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H.227

Introduced by Representatives Webb of Shelburne, Buxton of Tunbridge,
Christie of Hartford, Deen of Westminster, Devereux of Mount
Holly, Emmons of Springfield, Frank of Underhill, Hebert of
Vernon, Helm of Fair Haven, Jerman of Essex, Krebs of South
Hero, Lanpher of Vergennes, Pearson of Burlington, Rachelson
of Burlington, South of St. Johnsbury, Stuart of Brattleboro, and
Yantachka of Charlotte

Referred to Committee on

Date:

Subject: Professions and occupations; Department of Public Safety; Division
of Fire Safety; regulation of property inspectors

Statement of purpose of bill as introduced: This bill proposes to require the
Department of Public Safety's Division of Fire Safety to license and regulate
property inspectors.

An act relating to licensing and regulating property inspectors

It is hereby enacted by the General Assembly of the State of Vermont:

1 ~~Sec. 1. 26 V.S.A. chapter 19 is added to read:~~

2 CHAPTER 19. PROPERTY INSPECTORS

3 Subchapter 1. General Provisions

4 § 1051. PURPOSE AND EFFECT

5 In order to safeguard property and the public welfare, a person shall not
6 engage in the practice of property inspecting unless currently licensed under
7 this chapter.

8 § 1052. DEFINITIONS

9 As used in this chapter:

10 (1) “Board” means the Vermont Board of Property Inspectors.

11 (2) “Disciplinary action” means any action taken against a licensee for
12 unprofessional conduct.

13 (3) “License” means a current authorization permitting the practice of
14 property inspecting issued pursuant to this chapter.

15 (4) “Practice of property inspecting” means performing or offering to
16 perform services involving the physical inspection of real property structures
17 and other improvements in order to evaluate the condition of the property,
18 including any safety issues or material defects.

19 (5) “Property inspector” means a person who is licensed to practice
20 property inspecting under this chapter.

~~§ 1053. PROHIBITIONS; OFFENSES~~

~~(a) It shall be a violation of this chapter for any person, including any corporation, association, or individual, to:~~

~~(1) sell or fraudulently obtain or furnish any property inspector degree, diploma, certificate of registration, license, or any other related document or record or to aid or abet in so doing;~~

~~(2) practice property inspecting under cover of any degree, diploma, registration, license, or related document or record illegally or fraudulently obtained or signed or issued unlawfully or under fraudulent representation;~~

~~(3) practice property inspecting unless duly registered and currently licensed to do so under the provisions of this chapter;~~

~~(4) represent himself or herself as being licensed by this state to practice property inspecting or use in connection with a name any words, letters, signs, or figures which imply that a person is a property inspector when not licensed or otherwise authorized under this chapter;~~

~~(5) practice property inspecting during the time a license or authorization issued under this chapter is suspended or revoked; or~~

~~(6) conduct a property inspector training program unless the program has been approved by the Board.~~

~~(b) Any person violating this section shall be subject to a fine of not more than \$5,000.00 or imprisonment for not more than one year, or both.~~

1 ~~Prosecution may occur upon the complaint of the Attorney General, a state's~~
2 attorney, or an attorney assigned by the Department of Public Safety and shall
3 not act as a bar to civil or administrative proceedings involving the same
4 conduct.

5 § 1054. EXCEPTIONS

6 This chapter does not prohibit:

7 (1) the practice of property inspection which is incidental to his or her
8 program of study by a person enrolled in a property inspection training
9 program approved by the Board; or

10 (2) the practice of any other occupation or profession by a person duly
11 licensed or otherwise authorized under the laws of this State.

12 Subchapter 2. Administration

13 § 1061. BOARD OF PROPERTY INSPECTORS; MEMBERSHIP

14 (a) A Board of Property Inspectors is created within the Department of
15 Public Safety's Division of Fire Safety to regulate the licensure of property
16 inspectors.

17 (b) The Board shall consist of seven members, one of whom shall be the
18 Director of Fire Safety. The remaining members shall serve four-year terms
19 and be appointed by the Governor pursuant to 3 V.S.A. § 2004. The members
20 appointed by the Governor shall include four licensed property inspectors and
21 two public members, as that term is defined in section 3101a of this title.

