

Bill No. SB 1046

Barcode 492440

CHAMBER ACTION

Senate

House

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The Committee on Regulated Industries (King) recommended the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. It is the intent of the Legislature pursuant to s. 11.62, Florida Statutes, that the professions and occupations covered by this act be regulated in a manner that does not unnecessarily restrict entry into the profession or occupation pursuant to this act. The Legislature finds that this provides a measure of protection for homeowners by providing the requirements for education, experience, and testing which are necessary to protect homeowners' investment in their homes.

Section 2. Part IV of chapter 489, Florida Statutes, entitled "Mold Assessment and Mold Remediation in Residential, Institutional, Governmental, and Commercial Buildings" and consisting of ss. 489.601, 489.602, 489.603, 489.604, 489.605, 489.606, 489.607, 489.608, 489.609, 489.61, 489.611, 489.612,

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1 489.613, 489.614, 489.615, 489.616, 489.617, and 489.618, is
2 created.

3 Section 3. Section 489.601, Florida Statutes, is
4 created to read:

5 489.601 Legislative purpose.--The Legislature finds it
6 necessary in the interest of the public health, safety, and
7 welfare in order to prevent damage to the real and personal
8 property of the residents of this state and to avert economic
9 injury to the residents of this state to regulate individuals
10 and companies that hold themselves out to the public as
11 qualified to perform mold-related activities in residential,
12 institutional, governmental, and commercial buildings.

13 Section 4. Section 489.603, Florida Statutes, is
14 created to read:

15 489.603 Exemptions.--Sections 489.601-489.618 do not
16 apply to:

17 (1) A Division I and Division II contractor licensed
18 under this chapter, an individual in the manufactured housing
19 industry who is licensed under chapter 320, or an engineer
20 licensed under chapter 471, when engaged in mold-related
21 activities incidental to activities within the scope of his or
22 her license.

23 (2) An authorized employee of the United States, this
24 state, or any municipality, county, or other political
25 subdivision, public or private school, or private business
26 organization who has completed training courses in mold
27 assessment or mold remediation approved by the board or a
28 certification program approved by the board and who is
29 conducting mold assessment or mold remediation within the
30 scope of that employment, as long as the employee does not
31 hold out for hire or otherwise engage in mold assessment or

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1 mold remediation.

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

6 Section 5. Section 489.604, Florida Statutes, is
7 created to read:

8 489.604 Definitions.--As used in this part, the term:

9 (1) "Board" means the Construction Industry Licensing
10 Board.

11 (2) "Business organization" means any partnership,
12 corporation, business trust, joint venture, or other business
13 organization.

14 (3) "Department" means the Department of Business and
15 Professional Regulation.

16 (4) "Mold" means an organism of the class fungi that
17 causes disintegration of organic matter and produces spores,
18 and includes any spores, hyphae, and secondary metabolites
19 produced by mold.

20 (5) "Mold assessment" means:

21 (a) An inspection, investigation, or survey of a
22 dwelling or other structure to provide the owner or occupant
23 with information regarding the presence, identification, or
24 evaluation of mold;

25 (b) The development of a mold-management plan,
26 development of a remediation protocol, and a postabatement
27 evaluation of a property;

28 (c) The collection or analysis of a mold sample; or

29 (d) The evaluation of a property for moisture damage
30 or moisture-incursion conditions that are likely to result in
31 fungal growth. A pre-purchase evaluation of a property must

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1 include an assessment of moisture incursion and fungal growth.

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

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

8 (8) "Mold remediator" means any person or business
9 organization that performs mold remediation. A mold remediator
10 may not perform any work that requires a license under any
11 other part of this chapter unless the mold remediator is also
12 licensed under that part.

