

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
94th General Assembly
Regular Session, 2023

A Bill

SENATE BILL 319

By: Senator Irvin
By: Representatives L. Johnson, Wardlaw

For An Act To Be Entitled

AN ACT TO CHANGE THE NAME OF THE ARKANSAS HOME INSPECTOR REGISTRATION BOARD TO THE ARKANSAS HOME INSPECTOR LICENSING BOARD TO BETTER REFLECT ITS DUTIES AND RESPONSIBILITIES; TO MAKE CORRESPONDING TECHNICAL CHANGES; TO CLARIFY BOARD MEMBERSHIP AND SUCCESSION; TO PERMIT RENEWAL NOTICES TO BE SENT BY ELECTRONIC MAIL; AND FOR OTHER PURPOSES.

Subtitle

TO CHANGE THE NAME OF THE ARKANSAS HOME INSPECTOR REGISTRATION BOARD; TO MAKE CORRESPONDING TECHNICAL CHANGES; TO CLARIFY BOARD MEMBERSHIP AND SUCCESSION; AND TO PERMIT RENEWAL NOTICES TO BE SENT BY ELECTRONIC MAIL.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 17-52-301 is amended to read as follows:
17-52-301. Title.

This subchapter shall be known and may be cited as the “Arkansas Home Inspectors ~~Registration~~ Licensing Act”.

SECTION 2. Arkansas Code § 17-52-302(a)(3), concerning purpose and intent of the Arkansas Home Inspectors Registration Act, is amended to read as follows:



(3) That this subchapter apply to and govern all persons who practice home inspection in Arkansas whether they are ~~registered~~ licensed under its provisions or not.

SECTION 3. Arkansas Code § 17-52-302(b), concerning purpose and intent of the Arkansas Home Inspectors Registration Act, is amended to read as follows:

(b) The purpose of the Arkansas Home Inspector ~~Registration~~ Licensing Board created under this subchapter shall be to:

- (1) Administer and enforce the provisions of this subchapter;
- (2) Promote a business atmosphere that will protect consumers of home inspection services;
- (3) Oversee an ongoing program to develop high-level skills in home inspectors; and
- (4) Encourage the presence of a viable home inspection industry in Arkansas.

SECTION 4. Arkansas Code § 17-52-303(1), concerning the definitions under the Arkansas Home Inspectors Registration Act, is amended to read as follows:

(1) "Applicant" means a person who is applying for ~~registration~~ a license or renewal of ~~registration~~ a license under this subchapter;

SECTION 5. Arkansas Code § 17-52-303, concerning the definitions under the Arkansas Home Inspectors Registration Act, is amended to add an additional subdivision to read as follows:

(9)(A) "License" means the authority required by this subchapter for a home inspector to lawfully conduct home inspections and related activities in this state.

(B) "License" includes the authority previously granted under a certificate of registration issued by the Arkansas Home Inspector Registration Board until renewed, revoked, or expired.

SECTION 6. Arkansas Code § 17-52-304 is amended to read as follows:

17-52-304. Arkansas Home Inspector ~~Registration~~ Licensing Board – Creation – Members.

(a) There is created the Arkansas Home Inspector ~~Registration~~ Licensing Board.

(b) The board shall consist of seven (7) members, to be appointed by the Governor as follows:

- (1) Four (4) members shall be ~~registered~~ licensed home inspectors;
 - (2) One (1) member shall be a licensed real estate professional;
 - (3) One (1) member shall be a licensed real estate appraiser;
- and
- (4) One (1) member shall be an at-large member who shall serve as a consumer advocate.

(c)(1) The initial members appointed under subsection (b) of this section shall determine their terms of office by drawing lots to result in two (2) home inspector members and two (2) noninspector members serving two-year terms and two (2) home inspector members and one (1) noninspector member serving one-year terms.

(2) Successor appointed members shall serve two-year terms.

(d) ~~Any vacancy that occurs on the board shall be filled by the Governor for the remainder of the unexpired term~~ Members of the board:

- (1) Shall hold office until a successor is appointed and qualified; and
- (2) May be removed by the Governor for gross incompetency, gross immorality, disability, any abuse of his or her official power, or other good cause.

(3)(A) The Governor shall fill any vacancy by appointment within thirty (30) days after the vacancy occurs.

