

SENATE, No. 335

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Senator MARTIN

1 **AN ACT** providing for the licensing and regulation of home inspectors,
2 supplementing Title 56 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. This act shall be known and may be cited as the "Home
8 Inspection Professional Licensing Law."

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10 2. As used in this act, except as expressly or by clear implication
11 otherwise intended:

12 a. "Board" means the Board of Home Inspectors established by
13 section 3 of this act.

14 b. "Certificate of condition" means a written report of the
15 evaluation made by a qualified and licensed home inspector of the
16 elements and systems inspected by him pursuant to a contract for such
17 inspection as provided under this act.

18 c. "Client" means any person who engages, or seeks to engage, the
19 services of a home inspector for the purpose of obtaining inspection
20 of and written report upon the condition of a residential building.

21 d. "Director" means the Director of the Division of Consumer
22 Affairs in the Department of Law and Public Safety.

23 e. "Home inspector" means any person licensed as a home
24 inspector by the Board pursuant to the provisions of this act.

25 f. "Home inspection business" means the inspection of the
26 condition of the structural and mechanical elements of residential
27 buildings, the preparation of reports thereon for clients of the home
28 inspector, and the providing of warranties thereon as authorized by
29 provision of this act. A home inspection within the meaning of this act
30 shall consist of visual inspection in situ of the structural elements of,
31 and mechanical and electrical systems included in, a residential
32 building, which are normally accessible to such inspection, for the
33 purpose of identifying any defect affecting the structural soundness
34 and functional efficiency of any such elements or systems, or
35 determining the absence of such defects to the extent such

1 determination is feasible; and any such inspection shall, where
2 practicable, include test operation of any systems in the manner and
3 under conditions in which they would be operated in ordinary daily use
4 by residents of the structure.

5 g. "Real estate broker" means a person licensed by the State to
6 engage in the business of a real estate broker.

7 h. "Real estate salesman" means a person licensed by the State to
8 engage in the business of a real estate salesman.

9 i. "Residential building" means a structure consisting of from one
10 to four family dwelling units that has been occupied as such prior to
11 the time when a home inspection is requested or contracted for in
12 accordance with this act, but shall not include any such structure
13 newly constructed and not previously occupied.

14 j. "Structural elements and mechanical systems" includes:

15 (1) Foundations, basements and first-floor structures, including
16 structural members and assemblies, foundation components, grading
17 and drainage.

18 (2) Walls, exterior and interior, ceilings; window and door
19 assemblies; stairways, exterior and interior; and porches, decks,
20 balconies and railings.

21 (3) Roofing, including ventilation systems.

22 (4) Electrical systems, including type of service supplied to the
23 structure, including amperage, wiring materials and workmanship, and
24 type and sufficiency of overload protection and safety provision.

25 (5) Interior plumbing system, including source of water supply
26 (quality thereof not being within the purview of system inspection),
27 method of waste disposal (adequacy or efficiency thereof not being
28 within the purview of system inspection); material, workmanship and
29 functionality of supply and waste lines, and operation of water shutoff
30 valves and drainage cleanout access points; arrangements for
31 hot-water heating (including, where applicable, connection with
32 heating system).

33 (6) Heating and air conditioning, including energy source or
34 sources, type and location of equipment, including automatic or
35 manual controls, and heating or cooling outlets in each habitable room;
36 flue pipes, chimneys and fireplaces.

37 k. "Warranty" means a written guarantee provided by a home
38 inspector as authorized by section 6 of this act.

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40 3. There is hereby established in the Division of Consumer Affairs
41 of the Department of Law and Public Safety the Board of Home
42 Inspectors. The board will consist of five members, of whom one shall
43 be the Director of the Division of Consumer Affairs for the time being,
44 and the other four shall be appointed by the Governor with the advice
45 and consent of the Senate. Two of the appointed members shall be
46 home inspectors within the meaning of this act, and the other two shall

1 be chosen on the basis of their knowledge and experience in the field
2 of home construction but shall not be home inspectors within the
3 meaning of this act. Appointed members shall serve for terms for four
4 years, except that of the first two home inspector members appointed
5 one shall serve for a term of two years, and of the first two members
6 not home inspectors appointed one shall serve for a term of one year
7 and the other for a term of three years. Vacancies among appointed
8 members shall be filled in the same manner as the original appointment
9 was made, but for the unexpired term only. Appointed members shall
10 serve without compensation, but shall be entitled to reimbursement for
11 actual expenses necessarily incurred in the performance of their duties
12 as members. The Director of the Division of Consumer Protection
13 may exercise his functions as member of the board by delegation to
14 any subordinate officer in the division, which delegation shall be in
15 writing and filed with the secretary of the board. The director shall
16 also appoint the secretary of the board from among the permanent
17 staff of the division. Neither the director, nor his delegate exercising
18 his functions as member of the board, nor the secretary of the board,
19 shall receive any additional compensation from the State by reason of
20 their services on or to the board.

