

SB 1783

Senate Bill No. 1783
As Amended

SENATE BILL NO. 1783 - By: LEFTWICH of the Senate and WESSELHOFT of the House.

[professions and occupations - modifying powers and duties of the Construction Industries Board - effective date]

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;

1 ~~6-~~ 4. "Home inspection report" means a written opinion of the
2 functional and physical condition of property written by the
3 licensed home inspector pursuant to home inspection; and

4 ~~7-~~ 5. "Home inspector" means an individual licensed pursuant to
5 the Home Inspection Licensing Act who, for compensation, conducts
6 home inspections.

7 SECTION 2. AMENDATORY 59 O.S. 2001, Section 858-624, as
8 amended by Section 21, Chapter 188, O.S.L. 2007 (59 O.S. Supp. 2007,
9 Section 858-624), is amended to read as follows:

10 Section 858-624. A. There is hereby created, to continue until
11 July 1, 2013, in accordance with the provisions of the Oklahoma
12 Sunset Law, the Committee of Home Inspector Examiners, which shall
13 consist of seven (7) members who have been residents of this state
14 for at least three (3) years prior to their appointment. Each
15 member shall be appointed by the Governor with the advice and
16 consent of the Senate. Appointments shall be made so that not more
17 than two members shall, at the time an appointment is made, be
18 residents of the same congressional district; provided, no member
19 shall be removed from office due solely to a reduction in the number
20 of congressional districts.

21 B. Of the seven members:

22 1. Four of the initial appointees shall hold memberships in a
23 state or national housing inspection association or foundation.

1 After expiration of the terms of the initial appointees, four
2 members shall be licensed home inspectors who are active full time
3 in the practice of making home inspections, two or more of whom
4 shall hold membership in an association that certifies home
5 inspectors in this state;

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

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

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

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

19 D. Members shall serve until their successors are appointed and
20 qualified. Vacancies shall be filled for the balance of an
21 unexpired term by appointment of the Governor. Members may be
22 removed by the Governor for good cause.

1 E. ~~The first meeting of the Committee shall be called by the~~
2 ~~State Commissioner of Health for election of a chair and vice chair.~~
3 ~~Thereafter members~~ Members shall elect officers annually. The
4 chair, or in the absence of the chair, the vice-chair, shall preside
5 at all meetings of the Committee and shall perform such duties as
6 the Committee shall prescribe. The Committee shall meet at least
7 semiannually, and special meetings may be called by the ~~Commissioner~~
8 chair or the designee of the ~~Commissioner~~ chair. Four members shall
9 constitute a quorum.

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

13 G. Personnel and administrative support necessary for the
14 Committee to exercise its powers and accomplish its duties shall be
15 provided by the ~~Department~~ Construction Industries Board.

16 SECTION 3. AMENDATORY 59 O.S. 2001, Section 858-626, is
17 amended to read as follows:

18 Section 858-626. There is hereby created in the State Treasury
19 a revolving fund for the ~~State Department of Health~~ Construction
20 Industries Board, to be designated the "Home Inspection Licensing
21 Act Revolving Fund". The fund shall be a continuing fund, not
22 subject to fiscal year limitations, and shall consist of all monies
23 received by the ~~Department~~ Board pursuant to the Home Inspection

1 Licensing Act. All monies accruing to the credit of the fund are
2 hereby appropriated and may be budgeted and expended by the
3 ~~Department~~ Board for the purpose of implementing and enforcing the
4 Home Inspection Licensing Act. Expenditures from the fund shall be
5 made upon warrants issued by the State Treasurer against claims
6 filed as prescribed by law with the Director of State Finance for
7 approval and payment.

8 SECTION 4. AMENDATORY 59 O.S. 2001, Section 858-627, is
9 amended to read as follows:

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

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

- 16 1. Qualifications and examinations for licensure of home
17 inspectors;
- 18 2. License renewal requirements;
- 19 3. Reinstatement of license after suspension or revocation of
20 license or failure to meet license renewal requirements;
- 21 4. Continuing education;
- 22 5. Standards of practice and prohibited acts;

1 6. Approval of schools, educational course content,
2 instructors, and organizations offering courses of study for home
3 inspection, ~~and standards required for instructors, schools, and~~
4 ~~organizations to remain approved;~~

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

7 8. Approval fees;

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

11 10. Investigative procedures.

