

CHAMBER ACTION

1 The Committee on Business Regulation recommends the following:

2
3 **Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to mold assessment and mold remediation;
7 creating pt. IV of ch. 489, F.S.; providing legislative
8 purpose; providing scope of the act; providing exemptions;
9 defining terms; providing for fees relating to licensure
10 of mold assessors and mold remediators; providing for
11 licensure examinations; requiring good moral character, as
12 specified; providing prerequisites to licensure; providing
13 for the licensure of business organizations; providing for
14 qualifying agents; providing for fees; providing
15 responsibilities of primary and secondary qualifying
16 agents and of financially responsible officers;
17 establishing requirements for continuing education;
18 providing that the Construction Industry Licensing Board
19 must approve training courses and training providers for
20 mold assessors and mold remediators; providing for
21 assessing penalties; providing for renewal of licensure;
22 providing for rulemaking; providing for reactivation of
23 licensure; providing for disciplinary proceedings;

24 | establishing prohibitions; providing for penalties;
 25 | prohibiting performing more than one specified activity on
 26 | a given project; creating a technical advisory committee;
 27 | providing for membership, meetings, removal of members;
 28 | setting a quorum; providing for reimbursement for per diem
 29 | and travel expenses; requiring the department to provide
 30 | staff support and to maintain and make available to the
 31 | public the committee minutes and records; providing for
 32 | financial review; providing for notice and opportunity to
 33 | repair mold damage in accordance with the provisions of
 34 | ch. 558; providing a statute of limitations; amending s.
 35 | 489.107, F.S.; adding to the board a member who is a mold
 36 | assessor or mold remediator; providing severability;
 37 | providing an effective date.

38 |
 39 | Be It Enacted by the Legislature of the State of Florida:

40 |
 41 | Section 1. Part IV of chapter 489, Florida Statutes,
 42 | entitled "Mold Assessment and Mold Remediation" and consisting
 43 | of ss. 489.601, 489.602, 489.603, 489.604, 489.605, 489.606,
 44 | 489.607, 489.608, 489.609, 489.61, 489.611, 489.612, 489.613,
 45 | 489.614, 489.615, 489.616, and 489.617, is created.

46 | Section 2. Section 489.601, Florida Statutes, is created
 47 | to read:

48 | 489.601 Legislative purpose.--The Legislature finds it
 49 | necessary in the interest of the public health, safety, and
 50 | welfare in order to prevent damage to the real and personal
 51 | property of the residents of this state and to avert economic

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52 injury to the residents of this state to regulate individuals
 53 and companies that hold themselves out to the public as
 54 qualified to perform mold-related activities.

55 Section 3. Section 489.602, Florida Statutes, is created
 56 to read:

57 489.602 Scope of part.--This part applies only to
 58 individuals and companies conducting mold assessment and mold
 59 remediation for compensation.

60 Section 4. Section 489.603, Florida Statutes, is created
 61 to read:

62 489.603 Exemptions.--This part does not apply to:

63 (1) Individuals or business organizations licensed under
 64 chapter 471, part I of chapter 481, chapter 482, or chapter 489,
 65 or on behalf of an insurer under part VI of chapter 626, when
 66 acting within the scope of their respective licenses.

67 (2) An authorized employee of the United States, this
 68 state, or any municipality, county, or other political
 69 subdivision, public or private school, or private business
 70 organization who has completed mold assessment or mold
 71 remediation training courses approved by the board or a
 72 certification program approved by the board and who is
 73 conducting mold assessment or mold remediation within the scope
 74 of that employment, as long as the employee does not hold out
 75 for hire or otherwise engage in mold assessment or mold
 76 remediation.

77 (3) A full-time employee engaged in routine maintenance of
 78 private buildings, structures, and facilities as long as the

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79 employee does not hold out for hire or otherwise engage in mold
80 assessment or mold remediation.

81 Section 5. Section 489.604, Florida Statutes, is created
82 to read:

83 489.604 Definitions.--As used in this part, the term:

84 (1) "Board" means the Construction Industry Licensing
85 Board.

86 (2) "Business organization" means any partnership,
87 corporation, business trust, joint venture, or other business
88 organization.

89 (3) "Department" means the Department of Business and
90 Professional Regulation.

91 (4) "Mold" means an organism of the class fungi that
92 causes disintegration of organic matter and produces spores. The
93 term "mold" also includes any spores, hyphae, and mycotoxins
94 produced by "mold."

95 (5) "Mold assessment" means:

96 (a) An inspection, investigation, or survey of a dwelling
97 or other structure to provide the owner or occupant with
98 information regarding the presence, identification, or
99 evaluation of mold;

100 (b) The development of a mold management plan or
101 remediation protocol; or

102 (c) The collection or analysis of a mold sample.

