

SENATE, No. 891

STATE OF NEW JERSEY

212th LEGISLATURE

INTRODUCED JANUARY 17, 2006

Sponsored by:

Senator ANTHONY R. BUCCO

District 25 (Morris)

Senator SHIRLEY K. TURNER

District 15 (Mercer)

SYNOPSIS

"Toxic Mold Protection Act of 2004."

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/23/2007)

1 AN ACT concerning mold hazards and remediation, and
2 supplementing Title 26 of the Revised Statutes.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. This act chapter shall be known, and may be cited, as the
8 "Toxic Mold Protection Act of 2004."

9
10 2. As used in this act:

11 "Certified Industrial Hygienist" shall have the same meaning as
12 defined in section 3 of P.L.1996, c.130 (C.56:8-83).

13 "Code enforcement officer" means a local official responsible for
14 enforcing housing codes and maintaining public safety in buildings
15 using an interdepartmental approach at the local government level.

16 "Indoor environments" means the affected dwelling unit or
17 affected commercial or industrial building.

18 "Mold" means any form of multicellular fungi that live on plant
19 or animal matter and in indoor environments. Types of mold
20 include, but are not limited to, Cladosporium, Penicillium,
21 Alternaria, Aspergillus, Fuarim, Trichoderma, Memnoniella, Mucor
22 and Stachhybotrys Chartarum, often found in water-damaged
23 building materials.

24 "Public health officer" means a full-time health officer as defined
25 pursuant to section 3 of P.L.1975, c.329 (C.26:3A2-3), or a local
26 comprehensive health agency designated by the board of
27 supervisors pursuant to Section 101275 to carry out the drinking
28 water program.

29
30 3. a. There is created the "Mold Task Force." The task force
31 shall consist of 5 representatives from State and local agencies and
32 8 public members. The State and local representatives shall be
33 from each of the following: a representative from a county board of
34 health, a representative from a municipal health agency, a
35 representative from the Department of Community Affairs, a
36 representative from the Department of Health and Senior Services,
37 and a representative from the Department of Environmental
38 Protection. The 8 public members shall be appointed by the
39 Governor with the advice and consent of the Senate. The public
40 members shall include a representative with expertise on the health
41 effects of molds, a certified industrial hygienist, a representative
42 with knowledge of mold abatement techniques, a representative of
43 commercial and industrial tenants, a representative of commercial
44 or industrial property owners, a representative of an environmental
45 group, a representative of the home builders, and a representative
46 of the insurance industry. The Department of Community Affairs
47 and the Department of Health and Senior Services shall provide
48 staff to implement the functions and duties of the task force. The

1 public members of the task force shall serve without compensation
2 but may be reimbursed for actual expenses in the performance of
3 their duties. The Governor shall select the chairperson of the task
4 force.

5 b. The task force shall provide advise to the Department of
6 Health and Senior Services and the Department of Community
7 Affairs on the development of standards for permissible exposure
8 limits to mold in the indoor environment, guidelines for the
9 identification of the presence of mold, guidelines for the assessment
10 of the health risk posed by the presence of mold, and remediation
11 guidelines and procedures for the abatement of a mold hazard.

12
13 4. a. Within 12 months of the effective date of this act, the
14 Department of Health and Senior Services, in consultation with the
15 Department of Environmental Protection and the Department of
16 Community Affairs, shall adopt, pursuant to the "Administrative
17 Procedure Act," P.L. 1968, c. 410 (C.52:14B-1 et seq.), permissible
18 exposure limits to mold in indoor environments, and procedures for
19 the assessment of the health risk posed by the presence of mold.
20 The exposure limits shall be set at levels to avoid adverse effects on
21 health, with an adequate margin of safety. The department shall
22 balance the protection of public health with technological and
23 economic feasibility when it adopts permissible exposure limits and
24 procedures for the assessment of the health risk posed by the
25 presence of mold. The department shall use the latest scientific data
26 to develop permissible exposure limits and assessment procedures
27 that target the general population.

