

By the Committees on Appropriations; Finance and Taxation;
Regulated Industries; and Senator Bennett

309-2379-04

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 providing for membership, meetings, removal of
28 members; setting a quorum; providing for
29 reimbursement for per diem and travel expenses;
30 requiring the department to provide staff
31 support and to maintain and make available to

1 the public the committee minutes and records;
2 providing for financial review; providing
3 presumptions in civil actions against persons
4 or entities licensed under the act; providing
5 severability; amending s. 489.107, F.S.; adding
6 to the board a member who is a mold assessor or
7 mold remediator; providing an appropriation and
8 authorizing positions; providing an effective
9 date.

10

11 Be It Enacted by the Legislature of the State of Florida:

12

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

18 Section 2. Section 489.601, Florida Statutes, is
19 created to read:

20 489.601 Legislative purpose.--The Legislature finds it
21 necessary in the interest of the public health, safety, and
22 welfare in order to prevent damage to the real and personal
23 property of the residents of this state and to avert economic
24 injury to the residents of this state to regulate individuals
25 and companies that hold themselves out to the public as
26 qualified to perform mold-related activities.

27 Section 3. Section 489.602, Florida Statutes, is
28 created to read:

29 489.602 Scope of act.--Sections 489.601-489.618 apply
30 only to individuals and companies conducting mold assessment
31 and mold remediation for compensation.

1 Section 4. Section 489.603, Florida Statutes, is
2 created to read:

3 489.603 Exemptions.--Sections 489.601-489.618 do not
4 apply to:

5 (1) A Division I and Division II contractor licensed
6 under this chapter, and an engineer licensed under chapter
7 471, when engaged in mold-related activities incidental to
8 activities within the scope of his or her license.

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

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

23 Section 5. Section 489.604, Florida Statutes, is
24 created to read:

25 489.604 Definitions.--As used in this part, the term:

26 (1) "Board" means the Construction Industry Licensing
27 Board.

28 (2) "Business organization" means any partnership,
29 corporation, business trust, joint venture, or other business
30 organization.

31

1 (3) "Department" means the Department of Business and
2 Professional Regulation.

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

5 (5) "Mold assessment" means:

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

10 (b) The development of a mold management plan or
11 remediation protocol; or

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

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

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

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

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

1 determined by investigation and examination as provided in
2 this part, as attested by the department.

3 (10) "Secondary qualifying agent" means a person who
4 possesses the requisite skill, knowledge, and experience, and
5 has the responsibility, to supervise, direct, manage, and
6 control mold assessment and mold remediation activities, and
7 whose technical and personal qualifications have been
8 determined by investigation and examination as provided in
9 this part, as attested by the department.

10 Section 6. Section 489.605, Florida Statutes, is
11 created to read:

12 489.605 Fees.--The board shall, by rule, establish
13 reasonable fees to be paid for applications, examinations,
14 licensing and renewal, recordmaking, and recordkeeping. Fees
15 for application, initial licensure, license renewal, or
16 license reactivation for mold assessors or mold remediators
17 may not exceed \$500 per applicant. The board may, by rule,
18 establish late renewal penalty fees, in an amount not to
19 exceed the initial licensure fee.

20 Section 7. Section 489.606, Florida Statutes, is
21 created to read:

22 489.606 Examination.--

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

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

1 (3) The board shall adopt rules providing for the
2 review and approval of mold assessment and mold remediation
3 training programs. The board may adopt rules providing for the
4 acceptance of the approval and accreditation of schools and
5 courses of study by nationally accepted accreditation
6 organizations.

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

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

12 1. The board finds that there is a substantial
13 connection between the lack of good moral character of the
14 applicant and the professional responsibilities of a mold
15 assessor or mold remediator; and

16 2. This finding is supported by clear and convincing
17 evidence.

18 (c) If an applicant is found to be unqualified for a
19 license because of a lack of good moral character, the board
20 must furnish to the applicant a statement containing the
21 findings of the board, a complete record of the evidence upon
22 which the determination was based, and a notice of the rights
23 of the applicant to a rehearing and appeal.

