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.
AN ACT concerning mold remediation in rental premises, supplementing Title 52 of the Revised Statutes and amending various parts of the statutory law.

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

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

2. (New section) As used in this act:
“Substantial presence of mold” means the visible or detectable presence of mold growing on interior surfaces or in ventilation ducts, in such amounts as to raise concerns for the health of the residents of the building, in accordance with standards promulgated by the Department of Community Affairs pursuant to P.L. , c. (C. ) (pending before the Legislature as Assembly Bill No. 1007 of 2014).

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

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

4. (New section) a. A tenant residing in rental housing who 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.
notify the landlord of the premises, in writing, and request remediation of the mold hazard.

b. A landlord who has been notified in writing by a tenant that the tenant believes a substantial mold hazard exists shall investigate the condition within 72 hours of receiving the written notification. If any visible signs of mold on surfaces are present, the landlord shall clean and remove the mold from those surfaces in a manner consistent with the regulations promulgated by the department. Any leaking pipes, roofing or walls which are contributing to a wet condition that in turn is furthering the growth of mold shall be fixed in an expedited manner by the landlord. Any mold conditions which will require testing to determine the efficacy of the mold removal shall be performed by persons certified to remediate mold in accordance with P.L. , c. (C. ) (pending before the Legislature as Assembly Bill No. 1007 of 2014).

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

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

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

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

d. In the case of any displacement of a household from a unit of rental housing that has been found, in a final administrative or judicial determination, not to be maintained in a mold-safe condition in accordance with standards established by rule of the Department of Community Affairs, all relocation costs incurred by a public agency to relocate that household shall be paid by the owner of the rental housing to the public agency making relocation payments upon presentation to the owner by the public agency of a
statement of those relocation costs and of the date upon which the
relocation costs are due and payable.

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

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

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

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

6. (New section) Notwithstanding any other provisions of
P.L.  , c. (C. ) (pending before the Legislature as this bill), a
dwelling unit shall not be subject to inspection and evaluation or
subject to any fees for the presence of mold hazards if the unit:
is a seasonal rental unit which is rented for less than six months'
duration each year;
has been certified as having a mold-free interior by a certified
inspector; or
is occupied by the owner of the dwelling unit.

7. N.J.S.2A:18-59 is amended to read as follows:
2A:18-59. : Proceedings had by virtue of [this] article 9 of
chapter 18 of Title 2A shall not be appealable except on the ground
of lack of jurisdiction. The landlord, however, shall remain liable in a civil action for unlawful proceedings under this article.

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

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

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

2. As used in this act:

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

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

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

"Home inspector" means any person licensed as a home inspector pursuant to the provisions of [this act] P.L.1997, c.323 (C.45:8-61 et seq.).

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

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

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

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

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

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

b. engage in the practice of mold inspection or mold hazard abatement unless certified to do so pursuant to P.L.1997,
c. (C. ) (pending before the Legislature as Assembly Bill No. 1007 of 2014),
(cf: P.L.2001, c.158, s.2)

10. Section 2 of P.L.1993, c.30 (C.45:22A-44) is amended to read as follows:
   2. a. Subject to the master deed, declaration of covenants and restrictions or other instruments of creation, the association may do all that it is legally entitled to do under the laws applicable to its form of organization.
   b. The association shall exercise its powers and discharge its functions in a manner that protects and furthers the health, safety and general welfare of the residents of the community.
   c. The association shall provide a fair and efficient procedure for the resolution of disputes between individual unit owners and the association, and between unit owners, which shall be readily available as an alternative to litigation.
   d. The association may assert tort claims concerning the common elements and facilities of the development as if the claims were asserted directly by the unit owners individually.
   e. Notwithstanding any governing documents to the contrary, no association shall deny permission to a unit owner to abate the presence of mold in or around the immediate areas of the owners’ dwelling unit, provided that the association may control the implementation of mold hazard abatement in the common elements.
(cf: P.L.1993, c.30, s.2)

11. Section 3 of P.L.1967, c.76 (C.55:13A-3) is amended to read as follows:
   3. The following terms whenever used or referred to in P.L.1967, c.76 (C.55:13A-1 et seq.) shall have the following respective meanings for the purposes thereof, except in those instances where the context clearly indicates otherwise:
   (a) The term "act" shall mean P.L.1967, c.76 (C.55:13A-1 et seq.), any amendments or supplements thereto, and any rules and regulations promulgated thereunder.
   (b) The term "accessory building" shall mean any building which is used in conjunction with the main building of a hotel, whether separate therefrom or adjoining thereto.
   (c) (Deleted by amendment, P.L.2013, c.253.)
   (d) The term "bureau" shall mean the Bureau of Housing Inspection in the Department of Community Affairs.
   (e) (Deleted by amendment.)
   (f) The term "commissioner" shall mean the Commissioner of Community Affairs.
   (g) The term "department" shall mean the Department of Community Affairs.
The term "unit of dwelling space" or the term "dwelling unit" shall mean any room or rooms, or suite or apartment thereof, whether furnished or unfurnished, which is occupied, or intended, arranged or designed to be occupied, for sleeping or dwelling purposes by one or more persons, including but not limited to the owner thereof, or any of the person's or persons' servants, agents or employees, and shall include all privileges, services, furnishings, furniture, equipment, facilities and improvements connected with the use or occupancy thereof.

