

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Regulated Industries Committee

BILL: CS/SB 1830

SPONSOR: Regulated Industries Committee and Senator Argenziano

SUBJECT: Home inspection services

DATE: April 26, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Imhof	RI	Fav/CS
2.			GA	
3.				
4.				
5.				
6.				

I. Summary:

The committee substitute (CS) creates s. 501.935, F.S., to provide requirements for home inspectors. It provides that home inspectors are not regulated by any state agency, but violations of the section may be actionable as an unfair and deceptive trade practice under part II of ch. 501, F.S.

It provides for:

- Exemptions to the section for certain licensed and regulated professionals;
- Criminal penalties for certain violations of the section; and
- A requirement to maintain commercial general liability insurance in the amount not less than \$300,000;
- The statute of limitations as provided in ch. 95, F.S. governs actions to enforce an obligation, duty, or right arising under the section.

It provides that home inspectors are not required to provide estimates related to the cost of repair of an inspected property.

This bill creates s. 501.935 of the Florida Statutes.

II. Present Situation:

Current Florida law does not license or regulate the practice of home inspectors. There are an estimated 3,000 home inspection entities in Florida.¹ Generally, the home inspector provides an inspection to a buyer just prior to the sale of the home. The home inspector looks for visually

¹ The department obtained this information from the Florida Association of Building Inspectors.

obvious problems with the home and reports any problems to the buyer who may consider having them corrected by the seller before closing the sale. A home inspector is not required to report to the customer possible conflicts of interest and is under no obligation to maintain the confidentiality of a home inspection report.

The existence and level of home inspector regulation varies from state to state.² Georgia law requires home inspectors to provide written documents to customers containing certain information, including the scope of the inspection, the structural elements and systems to be inspected, that the inspection is a visual inspection, and that the home inspector will notify, in writing, the person on whose behalf such inspection is being made of any defects noted during the inspection.³ In Alabama the rules require individuals performing home inspections to be licensed by the Alabama Building Commission.⁴ The Alabama Standards of Practice and Code of Ethics are adopted from the American Society of Home Inspectors (ASHI) Standards of Practice and Code of Ethics.⁵ The Alabama law also outline educational and experience requirements to become licensed, sets license fees and insurance requirements, and defines penalties under which licensure may be suspended or revoked.⁶

III. Effect of Proposed Changes:

Section 1.

Definitions

The bill creates s. 501.935(1), F.S., to provide the following definitions:

- “Home” means any residential real property, or manufactured or modular home, which is a single-family dwelling, duplex, triplex, quadruplex, condominium unit, or cooperative unit. It does not include the common areas of condominiums or cooperatives;
- “Home inspector” means any person who provides or offers to provide a home inspection for a fee or other compensation;
- “Home inspection” means a limited visual examination of one or more of the readily accessible installed systems and components of a home, including the structure, electrical system, HVAC system, roof covering, plumbing system, interior components, exterior components, and site conditions that affect the structure, for the purposes of providing a written professional opinion of the condition of the home.

Requirements of Practice

The bill creates s. 501.935(2), F.S., to provide the requirements of practice that include:

- Successfully completing a course in home inspections which requires a passing score on a valid examination provided through a nonprofit organization or

² The National Association of Certified Home Inspectors (NACHI) reports that there are at least 17 states that license home inspectors.

³ Ga. Code Unann. s. 8-3-331 (2001).

⁴ Alabama Building Commission, Alabama Home Inspectors Registration Program, *Chapter 170-x-24-.03*.

⁵ *Id.* at *Chapter 170-x-25-02*.

