

House Bill 1182

By: Representatives Ray of the 128<sup>th</sup>, Floyd of the 138<sup>th</sup> and Barnard of the 154<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 45 of Title 43 of the Official Code of Georgia Annotated, known as the  
2 "Structural Pest Control Act," so as to change certain definitions; to regulate preconstruction  
3 termite treatments; to provide for additional powers and duties of the State Structural Pest  
4 Control Commission and the Commissioner of Agriculture; to provide for bonds, procedures  
5 and requirements related to bonds, and actions on bonds; to change the provisions relating  
6 to examinations; to provide for additional qualifications for operators; to provide that certain  
7 conduct shall be unlawful; to change the provisions relating to penalties and provide for  
8 additional penalties; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 style="text-align:center">**SECTION 1.**

11 Chapter 45 of Title 43 of the Official Code of Georgia Annotated, known as the "Structural  
12 Pest Control Act," is amended by striking Code Section 43-45-2, relating to definitions, and  
13 inserting in its place the following:

14 "43-45-2.

15 As used in this chapter, the term:

16 (1) 'Applicant' means any persons or any person in charge of any individuals, firm,  
17 partnership, corporation, association, or any other organization or any combination  
18 thereof making application for a license to engage in operations regulated by this chapter,  
19 or any other person making application for certification or registration under this chapter.

20 (2) 'Application of a pesticide under the direct supervision of a certified operator' means,  
21 unless otherwise prescribed by its labeling or by regulations of the Commissioner, the  
22 application of a pesticide by a competent person acting under the instructions and control  
23 of a certified operator who is available if and when needed, even though such certified  
24 operator is not physically present at the time at which and the place the pesticide is  
25 applied.

1 (3) 'Bond' means a written instrument issued or executed by a bonding, surety, or  
2 insurance company licensed to do business in this state, or otherwise approved by the  
3 commission, guaranteeing the fulfillment of the agreement between the licensee or  
4 business entity and his or her customer.

5 (4) 'Branch office' means any place of doing business which has two or more employees  
6 engaged in the control of insect pests, rodents, or wood-destroying organisms.

7 (5) 'Certified operator' means any individual who has been determined competent to use  
8 or supervise the use of pesticides, including restricted use pesticides or state restricted  
9 pesticide uses, as defined in this chapter, in the structural pest control category or  
10 categories in which he or she is currently licensed.

11 (6) 'Commission' means the State Structural Pest Control Commission.

12 (7) 'Commissioner' means the Commissioner of Agriculture of this state.

13 (8) 'Employee' means any person employed by a licensee with the exception of clerical,  
14 janitorial, or office maintenance employees, or those employees performing work  
15 completely disassociated with the control of insects, pests, and rodents and the control  
16 of wood-destroying organisms and preconstruction termite treatments.

17 (9) 'Fumigant' means any substance which by itself or in combination with any other  
18 substance emits or liberates a gas or gases, fumes, or vapors, which gas or gases, fumes,  
19 or vapors when liberated and used will destroy vermin, rodents, insects, and other pests,  
20 but are usually lethal, poisonous, noxious, or dangerous to human life.

21 (10) 'Insecticides' means substances, not fumigants, under whatever name known, used  
22 for the destruction or control of insects and similar pests.

23 (11) 'Licensee' means a business entity engaged in the business of structural pest control  
24 which holds a valid license issued under this chapter.

25 (12) 'Pesticide' means attractants, fumigants, fungicides, insecticides, rodenticides, and  
26 repellants.

27 (13) 'Registered employee' means an employee registered as provided by this chapter.

28 (14) 'Repellants' means substances, not fumigants, under whatever name known, which  
29 may be toxic to insects and related pests, but generally employed because of their  
30 capacity for preventing the entrance or attack of pests.

31 (15) 'Restricted use pesticide' means any attractant, fumigant, fungicide, insecticide,  
32 rodenticide, or repellant whose label bears one or more uses which have been classified  
33 as restricted by the administrator, Environmental Protection Agency, or any use of these  
34 pesticides which, when used as directed or in accordance with widespread and commonly  
35 recognized practice, the Commissioner determines, subsequent to a hearing, requires  
36 additional restrictions for that use to protect the environment, including ~~man~~ human  
37 beings, lands, beneficial insects, animals, crops, and wildlife, other than pests.

