

By Senator Bennett

21-581-05

1 A bill to be entitled
2 An act relating to mold assessment and mold
3 remediation; creating pt. IV of ch. 489, F.S.;
4 providing legislative purpose; providing scope
5 of the act; providing exemptions; defining
6 terms; providing for fees relating to licensure
7 of mold assessors and mold remediators;
8 providing for licensure examinations; requiring
9 good moral character; providing prerequisites
10 to licensure; providing for the licensure of
11 business organizations; providing for
12 qualifying agents; providing for fees;
13 providing responsibilities of primary and
14 secondary qualifying agents and of financially
15 responsible officers; establishing requirements
16 for continuing education; requiring that the
17 Construction Industry Licensing Board approve
18 training courses and training providers for
19 mold assessors and mold remediators; providing
20 for assessing penalties; providing for renewal
21 of licensure; providing for rulemaking;
22 providing for reactivation of licensure;
23 providing for disciplinary proceedings;
24 establishing prohibitions; providing penalties;
25 allowing the board to provide, by rule, for
26 multiple services; providing presumptions in
27 civil actions against persons or entities
28 licensed under the act; providing severability;
29 amending s. 489.107, F.S.; adding to the board
30 a member who is a mold assessor or mold
31 remediator; providing an appropriation and

1 authorizing positions; providing an effective
2 date.

3
4 Be It Enacted by the Legislature of the State of Florida:

5
6 Section 1. Part IV of chapter 489, Florida Statutes,
7 entitled "Mold Assessment and Mold Remediation" and consisting
8 of ss. 489.601, 489.602, 489.603, 489.604, 489.605, 489.606,
9 489.607, 489.608, 489.609, 489.61, 489.611, 489.612, 489.613,
10 489.614, 489.615, 489.616, 489.617, and 489.618, is created.

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

13 489.601 Legislative purpose.--The Legislature finds it
14 necessary in the interest of the public health, safety, and
15 welfare in order to prevent damage to the real and personal
16 property of the residents of this state and to avert economic
17 injury to the residents of this state to regulate individuals
18 and companies that hold themselves out to the public as
19 qualified to perform mold-related activities.

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

22 489.602 Scope of act.--Sections 489.601-489.618 apply
23 only to individuals and companies conducting mold assessment
24 and mold remediation for compensation.

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

27 489.603 Exemptions.--Sections 489.601-489.618 do not
28 apply to:

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

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

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

17 Section 5. Section 489.604, Florida Statutes, is
18 created to read:

19 489.604 Definitions.--As used in this part, the term:

20 (1) "Board" means the Construction Industry Licensing
21 Board.

22 (2) "Business organization" means any partnership,
23 corporation, business trust, joint venture, or other business
24 organization.

25 (3) "Department" means the Department of Business and
26 Professional Regulation.

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

29 (5) "Mold assessment" means:

30 (a) An inspection, investigation, or survey of a
31 dwelling or other structure to provide the owner or occupant

1 with information regarding the presence, identification, or
2 evaluation of mold;

3 (b) The development of a mold-management plan or
4 remediation protocol; or

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

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

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

12 (8) "Mold remediator" means any person or business
13 organization that performs mold remediation. A mold remediator
14 may not perform any work that requires a license under this
15 part unless the mold remediator is also licensed under that
16 chapter.

17 (9) "Primary qualifying agent" means a person who
18 possesses the requisite skill, knowledge, and experience, and
19 has the responsibility, to supervise, direct, manage, and
20 control the mold assessment or mold remediation activities of
21 the business organization with which he or she is connected;
22 who has the responsibility to supervise, direct, manage, and
23 control mold assessment or mold-remediation activities; and
24 whose technical and personal qualifications have been
25 determined by investigation and examination as provided in
26 this part, as attested by the department.

