

HOUSE BILL NO. 225

INTRODUCED BY E. TILLEMAN

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO HOME INSPECTIONS;
5 ALIGNING THE HOME INSPECTION PROGRAM WITH OTHER DEPARTMENTAL LICENSING PROGRAMS;
6 PROVIDING DEFINITIONS; PROVIDING FEES; PROVIDING RULEMAKING AUTHORITY; REVISING LAW
7 RELATED TO HOME INSPECTION LICENSURE; INCREASING THE MINIMUM COVERAGE AMOUNT FOR
8 ERRORS AND OMISSIONS INSURANCE; PROVIDING STANDARDS FOR THE PRACTICE OF HOME
9 INSPECTIONS; AMENDING SECTIONS 37-1-401, 39-9-101, 39-9-102, 39-9-206, 39-9-207, 39-9-301, AND
10 39-9-303, MCA; REPEALING SECTIONS 39-9-212 AND 39-9-213, MCA; AND PROVIDING A DELAYED
11 EFFECTIVE DATE."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14
15 NEW SECTION. Section 1. Definitions. As used in [sections 1 through 4], the following definitions
16 apply:

- 17 (1) "Department" means the department of labor and industry.
- 18 (2) (a) "Home inspection" means a physical examination of a residential dwelling to identify major
19 defects in various attributes of or attachments to the dwelling, including mechanical, electrical, and plumbing
20 systems in addition to structural and other essential components. Home inspections are performed for
21 compensation and employ visual observation and the testing of user controls but not mathematical or
22 specialized engineering sciences.
- 23 (b) The term does not mean a physical examination of a residential dwelling when the owner or a
24 representative of the owner requests the examination by an individual who is licensed in this state and acting
25 within the scope of practice of the individual's profession or occupation.
- 26 (3) "Home inspection report" means a written document prepared by a home inspector for a client
27 and issued to the client in exchange for compensation after a home inspection has been completed. The report
28 must clearly identify and describe:

- 1 (a) the inspected systems, structures, and other relevant components of the dwelling;
- 2 (b) any major visible defects in the inspected systems, structures, and other relevant components
- 3 of the dwelling; and
- 4 (c) any recommendations for further evaluation of the property by other appropriate persons.
- 5 (4) "Home inspector" means an individual who performs a home inspection for compensation.
- 6 (5) "Practice" means to engage in the services of home inspection as the term is defined in this
- 7 section.

8

9 **NEW SECTION. Section 2. Department rulemaking -- fees.** (1) The department may adopt rules

10 necessary to implement [sections 1 through 4].

11 (2) The fees collected under [sections 1 through 4] in accordance with 37-1-134 must be deposited

12 in a special revenue account for administration and enforcement of [sections 1 through 4].

13

14 **NEW SECTION. Section 3. License to practice home inspections required -- qualifications.** (1)

15 An individual may not practice home inspection without a home inspector license issued under Title 37, chapter

16 1, and [sections 1 through 4].

17 (2) An applicant for a home inspection license must have:

18 (a) successfully completed a minimum of 40 hours of comprehensive home inspection instruction

19 approved by the department;

20 (b) membership in a national home inspection association; and

21 (c) a minimum of ~~\$100,000~~ \$125,000 liability insurance coverage in errors and omissions

22 insurance.

23 (3) The requirements in subsections (2)(b) and (2)(c) of this section must be maintained for

24 continued licensure.

25

26 **NEW SECTION. Section 4. Standards of home inspection practice.** (1) A home inspector shall

27 issue a written home inspection report to a client after completing a home inspection unless the client agrees in

28 writing to release the home inspector from this obligation.

- 1 (2) The home inspection report must clearly identify and describe:
- 2 (a) the inspected systems, structures, and other relevant components of the dwelling;
- 3 (b) any major visible defects in the inspected systems, structures, and other relevant components
- 4 of the dwelling; and
- 5 (c) any recommendations for further evaluation of the property by other appropriate persons.
- 6 (3) A home inspector may not:
- 7 (a) ~~disclose information concerning the results of a home inspection without the written approval of~~
- 8 ~~the home inspector's client or the client's representative;~~
- 9 (b) ~~accept compensation from more than one party with a financial interest in the residential~~
- 10 ~~dwelling without written approval from all parties with a financial interest in the residential dwelling;~~
- 11 ~~(c)(B) accept a commission or allowance, directly or indirectly, from another individual or business~~
- 12 ~~entity associated with the client in connection with work for which the home inspector is responsible to the~~
- 13 ~~client; or~~
- 14 ~~(d)(C) refuse or otherwise fail to disclose promptly to a client information about any business interest~~
- 15 ~~or relationship of the home inspector that may affect the client in connection with a home inspection.~~