1 (16) 'Rodenticides' means substances, not fumigants, under whatever name known,  
2 whether poisonous or otherwise, used for the destruction or control of rodents.

3 (16.5) 'Secretary' means the Commissioner of Agriculture in his or her capacity as  
4 secretary of the State Structural Pest Control Commission.

5 (17) 'Structural pest control' means control of wood-destroying organisms,  
6 preconstruction termite treatments, or fumigation; the identification of infestations or  
7 infections; the making of inspections; the use of pesticides, including insecticides,  
8 repellants, rodenticides, fumigants, and other substances, and the use of mechanical  
9 devices of structural modifications under whatever name known for the purpose of  
10 preventing, controlling, and eradicating insects, vermin, rodents, and other pests in  
11 household structures, commercial buildings, and other structures, including adjacent  
12 outside areas; and all phases of fumigation, including treatments of products by vacuum  
13 fumigation and the fumigation of railroad cars, trucks, ships, and airplanes."

## 14 SECTION 2.

15 Said chapter is further amended by striking Code Section 43-45-8, relating to the general  
16 powers and duties of the State Structural Pest Control Commission, and inserting in its place  
17 the following:

18 "43-45-8.

19 The commission is authorized and required to:

20 (1) Make such reasonable rules and regulations as may be necessary to protect the  
21 interest, health, and safety of the public and to ensure the efficiency of licensees,  
22 operators, and registered employees to carry out this chapter. Such rules and regulations  
23 shall not be effective until a public hearing shall have been granted and notification of  
24 such a hearing has been made to all licensees and certified operators;

25 (2) Provide for an appropriate and written examination for applicants and any other  
26 appropriate means of examination for applicants. The frequency of such examination  
27 shall be at the discretion of the commission, based upon the number of applications  
28 received, but not less than two such examinations shall be held annually. The commission  
29 shall give one examination per phase of structural pest control for one fee if the applicant  
30 seems to qualify. The examination fee shall be in an amount established by the  
31 commission for each applicant who makes application to take the examination to become  
32 a certified household pest control operator, wood-destroying organism control operator,  
33 preconstruction termite treatment operator, or fumigator. An examination may be taken  
34 for the payment of one fee; and, in case the applicant shall not be certified, he or she shall  
35 have the right to take the examination again at the next scheduled examination, upon the  
36 payment of an additional fee in an amount established by the commission. In case

1 certification is again denied, the applicant must wait a full year before reapplication is  
 2 made. Thereafter, one full year must elapse before subsequent application may be made;  
 3 (3) Make an annual report to the Governor of the activities, expenditures, receipts, and  
 4 other matters pertinent to the operation of the commission, a copy of which shall be filed  
 5 by the Commissioner and the commission;

6 (4)(A) Issue licenses to each place of business of each business entity qualifying under  
 7 this chapter. Such licenses shall be renewable biennially and the license fee shall be in  
 8 an amount established by the commission. In addition to the license fee per se, the  
 9 commission is authorized to establish a research fee on each license in an amount  
 10 sufficient to provide a minimum of \$30,000.00 per year and up to \$50,000.00 per year  
 11 for the purpose of supporting the work of a research position in urban pest control at the  
 12 University of Georgia. As a source of information for considering the amount of the  
 13 research fee to be established, the commission shall be furnished within 30 days of the  
 14 end of each fiscal year by the ~~chairman~~ chairperson of the Division of Entomology at  
 15 the University of Georgia with a statement of the total costs associated with the  
 16 research position for the preceding year and a description of the urban research projects  
 17 to be conducted over the following two fiscal years. The commission shall advise the  
 18 ~~chairman~~ chairperson of the Entomology Division at the University of Georgia on the  
 19 projects proposed to be conducted; however, the final selection of projects shall be the  
 20 sole responsibility of the ~~chairman~~ chairperson of the entomology division.  
 21 Information provided to the commission on costs associated with the position shall be  
 22 for advisory purposes only and the commission shall be solely responsible for  
 23 establishment and collection of the research fee within the limits established above and  
 24 for transferring such fees to the University of Georgia. If the University of Georgia  
 25 discontinues such research position at any time, the commission shall discontinue its  
 26 collection of the research fee and any unexpended funds held by the commission shall  
 27 be transferred to the state treasury.

