

SENATE BILL

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

WORKING GROUP DISCUSSION DRAFT - JUNE 2011

AN ACT

RELATING TO LICENSURE; ENACTING THE HOME INSPECTOR LICENSING ACT

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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SECTION 1. SHORT TITLE.

This act may be cited as the "Home Inspector Licensing Act":

SECTION 2. PURPOSE.

The purpose of the Home Inspector Licensing Act is to provide for regulation and supervision of the business of home inspection and evaluation, including assessing the condition of residential real estate, providing comprehensive analysis of the condition of property and providing necessary evidence of condition to clients.

SECTION 3. DEFINITIONS.

As used in the Home Inspector Licensing Act:

- A. "client" means a person who engages through a written pre-inspection agreement the services of a home inspector for the purpose of obtaining a written inspection report on the condition of a residential building;
- B. "commission" means the New Mexico Real Estate Commission;
- C. "committee" means the New Mexico Home Inspector Licensing Committee as established in this act;
- D. "compensation" means the payment for home inspection services pursuant to the written pre-inspection agreement;
- E. "fund" means the Home Inspection Licensing Fund created through fee revenue.

F. "home inspection" means a noninvasive, nondestructive inspection by a licensee for the purposes of providing a professional written opinion of the condition of a building and its carports and garages, any reasonable accessible installed components and the operation of the building systems, including the controls normally operated by the owner of a residential building, such as the heating system, cooling system, plumbing system, structural components, foundation, roof covering, exterior and interior components and site aspects as they affect the building;

G. "home inspector" means a person who has a license pursuant to the Home Inspector Licensing Act who engages in the business of performing home inspections and generating inspection reports pursuant to a written pre-inspection agreement;

H. "license" means a home inspector license;

I. "licensee" means the holder of a license;

J. "pre-inspection agreement" is the written agreement by which a client engages the services of a home inspector.

K. "report" means a written opinion of the functional and physical condition of the residential real property prepared pursuant to a pre-inspection agreement between a client and licensee as defined in this act;

L. "residential real property" means any real property used for residential purposes, or manufactured or modular home, which is a single-family dwelling, duplex, triplex,

quadruplex (1-4 residential units) or unit as defined in the Condominium Act, except that residential real property does not include the common areas of a condominium as defined in the Condominium Act, Section 47-7A-1, NMSA 1978.

SECTION 4. LICENSING COMMITTEE CREATED - COMPOSITION.

A. The "Home Inspector Licensing Committee" is created. The Licensing Committee is administratively attached to the Regulation and Licensing Department. The Committee is comprised of five members initially nominated by the working group established pursuant to Senate Memorial 2 (need citation) and appointed by the governor.

B. One COMMITTEE member should be a public member.

C. Additional Committee member(s) should include three (3) Home Inspectors

1) who have actively engaged in the practice of home inspections for at least five years immediately preceding their appointment;

2) who demonstrate that they have passed a proctored national home inspector examination;

3) who are representative of a widely diverse and geographically dispersed cross-section of the state's population;

D. The fifth Committee Member may be from related licensed professions to the real estate industry (Real Estate Brokers, Engineers, Appraisers, et.al.).

E. Committee members shall be appointed to staggered five-year terms and shall serve until their successors are nominated and appointed.

F. A vacancy on the Committee shall be filled by appointment from the Governor for the unexpired term within sixty days of the vacancy.

SECTION 5. DUTIES OF THE COMMITTEE.

The Committee shall:

A. Adopt rules and procedures necessary to administer and enforce the provisions of the Home Inspector Licensing Act;

B. Issue and renew licenses to home inspectors pursuant to the provisions of that act;

C. May suspend, revoke or deny the license of a home inspector based on the act;

D. Establish standards for the training and experience requirements of home inspectors and for continuing education requirements;

E. Adopt and publish a code of ethics and standards of practice for home inspectors

F. Establish and administer the fees charged for examinations, licenses, renewals and other services of the committee; and

G. Perform other functions and duties as may be necessary to carry out the provisions of the Home Inspector Licensing Act.

SECTION 6. COMMITTEE REIMBURSEMENT AND EXPENSES.

