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SENATE BILL 212

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

Phil A. Griego

AN ACT

RELATING TO REAL ESTATE BROKERS LICENSURE; AMENDING SECTIONS OF CHAPTER 61, ARTICLE 29 NMSA 1978 TO PROVIDE FOR NONRESIDENT BROKER LICENSING; INCREASING THE LIMIT ON LIABILITY INSURANCE PREMIUMS; REVISING PENALTIES FOR VIOLATION OF LICENSURE REQUIREMENTS.

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

SECTION 1. Section 61-29-1 NMSA 1978 (being Laws 1959, Chapter 226, Section 1, as amended) is amended to read:

"61-29-1. PROHIBITION.--It is unlawful for a person to engage in the business or act in the capacity of [~~advertise or display in any manner or otherwise assume to engage in the business of, or act as an~~] real estate associate broker or [a] qualifying broker within [~~this state~~] New Mexico without a license issued by the commission. A person who engages in the

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1 business or acts in the capacity of an associate broker or a
2 qualifying broker in [~~this state~~] New Mexico, except as
3 otherwise provided in Section 61-29-2 NMSA 1978, with or
4 without a New Mexico real estate broker's license, has thereby
5 submitted to the jurisdiction of the state and to the
6 administrative jurisdiction of the commission and is subject to
7 all penalties and remedies available for a violation of any
8 provision of Chapter 61, Article 29 NMSA 1978."

9 SECTION 2. Section 61-29-2 NMSA 1978 (being Laws 1999,
10 Chapter 127, Section 1, as amended) is amended to read:

11 "61-29-2. DEFINITIONS AND EXCEPTIONS.--

12 A. As used in Chapter 61, Article 29 NMSA 1978:

13 (1) "agency relationship" means the fiduciary
14 relationship created solely by an express written agency
15 agreement between a person and a brokerage, authorizing the
16 brokerage to act as an agent for the person according to the
17 scope of authority granted in that express written agreement
18 for real estate services subject to the jurisdiction of the
19 commission;

20 (2) "agent" means the brokerage authorized,
21 solely by means of an express written agreement, to act as a
22 fiduciary for a person and to provide real estate services that
23 are subject to the jurisdiction of the commission; in the case
24 of an associate broker, "agent" means the person who has been
25 authorized to act by that associate broker's qualifying broker;

1 (3) "associate broker" means a person who, for
2 compensation or other valuable consideration, is associated
3 with or engaged under contract by a qualifying broker to
4 participate in an activity described in Paragraph (4) of this
5 subsection or to carry on the qualifying broker's business as a
6 whole or partial vocation;

7 (4) "broker" or "qualifying broker" means a
8 person who for compensation or other consideration from
9 another:

10 (a) lists, sells or offers to sell real
11 estate; buys or offers to buy real estate; or negotiates the
12 purchase, sale or exchange of real estate or options on real
13 estate;

14 (b) is engaged in managing property for
15 others;

16 (c) leases, rents or auctions or offers
17 to lease, rent or auction real estate;

18 (d) advertises or makes any
19 representation as being engaged in the business of buying,
20 selling, exchanging, renting, leasing, auctioning or dealing
21 with options on real estate for others as a whole or partial
22 vocation; or

23 (e) engages in the business of charging
24 an advance fee or contracting for collection of a fee in
25 connection with a contract under which the broker or qualifying

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1 broker undertakes primarily to promote the sale of real estate
2 through its listing in a publication issued primarily for that
3 purpose or for the purpose of referral of information
4 concerning real estate to brokers, qualifying brokers or
5 associate brokers;

6 (5) "brokerage" means a licensed qualifying
7 broker and the licensed real estate business represented by the
8 qualifying broker and its affiliated licensees;

9 (6) "brokerage relationship" means the legal
10 or contractual relationship between a person and a brokerage in
11 a real estate transaction subject to the jurisdiction of the
12 commission;

