

By the Committee on Regulated Industries; and Senator Bennett

315-2149-04

1                                   A bill to be entitled  
2           An act relating to mold assessment and mold  
3           remediation; creating pt. IV of ch. 489, F.S.;  
4           providing legislative purpose; providing scope  
5           of the act; providing exemptions; defining  
6           terms; providing for fees relating to licensure  
7           of mold assessors and mold remediators;  
8           providing for licensure examinations; requiring  
9           good moral character, as specified; providing  
10          prerequisites to licensure; providing for the  
11          licensure of business organizations; providing  
12          for qualifying agents; providing for fees;  
13          providing responsibilities of primary and  
14          secondary qualifying agents and of financially  
15          responsible officers; establishing requirements  
16          for continuing education; providing that the  
17          Construction Industry Licensing Board must  
18          approve training courses and training providers  
19          for mold assessors and mold remediators;  
20          providing for assessing penalties; providing  
21          for renewal of licensure; providing for  
22          rulemaking; providing for reactivation of  
23          licensure; providing for disciplinary  
24          proceedings; establishing prohibitions;  
25          providing for penalties; allowing the board to  
26          provide, by rule, for multiple services;  
27          creating a technical advisory committee;  
28          providing for membership, meetings, removal of  
29          members; setting a quorum; providing for  
30          reimbursement for per diem and travel expenses;  
31          requiring the department to provide staff

1 support and to maintain and make available to  
2 the public the committee minutes and records;  
3 providing for financial review; requiring  
4 disclosure of the results of a mold remediation  
5 conducted shortly before a contract is executed  
6 for the sale or lease of residential property;  
7 exempting from liability a person who performs  
8 mold assessment or mold remediation in  
9 accordance with applicable building codes and  
10 accepted industry protocols; providing  
11 severability; amending s. 489.107, F.S.; adding  
12 to the board a member who is a mold assessor or  
13 mold remediator; providing an effective date.

14  
15 Be It Enacted by the Legislature of the State of Florida:

16  
17 Section 1. Part IV of chapter 489, Florida Statutes,  
18 entitled "Mold Assessment and Mold Remediation" and consisting  
19 of ss. 489.601, 489.602, 489.603, 489.604, 489.605, 489.606,  
20 489.607, 489.608, 489.609, 489.61, 489.611, 489.612, 489.613,  
21 489.614, 489.615, 489.616, 489.617, and 489.618, is created.

22 Section 2. Section 489.601, Florida Statutes, is  
23 created to read:

24 489.601 Legislative purpose.--The Legislature finds it  
25 necessary in the interest of the public health, safety, and  
26 welfare in order to prevent damage to the real and personal  
27 property of the residents of this state and to avert economic  
28 injury to the residents of this state to regulate individuals  
29 and companies that hold themselves out to the public as  
30 qualified to perform mold-related activities.

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1           Section 3. Section 489.602, Florida Statutes, is  
2 created to read:

3           489.602 Scope of act.--Sections 489.601-489.618 apply  
4 only to individuals and companies conducting mold assessment  
5 and mold remediation for compensation.

6           Section 4. Section 489.603, Florida Statutes, is  
7 created to read:

8           489.603 Exemptions.--Sections 489.601-489.618 do not  
9 apply to:

10           (1) Individuals or business organizations licensed  
11 under chapter 471 or chapter 482 when acting within the scope  
12 of their respective licenses.

13           (2) An authorized employee of the United States, this  
14 state, or any municipality, county, or other political  
15 subdivision, public or private school, or private business  
16 organization who has completed mold assessment and mold  
17 remediation training courses approved by the department or a  
18 certification program approved by the department and who is  
19 conducting mold assessment or mold remediation within the  
20 scope of that employment, as long as the employee does not  
21 hold out for hire or otherwise engage in mold assessment or  
22 mold remediation.

23           (3) A full-time employee engaged in routine  
24 maintenance of public and private buildings, structures, and  
25 facilities as long as the employee does not hold out for hire  
26 or otherwise engage in mold assessment or mold remediation.

27           Section 5. Section 489.604, Florida Statutes, is  
28 created to read:

29           489.604 Definitions.--As used in this part, the term:

30           (1) "Board" means the Construction Industry Licensing  
31 Board.

1           (2) "Business organization" means any partnership,  
2 corporation, business trust, joint venture, or other business  
3 organization.

4           (3) "Department" means the Department of Business and  
5 Professional Regulation.

