

HOUSE BILL No. 4014

January 13, 2011, Introduced by Rep. LeBlanc and referred to the Committee on Regulatory Reform.

A bill to amend 1980 PA 299, entitled
"Occupational code,"
by amending sections 303a, 401, and 601 (MCL 339.303a, 339.401,
and 339.601), section 303a as amended by 2006 PA 489, section 401
as amended by 1988 PA 463, and section 601 as amended by 2008 PA
319, and by adding article 14.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 303a. The terms provided for in this act shall commence
2 on the following dates:

3 Accountancy	July 1
4 Architects	April 1
5 Auctioneers	October 1

1	Barbers	October 1
2	Collection agencies	July 1
3	Community planners	July 1
4	Cosmetology	January 1
5	Employment agencies	October 1
6	Foresters	April 1
7	Hearing aid dealers	October 1
8	HOME INSPECTORS	JULY 1
9	Land surveyors	April 1
10	Landscape architects	July 1
11	Mortuary science	July 1
12	Professional engineers	April 1
13	Real estate appraisers	July 1
14	Real estate brokers and salespersons	July 1
15	Residential builders	April 1

16 Sec. 401. (1) ~~The~~ **EXCEPT AS OTHERWISE PROVIDED FOR IN A**
 17 **SPECIFIC ARTICLE, THE** specific amounts to be charged for
 18 licenses, registrations, and other activities provided for in
 19 this act shall be as prescribed in the state license fee act, ~~Act~~
 20 ~~No. 152 of the Public Acts of 1979, being sections 338.2201 to~~
 21 ~~338.2277 of the Michigan Compiled Laws 1979 PA 152, MCL 338.2201~~
 22 **TO 338.2277.**

23 (2) **THE OCCUPATIONAL FUND IS CREATED WITHIN THE STATE**
 24 **TREASURY. THE STATE TREASURER MAY RECEIVE MONEY OR OTHER ASSETS**
 25 **FROM ANY SOURCE FOR DEPOSIT INTO THE FUND, INCLUDING MONEY FROM**
 26 **THIS ACT AND THE STATE LICENSE FEE ACT, 1979 PA 152, MCL 338.2201**
 27 **TO 338.2277. THE STATE TREASURER SHALL DIRECT THE INVESTMENT OF**
 28 **THE FUND. THE STATE TREASURER SHALL CREDIT TO THE FUND INTEREST**

1 AND EARNINGS FROM FUND INVESTMENTS. MONEY IN THE FUND AT THE
2 CLOSE OF THE FISCAL YEAR SHALL REMAIN IN THE FUND AND SHALL NOT
3 LAPSE TO THE GENERAL FUND. THE DEPARTMENT SHALL BE THE
4 ADMINISTRATOR OF THE FUND FOR AUDITING PURPOSES.

5 (3) FEES ESTABLISHED WITHIN THIS ACT ARE INTENDED TO BEAR A
6 REASONABLE RELATION TO THE DEPARTMENT'S COST, INCLUDING OVERHEAD,
7 OF THE SERVICE OR ACTION FOR WHICH THE FEE IS CHARGED AND SHALL
8 BE DEPOSITED INTO THE FUND TO OFFSET SUCH COSTS. THE DEPARTMENT
9 SHALL ADJUST ON AN ANNUAL BASIS THE LICENSE FEES PRESCRIBED IN
10 THIS ACT BY AN AMOUNT DETERMINED BY THE STATE TREASURER TO
11 REFLECT THE CUMULATIVE ANNUAL PERCENTAGE CHANGE IN THE DETROIT
12 CONSUMER PRICE INDEX, NOT TO EXCEED 5%. AS USED IN THIS
13 SUBSECTION, "DETROIT CONSUMER PRICE INDEX" MEANS THE MOST
14 COMPREHENSIVE INDEX OF CONSUMER PRICES AVAILABLE FOR THE DETROIT
15 AREA FROM THE BUREAU OF LABOR STATISTICS OF THE UNITED STATES
16 DEPARTMENT OF LABOR.

17 (4) THE DEPARTMENT SHALL EXPEND MONEY FROM THE FUND, UPON
18 APPROPRIATION, ONLY FOR THE OPERATION OF THE BUREAU OF COMMERCIAL
19 SERVICES AND INDIRECT OVERHEAD EXPENSES OF THE DEPARTMENT THAT
20 INCLUDE, BUT ARE NOT LIMITED TO, THE PURCHASE AND SALE TO THE
21 GENERAL PUBLIC OF PRINTED LAWS AND RULES.

