

HOUSE BILL NO. 140

INTRODUCED BY A. OLSEN

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING HOME INSPECTOR LAWS; REQUIRING  
5 REGISTRATION; PROVIDING FEES FOR LISTING REGISTERED HOME INSPECTORS ON THE  
6 DEPARTMENT OF LABOR AND INDUSTRY WEBSITE AND FOR OTHER EDUCATIONAL PROGRAMS;  
7 ALLOWING A JOINT APPLICATION FOR A HOME INSPECTOR REGISTRATION AND AN INDEPENDENT  
8 CONTRACTOR EXEMPTION CERTIFICATE; PROVIDING RULEMAKING AUTHORITY; AMENDING  
9 SECTIONS 30-14-1004, 39-9-101, 39-9-206, 39-9-211, 39-9-301, AND 39-9-303, MCA; AND PROVIDING AN  
10 EFFECTIVE DATE."

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

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14 **Section 1.** Section 30-14-1004, MCA, is amended to read:

15 **"30-14-1004. Requirement Registration -- prohibitions -- notification -- rulemaking -- definition.**

16 (1) A home inspector shall:

17 (a) register with the department on forms provided by the department and pay a registration fee valid  
18 for 2 years. A registration fee must be set by the department by rule as provided in 39-9-206. Part of the fee may  
19 be used by the department for the education program required under 39-9-206.

20 (b) document, as provided by the department by rule:

21 (i) for a first-time registration:

22 (A) successful completion of a minimum of 40 hours of comprehensive home inspection instruction  
23 approved by the department or a passing grade on the national home inspector examination offered by the  
24 examination board of professional home inspectors or another national examination as provided by the  
25 department by rule; and

26 (B) membership in a national home inspection association; and

27 (ii) for renewals of registration:

28 (A) completion of 40 hours of continuing education over the prior 2 years; and

29 (B) membership in a national home inspection association; and

30 (c) provide documentation of:

1           (i) liability insurance;  
2           (ii) a minimum of \$100,000 in errors and omissions insurance; and  
3           (iii) (A) workers' compensation insurance; or  
4           (B) an independent contractor's exemption certificate if the home inspector is self-employed with no other  
5 employees.

6           (2) A home inspector shall issue a written home inspection report to a client after completing a home  
7 inspection unless the client agrees in writing to release the home inspector from this obligation.

8           ~~(2)~~(3) A home inspector may not:

9           (a) disclose information concerning the results of a home inspection to anyone other than the client or  
10 the client's representative without the written approval of the home inspector's client or the client's representative;

11           (b) accept compensation from more than one party with a financial interest in the residential dwelling  
12 without written approval from all parties with a financial interest in the residential dwelling;

13           (c) accept a commission or allowance, directly or indirectly, from another person or business entity  
14 ~~associated with the client~~ in connection with work for which the home inspector is responsible to the client;

15           (d) refuse or otherwise fail to disclose promptly to a client information about any business interest or  
16 relationship of the home inspector that may affect the client in connection with a home inspection.

17           (4) Failure to pay a registration fee may result in the department making a notation of noncompliance  
18 on the department's website used to list registered home inspectors. Upon payment of the registration fee, the  
19 noncompliance notation must be removed.

20           (5) Registration fees paid under this section must be deposited in a state special revenue account to the  
21 credit of the department. Registration fees must be used for the administration and enforcement of this section  
22 and for the education program provided for in 39-9-206, including listing registered home inspectors on the  
23 department's website. The fees may also be used in part for the independent contractor certification program  
24 provided for in Title 39, chapter 71, part 4.

25           (6) The department may adopt rules to implement this section.

26           (7) For the purposes of this section, "department" means the department of labor and industry."

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28           **Section 2.** Section 39-9-101, MCA, is amended to read:

29           **"39-9-101. Purpose.** It is the purpose of this chapter to ensure that all construction contractors and  
30 home inspectors are competing fairly and in compliance with state laws."

