

Legislative Bill Drafting Commission
05929-03-3

S.

SENATE

IN SENATE--Introduced by Sen

--read twice and ordered printed,
and when printed to be committed
to the Committee on

A.
ASSEMBLY

IN ASSEMBLY--Introduced by M. of A.

--read once and referred to the
Committee on

REALPRLA

(Provides for licensing of home inspectors and associate home inspectors, and establishes a licensure board in the department of state)

RP L. license home inspectors

AN ACT

to amend the real property law, in
relation to providing for the
licensing of real estate home
inspectors

The People of the State of New
York, represented in Senate and
Assembly, do enact as follows:

IN SENATE

Senate introducer's signature

The Senators whose names are circled below wish to join me
in the sponsorship of this proposal:

s55 Alessi	s84 Johnson	s37 Oppenheimer
s20 Andrews	s26 Krueger	s11 Padavan
s07 Balboni	s27 Kruger	s21 Parker
s42 Bonacic	s33 Kuhl	s30 Paterson
s46 Breslin	s23 Lachman	s61 Rath
s60 Brown	s39 Larkin	s50 Robach
s43 Bruno	s01 LaValle	s13 Sabini
s25 Connor	s40 Leibell	s41 Saland
s50 DeFrancisco	s52 Libous	s19 Sampson
s32 Diaz	s45 Little	s31 Schneiderman
s17 Dilan	s15 Maltese	s51 Seward
s29 Duane	s05 Marcellino	s09 Skelos
s44 Farley	s24 Marchi	s10 Smith, A.
s02 Flanagan	s62 Maziarz	s14 Smith, N.
s08 Fuschillo	s57 McGee	s34 Spano
s22 Golden	s47 Meier	s58 Stachowski
s33 Gonzalez	s28 Mendez	s16 Stashyk
s06 Hannon	s18 Montgomery	s03 Trunzo
s36 Harzell-Thompson	s38 Morahan	s34 Velella
s49 Hoffmann	s54 Nozzolio	s39 Volker
	s12 Onorato	s48 Wright

IN ASSEMBLY

Assembly introducer's signature

The Members of the Assembly whose names are circled below wish
to join me in the sponsorship of this proposal:

s049 Abbate	s036 Gianaris	s017 O'Connell
s001 Acampora	s066 Glick	s069 O'Donnell
s021 Alfano	s040 Goodson	s051 Oriz
s084 Arroyo	s075 Gottfried	s114 Orloff
s118 Aubertine	s065 Granaia	s150 Parment
s035 Aubry	s057 Green	s088 Paulin
s136 Bacalles	s077 Greene	s141 Peoples
s124 Barclay	s022 Goodenrich	s039 Peralta
s014 Barra	s094 Gromack	s058 Perry
s008 Barraga	s098 Gunther	s023 Pfeffer
s079 Benjamin	s148 Hayes	s068 Powell
s073 Bing	s083 Heacock	s152 Poynter
s055 Boylard	s145 Higgins	s087 Prellow
s089 Bradley	s043 Piskind	s099 Raia
s044 Brennan	s127 Hooker	s006 Ramos
s092 Brodsky	s018 Hooper	s134 Reilich
s121 Brown	s144 Hoyt	s078 Rivera, J.
s147 Burling	s042 Jacobs	s075 Rivera, P.
s101 Cahill	s131 John	s056 Robinson
s096 Calhoun	s095 Karben	s074 Sanders
s106 Canestrari	s082 Kaufman	s113 Sayward
s026 Carozza	s100 Kirvan	s029 Scarborough
s108 Casale	s080 Klein	s140 Schimminger
s119 Christensen	s129 Kolb	s122 Scuzzafava
s033 Clark	s135 Koon	s059 Seidlo
s046 Cohen, A.	s017 Labovita	s038 Seminario
s028 Cohen, M.	s034 Lafayette	s013 Sidikman
s047 Colton	s061 Lavelle	s084 Silver
s010 Conte	s020 Lenzel	s146 Smith
s032 Cook	s031 L... ..	s057 Spano
s107 Couch	s125 Lifton	s099 Stephens
s063 Cusick	s053 Lopez	s062 Stranieri
s045 Cymbrowitz	s111 Magee	s067 Stringer
s138 DelMoate	s120 Magnorelli	s111 Sweeney
s116 Destito	s030 Manning	s110 Tedisco
s086 Diaz, L.	s030 Markey	s002 Thiele
s085 Diaz, R.	s027 Mavrosohn	s031 Titus
s016 DiNapoli	s112 McDonald	s091 Tocci
s081 DiVincenzo	s019 McDonough	s113 Tokasz
s303 Eddington	s104 McEnty	s035 Toady
s904 Englebright	s075 McLaughlin	s054 Towns
s130 Erigo	s102 Miller	s115 Townsend
s072 Espaillar	s052 Millman	s076 Warner
s071 Farrell	s097 Mills	s041 Weinstein
s015 Ferrara	s060 Mirones	s020 Weisenberg
s123 Finch	s137 Morelle	s024 Weprin
s007 Fitzpatrick	s139 Nesbitt	s137 Winner
s090 Galef	s037 Nolan	s142 Wirth
s113 Gantt	s043 Norman	s070 Wright
	s128 Oaks	s149 Young

