

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of mold remediation and other mold-related activities; providing civil, administrative, and criminal penalties.

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

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

CHAPTER 1958. MOLD REMEDIATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1958.001. SHORT TITLE. This chapter may be cited as the Texas Mold Remediation Licensing Act.

Sec. 1958.002. SCOPE OF CHAPTER. (a) This chapter applies to:

(1) any mold-related activity performed by a third party for compensation; and

(2) any mold-related activity performed in a facility owned or leased by the state or by a county or a city.

(b) An activity described in Subsection (a) may be performed only by a person licensed under this chapter.

Sec. 1958.003. DEFINITIONS. In this chapter:

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

(2) "Certified industrial hygienist" means an individual certified by the American Board of Industrial Hygiene as a certified industrial hygienist and whose certification has not expired or been suspended or revoked.

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

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

4 (5) "Indoor air quality factors" means:

5 (A) physical parameters of an indoor air
6 environment, including temperature, moisture content, airflow, and
7 pressure;

8 (B) contaminants of any origin likely to produce
9 adverse effects in an indoor environment including gases, vapors,
10 aerosols, or particulates; and

11 (C) major influences, including contaminant
12 sources and their transport mechanisms, and occupant
13 sensitivities.

14 (6) "Licensee" means an individual licensed to engage
15 in a business or profession listed under Section 1958.101(a) or, if
16 the licensee is a company, the officers or partners licensed to
17 engage in a business or profession listed under Section 1958.101(a).

18 (7) "Mold" means any fungi or related products or
19 parts, including spores, hyphae, and mycotoxins.

20 (8) "Mold analysis company" means a person, other than
21 an individual, that performs mold and mold-related analyses for
22 compensation.

23 (9) "Mold assessment" means the performance of mold
24 assessments, investigations, or surveys; the development of mold
25 management plans or response actions; or the collection or analysis
26 of mold samples.

27 (10) "Mold assessment company" means a person, other

1 than an individual, that performs mold assessments for
2 compensation.

3 (11) "Mold assessment consultant" means an individual
4 who performs mold assessments for compensation.

5 (12) "Mold assessment technician" means an individual
6 who performs mold assessments under the supervision of a licensed
7 mold assessment consultant and who is an employee of a mold
8 assessment company or a mold assessment consultant.

9 (13) "Mold remediation" means the removal, cleaning,
10 or other treatment of mold or mold-contaminated matter, live or
11 dead, that was not intended to be grown, or purposely grown, at that
12 location.

13 (14) "Mold remediation company" means a person, other
14 than an individual, that performs mold remediation for
15 compensation.

16 (15) "Mold remediation contractor" means an
17 individual who performs mold remediation for compensation.

18 (16) "Mold remediation supervisor" means an
19 individual who performs mold remediation under the supervision of a
20 licensed mold remediation contractor and who is an employee of a
21 mold remediation company or a mold remediation contractor.

22 (17) "Mold-related activities" means the performance
23 of mold assessments or mold remediation or any other activities
24 conducted to assess or remediate mold.

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

26 Sec. 1958.051. ADOPTION OF RULES; AUTHORITY TO CONTRACT.

27 (a) The board shall adopt substantive and procedural rules as

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

3 (b) The board by rule shall establish procedures to be
4 followed if, in the opinion of the department following a site
5 inspection, there is a danger or potential danger to the occupants
6 of a building, workers in a building or facility, or the general
7 public.

8 (c) The department may adopt rules under this chapter to
9 effect reciprocity agreements with other states.

10 (d) The department may contract with any qualified person to
11 perform inspections necessary to enforce the provisions of this
12 chapter.

13 Sec. 1958.052. STANDARDS FOR MOLD-RELATED ACTIVITIES. The
14 board by rule shall adopt minimum standards for conducting
15 mold-related activities.

16 Sec. 1958.053. MOLD REMEDIATION PROCEDURES. The board
17 shall adopt rules to ensure proper and adequate procedures for mold
18 remediation, including rules specifying:

19 (1) any additional procedures beyond those required
20 under Section 1958.257 that are required to be addressed in the
21 written standard operating procedures for mold remediation that
22 must be prepared and followed by any licensee conducting mold
23 remediation;

24 (2) any other requirements or procedures that the
25 board determines are necessary to be included in the scope of work
26 analysis required under Section 1958.254(a) and that the board
27 determines are necessary to implement the scope of work analysis;

1 (3) any other requirements or procedures that the
2 board determines are necessary to be included in the work plan
3 required under Section 1958.254(b), including the elements of the
4 work plan such as safety plans, contractor standard operating
5 procedures, specific methods of removal for each type of
6 remediation required for the project, estimated start and finish
7 dates of the project, and the type of personal protective equipment
8 to be used on the job, and any other requirements or procedures that
9 the board determines are necessary to implement the work plan;

10 (4) minimum standards for containment procedures to be
11 used in mold remediation activities;

12 (5) any required safety standards mandated or
13 recommended by federal, state, or other jurisdictions or
14 organizations;

15 (6) any required equipment and equipment maintenance
16 standards;

17 (7) any necessary periodic medical monitoring of
18 licensees; and

19 (8) necessary project documentation and records to be
20 maintained at the job site and records to be maintained at the
21 licensee's place of business.