13 (7) "client" means a [~~buyer, seller, landlord~~
14 ~~or tenant~~] person who has entered into an express written
15 agreement with a brokerage for real estate services subject to
16 the jurisdiction of the commission;

17 (8) "commission" means the New Mexico real
18 estate commission;

19 (9) "customer" means a [~~buyer, seller,~~
20 ~~landlord or tenant~~] person who uses real estate services
21 without entering into an express written agreement with a
22 brokerage subject to the jurisdiction of the commission;

23 (10) "license" means a qualifying broker's
24 license or an associate broker's license issued by the
25 commission;

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1 (11) "licensee" means a person holding a valid
2 qualifying broker's license or an associate broker's license
3 subject to the jurisdiction of the commission;

4 (12) "real estate" means land, improvements,
5 leaseholds and other interests in real property that are less
6 than a fee simple ownership interest, whether tangible or
7 intangible; and

8 [~~(13)~~] ~~"real estate salesperson" means a person~~
9 ~~who, for compensation or other valuable consideration, is~~
10 ~~associated with or engaged under contract by a broker to~~
11 ~~participate in an activity described in Paragraph (4) of this~~
12 ~~subsection or to carry on the broker's business as a whole or~~
13 ~~partial vocation; and~~

14 ~~(14)]~~ (13) "transaction broker" means a
15 qualifying broker, associate broker or brokerage that provides
16 real estate services without entering into an agency
17 relationship.

18 B. A single act of a person in performing or
19 attempting to perform an activity described in Paragraph (4) of
20 Subsection A of this section makes the person a qualifying
21 broker. A single act of a person in performing or attempting
22 to perform an activity described in Paragraph (3) of Subsection
23 A of this section makes the person an associate broker.

24 C. The provisions of Chapter 61, Article 29 NMSA
25 1978 do not apply to:

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1 (1) a person who as owner performs any of the
2 activities included in this section with reference to property
3 owned by the person, except when the sale or offering for sale
4 of the property constitutes a subdivision containing one
5 hundred or more parcels;

6 (2) the employees of the owner or the
7 employees of a qualifying broker acting on behalf of the owner,
8 with respect to the property owned, if the acts are performed
9 in the regular course of or incident to the management of the
10 property and the investments [~~except when the sale or offering~~
11 ~~for sale of the property constitutes a subdivision containing~~
12 ~~one hundred or more parcels~~];

13 (3) isolated or sporadic transactions not
14 exceeding two transactions annually in which a person acts as
15 attorney-in-fact under a duly executed power of attorney
16 delivered by an owner authorizing the person to finally
17 consummate and to perform under any contract the sale, leasing
18 or exchange of real estate on behalf of the owner; and the
19 owner or attorney-in-fact has not used a power of attorney for
20 the purpose of evading the provisions of Chapter 61, Article 29
21 NMSA 1978;

22 (4) transactions in which a person acts as
23 attorney-in-fact under a duly executed power of attorney
24 delivered by an owner related to the attorney-in-fact within
25 the fourth degree of consanguinity or closer, authorizing the

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1 person to finally consummate and to perform under any contract
2 for the sale, leasing or exchange of real estate on behalf of
3 the owner;

4 (5) the services rendered by an attorney at
5 law in the performance of the attorney's duties as an attorney
6 at law;

7 (6) a person acting in the capacity of a
8 receiver, trustee in bankruptcy, administrator or executor, a
9 person selling real estate pursuant to an order of any court or
10 a trustee acting under a trust agreement, deed of trust or will
11 or the regular salaried employee of a trustee;

12 (7) the activities of a salaried employee of a
13 governmental agency acting within the scope of employment; or

14 (8) persons who deal exclusively in mineral
15 leases or the sale or purchase of mineral rights or royalties
16 in any case in which the fee to the land or the surface rights
17 are in no way involved in the transaction."