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

8           (5) "Mold assessment" means:

9           (a) An inspection, investigation, or survey of a  
10 dwelling or other structure to provide the owner or occupant  
11 with information regarding the presence, identification, or  
12 evaluation of mold;

13           (b) The development of a mold management plan or  
14 remediation protocol; or

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

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

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

22           (8) "Mold remediator" means any person or business  
23 organization that performs mold remediation. A mold remediator  
24 may not perform any work that requires a license under this  
25 part unless the mold remediator is also licensed under that  
26 chapter.

27           (9) "Primary qualifying agent" means a person who  
28 possesses the requisite skill, knowledge, and experience, and  
29 has the responsibility, to supervise, direct, manage, and  
30 control the mold assessment or mold remediation activities of  
31 the business organization with which he or she is connected;

1 who has the responsibility to supervise, direct, manage, and  
2 control mold assessment or mold remediation activities on a  
3 job for which he or she has obtained the building permit; and  
4 whose technical and personal qualifications have been  
5 determined by investigation and examination as provided in  
6 this part, as attested by the department.

7 (10) "Secondary qualifying agent" means a person who  
8 possesses the requisite skill, knowledge, and experience, and  
9 has the responsibility, to supervise, direct, manage, and  
10 control mold assessment and mold remediation activities on a  
11 job for which he or she has obtained a permit, and whose  
12 technical and personal qualifications have been determined by  
13 investigation and examination as provided in this part, as  
14 attested by the department.

15 Section 6. Section 489.605, Florida Statutes, is  
16 created to read:

17 489.605 Fees.--The board shall, by rule, establish  
18 reasonable fees to be paid for applications, examinations,  
19 licensing and renewal, recordmaking, and recordkeeping. Fees  
20 for application, initial licensure, license renewal, or  
21 license reactivation for mold assessors or mold remediators  
22 may not exceed \$500 per applicant. The board may, by rule,  
23 establish late renewal penalty fees, in an amount not to  
24 exceed the initial licensure fee.

25 Section 7. Section 489.606, Florida Statutes, is  
26 created to read:

27 489.606 Examination.--

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

31

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

7           (3) The board shall adopt rules providing for the  
8 review and approval of mold assessment and mold remediation  
9 programs. The board may adopt rules providing for the  
10 acceptance of the approval and accreditation of schools and  
11 courses of study by nationally accepted accreditation  
12 organizations.

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

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

18                 1. The board finds that there is a substantial  
19 connection between the lack of good moral character of the  
20 applicant and the professional responsibilities of a mold  
21 assessor or mold remediator; and

22                 2. This finding is supported by clear and convincing  
23 evidence.

24           (c) If an applicant is found to be unqualified for a  
25 license because of a lack of good moral character, the board  
26 must furnish to the applicant a statement containing the  
27 findings of the board, a complete record of the evidence upon  
28 which the determination was based, and a notice of the rights  
29 of the applicant to a rehearing and appeal.

30           Section 8. Section 489.607, Florida Statutes, is  
31 created to read:

1           489.607 Licensure.--The department shall license any  
2 applicant who the board certifies is qualified to practice  
3 mold assessment or mold remediation and who:

4           (1) Pays the initial licensing fee;

5           (2) Submits with the application for licensure as a  
6 mold assessor or a mold remediator evidence that he or she has  
7 successfully completed the department-approved courses as  
8 prescribed by rule;

9           (3) Provides evidence of financial stability; and

10           (4)(a) Passes a department-approved examination of  
11 qualifications and knowledge relating to mold assessment and  
12 mold remediation; or

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

17           Section 9. Section 489.608, Florida Statutes, is  
18 created to read:

19           489.608 Licensure of business organizations;  
20 qualifying agents.--

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

24           (2)(a) If the applicant proposes to engage in mold  
25 remediation or mold assessment as a business organization in  
26 any name other than the applicant's legal name, the business  
27 organization must apply for licensure through a qualifying  
28 agent or the individual applicant must apply for licensure  
29 under the fictitious name.

30           (b) The application must state the name of the  
31 business organization and of each of its partners, the name of

1 the corporation and of each of its officers and directors and  
2 the name of each of its stockholders who is also an officer or  
3 director, the name of the business trust and of each of its  
4 trustees, or the name of such other business organization and  
5 of each of its members.

6 1. The application for primary qualifying agent must  
7 include an affidavit on a form provided by the department  
8 which attests that the applicant's signature is required on  
9 all checks, drafts, or payments, regardless of the form of  
10 payment, made by the business organization, and that the  
11 applicant has final approval authority for all work performed  
12 by the business organization.

13 2. The application for financially responsible officer  
14 must include an affidavit on a form provided by the department  
15 which attests that the applicant's signature is required on  
16 all checks, drafts, or payments, regardless of the form of  
17 payment, made by the business organization, and that the  
18 applicant has authority to act for the business organization  
19 in all financial matters.

