

S T A T E O F N E W Y O R K

3086--A

2011-2012 Regular Sessions

I N S E N A T E

February 8, 2011

Introduced by Sen. STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Finance -- recommitted to the Committee on Finance in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law and the insurance law, in relation to enacting the New York toxic mold safety and protection act of 2012 and making an appropriation therefor

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Short title. This act shall be known and may be cited as
2 "the New York toxic mold safety and protection act of 2012".

3 S 2. The public health law is amended by adding a new article 48-A to
4 read as follows:

ARTICLE 48-A

TOXIC MOLD

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6
7 TITLE I. RESEARCH AND PUBLIC EDUCATION (SS 4850-4853).

8 II. HOUSING PROVISIONS FOR INDOOR MOLD HAZARD PREVENTION AND
9 DETECTION (SS 4855-4860).

TITLE I

RESEARCH AND PUBLIC EDUCATION

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11
12 SECTION 4850. DEFINITIONS.

13 4851. RESEARCH AND REPORTING.

14 4852. STANDARDS FOR PREVENTING, DETECTING, AND REMEDIATING
15 INDOOR MOLD GROWTH.

16 4853. PUBLIC EDUCATION.

17 S 4850. DEFINITIONS. WHEN USED IN THIS ARTICLE:

18 1. "MOLD" MEANS ANY FURRY GROWTH OF MINUTE FUNGI OCCURRING IN MOIST
19 CONDITIONS.

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [] is old law to be omitted.

LBD06353-02-1

1 2. "TOXIC MOLD" MEANS ANY INDOOR MOLD GROWTH CAPABLE OF CREATING
2 TOXINS THAT CAN CAUSE PULMONARY, RESPIRATORY, NEUROLOGICAL OR OTHER
3 MAJOR ILLNESSES AFTER MINIMAL EXPOSURE, AS SUCH EXPOSURE IS DEFINED BY
4 THE ENVIRONMENTAL PROTECTION AGENCY, CENTERS FOR DISEASE CONTROL,
5 NATIONAL INSTITUTE OF HEALTH OR OTHER FEDERAL, STATE OR LOCAL AGENCY
6 ORGANIZED IN PART TO STUDY AND/OR PROTECT HUMAN HEALTH.

7 3. "TOXIC MOLD RISK ASSESSOR" MEANS A PERSON WHO ESTABLISHES THE LEVEL
8 OF RISK TO PUBLIC HEALTH ASSOCIATED WITH TOXIC MOLD.

9 4. "MOLD INSPECTION" MEANS AN INSPECTION OF REAL PROPERTY THAT IS
10 DESIGNED TO DISCOVER INDOOR MOLD GROWTH, TOXIC MOLD GROWTH, CONDITIONS
11 THAT FACILITATE INDOOR MOLD GROWTH AND/OR INDICIA OF CONDITIONS THAT ARE
12 LIKELY TO FACILITATE INDOOR MOLD GROWTH.

13 S 4851. RESEARCH AND REPORTING. 1. THE DEPARTMENT OF ENVIRONMENTAL
14 CONSERVATION AND THE DEPARTMENT SHALL JOINTLY UNDERTAKE A COMPREHENSIVE
15 STUDY OF THE HEALTH EFFECTS OF INDOOR MOLD GROWTH AND TOXIC MOLD. THE
16 RESULTS OF THE AFOREMENTIONED STUDY SHALL BE SUBMITTED TO THE GOVERNOR,
17 THE TEMPORARY PRESIDENT OF THE SENATE, THE MINORITY LEADER OF THE
18 SENATE, THE SPEAKER OF THE ASSEMBLY, THE MINORITY LEADER OF THE ASSEMBLY
19 AND THE GENERAL PUBLIC. THE STUDY SHOULD ASCERTAIN AMONG OTHER THINGS:
20 DETAILED INFORMATION ABOUT HARMFUL AND/OR TOXIC STRAINS OF MOLD; METHODS
21 OF DETECTING HARMFUL AND/OR TOXIC MOLD; POTENTIAL DANGERS OF PROLONGED
22 EXPOSURE TO INDOOR MOLD GROWTH; MINIMUM LEVELS OF EXPOSURE AT WHICH
23 INDOOR MOLD GROWTH IS HARMFUL TO HUMAN HEALTH; AND THE HAZARDS INVOLVED
24 IN MOLD REMEDIATION.

25 2. THE DIVISION OF HOUSING AND COMMUNITY RENEWAL SHALL STUDY AND
26 REPORT THE IMPACT OF CONSTRUCTION STANDARDS ON INDOOR MOLD GROWTH. SUCH
27 STUDY SHALL BE SUBMITTED TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE
28 SENATE, THE MINORITY LEADER OF THE SENATE, THE SPEAKER OF THE ASSEMBLY
29 AND THE MINORITY LEADER OF THE ASSEMBLY.

30 3. ALL RESEARCH AND STUDY CONDUCTED PURSUANT TO THIS ARTICLE SHALL BE
31 ONGOING WITH UPDATED REPORTS PUBLISHED AS NEEDED TO ADEQUATELY INFORM
32 THE PUBLIC AND PROTECT HUMAN HEALTH.

33 S 4852. STANDARDS FOR PREVENTING, DETECTING, AND REMEDIATING INDOOR
34 MOLD GROWTH. 1. AFTER APPROPRIATE RESEARCH AND STUDY AS REQUIRED BY
35 THIS ARTICLE, BUT NOT LATER THAN ONE YEAR AFTER THE EFFECTIVE DATE OF
36 THIS ARTICLE, THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, IN CONJUNC-
37 TION WITH APPROPRIATE AGENCIES, SHALL PROMULGATE RULES AND REGULATIONS
38 THAT INCLUDE AMONG OTHER THINGS: STANDARDS FOR MOLD INSPECTION, MOLD
39 REMEDIATION, TESTING THE TOXICITY OF MOLD, AND THE PROBLEM OF MOLD REME-
40 DIATION; STANDARDS FOR CERTIFICATION OF MOLD INSPECTORS, MOLD REMEDIA-
41 TORS, MOLD TESTING LABS, MOLD RISK ASSESSORS AND INDUSTRIAL HYGIENISTS
42 INVOLVED WITH MOLD REMEDIATION PLANNING; AND STANDARDS FOR THE DESIGN,
43 INSTALLATION, AND MAINTENANCE OF AIR VENTILATION AND/OR AIR-CONDITIONING
44 SYSTEMS TO PREVENT MOLD GROWTH OR CREATION OF CONDITIONS THAT FOSTER
45 MOLD GROWTH.

46 2. AFTER APPROPRIATE RESEARCH AND STUDY AS REQUIRED BY THIS ARTICLE,
47 BUT NOT LATER THAN ONE YEAR AFTER THE EFFECTIVE DATE OF THIS ARTICLE,
48 THE DIVISION OF HOUSING AND COMMUNITY RENEWAL SHALL PROMULGATE GUIDE-
49 LINES IDENTIFYING CONDITIONS CREATED PRIOR TO AND DURING CONSTRUCTION
50 THAT FACILITATE THE GROWTH OF INDOOR MOLD AND RECOMMENDING APPROPRIATE
51 MEANS OF ELIMINATING THOSE CONDITIONS.

52 3. TO THE MAXIMUM EXTENT POSSIBLE, THE STANDARDS, GUIDELINES AND
53 RECOMMENDATIONS ESTABLISHED UNDER THIS SECTION SHALL BE DEVELOPED WITH
54 THE ASSISTANCE OF ORGANIZATIONS INVOLVED IN ESTABLISHING NATIONAL BUILD-
55 ING CONSTRUCTION STANDARDS AND REPRESENTATIVES OF STATE OR LOCAL AUTHOR-

ITIES RESPONSIBLE FOR BUILDING INSPECTIONS AND ISSUANCE OF CERTIFICATES OF OCCUPANCY.

4. THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION AND THE DIVISION OF HOUSING AND COMMUNITY RENEWAL SHALL MAKE DRAFTS OF THEIR RESPECTIVE DOCUMENTS AVAILABLE FOR PUBLIC REVIEW AND COMMENT THIRTY DAYS PRIOR TO PUBLICATION. THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION AND THE DIVISION OF HOUSING AND COMMUNITY RENEWAL SHALL MAKE FINAL MODEL STANDARDS AND TECHNIQUES AVAILABLE TO THE PUBLIC NO LATER THAN ONE YEAR AFTER THE EFFECTIVE DATE OF THIS ARTICLE.

5. THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL TAKE SUCH ACTIONS AS MAY BE NECESSARY TO INFORM APPROPRIATE LOCAL GOVERNMENT AGENCIES AND AUTHORITIES OF THE MODEL STANDARDS AND TECHNIQUES WITH THE GOAL OF ENSURING THAT SUCH AGENCIES AND AUTHORITIES ADOPT SUCH STANDARDS AND TECHNIQUES BY JUNE FIRST, TWO THOUSAND THIRTEEN.

6. ALL STANDARDS AND GUIDELINES PROMULGATED PURSUANT TO THIS ARTICLE SHALL BE UPDATED AND PUBLISHED AS NEEDED TO ADEQUATELY INFORM THE PUBLIC AND PROTECT HUMAN HEALTH.

S 4853. PUBLIC EDUCATION. 1. THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, THE DEPARTMENT AND THE DIVISION OF HOUSING AND COMMUNITY RENEWAL AND OTHER RELEVANT AGENCIES SHALL SPONSOR PUBLIC EDUCATION PROGRAMS TO PROMOTE AND INCREASE PUBLIC AWARENESS OF THE DANGERS OF INDOOR MOLD GROWTH OR TOXIC MOLD.

2. THE PUBLIC EDUCATION PROGRAMS SHOULD INCLUDE, AMONG OTHER THINGS, INFORMATION REGARDING THE CONDITIONS THAT FACILITATE INDOOR MOLD GROWTH; GUIDELINES FOR REMEDIATING INDOOR MOLD GROWTH; DANGERS OF EXPOSURE TO INDOOR MOLD GROWTH IN PUBLIC BUILDINGS; RISK ASSESSMENT AND INSPECTION METHODS FOR TOXIC MOLD; AND OTHER NECESSARY INFORMATION.

A. THE PUBLIC EDUCATION PROGRAMS SHALL PROVIDE EDUCATION AND INFORMATION THROUGH MODES OF COMMUNICATION THAT ARE COMMONLY UTILIZED AND ABLE TO BE EASILY CONSUMED BY RELEVANT INDIVIDUALS OR ORGANIZATIONS;

B. PUBLIC EDUCATION PROGRAMS SHOULD BE DESIGNED TO REACH HEALTH PROFESSIONALS; THE GENERAL PUBLIC; HOMEOWNERS, PROSPECTIVE HOMEOWNERS, LANDLORDS, AND TENANTS; CONSUMERS OF HOME IMPROVEMENT PRODUCTS; THE REAL ESTATE INDUSTRY; THE HOME CONSTRUCTION AND RENOVATION INDUSTRY, INCLUDING THE HEATING AND AIR CONDITIONING INDUSTRY; AND OTHER INDIVIDUALS AND ORGANIZATIONS WITH AN INTEREST IN THE USE AND/OR OCCUPANCY OF REAL PROPERTY.

3. NOTWITHSTANDING THE FOREGOING, THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, IN CONSULTATION WITH APPROPRIATE AGENCIES, SHALL PUBLISH, AND PERIODICALLY REVISE, A PAMPHLET REGARDING INDOOR MOLD HAZARDS. AMONG OTHER THINGS THIS PAMPHLET SHOULD: CONTAIN INFORMATION REGARDING THE HEALTH RISKS ASSOCIATED WITH EXPOSURE TO INDOOR MOLD GROWTH; PROVIDE INFORMATION ON THE HAZARDS OF INDOOR MOLD GROWTH IN PUBLIC HOUSING; DESCRIBE THE RISKS OF MOLD EXPOSURE FOR PERSONS RESIDING IN A DWELLING WITH TOXIC MOLD; PROVIDE INFORMATION ON APPROVED METHODS FOR EVALUATING AND REDUCING MOLD GROWTH AND THEIR EFFECTIVENESS IN IDENTIFYING, REDUCING, ELIMINATING, OR PREVENTING MOLD GROWTH; ADVISE PERSONS HOW TO OBTAIN A LIST OF PERSONS CERTIFIED TO INSPECT OR REMEDIATE MOLD GROWTH IN THE AREA IN WHICH THE PAMPHLET IS TO BE USED; STATE THAT A RISK ASSESSMENT OR INSPECTION FOR MOLD GROWTH IS RECOMMENDED PRIOR TO THE PURCHASE, LEASE, OR RENOVATION OF TARGET HOUSING; STATE THAT CERTAIN STATE AND LOCAL LAWS IMPOSE ADDITIONAL REQUIREMENTS RELATED TO MOLD GROWTH IN HOUSING AND PROVIDE A LISTING OF FEDERAL, STATE, AND LOCAL AGENCIES, INCLUDING ADDRESS AND TELEPHONE NUMBER, THAT CAN PROVIDE INFORMATION ABOUT APPLICABLE LAWS AND AVAILABLE GOVERNMENTAL AND PRIVATE ASSISTANCE AND FINANCING; AND PROVIDE INFORMATION DEEMED APPROPRIATE

1 AND/OR NECESSARY TO PROMOTE AWARENESS OF THE HAZARDS POSED BY INDOOR
2 MOLD.

3 TITLE II
4 HOUSING PROVISIONS FOR INDOOR MOLD HAZARD PREVENTION
5 AND DETECTION

6 SECTION 4855. INSPECTIONS OF RESIDENTIAL PROPERTY.

7 4856. SALE OR LEASE OF RESIDENTIAL PROPERTY.

8 4857. INSPECTION REQUIREMENTS FOR EXISTING PUBLIC HOUSING.

9 4858. CONSTRUCTION REQUIREMENTS FOR NEW PUBLIC HOUSING.

10 4859. BUILDING CODES.

11 4860. INSPECTION REQUIREMENT IN CONNECTION WITH STATE MADE OR
12 INSURED MORTGAGES.

13 S 4855. INSPECTIONS OF RESIDENTIAL PROPERTY. COMMENCING JANUARY
14 FIRST, TWO THOUSAND FOURTEEN, THE LESSOR OF EACH UNIT OF RENTAL PROPERTY
15 SHALL CONDUCT AN ANNUAL INSPECTION OF SUCH PROPERTY IN ACCORDANCE WITH
16 THE MODEL STANDARDS AND TECHNIQUES SET FORTH IN SECTION FORTY-EIGHT
17 HUNDRED FIFTY-TWO OF THIS ARTICLE AND SHALL PROMPTLY NOTIFY THE OCCU-
18 PANTS OF SUCH PROPERTY OF THE RESULTS OF SUCH INSPECTION.

19 S 4856. SALE OR LEASE OF RESIDENTIAL PROPERTY. 1. NOT LATER THAN JANU-
20 ARY FIRST, TWO THOUSAND FIFTEEN, THE COMMISSIONER OF HOUSING AND COMMU-
21 NITY RENEWAL AND THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION SHALL
22 PROMULGATE RULES AND REGULATIONS UNDER THIS SECTION FOR THE DISCLOSURE
23 OF MOLD HAZARDS IN HOUSING WHICH IS OFFERED FOR SALE OR LEASE.

24 2. THE RULES AND REGULATIONS SHALL REQUIRE THAT, BEFORE THE SALE OR
25 LEASE OF REAL PROPERTY A MOLD INSPECTION BE CONDUCTED BY A STATE-CERTI-
26 FIED MOLD INSPECTOR AND, WITHIN A REASONABLE TIME PRIOR TO THE EFFECTIVE
27 DATE OF THE PURCHASE OR LEASE, THE SELLER OR LESSOR SHALL CLEARLY AND
28 ACCURATELY DISCLOSE TO THE PURCHASER OR LESSEE THE RESULTS OF THE
29 INSPECTION REQUIRED UNDER THIS SECTION.

30 3. RULES AND REGULATIONS PROMULGATED UNDER THIS SECTION SHALL PROVIDE
31 THAT EVERY CONTRACT FOR THE SALE OR LEASE OF ANY INTEREST IN HOUSING
32 SHALL CONTAIN A STATEMENT SIGNED BY BOTH THE SELLER OR LESSOR AND BY THE
33 PURCHASER OR LESSEE THAT ACKNOWLEDGES THE RESULT OF THE MOLD INSPECTION
34 REQUIRED BY SUBDIVISION TWO OF THIS SECTION.

35 4. ANY PERSON WHO KNOWINGLY MISREPRESENTS THE RESULTS OF A MOLD
36 INSPECTION OR CAUSES THE RESULTS OF A MOLD INSPECTION TO BE INACCURATE
37 SHALL BE SUBJECT TO A CIVIL MONEY PENALTY OF ONE THOUSAND DOLLARS.

