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H.B. No. 329

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of mold assessors and remediators, civil liability for mold remediation, and insurance coverage on mold claims; providing civil and administrative penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle B, Title 12, Occupations Code, is amended by adding Chapter 1958 to read as follows:

CHAPTER 1958. MOLD ASSESSORS AND REMEDIATORS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1958.001. DEFINITIONS. In this chapter:

(1) "Board" means the Texas Board of Health.

(2) "Commissioner" means the commissioner of public health.

(3) "Department" means the Texas Department of Health.

(4) "License" means a license issued under this chapter.

(5) "Mold" means any living or dead fungi or related products or parts, including spores, hyphae, and mycotoxins.

(6) "Mold assessment" means:

(A) an inspection, investigation, or survey of a dwelling or other structure to provide the owner or occupant with information regarding the presence, identification, or evaluation of mold;

(B) the development of a mold management plan or

1 remediation protocol; or

2 (C) the collection or analysis of a mold sample.

3 (7) "Mold remediation" means the removal, cleaning,  
4 sanitizing, demolition, or other treatment, including preventive  
5 activities, of mold or mold-contaminated matter that was not  
6 purposely grown at that location.

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

10 (b) This chapter does not apply to:

11 (1) the following activities when not conducted for  
12 the purpose of mold assessment or mold remediation:

13 (A) routine cleaning;

14 (B) the diagnosis, repair, cleaning, or  
15 replacement of plumbing, heating, ventilation, air conditioning,  
16 electrical, or air duct systems or appliances;

17 (C) commercial or residential real estate  
18 inspections; and

19 (D) the incidental discovery or emergency  
20 containment of potential mold contamination during the conduct or  
21 performance of services listed in this subsection; or

22 (2) a pest control inspection conducted by a person  
23 regulated under Chapter 1951.

24 [Sections 1958.003-1958.050 reserved for expansion]

25 SUBCHAPTER B. POWERS AND DUTIES

26 Sec. 1958.051. GENERAL POWERS AND DUTIES OF DEPARTMENT;  
27 SCOPE OF AUTHORITY. The department shall administer this chapter

1 to protect the public from the adverse health effects of mold.

2 Sec. 1958.052. EDUCATION PROGRAM. (a) The department  
3 shall conduct a statewide education and outreach program regarding  
4 the health implications of mold growth in indoor environments. The  
5 program must include methods to recognize, prevent, and mitigate  
6 mold occurrence.

7 (b) The department may contract with governmental entities  
8 or other persons to provide the program.

9 Sec. 1958.053. GENERAL RULEMAKING AUTHORITY. The board  
10 shall adopt substantive and procedural rules as necessary or  
11 desirable for the board, department, and commissioner to discharge  
12 their powers and duties under this chapter.

13 Sec. 1958.054. RULES REGARDING PERFORMANCE STANDARDS AND  
14 WORK PRACTICES. The board by rule shall establish minimum  
15 performance standards and work practices for conducting a mold  
16 assessment or mold remediation in this state.

17 Sec. 1958.055. FEES. The board shall establish reasonable  
18 and necessary fees to administer this chapter, including fees for  
19 licenses and examinations. The board shall set the fees in an  
20 amount sufficient to recover the costs of administering this  
21 chapter.

22 Sec. 1958.056. INSPECTIONS. (a) The department shall  
23 conduct inspections as necessary to ensure compliance with this  
24 chapter.

25 (b) The board shall adopt rules regarding compliance  
26 investigations.

27 Sec. 1958.057. COMPLAINTS. The department shall

1 investigate any complaint regarding mold-related activities.

2 [Sections 1958.058-1958.100 reserved for expansion]

3 SUBCHAPTER C. LICENSE REQUIREMENTS

4 Sec. 1958.101. LICENSE REQUIRED; RULES. (a) A person may  
5 not engage in:

6 (1) mold assessment unless the person holds a mold  
7 assessment license; or

8 (2) mold remediation unless the person holds a mold  
9 remediation license.

10 (b) The board shall adopt rules regarding:

11 (1) the scope of mold-related work for which a license  
12 is required, including the supervision of employees or other  
13 persons by license holders; and

14 (2) renewal requirements for a license issued under  
15 this chapter.

16 Sec. 1958.102. EXEMPTIONS. (a) An owner or tenant, or a  
17 managing agent or employee of an owner or tenant, is not required to  
18 be licensed under this chapter to perform mold assessment or mold  
19 remediation on property owned or leased by the owner or tenant.  
20 This exemption does not apply:

21 (1) if the managing agent or employee engages in the  
22 business of performing mold assessment or mold remediation for the  
23 public;

24 (2) if the mold remediation is performed in an area in  
25 which the mold contamination affects a total surface area of 25  
26 contiguous square feet or more; or

27 (3) to a person who is exempt under Subsection (e).

