

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of mold assessors and remediators;
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) the performance of a mold assessment, investigation, or survey;

(B) the development of a mold management plan or response action; or

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

(7) "Mold remediation" means the removal or other

1 treatment, including preventive activities, of mold or
2 mold-contaminated matter that was not purposely grown at that
3 location.

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

7 (b) This chapter does not apply to routine cleaning when not
8 conducted for the purpose of mold remediation.

9 [Sections 1958.003-1958.050 reserved for expansion]

10 SUBCHAPTER B. POWERS AND DUTIES

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

14 Sec. 1958.052. EDUCATION PROGRAM. (a) The department
15 shall conduct a statewide education and outreach program regarding
16 the health implications of mold growth in indoor environments. The
17 program must include methods to recognize, prevent, and mitigate
18 mold occurrence.

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

21 Sec. 1958.053. GENERAL RULEMAKING AUTHORITY. The board
22 shall adopt substantive and procedural rules as necessary or
23 desirable for the board, department, and commissioner to discharge
24 their powers and duties under this chapter.

25 Sec. 1958.054. RULES REGARDING PERFORMANCE STANDARDS AND
26 WORK PRACTICES. The board by rule shall establish minimum
27 performance standards and work practices for conducting a mold

1 assessment or mold remediation in this state.

2 Sec. 1958.055. FEES. The board shall establish reasonable
3 and necessary fees to administer this chapter, including fees for
4 licenses and examinations. The board shall set the fees in an
5 amount sufficient to recover the costs of administering this
6 chapter.

7 Sec. 1958.056. INSPECTIONS. (a) The department shall
8 conduct inspections as necessary to ensure compliance with this
9 chapter.

10 (b) The board shall adopt rules regarding compliance
11 investigations.

12 Sec. 1958.057. COMPLAINTS. The department shall
13 investigate any complaint regarding mold-related activities.

14 [Sections 1958.058-1958.100 reserved for expansion]

15 SUBCHAPTER C. LICENSE REQUIREMENTS

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

18 (1) mold assessment unless the person holds a mold
19 assessment license; or

20 (2) mold remediation unless the person holds a mold
21 remediation license.

22 (b) The board shall adopt rules regarding:

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

26 (2) renewal requirements for a license issued under
27 this chapter.

1 Sec. 1958.102. EXEMPTIONS. (a) A residential property
2 owner is not required to be licensed under this chapter to perform
3 mold assessment or mold remediation on the owner's property.

4 (b) A residential tenant is not required to be licensed
5 under this chapter to perform mold assessment or mold remediation
6 on the residential property rented by the tenant.

7 (c) A nonresidential property owner, or the employee of that
8 owner, is not required to be licensed under this chapter to perform
9 mold assessment or mold remediation on an apartment building owned
10 by that person that has not more than four dwelling units. The
11 individual performing the work must complete at least two hours of
12 continuing education per year regarding mold.

13 Sec. 1958.103. RULES REGARDING LICENSE APPLICATION. The
14 board shall adopt rules regarding a license application. The board
15 shall adopt rules that establish minimum requirements for a
16 license, including the type, term, qualifications, renewal, and
17 liability insurance requirements for the license.

18 Sec. 1958.104. EXAMINATION. The department may require
19 that an applicant for a license pass a competency examination to
20 qualify for the license.

21 Sec. 1958.105. CONTINUING EDUCATION. (a) The board shall
22 adopt rules regarding continuing education required under this
23 chapter.

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

- 26 (1) accreditation by the department;
27 (2) curriculum and training requirements; and

1 (3) qualifications.

2 Sec. 1958.106. RECIPROCITY. The board may adopt rules that
3 facilitate reciprocity and communication with other states that
4 have a similar licensing program.

5 [Sections 1958.107-1958.150 reserved for expansion]

6 SUBCHAPTER D. PRACTICE BY LICENSE HOLDER

7 Sec. 1958.151. NOTICE OF MOLD REMEDIATION. (a) Not later
8 than the 10th day before the date on which a license holder starts
9 mold remediation at a property, the license holder shall notify the
10 department about the project.

11 (b) Not later than the 10th day after the date on which a
12 license holder completes mold remediation at a property, the
13 license holder shall notify the department that the project has
14 been completed.