38 5. ANY PERSON WHO KNOWINGLY VIOLATES THE PROVISIONS OF THIS SECTION
39 SHALL BE JOINTLY AND SEVERALLY LIABLE TO THE PURCHASER OR LESSEE IN AN
40 AMOUNT EQUAL TO THREE TIMES THE AMOUNT OF DAMAGES INCURRED BY SUCH INDIV-
41 VIDUAL.

42 6. IN ANY CIVIL ACTION BROUGHT FOR DAMAGES, THE APPROPRIATE COURT MAY
43 AWARD COURT COSTS TO THE PARTY COMMENCING SUCH ACTION, TOGETHER WITH
44 REASONABLE ATTORNEY FEES AND ANY EXPERT WITNESS FEES, IF THAT PARTY
45 PREVAILS.

46 S 4857. INSPECTION REQUIREMENTS FOR EXISTING PUBLIC HOUSING. 1. THE
47 COMMISSIONER OF HOUSING AND COMMUNITY RENEWAL SHALL ESTABLISH PROCEDURES
48 TO ELIMINATE, AS FAR AS PRACTICABLE, THE HAZARDS OF INDOOR MOLD WITH
49 RESPECT TO ANY EXISTING PUBLIC HOUSING WHICH MAY PRESENT SUCH HAZARDS,
50 IN ACCORDANCE WITH THIS SECTION. SUCH PROCEDURES SHALL PROVIDE FOR
51 APPROPRIATE MEASURES TO CONDUCT RISK ASSESSMENTS, INSPECTIONS, INTERIM
52 CONTROLS, AND ABATEMENT OF INDOOR MOLD HAZARDS.

53 2. AT A MINIMUM, SUCH PROCEDURES SHALL REQUIRE: THE PROVISION OF
54 INDOOR MOLD HAZARD INFORMATION PAMPHLETS TO TENANTS; PERIODIC RISK
55 ASSESSMENTS AND INTERIM CONTROLS IN ACCORDANCE WITH A SCHEDULE DETER-

MINED BY THE COMMISSIONER OF HOUSING AND COMMUNITY RENEWAL; MOLD INSPECTIONS; ABATEMENT OF INDOOR MOLD HAZARDS IDENTIFIED; WHERE RISK ASSESSMENT, INSPECTION, OR REDUCTION ACTIVITIES HAVE BEEN UNDERTAKEN, THE PROVISION OF NOTICE TO OCCUPANTS DESCRIBING THE NATURE AND SCOPE OF SUCH ACTIVITIES AND THE ACTUAL RISK ASSESSMENT OR INSPECTION REPORTS; AND SUCH OTHER MEASURES AS THE COMMISSIONER OF HOUSING AND COMMUNITY RENEWAL DEEMS APPROPRIATE.

S 4858. CONSTRUCTION REQUIREMENTS FOR NEW PUBLIC HOUSING. THE COMMISSIONER OF HOUSING AND COMMUNITY RENEWAL SHALL TAKE SUCH ACTIONS AND IMPOSE SUCH STANDARDS AND CONDITIONS AS MAY BE NECESSARY OR APPROPRIATE TO ENSURE THAT PUBLIC HOUSING CONSTRUCTED AFTER THE DATE OF THE ISSUANCE OF THE MODEL CONSTRUCTION STANDARDS AND TECHNIQUES ESTABLISHED UNDER SECTION FORTY-EIGHT HUNDRED FIFTY-TWO OF THIS ARTICLE, IS CONSTRUCTED IN ACCORDANCE WITH SUCH MODEL STANDARDS AND TECHNIQUES.

S 4859. BUILDING CODES. 1. THE COMMISSIONER OF HOUSING AND COMMUNITY RENEWAL SHALL DEVELOP MODEL CONSTRUCTION STANDARDS AND TECHNIQUES FOR PREVENTING AND CONTROLLING MOLD WITHIN NEW BUILDINGS.

2. THE MODEL STANDARDS AND TECHNIQUES SHALL PROVIDE FOR GEOGRAPHIC DIFFERENCES IN CONSTRUCTION TYPES AND MATERIALS, GEOLOGY, WEATHER, AND OTHER VARIABLES THAT MAY AFFECT MOLD LEVELS IN NEW BUILDINGS.

3. TO THE MAXIMUM EXTENT POSSIBLE, THESE STANDARDS AND TECHNIQUES SHOULD BE DEVELOPED WITH THE ASSISTANCE OF ORGANIZATIONS INVOLVED IN ESTABLISHING NATIONAL BUILDING CONSTRUCTION STANDARDS AND TECHNIQUES. THE COMMISSIONER OF HOUSING AND COMMUNITY RENEWAL SHALL MAKE A DRAFT OF THE DOCUMENT CONTAINING THE MODEL STANDARDS AND TECHNIQUES AVAILABLE FOR PUBLIC REVIEW AND COMMENT. THE COMMISSIONER OF HOUSING AND COMMUNITY RENEWAL SHALL MAKE FINAL MODEL STANDARDS AND TECHNIQUES AVAILABLE TO THE PUBLIC NO LATER THAN JANUARY FIRST, TWO THOUSAND THIRTEEN.

S 4860. INSPECTION REQUIREMENT IN CONNECTION WITH STATE MADE OR INSURED MORTGAGES. 1. AFTER DECEMBER THIRTY-FIRST, TWO THOUSAND THIRTEEN, NO STATE AGENCY MAY MAKE, INSURE, OR GUARANTEE A MORTGAGE OR LOAN FOR PURCHASE OR LEASE OF RESIDENTIAL REAL PROPERTY UNLESS: THERE HAS BEEN AN INSPECTION OF THE PROPERTY FOR THE PRESENCE OF INDOOR MOLD GROWTH, TOXIC MOLD AND/OR THE CONDITIONS THAT FACILITATE INDOOR MOLD GROWTH HAZARDS BY A MOLD INSPECTOR CERTIFIED IN ACCORDANCE WITH STANDARDS PROMULGATED PURSUANT TO THIS ARTICLE WITHIN A REASONABLE TIME PRIOR TO THE MAKING, INSURING, OR GUARANTEEING OF THE MORTGAGE OR LOAN AND THE RESULTS OF THE INSPECTION ARE CLEARLY AND ACCURATELY DISCLOSED TO THE PURCHASER, SELLER AND MORTGAGOR; AND THE CONTRACT FOR PURCHASE AND SALE OF AN INTEREST IN RESIDENTIAL REAL PROPERTY FOR WHICH SUCH MORTGAGE OR LOAN WAS MADE CONTAINS A STATEMENT SIGNED BY THE SELLER OR LESSOR AND BY THE PURCHASER OR LESSEE THAT THESE CONDITIONS HAVE BEEN COMPLIED WITH.

2. THE HEADS OF EACH OF THE AGENCIES OR AUTHORITIES THAT MAKE, INSURE, OR GUARANTEE MORTGAGES OR LOANS FOR PURCHASE OR LEASE OF RESIDENTIAL REAL PROPERTY SHALL, NOT LATER THAN SEPTEMBER THIRTIETH, TWO THOUSAND TWELVE, ISSUE SUCH RULES AND REGULATIONS AS MAY BE NECESSARY TO CARRY OUT THIS SECTION.

S 3. The insurance law is amended by adding a new article 57 to read as follows:

ARTICLE 57

TOXIC MOLD HAZARD INSURANCE PROGRAM

SECTION 5700. PROGRAM AUTHORITY.

5701. SCOPE OF PROGRAM AND PRIORITIES.

5702. NATURE AND LIMITATION OF INSURANCE COVERAGE.

5703. ESTIMATES OF PREMIUM RATES.

5704. ESTABLISHMENT OF CHARGEABLE PREMIUM RATES.

1 5705. TOXIC MOLD HAZARD INSURANCE FUND.
2 5706. OPERATING COSTS AND ALLOWANCES.
3 5707. PAYMENT OF CLAIMS.
4 5708. DISSEMINATION OF INSURANCE INFORMATION.
5 5709. COORDINATION WITH OTHER PROGRAMS.
6 5710. REPORTS.
7 5711. IMPLEMENTATION.
8 5712. INDUSTRY INSURANCE POOL.
9 5713. AGREEMENTS WITH INSURANCE POOL.
10 5714. ADJUSTMENT AND PAYMENT OF CLAIMS AND JUDICIAL REVIEW.
11 5715. PREMIUM EQUALIZATION PAYMENTS.
12 5716. EMERGENCY IMPLEMENTATION OF PROGRAM.
13 5717. ADJUSTMENT AND PAYMENT OF CLAIMS AND JUDICIAL REVIEW.
14 5718. SERVICES BY THE INSURANCE INDUSTRY.
15 5719. USE OF INSURANCE POOL, COMPANIES OR OTHER PRIVATE ORGAN-
16 IZATIONS FOR CERTAIN PAYMENTS.
17 5720. SETTLEMENT AND ARBITRATION.
18 5721. RECORDS AND AUDITS.
19 5722. PAYMENTS.