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

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

27 1. An affidavit on a form provided by the department  
28 which attests that the applicant has obtained workers'  
29 compensation insurance as required by chapter 440, public  
30 liability insurance, and property damage insurance, in amounts  
31 determined by department rule. The department shall, by rule,



1 establish a procedure to verify the accuracy of such  
2 affidavits based upon a random sample method.

3 2. Evidence of financial responsibility. The  
4 department shall adopt rules to determine financial  
5 responsibility which specify grounds on which the department  
6 may deny licensure. Such criteria must include, but need not  
7 be limited to, credit history and limits of bondability and  
8 credit.

9 (d) A joint venture, including a joint venture  
10 composed of qualified business organizations, is a separate  
11 and distinct organization that must be qualified in accordance  
12 with department rules.

13 (e) A license that is issued upon application of a  
14 business organization must be in the name of the business  
15 organization, and the name of the qualifying agent must be  
16 noted thereon. If there is a change in any information that is  
17 required to be stated on the application, the business  
18 organization shall, within 45 days after the change occurs,  
19 mail the correct information to the department.

20 (f) The applicant must furnish evidence of statutory  
21 compliance if a fictitious name is used, notwithstanding s.  
22 865.09(7).

23 (3) The qualifying agent must be licensed under this  
24 part in order for the business organization to be licensed. If  
25 the qualifying agent ceases to be affiliated with the business  
26 organization, the agent must so inform the department. In  
27 addition, if the qualifying agent is the only licensed  
28 individual affiliated with the business organization, the  
29 business organization must notify the department of the  
30 termination of the qualifying agent, and the business  
31 organization has 60 days after the termination of the

1 qualifying agent's affiliation with the business organization  
2 in which to employ another qualifying agent. The business  
3 organization may not engage in mold assessment or mold  
4 remediation until a qualifying agent is employed, unless the  
5 department has granted a temporary nonrenewable license to the  
6 financially responsible officer, the president, the sole  
7 proprietor, a partner, or, in the case of a limited  
8 partnership, the general partner, who assumes all  
9 responsibilities of a primary qualifying agent for the  
10 business organization. This temporary license allows the  
11 business organization to proceed only with incomplete  
12 contracts.

13 (4)(a) The qualifying agent shall inform the  
14 department in writing if the agent proposes to engage in mold  
15 assessment or mold remediation in the agent's own name or in  
16 affiliation with another business organization, and the agent  
17 or the new business organization shall supply the same  
18 information to the department as is required of initial  
19 applicants under this part.

20 (b) Upon a favorable determination by the department,  
21 after investigation of the financial responsibility, credit,  
22 and business reputation of the qualifying agent and the new  
23 business organization, the department shall issue, without any  
24 examination, a new license in the business organization's  
25 name, and the name of the qualifying agent must be noted  
26 thereon.

27 (5)(a) Each mold assessor or mold remediator shall  
28 affix the mold assessor's or mold remediator's signature and  
29 license number to each document prepared or approved for use  
30 by the licensee which is related to any mold assessment or  
31 mold remediation project and filed for public record with a

1 governmental agency, and to any offer, bid, or contract  
2 submitted to a client.

3 (b) The license number of each mold assessor or mold  
4 remediator must appear in any printed matter or any newspaper,  
5 airwave transmission, phone directory, or other advertising  
6 medium offering or related to mold assessment or mold  
7 remediation, as provided by department rule.

8 (6) Each qualifying agent shall pay the department an  
9 amount equal to the original fee for licensure of a new  
10 business organization. If the qualifying agent for a business  
11 organization desires to qualify additional business  
12 organizations, the department shall require the agent to  
13 present evidence of the supervisory ability and financial  
14 responsibility of each such business organization. A licensee  
15 may qualify more than one business organization only upon  
16 showing that the licensee has both the capacity and intent to  
17 adequately supervise each business organization. The  
18 department may not limit the number of business organizations  
19 which the licensee may qualify except upon the licensee's  
20 failure to provide the information required under this  
21 subsection or upon a finding that the information or evidence  
22 that the licensee supplied is incomplete or unpersuasive in  
23 showing the licensee's capacity and intent to comply with this  
24 subsection. A qualification for an additional business  
25 organization may be revoked or suspended upon a finding by the  
26 department that the licensee has failed in the licensee's  
27 responsibility to adequately supervise the operations of the  
28 business organization. Failure to adequately supervise the  
29 operations of a business organization is grounds for denial to  
30 qualify additional business organizations.

