place is determined by the board.
- (c) The executive director shall notify each board member of the date and place of meeting at least seven days prior to the date.
- (d) There shall be a majority of board members present at any board meeting in order to have a quorum to transact business. All decisions of the board will be by simple majority of board members present.
- (e) The minutes of the board shall be kept in such form and manner as the board may prescribe.

Source: The provisions of this §591.5 adopted to be effective June 1, 1984, 9 TexReg 2307.

§591.6. Board Seal.

The seal of the board shall be a circle with the words "The Texas Structural Pest Control Board" circularly arranged about the inner edge, and in the center of the circle, there shall be a five-pointed star, together with the live oak and olive branches common to other official state seals.

Source: The provisions of this §591.6 adopted to be effective June 1, 1984, 9 TexReg 2307.

§591.7. Board Records.

- (a) All official records of the board, except files relating to applications for employment, or confidential records of investigations or other sensitive records, shall be public records open to inspection at any reasonable time by any person; but such records shall not be taken from the board office.
- (b) Copies of official records may be made and certified by the chairman, vice-chairman, or the executive director, the expense thereof to be borne by the person or party requesting same.

Source: The provisions of this §591.7 adopted to be effective June 1, 1984, 9 TexReg 2307.

§591.8. Board Acceptance of Documents.

- (a) All instruments, correspondence, and material delivered to the board will be stamped or marked "Received" and the date thereof clearly indicated. On any application or petition requiring board action for acceptance or filing, a preliminary examination will be conducted by the staff to determine if the application or petition is in proper form and accompanied by the necessary fee.

- (b) Any instrument requiring board action will not be formally accepted for filing until it is received in proper form accompanied by those fees and data required by law and applicable board rules. Instruments, applications, and petitions which do not conform with these requirements shall be returned for necessary amendments and revision. Upon express written approval of the applicant, any employee of the board may make minor administrative changes in any documents submitted to the board by the applicant. If the filing fees are insufficient, the instrument may be held pending receipt of the necessary fee.

Source: The provisions of this §591.8 adopted to be effective June 1, 1984, 9 TexReg 2307.

§591.9. Board Hearings.

- (a) The board may order a public hearing on any pending matter where the public interest would be best served thereby.
- (b) The hearings of the board on any matter shall, unless otherwise ordered, be held in Austin, Texas.
- (c) Notice for meetings and hearings will be in accord with the Administrative Procedure and Texas Register Act.
- (d) In the event anyone should desire to protest or oppose any matter pending before the board, a written protest shall be filed with the board on or before the date and time of hearing. Protests should be filed at least five days before the hearing date in order to receive adequate consideration, and comply in a substantial manner with the following requirements.
- (1) Each protest shall show the name and address of the protestant.
 - (2) There shall be an allegation of injury to protestant which could result from the proposed action on the matter to be considered by the board.
 - (3) There shall be an allegation of interference with some present right of protestant's claim of right. A protest may be dismissed as insufficient if it fails to comply in a substantial manner with the board's requirements.
- (e) Hearings will be conducted in such manner as the board deems most suitable to the particular case. The technical rules of legal and court procedure need not be applied. It is the purpose of this board to obtain all the relevant information and testimony pertaining to the issue before it as conveniently, inexpensively, and expeditiously as possible without prejudicing the rights of the protestant.
- (f) Applications, motions, exceptions, communications, requests, briefs, or other papers or documents required or permitted to be filed under these rules or by law must be received at the board's office in Austin, Texas, within the time limit, if any, for such filing.
- (g) Any person whose interest is affected in a proceeding may appear at such proceeding. At the discretion of the board, anyone not such a party may also appear. An appearance may be made individually, by an attorney, or by authorized agents.
- (h) Except for unusual and extenuating circumstances, the protestants, his attorney, or his duly authorized agent shall be present at the public hearing. Failure to so appear will be grounds for withholding consideration of the protest.
- (i) Evidence will be admitted pursuant to the Administrative Procedure and Texas Register Act, Article 6252-13a.
- (j) The testimony shall be confined to the subject matter contained in the application or pleadings. In the event a party at a hearing shall pursue a line of interrogation of a witness which is clearly irrelevant, incompetent, or immaterial, such interrogation will be terminated.
- (k) The board reserves the right to limit the number of witnesses appearing at any proceeding where it appears that their testimony may be merely cumulative or repetitious of evidence previously received.
- (l) Any matter of official record in the board files may be incorporated by reference by the board or interested parties to the proceeding provided that:
- (1) it is identified sufficiently to put all parties on notice;
 - (2) it is material and relevant; and
 - (3) no party at interest is deprived of the right of cross-examination.
- (m) Official records may be entered in evidence; provided, however, that the board may waive all requirements for certification when it appears there is no valid reason to doubt the authenticity of the document presented.
- (n) When documents are numerous, the board may elect to receive in evidence only those which are typical and representative, and it may require the abstracting of the relevant data from the documents and the presentation of the abstracts in the form of an exhibit; provided, however, that before making such requirements, the board shall see that all interested persons are given the right to examine the documents from which such abstracts are made.
- (o) In the event an exhibit has been identified, objected to, and excluded, the presiding board member shall determine whether or not the party offering the exhibit withdraws the offer. If withdrawn, the exhibit will be returned. If the excluded exhibit is not withdrawn, it shall be identified and included in the record for the purpose of preserving the objection to the exclusion.
- (p) Unless specifically directed by the board, no exhibit will be permitted to be filed as part of the proceeding in any matter pending before the board after the conclusion of the public hearing held thereon. The board may hold the record open for the purpose of receiving additional written evidence.
- (q) Oral arguments may be allowed by the board upon request, but a reasonable time limit shall be fixed.
- (r) Prior to the closing of the hearing, the board may allow the presentation of briefs at a later date. The order and time for filing briefs shall be determined by the board following consultation with counsel.