22 Sec. 1958.054. PUBLIC EDUCATION PROGRAM. (a) The
23 department shall conduct a statewide public education and outreach
24 program regarding the importance of and ways to improve air quality
25 in buildings, including the importance of and the ways to
26 recognize, prevent, control, and mitigate mold occurrence and other
27 indoor air quality factors that have an adverse impact on human

1 health.

2 (b) The program may include the development and
3 distribution of information to the public concerning indoor air
4 quality and mold, educational programs, informational or
5 educational exhibits, and any other methods of education or
6 communication that the department deems appropriate.

7 SUBCHAPTER C. LICENSING; TEMPORARY CERTIFICATION

8 Sec. 1958.101. LICENSE REQUIRED; EXEMPTION. (a) Unless a
9 person holds a license issued by the department under Section
10 1958.103, the person may not act as or purport to be:

- 11 (1) a mold analysis company;
- 12 (2) a mold assessment company;
- 13 (3) a mold assessment consultant;
- 14 (4) a mold assessment technician;
- 15 (5) a mold remediation company;
- 16 (6) a mold remediation contractor;
- 17 (7) a mold remediation supervisor; or
- 18 (8) a person that, by any other title or occupation not
19 described in this subsection, engages in mold assessment, mold
20 remediation, or mold analysis.

21 (b) A mold training provider must obtain a license in
22 accordance with Section 1958.103.

23 (c) This section does not apply to an individual licensed as
24 a certified industrial hygienist.

25 Sec. 1958.102. TRAINING REQUIRED FOR LICENSE. A person may
26 not be licensed to engage in a business or profession listed under
27 Section 1958.101(a) unless the person completes all training

1 required by board rule.

2 Sec. 1958.103. ISSUANCE, TYPES OF LICENSES. Persons that
3 meet the requirements for licensing under this chapter, and any
4 education, experience, or other requirements established by board
5 rule, shall be licensed by the department to perform those
6 activities that are authorized under each of the following license
7 types:

8 (1) A person, other than an individual, that performs
9 mold and mold-related analyses for compensation must be licensed as
10 a mold analysis company.

11 (2) A person, other than an individual, that performs
12 mold assessments for compensation must be licensed as a mold
13 assessment company.

14 (3) An individual who performs mold assessments for
15 compensation must be licensed as a mold assessment consultant.

16 (4) An individual who performs mold assessment under
17 the supervision of a licensed mold assessment consultant must be
18 licensed as a mold assessment technician.

19 (5) A person, other than an individual, that performs
20 mold remediation for compensation must be licensed as a mold
21 remediation company.

22 (6) An individual who performs mold remediation for
23 compensation must be licensed as a mold remediation contractor.

24 (7) An individual who performs mold remediation under
25 the supervision of a licensed mold remediation contractor must be
26 licensed as a mold remediation supervisor.

27 (8) A person that offers and conducts mold assessment,

1 mold remediation, or mold analysis training for the fulfillment of
2 specific training requirements that are a prerequisite to licensing
3 must be licensed as a mold training provider.

4 Sec. 1958.104. APPLICATION FOR LICENSE. (a) An applicant
5 for a license issued under Section 1958.103 must apply to the
6 department on the form prescribed by the department.

7 (b) The application form must be signed by the applicant and
8 must include, where applicable:

9 (1) the business name and address of the applicant;

10 (2) personal history information, business records,
11 and other relevant facts as required by the department and, for an
12 applicant for a license to engage in a business or profession listed
13 in Section 1958.101, evidence of proof of compliance with the
14 insurance and incorporation requirements provided under Section
15 1958.107; and

16 (3) a sample of the applicant's fingerprints and a
17 recent passport color photograph.

18 (c) The completed application must be notarized.

19 (d) An applicant must pay a nonrefundable application fee
20 set by the board for each application submitted.

21 (e) The department may, at any time after the filing of the
22 application and before the expiration of the license, require
23 additional written information and assurances from the applicant or
24 licensee and may make any inspections or require the production of
25 any documentary or other evidence that the department considers
26 necessary to determine whether the license should be granted,
27 delayed, or denied or whether the license should be modified,

1 suspended, or revoked.

