

CHAPTER 109**(SB 34)**

AN ACT relating to home inspectors.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 20 of this Act, unless otherwise provided:

- (1) *"Applicant" means an individual who applies for a license as a home inspector.*
- (2) *"Board" means the Kentucky Board of Home Inspectors established in Section 3 of this Act.*
- (3) *"Client" means an individual who contracts with a licensed home inspector to obtain a home inspection and subsequent written home inspection report.*
- (4) *"Department" means the Kentucky Department of Housing, Buildings, and Construction.*
- (5) *"Home inspection" means a visual analysis for the purpose of providing a professional opinion by a licensed home inspector, of the condition of a residential dwelling and the dwelling's attached garages and carports, any reasonable accessible installed components, and the operation of the dwelling's systems, including any controls normally operated by the owner of the dwelling, for systems and components in the standards of practice established by the board. Home inspection shall not include a code compliance inspection, or an inspection required under the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. secs. 5401 et seq., as amended, and rules and regulations issued thereunder, or KRS 227.600 regarding manufactured homes.*
- (6) *"Home inspection report" means a written report prepared by a licensed home inspector for compensation and issued after a home inspection. The report shall include the following:*
 - (a) *A report on any system or component inspected that, in the professional opinion of the inspector, is significantly deficient;*
 - (b) *The inspector's recommendation to repair or monitor deficiencies reported under paragraph (a) of this subsection;*
 - (c) *A list of any systems or components that were designated for inspection in the standards of practice adopted by the board but that were not inspected; and*
 - (d) *The reason a system or component listed under paragraph (c) of this subsection was not inspected.*
- (7) *"Licensee" means a person who performs home inspections and who is licensed under Sections 1 to 20 of this Act as a home inspector.*
- (8) *"Residential dwelling" means a structure consisting of at least one (1) but not more than four (4) units, each designed for occupancy by a single family, whether the units are occupied or unoccupied.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

Sections 1 to 20 of this Act shall apply to an individual who conducts home inspections for compensation, but shall not apply to the following:

- (1) An individual who is acting within the scope of the individual's employment as:
 - (a) A code enforcement official for the state or a political subdivision of the state; or*
 - (b) A representative of a state or local housing agency or an individual acting under the authority of the United States Department of Housing and Urban Development;**
- (2) An individual who is acting within the scope of the individual's license as a licensed:
 - (a) Architect under KRS Chapter 323;*
 - (b) Professional engineer under KRS Chapter 322;*
 - (c) Plumbing contractor or journeyman plumber under KRS Chapter 318;*
 - (d) Electrician, master electrician, or electrical contractor under KRS Chapter 227A;*
 - (e) Liquefied petroleum gas dealers under KRS Chapter 234; or*
 - (f) Master heating, ventilation, and air conditioning contractor, journeyman heating, ventilation, and air conditioning mechanic, or an apprentice heating, ventilation, and air conditioning mechanic under this chapter;**
- (3) An individual licensed under KRS Chapter 324 as a real estate broker, broker-salesperson, or salesperson and is acting within the scope of the individual's license;*
- (4) An individual who is licensed under KRS Chapter 324A as a real estate appraiser and is acting within the scope of the individual's license;*
- (5) An individual who holds a license under KRS Chapter 304 as an insurance adjuster and is acting within the scope of the individual's license;*
- (6) An individual who holds a permit, certificate, or license to:
 - (a) Use and apply pesticides; or*
 - (b) Make diagnostic inspections and reports for wood destroying pests and fungi under KRS Chapter 217B and is acting within the scope of the individual's certificate or license;**
- (7) An individual who holds a license from a political subdivision as a tradesperson or home builder and is acting within the scope of the individual's license;*
- (8) An individual who holds a current and valid license, certificate, or permit under KRS 227.550 to 227.660 and is acting within the scope of the individual's license, certificate, or permit as a:
 - (a) Manufactured home retailer;*
 - (b) Manufactured home certified retailer; or*
 - (c) Manufactured home certified installer; or**
- (9) Employees of the Department of Housing, Buildings and Construction or the State Fire Marshall's Office acting in their official capacities as inspectors of buildings and manufactured housing.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