28 b. The department shall consider the following criteria when it
29 adopts permissible exposure limits and assessment procedures for
30 molds in indoor environments:

31 (1) The adverse health effects of exposure to molds on the
32 general population, the health effects on members of subgroups of
33 the general population, which may include infants, children age 6
34 years and under, pregnant women, the elderly, asthmatic, allergic
35 individuals, immune compromised individuals or other subgroups
36 that are identifiable as being at greater risk of adverse health effects
37 than the general population when exposed to mold;

38 (2) The standards for mold exposure and procedures for
39 assessing its health effects, if any, adopted by any other state or by
40 a federal agency;

41 (3) The technological and economic feasibility of compliance
42 with the proposed permissible exposure limit for molds. For the
43 purposes of determining economic feasibility pursuant to this
44 paragraph, the department shall consider the costs of compliance to
45 tenants, landlords, homeowners, and other affected parties; and

46 (4) Toxicological studies and any scientific evidence as it relates
47 to mold.

48 c. The department may develop alternative permissible exposure

1 limits and assessment standards applicable to those facilities in
2 which persons more vulnerable to the health effects of mold
3 exposure reside or visit, which may include hospitals, child care
4 facilities, and nursing homes.

5 d. The department shall report to the Legislature on its progress
6 in developing the permissible exposure limit for molds by April 30,
7 2005.

8
9 5. The Department of Health and Senior Services shall provide
10 public notice that when it initiates work on the permissible exposure
11 limits to mold and procedures for assessing its health effects on
12 individuals. The notice shall include:

13 (1) A brief description or bibliography of the technical
14 documents or other information the department has identified that is
15 relevant to the preparation of the permissible exposure limits and
16 assessment procedures;

17 (2) The name and address of a person in the department to
18 whom the public may send information concerning exposure to
19 molds, and the date by which the information must be received in
20 order for the department to consider it in the preparation of the
21 permissible exposure limits.

22
23 6. a. Within 12 months of the effective date of this act, the
24 Department of Community Affairs, in consultation with the
25 Department of Health and Senior Services, and the Department of
26 Environmental Protection, shall adopt, pursuant to the
27 Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
28 seq.), mold identification guidelines for the recognition of mold in
29 indoor environments.

30 b. Identification guidelines shall include scientifically accepted
31 methods to identify the presence of mold, and may include
32 procedures for the collection of air, surface and bulk samples, visual
33 identification, olfactory identification, laboratory analysis,
34 measurements of amount of moisture, and presence of mold, and
35 any other recognized analytical method used for the identification
36 of molds. The department may use scientific data or existing
37 standards or procedures for the identification of molds adopted by
38 any other state or by a federal agency.

39 c. The department shall consider the following criteria when it
40 develops identification guidelines for molds:

41 (1) Exposure limits and the procedures for the assessment of the
42 health threat by molds adopted pursuant to section 4 of
43 P.L. , c. (C.) (now before the Legislature as this bill),

44 (2) Any scientific or other evidence developed by the United
45 States Environmental Protection Agency, the World Health
46 Organization, Centers for Disease Control and Prevention, or any
47 other public health or scientific organization.

48 d. The department may not require a commercial, industrial, or

1 residential landlord or a public entity that rents or leases a unit or
2 building to perform testing to determine whether the presence of
3 molds exceeds the permissible exposure limits to mold established
4 pursuant to section 4 of P.L. , c. (C.).

5 e. The department shall develop a reporting form for building
6 inspection that may be used to document the presence of mold.

7 f. The department shall develop

8 g. The department shall report to the Legislature on its progress
9 in developing identification guidelines for mold by April 30, 2005.

10
11 7. The Department of Community Affairs shall provide public
12 notice that when it initiates work on mold identification guidelines
13 for the recognition of mold in indoor environments. The notice
14 shall include:

15 (1) A brief description or bibliography of the technical
16 documents or other information the department has identified that is
17 relevant to the preparation of mold identification guidelines for the
18 recognition of mold in indoor environments;

19 (2) The name and address of a person in the department to
20 whom the public may send information concerning mold
21 identification guidelines, and the date by which the information
22 must be received in order for the department to consider it in the
23 preparation of the guidelines.

24
25 8. a. Within 12 months of the effective date of this act, the
26 Department of Community Affairs shall adopt, pursuant to the
27 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
28 seq.), standards for mold remediation procedures including
29 specialized cleaning, repairs, maintenance, painting, temporary
30 containment and ongoing monitoring of mold hazards or potential
31 hazards.

32 b. Remediation procedures for mold developed by the
33 department shall:

34 (1) Provide practical guidelines for the removal of mold and
35 abatement of the underlying cause of mold and associated water
36 intrusion and water damage in indoor environments.

