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SENATE BILL 479

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

INTRODUCED BY

Kent L. Cravens

AN ACT

RELATING TO MANUFACTURED HOUSING; CHANGING THE ROLE OF THE
MANUFACTURED HOUSING COMMITTEE; GRANTING RULEMAKING TO THE
MANUFACTURED HOUSING DIVISION OF THE REGULATION AND LICENSING
DEPARTMENT.

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

SECTION 1. Section 60-14-4 NMSA 1978 (being Laws 1978,
Chapter 80, Section 1, as amended) is amended to read:

"60-14-4. POWERS AND DUTIES OF DIVISION.--The division
shall:

A. prepare, administer and grade examinations for
licensure under the classification sought by each applicant;

B. issue licenses and certificates of qualification
in accordance with the provisions of the Manufactured Housing
Act;

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1 C. establish and collect fees authorized to be
2 collected by the division pursuant to the Manufactured Housing
3 Act;

4 D. ~~[subject to the approval of the committee]~~ adopt
5 rules ~~[and regulations]~~ relating to the construction, repair,
6 modification, installation, tie-down, hookup and sale of all
7 manufactured homes, which ~~[regulations]~~ rules shall be uniform
8 throughout the state and shall be enforced by inspectors for
9 the division to ~~[insure]~~ ensure minimum standards of safety
10 within the state and any of its political subdivisions, and to
11 carry out the provisions of the Manufactured Housing Act.

12 Ordinances of any political subdivision of New Mexico relating
13 to gas, including natural gas, liquefied petroleum gas or
14 synthetic natural gas; electricity; sanitary plumbing; and
15 installation or sale of manufactured homes shall not be
16 inconsistent with any rules, ~~[regulations]~~ codes or standards
17 adopted by the division pursuant to the Manufactured Housing
18 Act;

19 ~~[E. adopt a budget and submit it to the regulation~~
20 ~~and licensing department for approval;~~

21 ~~F. make an annual report to the superintendent of~~
22 ~~regulation and licensing concerning the operations of the~~
23 ~~division. The report shall contain the division's~~
24 ~~recommendations for legislation that it deems necessary to~~
25 ~~improve the licensing and the ethical and technical practices~~

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1 of the manufactured housing industry and to protect the public
2 welfare;

3 ~~G. subject to the approval of the committee, adopt~~
4 ~~such rules, regulations, codes and standards as are necessary~~
5 ~~to carry out the provisions of the Manufactured Housing Act;~~

6 H.] E. prepare a uniform manufacturer's warranty
7 and require its adoption as a condition of licensure by all
8 manufacturers of manufactured homes doing business in New
9 Mexico;

10 [~~I. subject to the approval of the committee]~~

11 F. adopt by [~~regulation~~] rule the mobile home
12 construction and safety standards contained in the National
13 Mobile Home Construction and Safety Standards Act of 1974, 42
14 U.S.C. 5401 et seq., as amended;

15 [~~J. subject to the approval of the committee]~~

16 G. adopt by [~~regulation~~] rule the mobile home
17 procedural and enforcement regulations, 24 C.F.R. 3282, as
18 amended, promulgated by the department of housing and urban
19 development pursuant to the National Mobile Home Construction
20 and Safety Standards Act of 1974, 42 U.S.C. 5401 et seq., as
21 amended;

22 [~~K.~~] H. issue permits and provide for a single
23 inspection of every installation in New Mexico, regardless of
24 the location;

25 [~~L. subject to the approval of the committee]~~

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1 I. adopt [~~regulations~~] rules prescribing standards
2 for the installation or use of electrical wiring; the
3 installation of all fixtures, plumbing, consumer's gas pipe,
4 including natural gas, liquefied petroleum gas and synthetic
5 natural gas, appliances and materials installed in the course
6 of mechanical installation; and the construction, alteration,
7 installation and repair of all manufactured homes intended for
8 use in flood or mudslide areas designated pursuant to Section
9 3-18-7 NMSA 1978. The [~~regulations~~] rules shall give due
10 regard to standards prescribed by the federal insurance
11 administration pursuant to regulation 1910, Subsection 7(d), 79
12 Stat. 670, Section 1361, 82 Stat. 587 and 82 Stat. 5757, all as
13 amended, and shall give due regard to physical, climatic and
14 other conditions peculiar to New Mexico;

