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SENATE BILL NO. 786

Senate Amendments in [] - January 16, 2023

Prefiled November 9, 2022

A *BILL to amend and reenact §§ 54.1-300, 54.1-500, 54.1-500.1, 54.1-501, 54.1-503, 54.1-504.1, 54.1-512, and 54.1-516 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 5 of Title 54.1 an article numbered 3.1, consisting of a section numbered 54.1-517.6, relating to the Department of Professional and Occupational Regulation; Board for Asbestos, Lead, and Home Inspectors; licensure of mold inspectors and mold remediators.*

Patron Prior to Engrossment—Senator Spruill

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-300, 54.1-500, 54.1-500.1, 54.1-501, 54.1-503, 54.1-504.1, 54.1-512, and 54.1-516 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 5 of Title 54.1 an article numbered 3.1, consisting of a section numbered 54.1-517.6, as follows:

§ 54.1-300. Definitions.

As used in this chapter unless the context requires a different meaning:

"Board" means the Board for Professional and Occupational Regulation.

"Certification" means the process whereby the Department or any regulatory board issues a certificate on behalf of the Commonwealth to a person certifying that he possesses the character and minimum skills to engage properly in his profession or occupation.

"Department" means the Department of Professional and Occupational Regulation.

"Director" means the Director of the Department of Professional and Occupational Regulation.

"Inspection" means a method of regulation whereby a state agency periodically examines the activities and premises of practitioners of an occupation or profession to ascertain if the practitioner is carrying out his profession or occupation in a manner consistent with the public health, safety and welfare.

"Licensure" means a method of regulation whereby the Commonwealth, through the issuance of a license, authorizes a person possessing the character and minimum skills to engage in the practice of a profession or occupation that is unlawful to practice without a license.

"Registration" means a method of regulation whereby any practitioner of a profession or occupation may be required to submit information concerning the location, nature and operation of his practice.

"Regulatory board" means the Auctioneers Board, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, Board for Barbers and Cosmetology, Board for Branch Pilots, Board for Contractors, Board for Hearing Aid Specialists and Opticians, Board for Professional Soil Scientists, Wetland Professionals, and Geologists, Board for Waste Management Facility Operators, Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals, Cemetery Board, Real Estate Appraiser Board, Real Estate Board, Fair Housing Board, Virginia Board for Asbestos, Lead, *Mold*, and Home Inspectors, and Common Interest Community Board.

CHAPTER 5.**ASBESTOS, LEAD, *MOLD*, AND HOME INSPECTION CONTRACTORS AND WORKERS.****§ 54.1-500. Definitions.**

As used in this chapter, unless the context requires a different meaning:

"Accredited asbestos training program" means a training program that has been approved by the Board to provide training for individuals to engage in asbestos abatement, conduct asbestos inspections, prepare management plans, prepare project designs or act as project monitors.

"Accredited lead training program" means a training program that has been approved by the Board to provide training for individuals to engage in lead-based paint activities.

"Accredited renovation training program" means a training program that has been approved by the Board to provide training for individuals to engage in renovation or dust clearance sampling.

"Asbestos" means the asbestiform varieties of actinolite, amosite, anthophyllite, chrysotile, crocidolite, and tremolite.

"Asbestos analytical laboratory license" means an authorization issued by the Board to perform phase contrast, polarized light, or transmission electron microscopy on material known or suspected to contain asbestos.

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SB786E

59 "Asbestos contractor's license" means an authorization issued by the Board permitting a person to
60 enter into contracts to perform an asbestos abatement project.

61 "Asbestos-containing materials" or "ACM" means any material or product which contains more than
62 1.0 percent asbestos or such other percentage as established by EPA final rule.

63 "Asbestos inspector's license" means an authorization issued by the Board permitting a person to
64 perform on-site investigations to identify, classify, record, sample, test and prioritize by exposure
65 potential asbestos-containing materials.

66 "Asbestos management plan" means a program designed to control or abate any potential risk to
67 human health from asbestos.

68 "Asbestos management planner's license" means an authorization issued by the Board permitting a
69 person to develop or alter an asbestos management plan.

