

CS FOR HOUSE BILL NO. 9(FIN) am

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Amended: 2/26/03

Offered: 2/21/03

Sponsor(s): REPRESENTATIVES ROKEBERG, Hawker, Crawford

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the registration of individuals who perform home inspections;
2 relating to regulation of contractors; relating to registration fees for specialty
3 contractors, home inspectors, and associate home inspectors; relating to home inspection
4 requirements for residential loans purchased or approved by the Alaska Housing
5 Finance Corporation; relating to civil actions by and against home inspectors and to
6 civil actions arising from residential unit inspections; repealing a law that limits liability
7 for damages based on a duty to inspect a residential unit to damages caused by gross
8 negligence or intentional misconduct; and providing for an effective date."

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

10 * **Section 1.** AS 08.01.010(12) is amended to read:

11 (12) regulation of construction contractors and home inspectors under

12 AS 08.18;

1 * **Sec. 2.** AS 08.01.065(c) is amended to read:

2 (c) Except as provided in **(f) - (i)** [(f) - (h)] of this section, the department shall
 3 establish fee levels under (a) of this section so that the total amount of fees collected
 4 for an occupation approximately equals the actual regulatory costs for the occupation.
 5 The department shall annually review each fee level to determine whether the
 6 regulatory costs of each occupation are approximately equal to fee collections related
 7 to that occupation. If the review indicates that an occupation's fee collections and
 8 regulatory costs are not approximately equal, the department shall calculate fee
 9 adjustments and adopt regulations under (a) of this section to implement the
 10 adjustments. In January of each year, the department shall report on all fee levels and
 11 revisions for the previous year under this subsection to the office of management and
 12 budget. If a board regulates an occupation covered by this chapter, the department
 13 shall consider the board's recommendations concerning the occupation's fee levels and
 14 regulatory costs before revising fee schedules to comply with this subsection. In this
 15 subsection, "regulatory costs" means costs of the department that are attributable to
 16 regulation of an occupation plus

17 (1) all expenses of the board that regulates the occupation if the board
 18 regulates only one occupation;

19 (2) the expenses of a board that are attributable to the occupation if the
 20 board regulates more than one occupation.

21 * **Sec. 3.** AS 08.01.065 is amended by adding a new subsection to read:

22 (i) Notwithstanding (c) of this section, the department shall establish fee levels
 23 under (a) of this section so that the total amount of fees collected by the Department of
 24 Community and Economic Development for specialty contractors, home inspectors,
 25 and associate home inspectors approximately equals the total regulatory costs of the
 26 department for those three registration categories. The department shall set the fee
 27 levels for the issuance and renewal of a certificate of registration issued under
 28 AS 08.18 so that the fee levels are the same for all three of these registration
 29 categories and so that the fee level for a home inspector with a joint registration is not
 30 different from the fee level for a home inspector who does not have a joint
 31 registration. In this subsection, "joint registration" has the meaning given in

1 AS 08.18.171.

2 * **Sec. 4.** AS 08.18.011 is amended to read:

3 **Sec. 08.18.011. Registration required.** (a) A person may not submit a bid or
4 work as a contractor until that person has been issued a certificate of registration **as a**
5 **contractor** by the department. A partnership or joint venture shall be considered
6 registered **as a contractor** if one of the general partners or venturers whose name
7 appears in the name under which the partnership or venture does business is registered
8 **as a contractor**.

9 (b) A general contractor may not use a bid or proposal from, award a bid or
10 proposal to, contract with, or allow a person required to be registered under this
11 chapter to work for the general contractor as a specialty contractor unless the person is
12 registered **as a specialty contractor** under this chapter.

13 * **Sec. 5.** AS 08.18.011 is amended by adding new subsections to read:

14 (c) Unless exempt under AS 08.18.156 or serving lawfully as an associate
15 home inspector under (d) of this section, an individual may not perform a home
16 inspection

17 (1) for a residence not previously occupied as a residence unless that
18 individual is registered as a home inspector for new homes under this chapter;

19 (2) for a residence previously occupied as a residence unless that
20 individual is registered as a home inspector for existing homes under this chapter.

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

24 (1) is employed by a registered 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 department as an associate home inspector.

28 (e) A registered home inspector who employs an associate home inspector
29 under (d) of this section is liable for the work done by the associate home inspector.

30 (f) An individual who holds a joint registration for home inspection is
31 considered to be registered as both a home inspector for new homes and a home

1 inspector for existing homes.