18 **SECTION 3.** Section 61-29-4.1 NMSA 1978 (being Laws 1985,
19 Chapter 89, Section 1, as amended) is amended to read:

20 "61-29-4.1. ADDITIONAL POWERS OF COMMISSION--CONTINUING
21 EDUCATION PROGRAMS--MINIMUM REQUIREMENTS.--The commission shall
22 adopt rules providing for continuing education courses in
23 selling, leasing or managing residential, commercial and
24 industrial property as well as courses in basic real estate law
25 and practice and other courses prescribed by the commission.

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1 The regulations shall require that every licensee except
2 licensees who were already exempted from continuing education
3 requirements prior to [~~the effective date of this 2011 act~~]
4 July 1, 2011, as a condition of license renewal, successfully
5 complete a minimum of thirty classroom hours of instruction
6 every three years in courses approved by the commission. The
7 rules may prescribe areas of specialty or expertise and may
8 require that part of the classroom instruction be devoted to
9 courses in the area of a licensee's specialty or expertise."

10 SECTION 4. Section 61-29-4.2 NMSA 1978 (being Laws 2001,
11 Chapter 216, Section 1, as amended) is amended to read:

12 "61-29-4.2. ADDITIONAL POWERS OF THE COMMISSION--
13 PROFESSIONAL LIABILITY INSURANCE--MINIMUM COVERAGE.--

14 A. In addition to the powers and duties granted to
15 the commission pursuant to the provisions of Sections 61-29-4
16 and 61-29-4.1 NMSA 1978, the commission may adopt rules that
17 require professional liability insurance coverage and may
18 establish the minimum terms and conditions of coverage,
19 including limits of coverage and permitted exceptions. If
20 adopted by the commission, the rules shall require every
21 applicant for an active license and licensee who applies for
22 renewal of an active license to provide the commission with
23 satisfactory evidence that the applicant or licensee has
24 professional liability insurance coverage that meets the
25 minimum terms and conditions required by commission rule.

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1 B. The commission is authorized to solicit sealed,
2 competitive proposals from insurance carriers to provide a
3 group professional liability insurance policy that complies
4 with the terms and conditions established by commission rule.
5 The commission may approve one or more policies that comply
6 with the commission rules; provided that the maximum annual
7 premium shall not exceed [~~three hundred dollars (\$300)~~] five
8 hundred dollars (\$500) for a licensee, that the minimum
9 coverage shall not be less than one hundred thousand dollars
10 (\$100,000) for an individual claim and not less than a five-
11 hundred-thousand-dollar (\$500,000) aggregate limit per policy
12 and that the deductible shall not be greater than one thousand
13 dollars (\$1,000).

14 C. Rules adopted by the commission shall permit an
15 active licensee to satisfy any requirement for professional
16 liability insurance coverage by purchasing an individual
17 policy.

18 D. Rules adopted by the commission shall provide
19 that there shall not be a requirement for a licensee to have
20 professional liability insurance coverage during a period when
21 a group policy, as provided in Subsection B of this section, is
22 not in effect."

23 **SECTION 5.** Section 61-29-9 NMSA 1978 (being Laws 1959,
24 Chapter 226, Section 8, as amended) is amended to read:

25 "61-29-9. QUALIFICATIONS FOR LICENSE.--

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1 A. Licenses shall be granted only to persons who
2 meet the requirements for licensure prescribed by law and are
3 deemed by the commission to be of good repute and competent to
4 transact the business of a qualifying broker or an associate
5 broker in a manner that safeguards the interests of the public.

6 B. An applicant for a qualifying broker's license
7 or an associate broker's license shall be a legal resident of
8 the United States and have reached the age of majority. Each
9 applicant for a qualifying broker's license or an associate
10 broker's license shall have passed the real estate broker's
11 examination approved by the commission and shall:

12 (1) furnish the commission with [~~a certificate~~
13 ~~that the applicant has completed successfully~~] certificates of
14 completion of ninety [~~classroom~~] hours of classroom instruction
15 [~~in basic real estate courses approved by the commission,~~
16 ~~thirty hours of which shall have been a broker basics course~~]
17 consisting of commission-approved thirty-hour courses in real
18 estate principles and practice, real estate law and broker
19 basics; or

