

SENATE Substitute for HOUSE BILL No. 2260

By Committee on Commerce
Passed out of the Senate 36 to 4 April 2, 2009
Passed out of the House 99 to 26 April 3, 2009
Signed by Governor Sebelius April 23, 2009

AN ACT concerning the Kansas home inspectors professional competence and financial responsibility act; amending K.S.A. 2008 Supp. 58-4501, 58-4502, 58-4503, 58-4504, 58-4505, 58-4506, 58-4509, 58-4510, 58-4511 and 58-4512 and repealing the existing sections; also repealing K.S.A. 2008 Supp. 58-4513.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2008 Supp. 58-4502 is hereby amended to read as follows: 58-4502. As used in this act:

- (a) (1) "Home inspection" means a non-invasive limited visual examination of a residential dwelling of not more than four attached units, or any portion thereof designed to identify material defects at the time of the inspection of three or more of the following readily accessible systems and components:
- (A) Heating systems;
 - (B) cooling systems;
 - (C) electrical systems;
 - (D) plumbing systems;
 - (E) structural components;
 - (F) foundations;
 - (G) roof coverings;
 - (H) exterior and interior components; and
 - (I) any other components and systems that are part of the residential dwelling and included in the standards of practice followed by the home inspector.
- (2) The term "home inspection" also includes any consultation regarding the property that is represented to be a home inspection or that is described by any similar term.
- (3) The term "home inspection" does not include:
- (A) A compliance inspection for any code or governmental regulation;
 - (B) an examination for the conditions and operation of kitchen-type appliances, on-site water supplies or wells, private waste systems, the determination of the presence of wood-destroying organisms or pests, or the presence of fungi, mold, bacteria, asbestos, lead-based paint, gases or conditions of air quality; and
 - (C) an examination and evaluation of only two or less of the components listed in section (a)(1).
- (b) "Home inspector" means an individual who performs a home inspection as defined by this act.
- (c) "Home inspection report" means a written report on the results of a home inspection which is issued for a home inspection. The report shall include the following:
- (1) A clear identification and description of those systems, structures or components which were inspected;
 - (2) a clear identification and description of those systems, structures or components designated to be inspected under the standards of practice approved by the board and which were not inspected, and the reason why they were not inspected;
 - (3) a clear identification and description of any material defects found to be in need of repair, including any recommendations for further evaluation; and
 - (4) a completed pre-inspection agreement.
- (d) "Pre-inspection agreement" means a written contract between a customer and a home inspector to do a home inspection.
- (e) "Pre-inspection notice" means a document which shall be provided to a customer prior to the start of the home inspection. The pre-inspection notice shall contain, at a minimum, the following information:

- (1) A clear description of the scope of the home inspection;
 - (2) a clear description of any limitations on the liability of the home inspector for any errors and omissions which may arise during the home inspection; and
 - (3) an identification of the standards of practice approved by the board which the home inspector will be following during the home inspection.
- (f) "Readily accessible" means available for visual inspection without requiring the moving of personal property, dismantling, destructive measures or actions that would likely involve risk to persons or property.
- (g) "Material defect" means any condition that significantly affects the value, habitability or safety of the dwelling. Style, cosmetic defects or aesthetics shall not be considered in determining whether a system, structure or component is materially defective.
- (h) "Board" means the Kansas home inspectors registration board.
- (i) "Registrant" means any person registered as a home inspector under this act.
- (j) "Applicant" means any person who is applying for registration or renewal of registration under this act.

Sec. 2. K.S.A. 2008 Supp. 58-4503 is hereby amended to read as follows: 58-4503.