22 Sec. 601. (1) A person shall not engage in or attempt to
23 engage in the practice of an occupation regulated under this act
24 or use a title designated in this act unless the person possesses
25 a license or registration issued by the department for the
26 occupation.

27 (2) A school, institution, or person shall not operate or

1 attempt to operate a barber college, school of cosmetology, or
2 real estate school unless the school, institution, or person is
3 licensed or approved by the department.

4 (3) Subject to section 411, a person whose license or
5 registration is suspended, revoked, or lapsed, as determined by
6 the records of the department, is considered unlicensed or
7 unregistered.

8 (4) Except as otherwise provided for in section 735, a
9 person, school, or institution that violates subsection (1) or
10 (2) is guilty of a misdemeanor ~~—~~punishable by a fine of not more
11 than \$500.00 ~~—~~or imprisonment for not more than 90 days, or
12 both.

13 (5) Except as otherwise provided for in section 735, a
14 person, school, or institution that violates subsection (1) or
15 (2) a second or any subsequent time is guilty of a misdemeanor ~~—~~
16 punishable by a fine of not more than \$1,000.00 ~~—~~or imprisonment
17 for not more than 1 year, or both.

18 (6) Notwithstanding subsections (4) and (5), a person not
19 licensed under **ARTICLE 14 AS A HOME INSPECTOR OR UNDER** article 24
20 as a residential builder or a residential maintenance and
21 alteration contractor who violates subsection (1) or (2) is
22 guilty as follows:

23 (a) In the case of a first offense, a misdemeanor punishable
24 by a fine of not less than \$5,000.00 or more than \$25,000.00 ~~—~~or
25 imprisonment for not more than 1 year, or both.

26 (b) In the case of a second or subsequent offense, a
27 misdemeanor punishable by a fine of not less than \$5,000.00 or

1 more than \$25,000.00 ~~—~~or imprisonment for not more than 2 years,
2 or both.

3 (c) In the case of an offense that causes death or serious
4 injury, a felony punishable by a fine of not less than \$5,000.00
5 or more than \$25,000.00 ~~—~~or imprisonment for not more than 4
6 years, or both.

7 (7) Notwithstanding subsections (4) and (5), a person not
8 licensed under article 20 as an architect, professional engineer,
9 or professional land surveyor who violates subsection (1) or (2)
10 is guilty as follows:

11 (a) In the case of a first offense, a misdemeanor punishable
12 by a fine of not less than \$5,000.00 or more than \$25,000.00 or
13 imprisonment for not more than 93 days, or both.

14 (b) In the case of a second or subsequent offense, a
15 misdemeanor punishable by a fine of not less than \$5,000.00 or
16 more than \$25,000.00 or imprisonment for not more than 1 year, or
17 both.

18 (c) In the case of an offense that causes death or serious
19 injury, a felony punishable by a fine of not less than \$5,000.00
20 or more than \$25,000.00 or imprisonment for not more than 4
21 years, or both.

22 (8) Any violation of this act shall include a requirement
23 that restitution be made, based upon proofs submitted to and
24 findings made by the trier of fact as provided by law.

25 (9) Notwithstanding the existence and pursuit of any other
26 remedy, an affected person may maintain injunctive action to
27 restrain or prevent a person from violating subsection (1) or

(2). If successful in obtaining injunctive relief, the affected person shall be entitled to actual costs and attorney fees.

(10) This act does not apply to a person engaging in or practicing the following:

(a) Interior design.

(b) Residential building design. As used in this subdivision, "residential building design" means the rendering of residential design services for a detached 1- and 2-family residence building by a person exempted from the requirements of **ARTICLE 20 BY** section 2012.

(c) Any activity for which the person is licensed under the state plumbing act, 2002 PA 733, MCL 338.3511 to 338.3569.

(d) Any activity for which the person is licensed under the Forbes mechanical contractors act, 1984 PA 192, MCL 338.971 to 338.988.

(e) Any activity for which the person is licensed under the electrical administrative act, 1956 PA 217, MCL 338.881 to 338.892.