2 * **Sec. 6.** AS 08.18.021(a) is amended to read:

3 (a) An applicant for registration as a contractor **or home inspector** shall
4 submit an application under oath upon a form to be prescribed by the commissioner
5 and **that** [WHICH] must include the following information pertaining to the applicant:

6 (1) **the applicant's** [EMPLOYER] social security number;

7 (2) **if applying to be a registered contractor, the** type of contracting
8 activity, whether a general or a specialty contractor and, if the latter, the type of
9 specialty;

10 (3) **if applying to be a registered home inspector, whether the**
11 **applicant is applying to inspect new homes or existing homes, or both;**

12 (4) **if applying to be a registered contractor,** the name and address of
13 each partner if the applicant is a firm or partnership, or the name and address of the
14 owner if the applicant is an individual proprietorship, or the name and address of the
15 corporate officers and statutory agent, if any, if the applicant is a corporation; **and**

16 (5) **if applying to be a registered home inspector, the name and**
17 **address of the applicant.**

18 * **Sec. 7.** AS 08.18 is amended by adding new sections to read:

19 **Sec. 08.18.022. Home inspectors; associate home inspectors.** (a) The
20 department shall issue a certificate of registration as a home inspector for new homes,
21 existing homes, or both, as appropriate, to an individual who

22 (1) passes the appropriate home inspection examination; for purposes
23 of this paragraph, the appropriate home inspection examination for an individual who
24 applies to be registered for inspection of

25 (A) existing homes is the examination offered by the American
26 Society of Home Inspectors, American Home Inspectors Training Institute, or
27 National Association of Home Inspectors;

28 (B) new homes or for a joint registration is the examination
29 offered by the International Conference of Building Officials;

30 (2) meets the educational and experience requirements adopted by the
31 department in regulations for the type of registration applied for;

1 (3) submits a complete application for registration within one year
2 after passing the examination required under (1) of this subsection;

3 (4) within the seven years preceding the date of application, has not
4 been under a sentence for an offense related to forgery, theft in the first or second
5 degree, extortion, or defrauding creditors or for a felony involving dishonesty;

6 (5) has not had the authority to perform home inspections revoked in
7 this state or in another jurisdiction;

8 (6) is not the subject of an unresolved criminal complaint or
9 unresolved disciplinary action before a regulatory authority in this state or in another
10 jurisdiction related to real estate or home inspection matters; and

11 (7) pays the appropriate fees.

12 (b) An individual may register with the department as an associate home
13 inspector upon application, payment of the required fee, and determination by the
14 department that the individual

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

18 (2) has not had the authority to perform home inspections revoked in
19 this state or in another jurisdiction; and

20 (3) is not the subject of an unresolved criminal complaint or
21 unresolved disciplinary action before a regulatory authority in this state or in another
22 jurisdiction related to real estate or home inspection matters.

23 **Sec. 08.18.023. Pre-inspection documents and inspection reports.** (a)

24 Before performing a home inspection, a registered home inspector or associate home
25 inspector shall provide to the person on whose behalf a home is inspected a written
26 document that includes the home inspector's registration number and that specifies

27 (1) the scope of intended inspection; the scope of the intended
28 inspection may include systems and components that are not listed in
29 AS 08.18.171(12); and

30 (2) that the inspector will notify in writing the person on whose behalf
31 the inspection is being made of defects noted during the inspection along with a

1 recommendation, if any, that experts be retained to conduct further evaluation through
 2 examination and analysis by a qualified professional, tradesperson, or service
 3 technician beyond that provided by the home inspection to determine the extent of
 4 defects and corrective action necessary to address the defects.

5 (b) After performance of a home inspection, a registered home inspector or
 6 associate home inspector shall give a written home inspection report to the person
 7 requesting the inspection. The written report must include the home inspector's
 8 registration number and a review of the condition of each system and component
 9 identified as being within the scope of the intended inspection under (a) of this section
 10 except that a home inspector's written report for new construction that is the subject of
 11 a loan by the Alaska Housing Finance Corporation or another lender may be in the
 12 form required by the corporation or other lender, as appropriate.

13 (c) In addition to the written inspection report required under (b) of this
 14 section, an oral inspection report may be given by the inspector during or after the
 15 inspection.

16 (d) A home inspection report is valid for 180 days after the date the home
 17 inspector signs and dates the report.

18 * **Sec. 8.** AS 08.18.031(a) is amended to read:

19 (a) **Except as provided in (c) of this section, a** [A] certificate of registration
 20 shall be renewed under the same requirements as for an original registration, **and the**
 21 [. THE] commissioner shall issue to the applicant a certificate of registration upon
 22 compliance with the registration requirements of this chapter.

23 * **Sec. 9.** AS 08.18.031 is amended by adding a new subsection to read:

24 (c) A certificate of registration as a home inspector may not be renewed unless
 25 the home inspector has complied with the continuing competency requirements
 26 established by the department. The department shall adopt regulations establishing the
 27 continuing competency requirements. The department shall require at least eight
 28 hours of continuing competency activity for each licensing period. The regulations
 29 must provide that a continuing competency activity approved by one of the following
 30 entities satisfies the continuing competency requirements of this subsection if the
 31 activity meets the requirements established by the department in regulations adopted

1 under this subsection:

- 2 (1) Alaska Housing Finance Corporation;
- 3 (2) University of Alaska;
- 4 (3) American Society of Home Inspectors Alaska Chapter;
- 5 (4) a chapter of the International Conference of Building Officials
- 6 Alaska;
- 7 (5) Alaska State Home Building Association; or
- 8 (6) a state agency that offers an activity that meets the requirements set
- 9 by the department.

