

HOUSE BILL 166

**52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016**

INTRODUCED BY

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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. [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;

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

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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 state in the United  
6 States or any other sovereign nation;

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. There is created the "New Mexico home inspectors  
23 board".

24 B. The board shall consist of five members,  
25 appointed by the governor, who have been residents of the state

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1 for three consecutive years immediately prior to their  
2 appointment. Three members shall be home inspectors. One  
3 member shall be a real estate qualifying or associate broker  
4 licensed in accordance with Chapter 61, Article 29 NMSA 1978,  
5 and one member shall be a member of the public who has never  
6 been licensed as a home inspector or real estate broker. No  
7 more than one member shall be a resident of any one county in  
8 the state.

9 C. Board members shall serve for five years or  
10 until their successors are appointed and qualified. The  
11 governor may remove a member for cause. In the event of a  
12 vacancy, the governor shall appoint a member to complete the  
13 unexpired term.

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

18 E. Pursuant to the provisions of the Home Inspector  
19 Licensing Act, the board shall:

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

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

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

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

7 (5) establish the amount and administer the  
8 fees charged for examinations, licenses, renewals and other  
9 services pursuant to the provisions of the Home Inspector  
10 Licensing Act;

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

14 (7) establish a home inspector advisory panel  
15 as provided for in Section 4 of the Home Inspector Licensing  
16 Act;

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

19 (9) maintain a list of the names and addresses  
20 of all licensees and of all persons whose license has been  
21 suspended or revoked within that year, together with such other  
22 information relative to the enforcement of the provisions of  
23 the Home Inspector Licensing Act;

24 (10) maintain a statement of all funds  
25 received and a statement of all disbursements;

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

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

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

16 SECTION 4. [NEW MATERIAL] HOME INSPECTION ADVISORY  
17 PANEL.--

18 A. The "home inspection advisory panel" consisting  
19 of five members is created. The board shall appoint the five  
20 members of the advisory panel, who shall be residents of New  
21 Mexico. The advisory panel shall consist of three home  
22 inspectors, one licensed real estate broker and one member of  
23 the public. The advisory panel members shall serve terms of  
24 three years, which terms shall be staggered such that the terms  
25 of no more than two members shall expire in any one year. The

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1 initial home inspectors appointed by the board to be members of  
2 the advisory panel shall demonstrate that they have been  
3 actively and lawfully engaged in home inspections for at least  
4 twenty-four months prior to the effective date of the Home  
5 Inspector Licensing Act and have met all the licensing  
6 requirements of Section 7 of the Home Inspector Licensing Act,  
7 except for Paragraphs (4), (5) and (6) of Subsection A of that  
8 section.

9 B. Once the board has prescribed a licensing  
10 examination, the initial home inspectors selected by the board  
11 shall comply with Paragraph (6) of Subsection A of Section 7 of  
12 the Home Inspector Licensing Act within six months of the  
13 effective date of the licensing examination regulation. After  
14 the advisory panel is established, any replacement of a home  
15 inspector member of the advisory panel shall be a licensee.

16 C. The advisory panel shall provide guidance and  
17 input to the board on the rules and procedures necessary to  
18 administer and enforce the provisions of the Home Inspector  
19 Licensing Act and on matters involving violations of that act  
20 and disciplinary sanctions that result from those violations.

21 SECTION 5. [NEW MATERIAL] PRE-INSPECTION AGREEMENT--  
22 REPORT--DISCLAIMER--NO WAIVER OF DUTY.--

23 A. A home inspector shall enter into a pre-  
24 inspection agreement with a client prior to commencement of a  
25 home inspection. The written pre-inspection agreement shall

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1 include, in all capital letters, the following statement: "THE  
2 HOME INSPECTOR WILL NOT DETERMINE AND THE REPORT PROVIDED UPON  
3 COMPLETION OF THE HOME INSPECTION WILL NOT CONTAIN A  
4 DETERMINATION OF WHETHER THE HOME OR COMPONENTS AND/OR SYSTEMS  
5 OF THE HOME THAT HAVE BEEN INSPECTED CONFORM TO LOCAL OR STATE  
6 BUILDING CODE REQUIREMENTS."

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

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

19 D. Contractual provisions that purport to waive any  
20 duty owed pursuant to the Home Inspector Licensing Act or  
21 accompanying regulations as prescribed by the board or that  
22 limit the liability of the home inspector are invalid.

23 SECTION 6. [NEW MATERIAL] LICENSE REQUIRED--EXEMPTIONS.--

24 A. A person who is not a licensee shall not:  
25 (1) conduct home inspections, develop a report

1 or otherwise engage in the business of home inspection;

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

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

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

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

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

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

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

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

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

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

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

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

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

6 SECTION 7. [NEW MATERIAL] LICENSURE.--

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

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

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

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

17 (4) have completed at least eighty hours of  
18 field training, or its equivalent, as determined by the board;

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

22 (6) pass a national home inspector licensing  
23 examination and any additional licensing examinations as  
24 prescribed by the board; and

25 (7) provide proof of and maintain insurance

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1 coverage as provided in Section 13 of the Home Inspector  
2 Licensing Act.

3 B. Paragraphs (4) and (5) of Subsection A of this  
4 section shall not apply to a person who has worked as a home  
5 inspector in each of the twenty-four months prior to the  
6 effective date of the Home Inspector Licensing Act.

