

SENATE, No. 2632

STATE OF NEW JERSEY
214th LEGISLATURE

INTRODUCED JANUARY 11, 2011

Sponsored by:

Senator SEAN T. KEAN

District 11 (Monmouth)

SYNOPSIS

Creates the “Mold Safe Housing Act.”

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning mold remediation in rental premises,
2 supplementing Title 52 of the Revised Statutes and amending
3 P.L.1997, c.323 and P.L.1967, c.76.

4

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

7

8 1. (New section) This act shall be known and may be cited as
9 the "Mold Safe Housing Act."

10

11 2. (New section) As used in this act:

12 "Substantial presence of mold" means the visible or detectable
13 presence of mold growing on interior surfaces or in ventilation
14 ducts, in such amounts as to raise concerns for the health of the
15 residents of the building, in accordance with standards promulgated
16 by the Department of Community Affairs pursuant to P.L. ,
17 c. (C.) (pending before the legislature as Senate Bill No. 2633 of
18 2011).

19

20 3. (New section) a. In any case where a change of occupancy
21 of any building subject to the requirements of section 1 of P.L.1991,
22 c.92 (C.52:27D-198.1) is subject to a municipal ordinance
23 requiring the issuance of a certificate of occupancy, certificate of
24 inspection or other documentary certification of compliance with
25 laws and regulations relating to safety, healthfulness and upkeep of
26 the premises, no such certificate shall issue until the municipal
27 officer or agency responsible for its issuance has received a
28 certification that the building has been inspected for and found free
29 of any visible or detectable indications of the substantial presence
30 of mold.

31 b. In the case of change of occupancy of any building subject to
32 the requirements of section 1 of P.L.1991, c.92 (C.52:27D-198.1) to
33 which the provisions of subsection a. of this section do not apply,
34 no owner shall sell, lease or otherwise permit occupancy for
35 residential purposes of that building without first obtaining from the
36 Bureau of Housing Inspection of the Division of Codes and
37 Standards, Department of Community Affairs, a certificate
38 evidencing compliance with the requirements section 6 of P.L. ,
39 c. (C.) (pending before the Legislature as this bill). The
40 Commissioner of Community Affairs shall establish a fee which
41 covers the costs of any inspection required, and of issuance of the
42 certificate.

43

44 4. (New section) a. A tenant residing in rental housing who
45 believes that the housing contains a substantial mold hazard shall

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 notify the landlord of the premises, in writing, and request
2 remediation of the mold hazard.

3 b. A landlord who has been notified in writing by a tenant that
4 the tenant believes a substantial mold hazard exists shall investigate
5 the condition within 72 hours of receiving the written notification.
6 If any visible signs of mold on surfaces are present, the landlord
7 shall clean and remove the mold from those surfaces in a manner
8 consistent with the regulations promulgated by the department.
9 Any leaking pipes, roofing or walls which are contributing to a wet
10 condition that in turn is furthering the growth of mold shall be fixed
11 in an expedited manner by the landlord. Any mold conditions
12 which will require testing to determine the efficacy of the mold
13 removal shall be performed by persons certified to remediate mold
14 in accordance with P.L. , c. (C.) (pending before the
15 Legislature as Senate Bill No. 2633 of 2011).

16 c. In the event a tenant notifies a landlord who does not comply
17 with subsection b. of this section, the tenant shall be entitled to
18 contact the Commissioner of Community Affairs for consideration
19 for a referral to the relocation program established pursuant to
20 P.L. , c. (C.) (pending before the Legislature as this bill).

21
22 5. (New section) a. The Commissioner of Community Affairs
23 shall review any case referred to the department in which a
24 substantial mold hazard condition has been found to exist and which
25 poses an immediate risk of continuing exposure to mold hazard for
26 any tenants living in rental housing. The commissioner shall
27 determine whether the removal of the residents from the rental
28 housing unit containing that mold hazard is warranted.

29 b. If the commissioner determines that the removal and
30 relocation of the residents from such housing is warranted, then the
31 commissioner shall authorize the payment of relocation assistance
32 pursuant to P.L.2003, c.311 (C.52:27D-437.1 et al.), and shall assist
33 in the relocation of such residents to mold-safe housing.

