

ENROLLED

HB 315, Engrossed 2

2005 Legislature

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

Page 1 of 17

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb0315-05-er

ENROLLED

HB 315, Engrossed 2

2005 Legislature

29 prohibited acts and penalties; requiring that
 30 noncontracting mold remediators maintain liability
 31 insurance; providing limitations; providing for
 32 enforcement of violations; providing legislative findings
 33 and intent with respect to the objectives of the act and
 34 protection of homeowners; providing effective dates.

35

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

37

38 Section 1. Section 501.935, Florida Statutes, is created
 39 to read:

40 501.935 Home inspection services; requirements;
 41 exemptions; prohibited acts and penalties; insurance;
 42 limitations and enforcement.--

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

44 (a) "Home" means any residential real property, or
 45 manufactured or modular home, that is a single-family dwelling,
 46 duplex, triplex, quadruplex, condominium unit, or cooperative
 47 unit. The term does not include the common areas of condominiums
 48 or cooperatives.

49 (b) "Home inspector" means any person who provides or
 50 offers to provide a home inspection for a fee or other
 51 compensation.

52 (c) "Home inspection" means a limited visual examination
 53 of one or more of the readily accessible installed systems and
 54 components of a home, including the structure, electrical
 55 system, HVAC system, roof covering, plumbing system, interior
 56 components, exterior components, and site conditions that affect

ENROLLED

HB 315, Engrossed 2

2005 Legislature

57 | the structure, for the purposes of providing a written
 58 | professional opinion of the condition of the home.

59 | (2) REQUIREMENTS FOR PRACTICE.--

60 | (a) A person shall not work as a home inspector unless he
 61 | or she:

62 | 1. Has successfully completed a course of study, which
 63 | requires a passing score on a valid examination in home
 64 | inspections which is not less than 60 hours and which includes,
 65 | but is not limited to, each of the following components of a
 66 | home: structure, electrical system, roof covering, plumbing
 67 | system, interior components, exterior components, site
 68 | conditions that affect the structure, and heating, ventilation,
 69 | and cooling systems.

70 | 2. Completes 8 hours of continuing education related to
 71 | home inspections annually.

72 | 3. Discloses each of the following to the consumer in
 73 | writing and prior to contracting for or commencing a home
 74 | inspection:

75 | a. The home inspector meets the education and examination
 76 | requirements of this subsection.

77 | b. The home inspector maintains the commercial general
 78 | liability insurance policy required by this section.

79 | c. The scope and any exclusions of the home inspection.

80 | d. A statement of experience which shall include either
 81 | the approximate number of home inspections the home inspector
 82 | has performed for a fee or the number of years of experience as
 83 | a home inspector.

ENROLLED

HB 315, Engrossed 2

2005 Legislature

84 e. Home inspectors are not regulated by any state agency,
85 but any violation of this section may be an unfair and deceptive
86 trade practice under part II of this chapter.

87 (b) A business entity may not provide or offer to provide
88 home inspection services unless each of the home inspectors
89 employed by the business entity satisfies all the requirements
90 of this section.

91 (c) A business entity may not use, in connection with the
92 name or signature of the business entity, the title "home
93 inspectors" to describe the business entity's services unless
94 each of the home inspectors employed by the business entity
95 satisfies all the requirements of this section.

96 (3) EXEMPTIONS.--The following persons are not required to
97 comply with this section when acting within the scope of
98 practice authorized by such license, except when such persons
99 are conducting, producing, disseminating, or charging a fee for
100 a home inspection or otherwise operating within the scope of
101 this section:

102 (a) A construction contractor licensed under chapter 489.

103 (b) An architect licensed under chapter 481.

104 (c) An engineer licensed under chapter 471.

105 (d) A building code administrator, plans examiner, or
106 building code inspector licensed under part XII of chapter 468.

107 (e) A certified real estate appraiser, licensed real
108 estate appraiser, or registered real estate appraiser licensed
109 under part II of chapter 475.

ENROLLED

HB 315, Engrossed 2

2005 Legislature

110 (f) An inspector whose report is being provided to, and is
111 solely for the benefit of, the Federal Housing Administration or
112 the Veterans Administration.

113 (g) An inspector conducting inspections for wood-
114 destroying organisms on behalf of a licensee under chapter 482.

115 (h) A firesafety inspector certified under s. 633.081.

116 (i) An insurance adjuster licensed under part VI of
117 chapter 626.

118 (j) An officer appointed by the court.

119 (k) A master septic tank contractor licensed under part
120 III of chapter 489.

121 (l) A certified energy auditor performing an energy audit
122 of any home or building conducted under chapter 366 or rules
123 adopted by the Public Service Commission.

