

By the Committee on Regulated Industries; and Senator Bennett

580-1693-05

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, an individual in the manufactured housing  
31 industry who is licensed under chapter 320, or an engineer

1 licensed under chapter 471, when engaged in mold-related  
2 activities incidental to activities within the scope of his or  
3 her license.

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

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

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

20 489.604 Definitions.--As used in this part, the term:

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

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

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

28 (4) "Mold" means an organism of the class fungi that  
29 causes disintegration of organic matter and produces spores,  
30 and includes any spores, hyphae, and mycotoxins produced by  
31 mold.

- 1           (5) "Mold assessment" means:  
2           (a) An inspection, investigation, or survey of a  
3 dwelling or other structure to provide the owner or occupant  
4 with information regarding the presence, identification, or  
5 evaluation of mold;  
6           (b) The development of a mold-management plan or  
7 remediation protocol; or  
8           (c) The collection or analysis of a mold sample.  
9           (6) "Mold assessor" means any person or business  
10 organization that performs a mold assessment.  
11           (7) "Mold remediation" means the removal, cleaning,  
12 sanitizing, demolition, or other treatment, including  
13 preventive activities, of mold or mold-contaminated matter  
14 that was not purposely grown at that location.  
15           (8) "Mold remediator" means any person or business  
16 organization that performs mold remediation. A mold remediator  
17 may not perform any work that requires a license under any  
18 other part of this chapter unless the mold remediator is also  
19 licensed under that part.  
20           (9) "Primary qualifying agent" means a person who  
21 possesses the requisite skill, knowledge, and experience, and  
22 has the responsibility, to supervise, direct, manage, and  
23 control the mold assessment or mold remediation activities of  
24 the business organization with which he or she is connected;  
25 who has the responsibility to supervise, direct, manage, and  
26 control mold assessment or mold-remediation activities; and  
27 whose technical and personal qualifications have been  
28 determined by investigation and examination as provided in  
29 this part, as attested by the department.  
30           (10) "Secondary qualifying agent" means a person who  
31 possesses the requisite skill, knowledge, and experience, and

1 has the responsibility, to supervise, direct, manage, and  
2 control mold assessment and mold-remediation activities, and  
3 whose technical and personal qualifications have been  
4 determined by investigation and examination as provided in  
5 this part, as attested by the department.

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

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

16 Section 7. Section 489.606, Florida Statutes, is  
17 created to read:

18 489.606 Examination.--

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

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

28 (3) The board shall adopt rules providing for the  
29 review and approval of training programs in mold assessment  
30 and mold remediation. The board may adopt rules providing for  
31 the acceptance of the approval and accreditation of schools

1 and courses of study by nationally accepted accreditation  
2 organizations.

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

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

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

12 2. This finding is supported by clear and convincing  
13 evidence.

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

20 Section 8. Section 489.607, Florida Statutes, is  
21 created to read:

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

25 (1) Pays the initial licensing fee;

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

30 (3) Provides evidence of financial stability; and  
31

1           (4)(a) Passes a department-approved examination of  
2 qualifications and knowledge relating to mold assessment and  
3 mold remediation; or

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

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

10           489.608 Licensure of business organizations;  
11 qualifying agents.--

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

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

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

28           1. The application for primary qualifying agent must  
29 include an affidavit on a form provided by the department  
30 which attests that the applicant's signature is required on  
31 all checks, drafts, or payments, regardless of the form of

1 payment, made by the business organization, and that the  
2 applicant has final approval authority for all work performed  
3 by the business organization.

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

11 3. The application for secondary qualifying agent must  
12 include an affidavit on a form provided by the department  
13 which attests that the applicant has authority to supervise  
14 all mold assessment or mold-remediation work performed by the  
15 business organization as provided in s. 489.609.

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

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

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



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

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

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

16 (f) The applicant must furnish evidence of statutory  
17 compliance if a fictitious name is used, notwithstanding s.  
18 865.09(7).

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

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

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

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

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

29 (b) The license number of each mold assessor or mold  
30 remediator must appear in any printed matter or any newspaper,  
31 airwave transmission, phone directory, or other advertising

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.

31

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 the insurance coverage required  
30 under this act is or has been 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 binding arbitration.

13 (d) The arbitrator's order shall be adopted as a final  
14 order of the board.

15 (11) If an investigation of a mold assessor or mold  
16 remediator is undertaken, the department shall promptly  
17 furnish to the mold assessor or mold remediator or the mold  
18 assessor's or mold remediator's attorney a copy of the  
19 complaint or document that resulted in the initiation of the  
20 investigation. The department shall make the complaint and  
21 supporting documents available to the mold assessor or mold  
22 remediator. The complaint or supporting documents must contain  
23 information regarding the specific facts that serve as the  
24 basis for the complaint. The mold assessor or mold remediator  
25 may submit a written response to the information contained in  
26 the complaint or document within 20 days after service to the  
27 mold assessor or mold remediator of the complaint or document.  
28 The mold assessor's or mold remediator's written response must  
29 be considered by the probable cause panel. The right to  
30 respond does not prohibit the issuance of a summary emergency  
31 order if necessary to protect the public. However, if the

1 secretary, or the secretary's designee, and the chair of the  
2 board or the chair of the probable cause panel agree in  
3 writing that such notification would be detrimental to the  
4 investigation, the department may withhold notification. The  
5 department may conduct an investigation without notification  
6 to a mold assessor or mold remediator if the act under  
7 investigation is a criminal offense.

