

HOUSE BILL No. 4839

May 20, 1991, Introduced by Reps. DeLange, Leland, Brackenridge, McBryde, Pitoniak, Hoekman and McNutt 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 certain state departments and agencies; to provide for the promulgation of rules; and to provide for the rights and remedies for certain persons for violation of this act under certain circumstances.

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 commerce.

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, and directly wired electrical and lighting
5 fixtures.

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

8 (i) Slab.

9 (ii) Crawl space.

10 (iii) Basement.

11 (iv) Piers.

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

20 (f) "Home inspector" means a person engaged in, or offering
21 to engage in, the business of providing home inspection services
22 but does not include any of the following:

23 (i) A person acting on behalf of a local, state, or federal
24 governmental unit or agency conducting an inspection or investi-
25 gation concerning compliance with either or both of the
26 following:

1 (A) Health or safety laws or regulations.

2 (B) Construction or building laws or regulations.

3 (ii) A person licensed, registered, or certified under 1 or
4 more of the following while conducting an inspection that is rea-
5 sonably related to a task or prospective task within the scope of
6 licensure, registration, or certification:

7 (A) Article 20 of the occupational code, Act No. 299 of the
8 Public Acts of 1980, being sections 339.2001 to 339.2014 of the
9 Michigan Compiled Laws.

10 (B) Article 24 of Act No. 299 of the Public Acts of 1980,
11 being sections 339.2401 to 339.2412 of the Michigan Compiled
12 Laws.

13 (C) Article 26 of Act No. 299 of the Public Acts of 1980,
14 being sections 339.2601 to 339.2637 of the Michigan Compiled
15 Laws.

16 (D) Act No. 222 of the Public Acts of 1901, being sections
17 338.951 to 338.965 of the Michigan Compiled Laws.

18 (E) Act No. 266 of the Public Acts of 1929, being sections
19 338.901 to 338.917 of the Michigan Compiled Laws.

20 (F) The electrical administrative act, Act No. 217 of the
21 Public Acts of 1956, being sections 338.881 to 338.892 of the
22 Michigan Compiled Laws.

23 (G) The Forbes mechanical contractors act, Act No. 192 of
24 the Public Acts of 1984, being sections 338.971 to 338.988 of the
25 Michigan Compiled Laws.

26 (g) "Home inspection services" means services provided to a
27 client, for consideration, which are designed to identify and

1 disclose the functional condition of the major systems of a
2 residence at the time of the inspection. Home inspection serv-
3 ices does not include an inspection designed only to disclose any
4 of the following:

5 (i) Compliance with local, state, or federal building or
6 construction laws or regulations.

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

9 (iii) The presence or absence of pests, termites, or other
10 vermin.

11 (h) "Major deficiency" means a defect in 1 or more major
12 systems that causes the reasonable likelihood of harm to the
13 safety of the occupants so as to require their evacuation of the
14 residence for more than 3 days.

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

16 (i) Electrical system.

17 (ii) Heating and air conditioning system.

18 (iii) Plumbing system.

19 (iv) Structure and foundation system.

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

22 (k) "Plumbing" means that system regulating the inward and
23 outward flow of water and sewage in a residence and includes, but
24 is not limited to, water heaters, water softeners, fixtures, fau-
25 cets, valves, and pipes. Plumbing does not include wells, septic
26 systems, or sump pumps unless included in writing in the contract
27 for home inspection systems.

1 (1) "Residence" means a building used primarily for family
2 living quarters and designed for occupation of not more than 4
3 families in separate living quarters.

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

7 Sec. 5. (1) An individual shall not provide, or offer to
8 provide, home inspection services unless registered with the
9 department on a form provided by the department. The department
10 shall only register an individual as a home inspector. The
11 applicant shall pay an application fee of \$25.00 at the time of
12 application and thereafter a yearly license fee of \$20.00. The
13 department shall determine standards of qualification by promul-
14 gation of rules and may consider and adopt standards set by any
15 independent organization that has as 1 of its purposes the estab-
16 lishment and maintenance of standards for home inspection.

17 (2) A person shall not use the term "home inspector", "home
18 inspection services", or any similar term which tends to connote
19 qualification or registration under this act in any way without
20 being registered under this act. A sole proprietorship, partner-
21 ship, association, corporation, or other legal entity shall not
22 use the term "home inspector", "home inspection services", or a
23 similar term in a name or description of a firm unless an indi-
24 vidual registered under this act is an officer, principal, or
25 employee of the firm and is available to perform the home inspec-
26 tion services.