(11) As used in subsection (9), "affected person" means a person directly affected by the actions of a person suspected of violating subsection (1) or (2) and includes, but is not limited to, a licensee or registrant, a board established pursuant to this act, the department, a person who has utilized the services of the person engaging in or attempting to engage in an occupation regulated under this act or using a title designated by this act without being licensed or registered by the department, or a private association composed primarily of

1 members of the occupation in which the person is engaging in or
2 attempting to engage in or in which the person is using a title
3 designated under this act without being registered or licensed by
4 the department.

5 (12) An investigation may be conducted under article 5 to
6 enforce this section. A person who violates this section ~~shall be~~
7 **IS** subject to this section and sections 506, 602, and 606.

8 (13) The department, the attorney general, or a county
9 prosecutor may utilize forfeiture as a remedy **FOR A VIOLATION OF**
10 **THIS SECTION** in the manner provided for in section 606.

11 (14) The remedies under this section are independent and
12 cumulative. The use of 1 remedy by a person shall not bar the use
13 of other lawful remedies by that person or the use of a lawful
14 remedy by another person.

15 (15) An interior designer may perform services in connection
16 with the design of interior spaces including preparation of
17 documents relative to finishes, systems furniture, furnishings,
18 fixtures, equipment, and interior partitions that do not affect
19 the building mechanical, structural, electrical, or fire safety
20 systems.

21 (16) Upon entering a conviction under subsection (4), (5),
22 ~~or~~ (6), **OR (7)**, a court entering the conviction shall notify, by
23 mail, facsimile transmission, or electronic mail, the bureau of
24 commercial services at the department.

25 **ARTICLE 14**

26 **SEC. 1401. AS USED IN THIS ARTICLE:**

27 **(A) "CLIENT" MEANS THE PERSON ON WHOSE BEHALF A HOME**

1 INSPECTOR IS ACTING, WHICH MAY INCLUDE THE SELLER UNDER CERTAIN
2 CIRCUMSTANCES.

3 (B) "ELECTRICAL SYSTEM" MEANS THE TOTAL SYSTEM, BEGINNING
4 WITH THE UTILITY CONNECTION, IN A RESIDENCE THAT FACILITATES THE
5 FLOW OF ELECTRICITY BEGINNING WITH THE MAIN PANEL AND EXTENDING
6 TO THE SUBPANELS AND INCLUDING BRANCH CIRCUITS, AND DIRECTLY
7 WIRED ELECTRICAL AND LIGHTING FIXTURES.

8 (C) "FOUNDATION" MEANS 1 OR MORE OF THE SUPPORTING ELEMENTS
9 OF A STRUCTURE, INCLUDING, BUT NOT LIMITED TO, THE FOLLOWING:

10 (i) SLAB.

11 (ii) CRAWL SPACE.

12 (iii) BASEMENT.

13 (iv) PIERS.

14 (D) "HEATING AND AIR CONDITIONING SYSTEM" MEANS A SEPARATE
15 OR COMBINED SYSTEM USED TO DISTRIBUTE OR RADIATE HEAT OR COOL AIR
16 THROUGHOUT ALL OR PART OF A RESIDENCE.

17 (E) "HOME INSPECTION SERVICES" MEANS SERVICES PROVIDED TO A
18 CLIENT, FOR CONSIDERATION, THAT ARE DESIGNED TO IDENTIFY AND
19 DISCLOSE THE FUNCTIONAL CONDITION OF THE MAJOR SYSTEMS IN A
20 RESIDENCE AT THE TIME OF THE INSPECTION. HOME INSPECTION SERVICES
21 DO NOT INCLUDE AN INSPECTION DESIGNED ONLY TO DISCLOSE ANY OF THE
22 FOLLOWING:

23 (i) COMPLIANCE WITH LOCAL, STATE, OR FEDERAL BUILDING OR
24 CONSTRUCTION LAWS, CODES, OR REGULATIONS.

25 (ii) COMPLIANCE WITH LOCAL, STATE, OR FEDERAL HEALTH AND
26 SAFETY LAWS OR REGULATIONS.

27 (iii) THE PRESENCE OR ABSENCE OF PESTS, TERMITES, OR OTHER

1 VERMIN OR DAMAGE RESULTING FROM THE PRESENCE OF PESTS, TERMITES,
2 OR VERMIN.

3 (F) "HOME INSPECTOR" MEANS A PERSON ENGAGED IN, OR OFFERING
4 TO ENGAGE IN, THE BUSINESS OF PROVIDING HOME INSPECTION SERVICES
5 BUT DOES NOT INCLUDE ANY OF THE FOLLOWING:

6 (i) A PERSON ACTING ON BEHALF OF A LOCAL, STATE, OR FEDERAL
7 GOVERNMENTAL UNIT OR AGENCY CONDUCTING AN INSPECTION OR
8 INVESTIGATION CONCERNING COMPLIANCE WITH EITHER OR BOTH OF THE
9 FOLLOWING:

10 (A) HEALTH OR SAFETY LAWS OR REGULATIONS.