27 (10) "Secondary qualifying agent" means a person who
28 possesses the requisite skill, knowledge, and experience, and
29 has the responsibility, to supervise, direct, manage, and
30 control mold assessment and mold-remediation activities, and
31 whose technical and personal qualifications have been

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

3 Section 6. Section 489.605, Florida Statutes, is
4 created to read:

5 489.605 Fees.--The board shall, by rule, establish
6 reasonable fees to be paid for applications, examinations,
7 licensing and renewal, recordmaking, and recordkeeping. Fees
8 for application, initial licensure, license renewal, or
9 license reactivation for mold assessors or mold remediators
10 may not exceed \$500 per applicant. The board may, by rule,
11 establish late renewal penalty fees, in an amount not to
12 exceed the initial licensure fee.

13 Section 7. Section 489.606, Florida Statutes, is
14 created to read:

15 489.606 Examination.--

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

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

25 (3) The board shall adopt rules providing for the
26 review and approval of training programs in mold assessment
27 and mold remediation. The board may adopt rules providing for
28 the acceptance of the approval and accreditation of schools
29 and courses of study by nationally accepted accreditation
30 organizations.

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

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

6 1. The board finds that there is a substantial
7 connection between the lack of good moral character of the
8 applicant and the professional responsibilities of a mold
9 assessor or mold remediator; and

10 2. This finding is supported by clear and convincing
11 evidence.

12 (c) If an applicant is found to be unqualified for a
13 license because of a lack of good moral character, the board
14 must furnish to the applicant a statement containing the
15 findings of the board, a complete record of the evidence upon
16 which the determination was based, and a notice of the rights
17 of the applicant to a rehearing and appeal.

18 Section 8. Section 489.607, Florida Statutes, is
19 created to read:

20 489.607 Licensure.--The department shall license any
21 applicant who the board certifies is qualified to practice
22 mold assessment or mold remediation and who:

23 (1) Pays the initial licensing fee;

24 (2) Submits with the application for licensure as a
25 mold assessor or a mold remediator evidence that he or she has
26 successfully completed the board-approved courses as
27 prescribed by rule;

28 (3) Provides evidence of financial stability; and

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

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

5 Section 9. Section 489.608, Florida Statutes, is
6 created to read:

7 489.608 Licensure of business organizations;
8 qualifying agents.--

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

12 (2)(a) If the applicant proposes to engage in mold
13 remediation or mold assessment as a business organization in
14 any name other than the applicant's legal name, the business
15 organization must apply for licensure through a qualifying
16 agent or the individual applicant must apply for licensure
17 under the fictitious name.

18 (b) The application must state the name of the
19 business organization and of each of its partners, the name of
20 the corporation and of each of its officers and directors and
21 the name of each of its stockholders who is also an officer or
22 director, the name of the business trust and of each of its
23 trustees, or the name of such other business organization and
24 of each of its members.

25 1. The application for primary qualifying agent must
26 include an affidavit on a form provided by the department
27 which attests that the applicant's signature is required on
28 all checks, drafts, or payments, regardless of the form of
29 payment, made by the business organization, and that the
30 applicant has final approval authority for all work performed
31 by the business organization.

1 2. The application for financially responsible officer
2 must include an affidavit on a form provided by the department
3 which attests that the applicant's signature is required on
4 all checks, drafts, or payments, regardless of the form of
5 payment, made by the business organization, and that the
6 applicant has authority to act for the business organization
7 in all financial matters.

8 3. The application for secondary qualifying agent must
9 include an affidavit on a form provided by the department
10 which attests that the applicant has authority to supervise
11 all mold assessment or mold-remediation work performed by the
12 business organization as provided in s. 489.614.

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

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

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

1 Continuing proof of all insurance coverages referenced in this
2 paragraph shall be a requisite condition to maintaining a
3 license issued under this part.

4 (d) A joint venture, including a joint venture
5 composed of qualified business organizations, is a separate
6 and distinct organization that must be qualified in accordance
7 with department rules.

8 (e) A license that is issued upon application of a
9 business organization must be in the name of the business
10 organization, and the name of the qualifying agent must be
11 noted thereon. If there is a change in any information that is
12 required to be stated on the application, the business
13 organization shall, within 45 days after the change occurs,
14 mail the correct information to the department.

15 (f) The applicant must furnish evidence of statutory
16 compliance if a fictitious name is used, notwithstanding s.
17 865.09(7).

