

1 **State of Arkansas**
2 **79th General Assembly**
3 **Regular Session, 1993**
4 **By: Representatives Blair and Dietz**

A Bill

HOUSE BILL 1913

For An Act To Be Entitled

8 "AN ACT TO DEFINE AND REGULATE RESIDENTIAL HOME
9 INSPECTIONS; TO REQUIRE LICENSURE OF RESIDENTIAL HOME
10 INSPECTORS; TO ESTABLISH MINIMUM QUALIFICATIONS AND
11 PROCEDURES FOR LICENSURE; AND FOR OTHER PURPOSES."

Subtitle

14 "TO PROVIDE FOR RESIDENTIAL HOME INSPECTIONS AND THE
15 MINIMUM QUALIFICATIONS AND LICENSURE OF INSPECTORS."

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

19 SECTION 1. This act shall be known and may be cited as the Arkansas
20 Residential Home Inspector License Law.

22 SECTION 2. As used in this act, unless the context otherwise requires:

23 (1) "Agency" means the state board, commission, department or other
24 entity established by the General Assembly to administer this act and regulate
25 the practice of residential home inspection and residential home inspectors in
26 the State of Arkansas; provided, however, that the word "Agency" shall mean
27 the Arkansas Real Estate Commission until December 31, 1995, at which time
28 that Commission's authority and responsibility under this act expire;

29 (2) "Dwelling Unit" means a residence intended or designed for
30 occupancy by a single family;

31 (3) "Residence" or "Residential Home" means a physical structure or
32 dwelling intended or designed as a place of abode for people;

33 (4) "Residential Home Inspection" means an inspection of a residence
34 made to identify visible defects or conditions that may adversely affect the
35 function and integrity of the items, components and systems inspected, or the

1 health and safety of the occupants of the residence; and

2 (5) "Residential Home Inspector" means a person who, for compensation
3 or the promise or expectation thereof, performs a residential home inspection
4 of a building or buildings with one (1) through four (4) dwelling units,
5 inclusive.

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7 SECTION 3. (a) The Agency is authorized to do all things necessary,
8 convenient or desirable to carry out the provisions of this act and to design,
9 implement and administer a licensing and regulatory program and procedure for
10 residential home inspectors.

11 (b) The Agency shall appoint an advisory board consisting of three (3)
12 persons *who are residential home inspectors* to advise and assist the Agency in
13 its design and implementation of the regulatory program and procedures for
14 licensure and regulation of residential home inspectors. The Agency shall
15 determine when the advisory board shall meet and what duties it will perform,
16 and any decisions or recommendations made by the advisory board will be
17 advisory only, and will not be binding upon the Agency. Initial members shall
18 be appointed to terms of one (1), two (2) and three (3) years, and their
19 successors shall serve terms of three (3) years. All terms shall expire on
20 December 31 of the respective year and members shall serve until their
21 successors are appointed.

22 (c) The Agency is authorized to enact such rules and regulations as it
23 deems necessary or desirable in order to carry out its responsibilities,
24 duties and authority pursuant to this act.

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26 SECTION 4. (a) It shall be unlawful for any person, firm, partnership,
27 co-partnership, association or corporation to act as a residential home
28 inspector or advertise or assume to act as a residential home inspector
29 without having first complied with the terms of this act and all regulations
30 promulgated by the Agency pursuant hereto, and having first secured a regular
31 valid license as a residential home inspector issued by the Agency.

32 (b) (1) Any person violating the provisions of this act shall be
33 deemed guilty of a Class D Felony, and upon conviction, punished accordingly.

34 (2) Any officer or agent of a corporation or member or agent of a
35 firm, partnership, co-partnership, or association who shall personally

1 participate in or in any way be an accessory to any violation of this act by
2 the firm, partnership, co-partnership, association, or corporation shall be
3 subject to all the penalties prescribed in this section for individuals.

4 (3) The Agency_s Executive Director or other designee, or any
5 licensed residential home inspector residing in the county where the violation
6 occurs may by affidavit institute criminal proceedings against any violator of
7 this act without having to file a bond for costs.

8 (4) The prosecuting attorney for each county shall prosecute any
9 violations of the provisions of this act which occurs in his or her county.

10 (c) The provisions of this act shall not apply to a licensed
11 electrician, plumber, architect, engineer or other person holding a valid
12 license issued by the State of Arkansas provided that such person_s activity
13 is limited to that activity authorized by his or her license. However, any
14 such person who performs a residential home inspection shall be presumed to
15 require licensure under this act and shall have the burden of overcoming such
16 presumption by proof that he or she was performing that activity authorized by
17 and within the scope of his or her license.

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19 SECTION 5. Licenses shall be granted only to applicants who:

- 20 (1) Bear a good reputation for honesty, truthfulness and fair dealing;
21 (2) Are competent to perform residential home inspections; and
22 (3) Comply with such education, examination and experience requirements
23 as the Agency may establish.

