

CHAPTER NO. 65

SENATE BILL NO. 302

By Cooper, Southerland, Bryson, Kilby, McLeary, Ramsey, Burchett, Burks, Fowler, Black

Substituted for: House Bill No. 6

By Ferguson, Curtiss, Hargrove, Sharp, Watson, Fraley, Coleman, Shepard, Russell Johnson, Cobb, Overbey, Harry Brooks, Crider, DuBois, McDonald, Todd, Sargent, Odom, Hargett, Gresham, Marrero, Brown, Favors

AN ACT to amend Tennessee Code Annotated, Title 62, Chapter 6, relative to home inspection services.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 62, Chapter 6, is amended by deleting Part 3 in its entirety and by substituting instead Sections 2 through 13 of this act.

SECTION 2. This act shall be known and may be cited as the "Tennessee Home Inspector License Act of 2005".

SECTION 3. As used in this act, unless the context otherwise requires:

(1) "Client" means any person who hires or seeks to hire a home inspector to obtain a home inspection or home inspection report;

(2) "Commissioner" means the commissioner of commerce and insurance, or the commissioner's designee;

(3) "Home inspection" means a visual analysis for the purpose of providing a professional opinion of the condition of a residential building, ancillary buildings, any reasonably accessible installed components, and the operation of the building's systems, including any controls normally operated by the owner of the building, for the following components:

(A) Heating systems;

(B) Cooling systems;

(C) Electrical systems;

(D) Plumbing systems;

(E) Structural components;

(F) Foundations;

(G) Roof coverings;

(H) Exterior and interior components; and

(I) Any other site aspects that affect the residential dwelling.

Home inspection does not include a compliance inspection for building codes or any other codes adopted by this state or a political subdivision of this state. Home inspection does not include any work which is within the scope of practice of architecture, engineering, or landscape architecture or is performed by a person qualified to use the title "registered interior designer," all as defined in Chapter 2 of this title. "Home inspection" also does not include an inspection or assessment by a lender either as a part of an evaluation of value, or for purposes of determining whether or not to extend credit, provided such inspection or assessment shall not be represented as a "home inspection report".

(4) "Home inspection report" means a legibly written document prepared for compensation and issued after a home inspection. The report shall include the following:

(A) A report on any system or component inspected that, in the opinion of the inspector, is significantly deficient. A report under this subdivision must include the reason why the system or component is significantly deficient;

(B) A list of any systems or components that were designated for inspection in the standards of practice adopted by the commissioner but that were not inspected;

(C) The reason a system or component listed under subdivision (B) was not inspected;

(D) A statement that the report does not address environmental hazards, including:

(i) Lead-based paint;

(ii) Radon;

(iii) Asbestos;

(iv) Cockroaches;

(v) Rodents;

(vi) Pesticides;

(vii) Treated lumber;

(viii) Fungus;

(ix) Mercury;

(x) Carbon monoxide; or

(xi) Other similar environmental hazards;

(E) A statement that the report does not address wood destroying insects and organisms; and

(F) A statement that the report does not address subterranean systems or system components (operational or nonoperational), including:

(i) Sewage disposal;

(ii) Water supply; or

(iii) Fuel storage or delivery.

(5) "Home inspector" means any person who is licensed under this act as a home inspector and who engages in the business of performing home inspections and writing home inspection reports; and

(6) "Residential building" means a structure that is intended to be or is in fact used as a residence consisting of from one (1) to four (4) family dwelling units.

SECTION 4. (a) The commissioner has the power and the duty to:

(1) Administer and enforce the provisions of this chapter;

(2) Issue and renew licenses to home inspectors pursuant to the provisions of this chapter;

(3) Suspend, revoke, or fail to renew the license of a home inspector;

(4) Establish standards for the initial and continuing education of home inspectors, including prescribing the form and content of examinations to determine the qualifications of persons applying for licensure;

(5) Promulgate such rules and regulations as are reasonably necessary to effectuate the purposes of this chapter. All such rules shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5;

(6) Adopt and publish a code of ethics and standards of practice for home inspectors; and

(7) Charge and collect fees, including license application and renewal fees, to be utilized to fund such activities as may be necessary to carry out the provisions of this chapter.

