

HOUSE REGULATORY AND PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
HOUSE BILL 551

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

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. "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;

B. "commission" means the New Mexico real estate
commission;

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 home inspector license issued by the
5 commission, but who holds a current and valid home inspector
6 license issued by another state in the United States or any
7 other sovereign nation;

8 E. "home inspection" means a noninvasive,
9 nondestructive examination by a person of the interior and
10 exterior components of a residential real property, including
11 the property's structural components, foundation and roof, for
12 the purposes of providing a professional written opinion
13 regarding the site aspects and condition of the property and
14 its carports, garages and reasonably accessible installed
15 components. Also included is the examination of the property's
16 heating, cooling, plumbing and electrical systems, including
17 the operational condition of the systems' controls that are
18 normally operated by a property owner;

19 F. "home inspector" means a person who performs
20 home inspections for compensation;

21 G. "license" means a home inspector license issued
22 by the commission in accordance with the Home Inspector
23 Licensing Act;

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

25 I. "pre-inspection agreement" means the written

1 agreement signed by the client and a home inspector by which a
2 client engages the services of the home inspector and that sets
3 forth at a minimum the following:

4 (1) the amount of compensation due and payable
5 to the home inspector upon completion of the home inspection
6 and delivery of a report;

7 (2) a list of all components and systems that
8 will be inspected; and

9 (3) the date by which the client will receive
10 the report;

11 J. "report" means a written opinion prepared by a
12 home inspector pursuant to the terms of a pre-inspection
13 agreement regarding the functional and physical condition of
14 the residential real property as determined by a home
15 inspection conducted by a home inspector; and

16 K. "residential real property" means any real
17 property or manufactured or modular home that is used for or
18 intended to be used for residential purposes and that is a
19 single-family dwelling, duplex, triplex, quadplex or unit, as
20 "unit" is defined by the Condominium Act.

21 SECTION 3. [NEW MATERIAL] COMMISSION POWERS AND
22 DUTIES.--Pursuant to the provisions of the Home Inspector
23 Licensing Act, the commission shall:

24 A. adopt rules and procedures necessary to
25 administer and enforce the provisions of the Home Inspector

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1 Licensing Act;

2 B. adopt and publish a code of ethics and standards
3 of practice for persons licensed under the Home Inspector
4 Licensing Act;

5 C. issue, renew, suspend, modify or revoke licenses
6 to home inspectors pursuant to the provisions of the Home
7 Inspector Licensing Act;

8 D. establish standards for the training, experience
9 and continuing education requirements of the Home Inspector
10 Licensing Act;

11 E. establish the amount and administer the fees
12 charged for examinations, licenses, renewals and other services
13 pursuant to the provisions of the Home Inspector Licensing Act;

14 F. adopt and approve a licensing examination, which
15 may be administered by a nationally accepted testing service as
16 determined by the commission;

17 G. establish a home inspector advisory panel as
18 provided for in Section 4 of the Home Inspector Licensing Act;

19 H. conduct state and criminal background checks on
20 all applicants for a license;

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

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1 J. maintain a statement of all funds received and a
2 statement of all disbursements;

3 K. mail copies of statements to any person in this
4 state upon request; and

5 L. perform other functions and duties as may be
6 necessary to administer or carry out the provisions of the Home
7 Inspector Licensing Act.

8 SECTION 4. [NEW MATERIAL] HOME INSPECTOR ADVISORY
9 PANEL.--

10 A. The "home inspection advisory panel" consisting
11 of five members is created. The commission shall appoint the
12 five members of the advisory panel, who shall be residents of
13 New Mexico. The advisory panel shall consist of three home
14 inspectors, one licensed real estate broker and one member of
15 the public. The advisory panel members shall serve terms of
16 three years, which terms shall be staggered such that the terms
17 of no more than two members shall expire in any one year. The
18 initial home inspectors appointed by the commission to be
19 members of the advisory panel shall demonstrate that they have
20 been actively and lawfully engaged in home inspections for at
21 least twenty-four months prior to the effective date of the
22 Home Inspector Licensing Act and have met all the licensing
23 requirements of Section 7 of the Home Inspector Licensing Act,
24 except for Paragraphs (4), (5) and (6) of Subsection A of that
25 section.

