

SECOND REGULAR SESSION

SENATE BILL NO. 651

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHAEFER.

Read 1st time January 12, 2012, and ordered printed.

TERRY L. SPIELER, Secretary.

5320S.01I

AN ACT

To amend chapter 339, RSMo, by adding thereto fourteen new sections relating to the licensing of home inspectors, with penalty provisions and an effective date.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 339, RSMo, is amended by adding thereto fourteen new sections, to be known as sections 339.900, 339.903, 339.906, 339.909, 339.912, 339.915, 339.918, 339.921, 339.924, 339.927, 339.930, 339.933, 339.936, and 339.939, to read as follows:

339.900. As used in sections 339.900 to 339.939, the following terms mean:

- (1) "Board", the Missouri home inspectors board;
- (2) "Client", a person or persons who engage the services of a licensed home inspector to perform a home inspection by paying the inspection fee and approving the inspection agreement;
- (3) "Component", a part of a system, as defined in this section;
- (4) "Division", the division of professional registration;
- (5) "Home inspection", the process by which a home inspector, for payment, visually examines the readily accessible systems and components of a residential building and describes such systems in writing in accordance with the standards of practice established by the board;
- (6) "Home inspection report", a written report of a home inspection;
- (7) "Home inspector", an individual who is retained to perform a home inspection for compensation;
- (8) "Readily accessible", available for visual inspection without requiring the movement of personal property, dismantling, destructive

20 measures, or any action in the opinion of the inspector that would
21 likely involve risk of injury to the inspector, another person, or
22 property;

23 (9) "Residential building", a structure of one to four family
24 dwelling units;

25 (10) "State-licensed inspector", an individual licensed by the
26 board under sections 339.900 to 339.939;

27 (11) "System", a combination of interacting or interdependent
28 components, as defined in this section, assembled to carry out one or
29 more functions.

339.903. 1. No person shall act as a home inspector, or directly
2 or indirectly engage or assume to engage in the business of home
3 inspection, or advertise or hold himself or herself out as engaging in or
4 conducting such business without first obtaining a license issued by the
5 board as provided in sections 339.900 to 339.939.

6 2. No license shall be issued under sections 339.900 to 339.939 to
7 a partnership, association, corporation, firm, LLC or group.

8 3. Any person who is not state licensed under sections 339.900 to
9 339.939 may assist a state-licensed home inspector in the performance
10 of an inspection provided that the person is personally supervised by
11 a state-licensed inspector and any inspection report rendered in
12 connection with the inspection is reviewed and signed by the
13 state-licensed home inspector.

14 4. The provisions of sections 339.900 to 339.939 shall not be
15 construed to require a license for:

16 (1) Any person, partnership, association, or corporation who as
17 owner performs inspections of property owned by such person,
18 partnership, association, or corporation;

19 (2) Any employee of a political subdivision, state, or federal
20 agency who performs inspection services within the scope of his or her
21 employment;

22 (3) Any person providing the inspection of two or less of the
23 following: heating system, cooling system, electrical system, plumbing
24 system, foundation, siding, roofing, masonry chimney, or the structural
25 frame or other essential components or systems of a residential
26 dwelling;

27 (4) A real estate broker, real estate salesperson, real estate

28 appraiser, architect, or engineer acting within the scope of his or her
29 license;

30 (5) Any person acting on behalf of the Federal Housing
31 Administration (FHA) in the capacity of an approved FHA fee inspector;

32 (6) Any person employed by or acting on behalf of a licensed
33 insurance company doing business in this state.

34 5. A home inspection shall not be construed to include:

35 (1) A compliance inspection for any code or government
36 regulation; or

37 (2) An examination for, including but not limited to, the
38 conditions and operation of kitchen-type appliances; laundry
39 equipment; onsite water supplies or wells; private waste systems;
40 irrigation systems; fire suppression systems; swimming pools and
41 heaters; hot tubs, saunas, or spas; exterior cooking equipment; low
42 voltage systems; the determination of the presence of wood-destroying
43 organisms or pests; the determination of the presence of fungi, mold,
44 bacteria, asbestos, lead-based paint, gases or conditions of air quality,
45 acoustics and other components or conditions as identified by the
46 board.

