

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL 589

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Joseph A. Fidel

AN ACT

RELATING TO PROFESSIONAL AND VOCATIONAL LICENSING; ENACTING THE
HOME INSPECTOR LICENSING ACT; CREATING A FUND; PROVIDING
PENALTIES; MAKING AN APPROPRIATION.

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 domestic 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:

. 144621. 1

- 1 A. "board" means the home inspector licensing
2 board;
- 3 B. "client" means a person who engages or seeks to
4 engage the services of a home inspector for the purpose of
5 obtaining inspection of and a written home inspection report
6 upon the condition of a residential building;
- 7 C. "compensation" means direct or indirect payment,
8 including the expectation of payment, whether or not actually
9 received;
- 10 D. "component" means a readily accessible and
11 observable aspect of a system, such as a floor or wall, but not
12 individual pieces, such as boards or nails where many similar
13 pieces make up a system;
- 14 E. "fund" means the home inspector fund;
- 15 F. "home inspection" means a noninvasive,
16 nondestructive inspection for the purposes of providing a
17 professional opinion of the condition of a building and its
18 carports and garages, any reasonable accessible installed
19 components and the operation of the building systems, including
20 the controls normally operated by the owner of a residential
21 building, such as the heating system, cooling system, plumbing
22 system, structural components, foundation, roof covering,
23 exterior and interior components and site aspects as they
24 affect the building;
- 25 G. "home inspection report" means a written report

underscored material = new
[bracketed material] = delete

1 prepared for compensation and issued after a home inspection
2 that includes:

3 (1) information on the systems and components
4 inspected that are significantly deficient or are near the end
5 of their service lives;

6 (2) the reason why a system or component is
7 significantly deficient or near the end of its service life;

8 (3) the home inspector's recommendations to
9 correct or monitor the deficiency; and

10 (4) any systems and components designated for
11 inspection in the standards of practice that were not inspected
12 and the reason they were not inspected;

13 H. "home inspector" means a person who has a
14 license pursuant to the Home Inspector Licensing Act as a home
15 inspector and who engages in the business of performing home
16 inspections and writing home inspection reports;

17 I. "qualified trainee" means a candidate who wishes
18 to become a home inspector and who has met the requirements set
19 forth in the rules of the board;

20 J. "readily accessible" means available for visual
21 inspection without moving personal property, dismantling,
22 destructive measures or any action that likely will involve
23 risk to persons or property;

24 K. "residential building" means a structure
25 consisting of from one to four family dwelling units;

. 144621. 1

underscored material = new
[bracketed material] = delete

1 L. "significantly deficient" means a system or
2 component that is unsafe or not functioning;

3 M. "society" means the American society of home
4 inspectors;

5 N. "system" means a combination of interactive or
6 interdependent components assembled to carry out one or more
7 functions; and

8 O. "technically exhaustive" means an investigation
9 that involves dismantling, the extensive use of advanced
10 techniques, measurements, instruments, testing, calculations or
11 other means.

12 Section 4. BOARD CREATED--COMPOSITION.--

13 A. The "home inspector licensing board" is created.
14 The board is comprised of five members appointed by the
15 governor.

16 B. One board member shall be a person with no
17 interest in or connection to the home inspection business, and
18 four board members shall be home inspectors:

19 (1) who have actively engaged in the practice
20 of home inspections for at least four years immediately
21 preceding their appointment;

22 (2) who have performed a minimum of five
23 hundred home inspections for compensation;

24 (3) who demonstrate that they have passed the
25 national home inspector examination offered by the examination

underscored material = new
[bracketed material] = delete

1 board of professional home inspectors;

2 (4) who are representative of a widely diverse
3 and geographically dispersed cross-section of the state's
4 population; and

5 (5) no two of whom are from the same county.

6 C. Board members shall be appointed to four-year
7 terms and shall serve until their successors are appointed and
8 qualified.

9 D. The board shall ensure continuity with staggered
10 terms, and at the first meeting of the board, two members shall
11 be selected by lot to serve two-year terms. Thereafter, all
12 members shall serve four-year terms.