37 (2) Balance the protection of public health with technological
38 and economic feasibility;

39 (3) Provide practical guidance for the removal or cleaning of
40 contaminated materials in a manner that protects the health of the
41 person performing the remediation, including requirements for the
42 use of protective clothing or equipment;

43 c. The department shall not require a commercial, industrial, or
44 residential lessor, or a public entity that rents or leases a unit or
45 building to conduct air or surface tests of units or buildings to
46 determine whether the presence of molds exceeds the permissible
47 exposure limits to mold established in section 4 of P.L. , c. (C.).

48 d. The department shall report to the Legislature on its progress

1 in developing remediation standards for mold by April 30, 2005.

2

3 9. The department shall provide public notice when it initiates
4 work on the remediation procedures for mold. The notice shall
5 include:

6 (1) A brief description or bibliography of the technical
7 documents or other information the department has identified that is
8 relevant to the preparation of the mold remediation procedures;

9 (2) The name and address of a person in the department to
10 whom the public may send information concerning mold
11 remediation procedures, and the date by which the information must
12 be received in order for the department to consider it in the
13 preparation of the mold remediation procedures.

14

15 10. The Department of Community Affairs shall make available
16 to the public upon request, information about contracting for the
17 removal of mold in a building or surrounding environment. The
18 information to be made available shall include recommended steps
19 to take when contracting with a company to remove mold, existing
20 laws, regulations, and guidelines developed by the Department of
21 Community Affairs and the Department of Health and Senior
22 Services, pertaining to permissible exposure limits to mold,
23 identification, and remediation, health effects of molds, methods to
24 prevent, identify and remediate mold growth, resources to obtain
25 information about molds, and contact information for individuals,
26 organizations, or government entities to assist with public concerns
27 about molds.

28

29 11. a. Any person who sells or transfers commercial or
30 industrial real property shall disclose, in writing, to any prospective
31 buyer before the transfer of title, when the seller or transferor
32 knows of the presence of mold in the unit or building and the mold
33 either exceeds permissible exposure limits to mold or poses a health
34 risk, pursuant to the standards adopted by the Department of Health
35 and Senior Services pursuant to section 4 of P.L. , c. (C.) (now
36 before the Legislature as this bill). A disclosure shall not be
37 required pursuant to this section if a mold hazard is remediated
38 pursuant to the remediation standards adopted by the Department of
39 Community Affairs pursuant to section 8 of P.L. , c. (C.) (now
40 before the Legislature as this bill).

41 b. A person who sells or transfers commercial or industrial real
42 property shall not be required to conduct air or surface tests of
43 property to determine whether the presence of molds exceeds the
44 permissible exposure limits to molds established by pursuant to
45 section 4 of P.L. , c. (C.).

46

47 12. a. Any lessor of commercial or industrial property shall
48 disclose, in writing, to prospective and current tenants of the

1 property when the lessor knows that mold is present that exceeds
2 the permissible exposure limits to molds or poses a health risk
3 pursuant to section 4 of P.L. , c. (C.). The disclosure shall be
4 provided to prospective tenants prior to entering into the rental
5 agreement and to current tenants in affected units as soon as
6 practicable.

7 b. A commercial and industrial landlord shall not be required to
8 provide a disclosure pursuant to this section if a mold hazard is
9 remediated pursuant to the remediation standards adopted by the
10 Department of Community Affairs pursuant to section 8 of
11 P.L. , c. (C.) (now before the Legislature as this bill.

12 c. A person who leases commercial or industrial real property
13 shall not be required to conduct air or surface tests of property to
14 determine whether the presence of molds exceeds the permissible
15 exposure limits to molds established by pursuant to section 4 of
16 P.L. , c. (C.).

17
18 13. Any lessee of a commercial or industrial real property who
19 knows that mold is present in the building, heating system,
20 ventilating or air conditioning system, or appurtenant structures, or
21 that there is a condition of chronic water intrusion or flood, shall
22 inform the lessor of this knowledge in writing within a reasonable
23 period of time. The lessee shall make the property available to the
24 lessor or his or her agents for appropriate assessment or remedial
25 action as soon as is reasonably practicable if the lessor is
26 responsible for maintenance of the property. Nothing in this
27 section shall affect existing duties and obligations of residential
28 lessees and lessors.

29
30 14. a. Except as provided in subsection b. of this section, any
31 person who owns a commercial and industrial property, who knows
32 or has notice that mold is present in the building, heating system,
33 ventilating or air conditioning system, or appurtenant structures, or
34 that there is a condition of chronic water intrusion or flood, shall,
35 within a reasonable period of time, assess the presence of mold, or
36 the condition likely to result in the presence of mold and conduct
37 any necessary remedial action.

