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

4759

2015-2016 Regular Sessions

I N A S S E M B L Y

February 5, 2015

Introduced by M. of A. KAMINSKY -- read once and referred to the Committee on Labor

AN ACT to amend the labor law, in relation to requiring the licensure of mold assessment and remediation specialists and setting minimum work standards for mold assessment and remediation specialists; to amend chapter 551 of the laws of 2014 amending the labor law relating to requiring the licensure of mold assessment and remediation specialists and setting minimum work standards for mold assessment and remediation specialists, in relation to the effectiveness thereof; and to repeal section 97-pppp of the state finance law relating to the mold assessment and remediation account

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

Section 1. Article 32 of the labor law, as added by chapter 551 of the laws of 2014, is amended to read as follows:

ARTICLE 32

LICENSING OF MOLD INSPECTION, ASSESSMENT AND REMEDIATION SPECIALISTS AND MINIMUM WORK STANDARDS

Title 1. Licensing of mold inspection, assessment and remediation specialists and minimum work standards (Secs. 930-940.)

2. Minimum work standards for the conduct of mold assessments and remediation by licensed persons (Secs. 945-948.)

TITLE 1

LICENSING OF MOLD INSPECTION, ASSESSMENT AND REMEDIATION SPECIALISTS AND MINIMUM WORK STANDARDS

Section 930. Definitions.

931. Licensing requirements.

932. License; procedure.

933. Exemptions.

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

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934. License issuance and renewal.
935. Practice by license holder.
936. Licensee duties; prohibited activities.
937. Civil penalties and revocation.
938. Denial of license; complaints; notice of hearing.
939. Judicial review.
940. Rulemaking authority.

S 930. Definitions. As used in this article: 1. "Department" means the department of labor.

2. "Mold" means ANY indoor [mold] MULTI-CELLULAR FUNGI growth capable of creating toxins that can cause pulmonary, respiratory, neurological or other major illnesses after minimal exposure, as such exposure is defined by the environmental protection agency, centers for disease control and prevention, national institute of health, or other federal, state, or local agency organized to study and/or protect human health.

3. "Mold remediation" means conducting the business of removal, cleaning, sanitizing, or surface disinfection of mold, mold containment, and waste handling of mold and materials used to remove mold from surfaces by a business enterprise, including but not limited to, sole proprietorships. Mold remediation for the purposes of this article shall not include remediation of the underlying sources of moisture that may be the cause of mold that requires expertise not specific to acts authorized under this article.

4. "Mold assessment" means an inspection or assessment of real property that is designed to discover [indoor] mold [growth, toxic mold growth], conditions that facilitate [indoor] mold [growth and/or], indicia of conditions that are likely to facilitate [indoor] mold [growth], OR ANY COMBINATION THEREOF.

5. "Mold abatement" means the act of removal, cleaning, sanitizing, or surface disinfection of mold, mold containment, and waste handling of mold and materials used to remove mold from surfaces by an individual.

6. "PROJECT" MEANS MOLD REMEDIATION, MOLD ASSESSMENT, OR MOLD ABATEMENT, OF AREAS GREATER THAN TEN SQUARE FEET, BUT DOES NOT INCLUDE (A) ROUTINE CLEANING OR (B) CONSTRUCTION, MAINTENANCE, REPAIR OR DEMOLITION OF BUILDINGS, STRUCTURES OR FIXTURES UNDERTAKEN FOR PURPOSES OTHER THAN MOLD REMEDIATION OR ABATEMENT.

7. "Commissioner" means the commissioner of the department of labor.

S 931. Licensing requirements. 1. It shall be unlawful for any contractor to engage in mold assessment ON A PROJECT, or to advertise or hold themselves out as a mold assessment contractor unless such contractor has a valid mold assessment license issued by the commissioner.

2. It shall be unlawful for any contractor to engage in mold remediation ON A PROJECT, or to advertise or hold themselves out as a mold remediation contractor unless such contractor has a valid mold remediation license issued by the commissioner.

3. It shall be unlawful for any individual to engage in mold abatement ON A PROJECT or to advertise or hold themselves out as a mold abatement worker unless such individual has a valid mold abater's license issued by the commissioner.

4. A copy of a valid mold assessment or mold remediation license must be conspicuously displayed at the work site on a mold project.

