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AN ACT

RELATING TO LICENSURE; ENACTING THE HOME INSPECTOR LICENSING ACT; 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. DEFINITIONS.--As used in the Home Inspector Licensing Act:

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

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

1 exterior components of a residential real property, including
2 the property's structural components, foundation and roof,
3 for the purposes of providing a professional written opinion
4 regarding the site aspects and condition of the property and
5 its carports, garages and reasonably accessible installed
6 components. "Home inspection" includes the examination of
7 the property's heating, cooling, plumbing and electrical
8 systems, including the operational condition of the systems'
9 controls that are normally operated by a property owner;

10 F. "home inspector" means a person who performs
11 home inspections for compensation;

12 G. "license" means a home inspector license issued
13 by the board in accordance with the Home Inspector Licensing
14 Act;

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

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

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

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

25 (3) the date by which the client will

1 receive the report;

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

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

12 SECTION 3. NEW MEXICO HOME INSPECTORS BOARD--
13 CREATED--POWERS AND DUTIES.--

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

17 B. The board shall consist of five members,
18 appointed by the governor, who have been residents of the
19 state for at least three consecutive years immediately prior
20 to their appointment. Three members shall be home
21 inspectors. One member shall be a real estate qualifying or
22 associate broker licensed in accordance with Chapter 61,
23 Article 29 NMSA 1978, and one member shall be a member of the
24 public who has never been licensed as a home inspector or
25 real estate broker. No more than one member shall be a

1 resident of any one county in the state. The initial home
2 inspector members appointed shall demonstrate that they have
3 been actively and lawfully engaged in home inspections for at
4 least twenty-four months prior to the effective date of the
5 Home Inspector Licensing Act and have met the requirements of
6 Paragraphs (1) through (4) of Subsection A of Section 6 of
7 the Home Inspector Licensing Act. The initial home inspector
8 members appointed shall comply with Paragraph (6) of
9 Subsection A of Section 6 of the Home Inspector Licensing Act
10 within six months of the effective date of the licensing
11 examination rule promulgated by the board. After the board
12 is initially established, any replacement of a home inspector
13 member shall be a licensee.

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

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

24 D. The board shall elect annually from among its
25 members a chair and other officers as the board determines.

1 The board shall meet at times and places as fixed by the
2 board. A majority of the board constitutes a quorum.

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

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

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

12 (1) adopt rules and procedures necessary to
13 administer and enforce the provisions of the Home Inspector
14 Licensing Act;

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

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

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

24 (5) establish the amount and administer the
25 fees charged for examinations, initial licensure, license

1 renewals, reinstatement of revoked or suspended licenses,
2 reactivation of inactive or expired licenses, criminal
3 background checks and other services pursuant to the
4 provisions of the Home Inspector Licensing Act;

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

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

10 (8) maintain a list of the names and
11 addresses of all licensees and of all persons whose licenses
12 have been suspended or revoked within that year, together
13 with such other information relative to the enforcement of
14 the provisions of the Home Inspector Licensing Act;

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

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

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

22 H. Prior to a final action on a proposed change or
23 amendment to the board's rules, the board may publish notice
24 of the proposed action in its official publication,
25 distribute the publication to each active licensee and give

1 the time and place for a public hearing on the proposed
2 changes. The hearing shall be held at least thirty days
3 prior to a proposed final action. Changes or amendments to
4 the rules shall be filed in accordance with the procedures of
5 the State Rules Act and shall become effective thirty days
6 after notification to all active licensees of the filing of
7 the changes or amendments.

8 SECTION 4. PRE-INSPECTION AGREEMENT--REPORT--
9 DISCLAIMER--NO WAIVER OF DUTY.--

10 A. A home inspector shall enter into a pre-
11 inspection agreement with a client prior to commencement of a
12 home inspection. The written pre-inspection agreement shall
13 include, in all capital letters, the following statement:

14 "THE HOME INSPECTOR WILL NOT DETERMINE AND THE REPORT
15 PROVIDED UPON COMPLETION OF THE HOME INSPECTION WILL NOT
16 CONTAIN A DETERMINATION OF WHETHER THE HOME OR COMPONENTS
17 AND/OR SYSTEMS OF THE HOME THAT HAVE BEEN INSPECTED CONFORM
18 TO LOCAL OR STATE BUILDING CODE REQUIREMENTS."

