

JAN 19 2007

A BILL FOR AN ACT

RELATING TO REGULATION OF HOME INSPECTORS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

4 **"CHAPTER**

5 **HOME INSPECTORS**

6 § -1 **Definitions.** As used in this chapter, unless the
7 context clearly requires otherwise:

8 "Board" means the home inspector licensing board.

9 "Client" means a person who engages or seeks to engage the
10 services of a home inspector for an inspection assignment.

11 "Compensation" means direct or indirect payment, including
12 the expectation of payment, whether or not actually received.

13 "Component" means a readily accessible and observable
14 aspect of a system, such as a floor or wall, but does not
15 include individual pieces, such as boards or nails, many of
16 which similar pieces make up a system.

17 "Department" means the department of commerce and consumer
18 affairs.



1 "Home inspection" means a visual analysis undertaken to
2 render a professional opinion as to the condition of a building,
3 its carports and garages, any reasonably accessible installed
4 components, and operating systems, including the controls
5 normally operated by the owner, for the following components of
6 a residential building of four units or less: heating system,
7 electrical system, cooling system, plumbing system, structural
8 components, foundation, roof covering, exterior and interior
9 components, and site aspects as they affect the building.

10 "Home inspection report" means a written report prepared
11 for compensation and issued after a home inspection that
12 includes:

- 13 (1) Identification of the systems and components inspected
14 as required or recommended by the standards of
15 practice for home inspectors adopted by the board;
- 16 (2) Identification of systems and components inspected
17 that, in the home inspector's professional opinion,
18 are significantly deficient or are near the end of
19 their service lives;
- 20 (3) Recommendations to correct or monitor the reported
21 deficiencies; and



1 (4) Identification of systems or components designated for
2 inspection in the standards of practice that were in
3 existence at the time of the inspection, but that were
4 not inspected, and the reasons for the lack of
5 inspection.

6 "Home inspector" means a person licensed under this chapter
7 who engages in the business of performing home inspections and
8 writing home inspection reports.

9 "Readily accessible", as it refers to components of a
10 system, means that a component is available for visual
11 inspection without requiring the removal of personal property,
12 dismantling, destructive measures, or any action that likely
13 will involve risk to persons or property.

14 "Residential building" means a structure consisting of one
15 to four dwelling units.

16 "Significantly deficient", as it refers to a system or
17 component, means a system or component that is unsafe or not
18 functioning.

19 "Standards of practice" means recognized standards and
20 codes to be used in a home inspection, as determined by the
21 board and as established by rule.



1 "System" means a combination of interactive or
2 interdependent components assembled to carry out one or more
3 functions.

4 "Technically exhaustive", as it refers to an inspection,
5 means an inspection that involves dismantling and the extensive
6 use of advanced techniques, measurements, instruments, testing,
7 calculations, or other means.

8 § -2 Home inspector licensing board. (a) There is
9 established within the department a home inspector licensing
10 board consisting of seven members who shall be appointed by the
11 governor as provided in section 26-34. The members shall be
12 residents of the State, of which:

13 (1) Four members shall be licensed home inspectors who:

14 (A) Have been actively engaged in the practice of
15 home inspection for at least five years preceding
16 their appointment; and

17 (B) Have performed a minimum of five hundred home
18 inspections for compensation; and

19 (2) Three members shall be public members with no
20 financial interest in or connection to the home
21 inspection industry.



1 Industry members appointed under paragraph (1) to serve on the
2 initial licensing board shall be exempt from the licensure
3 requirement, but shall provide proof of passage of an
4 examination administered by a national examination organization
5 that complies with the standards established by the National
6 Commission for Certifying Agencies.

7 (b) Each member shall serve for a term of four years, and
8 until the member's successor is appointed and qualified;
9 provided that the terms of the initial members shall be
10 staggered as provided for in section 26-34.

11 (c) Board members affiliated with any school teaching home
12 inspection shall disclose that affiliation and at all times
13 adhere to chapter 84 and the interpretations of that chapter by
14 the state ethics commission.

15 (d) Members shall serve without compensation, but shall be
16 reimbursed for expenses, including travel expenses, necessary
17 for the performance of their duties.

