

FIRST REGULAR SESSION

# HOUSE BILL NO. 978

## 94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE PARSON.

Read 1st time February 26, 2007 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

2085L.02I

### AN ACT

To amend chapter 339, RSMo, by adding thereto ten new sections relating to licensing 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 ten new sections, to be  
2 known as sections 339.900, 339.903, 339.906, 339.909, 339.912, 339.924, 339.930, 339.933,  
3 339.934, and 339.936, to read as follows:

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

- 2 (1) "Commission", the Missouri home inspectors commission;
- 3 (2) "Component", a part of a system;
- 4 (3) "Home inspection", the process by which an inspector, for payment or other  
5 compensation, visually examines the readily accessible systems and components of a  
6 residential building and describes such systems in writing in accordance with the standards  
7 of practice established by the commission. The inspection is not intended to be technically  
8 exhaustive or intrusive, nor shall it predict life expectancies of efficiencies of structural or  
9 mechanical components;
- 10 (4) "Home inspection report", a written opinion prepared for compensation and  
11 issued for a home inspection. The report shall clearly describe and identify the inspected  
12 systems, structures, or components of the residential building, identify any visible major  
13 defects found to be in need of immediate major repair, and include any recommendations  
14 for further evaluation;

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.

15           (5) "Home inspector", an individual who performs an independent, objective home  
16 inspection for compensation;

17           (6) "Readily accessible", available for visual inspection without requiring the  
18 movement of personal property, dismantling, destructive measures, or any action that  
19 would likely involve risk to persons or property;

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

21           (8) "System", a combination of interacting or interdependent components  
22 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 Missouri home inspectors commission as provided in sections 339.900 to  
5 339.936.**

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

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

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

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

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

19           **(3) Any individual or business, which is a residential or general contractor,  
20 electrician, plumber, mechanical contractor, or any other individual acting within the  
21 scope of their trade, profession, or business, who may as an element of its business,  
22 perform a noninvasive and visual examination for compensation of one or more of the  
23 readily accessible systems or components of a residential building for payment or other  
24 compensation, but which is not a home inspector required to be registered under the  
25 requirements of sections 339.880 to 339.894;**

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

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

**339.906. 1.** There is hereby created within the division of professional registration  
2 of the department of insurance, financial institutions and professional registration the  
3 "Missouri Home Inspectors Commission", which shall consist of nine members appointed  
4 by the governor with the advice and consent of the senate, six of whom shall be licensed  
5 home inspectors, one who shall be a licensed real estate broker, one who shall be a  
6 representative of a third class county, and one who shall be a public member. Each  
7 member shall be a resident of this state and a registered voter for a period of one year prior  
8 to the person's appointment. The public member shall have never been engaged in the  
9 businesses of real estate appraisal, real estate sales, or making loans secured by real estate.  
10 The board shall elect from its membership a president, vice president, and secretary-  
11 treasurer, each of whom shall be elected at the times and serve for the terms as are  
12 determined by the commission, and each of whose duties shall be prescribed by the  
13 commission.

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

23           **3.** Of the initial members appointed, three members shall be appointed for one-year  
24 terms, three members for two-year terms, and three members for three-year terms. All  
25 successor members shall be appointed for three-year terms. All members shall serve until  
26 their successors have been appointed and qualified. Vacancies occurring in the  
27 membership of the commission for any reason shall be filled by appointment by the  
28 governor for the unexpired term. Upon expiration of their terms, members of the  
29 commission shall continue to hold office until the appointment and qualification of their  
30 successors. The governor may remove a member for cause. The executive director of the  
31 commission shall be employed by the division of professional registration.

32           **4.** The commission shall meet at least once each calendar year to conduct its  
33 business. The executive director shall give each member notice of the time and place of  
34 each meeting of the commission at least ten days before the scheduled date of the meeting,

35 and notice of any special meeting shall state the specific matters to be considered in the  
36 special meeting which is not a regular meeting. A quorum of the commission shall consist  
37 of a majority of the number on the commission.

38 5. Each member of the commission shall be entitled to a per diem allowance of up  
39 to seventy dollars for each meeting day or part of a day of the commission at which the  
40 member is present and shall be entitled to reimbursement of the member's actual and  
41 necessary expenses incurred in the discharge of the member's official duties. Each member  
42 of the commission shall be entitled to reimbursement of travel expenses necessarily  
43 incurred in attending meetings of the commission.

