

HOUSE BILL NO. 417

INTRODUCED BY MALEK, KERNS, HENRY, VANCE, POMNICHOWSKI

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING REGISTRATION AND REGULATION OF HOME INSPECTORS; PROVIDING A CODE OF ETHICS AND STANDARDS OF PRACTICE; LISTING LIMITATIONS AND TASKS NOT REQUIRED OF HOME INSPECTORS; DESCRIBING DUTIES FOR THE DEPARTMENT OF LABOR AND INDUSTRY FOR A HOME INSPECTION PROGRAM; PROVIDING RULEMAKING AUTHORITY; REPEALING THE HOME INSPECTION TRADE PRACTICES ACT; AMENDING SECTION 37-1-401, MCA; REPEALING SECTIONS 30-14-1001, 30-14-1002, 30-14-1003, 30-14-1004, AND 30-14-1005, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Purpose.** The legislature finds that public safety and welfare are met through annual registration of home inspectors and the adoption of a code of ethics and standards of practice for home inspectors.

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 7], the following definitions apply:

- (1) "Department" means the department of labor and industry provided for in 2-15-1701.
- (2) "Home" means a residential building with four or fewer dwelling units and their garages or carports.
- (3) "Home inspection" means a physical examination of a residential dwelling to identify major defects in various attributes of or attachments to the dwelling, including mechanical, electrical, and plumbing systems, in addition to structural and other essential components. Home inspections are performed for compensation and employ visual observation and the testing of user controls, but not mathematical or specialized engineering sciences.
- (4) "Home inspection report" is a written document prepared by a home inspector for a client and issued to the client in exchange for compensation after a home inspection has been completed. The report must contain the information regarding the inspection of systems and components as required by [section 5].
- (5) (a) "Home inspector" is a person who performs a home inspection for compensation.
(b) The term does not include a person:

- (i) employed by the state or a local government to enforce building codes; or
- (ii) licensed in Montana and acting within the scope of the person's occupation or profession as an architect, professional engineer, electrician, master plumber, real estate broker, real estate broker-salesperson, real estate salesperson, real estate appraiser, certified general or residential real estate appraiser, property manager, insurance adjuster, or pesticide applicator.

NEW SECTION. Section 3. Registration required -- fees. (1) (a) A home inspector shall register annually with the department, using a form prescribed by the department that requires at least the applicant's name, address, and telephone number.

(b) With the registration form, an applicant shall also submit written proof that:

- (i) the applicant is 18 years of age or older;
- (ii) the applicant has successfully completed a competency examination adopted by the department by rule that is:

(A) designed to test competence in home inspection practice as determined by a psychometrically valid and recognized role definition methodology;

(B) developed and administered in a manner consistent with the American educational research association's Standards of Educational and Psychological Testing; and

(C) administered and proctored by an approved and recognized testing organization at a physical location; and

(iii) the applicant has successfully completed 20 hours of professional education during the previous 12 months. These 20 hours of related professional education must be accepted by one or more of the following home inspection associations:

(A) the national association of home inspectors, inc.;

(B) the housing inspection foundation;

(C) the American institute of inspectors;

(D) the American society of home inspectors; or

(E) the international association of certified home inspectors.

(2) The registration material must include a copy of the code of ethics, as provided in [section 4], with a form to be returned with the application with the applicant's signature attesting to the applicant's intent to abide by the code of ethics.

(3) The department may charge a registration fee commensurate with the cost of administering the home

inspection registration program.

NEW SECTION. Section 4. Code of ethics. (1) An applicant who is registering as a home inspector under [sections 1 through 7] shall attest in writing that the applicant accepts the code of ethics provided in subsection (2) and that violation of the code of ethics is cause for suspension or revocation of the person's registration as a home inspector.

(2) A registered home inspector:

(a) shall conduct home inspections in a professional manner at all times;

(b) shall provide a thorough and honest opinion of the structure and its contents in accordance with the standards of practice provided for in [section 5] and the home inspector's professional experience;

(c) shall always perform as a disinterested third party and neither accept commissions or allowances nor provide commissions or allowances to others;

(d) may not disclose to others any information regarding the home inspection without prior written consent of the client;

(e) is responsible for alerting the client to the existence of any outside interest that may affect the client or the quality of the inspection;

(f) may not use the inspection process to obtain additional work for hire, including repairs, on the inspected property for a period of 12 months from the date of the inspection;

(g) may not accept monetary or other compensation from more than one client regarding the same service on the same property without prior written consent of the client;

(h) shall always represent the home inspection profession in a way that enhances its public image; and

(i) shall report to the department any violation of this ethical code or the standards of practice provided for in [section 5].