- (1) *There is created a board to be known as the Kentucky Board of Home Inspectors.*
- (2) *The board shall be composed of ten (10) members appointed by the Governor.*
 - (a) *Five (5) of the members shall:*
 1. *Have been actively engaged in performing home inspections in Kentucky for at least five (5) years immediately before the member's appointment to the board, or have completed one hundred (100) fee paid inspections per year over the last five (5) years;*
 2. *Be licensed by the board as a home inspector; and*
 3. *Be appointed as follows:*
 - a. *One (1) person shall be a member of the American Society of Home Inspectors;*
 - b. *One (1) person shall be a member of the Kentucky Real Estate Inspectors Association;*
 - c. *One (1) person shall be a member of the National Association of Home Inspectors; and*
 - d. *Two (2) persons shall be either at-large licensed home inspectors or owners or managers of a home inspection company actively performing home inspections within the Commonwealth of Kentucky. The company and its owner or manager shall have been actively engaged in the home inspection profession in Kentucky for a minimum of five (5) years. The company shall employ or contract with multiple licensed home inspectors in good standing with the Kentucky Board of Home Inspectors.*

These five (5) members shall be selected from a list of fifteen (15) names submitted to the Governor, and compiled by a selection committee composed of six (6) members, two (2) each from the American Society of Home Inspectors, the Kentucky Real Estate Inspectors Association, and the National Association of Home Inspectors respectively.

- (b) *The other five (5) board members shall be qualified as follows:*
 1. *One (1) person shall be a home builder who has been actively engaged in home building in Kentucky for at least five (5) years immediately before the member's appointment to the board. This member shall be selected from a list of three (3) names submitted to the Governor from the Home Builders Association of Kentucky;*
 2. *One (1) person shall be a licensed real estate salesperson or broker under KRS Chapter 324 who has been actively engaged in selling, trading, exchanging, optioning, leasing, renting, managing, or listing residential real estate in Kentucky for at least five (5) years immediately before the member's appointment to the board. This member shall be selected from a list of three (3) names submitted to the Governor from the Kentucky Association of Realtors;*

3. *One (1) person shall represent the public at-large and shall not be associated with the home inspection, home building, or real estate business other than as a consumer. This member shall be appointed by the Governor, but shall not be selected from a submitted list of names;*
 4. *One (1) person shall be a licensed manufactured home retailer, certified retailer, or certified installer who has been actively engaged in such an occupation for at least five (5) years immediately before the member's appointment to the board. This member shall be selected from a list of three (3) names submitted to the Governor from the Kentucky Manufactured Housing Institute; and*
 5. *The Executive Director of the Office of Housing, Buildings, and Construction, or his or her designee shall be a member of the board.*
- (3) *A board member required to have a license in accordance with subparagraph 3. of paragraph (a) of subsection (2) of this section, shall obtain the requisite license in accordance with Section 7 of this Act, on or before July 1, 2006. If a board member does not obtain the requisite license on or before July 1, 2006, the board member shall be considered to have resigned from the board on July 1, 2006, and the Governor shall fill the vacancy in accordance with this section. If a board member resigns for failure to obtain a home inspectors license, the actions of the board member and board before July 1, 2006, shall be valid and viable.*
 - (4) *The members of the board shall be residents of Kentucky.*
 - (5) *The initial terms of office for the nine (9) members appointed to the board by the Governor are as follows:*
 - (a) *Three (3) members for a term of three (3) years;*
 - (b) *Three (3) members for a term of two (2) years; and*
 - (c) *Three (3) members for a term of one (1) year.**Thereafter, all members shall serve a term of three (3) years.*
 - (6) *The initial terms begin July 15, 2004.*
 - (7) *The Governor may remove a board member at any time for incompetence, neglect of duty, or unprofessional conduct.*
 - (8) *If a vacancy occurs in the membership of the board, the Governor shall appoint an individual to serve for the remainder of the unexpired term who has like qualifications required of the member who created the vacancy.*
 - (9) *A member shall not serve on the board for more than six (6) consecutive years.*
 - (10) *Each year the board shall elect a member as chairperson and a member as vice chairperson.*
 - (11) *The chairperson and vice chairperson shall serve in their respective capacities for no more than one (1) year consecutively and until a successor is elected.*
 - (12) *The chairperson shall preside at all meetings at which the chairperson is present. The vice chairperson shall preside at meetings in the absence of the chairperson and shall perform other duties as the chairperson directs.*