- (s) The procedure for appeal from any ruling, order, decision, or act of the board is controlled by the provisions of the Act, §9(b), and the Administrative Procedure and Texas Register Act, Article 6252-13a.
- (t) All testimony given at any public hearing shall be recorded by some person appointed by the board. In those instances where any proper party at such hearing requests it, the testimony will be reduced to writing. Copies of any hearing thus transcribed may be obtained from the Structural Pest Control Board and paid for at the rate of \$1.00 per page.

Source: The provisions of this §591.9 adopted to be effective June 1, 1984, 9 TexReg 2307.

§591.10. through 591.20. [RESERVED]

§591.21. Definitions of Terms.

In addition to the definitions set out in the Act, §2, the following words, names, and terms shall have the following meanings, unless the context clearly indicates otherwise.

Act—The Texas Structural Pest Control Act, Texas Civil Statutes, Article 135b-6, as amended.

Applicant—Any person making application for a license or credentials from the board.

Board—The Structural Pest Control Board.

Category—The type of service or services a person or business entity is authorized to perform.

Chairman—An individual appointed board member elected by the board, who presides at the board meeting.

Contract—A binding agreement between two or more persons or parties that spells out in writing the terms and conditions of such agreement, and will include, but not be limited to, warranties or guarantees for pest control work.

Employee—Any person employed by a business licensee to engage in pesticide applications, maintain or utilize structural pest control devices, make sales presentations, or identify pest infestation or damage. The term "employee" shall not mean those individuals whose sole duties are clerical, or janitorial, or are completely disassociated with the control of arthropods (insects, spiders, mites, ticks, and related pests), wood-infesting organisms, rodents, weeds, nuisance birds, and any other obnoxious or undesirable animals which may infest households, railroad cars, ships, docks, trucks, airplanes, or other structures, or the contents thereof, or the immediate adjacent outside area.

Executive director—The person employed by the board who administers the provisions of this Act and the rules and regulations promulgated by the board.

Investigator—A structural pest control investigator employed by the board.

License—A document issued by the board to a person authorizing the practicing and/or supervising of the professional service or services indicated thereon.

Licensee—The holder of a valid license.

Revoke—To cancel a license issued under authority of the Pest Control Act. When a business license is revoked, the holder of said license must acquire a new license by completing a new application and paying the required fee. In the case of the certified applicator, the holder of such certified applicator's license must acquire a new license by completing a new application, paying the required fee, and being reexamined in each category desired by said person.

Suspend—To cease operations for a period of time as specified by the board.

Vice-chairman—An individual appointed board member elected by the board, who presides at the board meeting in the absence of the chairman.

Source: The provisions of this §591.21 adopted to be effective June 1, 1984, 9 TexReg 2307.

CHAPTER 593. LICENSES

Section No.

Section Name

593.1.	Persons Required to Secure License.
593.2.	License Application.
593.3.	Insurance Requirements.
593.4.	Resident Agent.
593.5.	Examinations.
593.6.	License Expiration and Renewal.
593.7.	Fees.
593.8.	Loss of Certified Applicator or Business Owner.
593.9.	Licensing of Persons with Criminal Backgrounds.