11 (B) CONSTRUCTION OR BUILDING LAWS, CODES, OR REGULATIONS.

12 (ii) A PERSON LICENSED, REGISTERED, OR CERTIFIED UNDER 1 OR
13 MORE OF THE FOLLOWING WHILE CONDUCTING AN INSPECTION THAT IS
14 REASONABLY RELATED TO A TASK OR PROSPECTIVE TASK WITHIN THE SCOPE
15 OF LICENSURE, REGISTRATION, OR CERTIFICATION:

16 (A) ARTICLE 20.

17 (B) ARTICLE 24.

18 (C) ARTICLE 25.

19 (D) ARTICLE 26.

20 (E) THE STATE PLUMBING ACT, 2002 PA 733, MCL 338.3511 TO
21 338.3569.

22 (F) THE ELECTRICAL ADMINISTRATIVE ACT, 1956 PA 217, MCL
23 338.881 TO 338.892.

24 (G) THE FORBES MECHANICAL CONTRACTORS ACT, 1984 PA 192, MCL
25 338.971 TO 338.988.

26 (G) "MAJOR DEFICIENCY" MEANS A DEFECT IN 1 OR MORE MAJOR
27 SYSTEMS THAT MAY CAUSE THE REASONABLE LIKELIHOOD OF HARM TO THE

1 SAFETY OF THE OCCUPANTS OR THAT MAY RESULT IN THE REASONABLE
2 LIKELIHOOD OF A MAJOR SYSTEM BECOMING NONOPERATIONAL.

3 (H) "MAJOR SYSTEM" MEANS ANY 1 OF THE FOLLOWING:

4 (i) ELECTRICAL SYSTEM.

5 (ii) HEATING AND AIR CONDITIONING SYSTEM.

6 (iii) PLUMBING SYSTEM.

7 (iv) STRUCTURE AND FOUNDATION.

8 (I) "PLUMBING SYSTEM" MEANS THAT SYSTEM REGULATING THE
9 INWARD AND OUTWARD FLOW OF WATER AND SEWAGE IN A RESIDENCE AND
10 INCLUDES, BUT IS NOT LIMITED TO, WATER HEATERS, FIXTURES,
11 FAUCETS, VALVES, AND PIPES. PLUMBING DOES NOT INCLUDE WELLS,
12 SEPTIC SYSTEMS, WATER SOFTENERS, OR SUMP PUMPS UNLESS INCLUDED IN
13 WRITING IN THE CONTRACT FOR HOME INSPECTION SERVICES.

14 (J) "RESIDENCE" MEANS A BUILDING USED PRIMARILY FOR FAMILY
15 LIVING QUARTERS AND DESIGNED FOR OCCUPANCY OF NOT MORE THAN 4
16 FAMILIES IN SEPARATE DWELLING UNITS. RESIDENCE DOES NOT INCLUDE
17 ANY BUILDING NEWLY CONSTRUCTED OR NOT PREVIOUSLY OCCUPIED AS A
18 DWELLING UNIT.

19 (K) "STRUCTURE" MEANS THE WALLS, WINDOWS, DOORS, AND ROOF ON
20 THE EXTERIOR OF A RESIDENCE AND THE WALLS, CEILINGS, FLOORS,
21 WINDOWS, AND DOORS ON THE INTERIOR OF A RESIDENCE.

22 SEC. 1402. THERE IS CREATED A HOME INSPECTORS BOARD.

23 SEC. 1403. (1) BEGINNING ON THE EFFECTIVE DATE OF THIS
24 ARTICLE, AN INDIVIDUAL SHALL NOT PROVIDE, OR OFFER TO PROVIDE,
25 HOME INSPECTION SERVICES UNLESS LICENSED UNDER THIS ARTICLE OR
26 UNLESS THE INDIVIDUAL OR SERVICES ARE EXEMPTED FROM LICENSURE
27 UNDER THIS ARTICLE AS DESCRIBED IN SECTION 1401(F) (i) OR (ii). AN

1 INDIVIDUAL SHALL NOT USE THE TERM "HOME INSPECTOR" OR ANY OTHER
2 SIMILAR TITLE THAT CONNOTES LICENSURE UNDER THIS ARTICLE UNLESS
3 LICENSED UNDER THIS ARTICLE. A PERSON WHO VIOLATES THIS SECTION
4 IS SUBJECT TO THE PENALTIES OF ARTICLE 6.