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

4 (4) A home inspector shall inspect those major systems of a
5 residence that are the subject of a contract for home inspection
6 services only to the extent that those major systems are readily
7 accessible and visible to the home inspector.

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

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

14 Sec. 7. (1) The home inspector shall disclose whether he or
15 she, or an immediate family member, has an ownership interest in
16 the property being inspected.

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

20 (3) A home inspector shall furnish to the client a document
21 entitled "disclosure statement" which shall contain, at a mini-
22 mum, all of the following:

23 (a) The scope of the home inspection services with a
24 detailed description of the major systems to be inspected, the
25 type of major deficiencies the home inspection is designed to
26 reveal, and items that are excluded from coverage under the
27 inspection.

1 (b) A statement that the home inspector shall not release a
2 home inspection report without prior written approval from the
3 client until 6 months after the date of the home inspection.

4 (c) A statement that a home inspector inspecting a particu-
5 lar residence shall not repair or offer to repair a major defi-
6 ciency discovered by an inspection of that residence by that home
7 inspector.

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

12 Sec. 11. (1) A contract for home inspection services shall
13 be in writing, executed by the home inspector and either the
14 client or the client's agent and in conformance with section 13.

15 (2) All terms of the contract for home inspection services
16 shall be contained in the contract except that conditions affect-
17 ing the home inspector's ability to conduct a home inspection may
18 be noted in a separate document attached to the contract.

19 (3) Unless otherwise indicated in writing, the purchaser of
20 a residence being inspected is considered the client in the case
21 of a home inspection conducted as part of a sale of the
22 residence.

23 Sec. 13. At a minimum, the following shall be contained in
24 a contract for home inspection services:

25 (a) Any disclaimers including, but not limited to, the
26 absence of any warranties as to the adequacy of future
27 performance of a major system and the fact that the home

1 inspection is considered a valid assessment of the condition of
2 the residence only as of the date of the home inspection.

3 (b) Any exclusion of latent defects not reasonably apparent
4 by visual inspection unless otherwise provided in the contract.

5 (c) Any exclusion of any system not operable at the time of
6 the inspection.

7 (d) A description of the services to be provided.

8 Sec. 15. (1) After performing home inspection services, a
9 home inspector may provide to the client a report containing the
10 results of the home inspection. The home inspector may list in
11 the report any conditions affecting or limiting the ability of
12 the home inspector to provide home inspection services pursuant
13 to the contract.

14 (2) The home inspector shall indicate in the report the fact
15 that the home inspection is considered a valid assessment of the
16 condition of the residence only as of the date of the home
17 inspection.

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

25 (a) Failure to reduce a contract for home inspection serv-
26 ices to writing.

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

3 (c) Failure to provide a disclosure statement.

4 (d) Failure to obtain or renew a registration under this
5 act.

6 (2) A default in the payment of a civil fine or costs
7 ordered under this act or an installment of the fine or costs may
8 be remedied by any means authorized under the revised judicature
9 act of 1961, Act No. 236 of the Public Acts of 1961, being sec-
10 tions 600.101 to 600.9947 of the Michigan Compiled Laws.

11 Sec. 19. (1) In an action for civil damages regarding home
12 inspection services brought against a home inspector, a person or
13 entity not in privity of contract with the home inspector may
14 recover civil damages resulting from an act, omission, decision,
15 or other conduct in connection with the performance of home
16 inspection services by a home inspector where the act, omission,
17 decision, or other conduct constitutes fraud or intentional
18 misrepresentation.

19 (2) In a case not involving fraud or intentional misrepre-
20 sentation as described in subsection (1), a person or entity not
21 in privity of contract with the home inspector may recover civil
22 damages resulting from an act, omission, decision, or other con-
23 duct in connection with the performance of home inspection serv-
24 ices by the home inspector only where the following circumstances
25 exist:

26 (a) The home inspector knew that the information developed
27 through the performance of home inspection services was intended

1 for use by a person or entity not in privity of contract with the
2 home inspector.

3 (b) The home inspector intended that the information devel-
4 oped through the performance of home inspection services would
5 influence a transaction which is the subject of the action for
6 civil damages.

7 (c) The person or entity not in privity of contract with the
8 home inspector actually relied upon the information developed
9 through the performance of the home inspection services.