

**Agriculture and Industries Chapter 28, Title 2 Code of Alabama, 1975**  
**ALABAMA DEPARTMENT OF AGRICULTURE AND INDUSTRIES**  
**CODE OF ALABAMA**  
**CHAPTER 28**  
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## **Section 2-28-1**

### **Definitions.**

When used in this chapter, the following terms shall have the following meanings, respectively, unless the context clearly indicates otherwise:

(1) **ENTOMOLOGICAL WORK.** Receiving fees for advice or prescriptions for the control or eradication of any insect pest or rodent or for actual spraying, dusting, fumigating, or any other methods used for the control or eradication of any insect pest or rodent.

(2) **PATHOLOGICAL WORK.** Receiving fees for advice or prescriptions for the control or eradication of any plant disease, for actual spraying, or any other methods used for the control or eradication of any plant disease.

(3) **HORTICULTURAL AND FLORICULTURAL WORK.** Receiving fees for landscaping and setting of plants, or for the sale of any plants for which the seller contracts to render future services.

(4) **TREE SURGERY WORK.** Receiving fees for tree surgery, including but not limited to, cavity filling or repair, bracing, cabling, and wound treatment of shrubs and trees. Tree surgery work shall not include pruning, feeding, budding, or grafting of trees, shrubs, or wounds made and treated during pruning.

(5) **STRUCTURAL PEST CONTROL WORK.** That branch or type of entomological, pest control, or eradication work which involves the performance of work or giving advice or prescriptions for compensation for the prevention, control, or eradication of insects, vermin, rodents, pest animals, fungi, or other wood destroying organisms in household structures, commercial buildings, or other structures by the use of insecticides, rodenticides, repellants, chemicals, mechanical devices, or structural modifications, as well as a fumigation of products, containers, structures, or transportation vehicles.

(6) **BRANCH OFFICE.** A place of business at an established location other than the main office having equipment and three or more employees directly engaged in structural pest control work from the place of business, which is a subdivision or branch of the main office, point of headquarters, or principal operation of the firm.

(7) **SUBOFFICE.** A place at an established location other than the main office or branch office having equipment and less than three employees directly engaged in structural pest control work from the location, which shall not be more than 100 road miles from the branch office or main office of the firm. It is not required that any employee of a suboffice be certified by the commissioner for the structural pest control work performed from the office.

(8) **CERTIFIED OPERATOR.** A person who has been certified by the commissioner as qualified to supervise the operation of a main office or a branch office.

(9) **BRANCH SUPERVISOR.** A person who has been certified by the commissioner as qualified to supervise the operation of a branch office only. In no event shall the person be qualified to supervise structural pest control work from a main office.

(10) COMMISSIONER. The Commissioner of Agriculture and Industries.

(11) DEPARTMENT. The Department of Agriculture and Industries.

(12) WEED CONTROL WORK. Receiving fees for advice or prescription for the control or eradication of any weed or for actual spraying or other methods used for the control and eradication of any plant which grows where not wanted.

(13) CERTIFICATION. The recognition by the commissioner that a person is competent and thus authorized to perform and/or supervise professional work or services in the category or categories listed on said certification permit.

(14) CERTIFICATION PERMIT. A document issued by the commissioner attesting that all standards have been met in competency in one or more categories and/or subcategories of professional work or services.

(15) BUSINESS LOCATION. Any location in or from which professional work or services are solicited, accepted, or conducted, and identified as a main office, branch office, or suboffice by permit.

*(Acts 1939, No. 548, p. 866; Code 1940, T. 2, §§672, 674; Acts 1943, No. 499, p. 468, §1; Acts 1953, No. 873, p. 1169, §2; Acts 1965, 2nd Ex. Sess., No. 43, p. 58, §1; Acts 1969, No. 796, p. 1429, §2; Acts 1992, No. 92-122, p. 207, §3; Acts 1993, No. 93-761, p. 1519, §1; Acts 1994, No. 94-305, p. 539, §1.)*

### **Section 2-28-2**

#### **Persons engaged in entomological, pathological, horticultural and floricultural and tree surgery work or services to be examined by commissioner.**

Persons engaging in professional work or services pertaining to entomological work, pathological work, horticultural and floricultural work and tree surgery work as defined in Section 2-28-1 shall be examined by the commissioner.