2 Sec. 1958.105. LICENSE FEES; OTHER FEES. (a) The board by
3 rule shall adopt a schedule of fees as set forth in this section and
4 any other fees reasonable and necessary to implement the provisions
5 of this chapter. The fees shall be collected by the department and
6 shall be deposited with the comptroller in the general revenue fund
7 to the credit of an account that may be used only by the department
8 for the purposes of this chapter.

9 (b) License fees may not exceed the following amounts:

- 10 (1) \$600 for a mold analysis company license;
11 (2) \$600 for a mold assessment company license;
12 (3) \$500 for a mold assessment consultant license;
13 (4) \$300 for a mold assessment technician license;
14 (5) \$600 for a mold remediation company license;
15 (6) \$500 for a mold remediation contractor license;
16 (7) \$300 for a mold remediation supervisor license;

17 and

- 18 (8) \$600 for a mold training provider license.

19 Sec. 1958.106. QUALIFICATIONS FOR LICENSE. (a) To qualify
20 for a license as a mold assessment consultant, mold assessment
21 technician, mold remediation contractor, mold remediation
22 supervisor, or mold training provider, an applicant must:

- 23 (1) be at least 18 years of age;
24 (2) be a citizen of the United States;
25 (3) be a resident of the state;
26 (4) be trustworthy and of a moral character that
27 reasonably ensures that the applicant will conduct the business of

1 the mold-related activity for which the applicant is seeking
2 licensure fairly and in good faith and without detriment to any
3 member of the public;

4 (5) have never been convicted of a felony or, if
5 convicted of a felony, must have received a full pardon from that
6 conviction and otherwise be relieved from any disabilities
7 connected with the conviction;

8 (6) possess sufficient knowledge and training or
9 experience to engage in the business of the mold-related activity
10 for which the applicant is seeking licensure competently and
11 without detriment to any member of the public;

12 (7) have successfully passed the license examination
13 adopted or approved under Section 1958.151;

14 (8) have successfully completed the training
15 requirements under Section 1958.102; and

16 (9) have complied with the insurance and other
17 requirements under Section 1958.107.

18 (b) To qualify for a license as a mold assessment company,
19 mold remediation company, or mold analysis company, the applicant
20 company must:

21 (1) be a corporation or other business entity
22 organized under the laws of this state or any other state or
23 territory of the United States;

24 (2) be admitted to conduct business in this state by
25 the secretary of state, if so required;

26 (3) be organized and operating for the purpose of
27 conducting the activity for which the company is seeking a license;

1 (4) have at least one officer of the corporation or one
2 active partner of the partnership and all other persons performing
3 the activity for which the company is seeking licensure on behalf of
4 the company in this state individually licensed or applying
5 individually for a license from the department separately from the
6 corporation or partnership; and

7 (5) have complied with the insurance and other
8 requirements under Section 1958.107.

9 Sec. 1958.107. CERTIFICATES OF INCORPORATION AND
10 INSURANCE. (a) To be issued a license under this chapter, an
11 applicant must also provide, as applicable:

12 (1) a certificate of good standing issued by the
13 secretary of state, if the applicant is a corporation or other
14 business entity;

15 (2) if the applicant is a foreign corporation, a
16 certificate from the secretary of state authorizing the applicant
17 to conduct business in this state;

18 (3) a State of Texas sales tax number; and

19 (4) a certificate of insurance or other proof of
20 insurance issued for the purpose of licensing under this chapter
21 that demonstrates:

22 (A) occurrence-based commercial general
23 liability pollution insurance with mold remediation included with a
24 minimum coverage of \$1 million per occurrence and at least \$2
25 million aggregate coverage for any person applying for a license as
26 a mold remediation company or a mold remediation contractor, or
27 coverage under such policy as an employee of the mold remediation

1 company or mold remediation contractor for any person applying as a
2 mold remediation supervisor;

3 (B) professional liability insurance coverage
4 for errors and omissions, in an amount and with a deductible as
5 required by the department, for any mold training provider, mold
6 assessment company, mold assessment consultant, or mold analysis
7 company applying for a license under this chapter, or coverage
8 under such policy as an employee of the mold assessment company,
9 mold assessment consultant, or mold analysis company for any person
10 applying as a mold assessment technician;

11 (C) workers' compensation insurance issued by a
12 company authorized and licensed to issue workers' compensation
13 insurance in the state and written in the state on the Texas form,
14 or evidence of self-insurance; and

15 (D) commercial automobile liability coverage in
16 an amount required by the department.

17 (b) A licensee must continuously maintain all applicable
18 insurance required under this section for the license to remain
19 effective. Failure to maintain the applicable insurance required
20 under this section will result in immediate forfeiture of the
21 license.