18 (3) The qualifying agent must be licensed under this
19 part in order for the business organization to be licensed. If
20 the qualifying agent ceases to be affiliated with the business
21 organization, the agent must so inform the department. In
22 addition, if the qualifying agent is the only licensed
23 individual affiliated with the business organization, the
24 business organization must notify the department of the
25 termination of the qualifying agent, and the business
26 organization has 60 days after the termination of the
27 qualifying agent's affiliation with the business organization
28 in which to employ another qualifying agent. The business
29 organization may not engage in mold assessment or mold
30 remediation until a qualifying agent is employed, unless the
31 department has granted a temporary nonrenewable license to the

1 financially responsible officer, the president, a partner, or,
2 in the case of a limited partnership, the general partner, who
3 assumes all responsibilities of a primary qualifying agent for
4 the business organization. This temporary license allows the
5 business organization to proceed only with incomplete
6 contracts.

7 (4)(a) The qualifying agent shall inform the
8 department in writing if the agent proposes to engage in mold
9 assessment or mold remediation in the agent's own name or in
10 affiliation with another business organization, and the agent
11 or the new business organization shall supply the same
12 information to the department as is required of initial
13 applicants under this part.

14 (b) Upon a favorable determination by the board, after
15 investigation of the financial responsibility, credit, and
16 business reputation of the qualifying agent and the new
17 business organization, the board shall issue, without any
18 examination, a new license in the business organization's
19 name, and the name of the qualifying agent must be noted
20 thereon.

21 (5)(a) Each mold assessor or mold remediator shall
22 affix the mold assessor's or mold remediator's signature and
23 license number to each document prepared or approved for use
24 by the licensee which is related to any mold assessment or
25 mold-remediation project and filed for public record with a
26 governmental agency, and to any offer, bid, or contract
27 submitted to a client.

28 (b) The license number of each mold assessor or mold
29 remediator must appear in any printed matter or any newspaper,
30 airwave transmission, phone directory, or other advertising
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1 medium offering or related to mold assessment or mold
2 remediation, as provided by department rule.

3 (6) Each qualifying agent shall pay the department an
4 amount equal to the original fee for licensure of a new
5 business organization. If the qualifying agent for a business
6 organization desires to qualify additional business
7 organizations, the board shall require the agent to present
8 evidence of ability and financial responsibility of each such
9 organization. The issuance of such certificate of authority is
10 discretionary with the board.

11 Section 10. Section 489.609, Florida Statutes, is
12 created to read:

13 489.609 Responsibilities.--

14 (1) A qualifying agent is a primary qualifying agent
15 unless he or she is a secondary qualifying agent under this
16 section.

17 (a) All primary qualifying agents for a business
18 organization are jointly and equally responsible for
19 supervising all operations of the business organization; for
20 all field work at all sites; and for financial matters, both
21 for the organization in general and for each specific job.

22 (b) Upon approval by the board, a business
23 organization may designate a financially responsible officer
24 for purposes of licensure. A financially responsible officer
25 shall be responsible for all financial aspects of the business
26 organization and may not be designated as the primary
27 qualifying agent. The designated financially responsible
28 officer shall furnish evidence of his or her financial
29 responsibility, credit, and business reputation, or that of
30 the business organization he or she desires to qualify, as
31 determined appropriate by the board.

1 (c) If a business organization has a licensed
2 financially responsible officer, the primary qualifying agent
3 is responsible for all mold assessment or mold-remediation
4 activities of the business organization, both in general and
5 for each specific job.

6 (d) The board shall adopt rules prescribing the
7 qualifications for financially responsible officers, including
8 net worth, cash, and bonding requirements. These
9 qualifications must be at least as extensive as the
10 requirements for the financial responsibility of qualifying
11 agents.

12 (2)(a) One of the qualifying agents for a business
13 organization that has more than one qualifying agent may be
14 designated as the sole primary qualifying agent for the
15 business organization by a joint agreement that is executed,
16 on a form provided by the board, by all qualifying agents for
17 the business organization.