1 ~~(e) The members of the Board appointed by the Governor shall be entitled~~
2 ~~to compensation as provided in 32 V.S.A. § 1010.~~

3 § 1062. BOARD POWERS AND DUTIES

4 (a) The Board shall:

5 (1) Adopt rules according to the provisions of the Vermont
6 Administrative Procedure Act set forth in 3 V.S.A. chapter 25 which:

7 (A) are necessary for the performance of its duties as set forth in this
8 chapter;

9 (B) establish minimum standards of practice. Standards adopted by
10 the Board shall not exceed the minimum required to protect the public and
11 shall be responsive to a demonstrated need to impose standards; and

12 (C) establish the activities that must be completed by an applicant in
13 order to fulfill the experience requirements established by the Board. The rules
14 shall require that the applicant's experience be under the supervision of a
15 licensed property inspector who has been licensed for three years or more, and
16 shall not require that the applicant be in charge of the property inspection. The
17 activities shall be designed to ensure that all applicants acquire experience in
18 critical areas of property inspecting, but shall not limit admission to licensure
19 unless there is good reason to believe that licensure of a particular applicant
20 would be inconsistent with safeguarding property and the public welfare.

21 (2) Adopt an official seal.

1 ~~(3) Provide general information to applicants for admission to licensure~~
2 ~~as property inspectors.~~

3 ~~(4) Explain appeal procedures to licensees and applicants and complaint~~
4 ~~procedures to the public.~~

5 ~~(5) Inform a prospective applicant that he or she may notify the Board~~
6 ~~if, after reasonable effort, he or she has been unable to obtain supervision by a~~
7 ~~licensee for activities prerequisite to licensure. When the Board receives such~~
8 ~~a notice, it may interview the prospective applicant, and thereafter shall take~~
9 ~~whatever action it considers appropriate.~~

10 ~~(6) If applications for licensure by examination are pending, offer~~
11 ~~examinations at least twice each year and determine the qualifications of~~
12 ~~applicants.~~

13 ~~(b) The Board may consult with an attorney assigned by the Department of~~
14 ~~Public Safety for the proper conduct of its affairs.~~

15 § 1063. DISCIPLINE OF LICENSEES

16 The Board, after notice to the licensee and opportunity for hearing, may
17 condition, suspend, or revoke a license issued under this chapter, or refuse to
18 renew the license of a person who has made application for renewal:

19 (1) if the license was wrongfully or fraudulently obtained;

20 (2) if the licensee has violated or failed to comply with any provision of
21 this chapter, or any rule adopted under this chapter; or

1 ~~(3) if the licensee is found by the Board to be unqualified to hold the~~
2 ~~license.~~

3 § 1064. APPEALS FROM BOARD DECISIONS

4 (a) A party aggrieved by a final decision of the Board may, within 30 days
5 of the decision, appeal that decision by filing a notice of appeal with the
6 Commissioner of Public Safety who shall assign the case to an appellate
7 officer. The review shall be conducted on the basis of the record created
8 before the Board. In cases of alleged irregularities in procedure before the
9 Board, not shown in the record, proof on that issue may be taken by the
10 appellate officer.

11 (b) The appellate officer shall not substitute his or her judgment for that of
12 the Board as to the weight of the evidence on questions of fact. The appellate
13 officer may affirm the decision, or may reverse and remand the matter with
14 recommendations if substantial rights of the appellant have been prejudiced
15 because the Board's finding, inferences, conclusions or decisions are:

16 (1) in violation of constitutional or statutory provisions;

17 (2) in excess of the statutory authority of the Board;

18 (3) made upon unlawful procedure;

19 (4) affected by other error of law;

20 (5) clearly erroneous in view of the evidence on the record as a whole;

21 (6) arbitrary or capricious; or

1 ~~(7) characterized by abuse of discretion or clearly unwarranted exercise~~
2 ~~of discretion.~~

3 (c) A party aggrieved by a decision of the appellate officer may appeal to
4 the Superior Court in Washington County which shall review the matter on the
5 basis of the records created before the Board and the appellate officer.