103 (6) "Mold assessor" means any person or business
104 organization that performs a mold assessment.

105 (7) "Mold remediation" means the removal, cleaning,
106 sanitizing, demolition, or other treatment, including preventive

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107 activities, of mold or mold-contaminated matter that was not
108 purposely grown at that location.

109 (8) "Mold remediator" means any person or business
110 organization that performs mold remediation. A mold remediator
111 may not perform any work that requires a license under this part
112 unless the mold remediator is also licensed under that chapter.

113 (9) "Primary qualifying agent" means a person who
114 possesses the requisite skill, knowledge, and experience, and
115 has the responsibility, to supervise, direct, manage, and
116 control the mold assessment or mold remediation activities of
117 the business organization with which he or she is connected; who
118 has the responsibility to supervise, direct, manage, and control
119 mold assessment or mold remediation activities; and whose
120 technical and personal qualifications have been determined by
121 investigation and examination as provided in this part, as
122 attested by the department.

123 (10) "Secondary qualifying agent" means a person who
124 possesses the requisite skill, knowledge, and experience, and
125 has the responsibility, to supervise, direct, manage, and
126 control mold assessment and mold remediation activities, and
127 whose technical and personal qualifications have been determined
128 by investigation and examination as provided in this part, as
129 attested by the department.

130 Section 6. Section 489.605, Florida Statutes, is created
131 to read:

132 489.605 Fees.--The board shall, by rule, establish
133 reasonable fees to be paid for applications, examinations,
134 licensing and renewal, recordmaking, and recordkeeping. Fees for

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135 application, initial licensure, license renewal, or license
 136 reactivation for mold assessors or mold remediators may not
 137 exceed \$500 per applicant. The board may, by rule, establish
 138 late renewal penalty fees, in an amount not to exceed the
 139 initial licensure fee.

140 Section 7. Section 489.606, Florida Statutes, is created
 141 to read:

142 489.606 Examination.--

143 (1) A person who desires to be licensed as a mold assessor
 144 or mold remediator must apply to the department for licensure.

145 (2) An applicant may take the licensure examination to
 146 practice in this state as a mold assessor or mold remediator if
 147 the applicant is of good moral character, is a graduate of an
 148 approved course of study in mold assessment or mold remediation,
 149 and has a specific experience record as prescribed by rule.

150 (3) The board shall adopt rules providing for the review
 151 and approval of mold assessment and mold remediation training
 152 programs. The board may adopt rules providing for the acceptance
 153 of the approval and accreditation of schools and courses of
 154 study by nationally accepted accreditation organizations.

155 (4)(a) Good moral character means a personal history of
 156 honesty, fairness, and respect for the rights of others and for
 157 the laws of this state and nation.

158 (b) The board may refuse to certify an applicant for
 159 failure to satisfy this requirement only if:

160 1. The board finds that there is a substantial connection
 161 between the lack of good moral character of the applicant and

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162 the professional responsibilities of a mold assessor or mold
 163 remediator; and

164 2. This finding is supported by clear and convincing
 165 evidence.

166 (c) If an applicant is found to be unqualified for a
 167 license because of a lack of good moral character, the board
 168 must furnish to the applicant a statement containing the
 169 findings of the board, a complete record of the evidence upon
 170 which the determination was based, and a notice of the rights of
 171 the applicant to a rehearing and appeal.

172 Section 8. Section 489.607, Florida Statutes, is created
 173 to read:

174 489.607 Licensure.--The department shall license any
 175 applicant who the board certifies is qualified to practice mold
 176 assessment or mold remediation and who:

177 (1) Pays the initial licensing fee;

178 (2) Submits with the application for licensure as a mold
 179 assessor or a mold remediator evidence that he or she has
 180 successfully completed the board-approved courses as prescribed
 181 by rule;

182 (3) Provides evidence of financial stability; and

183 (4)(a) Passes a department-approved examination of
 184 qualifications and knowledge relating to mold assessment and
 185 mold remediation; or

186 (b) In lieu of passing a department-approved examination,
 187 shows proof that he or she has been certified by an organization
 188 that requires the same testing and examination as the department
 189 requires.

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190 Section 9. Section 489.608, Florida Statutes, is created
191 to read:

192 489.608 Licensure of business organizations; qualifying
193 agents.--

194 (1) If an individual proposes to engage in mold
195 remediation or mold assessment in that individual's own name,
196 the license may be issued only to that individual.

