

CHAMBER ACTION

1 The Business Regulation Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to building assessment and remediation;
7 creating pt. XV of ch. 468, F.S., relating to regulation
8 of mold assessment and mold remediation; providing
9 legislative intent; providing definitions; providing
10 requirements for practice of mold assessment or mold
11 remediation; providing exemptions; providing for
12 prohibited acts and penalties; providing insurance
13 requirements; providing for contracts to perform mold
14 assessment or mold remediation; providing a statute of
15 limitations; providing a grandfather clause; creating pt.
16 XVI of ch. 468, F.S., relating to regulation of home
17 inspection services; providing definitions; providing
18 requirements for practice; providing exemptions; providing
19 prohibited acts and penalties; requiring liability
20 insurance; exempting certain persons from duty to provide
21 repair cost estimates; providing a statute of limitations;
22 providing a grandfather clause; providing an effective
23 date.

HB 161

2006
CS24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50

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

Section 1. Part XV of chapter 468, Florida Statutes, consisting of sections 468.83, 468.831, 468.832, 468.833, 468.834, 468.835, 468.836, 468.837, and 468.838, is created to read:

468.83 Legislative intent.--It is the intent of the Legislature pursuant to s. 11.62 that professions and occupations covered by this part be regulated in a manner that does not unnecessarily restrict entry into such professions or occupations. The Legislature finds that this part provides a measure of protection for homeowners by providing education, experience, and testing requirements for persons in such professions or occupations necessary to protect homeowners' investments in their homes.

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

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

(2) "Mold assessment" means:

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

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

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

51 (3) "Mold assessor" means any person who performs or
52 directly supervises a mold assessment.

53 (4) "Mold remediation" means the removal, cleaning,
54 sanitizing, demolition, or other treatment, including preventive
55 activities, of mold or mold-contaminated matter that was not
56 purposely grown at that location; however, such removal,
57 cleaning, sanitizing, demolition, or other treatment, including
58 preventive activities, may not be work that requires a license
59 under chapter 489 unless performed by a person who is licensed
60 under that chapter or the work complies with that chapter.

61 (5) "Mold remediator" means any person who performs mold
62 remediation. A mold remediator may not perform any work that
63 requires a license under chapter 489 unless the mold remediator
64 is also licensed under that chapter or complies with that
65 chapter.

66 468.832 Requirements for practice.--

67 (1) A person shall not work as a mold assessor or mold
68 remediator unless he or she has evidence of, or works under the
69 direct supervision of a person who has evidence of, the
70 following:

71 (a) At least a 2-year degree in microbiology, engineering,
72 architecture, industrial hygiene, or a related field of science
73 from an accredited institution, along with a minimum of 1 year
74 of documented field experience in conducting microbial sampling
75 or investigations, or a high school diploma, a GED, or the
76 equivalent with a minimum of 2 years of documented field
77 experience in conducting microbial sampling or investigations.

HB 161

2006
CS

78 (b) A certification related to performing mold assessment
79 or mold remediation, respectively. Such certification may be
80 issued by a not-for-profit industry association, society, or
81 certification body or by a college or university that offers
82 mold assessment training or education. Qualified certification
83 programs shall be accredited by a nationally recognized
84 independent accrediting entity that sets programs and standards
85 that comply with American Society for Testing and Materials
86 Standard E1929-98, Standard Practice for Assessment of
87 Certification Programs for Environmental Professionals:
88 Accreditation Criteria, or the equivalent.

89 (2) A business entity may not provide or offer to provide
90 mold assessment or mold remediation services unless the business
91 entity satisfies all of the requirements of this part.

92 468.833 Exemptions.--

93 (1) The following persons are not required to comply with
94 this part with regard to any mold assessment:

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

97 (b) An owner or tenant, or a managing agent or employee of
98 an owner or tenant, who performs mold assessment on property
99 owned or leased by the owner or tenant. This exemption does not
100 apply if the managing agent or employee engages in the business
101 of performing mold assessment for the public.

