

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

SENATE BILL 1277

By: Milacek

AS INTRODUCED

An Act relating to professions and occupations; amending 59 O.S. 2001, Sections 858-622, 858-623, 858-624, 858-625, 858-626, 858-627, 858-629, 858-630, 858-631, 858-633, 858-634, 1000.2 and 1000.4, which relate to licensing of home inspectors; modifying and deleting definitions; transferring authority over the Home Inspection Licensing Act to Construction Industries Board; clarifying exemption; changing entity which pays for travel reimbursement; requiring State Department of Health to provide funding for specified period; authorizing fee for approval of educational course content; deleting duplicate fee; increasing fees; modifying language to conform with transfer of authority; increasing membership of Construction Industries Board; including home inspectors under Construction Industries Board authority; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 59 O.S. 2001, Section 858-622, is amended to read as follows:

Section 858-622. As used in the Home Inspection Licensing Act:

1. "Board" means the ~~State Board of Health~~ Construction Industries Board;
2. ~~"Commissioner" means the State Commissioner of Health;~~
- ~~3.~~ "Committee" means the Committee of Home Inspector Examiners;
- ~~4.~~ ~~"Department" means the State Department of Health;~~
- ~~5.~~ 3. "Home inspection" means a visual examination of any or all of the readily accessible physical real property and improvements to real property consisting of four or fewer dwelling units, including structural, lot drainage, roof, electrical, plumbing, heating and air conditioning and such other areas of

concern as are specified in writing to determine if performance is as intended;

~~6.~~ 4. "Home inspection report" means a written opinion of the functional and physical condition of property written by the licensed home inspector pursuant to home inspection; and

~~7.~~ 5. "Home inspector" means an individual licensed pursuant to the Home Inspection Licensing Act who, for compensation, conducts home inspections.

SECTION 2. AMENDATORY 59 O.S. 2001, Section 858-623, is amended to read as follows:

Section 858-623. A. On and after July 1, 2002, it shall be unlawful for an individual 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 pursuant to the Home Inspection Licensing Act.

B. The Home Inspection Licensing Act shall not apply to:

1. Individuals inspecting new residential construction;
2. Architects;
3. Engineers;
4. Individuals holding other occupational licenses who only do home inspections within the occupational confines of that license;
5. Government employees who perform inspections when acting within the scope of their employment; or

6. ~~Individuals licensed in structural pest control~~ Persons regulated by the State Board of Agriculture who only do wood-destroying insect infestation inspection reports issue wood infestation reports as defined in Section 3-81 of Title 2 of the Oklahoma Statutes.

SECTION 3. AMENDATORY 59 O.S. 2001, Section 858-624, is amended to read as follows:

Section 858-624. A. There is hereby created, to continue until July 1, 2007, in accordance with the provisions of the Oklahoma

Sunset Law, the Committee of Home Inspector Examiners, which shall consist of seven (7) 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. Appointments shall be made so that not more than two members shall, at the time an appointment is made, be residents of the same congressional district; provided, no member shall be removed from office due solely to a reduction in the number of congressional districts.

B. Of the seven members:

1. Four of the initial appointees shall hold memberships in a state or national housing inspection association or foundation. After expiration of the terms of the initial appointees, four members shall be licensed home inspectors who are active full time in the practice of making home inspections, two or more of whom shall hold membership in an association that certifies home inspectors in this state;

2. One shall be a licensed real estate broker who is active full time in the real estate brokerage business;

3. One shall be a licensed real estate appraiser who is active full time in the real estate appraisal business; and

4. One shall be a lay person who is not involved in the property business, including, but not limited to, the leasing of commercial or residential property, and is not in the real estate business or home inspection business.

C. Initially, three members shall be appointed for a term to expire June 30, 2003; two members shall be appointed for a term to expire June 30, 2004; and two members shall be appointed for a term to expire June 30, 2005. Thereafter, all terms shall be three-year terms ending June 30.

D. Members shall serve until their successors are appointed and qualified. Vacancies shall be filled for the balance of an

unexpired term by appointment of the Governor. Members may be removed by the Governor for good cause.

