

California Mold Law

The new California mold disclosure law took effect January 1, 2002, but real estate sellers and prospective landlords won't have to disclose the presence of mold in homes and buildings to prospective buyers and tenants under this law until some later date, most likely January of 2004.

This change in the law will require modifications to how sellers, real estate brokers and agents do business. The property seller's transfer disclosure statement must now include mold inspections. Additionally, the California State Department of Toxic Substance Control will soon include a chapter on toxic mold in its Environmental Hazards Handbook, a reference material provided to sellers and buyers.

TEXT OF CALIFORNIA MOLD DISCLOSURE LAW

Senate Bill No. 732 CHAPTER 584 An act to amend Section 1102.6 of the Civil Code, and to add Chapter 18 (commencing with Section 26100) to Division 20 of, the Health and Safety Code, relating to toxic mold. [Approved by Governor October 5, 2001. Filed with Secretary of State October 7, 2001.]

LEGISLATIVE COUNSEL'S DIGEST SB 732, Ortiz. Toxic mold.

Existing law provides the State Department of Health Services with various powers to enforce its regulations, to promulgate regulations to protect the public health, and to enjoin and abate nuisances dangerous to public health. The department is vested with the power to perform studies, evaluate existing projects, disseminate information, and provide training programs to enforce regulations related to public health. This bill would enact the Toxic Mold Protection Act of 2001. The bill would require the department to convene a task force comprised of various individuals including, but not limited to, health officers, health and medical experts, mold abatement experts, representatives of government-sponsored enterprises, representatives from school districts or county offices of education, representatives of employees and representatives of employers, and affected consumers and affected industries including, residential, commercial, and industrial tenants, proprietors, managers or landlords, insurers, and builders, to advise the department on the development of permissible exposure limits to mold, standards for assessment of molds in indoor environments as well as alternative standards for hospitals, child care facilities, and nursing homes, standards for identification, and remediation of mold.

This bill would require the department to consider the feasibility of adopting permissible exposure limits to molds in indoor environments. If it is determined to be feasible, the department would be required to adopt, in consultation with the task force, permissible exposure limits to mold for indoor environments that avoid adverse health effects. The department would be required to report its progress on developing the permissible exposure limits for molds by July 1, 2003. This bill would require that, in the process of adopting the permissible exposure limits, the department would be required to conduct studies, consider specific delineated criteria, and consult with the task force to arrive at both permissible exposure limits to mold to avoid adverse effects on health on the general

public and alternative permissible exposure limits to avoid adverse health effects for hospitals, child care facilities, and nursing homes, whose primary business is to serve members of a subgroup that is a meaningful portion of the general population. This bill would also require the department, in consultation with the task force, to develop and adopt guidelines for the identification and the remediation of toxic molds. This bill would require that, after the adoption of permissible exposure limits to molds, the department review and revise the exposure limits at least once every 5 years and consider any new technological or treatment techniques or new scientific evidence that indicates that molds may present a different health risk than was previously determined. This bill would also require the department to develop and adopt standards for the assessment of the health threat posed by the presence of molds, both visible and invisible or hidden, in indoor environments. The department would be required to consider specific delineated criteria in developing the assessment standard including the balancing of the protection of public health with technological and economic feasibility. The department would also be authorized to adopt alternative assessment standards for hospitals, child care facilities, and nursing homes. The department would be required to report its progress on developing the assessment standards for molds by July 1, 2003. After the adoption of mold assessment standards, the department would review and revise the exposure limits at least once every 5 years and consider any new technological or treatment techniques or new scientific evidence that indicates that molds may present a different health risk than was previously determined. The bill would provide for specific protocol to allow the public to be involved in the process to determine permissible exposure limits to mold, guidelines for identification and remediation of mold, and the guidelines for the assessment of molds. This bill would require the department to develop public education materials and resources to inform the public about the health effects of molds, methods of prevention, methods of identification and remediation of mold growth, and contact information to organizations or governmental entities to assist public concerns. This bill would, except under specified circumstances, also require that any person who sells, transfers, or rents residential, commercial, or industrial real property or a public entity that owns, leases, or operates a building who knows, or in specified instances has reasonable cause to believe, that mold is present that affects the unit or building, and the mold exceeds the permissible exposure limits to molds, would be required to provide a written disclosure to potential buyers, prospective tenants, renters, landlords, or occupants of the mold conditions. However, this bill would not require a landlord, owner, seller, or transferor to conduct air or surface tests to determine whether the presence of molds exceeds the permissible exposure limits or for mold remediation. These disclosure duties and requirements would not apply until the January 1 or July 1 that occurs at least 6 months after the department adopts the requisite standards, and guidelines, as provided in the bill. This bill would authorize the enforcement of all conditions of this bill, including the disclosure provisions, by designated enforcement officers. The implementation of this bill would depend on the extent to which the department determines funds are available for its implementation.

