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FISCAL IMPACT REPORT

ORIGINAL DATE 02/03/11

SPONSOR Eichenberg LAST UPDATED _____ HB _____

SHORT TITLE Revocation and renewal of Real Estate Licenses SB 191

ANALYST C. Sanchez

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
Regulation and Licensing Department (RLD)

SUMMARY

Synopsis of Bill

Senate Bill 191 would require the Real Estate Commission to revoke the real estate broker's license or deny the issuance, renewal or reinstatement of a license if the license applicant or licensee has been convicted of criminal sexual penetration, sexual assault of an adult or minor or any other violent sexually based felony in New Mexico or any other jurisdiction, or is required to register as a sex offender.

FISCAL IMPLICATIONS

No fiscal impact on the General Fund is identified.

SIGNIFICANT ISSUES

NMSA 1978, §61-29-12 A(6) of the Real Estate License Law currently gives the Real Estate Commission the discretion to refuse to issue a broker's license or suspend, revoke, limit or condition a license if the applicant or licensee has been convicted of a felony or crime of moral turpitude. NMSA 1978, §61-29-3 of the Real Estate License Law provides that the provisions of the Criminal Offender Employment Act govern any consideration of criminal records in the determination of whether to issue, suspend, revoke, limit or condition a real estate broker's license.

NMSA 1978, §28-2-3 of the Criminal Offender Employment Act provides that a criminal

conviction shall not operate as an automatic bar to obtaining a professional or occupational license from the State of New Mexico. NMSA 1978, §28-2-4 A (1) of the Act provides that a professional or occupational licensing board may refuse to suspend or revoke the license of an individual convicted of a felony or misdemeanor or a crime of moral turpitude and the criminal conviction directly relates to the particular employment, trade, business, or profession.

NMSA 1978, §28-2-4 A (2) of the Act provides that a professional or occupational licensing board may refuse to suspend or revoke the license of an individual convicted of a felony or misdemeanor not related to the occupation or profession in which the individual seeks licensure if the board determines after investigation that the individual is not sufficiently rehabilitated to warrant the public trust. The Act further provides that completion of probation or parole supervision or expiration of a period of three years after final discharge or release from any term of imprisonment without any subsequent conviction shall create a presumption of sufficient rehabilitation for purposes of Paragraph 2 Subsection A of this section.

Section 28-2-4 A (3) of the Act provides that a board or other agency of jurisdiction may refuse to issue or revoke the license of an individual who has been convicted of trafficking in controlled substances, criminal sexual penetration or related sexual offenses or child abuse and the applicant or licensee has applied for reinstatement or issuance of a teaching certificate, a license to operate a child care facility, or employment at a child care facility, regardless of rehabilitation.

The effect of SB 191 would be to place an applicant for a real estate broker's license or a licensed real estate broker convicted of a sex offense in the same category with teachers, child care facility operators, and child care workers with respect to the Criminal Offender Employment Act and the Act's rehabilitation standard.

ADMINISTRATIVE IMPLICATIONS

The Real Estate Commission already initiates disciplinary action against individuals convicted of felonies, including sex crimes, thus SB191 would have no administrative implications for RLD.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

According to the Regulation and Licensing Department (RLD), SB191 appears to conflict with the aforementioned provision of the Criminal Offender Employment Act at Section 28-2-4 B relating to the presumption of rehabilitation after completion of parole and probation supervision and the expiration of three years after release from imprisonment without any subsequent conviction.

ALTERNATIVES

According to the Attorney General's Office (AGO), if the intent is to make licensure revocation or denial mandatory irrespective of (1) the rehabilitation requirements of the COEA and (2) the limitations period of the ULA, then appropriate "notwithstanding" language should be added to provide clarity in this respect.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

CS/bym:mew