197 (2)(a) If the applicant proposes to engage in mold
198 remediation or mold assessment as a business organization in any
199 name other than the applicant's legal name, the business
200 organization must apply for licensure through a qualifying agent
201 or the individual applicant must apply for licensure under the
202 fictitious name.

203 (b) The application must state the name of the business
204 organization and of each of its partners, the name of the
205 corporation and of each of its officers and directors and the
206 name of each of its stockholders who is also an officer or
207 director, the name of the business trust and of each of its
208 trustees, or the name of such other business organization and of
209 each of its members.

210 1. The application for primary qualifying agent must
211 include an affidavit on a form provided by the department which
212 attests that the applicant's signature is required on all
213 checks, drafts, or payments, regardless of the form of payment,
214 made by the business organization, and that the applicant has
215 final approval authority for all work performed by the business
216 organization.

217 2. The application for financially responsible officer
 218 must include an affidavit on a form provided by the department
 219 which attests that the applicant's signature is required on all
 220 checks, drafts, or payments, regardless of the form of payment,
 221 made by the business organization, and that the applicant has
 222 authority to act for the business organization in all financial
 223 matters.

224 3. The application for secondary qualifying agent must
 225 include an affidavit on a form provided by the department which
 226 attests that the applicant has authority to supervise all mold
 227 assessment or mold remediation work performed by the business
 228 organization as provided in s. 489.614.

229 (c) As a prerequisite to the issuance of a license under
 230 this section, the applicant must submit:

231 1. An affidavit on a form provided by the department which
 232 attests that the applicant has obtained workers' compensation
 233 insurance as required by chapter 440, public liability
 234 insurance, and property damage insurance, in amounts determined
 235 by board rule. Such insurance shall include coverage for an
 236 applicant's failure to properly perform mold assessment or mold
 237 remediation. The department shall, by rule, establish a
 238 procedure to verify the accuracy of such affidavits based upon a
 239 random sample method.

240 2. Evidence of financial responsibility. The board shall
 241 adopt rules to determine financial responsibility which specify
 242 grounds on which the department may deny licensure. Such
 243 criteria must include, but need not be limited to, credit
 244 history and limits of bondability and credit.

245
246 Continuing proof of all insurance coverages referenced in this
247 paragraph shall be a requisite condition to maintaining a
248 license issued under this part.

249 (d) A joint venture, including a joint venture composed of
250 qualified business organizations, is a separate and distinct
251 organization that must be qualified in accordance with
252 department rules.

253 (e) A license that is issued upon application of a
254 business organization must be in the name of the business
255 organization, and the name of the qualifying agent must be noted
256 thereon. If there is a change in any information that is
257 required to be stated on the application, the business
258 organization shall, within 45 days after the change occurs, mail
259 the correct information to the department.

260 (f) The applicant must furnish evidence of statutory
261 compliance if a fictitious name is used, notwithstanding s.
262 865.09(7).

263 (3) The qualifying agent must be licensed under this part
264 in order for the business organization to be licensed. If the
265 qualifying agent ceases to be affiliated with the business
266 organization, the agent must so inform the department. In
267 addition, if the qualifying agent is the only licensed
268 individual affiliated with the business organization, the
269 business organization must notify the department of the
270 termination of the qualifying agent, and the business
271 organization has 60 days after the termination of the qualifying
272 agent's affiliation with the business organization in which to

273 employ another qualifying agent. The business organization may
274 not engage in mold assessment or mold remediation until a
275 qualifying agent is employed, unless the department has granted
276 a temporary nonrenewable license to the financially responsible
277 officer, the president, a partner, or, in the case of a limited
278 partnership, the general partner, who assumes all
279 responsibilities of a primary qualifying agent for the business
280 organization. This temporary license allows the business
281 organization to proceed only with incomplete contracts.

282 (4)(a) The qualifying agent shall inform the department in
283 writing if the agent proposes to engage in mold assessment or
284 mold remediation in the agent's own name or in affiliation with
285 another business organization, and the agent or the new business
286 organization shall supply the same information to the department
287 as is required of initial applicants under this part.

288 (b) Upon a favorable determination by the board, after
289 investigation of the financial responsibility, credit, and
290 business reputation of the qualifying agent and the new business
291 organization, the board shall issue, without any examination, a
292 new license in the business organization's name, and the name of
293 the qualifying agent must be noted thereon.

294 (5)(a) Each mold assessor or mold remediator shall affix
295 the mold assessor's or mold remediator's signature and license
296 number to each document prepared or approved for use by the
297 licensee which is related to any mold assessment or mold
298 remediation project and filed for public record with a
299 governmental agency, and to any offer, bid, or contract
300 submitted to a client.