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1           (7) If a business organization or any of its partners,  
2 officers, directors, trustees, or members is disciplined,  
3 other than by citation, for violating s. 469.009(2), the  
4 department may, on that basis alone, deny issuance, or issue  
5 with conditions, a license to the business organization, its  
6 financially responsible officer, or its qualifying agent.

7           Section 10. Section 489.609, Florida Statutes, is  
8 created to read:

9           489.609 Responsibilities.--

10           (1) A qualifying agent is a primary qualifying agent  
11 unless he or she is a secondary qualifying agent under this  
12 section.

13           (a) All primary qualifying agents for a business  
14 organization are jointly and equally responsible for  
15 supervision of all operations of the business organization;  
16 for all field work at all sites; and for financial matters,  
17 both for the organization in general and for each specific  
18 job.

19           (b) Upon approval by the board, a business  
20 organization may designate a financially responsible officer  
21 for purposes of licensure. A financially responsible officer  
22 shall be responsible for all financial aspects of the business  
23 organization and may not be designated as the primary  
24 qualifying agent. The designated financially responsible  
25 officer shall furnish evidence of his or her financial  
26 responsibility, credit, and business reputation, or that of  
27 the business organization he or she desires to qualify, as  
28 determined appropriate by the board.

29           (c) If a business organization has a licensed  
30 financially responsible officer, the primary qualifying agent  
31 is responsible for all mold assessment or mold remediation

1 activities of the business organization, both in general and  
2 for each specific job.

3 (d) The board shall adopt rules prescribing the  
4 qualifications for financially responsible officers, including  
5 net worth, cash, and bonding requirements. These  
6 qualifications must be at least as extensive as the  
7 requirements for the financial responsibility of qualifying  
8 agents.

9 (2)(a) One of the qualifying agents for a business  
10 organization that has more than one qualifying agent may be  
11 designated as the sole primary qualifying agent for the  
12 business organization by a joint agreement that is executed,  
13 on a form provided by the board, by all qualifying agents for  
14 the business organization.

15 (b) The joint agreement must be submitted to the board  
16 for approval. If the board determines that the joint agreement  
17 is in good order, it must approve the designation and  
18 immediately notify the qualifying agents of its approval. The  
19 designation made by the joint agreement is effective upon  
20 receipt of the notice by the qualifying agents.

21 (c) The qualifying agent designated for a business  
22 organization by a joint agreement is the sole primary  
23 qualifying agent for the business organization, and all other  
24 qualifying agents for the business organization are secondary  
25 qualifying agents.

26 (d) A designated sole primary qualifying agent has all  
27 the responsibilities and duties of a primary qualifying agent,  
28 notwithstanding that there are secondary qualifying agents for  
29 specified jobs. The designated sole primary qualifying agent  
30 is jointly and equally responsible with secondary qualifying  
31 agents for field work supervision.

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

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

5       (3)(a) A qualifying agent who has been designated by a  
6 joint agreement as the sole primary qualifying agent for a  
7 business organization may terminate this status by giving  
8 actual notice to the business organization, to the board, and  
9 to all secondary qualifying agents of his or her intention to  
10 terminate this status. The notice to the board must include  
11 proof satisfactory to the board that the qualifying agent has  
12 given the notice required in this paragraph.

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

17       (c) If a new primary qualifying agent has not been  
18 designated within 60 days, all secondary qualifying agents for  
19 the business organization become primary qualifying agents  
20 unless the joint agreement specifies that one or more of them  
21 become sole qualifying agents under such circumstances, in  
22 which case only the specified secondary qualifying agents  
23 become sole qualifying agents.

24       (d) Any change in the status of a qualifying agent is  
25 prospective only. A qualifying agent is not responsible for  
26 his or her predecessor's actions but is responsible, even  
27 after a change in status, for matters for which he or she was  
28 responsible while in a particular status.

29       Section 11. Section 489.61, Florida Statutes, is  
30 created to read:

31       489.61 Continuing education.--

1           (1) A licensee must annually complete 15 hours of  
2 continuing education courses as prescribed by department rule.

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

6           (3) The licensee must submit proof of compliance with  
7 the continuing education requirements along with the  
8 licensee's application for license renewal.

9           Section 12. Section 489.611, Florida Statutes, is  
10 created to read:

11           489.611 Approval of mold assessor and mold remediator  
12 training courses and providers.--

13           (1) The board shall approve training courses and the  
14 providers of such courses as are required under this part. The  
15 board must also approve training courses and the providers of  
16 such courses who offer training for persons who are exempt  
17 from licensure under this part.

