

CHAPTER 171
HOUSE BILL No. 2315*

AN ACT concerning real property; relating to home inspections; requiring home inspector registration and certificates.

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

Section 1. As used in this section:

(a) (1) "Home inspection" means a non-invasive limited visual examination of a residential dwelling of not more than four attached units, or any portion thereof designed to identify material defects at the time of the inspection of three or more of the following readily accessible systems and 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 components and systems that are part of the residential dwelling and included in the standards of practice followed by the home inspector.

(2) The term "home inspection" also includes any consultation regarding the property that is represented to be a home inspection or that is described by any similar term.

(3) The term "home inspection" does not include:

- (A) A compliance inspection for any code or governmental regulation;
- (B) an examination for the conditions and operation of kitchen-type appliances, on-site water supplies or wells, private waste systems, the determination of the presence of wood-destroying organisms or pests, or the presence of fungi, mold, bacteria, asbestos, lead-based paint, gases or conditions of air quality; and
- (C) an examination and evaluation of only two or less of the components listed in section (a)(1).

(b) "Home inspector" means an individual who performs a home inspection as defined by this act.

(c) "Home inspection report" means a written report on the results of a home inspection which is issued for a home inspection. The report shall include the following:

- (1) A clear identification and description of those systems, structures or components which were inspected;
- (2) a clear identification and description of those systems, structures or components designated to be inspected under the standards of practice approved by the board and which were not inspected, and the reason why they were not inspected;
- (3) a clear identification and description of any material defects found to be in need of repair, including any recommendations for further evaluation; and

(4) a completed pre-inspection agreement.

(d) "Pre-inspection agreement" means a written contract between a customer and a home inspector to do a home inspection.

(e) "Pre-inspection notice" means a document which shall be provided to a customer prior to the start of the home inspection. The pre-inspection notice shall contain, at a minimum, the following information:

- (1) A clear description of the scope of the home inspection;
- (2) a clear description of any limitations on the liability of the home inspector for any errors and omissions which may arise during the home inspection; and
- (3) an identification of the national home inspection organizations approved by the board which the home inspector is a member of at the time of the home inspection; and

(4) an identification of the standards of practice approved by the board which the home inspector will be following during the home inspection.

(f) "Readily accessible" means available for visual inspection without requiring the moving of personal property, dismantling, destructive meas-

ures or actions that would likely involve risk to persons or property.

(g) "Dismantling" means to take apart or remove any component, device or piece of equipment that is bolted, screwed or fastened by any other means and that would not be taken apart or removed by a homeowner in the course of normal and routine household maintenance.

(h) "Material defect" means any condition that significantly affects the value, habitability or safety of the dwelling. Style, cosmetic defects or aesthetics shall not be considered in determining whether a system, structure or component is materially defective.

(i) "Board" means the Kansas home inspectors registration board.

(j) "Registrant" means any person registered as a home inspector under this act.

(k) "Applicant" means any person who is applying for registration or renewal of registration under this act.

Sec. 2. This act shall apply to all individuals who conduct home inspections for compensation, but shall not apply to the following individuals who are specifically exempted from registration under this act:

(a) A tradesman or contractor performing a single component or system evaluation or a combination of any two systems or components listed in section 1 (a)(1)(A)-(I) while acting within the scope of that occupation;

(b) an individual employed by the state or a political subdivision of the state who, within the scope of such employment and in the discharge of such public duties, inspects property or buildings for compliance with requirements safeguarding life, health or property;

(c) an individual licensed by the state as an architect while acting within the scope of that license;

(d) an individual licensed by the state as a professional engineer while acting within the scope of that license;

(e) an individual licensed by the state as a real estate appraiser while acting within the scope of that license;

(f) an individual licensed by the state as a real estate broker or salesperson while acting within the scope of that license;

(g) an individual employed as an insurance adjuster while acting within the scope of that occupation;

(h) an individual licensed as a manufactured home manufacturer while acting within the scope of that license;

