

By the Committee on Regulated Industries; and Senator Bennett

315-2298-03

1                                   A bill to be entitled  
2           An act relating to home inspection services;  
3           creating s. 501.935, F.S.; providing  
4           requirements relating to home inspection  
5           services; providing legislative intent;  
6           providing definitions; providing certain  
7           inspector qualifications and practice  
8           standards; limiting the authority of the  
9           Department of Agriculture and Consumer Services  
10          to license home inspectors or to impose fees on  
11          or file administrative complaints against home  
12          inspectors; providing exemptions; requiring,  
13          before inspection, provision of inspector  
14          credentials, a caveat, a disclosure of  
15          conflicts of interest and certain  
16          relationships, and a statement or agreement of  
17          scope, limitations, terms, and conditions;  
18          requiring a report to the client on the results  
19          of the inspection and requiring provision of  
20          relevant portions thereof to homeowners under  
21          certain circumstances; prohibiting certain acts  
22          for which there are civil penalties; providing  
23          that failure to comply is a deceptive and  
24          unfair trade practice; providing for injunction  
25          against use of the title "board-certified home  
26          inspector" under certain circumstances and  
27          requiring notice thereof to potential clients;  
28          providing for the filing of complaints;  
29          requiring maintenance of records regarding  
30          complaints and compilation of statistics  
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1           regarding such complaints; providing an  
2           effective date.

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4 Be It Enacted by the Legislature of the State of Florida:

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6           Section 1. Section 501.935, Florida Statutes, is  
7 created to read:

8           501.935 Home inspection services; qualifications and  
9 standards; exemptions; required disclosures prior to  
10 inspection; report on inspection results; prohibited acts;  
11 failure to comply; complaints.--

12           (1) INTENT.--The Legislature recognizes that the  
13 performance of a home inspection requires certain unique  
14 skills and that a home inspection should not be confused with  
15 an engineering analysis, the practice of engineering, the  
16 practice of architecture, an evaluation of compliance with  
17 construction codes, a code enforcement inspection, contracting  
18 as defined in chapter 489, or an appraisal as defined in  
19 chapter 475. Therefore, it is in the public interest to  
20 require the disclosure of information useful to assist  
21 consumers in choosing a qualified home inspector, to inform  
22 them of the limitations of a home inspection, and to prohibit  
23 actions that conflict with the best interests of a home  
24 inspector's client.

25           (2) DEFINITIONS.--As used in this section, the term:

26           (a) "Conspicuous type" means type in capital letters  
27 at least 2 points larger than the largest type, exclusive of  
28 headings, on the page on which it appears and, in all cases,  
29 at least 10-point type. When conspicuous type is required, it  
30 must be separated on all sides from other type and print.

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1 Conspicuous type may not be used in a disclosure or contract  
2 except when required by law.

3 (b) "Home" means any improved residential real  
4 property that is a single-family dwelling, duplex, triplex,  
5 quadruplex, condominium unit, or cooperative unit. The term  
6 includes the structure, fixtures, appliances, and mechanical  
7 systems, but does not include offsite amenities or common  
8 areas of a condominium or cooperative.

9 (c) "Home inspector" means any person who provides or  
10 offers to provide a home inspection for a fee or other  
11 compensation.

12 (d) "Home inspection" means an examination, done for  
13 compensation, of the mechanical and physical components of a  
14 home through visual means and operation of normal user  
15 controls, without necessarily the use of any mathematical or  
16 engineering science. The inspection may include, but is not  
17 limited to, examination of the readily visible portions of the  
18 structural, electrical, heating, central air-conditioning,  
19 roofing, plumbing, insulation and ventilation, cladding  
20 systems, doors and windows, interior surfaces, and chimneys  
21 and fireplaces.

22 (e) "Code certified" means that the inspector has  
23 passed either the One and Two Family Dwelling Inspector  
24 examination or International Residential Code Inspector  
25 examination as administered by a recognized model code  
26 organization, such as SBCCI, ICBO, or ICC, or has passed the  
27 examinations as administered by a recognized model code  
28 organization in all of the following categories: BUILDING  
29 INSPECTOR, PLUMBING INSPECTOR, ELECTRICAL INSPECTOR, and  
30 MECHANICAL INSPECTOR, thus demonstrating that the inspector

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1 has a fundamental knowledge of the codes relating to the  
2 construction of homes.

3 (3) HOME INSPECTION SERVICES; STANDARDS OF PRACTICE.--

4 (a) The Department of Agriculture and Consumer  
5 Services shall adopt and incorporate by rule the Standards of  
6 Practice of the American Society of Home Inspectors in effect  
7 on January 1, 2003, or any other consensus-based home  
8 inspection standard deemed equivalent by the Department of  
9 Agriculture and Consumer Services, including minimum standards  
10 required for a home inspector to claim to be a "certified home  
11 inspector." Any such standard shall require that a home  
12 inspector have experience and have successfully passed an  
13 examination regarding home inspections.

14 (b) In adopting the rules required by this subsection,  
15 the department shall consult with representatives of the  
16 Florida home inspection industry, the Florida Building Code  
17 Administrators and Inspectors Board, the Construction Industry  
18 Licensing Board, and the Electrical Contractors' Licensing  
19 Board.

20 (c) The purpose and intent of this subsection is not  
21 to create or impose a bureau or other state agency to regulate  
22 the affairs of home inspectors. Accordingly, the Department of  
23 Agriculture and Consumer Services shall not license a home  
24 inspector, collect fees from a home inspector for licensure,  
25 or file an administrative complaint against a home inspector  
26 for a violation of this section or for a violation of rules  
27 adopted under this section.