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

21           (3) The board may enter into agreements with other  
22 states for the reciprocal approval of training courses or the  
23 providers of training courses.

24           (4) The board shall, by rule, establish reasonable  
25 fees in an amount not to exceed the cost of evaluation,  
26 approval, and recordmaking and recordkeeping of training  
27 courses and providers of training courses.

28           (5) The board may impose against a provider of  
29 training courses any penalty that it may impose against a  
30 licensee under this part or s. 455.227, may decline to approve  
31 courses, and may withdraw approval of courses proposed by a

1 provider who has, or whose agent has, been convicted of, pled  
2 guilty or nolo contendere to, or entered into a stipulation or  
3 consent agreement relating to, without regard to adjudication,  
4 any crime or administrative violation in any jurisdiction  
5 which involves fraud, deceit, or false or fraudulent  
6 representations made in the course of seeking approval of or  
7 providing training courses.

8 Section 13. Section 489.612, Florida Statutes, is  
9 created to read:

10 489.612 Renewal of license.--

11 (1) The department shall renew a license upon receipt  
12 of the renewal application and fee, upon proof of compliance  
13 with the continuing education requirements of s. 489.61, and,  
14 if a demonstration of competency is required by law or rule,  
15 upon certification by the board that the licensee has  
16 satisfactorily demonstrated his or her competence in mold  
17 assessment and mold remediation.

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

20 Section 14. Section 489.613, Florida Statutes, is  
21 created to read:

22 489.613 Reactivation.--

23 (1) The board shall, by rule, prescribe continuing  
24 education requirements for reactivating a license. The  
25 continuing education requirements for reactivating a license  
26 for a licensed mold assessor or mold remediator may not exceed  
27 15 classroom hours for each year the license was inactive.

28 (2) The board shall adopt rules relating to licenses  
29 that have become inactive and for the renewal of inactive  
30 licenses. The board shall, by rule, prescribe a fee not to  
31



1 exceed \$50 for the reactivation of an inactive license and a  
2 fee not to exceed \$50 for the renewal of an inactive license.

3 Section 15. Section 489.614, Florida Statutes, is  
4 created to read:

5 489.614 Disciplinary proceedings.--

6 (1) The board may revoke, suspend, or deny the  
7 issuance or renewal of a license; reprimand, censure, or place  
8 on probation any mold assessor or mold remediator; require  
9 financial restitution to a consumer; impose an administrative  
10 fine not to exceed \$5,000 per violation; require continuing  
11 education; or assess costs associated with any investigation  
12 and prosecution, if the mold assessor or mold remediator is  
13 found guilty of any of the following acts:

14 (a) Obtaining a license or certificate of authority by  
15 fraud or misrepresentation.

16 (b) Being convicted or found guilty of, or entering a  
17 plea of nolo contendere to, regardless of adjudication, a  
18 crime in any jurisdiction which directly relates to the  
19 practice of mold assessment or mold remediation or the ability  
20 to practice mold assessment or mold remediation.

21 (c) Violating any provision of chapter 455.

22 (d) Performing any act that assists a person or entity  
23 in engaging in the prohibited unlicensed practice of mold  
24 assessment or mold remediation, if the licensee knows or has  
25 reasonable grounds to know that the person or entity was  
26 unlicensed.

27 (e) Knowingly combining or conspiring with an  
28 unlicensed person by allowing his or her license or  
29 certificate of authority to be used by the unlicensed person  
30 with intent to evade any provision of this part. If a licensee  
31 allows his or her license to be used by one or more business

1 organizations without having any active participation in the  
2 operations, management, or control of the business  
3 organizations, such an act constitutes prima facie evidence of  
4 an intent to evade the provisions of this part.

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

8 (g) Committing mismanagement or misconduct in the  
9 practice of mold assessment or mold remediation which causes  
10 financial harm to a customer. Financial mismanagement or  
11 misconduct occurs when:

12 1. Valid liens have been recorded against the property  
13 of a mold assessor's or mold remediator's customer for  
14 supplies or services ordered by the mold assessor or mold  
15 remediator for the customer's job; the mold assessor or mold  
16 remediator has received funds from the customer to pay for the  
17 supplies or services; and the mold assessor or mold remediator  
18 has not had the liens removed from the property, by payment or  
19 by bond, within 75 days after the date of such liens;

20 2. The mold assessor or mold remediator has abandoned  
21 a customer's job and the percentage of completion is less than  
22 the percentage of the total contract price paid to the mold  
23 assessor or mold remediator as of the time of abandonment,  
24 unless the contractor is entitled to retain such funds under  
25 the terms of the contract or refunds the excess funds within  
26 30 days after the date the job is abandoned; or

27 3. The mold assessor's or mold remediator's job has  
28 been completed, and it is shown that the customer has had to  
29 pay more for the contracted job than the original contract  
30 price, as adjusted for subsequent change orders, unless the  
31 increase in cost was the result of circumstances beyond the

1 control of the assessor or remediator, was the result of  
2 circumstances caused by the customer, or was otherwise  
3 permitted by the terms of the contract between the mold  
4 assessor or mold remediator and the customer.

