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Summary: Indoor Mold Remediation Act

**HISTORY OF LEGISLATIVE ACTIONS**

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4/14/2016 House Referred to Committee on **Agriculture, Natural Resources and Environmental Affairs** ([House Journal‑page 83](file:///h:\HJ%20Archive\2016\04-14-16.docx))

View the latest [legislative information](http://www.scstatehouse.gov/billsearch.php?billnumbers=5231&session=121&summary=B) at the website

**VERSIONS OF THIS BILL**

[4/14/2016](file:///p:\pprever\2015-16\5231_20160414.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 11 TO CHAPTER 40, TITLE 27 SO AS TO ENACT THE “INDOOR MOLD REMEDIATION ACT”; TO DEFINE NECESSARY TERMS; TO DIRECT THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL TO SET STANDARDS, PRACTICES, AND GUIDELINES RELATING TO THE ASSESSMENT AND REMEDIATION OF INDOOR MOLD CONTAMINATION; TO ESTABLISH LICENSING REQUIREMENTS FOR INDOOR MOLD ASSESSMENT AND REMEDIATION, AND TO AUTHORIZE THE DEPARTMENT TO ESTABLISH AND COLLECT REASONABLE FEES TO ADMINISTER THE PROVISIONS OF THIS ARTICLE; TO ESTABLISH REQUIREMENTS AND PROCEDURES FOR A RESIDENTIAL PROPERTY OWNER WHO RECEIVES NOTICE FROM A TENANT THAT INDOOR MOLD EXISTS IN THE DWELLING UNIT OR COMMON AREA; TO PROVIDE THAT A PROFESSIONAL INDOOR MOLD ASSESSMENT THAT FINDS AN INDOOR MOLD CONTAMINATION CREATES A REBUTTABLE PRESUMPTION OF A VIOLATION OF THE PROPERTY OWNER’S OBLIGATIONS UNDER THIS ARTICLE AND TO PROVIDE THAT A COURT HAS DISCRETION TO REIMBURSE COSTS AND FEES AS WELL AS AWARD TREBLE DAMAGES IN CERTAIN CIRCUMSTANCES; TO ESTABLISH THE INDOOR MOLD ASSESSMENT FUND, TO PROVIDE THAT THE FUND SHALL CONSIST OF REVENUE FROM FEES COLLECTED PURSUANT TO THIS ARTICLE, AND TO AUTHORIZE THE DEPARTMENT TO ADMINISTER GRANTS FROM THIS FUND IN CERTAIN CIRCUMSTANCES; TO ESTABLISH THAT THIS ARTICLE DOES NOT CREATE A PRIVATE RIGHT OF ACTION AGAINST THE STATE OF SOUTH CAROLINA; TO PROVIDE THAT THE REMEDIES PROVIDED UNDER THIS ARTICLE DO NOT SUPPLANT A TENANT’S COMMON LAW RIGHTS AND REMEDIES; AND TO AUTHORIZE THE DEPARTMENT TO ADOPT RULES AND PROMULGATE REGULATIONS TO ACCOMPLISH THE PURPOSES OF THIS ARTICLE.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act is known and may be cited as the “Indoor Mold Remediation Act”.

SECTION 2. Chapter 40, Title 27 of the 1976 Code is amended by adding:

“Article 11

Indoor Mold Remediation

Section 27‑40‑1100. For purposes of this article, the term:

(1) ‘Department’ means the Department of Health and Environmental Control.

(2) ‘Director’ means the Director of the Department of Health and Environmental Control or his designee.

(3) ‘Dwelling unit’ means a building or structure used or designed to be used, in whole or in part, as a living or sleeping place for one or more persons.

(4) ‘Indoor mold assessment professional’ means an indoor mold assessor certified and licensed by the department in accordance with Section 27‑40‑1120.

(5) ‘Indoor mold’ means living or dead fungi or related products or parts, including spores hyphae, and mycotoxins, on an interior surface of a building, including common spaces, utility spaces, HVAC, or other systems.

(6) ‘Indoor mold contamination’ means indoor mold at or above the threshold established by Section 27‑40‑1110.

(7) ‘Indoor mold remediation professional’ means a person certified and licensed by the department in accordance with this article to clean and remove indoor mold.

(8) ‘Professional indoor mold assessment’ means an indoor mold assessment conducted by an indoor mold assessment professional.

(9) ‘Professional indoor mold remediation’ means an indoor mold remediation conducted by an indoor mold remediation professional.

Section 27‑40‑1110. (A) Consistent with applicable U.S. Environmental Protection Agency or U.S. Department of Labor, Occupational Safety and Health Administration guidelines and regulations relating to the assessment and remediation of mold, the director shall:

(1) set a threshold level of indoor mold contamination that requires professional indoor mold remediation at residential properties;

(2) establish scientific and objective methods to be used by individuals certified by the department when conducting an indoor mold assessment;

(3) establish minimum performance standards and work practices for conducting professional indoor mold remediation in the State; and

(4) establish guidelines for the removal of indoor mold below the threshold set by this section.

