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FISCAL IMPACT REPORT

ORIGINAL DATE 02/20/09
 SPONSOR Eichenberg LAST UPDATED 03/19/09 HB _____
 SHORT TITLE Real Estate License Revocation & Reissuance SB 594/aSJC
 ANALYST Wilson

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Unknown See Below	Unknown See Below	Unknown See Below	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Attorney General’s Office (AGO)
 Regulation & Licensing (RLD)

SUMMARY

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to SB 594 removed language referring to “related offenses” when applied to criminal sexual penetration.

Synopsis of Original Bill

Senate Bill 594 SB 594 prohibits individuals convicted of criminal sexual penetration or “related offenses” from holding a real estate license.

The Real Estate Commission may also revoke an existing license unless the licensee can provide “compelling evidence” of rehabilitation for the offense.

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Applicants or licensees may appeal the Real Estate Commission’s decision to deny or revoke a license to the district court. Any additional fiscal impact on the judiciary will be proportional to the number of new appeals to the district courts. New appeals have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

SIGNIFICANT ISSUES

The bill does not define the term related offense nor does it define compelling evidence leaving these phrases open to conflicting interpretations.

Under the current Real Estate License Law states that the Real Estate Commission (REC) may refuse to issue a license or may suspend, revoke, limit or condition a license if an applicant or licensee has: been convicted in any court of competent jurisdiction of a felony or any offense involving moral turpitude. Senate Bill 594 proposes to add a provision that provides that an applicant or licensee convicted of criminal sexual penetration or related offenses shall be denied issuance, renewal or reinstatement of a license and that the license of a licensee shall be revoked unless the applicant or licensee can provide to the commission compelling evidence of rehabilitation.

The AGO provided the following:

The proposed amendment is contrary to the provisions of the Criminal Offender Employment Act. The COEA generally provides that criminal offenders should be provided the opportunity to secure employment or engage in a lawful trade. In furtherance of this purpose, the State and its agencies may take into consideration a criminal conviction, but such conviction shall not operate as an automatic bar to obtaining public employment or a license.

The COEA also provides that various degrees of evaluation are to be considered based on whether the criminal conviction is related to the particular trade or profession for which licensure is at issue, as well as a presumption of rehabilitation after discharge or completion of probation or parole. Additionally, the Real Estate License Law specifically states that consideration of criminal records will be governed by the COEA.

This bill is contrary to an opinion by the AG discussing the applicability of the COEA, which states that the REC must follow the COEA when taking any action to suspend or revoke a broker's license for criminal convictions.

The proposed amendment is contrary to the Uniform Licensing Act ("ULA"), NMSA 1978, §§ 61-1-1 to 61-1-33. The ULA provides that a licensee must be provided with notice and an opportunity for hearing prior to any action that will result in the revocation of a license.

The bill may create an impermissible shift in the burden of proof, requiring a licensee to demonstrate "compelling evidence of rehabilitation." As stated above, the COEA provides for a presumption of rehabilitation unless the REC can prove otherwise, or demonstrates otherwise as explicitly stated in writing in the Commission's decision.

ADMINISTRATIVE IMPLICATIONS

The current language of the bill may increase the number of appeals to the district courts

ALTERNATIVES

RLD suggests that an alternative to SB594 would be to continue to allow existing provisions of the Real Estate License Law, the Uniform Licensing Act, and the Criminal Offender Employment Act to govern the issuance, suspension, or revocation of real estate licenses to persons convicted of sex offenses.

DW/mt:svb