18 (b) The joint agreement must be submitted to the board
19 for approval. If the board determines that the joint agreement
20 is in good order, it must approve the designation and
21 immediately notify the qualifying agents of its approval. The
22 designation made by the joint agreement is effective upon
23 receipt of the notice by the qualifying agents.

24 (c) The qualifying agent designated for a business
25 organization by a joint agreement is the sole primary
26 qualifying agent for the business organization, and all other
27 qualifying agents for the business organization are secondary
28 qualifying agents.

29 (d) A designated sole primary qualifying agent has all
30 the responsibilities and duties of a primary qualifying agent,
31 notwithstanding that there are secondary qualifying agents for

1 specified jobs. The designated sole primary qualifying agent
2 is jointly and equally responsible with secondary qualifying
3 agents for supervising field work.

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

6 (f) A secondary qualifying agent is not responsible
7 for supervising financial matters.

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

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

20 (c) If a new primary qualifying agent has not been
21 designated within 60 days, all secondary qualifying agents for
22 the business organization become primary qualifying agents
23 unless the joint agreement specifies that one or more of them
24 become sole qualifying agents under such circumstances, in
25 which case only the specified secondary qualifying agents
26 become sole qualifying agents.

27 (d) Any change in the status of a qualifying agent is
28 prospective only. A qualifying agent is not responsible for
29 his or her predecessor's actions but is responsible, even
30 after a change in status, for matters for which he or she was
31 responsible while in a particular status.

1 Section 11. Section 489.61, Florida Statutes, is
2 created to read:

3 489.61 Continuing education.--

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

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

9 (3) The licensee must submit proof of compliance with
10 the continuing education requirements along with the
11 licensee's application for license renewal.

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

14 489.611 Approval of mold assessor and mold remediator
15 training courses and providers.--

16 (1) The board shall approve training courses and the
17 providers of such courses as are required under this part. The
18 board must also approve training courses and the providers of
19 such courses who offer training for persons who are exempt
20 from licensure under this part.

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

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

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

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

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

14 489.612 Renewal of license.--

15 (1) The department shall renew a license upon receipt
16 of the renewal application and fee, upon proof of compliance
17 with the continuing education requirements of s. 489.61, and,
18 if a demonstration of competency is required by law or rule,
19 upon certification by the board that the licensee has
20 satisfactorily demonstrated his or her competence in mold
21 assessment and mold remediation.

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

24 Section 14. Section 489.613, Florida Statutes, is
25 created to read:

26 489.613 Reactivation.--

27 (1) The board shall, by rule, prescribe continuing
28 education requirements for reactivating a license. The
29 continuing education requirements for reactivating a license
30 for a licensed mold assessor or mold remediator may not exceed
31 15 classroom hours for each year the license was inactive.

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

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

8 489.614 Disciplinary proceedings.--

9 (1) The board may revoke, suspend, or deny the
10 issuance or renewal of a license; reprimand, censure, or place
11 on probation any mold assessor or mold remediator; require
12 financial restitution to a consumer; impose an administrative
13 fine not to exceed \$5,000 per violation; require continuing
14 education; or assess costs associated with any investigation
15 and prosecution if the mold assessor or mold remediator is
16 found guilty of any of the following acts:

17 (a) Obtaining a license or certificate of authority by
18 fraud or misrepresentation.

19 (b) Being convicted or found guilty of, or entering a
20 plea of nolo contendere to, regardless of adjudication, a
21 crime in any jurisdiction which directly relates to the
22 practice of mold assessment or mold remediation or the ability
23 to practice mold assessment or mold remediation.

24 (c) Violating any provision of chapter 455.

25 (d) Performing any act that assists a person or entity
26 in engaging in the prohibited unlicensed practice of mold
27 assessment or mold remediation, if the licensee knows or has
28 reasonable grounds to know that the person or entity is
29 unlicensed.

30 (e) Knowingly combining or conspiring with an
31 unlicensed person by allowing his or her license or

1 certificate of authority to be used by the unlicensed person
2 with intent to evade any provision of this part. If a licensee
3 allows his or her license to be used by one or more business
4 organizations without having any active participation in the
5 operations, management, or control of the business
6 organizations, such an act constitutes prima facie evidence of
7 an intent to evade the provisions of this part.