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

104 (d) Individuals or business organizations that are not
105 specifically engaged in mold assessment but are acting within

HB 161

2006
CS

106 the scope of the respective licenses required under chapter 471,
107 part I of chapter 481, chapter 482, or chapter 489, are acting
108 on behalf of an insurer under part VI of chapter 626, or are
109 individuals in the manufactured housing industry who are
110 licensed under chapter 320.

111 (e) An authorized employee of the United States, this
112 state, or any municipality, county, or other political
113 subdivision, or public or private school, who meets the
114 requirements of s. 468.832 and who is conducting mold assessment
115 within the scope of that employment, as long as the employee
116 does not hold out for hire or otherwise engage in mold
117 assessment.

118 (2) The following persons are not required to comply with
119 this part with regard to any mold remediation:

120 (a) A residential property owner who performs mold
121 remediation on his or her own property.

122 (b) An owner or tenant, or a managing agent or employee of
123 an owner or tenant, who performs mold remediation on property
124 owned or leased by the owner or tenant so long as such
125 remediation is within the routine maintenance of a building
126 structure. This exemption does not apply if the managing agent
127 or employee engages in the business of performing mold
128 remediation for the public.

129 (c) An employee of a mold remediator while directly
130 supervised by the mold remediator.

131 (d) Individuals or business organizations that are not
132 specifically engaged in mold remediation but that are acting
133 within the scope of the respective licenses required under

HB 161

2006
CS

134 chapter 471, part I of chapter 481, chapter 482, or chapter 489,
135 are acting on behalf of an insurer under part VI of chapter 626,
136 or are individuals in the manufactured housing industry who are
137 licensed under chapter 320.

138 (e) An authorized employee of the United States, this
139 state, or any municipality, county, or other political
140 subdivision, or public or private school, who meets the
141 requirements of s. 468.832 and who is conducting mold
142 remediation within the scope of that employment, as long as the
143 employee does not hold out for hire or otherwise engage in mold
144 remediation.

145 468.834 Prohibited acts; penalties.--

146 (1) A mold assessor, a company that employs a mold
147 assessor, or a company that is controlled by a company that also
148 has a financial interest in a company employing a mold assessor
149 may not:

150 (a) Perform or offer to perform any mold assessment
151 without complying with the requirements of this part.

152 (b) Perform or offer to perform any mold remediation to a
153 structure on which the mold assessor or the mold assessor's
154 company provided a mold assessment within the last 12 months.

155 (c) Inspect for a fee any property in which the assessor
156 or the assessor's company has any financial or transfer
157 interest.

158 (d) Accept any compensation, inducement, or reward from a
159 mold remediator or mold remediator's company for the referral of
160 any business to the mold remediator or the mold remediator's
161 company.

HB 161

2006
CS

162 (e) Offer any compensation, inducement, or reward to a
 163 mold remediator or mold remediator's company for the referral of
 164 any business from the mold remediator or the mold remediator's
 165 company.

166 (f) Accept an engagement to make an omission of the
 167 assessment or conduct an assessment in which the assessment
 168 itself, or the fee payable for the assessment, is contingent
 169 upon the conclusions of the assessment.

170 (2) A mold remediator, a company that employs a mold
 171 remediator, or a company that is controlled by a company that
 172 also has a financial interest in a company employing a mold
 173 remediator may not:

174 (a) Perform or offer to perform any mold remediation
 175 without complying with the requirements of this part.

176 (b) Perform or offer to perform any mold assessment as
 177 defined in s. 468.831.

178 (c) Remediate for a fee any property in which the mold
 179 remediator or the mold remediator's company has any financial or
 180 transfer interest.

181 (d) Accept any compensation, inducement, or reward from a
 182 mold assessor or mold assessor's company for the referral of any
 183 business from the mold assessor or the mold assessor's company.

184 (e) Offer any compensation, inducement, or reward to a
 185 mold assessor or mold assessor's company for the referral of any
 186 business from the mold assessor or the mold assessor's company.