§593.1. Persons Required to Secure License.

Any person engaged in structural pest control operations must secure a business license from the board for each business location, including branch offices, in accordance with the Act and the regulations. Each business license holder shall have a certified applicator who is not also serving as a certified applicator for another business licensee. No person shall advertise in any manner to render services or solicit business within the meaning of the Act without first obtaining a license.

Source: The provisions of this §593.1 adopted to be effective June 1, 1984, 9 TexReg 2307.

§593.2. License Application.

- (a) The application for a business license and a certified applicator license shall be submitted on a regular form furnished by the board.
- (b) The application for an endorsement of license will be the same as used for regular business license or regular certified applicators license, and such applications shall be furnished by the board. In order to qualify for an endorsement of license, the test or tests taken in a state other than Texas must meet Texas standards. If the test or tests does not meet Texas standards, then the director is authorized to prepare an exam for said person. The exam or exams will be given as directed by the board.
- (c) An application for a license must contain an address where the licensee may be located. The address of an answering service or post office box will not meet the requirements of this section.

Source: The provisions of this §593.2 adopted to be effective June 1, 1984, 9 TexReg 2307.

§593.3. Insurance Requirements.

Each business license applicant must submit with the application an insurance policy or certificate of coverage in the amount of not less than \$25,000 in bodily injury coverage and \$5,000 in property damage covering insuring him against liability for damage to persons or property occurring as a result of operations performed in the course of the business of structural pest control to premises or any other property under his care, custody, or control. No new business license will be issued until insurance requirements are met. This policy shall contain a cancellation provision whereby notification of cancellation is received by the board not less than 30 days prior to cancellation.

Source: The provisions of this §593.3 adopted to be effective June 1, 1984, 9 TexReg 2307.

§593.4. Resident Agent.

- (a) License applicants who reside outside the state shall designate in writing a resident agent for service of process in actions taken in the administration and enforcement of the Act.
- (b) Each resident agent shall be a citizen of the state and maintain a permanent address within the state.
- (c) Instead of designating a resident agent, the applicant may designate the secretary of state as the recipient of service of process for the applicant.

Source: The provisions of this §593.4 adopted to be effective June 1, 1984, 9 TexReg 2307.

§593.5. Examinations.

- (a) Except as provided in §593.6(d) of this title (relating to License Expiration and Renewal), and individual who has previously qualified by written exam in a category shall receive a certified applicators license for the qualified category without reexamination. Each individual not previously qualified by written examination in the category or categories for which a license is requested must secure a certified applicators license by passing an exam administered by the board.
- (b) In order to qualify to take the Structural Pest Control Board test for obtaining a certified applicators license, the applicant must have verifiable employment in the pest control industry under the supervision of a licensed certified applicator for at least 12 months out of the past 24 months.
 - (1) The proof of previous employment or experience in the industry shall be furnished by the applicant in the form of a notarized statement.
 - (2) The following persons with less than 12 months verified employment may apply to the board for permission to take the test:
 - (A) an applicant with a degree in the biological sciences from an accredited college or university;
 - (B) an applicant with technical field experience from a previous occupation; and
 - (C) an applicant who qualifies under the hardship clause outlined in these regulations.
- (c) The testing procedure will be as follows.
 - (1) Examinations will be given at the discretion of the board at least once each quarter based upon the calendar year.
 - (2) A fee of \$25 shall be charged for each category in which an applicant is examined.