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

23 (10) "Secondary qualifying agent" means a person who
24 possesses the requisite skill, knowledge, and experience, and
25 has the responsibility, to supervise, direct, manage, and
26 control mold assessment and 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 Section 6. Section 489.605, Florida Statutes, is
31 created to read:

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1 489.605 Fees.--The board shall, by rule, establish
 2 reasonable fees to be paid for applications, examinations,
 3 licensing and renewal, recordmaking, and recordkeeping. Fees
 4 for application, initial licensure, license renewal, or
 5 license reactivation for mold assessors or mold remediators
 6 may not exceed \$500 per applicant. The board may, by rule,
 7 establish late renewal penalty fees, in an amount not to
 8 exceed the initial licensure fee.

9 Section 7. Section 489.606, Florida Statutes, is
 10 created to read:

11 489.606 Examination.--

12 (1) A person who desires to be licensed as a mold
 13 assessor or mold remediator must apply to the department for
 14 licensure.

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

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

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

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

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1 1. The board finds that there is a substantial
 2 connection between the lack of good moral character of the
 3 applicant and the professional responsibilities of a mold
 4 assessor or mold remediator; and

5 2. This finding is supported by clear and convincing
 6 evidence.

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

13 Section 8. Section 489.607, Florida Statutes, is
 14 created to read:

15 489.607 Licensure.--The department shall license any
 16 applicant who the board certifies is qualified to practice
 17 mold assessment or mold remediation and who:

18 (1) Pays the initial licensing fee;
 19 (2) Submits with the application for licensure as a
 20 mold assessor or a mold remediator evidence that he or she has
 21 successfully completed the board-approved courses as
 22 prescribed by rule;

23 (3) Provides evidence of financial stability; and

24 (4)(a) Passes a department-approved examination of
 25 qualifications and knowledge relating to mold assessment and
 26 mold remediation; or

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

31 Section 9. Section 489.608, Florida Statutes, is

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1 created to read:

2 489.608 Licensure of business organizations;
3 qualifying agents.--

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

7 (2)(a) If the applicant proposes to engage in mold
8 remediation or mold assessment as a business organization in
9 any name other than the applicant's legal name, the business
10 organization must apply for licensure through a qualifying
11 agent or the individual applicant must apply for licensure
12 under the fictitious name.

13 (b) The application must state the name of the
14 business organization and of each of its partners, the name of
15 the corporation and of each of its officers and directors and
16 the name of each of its stockholders who is also an officer or
17 director, the name of the business trust and of each of its
18 trustees, or the name of such other business organization and
19 of each of its members.

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

27 2. The application for financially responsible officer
28 must include an affidavit on a form provided by the department
29 which attests that the applicant's signature is required on
30 all checks, drafts, or payments, regardless of the form of
31 payment, made by the business organization, and that the

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1 applicant has authority to act for the business organization
2 in all financial matters.

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

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

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

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

25
26 Continuing proof of all insurance coverages referenced in this
27 paragraph shall be a requisite condition to maintaining a
28 license issued under this part.

29 (d) A joint venture, including a joint venture
30 composed of qualified business organizations, is a separate
31 and distinct organization that must be qualified in accordance

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1 with department rules.

2 (e) A license that is issued upon application of a
3 business organization must be in the name of the business
4 organization, and the name of the qualifying agent must be
5 noted thereon. If there is a change in any information that is
6 required to be stated on the application, the business
7 organization shall, within 45 days after the change occurs,
8 mail the correct information to the department.

9 (f) The applicant must furnish evidence of statutory
10 compliance if a fictitious name is used, notwithstanding s.
11 865.09(7).

12 (3) The qualifying agent must be licensed under this
13 part in order for the business organization to be licensed. If
14 the qualifying agent ceases to be affiliated with the business
15 organization, the agent must so inform the department. In
16 addition, if the qualifying agent is the only licensed
17 individual affiliated with the business organization, the
18 business organization must notify the department of the
19 termination of the qualifying agent, and the business
20 organization has 60 days after the termination of the
21 qualifying agent's affiliation with the business organization
22 in which to employ another qualifying agent. The business
23 organization may not engage in mold assessment or mold
24 remediation until a qualifying agent is employed, unless the
25 department has granted a temporary nonrenewable license to the
26 financially responsible officer, the president, a partner, or,
27 in the case of a limited partnership, the general partner, who
28 assumes all responsibilities of a primary qualifying agent for
29 the business organization. This temporary license allows the
30 business organization to proceed only with incomplete
31 contracts.

