HOUSE BILL NO. 225

INTRODUCED BY E. TILLEMAN

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

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

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

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

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

(b) The term does not mean a physical examination of a residential dwelling when the owner or a representative of the owner requests the examination by an individual who is licensed in this state and acting within the scope of practice of the individual's profession or occupation.

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

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

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

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

(4) "Home inspector" means an individual who performs a home inspection for compensation.

(5) "Practice" means to engage in the services of home inspection as the term is defined in this section.

NEW SECTION. **Section 2. Department rulemaking -- fees.** (1) The department may adopt rules necessary to implement [sections 1 through 4].

(2) The fees collected under [sections 1 through 4] in accordance with 37-1-134 must be deposited in a special revenue account for administration and enforcement of [sections 1 through 4].

NEW SECTION. **Section 3. License to practice home inspections required -- qualifications.** (1) An individual may not practice home inspection without a home inspector license issued under Title 37, chapter 1, and [sections 1 through 4].

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

(a) successfully completed a minimum of 40 hours of comprehensive home inspection instruction approved by the department;

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

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

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

NEW SECTION. **Section 4. Standards of home inspection practice.** (1) A home inspector shall issue a written home inspection report to a client after completing a home inspection unless the client agrees in writing to release the home inspector from this obligation.

(2) The home inspection report must clearly identify and describe:

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

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

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

(3) A home inspector may not:

(a) ~~disclose information concerning the results of a home inspection without the written approval of the home inspector's client or the client's representative;~~

~~(b)~~ accept compensation from more than one party with a financial interest in the residential dwelling without written approval from all parties with a financial interest in the residential dwelling;

~~(c)~~(B) accept a commission or allowance, directly or indirectly, from another individual or business entity associated with the client in connection with work for which the home inspector is responsible to the client; or

~~(d)~~(C) refuse or otherwise fail to disclose promptly to a client information about any business interest or relationship of the home inspector that may affect the client in connection with a home inspection.

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

"**37-1-401. (Temporary) Uniform regulation for licensing programs without boards -- definitions.** As used in this part, the following definitions apply:

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

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

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

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

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

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

(d) whether the department should seek an injunction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) whether the department should seek an injunction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) the registered construction contractor ~~or home inspector~~;

(2) the employees of the registered construction contractor ~~or home inspector~~; or

(3) any subsequent subcontractor or the employees of any subsequent subcontractor engaged to fulfill a part of or all of the obligations of the oral or written contract of the registered construction contractor ~~or home inspector~~ listed in subsection (1)."

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

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

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

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

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

(4) A construction contractor may not:

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

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

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

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

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

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

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

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

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

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

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

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

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

39-9-213. Requirement -- prohibitions.

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

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

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

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

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

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

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

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

401 MUST BE REPEALED.

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

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