

By Senator Aronberg

27-00266-10

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1 A bill to be entitled
2 An act relating to reactive drywall mitigation;
3 creating part XVII of ch. 468, F.S.; creating the
4 Reactive Drywall Mitigation Act; defining terms;
5 specifying exemptions from the act; prohibiting a
6 person from performing an inspection or preparing a
7 plan for the removal of reactive drywall or removing
8 reactive drywall and damaged items unless the person
9 is employed by a licensed reactive drywall mitigation
10 business; specifying prerequisites for licensure by
11 the Department of Business and Professional Regulation
12 as a reactive drywall mitigation business; providing
13 for the renewal of a license; authorizing the
14 department to establish fees by rule for application,
15 examination, reexamination, and licensing and license
16 renewal; specifying grounds and sanctions in
17 disciplinary actions; authorizing the department to
18 assess costs; requiring the department to adopt by
19 rule standards for reactive drywall mitigation;
20 authorizing the department to approve by rule criteria
21 for drywall mitigation courses and providers;
22 providing an effective date.

23
24 Be It Enacted by the Legislature of the State of Florida:

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26 Section 1. Part XVII of chapter 468, Florida Statutes,
27 consisting of sections 468.85, 468.851, 468.852, 468.853,
28 468.854, 468.855, 468.856, 468.857, 468.858, and 468.859, is
29 created to read:

27-00266-10

2010500__

30 468.85 Short title.—This part may be cited as the “Reactive
31 Drywall Mitigation Act.”

32 468.851 Definitions.—As used in this part, the term:

33 (1) “Applicant” means a business seeking a license under
34 this part.

35 (2) “Department” means the Department of Business and
36 Professional Regulation.

37 (3) “Reactive drywall” means drywall that emits sulfur or
38 strontium compounds that react with copper or other metals
39 commonly found in building materials and appliances.

40 (4) “Reactive drywall mitigation” means conducting an
41 inspection for the presence of or preparing a plan for the
42 removal of reactive drywall, or removing reactive drywall and
43 items damaged by reactive drywall from a building.

44 (5) “Reactive drywall mitigation business” means a business
45 engaged in reactive drywall mitigation.

46 468.852 Exemptions.—The following persons are not required
47 to comply with any provisions of this part:

48 (1) A residential property owner who conducts reactive
49 drywall mitigation on his or her own property.

50 (2) A person who conducts reactive drywall mitigation on
51 property owned or leased by the person, the person’s employer,
52 or an entity affiliated with the person’s employer through
53 common ownership, or on property operated or managed by the
54 person’s employer or an entity affiliated with the person’s
55 employer through common ownership. This exemption does not apply
56 if the person, employer, or affiliated entity performs reactive
57 drywall mitigation for the public.

58 (3) An employee of a reactive drywall mitigation business

27-00266-10

2010500__

59 while performing duties under the direction of the business.

60 (4) Persons or business organizations acting within the
61 scope of the respective licenses required under chapter 471,
62 chapter 489, or part XV of this chapter, except when any such
63 persons or business organizations hold themselves out for hire
64 to the public as a "certified reactive drywall mitigation
65 business," "registered reactive drywall mitigation business,"
66 "licensed reactive drywall mitigation business," "reactive
67 drywall assessor," "professional reactive drywall assessor," or
68 any combination thereof stating or implying licensure under this
69 part.

70 (5) An authorized employee of the United States, this
71 state, a municipality, county, or other political subdivision,
72 or a public or private school who is performing reactive drywall
73 mitigation within the scope of that employment, as long as the
74 employee does not hold himself or herself out for hire to the
75 public as performing or otherwise perform reactive drywall
76 mitigation.

77 468.853 License required.—A person may not perform reactive
78 drywall mitigation unless the person is employed by a licensed
79 reactive drywall mitigation business.

80 468.854 License application.—A business seeking to be
81 licensed as a reactive drywall mitigation business must:

82 (1) Pay the initial licensing fee.

83 (2) Provide proof that the owner or operator of the
84 business has satisfactorily completed courses or passed
85 examinations on reactive drywall mitigation required by the
86 department as a prerequisite to licensure.

87 (3) Provide evidence of financial responsibility.

27-00266-10

2010500__

88 468.855 Renewal of license.-

89 (1) The department shall renew a license upon receipt of
90 the renewal application fee and upon certification by the
91 department that the licensee has completed any continuing
92 education required by the department.

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

95 468.856 Fees.-

96 (1) The department may establish by rule fees to be paid
97 for application, examination, reexamination, licensing and
98 renewal of licensure, and maintenance of licenses on inactive
99 status and reactivation of licenses. The department may also
100 establish by rule a delinquency fee. Fees shall be based on
101 department estimates of the revenue required to administer the
102 provisions of this part. All fees shall be remitted with the
103 application for licensing and license renewal, inactive status,
104 and reactivation of inactive licenses.

