



Home	Bill Information	California Law	Publications	Other Resources	My Subscriptions	My Favorites
------	------------------	----------------	--------------	-----------------	------------------	--------------

SB-1481 Structural pest control: certification: fumigation: penalties. (2017-2018)

SHARE THIS:  

Date Published: 09/19/2018 09:00 PM

Senate Bill No. 1481

CHAPTER 572

An act to amend Sections 8517, 8519, 8519.5, 8520, 8528, 8550, 8553, 8613, 8619, 8623, 8663, 8674, and 8698.3 of, and to add Sections 8504.2, 8504.3, 8504.4, and 8623.5 to, the Business and Professions Code, relating to structural pest control.

[Approved by Governor September 19, 2018. Filed with Secretary of State September 19, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1481, Hill. Structural pest control: certification: fumigation: penalties.

Existing law establishes the Structural Pest Control Board within the Department of Consumer Affairs to define, license, and regulate structural pest control operators and companies. Existing law authorizes the board to revoke, suspend, or deny a license under the Structural Pest Control Act and authorizes the director to levy a civil penalty against a person for any violation of the act. Existing law also authorizes county agricultural commissioners, among other things, to levy fines against Branch 1 registered companies for any major violations, as defined by the act. Existing law repeals the provisions relating to the board on January 1, 2019.

This bill would authorize a person whose license or registration has been revoked, suspended, or surrendered, or who has been placed on probation, to petition the board, after specified minimum time periods, for reinstatement or modification of the penalty. The bill would additionally authorize specified county agricultural commissioners to levy a civil penalty against a person for any violation of the act. The bill would also authorize the board and all county agricultural commissioners to levy fines for serious or moderate violations, as defined. The bill would also change the minimum and maximum penalties applicable for a violation of this chapter. The bill would extend the provisions establishing the board until January 1, 2023.

Existing law prohibits a registered company or licensee from commencing work on a contract relating to the absence or presence of wood destroying pests or organisms until an inspection has been made, as provided, and an inspection report has been delivered to the person requesting the inspection and to the property owner. Existing law authorizes a person who orders an inspection report to also request a certification on whether evidence of the absence or presence of wood destroying pests or organisms was found and requires the registered company performing the inspection to provide this certification, as specified.

Existing law requires a Branch 1 registered company who performs a fumigation following an inspection by a Branch 3 registered company to issue a specified certification of completion of the fumigation to the Branch 3 registered company. Upon failure of a fumigation, existing law requires the Branch 1 registered company that performed the fumigation to verify the need for refumigation and file specified reports with the Branch 3 registered company and with the consumer.

This bill would require a specified certification when the property is free of evidence of active infestation or infection and require all certifications to be included on the complete, limited, supplemental, or reinspection reports. The bill would, where the consumer has directly contracted for the fumigation, require the Branch 1 registered company to also provide the certification of

completion of the fumigation to the consumer who ordered the fumigation and would require the Branch 1 registered company to provide a warranty for fumigation to the owner or the owner's designated agent. The bill would specify additional requirements for a potential failed fumigation, including a requirement that, when a consumer authorizes a Branch 3 registered company to subcontract the fumigation to a Branch 1 registered company, the Branch 3 registered company verify the need for a refumigation and issue an inspection report. The bill would require, when the consumer elects to contract directly with a Branch 1 registered company to perform a fumigation, the Branch 1 registered company to take additional specified actions.

Existing law makes a violation of the act a crime.

Because a violation of the bill's requirements would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 8504.2 is added to the Business and Professions Code, to read:

8504.2. "Control" means a pest population management system that utilizes techniques to reduce and maintain pest populations at levels below those causing economic or material injury, or to manipulate the populations to prevent causing such injury.

SEC. 2. Section 8504.3 is added to the Business and Professions Code, to read:

8504.3. "Eradication" means the total elimination of a pest from a designated area. For purposes of this chapter, elimination and extermination shall have the same meaning as eradication.

SEC. 3. Section 8504.4 is added to the Business and Professions Code, to read:

8504.4. "Inspection" is the act of a field representative or operator physically performing an onsite assessment of real property.

SEC. 4. Section 8517 of the Business and Professions Code is amended to read:

8517. 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 or organisms, shall refer to the inspection report required by Section 8516. These documents shall indicate specifically whether all of the recommended work as set forth in the inspection report was completed, or, if not, the document shall indicate specifically which recommendations were not completed.