16

17 **Section 5.** Section 37-1-401, MCA, is amended to read:

18 **"37-1-401. (Temporary) Uniform regulation for licensing programs without boards --**

19 **definitions.** As used in this part, the following definitions apply:

- 20 (1) "Complaint" means a written allegation filed with the department that, if true, warrants an
- 21 injunction, disciplinary action against a licensee, or denial of an application submitted by a license applicant.
- 22 (2) "Department" means the department of labor and industry provided for in 2-15-1701.
- 23 (3) "Investigation" means the inquiry, analysis, audit, or other pursuit of information by the
- 24 department, with respect to a complaint or other information before the department, that is carried out for the
- 25 purpose of determining:
- 26 (a) whether a person has violated a provision of law justifying discipline against the person;
- 27 (b) the status of compliance with a stipulation or order of the department;
- 28 (c) whether a license should be granted, denied, or conditionally issued; or

1 (d) whether the department should seek an injunction.
2 (4) "License" means permission in the form of a license, permit, endorsement, certificate,
3 recognition, or registration granted by the state of Montana to engage in a business activity or practice at a
4 specific level in a profession or occupation governed by:

5 (a) Title 37, chapter 2, part 6;

6 (b) Title 37, chapter 16, 40, 56, 60, 72, ~~or 73~~, or [sections 1 through 4]; or

7 (c) Title 50, chapter 39, 74, or 76.

8 (5) "Profession" or "occupation" means a profession or occupation regulated by the department
9 under the provisions of:

10 (a) Title 37, chapter 2, part 6;

11 (b) Title 37, chapter 16, 40, 49, 56, 60, 72, ~~or 73~~, or [sections 1 through 4]; or

12 (c) Title 50, chapter 39, 74, or 76. (Terminates June 30, 2031--sec. 10, Ch. 628, L. 2023.)

13 **37-1-401. (Effective July 1, 2031) Uniform regulation for licensing programs without boards --**
14 **definitions.** As used in this part, the following definitions apply:

15 (1) "Complaint" means a written allegation filed with the department that, if true, warrants an
16 injunction, disciplinary action against a licensee, or denial of an application submitted by a license applicant.

17 (2) "Department" means the department of labor and industry provided for in 2-15-1701.

18 (3) "Investigation" means the inquiry, analysis, audit, or other pursuit of information by the
19 department, with respect to a complaint or other information before the department, that is carried out for the
20 purpose of determining:

21 (a) whether a person has violated a provision of law justifying discipline against the person;

22 (b) the status of compliance with a stipulation or order of the department;

23 (c) whether a license should be granted, denied, or conditionally issued; or

24 (d) whether the department should seek an injunction.

25 (4) "License" means permission in the form of a license, permit, endorsement, certificate,
26 recognition, or registration granted by the state of Montana to engage in a business activity or practice at a
27 specific level in a profession or occupation governed by:

28 (a) Title 37, chapter 16, 40, 56, 60, 72, ~~or 73~~, or [sections 1 through 4]; or

1 (b) Title 50, chapter 39, 74, or 76.

2 (5) "Profession" or "occupation" means a profession or occupation regulated by the department
3 under the provisions of:

4 (a) Title 37, chapter 16, 40, 49, 56, 60, 72, ~~or 73~~, or [sections 1 through 4]; or

5 (b) Title 50, chapter 39, 74, or 76."
6

7 **Section 6.** Section 39-9-101, MCA, is amended to read:

8 **"39-9-101. Purpose.** It is the purpose of this chapter to ensure that all construction contractors and
9 ~~home inspectors are competing fairly and in compliance with state laws."~~

10
11 **Section 7.** Section 39-9-102, MCA, is amended to read:

12 **"39-9-102. Definitions.** As used in this chapter, the following definitions apply:

13 (1) "Construction contractor" means a person, firm, or corporation that:

14 (a) in the pursuit of an independent business, offers to undertake, undertakes, or submits a bid to
15 construct, alter, repair, add to, subtract from, improve, move, wreck, or demolish for another a building,
16 highway, road, railroad, excavation, or other structure, project, development, or improvement attached to real
17 estate, including the installation of carpeting or other floor covering, the erection of scaffolding or other
18 structures or works, or the installation or repair of roofing or siding; or

19 (b) in order to do work similar to that described in subsection (1)(a) upon the construction
20 contractor's property, employs members of more than one trade on a single job or under a single building
21 permit, except as otherwise provided.

22 (2) "Department" means the department of labor and industry.