E. The first meeting of the Committee shall be called by the State Commissioner of Health for election of a chair and vice-chair. Thereafter members shall elect officers annually. The chair, or in the absence of the chair, the vice-chair, shall preside at all meetings of the Committee and shall perform such duties as the Committee shall prescribe. The Committee shall meet at least semiannually, and special meetings may be called by the ~~Commissioner~~ Administrator of the Construction Industries Board or the designee of the ~~Commissioner~~ Administrator. Four members shall constitute a quorum.

F. Members shall serve without compensation but shall be reimbursed from funds available to the ~~State Department of Health~~ Construction Industries Board in accordance with the State Travel Reimbursement Act.

G. Personnel and administrative support necessary for the Committee to exercise its powers and accomplish its duties shall be provided by the ~~Department~~ Construction Industries Board; provided, the State Department of Health shall provide funding until January 1, 2004.

SECTION 4. AMENDATORY 59 O.S. 2001, Section 858-625, is amended to read as follows:

Section 858-625. Fees for the Home Inspection Licensing Act shall not exceed the following:

Approval fees for schools, instructors and home inspection organizations	\$100.00
<u>Approval fees for educational course content</u>	<u>\$50.00</u>
Licensure for reciprocity	\$50.00
Renewal license fee	\$50.00
Examination fee	\$50.00

License fee	\$50.00 <u>\$200.00</u>
License renewal	\$50.00 <u>\$150.00</u>
License reactivation	\$50.00

SECTION 5. AMENDATORY 59 O.S. 2001, Section 858-626, is amended to read as follows:

Section 858-626. There is hereby created in the State Treasury a revolving fund for the ~~State Department of Health~~ Construction Industries Board, to be designated the "Home Inspection Licensing Act Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies received by the ~~Department~~ Board pursuant to the Home Inspection Licensing Act. All monies accruing to the credit of the fund are hereby appropriated and may be budgeted and expended by the ~~Department~~ Board for the purpose of implementing and enforcing the Home Inspection Licensing Act. Expenditures from the fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

SECTION 6. AMENDATORY 59 O.S. 2001, Section 858-627, is amended to read as follows:

Section 858-627. A. The Committee of Home Inspector Examiners shall advise the ~~State Board of Health~~ Construction Industries Board in promulgating rules consistent with the purposes of the Home Inspection Licensing Act.

B. The ~~State Board of Health~~ Board shall promulgate rules including, but not limited to:

1. Qualifications and examinations for licensure of home inspectors;
2. License renewal requirements;
3. Reinstatement of license after suspension or revocation of license or failure to meet license renewal requirements;
4. Continuing education;

5. Standards of practice and prohibited acts;

6. 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;

7. Standards required for schools, instructors, and organizations to remain approved;

8. Approval fees;

9. Reciprocity agreements whereby home inspectors licensed in other states with equal or greater licensure requirements may be licensed in this state, and fee for licensing by reciprocity; and

10. Investigative procedures.

C. Upon showing of good cause as provided for in the Home Inspection Licensing Act, the ~~Department~~ Board shall discipline licensees, approved instructors, approved schools, and educational organizations by:

1. Issuing reprimands;

2. Requiring probation for a specified period of time;

3. Requiring education in addition to the educational requirements provided for licensure or continuing education;

4. Suspending licenses or approvals;

5. Rescinding or revoking licenses or approvals;

6. Imposing administrative fines as provided for by the Home Inspection Licensing Act;

7. Any combination of disciplinary measures as provided by paragraphs 1 through 6 of this subsection; and

8. Upon showing of good cause, may modify any disciplinary action imposed pursuant to the provisions of the Home Inspection Licensing Act.

D. The Committee may advise the ~~Department~~ Board to seek injunctive relief and restraining orders for violations of the Home Inspection Licensing Act or the rules promulgated pursuant thereto

to cause the prosecution of any person who violates any of the provisions of the Home Inspection Licensing Act or the rules promulgated pursuant thereto.

E. In the exercise of all powers and the performance of all duties provided in the Home Inspection Licensing Act, the Committee and the ~~Department~~ Board shall comply with the Administrative Procedures Act, the Oklahoma Open Meeting Act, and the Oklahoma Open Records Act.

SECTION 7. AMENDATORY 59 O.S. 2001, Section 858-629, is amended to read as follows:

Section 858-629. A. Any individual of good moral character eighteen (18) years of age or older who has successfully completed fifty (50) clock hours of home inspection training or its equivalent as determined by the Committee of Home Inspector Examiners may apply to take a home inspector examination. Application shall be made on forms prescribed by the ~~Department~~ Construction Industries Board, shall contain information as required by the Board upon advisement of the Committee, and shall be accompanied by evidence of successful completion of the required training. Examinations may be held in vocational and technical schools or in other locations as determined by rule.

