

HOUSE BILL NO. 27

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE ROKEBERG

Introduced: 1/8/01

Referred: Labor and Commerce, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the licensure and registration of individuals who perform home**
2 **inspections; relating to home inspection requirements for residential loans purchased or**
3 **approved by the Alaska Housing Finance Corporation; relating to civil actions by and**
4 **against home inspectors; and providing for an effective date."**

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

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

7 **Chapter 57. Home Inspectors.**

8 **Article 1. Board of Home Inspectors.**

9 **Sec. 08.57.010. Creation and membership of board.** There is created the
10 Board of Home Inspectors consisting of five members. Three members shall be
11 licensed under this chapter and shall have been engaged in the practice of home
12 inspection in the state for three years immediately preceding appointment, one
13 member shall be a licensed real estate broker or certified real estate appraiser, and one
14 member shall be a public member.

1 **Sec. 08.57.020. General duties.** The board shall

- 2 (1) administer and enforce this chapter;
- 3 (2) regulate the practice of home inspection;
- 4 (3) establish education and experience requirements that must be met
5 for licensure under this chapter; the requirements established by the board must
6 include Alaska or northern education or experience in Arctic construction or building;
- 7 (4) establish standards for continuing education of licensed home
8 inspectors;
- 9 (5) adopt a code of ethics for licensed home inspectors; and
- 10 (6) in addition to the meeting required under AS 08.01.070(2), meet
11 when requested by a majority of the members of the board.

12 **Sec. 08.57.030. Meetings.** The board may meet by teleconference.

13 **Article 2. Licensure.**

14 **Sec. 08.57.050. Licensure required.** (a) Unless exempt under AS 08.57.920
15 or serving lawfully as an associate home inspector under (b) of this section, an
16 individual may not perform a home inspection

17 (1) for new construction unless that individual is licensed as a home
18 inspector for new construction under this chapter;

19 (2) for previously occupied construction unless that individual is
20 licensed as a home inspector for previously occupied construction under this chapter.

21 (b) Notwithstanding (a) of this section, an individual who is not licensed under
22 this chapter may perform a home inspection as an associate home inspector if the
23 individual

24 (1) is employed by a licensed home inspector who supervises the
25 associate's work and the inspection is of the type that the supervising individual is
26 authorized to perform; and

27 (2) is registered with the board as an associate home inspector.

28 (c) A licensed home inspector who employs an associate home inspector
29 under (b) of this section is liable for the work done by the associate home inspector.

30 (d) An individual who holds a joint license is considered to be licensed as both
31 a home inspector for new construction and a home inspector for previously occupied

1 construction.

2 **Sec. 08.57.060. Qualifications.** The board shall authorize the department to
 3 issue a home inspector license for new construction, previously occupied construction,
 4 or both, as appropriate, to an individual who

5 (1) passes the appropriate home inspection examination; the
 6 examination, which must include a written portion and other test methodologies as
 7 determined by the board, must test competence in relation to Alaska construction
 8 techniques and other matters as determined by the board; the examination may be
 9 based on a recognized national examination or other methodology;

10 (2) meets the educational and experience requirements adopted by the
 11 board in regulations for the type of license applied for;

12 (3) submits a complete application for licensure within one year after
 13 passing the examination required under (1) of this section;

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

18 (5) pays the appropriate fees.

19 **Sec. 08.57.070. License renewal; continued competency.** (a) A license
 20 issued under this chapter may not be renewed unless the applicant submits proof of
 21 continued competency relating to home inspecting that satisfies the board.

22 (b) A lapsed license may be reinstated within two years after the lapse upon
 23 proof of continued competency, payment of a renewal fee for the intervening time
 24 period, and payment of any penalty fee established under AS 08.01.100(b). If the
 25 license has been lapsed for more than two years, the license may not be reinstated until
 26 the individual also passes the appropriate home inspection examination described in
 27 AS 08.57.060. A license may not be reinstated if the license has been lapsed for more
 28 than five years.

29 (c) The license of an applicant whose license has been suspended or against
 30 whom a fine has been imposed under this chapter may not be renewed until the period
 31 of suspension has expired and any fine has been paid.

1 **Sec. 08.57.080. Fees.** (a) The department shall set fees under AS 08.01.065
2 for

3 (1) licensure and renewal of licensure for a home inspector qualified to
4 inspect new construction;

5 (2) licensure and renewal of licensure for a home inspector qualified to
6 inspect previously occupied construction;

7 (3) joint licenses and renewal of joint licenses;

8 (4) registration and renewal of registration as an associate home
9 inspector;

10 (5) examinations; and

11 (6) board and departmental publications and seminars related to this
12 chapter.