22 Sec. 1958.108. LICENSES SUBJECT TO RULES AND ORDERS. The
23 terms and conditions of licenses are subject to rules adopted or
24 orders issued by the board in accordance with this chapter.

25 Sec. 1958.109. LICENSE NOT ASSIGNABLE. A license issued
26 under this chapter may not be assigned to another person.

27 Sec. 1958.110. LICENSE REPLACEMENT. A licensee may request

1 a replacement license certificate by completing and submitting an
2 application as prescribed by the board.

3 Sec. 1958.111. PROVISIONAL LICENSE. (a) The department
4 may grant a provisional license to an applicant currently licensed
5 or registered in another jurisdiction who is applying for a license
6 in this state to engage in a business or profession listed under
7 Section 1958.101(a) and who:

8 (1) has been licensed or registered in good standing
9 to perform the relevant mold-related activity for at least two
10 years in the other jurisdiction, including a foreign country, if
11 the jurisdiction has licensing or registration requirements
12 substantially equivalent to the requirements of this chapter;

13 (2) has passed a national or other examination
14 recognized by the department relating to the relevant mold-related
15 activity in this state; and

16 (3) is sponsored by a person licensed by the
17 department under this chapter with whom the provisional license
18 holder will practice during the time the person holds the
19 provisional license.

20 (b) The department may waive the requirement of Subsection
21 (a)(3) for an applicant if the department determines that
22 compliance with that subsection would be a hardship to the
23 applicant.

24 (c) A provisional license is valid until the date the
25 department approves or denies the provisional license holder's
26 application for licensing. The department shall issue a license
27 under this chapter to the provisional license holder if the

1 provisional license holder is eligible to be licensed under Section
2 1958.106 and satisfies any other applicable licensing requirements
3 under this chapter.

4 (d) The department shall approve or deny a provisional
5 licensee's application for a license to engage in a business or
6 profession listed under Section 1958.101(a) not later than the
7 180th day after the date the provisional license is issued. The
8 department may extend the 180-day period if the results of an
9 examination have not been received by the department before the end
10 of that period.

11 (e) The department may establish a fee for a provisional
12 license in an amount reasonable and necessary to cover the cost of
13 issuing the license.

14 Sec. 1958.112. REGISTRATION FOR TRAINEES. (a) A trainee
15 for mold assessment technician or mold remediation supervisor must
16 register with the department for a temporary certificate under this
17 section. An applicant for the certificate must apply to the
18 department on a form prescribed by the board. The form must be
19 accompanied by a nonrefundable registration fee set by the board.

20 (b) A temporary certificate may be issued under this section
21 only for educational and training purposes. The holder of a
22 temporary certificate may train only under the direction and
23 sponsorship of a person licensed for the applicable mold-
24 assessment or mold-remediation activity.

25 (c) The sponsor must attest, on a form prescribed by the
26 board, that the trainee is an employee of and under the supervision
27 and control of the sponsor, that the sponsor is in compliance with

1 the insurance and other requirements of this chapter, and that the
2 trainee as an employee of the sponsor is in compliance with the
3 insurance and other requirements of this chapter.

4 (d) A temporary certificate expires on the 180th day after
5 the date of issuance and may be renewed once on application to the
6 department. A person may not hold more than two consecutive
7 temporary certificates.

8 (e) Each person who holds a temporary certificate under this
9 section must comply with the insurance requirements under Section
10 1958.107 and must meet the requirements for licensing under Section
11 1958.106(1)-(5).

12 SUBCHAPTER D. LICENSE EXAMINATION

13 Sec. 1958.151. EXAMINATION REQUIREMENT. (a) A person may
14 not receive a license for a business or profession licensed under
15 Section 1958.101 unless the person passes an examination required
16 for the license.

17 (b) The board shall adopt or approve examinations that
18 applicants must pass in order to be licensed under this chapter.

19 (c) The board may require or authorize the use of
20 standardized examinations for licensing under this chapter and may
21 set fees for the administration of the examinations.

22 Sec. 1958.152. NOTIFICATION OF EXAMINATION RESULTS.

23 (a) Not later than the 30th day after the date a person takes a
24 licensing examination under this chapter, the department shall
25 notify the person of the results of the examination.

26 (b) If the examination is graded or reviewed by a testing
27 service:

1 (1) the department shall notify the person of the
2 results of the examination not later than the 14th day after the
3 date the department receives the results from the testing service;
4 and

5 (2) if notice of the examination results will be
6 delayed for longer than 90 days after the examination date, the
7 department shall notify the person of the reason for the delay
8 before the 90th day.

9 (c) The department may require a testing service to notify a
10 person of the results of the person's examination under Subsection
11 (b).

