

2007 BILL

1 **AN ACT** *to renumber* 254.30; *to amend* 20.435 (1) (gm); and *to create* 250.041
2 (1) (dm), 254.115 (1) (bm) and 254.24 of the statutes; **relating to:** licensure and
3 other regulation of mold assessors and mold remediators, granting
4 rule-making authority, requiring the exercise of rule-making authority,
5 making appropriations, and providing penalties.

Analysis by the Legislative Reference Bureau

Effective January 1, 2010, this bill establishes requirements for licensure by the Department of Health and Family Services (DHFS) of mold assessors and mold remediators for the performance of mold assessment and mold remediation, as defined in the bill. DHFS must issue biennial licenses and renewals of these licenses as mold assessors or mold remediators to individuals who submit applications, pay specified fees, and meet certain statutory requirements and DHFS rules requirements.

The bill specifies requirements for the performance of mold assessment and mold remediation, but exempts from these requirements routine cleaning and mold assessment or mold remediation activities performed by residential property owners on their residences or by maintenance staff for property owners who were not hired for mold treatment. DHFS must promulgate rules to specify, among other things, the scope of licensure activity, requirements for licensure, standards for continuing education requirements, practice standards, and information to be contained in written reports that mold assessors must provide to persons for whom they perform

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services. Further, the bill requires DHFS, among other things, to develop and administer examinations for licensure, maintain a publicly accessible registry of licensed mold assessors and mold remediators, and periodically conduct inspections. Annually, beginning January 1, 2011, DHFS must submit a report to the legislature and the governor specifying the number of current licenses, measures taken by DHFS to disseminate information about licensees, and mold assessment and mold remediation education and research conducted in the previous year and any proposed by DHFS in the ensuing year.

The bill specifically prohibits certain actions by mold assessors, mold remediators, and employers or contractors of mold assessors and mold remediators, including offering compensation, inducement, or reward for the referral of business, and prohibits performance after license expiration of a mold assessment or mold remediation activity that requires licensure. DHFS must investigate complaints concerning the manner in which a mold assessment or mold remediation was conducted or concerning licensure of a mold assessor or mold remediator. Lastly, the bill specifies disciplinary actions for violations, including assessments by DHFS of costs of investigations, imposition of forfeitures, and cease and desist orders.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 20.435 (1) (gm) of the statutes is amended to read:

2 20.435 (1) (gm) *Licensing, review and certifying activities; fees; supplies and*
3 *services.* The amounts in the schedule for the purposes specified in ss. 146.50 (8),
4 252.23, 252.24, 252.245, 254.176, 254.178, 254.179, 254.20 (5) and (8), 254.24, 254.31
5 to 254.39, 254.41, 254.47, 254.61 to 254.88, and 255.08 (2) and ch. 69, for the purchase
6 and distribution of medical supplies and to analyze and provide data under s. 250.04.
7 All moneys received under ss. 146.50 (5) (f) and (8) (d), 250.04 (3m), 252.23 (4) (a),
8 252.24 (4) (a), 252.245 (9), 254.176, 254.178, 254.181, 254.20 (5) and (8), 254.24 (4)
9 (a) 2. and (b) 2., (5) (a), and (11) (b). 254.31 to 254.39, 254.41, 254.47, 254.61 to 254.88,
10 and 255.08 (2) (b) and ch. 69, other than s. 69.22 (1m), and as reimbursement for
11 medical supplies shall be credited to this appropriation account.

12 **SECTION 2.** 250.041 (1) (dm) of the statutes is created to read:

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1 250.041 (1) (dm) A license under s. 254.24 (4) (a) or (b).

2 **SECTION 3.** 254.115 (1) (bm) of the statutes is created to read:

3 254.115 (1) (bm) Licensure under s. 254.24 (4) (a) or (b).

4 **SECTION 4.** 254.24 of the statutes is created to read:

5 **254.24 Mold assessment and mold remediation. (1) DEFINITIONS.** In this
6 section:

7 (a) “Hyphae” means threadlike vegetative structures that make up the
8 mycelium of a fungus.

