

By the Committee on Regulated Industries; and Senator Bennett

580-1698-06

1 A bill to be entitled
2 An act relating to mold assessment and mold
3 remediation; providing legislative intent;
4 creating pt. IV of ch. 489, F.S.; providing
5 legislative purpose; providing exemptions;
6 defining terms; providing for fees relating to
7 licensure of mold assessors and mold
8 remediators; providing for licensure
9 examinations; requiring good moral character;
10 providing prerequisites to licensure; providing
11 for the licensure of business organizations;
12 providing for qualifying agents; providing for
13 fees; 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 by the
22 Department of Business and Professional
23 Regulation and the Construction Industry
24 Licensing Board; providing for reactivation of
25 licensure; providing for disciplinary
26 proceedings; establishing prohibitions;
27 providing penalties; allowing the board to
28 provide, by rule, for multiple services;
29 providing presumptions in civil actions against
30 persons or entities licensed under the act;
31 providing severability; amending s. 489.107,

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

6 Be It Enacted by the Legislature of the State of Florida:
7

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

17 Section 2. Part IV of chapter 489, Florida Statutes,
18 entitled "Mold Assessment and Mold Remediation in Residential,
19 Institutional, Governmental, and Commercial Buildings" and
20 consisting of ss. 489.601, 489.602, 489.603, 489.604, 489.605,
21 489.606, 489.607, 489.608, 489.609, 489.61, 489.611, 489.612,
22 489.613, 489.614, 489.615, 489.616, 489.617, and 489.618, is
23 created.

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

26 489.601 Legislative purpose.--The Legislature finds it
27 necessary in the interest of the public health, safety, and
28 welfare in order to prevent damage to the real and personal
29 property of the residents of this state and to avert economic
30 injury to the residents of this state to regulate individuals
31 and companies that hold themselves out to the public as

1 qualified to perform mold-related activities in residential,
2 institutional, governmental, and commercial buildings.

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

5 489.603 Exemptions.--Sections 489.601-489.618 do not
6 apply to:

7 (1) A Division I and Division II contractor licensed
8 under this chapter, an individual in the manufactured housing
9 industry who is licensed under chapter 320, or individuals or
10 business organizations licensed under chapter 471 or part I of
11 chapter 481, when engaged in mold-related activities
12 incidental to activities within the scope of his or her
13 license.

14 (2) An authorized employee of the United States, this
15 state, or any municipality, county, or other political
16 subdivision, public or private school, or private business
17 organization who has completed training courses in mold
18 assessment or mold remediation approved by the board or a
19 certification program approved by the board and who is
20 conducting mold assessment or mold remediation within the
21 scope of that employment, as long as the employee does not
22 hold out for hire or otherwise engage in mold assessment or
23 mold remediation.

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

28 Section 5. Section 489.604, Florida Statutes, is
29 created to read:

30 489.604 Definitions.--As used in this part, the term:
31

- 1 (1) "Board" means the Construction Industry Licensing
2 Board.
- 3 (2) "Business organization" means any partnership,
4 corporation, business trust, joint venture, or other business
5 organization.
- 6 (3) "Department" means the Department of Business and
7 Professional Regulation.
- 8 (4) "Mold" means an organism of the class fungi that
9 causes disintegration of organic matter and produces spores,
10 and includes any spores, hyphae, and secondary metabolites
11 produced by mold.
- 12 (5) "Mold assessment" means:
- 13 (a) An inspection, investigation, or survey of a
14 dwelling or other structure to provide the owner or occupant
15 with information regarding the presence, identification, or
16 evaluation of mold;
- 17 (b) The development of a mold-management plan,
18 development of a remediation protocol, and a postabatement
19 evaluation of a property;
- 20 (c) The collection or analysis of a mold sample; or
21 (d) The evaluation of a property for moisture damage
22 or moisture-incursion conditions that are likely to result in
23 fungal growth. A pre-purchase evaluation of a property must
24 include an assessment of moisture incursion and fungal growth.
- 25 (6) "Mold assessor" means any person or business
26 organization that performs a mold assessment.
- 27 (7) "Mold remediation" means the removal, cleaning,
28 sanitizing, demolition, or other treatment, including
29 preventive activities, of mold or mold-contaminated matter
30 that was not purposely grown at that location.
- 31

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

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

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

25 489.605 Fees.--The board shall, by rule, establish
26 reasonable fees to be paid for applications, examinations,
27 licensing and renewal, recordmaking, and recordkeeping. Fees
28 for application, initial licensure, license renewal, or
29 license reactivation for mold assessors or mold remediators
30 may not exceed \$500 per applicant. The board may, by rule,
31

1 establish late renewal penalty fees, in an amount not to
2 exceed the initial licensure fee.

3 Section 7. Section 489.606, Florida Statutes, is
4 created to read:

5 489.606 Examination.--

6 (1) A person who desires to be licensed as a mold
7 assessor or mold remediator must apply to the department for
8 licensure.