- (3) All examination fees are payable by personal check or money order and payment should be submitted with the completed application.
- (4) All examinations shall be maintained and administered by the board. Complete examinations shall be retained by the director for a period of two years.
- (5) The applicant shall take an examination which shall be in written form and, in general, cover the subject of the services designated in the application, except those covered by endorsement of license.
- (6) A grade of 70% will be the minimum grade required for passing.
- (7) The applicant must be able to read and write the English language.
- (8) All examinations will be given in Austin, Texas, unless otherwise designated by the board and the applicants so notified.
- (9) An applicant who gives or receives unauthorized assistance during an examination shall be dismissed from the examination and his results shall be voided.
- (10) Applicants who do not make a passing grade on an exam will not be allowed to retake the same category exam until the second exam date after failure.
- (11) Applicants who do not take a scheduled exam may not receive a refund of their exam fee unless they notify the board 10 days in advance of the test date. Exceptions may be granted if there is an emergency such as a death or serious illness in the family.
- (12) Categories in which examinations are to be given for which licenses will be issued are as follows:
 - (A) *Termite control*—Inspection and/or control of termites and other wood-destroying organisms. This category includes persons engaged in the inspection and/or control of termites, beetles, or other wood destroying organisms by means other than fumigation in buildings, including homes, warehouses, stores, docks, or any other structures.
 - (B) *Pest control*—Inspection and/or control of pests in and around homes, businesses, and industries. This category shall include persons engaged in the inspection and/or control of insect pests or pest animals which may invade homes, restaurants, stores, and other buildings, attacking their contents or furnishings or being a general nuisance, but do not normally attack the building itself, as for example, roaches, silverfish, ants, flies, mosquitoes, rats, mice, etc.
 - (C) *Lawn and ornamental*—Inspection and/or control of pests or ornamental plants, shade trees, and lawns. This category includes persons engaged in the inspection and/or control of pests or diseases of trees, shrubs, or other plantings in a park or adjacent to a residence, business establishment, industrial plants, institutional building, or street.
 - (D) *Fumigation*—This category includes persons engaged in pest inspection and/or control through fumigation of structures, food stuffs, warehouses, ships, railroad cars, etc.
 - (E) *Weed control*—This category includes persons engaged in the inspection and/or control of weeds around homes and industrial environs.
 - (F) *Wood preservation*—That phase of pest control that involves the addition of preservatives to wood to extend the life of wood products by protecting them from damage caused by insects, fungi, and marine borers. Such wood products will include, but not be limited to, crossties, poles, and posts. This category is intended only for use by those persons using wood preservatives that may be classified as restricted use.

Source: The provisions of this §593.5 adopted to be effective June 1, 1984, 9 TexReg 2307.

§593.6. License Expiration and Renewal.

- (a) Licenses shall expire December 31 of each calendar year and must be renewed by submitting an application to the board, paying the required fee, and meeting any additional requirements of the board under subsection (d) of this section, on or before December 31 of each calendar year. The board may grant to an untimely applicant for renewal a structural pest control business license or a certified applicators license, if such applicant pays a late renewal fee of \$25 and if his or her application is filed with the board not more than 30 days after the expiration of said license. If such application is received between 31 and 60 days after the expiration of the applicant's license, the board may grant the renewal of license when said application is accompanied by a late renewal fee of \$50. An applicant who applies for the renewal of a certified applicators license more than 60 days after the expiration of said license must be reexamined by the board.
- (b) Licenses and employee identification cards issued by the board are not transferable.
- (c) Whenever a licensed operator desires a change made in his mailing address or business location, he shall notify the board in writing within 30 days of the effective date of the change and submit the required fee for the change of the business location.
- (d) Pursuant to the Act, §7(e), the board, in determining whether additional testing or training shall be required for current licenses before renewal of their applicator license, may consider changes in technology, pesticide related problems, or the performance of individual applicators. If general retraining and/or retesting is required for all applicators in a

category or subcategory, the board will publish notice at least six months in advance of the license renewal date. If individual retraining and/or retesting is required as a result of the applicator's performance, the board may give notification and set a time and place of retraining.

Source: The provisions of this §593.6 adopted to be effective June 1, 1984, 9 TexReg 2307.

Cross References: This section cited in 22 TAC §593.5 (relating to Examinations).

§593.7. Fees.

Applicants and licensees will be charged the following fees for board services:

- (1) \$75 for an original or renewal of a business license
- (2) \$20 for an original or renewal of a certified applicators license;
- (3) \$10 for an original, renewal, or duplicate employee identification card;
- (4) \$20 for a duplicate business or certified applicators license when the original has been lost or destroyed;
- (5) \$20 for reissuing a business license or certified applicators license due to a name change in the license or a change of address;
- (6) \$25 for administering exams in each category;
- (7) \$25 for late renewal fee for up to 30 days late;
- (8) \$50 for late renewal fee for 31-60 days late.

Source: The provisions of this §593.7 adopted to be effective June 1, 1984, 9 TexReg 2307.

§593.8. Loss of Certified Applicator or Business Owner.

In the event of a disability, incapacity, or death of the business owner or certified applicator, if they are the same person, upon application of heir or license holder wishing to continue the business, the board may require their presence at the next scheduled board meeting for the purpose of allowing the prospective licensee the opportunity to show that the policies and services will continue substantially as before with due protection to the public and the environment and state or federal regulations. The board may issue a temporary hardship license to be valid for a period not to exceed six months. If a certified applicator for a business licensee leaves the employment of the business licensee, the business licensee may request the board to allow the company to continue until the next state examination date. *The business licensee must notify the board on the date of the loss of his or her certified applicator.*

Source: The provisions of this §593.8 adopted to be effective June 1, 1984, 9 TexReg 2307.

