

AN ACT concerning regulation.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Regulatory Sunset Act is amended by changing Section 4.22 and by adding Section 4.32 as follows:

(5 ILCS 80/4.22)

Sec. 4.22. Acts repealed on January 1, 2012. The following Acts are repealed on January 1, 2012:

The Detection of Deception Examiners Act.

~~The Home Inspector License Act.~~

The Interior Design Title Act.

The Massage Licensing Act.

The Petroleum Equipment Contractors Licensing Act.

The Professional Boxing Act.

The Real Estate Appraiser Licensing Act of 2002.

The Water Well and Pump Installation Contractor's License Act.

(Source: P.A. 95-331, eff. 8-21-07.)

(5 ILCS 80/4.32 new)

Sec. 4.32. Act repealed on January 1, 2022. The following Act is repealed on January 1, 2022:

The Home Inspector License Act.

Section 10. The Home Inspector License Act is amended by changing Sections 1-10, 5-5, 5-10, 5-12, 5-16, 5-17, 5-20, 5-45, 10-5, 10-10, 15-5, 15-10, 15-15, 15-20, 15-25, 15-35, 15-55, 15-60, 20-5, 20-10, 25-5, 25-15, 25-20, and 25-25 and by adding Sections 5-14, 15-65, 15-70, 25-17, and 25-27 as follows:

(225 ILCS 441/1-10)

(Section scheduled to be repealed on January 1, 2012)

Sec. 1-10. Definitions. As used in this Act, unless the context otherwise requires:

"Address of record" means the designated address recorded by the Department in the applicant's or licensee's application file or license file as maintained by the Department's licensure maintenance unit. It is the duty of the applicant or licensee to inform the Department of any change of address and those changes must be made either through the Department's website or by contacting the Department.

"Applicant" means a person who applies to the Department ~~OBRE~~ for a license under this Act.

~~"Board" means the Home Inspector Advisory Board.~~

"Client" means a person who engages or seeks to engage the services of a home inspector for an inspection assignment.

"Department" means the Department of Financial and Professional Regulation.

~~"Commissioner" means the Commissioner of the Office of Banks and Real Estate or his or her designee.~~

"Home inspection" means the examination and evaluation of the exterior and interior components of residential real property, which includes the inspection of any 2 or more of the following components of residential real property in connection with or to facilitate the sale, lease, or other conveyance of, or the proposed sale, lease or other conveyance of, residential real property:

(1) heating, ventilation, and air conditioning system;

(2) plumbing system;

(3) electrical system;

(4) structural composition;

(5) foundation;

(6) roof;

(7) masonry structure; or

(8) any other residential real property component as established by rule.

"Home inspector" means a person who, for another and for compensation either direct or indirect, performs home inspections.

"Home inspection report" or "inspection report" means a written evaluation prepared and issued by a home inspector upon completion of a home inspection, which meets the standards of practice as established by the Department ~~OBRE~~.

"Inspection assignment" means an engagement for which a

home inspector is employed or retained to conduct a home inspection and prepare a home inspection report.

~~"OBRE" means the Office of Banks and Real Estate.~~

"Person" means individuals, entities, corporations, limited liability companies, registered limited liability partnerships, and partnerships, foreign or domestic, except that when the context otherwise requires, the term may refer to a single individual or other described entity.

"Residential real property" means real property that is used or intended to be used as a residence by one or more individuals.

"Secretary" means the Secretary of Financial and Professional Regulation.

"Standards of practice" means recognized standards and codes to be used in a home inspection, as determined by the Department ~~OBRE~~ and established by rule.

(Source: P.A. 92-239, eff. 8-3-01.)

(225 ILCS 441/5-5)

(Section scheduled to be repealed on January 1, 2012)

Sec. 5-5. Necessity of license; use of title; exemptions.

(a) It ~~Beginning January 1, 2003, it~~ is unlawful for any person, including any entity, to act or assume to act as a home inspector, to engage in the business of home inspection, to develop a home inspection report, to practice as a home inspector, or to advertise or hold himself, herself, or itself

out to be a home inspector without a home inspector license issued under this Act. A person who violates this subsection is guilty of a Class A misdemeanor for the first offense and a Class 4 felony for the second and any subsequent offenses.

(b) It ~~Beginning January 1, 2003, it~~ is unlawful for any person, other than a person who holds a valid home inspector license issued pursuant to this Act, to use the title "home inspector" or any other title, designation, or abbreviation likely to create the impression that the person is licensed as a home inspector pursuant to this Act. A person who violates this subsection is guilty of a Class A misdemeanor.

(c) The licensing requirements of this Article do not apply to:

(1) any person who is employed as a code enforcement official by the State of Illinois or any unit of local government, while acting within the scope of that government employment;

(2) any person licensed by the State of Illinois while acting within the scope of his or her license; or

(3) any person engaged by the owner or lessor of residential real property for the purpose of preparing a bid or estimate as to the work necessary or the costs associated with performing home construction, home remodeling, or home repair work on the residential real property, provided such person does not hold himself or herself out, or advertise himself or herself, as being

engaged in business as a home inspector.

(Source: P.A. 92-239, eff. 8-3-01.)

(225 ILCS 441/5-10)

(Section scheduled to be repealed on January 1, 2012)

Sec. 5-10. Application for home inspector license. Every natural person who desires to obtain a home inspector license shall:

(1) apply to the Department ~~OBRE~~ on forms prescribed by the Department and provided by OBRE accompanied by the required fee; all applications shall contain the information that, in the judgment of the Department, enables the Department to pass on the qualifications of the applicant for a license to practice as a home inspector as set by rule;

(2) be at least 21 years of age;

(3) provide evidence of having attained a high school diploma or completed an equivalent course of study as determined by an examination conducted by the Illinois State Board of Education;

(4) personally take and pass an examination authorized by the Department ~~OBRE~~; and

(5) prior to taking the examination, provide evidence to the Department ~~OBRE~~ that he or she has successfully completed the prerequisite classroom hours of instruction in home inspection, as established by rule.

