

1 HOUSE BILL 433

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO LICENSURE; ENACTING THE HOME INSPECTOR LICENSING  
12 ACT; PROVIDING PENALTIES; MAKING AN APPROPRIATION.

13  
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

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

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

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

25 C. "compensation" means the payment for home

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1 inspection services pursuant to the written pre-inspection  
2 agreement;

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

7 E. "home inspection" means a noninvasive,  
8 nondestructive examination by a person of the interior and  
9 exterior components of a residential real property, including  
10 the property's structural components, foundation and roof, for  
11 the purposes of providing a professional written opinion  
12 regarding the site aspects and condition of the property and  
13 its carports, garages and reasonably accessible installed  
14 components. "Home inspection" includes the examination of the  
15 property's heating, cooling, plumbing and electrical systems,  
16 including the operational condition of the systems' controls  
17 that are normally operated by a property owner;

18 F. "home inspector" means a person who performs  
19 home inspections for compensation;

20 G. "license" means a home inspector license issued  
21 by the board in accordance with the Home Inspector Licensing  
22 Act;

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

24 I. "pre-inspection agreement" means the written  
25 agreement signed by the client and a home inspector by which a

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1 client engages the services of the home inspector and that sets  
2 forth at a minimum the following:

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

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

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

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

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

20 SECTION 3. [NEW MATERIAL] NEW MEXICO HOME INSPECTORS  
21 BOARD--CREATED--POWERS AND DUTIES.--

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

25 B. The board shall consist of five members,

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

21 C. Board members shall serve for five years or  
22 until their successors are appointed and qualified. The  
23 governor may remove a member with or without cause. In the  
24 event of a vacancy, the governor shall appoint a member to  
25 complete the unexpired term. The initial board members

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1 appointed shall serve staggered terms from the date of their  
2 appointment as follows:

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

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

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

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

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

19 (1) adopt rules and procedures necessary to  
20 administer and enforce the provisions of the Home Inspector  
21 Licensing Act;

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

25 (3) issue, renew, suspend, modify or revoke

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1 licenses to home inspectors pursuant to the provisions of the  
2 Home Inspector Licensing Act;

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

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

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

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

17 (8) maintain a list of the names and addresses  
18 of all licensees and of all persons whose licenses have been  
19 suspended or revoked within that year, together with such other  
20 information relative to the enforcement of the provisions of  
21 the Home Inspector Licensing Act;

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

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

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

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

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

16 A. A home inspector shall enter into a pre-  
17 inspection agreement with a client prior to commencement of a  
18 home inspection. The written pre-inspection agreement shall  
19 include, in all capital letters, the following statement: "THE  
20 HOME INSPECTOR WILL NOT DETERMINE AND THE REPORT PROVIDED UPON  
21 COMPLETION OF THE HOME INSPECTION WILL NOT CONTAIN A  
22 DETERMINATION OF WHETHER THE HOME OR COMPONENTS AND/OR SYSTEMS  
23 OF THE HOME THAT HAVE BEEN INSPECTED CONFORM TO LOCAL OR STATE  
24 BUILDING CODE REQUIREMENTS."

25 B. A home inspector shall provide a client with a

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1 report of the home inspection by the date set forth in the  
2 pre-inspection agreement. If the pre-inspection agreement does  
3 not set forth a date by which the report shall be provided to  
4 the client, the home inspector shall provide the report to the  
5 client no later than five days after the home inspection was  
6 performed.

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

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

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

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

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

22 (2) in the course of conducting business, use  
23 the title "home inspector", "certified home inspector",  
24 "registered home inspector", "licensed home inspector",  
25 "professional home inspector" or any other title, abbreviation,

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1 letters, figures or signs that indicate the person is a  
2 licensed home inspector; or

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

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

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

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

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

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

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

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

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

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

17 (7) who in the scope of the person's  
18 employment performs safety inspections of utility equipment in  
19 or attached to residential real property pursuant to the  
20 provisions of Chapter 62 NMSA 1978 or rules adopted by the  
21 public regulation commission; and

22 (8) hired by the owner or lessor of  
23 residential real property to perform an inspection of the  
24 components of the residential real property for the purpose of  
25 preparing a bid or estimate for performing construction,

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1 remodeling or repair work in the residential real property.

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

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

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

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

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

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

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

19 (6) pass a national home inspector licensing  
20 examination and any additional licensing examinations as  
21 prescribed by the board; and

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

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

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

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

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

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

15 A. All applicants for licensure shall:

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

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

21 B. Records obtained by the board pursuant to the  
22 provisions of this section shall not be disclosed except as  
23 provided by law. The board is authorized to use criminal  
24 history records obtained from the federal bureau of  
25 investigation and the department of public safety to conduct

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1 background checks on applicants for certification as provided  
2 for in the Home Inspector Licensing Act.

