

**STORAGE NAME:** h0465.rpp  
**DATE:** February 3, 2000

**HOUSE OF REPRESENTATIVES  
AS REVISED BY THE COMMITTEE ON  
REAL PROPERTY & PROBATE  
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 & PROBATE
  - (3) GOVERNMENTAL RULES AND REGULATIONS
  - (4) GENERAL GOVERNMENT APPROPRIATIONS
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**I. SUMMARY:**

A home inspection is an examination of the mechanical and physical components of a residential structure. Home inspectors are currently unregulated. This bill provides guidelines for the conduct of a home inspector, and provides that a violation of these guidelines may constitute an unfair and deceptive trade practice for which a civil action may be authorized. This bill does not place home inspectors under the regulatory jurisdiction of any agency, nor does it provide for examinations, licensure, or discipline. Specifically, this bill:

Requires a home inspector to provide a client with an accurate and written disclosure of the home inspector's credentials prior to entering into a contract to perform a home inspection;

Requires a written explanation to a client regarding the limits of a home inspection, particularly the inability to discover latent or concealed defects that may exist;

Prohibits a home inspector from repairing, or profiting from others repairing, any home he or she has recently inspected;

Prohibits a home inspector from using the term "board-certified home inspector" unless the home inspector meets certain criteria; and

Provides that the failure to comply with any provision of this bill constitutes an unfair and deceptive trade practice.

The Committee on Business Regulation and Consumer Affairs adopted four amendments, which are traveling with the bill. Those amendments provide that building inspectors and code enforcement officers are exempt from the bill's provisions, define "home", and clarify the reference to the Florida Unfair and Deceptive Trade Practice Act.

This bill does not appear to have any fiscal impact on local governments. The fiscal impact on state government is unknown, but is probably minimal.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |                              |  |   |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/> | No <input checked="" 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:

Home inspectors are currently unregulated. This bill defines "home inspection", establishes criteria for use of the term "board-certified home inspector", requires a home inspector to disclose certain facts before entering into a contract and requires a caveat in the disclosure given to a potential client, requires a home inspector to provide a written report to the client within three days, prohibits certain activities, and creates a cause of action for violation of the section.

B. PRESENT SITUATION:

Home Inspection in General

Currently, home inspectors are not regulated. The American Society of Home Inspectors estimates that there are between 800 and 900 home inspectors statewide.<sup>1</sup>

"Home inspection" should not be confused with "building inspection." A building inspection is a legally required act, performed by a local governmental entity for the purpose of determining whether a structure complies with the appropriate building code at the time of construction. By contrast, a home inspection is a discretionary endeavor, often contracted for after construction is complete. A home inspection is typically contracted for by a potential purchaser of a home, although home inspections are sometimes contracted for by the current owner of a home to determine its condition, by a homeowner about to sell a home that wishes to avoid potential problems, or by a purchaser of a new home that wants to insure that the house was constructed properly. A home inspection is performed by private industry, rather than by local government.

The American Society of Home Inspectors and the National Home Inspector Examination

There are private voluntary organizations that home inspectors may join. Some of these organizations have promulgated standards of practice and certification examinations. The largest organization is the American Society of Home Inspectors (ASHI), with approximately

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<sup>1</sup> Telephone conference with Mark Cramer, of Indian Rocks, Florida, President of the American Society of Home Inspectors, January 25, 2000.

5,500 members nationwide, including 340 members statewide.<sup>2</sup> ASHI was formed in 1976 as a not-for-profit organization “to build public awareness of home inspection and to enhance the technical and professional performance of home inspectors. It is the oldest and most respected professional association of home inspectors in North America, representing its membership and the profession as a whole in areas of education, marketing, and communications.”<sup>3</sup>

The Examination Board of Professional Home Inspectors, an organization created by the American Society of Home Inspectors, developed the National Home Inspector Examination.<sup>4</sup> The National Home Inspector Examination is a four hour multiple choice examination that tests the following areas: structural components, exterior, roofing, plumbing, heating, cooling, electrical, insulation and ventilation, interiors, fireplaces and solid fuel burning appliances, professional practice, good residential building construction practices, common building defects which can be visually detected, and good inspection and reporting principles.<sup>5</sup>