6 Subchapter 3. Licenses

7 § 1071. APPLICATIONS

8 Applications for licensure shall be on forms provided by the Board. Each
9 application shall contain a statement under oath showing the applicant's
10 education, property inspecting experience, and other pertinent information
11 required by the Board and shall be accompanied by the required fee.

12 § 1072. LICENSES GENERALLY

13 (a) The Board shall issue a license, upon payment of the fees prescribed in
14 this chapter, to any applicant who has satisfactorily met all the requirements of
15 this chapter. Licenses shall contain a serial number, the full name of the
16 licensee, the signature of the Director of Fire Safety, and the seal of the Board.

17 (b) Issuance of a license shall be evidence that the person named in the
18 license is entitled to all the rights and privileges of a licensed property
19 inspector as long as the license remains unexpired and not revoked, suspended,
20 or limited by conditions established as a result of disciplinary action taken
21 under the provisions of this chapter.

§ 1073. RENEWALS

(a) Licenses shall be renewed every two years upon payment of the renewal fee.

(b) Biennially, the Board shall forward a renewal form to each licensee. Upon receipt of the completed form and the renewal fee, the Board shall issue a new license.

(c) As a condition of renewal, the Board shall require that a licensee establish that he or she has completed continuing education, as approved by the Board, not to exceed 15 hours for each year of renewal.

(d) The Board may renew the license of an individual whose license has lapsed upon payment of the required fee and the late renewal penalty, provided the individual has satisfied all the requirements for renewal, including continuing education.

§ 1074. LICENSE AND RENEWAL FEES

(a) Applicants and persons regulated under this chapter shall pay the following fees:

(1) Application \$100.00

(2) Biennial renewal of license \$200.00

(b) A late renewal penalty of \$25.00 shall apply for a renewal submitted less than 30 days late. Thereafter, the Board may increase the late renewal penalty by \$5.00 for each additional month or fraction of a month, provided

1 ~~that the total penalty for a late renewal shall not exceed \$100.00. This penalty~~
2 shall not preclude disciplinary action for practicing without a valid license.

3 (c) The Board shall not require payment of renewal fees for years during
4 which a license was lapsed.

5 Sec. 2. TRANSITIONAL PROVISION; LICENSING OF CURRENT
6 PROPERTY INSPECTORS

7 The Commissioner of Public Safety shall establish a procedure so that
8 residents of Vermont who have been engaged in the practice of property
9 inspection in Vermont prior to the effective date of Sec. 1 of this act may
10 become licensed without examination. Only those applicants who can
11 establish a record of property inspecting practice for five or more years shall be
12 eligible for licensure without examination as property inspectors under this
13 section. A degree from an accredited property inspecting program may
14 substitute for years of the experience requirement under this section at the rate
15 of two years of accredited school work for one year of property inspecting
16 work experience. Any person licensed under this section shall thereafter be
17 eligible for licensure renewal pursuant to 26 V.S.A. § 1073.

18 Sec. 3. IMPLEMENTATION OF THE BOARD OF PROPERTY
19 INSPECTORS

20 (a) The Board of Property Inspectors, as created in this act, is established
21 on January 1, 2014.

1 ~~(b) The Governor shall appoint Board members by July 1, 2013 for the~~
2 ~~purposes set forth in subsection (c) of this section. The non-public Board~~
3 ~~members shall meet the requirements for licensure without examination as set~~
4 ~~forth in Sec. 2 (transitional provision; licensing of current property inspectors)~~
5 ~~of this act. Of the initial six Board of Property Inspectors member~~
6 ~~appointments, the Governor shall appoint two members for two-year terms,~~
7 ~~two members for three-year terms, and two members for four-year terms, with~~
8 ~~each public member being appointed to a different term length, so that the~~
9 ~~terms of members expire in a staggered manner. Terms of members shall~~
10 ~~officially begin as set forth in subsection (d) of this section.~~

11 (c) The Board members appointed as set forth in subsection (b) of this
12 section are authorized and shall conduct business through December 31, 2013
13 for the limited purposes of organizing and transitioning to the Board of
14 Property Inspectors established as set forth in subsection (a) of this section,
15 including the adoption of rules to:

16 (1) establish standards for property inspection training programs and
17 how they are approved;

18 (2) establish standards for registration and licensure of individuals for
19 the practice of property inspection;

