

## HOUSE Substitute for SENATE BILL No. 324

By Committee on Commerce and Labor

1-14

---

9 AN ACT concerning the Kansas home inspectors professional compe-  
10 tence and financial responsibility act; amending K.S.A. 2009 Supp. 58-  
11 4505 and 58-4512 and repealing the existing sections.

12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 2009 Supp. 58-4505 is hereby amended to read as  
15 follows: 58-4505. (a) Except as provided in subsections (b) and (c), the  
16 board may deny, suspend or revoke a registration, or may impose pro-  
17 bationary conditions on a registrant or applicant if the registrant or ap-  
18 plicant has engaged in any of the following conduct:

19 (1) Making a materially false or fraudulent statement in an application  
20 for registration or renewal;

21 (2) been convicted of or plead guilty or nolo contendere in a court of  
22 competent jurisdiction to any misdemeanor involving dishonesty;

23 (3) intentionally falsifying a home inspection report;

24 (4) performing any of the following acts as part of the home  
25 inspection:

26 (A) Inspecting for a fee any property in which the home inspector  
27 has any personal or financial interest unless the interest is disclosed in  
28 writing to the client before the home inspection is performed and the  
29 client signs an acknowledgment of receipt of the disclosure;

30 (B) offering or delivering any commission, referral fee or kickback  
31 for the referral of any business to the home inspector; and

32 (C) accepting an engagement to perform a home inspection or to  
33 prepare a home inspection report in which the employment itself or the  
34 fee payable for the inspection is contingent upon the conclusions in the  
35 home inspection report, pre-established or prescribed findings or the  
36 closing of the underlying real estate transaction;

37 (5) including as a term or condition in an agreement to conduct a  
38 home inspection any provision that disclaims the liability of the registered  
39 home inspector for any errors and omissions which may arise during a  
40 home inspection or to limit the amount of damage for liability for any  
41 errors and omissions which may arise during a home inspection to less  
42 than ~~\$10,000~~ \$2,000 in the aggregate for each home inspection;

43 (6) failing to provide a client with a pre-inspection notice prior to the

- 1 home inspection;
- 2 (7) failing to substantially follow the approved standards of practice
- 3 and code of ethics;
- 4 (8) failing to respond as requested by the board to any summons for
- 5 attendance and testimony or to produce documents or any other physical
- 6 evidence during an investigation into the qualifications of or allegations
- 7 of misconduct of an applicant or registrant; and
- 8 (9) violating any provision of this act or rules and regulations prom-
- 9 ulgated by the board pursuant to this act.
- 10 (b) (1) Except as provided in paragraph (2), the board shall refuse to
- 11 issue a registration to an applicant or registrant if the applicant or regis-
- 12 trant has entered a plea of guilty or nolo contendere to, or has been
- 13 convicted of:
- 14 (A) (i) Any offense that is comparable to any crime which would re-
- 15 quire the applicant to register as provided in the Kansas offender regis-
- 16 tration act; or
- 17 (ii) any federal, military or other state conviction for an offense that
- 18 is comparable to any crime under the laws of this state which would
- 19 require the applicant to register as provided in the Kansas offender reg-
- 20 istration act; or
- 21 (B) (i) Any felony other than a felony under subparagraph (A); or
- 22 (ii) any federal, military or other state conviction for an offense that
- 23 is comparable to any under the laws of this state other than a felony under
- 24 subparagraph (A).
- 25 (2) The board may grant an original registration pursuant to subsec-
- 26 tion (c) if the applicant's or registrant's application is received at least:
- 27 (A) Fifteen years after the date of the applicant's or registrant's dis-
- 28 charge from postrelease supervision, completion of any nonprison sanc-
- 29 tion or suspension of the imposition of the sentence resulting from any
- 30 plea of guilty or nolo contendere to or conviction of any offense specified
- 31 in subparagraph (A) of paragraph (1); or
- 32 (B) five years after the date of the applicant's discharge from post-
- 33 release supervision, completion of any nonprison sanction or suspension
- 34 of the imposition of the sentence resulting from any plea of guilty or nolo
- 35 contendere to or conviction of any offense specified in subparagraph (B)
- 36 of paragraph (1), whichever is applicable.
- 37 (3) For the purposes of this subsection, "postrelease supervision"
- 38 shall have the meaning ascribed to it in K.S.A. 21-4703 and amendments
- 39 thereto.
- 40 (4) For the purposes of this subsection, "nonprison sanction" shall
- 41 have the meaning ascribed to it in K.S.A. 21-4703 and amendments
- 42 thereto.
- 43 (c) (1) The board may renew or grant an original registration to an