*(Acts 1939, No. 548, p. 866; Code 1940, T. 2, §671; Acts 1992, No. 92-122, p. 207, §3.)*

### **Section 2-28-3**

#### **Promulgation of rules and regulations to regulate persons engaged in work or services governed by chapter, etc.**

The commissioner with the approval of the State Board of Agriculture and Industries may adopt and promulgate rules and regulations that are reasonable and necessary to carry out the intent and purpose of this chapter and to regulate persons engaged in professional services or work defined in this chapter to prevent fraudulent and unauthorized practices of those professional services or work.

In order to ensure that persons issued a permit or certified under this chapter are capable of performing a high quality of workmanship and continue to meet the requirements of a changing

technology and assure a continued level of competence and ability, the commissioner with the approval of the State Board of Agriculture and Industries, is hereby authorized and empowered to make rules and regulations with respect to:

1. The qualifications and residency requirements of an applicant for certification and a permit to engage in any one or more phases of professional work or service.
2. The type, frequency, and passing score of any examination given an applicant for certification and a permit under this chapter.
3. The methods and materials to be used in performing any work authorized by issuance of a permit and certification under this chapter.
4. Records to be made and maintained by persons issued a permit and persons certified under this chapter necessary for the commissioner to determine whether such persons are performing a high quality of workmanship.
5. Methods and procedures necessary and reasonable to protect the interests, health, safety, and welfare of the public and persons engaging in professional work or services where such work or services involve the use of pesticides.
6. The amount, kind, and frequency of training required of any employee of persons issued a permit or certification where such professional work or services involves the application of pesticides.
7. Any other matter deemed necessary to be regulated.

*(Acts 1939, No. 548, p. 866; Code 1940, T. 2, §673; Acts 1953, No. 873, p. 1169, §1; Acts 1992, No. 92-122, p. 207, §3; Acts 1993, No. 93-761, p. 1519, §2.)*

#### **Section 2-28-4**

##### **Permits; statements as to training and experience of applicants; examination.**

(a) Permits generally; fees; delinquent penalty; subcategories of structural pest control permits and fees. Before any person engages in professional work or services as defined in this chapter or before any person may solicit professional work or services through advertising or in any other manner, the person shall apply for and obtain from the commissioner an annual permit on forms furnished for this purpose accompanied with the annual permit fee which shall be established by the Board of Agriculture and Industries not to exceed \$200. Structural pest control work as defined in subdivision (5) of Section 2-28-1 shall be divided in the following subcategories: (1) Control of wood-destroying organisms by any method other than fumigation, (2) Control of industrial, institutional, and household pests by any method other than fumigation, (3) Fumigation pest control. The annual permit fee for persons engaged in the type of entomological work known as structural pest control work as defined in subdivision (5) of Section 2-28-1 shall be established by the board for each subcategory of work a person is qualified to perform. Any person engaged in structural pest control work who conducts the work from more than one

location or place of business that is a branch office as defined in subdivision (6) of Section 2-28-1 shall be required to obtain a branch office permit for each branch office, and the permit fee shall be established by the board for each branch office and for each subcategory of work a person is qualified to perform. If a person conducts structural pest control work from an additional location designated as a suboffice as defined in subdivision (7) of Section 2-28-1, the person shall be required to obtain a suboffice permit for each suboffice, and the permit fee shall be established by the board for each suboffice and for each subcategory of work a person is qualified to perform. All permits shall expire on September 30 and shall be renewed by October 1 upon payment of the annual permit fee prescribed by this subsection and upon compliance with the other requirements of this chapter. If the permit fee is not paid by November 1 or within 31 days from the date on which the fee is due, a delinquent penalty established by the board shall be added to the amount.

