

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 928 Session of
2003

INTRODUCED BY GREENLEAF, CONTI, WAGNER, LEMMOND, KUKOVICH,
MOWERY AND STACK, OCTOBER 8, 2003

REFERRED TO CONSUMER PROTECTION AND PROFESSIONAL LICENSURE,
OCTOBER 8, 2003

AN ACT

1 Amending Title 68 (Real and Personal Property) of the
2 Pennsylvania Consolidated Statutes, establishing a board to
3 regulate home inspectors.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Section 7502(a) of Title 68 of the Pennsylvania
7 Consolidated Statutes is amended to read:

8 § 7502. Definitions and index of definitions.

9 (a) Definitions.--The following words and phrases when used
10 in this chapter shall have the meanings given to them in this
11 section unless the context clearly indicates otherwise:

12 "Board." The Pennsylvania Home Inspectors Board established
13 under section 7502.1 (relating to Pennsylvania Home Inspectors
14 Board).

15 "Fund." The Pennsylvania Home Inspectors Fund established
16 under section 7502.4 (relating to Pennsylvania Home Inspectors
17 Fund).

18 "Home inspection." A noninvasive visual examination of some

1 combination of the mechanical, electrical or plumbing systems or
2 the structural and essential components of a residential
3 dwelling designed to identify material defects in those systems
4 and components and performed for a fee in connection with or
5 preparation for a proposed or possible residential real estate
6 transfer. The term also includes any consultation regarding the
7 property that is represented to be a home inspection or that is
8 described by any confusingly similar term. The term does not
9 include an examination of a single system or component of a
10 residential dwelling such as, for example, its electrical or
11 plumbing system or its roof. The term also does not include an
12 examination that is limited to inspection for or of one or more
13 of the following: wood destroying insects, underground tanks and
14 wells, septic systems, swimming pools and spas, alarm systems,
15 air and water quality, tennis courts and playground equipment,
16 pollutants, toxic chemicals and environmental hazards.

17 "Home inspection report." A written report on the results of
18 a home inspection.

19 "Home inspector." An individual who performs a home
20 inspection.

21 "National home inspectors association." Any national
22 association of home inspectors that:

23 (1) Is operated on a not-for-profit basis and is not
24 operated as a franchise.

25 (2) Has members in more than ten states.

26 (3) Requires that a person may not become a full member
27 unless the person has performed or participated in more than
28 100 home inspections and has passed a recognized or
29 accredited examination testing knowledge of the proper
30 procedures for conducting a home inspection.

(4) Requires that its members comply with a code of conduct and attend continuing professional education classes as an ongoing condition of membership.

* * *

Section 2. Title 68 is amended by adding sections to read:

§ 7502.1. Pennsylvania Home Inspectors Board.

(a) Board.--The Pennsylvania Home Inspectors Board shall be a departmental administrative board in the Department of State.

(b) Members.--The board shall consist of 11 members as follows:

(1) The Commissioner of Professional and Occupational Affairs in the Department of State.

(2) The Director of the Bureau of Consumer Protection in the Office of Attorney General or his designee.

(3) Six members who shall be registered home inspectors, who have been actively engaged in the practice of home inspections for at least five years immediately preceding their appointment, and who have performed a minimum of 500 home inspections for compensation.

(4) A licensed real estate agent or broker or an attorney who practices real estate law.

(5) A professional engineer.

(6) A public member.

(c) Appointment and terms.--The members listed in subsection (b)(1) and (2) shall serve ex officio. The members listed in subsection (b)(3), (4), (5) and (6) shall be appointed by the Governor with the advice and consent of the majority of the members elected to the Senate. Except as provided for in subsection (d), the term of office of each appointed member shall be four years from his appointment, or until his successor

1 has been appointed and qualified. Members shall not be eligible
2 to serve for more than three consecutive terms. In the event
3 that any member shall die or resign during the member's term of
4 office, the member's successor shall be appointed in the same
5 manner and with the same qualifications as provided for in this
6 subsection and shall hold office for the unexpired term.

