

Bill No. HB 315, 1st Eng.

Barcode 331680

CHAMBER ACTION

Senate

House

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Senator Argenziano moved the following amendment:

**Senate Amendment (with title amendment)**

Line 145, delete that line

and insert:

Section 2. Effective October 1, 2005, section 489.1134, Florida Statutes, is created to read:

489.1134 Mold remediation certification.--

(1) (a) In addition to the certification or registration required to engage in business as a contractor under this part, any contractor who wishes to engage in business as a contractor with a focus or emphasis on mold or mold remediation that is not incidental to the scope of his or her license shall take the courses or the number of course hours determined by the board. Such courses or course hours may count as part of the contractor's continuing education requirement and shall be given by an instructional facility or teaching entity that has been approved by the board. Upon successful completion of the course, courses, or course hours, the instructional facility or teaching entity that has been

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1 approved by the board shall report such completion to the  
2 department and issue to the taker of the course a certificate  
3 of completion, which shall be available for inspection by any  
4 entity or person seeking to have the contractor engage in  
5 business as a contractor with a focus or emphasis on mold or  
6 mold remediation that is not incidental to the license of the  
7 contractor.

8 (b) Any other natural person who is employed by a  
9 licensed contractor to provide work on mold or mold  
10 remediation shall, as a prerequisite to his or her  
11 authorization to provide such service, take a course approved  
12 by the board.

13 (c) It is the responsibility of the contractor  
14 licensed under this part to ensure that members of his or her  
15 workforce who are engaging in business as a contractor with a  
16 focus or emphasis on mold or mold remediation that is not  
17 incidental to the scope of the contractor's license are in  
18 compliance with this section, and such contractor is subject  
19 to discipline under s. 489.129 for violation of this section.

20 (d) Training programs in mold remediation shall be  
21 reviewed annually by the board to ensure that programs have  
22 been provided equitably across the state.

23 (e) Periodically, the board shall review training  
24 programs in mold remediation for quality in content and  
25 instruction. The board shall also respond to complaints  
26 regarding approved programs.

27 (2) (a) A person qualified under paragraph (1) (a) must  
28 be present on any job site at which a person is engaging in  
29 business as a contractor with a focus or emphasis on mold or  
30 mold remediation that is not incidental to the scope of his or  
31 her license.

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1       (b) It is the responsibility of the licensed  
2 contractor to ensure compliance with paragraph (a), and such  
3 contractor is subject to discipline under s. 489.129 for  
4 violation of this subsection.

5       (3) No contractor shall hold himself or herself out as  
6 emphasizing in mold or mold remediation unless the contractor  
7 is in compliance with this section.

8       (4) The term "mold" means an organism of the class  
9 fungi that causes disintegration of organic matter and  
10 produces spores and includes any spores, hyphae, and  
11 mycotoxins produced by mold. The term "mold remediation" means  
12 the business as a contractor related to mold or  
13 mold-contaminated matter.

14       Section 3. Effective October 1, 2005, section 501.933,  
15 Florida Statutes, is created to read:

16       501.933 Mold assessors; requirements; exemptions;  
17 prohibited acts and penalties; bond and insurance; limitations  
18 and enforcement.--

19       (1) DEFINITIONS.--As used in this section, the term:

20       (a) "Mold" means an organism of the class fungi that  
21 causes disintegration of organic matter and produces spores,  
22 and includes any spores, hyphae, and mycotoxins produced by  
23 mold.

24       (b) "Mold assessment" means:

25       1. An inspection, investigation, or survey of a  
26 dwelling or other structure to provide the owner or occupant  
27 with information regarding the presence, identification, or  
28 evaluation of mold;

29       2. The development of a mold-management plan or  
30 remediation protocol; or

31       3. The collection or analysis of a mold sample.

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1       (c) "Mold assessor" means any person that performs or  
2 directly supervises a mold assessment.

