

## **BILL ANALYSIS**

C.S.H.B. 329

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Licensing & Administrative Procedures  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Currently, the State of Texas does not have the ability to regulate mold assessors or remediators. There are laws regulating most occupations that perform health-related services, such as pest control contractors, water well drillers, and industrial hygienists. We also have laws that require licensure and training for professionals who remove lead-based paint and asbestos.

Dozens of complaints have been made to the Texas Department of Health Toxic Substances Division and to my office concerning unscrupulous companies which hold themselves out to be experts with little or no training. They often identify what they believe is dangerous mold and recommend expensive renovations. We have learned of mold companies that perform the assessment and then the remediation and then rent the homeowners an apartment while the removal takes place - blatant conflicts of interest. These practices result in increased costs to homeowners, schools and other public buildings, and to insurance companies. A Dallas code-compliance investigator is reported as saying, "Until somebody comes in and buckles them down, it's a free ride. And you're not doing anything illegal yet. You're not breaking the law yet, because there is no law."

CSHB 329 will require mold assessors and remediators to be licensed through a program implemented by the Texas Board of Health, eliminate conflicts of interest, and provide for a statewide education and outreach program to inform citizens about how to recognize, prevent and mitigate mold problems, protect homeowners from abuse, and provide information about the health effects of mold growth. The substitute will also prohibit certain underwriting or rating decisions based on previous water or mold claims.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Board of Health in SECTION 1 (Sections 1958.053, 1958.054, 1958.056(b), 1958.101(b), 1958.103, 1958.105, 1958.106, and 1958.151(d), Occupations Code) and to the commissioner of insurance in SECTION 2 (Article 21.21-11, Sec. 4, Insurance Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1 of CSHB 329 amends Subtitle B, Title 12, Occupations Code, by adding Chapter 1958, as follows: Chapter 1958 Mold Assessors and Remediators; Subchapter A. General Provisions  
Section 1958.001 - defines terms used in the bill including "mold," "mold assessment," and "mold remediation."

Section 1958.002 SCOPE OF AUTHORITY. Defines the Department of Health's scope of authority. The chapter applies only to the regulation of mold-related activities that affect indoor air quality. The chapter does not apply to routine cleanings when not performed for mold remediation; when the diagnosis, repair, or replacement of plumbing, heating, ventilation, air conditioning, or electrical systems and appliances; commercial or residential real estate inspections; and the incidental discovery or emergency containment of potential mold contamination during the conduct or performance of services listed in this subsection. Also if a pest control inspection conducted by a person regulated under Chapter 1951.

Sections 1958.003-1958.050 are reserved for expansion

Subchapter B, outlines Powers and Duties in Section 1958.051 - GENERAL POWERS AND DUTIES OF DEPARTMENT; SCOPE OF AUTHORITY - states that the general powers and duties of the department will be to protect the public from the adverse health effects of mold.

Section 1958.052 - EDUCATION PROGRAM - (a) requires the Department of Health to develop and conduct an education and outreach program to disseminate information to the public about molds. (b) allows the department to contract with other governmental entities or other persons to provide the program.

Section 1958.053 - GENERAL RULEMAKING AUTHORITY - gives the Board of Health rule making authority to administer the chapter.

Section 1958.054 - RULES REGARDING PERFORMANCE STANDARDS AND WORK PRACTICES - directs the board to establish minimum standards for conducting mold assessment and remediation

Section 1958.055 - FEES - allows the department to establish reasonable fees to administer the licensure program to recover the cost of administering the program.

Section 1958.056 - INSPECTIONS - (a) requires that the department conduct compliance inspections and (b) requires the board to adopt rules for compliance inspections.

Section 1958.057 - COMPLAINTS - requires the department to investigate complaints regarding mold-related activities.

Sections 1958.058-1958.100 are reserved for expansion.

Subchapter C outlines license requirements beginning in Section 1958.101 - LICENSE REQUIRED; RULES (a) prohibits a person from engaging in mold assessment of mold remediation unless the person holds a license. (b) requires the board to adopt rules regarding the scope of mold-related work and license renewals.

Section 1958.102 - EXEMPTIONS - provides for exemptions from licensure (a) a property owner, tenant, managing agent and employees thereof that perform mold assessments or remediation on their own property without compensation (b) an employee of a licensed holder who perform mold assessments or remediation while supervised by a licensed holder.

Section 1958.103 - RULES REGARDING LICENSE APPLICATION - requires the board to adopt rules regarding license applications which establish minimum requirements, type, term, qualifications, renewal and liability insurance.

Section 1958.104 - EXAMINATION - authorizes the department to require a competency examination to qualify for the license.

