

BILL ANALYSIS

Senate Research Center

S.B. 129
By: Fraser
Business and Commerce
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DIGEST AND PURPOSE

Currently, persons and companies who provide services related to mold assessment and remediation are not regulated under state or federal law. The lack of mold assessment and remediation regulation has resulted in costly mold assessment and remediation expenses as well as hazardous and inefficient extraction of mold by ill-trained and unlicensed mold remediators. The expense of mold assessment and remediation services has resulted in an increase in the cost of homeowners' insurance premiums. As proposed, S.B. 129 would establish a licensing and regulatory framework for persons and companies who provide certain commercial services related to mold assessment and remediation. S.B. 129 sets forth requirements for mold assessment and remediation licensure and accordingly establishes eight types of licenses relating to mold assessment and remediation to be issued by the Texas Department of Health (TDH). S.B. 129 authorizes TDH to engage in certain disciplinary actions if a licensee violates conditions of that license. S.B. 129 establishes other standards for mold assessment and remediation services, and sets forth requirements for mold assessment and remediation training. S.B. 129 further authorizes TDH to conduct a public outreach program to educate Texans on the importance and methods of improving indoor air quality.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Board of Health in SECTION 1 (Sections 1958.051, 1958.052, 1958.053, 1958.105, 1958.255, 1958.256, 1958.258, 1958.302, 1958.303, and 1958.351, Chapter 1958, Title 12B, Occupations Code) of this bill.

Rulemaking authority is expressly granted to the Texas Department of Health in SECTION 1 (1958.051 and 1958.202, Chapter 1958, Title 12B, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

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

CHAPTER 1958. MOLD REMEDIATION SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1958.001. **SHORT TITLE.** Provides that the Texas Mold Remediation Licensing Act is this chapter's short title.

Sec. 1958.002. **SCOPE OF CHAPTER.** Makes this chapter applicable to any mold-related activity performed by a third party for compensation and any mold-related activity performed in a facility owned or leased by the state, a county, or a city. Requires that such activity be performed by persons licensed under this chapter.

Sec. 1958.003. **DEFINITIONS.** Defines "board," "certified industrial hygienist," "commissioner," "department," "indoor air quality factors," "licensee," "mold," "mold analysis company," "mold assessment," "mold assessment company," "mold assessment consultant," "mold assessment technician," "mold remediation," "mold remediation company," "mold

remediation contractor,” “mold remediation supervisor,” and “mold-related activities.”

SUBCHAPTER B. POWERS AND DUTIES OF THE BOARD AND THE DEPARTMENT

Sec. 1958.051. ADOPTION OF RULES; AUTHORITY TO CONTRACT. (a) Requires the Texas Board of Health (board) to adopt, by rule, procedural and substantive rules as needed for the board, the Texas Department of Health (TDH), and commissioner of public health (commissioner) to carry out their powers and duties under this chapter.

(b) Requires the board, by rule, to create procedures to be followed when TDH determines that a site poses a danger to its occupants, workers, or the general public.

(c) Authorizes TDH to adopt rules effecting reciprocity agreements with other states.

(d) Authorizes TDH to contract with qualified persons in order to perform the inspections required for the enforcement of this chapter.

Sec. 1958.052. STANDARDS FOR MOLD-RELATED ACTIVITIES. Requires the board to adopt, by rule, minimum standards for conducting mold-related activities.

Sec. 1958.053. MOLD REMEDIATION PROCEDURES. Requires the board to adopt rules to ensure proper mold remediation procedures, and specifies that the board must include certain specific rules and procedures.

Sec. 1958.054. PUBLIC EDUCATION PROGRAM. Requires TDH to conduct a statewide program for educating the public about the importance of improving indoor air quality and how to do so. Sets forth the possible methods of carrying out the public education program.

SUBCHAPTER C. LICENSING; TEMPORARY CERTIFICATION

Sec. 1958.101. LICENSE REQUIRED; EXEMPTION. Prohibits anyone not holding a license issued by TDH under Section 1958.103 from engaging in mold assessment, remediation, or analysis. Requires a mold training provider to acquire a license under Section 1958.103. Exempts licensed certified industrial hygienists from the requirements of this section.

