

Mold

Fifty States Of Mold Claims: A Comprehensive Survey Of Defense Strategies, Coverage Exclusions, And Liability Implications Across The U.S.

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Commentary

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I. Introduction

Nearly three decades have passed since the first mold cases made national headlines with reports of million-dollar verdicts, and yet it appears the field of mold-related litigation is still burgeoning. Indeed, one only has to search the web to realize that the number of personal injury and property damage lawsuits brought by individuals, tenants, and others against property owners and entities involved in construction projects, including claims for defective construction and exposure to "toxic" mold, have dramatically increased over the years. Oftentimes, companion litigation arises between the entities involved in the underlying lawsuit and their insurers with respect to mold-related coverage issues under the relevant policies of insurance. The litigation of these types of claims must be vigorously pursued and dangers and pitfalls unique to

mold-related claims must be carefully avoided. The experienced mold practitioner knows that the issues raised in the underlying mold litigation and in the related insurance coverage litigation are jurisdictionally and factually specific and present many complex scientific causation questions.

This first-of-its-kind article provides an overview of many of these jurisdictionally specific mold-related litigation issues, and includes a checklist of how to successfully defend against mold claims. A 50-state survey of the three most critical and common legal issues arising from mold litigation will assist the practitioner and claims professional in developing the appropriate strategy to analyze and defend their positions. Absent a clear understanding of the liability and insurance coverage issues, those involved in mold litigation face tremendous exposure.

It is the intent of the authors to monitor both the liability and insurance coverage aspects of mold litigation and to periodically update this article to address new and evolving mold-related litigation issues on an ongoing basis. In the interim, please follow the publications of Goldberg Segalla's Environmental Practice Group (available at www.goldbergsegalla.com/practice-groups/environmental) or contact one of the authors to subscribe to these publications.

II. Mold Claims – Overview And Litigation Strategies

- A. Introduction: Mold litigation is a unique toxic tort litigation because, unlike toxic tort-related products cases, mold grows naturally as part of the environment. It grows from the combination of spores (*e.g.*, penicillium, aspergillus, strachybotrys), water (*e.g.*, defect from leaking pipe, roof, foundation), and a source (furniture, walls).
- B. Who are the parties?
- Plaintiffs/claimants: Individual premises owners, occupants/renters, and governmental bodies.
 - Defendants: Construction entities, building owners, managing agents, lessors, suppliers, architects/engineers, and insurers. To a limited extent, product manufacturers (roofing materials) are sometimes named.
- C. What do they want?
- Personal injury plaintiffs: Monetary damages for pain and suffering and economic losses, medical monitoring, fear of cancer, punitive damages.
 - Property damages plaintiffs: Cost of repair/remediation, lost rent, consequential damages, property losses for personal property.
- D. Causes of action
- Breach of contract (*e.g.*, landlord-tenant, insurance coverage)
 - Trespass
 - Nuisance
 - Negligence (*e.g.*, failure to maintain, repair)
 - Construction eviction
- E. Defense strategies
- Investigate promptly and properly:* It is imperative for the defendant to act promptly upon receiving notice of a mold claim. The following are among the critical actions to take: (a) dispute/confirm the presence of mold, specifically including the types of mold; (b) identify other potential responsible parties; (c) identify, in the personal injury context, any other possible cause of the plaintiff's symptoms; (d) determine the various types of claims being made; and (e) bolster any of the below mentioned liability and damages related defenses.
 - Documenting the premises is critical. Depending on what you find during the investigation, it may be worthwhile to photograph and/or videotape the inspection to undermine any exaggerated claims or descriptions of the problem.
 - Investigate claimant: Determine claimant's background and lifestyle. In the personal injury context, there are many other causes of alleged mold-related respiratory ailments, including allergens, the flu, workplace environment, rodents, and pets. Identifying any other possible causes of the claimed respiratory ailment will bolster a dispositive motion.
 - Statute of limitations and notice of claim: Early investigation may reveal that the claimed mold issue is longstanding, which may give rise to a statute of limitations or failure to give timely notice defense. If the claim is personal injury related, however, most states have promulgated a special limitations period for toxic torts, which typically extends the accrual date to the date the plaintiff first knew or should have known about the injury.
 - Obtain documents of prior testing of the building:* The existence of prior testing of the building may support a defense that there is little or no increase in mold levels.
 - Know your mold:* There are thousands of species of mold. However, very few are considered to be toxic.
 - Medical expert defense:* Respiratory ailments are the most common complaint in mold-related personal injury matters. For causation purposes, a medical defense is critical. Authorizations to obtain a plaintiff's employment, school, and healthcare records will be useful to establish that the plaintiff's conditions were not caused by the subject premises, but were caused by other events or by other environmental factors.

- i. Depending on the symptoms alleged, defendants should also retain relevant experts (e.g., an allergist; toxicologist; ear, nose, and throat specialist; neurologist; and/or pulmonologist).
- e. *Spoilation*: Spoilation is the loss or suppression of evidence. Spoilation requires a showing that the spoliator knew of pending or anticipated litigation and destroyed or failed to preserve relevant evidence. Remedies for spoilation vary from an adverse evidentiary inference to striking a pleading. In mold litigation, spoilation can arise when an unsophisticated potential plaintiff goes forward with a full remediation without notifying potential tortfeasors of the intention to abate.
- f. *Expert challenges*: The critical issue in almost any mold claim (both personal injury and property damage) is causation and whether the plaintiff can survive a *Daubert/Frye* challenge. Defending a mold claim typically requires experts in the disciplines of immunology, mycotoxicology, industrial hygiene, and neuropsychology. In section V, *infra*, we provide a detailed discussion of the most common expert issues and challenges, plus an up-to-date 50-state survey of *Daubert/Frye* challenges in mold litigation.
- g. *Testing*: It is imperative that mold testing be performed to quantitatively show the amount and types of mold spores present. Any testing and reports are, of course, going to be discoverable. There are many qualified environmental hygienists who will assist in ensuring that quality testing is performed. In performing the tests, keep the following in mind:
 1. Document the environmental conditions.
 2. Collect samples.
 3. Describe the specific locations where testing was performed.
 4. Describe the scientific methods used during the testing/analysis.
- h. *Blaming other parties*: By identifying the actual culprit, a defendant can shift all or some of the liability onto others. For example, an inspection may reveal that

the mold is related to work being performed by others (*i.e.*, a roof leak or deficient plumbing repair), which might identify a negligent contractor.

- i. *Damages*
 - i. Establish that the plaintiff/claimant failed to mitigate his damages.
 - ii. Establish that the costs to remediate and/or valuation claims are speculative or excessive.
 - iii. In the personal injury context, establish that the plaintiffs' physical ailments are treatable.
 - iv. Uncover collateral offsets.
- j. *Settlement and ADR considerations*: It is not uncommon in mold situations for the claimant to try to avoid litigation due to the complexity and expense of proving a claim. Some simply wish to have the property remediated to the condition it was before the mold was discovered. Depending on many factors (*e.g.*, the severity of the contamination, the value of the property, whether there are personal injury claims intermixed), it may be cost effective to settle quickly by offering a percentage of the cost for remediation in exchange for a full release.

III. Coverage Issues

- A. Applicable insurance policies
 - a. *First-party claims*: Loss or damage sustained by the insured (life, disability, health, fire, theft, and casualty insurance).
 - b. *Third-party claims*: Insured's liability to third parties (CGL; D&O and E&O policies). Insurers are targets of third-party claims from various entities, such as builders, contractors, engineers, architects, sellers, inspectors, and others. See Elizabeth L. Perry, *Why Fear the Fungus? Why Toxic Mold Is and Is Not the Next Big Toxic Tort*, 52 Buff. L. Rev. 257, n. 5, (2004).
- B. *Bad faith claims*: Bad faith claims in the toxic tort context are difficult to prove. Typically, the insured must show that the insurer did one of the following: (1) misrepresented facts or policy rights/conditions; (2) did not act quickly enough; (3) unjustifiably denied

the claim; or (4) made a deficient offer of settlement. *See generally* Daniel J. Penofsky, *Litigating Toxic Mold Cases*, 92 Am. Jur. Trials § 70 (2004).

C. *Covered peril v. policy exclusion*: For the past three decades, insurers and policyholders have litigated the critical question over whether fungus, mold, rot, and the like are covered perils under the policy, notwithstanding the fact that insurers, faced with increasing numbers of claims, have drafted specific exclusions to mold claims. Although the great majority of state insurance departments permit policy exclusions for mold (*see generally* Joseph Ziemianski et al., *Emerging Property and CGL Insurance Claims Trends*, 742 PLI/Lit 251, 258 (2006)), courts have been left to answer the question of whether the exclusions are enforceable.

In the ongoing battle as to the enforceability of mold exclusions, most courts adopted some form of “efficient proximate cause” analysis to determine enforceability. Under this approach, a mold claim is covered if a different peril which is covered by the policy (*e.g.*, a sudden pipe leak) “proximately caused” the mold contamination. Stated another way, the pipe leak, not the mold, is deemed to be the *cause* of the loss.

Faced with unfriendly court decisions, insurers, in turn, added even clearer clauses, known as “anti-concurrent causation clause,” with the aim of excluding a mold claim “regardless of any other cause or event contributing concurrently or in any sequence to the loss.” *See* Insurance Services Office, Inc., *Homeowners 3 - Special Form* (1999), at 9. Insurers have been relatively successful in enforcing these clauses.

What follows is a state-by-state list of recent cases that have analyzed the question of enforceability of mold policy exclusions.

Alabama	<i>Preis v. Lex. Ins. Co.</i> , 508 F. Supp.2d 1061 (S.D.Al. 2007) (Summary judgment granted as to flood-related mold claims but denied as to non-mold related damage caused by wind.)
Alaska	No mold-related cases.
Arizona	<i>Luristis v. American Family Mut. Ins. Co.</i> , 204 Ariz. 140 (Ariz. Ct. App. 2002) (Mold damage covered despite anti-concurrent causation clause.) <i>Cooper v. American Family Mut. Ins. Co.</i> , 184 F. Supp.2d 960 (D. Ariz 2002) (Plumbing leak damaged drywall and flooring. Mold ensued. Policy included anti-concurrent causation and ensuing loss language. Court held that no coverage. Bad faith claim also dismissed.)
Arkansas	No mold-related cases.
California	<i>De Bruyn v. Superior Court</i> , 158 Cal. App. 4th 1213, 1216 (2008) (A policy’s exclusion for mold damage “under any circumstances” and “however caused” precluded coverage, notwithstanding fact that a covered peril – sudden and accidental discharge from a plumbing system – was efficient proximate cause of the mold.) <i>Freedman v. State Farm Ins. Co.</i> , 173 Cal. App. 4th 957 (2009) (Mold exclusion enforced where policy holder failed to identify covered peril that gave rise to mold.)
Colorado	No mold-related cases.
Connecticut	<i>Travelers Prop. Cas. Co. of Am. v. Laticrete Int’l, Inc.</i> , 2006 Conn. Super. LEXIS 2268 (Conn. Super. Ct. July 27, 2006) (Insurer’s motion for summary judgment denied “[b]ecause the allegations in the underlying complaint and the record lead to a reasonable inference that the triggering event, water exposure, “possibly” occurred within the coverage period.”)
Delaware	<i>Atwell v. RHIS, Inc.</i> , 974 A.2d 148 (Del. 2009) (Remanded for new trial for improper jury instructions relating to proximate causation and a third-party defendant.) <i>McNight v. USAA Cas. Ins. Co.</i> , 871 A.2d 446 (Del. Super. Ct. 2005) (A trial court interpreted a homeowners’ insurance policy and granted partial summary judgment to the insurer because the policy clearly limited the insurer’s liability for a mold and fungi claim of the insureds to \$2,500 for property damage and \$2,000 for loss of use.)

