

HOUSE BILL No. 5453

February 7, 1990, Introduced by Reps. DeLange, Johnson, Bender, Kulchitsky, Crandall, Weeks, Mathieu and Krause and referred to the Committee on State Affairs.

A bill to prescribe certain disclosures and standards in contracts involving home inspection services; to provide for registration of home inspectors; to prescribe certain duties of the department of licensing and regulation; to provide for the promulgation of rules; and to provide for penalties and remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "home inspection services act".

3 Sec. 3. As used in this act:

4 (a) "Client" means the person on whose behalf a home inspec-
5 tor is acting.

6 (b) "Department" means the department of licensing and
7 regulation.

1 (c) "Electrical system" means the total system in a
2 residence which facilitates the flow of electricity beginning
3 with the main panel and extending to the subpanels and including
4 branch circuits, connected devices, and lighting fixtures.

5 (d) "Foundation" means 1 or more of the following upon which
6 a residence is placed:

7 (i) Slab.

8 (ii) Crawl space.

9 (iii) Basement.

10 (iv) Piers.

11 (e) "Heating and air conditioning system" means a separate
12 or combined system used to distribute or radiate heat or cool air
13 throughout all or part of a residence. The radiation or distri-
14 bution of heat may be accomplished by means of a central heat
15 source or thermostatically controlled heat sources in 1 or more
16 rooms of a residence. Air conditioning does not include a unit
17 mounted in a wall or a window unless the unit utilizes ducts to
18 distribute the air.

19 (f) "Home inspector" means a person engaged in the business
20 of providing home inspection services.

21 (g) "Home inspection services" means services provided to a
22 client, for consideration, which are designed to identify and
23 disclose the functional condition of the major systems of a
24 residence. Home inspection services does not include an inspec-
25 tion designed only to disclose any of the following:

26 (i) Compliance with local, state, or federal building or
27 construction laws or regulations.

1 (ii) Compliance with local, state, or federal health and
2 safety laws or regulations.

3 (iii) The presence or absence of pests, termites, or other
4 vermin.

5 (h) "Major deficiency" means a defect in 1 or more major
6 systems that severely affects the habitability of a residence.

7 (i) "Major system" means any 1 of the following:

8 (i) Electrical system.

9 (ii) Heating and air conditioning system.

10 (iii) Plumbing system.

11 (iv) Structure and foundation system.

12 (j) "Person" means an individual, partnership, corporation,
13 or other legal entity.

14 (k) "Plumbing" means that system regulating the inward and
15 outward flow of water and sewage in a residence and includes, but
16 is not limited to, fixtures, faucets, valves, and pipes.

17 (l) "Residence" means a building used primarily for family
18 living quarters and designed for occupation of not more than 4
19 families in separate living quarters.

20 (m) "Structure" means the walls, windows, doors, and roof on
21 the exterior of a residence and the walls, ceilings, floors, win-
22 dows, and doors on the interior of a residence.

23 Sec. 5. (1) An individual shall not provide home inspection
24 services unless registered with the department on a form provided
25 by the department. The department shall only register an indi-
26 vidual as a home inspector. The applicant shall pay an
27 application fee of \$25.00 at the time of application and

1 thereafter a yearly registration fee of \$20.00. The department
2 shall determine standards of qualification by promulgation of
3 rules and may consider standards set by the American society of
4 home inspectors or any independent organization whose purpose is
5 to establish and maintain standards for home inspection.

6 (2) A person shall not use the term "home inspector", "home
7 inspection services", or any similar term which tends to connote
8 qualification or registration under this act in any way without
9 being registered under this act. A sole proprietorship, partner-
10 ship, association, corporation, or other legal entity shall not
11 use the term "home inspector", "home inspection services", or a
12 similar term in a name or description of a firm unless an indi-
13 vidual registered under this act is an officer, principal, or
14 employee of the firm and is available to perform the home inspec-
15 tion services.

16 (3) A home inspector who enters into a contract for home
17 inspection services that is not in conformance to this act shall
18 be subject to the penalties imposed under this act.

19 (4) A home inspector shall inspect those major systems of a
20 residence that are readily accessible and visible to the home
21 inspector.

22 (5) In the case of a home inspection performed on a resi-
23 dence not owned by a client but which residence the client
24 desires to purchase, a home inspector shall not disclose any
25 information regarding the existence or the results of a home
26 inspection without the prior written approval of the client

1 unless the client has informed the home inspector that he or she
2 no longer desires to purchase the home.

3 (6) A home inspector shall not release a home inspection
4 report without prior written approval from the client until 6
5 months after the date of the home inspection.

6 (7) A home inspector who inspects a residence shall not
7 repair or offer to repair a major deficiency discovered by an
8 inspection of that residence by that home inspector.

9 Sec. 7. (1) The home inspector shall disclose whether he or
10 she has an ownership interest in the property being inspected
11 which ownership interest may affect the client.

12 (2) A home inspector shall disclose whether he or she is a
13 member of a board of directors of or an officer of an entity
14 which has an ownership interest in the property being inspected.