20 S 5700. PROGRAM AUTHORITY. (A) THE SUPERINTENDENT SHALL ESTABLISH AND
21 CARRY OUT A STATE TOXIC MOLD INSURANCE PROGRAM TO ENABLE INTERESTED
22 PERSONS TO PURCHASE INSURANCE AGAINST LOSSES RESULTING FROM MOLD HAZARDS
23 IN REAL PROPERTIES LOCATED IN THE STATE.

24 (B) IN CARRYING OUT THE TOXIC MOLD HAZARD INSURANCE PROGRAM UNDER THIS
25 ARTICLE, THE SUPERINTENDENT SHALL, TO THE MAXIMUM EXTENT PRACTICABLE,
26 ENCOURAGE AND ARRANGE FOR APPROPRIATE FINANCIAL PARTICIPATION AND RISK
27 SHARING IN THE PROGRAM BY INSURANCE COMPANIES AND OTHER INSURERS; AND
28 OTHER APPROPRIATE PARTICIPATION ON OTHER THAN A RISK-SHARING BASIS, BY
29 INSURANCE COMPANIES AND OTHER INSURERS, INSURANCE AGENTS AND BROKERS,
30 AND INSURANCE ADJUSTMENT ORGANIZATIONS.

31 S 5701. SCOPE OF PROGRAM AND PRIORITIES. (A) IN CARRYING OUT THE
32 TOXIC MOLD HAZARD INSURANCE PROGRAM, THE SUPERINTENDENT SHALL AFFORD A
33 PRIORITY TO MAKING TOXIC MOLD HAZARD INSURANCE AVAILABLE TO COVER RESI-
34 DENTIAL PROPERTIES WHICH ARE DESIGNED FOR THE OCCUPANCY OF FROM ONE TO
35 FOUR FAMILIES.

36 (B) IF, PURSUANT TO STUDIES AND INVESTIGATIONS PURSUANT TO SECTION
37 FIVE THOUSAND SEVEN HUNDRED THREE OF THIS ARTICLE OR SUCH OTHER INFORMA-
38 TION AS THE SUPERINTENDENT CONSIDERS APPROPRIATE, THE SUPERINTENDENT
39 DETERMINES THAT IT WOULD BE FEASIBLE TO EXTEND THE INSURANCE PROGRAM
40 UNDER THIS ARTICLE TO COVER OTHER PROPERTIES, THE SUPERINTENDENT MAY
41 TAKE SUCH ACTION UNDER THIS ARTICLE AS MAY BE NECESSARY TO MAKE INSUR-
42 ANCE AVAILABLE TO COVER, ON SUCH BASIS AS MAY BE FEASIBLE, ANY TYPES AND
43 CLASSES OF: OTHER RESIDENTIAL PROPERTIES; CHURCH PROPERTIES, AND BUSI-
44 NESS PROPERTIES WHICH ARE OWNED OR LEASED AND OPERATED BY SMALL BUSINESS
45 CONCERNS; OTHER BUSINESS PROPERTIES; PROPERTIES OCCUPIED BY PRIVATE
46 NONPROFIT ORGANIZATIONS; AND PROPERTIES OWNED BY STATE AND LOCAL GOVERN-
47 MENTS AND AGENCIES THEREOF; AND ANY SUCH EXTENSIONS OF THE PROGRAM TO
48 ANY TYPES AND CLASSES OF THESE PROPERTIES SHALL FROM TIME TO TIME BE
49 PRESCRIBED IN RULES AND REGULATIONS.

50 S 5702. NATURE AND LIMITATION OF INSURANCE COVERAGE. THE SUPERINTEN-
51 DENT SHALL FROM TIME TO TIME, AFTER CONSULTATION WITH INTERESTED
52 PARTIES, PROVIDE BY RULE AND REGULATION FOR GENERAL TERMS AND CONDITIONS
53 OF INSURABILITY WHICH SHALL BE APPLICABLE TO PROPERTIES ELIGIBLE FOR
54 TOXIC MOLD HAZARD INSURANCE COVERAGE UNDER SECTION FIVE THOUSAND SEVEN
55 HUNDRED ONE OF THIS ARTICLE, INCLUDING: THE TYPES, CLASSES, AND
56 LOCATIONS OF ANY SUCH PROPERTIES WHICH SHALL BE ELIGIBLE FOR SUCH INSUR-

1 ANCE; THE NATURE AND LIMITS OF LOSS OR DAMAGE THAT MAY BE COVERED BY
2 SUCH INSURANCE, WHICH SHALL INCLUDE COSTS OF PROPERTY DAMAGE AND LOSS,
3 REMEDIATION, RELOCATION (DURING REMEDIATION OR PERMANENTLY), AND RENTAL
4 OF AN ALTERNATIVE DWELLING DURING REMEDIATION; THE CLASSIFICATION, LIMIT-
5 TATION, AND REJECTION OF ANY RISKS THAT MAY BE APPROPRIATE; APPROPRIATE
6 MINIMUM PREMIUMS; APPROPRIATE LOSS-DEDUCTIBLES; APPROPRIATE LIMITS ON
7 AGGREGATE LIABILITY UNDER SUCH COVERAGE, BASED ON THE TYPE OF PROPERTY
8 INSURED; AND ANY OTHER TERMS AND CONDITIONS RELATING TO INSURANCE COVER-
9 AGE OR EXCLUSION WHICH MAY BE NECESSARY TO CARRY OUT THE PURPOSES OF
10 THIS ARTICLE.

11 S 5703. ESTIMATES OF PREMIUM RATES. THE SUPERINTENDENT SHALL UNDERTAKE
12 AND CARRY OUT SUCH STUDIES AND INVESTIGATIONS AND RECEIVE OR EXCHANGE
13 SUCH INFORMATION AS MAY BE NECESSARY TO ESTIMATE, AND SHALL FROM TIME TO
14 TIME ESTIMATE THE FOLLOWING PREMIUM RATES FOR TOXIC MOLD HAZARD INSUR-
15 ANCE COVERAGE UNDER THIS ARTICLE:

16 (A) ACTUARIAL RATES. THE RISK PREMIUM RATES THAT WOULD BE REQUIRED TO
17 MAKE SUCH INSURANCE AVAILABLE ON AN ACTUARIAL BASIS FOR ANY TYPES AND
18 CLASSES OF PROPERTIES FOR WHICH INSURANCE COVERAGE IS AVAILABLE UNDER
19 SECTION FIVE THOUSAND SEVEN HUNDRED ONE OF THIS ARTICLE AND WHICH: ARE
20 BASED ON CONSIDERATION OF THE RISK INVOLVED AND ACCEPTED ACTUARIAL PRIN-
21 CIPLES; INCLUDE THE APPLICABLE OPERATING COSTS AND ALLOWANCES SET FORTH
22 IN THE SCHEDULES PRESCRIBED UNDER SECTION FIVE THOUSAND SEVEN HUNDRED
23 SIX OF THIS ARTICLE AND REFLECTED IN SUCH RATES; AND INCLUDE ANY ADMIN-
24 ISTRATIVE EXPENSES OF CARRYING OUT THE INSURANCE PROGRAM UNDER THIS
25 ARTICLE.

26 (B) SUBSIDIZED RATES. THE RISK PREMIUM RATES THAT: ARE LESS THAN THE
27 RATES ESTIMATED UNDER SUBSECTION (A) OF THIS SECTION; WOULD BE REASON-
28 ABLE; WOULD ENCOURAGE PROSPECTIVE INSURED TO PURCHASE TOXIC MOLD HAZARD
29 INSURANCE COVERAGE; WOULD BE CONSISTENT WITH THE PURPOSES OF THIS ARTI-
30 CLE; AND INCLUDE ANY ADMINISTRATIVE EXPENSES INCURRED IN CARRYING OUT
31 THE INSURANCE PROGRAM UNDER THIS ARTICLE.

