

OCCUPATIONS CODE
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) an inspection, 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 remediation protocol; or

(C) the collection or analysis of a mold sample.

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

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

Sec. 1958.002. SCOPE OF AUTHORITY. (a) This chapter applies only to the regulation of mold-related activities that affect indoor air quality, including a mold-related activity performed by a third party for compensation at a property owned or operated by a governmental entity.

(b) This chapter does not apply to:

(1) the following activities when not conducted for the purpose of mold assessment or mold remediation:

(A) routine cleaning;

(B) the diagnosis, repair, cleaning, or replacement of plumbing, heating, ventilation, air conditioning, electrical, or air duct systems or appliances;

(C) commercial or residential real estate inspections; and

(D) the incidental discovery or emergency containment of potential mold contamination during the conduct or performance of services listed in this subsection;

(2) the repair, replacement, or cleaning of construction materials during the building phase of the construction of a structure;

(3) the standard performance of custodial activities for, preventive maintenance of, and the routine assessment of property owned or operated by a governmental entity; or

(4) a pest control inspection conducted by a person regulated under Chapter 1951.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

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.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

Sec. 1958.052. PUBLIC EDUCATION PROGRAM. (a) The department shall conduct a statewide education and outreach program regarding the importance of, and ways to improve, air quality in buildings, including the importance of, and the ways to recognize, prevent, control, and mitigate, mold occurrence and other indoor air quality factors that adversely affect human health.

(b) The program may include:

(1) the development and distribution of information to the public concerning indoor air quality and mold;

(2) educational programs;

(3) informational or educational exhibits; and

(4) any other methods of education or communication that the department considers appropriate.

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

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

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.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

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.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

Sec. 1958.055. FEES. (a) The board shall establish reasonable and necessary fees to administer this chapter, including fees for licenses, registrations, and examinations. The board shall set the fees in an amount sufficient to recover the costs of administering this chapter, not to exceed the caps established under Subsection (b).

(b) A fee set under this section may not exceed:

- (1) \$400 for a license issued to an individual;
- (2) \$750 for a license issued to a person who is not an individual; and
- (3) \$60 for a registration issued to an employee of a license holder.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

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.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

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

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

Sec. 1958.058. SAFETY STANDARDS. The board may develop and establish mold safety standards for license holders if appropriate scientific information exists regarding the effect of mold.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

Sec. 1958.059. CODE OF ETHICS. The board by rule shall adopt a code of ethics for license holders that promotes the education of mold assessors and mold remediators concerning the ethical, legal, and business principles that should govern their conduct.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER C. LICENSE AND REGISTRATION 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.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

Sec. 1958.102. EXEMPTIONS. (a) An owner or tenant, or a managing agent or employee of an owner or tenant, is not required to be licensed under this chapter to perform mold assessment or mold remediation on property owned or leased by the owner or tenant. This exemption does not apply:

- (1) if the managing agent or employee engages in the business of performing mold assessment or mold remediation for the public;
- (2) if the mold remediation is performed in an area in which the mold contamination affects a total surface area of 25 contiguous square feet or more; or
- (3) to a person who is exempt under Subsection (e).

(b) An employee of a license holder is not required to be licensed under this chapter to perform mold assessment or mold remediation while supervised by the license holder, as provided by rules adopted under Section 1958.101.

(c) A person is not required to be licensed under this chapter to perform mold remediation in an area in which the mold contamination affects a total surface area for the project of less than 25 contiguous square feet.

(d) A person is not required to be licensed under this chapter to perform mold assessment or mold remediation in a one-family or two-family dwelling that the person constructed or

improved if the person performs the mold assessment or mold remediation at the same time the person performs the construction or improvement or at the same time the person performs repair work on the construction or improvement. This exemption does not apply if the person engages in the business of performing mold assessment or mold remediation for the public.

