

SENATE BILL 1067

M3, F5, N1

0lr3620
CF HB 1540

By: **Senator Patterson**

Introduced and read first time: February 28, 2020

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Environment – Mold Inspections – Standards, Reporting, and Penalties**

3 FOR the purpose of requiring the Department of the Environment, in consultation with the
4 Maryland Department of Health, the State Department of Education, the
5 Department of Housing and Community Development, and the Department of
6 General Services, to adopt certain regulations on or before a certain date establishing
7 uniform standards for mold assessment and remediation; requiring the Department
8 of the Environment to submit a certain annual indoor air quality report to the
9 Governor and the General Assembly on or before a certain date each year;
10 authorizing the Department to charge a certain fee of up to a certain amount;
11 requiring the Department to maintain a certain registry; requiring the Department
12 to develop and make available on its website and in print certain resource materials;
13 establishing penalties for a violation of the regulations adopted under this Act;
14 requiring that the penalty be assessed with consideration given to certain factors;
15 providing that each day a violation of the regulations continues is a separate
16 violation; specifying that this Act does not prevent a person from filing a certain civil
17 action or receiving a certain award; authorizing a tenant to deposit the tenant's rent
18 in an escrow account under certain circumstances; prohibiting a tenant from
19 depositing the tenant's rent in an escrow account under certain circumstances;
20 specifying that the right of a tenant to deposit rent in an escrow account does not
21 preclude the tenant from pursuing any other right or remedy available; specifying
22 the conditions under which money deposited in an escrow account must be released;
23 prohibiting a lessee from being evicted, the tenancy from being terminated, and the
24 rent from being raised for a lessee who seeks certain remedies; specifying actions
25 that are presumed to be retaliation for the lessee taking certain actions; providing
26 that certain provisions of this Act preempt certain laws or ordinances; defining
27 certain terms; and generally relating to the establishment of standards and
28 reporting requirements for mold in schools, child care centers, nursing homes,
29 assisted living facilities for the elderly, and rental dwellings.

30 BY repealing and reenacting, without amendments,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Article – Education

Section 9.5–401(a) through (c)

Annotated Code of Maryland

(2018 Replacement Volume and 2019 Supplement)

BY adding to

Article – Environment

Section 6–1601 and 6–1602 to be under the new subtitle “Subtitle 16. Mold”

Annotated Code of Maryland

(2013 Replacement Volume and 2019 Supplement)

BY adding to

Article – Real Property

Section 8–211.2

Annotated Code of Maryland

(2015 Replacement Volume and 2019 Supplement)

Preamble

WHEREAS, There are State laws to protect Marylanders from the impact of exposure to the environmental hazards of radon, asbestos, lead–based paint, and methane when they are found in the home, but not to protect Marylanders from the harmful effects of exposure to mold; and

WHEREAS, The health effects caused by exposure to mold include chronic lung disease, immune system deficiencies, increased risk of infection, skin rash, coughing, wheezing, and burning eyes; and

WHEREAS, Currently, 15 states and the District of Columbia have indoor air quality mold regulations, including states with high levels of moisture and humidity such as Florida and Louisiana; now, therefore,

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Education

9.5–401.

(a) In this subtitle the following words have the meanings indicated.

(b) “Child” means an individual under the age of 16 years.

(c) (1) “Child care center” means an agency, institution, or establishment that, for part or all of a day, or on a 24–hour basis on a regular schedule, and at least twice a week, offers or provides child care to children who do not have the same parentage except as otherwise provided for in law or regulation.

(2) “Child care center” shall include a nonpublic nursery school in which an instructional program is offered or provided for children who are under the age of 5 years.

(3) “Child care center” does not include:

(i) A nonpublic kindergarten in which an instructional program is offered or provided for children who are at least 5 years old;

(ii) A nonpublic elementary school in which an instructional program is offered or provided for children who are in grades 1 through 8;

(iii) A child care home, a child care institution, or other child care facility that offers or provides a residential placement for a child and is established, licensed, or registered under this title, Title 9 of the Human Services Article, or Title 10 of the Health – General Article; or

(iv) A family child care home or large family child care home that is required to be registered or is registered under this title.

Article – Environment

SUBTITLE 16. MOLD.

6–1601.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) “CHILD CARE CENTER” HAS THE MEANING STATED IN § 9.5–401 OF THE EDUCATION ARTICLE.

(C) “DAMPNESS” MEANS ABNORMAL MOISTURE IN THE INTERIOR OF A FACILITY, INCLUDING:

(1) EXCESSIVE HUMIDITY LEVELS;

(2) LINGERING CONDENSATION;

(3) LEAKS;

(4) WATER DAMAGE; AND

(5) MUSTY OR MOLDY ODORS.