13 (b) An individual who fails a home inspector examination shall pay the
14 examination fee set by the department if the individual applies to retake an
15 examination.

16 **Article 3. Insurance Requirement.**

17 **Sec. 08.57.200. Type of insurance.** Each applicant for licensure, at the time
18 of applying for licensure or for renewal of licensure, shall file with the board
19 satisfactory evidence that there is in effect for the applicant public liability and
20 property damage insurance covering the applicant's home inspecting operations in this
21 state in the sum of not less than \$20,000 for damage to property, \$50,000 for injury,
22 including death, to any one person, and \$100,000 for injury, including death, to more
23 than one person.

24 **Sec. 08.57.210. Suspension of license.** If insurance required in AS 08.57.200
25 ceases to be in effect, the license of the home inspector shall immediately be
26 suspended until the insurance has been reinstated.

27 **Article 4. Activities of Home Inspectors.**

28 **Sec. 08.57.300. Identification requirements.** (a) Except as provided
29 otherwise by law, an individual who is licensed or registered under this chapter by one
30 name may not act in the capacity of a home inspector or associate home inspector
31 under any other name unless the individual is also licensed or registered under that

1 name.

2 (b) All advertising and business cards prepared by a licensed home inspector
3 or associate home inspector for the home inspection business must show the
4 inspector's name, mailing address, and license or registration number.

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

10 (d) Regardless of whether they are exempt from licensure and registration
11 under AS 08.57.920, persons who perform home inspections may not hold themselves
12 out to be licensed home inspectors or use words or titles that may reasonably be
13 confused with the title of "licensed home inspector" unless they are licensed under this
14 chapter.

15 **Sec. 08.57.310. Pre-inspection document required.** Before performing a
16 home inspection, a licensee or an associate home inspector shall provide to the person
17 on whose behalf a home is inspected a written document specifying

18 (1) the scope of intended inspection; and

19 (2) that the inspector will notify in writing the person on whose behalf
20 the inspection is being made of defects noted during the inspection along with a
21 recommendation, if any, that experts be retained to conduct further evaluation through
22 examination and analysis by a qualified professional, tradesperson, or service
23 technician beyond that provided by the home inspection to determine the extent of
24 defects and corrective action necessary to address the defects.

25 **Sec. 08.57.320. Conflict of interest must be disclosed.** (a) A licensed home
26 inspector who has a conflict of interest relating to a home inspection shall disclose that
27 conflict of interest at the time of initial substantive contact with the person requesting
28 the home inspection and confirm the conflict of interest in writing to the person
29 requesting the home inspection as soon as possible after the initial substantive contact.

30 (b) The failure of a licensee to disclose a conflict of interest as required under
31 this section does not give rise to a cause of action by a private person. However, the

1 commission may, under AS 08.57.400, impose a disciplinary sanction for violation of
2 this section.

3 (c) In this section, "conflict of interest" is when

4 (1) a relative of the licensee or a person with whom the licensee has a
5 financial relationship has a present financial interest in the property being inspected or
6 considered for inspection; or

7 (2) the licensee receives compensation from someone other than a
8 party to the home inspection contract or another party having a financial interest in the
9 outcome of the home inspection.

10 **Sec. 08.57.330. Inspection report required.** After performance of a home
11 inspection, a licensed home inspector shall give a home inspection report to the person
12 requesting the inspection.

13 **Article 5. Disciplinary Actions; Other Enforcement Mechanisms.**

14 **Sec. 08.57.400. Grounds for disciplinary sanctions or other license**
15 **decisions.** The board may take disciplinary action authorized under AS 08.01.075 or
16 refuse to grant or renew a license or registration under this chapter on a finding that

17 (1) the application is fraudulent or misleading;

18 (2) the individual has knowingly violated this chapter or a lawful order
19 or regulation of the department or the board;

20 (3) the individual is incompetent or has engaged in fraudulent practices
21 relating to home inspection.

22 **Sec. 08.57.410. Administrative Procedure Act applicable.** Proceedings for
23 the denial, suspension, or revocation of a license or registration under this chapter are
24 governed by AS 44.62 (Administrative Procedure Act).

25 **Sec. 08.57.420. Injunction.** In an action instituted in the superior court by the
26 board or the department, the court may enjoin an individual from performing a home
27 inspection in violation of this chapter. In addition to other relief, the court may
28 impose a civil penalty of not more than \$500 for each violation. Each day that an
29 unlawful act continues constitutes a separate violation.