5. (a) Nothing in this article shall prohibit any design professional licensed pursuant to title eight of the education law from performing mold inspection, assessment, remediation and/or abatement tasks or functions if the person is acting within the scope of his or her practice, or require the design professional to obtain a license under this arti-

cle for such mold inspection, assessment remediation and/or abatement tasks or functions.

(b) Nothing in this article shall mean that any individual not licensed pursuant to title eight of the education law may perform tasks or functions limited to the scope of practice of a design professional under such title.

S 932. License; procedure. 1. The commissioner shall establish minimum qualifications for licensing.

2. Applications for licenses and renewal licenses shall be submitted to the [department] COMMISSIONER in writing on forms furnished by the commissioner and shall contain the information set forth in this section as well as any additional information that the commissioner may require.

3. An applicant for a license to perform mold assessment shall meet the following minimum requirements:

(a) be eighteen years of age or older;

(b) have satisfactorily completed [department] COMMISSIONER approved course work, including training on the appropriate use and care of personal protection equipment [as approved by the commissioner of the department of health]; [and]

(c) paid the appropriate fees as provided in subdivision six of this section; and

(D) SUBMITTED INSURANCE CERTIFICATES EVIDENCING WORKERS' COMPENSATION COVERAGE, IF REQUIRED, AND LIABILITY INSURANCE OF AT LEAST FIFTY THOUSAND DOLLARS PROVIDING COVERAGE FOR CLAIMS ARISING FROM THE LICENSED ACTIVITIES AND OPERATIONS PERFORMED PURSUANT TO THIS ARTICLE.

4. An applicant for a license to perform mold remediation shall meet the following minimum requirements:

(a) be eighteen years of age or older;

(b) have satisfactorily completed [department] COMMISSIONER approved course work, including training on the appropriate use and care of personal protection equipment [as approved by the commissioner of the department of health];

(c) paid the appropriate fees as provided in subdivision six of this section; and

(d) submitted insurance certificates evidencing workers' compensation coverage, if required, and liability insurance of at least fifty thousand dollars PROVIDING COVERAGE FOR CLAIMS ARISING FROM THE LICENSED ACTIVITIES AND OPERATIONS PERFORMED PURSUANT TO THIS ARTICLE. [An applicant for a license to perform mold remediation shall furnish the department with a financial statement, prepared by an independent auditor or accountant and signed by the applicant and auditor before a notary public, stating the assets of the applicant, to be used by the department to determine the financial responsibility of the applicant to perform mold remediation services.]

5. An applicant for a license to perform mold abatement shall meet the following minimum requirements:

(a) be eighteen years of age or older;

(b) have satisfactorily completed [department] COMMISSIONER approved course work, including training on the appropriate use and care of personal protection equipment [as approved by the commissioner of the department of health]; and

(c) paid the appropriate fees as provided in subdivision six of this section[; and].

6. The [department] COMMISSIONER shall charge and collect the following NON-REFUNDABLE fees which shall accompany each application:

(a) a fee for an initial application for a license[, not to exceed one hundred dollars] AS DETERMINED BY THE COMMISSIONER, OF NOT LESS THAN FIVE HUNDRED DOLLARS NOR MORE THAN ONE THOUSAND DOLLARS FOR A MOLD REMEDIATION LICENSE, NOT LESS THAN ONE HUNDRED FIFTY DOLLARS NOR MORE THAN THREE HUNDRED DOLLARS FOR A MOLD ASSESSMENT LICENSE AND NOT LESS THAN FIFTY DOLLARS NOR MORE THAN ONE HUNDRED DOLLARS FOR AN INDIVIDUAL MOLD ABATEMENT LICENSE; [and]

(b) a fee for renewal of a license[, not to exceed one hundred dollars] EQUAL TO THE APPLICATION FEE; AND

(C) A FEE TO BE CHARGED TO A COURSE PROVIDER FOR REVIEW OF EACH COURSE SUBMITTED FOR APPROVAL, AS DETERMINED BY THE COMMISSIONER, OF NOT LESS THAN FIVE HUNDRED DOLLARS AND NOT MORE THAN ONE THOUSAND DOLLARS, AND AN ADDITIONAL FEE TO BE CHARGED TO A COURSE PROVIDER OF NOT LESS THAN ONE HUNDRED DOLLARS NOR MORE THAN TWO HUNDRED DOLLARS FOR REVIEW OF CHANGES OF TECHNICAL CONTENT.