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

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

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

The term "multiple dwelling" shall mean any building or structure of one or more stories and any land appurtenant thereto, and any portion thereof, in which three or more units of dwelling space are occupied, or are intended to be occupied by three or more persons who live independently of each other. This definition shall also mean any group of ten or more buildings on a single parcel of land or on contiguous parcels under common ownership, in each of which two units of dwelling space are occupied or intended to be occupied by two persons or households living independently of each other, and any land appurtenant thereto, and any portion thereof. This definition shall not include:
The term "owner" shall mean the person who owns, purports to own, or exercises control of any hotel or multiple dwelling. The term "owner" shall also mean and include any person who owns, purports to own, or exercises control over three or more dwelling units within a multiple dwelling.

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

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

(o) The term "project" shall mean a group of buildings subject to the provisions of P.L.1967, c.76 (C.55:13A-1 et seq.), which are or are represented to be under common or substantially common ownership and which stand on a single parcel of land or parcels of land which are contiguous and which group of buildings is named, designated or advertised as a common entity. The contiguity of such parcels shall not be adversely affected by public rights-of-way incidental to such buildings.
(p) The term "mutual housing corporation" means a corporation not-for-profit incorporated under the laws of New Jersey on a mutual or cooperative basis within the scope of Title VI, s.607 of the "Lanham Public War Housing Act," 54 Stat.1125, 42 U.S.C. s.1501 et seq., as amended, which acquired a National Defense Housing Project pursuant to said act.

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

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

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

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

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

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

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

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

Any such regulations issued and promulgated by the commissioner pursuant to this section shall provide standards and
specifications for such maintenance materials, methods and
techniques, fire warning and extinguisher systems, elevator
systems, emergency egresses, and such other protective equipment
as the commissioner shall deem reasonably necessary to the health,
safety and welfare of the occupants or intended occupants of any
units of dwelling space in any hotel or multiple dwelling, including
but not limited to:
   (a) Structural adequacy ratings;
   (b) Methods of egress, including fire escapes, outside fireproof
   stairways, independent stairways, and handrails, railings, brackets,
braces and landing platforms thereon, additional stairways, and
treads, winders, and risers thereof, entrances and ramps;
   (c) Bulkheads and scuttles, partitions, walls, ceilings and
   floors;
   (d) Garbage and refuse collection and disposal, cleaning and
   janitorial services, repairs, and extermination services;
   (e) Electrical wiring and outlets, and paints and the composition
   thereof;
   (f) Doors, and the manner of opening thereof;
   (g) Transoms, windows, shafts and beams;
   (h) Chimneys, flues and central heating units;
   (i) Roofing and siding materials;
   (j) Lots, yards, courts and garages, including the size and
   location thereof;
   (k) Intakes, open ducts, offsets and recesses;
   (l) Windows, including the size and height thereof;
   (m) Rooms, including the area and height thereof, and the
   permissible number of occupants thereof;
   (n) Stairwells, skylights and alcoves;
   (o) Public halls, including the lighting and ventilation thereof;
   (p) Accessory passages to rooms;
   (q) Cellars, drainage and air space;
   (r) Water-closets, bathrooms and sinks;
   (s) Water connections, including the provision of drinking and
   hot and cold running water;
   (t) Sewer connections, privies, cesspools, and private sewers;
   (u) Rain water and drainage conductors;
   (v) Entrances and ramps; [and]
   (w) Presence of lead-based paint hazards in multiple dwellings
   and in single-family and two-family dwellings, exclusive of owner-
   occupied dwelling units, subject to P.L.2003, c.311 (C.52:27D-
   437.1 et al.). In a common interest community, any inspection fee
   for and violation found within a unit which is solely related to this
   subsection shall be the responsibility of the unit owner and not the
   homeowners' association, unless the association is the owner of the
   unit; and
   (x) Visible substantial presence of mold on any interior surface,
   including in ventilation ductwork, and the presence of conditions
which contribute to that mold formation in multiple dwellings and
in single-family and two-family dwellings, exclusive of owner-
occupied dwelling units, subject to P.L. 2006, c. ___ (C. ___) (pending
before the Legislature as this bill). In a condominium, cooperative,
or planned real estate development with common elements, any
mold, or condition contributing to the formation of mold, which is
not under the sole control of a unit owner and which in any manner
concerns a common element or facility, shall be the duty of the
homeowners’ association to remedy; any inspection fee for and
violation found within a unit which is solely related to a condition
caused by the owner within the individual unit shall be the sole
responsibility of that unit owner and not the homeowners’
association, unless the homeowners’ association is the owner of the
unit.

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

13. This act shall take effect immediately.

STATEMENT

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

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

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