12 (d) If requested in writing by a person who fails a
13 licensing examination, the department shall provide to the person
14 an analysis of the person's performance on the examination.

15 SUBCHAPTER E. CONTINUING EDUCATION; LICENSE RENEWAL

16 Sec. 1958.201. CONTINUING EDUCATION REQUIREMENT. (a) A
17 licensee must annually complete at least 15 hours of continuing
18 education courses as prescribed by board rule.

19 (b) The courses under this section shall be offered and
20 provided by mold training providers licensed under this chapter.

21 (c) The licensee must submit proof of compliance with the
22 continuing education requirements along with the licensee's
23 license renewal application.

24 Sec. 1958.202. LICENSE RENEWAL. (a) A license issued
25 under this chapter expires on the first anniversary of its
26 effective date unless the license is renewed for a one-year term as
27 provided by Subsection (d).

1 (b) The department by rule may adopt a system under which
2 licenses expire on various dates during the year. For the year in
3 which the license expiration date is changed, the department shall
4 prorate license fees on a monthly basis so that each licensee pays
5 only the portion of the license fee that is allocable to the number
6 of months during which the license is valid. On renewal of the
7 license on the new expiration date, the total license renewal fee is
8 payable.

9 (c) At least one month before the license expires, the
10 department shall send to the licensee, by first class mail to the
11 licensee's last known address, a renewal notice that states:

12 (1) the date on which the current license expires;

13 (2) the date by which the renewal application must be
14 received by the department in order for the renewal to be issued and
15 mailed before the license expires; and

16 (3) the amount of the renewal fee.

17 (d) A licensee may renew a license for a one-year term if,
18 before the license expires, the licensee:

19 (1) is otherwise entitled to be licensed;

20 (2) pays to the department a nonrefundable renewal fee
21 set by the board in an amount not greater than the amount set by the
22 board for an original application under Section 1958.105;

23 (3) submits to the department a renewal application on
24 the form prescribed by the board and proof of compliance with the
25 continuing education requirements under Section 1958.201;

26 (4) has successfully completed all requirements for
27 renewal as provided by this chapter and as required by the board by

1 rule; and

2 (5) has complied with all final orders resulting from
3 violations of this chapter.

4 Sec. 1958.203. EXPIRED LICENSE. (a) A person whose
5 license has expired may not engage in activities that require a
6 license until the license has been renewed.

7 (b) A person whose license has been expired for 90 days or
8 less may renew the license by meeting the requirements of Section
9 1958.202(d), except that the renewal fee shall be equal to 1-1/2
10 times the normally required renewal fee.

11 (c) A person whose license has been expired for more than 90
12 days but less than one year may renew the license by meeting the
13 requirements of Section 1958.202(d), except that the renewal fee
14 shall be equal to twice the normally required renewal fee.

15 (d) A person whose license has been expired for one year or
16 more may not renew the license. The person may obtain a new license
17 by complying with the requirements and procedures, including the
18 examination requirements, for obtaining an original license.

19 Sec. 1958.204. RENEWAL OF EXPIRED LICENSE BY NONRESIDENT
20 LICENSEES. (a) A person may renew without examination an expired
21 license if the person:

22 (1) was formerly licensed in this state to engage in a
23 mod-related activity required to be licensed under this chapter;

24 (2) moved to another state and is currently licensed
25 in good standing with the other state to conduct the activity; and

26 (3) has practiced the activity in the other state for
27 the two years preceding the date of application.

1 (b) The person must pay to the department a fee that is equal
2 to twice the normally required renewal fee for the license.

3 SUBCHAPTER F. PROFESSIONAL DUTIES AND CONDUCT

4 Sec. 1958.251. DUTY TO ENSURE EMPLOYEE QUALIFICATIONS AND
5 PROTECTION. A licensee engaged in any mold-related activity shall
6 ensure that each employee licensee who will be involved in or
7 responsible for the activity:

8 (1) is familiar with all relevant federal, state, and
9 local standards;

10 (2) has completed the applicable course of instruction
11 adopted or approved by the board and any continuing education
12 requirements adopted by the board; and

13 (3) is supplied with approved equipment in good
14 working order for the employee's protection and for the protection
15 of the public and the environment.

16 Sec. 1958.252. PROHIBITION ON MULTIPLE SERVICES THAT CREATE
17 CONFLICT OF INTEREST. A licensee may perform only one of the
18 following activities on the same project:

19 (1) mold assessment;

20 (2) mold remediation; or

21 (3) mold or mold-related analysis.

22 Sec. 1958.253. REQUIRED RECORDS. (a) A licensee shall:

23 (1) keep records, as prescribed by board rule, of each
24 mold-related activity that the licensee performs including:

25 (A) documentation and records to be maintained at
26 the job site; and

27 (B) permanent project records to be maintained at

1 the licensee's place of business; and

2 (2) make the records available to the department on
3 request.