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2       **Section 3.** Section 39-9-206, MCA, is amended to read:  
3       **"39-9-206. Fees -- education program.** (1) The department shall charge fees for:  
4       (a) issuance, renewal, and reinstatement of certificates of registration; and  
5       (b) change of name, address, or business structure.  
6       (2) The department shall set the fees by administrative rule. The fees must cover the full cost of issuing  
7 certificates, filing papers and notices, and administering and enforcing this chapter and the provisions of Title 30,  
8 chapter 14, part 10. The costs include reproduction, travel, per diem, and administrative and legal support costs.  
9       (3) The fees charged in subsection (1)(a) may not exceed:  
10       (a) \$70 for the initial registration certificate; or  
11       (b) \$70 for the renewal or reinstatement of a registration certificate.  
12       (4) The fees collected under this section must be deposited in the state special revenue fund in an  
13 account to the credit of the department for the administration and enforcement of Title 30, chapter 14, part 10,  
14 this chapter, and independent contractor certification provided for in Title 39, chapter 71, part 4.  
15       (5) The department shall establish, cooperatively with representatives of the building industry and the  
16 home inspection industry, an industry and consumer information program, funded with 15% of the fees, to  
17 educate the building industry and the home inspection industry about the registration ~~program~~ requirements and  
18 to educate the public regarding the hiring of registered building construction contractors and registered home  
19 inspectors.  
20       (6) The fee for a joint application for a certificate of registration under this section or home inspector  
21 registration under 30-14-1004 and an independent contractor exemption certificate may not exceed the total fee  
22 charged for a certificate of registration or home inspector registration and an independent contractor exemption  
23 certificate that are obtained separately. The fee paid for the independent contractor exemption certificate may  
24 be used by the department to offset the cost of administering independent contractor certification provided for  
25 in Title 39, chapter 71, part 4."

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27       **Section 4.** Section 39-9-211, MCA, is amended to read:  
28       **"39-9-211. Exemptions.** ~~This~~ As related to construction contractors, this chapter does not apply:  
29       (1) to an authorized representative of the United States government, the state of Montana, or any  
30 incorporated municipality, county, alternative form of local government, irrigation district, reclamation district, or

- 1 other municipal or political corporation or subdivision of this state;
- 2 (2) to an officer of a court acting within the scope of office;
- 3 (3) to a public utility operating under the regulations of the public service commission or to a rural  
4 cooperative utility operating under Title 35, chapter 18, in construction, maintenance, or development work  
5 incidental to its own business;
- 6 (4) to the repair or operation incidental to the discovery or production of oil or gas or incidental to the  
7 drilling, testing, abandoning, or other operation of an oil or gas well or a surface or underground mine or mineral  
8 deposit;
- 9 (5) to the sale or installation of finished products, materials, or articles of merchandise that are not  
10 actually fabricated into and do not become a permanent fixed part of a structure;
- 11 (6) to the construction, alteration, improvement, or repair carried on within the limits and boundaries of  
12 a site or reservation under the exclusive legal jurisdiction of the federal government;
- 13 (7) to a person who only furnished materials, supplies, or equipment without fabricating them into or  
14 consuming them in the performance of the work of the construction contractor;
- 15 (8) to work or operation on one undertaking or project considered of a casual, minor, or inconsequential  
16 nature, by one or more contracts, the aggregate contract price of which, for labor and materials and all other  
17 items, is less than \$2,500 a job. The exemption prescribed in this subsection does not apply when the work or  
18 construction is only a part of a larger or major operation, whether undertaken by the same or a different  
19 construction contractor, or in which a division of the operation is made into contracts of amounts of less than  
20 \$2,500 a job for the purpose of evasion of this chapter or otherwise.
- 21 (9) to a farmer or rancher while engaged in a farming, dairying, agriculture, viticulture, horticulture, or  
22 stock or poultry operation;
- 23 (10) to an irrigation district or reclamation district;
- 24 (11) to an operation related to clearing or other work upon land in rural districts for fire prevention  
25 purposes;
- 26 (12) to an owner who contracts for work to be performed by a registered construction contractor, but this  
27 exemption does not apply to an owner who is otherwise covered by this chapter who constructs a residence on  
28 the owner's property with the intention and for the purpose of promptly selling the improved property;
- 29 (13) to an owner working on the owner's property, whether occupied by the owner or not, but this  
30 exemption does not apply to an owner who is otherwise covered by this chapter who constructs an improvement