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

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

9       (d) A person is not required to be licensed under this  
10 chapter to perform mold assessment or mold remediation in a  
11 one-family or two-family dwelling that the person constructed or  
12 improved if the person performs the mold assessment or mold  
13 remediation at the same time the person performs the construction  
14 or improvement or at the same time the person performs repair work  
15 on the construction or improvement. This exemption does not apply  
16 if:

17               (1) the person engages in the business of performing  
18 mold assessment or mold remediation for the public; or

19               (2) the mold remediation is performed in an area in  
20 which the mold contamination affects a total surface area of 25  
21 contiguous square feet or more.

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

1       Sec. 1958.103. RULES REGARDING LICENSE APPLICATION. The  
2 board shall adopt rules regarding a license application. The board  
3 shall adopt rules that establish minimum requirements for a  
4 license, including the type, term, qualifications, renewal, and  
5 liability insurance requirements for the license.

6       Sec. 1958.104. EXAMINATION. The department may require  
7 that an applicant for a license pass a competency examination to  
8 qualify for the license.

9       Sec. 1958.105. CONTINUING EDUCATION. (a) The board shall  
10 adopt rules regarding continuing education required under this  
11 chapter.

12       (b) The rules may include requirements regarding continuing  
13 education providers, including rules establishing:

- 14           (1) accreditation by the department;  
15           (2) curriculum and training requirements; and  
16           (3) qualifications.

17       Sec. 1958.106. RECIPROCITY. The board may adopt rules that  
18 facilitate reciprocity and communication with other states that  
19 have a similar licensing program.

20       [Sections 1958.107-1958.150 reserved for expansion]

21       SUBCHAPTER D. PRACTICE BY LICENSE HOLDER

22       Sec. 1958.151. SCOPE OF WORK ANALYSIS. (a) A license  
23 holder who intends to perform mold assessment on a mold remediation  
24 project shall prepare a work analysis for the project. The license  
25 holder shall provide the analysis to the client before the mold  
26 remediation begins.

27       (b) The work analysis must specify:

1           (1) the rooms or areas where the work will be  
2 performed;

3           (2) the quantities of materials to be removed or  
4 cleaned at the project;

5           (3) the proposed methods for each type of remediation  
6 in each type of area in the project; and

7           (4) the proposed clearance criteria for each type of  
8 remediation in each type of area in the project.

9           Sec. 1958.152. REMEDIATION WORK PLAN. (a) A license holder  
10 who intends to perform mold remediation shall prepare a work plan  
11 providing instructions for the remediation efforts to be performed  
12 for the mold remediation project. The license holder shall provide  
13 the work plan to the client before the mold remediation begins.

14           (b) The license holder shall maintain a copy of the work  
15 plan at the job site where the remediation is being performed.

16           Sec. 1958.153. NOTICE; CERTIFICATE OF MOLD REMEDIATION.

17           (a) Except as provided by Subsection (c), not later than the fifth  
18 day before the date on which a license holder starts mold  
19 remediation at a property, the license holder shall notify the  
20 department in writing about the project.

21           (b) Not later than the 10th day after the date on which a  
22 license holder completes mold remediation at a property, the  
23 license holder shall provide a certificate of mold remediation to  
24 the property owner and the department. The certificate must  
25 include a statement by a mold assessment license holder that, based  
26 on visual, procedural, and analytical evaluation, the mold  
27 contamination identified for the project has been remediated as

1 outlined in the mold management plan or remediation protocol. If  
2 the mold assessment license holder determines that the underlying  
3 cause of the mold has been remediated so that it is reasonably  
4 certain that the mold will not return from that remediated cause,  
5 the mold assessment license holder shall indicate on the  
6 certificate that the underlying cause of the mold has been  
7 remediated.

8 (c) In an emergency, notice to the department under  
9 Subsection (a) may be made verbally but must be made not later than  
10 the next business day after the license holder identifies the  
11 emergency. For purposes of this subsection, an emergency exists if  
12 a delay in mold remediation services in response to a water damage  
13 occurrence would increase mold contamination.

14 (d) The board shall adopt rules to implement this section,  
15 including rules:

16 (1) describing the information that must be provided  
17 in the notice and certificate of mold remediation; and

18 (2) authorizing verbal notification to the department  
19 in an emergency.

