

House Bill 4839

Sponsor: Rep. Walter J. DeLange

Committee: State Affairs

Complete to 9-18-91

A SUMMARY OF HOUSE BILL 4839 AS INTRODUCED 5-20-91

The bill would create a new act, the "home inspection services act," to require home inspectors to be registered with the state Department of Commerce, require home inspectors to make certain disclosures to potential clients, set certain standards for home inspection contracts, and establish penalties for violations of the bill's requirements.

"Home inspector." The bill would define "home inspector" to mean an individual "engaged in, or offering to engage in, the business of providing home inspection services." Only individuals could register as home inspectors. Unless an individual were registered under the bill, he or she could not use the term "home inspector" or any term that tended to suggest qualification or registration under the bill. Businesses (sole proprietorships, partnerships, associations, corporations, or other legal entities) could not use the term "home inspector" or a similar term in a name or description of a firm unless someone registered under the bill were an officer, principal, or employee of the firm and was available to perform home inspection services. The bill also would prohibit people from providing, or offering, home inspection services unless registered with the Department of Commerce, which would promulgate rules setting standards for qualifications for home inspectors.

Home inspectors would be required to inspect those major systems (defined in the bill to include electrical, heating and air conditioning, plumbing, structure and foundation systems) of a residence that were contracted for inspection, and only to the extent that those major systems were "readily accessible and visible" to the home inspector. A home inspector could not release a home inspection report without prior written approval from the client until six months after the date of the inspection, and would be prohibited from repairing or offering to repair major deficiencies discovered in the course of his or her inspection of the home. (The bill would define "major deficiency" to mean a defect in one or more of the home's major systems that would cause "the reasonable likelihood of harm to the safety of the occupants so as to require their evacuation of the residence for more than 3 days.")

The definition of "home inspector" specifically would exclude certain people who conducted similar kinds of inspections: state, local, or federal agents investigating compliance with health, safety, construction, or building laws or regulations, and anyone licensed, registered, or certified under other state laws who conducted inspections that were "reasonably related" to the person's legal scope of practice. (The bill refers to the parts of the Occupational Code that regulate architects, professional engineers, land surveyors, residential builders, and real estate appraisers; the act regulating plumbers; the Electrical Administrative Act, which regulates electricians and electrical contractors; and the Forbes

Mechanical Contractors Act, which regulates various kinds of heating, cooling, and fire suppression work.)

Registration fees. Application fees would be \$25, and annual license fees would be \$20.

"Home inspection services." The bill would define "home inspection services" to mean services provided to a client, for payment, which were designed to identify and disclose the functional condition of the major systems (electrical, heating and air conditioning, plumbing, structure and foundation) of a residence at the time of the inspection. "Home inspection services" would not include inspections designed only to determine compliance with local, state, or federal building or construction, or health and safety laws and regulations, or the presence of absence of termites, pests, or other vermin.

Disclosure statement. A home inspector would be required to disclose certain information regarding whether he or she had an ownership interest in the property being inspected. Home inspectors would have to give their clients "disclosure statements" which contained certain information specified by the bill (including the scope of the home inspection services and statements that the home inspector would not release a home inspection report without prior written approval from the client until six months after the date of the inspection and that the home inspector would not repair or offer to repair any major deficiencies he or she discovered in the course of an inspection).

Home inspection services contracts. The bill would set certain requirements for home inspection service contracts. Such contracts would have to be in writing, executed by the home inspector and either the client or the client's agent in accordance with the bill's provisions, and all terms of the contract (except for conditions affecting the home inspector's ability to conduct a home inspection) would have to appear in the contract. Unless otherwise indicated in writing, the client would be the buyer of the residence being inspected. The bill would require that, at a minimum, home inspection contracts contain a description of the services to be provided, any exclusions (either of "latent defects" not readily apparent by visual inspection, unless otherwise specified by the contract, or of any system not working at the time of the inspection), and any disclaimers (including, but not limited to, the absence of any warranties about the adequacy of future performance of major systems and the fact that the inspection would be a valid assessment of the condition of the residence only as of the date of the inspection).

Home inspection reports. The bill would allow, but not require, home inspectors to provide their clients with a report containing the results of a home inspection. The home inspector could list in the report any condition affecting or limiting his or her ability to provide services under the contract. A report would have to indicate that the home inspection was considered a valid assessment of the residence only as of the date of the inspection.

Violations and penalties. The bill would make a home inspector who entered into a contract for home inspection services that did not conform to the bill's requirement subject to the penalties imposed by the bill. A home inspector would be subject to a \$100 fine (for

a first offense) or a \$250 fine (for subsequent offenses) if, after a hearing under the Administrative Procedures Act, he or she was found to have failed to: (a) put a home inspection services contract in writing, (b) include in the contract the provisions required by the bill, (c) provide a disclosure statement, or (d) register or renew his or her registration. Defaults in payment of a civil fine or costs would be recoverable under provisions of the Revised Judicature Act.

Actions for civil damages. Actions for civil damages could be brought against home inspectors in cases involving fraud or intentional misrepresentation. Otherwise, civil suits could be brought only under circumstances specified by the bill: in cases where the home inspector knew that the information developed through home inspections was intended for someone not part of the home inspection contract, where the home inspector intended the information developed through home inspections would influence a transaction which was the subject of the lawsuit, or where some third party actually relied on the information developed through the home inspection services.