

SENATE, No. 335

STATE OF NEW JERSEY

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 45 of the Revised Statutes.

3

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

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

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

12 "Board" means the Board of Home Inspectors established by
13 section 3 of P.L. , c. (C.)(pending before the Legislature as this
14 bill).

15 "Certificate of condition" means a written report of an evaluation
16 of the structural elements and mechanical systems of a residential
17 building by a home inspector pursuant to a contract.

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

23 "Home inspector" means any person licensed as a home inspector
24 by the Board pursuant to the provisions of P.L. , c. (C.)(pending
25 before the Legislature as this bill).

26 "Home inspection business" means the inspection of the condition
27 of the structural elements and mechanical systems of residential
28 buildings, the preparation of reports thereon for clients of the home
29 inspector, and the provision of warranties thereon as authorized by
30 P.L. , c. (C.)(pending before the Legislature as this bill). A home
31 inspection shall consist of an on-site visual inspection of the accessible
32 structural elements and mechanical systems of a residential building for
33 the 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
36 determination is feasible. An inspection shall, where practicable,

1 include test operation of any systems in the manner and under
2 conditions in which they would be operated in ordinary daily use by
3 residents of the structure.

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

6 "Real estate salesperson" means a person licensed by the State to
7 engage in the business of a real estate salesperson.

8 "Residential building" means a structure consisting of one to four
9 dwelling units that has been occupied as such prior to the time when
10 a home inspection is requested or contracted for in accordance with
11 P.L. , c. (C.)(pending before the Legislature as this bill).

12 "Structural elements and mechanical systems" includes:

13 a. Foundations, basements and first-floor structures, including
14 structural members and assemblies, foundation components, grading
15 and drainage.

16 b. Walls, exterior and interior; ceilings; window and door
17 assemblies; stairways, exterior and interior; and porches, decks,
18 balconies and railings.

19 c. Roofing, including ventilation systems.

20 d. Electrical systems, including type of service supplied to the
21 structure, including amperage, wiring materials and workmanship, and
22 type and sufficiency of overload protection and safety provision.

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

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

35 "Warranty" means a written guarantee provided by a home
36 inspector as authorized by section 6 of P.L. , c. (C.)(pending
37 before the Legislature as this bill).

38

39 3. There is hereby established in the Division of Consumer Affairs
40 of the Department of Law and Public Safety the Board of Home
41 Inspectors. The board shall consist of five members, of whom one
42 shall be the Director of the Division of Consumer Affairs, or the
43 director's designee, and the other four shall be appointed by the
44 Governor with the advice and consent of the Senate. Two of the
45 appointed members shall be home inspectors, and the other two shall
46 be chosen on the basis of their knowledge and experience in the field

1 of home construction but shall not be home inspectors. Appointed
2 members shall serve for terms of four years, except that one of the first
3 two home inspector members appointed shall serve for a term of two
4 years, and the first two members appointed who are not home
5 inspectors shall serve for terms of one year and three years. Vacancies
6 among appointed members shall be filled in the same manner as the
7 original appointment was made, but for the unexpired term only.
8 Appointed members shall serve without compensation, but shall be
9 entitled to reimbursement for actual expenses necessarily incurred in
10 the performance of their duties as members. The director's designee
11 may be any subordinate officer in the division. The designation shall
12 be in writing and filed with the secretary of the board. The director
13 shall appoint the secretary of the board from among the permanent
14 staff of the division. Neither the director, the director's designee, nor
15 the secretary of the board, shall receive any additional compensation
16 from the State by reason of their services on or to the board.

17 For the purposes of the first appointments under this section, the
18 determination of whether a person is a home inspector shall be in the
19 discretion of the appointing authority, who may deem any person to be
20 a home inspector if the appointing authority has reason to believe that
21 that person is qualified for a license as such and would have received
22 such a license if the board and the licensing procedure established by
23 P.L. , c. (C.)(pending before the Legislature as this bill) had been
24 in effect prior to the making of those appointments.

