

SENATE BILL NO. 269

INTRODUCED BY M. MACDONALD

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A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR HOME INSPECTOR REGISTRATION WITH THE DEPARTMENT OF LABOR AND INDUSTRY; PROVIDING REQUIREMENTS, FEES, AND PENALTIES; PROVIDING RULEMAKING AUTHORITY; REMOVING NONCOMPLIANCE WITH HOME INSPECTOR REQUIREMENTS AS AN UNFAIR TRADE PRACTICE; AMENDING SECTIONS 39-9-101, 39-9-102, 39-9-206, 39-9-207, 39-9-211, 39-9-301, 39-9-303, AND 39-9-304, MCA; REPEALING SECTIONS 30-14-1001, 30-14-1002, 30-14-1003, AND 30-14-1005, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Home inspector registration -- penalty -- rulemaking. (1) A home

inspector, whether as an individual or a partnership, corporation, or manager-managed or member-managed limited liability company, shall register with the department on forms provided by the department and pay a registration fee for each home inspector covered by the registration. The registration fee must be set by the department by rule as provided in 39-9-206.

(2) For a first-time registration, a home inspector shall document that each person working under the registration certificate as a home inspector:

(a) has successfully completed a minimum of 40 hours of comprehensive home inspection instruction approved by the department or a passing grade on the national home inspector examination offered by the examination board of professional home inspectors or another national examination as provided by the department by rule;

(b) is a member of a national home inspection association; and

(c) is covered by liability insurance, a minimum of \$100,000 coverage in errors and omissions insurance, and either workers' compensation coverage or, if the home inspector is self-employed with no other employees and does not have workers' compensation coverage, an independent contractor's exemption certificate.

(3) A home inspector renewing a registration shall provide documentation that each home inspector covered by the registration:

(a) has completed 40 hours of continuing education over the prior 2 years;



1 (b) is a member in a national home inspection association; and
 2 (c) is covered by liability insurance, a minimum of \$100,000 in errors and omissions insurance, and either
 3 workers' compensation coverage or an independent contractor's exemption certificate if the home inspector is
 4 self-employed with no other employees.

5 (4) Failure to register and pay a registration fee may result in:

6 (a) a fine as determined by the department by rule; and

7 (b) removal of the home inspector's registration on the department's website used to list registered home
 8 inspectors. Upon payment of the registration fee, the department shall reinstate the listing and charge a fee for
 9 reinstatement as provided in 39-9-206.

10 (5) (a) A fee or fine collected under this section must be deposited in a state special revenue account to
 11 the credit of the department for administration and enforcement of this chapter.

12 (b) A penalty under this section does not apply to a violation that is determined to be an inadvertent error.

13 (6) The department may adopt rules to implement this section.

14

15 **Section 2.** Section 39-9-101, MCA, is amended to read:

16 **"39-9-101. Purpose.** It is the purpose of this chapter to ensure that all construction contractors and
 17 home inspectors are competing fairly and in compliance with state laws."
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18

19 **Section 3.** Section 39-9-102, MCA, is amended to read:

20 **"39-9-102. Definitions.** As used in this chapter, the following definitions apply:

21 (1) "Construction contractor" means a person, firm, or corporation that:

22 (a) in the pursuit of an independent business, offers to undertake, undertakes, or submits a bid to
 23 construct, alter, repair, add to, subtract from, improve, move, wreck, or demolish for another a building, highway,
 24 road, railroad, excavation, or other structure, project, development, or improvement attached to real estate,
 25 including the installation of carpeting or other floor covering, the erection of scaffolding or other structures or
 26 works, or the installation or repair of roofing or siding; or

27 (b) in order to do work similar to that described in subsection (1)(a) upon the construction contractor's
 28 property, employs members of more than one trade on a single job or under a single building permit, except as
 29 otherwise provided.

30 (2) "Department" means the department of labor and industry.

1 (3) "Home inspection" means a physical examination of a residential dwelling to identify major defects
 2 in various attributes of or attachments to the dwelling, including mechanical, electrical, and plumbing systems in
 3 addition to structural and other essential components. Home inspections are performed for compensation and
 4 employ visual observation and the testing of user controls but not mathematical or specialized engineering
 5 sciences.

6 (4) "Home inspection report" means a written document prepared by a home inspector for a client and
 7 issued to the client in exchange for compensation after a home inspection has been completed. The report must
 8 clearly identify and describe:

9 (a) the inspected systems, structures, and other relevant components of the dwelling;

10 (b) any major visible defects in the inspected systems, structures, and other relevant components of the
 11 dwelling; and

12 (c) any recommendations for further evaluation of the property by other appropriate persons.

13 (5) "Home inspector" means a person who performs a home inspection for compensation."

14

15 **Section 4.** Section 39-9-206, MCA, is amended to read:

16 **"39-9-206. Fees -- education program.** (1) The department shall charge fees to construction
 17 contractors and home inspectors for:

18 (a) issuance, renewal, and reinstatement of certificates of registration; and

19 (b) change of name, address, or business structure.

