



2021 SENATE BILL 74

February 5, 2021 - Introduced by Senators BERNIER, BEWLEY and COWLES, cosponsored by Representatives BROOKS, GUNDRUM, ALLEN, MOSES, ORTIZ-VELEZ and SKOWRONSKI. Referred to Committee on Insurance, Licensing and Forestry.

1 **AN ACT** *to repeal* 440.978 (4); *to amend* 440.97 (2m), 440.973 (3), 440.974 (2) and
2 440.975 (3) (cm); and *to create* 440.972 (1) (bg), 440.972 (1m), 440.974 (1) (ag),
3 440.975 (3) (bm) and 440.975 (3) (cr) of the statutes; **relating to:** regulation of
4 home inspectors, extending the time limit for emergency rule procedures,
5 providing an exemption from emergency rule procedures, and granting
6 rule-making authority.

Analysis by the Legislative Reference Bureau

This bill does the following related to regulation of home inspectors:

1. Modifies the definition of what is considered to be a “defect,” for purposes of a report submitted by a home inspector to a client. The bill also makes modifications to what the report is required to contain, including by adding a number of required elements and statements for the report, such as a summary page with required statements, and requiring defects to be labeled as defects if they satisfy the legal definition of defect.

2. Requires, in order to be granted a home inspector registration, that an individual complete 40 hours of instruction. Current law generally requires a person to be registered with the Department of Safety and Professional Services to act as a home inspector, use the title “home inspector,” or represent himself or herself to be a home inspector.

3. Exempts newly registered home inspectors from continuing education requirements for the first two renewals of a registration. Current DSPS rules

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exempt newly registered home inspectors from continuing education requirements for the first renewal of a registration.

4. Provides for reciprocal registration of home inspectors licensed in other states who have comparable or more stringent requirements.

5. Repeals a provision allowing DSPS to use an alternative professional discipline procedure for home inspectors.

For further information see the state fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 440.97 (2m) of the statutes is amended to read:

2 440.97 **(2m)** “Defect” means a condition of any component of an improvement
3 that a home inspector determines, on the basis of the home inspector’s judgment on
4 the day of an inspection, would significantly impair the health or safety of future
5 occupants of a property or that, if not repaired, removed, or replaced, would
6 significantly shorten or adversely affect the expected normal life of the component
7 of the improvement.

8 **SECTION 2.** 440.972 (1) (bg) of the statutes is created to read:

9 440.972 **(1)** (bg) Submits evidence satisfactory to the department that he or she
10 has completed at least 40 hours of instruction approved by the department under s.
11 440.974 (1) (ag).

12 **SECTION 3.** 440.972 (1m) of the statutes is created to read:

13 440.972 **(1m)** The department shall register an individual under this
14 subchapter if the individual is registered or licensed in good standing as a home
15 inspector in another state, the individual complies with sub. (1) (a), (b), (c), and (d),
16 and the other state has requirements that the department determines meet or exceed
17 those required under sub. (1).

18 **SECTION 4.** 440.973 (3) of the statutes is amended to read:

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1 440.973 (3) An individual is not eligible for examination unless the individual
2 has satisfied the requirements for registration under s. 440.972 (1) (a) ~~to (e)~~ and (b)
3 at least 30 days before the date of the examination.

4 **SECTION 5.** 440.974 (1) (ag) of the statutes is created to read:

5 440.974 (1) (ag) Standards for instruction for purposes of the requirement
6 under s. 440.972 (1) (bg).

7 **SECTION 6.** 440.974 (2) of the statutes is amended to read:

8 440.974 (2) The department shall promulgate rules establishing continuing
9 education requirements for individuals registered under this subchapter. The rules
10 promulgated under this subsection shall require the completion of at least 40 hours
11 of continuing education every 2 years, except that the rules may not require
12 continuing education for an applicant for renewal of a registration that expires on
13 the 1st and 2nd renewal dates after the date on which the department initially
14 granted the registration.

15 **SECTION 7.** 440.975 (3) (bm) of the statutes is created to read:

16 440.975 (3) (bm) States the property address, the name of the home inspector
17 who conducted the home inspection, the date of the home inspection, the names of
18 the individuals who prepared the report, the date the report was prepared, and, if
19 applicable, the date the report was revised.

