

HOUSE BILL 433

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

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Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

RELATING TO LICENSURE; ENACTING THE HOME INSPECTOR LICENSING  
ACT; PROVIDING PENALTIES Sfl→~~SJC→~~; ~~MAKING AN~~  
~~APPROPRIATION←SJC←~~Sfl Sfl→; ~~MAKING AN APPROPRIATION←~~Sfl.

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

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

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Home Inspector Licensing Act:

A. "board" means the New Mexico home inspectors board;

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B. "client" means a person or an agent of the person who, through a written pre-inspection agreement, engages the services of a home inspector for the purpose of obtaining a report on the condition of residential real property;

C. "compensation" means the payment for home inspection services pursuant to the written pre-inspection agreement;

D. "foreign home inspector" means a home inspector who does not hold a license but who holds a current and valid home inspector license issued by another jurisdiction in the United States;

E. "home inspection" means a noninvasive, nondestructive examination by a person 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. "Home inspection" includes 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 performs home inspections for compensation;

G. "license" means a home inspector license issued

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by the board in accordance with the Home Inspector Licensing Act;

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

I. "pre-inspection agreement" means the written agreement signed by the client and a home inspector by which a client engages the services of the home inspector and that sets forth at a minimum the following:

(1) the amount of compensation due and payable to the home inspector for the home inspection and delivery of a report;

(2) a list of all components and systems that will be inspected; and

(3) the date by which the client will receive the report;

J. "report" means a written opinion prepared by a home inspector pursuant to the terms of a pre-inspection agreement regarding the functional and physical condition of the residential real property as determined by a home inspection conducted by a home inspector; and

K. "residential real property" means any real property or manufactured or modular home that is used for or intended to be used for residential purposes and that is a single-family dwelling, duplex, triplex, quadplex or unit, as "unit" is defined by the Condominium Act.

SECTION 3. [NEW MATERIAL] NEW MEXICO HOME INSPECTORS

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BOARD--CREATED--POWERS AND DUTIES.--

A. The "New Mexico home inspectors board" is created and is administratively attached to the regulation and licensing department.

B. The board shall consist of five members, appointed by the governor, who have been residents of the state for at least three consecutive years immediately prior to their appointment. Three members shall be home inspectors. One member shall be a real estate qualifying or associate broker licensed in accordance with Chapter 61, Article 29 NMSA 1978, and one member shall be a member of the public who has never been licensed as a home inspector or real estate broker. No more than one member shall be a resident of any one county in the state. The initial home inspector members appointed shall demonstrate that they have been actively and lawfully engaged in home inspections for at least twenty-four months prior to the effective date of the Home Inspector Licensing Act and have met the requirements of Paragraphs (1) through (4) of Subsection A of Section 6 of the Home Inspector Licensing Act. The initial home inspector members appointed shall comply with Paragraph (6) of Subsection A of Section 6 of the Home Inspector Licensing Act within six months of the effective date of the licensing examination rule promulgated by the board. After the board is initially established, any replacement of a home inspector member shall be a licensee.

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C. Board members shall serve for five years or until their successors are appointed and qualified. The governor may remove a member with or without cause. In the event of a vacancy, the governor shall appoint a member to complete the unexpired term. The initial board members appointed shall serve staggered terms from the date of their appointment as follows:

- (1) two members for three-year terms;
- (2) two members for two-year terms; and
- (3) one member for a one-year term.

D. The board shall elect annually from among its members a chair and other officers as the board determines. The board shall meet at times and places as fixed by the board. A majority of the board constitutes a quorum.

E. Members of the board may receive per diem and mileage as provided in the Per Diem and Mileage Act but shall receive no other compensation, perquisite or allowance.

F. The board shall possess all powers and perform all duties prescribed by the Home Inspector Licensing Act and as otherwise provided by law and may make and enforce rules to carry out the provisions of that act.

G. Pursuant to the provisions of the Home Inspector Licensing Act, the board shall:

- (1) adopt rules and procedures necessary to administer and enforce the provisions of the Home Inspector

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Licensing Act;

(2) adopt and publish a code of ethics and standards of practice for persons licensed under the Home Inspector Licensing Act;

(3) issue, renew, suspend, modify or revoke licenses to home inspectors pursuant to the provisions of the Home Inspector Licensing Act;

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

(5) establish the amount and administer the fees charged for examinations, initial licensure, license renewals, reinstatement of revoked or suspended licenses, reactivation of inactive or expired licenses, criminal background checks and other services pursuant to the provisions of the Home Inspector Licensing Act;

(6) adopt and approve a licensing examination, which may be administered by a nationally accepted testing service as determined by the board;

(7) conduct state and criminal background checks on all applicants for a license;

(8) maintain a list of the names and addresses of all licensees and of all persons whose licenses have been suspended or revoked within that year, together with such other information relative to the enforcement of the provisions of

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the Home Inspector Licensing Act;

(9) maintain a statement of all funds received and a statement of all disbursements;

(10) mail copies of statements to any person in this state upon request; and

(11) perform other functions and duties as may be necessary to administer or carry out the provisions of the Home Inspector Licensing Act.