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25 SECTION 6. The Agency may establish minimum education and experience
26 requirements for licensure, and may require applicants to pass an examination
27 prior to licensure. Such requirements shall be established by regulation.

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29 SECTION 7. (a) The Agency may require such fees as deemed necessary or
30 desirable, including, without limitations, fees for application, examination,
31 temporary license, regular license, and renewal of license.

32 (b) The Agency shall establish the fees at amounts sufficient to insure
33 receipt by the Agency of sufficient funds to implement and administer this
34 act, and to provide sufficient funds to insure the continuous operation of the
35 licensure program.

1 (c) The Agency is also authorized to make reasonable charges for
2 materials provided by the Agency and for services performed in connection with
3 providing such materials.

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5 SECTION 8. All licenses issued under this act shall expire on December
6 31 of each year. Renewal of licenses shall be in accordance with regulations
7 established by the Agency.

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9 SECTION 9. (a) The following acts, conduct or practices are prohibited
10 and any licensed residential home inspector found guilty shall be subject to
11 disciplinary action by the Agency:

12 (1) obtaining a license by means of fraud, misrepresentation or
13 concealment;

14 (2) Violating any of the provisions of this act or any rules or
15 regulations adopted pursuant to this act or any order issued thereunder;

16 (3) Being convicted of any crime involving moral turpitude,
17 fraud, dishonesty, untruthfulness, or untrustworthiness; provided, that for
18 the purposes of this section being convicted shall include all instances in
19 which a plea of guilty or nolo contendere is the basis for the conviction, and
20 all proceedings in which the sentence has been deferred or suspended, and a
21 certified copy of the final judgement of any court of competent jurisdiction
22 in such matters shall be conclusive evidence in any hearing under this act;

23 (4) Making any substantial misrepresentation;

24 (5) Making, printing, publishing, distributing, or causing,
25 authorizing, or knowingly permitting the making, printing, publication or
26 distribution of false statements, claims, descriptions or promises of such
27 character as to reasonably induce, persuade, or influence any person to act
28 thereon;

29 (6) Failing, within a reasonable time, to complete an inspection
30 which the licensee has been employed to make;

31 (7) Committing any act involving moral turpitude, fraud,
32 dishonesty, untruthfulness or untrustworthiness;

33 (8) Advertising in a false, misleading or deceptive manner;

34 (9) Being unworthy or incompetent to act as a residential home
35 inspector in such manner as to safeguard the interests of the public;

1 (10) Any other conduct whether of the same or a different
2 character from that hereinbefore specified which constitutes improper,
3 fraudulent or dishonest dealing.

4 (b) Any license obtained through mistake or inadvertence shall be
5 subject to revocation.

6 (c) A licensee_s license revoked pursuant to this section shall be
7 eligible to apply for a new license after the expiration of two (2) years from
8 the date of revocation and not before.

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10 SECTION 10. (a) The Agency may investigate the actions of any person
11 engaged in the business of residential home inspector or acting or advertising
12 as such, and if such person is found to have violated this act, the Agency may
13 impose any one (1) or more of the following sanctions:

14 (1) Suspension, revocation or denial of a license or the renewal
15 thereof;

16 (2) A penalty not to exceed one thousand dollars (\$1,000) for
17 each violation;

18 (3) Completion of appropriate educational programs or courses;

19 (4) Successful completion of an appropriate examination;

20 (5) Conditions or restrictions upon the licensee_s license or
21 practice; or

22 (6) Such other requirements or penalties as may be appropriate to
23 the circumstances of the case, and which would achieve the desired
24 disciplinary purposes, but which would not impair the public welfare and
25 morals.

26 (b) The Agency is authorized to file suit in either the Circuit Court
27 of Pulaski County or the circuit court of any county in which the defendant
28 resides or does business to collect any penalty assessed pursuant to this act
29 if such penalty is not paid within the time prescribed by the Agency.

30 (c) Where deemed appropriate, the Agency may suspend the imposition of
31 any sanctions imposed upon appropriate terms and conditions.

32 (d) *The provisions of Sections 17-35-401 et seq. of the Arkansas Code*
33 *pertaining to the Real Estate Recovery Fund shall not apply to any claims*
34 *arising from or damages caused by a violation or violations of this act or*
35 *regulations promulgated hereunder.*

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SECTION 11. This act shall be in full force and effect from and after January 1, 1994. However, during the transitional period from the time this act is passed until its effective date, the agency may appoint the advisory board and begin planning implementation of the act, including drafting and enacting rules and regulations. During this transitional period and until December 31, 1994, the Agency may grant temporary licenses to persons who are acting as residential home inspectors without requiring those persons to meet any educational, experience, or examination requirements prior to issuance of the temporary licenses. Provided, however, that no temporary license shall be effective prior to January 1, 1994 and all temporary licenses shall expire on or before December 31, 1994.

SECTION 12. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 13. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 14. All laws and parts of laws in conflict with this act are hereby repealed.

/s/Buddy Blair, et al

As Engrossed: 3/23/93

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