



**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 1997 ASSEMBLY BILL 334**

February 4, 1998 - Offered by COMMITTEE ON HOUSING.

1 **AN ACT** *to create* 440.08 (2) (a) 38g. and subchapter X of chapter 440 [precedes
2 440.97] of the statutes; **relating to:** the regulation of home inspectors,
3 providing an exemption from emergency rule procedures, granting
4 rule-making authority and providing penalties.

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

5 **SECTION 1.** 440.08 (2) (a) 38g. of the statutes is created to read:
6 440.08 (2) (a) 38g. Home inspector: January 1 of each odd-numbered year; \$41.

7 **SECTION 2.** Subchapter X of chapter 440 [precedes 440.97] of the statutes is
8 created to read:

9 **CHAPTER 440**

10 **SUBCHAPTER X**

11 **HOME INSPECTORS**

12 **440.97 Definitions.** In this subchapter:

1 (1) “Client” means a person who contracts with a home inspector for a home
2 inspection.

3 (2) “Compensation” means direct or indirect payment, including the
4 expectation of payment whether or not actually received.

5 (3) “Dwelling unit” means a structure or that part of a structure that is used
6 or intended to be used as a home, residence or sleeping place by one person or by 2
7 or more persons who are maintaining a common household, to the exclusion of all
8 others.

9 (4) “Home inspection” means the process by which a home inspector examines
10 the observable systems and components of improvements to residential real property
11 that are readily accessible.

12 (5) “Home inspection report” means a written opinion of a home inspector
13 concerning all of the following:

14 (a) The condition of the improvements to residential real property that contains
15 not more than 4 dwelling units.

16 (b) The condition of mechanical and structural components of the
17 improvements specified in par. (a).

18 (6) “Home inspector” means an individual who, for compensation, conducts a
19 home inspection.

20 (7) “Technically exhaustive” means the extensive use of measurements,
21 instruments, testing, calculations and other means to develop scientific or
22 engineering findings, conclusions or recommendations.

23 **440.971 Registry established.** The department shall establish a registry of
24 home inspectors.

1 **440.9712 Registration required.** (1) Except as provided in s. 440.9715, no
2 individual may act as a home inspector, use the title “home inspector”, use any title
3 or description that implies that he or she is a home inspector or represent himself or
4 herself to be a home inspector unless the individual is registered under this
5 subchapter.

6 **(1m)** No business entity may provide home inspection services unless each of
7 the home inspectors employed by the business entity is registered under this
8 subchapter.

9 **(2)** No business entity may use, in connection with the name or signature of the
10 business entity, the title “home inspectors” to describe the business entity’s services,
11 unless each of the home inspectors employed by the business entity is registered
12 under this subchapter.

13 **440.9715 Applicability.** A registration is not required under this subchapter
14 for any of the following:

15 **(1)** An individual who conducts a home inspection while lawfully practicing
16 within the scope of a license, permit or certificate granted to that individual by a state
17 governmental agency.

18 **(2)** An individual who constructs, repairs or maintains improvements to
19 residential real property, if the individual conducts home inspections only as part of
20 his or her business of constructing, repairing or maintaining improvements to real
21 property and if the individual does not describe himself or herself as a registered
22 home inspector or convey the impression that he or she is a registered home
23 inspector.

24 **(3)** An individual who conducts home inspections in the normal course of his
25 or her employment as an employe of a federal, state or local governmental agency.

1 **440.972 Registration of home inspectors.** (1) The department shall
2 register an individual under this subchapter if the individual does all of the
3 following:

4 (a) Submits an application for registration to the department on a form
5 provided by the department.

6 (b) Pays the fee specified in s. 440.05 (1).

7 (c) Submits evidence satisfactory to the department that he or she is not subject
8 to a pending criminal charge, or has not been convicted of a felony, misdemeanor or
9 other offense, the circumstances of which substantially relate to the practice of home
10 inspection.

11 (d) Passes an examination under s. 440.973 (1).

12 **(2)** The renewal date and renewal fee for certificates granted under this section
13 are specified under s. 440.08 (2) (a) 38g.

