

SENATE, No. 460

STATE OF NEW JERSEY

218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

Sponsored by:

Senator ROBERT W. SINGER

District 30 (Monmouth and Ocean)

Senator THOMAS H. KEAN, JR.

District 21 (Morris, Somerset and Union)

SYNOPSIS

Creates the “Mold Safe Housing Act.”

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning mold remediation in rental premises,
2 supplementing Title 52 of the Revised Statutes and amending
3 various parts of the statutory law.
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 Assembly Bill No.
18 1007 of 2014).
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 requiring
23 the issuance of a certificate of occupancy, certificate of inspection
24 or other documentary certification of compliance with laws and
25 regulations relating to safety, healthfulness and upkeep of the
26 premises, no such certificate shall issue until the municipal officer
27 or agency responsible for its issuance has received a certification
28 that the building has been inspected for and found free of any
29 visible or detectable indications of the substantial presence of mold.

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

43 4. (New section) a. A tenant residing in rental housing who
44 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 which
12 will require testing to determine the efficacy of the mold removal
13 shall be performed by persons certified to remediate mold in
14 accordance with P.L. , c. (C.) (pending before the
15 Legislature as Assembly Bill No. 1007 of 2014).

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
23 Affairs 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
41 of 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
23 agency are not paid as and when due, the unpaid balance thereof
24 and all interest accrued thereon, together with attorney's fees and
25 costs, 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, c.323
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
41 read as follows:

42 15. No person licensed as a home inspector pursuant to **【this**
43 **act】** 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 Assembly Bill No.
2 1007 of 2014).

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
8 and restrictions or other instruments of creation, the association
9 may do all that it is legally entitled to do under the laws applicable
10 to its 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
15 for the resolution of disputes between individual unit owners and
16 the 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,
22 no 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
31 P.L.1967, c.76 (C.55:13A-1 et seq.) shall have the following
32 respective meanings for the purposes thereof, except in those
33 instances where the context clearly indicates otherwise:

34 (a) The term "act" shall mean P.L.1967, c.76 (C.55:13A-1 et
35 seq.), any amendments or supplements thereto, and any rules and
36 regulations promulgated thereunder.

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

40 (c) (Deleted by amendment, P.L.2013, c.253.)

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

43 (e) (Deleted by amendment.)

44 (f) The term "commissioner" shall mean the Commissioner of
45 Community Affairs.

46 (g) The term "department" shall mean the Department of
47 Community Affairs.

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

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

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

23 This definition shall also mean and include any hotel, motor
24 hotel, motel, or established guesthouse, which is commonly
25 regarded as a hotel, motor hotel, motel, or established guesthouse,
26 as the case may be, in the community in which it is located;
27 provided, that this definition shall not be construed to include any
28 building or structure defined as a multiple dwelling in P.L.1967,
29 c.76 (C.55:13A-1 et seq.), registered as a multiple dwelling with the
30 Commissioner of Community Affairs as hereinafter provided, and
31 occupied or intended to be occupied as such nor shall this definition
32 be construed to include a rooming house or a boarding house as
33 defined in the "Rooming and Boarding House Act of 1979,"
34 P.L.1979, c.496 (C.55:13B-1 et al.) or, except as otherwise set forth
35 in P.L.1987, c.270 (C.55:13A-7.5, 55:13A-7.6, 55:13A-12.1,
36 55:13A-13.2), any retreat lodging facility, as defined in this section.

37 (k) The term "multiple dwelling" shall mean any building or
38 structure of one or more stories and any land appurtenant thereto,
39 and any portion thereof, in which three or more units of dwelling
40 space are occupied, or are intended to be occupied by three or more
41 persons who live independently of each other. This definition shall
42 also mean any group of ten or more buildings on a single parcel of
43 land or on contiguous parcels under common ownership, in each of
44 which two units of dwelling space are occupied or intended to be
45 occupied by two persons or households living independently of
46 each other, and any land appurtenant thereto, and any portion
47 thereof. This definition shall not include:

1 (1) any building or structure defined as a hotel in P.L.1967, c.76
2 (C.55:13A-1 et seq.), or registered as a hotel with the Commissioner
3 of Community Affairs as hereinafter provided, or occupied or
4 intended to be occupied exclusively as such;

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

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

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

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

36 (n) The term "continuing violation" shall mean any violation of
37 P.L.1967, c.76 (C.55:13A-1 et seq.) or any regulation promulgated
38 thereunder, where notice is served within two years of the date of
39 service of a previous notice and where violation, premise and
40 person cited in both notices are substantially identical.

