

SECOND REGULAR SESSION

HOUSE BILL NO. 2057

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES PARSON (Sponsor), RUCKER, WILSON (119), SCHNEIDER, ROBB, JONES (117), SCHAD AND NORR (Co-sponsors).

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D. ADAM CRUMBLISS, Chief Clerk

4757L.01I

AN ACT

To amend chapter 339, RSMo, by adding thereto fourteen new sections relating to the licensing of home inspectors, with penalty provisions and an effective date.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 339, RSMo, is amended by adding thereto fourteen new sections, to
2 be known as sections 339.900, 339.903, 339.906, 339.909, 339.912, 339.915, 339.916, 339.917,
3 339.920, 339.930, 339.933, 339.934, 339.935, and 339.936, to read as follows:

339.900. As used in sections 339.900 to 339.936, the following terms mean:

- 2 (1) "Board", the Missouri home inspectors board;
- 3 (2) "Component", a part of a system;
- 4 (3) "Division", the division of professional registration;
- 5 (4) "Home inspection", the process by which an inspector, for payment or other
6 compensation, visually examines the readily accessible systems and components of a
7 residential building and describes such systems in writing in accordance with the standards
8 of practice established by the board. The inspection is not intended to be technically
9 exhaustive or intrusive, nor shall it predict life expectancies of efficiencies of structural or
10 mechanical components;
- 11 (5) "Home inspection report", a written report of a home inspection;
- 12 (6) "Home inspector", an individual who is retained to perform a home inspection;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

13 (7) "Readily accessible", available for visual inspection without requiring the
14 movement of personal property, dismantling, destructive measures, or any action in the
15 opinion of the inspector that would likely involve risk of injury to persons or property;

16 (8) "Residential building", a structure of one to four family dwelling units;

17 (9) "State-licensed inspector", an individual licensed by the board under sections
18 339.900 to 339.936;

19 (10) "System", a combination of interacting or interdependent components
20 assembled to carry out one or more functions.

 339.903. 1. No person shall act as a home inspector, or directly or indirectly engage
2 or assume to engage in the business of home inspection, or advertise or hold himself or
3 herself out as engaging in or conducting such business without first obtaining a license
4 issued by the board as provided in sections 339.900 to 339.936.

5 2. No license shall be issued under sections 339.900 to 339.936 to a partnership,
6 association, corporation, firm, or group.

7 3. Any person who is not state licensed under sections 339.900 to 339.936 may assist
8 a state-licensed home inspector in the performance of an inspection provided that the
9 person is personally supervised by a state-licensed inspector and any inspection report
10 rendered in connection with the inspection is reviewed and signed by the state-licensed
11 home inspector.

12 4. The provisions of sections 339.900 to 339.936 shall not be construed to require
13 a license for:

14 (1) Any person, partnership, association, or corporation who as owner performs
15 inspections of property owned by such person, partnership, association, or corporation;

16 (2) Any employee of a local, state, or federal agency who performs inspection
17 services within the scope of his or her employment;

18 (3) Any person providing the inspection of two or less of the following: heating
19 system, cooling system, electrical system, plumbing system, foundation, siding, roofing,
20 masonry chimney, or the structural frame or other essential components or systems of a
21 residential dwelling;

22 (4) A real estate broker, real estate salesperson, or real estate appraiser acting
23 within the scope of his or her license;

24 (5) Any person employed by or acting on behalf of a licensed insurance company
25 doing business in this state.

 339.906. 1. There is hereby created within the division of professional registration
2 the "Missouri Home Inspectors' Board", which shall consist of five members appointed by
3 the governor with the advice and consent of the senate. Each member shall be a citizen of

4 the United States, a resident of this state, and a registered voter for a period of one year
5 prior to the person's appointment. Three members shall be licensed home inspectors
6 representing various geographic locations throughout the state, one shall be a home
7 inspector appointed from a third class county, and one who shall be a public member. The
8 public member shall have never been engaged in the businesses of home inspections, real
9 estate appraisal, real estate sales, or making loans secured by real estate or an immediate
10 family member of such person. The board shall elect from its membership a president and
11 vice president each of whom shall be elected at the times, and serve for the terms, as are
12 determined by the board.