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

12 D. A person who releases or discloses records or  
13 information contained in those records in violation of the  
14 provisions of this section is guilty of a misdemeanor and shall  
15 be sentenced pursuant to the provisions of Section 31-19-1 NMSA  
16 1978.

17 SECTION 8. [NEW MATERIAL] LICENSE VALIDITY PERIOD--  
18 RENEWAL.--A license shall be valid for a period not to exceed  
19 three years. No later than the last day of the month  
20 immediately following the licensee's birth month in the third  
21 calendar year after the license becomes effective, 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 other  
25 information necessary for a state and national criminal

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1 background check. A home inspection performed based on an  
2 expired license shall be deemed a violation of the Home  
3 Inspector Licensing Act.

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

11 SECTION 10. [NEW MATERIAL] LICENSE RECOGNITION--  
12 RECIPROCITY.--

13 A. The board may issue a license to a foreign home  
14 inspector; provided that the applicant's resident state license  
15 requirements are the same as or similar to the requirements set  
16 forth in the Home Inspector Licensing Act as determined by the  
17 board. In the event that the state requirements for licensing  
18 a home inspector are not substantially similar to the  
19 provisions of the Home Inspector Licensing Act, or if the  
20 requirements cannot be verified, a foreign home inspector may  
21 be issued a license in accordance with Section 6 of that act.

22 B. The board may negotiate agreements with other  
23 states or licensing jurisdictions to allow for reciprocity  
24 regarding licensure. A license granted pursuant to a  
25 reciprocity agreement shall be issued upon payment by the

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1 applicant of the application fee and verification that the  
2 applicant has complied with the licensing jurisdiction's  
3 requirements, including continuing education requirements. The  
4 applicant shall provide to the board documentation necessary to  
5 demonstrate that the applicant currently holds a license in  
6 good standing in the licensing jurisdiction.

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

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

- 18 (1) made a substantial misrepresentation;
- 19 (2) violated any of the provisions of the Home  
20 Inspector Licensing Act or any rule of the board;
- 21 (3) offered or delivered compensation,  
22 inducement or reward to the owner of the inspected property or  
23 to the broker or the agent for the referral of any business to  
24 the home inspector or the home inspector's company;
- 25 (4) had a license to perform home inspections

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1 revoked, suspended, denied, stipulated or otherwise limited in  
2 any state, jurisdiction, territory or possession of the United  
3 States or another country for actions of the licensee similar  
4 to acts proscribed in this subsection;

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

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

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

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

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

25 A. All licensees and their employers shall carry at

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1 all times errors and omissions insurance and professional  
2 liability insurance to cover all activities contemplated  
3 pursuant to the provisions of the Home Inspector Licensing Act.

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

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

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

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1 by the board.

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

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

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

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

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

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

15 F. a fee for each duplicate license issued because  
16 a license is lost or destroyed, not to exceed fifty dollars  
17 (\$50.00); provided that an affidavit attesting to the loss or  
18 destruction of the license shall be required before issuance of  
19 a duplicate license.

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

25 SECTION 15. [NEW MATERIAL] HOME INSPECTOR FUND CREATED--

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1 DEPOSITS--METHOD OF PAYMENT.--

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

8 B. Money in the home inspector fund shall be used  
9 by the board to meet necessary expenses incurred in the  
10 enforcement of the provisions of the Home Inspector Licensing  
11 Act, in carrying out the duties imposed by the Home Inspector  
12 Licensing Act and for the promotion of education and standards  
13 for home inspectors in the state. Payments out of the home  
14 inspector fund shall be on vouchers issued and signed by the  
15 person designated by the board upon warrants drawn by the  
16 department of finance and administration.

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

20 SECTION 16. [NEW MATERIAL] CIVIL AND CRIMINAL PENALTIES--  
21 INJUNCTIVE RELIEF.--

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

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

8           C. Notwithstanding a provision of the Home  
9 Inspector Licensing Act to the contrary, the board may impose a  
10 civil penalty in an amount not to exceed one thousand dollars  
11 (\$1,000) for each violation of the Home Inspector Licensing Act  
12 and may assess administrative costs for any investigation or  
13 administrative or other proceedings against a home inspector or  
14 against a person who is found, through an administrative  
15 proceeding, to have acted as a home inspector without a  
16 license. Appeals from decisions of the board shall be made as  
17 provided in Section 39-3-1.1 NMSA 1978.

18           **SECTION 17. APPROPRIATION.**--Two hundred thousand dollars  
19 (\$200,000) is appropriated from the general fund to the home  
20 inspector fund for expenditure in fiscal year 2020 and  
21 subsequent fiscal years to carry out the purposes of the Home  
22 Inspector Licensing Act. Any unexpended or unencumbered  
23 balance remaining at the end of a fiscal year shall not revert  
24 to the general fund.

25           **SECTION 18. EFFECTIVE DATE.**--The effective date of the

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1 provisions of this act is January 1, 2020.

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