- (13) *If the chairperson and vice chairperson are absent from a meeting of the board when a quorum exists, the members who are present may elect a presiding officer who shall serve as acting chairperson until the conclusion of the meeting or until the arrival of the chairperson or vice chairperson.*
- (14) *The board shall meet at least quarterly each calendar year upon the call of the chairperson or the written request of a majority of the members of the board.*
- (15) *The chairperson shall establish the date, time, and place for each meeting.*
- (16) *A majority of the current members of the board constitutes a quorum.*
- (17) *The affirmative vote of a majority of the members appointed to the board is necessary for the board to take official action.*
- (18) *Each member of the board is entitled to a minimum salary of thirty-five dollars (\$35) per diem. Each member of the board is entitled to reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties as established under KRS 45.101.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

The board shall:

- (1) *Through the promulgation of administrative regulations:*
 - (a) *Determine the requirements for and prescribe the form of licenses, applications, and other documents that are required by Sections 1 to 20 of this Act; and*
 - (b) *Require that a home inspection report include a statement that the home inspection report does not address environmental hazards, which shall be listed with specificity by the board;*
- (2) *Grant, deny, suspend, and revoke approval of examinations and courses of study regarding home inspections;*
- (3) *Issue, deny, suspend, and revoke licenses in accordance with Sections 1 to 20 of this Act;*
- (4) *Investigate complaints concerning licensees, or persons the board has reason to believe should be licensees, including complaints concerning failure to comply with Sections 1 to 20 of this Act or administrative regulations promulgated under Sections 1 to 20 of this Act, and, when appropriate, take action in accordance with Sections 15 and 16 of this Act;*
- (5) *Bring actions in the name of the state in an appropriate court in order to enforce compliance with Sections 1 to 20 of this Act or the administrative regulations promulgated under Sections 1 to 20 of this Act;*
- (6) *Establish fees in an amount not to exceed two hundred and fifty dollars (\$250) annually;*
- (7) *Inspect the records of a licensee in accordance with administrative regulations promulgated by the board;*
- (8) *Conduct or designate a member or other representative to conduct public hearings on any matter for which a hearing is required under Sections 15 and 16 of this Act and exercise all powers granted under KRS Chapter 13B;*

- (9) *Adopt a seal containing the words "Kentucky Board of Home Inspectors" and, through the board's secretary, certify copies and authenticate all acts of the board;*
- (10) *Use counsel, consultants, and other persons, enter into contracts, and authorize expenditures that are reasonably necessary or appropriate to administer and enforce Sections 1 to 20 of this Act and administrative regulations promulgated thereunder;*
- (11) *Establish continuing education requirements for licensed home inspectors in accordance with Sections 12 and 13 of this Act;*
- (12) *Maintain the board's office, files, records, and property in the city of Frankfort;*
- (13) *Require all fee-paid home inspections to be conducted in accordance with the standards of practice of:*
 - (a) *The American Society of Home Inspectors;*
 - (b) *The National Association of Home Inspectors; or*
 - (c) *Any other approved standards of practice that are equal to the standards of practice of the organizations in paragraphs (a) and (b) of this subsection.*

The board may establish standards of practice for home inspectors licensed in Kentucky at a later date, which will supersede any other standards of practice previously adopted by the board.

- (14) *Exercise all other powers specifically conferred on the board under Sections 1 to 20 of this Act; and*
- (15) *Promulgate administrative regulations to carry out the effective administration and the requirements of Sections 1 to 20 of this Act.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

The department shall provide the board with:

- (1) *Clerical or other assistants, including investigators, necessary for the proper performance of the board's duties;*
- (2) *A place to hold board meetings and hearings; and*
- (3) *Office equipment and office space for board records, staff, and other effects necessary to carry out the requirements of Sections 1 to 20 of this Act.*

SECTION 6. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

- (1) *There is established in the State Treasury a revolving fund for the use by the board.*
- (2) *All fees and other money received by the board in accordance with Sections 4, 7, 8, 12, and 13 of this Act shall be deposited in the revolving fund established in subsection (1) of this section.*
- (3) *No part of this revolving fund shall revert to the general fund.*
- (4) *The compensation of board members and all of the board's expenses incurred by the board shall be paid from this revolving fund, except the assistance set forth in Section 5 of this Act.*