Florida	<i>Residences at Ocean Grande, Inc. v. Allianz Global Risks U.S. Ins. Co.</i> , No. 07-22656-Civ., 2009 U.S. Dist. Lexis 130011 (S.D.Fla. Sept. 9, 2006) (Enforcing mold exclusion and finding that the loss was caused by mold, not underlying moisture.)
Georgia	<i>Burgess v. Allstate Ins. Co.</i> , 334 F. Supp.2d 1351 (N.D.Ga. 2003) (Efficient proximate cause was a jury question in mold claim arising out of a house with a leaking roof and faulty dishwasher. Court held that mold was covered if proximately caused by water damage, but not covered if pre-existing.)
Hawaii	No mold-related cases.
Idaho	<i>Melichar v. State Farm Fire and Cas. Co.</i> , 152 P.3d 587 (2007) (Insurer remediated mold from first accident since initial policy did not contain mold exclusion. Insured sued insurer under second policy claiming that a second accident, combined with the first accident, resulted in mold contamination. Supreme Court upheld the enforceability of the exclusion since mold was not a direct cause from the first accident.)
Illinois	<i>DeVore v. Am. Fam. Mut. Ins. Co.</i> , 383 Ill. App.2d 266 (2008) (Enforcing anti-concurrent causation clause; mold resulting from burst pipe not covered.) <i>Federated Dep't Stores, Inc. v. M.J. Clark, Inc.</i> , 04 C 879, 2007 U.S. Dist. Lexis 51826 (N.D.Ill. July 17, 2007) (Finding that the mold exclusion did not exclude mold damage which is proximately caused by negligently induced flood.)
Indiana	<i>Westfield Ins. Co. v. Sheehan Constr. Co.</i> , 580 F. Supp. 2d 701 (S.D. Ind. 2008) (Summary judgment is granted for the insurer for state court claims against them for fraud, breach of contract, and personal injury. The court held that an insurer's duty to defend, at least in part, is determined by comparing the policy language to the allegations set forth in the underlying complaints.)
Iowa	<i>Walnut Grove Ptnrs., L.P. v. Am. Family Mut. Ins. Co.</i> , 479 F.3d 949 (8th Cir. Iowa 2007) (Insurer was entitled to summary judgment with respect to an insured's claim for coverage of damages resulting from mold in leased space because, given the passage of at least six months between the insured's notice of mold and the date of alleged loss, no reasonable jury could conclude the mold damage was an accident or occurrence under the policy.)
Kansas	<i>Wilson v. Farmers Ins. Exch.</i> , 233 P.3d 767 (Kan. Ct. App. 2010) (Insurer argues no duty to defend contractor who caused mold damage because the damages caused were not an "occurrence" as defined by the insurance contract. The court found that the plaintiffs suffered their damage as "a direct or consequential result of [the insured] selling his house to them and any claim of negligence against [the insured] is excluded from coverage under [the insured]'s policy.")
Kentucky	<i>Reynolds v. Travelers Indem. Co. of Am.</i> , 233 S.W.3d 197 (Ky. Ct. App. 2007) (Denying insurer summary judgment motion relying on <i>Bowers v. Famers Ins. Exchange</i> , 991 P.2d 734 (Wash. Ct. App. 2000). Underlying damage caused by theft which was covered (i.e., stolen appliances, resulting in water leak).)
Louisiana	<i>Morgan v. Auto Club Fam. Ins. Co.</i> , 899 So.2d 135 (La. Ct. App. 2005) (Mold exclusion enforced in insurance claim arising out of faulty workmanship.)
Maine	<i>Weaver v. Blake</i> , No. 04 CV 879, 2004 Me. Super LEXIS 201 (Me. Super. Ct. Sept. 28, 2004) (Insurer summary judgment motion denied because policyholders "are seeking to be reimbursed under the policy for the mold itself, rather than the damage caused by mold.")
Maryland	No mold-related cases.
Massachusetts	<i>Ames Privilege Assoc. Ltd. Partnership v. Utica Mut. Ins. Co.</i> , 742 F. Supp. 704 (D. Mass. 1990) (Insurer's motion for summary judgment was granted as its policy clearly and unambiguously excluded damage to plaintiff's building from rot and an "ensuing loss" clause did not nullify such exclusion, despite plaintiff's argument.) <i>Arbella Prot. Ins. Co. v. Arnold</i> , 2007 Mass. Super. LEXIS 488 (Mass. Super. Ct. Aug. 15, 2007) (Insurer's summary judgment motion was granted as insured received later advisory notice and renewal documents, which explicitly stated that policy would include Fungi Exclusion Endorse-

	<p>ment beginning June 22, 2004. Endorsement clearly and unambiguously added fungi and bacteria to exclusions in policy's general exclusion provision.)</p> <p><i>Liska v. Travelers Prop. Cas. Corp.</i>, 18 Mass. L. Rep. 644 (Mass. Super. Ct. 2004) (The homeowners' water tank failure, while being an insured risk, was not the proximate cause of the generation of the mycotoxins. Thus, judgment was granted in favor of the insurers.)</p> <p><i>Cotter v. Phoenix Ins. Co.</i>, 2008 Mass. App. Div. 55 (Mass. App. Div. 2008) (Trial court erred in allowing summary judgment in favor of insureds in a coverage action because the insureds failed to establish as a matter of law that the all risk policy they had been issued covered a loss due to seeping water. Even if the loss was covered, fact issues remained as to whether an exclusion, such as wear and tear, would apply.)</p>
Michigan	<p><i>Commerce Center P'ship v. Cincinnati Ins. Co.</i>, No. 265147, 2006 Mich. App. Lexis 1608 (Mich. Ct. App. May 9, 2006) (Mold exclusion/anti-concurrent causation clause enforced where water damage was concurrent cause.)</p> <p><i>Hayley v. Allstate Ins. Co.</i>, 686 N.W.2d 273 (Mich Ct. App. 2004) (Insurer paid to repair water damage caused by ice damming, but refused to pay mold-related costs. Court held that mold was the loss, not the cause of loss and consequently granted insurer motion for summary judgment.)</p>
Minnesota	<p><i>Buscher v. Economy Premier Assurance Co.</i>, No. Civ. 05-544, 2006 U.S. Dist. Lexis 4133 (D. Minn. Feb. 1, 2006) (Mold exclusion not applicable where a covered water loss caused mold damage. The court reasoned that "the exclusion applies to physical damage caused by mold, rather than to the occurrence of mold due to a separate covered water loss." The court held that the exclusion did not eliminate coverage.)</p>
Mississippi	<p><i>Nationwide Mut. Fire Ins. Co. v. Hayes</i>, 2010 U.S. Dist. LEXIS 92988 (S.D. Miss. Sept. 7, 2010) (Insurer's motion for summary judgment to not owe a contractor indemnity is denied. Insurer argues that mold is the only reason that the home will have to be torn down so this exclusion applies. Defendant house owner argues that the home was damaged by Hurricane Katrina before the mold occurred.)</p> <p><i>Bostwick v. State Farm Fire & Cas. Co.</i>, 2008 U.S. Dist. LEXIS 79856 (S.D. Miss. Oct. 7, 2008) (Plaintiffs concede that the \$ 19,666.54 that the insurer paid for personal property loss as a result of Hurricane Katrina "was a reasonable and sufficient amount," but the plaintiffs allege that they are entitled to compensation for mold and mildew damage to the new furniture and appliances that they purchased after the storm. The insurer's motion for partial summary judgment on the issue of exclusion of coverage for damages resulting from mold was granted.)</p>
Missouri	<p><i>Tate v. One Beacon Ins. Co.</i>, 328 S.W.3d 262 (Mo. Ct. App. 2010) (A tenant recovered a judgment against an insured related to injuries she alleged were due to toxic mold, and she agreed to seek satisfaction of the judgment under the insurance policy, but the policy had an unambiguous mold exclusion, and thus the trial court properly granted the insurer summary judgment.)</p>
Montana	No mold-related cases.
Nebraska	<p><i>Poulton v. State Farm Fire & Cas. Cos.</i>, 267 Neb. 569 (Neb. 2004) (Trial court did not err when it determined homeowners' insurance policy did not provide coverage for damage to personal household property caused by a mold infestation, because mold was not one of 16 listed perils under the "named perils" coverage.)</p>
Nevada	<p><i>M&H Enters. v. Westchester Surplus Lines Ins. Co.</i>, 2010 U.S. Dist. LEXIS 135138 (D. Nev. Dec. 15, 2010) (Court grants insurer's motion for summary judgment, finding that the insurer had no duty to indemnify or defend the contractor for mold damage due to an exclusion clause within the insurance contract.)</p>
New Hampshire	<p><i>Nationwide Ins. Co. v. Walen</i>, 2011 N.H. Super. LEXIS 49 (N.H. Super. Ct. 2011) (The court determined that the insurer had a duty to defend, though the potential for it to indemnify is limited, and certain exclusions did not bar coverage. The court also denied summary judgment for the insurer respecting the umbrella policy exclusion due to the "biological deterioration or damage," because it is not clear that these damages were entirely covered by the exclusion.)</p>

