



**House
Legislative
Analysis
Section**

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REGULATE HOME INSPECTORS

House Bill 4109

Sponsor: Rep. Walter J. DeLange

Committee: Consumers

Complete to 4-19-93

A SUMMARY OF HOUSE BILL 4109 AS INTRODUCED 2-2-93

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

"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." Home inspectors would be required to comply with the provisions of the bill.

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 report, 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.") A home inspector would be required to retain copies of all home inspection services contracts and home inspection reports for at least three years.

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

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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.

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 report 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; 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, 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). 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 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. The bill would specify that a home inspector who entered into a contract for home inspection services that did not conform to the bill's requirement would be subject to the penalties imposed under the act. (Note: the bill does not contain penalty provisions.)

Actions for civil damages. The bill specifies that, unless otherwise indicated in writing, the buyer of the home being inspected is considered to be the client in the contractual relationship. The bill would limit the ability of a person who was not a party to a contract (presumably, the seller of the property inspected or other third party) to bring an action for damages against a home inspector, unless the action involved fraud or intentional misrepresentation. Otherwise, civil suits could be brought by a person other than the client only if all of the following circumstances existed:

* the home inspector knew that the information developed through home inspection services was intended for use by someone not part of the home inspection contract,

* the home inspector intended the information developed through the home inspection would influence a transaction which was the subject of the lawsuit, and

* the third party actually relied on the information developed through the home inspection services.