(i) an individual employed by a manufactured home manufacturer while acting within the scope of that occupation;

(j) a modular home manufacturer or modular home manufacturer's representative reviewing a residential dwelling built by the manufacturer for the purpose of evaluating the residential dwelling;

(k) an individual licensed as a manufactured home dealer while acting within the scope of that license;

(l) an individual employed as a manufactured home installer while acting within the scope of that occupation;

(m) an individual licensed by the state as an insurance agent while acting within the scope of that license;

(n) a homebuilder or homebuilder's representative reviewing a residential dwelling built by the homebuilder for the purposes of evaluating the residential dwelling; and

(o) an individual employed as a pest exterminator or chemical applicator while acting within the scope of that occupation and not providing services which would constitute a home inspection under this act.

Sec. 3. (a) There is hereby established the Kansas home inspectors registration board. The purpose of the board is to administer and enforce the provisions of this act, promote consumer protection, ensure professional competency and ensure the presence of a viable home inspection industry in this state.

(b) The board shall consist of five members to be appointed by the governor as follows:

(1) Three members shall be home inspectors who have actively been engaged in the practice of home inspections for at least five years immediately preceding their appointment and have completed at least 1,000 fee-paid home inspections; and

(2) two members shall be at-large members neither of whom shall be a home inspector.

(c) Prior to September 1, 2008, the governor shall appoint the initial board members as specified in subsection (b). The board shall hold its first meeting prior to January 1, 2009. Following the first meeting of the

board, the newly elected chairperson shall serve for a term of three years, the vice-chairperson shall serve for a term of three years, the secretary shall serve for a term of two years and the remaining board members shall serve for a term of one year. After these initial terms have been completed, the board members shall serve terms as specified in subsection (d).

(d) Board members shall serve three-year terms, with no board member serving more than two consecutive terms of office. Upon the expiration of the term of office of any member, the governor shall appoint a successor meeting the qualifications under this act. Each board member shall serve until a successor is appointed and qualified. There shall be at all times at least one board member from each congressional district in the state of Kansas.

(e) In the event of a vacancy in the membership of the board for any reason other than expiration of a board member's term of office, the governor shall appoint a successor meeting the qualifications of this act to fill the unexpired term.

(f) At the first board meeting each year, the board shall elect from its membership the following officers: Chairperson, vice-chairperson and secretary. The officers shall serve 12-month terms. A person may serve a maximum of two consecutive terms as an officer in each respective position. The officers shall have the following duties:

(1) The chairperson shall preside over all meetings.

(2) The vice-chairperson shall preside over meetings in the absence of the chairperson.

(3) The secretary shall be responsible for:

(A) Preparation, publication and maintenance of the minutes of the board meetings;

(B) preparation of correspondence and conduct of administrative support as the chairperson may direct or as may be prescribed in the rules and regulations of the board;

(C) maintaining the permanent records of the board. The secretary of state shall be the custodian of all permanent records of the board.

(g) Upon determining that adequate resources are available, the board may appoint an executive secretary who shall be in the unclassified service of the Kansas civil service act. The executive secretary shall receive an annual salary which shall be fixed by the board and approved by the state finance council.

(h) The board may employ such other employees as may be necessary, fix salaries of all its employees and make such other expenditures as are necessary to properly carry out the provisions of this act.

(i) Each board member shall be paid compensation, subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223, and amendments thereto.

(j) The board shall hold meetings in such places as it shall determine and at such times as it may designate or on request of two or more of its members. A majority of the members of the board shall constitute a quorum.

(k) Applications for original registration and renewal of registration shall be made in writing or by electronic filing to the board on forms approved by the board and shall be accompanied by the appropriate fees prescribed by the board.

Sec. 4. The secretary shall remit all moneys received by or for the board from fees, charges or penalties to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury and the balance shall be credited to the home inspectors registration fee fund, which is hereby established. All expenditures from such fund shall be made in accordance with appropriations acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the board or by a person or persons designated by the board.

