

House Bill 729

By: Representatives Carter of the 159<sup>th</sup> and Ray of the 136<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Title 43 of the Official Code of Georgia Annotated, relating to professions and  
2 businesses, so as to regulate the practice of microbial professionals; to provide a short title;  
3 to provide legislative findings; to provide definitions; to create the State Licensing Board for  
4 Microbial Professionals; to provide for the composition and operation of the board; to  
5 provide for board powers and duties; to provide for minimum qualifications for licensure as  
6 a microbial professional; to provide for application, fees, and renewals; to provide for denial,  
7 suspension, discipline, and revocation of licenses; to provide for a code of professional  
8 conduct; to provide for the practice of licensed microbial professionals through the medium  
9 of a sole proprietorship, partnership, limited liability company, or corporation; to require  
10 licensure of persons engaged in the microbial profession; to provide requirements for the  
11 practice of microbial assessment and remediation; to provide for legislative intent relative  
12 to funding; to provide for civil actions to enjoin violations of this chapter; to provide for  
13 investigations; to provide for applicability; to provide for related matters; to repeal  
14 conflicting laws; and for other purposes.

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

16 style="text-align:center">**SECTION 1.**

17 Title 43 of the Official Code of Georgia Annotated, relating to professions and businesses,  
18 is amended by inserting immediately following Chapter 24 a new Chapter 24A to read as  
19 follows:

20 style="text-align:center">"CHAPTER 24A

21 43-24A-1.

22 This chapter shall be known and may be cited as the 'Microbial Professionals Licensing  
23 Act.'

1 43-24A-2.

2 The General Assembly finds that the presence of mold in dwellings and other structures  
3 may produce adverse health effects, cause damage to property, and adversely affect the  
4 operation of building systems. The General Assembly further finds that it is necessary in  
5 the interests of the public health, safety, and welfare in order to prevent damage to the real  
6 and personal property of the residents of this state and to avert economic injury to the  
7 residents of this state to regulate individuals that hold themselves out to the public as  
8 qualified to perform microbial assessments and microbial remediation.

9 43-24A-3.

10 As used in this chapter, the term:

11 (1) 'Board' means the State Licensing Board for Microbial Professionals established  
12 pursuant to Code Section 43-24A-4.

13 (2) 'License' means a certificate issued by the board to practice microbial assessment,  
14 microbial remediation, or both to an individual who satisfies the requirements established  
15 for a licensed microbial professional under this chapter and the rules and regulations  
16 adopted pursuant to this chapter.

17 (3) 'Licensed microbial professional' or 'licensee' means an individual licensed under this  
18 chapter to engage in the practice of microbial assessment, microbial remediation, or both,  
19 as determined by the specific license issued by the board.

20 (4) 'Microbial assessment' means an inspection, investigation, or survey of a dwelling or  
21 other structure, including visual observations, surface sampling, air quality testing, and  
22 laboratory analysis, to determine the presence, identification, and evaluation of mold and  
23 includes the development of a mold management plan or remediation protocol for the  
24 abatement and mitigation of mold.

25 (5) 'Microbial remediation' means removal, cleaning, sanitizing, demolition, or other  
26 treatment in accordance with a mold management plan or remediation protocol, including  
27 preventive activities of mold or mold contaminated matter that was not purposely grown  
28 at that location.

29 (6) 'Mold' means an organism of the class Fungi that causes disintegration of organic  
30 matter and produces spores. This term includes any spores, hyphae, aflatoxins, and  
31 mycotoxins produced by mold.

32 43-24A-4.

33 (a) There is created the State Licensing Board for Microbial Professionals, whose duty it  
34 shall be to administer this chapter. The board shall be composed of five members, each of  
35 whom shall be appointed by the Governor and confirmed by the Senate for a term of five

1 years. Any such appointments made when the Senate is not in session shall be effective  
2 until acted upon by the Senate. The five members shall represent the following entities:  
3 the Institute of Inspection, Cleaning, and Restoration Certification; the American Industrial  
4 Hygiene Association; the American Society of Safety Engineers; the Indoor Air Quality  
5 Association; and the Georgia Department of Consumer Affairs.

