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HB 672/91 - ECM

1997 Regular Session
7r1733

By: Senator Kasemeyer

Introduced and read first time: January 30, 1997
Assigned to: Finance

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: March 21, 1997

CHAPTER ____

1 AN ACT concerning

2 **Home Inspectors - Required Insurance, Disclosure, and Limitations of Liability**

3 **Disclosure Requirements and Inspection Standards**

4 FOR the purpose of ~~requiring home inspectors to maintain a current errors and omissions~~
5 ~~insurance policy in a certain amount; prohibiting a home inspector from limiting any~~
6 ~~liability arising out of the home inspection to any fee paid as consideration for the~~
7 ~~home inspection; requiring a home inspector to make certain disclosures regarding~~
8 ~~required insurance prior to making a home inspection; requiring home inspectors to~~
9 ~~disclose certain information prior to a home inspection; requiring a home inspection~~
10 ~~to be conducted in accordance with certain standards; providing that a violation of~~
11 ~~this Act is an unfair and deceptive trade practice; defining certain terms; and~~
12 ~~generally relating to home inspectors.~~

13 ~~BY adding to~~

14 ~~Article - Commercial Law~~
15 ~~Section 14-2801 through 14-2805, inclusive, to be under the new subtitle "Subtitle~~
16 ~~28. Home Inspectors"~~
17 ~~Annotated Code of Maryland~~
18 ~~(1990 Replacement Volume and 1996 Supplement)~~

19 ~~BY transferring~~

20 ~~Article - Real Property~~
21 ~~Section 10-801 and the subtitle "Subtitle 8. Home Inspections"~~
22 ~~Annotated Code of Maryland~~
23 ~~(1996 Replacement Volume and 1996 Supplement)~~

24 ~~to be~~

25 ~~Article - Commercial Law~~

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1 Section 14-2802 under the amended subtitle "Subtitle 28. Home Inspectors"
2 Annotated Code of Maryland
3 (1990 Replacement Volume and 1996 Supplement)

4 BY repealing and reenacting, with amendments,
5 Article - Commercial Law
6 Section 13-301(14)
7 Annotated Code of Maryland
8 (1990 Replacement Volume and 1996 Supplement)

9 BY repealing and reenacting, without amendments,
10 Article - Commercial Law
11 Section 13-301(15)
12 Annotated Code of Maryland
13 (1990 Replacement Volume and 1996 Supplement)

14 BY adding to
15 Article - Commercial Law
16 Section 14-2801, 14-2803, and 14-2804
17 Annotated Code of Maryland
18 (1990 Replacement Volume and 1996 Supplement)

19 BY repealing and reenacting, with amendments,
20 Article - Commercial Law
21 Section 14-2802
22 Annotated Code of Maryland
23 (1990 Replacement Volume and 1996 Supplement)
24 (As enacted by Section 1 of this Act)

25 ~~SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF~~
26 ~~MARYLAND, That the Laws of Maryland read as follows:~~

27 ~~**Article - Commercial Law**~~

28 ~~SUBTITLE 28. HOME INSPECTORS.~~

29 ~~14-2801.~~

30 ~~(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS~~
31 ~~INDICATED.~~

32 ~~(B) (1) "HOME INSPECTOR" MEANS A PERSON WHO, FOR COMPENSATION,~~
33 ~~CONDUCTS AN INSPECTION OF REAL PROPERTY IN CONNECTION WITH A~~
34 ~~RESIDENTIAL REAL ESTATE TRANSACTION OF ONE, TWO, THREE, OR FOUR~~
35 ~~SINGLE FAMILY UNITS FOR THE PURPOSE OF DETERMINING THE AGE, SAFETY,~~
36 ~~STRUCTURAL SOUNDNESS, EXPECTED LIFE, OR VALUE OF REAL PROPERTY.~~

1 ~~(2) "HOME INSPECTOR" DOES NOT INCLUDE ANY PERSON LICENSED~~
2 ~~UNDER THE BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE OR THE BUSINESS~~
3 ~~REGULATIONS ARTICLE~~

4 ~~(C) "PERSON" INCLUDES AN INDIVIDUAL, PARTNERSHIP, CORPORATION,~~
5 ~~TRUST ASSOCIATION, OWNER, OR OTHER LEGAL ENTITY.~~