34 c. Whenever relocation assistance is authorized pursuant to this
35 section, the commissioner may determine to seek reimbursement for
36 payments made for relocation assistance from the owner of the
37 rental housing from which the tenants were moved. The
38 commissioner shall seek reimbursement if the owner of such rental
39 housing had failed to maintain the housing in a mold-safe condition.

40 d. In the case of any displacement of a household from a unit of
41 rental housing that has been found, in a final administrative or
42 judicial determination, not to be maintained in a mold-safe
43 condition in accordance with standards established by rule of the
44 Department of Community Affairs, all relocation costs incurred by
45 a public agency to relocate that household shall be paid by the
46 owner of the rental housing to the public agency making relocation
47 payments upon presentation to the owner by the public agency of a

1 statement of those relocation costs and of the date upon which the
2 relocation costs are due and payable.

3 e. In the event that the relocation costs to be paid to the public
4 agency are not paid within ten days after the due date, interest shall
5 accrue and be due to the public agency on the unpaid balance at the
6 rate of 18% per annum until the costs, and the interest thereon, shall
7 be fully paid to the public agency.

8 f. In the event that the relocation costs to be paid to a public
9 agency shall not be paid within ten days after the date due, the
10 unpaid balance thereof and all interest accruing thereon shall be a
11 lien on the parcel in which the dwelling unit from which
12 displacement occurred is located. To perfect the lien granted by
13 this section, a statement showing the amount and due date of the
14 unpaid balance and identifying the parcel, which identification shall
15 be sufficiently made by reference to the municipal assessment map,
16 shall be recorded with the clerk or register of the county in which
17 the affected property is located and, upon recording, the lien shall
18 have the priority of a mortgage lien. Whenever relocation costs
19 with regard to the parcel and all interest accrued thereon shall have
20 been fully paid to the public agency, the statement shall be
21 promptly withdrawn or canceled by the public agency.

22 g. In the event that relocation costs to be paid to a public agency
23 are not paid as and when due, the unpaid balance thereof and all
24 interest accrued thereon, together with attorney's fees and costs,
25 may be recovered by the public agency in a civil action as a
26 personal debt of the owner of the property. If the owner is a
27 corporation, the directors, officers and any shareholders who each
28 control more than 5% of the total voting shares of the corporation,
29 shall be personally liable, jointly and severally, for the relocation
30 costs.

31 h. All rights and remedies granted by this section for the
32 collection and enforcement of relocation costs shall be cumulative
33 and concurrent.

34

35 6. (New section) Notwithstanding any other provisions of
36 P.L. , c. (C.) (pending before the Legislature as this bill), a
37 dwelling unit shall not be subject to inspection and evaluation or
38 subject to any fees for the presence of mold hazards if the unit:

39 is a seasonal rental unit which is rented for less than six months'
40 duration each year;

41 has been certified as having a mold-free interior by a certified
42 inspector; or

43 is occupied by the owner of the dwelling unit.

44

45 7. N.J.S.2A:18-59 is amended to read as follows:

46 2A:18-59 a. Proceedings had by virtue of **[this]** article 9 of
47 chapter 18 of Title 2A shall not be appealable except on the ground

1 of lack of jurisdiction. The landlord, however, shall remain liable
2 in a civil action for unlawful proceedings under this article.

3 b. Whenever the court determines that a tenant has been
4 constructively evicted by a landlord who has maintained the rental
5 premises in an uninhabitable condition, including the failure to
6 address the presence of mold, a copy of the notice of the judgment
7 to that effect shall be provided to the Commissioner of Community
8 Affairs.

9 (cf: N.J.S.2A:18-59)

10

11 8. Section 2 of P.L.1997, c.323 (C.45:8-62) is amended to read
12 as follows:

13 2. As used in this act:

14 "Board" means the State Board of Professional Engineers and
15 Land Surveyors.

16 "Client" means any person who engages, or seeks to engage, the
17 services of a home inspector for the purpose of obtaining inspection
18 of and written report upon the condition of a residential building.

19 "Committee" means the Home Inspection Advisory Committee
20 established pursuant to section 3 of this act.

