

AMENDED IN ASSEMBLY JUNE 18, 2002

AMENDED IN SENATE MAY 2, 2002

AMENDED IN SENATE APRIL 1, 2002

AMENDED IN SENATE MARCH 6, 2002

SENATE BILL

No. 1332

Introduced by Senator Figueroa

(Coauthors: Senators Escutia, Johannessen, and Romero)

(Coauthors: Assembly Members Alquist, Aroner, Chavez, Correa,
Jackson, Longville, *Negrete McLeod*, and Pavley)

January 30, 2002

An act to amend Sections 7195 and 7197 of, and to add Sections 7196.2 ~~and 7197.5~~, 7197.5, 7197.7, and 7198.5 to, the Business and Professions Code, and to amend Section 1102.4 of the Civil Code, relating to home inspections.

LEGISLATIVE COUNSEL'S DIGEST

SB 1332, as amended, Figueroa. Home inspectors.

Existing law regulates a person who performs home inspections for a fee. Existing law requires a home inspector to conduct a home inspection with the degree of care that a reasonably prudent home inspector would exercise. Under existing law, certain activities are listed as unfair business practices for a home inspector.

This bill would prohibit a person from holding himself or herself out as or using the title "certified home inspector" or other words implying he or she is a certified home inspector without fulfilling certain requirements. The bill would define a home inspection professional association and specify its duties in certifying home inspectors. The bill

would require, on or after July 1, 2003, a home inspector to make disclosures in writing as to his or her qualifications, whether the home inspector carries liability insurance, and whether the home inspection report may be relied on by 3rd parties prior to commencing a home inspection. The bill would also add items to the list of unfair business practices for a home inspector.

Existing law requires the transferor of certain residential real property to disclose specified information, and provides that the transferor may rely upon reports prepared by specified professionals.

This bill would provide that the transferor may also rely upon a report prepared by a certified home inspector for this purpose *if the certified home inspector carries errors and omissions insurance and meets other specified requirements.*

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 7195 of the Business and Professions
- 2 Code is amended to read:
- 3 7195. For purposes of this chapter, the following definitions
- 4 apply:
- 5 (a) (1) “Home inspection” is a noninvasive, physical
- 6 examination, performed for a fee in connection with a transfer, as
- 7 defined in subdivision (e), of real property, of the mechanical,
- 8 electrical, or plumbing systems or the structural and essential
- 9 components of a residential dwelling of one to four units designed
- 10 to identify material defects in those systems, structures and
- 11 components. “Home inspection” includes any consultation
- 12 regarding the property that is represented to be a home inspection
- 13 or any confusingly similar term.
- 14 (2) “Home inspection,” if requested by the client, may include
- 15 an inspection of energy efficiency. Energy efficiency items to be
- 16 inspected may include the following:
- 17 (A) A noninvasive inspection of insulation R-values in attics,
- 18 roofs, walls, floors, and ducts.
- 19 (B) The number of window glass panes and frame types.
- 20 (C) The heating and cooling equipment and water heating
- 21 systems.
- 22 (D) The age and fuel type of major appliances.



- 1 (E) The exhaust and cooling fans.
- 2 (F) The type of thermostat and other systems.
- 3 (G) The general integrity and potential leakage areas of walls,
4 window areas, doors, and duct systems.
- 5 (H) The solar control efficiency of existing windows.
- 6 (b) A “material defect” is a condition that significantly affects
7 the value, desirability, habitability, or safety of the dwelling. Style
8 or aesthetics shall not be considered in determining whether a
9 system, structure, or component is defective.
- 10 (c) A “home inspection report” is a written report prepared for
11 a fee and issued after a home inspection. The report clearly
12 describes and identifies the inspected systems, structures, or
13 components of the dwelling, any material defects identified, and
14 any recommendations regarding the conditions observed or
15 recommendations for evaluation by appropriate persons.
- 16 (d) A “home inspector” is any individual who performs a
17 home inspection.
- 18 (e) “Transfer” is a transfer by sale, exchange, installment land
19 sales contract, as defined in Section 2985 of the Civil Code, lease
20 with an option to purchase, any other option to purchase, or ground
21 lease coupled with improvements, of real property or residential
22 stock cooperative, improved with or consisting of not less than one
23 nor more than four dwelling units.
- 24 (f) A “certified home inspector” means a person who meets all
25 of the following:
 - 26 (1) Has demonstrated to a home inspection professional
27 association that he or she has performed at least 200 home
28 inspections for which a fee was paid.
 - 29 (2) Within the previous five years, has passed a knowledge,
30 skills, and aptitude examination endorsed by a home inspection
31 professional association. The examination shall test competence in
32 home inspection practice, as determined by recognized role
33 definition methodology, and be developed and administered in a
34 manner consistent with the American Educational Research
35 Association’s “Standards for Educational and Psychological
36 Testing,” the Equal Employment Opportunity Commission’s
37 “Uniform Guidelines for Employee Selection Procedures,” the
38 Civil Rights Act of 1991, and the Americans with Disabilities Act
39 of 1990.