9 (b) “Mold” means a saprophytic or parasitic spore-producing organism of the
10 biological taxonomy kingdom Fungi, including spores, hyphae, and mycotoxins.

11 (c) “Mold assessment” means an inspection, investigation, or survey of a
12 dwelling or other structure to determine and evaluate the presence, concentration,
13 and identification of mold, and includes visual observation, the identification of all
14 sources of moisture contributing to contamination, and the development of a mold
15 management plan for the abatement and mitigation of mold. “Mold assessment” may
16 include moisture-related measurements, surface sampling, air quality testing, air
17 pressure and transport testing, home performance forensic testing, infrared
18 imaging, and any associated laboratory analysis.

19 (d) “Mold remediation” means the removal, cleaning, sanitizing, demolition, or
20 other treatment of mold or of a mold-contaminated structure that is in accordance
21 with a mold management plan or remediation protocol, including activities to
22 prevent mold or mold contaminated matter that was not intentionally grown.

23 (e) “Mycotoxin” means a substance, toxic to humans, that is produced by a
24 fungus, especially a mold.

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1 (f) “Spore” means a primitive, usually unicellular dormant or reproductive
2 body produced by a fungus.

3 (2) POWERS AND DUTIES OF DEPARTMENT. The department shall do all of the
4 following:

5 (a) Promulgate rules that do all of the following:

6 1. Specify the scope and context of mold–related work for which a license under
7 this section is required.

8 2. Specify educational or fitness requirements for licensure for performance of
9 mold assessment and for licensure for performance of mold remediation.

10 3. Specify reasonable standards for continuing education requirements for
11 licensed mold assessors and mold remediators.

12 4. Specify standards for licensed mold assessors and mold remediators in other
13 states to practice as licensed mold assessors and mold remediators in this state.

14 5. Specify a code of professional conduct for performance of mold assessment
15 and mold remediation.

16 6. Specify standards for conducting a mold assessment and mold remediation,
17 inspecting a dwelling or other structure after completion of mold remediation, and
18 verifying satisfactory mold remediation.

19 7. Specify qualification requirements and accreditation of trainers for licensure
20 of mold assessors and mold remediators and for continuing education for licensed
21 mold assessors and mold remediators.

22 8. Specify the conditions of a grace period between a mold assessor or mold
23 remediator license number change and its required correction on any printed matter
24 or marketing or advertising medium required under sub. (6).

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1 9. Specify information that the holder of a mold assessor license must provide
2 in a written report under sub. (6) (a) 3., including all of the following:

- 3 a. The nature and location of excess moisture accumulation or water intrusion.
4 b. The location and extent of any mold contamination.
5 c. Information with respect to the assessment site, including previous
6 contamination.
7 d. Observations resulting from a visual assessment of the site.
8 e. Quality control and quality assurance procedures.
9 f. Results, in detail, of the mold assessment.
10 g. Recommendations for correcting excess moisture sources and related
11 structural or mechanical problems, for thoroughly cleaning and removing mold
12 growth and related contamination, and for addressing any other objectives.

13 10. Specify factors that the department shall consider in determining whether
14 a forfeiture is to be imposed under sub. (11) (c) 1.

15 11. Define “good cause” for the purposes of sub. (11) (a) 6.

16 (b) Develop and administer an examination for the licensure of mold assessors
17 and mold remediators.

18 (c) Issue, renew, and reinstate licenses for mold assessment and mold
19 remediation, under the requirements of subs. (4) and (6).

20 (d) Maintain a publicly accessible registry of all licensed mold assessors and
21 mold remediators and update the registry periodically.

22 (e) Specify the length of time and the manner by which mold assessors and mold
23 remediators shall retain records of mold assessment and mold remediation projects.

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1 (f) Conduct a statewide education and outreach program regarding the health
2 implications of mold growth in indoor environments, including methods to recognize,
3 prevent, and mitigate mold occurrence.

