

Bill No. HB 315, 1st Eng.

Barcode 633220

CHAMBER ACTION

Senate

House

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11 Senator Argenziano moved the following amendment:

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Senate Amendment (with title amendment)

14

Line 145, delete that line

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16 and insert:

17

Section 2. Effective October 1, 2005, section

18

489.1134, Florida Statutes, is created to read:

19

489.1134 Mold remediation certification.--

20

(1)(a) In addition to the certification or

21

registration required to engage in business as a contractor

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under this part, any contractor who wishes to engage in

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business as a contractor with a focus or emphasis on mold or

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mold remediation that is not incidental to the scope of his or

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her license shall take the courses or the number of course

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hours determined by the board. Such courses or course hours

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may count as part of the contractor's continuing education

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requirement and shall be given by an instructional facility or

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teaching entity that has been approved by the board. Upon

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successful completion of the course, courses, or course hours,

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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.--Subject to the

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1 exceptions set forth in s. 501.212, a violation of this
2 section may constitute a deceptive and unfair trade practice,
3 which may be remedied as provided in part II of this chapter.

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

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

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

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

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

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

29 (2) REQUIREMENTS FOR PRACTICE.--

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

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1 the direct supervision of a person who has evidence of, a
2 certification from either:

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

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

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

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

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

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

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

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

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

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

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1 the noncontracting mold remediator.

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

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

16 (4) PROHIBITED ACTS; PENALTIES.--

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

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

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

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

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

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

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

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

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

11 3. A felony of the third degree for a third or
12 subsequent violation, punishable as provided in s. 775.082, s.
13 775.083, or s. 775.084.

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

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

21 (7) ENFORCEMENT OF VIOLATIONS.--Subject to the
22 exceptions set forth in s. 501.212, a violation of this
23 section may constitute a deceptive and unfair trade practice,
24 which may be remedied as provided in part II of this chapter.

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

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

31 And the title is amended as follows:

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1 Lines 2-8, delete those lines

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3 and insert:

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

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1 definitions; providing requirements for
2 practice as a noncontracting mold remediator;
3 providing exemptions; providing prohibited acts
4 and penalties; requiring that noncontracting
5 mold remediators maintain liability insurance;
6 providing limitations; providing for
7 enforcement of violations; providing effective
8 dates.

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