

Arkansas Code of 1987 Annotated Official Edition
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*** CURRENT THROUGH THE 2010 FISCAL SESSION ***

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17-52-301. Title.

This subchapter shall be known and may be cited as the "Arkansas Home Inspectors Registration Act".

HISTORY: Acts 2003, No. 1328, § 1.

17-52-302. Purpose and intent.

(a) It is the intent of the General Assembly in enacting this subchapter:

- (1) To assure that consumers of home inspection services can rely upon the competence of home inspectors as determined by educational and testing requirements;
- (2) That in ascertaining the degree of care that would be exercised by a reasonably prudent home inspector, the court shall consider the standards of practice and code of ethics that are in force at the time the inspection in question was conducted; and
- (3) That this subchapter apply to and govern all persons who practice home inspection in Arkansas whether they are registered under its provisions or not.

(b) The purpose of the Arkansas Home Inspector Registration Board created under this subchapter shall be to:

- (1)** Administer and enforce the provisions of this subchapter;
- (2)** Promote a business atmosphere that will protect consumers of home inspection services;
- (3)** Oversee an ongoing program to develop high-level skills in home inspectors; and
- (4)** Encourage the presence of a viable home inspection industry in Arkansas.

HISTORY: Acts 2003, No. 1328, § 1.

17-52-303. Definitions.

As used in this subchapter:

- (1)** "Applicant" means a person who is applying for registration or renewal of registration under this subchapter;
- (2)** "Board" means the Arkansas Home Inspector Registration Board as established in this subchapter;
- (3)** "Client" means a person who engages the services of a home inspector for the purpose of obtaining inspection of and a written report on the condition of a residential unit;
- (4)** "Competency examination" means a written examination to establish whether an applicant possesses an adequate level of knowledge of home inspection procedures and components;
- (5)** "Home inspection" means a visual inspection of a residential unit and its attached carports and garages and the operation of the building's systems by using the controls normally operated by the owner;
- (6)** "Home inspection report" means a written report prepared for a fee and issued by a home inspector to document the results of a home inspection;
- (7)** "Home inspector" means a person who engages in the business of performing home inspections for compensation and who in the pursuit of that business offers to inspect or inspects the condition of a private residence;
- (8)** "Person" means any natural person; and
- (9)** "Residential unit" means any dwelling from one (1) to four (4) units in design intended principally for residential purposes by one (1) or more persons.

HISTORY: Acts 2003, No. 1328, § 1.

17-52-304. Creation -- Members.

- (a)** There is created the Arkansas Home Inspector Registration Board.
- (b)** The board shall consist of seven (7) members, to be appointed by the Governor as follows:
 - (1)** Four (4) members shall be registered home inspectors;

(2) One (1) member shall be a licensed real estate professional;

(3) One (1) member shall be a licensed real estate appraiser; and

(4) One (1) member shall be an at-large member who shall serve as a consumer advocate.

(c) (1) The initial members appointed under subsection (b) of this section shall determine their terms of office by drawing lots to result in two (2) home inspector members and two (2) noninspector members serving two-year terms and two (2) home inspector members and (1) noninspector member serving one-year terms.

(2) Successor appointed members shall serve two-year terms.

(d) Any vacancy that occurs on the board shall be filled by the Governor for the remainder of the unexpired term.

(e) Board members shall serve not more than three (3) consecutive terms of office.

(f) The consumer advocate member of the board shall call the first meeting and shall serve as chair of the first meeting.

(g) If funds are available, members of the board may receive expense reimbursement according to § 25-16-902.

HISTORY: Acts 2003, No. 1328, § 1.

17-52-305. Meetings.

(a) The Arkansas Home Inspector Registration Board shall physically meet not fewer than two (2) times each calendar year to conduct the business of the board.

(b) The board may conduct any additional meetings in person, by telephone conference call, or by other electronic means.

(c) Dates, times, and places of meetings shall be decided by a majority vote of the board members.

(d) (1) At the first meeting, a chair and all other officers needed to conduct the business of the board shall be elected.

(2) Except for the election of the initial board officers, all officers shall be elected in May of each year and shall serve for twelve-month terms.

(e) Written notice shall be given to each member of the board of the time and place of each meeting at least ten (10) calendar days before the scheduled date of the meeting.

(f) The minutes of all meetings shall be recorded by an administrative secretary and made a permanent part of the records of the board no later than seven (7) calendar days after the respective meeting.

(g) A majority of the members of the board shall constitute a quorum for transacting any business of the board.