15 (c) Except for an emergency, notice to the department under
16 this section must be in writing.

17 (d) The board shall adopt rules to implement this section,
18 including rules:

19 (1) describing the information that must be provided
20 in the notice; and

21 (2) authorizing oral notification to the department in
22 an emergency.

23 Sec. 1958.152. CONFLICT OF INTEREST. A license holder may
24 not perform both mold assessment and mold remediation at a
25 property.

26 [Sections 1958.153-1958.200 reserved for expansion]

27 SUBCHAPTER E. DISCIPLINARY PROCEDURES

1 Sec. 1958.201. DISCIPLINARY ACTION. If a license holder
2 violates this chapter or an order or rule adopted under this
3 chapter, the department, after providing the person with notice and
4 an opportunity for a hearing, shall:

- 5 (1) revoke, suspend, or refuse to renew the license;
6 (2) impose an administrative penalty;
7 (3) bring an action to collect a civil penalty; or
8 (4) reprimand the person.

9 [Sections 1958.202-1958.250 reserved for expansion]

10 SUBCHAPTER F. ADMINISTRATIVE PENALTY

11 Sec. 1958.251. IMPOSITION OF ADMINISTRATIVE PENALTY. The
12 commissioner may impose an administrative penalty on a person who
13 violates this chapter or a rule adopted or order issued under this
14 chapter.

15 Sec. 1958.252. AMOUNT OF PENALTY. (a) The amount of an
16 administrative penalty may not exceed \$5,000 a day for each
17 violation. Each day a violation continues may be considered a
18 separate violation for purposes of imposing a penalty.

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

- 21 (1) the seriousness of the violation;
22 (2) any hazard created to the health and safety of the
23 public;
24 (3) the person's history of previous violations; and
25 (4) any other matter that justice may require.

26 Sec. 1958.253. OPPORTUNITY FOR HEARING; ORDER. (a) The
27 commissioner may impose an administrative penalty under this

1 subchapter only after the person charged with a violation is given
2 the opportunity for a hearing.

3 (b) If a hearing is held, the commissioner shall make
4 findings of fact and issue a written decision as to:

5 (1) the occurrence of the violation; and

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

7 (c) If the person charged with a violation fails to exercise
8 the opportunity for a hearing, the commissioner, after determining
9 that a violation occurred and the amount of the penalty that is
10 warranted, may impose a penalty and shall issue an order requiring
11 the person to pay any penalty imposed.

12 (d) Not later than the 30th day after the date an order is
13 issued after determining that a violation occurred, the
14 commissioner shall inform the person charged with the violation of
15 the amount of any penalty imposed.

16 (e) The commissioner may consolidate a hearing under this
17 section with another proceeding.

18 Sec. 1958.254. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.

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

22 (1) pay the administrative penalty; or

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

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

27 (1) paying the penalty to the commissioner for

1 placement in an escrow account; or

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

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

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

7 Sec. 1958.255. COLLECTION OF PENALTY. At the request of the
8 commissioner, the attorney general may bring a civil action to
9 recover an administrative penalty imposed under this subchapter.

10 Sec. 1958.256. JUDICIAL REVIEW. Judicial review of a
11 decision or order of the commissioner imposing a penalty under this
12 subchapter is instituted by filing a petition with a district court
13 in Travis County and is under the substantial evidence rule as
14 provided by Subchapter G, Chapter 2001, Government Code.

15 Sec. 1958.257. REMITTANCE OF PENALTY AND INTEREST OR
16 RELEASE OF BOND. If after judicial review the administrative
17 penalty is reduced or is not upheld by the court, the commissioner
18 shall:

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

22 (2) execute a release of the bond, if the person gave a
23 bond.

24 [Sections 1958.258-1958.300 reserved for expansion]

25 SUBCHAPTER G. OTHER PENALTIES; ENFORCEMENT PROVISIONS

26 Sec. 1958.301. CIVIL PENALTY. (a) A person who violates
27 this chapter or a rule adopted under this chapter is liable for a

1 civil penalty in an amount not to exceed \$2,000 for the first
2 violation or \$10,000 for a second or later violation.

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

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

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

16 SECTION 3. (a) Except as provided by Subsection (b) of this
17 section, this Act takes effect September 1, 2003.

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