(B) A member appointed to fill a vacancy caused by death, resignation, or removal:

- (i) Shall meet the qualifications of the vacancy to be filled;
- (ii) Shall serve for the unexpired term of their predecessor; and
- (iii) Is eligible to be subsequently appointed to the board to the same position or any other position to which the member is qualified.

(e) Board members shall serve not more than three (3) consecutive

terms of office.

(f) The consumer advocate member of the board shall call the first meeting and shall serve as chair of the first meeting.

(g) If funds are available, members of the board may receive expense reimbursement according to § 25-16-902.

SECTION 7. Arkansas Code § 17-52-305(a), concerning meetings of the Arkansas Home Inspector Registration Licensing Board, is amended to read as follows:

(a) The Arkansas Home Inspector ~~Registration~~ Licensing Board shall physically meet not fewer than two (2) times each calendar year to conduct the business of the board.

SECTION 8. Arkansas Code § 17-52-306 is amended to read as follows:

17-52-306. Powers and duties of the board.

The Arkansas Home Inspector ~~Registration~~ Licensing Board may:

- (1) Perform the duties and functions appropriate and necessary to carry out the provisions of this subchapter;
- (2) Review, approve, or reject ~~registration~~ license applications and issue ~~registration~~ license certificates to applicants;
- (3) Establish a mandatory continuing education program designed to upgrade the professional skills and knowledge of home inspectors practicing in Arkansas;
- (4)(A) Establish administrative procedures for disciplinary proceedings conducted according to the provisions for this subchapter.
- (B) The procedures shall include provisions for the suspension and revocation of ~~registration~~ a license and enforcement of civil penalties;
- (5) Establish procedures for processing and resolving complaints against home inspectors conducting home inspections in Arkansas;
- (6) Authorize disbursement of the funds collected into the Arkansas Home Inspectors ~~Registration~~ Licensing Fund;
- (7) Employ legal counsel to represent it in any proceedings when legal counsel is required;
- (8) Develop competency exams for home inspectors;
- (9) Establish a standard of practice and code of ethics for home

inspectors;

(10) Enter into agreements with other states, territories, districts, or possessions of the United States concerning ~~registration or licensing~~ requirements acceptable between Arkansas and the other entities;

(11) Maintain working files as it deems necessary;

(12) Contract for administrative support services and meet financial obligations of those contracts using moneys from the fund;

(13)(A) Develop and implement a means for conducting internet board meetings, which may be observed by the public in real time.

(B) Public participation in the meetings may be permitted in accordance with rules developed by the board;

(14) Establish and maintain an internet site devoted to home inspection ~~registration~~ licensing and related subjects; and

(15) [Repealed.]

(16) ~~Establish~~ If the maximum number of hours required shall not exceed ninety (90) classroom hours, establish educational requirements for ~~registration~~ licensing ~~to begin after July 1, 2004,~~ including the standards and procedures for approval of educational programs ~~if the maximum number of hours required shall not exceed ninety (90) classroom hours.~~

SECTION 9. Arkansas Code § 17-52-307(a), concerning hearings under the Arkansas Home Inspector Registration Board, is amended to read as follows:

(a) As part of an investigation or as a condition of renewal, the Arkansas Home Inspector ~~Registration~~ Licensing Board may require a home inspector to submit in writing home inspection reports and other documents to be reviewed by the board.

SECTION 10. Arkansas Code § 17-52-308 is amended to read as follows:

17-52-308. Complaints and disciplinary procedures.

(a) Disciplinary hearings conducted by the Arkansas Home Inspector ~~Registration~~ Licensing Board for the purpose of determining whether to levy civil penalties under this subchapter and for the purpose of determining whether to revoke or suspend any registration, license, or certificate issued under this subchapter shall be open public meetings conducted as provided for in the Freedom of Information Act of 1967, § 25-19-101 et seq., unless otherwise superseded by provisions of this subchapter.