13 E. A vacancy on the board shall be filled by
14 appointment by the governor for the unexpired term within sixty
15 days of the vacancy.

16 Section 5. DUTIES OF THE BOARD. --The board shall:

17 A. adopt rules and procedures necessary to
18 administer and enforce the provisions of the Home Inspector
19 Licensing Act;

20 B. issue and renew licenses to home inspectors
21 pursuant to the provisions of that act;

22 C. suspend, revoke or deny the license of a home
23 inspector;

24 D. establish standards for the training and
25 experience requirements of home inspectors and for continuing

. 144621. 1

underscored material = new
[bracketed material] = delete

1 education requirements;

2 E. adopt and publish a code of ethics and standards
3 of practice for home inspectors, which may be the code of
4 ethics and standards of practice set forth by the society;

5 F. prescribe or change the fees charged for
6 examinations, licenses, renewals and other services of the
7 board; and

8 G. perform other functions and duties as may be
9 necessary to carry out the provisions of the Home Inspector
10 Licensing Act.

11 Section 6. BOARD--ORGANIZATION--MEETINGS.--

12 A. The board shall organize itself by electing a
13 chair, vice chair and secretary from among its members. A
14 majority of the board constitutes a quorum and may exercise all
15 powers and duties established by the provisions of the Home
16 Inspector Licensing Act.

17 B. The board shall keep a record of its proceedings
18 and a register of persons licensed or seeking licensing as home
19 inspectors, showing the name and place of business of each, and
20 shall retain all records and applications submitted to the
21 board pursuant to the Home Inspector Licensing Act.

22 C. The board shall meet not less frequently than
23 once each calendar quarter at such place as may be designated
24 by the board, and special meetings may be held on five days'
25 written notice to each of the members by the chair.

. 144621. 1

underscored material = new
[bracketed material] = delete

1 Section 7. REIMBURSEMENT AND EXPENSES. --The board may
2 appoint such committees of the board and employ such persons to
3 assist the board as may be necessary. Each member of the board
4 shall receive per diem and mileage as provided in the Per Diem
5 and Mileage Act and shall receive no other perquisite,
6 compensation or allowance. Compensation for employees, any
7 necessary supplies and equipment shall be paid from the fund.

8 Section 8. LICENSE REQUIRED--EXCEPTIONS. --

9 A. It is unlawful for a person to provide, or
10 represent himself as able to provide, a home inspection unless
11 licensed in accordance with the provisions of the Home
12 Inspector Licensing Act.

13 B. A person, unless licensed by the board, shall
14 not:

15 (1) assume any title, designation or
16 abbreviation likely to create the impression of a licensed home
17 inspector; or

18 (2) use the term "state licensed" or
19 "licensed" to refer to any inspection prepared by him.

20 C. A business entity shall not provide home
21 inspection services unless each of the home inspectors employed
22 by the business entity is licensed in accordance with the
23 provisions of the Home Inspector Licensing Act.

24 D. A business entity shall not use, in connection
25 with the name or signature of the business entity, the title

underscored material = new
[bracketed material] = delete

1 "home inspectors" to describe the business entity's services,
2 unless each of the home inspectors employed by the business
3 entity is licensed in accordance with the provisions of the
4 Home Inspector Licensing Act.

5 E. The requirement of licensing does not apply to a
6 state, county or municipal employee who, as part of his duties,
7 is required to perform home inspections. The requirement does
8 not apply to a person engaged with a bank solely to monitor
9 progress on the construction of a residential building or to a
10 person who is employed as a residential property manager for a
11 residential building and whose duties and responsibilities
12 include inspecting the residential building or performing an
13 inspection on the building if the person does not receive
14 separate compensation for the inspection work.

15 F. A qualified trainee, pursuant to rules of the
16 board, under the supervision of a home inspector, may provide a
17 home inspection while in training without a license. The board
18 may, in its discretion, provide a provisional license to a
19 qualified trainee.