10 * **Sec. 10.** AS 08.18.041 is amended to read:

11 **Sec. 08.18.041. Fees.** (a) The department shall set fees under AS 08.01.065

12 for

13 (1) registration and renewal of registration for all categories of

14 contractors;

15 (2) **registration and renewal of registration for a home inspector**

16 **qualified to inspect new homes;**

17 (3) **registration and renewal of registration for a home inspector**

18 **qualified to inspect existing homes;**

19 (4) **joint registration and renewal of joint registration for home**

20 **inspectors;**

21 (5) **registration and renewal of registration as an associate home**

22 **inspector;**

23 (6) **examinations for applicants for home inspector registration;**

24 (7) **examination, issuance of initial endorsement, and renewal of active**

25 **or inactive endorsements for residential contractors; and**

26 (8) [(3)] departmental publications and seminars related to this chapter.

27 (b) A person who fails a residential contractor examination **or home**

28 **inspector examination** shall pay the examination fee set by the department if the

29 person applies to retake an examination.

30 * **Sec. 11.** AS 08.18.051(a) is amended to read:

31 (a) Except as provided otherwise by law, a person who has registered **as a**

1 **contractor** under one name as required by this chapter may not act in the capacity of a
 2 contractor under any other name unless that name also is registered.

3 * **Sec. 12.** AS 08.18 is amended by adding a new section to read:

4 **Sec. 08.18.053. Identification requirements for home inspectors.** (a)

5 Except as provided otherwise by law, an individual who is registered as a home
 6 inspector or associate home inspector under this chapter by one name may not act in
 7 the capacity of a home inspector or associate home inspector under any other name.

8 (b) All advertising and business cards prepared by a registered home inspector
 9 or associate home inspector for the home inspection business must show the
 10 inspector's name, mailing address, and registration number.

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

16 (d) Individuals who are exempt from registration under AS 08.18.156(a) or
 17 whose actions are not considered to be home inspections under AS 08.18.156(b) may
 18 not hold themselves out to be registered home inspectors or use words or titles that
 19 may reasonably be confused with the title of "registered home inspector" unless they
 20 are registered as a home inspector under this chapter.

21 * **Sec. 13.** AS 08.18.061 is amended to read:

22 **Sec. 08.18.061. Requirements of political subdivision.** A contractor **or**
 23 **home inspector** who is registered with the state under this chapter may not be
 24 required to give bond in applying for or holding a license issued by a political
 25 subdivision **for a similar occupation.**

26 * **Sec. 14.** AS 08.18.071(a) is amended to read:

27 (a) Each applicant shall, at the time of applying for a certificate of registration,
 28 file with the commissioner a surety bond running to the state conditioned upon the
 29 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 contracting
4 business **or home inspection activity, as applicable**, or by reason of damage to
5 public facilities occurring in the course of a construction project.

6 * **Sec. 15.** AS 08.18.071(b) is amended to read:

7 (b) If the applicant is a general contractor, the amount of the bond shall be
8 \$10,000; if the applicant is a mechanical or specialty contractor **or home inspector**,
9 the amount of the bond shall be \$5,000. In lieu of the surety bond the applicant may
10 file with the commissioner a cash deposit or other negotiable security acceptable to the
11 commissioner in the amount specified for bonds.

12 * **Sec. 16.** AS 08.18.081(a) is amended to read:

13 (a) **Except as provided in AS 08.18.085, a** [A] person having a claim against
14 a contractor **or home inspector** for any of the items referred to in AS 08.18.071 may
15 bring suit upon the bond in the district court of the judicial district in which venue lies.
16 A copy of the complaint shall be served by registered or certified mail upon the
17 commissioner at the time suit is filed, and the commissioner shall maintain a record,
18 available for public inspection, of all suits commenced. Two additional copies shall
19 be served upon the director of the division of insurance with the payment to the
20 director of a fee set under AS 21.06.250, taxable as costs in the action. This service
21 upon the director shall constitute service on the surety, and the director shall transmit
22 the complaint or a copy of it to the surety within 72 hours after it has been received.
23 The surety upon the bond is not liable in an aggregate amount in excess of that named
24 in the bond, but in case claims pending at any one time exceed the amount of the bond,
25 the claims shall be satisfied from the bond in the following order:

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

1 * **Sec. 17.** AS 08.18 is amended by adding a new section to read:

2 **Sec. 08.18.085. Legal actions against home inspector.** (a) Notwithstanding
3 contrary provisions of AS 08.18.081 or AS 09.10, a person may not bring an action
4 against an individual registered under this chapter based on a home inspection report
5 unless the action is commenced within

6 (1) two years after the date of the home inspection report if the report
7 related to a new home; and

8 (2) one year after the date of the home inspection report if the report
9 related to an existing home.