20 (2) The department shall set the fees by administrative rule. The fees must cover the full cost of issuing
 21 certificates, filing papers and notices, and administering and enforcing this chapter. The costs include
 22 reproduction, travel, per diem, and administrative and legal support costs.

23 (3) The fees charged in subsection (1)(a) may not exceed:

24 (a) for a construction contractor:

25 (i) \$70 for the initial registration certificate; or

26 ~~(b)~~(ii) \$70 for the renewal or reinstatement of a registration certificate; or

27 (b) for a home inspector, an amount determined in rule for the initial registration certificate or for the
 28 renewal or reinstatement of a registration certificate.

29 (4) The fees collected under this section must be deposited in ~~the a~~ state special revenue fund ~~in an~~
 30 account to the credit of the department for the administration and enforcement of this chapter and independent

1 contractor certification provided for in Title 39, chapter 71, part 4.

2 (5) The department shall establish, cooperatively with representatives of the building industry and the
 3 home inspection industry, an industry and consumer information program, funded with 15% of the fees, to
 4 educate the building industry and home inspectors about the registration ~~program~~ requirements and to educate
 5 the public regarding the hiring of building construction contractors and home inspectors.

6 (6) The fee for a joint application for a certificate of registration and an independent contractor exemption
 7 certificate may not exceed the total fee charged for a certificate of registration and an independent contractor
 8 exemption certificate that are obtained separately. The fee paid for the independent contractor exemption
 9 certificate may be used by the department to offset the cost of administering independent contractor certification
 10 provided for in Title 39, chapter 71, part 4."

11

12 **Section 5.** Section 39-9-207, MCA, is amended to read:

13 **"39-9-207. Contractor registration Registration -- limiting liability.** A person who, pursuant to an
 14 oral or written contract, engages a construction contractor or a home inspector who is registered under this
 15 chapter on the date of the contract is not liable as an employer for workers' compensation coverage under
 16 39-71-405, for unemployment insurance coverage, or for wages and fringe benefits for:

- 17 (1) the registered construction contractor or home inspector;
- 18 (2) the employees of the registered construction contractor or home inspector; or
- 19 (3) any subsequent subcontractor or the employees of any subsequent subcontractor engaged to fulfill
 20 a part of or all of the obligations of the oral or written contract of the registered construction contractor or home
 21 inspector listed in subsection (1)."

22

23 **Section 6.** Section 39-9-211, MCA, is amended to read:

24 **"39-9-211. Exemptions.** ~~This~~ As related to construction contractors, this chapter does not apply:

- 25 (1) to an authorized representative of the United States government, the state of Montana, or any
 26 incorporated municipality, county, alternative form of local government, irrigation district, reclamation district, or
 27 other municipal or political corporation or subdivision of this state;
- 28 (2) to an officer of a court acting within the scope of office;
- 29 (3) to a public utility operating under the regulations of the public service commission or to a rural
 30 cooperative utility operating under Title 35, chapter 18, in construction, maintenance, or development work

1 incidental to its own business;

2 (4) to the repair or operation incidental to the discovery or production of oil or gas or incidental to the
3 drilling, testing, abandoning, or other operation of an oil or gas well or a surface or underground mine or mineral
4 deposit;

5 (5) to the sale or installation of finished products, materials, or articles of merchandise that are not
6 actually fabricated into and do not become a permanent fixed part of a structure;

7 (6) to the construction, alteration, improvement, or repair carried on within the limits and boundaries of
8 a site or reservation under the exclusive legal jurisdiction of the federal government;

9 (7) to a person who only furnished materials, supplies, or equipment without fabricating them into or
10 consuming them in the performance of the work of the construction contractor;

11 (8) to work or operation on one undertaking or project considered of a casual, minor, or inconsequential
12 nature, by one or more contracts, the aggregate contract price of which, for labor and materials and all other
13 items, is less than \$2,500 a job. The exemption prescribed in this subsection does not apply when the work or
14 construction is only a part of a larger or major operation, whether undertaken by the same or a different
15 construction contractor, or in which a division of the operation is made into contracts of amounts of less than
16 \$2,500 a job for the purpose of evasion of this chapter or otherwise.

17 (9) to a farmer or rancher while engaged in a farming, dairying, agriculture, viticulture, horticulture, or
18 stock or poultry operation;

19 (10) to an irrigation district or reclamation district;

20 (11) to an operation related to clearing or other work upon land in rural districts for fire prevention
21 purposes;

22 (12) to an owner who contracts for work to be performed by a registered construction contractor, but this
23 exemption does not apply to an owner who is otherwise covered by this chapter who constructs a residence on
24 the owner's property with the intention and for the purpose of promptly selling the improved property;

25 (13) to an owner working on the owner's property, whether occupied by the owner or not, but this
26 exemption does not apply to an owner who is otherwise covered by this chapter who constructs an improvement
27 on the owner's property with the intention and for the purpose of promptly selling the improved property, unless
28 the owner has continuously occupied the property as the owner's primary residence for at least the last 12
29 months;

