

FIRST REGULAR SESSION

# SENATE BILL NO. 321

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHAEFER.

Read 1st time February 13, 2013, and ordered printed.

TERRY L. SPIELER, Secretary.

1508S.011

## 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  
2 new sections, to be known as sections 339.900, 339.903, 339.906, 339.909,  
3 339.912, 339.915, 339.918, 339.921, 339.924, 339.927, 339.930, 339.933, 339.936,  
4 and 339.939, to read as follows:

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

3 (1) "Apprentice home inspector", an individual who desires to  
4 perform home inspections as an apprentice and complies with the  
5 apprenticeship rules established by the board;

6 (2) "Board", the Missouri home inspectors board;

7 (3) "Client", a person or persons who engage the services of a  
8 licensed home inspector to perform a home inspection by paying the  
9 inspection fee and approving the inspection agreement;

10 (4) "Component", a part of a system, as defined in this section;

11 (5) "Division", the division of professional registration;

12 (6) "Home inspection", the process by which a home inspector, for  
13 payment, visually examines the readily accessible systems and  
14 components of a residential building and describes such systems in  
15 writing in accordance with the standards of practice established by the  
16 board;

17 (7) "Home inspection report", a written report on the home  
18 inspection to standards defined by the board;

19 (8) "Home inspector", an individual who is retained to perform

20 a home inspection for compensation;

21 (9) "Home inspector apprentice supervisor", an individual who is  
22 a licensed home inspector and is approved by the board to supervise  
23 home inspector apprentices;

24 (10) "Readily accessible", available for visual inspection without  
25 requiring the movement of personal property, dismantling, destructive  
26 measures, or any action in the opinion of the inspector that would  
27 likely involve risk of injury to the state-licensed inspector, another  
28 person, or property;

29 (11) "Residential building", a structure of one to four dwelling  
30 units;

31 (12) "State-licensed home inspector", an individual licensed by  
32 the board under sections 339.900 to 339.939;

33 (13) "System", a combination of interacting or interdependent  
34 components, as defined by the board, assembled to carry out one or  
35 more functions.

339.903. 1. No person shall act as a home inspector, directly or  
2 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 a state-licensed home inspector under  
9 sections 339.900 to 339.939 may assist a state-licensed home inspector  
10 in the performance of a home inspection provided that the person is  
11 personally supervised by a state-licensed home inspector and any home  
12 inspection report rendered in connection with the home inspection is  
13 reviewed and signed by the 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, or  
17 employee thereof, who as owner performs inspections of residential  
18 property owned by such person, partnership, association, or  
19 corporation;

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

22 employment;

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

28 (4) A real estate broker, real estate salesperson, real estate  
29 appraiser, architect, or engineer acting within the scope of his or her  
30 license;

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

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

35 (7) Any person employed or retained by a residential home  
36 builder to inspect or provide warranty services for such home builder  
37 with respect to any home built by such builder.

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

39 (1) A compliance inspection for any code or government  
40 regulation; or

41 (2) An examination for, including but not limited to, the  
42 conditions and operation of kitchen-type appliances; laundry  
43 equipment; onsite water supplies or wells; private waste systems;  
44 irrigation systems; fire suppression systems; swimming pools and  
45 heaters; hot tubs, saunas, or spas; exterior cooking equipment; low  
46 voltage systems; the determination of the presence of wood-destroying  
47 organisms or pests; the determination of the presence of fungi, mold,  
48 bacteria, asbestos, lead-based paint, gases or conditions of air quality,  
49 acoustics and other components or conditions as identified by the  
50 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 or his or her spouse shall have never been

9 engaged in the businesses of home inspections, real estate appraisal,  
10 real estate sales, or making loans secured by real estate. The board  
11 shall elect from its membership a president and vice president each of  
12 whom shall be elected at the times, and serve for the terms, as are  
13 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 in any  
23 particular home inspector association.

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

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

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

339.909. 1. The board shall have the following powers and duties  
2 and shall 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 describing the minimum uniform standards of practice  
13 for a home inspection;

14 (5) Rules establishing the criteria for the supervision and  
15 training of home inspector apprentices;

16 (6) An application process and administrative procedures for  
17 processing applications, issuing home inspector licenses, and  
18 conducting disciplinary proceedings under the provisions of sections  
19 339.900 to 339.939;

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

25 (8) Standards related to acceptable knowledge and competence  
26 necessary to perform inspections of residential real estate as required  
27 by sections 339.900 to 339.939;

28 (9) Standards of professional and ethical conduct for home  
29 inspectors;

30 (10) Continuing education requirements for the renewal of  
31 licensure that will meet the requirements of sections 339.900 to 339.939;

32 (11) Rules which define systems and items that are outside the  
33 scope of a home inspection and which are not otherwise included in  
34 sections 339.900 to 339.939; and

35 (12) Reasonable rules as deemed necessary or desirable by the  
36 board to carry out and enforce the provisions of sections 339.900 to  
37 339.939.