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

11 (g) Committing mismanagement or misconduct in the
12 practice of mold assessment or mold remediation which causes
13 financial harm to a customer. Financial mismanagement or
14 misconduct occurs when:

15 1. Valid liens have been recorded against the property
16 of a mold assessor's or mold remediator's customer for
17 supplies or services ordered by the mold assessor or mold
18 remediator for the customer's job; the mold assessor or mold
19 remediator has received funds from the customer to pay for the
20 supplies or services; and the mold assessor or mold remediator
21 has not had the liens removed from the property, by payment or
22 by bond, within 75 days after the date of such liens;

23 2. The mold assessor or mold remediator has abandoned
24 a customer's job and the percentage of completion is less than
25 the percentage of the total contract price paid to the mold
26 assessor or mold remediator as of the time of abandonment,
27 unless the contractor is entitled to retain such funds under
28 the terms of the contract or refunds the excess funds within
29 30 days after the date the job is abandoned; or

30 3. The mold assessor's or mold remediator's job has
31 been completed, and it is shown that the customer has had to

1 pay more for the contracted job than the original contract
2 price, as adjusted for subsequent change orders, unless the
3 increase in cost was the result of circumstances beyond the
4 control of the assessor or remediator, was the result of
5 circumstances caused by the customer, or was otherwise
6 permitted by the terms of the contract between the mold
7 assessor or mold remediator and the customer.

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

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

13 (j) Abandoning a mold assessment or mold-remediation
14 project in which the mold assessor or mold remediator is
15 engaged or under contract as a mold assessor or mold
16 remediator. A project is presumed abandoned after 20 days if
17 the mold assessor or mold remediator has terminated the
18 project without just cause and without proper notification to
19 the owner, including the reason for termination; if the mold
20 assessor or mold remediator has failed to reasonably secure
21 the project to safeguard the public while work is stopped; or
22 if the mold assessor or mold remediator fails to perform work
23 without just cause for 20 days.

24 (k) Signing a statement with respect to a project or
25 contract falsely indicating that the work is bonded; falsely
26 indicating that payment has been made for all subcontracted
27 work, labor, and materials which results in a financial loss
28 to the owner, purchaser, or mold assessor or mold remediator;
29 or falsely indicating that workers' compensation and public
30 liability insurance are provided.

31

1 (l) Committing fraud or deceit in the practice of mold
2 assessment or mold remediation.

3 (m) Committing incompetency or misconduct in the
4 practice of mold assessment or mold remediation.

5 (n) Committing gross negligence, repeated negligence,
6 or negligence resulting in a significant danger to life or
7 property in the practice of mold assessment or mold
8 remediation.

9 (o) Failing to satisfy, within a reasonable time, the
10 terms of a civil judgment obtained against the licensee, or
11 the business organization qualified by the licensee, relating
12 to the practice of the licensee's profession.

13
14 For the purposes of this subsection, mold assessment or mold
15 remediation is considered to be commenced when the contract is
16 executed and the mold assessor or mold remediator has accepted
17 funds from the customer or lender.

18 (2) If a mold assessor or mold remediator disciplined
19 under subsection (1) is a qualifying agent for a business
20 organization and the violation was performed in connection
21 with any mold assessment, mold assessment-related activities,
22 mold remediation, or mold remediation-related activities
23 undertaken by that business organization, the board may impose
24 an additional administrative fine not to exceed \$5,000 per
25 violation against the business organization or against any
26 partner, officer, director, trustee, or member of the
27 organization if that person participated in the violation or
28 knew or should have known of the violation and failed to take
29 reasonable corrective action.

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

1 (4) In recommending penalties in any proposed
2 recommended final order, the department shall follow the
3 penalty guidelines established by the board by rule. The
4 department shall advise the administrative law judge of the
5 appropriate penalty, including mitigating and aggravating
6 circumstances, and the specific rule citation.