(b) Number of permits required. When a person has qualified for a permit to perform more than one type or branch of professional work or services, other than structural pest control work, only one permit shall be required to be obtained by the person, and the permit shall specify each type of professional work or service that the person is authorized to perform. When a person has qualified for a permit to perform more than one type or branch of structural pest control work, the person shall be required to obtain only one permit, that shall specify each type of work that the person is authorized to perform. Any person who performs structural pest control work from a branch office as defined in this section shall also be required to obtain a branch office permit for each branch office. Any person who performs structural pest control work from a suboffice as defined in this section shall also be required to obtain a suboffice permit for each suboffice

(c) Statements of applicants as to training and experience; testing and examination; issuance of permits; disposition of fees. The commissioner, pursuant to rules and regulations promulgated pursuant to this chapter, may require applicants for a permit to submit statements as to training and experience in professional work or services, and applicants shall be required to pass any test or examination for each type of professional service or work as the commissioner may prescribe. An examination fee established by the board shall accompany each application for each examination taken by the applicant. All permit fees and examination fees collected under this section shall be deposited in the State Treasury to the credit of the Agricultural Fund for the administration and enforcement of this chapter. Before a permit is issued to any applicant, the applicant shall be certified by the commissioner as qualified to perform the type of professional work or services for which a permit is desired. A full-time employee of an applicant who has been certified by the commissioner as qualified to perform the type or branch of professional work or service in which the applicant desires to engage may be designated by the applicant as a supervisor to be in charge of and responsible for the applicant's professional work or services, and the permit may be issued designating the employee as a supervisor.

*(Acts 1939, No. 548, p. 866; Code 1940, T. 2, §674; Acts 1943, No. 499, p. 468, §1; Acts 1953, No. 873, p. 1169, §2; Acts 1965, 2nd Ex. Sess., No. 43, p. 58, §1; Acts 1969, No. 796, p. 1429, §2; Acts 1988, No. 88-139, p. 205, §3; Acts 1992, No. 92-122, p. 207, §3; Acts 1993, No. 93-761, p. 1519, §3; Act 2004-516, §1.)*

**Section 2-28-5****Minimum qualifications for applicants for permits to engage in structural pest control work; applicants to present evidence as to qualifications to commissioner; issuance of permits.**

(a) Every applicant for examination for a permit to engage in structural pest control work, including those who will be designated as certified operators or branch supervisors as provided for in Section 2-28-8, shall have a knowledge of the practical and scientific facts underlying the practice of structural pest control work and the necessary knowledge and ability to recognize and control those hazardous conditions which may affect human life and health. Applicants for certified operators' or branch supervisors' permits, before being eligible to take an examination for structural pest control work, shall present satisfactory evidence to the commissioner relative to his or her qualifications.

(b) Before a permit is issued to any applicant, the applicant shall be certified by the commissioner as qualified to perform the type or branch of professional work or service for which a permit is desired. Any full-time employee of the applicant who has been certified by the commissioner as qualified to perform the type or branch of professional work or service in which the applicant will engage may be designated by the applicant as a certified operator or branch supervisor to be in charge of and responsible for the applicant's professional work or service, and the permit may be issued naming that employee as certified operator or branch supervisor.