(e) An owner, or a managing agent or employee of an owner, is not required to be licensed under this chapter to perform mold assessment or mold remediation on a residential property owned by that person with fewer than 10 dwelling units. This exemption does not apply if the managing agent or employee engages in the business of performing mold assessment or mold remediation for the public. Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

Sec. 1958.103. REGISTRATION REQUIREMENTS FOR EMPLOYEES. The board may adopt rules to require the registration of employees supervised by license holders. Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

Sec. 1958.104. 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:

- (1) the type of license;
- (2) the term of the license;
- (3) the qualifications for the license, including any previous training required under Section 1958.106;
- (4) renewal requirements for the license, including ongoing continuing education required under Section 1958.106; and
- (5) liability insurance requirements for the license.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

Sec. 1958.105. EXAMINATION. (a) The department may require that an applicant for a license pass a competency examination to qualify for the license.

(b) If the department requires an examination, the applicant must pass the examination with a score of 70 percent or more.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003. Amended by Acts 2005, 79th Leg., ch. 642, Sec. 1, eff. Sept. 1, 2005.

Sec. 1958.106. TRAINING; CONTINUING EDUCATION. (a) The board shall adopt rules regarding training required under this chapter and continuing education required for a license holder under this chapter.

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

- (1) accreditation by the department;
- (2) curriculum requirements; and
- (3) qualifications.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

Sec. 1958.107. RECIPROCITY. The board may adopt rules that facilitate reciprocity and communication with other states that have a similar licensing program.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER D. PRACTICE BY LICENSE HOLDER

Sec. 1958.151. SCOPE OF WORK ANALYSIS. (a) A license holder who intends to perform mold assessment on a mold remediation project shall prepare a work analysis for the project. The license holder shall provide the analysis to the client before the mold remediation begins.

- (b) The work analysis must specify:
- (1) the rooms or areas where the work will be performed;
 - (2) the quantities of materials to be removed or cleaned at the project;
 - (3) the proposed methods for each type of remediation in each type of area in the project; and
 - (4) the proposed clearance criteria for each type of remediation in each type of area in the project.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

Sec. 1958.152. REMEDIATION WORK PLAN. (a) A license holder who intends to perform mold remediation shall prepare a work plan providing instructions for the remediation efforts to be performed for the mold remediation project. The license holder shall provide the work plan to the client before the mold remediation begins.

(b) The license holder shall maintain a copy of the work plan at the job site where the remediation is being performed.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

Sec. 1958.153. NOTICE OF PROJECT. (a) Except as provided by Subsection (b), not later than the fifth day before the date on which a license holder starts mold remediation at a property, the license holder shall notify the department in writing about the project.

(b) In an emergency, notice to the department under Subsection (a) may be made verbally but must be made not later than the next business day after the license holder identifies the emergency. For purposes of this subsection, an emergency exists if a delay in mold remediation services in response to a water damage occurrence would increase mold contamination.

(c) 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 verbal notification to the department in an emergency.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

Sec. 1958.154. CERTIFICATE OF MOLD REMEDIATION; DUTY OF PROPERTY OWNER. (a) Not later than the 10th day after the date on which a license holder completes mold remediation at a property, the license holder shall provide a certificate of mold remediation to the property owner. The certificate must include a statement by a mold assessment license holder that, based on visual, procedural, and analytical evaluation, the mold contamination identified for the project has been remediated as outlined in the mold management plan or remediation protocol. If the mold assessment license holder determines that the underlying cause of the mold has been remediated so that it is reasonably certain that the mold will not return from that remediated cause, the mold assessment license holder shall indicate on the certificate that the underlying cause of the mold has been remediated.

(b) If a property owner sells property, the property owner shall provide to the buyer a copy of each certificate issued for the property under this section during the five years preceding the date the property owner sells the property.

(c) The board shall adopt rules to implement this section, other than rules described by Subsection (d).

(d) The commissioner of insurance shall adopt rules describing the information that must be provided in the certificate of mold remediation. In adopting the rules, the commissioner shall design the certificate as necessary to comply with any requirements imposed under Subchapter G, Chapter 544, Insurance Code.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003. Amended by Acts 2005, 79th Leg., ch. 149, Sec. 2, eff. May 24, 2005; Acts 2005, 79th Leg., ch. 728, Sec. 11.153, eff. Sept. 1, 2005.

