

AMENDED IN SENATE APRIL 1, 2002
AMENDED IN SENATE MARCH 21, 2002

SENATE BILL

No. 1463

Introduced by Senator Machado

February 15, 2002

~~An act to amend Sections 8505.17, 8616, 8616.4, 8616.5, 8616.7, and 8662 of, and to add Section 8617.1 to, the Business and Professions Code, relating to pest control.~~
An act to amend Section 8617 of the Business and Professions Code, relating to pest control.

LEGISLATIVE COUNSEL'S DIGEST

SB 1463, as amended, Machado. Structural pest control.

Existing law authorizes the Structural Pest Control Board to regulate the practice of structural pest control operators in this state. Existing law, among other things, authorizes the ~~Director of Pesticide Regulation to designate county agricultural commissioners to carry out inspections, routine investigations and after proper training, board or a county agricultural commissioner~~ to impose administrative fines or temporarily suspend a structural pest control licensee or registered company from working in a county.

This bill would *also* authorize the *board or a county agricultural commissioner* to ~~impose an administrative fine ranging from \$25 to \$500 or require the licensee to attend a board-approved course for specified violations. The revenues from these fines would be deposited into the Civil Penalties Account and would be available for use by the board, upon appropriation, for program enforcement purposes.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1.—Section 8505.17 of the Business and Professions~~

2 *SECTION 1. Section 8617 of the Business and Professions*
3 *Code is amended to read:*

4 8617. (a) The board or county agricultural commissioners,
5 when acting pursuant to Section 8616.4, may suspend the right of
6 a structural pest control licensee or registered company to work in
7 a county for up to three working days or, for a licensee, registered
8 company, or an unlicensed individual acting as a licensee, may
9 levy an administrative fine up to one thousand dollars (\$1,000) *or*
10 *direct the licensee to attend and pass a board-approved course of*
11 *instruction at a cost not to exceed the administrative fine, or both,*
12 for each violation of this chapter, or any regulations adopted
13 pursuant to this chapter, or Chapter 2 (commencing with Section
14 12751), Chapter 3 (commencing with Section 14001), Chapter 3.5
15 (commencing with Section 14101), or Chapter 7 (commencing
16 with Section 15201) of Division 7 of the Food and Agricultural
17 Code, or any regulations adopted pursuant to those chapters,
18 relating to ~~economic poisons~~ *pesticides*. Fines collected shall be
19 paid to the Education and Enforcement Account in the Structural
20 Pest Control Education and Enforcement Fund. Suspension may
21 include all or part of the registered company’s business within the
22 county based on the nature of the violation, but shall, whenever
23 possible, be restricted to that portion of a registered company’s
24 business in a county that was in violation.

25 (b) Before a suspension action is taken or a fine levied, the
26 person charged with the violation shall be provided a written
27 notice of the proposed action, including the nature of the violation
28 and the amount of the proposed fine or suspension. The notice of
29 proposed action shall inform the person charged with the violation
30 that if he or she desires a hearing before the commissioner issuing
31 the proposed action to contest the finding of a violation, that
32 hearing shall be requested by written notice to the commissioner
33 within 20 days of the date of issuance of the written notice of
34 proposed action.

35 A notice of the proposed action that is sent by certified mail to
36 the last known address of the person charged shall be considered
37 received even if delivery is refused or the notice is not accepted at
38 that address.



1 If a hearing is requested, notice of the time and place of the
2 hearing shall be given at least 10 days before the date set for the
3 hearing. At the hearing, the person shall be given an opportunity
4 to review the commissioner's evidence and a right to present
5 evidence on his or her own behalf. If a hearing is not requested
6 within the prescribed time, the commissioner may take the action
7 proposed without a hearing.

8 (c) If the person upon whom the commissioner imposed a fine
9 or suspension requested and appeared at a hearing before the
10 commissioner, the person may appeal the commissioner's decision
11 to the Disciplinary Review Committee and shall be subject to the
12 procedures in Section 8662.

