

HOUSE BILL NO. 207

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE ROKEBERG

Introduced: 4/21/99

Referred: Labor and Commerce, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the registration of persons who perform home inspections;**
2 **and providing for an effective date."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 *** Section 1.** AS 08 is amended by adding a new chapter to read:

5 **Chapter 57. Home Inspectors.**

6 **Article 1. Registration.**

7 **Sec. 08.57.010. Registration required.** (a) Unless exempt under
8 AS 08.57.900 or serving lawfully as an apprentice under (b) of this section, a person
9 may not perform a home inspection until that person has been issued a certificate of
10 registration by the department. A partnership or joint venture shall be considered
11 registered if one of the general partners or venturers whose name appears in the name
12 under which the partnership or venture does business is registered.

13 (b) Notwithstanding (a) of this section, a person who is not registered under
14 this chapter may perform a home inspection as an apprentice if the person

1 (1) is employed by a registered home inspector who directly supervises
2 the person's work; and

3 (2) has not performed home inspections for more than two years
4 without being registered under this chapter.

5 (c) A home inspector who employs an apprentice under (b) of this section is
6 liable for the work done by the apprentice.

7 **Sec. 08.57.020. Qualifications; continued competency.** (a) The department
8 shall issue a home inspection registration to a person who

9 (1) passes a home inspection examination, which shall be offered by
10 the department at least once each year in each judicial district; the examination, which
11 shall be written and practical, must test competence in relation to arctic structural and
12 thermal construction techniques and other matters as determined by the department in
13 consultation with representatives of the construction industry;

14 (2) applies for registration within six months after passing the
15 examination required under (1) of this subsection;

16 (3) within the seven years preceding the date of application, has not
17 been under a sentence for an offense related to forgery, theft in the first or second
18 degree, extortion, or conspiracy to defraud creditors or for a felony involving
19 dishonesty; and

20 (4) pays the appropriate fees.

21 (b) The department may not renew a registration issued under this section
22 unless the applicant submits proof of continued competency relating to home
23 inspecting that satisfies the department. A lapsed registration may be reinstated within
24 two years after the lapse upon proof of continued competency, payment of a renewal
25 fee for the intervening time period, and payment of any penalty fee established under
26 AS 08.01.100(b). If the registration has been lapsed for more than two years, the
27 department may not reinstate it until the person also passes the home inspection
28 examination described in (a) of this section.

29 **Sec. 08.57.030. Certificate of registration.** (a) A certificate of registration
30 shall be renewed under the same requirements as for an original registration. The
31 commissioner shall issue to the applicant a certificate of registration upon compliance

1 with the registration requirements of this chapter.

2 (b) The commissioner may not issue a certificate of registration or renew the
3 registration of an applicant whose registration has been revoked or suspended or
4 against whom a fine has been imposed under this chapter until the period of revocation
5 or suspension has expired and any fine has been paid.

6 **Sec. 08.57.040. Fees.** (a) The department shall set fees under AS 08.01.065
7 for

8 (1) registration and renewal of registration for home inspectors;

9 (2) examination for home inspectors; and

10 (3) departmental publications and seminars related to this chapter.

11 (b) A person who fails a home inspector examination shall pay the
12 examination fee set by the department if the person applies to retake an examination.

13 **Sec. 08.57.050. Identification requirements.** (a) Except as provided
14 otherwise by law, a person who has registered under one name as required by this
15 chapter may not act in the capacity of a home inspector under any other name unless
16 that name also is registered.

17 (b) All advertising, contracts, correspondence, cards, signs, posters, papers, and
18 documents prepared by a home inspector for the home inspection business must show
19 the home inspector's name, mailing address, and address of the home inspector's
20 principal place of business. Advertising and contracts must also include the home
21 inspector's registration number.

22 (c) Individual home inspectors and partners, associates, agents, salespeople,
23 solicitors, officers, and employees of home inspectors shall use their true names and
24 addresses and the true name of the home inspecting firm at all times while acting in
25 the capacity of a home inspector or performing related activities.