21 For the purposes of the first appointments under this section, the
22 determination of whether a person is a home inspector shall be in the
23 discretion of the appointing authority, who may deem any person to be
24 a home inspector if he has reason to believe that that person is
25 qualified for a license as such and would have received such a license
26 if the board and the licensing procedure established by this act had
27 been in effect prior to the making of those appointments.

28

29 4. No person not licensed as a home inspector pursuant to this act
30 shall give, purport to give, or hold himself out as qualified to give a
31 certificate of condition, as defined in this act, or any certificate or
32 assurance represented to be equivalent thereto.

33

34 5. No contract of sale of a residential building shall by its terms or
35 their practical implications forbid, prevent or preclude the obtaining of
36 an inspection and certificate of condition, as defined in this act, prior
37 to the execution of the deed or other conveyance pursuant to that
38 contract. Any contract of sale violating the terms of this section shall
39 be unenforceable as against the prospective buyer.

40

41 6. Any home inspector issuing a certificate of condition under
42 authorization of this act may in writing warrant its accuracy and
43 integrity to the client to whom it is issued, which warranty shall extend
44 for 18 months from the date on which the inspection on which it is
45 based was made, or for 12 months after the sale of the property on
46 which it was issued, whichever comes first. For the security of such

1 warranties and providing against other liabilities, the board shall from
2 time to time establish and enforce a minimum of insurance coverage
3 that every licensed home inspector shall be required to purchase
4 against liability for any negligence or inaccuracy in his inspection or
5 certificate, or any other breach of a warranty under this section, or a
6 contract required pursuant to section 7 of this act.

7

8 7. No home inspection shall be commenced unless all elements and
9 conditions of the inspection are contained in a written contract signed
10 in triplicate by the home inspector and client. One copy shall be
11 retained by the home inspector, one by the client, and one shall be
12 mailed to the board. The cost to the client for the inspection and
13 report shall be indicated in the contract, and the cost and coverage of
14 a warranty, if any, shall also be indicated in the contract. In order for
15 a valid certificate of condition to issue, the contract shall provide for
16 a home inspection covering the structural elements and mechanical
17 systems of the building to be inspected, within the meaning of those
18 terms pursuant to section 2 of this act.

19

20 8. a. If a home inspector contracts with more than one client for
21 a home inspection report on the same residential building, the reports
22 shall not differ in their content with respect to any element reported on
23 unless such difference is justified by a material change in the condition
24 of that element in the interim between different inspections.

25 b. No home inspector shall purport to offer or sell insurance on the
26 elements inspected by him under a home inspection contract.

27 c. No home inspector or anyone acting on his behalf shall give or
28 offer to give any commission or inducement whatsoever for the
29 referral of a client by a real estate broker or salesman, nor shall any
30 such broker or salesman request or accept any such commission or
31 inducement.

32

33 9. a. The board shall periodically make available to real estate
34 brokers and salesmen a listing of all licensed home inspectors in the
35 State. The list shall be on a county-by-county basis and shall list the
36 names and business addresses of each home inspector. The board may
37 charge a fee for this service commensurate with the cost of
38 maintaining, updating, and disseminating the list.

39 b. Real estate brokers and salesmen shall inform prospective buyers
40 that home inspection services are available, and may make available to
41 them the list provided under subsection a. of this section. At the
42 request of a buyer, real estate brokers and salesmen may recommend
43 a home inspector or home inspectors, but no such recommendations
44 shall establish or tend to establish any liability on the part of such a
45 broker or salesman.

1 10. Application for a license shall be made in writing under oath,
2 on a form provided by the board, and shall include the following
3 information:

4 a. If an individual:

5 (1) Full name;

6 (2) Residence and business address;

7 (3) Name and duration of all businesses engaged in during the
8 previous five years; and

9 (4) Experience in the home inspection business.

10 b. If a partnership:

11 (1) Name and address of the partnership;

12 (2) Name, residence, and business address of each partner; and

13 (3) Business experience of each partner during the previous five
14 years.

