

1 A bill to be entitled
2 An act relating to mold assessment and mold remediation;
3 creating pt. IV of ch. 489, F.S., entitled "Mold
4 Assessment and Mold Remediation"; providing legislative
5 purpose; providing scope of part; providing exemptions;
6 defining terms; providing for fees relating to licensure
7 of mold assessors and mold remediators; providing for
8 licensure examinations; requiring good moral character, as
9 specified; providing prerequisites to licensure; providing
10 for the licensure of business organizations; providing for
11 qualifying agents; providing for fees; providing
12 responsibilities of primary and secondary qualifying
13 agents and of financially responsible officers;
14 establishing requirements for continuing education;
15 providing that the Construction Industry Licensing Board
16 must approve training courses and training providers for
17 mold assessors and mold remediators; providing for
18 assessing penalties; providing for renewal of licensure;
19 providing for rulemaking; providing for reactivation of
20 licensure; providing for disciplinary proceedings;
21 establishing prohibitions; providing for penalties;
22 prohibiting performing more than one specified activity on
23 a given project; providing for notice and opportunity to
24 repair mold damage in accordance with the provisions of
25 ch. 558; providing a statute of limitations; amending s.
26 489.107, F.S.; adding to the board a member who is a mold
27 assessor or mold remediator; providing severability;
28 providing an effective date.

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

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

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

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

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

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

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

489.603 Exemptions.--This part does not apply to:
(1) Individuals or business organizations licensed under chapter 471, part I of chapter 481, chapter 482, or chapter 489, or on behalf of an insurer under part VI of chapter 626, when

57 acting within the scope of their respective licenses.

58 (2) An authorized employee of the United States, this
 59 state, or any municipality, county, or other political
 60 subdivision, public or private school, or private business
 61 organization who has completed mold assessment or mold
 62 remediation training courses approved by the board or a
 63 certification program approved by the board and who is
 64 conducting mold assessment or mold remediation within the scope
 65 of that employment, as long as the employee does not hold out
 66 for hire or otherwise engage in mold assessment or mold
 67 remediation.

68 (3) A full-time employee engaged in routine maintenance of
 69 private buildings, structures, and facilities as long as the
 70 employee does not hold out for hire or otherwise engage in mold
 71 assessment or mold remediation.

72 Section 5. Section 489.604, Florida Statutes, is created
 73 to read:

74 489.604 Definitions.--As used in this part, the term:

75 (1) "Board" means the Construction Industry Licensing
 76 Board.

77 (2) "Business organization" means any partnership,
 78 corporation, business trust, joint venture, or other business
 79 organization.

80 (3) "Department" means the Department of Business and
 81 Professional Regulation.

82 (4) "Mold" means an organism of the class fungi that
 83 causes disintegration of organic matter and produces spores. The
 84 term "mold" also includes any spores, hyphae, and mycotoxins

85 produced by mold.

86 (5) "Mold assessment" means:

87 (a) An inspection, investigation, or survey of a dwelling
 88 or other structure to provide the owner or occupant with
 89 information regarding the presence, identification, or
 90 evaluation of mold;

91 (b) The development of a mold management plan or
 92 remediation protocol; or

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

94 (6) "Mold assessor" means any person or business
 95 organization that performs mold assessment.

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

100 (8) "Mold remediator" means any person or business
 101 organization that performs mold remediation.

102 (9) "Primary qualifying agent" means a person who
 103 possesses the requisite skill, knowledge, and experience, and
 104 has the responsibility, to supervise, direct, manage, and
 105 control the mold assessment or mold remediation activities of
 106 the business organization with which he or she is connected; who
 107 has the responsibility to supervise, direct, manage, and control
 108 mold assessment or mold remediation activities; and whose
 109 technical and personal qualifications have been determined by
 110 investigation and examination as provided in this part, as
 111 attested by the department.

112 (10) "Secondary qualifying agent" means a person who

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113 possesses the requisite skill, knowledge, and experience, and
114 has the responsibility, to supervise, direct, manage, and
115 control mold assessment and mold remediation activities, and
116 whose technical and personal qualifications have been determined
117 by investigation and examination as provided in this part, as
118 attested by the department.