26 **Article 2. Bond and Insurance.**

27 **Sec. 08.57.100. Bond required.** (a) Each applicant shall, at the time of
28 applying for a certificate of registration, file with the commissioner a \$100,000 surety
29 bond running to the state conditioned upon the applicant's promise to pay all

30 (1) taxes and contributions due the state and political subdivisions;

31 (2) persons furnishing labor or material or renting or supplying

1 equipment to the applicant; and

2 (3) amounts that may be adjudged against the applicant by reason of
3 negligent or improper work or breach of contract in the conduct of the home inspecting
4 business or by reason of damage to public facilities occurring in the course of a home
5 inspection.

6 (b) In lieu of the surety bond required under (a) of this section, the applicant
7 may file with the commissioner a cash deposit or other negotiable security acceptable
8 to the commissioner in the amount specified for the bond.

9 (c) The bond required by this section remains in effect until cancelled by
10 action of the surety, the principal, or the commissioner. An action may not be
11 commenced upon the bond later than three years after its cancellation.

12 **Sec. 08.57.110. Claims against home inspector.** (a) A person having a claim
13 against a home inspector for an item referred to in AS 08.57.100 may bring suit on the
14 bond in the district court of the judicial district in which venue lies. A copy of the
15 complaint shall be served by registered or certified mail on the commissioner at the
16 time suit is filed, and the commissioner shall maintain a record, available for public
17 inspection, of all suits commenced. Two additional copies shall be served on the
18 director of the division of insurance with the payment to the director of a fee set under
19 AS 21.06.250, taxable as costs in the action. This service on the director shall
20 constitute service on the surety, and the director shall transmit the complaint or a copy
21 of it to the surety within 72 hours after it has been received. The surety on the bond
22 is not liable in an aggregate amount in excess of that named in the bond, but in case
23 claims pending at any one time exceed the amount of the bond, the claims shall be
24 satisfied from the bond in the following order:

- 25 (1) labor, including employee benefits;
26 (2) taxes and contributions due the state, city, and borough, in that
27 order;
28 (3) material and equipment;
29 (4) claims for breach of contract;
30 (5) repair of public facilities.

31 (b) If a judgment is entered against the cash deposit, the commissioner, on

1 receipt of a certified copy of a final judgment, shall pay the judgment from the amount
2 of the deposit in accordance with the priorities set out in (a) of this section.

3 **Sec. 08.57.120. Cancellation of bond.** This chapter does not impair the right
4 of a bonding company to cancel its bond of a home inspector for lawful reasons.

5 **Sec. 08.57.130. Insurance required.** Each applicant, at the time of applying
6 for registration or on renewal of registration, shall file with the commissioner
7 satisfactory evidence that the applicant has in effect

8 (1) to the extent required under AS 23.30, workers' compensation
9 insurance that is purchased from a private insurer who is admitted to do business in
10 the state and that shows coverage in this state, appropriate employee classifications,
11 and rates applicable in this state, or a valid workers' compensation self-insurance
12 certificate issued by the Alaska Workers' Compensation Board; and

13 (2) public liability and property damage insurance covering the
14 applicant's home inspecting operations in this state in the sum of not less than \$20,000
15 for damage to property, \$50,000 for injury, including death, to any one person, and
16 \$100,000 for injury, including death, to more than one person.

17 **Sec. 08.57.140. Advertising bond and insurance.** Home inspectors may not
18 advertise that they are bonded and insured simply because they have complied with the
19 bond and insurance requirements of this chapter.

20 **Sec. 08.57.150. Return of cash deposit.** (a) A home inspector who has filed
21 a cash deposit and who ceases doing business as a home inspector may request the
22 return of as much of that cash deposit as is held by the commissioner by filing a
23 notarized statement with the commissioner

24 (1) that the home inspector has ceased doing business as a home
25 inspector; and

26 (2) at least three years after filing the statement in (1) of this subsection
27 that

28 (A) requests return of the cash deposit;

29 (B) certifies that the former home inspector has not been
30 engaged in business as a home inspector for at least three years; and

31 (C) certifies that to the best of the home inspector's knowledge

1 no action has been commenced on the cash deposit that has not been dismissed
2 or reduced to a final judgment that has been satisfied.