41 (o) The term "project" shall mean a group of buildings subject to
42 the provisions of P.L.1967, c.76 (C.55:13A-1 et seq.), which are or
43 are represented to be under common or substantially common
44 ownership and which stand on a single parcel of land or parcels of
45 land which are contiguous and which group of buildings is named,
46 designated or advertised as a common entity. The contiguity of
47 such parcels shall not be adversely affected by public rights-of-way
48 incidental to such buildings.

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

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

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

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

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

29 (u) "Substantial presence of mold" means the visible or
30 detectable presence of mold growing on interior surfaces or in
31 ventilation ducts, in such amounts as to raise concerns for health of
32 the residents of the building, in accordance with standards
33 promulgated by the Department of Community Affairs pursuant to
34 P.L. , c. (C.) (pending before the Legislature as Assembly
35 Bill No. 1007 of 2014).

36 (cf: P.L.2013, c.253, s.53)

37

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

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

47 Any such regulations issued and promulgated by the
48 commissioner pursuant to this section shall provide standards and

- 1 specifications for such maintenance materials, methods and
2 techniques, fire warning and extinguisher systems, elevator
3 systems, emergency egresses, and such other protective equipment
4 as the commissioner shall deem reasonably necessary to the health,
5 safety and welfare of the occupants or intended occupants of any
6 units of dwelling space in any hotel or multiple dwelling, including
7 but not limited to:
- 8 (a) Structural adequacy ratings;
 - 9 (b) Methods of egress, including fire escapes, outside fireproof
10 stairways, independent stairways, and handrails, railings, brackets,
11 braces and landing platforms thereon, additional stairways, and
12 treads, winders, and risers thereof, entrances and ramps;
 - 13 (c) Bulkheads and scuttles, partitions, walls, ceilings and
14 floors;
 - 15 (d) Garbage and refuse collection and disposal, cleaning and
16 janitorial services, repairs, and extermination services;
 - 17 (e) Electrical wiring and outlets, and paints and the composition
18 thereof;
 - 19 (f) Doors, and the manner of opening thereof;
 - 20 (g) Transoms, windows, shafts and beams;
 - 21 (h) Chimneys, flues and central heating units;
 - 22 (i) Roofing and siding materials;
 - 23 (j) Lots, yards, courts and garages, including the size and
24 location thereof;
 - 25 (k) Intakes, open ducts, offsets and recesses;
 - 26 (l) Windows, including the size and height thereof;
 - 27 (m) Rooms, including the area and height thereof, and the
28 permissible number of occupants thereof;
 - 29 (n) Stairwells, skylights and alcoves;
 - 30 (o) Public halls, including the lighting and ventilation thereof;
 - 31 (p) Accessory passages to rooms;
 - 32 (q) Cellars, drainage and air space;
 - 33 (r) Water-closets, bathrooms and sinks;
 - 34 (s) Water connections, including the provision of drinking and
35 hot and cold running water;
 - 36 (t) Sewer connections, privies, cesspools, and private sewers;
 - 37 (u) Rain water and drainage conductors;
 - 38 (v) Entrances and ramps; **[and]**
 - 39 (w) Presence of lead-based paint hazards in multiple dwellings
40 and in single-family and two-family dwellings, exclusive of owner-
41 occupied dwelling units, subject to P.L.2003, c.311 (C.52:27D-
42 437.1 et al.). In a common interest community, any inspection fee
43 for and violation found within a unit which is solely related to this
44 subsection shall be the responsibility of the unit owner and not the
45 homeowners' association, unless the association is the owner of the
46 unit; and
 - 47 (x) Visible substantial presence of mold on any interior surface,
48 including in ventilation ductwork, and the presence of conditions

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

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

16

17 13. This act shall take effect immediately.

18

19

20

STATEMENT

21

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

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

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