B. If, from the application filed, answers to inquiries, complaints, or information received, or investigation, it appears to the ~~Department~~ Board that the applicant is not qualified, the Committee shall deny approval of the application and shall give notice of that fact to the applicant.

C. Upon approval of the application and the payment of the applicant of an examination fee, the applicant shall be scheduled to appear in person for an examination on the subjects prescribed by the Committee.

D. If the ~~Department~~ Board determines that the applicant has successfully passed the examination or an equivalent examination as

determined by the Committee, the ~~Department~~ Board shall, upon the payment of the license fee and submission of other documents as required by the Home Inspection Licensing Act or rules promulgated pursuant to the Home Inspection Licensing Act, issue to the applicant a license which shall authorize the applicant to perform home inspections.

E. The ~~Department~~ Board shall license without examination any person who can demonstrate to the Committee that the person was actively engaged in home inspection work on November 1, 2001, and had been actively engaged in such work for at least six (6) months or any person who can demonstrate that, prior to November 1, 2001, the person successfully completed a home inspection course offered or sanctioned by a home inspection foundation or a home inspection association. No new license shall be issued pursuant to this subsection after January 1, 2002. Demonstration that the person has actively engaged in home inspections prior to November 1, 2001, must include copies of invoices for work done in the field for the six (6) months prior to November 1, 2001, as well as at least three satisfactory references from three customers served during the twelve (12) months prior to November 1, 2001.

SECTION 8. AMENDATORY 59 O.S. 2001, Section 858-630, is amended to read as follows:

Section 858-630. To be licensed as a home inspector, or to renew or reactivate a license, an applicant shall submit to the ~~Department~~ Construction Industries Board such documents and fees as are required by the Home Inspection Licensing Act or the rules promulgated pursuant thereto and shall provide evidence of having secured a certificate of general liability insurance in the amount required by rule. The amount of the certificate of general liability insurance required shall not be less than Fifty Thousand Dollars (\$50,000.00).

SECTION 9. AMENDATORY 59 O.S. 2001, Section 858-631, is amended to read as follows:

Section 858-631. A. The license term for a home inspector shall be one (1) year. The license shall expire twelve (12) months from the date of issuance. The license fee and each renewal or reactivation thereafter shall be payable in advance, which shall not be refundable.

B. As a condition of license renewal or reactivation, each home inspector shall submit to the ~~Department~~ Construction Industries Board evidence of having attended five (5) clock hours of continuing education within the twelve (12) months immediately preceding the term for which the license is to be issued. Except as otherwise provided for in this section, the ~~Department~~ Board 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 before the license expiration date shall be required to submit to such additional requirements or penalties, or both, as the Board may require pursuant to rule.

D. The ~~Department~~ Board may place the license of a home inspector on inactive status when the licensee gives 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. Prior to the license being placed on an active status, the licensee shall be required to complete the five-hour continuing education requirement. If the holder of the inactive license has been in the military service during the entire time of inactive license status, only five (5) clock hours of continuing education and the license fee shall be required for the reactivation of the license.

SECTION 10. AMENDATORY 59 O.S. 2001, Section 858-633, is amended to read as follows:

Section 858-633. A. The Committee of Home Inspector Examiners may, upon its own motion, and shall, upon written complaint filed by any person, direct the ~~Department~~ Construction Industries Board to investigate the business activities of any home inspector. The Committee may contract for an administrative judge for any hearing which may, upon a showing of good cause, impose disciplinary actions as provided in the Home Inspection Licensing 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 or for approval of continuing education;
2. Having been convicted in a court of competent jurisdiction of forgery, fraud, conspiracy to defraud, or any similar offense, or pleading guilty or nolo contendere to any such offense;
3. Falsifying or failing to disclose in a home inspection report a visible material defect;
4. Failing to perform a home inspection report in accordance with the Home Inspection Licensing Act or the rules promulgated pursuant thereto;
5. Compensating any person for performing the services of a home inspector or lending a license to any person who has not first secured a license as a home inspector pursuant to the Home Inspection Licensing Act;
6. Accepting inspection assignments when the employment itself is contingent upon reporting a predetermined estimate, analysis or opinion;
7. Accepting inspection assignments when the fee to be paid is contingent upon the opinion, the conclusion, analysis, or report reached, or upon the consequences resulting from such assignments;