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

11 SECTION 8. [NEW MATERIAL] FINGERPRINTS--CRIMINAL  
12 BACKGROUND CHECKS.--

13 A. All applicants for licensure shall:  
14 (1) provide fingerprints to the department of  
15 public safety to permit a national criminal background check  
16 and to conduct a state background check; and

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

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

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

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

15           SECTION 9. [NEW MATERIAL] LICENSE VALIDITY PERIOD--  
16 RENEWAL.--A license shall be valid for a period not to exceed  
17 three years. No later than the last day of the month  
18 immediately following the licensee's birth month in the third  
19 calendar year after the license becomes effective, a licensee  
20 may renew the license by submitting a renewal application,  
21 renewal fee, proof of completion of the required continuing  
22 education as established by rule of the board and other  
23 information necessary for a state and national criminal  
24 background check. A home inspection performed based on an  
25 expired license shall be deemed a violation of the Home

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1 Inspector Licensing Act.

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

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

11 A. The board may issue a license to a foreign home  
12 inspector; provided that the applicant's resident state license  
13 requirements are the same as or similar to the requirements set  
14 forth in the Home Inspector Licensing Act as determined by the  
15 board. In the event that the state requirements for licensing  
16 a home inspector are not substantially similar to the  
17 provisions of the Home Inspector Licensing Act, or if the  
18 requirements cannot be verified, a foreign home inspector may  
19 be issued a license in accordance with Section 7 of that act.

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

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

5 SECTION 12. [NEW MATERIAL] DENIAL, SUSPENSION OR  
6 REVOCATION OF A LICENSE.--

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

- 15 (1) made a substantial misrepresentation;
- 16 (2) violated any of the provisions of the Home  
17 Inspector Licensing Act or any rule of the board;
- 18 (3) offered or delivered compensation,  
19 inducement or reward to the owner of the inspected property or  
20 to the broker or the agent for the referral of any business to  
21 the home inspector or the home inspector's company;
- 22 (4) had a license to perform home inspections  
23 revoked, suspended, denied, stipulated or otherwise limited in  
24 any state, jurisdiction, territory or possession of the United  
25 States or another country for actions of the licensee similar

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1 to acts proscribed in this subsection;

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

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

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

17 C. All licensing, revocation and suspension  
18 proceedings conducted by the board, and judicial review of the  
19 board's decisions, shall be governed by the provisions of the  
20 Uniform Licensing Act.

21 **SECTION 13. [NEW MATERIAL] INSURANCE REQUIREMENTS.--**

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

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

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

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

24           SECTION 14. [NEW MATERIAL] FEES--DEPOSIT OF FEES.--

25           A. In addition to any fees to cover reasonable and  
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1 necessary administrative expenses, the board shall establish,  
2 charge and collect:

3 (1) a license application or renewal fee, not  
4 to exceed one hundred fifty dollars (\$150);

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

7 (3) a three-year license fee, not to exceed  
8 three hundred fifty dollars (\$350);

9 (4) a reactivation fee, not to exceed two  
10 hundred dollars (\$200); and

11 (5) for each duplicate license issued because  
12 a license is lost or destroyed and an affidavit as to its loss  
13 or destruction is made and filed, not to exceed fifty dollars  
14 (\$50.00).

15 B. All fees received by the board pursuant to the  
16 Home Inspector Licensing Act shall be deposited with the state  
17 treasurer to the credit of the real estate commission fund.

18 SECTION 15. [NEW MATERIAL] ADVERTISING.--The term  
19 "licensed home inspector" along with the license number of the  
20 home inspector shall appear on all advertising, correspondence  
21 and documents incidental to the business of home inspection,  
22 including the pre-inspection agreement and the report.

23 SECTION 16. [NEW MATERIAL] CIVIL AND CRIMINAL PENALTIES--  
24 INJUNCTIVE RELIEF.--

25 A. A person who engages in the business or acts in

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1 the capacity of a home inspector within New Mexico without a  
2 license issued by the board or pursuant to the Home Inspector  
3 Licensing Act is guilty of a misdemeanor and shall be punished  
4 in accordance with Section 31-19-1 NMSA 1978. A person who  
5 violates any other provision of the Home Inspector Licensing  
6 Act is guilty of a petty misdemeanor and shall be punished in  
7 accordance with Section 31-19-1 NMSA 1978.

8 B. If a person is engaged or has engaged in any act  
9 or practice violative of a provision of the Home Inspector  
10 Licensing Act, the attorney general or the district attorney of  
11 the judicial district in which the person resides or in which  
12 the violation is occurring or has occurred may, upon  
13 application of the board, maintain an action in the name of the  
14 state to prosecute the violation or to enjoin the act or  
15 practice.

16 C. In an action brought under Subsection B of this  
17 section, if the court finds that a person is or has willfully  
18 engaged in any act or practice violative of a provision of the  
19 Home Inspector Licensing Act, the attorney general or the  
20 district attorney of the judicial district in which the person  
21 resides or in which the violation is occurring or has occurred  
22 may, upon petition to the court, recover on behalf of the state  
23 a civil penalty not exceeding five thousand dollars (\$5,000)  
24 per violation and attorney fees and costs.

25 SECTION 17. EFFECTIVE DATE.--The effective date of the  
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