3       (2) REQUIREMENTS FOR PRACTICE.--

4       (a) A person shall not work as a mold assessor unless  
5 he or she has evidence of, or works under the direct  
6 supervision of a person who has evidence of, a certification  
7 from either:

8           1. A nonprofit organization with a focus on indoor air  
9 quality or industrial hygiene that meets each of the following  
10 criteria:

11           a. Requires that a person may not obtain certification  
12 unless the person has at least a 2-year degree in a scientific  
13 or building science field and 3 years of documented experience  
14 from a qualified mold assessor, or requires a 4-year degree in  
15 a scientific or building science field.

16           b. Requires the person to pass an examination testing  
17 knowledge related to mold and mold assessment; or

18           2. A community college or university that offers mold  
19 assessment training or education.

20       (b) A business entity may not provide or offer to  
21 provide mold assessment services unless the business entity  
22 satisfies all of the requirements of this section.

23       (3) EXEMPTIONS.--The following persons are not  
24 required to comply with this section with regard to any mold  
25 assessment:

26           (a) A residential property owner who performs mold  
27 assessment on his or her own property.

28           (b) An owner or tenant, or a managing agent or  
29 employee of an owner or tenant, who performs mold assessment  
30 on property owned or leased by the owner or tenant. This  
31 exemption does not apply if the managing agent or employee

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1 engages in the business of performing mold assessment for the  
 2 public.

3 (c) An employee of a licensee who performs mold  
 4 assessment while directly supervised by the mold assessor.

5 (d) Individuals or business organizations licensed  
 6 under chapter 471, part I of chapter 481, chapter 482, or  
 7 chapter 489, or acting on behalf of an insurer under part VI  
 8 of chapter 626, or individuals in the manufactured housing  
 9 industry who are licensed under chapter 320, that are not  
 10 specifically engaged in mold assessment, but that are acting  
 11 within the scope of their respective licenses.

12 (e) An authorized employee of the United States, this  
 13 state, or any municipality, county, or other political  
 14 subdivision, or public or private school, who meets the  
 15 requirements of subsection (2) and who is conducting mold  
 16 assessment within the scope of that employment, as long as the  
 17 employee does not hold out for hire or otherwise engage in  
 18 mold assessment.

19 (4) PROHIBITED ACTS; PENALTIES.--

20 (a) A mold assessor, a company that employs a mold  
 21 assessor, or a company that is controlled by a company that  
 22 also has a financial interest in a company employing a mold  
 23 assessor may not:

24 1. Perform or offer to perform any mold assessment  
 25 without complying with the requirements of this section.

26 2. Perform or offer to perform any mold remediation to  
 27 a structure on which the mold assessor or the mold assessor's  
 28 company provided a mold assessment within the last 12 months.

29 3. Inspect for a fee any property in which the  
 30 assessor or the assessor's company has any financial or  
 31 transfer interest.

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1           4. Accept any compensation, inducement, or reward from  
2 a mold remediator or mold remediator's company for the  
3 referral of any business to the mold remediator or the mold  
4 remediator's company.

5           5. Offer any compensation, inducement, or reward to a  
6 mold remediator or mold remediator's company for the referral  
7 of any business from the mold remediator or the mold  
8 remediator's company.

9           6. Accept an engagement to make an omission of the  
10 assessment or conduct an assessment in which the assessment  
11 itself, or the fee payable for the assessment, is contingent  
12 upon the conclusions of the assessment.

13           (b) Any person who violates any provision of this  
14 subsection commits:

15           1. A misdemeanor of the second degree for a first  
16 violation, punishable as provided in s. 775.082 or s. 775.083.

17           2. A misdemeanor of the first degree for a second  
18 violation, punishable as provided in s. 775.082 or s. 775.083.

19           3. A felony of the third degree for a third or  
20 subsequent violation, punishable as provided in s. 775.082, s.  
21 775.083, or s. 775.084.

22           (5) INSURANCE.--A mold assessor must maintain a  
23 mold-specific insurance policy in an amount of not less than  
24 \$1 million.