339.906. 1. There is hereby created within the division of
2 professional registration the "Missouri Home Inspectors' Board", which
3 shall consist of five members appointed by the governor with the advice
4 and consent of the senate. Each member shall be a citizen of the United
5 States, a resident of this state, and a registered voter for a period of
6 one year prior to the person's appointment. Four members shall be
7 licensed home inspectors, and one member shall be a public
8 member. The public member shall have never been engaged in the
9 businesses of home inspections, real estate appraisal, real estate sales,
10 or making loans secured by real estate or the spouse of such
11 person. The board shall elect from its membership a president and vice
12 president each of whom shall be elected at the times, and serve for the
13 terms, as are determined by the board.

14 2. The home inspector members initially appointed by the
15 governor shall have home inspection experience in the state of Missouri
16 for not less than five years preceding their initial appointment, have
17 completed at least one thousand home inspections for compensation,
18 and be members in good standing of a nationally recognized home

19 inspector association requiring psychometrically valid and legally
20 defensible examination. The governor shall not exclude a state-licensed
21 home inspector from appointment as a successor inspector member of
22 the board by virtue of membership or lack of membership of the
23 state-licensed home inspector in any particular home inspector
24 association.

25 3. Of the initial members appointed, two members shall be
26 appointed for two-year terms, two members for three-year terms, and
27 one member for a four-year term. All successor members shall be
28 appointed for four-year terms. All members shall serve until their
29 successors have been appointed and qualified. Vacancies occurring in
30 the membership of the board for any reason shall be filled by
31 appointment by the governor for the unexpired term. The governor
32 may remove a member for cause. An executive director for the board
33 shall be employed by the division of professional registration.

34 4. The board shall meet at least once a year to conduct its
35 business. The board may hold such additional meetings as may be
36 required in the performance of its duties. A quorum of the board shall
37 consist of a majority of its voting members.

38 5. Each member of the board shall be entitled to a per diem
39 allowance of up to seventy dollars for each meeting day or part of a day
40 of the board at which the member is present and shall be entitled to
41 reimbursement of the member's actual and necessary expenses incurred
42 in the discharge of the member's official duties.

339.909. 1. The board shall have the following powers and duties
2 and may adopt rules in accordance with the provisions of chapter 536
3 to establish:

4 (1) Qualifications for the licensing of home inspectors as the
5 board deems necessary for the public interest;

6 (2) Rules which prescribe and define the curriculum related to
7 home inspection that will satisfy the qualification requirements for
8 licensure;

9 (3) Approved courses of instruction that prescribe and define the
10 curriculum related to home inspection that will satisfy the qualification
11 requirements for licensure;

12 (4) Rules establishing the criteria for the supervision and
13 training of home inspector apprentices;

14 **(5) An application process and administrative procedures for**
15 **processing applications and issuing home inspector licenses and for**
16 **conducting disciplinary proceedings under the provisions of sections**
17 **339.900 to 339.939;**

18 **(6) Procedures by which the board may issue a license on a**
19 **reciprocal basis with other states without examination to a nonresident**
20 **who is licensed or certified, and in good standing in another state**
21 **under standards that are substantially equal to those established by the**
22 **board and in sections 339.900 to 339.939;**

23 **(7) Standards related to acceptable knowledge and competence**
24 **necessary to perform inspections of residential real estate as required**
25 **by sections 339.900 to 339.939;**

26 **(8) Standards of professional and ethical conduct for home**
27 **inspectors;**

28 **(9) Continuing education requirements for the renewal of**
29 **licensure that will meet the requirements of sections 339.900 to 339.939;**

30 **(10) Rules which define systems and items that are outside the**
31 **scope of a home inspection and which are not otherwise included in**
32 **sections 339.900 to 339.939; and**

33 **(11) Reasonable rules as deemed necessary or desirable by the**
34 **board to carry out and enforce the provisions of sections 339.900 to**
35 **339.939.**

36 **2. The board:**

37 **(1) Shall prescribe the form and content of examinations to**
38 **determine the qualifications of persons who apply for licenses to**
39 **engage in home inspection;**

40 **(2) Shall establish a list of approved education program**
41 **providers and may approve courses of instruction in an accredited**
42 **college or university related to the inspection of homes and such other**
43 **areas deemed relevant by the board;**