10 (b) The limitations in (a) of this section apply to all actions based on a home
11 inspection report, regardless of whether the action is based on breach of contract,
12 personal injury or death, property damage, or another source of liability except that (a)
13 of this section is not applicable to an action based on gross negligence or intentional
14 misconduct by the home inspector. The limitations may not be waived by contract.

15 (c) A person may not bring an action against an individual registered under
16 this chapter for damages that arise from an act or omission relating to a home
17 inspection performed by the individual unless the person

18 (1) was a party to the real estate transaction for which the home
19 inspection was conducted;

20 (2) received the home inspection report with the written consent of the
21 party for whom the home inspection was originally performed; or

22 (3) acquired the property for which the home inspection report was
23 conducted by inheritance or bequest from a person who could have brought an action
24 under (1) or (2) of this subsection.

25 (d) Contractual provisions that purport to limit the liability of a home
26 inspector to the cost of the home inspection report are contrary to public policy and
27 void.

28 * **Sec. 18.** AS 08.18.111 is amended to read:

29 **Sec. 08.18.111. Advertising bond and insurance.** Contractors **and home**
30 **inspectors** may not advertise that they are bonded and insured simply because they
31 have complied with the bond and insurance requirements of this chapter.

1 * **Sec. 19.** AS 08.18.115 is amended to read:

2 **Sec. 08.18.115. Return of cash deposit.** (a) A contractor **or home inspector**
3 who has filed a cash deposit and who ceases doing business as a contractor **or home**
4 **inspector** may request the return of as much of that cash deposit as is held by the
5 commissioner by

6 (1) filing a notarized statement with the commissioner that the
7 contractor **or home inspector** has ceased doing business as a contractor **or home**
8 **inspector, as applicable**; and

9 (2) filing a notarized statement with the commissioner at least three
10 years after filing the statement in (1) of this subsection **that** [WHICH]

11 (A) requests return of the cash deposit;

12 (B) certifies that the former contractor **or home inspector** has
13 not been engaged in business as a contractor **or home inspector, as**
14 **applicable**, for at least three years; and

15 (C) certifies that to the best of the contractor's **or home**
16 **inspector's** knowledge no action has been commenced upon the cash deposit
17 **that** [WHICH] has not been dismissed or reduced to a final judgment **that**
18 [WHICH] has been satisfied.

19 (b) The commissioner, after paying any judgments against the cash deposit
20 under AS 08.18.081(b), shall return the remainder of a former contractor's **or former**
21 **home inspector's** cash deposit to the contractor **or home inspector, as applicable**, if

22 (1) the former contractor **or former home inspector** has complied
23 with (a) of this section; and

24 (2) no action has been commenced upon the cash deposit **that**
25 [WHICH] has not been dismissed or reduced to a final judgment **that** [WHICH] has
26 been satisfied.

27 * **Sec. 20.** AS 08.18.116 is amended to read:

28 **Sec. 08.18.116. Investigations.** Either the Department of Community and
29 Economic Development or the Department of Labor and Workforce Development
30 may investigate alleged or apparent violations of this chapter **relating to contractors.**
31 **The Department of Community and Economic Development may investigate**

1 **alleged or apparent violations of this chapter relating to home inspection**
 2 **activities**. These departments, upon showing proper credentials, may enter, during
 3 regular hours of work, a construction site where it appears that contracting work is
 4 being done. The departments may make inquiries about the identity of the contractor
 5 or the person acting in the capacity of a contractor. **The Department of Community**
 6 **and Economic Development may make inquiries about the identity of a home**
 7 **inspector or a person acting in the capacity of a home inspector**. Upon demand, a
 8 contractor **or home inspector** or person acting in the capacity of a contractor **or home**
 9 **inspector**, or that person's representative, shall produce evidence of current
 10 endorsement, if applicable, and registration.

11 * **Sec. 21.** AS 08.18.117 is amended to read:

12 **Sec. 08.18.117. Issuance of citations.** Either the Department of Community
 13 and Economic Development or the Department of Labor and Workforce Development
 14 may issue a citation for a violation if there is probable cause to believe a person has
 15 violated this chapter **with respect to contractor activities**. **The Department of**
 16 **Community and Economic Development may issue a citation for a violation if**
 17 **there is probable cause to believe a person has violated this chapter with respect**
 18 **to home inspection activities**. Each day a violation continues after a citation for the
 19 violation has been issued constitutes a separate violation.