§593.9. Licensing of Persons with Criminal Backgrounds.

- (a) The board may revoke, suspend, annul, or amend an existing valid license, disqualify a person from receiving or renewing a license, or deny to a person the opportunity to be examined for a license because of a person's conviction of a felony or a misdemeanor, if the crime directly relates to the performance of the occupation or activity for which the license is issued and the prior criminal conviction directly affects such person's present fitness to perform such occupation or activity. *No currently incarcerated person will be eligible to obtain or renew a pest control license.*
- (b) In determining whether a criminal conviction directly relates to the performance of a licensed occupation or activity, the board shall consider:
 - (1) the nature and seriousness of the crime;
 - (2) the relationship of the crime to the purposes for requiring a license to engage in the occupation;
 - (3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and
 - (4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.
- (c) In making a determination in a particular case, the crimes which the board considers as likely to be directly related to the performance of the licensed occupation or activity include, but are not limited to:
 - (1) any felony or misdemeanor of which fraud, dishonesty, or deceit is an essential element;
 - (2) any criminal violation of Texas Pest Control Act (Texas Civil Statutes article 135b-6);
 - (3) any criminal violation of statutes regulating the particular occupation or activity for which licensing is sought;
 - (4) any crime involving moral turpitude;
 - (5) murder;
 - (6) burglary;
 - (7) robbery;
 - (8) rape;
 - (9) theft; and
 - (10) child molesting.

- (d) In determining whether a criminal conviction directly affects a person's present fitness to hold a license under the Structural Pest Control Act, the board shall consider the factors listed in Texas Civil Statutes article 6252-13c(4)(c):
- (1) the extent and nature of the person's past criminal activity;
 - (2) the age of the person at the time of the commission of the crime;
 - (3) the amount of time that has elapsed since the person's last criminal activity;
 - (4) the conduct and work activity of the person prior to and following the criminal activity;
 - (5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release;
 - (6) other evidence of the person's present fitness, including letters or recommendation from prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; the sheriff and chief of police in the community where the person resides; and any other persons in contact with the convicted person.
- (e) It shall be the responsibility of the applicant to the extent possible to secure and provide to the board the recommendations of the prosecution, law enforcement, and correctional authorities. The applicant shall also furnish proof in such form as may be required by the board that he or she has maintained a record of steady employment and has supported his or her dependents and has otherwise maintained a record of good conduct and has paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which he or she has been convicted.

Source: The provisions of this §593.9 adopted to be effective June 1, 1984, 9 TexReg 2307.

Cross References: This section cited in 22 TAC §597.1 (relating to Grounds for Revocation, Suspension, Reprimanding, Refusal to Examine, Refusal to Issue or Renew License).

CHAPTER 595. COMPLIANCE AND ENFORCEMENT

Section No.

Section Name

595.1.	License Display.
595.2.	Employee Registration.
595.3.	Employee Supervision.
595.4.	Pest Control Use Records.
595.5.	Contracts.
595.21.	Entry and Access.
595.22.	Investigation of Complaints.
595.23.	Investigation Reports.

§595.1. License Display.

- (a) All structural pest control licenses shall be displayed in a conspicuous place of the business of the license holder. In the case of a nonresident license holder, the license shall be displayed in a conspicuous place of the residence or place of business of the license holder's resident agent. All structural pest control licenses shall be presented for visual inspection upon request of a board investigator.
- (b) The business license number shall be prominently displayed on all vehicles used in the company business, but shall not be required on unmarked management vehicles. Vehicles of a company may have more than one license number; provided, however, notice is made in writing to the board and the board approves the license number used in such cases. The numbers and letters must be permanently affixed to the vehicle in a prominent place on each front fender and/or front door panel in two-inch letters in a color which would contrast to the background color of the truck or vehicle and shall be designated as: Texas Pest Control License (number). This may be abbreviated to Texas PCL (number) or TPCL (number). Any numbers or letters that adhere to vehicle by way of magnetic device or magnets are not considered to be permanently affixed.

Source: The provisions of this §595.1 adopted to be effective June 1, 1984, 9 TexReg 2307.

§595.2. Employee Registration.