SEC. 5. Section 8519 of the Business and Professions Code is amended to read:

8519. Certification as used in this section means a written statement by the registered company attesting to the statement contained therein relating to the absence or presence of wood-destroying pests or organisms and, listing such recommendations, if any, which appear on an inspection report prepared pursuant to Section 8516, and which relate to (1) infestation or infection of wood-destroying pests or organisms found, or (2) repair of structurally weakened members caused by such infestation or infection, and which recommendations have not been completed at the time of certification.

Any registered company which makes an inspection report pursuant to Section 8516, shall, if requested by the person ordering the inspection report, prepare and deliver to that person or his or her designated agent, a certification, to provide:

(a) When the inspection report prepared pursuant to Section 8516 has disclosed no infestation or infection: "This is to certify that the above property was inspected on ____ (date(s)) in accordance with the Structural Pest Control Act and rules and regulations adopted pursuant thereto, and that no evidence of active infestation or infection was found in the visible and accessible areas."

(b) When the inspection report prepared pursuant to Section 8516 discloses infestation or infection and the notice of work completed prepared pursuant to Section 8518, or when the reinspection report prepared pursuant to Section 8516, indicates that all recommendations to remove that infestation or infection and to repair damage caused by that infestation or infection have been completed: "This is to certify that the property described herein is now free of evidence of active infestation or infection in the visible and accessible areas."

(c) When the inspection report prepared pursuant to Section 8516 discloses infestation or infection and the notice of work completed prepared pursuant to Section 8518 indicates that the registered company has not completed all recommendations to remove that infestation or infection or to repair damage caused by it: "This is to certify that the property described herein is now free of evidence of active infestation or infection in the visible and accessible areas except as follows: ____ (describing infestations, infections, damage or evidence thereof, excepted)."

(d) When a limited inspection report prepared pursuant to Section 8516 has disclosed no infestation or infection: "This is to certify that a limited inspection report was conducted on the area of the property described herein on ____ (date(s)) in accordance with the Structural Pest Control Act and rules and regulations adopted pursuant thereto, and has revealed no evidence of active infestation or infection in the visible and accessible areas inspected."

This certification shall be included on and made part of the complete, limited, supplemental, or reinspection report prepared pursuant to Section 8516, and by a copy of the notice of work completed prepared pursuant to Section 8518, if any notice has been prepared at the time of the certification, or the certification may be endorsed on and made a part of that inspection report or notice of work completed.

SEC. 6. Section 8519.5 of the Business and Professions Code is amended to read:

8519.5. (a) After an inspection report has been prepared by a Branch 3 registered company pursuant to Section 8516, which discloses a wood destroying pest or organism that can be eradicated by fumigation, and the fumigation has been duly performed by a Branch 1 registered company, the Branch 1 registered company, on a company document that identifies the licensee performing the fumigation and the name and address of the registered company, shall issue the following certification: "This is to certify that the property located at ____ (address) was fumigated on ____ (date) for the extermination of ____ (target pest)." This certification shall be issued to the registered company that prepared the inspection report within five working days after completing the fumigation.

(1) Where a consumer has authorized a Branch 3 registered company to subcontract the fumigation to a Branch 1 registered company, a copy of the certification pursuant to subdivision (a) shall accompany any inspection report, notice of work completed pursuant to Section 8518, or certification issued by the Branch 3 registered company.

(2) Where the consumer has elected to contract directly with a Branch 1 registered company to perform a fumigation, the Branch 1 registered company shall provide the certification described in subdivision (a) to the consumer who ordered the fumigation.

(b) A warranty for fumigation shall be provided in writing by the registered company contracting with the owner or the owner's designated agent.

(c) In the event of a failed fumigation, the following shall apply:

(1) When a consumer authorizes a Branch 3 registered company to subcontract the fumigation to a Branch 1 registered company, the Branch 3 registered company shall verify the need for a refumigation and issue an inspection report in accordance with Section 8516. The consumer shall not be charged for this inspection. Following completion of the refumigation, a new certification and any additional warranty or guarantee shall be issued to the owner or the owner's designated agent.

(2) When the consumer elects to contract directly with a Branch 1 registered company to perform a fumigation, the Branch 1 registered company shall do all of the following:

(A) Verify the need for a refumigation by obtaining a Branch 3 inspection at no charge to the consumer during the duration of a warranty or guarantee issued by the Branch 1 registered company.