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

16 1. Issuing reprimands;

17 2. Requiring probation for a specified period of time;

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

20 4. Suspending licenses or approvals;

21 5. Rescinding or revoking licenses or approvals;

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

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

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

6 D. The Committee may advise the ~~Department~~ Board to seek
7 injunctive relief and restraining orders for violations of the Home
8 Inspection Licensing Act or the rules promulgated pursuant thereto
9 to cause the prosecution of any person who violates any of the
10 provisions of the Home Inspection Licensing Act or the rules
11 promulgated pursuant thereto.

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

17 SECTION 5. AMENDATORY 59 O.S. 2001, Section 858-629, as
18 amended by Section 3, Chapter 449, O.S.L. 2002 (59 O.S. Supp. 2007,
19 Section 858-629), is amended to read as follows:

20 Section 858-629. A. Any individual of good moral character
21 eighteen (18) years of age or older who has successfully completed
22 fifty (50) clock hours of home inspection training or its equivalent
23 as determined by the Committee of Home Inspector Examiners may apply

1 to take a home inspector examination. Application shall be made on
2 forms prescribed by the ~~State Department of Health~~ Construction
3 Industries Board, shall contain information as required by the ~~State~~
4 ~~Board of Health~~ Construction Industries Board upon advisement of the
5 Committee, and shall be accompanied by evidence of successful
6 completion of the required training. Examinations may be held in
7 vocational and technical schools or in other locations as determined
8 by rule.

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

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

18 D. If the ~~Department~~ Board determines that the applicant has
19 successfully passed the examination or an equivalent examination as
20 determined by the Committee, the ~~Department~~ Board shall, upon the
21 payment of the license fee and submission of other documents as
22 required by the Home Inspection Licensing Act or rules promulgated
23 pursuant to the Home Inspection Licensing Act, issue to the

1 applicant a license which shall authorize the applicant to perform
2 home inspections.

3 E. The ~~Department~~ Board shall license without examination any
4 person who can demonstrate to the Committee that the person was
5 actively engaged in home inspection work on November 1, 2001, and
6 had been actively engaged in such work for at least six (6) months
7 or any person who can demonstrate that, prior to November 1, 2001,
8 the person successfully completed a home inspection course offered
9 or sanctioned by a home inspection foundation or a home inspection
10 association. Demonstration that the person has actively engaged in
11 home inspections prior to November 1, 2001, must include copies of
12 invoices for work done in the field for the six (6) months prior to
13 November 1, 2001, as well as at least three satisfactory references
14 from three customers served during the twelve (12) months prior to
15 November 1, 2001.

16 SECTION 6. AMENDATORY 59 O.S. 2001, Section 858-630, is
17 amended to read as follows:

18 Section 858-630. To be licensed as a home inspector, or to
19 renew or reactivate a license, an applicant shall submit to the
20 ~~Department~~ Construction Industries Board such documents and fees as
21 are required by the Home Inspection Licensing Act or the rules
22 promulgated pursuant thereto and shall provide evidence of having
23 secured a certificate of general liability insurance in the amount

1 required by rule. The amount of the certificate of general
2 liability insurance required shall not be less than Fifty Thousand
3 Dollars (\$50,000.00).

4 SECTION 7. AMENDATORY 59 O.S. 2001, Section 858-631, is
5 amended to read as follows:

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

11 B. As a condition of license renewal or reactivation, each home
12 inspector shall submit to the ~~Department~~ Construction Industries
13 Board evidence of having attended five (5) clock hours of continuing
14 education within the twelve (12) months immediately preceding the
15 term for which the license is to be issued. Except as otherwise
16 provided for in this section, the ~~Department~~ Board shall not issue a
17 renewal license or reactivate a license unless the continuing
18 education requirement set forth in this section is satisfied within
19 the prescribed time period.

20 C. Any licensee who fails to renew before the license
21 expiration date shall be required to submit to such additional
22 requirements or penalties, or both, as the Board may require
23 pursuant to rule.

1 D. The ~~Department~~ Construction Industries Board may place the
2 license of a home inspector on inactive status when the licensee
3 gives sufficient reason; however, such status shall not relieve the
4 licensee from paying the required fees. Continuing education shall
5 not be required during the period a license is on inactive status.
6 Prior to the license being placed on an active status, the licensee
7 shall be required to complete the five-hour continuing education
8 requirement. If the holder of the inactive license has been in the
9 military service during the entire time of inactive license status,
10 only five (5) clock hours of continuing education and the license
11 fee shall be required for the reactivation of the license.