20 * **Sec. 22.** AS 08.18.121(a) is amended to read:

21 (a) If the insurance required in AS 08.18.101 ceases to be in effect, the
 22 registration of the contractor **or home inspector** shall be suspended until the insurance
 23 has been reinstated.

24 * **Sec. 23.** AS 08.18.121(b) is amended to read:

25 (b) If a final judgment impairs the liability of the surety upon the bond or
 26 depletes the cash deposit so that there is not in effect a bond undertaking or cash
 27 deposit in the full amount prescribed in AS 08.18.071, the registration of the
 28 contractor **or home inspector** involved shall be suspended until the bond liability in
 29 the required amount, unimpaired by unsatisfied judgment claims, has been furnished.

30 * **Sec. 24.** AS 08.18.121(c) is amended to read:

31 (c) If a bonding company cancels its bond of a contractor **or home inspector**,

1 the contractor's **or home inspector's** registration shall be revoked. The contractor **or**
 2 **home inspector** may again obtain registration by complying with the requirements of
 3 this chapter.

4 * **Sec. 25.** AS 08.18.121(d) is amended to read:

5 (d) If a registered contractor **or registered home inspector** fails to fulfill the
 6 contractor's **or home inspector's** obligations as set out in AS 08.18.071, the
 7 contractor's **or home inspector's** registration shall be suspended for a period of time
 8 the commissioner determines is appropriate. After three suspensions, the contractor's
 9 **or home inspector's** registration may be permanently revoked.

10 * **Sec. 26.** AS 08.18.121(f) is amended to read:

11 (f) If the Department of Community and Economic Development or the
 12 Department of Labor and Workforce Development determines that a contractor or [A]
 13 person acting in the capacity of a contractor [,] is in violation of this chapter, that
 14 department may give written notice to the person prohibiting further action by the
 15 person as a contractor. **If the Department of Community and Economic**
 16 **Development determines that a home inspector or a person acting in the capacity**
 17 **of a home inspector is in violation of this chapter, the department may give**
 18 **written notice to the person prohibiting further action by the person as a home**
 19 **inspector.** The prohibition **in a notice given under this subsection** continues until
 20 the person has submitted evidence acceptable to **the appropriate** [THAT] department
 21 showing that the violation has been corrected.

22 * **Sec. 27.** AS 08.18.123 is amended to read:

23 **Sec. 08.18.123. Denial, suspension, and revocation of endorsement or**
 24 **home inspector registration.**

25 (a) The department may suspend, revoke, or refuse to grant or renew a
 26 residential contractor endorsement, **a home inspector registration, or an associate**
 27 **home inspector registration** upon a finding that

28 (1) the application is fraudulent or misleading;

29 (2) the **endorsement holder or registrant** [CONTRACTOR] has
 30 knowingly violated this chapter or a lawful order or regulation of the department;

31 (3) the **endorsement holder or registrant** [CONTRACTOR] is

1 incompetent or has engaged in fraudulent practices.

2 (b) Proceedings for the denial, suspension, or revocation of residential
3 contractor endorsement, **home inspector registration, or associate home inspector**
4 **registration** are governed by AS 44.62 (Administrative Procedure Act).

5 * **Sec. 28.** AS 08.18.131 is amended to read:

6 **Sec. 08.18.131. Injunction; civil penalty.** In an action instituted in the
7 superior court by the Department of Community and Economic Development or the
8 Department of Labor and Workforce Development, the court may enjoin a person
9 from acting in the capacity of a contractor in violation of this chapter. **In an action**
10 **instituted in the superior court by the Department of Community and Economic**
11 **Development, the court may enjoin a person from acting in the capacity of a**
12 **home inspector in violation of this chapter.** In addition to other relief, the court may
13 impose a civil penalty of not more than \$250 for each violation. Each day that an
14 unlawful act continues constitutes a separate violation.

15 * **Sec. 29.** AS 08.18.141(a) is amended to read:

16 (a) A contractor, **home inspector,** or [A] person acting in the capacity of a
17 contractor **or home inspector** who knowingly violates AS 08.18.011 or 08.18.025 is
18 guilty of a class B misdemeanor. A person who violates another provision of this
19 chapter is guilty of a violation punishable under AS 12.

20 * **Sec. 30.** AS 08.18.151 is amended to read:

21 **Sec. 08.18.151. Legal actions by contractor or home inspector.** A person
22 acting in the capacity of a contractor **or home inspector** may not bring an action in a
23 court of this state for the collection of compensation for the performance of work or
24 for breach of a contract for which registration is required under this chapter without
25 alleging and proving that the contractor **or home inspector** was a registered contractor
26 **or registered home inspector, as applicable,** at the time of contracting for the
27 performance of the work.