25           (6) REPAIR COST ESTIMATES.--Mold assessors are not  
26 required to provide estimates related to the cost of repair of  
27 an assessed property.

28           (7) STATUTE OF LIMITATIONS.--Chapter 95 governs the  
29 time at which an action to enforce an obligation, duty, or  
30 right arising under this section must be commenced.

31           (8) ENFORCEMENT OF VIOLATIONS.--Any violation of this

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1 section constitutes a deceptive and unfair trade practice,  
2 punishable as provided in part II of this chapter.

3 Section 4. Effective October 1, 2005, section 501.934,  
4 Florida Statutes, is created to read:

5 501.934 Noncontracting mold remediators; requirements;  
6 exemptions; prohibited acts and penalties; bond and insurance;  
7 limitations and enforcement.--

8 (1) DEFINITIONS.--As used in this section, the term:

9 (a) "Mold" means an organism of the class fungi that  
10 causes disintegration of organic matter and produces spores,  
11 and includes any spores, hyphae, and mycotoxins produced by  
12 mold.

13 (b) "Noncontracting mold remediation" means the  
14 removal, cleaning, sanitizing, demolition, or other treatment,  
15 including preventive activities, of mold or mold-contaminated  
16 matter that was not purposely grown at that location; however,  
17 such removal, cleaning, sanitizing, demolition, or other  
18 treatment, including preventive activities, may not be work  
19 that requires a license under chapter 489 unless performed by  
20 a person who is licensed under that chapter or the work  
21 complies with that chapter.

22 (c) "Noncontracting mold remediator" means any person  
23 that performs mold remediation. A noncontracting mold  
24 remediator may not perform any work that requires a license  
25 under chapter 489 unless the noncontracting mold remediator is  
26 also licensed under that chapter or complies with that  
27 chapter.

28 (2) REQUIREMENTS FOR PRACTICE.--

29 (a) A person shall not work as a noncontracting mold  
30 remediator unless he or she has evidence of, or works under  
31 the direct supervision of a person who has evidence of, a

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1 certification from either:

2       1. A nonprofit organization with a focus on mold  
3 remediation that meets each of the following criteria:

4           a. Requires that a person has at least a high school  
5 diploma and at least 2 years' experience in a field related to  
6 mold remediation;

7           b. Requires that a person has completed training  
8 related to mold and mold remediation; and

9           c. Requires the person to pass an examination testing  
10 knowledge related to mold and mold remediation; or

11       2. A community college or university that offers mold  
12 remediation training or education.

13       (b) A business entity may not provide or offer to  
14 provide mold remediation services unless the business entity  
15 satisfies all of the requirements of this section.

16       (3) EXEMPTIONS.--The following persons are not  
17 required to comply with this section with regard to any  
18 noncontracting mold remediation:

19           (a) A residential property owner who performs  
20 noncontracting mold remediation on his or her own property.

21           (b) An owner or tenant, or a managing agent or  
22 employee of an owner or tenant, who performs noncontracting  
23 mold remediation on property owned or leased by the owner or  
24 tenant so long as such remediation is within the routine  
25 maintenance of a building structure. This exemption does not  
26 apply if the managing agent or employee engages in the  
27 business of performing noncontracting mold remediation for the  
28 public.

29           (c) An employee of a licensee who performs  
30 noncontracting mold remediation while directly supervised by  
31 the noncontracting mold remediator.



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1       (d) Individuals or business organizations licensed  
2 under chapter 471, part I of chapter 481, chapter 482, or  
3 chapter 489, or acting on behalf of an insurer under part VI  
4 of chapter 626, or individuals in the manufactured housing  
5 industry who are licensed under chapter 320, that are not  
6 specifically engaged in mold remediation, but that are acting  
7 within the scope of their respective licenses.

8       (e) An authorized employee of the United States, this  
9 state, or any municipality, county, or other political  
10 subdivision, or public or private school, who meets the  
11 requirements of subsection (2) and who is conducting mold  
12 remediation within the scope of that employment, as long as  
13 the employee does not hold out for hire or otherwise engage in  
14 mold remediation.