119 Section 6. Section 489.605, Florida Statutes, is created
120 to read:

121 489.605 Fees.--The board shall, by rule, establish
122 reasonable fees to be paid for applications, examinations,
123 licensing and renewal, recordmaking, and recordkeeping. Fees for
124 application, initial licensure, license renewal, or license
125 reactivation for mold assessors or mold remediators may not
126 exceed \$500 per applicant. The board may, by rule, establish
127 late renewal penalty fees, in an amount not to exceed the
128 initial licensure fee.

129 Section 7. Section 489.606, Florida Statutes, is created
130 to read:

131 489.606 Examination.--

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

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

139 (3) The board shall adopt rules providing for the review
140 and approval of mold assessment and mold remediation training

141 programs. The board may adopt rules providing for the acceptance
 142 of the approval and accreditation of schools and courses of
 143 study by nationally accepted accreditation organizations.

144 (4)(a) "Good moral character" means a personal history of
 145 honesty, fairness, and respect for the rights of others and for
 146 the laws of this state and nation.

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

149 1. The board finds that there is a substantial connection
 150 between the lack of good moral character of the applicant and
 151 the professional responsibilities of a mold assessor or mold
 152 remediator; and

153 2. This finding is supported by clear and convincing
 154 evidence.

155 (c) If an applicant is found to be unqualified for a
 156 license because of a lack of good moral character, the board
 157 must furnish to the applicant a statement containing the
 158 findings of the board, a complete record of the evidence upon
 159 which the determination was based, and a notice of the rights of
 160 the applicant to a rehearing and appeal.

161 Section 8. Section 489.607, Florida Statutes, is created
 162 to read:

163 489.607 Licensure.--The department shall license any
 164 applicant who the board certifies is qualified to practice mold
 165 assessment or mold remediation and who:

166 (1) Pays the initial licensing fee;

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

169 successfully completed the board-approved courses as prescribed
 170 by rule;

171 (3) Provides evidence of financial stability; and

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

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

179 Section 9. Section 489.608, Florida Statutes, is created
 180 to read:

181 489.608 Licensure of business organizations; qualifying
 182 agents.--

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

186 (2)(a) If the applicant proposes to engage in mold
 187 remediation or mold assessment as a business organization in any
 188 name other than the applicant's legal name, the business
 189 organization must apply for licensure through a qualifying agent
 190 or the individual applicant must apply for licensure under the
 191 fictitious name.

192 (b) The application must state the name of the business
 193 organization and of each of its partners, the name of the
 194 corporation and of each of its officers and directors and the
 195 name of each of its stockholders who is also an officer or
 196 director, the name of the business trust and of each of its

197 trustees, or the name of such other business organization and of
 198 each of its members.

199 1. The application for primary qualifying agent must
 200 include an affidavit on a form provided by the department which
 201 attests that the applicant's signature is required on all
 202 checks, drafts, or payments, regardless of the form of payment,
 203 made by the business organization, and that the applicant has
 204 final approval authority for all work performed by the business
 205 organization.

206 2. The application for financially responsible officer
 207 must include an affidavit on a form provided by the department
 208 which attests that the applicant's signature is required on all
 209 checks, drafts, or payments, regardless of the form of payment,
 210 made by the business organization, and that the applicant has
 211 authority to act for the business organization in all financial
 212 matters.

213 3. The application for secondary qualifying agent must
 214 include an affidavit on a form provided by the department which
 215 attests that the applicant has authority to supervise all mold
 216 assessment or mold remediation work performed by the business
 217 organization as provided in s. 489.609(2).

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

220 1. An affidavit on a form provided by the department which
 221 attests that the applicant has obtained workers' compensation
 222 insurance as required by chapter 440, public liability
 223 insurance, and property damage insurance, in amounts determined
 224 by board rule. Such insurance shall include coverage for an

225 applicant's failure to properly perform mold assessment or mold
 226 remediation. The department shall, by rule, establish a
 227 procedure to verify the accuracy of such affidavits based upon a
 228 random sample method.

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

234
 235 Continuing proof of all insurance coverages referenced in this
 236 paragraph shall be a requisite condition to maintaining a
 237 license issued under this part.

238 (d) A joint venture, including a joint venture composed of
 239 qualified business organizations, is a separate and distinct
 240 organization that must be qualified in accordance with
 241 department rules.

242 (e) A license that is issued upon application of a
 243 business organization must be in the name of the business
 244 organization, and the name of the qualifying agent must be noted
 245 thereon. If there is a change in any information that is
 246 required to be stated on the application, the business
 247 organization shall, within 45 days after the change occurs, mail
 248 the correct information to the department.