The people of the State of California do enact as follows:

SECTION 1. Section 1102.6 of the Civil Code is amended to read:

1102.6. The disclosures required by this article pertaining to the property proposed to be

transferred are set forth in, and shall be made on a copy of, the following disclosure form:

[DISCLOSURE FORM NOT SHOWN HERE]

[Click here for SDAR Realtor® disclosure form. PDF format.](#)

SEC. 2. Chapter 18 (commencing with Section 26100) is added to Division 20 of the Health and Safety Code, to read:

CHAPTER 18. TOXIC MOLD Article 1. General Provisions

26100. This chapter shall be known, and may be cited, as the Toxic Mold Protection Act of 2001.

26101. For purposes of this chapter, the following definitions apply:

- (a) “Affect” means to cause a condition by the presence of mold in the dwelling unit, building, appurtenant structure, common wall, heating system, or ventilating and air-conditioning system that affects the indoor air quality of a dwelling unit or building.
- (b) “Authoritative bodies” means any recognized national or international entities with expertise on public health, mold identification and remediation, or environmental health, including, but not limited to, other states, the United States Environmental Protection Agency, the World Health Organization, the American Conference of Governmental Industrial Hygienists, the New York City Department of Health, the Centers for Disease Control and Prevention, and the American Industrial Hygiene Association.
- (c) “Certified Industrial Hygienist” means a person who has met the education, experience, and examination requirements of an industrial hygiene certification organization as defined in Section 20700 of the Business and Professions Code.
- (d) “Code enforcement officer” means a local official responsible for enforcing housing codes and maintaining public safety in buildings using an interdepartmental approach at the local government level.
- (e) “Department” means the State Department of Health Services, designated as the lead agency in the adoption of permissible exposure limits to mold in indoor environments, mold identification and remediation efforts, and the development of guidelines for the determination of what constitutes mold infestation.
- (f) “Indoor environments” means the affected dwelling unit or affected commercial or industrial building.
- (g) “Mold” means any form of multi-cellular fungi that live on plant or animal matter and in indoor environments. Types of mold include, but are not limited to, Cladosporium, Penicillium, Alternaria, Aspergillus, Fuarim, Trichoderma, Memmoniella, Mucor, and Stachybotryschartarum, often found in water-damaged building materials.
- (h) “Person” means an individual, corporation, company, association, partnership,

limited liability company, municipality, public utility, or other public body or institution.

(i) “Public health officer” means a local health officer appointed pursuant to Section 101000 or a local comprehensive health agency designated by the board of supervisors pursuant to Section 101275 to carry out the drinking water program.

26101.5. All standards that the department develops pursuant to this chapter shall be in accordance with existing administrative law procedures applicable to the development of regulations.

26101.7. The department shall convene a task force which shall advise the department on the development of standards pursuant to Sections 26103, 26105, 26106, 26120, and 26130. The task force shall be comprised of representatives of public health officers, environmental health officers, code enforcement officers, experts on the health effects of molds, medical experts, certified industrial hygienists, mold abatement experts, representatives of government-sponsored enterprises, representatives from school districts or county offices of education, representatives of employees and representatives of employers, and affected consumers, which include, but are not limited to, residential, commercial and industrial tenants, homeowners, environmental groups, and attorneys, and affected industries, which include, but are not limited to, residential, commercial and industrial building proprietors, managers or landlords, builders, realtors, suppliers of building materials and suppliers of furnishings, and insurers. Task force members shall serve on a voluntary basis and shall be responsible for any costs associated with their participation in the task force. The department shall not be responsible for travel costs incurred by task force members or otherwise compensating task force members for costs associated with their participation in the task force.

