

SHORT TITLE: Professions and occupations; providing for licensure of home inspectors; creating Committee of Home Inspectors within Oklahoma Real Estate Commission; codification; effective date.

STATE OF OKLAHOMA

2nd Session of the 45th Legislature (1996)

SENATE BILL NO. 787

By: Herbert of the Senate

and

Bastin of the House

AS INTRODUCED

An Act relating to professions and occupations;
providing short title; defining terms; requiring
licensure of home inspectors; making certain acts
unlawful; making act inapplicable to certain
persons; establishing Committee of Home Inspectors
within Oklahoma Real Estate Commission; providing
for membership, qualifications, terms of office,
vacancies, removal of members, rules, officers,
meetings, and records; requiring certain monies be
deposited in Commission's revolving fund and
expended for certain purposes; stating powers and
duties; providing for disciplinary actions,
sanctions, and remedies; requiring compliance with
certain statutory provisions; requiring certain
schools present certain information for approval;
stating qualifications and requirements for
application for home inspector examination;
providing for refusal to license and appeal of
refusal; providing for examination and examination
fee; stating conditions for licensure; requiring
bond; stating term of license; authorizing certain
fees; requiring certain continuing education;
providing for additional requirements and penalty
for late renewal; providing for inactive status;
providing for criminal penalty and civil remedies;

stating conditions for investigating home inspector business activities and imposing sanctions; stating criteria for establishing cause; providing for administrative fines and sanctions for failure to pay fines within certain time period; making administrative fine additional to other penalties; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 858-621 of Title 59, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Home Inspection Trade Practices Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 858-622 of Title 59, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Commission" means the Oklahoma Real Estate Commission;
 2. "Committee" means the Committee of Home Inspectors;
 3. "Secretary-treasurer" means the secretary-treasurer of the Oklahoma Real Estate Commission;
 4. "Home inspection" means an inspection of improvements, including structural and mechanical components and systems, to real property consisting of at least one but not more than four residential dwelling units, and the preparation of a home inspection report;
 5. "Home inspection report" means a written opinion of the functional and physical condition of improvements to real property;
- and

6. "Home inspector" means a person who, for compensation, conducts home inspections.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 858-623 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. On and after January 1, 1998, it shall be unlawful for persons to conduct, for compensation, a home inspection or to advertise or otherwise hold themselves out to be in the business of home inspection in this state, unless licensed under this act.

B. This act shall not apply to:

1. Persons inspecting new residential construction;
2. Structural or civil engineers who are licensed in this state, or an equivalent type license as determined by the Committee;
3. Government employees who perform inspections when acting within the scope of their employment; or
4. Persons who, for compensation, improve or maintain improvements to real property if they do not advertise or otherwise hold themselves out to be in the business of home inspection.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 858-624 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. There is hereby established within the Oklahoma Real Estate Commission, a Committee of Home Inspectors which shall consist of five (5) members who have been residents of this state for at least three (3) years prior to their appointment. Each member shall be appointed by the Governor with the advice and consent of the Senate.

B. Of these members, two members shall be licensed home inspectors who are active full-time in the home inspection business; one member shall be an approved home inspection school instructor who is active full-time as a home inspection instructor; one member shall be a licensed real estate broker who is active full-time in the real estate brokerage business; and one member shall be a lay

person not in the real estate business or home inspection business. No more than two members shall be appointed from the same congressional district or from the same home inspection professional association.

C. Initially, two members shall be appointed for a term of one (1) year to expire December 31, 1999; two members shall be appointed for a term of two (2) years to expire December 31, 2000; and one member shall be appointed for a term of three (3) years to expire December 31, 2001. After the initial appointment, all terms shall be for three (3) years. Initial appointments shall be made within ninety (90) days after the effective date of this act. The initial home inspector and home inspection school instructor appointees shall not be required to meet the licensure and approval requirements set forth in subsection B of this section in order to qualify for initial appointment.

D. Members of the Committee shall serve until their terms expire and their successors are appointed and qualified. Any vacancy which occurs on the Committee shall be filled for the balance of an unexpired term by appointment of the Governor with the advice and consent of the Senate. Members of the Committee may be removed from office by the Governor for incompetence, neglect of duty, or malfeasance in office in the manner provided by law for the removal of officers not subject to impeachment.

E. The members of the Committee, within thirty (30) days after their appointment, and annually thereafter, shall organize and elect a chair and vice-chair. The chair, and in the chair's absence, the vice-chair, shall preside at all meetings of the Committee and shall execute such duties as the Committee, by its rules, shall prescribe. The Committee shall meet at least semiannually, and special meetings may be called by the secretary-treasurer of the Oklahoma Real Estate Commission. The secretary-treasurer shall keep a complete and permanent record of all proceedings of the Committee.