15 [~~M.~~] J. conduct "inspector schools" so that each
16 inspector under the division's jurisdiction is capable of
17 giving a complete one-time inspection for the sufficiency of
18 unit installation, construction and mechanical and electrical
19 systems;

20 [~~N.~~] K. enter into cooperative agreements with
21 federal agencies relating to manufactured housing and accept
22 and use federal grants, matching funds or other financial
23 assistance to further the purposes of the Manufactured Housing
24 Act. The division may enter into agreements with
25 municipalities and counties to provide for the inspection of

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1 manufactured homes by employees of municipalities and counties,
2 to be performed under the supervision and control of the
3 division. The division may allow all or a portion of the
4 inspection fee collected by a local public body to be retained
5 by the local public body. The portion of the fee retained
6 shall be determined by the division and shall be related to the
7 completeness of the inspection performed;

8 [Ø-] L. administer oaths through any member of the
9 division, the director or a hearing officer;

10 [~~P. subject to the approval of the committee~~]

11 M. adopt rules [~~and regulations~~] for the conducting
12 of hearings and the presentation of views, consistent with the
13 regulations promulgated by the department of housing and urban
14 development, 24 C.F.R. 3282.151 through 3282.156, as amended;

15 [~~Q. subject to the approval of the committee~~]

16 N. adopt by [~~regulation~~] rule a requirement that
17 dealers, repairmen and installers provide to consumers
18 warranties on their product and work and prescribe by
19 [~~regulation~~] rule minimum requirements of such warranties;

20 [~~R-~~] O. coordinate with and qualify inspectors for
21 any multiple inspection program provided by the construction
22 industries division of the regulation and licensing department
23 for inspection of manufactured homes;

24 [~~S. subject to the approval of the committee~~]

25 P. adopt [~~regulations~~] rules, codes and standards

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1 for manufactured homes used for nonresidential purposes;
2 provided such manufactured homes being used for nonresidential
3 purposes on May 18, 1988 shall not be required to meet Uniform
4 Building Code standards, except as to requirements for access
5 to the handicapped, but manufactured homes being used for
6 nonresidential purposes after May 18, 1988 shall be required to
7 meet Uniform Building Code standards. None of the provisions
8 contained in this subsection shall apply to retailers licensed
9 by the motor vehicle division of the taxation and revenue
10 department; and

11 ~~[F.]~~ Q. with the approval of the superintendent of
12 regulation and licensing, employ such personnel as the director
13 deems necessary for the exclusive purposes of investigating
14 violations of the Manufactured Housing Act, enforcing Section
15 60-14-17 NMSA 1978 and instituting legal action in the name of
16 the division to enforce the provisions of Section 60-14-19 NMSA
17 1978."

18 **SECTION 2.** Section 60-14-5 NMSA 1978 (being Laws 1977,
19 Chapter 245, Section 220, as amended) is amended to read:

20 "60-14-5. MANUFACTURED HOUSING COMMITTEE CREATED--
21 MEMBERSHIP--COMPENSATION--DUTIES.--

22 A. ~~[There is created within the division]~~ The
23 "manufactured housing committee" is created and is
24 administratively attached to the division. It shall be
25 composed of seven members who are residents of New Mexico and

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1 who shall serve at the pleasure of the governor and be
2 appointed by [~~him~~] the governor as follows:

3 (1) one member who is or is the designated
4 representative of a manufacturer licensed under the
5 Manufactured Housing Act;

6 (2) one member who is or is the qualifying
7 party of a dealer licensed under the Manufactured Housing Act;

8 (3) one member who is or is the qualifying
9 party of an installer licensed under the Manufactured Housing
10 Act;

11 (4) one member who is a broker licensed under
12 the Manufactured Housing Act; and

13 (5) three members who are manufactured housing
14 unit owners not subject to licensure under the Manufactured
15 Housing Act.