HISTORY: Acts 2003, No. 1328, § 1.

17-52-306. Powers and duties of the board.

The Arkansas Home Inspector Registration Board may:

(1) Perform the duties and functions appropriate and necessary to carry out the provisions of this subchapter;

(2) Review, approve, or reject registration applications and issue registration certificates to applicants;

(3) Establish a mandatory continuing education program designed to upgrade the professional skills and knowledge of home inspectors practicing in Arkansas;

(4) (A) Establish administrative procedures for disciplinary proceedings conducted according to the provisions for this subchapter.

(B) The procedures shall include provisions for the suspension and revocation of registration and enforcement of civil penalties;

(5) Establish procedures for processing and resolving complaints against home inspectors conducting inspections in Arkansas;

(6) Authorize disbursement of the funds collected into the Arkansas Home Inspectors Registration Fund;

(7) Employ legal counsel to represent it in any proceedings when legal counsel is required;

(8) Develop competency exams for home inspectors;

(9) Establish a standard of practice and code of ethics for home inspectors;

(10) Enter into agreements with other states, territories, districts, or possessions of the United States concerning registration or licensing requirements acceptable between Arkansas and the other entities;

(11) Maintain working files as it deems necessary;

(12) Contract for administrative support services and meet financial obligations of those contracts using moneys from the Arkansas Home Inspectors Registration Fund;

(13) (A) Develop and implement a means for conducting Internet board meetings, which may be observed by the public in real time.

(B) Public participation in the meetings may be permitted in accordance with rules developed by the board;

(14) Establish and maintain an Internet site devoted to home inspection registration and related subjects;

(15) (A) Assume the Secretary of State's responsibilities for home inspector registration by development of or contracting for a support organization to perform the administrative duties required by the board if the Arkansas Home Inspectors Registration Fund totals at least fifteen thousand dollars (\$15,000).

(B) If the fund totals at least fifteen thousand dollars (\$15,000) and the board votes to transfer the responsibilities of the Secretary of State to the board, then the board shall give written notice to the Secretary of State ninety (90) calendar days before the transfer; and

(16) Establish educational requirements for registration to begin after July 1, 2004, including the standards and procedures for approval of educational programs if the maximum number of hours required shall not exceed ninety (90) classroom hours.

HISTORY: Acts 2003, No. 1328, § 1.

17-52-307. Hearings -- Review -- Access to records.

(a) As part of an investigation or as a condition of renewal, the Arkansas Home Inspector Registration Board may require an inspector to submit in writing inspection reports and other documents to be reviewed by the board.

(b) Requests by the board for copies of inspection reports shall supersede any contract of client privacy or confidentiality whether written or oral.

(c) Any documents submitted to the board as part of an investigation shall:

- (1)** Be considered as confidential documents;
- (2)** Be used only for the purpose for which they are requested;
- (3)** Not be available for public viewing;
- (4)** Not become part of any official file; and
- (5)** Not be revealed to any non-board members.

(d) When the action for which they were requested is completed by the board, the documents shall be returned to the inspector at his or her own expense or destroyed if the inspector requests that the documents be destroyed.

(e) In fulfilling its duties under this subchapter, the board shall comply with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., and any person aggrieved by any rule or other actions of the board for which an appeal is not provided for in the Arkansas Administrative Procedure Act, § 25-15-201 et seq., may appeal to the Pulaski County Circuit Court.

(f) All work papers submitted to the board for action on complaints and disciplinary procedures under this subchapter shall not be deemed public records under the Freedom of Information Act of 1967, § 25-19-101 et seq.

HISTORY: Acts 2003, No. 1328, § 1.

17-52-308. Complaints and disciplinary procedures.

(a) Disciplinary hearings conducted by the Arkansas Home Inspector Registration Board for the purpose of determining whether to levy civil penalties under this subchapter and for the purpose of determining whether to revoke or suspend any registration, license, or certificate issued under this subchapter shall be open public meetings conducted as provided for in the Freedom of Information Act of 1967, § 25-19-101 et seq., unless otherwise superseded by provisions of this subchapter.

(b) Upon its own motion or upon written complaint of any person and after notice and hearing as provided by the Arkansas Administrative Procedure Act, § 25-15-201 et seq., the board may suspend or revoke the registration of any home inspector and issue a fine up to one thousand dollars (\$1000) per violation or occurrence or take any other appropriate disciplinary action for:

(1) Any violation of the provisions in this subchapter;

(2) Falsifying any application for registration or otherwise providing any false information to the board or the Secretary of State;

(3) (A) Conviction in any jurisdiction of a misdemeanor involving moral turpitude or of any felony.