SECTION 7. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

- (1) *An individual shall not advertise or claim to be a licensed home inspector and shall not conduct a home inspection for compensation without first obtaining a license as a home inspector.*
- (2) *The board shall deny a license to any applicant who fails to:*
 - (a) *Furnish evidence satisfactory to the board, showing that the individual:*
 1. *Is at least eighteen (18) years of age;*
 2. *Has graduated from high school or earned a Kentucky or other state's general educational development (GED) diploma; and*
 3. *Meets other criteria established by the board.*
 - (b) *Verify the information submitted on the application form;*
 - (c) *Complete a board approved training program or course of study involving the performance of home inspections, and pass an examination prescribed or approved by the board;*
 - (d) *Submit to the board a certificate of insurance that is acceptable to the board and that:*
 1. *Is issued by an insurance company or other legal entity authorized to transact insurance business in Kentucky;*
 2. *Provides for general liability coverage of at least two-hundred and fifty thousand dollars (\$250,000);*
 3. *Lists the state as an additional insured;*
 4. *States that cancellation and nonrenewal of the underlying policy is not effective until the board receives at least ten (10) days prior written notice of the cancellation or nonrenewal; and*
 5. *Contains any other terms and conditions established by the board.*
 - (e) *Pay a licensing fee established in Section 4 of this Act.*
- (3) *A person applying for a license as a home inspector shall apply on a written or electronic form prescribed and provided by the board.*

SECTION 8. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

- (1) *The licensing requirements for a home inspector may be waived for a person moving to Kentucky from another jurisdiction, and the person may be granted a license as a home inspector if the person meets the following requirements:*
 - (a) *The other jurisdiction grants the same privileges to licensees of Kentucky as Kentucky grants to licensees of that other jurisdiction;*
 - (b) *The person is licensed in the other jurisdiction;*
 - (c) *The licensing requirements of the other jurisdiction are substantially similar to the requirements of Sections 1 to 20 of this Act; and*

(d) The person states that he or she has studied, is familiar with, and will abide by Sections 1 to 20 of this Act and the administrative regulations promulgated by the board.

(2) A person seeking a license as a home inspector under this section shall:

(a) Apply on a form prescribed and provided by the board; and

(b) Pay the applicable licensing fee established by the board.

SECTION 9. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

(1) A nonresident whom the board determines meets the requirements of Sections 1 to 20 of this Act and who files the written consent described in subsection (2) of this section may be licensed as a home inspector in Kentucky.

(2) A nonresident applicant shall file with the board a written consent stating that, if licensed:

(a) The applicant agrees to the commencement of any action arising out of the conduct of the applicant's business in Kentucky in the county in which the events giving rise to the cause of action occurred;

(b) The applicant:

1. Agrees to provide to the board the name and address of an agent to receive service of process in Kentucky; or

2. Consents to the board acting as the applicant's agent for the purpose of receiving service of process if:

a. An agent's name and address have not been filed with the board; or

b. The agent's name and address on file with the board are incorrect; and

(c) The applicant agrees that service of process in accordance with the Kentucky Rules of Civil Procedure is proper service and subjects the applicant to the jurisdiction of Kentucky courts.

SECTION 10. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

All licenses issued by the board shall remain the property of the board.

SECTION 11. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

A licensee shall notify the board within thirty (30) days of any change of:

(1) Name;

(2) Name under which the licensee conducts business; or

(3) Business address.

SECTION 12. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

(1) The initial license for a home inspector issued in accordance with Sections 1 to 20 of this Act, shall expire on the last day of the licensee's birth month in the following year. The

board may reduce the license fee on a pro rata basis for initial licenses issued for less than twelve (12) months.

- (2) *Renewed licenses shall expire on the last day of the licensee's birth month of each even numbered year after the date of issuance of the renewed license.*
- (3) *An individual who applies to renew a license as a licensed home inspector shall:*
 - (a) *Furnish evidence showing successful completion of the continuing education requirements of this section;*
 - (b) *Pay the renewal fee established by the board; and*
 - (c) *Show proof of general liability insurance in the amount required by subsection (2)(d) of Section 7 of this Act.*
- (4) *Renewal notices shall be sent to each licensee at least sixty (60) days prior to the expiration of the license. The notice shall inform the licensee of the need to renew and the requirement of payment of the renewal fee. If this notice of expiration is not sent by the board, the licensee is not subject to a sanction for failure to renew if, once notice is received from the board, the license is renewed within forty-five (45) days of the receipt of the notice.*
- (5) *Renewal fees shall be paid with a draft, a money order, a cashier's check, a certified or other personal check, or if payment is made in person, the payment may be made in cash. If the board receives an uncertified personal check for the renewal fee and if the check does not clear the bank, the board may refuse to renew the license.*
- (6) *Before the end of each license period, each licensee shall complete the continuing education required by the board. This requirement shall not exceed thirty (30) hours per two (2) year license cycle. This requirement shall be effective beginning January 1, 2005.*
- (7) *The board may, through the promulgation of administrative regulations:*
 - (a) *Establish an inactive license for licensees who are not actively engaging in the home inspection business but wish to maintain their license;*
 - (b) *Reduce license and renewal fees for inactive licenses; and*
 - (c) *Waive the insurance requirements established in Section (7) of this Act for inactive licenses.*