13 2. The home inspector members initially appointed by the governor shall have
14 home inspection experience in the state of Missouri for not less than five years preceding
15 their initial appointment, have completed at least one hundred home inspections for
16 compensation, and be members in good standing of a nationally recognized home inspector
17 association requiring written examination. The governor shall not exclude a state-licensed
18 home inspector from appointment as a successor inspector member of the board by virtue
19 of membership or lack of membership of the state-licensed home inspector in any
20 particular home inspector association.

21 3. Of the initial members appointed, two members shall be appointed for two-year
22 terms, two members for three-year terms, and one member for a four-year term. All
23 successor members shall be appointed for four-year terms. All members shall serve until
24 their successors have been appointed and qualified. Vacancies occurring in the
25 membership of the board for any reason shall be filled by appointment by the governor for
26 the unexpired term. The governor may remove a member for cause. An executive director
27 for the board shall be employed by the division of professional registration.

28 4. The board shall meet at least once a year to conduct its business. The board may
29 hold such additional meetings as may be required in the performance of its duties. A
30 quorum of the board shall consist of a majority of its voting members.

31 5. Each member of the board shall be entitled to a per diem allowance of up to
32 seventy dollars for each meeting day or part of a day of the board at which the member is
33 present and shall be entitled to reimbursement of the member's actual and necessary
34 expenses incurred in the discharge of the member's official duties.

339.909. 1. The board shall have the following powers and duties and may adopt
2 rules in accordance with the provisions of chapter 536, RSMo, to establish:

3 (1) Qualifications for the licensing of home inspectors as the board deems necessary
4 for the public interest;

5 (2) Rules which prescribe and define the subjects related to home inspection that
6 will satisfy the qualification requirements for licensure;

7 (3) Approved courses of instruction that prescribe and define the subjects related
8 to home inspection that will satisfy the qualification requirements for licensure;

9 (4) Rules establishing the criteria for the supervision and training of home
10 inspector apprentices;

11 (5) An application process and administrative procedures for processing
12 applications and issuing home inspector licenses and for conducting disciplinary
13 proceedings under the provisions of sections 339.900 to 339.936;

14 (6) Procedures by which the board may issue a license on a reciprocal basis with
15 other states without examination to a nonresident who is licensed or certified, and in good
16 standing in another state under standards that are substantially equal to those established
17 by the board and in sections 339.900 to 339.936;

18 (7) Standards related to acceptable knowledge and competence necessary to
19 perform inspections of residential and business real estate as required by sections 339.900
20 to 339.936;

21 (8) Standards of professional and ethical conduct for home inspectors;

22 (9) Continuing education requirements for the renewal of licensure that will meet
23 the requirements of sections 339.900 to 339.936; and

24 (10) Reasonable rules as deemed necessary or desirable by the board to carry out
25 and enforce the provisions of sections 339.900 to 339.936.

26 **2. The board:**

27 (1) Shall prescribe the form and content of examinations to determine the
28 qualifications of persons who apply for licenses to engage in home inspection;

29 (2) Shall establish a list of approved education program providers and may
30 approve courses of instruction in an accredited college or university related to the
31 inspection of homes and such other areas deemed relevant by the board;

32 (3) May contract with a testing service to provide and conduct such examinations;

33 (4) Shall have authority to determine who meets the criteria for licensure;

34 (5) Shall investigate to verify such applicant's qualifications. If the results of the
35 investigation are satisfactory to the board and the applicant is otherwise qualified, the
36 board shall issue to the applicant a license authorizing the applicant to act as a
37 state-licensed home inspector in Missouri;

38 (6) Shall set the amount of fees authorized by sections 339.900 to 339.936 and
39 required by rules promulgated under section 536.021, RSMo. The fees shall be set at a

40 level to produce revenue that does not substantially exceed the cost and expense of
41 administering this chapter; and

42 (7) Shall perform such other functions and duties as may be necessary to carry out
43 the provisions of sections 339.900 to 339.936.