Sec. 5. The board shall have the following duties and powers:

(a) Administer and enforce the provisions of this act;

(b) approve and adopt the standards of practice of nationally-recognized home inspection associations which meet the requirements of this act;

(c) register qualified applicants as home inspectors pursuant to this act;

- (d) suspend, revoke or fail to renew the registration of a home inspector under this act;
- (e) make all necessary investigations into the qualifications of an applicant and registrant;
- (f) approve examinations to determine the qualifications of applicants for registration; and
- (g) adopt all rules and regulations which are necessary to carry out the provisions of this act.

Sec. 6. (a) The board may deny, suspend or revoke a registration, or may impose probationary conditions on a registrant or applicant if the registrant or applicant has engaged in any of the following conduct:

- (1) Making a materially false or fraudulent statement in an application for registration or renewal;
- (2) been convicted of or plead guilty or nolo contendere in a court of competent jurisdiction to forgery, fraud, conspiracy to defraud or any similar offense or offenses;
- (3) intentionally falsifying a home inspection report;
- (4) failing to perform a home inspection in accordance with the standards of practice approved by the board and followed by the home inspector; and
- (5) violating any provision of this act or rules and regulations promulgated by the board pursuant to this act.

(b) In addition to or in lieu of any other administrative, civil or criminal remedy provided by law, the board, in accordance with the Kansas administrative procedures act and upon a finding that a registrant has violated a provision of this act or rules and regulations adopted hereunder, may impose on such registrant a civil fine not to exceed \$500 for each violation.

Sec. 7. The board shall adopt rules and regulations fixing the amounts of fees provided for by this act, subject to the following: For an application for an original registration, the amount may not exceed \$200, and for renewal of registration the amount may not exceed \$200. Other fees may be set in the amount determined by the board.

Sec. 8. The attorney general shall provide as an attorney for the board and shall represent the board in all actions and proceedings brought by or against the board. The board may hire independent counsel when the board deems appropriate. All fees and expenses of such independent counsel arising out of the performance of duties for the board shall be paid out of the home inspectors registration fee fund.

Sec. 9. The home inspector shall be prohibited from performing any of the following acts as part of the home inspection:

- (a) Inspecting for a fee any property in which the home inspector has any personal interest unless the interest is disclosed in writing to the client before the home inspection is performed and the client signs an acknowledgment of receipt of the disclosure;
- (b) offering or delivering any commission, referral fee or kickback for the referral of any business to the home inspector; and
- (c) accepting an engagement to perform a home inspection or to prepare a home inspection report in which the employment itself or the fee payable for the inspection is contingent upon the conclusions in the home inspection report, pre-established or prescribed findings or the closing of the underlying real estate transaction.

Sec. 10. (a) On and after July 1, 2009, all individuals performing home inspections as defined in section 1, and amendments thereto, in counties with a population of 60,000 or more shall be required to file a written registration with the board.

(b) On and after January 1, 2011, all individuals performing home inspections as defined in section 1, and amendments thereto, shall be required to file a written registration with the board.

- (c) All registrants must:
 - (1) Be at least 18 years of age;
 - (2) have successfully completed high school or its equivalent, unless such individual is engaged in the practice of performing home inspections on the effective date of this act;
 - (3) submit proof of current general liability insurance coverage in an amount of \$100,000 or more;
 - (4) submit proof of financial responsibility by one of the following:
 - (A) A policy of errors and omissions insurance coverage;

(B) a surety bond in an amount not less than \$10,000, providing that the surety bond may not be terminated without 30 days prior written notice to the board;

(C) an irrevocable letter of credit not less than \$10,000 issued by a bank which is insured by the federal deposit insurance corporation or its successor if such letter of credit is initially issued for a term of at least one year and by its terms is automatically renewed at each expiration date for at least an additional one-year term unless at least 30 days prior written notice of intention not to renew is provided to the board; or