New Jersey	<p><i>Petrick v. State Farm and Cas Co.</i>, No. A-1152—09T3, 2010 Super. Unpub. LEXIS 1964 (N.J. App. Div. Aug. 13, 2010) (Enforcing anti-concurrent causation clause to bar coverage for water damage that led to mold.)</p> <p><i>Simonetti v. Selective Ins. Co.</i>, 859 A.2d 694 (N.J. Super Cot. App. Div. 2004) (Faulty window installation resulting in water intrusion followed by mold. Court reversed lower court summary judgment finding, stating that “mold damage caused by a covered event is covered . . . [o]n the other hand, losses caused by mold may be excluded.”)</p>
New Mexico	<p><i>Sanchez v. Allstate Ins. Co.</i>, 2010 N.M. App. Unpub. LEXIS 79 (N.M. Ct. App. Feb. 3, 2010) (The court held that the insurer did not owe a fiduciary duty to disclose that toxic mold may be a potential hazard resulting from water intrusion into the plaintiffs’ house under circumstances where it is undisputed that neither the roof leak that brought on the water intrusion nor toxic mold are losses covered by the applicable homeowners’ insurance policy.)</p>
New York	<p><i>Gardenville LLC v. Travelers Prop. Cas. Of Am.</i>, 387 F. Supp. 2d ___, (W.D.N.Y. 2005) (Mold exclusion enforced where policy exclusion unambiguous and applied to all damage related to wetness or moistness.)</p> <p><i>Seigel v. Chubb Corp.</i>, 33 A.D.3d 565 (App. Div. 1st Dep’t 2006) (Mold exclusion enforced where no dispute that mold was efficient proximate cause of loss.)</p>
North Carolina	<p><i>Builders Mut. Ins. Co. v. Glascarr Props.</i>, 202 N.C. App. 323 (N.C. Ct. App. 2010) (The court held that when water damage caused by vandalism led to mold in home, developer was not entitled to recover under builders risk insurance policy on claim for loss caused by mold because policy’s anti-concurrent causation clause excluded mold remediation coverage, regardless of other cause or event that contributed, concurrently or in any sequence, to loss.)</p> <p><i>Nelson v. Hartford Underwriters Ins. Co.</i>, 177 N.C. App. 595 (N.C. Ct. App. 2006) (The court held that denial of insureds’ claim under a homeowners’ policy for mold damage to their home was not a breach of contract because the mold was caused by construction events that occurred before the policy was issued.)</p>
North Dakota	No mold-related cases.
Ohio	<p><i>Honeybaked Foods, Inc. v. Affiliated FM Ins. Co.</i>, 3:08CV01686, 2010 U.S. Dist. LEXIS 127502 (N.D. Oh. 2010) (Mold exclusion enforced where underlying loss (contamination of food products) was excluded by other provisions.)</p>
Oklahoma	<p><i>Kelly v. Farmers Ins. Co., Inc.</i>, 281 F. Supp.2d 1290 (W.D.Okla. 2003) (Frozen pipe damaged home. Insurer paid for repairs, including mold remediation. Policyholders claimed they became sick from mold and sued for damages related to health claims. Court held that, despite exclusion, the issue of whether the mold was the efficient proximate cause of the original damage was a question of fact for the jury.)</p>
Oregon	<p><i>Fireman’s Fund Ins. Co. v. Or. Cold Storage</i>, 11 Fed. Appx. 969 (9th Cir. 2001) (Summary judgment in favor of insurer for extensive rot damage to the insured’s floors based on an exclusion for “gradual deterioration, mold, and wet or dry rot.” The insured argued that the rotting itself was the damage, not the cause of damage. The court rejected the insured’s argument, stating that, while moisture and condensation might have caused rotting, that view does not exclude rotting as a cause of damage.)</p>
Pennsylvania	<p><i>Smith v. Westfield Ins. Co.</i>, 06-3077, 2007 U.S. Dist. LEXIS 43996 (E.D.Pa. 2007) (“There is an important caveat to the ‘ensuing loss’ provision, though: the ‘ensuing loss’ itself must not be specifically excluded elsewhere in the policy . . . [A]s mold and wet rot are expressly excluded, [t]he conclusion is that the insurance policy provides coverage for an ensuing loss to the interior of the house that is not mold or wet rot.”)</p>
Rhode Island	No cases identified.
South Carolina	<p><i>Stevenson v. Allstate Ins. Co.</i>, 2012 U.S. Dist. LEXIS 76747 (D.S.C. June 4, 2012) (Insurer’s motion for summary judgment was denied by the court because there was a genuine dispute of the</p>

	<p>facts as to whether the plaintiff's requested repairs to his barn from wind damage were excessive or reasonable and thus could have prevented the mold damage.)</p> <p><i>Builders Mut. Ins. Co. v. Kalman</i>, 2009 U.S. Dist. LEXIS 114363 (D.S.C. Dec. 8, 2009) (The insurer's motion for summary judgment was granted, as the court found that the policy did not cover defective construction and the resulting water and mold damage.)</p>
South Dakota	No mold-related cases.
Tennessee	<p><i>Pa. Nat'l Mut. Cas. Ins. Co. v. HVAC, Inc.</i>, 679 F. Supp. 2d 863, 867 (E.D. Tenn. 2009) (Plaintiff sustained mold damage due to faulty HVAC installation. Insurer's motion for summary judgment was granted because of a mold exclusion in the policy.)</p> <p><i>Assurance Co. of Am. v. Cont'l Dev. & Constr., Inc.</i>, 2009 U.S. Dist. LEXIS 49272 (M.D. Tenn. June 8, 2009) (The insurer contended that the contractor intentionally misrepresented to the buyer the quality of the house, and due to the misrepresentation it had no duty to indemnify the contractor for mold damages. The court granted the insurer's motion for summary judgment.)</p>
Texas	<i>Unity v. Waterford Fair Oaks, Ltd.</i> , No. 3:99 CV 1623, 2002 U.S. Dist. LEXIS 3594 (N.D. Tex. Mar. 5, 2002) (Apartment complex sustained water and mold damage after roof leak. Summary judgment granted in favor of insurer where fungi qualified as a contaminant under pollution exclusion.)
Utah	No recent cases.
Vermont	<i>Hamill v. Pawtucket Mut. Ins. Co.</i> , 2005 VT 133 (Vt. 2005) (The court granted the insurer's summary judgment as it found no legally cognizable duty was owed to the insured for later mold growth caused by water damage.)
Virginia	<p><i>Mount Vernon Fire Ins. Co. v. Adamson</i>, 2010 U.S. Dist. LEXIS 106758 (E.D. Va. Sept. 15, 2010) (The court held that the insurer's broad wording in its policy's mold exclusion barred any duty to indemnify the landlord for mold damage caused to the tenant.)</p> <p><i>Union Ins. Co. v. Riverpoint, L.C.</i>, 2007 U.S. Dist. LEXIS 13313 (E.D. Va. Feb. 27, 2007) (The insurer was found to owe no duty to defend the owners of the mold-infested apartment from plaintiff's seeking damages for mold-induced illness and property damage.)</p>
Washington	<p><i>Bowers v. Farmers Ins. Exchange</i>, 991 P.2d 734 (Wash. Ct. App. 2000) (Summary judgment denied where underlying loss was caused by vandalism. Policyholder rented home to tenants who, unbeknownst to homeowner, grew marijuana in home. Since the damage was caused by vandalism, the exclusion did not apply.)</p> <p><i>Sunbreaker Condominium Assn'n v. Travelers Ins. Co.</i>, 901 P.2d 1079 (Wash Ct. App. 1995) (Wind/rain caused water damage, leading to rot/mold. Court determined that the jury must decide whether loss was efficient proximate cause.)</p>
West Virginia	<i>Murray v. State Farm Fire & Cas. Co.</i> , 509 S.E.2d 1 (W.Va. 1998) (Court disregards anti-concurrent cause clause. Insurer cannot avoid liability with by claiming peril excluded by causal chain. "[N]o reasonable person would pay for insurance against some future peril if it were possible for the insurer to avoid liability by discovering an excluded peril somewhere in the chain of causation.")
Wisconsin	<p><i>Atl. Mut. Ins. Cos. v. Lotz</i>, 384 F. Supp. 2d 1292, 1308 (E.D. Wis. 2005) (The court concluded that there were several triable issues concerning whether there was coverage for the mold damage to the home. Therefore insurer's motion for summary judgment was denied.)</p> <p><i>Arnold v. Cincinnati Ins. Co.</i>, 2004 WI App 195 (Wis. Ct. App. 2004) (The trial court granted summary judgment for insurer as to exterior and interior damages caused by faulty workmanship and/or materials, but rain damage and resulting mold damage to interior of the homeowners' house was an ensuing loss not otherwise excluded by the policy. The mold exclusion did not apply to this damage.)</p>

IV. Causation And Frye/Daubert In Mold Litigation

In both the personal injury and property damage contexts, the issue of causation, both general and specific, presents the most vexing questions for the courts. In the personal injury context, plaintiffs assert a myriad of claimed ailments from mold exposure, including asthma, fear of cancer, reactive airways dysfunction syndrome (RADS), and toxic encephalopathy. The scientific community has not formulated a consensus regarding the risk associated with mold exposure. While most types of mold are innocuous, the issue is whether exposure to same is toxic.

Various forms of indoor molds have received attention because they have the potential to produce spores that contain a substance called mycotoxins. Many scientists opine mycotoxins such as *stachybotrys chartarum*, which is the greenish-black fungus at issue in most mold litigation cases, can become dangerous when released into the air. Furthermore, certain allergenic molds, such as penicillium and aspergillus, may be found in buildings

and have served as the basis for cases involving substantial damages.

The mold debate revolves around what health issues are caused by mycotoxins. There is evidence that too much exposure to certain molds may cause or worsen conditions such as asthma, hay fever, or other allergies. The most common symptoms of overexposure are cough, congestion, runny nose, eye irritation, and aggravation of asthma. Depending on the amount of exposure and a person's individual vulnerability, more serious health effects such as fever and breathing problems may occur but are unusual.

Irrespective of whether a particular jurisdiction has adopted the standard in *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 679 (1995) or *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923), the court must serve as the gatekeeper to determine which scientific evidence may be presented to a jury. Below is a comprehensive list of recent case law throughout the United States that demonstrates how each jurisdiction has determined whether mold actually causes illness and/or property damage based upon a *Daubert/Frye* analysis.

Alabama	No recent case law.
Alaska	No recent case law.
Arkansas	No recent case law.
Arizona	<i>Mason v. Eastside Place Apartments, Inc.</i> , 2010 Ariz. App. Unpub. LEXIS 894 (Ariz. App. 2010) (The trial court conducted a <i>Frye</i> hearing and determined the generally accepted position of the scientific community is that indoor exposure to mold could exacerbate pre-existing asthma. However, the Court did not allow the plaintiff to present expert testimony at the time of trial that indicated she suffered any other illnesses related to mold. The appellate court reversed. Plaintiffs were not required to demonstrate that each expert's opinion was generally accepted in the relevant scientific or medical community in order to satisfy <i>Frye</i> . Rather, Plaintiffs were required to demonstrate general acceptance <i>only</i> when the expert arrived at a conclusion " 'by applying a scientific theory or process based on the work or discovery of others.' " "If the experts based their opinions on their own experiences, observations, and studies, they were not required to show general acceptance; " '[s]uch evidence need only meet the traditional requirements of relevance and avoid substantial prejudice, confusion, or waste of time.' ")
California	<i>Dee v. PCS Property Management</i> , 174 Cal. App. 4th 390 (2009) (On appeal, the plaintiff challenged the exclusion of proposed expert testimony that her numerous ailments, ranging from an increased risk of cancer to fibromyalgia, were caused by mold exposure. The court conducted a <i>Frye</i> analysis and concluded that because the plaintiff's experts relied on unsupported assumptions and inadmissible blood and brain tests, the trial judge did not abuse his discretion in concluding their opinions lacked foundation and in excluding the proposed testimony pursuant to California Rule of Evidence 801. The experts sought to testify that the tenant's exposure to mycotoxins caused her symptoms and her susceptibility to cancer without any evidence that the tenant was exposed to mycotoxins. The experts' opinion relied on an incorrect premise; thus, their opinions lacked evidentiary value. Although a minute

