

SUBJECT: Allowing pest control work under direct supervision of TDA licensees

COMMITTEE: Agriculture and Livestock — favorable, without amendment

VOTE: 8 ayes — Burns, Anderson, Bailes, Cole, Cyrier, Guillen, Rosenthal, Toth

0 nays

1 absent — Herrero

WITNESSES: For — Rachelle Kemp, R and R Landscaping; Ryan Skrobarczyk, Texas Nursery & Landscape Association; (*Registered, but did not testify:* Kody Bessent, Plains Cotton Growers, Inc.; Chris Shields, Texas Agricultural Aviation Association; Peyton Schumann, Texas and Southwestern Cattle Raisers Association; Joy Davis, Texas Farm Bureau; Joe Morris, Texas Forestry Association)

Against — None

On — (*Registered, but did not testify:* Dan Hunter and Mike Kelly, Texas Department of Agriculture; Thomas Parkinson)

BACKGROUND: Occupations Code ch. 1951, the Texas Structural Pest Control Act, governs the performance of pest control work. The chapter lists exemptions to its requirements, including for persons performing certain pest control work otherwise regulated by the Texas Department of Agriculture.

Under sec. 1951.004, a pesticide is applied under "direct supervision" if application is made by a person acting under the instructions and control of a certified commercial applicator responsible for the actions of the person and available if needed for consultation or assistance. The certified commercial applicator is not required to be physically present at the time and place of the pesticide application.

Agriculture Code ch. 76 regulates the use, storage, labeling, and

HB 1070
House Research Organization
page 2

distribution requirements for pesticides and herbicides, including the issuance of certain noncommercial and commercial licenses for applicators.

DIGEST: HB 1070 would exempt from the provisions of the Texas Structural Pest Control Act, with certain exceptions relating to distribution of information sheets and pest management for school districts, a person who performs pest control work on growing plants, trees, shrubs, grass, or other horticultural plants under the direct supervision of the holder of a commercial or noncommercial license issued by the Texas Department of Agriculture that covers pest control work.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2021.

SUPPORTERS SAY: HB 1070 would provide consistency and clarity for pest control companies and employees by codifying existing Texas Department of Agriculture (TDA) practice into statute. The bill would protect TDA's interpretation of "direct supervision" that has been in place for more than 40 years. This interpretation allows persons who do not hold a pesticide applicator license to perform pest control work under the direction and control of a license holder. The work performed by the non-license holders involves only chemicals and supplies that are available to the general public.

These individuals, often employees of agricultural or landscaping businesses, are required to receive training and education in their preferred language on the proper application procedure for pesticides and afterwards sign an affidavit. The bill would not grant TDA any new licensing authority or alter current practice and would not create or reform any other aspect of pest control law. The bill would merely ensure consistency by codifying TDA's interpretation.

This interpretation prevents burdensome licensing costs for employers and ensures a fair barrier to entry for companies and prospective employees

while keeping costs down for consumers. The codification of TDA's interpretation also would maintain reasonable public health protections by requiring that the supervising license holder be available for consultation and assistance. The license holder would continue to be accountable for any action taken under the license.

While it has been in place for decades, this agency interpretation could be changed at any time. Putting this longstanding practice into statute would protect the industry and the public and ensure consistency in the law's application now and in the future.

**CRITICS
SAY:**

HB 1070 singles out one part of the larger pest control industry for licensing reform at the expense of a more comprehensive approach. It is important for different sectors of the pest control industry to be held to the same legal standards. Creating different standards in statute could lead to confusion regarding the proper procedures and create consumer expectations that are at odds with law and agency policy.