5 (2) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3), THE
6 DEPARTMENT SHALL LICENSE AN INDIVIDUAL FILING A COMPLETED
7 APPLICATION AND PAYING THE APPROPRIATE APPLICATION AND LICENSE
8 FEE AND WHO MEETS ALL OF THE FOLLOWING:

9 (A) TRAINING AND EDUCATION REQUIREMENTS CONSISTING OF AT
10 LEAST 60 CREDIT HOURS OF EDUCATION OR EQUIVALENT TRAINING AS
11 DETERMINED APPROPRIATE BY THE DEPARTMENT.

12 (B) PARTICIPATION IN NOT FEWER THAN 200 HOME INSPECTIONS
13 CONDUCTED UNDER THE AUTHORITY AND DIRECTION OF A HOME INSPECTOR
14 LICENSED UNDER THIS ARTICLE, AS EVIDENCED BY A AFFIDAVIT OF THE
15 LICENSEE.

16 (C) THE PASSAGE OF AN EXAMINATION ACCEPTABLE TO THE
17 DEPARTMENT AND THE BOARD. THE CURRENT EXAMINATION REFERRED TO AS
18 THE NATIONAL HOME INSPECTION EXAMINATION DEVELOPED BY THE
19 EXAMINATION BOARD OF PROFESSIONAL HOME INSPECTORS, AS IT EXISTS
20 ON THE EFFECTIVE DATE OF THIS ARTICLE, IS CONSIDERED AN
21 ACCEPTABLE EXAMINATION. ANY OTHER EXAMINATION UTILIZING
22 PSYCHOMETRIC STANDARDS AND HAVING SUBSTANTIALLY THE SAME
23 SUBSTANTIVE AREAS OF TESTING, AS DETERMINED BY THE BOARD AND THE
24 DEPARTMENT, MAY ALSO BE USED FOR PURPOSES OF THIS SUBDIVISION.
25 THE DIRECTOR, IN CONSULTATION WITH THE BOARD, MAY ADOPT ANY
26 UPDATES OR ALTERNATIVES TO THE EXAMINATION DESCRIBED IN THIS
27 SUBDIVISION BY THE PROMULGATION OF A RULE.

1 (D) IS AT LEAST 18 YEARS OF AGE AND HAS NOT BEEN CONVICTED
2 OF ANY FELONY.

3 (3) BEGINNING THE EFFECTIVE DATE OF THIS ARTICLE AND UNTIL
4 THE EXPIRATION OF 12 MONTHS AFTER THAT EFFECTIVE DATE, THE
5 DEPARTMENT SHALL ISSUE A LICENSE TO AN INDIVIDUAL WHO APPLIES AND
6 SUBMITS THE APPROPRIATE LICENSE AND APPLICATION FEES AND
7 DOCUMENTS, IN A MANNER ACCEPTABLE TO THE DEPARTMENT, AT LEAST 3
8 YEARS OF EXPERIENCE IN PROVIDING HOME INSPECTION SERVICES AND THE
9 CONDUCT OF OR THE PARTICIPATION IN AT LEAST 200 HOME INSPECTIONS,
10 BOTH OCCURRING DURING THE PRECEDING 5 CALENDAR YEARS. AN
11 INDIVIDUAL MEETING THE CONDITIONS DESCRIBED IN THIS SUBSECTION IS
12 NOT REQUIRED TO MEET THE REQUIREMENTS OF SUBSECTION (2).

13 (4) THE DEPARTMENT SHALL LICENSE AN INDIVIDUAL AS A HOME
14 INSPECTOR IF THE INDIVIDUAL IS LICENSED OR OTHERWISE REGULATED IN
15 ANOTHER STATE THAT HAS SUBSTANTIALLY THE SAME STANDARDS FOR
16 LICENSURE AS THIS STATE, AS DETERMINED BY THE DEPARTMENT, AND
17 THAT MEETS ALL OTHER RELEVANT REQUIREMENTS IN THIS STATE.