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

8 (b) Upon a favorable determination by the board, after
9 investigation of the financial responsibility, credit, and
10 business reputation of the qualifying agent and the new
11 business organization, the board shall issue, without any
12 examination, a new license in the business organization's
13 name, and the name of the qualifying agent must be noted
14 thereon.

15 (5)(a) Each mold assessor or mold remediator shall
16 affix the mold assessor's or mold remediator's signature and
17 license number to each document prepared or approved for use
18 by the licensee which is related to any mold assessment or
19 mold-remediation project and filed for public record with a
20 governmental agency, and to any report, specification, offer,
21 bid, or contract submitted to a client.

22 (b) The license number of each mold assessor or mold
23 remediator must appear in any printed matter or any newspaper,
24 airwave transmission, phone directory, or other advertising
25 medium offering or related to mold assessment or mold
26 remediation, as provided by department rule.

27 (6) Each qualifying agent shall pay the department an
28 amount equal to the original fee for licensure of a new
29 business organization. If the qualifying agent for a business
30 organization desires to qualify additional business
31 organizations, the board shall require the agent to present

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1 evidence of ability and financial responsibility of each such
2 organization. The issuance of such certificate of authority is
3 discretionary with the board.

4 Section 10. Section 489.609, Florida Statutes, is
5 created to read:

6 489.609 Responsibilities.--

7 (1) A qualifying agent is a primary qualifying agent
8 unless he or she is a secondary qualifying agent under this
9 section.

10 (a) All primary qualifying agents for a business
11 organization are jointly and equally responsible for
12 supervising all operations of the business organization; for
13 all field work at all sites; and for financial matters, both
14 for the organization in general and for each specific job.

15 (b) Upon approval by the board, a business
16 organization may designate a financially responsible officer
17 for purposes of licensure. A financially responsible officer
18 is responsible for all financial aspects of the business
19 organization and may not be designated as the primary
20 qualifying agent. The designated financially responsible
21 officer shall furnish evidence of his or her financial
22 responsibility, credit, and business reputation, or that of
23 the business organization he or she desires to qualify, as
24 determined appropriate by the board.

25 (c) If a business organization has a licensed
26 financially responsible officer, the primary qualifying agent
27 is responsible for all mold assessment or mold-remediation
28 activities of the business organization, both in general and
29 for each specific job.

30 (d) The board shall adopt rules prescribing the
31 qualifications for financially responsible officers, including

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1 net worth, cash, and bonding requirements. These
2 qualifications must be at least as extensive as the
3 requirements for the financial responsibility of qualifying
4 agents.

5 (2)(a) One of the qualifying agents for a business
6 organization that has more than one qualifying agent may be
7 designated as the sole primary qualifying agent for the
8 business organization by a joint agreement that is executed,
9 on a form provided by the board, by all qualifying agents for
10 the business organization.

11 (b) The joint agreement must be submitted to the board
12 for approval. If the board determines that the joint agreement
13 is in good order, it must approve the designation and
14 immediately notify the qualifying agents of its approval. The
15 designation made by the joint agreement is effective upon
16 receipt of the notice by the qualifying agents.

17 (c) The qualifying agent designated for a business
18 organization by a joint agreement is the sole primary
19 qualifying agent for the business organization, and all other
20 qualifying agents for the business organization are secondary
21 qualifying agents.

22 (d) A designated sole primary qualifying agent has all
23 the responsibilities and duties of a primary qualifying agent,
24 notwithstanding that there are secondary qualifying agents for
25 specified jobs. The designated sole primary qualifying agent
26 is jointly and equally responsible with secondary qualifying
27 agents for supervising field work.

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

30 (f) A secondary qualifying agent is not responsible
31 for supervising financial matters.