1) Single house bill introduced and printed separately in either or both houses: Sign 2 copies, circle names of co-sponsors and deliver to the introduction clerk of the house together with 4 copies of the introducer's memorandum.

2) Uni-bill introduced simultaneously in both houses and printed as one bill: Senate and Assembly introducer sign the same copy of the bill, circle the names of co-sponsors and return it to the introduction clerk of either house with the remaining copies and 4 copies of the introducer's memorandum.

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1 Section 1. The real property law is amended by adding a new article
2 12-B to read as follows:

3 ARTICLE 12-B

4 REAL ESTATE HOME INSPECTORS

5 Section 445. Short title.

6 445-a. Definitions.

7 445-b. State home inspection board.

8 445-c. License required for home inspectors.

9 445-d. Qualifications for licensure.

10 445-e. Duties of the secretary.

11 445-f. License periods and renewals.

12 445-g. Duty of care of home inspectors.

13 445-h. Suspension and revocation of licenses.

14 445-i. Construction with other laws.

15 445-j. Violations and penalties.

16 445-k. Severability.

17 § 445. Short title. This article shall be known and may be cited as
18 the "home inspection professional licensing act".

19 §. 445-a. Definitions. For the purposes of this article, the following
20 terms shall mean:

21 1. "Associate home inspector" means any person licensed as an associ-
22 ate home inspector pursuant to the provisions of this article and who
23 works under the indirect supervision of a home inspector.

24 2. "Board" means the state home inspection board established pursuant
25 to the provisions of section four hundred forty-five-b of this article.

26 3. "Customer" means any person who engages or seeks to engage the
27 services of a home inspector for the purpose of obtaining an inspection
28 of and written report upon the condition of a residential building.

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1 4. "Direct supervision" means that a home inspector is on-site and in
2 the presence of the inspector in training during the inspection proce-
3 dure, and oversees and takes full responsibility for the inspection and
4 report produced by the inspector in training.

5 5. "Home inspector" means any person licensed as a home inspector
6 pursuant to the provisions of this article.

7 6. "Home inspection" means a visual inspection and written evaluation,
8 performed for consideration, of multiple systems and components of a
9 residential building to provide a customer with objective information
10 about the condition of the property at the time of inspection.

11 7. "Inactive period" means any period during which a licensee has
12 allowed his or her license to lapse.

13 8. "Indirect supervision" means that a home inspector reviews and
14 evaluates one of every ten inspection reports produced by an associate
15 home inspector for the purpose of verifying compliance with the code of
16 ethics and standards of practice adopted by the board.

17 9. "Inspector in training" means an individual performing inspections
18 under the direct supervision of a home inspector for the purposes of
19 satisfying the requirements to obtain an associate home inspector
20 license.

21 10. "Licensee" means any individual licensed pursuant to this article
22 as a home inspector or associate home inspector.

23 11. "Residential building" means a structure consisting of one to four
24 family dwelling units, and their garages and carports.

25 12. "Secretary" means the secretary of state.

