

STORAGE NAME: h0465a.brc

DATE: January 18, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
BUSINESS REGULATION AND CONSUMER AFFAIRS
ANALYSIS**

BILL #: HB 465

RELATING TO: Home Inspection Services

SPONSOR(S): Representatives Turnbull, Brown and others

TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) BUSINESS REGULATION AND CONSUMER AFFAIRS YEAS 8 NAYS 0
 - (2) REAL PROPERTY AND PROBATE
 - (3) GOVERNMENTAL RULES AND REGULATIONS
 - (4) GENERAL GOVERNMENT APPROPRIATIONS
-

I. SUMMARY:

The Committee on Business Regulation and Consumer Affairs adopted four amendments, which are traveling with the bill.

This bill institutes regulation for home inspectors, without establishing a licensure program for them. A home inspector is a person hired to inspect a residence, to offer an opinion as to the remaining lifetime of its components, and to evaluate the components present (or future) need for repairs. The home inspection may include evaluation of the residence's overall structure, specific elements of the structure (the roof, for instance), or mechanical systems within the home (such as the AC/heating system). A home inspection is usually done at the time of a pending sale or resale. Home inspection does not currently require a license.

Rather than instituting licensure, the bill does four things: (1) It requires persons performing home inspections to provide their client with an accurate and written disclosure of their credentials; (2) It requires a written explanation to the client regarding the limits of a home inspection, particularly the inability to discover latent or concealed defects that may exist; (3) It prohibits the home inspector from repairing, or profiting from others repairing, any home he or she has recently inspected; and (4) It prohibits the use of the term "board-certified home inspector" by any person not properly qualified.

Any failure to comply with the requirements or prohibitions established in the bill constitutes a deceptive and unfair trade practice, and a violation of the Florida Deceptive and Unfair Trade Practices Act (Act), under part II, ch. 501, F.S. The enforcing authority for the Act may be either the state attorney or the state Department of Legal Affairs, depending on the geographical location and scope of the offenses. The Act provides for the possibility of cease and desist orders, compensatory damages, and civil penalties. Additionally under the Act, an individual consumer has the right to bring suit against a person or entity engaging in deceptive and unfair trade practices, and may recover actual damages.

In practical terms, action by the state attorney or the state Department of Legal Affairs is not likely unless the offender exhibits a widespread pattern of willful violations. Action under this law by an injured home buyer or seller, Realtor, or home builder could be a viable option, but the initial expense of pursuing such a civil remedy would rest upon the aggrieved party.

This bill does not have a significant fiscal impact upon state or local governments.

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II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

There is no present regulation on the practice of home inspection. There is no required licensure program, nor any other type of regulatory control. However, the American Society of Home Inspectors (ASHI) does have a private certification program.

"Home inspection" should not be confused with "building inspection." A building inspection is a legally required act, performed by a governmental policing agency (the local building department) for the purpose of determining whether the structure, at the time of its initial construction, addition, or major alteration, meets the state mandated minimum building code. A home inspection, on the other hand, is a discretionary endeavor. When done, it is usually contracted for some time after the residence's construction, typically at the time of a pending sale or resale. The home inspection is performed by private industry, rather than the building department. A home inspection may include evaluation of the residence's overall structure, specific elements of the structure (the roof, for instance), or mechanical systems within the home (such as the AC/heating system).

Despite the fact that there is currently no regulation of home inspection, home buyers, home sellers, home builders, and realtors all have an interest in seeing that home inspections are performed in a competent and honest fashion. If the home inspector misses problems in the home, the buyer is damaged. If the home inspector asserts the existence of a non-existent problem, the seller is harmed. If a sale is prevented because non-existent problems are identified, the Realtor is harmed. If the inspection is immediately subsequent to initial construction, and the home builder is the seller (a not-infrequent scenario), the home builder may be harmed, either by delaying or preventing the sale, or by having to perform needless modifications.

In 1998, regulation of industrial hygienists and safety professionals was established in s. 501.937, F.S. That regulation was generally similar to this bill in that industrial hygienists and safety professionals were required to accurately disclose their credentials, certain titles were reserved for use by qualified individuals only, and failure to comply was made a deceptive and unfair trade practice. A spokesman for the industrial hygienists and safety professionals indicated that he is not aware of any subsequent enforcement actions by either the state attorneys or the Attorney General. However, he stated that he believes that the regulation nevertheless benefits the public because practitioners are obeying the law.

C. EFFECT OF PROPOSED CHANGES:

This bill establishes minimalistic regulation of persons performing home inspections. Primarily, it does four things: (1) It requires persons performing home inspections to provide their client with an accurate and written disclosure of their credentials; (2) It requires a written explanation to the client regarding the limits of a home inspection, particularly the inability to discover latent or concealed defects that may exist; (3) It prohibits the home inspector from repairing, or profiting from others repairing, any home he or she has recently inspected; and (4) It prohibits the use of the term "board-certified home inspector" by any person not properly qualified.