28 (B)(i) Before any license is issued authorizing the performance of preconstruction  
 29 termite treatments, the applicant shall make and deliver to the commission a surety  
 30 bond executed by a surety corporation authorized to transact business in this state and  
 31 approved by the Commissioner of Agriculture. Any and all bond applications shall  
 32 be accompanied by a certificate of 'good standing' issued by the Commissioner of  
 33 Insurance. If any company issuing a bond shall be removed from doing business in  
 34 this state, it shall be the duty of the Commissioner of Insurance to notify the  
 35 Commissioner of Agriculture within 30 days. The bond shall be in such amount as  
 36 the commission may determine based upon the estimated number of preconstruction  
 37 termite treatments that are expected to be done during the first year of issuance and

1 thereafter on the number of preconstruction termite treatments that were performed  
2 in the previous year but not to exceed \$1 million. Such bond shall be upon a form  
3 prescribed or approved by the Commissioner of Agriculture and shall be conditioned  
4 to secure the faithful and punctual performance of preconstruction termite treatments  
5 performed or contracted to be performed. In lieu of a security bond, the  
6 Commissioner may accept a cash bond or an irrevocable letter of credit, which shall  
7 in all respects be subject to the same claims and actions as would exist against a  
8 surety bond. Whenever the Commissioner shall determine that a previously approved  
9 bond has for any cause become insufficient, the Commissioner may require an  
10 additional bond or bonds to be given, conforming with the requirements of this Code  
11 section. Unless the additional bond or bonds are given within the time fixed by  
12 written demand therefor, or if the bond of a licensee is canceled, the license of such  
13 person shall be immediately revoked by operation of law without notice or hearing.  
14 (ii) Any person claiming that he or she has been damaged by a breach of the  
15 conditions of a bond given by a licensee as provided in this Code section may enter  
16 a complaint with the Commissioner. Such complaint shall be a written statement of  
17 the facts constituting the complaint and must be made within 365 days of the alleged  
18 breach. If the Commissioner determines that the complaint is prima facie a breach of  
19 the bond and the matter cannot be amicably resolved within 15 days, the  
20 Commissioner shall publish a solicitation for additional complaints regarding  
21 breaches of the bond for a period of not less than five consecutive issues in a  
22 newspaper of general circulation and in such other publications as the Commissioner  
23 shall prescribe. Additional complaints must be filed within 60 days following initial  
24 public notification of a breach of the bond. Civil actions on the breach of such bond  
25 shall not be commenced less than 120 days nor more than 547 days from the initial  
26 date of public notification of such breach of the bond.  
27 (iii) Upon the filing of such complaint in the manner provided in this Code section,  
28 the Commissioner shall investigate the charges made and at his or her discretion order  
29 a hearing before him or her, giving the party complained of notice of the filing of such  
30 complaint and the time and place of such hearing. At the conclusion of the hearing,  
31 the Commissioner shall report his or her findings and render a conclusion upon the  
32 matter complained of to the complainant and respondent in each case, who shall have  
33 15 days thereafter in which to make effective and satisfy the Commissioner's  
34 conclusions.  
35 (iv) If such settlement is not effected within such time, the Commissioner or the  
36 complainant may bring an action to enforce the claim. If the complainant is not  
37 satisfied with the ruling of the Commissioner, he or she may commence and maintain

1 an action against the principal and surety on the bond of the parties complained of as  
 2 in any civil action.