21 "Home inspector" means any person licensed as a home
22 inspector pursuant to the provisions of **[this act]** P.L.1997, c323
23 (C.45:8-61 et seq.).

24 "Home inspection" means an inspection and written evaluation
25 of the following components of a residential building: heating
26 system, cooling system, plumbing system, electrical system,
27 structural components, foundation, roof, masonry structure, exterior
28 and interior components or any other related residential housing
29 component as determined by the board by regulation; in addition, a
30 home inspection may include an inspection for the visible and
31 detectable presence of substantial mold hazards, if specifically
32 requested by a purchaser of a residential housing unit.

33 "Residential building" means a structure consisting of from one
34 to four family dwelling units that has been occupied as such prior to
35 the time when a home inspection is requested or contracted for in
36 accordance with this act, but shall not include any such structure
37 newly constructed and not previously occupied.

38 (cf: P.L.2005, c.201, s.1)

39

40 9. Section 15 of P.L.1997, c.323 (C.45:8-75) is amended to read
41 as follows:

42 15. No person licensed as a home inspector pursuant to **[this act]**
43 P.L.1997, c.323 (C.45:8-61 et seq.) shall:

44 a. engage in the practice of architecture or the practice of
45 professional engineering unless licensed therefore; or

46 b. engage in the practice of mold inspection or mold hazard
47 abatement unless certified to do so pursuant to P.L. _____,

1 c. (C. _____) (pending before the Legislature as Senate Bill No.
2 2633 of 2011.)

3 (cf: P.L.2001, c.158, s.2)

4

5 10. Section 2 of P.L.1993, c.30 (C.45:22A-44) is amended to
6 read as follows:

7 2. a. Subject to the master deed, declaration of covenants and
8 restrictions or other instruments of creation, the association may do
9 all that it is legally entitled to do under the laws applicable to its
10 form of organization.

11 b. The association shall exercise its powers and discharge its
12 functions in a manner that protects and furthers the health, safety
13 and general welfare of the residents of the community.

14 c. The association shall provide a fair and efficient procedure for
15 the resolution of disputes between individual unit owners and the
16 association, and between unit owners, which shall be readily
17 available as an alternative to litigation.

18 d. The association may assert tort claims concerning the
19 common elements and facilities of the development as if the claims
20 were asserted directly by the unit owners individually.

21 e. Notwithstanding any governing documents to the contrary, no
22 association shall deny permission to a unit owner to abate the
23 presence of mold in or around the immediate areas of the owners'
24 dwelling unit, provided that the association may control the
25 implementation of mold hazard abatement in the common elements.

26 (cf: P.L.1993, c.30, s.2)

27

28 11. Section 3 of P.L.1967, c.76 (C.55:13A-3) is amended to read
29 as follows:

30 3. The following terms whenever used or referred to in this act
31 shall have the following respective meanings for the purposes of
32 this act, except in those instances where the context clearly
33 indicates otherwise:

34 (a) The term "act" shall mean this act, any amendments or
35 supplements thereto, and any rules and regulations promulgated
36 thereunder.

37 (b) The term "accessory building" shall mean any building which
38 is used in conjunction with the main building of a hotel, whether
39 separate therefrom or adjoining thereto.

40 (c) The term "board" shall mean the Hotel and Multiple Dwelling
41 Health and Safety Board created by subsection (a) of section 5 of
42 this act in the Division of Housing and Development of the
43 Department of Community Affairs.

44 (d) The term "bureau" shall mean the Bureau of Housing
45 Inspection in the Department of Community Affairs.

46 (e) (Deleted by amendment.)

47 (f) The term "commissioner" shall mean the Commissioner of the
48 Department of Community Affairs.

1 (g) The term "department" shall mean the Department of
2 Community Affairs.

3 (h) The term "unit of dwelling space" or the term "dwelling unit"
4 shall mean any room or rooms, or suite or apartment thereof,
5 whether furnished or unfurnished, which is occupied, or intended,
6 arranged or designed to be occupied, for sleeping or dwelling
7 purposes by one or more persons, including but not limited to the
8 owner thereof, or any of his servants, agents or employees, and
9 shall include all privileges, services, furnishings, furniture,
10 equipment, facilities and improvements connected with the use or
11 occupancy thereof.