Each member of the Committee shall receive per diem and mileage as provided in the Per Diem and Mileage Act and shall receive no other perquisite, compensation or allowance. Compensation for employees, any necessary supplies and equipment shall be paid from the fund.

SECTION 7. LICENSE REQUIRED.

A. Unless licensed to practice as a home inspector under the Home Inspector Licensing Act, no person shall:

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

2) use the title "certified home inspector", "registered home inspector", "licensed home inspector", "home inspector", "professional home inspector" or any other title, abbreviation, letters, figures, signs or devices that indicate the person is a licensed home inspector.

3) use the term "state licensed" or "licensed" to refer to any inspection prepared by them.

B. A business entity shall not provide home inspection services unless each of the home inspectors employed by the business entity is licensed in accordance with the provisions of the Home Inspector Licensing Act.

C. A business entity shall not use, in connection with the name or signature of the business entity, the title "home inspectors" to describe the business entity's services, unless each of the home inspectors employed by the business entity is licensed in accordance with the provisions of the Home Inspector Licensing Act.

D. The term "licensed home inspector" along with the license number of the inspector shall appear on all advertising, correspondence, and documents incidental to a home inspection.

SECTION 8. LICENSE EXEMPTIONS.

A. The Home Inspector Licensing Act shall not apply to:

1) Persons licensed by the state as professional engineers when acting within the scope of their license.

2) Persons licensed by the state as architects when acting within the scope of their license.

3) Persons licensed by the state or any political subdivision as electricians when acting within the scope of their license.

4) Persons licensed by the state or any political subdivision as plumbers when acting within the scope of their license.

5) Persons licensed by the state or any political subdivision as heating and air conditioning technicians when acting within the scope of their license.

- 6) Persons licensed by the state as real estate brokers or real estate sales persons when acting within the scope of their license.
- 7) Persons licensed by the state as real estate appraisers, certified general appraisers, or residential real estate appraisers when acting within the scope of their license.
- 8) Persons licensed by the state as pest control operators when acting within the scope of their license.
- 9) Persons regulated by the state as insurance adjusters when acting within the scope of their profession.
- 10) Persons who are employed as code enforcement officials by the state or any political subdivision when acting within the scope of their employment by such governmental entity.
- 11) Persons licensed by the state or any political subdivision as contractors when acting within the scope of their license.
- 12) Persons who perform warranty evaluations of components, systems, or appliances within resale residential buildings for the purpose of issuance of a home warranty agreement, provided that the warranty evaluation report includes a statement that the warranty evaluation performed is not a home inspection and does not meet the standards of a home inspection under this act. No home warranty company shall refer to a warranty evaluation as a home inspection in any written materials provided by the home warranty company.

13) Persons who perform Energy Audits of residential properties.

SECTION 9. HOME INSPECTOR LICENSURE.

A. Applicants for licensure shall apply to the licensing committee/commission. Prior to issuance of a license, applicants shall meet the following requirements:

- 1) Have reached the age of majority and be a legal resident of the United States;
- 2) Provide the Home Inspection Licensing Committee, a NCIC background report for review.
- 3) Have completed forty hours of field training, or its equivalent as determined by the committee, and eighty hours of classroom training, the content of which shall be established by rule;
- 4) Pass a proctored nationally provided home inspector examination, (National Home Inspectors Exam (NHIE), as administered by the Examination Board of Professional Home Inspectors (EBPHI)).
- 5) Maintain the insurance coverage described in Section 14. Insurance. of this act.

B. The committee/commission, may license without proof of the training required in Subsection A of this section any person who can demonstrate to the committee/commission that the person:

- 1) Has actively and engaged in home inspections for at least thirty six (36) months prior to January 1, 2013.

2) Has provided to the Home Inspection Licensing Committee, a NCIS background report for review.

3) Has passed a proctored national home inspector examination (National Home Inspectors Exam (NHIE), as administered by the Examination Board of Professional Home Inspectors (EBPHI)).

4) Is licensed to conduct home inspections in another state or territory of the United States or the District of Columbia, the applicant must provide the committee/commission with a certificate of good standing from the applicant's licensing authority and can provide confirmation of passing a proctored nationally provided home inspector examination (National Home Inspectors Exam (NHIE), as administered by the Examination Board of Professional Home Inspectors (EBPHI)).