Section 1958.105 - CONTINUING EDUCATION - (a) requires the board to develop rules concerning continuing education; (b) authorizes the board to establish rules for continuing education providers including requirements for accreditation, curriculum and training, and qualifications.

Section 1958.106 - RECIPROCITY - requires the board to adopt rules to provide for reciprocity with states that have similar licensing programs.

Sections 1958.107-1958.150 are reserved for expansion.

Sec. 1958.151 - NOTICE; CERTIFICATION OF MOLD REMEDIATION - (a) requires the license holder to notify the department not later than the fifth day before the date on which a license holder starts mold remediation; (b) requires the license holder to provide a certificate of mold remediation to the property owner and the department not later than the 10th day after the remediation is completed and sets criteria for certificate; c) verbal notice is allowed under a designation of an emergency where a delay in service would increase mold contamination; (d) requires the board to adopt rules (1) describing the information that must be provided in the notice, certificate and (2) authorizing verbal notification in an emergency; (e) provides that when a school or other public building has been issued a certificate of remediation and the owner or persons authorized by such entity to determine whether the building should be reoccupied shall not be held civilly liable for damages.

Section 1958.152 - CONFLICT OF INTEREST -(a) prohibits a license holder from performing both mold assessment and remediation at the same property, (b) prohibits a person from owning an interest in entities that perform assessment and remediation services on the same project.

Section 1958.153 - MOLD REMEDIATION IN SMALL AREAS - (a) this section applies if the mold contamination affects a total area of 10 square feet or less; (b) requires remediation be done (1) by following the United States Environmental Protection Agency (EPA) publication titled, "Mold Remediation in Schools and Commercial Buildings" set forth as of March 1, 2003; or (2) using the EPA's guidelines adopted by the board; (c) remediation performed under this section does not require notice under Section 1958.151(a).

Section 1958.154. MOLD REMEDIATOR LICENSING AND RESPONSIBILITIES- mandates record keeping provision for mold remediators.

Sections 1958.155-1958.200 are reserved for expansion.

Section 1958.201 - DISCIPLINARY ACTION - sets out disciplinary action for violation of rules. Requires the department to (1) revoke, suspend or refuse to renew the license; (2) impose an administrative penalty; (3) bring action to collect a civil penalty; or (4) reprimand the person.

Sections 1958.202-1958.250 are reserved for expansion.

Section 1958.251 - IMPOSITION OF ADMINISTRATIVE PENALTIES -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.

Section 1958.252 - AMOUNT OF PENALTY - (a) prohibits the amounts of penalties from exceeding \$5,000 a day for each violation; each day may be considered a separate violation; (b) requires the commissioner to consider the following to determine the amount of the penalty (1) whether the violation was committed knowingly, intentionally, or fraudulently; (2) the seriousness of the violation, (3) hazards created to the health and safety of the public; (4) history of previous violations; and (5) any other matter that justice may require.

Section 1958.253 - EXCEPTION TO ADMINISTRATIVE PENALTY - (a) authorizes the commissioner not to impose a penalty if the person provides conclusive evidence that the violations have been corrected and all actual damages paid, not later than the 10th day after the date of written notice of a violation; (b) this section does not apply to a violation alleged under Section 1598.101 or 1958.152.

Section 1958.254. NOTICE; OPPORTUNITY FOR HEARING; ORDER - (a) authorizes the commissioner to impose a penalty only after the person charged is given a written notice and the opportunity for a hearing; (b) the substitute provides that written notice state the facts that constitute the rule or law on which the violation is based; (c) If a hearing is held, requires the commissioner to make findings of fact and issue a written decision as to (1) occurrence of the violation, (2) the amount of any

penalty that is warranted; (d) if the person charged does not exercise the opportunity for a hearing, the commissioner having determined that a violation occurred and the amount of penalty that is warranted, is authorized to impose a penalty and order the person to pay; (e) the commissioner is required to inform the person charged of the amount of any penalty, not later than the 30th days after the date an order is issued; (f) authorizes the commissioner to consolidate a hearing with another proceeding.

Section 1958.255 - OPTIONS FOLLOWING DECISION; PAY OR APPEAL - (a) not later than within 30 days after the decision is final, the person is required to: (1) pay the penalty or (2) file a petition for judicial review contesting the fact of the violation, the amount of the penalty or both; (b) within the 30-day period, the person is authorized to stay the enforcement of the penalty by (1) paying the penalty for placement in an escrow account or (2) give the commissioner a bond that is for the amount of the penalty and is effective until judicial review of the decision or order.

Section 1958.256 - COLLECTION OF PENALTY - authorizes the attorney general to bring a civil action to recover administrative penalty at the request of the commissioner.