6 (b) Members of the board shall serve until their successors are appointed and qualified.  
7 Vacancies on the board shall be filled by appointment of a successor for the unexpired term  
8 of office by the Governor. Three members shall constitute a quorum for the transaction of  
9 any business of the board. The board shall organize by selecting from its members a  
10 chairperson and shall do all things necessary and convenient to carry this chapter into  
11 effect. The board shall meet at least once a month, or as often as is necessary, and remain  
12 in session as long as the chairperson shall deem it necessary to give full consideration to  
13 the business before the board. Members of the board or others may be designated by the  
14 chairperson of the board, in a spirit of cooperation and coordination, to confer with similar  
15 boards of other states, attend interstate meetings, and generally do such acts and things as  
16 may seem advisable to the board in the advancement of the profession and the standards  
17 of the microbial industry.

18 (c) The Governor, after giving notice and an opportunity for a hearing, may remove from  
19 office any member of the board for any of the following:

- 20 (1) Inability to perform or neglecting to perform the duties required of members;
- 21 (2) Incompetence; or
- 22 (3) Dishonest conduct.

23 (d) Each member of the board shall be compensated as provided for in subsection (f) of  
24 Code Section 43-1-2.

25 (e) The board, through its chairperson, shall file a written report with the Governor and  
26 both houses of the General Assembly on or before the second Tuesday in January of each  
27 year. The Governor may request a preliminary report prior to such annual report. The  
28 report shall include a summary of all actions taken by the board, a financial report of  
29 income and disbursements, staff personnel, and number of persons licensed by the board.  
30 The report shall further delineate steps taken in education and research to disseminate  
31 information so that all licensees can be better informed in order to protect the public. The  
32 board shall also outline a program of education and research for each ensuing year, for  
33 which a line appropriation shall be requested.

34 (f) The board shall not be under the jurisdiction of the director of the professional licensing  
35 boards division within the Office of the Secretary of State but shall be an independent state  
36 agency attached to the Department of Human Resources for administrative purposes only  
37 as provided by Code Section 50-4-3. The board shall have with respect to all matters within

1 its jurisdiction as provided under this chapter the same powers, duties, and functions as  
2 professional licensing boards as provided in Chapter 1 of this title.

3 43-24A-5.

4 (a) The board shall be authorized and required to:

5 (1) Establish educational qualifications and fitness requirements for the licensing and  
6 registration of those persons actively engaged in the fields of microbial assessment and  
7 microbial remediation. The board may require that an applicant for a license pass a  
8 competency examination to qualify for a license;

9 (2) Establish reasonable standards for continuing education requirements for licensed  
10 microbial professionals to include a minimum of 24 hours of continuing education per  
11 license period, and may include qualification requirements and accreditation of trainers  
12 by the board and approval of any continuing education curricula;

13 (3) Establish and receive fees for the licensing of those persons actively engaged in the  
14 fields of microbial assessment and microbial remediation;

15 (4) Issue, renew, and reinstate licenses;

16 (5) Deny, suspend, revoke, or otherwise sanction licenses;

17 (6) Establish a state registry of all licensed microbial professionals for the benefit of  
18 public information;

19 (7) Establish a disciplinary policy for those licensed microbial professionals who violate  
20 the provisions of this chapter and those set by the board;

21 (8) Establish standards for the collecting, sampling, analysis, and reporting of microbial  
22 contaminants and the subsequent protocols to address any findings, including setting  
23 standards for:

24 (A) Establishing the amount of mold within a material which must be present to qualify  
25 the material as containing mold;

26 (B) Laboratories which analyze material for the presence of mold;

27 (C) Laboratories which collect or analyze air samples for projects for the control of  
28 mold; and

29 (D) Post remediation inspections of a dwelling or other structure at the completion of  
30 a project for microbial remediation;

31 (9) Establish a system for the reporting of microbially contaminated properties to the  
32 board by licensees to provide prospective purchasers or renters with a property report that  
33 makes a variety of disclosures;

34 (10) Conduct a state-wide education and outreach program regarding the health  
35 implications of mold growth in indoor environments, including methods to recognize,  
36 prevent, and mitigate mold occurrence;

- 1 (11) Adopt a seal and alter the same at the pleasure of the board;
- 2 (12) Enter into contracts with other entities to assist in carrying out its duties;
- 3 (13) Promulgate rules and regulations, not inconsistent with this chapter, relating to the  
4 professional conduct of licensed microbial professionals and the administration of this  
5 chapter, which may include the acceptance of reciprocity and communication with other  
6 states that have similar licensing programs;
- 7 (14) Bring proceedings in the courts for the enforcement of this chapter or any rules or  
8 regulations promulgated pursuant to this chapter; and
- 9 (15) Have such other powers and duties as are necessary to effectuate the purposes of  
10 this chapter.