*(Acts 1939, No. 548, p. 866; Code 1940, T. 2, §674; Acts 1943, No. 499, p. 468, §1; Acts 1953, No. 873, p. 1169, §2; Acts 1965, 2nd Ex. Sess., No. 43, p. 58, §1; Acts 1969, No. 796, p. 1429, §2; Acts 1992, No. 92-122, p. 207, §3; Acts 1993, No. 93-761, p. 1519, §4.)*

**Section 2-28-6.1****Certification permit, continuing education; expiration and renewal; disposition of fees.**

Persons certified by the commissioner shall be issued a certification permit upon which are designated the various categories and/or subcategories of professional work or services such person is authorized to perform or supervise. Persons certified shall be required to maintain this certification through continuing education. The amount, kind, and frequency of continuing education required of a certified person shall be established pursuant to rules and regulations as authorized under this chapter. The fees for renewal of certification permit shall be established by the Board of Agriculture and Industries not to exceed fifty dollars (\$50) per category and per subcategory of professional work or services that such persons are certified to perform or supervise. The board shall promulgate rules and regulations which shall establish expiration and renewal schedules for certification permits issued under this chapter. Certification permit fees collected under this section shall be deposited in the State Treasury to the credit of the Agricultural Fund.

*(Acts 1993, No. 93-761, p. 1519, §10; Acts 1994, No. 94-305, p. 539, §1; Act 2004-516, §1.)*

**Section 2-28-7****Denial or revocation of permits by commissioner and appeals therefrom.**

Upon determination by the commissioner that any person certified or having a permit issued under the provisions of this chapter or any person who has applied for such certification or a permit has violated or failed to comply with any of the provisions or requirements of this chapter or any rules and regulations promulgated thereunder, the commissioner shall be authorized to revoke such certification or permit, or both, or he shall refuse to issue a certification or a permit, or both, to an applicant therefor. The performance of unauthorized work not covered by a permit, making misrepresentations or any fraudulent practices, failure to perform a contract, failure to have in its employ, when required, a certified operator or branch supervisor or use or continued use of ineffective methods or materials shall also be valid grounds for revocation of a certification or a permit; provided, however, that no certification or permit shall be revoked unless the holder thereof shall be given at least 10 days' notice that such action is to be considered by the commissioner with an opportunity being given for a hearing before the commissioner.

Any applicant refused or denied a certification or permit, or both, or any person whose certification or permit, or both, are revoked shall be entitled to appeal such action of the commissioner to the State Board of Agriculture and Industries by filing with the commissioner within a period of 15 days a written notice or demand for review of the action of the commissioner in denying or revoking a certification or permit, or both. The State Board of Agriculture and Industries shall review the action of the commissioner and make a finding as to whether the certification or permit, or both, shall be issued or revoked. Any person denied or refused a certification or permit or any person whose certification or permit has been revoked by action of the commissioner shall have the right to appear before the board and be heard in support of his appeal. Any person whose certification or permit to perform work or services as regulated under this chapter has been revoked shall not be eligible to have such a certification or permit again issued to him for a period of not less than one year following the date on which such a certification or permit was revoked. Nothing contained in this chapter shall require the commissioner to issue a certification or permit to any person who has been convicted for a violation of this chapter.

*(Acts 1939, No. 548, p. 866; Code 1940, T. 2, §674; Acts 1943, No. 499, p. 468, §1; Acts 1953, No. 873, p. 1169, §2; Acts 1965, 2nd Ex. Sess., No. 43, p. 58, §1; Acts 1969, No. 796, p. 1429, §2; Acts 1988, No. 88-139, p. 205, §3.)*

**Section 2-28-8****Regulation of performance of structural pest control work generally.**

(a) Conduct of business generally; operation and supervision of main offices, branches, and suboffices. Every person who engages in structural pest control work shall conduct the work from an established location or place of business, and the person or another individual as a full-time resident employee of the person who has been certified by the commissioner as being qualified for a permit as a certified operator shall be in charge of and responsible for the person's

structural pest control work. The residence of the owner or an employee from which structural pest control work is conducted may be considered an established location. Where a person has more than one separate place of business or location, the person shall obtain a permit for each separate location or place of business, and each separate location from which structural pest control work is conducted, including a branch office but not including a suboffice, shall be under the full-time supervision of an individual who has been certified by the commissioner as qualified to conduct the type of structural pest control work that the person offers to perform. No person having a permit required under this chapter or who has been certified by the commissioner as qualified for a permit shall be assigned or designated to supervise the activities of more than one main or principal office or more than one branch office.