124 (m) A mobile home manufacturer, dealer, or installer
125 regulated or licensed pursuant to the requirements of chapter
126 320 and any employees or agents of the manufacturer, dealer, or
127 installer.

128 (4) PROHIBITED ACTS; PENALTIES.--

129 (a) A home inspector, a company that employs a home
130 inspector, or a company that is controlled by a company that
131 also has a financial interest in a company employing a home
132 inspector may not:

133 1. Perform or offer to perform, prior to closing, for any
134 additional fee, any repairs to a home on which the inspector or
135 the inspector's company has prepared a home inspection report.
136 This paragraph does not apply to a home warranty company that is

ENROLLED

HB 315, Engrossed 2

2005 Legislature

137 affiliated with or retains a home inspector to perform repairs
 138 pursuant to a claim made under a home warranty contract.

139 2. Inspect for a fee any property in which the inspector
 140 or the inspector's company has any financial or transfer
 141 interest.

142 3. Offer or deliver any compensation, inducement, or
 143 reward to the owner of the inspected property, or any broker or
 144 agent therefor, for the referral of any business to the
 145 inspector or the inspection company.

146 4. Accept an engagement to make an omission or prepare a
 147 report in which the inspection itself, or the fee payable for
 148 the inspection, is contingent upon either the conclusions in the
 149 report, preestablished findings, or the close of escrow.

150 (b) Any person who violates any provision of this
 151 subsection commits:

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

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

156 3. A felony of the third degree for a third or subsequent
 157 violation, punishable as provided in s. 775.082, s. 775.083, or
 158 s. 775.084.

159 (5) INSURANCE.--A home inspector must maintain a
 160 commercial general liability insurance policy in an amount of
 161 not less than \$300,000.

162 (6) REPAIR COST ESTIMATES.--Home inspectors are not
 163 required to provide estimates related to the cost of repair of
 164 an inspected property.

ENROLLED

HB 315, Engrossed 2

2005 Legislature

165 (7) STATUTE OF LIMITATIONS.--Chapter 95 governs when an
 166 action to enforce an obligation, duty, or right arising under
 167 this section must be commenced.

168 (8) ENFORCEMENT OF VIOLATIONS.--Any violation of this
 169 section constitutes a deceptive and unfair trade practice,
 170 punishable as provided in part II of this chapter.

171 (9) GRANDFATHERING.--Until January 1, 2007,
 172 notwithstanding any other provision of this section, a person
 173 who meets the following criteria may work as a home inspector:

174 (a) Has successfully completed high school or its
 175 equivalent or has been in the business of home inspection
 176 services for at least 5 years;

177 (b) Has been engaged in the practice of home inspection
 178 for compensation for at least 3 years prior to January 1, 2006;
 179 and

180 (c) Has performed not fewer than 250 home inspections for
 181 compensation.

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

184 489.1134 Mold remediation certification.--

185 (1)(a) In addition to the certification or registration
 186 required to engage in business as a contractor under this part,
 187 any contractor who wishes to engage in business as a contractor
 188 with a focus or emphasis on mold or mold remediation that is not
 189 incidental to the scope of his or her license shall take the
 190 courses or the number of course hours determined by the board.

191 Such courses or course hours may count as part of the
 192 contractor's continuing education requirement and shall be given

ENROLLED

HB 315, Engrossed 2

2005 Legislature

193 by an instructional facility or teaching entity that has been
194 approved by the board. Upon successful completion of the course,
195 courses, or course hours, the instructional facility or teaching
196 entity that has been approved by the board shall report such
197 completion to the department and issue to the taker of the
198 course a certificate of completion, which shall be available for
199 inspection by any entity or person seeking to have the
200 contractor engage in business as a contractor with a focus or
201 emphasis on mold or mold remediation that is not incidental to
202 the license of the contractor.

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

207 (c) It is the responsibility of the contractor licensed
208 under this part to ensure that members of his or her workforce
209 who are engaging in business as a contractor with a focus or
210 emphasis on mold or mold remediation that is not incidental to
211 the scope of the contractor's license are in compliance with
212 this section, and such contractor is subject to discipline under
213 s. 489.129 for violation of this section.

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

217 (e) Periodically, the board shall review training programs
218 in mold remediation for quality in content and instruction. The
219 board shall also respond to complaints regarding approved
220 programs.

ENROLLED

HB 315, Engrossed 2

2005 Legislature

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

226 (b) It is the responsibility of the licensed contractor to
 227 ensure compliance with paragraph (a), and such contractor is
 228 subject to discipline under s. 489.129 for violation of this
 229 subsection.