7 (5) The board may not reinstate the license or
8 certificate of authority of, or cause a license or certificate
9 of authority to be issued to, a person who or business
10 organization that the board has determined is unqualified or
11 whose license or certificate of authority the board has
12 suspended, until it is satisfied that the person or business
13 organization has complied with all the terms and conditions
14 set forth in the final order and is capable of competently
15 engaging in the business of mold assessment or mold
16 remediation.

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

23 (7) The board may not issue a license or certificate
24 of authority, or a renewal thereof, to any person or business
25 organization that has been assessed a fine, interest, or costs
26 associated with investigation and prosecution, or has been
27 ordered to pay restitution, until the fine, interest, or costs
28 associated with investigation and prosecution or restitution
29 are paid in full or until all terms and conditions of the
30 final order have been satisfied.

31

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

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

14 (10)(a) Notwithstanding chapters 120 and 455, upon
15 receipt of a legally sufficient consumer complaint alleging a
16 violation of this part, the department may provide by rule for
17 binding arbitration between the complainant and the
18 certificateholder or registrant, if:

19 1. There is evidence that the complainant has suffered
20 or is likely to suffer monetary damages resulting from the
21 violation of this part;

22 2. The licensee does not have a history of repeated or
23 similar violations;

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

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

30 (b) The licensee and the complainant may consent in
31 writing to binding arbitration within 15 days following

1 notification of this process by the department. The department
2 may suspend all action in the matter for 45 days when notice
3 of consent to binding arbitration is received by the
4 department. If the arbitration process is successfully
5 concluded within the 60-day period, the department may close
6 the case file with a notation of the disposition, and the
7 licensee's record must reflect only that a complaint was filed
8 and resolved through arbitration.

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

13 (d) The arbitrator's order becomes a final order of
14 the board if not challenged by the complainant or the
15 certificateholder or registrant within 30 days after filing.
16 The board's review of the arbitrator's order operates in the
17 manner of the review of recommended orders pursuant to s.
18 120.57(1) and is not a de novo review.

19 (11) If an investigation of a mold assessor or mold
20 remediator is undertaken, the department shall promptly
21 furnish to the mold assessor or mold remediator or the mold
22 assessor's or mold remediator's attorney a copy of the
23 complaint or document that resulted in the initiation of the
24 investigation. The department shall make the complaint and
25 supporting documents available to the mold assessor or mold
26 remediator. The complaint or supporting documents must contain
27 information regarding the specific facts that serve as the
28 basis for the complaint. The mold assessor or mold remediator
29 may submit a written response to the information contained in
30 the complaint or document within 20 days after service to the
31 mold assessor or mold remediator of the complaint or document.

1 The mold assessor's or mold remediator's written response must
2 be considered by the probable cause panel. The right to
3 respond does not prohibit the issuance of a summary emergency
4 order if necessary to protect the public. However, if the
5 secretary, or the secretary's designee, and the chair of the
6 board or the chair of the probable cause panel agree in
7 writing that such notification would be detrimental to the
8 investigation, the department may withhold notification. The
9 department may conduct an investigation without notification
10 to a mold assessor or mold remediator if the act under
11 investigation is a criminal offense.

12 Section 16. Section 489.615, Florida Statutes, is
13 created to read:

14 489.615 Prohibitions; penalties.--

15 (1) A person may not:

16 (a) Falsely hold himself or herself or a business
17 organization out as a licensee;

18 (b) Falsely impersonate a licensee;

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

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

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

25 (f) Engage in the business or act in the capacity of a
26 mold assessor or mold remediator or advertise himself or
27 herself or a business organization as available to engage in
28 the business or act in the capacity of a mold assessor or mold
29 remediator without being duly licensed; or

30 (g) Operate a business organization engaged in mold
31 assessment or mold remediation after 60 days following the

1 termination of its only qualifying agent without designating
2 another primary qualifying agent, except as provided in ss.
3 489.608 and 489.609;

4
5 For purposes of this subsection, a person or business
6 organization operating on an inactive or suspended license or
7 certificate of authority is considered unlicensed.