44 3. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo,
45 that is created under the authority delegated in this section shall become effective only if
46 it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if
47 applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable
48 and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo,
49 to review, to delay the effective date, or to disapprove and annul a rule are subsequently
50 held unconstitutional, then the grant of rulemaking authority and any rule proposed or
51 adopted after August 28, 2008, shall be invalid and void.

339.912. 1. There is hereby created in the state treasury the "Missouri Home
2 Inspectors' Fund", which shall consist of moneys collected under sections 339.900 to
3 339.936. The fund shall be administered by the division of professional registration, which
4 shall collect and transfer the fees authorized in sections 339.900 to 339.936 to the director
5 of revenue for deposit in the fund. Moneys in the fund shall be used solely for the purposes
6 of the Missouri home inspectors' board as authorized in sections 339.900 to 339.936.

7 2. Notwithstanding the provisions of section 33.080, RSMo, to the contrary, any
8 moneys remaining in the fund at the end of the biennium shall not revert to the credit of
9 the general revenue fund until the amount in the fund at the end of the biennium exceeds
10 two times the amount of the appropriation from the board's funds for the preceding fiscal
11 year or, if the board requires by rule permit renewal less frequently than yearly, then three
12 times the appropriation from the board's fund for the preceding fiscal year. The amount,
13 if any, in the fund which shall lapse is that amount in the fund which exceeds the
14 appropriate multiple of the appropriations from the board's funds for the preceding fiscal
15 year.

339.915. 1. Applications for licensure as a home inspector shall be in writing,
2 submitted to the board on forms prescribed by the board and furnished to the applicant.
3 The application shall contain the applicant's statements showing the applicant's education,
4 experience and such other information as the board may require. Each application shall
5 contain a statement that it is made under oath or affirmation and that the information
6 contained therein is true and correct to the best knowledge and belief of the applicant,
7 subject to the penalties provided for the making of a false affidavit or declaration. Each
8 application shall be accompanied by the fees required by the board.

9 2. Each applicant for licensure shall:

10 **(1) Demonstrate the knowledge and competence necessary to perform inspections**
11 **of residential real estate as prescribed by rule;**

12 **(2) Be of good moral character;**

13 **(3) Have successfully completed a board approved classroom training program of**
14 **not less than eighty classroom hours or have completed an apprenticeship under the direct**
15 **supervision of a licensed home inspector;**

16 **(3) Have passed a examination offered or approved by the board or as provided for**
17 **in sections 339.900 to 339.936; and**

18 **(4) Pay the appropriate fee set by the board.**

19 **3. If an applicant is not licensed within three years after passing an examination**
20 **given under sections 339.900 to 339.936, the applicant shall be required to retake the**
21 **examination prior to state licensure.**

22 **4. An applicant who fails an examination taken under sections 339.900 to 339.936**
23 **may apply for reexamination as specified by board rule.**

339.916. 1. Any person desiring to practice as an apprentice for home inspecting
2 **in this state shall apply to the board, pay the appropriate fee and comply with the**
3 **apprenticeship rules established by the board. A home inspector apprentice license shall**
4 **be issued by the board prior to the individual beginning the apprenticeship program. In**
5 **order to satisfy requirements for licensure, the home inspector apprentice must complete**
6 **fifty home inspections under the direct supervision of a licensed home inspector apprentice**
7 **supervisor.**

8 **2. Any person desiring to act as a home inspector apprentice supervisor shall hold**
9 **a current license with the board, apply to the board for a supervisor license, and pay the**
10 **appropriate fee. A home inspector apprentice supervisor license is required prior to**
11 **supervising home inspector apprentices.**

339.917. 1. The division shall mail a renewal notice to the last known address of
2 **each licensee prior to the renewal date. Failure to provide the board with the information**
3 **required for renewal, or to pay the renewal fee after such notice shall result in the license**
4 **expiring. The license shall be reinstated if, within two years of the renewal date, the**
5 **applicant submits the required documentation and pays the applicable fees as approved**
6 **by the board.**

7 **2. A new license to replace any lost, destroyed or mutilated license may be issued**
8 **subject to the rules of the board.**

339.920. 1. Each provider shall submit application for approval each calendar
2 **year, and shall maintain a record of all attendance and satisfactory results for each**
3 **program attendee.**