F. Members of the Committee shall serve without compensation but are entitled to be reimbursed for all actual and necessary expenses incurred in the performance of their duties in accordance with the State Travel Reimbursement Act.

G. The Committee shall act in accordance with the Oklahoma Open Meetings Act, the Oklahoma Open Records Act, and the Administrative Procedures Act.

H. The Oklahoma Real Estate Commission may employ additional personnel to perform the requirements of this act as authorized by the Legislature.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 858-625 of Title 59, unless there is created a duplication in numbering, reads as follows:

All monies collected for administrative and licensing fees and penalties in connection with the Home Inspection Trade Practices Act shall be deposited into the Oklahoma Real Estate Commission Revolving Fund, created in Section 858-205 of Title 59 of the Oklahoma Statutes, and shall be expended for the purpose of implementing and enforcing the provisions of this act.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 858-626 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. The Committee of Home Inspectors shall have the following powers and duties:

1. To promulgate rules consistent with this act and make such orders as it may deem necessary or expedient in the performance of its duties, regarding, but not limited to, the following:

- a. qualifications, examinations, and license issuance for home inspectors,
- b. reinstatement of license for failure to meet license renewal requirements,

- c. license activities to include standards of practice and prohibited acts,
- d. regulatory proceedings to include investigation and administrative hearings, and
- e. approval of schools, educational course content, instructors, and organizations offering courses of study for home inspection, and standards required for instructors, schools and organizations to remain approved;

2. Upon showing good cause as provided for in this act, to discipline licensees, approved instructors, approved schools, and approved educational organizations by:

- a. reprimand,
- b. probation for a specified period of time,
- c. requiring education in addition to the educational requirements provided for licensure or continuing education,
- d. suspending licenses and approvals,
- e. revoking licenses and approvals,
- f. imposing administrative fines as provided for in this act, or
- g. any combination of discipline as provided by subparagraphs a through f of this paragraph;

3. Upon showing good cause, to modify any sanction imposed pursuant to the provisions of this act; and

4. To apply for injunctions and restraining orders for violations of this act or the rules of the Committee and to cause the prosecution of any person who violates any of the provisions of this act or the rules of the Committee.

B. In the exercise of all powers and the performance of all duties provided in this act, the Committee shall comply with the

procedures provided in the Administrative Procedures Act, the Oklahoma Open Meeting Act, and the Oklahoma Open Records Act.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 858-627 of Title 59, unless there is created a duplication in numbering, reads as follows:

Each school, whether public or private, must present to the Committee of Home Inspectors their syllabus of instruction, prior to the Committee approval of the school.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 858-628 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. Any person of good moral character, eighteen (18) years of age or older, who has successfully completed forty-five (45) clock hours of home inspection training, or its equivalent as determined by the Committee of Home Inspectors, in a course approved by the Committee, may apply to the Oklahoma Real Estate Commission to take a home inspector examination. Application shall be made on forms prescribed by the Committee, shall contain information as required by the Committee, and shall be accompanied by evidence of successful completion of the required training.

B. If, from the application filed, answers to inquiries, complaints or information received, or investigation, it appears to the Committee that the applicant is not qualified at any time before the initial license is issued, the Commission shall refuse to approve the application and shall give notice of that fact to the applicant. Refusal to approve an application may be appealed if written request is received by the Commission within thirty (30) days after receipt of notice of refusal.

C. Upon approval by the Commission of the application and payment of an examination fee of One Hundred Fifty Dollars (\$150.00), the applicant shall appear in person for an examination on the subjects prescribed by the Committee.

D. If it is determined that the applicant has successfully passed the examination or an equivalent examination as determined by the Committee, upon the payment of the license fee, and submission of other documents as required in this act, the Commission shall issue to the applicant a license which shall authorize the applicant to perform home inspections.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 858-629 of Title 59, unless there is created a duplication in numbering, reads as follows:

To be licensed as a home inspector, or to renew or reactivate a license, an applicant must submit to the Oklahoma Real Estate Commission documents and fees, as required by the Committee, and a bond in an amount not to exceed Fifty Thousand Dollars (\$50,000.00), as set by rule of the Committee.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 858-630 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. The license term for a home inspector shall be for one (1) year. The expiration date of the license shall be the end of the twelfth month including the month of issuance. The license fee and each renewal or reactivation thereafter shall be Two Hundred Dollars (\$200.00), payable in advance, which shall not be refundable.