38 2. The board:

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

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

46           (3) May contract with a testing service to provide and conduct  
47 such examinations;

48           (4) Shall have authority to determine who meets the criteria for  
49 licensure;

50           (5) Shall investigate to verify such applicant's qualifications. If  
51 the results of the investigation are satisfactory to the board and the  
52 applicant is otherwise qualified, the board shall issue to the applicant  
53 a license authorizing the applicant to act as a state-licensed home  
54 inspector in Missouri;

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

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

62           3. Any rule or portion of a rule, as that term is defined in section  
63 536.010, that is created under the authority delegated in this section  
64 shall become effective only if it complies with and is subject to all of  
65 the provisions of chapter 536 and, if applicable, section 536.028. This  
66 section and chapter 536 are nonseverable and if any of the powers  
67 vested with the general assembly pursuant to chapter 536 to review, to  
68 delay the effective date, or to disapprove and annul a rule are  
69 subsequently held unconstitutional, then the grant of rulemaking  
70 authority and any rule proposed or adopted after January 1, 2015, shall  
71 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 into 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 either two times  
13 the amount of the appropriation from the board's funds for the  
14 preceding fiscal year or, if the board requires by rule permit renewal  
15 less frequently than yearly, 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 at least eighty classroom hours, a board-approved  
17 apprenticeship program, or a board-approved program consisting of a  
18 combination of classroom hours and apprenticeship field training  
19 hours;

20 (4) Have passed an examination approved by the board; and

21 (5) Pay the appropriate fee set by the board.

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

25 4. An applicant who fails an examination taken under sections

26 **339.900 to 339.939 may apply for reexamination as specified by board**  
27 **rule.**

339.918. 1. Any person desiring to practice as an apprentice  
2 home inspector 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. To satisfy requirements for licensure, the apprentice home  
7 inspector shall complete fifty home inspections under the direct  
8 supervision of a licensed home inspector apprentice supervisor and  
9 comply with 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 apprentice home inspectors.

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

10 3. The board is authorized to issue an inactive license to any  
11 licensee who applies for such license on a form provided by the board  
12 and remits the fee for an inactive license established by the board. An  
13 inactive license may be issued only to a person who has previously  
14 been issued a license to practice as a home inspector in this state, who  
15 is no longer regularly engaged in such practice, and who does not hold  
16 himself or herself out to the public as being professionally engaged in  
17 such practice in this state. Each inactive license shall be subject to all  
18 provisions of sections 339.900 to 339.939, except as otherwise  
19 specifically provided. Each inactive license may be renewed by the  
20 board subject to all provisions of this section and all other provisions



21 of sections 339.900 to 339.939. An inactive licensee may apply for a  
22 license to regularly engage in the practice of home inspection upon  
23 filing a written application on a form provided by the board,  
24 submitting the reactivation fee established by the board, and  
25 submitting satisfactory proof of current competency as established by  
26 the board.

339.924. 1. Each educational provider shall apply for approval  
2 each calendar year and shall record all attendance and satisfactory  
3 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 and renewal of  
9 certification 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 has 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  
13 339.915 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 339.915, 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, of**  
27 **which an essential element is fraud, dishonesty, sexual misconduct, or**  
28 **an act of violence, regardless of the imposition of sentence;**

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

32           **(6) Failing to follow the minimum uniform standards of practice**  
33 **for a home inspection established by the board;**

34           **(7) Violating or assisting or enabling any person to willfully**  
35 **disregard any of the provisions of sections 339.900 to 339.939 or the**  
36 **rules of the board for the administration and enforcement of the**  
37 **provisions of sections 339.900 to 339.939;**

38           **(8) Accepting an inspection assignment when the employment**  
39 **itself is contingent upon the state-licensed home inspector's reporting**  
40 **a predetermined analysis or opinion or if the fee to be paid for the**  
41 **performance of the home inspection is contingent upon the opinion or**  
42 **conclusion reached or upon the consequences resulting from the home**  
43 **inspection;**

44           **(9) Violating the confidential nature of records to which the**  
45 **person gained access through employment or engagement to perform**  
46 **a home inspection;**

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

49           **(11) Violating any professional trust or confidence;**

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

52           **(13) Using any advertisement or solicitation which is false,**  
53 **misleading, or deceptive to either the general public or persons to**  
54 **whom the advertisement or solicitation is primarily directed;**

55           **(14) Disciplinary action taken against the holder of a license or**

56 other right to practice any profession regulated under sections 339.900  
57 to 339.939, or similar professions, imposed by another state, territory,  
58 federal agency, or country upon grounds for which revocation or  
59 suspension is authorized in this state.

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

71 4. Applicants for relicensure or reinstatement after revocation  
72 shall be required to successfully complete the examination for original  
73 licensure required by section 339.915 as a condition to reinstatement  
74 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, inspection reports, and supporting data assembled and  
4 formulated in preparing inspection reports for three years and a  
5 day. The service period for retention of the records applicable to each  
6 engagement of the services of the state-licensed home inspector shall  
7 begin on the date of the home inspection report. Such records shall be  
8 made available by the state-licensed home inspector for inspection and  
9 copying by the board on reasonable notice to the state-licensed home  
10 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, 2015, 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 2015;

6 (2) Has passed a psychometrically valid and legally defensible  
7 proctored home inspection examination; and

8 (3) Provides evidence of completing one hundred 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 shall 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, 2015.

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