4 (g) Conduct inspections periodically, as necessary to ensure compliance with
5 this section.

6 (h) Periodically review continuing education programs for licensed mold
7 assessors and mold remediators to ensure quality and equitable availability
8 statewide.

9 **(3)** MOLD ASSESSOR AND MOLD REMEDIATOR; LICENSE REQUIRED. No person may
10 perform a mold assessment or advertise or otherwise hold himself or herself out as
11 a mold assessor, unless he or she has a license issued under sub. (4) (a), or a renewal
12 of such a license. No person may perform mold remediation or advertise or otherwise
13 hold himself or herself out as a mold remediator, unless he or she has a license issued
14 under sub. (4) (b), or a renewal of such a license.

15 **(4)** MOLD ASSESSOR OR MOLD REMEDIATOR; LICENSURE. (a) *Mold assessor*: An
16 applicant for licensure as a mold assessor shall be at least 18 years of age and be a
17 U. S. citizen or an alien lawfully admitted for permanent residence or otherwise
18 permanently residing in the United States under color of law. Subject to sub. (11) (a)
19 and (d), the department shall issue a biennial license, other than a license renewal,
20 as a mold assessor to an applicant who does all of the following:

21 1. Submits an application for the license to the department on a form provided
22 by the department.

23 2. Pays a fee of \$53.

24 3. Submits evidence satisfactory to the department that at least one of the
25 following applies:

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1 a. The applicant has completed a course of study in mold assessment that is
2 approved by the department.

3 b. The applicant has satisfied a qualification other than as specified under
4 subd. 3. a., as determined by the department.

5 4. Submits evidence satisfactory to the department that all of the following
6 apply:

7 a. The applicant has passed an examination that the department develops.

8 b. The applicant has insurance coverage for workers compensation, liability,
9 and property damage, in types and amounts required by the department.

10 c. The applicant demonstrates financial responsibility, including an acceptable
11 credit history and limits of bondability and credit, as determined by the department.

12 d. The applicant complies with the educational and fitness requirements for
13 performance of mold assessment promulgated as rules by the department under sub.
14 (2) (a) 2.

15 (b) *Mold remediator*. An applicant for licensure as a mold remediator shall be
16 at least 18 years of age and be a U. S. citizen or an alien lawfully admitted for
17 permanent residence or otherwise permanently residing in the United States under
18 color of law. Subject to sub. (11) (a) and (d), the department shall issue a biennial
19 license, other than a license renewal, as a mold remediator to an applicant who does
20 all of the following:

21 1. Submits an application for the license to the department on a form provided
22 by the department.

23 2. Pays a fee of \$53.

24 3. Submits evidence satisfactory to the department that all of the following
25 apply:

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1 a. The applicant has completed a course of study in mold remediation that is
2 approved by the department.

3 b. The applicant has passed successful completion of an examination that the
4 department develops.

5 c. The applicant has insurance coverage for worker's compensation, liability,
6 and property damage, in types and amounts required by the department.

7 d. The applicant demonstrates financial responsibility, including an acceptable
8 credit history and limits of bondability and credit, as determined by the department.

9 e. The applicant complies with the educational and fitness requirements for
10 performance of mold remediation promulgated as rules by the department under
11 sub. (2) (a) 2.

12 **(5) LICENSE AMENDMENT, RENEWAL, AND EXPIRATION.** (a) A licensed mold assessor
13 or mold remediator shall file an amendment to his or her licensure within 20 days
14 after any change occurs in the information required under sub. (4) (a) or (b), as
15 applicable. The department may not require a fee for the filing of a license
16 amendment under this paragraph.

17 (b) 1. The department shall give a notice of renewal to each holder of a license
18 under this section at least 30 days prior to the renewal date of the license. Notice may
19 be mailed to the last address provided to the department by the licensee or may be
20 given by electronic transmission. Failure to receive a notice of renewal is not a
21 defense in any disciplinary proceeding against the holder or in any proceeding
22 against the holder for practicing without a license. Failure to receive a notice of
23 renewal does not relieve the holder from the obligation to pay a penalty for late
24 renewal under subd. 5.

