

By: Naishtat, Seaman, Raymond, Madden

H.B. No. 329

Substitute the following for H.B. No. 329:

By: Raymond

C.S.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, or replacement of
15 plumbing, heating, ventilation, air conditioning, or electrical
16 systems and 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 if the managing agent or employee
21 engages in the business of performing mold assessment or mold
22 remediation for the public.

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

27 Sec. 1958.103. RULES REGARDING LICENSE APPLICATION. The

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

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

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

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

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

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

19 [Sections 1958.107-1958.150 reserved for expansion]

20 SUBCHAPTER D. PRACTICE BY LICENSE HOLDER

21 Sec. 1958.151. NOTICE; CERTIFICATE OF MOLD REMEDIATION.

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

26 (b) Not later than the 10th day after the date on which a
27 license holder completes mold remediation at a property, the

1 license holder shall provide a certificate of mold remediation to
2 the property owner and the department. The certificate must
3 include a statement by the license holder that, based on visual,
4 procedural, and analytical evaluation, the mold contamination
5 identified for the project has been remediated as outlined in the
6 mold management plan or remediation protocol.

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

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

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

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

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

26 Sec. 1958.152. CONFLICT OF INTEREST. (a) A license holder
27 may not perform both mold assessment and mold remediation on the

1 same project.

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

5 Sec. 1958.153. MOLD REMEDIATION IN SMALL AREAS. (a) This
6 section applies if mold remediation is performed in an area in which
7 the mold contamination affects a total surface area for the project
8 of 10 square feet or less.

9 (b) The license holder shall perform a mold remediation
10 under this section by following:

11 (1) United States Environmental Protection Agency
12 guidelines set forth, as of March 1, 2003, in the Environmental
13 Protection Agency's publication titled "Mold Remediation in
14 Schools and Commercial Buildings"; or

15 (2) later United States Environmental Protection
16 Agency guidelines adopted by the board.

17 (c) The notice requirement under Section 1958.151(a) does
18 not apply to a remediation performed under this section.

19 Sec. 1958.154. MOLD REMEDIATOR LICENSING AND
20 RESPONSIBILITIES. A mold remediator must maintain a file regarding
21 each mold remediation for a minimum of three years from the date of
22 completion of the mold remediation and make such file available for
23 inspection by the department or any law enforcement entity. The
24 file must contain such material as the department may determine,
25 and must also include photographic evidence of the scene of the mold
26 remediation taken before and after the remediation, the written
27 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 1958.155-1958.200 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:

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

16 [Sections 1958.202-1958.250 reserved for expansion]

17 SUBCHAPTER F. ADMINISTRATIVE PENALTY

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

22 Sec. 1958.252. AMOUNT OF PENALTY. (a) The amount of an
23 administrative penalty may not exceed \$5,000 a day for each
24 violation. Each day a violation continues under Section 1958.101
25 or 1958.152 may be considered a separate violation for purposes of
26 imposing a penalty.

27 (b) In determining the amount of the penalty, the

1 commissioner shall consider:

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

4 (2) the seriousness of the violation;

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

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

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

9 Sec. 1958.253. EXCEPTION TO ADMINISTRATIVE PENALTY. (a)

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

16 (b) This section does not apply to a violation alleged under
17 Section 1958.101 or 1958.152.

18 Sec. 1958.254. NOTICE; OPPORTUNITY FOR HEARING; ORDER. (a)

19 The commissioner may impose an administrative penalty under this
20 subchapter only after the person charged with a violation is given a
21 written notice and the opportunity for a hearing.

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

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

27 (1) the occurrence of the violation; and

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

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

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

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

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

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

17 (1) pay the administrative penalty; or

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

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

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

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

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

27 (B) is effective until judicial review of the

1 commissioner's decision or order is final.

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

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

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

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

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

19 [Sections 1958.259-1958.300 reserved for expansion]

20 SUBCHAPTER G. OTHER PENALTIES; ENFORCEMENT PROVISIONS

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

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

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

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

10 Art. 21.21-11. PROHIBITION OF CERTAIN UNDERWRITING OR
11 RATING DECISIONS BASED ON PREVIOUS WATER OR MOLD CLAIM

12 Sec. 1. DEFINITIONS. In this article:

13 (1) "Insurer" means an insurer authorized to write
14 residential property insurance in this state.

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

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

21 (4) "Residential property insurance" means insurance
22 against damage to or loss of real or tangible personal property at a
23 fixed location provided in a homeowners insurance policy or
24 residential fire and allied lines insurance policy.

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

27 Sec. 3. PROHIBITION. An insurer may not make an

1 underwriting or rating decision regarding a residential property
2 insurance policy based in whole or in part on whether:

3 (1) the applicant for insurance has made a previous
4 claim under any residential property policy for damage caused by
5 water or mold;

6 (2) mold remediation has been performed on the claim;

7 (3) a certificate of mold remediation established
8 under Chapter 1958, Occupations Code, has been issued to the
9 property owner; and

10 (4) the property was inspected by an independent
11 assessor or adjustor that the property does not contain evidence of
12 mold damage.

13 Sec. 4. RULES. The commissioner shall adopt rules as
14 necessary to implement this article.

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

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

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

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