26 § 445-b. State home inspection board. 1. There is hereby established a
27 state home inspection board, within the department of state, which shall
28 be composed of the secretary of state or the secretary's designee and

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1 eight additional members, three of whom shall be public members and five
2 of whom shall be licensed home inspectors, appointed as follows:

3 a. Four members shall be appointed by the governor, one of whom shall
4 be a public member and three of whom shall be licensed home inspectors.

5 b. Two members shall be appointed by the temporary president of the
6 senate, one of whom shall be a public member and one of whom shall be a
7 licensed home inspector.

8 c. Two members shall be appointed by the speaker of the assembly, one
9 of whom shall be a public member and one of whom shall be a licensed
10 home inspector.

11 d. Notwithstanding the foregoing, the members of the first board who
12 are home inspectors need not be certified or licensed under this article
13 prior to this appointment to the board but shall have been engaged in
14 the practice of home inspection for compensation for not less than five
15 years, having performed not less than five hundred home inspections for
16 compensation.

17 2. Appointed members of the board shall serve for two year terms, but
18 at the pleasure of the appointing entity. Vacancies shall be filled by
19 the original appointing entity.

20 3. The members of the board shall receive no compensation for their
21 services, but shall be allowed their actual and necessary expenses
22 incurred in the performance of their duties pursuant to this article.

23 4. The department of state shall provide the board with such facili-
24 ties, resources and personnel as shall be necessary to properly carry
25 out the board's powers and duties.

26 5. The board shall meet not less than twice a year, and at such addi-
27 tional times as shall be determined by the chair of the board.

28 6. The board shall have the power and duty to:

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1 (a) advise the secretary in the administration and enforcement of the
2 provisions of this article and shall recommend to the secretary regu-
3 lations necessary to effectuate the provisions thereof;

4 (b) adopt or approve an examination designed to test competence in
5 home inspection practice as determined by recognized role definition
6 methodology, and developed and administered, to the extent practicable,
7 in a manner consistent with the American Educational Research Associ-
8 ation's "Standards for Educational and Psychological Testing". The board
9 may adopt the qualifying exam offered by the American Society of Home
10 Inspectors and the National Association of Home Inspectors and any other
11 previously existing nationally recognized home inspection exam utilized
12 prior to the effective date of this article as satisfying the examina-
13 tion requirement for the licensure of home inspectors and associate home
14 inspectors pursuant to subdivision five of section four hundred forty-
15 five-d of this article;

16 (c) establish standards for the training and continuing education of
17 home inspectors;

18 (d) develop and publish a code of ethics for licensees, consistent
19 with the provisions of this article and sound ethical practices;

20 (e) develop and publish a standard of practice for home inspectors,
21 which shall, to the extent practicable, be consistent with standards of
22 practice published by recognized non-profit national home inspector
23 organizations; and

24 (f) modify the standards of practice as necessary after a proper
25 notice and comment period. The standards of practice shall not include a
26 required reporting format, or limitations on the information provided by
27 a licensee to a customer.

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1 § 445-c. License required for home inspectors. No person shall
2 conduct, or represent that he or she has the ability to conduct a home
3 inspection for compensation, unless such person is licensed as a home
4 inspector or associate home inspector pursuant to this article. Every
5 person purporting to provide a home inspection, any service similar to a
6 home inspection or a service that fulfills the function of a home
7 inspection shall be subject to the provisions of this article.

8 § 445-d. Qualifications for licensure. 1. Every applicant for a
9 license as a home inspector shall: (a)(i) have a high school diploma and
10 been engaged as an associate home inspector for not less than one year
11 and, during such time as an associate home inspector shall have
12 performed not less than two hundred fifty home inspections for compen-
13 sation; or

14 (ii) have education and experience the board considers equivalent to
15 that required by subparagraph (i) of this paragraph; or

16 (iii) be licensed in this state as an architect or engineer; and

17 (b) have passed an examination designed to test competence in home
18 inspection practices, as approved by the board.

