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FISCAL IMPACT REPORT

ORIGINAL DATE 2/7/07

SPONSOR Park LAST UPDATED _____ HB 730

SHORT TITLE Real Estate Licenses to Convicted Criminals SB _____

ANALYST C.Sanchez

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

Relates to HJM 2 and SJM 4.

Conflicts with Real Estate License Law, Section 61-29-12 A (6), reasons for which the Real Estate Commission may refuse, suspend, revoke, limit, or condition a real estate broker's license..

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
Regulation and Licensing Department (RLD)

SUMMARY

Synopsis of Bill

House Bill 730 amends Section 28-2-4 NMSA 1978, of the Criminal Offender Employment Act to allow a board or other agency to refuse to grant or renew or to suspend or revoke a license to practice real estate, where the applicant, employee or licensee has been convicted of homicide, kidnapping, trafficking in controlled substances, criminal sexual penetration or related sexual offenses or child abuse.

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the state would be proportional to challenges to license refusals, non-renewals, suspensions and revocations pursuant to the law. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

SIGNIFICANT ISSUES

Section 61-29-12 A (6) governing Real Estate Broker's and Salesmen presently gives the Real Estate Commission authority to refuse to issue, suspend, revoke, limit or condition a license if the applicant or licensee has been convicted in any court of competent jurisdiction of a felony or any offense involving moral turpitude. The Commission has historically exercised this authority on a case-by-case basis.

Section 61-29-3 governing Real Estate Broker's and Salesmen specifies that the provisions of the Criminal Offender Employment Act shall govern consideration of criminal records in determining whether a real estate broker's license shall be denied, suspended, revoked, limited, or conditioned.

Further, Section 28-2-3 A of the Criminal Offender Employment Act states that while a professional or occupational licensing board may take a criminal conviction into account in determining eligibility for a professional or occupational license, such conviction shall not operate as an automatic bar to licensure.

By prohibiting licensing boards from taking rehabilitation into account in evaluating the suitability of an applicant or a broker convicted of one of the specified crimes to hold a real estate broker's license, HB730 would eliminate the Real Estate Commission's discretion to take rehabilitation into account in determining whether, as specified in Section 61-29-9 A, an individual is "of good repute and competent to transact the business or a real estate broker in a manner than safeguards the interests of the public."

CONFLICT,

HB730 conflicts with the provisions of Sections 61-29-9 and 61-29-12 A(6) to the extent that it would appear to prohibit the Real Estate Commission the discretion to take rehabilitation into account in determining an individual's suitability to hold or renew a real estate broker's license.

HB730 also appears to conflict with Section 28-2-2 of the Criminal Offender Employment Act which says, "the legislature finds the public is best protected when criminal offenders or ex-convicts are given the opportunity to secure employment or to engage in a lawful trade, occupation or profession and that barriers to such employment should be removed to make rehabilitation feasible."

TECHNICAL ISSUES

For the reasons specified elsewhere in this analysis, a suggested amendment would be to strike from Section 28-2-4 A (3) in HB730 the language “or a license to practice real estate”.

OTHER SUBSTANTIVE ISSUES

The other licenses and authority affected under the current Section 28-2-4 – a teaching certificate, a license to operate a child-care facility, employment at a child-care facility – specifically involve contact with children.

HJM 2 and SJM 4 resolve that “the secretary of labor be requested to convene a task force to review barriers to public employment for persons with criminal convictions and to make recommendations that could remove barriers while protecting the public.”

ALTERNATIVES

An alternative would be to continue to give the Real Estate Commission the discretion to take rehabilitation into account in determining the suitability of an individual to hold a real estate broker’s license.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

CS/nt