4 (b) A licensee must keep records required by this section
5 for the period prescribed by board rule.

6 Sec. 1958.254. SCOPE OF WORK ANALYSIS; WORK PLAN. (a) A
7 scope of work analysis shall be prepared for each mold remediation
8 project by the mold remediation company or mold remediation
9 contractor. This scope of work document shall be provided to the
10 client or the client's representative either in the bidding phase
11 of the project or before the mold remediation begins and must
12 include a specification of:

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

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

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

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

20 (b) A work plan providing instructions for the remediation
21 efforts to be performed shall be developed by the mold remediation
22 company or mold remediation contractor for each project. To allow
23 time for review and changes as needed, the work plan shall be
24 provided to the client and, if applicable, to the client's
25 third-party consultant before the mold remediation starts. A copy
26 of the plan must be maintained at the job site for constant review
27 by the mold remediation company, mold remediation contractor, and

1 mold remediation supervisor.

2 Sec. 1958.255. ADVERTISING OR COMPETITIVE BIDDING.

3 (a) Advertising or competitive bidding by a licensee that contains
4 false or misleading statements or that results in deceptive
5 practices is prohibited. The board may adopt rules to enforce this
6 section.

7 (b) If the board adopts rules under this section, the board
8 may not:

9 (1) restrict the use of any medium for advertising;

10 (2) restrict the use of a licensee's personal
11 appearance or voice in an advertisement;

12 (3) mandate the size or duration of an advertisement
13 by the licensee; or

14 (4) restrict the use of the licensee's trade name in an
15 advertisement.

16 Sec. 1958.256. REQUIRED NOTIFICATION OF MOLD-RELATED
17 ACTIVITIES. (a) A person engaged in mold-related activities in a
18 public building shall notify the department in writing or
19 electronically at least 10 days before the date the person begins
20 the activities.

21 (b) Notwithstanding Subsection (a), a person may give the
22 required notification orally if the mold-related activity is of an
23 emergency nature.

24 (c) The board shall impose a notification fee to be paid to
25 the department for notification under this section. The board by
26 rule shall determine the amount of the fee and the procedures for
27 payment. The fee is incurred on notification by the person under

1 this section.

2 Sec. 1958.257. STANDARD OPERATING PROCEDURES FOR MOLD
3 REMEDICATION. A person engaged in mold remediation shall develop
4 and follow standard operating procedures, including proper use of
5 personal protective equipment; employee decontamination
6 procedures; employee annual medical monitoring; work area
7 preparation; basic remediation techniques; decontamination
8 techniques including of contents and interior surfaces not directly
9 affected by visible mold; handling of mold remediation waste; use
10 of chemicals for mold remediation; and any other standard operating
11 procedures required by rule by the board.

12 Sec. 1958.258. CODE OF ETHICS. The board by rule shall
13 adopt a code of ethics for persons engaging in mold assessment, mold
14 remediation, and any other activities performed for the purpose of
15 assessing and remediating mold that fosters the education of
16 licensees concerning the ethical, legal, and business principles
17 that should govern their conduct. The code of ethics may address
18 ethical principles and practices common to all of the licensees as
19 well as specialized ethical principles and practices for each of
20 the professions licensed under this article.

21 SUBCHAPTER G. MOLD TRAINING

22 Sec. 1958.301. MOLD TRAINING PROVIDERS. (a) A mold
23 training provider may not offer a course of instruction approved
24 for the purposes of licensure under this chapter unless the
25 provider is licensed by the department under Section 1958.103(8).

26 (b) A mold training provider may not offer or provide
27 training in a course unless the course:

1 (1) is approved by the department as a prerequisite to
2 a license for a business or profession listed under Section
3 1958.101(a); and

4 (2) is offered or provided according to a course
5 schedule approved by the department.

6 (c) A mold training provider must furnish records to the
7 department concerning individuals who have attended a course of
8 instruction that is a prerequisite to licensing under this chapter.

9 Sec. 1958.302. BOARD TO ADOPT RULES. (a) The board shall
10 adopt rules reasonable and necessary to implement Sections
11 1958.301(b) and (c) and Section 1958.303.

12 (b) The board shall adopt any other rules necessary to
13 implement and monitor the mold training program.

14 Sec. 1958.303. TRAINING REQUIREMENTS. The board by rule
15 shall adopt a minimum curriculum and other training requirements
16 for mold training providers licensed under Section 1958.103(8) to
17 train persons who are required to be licensed under this chapter.

18 Sec. 1958.304. WITHDRAWAL OF COURSE APPROVAL. (a) The
19 board may withdraw approval of a course of instruction that the
20 board has previously approved.