26102. The department shall consider the feasibility of adopting permissible exposure limits to mold in indoor environments.

26103.

(a) If the department finds that adopting permissible exposure limits to mold in indoor environments is feasible, the department, in consultation with the task force convened pursuant to Section 26101.7, shall:

(1) Adopt permissible exposure limits to mold for indoor environments that avoid adverse effects on health, with an adequate margin of safety, and avoid any significant risk to public health.

(2) Notwithstanding paragraph (1), balance the protection of public health with technological and economic feasibility when it adopts permissible exposure limits.

(3) Utilize and include the latest scientific data or existing standards adopted by authoritative bodies.

(4) Develop permissible exposure limits that target the general population.

(b) The department shall consider all of the following criteria when it adopts permissible exposure limits for molds in indoor environments:

(1) The adverse health effects of exposure to molds on the general population, including specific effects on members of subgroups that comprise a meaningful portion of the general population, which may include infants, children age 6 years and under, pregnant women, the elderly, asthmatics, allergic individuals, immune compromised individuals, or other subgroups that are identifiable as being at greater risk of adverse health effects than the general population when exposed to molds.

(2) The standards for molds, if any, adopted by authoritative bodies.

(3) The technological and economic feasibility of compliance with the proposed permissible exposure limit for molds. For the purposes of determining economic feasibility pursuant to this paragraph, the department shall consider the costs of compliance to tenants, landlords, homeowners, and other affected parties.

(4) Toxicological studies and any scientific evidence as it relates to mold.

(c) The department may develop alternative permissible exposure limits applicable for facilities, which may include hospitals, child care facilities, and nursing homes, whose primary business is to serve members of subgroups that comprise a meaningful portion of the general population and are at greater risk of adverse health effects from molds than the general population. These subgroups may include infants, children age 6 years and under, pregnant women, the elderly, asthmatics, allergic individuals, or immune compromised individuals.

(d) The department shall report to the Legislature on its progress in developing the permissible exposure limit for molds by July 1, 2003.

26104.

(a)

(1) The department shall, at the time it commences preparation of the permissible exposure limits to mold, provide notice electronically by posting on its Internet Web site a notice that informs interested persons that the department has initiated work on the permissible exposure limits to mold.

(2) The notice shall also include a brief description or a bibliography of the technical documents or other information the department has identified to date as relevant to the preparation of the permissible exposure limits.

(3) The notice shall inform persons who wish to submit information concerning exposure to molds of the name and address of the person in the department to whom the information may be sent, the date by which the information must be received in order for the department to consider it in the preparation of the permissible exposure limits, and

that all information submitted will be made available to any member of the public who makes the request.

(b) The department may amend the permissible exposure limits to molds to make the limits less stringent if the department shows clear and convincing evidence that the permissible exposure limits to molds should be made less stringent and the amendment is made consistent with Section 26103.

(c) The department may review, and consider adopting by reference, any information prepared by, or on behalf of the United States Environmental Protection Agency or other authoritative bodies, for the purpose of adopting national permissible exposure limits to molds.

(d) At least once every five years, after adoption of permissible exposure limits to molds, the department shall review the adopted limits and shall, consistent with the criteria set forth in subdivisions (a) and (b) of Section 26103, amend the permissible exposure limits if any of the following occur:

(1) Changes in technology or treatment techniques that permit a materially greater protection of public health.

(2) New scientific evidence that indicates that molds may present a materially different risk to public health than was previously determined.

26105.

(a) The department, in consultation with the task force convened pursuant to Section 26101.7, shall adopt practical standards to assess the health threat posed by the presence of mold, both visible and invisible or hidden, in an indoor environment.

(b) The department shall adopt assessment standards for molds that do the following:

(1) Protect the public's health.

(2) Notwithstanding paragraph (1), balance the protection of public health with technological and economic feasibility when it adopts assessment standards.

(3) Utilize and include the latest scientific data or existing standards for the assessment of molds adopted by authoritative bodies.

(4) Develop standards that target the general population.

(5) The department shall ensure that air or surface testing is not required to determine whether the presence of mold constitutes a health threat posed by the presence of mold, both visible and invisible or hidden, in an indoor environment.