(B) Maintain with the original inspection report, on a company document, all of the following:

(i) The name of the current owner of the structure fumigated, the address of the structure, and the date of the failed fumigation.

(ii) An explanation of the need for refumigation.

(iii) The proposed date for the refumigation. Following completion of the refumigation, a new certification and any additional warranty or guarantee shall be issued to the owner or the owner's designated agent.

(C) Within five working days after the completion of the refumigation, the Branch 1 registered company, on a company document, shall file with the current owner, notification of the Branch 3 registered company whose report was used for the original fumigation, or refumigation. Any certification issued by the Branch 1 registered company shall also comply with subdivision (a), if applicable.

SEC. 7. Section 8520 of the Business and Professions Code is amended to read:

8520. (a) There is in the Department of Consumer Affairs a Structural Pest Control Board, which consists of seven members.

(b) Subject to the jurisdiction conferred upon the director by Division 1 (commencing with Section 100), the board is vested with the power to and shall administer the provisions of this chapter.

(c) It is the intent of the Legislature that consumer protection is the primary mission of the board.

(d) This section shall remain in effect only until January 1, 2023, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2023, deletes or extends that date. Notwithstanding any other law, the repeal of this section renders the board subject to review by the appropriate policy committees of the Legislature.

SEC. 8. Section 8528 of the Business and Professions Code is amended to read:

8528. (a) With the approval of the director, the board shall appoint a registrar, fix his or her compensation, and prescribe his or her duties.

(b) The registrar is the executive officer and secretary of the board.

(c) This section shall remain in effect only until January 1, 2023, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2023, deletes or extends that date.

SEC. 9. Section 8550 of the Business and Professions Code is amended to read:

8550. (a) It is unlawful for any person to advertise, to engage in, or offer to engage in the business or practice of structural pest control, as defined in Section 8505, unless he or she is licensed under this chapter.

(b) Notwithstanding subdivision (a), an unlicensed person may solicit pest control work on behalf of a structural pest control company only if the company is registered pursuant to this chapter, and the unlicensed individual does not perform or offer to perform any act for which an operator, field representative, or applicator license is required pursuant to this chapter. As used in this subdivision, to "solicit pest control work" means to introduce consumers to a registered company and the services it provides, to distribute advertising literature, and to set appointments on behalf of a licensed operator or field representative.

(c) It is unlawful for an unlicensed person, soliciting pest control work on behalf of a registered structural pest control company pursuant to subdivision (b), to perform or offer to perform any act for which an operator, field representative, or applicator license is required, including, but not limited to, performing or offering pest control evaluations or inspections, pest identification, making any claims of pest control safety or pest control efficacy, or to offer price quotes other than what is provided and printed on the company advertising or literature, or both.

(d) It is also unlawful for any unlicensed person to offer any opinion, or to make any recommendations, concerning the need for structural pest control work in general, or in connection with a particular structure.

(e) It is unlawful for any firm, sole proprietorship, partnership, corporation, association, or other organization or combination thereof to engage or offer to engage in the practice of structural pest control, unless registered in accordance with Article 6 (commencing with Section 8610).

SEC. 10. Section 8553 of the Business and Professions Code is amended to read:

8553. Any person who violates any provision of this chapter, or who conspires with another person to violate any provision of this chapter, is guilty of a misdemeanor, and is punishable by a fine of not less than fifty dollars (\$50) nor more than five thousand dollars (\$5,000), or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

SEC. 11. Section 8613 of the Business and Professions Code is amended to read:

8613. A registered company which changes the location of its principal office or any branch office or which changes its qualifying manager, branch supervisor, officers, sole proprietors, partners, or its bond or insurance shall notify the registrar on a form prescribed by the board of that change within 10 days thereafter. A fee for filing those changes shall be charged in accordance with Section 8674.

SEC. 12. Section 8619 of the Business and Professions Code is amended to read:

8619. (a) An inspection tag shall be posted whenever an inspection for wood destroying pests or organisms is made.

(b) If the registered company completes any work with respect to wood destroying pests or organisms, it shall post a completion tag next to the inspection tag, unless both the inspection and completion tags are combined on the same form.

SEC. 13. Section 8623 of the Business and Professions Code is amended to read:

8623. (a) Notwithstanding Section 8620 or any other provision of law, the board may revoke, suspend, or deny at any time a license under this chapter on any of the grounds for disciplinary action provided in this chapter. The proceedings under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein.

(b) The board may deny a license to an applicant on any of the grounds specified in Section 480.