NEW SECTION. Section 5. Standards of practice. (1) The standards of practice listed in subsections (2) through (4) are intended to provide a minimum and uniform standard for home inspections and an objective list for clients to use to assess the home inspection report on the conditions of the systems and components of the home, as indicated at the time of the home inspection. Home inspections performed in accordance with this section are not technically exhaustive and are not required to identify concealed conditions, latent defects, or consequential damages.

(2) A home inspector shall inspect readily accessible, visually observable, installed systems and

components, including:

(a) structural components, including the foundation and framing. The inspection of structural components must include a probing of a representative number of structural components in which deterioration is suspected or in which there are clear indications of possible deterioration. Probing is not required if probing would damage any finished surface or if no deterioration is visible or presumed to exist.

(b) exterior components, including:

(i) siding, flashing, and trim;

(ii) all exterior doors;

(iii) attached or adjacent decks, balconies, stoops, steps, porches, and associated railings;

(iv) eaves, soffits, and fascias if accessible from the ground level;

(v) vegetation, grading, surface drainage, and retaining walls that are likely to adversely affect the structure; and

(vi) adjacent or entryway walkways, patios, and driveways;

(c) roofing, including:

(i) roofing materials;

(ii) roof drainage systems;

(iii) flashing; and

(iv) skylights, chimneys, and roof penetrations;

(d) plumbing, including:

(i) interior water supply and distribution systems, including all fixtures and faucets;

(ii) drain, waste, and vent systems, including all fixtures;

(iii) water heating equipment and the hot water supply system;

(iv) vent systems, flues, and chimneys;

(v) fuel storage and fuel distribution systems; and

(vi) drainage sumps, sump pumps, and related piping;

(e) electrical systems, including:

(i) service drop;

(ii) service entrance conductors, cables, and raceways;

(iii) service equipment and main disconnects;

(iv) service grounding;

(v) interior components of service panels and subpanels;

- (vi) conductors;
- (vii) overcurrent protection devices;
- (viii) a representative number of installed lighting fixtures, switches, and receptacles; and
- (ix) ground fault circuit interrupters;
- (f) heating systems, including:
 - (i) access panels to determine if they are readily openable;
 - (ii) installed heating equipment; and
 - (iii) vent systems, flues, and chimneys;
- (g) air conditioning systems, including:
 - (i) access panels to determine if they are readily openable;
 - (ii) central and through-wall equipment; and
 - (iii) distribution systems;
- (h) interior components, including:
 - (i) walls, ceilings, and floors;
 - (ii) steps, stairways, and railings;
 - (iii) countertops and a representative number of installed cabinets;
 - (iv) a representative number of doors and windows; and
 - (v) garage doors and garage door operators;
- (i) insulation and ventilation, including:
 - (i) insulation and vapor retarders in unfinished spaces;
 - (ii) ventilation of attics and foundation areas; and
 - (iii) mechanical ventilation systems; and
- (j) fireplaces and solid fuel-burning appliances, including:
 - (i) system components; and
 - (ii) chimneys and vents.
- (3) A home inspector shall describe:
 - (a) for structural components in subsection (2)(a):
 - (i) the methods used to inspect underfloor crawl spaces and attics;
 - (ii) the foundation;
 - (iii) the floor structure;
 - (iv) the wall structure;

- (v) the ceiling structure; and
- (vi) the roof structure;
- (b) for exterior components in subsection (2)(b), the siding;
- (c) for roofing in subsection (2)(c), the roofing materials and the methods used to inspect the roofing;
- (d) for plumbing in subsection (2)(d):
 - (i) the water supply, drain, waste, and vent piping materials;
 - (ii) the water heating equipment, including energy source; and
 - (iii) the location of the main water and fuel shutoff valves;
- (e) for electrical systems in subsection (2)(e):
 - (i) the amperage and voltage rating of the service;
 - (ii) the location of the main disconnect and subpanels;
 - (iii) the presence of solid conductor aluminum branch circuit warning;
 - (iv) the presence or absence of smoke detectors and, if present, the location; and
 - (v) wiring methods;
- (f) for heating systems in subsection (2)(f):
 - (i) energy sources; and
 - (ii) heating systems;
- (g) for air conditioning systems in subsection (2)(g):
 - (i) energy sources; and
 - (ii) cooling systems;
- (h) for insulation and ventilation in subsection (2)(i):
 - (i) insulation and vapor retarders in unfinished spaces; and
 - (ii) whether insulation is present in unfinished spaces at conditioned surfaces; and
- (i) for fireplaces and solid-fuel burning appliances in subsection (2)(j):
 - (i) fireplaces and solid-fuel burning appliances; and
 - (ii) chimneys.
- (4) A home inspector shall report on the findings of home inspections regarding:
 - (a) systems and components that, in the professional judgment of the home inspector, are not functioning properly or are significantly deficient, unsafe, or near the end of their service lives;
 - (b) recommendations to correct or monitor for future correction the findings reported in subsection (4)(a) or other items needing further evaluation;