28 (4) EXEMPTIONS.--The following persons are not  
29 required to comply with this section with regard to any  
30 valuation condition, report, survey, evaluation, or estimate  
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1 rendered within the scope of practice authorized by such  
2 license:  
3 (a) A construction contractor licensed under chapter  
4 489.  
5 (b) An architect licensed under chapter 481.  
6 (c) An engineer licensed under chapter 471.  
7 (d) A building code administrator, plans examiner, or  
8 building code inspector licensed under part XII of chapter  
9 468.  
10 (e) A certified real estate appraiser, licensed real  
11 estate appraiser, or registered assistant real estate  
12 appraiser licensed under part II of chapter 475.  
13 (f) An inspector whose report is being provided to,  
14 and is solely for the benefit of, the Federal Housing  
15 Administration or the Veterans Administration.  
16 (5) DISCLOSURE.--Before entering into a contract for  
17 home inspection and before performing any home inspection, a  
18 home inspector must provide the following to any person who  
19 will enter into a contract to have a home inspection and who,  
20 as a client of the inspector, has requested the inspection:  
21 (a) A written list of the home inspector's  
22 credentials, including whether or not the inspector is board  
23 certified.  
24 (b) A caveat in conspicuous type that states:  
25 "AN INSPECTION IS INTENDED TO ASSIST IN EVALUATION OF  
26 THE OVERALL CONDITION OF A HOME. THE INSPECTION IS BASED ON  
27 OBSERVATION OF THE VISIBLE AND APPARENT CONDITION OF THE  
28 BUILDING AND ITS MECHANICAL AND PHYSICAL COMPONENTS ON THE  
29 DATE OF THE INSPECTION. THE RESULTS OF THIS HOME INSPECTION  
30 ARE NOT INTENDED TO MAKE ANY REPRESENTATION REGARDING LATENT  
31 OR CONCEALED DEFECTS THAT MAY EXIST, AND NO WARRANTY OR

1 GUARANTEE IS EXPRESSED OR IMPLIED. IT SHOULD BE UNDERSTOOD  
2 THAT A HOME INSPECTION IS A GENERAL OVERVIEW OF THE CONDITION  
3 OF THE BUILDING AND COMPONENTS. THE HOME INSPECTOR IS NOT  
4 NECESSARILY A PROFESSIONAL WITH LICENSES AUTHORIZING THE  
5 RENDERING OF DETAILED OPINIONS REGARDING ANY OR ALL OF THE  
6 ITEMS OR SYSTEMS INCLUDED IN THE INSPECTION. YOU MAY WISH TO  
7 SEEK AN OPINION FROM AN APPROPRIATELY LICENSED PROFESSIONAL AS  
8 TO ANY DEFECTS OR CONCERNS MENTIONED IN THE REPORT."

9 (c) A written disclosure to the client of any conflict  
10 of interest or relationship of the home inspector which may  
11 affect the client.

12 (d) A written statement or agreement declaring the  
13 home inspector's scope of services, limitations, terms, and  
14 conditions regarding the home inspection.

15 (6) REPORT.--A home inspector must provide to the  
16 client, within 3 working days after the date of the home  
17 inspection or at any other time agreed upon by both parties, a  
18 written report of the results of the home inspection. The  
19 relevant part of the report shall be provided by the buyer to  
20 the owner of the home upon request if a home inspection report  
21 is used by the buyer as a reason to void, modify, or refuse to  
22 close on a contract for sale and purchase of the home.

23 (7) PROHIBITIONS.--A home inspector may not:

24 (a) Accept any commission, allowance, gift, or other  
25 thing of value from another party dealing with a client of the  
26 inspector which relates to the inspection or conditions  
27 reported by the home inspector.

28 (b) Offer any commission, allowance, gift, or other  
29 thing of value to another party dealing with a client of the  
30 inspector which offer relates to the inspection.

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1           (c) Perform or offer to perform, for a fee, remedial  
2 work on a property which the inspector has inspected in the  
3 preceding 12 months.

4           (d) Disclose, without the client's written consent, a  
5 home inspection report to a person other than the client.

6           (e) Perform an inspection of any home that has not  
7 previously been issued a certificate of occupancy unless that  
8 home inspector is code certified.

9           (8) FAILURE TO COMPLY.--The failure of a home  
10 inspector to comply with any provision of this section  
11 constitutes a deceptive and unfair trade practice for which a  
12 cause of action under part II of this chapter may be  
13 prosecuted, in addition to any other remedy provided by law. A  
14 court may enjoin any person who has substantially failed to  
15 comply with this section from using the title "board-certified  
16 home inspector" for a reasonable period of time and may  
17 require such person to inform any potential client of the  
18 existence of such injunction.

19           (9) COMPLAINTS.--Complaints concerning a home  
20 inspector subject to the provisions of this section may be  
21 referred to the Division of Consumer Services of the  
22 Department of Agriculture and Consumer Services. The division  
23 shall maintain records regarding complaints and shall compile  
24 statistics regarding such complaints.

25           Section 2. This act shall take effect July 1, 2003.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
COMMITTEE SUBSTITUTE FOR  
SB 1902

Adds a definition for "Code Certified".  
Clarifies that a home inspector may not perform an inspection  
of any home that has not previously received a certificate of  
occupancy.