

AMERICAN INDUSTRIAL HYGIENE ASSOCIATION
GOVERNMENT AFFAIRS GROUP
STATE UPDATE



January 7, 2003

2003

TEXAS

Here is the latest legislative/regulatory report for your State. AIHA government affairs will send the reports every week, detailing any legislation pertinent to the profession in your state. The reports will also include the text of many bills and update activity on bills already reported. You will receive these reports while your legislature is in Session. However, you will receive these reports only if there has been new activity on the legislation already reported, or new legislation is found.

Current Legislation

TX H 329 **AUTHOR:** Naishtat (D)
 TITLE: Mold Assessors
 PREFILED: 01/03/2003
 LOCATION: HOUSE
 SUMMARY:
 Relates to the regulation of mold assessors and remediators; provides civil and
 administrative penalties.
 STATUS:
 01/03/2003 PREFILED.

Text of Legislation:

In bill text the following has special meaning
underline denotes added text
~~struck out text denotes deleted text~~

TX 2003 H 329

AUTHOR: Naishtat

VERSION: Prefiled

VERSION DATE: 20030103

By: Naishtat H.B. No. 329

A BILL TO BE ENTITLED

American Industrial Hygiene Association
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AN ACT

relating to the regulation of mold assessors and remediators; providing civil and administrative penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle B, Title 12, Occupations Code, is amended by adding Chapter 1958 to read as follows:

CHAPTER 1958. MOLD ASSESSORS AND REMEDIATORS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1958.001. DEFINITIONS. In this chapter:

- (1) "Board" means the Texas Board of Health.
- (2) "Commissioner" means the commissioner of public health.
- (3) "Department" means the Texas Department of Health.
- (4) "License" means a license issued under this chapter.
- (5) "Mold" means any living or dead fungi or related products or parts, including spores, hyphae, and mycotoxins.
- (6) "Mold assessment" means:
 - (A) the performance of a mold assessment, investigation, or survey;
 - (B) the development of a mold management plan or response action; or
 - (C) the collection or analysis of a mold sample.
- (7) "Mold remediation" means the removal or other treatment, including preventive activities, of mold or mold-contaminated matter that was not purposely grown at that location.

Sec. 1958.002. SCOPE OF AUTHORITY. (a) This chapter applies only to the regulation of mold-related activities that affect indoor air quality.

(b) This chapter does not apply to routine cleaning when not conducted for the purpose of mold remediation.

[Sections 1958.003-1958.050 reserved for expansion]

SUBCHAPTER B. POWERS AND DUTIES

Sec. 1958.051. GENERAL POWERS AND DUTIES OF DEPARTMENT; SCOPE OF AUTHORITY. The department shall administer this chapter to protect the public from the adverse health effects of mold.

Sec. 1958.052. EDUCATION PROGRAM. (a) The department shall conduct a statewide education and outreach program regarding the health implications of mold growth in indoor environments. The program must include methods to recognize, prevent, and mitigate mold occurrence.

(b) The department may contract with governmental entities or other persons to provide the program.

Sec. 1958.053. GENERAL RULEMAKING AUTHORITY. The board shall adopt substantive and procedural rules as necessary or desirable for the board, department, and commissioner to discharge their powers and duties under this chapter.

Sec. 1958.054. RULES REGARDING PERFORMANCE STANDARDS AND WORK PRACTICES. The board by rule shall establish minimum performance standards and work practices for conducting a mold assessment or mold remediation in this state.

Sec. 1958.055. FEES. The board shall establish reasonable and necessary fees to administer this chapter, including fees for licenses and examinations. The board shall set the fees in an amount sufficient to recover the costs of administering this chapter.

Sec. 1958.056. INSPECTIONS. (a) The department shall conduct inspections as necessary to ensure compliance with this chapter.

(b) The board shall adopt rules regarding compliance investigations.

Sec. 1958.057. COMPLAINTS. The department shall investigate any complaint regarding mold-related activities.

[Sections 1958.058-1958.100 reserved for expansion]

SUBCHAPTER C. LICENSE REQUIREMENTS

Sec. 1958.101. LICENSE REQUIRED; RULES. (a) A person may not engage in:

(1) mold assessment unless the person holds a mold assessment license; or

(2) mold remediation unless the person holds a mold remediation license.

(b) The board shall adopt rules regarding:

(1) the scope of mold-related work for which a license is required, including the supervision of employees or other persons by license holders; and

(2) renewal requirements for a license issued under this chapter.

Sec. 1958.102. EXEMPTIONS. (a) A residential property owner is not required to be licensed under this chapter to perform mold assessment or mold remediation on the owner's property.

(b) A residential tenant is not required to be licensed under this chapter to perform mold assessment or mold remediation on the residential property rented by the tenant.

(c) A nonresidential property owner, or the employee of that owner, is not required to be licensed under this chapter to perform mold assessment or mold remediation on an apartment building owned by that person that has not more than four dwelling units. The individual performing the work must complete at least two hours of continuing education per year regarding mold.

Sec. 1958.103. RULES REGARDING LICENSE APPLICATION. The board shall adopt rules regarding a license application. The board shall adopt rules that establish minimum requirements for a license, including the type, term, qualifications, renewal, and liability insurance requirements for the license.

Sec. 1958.104. EXAMINATION. The department may require that an applicant for a license pass a competency examination to qualify for the license.

Sec. 1958.105. CONTINUING EDUCATION. (a) The board shall adopt rules regarding continuing education required under this chapter.

(b) The rules may include requirements regarding continuing education providers, including rules establishing:

(1) accreditation by the department;

(2) curriculum and training requirements; and

(3) qualifications.