Applicants have 3 years after the date of the application to complete the application process. If the process has not been completed within 3 years, the application shall be denied, the fee forfeited, and the applicant must reapply and meet the requirements in effect at the time of reapplication.

(Source: P.A. 92-239, eff. 8-3-01.)

(225 ILCS 441/5-12)

(Section scheduled to be repealed on January 1, 2012)

Sec. 5-12. Application for home inspector license; entity. Every entity that is not a natural person that desires to obtain a home inspector license shall apply to the Department ~~OBRE~~ on forms provided by the Department ~~OBRE~~ and accompanied by the required fee.

Applicants have 3 years after the date of the application to complete the application process. If the process has not been completed within 3 years, the application shall be denied, the fee forfeited, and the applicant must reapply and meet the requirements in effect at the time of reapplication.

(Source: P.A. 92-239, eff. 8-3-01.)

(225 ILCS 441/5-14 new)

Sec. 5-14. Social Security Number on license application. In addition to any other information required to be contained in the application, every application for an original, renewal, reinstated, or restored license under this Act shall include

the applicant's Social Security Number.

(225 ILCS 441/5-16)

(Section scheduled to be repealed on January 1, 2012)

Sec. 5-16. Renewal of license.

(a) The expiration date and renewal period for a home inspector license issued under this Act shall be set by rule. Except as otherwise provided in subsections (b) and (c) of this Section, the holder of a license may renew the license within 90 days preceding the expiration date by:

(1) completing and submitting to the Department ~~OBRE~~ a renewal application form as provided by the Department ~~OBRE~~;

(2) paying the required fees; and

(3) providing evidence of successful completion of the continuing education requirements through courses approved by the Department ~~OBRE~~ given by education providers licensed by the Department ~~OBRE~~, as established by rule.

(b) A home inspector whose license under this Act has expired may renew the license for a period of 2 years following the expiration date by complying with the requirements of subparagraphs (1), (2), and (3) of subsection (a) of this Section and paying any late penalties established by rule.

(c) Notwithstanding subsection (b), a home inspector whose license under this Act has expired may renew the license without paying any lapsed renewal fees or late penalties if (i)

the license expired while the home inspector was on active duty with the United States Armed Services, (ii) application for renewal is made within 2 years following the termination of the military service or related education, training, or employment, and (iii) the applicant furnishes to the Department ~~OBRE~~ an affidavit that he or she was so engaged.

(d) The Department ~~OBRE~~ shall provide reasonable care and due diligence to ensure that each licensee under this Act is provided a renewal application at least 90 days prior to the expiration date, but it is the responsibility of each licensee to renew his or her license prior to its expiration date.

(Source: P.A. 92-239, eff. 8-3-01.)

(225 ILCS 441/5-17)

(Section scheduled to be repealed on January 1, 2012)

Sec. 5-17. Renewal of home inspector license; entity.

(a) The expiration date and renewal period for a home inspector license for an entity that is not a natural person shall be set by rule. The holder of a license may renew the license within 90 days preceding the expiration date by completing and submitting to the Department ~~OBRE~~ a renewal application form as provided by the Department ~~OBRE~~ and paying the required fees.

(b) An entity that is not a natural person whose license under this Act has expired may renew the license for a period of 2 years following the expiration date by complying with the

requirements of subsection (a) of this Section and paying any late penalties established by rule.

(Source: P.A. 92-239, eff. 8-3-01.)

(225 ILCS 441/5-20)

(Section scheduled to be repealed on January 1, 2012)

Sec. 5-20. Endorsement. Reciprocity; consent to jurisdiction. The Department may, in its discretion, license as a home inspector, by endorsement, on payment of the required fee, an applicant who is a home inspector licensed under the laws of another state or territory, if (i) the requirements for licensure in the state or territory in which the applicant was licensed were, at the date of his or her licensure, substantially equivalent to the requirements in force in this State on that date or (ii) there were no requirements in force in this State on the date of his or her licensure and the applicant possessed individual qualifications on that date that are substantially similar to the requirements under this Act. The Department may adopt any rules necessary to implement this Section.

Applicants have 3 years after the date of application to complete the application process. If the process has not been completed within 3 years, the application shall be denied, the fee forfeited, and the applicant must reapply and meet the requirements in effect at the time of reapplication.

(a) A nonresident who holds a valid home inspector license

~~issued to him or her by the proper licensing authority of a state, territory, possession of the United States, or the District of Columbia that has licensing requirements equal to or substantially equivalent to the requirements of the State of Illinois and otherwise meets the requirements for licensure may obtain a license without examination, provided that:~~

~~(1) OBRE has entered into a valid reciprocal agreement with the proper licensing authority of the state, territory, or possession of the United States or the District of Columbia;~~

~~(2) the applicant provides OBRE with a certificate of good standing from the applicant's licensing authority;~~

~~(3) the applicant completes and submits an application provided by OBRE; and~~

~~(4) the applicant pays all applicable fees required under this Act.~~

~~(b) A nonresident applicant shall file an irrevocable consent form with OBRE authorizing that actions may be commenced against the applicant or nonresident licensee in a court of competent jurisdiction in the State of Illinois by the service of summons, process, or other pleading authorized by law upon the Commissioner. The consent shall stipulate and agree that service of the summons, process, or pleading upon the Commissioner shall be taken and held in all courts to be valid and binding as if actual service had been made upon the nonresident licensee in Illinois. If a summons, process, or~~

~~other pleading is served upon the Commissioner, it shall be by duplicate copies, one of which shall be retained by OBRE and the other shall be immediately forwarded by certified or registered mail to the last known address of the nonresident licensee against whom the summons, process, or other pleading is directed.~~

(Source: P.A. 92-239, eff. 8-3-01.)

(225 ILCS 441/5-45)

(Section scheduled to be repealed on January 1, 2012)

Sec. 5-45. Fees. The Department ~~OBRE~~ shall establish rules for fees to be paid by applicants and licensees to cover the reasonable costs of the Department ~~OBRE~~ in administering and enforcing the provisions of this Act. The Department ~~OBRE~~ may also establish rules for general fees to cover the reasonable expenses of carrying out other functions and responsibilities under this Act.

