

SUBSTITUTE FOR SENATE BILL NO. 168

AN ACT concerning residential real estate; relating to home inspectors; enacting the Kansas home inspector professional competency and financial responsibility act.

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

Section 1. Sections 1 through 19, and amendments thereto, shall be known and may be cited as the Kansas home inspectors professional competency and financial responsibility act.

Sec. 2. As used in the Kansas home inspectors professional competency and financial act:

(a) "Act" means the Kansas home inspectors professional competency and financial responsibility act.

(b) "Applicant" means an individual who is applying for registration or registration renewal under this act.

(c) "Advisory council" means the Kansas home inspectors advisory council established to assist the attorney general on matters administering this act.

(d) "Attorney general" means the attorney general of the state of Kansas or the attorney general's designee.

(e) (1) "Home inspection" means a non-invasive limited visual examination of a residential dwelling in anticipation of a transfer of ownership of not more than four attached units, 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 within the standards of practice followed by the home inspector.

(2) "Home inspection" also includes residential property inspections represented as a home inspection but described using different or similar terms.

(3) "Home inspection", except as otherwise agreed to or otherwise required by the standards of practice referenced in the inspection agreement, 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 fewer of the systems or components and related systems or components listed in subsection (c)(1).

(f) "Home inspection agreement" means the agreement for home inspection services between the home inspector and the client entered into prior to the home inspection.

(g) "Home inspection report" means a written or verbal report on the results of a home inspection issued following a home inspection.

- (h) "Home inspector" means an individual who performs a home inspection.
- (i) "Registrant" means any person registered as a home inspector under this act.
- (j) "Material defect" means any condition that significantly affects the value, habitability or safety of the dwelling, except that, cosmetic defects or aesthetics shall not be used in determining whether a system, structure or component is materially defective.

(k) "National" or "nationally recognized" associations, means industry, trade or professional member organizations with membership residing in a simple majority of the states within the United States.

(l) "Readily accessible" means available for visual inspection without requiring the moving of personal property, dismantling, use of destructive measures or actions that would likely involve risk to persons or property.

Sec. 3. (a) No person, unless otherwise exempt by this act, shall engage in the business of or act in the capacity of a home inspector within the state of Kansas without having properly registered as required by this act. It shall be unlawful for an individual to perform a home inspection as defined in section 2, and amendments thereto, without being so registered.

(b) (1) Any person, unless otherwise exempt by this act, who fails to register prior to acting as a home inspector, shall be liable for a civil penalty as provided in K.S.A. 50-636(a), and amendments thereto, and such civil penalty shall be in addition to any other relief that may be granted or other penalty prescribed by law. The granting of powers to the attorney general in this act does not affect remedies available to consumers under other principles of law or equity.

(2) Any person who acts as a home inspector while such person's registration is suspended or revoked shall be liable for a civil penalty as provided in K.S.A. 50-636(a), and

amendments thereto, and such civil penalty shall be in addition to any other relief that may be granted or other penalty prescribed by law.

Sec. 4. (a) There is hereby established the Kansas home inspectors' advisory council. The purpose of the council is to assist and advise the attorney general on matters including those related to education and testing requirements of applicants.

(b) The advisory council shall consist of 10 members to be appointed by the attorney general as follows:

(1) Eight active and registered Kansas home inspectors as follows:

(A) Two nominated to serve by a Kansas chapter of the American society of home inspectors;

(B) two nominated to serve by a Kansas chapter of the international association of certified home inspectors; and

(C) two having no affiliation with a national home inspection association;

(2) two Kansas professional engineers who actively engage in home inspections nominated by and having affiliation with the Kansas society of professional engineers; and

(3) two Kansas residents shall be at-large members who are unaffiliated with the real estate inspection, sale or finance industries.

(d) All home inspector advisory council members who are registered Kansas home inspectors shall have at least three years of experience conducting home inspections and have completed at least 500 fee-paid home inspections.

(e) At-large members shall be first chosen from congressional districts without representation on the advisory council.

(f) The attorney general shall give consideration to proportionately represent national home inspection associations and professional engineer associations with memberships in Kansas, so as not to give any one national association a numerical advantage.