1 (g) A “home inspection professional association” means an
2 organization that meets all of the following:
3 (1) Has at least 200 members who are home inspectors in
4 California.
5 (2) Has been in existence for at least 10 years.
6 (3) Operates pursuant to Section 501(c) of the Internal Revenue
7 Code.
8 (4) Certifies that a home inspector has met the criteria set forth
9 in subdivision (f) without requiring membership in the
10 association.
11 SEC. 2. Section 7196.2 is added to the Business and
12 Professions Code, to read:
13 7196.2. A person representing himself or herself as a home
14 inspector shall comply with the requirements of subdivision (d) of
15 Section 8550.
16 SEC. 3. Section 7197 of the Business and Professions Code
17 is amended to read:
18 7197. It is an unfair business practice for a home inspector, a
19 company that employs the inspector, or a company that is
20 controlled by a company that also has a financial interest in a
21 company employing a home inspector, to do any of the following:
22 (a) To perform or offer to perform, for an additional fee, any
23 repairs to a structure on which the inspector, or the inspector’s
24 company, has prepared a home inspection report in the past 12
25 months. A home protection company that is affiliated with or that
26 retains a home inspector does not violate this section if it performs
27 repairs pursuant to a claim made under a home protection contract.
28 (b) Inspect for a fee any property in which the inspector, or the
29 inspector’s company, has any financial interest or any interest in
30 the transfer of the property.
31 (c) To offer or deliver any compensation, inducement, or
32 reward to the owner of the inspected property, the broker, or agent,
33 for the referral of any business to the inspector or the inspection
34 company. Nothing in this section shall prevent a home inspector
35 from naming a seller, a real estate broker, or a real estate
36 salesperson as an additional insured in a liability insurance policy
37 maintained by the home inspector.
38 (d) Accept an engagement to make an inspection or to prepare
39 a report in which the employment itself or the fee payable for the



1 inspection is contingent upon the conclusions in the report,
2 preestablished findings, or the close of escrow.

3 (e) On or after July 1, 2003, to hold oneself out or use the title
4 “certified home inspector” or some other term that infers that the
5 person is certified to perform a home inspection without meeting
6 the requirements of subdivision (f) of Section 7195.

7 (f) To state or advertise a registration or license number unless
8 the license or registration is specified by a statute, regulation, or
9 ordinance.

10 (g) To state or advertise that he or she is certified, registered, or
11 licensed by a governmental agency to perform home inspections.

12 (h) To fail to disclose or misrepresent any item required to be
13 disclosed in Section 7197.5.

14 SEC. 4. Section 7197.5 is added to the Business and
15 Professions Code, to read:

16 7197.5. As soon as it is commercially feasible and prior to
17 commencing a home inspection, a home inspector shall disclose
18 in writing to the party on whose behalf the home inspection is
19 being done, all of the following:

20 (a) The name, address, and telephone number of the home
21 inspection professional association that certified the home
22 inspector, and the date the home inspector was certified, unless the
23 home inspector is not a certified home inspector.

24 (b) A statement disclosing whether the home inspector
25 maintains professional liability insurance.

26 (c) A statement disclosing whether the home inspector
27 maintains general business liability insurance.

28 (d) A statement disclosing whether any report generated by the
29 home inspector can be relied upon by a third party who is identified
30 by name or class and that the parties may agree to include such a
31 provision in the agreement. This disclosure shall also be included
32 in the report.

33 (e) The approximate number of home inspections the home
34 inspector has performed for a fee.