(Source: P.A. 92-239, eff. 8-3-01.)

(225 ILCS 441/10-5)

(Section scheduled to be repealed on January 1, 2012)

Sec. 10-5. Standards of practice. All persons licensed under this Act must comply with standards of professional home inspection adopted by the Department ~~OBRE~~ and established by rule. The Department ~~may~~ ~~OBRE shall~~ consider nationally recognized standards and codes prior to adopting the rules for

the standards of practice.

(Source: P.A. 92-239, eff. 8-3-01.)

(225 ILCS 441/10-10)

(Section scheduled to be repealed on January 1, 2012)

Sec. 10-10. Retention of records. A person licensed under this Act shall retain the original or a true and exact copy of all written contracts engaging his or her services as a home inspector and all home inspection reports, including any supporting data used to develop the home inspection report, for a period of 5 years or 2 years after the final disposition of any judicial proceeding, which includes any appeal, in which testimony was given, whichever is longer.

(Source: P.A. 92-239, eff. 8-3-01.)

(225 ILCS 441/15-5)

(Section scheduled to be repealed on January 1, 2012)

Sec. 15-5. Unlicensed practice; civil penalty; ~~injunctive relief~~.

(a) Any person who practices, offers to practice, attempts to practice, or holds himself or herself out to practice home inspection or as a home inspector without being licensed under this Act ~~violates Section 5-5 of this Act~~ shall, in addition to any other penalty provided by law, pay a civil penalty to the Department ~~OBRE~~ in an amount not to exceed \$25,000 ~~\$10,000~~ for each violation of this Act as determined by the Department

~~Commissioner~~. The civil penalty shall be assessed by the Department ~~Commissioner~~ after a hearing is held in accordance with the provisions of this Act.

(b) The Department ~~OBRE~~ has the authority and power to investigate any unlicensed activity ~~that may violate this Act or the rules adopted under this Act.~~

(c) A civil penalty shall be paid within 60 days after the effective date of the order imposing the civil penalty. The Department ~~OBRE~~ may petition the circuit court for a judgment to enforce the collection of the penalty. Any civil penalties collected under this Act shall be made payable to the Department ~~Office of Banks and Real Estate~~ and deposited into the Home Inspector Administration Fund. ~~In addition to or in lieu of the imposition of a civil penalty, OBRE may report a violation of this Act or the failure or refusal to comply with an order of OBRE to the Attorney General or the appropriate State's Attorney.~~

~~(d) Practicing as a home inspector without holding a valid license as required under this Act is declared to be adverse to the public welfare, to constitute a public nuisance, and to cause irreparable harm to the public welfare. The Commissioner, the Attorney General, or the State's Attorney of any county in the State may maintain an action for injunctive relief in the name of the People of the State of Illinois in any circuit court to enjoin any person from engaging in such practice.~~

~~Upon the filing of a verified petition in a circuit court,~~

~~the court, if satisfied by affidavit or otherwise that a person has been engaged in the practice of home inspections without a valid license, may enter a temporary restraining order without notice or bond enjoining the defendant from further practice. The showing of non licensure, by affidavit or otherwise, is sufficient for the issuance of a temporary injunction. A copy of the verified complaint shall be served upon the defendant and the proceeding shall be conducted as in other civil cases except as modified by this Section. If it is established that the defendant has been or is engaged in unlawful practice, the court may enter an order or judgment perpetually enjoining the defendant from further unlawful practice. In all proceedings under this Section, the court, in its discretion, may apportion the costs among the parties interested in the action, including the cost of filing the complaint, service of process, witness fees and expenses, court reporter charges, and reasonable attorneys' fees. These injunction proceedings shall be in addition to, and not in lieu of, all penalties and other remedies provided in this Act.~~

(Source: P.A. 92-239, eff. 8-3-01.)

(225 ILCS 441/15-10)

(Section scheduled to be repealed on January 1, 2012)

Sec. 15-10. Grounds for disciplinary action.

(a) The Department may refuse to issue or renew, or may revoke, suspend, place on probation, reprimand, or take other

disciplinary or non-disciplinary action as the Department may deem appropriate, including imposing fines not to exceed \$25,000 for each violation, with regard to any license for any one or combination of the following: ~~The Office of Banks and Real Estate may suspend, revoke, or refuse to issue or renew a license, and may reprimand, place on probation or administrative supervision, or otherwise discipline a licensee, including imposing conditions limiting the scope, nature, or extent of the home inspection practice of a licensee and may impose a civil penalty not to exceed \$10,000 upon a licensee, for one or any combination of the following:~~

(1) Fraud or misrepresentation in applying for, or procuring a license under this Act or in connection with applying for renewal of a license under this Act. ~~Procuring or attempting to procure a license by knowingly making a false statement, submitting false information, making any form of fraud or misrepresentation, or refusing to provide complete information in response to a question in an application for licensure.~~

(2) Failing to meet the minimum qualifications for licensure as a home inspector established by this Act.

(3) Paying money, other than for the fees provided for by this Act, or anything of value to ~~a member of the Board~~ or an employee of the Department ~~Office of Banks and Real Estate~~ to procure licensure under this Act.

(4) Conviction by plea of guilty or nolo contendere,

finding of guilt, jury verdict, or entry of judgment or by sentencing of any crime, including, but not limited to, convictions, preceding sentences of supervision, conditional discharge, or first offender probation, under the laws of any jurisdiction of the United States: (i) that is a felony; (ii) that is a misdemeanor, an essential element of which is dishonesty, or that is directly related to the practice of the profession; or (iii) that is a crime that subjects the licensee to compliance with the requirements of the Sex Offender Registration Act. Being convicted of a felony in any state or federal court; of any crime, an essential element of which is dishonesty, fraud, theft, or embezzlement; of obtaining money, property, or credit by false pretenses; or of any other crime that is reasonably related to the practice of home inspection.