13 (d) If a suspension or fine is ordered, it may not take effect until
14 20 days after the date of the commissioner's decision if no appeal
15 is filed. If an appeal pursuant to Section 8662 is filed, the
16 commissioner's order shall be stayed until 20 days after the
17 Disciplinary Review Committee has ruled on the appeal.

18 (e) Failure of a licensee or registered company to pay a fine
19 within 30 days of the date of assessment or to comply with the
20 order of suspension, unless the citation is being appealed, may
21 result in disciplinary action being taken by the board.

22 Where a citation containing a fine is issued to a licensee and it
23 is not contested or the time to appeal the citation has expired and
24 the fine is not paid, the full amount of the assessed fine shall be
25 added to the fee for renewal of that license. A license shall not be
26 renewed without payment of the renewal fee and fine.

27 Where a citation containing a fine is issued to a registered
28 company and it is not contested or the time to appeal the citation
29 has expired and the fine is not paid, the board shall not sell to the
30 registered company any inspection stamps, notice of completion
31 stamps, or pesticide use stamps until the assessed fine has been
32 paid.

33 (f) Once final action pursuant to this section is taken, no other
34 administrative or civil action may be taken by any state
35 governmental agency for the same violation. However, action
36 taken pursuant to this section may be used by the board as evidence
37 of prior discipline, and multiple local actions may be the basis for
38 statewide disciplinary action by the board pursuant to Section
39 8620. A certified copy of the order of suspension or fine issued



1 pursuant to this section or Section 8662 shall constitute conclusive
2 evidence of the occurrence of the violation.

3 (g) Where the board is the party issuing the notice of proposed
4 action to suspend or impose a fine pursuant to subdivision (a) of
5 this section, “commissioner” as used in subdivisions (b), (c), and
6 (d) includes the board’s registrar.

7 ~~Code is amended to read:~~

8 ~~8505.17. (a) There is hereby created in the State Treasury a
9 special fund to be known as the Structural Pest Control Education
10 and Enforcement Fund. Funds derived from the pesticide use
11 report filing fee provided for in Section 8674 and all proceeds from
12 civil penalties collected by the board pursuant to Section 8617
13 shall be deposited in the Education and Enforcement Account
14 which is hereby created in the fund. The account shall be used by
15 the board (1) for the purposes of training as provided in Section
16 8616, (2) for reimbursement to the Director of Pesticide
17 Regulation for work performed as the agent of the board pursuant
18 to Sections 8616, 8616.4, 8617, and 8617.1 of this code, and
19 Section 15202 of the Food and Agricultural Code, and for cases
20 referred to the board pursuant to subdivision (b) of Section 8616.5,
21 and (3) for reasonable expenses incurred by the Disciplinary
22 Review Committee. There is no reimbursement from this fund for
23 inspections and routine investigations.~~

24 ~~(b) The board may withhold funds from its agent if it is not
25 satisfied that its agent has corrected the problems which resulted
26 in a suspension as provided in Section 8616.6. The authority to
27 withhold funds shall be limited only to the withholding of an
28 amount otherwise due the agent for reimbursable activities
29 performed in the county or counties for which a notice has been
30 filed pursuant to Section 8616.6.~~

31 ~~(c) Registered structural pest control companies shall prepare
32 and submit to the county agricultural commissioner a monthly
33 report of all pesticides used in that county. The report shall be on
34 a form approved by the Director of Pesticide Regulation and shall
35 contain the name and registration number of each pesticide, the
36 amount used, and the number of applications made. The report
37 shall be submitted to the commissioner by the 10th day of the
38 month following the month of application. Each pesticide use
39 report or combination of use reports representing a registered
40 structural pest control company’s total county pesticide use for the~~



1 month shall have affixed thereto a pesticide use stamp issued by
2 the board in the denomination fixed by the board in accordance
3 with Section 8674 as the pesticide use report filing fee. The board
4 shall provide for the sale of these stamps and for the refund of
5 moneys paid for stamps which are returned to it unused. When a
6 registered structural pest control company performs no pest
7 control during a month in a county in which it has given notice
8 pursuant to Section 15204 of the Food and Agricultural Code, the
9 registered company shall submit a use report stating this fact to the
10 commissioner. No pesticide use stamp is required on negative use
11 reports.