4 **2. In adopting rules under this section, the board may give favorable consideration**
5 **to courses of instruction, seminars, and other home inspection education courses and**
6 **programs previously or hereafter developed by, or under the auspices of, professional**
7 **home inspection associations and utilized by those associations for purposes of designation,**
8 **licensure, or renewal of licensure of members of the association.**

9 **3. For purposes of licensure or renewal of licensure, the board may establish or**
10 **approve credit for any of the following: courses of instruction, programs, teaching,**
11 **program development, and preparation of textbooks, articles, or other instructional**
12 **materials.**

339.930. 1. The board may refuse to issue or renew any license issued under
2 **sections 339.900 to 339.936 for one or any combination of causes stated in subsection 2 of**
3 **this section. The board shall notify the applicant in writing of the reasons for the refusal**
4 **and shall advise the applicant of the right to file a complaint with the administrative**
5 **hearing commission as provided by chapter 621, RSMo.**

6 **2. The board may cause a complaint to be filed with the administrative hearing**
7 **commission as provided by chapter 621, RSMo, against any state-licensed home inspector**
8 **or any person who has failed to renew or had surrendered his or her license for any one**
9 **or any combination of the following causes:**

10 **(1) Procuring or attempting to procure a license under section 339.912 by making**
11 **a false statement, submitting false information, refusing to provide complete information**
12 **in response to a question in an application for licensure, or through any form of fraud or**
13 **misrepresentation;**

14 **(2) Failing to meet the minimum qualifications for licensure or renewal established**
15 **by sections 339.900 to 339.936;**

16 **(3) Paying money or other valuable consideration, other than as provided for by**
17 **section 339.912, to any member or employee of the board to procure a license under**
18 **sections 339.900 to 339.936;**

19 **(4) The person has been finally adjudicated and found guilty, or entered a plea of**
20 **guilty or nolo contendere, in a criminal prosecution under the laws of any state or the**
21 **United States for any offense reasonably related to the qualifications, functions, or duties**
22 **of any profession licensed or regulated under sections 339.900 to 339.936, for any offense**
23 **of which an essential element is fraud, dishonesty, or an act of violence, regardless of the**
24 **imposition of sentence;**

25 **(5) Incompetency, misconduct, gross negligence, dishonesty, fraud, or**
26 **misrepresentation in the performance of the functions or duties of any profession licensed**
27 **or regulated by sections 339.900 to 339.936;**

28 **(6) Violation of any of the standards for the development or communication of**
29 **home inspections as provided in sections 339.900 to 339.936 or the rules applied thereafter;**

30 **(7) Failure or refusal without good cause to exercise reasonable diligence in**
31 **developing an inspection, preparing an inspection report, or communicating an inspection;**

32 **(8) Negligence or incompetence in developing an inspection, in preparing an**
33 **inspection report, or in communicating an inspection;**

34 **(9) Violating, assisting, or enabling any person to willfully disregard any of the**
35 **provisions of sections 339.900 to 339.936 or the rules of the board for the administration**
36 **and enforcement of the provisions of sections 339.900 to 339.936;**

37 **(10) Accepting an inspection assignment when the employment itself is contingent**
38 **upon the inspector's reporting a predetermined analysis or opinion or where the fee to be**
39 **paid for the performance of the inspection assignment is contingent upon the opinion,**
40 **conclusion, or valuation reached or upon the consequences resulting from the inspection**
41 **assignment;**

42 **(11) Violating the confidential nature of governmental records to which the person**
43 **gained access through employment or engagement to perform an inspection assignment or**
44 **specialized inspection services for a governmental agency;**

45 **(12) Violating any term or condition of a license issued by the board under the**
46 **authority of sections 339.900 to 339.936;**

47 **(13) Violation of any professional trust or confidence;**

48 **(14) Obtaining or attempting to obtain any fee, charge, tuition, or other**
49 **compensation by fraud, deception, or misrepresentation;**

50 **(15) Assisting or enabling any person to practice or offer to practice any profession**
51 **licensed or regulated by sections 339.900 to 339.936 who is not licensed and currently**
52 **eligible to practice under sections 339.900 to 339.936;**