16 The term of office of each member of the committee is four
17 years; provided that members shall be appointed for staggered
18 terms beginning July 1, 1983 so that two terms end on June 30,
19 1985, two terms end on June 30, 1986 and three terms end on
20 June 30, 1987. Thereafter, all members shall be appointed to
21 four-year terms. Members shall be appointed to provide
22 adequate representation of all geographic areas of the state.

23 B. Each member of the committee [~~shall~~] is entitled
24 to receive per diem and mileage as provided in the Per Diem and
25 Mileage Act and shall receive no other compensation, perquisite

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1 or allowance.

2 C. The committee shall annually elect a [~~chairman~~]
3 chair and vice [~~chairman~~] chair from its membership. The
4 director of the division shall serve as the executive secretary
5 of the committee.

6 D. The committee shall meet at least bimonthly at
7 the call of the [~~chairman~~] chair.

8 E. The committee shall provide technical and policy
9 advice to the division, review [~~and approve or disapprove all~~]
10 rules, [~~regulations~~] standards and codes [~~subject to its~~
11 ~~approval under the provisions of the Manufactured Housing Act~~]
12 of the division and

13 [~~(1) establish by regulation classifications~~
14 ~~of licenses issued by the division and qualifications and~~
15 ~~examinations necessary for licensure under the Manufactured~~
16 ~~Housing Act; and~~

17 ~~(2)]~~ suspend or revoke for cause any license or
18 certificate of qualification issued by the division."

19 SECTION 3. Section 60-14-6 NMSA 1978 (being Laws 1978,
20 Chapter 81, Section 1, as amended) is amended to read:

21 "60-14-6. BONDING REQUIREMENTS--DEALERS, BROKERS,
22 SALESPERSONS, MANUFACTURERS, REPAIRMEN AND INSTALLERS.--

23 A. The division [~~with the approval of the~~
24 ~~committee~~] may by [~~regulation~~] rule require each dealer,
25 broker, salesperson, manufacturer, repairman and installer to

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1 furnish and maintain with the division a consumer protection
2 bond underwritten by a corporate surety authorized to transact
3 business in New Mexico, in a sum to be determined by
4 [~~regulation~~] rule and in such form, and with either unit or
5 blanket coverage, as required by [~~regulation~~] rule, to be
6 conditioned upon the dealer, broker, salesperson, manufacturer,
7 repairman or installer complying with the provisions of the
8 Manufactured Housing Act and any other law applying to the
9 licensee, and also as indemnity for any loss sustained by any
10 person damaged:

11 (1) as a result of a violation by the licensee
12 of any provision of the Manufactured Housing Act or of any
13 [~~regulation~~] rule of the division adopted pursuant to that act;

14 (2) as a result of a violation of any
15 [~~regulation~~] rule adopted by the division;

16 (3) by fraud of a licensee in the execution or
17 performance of a contract; or

18 (4) by misrepresentation or the making of
19 false promises through the advertising or the agents of a
20 licensee.

21 B. The consumer protection bond may include
22 provisions for the indemnification for any loss sustained by
23 any consumer as the result of the refusal, failure or inability
24 to transfer good and sufficient legal title to the consumer by
25 the transferor or any other party claiming title.

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1 C. The committee may attach and disburse for cause
2 any consumer protection bond furnished to the division pursuant
3 to this section. The division [~~subject to the approval of the~~
4 ~~committee~~] shall adopt the necessary rules [~~and regulations~~] to
5 administer the provisions of this section."

6 SECTION 4. Section 60-14-7 NMSA 1978 (being Laws 1975,
7 Chapter 331, Section 8, as amended) is amended to read:

8 "60-14-7. LICENSE REQUIRED--CLASSIFICATION--
9 EXAMINATION.--

10 A. No person shall engage in business as a
11 manufacturer, dealer, broker, repairman, installer or
12 salesperson unless licensed as provided in the Manufactured
13 Housing Act.

14 B. The [~~committee~~] division shall adopt
15 [~~regulations~~] rules creating a system of license
16 classifications covering the occupations of dealer, broker,
17 manufacturer, repairman, installer and salesperson and
18 providing for the qualifications and examination for each class
19 of license.