7 (d) Initial terms.--Two of the members appointed under
8 subsection (b)(3) and the member appointed under subsection
9 (b)(4) shall serve for an initial term of two years. Two of the
10 members appointed under subsection (b)(3) and the member
11 appointed under subsection (b)(5) shall serve for an initial
12 term of three years. The six members initially appointed to the
13 board under subsection (b)(3) shall be members of a national
14 home inspectors association and shall be in compliance with the
15 qualifications required under subsection (b)(3) except for the
16 requirement that the members shall be registered with the board
17 at the time of appointment.

18 (e) Quorum; officers; and meetings.--A majority of the
19 members currently serving on the board shall constitute a
20 quorum. The board shall annually elect a chairman, vice chairman
21 and secretary from among its members. The Commissioner of
22 Professional and Occupational Affairs shall call and chair the
23 first meeting. The board shall meet at least twice each year in
24 Harrisburg to conduct the business of the board. The board also
25 may conduct additional meetings in other areas of this
26 Commonwealth. Reasonable notice of all meetings shall be given
27 in conformity with 65 Pa.C.S. Ch. 7 (relating to open meetings).

28 (f) Compensation.--Each member of the board appointed under
29 subsection (b)(3), (4), (5) and (6) shall receive reimbursement
30 for reasonable expenses in accordance with Commonwealth

regulations and per diem compensation at the rate of \$60 per day for the time actually devoted to the business of the board.

§ 7502.2. Powers and duties of the board.

The board shall have the power and duty to:

(1) Perform the duties and functions, including the adoption and, from time to time, revision of rules and regulations, and the expenditure of moneys, as necessary, to carry out the provisions of this chapter.

(2) Review, approve or reject applications for registration and annual renewal, and issue registration certificates to qualified home inspectors. The board shall adopt forms for application and renewal, and establish fees. The board may enter into reciprocity agreements with other states or territories.

(3) Establish and maintain a current list of registered home inspectors. The list shall be available for public inspection including by electronic means.

(4) Establish and maintain a current list of national home inspectors associations approved by the board as meeting the requirements of this chapter. Any national home inspectors association approved by the board shall annually provide the board with a list of its members in this Commonwealth. At the time of providing the list, the association shall notify the board when any of its members in this Commonwealth fail to keep their membership in the association or are otherwise not in compliance.

(5) Establish administrative procedures for disciplinary proceedings conducted according to the provisions of this chapter. The procedures shall include provisions for the suspension, revocation and reinstatement of registration

1 certificates.

2 (6) Establish procedures for processing and resolving
3 complaints against home inspectors. The board shall have
4 jurisdiction to resolve complaints concerning the conduct of
5 home inspectors. The board shall not have jurisdiction to
6 resolve disputes regarding the findings of a home inspection.
7 The Bureau of Consumer Protection of the Office of Attorney
8 General shall retain enforcement powers over consumer
9 complaints as appropriate pursuant to section 7505 (relating
10 to consumer remedies). The Bureau of Consumer Protection and
11 the board shall exchange information as necessary to enforce
12 the provisions of this chapter.

13 (7) Develop a model home inspection contract and
14 encourage registered home inspectors to use the model
15 contract.

16 (8) Oversee mentoring programs established pursuant to
17 the requirements of section 7506 (relating to required
18 contractual provision regarding home inspections).

19 (9) Submit annually a report to the Consumer Protection
20 and Professional Licensure Committee of the Senate and the
21 Professional Licensure Committee of the House of
22 Representatives containing information on the number of
23 registered home inspectors, a description of the types of
24 complaints received, the status of the cases, any board
25 action which has been taken, the length of time from the
26 initial complaint to final board resolution, and any other
27 appropriate information, including legislative
28 recommendations.

29 § 7502.3. Board proceedings.