- (a) There is hereby established the Kansas home inspectors registration board. The purpose of the board is to administer and enforce the provisions of this act, promote consumer protection, ensure professional competency and ensure the presence of a viable home inspection industry in this state.
- (b) The board shall consist of five members to be appointed by the governor as follows:
- (1) Three members shall be home inspectors who have actively been engaged in the practice of home inspections for at least five years immediately preceding their appointment and have completed at least 1,000 fee-paid home inspections; and
 - (2) two members shall be at-large members neither of whom shall be a home inspector.
- (c) Prior to September 1, 2008, the governor shall appoint the initial board members as specified in subsection (b). The board shall hold its first meeting prior to January 1, 2009. Following the first meeting of the board, the newly elected chairperson shall serve for a term of three years, the vice-chairperson shall serve for a term of three years, the secretary shall serve for a term of two years and the remaining board members shall serve for a term of one year. After these initial terms have been completed, the board members shall serve terms as specified in subsection (d).
- (d) Board members shall serve three-year terms, with no board member serving more than two consecutive terms of office. Upon the expiration of the term of office of any member, the governor shall appoint a successor meeting the qualifications under this act. Each board member shall serve until a successor is appointed and qualified. There shall be at all times at least one board member from each congressional district in the state of Kansas.
- (e) In the event of a vacancy in the membership of the board for any reason other than expiration of a board member's term of office, the governor shall appoint a successor meeting the qualifications of this act to fill the unexpired term.
- (f) At the first board meeting each year, the board shall elect from its membership the following officers: Chairperson, vice-chairperson and secretary. The officers shall serve 12-month terms. A person may serve a maximum of two consecutive terms as an officer in each respective position. Both the chairperson and the vice-chairperson shall be a registered home inspector. The officers shall have the following duties:
- (1) The chairperson shall preside over all meetings.
 - (2) The vice-chairperson shall preside over meetings in the absence of the chairperson.
 - (3) The secretary shall be responsible for:
 - (A) Preparation, publication and maintenance of the minutes of the board meetings;
 - (B) preparation of correspondence and conduct of administrative support as the chairperson may direct or as may be prescribed in the rules and regulations of the board;
 - (C) maintaining the records of the board.
- (g) Upon determining that adequate resources are available, the board may appoint an executive secretary who shall be in the unclassified service of the Kansas civil service act. The executive secretary shall receive an annual salary which shall be fixed by the board and approved by the Governor.

(h) The board may employ such other employees as may be necessary, who shall be in the classified service under the Kansas civil service act, and make such other expenditures as are necessary to properly carry out the provisions of this act.

(i) Each board member shall be paid compensation, subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223, and amendments thereto.

(j) The board shall hold meetings in such places as it shall determine and at such times as it may designate or on request of two or more of its members. A majority of the members of the board shall constitute a quorum.

(k) Applications for original registration and renewal of registration shall be made in writing or by electronic filing to the board on forms approved by the board and shall be accompanied by the appropriate fees prescribed by the board.

Sec. 3. K.S.A. 2008 Supp. 58-4504 is hereby amended to read as follows: 58-4504. The board shall have the following duties and powers:

(a) Administer and enforce the provisions of this act;

(b) approve and adopt a standard of practice and a code of ethics;

(c) register qualified applicants as home inspectors pursuant to this act;

(d) make all necessary investigations into the qualifications of *or* allegations of misconduct against an applicant and registrant. In connection with any investigation by the board or its duly authorized agents or employees shall at all reasonable times have access to and the right to examine and copy any document, report, record or other physical evidence of any registered home inspector being investigated or any document, report, record or other evidence maintained by and in the possession of any registered home inspector;

(e) require, at the discretion of the board, the attendance and testimony of any registered home inspector or the production for examination or copying documents or any other physical evidence if such evidence relates to qualifications for registration or allegation of misconduct of an applicant or registrant;

(f) approve examinations to determine the qualifications of applicants for registration;

(g) adopt all rules and regulations which are necessary to carry out the provisions of this act ;

(h) approve courses of study, educational providers and providers of continuing education and continuing education courses meeting standards for approval established by rules and regulations of the board; and

(i) contract with agencies or consultants as necessary to assist the board in obtaining information about educational providers.