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

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

15 (c) An unlicensed person who commits a violation of
16 subsection (1) during the existence of a state of emergency
17 declared by executive order of the Governor commits a felony
18 of the third degree, punishable as provided in s. 775.082 or
19 s. 775.083.

20 (3)(a) A licensed mold assessor or mold remediator may
21 not enter into an agreement, oral or written, whereby his or
22 her license number is used, or is to be used, by a person who
23 is not licensed as provided for in this part, or is used, or
24 is to be used, by a business organization that is not duly
25 qualified as provided for in this part, to engage in the
26 business or act in the capacity of a mold assessor or mold
27 remediator.

28 (b) A licensed mold assessor or mold remediator may
29 not knowingly allow his or her license number to be used by a
30 person who is not licensed as provided for in this part, or
31 used by a business organization that is not qualified as

1 provided for in this part, to engage in the business or act in
2 the capacity of a mold assessor or mold remediator.

3 Section 17. Section 489.616, Florida Statutes, is
4 created to read:

5 489.616 Multiple services.--The board shall, by rule,
6 provide when and in what manner a licensee may perform both
7 mold assessment and mold remediation on the same contract or
8 project.

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

11 489.618 Presumption.--Notwithstanding any law to the
12 contrary, in a civil action against a person or entity duly
13 licensed under and in compliance with the requirements of this
14 part and alleging mold or fungal injuries to persons or
15 damages to property, there is a rebuttable presumption that
16 any work performed in accordance with all applicable building
17 codes and all assessment and remediation standards adopted by
18 the board is not negligent. This presumption applies to any
19 person or entity that, in return for compensation, obtains and
20 relies on the opinion of a person or entity duly licensed
21 under and in compliance with the requirements of this part.
22 There is a rebuttable presumption that any work not performed
23 in accordance with all applicable building codes and all
24 assessment and remediation standards adopted by the board is
25 negligent per se. The presumptions set forth in this section
26 do not apply to actions alleging gross negligence.

27 Section 19. If any provision of this act or its
28 application to any person or circumstance is held invalid, the
29 invalidity does not affect other provisions or applications of
30 the act which can be given effect without the invalid
31

1 provision or application, and to this end the provisions of
2 this act are severable.

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

5 489.107 Construction Industry Licensing Board.--

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

7 (a) Four are primarily engaged in business as general
8 contractors;

9 (b) Three are primarily engaged in business as
10 building contractors or residential contractors, however, at
11 least one building contractor and one residential contractor
12 shall be appointed;

13 (c) One is primarily engaged in business as a roofing
14 contractor;

15 (d) One is primarily engaged in business as a sheet
16 metal contractor;

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

19 (f) One is primarily engaged in business as a
20 mechanical contractor;

21 (g) One is primarily engaged in business as a pool
22 contractor;

23 (h) One is primarily engaged in business as a plumbing
24 contractor;

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

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

29 ~~(k)-(j)~~ Two are consumer members who are not, and have
30 never been, members or practitioners of a profession regulated
31 by the board or members of any closely related profession; and

1 (1)(*) Two are building officials of a municipality or
2 county.

3 Section 21. For the 2005-2006 fiscal year, the sum of
4 \$294,776 is appropriated from the Professional Regulation
5 Trust Fund and three additional positions are authorized to
6 the Department of Business and Professional Regulation for the
7 purpose of conducting licensing and regulatory activities
8 associated with mold assessment and remediation.

9 Section 22. This act shall take effect October 1,
10 2005.

11 *****
12 *****

13 SENATE SUMMARY

14 Provides licensing requirements for mold assessors and
15 mold remediators. Requires training. Provides application
16 procedures. Provides for fees. Provides qualifications
17 for registration. Provides for rules and orders of the
18 Construction Industry Licensing Board. Provides for
19 obtaining replacement certificates. Requires continuing
20 education. Prohibits performing more than one specified
21 activity on a given project. Provides for the Department
22 of Business and Professional Regulation to issue
23 reprimands and to modify, suspend, or revoke a license.
24 Provides guidelines for disciplinary action. Requires the
25 Department of Business and Professional Regulation to
26 adopt rules. (See bill for details.)

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