

Date of Hearing: April 18, 2017

**ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS**

Rudy Salas, Chair

AB 1590 (Chen) – As Amended March 21, 2017

**SUBJECT:** Structural Pest Control Board: complaints: structural pest control operators.

**SUMMARY:** Requires a structural pest control complaint in writing against a nonlicensee, licensee, or registered company to be filed with the Structural Pest Control Board (Board) no later than two years after the act or omission or, in a matter involving fraud, gross negligence, or misrepresentation, no later than four years after commission of the act or omission and requires the Board to file any accusation no later than 18 months after the complaint was filed with the Board.

**EXISTING LAW:**

- 1) Establishes the Board within the Department of Consumer Affairs (DCA) to license and regulate structural pest control operators. (Business and Professions Code (BPC) Section 8502, *et seq.*)
- 2) Specifies that (1) the Board shall, upon verified complaint in writing of any person, investigate the actions of any individual acting as a licensee or applying for a license and that (2) the Board may, upon its own motion, investigate those actions. (BPC Section 8620)
- 3) Requires all complaints against a licensee or a registered company to be filed with the Board within two years after the act or omission alleged as the ground for disciplinary action or, in the case of fraud, within four years after commission of the fraudulent act or omission. (BPC Section 8621)
- 4) Requires the Board to file an accusation, except for those alleging a violation of BPC Section 8637, within one year after the complaint has been filed with the Board. (BPC Section 8621)
- 5) Specifies that a misrepresentation of a material fact by an applicant in obtaining a license or company registration is a ground for disciplinary action. (BPC Section 8637)
- 6) Provides that an accusation alleging a violation of BPC Section 8637 may be filed within two years after discovery by the Board of the alleged facts constituting the prohibited fraud or misrepresentation. (BPC Section 8621)

**THIS BILL:**

- 1) Specifies that the two-year period in which “all complaints against licensees or registered companies” must be filed with the Board instead applies to a “complaint in writing of any person against a nonlicensee, licensee, or registered company.”
- 2) Expands the types of complaints that may be filed within four years to include, in addition to cases of fraud, matters involving gross negligence or misrepresentation.

- 3) Extends the 12-month period in which the Board must file an accusation after the complaint has been filed to 18 months.
- 4) Makes technical, clarifying changes.

**FISCAL EFFECT:** Unknown. This bill is keyed fiscal by the Legislative Counsel.

**COMMENTS:**

**Purpose.** This bill is sponsored by the **Pest Control Operators of California**. According to the author, “[this bill] will help keep the integrity of the Structural Pest Control Board’s investigations by allowing for an adequate amount of time to investigate complaints and file accusations with the Attorney General’s office, instead of rushing the process and potentially causing bad decisions.”

**Background.** The Board issues three types of licenses for three different practice areas (branches) of pest control. The license types are Applicator, Field Representative, and Operator. The branches are fumigation, general pest, and termite (wood-destroying pests and organisms). Under the fumigation branch, the Board issues Field Representative Licenses and Operator Licenses. Under the general pest and termite branches, the Board issues all three licenses.

*Complaints Made to the Board.* Any owner of a property, the owner's agent, a registered pest control company, or a licensee may file a complaint with the Board. Complaints may be filed against both pest control companies and pest control licensees. The Board handles a variety of types of complaints. Complaints within the Board's jurisdiction include, but are not limited to, the following: (1) infections or infestations missed or not reported after an inspection; (2) unlicensed activity; (3) poor workmanship or repairs not performed in accordance with trade standards; (4) failure to complete work; and (5) false or misleading advertising. The Board has the authority to issue citations or charges against the licensee or registered company. If the violations are serious, the Board may take action to suspend or revoke a person's license or a company's registration. If a disciplinary action is undertaken, the state Attorney General represents the Board to prosecute the case. The Attorney General is not counsel for the complainant, but counsel for the Board.

*Areas of Concern.* Currently, the Board has 12 months from the time a complaint is received to file an accusation. Given the time required for the Board to conduct a thorough investigation, along with the processing time needed by the Deputy Attorney General, the Board believes that 12 months is an insufficient amount of time to file the accusation. For example, the Board has noted instances where it issued a citation and fine but was unable to take formal disciplinary action against the alleged violator’s license. Further, the Board notes that it has 8 investigators for 25,000 licensees and 2,300 companies. Lastly, the last time this section was amended was in 1987.

*Other Professions and Vocations.* Under BPC Section 7091, contractors have 18 months from the date of the filing of a complaint alleging patent acts or omissions.

**ARGUMENTS IN SUPPORT:**

The **Structural Pest Control Board** writes in support, “[t]his extension will help the SPCB staff and investigators with adequate time to fully investigate consumer complaints.”

**ARGUMENTS IN OPPOSITION:**

None on file.

**IMPLEMENTATION ISSUES:**

The Board recommended changing the language in existing law from “all complaints” to a “complaint in writing.” The Board intended this to be a conforming change because the term “complaint in writing” is used in other areas of the practice act. However, the Board investigates both “complaints in writing” as well as “upon its own motion.” Investigations opened upon the Board’s own motion are referred to as internal complaints.

Because the language under the current bill does not include internal complaints, this change could be construed as limiting the types of complaints that the filing period applies to. Therefore, if this bill passes this Committee, the author may wish to work with the Board to clarify that this provision still includes the Board’s internal complaints.

**REGISTERED SUPPORT:**

Pest Control Operators of California (sponsor)  
Structural Pest Control Board

**REGISTERED OPPOSITION:**

None on file.

**Analysis Prepared by:** Genna Promnick / Vincent Chee / B. & P. / 916-319-3301