20 Section 9. QUALIFICATION FOR LICENSING. --

21 A. A home inspector license shall be granted only
22 to a person who is deemed by the board to be of good repute and
23 competent to perform home inspections.

24 B. An applicant for a home inspector license shall
25 be a resident of New Mexico, except as otherwise provided in

. 144621. 1

underscored material = new
[bracketed material] = delete

1 the Home Inspector Licensing Act, who has reached the age of
2 majority and who has received a high school diploma or its
3 equivalent.

4 C. An applicant for a home inspector license shall
5 have completed a course of study that covers all the components
6 of a residential building, including the heating system,
7 cooling system, plumbing system, electrical system, structural
8 components, foundation, exterior and interior components and
9 site aspects as they affect the building.

10 D. An applicant shall acquire the required training
11 and meet the experience requirements as established by the
12 board and shall pass the national home inspector examination
13 offered by the examination board of professional home
14 inspectors. An applicant who passed the examination before the
15 effective date of the Home Inspector Licensing Act shall be
16 deemed to have completed the requirements of this subsection.

17 E. A qualified trainee under the supervision of a
18 home inspector may perform a home inspection and submit a home
19 inspection report, which shall be approved by the home
20 inspector, as provided in the rules of the board.

21 Section 10. INTERIM LICENSING. --Until July 1, 2004, to be
22 eligible for a license as a home inspector, an applicant shall:

- 23 A. be of good moral character;
- 24 B. have successfully completed high school or its
25 equivalent;

. 144621. 1

underscored material = new
[bracketed material] = del ete

1 C. have been engaged in the practice of home
2 inspection for compensation for not fewer than two years prior
3 to the effective date of the Home Inspector Licensing Act;

4 D. have performed not fewer than two hundred fifty
5 home inspections for compensation; and

6 E. have passed the national home inspector
7 examination offered by the examination board of professional
8 home inspectors.

9 Section 11. ISSUANCE AND RENEWAL OF LICENSES. --

10 A. A license is renewable every three years with
11 payment of the applicable fees on or before April 30. During
12 the first year of operation, the board may issue licenses for
13 one-, two- or three-year terms for the purpose of coordinating
14 continuing education requirements with license renewal
15 requirements.

16 B. An application for renewal shall be accompanied
17 by proof of compliance with continuing education requirements.

18 C. The board shall renew a license in the absence
19 of any reason or condition that might warrant the refusal of
20 the license.

21 D. The board may renew an expired license upon
22 application, payment of the annual renewal fee, submission of
23 proof of continuing education requirements and payment of a
24 reinstatement fee in addition to any other fee permitted under
25 the Home Inspector Licensing Act, provided that the board may

underscored material = new
[bracketed material] = delete

1 treat the former licensee as a new applicant and require
2 reexamination as a condition for reissuance of the license.

3 E. If during a period of one year from the date the
4 license expires the licensee has been on active duty with the
5 military service, reexamination shall not be required by the
6 board within the three-month period following return to the
7 state, and upon application the license shall be renewed. A
8 copy of military orders shall accompany the application.

9 Section 12. DENIAL, SUSPENSION OR REVOCATION OF A
10 LICENSE. --

11 A. The board shall deny, suspend or revoke a
12 license if the applicant:

13 (1) procured or attempted to procure a license
14 by knowingly making a false statement or submitting false
15 information or through any form of fraud or misrepresentation;

16 (2) refused to provide complete information in
17 response to a question in an application for licensing or
18 failed to meet the minimum qualifications established by the
19 Home Inspector Licensing Act;

20 (3) paid money, other than as provided for in
21 the Home Inspector Licensing Act, to any member or employee of
22 the board to procure a license;

23 (4) was convicted of a crime that is
24 substantially related to the qualifications, functions or
25 duties of a person providing home inspection services;

. 144621. 1

underscored material = new
[bracketed material] = delete

1 (5) committed an act involving dishonesty,
2 fraud or misrepresentation or by omission engaged in a
3 dishonest or fraudulent act or misrepresentation with the
4 intent to substantially benefit the license holder or another
5 person or with the intent to substantially injure another
6 person;

