

- SUBJECT:** Licensing mold assessors and remediators
- COMMITTEE:** Licensing and Administrative Procedures — committee substitute recommended
- VOTE:** 7 ayes — Flores, Hamilton, Raymond, Driver, Eissler, Goolsby, Homer
0 nays
2 absent — D. Jones, Wise
- WITNESSES:** For — Gregory Becker, Texas Association for Indoor Air Quality and TDH Mold Task Force Assessment Guidance Committee; David Brown, Indoor Air Quality Association; Gary Caldwell, International Association of Mold Remediation Specialists; Katherine Giaramita, Servicemaster Clean Disaster Restoration Services; James Killian, Farmers Insurance Group; Jerry Lauderdale; David Mintz, Texas Apartment Association; Scott Norman, Texas Association of Builders; (*On committee substitute:*) Stephen Pape, Texas Air Conditioning Contractors Association

Against — Randall Paul Smith, Amarillo ISD

On — (*Registered but did not testify:*) Claren Kotrla, Texas Department of Health; (*On committee substitute:*) George McLean, Texas Association of School Boards and College Station ISD
- BACKGROUND:** By order of the insurance commissioner effective January 2002, insurers can exclude from insurance policies coverage for loss due to mold, fungi, or other microbes and the cost of testing and remediating residences and relocating homeowners (Endorsement No. HO-161A).

Insurance Code, art. 21.21 identifies and prohibits practices that constitute unfair methods of competition and unfair or deceptive acts or practices.
- DIGEST:** CSHB 329 would require licensing and regulation of mold assessors and remediators. Persons would have to obtain a mold assessor license from the Texas Department of Health (TDH) if they did any of the following:

- inspect a structure for mold for the purpose of providing the owner or occupant with information about its presence;
- develop a mold management plan or remediation protocol; or
- collect or analyze a mold sample.

A person would have to obtain separately a mold remediation license from TDH in order to remove, clean, act to prevent, or otherwise treat mold located where it was not intended. A holder of both licenses could not provide mold assessment and remediation on the same project.

A mold remediator would have to maintain a file for three years after a remediation. The file would have to contain “before and after” photographs of the work, the contract for the service performed, and invoices in connection with the remediation. The license holder would have to make the file available for inspection by TDH and would have to provide the building owner with copies of the photographs within one week of completing the job.

Notice and certification. The license holder would have to notify TDH of a remediation project at least five days before the license holder began work on the property. The bill would allow verbal notification to TDH on shorter notice if delay in remediation would increase mold contamination.

A license holder would have to certify the completion of mold remediation within 10 days after completing work. In regard to public buildings, certification would entitle the government to immunity from any liability caused by reoccupancy of the building after remediation.

Administration. CSHB 329 would charge TDH with protecting the public from adverse health effects of mold. TDH would have to conduct or contract with a party to conduct a statewide program to teach people about the health consequences of indoor mold and how to recognize, clean, and prevent mold.

TDH would have to investigate any complaint regarding mold-related activities and would have to adopt rules by April 1, 2004, to:

- govern licensing standards, work practices, and compliance investigations for mold assessment and remediation;

- identify the scope of mold-related work for which a license would be required;
- establish minimum qualifications, terms, types, continuing education requirements, and liability insurance requirements for licenses; and
- describe information that must be provided in notifying TDH of the start of remediation work

TDH could require license applicants to pass a competency test. Remediation where the total surface area affected was less than 10 square feet would require no containment practices and only minimum personal protective equipment, per U.S. Environmental Protection Agency (EPA) guidelines.

Penalties. TDH would have to discipline a license holder who violated the chapter by revoking or suspending the license or imposing an administrative or civil penalty or reprimand. An administrative penalty would be limited to \$5,000 a day for assessing or remediating mold without a license or for performing both assessment and remediation on the same job.

The bill would require detailed notice and a hearing opportunity before TDH could assess a penalty. It would require consideration of certain factors and a 30-day deadline in determining the penalty. TDH's determination would be subject to judicial review in Travis County District Court.

The bill would limit the assessment of a civil penalty to \$2,000 for the first violation and to \$10,000 for the second or later one. TDH could ask the attorney general or a local government attorney to seek a restraining order, injunction, or other appropriate relief to stop a violation.

Exemptions. Licensing and other requirements under CSHB 329 would not apply to:

- routine cleaning;
- work on plumbing, electrical, and HVAC systems and appliances;
- real estate inspections;
- pest-control inspection; or
- incidental discovery or emergency containment of mold during performance of any service in this list.

The requirements would not apply to an owner, owner's agent, or tenant who assessed or remediated mold on property they owned or leased.

