

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, including a mold-related activity
10 performed by a third party for compensation at a property owned or
11 operated by a governmental entity.

12 (b) This chapter does not apply to:

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

15 (A) routine cleaning;

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

19 (C) commercial or residential real estate
20 inspections; and

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

24 (2) the repair, replacement, or cleaning of
25 construction materials during the building phase of the
26 construction of a structure;

1 (3) the standard performance of custodial activities
2 for, preventive maintenance of, and the routine assessment of
3 property owned or operated by a governmental entity; or

4 (4) a pest control inspection conducted by a person
5 regulated under Chapter 1951.

6 [Sections 1958.003-1958.050 reserved for expansion]

7 SUBCHAPTER B. POWERS AND DUTIES

8 Sec. 1958.051. GENERAL POWERS AND DUTIES OF DEPARTMENT;
9 SCOPE OF AUTHORITY. The department shall administer this chapter
10 to protect the public from the adverse health effects of mold.

11 Sec. 1958.052. PUBLIC EDUCATION PROGRAM. (a) The
12 department shall conduct a statewide education and outreach program
13 regarding the importance of, and ways to improve, air quality in
14 buildings, including the importance of, and the ways to recognize,
15 prevent, control, and mitigate, mold occurrence and other indoor
16 air quality factors that adversely affect human health.

17 (b) The program may include:

18 (1) the development and distribution of information to
19 the public concerning indoor air quality and mold;

20 (2) educational programs;

21 (3) informational or educational exhibits; and

22 (4) any other methods of education or communication
23 that the department considers appropriate.

24 (c) The department may contract with governmental entities
25 or other persons to provide the program.

26 Sec. 1958.053. GENERAL RULEMAKING AUTHORITY. The board
27 shall adopt substantive and procedural rules as necessary or

1 desirable for the board, department, and commissioner to discharge
2 their powers and duties under this chapter.

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

7 Sec. 1958.055. FEES. (a) The board shall establish
8 reasonable and necessary fees to administer this chapter, including
9 fees for licenses, registrations, and examinations. The board
10 shall set the fees in an amount sufficient to recover the costs of
11 administering this chapter, not to exceed the caps established
12 under Subsection (b).

13 (b) A fee set under this section may not exceed:

14 (1) \$400 for a license issued to an individual;

15 (2) \$750 for a license issued to a person who is not an
16 individual; and

17 (3) \$60 for a registration issued to an employee of a
18 license holder.

19 Sec. 1958.056. INSPECTIONS. (a) The department shall
20 conduct inspections as necessary to ensure compliance with this
21 chapter.

22 (b) The board shall adopt rules regarding compliance
23 investigations.

24 Sec. 1958.057. COMPLAINTS. The department shall
25 investigate any complaint regarding mold-related activities.

26 Sec. 1958.058. SAFETY STANDARDS. The board may develop and
27 establish mold safety standards for license holders if appropriate

1 scientific information exists regarding the effect of mold.

2 Sec. 1958.059. CODE OF ETHICS. The board by rule shall
3 adopt a code of ethics for license holders that promotes the
4 education of mold assessors and mold remediators concerning the
5 ethical, legal, and business principles that should govern their
6 conduct.

7 [Sections 1958.060-1958.100 reserved for expansion]

8 SUBCHAPTER C. LICENSE AND REGISTRATION REQUIREMENTS

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

11 (1) mold assessment unless the person holds a mold
12 assessment license; or

13 (2) mold remediation unless the person holds a mold
14 remediation license.

15 (b) The board shall adopt rules regarding:

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

19 (2) renewal requirements for a license issued under
20 this chapter.

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

26 (1) if the managing agent or employee engages in the
27 business of performing mold assessment or mold remediation for the

1 public;

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

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

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

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

14 (d) A person is not required to be licensed under this
15 chapter to perform mold assessment or mold remediation in a
16 one-family or two-family dwelling that the person constructed or
17 improved if the person performs the mold assessment or mold
18 remediation at the same time the person performs the construction
19 or improvement or at the same time the person performs repair work
20 on the construction or improvement. This exemption does not apply
21 if the person engages in the business of performing mold assessment
22 or mold remediation for the public.