187 (3) Any person who violates any provision of this section
 188 commits:

HB 161

2006
CS

189 (a) A misdemeanor of the second degree for a first
190 violation, punishable as provided in s. 775.082 or s. 775.083.

191 (b) A misdemeanor of the first degree for a second
192 violation, punishable as provided in s. 775.082 or s. 775.083.

193 (c) A felony of the third degree for a third or subsequent
194 violation, punishable as provided in s. 775.082, s. 775.083, or
195 s. 775.084.

196 468.835 Insurance.--

197 (1) A mold assessor must maintain general liability and
198 errors and omissions insurance coverage in an amount of not less
199 than \$250,000.

200 (2) A mold remediator must maintain general liability
201 insurance policy in an amount of not less than \$500,000 that
202 includes specific coverage for mold related claims.

203 468.836 Contracts.--A contract to perform mold assessment
204 or mold remediation must be in a record, signed or otherwise
205 authenticated by the parties. A mold assessment contract is not
206 required to provide estimates related to the cost of repair of
207 an assessed property. A mold assessment contract is not required
208 to provide estimates.

209 468.837 Statute of limitations.--Chapter 95 governs the
210 time at which an action to enforce an obligation, a duty, or a
211 right arising under this part must be commenced.

212 468.838 Grandfather clause.--The provisions of this part
213 shall become effective upon becoming law and shall allow for a
214 period of 2 years after enactment in which persons currently
215 performing mold assessment or mold remediation as described
216 under this part have to complete the requirements of this part.

HB 161

2006
CS

217 Section 2. Part XVI of chapter 468, Florida Statutes,
218 consisting of sections 468.841, 468.842, 468.843, 468.844,
219 468.845, 468.846, 468.847, and 468.848, is created to read:

220 468.841 Definitions.--As used in this part, the term:

221 (1) "Home" means any residential real property, or
222 manufactured or modular home, that is a single-family dwelling,
223 duplex, triplex, quadruplex, condominium unit, or cooperative
224 unit. The term does not include the common areas of condominiums
225 or cooperatives.

226 (2) "Home inspector" means any person who provides or
227 offers to provide a home inspection for a fee or other
228 compensation.

229 (3) "Home inspection" means a limited visual examination
230 of one or more of the readily accessible installed systems and
231 components of a home, including, but not limited to, the
232 structure, electrical system, HVAC system, roof covering,
233 plumbing system, interior components, exterior components, and
234 site conditions that affect the structure, for the purpose of
235 providing a written professional opinion of the condition of the
236 home.

237 468.842 Requirements for practice.--

238 (1) A person may not work as a home inspector unless he or
239 she:

240 (a) Has successfully completed a course of study of not
241 less than 80 hours, which requires a passing score on a
242 psychometrically valid examination in home inspections, and
243 which includes, but is not limited to, each of the following
244 components of a home: structure; electrical system; roof

HB 161

2006
CS

245 covering; plumbing system; interior components; exterior
246 components; and site conditions that affect the structure, and
247 heating, ventilation, and cooling systems. Courses of study
248 prescribed under this section must be accredited by a nationally
249 recognized third-party independent accrediting entity that sets
250 programs and standards that ensure certificant competence.

251 (b) Annually completes 8 hours of continuing education
252 related to home inspections.

253 (c) Discloses to the consumer in writing prior to
254 contracting for or commencing a home inspection:

255 1. That the home inspector meets the education and
256 examination requirements of this section.

257 2. That the home inspector maintains the commercial
258 general liability insurance policy as required by this part.

259 3. The scope and any exclusions of the home inspection.

260 4. A statement of experience that includes either the
261 approximate number of home inspections the home inspector has
262 performed for a fee or the number of years of experience as a
263 home inspector.

264 (2) A business entity may not provide or offer to provide
265 home inspection services unless each of the home inspectors
266 employed by the business entity satisfies all the requirements
267 of this part.

268 (3) A business entity may not use, in connection with the
269 name or signature of the business entity, the title "home
270 inspectors" to describe the business entity's services unless
271 each of the home inspectors employed by the business entity
272 satisfies all the requirements of this part.