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

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

10 (j) Abandoning a mold assessment or mold remediation  
11 project in which the mold assessor or mold remediator is  
12 engaged or under contract as a mold assessor or mold  
13 remediator. A project is presumed abandoned after 20 days if  
14 the mold assessor or mold remediator has terminated the  
15 project without just cause and without proper notification to  
16 the owner, including the reason for termination; if the mold  
17 assessor or mold remediator has failed to reasonably secure  
18 the project to safeguard the public while work is stopped; or  
19 if the mold assessor or mold remediator fails to perform work  
20 without just cause for 20 days.

21 (k) Signing a statement with respect to a project or  
22 contract falsely indicating that the work is bonded; falsely  
23 indicating that payment has been made for all subcontracted  
24 work, labor, and materials which results in a financial loss  
25 to the owner, purchaser, or mold assessor or mold remediator;  
26 or falsely indicating that workers' compensation and public  
27 liability insurance are provided.

28 (l) Committing fraud or deceit in the practice of mold  
29 assessment or mold remediation.

30 (m) Committing incompetency or misconduct in the  
31 practice of mold assessment or mold remediation.

1           (n) Committing gross negligence, repeated negligence,  
2 or negligence resulting in a significant danger to life or  
3 property in the practice of mold assessment or mold  
4 remediation.

5           (o) Failing to satisfy, within a reasonable time, the  
6 terms of a civil judgment obtained against the licensee, or  
7 the business organization qualified by the licensee, relating  
8 to the practice of the licensee's profession.

9  
10 For the purposes of this subsection, mold assessment or mold  
11 remediation is considered to be commenced when the contract is  
12 executed and the mold assessor or mold remediator has accepted  
13 funds from the customer or lender.

14           (2) If a mold assessor or mold remediator disciplined  
15 under subsection (1) is a qualifying agent for a business  
16 organization and the violation was performed in connection  
17 with any mold assessment, mold assessment-related activities,  
18 mold remediation, or mold remediation-related activities  
19 undertaken by that business organization, the department may  
20 impose an additional administrative fine not to exceed \$5,000  
21 per violation against the business organization or against any  
22 partner, officer, director, trustee, or member of the  
23 organization if that person participated in the violation or  
24 knew or should have known of the violation and failed to take  
25 reasonable corrective action.

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

28           (4) In recommending penalties in any proposed  
29 recommended final order, the department shall follow the  
30 penalty guidelines established by the board by rule. The  
31 department shall advise the administrative law judge of the

1 appropriate penalty, including mitigating and aggravating  
2 circumstances, and the specific rule citation.

3 (5) The board may not reinstate the license or  
4 certificate of authority of, or cause a license or certificate  
5 of authority to be issued to, a person who or business  
6 organization that the board has determined is unqualified or  
7 whose license or certificate of authority the board has  
8 suspended, until it is satisfied that the person or business  
9 organization has complied with all the terms and conditions  
10 set forth in the final order and is capable of competently  
11 engaging in the business of mold assessment or mold  
12 remediation.

13 (6)(a) The board may assess interest or penalties on  
14 all fines imposed under this part against any person or  
15 business organization that has not paid the imposed fine by  
16 the due date established by rule or final order. Chapter 120  
17 does not apply to such assessment. Interest rates to be  
18 imposed must be established by rule and may not be usurious.

19 (7) The board may not issue a license or certificate  
20 of authority, or a renewal thereof, to any person or business  
21 organization that has been assessed a fine, interest, or costs  
22 associated with investigation and prosecution, or has been  
23 ordered to pay restitution, until the fine, interest, or costs  
24 associated with investigation and prosecution or restitution  
25 are paid in full or until all terms and conditions of the  
26 final order have been satisfied.

27 (8) Any person licensed pursuant to this part who has  
28 had his or her license revoked is ineligible to be a partner,  
29 officer, director, or trustee of a business organization  
30 defined by this section or to be employed in a managerial or  
31 supervisory capacity for a 5-year period. The person is also

1 ineligible to reapply for licensure under this part for a  
2 period of 5 years after the effective date of the revocation.