(b) The commissioner may, as authorized by § 4-5-205, appoint a committee of persons with at least five (5) years experience in the field of home inspection to advise the commissioner with respect to any contemplated rulemaking under this section. The commissioner shall strive to include at least one (1) member from each of the following: The American Society of Home Inspectors, the Home Inspectors of Tennessee

Association, the National Association of Certified Home Inspectors, the National Association of Home Inspectors, and the American Home Inspection Association.

(c) The commissioner may seek relief at law or equity to restrain or enjoin any act or practice in violation of this chapter, or of any rule promulgated hereunder. Jurisdiction is conferred upon the chancery and circuit courts of this state to hear and determine such a suit. No bond shall be required for the prosecution of the suit or for the issuance of an injunction.

SECTION 5. It is unlawful for any person, directly or indirectly, to engage in or conduct, or to advertise or claim to be engaging in or conducting the business, or acting in the capacity of a home inspector as defined in this chapter, within this state, without first obtaining a home inspector license as provided in this chapter.

SECTION 6. (a) Any person who applies for licensure as a home inspector must submit an application on a form as prescribed by the commissioner. The application shall be accompanied by the fee specified in Section 4. Applicants for licensure shall furnish evidence satisfactory to the commissioner that the applicant:

(1) Is at least eighteen (18) years of age;

(2) Has graduated from high school or earned a general education development certificate;

(3) Has not been convicted of a crime that has a direct bearing on the applicant's ability to perform competently and fully as a licensee;

(4) Is not the subject of a disciplinary or enforcement action by another state or a local jurisdiction in connection with the performance of home inspections or the licensing or certification of home inspectors;

(5) Has successfully completed ninety (90) hours of a commissioner-approved training program or course of study involving the performance of home inspections and the preparation of home inspection reports;

(6) Has passed a commissioner-approved competency examination administered by the state or an entity selected by the state; and

(7) Has obtained a certificate of insurance in an amount required by the commissioner for general liability as well as errors and omissions to cover all activities contemplated under this chapter.

(b) During the first one hundred eighty (180) days after the effective date of this act, the commissioner may issue a license to an applicant who meets the requirements of subsection (a) of this section, excluding subsection (a)(5), if the applicant furnishes evidence satisfactory to the commissioner that the applicant:

(1) Has been principally engaged in the performance of home inspections in this state for at least two (2) years; and

(2) Has completed at least one hundred fifty (150) home inspections for compensation in the applicant's career.

SECTION 7. If the commissioner determines that an applicant meets the requirements of this chapter and is qualified for a home inspector license, the commissioner shall issue a license to the applicant that shall expire two (2) years following the date of issuance unless revoked or suspended prior thereto. The expiration date of the license shall appear on the license and no other notice of its expiration need be given to its holder. The commissioner shall maintain a roster, which shall be made available to the public, showing the name and place of business of each home inspector currently licensed. A licensee shall notify the commissioner immediately of any change of name, name under which the licensee conducts business, or business address.

SECTION 8. (a) To renew a current, valid home inspector license, the holder of such license shall submit an application on a form as prescribed by the commissioner. The application for renewal shall be accompanied by the fee specified in Section 4 of this act. All documentation and fees that are prerequisite to the renewal of a license shall be neither delivered to the commissioner not earlier than one hundred twenty (120) days nor later than thirty (30) days prior to the expiration date of the license then held.

(b) Applicants for license renewal shall furnish evidence satisfactory to the commissioner that the applicant:

(1) Has completed thirty-two (32) hours of commissioner-approved continuing education;

(2) Has not violated the provisions of this chapter or any rules and regulations promulgated thereunder; and

(3) Has obtained a certificate of insurance in an amount required by the commissioner for general liability as well as errors and omissions to cover all activities contemplated under this chapter.

(c) The commissioner may refuse to renew any license if the licensee has continued to perform home inspections in this state following the expiration of the license.