30 **Sec. 08.57.430. Violations.** (a) An individual who knowingly violates
31 AS 08.57.050 is guilty of a class B misdemeanor. A person who violates another

1 provision of this chapter is guilty of a violation punishable under AS 12.

2 (b) Criminal prosecution for a violation of this chapter does not preclude the
3 board or the department from seeking available civil remedies.

4 **Article 6. Miscellaneous Provisions.**

5 **Sec. 08.57.800. Legal actions by home inspector.** An individual may not
6 bring an action in a court of this state for the collection of compensation for the
7 performance of a home inspection or for breach of a contract for which a license or
8 registration is required under this chapter without proving that the individual was a
9 licensed home inspector or registered associate home inspector at the time of
10 contracting for the performance of the work.

11 **Sec. 08.57.810. Legal actions against home inspector.** A person may not
12 bring an action against an individual licensed or registered under this chapter based on
13 a written home inspection report prepared by the inspector if the report is more than
14 180 days old or was unlawfully disclosed to the person bringing the action.

15 **Article 7. General Provisions.**

16 **Sec. 08.57.900. Prohibited acts.** (a) An individual licensed or registered
17 under this chapter, a company that employs an individual licensed or registered under
18 this chapter, or a company that is controlled by a company that also has a financial
19 interest in a company employing an individual licensed or registered under this
20 chapter may not

21 (1) perform or offer to perform, for an additional fee, repairs to a
22 subject property on which the home inspector or the home inspector's company has
23 prepared a home inspection report in the past 12 months;

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

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

30 (4) without the written consent of the home inspection client or the
31 client's legal representative, disclose information from a home inspection report

1 prepared by the home inspector or the home inspector's company unless the disclosure
2 is made

3 (A) more than 180 days after the date of the report;

4 (B) to a subsequent client who requests a home inspection of
5 the same premises; or

6 (C) by the home inspector in an administrative or judicial
7 proceeding in which disclosure of the home inspection report is relevant to
8 resolution of the legal issues in the proceeding;

9 (5) without the written consent of all interested parties, accept
10 compensation from more than one interested party for the same services;

11 (6) accept from a person who has other dealings with a home
12 inspection client a commission or allowance, directly or indirectly, for work for which
13 the home inspector or the home inspector's company is responsible;

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

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

20 **Sec. 08.57.910. Limitation on activities.** A license or registration issued
21 under this chapter does not authorize the holder to perform an activity for which a
22 license is required under provisions of this title that are outside of this chapter.

23 **Sec. 08.57.920. Exemptions.** (a) Notwithstanding other provisions of this
24 chapter, an individual who performs a home inspection is not required to be licensed
25 or registered under this chapter if the individual is

26 (1) employed by the federal or state government, a political
27 subdivision of the state, or a municipality or unincorporated community and the
28 employee is performing only duties that are within the employee's official duties;

29 (2) performing a home inspection only with respect to property that is
30 the individual's residence or in which the individual has a financial interest;

31 (3) registered as a civil engineer or architect under AS 08.48 and the

1 individual either

2 (A) affixes the individual's seal to the home inspection report;

3 or

4 (B) signs the report and puts the individual's registration

5 number on the report; or

6 (4) engaged as an engineer in training or architect in training who
7 works for and is supervised by a person described in (3) of this subsection and the
8 person described in (3) of this subsection affixes the person's seal to the home
9 inspection report or signs and puts the person's registration number on the report.

10 (b) A person is not considered to be performing a home inspection for
11 purposes of this chapter if the person is

12 (1) licensed as a pesticide applicator by the Department of
13 Environmental Conservation and is performing only activities within the scope of that
14 license;

15 (2) registered as an engineer or architect under AS 08.48 and is
16 performing only activities that are authorized by the Board of Registration for
17 Architects, Engineers and Land Surveyors under that registration;

18 (3) registered as a general contractor with a residential contractor
19 endorsement under AS 08.18 and is performing only activities within the scope of that
20 registration;

21 (4) certified as any type of real estate appraiser under AS 08.87 and is
22 performing only activities that are authorized under that certification; or

23 (5) certified to demonstrate that a building complies with the thermal
24 and lighting energy standards required by AS 46.11.040 and is performing only
25 activities authorized under that certification.