(b) Upon its own motion or upon written complaint of any person and after notice and hearing as provided by the Arkansas Administrative Procedure Act, § 25-15-201 et seq., the board may suspend or revoke the ~~registration~~ license of any home inspector and issue a fine up to one thousand dollars (\$1,000) per violation or occurrence or take any other appropriate disciplinary action for:

- (1) Any violation of the provisions in this subchapter;
- (2) Falsifying any application for ~~registration~~ licensing or otherwise providing any false information to the board or the Secretary of State;
- (3) Conviction of any felony listed under § 17-3-102;
- (4) Any actions demonstrating untrustworthiness, incompetence, dishonesty, gross negligence, material misrepresentation, fraud, or unethical conduct in any dealings subject to this subchapter or these rules;
- (5) Adjudication of insanity;
- (6)(A) Use of advertising or solicitation that is false, misleading, or is otherwise deemed unprofessional by the board.
- (B) All advertisements, contracts, correspondence, and other documents utilized by a home inspector shall prominently include the home inspector's name and ~~registration~~ license number as registered according to this subchapter; or
- (7) Habitual or excessive use of intoxicants or illegal drugs.

SECTION 11. Arkansas Code § 17-52-309(a) and (b), concerning violations of law under the Arkansas Home Inspector Registration Act, are amended to read as follows:

(a)(1) It is unlawful for any person not ~~registered~~ licensed under this subchapter to perform any act for which ~~registration~~ licensure is required.

(2) Any person acting as a home inspector within the meaning of this subchapter without a home inspector ~~certificate of registration~~ license and any person who violates any other provision of this subchapter shall be guilty of a misdemeanor.

(b)(1) Upon application by the Arkansas Home Inspector ~~Registration~~ Licensing Board, a court may grant an injunction, restraining order, or other order as may be appropriate to enjoin a person from:

(A) Offering to engage or engaging in the performance of any acts or practices for which ~~registration~~ a license is required by this subchapter after a showing that the acts or practices were performed or offered to be performed without a ~~certificate of registration~~ license; or

(B) Engaging in any practice or business authorized by a ~~certificate of registration~~ license issued under this subchapter upon a showing that the holder presents a substantial probability of serious danger to the health, safety, or welfare of any resident of this state or client of the certificate holder.

(2) Any person cosigning a home inspection report with a ~~registered~~ licensed home inspector becomes subject to the provisions of this subchapter.

SECTION 12. Arkansas Code § 17-52-310(a), concerning continuing education under the Arkansas Home Inspector Registration Act, is amended to read as follows:

(a) The Arkansas Home Inspector ~~Registration~~ Licensing Board shall implement requirements for home inspectors to successfully complete continuing education annually as a condition to ~~registration~~ license renewal.

SECTION 13. Arkansas Code § 17-52-310(b)(3), concerning continuing education under the Arkansas Home Inspector Registration Act, is amended to read as follows:

(3) Provide a list of approved providers to all ~~registered~~ licensed home inspectors.

SECTION 14. Arkansas Code § 17-52-310(e), concerning continuing education under the Arkansas Home Inspector Registration Act, is amended to read as follows:

(e)(1) Failure to complete continuing education requirements shall result in suspension of the home inspector's ~~registration~~ license.

(2) However, the board may waive all or part of the requirements of this section for any ~~registered~~ licensed home inspector who submits satisfactory evidence of his or her inability to meet the continuing education requirements due to debilitating health, hardship, or extenuating circumstances beyond his or her control.

SECTION 15. Arkansas Code § 17-52-311 is amended to read as follows:

17-52-311. Role of Secretary of the Department of Labor and Licensing.

(a)(1) The Secretary of the Department of Labor and Licensing shall be the custodian of permanent, official, home inspector ~~registration~~ licensing files and shall maintain permanent records of all home inspector ~~registration~~ license applications received since the enactment of this subchapter.

(2) The secretary shall maintain the permanent records of the Arkansas Home Inspector ~~Registration~~ Licensing Board.

(b) The secretary shall receive and process applications for initial ~~registration~~ licensing and renewal of ~~registration~~ a license.

SECTION 16. Arkansas Code § 17-52-312 is amended to read as follows:

17-52-312. Fund.

(a)(1) There is created in the State Treasury a fund to be known as the “Arkansas Home Inspectors ~~Registration~~ Licensing Fund”.

(2) On the effective date of this Act, all funds remaining in the Arkansas Home Inspectors Registration Fund shall be transferred to the Arkansas Home Inspectors Licensing Fund.

(b) All funds, fees, charges, costs, and collections accruing to or collected under the provisions of this subchapter shall be deposited into the State Treasury to the credit of this fund.

(c) The funds shall be used for the purposes as specified in this subchapter.

