

- SUBJECT:** Reasonable certainty standard for certifying mold remediation
- COMMITTEE:** Insurance — favorable, without amendment
- VOTE:** 5 ayes — Smithee, Seaman, B. Keffer, Taylor, Van Arsdale  
0 nays  
4 absent — Eiland, Isett, Oliveira, Thompson
- WITNESSES:** For — Jay Dyer, Texas Association of Builders  
Against — None
- BACKGROUND:** In 2003, the 78th Legislature enacted HB 329 by Naishtat, et al., which directed the Texas Department of Health, now the Texas Department of State Health Services, to develop a program to train and license mold assessors and remediators. The Board of Health promulgated rules, and the program has been implemented.
- Occupations Code, sec. 1958.154 states that “[i]f the mold assessment license holder determines that the underlying cause of the mold has been remediated so that it is *reasonably certain* that the mold will not return from that remediated cause, the mold assessment license holder shall indicate on the certificate that the underlying cause of the mold has been remediated.”
- Insurance Code, art. 21.21-11, sec. 3 prohibits an insurer from making an underwriting decision regarding a residential property insurance policy based on previous mold damage or a claim for mold damage if the property was “remediated, as evidenced by a certificate of mold remediation issued to the property owner under Section 1958.154, Occupations Code, that establishes that the underlying cause of the mold at the property has been remediated.”
- DIGEST:** HB 1328 would add the phrase “with reasonable certainty” to Insurance Code, art. 21.21-11, sec. 3(4)(A) as a standard for certification that the underlying cause of mold had been remediated.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2005.

**SUPPORTERS  
SAY:**

HB 1328 would align a provision in the Insurance Code related to a mold remediation certificate with corresponding language in the Occupations Code. In so doing, it would correct an inadvertent inconsistency created last session.

Language in the Insurance Code currently requires a licensed mold remediator to certify with absolute certainty that a cause of mold has been completely eliminated. In reality, however, it often is difficult to assess with complete assurance that a source of mold adequately has been repaired. For example, a mold remediator might identify a broken shower pan as primary source of mold when a hidden source, such as a roof leak that happens to collect around the shower pan, might in fact be to blame. The language in the Insurance Code unnecessarily and unfairly exposes to future liability mold remediators who have taken reasonable care in their work. For this reason, the “reasonably certain” standard in the Occupations Code should be mirrored in the corresponding section of the Insurance Code.

**OPPONENTS  
SAY:**

No apparent opposition.