12 (i) The term "protective equipment" shall mean any equipment,
13 device, system or apparatus, whether manual, mechanical, electrical
14 or otherwise, permitted or required by the commissioner to be
15 constructed or installed in any hotel or multiple dwelling for the
16 protection of the occupants or intended occupants thereof, or of the
17 public generally.

18 (j) The term "hotel" shall mean any building, including but not
19 limited to any related structure, accessory building, and land
20 appurtenant thereto, and any part thereof, which contains 10 or
21 more units of dwelling space or has sleeping facilities for 25 or
22 more persons and is kept, used, maintained, advertised as, or held
23 out to be, a place where sleeping or dwelling accommodations are
24 available to transient or permanent guests.

25 This definition shall also mean and include any hotel, motor
26 hotel, motel, or established guesthouse, which is commonly
27 regarded as a hotel, motor hotel, motel, or established guesthouse,
28 as the case may be, in the community in which it is located;
29 provided, that this definition shall not be construed to include any
30 building or structure defined as a multiple dwelling in this act,
31 registered as a multiple dwelling with the Commissioner of
32 Community Affairs as hereinafter provided, and occupied or
33 intended to be occupied as such nor shall this definition be
34 construed to include a rooming house or a boarding house as
35 defined in the "Rooming and Boarding House Act of 1979,"
36 P.L.1979, c.496 (C.55:13B-1 et al.) or, except as otherwise set forth
37 in P.L.1987, c.270 (C.55:13A-7.5, 55:13A-7.6, 55:13A-12.1,
38 55:13A-13.2), any retreat lodging facility, as defined in this section.

39 (k) The term "multiple dwelling" shall mean any building or
40 structure of one or more stories and any land appurtenant thereto,
41 and any portion thereof, in which three or more units of dwelling
42 space are occupied, or are intended to be occupied by three or more
43 persons who live independently of each other. This definition shall
44 also mean any group of ten or more buildings on a single parcel of
45 land or on contiguous parcels under common ownership, in each of
46 which two units of dwelling space are occupied or intended to be
47 occupied by two persons or households living independently of

1 each other, and any land appurtenant thereto, and any portion
2 thereof. This definition shall not include:

3 (1) any building or structure defined as a hotel in this act, or
4 registered as a hotel with the Commissioner of Community Affairs
5 as hereinafter provided, or occupied or intended to be occupied
6 exclusively as such;

7 (2) a building section containing not more than four dwelling
8 units, provided the building has at least two exterior walls
9 unattached to any adjoining building section and the dwelling units
10 are separated exclusively by walls of such fire-resistant rating as
11 comports with the "State Uniform Construction Code Act,"
12 P.L.1975, c.217 (C.52:27D-119 et seq.) at the time of their
13 construction or with a rating as shall be established by the bureau in
14 conformity with recognized standards and the building is held under
15 a condominium or cooperative form of ownership, or by a mutual
16 housing corporation, provided that if any units within such a
17 building section are not occupied by an owner of the unit, then that
18 unit and the common areas within that building section shall not be
19 exempted from the definition of a multiple dwelling for the
20 purposes of P.L.1967, c.76 (C.55:13A-1 et seq.). A condominium
21 association, or a cooperative or mutual housing corporation shall
22 provide the bureau with any information necessary to justify an
23 exemption for a dwelling unit pursuant to this paragraph; or

24 (3) any building of three stories or less, owned or controlled by a
25 nonprofit corporation organized under any law of this State for the
26 primary purpose to provide for its shareholders or members housing
27 in a retirement community as same is defined under the provisions
28 of the "Retirement Community Full Disclosure Act," P.L.1969,
29 c.215 (C.45:22A-1 et seq.), provided that the corporation meets the
30 requirements of section 2 of P.L.1983, c.154 (C.55:13A-13.1).

31 (l) The term "owner" shall mean the person who owns, purports
32 to own, or exercises control of any hotel or multiple dwelling. The
33 term "owner" shall also mean and include any person who owns,
34 purports to own, or exercises control over three or more dwelling
35 units within a multiple dwelling.