23 ~~(3) (a) "Home inspection" means a physical examination of a residential dwelling to identify major
24 defects in various attributes of or attachments to the dwelling, including mechanical, electrical, and plumbing
25 systems in addition to structural and other essential components. Home inspections are performed for
26 compensation and employ visual observation and the testing of user controls but not mathematical or
27 specialized engineering sciences.~~

28 ~~(b) The term does not mean a physical examination of a residential dwelling when the owner or a~~

1 representative of the owner requests the examination by an individual who is licensed, certified, or registered in
2 this state and who is acting within the scope of practice of the individual's profession or occupation.

3 (4) ~~—"Home inspection report" means a written document prepared by a home inspector for a client~~
4 ~~and issued to the client in exchange for compensation after a home inspection has been completed. The report~~
5 ~~must clearly identify and describe:~~

6 (a) ~~the inspected systems, structures, and other relevant components of the dwelling;~~

7 (b) ~~any major visible defects in the inspected systems, structures, and other relevant components~~
8 ~~of the dwelling; and~~

9 (c) ~~any recommendations for further evaluation of the property by other appropriate persons.~~

10 (5) ~~—"Home inspector" means a person who performs a home inspection for compensation."~~

11

12 **Section 8.** Section 39-9-206, MCA, is amended to read:

13 **"39-9-206. Fees -- education program.** (1) The department shall charge fees to construction
14 contractors ~~and home inspectors~~ for:

15 (a) issuance, renewal, and reinstatement of certificates of registration; and

16 (b) change of name, address, or business structure.

17 (2) The department shall set the fees by administrative rule. The fees must cover the full cost of
18 issuing certificates, filing papers and notices, and administering and enforcing this chapter. The costs include
19 reproduction, travel, per diem, and administrative and legal support costs.

20 (3) The fees charged in subsection (1)(a) may not exceed:

21 (a) ~~for a construction contractor:~~

22 (i) ~~\$70 for the initial registration certificate; or~~

23 (ii) ~~\$70 for the renewal or reinstatement of a registration certificate; or~~

24 (b) ~~for a home inspector, an amount determined in rule for the initial registration certificate or for~~
25 ~~the renewal or reinstatement of a registration certificate. \$70 for the initial registration certificate or for the~~
26 ~~renewal or reinstatement of a registration certificate.~~

27 (4) The fees collected under this section must be deposited in a state special revenue account to
28 the credit of the department for the administration and enforcement of this chapter and independent contractor

1 certification provided for in Title 39, chapter 71, part 4.

2 (5) The department shall establish, cooperatively with representatives of the building industry, ~~and~~
3 ~~the home inspection industry,~~ an industry and consumer information program, funded with 15% of the fees, to
4 educate the building industry ~~and home inspectors~~ about the registration requirements and to educate the
5 public regarding the hiring of building construction contractors ~~and home inspectors~~.

6 (6) The fee for a joint application for a certificate of registration and an independent contractor
7 exemption certificate may not exceed the total fee charged for a certificate of registration and an independent
8 contractor exemption certificate that are obtained separately. The fee paid for the independent contractor
9 exemption certificate may be used by the department to offset the cost of administering independent contractor
10 certification provided for in Title 39, chapter 71, part 4."
11

12 **Section 9.** Section 39-9-207, MCA, is amended to read:

13 **"39-9-207. Registration -- limiting liability.** A person who, pursuant to an oral or written contract,
14 engages a construction contractor ~~or a home inspector~~ who is registered under this chapter on the date of the
15 contract is not liable as an employer for workers' compensation coverage under 39-71-405, for unemployment
16 insurance coverage, or for wages and fringe benefits for:

- 17 (1) the registered construction contractor ~~or home inspector~~;
- 18 (2) the employees of the registered construction contractor ~~or home inspector~~; or
- 19 (3) any subsequent subcontractor or the employees of any subsequent subcontractor engaged to
20 fulfill a part of or all of the obligations of the oral or written contract of the registered construction contractor ~~or~~
21 ~~home inspector~~ listed in subsection (1)."
22

23 **Section 10.** Section 39-9-301, MCA, is amended to read:

24 **"39-9-301. Business practices -- penalty.** (1) Except as provided in 39-9-205, a person who has
25 registered under one name as provided in this chapter may not engage in the business or act in the capacity of
26 a construction contractor ~~or a home inspector~~ under any other name unless that name also is registered under
27 this chapter.

28 (2) Use of a falsified registration number in connection with a solicitation or identification as a

1 construction contractor ~~or a home inspector~~ is prohibited.

2 (3) A partner, associate, agent, salesperson, solicitor, officer, or employee of a construction
3 contractor ~~or a home inspector~~ shall use a true name and address at all times while engaged in the business or
4 capacity of a construction contractor ~~or a home inspector~~ or in activities related to a construction contractor ~~or a~~
5 ~~home inspector~~.