9 (2) An applicant may take the licensure examination to
10 practice in this state as a mold assessor or mold remediator
11 if the applicant is of good moral character, is a graduate of
12 an approved course of study in mold assessment or mold
13 remediation, and has a specific experience record as
14 prescribed by rule.

15 (3) The board shall adopt rules providing for the
16 review and approval of training programs in mold assessment
17 and mold remediation. The board may adopt rules providing for
18 the acceptance of the approval and accreditation of schools
19 and courses of study by nationally accepted accreditation
20 organizations.

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

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

26 1. The board finds that there is a substantial
27 connection between the lack of good moral character of the
28 applicant and the professional responsibilities of a mold
29 assessor or mold remediator; and

30 2. This finding is supported by clear and convincing
31 evidence.

1 (c) If an applicant is found to be unqualified for a
2 license because of a lack of good moral character, the board
3 must furnish to the applicant a statement containing the
4 findings of the board, a complete record of the evidence upon
5 which the determination was based, and a notice of the rights
6 of the applicant to a rehearing and appeal.

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

9 489.607 Licensure.--The department shall license any
10 applicant who the board certifies is qualified to practice
11 mold assessment or mold remediation and who:

12 (1) Pays the initial licensing fee;

13 (2) Submits with the application for licensure as a
14 mold assessor or a mold remediator evidence that he or she has
15 successfully completed the board-approved courses as
16 prescribed by rule;

17 (3) Provides evidence of financial stability; and

18 (4)(a) Passes a department-approved examination of
19 qualifications and knowledge relating to mold assessment and
20 mold remediation; or

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

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

27 489.608 Licensure of business organizations;
28 qualifying agents.--

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

1 (2)(a) If the applicant proposes to engage in mold
2 remediation or mold assessment as a business organization in
3 any name other than the applicant's legal name, the business
4 organization must apply for licensure through a qualifying
5 agent or the individual applicant must apply for licensure
6 under the fictitious name.

7 (b) The application must state the name of the
8 business organization and of each of its partners, the name of
9 the corporation and of each of its officers and directors and
10 the name of each of its stockholders who is also an officer or
11 director, the name of the business trust and of each of its
12 trustees, or the name of such other business organization and
13 of each of its members.

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

21 2. The application for financially responsible officer
22 must include an affidavit on a form provided by the department
23 which attests that the applicant's signature is required on
24 all checks, drafts, or payments, regardless of the form of
25 payment, made by the business organization, and that the
26 applicant has authority to act for the business organization
27 in all financial matters.

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

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

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

15 2. Evidence of financial responsibility. The board
16 shall adopt rules to determine financial responsibility which
17 specify grounds on which the department may deny licensure.
18 Such criteria must include, but need not be limited to, credit
19 history and limits of bondability and credit.

20
21 Continuing proof of all insurance coverages referenced in this
22 paragraph shall be a requisite condition to maintaining a
23 license issued under this part.

24 (d) A joint venture, including a joint venture
25 composed of qualified business organizations, is a separate
26 and distinct organization that must be qualified in accordance
27 with department rules.

28 (e) A license that is issued upon application of a
29 business organization must be in the name of the business
30 organization, and the name of the qualifying agent must be
31 noted thereon. If there is a change in any information that is

1 required to be stated on the application, the business
2 organization shall, within 45 days after the change occurs,
3 mail the correct information to the department.

4 (f) The applicant must furnish evidence of statutory
5 compliance if a fictitious name is used, notwithstanding s.
6 865.09(7).

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

27 (4)(a) The qualifying agent shall inform the
28 department in writing if the agent proposes to engage in mold
29 assessment or mold remediation in the agent's own name or in
30 affiliation with another business organization, and the agent
31 or the new business organization shall supply the same

1 information to the department as is required of initial
2 applicants under this part.

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

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

17 (b) The license number of each mold assessor or mold
18 remediator must appear in any printed matter or any newspaper,
19 airwave transmission, phone directory, or other advertising
20 medium offering or related to mold assessment or mold
21 remediation, as provided by department rule.

22 (6) Each qualifying agent shall pay the department an
23 amount equal to the original fee for licensure of a new
24 business organization. If the qualifying agent for a business
25 organization desires to qualify additional business
26 organizations, the board shall require the agent to present
27 evidence of ability and financial responsibility of each such
28 organization. The issuance of such certificate of authority is
29 discretionary with the board.

30 Section 10. Section 489.609, Florida Statutes, is
31 created to read:

1 489.609 Responsibilities.--

2 (1) A qualifying agent is a primary qualifying agent
3 unless he or she is a secondary qualifying agent under this
4 section.

5 (a) All primary qualifying agents for a business
6 organization are jointly and equally responsible for
7 supervising all operations of the business organization; for
8 all field work at all sites; and for financial matters, both
9 for the organization in general and for each specific job.

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

20 (c) If a business organization has a licensed
21 financially responsible officer, the primary qualifying agent
22 is responsible for all mold assessment or mold-remediation
23 activities of the business organization, both in general and
24 for each specific job.