Sec. 4. K.S.A. 2008 Supp. 58-4505 is hereby amended to read as follows: 58-4505.

(a) Except as provided in subsections (b) and (c), the board may deny, suspend or revoke a registration, or may impose probationary conditions on a registrant or applicant if the registrant or applicant has engaged in any of the following conduct:

(1) Making a materially false or fraudulent statement in an application for registration or renewal;

(2) been convicted of or plead guilty or nolo contendere in a court of competent jurisdiction to any misdemeanor involving dishonesty;

(3) intentionally falsifying a home inspection report:

(4) performing any of the following acts as part of the home inspection:

(A) Inspecting for a fee any property in which the home inspector has any personal or financial interest unless the interest is disclosed in writing to the client before the home inspection is performed and the client signs an acknowledgment of receipt of the disclosure;

(B) offering or delivering any commission, referral fee or kickback for the referral of any business to the home inspector; and

(C) accepting an engagement to perform a home inspection or to prepare a home inspection report in which the employment itself or the fee payable for the inspection is contingent upon the conclusions in the home inspection report, pre-established or prescribed findings or the closing of the underlying real estate transaction;

- (5) including as a term or condition in an agreement to conduct a home inspection any provision that disclaims the liability of the registered home inspector for any errors and omissions which may arise during a home inspection or to limit the amount of damage for liability for any errors and omissions which may arise during a home inspection to less than \$10,000 in the aggregate for each home inspection;
 - (6) failing to provide a client with a pre-inspection notice prior to the home inspection;
 - (7) failing to substantially follow the approved standards of practice and code of ethics;
 - (8) failing to respond as requested by the board to any summons for attendance and testimony or to produce documents or any other physical evidence during an investigation into the qualifications of or allegations of misconduct of an applicant or registrant; and
 - (9) violating any provision of this act or rules and regulations promulgated by the board pursuant to this act.
- (b) (1) Except as provided in paragraph (2), the board shall refuse to issue a registration to an applicant or registrant if the applicant or registrant has entered a plea of guilty or nolo contendere to, or has been convicted of:
- (A) (i) Any offense that is comparable to any crime which would require the applicant to register as provided in the Kansas offender registration act; or
 - (ii) any federal, military or other state conviction for an offense that is comparable to any crime under the laws of this state which would require the applicant to register as provided in the Kansas offender registration act; or
 - (B) (i) Any felony other than a felony under subparagraph (A); or
 - (ii) any federal, military or other state conviction for an offense that is comparable to any under the laws of this state other than a felony under subparagraph (A).
- (2) The board may grant an original registration pursuant to subsection (c) if the applicant's or registrant's application is received at least:
- (A) Fifteen years after the date of the applicant's or registrant's discharge from postrelease supervision, completion of any nonprison sanction or suspension of the imposition of the sentence resulting from any plea of guilty or nolo contendere to or conviction of any offense specified in subparagraph (A) of paragraph (1); or
 - (B) five years after the date of the applicant's discharge from postrelease supervision, completion of any nonprison sanction or suspension of the imposition of the sentence resulting from any plea of guilty or nolo contendere to or conviction of any offense specified in subparagraph (B) of paragraph (1), whichever is applicable.
- (3) For the purposes of this subsection, "postrelease supervision" shall have the meaning ascribed to it in K.S.A. 21-4703 and amendments thereto.
- (4) For the purposes of this subsection, "nonprison sanction" shall have the meaning ascribed to it in K.S.A. 21-4703 and amendments thereto.
- (c) (1) The board may renew or grant an original registration to an applicant or registrant who has entered a plea of guilty or nolo contendere to, or has been convicted of any crime listed in paragraph (1) of subsection (b) if the applicant or registrant presents to the board satisfactory proof that the applicant or registrant now bears a good reputation for honesty, trustworthiness, integrity and competence to transact the business of registered home inspector in such a manner as to safeguard the interest of the public. The burden of proof shall be on the applicator or registrant to present such evidence to the board.
- (2) In determining whether or not the applicant or registrant presently has a good reputation as required in this subsection, the board shall consider the following additional factors:
- (A) The extent and nature of the applicant's or registrant's past criminal activity;
 - (B) the age of the applicant or registrant at the time of the commission of the crime or crimes;
 - (C) the amount of time elapsed since the applicant's or registrant's last criminal activity;
 - (D) the conduct and work activity of the applicant or registrant prior to and following the criminal activity; and
 - (E) evidence of the applicant's or registrant's rehabilitation or rehabilitative effort; and
 - (F) all other evidence of the applicant's or registrant's present fitness for a registration.
- (d) In addition to or in lieu of any other administrative, civil or criminal remedy provided by law, if the board determines after notice and an opportunity for a hearing in accordance with the Kansas administrative