3 (9) If a business organization or any of its partners,  
4 officers, directors, trustees, or members is or has previously  
5 been fined for violating subsection (2) the board may, on that  
6 basis alone, revoke, suspend, place on probation, or deny  
7 issuance of a license to a qualifying agent or financially  
8 responsible officer of that business organization.

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

14 1. There is evidence that the complainant has suffered  
15 or is likely to suffer monetary damages resulting from the  
16 violation of this part;

17 2. The licensee does not have a history of repeated or  
18 similar violations;

19 3. Reasonable grounds exist to believe that the public  
20 interest will be better served by arbitration than by  
21 disciplinary action; and

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

25 (b) The licensee and the complainant may consent in  
26 writing to binding arbitration within 15 days following  
27 notification of this process by the department. The department  
28 may suspend all action in the matter for 45 days when notice  
29 of consent to binding arbitration is received by the  
30 department. If the arbitration process is successfully  
31 concluded within the 60-day period, the department may close

1 the case file with a notation of the disposition, and the  
2 licensee's record must reflect only that a complaint was filed  
3 and resolved through arbitration.

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

8 (d) The arbitrator's order becomes a final order of  
9 the board if not challenged by the complainant or the  
10 certificateholder or registrant within 30 days after filing.  
11 The board's review of the arbitrator's order operates in the  
12 manner of the review of recommended orders pursuant to s.  
13 120.57(1) and is not a de novo review.

14 (11) If an investigation of a mold assessor or mold  
15 remediator is undertaken, the department shall promptly  
16 furnish to the mold assessor or mold remediator or the mold  
17 assessor's or mold remediator's attorney a copy of the  
18 complaint or document that resulted in the initiation of the  
19 investigation. The department shall make the complaint and  
20 supporting documents available to the mold assessor or mold  
21 remediator. The complaint or supporting documents must contain  
22 information regarding the specific facts that serve as the  
23 basis for the complaint. The mold assessor or mold remediator  
24 may submit a written response to the information contained in  
25 the complaint or document within 20 days after service to the  
26 mold assessor or mold remediator of the complaint or document.  
27 The mold assessor's or mold remediator's written response must  
28 be considered by the probable cause panel. The right to  
29 respond does not prohibit the issuance of a summary emergency  
30 order if necessary to protect the public. However, if the  
31 secretary, or the secretary's designee, and the chair of the

1 board or the chair of the probable cause panel agree in  
2 writing that such notification would be detrimental to the  
3 investigation, the department may withhold notification. The  
4 department may conduct an investigation without notification  
5 to a mold assessor or mold remediator if the act under  
6 investigation is a criminal offense.

7 Section 16. Section 489.615, Florida Statutes, is  
8 created to read:

9 489.615 Prohibitions; penalties.--

10 (1) A person may not:

11 (a) Falsely hold himself or herself or a business  
12 organization out as a licensee;

13 (b) Falsely impersonate a licensee;

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

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

18 (e) Use or attempt to use a license or certificate of  
19 authority which has been suspended or revoked;

20 (f) Engage in the business or act in the capacity of a  
21 mold assessor or mold remediator or advertise himself or  
22 herself or a business organization as available to engage in  
23 the business or act in the capacity of a mold assessor or mold  
24 remediator without being duly licensed or having a certificate  
25 of authority; or

26 (g) Operate a business organization engaged in mold  
27 assessment or mold remediation after 60 days following the  
28 termination of its only qualifying agent without designating  
29 another primary qualifying agent, except as provided in ss.  
30 489.608 and 489.609;

31



1 For purposes of this subsection, a person or business  
2 organization operating on an inactive or suspended license or  
3 certificate of authority is considered unlicensed.

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

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

11 (c) An unlicensed person who commits a violation of  
12 subsection (1) during the existence of a state of emergency  
13 declared by executive order of the Governor commits a felony  
14 of the third degree, punishable as provided in s. 775.082 or  
15 s. 775.083.

16 (3)(a) A licensed mold assessor or mold remediator may  
17 not enter into an agreement, oral or written, whereby his or  
18 her license number is used, or is to be used, by a person who  
19 is not licensed as provided for in this part, or is used, or  
20 is to be used, by a business organization that is not duly  
21 qualified as provided for in this part, to engage in the  
22 business or act in the capacity of a mold assessor or mold  
23 remediator.

24 (b) A licensed mold assessor or mold remediator may  
25 not knowingly allow his or her license number to be used by a  
26 person who is not licensed as provided for in this part, or  
27 used by a business organization that is not qualified as  
28 provided for in this part, to engage in the business or act in  
29 the capacity of a mold assessor or mold remediator.