### The Florida Deceptive and Unfair Trade Practices Act

The Florida Deceptive and Unfair Trade Practices Act (Act) is Part II of Chapter 501, F.S. The intent of the Act is to “simplify, clarify, and modernize the law governing consumer protection, unfair methods of competition, and unconscionable, deceptive, and unfair trade practices . . . protect the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce . . . [and] to make state consumer protection and enforcement consistent with established policies of federal law relating to consumer protection.”<sup>6</sup>

The Act provides that “[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful. . . . It is the intent of the Legislature that . . . due consideration and great weight must be given to the interpretations of the Federal Trade Commission and the federal courts relating to the Federal Trade Commission Act.”<sup>7</sup> The Act is sometimes referred to as the “Little FTC Act.”<sup>8</sup>

The Act gives primary enforcement authority to the “enforcing authority.” The enforcing authority is the state attorney for the circuit in which an unfair or deceptive practice occurred, or the Attorney General if an unfair or deceptive practice occurred in two or more

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<sup>2</sup> Id.

<sup>3</sup> <http://www.ashi.com/about.htm>

<sup>4</sup> National Home Inspector Examination Available; Valid, Reliable Exam for States Requiring Home Inspector Testing, by the Examination Board of Professional Home Inspectors, undated but received January, 2000.

<sup>5</sup> <http://www.ashi.com/examFAQ.htm>

<sup>6</sup> Section 501.202, F.S.

<sup>7</sup> Section 501.204, F.S.

<sup>8</sup> See, for example, Marshall v. W & L Enterprises Corp., 360 So.2d 1147 (Fla. 1st DCA 1978).

circuits, if the state attorney defers to the Attorney General, or the state attorney fails to act within 90 days of receipt of a complaint.<sup>9</sup>

An enforcing authority may bring an action for a declaratory judgment to declare that the practice violates the Act, an action for injunction, or an action on behalf of consumers to recover actual damages.<sup>10</sup> A willful violation of the Act may also subject the violator to a civil penalty of up to \$10,000 for each violation,<sup>11</sup> or \$15,000 if a victim was elderly or handicapped.<sup>12</sup>

A person may bring a private action for a declaratory judgment that a practice violates the Act, and may recover actual damages plus court costs and attorney's fees.<sup>13</sup>

### Related Regulated Professions

Although home inspectors are not regulated by any statute or agency, several professions dealing with construction are regulated. Those regulated professions include construction contractors, architects, engineers, building code administrators, plans examiners, and building code inspectors.

### C. EFFECT OF PROPOSED CHANGES:

This bill provides legislative intent regarding home inspection, and defines the terms "home inspector" and "home inspection".

This bill further provides that a home inspector may not represent himself or herself as a board-certified home inspector, unless such person has passed the National Home Inspector Examination offered by the Examination Board of Professional Home Inspectors, or any other examination deemed to be psychometrically valid<sup>14</sup> by the Secretary of the Department of Business and Professional Regulation. Additionally, the minimum standard of practice for home inspection by a person representing himself or herself as a board-certified home inspector is the Standards of Practice of the American Society of Home Inspectors, or any other consensus-based home inspection standard deemed equivalent by the Secretary of the Department of Business and Professional Regulation.

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<sup>9</sup> Section 501.203(2), F.S.

<sup>10</sup> Section 501.207, F.S.

<sup>11</sup> Section 501.2075, F.S.

<sup>12</sup> Section 501.2077, F.S.

<sup>13</sup> Section 501.211, F.S.

<sup>14</sup> "Psychometrics" is the "psychological theory of or technique of mental measurement." Webster's New Collegiate Dictionary, 8th Edition.

This bill further provides that a person licensed as a construction contractor,<sup>15</sup> an architect,<sup>16</sup> or an engineer<sup>17</sup> is not required to comply with this section with regard to any report, survey, evaluation, or estimate rendered within the scope of practice authorized by such license.

