

Pennsylvania Home Inspectors Coalition

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House Professional Licensure Committee

Rep. Julie Harhart, Majority Chair

RE: HB#1421

Chair Harhart and Members of the Committee,

By means of introduction, I am Brendan Ryan, a full time home inspector of 26 years. During that time I have been active locally including serving two terms as President of the Pittsburgh Regional Organization of ASHI (American Society of Home Inspectors), served on the ASHI National Board of Directors, and was developer and three term Chair of the ASHI Certification Committee, the only NCCA accredited program of its type in the country to certify home inspectors.

Currently I am the President of the Pennsylvania Home Inspectors Coalition. The PHIC was formed in the late 1990s in response to an attempt to legislate the home inspection profession. Jack Milne, who will testify today was the founding President and I served on the initial Board. Through an agreement with Senator Greenleaf's office we were able to stop activity on that legislation and over the next several years his office, the Pennsylvania Association of Realtors and the PHIC worked together to create Chapter 75 known as the Pennsylvania Home Inspection Law.

This is a very strong and fair law for all parties involved. Of the 38 states that have some form of home inspection regulation, the Pennsylvania law would be ranked in the top 5, however at the time we were unable to get actual licensure included. It was enacted and left to be self-enforcing. There is no regulatory oversight, no means of consumer protection or recourse, and no way to punish unethical practices or behavior. Therefore, we are always ranked near the bottom of the list.

I applaud Representatives Kortz and Helm for bringing this issue to the forefront again. It is time to update our law and I appreciate the opportunity to work with them in doing so.

On January 11th of this year the PHIC along with some other inspectors were invited to a Stakeholders meeting at the PAR offices here in Harrisburg. It was a long but very effective meeting where we all discussed the proposed HB# 1421, expressed our concerns and came to agreements on the content of the post meeting re-write. This new document was to be delivered within a few weeks or by the beginning of April at the latest.

Finally, it was delivered in late August along with notification of this hearing. I was excited to come before you and speak in favor of the bill we had all worked on, but as I read the document it became clear that this was not what we had agreed to eight months ago. Unfortunately, I and my fellow professional inspectors cannot support this Bill in its current form. There are sections that are not fully thought out, sections that do

not belong in law, and sections that are detrimental to the profession as well as detrimental to the ultimate goal of consumer protection.

While there is much to be addressed or wordsmithed in HB# 1421, I would like to touch on just a few of the issues we have concerns with;

1. Inclusion of the term "consultation" in the definition of Home Inspection. While the need to define a home inspection is understood, making it broader is not the way to do it. This creates a grey area which will be confusing to the public and create a liability concern for inspectors. Home Inspection needs to be defined as exactly what it is..." the only term valid for an evaluation of a property for real estate transaction purposes". If you perform a home survey, a consultation, an onsite walk through a 5-point inspection or any other confusing similar term you will be found to be working outside the law and appropriate repercussion can be expected either in civil court or by the Board.
2. Inclusion of a Temporary Practice Permit for new inspectors. As written this gives a new inspector the ability to perform home inspections for six months while waiting to pass the exam. The examination is the most important aspect of any competency program. What happens to the consumer should the inspector make a mistake? They find out that their inspector never passed the exam and they are left out in the cold most likely with no recourse. This provision needs to be either removed in its entirety, or further research on developing a Trainee designation is recommended.
3. Section 8 of the requirements for a home inspector identifies conviction of a felony under The Controlled Substance, Drug, Device and Cosmetic Act as a reason for refusal to license. This is insufficient. As inspectors we are routinely working in homes with no one present, or maybe just a woman or child present alone in the house. As inspectors we are trusted to go into their home, their bedrooms and closets where personal possessions and valuables are present. It would be a reasonable expectation that a licensee would not be a person convicted of a sex crime, violent crime, child predator, theft or burglary. This provision needs to be expanded for the purpose of consumer protection and confidence.
4. The window for initiating an action to recover damages from a home inspection has been doubled to two years evidently at the request of the trial attorneys. Requiring a home inspector, who is in a property on average for three hours, to be liable for two years does not make sense. Our insurance rates will go up as will our reserves to handle smaller claims along with our reserves to pay deductibles. And this does not even take into consideration frivolous claims. All these expenses will have to be passed on to the home buyer.