30 Section 17. Section 489.616, Florida Statutes, is  
31 created to read:

1           489.616 Multiple services.--The board shall, by rule,  
2 provide when and in what manner a licensee may perform both  
3 mold assessment and mold remediation on the same contract or  
4 project.

5           Section 18. Section 489.617, Florida Statutes, is  
6 created to read:

7           489.617 Sale or lease of residential property.--If a  
8 mold remediation of residential property is conducted within a  
9 reasonable time, as determined by the Florida Real Estate  
10 Commission, before executing the contract for sale or lease of  
11 the residential property, the seller shall clearly and  
12 accurately disclose to the purchaser or lessee the results of  
13 the remediation.

14           Section 19. Section 489.618, Florida Statutes, is  
15 created to read:

16           489.618 Liability.--Notwithstanding any law to the  
17 contrary, a civil action does not lie against a person  
18 alleging mold or fungal damages to property or injuries to  
19 persons claimed in excess of \$25,000, if that person has acted  
20 within acceptable codes and acceptable industry protocols.  
21 This limitation does not apply to actions alleging gross  
22 negligence. There is a rebuttable presumption that all work  
23 performed in accordance with applicable building codes and  
24 accepted industry protocols is not negligent.

25           Section 20. If any provision of this act or its  
26 application to any person or circumstance is held invalid, the  
27 invalidity does not affect other provisions or applications of  
28 the act which can be given effect without the invalid  
29 provision or application, and to this end the provisions of  
30 this act are severable.

31

1           Section 21. Subsection (2) of section 489.107, Florida  
2 Statutes, is amended to read:  
3           489.107 Construction Industry Licensing Board.--  
4           (2) The board shall consist of 19 ~~18~~ members, of whom:  
5           (a) Four are primarily engaged in business as general  
6 contractors;  
7           (b) Three are primarily engaged in business as  
8 building contractors or residential contractors, however, at  
9 least one building contractor and one residential contractor  
10 shall be appointed;  
11           (c) One is primarily engaged in business as a roofing  
12 contractor;  
13           (d) One is primarily engaged in business as a sheet  
14 metal contractor;  
15           (e) One is primarily engaged in business as an  
16 air-conditioning contractor;  
17           (f) One is primarily engaged in business as a  
18 mechanical contractor;  
19           (g) One is primarily engaged in business as a pool  
20 contractor;  
21           (h) One is primarily engaged in business as a plumbing  
22 contractor;  
23           (i) One is primarily engaged in business as an  
24 underground utility and excavation contractor;  
25           (j) One is primarily engaged in business as a mold  
26 assessor or mold remediator;  
27           ~~(k)(j)~~ Two are consumer members who are not, and have  
28 never been, members or practitioners of a profession regulated  
29 by the board or members of any closely related profession; and  
30           (l)(k) Two are building officials of a municipality or  
31 county.

1           Section 22. This act shall take effect October 1,  
2 2004.

3  
4                   STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
5                   COMMITTEE SUBSTITUTE FOR  
6                   Senate Bill 1350

7 The committee substitute authorizes the Construction Industry  
8 Licensing Board of the Department of Business and Professional  
9 Regulation to license individuals and companies conducting  
10 mold assessment and mold remediation for compensation.

11 It provides for an additional member to the construction  
12 industry licensing board who is primarily engaged in mold  
13 assessment or mold remediation.

14 It exempts engineers and pest control operators operating  
15 within the scope of their respective licenses. It also  
16 exempts authorized employees of the U.S., state, city and  
17 county governments performing mold assessment or mold  
18 remediation within the scope of their employment and full-time  
19 employees engaged in routine maintenance of public and private  
20 buildings, structures, and facilities as long as the employee  
21 does not hold out for hire or otherwise engage in mold  
22 assessment or mold remediation.

23 It provides for the procedures for mold assessors and mold  
24 remediators to be licensed including license fees, education  
25 requirements, continuing education requirements renewal and  
26 reactivation.

27 It requires that the board shall provide by rule when and in  
28 what manner a licensee may perform both mold assessment and  
29 mold remediation on the same contract or project.

30 It provides that if a mold remediation of residential property  
31 has been conducted within a reasonable time as determined by  
the Real Estate Commission before executing the contract for  
sale or lease of residential property the seller shall clearly  
and accurately disclose to the purchaser or lessee the results  
of the remediation.

It precludes any civil action alleging mold or fungal damages  
to property or injuries to persons claimed in excess of  
\$25,000, if that person has acted within acceptable codes and  
acceptable industry protocols. However, this provision does  
not apply to actions involving gross negligence.