HB 161

2006
CS

273 468.843 Exemptions.--The following persons are not
274 required to comply with this part when acting within the scope
275 of practice authorized by such license, except when such persons
276 are conducting, producing, disseminating, or charging a fee for
277 a home inspection or otherwise operating within the scope of
278 this part:

279 (1) A construction contractor licensed under chapter 489.

280 (2) An architect licensed under chapter 481.

281 (3) An engineer licensed under chapter 471.

282 (4) A building code administrator, plans examiner, or
283 building code inspector licensed under part XII of chapter 468.

284 (5) A certified real estate appraiser, licensed real
285 estate appraiser, or registered real estate appraiser licensed
286 under part II of chapter 475.

287 (6) An inspector whose report is being provided to, and is
288 solely for the benefit of, the Federal Housing Administration or
289 the Veterans Administration.

290 (7) An inspector conducting inspections for wood-
291 destroying organisms on behalf of a licensee under chapter 482.

292 (8) A firesafety inspector certified under s. 633.081.

293 (9) An insurance adjuster licensed under part VI of
294 chapter 626.

295 (10) An officer appointed by the court.

296 (11) A master septic tank contractor licensed under part
297 III of chapter 489.

298 (12) A certified energy auditor performing an energy audit
299 of any home or building conducted under chapter 366 or rules
300 adopted by the Public Service Commission.

HB 161

2006
CS

301 (13) A mobile home manufacturer, dealer, or installer
 302 regulated or licensed under chapter 320 and any employees or
 303 agents of the manufacturer, dealer, or installer.

304 468.844 Prohibited acts; penalties.--

305 (1) A home inspector, a company that employs a home
 306 inspector, or a company that is controlled by a company that has
 307 a financial interest in a company employing a home inspector may
 308 not:

309 (a) Perform or offer to perform, prior to closing, for any
 310 additional fee, any repairs to a home on which the inspector or
 311 the inspector's company has prepared a home inspection report.
 312 This paragraph does not apply to a home warranty company that is
 313 affiliated with or retains a home inspector to perform repairs
 314 pursuant to a claim made under a home warranty contract.

315 (b) Inspect for a fee any property in which the inspector
 316 or the inspector's company has any financial or transfer
 317 interest.

318 (c) Offer or deliver any compensation, inducement, or
 319 reward to the owner of the inspected property, or any broker or
 320 agent therefor, for the referral of any business to the
 321 inspector or the inspector's company.

322 (d) Accept an engagement to make an omission or prepare a
 323 report in which the inspection itself, or the fee payable for
 324 the inspection, is contingent upon the conclusions in the
 325 report, the preestablished findings, or the close of escrow.

326 (2) Any person who violates any provision of this section
 327 commits:

HB 161

2006
CS

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

330 (b) A misdemeanor of the first degree for a second
331 violation, punishable as provided in s. 775.082 or s. 775.083.

332 (c) A felony of the third degree for a third or subsequent
333 violation, punishable as provided in s. 775.082, s. 775.083, or
334 s. 775.084.

335 468.845 Insurance.--A home inspector must maintain a
336 commercial general liability insurance policy in an amount of
337 not less than \$300,000.

338 468.846 Repair cost estimates.--Home inspectors are not
339 required to provide estimates related to the cost of repair of
340 an inspected property.

341 468.847 Statute of limitations.--Chapter 95 governs when
342 an action to enforce an obligation, duty, or right arising under
343 this part must be commenced.

344 468.848 Grandfather clause.--Until January 1, 2008,
345 notwithstanding any other provision of this part, a person who
346 meets the following criteria may work as a home inspector:

347 (1) Has successfully completed high school or its
348 equivalent or has been in the business of home inspection
349 services for at least 5 years.

350 (2) Has been engaged in the practice of home inspection
351 for compensation for at least 3 years prior to January 1, 2007.

352 (3) Has performed of not fewer than 250 home inspections
353 for compensation.

354 Section 3. This act shall take effect January 1, 2008.