(c) the reasoning or explanations of the findings reported in subsection (4)(a) that are not self-evident;
and

(d) whether systems and components listed in subsection (2) were not inspected, whether they were present in the home, and if present, the reason they were not inspected.

(5) The standards of practice are not intended to prohibit home inspectors from:

(a) including other inspection services or systems and components in addition to those required in subsection (2);

(b) designing or specifying repairs if the home inspector is appropriately qualified and willing to design or specify repairs; or

(c) excluding systems and components from the inspection if requested by the client.

(6) A home inspector is not required to perform any action or make any determination not specifically stated in subsections (2) through (4).

NEW SECTION. Section 6. Exclusions and limitations. ~~The standards of practice in [section 5] do not require a home inspector to~~ A HOME INSPECTOR MAY NOT:

(1) ~~(A)~~ provide any engineering or architectural services or analysis;

~~(B) PERFORM ANY WORK OR PROVIDE ANY SERVICE FOR WHICH ANOTHER PROFESSIONAL LICENSE IS REQUIRED UNLESS THE HOME INSPECTOR POSSESSES THAT OTHER LICENSE; OR~~

~~(C) ACT AS AN ENERGY STAR VERIFIER OR A GREEN BUILDING VERIFIER ACCREDITED BY THE NATIONAL ASSOCIATION OF HOME BUILDERS UNLESS THE HOME INSPECTOR IS QUALIFIED TO ACT IN THAT CAPACITY;~~

(2) offer an opinion regarding the adequacy of any structural system or component;

(3) inspect any of the following:

(a) screening, shutters, awnings, and similar seasonal accessories;

(b) fences;

(c) geological or soil conditions;

(d) recreational facilities;

(e) outbuildings and detached structures other than garages and carports;

(f) seawalls, breakwalls, and docks;

(g) erosion control and earth stabilization measures;

(h) antennae;

(i) interiors of flues or chimneys that are not readily accessible;

- (j) other accessories installed on roofs;
- (k) clothes washing machine connections;
- (l) wells, well pumps, or water storage-related equipment;
- (m) water conditioning systems;
- (n) solar water heating systems;
- (o) fire and lawn sprinkler systems;
- (p) private waste disposal systems;
- (q) remote control devices;
- (r) alarm systems and components;
- (s) low-voltage wiring systems and components;
- (t) ancillary wiring systems and components that are not a part of the primary electrical power distribution system;
- (u) fireplace screens and doors;
- (v) seals and gaskets;
- (w) automatic fuel feed devices;
- (x) mantles and fireplace surrounds;
- (y) combustion makeup air devices;
- (z) heat distribution assists, including gravity-fed and fan-assisted systems;
- (aa) electronic air filters;
- (bb) window air conditioning units;
- (cc) paint, wallpaper, and other finish treatments;
- (dd) carpeting;
- (ee) window treatments;
- (ff) central vacuum systems;
- (gg) household appliances;
- (hh) underground items, including but not limited to underground storage tanks or other underground indications of their presence, whether abandoned or active;
- (ii) items that are not installed;
- (jj) installed decorative items; or
- (kk) common elements or common areas in condominiums, cooperative housing, or other multiunit housing;

