

STATE OF WISCONSIN
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

IN THE MATTER OF RULEMAKING PROCEEDINGS BEFORE THE
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

ORDER OF THE DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES
ADOPTING EMERGENCY RULES

The statement of scope for this rule, SS 090-18, was approved by the Governor on August 1, 2018, published in Register 752A1 on August 6, 2018, and approved by the Department of Safety and Professional Services on August 23, 2018.

ORDER

An emergency order of the Department of Safety and Professional Services to create SPS 131.02 (6m), 131.33 (2m), and 131.33 (3m), relating to the written reports of home inspectors.

Analysis prepared by the Department of Safety and Professional Services.

FINDING OF EMERGENCY

The Legislature by SECTION 6 (2) of 2017 Wisconsin Act 338 provides an exemption from providing evidence that promulgating this rule as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and an exemption from a finding of emergency for the promulgation of this rule.

ANALYSIS

Statutes interpreted: Subchapter XI of ch. 440, Stats.

Statutory authority: Sections 227.11 (2) (a) and 440.947 (1), Stats.

Explanation of board authority:

Section 227.11 (2) (a), Wis. Stats. Rule-making authority is expressly conferred as follows: (a) Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation.

Section 440.947 (1) "The department shall promulgate rules necessary to administer this subchapter including rules to establish all of the following:

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

(b) Subject to s. 440.975, standards for the practice of home inspection by home inspectors and standards for specifying the mechanical and structural components of improvements to residential real property that are included in a home inspection. The rules promulgated under this paragraph shall include standards for

the inspection of carbon monoxide detectors. The rules promulgated under this paragraph may not require a home inspector to use a specified form for the report required under s. 440.975 (3).

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

Related statute or rule:

Wisconsin home inspector requirements are found in chs. 15 and 440, Stats., the administrative code in ch. SPS 131, and DSPS administrative code chs. SPS 1 to 9, which outlines the administrative procedures for issuing licenses.

Plain language analysis:

This proposed rule updates the administrative code by adding the statutory citation for the meaning of the term home inspection “defect” and amends the home inspection report by using the defect term. This rule also provides that a written home inspection report is not required to use the term defect, but if the term is used, the written report must conform to the exact definition provided in the statutes.

Summary of, and comparison with, existing or proposed federal regulation:

Federal regulations do not govern home inspectors.

Comparison with rules in adjacent states:

Illinois: The state of Illinois uses the term, “significantly deficient” which means unsafe or not functioning. Illinois also uses the term, “unsafe” which they define as a condition in a system or component that poses a significant risk of personal injury or property damage during normal, day-to-day use. The risk, they include, may be due to damage, deterioration, improper installation or a change in accepted residential construction standards.

Iowa: The state of Iowa does not have licensing requirements for home inspectors. Generally, real estate agents are trained and certified in home inspection and are required to disclose material adverse facts.

Michigan: The state of Michigan does not have licensing requirements for home inspectors. Generally, real estate agents are trained and certified in home inspection and are required to disclose material adverse facts.

Minnesota: The state of Minnesota does not have licensing requirements for home inspectors. Generally, real estate agents are trained and certified in home inspection and are required to disclose material adverse facts.

Summary of factual data and analytical methodologies:

The basis for this rule is 2017 Wisconsin Act 338. The Wisconsin Association of Home Inspectors was contacted for additional background information.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:

This rule is predicated on statutory requirements and does not exceed the change made in statutes.

Fiscal Estimate:

These rules are not anticipated to have a fiscal impact.

Effect on small business:

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department’s Regulatory Review Coordinator may be contacted by email at NathanielL.Ristow@Wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

Greg DiMiceli, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-266-0955; email at DSPSAdminRules@wisconsin.gov.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Greg DiMiceli, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, Wisconsin 53708, or by email to DSPSAdminRules@wisconsin.gov. Comments must be submitted by the date and time at which the public hearing on these rules is conducted. Information as to the place, date, and time of the public hearing will be published on the Department of Safety and Professional Services’ website and in the Wisconsin Administrative Register.

TEXT OF RULE

Section 1. SPS 131.02 (6m) is created to read:

SPS 131.02 (6m). “Defect” has the meaning given in s. 440.97 (2m), Stats.

Section 2. SPS 131.33 (1) (d) is amended to read:

SPS 131.33 (1) (d). Describes ~~the condition of~~ any defect that is detected by the home inspector ~~item~~ identified in s. SPS 131.32 that, if not repaired, will have significant adverse effect on the life expectancy of the identified item.

Section 3. SPS 131.33 (2m) is created to read:

SPS 131.33 (2m). A home inspector is not required to use the term “defect” in describing a defect in the written home inspection report described in this section.

Section 4. SPS 131.33 (3m) is created to read:

SPS 131.33 (3m). A home inspector may not use the term “defect” in their written home inspection report unless that use is consistent with s. SPS 131.02 (6m).

Section 5. Effective Date. The rules adopted in this order shall take effect upon publication in the official state newspaper, pursuant to s. 227.22 (2) (c), Stats.

(END OF TEXT OF RULE)

Dated _____

Agency _____

Secretary,
Department of Safety and Professional Services