Prior to entering into a contract for home inspection and prior to performing any home inspection, a home inspector must provide the potential client with the home inspector's credentials, a statement as to whether or not the inspector is board certified, and a caveat in 10 point or larger boldfaced type that states:

**AN INSPECTION IS INTENDED TO ASSIST IN EVALUATION OF THE OVERALL CONDITION OF A BUILDING. THE INSPECTION IS BASED ON OBSERVATION OF THE VISIBLE AND APPARENT CONDITION OF THE BUILDING AND ITS COMPONENTS ON THE DATE OF THE INSPECTION. THE RESULTS OF THIS HOME INSPECTION ARE NOT INTENDED TO MAKE ANY REPRESENTATION REGARDING LATENT OR CONCEALED DEFECTS THAT MAY EXIST, AND NO WARRANTY OR GUARANTEE IS EXPRESSED OR IMPLIED. IT SHOULD BE UNDERSTOOD THAT A HOME INSPECTION IS A GENERAL OVERVIEW OF THE CONDITION OF THE BUILDING AND COMPONENTS. THE HOME INSPECTOR IS NOT NECESSARILY A PROFESSIONAL WITH LICENSES AUTHORIZING THE RENDERING OF DETAILED OPINIONS REGARDING ALL OF THE ITEMS OR SYSTEMS INCLUDED IN THE INSPECTION. YOU MAY BE ADVISED TO SEEK AN OPINION FROM AN APPROPRIATELY LICENSED PROFESSIONAL AS TO ANY DEFECTS OR CONCERNS MENTIONED IN THE REPORT.**<sup>18</sup>

Additionally, a home inspector must disclose any conflict of interest or relationship of the home inspector which may affect the client, and must provide a statement declaring the home inspector's scope of services, limitations, terms, and conditions regarding the home inspection.

Within three days after the inspection, a home inspector must provide to the client a written report, unless the parties agree to a different time.

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<sup>15</sup> A construction contractor under chapter 489, F.S., is a person licensed through the Department of Business and Professional Regulation as a contractor. There are 17 classes or types of contractors that are regulated. In general, a "contractor" is "the person who, for compensation, undertakes to, submits a bid to, or does himself or herself or by other construct, repair, alter, remodel, add to, demolish, subtract from, or improve any building or structure . . ." Section 489.105(3), F.S.

<sup>16</sup> An architect is a person who performs architecture. Architecture is "the rendering or offering to render services in connection with the design and construction of a structure or group of structures which have as their principal purpose human habitation or use, and the utilization of space within and surrounding such structures. These services include planning, providing preliminary study designs, drawings and specifications, job-site inspection, and administration of construction contracts." Section 481.203(6), F.S.

<sup>17</sup> An engineer is person who engages in the practice of engineering. Engineering "means any service or creative work, the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning, and design of engineering works and systems, planning the use of land and water, teaching of the principles and methods of engineering design, engineering surveys, and the inspection of construction for the purpose of determining in general if the work is proceeding in compliance with drawings and specifications, any of which embraces such services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, pneumatic, or thermal nature, insofar as they involve safeguarding life, health, or property; and includes such other professional services as may be necessary to the planning, progress, and completion of any engineering services." Section 471.005(6), F.S.

<sup>18</sup> This paragraph is printed in boldface 10 point type, the minimum size required by this bill. The text of this analysis, excluding footnotes, is in 12 point type.

A home inspector may not accept any commission, allowance, gift, or other thing of value from another party dealing with a client of the inspector which relates to the inspection or conditions reported by the home inspector; offer any commission, allowance, gift, or other thing of value to another party dealing with a client of the inspector which relates to the inspection; perform, or offer to perform, for a fee, remedial work on a property which the inspector has inspected in the preceding 12 months; or disclose, without the client's written consent, a home inspection report to any person other than the client.

This bill further provides that failure to comply with any of its provisions constitutes a deceptive and unfair trade practice.

**D. SECTION-BY-SECTION ANALYSIS:**

See "Current Situation" and "Effect of Proposed Changes"

**III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None

2. Expenditures:

The fiscal impact to state government is unknown but is likely minimal. If an organization applies to the Department of Business and Professional Regulation to have that organization's standards approved as "equivalent" or that organization's examination approved as "psychometrically valid", the department would have to spend time to review the proposal. No fiscal impact statement has been received from the Department of Business and Professional Regulation. A fiscal impact statement was requested on January 19, 2000.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None

2. Expenditures:

None

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

This bill will have a minimal direct economic impact on persons performing home inspections, as they will be required to draft disclosures and contracts to comply with the requirements of this bill.