procedures act that a registrant has violated any provision of this act or any rule and regulation adopted hereunder, the board may impose on such registrant a civil fine not to exceed \$500 for each violation.
(e) All proceedings pursuant to this section shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

Sec. 5. K.S.A. 2008 Supp. 58-4506 is hereby amended to read as follows: 58-4506.

(a) The board shall adopt rules and regulations fixing the amounts of fees provided for by this act, subject to the following: For an application for an original registration, the amount may not exceed \$200; and for renewal of registration the amount may not exceed \$200; for an additional fee for a late renewal an amount not to exceed \$50; for reinstatement of an expired or revoked registration an amount not to exceed \$300; and for a duplicate copy of a registration certificate an amount not to exceed \$25. Other fees may be set in the amount determined by the board.

(b) The board may charge a fee not to exceed \$500 to review an application packet submitted for approval by an education provider for preregistration courses or a fee not to exceed \$50 to review an application packet for an education provider for continuing education classes.

Sec. 6. K.S.A. 2008 Supp. 58-4509 is hereby amended to read as follows: 58-4509.

(a) On and after January 1, 2010, all individuals performing home inspections as defined in K.S.A. 2008 Supp. 58-4502, and amendments thereto, shall be required to be registered by the board.

(b) All registrants must:

- (1) Be at least 18 years of age;
- (2) have successfully completed high school or its equivalent, unless such individual is engaged in the practice of performing home inspections on the effective date of this act;
- (3) submit proof of current general liability insurance coverage in an amount of \$100,000 or more;
- (4) submit proof of financial responsibility by one of the following:
 - (A) A policy of errors and omissions insurance coverage;
 - (B) a surety bond in an amount not less than \$10,000. Each registered home inspector electing to provide the board a surety bond as a condition of registration, shall file with the board a surety bond in the amount of not less than \$10,000 per year. Such bond shall be issued by a corporate surety authorized to do business in this state. The surety bond shall state the effective date and the expiration date. The registered home inspector shall be named as principal. The bond shall be to the state of Kansas and shall be conditioned upon the registered home inspector faithfully performing all contracts entered into and complying with all provisions of this act and acts amendatory thereof and supplemental thereto and following all rules and regulations governing the profession. Regardless of the number of claims made against the bond or the number of years the bond remains in force, the aggregate liability of the surety shall in no event exceed the amount of the bond. The bond may be terminated at any time by the surety upon sending 30 days notice in writing to the principal, the obligee and the board;
 - (C) an irrevocable letter of credit not less than \$10,000 issued by a bank which is insured by the federal deposit insurance corporation or its successor if such letter of credit is initially issued for a term of at least one year and by its terms is automatically renewed at each expiration date for at least an additional one-year term unless at least 30 days prior written notice of intention not to renew is provided to the board; or
 - (D) the maintenance of a minimum balance of \$10,000 in an escrow account in a Kansas financial institution as defined in K.S.A. 16-117, and amendments thereto, provided that the escrow account shall maintain the minimum balance through the term of the registrant's registration as a home inspector. The board shall be notified in writing by the financial institution within 10 days if the amount in the escrow account falls below the \$10,000 minimum balance. Upon notification, the board shall suspend such registrant's registration as a home inspector until the escrow account minimum balance is restored to greater than or equal to \$10,000;
- (5) have successfully completed and passed a proctored written or electronic exam as approved by the board unless the applicant has been actively engaged as a home inspector as defined in