(g) All members shall be appointed to two year terms, with a limit of two consecutive terms and shall serve no more than eight terms total.

Sec. 5. The attorney general shall have the following duties and powers under this act:

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

(b) register qualified applicants as home inspectors pursuant to the act, including registration of individuals holding registrations, certificates or licenses from other states, private certifications or work experience, and establish:

(1) adopt standards and approve examinations, when applicable, to determine the qualifications of applicants for registration or registration renewal; and

(2) adopt reciprocity guidelines and fees for inspectors from other jurisdictions;

(c) create any forms necessary for the administration of this act;

(d) create or authorize others to create and implement provisions of this act through use of the internet or other technology as deemed necessary or appropriate. The attorney general shall establish an online system for the public to confirm registration of home inspectors. Such system shall include a listing of valid registrations and such other information collected pursuant to this act, as the attorney general may determine is appropriate;

(e) conduct all necessary investigations into the qualifications of or allegations of misconduct against an applicant or registrant. In connection with any investigation, the attorney general or the attorney general's duly authorized agents or employees shall, at all reasonable

times, have access and the right to examine and copy any document, report, record or other evidence of any registered home inspector or any document, report, record or other evidence maintained by and in the possession of any registered home inspector;

(f) require the attendance and testimony of any registered home inspector or the production for examination or copying of documents or any other physical evidence, if such evidence relates to qualifications for registration or allegation of misconduct of an applicant or registrant;

(g) establish requirements for continuing education for registration renewals and certify courses or training or examinations to meet the requirements, including requirements as provided by section 7, and amendments thereto;

(h) hire independent counsel. All fees and expenses, when possible, shall be paid out of the home inspectors registration fee fund; and

(i) adopt any rules and regulations necessary to carry out the provisions of this act.

Sec. 6. (a) There shall be a question on all application and application renewal forms requiring the applicant to answer, under oath, whether or not the applicant has:

(1) been convicted of a felony offense in this state, another state or any other jurisdiction, and the nature of the offense upon which a conviction was imposed; or

(2) ever applied for or held a home inspector registration under a different name and whether that applicant's registration has ever been suspended or revoked.

(b) The attorney general may conduct a criminal history records search or background check on any applicant or registered home inspector and may investigate the information submitted on an application or renewal form, provided no adverse action may be taken against

the person until the person has been notified and given an opportunity to respond in writing.

Sec. 7. (a) The attorney general 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) Made a materially false or fraudulent statement in an application for registration or registration renewal;

(2) intentionally falsified a home inspection report;

(3) performed any of the following acts as part of a home inspection:

(A) Inspected, for a fee, any property in which the home inspector, or home inspector's employer, has any personal or financial interest, unless the interest was disclosed in writing to the client before the home inspection was performed and the client signed an acknowledgment of receipt of the disclosure;

(B) offered or delivered an inducement of anything of value, including a commission, referral fee or any portion of an inspection fee for the referral of any business to the home inspector without the consent of the client; and

(C) accepted 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 was contingent upon the conclusions of the home inspection report, pre-established or prescribed findings or the closing of an underlying real estate transaction;

(4) included as a term or condition, in an agreement to conduct a home inspection, any provision that disclaims or limits the liability of the registered home inspector to less than \$2,000 in the aggregate for each home inspection;

(5) failed to make a reasonable effort to provide, when possible, an inspection agreement to a client;

(6) failed to identify and substantially follow standards of practice and code of ethics in the registrant's pre-inspection agreement;

(7) failed to submit evidence, satisfactory to the attorney general, of completion of not less than 16 hours of continuing education, approved by the attorney general within the 24 months immediately preceding registration renewal;

(8) failed to respond, as requested by the attorney general, to any summons for attendance and testimony or to produce documents or any other physical evidence during an investigation into the qualifications of or allegations of misconduct of an applicant or registrant;

(9) within the previous five years has been convicted, pled guilty or pled nolo contendere for any felony under Kansas law, or an offense in another jurisdiction that would constitute a felony under Kansas law, for theft or fraud;

(10) within the previous 15 years has been convicted, pled guilty or pled nolo contendere for:

(A) An offense under Kansas law that, upon conviction, requires the offender to register pursuant to the Kansas offender registration act; or

(B) any offense under the law of another jurisdiction that, upon conviction, requires registration of the offender under the law of the other jurisdiction, or that would constitute an offense under Kansas law that, upon conviction, requires the offender to register pursuant to the Kansas offender registration act; or

(11) violated any provision of this act or the rules and regulations adopted by the

attorney general pursuant to this act.