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301 (b) The license number of each mold assessor or mold
 302 remediator must appear in any printed matter or any newspaper,
 303 airwave transmission, phone directory, or other advertising
 304 medium offering or related to mold assessment or mold
 305 remediation, as provided by department rule.

306 (6) Each qualifying agent shall pay the department an
 307 amount equal to the original fee for licensure of a new business
 308 organization. If the qualifying agent for a business
 309 organization desires to qualify additional business
 310 organizations, the board shall require the agent to present
 311 evidence of ability and financial responsibility of each such
 312 organization. The issuance of such certificate of authority is
 313 discretionary with the board.

314 Section 10. Section 489.609, Florida Statutes, is created
 315 to read:

316 489.609 Responsibilities.--

317 (1) A qualifying agent is a primary qualifying agent
 318 unless he or she is a secondary qualifying agent under this
 319 section.

320 (a) All primary qualifying agents for a business
 321 organization are jointly and equally responsible for supervision
 322 of all operations of the business organization; for all field
 323 work at all sites; and for financial matters, both for the
 324 organization in general and for each specific job.

325 (b) Upon approval by the board, a business organization
 326 may designate a financially responsible officer for purposes of
 327 licensure. A financially responsible officer shall be
 328 responsible for all financial aspects of the business

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329 organization and may not be designated as the primary qualifying
330 agent. The designated financially responsible officer shall
331 furnish evidence of his or her financial responsibility, credit,
332 and business reputation, or that of the business organization he
333 or she desires to qualify, as determined appropriate by the
334 board.

335 (c) If a business organization has a licensed financially
336 responsible officer, the primary qualifying agent is responsible
337 for all mold assessment or mold remediation activities of the
338 business organization, both in general and for each specific
339 job.

340 (d) The board shall adopt rules prescribing the
341 qualifications for financially responsible officers, including
342 net worth, cash, and bonding requirements. These qualifications
343 must be at least as extensive as the requirements for the
344 financial responsibility of qualifying agents.

345 (2)(a) One of the qualifying agents for a business
346 organization that has more than one qualifying agent may be
347 designated as the sole primary qualifying agent for the business
348 organization by a joint agreement that is executed, on a form
349 provided by the board, by all qualifying agents for the business
350 organization.

351 (b) The joint agreement must be submitted to the board for
352 approval. If the board determines that the joint agreement is in
353 good order, it must approve the designation and immediately
354 notify the qualifying agents of its approval. The designation
355 made by the joint agreement is effective upon receipt of the
356 notice by the qualifying agents.

357 (c) The qualifying agent designated for a business
358 organization by a joint agreement is the sole primary qualifying
359 agent for the business organization, and all other qualifying
360 agents for the business organization are secondary qualifying
361 agents.

362 (d) A designated sole primary qualifying agent has all the
363 responsibilities and duties of a primary qualifying agent,
364 notwithstanding that there are secondary qualifying agents for
365 specified jobs. The designated sole primary qualifying agent is
366 jointly and equally responsible with secondary qualifying agents
367 for field work supervision.

368 (e) A secondary qualifying agent is responsible only for
369 any work for which he or she accepts responsibility.

370 (f) A secondary qualifying agent is not responsible for
371 supervision of financial matters.

372 (3)(a) A qualifying agent who has been designated by a
373 joint agreement as the sole primary qualifying agent for a
374 business organization may terminate this status by giving actual
375 notice to the business organization, to the board, and to all
376 secondary qualifying agents of his or her intention to terminate
377 this status. The notice to the board must include proof
378 satisfactory to the board that the qualifying agent has given
379 the notice required in this paragraph.

380 (b) The status of the qualifying agent ceases upon the
381 designation of a new primary qualifying agent or 60 days after
382 satisfactory notice of termination has been provided to the
383 board, whichever occurs first.

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384 (c) If a new primary qualifying agent has not been
385 designated within 60 days, all secondary qualifying agents for
386 the business organization become primary qualifying agents
387 unless the joint agreement specifies that one or more of them
388 become sole qualifying agents under such circumstances, in which
389 case only the specified secondary qualifying agents become sole
390 qualifying agents.

391 (d) Any change in the status of a qualifying agent is
392 prospective only. A qualifying agent is not responsible for his
393 or her predecessor's actions but is responsible, even after a
394 change in status, for matters for which he or she was
395 responsible while in a particular status.

396 Section 11. Section 489.61, Florida Statutes, is created
397 to read:

398 489.61 Continuing education.--

399 (1) A licensee must annually complete 15 hours of
400 continuing education courses as prescribed by board rule.

401 (2) The courses required under this section must be
402 offered and provided by mold training providers licensed under
403 this part and must be approved by the board.