(d)(1) ~~Except as provided in subdivision (d)(2) of this section, effective with the 2003 registration and under the provisions of this subchapter, all~~ All funds, fees, charges, costs, and collections accruing to or collected by the Secretary of the Department of Labor and Licensing under this subchapter shall be deposited quarterly into the fund.

(2) [Repealed.]

(e) The Arkansas Home Inspector ~~Registration~~ Licensing Board will process disbursements of those funds as necessary in the administration of this subchapter.

SECTION 17. Arkansas Code § 17-52-313 is amended to read as follows:

17-52-313. Disposition of funds.

(a)(1) The Secretary of the Arkansas Home Inspector ~~Registration~~ Licensing Board shall receive, disburse, and account for all income paid to or received by the Arkansas Home Inspector ~~Registration~~ Licensing Board.

(2) The Secretary of the Arkansas Home Inspector ~~Registration~~ Licensing Board shall institute a system of books and financial records satisfactory to the Secretary of the Department of Finance and Administration.

(3)(A) All fees collected on behalf of the board and all receipts of every kind and nature shall be paid into the State Treasury and shall be credited to the Arkansas Home Inspectors ~~Registration~~ Licensing Fund.

(B) The Arkansas Home Inspectors ~~Registration~~ Licensing Fund shall be for the general uses of the board, and out of it shall be paid all salaries and all other expenses necessarily incurred in carrying into effect the provisions of this subchapter.

(C) Expenditures from the Arkansas Home Inspectors ~~Registration~~ Licensing Fund shall be substantiated by vouchers and itemized statements at the end of each fiscal year or at any other time when demand is made by the Department of Finance and Administration.

(4) The Secretary of the Arkansas Home Inspector ~~Registration~~ Licensing Board shall deposit all funds of the board ~~that he or she receives~~ with the State Treasury within forty-eight (48) hours, excluding holidays and Sundays, after he or she receives the funds.

(b) All fines collected for the violation of any provisions of this subchapter shall be paid over to the board to be used by it in the same manner as funds received for the issuance of ~~registration~~ licenses.

(c) The total amount of warrants issued by the board or Auditor of State in payment of the expenses and compensation provided in this subchapter shall not exceed the amount of the application, ~~registration~~ licensure, and other fees collected.

(d)(1) Any surplus funds at the end of the fiscal year may be retained by the board for future expenditures.

(2) The board shall not be required to pay any surplus into the General Revenue Fund Account of the State Apportionment Fund.

SECTION 18. Arkansas Code § 17-52-314 is amended to read as follows:

17-52-314. ~~Registration~~ License required.

(a) No person shall advertise as a home inspector or undertake or attempt to undertake the conduct of a home inspection in this state without first having complied with this subchapter.

(b) No person who is ~~registered~~ licensed under one (1) name as provided in this subchapter shall engage in business as a home inspector under any other name unless the other name is also ~~registered~~ licensed.

SECTION 19. Arkansas Code § 17-52-315 is amended to read as follows:

17-52-315. Application for ~~registration~~ licensure or renewal.

(a) Any person applying for ~~registration~~ licensure or renewal of ~~registration~~ a license as a home inspector shall submit to the Arkansas Home Inspector ~~Registration~~ Licensing Board:

(1) An application under oath upon a form to be prescribed by the board;

(2) A current certificate of insurance issued by an insurance company licensed or surplus lines approved to do business in this state that states that the applicant has procured general liability insurance in the minimum amount of one hundred thousand dollars (\$100,000) and, if applicable, workers' compensation insurance; and

(3) The required ~~registration~~ license or ~~registration~~ license renewal fee with the application.

(b)(1) A person applying for ~~registration~~ licensure for the first time shall also submit with the application a certified copy of a document attesting to the successful completion of the competency examination.

(2) A person renewing a current ~~registration~~ license shall also submit with his or her application a properly completed form that states that the person has satisfactorily completed continuing education requirements for the current year.

(3) A person seeking to renew a lapsed, suspended, or otherwise inactive ~~registration~~ license shall provide other documents and comply with procedures as may be prescribed by the board.

(c) The following persons shall be exempt from any educational requirements for initial ~~registration~~ licensure, but not from the requirements concerning the competency examination:

(1) City inspectors certified by the International Code Council;

and

(2) Contractors who hold a builder’s license and have ten (10) years’ experience as a contractor.