20 (2) in the case of an out-of-state applicant,
21 furnish the commission with a [~~certificate that the applicant~~
22 ~~is a duly licensed real estate broker in good standing in~~
23 ~~another state; provided that the applicant has successfully~~
24 ~~completed ninety classroom hours of instruction in basic real~~
25 ~~estate courses approved by the commission, thirty hours of~~

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1 ~~which shall have been a broker basics course~~ certified license
2 history from the real estate licensing jurisdiction in the
3 state or states in which the applicant is currently or has been
4 previously licensed as a real estate broker, or certificates of
5 completion of those courses issued by the course sponsor or
6 provider, certifying that the applicant has or had a license in
7 that state and has completed the equivalent of sixty classroom
8 hours of prelicensing education approved by that licensing
9 jurisdiction in real estate principles and practice and real
10 estate law. Upon receipt of such documentation, the commission
11 may waive sixty hours of the ninety hours of prelicensing
12 education required to take the New Mexico real estate broker's
13 examination and may waive the national portion of the
14 examination. The applicant shall complete the commission-
15 approved thirty-hour broker basics class to be eligible to take
16 the state portion of the New Mexico real estate broker's
17 examination.

18 C. An applicant for a qualifying broker's license
19 shall have ~~[been actively engaged in the real estate business~~
20 ~~as an associate broker or real estate salesperson]~~ passed the
21 New Mexico real estate broker's examination or had an active
22 associate broker's license or equivalent real estate license
23 for at least two of the last five years immediately preceding
24 application for a qualifying broker's license and shall furnish
25 the commission ~~[proof that the applicant has completed~~

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1 ~~successfully one hundred twenty hours of prelicensing courses,~~
2 ~~including a broker basics course, approved by the commission.~~

3 ~~D. A licensee holding a current real estate~~
4 ~~salesperson's license on the effective date of this 2005 act~~
5 ~~shall automatically qualify for an associate broker's license~~
6 ~~without any additional requirements. However, to be eligible~~
7 ~~to apply for a qualifying broker's license, a real estate~~
8 ~~salesperson obtaining an associate broker's license pursuant to~~
9 ~~this subsection shall, in addition to meeting all other~~
10 ~~requirements for a qualifying broker's license, pass a real~~
11 ~~estate broker's examination approved by the commission] with a~~
12 ~~certificate of completion of the commission-approved thirty-~~
13 ~~hour brokerage office administration course.~~

14 ~~[E.]~~ D. The commission shall require the
15 information it deems necessary from every applicant to
16 determine that applicant's honesty, trustworthiness and
17 competency."

18 SECTION 6. Section 61-29-11 NMSA 1978 (being Laws 1959,
19 Chapter 226, Section 10, as amended) is amended to read:

20 "61-29-11. ISSUANCE, RENEWAL AND SURRENDER OF
21 LICENSES.--

22 A. The commission shall issue to each qualified
23 applicant a license in the form and size prescribed by the
24 commission.

25 B. The license shall show the name and address of

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1 the licensee. An associate broker's license shall show the
2 name of the qualifying broker by whom the associate broker is
3 engaged. The commission shall deliver or mail the license of
4 the associate broker to the qualifying broker by whom the
5 associate broker is engaged, and the qualifying broker shall
6 display the license at the brokerage from which the associate
7 broker will be conducting real estate business on behalf of the
8 brokerage. The license of the associate broker shall remain in
9 the custody and control of the qualifying broker as long as the
10 associate broker is engaged by that qualifying broker.

11 C. Any qualifying broker's or associate broker's
12 license suspended or revoked by an order, stipulated agreement
13 or settlement agreement approved by the commission shall be
14 surrendered to the commission by the broker upon the delivery
15 of the order to the broker by the commission, or on the
16 effective date of the order. All real-estate-related activity
17 conducted under such license shall cease for the duration of
18 the license suspension or revocation, and any associate broker
19 licenses hanging with a qualifying broker whose license is
20 suspended or revoked shall be automatically placed on inactive
21 status until a new qualifying broker or a qualifying broker in
22 charge is designated.