1 applicant or registrant who has entered a plea of guilty or nolo contendere  
2 to, or has been convicted of any misdemeanor or any crime listed in  
3 paragraph (1) of subsection (b) if the applicant or registrant presents to  
4 the board satisfactory proof that the applicant or registrant now bears a  
5 good reputation for honesty, trustworthiness, integrity and competence  
6 to transact the business of registered home inspector in such a manner  
7 as to safeguard the interest of the public. The burden of proof shall be  
8 on the applicator or registrant to present such evidence to the board.

9 (2) In determining whether or not the applicant or registrant pres-  
10 ently has a good reputation as required in this subsection, the board shall  
11 consider the following additional factors:

12 (A) The extent and nature of the applicant's or registrant's past crim-  
13 inal activity;

14 (B) the age of the applicant or registrant at the time of the commis-  
15 sion of the crime or crimes;

16 (C) the amount of time elapsed since the applicant's or registrant's  
17 last criminal activity;

18 (D) the conduct and work activity of the applicant or registrant prior  
19 to and following the criminal activity; and

20 (E) evidence of the applicant's or registrant's rehabilitation or reha-  
21 bilitative effort; and

22 (F) all other evidence of the applicant's or registrant's present fitness  
23 for a registration.

24 (d) In addition to or in lieu of any other administrative, civil or crim-  
25 inal remedy provided by law, if the board determines after notice and an  
26 opportunity for a hearing in accordance with the Kansas administrative  
27 procedures act that a registrant has violated any provision of this act or  
28 any rule and regulation adopted hereunder, the board may impose on  
29 such registrant a civil fine not to exceed \$500 for each violation.

30 (e) All proceedings pursuant to this section shall be conducted in  
31 accordance with the provisions of the Kansas administrative procedure  
32 act.

33 Sec. 2. K.S.A. 2009 Supp. 58-4512 is hereby amended to read as  
34 follows: 58-4512. (a) It is the duty of all home inspectors registered under  
35 this act to conduct home inspections with the degree of care that a rea-  
36 sonably prudent home inspector would exercise under the circumstances.

37 (b) All home inspections shall be conducted according to a standard  
38 of practice and a code of ethics approved by the board.

39 (c) No registered home inspector may include, as a term or condition  
40 in an agreement to conduct a home inspection, any provision that dis-  
41 claims the liability for any errors and omissions which may arise during a  
42 home inspection, or limit the amount of damages for liability for any  
43 errors and omissions which may arise during a home inspection to less

1 than ~~\$10,000~~ \$2,000 in the aggregate for each home inspection and such  
2 term or condition or limitation setting the liability at an amount greater  
3 than ~~\$10,000~~ \$2,000 must be provided to the customer in writing to be  
4 in effect.

5 (d) An action to recover damages for any act or omission of a regis-  
6 tered home inspector relating to a home inspection or home inspection  
7 report must be brought not more than 12 months from the date the home  
8 inspection was performed and may be initiated only by the client for  
9 which the home inspection was conducted.

10 (e) In any action to recover damages for any error or omission of a  
11 registered home inspector relating to a home inspection or home inspec-  
12 tion report, a registered home inspector is liable for any errors and  
13 omissions which may arise during a home inspection in an amount of not  
14 to exceed \$2,000 in the aggregate for each home inspection, or to the  
15 amount in the pre-inspection agreement to conduct a home inspection,  
16 if greater than \$2,000 in the aggregate for each home inspection, provided  
17 that a registered home inspector provides the customer with a clear writ-  
18 ten description in the pre-inspection agreement of any greater limitations  
19 on the liability of the registered home inspector for any errors and  
20 omissions which may arise during the home inspection.

21 (f) All home inspectors registered under this act shall provide clients  
22 with a written pre-inspection notice prior to the home inspection.

23 Sec. 3. K.S.A. 2009 Supp. 58-4505 and 58-4512 are hereby repealed.

24 Sec. 4. This act shall take effect and be in force from and after its  
25 publication in the Kansas register.