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1 2. An application for renewal of a mold assessor license or a mold remediator
2 license shall be submitted to the department on a form provided by the department
3 on or before January 1 of each even-numbered year and shall include a renewal fee
4 of \$53.

5 3. Except as provided in subd. 4., the department may not renew a mold
6 assessor or mold remediator license unless the applicant certifies that he or she has
7 completed, during the preceding 2-year licensure period, at least 24 hours of
8 continuing education programs or courses that meet standards promulgated as rules
9 by the department under sub. (2) (a) 3.

10 4. Subdivision 3. does not apply to an applicant who applies to renew a license
11 that expires on the first expiration date after initial issuance of the license.

12 5. If the department does not receive an application to renew a mold assessor
13 or mold remediator license before the renewal date specified in subd. 2., the applicant
14 for renewal may restore the license by complying with the requirements of this
15 paragraph within 30 days after the renewal date specified in subd. 1. and paying a
16 late renewal fee of \$100.

17 (c) A mold assessor license or a mold remediator license that is not timely
18 renewed under par. (b) is expired.

19 **(6) REQUIREMENTS FOR PERFORMANCE OF MOLD ASSESSMENT OR MOLD REMEDIATION.**

20 (a) A holder of a mold assessor license shall, in the performance of mold assessment,
21 do all of the following:

22 1. Affix his or her signature and mold assessor license number to each
23 document that is prepared or approved for use by the holder of the mold assessor
24 license in connection with a mold assessment project and to each offer, bid, or
25 contract submitted to a mold assessment client or potential client.

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1 2. Except during a grace period as provided in rules promulgated by the
2 department, ensure that his or her mold assessor license number is included in any
3 marketing or advertising medium for his or her mold assessment services.

4 3. If performing mold assessment services for compensation, provide to each
5 person for whom the services are performed a written report that satisfies
6 requirements promulgated by the department by rule.

7 (b) A holder of a mold assessor license may not be required to provide an
8 estimate related to the cost of repair of an assessed property.

9 (c) A holder of a mold remediator license shall, in the performance of mold
10 remediation, do all of the following:

11 1. Affix his or her signature and mold remediator license number to each
12 document that is prepared or approved for use by the holder of the mold remediator
13 license in connection with a mold remediation project and to each offer, bid, or
14 contract submitted to a mold remediation client or potential client.

15 2. Except during a grace period as provided in rules promulgated by the
16 department, ensure that his or her mold remediator license number is included in
17 any marketing or advertising medium for his or her mold remediation services.

18 3. Provide a written report of any mold remediation performed to each person
19 for which he or she performs mold remediation.

20 **(7) INAPPLICABILITY.** This section does not apply to any of the following:

21 (a) Routine cleaning that is not conducted for purposes of mold remediation.

22 (b) Mold assessment or mold remediation activities performed by an owner of
23 residential property on his or her residence or by maintenance staff for a property
24 who are operating at the direction of the property owner or of the board of directors
25 of a corporation that controls the property. In this paragraph, “maintenance staff”

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1 are permanent full-time or part-time staff who were not hired specifically for the
2 treatment of mold.

3 (c) Mold remediation activities performed by a tenant on rental property that
4 is the tenant's residence.

5 **(8) ANNUAL REPORT.** Beginning January 1, 2011, and annually by January 1
6 thereafter, the department shall provide to the legislature under s. 13.172 (3) and to
7 the governor a report that specifies all of the following:

8 (a) The number of individuals currently licensed by the department under this
9 section.

10 (b) Measures taken by the department to disseminate information about
11 holders of licenses as mold assessors or mold remediators so as to better protect the
12 public.

13 (c) Any mold assessment and mold remediation education and research
14 conducted in the previous year and any proposed to be conducted by the department
15 in the ensuing fiscal year.