(5) Committing an act or omission involving dishonesty, fraud, or misrepresentation with the intent to substantially benefit the licensee or another person or with the intent to substantially injure another person.

(6) Violating a provision or standard for the development or communication of home inspections as provided in Section 10-5 of this Act or as defined in the rules.

(7) Failing or refusing ~~without good cause~~ to exercise reasonable diligence in the development, reporting, or communication of a home inspection report, as defined by

this Act or the rules.

(8) Violating a provision of this Act or the rules.

(9) Having been disciplined by another state, the District of Columbia, a territory, a foreign nation, a governmental agency, or any other entity authorized to impose discipline if at least one of the grounds for that discipline is the same as or substantially ~~the~~ equivalent to ~~of~~ one of the grounds for which a licensee may be disciplined under this Act.

(10) Engaging in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public.

(11) Accepting an inspection assignment when the employment itself is contingent upon the home inspector reporting a predetermined analysis or opinion, or when the fee to be paid is contingent upon the analysis, opinion, or conclusion reached or upon the consequences resulting from the home inspection assignment.

(12) Developing home inspection opinions or conclusions based on the race, color, religion, sex, national origin, ancestry, age, marital status, family status, physical or mental handicap, or unfavorable military discharge, as defined under the Illinois Human Rights Act, of the prospective or present owners or occupants of the area or property under home inspection.

(13) Being adjudicated liable in a civil proceeding on

grounds of fraud, misrepresentation, or deceit. In a disciplinary proceeding based upon a finding of civil liability, the home inspector shall be afforded an opportunity to present mitigating and extenuating circumstances, but may not collaterally attack the civil adjudication.

(14) Being adjudicated liable in a civil proceeding for violation of a State or federal fair housing law.

(15) Engaging in misleading or untruthful advertising or using a trade name or insignia of membership in a home inspection organization of which the licensee is not a member.

(16) Failing, within 30 days, to provide information in response to a written request made by the Department. ~~to fully cooperate with an OBRE investigation by knowingly making a false statement, submitting false or misleading information, or refusing to provide complete information in response to written interrogatories or a written request for documentation within 30 days of the request.~~

(17) Failing to include within the home inspection report the home inspector's license number and the date of expiration of the license. All home inspectors providing significant contribution to the development and reporting of a home inspection must be disclosed in the home inspection report. It is a violation of this Act for a home inspector to sign a home inspection report knowing that a

person providing a significant contribution to the report has not been disclosed in the home inspection report.

(18) Advising a client as to whether the client should or should not engage in a transaction regarding the residential real property that is the subject of the home inspection.

(19) Performing a home inspection in a manner that damages or alters the residential real property that is the subject of the home inspection without the consent of the owner.

(20) Performing a home inspection when the home inspector is providing or may also provide other services in connection with the residential real property or transaction, or has an interest in the residential real property, without providing prior written notice of the potential or actual conflict and obtaining the prior consent of the client as provided by rule.

(21) Aiding or assisting another person in violating any provision of this Act or rules adopted under this Act.

(22) Inability to practice with reasonable judgment, skill, or safety as a result of habitual or excessive use or addiction to alcohol, narcotics, stimulants, or any other chemical agent or drug.

(23) A finding by the Department that the licensee, after having his or her license placed on probationary status, has violated the terms of probation.

(24) Willfully making or filing false records or reports in his or her practice, including, but not limited to, false records filed with State agencies or departments.

(25) Charging for professional services not rendered, including filing false statements for the collection of fees for which services are not rendered.

(26) Practicing under a false or, except as provided by law, an assumed name.

(27) Cheating on or attempting to subvert the licensing examination administered under this Act.

(b) The Department ~~Office of Banks and Real Estate~~ may suspend, revoke, or refuse to issue or renew an education provider's license, may reprimand, place on probation, or otherwise discipline an education provider licensee, and may suspend or revoke the course approval of any course offered by an education provider, for any of the following:

(1) Procuring or attempting to procure licensure by knowingly making a false statement, submitting false information, making any form of fraud or misrepresentation, or refusing to provide complete information in response to a question in an application for licensure.

(2) Failing to comply with the covenants certified to on the application for licensure as an education provider.

(3) Committing an act or omission involving dishonesty, fraud, or misrepresentation or allowing any

such act or omission by any employee or contractor under the control of the education provider.

(4) Engaging in misleading or untruthful advertising.

(5) Failing to retain competent instructors in accordance with rules adopted under this Act.

(6) Failing to meet the topic or time requirements for course approval as the provider of a pre-license curriculum course or a continuing education course.

(7) Failing to administer an approved course using the course materials, syllabus, and examinations submitted as the basis of the course approval.

(8) Failing to provide an appropriate classroom environment for presentation of courses, with consideration for student comfort, acoustics, lighting, seating, workspace, and visual aid material.

(9) Failing to maintain student records in compliance with the rules adopted under this Act.

(10) Failing to provide a certificate, transcript, or other student record to the Department ~~OBRE~~ or to a student as may be required by rule.

(11) Failing to fully cooperate with a Department ~~an~~ ~~OBRE~~ investigation by knowingly making a false statement, submitting false or misleading information, or refusing to provide complete information in response to written interrogatories or a written request for documentation within 30 days of the request.

(c) In appropriate cases, the Department ~~OBRE~~ may resolve a complaint against a licensee through the issuance of a Consent to Administrative Supervision order. A licensee subject to a Consent to Administrative Supervision order shall be considered by the Department ~~OBRE~~ as an active licensee in good standing. This order shall not be reported as or considered by the Department ~~OBRE~~ to be a discipline of the licensee. The records regarding an investigation and a Consent to Administrative Supervision order shall be considered confidential and shall not be released by the Department ~~OBRE~~ except as mandated by law. The complainant shall be notified that his or her complaint has been resolved by a Consent to Administrative Supervision order.

(d) The Department may refuse to issue or may suspend without hearing, as provided for in the Code of Civil Procedure, the license of any person who fails to file a tax return, to pay the tax, penalty, or interest shown in a filed tax return, or to pay any final assessment of tax, penalty, or interest, as required by any tax Act administered by the Illinois Department of Revenue, until such time as the requirements of the tax Act are satisfied in accordance with subsection (g) of Section 2105-15 of the Civil Administrative Code of Illinois.