44 **(3) May contract with a testing service to provide and conduct**
45 **such examinations;**

46 **(4) Shall have authority to determine who meets the criteria for**
47 **licensure;**

48 **(5) Shall investigate to verify such applicant's qualifications. If**
49 **the results of the investigation are satisfactory to the board and the**
50 **applicant is otherwise qualified, the board shall issue to the applicant**

51 a license authorizing the applicant to act as a state-licensed home
52 inspector in Missouri;

53 (6) Shall set the amount of fees authorized by sections 339.900 to
54 339.939 and required by rules promulgated under section 536.021. The
55 fees shall be set at a level to produce revenue that does not
56 substantially exceed the cost and expense of administering this
57 chapter; and

58 (7) Shall perform such other functions and duties as may be
59 necessary to carry out the provisions of sections 339.900 to 339.939.

60 3. Any rule or portion of a rule, as that term is defined in section
61 536.010, that is created under the authority delegated in this section
62 shall become effective only if it complies with and is subject to all of
63 the provisions of chapter 536 and, if applicable, section 536.028. This
64 section and chapter 536 are nonseverable and if any of the powers
65 vested with the general assembly pursuant to chapter 536 to review, to
66 delay the effective date, or to disapprove and annul a rule are
67 subsequently held unconstitutional, then the grant of rulemaking
68 authority and any rule proposed or adopted after January 1, 2013, shall
69 be invalid and void.

339.912. 1. There is hereby created in the state treasury the
2 "Missouri Home Inspectors' Fund", which shall consist of moneys
3 collected under sections 339.900 to 339.939. The fund shall be
4 administered by the division of professional registration, which shall
5 collect and transfer the fees authorized in sections 339.900 to 339.939
6 to the director of revenue for deposit in the fund. Moneys in the fund
7 shall be used solely for the purposes of the Missouri home inspectors'
8 board as authorized in sections 339.900 to 339.939.

9 2. Notwithstanding the provisions of section 33.080 to the
10 contrary, any moneys remaining in the fund at the end of the biennium
11 shall not revert to the credit of the general revenue fund until the
12 amount in the fund at the end of the biennium exceeds two times the
13 amount of the appropriation from the board's funds for the preceding
14 fiscal year or, if the board requires by rule permit renewal less
15 frequently than yearly, then three times the appropriation from the
16 board's fund for the preceding fiscal year. The amount, if any, in the
17 fund which shall lapse is that amount in the fund which exceeds the
18 appropriate multiple of the appropriations from the board's funds for

19 the preceding fiscal year.

339.915. 1. Applications for licensure as a home inspector shall
2 be submitted to the board on forms prescribed by the board and
3 furnished to the applicant. The application shall contain the
4 applicant's statements showing the applicant's education, experience
5 and such other information as the board may require. Each application
6 shall contain a statement that it is made under oath or affirmation and
7 that the information contained therein is true and correct to the best
8 knowledge and belief of the applicant, subject to the penalties provided
9 for the making of a false affidavit or declaration. Each application
10 shall be accompanied by the fees required by the board.

11 2. Each applicant for licensure shall:

12 (1) Demonstrate the knowledge and competence necessary to
13 perform inspections of residential real estate as prescribed by rule;

14 (2) Be of good moral character;

15 (3) Have successfully completed a board approved training
16 program of not less than eighty classroom or field training hours, have
17 successfully completed a board approved combination and field
18 training program of not less than eighty hours, or have completed a
19 board approved apprentice program as provided for in section 339.916;

20 (4) Have passed an examination offered or approved by the
21 board or as provided for in sections 339.900 to 339.939;

22 (5) Have complied with section 43.543 for the issuance of a
23 license; and

24 (6) Pay the appropriate fee set by the board.

25 3. If an applicant is not licensed within three years after passing
26 an examination given under sections 339.900 to 339.939, the applicant
27 shall be required to retake the examination prior to state licensure.

28 4. An applicant who fails an examination taken under sections
29 339.900 to 339.939 may apply for reexamination as specified by board
30 rule.