35 (f) A statement of the home inspector’s experience and
36 education, including the number of years of experience as a home
37 inspector, and education related to home inspection.

38 SEC. 5. *Section 7197.7 is added to the Business and*
39 *Professions Code, to read:*



1 7197.7. (a) *It is the intent of the Legislature to recognize the*
2 *special requirement of mandated insurance for certified home*
3 *inspectors in this section in order to protect buyers. This special*
4 *insurance mandate recognizes the difference between certified*
5 *home inspectors and the other listed categories of experts in*
6 *Section 1102.4 of the Civil Code. The other listed experts reflect*
7 *occupations that are accomplished by either a degree from an*
8 *institute of higher learning such as a four-year college or licensure*
9 *by the State of California, neither of which is applicable to*
10 *certified home inspectors. Therefore a mandated insurance*
11 *requirement applicable to certified home inspectors is necessary*
12 *to protect the public.*

13 (b) *A home inspection report shall be deemed an other report*
14 *for purposes of paragraph (1) of subdivision (c) of Section 1102.4*
15 *of the Civil Code if all of the following requirements are met:*

16 (1) *The home inspection report deals with matters within the*
17 *scope of the certified home inspector's certification.*

18 (2) *The home inspection report is prepared by a certified home*
19 *inspector who is certified pursuant to this chapter and meets all of*
20 *the requirements in subdivision (f) of Section 7195.*

21 (3) *The certified home inspector's certification is in good*
22 *standing.*

23 (4) *The certified home inspector has a valid policy of errors and*
24 *omissions insurance applicable to the transaction in an amount of*
25 *not less than seventy-five thousand dollars (\$75,000).*

26 (5) *Beginning January 1, 2008, and on every fifth anniversary*
27 *thereafter, the minimum face amount of the errors and omissions*
28 *insurance specified in this subdivision shall be adjusted for the*
29 *following five-year period by multiplying the product of one plus*
30 *.01 times the change in the Consumer Price Index for San*
31 *Francisco, California, between January 2003, and the Consumer*
32 *Price Index for the anniversary year multiplied by seventy-five*
33 *thousand dollars (\$75,000).*

34 SEC. 6. *Section 7198.5 is added to the Business and*
35 *Professions Code, to read:*

36 7198.5. (a) *Nothing in this chapter shall prohibit a licensed*
37 *contractor from performing a home inspection.*

38 (b) *Nothing in this chapter shall be construed to require an*
39 *agent or broker to refer a certified home inspector rather than a*
40 *noncertified home inspector when making a referral.*



1 *SEC. 7.* Section 1102.4 of the Civil Code is amended to read:
2 1102.4. (a) Neither the transferor nor any listing or selling
3 agent shall be liable for any error, inaccuracy, or omission of any
4 information delivered pursuant to this article if the error,
5 inaccuracy, or omission was not within the personal knowledge of
6 the transferor or that listing or selling agent, was based on
7 information timely provided by public agencies or by other
8 persons providing information as specified in subdivision (c) that
9 is required to be disclosed pursuant to this article, and ordinary
10 care was exercised in obtaining and transmitting it.

11 (b) The delivery of any information required to be disclosed by
12 this article to a prospective transferee by a public agency or other
13 person providing information required to be disclosed pursuant to
14 this article shall be deemed to comply with the requirements of this
15 article and shall relieve the transferor or any listing or selling agent
16 of any further duty under this article with respect to that item of
17 information.

18 (c) (1) The delivery of a report or opinion prepared by a
19 licensed engineer, land surveyor, geologist, structural pest control
20 operator, contractor, certified home inspector, or other expert,
21 dealing with matters within the scope of the professional's license
22 or expertise, shall be sufficient compliance for application of the
23 exemption provided by subdivision (a) if all of the following
24 occur:

25 (A) The information is provided to the prospective transferee
26 pursuant to a written or oral request.

27 (B) The expert indicates in writing, an understanding that the
28 information provided will be used in fulfilling the requirements of
29 Section 1102.6.

30 (C) The expert indicates in writing that the required
31 disclosures, or parts thereof, to which the information being
32 furnished is applicable.

33 (2) Where a statement is furnished, the expert shall not be
34 responsible for any items of information, or parts thereof, other
35 than those expressly set forth in the statement.