1 on the owner's property with the intention and for the purpose of promptly selling the improved property, unless  
2 the owner has continuously occupied the property as the owner's primary residence for at least the last 12  
3 months;

4 (14) to owners of commercial properties who use their own employees to do maintenance, repair, and  
5 alteration work in or upon their own properties;

6 (15) to an architect, civil or professional engineer, or professional land surveyor, licensed in Montana and  
7 acting solely in a professional capacity;

8 (16) to an electrician or plumber, licensed in Montana, operating within the scope of the license;

9 (17) to a contract security company, licensed under Title 37, chapter 60, operating within the scope of  
10 the license;

11 (18) to a person who engages in the activities regulated as an employee of a registered construction  
12 contractor with wages as the sole compensation or as an employee with wages as the sole compensation;

13 (19) to a person or entity licensed under Title 50, chapter 39, to sell, install, or service fire suppression  
14 or fire protection equipment;

15 (20) to a water well contractor licensed under Title 37, chapter 43, performing the work of a water well  
16 contractor;

17 (21) to an enrolled tribal member or an association, business, corporation, or other entity, at least 51%  
18 of which is owned by an enrolled tribal member or members and whose business is conducted solely within the  
19 exterior boundaries of an Indian reservation;

20 (22) to a contractor engaged in the logging industry who builds forest access roads for the purpose of  
21 harvesting and transporting logs from forest to mill;

22 (23) to a person working on the person's own residence, if the residence is owned by a person other than  
23 the resident; or

24 (24) to an independent contractor who has no employees. However, an independent contractor may  
25 voluntarily elect to register as a construction contractor under this chapter. A home inspector, whether an  
26 independent contractor or not, is required to register under 30-14-1004."

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28 **Section 5.** Section 39-9-301, MCA, is amended to read:

29 **"39-9-301. Business practices -- penalty.** (1) Except as provided in 39-9-205, a person who has  
30 registered under one name as provided in this chapter may not engage in the business or act in the capacity of

1 a construction contractor or home inspector under any other name unless that name also is registered under this  
2 chapter.

3 (2) A construction contractor may not falsify a registration number and use it that registration number  
4 in connection with a solicitation or identification as a construction contractor. An individual construction contractor,  
5 partner, associate, agent, salesperson, solicitor, officer, or employee of a construction contractor shall use a true  
6 name and address at all times while engaged in the business or capacity of a construction contractor or in  
7 activities related to a construction contractor.

8 (3) (a) The finding of a violation of this section by the department at a hearing held in accordance with  
9 the Montana Administrative Procedure Act subjects the person who commits the violation to a penalty of not more  
10 than \$5,000, as determined by the department. The required hearing may be held by telephone or by  
11 videoconference. A penalty collected under this section must be deposited in the state special revenue account  
12 to the credit of the department for administration and enforcement of this chapter.

13 (b) Penalties under this section do not apply to a violation that is determined to be an inadvertent error."  
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15 **Section 6.** Section 39-9-303, MCA, is amended to read:

16 **"39-9-303. Department to compile and update ~~list of registered construction contractors~~**  
17 **registration lists -- availability -- fee.** (1) The department shall compile a list of all construction contractors  
18 registered under this chapter and a list of all home inspectors registered under 30-14-1004. The department shall  
19 update the list of contractors at least bimonthly and the list of home inspectors as provided by rule. The list is  
20 public information and must be available to the public upon request for a reasonable fee or posted on the  
21 department's website.

22 (2) The department shall inform a person, firm, or corporation whether a construction contractor or home  
23 inspector is registered. The department shall provide the information without charge, except for a reasonable fee  
24 for any copies made."  
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26 **NEW SECTION. Section 7. Effective date.** [This act] is effective July 1, 2019.

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