Sec. 1958.102. TRAINING REQUIRED FOR LICENSE. Prohibits anyone from becoming licensed under Section 1958.101 unless that person has completed all the training required by board rule.

Sec. 1958.103. ISSUANCE, TYPES OF LICENSES. Requires persons meeting the requirements under this chapter and any other requirements established by the board to be licensed by TDH under the appropriate type of license type, and defines the various types of licenses.

Sec. 1958.104. APPLICATION FOR LICENSE. Requires an applicant for a license under Section 1958.103 to apply to TDH on the form it prescribes. Requires the form to be signed by the applicant, include certain information, and be notarized. Requires the applicant to pay a nonrefundable application fee set by the board. Authorizes TDH, during the application process or before a granted license expires, to require additional information and assurances from the applicant, and to make inspections of evidence considered necessary to determine whether the license should be granted, denied, delayed, modified, suspended, or revoked.

Sec. 1958.105. LICENSE FEES; OTHER FEES. Requires the board to adopt, by rule, fees

set forth in this section and any other reasonable fees necessary for the implementation of this chapter. Requires TDH to collect the fees and deposit them with the comptroller in an account that may be used only by TDH for the implementation of this chapter. Establishes maximum fees for the various types of licenses.

Sec. 1958.106. QUALIFICATIONS FOR LICENSE. Establishes the requirements for qualifying as a mold assessment consultant, mold assessment technician, mold remediation contractor, mold remediation supervisor, or mold training provider. Establishes the requirements for qualifying as a mold assessment company, mold remediation company, or mold analysis company.

Sec. 1958.107. CERTIFICATES OF INCORPORATION AND INSURANCE. Requires an individual applying for a license under this chapter to provide certain documentation which demonstrates the right to conduct business in the state, as well as proof of certain kinds of insurance. Requires a licensee to maintain all applicable insurance required under this section, including commercial general liability pollution insurance with certain minimum coverages for a mold remediation company or contractor as well as professional liability insurance coverage for errors and omissions by a mold training or mold assessment service provider. Provides that failure to maintain the required insurance will result in immediate forfeiture of the license.

Sec. 1958.108. LICENSES SUBJECT TO RULES AND ORDERS. Provides that the terms and conditions of licenses are subject to rules and orders of the board in accordance with this chapter.

Sec. 1958.109. LICENSE NOT ASSIGNABLE. Provides that a license issued under this chapter is not transferrable to another person.

Sec. 1958.110. LICENSE REPLACEMENT. Authorizes a licensee to request a replacement license certificate by submitting an application as prescribed by the board.

Sec. 1958.111. PROVISIONAL LICENSE. (a) Authorizes TDH to grant a provisional license to an applicant who is licensed in another jurisdiction, on the condition that the applicant meets certain requirements.

(b) Authorizes TDH to waive the requirement of Subsection (a)(3), which requires a person holding a provisional license to be sponsored by, and practice with a person licensed by TDH, if it determines that compliance would create a hardship to the applicant.

(c) Provides that a provisional license is valid until TDH approves or denies the provisional license holder's application. Requires TDH to issue a license to a provisional license holder who is eligible to be licensed under Section 1958.106 and meets any other licensing requirements under this chapter.

(d) Requires TDH to approve or deny a provisional license holder's application within 180 from the date the provisional license is issued. Authorizes TDH to extend the 180-day period if it has not received the results of an examination before the end of that period.

(e) Authorizes TDH to establish a fee for a provisional license in an amount necessary for covering the cost of issuing the license.

Sec. 1958.112. REGISTRATION FOR TRAINEES. (a) Requires trainees for mold assessment technician or mold remediation supervisor to register with TDH for a temporary certificate. Requires applicants for the certificate to apply to TDH on a form prescribed by the

board and to pay a fee set by the board.

(b) Provides that temporary certificates may be issued only for training purposes, and that the holders of such certificates must train under the direction and sponsorship of a person licensed for the applicable mold-related activity.