(D) "HABITABLE" MEANS A FACILITY THAT IS NOT LIKELY TO BE HARMED BY MOLD HAZARDS.

(E) "LICENSED CHILD CARE CENTER" MEANS A CHILD CARE CENTER THAT IS LICENSED UNDER TITLE 9.5, SUBTITLE 4 OF THE EDUCATION ARTICLE.

(F) (1) "MOLD" MEANS A FORM OF MULTICELLULAR FUNGI THAT LIVES:

(I) ON PLANT OR ANIMAL MATTER; OR

(II) IN AN INDOOR ENVIRONMENT.

(2) "MOLD" INCLUDES:

(I) ALTERNARIA;

(II) ASPERGILLUS;

(III) CLADOSPORIUM;

(IV) FUSARIUM;

(V) MEMNONIELLA;

(VI) MUCOR;

(VII) PENICILLIUM;

(VIII) STACHYBOTRYS CHARTARUM; AND

(IX) TRICHODERMA.

(G) "MOLD HAZARD" MEANS:

(1) A CONCENTRATION OF MOLD OR MOLD SPORES THAT EXCEEDS THE STANDARDS ESTABLISHED UNDER § 6-1602(B)(1) OF THIS SUBTITLE; OR

(2) AN ADVERSE HUMAN HEALTH EFFECT ASSOCIATED WITH MOLD EXPOSURE, INCLUDING:

(I) ALLERGIC REACTIONS;

1 (II) ASTHMA; AND

2 (III) OTHER RESPIRATORY COMPLAINTS.

3 (H) "MOLD REMEDIATION" MEANS:

4 (1) REMOVING, CLEANING, SANITIZING, DEMOLISHING, OR ANY
5 OTHER TREATMENT PERFORMED TO ADDRESS A MOLD HAZARD, MOLD, OR
6 DAMPNESS; OR

7 (2) ABATEMENT OF THE UNDERLYING CAUSE OF A MOLD HAZARD,
8 MOLD, OR DAMPNESS.

9 6-1602.

10 (A) ON OR BEFORE JUNE 1, 2022, THE DEPARTMENT, IN CONSULTATION
11 WITH THE MARYLAND DEPARTMENT OF HEALTH, THE STATE DEPARTMENT OF
12 EDUCATION, THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT,
13 AND THE DEPARTMENT OF GENERAL SERVICES, SHALL ADOPT REGULATIONS
14 ESTABLISHING UNIFORM STANDARDS FOR MOLD ASSESSMENT AND REMEDIATION.

15 (B) THE REGULATIONS ADOPTED UNDER THIS SECTION SHALL:

16 (1) ESTABLISH STANDARDS FOR:

17 (I) HABITABLE DAMPNESS;

18 (II) IDENTIFYING AND EVALUATING THE PRESENCE OF MOLD,
19 INCLUDING VISIBLE MOLD INSPECTION AND TESTING;

20 (III) MOLD REMEDIATION THAT ARE AT LEAST AS STRINGENT AS
21 THE STANDARDS IN THE U.S. ENVIRONMENTAL PROTECTION AGENCY'S 2008 MOLD
22 REMEDIATION IN SCHOOLS AND COMMERCIAL BUILDINGS GUIDELINE AS REVISED
23 AND UPDATED; AND

24 (IV) BEST PRACTICES TO ELIMINATE THE RISK OF MOLD
25 HAZARDS;

26 (2) REQUIRE A LOCAL JURISDICTION TO CONDUCT AN ANNUAL MOLD
27 INSPECTION OF THE FOLLOWING FACILITIES LOCATED WITHIN THE JURISDICTION:

28 (I) PUBLIC AND PRIVATE SCHOOL FACILITIES;

(II) LICENSED CHILD CARE CENTERS;

(III) NURSING HOMES;

(IV) ASSISTED LIVING FACILITIES FOR THE ELDERLY; AND

(V) RENTAL DWELLINGS;

(3) AUTHORIZE THE MOLD INSPECTION REQUIRED UNDER ITEM (2) OF THIS SUBSECTION TO BE PERFORMED IN CONJUNCTION WITH ANOTHER INSPECTION;

(4) ESTABLISH A PROCESS FOR A THIRD-PARTY INSPECTOR TO PERFORM THE INSPECTION REQUIRED UNDER ITEM (2) OF THIS SUBSECTION, INCLUDING PROCESSES FOR:

(I) THE DEPARTMENT TO VERIFY THAT A THIRD-PARTY INSPECTOR IS QUALIFIED TO PERFORM THE MOLD INSPECTION REQUIRED UNDER ITEM (2) OF THIS SUBSECTION; AND

(II) THE ESTABLISHMENT OF A REGISTRY THAT LISTS VERIFIED THIRD-PARTY INSPECTORS;

(5) REQUIRE THE LANDLORD OF A RENTAL DWELLING TO DISCLOSE THE RESULTS OF THE MOLD INSPECTION REQUIRED UNDER ITEM (2) OF THIS SUBSECTION TO A TENANT OR PROSPECTIVE TENANT;

(6) PROHIBIT A TENANT OR PROSPECTIVE TENANT OF A RENTAL DWELLING FROM WAIVING THE DISCLOSURE REQUIREMENT UNDER ITEM (4) OF THIS SUBSECTION; AND

(7) REQUIRE, ON OR BEFORE JULY 1 EACH YEAR, BEGINNING IN 2023, A LOCAL JURISDICTION TO SUBMIT TO THE DEPARTMENT AN ANNUAL INDOOR AIR QUALITY REPORT SUMMARIZING THE RESULTS OF THE ANNUAL MOLD INSPECTIONS REQUIRED UNDER ITEM (2) OF THIS SUBSECTION.

(C) (1) (I) THE DEPARTMENT MAY CHARGE A FEE OF UP TO \$100 FOR VERIFYING A THIRD-PARTY INSPECTOR UNDER SUBSECTION (B)(4) OF THIS SECTION.

(II) THE DEPARTMENT SHALL MAINTAIN THE REGISTRY ESTABLISHED UNDER SUBSECTION (B)(4) OF THIS SECTION.

1 **(2) THE DEPARTMENT SHALL DEVELOP AND MAKE AVAILABLE ON ITS**
2 **WEBSITE AND IN PRINT RESOURCE MATERIALS REGARDING MOLD HAZARDS, MOLD,**
3 **AND DAMPNESS.**

4 **(D) ON OR BEFORE DECEMBER 1 EACH YEAR, BEGINNING IN 2023, THE**
5 **DEPARTMENT SHALL SUBMIT AN ANNUAL INDOOR AIR QUALITY REPORT TO THE**
6 **GOVERNOR AND, IN ACCORDANCE WITH § 2-1257 OF THE STATE GOVERNMENT**
7 **ARTICLE, THE GENERAL ASSEMBLY ON INDOOR AIR QUALITY AND THE RESULTS OF**
8 **THE MOLD INSPECTIONS REQUIRED UNDER SUBSECTION (B)(2) AND (4) OF THIS**
9 **SECTION.**

10 **(E) (1) (I) A PERSON WHO VIOLATES A REGULATION ADOPTED UNDER**
11 **THIS SECTION IS SUBJECT TO AN ADMINISTRATIVE PENALTY OF UP TO \$250 PER**
12 **VIOLATION, NOT EXCEEDING \$10,000.**

13 **(II) THE ADMINISTRATIVE PENALTY UNDER THIS PARAGRAPH**
14 **SHALL BE ASSESSED WITH CONSIDERATION GIVEN TO:**

15 **1. THE WILLFULNESS OF THE VIOLATION AND THE**
16 **EXTENT TO WHICH THE VIOLATION WAS KNOWN TO THE VIOLATOR BUT**
17 **UNCORRECTED BY THE VIOLATOR;**

18 **2. THE EXTENT TO WHICH THE VIOLATION RESULTED IN**
19 **ACTUAL HARM TO HUMAN HEALTH;**

20 **3. THE NATURE AND DEGREE OF INJURY TO OR**
21 **INTERFERENCE WITH GENERAL WELFARE AND HEALTH; AND**

22 **4. THE EXTENT TO WHICH THE CURRENT VIOLATION IS**
23 **PART OF A RECURRENT PATTERN OF THE SAME OR SIMILAR TYPE OF VIOLATION**
24 **COMMITTED BY THE VIOLATOR.**

25 **(2) EACH DAY A VIOLATION CONTINUES CONSTITUTES A SEPARATE**
26 **OFFENSE UNDER THIS SECTION.**

27 **(3) NOTHING IN THIS SUBSECTION PREVENTS A PERSON FROM:**

28 **(I) FILING A CIVIL ACTION FOR A POTENTIAL VIOLATION OF**
29 **THE REGULATIONS ADOPTED UNDER THIS SECTION; OR**

30 **(II) RECEIVING AN AWARD GRANTED BY THE COURT IN THE**
31 **CIVIL ACTION.**

(4) A TENANT MAY DEPOSIT THE TENANT'S RENT IN AN ESCROW ACCOUNT IN ACCORDANCE WITH § 8-211.2 OF THE REAL PROPERTY ARTICLE IF A LANDLORD FAILS TO COMPLY WITH THE:

(I) REGULATIONS ADOPTED UNDER SUBSECTION (A) OF THIS SECTION; OR

(II) DISCLOSURE REQUIREMENTS UNDER SUBSECTION (B)(4) OF THIS SECTION.