70 "Asbestos project" or "asbestos abatement project" means an activity involving job set-up for
71 containment, removal, encapsulation, enclosure, encasement, renovation, repair, construction or alteration
72 of an asbestos-containing material. An asbestos project or asbestos abatement project ~~shall~~ *does* not
73 include nonfriable asbestos-containing roofing, flooring and siding materials which when installed,
74 encapsulated or removed do not become friable.

75 "Asbestos project designer's license" means an authorization issued by the Board permitting a person
76 to design an asbestos abatement project.

77 "Asbestos project monitor's license" means an authorization issued by the Board permitting a person
78 to monitor an asbestos project, subject to Department regulations.

79 "Asbestos supervisor" means any person so designated by an asbestos contractor who provides
80 on-site supervision and direction to the workers engaged in asbestos projects.

81 "Asbestos worker's license" means an authorization issued by the Board permitting an individual to
82 work on an asbestos project.

83 "Board" means the Virginia Board for Asbestos, Lead, *Mold*, and Home Inspectors.

84 "Dust clearance sampling" means an on-site collection of dust or other debris that is present after the
85 completion of a renovation to determine the presence of lead-based paint hazards and the provisions of a
86 report explaining the results.

87 "Dust sampling technician" means an individual licensed by the Board to perform dust clearance
88 sampling.

89 "Friable" means that the material when dry may be crumbled, pulverized, or reduced to powder by
90 hand pressure and includes previously nonfriable material after such previously nonfriable material
91 becomes damaged to the extent that when dry it may be crumbled, pulverized, or reduced to powder by
92 hand pressure.

93 "Home inspection" means any inspection of a residential building for compensation conducted by a
94 licensed home inspector. A home inspection ~~shall include~~ *includes* a written evaluation of the readily
95 accessible components of a residential building, including heating, cooling, plumbing, and electrical
96 systems; structural components; foundation; roof; masonry structure; exterior and interior components;
97 and other related residential housing components. A home inspection may be limited in scope as
98 provided in a home inspection contract, provided that such contract is not inconsistent with the
99 provisions of this chapter or the regulations of the Board. For purposes of this chapter, residential
100 building energy analysis alone, as defined in § 54.1-1144, shall not be considered a home inspection.

101 "Home inspector" means a person who meets the criteria of education, experience, and testing
102 required by this chapter and regulations of the Board and who has been licensed by the Board to
103 perform home inspections.

104 "Lead abatement" means any measure or set of measures designed to permanently eliminate
105 lead-based paint hazards, including lead-contaminated dust or soil.

106 "Lead-based paint" means paint or other surface coatings that contain lead equal to or in excess of
107 1.0 milligrams per square centimeter or more than 0.5 percent by weight.

108 "Lead-based paint activity" means lead inspection, lead risk assessment, lead project design and
109 abatement of lead-based paint and lead-based paint hazards, including lead-contaminated dust and
110 lead-contaminated soil.

111 "Lead-contaminated dust" means surface dust that contains an area or mass concentration of lead at
112 or in excess of levels identified by the Environmental Protection Agency pursuant to § 403 of TSCA (15
113 U.S.C. § 2683).

114 "Lead-contaminated soil" means bare soil that contains lead at or in excess of levels identified by the
115 Environmental Protection Agency.

116 "Lead contractor" means a person who has met the Board's requirements and has been issued a
117 license by the Board to enter into contracts to perform lead abatements.

118 "Lead inspection" means a surface-by-surface investigation to determine the presence of lead-based
119 paint and the provisions of a report explaining the results of the investigation.

120 "Lead inspector" means an individual who has been licensed by the Board to conduct lead

inspections and abatement clearance testing.

"Lead project design" means any descriptive form written as instructions or drafted as a plan describing the construction or setting up of a lead abatement project area and the work practices to be utilized during the lead abatement project.

"Lead project designer" means an individual who has been licensed by the Board to prepare lead project designs.

"Lead risk assessment" means (i) an on-site investigation to determine the existence, nature, severity and location of lead-based paint hazards and (ii) the provision of a report by the individual or the firm conducting the risk assessment, explaining the results of the investigation and options for reducing lead-based paint hazards.

"Lead risk assessor" means an individual who has been licensed by the Board to conduct lead inspections, lead risk assessments and abatement clearance testing.