249 (f) The applicant must furnish evidence of statutory
 250 compliance if a fictitious name is used, notwithstanding s.
 251 865.09(7).

252 (3) The qualifying agent must be licensed under this part

253 in order for the business organization to be licensed. If the
 254 qualifying agent ceases to be affiliated with the business
 255 organization, the agent must so inform the department. In
 256 addition, if the qualifying agent is the only licensed
 257 individual affiliated with the business organization, the
 258 business organization must notify the department of the
 259 termination of the qualifying agent, and the business
 260 organization has 60 days after the termination of the qualifying
 261 agent's affiliation with the business organization in which to
 262 employ another qualifying agent. The business organization may
 263 not engage in mold assessment or mold remediation until a
 264 qualifying agent is employed, unless the department has granted
 265 a temporary nonrenewable license to the financially responsible
 266 officer, the president, a partner, or, in the case of a limited
 267 partnership, the general partner, who assumes all
 268 responsibilities of a primary qualifying agent for the business
 269 organization. This temporary license allows the business
 270 organization to proceed only with incomplete contracts.

271 (4)(a) The qualifying agent shall inform the department in
 272 writing if the agent proposes to engage in mold assessment or
 273 mold remediation in the agent's own name or in affiliation with
 274 another business organization, and the agent or the new business
 275 organization shall supply the same information to the department
 276 as is required of an initial applicant under this part.

277 (b) Upon a favorable determination by the board, after
 278 investigation of the financial responsibility, credit, and
 279 business reputation of the qualifying agent and the new business
 280 organization, the board shall issue, without any examination, a

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281 new license in the business organization's name, and the name of
282 the qualifying agent must be noted thereon.

283 (5)(a) Each mold assessor or mold remediator shall affix
284 the mold assessor's or mold remediator's signature and license
285 number to each document prepared or approved for use by the
286 licensee which is related to any mold assessment or mold
287 remediation project and filed for public record with a
288 governmental agency, and to any offer, bid, or contract
289 submitted to a client.

290 (b) The license number of each mold assessor or mold
291 remediator must appear in any printed matter or any newspaper,
292 airwave transmission, phone directory, or other advertising
293 medium offering or related to mold assessment or mold
294 remediation, as provided by department rule.

295 (6) Each qualifying agent shall pay the department an
296 amount equal to the original fee for licensure of a new business
297 organization. If the qualifying agent for a business
298 organization desires to qualify additional business
299 organizations, the board shall require the agent to present
300 evidence of ability and financial responsibility of each such
301 organization. The issuance of such license is discretionary with
302 the board.

303 Section 10. Section 489.609, Florida Statutes, is created
304 to read:

305 489.609 Responsibilities.--

306 (1) A qualifying agent is a primary qualifying agent
307 unless he or she is a secondary qualifying agent under this
308 section.

309 (a) All primary qualifying agents for a business
310 organization are jointly and equally responsible for supervision
311 of all operations of the business organization; for all field
312 work at all sites; and for financial matters, both for the
313 organization in general and for each specific job.

314 (b) Upon approval by the board, a business organization
315 may designate a financially responsible officer for purposes of
316 licensure. A financially responsible officer shall be
317 responsible for all financial aspects of the business
318 organization and may not be designated as the primary qualifying
319 agent. The designated financially responsible officer shall
320 furnish evidence of his or her financial responsibility, credit,
321 and business reputation, or that of the business organization he
322 or she desires to qualify, as determined appropriate by the
323 board.

324 (c) If a business organization has a licensed financially
325 responsible officer, the primary qualifying agent is responsible
326 for all mold assessment or mold remediation activities of the
327 business organization, both in general and for each specific
328 job.

329 (d) The board shall adopt rules prescribing the
330 qualifications for financially responsible officers, including
331 net worth, cash, and bonding requirements. These qualifications
332 must be at least as extensive as the requirements for the
333 financial responsibility of qualifying agents.

334 (2)(a) One of the qualifying agents for a business
335 organization that has more than one qualifying agent may be
336 designated as the sole primary qualifying agent for the business

337 organization by a joint agreement that is executed, on a form
338 provided by the board, by all qualifying agents for the business
339 organization.