SECTION 13. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

The board shall promulgate administrative regulations concerning the continuing education required for the renewal of a home inspector license and shall:

- (1) *Establish procedures for approving organizations that provide continuing education; and*
- (2) *Prescribe the content, duration, and organization of continuing education courses that contribute to the competence of home inspectors.*

SECTION 14. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section, "political subdivision" means any city, county, or consolidated local government.*

- (2) *No agency or political subdivision of the state, other than the board, shall impose the following on individuals licensed under Sections 1 to 20 of this Act:*
- (a) *A registration or licensing requirement; or*
 - (b) *A license fee to obtain any local license, except that this prohibition shall not prevent any local government from imposing an occupational license tax on any person operating as a home inspector within the jurisdiction of the local government.*

SECTION 15. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

The board shall take disciplinary actions against or impose sanctions on a licensee for failing to comply with any provision of Sections 1 to 20 of this Act or any administrative regulations promulgated to carry out Sections 1 to 20 of this Act.

SECTION 16. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

- (1) *The procedures set forth in KRS Chapter 13B shall govern the board's conduct of disciplinary hearings.*
- (2) *The board may summarily suspend a license for up to ninety (90) days before a final adjudication or during an appeal of the board's determination, if the board finds that the licensee would represent a clear and immediate danger to the public's health, safety, or property if allowed to perform home inspections. The summary suspension may be renewed upon a hearing before the board for up to ninety (90) days.*
- (3) *If the board:*
 - (a) *Determines that an individual is not licensed under Sections 1 to 20 of this Act and is engaged in or believed to be engaged in activities for which a license is required under Sections 1 to 20 of this Act, the board shall issue an order to that individual requiring the individual to show cause why the individual should not be ordered to cease and desist from the activities. The show cause order shall set forth a date, time, and place for a hearing at which the individual shall appear and show cause why the individual should not be subject to licensing under Sections 1 to 20 of this Act;*
 - (b) *After a hearing, determines that the activities in which the individual is engaged are subject to licensing under Sections 1 to 20 of this Act, the board may issue a cease and desist order that identifies the individual and describes activities that are the subject of the order.*
- (4) *A cease and desist order issued under this section shall be enforceable in a Circuit Court of the Commonwealth.*

SECTION 17. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

- (1) *An individual is guilty of a Class B misdemeanor under KRS 534.040 if the individual:*
 - (a) *Performs or offers to perform home inspections for compensation without being licensed as a home inspector and without being exempt from licensing;*
 - (b) *Presents as the individual's own the license of another;*

- (c) *Intentionally gives false or materially misleading information to the board or to a board member in connection with a licensing matter;*
 - (d) *Impersonates another licensee; or*
 - (e) *Uses an expired, suspended, revoked, or an otherwise restricted license.*
- (2) *When entering a judgment for a violation, the court shall add to any penalty imposed, the amount of any fee or other compensation earned by the individual in the commission of the violation.*
 - (3) *Each transaction involving unauthorized activities as described in this section, shall constitute a separate violation.*
 - (4) *In all actions for the collection of a fee or other compensation for performing home inspections, the party seeking relief shall allege and prove that, at the time that the cause of action arose, the party seeking relief was not in violation of Section 7 of this Act.*
 - (5) *The general counsel for the Department of Housing, Buildings and Construction shall act as the legal adviser for the board and provide any legal assistance necessary to carry out this section.*

SECTION 18. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

- (1) *An action for damages, whether brought in contract or tort, or on any other basis, based on professional services that were rendered or that should have been rendered by a licensed home inspector shall not be brought, commenced, or maintained unless the action is filed within one (1) year of the time that the claimant knew or should have known of a deficient inspection and damages and injuries resulting therefrom.*
- (2) *Nothing in this section creates any duty to a third party that is not available under common law.*