	amount of a particular mycotoxin, specifically a gliotoxin, was found was found two weeks after the tenant had moved out of her unit, nothing in the record supported a causal connection between a minute amount of gliotoxin and any illness. Thus, the experts' opinions were based on speculation and conjecture. Therefore, the trial court's ruling was affirmed.)
Colorado	No recent case law.
Connecticut	<i>Hatch v. Garrett</i> , 2012 Conn.Super.LEXIS 401 (February 7, 2012) (This matter addressed causation concerning a mold-related illness but did not conduct a <i>Frye/Daubert</i> analysis. The court granted the defendant-landlord's motion for summary judgment because the tenant failed to disclose an expert who could causally relate her mold-related disease to any substance on the landlord's premises.)
Delaware	<i>Minner v. American Mortg. & Guar. Co.</i> , 791 A.2d 826 (Del.Super. 2000) (Plaintiff alleged they suffered various illnesses caused by mold while they were working in a building. The court was asked to determine whether the plaintiff's expert medical testimony was admissible under <i>Daubert</i> concerning the cause of these illnesses. The court found that the expert was permitted to introduce evidence concerning reactive airway dysfunction syndrome and toxic encephalopathy because both illnesses are "recognized" in the scientific community. However, testimony concerning five other illnesses allegedly caused by mold exposure was precluded because the expert's opinion concerning same had no scientific foundation.)
District of Columbia	<i>Young v. Burton</i> , 567 F.Supp.2d 121 (D.D.C. 2008), <i>aff'd</i> 354 Fed.Appx. 432 (2009) (Plaintiffs filed a legal malpractice action based upon the defendants' alleged failure to file a timely personal injury suit concerning damages caused by exposure to mold. In accordance with <i>Daubert</i> the court found the plaintiffs' expert testimony in support of this theory should be precluded because it was not based upon scientifically valid principles. On appeal, the court affirmed and held there is no generally accepted consensus in the scientific community that exposure to a water damaged building causes "mold-illness.")
Florida	No recent case law.
Georgia	<i>Jazairi v. Royal Oaks Apt. Assocs., L.P.</i> , 217 Fed. Appx. 895 (11th Cir. 2007) (Plaintiff's expert opined she had hypersensitive pneumonitis (HP) that was caused by exposure to mold. The district court excluded the doctor's testimony, holding that his diagnosis was not accepted in the scientific community. This ruling was affirmed on appeal because the doctor's testimony failed to surpass the <i>Daubert</i> threshold. The record showed that HP was an allergic reaction that occurred when a hypersensitive individual was exposed to high dosages of mold spores. The doctor tested the plaintiff for mold allergies, found that she had none, and apparently did not conclude that the plaintiff suffered symptoms due to exposure to any of the molds that were present in her apartment. To the extent that the doctor was prepared to testify that the mold in the plaintiff's apartment caused her conditions, the testimony would have been based solely on temporal proximity and anecdotal evidence.)
Hawaii	No recent case law.
Idaho	No recent case law.
Illinois	No recent case law.
Indiana	No recent case law.
Iowa	No recent case law.
Kansas	No recent case law.
Kentucky	No recent case law.
Louisiana	<i>Hooper v. Travelers Ins. Co.</i> , 74 So.3d 1202 (La.App. 2011) (The plaintiff appealed the trial court's ruling under <i>Daubert</i> excluding expert testimony that indicates her personal injuries were caused by exposure to mold. Specifically, the plaintiff alleged mold exposure caused her to suffer joint pain, headaches, chest pain, itchy eyes, upper respiratory infections,

	and mental cloudiness. This order was affirmed because the plaintiff's allegations were based upon exposure to mold that occurred four years prior to her onset of illnesses. Thus, the court found the methodology utilized by the plaintiff's expert to formulate his opinion was unreliable.)
Maine	<i>Searles v. Fleetwood Homes of Pennsylvania</i> , 878 A.2d. 509 (Me. 2005) (The trial court conducted a <i>Daubert</i> analysis and denied the defendants' motion in limine to preclude expert testimony that indicated the plaintiffs suffered from respiratory problems related to mold exposure. Subsequently, the jury awarded damages and the ruling concerning the motion in limine was appealed. The appellate court affirmed. Maine's Supreme Court also affirmed and stated there was medical literature that supported a link between mold exposure and respiratory problems. Therefore, the expert's opinion had general acceptance in the relevant scientific community.)
Maryland	<i>Montgomery Mut. Ins. Co. v. Chesson</i> , 399 Md. 314 (Md Ct App. 2007) (The claimants asserted that they each had sustained an occupational disease known as "sick building syndrome," arising out of and in the course of their employment, due to exposure to toxic mold. The workers' compensation commission held a hearing and awarded partial compensation to some claimants. The trial court then consolidated the claims. The insurance company filed a motion in limine seeking to exclude the testimony of the claimants' medical expert on the grounds that his theories and methodologies for diagnosis had not been generally accepted within the relevant scientific community. The trial court then denied the insurance company's request for a <i>Frye</i> hearing to determine acceptance of the medical expert's theories and methodologies within the scientific community, and, thus, denied the motion in limine. The jury returned verdicts for the claimants. The intermediate appellate court affirmed. On further review, the state supreme court found that since a scientific opinion was involved, a <i>Frye</i> hearing should have been held. Consequently, the order was vacated and the case was remanded.)
Massachusetts	<i>Broumand v. Oly Realty Two</i> , 2011 Mass.App.Unpub. LEXIS 381 (Mass. App. 2011) (The plaintiff claimed that mold exposure caused her to suffer sinusitis, ear problems, and asthma. The defendant's <i>Daubert</i> motion to preclude the plaintiff's expert testimony in this regard was granted. The trial court found that plaintiff's expert opinion was not accepted in the scientific community. Thus, the expert opinions were flawed and unrealizable. This ruling was upheld on appeal.)
Michigan	<i>Trice v. Oakland Development Limited Partnership</i> , 2008 Mich. App. LEXIS 2484 (Mich. App. 2008). (The plaintiff alleged she suffered various medical conditions as a result of mold exposure in her apartment. On appeal it was determined the trial court applied an incorrect standard for analyzing the admissibility of plaintiff's expert witnesses' scientific testimony because it improperly focused on the <i>Frye</i> standard that relies exclusively on whether evidence that mold causes health problems in humans had gained general acceptance in the scientific community. The standard in Michigan for evaluating the admissibility of scientific evidence is set forth in <i>Daubert</i> . Thus, the trial court should have considered the seven non-exhaustive factors set forth in MCL 600.2955, of which acceptance in the scientific community is but one. The trial court also erred in requiring the plaintiff to provide epidemiological studies showing a causal connection between mold exposure and human health effects. The trial court did not cite to any Michigan case law that requires a proponent of scientific evidence regarding causation to provide epidemiological studies. Therefore, this case was remanded so the trial court could hold a <i>Daubert</i> hearing concerning the reliability of the plaintiff's expert testimony.)
Minnesota	No recent case law.
Mississippi	No recent case law.
Missouri	<i>Mason v. Safeco Ins. Co.</i> , 2010 U.S. Dist. LEXIS 86696 (E.D. Mo. 2010) (The plaintiff alleged mold contamination caused him to suffer headaches and dizziness in addition to property damage to his boat. The defendant filed a <i>Daubert</i> motion to preclude the plaintiff's expert

	<p>from rendering any testimony in support of these allegations. The court found the expert's opinion concerning property damage was inadmissible. The expert relied on an environmental report, which did not establish the presence of mold in the boat's interstitial spaces. Thus, the court found this report cannot provide a factual basis for the expert's conclusions.</p> <p>However, the motion to preclude any expert testimony concerning the cause of the plaintiff's health conditions was denied. The defendant's motion focused on the qualifications of the plaintiff's expert rather than the methodology adopted to formulate his conclusions. The plaintiff apparently circumvented this argument by stating he was not seeking damages for personal injuries and that his expert would simply testify that mold is a general cause of certain health effects in some people. The court found this testimony admissible because the motion failed to argue testimony concerning the cause of health effects from mold exposure is inadmissible.)</p>
Montana	No recent case law.
Nebraska	<i>Mondelli v. Kendel Homes Corp</i> , 631 N.W.2d 846 (Neb. 2001) (The plaintiff sued the defendants for personal injuries caused by the failure to properly construct and inspect their home. The trial court granted the defendants' <i>Frye</i> motion and ruled that the plaintiff's expert was precluded from rendering any testimony at trial concerning the cause of any medical conditions related to mold exposure. The court of appeals reversed and held that the trial court erred because the witness was a qualified toxicologist, her testimony was relevant to the issue of damages, the testimony concerning the relationship between mold and health concerns would have assisted the jury in understanding the evidence, and the testimony's probative value outweighed the danger of unfair prejudice.)
Nevada	No recent case law.
New Hampshire	No recent case law.
New Jersey	<i>Sanders v. Rosenberg</i> , 2008 U.S. Dist. LEXIS 29581 (D.N.J. 2008) (The plaintiff claimed he suffered personal injuries from mold exposure in his townhouse including respiratory disorders and sleep disorders. The defendant filed a motion for summary judgment and argued the plaintiff failed under <i>Daubert</i> to present sufficient expert testimony that indicated her injuries were caused by mold exposure. The plaintiff relied upon her treating physicians to prove causation. The court found none of these physicians established the plaintiff's injuries were caused by mold. These physicians simply established that the plaintiff had a series of injuries but failed to explain how they were related to the presence of mold. Therefore, the court granted summary judgment.)
New Mexico	No recent case law.
New York	<i>Cornel, v. 360 West 51st Street Realty, LLC</i> , 939 N.Y.S.2d 434 (N.Y. 1st Dep't 2012) (The appellate division found the trial court erred by ruling <i>Frye</i> bars an expert from rendering testimony that an individual suffered dizziness, a rash, congestion, and other symptoms due to mold exposure.)
North Carolina	No recent case law.
North Dakota	No recent case law.
Ohio	<i>Finley v. First Realty Prop. Mgmt.</i> , 185 Ohio App. 3d 366 (2009) (The plaintiffs alleged that their landlord-defendants failed to maintain their rental property in a habitable condition, allowing for the growth of mold. It was further alleged the plaintiffs suffered various medical conditions caused by mold exposure. The appellate court performed a <i>Daubert</i> analysis and held that the trial court did not err in excluding the expert's testimony because there was no evidence that the conclusions were based on a methodology which had been tested, subjected to peer review, or generally accepted in the scientific community.)
Oklahoma	<i>Perkins v. Gray Family Services, Inc.</i> , 2006 U.S. Dist. LEXIS 100888 (W.D. Ok.) (The plaintiff alleges he suffered pneumonitis caused by mold exposure in his apartment. The defendants asserted that the plaintiff's expert testimony should be excluded under <i>Daubert</i> .