20 C. No person shall import for sale or exchange, or
21 engage in the business of selling, leasing or exchanging or
22 offering for sale, lease or exchange, any manufactured home
23 manufactured by any person who is not licensed as a
24 manufacturer under the Manufactured Housing Act."

25 SECTION 5. Section 60-14-9 NMSA 1978 (being Laws 1975,

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1 Chapter 331, Section 9, as amended) is amended to read:

2 "60-14-9. LICENSE--APPLICATION--ISSUANCE.--

3 A. Application for a license required under Section
4 60-14-7 NMSA 1978 for one of the classified occupations, or for
5 a certificate of qualification of a qualifying party of a
6 licensee other than an individual licensee, shall be submitted
7 to the division on forms prescribed and furnished by the
8 division. The application shall contain such information and
9 be accompanied by such attachments as are required by
10 [~~regulations~~] rules of the division. The forms shall be
11 accompanied by the prescribed fee.

12 B. No license shall be issued by the division to
13 [~~any~~] a person unless the division is satisfied that [~~he~~] the
14 person is or has in [~~his~~] the person's employ a qualifying
15 party who is qualified for the classification for which the
16 application is made and who has satisfied the requirements of
17 Subsection C of this section.

18 C. An applicant for licensure shall:

19 (1) demonstrate financial responsibility as
20 required by [~~regulations~~] rules of the [~~committee~~] division;

21 (2) be of good reputation;

22 (3) not have engaged illegally in the licensed
23 classification that [~~he~~] the applicant is applying for within
24 one year prior to making the application;

25 (4) demonstrate familiarity with the rules

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1 [and regulations] adopted by the [committee] division
2 concerning the classification for which application is made;

3 (5) if a corporation, have complied with the
4 laws of New Mexico regarding qualifications for doing business
5 in this state or have been incorporated in New Mexico and have
6 and maintain a registered agent and a registered office in this
7 state;

8 (6) if an individual or partnership, have
9 maintained a residence or street address in New Mexico for at
10 least thirty days preceding the date of application;

11 (7) submit proof of registration with the
12 [~~revenue division of the~~] taxation and revenue department and
13 submit a current tax identification number; and

14 (8) personally or through the applicant's
15 qualifying party successfully pass an examination administered
16 by the division in the license classification for which
17 application is made."

18 SECTION 6. Section 60-14-10 NMSA 1978 (being Laws 1975,
19 Chapter 331, Section 10, as amended) is amended to read:

20 "60-14-10. QUALIFYING PARTY--EXAMINATION--CERTIFICATE.--

21 A. Except as provided in Subsection C of this
22 section, no certificate of qualification shall be issued to
23 [~~any individual~~] a person desiring to be a qualifying party
24 until [~~he~~] the person has passed with a satisfactory score an
25 examination prepared, administered and graded by the division.

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1 B. The examination where applicable shall consist of:

2 (1) general business knowledge, the rules [~~and~~
3 ~~regulations~~] of the division [~~and committee~~] and the provisions
4 of the Manufactured Housing Act;

5 (2) technical knowledge and familiarity with the
6 prescribed codes and minimum standards, which may be prepared
7 and administered by an employee of the division who is expert
8 in the particular classification for which certification is
9 sought; and

10 (3) general knowledge of the statutes of this
11 state relating to the sale, exchange or lease of manufactured
12 homes, contracts of sale, agency and brokerage.

13 C. If a licensee is subject to suspension by the
14 committee for failure of the licensee to have a qualifying
15 party in [~~his~~] the licensee's employ, and the employment of the
16 qualifying party is terminated without fault of the licensee,
17 then an employee of the licensee who is experienced in the
18 classification for which the certificate of qualification was
19 issued and who has been employed two or more years by the
20 licensee shall be issued without examination a temporary
21 certificate of qualification in the classification for which
22 the licensee is licensed. The temporary qualifying party shall
23 be subject to passing the examination as set forth in this
24 section within one year from the date of the temporary
25 certificate's issuance.

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1 D. A certificate of qualification is not
2 transferable."