24 Section 8. Section 489.607, Florida Statutes, is
25 created to read:

26 489.607 Licensure.--The department shall license any
27 applicant who the board certifies is qualified to practice
28 mold assessment or mold remediation and who:

29 (1) Pays the initial licensing fee;

30 (2) Submits with the application for licensure as a
31 mold assessor or a mold remediator evidence that he or she has

1 successfully completed the board-approved courses as
2 prescribed by rule;

3 (3) Provides evidence of financial stability; and

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

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

11 Section 9. Section 489.608, Florida Statutes, is
12 created to read:

13 489.608 Licensure of business organizations;
14 qualifying agents.--

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

18 (2)(a) If the applicant proposes to engage in mold
19 remediation or mold assessment as a business organization in
20 any name other than the applicant's legal name, the business
21 organization must apply for licensure through a qualifying
22 agent or the individual applicant must apply for licensure
23 under the fictitious name.

24 (b) The application must state the name of the
25 business organization and of each of its partners, the name of
26 the corporation and of each of its officers and directors and
27 the name of each of its stockholders who is also an officer or
28 director, the name of the business trust and of each of its
29 trustees, or the name of such other business organization and
30 of each of its members.

31

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

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

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

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

22 1. An affidavit on a form provided by the department
23 which attests that the applicant has obtained workers'
24 compensation insurance as required by chapter 440, public
25 liability insurance, and property damage insurance, in amounts
26 determined by board rule. Such insurance shall include
27 coverage for an applicant's failure to properly perform mold
28 assessment or mold remediation. The department shall, by rule,
29 establish a procedure to verify the accuracy of such
30 affidavits based upon a random sample method.

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

6
7 Continuing proof of all insurance coverages referenced in this
8 paragraph shall be a requisite condition to maintaining a
9 license issued under this part.

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

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

21 (f) The applicant must furnish evidence of statutory
22 compliance if a fictitious name is used, notwithstanding s.
23 865.09(7).

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

1 organization has 60 days after the termination of the
2 qualifying agent's affiliation with the business organization
3 in which to employ another qualifying agent. The business
4 organization may not engage in mold assessment or mold
5 remediation until a qualifying agent is employed, unless the
6 department has granted a temporary nonrenewable license to the
7 financially responsible officer, the president, a partner, or,
8 in the case of a limited partnership, the general partner, who
9 assumes all responsibilities of a primary qualifying agent for
10 the 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 board, after
21 investigation of the financial responsibility, credit, and
22 business reputation of the qualifying agent and the new
23 business organization, the board 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 board shall require the agent to present
13 evidence of ability and financial responsibility of each such
14 organization. The issuance of such certificate of authority is
15 discretionary with the board.

16 Section 10. Section 489.609, Florida Statutes, is
17 created to read:

18 489.609 Responsibilities.--

19 (1) A qualifying agent is a primary qualifying agent
20 unless he or she is a secondary qualifying agent under this
21 section.

22 (a) All primary qualifying agents for a business
23 organization are jointly and equally responsible for
24 supervision of all operations of the business organization;
25 for all field work at all sites; and for financial matters,
26 both for the organization in general and for each specific
27 job.

28 (b) Upon approval by the board, a business
29 organization may designate a financially responsible officer
30 for purposes of licensure. A financially responsible officer
31 shall be responsible for all financial aspects of the business

1 organization and may not be designated as the primary
2 qualifying agent. The designated financially responsible
3 officer shall furnish evidence of his or her financial
4 responsibility, credit, and business reputation, or that of
5 the business organization he or she desires to qualify, as
6 determined appropriate by the board.

7 (c) If a business organization has a licensed
8 financially responsible officer, the primary qualifying agent
9 is responsible for all mold assessment or mold remediation
10 activities of the business organization, both in general and
11 for each specific job.

12 (d) The board shall adopt rules prescribing the
13 qualifications for financially responsible officers, including
14 net worth, cash, and bonding requirements. These
15 qualifications must be at least as extensive as the
16 requirements for the financial responsibility of qualifying
17 agents.

18 (2)(a) One of the qualifying agents for a business
19 organization that has more than one qualifying agent may be
20 designated as the sole primary qualifying agent for the
21 business organization by a joint agreement that is executed,
22 on a form provided by the board, by all qualifying agents for
23 the business organization.

24 (b) The joint agreement must be submitted to the board
25 for approval. If the board determines that the joint agreement
26 is in good order, it must approve the designation and
27 immediately notify the qualifying agents of its approval. The
28 designation made by the joint agreement is effective upon
29 receipt of the notice by the qualifying agents.

30 (c) The qualifying agent designated for a business
31 organization by a joint agreement is the sole primary

1 qualifying agent for the business organization, and all other
2 qualifying agents for the business organization are secondary
3 qualifying agents.