340 (b) The joint agreement must be submitted to the board for
341 approval. If the board determines that the joint agreement is in
342 good order, it must approve the designation and immediately
343 notify the qualifying agents of its approval. The designation
344 made by the joint agreement is effective upon receipt of the
345 notice by the qualifying agents.

346 (c) The qualifying agent designated for a business
347 organization by a joint agreement is the sole primary qualifying
348 agent for the business organization, and all other qualifying
349 agents for the business organization are secondary qualifying
350 agents.

351 (d) A designated sole primary qualifying agent has all the
352 responsibilities and duties of a primary qualifying agent,
353 notwithstanding that there are secondary qualifying agents for
354 specified jobs. The designated sole primary qualifying agent is
355 jointly and equally responsible with secondary qualifying agents
356 for field work supervision.

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

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

361 (3)(a) A qualifying agent who has been designated by a
362 joint agreement as the sole primary qualifying agent for a
363 business organization may terminate this status by giving actual
364 notice to the business organization, to the board, and to all

365 secondary qualifying agents of his or her intention to terminate
 366 this status. The notice to the board must include proof
 367 satisfactory to the board that the qualifying agent has given
 368 the notice required in this paragraph.

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

373 (c) If a new primary qualifying agent has not been
 374 designated within 60 days, all secondary qualifying agents for
 375 the business organization become primary qualifying agents
 376 unless the joint agreement specifies that one or more of them
 377 become sole qualifying agents under such circumstances, in which
 378 case only the specified secondary qualifying agents become sole
 379 qualifying agents.

380 (d) Any change in the status of a qualifying agent is
 381 prospective only. A qualifying agent is not responsible for his
 382 or her predecessor's actions but is responsible, even after a
 383 change in status, for matters for which he or she was
 384 responsible while in a particular status.

385 Section 11. Section 489.61, Florida Statutes, is created
 386 to read:

387 489.61 Continuing education.--

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

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

393 (3) The licensee must submit proof of compliance with the
 394 continuing education requirements along with the licensee's
 395 application for license renewal.

396 Section 12. Section 489.611, Florida Statutes, is created
 397 to read:

398 489.611 Approval of mold assessor and mold remediator
 399 training courses and providers.--

400 (1) The board shall approve training courses and the
 401 providers of such courses as are required under this part. The
 402 board must also approve training courses and the providers of
 403 such courses who offer training for persons who are exempt from
 404 licensure under this part.

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

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

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

415 (5) The board may impose against a provider of training
 416 courses any penalty that it may impose against a licensee under
 417 this part or s. 455.227, may decline to approve courses, and may
 418 withdraw approval of courses proposed by a provider who has, or
 419 whose agent has, been convicted of, pled guilty or nolo
 420 contendere to, or entered into a stipulation or consent

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421 agreement relating to, without regard to adjudication, any crime
 422 or administrative violation in any jurisdiction which involves
 423 fraud, deceit, or false or fraudulent representations made in
 424 the course of seeking approval of or providing training courses.

425 Section 13. Section 489.612, Florida Statutes, is created
 426 to read:

427 489.612 Renewal of license.--

428 (1) The department shall renew a license upon receipt of
 429 the renewal application and fee, upon proof of compliance with
 430 the continuing education requirements of s. 489.61, and, if a
 431 demonstration of competency is required by law or rule, upon
 432 certification by the board that the licensee has satisfactorily
 433 demonstrated his or her competence in mold assessment and mold
 434 remediation.

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

437 Section 14. Section 489.613, Florida Statutes, is created
 438 to read:

439 489.613 Reactivation.--

440 (1) The board shall, by rule, prescribe continuing
 441 education requirements for reactivating a license. The
 442 continuing education requirements for reactivating a license for
 443 a licensed mold assessor or mold remediator may not exceed 15
 444 classroom hours for each year the license was inactive.

445 (2) The board shall adopt rules relating to licenses that
 446 have become inactive and for the renewal of inactive licenses.
 447 The board shall, by rule, prescribe a fee not to exceed \$50 for
 448 the reactivation of an inactive license and a fee not to exceed

449 \$50 for the renewal of an inactive license.

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

452 489.614 Disciplinary proceedings.--

453 (1) The board may revoke, suspend, or deny the issuance or
454 renewal of a license; reprimand, censure, or place on probation
455 any mold assessor or mold remediator; require financial
456 restitution to a consumer; impose an administrative fine not to
457 exceed \$5,000 per violation; require continuing education; or
458 assess costs associated with any investigation and prosecution,
459 if the mold assessor or mold remediator is found guilty of any
460 of the following acts:

461 (a) Obtaining a license by fraud or misrepresentation.