8 Section 16. Section 489.615, Florida Statutes, is  
9 created to read:

10 489.615 Prohibitions; penalties.--

11 (1) A person may not:

12 (a) Falsely hold himself or herself or a business  
13 organization out as a licensee;

14 (b) Falsely impersonate a licensee;

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

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

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

21 (f) Engage in the business or act in the capacity of a  
22 mold assessor or mold remediator or advertise himself or  
23 herself or a business organization as available to engage in  
24 the business or act in the capacity of a mold assessor or mold  
25 remediator without being duly licensed; or

26 (g) Operate a business organization engaged in mold  
27 assessment or mold remediation after 60 days following the  
28 termination of its only qualifying agent without designating  
29 another primary qualifying agent, except as provided in ss.  
30 489.608 and 489.609;

31

1 For purposes of this subsection, a person or business  
2 organization operating on an inactive or suspended license or  
3 certificate of authority is considered unlicensed.

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

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

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

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

24 (b) A licensed mold assessor or mold remediator may  
25 not knowingly allow his or her license number to be used by a  
26 person who is not licensed as provided for in this part, or  
27 used by a business organization that is not qualified as  
28 provided for in this part, to engage in the business or act in  
29 the capacity of a mold assessor or mold remediator.

30 Section 17. Section 489.616, Florida Statutes, is  
31 created to read:



1           489.616 Multiple services.--The board shall, by rule,  
2 provide when and in what manner a licensee may perform both  
3 mold assessment and mold remediation on the same contract or  
4 project.

5           Section 18. Section 489.618, Florida Statutes, is  
6 created to read:

7           489.618 Presumption.--Notwithstanding any law to the  
8 contrary, in a civil action against a person or entity duly  
9 licensed under and in compliance with the requirements of this  
10 part and alleging mold or fungal injuries to persons or  
11 damages to property, there is a rebuttable presumption that  
12 any work performed in accordance with all applicable building  
13 codes and all assessment and remediation standards adopted by  
14 the board is not negligent. This presumption applies to any  
15 person or entity that, in return for compensation, obtains and  
16 relies on the opinion of a person or entity duly licensed  
17 under and in compliance with the requirements of this part.  
18 There is a rebuttable presumption that any work not performed  
19 in accordance with all applicable building codes and all  
20 assessment and remediation standards adopted by the board is  
21 negligent per se. The presumptions set forth in this section  
22 do not apply to actions alleging gross negligence.

23           Section 19. If any provision of this act or its  
24 application to any person or circumstance is held invalid, the  
25 invalidity does not affect other provisions or applications of  
26 the act which can be given effect without the invalid  
27 provision or application, and to this end the provisions of  
28 this act are severable.

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

31           489.107 Construction Industry Licensing Board.--

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

2           (a) Four are primarily engaged in business as general  
3 contractors;

4           (b) Three are primarily engaged in business as  
5 building contractors or residential contractors, however, at  
6 least one building contractor and one residential contractor  
7 shall be appointed;

8           (c) One is primarily engaged in business as a roofing  
9 contractor;

10          (d) One is primarily engaged in business as a sheet  
11 metal contractor;

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

14          (f) One is primarily engaged in business as a  
15 mechanical contractor;

16          (g) One is primarily engaged in business as a pool  
17 contractor;

18          (h) One is primarily engaged in business as a plumbing  
19 contractor;

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

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

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

27          ~~(l)(k)~~ Two are building officials of a municipality or  
28 county.

29          Section 21. For the 2005-2006 fiscal year, the sum of  
30 \$294,776 is appropriated from the Professional Regulation  
31 Trust Fund and three additional positions are authorized to

1 the Department of Business and Professional Regulation for the  
2 purpose of conducting licensing and regulatory activities  
3 associated with mold assessment and remediation.

4 Section 22. This act shall take effect October 1,  
5 2005.

6  
7 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
8 COMMITTEE SUBSTITUTE FOR  
9 SB 590

10 The committee substitute exempts from licensure, an individual  
11 in the manufactured housing industry who is licensed under  
chapter 320.

12 It modifies the definition of mold by clarifying that mold  
13 means an organism of the class fungi that causes  
14 disintegration of organic matter and produces spores, and  
includes any spores, hyphae, and mycotoxins produced by mold.

15 It clarifies that a mold remediator cannot perform work  
16 required by a contractor licensed under ch. 489 unless they  
are also licensed under ch. 489 to perform that type of work.

17 It replaces workers' compensation and public liability  
18 insurance with "insurance coverage required under the act" to  
the types of insurance the licensee cannot falsely claim to  
have.

19 It includes the word "binding" in the phrase mandatory  
20 arbitration and it provides that a mandatory binding  
arbitration order shall be a final order of the board.

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