8. Performing repair or maintenance work, or receiving compensation either directly or indirectly from a company regularly engaged in home repair work, on a property having four or fewer dwelling units 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 has informed all clients who are paying a fee for that home inspection that such compensation is sought or anticipated;

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 written consent of the client;

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 to submit a written home inspection report within a reasonable time as determined by the Board to the client after compensation has been paid to the home inspector;

13. Paying any fees or other amounts due pursuant to the Home Inspection Licensing Act or the rules promulgated pursuant thereto with a check that is dishonored upon presentation to the financial institution on which it is drawn;

14. Failing, upon demand in writing by the ~~Department~~ Board, a law enforcement agency, or a court of law, to disclose any information within the knowledge of the licensee or to produce any document in possession of a licensee or under control of a licensee that relates to a home inspection; or

15. Disregarding or violating any provision of the Home Inspection Licensing Act or rule promulgated pursuant to the Home Inspection Licensing Act.

SECTION 11. AMENDATORY 59 O.S. 2001, Section 858-634, is amended to read as follows:

Section 858-634. A. The Committee of Home Inspector Examiners may impose administrative fines on any licensee licensed pursuant to the Home Inspection Licensing Act. Fines may be imposed as follows:

1. Any administrative fine imposed as a result of a violation of the Home Inspection Licensing Act or rules promulgated pursuant thereto shall not:

- a. be less than Two Hundred Dollars (\$200.00) and shall not exceed Two Thousand Dollars (\$2,000.00) for each violation, 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 to the licensee of the order imposing the administrative fine or, if the licensee appeals the fine, within thirty (30) days of the decision of the ~~Department~~ Construction Industries Board in favor of the action of the ~~Department~~ Board unless the district court stays the order of the ~~Department~~ Board pending an appeal pursuant to the Administrative Procedures Act;

3. The ~~Department~~ Board may suspend the license until any fine imposed upon the licensee is paid; and

4. If fines are not paid in full by the licensee as required by this subsection, the ~~Department~~ Board shall revoke the license.

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

SECTION 12. AMENDATORY 59 O.S. 2001, Section 1000.2, is amended to read as follows:

Section 1000.2 A. The Construction Industries Board is hereby created to continue until July 1, 2007, in accordance with the provisions of the Oklahoma Sunset Law. Beginning January 1, 2002, the Board shall regulate the plumbing, electrical and mechanical trades, home inspectors, and building and construction inspectors

through the powers and duties set forth in the Construction Industries Board Act and in the respective licensing acts for such trades.

B. 1. The Board shall be composed of ~~nine (9)~~ eleven (11) members appointed by the Governor with the advice and consent of the Senate, as follows:

- a. two members shall have at least ten (10) years' experience in the plumbing trade, of which one shall be a plumbing contractor and one shall be a journeyman plumber,
- b. two members shall have at least ten (10) years' experience in the electrical trade, of which one shall be an electrical contractor and one shall be a journeyman electrician,
- c. two members shall have at least ten (10) years' experience in the mechanical trade, of which one shall be a mechanical contractor and one shall be a mechanical journeyman,
- d. two members shall have at least ten (10) years' experience as a building and construction inspector, and
- e. one member shall represent the public and shall not practice, have practiced, or be licensed to practice any of the trades regulated by the Board nor be employed by or be related by blood or marriage within the third degree to any person who practices, has practiced, or is licensed to practice any such trades,
- f. one member shall have at least ten (10) years' experience as a home inspector. The member initially appointed pursuant to this subparagraph shall be appointed for a term to expire on September 1, 2003.

Thereafter, the member shall serve a four-year term as provided in paragraph 2 of this subsection, and

g. one member shall be designated by the State Board of Registration for Professional Engineers and Land Surveyors. The member initially appointed pursuant to this subparagraph shall be appointed for a term to expire on September 1, 2005. Thereafter, the member shall serve a four-year term as provided in paragraph 2 of this subsection.