32 S 5704. ESTABLISHMENT OF CHARGEABLE PREMIUM RATES. (A) ON THE BASIS OF
33 ESTIMATES MADE UNDER SECTION FIVE THOUSAND SEVEN HUNDRED THREE OF THIS
34 ARTICLE AND SUCH OTHER INFORMATION AS MAY BE NECESSARY, THE SUPERINTEN-
35 DENT SHALL FROM TIME TO TIME, AFTER CONSULTATION WITH THE INTERESTED
36 PARTIES, PRESCRIBE BY RULES AND REGULATIONS: CHARGEABLE PREMIUM RATES
37 FOR ANY TYPES AND CLASSES OF PROPERTIES FOR WHICH INSURANCE COVERAGE
38 SHALL BE AVAILABLE UNDER SECTION FIVE THOUSAND SEVEN HUNDRED ONE OF THIS
39 ARTICLE (AT LESS THAN THE ESTIMATED RISK PREMIUM RATES UNDER SECTION
40 FIVE THOUSAND SEVEN HUNDRED THREE OF THIS ARTICLE, WHERE NECESSARY), AND
41 THE TERMS AND CONDITIONS UNDER WHICH, AND THE AREAS WITHIN WHICH, SUCH
42 RATES SHALL APPLY.

43 (B) SUCH RATES SHALL, INsofar AS PRACTICABLE, BE:

44 (1) BASED ON A CONSIDERATION OF THE RESPECTIVE RISKS INVOLVED, INCLUD-
45 ING DIFFERENCES IN RISKS DUE TO CONSTRUCTION TYPES AND MATERIALS, BUILD-
46 ING SYSTEMS, GEOLOGY, CLIMATE, AND OTHER FACTORS THAT MAY AFFECT MOLD
47 LEVELS IN BUILDINGS;

48 (2) ADEQUATE, ON THE BASIS OF ACCEPTED ACTUARIAL PRINCIPLES, TO
49 PROVIDE RESERVES FOR ANTICIPATED LOSSES; OR IF LESS THAN SUCH AMOUNT
50 CONSISTENT WITH THE OBJECTIVE OF MAKING TOXIC MOLD HAZARD INSURANCE
51 COVERAGE AVAILABLE WHERE NECESSARY AT REASONABLE RATES SO AS TO ENCOUR-
52 AGE PROSPECTIVE INSURED TO PURCHASE SUCH INSURANCE AND WITH THE
53 PURPOSES OF THIS ARTICLE;

54 (3) ADEQUATE TO PROVIDE FOR ANY ADMINISTRATIVE EXPENSES OF THE INSUR-
55 ANCE PROGRAMS UNDER THIS ARTICLE; AND

(4) STATED SO AS TO REFLECT THE BASIS FOR SUCH RATES, INCLUDING THE DIFFERENCES (IF ANY) BETWEEN THE ESTIMATED ACTUARIAL RISK PREMIUM RATES UNDER SUBSECTION (A) OF SECTION FIVE THOUSAND SEVEN HUNDRED THREE OF THIS ARTICLE AND THE ESTIMATED SUBSIDIZED RISK PREMIUM RATES UNDER SUBSECTION (B) OF SECTION FIVE THOUSAND SEVEN HUNDRED THREE OF THIS ARTICLE.

(C) SUBJECT ONLY TO THE LIMITATION UNDER PARAGRAPH FOUR OF SUBSECTION (B) OF THIS SECTION, THE CHARGEABLE RATE WITH RESPECT TO ANY PROPERTY THAT IS LOCATED WITHIN A JURISDICTION THAT THE SUPERINTENDENT DETERMINES HAS NOT ADOPTED ADEQUATE TOXIC MOLD CONTROL MEASURES, WITH EFFECTIVE ENFORCEMENT PROVISIONS, THAT THE SUPERINTENDENT DETERMINES ARE CONSISTENT WITH THE MODEL STANDARDS AND TECHNIQUES FOR INSPECTION AND CERTIFICATION OF OCCUPANCY ISSUED UNDER SECTION FORTY-EIGHT HUNDRED FIFTY-FIVE OF THE PUBLIC HEALTH LAW AND WITH THE MODEL STANDARDS FOR PUBLIC DISCLOSURE ISSUED UNDER SECTION FORTY-EIGHT HUNDRED FIFTY-SIX OF THE PUBLIC HEALTH LAW, SHALL NOT BE LESS THAN THE APPLICABLE ESTIMATED RISK PREMIUM RATE FOR SUCH AREA (OR SUBDIVISION THEREOF) UNDER SUBSECTION (A) OF SECTION FIVE THOUSAND SEVEN HUNDRED THREE OF THIS ARTICLE, EXCEPT THAT SUCH PREMIUM RATE FOR SUCH PROPERTIES SHALL BE AFFORDABLE AND REASONABLY PRICED.

(D) NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE, THE CHARGEABLE RISK PREMIUM RATES FOR TOXIC MOLD HAZARD INSURANCE UNDER THIS ARTICLE FOR ANY PROPERTIES WITHIN ANY SINGLE RISK CLASSIFICATION MAY NOT BE INCREASED BY AN AMOUNT THAT WOULD RESULT IN THE AVERAGE OF SUCH RATE INCREASES FOR PROPERTIES WITHIN THE RISK CLASSIFICATION DURING ANY TWELVE-MONTH PERIOD EXCEEDING TEN PERCENT OF THE AVERAGE OF THE RISK PREMIUM RATES FOR PROPERTIES WITHIN THE RISK CLASSIFICATION UPON THE COMMENCEMENT OF SUCH TWELVE-MONTH PERIOD.

(E) THE CHARGEABLE RISK PREMIUM RATE FOR TOXIC MOLD HAZARD INSURANCE UNDER THIS ARTICLE FOR A SINGLE FAMILY DWELLING SHALL BE AFFORDABLE AND REASONABLY PRICED.

S 5705. TOXIC MOLD HAZARD INSURANCE FUND. (A) TO CARRY OUT THE TOXIC MOLD HAZARD INSURANCE PROGRAM UNDER THIS ARTICLE, THE SUPERINTENDENT SHALL ESTABLISH A TOXIC MOLD HAZARD INSURANCE FUND, WHICH SHALL BE AN ACCOUNT SEPARATE FROM ANY OTHER ACCOUNTS OR FUNDS AVAILABLE TO THE SUPERINTENDENT AND SHALL BE AVAILABLE FOR MAKING SUCH PAYMENTS AS MAY, FROM TIME TO TIME, BE REQUIRED UNDER SECTION FIVE THOUSAND SEVEN HUNDRED FIFTEEN OF THIS ARTICLE; AND FOR THE PURPOSES SPECIFIED IN THIS SECTION UNDER THE CONDITIONS PROVIDED THEREIN.

(B) THE FUND SHALL BE CREDITED WITH ANY AMOUNTS AS MAY BE APPROPRIATED FOR THE FUND; INTEREST WHICH MAY BE EARNED ON INVESTMENTS OF THE FUND PURSUANT TO SUBSECTION (C) OF THIS SECTION; RECEIPTS FROM ANY OTHER OPERATIONS UNDER THIS ARTICLE (INCLUDING PREMIUMS UNDER THE CONDITIONS SPECIFIED IN THIS SECTION); AND SUCH OTHER AMOUNTS AS MAY BE CREDITED TO THE FUND.

(C) IF THE SUPERINTENDENT DETERMINES THAT THE AMOUNTS IN THE FUND ARE IN EXCESS OF CURRENT NEEDS, THE SUPERINTENDENT MAY INVEST SUCH AMOUNTS AS THE SUPERINTENDENT DEEMS ADVISABLE.

S 5706. OPERATING COSTS AND ALLOWANCES. (A) THE SUPERINTENDENT SHALL FROM TIME TO TIME NEGOTIATE WITH APPROPRIATE REPRESENTATIVES OF THE INSURANCE INDUSTRY FOR THE PURPOSE OF ESTABLISHING A CURRENT SCHEDULE OF OPERATING COSTS APPLICABLE BOTH TO RISK-SHARING INSURANCE COMPANIES AND OTHER INSURERS AND TO INSURANCE COMPANIES AND OTHER INSURERS, INSURANCE AGENTS AND BROKERS, AND INSURANCE ADJUSTMENT ORGANIZATIONS PARTICIPATING ON OTHER THAN A RISK-SHARING BASIS, AND A CURRENT SCHEDULE OF OPERATING

1 ALLOWANCES APPLICABLE TO RISK-SHARING INSURANCE COMPANIES AND OTHER
2 INSURERS.

3 (B) FOR PURPOSES OF SUBSECTION (A) OF THIS SECTION, THE FOLLOWING
4 DEFINITIONS SHALL APPLY:

5 (1) "OPERATING ALLOWANCES" SHALL MEAN AMOUNTS FOR PROFIT AND CONTIN-
6 GENCIES THAT THE SUPERINTENDENT DETERMINES ARE REASONABLE AND NECESSARY
7 TO CARRY OUT THE PURPOSES OF THIS ARTICLE.