7 (6) willfully disregarded or violated any
8 provisions of the Home Inspector Licensing Act or the rules of
9 the board adopted pursuant to that act;

10 (7) accepted a home inspection assignment when
11 the employment itself was contingent upon reporting a
12 predetermined result or opinion or when the fee to be paid for
13 the home inspection report was contingent upon the opinion or
14 conclusion reached or upon the consequences resulting from the
15 home inspection and home inspection report;

16 (8) suffered the entry of a final civil
17 judgment on the grounds of fraud, misrepresentation or deceit
18 in making an inspection and submitting a false home inspection
19 report; or

20 (9) committed any other conduct that is
21 related to home inspections and that constitutes or
22 demonstrates bad faith, untrustworthiness, impropriety, fraud,
23 dishonesty or any unlawful act.

24 B. The board shall refuse to issue or renew a
25 license and shall suspend or revoke a license when the board

underscored material = new
[bracketed material] = delete

1 determines that the applicant or licensee in the performance of
2 home inspections has:

3 (1) repeatedly failed to observe one or more
4 of the standards for the performance of home inspection as set
5 forth in the rules adopted pursuant to the Home Inspector
6 Licensing Act;

7 (2) repeatedly failed or refused, without good
8 cause, to exercise reasonable diligence in performing a home
9 inspection or issuing a home inspection report;

10 (3) repeatedly been negligent or incompetent
11 in performing a home inspection or issuing a home inspection
12 report; or

13 (4) violated any confidential matter obtained
14 in the performance of a home inspection.

15 C. An action of the board relating to the issuance,
16 suspension or revocation of a license shall be governed by the
17 provisions of the Uniform Licensing Act. The board shall
18 participate in any hearings required or conducted by the board
19 pursuant to the Uniform Licensing Act.

20 D. The provisions of the Criminal Offender
21 Employment Act shall govern any consideration of criminal
22 records required or permitted under the Home Inspector
23 Licensing Act.

24 E. Nothing in the Home Inspector Licensing Act
25 shall be construed to preclude any other remedies otherwise

. 144621. 1

1 available under common law or statutes of this state.

2 Section 13. STANDARDS OF PROFESSIONAL HOME INSPECTION
3 PRACTICE. --

4 A. A home inspector shall comply with generally
5 accepted standards of professional home inspection practice and
6 generally accepted ethical rules to be observed by a home
7 inspector. Generally accepted standards of professional home
8 inspection practice shall be as currently evidenced by the
9 society standards and adopted as rules by the board.

10 B. The home inspector is not required to make a
11 determination on the following, except as may otherwise be
12 required by law:

13 (1) the condition of systems or components
14 that are not readily accessible;

15 (2) the strength, adequacy, effectiveness or
16 efficiency of a system or component;

17 (3) the causes of a condition or deficiency;

18 (4) the materials, methods or costs of
19 corrections;

20 (5) future conditions, including failure of
21 systems and components;

22 (6) the suitability of the property for any
23 specialized use;

24 (7) compliance with regulatory requirements,
25 including codes, rules, laws and ordinances;

. 144621. 1

underscored material = new
[bracketed material] = del ete

1 (8) the market value of the property or its
2 marketability;

3 (9) the advisability of the purchase of the
4 property;

5 (10) the presence of potentially hazardous
6 plants or animals, including wood-destroying organisms or
7 diseases harmful to humans;

8 (11) the presence of any environmental
9 hazards, including toxins, carcinogens, noise and contaminants
10 in soil, water or air;

11 (12) the effectiveness of any system installed
12 or methods used to control or remove suspected hazardous
13 substances;

14 (13) the operating costs of systems or
15 components; and

16 (14) the acoustical properties of any system
17 or component.

18 C. Rules adopted by the board shall identify items
19 and actions that will not be offered by home inspectors, items
20 that a home inspector is not required to operate and, when
21 entry is not required by an inspector, items that a home
22 inspector is not required to inspect and actions that a home
23 inspector is not required to perform. Copies of the rules
24 containing the items shall be disseminated by the board.