105 (2) The application fee may not exceed \$125 and is
106 nonrefundable.

107 (3) The fee for an initial license may not exceed \$200.

108 (4) The fee for a biennial license renewal may not exceed
109 \$400.

110 468.857 Disciplinary proceedings.-

111 (1) The following acts constitute grounds for which the
112 disciplinary actions in subsection (2) may be taken:

113 (a) Violating any provision of this part or s. 455.227(1);

114 (b) Attempting to procure a license as a reactive drywall
115 mitigation business by bribery or fraudulent misrepresentation;

116 (c) Having a license to perform reactive drywall mitigation

27-00266-10

2010500__

117 or similar license revoked, suspended, or otherwise acted
118 against, including the denial of licensure, by the licensing
119 authority of another state, territory, or country;

120 (d) Being convicted or found guilty of, or entering a plea
121 of nolo contendere to, regardless of adjudication, a crime in
122 any jurisdiction which directly relates to the practice of
123 reactive drywall mitigation or the ability to practice reactive
124 drywall mitigation;

125 (e) Making or filing a report or record that the licensee
126 knows to be false, willfully failing to file a report or record
127 required by state or federal law, willfully impeding or
128 obstructing such filing, or inducing another person to impede or
129 obstruct such filing. Such reports or records include only those
130 that are signed on behalf of a licensed reactive drywall
131 mitigation business;

132 (f) Advertising goods or services in a manner that is
133 fraudulent, false, deceptive, or misleading in form or content;

134 (g) Engaging in fraud or deceit, or negligence,
135 incompetency, or misconduct, in performing reactive drywall
136 mitigation;

137 (h) Failing to perform any statutory or legal obligation
138 placed upon a licensed reactive drywall remediation business;
139 violating any provision of this chapter, a rule of the
140 department, or a lawful order of the department previously
141 entered in a disciplinary hearing; or failing to comply with a
142 lawfully issued subpoena of the department; or

143 (i) Performing reactive drywall mitigation under a revoked,
144 suspended, inactive, or delinquent license.

145 (2) If the department finds any business or person has

27-00266-10

2010500__

146 engaged in conduct set forth in subsection (1), it may enter an
147 order imposing one or more of the following penalties:

148 (a) Denial of an application for licensure.

149 (b) Revocation or suspension of a license.

150 (c) Imposition of an administrative fine not to exceed
151 \$5,000 for each count or separate offense.

152 (d) Issuance of a reprimand.

153 (e) Placement of the reactive drywall mitigation business
154 on probation for a period of time and subject to such conditions
155 as the department may specify.

156 (f) Restriction of the authorized scope of practice by the
157 reactive drywall remediation business.

158 (3) In addition to any other sanction imposed under this
159 part, in any final order that imposes sanctions, the department
160 may assess costs related to the investigation and prosecution of
161 the case.

162 468.858 Drywall mitigation standards.—The department shall
163 adopt standards by rule for reactive drywall mitigation. The
164 standards shall identify the fixtures, components, or contents
165 of a structure which must be inspected as part of an inspection
166 for reactive drywall. The department shall also develop
167 standards or practices by rule which must be incorporated in a
168 plan for the removal and disposal of reactive drywall and items
169 damaged by emissions from reactive drywall.

170 468.859 Approval of drywall mitigation courses and
171 providers.—

172 (1) The department shall approve training courses and the
173 providers of such courses as are required under this part. The
174 department shall also approve training courses and the providers

27-00266-10

2010500__

175 of such courses who offer training for persons who are exempt
176 from licensure under this part.

177 (2) The department shall prescribe criteria by rule for
178 approving training courses and course providers and may by rule
179 modify the training required by this chapter.

180 (3) The department may enter into agreements with other
181 states for the reciprocal approval of training courses or
182 training-course providers.

183 (4) The department shall establish by rule reasonable fees
184 in an amount not to exceed the cost of evaluation, approval, and
185 recordmaking and recordkeeping of training courses and training-
186 course providers.

187 (5) The department may impose any penalty against a
188 training-course provider which it may impose against a licensee
189 under this part or s. 455.227, may decline to approve courses,
190 and may withdraw approval of courses proposed by a provider who
191 has, or whose agent has, been convicted of, or pled guilty or
192 nolo contendere to, or entered into a stipulation or consent
193 agreement relating to, without regard to adjudication, any crime
194 or administrative violation in any jurisdiction which involves
195 fraud, deceit, or false or fraudulent representations made in
196 the course of seeking approval of or providing training courses.

197 Section 2. This act shall take effect January 1, 2011.