3 SECTION 7. Section 60-14-12 NMSA 1978 (being Laws 1975,
4 Chapter 331, Section 12, as amended) is amended to read:

5 "60-14-12. SUSPENSION AND REVOCATION.--Any license or
6 certificate of qualification issued by the division shall be
7 suspended for a definite period or revoked under the procedures
8 of the Uniform Licensing Act by the committee for any of the
9 following causes:

10 A. if a licensee or a qualifying party of a licensee
11 violates any provision of the Manufactured Housing Act or any
12 [~~regulations~~] rules adopted by the division [~~or committee~~]
13 pursuant to that act;

14 B. false, misleading or deceptive advertising;

15 C. knowingly contracting or performing a service
16 beyond the scope of the license;

17 D. misrepresentation of a material fact by the
18 applicant in obtaining a license or certificate;

19 E. misrepresentation or omission of a material fact
20 in any manufactured home transaction;

21 F. failure to comply with the warranty requirements
22 of the Manufactured Housing Act or any [~~regulation~~] rule of the
23 [~~committee~~] division pursuant to those requirements;

24 G. failure by a manufacturer or dealer to transfer
25 good and sufficient title to the purchaser of a manufactured

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1 home;

2 H. failure by a broker or dealer to provide the buyer
3 and the seller of a pre-owned manufactured home with a closing
4 statement as required by [~~regulation~~] rule of the [~~committee~~]
5 division;

6 I. conviction of a licensee or a qualifying party of
7 a licensee in any court of competent jurisdiction of a felony
8 or any offense involving moral turpitude; or

9 J. failure by a dealer or broker in the transfer of a
10 pre-owned manufactured home not owned at the time of the
11 transaction by the dealer or broker to comply with title
12 transfer provisions set forth by [~~regulation~~] rule of the
13 division."

14 SECTION 8. Section 60-14-15 NMSA 1978 (being Laws 1975,
15 Chapter 331, Section 23, as amended) is amended to read:

16 "60-14-15. [~~COMMITTEE AND DIVISION~~] CONSUMER
17 COMPLAINTS--ORDERS--SUSPENSION--REVOCATION.--In addition to the
18 other duties imposed on the [~~committee and~~] division under the
19 Manufactured Housing Act, the [~~committee and~~] division shall
20 receive complaints from any consumer who claims to be harmed by
21 [~~any~~] a licensee and shall attempt to have the complaints
22 adjusted to the reasonable satisfaction of the consumer. If
23 the [~~committee or~~] division cannot secure a proper adjustment,
24 the [~~committee or~~] division shall prepare a formal complaint
25 for the consumer, and, pursuant to the provisions of the

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1 Uniform Licensing Act, the committee shall determine whether
2 the licensee is in violation of the Manufactured Housing Act or
3 of rules [~~and regulations~~] promulgated under that act. If the
4 licensee is in violation of the Manufactured Housing Act or of
5 the rules [~~and regulations~~] promulgated under that act, the
6 committee may order [~~him~~] the licensee to comply, may suspend
7 [~~his~~] the licensee's license until such time as the licensee
8 complies with the order of the committee or may revoke [~~his~~]
9 the license."

10 SECTION 9. Section 60-14-18 NMSA 1978 (being Laws 1979,
11 Chapter 400, Section 2, as amended) is amended to read:

12 "60-14-18. [~~COMMITTEE OR~~] DIVISION--POWERS OF
13 INJUNCTIONS--MANDAMUS.--The division [~~or committee~~] may enforce
14 the provisions of the Manufactured Housing Act by injunction,
15 mandamus or any proper legal proceeding in the district court
16 of the county in which the offense was committed."

17 SECTION 10. TEMPORARY PROVISION--RULES.--The rules of the
18 manufactured housing committee shall be deemed to be the rules
19 of the manufactured housing division of the regulation and
20 licensing department until amended or repealed by the division.

21 SECTION 11. REPEAL.--Section 9-16-13 NMSA 1978 (being
22 Laws 1983, Chapter 297, Section 29) is repealed.

23 SECTION 12. EFFECTIVE DATE.--The effective date of the
24 provisions of this act is July 1, 2011.