15 c. If an association:

16 (1) Name and address of the association;

17 (2) Name, residence, and business address of each of the officers,
18 directors, and managers;

19 (3) Business experience during the previous five years of each
20 officer, director, and manager; and

21 (4) Name, residence, and business addresses of all members who
22 have 10% or more control of the association.

23 d. If a corporation:

24 (1) Name of the corporation, date and place of incorporation;

25 (2) Name, residence, and business address of each director and
26 officer of the corporation;

27 (3) Business experience during the previous five years of each
28 director and officer;

29 (4) Name, residence, and shareholding of all shareholders owning
30 10% or more of the outstanding shares; and

31 (5) Number of shares of each class of stock issued and outstanding.

32

33 11. In all cases, the application shall also include:

34 a. The full name, residence, and age of each agent of the home
35 inspection business, exclusive of ministerial office employees.

36 b. Whether any person making application has been convicted in
37 any State or Federal court of a crime, the record of which has not been
38 expunged, annulled, and sealed, or forgery, fraud, obtaining money
39 under false pretenses, embezzlement, extortion, larceny, burglary,
40 breaking and entering, robbery, bribery, criminal conspiracy to defraud
41 or other like offense or offenses including violations of this act or has
42 entered the plea of nolo contendere or non vult to any indictment,
43 allegation or complaint alleging the commission of such offenses.

44 The record of conviction or the entry of the plea in any court of this
45 State or of any other state or of the United States shall be sufficient
46 warrant for the refusal, suspension or revocation of a license except as

1 provided in P.L. 1968, c. 282 (C. 2A:168A-1 et seq.).

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3 12. No home inspector shall be licensed unless the board is
4 satisfied that the home inspector or one or more of his agents,
5 collectively, are qualified pursuant to the provisions of this act and any
6 other rules and regulations promulgated thereunder by the board.

7 The board may require any applicant for a license to complete
8 satisfactorily an examination devised or approved by it as an adequate
9 indicator of the qualifications required of a home inspector. For this
10 purpose, the board may by rule approve examinations administered by
11 recognized professional societies, such as the American Society of
12 Home Inspectors.

13

14 13. Every person making application for a license shall pay to the
15 board at the time of making application and every other year thereafter
16 upon license renewal a fee of \$200.00 for its principal place of
17 business and \$100.00 for each additional place of business.

18

19 14. No abatement in the amount of the license fee shall be made if
20 the license is surrendered, canceled or revoked prior to the expiration
21 of the period for which such license was issued. Every license shall
22 expire on the last day of the twenty-fourth calendar month following
23 the calendar month in which the license was issued; provided,
24 however, the board may, in order to stagger the expiration dates of
25 licenses, issue or renew licenses which shall expire on a date fixed by
26 the board, not sooner than six months nor later than 29 months after
27 the date of issue, and the fee for these licenses shall be in amounts
28 proportionately less or greater than the fee fixed in section 13 hereof.

29

30 15. The license shall not be transferable or assignable, by operation
31 of law or otherwise. Each license shall specify the location of the
32 office or branch and shall be conspicuously displayed therein. If the
33 location is changed, a new license shall issue without charge. No
34 home inspector shall transact the business provided for by this act
35 under any other name or at any location other than that designated in
36 the license, or under any business name which includes the term "home
37 inspection business" unless it is in fact a bona fide home inspection
38 business.

39

40 16. Prior to actually employing any individual who shall come into
41 personal contact with the public during a home inspection, a home
42 inspector shall file with the board a supplemental application supplying
43 additional information in every respect necessary to satisfy the
44 requirements of this act. There shall be paid a filing fee of \$5.00 to
45 the board for the filing of each application in addition to an annual
46 license fee of \$10.00 for each inspector or agent. Each individual

1 home inspector shall be provided with an official identification card by
2 the board which must be carried by the inspector and presented upon
3 request.

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5 17. A home inspector's license may be suspended or revoked by the
6 board, after due notice and opportunity to be heard given to the
7 licensee, for any willful or persistent violation of a licensee's duties and
8 obligations under this act. A licensee may surrender his license at any
9 time by delivering the license to the board with written notice that he
10 thereby surrenders the license, but the surrender shall not affect the
11 licensee's civil or criminal liability for acts committed prior to the
12 surrender.

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14 18. The board shall, after consultation with recognized professional
15 associations of the home inspection business, and with recognized
16 leaders of that profession, devise, adopt and promulgate, and may
17 from time to time revise, a code of ethical standards and practices to
18 govern the conduct of licensed home inspectors in the performance of
19 their work, and shall adopt a schedule of penalties for the neglect or
20 violation of those standards and practices; but no licensee shall be
21 punished, whether by fine or by revocation or suspension of license
22 without due notice and opportunity to be heard on any such alleged
23 violation.