C. After completion of the application form, proctored national examination and payment of the application fee, the committee/commission may issue a license.

SECTION 10. LICENSE RENEWAL.

A. All home inspector licenses shall be renewed TRI-ANNUALLY as established in rules of the committee/commission.

B. A licensee may renew the license by submitting a renewal fee, renewal application, proof of error's and omission insurance, NCIS background check and proof of continuing

education to the committee/commission every three years not later than the last day of the month following the licensee's birth month.

SECTION 11. INACTIVE STATUS.

A. A licensee may put their license on inactive status by returning their license to the committee/commission.

B. A licensee whose license has been placed on inactive status may not conduct home inspections as described in this act.

C. A license may be reactivated upon application to the committee/commission.

SECTION 12. CONTINUING EDUCATION REQUIREMENTS.

The committee/commission shall adopt rules providing for continuing education programs that offer courses in home inspection practices and techniques. The rules shall require that a home inspector, as a condition of license renewal, shall successfully complete a minimum of thirty classroom hours of instruction every three years in courses approved by the committee/commission.

SECTION 13. LICENSE RECOGNITION.

A. The committee/commission shall issue a license to a non-resident home inspector provided that the applicant's resident state's requirements for licensing are the same or substantially similar to the requirements set forth in the Home Inspector Licensing Act. In the event that the other state's requirements are not similar or cannot be verified, a

qualifying nonresident may become a licensed home inspector in this state by conforming to all the conditions of the Home Inspector Licensing Act. An examination taken in another state is acceptable in New Mexico provided the examination was at the appropriate level and was a proctored examination. If it is beneficial to the New Mexico-licensed home inspectors, the committee/commission may negotiate agreements with other states allowing reciprocity. The license shall be issued upon payment of the application fee, verification that the applicant has complied with his resident state's current education requirements and filing with the committee/commission of a license history with verification of good standing by the licensing committee/commission of the other state.

B. The nonresident applicant shall file an irrevocable consent that suits and actions may be commenced against him in the proper court of any county of this state in which a cause of action may arise from his actions as a home inspector or in which the plaintiff may reside by service of any processes or pleadings authorized by the laws of New Mexico on the committee/commission, with the consent stipulating and agreeing that such service of processes or pleadings on the committee/commission shall be taken and held in all courts to be valid and binding as if personal service has been made upon the applicant in New Mexico. In case a process or pleading mentioned in the case is served upon the committee/commission, it shall be by duplicate copies, one of which shall be filed in the office of the committee/commission and the other immediately forwarded by

registered mail to the nonresident New Mexico-licensed home inspector to whom the processes or pleadings are directed.

SECTION 14. INSURANCE.

A home inspector or a home inspector's employer shall maintain a policy of insurance covering:

1) All active practicing licensed home inspectors shall carry errors and omissions insurance to cover all activities contemplated under this Act.

2) The committee, by rule, may enter into a contract with a qualified insurance carrier to make available to home inspector licensees a group policy of errors and omissions insurance and general liability insurance. The committee shall establish the terms and conditions of coverage, including but not limited to the permissible deductible and permissible exemptions. However, licensees shall have the option of obtaining errors and omissions insurance independently that complies with the coverage requirements established by the committee.

B. In addition to general errors and omissions insurance, all active licensees shall carry general liability insurance to cover all activities contemplated under this Act.

SECTION 15. FEES.

The committee shall charge and collect the following fees not to exceed:

A. License application fee – One Hundred Fifty dollars (\$150.00);

- B. NCIS Background Check – One Hundred dollars (\$100.00);
- C. Three Year License Fee – Five Hundred dollars (\$500.00);
- D. License Renewal Fee – Five Hundred dollars (\$500.00)
- E. Reactivation Fee – Two Hundred (\$200.00).
- F. For each duplicate license issued because a license is lost or destroyed and an affidavit as to its loss or destruction is made and filed, fifty dollars (\$50.00); and fees to cover reasonable and necessary administrative expenses.