3 (v) If the bond or collateral posted is insufficient to pay in full the valid claims of  
 4 complainants, the Commissioner may direct that the proceeds of such bond shall be  
 5 divided pro rata among such complainants;

6 (5) Issue certificates, certifying the qualification of operators, to those persons qualifying  
 7 under this chapter. The certification fee shall be in an amount established by the  
 8 commission; such certification shall be renewable biennially unless revoked or canceled  
 9 for cause, subject to reeducation or such other requirements as the commission may  
 10 impose by regulation to ensure that certified operators continue to meet the needs of  
 11 changing technology and to assure a continuing level of competence and ability to  
 12 operate safely and properly;

13 (6) Issue certificates of registration to employees under this chapter. The secretary shall  
 14 collect for such registration a fee in an amount established by the commission for each  
 15 such registration. The commission is authorized to require a fee in an amount established  
 16 by the commission for each change, cancellation, renewal, or issuance of a duplicate  
 17 registration card;

18 (7) Adopt a seal and alter the same at the pleasure of the commission;

19 (8) Hold hearings, subpoena witnesses, and compel the production of documents and  
 20 papers as shall be necessary in the performance of the duties of the commission;

21 (9) Enter into reciprocal agreements with comparable agencies of other states that have  
 22 requirements substantially equivalent to this state, whereby persons licensed or certified  
 23 by such other states may be issued a license or certified by the commission without an  
 24 examination, provided that such other states issue licenses or certifications without  
 25 examination to persons licensed or certified by the commission; and

26 (10) Aid and assist the Commissioner in the enforcement of this chapter in an advisory  
 27 capacity as to matters pertaining to the enforcement of this chapter."

### 28 SECTION 3.

29 Said chapter is further amended by striking Code Section 43-45-9, relating to examination  
 30 for certification as an operator, evidence from applicants as to employment of qualified  
 31 operators, and insurance requirements, and inserting in its place the following:

32 "43-45-9.

33 (a) All applicants for examination for certification as an operator must have a knowledge  
 34 of the practical and scientific facts underlying the practice of structural pest control, control  
 35 of wood-destroying organisms, preconstruction termite treatments, and fumigation and the  
 36 necessary knowledge and ability to recognize and control those hazardous conditions which

1 may affect human life and health. The commission may refuse to examine anyone  
2 convicted of a crime involving moral turpitude.

3 (b) Each applicant must present satisfactory evidence to the commission concerning his  
4 or her qualifications which must include at least one of the following:

5 (1) Two years' actual experience relating to service, one year of which must have been,  
6 within the last five years, as an employee, employer, or owner-operator in the field of  
7 household pest control, control of wood-destroying organisms, preconstruction termite  
8 treatments, or fumigation, for whichever license is applied for;

9 (2) One or more years' specialized training in household pest control, control of  
10 wood-destroying organisms, preconstruction termite treatments, or fumigation, or any  
11 combination thereof, under university or college supervision as a substitute for practical  
12 experience at the ratio of one year of schooling for one-fourth year practical experience;  
13 or

14 (3) A degree from a recognized college or university with advanced training or major in  
15 entomology, sanitary or public health engineering, or related subjects, including sufficient  
16 practical experience of structural pest control work under proper supervision.

17 (c) Each applicant for a license shall present evidence satisfactory to the commission that  
18 the business entity desiring the license has in its employ one or more qualified operators  
19 to engage in the business of structural pest control as provided in this chapter.

20 (d) Each applicant for a license shall submit with the application and each licensee shall  
21 submit at the time of renewal of the license a certificate of insurance verifying coverage  
22 from an insurance company licensed to do business in this state. Such coverage shall be  
23 in the amount of not less than \$50,000.00 per occurrence, with a minimum annual  
24 aggregate of \$200,000.00 for all occurrences, and shall insure the licensee's business  
25 against bodily injury and property damage claims. The insurance shall also cover claims  
26 for pollution liability caused by sudden and accidental discharge or release of pollutants.  
27 No license shall be issued or renewed and no business license shall be issued by a political  
28 subdivision pursuant to Code Section 43-45-15 until the insurance requirements of this  
29 subsection are met. Policies shall contain a cancellation provision whereby notification of  
30 cancellation is made to and received by the commission not less than 30 days prior to the  
31 cancellation."