14 **440.973 Examinations.** (1) No person may be registered under this
15 subchapter unless he or she passes an examination approved by the department. In
16 approving an examination under this subsection, the department shall consider the
17 use of an examination that is similar to an examination that is required for
18 membership in the American Society of Home Inspectors.

19 **(2)** The department shall conduct examinations for home inspector
20 registration at least semiannually at times and places determined by the
21 department.

22 **(3)** An individual is not eligible for examination unless the individual has
23 satisfied the requirements for registration under s. 440.972 (1) (a) to (c) at least 30
24 days before the date of the examination.

1 **440.974 Rules. (1)** The department shall promulgate rules necessary to
2 administer this subchapter, including rules to establish all of the following:

3 (a) Standards for acceptable examination performance by an applicant for
4 registration.

5 (b) Subject to s. 440.975, standards for the practice of home inspection by home
6 inspectors and standards for specifying the mechanical and structural components
7 of improvements to residential real property that are included in a home inspection.
8 The rules promulgated under this paragraph may not require a home inspector to
9 use a specified form for the report required under s. 440.975 (3).

10 (c) Subject to s. 440.975, the information that a home inspector is required to
11 provide to a client concerning the results of the home inspection conducted by the
12 home inspector.

13 **(2)** The department shall promulgate rules establishing continuing education
14 requirements for individuals registered under this subchapter. The rules
15 promulgated under this subsection shall require the completion of at least 20 hours
16 of continuing education during each calendar year.

17 **440.975 Standards of practice. (1)** In this section, “reasonably competent
18 and diligent inspection” means an inspection that complies with the standards
19 established under this subchapter or the rules promulgated under this subchapter.

20 **(2)** A home inspector shall perform a reasonably competent and diligent
21 inspection to detect observable conditions of an improvement to residential real
22 property. Except for removing an access panel that is normally removed by an
23 occupant of residential real property, this subsection does not require a home
24 inspector to disassemble any component of an improvement to residential real

1 property. A reasonably competent and diligent inspection under this subsection is
2 not required to be technically exhaustive.

3 **(3)** After completing a home inspection, a home inspector shall submit a
4 written report to a client that does all of the following:

5 (a) Lists the components of an improvement to residential real property that
6 the home inspector is required to inspect under the rules promulgated under s.
7 440.974 (1) (b).

8 (b) Lists the components of an improvement to residential real property that
9 the home inspector has inspected.

10 (c) Describes any condition of an improvement to residential real property or
11 of any component of an improvement to residential real property that is detected by
12 the home inspector during his or her home inspection and that, if not repaired, will
13 have a significant adverse effect on the life expectancy of the improvement or the
14 component of the improvement.

15 (d) Provides any other information that the home inspector is required to
16 provide under the rules promulgated under s. 440.974 (1) (c).

17 **(4)** A home inspector is not required to report on any of the following:

18 (a) The life expectancy of an improvement to residential real property or a
19 component of an improvement to residential real property.

20 (b) The cause of the need for any major repair to an improvement to residential
21 real property or a component of an improvement to residential real property.

22 (c) The method of making any repair or correction, the materials needed for any
23 repair or correction or the cost of any repair or correction.

24 (d) The suitability for any specialized use of an improvement to residential real
25 property.

1 (e) Whether an improvement to residential real property or a component of an
2 improvement to residential real property complies with applicable regulatory
3 requirements.

4 (f) The condition of any component of an improvement to residential real
5 property that the home inspector was not required to inspect under the rules
6 promulgated under s. 440.974 (1) (b).

7 **(5)** A home inspector may not report, either in writing or verbally, on any of the
8 following:

9 (a) The market value or marketability of a property.

10 (b) Whether a property should or should not be purchased.

11 **(6)** This section does not require a home inspector to do any of the following:

12 (a) Offer a warranty or guarantee of any kind.

13 (b) Calculate the strength, adequacy or efficiency of any component of an
14 improvement to residential real property.

15 (c) Enter any area or perform any procedure that may damage an improvement
16 to residential real property or a component of an improvement to residential real
17 property, or enter any area or perform any procedure that may be dangerous to the
18 home inspector or to other persons.

19 (d) Operate any component of an improvement to residential real property that
20 is inoperable.

21 (e) Operate any component of an improvement to residential real property that
22 does not respond to normal operating controls.

