

BILL ANALYSIS

Senate Research Center

H.B. 329
By: Naishtat (Fraser)
Business & Commerce
5/18/2003
Engrossed

DIGEST AND PURPOSE

Currently, mold assessors and mold remediators are not regulated under state or federal law. This lack of regulation may have contributed to the incidence of costly mold assessment and remediation expenses, as well as hazardous and inefficient extraction of mold by untrained and unlicensed mold remediators. This, in turn, may have resulted in significant increases in homeowners' insurance premiums. H.B. 329 requires mold assessors and remediators to be licensed through a program developed and implemented by the Texas Department of Health (TDH), requires TDH to conduct inspections and investigate complaints, provides for a statewide education and outreach program on the health implications of mold growth in indoor environments, and prohibits underwriting decisions by residential property insurers based on a previous mold damage claim if the property was remediated as evidenced by a certificate of mold remediation or independent inspection.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Board of Health in SECTION 1 (Sections 1958.053, 1958.054, 1958.056, 1958.101, 1958.103, 1958.105, 1958.106, 1958.153, 1958.154, and 1958.155, Occupations Code) of this bill.

Rulemaking authority is expressly granted to the commissioner of insurance in SECTION 2 (Article 21.21-11, Section 4, Insurance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle B, Title 12, Occupations Code, by adding Chapter 1958, as follows:

CHAPTER 1958. MOLD ASSESSORS AND REMEDIATORS SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1958.001. DEFINITIONS. Defines "board," "commissioner," "department," "license," "mold," "mold assessment," and "mold remediation."

Sec. 1958.002. SCOPE OF AUTHORITY. (a) Provides that this chapter applies only to the regulation of mold-related activities that affect indoor air quality.

(b) Sets forth the activities to which this chapter does not apply.

[Reserves Sections 1958.003-1958.050 for expansion.]

SUBCHAPTER B. POWERS AND DUTIES

Sec. 1958.051. GENERAL POWERS AND DUTIES OF DEPARTMENT; SCOPE OF AUTHORITY. Requires the Texas Department of Health (TDH) to administer this chapter to protect the public from the adverse health effects of mold.

Sec. 1958.052. EDUCATION PROGRAM. (a) Requires TDH to conduct a statewide education and outreach program regarding the health implications of mold growth in

indoor environments. Requires the program to include methods to recognize, prevent, and mitigate mold occurrence.

(b) Authorizes TDH to contract with governmental entities or other persons to provide the program.

Sec. 1958.053. GENERAL RULEMAKING AUTHORITY. Requires the Texas Board of Health (board) to adopt substantive and procedural rules as necessary or desirable for the board, TDH, and commissioner of public health (commissioner) to discharge their powers and duties under this chapter.

Sec. 1958.054. RULES REGARDING PERFORMANCE STANDARDS AND WORK PRACTICES. Requires the board, by rule, to establish minimum performance standards and work practices for conducting a mold assessment or mold remediation in this state.

Sec. 1958.055. FEES. Requires the board to establish reasonable and necessary fees to administer this chapter, including fees for licenses and examinations. Requires the board to set the fees in an amount sufficient to recover the costs of administering this chapter.

Sec. 1958.056. INSPECTIONS. (a) Requires TDH to conduct inspections as necessary to ensure compliance with this chapter.

(b) Requires the board to adopt rules regarding compliance investigations.

Sec. 1958.057. COMPLAINTS. Requires TDH to investigate any complaint regarding mold-related activities.

[Reserves Sections 1958.058-1958.100 for expansion.]

SUBCHAPTER C. LICENSE REQUIREMENTS

Sec. 1958.101. LICENSE REQUIRED; RULES. (a) Prohibits a person from engaging in mold assessment unless the person holds a mold assessment license or from engaging in mold remediation unless the person holds a mold remediation license.

(b) Requires the board to adopt rules regarding the scope of mold-related work for which a license is required, including the supervision of employees or other persons by license holders, and renewal requirements for a license issued under this chapter.