Sec. 1958.106. RECIPROCITY. The board may adopt rules that facilitate reciprocity and communication with other states that have a similar licensing program.

[Sections 1958.107-1958.150 reserved for expansion]

SUBCHAPTER D. PRACTICE BY LICENSE HOLDER

Sec. 1958.151. NOTICE OF MOLD REMEDIATION. (a) Not later than the 10th day before the date on which a license holder starts mold remediation at a property, the license holder shall notify the department about the project.

(b) Not later than the 10th day after the date on which a license holder completes mold remediation at a

property, the license holder shall notify the department that the project has been completed.

(c) Except for an emergency, notice to the department under this section must be in writing.

(d) The board shall adopt rules to implement this section, including rules:

(1) describing the information that must be provided in the notice; and

(2) authorizing oral notification to the department in an emergency.

Sec. 1958.152. CONFLICT OF INTEREST. A license holder may not perform both mold assessment and mold remediation at a property.

[Sections 1958.153-1958.200 reserved for expansion]

SUBCHAPTER E. DISCIPLINARY PROCEDURES

Sec. 1958.201. DISCIPLINARY ACTION. If a license holder violates this chapter or an order or rule adopted under this chapter, the department, after providing the person with notice and an opportunity for a hearing, shall:

(1) revoke, suspend, or refuse to renew the license;

(2) impose an administrative penalty;

(3) bring an action to collect a civil penalty; or

(4) reprimand the person.

[Sections 1958.202-1958.250 reserved for expansion]

SUBCHAPTER F. ADMINISTRATIVE PENALTY

Sec. 1958.251. IMPOSITION OF ADMINISTRATIVE PENALTY. The commissioner may impose an administrative penalty on a person who violates this chapter or a rule adopted or order issued under this chapter.

Sec. 1958.252. AMOUNT OF PENALTY. (a) The amount of an administrative penalty may not exceed \$5,000 a day for each violation. Each day a violation continues may be considered a separate violation for purposes of imposing a penalty.

(b) In determining the amount of the penalty, the commissioner shall consider:

(1) the seriousness of the violation;

(2) any hazard created to the health and safety of the public;

(3) the person's history of previous violations; and

(4) any other matter that justice may require.

Sec. 1958.253. OPPORTUNITY FOR HEARING; ORDER. (a) The commissioner may impose an administrative penalty under this subchapter only after the person charged with a violation is given the opportunity for a hearing.

(b) If a hearing is held, the commissioner shall make findings of fact and issue a written decision as to:

(1) the occurrence of the violation; and

(2) the amount of any penalty that is warranted.

(c) If the person charged with a violation fails to exercise the opportunity for a hearing, the commissioner, after determining that a violation occurred and the amount of the penalty that is warranted, may impose a penalty and shall issue an order requiring the person to pay any penalty imposed.

(d) Not later than the 30th day after the date an order is issued after determining that a violation occurred, the commissioner shall inform the person charged with the violation of the amount of any penalty imposed.

(e) The commissioner may consolidate a hearing under this section with another proceeding.

Sec. 1958.254. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Not later than the 30th day after the date the commissioner's decision or order becomes final as provided by Section 2001.144, Government Code, the person shall:

(1) pay the administrative penalty; or

(2) file a petition for judicial review contesting the fact of the violation, the amount of the penalty, or both.

(b) Within the 30-day period, a person who acts under Subsection (a)(2) may stay enforcement of the penalty by:

(1) paying the penalty to the commissioner for placement in an escrow account; or

(2) giving the commissioner a bond in a form approved by the commissioner that:

(A) is for the amount of the penalty; and

(B) is effective until judicial review of the commissioner's decision or order is final.

Sec. 1958.255. COLLECTION OF PENALTY. At the request of the commissioner, the attorney general may bring a civil action to recover an administrative penalty imposed under this subchapter.

Sec. 1958.256. JUDICIAL REVIEW. Judicial review of a decision or order of the commissioner imposing a penalty under this subchapter is instituted by filing a petition with a district court in Travis County and is under the substantial evidence rule as provided by Subchapter G, Chapter 2001, Government Code.

Sec. 1958.257. REMITTANCE OF PENALTY AND INTEREST OR RELEASE OF BOND. If after judicial review the administrative penalty is reduced or is not upheld by the court, the commissioner shall:

(1) remit the appropriate amount, plus accrued interest, to the person not later than the 30th day after the date of the determination, if the person paid the penalty; or

(2) execute a release of the bond, if the person gave a bond.

[Sections 1958.258-1958.300 reserved for expansion]

SUBCHAPTER G. OTHER PENALTIES; ENFORCEMENT PROVISIONS

Sec. 1958.301. CIVIL PENALTY. (a) A person who violates this chapter or a rule adopted under this chapter is liable for a civil penalty in an amount not to exceed \$2,000 for the first violation or \$10,000 for a second or later violation.

(b) The commissioner may request the attorney general or the district, county, or city attorney having jurisdiction to bring an action to collect a civil penalty under this section.

Sec. 1958.302. INJUNCTIVE RELIEF. The commissioner may request the attorney general or the district, county, or city attorney having jurisdiction to bring an action in a district court of Travis County for a restraining order, injunction, or other relief the court determines is appropriate if it appears to the department that a person is violating or has violated this chapter or a rule adopted under this chapter.

SECTION 2. The Texas Board of Health shall adopt the rules required by Chapter 1958, Occupations Code, as added by this Act, not later than April 1, 2004.

SECTION 3. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2003.

(b) Section 1958.101(a), Occupations Code, and Subchapters D, E, F, and G, Chapter 1958, Occupations Code, as added by this Act, take effect July 1, 2004.

Legislation Reported Earlier

None to Report

Regulatory Activity

None to Report