(e) The Department shall deny a license or renewal authorized by this Act to a person who has defaulted on an educational loan or scholarship provided or guaranteed by the

Illinois Student Assistance Commission or any governmental agency of this State in accordance with item (5) of subsection (g) of Section 2105-15 of the Civil Administrative Code of Illinois.

(f) In cases where the Department of Healthcare and Family Services has previously determined that a licensee or a potential licensee is more than 30 days delinquent in the payment of child support and has subsequently certified the delinquency to the Department, the Department may refuse to issue or renew or may revoke or suspend that person's license or may take other disciplinary action against that person based solely upon the certification of delinquency made by the Department of Healthcare and Family Services in accordance with item (5) of subsection (g) of Section 2105-15 of the Civil Administrative Code of Illinois.

(g) The determination by a circuit court that a licensee is subject to involuntary admission or judicial admission, as provided in the Mental Health and Developmental Disabilities Code, operates as an automatic suspension. The suspension will end only upon a finding by a court that the patient is no longer subject to involuntary admission or judicial admission and the issuance of a court order so finding and discharging the patient.

(h) In enforcing this Act, the Department, upon a showing of a possible violation, may compel an individual licensed to practice under this Act, or who has applied for licensure under

this Act, to submit to a mental or physical examination, or both, as required by and at the expense of the Department. The Department may order the examining physician to present testimony concerning the mental or physical examination of the licensee or applicant. No information shall be excluded by reason of any common law or statutory privilege relating to communications between the licensee or applicant and the examining physician. The examining physician shall be specifically designated by the Department. The individual to be examined may have, at his or her own expense, another physician of his or her choice present during all aspects of this examination. The examination shall be performed by a physician licensed to practice medicine in all its branches. Failure of an individual to submit to a mental or physical examination, when directed, shall result in an automatic suspension without hearing.

A person holding a license under this Act or who has applied for a license under this Act, who, because of a physical or mental illness or disability, including, but not limited to, deterioration through the aging process or loss of motor skill, is unable to practice the profession with reasonable judgment, skill, or safety, may be required by the Department to submit to care, counseling, or treatment by physicians approved or designated by the Department as a condition, term, or restriction for continued, reinstated, or renewed licensure to practice. Submission to care, counseling,

or treatment as required by the Department shall not be considered discipline of a license. If the licensee refuses to enter into a care, counseling, or treatment agreement or fails to abide by the terms of the agreement, the Department may file a complaint to revoke, suspend, or otherwise discipline the license of the individual. The Secretary may order the license suspended immediately, pending a hearing by the Department. Fines shall not be assessed in disciplinary actions involving physical or mental illness or impairment.

In instances in which the Secretary immediately suspends a person's license under this Section, a hearing on that person's license must be convened by the Department within 15 days after the suspension and completed without appreciable delay. The Department shall have the authority to review the subject individual's record of treatment and counseling regarding the impairment to the extent permitted by applicable federal statutes and regulations safeguarding the confidentiality of medical records.

An individual licensed under this Act and affected under this Section shall be afforded an opportunity to demonstrate to the Department that he or she can resume practice in compliance with acceptable and prevailing standards under the provisions of his or her license.

(Source: P.A. 92-239, eff. 8-3-01.)

(Section scheduled to be repealed on January 1, 2012)

Sec. 15-15. Investigation; notice; hearing. The Department may investigate the actions of any applicant or of any person or persons rendering or offering to render home inspection services or any person holding or claiming to hold a license as a home inspector. The Department shall, before refusing to issue or renew a license or to discipline a licensee pursuant to Section 15-10, at least 30 days prior to the date set for the hearing, (i) notify the accused in writing, of the charges made and the time and place for the hearing on the charges, (ii) direct him or her to file a written answer with the Department under oath within 20 days after the service of the notice, and (iii) inform the applicant or licensee that failure to file an answer will result in a default judgment being entered against the applicant or licensee. At the time and place fixed in the notice, the Department shall proceed to hear the charges and the parties of their counsel shall be accorded ample opportunity to present any pertinent statements, testimony, evidence, and arguments. The Department may continue the hearing from time to time. In case the person, after receiving the notice, fails to file an answer, his or her license, may, in the discretion of the Department, be revoked, suspended, placed on probationary status, or the Department may take whatever disciplinary actions considered proper, including limiting the scope, nature, or extent of the person's practice or the imposition of a fine, without a hearing, if the

act or acts charged constitute sufficient grounds for that action under the Act. The written notice may be served by personal delivery or by certified mail to the accused's address of record.

~~(a) Upon the request of the Office of Banks and Real Estate or the Board, or upon a complaint in writing of a person setting forth facts that, if proven, would constitute grounds for suspension, revocation, or other disciplinary action against a licensee or applicant for licensure, the Office of Banks and Real Estate shall investigate the actions of the licensee or applicant so accused.~~

~~(b) Formal disciplinary proceedings shall commence upon the issuance of a written complaint detailing the charges that are the basis of the disciplinary action and delivery of the detailed complaint to the address of record of the licensee or applicant. OBRE shall notify the licensee or applicant to file a verified written answer within 20 days after the service of the notice and complaint. The notification shall inform the licensee or applicant that he or she has a right to be heard in person or by legal counsel; that the hearing will be afforded not sooner than 30 days after receipt of the answer to the specific charges; that failure to file an answer will result in a default being entered against the licensee or applicant; and that the license may be suspended, revoked, or placed on probationary status and other disciplinary action may be taken pursuant to this Act, including limiting the scope, nature, or~~

~~extent of the licensee's practice. If the licensee or applicant fails to file an answer after receiving notice, his or her license may, at the discretion of the Office of Banks and Real Estate, be suspended, revoked, or placed on probationary status and the Office of Banks and Real Estate may take whatever disciplinary action it deems proper, including limiting the scope, nature, or extent of the person's practice, without a hearing.~~

