

BILL

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO PROFESSIONAL AND OCCUPATIONAL LICENSURE; ENACTING THE HOME INSPECTOR LICENSING ACT; PROVIDING PENALTIES; CREATING A FUND.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. SHORT TITLE.--This act may be cited as the "Home Inspector Licensing Act".

SECTION 2. PURPOSE.--The purpose of the Home Inspector Licensing Act is to provide for regulation and supervision of the business of home inspection and evaluation, including assessing the condition of residential real estate, providing comprehensive analysis of the condition of property and providing necessary evidence of condition to clients.

SECTION 3. DEFINITIONS.--As used in the Home Inspector Licensing Act:

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- A. "board" means the home inspector licensing board;
- B. "client" means a person who, through a written preinspection agreement, engages the services of a home inspector for the purpose of obtaining a report on the condition of a residential real property;
- C. "compensation" means the payment for home inspection services pursuant to the written preinspection agreement;
- D. "fund" means the home inspector fund;
- E. "home inspection" means a noninvasive, nondestructive examination by a licensee of the interior and exterior components of a residential real property, including the property's structural components, foundation and roof, for the purposes of providing a professional written opinion regarding the site aspects and condition of the property and its carports, garages and reasonably accessible installed components. Also included is the examination of the property's heating, cooling, plumbing and electrical systems, including the operational condition of the systems' controls that are normally operated by a property owner;
- F. "home inspector" means a person who has a license pursuant to the Home Inspector Licensing Act and who engages in the business of performing home inspections and generates reports pursuant to a written preinspection

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1 agreement;

2 G. "license" means a home inspector license;

3 H. "licensee" means the holder of a license;

4 I. "preinspection agreement" means the written
5 agreement by which a client engages the services of a home
6 inspector;

7 J. "report" means a professional written opinion
8 regarding the functional and physical condition of the
9 residential real property prepared by the home inspector
10 pursuant to the terms of a preinspection agreement; and

11 K. "residential real property" means any real
12 property used for residential purposes or a manufactured or
13 modular home, which is a single-family dwelling, duplex,
14 triplex, quadruplex or a unit as defined in the Condominium
15 Act, except that "residential real property" does not include
16 the common areas of a condominium as defined in the Condominium
17 Act.

18 SECTION 4. BOARD CREATED--COMPOSITION--TERMS--
19 VACANCIES--REMOVAL.--

20 A. The "home inspector licensing board" is created.
21 The board is administratively attached to the regulation and
22 licensing department. The board shall consist of five members
23 whose collective membership represents a diverse and
24 geographically dispersed cross-section of the state's
25 population. The board members shall be comprised as follows:

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1 (1) one member shall be a public member;
2 (2) one member shall be a member who is active
3 in business in a licensed profession related to the real estate
4 industry; and

5 (3) three members shall be home inspectors
6 who:

7 (a) have actively engaged in the
8 practice of home inspection for at least five years immediately
9 preceding their appointment; and

10 (b) have demonstrated that they have
11 passed a proctored national home inspection examination
12 administered by the examination board of professional home
13 inspectors.

14 B. The initial members of the board shall be
15 nominated for appointment by the members of the working group
16 established pursuant to Senate Memorial 2 of the first session
17 of the fiftieth legislature and shall be approved for
18 appointment by the governor. Thereafter, the board members
19 shall be appointed by the governor.

20 C. Board members shall be appointed for five-year
21 terms and shall serve until their successors are appointed. To
22 provide for staggered terms, the members initially appointed
23 shall serve staggered terms from the date of their appointment
24 as follows:

25 (1) two members, one home inspector member and

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1 the public member, for three-year terms;

2 (2) two members, one home inspector member and
3 the member actively in the business related to the real estate
4 industry, for two-year terms; and

5 (3) one home inspector member for a one-year
6 term.

7 D. The governor may remove a member for cause.
8 Vacancies shall be filled by appointment by the governor.
9 Vacancy appointments shall be made within sixty days of the
10 vacancy and shall run for the remainder of the unexpired term.
11 Members shall be eligible for reappointment but no member shall
12 serve more than two full terms on the board.