(c) Requires the sponsor to attest, on a form prescribed by the board, that the trainee is under the sponsor's employment and supervision, and that both the sponsor and trainee are in compliance with the insurance and other requirements under this chapter.

(d) Provides that a temporary certificate expires 180 days after issuance and allows the certificate to be renewed once on application to TDH. Prohibits a person from holding more than two consecutive temporary certificates.

(e) Requires a person who holds a temporary certificate under this section to comply with the insurance requirements under Section 1958.107 and the requirements for licensing under Section 1958.106(1)-(5).

SUBCHAPTER D. LICENSE EXAMINATION

Sec. 1958.151. EXAMINATION REQUIREMENT. Prohibits a person from receiving a license for a business or profession under Section 1958.101 unless the person passes an examination required for the license. Requires the board to adopt or approve the examinations that the applicants must pass. Authorizes the board to require or authorize the use of standardized examinations for licensing under this chapter and to set fees for the administration of such examinations.

Sec. 1958.152. NOTIFICATION OF EXAMINATION RESULTS. Requires TDH to notify a person of the results of a licensing examination within 30 days of the examination's administration. Requires TDH to notify the person of the results of an examination within 14 days of its receipt of the results of an examination that is graded or reviewed by a testing service. Requires TDH to notify the examinee of the reason for the delay before the 90th day if the notice of the examination's results will be delayed for more than 90 days after the exam date. Authorizes TDH to require a testing service to notify a person of the results of the person's examination under Subsection (b). Requires TDH to provide an analysis of a person's performance on an exam if the person has failed the exam and requests an analysis in writing.

SUBCHAPTER E. CONTINUING EDUCATION; LICENSE RENEWAL

Sec. 1958.201. CONTINUING EDUCATION REQUIREMENT. Requires a licensee to complete 15 hours of continuing education courses every year, as prescribed by board rule. Requires that those courses be offered and provided by mold training providers licensed under this chapter. Requires a licensee to submit proof of compliance with the continuing education requirements along with the licensee's license renewal application.

Sec. 1958.202. LICENSE RENEWAL. (a) Provides that a license issued under this chapter expires on the first year anniversary of its effective date, unless renewed for a one-year term under Subsection (d).

(b) Authorizes TDH to adopt a system, by rule, under which licenses expire on various dates during the year. Requires TDH to prorate fees for the year the license expiration date is changed, but provides that the entire license renewal fee is due on the new expiration date.

(c) Requires TDH to send the licensee a renewal notice containing certain information

at least one month before the license expires.

(d) Authorizes a license holder to renew the license for a one-year term if certain requirements are met.

Sec. 1958.203. EXPIRED LICENSE. Prohibits a person whose license has expired from engaging in any activity that requires a license until the license is renewed. Sets forth requirements for renewing licenses that have been expired for 90 days or less and for licenses that have been expired for more than 90 days but less than one year; and sets forth requirements for acquiring a new license if a person's license has been expired for a year or more.

Sec. 1958.204. RENEWAL OF EXPIRED LICENSE BY NONRESIDENT LICENSEES. Authorizes a nonresident person under certain conditions to renew an expired license without examination if that person meets certain requirements. Requires a nonresident person renewing without examination to pay a renewal fee double the normally required amount.

SUBCHAPTER F. PROFESSIONAL DUTIES AND CONDUCT

Sec. 1958.251. DUTY TO ENSURE EMPLOYEE QUALIFICATIONS AND PROTECTION. Requires a licensee engaged in any mold-related activity to ensure that each employee licensee involved in the activity is familiar with certain standards, has completed applicable courses, and is supplied with approved equipment in good working order.

Sec. 1958.252. PROHIBITION ON MULTIPLE SERVICES THAT CREATE CONFLICT OF INTEREST. Prohibits a licensee from performing more than one of the following activities on the same project: mold assessment, mold remediation, or mold or mold-related analysis.

Sec. 1958.253. REQUIRED RECORDS. Requires a licensee to maintain records, as prescribed by board rule, of each mold-related activity a licensee performs, including job site records and permanent records at the licensee's place of business. Requires a licensee to make the records available to TDH on request. Requires a licensee to maintain the records for a period prescribed by board rule.