339.909. 1. The commission shall have the following powers and duties:

- 2 (1) To adopt rules in accordance with the provisions of chapter 536, RSMo, to:
  - 3 (a) Establish the qualifications for the licensing of home inspectors as the  
4 commission deems necessary for the public interest;
  - 5 (b) Establish an application process for persons seeking a license as a home  
6 inspector;
  - 7 (c) Establish and publish standards of professional and ethical conduct for home  
8 inspectors that will meet or exceed those set by recognized national home inspector  
9 associations; and
  - 10 (d) Establish such reasonable rules as deemed necessary or desirable by the  
11 commission to carry out and enforce the provisions of sections 339.900 to 339.936;
- 12 (2) To establish rules regarding hearings on any matter under the provisions of  
13 sections 339.900 to 339.936;
- 14 (3) To establish administrative procedures for processing applications and issuing  
15 licenses of state-licensed home inspectors and for conducting disciplinary proceedings  
16 under the provisions of sections 339.900 to 339.936. The commission shall have authority  
17 to determine who meets the criteria for licensure and shall have authority to renew,  
18 censure, suspend, or revoke licenses;
- 19 (4) To maintain and publish a registry of names and addresses of state-licensed  
20 home inspectors;
- 21 (5) To adopt rules for establishing approved courses of instruction that prescribe  
22 and define the subjects related to home inspection that will satisfy the qualification  
23 requirements for licensure. The commission shall establish and publish a list of approved  
24 education program providers;
- 25 (6) To prescribe the form and content of examinations to determine the  
26 qualifications of persons who apply for licenses to engage in home inspection. The  
27 commission may contract with a testing service to provide and conduct such examinations;

28           (7) To define by rule the continuing education requirements for the renewal of  
29 licensure that will meet the requirements of sections 339.900 to 339.936;

30           (8) To set the amount of fees authorized by sections 339.900 to 339.936 and required  
31 by rules promulgated under section 536.021, RSMo. The fees shall be set at a level to  
32 produce revenue that does not substantially exceed the cost and expense of administering  
33 this chapter;

34           (9) To establish rules by which the commission may issue a license on a reciprocal  
35 basis with other states without examination to a nonresident who is licensed or certified,  
36 and in good standing in another state under standards that are substantially equal to those  
37 established by the commission and in sections 339.900 to 339.936. Fees collected shall be  
38 the same as those required for state licensure of resident home inspectors;

39           (10) To perform such other functions and duties as may be necessary to carry out  
40 the provisions of sections 339.900 to 339.936.

41           2. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo,  
42 that is created under the authority delegated in this section shall become effective only if  
43 it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if  
44 applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable  
45 and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo,  
46 to review, to delay the effective date, or to disapprove and annul a rule are subsequently  
47 held unconstitutional, then the grant of rulemaking authority and any rule proposed or  
48 adopted after August 28, 2007, shall be invalid and void.

339.912. 1. Any person desiring to obtain licensure as a state-licensed home  
2 inspector shall make written application to the commission on such forms as are prescribed  
3 by the commission setting forth the applicant's qualifications for licensure and present to  
4 the commission satisfactory proof that the person is of good moral character and bears a  
5 good reputation for honesty, integrity, and fair dealing.

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

12           3. Notwithstanding the provisions of section 33.080, RSMo, to the contrary, any  
13 moneys remaining in the fund at the end of the biennium shall not revert to the credit of  
14 the general revenue fund until the amount in the fund at the end of the biennium exceeds  
15 two times the amount of the appropriation from the board's funds for the preceding fiscal

16 year or, if the board requires by rule permit renewal less frequently than yearly, then three  
17 times the appropriation from the board's fund for the preceding fiscal year. The amount,  
18 if any, in the fund which shall lapse is that amount in the fund which exceeds the  
19 appropriate multiple of the appropriations from the board's funds for the preceding fiscal  
20 year.

