

SUBPART 3-BUREAU OF PLANT INDUSTRY  
 CHAPTER 11-Regulation of Professional Services  
 SUBCHAPTER 05-Regulations Governing Tree Surgeons.

Definitions

- 500 For the purpose of these regulations, the following words, names and terms shall be construed within the meaning and purpose of Sections 69-19-1 through 69-19-11, Mississippi Code 1972.
1. "Act shall mean Miss. Code Ann. §§69-19-1 to -11.
  2. "Bonafide Employee" shall be a person who receives all or part of his salary, pay, or commission from a license holder and whose salary, pay or commission is regularly reported under Federal Social Security and/or income tax laws. A bonafide employee must be under the direct supervision of a license holder.
  3. "Bureau" shall mean the Bureau of Plant Industry of the Mississippi Department of Agriculture and Commerce created under the provision of Section 69-25-3, Mississippi Code 1972.
  4. "Executive Secretary and/or State Entomologist" shall mean the executive secretary and director and/or state entomologist of the Bureau of Plant Industry, Mississippi Department of Agriculture and Commerce as set forth in Section 69-25-5, Mississippi Code 1972.
  5. "Licensed Operator" shall mean the person who shall be responsible for fulfillment of all services to be rendered by a company licensed to perform any or all of the professional services covered by these regulations.
  6. "Ornamental Trees and Shrubs" shall mean a plant grown for the beauty of its form, foliage, flowers or fruit, rather than for food, fiber or other uses.
  7. "Person" shall mean any individual, partnership, corporation, association, company, or organized group of persons whether incorporated or not.
  8. "Professional Services" shall mean the professional services performed as designated by the category listed under subsection 503.02 of this chapter.
  9. "Tree Surgeon" shall mean a person who advertises in a local phone book, newspaper, newsletter, bulletin, the internet or other, prominently displayed sign as a licensed ~~or bonded~~ or insured tree surgeon and receives compensation for any work or consultation relative to the care, pruning, cabling, bracing, topping, trimming, fertilizing, cavity work and removal of ornamental trees and shrubs in any manner. Nothing shall prevent any person from performing such services as long as their advertising does not include the description licensed or ~~bonded~~ insured.

Persons Required to Secure License

- 501 Tree surgeons must secure a license from the Bureau of Plant Industry, Mississippi Department of Agriculture and Commerce only if they advertise as licensed or ~~bonded~~ or insured in accordance with Section 69-19-1 through 69-19-11, Mississippi Code 1972 as amended.

### License Application; Qualifications

- 502 Application for license shall be submitted on a regular form furnished by the Bureau, in time to be approved ten (10) days prior to regular scheduled examinations. ~~The applicant shall furnish names of several references as to his character and a satisfactory credit report.~~ No application for a license shall be accepted unless the applicant shall furnish written proof that he meets one (1) of the following requirements:
1. must be graduated from ~~a recognized~~ an accredited college or university with at least 15 semester hours or the equivalent in the field for which he is requesting a license,
  2. must have not less than two years college or university training with special training in the field for which he is requesting a license,
  3. must be at least a high school graduate, and have had, in addition, at least one year's experience with a licensed operator within the past two years,
  4. holds a valid arborist certification issued by the International Society of Arboriculture, and
  5. if the applicant does not have a high school education or its equivalency, he must be able to furnish proof that he has at least two year's experience with licensed operator within the past three years.

### Examinations; License Categories

- 503.01 Each person required to secure a license in accordance with the Act shall be examined as follows: When the firm is under the control of one (1) person who is solely responsible for the work, this person alone shall be required to pass the examination. When more than one person is responsible, then each shall be required to pass the examination. A person may designate an employee who is regularly and actively in charge to take the examination and the license will be issued naming the employee as supervisor. Both the employer and the person to whom the license is issued will be held responsible for the professional services rendered.
- 503.02 The applicant shall take an examination which shall be written and, in general, cover the subject of the professional services designated in the application. The examination may be waived if the applicant is already licensed to perform the same professional services in a state with standards equal to those of Mississippi, and provided further that said state recognizes such examinations given by Mississippi.
- 503.03 Examination dates: Examinations shall be given once each quarter at Mississippi State, Mississippi. The dates for written examinations shall be the second Tuesday in each quarter of the calendar year. Applicants not passing the examination may take it on the next regularly scheduled examination date.

503.04 Category in which the examination is to be given and for which a license will be issued:

Tree Surgery – This category includes person who advertise in a local phone book, newspaper, newsletter, bulletin, the internet or other prominently displayed sign as a licensed or bonded or insured tree surgeon and receive compensation for any work or consultation relative to the care, pruning, cabling, bracing, topping, trimming, fertilizing, cavity work and removal of ornamental trees and shrubs in any manner. Nothing shall prevent any person from performing such services as long as their advertising does not include the description licensed or ~~bonded~~ insured.

#### Issuance of License

504.01 After all qualifications and requirements have been met, said applicant must furnish proof of insurance in the proper amount as set forth in section 507 of this chapter in conformity to Section 69-19-9, Mississippi Code 1972. The Bureau shall then issue a license which shall be valid for an indefinite period unless suspended or revoked for cause, **PROVIDED**, ~~that no license shall be issued to any person who uses any material or method which has not been approved by the Bureau.~~

504.02 A license is not transferable. When there is a change in the status of a license holder due to uncontrollable circumstances, a reasonable period of time shall be allowed for a qualified person to meet the requirements of section 501 of this chapter. Failure of the licensee to notify the Bureau of an address change will invalidate the license.

504.03 Persons requesting a license must have passed the required examination within the past year or have been actively engaged in the work since passing the examination or be reexamined before his license can be issued.