S 933. Exemptions. The following persons shall not be required to obtain a license as provided in this title in order to perform mold assessment [or], remediation, OR ABATEMENT:

1. a residential property owner who performs mold inspection, assessment [or], remediation, OR ABATEMENT on his or her own property;

2. a non-residential property owner, or the employee of such owner, who performs mold assessment [or], remediation, OR ABATEMENT on an apartment building owned by that person that has not more than four dwelling units; [and]

3. an owner or a managing agent or a full-time employee of an owner OR MANAGING AGENT who performs mold assessment [or], remediation, OR ABATEMENT on commercial property OR A RESIDENTIAL APARTMENT BUILDING OF MORE THAN FOUR DWELLING UNITS owned by the owner provided, however, that this subdivision shall not apply if the managing agent or employee engages in the business of performing mold assessment [or], remediation, OR ABATEMENT for the public; AND

4. A FEDERAL, STATE OR LOCAL GOVERNMENTAL UNIT OR PUBLIC AUTHORITY AND EMPLOYEES THEREOF THAT PERFORM MOLD ASSESSMENT, REMEDIATION, OR ABATEMENT ON ANY PROPERTY OWNED, MANAGED OR REMEDIATED BY SUCH GOVERNMENTAL UNIT OR AUTHORITY.

S 934. License issuance and renewal. 1. Licenses issued pursuant to the provisions of this title shall be valid for a period of two years from the date of issuance and may be renewed in accordance with the conditions set forth in this article and established by the commissioner.

2. Within thirty days of the receipt of the application and fee for any license issued under this section, the commissioner shall either issue the license or [deny the license setting forth the reason for such denial in writing] ISSUE A NOTIFICATION OF DENIAL PURSUANT TO SUBDIVISION ONE OF SECTION NINE HUNDRED THIRTY-EIGHT OF THIS TITLE.

3. Licenses shall be in a form prescribed by the [department] COMMISSIONER.

4. The renewal of all licenses granted under the provisions of this article shall be conditioned upon the submission of a certificate of completion of a [department-approved] COMMISSIONER-APPROVED course designed to ensure the continuing education of licensees on new and existing mold assessment and mold remediation standards.

S 935. Practice by license holder. 1. A mold assessment license holder who intends to perform mold assessment on a mold remediation project shall prepare a work analysis for the project. The mold assessment license holder shall provide the analysis to the client before the mold

remediation begins and such plan must include the analysis as defined in section nine hundred forty-five of this article.

2. A mold remediation 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 mold remediation license holder shall provide the work plan to the client before the mold remediation begins. The mold remediation license holder shall maintain a copy of the work plan at the job site where the remediation is being performed.

S 936. Licensee duties; prohibited activities. 1. A mold assessment licensee who performs mold assessment services shall provide a written report to each person for whom such licensee performs mold assessment services for compensation.

2. No licensee shall perform both mold assessment and mold remediation on the same property.

3. No person shall own an interest in both the [entity which] LICENSEE WHO performs mold assessment services and the [entity which] LICENSEE WHO performs mold remediation services on the same property.

S 937. Civil penalties and revocation. 1. The [department] COMMISSIONER may, after a notice and hearing, suspend or revoke any license, or censure, fine, or impose probationary or other restrictions on any licensee for good cause shown which shall include, but not be limited to the following:

(a) conviction of a felony relating to the performance of a mold assessment or mold remediation;

(b) deceit or misrepresentation in obtaining a license authorized under this article;

(c) providing false testimony or documents to the [department] COMMISSIONER in relation to a license authorized by this article or any other license issued by the [department] COMMISSIONER;

(d) deceiving or defrauding the public in relation to services provided for a fee that require a license; or

(e) incompetence or gross negligence in relation to mold assessment or mold remediation.

2. Violators of any of the provisions of this article may be fined by the [department] COMMISSIONER in an amount not to exceed two thousand dollars for the initial violation and up to ten thousand dollars for each subsequent violation.