404 (3) The licensee must submit proof of compliance with the
405 continuing education requirements along with the licensee's
406 application for license renewal.

407 Section 12. Section 489.611, Florida Statutes, is created
408 to read:

409 489.611 Approval of mold assessor and mold remediator
410 training courses and providers.--

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411 (1) The board shall approve training courses and the
 412 providers of such courses as are required under this part. The
 413 board must also approve training courses and the providers of
 414 such courses who offer training for persons who are exempt from
 415 licensure under this part.

416 (2) The board shall, by rule, prescribe criteria for
 417 approving training courses and course providers and may, by
 418 rule, modify the training required by this part.

419 (3) The board may enter into agreements with other states
 420 for the reciprocal approval of training courses or the providers
 421 of training courses.

422 (4) The board shall, by rule, establish reasonable fees in
 423 an amount not to exceed the cost of evaluation, approval, and
 424 recordmaking and recordkeeping of training courses and providers
 425 of training courses.

426 (5) The board may impose against a provider of training
 427 courses any penalty that it may impose against a licensee under
 428 this part or s. 455.227, may decline to approve courses, and may
 429 withdraw approval of courses proposed by a provider who has, or
 430 whose agent has, been convicted of, pled guilty or nolo
 431 contendere to, or entered into a stipulation or consent
 432 agreement relating to, without regard to adjudication, any crime
 433 or administrative violation in any jurisdiction which involves
 434 fraud, deceit, or false or fraudulent representations made in
 435 the course of seeking approval of or providing training courses.

436 Section 13. Section 489.612, Florida Statutes, is created
 437 to read:

438 489.612 Renewal of license.--

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439 (1) The department shall renew a license upon receipt of
 440 the renewal application and fee, upon proof of compliance with
 441 the continuing education requirements of s. 489.61, and, if a
 442 demonstration of competency is required by law or rule, upon
 443 certification by the board that the licensee has satisfactorily
 444 demonstrated his or her competence in mold assessment and mold
 445 remediation.

446 (2) The department shall adopt rules establishing a
 447 procedure for the biennial renewal of licenses.

448 Section 14. Section 489.613, Florida Statutes, is created
 449 to read:

450 489.613 Reactivation.--

451 (1) The board shall, by rule, prescribe continuing
 452 education requirements for reactivating a license. The
 453 continuing education requirements for reactivating a license for
 454 a licensed mold assessor or mold remediator may not exceed 15
 455 classroom hours for each year the license was inactive.

456 (2) The board shall adopt rules relating to licenses that
 457 have become inactive and for the renewal of inactive licenses.
 458 The board shall, by rule, prescribe a fee not to exceed \$50 for
 459 the reactivation of an inactive license and a fee not to exceed
 460 \$50 for the renewal of an inactive license.

461 Section 15. Section 489.614, Florida Statutes, is created
 462 to read:

463 489.614 Disciplinary proceedings.--

464 (1) The board may revoke, suspend, or deny the issuance or
 465 renewal of a license; reprimand, censure, or place on probation
 466 any mold assessor or mold remediator; require financial

467 restitution to a consumer; impose an administrative fine not to
 468 exceed \$5,000 per violation; require continuing education; or
 469 assess costs associated with any investigation and prosecution,
 470 if the mold assessor or mold remediator is found guilty of any
 471 of the following acts:

472 (a) Obtaining a license or certificate of authority by
 473 fraud or misrepresentation.

474 (b) Being convicted or found guilty of, or entering a plea
 475 of nolo contendere to, regardless of adjudication, a crime in
 476 any jurisdiction which directly relates to the practice of mold
 477 assessment or mold remediation or the ability to practice mold
 478 assessment or mold remediation.

479 (c) Violating any provision of chapter 455.

480 (d) Performing any act that assists a person or entity in
 481 engaging in the prohibited unlicensed practice of mold
 482 assessment or mold remediation, if the licensee knows or has
 483 reasonable grounds to know that the person or entity was
 484 unlicensed.

485 (e) Knowingly combining or conspiring with an unlicensed
 486 person by allowing his or her license or certificate of
 487 authority to be used by the unlicensed person with intent to
 488 evade any provision of this part. If a licensee allows his or
 489 her license to be used by one or more business organizations
 490 without having any active participation in the operations,
 491 management, or control of the business organizations, such an
 492 act constitutes prima facie evidence of an intent to evade the
 493 provisions of this part.

494 (f) Acting in the capacity of a mold assessor or mold
 495 remediator under any license issued under this part except in
 496 the name of the licensee as set forth on the issued license.