18 § -3 **Powers and duties of board.** In addition to any
19 other powers and duties authorized by law, the board shall:

- 20 (1) Administer and enforce this chapter;
21 (2) Issue, renew, suspend, revoke, or reinstate licenses;



- 1 (3) Conduct investigations or hearings regarding
2 complaints for violations of this chapter;
- 3 (4) Establish standards for home inspector continuing
4 education;
- 5 (5) Adopt and publish a code of ethics and standards of
6 practice for home inspectors;
- 7 (6) Prescribe or change the fees charged for examinations,
8 license issuance and renewals, and other services; and
- 9 (7) Adopt rules pursuant to chapter 91.

10 § -4 License required. (a) No person shall provide home
11 inspection services for compensation or represent the person's
12 self as a home inspector unless licensed under this chapter.

13 (b) No business entity shall provide home inspection
14 services for compensation or use any name or title implying that
15 the business entity provides home inspection services, unless
16 each of the inspectors employed by the business entity is
17 licensed under this chapter.

18 § -5 Licenses; application; issuance. (a) An applicant
19 for a home inspector's license shall file with the board a
20 written application on a form prescribed by the board and pay
21 the prescribed application fee.



1 (b) The board may grant a license to an applicant if the
2 applicant provides to the board satisfactory evidence that the
3 applicant:

4 (1) Is of good moral character;

5 (2) Has successfully completed high school or its
6 equivalent;

7 (3) Has completed a board-approved course of study of no
8 less than eighty hours on inspection of the following
9 components of a residential building: heating system,
10 cooling system, plumbing system, electrical system,
11 structural components, foundation, roof covering,
12 exterior and interior components, and site aspects as
13 they affect the building;

14 (4) Has met the training and experience requirements
15 established by rule by the board; and

16 (5) Has passed the National Home Inspector Examination
17 offered by the Examination Board of Professional Home
18 Inspectors or other comparable nationally-recognized
19 licensing examination.

20 **§ -6 License renewal; continuing education requirement.**

21 (a) All licensee issued by the board shall be renewed
22 triennially, on or before December 31 of the renewal year.



1 (b) Failure to renew a license shall result in a
2 forfeiture of the license. Licenses that have been forfeited
3 may be restored within one year of the expiration date upon
4 payment of renewal and restoration fees. Failure to restore a
5 forfeited license within one year of the date of its expiration
6 shall result in the automatic termination of the license.
7 Persons with terminated licenses shall be required to reapply
8 for licensure as a new applicant.

9 (c) Prior to each license renewal, all licensed home
10 inspectors shall have completed twenty credit hours in board-
11 approved continuing education courses; provided that a licensee
12 who has graduated from a board-approved course of study within
13 one year of the licensee's first license renewal period shall
14 not be subject to the continuing education requirement for the
15 first license renewal.

16 (d) Each licensee shall maintain the licensee's own
17 continuing education records. At the time of renewal, each
18 licensee shall provide evidence satisfactory to the board that
19 demonstrates compliance with the continuing education
20 requirement of this section.

21 § -7 **Persons exempt from licensure.** This chapter shall
22 not apply to:



- 1 (1) Any person who is employed as a code enforcement
2 official by the State or any of its political
3 subdivisions when acting within the person's scope of
4 government employment;
- 5 (2) Any person performing a home inspection that will be
6 used solely by a bank, savings and loan association,
7 credit union, or other financial institution to
8 monitor the progress on the construction of a
9 residential structure;
- 10 (3) Any person employed as a property manager for a
11 residential structure acting within the scope of the
12 person's employment if the person does not receive
13 separate compensation for the inspection work; or
- 14 (4) Any person licensed by the State in the following
15 professions and performing inspections within the
16 scope of that person's license: architect, contractor,
17 electrician, insurance adjuster, pest control
18 operator, plumber, professional engineer, real estate
19 appraiser, real estate broker, and real estate
20 salesperson.

21 § **-8 Fees.** (a) The board, by rule, shall establish,
22 prescribe, or amend the fees for license issuance, renewal, and



1 restoration, and for other services provided under this chapter;
2 provided that fees shall not exceed amounts necessary to defray
3 the related administrative costs.