28 * **Sec. 31.** AS 08.18 is amended by adding new sections to article 4 to read:

29 **Sec. 08.18.152. Prohibited acts for home inspectors.** An individual
30 registered under this chapter as a home inspector or associate home inspector may not

31 (1) perform or offer to perform, for an additional fee, repairs to a

1 subject property on which the home inspector or the home inspector's company has
2 prepared a home inspection report in the past 12 months;

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

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

9 (4) without the written consent of the home inspection client or the
10 client's legal representative, disclose information from a home inspection report
11 prepared by the home inspector or the home inspector's company unless the disclosure
12 is made

13 (A) to a subsequent client who requests a home inspection of
14 the same premises; or

15 (B) by the home inspector in an administrative or judicial
16 proceeding in which disclosure of the home inspection report is relevant to
17 resolution of the legal issues in the proceeding;

18 (5) without the written consent of all interested parties, accept
19 compensation from more than one interested party for the same home inspection
20 services;

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

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

27 **Sec. 08.18.154. Limitation on home inspector's activities.** A registration
28 issued under AS 08.18.022 does not authorize the holder to perform an activity for
29 which a license is required under provisions of this title that are outside of this chapter.

30 **Sec. 08.18.156. Exemptions related to home inspections.** (a)
31 Notwithstanding other provisions of this chapter, an individual who inspects a home is

1 not required to be registered under this chapter as a home inspector or associate home
2 inspector if the individual is

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

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

8 (3) registered as an engineer or architect under AS 08.48, prepares a
9 written report after the inspection, affixes the individual's seal to the home inspection
10 report, signs and dates the report, and puts the individual's registration number on the
11 report;

12 (4) engaged as an engineer in training or architect in training who
13 works for and is supervised by a person described in (3) of this subsection and the
14 person described in (3) of this subsection affixes the person's seal to the home
15 inspection report, signs and dates the report, and puts the person's registration number
16 on the report;

17 (5) licensed as a pesticide applicator by the Department of
18 Environmental Conservation and is performing only activities within the scope of that
19 license;

20 (6) registered as a general contractor with a residential contractor
21 endorsement under this chapter and is performing only activities within the scope of
22 that registration;

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

25 (8) only determining whether a building complies with the thermal and
26 lighting energy standards required by AS 46.11.040.

27 (b) Notwithstanding the definition of "home inspection" in AS 08.18.171(12),
28 an individual is not considered to be doing a home inspection for purposes of this
29 chapter if the individual

30 (1) is in the business of repairing, maintaining, or installing any of the
31 systems or components listed in AS 08.18.171(12); and

1 (2) inspects the system or component for the sole purpose of
 2 determining the condition of the system or component before performing or offering
 3 to perform repair, maintenance, or installation work on the system or component.

4 * **Sec. 32.** AS 08.18.161 is amended to read:

5 **Sec. 08.18.161. Exemptions. To the extent that this chapter governs**
 6 **contractors, this** [THIS] chapter does not apply to

7 (1) an authorized representative of the United States government, the
 8 State of Alaska, or a political subdivision or agency of the state;

9 (2) an officer of a court when acting within the scope of office;

10 (3) a public utility operating under the regulations of the public service
 11 commission in construction, maintenance, or development work incidental to its own
 12 business;

13 (4) a construction, repair, or operation incidental to the discovering or
 14 producing of petroleum or gas, or the drilling, testing, abandoning, or other operation
 15 of a petroleum or gas well or a surface or underground mine or mineral deposit when
 16 performed by an owner or lessee;

17 (5) the sale or installation of finished products, materials, or articles of
 18 merchandise that are not actually fabricated into and do not become a permanent,
 19 fixed part of a structure;

20 (6) construction, alteration, or repair of personal property;

21 (7) a person who only furnished materials, supplies, or equipment
 22 without fabricating them into, or consuming them in the performance of, the work of
 23 the contractor;

24 (8) work on one project under one or more contracts, the aggregate
 25 contract price of which for labor and materials and all other items is less than \$10,000
 26 [, THIS WORK BEING CONSIDERED AS OF A CASUAL, MINOR, OR
 27 INCONSEQUENTIAL NATURE]; this exemption does not apply when the work is
 28 only a part of a larger or major operation, whether undertaken by the same or a
 29 different contractor, or when the work is divided into contracts of amounts less than
 30 \$10,000 for the purpose of evasion of this chapter or otherwise; this exemption does
 31 not apply to a person who advertises or puts out a sign or card or other device that

1 might indicate to the public that the person is a contractor, or that the person is
 2 qualified to engage in the contracting business; a contractor who performs work priced
 3 at \$2,500 or more, under this exemption, shall nevertheless keep in force public
 4 liability and property damage insurance with coverage in at least the amounts set out
 5 in AS 08.18.101;

6 (9) an owner who contracts for a project with a registered contractor;

7 (10) a person working on that person's own property, whether occupied
 8 by the person or not, and a person working on that person's own residence, whether
 9 owned by the person or not;

10 (11) an owner or tenant of commercial property who uses the owner's
 11 or tenant's own employees to do maintenance, repair, and alteration work upon that
 12 property;

13 (12) an owner who acts as the owner's own contractor and in doing so
 14 hires workers on an hourly basis, hires subcontractors, purchases materials and, as
 15 such, sees to the paying for all labor, subcontractors, and materials; in this case, the
 16 owner shall be limited to construction of one home, duplex, triplex, four-plex, or one
 17 commercial building a [PER] year;

18 (13) a person performing construction work incidental to farming,
 19 dairying, agriculture, horticulture, stock or poultry raising, mining, logging, fishing,
 20 clearing, or other work upon the land in rural districts for fire prevention purposes, or
 21 access road building, unless the person is a licensee.