(b) Any proceedings pursuant to this section shall be conducted in accordance with the provisions of the Kansas administrative procedures act. Persons aggrieved by a final decision or order of the attorney general may appeal pursuant to the provisions of the Kansas judicial review act.

Sec. 8. The attorney general shall set reasonable fees as provided for by this act, except for limitations on the amounts of certain fees as follows:

- (a) Application for an original registration, \$200;
- (b) biennial renewal of registration, \$200;
- (c) late renewal; additional amount not to exceed \$50;
- (d) reinstatement of expired or revoked registration, \$300;
- (e) duplicate copy of a registration certificate, \$25; and
- (f) inactive status fee, not to exceed \$50.

Sec. 9. Whenever any person has engaged in any act or practice that constitutes a violation of this act or the rules and regulations adopted pursuant to this act, the attorney general may institute an action in the district court of the county in which the person resides or in the district court in the county in which such act or practice occurred for an injunction to enforce compliance with this act or such rules and regulations. The attorney general shall not be required to give any bond or pay any filing fee for initiating this action. Upon a showing that the person has engaged in any act or practice in violation of this act or such rules and regulations, the court may enjoin such acts or practices and may make any orders necessary to conserve, protect and disburse any funds involved.

Sec. 10. The attorney general shall remit all moneys received 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 to the credit of the home inspectors registration fee fund, which is hereby established. All expenditures from the home inspectors registration fee fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the attorney general or persons designated by the attorney general.

Sec. 11. On and after January 1, 2021, any individual performing home inspections shall hold a current and valid registration issued under this act, and the rules and regulations adopted pursuant to this act, and meet the following requirements:

- (a) Be at least 18 years of age;
- (b) have general liability insurance coverage in an amount of \$250,000 or more;
- (c) maintain proof of financial responsibility by securing one of the following:
 - (1) A policy of errors and omissions insurance coverage of no less than \$10,000;
 - (2) a surety bond in an amount not less than \$10,000. Such bond shall be issued by a corporate surety authorized to do business in this state. The surety bond shall state the effective date and the expiration date, if available. The applicant shall be named as principal. The bond shall be to the state of Kansas and shall be conditioned upon the applicant faithfully performing all contracts entered into by the applicant, complying with all provisions of this act and following all rules and regulations of the act. Regardless of the number of claims made against the bond or the number of years the bond remains in force, the aggregate liability of the surety shall in no

event exceed the amount of the bond. The bond may be terminated at any time by the surety upon sending 30 days' notice in writing to the principal, the obligee and the attorney general;

(3) an irrevocable letter of credit in an amount of not less than \$10,000, issued by a financial institution that is insured by the federal deposit insurance corporation or its successor, initially issued for a term of at least one year and that 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 attorney general; or

(4) proof of 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. The attorney general 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 home inspector's registration shall be suspended until the escrow account minimum balance is restored to \$10,000 or the registrant otherwise meets the minimum financial obligations of this act; and

(d) except as provided by section 15, and amendments thereto, submit evidence, satisfactory to the attorney general, of meeting the testing, education or training requirements of section 12, and amendments thereto;

Sec. 12. (a) Applicants shall be deemed to have met the testing and education requirements of this act who:

(1) Were previously licensed by the state of Kansas as a home inspector under the provisions of K.S.A. 58-4501 through 58-4514, and amendments thereto, as in effect prior to

July 1, 2013; or

(2) were not previously licensed under K.S.A. 58-4501 through 58-4514, and amendments thereto, as in effect prior to July 1, 2013, but who have been actively and continually engaged in the practice of conducting home inspections for not less than two years prior to the registration application date and have completed no fewer than 200 fee-paid home inspections.