23 (e) An owner, or a managing agent or employee of an owner, is
24 not required to be licensed under this chapter to perform mold
25 assessment or mold remediation on a residential property owned by
26 that person with fewer than 10 dwelling units. This exemption does
27 not apply if the managing agent or employee engages in the business

1 of performing mold assessment or mold remediation for the public.

2 Sec. 1958.103. REGISTRATION REQUIREMENTS FOR EMPLOYEES.

3 The board may adopt rules to require the registration of employees
4 supervised by license holders.

5 Sec. 1958.104. RULES REGARDING LICENSE APPLICATION. The
6 board shall adopt rules regarding a license application. The board
7 shall adopt rules that establish minimum requirements for a
8 license, including:

9 (1) the type of license;

10 (2) the term of the license;

11 (3) the qualifications for the license, including any
12 previous training required under Section 1958.106;

13 (4) renewal requirements for the license, including
14 ongoing continuing education required under Section 1958.106; and

15 (5) liability insurance requirements for the license.

16 Sec. 1958.105. EXAMINATION. The department may require
17 that an applicant for a license pass a competency examination to
18 qualify for the license.

19 Sec. 1958.106. TRAINING; CONTINUING EDUCATION. (a) The
20 board shall adopt rules regarding training required under this
21 chapter and continuing education required for a license holder
22 under this chapter.

23 (b) The rules may include requirements regarding training
24 and continuing education providers, including rules establishing:

25 (1) accreditation by the department;

26 (2) curriculum requirements; and

27 (3) qualifications.

1 Sec. 1958.107. RECIPROCITY. The board may adopt rules that
2 facilitate reciprocity and communication with other states that
3 have a similar licensing program.

4 [Sections 1958.108-1958.150 reserved for expansion]

5 SUBCHAPTER D. PRACTICE BY LICENSE HOLDER

6 Sec. 1958.151. SCOPE OF WORK ANALYSIS. (a) A license
7 holder who intends to perform mold assessment on a mold remediation
8 project shall prepare a work analysis for the project. The license
9 holder shall provide the analysis to the client before the mold
10 remediation begins.

11 (b) The work analysis must specify:

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

14 (2) the quantities of materials to be removed or
15 cleaned at the project;

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

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

20 Sec. 1958.152. REMEDIATION WORK PLAN. (a) A license holder
21 who intends to perform mold remediation shall prepare a work plan
22 providing instructions for the remediation efforts to be performed
23 for the mold remediation project. The license holder shall provide
24 the work plan to the client before the mold remediation begins.

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

27 Sec. 1958.153. NOTICE OF PROJECT. (a) Except as provided

1 by Subsection (b), not later than the fifth day before the date on
2 which a license holder starts mold remediation at a property, the
3 license holder shall notify the department in writing about the
4 project.

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

11 (c) The board shall adopt rules to implement this section,
12 including rules:

13 (1) describing the information that must be provided
14 in the notice; and

15 (2) authorizing verbal notification to the department
16 in an emergency.

17 Sec. 1958.154. CERTIFICATE OF MOLD REMEDIATION; DUTY OF
18 PROPERTY OWNER. (a) Not later than the 10th day after the date on
19 which a license holder completes mold remediation at a property,
20 the license holder shall provide a certificate of mold remediation
21 to the property owner. The certificate must include a statement by
22 a mold assessment license holder that, based on visual, procedural,
23 and analytical evaluation, the mold contamination identified for
24 the project has been remediated as outlined in the mold management
25 plan or remediation protocol. If the mold assessment license
26 holder determines that the underlying cause of the mold has been
27 remediated so that it is reasonably certain that the mold will not

1 return from that remediated cause, the mold assessment license
2 holder shall indicate on the certificate that the underlying cause
3 of the mold has been remediated.

4 (b) If a property owner sells property, the property owner
5 shall provide to the buyer a copy of each certificate that has been
6 issued for the property under this section.

7 (c) The board shall adopt rules to implement this section,
8 other than rules described by Subsection (d).