(B) A plea of nolo contendere or no contest is considered a conviction for the purposes of this section;

(4) Any actions demonstrating untrustworthiness, incompetence, dishonesty, gross negligence, material misrepresentation, fraud, or unethical conduct in any dealings subject to this subchapter or these regulations;

(5) Adjudication of insanity;

(6) (A) Use of advertising or solicitation that is false, misleading, or is otherwise deemed unprofessional by the board.

(B) All advertisements, contracts, correspondence, and other documents utilized by a home inspector shall prominently include the home inspector's name and registration number as registered according to this subchapter; or

(7) Habitual or excessive use of intoxicants or illegal drugs.

HISTORY: Acts 2003, No. 1328, § 1; 2005, No. 2014, § 2.

17-52-309. Violation of law -- Civil penalties, injunctions, and venue.

(a) (1) It is unlawful for any person not registered under this subchapter to perform any act for which registration is required.

(2) Any person acting as a home inspector within the meaning of this subchapter without a home inspector certificate of registration and any person who violates any other provision of this subchapter shall be guilty of a misdemeanor.

(b) (1) Upon application by the Arkansas Home Inspector Registration Board, a court may grant an injunction, restraining order, or other order as may be appropriate to enjoin a person from:

(A) Offering to engage or engaging in the performance of any acts or practices for which registration is required by this subchapter after a showing that the acts or practices were performed or offered to be performed without a certificate of registration; or

(B) Engaging in any practice or business authorized by a certificate of registration issued under this subchapter upon a showing that the holder presents a substantial probability of serious danger to the health, safety, or welfare of any resident of this state or client of the certificate holder.

(2) Any person cosigning a home inspection report with a registered home inspector becomes subject to the provisions of this subchapter.

(c) Any action brought under this section shall be commenced in the county in which the conduct occurred, in the county in which the defendant resides, or in Pulaski County.

(d) Any actions brought under this section shall be in addition to any penalty under this subchapter and may be brought concurrently with other actions to enforce the provisions of this subchapter.

HISTORY: Acts 2003, No. 1328, § 1.

17-52-310. Continuing education.

(a) The Arkansas Home Inspector Registration Board shall implement requirements for home inspectors to successfully complete continuing education annually as a condition to registration renewal.

(b) The board shall:

(1) Review the curriculum of continuing education providers;

(2) Grant, deny, or revoke approval of those providers as appropriate; and

(3) Provide a list of approved providers to all registered home inspectors.

(c) All costs or fees for continuing education will be borne by the individual inspector.

(d) The board shall promote continuing education courses in Arkansas.

(e) (1) Failure to complete continuing education requirements shall result in suspension of the home inspector's registration.

(2) However, the board may waive all or part of the requirements of this section for any registered home inspector who submits satisfactory evidence of his or her inability to meet the continuing education requirements due to debilitating health, hardship, or extenuating circumstances beyond his or her control.

HISTORY: Acts 2003, No. 1328, § 1.

17-52-311. Role of Secretary of State.

(a) (1) The Secretary of State shall be the custodian of permanent, official, home inspector registration files and shall maintain permanent records of all home inspector registration applications received since the enactment of this subchapter.

(2) The Secretary of State shall maintain the permanent records of the Arkansas Home Inspector Registration Board.

(b) The Secretary of State shall receive and process applications for initial registration and renewal of registration.

HISTORY: Acts 2003, No. 1328, § 1.

17-52-312. Fund.

(a) There is created in the State Treasury a fund to be known as the "Arkansas Home Inspectors Registration Fund".

(b) All funds, fees, charges, costs, and collections accruing to or collected under the provisions of this subchapter shall be deposited into the State Treasury to the credit of this fund.

(c) The funds shall be used for the purposes as specified in this subchapter.

(d) (1) Except as provided in subdivision (d)(2) of this section, effective with the 2003 registration and under the provisions of this subchapter, all funds, fees, charges, costs, and collections accruing to or collected by the Secretary of State shall be deposited quarterly into the fund.

(2) The Secretary of State shall retain twenty-five dollars (\$25.00) for processing registration applications and renewals until this process is transferred to the Arkansas Home Inspector Registration Board.

(e) The board will process disbursements of those funds as necessary in the administration of this subchapter.