18 SEC. 1404. (1) BEGINNING THE EFFECTIVE DATE OF THIS ARTICLE,
19 AN INDIVIDUAL PROVIDING OR OFFERING TO PROVIDE HOME INSPECTION
20 SERVICES SHALL COMPLY WITH THE REQUIREMENTS OF THIS SECTION AND
21 SECTION 1405.

22 (2) A HOME INSPECTOR WHO ENTERS INTO A CONTRACT FOR HOME
23 INSPECTION SERVICES THAT IS NOT IN CONFORMANCE WITH THIS ARTICLE
24 IS SUBJECT TO AN ACTION FOR DAMAGES BROUGHT BY THE CLIENT IN A
25 COURT OF COMPETENT JURISDICTION OR PENALTIES AND SANCTIONS
26 CONTAINED IN ARTICLES 5 AND 6, OR BOTH.

27 (3) A HOME INSPECTOR SHALL INSPECT THOSE MAJOR SYSTEMS OF A

1 RESIDENCE THAT ARE THE SUBJECT OF A CONTRACT FOR HOME INSPECTION
2 SERVICES BUT IS ONLY REQUIRED TO INSPECT TO THE EXTENT THAT THOSE
3 MAJOR SYSTEMS ARE READILY ACCESSIBLE AND VISIBLE TO THE HOME
4 INSPECTOR. A HOME INSPECTOR SHALL INDICATE IN WRITING ANY MAJOR
5 SYSTEM, OR ANY PART OF A MAJOR SYSTEM, THAT WAS NOT ABLE TO BE
6 INSPECTED AND THE REASONS FOR THE INABILITY TO INSPECT.

7 (4) THE HOME INSPECTOR SHALL DISCLOSE WHETHER HE OR SHE, AN
8 EMPLOYEE OR AGENT, OR AN IMMEDIATE FAMILY MEMBER HAS AN OWNERSHIP
9 INTEREST IN THE RESIDENCE BEING INSPECTED.

10 (5) A HOME INSPECTOR SHALL DISCLOSE WHETHER HE OR SHE, AN
11 EMPLOYEE OR AGENT, OR AN IMMEDIATE FAMILY MEMBER IS A MEMBER OF A
12 BOARD OF DIRECTORS OF, OR AN OFFICER OF, AN ENTITY THAT HAS AN
13 OWNERSHIP INTEREST IN THE RESIDENCE BEING INSPECTED.

14 (6) A HOME INSPECTOR SHALL DISCLOSE AND PROVIDE AT THE TIME
15 THE WRITTEN HOME INSPECTION REPORT IS CONVEYED TO THE CLIENT AT
16 LEAST BOTH OF THE FOLLOWING:

17 (A) THE SCOPE OF THE HOME INSPECTION SERVICES WITH A
18 DETAILED DESCRIPTION OF THE MAJOR SYSTEMS TO BE INSPECTED, THE
19 TYPE OF MAJOR DEFICIENCIES THE HOME INSPECTION IS DESIGNED TO
20 REVEAL, AND ITEMS THAT ARE EXCLUDED FROM COVERAGE UNDER THE
21 CONTRACT OF HOME INSPECTION SERVICES.

22 (B) A STATEMENT THAT A HOME INSPECTOR INSPECTING A
23 PARTICULAR RESIDENCE SHALL NOT REPAIR OR OFFER TO REPAIR A
24 RESIDENCE THAT WAS THE SUBJECT OF HOME INSPECTION SERVICES
25 PROVIDED BY THAT HOME INSPECTOR.

26 SEC. 1405. (1) A CONTRACT FOR HOME INSPECTION SERVICES SHALL
27 BE IN WRITING, EXECUTED BY THE HOME INSPECTOR AND EITHER THE

1 CLIENT OR THE CLIENT'S AGENT, AND IN CONFORMANCE WITH SUBSECTION
2 (4). A COPY OF THE EXECUTED CONTRACT FOR HOME INSPECTION SERVICES
3 SHALL BE PROVIDED TO THE CLIENT AT THE TIME OF ITS EXECUTION.