20 **SECTION 8.** 440.975 (3) (cm) of the statutes is amended to read:

21 440.975 (3) (cm) Describes any defect that is detected by the home inspector
22 during his or her home inspection. A home inspector is ~~not required to~~ shall use the
23 term “defect” in describing a ~~defect~~ defect condition in the written report required under
24 this subsection. ~~A home inspector may not use the term “defect” in a written report~~
25 ~~required under this subsection unless that use is consistent with s. 440.97 (2m) if the~~

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1 home inspector believes the condition satisfies the definition of “defect” under s.
2 440.97 (2m).

3 **SECTION 9.** 440.975 (3) (cr) of the statutes is created to read:

4 440.975 (3) (cr) 1. Includes a summary page that includes at least all of the
5 following:

6 a. A list of conditions, labeled as defects, that are observed under par. (cm) to
7 be defects, as defined in s. 440.97 (2m).

8 b. Other than items labeled as defects, a listing of components needing repairs,
9 components needing further evaluation, items to monitor, and maintenance items.

10 2. The summary page shall include references to the page, heading, or item
11 number in the detailed account for further information.

12 3. The summary page shall include all of the following statements:

13 NOTE: This summary page is provided for convenience and is not a substitute
14 for reading the entire report and should not be relied upon as the complete list for
15 the client’s reference.

16 For the purposes of the report, “defect,” as defined in section 440.97 (2m), Wis.
17 Stats., means a condition of any component of an improvement that a home inspector
18 determines, on the basis of the home inspector’s judgment on the day of an
19 inspection, would significantly impair the health or safety of occupants of a property
20 or that, if not repaired, removed, or replaced, would significantly shorten or
21 adversely affect the expected normal life of the component of the improvement. The
22 contract of sale may define “defect” to also include a condition that would have a
23 significant adverse effect on the value of the property, but such a condition may not
24 be labeled a defect in the report unless it meets the definition in section 440.97 (2m),
25 Wis. Stats.

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1 NOTE: A home inspector may not report on the market value or marketability
2 of a property or whether a property should or should not be purchased.

3 **SECTION 10.** 440.978 (4) of the statutes is repealed.

4 **SECTION 11. Nonstatutory provisions.**

5 (1) In requiring a home inspector, under s. 440.975 (3) (cm), to describe a defect,
6 as defined in s. 440.97 (2m), by using the term “defect” in a home inspection
7 consistent with the definition under s. 440.97 (2m), the legislature does not intend
8 to modify the liability of a home inspector in any action relating to a home inspection
9 conducted by the home inspector.

10 (2) The rules promulgated under s. 440.974 (2), as affected by this act, shall first
11 apply to an individual who is required to satisfy s. 440.972 (1) (bg) as provided in
12 SECTION 12 (1) of this act.

13 (3) The department of safety and professional services may promulgate
14 emergency rules under s. 227.24 necessary to implement this act. Notwithstanding
15 s. 227.24 (1) (c) and (2), emergency rules promulgated under this subsection remain
16 in effect until May 1, 2023, or the date on which permanent rules take effect,
17 whichever is sooner. Notwithstanding s. 227.24 (1) (a) and (3), the department is not
18 required to provide evidence that promulgating a rule under this subsection as an
19 emergency rule is necessary for the preservation of the public peace, health, safety,
20 or welfare and is not required to provide a finding of emergency for a rule
21 promulgated under this subsection.

22 **SECTION 12. Initial applicability.**

23 (1) The treatment of s. 440.972 (1) (bg) first applies to decisions by the
24 department of safety and professional services to grant or deny a registration under

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1 s. 440.972 made on the date on which the rules promulgated under s. 440.974 (1) (ag)
2 take effect.

3 (2) The treatment of s. 440.975 (3) (bm), (cm), and (cr) first applies to home
4 inspection reports submitted to a client on the effective date of this subsection.

5 **SECTION 13. Effective dates.** This act takes effect on the day after publication,
6 except as follows:

7 (1) The treatment of s. 440.975 (3) (bm), (cm), and (cr) and SECTION 12 (2) of this
8 act takes effect on the first day of the 3rd month beginning after publication.

9 (END)