H. Prior to a final action on a proposed change or amendment to the board's rules, the board may publish notice of the proposed action in its official publication, distribute the publication to each active licensee and give the time and place for a public hearing on the proposed changes. The hearing shall be held at least thirty days prior to a proposed final action. Changes or amendments to the rules shall be filed in accordance with the procedures of the State Rules Act and shall become effective thirty days after notification to all active licensees of the filing of the changes or amendments.

**SECTION 4. [NEW MATERIAL] PRE-INSPECTION AGREEMENT--REPORT--DISCLAIMER--NO WAIVER OF DUTY.--**

A. A home inspector shall enter into a pre-inspection agreement with a client prior to commencement of a home inspection. The written pre-inspection agreement shall include, in all capital letters, the following statement: "THE HOME INSPECTOR WILL NOT DETERMINE AND THE REPORT PROVIDED UPON

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COMPLETION OF THE HOME INSPECTION WILL NOT CONTAIN A DETERMINATION OF WHETHER THE HOME OR COMPONENTS AND/OR SYSTEMS OF THE HOME THAT HAVE BEEN INSPECTED CONFORM TO LOCAL OR STATE BUILDING CODE REQUIREMENTS."

B. A home inspector shall provide a client with a report of the home inspection by the date set forth in the pre-inspection agreement. If the pre-inspection agreement does not set forth a date by which the report shall be provided to the client, the home inspector shall provide the report to the client no later than five days after the home inspection was performed.

C. The report shall contain the following statement: "THE HOME INSPECTOR DID NOT DETERMINE AND THIS REPORT DOES NOT CONTAIN A DETERMINATION OF WHETHER THE HOME OR COMPONENTS AND/OR SYSTEMS OF THE HOME THAT HAVE BEEN INSPECTED CONFORM TO LOCAL OR STATE BUILDING CODE REQUIREMENTS."

D. Contractual provisions that purport to waive any duty owed pursuant to the Home Inspector Licensing Act or accompanying rules as prescribed by the board or that limit the liability of the home inspector to an amount less than the professional liability insurance minimum coverage per claim as prescribed by the board are invalid.

SECTION 5. [NEW MATERIAL] LICENSE REQUIRED--EXEMPTIONS.--

A. A person who is not a licensee shall not:

(1) conduct home inspections, develop a report

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or otherwise engage in the business of home inspection;

(2) in the course of conducting business, use the title "home inspector", "certified home inspector", "registered home inspector", "licensed home inspector", "professional home inspector" or any other title, abbreviation, letters, figures or signs that indicate the person is a licensed home inspector; or

(3) use the terms "state licensed" or "licensed" to refer to an inspection conducted or a report prepared by a person who is not a licensee.

B. A business entity shall not provide home inspection services unless all of the home inspectors employed by the business are licensees.

C. A business entity shall not use, in connection with the name or signature of the business, the title "home inspectors" to describe the business entity's services unless each person employed by the business as a home inspector is a licensee.

D. The Home Inspector Licensing Act does not apply to a person:

(1) licensed by the state as an engineer, an architect, a real estate qualifying or associate broker, a real estate appraiser, a certified general appraiser, a residential real estate appraiser or a pest control operator, when acting within the scope of the person's license;

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

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

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

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

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

(7) who in the scope of the person's employment performs safety inspections of utility equipment in or attached to residential real property pursuant to the provisions of Chapter 62 NMSA 1978 or rules adopted by the

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public regulation commission; and

(8) hired by the owner or lessor of residential real property to perform an inspection of the components of the residential real property for the purpose of preparing a bid or estimate for performing construction, remodeling or repair work in the residential real property.

**SECTION 6. [NEW MATERIAL] LICENSURE.--**

A. Unless otherwise provided in the Home Inspector Licensing Act, an applicant for a license shall:

(1) complete an application on forms provided by the board;

(2) provide documentation to establish that the applicant is at least eighteen years of age and a legal resident of the United States;

(3) provide the board with the applicant's fingerprints and all information necessary for a state and national criminal background check;

(4) provide proof of and maintain insurance coverage as provided in Section 12 of the Home Inspector Licensing Act;

(5) have completed at least eighty hours of classroom training, the content of which shall be established by rule of the board;

(6) pass a national home inspector licensing examination and any additional licensing examinations as

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prescribed by the board; and

(7) have completed at least eighty hours of field training, or its equivalent, as determined by the board.