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

233 (4) The term "mold" means an organism of the class fungi
 234 that causes disintegration of organic matter and produces spores
 235 and includes any spores, hyphae, and mycotoxins produced by
 236 mold. The term "mold remediation" means the business as a
 237 contractor related to mold or mold-contaminated matter.

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

240 501.933 Mold assessors; requirements; exemptions;
 241 prohibited acts and penalties; bond and insurance; limitations
 242 and enforcement.--

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

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

247 (b) "Mold assessment" means:

ENROLLED

HB 315, Engrossed 2

2005 Legislature

248 1. An inspection, investigation, or survey of a dwelling
 249 or other structure to provide the owner or occupant with
 250 information regarding the presence, identification, or
 251 evaluation of mold;

252 2. The development of a mold-management plan or
 253 remediation protocol; or

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

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

257 (2) REQUIREMENTS FOR PRACTICE.--

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

261 1. A nonprofit organization with a focus on indoor air
 262 quality or industrial hygiene that meets each of the following
 263 criteria:

264 a. Requires that a person may not obtain certification
 265 unless the person has at least a 2-year degree in a scientific
 266 or building science field and 3 years of documented experience
 267 from a qualified mold assessor, or requires a 4-year degree in a
 268 scientific or building science field.

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

271 2. A community college or university that offers mold
 272 assessment training or education.

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

ENROLLED

HB 315, Engrossed 2

2005 Legislature

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

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

280 (b) An owner or tenant, or a managing agent or employee of
 281 an owner or tenant, who performs mold assessment on property
 282 owned or leased by the owner or tenant. This exemption does not
 283 apply if the managing agent or employee engages in the business
 284 of performing mold assessment for the public.

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

287 (d) Individuals or business organizations licensed under
 288 chapter 471, part I of chapter 481, chapter 482, or chapter 489,
 289 or acting on behalf of an insurer under part VI of chapter 626,
 290 or individuals in the manufactured housing industry who are
 291 licensed under chapter 320, that are not specifically engaged in
 292 mold assessment, but that are acting within the scope of their
 293 respective licenses.

294 (e) An authorized employee of the United States, this
 295 state, or any municipality, county, or other political
 296 subdivision, or public or private school, who meets the
 297 requirements of subsection (2) and who is conducting mold
 298 assessment within the scope of that employment, as long as the
 299 employee does not hold out for hire or otherwise engage in mold
 300 assessment.

301 (4) PROHIBITED ACTS; PENALTIES.--

302 (a) A mold assessor, a company that employs a mold
 303 assessor, or a company that is controlled by a company that also

ENROLLED
 HB 315, Engrossed 2

2005 Legislature

304 has a financial interest in a company employing a mold assessor
 305 may not:

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

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

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

313 4. Accept any compensation, inducement, or reward from a
 314 mold remediator or mold remediator's company for the referral of
 315 any business to the mold remediator or the mold remediator's
 316 company.

317 5. Offer any compensation, inducement, or reward to a mold
 318 remediator or mold remediator's company for the referral of any
 319 business from the mold remediator or the mold remediator's
 320 company.

321 6. Accept an engagement to make an omission of the
 322 assessment or conduct an assessment in which the assessment
 323 itself, or the fee payable for the assessment, is contingent
 324 upon the conclusions of the assessment.

325 (b) Any person who violates any provision of this
 326 subsection commits:

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

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

ENROLLED
 HB 315, Engrossed 2

2005 Legislature

331 | 3. A felony of the third degree for a third or subsequent
 332 | violation, punishable as provided in s. 775.082, s. 775.083, or
 333 | s. 775.084.

334 | (5) INSURANCE.--A mold assessor must maintain a mold-
 335 | specific insurance policy in an amount of not less than \$1
 336 | million.

337 | (6) REPAIR COST ESTIMATES.--Mold assessors are not
 338 | required to provide estimates related to the cost of repair of
 339 | an assessed property.

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

343 | (8) ENFORCEMENT OF VIOLATIONS.--Subject to the exceptions
 344 | set forth in s. 501.212, a violation of this section may
 345 | constitute a deceptive and unfair trade practice, which may be
 346 | remedied as provided in part II of this chapter.

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

349 | 501.934 Noncontracting mold remediators; requirements;
 350 | exemptions; prohibited acts and penalties; bond and insurance;
 351 | limitations and enforcement.--

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

353 | (a) "Mold" means an organism of the class fungi that
 354 | causes disintegration of organic matter and produces spores, and
 355 | includes any spores, hyphae, and mycotoxins produced by mold.