Sec. 1958.102. EXEMPTIONS. (a) Provides that an owner or tenant, or a managing agent or employee of an owner or tenant, is not required to be licensed under this chapter to perform mold assessment or mold remediation on property owned or leased by the owner or tenant. Sets forth the circumstances under which this exemption does not apply.

(b) Provides that an employee of a license holder is not required to be licensed under this chapter to perform mold assessment or mold remediation while supervised by the license holder, as provided by rules adopted under Section 1958.101.

(c) Provides that a person is not required to be licensed under this chapter to perform mold remediation in an area in which the mold contamination affects a total surface area for the project of less than 25 contiguous square feet.

(d) Provides that a person is not required to be licensed under this chapter to perform mold assessment or mold remediation in a one-family or two-family dwelling that the person constructed or improved, if the person performs the mold assessment or mold remediation at the same time the person performs the construction or improvement or at the same time the person performs repair work

on the construction or improvement. Sets forth the circumstances under which this exemption does not apply.

(e) Provides that an owner, or a managing agent or employee of an owner, is not required to be licensed under this chapter to perform mold assessment or mold remediation on a residential property owned by that person with fewer than 25 dwelling units. Provides that this exemption does not apply if the managing agent or employee engages in the business of performing mold assessment or mold remediation for the public.

Sec. 1958.103. **RULES REGARDING LICENSE APPLICATION.** Requires the board to adopt rules regarding a license application. Requires the board to adopt rules that establish minimum requirements for a license, including the type, term, qualifications, renewal, and liability insurance requirements for the license.

Sec. 1958.104. **EXAMINATION.** Authorizes TDH to require that an applicant for a license pass a competency examination to qualify for the license.

Sec. 1958.105. **CONTINUING EDUCATION.** (a) Requires the board to adopt rules regarding continuing education required under this chapter.

(b) Authorizes the rules to include requirements regarding continuing education providers, including rules establishing accreditation by TDH, curriculum and training requirements, and qualifications.

Sec. 1958.106. **RECIPROCITY.** Authorizes the board to adopt rules that facilitate reciprocity and communication with other states that have a similar licensing program.

[Reserves Sections 1958.107-1958.150 for expansion.]

SUBCHAPTER D. PRACTICE BY LICENSE HOLDER

Sec. 1958.151. **SCOPE OF WORK ANALYSIS.** (a) Requires a license holder who intends to perform mold assessment on a mold remediation project to prepare a work analysis for the project. Requires the license holder to provide the analysis to the client before the mold remediation begins.

(b) Sets forth the required specifications of the work.

Sec. 1958.152. **REMEDICATION WORK PLAN.** (a) Requires a license holder who intends to perform mold remediation to prepare a work plan providing instructions for the remediation efforts to be performed for the mold remediation project. Requires the license holder to provide the work plan to the client before the mold remediation begins.

(b) Requires the license holder to maintain a copy of the work plan at the job site where the remediation is being performed.

Sec. 1958.153. **NOTICE; CERTIFICATE OF MOLD REMEDIATION.** (a) Requires the license holder, except as provided by Subsection (c), not later than the fifth day before the date on which a license holder starts mold remediation at a property, to notify TDH in writing about the project.

(b) Requires the license holder, not later than the 10th day after the date on which a license holder completes mold remediation at a property, to provide a certificate of mold remediation to the property owner and TDH. Requires the certificate to include a statement by a mold assessment license holder that, based on visual, procedural, and analytical evaluation, the mold contamination identified for the project has been remediated as outlined in the mold management plan or remediation protocol. Requires the mold assessment license holder, if the mold

assessment license holder determines that the underlying cause of the mold has been remediated so that it is reasonably certain that the mold will not return from that remediated cause, to indicate on the certificate that the underlying cause of the mold has been remediated.

(c) Authorizes notice to TDH under Subsection (a), in an emergency, to be made verbally but requires it to be made not later than the next business day after the license holder identifies the emergency. Provides that for purposes of this subsection, an emergency exists if a delay in mold remediation services in response to a water damage occurrence would increase mold contamination.

(d) Requires the board to adopt rules to implement this section, including rules describing the information that must be provided in the notice and certificate of mold remediation and authorizing verbal notification to TDH in an emergency.