"Lead supervisor" means an individual who has been licensed by the Board to supervise lead abatements.

"Lead worker" or "lead abatement worker" means an individual who has been licensed by the Board to perform lead abatement.

"Mold" means any living or dead fungi or related products or parts, including spores, hyphae, and spore-producing structures.

"Mold analysis" means the examination of a sample collected during a mold inspection for the purpose of (i) determining the amount of living or dead mold present in the sample or (ii) identifying or determining the amount of presence of any fungal products including mycotoxins and fungal volatile organic compounds present in the sample.

"Mold inspection" includes (i) an inspection, investigation, or survey of a dwelling or other structure to determine the presence of mold; (ii) the development of a mold management plan or mold remediation protocol; or (iii) the collection or analysis of a mold sample.

"Mold inspector" means an individual who has been licensed by the Board to perform mold inspections.

"Mold remediation" means cleaning mold from building material surfaces or the removal of contaminated building materials that are unsalvageable and other activities, including applying biocides or antimicrobial compounds and sanitization protocols, intended to prevent future mold contamination.

"Mold remediator" means an individual licensed by the Board to perform mold remediation.

"Person" means a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, or any other individual or entity.

"Principal instructor" means the individual who has the primary responsibility for organizing and teaching an accredited asbestos training program, an accredited lead training program, an accredited renovation training program, or any combination thereof.

"Renovation" means the modification of any existing structure or portion thereof, for compensation, that results in the disturbance of painted surfaces, unless that activity is (i) performed as a part of a lead abatement or (ii) limited in scope to the site work or remediation as referenced in the definition of contractor in § 54.1-1100. As used in this definition, "compensation" ~~shall include~~ includes the receipt of (a) pay for work performed, such as that paid to contractors and subcontractors; (b) wages, including but ~~not limited to~~ those paid to employees of contractors, building owners, property management companies, child-occupied facilities operators, state and local government agencies, and nonprofit organizations; and (c) rent for housing constructed before January 1, 1978, or child-occupied facilities in public or commercial building space.

"Renovation contractor" means a person who has met the Board's requirements and has been issued a license by the Board to conduct renovations.

"Renovator" means an individual who has been issued a license by the Board to perform renovations or to direct others who perform renovations.

"Residential building" means, for the purposes of home inspection, a structure consisting of one to four dwelling units used or occupied, or intended to be used or occupied, for residential purposes.

"Training manager" means the individual responsible for administering a training program and monitoring the performance of instructors for an accredited asbestos training, accredited lead training program or accredited renovation training program.

§ 54.1-500.1. Virginia Board for Asbestos, Lead, Mold, and Home Inspectors; membership; meetings.

The Virginia Board for Asbestos, Lead, *Mold*, and Home Inspectors shall be appointed by the Governor and composed of ~~13~~ 14 members as follows: (i) one shall be a representative of a Virginia-licensed asbestos contractor, (ii) one shall be a representative of a Virginia-licensed lead contractor, (iii) one shall be a representative of a Virginia-licensed renovation contractor, (iv) one shall be either a Virginia-licensed asbestos inspector or project monitor, (v) one shall be a Virginia-licensed

182 lead risk assessor, (vi) one shall be a representative of a Virginia-licensed asbestos analytical laboratory,
183 (vii) one shall be a representative of an asbestos, lead, or renovation training program, (viii) one shall be
184 a member of the Board for Contractors, (ix) three shall be Virginia-licensed home inspectors, (x) *one*
185 *shall be a licensed mold inspector or a licensed mold remediator*, and ~~(x)~~ (xi) two shall be citizen
186 members. After the initial staggering of terms, the terms of members of the Board shall be four years,
187 except that vacancies may be filled for the remainder of the unexpired term. The home inspector and
188 renovation contractor members appointed to the Board shall have practiced as a home inspector and a
189 renovation contractor, respectively, for at least five consecutive years immediately prior to appointment.

190 The Board shall meet at least once each year and other such times as it deems necessary. The Board
191 shall elect from its membership a chairman and a vice-chairman to serve for a period of one year. The
192 Board is vested with the powers and duties necessary to execute the purposes of this chapter.