(d) The license of any home inspector who fails timely to pay a renewal fee or to comply with any prerequisite or condition to licensure or renewal may be reinstated without examination within sixty (60) days after the expiration date of the license upon providing proof of compliance with such prerequisites or conditions, including payment of any penalty fee arising from such failure to comply with any prerequisite or condition to renewal prior to the expiration date of the license, and payment of the renewal fee, plus an additional penalty fee of not more than twenty-five dollars (\$25.00) per month. Any person desiring reinstatement thereafter must reapply for licensure; provided, that the commissioner has the discretion to:

(1) Waive reexamination or additional education requirements for such an applicant; or

(2) Reinstatement a license subject to the applicant's compliance with such reasonable conditions as the commissioner may prescribe, including payment of

a penalty fee, in addition to the penalty fee provided in subsection (d), of not more than twenty-five dollars (\$25.00) per month, or portion thereof, from the time the license expired.

(e) When fees are remitted by mail to the commissioner, the date of payment shall be determined by the official postmark on such mail.

SECTION 9. (a) The commissioner may take disciplinary action against a licensee or applicant, deny an application for a license, assess a civil penalty of up to one thousand dollars (\$1,000) per violation, or may suspend, revoke, or refuse to issue or renew a license when a licensee performs or attempts to perform any of the following acts:

(1) Accepting or offering commissions or allowances, directly or indirectly, from or to parties other than the client, unless fully disclosed to the client in writing;

(2) Performing or offering to perform repair or maintenance work on a property the licensee has inspected in the preceding twelve (12) months;

(3) Using a home inspection with the intention to obtain work in another field or profession;

(4) Accepting compensation, financial or otherwise, from more than one (1) interested party for the same service without the consent of all interested parties;

(5) Failing to disclose to the client any financial interest or any relationship which may affect the client's interest;

(6) Disclosing information concerning the results of a home inspection without the approval of the client or the client's legal representative, except under a court order;

(7) Knowingly making a false or misleading representation about:

(A) The condition of a residential dwelling for which the licensee has performed or has contracted to perform a home inspection; or

(B) The extent of the services the licensee has performed or will perform;

(8) Committing a felony in the course of the practice of home inspection;

(9) Violating any provisions of this chapter or rules promulgated by the commissioner under this chapter;

(10) Making a false or misleading representation:

(A) In a license or renewal application form; or

(B) In information provided to the commissioner;

(11) Failing to pay any fees or fines required by this chapter;

(12) Failing to continuously maintain the insurance required by this chapter;

(13) Communicating to the public false or misleading information about the type of license held by the licensee;

(14) Engaging in a course of lewd or immoral conduct in connection with the delivery of services to clients; or

(15) Failing to complete the continuing education requirements established by the commissioner.

(b) The commissioner is authorized to issue citations against persons engaging in or conducting in the business, or acting in the capacity of a home inspector as defined in this chapter without a license in violation of Section 5 of this act. The commissioner shall promulgate rules and regulations to specify those conditions necessary to the issuance of a citation, and the range of penalties for violations of this chapter. Each citation shall:

(1) Be in writing and shall describe with particularity the basis for the citation; and

(2) Contain an order to cease all violations of this chapter and an assessment of a civil penalty in an amount not less than fifty dollars (\$50.00) nor more than one thousand dollars (\$1,000) per violation.

(c) The sanctions authorized pursuant to this part shall be in addition to any other remedies, civil and criminal, available to any person harmed by a violation of this chapter.

(d) The provisions of the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5, govern all matters and procedures respecting the hearing and judicial review of any contested case, as defined therein, arising under this chapter.

SECTION 10. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 11. For the purpose of effectuating the intent of this act, the commissioner is authorized to promulgate rules by public necessity pursuant to the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5.

SECTION 12. For the purpose of promulgating rules and regulations, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect July 1, 2006, the public welfare requiring it.

PASSED: March 31, 2005


JOHN S. WILDER
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 18th day of April 2005


PHIL BREDESEN, GOVERNOR