30 (a) Inspection reports.--The board may, as part of an

1 investigation or as a condition of registration or renewal,
2 require a home inspector to submit in writing inspection reports
3 and other documents to be reviewed by the board. Requests by the
4 board for copies of inspection reports shall supersede any
5 contract of client privacy or confidentiality, whether written
6 or oral.

7 (b) Confidentiality.--Any documents submitted to the board
8 as part of an investigation shall be considered as confidential
9 documents and shall be used only for the purpose for which they
10 are requested. When the board completes the action for which
11 they were requested, the documents shall be returned to the home
12 inspector or shall be destroyed if the home inspector requests
13 that the documents be destroyed.

14 (c) Disciplinary hearings.--Following the submission of a
15 written complaint, the board may conduct a hearing to determine
16 whether to suspend or revoke a registration or to impose civil
17 penalties for violations of the provisions of this chapter or
18 regulations promulgated by the board. The hearing shall be
19 conducted as follows:

20 (1) The home inspector subject to the complaint shall be
21 entitled to representation by counsel.

22 (2) The hearing shall be conducted in accordance with
23 the provisions for hearings of contested cases as prescribed
24 by the applicable laws and regulations relating to
25 administrative hearings.

26 (3) The hearing may be held by the board or any member
27 thereof, or by any of its duly authorized hearing examiners.

28 (4) The board or its hearing examiner shall fix the time
29 and place of the hearing.

30 (5) Any members of the board or hearing examiner

1 authorized to conduct the hearing may administer oaths and
2 conduct investigations.

3 (6) When a matter is referred to a hearing examiner for
4 hearing, following the completion of the testimony in the
5 hearing, the hearing examiner shall, with reasonable
6 dispatch, file a report with the board setting forth findings
7 of fact and recommendations.

8 (7) Upon review of the record, the board by majority
9 vote may adopt the findings in the report or may, with or
10 without additional testimony, either return the matter to the
11 hearing examiner for further consideration as the board deems
12 necessary or make additional or other findings of fact on the
13 basis of all the legally probative evidence in the record and
14 enter its conclusions of law and order in accordance with the
15 requirements for the issuance of an adjudication under 2
16 Pa.C.S. (relating to administrative law and procedure).

17 (d) Penalties.--The board may suspend or revoke the
18 registration of a home inspector and issue a civil penalty of
19 not more than \$1,000 per violation.

20 (e) Registry.--The board shall maintain a registry including
21 a copy of a complaint against a registered home inspector, the
22 home inspector's response to the complaint, and any disciplinary
23 action by the board concerning the complaint. The registry shall
24 be cumulative and may include, but not be limited to, the
25 following complaints:

26 (1) A violation of the provisions of this chapter or the
27 regulations promulgated by the board.

28 (2) The falsification of an application for registration
29 or renewal, or otherwise providing false information to the
30 board.

1 (3) A conviction in any jurisdiction of a misdemeanor
2 involving moral turpitude or of a felony. A plea of nolo
3 contendere shall be considered a conviction.

4 (4) An action demonstrating untrustworthiness,
5 incompetence, dishonesty, gross negligence, material
6 misrepresentation, fraud or unethical conduct in any dealings
7 subject to the provisions of this chapter or the regulations
8 promulgated by the board.

9 (5) Use of advertising or solicitation that is false,
10 misleading or is otherwise deemed unprofessional by the
11 board. All advertisements, contracts, correspondence and
12 other documents utilized by a home inspector shall
13 prominently include the home inspector's name and
14 registration number as registered according to this chapter.

15 (6) Habitual or excessive use of intoxicants or illegal
16 drugs.

17 § 7502.4. Pennsylvania Home Inspectors Fund.

18 (a) Fund.--There shall be a restricted account in the State
19 Treasury to be known as the Pennsylvania Home Inspectors Fund.