3 (b) The commissioner, after paying judgments against the cash deposit under
4 AS 08.57.110(b), shall return the remainder of a former home inspector's cash deposit
5 to the home inspector if

6 (1) the former home inspector has complied with (a) of this section;
7 and

8 (2) all actions that have been commenced on the cash deposit have
9 been dismissed or reduced to a final judgment that has been satisfied.

10 **Article 3. Enforcement.**

11 **Sec. 08.57.200. Investigations.** Either the department or the Department of
12 Labor may investigate alleged or apparent violations of this chapter. These
13 departments, upon showing proper credentials, may enter, during regular hours of
14 work, a site where it appears that home inspecting work is being done. The
15 departments may make inquiries about the identity of the home inspector or the person
16 acting in the capacity of a home inspector. On demand, a home inspector or person
17 acting in the capacity of a home inspector, or that person's representative, shall
18 produce evidence of current registration.

19 **Sec. 08.57.210. Issuance of citations.** Either the department or the
20 Department of Labor may issue a citation for a violation if there is probable cause to
21 believe a person has violated this chapter. Each day a violation continues after a
22 citation for the violation has been issued constitutes a separate violation.

23 **Sec. 08.57.220. Procedure and form of citation issuance and procedure.**

24 (a) A citation issued under this chapter must be in writing. A person receiving the
25 citation is not required to sign a notice to appear in court.

26 (b) The time specified in the notice to appear on a citation issued under this
27 chapter must be at least five days, not including weekends and holidays, after the
28 issuance of the citation unless the person cited requests an earlier hearing.

29 (c) The department and the Department of Labor are responsible for the
30 issuance of books containing appropriate citations, and each shall maintain a record of
31 each book issued and each citation contained in it. Each department shall require and

1 retain a receipt for every book issued to an employee of that department.

2 (d) The department that issues a citation under this chapter shall deposit the
3 original or a copy of the citation with a court having jurisdiction over the alleged
4 offense. Upon its deposit with the court, the citation may be disposed of only by trial
5 in the court or other official action taken by the magistrate, judge, or prosecutor. The
6 department that issued the citation may not dispose of it or copies of it or of the record
7 of its issuance except as required under this subsection and (e) of this section.

8 (e) The department and the Department of Labor shall require the return of a
9 copy of every citation issued by the respective department under this chapter and of
10 all copies of every citation that has been spoiled or upon which an entry has been
11 made and not issued to an alleged violator. The departments shall also maintain, in
12 connection with every citation issued by the respective department, a record of the
13 disposition of the charge by the court where the original or copy of the citation was
14 deposited.

15 (f) If the form of citation issued under this chapter includes the essential facts
16 constituting the offense charged, and if the citation is sworn to as required under the
17 laws of this state for a complaint charging commission of the offense alleged in the
18 citation, then the citation when filed with a court having jurisdiction is considered to
19 be a lawful complaint for the purpose of prosecution.

20 **Sec. 08.57.230. Failure to obey citation.** Unless the citation has been voided
21 or otherwise dismissed by the magistrate, judge, or prosecutor, a person who without
22 lawful justification or excuse fails to appear in court to answer a citation issued under
23 this chapter, regardless of the disposition of the charge for which the citation was
24 issued, is guilty of a class B misdemeanor.

25 **Sec. 08.57.240. Suspension and revocation of registration.** (a) If the
26 insurance required in AS 08.57.130 ceases to be in effect, the registration of the home
27 inspector shall be suspended until the insurance has been reinstated.

28 (b) If a final judgment impairs the liability of the surety upon the bond or
29 depletes the cash deposit so that there is not in effect a bond undertaking or cash
30 deposit in the full amount prescribed in AS 08.57.100, the registration of the home
31 inspector involved shall be suspended until the bond liability in the required amount,

1 unimpaired by unsatisfied judgment claims, has been furnished.

2 (c) If a bonding company cancels its bond of a home inspector, the home
3 inspector's registration shall be revoked. The home inspector may again obtain
4 registration by complying with the requirements of this chapter.

5 (d) If a registered home inspector fails to fulfill the home inspector's
6 obligations as set out in AS 08.57.100, the home inspector's registration shall be
7 suspended for a period of time the commissioner determines is appropriate. After
8 three suspensions, the home inspector's registration may be permanently revoked.