4 (2) ALL TERMS OF THE CONTRACT FOR HOME INSPECTION SERVICES
5 SHALL BE CONTAINED IN THE WRITTEN CONTRACT EXCEPT THAT CONDITIONS
6 OF THE RESIDENCE AFFECTING THE HOME INSPECTOR'S ABILITY TO
7 CONDUCT A HOME INSPECTION SHALL BE NOTED IN THE REPORT PROVIDED
8 TO THE CLIENT AFTER THE INSPECTION IS CONDUCTED. ANY CHANGES OR
9 MODIFICATIONS OF THE TERMS OF THE CONTRACT FOR HOME INSPECTION
10 SERVICES SHALL BE REDUCED TO WRITING.

11 (3) UNLESS OTHERWISE INDICATED IN WRITING, THE PURCHASER OF
12 A RESIDENCE BEING INSPECTED IS CONSIDERED THE CLIENT IN THE CASE
13 OF A HOME INSPECTION CONDUCTED AS PART OF A SALE OF THE
14 RESIDENCE.

15 (4) THE FOLLOWING SHALL BE CONTAINED IN A CONTRACT FOR HOME
16 INSPECTION SERVICES:

17 (A) A DESCRIPTION OF THE HOME INSPECTION SERVICES TO BE
18 PROVIDED.

19 (B) ANY DISCLAIMERS INCLUDING, BUT NOT LIMITED TO, THE
20 ABSENCE OF ANY WARRANTIES AS TO THE ADEQUACY OF FUTURE
21 PERFORMANCE OF A MAJOR SYSTEM AND THE FACT THAT THE HOME
22 INSPECTION IS CONSIDERED A VALID ASSESSMENT OF THE CONDITION OF
23 THE RESIDENCE ONLY AS OF THE DATE THE HOME INSPECTION WAS
24 CONDUCTED.

25 (C) ANY EXCLUSION OF DEFECTS NOT REASONABLY APPARENT BY
26 VISUAL INSPECTION.

27 (D) ANY EXCLUSION OF ANY MAJOR SYSTEM NOT OPERABLE AT THE

1 TIME OF THE CONDUCT OF THE HOME INSPECTION.

2 (E) THE DISCLOSURES REQUIRED IN SECTION 1404(4) AND (5).

3 (5) AFTER PERFORMING HOME INSPECTION SERVICES, A HOME
4 INSPECTOR SHALL PROVIDE TO THE CLIENT A WRITTEN HOME INSPECTION
5 REPORT CONTAINING THE RESULTS OF THE HOME INSPECTION. THE HOME
6 INSPECTION REPORT SHALL INCLUDE A LIST OF THE MAJOR SYSTEMS
7 INSPECTED AND ANY MAJOR SYSTEMS NOT INSPECTED. THE HOME INSPECTOR
8 SHALL LIST IN THE REPORT ANY CONDITIONS AFFECTING OR LIMITING THE
9 ABILITY OF THE HOME INSPECTOR TO PROVIDE HOME INSPECTION SERVICES
10 PURSUANT TO THE CONTRACT.

11 (6) THE HOME INSPECTION REPORT SHALL INCLUDE THE FOLLOWING
12 STATEMENTS:

13 (A) THAT DEFECTS NOT REASONABLY APPARENT BY VISUAL
14 INSPECTION ARE EXCLUDED.

15 (B) THAT A MAJOR SYSTEM NOT OPERABLE AT THE TIME OF THE
16 CONDUCT OF THE HOME INSPECTION IS EXCLUDED.

17 (7) THE HOME INSPECTOR SHALL INDICATE IN THE WRITTEN HOME
18 INSPECTION REPORT THE FACT THAT THE HOME INSPECTION IS CONSIDERED
19 A VALID ASSESSMENT OF THE CONDITION OF THE RESIDENCE ONLY AS OF
20 THE DATE THE HOME INSPECTION WAS CONDUCTED.

21 (8) A HOME INSPECTOR SHALL RETAIN A COPY OF THE CONTRACT FOR
22 HOME INSPECTION SERVICES AND THE WRITTEN HOME INSPECTION REPORT
23 FOR AT LEAST 3 YEARS AFTER THE DATE OF THE REPORT.

24 (9) ANY DISPUTES BETWEEN A HOME INSPECTOR AND A CLIENT MAY
25 BE RESOLVED BY ARBITRATION, IF THE CONTRACT SO PROVIDES. THE
26 ARBITRATION SHALL BE CONDUCTED IN COMPLIANCE WITH THE RULES OF
27 THE AMERICAN ARBITRATION ASSOCIATION.