462 (b) Being convicted or found guilty of, or entering a plea
463 of nolo contendere to, regardless of adjudication, a crime in
464 any jurisdiction which directly relates to the practice of mold
465 assessment or mold remediation or the ability to practice mold
466 assessment or mold remediation.

467 (c) Violating any provision of chapter 455.

468 (d) Performing any act that assists a person or entity in
469 engaging in the prohibited unlicensed practice of mold
470 assessment or mold remediation, if the licensee knows or has
471 reasonable grounds to know that the person or entity is
472 unlicensed.

473 (e) Knowingly combining or conspiring with an unlicensed
474 person by allowing his or her license to be used by the
475 unlicensed person with intent to evade any provision of this
476 part. If a licensee allows his or her license to be used by one

477 or more business organizations without having any active
478 participation in the operations, management, or control of the
479 business organizations, such an act constitutes prima facie
480 evidence of an intent to evade the provisions of this part.

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

484 (g) Committing mismanagement or misconduct in the practice
485 of mold assessment or mold remediation which causes financial
486 harm to a customer. Financial mismanagement or misconduct occurs
487 when:

488 1. Valid liens have been recorded against the property of
489 a mold assessor's or mold remediator's customer for supplies or
490 services ordered by the mold assessor or mold remediator for the
491 customer's job; the mold assessor or mold remediator has
492 received funds from the customer to pay for the supplies or
493 services; and the mold assessor or mold remediator has not had
494 the liens removed from the property, by payment or by bond,
495 within 75 days after the date of such liens;

496 2. The mold assessor or mold remediator has abandoned a
497 customer's job and the percentage of completion is less than the
498 percentage of the total contract price paid to the mold assessor
499 or mold remediator as of the time of abandonment, unless the
500 contractor is entitled to retain such funds under the terms of
501 the contract or refunds the excess funds within 30 days after
502 the date the job is abandoned; or

503 3. The mold assessor's or mold remediator's job has been
504 completed, and it is shown that the customer has had to pay more

505 for the contracted job than the original contract price, as
506 adjusted for subsequent change orders, unless the increase in
507 cost was the result of circumstances beyond the control of the
508 assessor or remediator, was the result of circumstances caused
509 by the customer, or was otherwise permitted by the terms of the
510 contract between the mold assessor or mold remediator and the
511 customer.

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

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

516 (j) Abandoning a mold assessment or mold remediation
517 project in which the mold assessor or mold remediator is engaged
518 or under contract as a mold assessor or mold remediator. A
519 project is presumed abandoned after 20 days if the mold assessor
520 or mold remediator has terminated the project without just cause
521 and without proper notification to the owner, including the
522 reason for termination; if the mold assessor or mold remediator
523 has failed to reasonably secure the project to safeguard the
524 public while work is stopped; or if the mold assessor or mold
525 remediator fails to perform work without just cause for 20 days.

526 (k) Signing a statement with respect to a project or
527 contract falsely indicating that the work is bonded; falsely
528 indicating that payment has been made for all subcontracted
529 work, labor, and materials which results in a financial loss to
530 the owner, purchaser, or mold assessor or mold remediator; or
531 falsely indicating that workers' compensation and public
532 liability insurance are provided.

533 (1) Committing fraud or deceit in the practice of mold
 534 assessment or mold remediation.

535 (m) Committing incompetency or misconduct in the practice
 536 of mold assessment or mold remediation.

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

540 (o) Failing to satisfy, within a reasonable time, the
 541 terms of a civil judgment obtained against the licensee, or the
 542 business organization qualified by the licensee, relating to the
 543 practice of the licensee's profession.

544
 545 For the purposes of this subsection, mold assessment or mold
 546 remediation is considered to be commenced when the contract is
 547 executed and the mold assessor or mold remediator has accepted
 548 funds from the customer or lender.

549 (2) If a mold assessor or mold remediator disciplined
 550 under subsection (1) is a qualifying agent for a business
 551 organization and the violation was performed in connection with
 552 any mold assessment, mold assessment-related activities, mold
 553 remediation, or mold remediation-related activities undertaken
 554 by that business organization, the board may impose an
 555 additional administrative fine not to exceed \$5,000 per
 556 violation against the business organization or against any
 557 partner, officer, director, trustee, or member of the
 558 organization if that person participated in the violation or
 559 knew or should have known of the violation and failed to take
 560 reasonable corrective action.

