STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

SENATE BILL 198 By: Milacek

AS INTRODUCED

An Act relating to licensing of home inspectors; enacting the Home Inspection Licensing Act; providing short title; defining terms; making it unlawful to conduct home inspections after certain date without license; stating exceptions; creating Committee of Home Inspector Examiners; providing for number of members, qualification of members, appointments, terms of service, removal of members, and filling of vacancies; providing for organization, officers, meetings, and quorum; providing for travel reimbursement and administrative support; setting fees; creating the Home Inspection Licensing Act Revolving Fund and providing for expenditures for certain purposes; stating powers and duties of Committee and Board; providing for certain discipline; requiring compliance with Administrative Procedures Act, Oklahoma Open Meeting Act, and Oklahoma Open Records Act; requiring certain examination prior to approval of school or organization providing instruction; providing for construction of act; requiring promulgation of rules concerning qualifications for examination and licensure of home inspectors; providing for issuance of licenses; requiring evidence of certificate of general liability insurance; limiting amount of such insurance; requiring continuing education for renewal of license; providing for inactive status; providing for requirements; providing certain exemptions; making certain actions misdemeanors; providing for penalties; authorizing certain applications to enjoin or restrain certain persons from certain acts; authorizing injunctions; authorizing investigation of certain business activities; stating grounds for establishment of good cause; providing for imposition of administrative fines, suspension of license, and rescission or revocation of license; providing for certain appeals; 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 Licensing 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 the Home Inspection Licensing Act:

1. “Board” means the State Board of Health;

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. "Home inspection" means an examination of any or all of the physical components of 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 components and such other components as are specified in written requests for inspection;

6. "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. "Home inspector" means an individual licensed pursuant to the Home Inspection Licensing Act 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 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; or

5. Government employees who perform inspections when acting within the scope of their employment.

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 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 an association that certifies home inspectors in this state. 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 or the designee of the Commissioner. 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 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.

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:

Fees for the Home Inspection Licensing Act shall not exceed the following:

Approval fees for schools, instructors and home inspection organizations	$100.00
Licensure for reciprocity	$50.00
Renewal license fee	$50.00
Examination fee	$50.00
License fee	$50.00
License renewal	$50.00
License reactivation	$50.00

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:

There is hereby created in the State Treasury a revolving fund for the State Department of Health, 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 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 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 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:

A. The Committee of Home Inspector Examiners shall advise the State Board of Health in promulgating rules consistent with the purposes of the Home Inspection Licensing Act.

B. The State Board of Health 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 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 to seek injunctive relief and restraining orders for violations of the Home Inspection Licensing Act or the rules pursuant thereto to cause the prosecution of any person who violates any of the provisions of the Home Inspection Licensing Act or the rules 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 shall comply with the Administrative Procedures Act, the Oklahoma Open Meeting Act, and the Oklahoma Open Records Act.

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. The Committee of Home Inspector Examiners shall not approve any school of home inspection instruction until it has received and examined the curriculum, syllabi or program of instruction of the school or organization conducting or offering the instruction.

B. Nothing in the Home Inspection Licensing Act shall be construed as relieving a school of home inspection from responsibility for compliance pursuant to law with the requirements of any other agency.

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:

A. Any individual of good moral character eighteen (18) years of age or older who has successfully completed eighty (80) 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, 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 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 determines that the applicant has successfully passed the examination or an equivalent examination as determined by the Committee, the Department 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.

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:

To be licensed as a home inspector, or to renew or reactivate a license, an applicant shall submit to the Department such documents and fees as are required by the Home Inspection Licensing Act or the rules 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 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. 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 evidence of having attended eight (8) 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 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 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 continuing education requirement for the term for which the license is to be issued. If the holder of the inactive license has been in the military service during the entire time of inactive license status, only eight (8) clock hours of continuing education and the license fee shall be required for the reactivation of the license.

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. In addition to any other penalties provided by law, any individual unlicensed pursuant to the Home Inspection Licensing Act who shall willfully and knowingly violate any provision of the Home Inspection Licensing Act shall, upon conviction, 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 Attorney General, or a district attorney may apply to the district court in the county in which a violation of the Home Inspection Licensing Act has allegedly occurred for an order enjoining or restraining the unlicensed individual 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 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 Inspector Examiners may, upon its own motion, and shall, upon written complaint filed by any person, direct the Department 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 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 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, 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 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 858-634 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. The Committee 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 in favor of the action of the Department unless the district court stays the order of the Department pending an appeal pursuant to the Administrative Procedures Act;

3. The Department 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 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 15. This act shall become effective November 1, 2001.

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