(e) Prohibits the entity that owns the building, the entity that occupies the building, and any persons authorized by such entities to make a determination regarding whether the building will be reoccupied, in the event that a school or other public building has been issued a certificate of mold remediation under this subchapter, from being liable in a civil lawsuit for damages relating to the decision to allow occupancy of the building following mold remediation.

Sec. 1958.154. CONFLICT OF INTEREST; DISCLOSURE REQUIRED. (a) Prohibits a license holder from performing both mold assessment and mold remediation on the same project.

(b) Prohibits a person from owning an interest in both the entity that performs assessment services and an entity that performs remediation services on the same project.

(c) Requires a license holder who is not an individual to disclose to TDH the name, address, and occupation of each person that has an ownership interest in the license holder. Requires the license holder to report any changes in ownership to TDH. Requires the board to adopt rules to implement this section, including rules regarding the form of the disclosure and the time required to make disclosures or to report a change in ownership.

Sec. 1958.155. CODE OF ETHICS. Requires the board by rule to adopt a code of ethics for license holders that promotes the education of mold assessors and mold remediators concerning the ethical, legal, and business principles that should govern their conduct.

Sec. 1958.156. MOLD REMEDIATOR LICENSING AND RESPONSIBILITIES. Requires a mold remediator to maintain a file regarding each mold remediation for a minimum of three years from the date of completion of the mold remediation and make such file available for inspection by the department or any law enforcement entity. Requires the file to contain such material as TDH may determine, and to also include photographic evidence of the scene of the mold remediation taken before and after the remediation, the written contract between the mold remediator or any other party regarding the mold remediation, and all invoices issued regarding the mold remediation. Requires the mold remediation company or mold remediation contractor to provide the owner of the building with copies of all photographic evidence required by this section within one week of the completion of the mold remediation.

[Reserves Sections 1958.157-1958.200 for expansion.]

SUBCHAPTER E. DISCIPLINARY PROCEDURES

Sec. 1958.201. DISCIPLINARY ACTION. Requires TDH, if a license holder violates this chapter or an order or rule adopted under this chapter, after providing the person with notice and

an opportunity for a hearing, to take one or more of certain actions.

[Reserves Sections 1958.202-1958.250 for expansion.]

SUBCHAPTER F. ADMINISTRATIVE PENALTY

Sec. 1958.251. IMPOSITION OF ADMINISTRATIVE PENALTY. Authorizes the commissioner to impose an administrative penalty on a person who violates this chapter or a rule adopted or order issued under this chapter.

Sec. 1958.252. AMOUNT OF PENALTY. (a) Prohibits the amount of an administrative penalty from exceeding \$5,000 for each violation. Authorizes each day a violation continues under Section 1958.101 or 1958.154 to be considered a separate violation for purposes of imposing a penalty.

(b) Sets forth the criteria the commissioner is required to consider in determining the amount of the penalty.

Sec. 1958.253. EXCEPTION TO ADMINISTRATIVE PENALTY. (a) Authorizes the commissioner to choose not to impose an administrative penalty under this subchapter if, not later than the 10th day after the date of written notice of the violation under Section 1958.254, the person provides conclusive evidence that the circumstances giving rise to the violation have been corrected and all actual damages are paid.

(b) Provides that this section does not apply to a violation alleged under Section 1958.101 or 1958.154.

Sec. 1958.254. NOTICE; OPPORTUNITY FOR HEARING; ORDER. (a) Authorizes the commissioner to impose an administrative penalty under this subchapter only after the person charged with a violation is given a written notice and the opportunity for a hearing.

(b) Requires the written notice to state the facts that constitute the alleged violation and the law or rule on which the violation is based.

(c) Requires the commissioner, if a hearing is held, to make findings of fact and issue a written decision as to the occurrence of the violation and the amount of any penalty that is warranted.

(d) Authorizes the commissioner, if the person charged with a violation fails to exercise the opportunity for a hearing, after determining that a violation occurred and the amount of the penalty that is warranted, to impose a penalty and requires the commissioner to issue an order requiring the person to pay any penalty imposed.