25 Section 14. FEES. --The board may establish and collect

. 144621. 1

underscored material = new
[bracketed material] = delete

1 fees for the following, but not to exceed:

2 A. one hundred dollars (\$100) for an application
3 fee for licensure;

4 B. one hundred dollars (\$100) for examination for
5 licensure;

6 C. one hundred fifty dollars (\$150) for a triennial
7 license;

8 D. twenty-five dollars (\$25.00) for each duplicate
9 license issued because of loss or destruction, with an
10 affidavit as to its loss or destruction; and

11 E. any fees to cover reasonable and necessary
12 administrative expenses.

13 Section 15. HOME INSPECTOR FUND CREATED--DISPOSITION--
14 METHOD OF PAYMENT.--

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

21 B. Money in the fund shall be used by the board to
22 meet necessary expenses incurred in the enforcement of the
23 provisions of the Home Inspector Licensing Act, in carrying out
24 the duties imposed by that act and for the promotion of
25 education and standards of home inspectors in this state.

underscored material = new
[bracketed material] = delete

1 Payments out of the fund shall be on vouchers issued and signed
2 by the person designated by the board upon warrants drawn by
3 the department of finance and administration. All unexpended
4 or unencumbered balances remaining at the end of each fiscal
5 year shall remain in the fund for use in accordance with the
6 provisions of that act.

7 Section 16. CONTINUING EDUCATION REQUIREMENTS. --The board
8 shall adopt rules providing for continuing education programs
9 that offer courses in home inspection practices and techniques.
10 The rules shall require that a home inspector, as a condition
11 to renewal of his license, shall successfully complete twenty
12 classroom hours of instruction every three years in courses
13 approved by the board.

14 Section 17. NONRESIDENT APPLICANTS--RECIPROCITY. --

15 A. The board shall issue a license to a nonresident
16 home inspector provided that the applicant's resident state's
17 requirements for licensing are the same or substantially
18 similar to the requirements set forth in the Home Inspector
19 Licensing Act. In the event that the other state's
20 requirements are not similar or cannot be verified, a
21 qualifying nonresident may become a licensed home inspector in
22 this state by conforming to all the conditions of the Home
23 Inspector Licensing Act. An examination taken in another state
24 is acceptable in New Mexico provided the examination was at the
25 appropriate level and approved by the society. If it is

underscored material = new
[bracketed material] = delete

1 beneficial to the New Mexico-licensed home inspectors, the
2 board may negotiate agreements with other states allowing
3 reciprocity. The license shall be issued upon payment of the
4 application fee, verification that the applicant has complied
5 with his resident state's current education requirements and
6 filing with the board of a license history with verification of
7 good standing by the licensing board of the other state.

8 B. The nonresident applicant shall file an
9 irrevocable consent that suits and actions may be commenced
10 against him in the proper court of any county of this state in
11 which a cause of action may arise from his actions as a home
12 inspector or in which the plaintiff may reside by service of
13 any processes or pleadings authorized by the laws of New Mexico
14 on the board, with the consent stipulating and agreeing that
15 such service of processes or pleadings on the board shall be
16 taken and held in all courts to be valid and binding as if
17 personal service has been made upon the applicant in New
18 Mexico. In case a process or pleading mentioned in the case is
19 served upon the board, it shall be by duplicate copies, one of
20 which shall be filed in the office of the board and the other
21 immediately forwarded by registered mail to the nonresident New
22 Mexico-licensed home inspector to whom the processes or
23 pleadings are directed.