SECTION 19. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

- (1) *An individual who performs home inspections after the effective date of this Act, does not violate Sections 2 and 7 of this Act, and shall not be disciplined or sanctioned for failure to have a home inspector's license if the person obtains a home inspector's license not later than July 1, 2006.*
- (2) *Notwithstanding the requirements of Section 7 of this Act, the board may issue to an individual, upon the individual's application and payment of fees, a home inspector license if the individual:*
 - (a) *Meets the requirements of Section 7 of this Act, excluding paragraph (2)(c) of Section 7 of this Act; or*
 - (b) *Has been engaged in the practice of home inspections for at least one (1) year prior to enactment of Sections 1 to 20 of this Act and documents the performance of at least twenty-five (25) home inspections performed for compensation in the previous twelve (12) months or at least one hundred (100) home inspections performed for compensation in the individual's career.*
- (3) *The board may consider and accept the successful completion of equivalent licensing requirements in another state or local jurisdiction instead of one (1) or more of the*

requirements of Section 7 of this Act, if those requirements meet or exceed the requirements of Section 7 of this Act.

(4) *This section shall expire January 1, 2007.*

SECTION 20. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

Home inspectors are prohibited from indicating in writing in the initial home inspection report, that any condition is not in compliance with any building code enforced under KRS Chapter 198B.

SECTION 21. A NEW SECTION OF KRS CHAPTER 21 IS CREATED TO READ AS FOLLOWS:

As used in Sections 21 to 27 of this Act, unless the context otherwise requires:

- (1) *"Action" means any civil lawsuit or action in contract or tort for damages or indemnity brought against a home inspector to assert a claim, whether by complaint, counterclaim, or cross-claim, for damages or the loss of use of real or personal property caused by a deficient home inspection or home inspection report regarding the inspection of a home. "Action" does not include any civil action in tort alleging personal injury or wrongful death to a person or persons resulting from a deficient home inspection or home inspection report;*
- (2) *"Claimant" means a client who asserts a claim against a home inspector concerning a deficient home inspection or home inspection report regarding the inspection of a home;*
- (3) *"Home" means a structure consisting of at least one (1) but not more than four (4) units, each designed for occupancy by a single family, whether the units are occupied or unoccupied;*
- (4) *"Home inspector " means a person licensed in accordance with Sections 1 to 27 of this Act; and*
- (5) *"Serve" or "service" means personal service or delivery by certified mail to the last known address of the addressee.*

SECTION 22. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO READ AS FOLLOWS:

Sections 21 to 27 of this Act shall:

- (1) *Apply to any claim that arises before, on, or after July 15, 2004, as the result of a deficient home inspection or home inspection report regarding the inspection of a home, except a claim for personal injury or wrongful death, if the claim is the subject of an action commenced on or after July 15, 2004;*
- (2) *Prevail over any conflicting law otherwise applicable to the claim or cause of action;*
- (3) *Not bar or limit any claim or defense otherwise available except as otherwise provided in Sections 21 to 27 of this Act; and*
- (4) *Not create a new theory upon which liability may be based.*

SECTION 23. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO READ AS FOLLOWS:

In a claim to recover damages resulting from a deficient home inspection or home inspection report regarding the inspection of a home, a home inspector is liable for his or her acts or omissions or the acts or omissions of his or her agents or employees and is not liable for any damages caused by:

- (1) The acts or omissions of a person other than the home inspector or his or her agent or employee; or*
- (2) Any construction defect disclosed to a claimant before his or her purchase of the home, if the disclosure was provided in writing and in language that is understandable and was signed by the claimant.*

SECTION 24. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO READ AS FOLLOWS:

- (1) In every deficient home inspection or home inspection report action brought against a home inspector, the claimant shall serve written notice of claim on the home inspector. The notice of claim shall state that the claimant asserts a deficient home inspection or home inspection report claim against the home inspector and shall describe the claim in reasonable detail sufficient to determine the general nature of the deficiency.*
- (2) Within twenty-one (21) days after service of the notice of claim, the home inspector shall serve a written response on the claimant by registered mail or personal service. The written response shall:*
 - (a) Propose to inspect the residence that is the subject of the claim and to complete the inspection within a specified time frame. The proposal shall include the statement that the home inspector shall, based on the inspection, offer to remedy the defect, compromise by payment, or dispute the claim;*
 - (b) Offer to compromise and settle the claim by monetary payment without inspection; or*
 - (c) State that the home inspector disputes the claim.*
- (3) (a) If the home inspector disputes the claim or does not respond to the claimant's notice of claim within the time stated in subsection (2) of this section, then the claimant may bring an action against the home inspector for the claim described in the notice of claim without further notice.*
 - (b) If the claimant rejects the inspection proposal or the settlement offer made by the home inspector pursuant to subsection (2) of this section, then the claimant shall serve written notice of the claimant's rejection on the home inspector. After service of the rejection, the claimant may bring an action against the home inspector for the deficient home inspection or home inspection report claim described in the notice of claim. If the home inspector has not received from the claimant, within thirty (30) days after the claimant's receipt of the home inspector's response, either an acceptance or a rejection of the inspection proposal or settlement offer, then at any time thereafter the home inspector may terminate the proposal or offer by serving written notice to the claimant, and the claimant may thereafter bring an action against the home inspector for the deficient home inspection or home inspection report claim described in the notice of claim.*
- (4) (a) If the claimant elects to allow the home inspector to inspect in accordance with the home inspector's proposal pursuant to subsection (2)(a) of this section, then the*

claimant shall provide the home inspector reasonable access to the claimant's home during normal working hours to inspect the premises.

(b) Within fourteen (14) days following completion of the inspection, the home inspector shall serve on the claimant:

- 1. A written offer to remedy the defect at no cost to the claimant, including a report of the scope of the inspection, the findings and results of the inspection, a description of the remedy necessary to cure the defect described in the claim, and a timetable for the completion of this remedy;*
- 2. A written offer to compromise and settle the claim by monetary payment pursuant to subsection (2)(b) of this section; or*
- 3. A written statement that the home inspector will not proceed further to remedy the defect.*

The claimant shall have the right to accept or reject the proposed remedy, or the monetary offer to settle the claim.

(c) If the home inspector does not proceed further to remedy the defect within the agreed timetable, or if the home inspector fails to comply with the provisions of paragraph (b) of this subsection, then the claimant may bring an action against the home inspector for the claim described in the notice of claim without further notice.

(d) If the claimant rejects the offer made by the home inspector pursuant to paragraph (b)1. or 2. of this subsection to either remedy the defect or to compromise and settle the claim by monetary payment, then the claimant shall serve written notice of the claimant's rejection on the home inspector. After service of the rejection notice, the claimant may bring an action against the home inspector for the deficient home inspection or home inspection report claim described in the notice of claim. If the home inspector has not received from the claimant, within thirty (30) days after the claimant's receipt of the home inspector's response, either an acceptance or a rejection of the offer made pursuant to paragraph (b)1. or 2. of this subsection, then at any time thereafter the home inspector may terminate the offer by serving written notice to the claimant.

(5) (a) Any claimant accepting the offer of a home inspector to remedy the defect pursuant to subsection (4)(b)1. of this section shall do so by serving the home inspector with a written notice of acceptance within a reasonable time period after receipt of the offer, and no later than thirty (30) days after receipt of the offer. The claimant shall provide the home inspector reasonable access to the claimant's home during normal working hours to perform and complete the remedy by the timetable stated in the offer.

(b) The claimant and home inspector may, by written mutual agreement, alter the extent of remedy or the timetable, including but not limited to repair of additional defects.

(6) If a claimant files a complaint, counterclaim, or cross-claim prior to meeting the requirements of this section, then the court may issue an order holding the action in abeyance until the parties comply with this section.

(7) Nothing in this section may be construed to prevent a claimant from commencing an action on the deficient home inspection or home inspection report claim described in the

notice of claim if the home inspector fails to perform the remedy agreed upon or fails to perform by the timetable agreed upon pursuant to subsection (2)(a) or (5) of this section.