- (a) It shall be the duty of the business licensee to inform the board in writing of the employment of all employees, as the term employee is defined in the rules.
- (b) Such notice shall be furnished on the date of employment and shall include the full name and home address of the employee, the date of employment, and, if applicable, the branch office at which he will be employed, and other information as may be required.
- (c) Within 90 days of such employment, the business licensee shall obtain from the board an identification card for such employee. It shall be the responsibility of every business licensee to collect all identification cards from terminated employees and mail them to the Structural Pest Control Board within 10 days after termination of employment. If, for any reason, such cards cannot be collected, the Structural Pest Control Board shall be so notified in writing. Any registration fee paid for an employee shall not be refundable or transferred to another employee.

Source: The provisions of this §595.2 adopted to be effective June 1, 1984, 9 TexReg 2307.

§595.3. Employee Supervision.

- (a) The certified applicator is responsible to supervise the use of pesticides by uncertified employees of a pest control business.
- (b) In order to provide adequate supervision, the certified applicator must have daily or frequent personal contact with the licensed business office and/or the employees being supervised. The business employee must reside within the normally accepted commuting area of the licensed business office in order to personally report in daily or frequently to receive instructions.
 - (3) Uncertified employees may not schedule and perform pest control work unless verifiable instructions for the type of work to be done are obtained from the certified applicator.
- (d) The business license holder will be responsible for actions of employees when they are performing pest control work.

Source: The provisions of this §595.3 adopted to be effective June 1, 1984, 9 TexReg 2307.

§595.4. Pest Control Use Records.

The business licensee shall keep and maintain a record of all uses of pesticides and devices for a period of two years. Said records will be kept on the premise of either the business licensee or the certified applicator licensee; however, a designation will be made as to who will keep the records on the application for a business license or certified applicator license or renewal of such license. The records will include, but are not limited to, routine operational data, which include the name and address of the customer, the name of pesticides or devices used, the amounts of pesticides or devices used, the purpose for which the pesticides or devices were used, the date the pesticides or devices were used, and the location where the pesticides or devices were used, and shall be kept in a clear and concise manner. These records shall be made available to the board or its authorized agents in accordance with the Act as amended.

Source: The provisions of this §595.4 adopted to be effective June 1, 1984, 9 TexReg 2307.

§595.5. Contracts.

- (a) In each written contract in which a licensee under the Act agrees to perform structural pest control services in this state, the licensee shall include the mailing address and telephone number of the board and a statement: "The board has jurisdiction over individuals licensed under the Structural Pest Control Act."
- (b) The requirement in subsection (a) of this section shall be on the face of the contract, warranty, or guarantee issued by the pest control operator.

- (c) The requirement in subsection (a) of this section shall be legible and printing shall be in at least seven-point type.

Source: The provisions of this §595.5 adopted to be effective June 1, 1984, 9 TexReg 2307.

§595.21. Entry and Access.

- (a) Authorized employees of the board may conduct investigations of structural pest control activities of any person in this state to determine compliance with the Act and board rules.
- (b) In conducting these investigations, the employees may, with proper permission:
- (1) enter the premise of a licensee during normal business hours to examine records, question witnesses, inspect pesticides and equipment used for pest control, and collect samples;
 - (2) enter premises where licensees are performing pest control operations to inspect the use of pesticides and devices, check employee credentials, collect samples, identify pests, and inspect equipment;
 - (3) on public property, inspect pesticides and equipment and question employees of persons suspected of conducting structural pest control activities.

Source: The provisions of this §595.21 adopted to be effective June 1, 1984, 9 TexReg 2307.

§595.22. Investigation of Complaints.

- (a) Any person with cause to believe that any provision of the Act or this chapter has been violated or who has experienced adverse effects from the actions of a person engaged in structural pest control may file a written complaint with the board. The board will furnish complaint forms for this purpose.
- (b) Upon receipt of a complaint, the board will conduct an investigation and issue a report as soon as possible.

Source: The provisions of this §595.22 adopted to be effective June 1, 1984, 9 TexReg 2307.

§595.23. Investigation Reports.

- (a) Written reports and documented evidence submitted by board investigators as the result of any investigation may be admitted, at the board's discretion, as evidence in any hearing, or used to support other enforcement actions taken by the board or its authorized staff.
- (b) A copy of the investigation report resulting from a complaint will be made available to the complaining party and the party complained against upon request.

Source: The provisions of this §595.23 adopted to be effective June 1, 1984, 9 TexReg 2307.

CHAPTER 597. UNLAWFUL ACTS AND GROUNDS FOR REVOCATION

Section No.

Section Name

597.1.

Grounds for Revocation, Suspension, Reprimanding, Refusal To Examine, Refusal To Issue or Renew Licenses.

597.2.

Suspension.

597.3.

Unlawful Acts.