13 E. The board shall initially meet within sixty days
14 of the beginning of the fiscal year and shall elect from its
15 membership a chair and a vice chair. Thereafter, the board
16 shall meet at times deemed necessary or advisable by the chair
17 or a majority of the members, or at the request of the
18 governor, but in no event less than twice a year. Reasonable
19 notice of all meetings shall be given in a manner prescribed by
20 the board. A majority of the board shall constitute a quorum;
21 provided that at least two of the members present are home
22 inspectors.

23 SECTION 5. BOARD--POWERS AND DUTIES.--

24 A. Pursuant to the provisions of the Home Inspector
25 Licensing Act, the board shall:

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1 (1) adopt rules and procedures necessary to
2 administer and enforce the provisions of the Home Inspector
3 Licensing Act;

4 (2) issue and renew licenses to home
5 inspectors pursuant to the provisions of the Home Inspector
6 Licensing Act;

7 (3) suspend, revoke or deny the license of a
8 home inspector;

9 (4) establish standards for the training,
10 experience and continuing education requirements of the Home
11 Inspector Licensing Act;

12 (5) establish the amount and administer the
13 fees charged for examinations, licenses, renewals and other
14 services pursuant to the provisions of the Home Inspector
15 Licensing Act; and

16 (6) perform other functions and duties as may
17 be necessary to administer and carry out the provisions of the
18 Home Inspector Licensing Act.

19 B. In addition to any other authority provided by
20 law, the board shall have the power to make and enforce rules
21 to carry out the provisions of the Home Inspector Licensing
22 Act.

23 **SECTION 6. BOARD REIMBURSEMENT AND EXPENSES.**--Each board
24 member shall receive per diem and mileage as provided in the
25 Per Diem and Mileage Act and shall receive no other

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1 compensation, perquisite or allowance.

2 SECTION 7. LICENSE REQUIRED--EXEMPTIONS.--

3 A. Unless licensed to practice as a home inspector
4 pursuant to the provisions of the Home Inspector Licensing Act,
5 a person shall not:

6 (1) conduct home inspections, develop a report
7 or otherwise engage in the business of home inspection;

8 (2) use the title "home inspector", "certified
9 home inspector", "registered home inspector", "licensed home
10 inspector", "professional home inspector" or any other title,
11 abbreviation, letters, figures or signs that indicate the
12 person is a licensed home inspector; or

13 (3) use the terms "state licensed" or
14 "licensed" to refer to an inspection conducted or a report
15 prepared by a person who is not a licensee pursuant to the
16 provisions of the Home Inspector Licensing Act.

17 B. A business entity shall not provide home
18 inspection services unless all of the home inspectors employed
19 by the business are licensees in accordance with the provisions
20 of the Home Inspector Licensing Act.

21 C. A business entity shall not use, in connection
22 with the name or signature of the business, the title "home
23 inspectors" to describe the business entity's services unless
24 each person employed by the business as a home inspector is
25 licensed in accordance with the provisions of the Home

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1 Inspector Licensing Act.

2 D. The term "licensed home inspector" along with
3 the license number of the home inspector shall appear on all
4 advertising, correspondence and documents incidental to the
5 business of home inspection.

6 E. The Home Inspector Licensing Act shall not apply
7 to:

8 (1) a person licensed by the state in a
9 vocation or profession such as an engineer, an architect, a
10 real estate broker, a real estate salesperson, a real estate
11 appraiser, a certified general appraiser, a residential real
12 estate appraiser or a pest control operator, when acting within
13 the scope of the person's license;

14 (2) a person licensed by the state or any
15 political subdivision of the state as an electrician, a
16 contractor, a plumber or a heating and air conditioning
17 technician, when acting within the scope of the person's
18 license;

19 (3) a person regulated by the state as an
20 insurance adjuster, when acting within the scope of the
21 person's license;