S 938. Denial of license; complaints; notice of hearing. 1. The [department] COMMISSIONER shall, before making a determination to deny an application for a license, notify the applicant in writing of the reasons for such proposed denial and afford the applicant an opportunity to be heard in person or by counsel prior to denial of the application. [Such notification shall be served in any manner authorized by the civil practice law and rules for service of summons.] Such notice shall notify the applicant that a request for a hearing must be made within thirty days after [receipt] ISSUANCE of such notification. If a hearing is requested, such hearing shall be held at such time and place as the [department] COMMISSIONER shall prescribe.

2. If the applicant fails to make a written request for a hearing within thirty days after [receipt] ISSUANCE of such notification, then the notification of denial shall become the final determination of the [department] COMMISSIONER. The [department] COMMISSIONER shall have subpoena powers regulated by the civil practice law and rules. If, after such hearing, the application is denied, written notice of such denial

shall be served upon the applicant [in any manner authorized by the civil practice law and rules for the service of a summons].

3. The [department] COMMISSIONER shall, before revoking or suspending any license or imposing any fine as authorized by this article or reprimand on the holder thereof[, or before issuing any order directing the cessation of unlicensed activities,] and at least ten days prior to the date set for the hearing, notify in writing the holder of such license, [or the person alleged to have engaged in unlicensed activities,] of any charges made and shall afford such person an opportunity to be heard in person or by counsel in reference thereto. NO PRIOR NOTICE AND HEARING IS REQUIRED BEFORE THE COMMISSIONER ISSUES AN ORDER DIRECTING THE CESSATION OF UNLICENSED ACTIVITIES.

4. Written notice must be served to the licensee or person charged.

5. The hearing on such charges shall be at such time and place as the [department] COMMISSIONER shall prescribe.

S 939. Judicial review. The action of the commissioner in suspending, revoking or refusing to issue or renew a license, or issuing an order directing the cessation of unlicensed activity or imposing a fine or reprimand may be appealed by a proceeding brought under and pursuant to article seventy-eight of the civil practice law and rules.

S 940. Rulemaking authority. The [department shall] COMMISSIONER MAY adopt rules and regulations to oversee the practice of mold assessment, remediation and abatement and to ensure the health, safety and welfare of the public.

TITLE 2
MINIMUM WORK STANDARDS FOR THE CONDUCT OF MOLD ASSESSMENTS AND REMEDIATION BY LICENSED PERSONS

Section 945. Minimum work standards for the conduct of mold assessments by licensed persons.
946. Minimum work standards for the conduct of mold remediation by licensed persons.
947. Post-remediation assessment and clearance.
948. Investigations and complaints.

S 945. Minimum work standards for the conduct of mold assessments by licensed persons. 1. A mold assessment licensee shall prepare a mold remediation plan that is specific to each remediation project and provide the plan to the client before the remediation begins. The mold remediation plan must specify:

(a) the rooms or areas where the work will be performed;

(b) the estimated quantities of materials to be cleaned or removed;

(c) the methods to be used for each type of remediation in each type of area;

(d) the personal protection equipment (PPE) to be supplied by licensed remediators for use by licensed abaters;

(e) the proposed clearance procedures and criteria for each type of remediation in each type of area;

(f) when the project is a building that is currently occupied, how to properly notify such occupants of such projects taking into consideration proper health concerns; the plan must also provide recommendations for notice and posting requirements that are appropriate for the project size, duration and points of entry;

(g) an estimate of cost and an estimated time frame for completion; and

(h) when possible, the underlying sources of moisture that may be causing the mold and a recommendation as to the type of contractor who would remedy the source of such moisture.

2. The REMEDIATION PLAN MAY REQUIRE containment [specified in the remediation plan must], AS APPROPRIATE, TO prevent the spread of mold to areas of the building outside the containment under normal conditions of use.

3. A mold assessment licensee who indicates in a remediation plan that a disinfectant, biocide, or antimicrobial coating will be used on a mold remediation project shall indicate a specific product or brand only if it is registered by the United States Environmental Protection Agency for the intended use and if the use is consistent with the manufacturer's labeling instructions. A decision by a mold assessment licensee to use such products must take into account the potential for occupant sensitivities.