22 * **Sec. 33.** AS 08.18.171 is amended by adding new paragraphs to read:

23 (11) "existing home" means a residence previously occupied as a
 24 residence;

25 (12) "home inspection" means a visual examination, performed in
 26 accordance with standards of practice adopted by the department, of the readily
 27 accessible parts of one or more of the following systems and components of a
 28 residence or intended residence:

29 (A) heating and air-conditioning systems;

30 (B) plumbing and electrical systems;

31 (C) built-in appliances;

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

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

3 (F) foundation and basement;

4 (G) visible interior and exterior structures;

5 (H) drainage to and from the residence;

6 (I) other systems or components as specified by the department
7 in regulations;

8 (13) "home inspector" means an individual who performs or offers to
9 perform a home inspection for a fee;

10 (14) "joint registration" means a certificate of registration that
11 authorizes an individual to inspect both new homes and existing homes;

12 (15) "knowingly" has the meaning given in AS 11.81.900;

13 (16) "new home" means a residence not previously occupied as a
14 residence;

15 (17) "residence" means

16 (A) a single-family home other than a mobile home;

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

18 (C) a residential townhouse or residential condominium unit;

19 (18) "visual examination" means an examination performed in person
20 at the physical location of the residence except that, if a method other than personal
21 physical inspection has been approved by the Alaska Housing Finance Corporation
22 under AS 18.56.300(b), use of the other approved method constitutes a visual
23 examination under this chapter.

24 * **Sec. 34.** AS 18.56.300(b) is amended to read:

25 (b) As a condition of a commitment to purchase or approve a loan under this
26 section for residential housing the construction of which begins after June 30, 1992,
27 the corporation shall require inspection of the unit of residential housing that is the
28 subject of the loan. The inspection must be performed by a municipal building
29 inspector, by a person who is approved or certified to perform residential inspections
30 by the International Conference of Building Officials or the International Association
31 of Electrical Inspectors, **by an individual who is registered under AS 08.18 to**

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

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

19 * **Sec. 35.** 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
 25 RESIDENTIAL INSPECTIONS BY THE INTERNATIONAL CONFERENCE OF
 26 BUILDING OFFICIALS OR THE INTERNATIONAL ASSOCIATION OF
 27 ELECTRICAL INSPECTORS,] by an individual who is registered under AS 08.18 to
 28 perform home inspections for new construction, by an architect registered under
 29 AS 08.48, by an engineer registered under AS 08.48, or by another person approved
 30 by the corporation. When the unit of residential housing is located in a rural area, the
 31 person who makes the inspection may use methods other than a personal physical

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

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

14 * **Sec. 36.** AS 36.30.050(b) is amended to read:

15 (b) A person who desires to be on a list shall submit to the commissioner
 16 evidence of a valid Alaska business license. A biennial fee may be established by
 17 regulation in an amount reasonably calculated to pay the costs of administering this
 18 section. A construction contractor shall also submit a valid certificate of registration
 19 **as a contractor** issued under AS 08.18. The commissioner, by regulation, may require
 20 submission of additional information.

21 * **Sec. 37.** AS 36.30.115(a) is amended to read:

22 (a) Within five working days after the identification of the apparent low bidder
 23 for a construction contract, the apparent low bidder shall submit a list of the
 24 subcontractors the bidder proposes to use in the performance of the construction
 25 contract. The list must include the name and location of the place of business for each
 26 subcontractor, evidence of each subcontractor's valid Alaska business license, and
 27 evidence of each subcontractor's registration **as a contractor** under AS 08.18. If a
 28 subcontractor on the list did not have a valid Alaska business license and a valid
 29 certificate of registration **as a contractor** under AS 08.18 at the time the bid was
 30 opened, the bidder may not use the subcontractor in the performance of the contract,
 31 and shall replace the subcontractor with a subcontractor who had a valid Alaska

1 business license and a valid certificate of registration **as a contractor** under AS 08.18
 2 at the time the bid was opened.

