

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

400M0217

SENATE BILL NO. 18

Introduced by: Senators Kelly and Gant and Representatives Weems and Murschel

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the licensing of home
2 inspectors.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 36-21C-1 be amended to read as follows:

5 36-21C-1. Terms used in this chapter mean:

- 6 (1) "Client," any person who engages, or seeks to engage, the services of a home
7 inspector for the purpose of obtaining inspection of and written report upon the
8 condition of a residential building;
- 9 (2) "Commission," the South Dakota Real Estate Commission;
- 10 (3) "Home inspector," any person registered or licensed as a home inspector pursuant to
11 the provisions of this chapter;
- 12 (4) "Home inspection," an inspection and written evaluation of all the following
13 components of a residential building: heating system, cooling system, plumbing
14 system, electrical system, structural components, foundation, roof, masonry structure,
15 and exterior and interior components;
- 16 (5) "Licensee," any person holding a license or registration issued pursuant to this



1 chapter;

2 (6) "Inactive licensee," any licensee who has returned his or her license or registration
3 to the commission and has requested the commission to place the license on inactive
4 status, or any new licensee who has failed to designate a place of business;

5 (7) "Residential building," a structure consisting of not more than four family dwelling
6 units.

7 Section 2. That § 36-21C-4 be amended to read as follows:

8 36-21C-4. An applicant for a license as a home inspector shall file a written application
9 provided by the commission showing that the applicant meets the following requirements:

10 (1) Good moral character;

11 (2) ~~Successful completion of high school or high school equivalency~~ Eighteen years of
12 age;

13 (3) Employment as a registered home inspector for no less than one year and
14 performance of not less than one hundred home inspections for compensation; ~~and~~

15 (4) Successful completion of a licensing examination approved by the commission; and

16 (5) A citizen of the United States of America or a resident of South Dakota.

17 Section 3. That § 36-21C-5 be amended to read as follows:

18 36-21C-5. An applicant for registration as a home inspector shall file a written application
19 provided by the commission showing that the applicant meets the following requirements:

20 (1) Good moral character;

21 (2) ~~Successful completion of high school or high school equivalency~~ Eighteen years of
22 age;

23 (3) Successful completion of an approved course of study of not less than forty hours,
24 as prescribed by the commission in rules promulgated pursuant to chapter 1-26; ~~and~~

1 (4) Successful completion of a registration examination approved by the commission;
2 and

3 (5) A citizen of the United States of America or a resident of South Dakota.

4 Section 4. That § 36-21C-9 be repealed.

5 ~~— 36-21C-9. During the first three hundred sixty-five days after January 1, 2001, the~~
6 ~~commission shall issue to any person, upon application, a home inspector license, if the~~
7 ~~applicant meets the requirements of subdivisions 36-21C-4(1), (2), and (4) and has been~~
8 ~~engaged in the practice of home inspections for compensation for not less than one year prior~~
9 ~~to January 1, 2001, and has performed not less than one hundred home inspections for~~
10 ~~compensation.~~

11 Section 5. That § 36-21C-13 be amended to read as follows:

12 36-21C-13. The commission ~~may refuse to grant or~~ may suspend or revoke a home inspector
13 license or registration upon proof, to the satisfaction of the commission, that the ~~holder~~ licensee
14 has:

- 15 (1) Disclosed any information concerning the results of the home inspection without the
16 approval of a client or the client's representative;
- 17 (2) Accepted compensation from more than one interested party for the same service
18 without the written consent of all interested parties;
- 19 (3) Accepted commissions or allowances, directly or indirectly, from other parties
20 dealing with the ~~holder's~~ licensee's client in connection with work for which the
21 ~~holder~~ licensee is responsible; ~~or~~
- 22 (4) Failed to disclose promptly to a client information about any business interest of the
23 ~~holder~~ licensee which may affect the client in connection with the home inspection;
- 24 (5) Been convicted or pled guilty or nolo contendere of a misdemeanor involving moral

- 1 turpitude or of a felony;
- 2 (6) Had a professional or occupational license suspended or revoked in this or any other
3 state;
- 4 (7) Made a material false statement in the licensee's application for a license or
5 registration or in any information furnished to the commission;
- 6 (8) Made any substantial and willful misrepresentation to a home inspection which is
7 injurious to any person;
- 8 (9) Made any false promise or advertisement of a character such as to influence,
9 persuade, or induce a party to a transaction to the party's injury or damage;
- 10 (10) Failed or refused upon demand to produce any document, book, or record in the
11 licensee's possession or under the licensee's control, concerning a home inspection
12 under investigation by the commission;
- 13 (11) Violated any federal or state fair housing requirement;
- 14 (12) Failed to obtain a written contract prior to performing a home inspection;
- 15 (13) Failed or refused upon demand to furnish copies including reproduction of any
16 document pertaining to any home inspection to the client or client's representative;
- 17 (14) Paid compensation or commission in connection with a home inspection to any
18 person who is not licensed or registered under this chapter or paid compensation or
19 commission to an inactive licensee;
- 20 (15) Performed a home inspection and received compensation thereof while license or
21 registration was inactive;
- 22 (16) Exhibited conduct which constitutes dishonesty or fraudulent conduct, whether
23 arising within or without the pursuit of the home inspector's license privilege;
- 24 (17) Failed to deal fairly with a client;

- 1 (18) Committed any act constituting or demonstrating bad faith, incompetency, or
2 fraudulent dealings;
- 3 (19) Used the licensee's position to gain undue influence over a client, using the licensee's
4 position to coerce a client, or using duress on a client;
- 5 (20) Issued an insufficient funds check; or
- 6 (21) Violated any provisions of this chapter or any rule promulgated by the commission
7 under the provisions of this chapter.

8 Section 6. That chapter 36-21C be amended by adding thereto a NEW SECTION to read as
9 follows:

10 The commission may deny an application for any one of the following reasons:

- 11 (1) The applicant has written insufficient funds checks within the calendar year before
12 application or has written an insufficient funds check for the application fee;
- 13 (2) The applicant has been convicted of a felony or of a misdemeanor involving moral
14 turpitude;
- 15 (3) The applicant has had a professional or occupational license disciplined in this or any
16 other state;
- 17 (4) The applicant has failed to satisfy the requirements as provided by this chapter;
- 18 (5) The applicant has not met education requirements;
- 19 (6) The applicant has failed the prelicense school examination;
- 20 (7) The applicant made deliberate misstatements, deliberate omissions,
21 misrepresentations, or untruths in the application; or
- 22 (8) The applicant has a current and unpaid judgment filed against the applicant.

23 Section 7. That chapter 36-21C be amended by adding thereto a NEW SECTION to read as
24 follows:

1 Each person licensed or registered as a home inspector shall have and maintain a fixed place
2 of business within this state. The license shall be prominently displayed in the office of the fixed
3 place of business.

4 Section 8. That chapter 36-21C be amended by adding thereto a NEW SECTION to read as
5 follows:

6 The licensee shall register the licensee's fixed place of business with the commission and
7 may not transact business at any other address. In case of removal from the registered address,
8 the licensee shall apply, on forms furnished by the commission, to the commission, before the
9 removal or within ten days after removal. The licenses shall designate the new location of the
10 office of the fixed place of business or request inactive status. The commission shall
11 immediately register the new location for the unexpired period, if the new location is
12 satisfactory, or place the licensee on inactive status.

13 Section 9. That chapter 36-21C be amended by adding thereto a NEW SECTION to read as
14 follows:

15 A licensee shall preserve for four years all contracts, home inspection reports, and other
16 records relating to any home inspection.