Work performed from a suboffice shall be under supervision of the main or a branch office of the firm which is not more than 100 road miles from the suboffice, and the supervisor at the main or branch office shall be responsible for the work of the suboffice. Every permit holder shall notify the commissioner in writing of any change of address or the opening or closing of an office, branch, or suboffice or change in certified operators or branch supervisors within 10 days after the change has been made.

(b) Additional requirements for structural pest control work. Any person who has been granted a right or a franchise from another person to conduct structural pest control work as a separate company, firm, or corporation shall qualify and comply with all of the requirements of this chapter before the company, firm, or corporation is entitled to a permit under this chapter authorizing it to engage in structural pest control work. Any individual, firm, or corporation who allows others to use its permit, or certification, or both to avoid compliance with this chapter shall be guilty of a violation of this chapter and shall be punished as prescribed and shall be subject to having their permit or certification or both revoked by the commissioner after hearing as provided in the Administrative Hearing Act.

Persons engaged in structural pest control work by the treatment of buildings or structures shall use for the treatment a chemical with a toxic or other effective base or employ other effective methods to be approved by the commissioner under regulations adopted by the State Board of Agriculture and Industries for this purpose. The department through its agents or employees may enter upon any private premises at reasonable times to examine and test any chemicals or other methods used or employed for structural pest control work by any person engaged in that work. The department may, through its agents or employees, examine records of persons engaged in structural pest control work, including, but not limited to, contracts, invoices, guarantees, documents, and other records as are necessary to determine whether the requirements of this chapter are being complied with. Failure or refusal by persons engaged in structural pest control work to allow those agents or employees access to documents and records shall constitute a violation of this chapter and shall also be grounds for revoking its permit or certification or both.

In addition to the requirements of this chapter, each person who has been issued a permit to engage in structural pest control work, including, but not limited to, subterranean termite eradication or control work, shall have his or her unit or equipment marked for easy identification in accordance with rules and regulations authorized pursuant to this chapter.



*(Acts 1939, No. 548, p. 866; Code 1940, T. 2, §674; Acts 1943, No. 499, p. 468, §1; Acts 1953, No. 873, p. 1169, §2; Acts 1965, 2nd Ex. Sess., No. 43, p. 58, §1; Acts 1969, No. 796, p. 1429, §2; Acts 1992, No. 92-122, p. 207, §3; Acts 1993, No. 93-761, p. 1519, §6.)*

### **Section 2-28-9**

#### **Regulation of performance of subterranean termite eradication and control work generally.**

Persons engaged in subterranean termite eradication and control work shall be required to file a monthly report with the commissioner containing such information relative to work performed as may be required by rules and regulations duly adopted as authorized under provisions of this chapter in order that it may be determined whether persons having been issued a permit are complying with the requirements of this chapter. Every person engaged in subterranean termite eradication and control work shall make an annual inspection of each job done during the term of the contract and shall report to the building owner in each instance as to whether or not there has been a reinfestation of subterranean termites. If a contract for termite eradication work provides for inspections of such work at intervals of less than one year, such inspections shall be made as required by the terms of the contract, and failure or refusal to make such required inspections or any retreatment or other related work as required by a contract shall constitute a valid and sufficient reason for revocation of the permit.

*(Acts 1939, No. 548, p. 866; Code 1940, T. 2, §674; Acts 1943, No. 499, p. 468, §1; Acts 1953, No. 873, p. 1169, §2; Acts 1965, 2nd Ex. Sess., No. 43, p. 58, §1; Acts 1969, No. 796, p. 1429, §2; Acts 1993, No. 93-761, p. 1519, §7.)*

### **Section 2-28-10.1**

#### **Financial responsibility.**

(a) The commissioner with the approval of the State Board of Agriculture and Industries may promulgate rules and regulations which require any applicant for a permit to perform professional work or services to provide evidence of his ability to properly indemnify persons damaged in any manner by the use or application of pesticides. The amount and form of indemnification required shall be determined by rules and regulations promulgated by the commissioner with the approval of the State Board of Agriculture and Industries.