24 Section 18. PROHIBITED ACTS. --The board may make
25 investigations or conduct hearings to determine whether a

. 144621. 1

underscored material = new
[bracketed material] = delete

1 violation of the Home Inspector Licensing Act has occurred and
2 may deny, suspend or revoke a home inspector license upon proof
3 to the satisfaction of the board that the holder has
4 participated in an unfair business practice. It is an unfair
5 business practice for a home inspector, a company that employs
6 a home inspector or a company that is controlled by a company
7 that also has a financial interest in a company employing a
8 home inspector to do any of the following:

9 A. perform or offer to perform for an additional
10 fee any repairs to a structure on which the home inspector or
11 the home inspector's company has prepared a home inspection
12 report in the past twelve months, except that a home protection
13 company that is affiliated with or that retains a home
14 inspector does not violate this section if it performs repairs
15 pursuant to a claim made under the home protection contract;

16 B. inspect for a fee a property in which the home
17 inspector, or the home inspector's company, has any financial
18 interest or any interest in the transfer of the property;

19 C. offer or deliver compensation, inducement or
20 reward to the owner of the inspected property or the broker or
21 agent for the referral of any business to the home inspector or
22 the home inspection company; or

23 D. accept an engagement to make a home inspection
24 or prepare a home inspection report in which the employment
25 itself or the fee payable for the inspection is contingent upon

. 144621. 1

1 the conclusions in the home inspection report, pre-established
2 findings or the close of escrow.

3 Section 19. REGISTRY OF COMPLAINTS. --

4 A. In lieu of proceeding with an investigation, the
5 board may place in a registry a copy of a complaint received by
6 the board against a home inspector, the home inspector's
7 response to the complaint and a copy of records of the board
8 concerning the complaint no later than thirty days after the
9 date on which the board receives a complaint alleging that a
10 home inspector has engaged in conduct that is grounds for
11 discipline. The board shall provide the home inspector with a
12 copy of the complaint.

13 B. After receiving a copy of the complaint, the
14 home inspector may place in the registry a statement describing
15 the home inspector's opinion of the correctness or relevance of
16 the information contained in the complaint. The board shall
17 make the complaint and the home inspector's response to the
18 complaint available to the public.

19 C. The board shall remove all complaints against
20 and other information concerning a home inspector from the
21 registry if, for a period of two years from the date of the
22 most recent complaint filed in the registry, no further
23 complaints have been filed against the home inspector.

24 D. Unworthy or frivolous complaints shall be
25 discarded and shall not be retained in the registry.

1 Section 20. LIABILITY OF HOME INSPECTORS. --

2 A. An action to recover damages for any act or
3 omission of a home inspector relating to a home inspection that
4 he conducts shall be commenced within one year after the date
5 that the home inspection is completed.

6 B. Only a client and no other party shall have
7 recourse to action to recover damages arising from a home
8 inspection or a home inspection report.

9 Section 21. BOARD-IMPOSED INSURANCE OR BOND
10 REQUIREMENT. -- The board may, as a condition of removing a
11 limitation on a license or of reinstating a license that has
12 been suspended or revoked, require the home inspector to:

13 A. obtain insurance against loss, expense and
14 liability resulting from errors and omissions or neglect in the
15 performance of services as a home inspector; or

16 B. file with the board a bond that is furnished by
17 a company authorized to do business in this state and is in the
18 amount approved by the board.

19 Section 22. PENALTY--INJUNCTIVE RELIEF. --

20 A. A person who violates the provisions of the Home
21 Inspector Licensing Act is guilty of a misdemeanor and shall be
22 punished by a fine of five hundred dollars (\$500) or by
23 imprisonment for not more than six months, or both.

24 B. In the event that a person has engaged in or
25 proposes to engage in an act or practice violating the Home

underscored material = new
[bracketed material] = delete

1 Inspector Licensing Act, the attorney general or the district
2 attorney of the judicial district in which the person resides
3 or the judicial district in which the violation has occurred or
4 will occur shall, upon application of the board, maintain an
5 action in the name of the state to prosecute the violation or
6 to enjoin the proposed act or practice.

7 Section 23. TERMINATION OF AGENCY LIFE-- DELAYED REPEAL. --
8 The home inspector licensing board is terminated on July 1,
9 2013 pursuant to the Sunset Act. The board shall continue to
10 operate according to the provisions of the Home Inspector
11 Licensing Act until July 1, 2014. Effective July 1, 2014, the
12 Home Inspector Licensing Act is repealed.