36 (m) The term "person" shall mean any individual, corporation,
37 association, or other entity, as defined in R.S.1:1-2.

38 (n) The term "continuing violation" shall mean any violation of
39 this act or any regulation promulgated thereunder, where notice is
40 served within two years of the date of service of a previous notice
41 and where violation, premise and person cited in both notices are
42 substantially identical.

43 (o) The term "project" shall mean a group of buildings subject to
44 the provisions of this act, which are or are represented to be under
45 common or substantially common ownership and which stand on a
46 single parcel of land or parcels of land which are contiguous and
47 which group of buildings is named, designated or advertised as a
48 common entity. The contiguity of such parcels shall not be

1 adversely affected by public rights-of-way incidental to such
2 buildings.

3 (p) The term "mutual housing corporation" means a corporation
4 not-for-profit incorporated under the laws of New Jersey on a
5 mutual or cooperative basis within the scope of Title VI, s.607 of
6 the "Lanham Public War Housing Act," 54 Stat. 1125, 42U.S.C.
7 s.1501 et seq., as amended, which acquired a National Defense
8 Housing Project pursuant to said act.

9 (q) "Condominium" means the form of ownership so defined in
10 the "Condominium Act," P.L.1969, c.257 (C.46:8B-1 et seq.).

11 (r) "Cooperative" means a housing corporation or association
12 which entitles the holder of a share or membership interest thereof
13 to possess and occupy for dwelling purposes a house, apartment or
14 other structure owned or leased by said corporation or association,
15 or to lease or purchase a dwelling constructed or to be constructed
16 by said corporation or association.

17 (s) "Retreat lodging facility" means a building or structure,
18 including but not limited to any related structure, accessory
19 building, and land appurtenant thereto, and any part thereof, owned
20 by a nonprofit corporation or association which has tax-exempt
21 charitable status under the federal Internal Revenue Code and which
22 has sleeping facilities used exclusively on a transient basis by
23 persons participating in programs of a religious, cultural or
24 educational nature, conducted under the sole auspices of one or
25 more corporations or associations having tax-exempt charitable
26 status under the federal Internal Revenue Code, which are made
27 available without any mandatory charge to such participants.

28 (t) "Homeowners' association" means the association formed to
29 manage the common elements of a condominium, cooperative, or a
30 planned real estate development.

31 (u) "Substantial presence of mold" means the visible or
32 detectable presence of mold growing on interior surfaces or in
33 ventilation ducts, in such amounts as to raise concerns for health of
34 the residents of the building, in accordance with standards
35 promulgated by the Department of Community Affairs pursuant to
36 P.L. , c. (C.) (pending before the legislature as Senate Bill
37 No. 2633 of 2011).

38 (cf: P.L.1999, c.384, s.1)

39

40 12. Section 7 of P.L.1967, c.76 (C.55:13A-7) is amended to read
41 as follows:

42 7. The commissioner shall issue and promulgate, in the manner
43 specified in section 8 of P.L.1967, c.76 (C.55:13A-8), such
44 regulations as the commissioner may deem necessary to assure that
45 any hotel or multiple dwelling will be maintained in such manner as
46 is consistent with, and will protect, the health, safety and welfare of
47 the occupants or intended occupants thereof, or of the public
48 generally.

1 Any such regulations issued and promulgated by the
2 commissioner pursuant to this section shall provide standards and
3 specifications for such maintenance materials, methods and
4 techniques, fire warning and extinguisher systems, elevator
5 systems, emergency egresses, and such other protective equipment
6 as the commissioner shall deem reasonably necessary to the health,
7 safety and welfare of the occupants or intended occupants of any
8 units of dwelling space in any hotel or multiple dwelling, including
9 but not limited to:

10 (a) Structural adequacy ratings;

11 (b) Methods of egress, including fire escapes, outside fireproof
12 stairways, independent stairways, and handrails, railings, brackets,
13 braces and landing platforms thereon, additional stairways, and
14 treads, winders, and risers thereof, entrances and ramps;

15 (c) Bulkheads and scuttles, partitions, walls, ceilings and floors;

16 (d) Garbage and refuse collection and disposal, cleaning and
17 janitorial services, repairs, and extermination services;