19 2. Every applicant for a license as an associate home inspector shall:

20 (a) have successfully completed high school or its equivalent;

21 (b) have passed an approved course of study, as prescribed by the
22 board, which shall consist of not less than ninety-six classroom hours
23 of core real estate inspection courses within the previous five years;

24 (c) have performed not less than seventy-five home inspections under
25 the direct supervision of a home inspector; and

26 (d) have passed an examination designed to test competence in home
27 inspection practices, as approved by the board.

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1 3. The provisions of section four hundred forty-five-c of this article
2 shall not apply to any person performing a home inspection while under
3 the direct supervision of a home inspector for the purpose of meeting
4 the requirements of paragraph (c) of subdivision two of this section.

5 4. Upon payment of such fee and submission of such application, as
6 shall be prescribed by the secretary, to the secretary, the secretary
7 shall issue a home inspector's license to any person who holds a valid
8 license as a home inspector issued by another state or possession of the
9 United States, or the District of Columbia which has standards therefor
10 which are substantially equivalent to those of this state, as determined
11 by the board.

12 5. On or before the three hundred sixty-fifth day following the
13 adoption or approval of the examination required by this article, the
14 secretary shall, upon application therefor, issue:

15 (a) a home inspector's license to any person who meets the require-
16 ments established in paragraph (a) of subdivision two of this section
17 and has either passed an examination as required by paragraph (d) of
18 subdivision two of this section or in lieu of having passed such an
19 examination has qualifications for licensure satisfactory to the board,
20 and who has been engaged in the practice of home inspection for compen-
21 sation for not less than three years prior to the effective date of this
22 section, having performed not less than three hundred home inspections
23 for compensation; or

24 (b) an associate home inspector's license to any person failing to
25 meet the requirements of paragraph (a) of this subdivision, when such
26 person meets the requirements established in paragraphs (a) and (d) of
27 subdivision two of this section, and who has been engaged in the prac-
28 tice of home inspection for compensation for not less than one year,

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1 having performed not less than one hundred home inspections for compen-
2 sation.

3 § 445-e. Duties of the secretary. 1. The secretary shall, in consulta-
4 tion with the board, establish such rules and regulations as shall be
5 necessary to implement the provisions of this article.

6 2. The secretary shall establish such fees for licenses, renewals
7 thereof and other services pursuant to this article as he or she shall
8 deem reasonable to cover the costs of implementing the provisions of
9 this article.

10 § 445-f. License periods and renewals. 1. All licenses and renewals
11 thereof issued pursuant to this article shall be issued for a period of
12 two years, except that the secretary may, in order to stagger the expi-
13 ration dates thereof, issue licenses, within one year of the effective
14 date of this article, for periods of not less than six months nor more
15 than twenty-nine months.

16 2. No renewal of a license shall be issued unless the applicant there-
17 for shall, within two years of applying for such renewal, have success-
18 fully completed and passed a course of continuing education approved by
19 the board. Such course shall consist of not less than thirty-two hours
20 of home inspection instruction, as determined by the board.

21 3. The license of any person who has had an inactive period of not
22 more than five years may renew his or her license by meeting the
23 requirements for the renewal of such license. A person who held a
24 license and has had an inactive period of more than five years, shall,
25 in addition to any other requirement for renewal of such license, pass
26 the examination provided for by paragraph (d) of subdivision two of
27 section four hundred forty-five-d of this article within the preceding
28 year.

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1 § 445-g. Duty of care of home inspectors. 1. Every home inspector and
2 associate home inspector shall comply with the provisions of this arti-
3 cle, and the rules, regulations and standards adopted pursuant thereto.
4 The duty of every home inspector or associate home inspector shall be to
5 the customer. No liability for information contained within a home
6 inspection report, or omitted from such report, shall accrue to any
7 other party.

8 2. Every home inspector and associate home inspector shall display his
9 or her license number and status as a licensed home inspector or
10 licensed associate home inspector on every home inspection report and in
11 all advertising. Upon request of any customer or interested party to a
12 real estate transaction, every home inspector and associate home inspec-
13 tor shall provide such proof of licensure pursuant to this article as
14 shall be issued by the secretary for such purpose.

15 3. After the completion of a home inspection on behalf of a customer,
16 each home inspector or associate home inspector shall provide such
17 customer with a written report of the findings of such inspection. Every
18 such written report and the information contained therein shall be
19 deemed confidential and shall not be disclosed without the express
20 consent of the customer.