(e) Requires the commissioner, not later than the 30th day after the date the commissioner issues an order after determining that a violation occurred, to inform the person charged with the violation of the amount of any penalty imposed.

(f) Authorizes the commissioner to consolidate a hearing under this section with another proceeding.

Sec. 1958.255. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Requires the person, not later than the 30th day after the date the commissioner's decision or order becomes final as provided by Section 2001.144 (Decisions; When Final), Government Code, to pay the administrative penalty or file a petition for judicial review contesting the fact of the violation, the amount of the penalty, or both.

(b) Authorizes a person who acts under Subsection (a)(2) within the 30-day period to stay enforcement of the penalty by paying the penalty to the commissioner for placement in an escrow account or by giving the commissioner a bond in a form approved by the commissioner that is for the amount of the penalty and is effective until judicial review of the commissioner's decision or order is final.

Sec. 1958.256. **COLLECTION OF PENALTY.** Authorizes the attorney general, at the request of the commissioner, to bring a civil action to recover an administrative penalty imposed under this subchapter.

Sec. 1958.257. **JUDICIAL REVIEW.** Provides that judicial review of a decision or order of the commissioner imposing a penalty under this subchapter is instituted by filing a petition with a district court in Travis County and is under the substantial evidence rule as provided by Subchapter G (Contested Cases: Judicial Review), Chapter 2001 (Administrative Procedure), Government Code.

Sec. 1958.258. **REMITTANCE OF PENALTY AND INTEREST OR RELEASE OF BOND.** Requires the commissioner, if after judicial review the administrative penalty is reduced or is not upheld by the court, to remit the appropriate amount, plus accrued interest, to the person not later than the 30th day after the date of the determination, if the person paid the penalty, or execute a release of the bond, if the person gave a bond.

[Reserves Sections 1958.259-1958.300 for expansion.]

SUBCHAPTER G. OTHER PENALTIES; ENFORCEMENT PROVISIONS

Sec. 1958.301. **CIVIL PENALTY.** (a) Provides that a person who violates this chapter or a rule adopted under this chapter is liable for a civil penalty in an amount not to exceed \$2,000 for the first violation or \$10,000 for a second or later violation.

(b) Authorizes the commissioner to request the attorney general or the district, county, or city attorney having jurisdiction to bring an action to collect a civil penalty under this section.

Sec. 1958.302. **INJUNCTIVE RELIEF.** Authorizes the commissioner to request the attorney general or the district, county, or city attorney having jurisdiction to bring an action in a district court of Travis County for a restraining order, injunction, or other relief the court determines is appropriate if it appears to TDH that a person is violating or has violated this chapter or a rule adopted under this chapter.

SECTION 2. Amends Subchapter B, Chapter 21, Insurance Code, adding Article 21.21-11, as follows:

Art. 21.21-11. PROHIBITION OF CERTAIN UNDERWRITING DECISIONS BASED ON PREVIOUS MOLD CLAIM

Sec. 1. **DEFINITIONS.** Defines "insurer," "mold," "mold remediation," and "residential property insurance."

Sec. 2. **APPLICABILITY.** Provides that this article applies to each insurer that writes residential property insurance in this state.

Sec. 3. **PROHIBITION.** Prohibits an insurer from making an underwriting decision regarding a residential property insurance policy based on previous mold damage under certain circumstances.

Sec. 4. **RULES.** Requires the commissioner of insurance (commissioner) to adopt rules as necessary to implement this article.

Sec. 5. PENALTY. Provides that an insurer who violates this article commits an unfair practice in violation of Article 21.21 (Unfair Competition and Unfair Practices), Insurance Code.

SECTION 3. Requires the Texas Board of Health to adopt the rules required by Chapter 1958, Occupations Code, as added by this Act, not later than April 1, 2004.

SECTION 4. (a) Effective date: September 1, 2003, except as provided by Subsection (b) of this section.

(b) Provides that Section 1958.101(a), Occupations Code, and Subchapters D, E, F, and G, Chapter 1958, Occupations Code, as added by this Act, take effect July 1, 2004.