23 (f) Disturb insulation or move personal items, furniture, equipment,
24 vegetation, soil, snow, ice or debris that obstructs access to or visibility of an

1 improvement to residential real property or a component of an improvement to
2 residential real property.

3 (g) Determine the effectiveness of a component of an improvement to
4 residential real property that was installed to control or remove suspected hazardous
5 substances.

6 (h) Predict future conditions, including the failure of a component of an
7 improvement to residential real property.

8 (i) Project or estimate the operating costs of a component of an improvement
9 to residential real property.

10 (j) Evaluate acoustic characteristics of a component of an improvement to
11 residential real property.

12 (k) Inspect for the presence or absence of pests, including rodents, insects and
13 wood-damaging organisms.

14 (L) Inspect cosmetic items, underground items or items not permanently
15 installed.

16 (m) Inspect for the presence of any hazardous substances.

17 **(7)** A home inspector may not do any of the following:

18 (a) Perform or offer to perform any act or service contrary to law.

19 (b) Deliver a home inspection report to any person other than the client without
20 the client's consent.

21 (c) Perform a home inspection for a client with respect to a transaction if the
22 home inspector, a member of the home inspector's immediate family or an
23 organization or business entity in which the home inspector has an interest, is a
24 party to the transaction and has an interest that is adverse to that of the client,
25 unless the home inspector obtains the written consent of the client.

1 (d) Accept any compensation from more than one party to a transaction for
2 which the home inspector has provided home inspection services without the written
3 consent of all of the parties to the transaction.

4 (e) Pay or receive, directly or indirectly, in full or in part, for a home inspection
5 or for the performance of any construction, repairs, maintenance or improvements
6 regarding improvements to residential real property that is inspected by him or her,
7 a fee, a commission, or compensation as a referral or finder's fee, to or from any
8 person who is not a home inspector.

9 (8) This section does not prohibit a home inspector from doing any of the
10 following:

11 (a) Reporting observations or conditions in addition to those required under
12 this section or the rules promulgated under this section.

13 (b) Excluding a component of an improvement to residential real property from
14 the inspection, if requested to do so by his or her client.

15 (c) Engaging in an activity that requires an occupation credential if he or she
16 holds the necessary credential.

17 **440.976 Disclaimers or limitation of liability.** No home inspector may
18 include, as a term or condition in an agreement to conduct a home inspection, any
19 provision that disclaims the liability, or limits the amount of damages for liability,
20 of the home inspector for his or her failure to comply with the standards of practice
21 prescribed in this subchapter or in rules promulgated under this subchapter.

22 **440.977 Liability of home inspectors. (1)** Notwithstanding s. 893.54, an
23 action to recover damages for any act or omission of a home inspector relating to a
24 home inspection that he or she conducts shall be commenced within 2 years after the

1 date that a home inspection is completed or be barred. The period of limitation under
2 this subsection may not be reduced by agreement.

3 (2) A home inspector is not liable to a person for damages that arise from an
4 act or omission relating to a home inspection that he or she conducts if that person
5 is not a party to the transaction for which the home inspection is conducted.

6 **440.978 Discipline; prohibited acts.** (1) Subject to the rules promulgated
7 under s. 440.03 (1), the department may make investigations or conduct hearings to
8 determine whether a violation of this subchapter or any rule promulgated under this
9 subchapter has occurred.

10 (2) Subject to the rules promulgated under s. 440.03 (1), the department may
11 reprimand a home inspector or deny, limit, suspend or revoke a certificate under this
12 subchapter if the department finds that the applicant or home inspector has done
13 any of the following:

14 (a) Made a material misstatement in an application for a certificate or renewal
15 of a certificate.

16 (b) Engaged in conduct while practicing as a home inspector that evidences a
17 lack of knowledge or ability to apply professional principles or skills.

18 (c) Subject to ss. 111.321, 111.322 and 111.335, been arrested or convicted of an
19 offense committed while registered under this subchapter.

20 (d) Advertised in a manner that is false, deceptive or misleading.

21 (e) Advertised, practiced or attempted to practice as a home inspector under
22 another person's name.

23 (f) Allowed his or her name to be used by another person while the other person
24 was practicing or attempting to practice as a home inspector.