21 4. No home inspector or associate home inspector shall:
22 (a) perform or offer to perform, for any additional fee, any repair,
23 improvement or replacement of any component or system in a residential
24 building for which such inspector, or associate or partner thereof shall
25 have prepared a home inspection report within the preceding twelve
26 months. This paragraph shall not include repairs to components and
27 systems not included in the standards of practice adopted pursuant to
28 this article;

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1 (b) inspect any residential building in which such inspector, associ-
2 ate, partner or relative thereof has a financial interest or any inter-
3 est in the transfer thereof, including the receipt of any commission as
4 an agent;

5 (c) offer to provide or provide any commission, referral fee or kick-
6 back to the seller of an inspected residential building, or to the agent
7 of either or both the seller and buyer of such building, for the refer-
8 ral of any business to such inspector or associate or partner thereof;
9 or

10 (d) agree to perform any home inspection or prepare any home
11 inspection report for which compensation or employment is contingent
12 upon the conclusions of the home inspection report, pre-established or
13 prescribed findings, or the closing of a real estate transaction.

14 § 445-h. Suspension and revocation of licenses. 1. A license to engage
15 in the business of home inspection may be suspended or revoked by the
16 secretary, or in lieu thereof the secretary may impose a fine not to
17 exceed one thousand dollars per violation or issue a reprimand, for any
18 one or more of the following causes:

19 (a) fraud or bribery in securing a license;

20 (b) the making of any false statement as to a material matter in any
21 application or other statement or certificate required by or pursuant to
22 this article;

23 (c) incompetency;

24 (d) failure to display a license as provided in this article;

25 (e) violation of any provision of this article, or any rule or regu-
26 lation adopted pursuant thereto; or

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1 (f) conviction of a felony involving fraud, theft, perjury or bribery,
2 or any other cause which would permit disqualification from receiving a
3 license pursuant to this article upon the original application therefor.

4 2. Whenever a license is revoked pursuant to subdivision one of this
5 section, such license shall not be reinstated or reissued until after
6 the expiration of a period of five years from the date of such revoca-
7 tion.

8 § 445-i. Construction with other laws. Nothing in this article shall
9 prevent any licensed engineer, registered architect or any other
10 licensed or regulated profession or governmental employee from acting
11 within the scope of his or her profession or employment.

12 § 445-j. Violations and penalties. Any person who directly or indi-
13 rectly engages in the business of home inspection, holds himself or
14 herself out to the public as being able to engage in the business of
15 home inspection without a license therefor, violates any provision of
16 this article or any rule or regulation adopted pursuant thereto, engages
17 in the business of home inspection after having his or her license
18 revoked or suspended, or without a license to engage in the business of
19 home inspection, directly or indirectly employs, permits or authorizes
20 an unlicensed person to engage in the business of home inspection shall
21 be guilty of a misdemeanor and upon the first conviction thereof shall
22 be sentenced to a fine of not more than one thousand dollars, or to a
23 term of imprisonment not to exceed six months, or both such fine and
24 imprisonment; upon a second or subsequent conviction thereof shall be
25 sentenced to a fine of not less than one thousand dollars nor more than
26 five thousand dollars, or to a term of imprisonment not to exceed one
27 year, or both such fine and imprisonment. Each violation of this article
28 shall be deemed a separate offense.

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1 § 445-k. Severability. In the event it is determined by a court of
2 competent jurisdiction that any phrase, clause, part, subdivision, para-
3 graph or section, or any of the provisions of this article, is unconsti-
4 tutional or otherwise invalid or inoperative, such determination shall
5 not affect the validity or effect of the remaining provisions of this
6 article.

7 § 2. This act shall take effect on the one hundred eightieth day after
8 it shall have become a law, except that:

9 (a) section 445-c of the real property law, as added by section one of
10 this act, shall take effect on the three hundred sixty-fifth day after
11 the effective date of this act; and

12 (b) any rules, regulations and other measures necessary to implement
13 the provisions of this act on its effective date are authorized and
14 directed to be promulgated or taken on or before such date.