

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:

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

3 ARTICLE 32

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

6 Title 1. Licensing of mold inspection, assessment and remediation  
7 specialists and minimum work standards (Secs. 930-940.)  
8 2. Minimum work standards for the conduct of mold assessments  
9 and remediation by licensed persons (Secs. 945-948.)

10 TITLE 1

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

13 Section 930. Definitions.  
14 931. Licensing requirements.  
15 932. License; procedure.  
16 933. Exemptions.

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

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

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

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

16 3. "Mold remediation" means conducting the business of removal, clean-  
17 ing, sanitizing, or surface disinfection of mold, mold containment, and  
18 waste handling of mold and materials used to remove mold from surfaces  
19 by a business enterprise, including but not limited to, sole proprietor-  
20 ships. Mold remediation for the purposes of this article shall not  
21 include remediation of the underlying sources of moisture that may be  
22 the cause of mold that requires expertise not specific to acts author-  
23 ized under this article.

24 4. "Mold assessment" means an inspection or assessment of real proper-  
25 ty that is designed to discover [indoor] mold [growth, toxic mold  
26 growth], conditions that facilitate [indoor] mold [growth and/or], indi-  
27 cia of conditions that are likely to facilitate [indoor] mold [growth],  
28 OR ANY COMBINATION THEREOF.

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

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

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

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

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

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

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

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

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

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

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

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

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

15 (a) be eighteen years of age or older;

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

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

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

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

28 (a) be eighteen years of age or older;

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

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

35 (d) submitted insurance certificates evidencing workers' compensation  
36 coverage, if required, and liability insurance of at least fifty thou-  
37 sand dollars PROVIDING COVERAGE FOR CLAIMS ARISING FROM THE LICENSED  
38 ACTIVITIES AND OPERATIONS PERFORMED PURSUANT TO THIS ARTICLE. [An  
39 applicant for a license to perform mold remediation shall furnish the  
40 department with a financial statement, prepared by an independent audi-  
41 tor or accountant and signed by the applicant and auditor before a nota-  
42 ry public, stating the assets of the applicant, to be used by the  
43 department to determine the financial responsibility of the applicant to  
44 perform mold remediation services.]

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

47 (a) be eighteen years of age or older;

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

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

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

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

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

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

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

19 1. a residential property owner who performs mold inspection, assess-  
20 ment [or], remediation, OR ABATEMENT on his or her own property;

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

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

32 4. A FEDERAL, STATE OR LOCAL GOVERNMENTAL UNIT OR PUBLIC AUTHORITY AND  
33 EMPLOYEES THEREOF THAT PERFORM MOLD ASSESSMENT, REMEDIATION, OR ABATE-  
34 MENT ON ANY PROPERTY OWNED, MANAGED OR REMEDIATED BY SUCH GOVERNMENTAL  
35 UNIT OR AUTHORITY.

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

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

46 3. Licenses shall be in a form prescribed by the [department] COMMIS-  
47 SIONER.

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

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

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

3 2. A mold remediation license holder who intends to perform mold reme-  
4 diation shall prepare a work plan providing instructions for the remedi-  
5 ation efforts to be performed for the mold remediation project. The mold  
6 remediation license holder shall provide the work plan to the client  
7 before the mold remediation begins. The mold remediation license holder  
8 shall maintain a copy of the work plan at the job site where the remedi-  
9 ation is being performed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 TITLE 2

26 MINIMUM WORK STANDARDS FOR THE CONDUCT OF

27 MOLD ASSESSMENTS AND REMEDIATION BY LICENSED PERSONS

28 Section 945. Minimum work standards for the conduct of mold assessments  
29 by licensed persons.

30 946. Minimum work standards for the conduct of mold remediation  
31 by licensed persons.

32 947. Post-remediation assessment and clearance.

33 948. Investigations and complaints.

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

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

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

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

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

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

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

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

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

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

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

13 S 946. Minimum work standards for the conduct of mold remediation by  
14 licensed persons. 1. A mold remediation licensee shall prepare a mold  
15 remediation work plan that is specific to each project, fulfills all the  
16 requirements of the mold remediation plan developed by the mold assess-  
17 ment licensee as provided to the client and provides specific  
18 instructions and/or standard operating procedures for how a mold remedi-  
19 ation project will be performed. The mold remediation licensee shall  
20 provide the mold remediation work plan to the client before site prepa-  
21 ration work begins.

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

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

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

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

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

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

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

1 2. Post-remediation assessment shall, to the extent feasible, deter-  
2 mine that the underlying cause of the mold has been remediated so that  
3 it is reasonably certain that the mold will not return from that remedi-  
4 ated area. If it has been determined that the underlying cause of the  
5 mold has not been remediated, the mold assessment licensee shall make a  
6 recommendation to the client as to the type of contractor who could  
7 remedy the source of the mold or the moisture causing the mold.

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

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

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

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

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

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

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

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

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