6 ~~(D) "REAL PROPERTY" INCLUDES ANY APPLIANCE, FIXTURE, ITEM OF~~
7 ~~EQUIPMENT, ELECTRICAL SYSTEM, HEATING, COOLING, OR VENTILATION SYSTEM,~~
8 ~~PLUMBING SYSTEM, OR LOAD BEARING PORTION OF RESIDENTIAL REAL ESTATE.~~

9 ~~14-2802.~~

10 ~~A PERSON MAY NOT ACT AS A HOME INSPECTOR UNLESS THAT PERSON HAS A~~
11 ~~CURRENT POLICY OF INSURANCE FOR ERRORS AND OMISSIONS IN AN AMOUNT NOT~~
12 ~~LESS THAN \$10,000, ISSUED BY AN AUTHORIZED INSURER.~~

13 ~~14-2803.~~

14 ~~A CONTRACT FOR THE INSPECTION OF REAL PROPERTY BY A HOME~~
15 ~~INSPECTOR MAY NOT LIMIT LIABILITY OF THE HOME INSPECTOR ARISING OUT OF~~
16 ~~THE HOME INSPECTION TO ANY FEE PAID AS CONSIDERATION FOR THE HOME~~
17 ~~INSPECTION.~~

18 ~~14-2804.~~

19 ~~PRIOR TO MAKING A HOME INSPECTION, A HOME INSPECTOR SHALL:~~

20 ~~(1) DISCLOSE IN WRITING TO A PROSPECTIVE BUYER THAT STATE LAW~~
21 ~~REQUIRES A HOME INSPECTOR TO HAVE A CURRENT POLICY OF INSURANCE UNDER~~
22 ~~§ 14-2802 OF THIS SUBTITLE; AND~~

23 ~~(2) PROVIDE TO A PROSPECTIVE BUYER:~~

24 ~~(i) THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE~~
25 ~~INSURER PROVIDING THE POLICY REQUIRED UNDER § 14-2802 OF THIS SUBTITLE;~~
26 ~~AND~~

27 ~~(ii) THE POLICY NUMBER OF THE POLICY REQUIRED UNDER §~~
28 ~~14-2802 OF THIS SUBTITLE.~~

29 ~~14-2805.~~

30 ~~IN ADDITION TO ANY OTHER REMEDIES OTHERWISE AVAILABLE AT LAW,~~
31 ~~VIOLATION OF THIS SUBTITLE IS AN UNFAIR AND DECEPTIVE TRADE PRACTICE~~
32 ~~WITHIN THE MEANING OF TITLE 13 OF THIS ARTICLE.~~

33 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
34 MARYLAND, That Section(s) 10-801 and the subtitle "Subtitle 8. Home Inspections" of
35 Article - Real Property of the Annotated Code of Maryland be transferred to be
36 Section(s) 14-2802 and the amended subtitle "Subtitle 28. Home Inspectors" of Article -
37 Commercial Law of the Annotated Code of Maryland.

38 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
39 read as follows:

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1 **Article - Commercial Law**

2 13-301.

3 Unfair or deceptive trade practices include any:

4 (14) Violation of a provision of:

5 (i) This title;

6 (ii) An order of the Attorney General or agreement of a party relating
7 to unit pricing under Title 14, Subtitle 1 of this article;

8 (iii) Title 14, Subtitle 2 of this article, the Maryland Consumer Debt
9 Collection Act;

10 (iv) Title 14, Subtitle 3 of this article, the Maryland Door-to-Door
11 Sales Act;

12 (v) Title 14, Subtitle 9 of this article, Kosher Products;

13 (vi) Title 14, Subtitle 10 of this article, Automotive Repair Facilities;

14 (vii) Section 14-1302 of this article;

15 (viii) Title 14, Subtitle 11 of this article, Maryland Layaway Sales Act;

16 (ix) Section 22-415 of the Transportation Article;

17 (x) Title 14, Subtitle 20 of this article;

18 (xi) Title 14, Subtitle 15 of this article, the Automotive Warranty
19 Enforcement Act;

20 (xii) Title 14, Subtitle 21 of this article;

21 (xiii) Section 18-107 of the Transportation Article;

22 (xiv) Title 14, Subtitle 22 of this article, the Maryland Telephone
23 Solicitations Act;

24 (xv) Title 14, Subtitle 23 of this article, the Automotive Crash Parts
25 Act;

26 (xvi) Title 10, Subtitle 6 of the Real Property Article;

27 (xvii) [Title 10, Subtitle 8 of the Real Property Article] TITLE 14,
28 SUBTITLE 28 OF THIS ARTICLE;

29 (xviii) Title 14, Subtitle 25 of this article, the Hearing Aid Sales Act; or

30 (xix) Title 14, Subtitle 26 of this article, the Maryland Door-to-Door
31 Solicitations Act; or

32 (15) Any act or omission that relates to a residential building and that is
33 chargeable as a misdemeanor under or otherwise violates a provision of the Energy

34 Conservation Building Standards Act, Article 78, § 54-I of the Code.

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1 Subtitle [8. Home Inspections] 28. HOME INSPECTORS.