38 b. The provisions of subsection a. of this section shall not apply
39 to any property where the lessee is responsible pursuant to a lease
40 or other contract, for maintenance of the property.

41
42 15. Any lessee of commercial or industrial real property who
43 knows that mold is present in the building, heating system,
44 ventilating or air conditioning system, or appurtenant structures, or
45 that there is a condition of chronic water intrusion or flood, and is
46 responsible for maintenance of the property shall inform the owner
47 of the property, in writing of the conditions as soon as practicable
48 and shall correct the condition in compliance with the terms of the

1 lease.

2

3 16. A public entity that owns, leases, or operates a building shall
4 disclose, in writing, to all building occupants and prospective
5 tenants when the public entity knows, or has reasonable cause to
6 believe, that a condition of chronic water intrusion or flood exists,
7 or that mold, both visible and invisible or hidden, is present that
8 affects the building or unit and the mold either exceeds the
9 permissible exposure limits to mold or poses a health threat
10 established in section 4 of P.L. , c. (C.). A disclosure shall
11 not be required pursuant to this section if a mold hazard is
12 remediated pursuant to the remediation standards adopted by the
13 Department of Community Affairs pursuant to section 8 of
14 P.L. , c. (C.) (now before the Legislature as this bill).

15

16 17. a. A lessor of residential property shall disclose, in writing,
17 to any prospective or current lessee when the lessor knows, or has
18 reasonable cause to believe, that mold, both visible and invisible or
19 hidden, is present that affects the unit or the building and the mold
20 either exceeds the permissible exposure limits to mold or poses a
21 health threat pursuant to standards adopted pursuant to section 4 of
22 P.L. , c. (C.). A disclosure shall not be required pursuant to
23 this section if a mold hazard is remediated pursuant to the
24 remediation standards 8 of P.L. , c. (C.) (now before the
25 Legislature as this bill).

26 b. A lessor of residential property shall not be required to
27 conduct air or surface tests of units or buildings to determine
28 whether the presence of molds exceeds the permissible exposure
29 limits to mold established pursuant to section 4 of
30 P.L. , c. (C.).

31

32 18. Before a purchaser or lessee is obligated under any contract
33 to purchase or lease residential housing, a seller or lessor of
34 residential housing shall provide the purchaser or lessee with a
35 mold hazard information pamphlet developed by the Department of
36 Community Affairs.

37

38 19. Any person violating the provisions of sections 11, 12, and
39 16 of P.L. , c. (C.) (now before the Legislature as this bill), or
40 any order of the Department of Community Affairs made pursuant
41 to this act, shall be liable for penalties as may be levied against the
42 owner of a multiple dwelling pursuant to section 19 of P.L.1967,
43 c.76 (C.55:13A-19), and the Department of Community Affairs
44 shall have all of the enforcement powers granted under that section
45 to enforce this act. The Department of Community Affairs shall
46 adopt, pursuant to the "Administrative Procedure Act," P.L.1068,
47 c.410 (C.52:14B-1 et seq.), disclosure enforcement guidelines
48 pursuant to this section, and shall include development of a form for

1 disclosure, and penalties, if any, that may be imposed for failure to
2 disclose.

3
4 20. Any local health inspector, local housing inspector, code
5 enforcement officer or Department of Community Affairs inspector
6 may respond to complaints about mold and may enforce standards
7 adopted by the Department of Community Affairs or the
8 Department of Health and Human Services pursuant to sections
9 4, 6, or 8 of P.L. , c. (C.) (now before the Legislature as this
10 bill) and enforce the disclosure requirements established pursuant
11 to sections 11, 12, 16 of P.L. , c. (C.).

12
13 21. Sections 4, 6, 8, and 20 of this act shall take effect
14 immediately, and the remainder of this act shall take effect 18
15 months after the date of enactment.

16
17
18 STATEMENT

19
20 This bill would require the Department of Health and Senior
21 Services to adopt rules and regulations establishing permissible
22 exposure limits for mold exposure and procedures for the
23 assessment of the health risk posed by the presence of mold.
24 Further, the bill would require the Department of Community
25 Affairs to adopt mold identification guidelines and mold
26 remediation procedures. The bill would require the disclosure of
27 the presence of mold by a person selling or leasing a commercial or
28 industrial building, by a public entity that owns, leases or operates a
29 building, and by a lessor of a residential building. Finally, the bill
30 would require a lessee who knows that mold is present in the
31 building to inform the owner of a building.