SECTION 20. Arkansas Code § 17-52-316(a), concerning fees and reimbursements to the Arkansas Home Inspector Registration Board, is amended to read as follows:

(a)(1) The Arkansas Home Inspector ~~Registration~~ Licensing Board may set ~~registration~~ licensing and renewal fees not to exceed three hundred dollars (\$300) per year.

(2) The board shall notify the Secretary of the Department of Labor and Licensing of the ~~registration~~ licensing fee for the next year and by June 1 every year thereafter until transferred to the board.

SECTION 21. Arkansas Code § 17-52-316(d)(3) and (4), concerning fees and reimbursements to the Arkansas Home Inspector Registration Board, are amended to read as follows:

(3) Duplicate ~~registration~~ licensing fees not to exceed twenty-five dollars (\$25.00);

(4) ~~Returned~~ In addition to any other applicable fine or penalty authorized by law, returned check fees not to exceed twenty-five dollars (\$25.00); and

SECTION 22. Arkansas Code § 17-52-317 is amended to read as follows:

17-52-317. ~~Certificates of registration~~ Issuance of licenses - Duration.

(a)(1) ~~Certificates of registration~~ Licenses shall be issued by the Arkansas Home Inspector ~~Registration~~ Licensing Board to an applicant after compliance with the ~~registration~~ licensing or renewal requirements of this subchapter and approval by the board.

(2) ~~Certificates~~ Licenses shall be consecutively numbered.

(b) When ~~registration~~ a license is renewed, that person’s ~~registration~~ license number shall be perpetuated.

(c) ~~Certificates of registration~~ Licenses of a home inspector shall be issued for a period of at least one (1) year and shall expire at the end of a period of up to three (3) years, as may be set by the board.

(d) Notices of upcoming ~~registration~~ license expiration and a reminder to renew shall be mailed or sent by electronic mail to the email address provided by the licensee to ~~registered~~ licensed home inspectors no more than sixty (60) days and no less than forty-five (45) days before the expiration date of the ~~applicant's registration~~ license.

SECTION 23. Arkansas Code § 17-52-318(b)-(d), concerning home inspector insurance, are amended to read as follows:

(b) All policies and certificates shall provide that cancellation or renewal of the policy shall not be effective unless and until at least ten (10) days' notice of cancellation or nonrenewal has been received in writing by the Arkansas Home Inspector ~~Registration~~ Licensing Board.

(c) If the insurance coverage required under this subchapter shall cease to be effective, the ~~insured~~ home inspector shall ~~be required to~~ notify the board in writing, of any lapses in coverage.

(d)(1) After notification, the ~~registration~~ license of the affected home inspector shall be suspended until the required insurance is reinstated or replaced.

(2) The suspension shall be noted on the home inspector's listing on the board's internet site.

SECTION 24. Arkansas Code § 17-52-319(b), concerning standards of care for home inspectors, is amended to read as follows:

(b) All home inspections conducted for compensation in this state shall be conducted according to the standards of practice and code of ethics set forth by the Arkansas Home Inspector ~~Registration~~ Licensing Board.

SECTION 25. Arkansas Code § 17-52-319(d), concerning standards of care for home inspectors, is amended to read as follows:

(d) Copies of all standards of practice and code of ethics set forth by the board shall be filed with the Secretary of State and made available at cost to anyone ~~requesting the rules~~ upon request.

SECTION 26. Arkansas Code § 17-52-320(b), concerning limitations on damages on a cause of action relating to a home inspector, is amended to read as follows:

(b) Disciplinary action taken against a home inspector by the Arkansas Home Inspector ~~Registration~~ Licensing Board shall not in and of itself be the basis for civil or criminal action.

SECTION 27. Arkansas Code § 17-52-321(b)(2), concerning unfair practice of home inspectors, is amended to read as follows:

(2) Transfer of a home inspection report or portion of a home inspection report to any third party absolves the home inspector and his or her client of any responsibility for liability for claims or adverse actions arising from the use of the home inspection report.

SECTION 28. Arkansas Code § 17-52-322(a), concerning home inspector license exemptions, is amended to read as follows:

(a) A person who by virtue of his or her employment by a public entity does home inspection work for that agency shall not be required to be ~~registered~~ licensed under this subchapter if the home inspections are conducted:

- (1) Solely for the benefit of that entity; and
- (2) For no compensation other than the employee's salary and authorized per diem or reimbursement of expenses.