(b) Applicants who were not previously licensed and fail to meet the work and experience requirements of subsection (a) shall:

(1) Successfully complete a proctored nationally recognized home inspector examination on home or building components, inspections or codes. The exam may have been taken prior to the date of this act; and

(2) submit evidence, satisfactory to the attorney general, of successfully completing an approved course of study not less than:

(A) 120 hours of instruction, approved by the attorney general, consisting of no more than 80 hours of distance education provided online or in other computer-assisted formats, or by correspondence, audiotape, video tape or other media. In addition, applicants shall complete 10 supervised inspections conducted under a supervising registered home inspector who has been in the business at least five years and completed at least 1,000 fee-paid inspections; or

(B) 40 hours of instruction, approved by the attorney general, and assist in a minimum of 80 supervised inspections conducted under a supervising registered home inspector who has been in the business at least five years and completed at least 1,000 fee-paid inspections.

(b) The training required pursuant to subsection (b) shall be approved by one of the

following:

- (1) American society of home inspectors;
- (2) international code council;
- (3) international association of certified home inspectors; or
- (4) a recognized home inspector education and training program approved by the

attorney general.

(c) An applicant completing supervised inspections shall retain:

(1) A written log of supervised inspections for two years from the date of each inspection;

(2) certificates of completion or other proof that the applicant has met the experience, educational, and testing requirements for a period not less than three years from the date of the initial application; and

(3) a copy of each of the following documents, pertaining to each home inspection performed by or at the direction of the home inspector, for a period of two years from the date of the inspection:

(A) The home inspection agreement;

(B) the home inspection report; and

(C) any other information prescribed by the rules and regulations adopted by the attorney general pursuant to this act.

(d) For purposes of this section, attendance of one hour of instruction shall mean 50 minutes of classroom instruction or the equivalent thereof in distance education study as determined by the attorney general.

Sec. 13. (a) The attorney general, by rules and regulations, shall establish the date for registration renewals, which shall be on a biennial basis. A registrant who has not renewed the registrant's registration by the expiration date may not conduct home inspections until the registration is renewed.

(b) The attorney general may grant inactive status to a registrant who meets all the requirements for renewal except for completion of continuing education upon written request of the registrant and the payment of the inactive status fee. A registrant whose registration is inactive shall not conduct home inspections during the time the registration is in inactive status.

(c) The attorney general may reinstate a registration that has been expired or revoked upon application on a form provided by the attorney general and payment of any required fees.

(d) The attorney general may establish standards for reinstatement, including a requirement that an applicant, whose registration was revoked or that has been expired for more than one year, successfully completes an approved examination.

Sec. 14. This act shall apply to all individuals who conduct home inspections for compensation, but shall not apply to the following individuals:

(a) A tradesman or contractor performing an evaluation, while acting within the scope of that occupation and for the purpose of repair or maintenance;

(b) an individual employed by a federal, state or local governmental agency or a political subdivision thereof who, within the scope of such employment, inspects property or buildings;

(c) except as provided by subsection 15, and amendments thereto, an individual licensed by the state of Kansas as an architect, while acting within the scope of such license;

(d) except as provided by subsection 15, and amendments thereto, an individual licensed by the state of Kansas as a professional engineer, while acting within the scope of such license;

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

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

(g) an individual employed as an insurance adjuster, while acting within the scope of such employment;

(h) an individual licensed by the state of Kansas as a manufactured home manufacturer, while acting within the scope of such 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 by the state of Kansas as a manufactured home dealer, while acting within the scope of such license;

(l) an individual employed as a manufactured home installer, while acting within the scope of such employment;

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

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

(o) an individual providing services as a pest exterminator or chemical applicator but not providing services that would constitute a home inspection under this act;

(p) an individual certified or approved by the federal housing administration or the United States department of veterans affairs, while consulting or performing compliance or rehabilitation reviews for work required or needed to conform to United States department of housing and urban development, United States department of veterans affairs, or federal national mortgage association, fannie mae, standards or requirements;

(q) an individual conducting a weatherization pre- or post-inspection under the Kansas weatherization program, if the individual meets the certification requirements for weatherization inspectors set forth by the United States department of energy; and

(r) an individual who is not registered as a home inspector may assist a registered home inspector in the performance of an inspection if such individual is supervised at the inspection site by a registered home inspector, and any home inspection report rendered in connection with the home inspection is reviewed and signed by the registered home inspector.