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

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

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

13 SECTION 5. LICENSE REQUIRED--EXEMPTIONS.--

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

15 (1) conduct home inspections, develop a
16 report or otherwise engage in the business of home
17 inspection;

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

24 (3) use the terms "state licensed" or
25 "licensed" to refer to an inspection conducted or a report

1 prepared by a person who is not a licensee.

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

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

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

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

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

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

25 (4) employed by the state or a political

1 subdivision of the state as a code enforcement official, when
2 acting within the scope of the person's employment;

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

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

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

19 (8) 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
22 of preparing a bid or estimate for performing construction,
23 remodeling or repair work in the residential real property.

24 **SECTION 6. LICENSURE.--**

25 A. Unless otherwise provided in the Home Inspector HB 433/a
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1 Licensing Act, an applicant for a license shall:

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

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

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

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

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

16 (6) pass a national home inspector licensing
17 examination and any additional licensing examinations as
18 prescribed by the board; and

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

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

24 (1) worked as a home inspector in each of
25 the twenty-four months immediately preceding the effective

1 date of the Home Inspector Licensing Act; and

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

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

11 **SECTION 7. FINGERPRINTS--CRIMINAL BACKGROUND CHECKS.--**

12 A. All applicants for licensure shall:

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

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

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

25 C. Records obtained by the board pursuant to the

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

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

14 **SECTION 8. LICENSE VALIDITY PERIOD--RENEWAL.--**A license
15 shall be valid for a period not to exceed three years. No
16 later than the last day of the month immediately following
17 the licensee's birth month in the third calendar year after
18 the license becomes effective, a licensee may renew the
19 license by submitting a renewal application, renewal fee,
20 proof of completion of the required continuing education as
21 established by rule of the board and other information
22 necessary for a state and national criminal background check.
23 A home inspection performed based on an expired license shall
24 be deemed a violation of the Home Inspector Licensing Act.

25 **SECTION 9. LICENSEE--CONTINUING EDUCATION**

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

7 SECTION 10. LICENSE RECOGNITION--RECIPROCITY.--

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

18 B. The board may negotiate agreements with other
19 states or licensing jurisdictions to allow for reciprocity
20 regarding licensure. A license granted pursuant to a
21 reciprocity agreement shall be issued upon payment by the
22 applicant of the application fee and verification that the
23 applicant has complied with the licensing jurisdiction's
24 requirements, including continuing education requirements.
25 The applicant shall provide to the board documentation

1 necessary to demonstrate that the applicant currently holds a
2 license in good standing in the licensing jurisdiction.

3 SECTION 11. DENIAL, SUSPENSION OR REVOCATION OF A
4 LICENSE.--

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

14 (1) made a substantial misrepresentation;

15 (2) violated any of the provisions of the
16 Home Inspector Licensing Act or any rule of the board;

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

22 (4) had a license to perform home
23 inspections revoked, suspended, denied, stipulated or
24 otherwise limited in any state, jurisdiction, territory or
25 possession of the United States or another country for

1 actions of the licensee similar to acts proscribed in this
2 subsection;

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

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

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

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

23 **SECTION 12. INSURANCE REQUIREMENTS.--**

24 A. All licensees and their employers shall carry
25 at all times errors and omissions insurance and professional

1 liability insurance to cover all activities contemplated
2 pursuant to the provisions of the Home Inspector Licensing
3 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
11 license to provide the board with satisfactory evidence that
12 the 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
18 professional liability insurance policy that comply with the
19 terms and conditions established by board rule. The board
20 may approve one or more policies that comply with the board
21 rules.

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

1 individual policy that is consistent with standards
2 established by the board.

3 **SECTION 13. FEES.**--In addition to any fees to cover
4 reasonable and necessary administrative expenses, the board
5 shall establish, charge and collect:

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

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

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

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

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

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

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

1 **SECTION 15. HOME INSPECTOR FUND CREATED--DEPOSITS--**
2 **METHOD OF PAYMENT.--**

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

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

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

21 **SECTION 16. CIVIL AND CRIMINAL PENALTIES--INJUNCTIVE**
22 **RELIEF.--**

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

1 Licensing Act is guilty of a misdemeanor.

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

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

19 SECTION 17. EFFECTIVE DATE.--The effective date of the
20 provisions of this act is January 1, 2020. _____

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