24

25 19. a. Any dispute between a home inspector and his client or any
26 other person arising out of the terms of this act or of any contract,
27 certification, warranty or other instrument or agreement made or
28 entered into pursuant to the requirements or authorizations of this act,
29 and any complaint touching upon the competence or integrity of any
30 person licensed as a home inspector by the board in connection with
31 the performance of his duties and responsibilities as a home inspector
32 shall in the first instance be referred to the board for resolution or
33 appropriate disciplinary action. No legal proceedings shall be had on
34 any such matter before the board has rendered its decision, or until 90
35 days have elapsed from the time when the complainant or party to the
36 dispute has notified the board in writing of the existence of the dispute
37 or complaint.

38 b. The board shall make all necessary and proper rules and
39 regulations to govern the form and manner of submission of such
40 matters to its decision, in accordance with the rules laid down for the
41 hearing of contested cases under the "Administrative Procedure Act,"
42 P.L. 1968, c. 410 (C. 52:14B-1 et seq.).

43 c. In deciding upon any such dispute or complaint, the Board may,
44 in accordance with general rules which it shall adopt:

45 (1) Order any licensed inspector to perform or omit any act or
46 proposed act the performance or omission of which forms the basis for

1 dispute or complaint.

2 (2) Order any licensed inspector to compensate a client for any
3 monetary loss or damage arising out of the inspector's neglect or
4 failure to comply with the terms of an inspection contract, or for loss
5 or damage arising under the terms of a warranty given by the
6 inspector.

7 (3) Penalize a licensed inspector by monetary fine, in accordance
8 with schedules established by rule, for violation of any of the
9 provisions of this act, or of the code of ethical conduct and practices
10 promulgated pursuant to section 18 of this act.

11 (4) Suspend or revoke the license of an inspector for any flagrant,
12 willful or persistent violation of the terms of this act, or of the code of
13 ethical conduct and practices.

14

15 20. The board is hereby authorized to adopt and promulgate, in
16 accordance with the provisions of the "Administrative Procedure Act,"
17 P.L.1968, c.410 (C.52:14B-1 et seq.), all rules and regulations
18 necessary or expedient to the timely and effective implementation of
19 the provisions and purposes of this act.

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21 21. This act shall take effect on the first day of the sixth month
22 next following the month in which this act becomes law, except that
23 sections 3 and 20 shall take effect immediately.

24

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STATEMENT

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This bill provides for the licensing and regulation of persons engaged in the business of "home inspection"--i.e., the examination, on behalf of a prospective purchaser, of a previously occupied home in order to assure the new purchaser of its soundness and habitability.

32 The bill would create, within the Division of Consumer Affairs of
33 the Department of Law and Public Safety, a Board of Home
34 Inspectors, which would determine the qualifications for a licensed
35 inspector, receive applications for licensing, administer appropriate
36 examinations, issue licenses and administer the regulation and
37 disciplining of licensees.

38 The board would consist of the Director of the Division of
39 Consumer Affairs (or his designee), ex officio, and four persons
40 appointed by the Governor with the advice and consent of the Senate.
41 Of the appointed members, two would be engaged in the home
42 inspection business, and two would be persons knowledgeable in home
43 construction but not engaged in the inspection business; they would
44 serve four-year terms, staggered so that one would expire each year,
45 and would receive no compensation except reimbursement for
46 expenses incurred in carrying out their duties. The Director of the

1 Division of Consumer Affairs would appoint the board secretary, who
2 would be a member of the permanent staff of the Division.

3 The bill would authorize a licensed home inspector--and no one
4 else-to-issue a "certificate of condition" on a home inspected by the
5 licensed inspector in accordance with the requirements of the act and
6 of any applicable regulations made by the board in pursuance of the
7 act. It would also authorize the inspector to give a warranty on the
8 certificate so issued, and would require the board to set minimum
9 insurance coverage which a licensed inspector must carry to secure
10 such warranties and to provide against other liabilities arising out of
11 his inspection activity.

12 The bill also requires the board to adopt a code of ethical standards
13 and practices for licensed inspectors, and authorizes it to punish
14 violations of the code, by fines or by suspension or revocation of
15 license. It also requires the board to settle disputes arising between
16 licensed inspectors and their clients, to resolve complaints touching the
17 competence or integrity of licensed inspectors, and to administer any
18 discipline of licensed inspectors in connection with such disputes or
19 complaints.

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24 Provides for licensing and regulation of home inspectors.