6 (4) A construction contractor may not:

7 (a) hire a person as an independent contractor who does not have an independent contractor
8 exemption certificate if required by 39-71-417;

9 (b) hire a person as an independent contractor if the department has suspended, revoked, or
10 denied the person's independent contractor's exemption certificate;

11 (c) hire an independent contractor to work in a trade, business, occupation, or profession not listed
12 on the independent contractor's registration;

13 (d) allow an independent contractor to perform work not in the trade, business, occupation, or
14 profession listed on the independent contractor exemption certificate; or

15 (e) classify an employee as an independent contractor if the person does not have an independent
16 contractor exemption certificate required by 39-71-417.

17 (5) (a) The finding of a violation of this section by the department at a hearing held in accordance
18 with the Montana Administrative Procedure Act subjects the person who commits the violation to a penalty of
19 not more than \$5,000, as determined by the department. The required hearing may be held by telephone or by
20 videoconference. A penalty collected under this section must be deposited in the state special revenue account
21 to the credit of the department for administration and enforcement of this chapter.

22 (b) Penalties under this section do not apply to a violation that is determined to be an inadvertent
23 error."
24

25 **Section 11.** Section 39-9-303, MCA, is amended to read:

26 **"39-9-303. Department to compile and update registration lists -- availability -- fee.** (1) The
27 department shall compile a list of all construction contractors ~~and home inspectors~~ registered under this chapter
28 and update the list at least bimonthly. ~~list of construction contractors at least bimonthly and the list of home~~

1 ~~inspectors as provided by rule.~~ The list is public information and must be available to the public upon request
2 for a reasonable fee or posted on the department's website.

3 (2) The department shall inform a person, firm, or corporation whether a construction contractor or
4 ~~a home inspector~~ is registered. The department shall provide the information without charge, except for a
5 reasonable fee for any copies made."
6

7 **NEW SECTION. Section 12. Repealer.** The following sections of the Montana Code Annotated are
8 repealed:

9 39-9-212. Home inspector registration -- penalty -- rulemaking.

10 39-9-213. Requirement -- prohibitions.
11

12 **NEW SECTION. Section 13. Codification instruction.** [Sections 1 through 4] are intended to be
13 codified as an integral part of Title 37, and the provisions of Title 37 apply to [sections 1 through 4].
14

15 **COORDINATION SECTION. SECTION 14. COORDINATION INSTRUCTION. (1) IF HOUSE BILL NO. 239 IS**
16 **PASSED AND APPROVED AND IF IT INCLUDES A SECTION THAT AMENDS 39-9-101, THEN [SECTION 6 OF THIS ACT],**
17 **AMENDING 39-9-101, IS VOID AND 39-9-101 MUST BE REPEALED.**
18

19 (2) IF HOUSE BILL NO. 239 IS PASSED AND APPROVED AND IF IT INCLUDES A SECTION THAT AMENDS 39-9-
20 102, THEN [SECTION 7 OF THIS ACT], AMENDING 39-9-102, IS VOID AND 39-9-102 MUST BE REPEALED.

21 (3) IF HOUSE BILL NO. 239 IS PASSED AND APPROVED AND IF IT INCLUDES A SECTION THAT AMENDS 39-9-
22 206, THEN [SECTION 8 OF THIS ACT], AMENDING 39-9-206, IS VOID AND 39-9-206 MUST BE REPEALED.

23 (4) IF HOUSE BILL NO. 239 IS PASSED AND APPROVED AND IF IT INCLUDES A SECTION THAT AMENDS 39-9-
24 207, THEN [SECTION 9 OF THIS ACT], AMENDING 39-9-207, IS VOID AND 39-9-207 MUST BE REPEALED.

25 (5) IF HOUSE BILL NO. 239 IS PASSED AND APPROVED AND IF IT INCLUDES A SECTION THAT AMENDS 39-9-
26 301, THEN [SECTION 10 OF THIS ACT], AMENDING 39-9-301, IS VOID AND 39-9-301 MUST BE REPEALED.

27 (6) IF HOUSE BILL NO. 239 IS PASSED AND APPROVED AND IF IT INCLUDES A SECTION THAT AMENDS 39-9-
28 303, THEN [SECTION 11 OF THIS ACT], AMENDING 39-9-303, IS VOID AND 39-9-303 MUST BE REPEALED.

1 (7) IF BOTH HOUSE BILL NO. 239 AND [THIS ACT] ARE PASSED AND APPROVED, THEN 39-9-103 AND 39-9-
2 401 MUST BE REPEALED.

3

4 NEW SECTION. Section 15. Effective date. [This act] is effective January 1, 2026.

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6

- END -