⁶ Al. Code s. 34-14B-1 – 9 (1975).

community college or university, not less than 80 hours which includes but is not limited to:

- Structure;
 - Electrical system;
 - Roof covering;
 - Plumbing system;
 - Interior components;
 - Exterior components;
 - Site conditions that affect the structure; and
 - Heating, ventilation, and cooling systems.
- Annually completes eight hours of continuing education, provided through a nonprofit organization or a community college or university, related to home inspections;
 - Discloses in writing to the consumer prior to contracting for or commencing a home inspection:
 - The home inspector meets the education and examination requirements;
 - The home inspector maintains the commercial general liability insurance policy;
 - The scope and any exclusions of the home inspection;
 - A statement of experience which shall include either the approximate number of home inspections the home inspector has performed for a fee or the number of years of experience as a home inspector.
 - Violations of the section may be an unfair and deceptive trade practice under part II of ch. 501, F.S.;
 - Business entities may not provide or offer to provide home inspection services unless each of the home inspectors employed by the business entity satisfy all the requirements of the section; and
 - Business entities may not use the title “home inspectors” to describe the business entity’s services unless each of the home inspectors employed by the business entity satisfies all the requirements of the section.

Exemptions

The bill creates s. 501.935(3), F.S., to provide the following exemptions from the section when acting within the scope of practice authorized by the license except when conducting, producing, disseminating, or charging a fee for a home inspection or otherwise operating within the scope of this section:

- A construction contractor licensed under ch. 489, F.S.;
- An architect licensed under ch. 481, F.S.;
- An engineer licensed under ch. 471, F.S.;
- A building code administrator, plans examiner, or building code inspector licensed under part XII of ch. 468;
- A certified real estate appraiser, licensed real estate appraiser, or registered real estate appraiser licensed under part II of ch. 475, F.S.;
- An inspector whose report is being provided to, and is solely for the benefit of, the Federal Housing Administration or the Veterans Administration;

- An inspector conducting inspections for wood-destroying organisms on behalf of a licensee under ch. 482, F.S.;
- A firesafety inspector certified under s. 633.081, F.S.;
- An insurance adjuster licensed under part VI of ch. 626, F.S., or any person performing insurance duties;
- An officer appointed by the court;
- A master septic tank contractor licensed under part III of ch. 489, F.S.;
- A certified energy auditor performing an energy audit of any home or building conducted under ch. 366, F.S, or rules adopted by the Public Service Commission; or
- A mobile home manufacturer, dealer, or installer regulated or licensed under the requirements of ch. 320, F.S. and any employees or agents of the manufacturer, dealer, or installer.

Prohibited Acts; Penalties

The bill creates s. 501.935(4), F.S., to provide that a home inspector, a company that employs a home inspector, or a company that is controlled by a company that also has a financial interest in a company employing a home inspector may not:

- Perform or offer to perform, prior to closing, for any additional fee, any repairs to a home on which the inspector or the inspector's company has prepared a home inspection report. This does not apply to a home warranty company that is affiliated with or retains a home inspector to perform repairs pursuant to a claim made under a home warranty contract;
- Inspect for a fee any property in which the inspector or the inspector's company has any financial or transfer interest;
- Offer or deliver any compensation, inducement, or reward to the owner of the inspected property, or any broker or agent therefore, for the referral of any business to the inspector or the inspection company;
- Accept an engagement to make an omission or prepare a report in which the inspection itself, or the fee payable for the inspection, is contingent upon either the conclusions in the report, preestablished findings, or the close of escrow.

Any person who violates provisions of the subsection commits:

- A misdemeanor of the second degree for a first violation, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S.;
- A misdemeanor of the first degree for a second violation, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S.;
- A felony of the third degree for a third or subsequent violation, punishable as provided in s. 775.082, F.S., s. 775.083, F.S., or s. 775.084, F.S.

Insurance

The bill creates s. 510.935(5), F.S., to provide that a licensed home inspector must maintain a commercial general liability insurance policy in an amount of not less than \$300,000.

Repair Cost Estimates

The bill creates s. 510.935(6), F.S., to provide that home inspectors are not required to provide estimates related to the cost of repair of an inspected property.

Statute of Limitations

The bill creates s. 510.935(7), F.S., to provide that ch. 95, F.S. governs when an action to enforce an obligation, duty, or right arising under section must be commenced.

Enforcement of Violations

The bill creates s. 510.935(8), F.S., to provide that any violation of this section constitutes a deceptive and unfair trade practice, punishable as provided in part II of this chapter.

Section 2.

The bill has an effective date of July 1, 2005.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