	The court denied this motion and found the expert testimony in this regard should be considered by the jury.)
Oregon	No recent case law.
Pennsylvania	<i>Bodon-Soto v. Cohen</i> , 20 Pa.D.&C.5th 89 (Pa.Comm 2010) (The plaintiff leased a home from the defendant and subsequently suffered bronchitis, which was allegedly caused by mold exposure. After a jury verdict was entered in favor of the plaintiff, the defendant requested the court to enter judgment notwithstanding the verdict in her favor. Specifically, the defendant argued there was no proof of causation. The court denied the defendant's motion and analyzed the plaintiff's expert testimony regarding causation under <i>Frye</i> . The Court found the plaintiff improperly challenged the expert's conclusions instead of requesting a <i>Frye</i> hearing to test the methodology adopted to formulate these conclusions. Nonetheless, the court found this testimony would have been admissible if the proper motion was filed. The court found the methodology used by the expert to formulate his conclusions was reliable.)
Rhode Island	No recent case law.
South Carolina	No recent case law.
South Dakota	No recent case law.
Tennessee	No recent case law.
Texas	<i>Plunkett v. Conn. Gen. Life Ins. Co.</i> , 285 S.W.3d 106 (Tex. App. 2009) (The plaintiffs alleged they suffered property losses and personal injuries arising from toxic mold contamination. Summary judgment was entered against them, which was affirmed on appeal. One expert did not provide any empirical evidence or methodology that explained the validity of his extrapolation that observations pertaining to the exposure of one resident's property were also applicable to all the other residents' property. The expert opinion was not evidence of property damage or causation. Two doctors that testified did not conduct examinations or testing that would have been required to show causation as to the personal injury claims filed by the residents.)
Utah	No recent case law.
Vermont	No recent case law.
Virginia	<i>Kristensen v. Spotnitz</i> , 2011 U.S. Dist. LEXIS 107027 (W.D. Va. 2011) (This is a personal injury action arising out of alleged mold contamination of a residence owned by defendants, but formerly occupied by the plaintiffs. In support of their allegations that mold exposure caused them respiratory conditions, the plaintiffs presented several medical experts at the time of the trial. The defendants filed motions in limine to preclude these experts under <i>Daubert</i> , which were denied. The court found the methodology adopted to formulate these opinions was generally accepted in the scientific community.)
Washington	<i>Whisnant v. United States</i> , 2006 U.S. Dist. LEXIS 76321 (W.D. Wash. 2006) (This is a toxic tort case brought under the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 1346(b), 2671-80. The plaintiff alleged that he sustained personal injuries caused by mold exposure at a Navy base. The plaintiff retained an allergist and immunologist as a medical expert. In his report, the expert opined that plaintiff experienced cough, headaches, and fatigue as a result of mold exposure in the commissary meat department. The expert used a skin test in support of his conclusions. The court conducted a <i>Daubert</i> analysis and found the expert's testimony inadmissible because the methods to conduct the subject testing were found to be unreliable by the United States Department of Health and Human Services.)
West Virginia	No recent case law.
Wisconsin	No recent case law.
Wyoming	<i>Chisholm v. Champion Ent., Int.</i> , 2003 U.S. Dist. LEXIS 27968 (D. Wy. 2003) (The plaintiff alleged he suffered various illnesses due to mold exposure. The defendant filed a motion in limine to preclude the plaintiff's expert testimony under <i>Daubert</i> because the opinions were based upon a differential diagnosis. The court denied the motion and held <i>Daubert</i> permits an expert to base his opinion on a differential diagnosis because it assists a jury in understanding the cause of the subject illness.)

V. Mold-Related Legislative Action By State

As we discussed in the introductory paragraph to this article, over the nearly three decades since the first mold-related lawsuits made national headlines, there has been a precipitous increase in mold-related litigation. This is due, at least in part, to an increasing awareness of the human health dangers associated with mold exposure. The growing concern for mold-related health effects is reflected in the abundance of mold-related legislation

that has cropped up in recent years at the state level. For obvious reasons, it is imperative for any practitioner working in the area of mold litigation to fully understand the mold-related statutory framework in place in his or her jurisdiction. What follows is a 50-state survey of the mold-related legislation currently on the books nationwide, adapted from the “Environmental Law Institute Database of State Indoor Air Quality Laws: Mold Excerpt,” published by the Environmental Law Institute.

Alabama	While no mold-related legislation has ever been introduced in Alabama, the Alabama Insurance Commission has capped mold damage claims on homeowner’s insurance policies at \$10,000.
Alaska	No mold-related legislation on the books.
Arizona	<p>Arizona Revised Statutes §§ 32-2301 et seq.: Requires those engaging in the business of pest management to obtain a business license from the state and includes minimum requirements for obtaining a license. Includes the management of fungi in the definition of pest management and establishes fungi inspection and antimicrobial pest management as separate license categories. Provides that fungi inspection reports may only be completed by a licensed applicator or party licensed in the fungi category and who has received instruction on the subject. Requires licensees to notify schools and child care facilities at least 72 hours in advance of a pesticide application and to provide a written pre-application notification immediately prior to the application. Requires the Department of Agriculture to implement the law and rules adopted pursuant to the law (Ariz. Admin. Code R4-29-101).</p> <p>Arizona Revised Statutes §§ 15-2001 et seq.: Requires each school board to test for mold at each school once every two years.</p>
Arkansas	<p>2011 Arkansas Senate Bill 518: Repealed the Arkansas Mold Investigator Licensing Act of 2009, which had established a separate category of mold investigators within the state.</p> <p>2011 Arkansas Senate Bill 531: Created the Mold Investigation Advisory Board and required the board to study the effects on public health and safety of existing state mold laws and regulations, as well as options for revising state laws. The board was to report its findings by December 31, 2012, on which date it was planned to be abolished.</p>
California	<p>2001 Bill Text CA A.B. 442 (9/30/02): Creates a Public Health Indoor Mold Hazard Fund to be utilized to provide guidance, developing standards, and guidelines regarding permissive exposure limits relating to indoor mold hazards.</p> <p>2001 Bill Text CA A.B. 2223 (9/30/02): Deals with indoor air quality for schools and provides that unnecessary accumulation of moisture that could lead to mold growth is to be avoided.</p> <p>2001 Bill Text CA A.B. 2684 (2/22/02): Intent of Legislature to limit the liability of a school district or the governing board of a school district for claims of personal injury or wrongful death resulting from the presence of “toxic mold” on school premises.</p> <p>2001 Bill Text CA A.P. 3034 (9/18/02): Provides that a residential landlord shall provide written disclosure to prospective tenants of the potential health risks and the health impact that may result from the exposure to mold by distributing a consumer-oriented booklet.</p> <p>2001 Bill Text CA S.B. 1763 (6/20/02): Provides disclosure requirements for an insurer where mold is “implicated or likely to be present”; provides an obligation to “thoroughly investigate”; mold is an ensuing loss under the policy (property or liability); mold shall be covered; must be excluded “clearly, explicitly and in readily understandable terms”; defines mold as a form of multi-cellular fungi often found in water-damaged building materials.</p>

	<p>2001 Bill Text CA S.B. 1846 (6/25/02): Relates to fund of Medi-Cal and Healthy Families and recognizes the Toxic Mold Protection Act of 2002 and funding.</p> <p>2001 Bill Text CA S.B. 2098 (9/6/02): Recognizes that the Toxic Mold Act imposes various disclosure requirements on landlords, sellers, renters, transferors, and tenants of commercial or industrial properties pertaining to the presence of mold based on knowledge or reason to have notice of the presence of mold.</p> <p>California Civil Code §§ 1102—1102.18: Requires sellers of real property containing one to four residential units to complete a disclosure form indicating the presence of all environmental hazards, including radon gas, formaldehyde, and mold that are known to the seller. Also requires disclosure of whether property contains a carbon monoxide device. Requires resale of manufactured homes and mobile homes to include disclosure of environmental hazards in the home interior or exterior, including radon, formaldehyde, and lead-based paint, as well as the existence of a carbon monoxide device.</p> <p>California Education Code §§ 17070.75, 17002(d)(1): Requires school districts to establish a facilities inspection system to ensure schools are maintained in good repair, as a condition of receiving state school facility funds. Defines “good repair” to include interior surfaces free from water damage and showing no evidence of mold or mildew and to include functional and unobstructed HVAC systems. Requires state to develop an evaluation instrument consistent with the criteria set in the law. The Facility Inspection Tool developed by the state for use in school inspections includes several IAQ-related items that address ventilation and mold/water damage.</p> <p>California Health & Safety Code § 39619.6: Requires the Air Resources Board and the Department of Public Health to conduct a comprehensive study and review of the environmental health conditions in portable classrooms. Directs the study to include a review of design and construction specifications; a review of school maintenance practices; an assessment of IAQ; and an assessment of potential toxic contamination, including mold contamination. Provides that the study shall address the need for modified design and construction standards; emission limits for building materials and classroom furnishings; and other mitigation actions to ensure the protection of children’s health.</p> <p>California Health & Safety Code §§ 26101—26157: Requires the state health agency to consider the feasibility of adopting permissible exposure limits to mold in indoor environments and, if feasible, to adopt such limits. Establishes criteria to consider in adopting standards, and provides that the department may also adopt alternative standards for facilities that serve people at greater risk of adverse health effects. Provides that the law shall be implemented only to the extent that the department determines that funds are available for its implementation. Establishes disclosure and property maintenance requirements for transferors, lessors, and tenants of real estate following the department’s issuance of standards and guidelines under the law. Authorizes local enforcement of any standards adopted by the department.</p> <p>California Health & Safety Code §§ 26200—26204: Requires the California Research Bureau, in consultation with the Department of Public Health and with the assistance of a review panel, to perform a study and to publish findings on fungal contamination affecting indoor environments. Requires the study to include information on health effects, assessment, remediation, and hazard communication, among other issues. Requires the California Research Bureau to submit its findings to the legislature and the Director of Public Health.</p> <p>California Health and Safety Code § 17920.3: Establishes minimum standards for residential rental properties. Includes “dampness of habitable rooms” as a substandard condition to the extent that it “endangers the life, limb, health, property, safety, or welfare of the public or the occupants.” Part of state housing code, which provides for local enforcement.</p>
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	California Labor Code § 142.3: Authorizes the Occupational Safety and Health Standards Board to adopt occupational safety and health standards that are at least as effective as federal standards. Regulations promulgated under the law (Cal. Code Regs., tit. 8, §§ 5142, 5143) apply to both private and public workplaces, such as schools. The regulations require that HVAC systems be operated continuously and inspected annually, and that HVAC inspection and maintenance records be made in writing and provided to the state and to employees upon request. Additional regulations governing general sanitation (Cal. Code Regs., tit. 8, § 3362) provide that when exterior water intrusion, leakage from interior water sources, or other uncontrolled accumulation of water occurs, those conditions must be corrected because of their potential to cause the growth of mold.
Colorado	No mold-related legislation on the books.
Connecticut	Connecticut General Statutes § 19a-111(l): Directs the Department of Public Health to publish guidelines establishing mold abatement protocols, including acceptable methods for performing mold remediation or abatement work.
Delaware	2005 Delaware House Bill 219: Created an Occupational Health Program within the Division of Public Health to assess hazards, including mold, in the workplace (codified at 29 Delaware Code § 7980).
District of Columbia	No mold-related legislation on the books.
Florida	Florida Statutes §§ 468.84 et seq.: Established a state mold-related services licensing program for mold assessors and remediators. Set forth requirements pertaining examinations, education, training, and insurance. Authorized the state to collect application and licensing fees. Established penalties for violations and addresses conflict of interest involving assessment and remediation activities. Required the Department of Business and Professional Regulation to adopt rules to administer the program.
Georgia	No mold-related legislation on the books.
Hawaii	No mold-related legislation on the books.
Idaho	No mold-related legislation on the books.
Illinois	Illinois Compiled Statutes Ch. 410, §§ 105/1 et seq.: Authorizes the state health agency to adopt rules establishing a program for state registration of mold professionals. Illinois House Joint Resolution 12: Creates a Joint Task Force on Mold in Indoor Environments, and requires the task force to make recommendations to the legislature regarding mold in indoor environments. In 2005, the Task Force issued its report, which discusses regulating mold remediation and testing providers.
Indiana	2003 Bill Text IN H.B. 1856 (1/23/03): Directs the State Department of Health to make recommendations to the legislative council regarding toxic mold exposure limits. Indiana Code §§ 32-21-5-1—12: Requires sellers of property containing one to four dwelling units to complete a Seller's Residential Real Estate Sales Disclosure form. 879 Indiana Admin. Code 1-4-2: Establishes the disclosure form, which requires sellers to disclose knowledge of hazardous conditions on the property, including radon gas, mold, other biological contaminants, lead paint, asbestos insulation, methane gas, PCBs, and toxic materials.
Iowa	No mold-related legislation on the books.
Kansas	Kansas Statutes § 36-506: Requires the state to establish minimum standards for the safe and sanitary operation of lodging establishments (hotels, rooming houses, or boarding houses). Regulations adopted under the law (Kansas Admin. Code 4-27-9) require, among other things, that guest rooms with visible mold on the floors, walls, ceiling, or windows shall not be rented until mold cleanup is completed. Regulations also require that all sinks, bathtubs, and shower areas be kept free of mold and mildew.
Kentucky	2010 Kentucky Acts, Ch. 89 (H.B. 44): Directs the state Department of Law to establish minimum standards for mold remediation companies that are based on the general mold

