

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 SENATE BILL 1783

By: Leftwich

4
5
6 AS INTRODUCED

7 An Act relating to professions and occupations;
8 amending 59 O.S. 2001, Sections 858-622, 858-624, as
9 amended by Section 21, Chapter 188, O.S.L. 2007, 858-
10 626, 858-627, 858-629, as amended by Section 3,
11 Chapter 449, O.S.L. 2002, 858-630, 858-631, 858-633,
12 858-634 and 1000.4, as last amended by Section 1,
13 Chapter 163, O.S.L. 2004 (59 O.S. Supp. 2007,
14 Sections 858-624, 858-629 and 1000.4), which relate
15 to the Home Inspection Licensure Act and the
16 Construction Industries Board; transferring the Home
17 Inspection Licensure Act from the State Department of
18 Health to the Construction Industries Board
19 throughout act; modifying powers and duties of the
20 Construction Industries Board; providing for transfer
21 of certain powers, duties, responsibilities,
22 employees, records and equipment; providing for
23 certain personnel status and salaries; and providing
24 an 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~~

1 ~~3.~~ "Committee" means the Committee of Home Inspector Examiners;

2 ~~4.~~ ~~"Department" means the State Department of Health;~~

3 ~~5.~~ 3. "Home inspection" means a visual examination of any or
4 all of the readily accessible physical real property and
5 improvements to real property consisting of four or fewer dwelling
6 units, including structural, lot drainage, roof, electrical,
7 plumbing, heating and air conditioning and such other areas of
8 concern as are specified in writing to determine if performance is
9 as intended;

10 ~~6.~~ 4. "Home inspection report" means a written opinion of the
11 functional and physical condition of property written by the
12 licensed home inspector pursuant to home inspection; and

13 ~~7.~~ 5. "Home inspector" means an individual licensed pursuant to
14 the Home Inspection Licensing Act who, for compensation, conducts
15 home inspections.

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

19 Section 858-624. A. There is hereby created, to continue until
20 July 1, 2013, in accordance with the provisions of the Oklahoma
21 Sunset Law, the Committee of Home Inspector Examiners, which shall
22 consist of seven (7) members who have been residents of this state
23 for at least three (3) years prior to their appointment. Each
24 member shall be appointed by the Governor with the advice and

1 consent of the Senate. Appointments shall be made so that not more
2 than two members shall, at the time an appointment is made, be
3 residents of the same congressional district; provided, no member
4 shall be removed from office due solely to a reduction in the number
5 of congressional districts.

6 B. Of the seven members:

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

9 After expiration of the terms of the initial appointees, four
10 members shall be licensed home inspectors who are active full time
11 in the practice of making home inspections, two or more of whom
12 shall hold membership in an association that certifies home
13 inspectors in this state;

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

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

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

22 C. Initially, three members shall be appointed for a term to
23 expire June 30, 2003; two members shall be appointed for a term to
24 expire June 30, 2004; and two members shall be appointed for a term

1 to expire June 30, 2005. Thereafter, all terms shall be three-year
2 terms ending June 30.

3 D. Members shall serve until their successors are appointed and
4 qualified. Vacancies shall be filled for the balance of an
5 unexpired term by appointment of the Governor. Members may be
6 removed by the Governor for good cause.

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

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

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

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

24

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

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

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

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

22 1. Qualifications and examinations for licensure of home
23 inspectors;

24 2. License renewal requirements;

- 1 3. Reinstatement of license after suspension or revocation of
- 2 license or failure to meet license renewal requirements;
- 3 4. Continuing education;
- 4 5. Standards of practice and prohibited acts;
- 5 6. Approval of schools, educational course content,
- 6 instructors, and organizations offering courses of study for home
- 7 inspection, ~~and standards required for instructors, schools, and~~
- 8 ~~organizations to remain approved;~~
- 9 7. Standards required for schools, instructors, and
- 10 organizations to remain approved;
- 11 8. Approval fees;
- 12 9. Reciprocity agreements whereby home inspectors licensed in
- 13 other states with equal or greater licensure requirements may be
- 14 licensed in this state, and fee for licensing by reciprocity; and
- 15 10. Investigative procedures.
- 16 C. Upon showing of good cause as provided for in the Home
- 17 Inspection Licensing Act, the ~~Department~~ Board shall discipline
- 18 licensees, approved instructors, approved schools, and educational
- 19 organizations by:
- 20 1. Issuing reprimands;
- 21 2. Requiring probation for a specified period of time;
- 22 3. Requiring education in addition to the educational
- 23 requirements provided for licensure or continuing education;
- 24 4. Suspending licenses or approvals;

1 5. Rescinding or revoking licenses or approvals;

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

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

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

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

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

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

23 Section 858-629. A. Any individual of good moral character
24 eighteen (18) years of age or older who has successfully completed

1 fifty (50) clock hours of home inspection training or its equivalent
2 as determined by the Committee of Home Inspector Examiners may apply
3 to take a home inspector examination. Application shall be made on
4 forms prescribed by the ~~State Department of Health~~ Construction
5 Industries Board, shall contain information as required by the ~~State~~
6 ~~Board of Health~~ Construction Industries Board upon advisement of the
7 Committee, and shall be accompanied by evidence of successful
8 completion of the required training. Examinations may be held in
9 vocational and technical schools or in other locations as determined
10 by rule.

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

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

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

1 pursuant to the Home Inspection Licensing Act, issue to the
2 applicant a license which shall authorize the applicant to perform
3 home inspections.

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

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

19 Section 858-630. To be licensed as a home inspector, or to
20 renew or reactivate a license, an applicant shall submit to the
21 ~~Department~~ Construction Industries Board such documents and fees as
22 are required by the Home Inspection Licensing Act or the rules
23 promulgated pursuant thereto and shall provide evidence of having
24 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.

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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:
24

- 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
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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
23 licensee or to produce any document in possession of a licensee or
24 under control of a licensee that relates to a home inspection; or

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

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

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

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

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

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

17 2. All administrative fines shall be paid within thirty (30)
18 days of written notification to the licensee of the order imposing
19 the administrative fine or, if the licensee appeals the fine, within
20 thirty (30) days of the decision of the ~~Department~~ Construction
21 Industries Board in favor of the action of the ~~Department~~ Board
22 unless the district court stays the order of the ~~Department~~ Board
23 pending an appeal pursuant to the Administrative Procedures Act;

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

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

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

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

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

19 2. Beginning January 1, 2002, the Board shall have the power to
20 enforce the provisions of the Construction Industries Board Act, The
21 Plumbing License Law of 1955, the Oklahoma Inspectors Act, the
22 Electrical License Act, ~~and~~ the Mechanical Licensing Act and,
23 beginning November 1, 2008, the Home Inspection Licensing Act.
24

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

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

16 B. The Board shall have the following powers:

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

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

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

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

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

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

18 7. Direct such other expenditures as may be necessary in the
19 performance of its duties including, but not limited to,
20 expenditures for office space, equipment, furnishings and contracts
21 for legal services. All expenditures shall be made pursuant to the
22 Oklahoma Central Purchasing Act.

23 C. After July 1, 2004, the Board shall account for all receipts
24 and expenditures of the monies of the Board, including annually

1 preparing and publishing a statement of receipts and expenditures of
2 the Board for each fiscal year. The Board's annual statement of
3 receipts and expenditures shall be audited by the State Auditor and
4 Inspector or an independent accounting firm, and the audit report
5 shall be certified to the Governor of this state to be true and
6 correct, under oath, by the chair and vice-chair of the Board.

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

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

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

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