15       (4) PROHIBITED ACTS; PENALTIES.--

16       (a) A noncontracting mold remediator, a company that  
17 employs a noncontracting mold remediator, or a company that is  
18 controlled by a company that also has a financial interest in  
19 a company employing a noncontracting mold remediator may not:

20           1. Perform or offer to perform any mold remediation  
21 without complying with the requirements of this section.

22           2. Perform or offer to perform any mold assessment as  
23 defined in s. 501.933.

24           3. Remediate for a fee any property in which the  
25 noncontracting mold remediator or the noncontracting mold  
26 remediator's company has any financial or transfer interest.

27           4. Accept any compensation, inducement, or reward from  
28 a mold assessor or mold assessor's company for the referral of  
29 any business from the mold assessor or the mold assessor's  
30 company.

31           5. Offer any compensation, inducement, or reward to a

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1 mold assessor or mold assessor's company for the referral of  
2 any business from the mold assessor or the mold assessor's  
3 company.

4 (b) Any person who violates any provision of this  
5 subsection commits:

6 1. A misdemeanor of the second degree for a first  
7 violation, punishable as provided in s. 775.082 or s. 775.083.

8 2. A misdemeanor of the first degree for a second  
9 violation, punishable as provided in s. 775.082 or s. 775.083.

10 3. A felony of the third degree for a third or  
11 subsequent violation, punishable as provided in s. 775.082, s.  
12 775.083, or s. 775.084.

13 (5) INSURANCE.--A noncontracting mold remediator shall  
14 maintain a general liability insurance policy with a mold  
15 insurance pollution rider in an amount of not less than \$1  
16 million.

17 (6) STATUTE OF LIMITATIONS.--Chapter 95 governs the  
18 time at which an action to enforce an obligation, duty, or  
19 right arising under this section must be commenced.

20 (7) ENFORCEMENT OF VIOLATIONS.--Any violation of this  
21 section constitutes a deceptive and unfair trade practice,  
22 punishable as provided in part II of this chapter.

23 Section 5. Except as otherwise expressly provided in  
24 this act and except for this section, which shall take effect  
25 July 1, 2005, this act shall take effect January 1, 2006.

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28 ===== T I T L E A M E N D M E N T =====

29 And the title is amended as follows:

30 Lines 2-8, delete those lines

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1 and insert:

2 An act relating to building assessment and  
 3 remediation; creating s. 501.935, F.S.,  
 4 relating to home inspection services; providing  
 5 definitions; providing requirements for  
 6 practice; providing exemptions; providing  
 7 prohibited acts and penalties; requiring  
 8 liability insurance; exempting from duty to  
 9 provide repair cost estimates; providing  
 10 limitations; providing for enforcement of  
 11 violations; creating s. 489.1134, F.S.;  
 12 providing educational requirements and  
 13 procedural requirements for mold remediation  
 14 certification; providing for discipline;  
 15 requiring review of mold remediation training  
 16 programs; requiring a person certified under  
 17 this section to be present on certain job  
 18 sites; assigning responsibility for workforce  
 19 compliance; requiring compliance; providing  
 20 definitions; creating s. 501.933, F.S.;  
 21 providing definitions; providing requirements  
 22 for practice as a mold assessor; providing  
 23 exemptions; providing prohibited acts and  
 24 penalties; requiring that mold assessors  
 25 maintain liability insurance; providing that  
 26 mold assessors do not have a duty to provide  
 27 repair cost estimates; providing limitations;  
 28 providing for enforcement of violations;  
 29 creating s. 501.934, F.S.; providing  
 30 definitions; providing requirements for  
 31 practice as a noncontracting mold remediator;

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1 providing exemptions; providing prohibited acts  
2 and penalties; requiring that noncontracting  
3 mold remediators maintain liability insurance;  
4 providing limitations; providing for  
5 enforcement of violations; providing effective  
6 dates.

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