193 **§ 54.1-501. Powers and duties of the Board.**

194 The Board shall administer and enforce this chapter. The Board shall:

195 1. Promulgate regulations necessary to carry out the requirements of this chapter in accordance with
196 the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) to include but not be limited to the
197 prescription of fees, procedures, and qualifications for the issuance and renewal of asbestos, lead, *mold*,
198 and renovation licenses, and governing conflicts of interest among various categories of asbestos, lead,
199 *mold*, and renovation licenses;

200 2. Approve the criteria for accredited asbestos training programs, accredited lead training programs,
201 *accredited mold training programs*, accredited renovation training programs, training managers, and
202 principal instructors;

203 3. Approve accredited asbestos training programs, accredited lead training programs, *accredited mold*
204 *training programs*, accredited renovation training programs, examinations and the grading system for
205 testing applicants for asbestos, lead, *mold*, and renovation licensure;

206 4. Promulgate regulations governing the licensing of and establishing performance criteria applicable
207 to asbestos analytical laboratories;

208 5. Promulgate regulations governing the functions and duties of project monitors on asbestos projects,
209 circumstances in which project monitors shall be required for asbestos projects, and training
210 requirements for project monitors;

211 6. Promulgate, ~~in accordance with the Administrative Process Act~~, regulations necessary to establish
212 ~~procedures and requirements~~ for the: (i) approval of accredited lead training programs, (ii) licensure of
213 individuals and firms to engage in lead-based paint activities, and (iii) establishment of standards for
214 performing lead-based paint activities consistent with the Residential Lead-based Paint Hazard Reduction
215 Act and United States U.S. Environmental Protection Agency (EPA) regulations. If the United States
216 Environmental Protection Agency (EPA) EPA has adopted, prior to the promulgation of any related
217 regulations by the Board, any final regulations relating to lead-based paint activities, then the related
218 regulations of the Board shall not be more stringent than the EPA regulations in effect as of the date of
219 such promulgation. In addition, if the EPA shall have outstanding any proposed regulations relating to
220 lead-based paint activities (other than as amendments to existing EPA regulations), as of the date of
221 promulgation of any related regulations by the Board, then the related regulations of the Board shall not
222 be more stringent than the proposed EPA regulations. In the event that the EPA shall adopt any final
223 regulations subsequent to the promulgation by the Board of related regulations, then the Board shall, as
224 soon as practicable, amend its existing regulations so as to be not more stringent than such EPA
225 regulations;

226 7. Promulgate regulations for the licensing of home inspectors not inconsistent with this chapter
227 regarding the professional qualifications of home ~~inspectors~~ *inspector* applicants, the requirements
228 necessary for passing home ~~inspectors~~ *inspector* examinations, the proper conduct of its examinations,
229 the proper conduct of the home inspectors licensed by the Board, and the proper discharge of its duties;
230 and

231 8. Promulgate, ~~in accordance with the Administrative Process Act~~, regulations necessary to establish
232 ~~procedures and requirements~~ for the (i) approval of accredited renovation training programs, (ii)
233 licensure of individuals and firms to engage in renovation, and (iii) establishment of standards for
234 performing renovation consistent with the Residential Lead-based Paint Hazard Reduction Act and
235 United States Environmental Protection Agency (EPA) EPA regulations. Such regulations of the Board
236 shall be consistent with the EPA Lead Renovation, Repair, and Painting Program final rule; and

237 9. Promulgate regulations for the (i) *licensing of mold inspector and mold remediator applicants*; (ii)
238 *requirements necessary for passing mold inspector and remediator examinations*; (iii) *proper conduct of*
239 *such examinations*; (iv) *proper discharge of duties of the mold inspectors and mold remediators licensed*
240 *by the Board*; (v) *establishment of standards for performing mold [assessment inspections] and*
241 *remediation consistent with the Institute of Inspection Cleaning and Restoration Certification (IICRC) in*
242 *its accredited publication, ANSI/IICRC S520, Third Edition, Standard for Professional Mold*
243 *Remediation, or its successor publication*; and (vi) *exemptions from mold inspector and mold remediator*

licensure requirements. The Board shall have the discretion to impose different licensure requirements for mold inspectors and mold remediators.

§ 54.1-503. Licenses required.