20 (3) establish standards of practice for licensed property inspectors; and

1 ~~(1) establish standards for:~~
2 ~~(A) the renewal of licenses every two years; and~~
3 ~~(B) the reentry into property inspection practice following a lapse of~~
4 ~~five or more years.~~
5 ~~(d) On January 1, 2014, the Board members appointed as set forth in~~
6 ~~subsection (b) of this section shall be the members of the new Board of~~
7 ~~Property Inspectors established as set forth in subsection (a) of this section, and~~
8 ~~the official terms of their appointments shall begin on this date.~~
9 Sec. 4. EFFECTIVE DATES
10 ~~This act shall take effect on passage, except that Sec. 1 (adding 26 V.S.A.~~
11 ~~chapter 19) of this act shall take effect on January 1, 2014.~~

Sec. 1. 3 V.S.A. § 122 is amended to read:

§ 122. OFFICE OF PROFESSIONAL REGULATION

An Office of Professional Regulation is created within the Office of the Secretary of State. The Office shall have a director who shall be appointed by the Secretary of State and shall be an exempt employee. The following boards or professions are attached to the Office of Professional Regulation:

** * **

(42) Landscape Architects

(43) Property Inspectors.

Sec. 2. 26 V.S.A. chapter 19 is added to read:

CHAPTER 19. PROPERTY INSPECTORS

Subchapter 1. General Provisions

§ 1051. PURPOSE AND EFFECT

In order to safeguard the life and health of the people of this State, no person shall practice, or offer to practice, property inspecting unless currently licensed under this chapter.

§ 1052. DEFINITIONS

As used in this chapter:

(1) "Director" means the Director of the Office of Professional Regulation.

(2) "License" means a current authorization granted by the Director permitting the practice of property inspecting.

~~(3) "Practice of property inspecting" means performing or offering to perform services involving the physical inspection of real property structures and other improvements for a fee or other compensation in order to evaluate the condition of the property, including any safety issues or material defects.~~

(3) "Practice of property inspecting" means performing or offering to perform for the public for a fee or other compensation services involving the physical inspection of real property structures and other improvements in order to evaluate the condition of the property, including any safety issues or material defects.

(4) "Property inspector" means a person who is licensed under this chapter to engage in the practice of property inspecting.

§ 1053. PROHIBITIONS; OFFENSES

(a) It shall be a violation of this chapter for any person to:

(1) sell or fraudulently obtain or furnish any property inspector degree, diploma, certificate of registration, license, or any other related document or record or to aid or abet in so doing;

(2) practice property inspecting under cover of any degree, diploma, registration, license, or related document or record illegally or fraudulently obtained or signed or issued unlawfully or under fraudulent representation;

(3) practice property inspecting unless currently licensed to do so under the provisions of this chapter;

(4) represent himself or herself as being licensed by this State to practice property inspecting or use in connection with a name any words, letters, signs, or figures that imply that a person is a property inspector when not licensed or otherwise authorized under this chapter; or

(5) practice property inspecting during the time a license or authorization issued under this chapter is suspended or revoked.

(b) Any person violating this section shall be subject to the penalties provided in 3 V.S.A. § 127.

§ 1054. EXCEPTIONS

This chapter does not prohibit:

(1) the practice of property inspection that is incidental to his or her program of study by a person enrolled in a property inspection training program approved by the Director; or

(2) the practice of any other occupation or profession by a person duly licensed or otherwise authorized under the laws of this State.

Subchapter 2. Administration

§ 1071. DUTIES OF THE DIRECTOR

(a) The Director shall:

(1) provide general information to applicants for licensure as property inspectors;

(2) receive applications for licensure and issue licenses to applicants qualified under this chapter;

(3) administer fees as established by law;

(4) refer all disciplinary matters to an administrative law officer;

(5) renew, revoke, and reinstate licenses as ordered by an administrative law officer; and

(6) explain appeal procedures to licensed property inspectors and to applicants, and complaint procedures to the public.

(b) The Director may adopt rules necessary to perform his or her duties under this section, and may adopt rules establishing standards of practice for the profession.

§ 1072. ADVISOR APPOINTEES

(a) The Secretary of State shall appoint two property inspectors for five-year staggered terms to serve at the Secretary's pleasure as advisors in matters relating to property inspection. One of the initial appointments may be for less than a five-year term.