B. Paragraphs (5) and (7) of Subsection A of this section shall not apply to a person who has:

(1) worked as a home inspector in each of the twenty-four months immediately preceding the effective date of the Home Inspector Licensing Act; and

(2) performed at least one hundred home inspections for compensation in the twenty-four months immediately preceding the effective date of the Home Inspector Licensing Act.

C. After the board's review of all information obtained by the board and submitted by the applicant as required by this section, if all of the requirements for licensure are met, the board shall issue a license to the applicant.

**SECTION 7. [NEW MATERIAL] FINGERPRINTS--CRIMINAL BACKGROUND CHECKS.--**

A. All applicants for licensure shall:

(1) provide fingerprints to the department of public safety to permit a national criminal background check and to conduct a state background check; and

(2) have the right to inspect records if the applicant's licensure is denied.

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B. Records obtained by the board pursuant to the provisions of this section shall not be disclosed except as provided by law. The board is authorized to use criminal history records obtained from the federal bureau of investigation and the department of public safety to conduct background checks on applicants for certification as provided for in the Home Inspector Licensing Act.

C. Records obtained by the board pursuant to the provisions of this section shall not be used for any purpose other than for licensing purposes pursuant to the Home Inspector Licensing Act. Records obtained pursuant to the provisions of this section and the information contained in those records shall not be released or disclosed to any other person or agency, except pursuant to a court order or with the written consent of the person who is the subject of the records.

D. A person who releases or discloses records or information contained in those records in violation of the provisions of this section is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

**SECTION 8. [NEW MATERIAL] LICENSE VALIDITY PERIOD--RENEWAL.--**A license shall be valid for a period not to exceed three years. No later than the last day of the month immediately following the licensee's birth month in the third

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calendar year after the license becomes effective, a licensee may renew the license by submitting a renewal application, renewal fee, proof of completion of the required continuing education as established by rule of the board and other information necessary for a state and national criminal background check. A home inspection performed based on an expired license shall be deemed a violation of the Home Inspector Licensing Act.

**SECTION 9. [NEW MATERIAL] LICENSEE--CONTINUING EDUCATION REQUIREMENT.--**The board shall adopt rules providing for continuing education programs that offer courses in home inspection practices and techniques. The rules shall require that a home inspector, as a condition of license renewal, shall successfully complete a minimum of sixty classroom hours of board-approved instruction every three years.

**SECTION 10. [NEW MATERIAL] LICENSE RECOGNITION--**  
RECIPROCITY.--

A. The board may issue a license to a foreign home inspector; provided that the applicant's resident state license requirements are the same as or similar to the requirements set forth in the Home Inspector Licensing Act as determined by the board. In the event that the state requirements for licensing a home inspector are not substantially similar to the provisions of the Home Inspector Licensing Act, or if the requirements cannot be verified, a foreign home inspector may

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be issued a license in accordance with Section 6 of that act.

B. The board may negotiate agreements with other states or licensing jurisdictions to allow for reciprocity regarding licensure. A license granted pursuant to a reciprocity agreement shall be issued upon payment by the applicant of the application fee and verification that the applicant has complied with the licensing jurisdiction's requirements, including continuing education requirements. The applicant shall provide to the board documentation necessary to demonstrate that the applicant currently holds a license in good standing in the licensing jurisdiction.

**SECTION 11. [NEW MATERIAL] DENIAL, SUSPENSION OR REVOCATION OF A LICENSE.--**

A. The board may deny issuance of a license or may suspend, revoke, limit or condition a license if the applicant or licensee is convicted of a felony or misdemeanor, provided that the denial, suspension or revocation is in accordance with the Criminal Offender Employment Act; has by false or fraudulent representations obtained a license; or in performing or attempting to perform any of the activities covered by the provisions of the Home Inspector Licensing Act, the applicant or licensee has:

- (1) made a substantial misrepresentation;
- (2) violated any of the provisions of the Home Inspector Licensing Act or any rule of the board;

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(3) offered or delivered compensation, inducement or reward to the owner of the inspected property or to the broker or the agent for the referral of any business to the home inspector or the home inspector's company;

(4) had a license to perform home inspections revoked, suspended, denied, stipulated or otherwise limited in any state, jurisdiction, territory or possession of the United States or another country for actions of the licensee similar to acts proscribed in this subsection;

(5) failed to furnish the board, its investigators or its representatives with information requested by the board in the course of an official investigation; or

(6) performed or offered to perform for an additional fee any repair to a structure on which the home inspector or the home inspector's company has prepared a report at any time during the twelve months immediately prior to the repair or offer to repair, except that a home inspection company that is affiliated with or that retains a home inspector does not violate this paragraph if the home inspection company performs repairs pursuant to a claim made pursuant to the terms of a home inspection contract.