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1 B. Once the commission has prescribed a licensing
2 examination, the initial home inspectors selected by the
3 commission shall comply with Paragraph (6) of Subsection A of
4 Section 7 of the Home Inspector Licensing Act within six months
5 of the effective date of the licensing examination regulation.
6 After the advisory panel is established, any replacement of a
7 home inspector member of the advisory panel shall be a
8 licensee.

9 C. The advisory panel shall provide guidance and
10 input to the commission on the rules and procedures necessary
11 to administer and enforce the provisions of the Home Inspector
12 Licensing Act and on matters involving violations of that act
13 and disciplinary sanctions that result from those violations.

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

16 A. A home inspector shall enter into a pre-
17 inspection agreement with a client prior to commencement of a
18 home inspection. The written pre-inspection agreement shall
19 state, in all capital letters, the following statement: "THE
20 HOME INSPECTOR WILL NOT DETERMINE AND THE REPORT PROVIDED UPON
21 COMPLETION OF THE HOME INSPECTION WILL NOT CONTAIN A
22 DETERMINATION OF WHETHER THE HOME OR COMPONENTS AND/OR SYSTEMS
23 OF THE HOME THAT HAVE BEEN INSPECTED CONFORM TO LOCAL OR STATE
24 BUILDING CODE REQUIREMENTS."

25 B. A home inspector shall provide a client with a

1 report of the home inspection by the date set forth in the
2 pre-inspection agreement. If the pre-inspection agreement does
3 not set forth a date by which the report shall be provided to
4 the client, the home inspector shall provide the report to the
5 client no later than five days after the home inspection was
6 performed.

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

12 D. Contractual provisions that purport to waive any
13 duty owed pursuant to the Home Inspector Licensing Act, or
14 accompanying regulations as prescribed by the commission or
15 that limit the liability of the home inspector are invalid.

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

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

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

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

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

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

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

12 D. The Home Inspector Licensing Act does not apply
13 to a person:

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

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

23 (3) regulated by the state as an insurance
24 adjuster, when acting within the scope of the person's 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 and
 10 does not meet the standards of a home inspection pursuant to
 11 the provisions of the Home Inspector Licensing Act. A home
 12 warranty company shall not refer to a warranty evaluation as a
 13 home inspection;

14 (7) who in the scope of the person's
 15 employment performs safety inspections of utility equipment in
 16 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 of
 22 preparing a bid or estimate for performing construction,
 23 remodeling or repair work in the residential real property.

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

25 A. Unless otherwise provided in the Home Inspector

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1 Licensing Act, an applicant for a license shall:

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

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 commission with the
8 applicant's fingerprints and all information necessary for a
9 state and national criminal background check;

10 (4) have completed at least forty hours of
11 field training, or its equivalent, as determined by the
12 commission;

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

16 (6) pass a licensing examination based on
17 national standards and prescribed by the commission; and

18 (7) provide proof of and maintain insurance
19 coverage as provided in Section 13 of the Home Inspector
20 Licensing Act.

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

25 C. After the commission's review of all information

1 obtained by the commission and submitted by the applicant as
2 required by this section, if all the requirements for licensure
3 are met, the commission shall issue a license to the applicant.

4 **SECTION 8. [NEW MATERIAL] FINGERPRINTS--CRIMINAL**
5 **BACKGROUND CHECKS.--**

6 A. All applicants for licensure shall:

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

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

12 B. Records obtained by the commission pursuant to
13 the provisions of this section shall not be disclosed except as
14 provided by law. The commission is authorized to use criminal
15 history records obtained from the federal bureau of
16 investigation and the department of public safety to conduct
17 background checks on applicants for certification as provided
18 for in the Home Inspector Licensing Act.

19 C. Records obtained by the commission pursuant to
20 the provisions of this section shall not be used for any
21 purpose other than for licensing purposes pursuant to the Home
22 Inspector Licensing Act. Records obtained pursuant to the
23 provisions of this section and the information contained in
24 those records shall not be released or disclosed to any other
25 person or agency, except pursuant to a court order or with the

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1 written consent of the person who is the subject of the
2 records.

3 D. A person who releases or discloses records or
4 information contained in those records in violation of the
5 provisions of this section is guilty of a misdemeanor and shall
6 be sentenced pursuant to the provisions of Section 31-19-1 NMSA
7 1978.