22 (4) a person employed by the state or any
23 political subdivision of the state as a code enforcement
24 official, when acting within the scope of the person's
25 employment;

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1 (5) a person who performs an energy audit of a
2 residential property;

3 (6) a person who performs a warranty
4 evaluation of components, systems or appliances within a resale
5 residential property for the purpose of issuing a home
6 warranty; provided that all warranty evaluation reports include
7 a statement that the warranty evaluation performed is not a
8 home inspection and does not meet the standards of a home
9 inspection pursuant to the provisions of the Home Inspector
10 Licensing Act. A home warranty company shall not refer to a
11 warranty evaluation as a home inspection;

12 (7) a person who in the scope of the person's
13 employment performs safety inspections of utility equipment in
14 or attached to residential real property pursuant to the
15 provisions of Chapter 62 NMSA 1978 or rules adopted by the
16 public regulation commission; provided that the employee does
17 not hold out for hire to the general public or otherwise
18 conduct home inspections; and

19 (8) a person hired by the owner or lessor of
20 residential real property to perform an inspection of the
21 components of the residential real property for the purpose of
22 preparing a bid or estimate for performing construction,
23 remodeling or repair work in the residential real property;
24 provided that the person does not hold out for hire to the
25 general public or otherwise conduct home inspections.

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1 SECTION 8. HOME INSPECTOR LICENSURE.--

2 A. An applicant for licensure shall apply to the
3 board and provide with the application documentation
4 establishing that the applicant is at least eighteen years of
5 age and a legal resident of the United States. Prior to
6 issuance of a license, an applicant shall:

7 (1) at cost to the applicant, provide the
8 board with fingerprints and other information necessary for a
9 state and national criminal background check;

10 (2) have completed at least forty hours of
11 field training, or its equivalent as determined by the board,
12 and eighty hours of classroom training, the content of which
13 shall be established by rule of the board;

14 (3) pass a proctored national home inspector
15 examination as administered by the examination board of
16 professional home inspectors; and

17 (4) provide proof of and maintain insurance
18 coverage as provided in Section 13 of the Home Inspector
19 Licensing Act.

20 B. The board may issue a license to a person who
21 demonstrates that the person:

22 (1) has been actively and lawfully engaged in
23 home inspections for at least thirty-six months prior to
24 January 1, 2013;

25 (2) has provided the board with fingerprints

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1 and other information necessary for a state and criminal
2 background check;

3 (3) has passed a proctored national home
4 inspector examination as administered by the examination board
5 of professional home inspectors; and

6 (4) is licensed to conduct home inspections in
7 another state or territory in the United States or the District
8 of Columbia. The applicant for licensure pursuant to the
9 provisions of this subsection shall provide the board with a
10 certificate of good standing from the licensing authority under
11 which the applicant holds the license.

12 C. After submission of the application form,
13 payment of the application fee and successful completion of the
14 licensure requirements set forth in Subsection A or B of this
15 section, the board may issue or deny a license to the
16 applicant.

17 SECTION 9. LICENSE RENEWAL.--

18 A. All home inspector licenses shall be renewed
19 triennially as established by rule of the board.

20 B. No later than the last day of the month
21 immediately following the licensee's birth month, a licensee
22 may renew the license by submitting a renewal application,
23 renewal fee, proof of completion of the required continuing
24 education as established by rule of the board and updated
25 fingerprints and other information necessary for a state and

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1 national criminal background check.

2 SECTION 10. LICENSEE--CONTINUING EDUCATION REQUIREMENT.--

3 The board shall adopt rules providing for continuing education
4 programs that offer courses in home inspection practices and
5 techniques. The rules shall require that a home inspector, as
6 a condition of license renewal, shall successfully complete a
7 minimum of thirty classroom hours of board-approved instruction
8 every three years.