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

563 (4) In recommending penalties in any proposed recommended
 564 final order, the department shall follow the penalty guidelines
 565 established by the board by rule. The department shall advise
 566 the administrative law judge of the appropriate penalty,
 567 including mitigating and aggravating circumstances, and the
 568 specific rule citation.

569 (5) The board may not reinstate the license of, or cause a
 570 license to be issued to, a person who or business organization
 571 that the board has determined is unqualified or whose license
 572 the board has suspended, until it is satisfied that the person
 573 or business organization has complied with all the terms and
 574 conditions set forth in the final order and is capable of
 575 competently engaging in the business of mold assessment or mold
 576 remediation.

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

583 (7) The board may not issue a license, or a renewal
 584 thereof, to any person or business organization that has been
 585 assessed a fine, interest, or costs associated with
 586 investigation and prosecution, or has been ordered to pay
 587 restitution, until the fine, interest, or costs associated with
 588 investigation and prosecution or restitution are paid in full or

589 until all terms and conditions of the final order have been
 590 satisfied.

591 (8) Any person licensed pursuant to this part who has had
 592 his or her license revoked is ineligible to be a partner,
 593 officer, director, or trustee of a business organization defined
 594 by this section or to be employed in a managerial or supervisory
 595 capacity for a 5-year period. The person is also ineligible to
 596 reapply for licensure under this part for a period of 5 years
 597 after the effective date of the revocation.

598 (9) If a business organization or any of its partners,
 599 officers, directors, trustees, or members is or has previously
 600 been fined for violating subsection (2) the board may, on that
 601 basis alone, revoke, suspend, place on probation, or deny
 602 issuance of a license to a qualifying agent or financially
 603 responsible officer of that business organization.

604 (10)(a) Notwithstanding chapters 120 and 455, upon receipt
 605 of a legally sufficient consumer complaint alleging a violation
 606 of this part, the department may provide by rule for binding
 607 arbitration between the complainant and the licensee, if:

608 1. There is evidence that the complainant has suffered or
 609 is likely to suffer monetary damages resulting from the
 610 violation of this part;

611 2. The licensee does not have a history of repeated or
 612 similar violations;

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

616 4. The complainant and licensee have not previously

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617 entered into private arbitration, and a civil court action based
618 on the same transaction has not been filed.

619 (b) The licensee and the complainant may consent in
620 writing to binding arbitration within 15 days following
621 notification of this process by the department. The department
622 may suspend all action in the matter for 45 days when notice of
623 consent to binding arbitration is received by the department. If
624 the arbitration process is successfully concluded within the 60-
625 day period, the department may close the case file with a
626 notation of the disposition, and the licensee's record must
627 reflect only that a complaint was filed and resolved through
628 arbitration.

629 (c) If a complaint meets the criteria for arbitration set
630 forth in paragraph (a) and the damages at issue are less than
631 \$2,500, the department shall refer the complaint for mandatory
632 arbitration.

633 (d) The arbitrator's order becomes a final order of the
634 board if not challenged by the complainant or the licensee
635 within 30 days after filing. The board's review of the
636 arbitrator's order operates in the manner of the review of
637 recommended orders pursuant to s. 120.57(1) and is not a de novo
638 review.

639 (11) If an investigation of a mold assessor or mold
640 remediator is undertaken, the department shall promptly furnish
641 to the mold assessor or mold remediator or the mold assessor's
642 or mold remediator's attorney a copy of the complaint or
643 document that resulted in the initiation of the investigation.
644 The department shall make the complaint and supporting documents

645 available to the mold assessor or mold remediator. The complaint
 646 or supporting documents must contain information regarding the
 647 specific facts that serve as the basis for the complaint. The
 648 mold assessor or mold remediator may submit a written response
 649 to the information contained in the complaint or document within
 650 20 days after service to the mold assessor or mold remediator of
 651 the complaint or document. The mold assessor's or mold
 652 remediator's written response must be considered by the probable
 653 cause panel. The right to respond does not prohibit the issuance
 654 of a summary emergency order if necessary to protect the public.
 655 However, if the secretary, or the secretary's designee, and the
 656 chair of the board or the chair of the probable cause panel
 657 agree in writing that such notification would be detrimental to
 658 the investigation, the department may withhold notification. The
 659 department may conduct an investigation without notification to
 660 a mold assessor or mold remediator if the act under
 661 investigation is a criminal offense.

