

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas
2 81st General Assembly
3 Regular Session, 1997

As Engrossed: S2/17/97 S2/27/97

A Bill

SENATE BILL 277

4
5 By: Senator Canada
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7

For An Act To Be Entitled

8
9 "AN ACT ESTABLISHING THE ARKANSAS HOME INSPECTORS
10 REGISTRATION ACT; TO PROVIDE FOR THE REGISTRATION AND
11 QUALIFICATIONS OF HOME INSPECTORS IN THE STATE; AND TO
12 PROVIDE CIVIL SANCTIONS AND PENALTIES FOR VIOLATIONS; AND
13 FOR OTHER PURPOSES."

Subtitle

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15 "AN ACT TO ESTABLISH THE ARKANSAS HOME
16 INSPECTORS REGISTRATION ACT."
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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21 SECTION 1. This act shall be known and may be cited as "The Arkansas
22 Home Inspectors Registration Act." It is the intent of the legislature in
23 enacting this act to assure that consumers of home inspection services can
24 rely upon the competence of home inspectors. It is the intent of the
25 legislature that, in ascertaining the degree of care that would be exercised
26 by a reasonably prudent home inspector, the court may consider the standards
27 of practice and code of ethics of the American Society of Home Inspectors, the
28 Arkansas Association of Real Estate Inspectors, or equivalent professional
29 home inspector associations.

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31 SECTION 2. For the purpose of this act:

32 (1) "Home inspector" means a person who engages in the business
33 of performing home inspections for compensation and, who, in the pursuit of
34 that independent business, undertakes or offers to undertake, or submits a bid
35 to, or contracts or undertakes to inspect, or assumes charge, in a supervisory
36 capacity or otherwise, or inspects the condition of a private residence on

1 behalf of another person.

2 (2) "Home inspection" means a physical examination of a home made
3 to identify visible defects or conditions that may adversely affect the
4 function and integrity of the items, components, and systems inspected, or the
5 health or safety of the occupants of the residence. Such inspections may
6 include ancillary buildings.

7 (3) "Home or residence" means any dwelling, from one (1) to four
8 (4) units in design intended principally for residential purposes by one (1)
9 or more individuals.

10 (4) "Person" means any natural person.

11 (5) "Equivalent professional home inspector association" means a
12 professional association determined as equivalent to the American Society of
13 Home Inspectors, or the Arkansas Association of Real Estate Inspectors by the
14 Secretary of State and also approved by a majority of the home inspectors
15 registered under this act at the time the determination is made.

16 (6) "Home inspection report" means a written report prepared for
17 a fee and issued by a home inspector after a home inspection. The report
18 clearly describes and identifies the inspected systems, structures, or
19 components of the dwelling, any defects identified, and any recommendations
20 regarding the conditions observed or recommendations for evaluation by
21 appropriate persons.

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23 SECTION 3. (a) A person applying for registration, or renewal of
24 registration, as a home inspector shall submit an application, under oath,
25 upon a form to be prescribed by the Secretary of State which shall include as
26 a minimum, the following information pertaining to the applicant:

27 (1) The name and address under which the applicant conducts
28 business, if an individual proprietorship; the name and address of each
29 partner or venturer, if the applicant is a party to a partnership or joint
30 venture; or the name and address of the corporate officers and statutory agent
31 for service, if the applicant is an employee of or party to a corporation.

32 (2) A certificate issued by an insurance company licensed, or
33 surplus lines approved, to do business in the State of Arkansas that the
34 applicant has procured general liability insurance in the minimum amount of
35 one hundred thousand dollars (\$100,000); and, if applicable, workers
36 compensation insurance coverage.

1 (3) Evidence of one of the following professional qualifications:

2 (A) Membership or candidacy in, and adherence to the
3 Standards of Practice and Code of Ethics of the American Society of Home
4 Inspectors, Inc. (ASHI), the Arkansas Association of Real Estate Inspectors
5 (AAREI), or an equivalent professional home inspection association. Persons
6 in candidate status must provide evidence of having successfully completed the
7 respective professional associations certification examination.

8 (B) A high school diploma or its equivalent, work
9 experience doing home inspections for at least one (1) year under the direct
10 supervision of a registered home inspector, and completion of one hundred
11 (100) home inspections for compensation.

12 (C) Current professional registration in Arkansas as an
13 architect, architectural engineer, mechanical engineer, or structural
14 engineer.

15 (D) A high school diploma or its equivalent, work
16 experience doing home inspections for at least one (1) year, completion of at
17 least twenty (20) home inspections for compensation, and successful completion
18 of at least ninety (90) core hours of a real estate inspection education
19 program.

20 (4) Evidence of a positive net worth or a fidelity bond payable
21 to the Secretary of State in the amount of ten thousand dollars (\$10,000).

22 (b) The information contained in an application shall be a matter of
23 public record and open to public inspection.

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25 SECTION 4. Certificates of registration.

26 Certificates shall be consecutively numbered by the Secretary of State.
27 Certificates shall be issued only to properly qualified home inspectors.
28 Certificates for the initial registration of a home inspector shall be issued
29 for a period commencing on the date of issue and expiring on December 31 of
30 that year. Certificates shall be renewed for a term of one (1) calendar
31 year. Renewal shall be accomplished on or before sixty (60) days prior to the
32 expiration date. The Secretary of State shall issue certificates to
33 applicants upon applicants compliance with the registration requirements of
34 this act. Records of certificates and any renewals thereof shall be filed in
35 the office of the Secretary of State and be available to the public. All
36 registrants will be assigned a registration number unique to that person and

1 that number shall never be issued to any other person. When registration is
2 renewed, that persons registration number shall be perpetuated.