	<p>remediation principles set forth by the Institute of Inspection, Cleaning and Restoration Certification (IICRC). Establishes that the state may take civil action against mold remediation companies that violate the law's provisions.</p> <p>Kentucky Revised Statutes § 324.360 Requires that a Seller's Disclosure of Conditions form be used in residential real estate transactions if licensed real estate agents are involved and receive compensation. Requires the real estate commission to promulgate an administrative regulation authorizing the form. The regulation (201 Kentucky Admin. Rules 11:350) requires disclosure of any radon testing of the property, of the existence of mold or other fungi, and of any other environmental hazards on the property.</p>
<p>Louisiana</p>	<p>Effective as of August 15, 2004, Louisiana passed HB 793, which offers broad immunization to commercial and marine contractors, design professionals, and real estate licensees licensed in the state from personal injury, property damage, or any other claims related to mold or mold damage arising out of work performed by the contractor on manufactured homes.</p> <p>2003 Louisiana Session Law Serv. Act 333 (H.B. 943): Excludes mold and mold damage from specified builder's warranties for new homes and home additions, unless the parties agree otherwise in writing.</p> <p>Louisiana Revised Statutes § 22:1319: Requires that fire insurance policies that are delivered or issued for delivery within the state include a prominent disclosure of whether the policy covers mold damage to the property.</p> <p>Louisiana Revised Statutes § 22:1332: Requires that homeowner insurance policies delivered or issued for delivery in the state include a prominent disclosure of whether the policy covers mold damage.</p> <p>Louisiana Revised Statutes § 37:1470: Directs the State Real Estate Commission to approve a mold information pamphlet, which may be distributed to buyers by real estate licensees in connection with any real estate transaction. Provides that if the licensee elects to deliver the mold information pamphlet to the buyer, the licensee is not required to provide any additional information about mold. Real Estate Commission has designated U.S. EPA as official source of state mold information under the law (see Louisiana Admin. Code 46:LXVII.3801).</p> <p>Louisiana Revised Statutes § 9:2800.15: Provides that licensed commercial or marine contractors, architects, and engineers are not liable for mold damage unless caused by defects in workmanship or design. Also applies to manufactured homes and to real estate licensees representing commercial and marine contractors.</p> <p>Louisiana Revised Statutes §§ 37:2181 et seq.: Requires the State Licensing Board for Contractors to: adopt rules and regulations to govern mold remediation; issue, suspend, modify, and revoke licenses to practice mold remediation; maintain an up-to-date list of all licensees; report violations to the Attorney General; and adopt minimum standards of practice for licensed mold remediators. Establishes various required practices for licensees.</p>
<p>Maine</p>	<p>Maine Resolves 2006 Chapter 174: Requires the state environmental and health agencies to convene a working group and to submit a report to the state legislature concerning: (1) the science of mold testing and removal; (2) considerations for establishing mold clean-up standards; and (3) considerations for developing building standards.</p> <p>Maine Revised Statutes, tit. 10, § 1480 Prohibits a person or company from providing both mold assessment and remediation services on a project unless the building owner has signed a disclosure statement regarding the potential conflict of interest.</p>
<p>Maryland</p>	<p>2001 Maryland Senate Bill 283: Establishes a task force on indoor air quality and requires the task force to study the nature, location, and extent of health and environmental risks posed to workers as a result of molds, spores, and other toxic organisms located in the HVAC</p>

	<p>systems of office buildings. Requires recommendations regarding prevention of illnesses, remedies and controls, a plan to provide educational information, and legislative or regulatory measures necessary to address current gaps in federal, state, and local protection of office workers. Requires the task force to submit a final report of its findings and recommendations to the governor and the legislature.</p> <p>Maryland Business Regulation Code § 8-701: Establishes a licensing program for companies and firms that provide mold remediation services. Directs the Maryland Home Improvement Commission to adopt regulations and implement the licensing program. Provides that as of June 2010, companies must: be licensed in order to provide mold remediation services within the state; carry a specified minimum amount of insurance; and ensure that their employees are certified by a third-party accreditation body.</p> <p>Maryland Education Code § 5-301: Requires the state Board of Public Works to adopt regulations establishing criteria designed to enhance IAQ in relocatable (portable) school classrooms. Requires the regulations to include specifications for preventing mold/water damage, limiting infiltration of pollutants, providing continuous ventilation, and using low-emitting building materials.</p>
Massachusetts	<p>2003 Bill Text MA S.B. 657 (1/1/03): Creates a Task Force of Department of Health, Environmental Protection, Division of Occupational Safety and State Board of Building Regulations and Standards to study health effects of mold to protect public from unsafe indoor exposure to mold.</p> <p>2001 Bill Text MA H.B. 5124 (6/6/02): Moulton Toxic Mold Protection Act to adopt permissible exposure limits to mold; remediation efforts and guidelines. 2001 Bill Text MA S.B. 2353: Companion bill to prior Bill 5124. 2001 Bill Text MA S.B. 2406: Companion bill to prior Bills 2353 and 5124.</p> <p>Massachusetts General Laws, ch. 111, § 127A: Authorizes the Department of Health to adopt a state sanitary code to address matters affecting the health and well-being of the public. Regulations adopting the Sanitary Code (105 Code Mass. Regs. 675.001 et seq.) establish IAQ requirements for ice rinks, including air sampling and record-keeping requirements; action levels for carbon monoxide and nitrogen dioxide; and required corrective action, notification, and evacuation measures. A separate chapter of the Sanitary Code establishes Minimum Standards of Fitness for Human Habitation that apply to all dwelling units, including leased units. The Code (105 CMR 410.020) requires dwelling owners to maintain structural elements (including foundation, floors, walls, doors, windows, ceilings, and roofs) in good repair and free from chronic dampness and defines chronic dampness as “the regular and/or periodic appearance of moisture, water, mold or fungi.”</p> <p>Massachusetts General Laws, ch. 13, § 97: Requires the state to publish an informational brochure for home buyers on home inspections, including information regarding radon inspections, and requires that the brochure be issued to home buyers at the signing of the first written contract to purchase. Rules promulgated under the law (266 Code Mass. Regs. § 6.03) require home inspectors to notify their clients that answers to some questions, including whether or not a dwelling has been tested for radon gas, and whether there are any mold or air quality issues in the dwelling, should be ascertained from sellers and may not be readily observable through inspection.</p> <p>Massachusetts General Laws, ch. 70B, § 3: Establishes a School Building Assistance program to provide funding to local governments for school construction and renovation, and authorizes the Board of Education to establish policies and standards regarding school construction. Amended in 2006 to create the Massachusetts School Building Authority and school building grant program. Regulations governing these state-funded projects (963 Code Mass. Regs. 2.04) require that all reasonable efforts be made to ensure suitable indoor air quality. The regulations also establish specific IAQ-related requirements for state funded projects, including: ventilation and thermal comfort; containment procedures for pollutants</p>

	<p>created during renovation; filtration; walk-off mats; gas-fired equipment; siting of outside air intakes; and prevention of mold and water damage in building materials.</p>
Michigan	<p>2003 Bill Text MI H.B. 4094 (1/29/03): Toxic Mold Protection Act requires the Department of Community Health to establish standards for permissible exposure limits, identification and remediation of molds.</p> <p>2003 Bill Text MI S.B. 88 (1/28/03): Seller Disclosure Act requires the seller of property to disclose answer to question: "11. Toxic Mold: Are you aware of any toxic mold on the property? If yes, please explain. . . ." It is a disclosure, not a warranty.</p> <p>2003 Bill Text MI S.B. 172 (2/11/03): Require certain disclosures by sellers of real property (notes that the seller does not possess any expertise in construction, engineering, toxic mold detection, or abatement). Failure to disclose can enable the purchaser to terminate contract.</p> <p>2001 Bill Text MI H.B. 6177 (6/5/02): Similar type of disclosure form.</p> <p>2001 Bill Text MI H.B. 6178 (6/5/02): Toxic Mold Protection Act, prior bill to H.B. 4094.</p> <p>2001 Bill Text MI H.B. 6427 (9/24/02): Includes mold as a fungi with rust, smut, mildew, yeast, and bacteria. 2001 Bill Text MI S.B. 989 (6/5/02): Similarly defines mold in an Act to protect the environment and natural resources (Pesticide Control Act).</p> <p>Michigan Compiled Laws §§ 565.951—.966: Requires sellers of residential property consisting of one to four dwelling units to complete a seller's disclosure statement, which provides for disclosure of any environmental hazards on the property, including radon gas, asbestos, formaldehyde, and lead-based paint. The disclosure statement recommends that buyers obtain a professional inspection that specifically addresses indoor air and water quality, as well as any evidence of potential allergens such as mold, mildew and bacteria.</p>
Minnesota	<p>Minnesota Statutes § 123B.57: Provides that in order to receive state health and safety revenue, school districts must adopt a health and safety policy. Requires that the policy include provisions for implementing a health and safety program that complies with best practices for IAQ management. Establishes that health and safety revenues may be used for HVAC upgrades and mold abatement activities.</p> <p>Minnesota Statutes § 273.11: Provides that the owner of a homestead property may apply to the tax assessor for a reduction in the market value of a property that has been damaged by mold, where the costs to repair the mold are at least \$20,000. Requires the owner to file a form following completion of the remediation work, which may result in increase in market value.</p> <p>Minnesota Statutes § 326B.118: Requires the Commissioner of Labor and Industry to review the appropriateness of model energy codes for one and two-family residential buildings and take steps to adopt a code. Prohibits Commissioner from adopting a model energy code without research and analysis that addresses air quality and moisture, among other issues.</p>
Mississippi	<p>Effective as of July 1, 2004, HB 722, which establishes the "New Home Warranty Act," includes a provision which excludes mold and mold damage from homebuilder warranties.</p> <p>Mississippi Code § 83-58-5: Excludes mold and mold damage from home builder warranty, unless the builder's negligence was a proximate or contributing cause, or unless the parties agree otherwise in writing.</p> <p>Mississippi Code §§ 83-5-1, 83-5-29—51: Authorizes the state to regulate the practice of insurance companies, including the prohibition of unfair trade practices. Regulations adopted under the law (Miss. Admin. Code 19-1-2007-1:1 et seq.) establish the Mississippi Homeowner Insurance Policy Bill of Rights which, among other things, requires that the insured be provided with a statement indicating whether their residential property coverage includes insurance against mold.</p>