12 (d) All other proceeds from civil penalties collected by the
13 board shall be deposited in the Civil Penalties Account which is
14 hereby created in the fund. These funds shall be available to the
15 board upon appropriation by the Legislature for the purposes of
16 enforcing this chapter.

17 SEC. 2. Section 8616 of the Business and Professions Code
18 is amended to read:

19 8616. The Director of Pesticide Regulation shall be
20 designated by the board as its agent for the purposes of carrying
21 out Section 8616.4. The board and the Department of Pesticide
22 Regulation shall jointly develop a training program specifically
23 relating to the various aspects of structural pest control and train
24 all county agricultural commissioners and other personnel
25 involved in structural pest control investigations and enforcement.
26 No disciplinary action pursuant to Section 8617 or 8617.1 may be
27 taken by a county agricultural commissioner until training has
28 been completed.

29 SEC. 3. Section 8616.4 of the Business and Professions Code
30 is amended to read:

31 8616.4. The Director of Pesticide Regulation shall designate
32 county agricultural commissioners as his or her representatives to
33 carry out the provisions of Sections 8616.5, 8616.7, 8617, and
34 8617.1. The Director of Pesticide Regulation shall enter into a
35 contract specifying their responsibilities and providing for
36 reimbursement in accordance with Section 8505.17.

37 SEC. 4. Section 8616.5 of the Business and Professions Code
38 is amended to read:

39 8616.5. (a) The county agricultural commissioner shall be
40 the lead agency for inspections and routine investigations of



1 pesticide use by the board licensees and registered companies, and
2 of persons engaged in unlicensed structural pest control. When a
3 matter is referred to the board for action, the board shall be the lead
4 agency and may require that the commissioner assist in any
5 investigation.

6 (b) The board and the Director of Pesticide Regulation shall
7 jointly develop the list of the types of investigations to be
8 conducted by the commissioner that may result in the suspension
9 of a license or company registration, or the imposition of a fine,
10 pursuant to Sections 8617 and 8617.1 and the list of the types of
11 violations that the commissioner shall refer to the board for
12 disciplinary action.

13 (c) As used in subdivision (a), the term “routine
14 investigations” means all investigations of pesticide misuse by a
15 board licensee or registered company except (1) investigation of
16 misuse incidents that are referred to the board for disciplinary
17 action or that are the basis for county actions to suspend or fine
18 structural pest control licensees or registered companies in
19 accordance with the lists promulgated pursuant to subdivision (b),
20 or (2) any investigation performed by the county agricultural
21 commissioner that has been requested by the board and involves
22 exclusively a violation of this code.

23 SEC. 5. Section 8616.7 of the Business and Professions Code
24 is amended to read:

25 8616.7. When a county agricultural commissioner is acting,
26 pursuant to Section 8616.4, only the commissioner may conduct
27 inspections and routine investigations pursuant to Section 8616.5
28 and take disciplinary action pursuant to Sections 8617 and 8617.1.
29 Except as otherwise provided, nothing in this section shall be
30 construed as limiting or excluding the assistance provided to the
31 board by the Division of Investigation under Sections 155 and
32 159.5 other than by board personnel.