(D) the maintenance of a minimum balance of \$10,000 in an escrow account in a Kansas financial institution as defined in K.S.A. 16-117, and amendments thereto, provided that the escrow account shall maintain the minimum balance through the term of the registrant's registration as a home inspector. The board shall be notified in writing by the financial institution within 10 days if the amount in the escrow account falls below the \$10,000 minimum balance. Upon notification, the board shall suspend such registrant's registration as a home inspector until the escrow account minimum balance is restored to greater than or equal to \$10,000;

(5) submit proof of membership in good standing in one or more nationally recognized society, association or organization that provides for membership of individuals engaged in home inspections as recognized by the board; and

(6) have successfully completed and passed a written or electronic exam as approved by the board and proctored by a testing organization approved by the board;

(7) annually obtained a minimum of 16 hours of continuing education by completing courses approved by the board; and

(8) have satisfied one of the following requirements:

(A) Have successfully completed and passed a course of study containing at least 80 hours of classroom and field training offered by an educational provider approved by the board; or

(B) (i) if the individual performs home inspections in counties with a population of 60,000 or more, have been actively engaged in the practice of conducting home inspections for not fewer than two years prior to the effective date of this act and have completed not less than 100 fee-paid home inspections; or

(ii) if the individual does not perform home inspections in counties with a population of 60,000 or more, have been actively engaged in the practice of conducting home inspections for not fewer than two years prior to the effective date of this act and have completed not less than 35 fee-paid home inspections.

Sec. 11. (a) It is the duty of all home inspectors registered under this act to conduct home inspections with the degree of care that a reasonably prudent home inspector would exercise under the circumstances.

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

(c) No home inspector may include, as a term or condition in an agreement to conduct a home inspection, any provision that disclaims the liability for any errors and omissions which may arise during a home inspection, or limit the amount of damages for liability for any errors and omissions which may arise during a home inspection to less than \$10,000 in the aggregate for each home inspection and such term or condition or limitation setting the liability at an amount greater than \$10,000 must be provided to the customer in writing to be in effect.

(d) An action to recover damages for any act or omission of a home inspector relating to a home inspection or home inspection report must be brought not more than 12 months from the date the home inspection was performed and may be initiated only by a party to the real estate transaction for which the home inspection was conducted.

(e) In any action to recover damages for any error or omission of a home inspector relating to a home inspection or home inspection report, a home inspector is liable for any errors and omissions which may arise during a home inspection in an amount of not to exceed \$10,000 in the aggregate for each home inspection, or to the amount in the pre-inspection agreement to conduct a home inspection, if greater than \$10,000 in the aggregate for each home inspection, provided that a home inspector provides the customer with a clear written description in the pre-inspection agreement of any greater limitations on the liability of the home inspector for any errors and omissions which may arise during the home

inspection.

(f) All home inspectors registered under this act shall provide customers and clients with a completed pre-inspection notice prior to the home inspection.

Sec. 12. (a) No individual shall advertise themselves as a home inspector unless the individual has complied with the provisions of this act. Individuals who are exempt from registration under this act or whose actions are considered to be a home inspection under this act may not hold themselves out to be home inspectors or use words or titles that may reasonably be confused with the title of "home inspector" or "house inspector" unless they are registered as a home inspector pursuant to this act.

(b) All advertisements, contracts, correspondence and other documents prepared by an individual performing home inspections under this act shall indicate the home inspector's registration number, name and address as registered with the board.

Sec. 13. (a) It shall be unlawful for an individual to perform home inspections as defined in section 1, and amendments thereto, without being registered under this act if such individual is required to register with the board pursuant to section 10, and amendments thereto.

(b) Violation of this section is a class A nonperson misdemeanor.

Sec. 14. This act shall be cited as the Kansas home inspectors professional competence and financial responsibility act.

Sec. 15. This act shall take effect and be in force from and after its publication in the statute book.

Approved May 18, 2008.