21 **4. At the time of filing an application for licensure, each applicant shall sign a**  
22 **pledge to comply with the standards set forth by the commission in sections 339.900 to**  
23 **339.936. The applicant shall state that the applicant understands the types of misconduct**  
24 **for which disciplinary proceedings may be initiated against a state-licensed home inspector.**

25 **5. Each applicant for licensure must demonstrate the knowledge and competence**  
26 **necessary to perform inspections of residential and business real estate as the commission**  
27 **may prescribe by rule and as required by sections 339.900 to 339.936. The commission**  
28 **shall issue state licensure as a state-licensed home inspector upon assurance that an**  
29 **applicant:**

30 **(1) Is of good moral character;**

31 **(2) Has successfully completed a commission approved classroom training program**  
32 **of not less than one hundred twenty classroom hours or has completed at least eighty home**  
33 **inspections under the direct supervision of a licensed home inspector;**

34 **(3) Has passed a proctored examination offered or approved by the commission or**  
35 **as provided for in sections 339.900 to 339.936; and**

36 **(4) Has paid the appropriate fee set by the commission.**

37 **6. If an applicant is not licensed within three years after passing an examination**  
38 **given under sections 339.900 to 339.936, the applicant shall be required to retake the**  
39 **examination prior to state licensure.**

40 **7. An applicant who fails an examination taken under sections 339.900 to 339.936**  
41 **may apply for reexamination by submitting an application with the appropriate**  
42 **examination fee during the time frame defined by rule regarding procedures for**  
43 **reexamination.**

44 **8. The commission shall also make such investigation as required to verify such**  
45 **qualifications. If the results of the investigation are satisfactory to the commission and the**  
46 **applicant is otherwise qualified, the commission shall issue to the applicant a license**  
47 **authorizing the applicant to act as a state-licensed home inspector in Missouri. If the**  
48 **results of the investigation are unsatisfactory, action on the application may be deferred**  
49 **pending a hearing before the commission.**

50 **9. An action to recover damages for any act or omission of a home inspector**  
51 **relating to a home inspection that he or she conducts can only be commenced within one**

52 year after the date that a home inspection is completed. Only a client and no other party  
53 shall have an action to recover damages arising from a home inspection or a home  
54 inspection report. Home inspectors shall maintain general liability insurance coverage  
55 while in the business of performing home inspections.

339.924. 1. The commission shall promulgate and adopt rules which prescribe and  
2 define the subjects related to home inspection that will satisfy the qualification  
3 requirements for licensure. The commission shall establish a list of approved education  
4 program providers and may approve courses of instruction in an accredited college or  
5 university related to the inspection of homes and such other areas deemed relevant by the  
6 commission. Each provider shall submit application for approval each calendar year, and  
7 shall maintain a record of all attendance and satisfactory results for each program  
8 attendee.

9 2. In adopting rules under this section, the commission may give favorable  
10 consideration to courses of instruction, seminars, and other home inspection education  
11 courses and programs previously or hereafter developed by, or under the auspices of,  
12 professional home inspection associations and utilized by those associations for purposes  
13 of designation, licensure, or renewal of licensure of members of the association.

14 3. For purposes of licensure or renewal of licensure, the commission may establish  
15 or approve credit for any of the following: courses of instruction, programs, teaching,  
16 program development, and preparation of textbooks, articles, or other instructional  
17 materials.

339.930. 1. The commission 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 commission shall notify the applicant in writing of the reasons for the  
4 refusal and shall advise the applicant of the right to file a complaint with the  
5 administrative hearing commission as provided by chapter 621, RSMo.

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

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

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 commission for the**  
36 **administration 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 commission under**  
46 **the 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 commission may, singly or in combination,**  
64 **publicly censure or place the person named in the complaint on probation on such terms**  
65 **and conditions as the commission deems appropriate for a period not to exceed five years,**  
66 **or may suspend for a period not to exceed three years, or revoke the license. The holder**  
67 **of a license revoked under this section shall not obtain 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 shall be required to successfully**  
70 **complete the examination for original licensure required by section 339.921 as a condition**  
71 **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 commission on**  
12 **reasonable 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. Sections 339.900 to 339.936 shall not affect:

6 (1) Local regulations relating to zoning requirements or occupational license taxes  
7 pertaining to home inspectors or home inspection businesses; or

8 (2) Local regulations that do not relate to home inspections as performed by a  
9 Missouri state-licensed home inspector, including the regulations of those professionals  
10 who perform duties with a state-licensed home inspector.

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

Section B. Section A shall become effective January 1, 2008.

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