25

26 4. No person other than a home inspector licensed pursuant to
27 P.L. , c. (C.)(pending before the Legislature as this bill) shall give,
28 purport to give, or hold out as qualified to give a certificate of
29 condition, as defined in P.L. , c. (C.)(pending before the
30 Legislature as this bill), or any certificate or assurance represented to
31 be equivalent thereto.

32

33 5. No contract of sale of a residential building shall prevent a
34 prospective buyer from obtaining an inspection and certificate of
35 condition prior to the execution of the deed or other conveyance
36 pursuant to that contract. Any contract of sale violating the terms of
37 this section shall be unenforceable as against the prospective buyer.

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39 6. Any home inspector issuing a certificate of condition may in
40 writing warrant its accuracy and integrity to the client to whom it is
41 issued, which warranty shall extend for 18 months from the date on
42 which the inspection on which it is based was made, or for 12 months
43 after the sale of the property on which it was issued, whichever comes
44 first. For the security of such warranties and providing against other
45 liabilities, the board shall from time to time establish and enforce a
46 minimum of insurance coverage that every licensed home inspector

1 shall be required to purchase against liability for any negligence or
2 inaccuracy in the inspection or certificate, or any other breach of a
3 warranty under this section, or a contract required pursuant to section
4 7 of P.L. , c. (C.)(pending before the Legislature as this bill).

5
6 7. No home inspection shall be commenced unless all elements and
7 conditions of the inspection are contained in a written contract signed
8 in triplicate by the home inspector and client. One copy shall be
9 retained by the home inspector, one by the client, and one shall be
10 mailed to the board. The cost to the client for the inspection and
11 report shall be indicated in the contract, and the cost and coverage of
12 a warranty, if any, shall also be indicated in the contract. In order for
13 a valid certificate of condition to issue, the contract shall provide for
14 a home inspection covering the structural elements and mechanical
15 systems of the building to be inspected.

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

23 b. No home inspector shall purport to offer or sell insurance on the
24 elements and systems inspected under a home inspection contract.

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

30
31 9. a. The board shall periodically make available to real estate
32 brokers and salespersons a listing of all licensed home inspectors in the
33 State. The list shall be on a county-by-county basis and shall list the
34 names and business addresses of each home inspector. The board may
35 charge a fee for this service commensurate with the cost of
36 maintaining, updating, and disseminating the list.

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

44
45 10. Application for a license shall be made in writing under oath,
46 on a form provided by the board, and shall include the following

- 1 information:
- 2 a. If an individual:
- 3 (1) Full name;
- 4 (2) Residence and business address;
- 5 (3) Name and duration of all businesses engaged in during the
- 6 previous five years; and
- 7 (4) Experience in the home inspection business.
- 8 b. If a partnership:
- 9 (1) Name and address of the partnership;
- 10 (2) Name, residence, and business address of each partner; and
- 11 (3) Business experience of each partner during the previous five
- 12 years.
- 13 c. If an association:
- 14 (1) Name and address of the association;
- 15 (2) Name, residence, and business address of each of the officers,
- 16 directors, and managers;
- 17 (3) Business experience during the previous five years of each
- 18 officer, director, and manager; and
- 19 (4) Name, residence, and business addresses of all members who
- 20 have 10% or more control of the association.
- 21 d. If a corporation:
- 22 (1) Name of the corporation, date and place of incorporation;
- 23 (2) Name, residence, and business address of each director and
- 24 officer of the corporation;
- 25 (3) Business experience during the previous five years of each
- 26 director and officer;
- 27 (4) Name, residence, and shareholding of all shareholders owning
- 28 10% or more of the outstanding shares; and
- 29 (5) Number of shares of each class of stock issued and outstanding.
- 30
- 31 11. In all cases, the application shall also include:
- 32 a. The full name, residence, and age of each agent of the home
- 33 inspection business, exclusive of ministerial office employees.
- 34 b. Whether any person making application has been convicted in
- 35 any State or Federal court of a crime, the record of which has not been
- 36 expunged, annulled, and sealed, or forgery, fraud, obtaining money
- 37 under false pretenses, embezzlement, extortion, larceny, burglary,
- 38 breaking and entering, robbery, bribery, criminal conspiracy to defraud
- 39 or other like offense or offenses including violations of P.L. , c. (C.)
- 40 (pending before the Legislature as this bill) or has entered the plea of
- 41 nolo contendere or non vult to any indictment, allegation or complaint
- 42 alleging the commission of such offenses.
- 43 The record of conviction or the entry of the plea in any court of this
- 44 State or of any other state or of the United States shall be sufficient
- 45 warrant for the refusal, suspension or revocation of a license except as
- 46 provided in P.L.1968, c.282 (C.2A:168A-1 et seq.).