356 | (b) "Noncontracting mold remediation" means the removal,
 357 | cleaning, sanitizing, demolition, or other treatment, including
 358 | preventive activities, of mold or mold-contaminated matter that

ENROLLED

HB 315, Engrossed 2

2005 Legislature

359 was not purposely grown at that location; however, such removal,
360 cleaning, sanitizing, demolition, or other treatment, including
361 preventive activities, may not be work that requires a license
362 under chapter 489 unless performed by a person who is licensed
363 under that chapter or the work complies with that chapter.

364 (c) "Noncontracting mold remediator" means any person that
365 performs mold remediation. A noncontracting mold remediator may
366 not perform any work that requires a license under chapter 489
367 unless the noncontracting mold remediator is also licensed under
368 that chapter or complies with that chapter.

369 (2) REQUIREMENTS FOR PRACTICE.--

370 (a) A person shall not work as a noncontracting mold
371 remediator unless he or she has evidence of, or works under the
372 direct supervision of a person who has evidence of, a
373 certification from either:

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

376 a. Requires that a person has at least a high school
377 diploma and at least 2 years' experience in a field related to
378 mold remediation;

379 b. Requires that a person has completed training related
380 to mold and mold remediation; and

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

383 2. A community college or university that offers mold
384 remediation training or education.

ENROLLED

HB 315, Engrossed 2

2005 Legislature

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

388 (3) EXEMPTIONS.--The following persons are not required to
 389 comply with this section with regard to any noncontracting mold
 390 remediation:

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

393 (b) An owner or tenant, or a managing agent or employee of
 394 an owner or tenant, who performs noncontracting mold remediation
 395 on property owned or leased by the owner or tenant so long as
 396 such remediation is within the routine maintenance of a building
 397 structure. This exemption does not apply if the managing agent
 398 or employee engages in the business of performing noncontracting
 399 mold remediation for the public.

400 (c) An employee of a licensee who performs noncontracting
 401 mold remediation while directly supervised by the noncontracting
 402 mold remediator.

403 (d) Individuals or business organizations licensed under
 404 chapter 471, part I of chapter 481, chapter 482, or chapter 489,
 405 or acting on behalf of an insurer under part VI of chapter 626,
 406 or individuals in the manufactured housing industry who are
 407 licensed under chapter 320, that are not specifically engaged in
 408 mold remediation, but that are acting within the scope of their
 409 respective licenses.

410 (e) An authorized employee of the United States, this
 411 state, or any municipality, county, or other political
 412 subdivision, or public or private school, who meets the

ENROLLED
 HB 315, Engrossed 2

2005 Legislature

413 requirements of subsection (2) and who is conducting mold
 414 remediation within the scope of that employment, as long as the
 415 employee does not hold out for hire or otherwise engage in mold
 416 remediation.

417 (4) PROHIBITED ACTS; PENALTIES.--

418 (a) A noncontracting mold remediator, a company that
 419 employs a noncontracting mold remediator, or a company that is
 420 controlled by a company that also has a financial interest in a
 421 company employing a noncontracting mold remediator may not:

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

424 2. Perform or offer to perform any mold assessment as
 425 defined in s. 501.933.

426 3. Remediate for a fee any property in which the
 427 noncontracting mold remediator or the noncontracting mold
 428 remediator's company has any financial or transfer interest.

429 4. Accept any compensation, inducement, or reward from a
 430 mold assessor or mold assessor's company for the referral of any
 431 business from the mold assessor or the mold assessor's company.

432 5. Offer any compensation, inducement, or reward to a mold
 433 assessor or mold assessor's company for the referral of any
 434 business from the mold assessor or the mold assessor's company.

435 (b) Any person who violates any provision of this
 436 subsection commits:

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

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

ENROLLED

HB 315, Engrossed 2

2005 Legislature

441 3. A felony of the third degree for a third or subsequent
442 violation, punishable as provided in s. 775.082, s. 775.083, or
443 s. 775.084.

444 (5) INSURANCE.--A noncontracting mold remediator shall
445 maintain a general liability insurance policy with a mold
446 insurance pollution rider in an amount of not less than \$1
447 million.

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

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

455 Section 5. It is the intent of the Legislature pursuant to
456 section 11.62, Florida Statutes, that the professions and
457 occupations covered by the act be regulated in a manner that
458 does not unnecessarily restrict entry into the profession or
459 occupation pursuant to this act. The Legislature finds that this
460 act provides a measure of protection for homeowners by providing
461 education and experience requirements and testing necessary to
462 protect homeowners' investment in their homes.

463 Section 6. Except as otherwise expressly provided in this
464 act and except for this section, which shall take effect July 1,
465 2005, this act shall take effect January 1, 2006.
466