~~(c) At the time and place fixed in the notice, the Board shall conduct a hearing of the charges, providing both the accused person and the complainant ample opportunity to present in person or by counsel such statements, testimony, evidence, and arguments as may be pertinent to the charges or to any defense thereto.~~

~~(d) The Board shall present to the Commissioner a written report of its findings and recommendations. A copy of the report shall be served upon the licensee or applicant, either personally or by certified mail. Within 20 days after the service, the licensee or applicant may present the Commissioner with a motion in writing for either a rehearing, a proposed finding of fact, a conclusion of law, or an alternative sanction, and shall specify the particular grounds for the request. If the accused shall order and pay for a transcript of the record as provided in this Act, the time elapsing thereafter and before the transcript is ready for delivery to the accused shall not be counted as part of the 20 days. If the~~

~~Commissioner is not satisfied that substantial justice has been done, the Commissioner may order a rehearing by the Board or other special committee appointed by the Commissioner, may remand the matter to the Board for their reconsideration of the matter based on the pleadings and evidence presented to the Board, or may enter a final order in contravention of the Board's recommendation. In all instances, under this Act, in which the Board has rendered a recommendation to the Commissioner with respect to a particular licensee or applicant, the Commissioner, if he or she disagrees with the recommendation of the Board, shall file with the Board and provide to the licensee or applicant the Commissioner's specific written reasons for disagreement with the Board. The reasons shall be filed within 60 days of the Board's recommendation to the Commissioner and prior to any contrary action. At the expiration of the time specified for filing a motion for a rehearing, the Commissioner shall have the right to take any of the actions specified in this paragraph. Upon the suspension or revocation of a license, the licensee shall be required to surrender his or her license to OBRE, and upon failure or refusal to do so, OBRE shall have the right to seize the license.~~

~~(c) The Office of Banks and Real Estate has the power to issue subpoenas and subpoenas duces tecum to bring before it any person in this State, to take testimony, or to require production of any records relevant to an inquiry or hearing by~~

~~the Board in the same manner as prescribed by law in judicial proceedings in the courts of this State. In a case of refusal of a witness to attend, testify, or to produce books or papers concerning a matter upon which he or she might be lawfully examined, the circuit court of the county where the hearing is held, upon application of the Office of Banks and Real Estate or any party to the proceeding, may compel obedience by proceedings as for contempt of court.~~

~~(f) Any license that is suspended indefinitely or revoked may not be restored for a minimum period of 2 years. After the 2 year period, OBRE may restore the license without examination, upon the written recommendation of the Board.~~

(Source: P.A. 92-239, eff. 8-3-01.)

(225 ILCS 441/15-20)

(Section scheduled to be repealed on January 1, 2012)

Sec. 15-20. Administrative Review Law; certification fees; Illinois Administrative Procedure Act.

(a) All final administrative decisions of the Department Commissioner under this Act are subject to judicial review pursuant to the provisions of the Administrative Review Law and the rules adopted pursuant thereto. The term "administrative decision" has the meaning ascribed to it in Section 3-101 of the Administrative Review Law.

(b) The Department shall not be required to certify any record to the court or file any answer in court or otherwise

appear in any court in a judicial review proceeding, unless and until the Department has received from the plaintiff payment of the costs of furnishing and certifying the record, which costs shall be determined by the Department. Exhibits shall be certified without cost. Failure on the part of the plaintiff to file a receipt in court is grounds for dismissal of the action.
~~OBRE shall not be required to certify any record, file any answer, or otherwise appear unless the party filing the administrative review complaint pays the certification fee to OBRE as provided by rule. Failure on the part of the plaintiff to make such a deposit shall be grounds for dismissal of the action.~~

(c) The Illinois Administrative Procedure Act is hereby expressly adopted and incorporated herein. In the event of a conflict between this Act and the Illinois Administrative Procedure Act, this Act shall control.

(Source: P.A. 92-239, eff. 8-3-01; 92-651, eff. 7-11-02.)

(225 ILCS 441/15-25)

(Section scheduled to be repealed on January 1, 2012)

Sec. 15-25. Temporary suspension. The Secretary
~~Commissioner~~ may temporarily suspend the license of a licensee without a hearing, while instituting a proceeding for a hearing as provided for in Section 15-15 of this Act, if the Secretary
~~Commissioner~~ finds that the evidence indicates that the public interest, safety, or welfare imperatively requires emergency

action. In the event that the Secretary ~~Commissioner~~ temporarily suspends the license without a hearing ~~before the Board~~, a hearing shall be held within 30 days after the suspension has occurred. The suspended licensee may seek a continuance of the hearing during which the suspension shall remain in effect. The proceeding shall be concluded without appreciable delay.

(Source: P.A. 92-239, eff. 8-3-01.)

(225 ILCS 441/15-35)

(Section scheduled to be repealed on January 1, 2012)

Sec. 15-35. Signature of the Secretary ~~Commissioner~~. An order of revocation or suspension or a certified copy of the order, bearing the seal of the Department ~~OBPE~~ and purporting to be signed by the Secretary ~~Commissioner~~, shall be prima facie proof that:

(1) the signature is the genuine signature of the Secretary ~~Commissioner~~; and

(2) the Secretary ~~Commissioner~~ is duly appointed and qualified. ~~and~~

~~(3) the Board and its members are qualified.~~

This proof may be rebutted.

(Source: P.A. 92-239, eff. 8-3-01.)

