

**CHAPTER 100****(SB 22)**

AN ACT relating to home inspector licensing.

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

➔Section 1. KRS 198B.700 is amended to read as follows:

As used in KRS 198B.700 to 198B.738, 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 KRS 198B.704.
- (3) "Client" means **a person**~~an individual~~ who contracts with a licensed home inspector to obtain a home inspection and subsequent written home inspection report.
- (4) "Office" means the Kentucky Office 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) **"Home inspector" means an individual who performs home inspections for compensation.**
- (8) "Licensee" means a person who performs home inspections and who is licensed under KRS 198B.700 to 198B.738 as a home inspector.
- ~~(8)~~ (9) "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. KRS 198B.704 is amended 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 selected from a list of fifteen (15) names submitted to the Governor, and compiled by a selection committee composed of eight (8) members, two (2) each from the American Society of

Home Inspectors, the Kentucky Real Estate Inspectors Association, the National Association of Certified Home Inspectors, 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 subsection (2)(a)3. of this section, shall obtain the requisite license in accordance with KRS 198B.712, 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, *or until a successor has been duly appointed.*
- (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 *in attendance at a duly constituted meeting of 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.
- (19) *A member shall be automatically removed from the board and a vacancy shall be created if a member fails to adhere to a duly adopted code of ethics of the board. Failure to adhere to such a code shall be determined by official action of the board.*

➔Section 3. KRS 198B.706 is amended 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 KRS 198B.700 to 198B.738; 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, *place on probation, require additional continuing education,* and revoke licenses *for violations of* ~~in accordance with~~ KRS 198B.700 to 198B.738;
- (4) Investigate complaints concerning licensees, or persons the board has reason to believe should be licensees, including complaints concerning failure to comply with KRS 198B.700 to 198B.738 or administrative regulations promulgated under KRS 198B.700 to 198B.738, and, when appropriate, take action in accordance with KRS 198B.728 and 198B.730;
- (5) Bring actions in the name of the state in an appropriate court in order to enforce compliance with KRS 198B.700 to 198B.738 or the administrative regulations promulgated under KRS 198B.700 to 198B.738;
- (6) Establish *license* fees in an amount not to exceed two hundred 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 KRS 198B.728 and 198B.730 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 KRS 198B.700 to 198B.738 and administrative regulations promulgated thereunder;
- (11) Establish continuing education requirements for licensed home inspectors in accordance with KRS 19B.722 and 198B.724;
- (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 ***and, if adopted by regulation, the standards in paragraphs (a) and (b) of this subsection;***

- (14) Exercise all other powers specifically conferred on the board under KRS 198B.700 to 198B.738; and
- (15) Promulgate administrative regulations to carry out the effective administration and the requirements of KRS 198B.700 to 198B.738.

➔Section 4. KRS 198B.710 is amended 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 KRS 198B.706, 198B.712, 198B.714, 198B.722, and 198B.724 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, ***including expenses attributable to***~~except~~ the assistance set forth in KRS 198B.708 ***and subsection (6) of Section 7 of this Act.***

➔Section 5. KRS 198B.712 is amended 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) ***An individual shall not advertise, or claim to be, or operate as a home inspection business unless an owner or employee of that business is a licensed home inspector.***
- (3) 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 fifty thousand dollars (\$250,000);
    - 3. Lists the Kentucky Board of Home Inspectors as a certificate holder of any insurance policy issued under this paragraph;
    - 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; or
  - (e) Pay a licensing fee established in KRS 198B.706.

(4)~~(3)~~ *An Individual*~~[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 6. KRS 198B.722 is amended to read as follows:

- (1) The initial license for a home inspector issued in accordance with KRS 198B.700 to 198B.738, 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 *and late fee, if applicable*, established by the board;~~and~~
  - (c) Show proof of general liability insurance in the amount required by KRS 198B.712(3)~~(2)~~(d); *and*
  - (d) *Submit an acceptable background check.*
- (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 *and applicable late* fees shall be paid with *a credit card*, 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 KRS 198B.712 for inactive licenses.

➔Section 7. KRS 198B.732 is amended 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 otherwise restricted license.
- (2) *An individual is guilty of a Class A misdemeanor if the individual is convicted of a second or subsequent offense under this section within five (5) years after a prior conviction of an offense under this section.*

- (3) When entering a judgment for *an offense under this section*~~[a violation]~~, the court shall *impose a service fee of an*~~[add to any penalty imposed the]~~ amount *equal to*~~[of]~~ any fee or other compensation earned by the individual in the commission of the *offense*~~[violation]~~.
- (4)~~(3)~~ Each transaction involving unauthorized activities as described in this section shall constitute a separate *offense*~~[violation]~~.
- (5)~~(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 KRS 198B.712.
- (6)~~(5)~~ The general counsel for the Office 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 8. KRS 198B.736 is amended to read as follows:

- (1) An individual who performs home inspections after July 13, 2004, does not violate KRS 198B.702 and 198B.712, 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 KRS 198B.712, the board may issue to an individual, upon the individual's application and payment of fees, a home inspector license if the individual:
- Meets the requirements of KRS 198B.712, excluding KRS 198B.712(3)~~(2)~~(c); or
  - Has been engaged in the practice of home inspections for at least one (1) year prior to enactment of KRS 198B.700 to 198B.738 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 KRS 198B.712, if those requirements meet or exceed the requirements of KRS 198B.712.
- (4) This section shall expire January 1, 2007.

➔Section 9. KRS 198B.738 is amended to read as follows:

Home inspectors, *when acting in that capacity*, are prohibited from indicating *orally or* in writing~~[in the initial home inspection report]~~ that any condition is *or is* not in compliance with any building code enforced under KRS Chapter 198B.

➔Section 10. KRS 198B.734 is repealed, reenacted as a new section of KRS Chapter 413, and amended 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 *under KRS 198B.700 to 198B.738* 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 11. KRS 198B.716 is amended to read as follows:

- (1) A nonresident whom the board determines meets the requirements of KRS 198B.700 to 198B.738 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:
- 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;
  - 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.
- (3) *The board may consider and accept the successful completion by a nonresident of a training program or course of study completed in another state in lieu of the requirements of Section 5(3)(c) of this Act if the board determines the training program or course of study meets or exceeds the requirements of Section 5(3)(c) of this Act and its implementing administrative regulations, or the board may give credit for such program or course of study towards meeting the requirements of Section 5(3)(c) of this Act. The nonresident shall still be subject to the examination requirements of Section 5(3)(c) of this Act.*

➔Section 12. The following KRS section is repealed:

198B.736 Alternative requirements for licensure.

**Signed by Governor April 14, 2008.**