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4 SECTION 5. Registration and renewal fees shall be seventy dollars
5 (\$70). Payments shall be to the Secretary of State and shall accompany the
6 application to which it applies. Provided, however, the fee may be adjusted
7 by the Secretary of State as may be necessary to cover the costs and expenses
8 of performing the duties of the Secretary of State as required by this act, it
9 being intended that the registration and renewal fees shall not produce a
10 profit to the State of Arkansas. Prior to any adjustment to the fee, the
11 Secretary of State shall certify to the Legislative Council of the Legislature
12 that the adjustment is necessary in order to comply with the provisions of
13 this act. All moneys received by the Secretary of State pursuant to this act
14 shall be used to administer this act.

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16 SECTION 6. There is created in the state treasury a fund to be known as
17 the "Arkansas Home Inspectors Registration Fund." All funds, fees, charges,
18 costs and collections accruing to or collected by the office of the Secretary
19 of State under the provisions of this act shall be deposited into the state
20 treasury to the credit of this fund. The funds shall be used for the purpose
21 of this act.

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23 SECTION 7. No person shall advertise as a home inspector unless the
24 person has complied with the provisions of this act. No person who is
25 registered under one (1) name as provided in this act shall engage in business
26 as a home inspector under any other name unless the other name is also
27 registered. All advertisements, contracts, correspondence, and other
28 documents prepared by a home inspector shall indicate the home inspectors
29 registration number, name, and address as registered pursuant to this act.

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31 SECTION 8. In the event that the insurance coverage required pursuant
32 to this act shall cease to be effective, the home inspector shall notify the
33 Secretary of State, and the registration of the affected home inspector shall
34 be suspended until the insurance is reinstated or replaced. The insurance
35 company ceasing to provide coverage for the home inspector shall be requested
36 to notify the Secretary of State of the policy cancellation.

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SECTION 9. (a) Any person who undertakes or attempts to undertake the business of home inspection without first having been registered as required by this act, or who knowingly presents or files false information with the Secretary of State for the purpose of registering as a home inspector, shall be deemed guilty of a Class C misdemeanor.

(b) A person who has failed to register pursuant to this act shall not bring an action to enforce the provisions of any contract to provide home inspections which he or she entered into a violation of this act.

(c) All home inspections conducted by persons registered under this act shall be conducted in adherence to the Standards of Practice and Code of Ethics of the American Society of Home Inspectors, the Arkansas Association of Real Estate Inspectors, or equivalent professional home inspection association. Copies of these standards shall be on deposit with the Secretary of State.

(d) It is the duty of all home inspectors doing business in the State of Arkansas to conduct home inspections with the degree of care that a reasonably prudent home inspector would exercise.

(e) Nothing in this act shall be construed to allow home inspectors who are not registered as professional architects or engineers to perform any analysis of the systems, components, or structural integrity of a dwelling that would constitute the practice of civil, electrical, or mechanical engineering.

SECTION 10. Unfair practices.

It is an unfair business practice for a home inspector, a company that employs the inspector, or a company that is controlled by a company that also has a financial interest in a company employing a home inspector, to do any of the following:

(1) To perform or offer to perform, for an additional fee, any repairs to a structure on which the inspector, or the inspectors company, has prepared a home inspection report in the past twelve (12) months.

(2) Inspect for a fee any property in which the inspector, or the inspectors company, has any financial interest or any interest in the transfer of the property.

(3) To offer or deliver any compensation, inducement, or reward to the

1 owner of the inspected property, the broker, or agent, for the referral of any
2 business to the inspector or the inspection company.

3 (4) Accept an engagement to make an inspection or to prepare a report
4 in which the employment itself or the fee payable for the inspection is
5 contingent upon the conclusions in the report, preestablished findings or the
6 close of escrow.

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8 SECTION 11. Exemptions.

9 (a) A person who by virtue of his employment by a public entity does
10 home inspection work for that agency, shall not be required to be registered
11 under this act so long as those inspections are conducted solely for the
12 benefit of that entity and for no compensation beyond the salary prescribed
13 for that persons position.

14 (b) The provisions of this act shall not apply to a registered
15 professional architect or engineer or licensed electrician, plumber, or other
16 person holding a valid license issued by the State of Arkansas provided that
17 such persons activity is limited to that activity authorized by his
18 license/registration.

19 (c) This act shall not apply to a person who inspects his own home or
20 public entity who inspects its home with its own personnel specifically
21 trained for such inspection.

22 (d) Any person exempt under this section is required to obtain local
23 permits and licenses as may be required by local ordinance.

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25 Section 12. Persons affected by this act shall have ninety (90)
26 calendar days after it becomes law to comply with its provisions.

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28 SECTION 13. All provisions of this act of a general and permanent
29 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
30 Code Revision Commission shall incorporate the same in the Code.

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32 SECTION 14. If any provision of this act or the application thereof to
33 any person or circumstance is held invalid, such invalidity shall not affect
34 other provisions or applications of the act which can be given effect without
35 the invalid provision or application, and to this end the provisions of this
36 act are declared to be severable.

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SECTION 15. All laws and parts of laws in conflict with this act are hereby repealed.

SECTION 16. EMERGENCY. It is hereby found and determined by the General Assembly that the lack of a present Home Inspector registration law allows for poorly accomplished home inspections; and that the lack of a law does not allow for consumer or public protection to the citizens of the State of Arkansas. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.

/s/Canada