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

20 SECTION 10. [NEW MATERIAL] LICENSEE--CONTINUING EDUCATION
21 REQUIREMENT.--The commission shall adopt rules providing for
22 continuing education programs that offer courses in home
23 inspection practices and techniques. The rules shall require
24 that a home inspector, as a condition of license renewal, shall
25 successfully complete a minimum of thirty classroom hours of

1 commission-approved instruction every three years.

2 SECTION 11. [NEW MATERIAL] LICENSE RECOGNITION--
3 RECIPROCITY.--

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

14 B. The commission may negotiate agreements with
15 other states or licensing jurisdictions to allow for
16 reciprocity regarding licensure. A license granted pursuant to
17 a reciprocity agreement shall be issued upon payment by the
18 applicant of the application fee and verification that the
19 applicant has complied with the licensing jurisdiction's
20 requirements, including continuing education requirements. The
21 applicant shall provide to the commission documentation
22 necessary to demonstrate that the applicant currently holds a
23 license in good standing in the licensing jurisdiction.

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

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1 A. The commission may deny issuance of a license or
2 may suspend, revoke, limit or condition a license if the
3 applicant or licensee is convicted of a felony or misdemeanor
4 in accordance with the Criminal Offender Employment Act, has by
5 false or fraudulent representations obtained a license or, in
6 performing or attempting to perform any of the activities
7 covered by the provisions of the Home Inspector Licensing Act,
8 the applicant or licensee has:

9 (1) made a substantial misrepresentation;

10 (2) violated any of the provisions of the Home
11 Inspector Licensing Act or any rule of the commission;

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

16 (4) had a license to perform home inspections
17 revoked, suspended, denied, stipulated or otherwise limited in
18 any state, jurisdiction, territory or possession of the United
19 States or another country for actions of the licensee similar
20 to acts proscribed in this subsection;

21 (5) failed to furnish the commission, its
22 investigators or its representatives with information requested
23 by the commission in the course of an official investigation;
24 or

25 (6) performed or offered to perform for an

1 additional fee any repair to a structure on which the home
 2 inspector or the home inspector's company has prepared a report
 3 at any time during the twelve months immediately prior to the
 4 repair or offer to repair, except that a home inspection
 5 company that is affiliated with or that retains a home
 6 inspector does not violate this paragraph if the home
 7 inspection company performs repairs pursuant to a claim made
 8 pursuant to the terms of a home inspection contract.

9 B. Disciplinary proceedings may be instituted by
 10 sworn complaint by any person, including a commission member,
 11 and shall conform to the provisions of the Uniform Licensing
 12 Act.

13 C. All licensing, revocation and suspension
 14 proceedings conducted by the commission, and judicial review of
 15 the commission's decisions, shall be governed by the provisions
 16 of the Uniform Licensing Act.

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

18 A. All licensees and their employers shall carry at
 19 all times errors and omissions insurance and professional
 20 liability insurance to cover all activities contemplated
 21 pursuant to the provisions of the Home Inspector Licensing Act.

22 B. In addition to the powers and duties granted to
 23 the commission pursuant to the provisions of Section 4 of the
 24 Home Inspector Licensing Act, the commission may adopt rules
 25 that establish the minimum terms and conditions of coverage,

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1 including limits of coverage and permitted exceptions. If
2 adopted by the commission, the rules shall require every
3 applicant for a license and licensee who applies for renewal of
4 a license to provide the commission with satisfactory evidence
5 that the applicant or licensee has errors and omissions
6 insurance coverage and professional liability insurance
7 coverage that meet the minimum terms and conditions required by
8 commission rule.

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

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

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

23 A. In addition to any fees to cover reasonable and
24 necessary administrative expenses, the commission shall
25 establish, charge and collect:

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

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

5 (3) a three-year license fee, not to exceed
6 five hundred dollars (\$500);

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

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

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

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

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

24 A. A person who engages in the business or acts in
25 the capacity of a home inspector within New Mexico without a

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1 license issued by the commission or pursuant to the Home
2 Inspector Licensing Act is guilty of a misdemeanor and shall be
3 punished in accordance with Section 31-19-1 NMSA 1978. A
4 person who violates any other provision of the Home Inspector
5 Licensing Act is guilty of a petty misdemeanor and shall be
6 punished in accordance with Section 31-19-1 NMSA 1978.

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

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

24 SECTION 17. EFFECTIVE DATE.--The effective date of the
25 provisions of this act is January 1, 2016.

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