1 (g) Subject to ss. 111.321, 111.322 and 111.34, practiced as a home inspector
2 while the individual's ability to practice was impaired by alcohol or other drugs.

3 (h) Acted as a home inspector in connection with a transaction in which he or
4 she was also an appraiser or broker.

5 (i) Performed, or agreed to perform, for compensation any repairs, maintenance
6 or improvements on any property less than 2 years after he or she conducts a home
7 inspection, without the written consent of the property owner given before the home
8 inspection occurred.

9 (j) Prevented or attempted to prevent a client from providing a copy of, or any
10 information from, a home inspection report done by the home inspector in connection
11 with a transaction to any interested party to the transaction.

12 (k) Failed to provide a home inspection report to a client by the date agreed on
13 by the home inspector and the client or, if no date was agreed on, within a reasonable
14 time after completing the inspection.

15 (m) Violated this subchapter or any rule promulgated under this subchapter.

16 **(3)** In addition to or in lieu of proceeding under sub. (2), the department may
17 assess against a person who has engaged in any of the practices specified in sub. (2)
18 a forfeiture of not more than \$1,000 for each separate offense.

19 **(4)** In lieu of proceeding under sub. (1) or (2), the department may place, in a
20 registry information file, a copy of a complaint received by the department against
21 a Wisconsin registered home inspector, the inspector's response to the complaint and
22 a copy of any records of the department concerning the complaint. If the department
23 establishes a registry information file under this subsection, the department shall
24 use the following procedure:

1 (a) No later than 60 days after the date on which the department receives a
2 complaint alleging that a home inspector has engaged in conduct that is grounds for
3 discipline under sub. (2), the department shall provide the inspector with a copy of
4 the complaint and place a copy of the complaint and a copy of any records of the
5 department concerning the complaint in the registry information file.

6 (b) After receiving a copy of the complaint under par. (a), the home inspector
7 who is the subject of the complaint, or his or her authorized representative, may place
8 in the registry information file a statement of reasonable length describing the
9 inspector's view of the correctness or relevance of any of the information contained
10 in the complaint.

11 (c) The department shall make the complaint, the home inspector's response
12 to the complaint, if any, and a copy of any records of the department concerning the
13 complaint placed in a registry information file under this subsection available to the
14 public.

15 (d) The department shall remove all complaints against and other information
16 concerning a home inspector from the registry information file if, for a period of 2
17 years from the date of the most recent complaint filed in the registry information file,
18 no further complaints have been filed against the inspector.

19 **(5)** The department may, as a condition of removing a limitation on a certificate
20 issued under this subchapter or of reinstating a certificate that has been suspended
21 or revoked under this subchapter, do any of the following:

22 (a) Require the home inspector to obtain insurance against loss, expense and
23 liability resulting from errors and omissions or neglect in the performance of services
24 as a home inspector.

1 (b) Require the home inspector to file with the department a bond that is
2 furnished by a company authorized to do business in this state and is in an amount
3 approved by the department.

4 **440.999 Report by department.** The department shall submit an annual
5 report to the legislature under s. 13.172 (2) that describes all of the following:

6 (1) The number of home inspectors who are registered under this subchapter.

7 (2) The number and nature of complaints regarding home inspections that are
8 received by the department from clients of home inspectors.

9 (3) The number and nature of complaints regarding home inspections that are
10 received by the department from persons who are not clients of home inspectors.

11 (4) An estimate of the cost of complying with this subchapter that is incurred
12 by home inspectors.

13 (5) The cost incurred by the department in carrying out its duties under this
14 subchapter.

15 **SECTION 3. Nonstatutory provisions.**

16 (1) Before the first day of the 7th month beginning after the effective date of
17 this subsection, the department of regulation and licensing may promulgate rules
18 under section 440.974 of the statutes, as created by this act, as emergency rules
19 under section 227.24 of the statutes for the period before permanent rules take effect,
20 but not to exceed the period authorized under section 227.24 (1) (c) and (2) of the
21 statutes, if the department of regulation and licensing determines that the use of the
22 procedure under section 227.24 of the statutes is necessary or is in the best interests
23 of the public. Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the
24 department of regulation and licensing is not required to make a finding of
25 emergency.