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

27 (1) "board" means the Board of Home Inspectors;

28 (2) "department" means the Department of Community and Economic
29 Development;

30 (3) "home inspection" means a visual examination of the readily
31 accessible systems and components of a residence or intended residence that describes

1 those systems and components in accordance with standards of practice adopted by the
2 board;

3 (4) "home inspection report" means a written or oral report; the report
4 may set out a review of the condition of the following, to the extent that the residence
5 contains the following:

6 (A) heating and air-conditioning systems;

7 (B) interior plumbing and electrical systems;

8 (C) built-in appliances;

9 (D) roof, attic, and visible insulation;

10 (E) walls, ceilings, floors, windows, and doors;

11 (F) foundation and basement;

12 (G) visible structure; and

13 (H) any other items mutually agreed on by the parties;

14 (5) "home inspector" means a person who performs or offers to
15 perform a home inspection;

16 (6) "joint license" means a license that authorizes an individual to
17 inspect both new construction and previously occupied residences;

18 (7) "knowingly" has the meaning given in AS 11.81.900;

19 (8) "real estate transaction" means the transfer or attempted transfer of
20 an interest in a unit of real property or an act conducted as a result of or in pursuit of a
21 contract to transfer an interest in a unit of real property;

22 (9) "residence" means

23 (A) a single-family home;

24 (B) a duplex, triplex, or four-plex; or

25 (C) a residential townhouse or residential condominium unit.

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

27 (37) Board of Home Inspectors (AS 08.57.010).

28 * **Sec. 3.** AS 08.03.010(c) is amended by adding a new paragraph to read:

29 (22) Board of Home Inspectors (AS 08.57.010) -- June 30, 2005.

30 * **Sec. 4.** AS 18.56.300(b) is amended to read:

31 (b) As a condition of a commitment to purchase or approve a loan under this

1 section for residential housing the construction of which begins after June 30, 1992,
 2 the corporation shall require inspection of the unit of residential housing that is the
 3 subject of the loan. The inspection must be performed by a municipal building
 4 inspector, by a person who is approved or certified to perform residential inspections
 5 by the International Conference of Building Officials or the International Association
 6 of Electrical Inspectors, **by an individual who is licensed or registered under**
 7 **AS 08.57.050 to perform home inspections** [OR, WHEN THE UNIT OF
 8 RESIDENTIAL HOUSING IS LOCATED IN A RURAL AREA], by an architect
 9 licensed under AS 08.48, by an engineer licensed under AS 08.48, or by another
 10 person approved by the corporation. When the unit of residential housing is located in
 11 a rural area, the person who makes the inspection may use methods other than a
 12 personal physical inspection to make the inspection if the method is approved by the
 13 corporation, and variations from the applicable code may be accepted at the
 14 corporation's discretion, if the person authorized to inspect the unit under this
 15 subsection satisfies the corporation that the variation does not adversely affect the
 16 structural integrity of the unit or the health and safety of the residents. The person
 17 who makes the inspection shall determine whether the construction conforms to
 18 relevant provisions of the construction codes of the municipality or of the state
 19 building code, as applicable, at each of the following stages of construction:

- 20 (1) plan approval;
- 21 (2) completion of footings and foundations;
- 22 (3) completion of electrical installation, plumbing, and framing;
- 23 (4) completion of installation of insulation;
- 24 (5) final approval.

25 * **Sec. 5.** AS 18.56.300(b) is amended to read:

26 (b) As a condition of a commitment to purchase or approve a loan under this
 27 section for residential housing the construction of which begins after June 30, 1992,
 28 the corporation shall require inspection of the unit of residential housing that is the
 29 subject of the loan. The inspection must be performed by a municipal building
 30 inspector, [BY A PERSON WHO IS APPROVED OR CERTIFIED TO PERFORM
 31 RESIDENTIAL INSPECTIONS BY THE INTERNATIONAL CONFERENCE OF

1 BUILDING OFFICIALS OR THE INTERNATIONAL ASSOCIATION OF
 2 ELECTRICAL INSPECTORS,] by an individual who is licensed or registered under
 3 AS 08.57.050 to perform home inspections, by an architect licensed under AS 08.48,
 4 by an engineer licensed under AS 08.48, or by another person approved by the
 5 corporation. When the unit of residential housing is located in a rural area, the person
 6 who makes the inspection may use methods other than a personal physical inspection
 7 to make the inspection if the method is approved by the corporation, and variations
 8 from the applicable code may be accepted at the corporation's discretion, if the person
 9 authorized to inspect the unit under this subsection satisfies the corporation that the
 10 variation does not adversely affect the structural integrity of the unit or the health and
 11 safety of the residents. The person who makes the inspection shall determine whether
 12 the construction conforms to relevant provisions of the construction codes of the
 13 municipality or of the state building code, as applicable, at each of the following
 14 stages of construction:

- 15 (1) plan approval;
- 16 (2) completion of footings and foundations;
- 17 (3) completion of electrical installation, plumbing, and framing;
- 18 (4) completion of installation of insulation;
- 19 (5) final approval.