SECTION 16. CIVIL AND CRIMINAL PENALTIES - INJUNCTIVE RELIEF.

- A. Any person who violates any provision of the Home Inspector Licensing Act is guilty of a fourth degree felony and shall be punished by a fine of not more than five thousand dollars (\$5,000) or by imprisonment for not more than eighteen months or both.
- B. In the event any person has engaged in or proposes to engage in any act or practice violating a provision of the Home Inspector Licensing Act, the attorney general or the district attorney of the judicial district in which the person resides or the judicial district in which the violation has occurred or will occur shall, upon application of the committee/commission, maintain an action in the name of the state to prosecute the violation or to enjoin the proposed act or practice.

SECTION 17. REFUSAL, SUSPENSION, OR REVOCATION OF LICENSEE FOR CAUSES ENUMERATED.

The committee may refuse to issue a license or may suspend, revoke, limit, or condition a license if the applicant or licensee has by false or fraudulent representations obtained a license or, in performing or attempting to perform any of the actions specified in this Act.

An applicant or licensee:

- 1) has been convicted of a felony or a crime of moral turpitude.
- 2) has made a substantial misrepresentation and pursued a continued course of misrepresentation.
- 3) is guilty of unprofessional conduct as defined by rule;
- 4) has violated any provisions of the Home Inspector Licensing Act or rule of the committee/commission or the committee/commission;
- 5) is guilty of obtaining or attempting to obtain any fee by fraud or misrepresentation or has otherwise acted in a manner or by conduct likely to deceive, defraud or harm the public;
- 6) has inspected for a fee a property in which the home inspector, or the home inspector's company, has any financial interest or any interest in the transfer of the property;
- 7) has offered or deliver compensation, inducement or reward to the owner of the inspected property or the broker or agent for the referral of any business to the home inspector or the home inspection company; or

8) has accepted an engagement to make a home inspection or prepare a home inspection report in which the employment itself or the fee payable for the inspection is contingent upon the conclusions in the home inspection report, pre-established findings or the close of escrow.

9) has had a license to perform home inspections revoked, suspended, denied, stipulated or otherwise limited in any jurisdiction, territory or possession of the United States or another country for actions of the licensee similar to acts described in this subsection. A certified copy of the decision of the jurisdiction taking such disciplinary action will be conclusive evidence; or

10) has failed to furnish the committee/commission, its investigators or its representatives with information requested by the committee/commission in the course of an official investigation.

11) has performed or offered to perform for an additional fee any repairs to a structure on which the home inspector or the home inspector's company has prepared a home inspection report in the past twelve months, except that a home protection company that is affiliated with or that retains a home inspector does not violate this section if it performs repairs pursuant to a claim made under the home protection contract;

12) has committed an act whether of the same or different character from that specified in this subsection that is related to dealings as a home inspector that constitutes or

demonstrates bad faith, incompetency, untrustworthiness, impropriety, fraud, dishonesty, negligence or any unlawful act.

B) Disciplinary proceedings may be instituted by sworn complaint by any person, including a committee/commission or committee member, and shall conform with the provisions of the Uniform Licensing Act.

C) Licensees shall bear the costs of disciplinary proceedings unless exonerated.

D) Any person filing a sworn complaint shall be immune from liability arising out of civil action if the complaint is filed in good faith and without actual malice.

SECTION 18. FUND.

A. There is created in the state treasury the "home inspector fund" to be administered by the committee/commission. All fees received by the committee/commission pursuant to the Home Inspector Licensing Act shall be deposited with the state treasurer to the credit of the home inspector fund. Income earned on investment of the fund shall be credited to the fund.

B. Money in the home inspector fund shall be used by the committee/commission to meet necessary expenses incurred in the enforcement of the provisions of the Home Inspector Licensing Act, in carrying out the duties imposed by the Home Inspector Licensing Act and for the promotion of education and standards for home inspectors in this state. Payments out of the home inspector fund shall be on vouchers issued and signed

by the person designated by the committee/commission upon warrants drawn by the department of finance and administration. All unexpended or unencumbered balances remaining at the end of each fiscal year shall remain in the home inspector fund for use in accordance with the provisions of the Home Inspector Licensing Act.