9 (e) The department may suspend, revoke, or refuse to grant or renew a home
10 inspector's registration on a finding that

11 (1) the application is fraudulent or misleading;

12 (2) the home inspector has knowingly violated this chapter or a lawful
13 order or regulation of the department;

14 (3) the home inspector is incompetent or has engaged in fraudulent
15 practices.

16 (f) If the department or the Department of Labor determines that a home
17 inspector or a person acting in the capacity of a home inspector is in violation of this
18 chapter, that department may give written notice to the person prohibiting further
19 action by the person as a home inspector. The prohibition continues until the person
20 has submitted evidence acceptable to that department showing that the violation has
21 been corrected.

22 (g) A person affected by an order issued under this chapter may seek equitable
23 relief preventing the department or the Department of Labor from enforcing the order.

24 (h) Proceedings for the denial, suspension, or revocation of a home inspector's
25 registration are governed by AS 44.62 (Administrative Procedure Act).

26 **Sec. 08.57.250. Injunction.** In an action instituted in the superior court by the
27 department or the Department of Labor, the court may enjoin a person from acting in
28 the capacity of a home inspector in violation of this chapter. In addition to other relief,
29 the court may impose a civil penalty of not more than \$250 for each violation. Each
30 day that an unlawful act continues constitutes a separate violation.

31 **Sec. 08.57.260. Violations.** (a) A home inspector or a person acting in the

1 capacity of a home inspector who knowingly violates AS 08.57.010 is guilty of a
 2 class B misdemeanor. A person who violates another provision of this chapter is
 3 guilty of a violation punishable under AS 12.

4 (b) Criminal prosecution for a violation of this chapter does not preclude the
 5 department or the Department of Labor from seeking available civil remedies.

6 **Article 4. Miscellaneous Provisions.**

7 **Sec. 08.57.300. Legal actions by home inspector.** A person acting in the
 8 capacity of a home inspector may not bring an action in a court of this state for the
 9 collection of compensation for the performance of a home inspection or for breach of
 10 a contract for which registration is required under this chapter without alleging and
 11 proving that the person was a registered home inspector at the time of contracting for
 12 the performance of the work.

13 **Sec. 08.57.310. Inspection report required.** (a) Before performing a home
 14 inspection, a home inspector shall provide to the person on whose behalf a home is
 15 inspected a written document specifying

16 (1) the scope of intended inspection, including the structural elements,
 17 systems, and subsystems that will be inspected according to the checklist developed
 18 by the department under (c) of this section;

19 (2) that the inspection will be visual; and

20 (3) that the home inspector will notify in writing the person on whose
 21 behalf the inspection is being made of defects noted during the inspection along with
 22 a recommendation, if any, that experts be retained to determine the extent of defects
 23 and corrective action necessary to address the defects.

24 (b) After performing a home inspection, a home inspector shall provide to the
 25 person on whose behalf the inspection was performed a completed checklist of the type
 26 developed under (c) of this section and a written description of defects noted during
 27 the inspection along with a recommendation, if any, that experts be retained to
 28 determine the extent and corrective action necessary to address the defects.

29 (c) The department shall develop a checklist to be used by home inspectors
 30 under (a) of this section. The checklist must include elements related to health and
 31 safety, hazards, code compliance, short-term maintenance and repair needs, comfort

1 and convenience, small points, good points, disclaimers, and other noteworthy
2 observations.

3 **Sec. 08.57.320. Prohibited acts.** (a) A person registered under this chapter,
4 a company that employs a person registered under this chapter, or a company that is
5 controlled by a company that also has a financial interest in a company employing a
6 person registered under this chapter may not

7 (1) perform or offer to perform, for an additional fee, repairs to a
8 structure on which the home inspector or the home inspector's company has prepared
9 a home inspection report in the past 12 months;

10 (2) inspect for a fee any property in which the home inspector or the
11 home inspector's company has a financial interest or an interest in the transfer of the
12 property;

13 (3) offer or deliver compensation, an inducement, or a reward to the
14 owner of the inspected property, the broker, or the agent, for the referral of business
15 to the home inspector or the home inspector's company;

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

19 (b) Contractual provisions that purport to limit the liability of a home inspector
20 to the cost of the home inspection report are contrary to public policy and void.