S 946. Minimum work standards for the conduct of mold remediation by licensed persons. 1. A mold remediation licensee shall prepare a mold remediation work plan that is specific to each project, fulfills all the requirements of the mold remediation plan developed by the mold assessment licensee as provided to the client and provides specific instructions and/or standard operating procedures for how a mold remediation project will be performed. The mold remediation licensee shall provide the mold remediation work plan to the client before site preparation work begins.

2. If a mold assessment licensee specifies in the mold remediation plan that personal protection equipment (PPE) is required for the project, the mold remediation licensee shall provide the specified PPE to all employees who engage in remediation activities and who will, or are anticipated to, disturb or remove mold contamination. The containment, when constructed as described in the remediation work plan and under normal conditions of use, must prevent the spread of mold to areas outside the containment.

3. Signs advising that a mold remediation project is in progress shall be displayed at all accessible entrances to remediation areas.

4. No person shall remove or dismantle any containment structures or materials from a project site prior to receipt by the mold remediation licensee overseeing the project of a notice from a mold assessment licensee that the project has achieved clearance as described in section nine hundred forty-seven of this title.

5. Disinfectants, biocides and antimicrobial coatings may be used only if their use is specified in a mold remediation plan, if they are registered by the United States Environmental Protection Agency for the intended use and if the use is consistent with the manufacturer's labeling instructions. If a plan specifies the use of such a product but does not specify the brand or type of product, a mold remediation licensee may select the brand or type of product to be used. A decision by a mold assessment or remediation licensee to use such a product must take into account the potential for occupant sensitivities and possible adverse reactions to chemicals that have the potential to be off-gassed from surfaces coated with the product.

S 947. Post-remediation assessment and clearance. 1. For a remediated project to achieve clearance, a mold assessment licensee shall conduct a post-remediation assessment. The post-remediation assessment shall determine whether:

(a) the work area is free from all visible mold; and

(b) all work has been completed in compliance with the remediation plan and remediation work plan and meets clearance criteria specified in the plan.

2. Post-remediation assessment shall, to the extent feasible, determine 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 area. If it has been determined that the underlying cause of the mold has not been remediated, the mold assessment licensee shall make a recommendation to the client as to the type of contractor who could remedy the source of the mold or the moisture causing the mold.

3. A mold assessment licensee who determines that remediation has been successful shall issue a written passed clearance report to the client at the conclusion of each mold remediation project.

4. If the mold assessment licensee determines that remediation has not been successful, the licensee shall issue a written final status report to the client and to the remediation licensee and recommend to the client that either a new assessment be conducted, that the remediation plan as originally developed be completed, or the underlying causes of mold be addressed, as appropriate.

S 948. Investigations and complaints. The commissioner shall have the authority to inspect ongoing or completed mold assessment and mold remediation projects and to conduct an investigation upon his or her own initiation or upon receipt of a complaint by any person or entity.

S 2. Section 97-pppp of the state finance law, as added by chapter 551 of the laws of 2014, is REPEALED.

S 3. The opening paragraph of subdivision 3 of section 30 of the labor law, as added by chapter 162 of the laws of 1993, is amended to read as follows:

Except for variations concerning provisions, rules, codes, orders or any other matter affecting asbestos projects, MOLD PROJECTS or safety and health standards for public employees, including but not limited to projects covered by article thirty and section twenty-seven-a and subdivision ten of section two hundred forty-one of this chapter;

S 4. Section 3 of chapter 551 of the laws of 2014 amending the labor law relating to requiring the licensure of mold assessment and remediation specialists and setting minimum work standards for mold assessment and remediation specialists, is amended to read as follows:

S 3. This act shall take effect on the one hundred eightieth day after it shall have become a law, PROVIDED, HOWEVER, THAT THE LICENSING REQUIREMENTS OF SECTION 931 OF ARTICLE 32 OF THE LABOR LAW, AS ADDED BY SECTION ONE OF THIS ACT, SHALL TAKE EFFECT ON THE FIRST OF JANUARY NEXT SUCCEEDING THE DATE ON WHICH IT SHALL HAVE BECOME A LAW.

S 5. This act shall take effect immediately; provided, that sections one, two and three of this act shall take effect on the same date and in the same manner as chapter 551 of the laws of 2014, takes effect.