16 **(9) PROHIBITED ACTS.** (a) No licensed mold assessor or employer or contractor
17 of a mold assessor may do any of the following:

18 1. Perform or offer to perform a mold assessment that is not in compliance with
19 the requirements of this section or of rules promulgated under this section.

20 2. Perform or offer to perform mold remediation to a structure on which the
21 licensed mold assessor or employer or contractor of the mold assessor provided a
22 mold assessment within the previous 12 months, unless the projected mold
23 remediation costs are less than \$5,000.

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1 3. Inspect for a fee any property in which the licensed mold assessor or any
2 entity that employs the licensed mold assessor, or with which the licensed mold
3 assessor contracts has a financial interest.

4 4. Accept any compensation, inducement, or reward from a licensed mold
5 remediator or any entity that employs a licensed mold remediator or with which a
6 licensed mold remediator contracts, for the referral of any business to the mold
7 remediator or the entity.

8 5. Offer any compensation, inducement, or reward to a licensed mold
9 remediator or any entity that employs a licensed mold remediator or with which a
10 licensed mold remediator contracts, for the referral of any business from the mold
11 remediator or the entity.

12 6. Accept an engagement to conduct a mold assessment under which the mold
13 assessment itself, or the fee payable for the mold assessment, is contingent upon the
14 conclusions of the mold assessment.

15 (b) No licensed mold remediator or employer or contractor of a mold remediator
16 may do any of the following:

17 1. Perform or offer to perform mold remediation that is not in compliance with
18 this section or with rules promulgated under this section.

19 2. Perform or offer to perform mold assessment to a structure on which the
20 licensed mold remediator or employer or contractor of the mold remediator provided
21 mold remediation within the previous 12 months, unless the projected mold
22 assessment costs are less than \$1,000.

23 3. Perform mold remediation for a fee on a property in which the licensed mold
24 remediator or the entity that employs the licensed mold remediator or with which
25 the licensed mold remediator contracts has a financial interest.

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1 4. Accept any compensation, inducement, or reward from a licensed mold
2 assessor or an entity that employs a licensed mold assessor or with which a licensed
3 mold assessor contracts, for the referral of any business from the mold assessor or
4 the entity.

5 5. Offer any compensation, inducement, or reward to a licensed mold assessor
6 or an entity that employs a licensed mold assessor with which a licensed mold
7 assessor contracts, for the referral of any business to the mold assessor or the entity.

8 6. Perform mold remediation without having reviewed a written report that is
9 issued by a licensed mold assessor for the property for which mold remediation is
10 intended to be performed.

11 (c) 1. No person, as specified in sub. (5) (c), whose license as a mold assessor has
12 expired may perform a mold assessment activity that requires licensure under this
13 section.

14 2. No person, as specified in sub. (5) (c), whose license as a mold remediator has
15 expired may perform a mold remediation activity that requires licensure under this
16 section.

17 **(10) INVESTIGATIONS.** (a) The department shall conduct an investigation of a
18 person or circumstance if any of the following applies:

19 1. The department receives a complaint related to any of the following:

20 a. The manner in which a mold assessment or mold remediation was conducted.

21 b. The licensure of a mold assessor or mold remediator.

22 (b) A person who is the subject of an investigation under this subsection shall
23 cooperate in the investigation, including providing assistance or relevant
24 information requested.

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1 **(11) DISCIPLINE.** (a) The department may limit, suspend, revoke, or refuse to
2 issue or renew a license issued under this section if it finds that the applicant or
3 licensee has done any of the following:

4 1. Made any false statement or given any false information in connection with
5 an application for a license or for renewal or reinstatement of a license or received
6 a license through error.

7 2. Violated this section, rules promulgated under this section, or a federal
8 statute or regulation that relates to the practice of mold assessment or mold
9 remediation, as applicable.

10 3. In connection with the performance of or otherwise relating to mold
11 assessment or mold remediation, done any of the following:

12 a. Engaged in fraud, omission of a material fact, or negligence.