23 [~~G.~~] D. Every license shall be renewed every three
24 years on or before the last day of the month following the
25 licensee's month of birth. Upon written request for renewal by

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1 the licensee, the commission shall certify renewal of a license
2 if there is no reason or condition that might warrant the
3 refusal of the renewal of a license. The licensee shall
4 provide proof of compliance with continuing education
5 requirements and pay the renewal fee. If a licensee has not
6 made application for renewal of license, furnished proof of
7 compliance with continuing education requirements and paid the
8 renewal fee by the license renewal date, the license shall
9 expire. The commission may require a person whose license has
10 expired to apply for a license as if the person had not been
11 previously licensed under Chapter 61, Article 29 NMSA 1978 and
12 further require that the person be reexamined. The commission
13 shall require a person whose license has expired to pay when
14 the person applies for a license, in addition to any other fee,
15 a late fee. If during a period of one year from the date the
16 license expires the person or the person's spouse is either
17 absent from this state on active duty military service or the
18 person is suffering from an illness or injury of such severity
19 that the person is physically or mentally incapable of making
20 application for a license, payment of the late fee and
21 reexamination shall not be required by the commission if,
22 within three months of the person's permanent return to this
23 state or sufficient recovery from illness or injury to allow
24 the person to make an application, the person makes application
25 to the commission for a license. A copy of that person's or

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1 that person's spouse's military orders or a certificate from
2 the applicant's physician shall accompany the application. A
3 person excused by reason of active duty military service,
4 illness or injury as provided for in this subsection may make
5 application for a license without imposition of the late fee.
6 All fees collected pursuant to this subsection shall be
7 disposed of in accordance with the provisions of Section
8 61-29-8 NMSA 1978. The revocation of a qualifying broker's
9 license automatically suspends every associate broker's license
10 granted to any person by virtue of association with the
11 qualifying broker whose license has been revoked, pending a
12 change of qualifying broker. Upon the naming of a new
13 qualifying broker, the suspended license shall be reactivated
14 without charge if granted during the three-year renewal cycle.

15 ~~[D-]~~ E. A qualifying broker shall conduct brokerage
16 business under the trade name and from the brokerage address
17 registered with the commission. Every brokerage shall have a
18 qualifying broker in charge. The license of the qualifying
19 broker and each associate broker associated with that
20 qualifying broker shall be prominently displayed in each
21 brokerage office. The address of the office shall be
22 designated in the qualifying broker's license, and a license
23 issued shall not authorize the licensee to transact real estate
24 business at any other address. In case of removal from the
25 designated address, the licensee shall make application to the

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1 commission before the removal or within ten days thereafter,
2 designating the new location of the licensee's office and
3 paying the required fee, whereupon the commission shall issue a
4 license for the new location if the new location complies with
5 the terms of Chapter 61, Article 29 NMSA 1978. A qualifying
6 broker shall maintain a sign at the brokerage office of such
7 size and content as the commission prescribes.

8 ~~[E-]~~ F. When an associate broker is discharged or
9 terminates association or employment with the qualifying broker
10 with whom the associate broker is associated, the qualifying
11 broker shall deliver or mail the associate broker's license to
12 the commission within forty-eight hours. The commission shall
13 hold the license on inactive status. It is unlawful for an
14 associate broker to perform any of the acts authorized by
15 Chapter 61, Article 29 NMSA 1978 either directly or indirectly
16 under authority of an inactive license after the associate
17 broker's association with a qualifying broker has been
18 terminated and the associate broker's license has been returned
19 to the commission until the appropriate fee has been paid and
20 the license has been reissued and reactivated by the
21 commission."