20 (e) In the event that a school or other public building has  
21 been issued a certificate of mold remediation under this  
22 subchapter, the entity that owns the building, the entity that  
23 occupies the building, and any persons authorized by such entities  
24 to make a determination regarding whether the building will be  
25 reoccupied shall not be liable in a civil lawsuit for damages  
26 relating to the decision to allow occupancy of the building  
27 following mold remediation.



Sec. 1958.154. CONFLICT OF INTEREST; DISCLOSURE REQUIRED.

(a) A license holder may not perform both mold assessment and mold remediation on the same project.

(b) A person may not own an interest in both the entity that performs assessment services and an entity that performs remediation services on the same project.

(c) A license holder who is not an individual shall disclose to the department the name, address, and occupation of each person that has an ownership interest in the license holder. The license holder shall report any changes in ownership to the department. The board shall 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. The board by rule shall 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. A mold remediator must 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. The file must contain such material as the department may determine, and must 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

1 the mold remediation, and all invoices issued regarding the mold  
2 remediation. The mold remediation company or mold remediation  
3 contractor must provide the owner of the building with copies of all  
4 photographic evidence required by this section within one week of  
5 the completion of the mold remediation.

6 [Sections 1958.157-1958.200 reserved for expansion]

7 SUBCHAPTER E. DISCIPLINARY PROCEDURES

8 Sec. 1958.201. DISCIPLINARY ACTION. If a license holder  
9 violates this chapter or an order or rule adopted under this  
10 chapter, the department, after providing the person with notice and  
11 an opportunity for a hearing, shall take one or more of the  
12 following actions:

- 13 (1) revoke, suspend, or refuse to renew the license;  
14 (2) impose an administrative penalty;  
15 (3) bring an action to collect a civil penalty; or  
16 (4) reprimand the person.

17 [Sections 1958.202-1958.250 reserved for expansion]

18 SUBCHAPTER F. ADMINISTRATIVE PENALTY

19 Sec. 1958.251. IMPOSITION OF ADMINISTRATIVE PENALTY. The  
20 commissioner may impose an administrative penalty on a person who  
21 violates this chapter or a rule adopted or order issued under this  
22 chapter.

23 Sec. 1958.252. AMOUNT OF PENALTY. (a) The amount of an  
24 administrative penalty may not exceed \$5,000 for each violation.  
25 Each day a violation continues under Section 1958.101 or 1958.154  
26 may be considered a separate violation for purposes of imposing a  
27 penalty.

1        (b) In determining the amount of the penalty, the  
2 commissioner shall consider:

3            (1) whether the violation was committed knowingly,  
4 intentionally, or fraudulently;

5            (2) the seriousness of the violation;

6            (3) any hazard created to the health and safety of the  
7 public;

8            (4) the person's history of previous violations; and

9            (5) any other matter that justice may require.

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

17        (b) This section does not apply to a violation alleged under  
18 Section 1958.101 or 1958.154.

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

23        (b) The written notice must state the facts that constitute  
24 the alleged violation and the law or rule on which the violation is  
25 based.

26        (c) If a hearing is held, the commissioner shall make  
27 findings of fact and issue a written decision as to:

1           (1) the occurrence of the violation; and

2           (2) the amount of any penalty that is warranted.

3           (d) If the person charged with a violation fails to exercise  
4 the opportunity for a hearing, the commissioner, after determining  
5 that a violation occurred and the amount of the penalty that is  
6 warranted, may impose a penalty and shall issue an order requiring  
7 the person to pay any penalty imposed.

8           (e) Not later than the 30th day after the date the  
9 commissioner issues an order after determining that a violation  
10 occurred, the commissioner shall inform the person charged with the  
11 violation of the amount of any penalty imposed.

12           (f) The commissioner may consolidate a hearing under this  
13 section with another proceeding.

14           Sec. 1958.255. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.

15           (a) Not later than the 30th day after the date the commissioner's  
16 decision or order becomes final as provided by Section 2001.144,  
17 Government Code, the person shall:

18                   (1) pay the administrative penalty; or

19                   (2) file a petition for judicial review contesting the  
20 fact of the violation, the amount of the penalty, or both.

21           (b) Within the 30-day period, a person who acts under  
22 Subsection (a)(2) may stay enforcement of the penalty by:

23                   (1) paying the penalty to the commissioner for  
24 placement in an escrow account; or

25                   (2) giving the commissioner a bond in a form approved  
26 by the commissioner that:

27                           (A) is for the amount of the penalty; and

1           (B) is effective until judicial review of the  
2 commissioner's decision or order is final.