(c) In addition to the requirements provided in Sections 485 and 486, upon denial of an application for a license, the board shall provide a statement of reasons for the denial that does the following:

(1) Evaluates evidence of rehabilitation submitted by the applicant, if any.

(2) Provides the board's criteria relating to rehabilitation, formulated pursuant to Section 482, that takes into account the age and severity of the offense, and the evidence relating to participation in treatment or other rehabilitation programs.

(3) If the board's decision was based on the applicant's prior criminal conviction, justifies the board's denial of a license and conveys the reasons why the prior criminal conviction is substantially related to the qualifications, functions, or duties of a licensed structural pest control operator.

(d) Commencing July 1, 2009, all of the following shall apply:

(1) If the denial of a license is due at least in part to the applicant's state or federal criminal history record, the board shall, in addition to the information provided pursuant to paragraph (3) of subdivision (c), provide to the applicant a copy of his or her criminal history record at an address specified by the candidate.

(A) The state or federal criminal history record shall not be modified or altered from its form or content as provided by the Department of Justice.

(B) The criminal history record shall be provided in such a manner as to protect the confidentiality and privacy of the applicant's criminal history record and the criminal history record shall not be made available by the board to any employer.

(C) The board shall retain a copy of the applicant's written request and a copy of the response sent to the applicant, which shall include the date and the address to which the response was sent.

(2) The board shall make that information available upon request by the Department of Justice or the Federal Bureau of Investigation.

(e) Notwithstanding Section 487, the board shall conduct a hearing of a license denial within 90 days of receiving an applicant's request for a hearing. For all other hearing requests, the board shall determine when the hearing shall be conducted.

SEC. 14. Section 8623.5 is added to the Business and Professions Code, to read:

8623.5. (a) A person whose license or registration has been revoked, suspended, or surrendered, or who has been placed on probation, may petition the board for reinstatement or modification of the penalty, including modification or termination of probation, after not less than the following minimum periods have elapsed, beginning on the effective date of the decision ordering that disciplinary action:

(1) At least three years for reinstatement of a license revoked or surrendered.

(2) At least two years for modification of a condition of probation.

(3) At least one year for early termination of a probation of less than three years.

(4) At least two years for early termination of a probation of three years or more.

(b) The board may require an examination for reinstatement of a license revoked or surrendered.

SEC. 15. Section 8663 of the Business and Professions Code is amended to read:

8663. (a) This section only applies to work conducted under a Branch 1 license.

(b) A copy of a notice of violation issued for any violation committed by a subcontractor shall be sent to the prime contractor responsible for the work by the issuing authority within 30 days from the date the violation was committed or discovered. In circumstances where the violation is classified as serious or moderate, notification shall be performed by certified mail with a return receipt requested.

(c) The board or county agricultural commissioners, when acting pursuant to Section 8616.4, may levy a fine of up to five thousand dollars (\$5,000) against a registered company acting as a prime contractor for any serious or moderate violation committed by any licensee with whom the prime contractor has subcontracted if, before that violation occurred, the prime contractor had been notified by certified mail, return receipt requested, of two or more serious or moderate violations committed by that subcontractor within 12 consecutive months.

Fines collected pursuant to this section shall be paid to the Education and Enforcement Account in the Structural Pest Control Education and Enforcement Fund.

(d) For purposes of this section, "serious or moderate" violation includes, but is not limited to, a violation of any of the following provisions of this code or of the California Code of Regulations that poses a serious hazard to humans:

(1) A violation of subdivision (a) or (b) of Section 1970.4 of Title 16 of, or Section 6454 of Title 3 of, the California Code of Regulations, or a violation of Section 8505.5.

(2) Any violation of the structural pest control law that results in a serious injury to any person.

(3) A violation of Section 8505.2 or 8505.3, relating to direct and personal supervision.

(4) A violation of Section 8505.7, relating to vacating and securing structures.

(5) A violation of Section 6780 of Title 3 of the California Code of Regulations.

(6) A violation of Section 6454 of Title 3 of the California Code of Regulations.

(7) A violation of Section 8505.12, relating to warning agents.

(8) A violation of Section 8505.9 or 8505.10, relating to warning signs.

(e) Notwithstanding subdivision (c), a prime contractor may be fined for a subcontractor's first violation for failing to have a signed Occupants Fumigation Notice, pursuant to Section 1970.4 of Title 16 of the California Code of Regulations, on the premises being treated, or for failure to provide advance notice of a fumigation pursuant to Section 8538 to the occupants of the premises being treated.