9 SECTION 11. LICENSE RECOGNITION--RECIPROCITY.--

10 A. The board may issue a license to a nonresident
11 home inspector; provided that the applicant's resident state
12 license requirements are the same as or similar to the
13 requirements set forth in the Home Inspector Licensing Act. In
14 the event that the state requirements for licensing a home
15 inspector are not substantially similar to the provisions of
16 the Home Inspector Licensing Act, or if the requirements cannot
17 be verified, a nonresident home inspector may be issued a
18 license upon successful application and completion of the
19 requirements, including payments of fees as provided in the
20 Home Inspector Licensing Act.

21 B. The board may negotiate agreements with other
22 states or licensing jurisdictions allowing reciprocity. A
23 license granted pursuant to a reciprocity agreement shall be
24 issued upon payment by the applicant of the application fee and
25 verification that the applicant has complied with the licensing

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1 jurisdiction's requirements, including continuing education
2 requirements. The applicant shall provide documentation
3 necessary to demonstrate that the applicant currently holds a
4 license in good standing in the licensing jurisdiction.

5 C. Prior to the issuance of a home inspector
6 license to a nonresident applicant, the applicant shall file
7 with the board an irrevocable consent that lawsuits and actions
8 may be commenced against the applicant in the proper court of
9 any county of this state in which a cause of action may arise
10 from the applicant's actions as a home inspector or in which
11 the plaintiff may reside by service of any processes or
12 pleadings authorized by the laws of New Mexico on the board
13 with the consent stipulating and agreeing that such service of
14 processes or pleadings on the board shall be taken and held in
15 all courts to be valid and binding as if personal service has
16 been made upon the applicant in New Mexico. Service of process
17 or pleadings shall be served in duplicate upon the board; one
18 shall be filed in the office of the board and the other
19 immediately forwarded by certified mail to the nonresident New
20 Mexico licensed home inspector to whom the process or pleadings
21 are directed.

22 SECTION 12. DENIAL, SUSPENSION OR REVOCATION OF A
23 LICENSE.--

24 A. The board may deny issuance of a license or may
25 suspend, revoke, limit or condition a license if the applicant

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1 or licensee is convicted of a felony, has by false or
2 fraudulent representations obtained a license or, in performing
3 or attempting to perform any of the activities covered by the
4 provisions of the Home Inspector Licensing Act, the applicant
5 or licensee:

6 (1) has made a substantial misrepresentation
7 and pursued a continued course of misrepresentation;

8 (2) is guilty of unprofessional conduct as
9 defined by rule of the board;

10 (3) has violated any of the provisions of the
11 Home Inspector Licensing Act or any rule of the board;

12 (4) is guilty of obtaining or attempting to
13 obtain any home inspection fee by fraud or misrepresentation or
14 has otherwise acted in a manner or by conduct likely to
15 deceive, defraud or harm the public;

16 (5) has inspected for a fee a property in
17 which the home inspector or the home inspector's company has a
18 financial interest or an interest in the transfer of the
19 property;

20 (6) has offered or delivered compensation,
21 inducement or reward to the owner of the inspected property or
22 the broker or the agent for the referral of any business to the
23 home inspector or the home inspector's company;

24 (7) has accepted an engagement to make a home
25 inspection or prepare a report in which the inspection itself

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1 or the fee payable for the inspection is contingent upon the
2 conclusions in the report, preestablished findings or the close
3 of escrow;

4 (8) has had a license to perform home
5 inspections revoked, suspended, denied, stipulated or otherwise
6 limited in any state, jurisdiction, territory or possession of
7 the United States or another country for actions of the
8 licensee similar to acts prescribed in this subsection. A
9 certified copy of the decision of the jurisdiction taking such
10 disciplinary action shall be conclusive evidence;

11 (9) has failed to furnish the board, its
12 investigators or its representatives with information requested
13 by the board in the course of an official investigation;

14 (10) has performed or offered to perform for
15 an additional fee any repair to a structure on which the home
16 inspector or the home inspector's company has prepared a report
17 at any time during the twelve months immediately prior to the
18 repair or offer to repair, except that a home inspection
19 company that is affiliated with or that retains a home
20 inspector does not violate this subsection if the home
21 inspection company performs repairs pursuant to a claim made
22 pursuant to the terms of a home inspection contract; or

23 (11) has committed an act whether of the same
24 or different character from an act prescribed in this
25 subsection that is related to activities as a home inspector

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1 that constitutes or demonstrates bad faith, incompetency,
2 untrustworthiness, impropriety, fraud, dishonesty, negligence
3 or an unlawful act.