HISTORY: Acts 2003, No. 1328, § 1.

17-52-313. Disposition of funds.

(a) (1) The Secretary of the Arkansas Home Inspector Registration Board shall receive, disburse, and account for all income paid to or received by the board.

(2) The secretary shall institute a system of books and financial records satisfactory to the Director of the Department of Finance and Administration.

(3) (A) All fees collected on behalf of the board and all receipts of every kind and nature shall be paid into the State Treasury and shall be credited to the Arkansas Home Inspectors Registration Fund.

(B) The fund shall be for the general uses of the board, and out of it shall be paid all salaries and all other expenses necessarily incurred in carrying into effect the provisions of this subchapter.

(C) Expenditures from the fund shall be substantiated by vouchers and itemized statements at the end of each fiscal year or at any other time when demand is made by the Department of Finance and Administration.

(4) The secretary shall deposit all funds of the board that he or she receives with the State Treasury within forty-eight (48) hours, excluding holidays and Sundays, after he or she receives the funds.

(b) All fines collected for the violation of any provisions of this subchapter shall be paid over to the board to be used by it in the same manner as funds received for the issuance of registration.

(c) The total amount of warrants issued by the board or Auditor of State in payment of the expenses and compensation provided in this subchapter shall not exceed the amount of the application, registration, and other fees collected.

(d) (1) Any surplus funds at the end of the fiscal year may be retained by the board for future expenditures.

(2) The board shall not be required to pay any surplus into the General Revenue Fund Account of the State Apportionment Fund.

HISTORY: Acts 2003, No. 1328, § 1.

17-52-314. Registration.

(a) No person shall advertise as a home inspector or undertake or attempt to undertake the conduct of a home inspection in this state without first having complied with this subchapter.

(b) No person who is registered under one (1) name as provided in this subchapter shall engage in business as a home inspector under any other name unless the other name is also registered.

HISTORY: Acts 2003, No. 1328, § 1.

17-52-315. Application for registration.

(a) Any person applying for registration or renewal of registration as a home inspector shall be of good moral character and shall submit to the Arkansas Home Inspector Registration Board:

(1) An application under oath upon a form to be prescribed by the board;

(2) A current certificate of insurance issued by an insurance company licensed or surplus lines approved to do business in this state that states that the applicant has procured general liability insurance in the minimum amount of one hundred thousand dollars (\$100,000) and, if applicable, workers' compensation insurance; and

(3) The required registration or registration renewal fee with the application.

(b) (1) A person applying for registration for the first time shall also submit with the application a certified copy of a document attesting to the successful completion of the competency examination.

(2) A person renewing a current registration shall also submit with his or her application a properly completed form that states that the person has satisfactorily completed continuing education requirements for the current year.

(3) A person seeking to renew a lapsed, suspended, or otherwise inactive registration shall provide other documents and comply with procedures as may be prescribed by the board.

(c) The following persons shall be exempt from any educational requirements for initial registration, but not from the requirements concerning the competency examination:

(1) City inspectors certified by the International Code Council; and

(2) Contractors who hold a builder's license and have ten (10) years' experience as a contractor.

HISTORY: Acts 2003, No. 1328, § 1.

17-52-316. Fees and reimbursements.

(a) (1) The Arkansas Home Inspector Registration Board may set registration and renewal fees not to exceed three hundred dollars (\$300) per year.

(2) Within forty-five (45) days of the enactment of this section, the board shall notify the Secretary of State of the registration fee for the next year and by June 1 every year thereafter until transferred to the board.

(b) All moneys received under this subchapter shall be used to administer this subchapter.

(c) The board may make reasonable charges for materials provided by the board and for services performed in connection with providing materials.

(d) Other fees authorized to be assessed by the board are:

- (1) Delinquent renewal fees not to exceed the amount of the renewal fee;
- (2) Inspector training or continuing education provider fees as follows:
 - (A) Initial qualifying fees not to exceed two hundred dollars (\$200);
 - (B) Annual renewal fees not to exceed two hundred dollars (\$200); and
 - (C) Additional course filing fees not to exceed twenty-five dollars (\$25.00);
- (3) Duplicate registration fees not to exceed twenty-five dollars (\$25.00);
- (4) Returned check fees not to exceed twenty-five dollars (\$25.00); and
- (5) Change-of-address fees not to exceed twenty-five dollars (\$25.00).

HISTORY: Acts 2003, No. 1328, § 1.

17-52-317. Certificates of registration.