1 (10) THE HOME INSPECTOR-CLIENT RELATIONSHIP IS PRIVILEGED.
2 COMMUNICATIONS BETWEEN A HOME INSPECTOR AND CLIENT, INCLUDING THE
3 HOME INSPECTION REPORT, ARE PRIVILEGED. A PERSON SHALL NOT
4 INTENTIONALLY OR WILLFULLY INTERFERE IN THE HOME INSPECTOR-CLIENT
5 RELATIONSHIP OR ANY COMMUNICATIONS ARISING FROM THE HOME
6 INSPECTOR-CLIENT RELATIONSHIP.

7 (11) ANY ADMINISTRATIVE OR CIVIL COMPLAINT FILED BY THE
8 CLIENT OR THE DEPARTMENT AGAINST THE HOME INSPECTOR SHALL BE
9 FILED NOT LATER THAN 3 YEARS FROM THE DATE OF THE INSPECTION.

10 SEC. 1406. (1) A CLIENT SUFFERING DAMAGES DUE TO A VIOLATION
11 OF THIS ARTICLE MAY BRING AN ACTION FOR DAMAGES IN A COURT OF
12 COMPETENT JURISDICTION. THE CONTRACT FOR HOME INSPECTION SERVICES
13 SHALL NOT LIMIT THE ABILITY OF A CLIENT TO BRING A CIVIL ACTION
14 FOR DAMAGES.

15 (2) A PERSON VIOLATING THIS ARTICLE IS SUBJECT TO CRIMINAL
16 PENALTIES AND ADMINISTRATIVE SANCTIONS, IF APPLICABLE, UNDER
17 ARTICLE 6.

18 (3) THE REMEDIES UNDER THIS ARTICLE ARE CUMULATIVE AND THE
19 USE OF 1 REMEDY DOES NOT BAR THE USE OF ANY OTHER REMEDY PROVIDED
20 BY LAW.

21 SEC. 1407. THE DIRECTOR SHALL PROMULGATE RULES TO PROVIDE
22 FOR THE FOLLOWING:

23 (A) A DEMONSTRATION OF CONTINUING PROFESSIONAL COMPETENCE
24 FOR RENEWAL OF A LICENSE.

25 (B) REQUIREMENTS FOR ACCEPTABLE COURSES OFFERED AT SEMINARS
26 AND CONVENTIONS BY TRADE ASSOCIATIONS, RESEARCH INSTITUTES, RISK
27 MANAGEMENT ENTITIES, MANUFACTURERS, SUPPLIERS, GOVERNMENTAL

1 AGENCIES, CONSULTING AGENCIES, OR OTHER ENTITIES.

2 (C) ACCEPTABLE DISTANCE LEARNING.

3 (D) STANDARDS OF PERFORMANCE AND PRACTICE AND A CODE OF
4 ETHICS.

5 (E) ALTERNATE FORMS OF CONTINUING COMPETENCY, INCLUDING
6 COMPREHENSIVE TESTING, PARTICIPATION IN MENTORING PROGRAMS,
7 RESEARCH, PARTICIPATION IN CODE HEARINGS CONDUCTED BY THE
8 INTERNATIONAL CODE COUNCIL, AND PUBLICATION OF ARTICLES IN A
9 TRADE JOURNAL OR REGIONAL MAGAZINE AS AN EXPERT IN THE FIELD. THE
10 ALTERNATE FORMS SHALL BE DESIGNED TO MAINTAIN AND IMPROVE THE
11 LICENSEE'S ABILITY TO PERFORM THE OCCUPATION WITH COMPETENCE AND
12 SHALL PRESCRIBE PROOFS THAT ARE NECESSARY TO DEMONSTRATE THAT THE
13 LICENSEE HAS FULFILLED THE REQUIREMENTS OF CONTINUING COMPETENCY.

14 SEC. 1408. FEES FOR A PERSON LICENSED OR SEEKING LICENSURE
15 AS A HOME INSPECTOR UNDER THIS ARTICLE ARE AS FOLLOWS:

16 (A) NONREFUNDABLE APPLICATION PROCESSING FEE, \$100.00.

17 (B) PER YEAR LICENSE FEE, \$100.00.

18 (C) EXAMINATION FEE, IF APPLICABLE, \$200.00.

19 (D) EXAMINATION REVIEW FEE, IF APPLICABLE, \$20.00.

20 Enacting section 1. This amendatory act takes effect 1 year
21 after the date it is enacted into law.