20 * **Sec. 6.** AS 44.62.330(a) is amended by adding a new paragraph to read:

- 21 (60) Board of Home Inspectors.

22 * **Sec. 7.** AS 45.50.471(b) is amended by adding a new paragraph to read:

- 23 (43) violating AS 08.57.320, 08.57.330, or 08.57.900.

24 * **Sec. 8.** The uncodified law of the State of Alaska is amended by adding a new section to
 25 read:

26 REGULATIONS. The Board of Home Inspectors may proceed to adopt regulations to
 27 implement this Act. A regulation adopted under this section takes effect under AS 44.62
 28 (Administrative Procedure Act) but not before the effective date of the law implemented by
 29 the regulation.

30 * **Sec. 9.** The uncodified law of the State of Alaska is amended by adding a new section to
 31 read:

1 INITIAL BOARD MEMBERS. Notwithstanding AS 08.57.010, added by sec. 1 of
2 this Act, the three home inspectors appointed to the initial Board of Home Inspectors are not
3 required to be licensed as home inspectors before appointment but must be licensed as home
4 inspectors in order to be appointed or reappointed after expiration of their first term in office.

5 * **Sec. 10.** The uncodified law of the State of Alaska is amended by adding a new section to
6 read:

7 TRANSITIONAL LICENSING PROVISIONS. (a) Notwithstanding AS 08.57,
8 added by sec. 1 of this Act, the Board of Home Inspectors shall issue a joint license that is
9 valid until January 1, 2003, to an individual who submits to the board satisfactory evidence of
10 being in the business of home inspection in the state at the time of application for a license
11 under this subsection and of having

12 (1) been in the business of home inspection in the state on October 1, 2000; or

13 (2) passed the building inspector examination or property maintenance and
14 housing inspector examination given by the International Conference of Building Officials.

15 (b) Notwithstanding AS 08.57, added by sec. 1 of this Act, the Board of Home
16 Inspectors shall issue a license to practice home inspection of previously occupied residences
17 that is valid until January 1, 2003, to an individual who submits to the board satisfactory
18 evidence of being in the business of home inspection in the state at the time of application for
19 a license under this subsection and of having passed

20 (1) the national home inspector examination given by the American Society of
21 Home Inspectors; or

22 (2) the examination of the Examination Board of Professional Home
23 Inspectors.

24 (c) Notwithstanding AS 08.57, added by sec. 1 of this Act, the Board of Home
25 Inspectors shall issue a license to practice home inspection of new construction that is valid
26 until January 1, 2003, to an individual who submits to the board satisfactory evidence of being
27 in the business of home inspection in the state at the time of application for a license under
28 this subsection and of having passed the combination inspector examination or the
29 combination dwelling inspector examination given by the International Conference of
30 Building Officials.

31 (d) Notwithstanding AS 08.57, added by sec. 1 of this Act, the Board of Home

1 Inspectors shall grant registration as an associate home inspector that is valid until January 1,
2 2003, to an individual who submits to the board satisfactory evidence of being employed by
3 an individual who is in the business of home inspection and is licensed under this section or
4 under AS 08.57.

5 (e) A license or registration issued under this section may not be renewed or
6 extended.

7 (f) Except as provided in (e) of this section, a license or registration issued under this
8 section is considered to be a license or registration issued under AS 08.57, added by sec. 1 of
9 this Act.

10 (g) In this section, "joint license" has the meaning given in AS 08.57.990, added by
11 sec. 1 of this Act.

12 * **Sec. 11.** AS 08.57.050, 08.57.300 - 08.57.330, 08.57.430(a), 08.57.800 - 08.57.810,
13 enacted by sec. 1 of this Act, and the amendment of AS 18.56.300(b), made by sec. 4 of this
14 Act, take effect July 1, 2002.

15 * **Sec. 12.** Section 5 of this Act takes effect January 1, 2003.

16 * **Sec. 13.** Except as provided in secs. 11 and 12 of this Act, this Act takes effect
17 immediately under AS 01.10.070(c).