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

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C. All licensing, revocation and suspension proceedings conducted by the board shall be governed by the provisions of the Uniform Licensing Act.

**SECTION 12. [NEW MATERIAL] INSURANCE REQUIREMENTS.--**

A. All licensees and their employers shall carry at all times errors and omissions insurance and professional liability insurance to cover all activities contemplated pursuant to the provisions of the Home Inspector Licensing Act.

B. In addition to the powers and duties granted to the board pursuant to the provisions of Section 3 of the Home Inspector Licensing Act, the board may adopt rules that establish the minimum terms and conditions of coverage, including limits of coverage and permitted exceptions. If adopted by the board, the rules shall require every applicant for a license and licensee who applies for renewal of a license to provide the board with satisfactory evidence that the applicant or licensee has errors and omissions insurance coverage and professional liability insurance coverage that meet the minimum terms and conditions required by board rule.

C. The board is authorized to solicit sealed, competitive proposals from insurance carriers to provide a group errors and omissions insurance policy and a professional liability insurance policy that comply with the terms and conditions established by board rule. The board may approve one or more policies that comply with the board rules.

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D. Licensees shall not be required to contract with the group policy provider. Licensees may satisfy any requirement for errors and omissions insurance coverage and professional liability insurance coverage by purchasing an individual policy that is consistent with standards established by the board.

**SECTION 13. [NEW MATERIAL] FEES.**--In addition to any fees to cover reasonable and necessary administrative expenses, the board shall establish, charge and collect:

A. an initial application fee, no less than two hundred fifty dollars (\$250);

B. a state and national criminal background check fee, not to exceed one hundred dollars (\$100);

C. a three-year license fee, no less than one thousand dollars (\$1,000);

D. a reactivation fee, not to exceed two hundred dollars (\$200);

E. a reinstatement fee, not to exceed two hundred dollars (\$200); and

F. a fee for each duplicate license issued because a license is lost or destroyed, not to exceed fifty dollars (\$50.00); provided that an affidavit attesting to the loss or destruction of the license shall be required before issuance of a duplicate license.

**SECTION 14. [NEW MATERIAL] ADVERTISING.**--The term  
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"licensed home inspector" along with the license number of the home inspector shall appear on all advertising, correspondence and documents incidental to the business of home inspection, including the pre-inspection agreement and the report.

SECTION 15. [NEW MATERIAL] HOME INSPECTOR FUND CREATED--  
DEPOSITS--METHOD OF PAYMENT.--

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

B. Money in the home inspector fund Sfl→~~shall be~~  
~~used by~~←Sfl Sfl→**is appropriated to**←Sfl the board to meet necessary expenses incurred in the enforcement of the provisions of the Home Inspector Licensing Act, in carrying out the duties imposed by the Home Inspector Licensing Act and for the promotion of education and standards for home inspectors in the state. Payments out of the home inspector fund shall be on vouchers issued and signed by the person designated by the board upon warrants drawn by the department of finance and administration.

C. All unexpended or unencumbered balances remaining at the end of a fiscal year shall not revert to the general fund.

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SECTION 16. [NEW MATERIAL] CIVIL AND CRIMINAL PENALTIES--

INJUNCTIVE RELIEF.--

A. A person who engages in the business or acts in the capacity of a home inspector within New Mexico without a license issued by the board or pursuant to the Home Inspector Licensing Act is guilty of a misdemeanor.

B. If a person is engaged or has engaged in any act or practice violative of a provision of the Home Inspector Licensing Act, the attorney general or the district attorney of the judicial district in which the person resides or in which the violation is occurring or has occurred may maintain an action in the name of the state to prosecute the violation or to enjoin the act or practice.

C. Notwithstanding a provision of the Home Inspector Licensing Act to the contrary, the board may impose a civil penalty in an amount not to exceed one thousand dollars (\$1,000) for each violation of the Home Inspector Licensing Act and may assess administrative costs for any investigation or administrative or other proceedings against a home inspector or against a person who is found, through an administrative proceeding, to have acted as a home inspector without a license. Appeals from decisions of the board shall be made as provided in Section 39-3-1.1 NMSA 1978.

HAFC → ~~SECTION 17. APPROPRIATION.--Two hundred thousand dollars (\$200,000) is appropriated from the general fund to the~~

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~~home inspector fund for expenditure in fiscal year 2020 and subsequent fiscal years to carry out the purposes of the Home Inspector Licensing Act. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the general fund.~~←H AFC

SECTION H AFC→18.←H AFC H AFC→17.←H AFC EFFECTIVE

DATE.--The effective date of the provisions of this act is January 1, 2020.

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