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

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

13 (c) If a new primary qualifying agent has not been
 14 designated within 60 days, all secondary qualifying agents for
 15 the business organization become primary qualifying agents
 16 unless the joint agreement specifies that one or more of them
 17 become sole qualifying agents under such circumstances, in
 18 which case only the specified secondary qualifying agents
 19 become sole qualifying agents.

20 (d) Any change in the status of a qualifying agent is
 21 prospective only. A qualifying agent is not responsible for
 22 his or her predecessor's actions but is responsible, even
 23 after a change in status, for matters for which he or she was
 24 responsible while in a particular status.

25 Section 11. Section 489.61, Florida Statutes, is
 26 created to read:

27 489.61 Continuing education.--

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

30 (2) The courses required under this section must be
 31 offered and provided by mold-training providers licensed under

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1 this part and must be approved by the board.

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

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

7 489.611 Approval of mold assessor and mold remediator
8 training courses and providers.--

9 (1) The board shall approve training courses and the
10 providers of such courses as are required under this part. The
11 board must also approve training courses and the providers of
12 such courses who offer training for persons who are exempt
13 from licensure under this part.

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

17 (3) The board may enter into agreements with other
18 states for the reciprocal approval of training courses or the
19 providers of training courses.

20 (4) The board shall, by rule, establish reasonable
21 fees in an amount not to exceed the cost of evaluation,
22 approval, and recordmaking and recordkeeping of training
23 courses and providers of training courses.

24 (5) The board may impose against a provider of
25 training courses any penalty that it may impose against a
26 licensee under this part or s. 455.227, may decline to approve
27 courses, and may withdraw approval of courses proposed by a
28 provider who has, or whose agent has, been convicted of, pled
29 guilty or nolo contendere to, or entered into a stipulation or
30 consent agreement relating to, without regard to adjudication,
31 any crime or administrative violation in any jurisdiction

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1 which involves fraud, deceit, or false or fraudulent
2 representations made in the course of seeking approval of or
3 providing training courses.

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

6 489.612 Renewal of license.--

7 (1) The department shall renew a license upon receipt
8 of the renewal application and fee, upon proof of compliance
9 with the continuing education requirements of s. 489.61, and,
10 if a demonstration of competency is required by law or rule,
11 upon certification by the board that the licensee has
12 satisfactorily demonstrated his or her competence in mold
13 assessment and mold remediation.

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

16 Section 14. Section 489.613, Florida Statutes, is
17 created to read:

18 489.613 Reactivation.--

19 (1) The board shall, by rule, prescribe continuing
20 education requirements for reactivating a license. The
21 continuing education requirements for reactivating a license
22 for a licensed mold assessor or mold remediator may not exceed
23 15 classroom hours for each year the license was inactive.

24 (2) The board shall adopt rules relating to licenses
25 that have become inactive and for the renewal of inactive
26 licenses. The board shall, by rule, prescribe a fee not to
27 exceed \$50 for the reactivation of an inactive license and a
28 fee not to exceed \$50 for the renewal of an inactive license.

29 Section 15. Section 489.614, Florida Statutes, is
30 created to read:

31 489.614 Disciplinary proceedings.--

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

9 (a) Obtaining a license or certificate of authority by
10 fraud or misrepresentation.

11 (b) Being convicted or found guilty of, or entering a
12 plea of nolo contendere to, regardless of adjudication, a
13 crime in any jurisdiction which directly relates to the
14 practice of mold assessment or mold remediation or the ability
15 to practice mold assessment or mold remediation.

16 (c) Violating any provision of chapter 455.

17 (d) Performing any act that assists a person or entity
18 in engaging in the prohibited unlicensed practice of mold
19 assessment or mold remediation, if the licensee knows or has
20 reasonable grounds to know that the person or entity is
21 unlicensed.

22 (e) Knowingly combining or conspiring with an
23 unlicensed person by allowing his or her license or
24 certificate of authority to be used by the unlicensed person
25 with intent to evade any provision of this part. If a licensee
26 allows his or her license to be used by one or more business
27 organizations without having any active participation in the
28 operations, management, or control of the business
29 organizations, such an act constitutes prima facie evidence of
30 an intent to evade the provisions of this part.