497 (g) Committing mismanagement or misconduct in the practice
 498 of mold assessment or mold remediation which causes financial
 499 harm to a customer. Financial mismanagement or misconduct occurs
 500 when:

501 1. Valid liens have been recorded against the property of
 502 a mold assessor's or mold remediator's customer for supplies or
 503 services ordered by the mold assessor or mold remediator for the
 504 customer's job; the mold assessor or mold remediator has
 505 received funds from the customer to pay for the supplies or
 506 services; and the mold assessor or mold remediator has not had
 507 the liens removed from the property, by payment or by bond,
 508 within 75 days after the date of such liens;

509 2. The mold assessor or mold remediator has abandoned a
 510 customer's job and the percentage of completion is less than the
 511 percentage of the total contract price paid to the mold assessor
 512 or mold remediator as of the time of abandonment, unless the
 513 contractor is entitled to retain such funds under the terms of
 514 the contract or refunds the excess funds within 30 days after
 515 the date the job is abandoned; or

516 3. The mold assessor's or mold remediator's job has been
 517 completed, and it is shown that the customer has had to pay more
 518 for the contracted job than the original contract price, as
 519 adjusted for subsequent change orders, unless the increase in
 520 cost was the result of circumstances beyond the control of the
 521 assessor or remediator, was the result of circumstances caused

522 by the customer, or was otherwise permitted by the terms of the
 523 contract between the mold assessor or mold remediator and the
 524 customer.

525 (h) Being disciplined by a municipality or county for an
 526 act or violation of this part.

527 (i) Failing in any material respect to comply with this
 528 part or violating a rule or lawful order of the department.

529 (j) Abandoning a mold assessment or mold remediation
 530 project in which the mold assessor or mold remediator is engaged
 531 or under contract as a mold assessor or mold remediator. A
 532 project is presumed abandoned after 20 days if the mold assessor
 533 or mold remediator has terminated the project without just cause
 534 and without proper notification to the owner, including the
 535 reason for termination; if the mold assessor or mold remediator
 536 has failed to reasonably secure the project to safeguard the
 537 public while work is stopped; or if the mold assessor or mold
 538 remediator fails to perform work without just cause for 20 days.

539 (k) Signing a statement with respect to a project or
 540 contract falsely indicating that the work is bonded; falsely
 541 indicating that payment has been made for all subcontracted
 542 work, labor, and materials which results in a financial loss to
 543 the owner, purchaser, or mold assessor or mold remediator; or
 544 falsely indicating that workers' compensation and public
 545 liability insurance are provided.

546 (l) Committing fraud or deceit in the practice of mold
 547 assessment or mold remediation.

548 (m) Committing incompetency or misconduct in the practice
 549 of mold assessment or mold remediation.

550 (n) Committing gross negligence, repeated negligence, or
 551 negligence resulting in a significant danger to life or property
 552 in the practice of mold assessment or mold remediation.

553 (o) Failing to satisfy, within a reasonable time, the
 554 terms of a civil judgment obtained against the licensee, or the
 555 business organization qualified by the licensee, relating to the
 556 practice of the licensee's profession.

557
 558 For the purposes of this subsection, mold assessment or mold
 559 remediation is considered to be commenced when the contract is
 560 executed and the mold assessor or mold remediator has accepted
 561 funds from the customer or lender.

562 (2) If a mold assessor or mold remediator disciplined
 563 under subsection (1) is a qualifying agent for a business
 564 organization and the violation was performed in connection with
 565 any mold assessment, mold assessment-related activities, mold
 566 remediation, or mold remediation-related activities undertaken
 567 by that business organization, the board may impose an
 568 additional administrative fine not to exceed \$5,000 per
 569 violation against the business organization or against any
 570 partner, officer, director, trustee, or member of the
 571 organization if that person participated in the violation or
 572 knew or should have known of the violation and failed to take
 573 reasonable corrective action.

574 (3) The board may, by rule, specify the acts or omissions
 575 that constitute violations of this section.

576 (4) In recommending penalties in any proposed recommended
 577 final order, the department shall follow the penalty guidelines

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578 established by the board by rule. The department shall advise
 579 the administrative law judge of the appropriate penalty,
 580 including mitigating and aggravating circumstances, and the
 581 specific rule citation.

582 (5) The board may not reinstate the license or certificate
 583 of authority of, or cause a license or certificate of authority
 584 to be issued to, a person who or business organization that the
 585 board has determined is unqualified or whose license or
 586 certificate of authority the board has suspended, until it is
 587 satisfied that the person or business organization has complied
 588 with all the terms and conditions set forth in the final order
 589 and is capable of competently engaging in the business of mold
 590 assessment or mold remediation.