4 (b) All fees shall be paid to the credit of the compliance
5 resolution fund established under section 26-9(o) and managed in
6 accordance with section 26-9(1).

7 § -9 **General standards and limitations of practice.** (a)

8 A home inspector contracted to perform a home inspection shall
9 inspect readily accessible installed systems and components of
10 residential buildings and provide a signed, written inspection
11 report within five business days of performing an inspection. A
12 home inspector may:

13 (1) Inspect other systems or components, in addition to
14 those required or requested;

15 (2) Specify recommended repairs, if appropriately
16 qualified; and

17 (3) Exclude systems and components from the inspection if
18 requested by the client.

19 (b) Home inspectors are not required to perform
20 inspections that:

21 (1) Are technically exhaustive; or

22 (2) Identify concealed conditions or latent defects.



1 § -10 **Limitations on scope of home inspection.** (a)

2 This chapter does not require a home inspector to perform any
3 action or make any inspection that is contrary to the standards
4 of practice as adopted by the board, and this section.

5 (b) Home inspectors are not required to determine:

- 6 (1) The condition of systems or components that are not
7 readily accessible; provided that the home inspection
8 report shall specify which systems or components were
9 not inspected pursuant to this exclusion;
- 10 (2) The remaining life of any system or component;
- 11 (3) The strength, adequacy, effectiveness, or efficiency
12 of any system or component;
- 13 (4) The causes of any condition or deficiency;
- 14 (5) The methods, materials, or costs of corrective work;
- 15 (6) Future conditions, including but not limited to the
16 failure of systems and components;
- 17 (7) The suitability of the property for any specialized
18 use;
- 19 (8) The property, system, or component's compliance with
20 regulatory requirements;
- 21 (9) The property's market value or marketability;
- 22 (10) The advisability of the purchase of the property;



- 1 (11) The presence of potentially hazardous plants or
- 2 animals, including but not limited to wood-destroying
- 3 organisms or diseases harmful to humans;
- 4 (12) The presence of any environmental hazards, including
- 5 but not limited to toxins, carcinogens, noise, and
- 6 contaminants in soil, water, or air;
- 7 (13) The operating costs of systems or components; or
- 8 (14) The acoustical properties of any system or component.
- 9 (c) Home inspectors are not required to:
- 10 (1) Offer or perform any act or service contrary to law;
- 11 (2) Offer or perform engineering or architectural
- 12 services;
- 13 (3) Offer or perform work in any trade or professional
- 14 service, other than home inspection; or
- 15 (4) Offer any warranties or guarantees.
- 16 (d) Home inspectors are not required to operate:
- 17 (1) Any system or component that is shut down or otherwise
- 18 inoperable;
- 19 (2) Any system or component that does respond to normal
- 20 operating controls; or



- 1 (3) Shut-off valves; provided that the home inspection
2 report shall specify which system or component was not
3 inspected pursuant to this exclusion.
- 4 (e) Home inspectors are not required to enter:
- 5 (1) Any area that, in the home inspector's opinion, is
6 likely to be dangerous to the home inspector or other
7 persons, or the inspection of which is likely to
8 damage the property, its systems, or its components;
9 or
- 10 (2) Under-floor crawl spaces or attics that are not
11 readily accessible; provided that the home inspection
12 report shall specify which areas were not inspected
13 pursuant to this exclusion.
- 14 (f) Home inspectors are not required to inspect:
- 15 (1) Underground items, including but not limited to
16 underground storage tanks or other underground
17 indications of their presence, whether abandoned or
18 active;
- 19 (2) Systems or components that are not installed;
- 20 (3) Decorative items;
- 21 (4) Systems or components that are not entered;



1 (5) Detached structures, other than garages and carports;
2 or

3 (6) Common elements or common areas in multi-unit housing
4 projects, such as condominiums or cooperative housing
5 developments.

6 (g) Home inspectors are not required to:

7 (1) Perform any procedure or operation that, in the home
8 inspector's opinion, is likely to be dangerous to the
9 home inspector or other persons, or the inspection of
10 which is likely to damage the property, its systems,
11 or its components;

12 (2) Move suspended ceiling tiles, personal property,
13 furniture, equipment, plants, soil, snow, ice, or
14 debris; or

15 (3) Dismantle any system or component, except as
16 explicitly required by the standards of practice.