Sec. 15. (a) Individuals licensed by the state of Kansas as an architect or professional engineer, as defined in K.S.A. 74-7003, and amendments thereto, shall register as a home inspector and meet the requirements of section 11, and amendments thereto, if performing the duties of a home inspector, but shall not be required to meet the requirements of section 12, and amendments thereto.

(b) All complaints against a licensed architect or professional engineer, as defined by

K.S.A. 74-7003, and amendments thereto, received by the attorney general pursuant to this act shall be referred to the Kansas board of technical professions for investigation.

Sec. 16. (a) Home inspectors registered under this act shall conduct home inspections with the degree of care that a reasonably prudent home inspector would exercise under the circumstances.

(b) Home inspection agreements shall contain the following information:

(1) A description of the scope of the home inspection;

(2) a limitation of liability of the home inspector for any errors or omissions that may arise during the home inspection; and

(3) an identification of the standards of practice the home inspector will follow when conducting the home inspection.

(c) A home inspection agreement shall not be required for home inspections completed for a bank, financial institution, relocation company or other entity that is purchasing the home as part of a relocation, foreclosure or commercial investment if the inspection report clearly states in bold size, 14-point or larger type that: "This inspection report created for the exclusive use of a commercial client and its findings should not be used or relied upon by individuals purchasing the property."

(d) All home inspections shall be conducted according to a standard of practice and a code of ethics as identified in the inspection agreement.

(e) All home inspectors shall perform a home inspection in accordance with one of the following standards of practice:

(1) the American society of home inspectors;

(2) the international association of certified home inspectors;

(3) the national academy of building inspection engineers; or

(4) any other recognized standard of practice approved by the attorney general after consultation with the advisory council.

(f) A registered home inspector shall not include, as a term or condition in an agreement to conduct a home inspection, any provision that waives the liability or limits the amount of damages for liability for any errors and omissions that may arise during a home inspection to less than \$2,000 in the aggregate for each home inspection. Any term or condition or limitation setting the amount of damages for liability for any errors and omissions that may arise during a home inspection at an amount greater than \$2,000 shall be provided to the client in writing to be in effect.

(g) A home inspection report shall meet all requirements as set forth within the standards of practice stated in the home inspection agreement and additionally shall include:

(1) The inspection agreement; and

(2) the name of the inspection company, name of the inspector conducting the inspection, the inspector's registration number and the inspection company's contact information.

(h) An action to recover damages for any act or omission of a registered home inspector relating to a home inspection or a home inspection report shall be brought not more than 12 months from the date the home inspection was performed and may be initiated only by the client for whom the home inspection or the home inspection report was made.

(i) In any action to recover damages for any error or omission of a registered home inspector relating to a home inspection or home inspection report, a registered home inspector is

liable for any errors and omissions that may arise during a home inspection in an amount not to exceed \$2,000 in the aggregate for each home inspection, or to the amount specified in the inspection agreement to conduct a home inspection, if greater than \$2,000 in the aggregate for each home inspection, if the registered home inspector provides the client with a clear, written description in the inspection agreement of any greater limitations on the liability of the licensed home inspector for any errors and omissions that may arise during the home inspection.

Sec. 17. (a) No individual, except individuals licensed by the state of Kansas as an architect or professional engineer as defined in K.S.A. 74-7003, and amendments thereto, subject to section 14, and amendments thereto, shall present themselves as a Kansas state registered home inspector unless the individual has complied with all the provisions of this act. This requirement in no other way limits or infringes upon exempt licensed architects and professional engineers from the practice of home inspections as within the scope or as authorized by their professional license.

(b) All agreements, contracts and reports prepared by an individual performing home inspections under this act shall indicate the home inspector's registration number, name of the home inspector, name of the home inspector's company and contact information.

Sec. 18. The provisions of this act shall expire on July 1, 2025.

Sec. 19. This act shall take effect and be in force from and after its publication in the statute book.