13 b. Engaged in misconduct, as specified by rule by the department under sub.

14 (2) (a) 5.

15 c. Acted maliciously or in intentional disregard for the rights of another.

16 d. Provided false testimony before the department.

17 4. Knowingly conspired with a person with no license for mold assessment or
18 mold remediation to evade this section.

19 5. Has had revoked or suspended any licensure, certification, registration, or
20 permit for mold assessment or mold remediation issued by another state, for activity
21 consistent with an activity specified under this subsection.

22 6. Is incapable, for a medical reason or another good cause, of performing mold
23 assessment or mold remediation in a manner that is consistent with the health,
24 safety, or welfare of the public.

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1 7. With respect to mold assessment or mold remediation, has been convicted
2 of, or has pleaded nolo contendere or its equivalent to, criminal negligence, as defined
3 in s. 939.25 (1), or theft under s. 943.20 (1) (d).

4 (b) As a condition of a license limitation, suspension, or revocation under par.
5 (a), the department may directly assess the relevant licensee partial or all costs of
6 the department's investigation of any act by the licensee, as specified under par. (a)
7 1. to 7. The costs may include fees of investigators, stenographers, and attorneys.
8 All costs paid under this paragraph shall be credited to the appropriation account
9 under s. 20.435 (1) (gm).

10 (c) 1. In lieu of suspending or revoking a license under par. (a), the department
11 may impose a forfeiture of not less than \$1,000 nor more than \$5,000 on a person that
12 violates par. (a) 1. to 5. In determining whether a forfeiture is to be imposed for a
13 violation, the department shall consider factors that the department promulgates as
14 rules under sub. (2) (a) 10.

15 2. The department may directly assess the forfeiture provided for under subd.
16 1. If the department determines that a forfeiture should be imposed for a particular
17 violation or for failure to correct it, it shall send a notice of imposition to the alleged
18 violator. The notice shall specify the amount of the forfeiture, the statute or rule
19 alleged to have been violated, and shall inform the alleged violator of the right to
20 hearing under subd. 3.

21 3. A person may contest the imposition of a forfeiture, if any, by sending a
22 written request for hearing under s. 227.44 to the division of hearings and appeals
23 created under s. 15.103 (1). The administrator of the division may designate a
24 hearing examiner to preside over the case and recommend a decision to the
25 administrator under s. 227.46. The decision of the administrator shall be the final

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1 administrative decision. The division shall commence the hearing within 30 days of
2 receipt of the request for hearing and shall issue a final decision within 15 days after
3 the close of the hearing. Proceedings before the division are governed by ch. 227. In
4 any petition for judicial review of a decision by the division, the department, if not
5 the petitioner who was in the proceeding before the division, shall be the named
6 respondent.

7 4. All forfeitures shall be paid to the department within 10 days of notice of
8 imposition or, if the forfeiture is contested under subd. 2., within 10 days of receipt
9 of the final decision after exhaustion of administrative review, unless the final
10 decision is appealed and the order is stayed by court order. The department shall
11 remit all forfeitures paid to the secretary of administration for deposit in the school
12 fund.

13 5. The attorney general may bring an action in the name of the state to collect
14 any forfeiture imposed under this paragraph if the forfeiture has not been paid
15 following the exhaustion of all administrative and judicial reviews. The only issue
16 to be contested in any such action shall be whether the forfeiture has been paid.

17 (d) 1. The department may issue a license under sub. (4) (a) or (b) to a qualified
18 applicant, regardless of whether the applicant has previously been subject to license
19 suspension or revocation under par. (a) or imposition of a forfeiture under par. (c),
20 except that the department may refuse to issue a new license for an applying former
21 licensee whose license is revoked under par. (a), for a period of 12 months from the
22 date of the revocation.

23 2. An applying former licensee whose license is revoked under par. (a) shall
24 complete the course of study specified under sub. (4) (a) 3. a. or (b) 3. a., as applicable,
25 before license issuance is made under subd. 1.