2. Members shall be appointed for terms of four (4) years; provided, of those members initially appointed to the Board, five members shall be appointed for two-year terms, beginning September 1, 2001, and four members shall be appointed for four-year terms, beginning September 1, 2001, as designated by the Governor. Members shall continue in office until a successor is appointed by the Governor. The Governor shall fill all vacancies and unexpired terms in the same manner as the original appointment of the member whose position is to be filled. Such members may be removed by the Governor for cause.

SECTION 13. AMENDATORY 59 O.S. 2001, Section 1000.4, is amended to read as follows:

Section 1000.4 A. 1. Beginning September 1, 2001, pursuant to and in compliance with Article I of the Administrative Procedures Act, the Construction Industries Board shall have the power to adopt, amend, repeal, and promulgate rules as may be necessary to regulate the plumbing, electrical and mechanical trades, home inspectors and building and construction inspectors. Rules authorized under this section shall not become effective prior to January 1, 2002.

2. Beginning January 1, 2002, the Board shall have the power to enforce the provisions of the Construction Industries Board Act, The Plumbing License Law of 1955, the Oklahoma Inspectors Act, the

Electrical License Act, ~~and~~ the Mechanical Licensing Act, and the Home Inspection Licensing Act.

3. In addition to rules promulgated by the Construction Industries Board, rules promulgated by the State Board of Health prior to January 1, 2002, shall be the rules of the Construction Industries Board and shall continue in effect until such rules are amended or repealed by rules promulgated by the Construction Industries Board.

4. Any order made or action taken prior to January 1, 2002, by the State Board of Health, the State Department of Health, or the State Commissioner of Health pursuant to the provisions of, or rules promulgated pursuant to, The Plumbing License Law of 1955, the Oklahoma Inspectors Act, the Electrical License Act, ~~or~~ the Mechanical Licensing Act or the Home Inspection Licensing Act shall be considered valid and in effect unless rescinded by the Construction Industries Board.

B. The Board may:

1. Exercise all incidental powers and duties which are necessary to effectuate the provisions of The Plumbing License Law of 1955, the Oklahoma Inspectors Act, the Electrical License Act, ~~and~~ the Mechanical Licensing Act, and the Home Inspection Licensing Act;

2. Serve as a code variance and appeals board for the trades and industries it regulates which do not have statutory code variance and appeals boards;

3. Order or subpoena the attendance of witnesses, the inspection of records and premises, and the production of relevant books and papers for the investigation of matters that may come before the Board;

4. Recommend at least three candidates for the position of Construction Industries Administrator to the State Commissioner of

Health when a vacancy exists, and fix the salary of the Construction Industries Administrator; and

5. Direct such other expenditures as may be necessary in the performance of its duties.

C. Effective January 1, 2002, all powers, duties, responsibilities, employees, records, and equipment of the State Board of Health, the State Department of Health, and the State Commissioner of Health relating exclusively to the regulation of the plumbing, electrical and mechanical trades, home inspectors, and building and construction inspectors shall be placed under the authority of the Construction Industries Board. To the extent practicable, this shall include all computer hardware and software used in regulating industries listed in this section. The State Department of Health shall provide all necessary administrative support, including, but not limited to, office space, equipment, furnishings, and legal staff support for the Board and may manage the Board's funds, subject to Board approval. The Construction Industries Board may contract for additional legal services as necessary, pursuant to the Oklahoma Central Purchasing Act. Employees shall be under the general direction of the Construction Industries Administrator and the Construction Industries Board, but in all other respects shall be employees of the Department of Health.

D. The Construction Industries Board and the State Board of Health may enter into an agreement for the transfer of personnel into the unclassified service under the direction of the Construction Industries Board effective January 1, 2002. No employee shall be transferred into the unclassified service under the direction of the Construction Industries Board except on the freely given written consent of the employee. All classified employees under the Merit System of Personnel Administration who are not transferred into the unclassified service as provided shall

retain the status in the class occupied by the employee on July 1, 2001, as allocated by the Office of Personnel Management. The salary of such an employee shall not be reduced as a result of such position allocation. Employees who are transferred as provided shall not be required to accept a lesser grade or salary than that in effect on July 1, 2001. All employees shall retain leave, sick and annual time earned, and any retirement and longevity benefits which have accrued during their tenure in the classified service. The transfer of personnel shall be coordinated with the Office of Personnel Management.

SECTION 14. This act shall become effective July 1, 2002.

SECTION 15. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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