8 (2) "OPERATING COSTS" SHALL MEAN EXPENSE REIMBURSEMENTS COVERING THE
9 DIRECT, ACTUAL, AND NECESSARY EXPENSES INCURRED IN CONNECTION WITH SELL-
10 ING AND SERVICING TOXIC MOLD HAZARD INSURANCE COVERAGE; REASONABLE
11 COMPENSATION PAYABLE FOR SELLING AND SERVICING SUCH COVERAGE, OR COMMIS-
12 SIONS OR SERVICE FEES PAID TO PRODUCERS; LOSS ADJUSTMENT EXPENSES; AND
13 OTHER DIRECT, ACTUAL, AND NECESSARY EXPENSES WHICH THE SUPERINTENDENT
14 FINDS ARE INCURRED IN CONNECTION WITH SELLING OR SERVICING SUCH INSUR-
15 ANCE COVERAGE.

16 S 5707. PAYMENT OF CLAIMS. THE SUPERINTENDENT SHALL PRESCRIBE RULES
17 AND REGULATIONS ESTABLISHING THE GENERAL METHOD OR METHODS BY WHICH
18 PROVED AND APPROVED CLAIMS FOR LOSSES MAY BE ADJUSTED AND PAID FOR ANY
19 LOSSES OR DAMAGES COVERED BY TOXIC MOLD HAZARD INSURANCE MADE AVAILABLE
20 UNDER THIS ARTICLE.

21 S 5708. DISSEMINATION OF INSURANCE INFORMATION. THE SUPERINTENDENT
22 SHALL FROM TIME TO TIME TAKE SUCH ACTION AS MAY BE NECESSARY IN ORDER TO
23 MAKE INFORMATION AVAILABLE TO THE PUBLIC, AND TO ANY STATE OR LOCAL
24 AGENCY OR OFFICIAL, WITH REGARD TO THE TOXIC MOLD HAZARD INSURANCE
25 PROGRAM, ITS COVERAGE, AND OBJECTIVES; AND ESTIMATED AND CHARGEABLE
26 INSURANCE PREMIUM RATES UNDER THE PROGRAM, INCLUDING THE BASIS FOR AND
27 DIFFERENCES BETWEEN SUCH RATES IN ACCORDANCE WITH THE PROVISIONS OF THIS
28 ARTICLE.

29 S 5709. COORDINATION WITH OTHER PROGRAMS. IN CARRYING OUT THE
30 PROVISIONS OF THIS ARTICLE, THE SUPERINTENDENT SHALL CONSULT WITH OTHER
31 DEPARTMENTS AND AGENCIES OF THE STATE, AND WITH INTERSTATE AND LOCAL
32 AGENCIES HAVING RESPONSIBILITIES FOR TOXIC MOLD INSPECTION AND
33 PREVENTION, IN ORDER TO ENSURE THAT THE PROGRAMS OF SUCH AGENCIES AND
34 THE PROGRAM UNDER THIS ARTICLE ARE MUTUALLY CONSISTENT.

35 S 5710. REPORTS. THE SUPERINTENDENT SHALL ANNUALLY SUBMIT A REPORT OF
36 OPERATIONS UNDER THIS ARTICLE TO THE GOVERNOR, THE TEMPORARY PRESIDENT
37 OF THE SENATE AND THE SPEAKER OF THE ASSEMBLY.

38 S 5711. IMPLEMENTATION. FOLLOWING SUCH CONSULTATION WITH REPRESen-
39 TATIVES OF THE INSURANCE INDUSTRY AS MAY BE NECESSARY, THE SUPERINTEN-
40 DENT SHALL IMPLEMENT THE TOXIC MOLD HAZARD INSURANCE PROGRAM UNDER THIS
41 ARTICLE.

42 S 5712. INDUSTRY INSURANCE POOL. (A) THE SUPERINTENDENT MAY ENCOURAGE
43 AND OTHERWISE ASSIST ANY INSURANCE COMPANIES AND OTHER INSURERS THAT
44 MEET THE REQUIREMENTS PRESCRIBED UNDER SUBSECTION (B) OF THIS SECTION TO
45 FORM, ASSOCIATE, OR OTHERWISE JOIN TOGETHER IN A POOL IN ORDER TO
46 PROVIDE THE INSURANCE COVERAGE AUTHORIZED UNDER THIS ARTICLE, AND FOR
47 THE PURPOSE OF ASSUMING, ON SUCH TERMS AND CONDITIONS AS MAY BE AGREED
48 UPON, SUCH FINANCIAL RESPONSIBILITY AS WILL ENABLE SUCH COMPANIES AND
49 OTHER INSURERS, WITH THE FINANCIAL AND OTHER ASSISTANCE AVAILABLE UNDER
50 THIS ARTICLE, TO ASSURE A REASONABLE PROPORTION OF RESPONSIBILITY FOR
51 THE ADJUSTMENT AND PAYMENT OF CLAIMS FOR LOSSES UNDER THE TOXIC MOLD
52 HAZARD INSURANCE PROGRAM.

53 (B) TO PROMOTE THE EFFECTIVE ADMINISTRATION OF THE TOXIC MOLD HAZARD
54 INSURANCE PROGRAM UNDER THIS ARTICLE, AND TO ENSURE THAT THE OBJECTIVES
55 OF THIS ARTICLE ARE FURTHERED, THE SUPERINTENDENT MAY PRESCRIBE APPRO-
56 PRIATE REQUIREMENTS FOR INSURANCE COMPANIES AND OTHER INSURERS PARTIC-

1 IPATING IN SUCH POOL, INCLUDING MINIMUM REQUIREMENTS FOR CAPITAL,
2 SURPLUS OR ASSETS.

3 S 5713. AGREEMENTS WITH INSURANCE POOL. (A) THE SUPERINTENDENT MAY
4 ENTER INTO SUCH AGREEMENTS WITH THE POOL FORMED OR OTHERWISE CREATED
5 UNDER THIS ARTICLE AS THE SUPERINTENDENT DEEMS NECESSARY TO CARRY OUT
6 THE PURPOSES OF THIS ARTICLE.

7 (B) SUCH AGREEMENTS SHALL SPECIFY: THE TERMS AND CONDITIONS UNDER
8 WHICH RISK CAPITAL WILL BE AVAILABLE FOR THE ADJUSTMENT AND PAYMENTS OF
9 CLAIMS; THE TERMS AND CONDITIONS UNDER WHICH THE POOL (AND THE COMPANIES
10 AND OTHER INSURERS PARTICIPATING THEREIN) SHALL PARTICIPATE IN PREMIUMS
11 RECEIVED AND PROFITS OR LOSSES REALIZED OR SUSTAINED; THE MAXIMUM AMOUNT
12 OF PROFIT, ESTABLISHED BY THE SUPERINTENDENT AND SET FORTH IN THE SCHED-
13 ULES PRESCRIBED UNDER SECTION FIVE THOUSAND SEVEN HUNDRED SIX OF THIS
14 ARTICLE, WHICH MAY BE REALIZED BY SUCH POOL (AND THE COMPANIES AND OTHER
15 INSURERS PARTICIPATING THEREIN); THE TERMS AND CONDITIONS UNDER WHICH
16 OPERATING COSTS AND ALLOWANCES SET FORTH IN THE SCHEDULES PRESCRIBED
17 UNDER SECTION FIVE THOUSAND SEVEN HUNDRED SIX OF THIS ARTICLE MAY BE
18 PAID; AND THE TERMS AND CONDITIONS UNDER WHICH PREMIUM EQUALIZATION
19 PAYMENTS UNDER SECTION FIVE THOUSAND SEVEN HUNDRED FIFTEEN OF THIS ARTI-
20 CLE WILL BE MADE.

21 (C) IN ADDITION, SUCH AGREEMENTS SHALL CONTAIN SUCH PROVISIONS AS THE
22 SUPERINTENDENT FINDS NECESSARY TO ENSURE THAT: NO INSURANCE COMPANY OR
23 OTHER INSURER THAT MEETS THE REQUIREMENTS PRESCRIBED UNDER SUBSECTION
24 (B) OF SECTION FIVE THOUSAND SEVEN HUNDRED TWELVE OF THIS ARTICLE AND
25 HAS INDICATED AN INTENTION TO PARTICIPATE IN THE TOXIC MOLD HAZARD
26 INSURANCE PROGRAM ON A RISK-SHARING BASIS, WILL BE EXCLUDED FROM PARTIC-
27 IPATING IN THE POOL; THE INSURANCE COMPANIES AND OTHER INSURERS PARTIC-
28 IPATING IN THE POOL WILL TAKE WHATEVER ACTION MAY BE NECESSARY TO
29 PROVIDE CONTINUITY OF TOXIC MOLD HAZARD INSURANCE COVERAGE BY THE POOL;
30 AND ANY INSURANCE COMPANIES AND OTHER INSURERS, INSURANCE AGENTS, AND
31 BROKERS AND INSURANCE ADJUSTMENT ORGANIZATIONS WILL BE PERMITTED TO
32 COOPERATE WITH THE POOL AS FISCAL AGENTS OR OTHERWISE, ON OTHER THAN A
33 RISK-SHARING BASIS, TO THE MAXIMUM EXTENT PRACTICABLE.