4 (d) A designated sole primary qualifying agent has all
5 the responsibilities and duties of a primary qualifying agent,
6 notwithstanding that there are secondary qualifying agents for
7 specified jobs. The designated sole primary qualifying agent
8 is jointly and equally responsible with secondary qualifying
9 agents for field work supervision.

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

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

14 (3)(a) A qualifying agent who has been designated by a
15 joint agreement as the sole primary qualifying agent for a
16 business organization may terminate this status by giving
17 actual notice to the business organization, to the board, and
18 to all secondary qualifying agents of his or her intention to
19 terminate this status. The notice to the board must include
20 proof satisfactory to the board that the qualifying agent has
21 given the notice required in this paragraph.

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

26 (c) If a new primary qualifying agent has not been
27 designated within 60 days, all secondary qualifying agents for
28 the business organization become primary qualifying agents
29 unless the joint agreement specifies that one or more of them
30 become sole qualifying agents under such circumstances, in
31

1 which case only the specified secondary qualifying agents
2 become sole qualifying agents.

3 (d) Any change in the status of a qualifying agent is
4 prospective only. A qualifying agent is not responsible for
5 his or her predecessor's actions but is responsible, even
6 after a change in status, for matters for which he or she was
7 responsible while in a particular status.

8 Section 11. Section 489.61, Florida Statutes, is
9 created to read:

10 489.61 Continuing education.--

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

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

16 (3) The licensee must submit proof of compliance with
17 the continuing education requirements along with the
18 licensee's application for license renewal.

19 Section 12. Section 489.611, Florida Statutes, is
20 created to read:

21 489.611 Approval of mold assessor and mold remediator
22 training courses and providers.--

23 (1) The board shall approve training courses and the
24 providers of such courses as are required under this part. The
25 board must also approve training courses and the providers of
26 such courses who offer training for persons who are exempt
27 from licensure under this part.

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

31

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

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

8 (5) The board may impose against a provider of
9 training courses any penalty that it may impose against a
10 licensee under this part or s. 455.227, may decline to approve
11 courses, and may withdraw approval of courses proposed by a
12 provider who has, or whose agent has, been convicted of, pled
13 guilty or nolo contendere to, or entered into a stipulation or
14 consent agreement relating to, without regard to adjudication,
15 any crime or administrative violation in any jurisdiction
16 which involves fraud, deceit, or false or fraudulent
17 representations made in the course of seeking approval of or
18 providing training courses.

19 Section 13. Section 489.612, Florida Statutes, is
20 created to read:

21 489.612 Renewal of license.--

22 (1) The department shall renew a license upon receipt
23 of the renewal application and fee, upon proof of compliance
24 with the continuing education requirements of s. 489.61, and,
25 if a demonstration of competency is required by law or rule,
26 upon certification by the board that the licensee has
27 satisfactorily demonstrated his or her competence in mold
28 assessment and mold remediation.

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

31

1 Section 14. Section 489.613, Florida Statutes, is
2 created to read:

3 489.613 Reactivation.--

4 (1) The board shall, by rule, prescribe continuing
5 education requirements for reactivating a license. The
6 continuing education requirements for reactivating a license
7 for a licensed mold assessor or mold remediator may not exceed
8 15 classroom hours for each year the license was inactive.

9 (2) The board shall adopt rules relating to licenses
10 that have become inactive and for the renewal of inactive
11 licenses. The board shall, by rule, prescribe a fee not to
12 exceed \$50 for the reactivation of an inactive license and a
13 fee not to exceed \$50 for the renewal of an inactive license.

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

16 489.614 Disciplinary proceedings.--

17 (1) The board may revoke, suspend, or deny the
18 issuance or renewal of a license; reprimand, censure, or place
19 on probation any mold assessor or mold remediator; require
20 financial restitution to a consumer; impose an administrative
21 fine not to exceed \$5,000 per violation; require continuing
22 education; or assess costs associated with any investigation
23 and prosecution, if the mold assessor or mold remediator is
24 found guilty of any of the following acts:

25 (a) Obtaining a license or certificate of authority by
26 fraud or misrepresentation.

27 (b) Being convicted or found guilty of, or entering a
28 plea of nolo contendere to, regardless of adjudication, a
29 crime in any jurisdiction which directly relates to the
30 practice of mold assessment or mold remediation or the ability
31 to practice mold assessment or mold remediation.