31 (f) Acting in the capacity of a mold assessor or mold

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1 remediator under any license issued under this part except in
2 the name of the licensee as set forth on the issued license.

3 (g) Committing mismanagement or misconduct in the
4 practice of mold assessment or mold remediation which causes
5 financial harm to a customer. Financial mismanagement or
6 misconduct occurs when:

7 1. Valid liens have been recorded against the property
8 of a mold assessor's or mold remediator's customer for
9 supplies or services ordered by the mold assessor or mold
10 remediator for the customer's job; the mold assessor or mold
11 remediator has received funds from the customer to pay for the
12 supplies or services; and the mold assessor or mold remediator
13 has not had the liens removed from the property, by payment or
14 by bond, within 75 days after the date of such liens;

15 2. The mold assessor or mold remediator has abandoned
16 a customer's job and the percentage of completion is less than
17 the percentage of the total contract price paid to the mold
18 assessor or mold remediator as of the time of abandonment,
19 unless the contractor is entitled to retain such funds under
20 the terms of the contract or refunds the excess funds within
21 30 days after the date the job is abandoned; or

22 3. The mold assessor's or mold remediator's job has
23 been completed, and it is shown that the customer has had to
24 pay more for the contracted job than the original contract
25 price, as adjusted for subsequent change orders, unless the
26 increase in cost was the result of circumstances beyond the
27 control of the assessor or remediator, was the result of
28 circumstances caused by the customer, or was otherwise
29 permitted by the terms of the contract between the mold
30 assessor or mold remediator and the customer.

31 (h) Being disciplined by a municipality or county for

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1 an act or violation of this part.

2 (i) Failing in any material respect to comply with
3 this part or violating a rule or lawful order of the
4 department.

5 (j) Abandoning a mold assessment or mold-remediation
6 project in which the mold assessor or mold remediator is
7 engaged or under contract as a mold assessor or mold
8 remediator. A project is presumed abandoned after 20 days if
9 the mold assessor or mold remediator has terminated the
10 project without just cause and without proper notification to
11 the owner, including the reason for termination; if the mold
12 assessor or mold remediator has failed to reasonably secure
13 the project to safeguard the public while work is stopped; or
14 if the mold assessor or mold remediator fails to perform work
15 without just cause for 20 days.

16 (k) Signing a statement with respect to a project or
17 contract falsely indicating that the work is bonded; falsely
18 indicating that payment has been made for all subcontracted
19 work, labor, and materials which results in a financial loss
20 to the owner, purchaser, or mold assessor or mold remediator;
21 or falsely indicating that the insurance coverage required
22 under this act is or has been provided.

23 (l) Committing fraud or deceit in the practice of mold
24 assessment or mold remediation.

25 (m) Committing incompetency or misconduct in the
26 practice of mold assessment or mold remediation.

27 (n) Committing gross negligence, repeated negligence,
28 or negligence resulting in a significant danger to life or
29 property in the practice of mold assessment or mold
30 remediation.

31 (o) Failing to satisfy, within a reasonable time, the

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1 terms of a civil judgment obtained against the licensee, or
2 the business organization qualified by the licensee, relating
3 to the practice of the licensee's profession.

4
5 For the purposes of this subsection, mold assessment or mold
6 remediation is considered to be commenced when the contract is
7 executed and the mold assessor or mold remediator has accepted
8 funds from the customer or lender.

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

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

23 (4) In recommending penalties in any proposed
24 recommended final order, the department shall follow the
25 penalty guidelines established by the board by rule. The
26 department shall advise the administrative law judge of the
27 appropriate penalty, including mitigating and aggravating
28 circumstances, and the specific rule citation.

29 (5) The board may not reinstate the license or
30 certificate of authority of, or cause a license or certificate
31 of authority to be issued to, a person who or business

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1 organization that the board has determined is unqualified or
2 whose license or certificate of authority the board has
3 suspended, until it is satisfied that the person or business
4 organization has complied with all the terms and conditions
5 set forth in the final order and is capable of competently
6 engaging in the business of mold assessment or mold
7 remediation.