(b) The commissioner with the approval of the State Board of Agriculture and Industries, may promulgate rules and regulations requiring an applicant for a permit to perform professional work or services to furnish and file with the commissioner a surety bond payable to the State of Alabama. The surety bond shall be conditioned that the principal therein named shall honestly and in a skillful and workmanlike manner conduct and practice his said business or profession. The amount of this surety bond shall be determined by rules and regulations adopted and promulgated by the commissioner with the approval of the State Board of Agriculture and Industries.

(c) Any rules and regulations adopted pursuant to this section may provide for conditions, limitations, and requirements concerning financial responsibility required by this section as

deemed necessary including, but not limited to, notice of reduction or cancellation of coverage and deductible provisions. Such rules and regulations may classify financial responsibility requirements according to the separate permit classifications and subclassifications. Failure or refusal to meet and maintain financial responsibility requirements as required by this section and rules and regulations shall constitute a valid and sufficient reason for revocation of any permit issued under this chapter.

Pending adoption of rules and regulations, the statutory requirements for bond and insurance shall remain in effect.

*(Acts 1993, No. 93-761, p. 1519, §9.)*

### **Section 2-28-11**

**Penalties for violations of provisions of chapter or rules or regulations promulgated hereunder; injunctive proceedings to restrain performance, etc., of professional work or services without permit.**

(a) Penalties. Any person who engages in professional work or services as defined in this chapter or any person who solicits such work through advertising or in any other manner without having a permit as required by said chapter or any person who violates any of the provisions or requirements of this chapter or any rules and regulations adopted and promulgated as authorized under said chapter by failure to comply with any of the requirements or rules and regulations of said chapter shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than \$25.00 nor more than \$500.00 and, within the discretion of the court, may also be imprisoned for a period not to exceed six months. Fines paid for such violations shall be deposited in the State Treasury to the credit of the Agricultural Fund.

(b) Injunctive relief. In addition to the penalty provided hereunder, the circuit court or any judge thereof shall have jurisdiction, for cause shown to grant a temporary restraining order or a permanent injunction or both restraining and enjoining any person from performing any professional work or services as defined in this chapter or from soliciting such work without having a valid permit as required by said chapter or after such a permit has been revoked. Petitions for injunctive relief as authorized under this subsection shall be filed in the circuit court of the county of residence of the person who performs work or services in violation of this chapter or in the county where such unauthorized work is performed. Any temporary restraining order or permanent injunction issued under this subsection shall be issued without a bond. Any action commenced under this subsection based upon facts furnished by the Commissioner of Agriculture and Industries or others having knowledge thereof may be brought in the name of the State of Alabama; provided, that such action shall be brought upon the relation of the Attorney General and with his approval and such officer shall upon his request be assisted by the district attorney or deputy district attorney of the judicial circuit in which injunctive proceedings are filed.

*(Acts 1939, No. 548, p. 866; Code 1940, T. 2, §676; Acts 1943, No. 499, p. 468, §3; Acts 1953, No. 873, p. 1169, §4; Acts 1965, 2nd Ex. Sess., No. 43, p. 58, §2; Acts 1969, No. 796, p. 1429, §4.)*

**Section 2-28-12****Applicability of chapter.**

The provisions of this chapter shall apply only to persons who solicit work and to persons engaging in a business or profession regulated under the provisions of this chapter, but in no event shall it be construed so as to apply to any person employed by the owners or others in possession of property to work under their supervision as an employee in grafting, spraying, dusting cotton or other similar work.

*(Acts 1939, No. 548, p. 866; Code 1940, T. 2, §677; Acts 1969, No. 796, p. 1429, §5.)*