Sec. 1958.254. SCOPE OF WORK ANALYSIS; WORK PLAN. (a) Requires the mold remediation company or contractor to prepare a scope of work analysis for each mold remediation project. Requires the company or contractor to provide the scope of work document to the client or the client's representative either in the bidding phase of the project or before the mold remediation begins. Require the analysis to include specific information.

(b) Requires the mold remediation company or contractor to develop a work plan providing instructions for the remediation efforts to be performed, and requires the company or contractor to provide the work plan to the client before the remediation begins. Requires a copy of the plan to be maintained at the job site for review by the mold remediation company, contractor, and supervisor.

Sec. 1958.255. ADVERTISING OR COMPETITIVE BIDDING. Prohibits a licensee from using false or misleading statements resulting in deceptive practices in the licensee's advertising and competitive bidding. Authorizes the board to enforce this section by rule, but prohibits the board from adopting rules that restrict advertising in certain ways.

Sec. 1958.256. REQUIRED NOTIFICATION OF MOLD-RELATED ACTIVITIES. Requires a person engaged in mold-related activities in a public building to notify TDH in writing or electronically at least 10 days before beginning work on the building. Provides that a

person may give notification orally in the case of an emergency. Requires the board to impose a notification fee for notification under this section, and to set the amount of the fee and procedures for payment by rule. Provides that a licensee incurs the fee upon making a notification under this section.

Sec. 1958.257. **STANDARD OPERATING PROCEDURES FOR MOLD REMEDIATION.** Requires a person engaged in mold remediation to develop and follow standard operating procedures, including certain specific procedures and any other standard operating procedures required by board rule.

Sec. 1958.258. **CODE OF ETHICS.** Requires the board to adopt, by rule, a code of ethics for persons engaging in mold assessment and remediation activities that facilitates the education of ethical, legal, and business principles governing licensees' conduct. Provides that the code of ethics may address practices common to all the professions licensed under this article as well as ethical principals and practices specific to each.

SUBCHAPTER G. MOLD TRAINING

Sec. 1958.301. **MOLD TRAINING PROVIDERS.** Prohibits a mold training provider from offering courses for licensure unless that provider is licensed under Section 1958.103(8). Prohibits a mold training provider from offering courses unless the course is approved by TDH as a prerequisite to licensure and is offered according to a schedule approved by TDH. Requires a mold training provider to provide TDH with records documenting individuals who have attended such a course.

Sec. 1958.302. **BOARD TO ADOPT RULES.** Requires the board to adopt rules reasonable and necessary to implement Sections 1958.301(b) and (c) and Section 1958.303, as well as any other rules necessary to implement and monitor the mold training program.

Sec. 1958.303. **TRAINING REQUIREMENTS.** Requires the board to adopt, by rule, a minimum curriculum and other training requirements for mold training providers licensed under Section 1958.103(8) to train other persons required to be licensed under this chapter.

Sec. 1958.304. **WITHDRAWAL OF COURSE APPROVAL.** Authorizes the board to withdraw approval of a course of instruction that it previously approved. Provides that the withdrawal is effective immediately, and that a training provider must cease to offer a course whose approval has been withdrawn upon receiving notice from TDH.

SUBCHAPTER H. DISCIPLINARY ACTION

Sec. 1958.351. **REPRIMAND; MODIFICATION, SUSPENSION, OR REVOCATION OF LICENSE.** (a) Requires TDH, after providing notice and the opportunity for a hearing, to reprimand a licensee or modify, suspend, or revoke the license of a licensee if the licensee commits an act or omission that meets the criteria under Subsection (c).

(b) Provides that an emergency suspension by TDH is effective immediately, and requires TDH to provide an opportunity for a hearing within 20 days of such a suspension.

(c) Requires the board to adopt, by rule, criteria for departmental action under this section, and establishes the minimum criteria that the board must adopt for disciplinary action.

(d) Prohibits individuals or organizations whose licenses have been revoked under this chapter from reapplying for a license for at least five years from the date of revocation.