A. It ~~shall be~~ is unlawful for any person who does not have an asbestos contractor's license to contract with another person, for compensation, to carry out an asbestos project or to perform any work on an asbestos project. It ~~shall be~~ is unlawful for any person who does not have an asbestos project designer's license to develop an asbestos project design. It ~~shall be~~ is unlawful for any person who does not have an asbestos inspector's license to conduct an asbestos inspection. It ~~shall be~~ is unlawful for any person who does not have an asbestos management planner's license to develop an asbestos management plan. It ~~shall be~~ is unlawful for any person who does not have a license as an asbestos project monitor to act as project monitor on an asbestos project.

B. It ~~shall be~~ is unlawful for any person who does not possess a valid asbestos analytical laboratory license issued by the Board to communicate the findings of an analysis, verbally or in writing, for a fee, performed on material known or suspected to contain asbestos for the purpose of determining the presence or absence of asbestos.

C. It ~~shall be~~ is unlawful for any person who does not possess a license as a lead contractor to contract with another person to perform lead abatement activities or to perform any lead abatement activity or work on a lead abatement project. It ~~shall be~~ is unlawful for any person who does not possess a lead supervisor's license to act as a lead supervisor on a lead abatement project. It ~~shall be~~ is unlawful for any person who does not possess a lead worker's license to act as a lead worker on a lead abatement project. It ~~shall be~~ is unlawful for any person who does not possess a lead project designer's license to develop a lead project design. It ~~shall be~~ is unlawful for any person who does not possess a lead inspector's license to conduct a lead inspection. It ~~shall be~~ is unlawful for any person who does not possess a lead risk assessor's license to conduct a lead risk assessment. It ~~shall be~~ is unlawful for any person who does not possess a lead inspector's or lead risk assessor's license to conduct lead abatement clearance testing.

D. It ~~shall be~~ is unlawful for any person who does not possess a license as a renovation contractor to perform renovation. It ~~shall be~~ is unlawful for any person who does not possess a renovator's license to perform or direct others to perform renovation. It ~~shall be~~ is unlawful for any person who does not possess a dust sampling technician's license to perform dust clearance sampling.

E. It ~~shall be~~ is unlawful for any individual who does not possess a license as a home inspector issued by the Board to perform a home inspection for compensation on a residential building. It ~~shall be~~ is unlawful for any individual who does not possess a home inspector license with the new residential structure endorsement to conduct a home inspection for compensation on any new residential structure. For purposes of this chapter, "new residential structure" means a residential structure for which the first conveyance of record title to a purchaser has not occurred, or of which a purchaser has not taken possession, whichever occurs later.

F. It is unlawful for any person who does not possess a license as a mold inspector or mold remediator to contract with another person to perform mold [~~assessment~~ inspections] or mold remediation activity or work on a mold remediation project.

§ 54.1-504.1. Notices for handling asbestos.

The Department of Professional and Occupational Regulation shall include with every asbestos worker's license a notice, in English and Spanish, containing a summary of the basic worker safety procedures regarding the handling of asbestos and information on how to file a complaint with the Virginia Board for Asbestos, Lead, and Home Inspectors.

§ 54.1-512. Exemptions from licensure.

A. In an emergency, the Board may, at its discretion, waive the requirement for asbestos contractor's, supervisor's, and worker's licenses.

B. Any employer, and any employee of such employer, who conducts an asbestos project on premises owned or leased by such employer shall be exempt from licensure.

C. Notwithstanding the provisions of the Virginia Tort Claims Act (§ 8.01-195.1 et seq.), neither the Commonwealth nor any agency or employee of the Commonwealth shall be subject to any liability as the result of a determination made by the Board hereunder.

D. Nothing in this chapter shall be construed as requiring the licensure of a contractor who contracts to undertake a project, a portion of which constitutes an asbestos or lead abatement project or renovation, if all of the asbestos or lead abatement work or renovation is subcontracted to a person licensed to perform such work in accordance with the provisions of this chapter.

E. This chapter shall not apply to any person who performs lead-based paint activities within residences which they own, unless the residence is occupied by a person or persons other than the owner or the owner's immediate family while these activities are being conducted or a child is residing in the property and has been identified as having an elevated blood-lead level.