SEC. 16. Section 8674 of the Business and Professions Code is amended to read:

8674. The fees prescribed by this chapter are the following:

(a) A duplicate license fee of not more than two dollars (\$2).

(b) A fee for filing a change of name of a licensee of not more than two dollars (\$2).

(c) An operator's examination fee of not more than one hundred dollars (\$100).

(d) An operator's license fee of not more than one hundred fifty dollars (\$150).

(e) An operator's license renewal fee of not more than one hundred fifty dollars (\$150).

(f) A company registration fee of not more than one hundred twenty dollars (\$120).

(g) A branch office registration fee of not more than sixty dollars (\$60).

(h) A field representative's examination fee of not more than seventy-five dollars (\$75).

(i) A field representative's license fee of not more than forty-five dollars (\$45).

(j) A field representative's license renewal fee of not more than forty-five dollars (\$45).

(k) An applicator's examination fee of not more than sixty dollars (\$60).

(l) An applicator's license fee of not more than fifty dollars (\$50).

(m) An applicator's license renewal fee of not more than fifty dollars (\$50).

(n) An activity form fee, per property address, of not more than five dollars (\$5).

(o) A fee for certifying a copy of an activity form of not more than three dollars (\$3).

(p) A fee for filing a change of a registered company's name, principal office address, or branch office address, qualifying manager, or the names of a registered company's officers, or bond or insurance of not more than twenty-five dollars (\$25) for each change.

(q) A fee for approval of continuing education providers of not more than fifty dollars (\$50).

(r) A pesticide use report filing fee of not more than five dollars (\$5) for each pesticide use report or combination of use reports representing a registered structural pest control company's total county pesticide use for the month.

(s) A fee for approval of continuing education courses of not more than twenty-five dollars (\$25).

(t) (1) Any person who pays a fee pursuant to subdivision (r) shall, in addition, pay a fee of two dollars (\$2) for each pesticide use stamp or stamp number purchased from the board. Notwithstanding any other law, the fee established pursuant to this subdivision shall be deposited into the Structural Pest Control Research Fund that is hereby continued in existence and continuously appropriated to be used only for structural pest control research.

(2) A charge for administrative expenses of the board in an amount not to exceed 5 percent of the amount collected and deposited in the Structural Pest Control Research Fund may be assessed against the fund. The charge shall be limited to expenses directly related to the administration of the fund.

(3) The board shall, by regulation, establish a five-member research advisory panel, including, but not limited to, representatives from the Structural Pest Control Board, the structural pest control industry, the Department of Pesticide Regulation, and the University of California. The panel, or other entity designated by the board, shall solicit on behalf of the board all requests for proposals and present to the panel all proposals that meet the criteria established by the panel. The panel shall review the proposals and recommend to the board which proposals to accept. The recommendations shall be accepted upon a two-thirds vote of the board. The board shall direct the panel, or other entity designated by the board, to prepare and issue the research contracts and authorize the transfer of funds from the Structural Pest Control Research Fund to the applicants whose proposals were accepted by the board.

(4) A charge for requests for proposals, contracts, and monitoring of contracted research shall not exceed 5 percent of the research funds available each year and shall be paid from the Structural Pest Control Research Fund.

SEC. 17. Section 8698.3 of the Business and Professions Code is amended to read:

8698.3. (a) The Director of the Department of Pesticide Regulation or a county agricultural commissioner listed in Section 8698 may levy a civil penalty against a person or company violating this chapter, including any regulation adopted pursuant to this chapter for failing to comply with Section 8698.1.

(b) Before a civil penalty is levied, the person charged with the violation shall receive notice of the nature of the violation and shall be given an opportunity to be heard, including the right to review the director's evidence and a right to present evidence on his or her own behalf.

(c) Review of the decision of the director may be sought by the person against whom the penalty was levied, within 30 days of receiving notice of the decision, pursuant to Section 1094.5 of the Code of Civil Procedure.

(d) After the exhaustion of the review procedure provided in this section, the director, or his or her representative, may file a certified copy of a final decision of the director that directs the payment of a civil penalty and, if applicable, any order that denies a petition for a writ of administrative mandamus, with the clerk of the superior court of any county. Judgment shall be entered immediately by the clerk in conformity with the decision or order. No fees shall be charged by the clerk of the superior court for the performance of any official service required in connection with the entry of judgment pursuant to this section.

SEC. 18. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.