30 (14) to owners of commercial properties who use their own employees to do maintenance, repair, and

1 alteration work in or upon their own properties;

2 (15) to an architect, civil or professional engineer, or professional land surveyor, licensed in Montana and
3 acting solely in a professional capacity;

4 (16) to an electrician or plumber, licensed in Montana, operating within the scope of the license;

5 (17) to a contract security company, licensed under Title 37, chapter 60, operating within the scope of
6 the license;

7 (18) to a person who engages in the activities regulated as an employee of a registered construction
8 contractor with wages as the sole compensation or as an employee with wages as the sole compensation;

9 (19) to a person or entity licensed under Title 50, chapter 39, to sell, install, or service fire suppression
10 or fire protection equipment;

11 (20) to a water well contractor licensed under Title 37, chapter 43, performing the work of a water well
12 contractor;

13 (21) to an enrolled tribal member or an association, business, corporation, or other entity, at least 51%
14 of which is owned by an enrolled tribal member or members and whose business is conducted solely within the
15 exterior boundaries of an Indian reservation;

16 (22) to a contractor engaged in the logging industry who builds forest access roads for the purpose of
17 harvesting and transporting logs from forest to mill;

18 (23) to a person working on the person's own residence, if the residence is owned by a person other than
19 the resident; or

20 (24) to an independent contractor who has no employees. However, an independent contractor may
21 voluntarily elect to register under this chapter."

22

23 **Section 7.** Section 39-9-301, MCA, is amended to read:

24 **"39-9-301. Business practices -- penalty.** (1) Except as provided in 39-9-205, a person who has
25 registered under one name as provided in this chapter may not engage in the business or act in the capacity of
26 a construction contractor or a home inspector under any other name unless that name also is registered under
27 this chapter.

28 (2) ~~A construction contractor may not falsify a~~ Use of a falsified registration number ~~and use it in~~
29 connection with a solicitation or identification as a construction contractor or a home inspector is prohibited.

30 (3) ~~An individual construction contractor, A~~ partner, associate, agent, salesperson, solicitor, officer, or

1 employee of a construction contractor or a home inspector shall use a true name and address at all times while
 2 engaged in the business or capacity of a construction contractor or a home inspector or in activities related to a
 3 construction contractor or a home inspector.

4 ~~(3)~~(4) (a) The finding of a violation of this section by the department at a hearing held in accordance with
 5 the Montana Administrative Procedure Act subjects the person who commits the violation to a penalty of not more
 6 than \$5,000, as determined by the department. The required hearing may be held by telephone or by
 7 videoconference. A penalty collected under this section must be deposited in the state special revenue account
 8 to the credit of the department for administration and enforcement of this chapter.

9 (b) Penalties under this section do not apply to a violation that is determined to be an inadvertent error."
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11 **Section 8.** Section 39-9-303, MCA, is amended to read:

12 **"39-9-303. Department to compile and update ~~list of registered construction contractors~~**
 13 **registration lists -- availability -- fee.** (1) The department shall compile a list of all construction contractors and
 14 home inspectors registered under this chapter and update the list of construction contractors at least bimonthly
 15 and the list of home inspectors as provided by rule. The list is public information and must be available to the
 16 public upon request for a reasonable fee or posted on the department's website.

17 (2) The department shall inform a person, firm, or corporation whether a construction contractor or a
 18 home inspector is registered. The department shall provide the information without charge, except for a
 19 reasonable fee for any copies made."
 20

21 **Section 9.** Section 39-9-304, MCA, is amended to read:

22 **"39-9-304. Provisions exclusive -- certain local authority not limited or abridged.** The provisions
 23 of this chapter relating to the registration or licensing of a person, firm, or corporation, including the requirement
 24 of a bond with the state of Montana named as obligee and the collection of a fee, are exclusive for registered
 25 construction contractors. A political subdivision of the state may not require or issue any registrations, licenses,
 26 or bonds for the same or a similar purpose. However, this section does not limit or abridge the authority of a local
 27 government to levy and collect a general and nondiscriminatory license fee levied upon all businesses. This
 28 section does not limit the authority of a local government with respect to contractors not required to be registered
 29 under this chapter."
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1 NEW SECTION. **Section 10. Repealer.** The following sections of the Montana Code Annotated are
2 repealed:

3 30-14-1001. Short title.

4 30-14-1002. Definitions.

5 30-14-1003. Exclusions.

6 30-14-1005. Unfair trade practice.

7

8 NEW SECTION. **Section 11. Codification instruction -- directions to code commissioner.** [Section
9 1] is intended to be codified as an integral part of Title 39, chapter 9, and the provisions of Title 39, chapter 9,
10 apply to [section 1]. The code commissioner is directed to renumber 30-14-1004 to include that section in Title
11 39, chapter 9, in proximity to [section 1].

12

13 NEW SECTION. **Section 12. Effective date.** [This act] is effective January 1, 2020.

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