

AMENDED IN SENATE JUNE 20, 1995

AMENDED IN SENATE JUNE 12, 1995

AMENDED IN SENATE MAY 11, 1995

AMENDED IN SENATE MAY 2, 1995

AMENDED IN SENATE APRIL 17, 1995

**SENATE BILL**

**No. 258**

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**Introduced by Senator O'Connell**

February 8, 1995

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An act to add Chapter 9.3 (commencing with Section 7195) to Division 3 of the Business and Professions Code, relating to home inspectors.

LEGISLATIVE COUNSEL'S DIGEST

SB 258, as amended, O'Connell. Home inspectors.

Existing law does not regulate persons who perform home inspections for a fee.

This bill would define terms related to paid home inspections, establish a standard of care for home inspectors, and prohibit certain inspections in which the inspector or the inspector's employer, as specified, has a financial interest. The bill would also provide that contractual provisions seeking to waive the statutory duty ~~or unreasonably~~ *of care or* limit the liability of a home inspector *to the cost of the home inspection report* are contrary to public policy and invalid. ~~The bill would, in addition, identify and limit the persons who can bring an action arising out of a home inspection.~~

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. It is the intent of the Legislature in  
2 enacting this act to assure that consumers of home  
3 inspection services can rely upon the competence ~~and~~  
4 ~~expertise~~ of home inspectors. It is the intent of the  
5 Legislature that, in ascertaining the degree of care that  
6 would be exercised by a reasonably prudent home  
7 inspector pursuant to Section 7196 of the Business and  
8 Professions Code, the court may consider the standards of  
9 practice and code of ethics of the California Real Estate  
10 Inspection Association, the American Society of Home  
11 Inspectors, or other nationally recognized professional  
12 home inspection associations.

13 SEC. 2. Chapter 9.3 (commencing with Section 7195)  
14 is added to Division 3 of the Business and Professions  
15 Code, to read:

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CHAPTER 9.3. HOME INSPECTORS

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19 7195. For purposes of this chapter, the following  
20 definitions apply:

21 (a) "Home inspection" is a noninvasive, physical  
22 examination, performed for a fee in connection with a  
23 transfer, as defined in subdivision (d), of real property, of  
24 the mechanical, electrical, or plumbing systems or the  
25 structural and essential components of a residential  
26 dwelling of one to four units designed to identify material  
27 defects in those systems, structures and components.  
28 "Home inspection" also includes any consultation  
29 regarding the property that is represented to be a home  
30 inspection or any confusingly similar term.

31 (b) A "material defect" is a condition that significantly  
32 affects the value, desirability, habitability, or safety of the  
33 dwelling. Style or aesthetics shall not be considered in  
34 determining whether a system, structure, or component  
35 is defective.



1 (c) A “home inspection report” is a written report  
2 prepared for a fee and issued after a home inspection. The  
3 report clearly describes and identifies the inspected  
4 systems, structures, or components of the dwelling, any  
5 material defects identified, and any recommendations  
6 regarding the conditions observed or recommendations  
7 for evaluation by appropriate persons.

8 (d) A “home inspector” is any individual who  
9 performs a home inspection.

10 (e) “Transfer” is a transfer by sale, exchange,  
11 installment land sale contract, as defined in Section 2985  
12 of the Civil Code, lease with an option to purchase, any  
13 other option to purchase, or ground lease coupled with  
14 improvements, of real property or residential stock  
15 cooperative, improved with or consisting of not less than  
16 one nor more than four dwelling units.

17 7196. It is the duty of a home inspector who is not  
18 licensed as a general contractor, structural pest control  
19 operator, or architect, or registered as a professional  
20 engineer to conduct a home inspection ~~that identifies all~~  
21 ~~the material defects of the property that can be identified~~  
22 ~~through an inspection conducted with the degree of care~~  
23 ~~that a reasonably prudent home inspector would~~  
24 ~~exercise. This does not preclude a home inspector from~~  
25 ~~explicitly excluding matters from the home inspection~~  
26 ~~report.~~

27 7196.1. (a) Nothing in this chapter shall be construed  
28 to allow home inspectors who are not registered  
29 engineers to perform any analysis of the systems,  
30 components, or structural integrity of a dwelling that  
31 would constitute the practice of civil, electrical, or  
32 mechanical engineering, or to exempt a home inspector  
33 from Chapter 3 (commencing with Section 5500),  
34 Chapter 7 (commencing with Section 6700), Chapter 9  
35 (commencing with Section 7000), or Chapter 14  
36 (commencing with Section 8500) of Division 3.

37 (b) This chapter does not apply to a registered  
38 engineer, licensed land surveyor, or licensed architect  
39 acting pursuant to his or her professional registration or  
40 license, nor does it affect the obligations of a real estate



1 licensee *or transferor* under Article 1.5 (commencing  
2 with Section 1102) of Chapter 2 of Title 4 of Part 3 of  
3 Division 2 of, or Article 2 (commencing with Section  
4 2079) of Chapter 3 of Title 6 of Part 4 of Division 3 of, the  
5 Civil Code.

6 7197. It is an unfair business practice for a home  
7 inspector, a company that employs the inspector, or a  
8 company that is controlled by a company that also has a  
9 financial interest in a company employing a home  
10 inspector, to do any of the following:

11 (a) To perform or offer to perform, for an additional  
12 fee, any repairs to a structure on which the inspector, or  
13 the inspector's company, has prepared a home inspection  
14 report in the past 12 months.

15 (b) Inspect for a fee any property in which the  
16 inspector, or the inspector's company, has any financial  
17 interest or any interest in the transfer of the property.

18 (c) To offer or deliver any compensation, inducement,  
19 or reward to the owner of the inspected property, the  
20 broker, or agent, for the referral of any business to the  
21 inspector or the inspection company.

22 (d) Accept an engagement to make an inspection or  
23 to prepare a report in which the employment itself or the  
24 fee payable for the inspection is contingent upon the  
25 conclusions in the report, preestablished findings, or the  
26 close of escrow.

27 7198. Contractual provisions that purport to waive  
28 the duty owed pursuant to Section 7196, or otherwise  
29 ~~unreasonably~~ limit the liability of the home inspector;  
30 ~~such as provisions limiting liability~~ to the cost of the home  
31 inspection report, are contrary to public policy and  
32 invalid.

33 ~~7198.1. An action arising from a home inspection may~~  
34 ~~be maintained only by the party ordering the report, the~~  
35 ~~party paying the home inspector for the report, a party~~  
36 ~~named in the report as a beneficiary of the report, or an~~  
37 ~~intended beneficiary of the report.~~