§597.1. Grounds for Revocation, Suspension, Reprimanding, Refusal To Examine, Refusal To Issue or Renew Licenses.

Any such action may be accomplished by a vote of the board, after notice and hearings, as provided for by the Texas Civil Statutes, Article 135b-6, and the Administrative Procedure and Texas Register Act. No revocation, suspension, annulment, or withdrawal of any license is effective unless, prior to the institution of agency proceedings, the agency gave notice by personal service or by registered or certified mail to the licensee of facts or conduct alleged to warrant the intended action, and the licensee was given an opportunity to show compliance with all requirements of law for the retention of the license. The following are grounds for revocation, suspension, reprimanding, refusal to examine, refusal to issue or renew licenses:

- (1) misrepresentation for the purpose of defrauding; deceit or fraud; the making of a false statement with knowledge of its falsity for the purpose of inducing others to act thereon to their damage;
- (2) intentional misrepresentation in any application for a license;
- (3) fraudulent or misleading advertising or advertising in an unauthorized category;
- (4) has been convicted or has pled guilty to a violation of this Act as amended, or any regulation adopted hereunder, or any of the laws or regulations of this state, another state, or the United States relating to the licensing of pest control operators and pesticide use;
- (5) has been convicted of, or has pled guilty to a felony or misdemeanor involving moral turpitude, under the law of this state and other states of the United States within seven years prior to the date of application, provided that when the applicant is a defendant in any action in which the defendant is charged with a felony or a misdemeanor involving moral turpitude, the board may delay processing of the application until final disposition of any such criminal proceedings;
- (6) has a criminal background as explained in §593.9 of this title (relating to Licensing of Persons with Criminal Backgrounds);
- (7) failure of the licensee to supply the board or its authorized representative, upon request, with true and accurate information concerning methods and materials used, or work performed, or other information essential to the public health and welfare and to the administration and enforcement of this Act;
- (8) engaging in pest control practices in a manner that could be injurious to the public health, safety, or to the environment;
- (9) failure to comply with contract specifications;
- (10) performing work in a category for which the certified applicator licensee is not certified;
- (11) failure of business licensee to register employees or failure to pay license fees for employees;
- (12) making a pesticide application inconsistent with the labeling of any pesticide as registered by the Environmental Protection Agency, the United States Department of Agriculture, or the state registration for that pesticide, or in violation of any condition or restriction placed upon the use of that pesticide by the Environmental Protection Agency, the United States Department of Agriculture, or the state;
- (13) failure to make records of pesticide use and keep them available as required by the Act, as amended, and §595.4 of this title (relating to Pest Control Use Records);
- (14) failure of business licensee to notify the board when a certified applicator leaves their employment;
- (15) failure of business licensee to put identifying letters and numbers on vehicles as required by regulations;
- (16) failure to print in proper size type the address and telephone number of the board and the statement that the board has jurisdiction over individuals licensed by the board and the Act;
- (17) failure of business licensee to notify the board of a change of address of their company;
- (18) failure of business licensee to give the board an address where licensee may be located; and
- (19) failure of the certified applicator or business licensee to adequately supervise employees engaged in pest control activities.

Source: The provisions of this §597.1 adopted to be effective June 1, 1984, 9 TexReg 2307.

Cross References: This section cited in 22 TAC §597.3 (relating to Unlawful Acts).

§597.2. Suspension.

Suspension of any license under the provisions of §597.1 of this title (relating to Grounds for Revocation, Suspension, Reprimanding, Refusal to Examine, Refusal To Issue or Renew Licenses) shall not be for less than 10 days nor more than two years at the discretion of the board. If a license is suspended or revoked under the provisions thereof, the licensee shall, within five days of such suspension or revocation, surrender all licenses and identification cards issued thereunder to the director or his authorized representative.

Source: The provisions of this §597.2 adopted to be effective June 1, 1984, 9 TexReg 2307.

§597.3. Unlawful Acts.

In addition to the offenses listed in the Act, §10(A), §597.1(1)-(3) and (7)-(18) of this title (relating to Grounds for Revocation, Suspension, Reprimanding, Refusal To Examine, Refusal To Issue or Renew Licenses) are unlawful acts. Any person who commits an unlawful act is subject to the criminal and civil penalties provided by the Act as well as the remedies provided in this section.

Source: The provisions of this §597.3 adopted to be effective June 1, 1984, 9 TexReg 2307.

CHAPTER 599. TREATMENT STANDARDS

Section No.

599.1.
599.2. through 599.10.
599.11.