B. As a condition of license renewal or reactivation, each home inspector shall submit to the Oklahoma Real Estate Commission evidence of attendance of six (6) clock hours of continuing education courses, approved by the Committee of Home Inspectors, within the twelve (12) months immediately preceding the term for which the license is to be issued. The Commission shall not issue a renewal license or reactivate a license unless the continuing education requirement set forth in this section is satisfied within the prescribed time period.

C. Any licensee who fails to renew their license before the license expiration date shall be required to submit to additional requirements or penalties, or both, as determined by the Committee.

D. The Commission may place a home inspector's license on inactive status when the request is accompanied by sufficient reason; however, such status shall not relieve the licensee from paying the required fees. Continuing education shall not be required during the period a license is on inactive status; however, before the license can be placed on an active status, the licensee shall be required to complete the continuing education requirement for the term for which the license is to be issued.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 858-631 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. In addition to any other penalties provided by law, any person unlicensed pursuant to the Home Inspection Trade Practices Act who shall willfully and knowingly violate any provision of this act, upon conviction, shall be guilty of a misdemeanor, punishable by a fine of not more than One Thousand Dollars (\$1,000.00), or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment.

B. In addition to any civil or criminal actions authorized by law, the Oklahoma Real Estate Commission, the Attorney General, or a district attorney may apply to the district court in the county in which a violation of this act has allegedly occurred for an order enjoining or restraining the unlicensed person from continuing the acts specified in the complaint. The court may grant any temporary or permanent injunction or restraining order, without bond, as it deems just and proper.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 858-632 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. The Committee of Home Inspectors may, upon its own motion, and shall upon written complaint filed by any person, investigate the business activities of any home inspector, and may, upon a showing of good cause, impose sanctions as provided in this act.

B. Good cause shall be established upon showing that any licensee has performed, is performing, has attempted to perform, or is attempting to perform any of the following acts:

1. Making a materially false or fraudulent statement in an application for license;

2. Having been convicted in a court of competent jurisdiction of forgery, fraud, conspiracy to defraud, an offense involving moral turpitude, or any similar offense, or pleading guilty or nolo contendere to any such offense;

3. Any conduct which constitutes untrustworthy, improper, fraudulent, or dishonest dealings;

4. Falsifying or failing to disclose a material defect in a home inspection report;

5. Failing to perform a home inspection report in accordance with the Standards of Practice established and adopted by the Committee;

6. Compensating any person for performing the services of a home inspector or lending a license to any person who has not first secured a home inspector's license pursuant to this act;

7. Giving or receiving compensation for recommending, referring, or otherwise inducing a client to contract with a home inspector;

8. Performing repair or maintenance work, or receiving compensation from a company regularly engaged in home repair work, on a residential property that the home inspector inspected within one (1) year from the date of the inspection;

9. Accepting compensation from more than one client for a single home inspection, unless the home inspector informs all clients who are paying a fee for that home inspection;

10. Except as provided in paragraph 14 of this subsection, disclosing the results of a home inspection to any person other than the client, without the client's written consent;

11. Failing to disclose to the client any conflict of interest of which the inspector knows or should have known that may adversely affect the client;

12. Failing within ten (10) calendar days to submit a written home inspection report to the customer when compensation has been paid to the home inspector;

13. The payment of any fees or amounts due the Oklahoma Real Estate Commission with a check that is dishonored upon presentation to the bank on which it is drawn;

14. Failing, upon demand in writing, to disclose any information within a licensee's knowledge or to produce any document in a licensee's possession or under a licensee's control that relates to home inspections, for inspection to a representative of the Oklahoma Real Estate Commission, law enforcement agency or a court of law; or

15. Disregarding or violating any provision of this act.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 858-633 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. The Committee of Home Inspectors may impose administrative fines on any licensee licensed pursuant to the Home Inspection Trade Practices Act. Fines may be imposed as follows:

1. Any administrative fine imposed as a result of a violation of the Home Inspection Trade Practices Act or rules shall not:

a. be less than One Hundred Dollars (\$100.00) and shall not exceed Two Thousand Dollars (\$2,000.00) for each

violation of this act or the rules of the Committee,
or

b. exceed Five Thousand Dollars (\$5,000.00) for all
violations resulting from a single inspection;

2. All administrative fines shall be paid within thirty (30)
days of written notification of the licensee of the Committee's
order imposing the administrative fine;

3. The license may be suspended until any fine imposed upon the
licensee is paid; and

4. If fines are not paid in full by the licensee within thirty
(30) days of the notification of the order, the license shall
automatically be revoked.

B. The administrative fines authorized by this section may be
in addition to any other criminal penalties or civil actions
provided for by law.

SECTION 14. This act shall become effective November 1, 1996.

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