21 (b) The withdrawal of approval is effective immediately,
22 and on receipt of notice from the department of the withdrawal of
23 approval, a mold training provider shall cease to offer and provide
24 the course of instruction.

25 SUBCHAPTER H. DISCIPLINARY ACTION

26 Sec. 1958.351. REPRIMAND; MODIFICATION, SUSPENSION, OR
27 REVOCAION OF LICENSE. (a) After providing notice and an

1 opportunity for hearing to a licensee, the department shall
2 reprimand a licensee or modify, suspend, suspend on an emergency
3 basis, or revoke a license issued under this chapter if an act or
4 omission of the licensee meets one of the criteria for departmental
5 action under Subsection (c).

6 (b) If the department suspends a license on an emergency
7 basis, the suspension is effective immediately. The department
8 shall provide an opportunity for a hearing within 20 days after the
9 date of the emergency suspension.

10 (c) The board by rule shall adopt the criteria for
11 departmental action under this section. At a minimum, the criteria
12 must require disciplinary action against a licensee who:

13 (1) commits fraud or deception in obtaining or
14 attempting to obtain a license or a contract to perform
15 mold-related activities;

16 (2) fails at any time to meet the qualifications for a
17 license;

18 (3) violates a rule adopted under this chapter;

19 (4) violates an applicable federal or state standard
20 for performance of mold-related activities; or

21 (5) fails to maintain the records required by this
22 chapter or board rule or fails to provide such records on request by
23 the department.

24 (d) If a license issued under this chapter has been revoked,
25 the individuals or organizations named in the revocation may not
26 reapply for a license for a period of at least five years after the
27 date of revocation.

1 (e) The notice and hearing required by this section shall be
2 conducted in accordance with Section 1958.352.

3 (f) The department may place on probation a person whose
4 license is suspended. If a suspension is probated, the department
5 may require the person to do one or more of the following:

6 (1) report regularly to the department on matters that
7 are the basis of the probation;

8 (2) limit practice to the areas prescribed by the
9 board; and

10 (3) continue or review professional education until
11 the person attains a degree of skill satisfactory to the board in
12 those areas that are the basis of the probation.

13 Sec. 1958.352. NOTICE; ADMINISTRATIVE HEARING; APPEAL. The
14 notice and hearing provisions under Section 1958.351(e) and appeals
15 for judicial review of final administrative decisions issued under
16 Section 1958.355 shall be conducted in accordance with the board's
17 rules for contested case hearings and the applicable provisions of
18 Chapter 2001, Government Code.

19 Sec. 1958.353. COMPLIANCE WITH STANDARDS NOT A DEFENSE.
20 Compliance with any minimum standards adopted by the board under
21 this chapter does not constitute a defense in a civil action for
22 damages arising from any work activity performed in the course of
23 mold-related activities.

24 Sec. 1958.354. CIVIL PENALTY; INJUNCTION. (a) If it
25 appears that a person has violated, is violating, or is threatening
26 to violate a provision of this chapter or a rule adopted or order
27 issued under this chapter, the commissioner may request the

1 attorney general or the district, county, or city attorney where
2 the violation has occurred, is occurring, or may occur to institute
3 a civil suit for:

4 (1) injunctive relief to restrain the person from
5 continuing the violation or threat of violation;

6 (2) the assessment and recovery of a civil penalty; or

7 (3) both injunctive relief and a civil penalty.

8 (b) The penalty may be in an amount not to exceed \$10,000 a
9 day for each violation. Each day a violation occurs or continues to
10 occur is a separate violation for purposes of imposing a penalty.

11 (c) The owner of a public building or an agent of the owner
12 who has contracted with or otherwise permitted a person without a
13 license issued under this chapter to perform in that building any
14 activity for which a license under this chapter is required is
15 subject to the imposition of a civil penalty, and the commissioner
16 may request the institution of a suit for collection of the civil
17 penalty or for injunctive relief, or for both the civil penalty and
18 injunctive relief, as provided by Subsections (a) and (b).

19 (d) In determining the amount of a civil penalty, the court
20 shall consider the person's history of previous violations, the
21 seriousness of the violation, any hazard to the health and safety of
22 the public, and the demonstrated good faith of the person charged.

23 (e) Any civil penalty recovered in a suit instituted by the
24 attorney general under this chapter shall be deposited with the
25 comptroller to the credit of the general revenue fund. Any civil
26 penalty recovered in a suit instituted by a local government under
27 this chapter shall be paid to the local government.

1 Sec. 1958.355. ADMINISTRATIVE PENALTY. (a) If a person
2 violates this chapter or a rule adopted or order issued under this
3 chapter, the commissioner may assess an administrative penalty
4 against the person as provided by this section.

