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HOUSE BILL 551

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

INTRODUCED BY

Alonzo Baldonado and Daniel A. Ivey-Soto

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

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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 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 an evaluation of
9 residential real property components or systems that will be
10 relied upon by a party to a transfer of the residential real
11 property or by a lender that will hold the residential real
12 property as collateral for a loan;

13 F. "home inspector" means a person who performs
14 home inspections for compensation and is licensed in accordance
15 with the Home Inspector Licensing Act;

16 G. "license" means a home inspector license issued
17 by the commission in accordance with the Home Inspector
18 Licensing Act;

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

20 I. "pre-inspection agreement" means the written
21 agreement signed by the client and a home inspector by which a
22 client engages the services of the home inspector and that sets
23 forth at a minimum the following:

24 (1) the amount of compensation due and payable
25 to the home inspector upon completion of the home inspection

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1 and delivery of a report;

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

4 (3) the date by which the client will receive
5 the report; and

6 (4) in all capital letters, the following
7 statement: "THE HOME INSPECTOR WILL NOT DETERMINE AND THE
8 REPORT PROVIDED UPON COMPLETION OF THE HOME INSPECTION WILL NOT
9 CONTAIN A DETERMINATION OF WHETHER THE COMPONENTS AND/OR
10 SYSTEMS OF THE HOME THAT HAVE BEEN INSPECTED CONFORM TO LOCAL
11 OR STATE BUILDING CODE REQUIREMENTS.";

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

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

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

25 A. adopt rules and procedures necessary to

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1 administer and enforce the provisions of the Home Inspector
2 Licensing Act;

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

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

9 D. adopt rules defining the list of specific
10 residential real property components and systems;

11 E. establish standards for the training, experience
12 and continuing education requirements of the Home Inspector
13 Licensing Act;

14 F. establish the amount and administer the fees
15 charged for examinations, licenses, renewals and other services
16 pursuant to the provisions of the Home Inspector Licensing Act;

17 G. adopt and approve a licensing examination, which
18 may be administered by a nationally accepted testing service as
19 determined by the commission;

20 H. establish a home inspector advisory panel as
21 provided for in Section 4 of the Home Inspector Licensing Act;

22 I. conduct state and criminal background checks on
23 all applicants for a license;

24 J. maintain a list of the names and addresses of
25 all licensees and of all persons whose license has been

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1 suspended or revoked within that year, together with such other
2 information relative to the enforcement of the provisions of
3 the Home Inspector Licensing Act;

4 K. maintain a statement of all funds received and a
5 statement of all disbursements;

6 L. mail copies of statements to any person in this
7 state upon request; and

8 M. perform other functions and duties as may be
9 necessary to administer or carry out the provisions of the Home
10 Inspector Licensing Act.

11 SECTION 4. [NEW MATERIAL] HOME INSPECTOR ADVISORY

12 PANEL.--The commission shall establish an advisory panel of
13 five members who are residents of New Mexico and are appointed
14 by the commission. The advisory panel shall consist of three
15 home inspectors, one licensed real estate broker and one member
16 of the public. The initial home inspectors appointed by the
17 commission to be members of the advisory panel shall
18 demonstrate that they have been actively and lawfully engaged
19 in home inspections for at least twenty-four months prior to
20 the effective date of the Home Inspector Licensing Act and have
21 met all the licensing requirements of Section 7 that act with
22 the exception of Paragraphs (4) and (5) of Subsection A of that
23 section. Once the commission has prescribed a licensing
24 examination, the initial home inspectors selected by the
25 commission shall comply with Paragraph (5) of Subsection A of

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1 Section 7 of the Home Inspector Licensing Act within six months
2 of the effective date of the licensing examination regulation.
3 After the advisory panel is established, any replacement of a
4 home inspector member of the advisory panel shall be a
5 licensee. The advisory panel shall provide guidance and input
6 to the commission on the rules and procedures necessary to
7 administer and enforce the provisions of the Home Inspector
8 Licensing Act and on matters involving violations of that act
9 and disciplinary sanctions that result from those violations.

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

12 A. A home inspector shall enter into a pre-
13 inspection agreement with a client prior to commencement of a
14 home inspection.

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

22 C. The report shall contain the following
23 statement: "THE HOME INSPECTOR DID NOT DETERMINE AND THIS
24 REPORT DOES NOT CONTAIN A DETERMINATION OF WHETHER THE HOME OR
25 COMPONENTS AND/OR SYSTEMS OF THE HOME THAT HAVE BEEN INSPECTED

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1 CONFORM TO LOCAL OR STATE BUILDING CODE REQUIREMENTS.".

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

7 SECTION 6. [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

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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 7. [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 commission;

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

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1 (4) have completed at least forty hours of
2 field training, or its equivalent, as determined by the
3 commission;

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

7 (6) pass a licensing examination prescribed by
8 the commission; and

9 (7) provide proof of and maintain insurance
10 coverage as provided in Section 13 of the Home Inspector
11 Licensing Act.

12 B. After the commission's review of all information
13 obtained by the commission and submitted by the applicant as
14 required by this section, if all the requirements for licensure
15 are met, the commission shall issue a license to the applicant.