15 (3) Control exercised by immediate family members and affil-
16 iates of the home inspector who have an ownership interest in the
17 property being inspected shall be attributed to the home inspec-
18 tor for purposes of subsections (1) and (2).

19 (4) The department may promulgate rules setting standards
20 for determining whether the home inspector has an ownership
21 interest as described in subsection (1) or (2) and for determin-
22 ing when ownership interest is considered to affect a client.

23 (5) A home inspector shall furnish to the client a document
24 entitled "disclosure statement" which shall contain, at a mini-
25 mum, all of the following:

26 (a) The scope of the home inspection services with a
27 detailed description of the major systems to be inspected, the

1 type of major deficiencies the home inspection is designed to
2 reveal, and items that are excluded from coverage under the
3 inspection.

4 (b) A statement that in the case of a home inspection per-
5 formed on the residence not owned by a client, but which the
6 client desires to purchase, the home inspector shall not disclose
7 any information regarding the existence or the results of the
8 inspection without the prior written approval of the client
9 unless the client has informed the home inspector that he or she
10 no longer desires to purchase the residence.

11 (c) A statement that the home inspector shall not release a
12 home inspection report without prior written approval from the
13 client until 6 months after the date of the home inspection.

14 (d) A statement that a home inspector inspecting a particu-
15 lar residence shall not repair or offer to repair a major defi-
16 ciency discovered by an inspection of that residence by that home
17 inspector.

18 Sec. 9. The department shall promulgate rules under the
19 administrative procedures act of 1969, Act No. 306 of the Public
20 Acts of 1969, being sections 24.201 to 24.328 of the Michigan
21 Compiled Laws, to implement the administration of this act.

22 Sec. 11. A contract for home inspection services shall be
23 in writing, executed by the home inspector and client and in con-
24 formance with section 13. All terms of the contract for home
25 inspection services shall be contained in the contract.

26 Sec. 13. At a minimum, both of the following shall be
27 contained in a contract for home inspection services:

1 (a) Any disclaimers including, but not limited to, the
2 absence of any warranties as to the adequacy of future per-
3 formance of a major system; any exclusion of latent defects not
4 reasonably apparent by visual inspection unless otherwise pro-
5 vided in the contract; or any exclusion of any system not opera-
6 ble at the time of the inspection.

7 (b) A description of the services to be provided and the
8 conditions which may affect the ability to conduct an
9 inspection.

10 Sec. 15. This act does not affect the rights and liabili-
11 ties of any party that may otherwise be available under law.

12 Sec. 17. (1) A home inspector who is found violating any of
13 the following, after a hearing pursuant to the administrative
14 procedures act of 1969, Act No. 306 of the Public Acts of 1969,
15 being sections 24.201 to 24.328 of the Michigan Compiled Laws, is
16 responsible for a civil violation and shall be fined \$100.00 for
17 a first violation and \$250.00 for a second or subsequent
18 violation:

19 (a) Failure to reduce a contract for home inspection serv-
20 ices to writing.

21 (b) Failure to include in a contract for home inspection
22 services the provisions of section 13.

23 (c) Failure to provide a disclosure statement.

24 (2) A default in the payment of a civil fine or costs
25 ordered under this act or an installment of the fine or costs may
26 be remedied by any means authorized under the revised judicature

1 act of 1961, Act No. 236 of the Public Acts of 1961, being
2 sections 600.101 to 600.9947 of the Michigan Compiled Laws.

3 Sec. 19. The following are exempt from registration under
4 this act:

5 (a) A person acting on behalf of a local, state, or federal
6 governmental unit or agency conducting an inspection or investi-
7 gation concerning compliance with either or both of the
8 following:

9 (i) Health or safety laws or regulations.

10 (ii) Construction or building laws or regulations.

11 (b) A person licensed, registered, or certified under 1 or
12 more of the following while conducting an inspection that is rea-
13 sonably related to a task or prospective task within the scope of
14 licensure, registration, or certification:

15 (i) Article 20 of the occupational code, Act No. 299 of the
16 Public Acts of 1980, being sections 339.2001 to 339.2014 of the
17 Michigan Compiled Laws.

18 (ii) Article 24 of Act No. 299 of the Public Acts of 1980,
19 being sections 339.2401 to 339.2412 of the Michigan Compiled
20 Laws.

21 (iii) Act No. 222 of the Public Acts of 1901, being sections
22 338.951 to 338.965 of the Michigan Compiled Laws.

23 (iv) Act No. 266 of the Public Acts of 1929, being sections
24 338.901 to 338.917 of the Michigan Compiled Laws.

25 (v) The electrical administrative act, Act No. 217 of the
26 Public Acts of 1956, being sections 338.881 to 338.892 of the
27 Michigan Compiled Laws.

1 (vi) The Forbes mechanical contractors act, Act No. 192 of
2 the Public Acts of 1984, being sections 338.971 to 338.988 of the
3 Michigan Compiled Laws.