(225 ILCS 441/15-55)

(Section scheduled to be repealed on January 1, 2012)

Sec. 15-55. Returned checks; penalty fee; termination. A person who delivers a check or other payment to the Department ~~OBRE~~ that is returned to the Department ~~OBRE~~ unpaid by the financial institution upon which it was drawn shall pay to the Department ~~OBRE~~, in addition to the amount already owed, a penalty fee of \$50. The Department ~~OBRE~~ shall notify the person, by certified mail return receipt requested, that his or her check or payment was returned and that the person shall pay to the Department ~~OBRE~~ by certified check or money order the amount of the returned check plus a \$50 penalty fee within 30 calendar days after the date of the notification. If, after the expiration of 30 calendar days of the notification, the person has failed to remit the necessary funds and penalty, the Department ~~OBRE~~ shall automatically terminate the license or deny the application without hearing. If the returned check or other payment was for issuance of a license under this Act and that person practices as a home inspector, that person may be subject to discipline for unlicensed practice as provided in this Act. If, after termination or denial, the person seeks a license, he or she shall petition the Department ~~OBRE~~ for restoration and he or she may be subject to additional discipline or fines. The Secretary ~~Commissioner~~ may waive the penalties or fines due under this Section in individual cases where the Secretary ~~Commissioner~~ finds that the penalties or fines would be unreasonable or unnecessarily burdensome.

(Source: P.A. 92-239, eff. 8-3-01.)

(225 ILCS 441/15-60)

(Section scheduled to be repealed on January 1, 2012)

Sec. 15-60. Violations; injunction; cease ~~Cease~~ and desist orders.

(a) If any person violates a provision of this Act, the Secretary may, in the name of the People of the State of Illinois, through the Attorney General of the State of Illinois or the State's Attorney in the county in which the offense occurs, petition for an order enjoining the violation or for an order enforcing compliance with this Act. Upon the filing of a verified petition in court, the court may issue a temporary restraining order, without notice or bond, and may preliminarily and permanently enjoin the violation. If it is established that the person has violated or is violating the injunction, the court may punish the offender for contempt of court. Proceedings under this Section shall be in addition to, and not in lieu of, all other remedies and penalties provided by this Act.

(b) If any person practices as a home inspector or holds himself or herself out as a home inspector without being licensed under the provisions of this Act, then the Secretary, any licensed home inspector, any interested party, or any person injured thereby may petition for relief as provided in subsection (a) of this Section or may apply to the circuit court of the county in which the violation or some part thereof

occurred, or in which the person complained of has his or her principal place of business or resides, to prevent the violation. The court has jurisdiction to enforce obedience by injunction or by other process restricting the person complained of from further violation and enjoining upon him or her obedience.

(c) Whoever knowingly practices or offers to practice home inspection in this State without a license for that purpose shall be guilty of a Class A misdemeanor for the first offense and shall be guilty of a Class 4 felony for the second and any subsequent offense.

(d) Whenever, in the opinion of the Department, a person violates any provision of this Act, the Department may issue a rule to show cause why an order to cease and desist should not be entered against that person. The rule shall clearly set forth the grounds relied upon by the Department and shall provide a period of 7 days from the date of the rule to file an answer to the satisfaction of the Department. Failure to answer to the satisfaction of the Department shall cause an order to cease and desist to be issued.

~~OBRE may issue, cease and desist orders to persons who engage in activities prohibited by this Act. Any person in violation of a cease and desist order issued by OBRE is subject to all of the penalties provided by law.~~

(Source: P.A. 92-239, eff. 8-3-01.)

(225 ILCS 441/15-65 new)

Sec. 15-65. Restoration of license from discipline. At any time after the successful completion of a term of indefinite probation, suspension, or revocation of a license, the Department may restore the license to the licensee, unless after an investigation and a hearing the Secretary determines that restoration is not in the public interest. No person or entity whose license, certificate, or authority has been revoked as authorized in this Act may apply for restoration of that license, certification, or authority until such time as provided for in the Civil Administrative Code of Illinois.

(225 ILCS 441/15-70 new)

Sec. 15-70. Confidentiality. All information collected by the Department in the course of an examination or investigation of a licensee or applicant, including, but not limited to, any complaint against a licensee filed with the Department and information collected to investigate any such complaint, shall be maintained for the confidential use of the Department and shall not be disclosed. The Department may not disclose the information to anyone other than law enforcement officials, other regulatory agencies that have an appropriate regulatory interest as determined by the Secretary, or to a party presenting a lawful subpoena to the Department. Information and documents disclosed to a federal, State, county, or local law enforcement agency shall not be disclosed by the agency for any

purpose to any other agency or person. A formal complaint filed against a licensee by the Department or any order issued by the Department against a licensee or applicant shall be a public record, except as otherwise prohibited by law.

(225 ILCS 441/20-5)

(Section scheduled to be repealed on January 1, 2012)

Sec. 20-5. Education provider.

(a) Only ~~Beginning January 1, 2002, only~~ education providers licensed by the Department ~~OBRE~~ may provide the pre-license and continuing education courses required for licensure under this Act.

(b) A person or entity seeking to be licensed as an education provider under this Act shall provide satisfactory evidence of the following:

- (1) a sound financial base for establishing, promoting, and delivering the necessary courses;
- (2) a sufficient number of qualified instructors;
- (3) adequate support personnel to assist with administrative matters and technical assistance;
- (4) a written policy dealing with procedures for management of grievances and fee refunds;
- (5) a qualified school administrator, who is responsible for the administration of the school, courses, and the actions of the instructors; and
- (6) any other requirements provided by rule.

(c) All applicants for an education provider's license shall make initial application to the Department ~~OBRE~~ on forms provided by the Department ~~OBRE~~ and pay the appropriate fee as provided by rule. The term, expiration date, and renewal of an education provider's license shall be established by rule.

(d) An education provider shall provide each successful course participant with a certificate of completion signed by the school administrator. The format and content of the certificate shall be specified by rule.

(e) All education providers shall provide to the Department ~~OBRE~~ a monthly roster of all successful course participants as provided by rule.

(Source: P.A. 92-239, eff. 8-3-01.)

(225 ILCS 441/20-10)

(Section scheduled to be repealed on January 1, 2012)

Sec. 20-10. Course approval.

(a) Only courses that are approved by the Department ~~OBRE~~ and offered by licensed education providers shall be used to meet the requirements of this Act and rules.

(b) An education provider licensed under this Act may submit courses to the Department ~~OBRE~~ for approval. The criteria, requirements, and fees for courses shall be established by rule.