- a. A home inspection is a “snapshot” in time of a property’s condition. While we use our experience and senses to give our client an indication of the implications of what we find during an inspection, we do not have a crystal ball to see two years into the future. We are limited in our visual inspection of a property not only by the building components themselves, but by occupant’s belongings, vegetation, debris, weather conditions and even attempts by home sellers to conceal defects. Putting this on the shoulders of an inspector for two years is excessive.
 - b. What is even more striking is the contrast between the proposed two year requirement for a home inspector and that of the person / company that actually built the home...which is only one year. In light of this, requiring two years for home inspectors is unreasonable.
 - c. In the event that an egregious error is made or an issue related to nonprofessional conduct, a one year window to present a claim does not absolve an inspector from liability. Gross negligence and willful misconduct claims can be made for up to ten years. And there is provision 3 of the Unfair Trade Practices Act which does not have a time limit and opens the door for treble damages. So we as inspectors have plenty of skin in the game already without extending the term to two years.
 - d. The one year provision has been present in the current law without any adverse issues, there is no reason to change it.
5. Mold was a section that during the stakeholders meeting had been agreed to be removed from the law, but it is back in now expanded to Mold, Fungi and other Related Biologicals. I am familiar with Rep. Kortz’ constituent’s situation. Back when it was occurring she came to a seminar I was hosting for approximately 150 inspectors and asked to distribute information. We not only allowed her to do so, but let her speak to the attendees and have a meeting with the President of ASHI who was a guest at the seminar. This opened the eyes of many inspectors to the harm that can be related to mold. But this was also at a time when the mold topic was in its infancy. The scenario concerning mold has changed dramatically since then. Hundreds of different mold education courses are given at seminars and local chapter meetings, it is the subject of numerous trade journal articles, businesses based on mold investigation and remediation can be found everywhere across the state and mold “certification” classes can be readily found. So fast forward 10 years from when Ms. ___ was at our seminar, and now home inspectors are keenly aware of the issues presented by mold. However while we are aware of mold and sympathetic to her case, this provision does not belong in state law.
- a. Currently the vast majority of home inspectors do identify visible materials affected by mold and recommend testing simply because given the level of information provided by the various educators and the fact that mold is generally a moisture related issue it would be negligent not to. The problem arises due to the insurance industry which does not provide mold coverage to inspectors or makes it difficult to do so. They will actually deny coverage if an inspector uses the word mold in a report...because it was not tested and confirmed to be mold at the time the report was written. So many inspectors use “confusingly similar terms” such as “an apparent moisture related biological material” to identify mold. So, until the insurance industry can figure out what it wants to do with

mold, it is unreasonable to mandate a mold clause into law that can put an inspectors business at risk.

- b. Mold would be better suited to be included in the list of options for additional inspections in the Standard Agreement for the Sale of Residential Property. There are already a few of these options for items such as radon testing and wood destroying insect inspections. There are many companies already that specialize in mold testing and investigation available to consumers. These companies are certified by their education providers to do this specialized work, where home inspectors for the most part are not. These certifications do allow those companies to obtain insurance. But in order to maintain a certification, continuing education is required. This puts an additional 15-20 hours a year onto the 16 a year already required to be an inspector and you have almost a full week of being in CE classes and not working. Much like radon and WDI inspections, an inspector should have the choice to enhance their business by offering mold services, not be required to. For these reasons, mold testing by an expert should be an option for the consumer to obtain within the Sales Agreement.
- c. Currently there are no set standards for mold thresholds either medically, within the industry, or by regulatory means. It is not included in any home inspection association Standard of Practice. There are thousands of species of mold. Some visible, some not. Some that humans are not symptomatic to, some that people are highly symptomatic or allergic to. Until a standard is set within the indoor air quality profession, it is not reasonable to put mold into state law.
- d. Identification of mold or any other specific inspection detail does not belong in statute. State law is just like the bylaws of a corporation or association. It is the framework by which an entity operates. By design laws and bylaws are not easily changed. If a provision for a specific inspection item is included in a law, and a change in the industry occurs, the entire law must then be opened to amendment by regulatory process in order to make that single change. Specifics such mold and other inspection practices do not belong in state law.

In conclusion, while the PHIC and the inspectors it represents support the premise of updating our current law, there is much work left to be done in order to create regulation that can be relied upon by the home inspection profession and the consumer alike for years to come. It is my understanding through Mr. Crawford's office that additional work sessions will be scheduled to bring HB#1421 to its final form. We request that the PHIC be included as a stake holder in all of these sessions as a representative of the home inspection profession. I thank Chair Harhart and the Committee for their time and consideration today.

Respectfully submitted,

Brendan Ryan
PHIC President