17 § -11 Denial, suspension, or revocation of license;

18 conditions for reinstatement. (a) The board may refuse to
19 issue or renew, or suspend or revoke a license on any of the
20 following grounds:

21 (1) Performing, or offering to perform, for an additional
22 fee, any repairs to a structure for which the



1 applicant or licensee or the applicant's or licensee's
2 employer has performed a home inspection within the
3 preceding twelve month; provided that repairs
4 performed pursuant to a claim under a home protection
5 contract are not prohibited under this paragraph;

6 (2) Inspect for a fee any property in which the applicant
7 or licensee or applicant's or licensee's employer has
8 a financial interest, or any interest in the transfer
9 of the property;

10 (3) Offering or paying any compensation, inducement, or
11 reward to the owner, broker, or agent of the inspected
12 property, for the referral of any business to the
13 applicant or licensee or the applicant's or licensee's
14 employer; or

15 (4) Accepting an engagement to inspect or to prepare an
16 inspection report if the engagement or compensation is
17 contingent upon either the conclusions in the report,
18 pre-established findings, or the close of escrow.

19 (b) The board, as a condition of removing a limitation on
20 a license or reinstating a suspended or revoked license, may
21 require a licensee to:



1 (1) Obtain insurance against loss, expense, and liability
2 resulting from error and omissions or neglect in the
3 performance of services as a home inspector; or

4 (2) File with the board a bond furnished by a surety
5 company authorized to do business in the State and in
6 an amount approved by the board.

7 § **-12 Complaints registry.** Notwithstanding any other law
8 to the contrary, in lieu of investigating a complaint for an
9 alleged violation of this chapter, the board may place in a
10 registry a complaint against a licensee, the licensee's
11 response, and any records concerning the complaint; provided
12 that:

13 (1) The board shall provide the licensee with a copy of
14 the complaint no late than thirty days after receipt
15 of the complaint;

16 (2) The licensee may have placed in the registry the
17 licensee's statement concerning the accuracy or
18 relevance of the information contained in the
19 complaint;

20 (3) The complaint and licensee's statement in response
21 shall be available to the public;



1 (4) All records relating to a complaint filed against a
2 licensee shall be removed from the registry if no
3 further complaints have been filed against the
4 licensee within two years from the filing of the
5 complaint; and

6 (5) Unworthy or frivolous complaints shall be removed from
7 the registry.

8 § -13 **Home inspector liability.** No party, other than a
9 client of a home inspector, may bring an action to recover
10 damages for the home inspector's acts or omissions in performing
11 the inspection. An action shall be filed no later than one year
12 from the date of the inspection."

13 SECTION 2. There is appropriated out of the general
14 revenues of the State of Hawaii the sum of \$, or so much
15 thereof as may be necessary for fiscal year 2007-2008, to
16 implement a home inspector licensing program.

17 The sum appropriated shall be expended by the department of
18 commerce and consumer affairs for the purposes of this Act.

19 SECTION 3. The department of commerce and consumer affairs
20 may appoint an administrative assistant and secretary, without
21 regard to chapter 76, Hawaii Revised Statutes, to assist with
22 the home inspector licensing program.



1 SECTION 4. This Act shall take effect on July 1, 2008;

2 provided that:

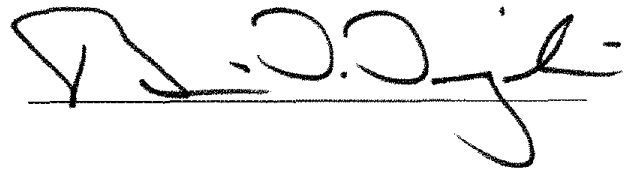
3 (1) Sections -2 and -3 of section 1 of this Act and
4 section 3 of this Act shall take effect upon approval;

5 and

6 (2) Section 2 of this Act shall take effect on July 1,
7 2007.

8

INTRODUCED BY:

A handwritten signature in black ink, appearing to read "R. D. O'Neil", is written over a horizontal line.

Report Title:

Home Inspectors; Licensing

Description:

Requires licensing of professional home inspectors by the department of commerce and consumer affairs. Establishes licensing board. Appropriates funds.