Section 1958.257 - JUDICIAL REVIEW - provides for judicial review of a decision or order to be initiated by filing a petition in Travis County district court and is under the substantial evidence rule in the Government Code.

Section 1958.258 - REMITTANCE OF PENALTY AND INTEREST OR RELEASE OF BOND - requires the commissioner to, if after judicial review the penalty is reduced or is not upheld by the court, (1) remit the appropriate amount plus accrued interest not later than the 30th day after the date of the determination; (2) execute a release of the bond.

Sections 1958.259-1958.300 are reserved for expansion.

Section 1958.301 - CIVIL PENALTY - (a) a person who violates this chapter or a rule 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 penalty.

Section 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 Travis County district court for a restraining order, injunction or other relief the court determines is appropriate if it appears to the department that a person is violating or has violated this chapter or a rule adopted under this chapter.

Art. 21.21-11- Prohibits certain underwriting or rating decisions based on previous water or mold claim. Requires the commissioner on insurance to adopt rules to implement this article.

### **EFFECTIVE DATE**

SECTION 3 of this substitute requires the Texas Board of Health to adopt rules required by Chapter 1958, Occupations Code, as added by this Act, by April 1, 2004.

SECTION 4 of this substitute states that (a) except as provided by Subsection (b) of this section, this Act takes effect September 1, 2003. (b) Section 1958.101(a) Occupations Code, and Subchapters D, E, F, and G, Chapter 1958, Occupations Code, added by this Act, take effect July 1, 2004.

### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

SECTION 1. Section 1958.001 clarifies the definitions of “mold assessment” and “mold remediation.” Section 1958.002 adds language to assure that related service industries that are in a position to

discover potential mold contamination (but do not perform mold related activities) are not covered by the Act. New language also excludes incidental discovery, reporting, and emergency containment by such service sectors when not performed to deal with mold.

Section 1958.101 adds language regarding the issuance of licenses covering employees of mold assessment companies or mold remediation companies as specified by board rule. Section 1958.102 exempts from licensure a property owner, tenant, managing agent, and employees thereof that perform mold assessment or remediation on their own property without compensation. Section 1958.151 (a) reduces advance notice time to 5 days. Advance notice is not required for mold affecting a total of 10 square feet or less or mold services performed in emergency water situations. Emergency services require notice on the next business day. (b) requires notice to department upon completion and a certificate from assessor certifying mold is remediated according to protocol established for the project. (d) the department shall determine contents of remediation certificate. (e) adds language providing that when a school or other public building has been issued a certificate of remediation and the owner or persons authorized by such entity determine whether the building should be reoccupied shall not be liable in a civil suit for damages relating to the decision.

Section 1958.152 changes “property” to the “same project” and adds that a person may not own an interest in both the entity which performs assessment services and an entity which performs remediation services on the same project. Section 1958.154 provides for mold remediation licensing and responsibilities requiring that a file on the remediation be kept by the remediator for a minimum of three years after completion of the project, make the file available for inspection by the department or law enforcement entity. The file must contain materials the department determines, photographic evidence of the remediation site before and after the remediation, the written contract, and all invoices. The remediation company or contractor must provide the owner of the building with copies of all photographic evidence required within one week of completion of the project.

Section 1958.252 stipulates that an administrative penalty may not exceed \$5,000 for each violation, except each day a violation occurs for acting without a license or violating conflicts of interest is a separate violation. (b) The commissioner shall also consider knowledge, intent, or fraud leading to a violation. Section 1958.253 (b) adds a written notice requirement from the department regarding a potential violation. Department may summarily dispose of a violation if cured and any damages are paid by licensee to satisfaction of the department before the matter goes to a hearing. Written notice and opportunity to cure are not available for actions without a license or violation of conflicts of interest rules.

SECTION 2. Subchapter B, Chapter 21, Insurance Code, is amended by adding Article 21.21-11 prohibiting certain underwriting or rating decisions based on previous water or mold claims. Section 1 defines “insurer,” “mold,” “mold remediation” and “residential property insurance.” Section 2 applies the article to each insurer that writes residential property insurance in this state. Sec. 3 prohibits an insurer from making an underwriting or rating decision regarding a residential property insurance policy based in whole or part on whether the applicant has made a previous claim for damage caused by water or mold, mold remediation has been performed on the claim, a certificate of mold remediation established under 1958 has been issued to the property owner, and the property was inspected by an independent assessor or adjustor that the property does not contain evidence of mold damage. Sec. 4 gives the Commissioner rule making power and provides a penalty under Article 21.21, Insurance Code.

SECTION 3 was SECTION 2 of the original.

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