- 1 (c) Violating any provision of chapter 455.
2 (d) Performing any act that assists a person or entity
3 in engaging in the prohibited unlicensed practice of mold
4 assessment or mold remediation, if the licensee knows or has
5 reasonable grounds to know that the person or entity was
6 unlicensed.
7 (e) Knowingly combining or conspiring with an
8 unlicensed person by allowing his or her license or
9 certificate of authority to be used by the unlicensed person
10 with intent to evade any provision of this part. If a licensee
11 allows his or her license to be used by one or more business
12 organizations without having any active participation in the
13 operations, management, or control of the business
14 organizations, such an act constitutes prima facie evidence of
15 an intent to evade the provisions of this part.
16 (f) Acting in the capacity of a mold assessor or mold
17 remediator under any license issued under this part except in
18 the name of the licensee as set forth on the issued license.
19 (g) Committing mismanagement or misconduct in the
20 practice of mold assessment or mold remediation which causes
21 financial harm to a customer. Financial mismanagement or
22 misconduct occurs when:
23 1. Valid liens have been recorded against the property
24 of a mold assessor's or mold remediator's customer for
25 supplies or services ordered by the mold assessor or mold
26 remediator for the customer's job; the mold assessor or mold
27 remediator has received funds from the customer to pay for the
28 supplies or services; and the mold assessor or mold remediator
29 has not had the liens removed from the property, by payment or
30 by bond, within 75 days after the date of such liens;
31

1 2. The mold assessor or mold remediator has abandoned
2 a customer's job and the percentage of completion is less than
3 the percentage of the total contract price paid to the mold
4 assessor or mold remediator as of the time of abandonment,
5 unless the contractor is entitled to retain such funds under
6 the terms of the contract or refunds the excess funds within
7 30 days after the date the job is abandoned; or

8 3. The mold assessor's or mold remediator's job has
9 been completed, and it is shown that the customer has had to
10 pay more for the contracted job than the original contract
11 price, as adjusted for subsequent change orders, unless the
12 increase in cost was the result of circumstances beyond the
13 control of the assessor or remediator, was the result of
14 circumstances caused by the customer, or was otherwise
15 permitted by the terms of the contract between the mold
16 assessor or mold remediator and the customer.

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

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

22 (j) Abandoning a mold assessment or mold remediation
23 project in which the mold assessor or mold remediator is
24 engaged or under contract as a mold assessor or mold
25 remediator. A project is presumed abandoned after 20 days if
26 the mold assessor or mold remediator has terminated the
27 project without just cause and without proper notification to
28 the owner, including the reason for termination; if the mold
29 assessor or mold remediator has failed to reasonably secure
30 the project to safeguard the public while work is stopped; or
31

1 if the mold assessor or mold remediator fails to perform work
2 without just cause for 20 days.

3 (k) Signing a statement with respect to a project or
4 contract falsely indicating that the work is bonded; falsely
5 indicating that payment has been made for all subcontracted
6 work, labor, and materials which results in a financial loss
7 to the owner, purchaser, or mold assessor or mold remediator;
8 or falsely indicating that workers' compensation and public
9 liability insurance are provided.

10 (l) Committing fraud or deceit in the practice of mold
11 assessment or mold remediation.

12 (m) Committing incompetency or misconduct in the
13 practice of mold assessment or mold remediation.

14 (n) Committing gross negligence, repeated negligence,
15 or negligence resulting in a significant danger to life or
16 property in the practice of mold assessment or mold
17 remediation.

18 (o) Failing to satisfy, within a reasonable time, the
19 terms of a civil judgment obtained against the licensee, or
20 the business organization qualified by the licensee, relating
21 to the practice of the licensee's profession.

22
23 For the purposes of this subsection, mold assessment or mold
24 remediation is considered to be commenced when the contract is
25 executed and the mold assessor or mold remediator has accepted
26 funds from the customer or lender.

27 (2) If a mold assessor or mold remediator disciplined
28 under subsection (1) is a qualifying agent for a business
29 organization and the violation was performed in connection
30 with any mold assessment, mold assessment-related activities,
31 mold remediation, or mold remediation-related activities

1 undertaken by that business organization, the board may impose
2 an additional administrative fine not to exceed \$5,000 per
3 violation against the business organization or against any
4 partner, officer, director, trustee, or member of the
5 organization if that person participated in the violation or
6 knew or should have known of the violation and failed to take
7 reasonable corrective action.

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

10 (4) In recommending penalties in any proposed
11 recommended final order, the department shall follow the
12 penalty guidelines established by the board by rule. The
13 department shall advise the administrative law judge of the
14 appropriate penalty, including mitigating and aggravating
15 circumstances, and the specific rule citation.