9 (d) The commissioner of insurance shall adopt rules
10 describing the information that must be provided in the certificate
11 of mold remediation. In adopting the rules, the commissioner shall
12 design the certificate as necessary to comply with any requirements
13 imposed under Article 21.21-11, Insurance Code.

14 Sec. 1958.155. CONFLICT OF INTEREST; DISCLOSURE REQUIRED.

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

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

20 (c) A license holder who is not an individual shall disclose
21 to the department the name, address, and occupation of each person
22 that has an ownership interest in the license holder. The license
23 holder shall report any changes in ownership to the department. The
24 board shall adopt rules to implement this section, including rules
25 regarding the form of the disclosure and the time required to make
26 disclosures or to report a change in ownership.

27 Sec. 1958.156. RECORD REQUIREMENTS; DUTIES OF MOLD

1 REMIEDIATORS. (a) A mold remediator shall maintain a record
2 regarding each mold remediation performed for at least three years
3 after the date of completion of the mold remediation on a property.

4 (b) The mold remediator shall make the record available for
5 inspection by the department or any law enforcement entity.

6 (c) The record must contain:

7 (1) photographs of the scene of the mold remediation
8 taken before and after the remediation;

9 (2) the written contract between the mold remediator
10 or any other party regarding the mold remediation;

11 (3) all invoices issued regarding the mold
12 remediation; and

13 (4) any other material required by the department.

14 (d) Not later than one week after completion of a mold
15 remediation, the mold remediator license holder shall provide the
16 property owner with copies of all photographs required by this
17 section.

18 Sec. 1958.157. OFFICE LOCATION. A license holder shall
19 maintain an office in this state.

20 [Sections 1958.158-1958.200 reserved for expansion]

21 SUBCHAPTER E. DISCIPLINARY PROCEDURES

22 Sec. 1958.201. DISCIPLINARY ACTION. If a license holder
23 violates this chapter or an order or rule adopted under this
24 chapter, the department, after providing the person with notice and
25 an opportunity for a hearing, shall take one or more of the
26 following actions:

27 (1) revoke, suspend, or refuse to renew the license;

- (2) impose an administrative penalty;
- (3) bring an action to collect a civil penalty; or
- (4) reprimand the person.

[Sections 1958.202-1958.250 reserved for expansion]

SUBCHAPTER F. ADMINISTRATIVE PENALTY

Sec. 1958.251. IMPOSITION OF ADMINISTRATIVE PENALTY. The commissioner may 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) The amount of an administrative penalty may not exceed \$5,000 for each violation. Each day a violation continues under Section 1958.101 or 1958.155 may be considered a separate violation for purposes of imposing a penalty.

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

- (1) whether the violation was committed knowingly, intentionally, or fraudulently;
- (2) the seriousness of the violation;
- (3) any hazard created to the health and safety of the public;
- (4) the person's history of previous violations; and
- (5) any other matter that justice may require.

Sec. 1958.253. EXCEPTION TO ADMINISTRATIVE PENALTY. (a) The commissioner may 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

1 person provides conclusive evidence that the circumstances giving
2 rise to the violation have been corrected and all actual damages are
3 paid.

4 (b) This section does not apply to a violation alleged under
5 Section 1958.101 or 1958.155.

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

10 (b) The written notice must state the facts that constitute
11 the alleged violation and the law or rule on which the violation is
12 based.

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

15 (1) the occurrence of the violation; and

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

17 (d) If the person charged with a violation fails to exercise
18 the opportunity for a hearing, the commissioner, after determining
19 that a violation occurred and the amount of the penalty that is
20 warranted, may impose a penalty and shall issue an order requiring
21 the person to pay any penalty imposed.

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

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

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

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

5 (1) pay the administrative penalty; or

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

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

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

12 (2) giving the commissioner a bond in a form approved
13 by the commissioner that:

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

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

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

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

25 Sec. 1958.258. REMITTANCE OF PENALTY AND INTEREST OR
26 RELEASE OF BOND. If after judicial review the administrative
27 penalty is reduced or is not upheld by the court, the commissioner

1 shall:

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

5 (2) execute a release of the bond, if the person gave a
6 bond.