16 SECTION 8. [NEW MATERIAL] FINGERPRINTS--CRIMINAL
17 BACKGROUND CHECKS.--

18 A. All applicants for licensure shall:

19 (1) provide fingerprints to the federal bureau
20 of investigation to permit a national instant criminal
21 background check and to the department of public safety to
22 conduct a state background check; and

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

25 B. Records obtained by the commission pursuant to

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

7 C. Records obtained by the commission pursuant to
8 the provisions of this section shall not be used for any
9 purpose other than conducting background checks. Records
10 obtained pursuant to the provisions of this section and the
11 information contained in those records shall not be released or
12 disclosed to any other person or agency, except pursuant to a
13 court order or with the written consent of the person who is
14 the subject of the records.

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

20 SECTION 9. [NEW MATERIAL] LICENSE VALIDITY PERIOD--
21 RENEWAL.--A license shall be valid for a period not to exceed
22 five years. No later than the last day of the month
23 immediately following the licensee's birth month in the fifth
24 calendar year after the license becomes effective, a licensee
25 may renew the license by submitting a renewal application,

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1 renewal fee, proof of completion of the required continuing
2 education as established by rule of the commission and other
3 information necessary for a state and national criminal
4 background check. A home inspection performed based on an
5 expired license shall be deemed a violation of the Home
6 Inspector Licensing Act.

7 SECTION 10. [NEW MATERIAL] LICENSEE--CONTINUING EDUCATION
8 REQUIREMENT.--The commission shall adopt rules providing for
9 continuing education programs that offer courses in home
10 inspection practices and techniques. The rules shall require
11 that a home inspector, as a condition of license renewal, shall
12 successfully complete a minimum of thirty classroom hours of
13 commission-approved instruction every three years.

14 SECTION 11. [NEW MATERIAL] LICENSE RECOGNITION--
15 RECIPROCITY.--

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

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

11 **SECTION 12. [NEW MATERIAL] DENIAL, SUSPENSION OR**
12 **REVOCAION OF A LICENSE.--**

13 A. The commission may deny issuance of a license or
14 may suspend, revoke, limit or condition a license if the
15 applicant or licensee is convicted of a felony or misdemeanor
16 in accordance with the Criminal Offender Employment Act, has by
17 false or fraudulent representations obtained a license or, in
18 performing or attempting to perform any of the activities
19 covered by the provisions of the Home Inspector Licensing Act,
20 the applicant or licensee has:

- 21 (1) made a substantial misrepresentation;
22 (2) violated any of the provisions of the Home
23 Inspector Licensing Act or any rule of the commission;
24 (3) offered or delivered compensation,
25 inducement or reward to the owner of the inspected property, or

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1 to the broker or the agent for the referral of any business to
2 the home inspector or the home inspector's company;

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

8 (5) failed to furnish the commission, its
9 investigators or its representatives with information requested
10 by the commission in the course of an official investigation;
11 or

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

21 B. Disciplinary proceedings may be instituted by
22 sworn complaint by any person, including a commission member,
23 and shall conform to the provisions of the Uniform Licensing
24 Act.

25 SECTION 13. [NEW MATERIAL] INSURANCE REQUIREMENTS.--

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1 A. All licensees and their employers shall carry at
2 all times errors and omissions insurance or professional
3 liability insurance to cover all activities contemplated
4 pursuant to the provisions of the Home Inspector Licensing Act.

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

16 C. The commission is authorized to solicit sealed,
17 competitive proposals from insurance carriers to provide a
18 group errors and omissions insurance policy that complies with
19 the terms and conditions established by commission rule. The
20 commission may approve one or more policies that comply with
21 the commission rules; provided that the minimum coverage shall
22 not be less than one hundred thousand dollars (\$100,000) for an
23 individual claim and not less than a five hundred thousand
24 dollars (\$500,000) aggregate limit per policy.

25 D. If the commission obtains a group policy as

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1 provided in Subsection C of this section, licensees shall not
2 be required to contract with the group policy provider.
3 Licensees may satisfy any requirement for professional
4 liability insurance coverage by purchasing an individual
5 policy.

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

7 A. In addition to any fees to cover reasonable and
8 necessary administrative expenses, the commission shall
9 establish, charge and collect:

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

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

14 (3) a five-year license fee, not to exceed
15 five hundred dollars (\$500);

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

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

22 B. All fees received by the commission pursuant to
23 the Home Inspector Licensing Act shall be deposited with the
24 state treasurer to the credit of the real estate recovery fund
25 in accordance with the Real Estate Recovery Fund Act.

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1 SECTION 15. ~~[NEW MATERIAL]~~ ADVERTISING.--The term
2 "licensed home inspector" along with the license number of the
3 home inspector shall appear on all advertising, correspondence
4 and documents incidental to the business of home inspection,
5 including the pre-inspection agreement and the report.

6 SECTION 16. ~~[NEW MATERIAL]~~ CIVIL AND CRIMINAL PENALTIES--
7 INJUNCTIVE RELIEF.--

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

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

24 C. In an action brought under Subsection B of this
25 section, if the court finds that a person is or has willfully

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1 engaged in any act or practice violative of a provision of the
2 Home Inspector Licensing Act, the attorney general or the
3 district attorney of the judicial district in which the person
4 resides or in which the violation has occurred or is occurring
5 may, upon petition to the court, recover on behalf of the state
6 a civil penalty not exceeding five thousand dollars (\$5,000)
7 per violation and attorney fees and costs.

8 SECTION 17. EFFECTIVE DATE.--The effective date of the
9 provisions of this act is July 1, 2015.