F. This chapter shall not apply to renovations of owner-occupied housing constructed before 1978, provided the person performing renovations obtains a statement signed by the owner providing that (i) no child under the age of six or pregnant woman resides in the structure, (ii) the residence is not a child-occupied facility, and (iii) the owner acknowledges that renovations may not include all of the lead-safe work practices contained in the EPA Lead Renovation, Repair, and Painting Program final rule.

G. This chapter shall not apply to any person who performs renovations on (i) housing constructed after January 1, 1978, (ii) housing for the elderly or persons with disabilities, unless a child under the age of six resides or is expected to reside in the structure, or (iii) a structure that does not have bedrooms.

H. *This chapter shall not apply to (i) an individual performing mold remediation in an area in which the mold contamination for the total project affects a total surface area of less than 10 square feet or (ii) an owner or the managing agent or employee of an owner performing mold inspections or mold remediation on the owner's residential property, provided such property contains no more than four residential dwelling units.*

§ 54.1-516. Disciplinary actions.

A. The Board may reprimand, fine, suspend, or revoke (i) the license of a lead contractor, lead inspector, lead risk assessor, lead project designer, lead supervisor, lead worker, asbestos contractor, asbestos supervisor, asbestos inspector, asbestos analytical laboratory, asbestos management planner, asbestos project designer, asbestos project monitor, asbestos worker, renovator, dust sampling technician, mold inspector, mold remediator, renovation contractor, or home inspector or (ii) the approval of an accredited asbestos training program, accredited lead training program, *accredited mold training program*, accredited renovation training program, training manager, or principal instructor, if the licensee or approved person or program:

1. Fraudulently or deceptively obtains or attempts to obtain a license or approval;
2. Fails at any time to meet the qualifications for a license or approval or to comply with the requirements of this chapter or any regulation adopted by the Board; or
3. Fails to meet any applicable federal or state standard when performing *activities related to an asbestos project or service, performing lead-based paint activities, mold assessment or remediation, or performing renovations.*

B. The Board may reprimand, fine, suspend, or revoke the license of (i) any asbestos contractor who employs or permits an individual without an asbestos supervisor's or worker's license to work on an asbestos project, (ii) any lead contractor who employs or permits an individual without a lead supervisor's or lead worker's license to work on a lead abatement project, ~~or~~ (iii) *any mold inspector or mold remediator contractor who employs or permits an individual without a mold inspector's or mold remediator's license to perform or to direct others who perform mold inspections or remediations; or* (iv) any renovation contractor who employs or permits an individual without a renovator's license to perform or to direct others who perform renovations.

~~C. The Board may reprimand, fine, suspend or revoke the license of a home inspector.~~

Article 3.1.

Mold Inspectors and Remediators.

§ 54.1-517.6. Requirements for licensure to perform mold inspection or mold remediation.

A. *The Board shall issue a license to perform mold inspection or mold remediation in the Commonwealth to any applicant who has submitted satisfactory evidence that he has successfully:*

1. *Completed any educational requirements as required by the Board;*
2. *Completed any experience requirements as required by the Board; and*
3. *Passed any written or electronic examination offered or approved by the Board.*

B. *The Board may issue a license to perform mold inspections or mold remediation to any applicant who is certified by a national or state professional mold inspectors or mold remediators association approved by the Board, provided that the requirements for the applicant's class of membership in such association are equal to or exceed the requirements established by the Board for all applicants.*

2. That the member appointed to the Board for Asbestos, Lead, Mold, and Home Inspectors (the Board), as renamed by this act, pursuant to clause (x) of § 54.1-500.1 of the Code of Virginia, as amended by this act, shall not vote on any matters before the Board except on matters related to mold inspection or mold remediation as defined in § 54.1-500, as amended by this act, until July 1, 2025.

3. That the initial term of the member appointed to the Board for Asbestos, Lead, Mold, and Home Inspectors, as renamed by this act, pursuant to clause (x) of § 54.1-500.1 of the Code of Virginia, as amended by this act, shall be for a term of one year beginning July 1, 2024. Thereafter, the appointment of such member shall be for a term of four years.

[4. That the provisions of this act shall become effective on July 1, 2024.]