

REGULATE HOME INSPECTORS

House Bill 4109 (Substitute H-3)
First Analysis (4-28-93)

Sponsor: Rep. Walter DeLange
Committee: Consumers

THE APPARENT PROBLEM:

Often, people in the process of buying a home are advised to obtain a professional inspection of the property (or may be required by a lender to do so). A home seller may obtain an inspection as a way of marketing the home's quality. Home inspections are designed to detect structural problems and safety hazards, as well as to alert the buyer of potentially expensive defects in plumbing, heating, and electrical systems and other features of the home. While people offering their services as home inspectors may be licensed builders or other licensed professionals, Michigan law does not license or regulate the practice of home inspection. Some consumers have complained about inadequate inspections performed by people who have held themselves out to be qualified to inspect real estate. Further, some home inspectors who voluntarily hold themselves to strict standards of conduct and ethics complain that anyone, no matter what their qualifications, may provide home inspection services. These home inspectors advocate state regulation of home inspectors that would incorporate minimum qualifications for those wishing to engage in the business of home inspection, and establish standards for inspection such as those adopted by the voluntary American Society of Home Inspectors, Inc. Others do not wish to expand the state's regulatory bureaucracy but agree that some protections for consumers are necessary. It is proposed that Michigan law set standards for the provision of home inspection services.

THE CONTENT OF THE BILL:

The bill would create a new act, the "home inspection services act," to require home inspectors to make certain disclosures to potential clients, and set certain standards for home inspection contracts and home inspection reports.

"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." 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, 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.)

"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 codes or health and safety laws and regulations, or those meant only to detect the presence or absence of termites, pests, or other vermin.

Home inspectors would be required to inspect those major systems and accessories ("appliances that are fixtures in a residence," including built-in appliances and vacuum systems, but not including security systems) of a residence that were contracted for inspection, and only to the extent that those major systems and accessories were "readily accessible and visible" to the home inspector. A home inspector would have to indicate in writing any accessory or major system that he or she was not able to inspect, and the reason. A home inspector would be

prohibited from repairing or offering to repair a residence that he or she inspected, unless the repair was done as part of a home warranty offered by the home inspector. A home inspector would be required to retain copies of all home inspection services contracts and home inspection reports (see below) for at least three years.

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 with a detailed description of the major systems and accessories to be inspected, the type of major deficiencies the inspection was designed to reveal, and items that would be excluded from the inspection. (The bill would define "major deficiency" to mean a defect in one or more of the home's major systems or accessories 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 or which may result in the reasonable likelihood of a major system or accessory becoming nonoperational.") The disclosure statement would also have to say that a home inspector could not repair or offer to repair a residence that was the subject of an inspection, unless the repair was provided as part of a home warranty provided by the inspector.

Home inspection services contracts. The bill would set certain requirements for home inspection service contracts; a contract that did not comply with the bill's provisions would be voidable at the option of the client. 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 home inspection contracts contain a description of the services to be provided, any exclusions of defects not readily apparent by visual inspection, and any disclaimers (including, but not limited to, the absence of any warranties about the adequacy of future performance of major systems or accessories 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). A client would have to be provided with a copy of the contract.

Home inspection reports. The bill would require home inspectors to provide their clients with a report containing the results of a home inspection. The report would include a list of the major systems or accessories inspected and those that were not inspected. 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, that major systems or accessories not operable at the time of the inspection were excluded, and that defects not reasonable apparent by visual inspection were excluded.

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

At present, Michigan has no legal standards for home inspection. Anyone can offer his or her services, for a fee, to inspect real estate, no matter what the person's qualifications. With such an important investment as the purchase of a home, consumers ought to have at least minimal assurance that people they pay to inspect a home are covering all the major systems of the home, and that the home inspector does not have a financial interest in the property. The bill would also prohibit a home inspector from offering to repair defects that are located in the inspection, an important ethical consideration. Further, the bill would require that clients be given copies of the home inspection contract and report, and that certain information be disclosed to the client that could help to prevent misunderstandings about what is being offered in an inspection. The bill would provide some consumer protection while also protecting those home inspectors who voluntarily hold themselves to strict standards adopted by national organizations of home inspectors.

Response:

The bill does not go far enough. The law should require home inspectors to be licensed or registered with the state, ensuring that they meet certain minimal education or experience requirements and

that they conduct themselves according to the professional standards of the American Society of Home Inspectors or other similar organizations.

POSITIONS:

The Michigan Consumer Federation supports the bill. (4-27-93)