2 14-2801.

3 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
4 INDICATED.

5 (B) "HOME INSPECTION" MEANS A LIMITED SURVEY OF A BUILDING AND ITS
6 MAJOR COMPONENTS FOR THE PURPOSE OF:

7 (1) EVALUATING THE OVERALL CONDITION OF THE BUILDING AND ITS
8 MAJOR COMPONENTS; AND

9 (2) IDENTIFYING AND REPORTING IN WRITING ANY MAJOR VISIBLE
10 AND ACCESSIBLE DEFECTS IN THE BUILDING AND ITS MAJOR COMPONENTS.

11 (C) "HOME INSPECTOR" MEANS A PERSON WHO, FOR COMPENSATION,
12 PROVIDES OR OFFERS TO PROVIDE HOME INSPECTION SERVICES.

13 (D) "STANDARDS OF PRACTICE" MEANS A DOCUMENT CREATED BY A
14 PROFESSIONAL HOME INSPECTION TRADE ASSOCIATION SUCH AS THE AMERICAN
15 SOCIETY OF HOME INSPECTORS (ASHI) OR THE NATIONAL ASSOCIATION OF HOME
16 INSPECTORS (NAHI) THAT DEFINES THE PROVISIONS, PURPOSE, GUIDELINES,
17 CONDITIONS, LIMITATIONS, EXCLUSIONS, AND TERMS RELATED TO THE
18 PERFORMANCE OF A HOME INSPECTION.

19 14-2802.

20 (a) [In this subtitle, "home inspector" means a person who provides or offers to
21 provide home inspection services.

22 (b) [Promptly after agreeing to perform [an] A HOME inspection and before [a
23 home is inspected] ACCEPTING PAYMENT FOR THE INSPECTION, a home inspector
24 shall provide the person who has entered into [a] THE contract FOR THE HOME
25 INSPECTION [for the purchase of the property]:

26 (1) A list of the credentials of:

27 (i) The home inspector; and

28 (ii) If the individual who will actually perform the inspection is
29 different from the home inspector, that individual; and

30 (2) A disclosure in 10-point bold type that states:

31 "An inspection is intended to assist in evaluation of the overall condition of a
32 building. The inspection is based on observation of the visible and apparent condition of
33 the building and its components on the date of inspection.

34 The results of this home inspection are not intended to make any representation
35 regarding latent or concealed defects that may exist, and no warranty or guaranty is
36 expressed or implied.

37 If the person conducting your home inspection is not a licensed structural engineer
38 or other professional whose license authorizes the rendering of an opinion as to the

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1 structural integrity of a building or its other component parts, you may be advised to seek
2 a professional opinion as to any defects or concerns mentioned in the report."

3 [(c)] (B) The information required to be provided under [subsection (b)]
4 SUBSECTION (A) of this section shall be included in the home inspection report that is
5 delivered to the person who has entered into [a] THE contract for the [purchase of the
6 property] HOME INSPECTION.

7 14-2803.

8 A HOME INSPECTOR CONDUCTING A HOME INSPECTION UNDER THIS SUBTITLE
9 SHALL PERFORM THE HOME INSPECTION IN ACCORDANCE WITH STANDARDS OF
10 PRACTICE SET FORTH BY A PROFESSIONAL HOME INSPECTION TRADE ASSOCIATION
11 SUCH AS THE AMERICAN SOCIETY OF HOME INSPECTORS (ASHI) OR THE NATIONAL
12 ASSOCIATION OF HOME INSPECTORS (NAHI).

13 14-2804.

14 IN ADDITION TO ANY OTHER REMEDIES OTHERWISE AVAILABLE AT LAW, A
15 VIOLATION OF THIS SUBTITLE SHALL BE AN UNFAIR AND DECEPTIVE TRADE
16 PRACTICE UNDER TITLE 13, SUBTITLE 3 OF THIS ARTICLE.

17 SECTION 2- 3. AND BE IT FURTHER ENACTED, That this Act shall take
18 effect October 1, 1997.