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

14 (7) The board may not issue a license or certificate
15 of authority, or a renewal thereof, to any person or business
16 organization that has been assessed a fine, interest, or costs
17 associated with investigation and prosecution, or has been
18 ordered to pay restitution, until the fine, interest, or costs
19 associated with investigation and prosecution or restitution
20 are paid in full or until all terms and conditions of the
21 final order have been satisfied.

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

29 (9) If a business organization or any of its partners,
30 officers, directors, trustees, or members is or has previously
31 been fined for violating subsection (2) the board may, on that

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1 basis alone, revoke, suspend, place on probation, or deny
2 issuance of a license to a qualifying agent or financially
3 responsible officer of that business organization.

4 (10) If an investigation of a mold assessor or mold
5 remediator is undertaken, the department shall promptly
6 furnish to the mold assessor or mold remediator or the mold
7 assessor's or mold remediator's attorney a copy of the
8 complaint or document that resulted in the initiation of the
9 investigation. The department shall make the complaint and
10 supporting documents available to the mold assessor or mold
11 remediator. The complaint or supporting documents must contain
12 information regarding the specific facts that serve as the
13 basis for the complaint. The mold assessor or mold remediator
14 may submit a written response to the information contained in
15 the complaint or document within 20 days after service to the
16 mold assessor or mold remediator of the complaint or document.
17 The mold assessor's or mold remediator's written response must
18 be considered by the probable cause panel. The right to
19 respond does not prohibit the issuance of a summary emergency
20 order if necessary to protect the public. However, if the
21 secretary, or the secretary's designee, and the chair of the
22 board or the chair of the probable cause panel agree in
23 writing that such notification would be detrimental to the
24 investigation, the department may withhold notification. The
25 department may conduct an investigation without notification
26 to a mold assessor or mold remediator if the act under
27 investigation is a criminal offense.

28 Section 16. Section 489.615, Florida Statutes, is
29 created to read:

30 489.615 Prohibitions; penalties.--

31 (1) A person may not:

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1 (a) Falsely hold himself or herself or a business
2 organization out as a licensee;

3 (b) Falsely impersonate a licensee;

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

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

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

10 (f) Engage in the business or act in the capacity of a
11 mold assessor or mold remediator or advertise himself or
12 herself or a business organization as available to engage in
13 the business or act in the capacity of a mold assessor or mold
14 remediator without being duly licensed; or

15 (g) Operate a business organization engaged in mold
16 assessment or mold remediation after 60 days following the
17 termination of its only qualifying agent without designating
18 another primary qualifying agent, except as provided in ss.
19 489.608 and 489.609.

20
21 For purposes of this subsection, a person or business
22 organization operating on an inactive or suspended license or
23 certificate of authority is considered unlicensed.

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

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

31 (c) An unlicensed person who commits a violation of

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1 subsection (1) during the existence of a state of emergency
 2 declared by executive order of the Governor commits a felony
 3 of the third degree, punishable as provided in s. 775.082 or
 4 s. 775.083.

5 (3)(a) A licensed mold assessor or mold remediator may
 6 not enter into an agreement, oral or written, whereby his or
 7 her license number is used, or is to be used, by a person who
 8 is not licensed as provided for in this part, or is used, or
 9 is to be used, by a business organization that is not duly
 10 qualified as provided for in this part, to engage in the
 11 business or act in the capacity of a mold assessor or mold
 12 remediator.

13 (b) A licensed mold assessor or mold remediator may
 14 not knowingly allow his or her license number to be used by a
 15 person who is not licensed as provided for in this part, or
 16 used by a business organization that is not qualified as
 17 provided for in this part, to engage in the business or act in
 18 the capacity of a mold assessor or mold remediator.