591 (6)(a) The board may assess interest or penalties on all
 592 finest imposed under this part against any person or business
 593 organization that has not paid the imposed fine by the due date
 594 established by rule or final order. Chapter 120 does not apply
 595 to such assessment. Interest rates to be imposed must be
 596 established by rule and may not be usurious.

597 (7) The board may not issue a license or certificate of
 598 authority, or a renewal thereof, to any person or business
 599 organization that has been assessed a fine, interest, or costs
 600 associated with investigation and prosecution, or has been
 601 ordered to pay restitution, until the fine, interest, or costs
 602 associated with investigation and prosecution or restitution are
 603 paid in full or until all terms and conditions of the final
 604 order have been satisfied.

605 (8) Any person licensed pursuant to this part who has had
 606 his or her license revoked is ineligible to be a partner,
 607 officer, director, or trustee of a business organization defined
 608 by this section or to be employed in a managerial or supervisory
 609 capacity for a 5-year period. The person is also ineligible to
 610 reapply for licensure under this part for a period of 5 years
 611 after the effective date of the revocation.

612 (9) If a business organization or any of its partners,
 613 officers, directors, trustees, or members is or has previously
 614 been fined for violating subsection (2) the board may, on that
 615 basis alone, revoke, suspend, place on probation, or deny
 616 issuance of a license to a qualifying agent or financially
 617 responsible officer of that business organization.

618 (10)(a) Notwithstanding chapters 120 and 455, upon receipt
 619 of a legally sufficient consumer complaint alleging a violation
 620 of this part, the department may provide by rule for binding
 621 arbitration between the complainant and the certificateholder or
 622 registrant, if:

623 1. There is evidence that the complainant has suffered or
 624 is likely to suffer monetary damages resulting from the
 625 violation of this part;

626 2. The licensee does not have a history of repeated or
 627 similar violations;

628 3. Reasonable grounds exist to believe that the public
 629 interest will be better served by arbitration than by
 630 disciplinary action; and

631 4. The complainant and licensee have not previously
632 entered into private arbitration, and a civil court action based
633 on the same transaction has not been filed.

634 (b) The licensee and the complainant may consent in
635 writing to binding arbitration within 15 days following
636 notification of this process by the department. The department
637 may suspend all action in the matter for 45 days when notice of
638 consent to binding arbitration is received by the department. If
639 the arbitration process is successfully concluded within the 60-
640 day period, the department may close the case file with a
641 notation of the disposition, and the licensee's record must
642 reflect only that a complaint was filed and resolved through
643 arbitration.

644 (c) If a complaint meets the criteria for arbitration set
645 forth in paragraph (a) and the damages at issue are less than
646 \$2,500, the department shall refer the complaint for mandatory
647 arbitration.

648 (d) The arbitrator's order becomes a final order of the
649 board if not challenged by the complainant or the
650 certificateholder or registrant within 30 days after filing. The
651 board's review of the arbitrator's order operates in the manner
652 of the review of recommended orders pursuant to s. 120.57(1) and
653 is not a de novo review.

654 (11) If an investigation of a mold assessor or mold
655 remediator is undertaken, the department shall promptly furnish
656 to the mold assessor or mold remediator or the mold assessor's
657 or mold remediator's attorney a copy of the complaint or
658 document that resulted in the initiation of the investigation.

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659 The department shall make the complaint and supporting documents
 660 available to the mold assessor or mold remediator. The complaint
 661 or supporting documents must contain information regarding the
 662 specific facts that serve as the basis for the complaint. The
 663 mold assessor or mold remediator may submit a written response
 664 to the information contained in the complaint or document within
 665 20 days after service to the mold assessor or mold remediator of
 666 the complaint or document. The mold assessor's or mold
 667 remediator's written response must be considered by the probable
 668 cause panel. The right to respond does not prohibit the issuance
 669 of a summary emergency order if necessary to protect the public.
 670 However, if the secretary, or the secretary's designee, and the
 671 chair of the board or the chair of the probable cause panel
 672 agree in writing that such notification would be detrimental to
 673 the investigation, the department may withhold notification. The
 674 department may conduct an investigation without notification to
 675 a mold assessor or mold remediator if the act under
 676 investigation is a criminal offense.