(5) A LOCAL JURISDICTION, COUNTY ATTORNEY, OR MUNICIPAL ATTORNEY MAY ENFORCE THE PROVISIONS OF THIS SECTION.

Article – Real Property

8-211.2.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "DAMPNESS" HAS THE MEANING STATED IN § 6-1601 OF THE ENVIRONMENT ARTICLE.

(3) "MOLD" HAS THE MEANING STATED IN § 6-1601 OF THE ENVIRONMENT ARTICLE.

(B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION AND NOTWITHSTANDING ANY OTHER PROVISION OF LAW OR ANY AGREEMENT, WHETHER WRITTEN OR ORAL, IF A LANDLORD FAILS TO COMPLY WITH THE REQUIREMENTS UNDER § 6-1602 OF THE ENVIRONMENT ARTICLE, THE TENANT MAY DEPOSIT THE TENANT'S RENT IN AN ESCROW ACCOUNT WITH THE CLERK OF THE DISTRICT COURT FOR THE DISTRICT IN WHICH THE PREMISES ARE LOCATED.

(2) A TENANT MAY NOT DEPOSIT THE TENANT'S RENT IN AN ESCROW ACCOUNT UNDER PARAGRAPH (1) OF THIS SUBSECTION IF THE TENANT HAS NOT PROVIDED NOTICE OF A MOLD HAZARD, MOLD, OR DAMPNESS TO THE LANDLORD IN A REASONABLE MANNER.

(C) THE RIGHT OF A TENANT TO DEPOSIT RENT IN AN ESCROW ACCOUNT DOES NOT PRECLUDE THE TENANT FROM PURSUING ANY OTHER RIGHT OR REMEDY AVAILABLE TO THE TENANT AT LAW OR EQUITY.

(D) MONEY DEPOSITED IN AN ESCROW ACCOUNT SHALL BE RELEASED

1 UNDER THE FOLLOWING TERMS AND CONDITIONS:

2 (1) TO THE LESSOR ON COMPLIANCE BY THE LESSOR WITH THE
3 DISCLOSURE REQUIREMENTS AND REGULATIONS ADOPTED UNDER § 6-1602 OF THE
4 ENVIRONMENT ARTICLE; OR

5 (2) TO THE LESSEE OR ANY OTHER PERSON WHO HAS COMPLIED WITH
6 THE DISCLOSURE REQUIREMENTS AND REGULATIONS ADOPTED UNDER § 6-1602 OF
7 THE ENVIRONMENT ARTICLE ON PRESENTATION OF A BILL FOR THE REASONABLE
8 COSTS OF COMPLIANCE.

9 (E) (1) A LESSEE MAY NOT BE EVICTED, THE TENANCY MAY NOT BE
10 TERMINATED, AND THE RENT MAY NOT BE RAISED FOR A LESSEE WHO ELECTS TO
11 SEEK THE REMEDIES UNDER THIS SECTION.

12 (2) IT SHALL BE PRESUMED THAT ANY ATTEMPT TO EVICT THE
13 LESSEE, TO TERMINATE THE TENANCY, OR TO RAISE THE RENT, EXCEPT FOR
14 NONPAYMENT OF RENT, WITHIN 2 MONTHS AFTER COMPLIANCE WITH THE
15 REQUIREMENTS UNDER § 6-1602 OF THE ENVIRONMENT ARTICLE IS IN
16 RETALIATION FOR THE LESSEE'S PROCEEDING UNDER THIS SECTION AND SHALL BE
17 VOIDABLE.

18 (F) THIS SECTION SHALL PREEMPT ANY PUBLIC LOCAL LAW OR ORDINANCE
19 CONCERNING THE DEPOSIT OF RENT INTO AN ESCROW ACCOUNT BASED ON THE
20 EXISTENCE OF MOLD IN A RENTAL DWELLING UNIT IN THE STATE AND DISPOSITION
21 OF THAT RENT.

22 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June
23 1, 2020.