339.918. 1. Any person desiring to practice as an apprentice for
2 home inspecting in this state shall apply to the board, pay the
3 appropriate fee, and comply with the apprenticeship rules established
4 by the board. A home inspector apprentice license shall be issued by
5 the board prior to the individual beginning the apprenticeship
6 program. In order to satisfy requirements for licensure, the home

7 inspector apprentice shall complete fifty home inspections under the
8 direct supervision of a licensed home inspector apprentice supervisor
9 and other criteria determined by the board.

10 2. Any person desiring to act as a home inspector apprentice
11 supervisor shall have completed five hundred inspections for
12 compensation, hold a current license with the board, apply to the board
13 for approval and be granted a supervisor license, and pay the
14 appropriate fee. A home inspector apprentice supervisor license is
15 required prior to supervising home inspector apprentices.

339.921. 1. The division shall mail a renewal notice to the last
2 known address of each licensee prior to the renewal date. Failure to
3 provide the board with the information required for renewal, or to pay
4 the renewal fee after such notice shall result in the license
5 expiring. The license shall be reinstated if, within two years of the
6 renewal date, the applicant submits the required documentation and
7 pays the applicable fees as approved by the board.

8 2. A new license to replace any lost, destroyed or mutilated
9 license may be issued subject to the rules of the board.

339.924. 1. Each educational provider shall submit application
2 for approval each calendar year, and shall maintain a record of all
3 attendance and satisfactory results for each program attendee.

4 2. In adopting rules under this section, the board shall approve
5 courses of instruction, seminars, and other home inspection education
6 courses and programs previously or hereafter developed by, or under
7 the auspices of, professional home inspection associations and utilized
8 by those associations for purposes of designation, licensure, or renewal
9 of licensure of members of the association.

10 3. For purposes of licensure or renewal of licensure, the board
11 shall establish or approve credit for education which may include
12 courses of instruction, programs, teaching, program development, and
13 preparation of textbooks, articles, or other instructional materials.

339.927. 1. The board may refuse to issue or renew any license
2 issued under sections 339.900 to 339.939 for one or any combination of
3 causes stated in subsection 2 of this section. The board shall notify the
4 applicant in writing of the reasons for the refusal and shall advise the
5 applicant of the right to file a complaint with the administrative
6 hearing commission as provided by chapter 621.

7 2. The board may cause a complaint to be filed with the
8 administrative hearing commission as provided by chapter 621, against
9 any state-licensed home inspector or any person who has failed to
10 renew or had surrendered his or her license for any one or any
11 combination of the following causes:

12 (1) Procuring or attempting to procure a license under section
13 339.912 by making a false statement, submitting false information,
14 refusing to provide complete information in response to a question in
15 an application for licensure, or through any form of fraud or
16 misrepresentation;

17 (2) Failing to meet the minimum qualifications for licensure or
18 renewal established by sections 339.900 to 339.939;

19 (3) Paying money or other valuable consideration, other than as
20 provided for by section 339.912, to any member or employee of the
21 board to procure a license under sections 339.900 to 339.939;

22 (4) The person has been finally adjudicated and found guilty, or
23 entered a plea of guilty or nolo contendere, in a criminal prosecution
24 under the laws of any state or the United States for any offense
25 reasonably related to the qualifications, functions, or duties of any
26 profession licensed or regulated under sections 339.900 to 339.939, for
27 any offense of which an essential element is fraud, dishonesty, sexual
28 misconduct, or an act of violence, regardless of the imposition of
29 sentence;

30 (5) Incompetency, misconduct, dishonesty, fraud, or
31 misrepresentation in the performance of the functions or duties of any
32 profession licensed or regulated by sections 339.900 to 339.939;

33 (6) Violation of any of the standards for the development or
34 communication of home inspections as provided in sections 339.900 to
35 339.939 or the rules applied thereafter;

36 (7) Any person violating, assisting, or enabling any person to
37 willfully disregard any of the provisions of sections 339.900 to 339.939
38 or the rules of the board for the administration and enforcement of the
39 provisions of sections 339.900 to 339.939;

40 (8) Accepting an inspection assignment when the employment
41 itself is contingent upon the inspector's reporting a predetermined
42 analysis or opinion or where the fee to be paid for the performance of
43 the inspection assignment is contingent upon the opinion or conclusion