677 Section 16. Section 489.615, Florida Statutes, is created
 678 to read:

679 489.615 Prohibitions; penalties.--

680 (1) A person may not:

681 (a) Falsely hold himself or herself or a business
 682 organization out as a licensee;

683 (b) Falsely impersonate a licensee;

684 (c) Present as his or her own the license or certificate
 685 of authority of another;

686 (d) Knowingly give false or forged evidence to the board
687 or a member thereof;

688 (e) Use or attempt to use a license that has been
689 suspended or revoked;

690 (f) Engage in the business or act in the capacity of a
691 mold assessor or mold remediator or advertise himself or herself
692 or a business organization as available to engage in the
693 business or act in the capacity of a mold assessor or mold
694 remediator without being duly licensed; or

695 (g) Operate a business organization engaged in mold
696 assessment or mold remediation after 60 days following the
697 termination of its only qualifying agent without designating
698 another primary qualifying agent, except as provided in ss.
699 489.608 and 489.609;

700
701 For purposes of this subsection, a person or business
702 organization operating on an inactive or suspended license or
703 certificate of authority is considered unlicensed.

704 (2)(a) An unlicensed person who violates subsection (1)
705 commits a misdemeanor of the first degree, punishable as
706 provided in s. 775.082 or s. 775.083.

707 (b) An unlicensed person who commits a violation of
708 subsection (1) after having been previously found guilty of such
709 a violation commits a felony of the third degree, punishable as
710 provided in s. 775.082 or s. 775.083.

711 (c) An unlicensed person who commits a violation of
712 subsection (1) during the existence of a state of emergency
713 declared by executive order of the Governor commits a felony of

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714 the third degree, punishable as provided in s. 775.082 or s.
715 775.083.

716 (3)(a) A licensed mold assessor or mold remediator may not
717 enter into an agreement, oral or written, whereby his or her
718 license number is used, or is to be used, by a person who is not
719 licensed as provided for in this part, or is used, or is to be
720 used, by a business organization that is not duly qualified as
721 provided for in this part, to engage in the business or act in
722 the capacity of a mold assessor or mold remediator.

723 (b) A licensed mold assessor or mold remediator may not
724 knowingly allow his or her license number to be used by a person
725 who is not licensed as provided for in this part, or used by a
726 business organization that is not qualified as provided for in
727 this part, to engage in the business or act in the capacity of a
728 mold assessor or mold remediator.

729 Section 17. Section 489.616, Florida Statutes, is created
730 to read:

731 489.616 Multiple services prohibited.--A registrant may
732 perform only one of the following activities on the same
733 project:

- 734 (1) Mold or mold-related analysis or assessment; or
- 735 (2) Mold remediation.

736 Section 18. Section 489.617, Florida Statutes, is created
737 to read:

738 489.617 Notice and opportunity to repair.--Any action
739 brought alleging defects against a mold assessor or mold
740 remediator shall be governed by the provisions of chapter 558.
741 For purposes of application of chapter 558, in any action

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742 brought against a mold assessor or mold remediator, the term
 743 contractor includes mold assessors and mold remediators as
 744 defined in s. 489.604(6) and (8), respectively, and the term
 745 construction defect includes mold or fungal damages to property
 746 or persons resulting from the activities of a mold assessor or
 747 remediator. Notwithstanding the provisions of s. 558.004(12),
 748 any subsequent judicial proceeding alleging such defects must be
 749 brought within one year of the exhaustion of the remedies
 750 available under chapter 558.

751 Section 19. Subsection (2) of section 489.107, Florida
 752 Statutes, is amended to read:

753 489.107 Construction Industry Licensing Board.--

754 (2) The board shall consist of 19 ~~18~~ members, of whom:

755 (a) Four are primarily engaged in business as general
 756 contractors;

757 (b) Three are primarily engaged in business as building
 758 contractors or residential contractors, however, at least one
 759 building contractor and one residential contractor shall be
 760 appointed;

761 (c) One is primarily engaged in business as a roofing
 762 contractor;

763 (d) One is primarily engaged in business as a sheet metal
 764 contractor;

765 (e) One is primarily engaged in business as an air-
 766 conditioning contractor;

767 (f) One is primarily engaged in business as a mechanical
 768 contractor;

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769 (g) One is primarily engaged in business as a pool
770 contractor;

771 (h) One is primarily engaged in business as a plumbing
772 contractor;

773 (i) One is primarily engaged in business as an underground
774 utility and excavation contractor;

775 (j) One is primarily engaged in business as a mold
776 assessor or mold remediator;

777 (k)~~(j)~~ Two are consumer members who are not, and have
778 never been, members or practitioners of a profession regulated
779 by the board or members of any closely related profession; and

780 (l)~~(k)~~ Two are building officials of a municipality or
781 county.

782 Section 20. If any provision of this act or its
783 application to any person or circumstance is held invalid, the
784 invalidity does not affect other provisions or applications of
785 the act which can be given effect without the invalid provision
786 or application, and to this end the provisions of this act are
787 severable.

788 Section 21. This act shall take effect October 1, 2004.