(B) When professional indoor mold remediation is required after a professional indoor mold assessment found indoor mold contamination at a property, the director may require the property owner to provide a remediation report from an indoor mold remediation professional to the tenant and to the department.

Section 27‑40‑1120. (A)(1) The department shall issue licenses and may issue certifications for indoor mold assessment and remediation in the State.

(2) In licensing a person to conduct indoor mold assessment or remediation, the department may recognize certification programs of other states or independent bodies that are determined to be sufficient to ensure professional conduct of indoor mold assessment or remediation.

(B) No person shall engage in the business of residential indoor mold assessment or remediation unless the person is certified and licensed in accordance with requirements promulgated by the department.

(C) The department shall maintain a publicly available list of all certified indoor mold assessment and remediation professionals in the State.

(D) The department shall establish reasonable and necessary fees to administer this section, including fees for certifications and licenses. The fees shall be set, at a minimum, in an amount sufficient to recover the costs of administering this section. All fees collected under this subsection shall be deposited into the Indoor Mold Assessment and Remediation Fund established by Section 27‑40‑1150.

Section 27‑40‑1130. (A) A residential property owner who receives written or electronic notice from a tenant that indoor mold or suspected indoor mold exists in the dwelling unit or in a common area of the property shall inspect the property within seven days and remediate the condition in accordance with this section within thirty days of the inspection unless a shorter timeframe is ordered by a court or the department.

(B) Where professional indoor mold remediation is not required, a residential property owner notified of indoor mold by a tenant shall clean and remove the indoor mold from the contaminated surface in accordance with the guidelines established under Section 27‑40‑1110(A)(4). Failure of the department to issue guidelines shall not excuse the residential property owner from the obligation to clean and remove visible indoor mold from the contaminated surface.

(C) If a residential property owner knows or has reason to know that indoor mold contamination exists in a tenant’s dwelling unit or in a common area of the property, the residential property owner shall cause the mold to be remediated by an indoor mold remediation professional.

(D) The provisions of this section may be enforced pursuant to Section 27‑40‑1140.

Section 27‑40‑1140. (A) In a private cause of action, claim, or defense by a tenant against a residential property owner for a violation of this article:

(1) A professional indoor mold assessment finding indoor mold contamination in a tenant’s dwelling unit or a common area of the property shall create a rebuttable presumption of a violation of the property owner’s obligation to maintain the property free from defective surface conditions. To establish the presumption, the tenant must demonstrate that the property owner received a professional indoor mold assessment in written or electronic form that determined that indoor mold contamination existed in the tenant’s dwelling unit.

(2) When ruling in favor of a tenant based on a professional mold assessment, the court shall have discretion to reimburse indoor mold assessment costs and award attorney fees and court costs to the tenant. The court may award treble damages to a tenant when:

(a) the tenant discovered the indoor mold;

(b) a professional indoor mold assessment determined that indoor mold contamination existed in the tenant’s dwelling unit;

(c) the residential property owner received the indoor mold assessment in written or electronic form;

(d) the residential property owner did not remediate the indoor mold within sixty days; and

(e) the court finds that the residential property owner acted in bad faith.

(B) In issuing a notice of violation to a property owner for failure to maintain the property free from defective surface conditions, the department shall have discretion to rely upon a professional indoor mold assessment.

Section 27‑40‑1150. (A) There is established a special fund, the Indoor Mold Assessment Fund, which shall be administered by the department in accordance with this section.

(B) The fund shall consist of the revenue from the fees collected in accordance with Section 27‑40‑1120(D) and any other money accepted for the benefit of the fund. The fund may be supplemented by funds appropriated by the General Assembly.

(C)(1) The fund shall be used to administer the certification and licensing programs and may be used to administer grants issued under this section.

(2) Where there are funds in excess of the amount needed to administer the certification and licensing programs, those funds shall be used to provide financial assistance grants to:

(a) low‑income residents for the purpose of having a professional mold assessment conducted in their premises, in the event that the owner of the resident’s property fails to comply with the requirements of this article; and

(b) residential property owners without financial means, as determined by the department, to comply with the requirements of this article.

(D)(1) The money deposited into the fund, and any interest earned, shall not revert to the general fund at the end of a fiscal year, or at any other time.

(2) Subject to authorization in an approved budget and financial plan, any funds appropriated in the fund shall be continually available without regard to fiscal year limitation.

Section 27‑40‑1160. Nothing in this article is intended to, or does, create a private right of action against the government of this State or its officers, employees, agents, representatives, contractors, successors, and assigns based upon compliance or noncompliance with its provisions. No person or entity may assert any claim or right as a beneficiary or protected class under this article in any civil, criminal, or administrative action against this State.

Section 27‑40‑1170. The remedies provided under this article do not supplant rights and remedies that may be available against property owners and other liable parties under the common law.

Section 27‑40‑1180. The department is authorized to adopt rules and promulgate regulations to accomplish the purposes of this article. The rules and regulations must be promulgated in accordance with the South Carolina Administrative Procedures Act.”

SECTION 3. This act takes effect upon approval by the Governor.

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