12 SECTION 8. AMENDATORY 59 O.S. 2001, Section 858-633, is
13 amended to read as follows:

14 Section 858-633. A. The Committee of Home Inspector Examiners
15 may, upon its own motion, and shall, upon written complaint filed by
16 any person, direct the ~~Department~~ Construction Industries Board to
17 investigate the business activities of any home inspector. The
18 Committee may contract for an administrative judge for any hearing
19 which may, upon a showing of good cause, impose disciplinary actions
20 as provided in the Home Inspection Licensing Act.

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

- 1 1. Making a materially false or fraudulent statement in an
2 application for license or for approval of continuing education;
- 3 2. Having been convicted in a court of competent jurisdiction
4 of forgery, fraud, conspiracy to defraud, or any similar offense, or
5 pleading guilty or nolo contendere to any such offense;
- 6 3. Falsifying or failing to disclose in a home inspection
7 report a material defect;
- 8 4. Failing to perform a home inspection report in accordance
9 with the Home Inspection Licensing Act or the rules promulgated
10 pursuant thereto;
- 11 5. Compensating any person for performing the services of a
12 home inspector or lending a license to any person who has not first
13 secured a license as a home inspector pursuant to the Home
14 Inspection Licensing Act;
- 15 6. Accepting inspection assignments when the employment itself
16 is contingent upon reporting a predetermined estimate, analysis or
17 opinion;
- 18 7. Accepting inspection assignments when the fee to be paid is
19 contingent upon the opinion, the conclusion, analysis, or report
20 reached, or upon the consequences resulting from such assignments;
- 21 8. Performing repair or maintenance work, or receiving
22 compensation either directly or indirectly from a company regularly
23 engaged in home repair work, on a property having four or fewer

1 dwelling units that the home inspector inspected within one (1) year
2 from the date of the inspection;

3 9. Accepting compensation from more than one client for a
4 single home inspection, unless the home inspector has informed all
5 clients who are paying a fee for that home inspection that such
6 compensation is sought or anticipated;

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

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

13 12. Failing to submit a written home inspection report within a
14 reasonable time as determined by the Board to the client after
15 compensation has been paid to the home inspector;

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

20 14. Failing, upon demand in writing by the ~~Department~~
21 Construction Industries Board, a law enforcement agency, or a court
22 of law, to disclose any information within the knowledge of the

1 licensee or to produce any document in possession of a licensee or
2 under control of a licensee that relates to a home inspection; or

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

6 SECTION 9. AMENDATORY 59 O.S. 2001, Section 858-634, is
7 amended to read as follows:

8 Section 868-634. A. The Committee may impose administrative
9 fines on any licensee licensed pursuant to the Home Inspection
10 Licensing Act. Fines may be imposed as follows:

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

14 a. be less than Two Hundred Dollars (\$200.00) and shall
15 not exceed Two Thousand Dollars (\$2,000.00) for each
16 violation, or

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

19 2. All administrative fines shall be paid within thirty (30)
20 days of written notification to the licensee of the order imposing
21 the administrative fine or, if the licensee appeals the fine, within
22 thirty (30) days of the decision of the ~~Department~~ Construction
23 Industries Board in favor of the action of the ~~Department~~ Board

1 unless the district court stays the order of the ~~Department~~ Board
2 pending an appeal pursuant to the Administrative Procedures Act;

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

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

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

10 SECTION 10. AMENDATORY 59 O.S. 2001, Section 1000.4, as
11 last amended by Section 1, Chapter 163, O.S.L. 2004 (59 O.S. Supp.
12 2007, Section 1000.4), is amended to read as follows:

13 Section 1000.4 A. 1. Beginning September 1, 2001, pursuant to
14 and in compliance with Article I of the Administrative Procedures
15 Act, the Construction Industries Board shall have the power to
16 adopt, amend, repeal, and promulgate rules as may be necessary to
17 regulate the plumbing, electrical and mechanical trades, ~~and~~
18 building and construction inspectors and, beginning November 1,
19 2008, home inspectors. Rules authorized under this section shall
20 not become effective prior to January 1, 2002.

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

1 Electrical License Act, ~~and~~ the Mechanical Licensing Act and,
2 beginning November 1, 2008, the Home Inspection Licensing Act.