662 Section 16. Section 489.615, Florida Statutes, is created
 663 to read:

664 489.615 Prohibitions; penalties.--

665 (1) A person may not:

666 (a) Falsely hold himself or herself or a business
 667 organization out as a licensee;

668 (b) Falsely impersonate a licensee;

669 (c) Present as his or her own the license of another;

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

672 (e) Use or attempt to use a license that has been

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673 suspended or revoked;

674 (f) Engage in the business or act in the capacity of a
675 mold assessor or mold remediator or advertise himself or herself
676 or a business organization as available to engage in the
677 business or act in the capacity of a mold assessor or mold
678 remediator without being duly licensed; or

679 (g) Operate a business organization engaged in mold
680 assessment or mold remediation after 60 days following the
681 termination of its only qualifying agent without designating
682 another primary qualifying agent, except as provided in ss.
683 489.608 and 489.609;

684
685 For purposes of this subsection, a person or business
686 organization operating on an inactive or suspended license is
687 considered unlicensed.

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

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

695 (c) An unlicensed person who commits a violation of
696 subsection (1) during the existence of a state of emergency
697 declared by executive order of the Governor commits a felony of
698 the third degree, punishable as provided in s. 775.082 or s.
699 775.083.

700 (3)(a) A licensed mold assessor or mold remediator may not

701 enter into an agreement, oral or written, whereby his or her
 702 license number is used, or is to be used, by a person who is not
 703 licensed as provided for in this part, or is used, or is to be
 704 used, by a business organization that is not duly qualified as
 705 provided for in this part, to engage in the business or act in
 706 the capacity of a mold assessor or mold remediator.

707 (b) A licensed mold assessor or mold remediator may not
 708 knowingly allow his or her license number to be used by a person
 709 who is not licensed as provided for in this part, or used by a
 710 business organization that is not qualified as provided for in
 711 this part, to engage in the business or act in the capacity of a
 712 mold assessor or mold remediator.

713 Section 17. Section 489.616, Florida Statutes, is created
 714 to read:

715 489.616 Multiple services prohibited.--A licensee may
 716 perform only one of the following activities on the same
 717 project:

- 718 (1) Mold or mold-related analysis or assessment; or
- 719 (2) Mold remediation.

720 Section 18. Section 489.617, Florida Statutes, is created
 721 to read:

722 489.617 Notice and opportunity to repair.--Any action
 723 brought alleging defects against a mold assessor or mold
 724 remediator shall be governed by the provisions of chapter 558.
 725 For purposes of application of chapter 558, in any action
 726 brought against a mold assessor or mold remediator, the term
 727 "contractor" includes mold assessors and mold remediators as
 728 defined in s. 489.604(6) and (8), respectively, and the term

729 "construction defect" includes mold or fungal damages to
 730 property or persons resulting from the activities of a mold
 731 assessor or remediator. Notwithstanding the provisions of s.
 732 558.004(10), any subsequent judicial proceeding alleging such
 733 defects must be brought within 1 year after the exhaustion of
 734 the remedies available under chapter 558.

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

737 489.107 Construction Industry Licensing Board.--

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

739 (a) Four are primarily engaged in business as general
 740 contractors;

741 (b) Three are primarily engaged in business as building
 742 contractors or residential contractors, however, at least one
 743 building contractor and one residential contractor shall be
 744 appointed;

745 (c) One is primarily engaged in business as a roofing
 746 contractor;

747 (d) One is primarily engaged in business as a sheet metal
 748 contractor;

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

751 (f) One is primarily engaged in business as a mechanical
 752 contractor;

753 (g) One is primarily engaged in business as a pool
 754 contractor;

755 (h) One is primarily engaged in business as a plumbing
 756 contractor;

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

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

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

764 (l)(k) Two are building officials of a municipality or
 765 county.

766 Section 20. If any provision of this act or its
 767 application to any person or circumstance is held invalid, the
 768 invalidity does not affect other provisions or applications of
 769 the act which can be given effect without the invalid provision
 770 or application, and to this end the provisions of this act are
 771 severable.

772 Section 21. This act shall take effect October 1, 2005.