Missouri	No mold-related legislation on the books.
Montana	<p>2003 Bill Text MT H.B. 536: An Act Providing for the Disclosure of the Potential for Mold in Inhabitable Property provides an extensive definition of mold and sets forth the obligations of buyers and sellers. 2003 Bill Text MT D. 684: Companion bill to H.B. 536.</p> <p>Montana Code § 70-16-703: Requires sellers, landlords, or their agents to inform buyers or renters of the known presence of mold in a building and to provide buyers or renters with the results of any mold tests that have been conducted. Authorizes sellers, landlords, agents, and property managers to provide buyers or tenants with a mold disclosure statement specified in the statute. Provides for relief from liability in certain cases for sellers and landlords who comply with these provisions.</p>
Nebraska	<p>2001 Bill Text NE L.B. 436 (2/27/02): Pesticide Act defines fungus to include rust, smut, mildew, mold, yeast, and bacteria. 2003 Bill Text NE L.B. 157 (1/10/03): Companion bill to L.B. 436 and similarly defines mold. 2003 Bill Text NE L.B. 246 (1/13/03): Provides funding to correct schools' life safety code violations and make air quality improvements (specifically for mold abatement and prevention).</p>
Nevada	<p>2011 Nevada Laws Ch. 348 (A.B. 432) Establishes provisions for licensure of home energy auditors by the Department of Business and Industry. Provides that when conducting a full "energy audit" an energy auditor must include, among other things: (1) an assessment of building air flow, IAQ and ventilation; (2) any anticipated remediation issues, including moisture or combustion appliance problems; and (3) an assessment of moisture control in the home. Department requires licensure in order to perform an energy audit, a limited energy audit, or an energy assessment, and has established licensure application forms.</p>
New Hampshire	<p>2003 Bill Text NH N.B. 267 (1/9/03): An act that provides for the collection of data on the status of air quality in public schools. The act recognizes that poor indoor air quality is "a lack of investment in maintenance of school buildings" that results in a buildup of pollutants, dust, mold and other biological growth.</p> <p>2003 Bill Text NH H.B. 557 (1/9/03): Act bans cancellation of or rate increases in homeowner insurance based on the number of claims. Also, under homeowner insurance, the Act provided: "417-B:3-b Homeowner's Insurance; Mold-Based Claims. No homeowner's insurance policy shall cover claims for damage caused by mold." 2003 Bill Text NH S.B. 167 (1/30/03): Companion bill to N.B. 267.</p> <p>New Hampshire Revised Statutes § 200:11-a: Requires school principals to conduct an annual IAQ investigation of all school buildings, using a checklist provided by the state Department of Education. Requires completed checklists to be filed with the department, the school board, and the local health officer and to remain on file for five years. Requires the state to review and consider the checklists when approving schools during the five-year school approval process. School IAQ Checklist adopted by the department requires schools to indicate whether they follow a wide range of best practices for IAQ management, including radon testing and mold prevention/remediation. Statute also requires the department to encourage public schools to implement EPA's IAQ Tools for Schools program and to ensure that every school has a copy of the program materials.</p>
New Jersey	<p>2002 Bill Text NJ A.B. 3310 (2/6/03): Provides for prompt handling of certain water damage claims by insurers. The bill is intended to avoid the situation in which the growth of mold or the development of some other chronic problem with the structure, such as fungi, wet or dry rot, or bacteria, is permitted to worsen due to the failure of the insurer to promptly determine whether the claim is covered.</p> <p>New Jersey Statutes § 56:8-19.1: Limits liability of licensed real estate brokers or salespersons for communicating false, misleading or deceptive information, where the licensee had no actual knowledge of the information, and made a diligent effort (e.g., obtained a property disclosure report from seller) to ascertain whether the information was false or misleading. State real estate commission property disclosure form adopted pursuant to the</p>

	<p>law (N.J. Admin. Code 13:45A-29.1) includes disclosure of number and location of carbon monoxide detectors, as well as disclosure of the presence of mold, lead-based paint, urea-formaldehyde foam insulation, asbestos, PCBs, other toxic substances, and any condition that adversely affects, or possibly adversely affects, the quality of air on the property. Disclosure form also includes a section providing information about radon testing results, though sellers can opt to provide this information at the time of the contract for sale.</p> <p>New Jersey Statutes §§ 34:6A-1, et seq.: Requires that every employer furnish a place of employment that is reasonably safe and healthful for employees, including adequate ventilation, and authorizes the state to adopt rules. Rules adopted under the law (N.J. Admin. Code 12:100-13.1 et seq.) establish safety and health standards for public workplaces, including certain requirements for addressing indoor air quality. The rules require that employers develop a plan for complying with the regulatory provisions and designate a person who is responsible for ensuring compliance. The rules also require employers to: establish and implement a preventive HVAC maintenance plan that includes a number of specified practices; undertake certain prevention and clean-up practices for microbial contamination; protect indoor air quality during renovation; respond to IAQ complaints; and keep and make available records of maintenance activities.</p>
New Mexico	No mold-related legislation on the books.
New York	<p>2003 Bill Text NY S.B. 896 (1/23/03): Amends the public health law and enacts the Toxic Mold Protection Act. There is a lengthy preamble as to what the act attempts to protect. Sets up a Task Force to advise the state on standards concerning exposure limits.</p> <p>2003 Bill Text NY S.B. 10610 (3/26/02): Prior bill to enact Toxic Mold Protection Act.</p> <p>New York Public Health Law § 1384: Establishes a state mold task force for the purpose of conducting a study and preparing a report covering the current state of knowledge about mold, the status of the problem in the state, and feasible legislative and executive actions to address the problem.</p>
North Carolina	<p>North Carolina Gen. Statutes § 115C-521.1: Provides that public school classrooms used as licensed child care facilities for pre-school students must have floors, walls, and ceilings that are free from mold, mildew, and lead hazards.</p> <p>North Carolina Gen. Statutes § 42-42: Requires that landlords repair or remedy, within a reasonable period of time, any imminently dangerous conditions on the premises, after acquiring actual knowledge or receiving notice of the conditions. Defines “imminently dangerous condition” to include excessive standing water, sewage, or flooding problems caused by plumbing leaks or inadequate drainage that contribute to mold.</p> <p>North Carolina Gen. Statutes §§ 115C-12, 115C-47: Directs the state to study methods for mold and mildew prevention and mitigation, and to incorporate recommendations into public school facilities guidelines as needed. Encourages local boards of education to remove and dispose of bulk mercury and mercury compounds in classrooms and prohibits the future use of mercury in classrooms, except in barometers. Also addresses other school environmental health issues such as arsenic-treated wood, pesticide use, and diesel emissions.</p>
North Dakota	No mold-related legislation on the books.
Ohio	<p>2001 Bill Text OH S.B. 217 (12/30/02): Amends various sections of the Pesticide Law and adds mold to the definition of fungus, with rust, smut, mildew, yeast, and bacteria.</p> <p>Ohio Revised Code § 5302.30: Requires sellers of residential real property containing one to four units to deliver a disclosure form to buyers disclosing material defects and the presence of hazardous materials or substances, including radon gas. Regulations adopted under the law (Ohio Admin. Code § 1301:5-6-10) establish the form, which also includes disclosure of mold inspection or remediation of the property, and contains a warning</p>

	statement about mold to purchasers, and requires disclosure of the presence of lead-based paint, asbestos, and urea-formaldehyde foam insulation.
Oklahoma	<p>2001 Bill Text OK S.B. 909 (6/4/02): Adds certain persons to the list of persons who are required to have a valid pesticide applicator's license. Defines fungus to include rusts, smuts, mildews, molds, yeasts, and bacteria.</p> <p>Effective as of July 1, 2004, HB 2554, Oklahoma's "Fair Assessment & Remediation Act" bars any one person from performing both mold assessment and remediation services on the same property or structure, and mandates that any mold assessor or remediator comply with a public statewide education program by distributing the program's educational materials to their customers.</p> <p>2003 Oklahoma Session Law Serv. Hs. Conc. Res. 1011: Establishes a Joint Task Force on Mold and Mold Remediation, and requires the task force to report its findings and recommendations to the legislature.</p> <p>Oklahoma Statutes, tit. 15 § 765.4: Provides that any person or entity that inspects houses for mold shall not also render services for removing the mold unless the total cost of the inspection and removal is \$200 or less.</p> <p>Oklahoma Statutes, tit. 60, §§ 831—839: Requires sellers of residential property consisting of one to two dwelling units to provide to purchasers either a written property disclaimer statement or written Property Condition Disclosure Statement. Requires the Oklahoma Real Estate Commission to establish by rule a form for the disclosure statement. The regulation (605 Okla. Admin. Code Ch. 10, Subch 17, App. A) adopts a disclosure form that requires seller to disclose known presence of radon or any radon testing. Also requires seller to disclose any mold inspections or treatment, the known presence of asbestos, lead-based paint, and other hazardous or regulated materials.</p>
Oregon	Oregon Revised Statutes §§ 105.462—105.490: Amends existing disclosure law to require sellers of real property consisting of one to four dwelling units to provide buyers with a seller's property disclosure statement, which includes disclosure of any testing of or treatment for formaldehyde, radon gas, mold, lead-based paint, or asbestos on the property.
Pennsylvania	<p>2003 Bill Text PA S.B. 218 (2/6/03): Establishes a public information and education program to inform the public about the health effects of molds and methods of prevention, identification, and remediation of mold growth. Mold is defined as a "form of multi-cellular fungi."</p> <p>2001 Bill Text PA H.B. 2652 (5/13/02): Amends the Air Pollution Control Act to add powers and duties to the Department of Environmental Resources (develop, implement, and administer a program to examine and test the indoor air quality of residential homes and buildings pertaining to the health effects of toxic mold).</p> <p>2001 Bill Text PA H.R. 439 (6/17/02): Encourages the development of a task force to investigate the health effects of mold.</p> <p>2001 Bill Text PA S.R. 171 (6/18/02): Companion bill to H.R. 439.</p> <p>2002 Pennsylvania Senate Resolution No. 171: Urges the Department of Health to establish a task force to investigate mold in homes, schools, and other buildings.</p>
Rhode Island	<p>2001 Bill Text RI S.B. 2465 (6/28/02): Amends the Pesticide Control Act and defines fungi to include rusts, smuts, mildews, molds, yeasts, and bacteria. Provides notice to parents prior to pesticide applications.</p> <p>2001 Bill Text RI S.B. 2985 (5/2/02): Proclaimed May 7, 2002 as "World Asthma Day," and in doing so recognized environmental triggers of asthma, such as "dust mites, mold, pet dander, cockroaches, and second-hand smoke."</p>