7 [Sections 1958.259-1958.300 reserved for expansion]

8 SUBCHAPTER G. OTHER PENALTIES; ENFORCEMENT PROVISIONS;

9 EXEMPTIONS FROM CIVIL LIABILITY

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

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

17 Sec. 1958.302. INJUNCTIVE RELIEF. The commissioner may
18 request the attorney general or the district, county, or city
19 attorney having jurisdiction to bring an action for a restraining
20 order, injunction, or other relief the court determines is
21 appropriate if it appears to the department that a person is
22 violating or has violated this chapter or a rule adopted under this
23 chapter.

24 Sec. 1958.303. EXEMPTION FROM CIVIL LIABILITY FOR CERTAIN
25 PROPERTY OWNERS. A property owner is not liable for damages related
26 to mold remediation on a property if:

27 (1) a certificate of mold remediation has been issued

1 under this chapter for that property; and

2 (2) the damages accrued on or before the date of the
3 issuance of the certificate.

4 Sec. 1958.304. EXEMPTION FROM CIVIL LIABILITY FOR CERTAIN
5 GOVERNMENTAL ENTITIES. A person is not liable in a civil lawsuit
6 for damages related to a decision to allow occupancy of a property
7 after mold remediation has been performed on the property if:

8 (1) a certificate of mold remediation has been issued
9 under this chapter for the property;

10 (2) the property is owned or occupied by a
11 governmental entity, including a school; and

12 (3) the decision was made by the owner, occupier, or
13 any person authorized by the owner or occupier to make the decision.

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

16 Art. 21.21-11. PROHIBITION OF CERTAIN UNDERWRITING
17 DECISIONS BASED ON PREVIOUS MOLD CLAIM OR DAMAGE

18 Sec. 1. DEFINITIONS. In this article:

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

27 (A) an eligible surplus lines insurer regulated

1 under Chapter 981;

2 (B) the Texas Windstorm Insurance Association
3 under Article 21.49; or

4 (C) the FAIR Plan Association under Article
5 21.49A.

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

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

12 (4) "Residential property insurance" means insurance
13 against damage to or loss of real or tangible personal property at a
14 fixed location provided in a homeowners insurance policy or
15 residential fire and allied lines insurance policy.

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

18 Sec. 3. PROHIBITION. An insurer may not make an
19 underwriting decision regarding a residential property insurance
20 policy based on previous mold damage or a claim for mold damage if:

21 (1) the applicant for insurance coverage has property
22 eligible for coverage under a residential property policy;

23 (2) the property has had mold damage;

24 (3) mold remediation has been performed on the
25 property; and

26 (4) the property was:

27 (A) remediated, as evidenced by a certificate of

1 mold remediation issued to the property owner under Section
2 1958.154, Occupations Code, that establishes that the underlying
3 cause of the mold at the property has been remediated; or

4 (B) inspected by an independent assessor or
5 adjustor who determined, based on the inspection, that the property
6 does not contain evidence of mold damage.

7 Sec. 4. RULES. The commissioner shall adopt rules as
8 necessary to implement this article.

9 Sec. 5. PENALTY. An insurer that violates this article is
10 subject, after notice and opportunity for hearing, to sanctions as
11 provided by Chapters 82, 83, and 84 of this code.

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

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

17 (b) A person is not required to comply with Section
18 1958.101(a), Occupations Code, as added by this Act, until
19 appropriate rules have been adopted under Section 3 of this Act.

President of the Senate

Speaker of the House

I certify that H.B. No. 329 was passed by the House on April 30, 2003, by a non-record vote; that the House refused to concur in Senate amendments to H.B. No. 329 on May 28, 2003, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 329 on June 1, 2003, by a non-record vote.

Chief Clerk of the House

I certify that H.B. No. 329 was passed by the Senate, with amendments, on May 26, 2003, by a viva-voce vote; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 329 on June 1, 2003, by a viva-voce vote.

Secretary of the Senate

APPROVED: _____

Date

Governor