Sec. 1958.155. CONFLICT OF INTEREST; DISCLOSURE REQUIRED. (a) A license holder may not perform both mold assessment and mold remediation on the same project.

(b) A person may not own an interest in both the entity that performs assessment services and an entity that performs remediation services on the same project.

(c) A license holder who is not an individual shall disclose to the department the name, address, and occupation of each person that has an ownership interest in the license holder. The license holder shall report any changes in ownership to the department. The board shall adopt rules to implement this section, including rules regarding the form of the disclosure and the time required to make disclosures or to report a change in ownership.

(d) This section does not apply to a license holder employed by a school district working on a project for that school district.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003. Amended by Acts 2005, 79th Leg., ch. 126, Sec. 1, eff. May 24, 2005.

Sec. 1958.156. RECORD REQUIREMENTS; DUTIES OF MOLD REMEDIATORS. (a) A mold remediator shall maintain a record regarding each mold remediation performed for at least three years after the date of completion of the mold remediation on a property.

(b) The mold remediator shall make the record available for inspection by the department or any law enforcement entity.

(c) The record must contain:

(1) photographs of the scene of the mold remediation taken before and after the remediation;

(2) the written contract between the mold remediator or any other party regarding the mold remediation;

(3) all invoices issued regarding the mold remediation; and

(4) any other material required by the department.

(d) Not later than one week after completion of a mold remediation, the mold remediator license holder shall provide the property owner with copies of all photographs required by this section.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

Sec. 1958.157. OFFICE LOCATION. A license holder shall maintain an office in this state.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

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 take one or more of the following actions:

- (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.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

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.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

Sec. 1958.252. AMOUNT OF PENALTY. (a) The amount of an administrative penalty may not exceed \$5,000 for each violation. Each day a violation continues under Section 1958.101 or 1958.155 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) whether the violation was committed knowingly, intentionally, or fraudulently;
- (2) the seriousness of the violation;
- (3) any hazard created to the health and safety of the public;
- (4) the person's history of previous violations; and
- (5) any other matter that justice may require.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

Sec. 1958.253. EXCEPTION TO ADMINISTRATIVE PENALTY. (a) The commissioner may choose not to impose an administrative penalty under this subchapter if, not later than the 10th day after the date of written notice of the violation under Section 1958.254, the person provides conclusive evidence that the circumstances giving rise to the violation have been corrected and all actual damages are paid.

(b) This section does not apply to a violation alleged under Section 1958.101 or 1958.155.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

Sec. 1958.254. NOTICE; 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 a written notice and the opportunity for a hearing.

(b) The written notice must state the facts that constitute the alleged violation and the law or rule on which the violation is based.

(c) 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.

(d) 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.

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

(f) The commissioner may consolidate a hearing under this

section with another proceeding.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

Sec. 1958.255. 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.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

Sec. 1958.256. 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.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

Sec. 1958.257. 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.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

Sec. 1958.258. 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.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER G. OTHER PENALTIES; ENFORCEMENT PROVISIONS; EXEMPTIONS FROM CIVIL LIABILITY

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.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

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 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.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

Sec. 1958.303. EXEMPTION FROM CIVIL LIABILITY FOR CERTAIN PROPERTY OWNERS. A property owner is not liable for damages related to mold remediation on a property if:

(1) a certificate of mold remediation has been issued under this chapter for that property; and

(2) the damages accrued on or before the date of the issuance of the certificate.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

Sec. 1958.304. EXEMPTION FROM CIVIL LIABILITY FOR CERTAIN GOVERNMENTAL ENTITIES. A person is not liable in a civil lawsuit for damages related to a decision to allow occupancy of a property after mold remediation has been performed on the property if:

(1) a certificate of mold remediation has been issued under this chapter for the property;

(2) the property is owned or occupied by a governmental entity, including a school; and

(3) the decision was made by the owner, occupier, or any person authorized by the owner or occupier to make the decision.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.