16 (5) The board may not reinstate the license or
17 certificate of authority of, or cause a license or certificate
18 of authority to be issued to, a person who or business
19 organization that the board has determined is unqualified or
20 whose license or certificate of authority the board has
21 suspended, until it is satisfied that the person or business
22 organization has complied with all the terms and conditions
23 set forth in the final order and is capable of competently
24 engaging in the business of mold assessment or mold
25 remediation.

26 (6) The board may assess interest or penalties on all
27 finances imposed under this part against any person or business
28 organization that has not paid the imposed fine by the due
29 date established by rule or final order. Chapter 120 does not
30 apply to such assessment. Interest rates to be imposed must be
31 established by rule and may not be usurious.

1 (7) The board may not issue a license or certificate
2 of authority, or a renewal thereof, to any person or business
3 organization that has been assessed a fine, interest, or costs
4 associated with investigation and prosecution, or has been
5 ordered to pay restitution, until the fine, interest, or costs
6 associated with investigation and prosecution or restitution
7 are paid in full or until all terms and conditions of the
8 final order have been satisfied.

9 (8) Any person licensed pursuant to this part who has
10 had his or her license revoked is ineligible to be a partner,
11 officer, director, or trustee of a business organization
12 defined by this section or to be employed in a managerial or
13 supervisory capacity for a 5-year period. The person is also
14 ineligible to reapply for licensure under this part for a
15 period of 5 years after the effective date of the revocation.

16 (9) If a business organization or any of its partners,
17 officers, directors, trustees, or members is or has previously
18 been fined for violating subsection (2) the board may, on that
19 basis alone, revoke, suspend, place on probation, or deny
20 issuance of a license to a qualifying agent or financially
21 responsible officer of that business organization.

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

27 1. There is evidence that the complainant has suffered
28 or is likely to suffer monetary damages resulting from the
29 violation of this part;

30 2. The licensee does not have a history of repeated or
31 similar violations;

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

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

7 (b) The licensee and the complainant may consent in
8 writing to binding arbitration within 15 days following
9 notification of this process by the department. The department
10 may suspend all action in the matter for 45 days when notice
11 of consent to binding arbitration is received by the
12 department. If the arbitration process is successfully
13 concluded within the 60-day period, the department may close
14 the case file with a notation of the disposition, and the
15 licensee's record must reflect only that a complaint was filed
16 and resolved through arbitration.

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

21 (d) The arbitrator's order becomes a final order of
22 the board if not challenged by the complainant or the
23 certificateholder or registrant within 30 days after filing.
24 The board's review of the arbitrator's order operates in the
25 manner of the review of recommended orders pursuant to s.
26 120.57(1) and is not a de novo review.

27 (11) If an investigation of a mold assessor or mold
28 remediator is undertaken, the department shall promptly
29 furnish to the mold assessor or mold remediator or the mold
30 assessor's or mold remediator's attorney a copy of the
31 complaint or document that resulted in the initiation of the

1 investigation. The department shall make the complaint and
2 supporting documents available to the mold assessor or mold
3 remediator. The complaint or supporting documents must contain
4 information regarding the specific facts that serve as the
5 basis for the complaint. The mold assessor or mold remediator
6 may submit a written response to the information contained in
7 the complaint or document within 20 days after service to the
8 mold assessor or mold remediator of the complaint or document.
9 The mold assessor's or mold remediator's written response must
10 be considered by the probable cause panel. The right to
11 respond does not prohibit the issuance of a summary emergency
12 order if necessary to protect the public. However, if the
13 secretary, or the secretary's designee, and the chair of the
14 board or the chair of the probable cause panel agree in
15 writing that such notification would be detrimental to the
16 investigation, the department may withhold notification. The
17 department may conduct an investigation without notification
18 to a mold assessor or mold remediator if the act under
19 investigation is a criminal offense.

20 Section 16. Section 489.615, Florida Statutes, is
21 created to read:

22 489.615 Prohibitions; penalties.--

23 (1) A person may not:

24 (a) Falsely hold himself or herself or a business
25 organization out as a licensee;

26 (b) Falsely impersonate a licensee;

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

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

31

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

3 (f) Engage in the business or act in the capacity of a
4 mold assessor or mold remediator or advertise himself or
5 herself or a business organization as available to engage in
6 the business or act in the capacity of a mold assessor or mold
7 remediator without being duly licensed; or

8 (g) Operate a business organization engaged in mold
9 assessment or mold remediation after 60 days following the
10 termination of its only qualifying agent without designating
11 another primary qualifying agent, except as provided in ss.
12 489.608 and 489.609;

13
14 For purposes of this subsection, a person or business
15 organization operating on an inactive or suspended license or
16 certificate of authority is considered unlicensed.