Section Name

Termite Control.
[RESERVED]
Structural Fumigation Requirements.

§599.1. Termite Control.

It will be illegal to use materials, products, and/or methods for termite control that are not approved by the board.

- (1) Each pesticide product or device registered by the United States Environmental Protection Agency and/or the Texas Department of Agriculture for termite control will be automatically approved by the board as long as the product is applied according to the instructions on the label or labeling.
- (2) Products or devices not subject to Environmental Protection Agency or Texas Department of Agriculture registration may be approved by the board if the manufacturer submits a request for approval to the board. The request should contain the following information:
 - (A) the name and address of the applicant and the name and address of the person whose name shall appear on the product label, if not the applicant's;
 - (B) the name of the product or device;
 - (C) a complete copy of all labeling to accompany the product or device and a statement of all claims to be made for it, including the directions for use;
 - (D) the complete formula of the product, including active and inert ingredients;
 - (E) a full description of the tests made and the results of the tests on which claims are based. These tests should be made by a recognized testing agency or institution and support, to the board's satisfaction, the efficacy and safety of the product when used as directed; and
 - (F) all available toxicology information, including the antidote or effective treatment.

Source: The provisions of this §599.1 adopted to be effective June 1, 1984, 9 TexReg 2307.

§599.2. through 599.10. [RESERVED]**§599.11. Structural Fumigation Requirements.**

- (a) Fumigation of structures to control wood destroying organisms shall be performed only under the direct on-site supervision of a certified applicator licensed by the board in the category of fumigation. Direct on-site supervision shall mean that the certified applicator exercising such supervision shall be present at the site of the fumigation during the entire time the fumigants are being released, the time ventilation is commenced, and at the time property is released for occupancy.
- (b) Fumigation shall be performed in compliance with all label requirements applicable to state, county, and city laws and ordinances and all applicable laws and regulations of the United States.
- (c) Prior to the commencement of fumigation, warning signs shall be posted in plainly visible locations on or in the immediate vicinity of all entrances to the space under fumigation and shall not be removed until fumigation and ventilation has been completed and the premises determined safe for reoccupancy. Ventilation shall be conducted with due regard for the public safety.
- (d) Local police, fire, and health authorities shall be notified prior to introduction of the fumigant and at the time the structure is released for occupancy.
- (e) The space to be fumigated shall be vacated by all occupants prior to the commencement of fumigation. The space to be fumigated shall be sealed in such manner to assure concentration of the fumigant released has been retained in compliance with the manufacturer's recommendations.
- (f) Warning signs shall be printed in red on white backgrounds and shall contain the following statement in letters not less than two inches in height: "Danger-Fumigation." They shall also depict a skull and crossbones, not less than one inch in height; the name of the fumigant; the date and time fumigant was introduced; and the name, address, and telephone number where the licensee performing the fumigation may be reached 24 hours a day.
- (g) On any structure that has been fumigated, the licensee who performed the fumigation shall, immediately upon completion, post a durable sign adjacent to the electric meter or hot water heater. This shall be a durable sign not less than one inch by two inches in size. It shall have the name of the licensee, date of fumigation, type of fumigant used, and the purpose for which it was fumigated (target pest).
- (h) A licensee performing fumigation shall use adequate warning agents with all fumigants which lack such properties. When conditions involving abnormal hazards exist, the person exercising direct on-site supervision shall take such safety precautions in addition to those prescribed to protect the public health and safety.
- (i) The licensee shall also post person or persons as a security guard at the location from the time the fumigant is introduced until released for occupancy.
- (j) For the purpose of maintaining proper safety and establishing responsibility in handling the dangerous gases used in fumigation, the licensee shall compile and retain for a period of at least two years a report for each fumigation job and/or treatment. The report for each fumigation job or treatment shall contain the following information:
 - (1) name and address of pest control company;
 - (2) name and address of property and owner;
 - (3) type of structure as to details of roofing;

- (4) cubic feet fumigated;
- (5) target pest or pest controlled;
- (6) kind of fumigant or fumigants used and amount;
- (7) name of warning agent and amount used;
- (8) type of sealing method;
- (9) weather conditions as to temperature and wind;
- (10) time gas introduced and ventilated (date and hour);
- (11) name of licensee (certified applicator);
- (12) list of any extraordinary safety precautions taken;
- (13) time released for occupancy (signed by certified applicator); and
- (14) the date and hour police, fire departments, and health authorities were notified.

Source: The provisions of this §599.11 adopted to be effective June 1, 1984. 9 TexReg 2307.