44 reached or upon the consequences resulting from the inspection
45 assignment;

46 (9) Violating the confidential nature of records to which the
47 person gained access through employment or engagement to perform
48 an inspection assignment or specialized inspection services;

49 (10) Violating any term or condition of a license issued by the
50 board under the authority of sections 339.900 to 339.939;

51 (11) Violation of any professional trust or confidence;

52 (12) Obtaining or attempting to obtain any fee, charge, tuition,
53 or other compensation by fraud, deception, or misrepresentation;

54 (13) Use of any advertisement or solicitation which is false,
55 misleading, or deceptive to the general public or persons to whom the
56 advertisement or solicitation is primarily directed;

57 (14) Disciplinary action against the holder of a license or other
58 right to practice any profession regulated under sections 339.900 to
59 339.939, or similar professions, imposed by another state, territory,
60 federal agency, or country upon grounds for which revocation or
61 suspension is authorized in this state.

62 3. After the filing of such complaint, the proceedings shall be
63 conducted in accordance with the provisions of chapter 621. Upon a
64 finding by the administrative hearing commission that the grounds
65 provided in subsection 2 of this section for disciplinary action are met,
66 the board may, singly or in combination, publicly censure or place the
67 person named in the complaint on probation on such terms and
68 conditions as the board deems appropriate for a period not to exceed
69 five years, or may suspend for a period not to exceed three years, or
70 revoke the license. The holder of a license revoked under this section
71 shall not apply for licensure as a state-licensed home inspector or
72 apprentice for at least five years after the date of revocation.

73 4. Applicants for relicensure or reinstatement after revocation
74 shall be required to successfully complete the examination for original
75 licensure required by section 339.915 as a condition to reinstatement
76 of licensure or relicensure subsequent to revocation.

339.930. State-licensed home inspectors shall retain originals or
2 true copies of contracts engaging an inspector's services for inspector
3 assignments, specialized inspection services, inspection reports, and
4 supporting data assembled and formulated in preparing inspection

5 reports for three years and a day. The service period for retention of
6 the records applicable to each engagement of the services of the
7 state-licensed home inspector shall run from the date of the inspection
8 report. Such records shall be made available by the state-licensed
9 home inspector for inspection and copying by the board on reasonable
10 notice to the state-licensed home inspector.

339.933. 1. Except as provided in subsection 2 of this section,
2 sections 339.900 to 339.939 shall preempt any rule, regulation, or order
3 adopted by a political subdivision of the state relating to the licensing
4 or regulation of home inspectors or home inspection businesses.

5 2. Under section 324.016, no new licensing activity or other
6 statutory requirements shall become effective until expenditures or
7 personnel are specifically appropriated for the purpose of conducting
8 the business as required and the initial rules filed, if appropriate, have
9 become effective.

339.936. Prior to January 1, 2014, the education, training, and
2 experience requirements of sections 339.900 to 339.939 shall be deemed
3 established if the applicant:

4 (1) Has been a home inspector for two years prior to January 1,
5 2012; and

6 (2) Has full membership in good standing with a nationally
7 recognized professional home inspection association; and

8 (3) Provides evidence of completing two hundred fifty home
9 inspection reports for which the individual was paid and can produce
10 invoices for verification.

339.939. 1. An action to recover damages for any act or omission
2 of a home inspector relating to a home inspection that he or she
3 conducts can only be commenced within one year after the date of the
4 inspection report.

5 2. Any person or corporation who knowingly violates any
6 provision of sections 339.900 to 339.939 is guilty of a class B
7 misdemeanor. Any officer or agent of a corporation, or member or
8 agent of a partnership or association, LLC, or group, who knowingly
9 and personally participates in or is an accessory to any violation of
10 sections 339.900 to 339.939 is guilty of a class B misdemeanor. This
11 section shall not be construed to release any person from civil liability
12 or criminal prosecution under any other law of this state. The board

13 **may cause a complaint to be filed for a violation of section 339.903 in**
14 **any court of competent jurisdiction, and perform such other acts as**
15 **may be necessary to enforce the provisions of sections 339.900 to**
16 **339.939.**

Section B. This act shall become effective January 1, 2014.

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Bill

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