21 **Sec. 08.57.330. Limitation on registrant.** A registration issued under this
22 chapter does not authorize the holder to perform an activity for which a license is
23 required under AS 08.48.

24 **Article 5. General Provisions.**

25 **Sec. 08.57.900. Exemptions.** Notwithstanding other provisions of this chapter,
26 a person who performs a home inspection is not required to be registered under this
27 chapter if the person is

28 (1) a real estate appraiser performing an appraisal;

29 (2) employed by the federal or state government, a political subdivision
30 of the state, or a municipality or unincorporated community and the employee is
31 performing only duties that are within the employee's official duties;

1 (3) licensed under another provision of this title and is performing only
2 activities that are within the scope of the person's license; or

3 (4) performing a home inspection only with respect to property that is
4 the person's residence or in which the person has a financial interest.

5 **Sec. 08.57.990. Definitions.** In this chapter,

6 (1) "commissioner" means the commissioner of commerce and
7 economic development;

8 (2) "department" means the Department of Commerce and Economic
9 Development;

10 (3) "home inspection" means a visual noninvasive inspection of the
11 condition of a residence or intended residence performed for compensation on behalf
12 of a prospective buyer, seller, or lender in a real estate transaction or on behalf of the
13 owner of the residence;

14 (4) "real estate transaction" means the transfer or attempted transfer of
15 an interest in a unit of real property or an act conducted as a result of or in pursuit of
16 a contract to transfer an interest in a unit of real property.

17 * **Sec. 2.** AS 08.01.010 is amended by adding a new paragraph to read:

18 (36) regulation of home inspectors under AS 08.57.

19 * **Sec. 3.** AS 18.56.300(b) is amended to read:

20 (b) As a condition of a commitment to purchase or approve a loan under this
21 section for residential housing the construction of which begins after June 30, 1992,
22 the corporation shall require inspection of the unit of residential housing that is the
23 subject of the loan. The inspection must be performed by a municipal building
24 inspector, by a person who is approved or certified to perform residential inspections
25 by the International Conference of Building Officials or the International Association
26 of Electrical Inspectors, **by a person who is registered under AS 08.57.010 to**
27 **perform home inspections**, or, when the unit of residential housing is located in a
28 rural area, by an architect licensed under AS 08.48, by an engineer licensed under
29 AS 08.48, or by another person approved by the corporation. When the unit of
30 residential housing is located in a rural area, the person who makes the inspection may
31 use methods other than a personal physical inspection to make the inspection if the

1 method is approved by the corporation, and variations from the applicable code may
2 be accepted at the corporation's discretion, if the person authorized to inspect the unit
3 under this subsection satisfies the corporation that the variation does not adversely
4 affect the structural integrity of the unit or the health and safety of the residents. The
5 person who makes the inspection shall determine whether the construction conforms
6 to relevant provisions of the construction codes of the municipality or of the state
7 building code, as applicable, at each of the following stages of construction:

- 8 (1) plan approval;
- 9 (2) completion of footings and foundations;
- 10 (3) completion of electrical installation, plumbing, and framing;
- 11 (4) completion of installation of insulation;
- 12 (5) final approval.

13 * **Sec. 4.** AS 45.50.471(b) is amended by adding a new paragraph to read:

- 14 (42) violating AS 08.57.320.

15 * **Sec. 5.** REGULATIONS. The Department of Commerce and Economic Development
16 may proceed to adopt regulations to implement this Act. A regulation adopted under this
17 section takes effect under AS 44.62 (Administrative Procedure Act) but not before the
18 effective date of the law implemented by the regulation.

19 * **Sec. 6.** AS 08.57.010, 08.57.050, 08.57.110, 08.57.300, and 08.57.310, enacted by sec. 1
20 of this Act, and the amendment of AS 18.56.300(b), made by sec. 3 of this Act, take effect
21 July 1, 2000.

22 * **Sec. 7.** Except as provided in sec. 6 of this Act, this Act takes effect immediately under
23 AS 01.10.070(c).