(e) Requires that the notice and hearing required by this section be conducted in accordance with Section 1958.352.

(f) Authorizes TDH to place a person whose license is suspended on probation. Authorizes TDH to require a person whose suspension is probated to undertake certain actions while on probation.

Sec. 1958.352. NOTICE; ADMINISTRATIVE HEARING; APPEAL. Provides that the notice and hearing provisions under Section 1958.351(e) and appeals for judicial review of decisions under Section 1958.355 must be conducted in accordance with the board's rules for contested hearings and with the applicable provisions of Chapter 2001 (Administrative Procedure), Government Code.

Sec. 1958.353. COMPLIANCE WITH STANDARDS NOT A DEFENSE. Provides that compliance with any minimum standards adopted by the board does not constitute a defense in a civil action for damages arising from work performed in the course of mold-related activities.

Sec. 1958.354. CIVIL PENALTY; INJUNCTION. (a) Authorizes the commissioner to request certain attorneys to institute certain civil suits if it appears that a person has violated, is violating, or has threatened to violate provisions of this chapter or rules adopted under this chapter.

(b) Provides that the penalty may not exceed \$10,000 per day for each violation, and that each day a violation occurs or continues to occur constitutes a separate violation for penalty purposes.

(c) Authorizes the commissioner to request certain civil suits against an owner of a public building who contracts or otherwise permits an unlicensed person to perform activities in that building that require a license under this chapter.

(d) Requires the court to consider certain factors when determining the amount of a civil penalty.

(e) Requires that any civil penalty recovered in a suit instituted by the attorney general under this chapter be deposited with the comptroller in the general revenue fund, and requires that such a penalty recovered in a suit instituted by a local government be paid to that government.

Sec. 1958.355. ADMINISTRATIVE PENALTY. (a) Authorizes the commissioner to assess an administrative penalty, as provided by this section, against a person who violates this chapter or a rule adopted or order issued under this chapter.

(b) Provides that the penalty may not exceed \$10,000 per violation, and that each day a violation continues may be considered a separate violation.

(c) Requires the commissioner to consider certain factors in determining the amount of an administrative penalty.

(d) Provides that the person charged with the violation must be given the opportunity for a hearing before the penalty may be assessed.

(e) Requires the commissioner to make findings of fact and issue a written decision in the event of a hearing.

(f) Authorizes the commissioner to consolidate the hearings with other proceedings.

(g) Authorizes the commissioner, if the person charged with the violation fails to exercise the opportunity for a hearing, to assess a penalty after having determined that a violation occurred and having decided upon the amount of the penalty.

(h) Requires the commissioner, after making the determinations under Subsection (g), to issue an order requiring the penalty to be paid.

(i) Requires the commissioner to inform the person charged with the violation of the penalty's amount within 30 days of issuing an order finding that a violation has occurred.

(j) Requires the person charged with the violation to pay the penalty in full or, if seeking judicial review, to place the amount in escrow or a bond with the commissioner within 30 days after the commissioner's final decision.

(k) Requires the commissioner to remit to the person, by the 30th date after the date of a determination by judicial review that a violation did not occur or that the amount of the penalty should be reduced, the appropriate amount with interest accrued. Establishes the guidelines for the rate and period of interest.

(l) Provides that failure to forward the amount of the penalty to the commissioner as required under Subsection (j) results in a waiver of rights to contest the determination of the violation or the amount of the penalty.

(m) Establishes the procedure for instituting judicial review under this Subchapter.

(n) Authorizes the attorney general, at the request of the commissioner, to recover administrative penalties owed under this section by civil action.

(o) Requires funds collected under this section to be deposited into the general revenue fund.

Sec. 1958.356. CRIMINAL PENALTY. Establishes the conditions under which a person required to be licensed under this chapter may commit a criminal offense. Provides that an offense under this chapter is a misdemeanor and specifies the maximum penalties for first and second offenses.

SECTION 2. Requires the Texas Board of Health to adopt rules implementing Chapter 1958, Occupations Code, as added by this Act, by January 1, 2004.

SECTION 3. Effective date: June 1, 2003, or September 1, 2003.