- (8) *The service of an amended notice of claim shall relate back to the original notice of claim for purposes of tolling statutes of limitations and repose.*

SECTION 25. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO READ AS FOLLOWS:

- (1) *The home inspector shall upon entering into a contract for the inspection of a building or residence, provide notice to each client, of the home inspector's right to offer to cure a deficient home inspection or home inspection report before a client may commence litigation against the home inspector. The notice shall be conspicuous and may be included as part of the underlying contract signed by the client.*
- (2) *The notice required by this section shall be in substantially the following form: "CHAPTER 411 OF THE KENTUCKY REVISED STATUTES CONTAIN IMPORTANT REQUIREMENTS YOU MUST FOLLOW BEFORE YOU MAY FILE A LAWSUIT FOR DEFECTIVE CONSTRUCTION AGAINST THE HOME INSPECTOR OF YOUR RESIDENCE. YOU MUST DELIVER TO YOUR HOME INSPECTOR A WRITTEN NOTICE OF ANY CONDITIONS YOU ALLEGE THAT YOUR HOME INSPECTOR FAILED TO INCLUDE IN THE HOME INSPECTION REPORT AND PROVIDE YOUR HOME INSPECTOR THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR PAY FOR THE DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY THE HOME INSPECTOR. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER STATE LAW, AND FAILURE TO FOLLOW THEM MAY AFFECT YOUR ABILITY TO FILE A LAWSUIT."*
- (3) *Sections 21 to 27 of this Act shall not preclude or bar any action if notice is not given to the client as required by this section.*

SECTION 26. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO READ AS FOLLOWS:

- (1) *Nothing in Sections 21 to 27 of this Act shall be construed to hinder or otherwise affect the employment, agency, or contractual relationship between and among homeowners and home inspectors during the process of inspection, and nothing in Sections 21 to 27 of this Act precludes the termination of those relationships as allowed under other law.*
- (2) *Noncompliance by the client with Section 24 of this Act shall not operate as an affirmative defense in an action against a home inspector by the client for emergency repairs.*

SECTION 27. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO READ AS FOLLOWS:

If a written notice of claim is served under Section 24 of this Act, then the statute of limitation for the underlying action is tolled until seventy-five (75) days after the expiration of the time frame agreed to by the parties under subsection (2) of Section 24 of this Act, or the date established for inspection pursuant to paragraph (a) of subsection (2) of Section 24 of this Act, or the expiration of the time frame contained in paragraph (b) of subsection (4) of Section 24 of this Act, whichever occurs later.

Section 28. KRS 198B.030 is amended to read as follows:

- (1) There is hereby created the Kentucky department of housing, buildings and construction within the cabinet for public protection and regulation. The governor shall appoint a commissioner to head the department by July 1, 1978. The commissioner shall receive for his services such compensation as the governor shall determine.
- (2) The commissioner may employ sufficient staff to carry out the functions of his office. Neither the commissioner nor any member of his staff shall be employed, either directly or indirectly, in any aspect of the building industry as regulated by this chapter while employed by the department of housing, buildings and construction.
- (3) The department shall serve as staff for the board of housing, buildings and construction as established by this chapter, and shall perform all budgeting, procurement, and other administrative activities necessary to the functioning of this body. The board shall prescribe the duties of the commissioner in addition to those duties otherwise delegated to him by the governor or prescribed for him by law.
- (4) The department may enter into contracts with the federal government, other agencies of state government or with its subdivisions, or with private profit or nonprofit organizations in order to effect the purposes of this chapter.
- (5) Subject to the direction of the board of housing, buildings and construction, the commissioner shall cooperate with the agencies of the United States and with the governing bodies and housing authorities of counties, cities, and with not for profit organizations and area development districts in relation to matters set forth in this chapter, and in any reasonable manner that may be necessary for the state to qualify for, and to receive grants or aid from such agencies. To these ends and subject to the direction of the board, the commissioner shall have the power to comply with each condition and execute such agreements as may be necessary, convenient, or desirable.
- (6) Nothing in this chapter shall preclude any other agency, board, or officer of the state from being designated as the directing or allocating agency, board, or officer for the distribution of federal grants and aid, or the performance of other duties to the extent necessary to qualify for and to receive grants and aid for programs under the administration of the department.
- (7) The commissioner is authorized to receive, for and on behalf of the state, the department, and the board of housing, buildings and construction, from the United States and agencies thereof, and from any and all other sources, grants and aid and gifts made for the purpose of providing, or to assist in providing, any of the programs authorized by this chapter, including expenses of administration. All such funds shall be paid into the state treasury and credited to a trust and agency fund to be used by the department in carrying out the provisions of this chapter. No part of this fund shall revert to the general fund of the Commonwealth.
- (8) *The Kentucky Board of Home Inspectors established in Section 3 of this Act shall be attached to the department for administrative purposes.*

Approved April 9, 2004