19 Section 17. Section 489.616, Florida Statutes, is
 20 created to read:

21 489.616 Multiple services.--The board shall, by rule,
 22 provide when and in what manner a licensee may perform both
 23 mold assessment and mold remediation on the same contract or
 24 project.

25 Section 18. Section 489.618, Florida Statutes, is
 26 created to read:

27 489.618 Presumption.--Notwithstanding any law to the
 28 contrary, in a civil action against a person or entity duly
 29 licensed under and in compliance with the requirements of this
 30 part and alleging mold or fungal injuries to persons or
 31 damages to property, there is a rebuttable presumption that

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1 any work performed in accordance with all applicable building
 2 codes and all assessment and remediation standards adopted by
 3 the board is not negligent. This presumption applies to any
 4 person or entity that, in return for compensation, obtains and
 5 relies on the opinion of a person or entity duly licensed
 6 under and in compliance with the requirements of this part.
 7 There is a rebuttable presumption that any work not performed
 8 in accordance with all applicable building codes and all
 9 assessment and remediation standards adopted by the board is
 10 negligent per se. The presumptions set forth in this section
 11 do not apply to actions alleging gross negligence.

12 Section 19. If any provision of this act or its
 13 application to any person or circumstance is held invalid, the
 14 invalidity does not affect other provisions or applications of
 15 the act which can be given effect without the invalid
 16 provision or application, and to this end the provisions of
 17 this act are severable.

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

20 489.107 Construction Industry Licensing Board.--

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

22 (a) Four are primarily engaged in business as general
 23 contractors;

24 (b) Three are primarily engaged in business as
 25 building contractors or residential contractors, however, at
 26 least one building contractor and one residential contractor
 27 shall be appointed;

28 (c) One is primarily engaged in business as a roofing
 29 contractor;

30 (d) One is primarily engaged in business as a sheet
 31 metal contractor;

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

3 (f) One is primarily engaged in business as a
4 mechanical contractor;

5 (g) One is primarily engaged in business as a pool
6 contractor;

7 (h) One is primarily engaged in business as a plumbing
8 contractor;

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

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

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

16 (l)(k) Two are building officials of a municipality or
17 county.

18 Section 21. For the 2006-2007 fiscal year, the sum of
19 \$294,776 is appropriated from the Professional Regulation
20 Trust Fund and three additional positions are authorized to
21 the Department of Business and Professional Regulation for the
22 purpose of conducting licensing and regulatory activities
23 associated with mold assessment and remediation.

24 Section 22. This act shall take effect October 1,
25 2006.

26
27
28 ===== T I T L E A M E N D M E N T =====

29 And the title is amended as follows:

30 Delete everything before the enacting clause

31

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1 and insert:

2 A bill to be entitled

3 An act relating to mold assessment and mold

4 remediation; providing legislative intent;

5 creating pt. IV of ch. 489, F.S.; providing

6 legislative purpose; providing exemptions;

7 defining terms; providing for fees relating to

8 licensure of mold assessors and mold

9 remediators; providing for licensure

10 examinations; requiring good moral character;

11 providing prerequisites to licensure; providing

12 for the licensure of business organizations;

13 providing for qualifying agents; providing for

14 fees; providing responsibilities of primary and

15 secondary qualifying agents and of financially

16 responsible officers; establishing requirements

17 for continuing education; requiring that the

18 Construction Industry Licensing Board approve

19 training courses and training providers for

20 mold assessors and mold remediators; providing

21 for assessing penalties; providing for renewal

22 of licensure; providing for rulemaking by the

23 Department of Business and Professional

24 Regulation and the Construction Industry

25 Licensing Board; providing for reactivation of

26 licensure; providing for disciplinary

27 proceedings; establishing prohibitions;

28 providing penalties; allowing the board to

29 provide, by rule, for multiple services;

30 providing presumptions in civil actions against

31 persons or entities licensed under the act;

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1 providing severability; amending s. 489.107,
2 F.S.; adding to the board a member who is a
3 mold assessor or mold remediator; providing an
4 appropriation and authorizing positions;
5 providing an effective date.

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