1 12. No home inspector shall be licensed unless the board is
2 satisfied that the home inspector or one or more of the agents of the
3 home inspection business, collectively, are qualified pursuant to the
4 provisions of P.L. , c. (C.)(pending before the Legislature as this
5 bill) and any other rules and regulations promulgated thereunder by the
6 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.

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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 for its principal place of business
17 and \$100 for each additional place of business.

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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.

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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 engage in the home inspection business under any
35 other name or at any location other than that designated in the license,
36 or under any business name which includes the term "home inspection
37 business" unless it is in fact a bona fide home inspection business.

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39 16. Prior to actually employing any individual who shall come into
40 personal contact with the public during a home inspection, a home
41 inspector shall file with the board a supplemental application supplying
42 additional information in every respect necessary to satisfy the
43 requirements of P.L. , c. (C.)(pending before the Legislature as
44 this bill). There shall be paid a filing fee of \$5 to the board for the
45 filing of each application in addition to an annual license fee of \$10 for
46 each inspector or agent. Each individual home inspector shall be

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

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

12
13 18. The board shall, after consultation with recognized professional
14 associations of the home inspection business, and with recognized
15 leaders of that profession, devise, adopt and promulgate, and may
16 from time to time revise, a code of ethical standards and practices to
17 govern the conduct of licensed home inspectors in the performance of
18 their work, and shall adopt a schedule of penalties for the neglect or
19 violation of those standards and practices; but no licensee shall be
20 punished, whether by fine or by revocation or suspension of license
21 without due notice and opportunity to be heard on any such alleged
22 violation.

23
24 19. a. Any dispute between a home inspector and a client or any
25 other person arising out of the terms of P.L. , c. (C.)(pending
26 before the Legislature as this bill) or of any contract, certification,
27 warranty or other instrument or agreement made or entered into
28 pursuant to the requirements or authorizations of P.L. , c. (C.)
29 (pending before the Legislature as this bill), and any complaint
30 touching upon the competence or integrity of any person licensed as
31 a home inspector by the board in connection with the performance of
32 duties and responsibilities as a home inspector shall in the first instance
33 be referred to the board for resolution or appropriate disciplinary
34 action. No legal proceedings shall be had on any such matter before
35 the board has rendered its decision, or until 90 days have elapsed from
36 the time when the complainant or party to the dispute has notified the
37 board in writing of the existence of the dispute 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 P.L. , c. (C.)(pending before the Legislature as this
10 bill), or of the code of ethical conduct and practices promulgated
11 pursuant to section 18 of P.L. , c. (C.)(pending before the
12 Legislature as this bill).

13 (4) Suspend or revoke the license of an inspector for any flagrant,
14 willful or persistent violation of the terms of P.L. , c. (C.)(pending
15 before the Legislature as this bill), or of the code of ethical conduct
16 and practices.

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

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24 21. This act shall take effect on the first day of the sixth month
25 next following enactment, except that sections 3 and 20 shall take
26 effect immediately.

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31 Provides for licensing and regulation of home inspectors.