- (4) determine the following:
 - (a) whether the water supply and waste disposal systems are public or private;
 - (b) whether the quantity and quality of the water supply are adequate;
 - (c) draft characteristics in fireplaces and solid fuel-burning appliances;
 - (d) conditions of systems or components that are not readily accessible;
 - (e) remaining life expectancy of any system or component;
 - (f) the strength, adequacy, effectiveness, or efficiency of any system or component;
 - (g) the causes of any conditions or deficiency;
 - (h) the methods, materials, or costs of corrections;
 - (i) future conditions, including but not limited to the failure of systems and components;
 - (j) the suitability of the property for any specialized use;
 - (k) what is necessary to comply with regulatory requirements, including but not limited to building codes, regulations, laws, and city ordinances;
 - (l) an estimate of the market value of the property or its marketability;
 - (m) the advisability of purchasing the property;
 - (n) the presence of potentially hazardous plants or animals, including but not limited to molds or mold-like substances that could cause disease in some humans, or wood-destroying organisms;
 - (o) the presence of any environmental hazards, including but not limited to toxins, carcinogens, noise, and contaminants in soil, water, or air;
 - (p) the effectiveness of any system installed or method used to control or remove suspected hazardous substances;
 - (q) the operating costs of systems or components;
 - (r) the acoustical properties of any system or component; or
 - (s) soil conditions relating to geotechnical or hydrologic specialties;
- (5) operate the following:
 - (a) automatic safety controls, shut-off valves, or manual stop valves;
 - (b) any system or component that is shut down or otherwise inoperable; or
 - (c) any system or component that does not respond to normal operating controls;
- (6) measure amperage, voltage, or impedance;
- (7) disturb insulation;
- (8) ignite or extinguish fires in fireplaces or solid fuel-burning appliances;

- (9) move fireplace inserts, stoves, firebox inserts, furniture, personal property, equipment, plants, soil, snow, ice, or debris;
- (10) offer warranties or guarantees of any kind;
- (11) offer or perform:
 - (a) any trade or any professional service other than home inspection;
 - (b) any act or service contrary to law; or
 - (c) any procedure that will, in the opinion of the home inspector, likely be dangerous to the home inspector or other persons or damage the property or its systems or components;
- (12) enter or inspect:
 - (a) any area that will, in the opinion of the home inspector, likely be dangerous to the home inspector or other persons or damage the property or its systems or components; or
 - (b) underfloor crawl spaces or attics that are not readily accessible;
- (13) describe or report on any system or component that is not included in the standards of practice in [section 5]; or
- (14) dismantle any system or component unless specifically required in the standards of practice in [section 5].

NEW SECTION. Section 7. Department duties. (1) The department shall adopt rules to administer [sections 1 through 7].

(2) The department shall establish fees for the annual registration of home inspectors and deposit the fees in a state special revenue account for the use of the program.

(3) The department may investigate complaints, hold hearings, and apply the provisions of Title 37, chapter 1, to home inspectors.

Section 8. Section 37-1-401, MCA, is amended to read:

"37-1-401. Uniform regulation for licensing programs without boards -- definitions. As used in this part, the following definitions apply:

- (1) "Complaint" means a written allegation filed with the department that, if true, warrants an injunction, disciplinary action against a licensee, or denial of an application submitted by a license applicant.
- (2) "Department" means the department of labor and industry provided for in 2-15-1701.
- (3) "Investigation" means the inquiry, analysis, audit, or other pursuit of information by the department,

with respect to a complaint or other information before the department, that is carried out for the purpose of determining:

- (a) whether a person has violated a provision of law justifying discipline against the person;
- (b) the status of compliance with a stipulation or order of the department;
- (c) whether a license should be granted, denied, or conditionally issued; or
- (d) whether the department should seek an injunction.

(4) "License" means permission in the form of a license, permit, endorsement, certificate, recognition, or registration granted by the state of Montana to engage in a business activity or practice at a specific level in a profession or occupation governed by:

- (a) Title 37, chapter 35, 72, or 73, or [sections 1 through 7]; or
- (b) Title 50, chapter 39, 74, or 76.

(5) "Profession" or "occupation" means a profession or occupation regulated by the department under the provisions of:

- (a) Title 37, chapter 35, 72, or 73, or [sections 1 through 7]; or
- (b) Title 50, chapter 39, 74, or 76."

NEW SECTION. Section 9. Repealer. Sections 30-14-1001, 30-14-1002, 30-14-1003, 30-14-1004, and 30-14-1005, MCA, are repealed.

NEW SECTION. Section 10. Codification instruction. [Sections 1 through 7] are intended to be codified as an integral part of Title 37, and the provisions of Title 37 apply to [sections 1 through 7].

NEW SECTION. Section 11. Effective date. [This act] is effective January 1, 2010.

- END -