- (a) (1) Certificates of registration shall be issued by the Arkansas Home Inspector Registration Board to an applicant after compliance with the registration or renewal requirements of this subchapter and approval by the board.
- (2) Certificates shall be consecutively numbered.
- (b) When registration is renewed, that person's registration number shall be perpetuated.
- (c) Certificates of registration of a home inspector shall be issued for a period of at least one (1) year and shall expire at the end of a period of up to three (3) years, as may be set by the board.
- (d) Notices of upcoming registration expiration and a reminder to renew shall be mailed to registered inspectors no more than sixty (60) days and no less than forty-five (45) days before the expiration date of the applicant's registration.

HISTORY: Acts 2003, No. 1328, § 1.

17-52-318. Insurance.

- (a) (1) All home inspectors are required to carry general liability insurance.
- (2) Coverage limits shall be not less than one hundred thousand dollars (\$100,000).
- (b) All policies and certificates shall provide that cancellation or renewal of the policy shall not be effective unless and until at least ten (10) days' notice of cancellation or nonrenewal has been received in writing by the Arkansas Home Inspector Registration Board.
- (c) If the insurance coverage required under this subchapter shall cease to be effective, the insured home inspector shall be required to notify the board in writing, of any lapses in coverage.
- (d) (1) After notification, the registration of the affected home inspector shall be suspended until the insurance is reinstated or replaced.

(2) The suspension shall be noted on the inspector's listing on the board's Internet site.

HISTORY: Acts 2003, No. 1328, § 1.

17-52-319. Standards of care.

(a) It is the duty of all home inspectors doing business in the state to conduct home inspections with the degree of care that a reasonably prudent home inspector would exercise.

(b) All home inspections conducted for compensation in this state shall be conducted according to the standards of practice and code of ethics set forth by the Arkansas Home Inspector Registration Board.

(c) If agreed, between the inspector and his or her client, an inspection of lesser scope and detail may be conducted.

(d) Copies of all standards of practice and code of ethics set forth by the board shall be filed with the Secretary of State and made available at cost to anyone requesting the rules.

(e) Nothing in this subchapter shall be construed to allow home inspectors who are not registered as professional architects or engineers to perform any analysis of the systems, components, or structural integrity of a dwelling that would constitute the practice of civil, electrical, or mechanical engineering.

HISTORY: Acts 2003, No. 1328, § 1.

17-52-320. Limitations.

(a) Any cause of action to recover damages suffered by a consumer as a result of any act or omission of a home inspector relating to a home inspection report must be commenced within one (1) year from the date the report is completed.

(b) Disciplinary action taken against a home inspector by the Arkansas Home Inspector Registration Board shall not in and of itself be the basis for civil or criminal action.

HISTORY: Acts 2003, No. 1328, § 1.

17-52-321. Unfair practices.

(a) It is an unfair business practice for a home inspector, a company that employs the inspector, or a company that has a financial interest in a company employing a home inspector to do any of the following:

(1) Perform or offer to perform for an additional fee any repairs to the property on which the inspector or the inspector's company has prepared a home inspection report in the past twelve (12) months;

(2) Inspect for a fee any property in which the inspector or the inspector's company has any financial interest or any interest in the transfer of the property;

(3) Offer or deliver any compensation, inducement, or reward to the owner of the inspected property, the broker, or the agent for the referral of any business to the inspector or the inspection company; or

(4) Accept an engagement to make an inspection or to prepare a report in which the employment itself or the fee payable for the inspection is contingent upon the conclusions in the report, preestablished findings, or the close of escrow.

(b) (1) A home inspection report shall not be used in any manner other than that agreed to in writing by the inspector and his or her client.

(2) Transfer of an inspection report or portion of a report to any third party absolves the inspector and his or her client of any responsibility for liability for claims or adverse actions arising from the use.

HISTORY: Acts 2003, No. 1328, § 1.

17-52-322. Exemptions.

(a) A person who by virtue of his or her employment by a public entity does home inspection work for that agency shall not be required to be registered under this subchapter if the inspections are conducted:

(1) Solely for the benefit of that entity; and

(2) For no compensation other than the employee's salary.

(b) This subchapter shall not apply to:

(1) Any person holding a valid registration, certificate, or license issued by the state if the person's activity is limited to the activity authorized by his or her registration, certificate, or license;

(2) A person who inspects his or her own home; or

(3) A public entity that inspects its residential units with its own personnel specifically trained for the inspection.

HISTORY: Acts 2003, No. 1328, § 1.