#### 32 **SECTION 4.**

33 Said chapter is further amended by adding at the end of Code Section 43-45-12, relating to  
34 suspension, cancellation, and revocation of licenses, certifications, and registrations and  
35 unlawful acts, a new subsection (c) to read as follows:

36 "(c) Any licensee, certified operator, or registered employee who shall:

1 (1) Fail to perform, report, or submit the appropriate fees for preconstruction termite  
 2 treatments consistent with any rules and regulations promulgated pursuant to this chapter;  
 3 or

4 (2) Use methods or materials that are not suitable or use any insecticide, device,  
 5 attractant, or repellent in a manner inconsistent with its labeling or other restrictions  
 6 imposed by the commission or the Commissioner for preconstruction termite treatments  
 7 shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for not  
 8 less than one year nor more than five years."

#### 9 SECTION 5.

10 Said chapter is further amended by striking Code Section 43-45-17, relating to enforcement  
 11 authority of the Commissioner of Agriculture, and inserting in its place the following:

12 "43-45-17.

13 The Commissioner is authorized and directed to enforce this chapter and rules and  
 14 regulations promulgated under this chapter and is authorized to utilize any employee of the  
 15 Department of Agriculture. The Commissioner may inspect any materials used or work  
 16 performed by persons engaged in the business of household pest control, wood-destroying  
 17 organism control, preconstruction termite treatments, or fumigation in this state. The  
 18 Commissioner shall be authorized, after notice and hearing, to revoke, suspend, or cancel  
 19 any license, certification, or registration issued under this chapter for a violation of this  
 20 chapter or the rules and regulations promulgated under this chapter, for conviction or  
 21 imposition of a final order imposing a civil penalty pursuant to Section 14 of the Federal  
 22 Insecticide, Fungicide, and Rodenticide Act, as amended, or for conviction of a crime  
 23 involving moral turpitude. It is the intent and purpose of this chapter to provide for the  
 24 enforcement of this chapter by the Commissioner and to provide for the licensing,  
 25 certification, and registration of those persons engaged in the business of structural pest  
 26 control by the commission. It is the further intent of this chapter to provide that the  
 27 commission shall advise the Commissioner with respect to the enforcement of this chapter.  
 28 In connection therewith, the Commissioner, his or her designated agent, or a designated  
 29 hearing officer is authorized to exercise the authority granted the commission to hold  
 30 hearings, subpoena witnesses, and compel the production of documents and papers."

#### 31 SECTION 6.

32 Said chapter is further amended by adding at the end of Code Section 43-45-24, relating to  
 33 engaging in structural pest control without a license, a new subsection (c) to read as follows:

34 "(c) Any person, firm, corporation, association, or any other organization or combination  
 35 thereof who shall engage in, solicit, supervise, advertise, represent himself or herself to be

1 in, hold himself or herself out as being in, or purport to be a manager, owner,  
2 operator-owner, operator, or agent, other than a registered employee, in preconstruction  
3 termite treatments or related work without having first secured a license issued for that  
4 purpose by the commission shall be guilty of a felony and, upon conviction, shall be  
5 punished by imprisonment for not less than three nor more than five years or by a fine of  
6 not more than \$3,000.00, or both. Each violation shall constitute a separate offense."

7 **SECTION 7.**

8 Said chapter is further amended by striking Code Section 43-45-25, relating to penalties, and  
9 inserting in its place the following:

10 "43-45-25.

11 Any person violating any preconstruction termite treatment provision or requirement of this  
12 chapter shall be guilty of a felony and, upon conviction, shall be punished by imprisonment  
13 for not less than three years nor more than five years or by a fine of not more than  
14 \$3,000.00, or both. Each such violation shall constitute a separate offense. Except as  
15 otherwise provided in this chapter, any person violating any other provision or requirement  
16 of this chapter shall be guilty of a misdemeanor."

17 **SECTION 8.**

18 All laws and parts of laws in conflict with this Act are repealed.