#### Denial, Suspension Or Cancellation of a License; Refusal To Issue Or Renew Same.

506.01 The commissioner with the approval of the advisory board may suspend for not more than thirty (30) days, and then after opportunity for a hearing may deny, suspend, cancel or modify the provisions of any license issued under the Act if he finds that the applicant or licensee has committed any of the following applicable to him, each of which is declared to be a violation of the Act and these regulations.

1. Made false or fraudulent claims through any media misrepresenting the effect of materials or methods to be used;
2. Operated in a faulty, careless or negligent manner or knowingly operated faulty or unsafe equipment in a manner as to cause damage to property or person;

3. Refused, or after notice, neglected to comply with the provisions of the Act, the regulations adopted thereunder, or any lawful order of the commissioner;
4. Refused, or neglected to keep and maintain records required by the Act or to make reports when required;
5. Made false or fraudulent records, invoices or reports;
6. Used fraud or misrepresentation in making application for a license or renewal of a license;
7. Aided or abetted any person in evading the provisions of the Act;
8. Allowed one's license to be used by an unlicensed person;
9. Impersonated any state or federal official;
10. Misrepresented for the purpose of deceiving or defrauding;
11. Made a false statement with knowledge of its falsity for the purpose of inducing others to act thereon to their detriment;
12. Performed work in a category covered by the Act for which the licensee does not hold a license;
13. When repeated inspections by Inspectors of the Bureau of Plant Industry reveal that the licensee is not performing services in satisfactory manner;
14. Failed to register agents or solicitors;
15. Convicted in any of the courts of this state of a violation of the Act or these rules and regulations;
16. Failed to correct substandard work; or
17. Failed to renew the insurance that is required in section 507 of this chapter.

506.02 Any person who is denied a license or whose license is suspended, canceled or modified by the commissioner shall be afforded an opportunity for a fair hearing before the advisory board in connection therewith upon written application to the commissioner within thirty (30) days after receipt of notice from the commissioner of such denial, suspension, cancellation or modification. The commissioner shall set a time and place for such hearing and shall convene the board within ten (10) days following receipt of the written application for a hearing. The board shall receive evidence and affirm, modify or reverse the determination of the commissioner within five (5) days.

506.03 Any person aggrieved by the determination of the board may petition the chancery court of the county of residence of such person, or the Chancery Court of Hinds County, for a review with supersedeas. The chancellor shall grant a hearing on said petition and may grant such review with supersedeas; the appellant may be required to post bond with sufficient sureties in an amount to be determined by the chancellor. Upon the review of any such decision, additional evidence may be received and considered by any record made or evidence heard before the board or commissioner may be submitted. Any such petition by either party from the determination of the chancellor shall proceed as otherwise provided by law.

506.04 A license shall automatically become invalid should the licensed operator whose name appears on the license, cease to personally supervise and be in direct charge

of operations, and shall remain invalid until some other person, having been examined in accordance with these rules and regulations becomes qualified as the licensed operator in his stead; except as provided for in section 504 of this chapter

506.05 When a license has been canceled, the licensee shall be notified in writing.

#### Insurance

507 Before a license shall be issued or reissued to engage in tree surgery, proof of insurance must be furnished on a form provided by the Bureau. This insurance shall be conditioned as to insure against negligent or careless acts. This insurance shall not be less than \$100,000.00. No insurance shall be accepted except from companies admitted to do business in Mississippi, companies that are non-admitted but approved to do business in Mississippi, or risk retention and purchasing groups registered by the Commissioner of Insurance of Mississippi. Those currently licensed to perform tree surgery must obtain the required insurance ~~at the time their bond expires~~ not to exceed twelve months.

#### Inspections; Records; Reporting; Contracts

508 Licensed operators shall keep complete and accurate records of all work performed including copies of contracts issued for at least two (2) years. Such records shall be available for examination by employees of the Bureau during reasonable business hours. Such records shall include location, kind of services performed, date performed, materials used if there be any, and other information as may be necessary for a complete record.

#### Identification; Operators; Employees; Equipment

509.01 Operators - All operators or owners of firms engaged in tree surgery soliciting work or dealing with the public must be provided with an identification card to be obtained from the Bureau. The licensee shall submit an I.D. card application provided by the Bureau.

509.02 Employees -

1. All employees of licensed operators, who solicit business or otherwise represent the operator in dealings with the public, must be provided with an identification card, to be obtained from the Bureau. An employee of an operator considered as a laborer shall have an I.D. card or be accompanied by an employee who holds a valid I.D. card. ~~A recent picture of the employee shall be permanently attached to the I.D. card.~~
2. The operator shall submit an I.D. card application provided by the Bureau requesting in writing, I.D. cards for his employees and himself, ~~enclosing a picture of each person.~~

3. When an operator or an employee resigns or is discharged, ~~the licensee his I.D. card shall be returned~~ shall be returned the I.D. card to the Bureau for cancellation.
3. An I.D. card shall be in the possession of the operator and his employees at all times, when performing work or soliciting business and will be presented on request to the person or persons for whom business is performed or solicited.
4. An I.D. card will not be issued to any person who has been employed by another operator until his previous card has been returned to the Bureau for cancellation.

509.03 Equipment - All vehicles used by persons engaged in professional services covered by the Act and these regulations shall be marked for easy identification to include the company name and license number.

#### Bonafide Employee

510 Services or work performed under any section of these regulations must be performed only by the licensee or his bonafide employees.

#### Effective Date

511 These changes will become effective after adoption by the Commissioner, approval of the Advisory Board and appropriate filing with the Secretary of State.

#### Waiver

512 The Bureau, in cases of natural disaster, may waive any and all provisions of this chapter.

(Subchapter 05 amended August 12, 1994 and May 12, 1995)