33 SEC. 6. Section 8617.1 is added to the Business and
34 Professions Code, to read:

35 8617.1. (a) When a licensed employee of a registered
36 company is found in violation of Section 8617 of this code or
37 Chapter 2 (commencing with Section 12751), Chapter 3
38 (commencing with Section 14001), Chapter 3.5 (commencing
39 with Section 14101), or Chapter 7 (commencing with Section
40 15201) of the Food and Agricultural Code, the county agricultural



1 commissioner may levy an administrative fine ranging from
2 twenty five dollars (\$25) up to five hundred dollars (\$500) or
3 direct the licensee to attend and pass a board-approved course of
4 instruction, or both, for each violation of this chapter, any
5 regulation adopted pursuant to this chapter, or any violation of
6 Chapter 2 (commencing with Section 12751), Chapter 3
7 (commencing with Section 14001), or Chapter 7 (commencing
8 with Section 15201) of the Food and Agricultural Code, or any
9 regulations adopted pursuant to those chapters, relating to
10 pesticides.

11 (b) Fines collected pursuant to this section shall be deposited
12 into the Civil Penalties Account and shall be available to the board
13 upon appropriation by the Legislature for the purposes of
14 enforcing this chapter.

15 SEC. 7. Section 8662 of the Business and Professions Code
16 is amended to read:

17 8662. (a) Whenever the right of a structural pest control
18 licensee or registered company to make pesticide applications is
19 to be suspended or the licensee, registered company, or unlicensed
20 individual is to be fined pursuant to Sections 8617 and 8617.1, and
21 if the person upon whom the commissioner imposed a fine or
22 suspension requested and appeared at a hearing before the
23 commissioner in accordance with Section 8617, the party to be
24 suspended or fined may appeal to the Disciplinary Review
25 Committee by filing a written appeal with the committee within 10
26 days of receipt of the fine or suspension order.

27 (b) The following procedures shall apply to the appeal:

28 (1) The appeal shall be in writing and signed by the appellant
29 or his or her or its authorized agent, state the grounds for the
30 appeal, and include a copy of the commissioner's decision. The
31 appellant shall file a copy of the appeal with the commissioner at
32 the same time it is filed with the committee.

33 (2) Any party may, at the time of filing the appeal or within 10
34 days thereafter, or at a later time prescribed by the committee or
35 its designee, present the record of the hearing, including written
36 evidence that was submitted at the hearing and written argument
37 to the committee stating the grounds for affirming, modifying, or
38 reversing the commissioner's decision.

39 (3) The committee or its designee may grant oral argument
40 upon application made at the time written arguments are filed. If



1 ~~an application to present an oral argument is granted, written~~
2 ~~notice of the time and place for the oral argument shall be given~~
3 ~~each party at least 10 days before the date set therefor. The times~~
4 ~~may be altered by mutual agreement of the appellant, the~~
5 ~~commissioner, and the committee.~~

6 ~~(4) At any time written evidence is submitted to the committee,~~
7 ~~a copy shall be immediately provided to the other party.~~

8 ~~(5) The committee shall decide the appeal on the record of the~~
9 ~~hearing, including the written evidence and the written argument~~
10 ~~described in paragraph (2) that the committee may have received.~~
11 ~~If the committee finds substantial evidence in the record to support~~
12 ~~the commissioner's decision, the committee shall affirm the~~
13 ~~decision.~~

14 ~~(6) The committee shall render its written decision within 45~~
15 ~~days of the date of appeal or within 15 days from the date of oral~~
16 ~~arguments. If the committee does not reach a decision in the time~~
17 ~~required in this subdivision, the order issued pursuant to Sections~~
18 ~~8617 and 8617.1 shall be null and void.~~

19 ~~(7) On an appeal pursuant to this section, the committee may~~
20 ~~sustain, modify by reducing the time of suspension or the amount~~
21 ~~of the fine levied, or reverse the decision. A copy of the~~
22 ~~committee's decision shall be delivered or mailed to each party.~~

23 ~~(8) Review of the decision of the committee may be sought by~~
24 ~~the licensee, registered company, or unlicensed individual~~
25 ~~pursuant to Section 1094.5 of the Code of Civil Procedure.~~