Any failure to comply with the requirements or prohibitions established in the bill constitutes a deceptive and unfair trade practice, actionable under part II of ch. 501, F.S. (the Florida Deceptive and Unfair Trade Practices Act). That act provides for civil action (\$10,000 per violation, or \$15,000 for a violation against a senior citizen) against the offender, which may be undertaken by the state attorney, or the state Department of Legal Affairs (the Attorney General). An aggrieved private citizen may also take civil action under this statute. However, in a suit by an aggrieved private citizen, there is no "per violation" penalty available, only actual damages.

In practical terms, action by the state attorney or the state Department of Legal Affairs is not likely unless the offender exhibits a widespread and continuing pattern of willful violations. It is likely that neither the state attorney nor the Attorney General would choose to act if the violations were few, or if the violator could claim the violations were unintentional.

Action under this law by an aggrieved party such as a home buyer, home seller, Realtor, or home builder could well be a viable option, but the initial expense of pursuing such a civil remedy would rest upon the aggrieved party. However, should the aggrieved party win, in addition to the actual damages, he or she could petition the court for award of court costs and attorneys fees.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Creates s. 501.935, F.S., to establish regulation of home inspectors. Violation of the section's requirements or prohibitions constitutes a deceptive and unfair trade practice, actionable under part II of ch. 501, F.S.

The section requires that the home inspector provide to the client, in written form:

1. An accurate disclosure of the home inspector's credentials;
2. An explanation of the limits of a home inspection, particularly regarding inability to discover latent or concealed defects that may exist;
3. A disclosure of any conflict of interest that may affect the client;
4. A statement declaring the scope of services provided, along with any limitations, terms, and conditions regarding the home inspection; and
5. A report containing the results of the home inspection, to be provided within three working days of the completion of the home inspection (or at any other time agreed to by the parties).

The section also prohibits:

6. Home inspectors from accepting or offering a commission (relating to the home inspection work) to or from another party dealing with the client;
7. Home inspectors from performing, or offering to perform, remedial work on a property the home inspector has inspected in the previous year;
8. Home inspectors from disclosing the result of the home inspection to another party without the written consent of the client; and
9. Any person not properly qualified from representing himself or herself as a "board-certified home inspector." Proper qualification consists of having passed the examination offered by the Examination Board of Professional Home Inspectors (EBPHI). Passage of any other examination which the Department of Business and Professional Regulation finds to be psychometrically valid would also be considered qualification.

It also provides that any person representing himself as a board-certified home inspector shall perform his or her services according to the minimum standards for home inspection promulgated by the American Society of Home Inspectors effective January 1, 2000.

Section 2. Provides that the act shall take effect July 1, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

If persons performing home inspections comply with the provisions of the bill, there should be a positive effect. Home buyers will have a better understanding of what defects a home inspection can reasonably be expected to uncover, and will be more likely to adequately evaluate the qualifications of a home inspector before hiring him or her. Also, it will be more likely that valid sales will not be interfered with, and needless repairs will not be made.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This act does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This act does not reduce the authority that counties or municipalities have to raise revenue in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This act does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

There may be potential for confusion or the possibility of misleading the public by reserving the term "board certified home inspector." A "board" is usually an appointed governmental oversight body that, among other things, processes complaints and dispenses discipline on misbehaving or incompetent practitioners. In this case, the board (EBPHI) will be a private entity with no oversight or disciplinary powers. It is possible that the public could gain the mistaken impression that, by utilizing a "board certified home inspector," they have the protection of a board which would process complaints and dispense discipline.

It should also be noted that there appears to be no mechanism for removal of certification as a "board certified home inspector," once someone has gained that certification. Again, this is contrary to what the public has grown to expect from a professional possessing "board" certification or licensure.

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Business Regulation and Consumer Affairs adopted four amendments on January 18, 2000. These amendments are traveling with the bill.

Amendment #1 provides that a home inspection does not include an evaluation of compliance regarding construction codes.

Amendment #2 provides a definition of "home," clarifying the maximum number of units (four) which may be in a multifamily dwelling, and still be considered a "home" for purposes of inspection.

Amendment #3 adds licensed building codes administrators, plans examiners, and inspectors to those persons exempted from the bill's provisions.

Amendment #4 clarifies that violation of the act is a violation of part II of chapter 501, F.S., the Florida Deceptive and Unfair Trade Practices Act, and is punishable by the penalties contained therein.

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION AND CONSUMER AFFAIRS:

Prepared by:

Staff Director:

Gip Arthur

Rebecca R. Everhart