53 **(16) Use of any advertisement or solicitation which is false, misleading, or deceptive**
54 **to the general public or persons to whom the advertisement or solicitation is primarily**
55 **directed;**

56 **(17) Disciplinary action against the holder of a license or other right to practice any**
57 **profession regulated under sections 339.900 to 339.936, imposed by another state, territory,**
58 **federal agency, or country upon grounds for which revocation or suspension is authorized**
59 **in this state.**

60 **3. After the filing of such complaint, the proceedings shall be conducted in**
61 **accordance with the provisions of chapter 621, RSMo. Upon a finding by the**
62 **administrative hearing commission that the grounds provided in subsection 2 of this**
63 **section for disciplinary action are met, the board may, singly or in combination, publicly**

64 censure or place the person named in the complaint on probation on such terms and
65 conditions as the board deems appropriate for a period not to exceed five years, or may
66 suspend for a period not to exceed three years, or revoke the license. The holder of a
67 license revoked under this section shall not apply for licensure as a state-licensed home
68 inspector for at least five years after the date of revocation.

69 **4. Applicants for relicensure or reinstatement after revocation shall be required to**
70 **successfully complete the examination for original licensure required by section 339.921**
71 **as a condition to reinstatement of licensure or relicensure subsequent to revocation.**

339.933. State-licensed home inspectors shall retain originals or true copies of
2 **contracts engaging an inspector's services for inspector assignments, specialized inspection**
3 **services, inspection reports, and supporting data assembled and formulated in preparing**
4 **inspection reports for three years and a day. In the event of a court action, state-licensed**
5 **home inspectors shall retain an original or true copy of the contract engaging an**
6 **inspector's service for inspector assignment, specialized inspection service, inspection**
7 **report, and supporting data assembled and formulated in preparing an inspection report**
8 **named in a court action for five years and a day. The service period for retention of the**
9 **records applicable to each engagement of the services of the state-licensed home inspector**
10 **shall run from the date of the inspection report. Such records shall be made available by**
11 **the state-licensed home inspector for inspection and copying by the board on reasonable**
12 **notice to the state-licensed home inspector.**

339.934. 1. Except as provided in subsection 2 of this section, sections 339.900 to
2 **339.936 shall preempt any rule, regulation, or order adopted by a political subdivision of**
3 **the state relating to the licensing or regulation of home inspectors or home inspection**
4 **businesses.**

5 **2. Under section 620.106, RSMo, no new licensing activity or other statutory**
6 **requirements shall become effective until expenditures or personnel are specifically**
7 **appropriated for the purpose of conducting the business as required and the initial rules**
8 **filed, if appropriate, have become effective.**

339.935. Prior to August 28, 2009, the education, training, and experience
2 **requirements of sections 335.900 to 339.936 shall be deemed established if the applicant has**
3 **been an active home inspector for two years prior to August 28, 2008, and:**

- 4 **(1) Has full membership in good standing with ASHI, NAHI and NACHI; or**
5 **(2) Provides evidence of completing one hundred home inspection reports for which**
6 **the individual was paid and can produce invoices for verification.**

339.936. 1. An action to recover damages for any act or omission of a home
2 **inspector relating to a home inspection that he or she conducts can only be commenced**

3 **within one year after the date that a home inspection is completed. Only a client and no**
4 **other party shall have an action to recover damages arising from a home inspection or a**
5 **home inspection report. Home inspectors shall maintain general liability insurance**
6 **coverage while in the business of performing home inspections.**

7 **2. Any person or corporation who knowingly violates any provision of sections**
8 **339.900 to 339.936 is guilty of a class B misdemeanor. Any officer or agent of a**
9 **corporation, or member or agent of a partnership or association, who knowingly and**
10 **personally participates in or is an accessory to any violation of sections 339.900 to 339.936**
11 **is guilty of a class B misdemeanor. This section shall not be construed to release any**
12 **person from civil liability or criminal prosecution under any other law of this state. The**
13 **board may cause a complaint to be filed for a violation of section 339.903 in any court of**
14 **competent jurisdiction, and perform such other acts as may be necessary to enforce the**
15 **provisions of sections 339.900 to 339.936.**

Section B. Section A of this act shall become effective January 1, 2009.

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