D. FISCAL COMMENTS:

None

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill 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 bill 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 bill 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:

Comments by the Committee on Business Regulation and Consumer Affairs

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.

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.

In practical terms, action under the Florida Deceptive and Unfair Trade Practice Act 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.

#### Comments by the Committee on Real Property and Probate

This bill provides that a home inspector that wishes to utilize the term "board-certified" must pass the National Home Inspector Examination and must comply with the Standards and Practices of the American Society of Home Inspectors.<sup>19</sup> The Secretary of the Department of Business and Professional Regulation is allowed to certify other standards of practice if they are "consensus-based" and to approve other examinations if they are "psychometrically valid". However, the American Society of Home Inspectors claims that it is the only organization that has established a "consensus-based" standard of practice for home inspectors, and that the National Home Inspector Examination created by its sister organization is the only "psychometrically valid" examination in use by any organization.<sup>20</sup>

There is a concern that, because this bill does not prohibit the use of conspicuous type in the portions of the disclosure other than the caveat, a home inspector might obscure the caveat by utilizing conspicuous type throughout the disclosure. There is a concern that home inspectors providing services to the Federal Housing Administration and to the Veteran's Administration are not exempted from this bill. The bill sponsor will introduce an amendment which addresses these concerns.

There is a concern that this bill does not specifically address liability issues. A home inspector is allowed to form a business entity that shields the home inspector from personal liability, yet he or she is not required to obtain any form of liability insurance, and need not disclose to customers the lack of insurance.

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<sup>19</sup> There is a concern that by mentioning one of several organizations that a home inspector may join, this bill may encourage home inspectors to join that organization, possibly to the detriment of the other organizations.

<sup>20</sup> Telephone conference with Mark Cramer, of Indian Rocks, Florida, President of the American Society of Home Inspectors, January 25, 2000.

The Florida Association of Realtors is in favor of this bill, but would prefer that home inspectors "be fully licensed and regulated."<sup>21</sup>

**VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:**

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

Amendment #1 amends the statutory intent section of the bill, adding that a home inspection does not include an evaluation of compliance with construction codes.

Amendment #2 adds a definition of "home" as follows: "'Home' means any improved residential real property that is a single-family detached dwelling unit or a single-family dwelling unit and appurtenant common elements in a multifamily structure, or a multifamily structure of four units or fewer. Residential dwelling units or structures may include any townhouse, duplex, condominium, cooperative, or timeshare property meeting such unit restriction."

Amendment #3 amends the list of persons exempt from the provisions of this bill by adding persons certified as a building code administrator,<sup>22</sup> plans examiner,<sup>23</sup> or inspector<sup>24</sup> under part XII of Chapter 468, F.S.

Amendment #4 clarifies that a violation of the provisions of this bill 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

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<sup>21</sup> Headlines, by the Florida Association of Realtors, January 24, 2000.

<sup>22</sup> A "building code administrator" is "any of those employees of municipal or county governments with building construction regulation responsibilities who are charged with the responsibility for direct regulatory administration or supervision of plan review, enforcement, or inspection of building construction, erection, repair, addition, remodeling, demolition, or alteration projects that require permitting indicating compliance with building, plumbing, mechanical, electrical, gas, fire prevention, energy, accessibility, and other construction codes as required by state law or municipal or county ordinance." Section 468.603(1), F.S.

<sup>23</sup> A "plans examiner" means "a person who is qualified to determine that plans submitted for purposes of obtaining building and other permits comply with the applicable building, plumbing, mechanical, electrical, gas, fire prevention, energy, accessibility, and other applicable construction codes." Section 468.603(7), F.S.

<sup>24</sup> A "building code inspector" or "inspector" is "any of those employees of local governments or state agencies with building construction regulation responsibilities who themselves conduct inspections of building construction, erection, repair, addition, or alteration projects that require permitting indicating compliance with building, plumbing, mechanical, electrical, gas, fire prevention, energy, accessibility, and other construction codes as required by state law or municipal or county ordinance." Section 468.603(2), F.S.

**STORAGE NAME:** h0465.rpp

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**PAGE 10**

AS REVISED BY THE COMMITTEE ON REAL PROPERTY & PROBATE:

Prepared by:

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Nathan L. Bond, J.D.

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J. Marleen Ahearn, Ph.D., J.D.