34 S 5714. ADJUSTMENT AND PAYMENT OF CLAIMS AND JUDICIAL REVIEW. THE
35 INSURANCE COMPANIES AND OTHER INSURERS THAT FORM, ASSOCIATE, OR OTHER-
36 WISE JOIN TOGETHER IN THE POOL UNDER THIS PART MAY ADJUST AND PAY ALL
37 CLAIMS FOR PROVED AND APPROVED LOSSES COVERED BY TOXIC MOLD HAZARD
38 INSURANCE IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE AND, UPON
39 THE DISALLOWANCE BY ANY SUCH COMPANY OR OTHER INSURER OF ANY SUCH CLAIM,
40 OR UPON THE REFUSAL OF THE CLAIMANT TO ACCEPT THE AMOUNT ALLOWED UPON
41 ANY SUCH CLAIM, THE CLAIMANT, WITHIN ONE YEAR AFTER THE DATE OF MAILING
42 OF NOTICE OF DISALLOWANCE OR PARTIAL DISALLOWANCE OF THE CLAIM, MAY
43 INSTITUTE AN ACTION ON SUCH CLAIM AGAINST SUCH COMPANY OR OTHER INSURER.

44 S 5715. PREMIUM EQUALIZATION PAYMENTS. (A) THE SUPERINTENDENT, ON SUCH
45 TERMS AND CONDITIONS AS THE SUPERINTENDENT MAY FROM TIME TO TIME
46 PRESCRIBE, SHALL MAKE PERIODIC PAYMENTS TO THE POOL FORMED OR OTHERWISE
47 CREATED UNDER SECTION FIVE THOUSAND SEVEN HUNDRED TWELVE OF THIS ARTI-
48 CLE, IN RECOGNITION OF SUCH REDUCTIONS IN CHARGEABLE PREMIUM RATES UNDER
49 SECTION FIVE THOUSAND SEVEN HUNDRED FOURTEEN OF THIS ARTICLE BELOW ESTI-
50 MATED PREMIUM RATES UNDER SECTION FIVE THOUSAND SEVEN HUNDRED THREE OF
51 THIS ARTICLE AS ARE REQUIRED IN ORDER TO MAKE TOXIC MOLD HAZARD INSUR-
52 ANCE AVAILABLE ON REASONABLE TERMS AND CONDITIONS.

53 (B) DESIGNATED PERIODS UNDER THIS SECTION AND THE METHODS FOR DETER-
54 MINING THE SUM OF PREMIUMS PAID OR PAYABLE DURING SUCH PERIODS SHALL BE
55 ESTABLISHED BY THE SUPERINTENDENT.

1 S 5716. EMERGENCY IMPLEMENTATION OF PROGRAM. (A) NOTWITHSTANDING ANY
2 OTHER PROVISIONS OF THIS ARTICLE, FOR THE PURPOSE OF PROVIDING TOXIC
3 MOLD HAZARD INSURANCE COVERAGE AT THE EARLIEST POSSIBLE TIME, THE SUPER-
4 INTENDENT MAY CARRY OUT THE INSURANCE PROGRAM UNDER THIS ARTICLE DURING
5 THE PERIOD ENDING SEPTEMBER THIRTIETH, TWO THOUSAND THIRTEEN, IN ACCORD-
6 ANCE WITH THE PROVISIONS OF THIS ARTICLE INSOFAR AS THEY RELATE TO THIS
7 ARTICLE, BUT SUBJECT TO THE MODIFICATIONS MADE BY OR UNDER SUBSECTION
8 (B) OF THIS SECTION.

9 (B) IN CARRYING OUT THE TOXIC MOLD HAZARD INSURANCE PROGRAM PURSUANT
10 TO SUBSECTION (A) OF THIS SECTION, THE SUPERINTENDENT SHALL PROVIDE
11 INSURANCE COVERAGE WITHOUT REGARD TO ANY ESTIMATED RISK PREMIUM RATES
12 WHICH WOULD OTHERWISE BE DETERMINED UNDER SECTION FIVE THOUSAND SEVEN
13 HUNDRED THREE OF THIS ARTICLE; AND SHALL UTILIZE THE PROVISIONS AND
14 PROCEDURES CONTAINED IN OR PRESCRIBED BY THIS ARTICLE TO SUCH EXTENT AND
15 IN SUCH MANNER AS THE SUPERINTENDENT MAY CONSIDER NECESSARY OR APPROPRI-
16 ATE TO CARRY OUT THE PURPOSE OF THIS SECTION.

17 S 5717. ADJUSTMENT AND PAYMENT OF CLAIMS AND JUDICIAL REVIEW. IF THE
18 PROGRAM IS CARRIED OUT AS PROVIDED IN THIS ARTICLE, THE SUPERINTENDENT
19 MAY ADJUST AND MAKE PAYMENT OF ANY CLAIMS FOR PROVED AND APPROVED LOSSES
20 COVERED BY TOXIC MOLD HAZARD INSURANCE, AND UPON THE DISALLOWANCE BY THE
21 SUPERINTENDENT OF ANY SUCH CLAIMS, OR UPON THE REFUSAL OF THE CLAIMANT
22 TO ACCEPT THE AMOUNT ALLOWED UPON ANY SUCH CLAIM, THE CLAIMANT, WITHIN
23 ONE YEAR AFTER THE DATE OF MAILING OF NOTICE OF DISALLOWANCE OR PARTIAL
24 DISALLOWANCE BY THE SUPERINTENDENT, MAY INSTITUTE AN ACTION AGAINST THE
25 SUPERINTENDENT ON SUCH CLAIM.

26 S 5718. SERVICES BY THE INSURANCE INDUSTRY. IN ADMINISTERING THE TOXIC
27 MOLD HAZARD INSURANCE PROGRAM UNDER THIS ARTICLE, THE SUPERINTENDENT MAY
28 ENTER INTO ANY CONTRACTS, AGREEMENTS, OR OTHER APPROPRIATE ARRANGEMENTS
29 WHICH MAY, FROM TIME TO TIME, BE NECESSARY FOR THE PURPOSE OF UTILIZING,
30 ON SUCH TERMS AND CONDITIONS AS MAY BE AGREED UPON, THE FACILITIES AND
31 SERVICES OF ANY INSURANCE COMPANIES OR OTHER INSURERS, INSURANCE AGENTS
32 AND BROKERS, OR INSURANCE ADJUSTMENT ORGANIZATIONS; AND SUCH CONTRACTS,
33 AGREEMENTS, OR ARRANGEMENTS MAY INCLUDE PROVISION FOR PAYMENT OF APPLI-
34 CABLE OPERATING COSTS AND ALLOWANCES FOR SUCH FACILITIES AND SERVICES AS
35 SET FORTH IN THE SCHEDULES PRESCRIBED UNDER SECTION FIVE THOUSAND SEVEN
36 HUNDRED SIX OF THIS ARTICLE.

37 S 5719. USE OF INSURANCE POOL, COMPANIES OR OTHER PRIVATE ORGANIZA-
38 TIONS FOR CERTAIN PAYMENTS. (A) TO PROVIDE FOR MAXIMUM EFFICIENCY IN THE
39 ADMINISTRATION OF THE TOXIC MOLD HAZARD INSURANCE PROGRAM AND TO FACILI-
40 TATE THE EXPEDITIOUS PAYMENT OF ANY FUNDS UNDER SUCH PROGRAM, THE SUPER-
41 INTENDENT MAY ENTER INTO CONTRACTS WITH A POOL FORMED OR OTHERWISE
42 CREATED UNDER SECTION FIVE THOUSAND SEVEN HUNDRED TWELVE OF THIS ARTI-
43 CLE, OR ANY INSURANCE COMPANY OR OTHER PRIVATE ORGANIZATION, FOR THE
44 PURPOSE OF SECURING PERFORMANCE BY SUCH POOL, COMPANY, OR ORGANIZATION
45 OR ANY OR ALL OF THE FOLLOWING RESPONSIBILITIES: ESTIMATING AND LATER
46 DETERMINING ANY AMOUNTS OF PAYMENTS TO BE MADE; RECEIVING FROM THE
47 SUPERINTENDENT, DISBURSING, AND ACCOUNTING FOR FUNDS IN MAKING SUCH
48 PAYMENTS; MAKING SUCH AUDITS OF THE RECORDS OF ANY INSURANCE COMPANY OR
49 OTHER INSURER, INSURANCE AGENT OR BROKER, OR INSURANCE ADJUSTMENT ORGAN-
50 IZATION AS MAY BE NECESSARY TO ASSURE THAT PROPER PAYMENTS ARE MADE;
51 OTHERWISE ASSISTING IN SUCH MANNER AS THE CONTRACT MAY PROVIDE TO
52 FURTHER THE PURPOSES OF THIS ARTICLE.