K.S.A. 2008 Supp. 58-4502, and amendments thereto, and met the requirements of subparagraph (B) of paragraph 8 of subsection (b) of this section;

(6) annually obtained a minimum of 16 hours of continuing education approved by the board;

(7) shall retain a copy of each of the following documents pertaining to each home inspection performed by, or at the direction of, the home inspector for a period of 24 consecutive calendar months commencing on the first day of the month in which such document is issued or in which the expiration date of any written agreement for such home inspection occurs, whichever is later:

(A) The pre-inspection notice;

(B) the home inspection agreement;

(C) the home inspection report; and

(D) any other information prescribed by the board by rule and regulation; and

(8) have satisfied one of the following requirements:

(A) Have successfully completed and passed a course of study containing at least 80 hours of classroom and field training offered by an educational provider approved by the board; or

(B) if the individual has been actively engaged in the practice of conducting home inspections for not fewer than two year prior to the effective date of this act and have completed not less than 50 fee-paid home inspections.

(c) The board, by rules and regulations, shall establish the date for renewal of a registration which may be on an annual or biennial basis. A registration that is not renewed in a timely manner shall be deemed expired and may be renewed within 30 days following the expiration date upon completion of a renewal form and payment of a late fee established by the board.

(d) The board may grant inactive status to a registrant who meets all the requirements for renewal except for completion of continuing education upon written request of the registrant and payment of the inactive status fee which shall not exceed \$50. The registration shall become active upon approval of the board following completion of all continuing education requirements and payment of the renewal fee. A registrant whose registration is inactive shall not conduct home inspections during the time the registration is in inactive status.

(e) The board may reinstate a registration that has been expired or revoked for more than 30 days but less than 90 days upon application on a form provided by the board and payment of a reinstatement fee established by the board. The board may establish standards for reinstatement, including a requirement that an applicant whose registration was revoked or that has been expired for more than one year successfully complete an approved examination.

Sec. 7. K.S.A. 2008 Supp. 58-4510 is hereby amended to read as follows: 58-4510. This act shall apply to all individuals who conduct home inspections for compensation, but shall not apply to the following individuals who are specifically exempted from registration under this act:

(a) A tradesman or contractor performing a single component or system evaluation or a combination of any two systems or components listed in K.S.A. 2008 Supp. 58-4502 (a)(1)(A)-(I), and amendments thereto, while acting within the scope of that occupation;

(b) an individual employed by the state or a political subdivision of the state who, within the scope of such employment and in the discharge of such public duties, inspects property or buildings for compliance with requirements safeguarding life, health or property;

(c) an individual licensed by the state as an architect while acting within the scope of that license;

(d) an individual licensed by the state as a professional engineer while acting within the scope of that license;

(e) an individual licensed by the state as a real estate appraiser while acting within the scope of that license;

(f) an individual licensed by the state as a real estate broker or salesperson while acting within the scope of that license;

(g) an individual employed as an insurance adjuster while acting within the scope of that occupation;

(h) an individual licensed as a manufactured home manufacturer while acting within the scope of that license;

(i) an individual employed by a manufactured home manufacturer while acting within the scope of that occupation;