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

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

24 (c) An unlicensed person who commits a violation of
25 subsection (1) during the existence of a state of emergency
26 declared by executive order of the Governor commits a felony
27 of the third degree, punishable as provided in s. 775.082 or
28 s. 775.083.

29 (3)(a) A licensed mold assessor or mold remediator may
30 not enter into an agreement, oral or written, whereby his or
31 her license number is used, or is to be used, by a person who

1 is not licensed as provided for in this part, or is used, or
2 is to be used, by a business organization that is not duly
3 qualified as provided for in this part, to engage in the
4 business or act in the capacity of a mold assessor or mold
5 remediator.

6 (b) A licensed mold assessor or mold remediator may
7 not knowingly allow his or her license number to be used by a
8 person who is not licensed as provided for in this part, or
9 used by a business organization that is not qualified as
10 provided for in this part, to engage in the business or act in
11 the capacity of a mold assessor or mold remediator.

12 Section 17. Section 489.616, Florida Statutes, is
13 created to read:

14 489.616 Multiple services.--The board shall, by rule,
15 provide when and in what manner a licensee may perform both
16 mold assessment and mold remediation on the same contract or
17 project.

18 Section 18. Section 489.618, Florida Statutes is
19 created to read:

20 489.618 Presumption.--Notwithstanding any law to the
21 contrary, in a civil action against a person or entity duly
22 licensed under and in compliance with the requirements of this
23 part and alleging mold or fungal injuries to persons or
24 damages to property, there is a rebuttable presumption that
25 any work performed in accordance with all applicable building
26 codes and all assessment and remediation standards adopted by
27 the board is not negligent. This presumption applies to any
28 person or entity that, in return for compensation, obtains and
29 relies on the opinion of a person or entity duly licensed
30 under and in compliance with the requirements of this part.

31 There is a rebuttable presumption that any work not performed

1 in accordance with all applicable building codes and all
2 assessment and remediation standards adopted by the board is
3 negligent per se. The presumptions set forth in this section
4 do not apply to actions alleging gross negligence.

5 Section 19. If any provision of this act or its
6 application to any person or circumstance is held invalid, the
7 invalidity does not affect other provisions or applications of
8 the act which can be given effect without the invalid
9 provision or application, and to this end the provisions of
10 this act are severable.

11 Section 20. Subsection (2) of section 489.107, Florida
12 Statutes, is amended to read:

13 489.107 Construction Industry Licensing Board.--

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

15 (a) Four are primarily engaged in business as general
16 contractors;

17 (b) Three are primarily engaged in business as
18 building contractors or residential contractors, however, at
19 least one building contractor and one residential contractor
20 shall be appointed;

21 (c) One is primarily engaged in business as a roofing
22 contractor;

23 (d) One is primarily engaged in business as a sheet
24 metal contractor;

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

27 (f) One is primarily engaged in business as a
28 mechanical contractor;

29 (g) One is primarily engaged in business as a pool
30 contractor;

31

1 (h) One is primarily engaged in business as a plumbing
2 contractor;

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

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

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

10 (l)(k) Two are building officials of a municipality or
11 county.

12 Section 21. For the 2004-2005 fiscal year, the sum of
13 \$294,776 is appropriated from the Professional Regulation
14 Trust Fund and three positions are authorized to the
15 Department of Business and Professional Regulation for the
16 purpose of conducting licensing and regulatory activities
17 associated with mold assessment and remediation.

18 Section 22. This act shall take effect October 1,
19 2004.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
CS/CS/SB 1350

The committee substitute:

(1) Removes an exemption from licensure for businesses engaged in pest control, and adds exemptions for a Division I and Division II contractor licensed under Chapter 489, F.S., and engineers licensed under Chapter 471, F.S., when engaged in mold-related activities incidental to activities within the scope of their licenses.

(2) Provides that presumptions related to negligence do not apply to actions alleging gross negligence.

(3) Provides an appropriation for the 2004-2005 fiscal year of \$294,776 and three positions from the Professional Regulation Trust Fund to the Department of Business and Professional Regulation to implement the licensing and regulatory activities associated with this act.