53 (B) ANY CONTRACT WITH THE POOL OR AN INSURANCE COMPANY OR OTHER
54 PRIVATE ORGANIZATION UNDER THIS SECTION MAY CONTAIN SUCH TERMS AND
55 CONDITIONS AS THE SUPERINTENDENT FINDS NECESSARY OR APPROPRIATE FOR
56 CARRYING OUT RESPONSIBILITIES UNDER SUBSECTION (A) OF THIS SECTION, AND

1 MAY PROVIDE FOR PAYMENT OF ANY COSTS WHICH THE SUPERINTENDENT DETERMINES
2 ARE INCIDENTAL TO CARRYING OUT SUCH RESPONSIBILITIES WHICH ARE COVERED
3 BY THE CONTRACT.

4 (C) NO CONTRACT MAY BE ENTERED INTO UNDER THIS SECTION UNLESS THE
5 SUPERINTENDENT FINDS THAT THE POOL, COMPANY, OR ORGANIZATION WILL
6 PERFORM ITS OBLIGATIONS UNDER THE CONTRACT EFFICIENTLY AND EFFECTIVELY,
7 AND WILL MEET SUCH REQUIREMENTS AS TO FINANCIAL RESPONSIBILITY, LEGAL
8 AUTHORITY, AND OTHER MATTERS AS THE SUPERINTENDENT FINDS APPROPRIATE.

9 (D)(1) ANY SUCH CONTRACT MAY REQUIRE THE POOL, COMPANY, OR ORGANIZA-
10 TION OR ANY OF ITS OFFICERS OR EMPLOYEES CERTIFYING PAYMENTS OR DISBURS-
11 ING FUNDS PURSUANT TO THE CONTRACT, OR OTHERWISE PARTICIPATING IN CARRY-
12 ING OUT THE CONTRACT, TO GIVE SURETY BOND IN SUCH AMOUNT AS THE
13 SUPERINTENDENT MAY DEEM APPROPRIATE.

14 (2)(A) NO INDIVIDUAL DESIGNATED PURSUANT TO A CONTRACT UNDER THIS
15 SECTION TO CERTIFY PAYMENTS SHALL, IN THE ABSENCE OF GROSS NEGLIGENCE OR
16 INTENT TO DEFRAUD, BE LIABLE WITH RESPECT TO ANY PAYMENT CERTIFIED BY
17 SUCH INDIVIDUAL UNDER THIS SECTION.

18 (B) NO OFFICER DISBURSING FUNDS SHALL IN THE ABSENCE OF GROSS NEGLI-
19 GENCE OR INTENT TO DEFRAUD, BE LIABLE WITH RESPECT TO ANY PAYMENT BY
20 SUCH OFFICER UNDER THIS SECTION IF IT WAS BASED UPON A VOUCHER SIGNED BY
21 AN INDIVIDUAL DESIGNATED TO CERTIFY PAYMENTS.

22 (E) ANY CONTRACT ENTERED INTO UNDER THIS SECTION SHALL BE FOR A TERM
23 OF ONE YEAR, AND MAY BE MADE AUTOMATICALLY RENEWABLE FROM TERM TO TERM
24 IN THE ABSENCE OF NOTICE BY EITHER PARTY OF AN INTENTION TO TERMINATE AT
25 THE END OF THE CURRENT TERM; EXCEPT THAT THE SUPERINTENDENT MAY TERMI-
26 NATE ANY SUCH CONTRACT AT ANY TIME (AFTER REASONABLE NOTICE TO THE POOL,
27 COMPANY, OR ORGANIZATION INVOLVED) IF THE SUPERINTENDENT FINDS THAT THE
28 POOL, COMPANY, OR ORGANIZATION HAS FAILED SUBSTANTIALLY TO CARRY OUT THE
29 CONTRACT, OR IS CARRYING OUT THE CONTRACT IN A MANNER INCONSISTENT WITH
30 THE EFFICIENT AND EFFECTIVE ADMINISTRATION OF THE TOXIC MOLD HAZARD
31 INSURANCE PROGRAM UNDER THIS ARTICLE.

32 S 5720. SETTLEMENT AND ARBITRATION. (A) THE SUPERINTENDENT MAY MAKE
33 FINAL SETTLEMENT OF ANY CLAIMS OR DEMANDS WHICH MAY ARISE AS A RESULT OF
34 ANY FINANCIAL TRANSACTIONS THAT THE SUPERINTENDENT IS AUTHORIZED TO
35 CARRY OUT UNDER THIS ARTICLE AND MAY, TO ASSIST THE SUPERINTENDENT IN
36 MAKING ANY SUCH SETTLEMENT, REFER ANY DISPUTES RELATING TO SUCH CLAIMS
37 OR DEMANDS TO ARBITRATION, WITH THE CONSENT OF THE PARTIES CONCERNED.

38 (B) SUCH ARBITRATION SHALL BE ADVISORY IN NATURE, AND ANY AWARD, DECI-
39 SION, OR RECOMMENDATION WHICH MAY BE MADE SHALL BECOME FINAL ONLY UPON
40 THE APPROVAL OF THE SUPERINTENDENT.

41 S 5721. RECORDS AND AUDITS. (A) THE INSURANCE POOL FORMED OR OTHERWISE
42 CREATED UNDER THIS ARTICLE, AND ANY INSURANCE COMPANY OR OTHER PRIVATE
43 ORGANIZATION EXECUTING ANY CONTRACT, AGREEMENT, OR OTHER APPROPRIATE
44 ARRANGEMENT WITH THE SUPERINTENDENT UNDER THIS ARTICLE, SHALL KEEP SUCH
45 RECORDS AS THE SUPERINTENDENT SHALL PRESCRIBE, INCLUDING RECORDS WHICH
46 FULLY DISCLOSE THE TOTAL COSTS OF THE PROGRAM UNDERTAKEN OR THE SERVICES
47 BEING RENDERED, AND SUCH OTHER RECORDS AS WILL FACILITATE AN EFFECTIVE
48 AUDIT.

49 (B) THE SUPERINTENDENT AND THE COMPTROLLER, OR ANY OF THEIR DULY
50 AUTHORIZED REPRESENTATIVES, SHALL HAVE ACCESS FOR THE PURPOSE OF AUDIT
51 AND EXAMINATION TO ANY BOOKS, DOCUMENTS, PAPERS AND ANY SUCH INSURANCE
52 COMPANY OR OTHER PRIVATE ORGANIZATION THAT ARE PERTINENT TO THE COSTS OF
53 THE PROGRAM UNDERTAKEN OR THE SERVICES BEING RENDERED.

54 S 5722. PAYMENTS. ANY PAYMENTS UNDER THIS ARTICLE MAY BE MADE (AFTER
55 NECESSARY ADJUSTMENT ON ACCOUNT OF PREVIOUSLY MADE UNDERPAYMENTS OR
56 OVERPAYMENTS) IN ADVANCE OR BY WAY OF REIMBURSEMENT, AND IN SUCH

1 INSTALLMENTS AND ON SUCH CONDITIONS, AS THE SUPERINTENDENT MAY DETER-
2 MINE.

3 S 4. The sum of two hundred fifty thousand dollars (\$250,000), or so
4 much thereof as may be necessary, is hereby appropriated to pay the
5 expenses incurred, including personal service, in carrying out the
6 provisions of this act. Such moneys shall be payable out of the state
7 treasury in the general fund to the credit of the state purposes account
8 after audit by and on the warrant of the comptroller upon voucher certi-
9 fied or approved by the superintendent of financial services in the
10 manner prescribed by law.

11 S 5. This act shall take effect on the sixtieth day after it shall
12 have become a law.