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HOUSE BILL 362

**53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

INTRODUCED BY

Alonzo Baldonado

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 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 for cause. In the event of a  
24 vacancy, the governor shall appoint a member to complete the  
25 unexpired term. The initial board members appointed shall

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1 serve staggered terms from the date of their appointment as  
2 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 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 to  
9 carry out the provisions of that act.

10 E. Pursuant to the provisions of the Home Inspector  
11 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

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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 provisions  
4 of the Home Inspector Licensing Act;

5 (6) adopt and approve a licensing examination,  
6 which may be administered by a nationally accepted testing  
7 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 addresses  
11 of all licensees and of all persons whose licenses have been  
12 suspended or revoked within that year, together with such other  
13 information relative to the enforcement of the provisions of  
14 the Home Inspector Licensing Act;

15 (9) maintain a statement of all funds received  
16 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 may  
20 be necessary to administer or carry out the provisions of the  
21 Home Inspector Licensing Act.

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

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

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

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

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

25 C. The report shall contain the following

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

5 D. Contractual provisions that purport to waive any  
6 duty owed pursuant to the Home Inspector Licensing Act or  
7 accompanying regulations as prescribed by the board or that  
8 limit the liability of the home inspector are invalid.

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

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

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

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

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

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

25 C. A business entity shall not use, in connection



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1 with the name or signature of the business, the title "home  
2 inspectors" to describe the business entity's services unless  
3 each person employed by the business as a home inspector is a  
4 licensee.

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

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

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

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

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

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

23 (6) who performs a warranty evaluation of  
24 components, systems or appliances within a resale residential  
25 property for the purpose of issuing a home warranty; provided

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1 that all warranty evaluation reports include a statement that  
2 the warranty evaluation performed is not a home inspection and  
3 does not meet the standards of a home inspection pursuant to  
4 the provisions of the Home Inspector Licensing Act. A home  
5 warranty company shall not refer to a warranty evaluation as a  
6 home inspection;

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

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

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

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

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

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

25 (3) provide the board with the applicant's

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- 1 fingerprints and all information necessary for a state and
- 2 national criminal background check;
- 3 (4) provide proof of and maintain insurance
- 4 coverage as provided in Section 12 of the Home Inspector
- 5 Licensing Act;
- 6 (5) have completed at least eighty hours of
- 7 classroom training, the content of which shall be established
- 8 by rule of the board;
- 9 (6) pass a national home inspector licensing
- 10 examination and any additional licensing examinations as
- 11 prescribed by the board; and
- 12 (7) have completed at least eighty hours of
- 13 field training, or its equivalent, as determined by the board.

14 B. Paragraphs (5) and (7) of Subsection A of this  
15 section shall not apply to a person who has worked as a home  
16 inspector in each of the twenty-four months prior to the  
17 effective date of the Home Inspector Licensing Act.

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

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

25 A. All applicants for licensure shall:

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

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

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

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

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

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2 SECTION 8. [NEW MATERIAL] LICENSE VALIDITY PERIOD--

3 RENEWAL.--A license shall be valid for a period not to exceed  
4 three years. No later than the last day of the month  
5 immediately following the licensee's birth month in the third  
6 calendar year after the license becomes effective, a licensee  
7 may renew the license by submitting a renewal application,  
8 renewal fee, proof of completion of the required continuing  
9 education as established by rule of the board and other  
10 information necessary for a state and national criminal  
11 background check. A home inspection performed based on an  
12 expired license shall be deemed a violation of the Home  
13 Inspector Licensing Act.

14 SECTION 9. [NEW MATERIAL] LICENSEE--CONTINUING EDUCATION

15 REQUIREMENT.--The board shall adopt rules providing for  
16 continuing education programs that offer courses in home  
17 inspection practices and techniques. The rules shall require  
18 that a home inspector, as a condition of license renewal, shall  
19 successfully complete a minimum of sixty classroom hours of  
20 board-approved instruction every three years.