20 (b) Deposits.--All funds, fees, charges, costs and
21 collections accruing to or collected under the provisions of
22 this chapter, including, but not limited to, registration and
23 renewal fees and civil penalties, shall be deposited into the
24 State Treasury to the credit of the fund.

25 (c) Disbursement.--The fund shall be used for the purposes
26 specified in this chapter. The board shall process disbursements
27 from the fund as necessary for the administration of the
28 provisions of this chapter.

29 § 7502.5. Application for registration.

30 (a) Member of national home inspectors association.--In

addition to any other requirements of the board, in order to be registered as a home inspector, the applicant must be a full member in good standing of a national home inspectors association as defined in section 7502(a) (relating to definitions and index of definitions) and approved by the board.

(b) General requirements.--All persons applying for registration or renewal as a home inspector shall be of good moral character and shall submit to the board:

(1) an application, under oath, upon a form to be prescribed by the board;

(2) a current certificate of insurance issued by an insurance company licensed, or surplus lines approved to do business in the State, indicating that the home inspector maintains insurance against errors and omissions in the amounts required under section 7509 (relating to liability insurance). Within 30 days of any lapse or failure to renew coverage, the insurance company shall notify the board of the lapse or failure to renew; and

(3) the required registration or renewal fee shall accompany the application.

(c) Other requirements.--A person applying for registration for the first time shall also submit with the application:

(1) a certified copy of at least a high school diploma or its equivalent; and

(2) a certified copy of a document attesting to the successful completion of a board-approved competency examination administered by a national home inspectors association.

(d) Renewal.--A person renewing a current registration shall also submit with his application a properly completed form that

1 states that the person has satisfactorily completed the
2 continuing education requirements for the current year offered
3 by a national home inspectors association which lists the
4 courses taken. A person seeking to renew a lapsed, suspended or
5 otherwise inactive registration shall provide other documents
6 and comply with procedures as may be prescribed by the board.
7 § 7502.6. Registration.

8 (a) Certificate.--The board shall issue certificates of
9 registration to an applicant after compliance with the
10 registration or renewal requirements of this chapter and
11 approval by the board. Certificates shall be consecutively
12 numbered. When a registration is renewed, that person's
13 registration number shall be perpetuated.

14 (b) One-year registration period.--Certificates of
15 registration of a home inspector shall be issued for a period of
16 one year.

17 (c) Display of certificate.--The home inspector may present
18 or display the registration certificate to show that he meets
19 the requirements of this chapter. The registration certificate
20 may be used as the written representation required under section
21 7510 (relating to reliance by buyer).

22 (d) Prohibition.--No person shall advertise as a home
23 inspector or undertake or attempt to undertake a home inspection
24 in this Commonwealth without first having complied with the
25 provisions of this chapter.

26 (e) Name.--No person who is registered under one name shall
27 engage in business as a home inspector under any other name
28 unless that other name is also registered.

29 Section 3. Section 7506 of Title 68 is amended to read:

30 § 7506. Required contractual provision regarding home

1 inspections.

2 A provision of an agreement of transfer regarding the right
3 of the buyer to obtain a home inspection report and providing
4 for the consequences, if any, shall provide that the home
5 inspection be performed by a [full member in good standing of a
6 national home inspection association in accordance with the
7 ethical standards and code of conduct or practice of that
8 association] home inspector registered under this chapter. A
9 home inspection performed by a person who [has not attained full
10 membership in a national home inspection association] is not
11 registered under this chapter satisfies the requirements of this
12 section if the person is supervised by a [full member in good
13 standing of a national home inspection association] registered
14 home inspector who agrees to be responsible for the home
15 inspection report by signing the report.

16 Section 4. A home inspector shall be required to comply with
17 the provisions of this act one year from the effective date of
18 this act. However, this provision does not relieve a home
19 inspector from the requirements of 68 Pa.C.S. Ch. 75 in effect
20 prior to the effective date of this act.

21 Section 5. This act shall take effect in 60 days.