(b) An appointee shall have not less than five years' experience as a property inspector immediately preceding appointment; shall be licensed as a property inspector in Vermont; and shall be actively engaged in the practice of property inspecting in this State during incumbency.

(c) The Director shall seek the advice of the property inspector advisors in carrying out the provisions of this chapter.

Subchapter 3. Licenses

§ 1091. ELIGIBILITY FOR LICENSURE

Each applicant for licensure as a property inspector shall meet the following minimum requirements:

(1) Be at least 18 years of age and have successfully completed high school or its equivalent.

(2) Complete no less than 80 hours of education approved by the Director covering all of the following real property core components:

(A) heating systems;

(B) cooling systems;

(C) plumbing systems;

(D) electrical systems;

(E) structural components;

(F) foundations;

(G) roof coverings;

(H) exterior and interior components; and

(I) site aspects as they affect the building.

(3) Pass an examination required for licensure. The Director shall identify by rule an eligibility examination required for licensure that is an independent, nationally recognized proctored examination.

(4) Complete a minimum number of property inspections incidental to a program of study in a property inspection training program administered by an independent, nationally recognized organization. The Director shall identify by rule the minimum number of inspections and acceptable organizations required by this subdivision (4).

(5) Provide proof of certification issued by an independent, nationally recognized organization that provides certification for property inspectors. The Director shall identify by rule acceptable organizations for certification.

§ 1092. LICENSE RENEWAL

(a) A license shall be renewed every two years on a schedule determined by the Director upon application and payment of the required fee. Failure to comply with the provisions of this section shall result in suspension of all privileges granted to the licensee, beginning on the expiration date of the license.

(b) A license that has lapsed may be renewed upon payment of the biennial renewal fee and the late renewal penalty.

(c) The Director may adopt rules necessary for the protection of the public to assure the Director that an applicant whose license has lapsed or who has not worked for more than five years as a property inspector is professionally qualified for license renewal. Conditions imposed under this subsection shall be in addition to the requirements of subsection (a) of this section.

§ 1093. APPLICATIONS

Applications for licensure and license renewal shall be on forms provided by the Director. Each application shall contain a statement under oath showing the applicant's education, experience, and other pertinent information and shall be accompanied by the required fee.

§ 1094. LICENSURE GENERALLY

The Director shall issue a license or renew a license, upon payment of the fees required under this chapter, to an applicant or licensee who has satisfactorily met all the requirements of this chapter.

§ 1095. FEES

Applicants and persons regulated under this chapter shall pay those fees set forth in 3 V.S.A. § 125.

Sec. 3. TRANSITIONAL PROVISIONS

(a) Notwithstanding the provision of Sec. 2 of this act, 26 V.S.A. § 1072(b) (advisor appointees; qualifications), that requires an advisor appointee to be licensed as a property inspector in Vermont, an initial advisor appointee may be in the process of applying for licensure if he or she otherwise meets the requirements for licensure as a property inspector and the other requirements of Sec. 2 of this act, 26 V.S.A. chapter 19.

(b) A person who has been actively engaged in the business of property inspection in this State as the primary means of his or her livelihood for at least five years preceding the effective date of this subsection shall be eligible for licensure without completion of the licensure eligibility requirements of Sec. 2 of this act, 26 V.S.A. § 1091(2)–(5) (eligibility for licensure). Such an applicant shall be issued a license by providing evidence satisfactory to the Director of the knowledge and experience equivalent to the licensure eligibility

requirements of Sec. 2 of this act, 26 V.S.A. chapter 19. All applicants shall pay an initial fee and fulfill all other license application requirements.

(c) Effective on July 1, 2016, all applicants for initial licensure or renewal shall meet the licensure eligibility requirements of Sec. 2 of this act, 26 V.S.A. § 1091.

(d) The Director of the Office of Professional Regulation may adopt rules necessary to perform his or her duties under Sec. 2 of this act, 26 V.S.A. chapter 19, prior to the effective date of that section.

Sec. 4. EFFECTIVE DATES

This act shall take effect on July 1, 2014 except this section and Sec. 3 (transitional provisions), which shall take effect on passage.