21 SECTION 10. [NEW MATERIAL] LICENSE RECOGNITION--

22 RECIPROCITY.--

23 A. The board may issue a license to a foreign home  
24 inspector; provided that the applicant's resident state license  
25 requirements are the same as or similar to the requirements set

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1     forth in the Home Inspector Licensing Act as determined by the  
2     board. In the event that the state requirements for licensing  
3     a home inspector are not substantially similar to the  
4     provisions of the Home Inspector Licensing Act, or if the  
5     requirements cannot be verified, a foreign home inspector may  
6     be issued a license in accordance with Section 6 of that act.

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

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

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

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1 provisions of the Home Inspector Licensing Act, the applicant  
2 or licensee has:

3 (1) made a substantial misrepresentation;

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

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

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

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

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

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1 pursuant to the terms of a home inspection contract.

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

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

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

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

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

24 C. The board is authorized to solicit sealed,  
25 competitive proposals from insurance carriers to provide a

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1 group errors and omissions insurance policy and a professional  
2 liability insurance policy that comply with the terms and  
3 conditions established by board rule. The board may approve  
4 one or more policies that comply with the board rules.

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

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

14 A. a license application or renewal fee, not to  
15 exceed one hundred fifty dollars (\$150);

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

18 C. a three-year license fee, not to exceed seven  
19 hundred fifty dollars (\$750);

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

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

24 F. for each duplicate license issued because a  
25 license is lost or destroyed and an affidavit as to its loss or

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1 destruction is made and filed, not to exceed fifty dollars  
2 (\$50.00).

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

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

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

16 B. Money in the home inspector fund shall be used  
17 by the board to meet necessary expenses incurred in the  
18 enforcement of the provisions of the Home Inspector Licensing  
19 Act, in carrying out the duties imposed by the Home Inspector  
20 Licensing Act and for the promotion of education and standards  
21 for home inspectors in the state. Payments out of the home  
22 inspector fund shall be on vouchers issued and signed by the  
23 person designated by the board upon warrants drawn by the  
24 department of finance and administration.

25 C. All unexpended or unencumbered balances

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1 remaining at the end of a fiscal year shall remain in the home  
2 inspector fund for use in accordance with the provisions of the  
3 Home Inspector Licensing Act.

4 SECTION 16. [NEW MATERIAL] CIVIL AND CRIMINAL PENALTIES--  
5 INJUNCTIVE RELIEF.--

6 A. A person who engages in the business or acts in  
7 the capacity of a home inspector within New Mexico without a  
8 license issued by the board or pursuant to the Home Inspector  
9 Licensing Act is guilty of a misdemeanor and shall be punished  
10 in accordance with Section 31-19-1 NMSA 1978. A person who  
11 violates any other provision of the Home Inspector Licensing  
12 Act is guilty of a petty misdemeanor and shall be punished in  
13 accordance with Section 31-19-1 NMSA 1978.

14 B. If a person is engaged or has engaged in any act  
15 or practice violative of a provision of the Home Inspector  
16 Licensing Act, the attorney general or the district attorney of  
17 the judicial district in which the person resides or in which  
18 the violation is occurring or has occurred may, upon  
19 application of the board, maintain an action in the name of the  
20 state to prosecute the violation or to enjoin the act or  
21 practice.

22 C. In an action brought under Subsection B of this  
23 section, if the court finds that a person is or has willfully  
24 engaged in any act or practice violative of a provision of the  
25 Home Inspector Licensing Act, the attorney general or the

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1 district attorney of the judicial district in which the person  
2 resides or in which the violation is occurring or has occurred  
3 may, upon petition to the court, recover on behalf of the state  
4 a civil penalty not exceeding five thousand dollars (\$5,000)  
5 per violation and attorney fees and costs.

6 SECTION 17. EFFECTIVE DATE.--The effective date of the  
7 provisions of this act is January 1, 2018.