4 B. Disciplinary proceedings may be instituted by
5 sworn complaint by any person, including a board member, and
6 shall conform with the provisions of the Uniform Licensing Act.

7 C. A licensee shall bear the costs of disciplinary
8 proceedings unless the licensee is exonerated of the
9 allegations that are the basis of the disciplinary action.

10 SECTION 13. INSURANCE REQUIREMENTS.--

11 A. All active practicing licensed home inspectors
12 or their employers shall carry errors and omissions insurance
13 to cover all activities contemplated pursuant to the provisions
14 of the Home Inspector Licensing Act. The errors and omissions
15 coverage requirements shall be established by rule of the
16 board.

17 B. The board, by rule, may enter into a contract
18 with a qualified insurance carrier to make available to
19 licensees a group policy of errors and omissions insurance and
20 general liability insurance. The board shall establish the
21 terms and conditions of coverage, including but not limited to
22 the permissible deductible and exemptions.

23 SECTION 14. FEES.--The board shall charge and collect the
24 following fees not to exceed:

25 A. a license application fee, one hundred fifty

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1 dollars (\$150);

2 B. a state and national criminal background check
3 fee, one hundred dollars (\$100);

4 C. a three-year license fee, five hundred dollars
5 (\$500);

6 D. a license renewal fee, five hundred dollars
7 (\$500);

8 E. a reactivation fee, two hundred dollars (\$200);
9 and

10 F. for each duplicate license issued because a
11 license is lost or destroyed and an affidavit as to its loss or
12 destruction is made and filed, fifty dollars (\$50.00); and fees
13 to cover reasonable and necessary administrative expenses.

14 SECTION 15. INACTIVE STATUS.--

15 A. A licensee may put the licensee's license on
16 inactive status by returning the license to the board.

17 B. A licensee whose license has been placed on
18 inactive status may not conduct home inspections as described
19 in the Home Inspector Licensing Act.

20 C. A license may be reactivated upon application to
21 the board.

22 SECTION 16. CIVIL AND CRIMINAL PENALTIES--INJUNCTIVE
23 RELIEF.--

24 A. A person who violates any provision of the Home
25 Inspector Licensing Act is guilty of a fourth degree felony and

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1 shall be punished by a fine of not more than five thousand
2 dollars (\$5,000) or by imprisonment for not more than eighteen
3 months, or both.

4 B. In the event that a person has engaged in or
5 proposes to engage in any act or practice violating a provision
6 of the Home Inspector Licensing Act, the attorney general or
7 the district attorney of the judicial district in which the
8 person resides or the judicial district in which the violation
9 has occurred or will occur shall, upon application of the
10 board, maintain an action in the name of the state to prosecute
11 the violation or to enjoin the proposed act or practice.

12 SECTION 17. FUND--CREATED.--

13 A. There is created in the state treasury the "home
14 inspector fund" to be administered by the board. All fees
15 received by the board pursuant to the Home Inspector Licensing
16 Act shall be deposited with the state treasurer to the credit
17 of the home inspector fund. Income earned on investment of the
18 fund shall be credited to the fund.

19 B. Money in the fund shall be used by the board to
20 meet necessary expenses incurred in the enforcement of the
21 provisions of the Home Inspector Licensing Act, in carrying out
22 the duties imposed by the Home Inspector Licensing Act and for
23 the promotion of education and standards for home inspectors in
24 this state. Payments from the fund shall be on vouchers issued
25 and signed by the person designated by the board upon warrants

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drawn by the department of finance and administration. All unexpended or unencumbered balances remaining at the end of a fiscal year shall remain in the home inspector fund for use in accordance with the provisions of the Home Inspector Licensing Act.