3           Sec. 1958.256. COLLECTION OF PENALTY. At the request of the  
4 commissioner, the attorney general may bring a civil action to  
5 recover an administrative penalty imposed under this subchapter.

6           Sec. 1958.257. JUDICIAL REVIEW. Judicial review of a  
7 decision or order of the commissioner imposing a penalty under this  
8 subchapter is instituted by filing a petition with a district court  
9 in Travis County and is under the substantial evidence rule as  
10 provided by Subchapter G, Chapter 2001, Government Code.

11           Sec. 1958.258. REMITTANCE OF PENALTY AND INTEREST OR  
12 RELEASE OF BOND. If after judicial review the administrative  
13 penalty is reduced or is not upheld by the court, the commissioner  
14 shall:

15           (1) remit the appropriate amount, plus accrued  
16 interest, to the person not later than the 30th day after the date  
17 of the determination, if the person paid the penalty; or

18           (2) execute a release of the bond, if the person gave a  
19 bond.

20           [Sections 1958.259-1958.300 reserved for expansion]

21           SUBCHAPTER G. OTHER PENALTIES; ENFORCEMENT PROVISIONS

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

26           (b) The commissioner may request the attorney general or the  
27 district, county, or city attorney having jurisdiction to bring an

1 action to collect a civil penalty under this section.

2 Sec. 1958.302. INJUNCTIVE RELIEF. The commissioner may  
3 request the attorney general or the district, county, or city  
4 attorney having jurisdiction to bring an action in a district court  
5 of Travis County for a restraining order, injunction, or other  
6 relief the court determines is appropriate if it appears to the  
7 department that a person is violating or has violated this chapter  
8 or a rule adopted under this chapter.

9 SECTION 2. Subchapter B, Chapter 21, Insurance Code, is  
10 amended by adding Article 21.21-11 to read as follows:

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

13 Sec. 1. DEFINITIONS. In this article:

14 (1) "Insurer" means an insurance company, reciprocal  
15 or interinsurance exchange, mutual insurance company, capital  
16 stock company, county mutual insurance company, farm mutual  
17 insurance company, Lloyd's plan, or other legal entity authorized  
18 to write residential property insurance in this state. The term  
19 includes an affiliate, as described by Section 823.003(a), if that  
20 affiliate is authorized to write and is writing residential  
21 property insurance in this state. The term does not include:

22 (A) an eligible surplus lines insurer regulated  
23 under Chapter 981;

24 (B) the Texas Windstorm Insurance Association  
25 under Article 21.49; or

26 (C) the FAIR Plan Association under Article  
27 21.49A.

1           (2) "Mold" means any living or dead fungi or related  
2 products or parts, including spores, hyphae, and mycotoxins.

3           (3) "Mold remediation" means the removal, cleaning,  
4 sanitizing, demolition, or other treatment, including preventive  
5 activities, of mold or mold-contaminated matter that was not  
6 purposely grown at that location.

7           (4) "Residential property insurance" means insurance  
8 against damage to or loss of real or tangible personal property at a  
9 fixed location provided in a homeowners insurance policy or  
10 residential fire and allied lines insurance policy.

11           Sec. 2. APPLICABILITY. This article applies to each  
12 insurer that writes residential property insurance in this state.

13           Sec. 3. PROHIBITION. An insurer may not make an  
14 underwriting decision regarding a residential property insurance  
15 policy based on previous mold damage if:

16           (1) the applicant for insurance has made a previous  
17 claim under any residential property policy for damage caused by  
18 mold;

19           (2) mold remediation has been performed on the  
20 property that is the subject of the claim; and

21           (3) the property was:

22                   (A) remediated, as evidenced by a certificate of  
23 mold remediation issued to the property owner under Section  
24 1958.153, Occupations Code, that establishes that the underlying  
25 cause of the mold at the property has been remediated; or

26                   (B) inspected by an independent assessor or  
27 adjustor who determined, based on the inspection, that the property

1 does not contain evidence of mold damage.

2 Sec. 4. RULES. The commissioner shall adopt rules as  
3 necessary to implement this article.

4 Sec. 5. PENALTY. An insurer who violates this article  
5 commits an unfair practice in violation of Article 21.21, Insurance  
6 Code.

7 SECTION 3. The Texas Board of Health shall adopt the rules  
8 required by Chapter 1958, Occupations Code, as added by this Act,  
9 not later than April 1, 2004.

10 SECTION 4. (a) Except as provided by Subsection (b) of this  
11 section, this Act takes effect September 1, 2003.

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