11 43-24A-6.

12 In addition to the requirements established by the board, to be eligible for a license as a  
13 microbial professional in this state, an applicant shall meet each of the following minimum  
14 qualifications:

- 15 (1) Be of good ethical character;
- 16 (2) To perform microbial assessment, be certified as an industrial hygienist by the  
17 American Industrial Hygiene Association;
- 18 (3) Have completed an approved course of study, as determined by the board, in  
19 microbial assessment or microbial remediation, as appropriate;
- 20 (4) Maintain workers' compensation insurance, public liability insurance, and property  
21 damage insurance, in amounts to be determined by the board; and
- 22 (5) Provide evidence of financial responsibility, including acceptable credit history and  
23 limits of bondability and credit, as determined by the board.

24 43-24A-7.

25 (a) Any person desiring to engage in the practice of microbial assessment or microbial  
26 remediation in this state shall file an application for a license with the board. All original  
27 and subsequent applications filed with the board shall be in such form and detail as the  
28 board shall prescribe. An application for licensing as a microbial professional shall be  
29 made under oath.

30 (b) The board shall issue a license, upon payment of the license fee set by the board, to any  
31 applicant who, in the opinion of the board, has satisfactorily met the requirements of this  
32 chapter.

33 (c) All licenses shall be renewable biennially at such time as may be designated by the  
34 board. All applications for renewal shall be filed with the board prior to the expiration date,  
35 accompanied by the renewal fee prescribed by the board. A license which has expired for

1 failure to renew may only be reinstated after application and payment of the prescribed  
2 reinstatement fee within six months of the expiration date, provided that the applicant  
3 meets such requirements as the board may establish by rule.

4 (d) A new license to replace any license that is lost, destroyed, or mutilated may be issued  
5 subject to the rules of the board and payment of a fee set by the board.

6 (e) Notwithstanding any provision of Article 4 of Chapter 18 of Title 50 to the contrary,  
7 all applications, including supporting documents and other personal information submitted  
8 by applicants and licensees as part of an application filed with the board, shall be  
9 confidential. The board shall deem as public records the following information and shall  
10 make such information reasonably available for inspection by the general public: a  
11 licensee's name, license number and status, business name, business address, business  
12 telephone number, type of license held, and term of license; the fact that a licensee has or  
13 has not received a disciplinary sanction; and such other information pertaining to the  
14 license of a licensee or approval of a school, course, or instructor as the board may  
15 determine by rule.

16 43-24A-8.

17 (a) The board shall have the authority to refuse to grant a license to an applicant or to  
18 revoke or suspend the license of a person licensed by the board or to otherwise discipline  
19 a person licensed by the board the same as provided in Code Section 43-1-19 for  
20 professional licensing boards. In addition, the board shall be authorized to impose a fine  
21 not to exceed \$10,000.00 for each violation of this chapter or its rules and regulations.

22 (b) The action by the board in granting or refusing to grant or renew a license under this  
23 chapter or in revoking or suspending or in refusing to revoke or suspend such a license may  
24 be appealed in accordance with Chapter 13 of Title 50, the 'Georgia Administrative  
25 Procedure Act,' to the superior court of the county of domicile of the board; provided,  
26 however, that if the findings of the board are supported by any evidence, such findings  
27 shall be accepted by the court.

28 43-24A-9.

29 The board shall prepare and adopt by rule a code of professional conduct that shall be made  
30 known in writing to every licensed microbial professional and applicant for licensing under  
31 this chapter and shall be published by the board. Publication of the code of professional  
32 conduct shall be due notice to all licensed microbial professionals of its contents. The board  
33 may revise and amend such code of professional conduct. Prior to adoption of any revision  
34 or amendments, all licensed microbial professionals and the public shall receive due notice  
35 and an opportunity to be heard.

1 43-24A-10.

2 This chapter shall not prohibit one or more licensed microbial professionals from practicing  
3 through the medium of a sole proprietorship, partnership, limited liability company, or  
4 corporation. In a partnership, limited liability company, or corporation whose primary  
5 activity consists of microbial assessment or microbial remediation, at least one partner,  
6 member, or officer shall be a licensed microbial professional.

7 43-24A-11.

8 (a) No person shall engage in the practice of microbial assessment or microbial  
9 remediation in this state unless that person is appropriately licensed by the board in  
10 accordance with this chapter.

11 (b) No person shall perform both microbial assessment and microbial remediation on the  
12 same dwelling or other structure.

