

HOUSE REGULATORY AND PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
HOUSE BILL 166

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

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

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

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 the powers and
7 perform all the duties prescribed by the Home Inspector
8 Licensing Act and as otherwise provided by law and may make and
9 enforce rules to 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, licenses, renewals and other

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1 services pursuant to the provisions of the Home Inspector
2 Licensing Act;

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

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

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

13 (9) maintain a statement of all funds received
14 and a statement of all disbursements;

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

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

20 F. Prior to a final action on a proposed change or
21 amendment to the board's rules, the board may publish notice of
22 the proposed action in its official publication, distribute the
23 publication to each active licensee and give the time and place
24 for a public hearing on the proposed changes. The hearing
25 shall be held at least thirty days prior to a proposed final

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1 action. Changes or amendments to the rules shall be filed in
2 accordance with the procedures of the State Rules Act and shall
3 become effective thirty days after notification to all active
4 licensees of the filing of the changes or amendments.

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

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

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

23 C. The report shall contain the following
24 statement: "THE HOME INSPECTOR DID NOT DETERMINE AND THIS
25 REPORT DOES NOT CONTAIN A DETERMINATION OF WHETHER THE HOME OR

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1 COMPONENTS AND/OR SYSTEMS OF THE HOME THAT HAVE BEEN INSPECTED
2 CONFORM TO LOCAL OR STATE BUILDING CODE REQUIREMENTS.".

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

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

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

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

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

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

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

23 C. A business entity shall not use, in connection
24 with the name or signature of the business, the title "home
25 inspectors" to describe the business entity's services unless

1 each person employed by the business as a home inspector is a
2 licensee.

3 D. The Home Inspector Licensing Act does not apply
4 to a person:

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

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

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

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

19 (5) who performs an energy audit of a
20 residential property;

21 (6) who performs a warranty evaluation of
22 components, systems or appliances within a resale residential
23 property for the purpose of issuing a home warranty; provided
24 that all warranty evaluation reports include a statement that
25 the warranty evaluation performed is not a home inspection and

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1 does not meet the standards of a home inspection pursuant to
2 the provisions of the Home Inspector Licensing Act. A home
3 warranty company shall not refer to a warranty evaluation as a
4 home inspection;

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

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

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

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

18 (1) complete an application on forms provided
19 by the board;

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

23 (3) provide the board with the applicant's
24 fingerprints and all information necessary for a state and
25 national criminal background check;

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

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

7 (6) pass a national home inspector licensing
 8 examination and any additional licensing examinations as
 9 prescribed by the board; and

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

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

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

20 **SECTION 7. [NEW MATERIAL] FINGERPRINTS--CRIMINAL**
 21 **BACKGROUND CHECKS.--**

22 A. All applicants for licensure shall:

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

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

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

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

19 D. A person who releases or discloses records or
20 information contained in those records in violation of the
21 provisions of this section is guilty of a misdemeanor and shall
22 be sentenced pursuant to the provisions of Section 31-19-1 NMSA
23 1978.

24 SECTION 8. [NEW MATERIAL] LICENSE VALIDITY PERIOD--
25 RENEWAL.--A license shall be valid for a period not to exceed

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1 three years. No later than the last day of the month
 2 immediately following the licensee's birth month in the third
 3 calendar year after the license becomes effective, a licensee
 4 may renew the license by submitting a renewal application,
 5 renewal fee, proof of completion of the required continuing
 6 education as established by rule of the board and other
 7 information necessary for a state and national criminal
 8 background check. A home inspection performed based on an
 9 expired license shall be deemed a violation of the Home
 10 Inspector Licensing Act.

11 **SECTION 9. [NEW MATERIAL] LICENSEE--CONTINUING EDUCATION**
 12 **REQUIREMENT.--**The board shall adopt rules providing for
 13 continuing education programs that offer courses in home
 14 inspection practices and techniques. The rules shall require
 15 that a home inspector, as a condition of license renewal, shall
 16 successfully complete a minimum of sixty classroom hours of
 17 board-approved instruction every three years.

18 **SECTION 10. [NEW MATERIAL] LICENSE RECOGNITION--**
 19 **RECIPROCITY.--**

20 A. The board may issue a license to a foreign home
 21 inspector; provided that the applicant's resident state license
 22 requirements are the same as or similar to the requirements set
 23 forth in the Home Inspector Licensing Act as determined by the
 24 board. In the event that the state requirements for licensing
 25 a home inspector are not substantially similar to the

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1 provisions of the Home Inspector Licensing Act, or if the
2 requirements cannot be verified, a foreign home inspector may
3 be issued a license in accordance with Section 6 of that act.

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

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

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

- 25 (1) made a substantial misrepresentation;

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

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

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

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

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

24 B. Disciplinary proceedings may be instituted by
25 sworn complaint by any person, including a board member, and

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1 shall conform to the provisions of the Uniform Licensing Act.

2 C. All licensing, revocation and suspension
3 proceedings conducted by the board, and judicial review of the
4 board's decisions, shall be governed by the provisions of the
5 Uniform Licensing Act.

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

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

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

22 C. The board is authorized to solicit sealed,
23 competitive proposals from insurance carriers to provide a
24 group errors and omissions insurance policy and a professional
25 liability insurance policy that comply with the terms and

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1 conditions established by board rule. The board may approve
2 one or more policies that comply with the board rules.

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

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

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

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

16 C. a three-year license fee, not to exceed three
17 hundred fifty dollars (\$350);

18 D. a reactivation fee, not to exceed two hundred
19 dollars (\$200); and

20 E. for each duplicate license issued because a
21 license is lost or destroyed and an affidavit as to its loss or
22 destruction is made and filed, not to exceed fifty dollars
23 (\$50.00).

24 SECTION 14. [NEW MATERIAL] ADVERTISING.--The term
25 "licensed home inspector" along with the license number of the

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1 home inspector shall appear on all advertising, correspondence
2 and documents incidental to the business of home inspection,
3 including the pre-inspection agreement and the report.

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

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

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

21 C. All unexpended or unencumbered balances
22 remaining at the end of a fiscal year shall remain in the home
23 inspector fund for use in accordance with the provisions of the
24 Home Inspector Licensing Act.

25 SECTION 16. [NEW MATERIAL] CIVIL AND CRIMINAL PENALTIES--

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1 INJUNCTIVE RELIEF.--

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

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

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

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1 per violation and attorney fees and costs.

2 SECTION 17. EFFECTIVE DATE.--The effective date of the
3 provisions of this act is January 1, 2017.

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