5 (b) The penalty may be in an amount not to exceed \$10,000 for
6 each violation. Each day a violation continues may be considered a
7 separate violation for purposes of the penalty assessment.

8 (c) In determining the amount of an administrative penalty,
9 the commissioner shall consider the person's history of previous
10 violations, the seriousness of the violation, any hazard to the
11 health and safety of the public, and any other matter that justice
12 may require.

13 (d) The administrative penalty may be assessed only after
14 the person charged with the violation has been given the
15 opportunity for a hearing.

16 (e) In the event of a hearing, the commissioner shall make
17 findings of fact and shall issue a written decision about the
18 occurrence of the violation and the amount of the penalty that is
19 warranted.

20 (f) The commissioner may consolidate the hearings with
21 other proceedings.

22 (g) If the person charged with the violation fails to
23 exercise the opportunity for a hearing, the commissioner may assess
24 an administrative penalty after determining that a violation
25 occurred and determining the amount of penalty that is warranted.

26 (h) After making the determinations under Subsection (g),
27 the commissioner shall issue an order requiring that the penalty be

1 paid.

2 (i) Not later than the 30th day after the date of issuance of
3 an order finding that a violation has occurred, the commissioner
4 shall inform the person charged with the violation of the amount of
5 the penalty.

6 (j) Not later than the 30th day after the date the
7 commissioner's decision or order is final as provided by Section
8 2001.144, Government Code, the person shall:

9 (1) pay the penalty in full; or

10 (2) if the person seeks judicial review of either the
11 amount of the penalty or the fact of the violation, or both:

12 (A) forward the amount to the commissioner for
13 placement in an escrow account; or

14 (B) in lieu of payment into escrow, post with the
15 commissioner a bond, in a form approved by the commissioner, for the
16 amount of the penalty that is to remain effective until all judicial
17 review of the order or decision is final.

18 (k) If after judicial review of the decision or order it is
19 determined that the violation did not occur, that the penalty
20 should not be assessed, or that the amount of the penalty should be
21 reduced, the commissioner shall, if the penalty has been paid to the
22 department, remit the appropriate amount to the person with accrued
23 interest not later than the 30th day after the date of the
24 determination. The rate of the interest is the rate charged on
25 loans to depository institutions by the New York Federal Reserve
26 Bank, and the interest shall be paid for the period beginning on the
27 date the penalty was paid and ending on the date the penalty is

1 remitted. If a bond has been posted, the department shall execute a
2 release of the bond.

3 (1) Failure to forward the amount of the penalty to the
4 commissioner within the time provided by Subsection (j) results in
5 a waiver of all rights on the part of the person charged with the
6 violation to contest the determination of a violation or the amount
7 of the penalty.

8 (m) Judicial review of the order or decision of the
9 commissioner imposing a penalty under this subchapter is instituted
10 by filing a petition with a district court in Travis County as
11 provided by Subchapter G, Chapter 2001, Government Code, and is
12 under the substantial evidence rule.

13 (n) Administrative penalties owed under this section may be
14 recovered in a civil action brought by the attorney general at the
15 request of the commissioner.

16 (o) A penalty collected under this section shall be
17 deposited with the comptroller to the credit of the general revenue
18 fund.

19 Sec. 1958.356. CRIMINAL PENALTY. (a) A person who is
20 required to be licensed under this chapter commits an offense if the
21 person:

22 (1) knowingly or intentionally violates this chapter
23 or a rule adopted or order issued under this chapter and the
24 violation results in an endangerment to the public health and
25 safety;

26 (2) engages in mold-related activities without a
27 license issued in accordance with this chapter and has previously

1 been assessed a civil or administrative penalty for engaging in
2 mold-related activities without a license; or

3 (3) fails to keep records as required by Section
4 1958.253 and previously has been assessed a civil or administrative
5 penalty for failing to keep records.

6 (b) An offense under this section is a misdemeanor
7 punishable by:

8 (1) for the first offense, a fine not to exceed
9 \$20,000, confinement in jail for a period of not more than six
10 months, or both the fine and confinement; or

11 (2) for a second or subsequent offense, a fine not to
12 exceed \$25,000, confinement in jail for a period of not more than
13 two years, or both the fine and confinement.

14 SECTION 2. The Texas Board of Health shall adopt rules
15 implementing Chapter 1958, Occupations Code, as added by this Act,
16 not later than January 1, 2004.

17 SECTION 3. This Act takes effect June 1, 2003, if it
18 receives a vote of two-thirds of all the members elected to each
19 house, as provided by Section 39, Article III, Texas Constitution.
20 If this Act does not receive the vote necessary for effect on that
21 date, this Act takes effect September 1, 2003.