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

9 4. Any order made or action taken prior to January 1, 2002, by
10 the State Board of Health, the State Department of Health, or the
11 State Commissioner of Health pursuant to the provisions of, or rules
12 promulgated pursuant to, The Plumbing License Law of 1955, the
13 Oklahoma Inspectors Act, the Electrical License Act, ~~or~~ the
14 Mechanical Licensing Act or, any order made or action taken prior to
15 November 1, 2008, pursuant to the Home Inspection Licensing Act,
16 shall be considered valid and in effect unless rescinded by the
17 Construction Industries Board.

18 B. The Board shall have the following powers:

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

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

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

8 4. Initiate disciplinary proceedings, request prosecution of
9 and initiate injunctive proceedings against any person who violates
10 any of the provisions of the Plumbing License Law of 1955, the
11 Oklahoma Inspectors Act, the Electrical License Act, ~~and~~ the
12 Mechanical Licensing Act and the Home Inspection Licensing Act;

13 5. Maintain an administrative staff including, but not limited
14 to, a Construction Industries Administrator whose appointment shall
15 be made as provided in Section 1000.6 of this title;

16 6. Establish and levy administrative fines against any person
17 or entity denying the Board or its representatives access to a job
18 site for purposes of enforcing any of the provisions of the Plumbing
19 License Law of 1955, the Oklahoma Inspectors Act, the Electrical
20 License Act, and the Mechanical Licensing Act; and

21 7. Direct such other expenditures as may be necessary in the
22 performance of its duties including, but not limited to,
23 expenditures for office space, equipment, furnishings and contracts

1 for legal services. All expenditures shall be made pursuant to the
2 Oklahoma Central Purchasing Act.

3 C. After July 1, 2004, the Board shall account for all receipts
4 and expenditures of the monies of the Board, including annually
5 preparing and publishing a statement of receipts and expenditures of
6 the Board for each fiscal year. The Board's annual statement of
7 receipts and expenditures shall be audited by the State Auditor and
8 Inspector or an independent accounting firm, and the audit report
9 shall be certified to the Governor of this state to be true and
10 correct, under oath, by the chair and vice-chair of the Board.

11 D. Effective January 1, 2002, all powers, duties,
12 responsibilities, employees, records, and equipment of the State
13 Board of Health, the State Department of Health, and the State
14 Commissioner of Health relating exclusively to the regulation of the
15 plumbing, electrical and mechanical trades, ~~and~~ building and
16 construction inspectors and, beginning November 1, 2008, home
17 inspectors shall be placed under the authority of the Construction
18 Industries Board. To the extent practicable, this shall include all
19 computer hardware and software used in regulating industries listed
20 in this section. Until July 1, 2004, the State Department of Health
21 shall provide all necessary administrative support, including, but
22 not limited to, office space, equipment, furnishings, and legal
23 staff support for the Board and may manage the Board's funds,

1 subject to Board approval. The Construction Industries Board may
2 contract for additional legal and administrative services as
3 necessary, pursuant to the Central Purchasing Act. Employees shall
4 be under the direction of the Construction Industries Administrator
5 and the Construction Industries Board.

6 E. The Construction Industries Board and the State Board of
7 Health may enter into an agreement for the transfer of personnel
8 into the unclassified service under the direction of the
9 Construction Industries Board effective January 1, 2002, and for
10 personnel exclusively related to the regulation of home inspectors,
11 effective November 1, 2008. No employee shall be transferred into
12 the unclassified service under the direction of the Construction
13 Industries Board except on the freely given written consent of the
14 employee. All classified employees under the Merit System of
15 Personnel Administration who are not transferred into the
16 unclassified service as provided shall retain the status in the
17 class occupied by the employee on July 1, 2001, and for personnel
18 exclusively related to the regulation of home inspectors, occupied
19 by the employee on November 1, 2008, as allocated by the Office of
20 Personnel Management. The salary of such an employee shall not be
21 reduced as a result of such position allocation. Employees who are
22 transferred as provided shall not be required to accept a lesser
23 grade or salary than that in effect on July 1, 2001, and for

1 personnel exclusively related to the regulation of home inspectors,
2 that in effect on November 1, 2008. All employees shall retain
3 leave, sick and annual time earned, and any retirement and longevity
4 benefits which have accrued during their tenure in the classified
5 service. The transfer of personnel shall be coordinated with the
6 Office of Personnel Management.

7 SECTION 11. This act shall become effective November 1, 2008.

8 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS & LABOR, dated 2-18-08 -
9 DO PASS, As Amended and Coauthored.