(c) For each course approved, the Department ~~OBRE~~ shall issue a certificate of course approval to the education

provider. The term, expiration date, and renewal of a course approval shall be established by rule.

(Source: P.A. 92-239, eff. 8-3-01.)

(225 ILCS 441/25-5)

(Section scheduled to be repealed on January 1, 2012)

Sec. 25-5. Home Inspector Administration Fund; surcharge.

(a) The Home Inspector Administration Fund is created as a special fund in the State Treasury. All fees, fines, and penalties received by the Department ~~OBRE~~ under this Act shall be deposited into the Home Inspector Administration Fund. All earnings attributable to investment of funds in the Home Inspector Administration Fund shall be credited to the Home Inspector Administration Fund. Subject to appropriation, the moneys in the Home Inspector Administration Fund shall be appropriated to the Department ~~OBRE~~ for the expenses incurred by the Department ~~OBRE~~ and the ~~Board~~ in the administration of this Act.

(b) (Blank). ~~The State Comptroller and State Treasurer shall transfer \$150,000 from the Real Estate License Administration Fund to the Home Inspector Administration Fund on July 1, 2002.~~

~~The State Treasurer shall transfer \$50,000 from the Home Inspector Administration Fund to the Real Estate License Administration Fund on July 1, 2003, July 1, 2004, and July 1, 2005; except that if there is a sufficient fund balance in the~~

~~Home Inspector Administration Fund, the Commissioner may recommend the acceleration of any of these repayment transfers to the State Comptroller and State Treasurer, who may, in their discretion, accelerate the transfers in accordance with the Commissioner's recommendation.~~

~~(c) (Blank). Until a total of \$150,000 has been transferred to the Real Estate License Administration Fund from the Home Inspector Administration Fund under subsection (b), each initial applicant for a license under this Act shall pay to OBRE a surcharge of \$150 in addition to the license fees otherwise required under this Act.~~

(c-5) Moneys in the Home Inspection Administration Fund may be transferred to the Professions Indirect Cost Fund, as authorized under Section 2105-300 of the Department of Professional Regulation Law of the Civil Administrative Code of Illinois.

(d) Upon the completion of any audit of the Department ~~OBRE~~, as prescribed by the Illinois State Auditing Act, that includes an audit of the Home Inspector Administration Fund, the Department ~~OBRE~~ shall make the audit report open to inspection by any interested person.

(Source: P.A. 94-91, eff. 7-1-05.)

(225 ILCS 441/25-15)

(Section scheduled to be repealed on January 1, 2012)

Sec. 25-15. Liaison; duties. The Secretary ~~Commissioner~~

shall appoint an employee of the Department ~~OBRE~~ to:

(1) (blank) ~~serve as a liaison to and as Chairperson of the Home Inspector Advisory Board, without vote;~~

(2) be the direct liaison between the Department, peer review advisors ~~OBRE~~, the profession, home inspectors, and related industry organizations and associations; and

(3) prepare and circulate to licensees such educational and informational material as the Department ~~OBRE~~ deems necessary for providing guidance or assistance to licensees.

(Source: P.A. 92-239, eff. 8-3-01.)

(225 ILCS 441/25-17 new)

Sec. 25-17. Peer review advisors. The Department may contract with licensees meeting qualifications established by the Department, on a full or part-time basis, to serve as peer review advisors for complaints and alleged violations of the Act. A peer review advisor is authorized to investigate and determine the facts of a complaint. The peer review advisor may, at the direction of the Department, revise the licensing examination, review the training and qualifications of applicants, and interview witnesses, the complainant and any licensees involved in the alleged matter.

(225 ILCS 441/25-20)

(Section scheduled to be repealed on January 1, 2012)

Sec. 25-20. Powers ~~OBRE;~~ ~~powers~~ and duties of the Department. The Department ~~Office of Banks and Real Estate~~ shall exercise the powers and duties prescribed by the Civil Administrative Code of Illinois for the administration of licensing acts and shall exercise such other powers and duties as are prescribed by this Act for the administration of this Act. ~~OBRE may contract with third parties for services necessary for the proper administration of this Act, including, without limitation, investigators with the proper knowledge, training, and skills to properly investigate complaints against home inspectors.~~

(Source: P.A. 92-239, eff. 8-3-01.)

(225 ILCS 441/25-25)

(Section scheduled to be repealed on January 1, 2012)

Sec. 25-25. Rules. The Department ~~OBRE, after considering any recommendations of the Board,~~ shall adopt any rules to implement, interpret, or make specific the provisions and purposes of this Act that may be necessary for the administration, implementation, and enforcement of this Act.

(Source: P.A. 92-239, eff. 8-3-01.)

(225 ILCS 441/25-27 new)

Sec. 25-27. Subpoenas; depositions; oaths.

(a) The Department may subpoena and bring before it any person to take oral or written testimony or compel the

production of any books, papers, records, or any other documents the Secretary or his or her designee deems relevant or material to any investigation or hearing conducted by the Department with the same fees and in the same manner as prescribed in civil cases in the courts of this State.

(b) Any circuit court, upon the application of the licensee or the Department, may order the attendance and testimony of witnesses and the production of relevant documents, files, records, books, and papers in connection with any hearing or investigation. The circuit court may compel obedience to its order by proceedings for contempt.

(c) The Secretary, the hearing officer, any member of the Board, or a certified shorthand court reporter may administer oaths at any hearing the Department conducts. Notwithstanding any other statute or Department rule to the contrary, all requests for testimony, production of documents, or records shall be in accordance with this Act.

(225 ILCS 441/5-15 rep.)

(225 ILCS 441/15-40 rep.)

(225 ILCS 441/15-45 rep.)

(225 ILCS 441/15-50 rep.)

(225 ILCS 441/25-10 rep.)

Section 15. The Home Inspector License Act is amended by repealing Sections 5-15, 15-40, 15-45, 15-50, and 25-10.

Section 99. Effective date. This Act takes effect upon

Public Act 097-0226

SB1806 Enrolled

LRB097 07033 CEL 47126 b

becoming law.

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