- (j) a modular home manufacturer or modular home manufacturer's representative reviewing a residential dwelling built by the manufacturer for the purpose of evaluating the residential dwelling;
- (k) an individual licensed as a manufactured home dealer while acting within the scope of that license;
- (l) an individual employed as a manufactured home installer while acting within the scope of that occupation;
- (m) an individual licensed by the state as an insurance agent while acting within the scope of that license;
- (n) a homebuilder or homebuilder's representative reviewing a residential dwelling built by the homebuilder for the purposes of evaluating the residential dwelling;
- (o) an individual providing services as a pest exterminator or chemical applicator while acting within the scope of that occupation and not providing services which would constitute a home inspection under this act; *and*
- (p) A person who is not registered as a home inspector, may assist a registered home inspector in the performance of an inspection provided that the person is supervised at the inspection site by a registered home inspector and any home inspection report rendered in connection with the home inspection is reviewed and signed by the registered home inspector.

Sec. 8. K.S.A. 2008 Supp. 58-4511 is hereby amended to read as follows: 58-4511.

- (a) It shall be unlawful for an individual to perform a home inspection as defined in K.S.A. 2008 Supp. 58-4502, and amendments thereto, without being registered under this act.
- (b) Violation of this section is a class A nonperson misdemeanor.

Sec. 9. K.S.A. 2008 Supp. 58-4512 is hereby amended to read as follows: 58-4512.

- (a) It is the duty of all home inspectors registered under this act to conduct home inspections with the degree of care that a reasonably prudent home inspector would exercise under the circumstances.
- (b) All home inspections shall be conducted according to a standard of practice and a code of ethics approved by the board.
- (c) No registered home inspector may include, as a term or condition in an agreement to conduct a home inspection, any provision that disclaims the liability for any errors and omissions which may arise during a home inspection, or limit the amount of damages for liability for any errors and omissions which may arise during a home inspection to less than \$10,000 in the aggregate for each home inspection and such term or condition or limitation setting the liability at an amount greater than \$10,000 must be provided to the customer in writing to be in effect.
- (d) An action to recover damages for any act or omission of a registered home inspector relating to a home inspection or home inspection report must be brought not more than 12 months from the date the home inspection was performed and may be initiated only by the client for which the home inspection was conducted.
- (e) In any action to recover damages for any error or omission of a registered home inspector relating to a home inspection or home inspection report, a registered home inspector is liable for any errors and omissions which may arise during a home inspection in an amount of not to exceed \$2,000 in the aggregate for each home inspection, or to the amount in the pre-inspection agreement to conduct a home inspection, if greater than \$2,000 in the aggregate for each home inspection, provided that a registered home inspector provides the customer with a clear written description in the pre-inspection agreement of any greater limitations on the liability of the registered home inspector for any errors and omissions which may arise during the home inspection.
- (f) All home inspectors registered under this act shall provide clients with a written pre-inspection notice prior to the home inspection.

Sec. 10. K.S.A. 2008 Supp. 58-4501 is hereby amended to read as follows: 58-4501.

- (a) This act shall be cited as the Kansas home inspectors professional competence and financial responsibility act.
- (b) The provisions of this act shall expire on July 1, 2013.

Sec. 11. K.S.A. 2008 Supp. 58-4501, 58-4502, 58-4503, 58-4504, 58-4505, 58-4506, 58-4509, 58-4510, 58-4511, 58-4512 and 58-4513 are hereby repealed.

Sec. 12. This act shall take effect and be in force from and after its publication in the statute book.

The following are from HB 2315, passed in 2008, these statutes were not changed and are still active.

K.S.A 58-4508

Section 4. The secretary shall remit all moneys received by or for the board from fees, charges or penalties to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury and the balance shall be credited to the home inspectors registration fee fund, which is hereby established. All expenditures from such fund shall be made in accordance with appropriations acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the board or by a person or persons designated by the board.

K.S.A 58-4507

Section 8. The attorney general shall provide as an attorney for the board and shall represent the board in all actions and proceedings brought by or against the board. The board may hire independent counsel when the board deems appropriate. All fees and expenses of such independent counsel arising out of the performance of duties for the board shall be paid out of the home inspectors registration fee fund.