13 (c) A microbial professional licensed to perform microbial remediation shall only perform  
14 such remediation if he or she is under the supervision of a microbial professional licensed  
15 to perform microbial assessment.

16 (d) It shall be unlawful for any person to use in connection with his or her name, otherwise  
17 assume, or advertise any title or description tending to convey the impression that he or she  
18 is a licensed microbial professional unless that person has been duly licensed under the  
19 provisions of this chapter.

20 43-24A-12.

21 (a) A licensed microbial professional shall notify the board prior to commencing work on  
22 any microbial remediation project.

23 (b) A licensed microbial professional who performs microbial remediation services shall  
24 provide a written report to each person or entity for whom he or she performs such  
25 services.

26 (c) A licensed microbial professional shall affix his or her signature and license number  
27 to each document prepared or approved for use by the licensee which is related to any  
28 microbial assessment or microbial remediation project and to any offer, bid, or contract  
29 submitted to a client or potential client.

30 (d) A licensed microbial professional shall ensure that his or her license number is  
31 included in any marketing or advertising medium for his or her services, including printed  
32 material, newspapers, airwave transmissions, telephone directories, brochures, and business  
33 cards.

1 43-24A-13.

2 It is the intent of the General Assembly that not less than the amount of revenue derived  
3 in any fiscal year from fees under this chapter shall be appropriated to the Department of  
4 Human Resources for purposes of administering this chapter in the subsequent fiscal year.

5 43-24A-14.

6 The board may institute a civil action to enjoin any violation of this chapter or any rule or  
7 regulation promulgated under this chapter. A violation of this chapter or any rule or  
8 regulation promulgated pursuant to this chapter is declared to constitute a public nuisance,  
9 and such action for injunction may be maintained notwithstanding the existence of other  
10 legal remedies and notwithstanding the pendency or successful completion of a criminal  
11 prosecution.

12 43-24A-15.

13 (a) The board may, upon its own motion, and shall, upon the sworn written request of any  
14 person, investigate the actions of any applicant for licensure or any licensed microbial  
15 professional. Except for investigations of applicants for licensure, the board shall not  
16 initiate an investigation on its own motion or investigate a licensee's activity as the result  
17 of a sworn written request for investigation unless the act or acts which may constitute a  
18 violation of this chapter occurred within three years of the initiation of the investigation.

19 (b) Any person authorized to conduct an investigation on behalf of the board shall have  
20 access to and may examine any writings, documents, or other material which may be  
21 related to an investigation made upon the order of the board.

22 (c) In the conduct of an authorized investigation, the chairperson of the board may issue  
23 subpoenas to compel production of such writings, documents, or material on behalf of the  
24 board. After the service of a notice of hearing, the chairperson of the board may issue  
25 subpoenas to compel production of such writings, documents, or material, either on behalf  
26 of the board or at the request of a respondent. The board or the respondent may apply to  
27 the superior court of the county in which a person disobeying a subpoena resides for an  
28 order requiring compliance. Failure to comply with such an order shall be punishable as  
29 for contempt of court.

30 (d) The results of all investigations shall be reported only to the board, and the records of  
31 such investigations shall not be subject to subpoena in civil actions. Records of  
32 investigations shall be kept by the board and no part of any investigative record shall be  
33 released for any purpose other than a hearing before the board or its designated hearing  
34 officer, review by another law enforcement agency or lawful licensing authority upon  
35 issuance of a subpoena from such agency or authority or at the discretion of the board upon

1 an affirmative vote of all members of the board, review by the respondent after the service  
2 of a notice of hearing, review by the board's legal counsel, or an appeal of a decision by  
3 the board to a court of competent jurisdiction. After service of a notice of hearing, a  
4 respondent shall have a right to obtain a copy of the investigative record pertaining to the  
5 respondent.

6 (e) The board shall have the authority to exclude all persons during the board's or the staff  
7 of the board's:

8 (1) Deliberations on disciplinary proceedings;

9 (2) Meetings with a licensee or an applicant or the legal counsel of that licensee or  
10 applicant in which the licensee or applicant seeks to settle a contested case as provided  
11 in Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act'; and

12 (3) Review of the results of investigations initiated under this Code section.

13 43-24A-16.

14 (a) This chapter shall not apply to routine cleaning when not conducted for purposes of  
15 microbial remediation.

16 (b) This chapter shall not apply to a residential property owner who personally performs  
17 microbial remediation activities on his or her own property."

18 **SECTION 2.**

19 All laws and parts of laws in conflict with this Act are repealed.