25 (d) The board shall adopt rules prescribing the
26 qualifications for financially responsible officers, including
27 net worth, cash, and bonding requirements. These
28 qualifications must be at least as extensive as the
29 requirements for the financial responsibility of qualifying
30 agents.

31

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

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

13 (c) The qualifying agent designated for a business
14 organization by a joint agreement is the sole primary
15 qualifying agent for the business organization, and all other
16 qualifying agents for the business organization are secondary
17 qualifying agents.

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

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

26 (f) A secondary qualifying agent is not responsible
27 for supervising financial matters.

28 (3)(a) A qualifying agent who has been designated by a
29 joint agreement as the sole primary qualifying agent for a
30 business organization may terminate this status by giving
31 actual notice to the business organization, to the board, and

1 to all secondary qualifying agents of his or her intention to
2 terminate this status. The notice to the board must include
3 proof satisfactory to the board that the qualifying agent has
4 given the notice required in this paragraph.

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

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

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

21 Section 11. Section 489.61, Florida Statutes, is
22 created to read:

23 489.61 Continuing education.--

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

26 (2) The courses required under this section must be
27 offered and provided by mold-training providers licensed under
28 this part and must be approved by the board.

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

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

3 489.611 Approval of mold assessor and mold remediator
4 training courses and providers.--

5 (1) The board shall approve training courses and the
6 providers of such courses as are required under this part. The
7 board must also approve training courses and the providers of
8 such courses who offer training for persons who are exempt
9 from licensure under this part.

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

13 (3) The board may enter into agreements with other
14 states for the reciprocal approval of training courses or the
15 providers of training courses.

16 (4) The board shall, by rule, establish reasonable
17 fees in an amount not to exceed the cost of evaluation,
18 approval, and recordmaking and recordkeeping of training
19 courses and providers of training courses.

20 (5) The board may impose against a provider of
21 training courses any penalty that it may impose against a
22 licensee under this part or s. 455.227, may decline to approve
23 courses, and may withdraw approval of courses proposed by a
24 provider who has, or whose agent has, been convicted of, pled
25 guilty or nolo contendere to, or entered into a stipulation or
26 consent agreement relating to, without regard to adjudication,
27 any crime or administrative violation in any jurisdiction
28 which involves fraud, deceit, or false or fraudulent
29 representations made in the course of seeking approval of or
30 providing training courses.

31

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

3 489.612 Renewal of license.--

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

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

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

15 489.613 Reactivation.--

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

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

26 Section 15. Section 489.614, Florida Statutes, is
27 created to read:

28 489.614 Disciplinary proceedings.--

29 (1) The board may revoke, suspend, or deny the
30 issuance or renewal of a license; reprimand, censure, or place
31 on probation any mold assessor or mold remediator; require

1 financial restitution to a consumer; impose an administrative
2 fine not to exceed \$5,000 per violation; require continuing
3 education; or assess costs associated with any investigation
4 and prosecution if the mold assessor or mold remediator is
5 found guilty of any of the following acts:

6 (a) Obtaining a license or certificate of authority by
7 fraud or misrepresentation.

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

13 (c) Violating any provision of chapter 455.

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

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

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

31

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

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

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

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

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

31

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

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

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

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

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

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

30 (o) Failing to satisfy, within a reasonable time, the
31 terms of a civil judgment obtained against the licensee, or

1 the business organization qualified by the licensee, relating
2 to the practice of the licensee's profession.

3
4 For the purposes of this subsection, mold assessment or mold
5 remediation is considered to be commenced when the contract is
6 executed and the mold assessor or mold remediator has accepted
7 funds from the customer or lender.

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

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

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

28 (5) The board may not reinstate the license or
29 certificate of authority of, or cause a license or certificate
30 of authority to be issued to, a person who or business
31 organization that the board has determined is unqualified or

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

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

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

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

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

1 issuance of a license to a qualifying agent or financially
2 responsible officer of that business organization.

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

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

29 489.615 Prohibitions; penalties.--

30 (1) A person may not:
31

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

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

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

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

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

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

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

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

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

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

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

21 489.107 Construction Industry Licensing Board.--

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

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

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

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

31

1 (d) One is primarily engaged in business as a sheet
2 metal contractor;

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

5 (f) One is primarily engaged in business as a
6 mechanical contractor;

7 (g) One is primarily engaged in business as a pool
8 contractor;

9 (h) One is primarily engaged in business as a plumbing
10 contractor;

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

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

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

18 ~~(l)(k)~~ Two are building officials of a municipality or
19 county.

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

26 Section 22. This act shall take effect October 1,
27 2006.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 1046

The committee substitute provides the legislative intent language to address the requirements of s. 11.62, F.S. It adds architects and interior designers licensed under part I, ch. 481, F.S., to the list of professionals exempt from mold remediation and assessment licensure. It amends the mold assessment definition to include secondary metabolites. It clarifies the scope of mold related activities, and includes errors and omissions insurance as part of the insurance required to be carried by an applicant. The committee substitute requires a mold assessor or remediator to sign and include the license number on any reports or specifications submitted to a client.