3 * **Sec. 38.** AS 36.30.210(b) is amended to read:

4 (b) An offeror for a construction contract shall submit evidence of the offeror's
 5 registration **as a contractor** under AS 08.18. A request for sealed proposals for a
 6 construction contract, except a design-build construction contract, must require the
 7 offeror, no later than five working days after the proposal that is the most
 8 advantageous to the state is identified, to list subcontractors the offeror proposes to use
 9 in the performance of the construction contract. The list must include the information
 10 required under AS 36.30.115(a). The provisions of AS 36.30.115(b) - (g) that apply to
 11 a construction contractor or an apparent low bidder apply to offerors submitting
 12 competitive sealed proposals for construction contracts, except design-build
 13 construction contracts.

14 * **Sec. 39.** AS 36.90.290(1) is amended to read:

15 (1) "prime contractor" means a person required to be registered **as a**
 16 **contractor** under AS 08.18 who has a contract with the state or a political subdivision
 17 of the state to provide materials or services, other than as an employee, for a public
 18 construction or public works project;

19 * **Sec. 40.** AS 45.50.471(b) is amended by adding a new paragraph to read:

20 (45) violating AS 08.18.023(b) or 08.18.152.

21 * **Sec. 41.** AS 18.56.300(c) is repealed.

22 * **Sec. 42.** The uncodified law of the State of Alaska is amended by adding a new section to
 23 read:

24 APPLICABILITY. The change made by sec. 41 of this Act applies to causes of action
 25 that accrue on or after July 1, 2005.

26 * **Sec. 43.** The uncodified law of the State of Alaska is amended by adding a new section to
 27 read:

28 REGULATIONS. The Department of Community and Economic Development may
 29 proceed to adopt regulations to implement this Act. A regulation adopted under this section
 30 takes effect under AS 44.62 (Administrative Procedure Act) but not before the effective date
 31 of the law implemented by the regulation.

1 * **Sec. 44.** The uncodified law of the State of Alaska is amended by adding a new section to
2 read:

3 TRANSITIONAL LICENSING PROVISIONS. (a) Notwithstanding AS 08.18.022,
4 added by sec. 7 of this Act, the Department of Community and Economic Development shall
5 issue a certificate of joint registration that is valid until January 1, 2006, to an individual who
6 submits to the department satisfactory evidence of being in the business of home inspection in
7 the state at the time of application for registration under this subsection and of having

8 (1) been in the business of home inspection in the state on October 1, 2002;

9 and

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

12 (b) Notwithstanding AS 08.18.022, added by sec. 7 of this Act, the Department of
13 Community and Economic Development shall issue a certificate of registration to practice
14 home inspection of previously occupied residences that is valid until January 1, 2006, to an
15 individual who submits to the department satisfactory evidence of being in the business of
16 home inspection in the state at the time of application for registration under this subsection
17 and of having passed

18 (1) the national home inspector examination given by the American Society of
19 Home Inspectors, American Home Inspectors Training Institute, or National Association of
20 Home Inspectors; or

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

23 (c) Notwithstanding AS 08.18.022, added by sec. 7 of this Act, the Department of
24 Community and Economic Development shall issue a certificate of registration to practice
25 home inspection of new construction that is valid until January 1, 2006, to an individual who
26 submits to the department satisfactory evidence of being in the business of home inspection in
27 the state at the time of application for registration under this subsection and of having passed
28 the combination inspector examination or the combination dwelling inspector examination
29 given by the International Conference of Building Officials.

30 (d) Notwithstanding AS 08.18.022, added by sec. 7 of this Act, the Department of
31 Community and Economic Development shall issue a certificate of registration as an associate

1 home inspector that is valid until January 1, 2006, to an individual who submits to the
 2 department satisfactory evidence of being employed by an individual who is in the business of
 3 home inspection and is registered under this section or under AS 08.18.

4 (e) A certificate of registration issued under this section may not be renewed or
 5 extended.

6 (f) Except as provided in (e) of this section, a certificate of registration as a home
 7 inspector or associate home inspector issued under this section is considered to be a certificate
 8 of registration as a home inspector or associate home inspector issued under AS 08.18.022,
 9 added by sec. 7 of this Act.

10 (g) In this section, "joint registration" has the meaning given in AS 08.18.171, as
 11 amended by sec. 33 of this Act.

12 * **Sec. 45.** AS 08.18.011(c) - (f), added by sec. 5 of this Act; AS 08.18.023, added by sec. 7
 13 of this Act; AS 08.18.085, added by sec. 17 of this Act; AS 08.18.151, as amended by sec. 30
 14 of this Act; and the amendment of AS 18.56.300(b), made by sec. 34 of this Act, take effect
 15 July 1, 2004.

16 * **Sec. 46.** Section 35 of this Act takes effect January 1, 2006.

17 * **Sec. 47.** Sections 41 and 42 of this Act take effect July 1, 2005.

18 * **Sec. 48.** Except as provided in secs. 45 - 47 of this Act, this Act takes effect immediately
 19 under AS 01.10.070(c).