18 (e) Electrical wiring and outlets, and paints and the composition
19 thereof;

20 (f) Doors, and the manner of opening thereof;

21 (g) Transoms, windows, shafts and beams;

22 (h) Chimneys, flues and central heating units;

23 (i) Roofing and siding materials;

24 (j) Lots, yards, courts and garages, including the size and
25 location thereof;

26 (k) Intakes, open ducts, offsets and recesses;

27 (l) Windows, including the size and height thereof;

28 (m) Rooms, including the area and height thereof, and the
29 permissible number of occupants thereof;

30 (n) Stairwells, skylights and alcoves;

31 (o) Public halls, including the lighting and ventilation thereof;

32 (p) Accessory passages to rooms;

33 (q) Cellars, drainage and air space;

34 (r) Water-closets, bathrooms and sinks;

35 (s) Water connections, including the provision of drinking and
36 hot and cold running water;

37 (t) Sewer connections, privies, cesspools, and private sewers;

38 (u) Rain water and drainage conductors;

39 (v) Entrances and ramps; **[and]**

40 (w) Presence of lead-based paint hazards in multiple dwellings
41 and in single-family and two-family dwellings, exclusive of owner-
42 occupied dwelling units, subject to P.L.2003, c.311 (C.52:27D-
43 437.1 et al.). In a common interest community, any inspection fee
44 for and violation found within a unit which is solely related to this
45 subsection shall be the responsibility of the unit owner and not the
46 homeowners' association, unless the association is the owner of the
47 unit ; and

1 (x) Visible substantial presence of mold on any interior surface,
2 including in ventilation ductwork, and the presence of conditions
3 which contribute to that mold formation in multiple dwellings and
4 in single-family and two-family dwellings, exclusive of owner-
5 occupied dwelling units, subject to P.L. , c. (C.) (pending
6 before the Legislature as this bill). In a condominium, cooperative,
7 or planned real estate development with common elements, any
8 mold, or condition contributing to the formation of mold, which is
9 not under the sole control of a unit owner and which in any manner
10 concerns a common element or facility, shall be the duty of the
11 homeowners' association to remedy; any inspection fee for and
12 violation found within a unit which is solely related to a condition
13 caused by the owner within the individual unit shall be the sole
14 responsibility of that unit owner and not the homeowners'
15 association, unless the homeowners' association is the owner of the
16 unit.

17 (cf: P.L.2007, c.251, s.5)

18

19 13. This act shall take effect immediately.

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21

22

STATEMENT

23

24 Entitled the "Mold-Safe Housing Act," this bill and a companion
25 bill would create mechanisms for tenants living in mold-
26 contaminated rental housing to have the mold effectively removed,
27 or be relocated to safer rental housing. In addition, the bill provides
28 a system of inspection of all rental housing for the presence of
29 mold. Single family and two-family rental housing will be required
30 to be inspected upon a change in occupancy, as well as every five
31 years as part of the multiple dwelling inspection. Multiple
32 dwellings will be inspected every five years for mold under the
33 "Hotel and Multiple Dwelling Law," which is enforced currently by
34 the Bureau of Housing Inspection in the Department of Community
35 Affairs.

36 The bill provides that a prospective home purchaser can specify
37 that an inspection for presence of mold be performed by a licensed
38 home inspector, should they retain such an inspector prior to
39 purchase.

40 The bill permits tenants whose landlords fail to abate a mold
41 hazard, upon written request to do so, to notify the Department of
42 Community Affairs, who shall investigate each claim and determine
43 whether to relocate the tenant. Current relocation assistance laws
44 would apply in such circumstances. In addition, the bill requires
45 the court to notify the department whenever a tenant is
46 constructively convicted on account of mold or some other issue of
47 habitability in the rental property.

1 Companion legislation to this bill creates standards for unsafe
2 mold exposure levels, mold hazard abatement methods and
3 certification of those professionals who will perform such work.
4 Together, these bills form the framework of a protective process
5 designed to identify and eliminate exposure in rental housing to
6 mold, and to quickly remove tenants from harmful exposure to
7 toxins that could impair their health for years to come.