Insurers. CSHB 329 would prohibit an insurer from writing a policy or rating an applicant for insurance based on whether:

- the applicant had made a previous claim for damage caused by water or mold;
- mold remediation had been performed on a claim;
- a property owner had received a certificate of mold remediation for the property; or
- an assessor or adjustor had inspected the property for mold.

An insurer who violated the bill's provisions would commit an unfair practice in violation of Insurance Code, art. 21.21.

The bill would take effect September 1, 2003, except that the notification and certification requirements and disciplinary procedure and penalty provisions would take effect April 1, 2004.

**SUPPORTERS
SAY:**

CSHB 329 would provide needed standards and oversight for the public's first line of defense against the proven, harmful effects of some types of mold. While not every mold spore threatens every person, scientists have classified molds that produce hazardous byproducts causing respiratory and other disorders in people. Injuries caused by mold have resulted in large judgments and settlements. TDH already licenses people qualified to remove from buildings another substance — asbestos — that occurs naturally but threatens people. Public demands to address toxic mold deserve similar attention.

By requiring licensing of mold assessors and remediators, CSHB 329 would help eliminate one cause of the mold crisis. Mold caused more than \$1 billion in insurance losses during the two-year period ending January 2002. In some cases, fraudulent assessors provided mold estimates tailored to match the policy limits of homeowners, not the cost of remediation. The remediators quit working once insurance reimbursement was exhausted. The attorney general sued at least one mold remediation company for engaging in practices that harmed consumers and bilked insurance companies.

CSHB 329 would improve consumer access to reliable mold assessment and remediation. Consumers have filed civil actions against mold contractors for unfinished and substandard work. Most mold contractors are now uninsurable. Licensing would help remedy these problems and would increase the number of qualified mold assessors and remediators. Just as consumers need government to license plumbers and electricians to improve service and make them more attractive candidates for insurance coverage, consumers also need licensing of mold contractors.

The bill properly would restrict insurers from discriminating against homeowners or their properties “tainted” by mold. By so doing, the bill would begin to protect consumers, at least to the degree that insurers write policies covering mold. Schools and businesses already use only licensed technicians to perform work with public safety implications. The slight burden on school districts that CSHB 329 might create would prove a small price for bolstering public confidence that schools are safe for children.

OPPONENTS
SAY:

CSHB 329 would impose unnecessary regulation based on the false premise that mold poses a public health hazard. Neither the federal Centers for Disease Control and Prevention nor TDH has recommended a mold-spore count standard, because science does not substantiate such a standard for mold. Mold occurs naturally where moisture and moderate temperatures combine with nutrients like dirt and with almost all common construction materials and furnishings. It is almost always present in buildings. A special licensing program for people to identify and clean mold is no more necessary than a program to license common cleaning businesses and maids.

CSHB 329 would enact belated, if not always unnecessary, regulation driven by prospective profiteers and by insurers attempting to assign blame for rising rates. An order of the insurance commissioner already allows insurers to exclude mold damage from policies, thus shielding insurers from future mold costs. Also, in contrast to widespread media reporting of fraud, communities report no unusual number of complaints concerning mold remediation work. By mid-March of this year, for example, the Better Business Bureau of Corpus Christi had received only five complaints against mold contractors, compared to 56 complaints against roofers. The attorney general has filed only one case against a mold remediator.

The bill would fail to stop insurers from ignoring consumer demand and would deter writing policies to cover possible mold damage. It would not overturn the commissioner's order allowing insurers to exclude mold coverage but simply would prohibit insurers from discriminating based on a property's relevant history of mold. Because insurers could not project the likelihood of mold claims for properties by using historical data, the bill could discourage insurers from writing policies that covered mold damage.

Local governments and small businesses would have to spend money to license workers or to contract specially to clean mold. School districts, in particular, would suffer from an unfunded mandate by having to comply with unnecessary licensing standards.

**OTHER
OPPONENTS
SAY:**

CSHB 329 would exempt too many people from licensing. At a minimum, the bill also should require licensing of landlords or their agents who perform assessment and remediation work.

The bill's requirement for notice would be unnecessarily stringent. Notice should be required no more than one day before work began, and no penalty for violation should result. Notice of mold remediation is necessary only to enable TDH to compile statistics. Also, the bill should exempt from the licensing requirement a person who assesses and remediates mold in an area smaller than 10 square feet. EPA guidelines require few or no standards for work in an area of this size.

NOTES:

The committee substitute would expand exemptions from licensing, immunize government from liability for allowing reoccupancy after remediation certification, and require record keeping by remediators, among other changes. The substitute also would prohibit an insurer from writing a policy or rating an applicant on the basis of matters pertaining to mold.

The companion bill, SB 243 by Shapleigh, has been referred to the Senate Business and Commerce Committee. A related bill, SB 129 by Fraser, is pending in the same committee.