	<p>Rhode Island General Laws § 45-24.3-1 et seq.: Sets minimum housing conditions that must be met by any person who occupies or leases to others a dwelling, and provides for enforcement. Requires that “every foundation, floor, roof, ceiling, and exterior and interior wall must be reasonably weather-tight, watertight, and damp free.”</p>
South Carolina	<p>Effective as of January 1, 2005, SB 949 provides that no cause of action can be brought against a real estate licensee who has truthfully disclosed any known defect, including mold problems/conditions.</p> <p>South Carolina Code § 40-57-137: Provides that no legal cause of action may be brought against real estate licensees who truthfully disclose any known material defects, including moisture or mold problems.</p>
South Dakota	<p>South Dakota Codified Laws §§ 43-4-37—44: Requires sellers of residential property to provide a form disclosing known hazardous conditions and testing for conditions including radon, mold, methane gas, lead paint, asbestos insulation, urea formaldehyde foam insulation, or toxic materials.</p>
Tennessee	<p>2003 Bill Text TN H.B. 891, 2003 Bill Text TN S.B. 602 (2/12/03): Amends Tennessee Code Annotated, Title 49, Chapter 1, Part 2, relative to mold in schools and states the Commission of Education shall establish guidelines regarding mold abatement in public schools and sets up the framework of a task force.</p> <p>2003 Tennessee Laws Pub. Ch. 381 (H.B. 891): Creates a special joint committee to study mold abatement in public schools, which must report findings and recommendations to the General Assembly no later than March 1, 2004.</p>
Texas	<p>2003 Bill Text TX H.B. 98 (1/14/03): Relates to insurance issues regarding the use of mold, fire, and water-resistant materials in residential buildings and provides for premium discounts for the use of such materials.</p> <p>2003 Bill Text TX H.B. 113 (1/14/03): Relates to rates for insurance; withdrawal from writing a line of insurance. Also provides for a “specialized training program for adjusters who handle claims involving water or mold damage.”</p> <p>2003 Bill Text TX H.B. 117 (1/14/03): Relates to a rate rollback for homeowners and residential fire and allied lines insurance. Specifically deals with insurer’s delay in the implementation of rate reductions and requires any benefits to be passed on to insureds.</p> <p>2003 Bill Text TX H.B. 123 (1/14/03): Companion to H.B. 113 dealing with specialized training.</p> <p>2003 Bill Text TX H.B. 329 (1/14/03): Regulates mold assessors and remediators and specific licensing requirements.</p> <p>2003 Bill Text TX H.B. 473 (1/21/03): Pertains to indoor air quality in public school buildings and adds mold as an item to be regulated and assessed.</p> <p>2003 Bill Text TX H.B. 747 (2/6/03): Establishes procedure by insurers for handling water damage claims and sets up a time frame to be followed.</p> <p>2003 Bill Text TX H.B. 921 (2/12/03): Relates to limitations on insurance coverage secured through the Texas Windstorm Insurance Association and notes that the Association is not authorized to issue policies that cover any direct or indirect damage caused by microbial contaminants which include fungi (mold, mildew, or rust), bacteria or other microbes, or wet or dry rot.</p> <p>2003 Bill Text TX S.B. 114 (1/14/03): The Insurance Code would be amended pertaining to building code specification and maintenance as it pertains to mold-resistant materials.</p>

	<p>2003 Bill Text TX S.B. 129 (1/14/03): Pertains to the regulation of mold remediation and other mold-related activities (mold analyses company; mold assessment company; mold assessment consultant; mold assessment technician; mold remediation company; mold remediation contractor; and mold remediation supervisor). Provides for civil and criminal penalties.</p> <p>2003 Bill Text TX S.B. 242 (1/22/03): Relates to air quality in the public schools and includes the monitoring of mold.</p> <p>2003 Bill Text TX S.B. 243 (1/22/03): Provides for the regulation of mold assessors and remediators.</p> <p>2003 Bill Text TX H.C.R. 11 (1/14/03): Resolution that requests the Congress of the United States pursue research to quantify health risks and develop uniform exposure guidelines applicable to molds and mold aggregation that constitute a “sick building.”</p> <p>Texas Insurance Code §§ 542.251—.253: Authorizes the state to adopt rules regulating the handling of water damage claims filed under residential property insurance policies, including required notice, processing procedures and time frames, claim investigation, and settlement of claims.</p> <p>Texas Insurance Code §§ 544.301—.305: Prohibits an insurer from making an underwriting decision regarding a residential property insurance policy based on previous mold damage or mold damage claim if: mold remediation has been performed on the property and a certificate of mold remediation was issued to the property owner; or an independent assessor or adjustor inspected the property and determined that the property does not contain evidence of mold damage. State has incorporated this provision in its consumer bill of rights information to be distributed by insurers (see 28 Texas Admin. Code 5.9970) and has adopted rules to carry out the statute (see 28 Texas Admin. Code 21.1007).</p> <p>Texas Occupations Code §§ 1958.001 et seq.: Prohibits a person from engaging in mold assessment or remediation, as defined in the law and regulations, unless that person holds a license from the state. Prohibits license holders (except those employed by school districts) from performing both mold assessment and mold remediation on the same project. Establishes certain minimum work practices and record-keeping requirements for licensed mold assessors and remediators. Requires the Board of Health to adopt rules governing the licensing program, including minimum performance standards and training requirements (25 Texas Admin. Code 295.301-295.338). Authorizes the board to adopt rules that facilitate reciprocity and communication with other states that have a similar licensing program. Directs the Department of Health to administer the program, and requires the department to investigate complaints regarding mold-related activities. Provides for administrative and civil penalties. Also requires the department to conduct a statewide education and outreach program on IAQ and mold.</p>
Utah	No mold-related legislation on the books.
Vermont	No mold-related legislation on the books.
Virginia	<p>Effective as of March 29, 2004, HB 824 requires landlord disclosure to prospective tenants regarding visible evidence of mold in a dwelling.</p> <p>2002 Bill Text VA S.B. 908 (1/8/03): Creates a statutory scheme for identification and remediation of mold in occupational buildings. Allows the Commissioner of Labor and Industry to receive, inspect, and investigate complaints and to hold hearings and institute legal proceedings to enforce regulations and to impose fines.</p> <p>2002 Bill Text VA S.B. 909 (1/8/03): Adds a section to the Workers’ Compensation Act which covers the inhalation, ingestion, or physical contact with mold that causes an</p>

	<p>infectious respiratory or pulmonary disease, provided it occurred at the plaintiff's place of business. A presumption is established in favor of the worker that can be rebuffed by clear and convincing evidence that exposure was not at place of employment or was elsewhere.</p> <p>2002 Bill Text VA S.J.R. 357 (2/3/03): Directs the Virginia Housing Study Commission to study house-related issues dealing with the amelioration of mold and mildew for commercial and residential property.</p> <p>Virginia Code § 55-248.11:2: Requires landlords to disclose whether there is any visible evidence of mold in a dwelling unit, as part of the move-in inspection report. Gives tenant the option of terminating lease if mold is noted in report. Requires that if tenant elects to take possession notwithstanding presence of mold, landlord must promptly remediate condition, re-inspect, and issue new report. [See also Va. Code Ann. § 55-225.7.]</p> <p>Virginia Code § 55-248.4—18:2: Requires landlords and tenants to maintain the premises to prevent the accumulation of moisture and the growth of mold. Requires landlords to respond promptly to notifications by tenants of mold or moisture accumulation. Provides that where mold condition materially affects the health or safety of a tenant, the landlord may require the tenant to temporarily vacate premises for up to 30 days, while the landlord undertakes mold remediation consistent with professional standards as defined in the law. Requires landlord to pay relocation cost. [See also Va. Code Ann. § 55- 225.3—9.]</p> <p>Virginia Code §§ 54.1-517.3—5: Requires that, effective July 2011, individuals obtain a license from the state before performing or offering to perform mold inspections or remediation. Authorizes the state Board for Asbestos, Lead, Mold, and Home Inspectors to issue a license to those meeting the board's requirements or to those that have been certified by a national or state association approved by the board as being equivalent to the board's requirements for other applicants. Exempts those performing remediation on a project with a total surface area of mold contamination under 10 square feet, as well as owners inspecting or remediating their residential property of four or fewer units. Related state law (Va. Code. Ann. § 54.1-501) requires the board to promulgate licensing regulations establishing minimum qualifications and proper conduct of mold inspectors and remediators. Regulations (Va. Admin. Code title 18, § 15-60) set forth minimum qualifications, general standards of practice, and fees for licensed professionals and training providers, and establish penalties for violations.</p>
<p>Washington</p>	<p>2003 Bill Text WA H.B. 1269 (1/22/03): Regulates structural pest inspectors pertaining to wood-destroying organism inspections. A wood-destroying organism is an insect or fungi that consumes, excavates, develops in, or otherwise modifies the integrity of wood. Included is wood decay fungi (wood rot). Fungi includes mold.</p> <p>2003 Bill Text WA S.B. 5227 (1/20/03): Companion bill to H.B. 1269.</p> <p>2003 Bill Text WA S.B. 5798 (2/12/03): Regulates the disclosure about mold in residential dwelling units and requires written notice and information about mold to tenants.</p> <p>2001 Bill Text WA H.B. 2751 (1/25/02): Relates to the seller disclosure statements and a requirement pertaining to mold.</p> <p>2001 Bill Text WA S.C.R. 8426 (1/30/02): Establishes a Joint Select Committee on Indoor Mold Contamination to study the health effects of exposure to mold.</p> <p>Revised Code of Washington § 59.18.060: Requires landlords to provide tenants with written or posted information approved by the Department of Health about the health hazards of indoor mold and how to control mold growth to minimize health risks. The legislature appropriated \$43,000 in fiscal year 2006 for the implementation of these mold provisions.</p>

	Revised Code of Washington §§ 70.164.010—.070: Establishes a low-income weatherization program, and defines weatherization services to include indoor air quality improvements and other health and safety improvements. Specifically establishes as one purpose of the program the identification and correction, to the extent practical, of health and safety problems for residents of low-income households, including asbestos, lead, and mold hazards.
West Virginia	No mold-related legislation on the books.
Wisconsin	No mold-related legislation on the books.
Wyoming	No mold-related legislation on the books.

VI. Mold Resources (Federal, State, And Academic)

1. United States Environmental Protection Agency: www.epa.gov/mold/moldresources.html
2. Centers for Disease Control and Prevention: www.cdc.gov/mold
3. National AG Safety Database: www.nasdonline.org/document/1862/d001796/farmer-039-s-lung-causes-and-symptoms-of.html
4. National Institute for Occupational Safety and Health: wwwn.cdc.gov/pubs/niosh.aspx
5. Occupational Safety and Health Administration: www.osha.gov/dts/shib/shib101003.html and www.osha.gov/Publications/preventing_mold.pdf
6. National Institute of Environmental Health Sciences: www.niehs.nih.gov/
7. Louisiana State University: <http://eden.lsu.edu/topics/humanhealth/mold/Pages/default.aspx> ■

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