22 **SECTION 7.** Section 61-29-16.1 NMSA 1978 (being Laws 2005,
23 Chapter 35, Section 15, as amended) is amended to read:

24 "61-29-16.1. ~~[FOREIGN BROKERS--NONRESIDENT-~~
25 ~~LICENSEES]~~ NONRESIDENT BROKERS--CONSENT TO SERVICE--REFERRAL

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1 FEES.--

2 ~~[A. A foreign associate broker or qualifying broker~~
3 ~~currently licensed by another state or licensing jurisdiction~~
4 ~~other than New Mexico may engage in real estate activity in New~~
5 ~~Mexico as a foreign broker; provided that the foreign broker~~
6 ~~enters into a transaction-specific written agreement with a New~~
7 ~~Mexico licensed qualifying broker prior to commencing such real~~
8 ~~estate activity. The foreign broker shall comply with all New~~
9 ~~Mexico laws, including those acts regulated by Chapter 61,~~
10 ~~Article 29 NMSA 1978.~~

11 B.] A. An associate broker or qualifying broker
12 with a license application address that is not within the state
13 of New Mexico shall file with the commission an irrevocable
14 consent that lawsuits and actions may be commenced against the
15 associate broker or qualifying broker in the proper court of
16 any county of ~~[this state]~~ New Mexico in which a cause of
17 action may arise or in which the plaintiff may reside, by
18 service on the commission of any process or pleadings
19 authorized by the laws of ~~[this state]~~ New Mexico, the consent
20 stipulating and agreeing that such service of process or
21 pleadings on the commission is as valid and binding as if
22 personal service had been made upon the associate broker or
23 qualifying broker in New Mexico. Service of process or
24 pleadings shall be served in duplicate upon the commission; one
25 shall be filed in the office of the commission and the other

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1 immediately forwarded by certified mail to the main office of
2 the associate broker or qualifying broker against whom the
3 process or pleadings are directed.

4 B. When a New Mexico associate broker or qualifying
5 broker makes a referral to or receives a referral from a
6 nonresident broker for the purpose of receiving a fee,
7 commission or any other consideration, the qualifying broker of
8 the New Mexico brokerage and the nonresident broker shall
9 execute a written, transaction-specific referral agreement at
10 the time of the referral."

11 SECTION 8. Section 61-29-17 NMSA 1978 (being Laws 1965,
12 Chapter 304, Section 8, as amended) is amended to read:

13 "61-29-17. PENALTY--INJUNCTIVE RELIEF.--

14 A. Any person who ~~[violates any provision of~~
15 ~~Chapter 61, Article 29 NMSA 1978 is guilty of a fourth degree~~
16 ~~felony and shall be punished by a fine of not more than five~~
17 ~~thousand dollars (\$5,000) or by imprisonment for a definite~~
18 ~~term of eighteen months, or both]~~ engages in the business or
19 acts in the capacity of an associate broker or a qualifying
20 broker within New Mexico without a license issued by the
21 commission or an associate broker or qualifying broker who
22 commits fraud, knowing or willful misrepresentation or wrongful
23 conversion of funds entrusted to the associate broker or
24 qualifying broker, is guilty of a fourth degree felony and
25 shall be punished by a fine of not more than five thousand

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1 dollars (\$5,000) or by imprisonment for a definite term of
2 eight months, or both. Any person who violates any other
3 provision of Chapter 61, Article 29 NMSA 1978 is guilty of a
4 misdemeanor and shall be punished by a fine of not more than
5 five hundred dollars (\$500) or imprisonment for not more than
6 six months, or both.

7 B. In the event any person has engaged or proposes
8 to engage in any act or practice violative of a provision of
9 Chapter 61, Article 29 NMSA 1978, the attorney general or the
10 district attorney of the judicial district in which the person
11 resides or the judicial district in which the violation has
12 occurred or will occur shall, upon application of the
13 commission, maintain an action in the name of the state to
14 prosecute the violation or to enjoin the proposed act or
15 practice.

16 C. In any action brought under Subsection B of this
17 section, if the court finds that a person is engaged or has
18 willfully engaged in any act or practice violative of a
19 provision of Sections 61-29-1 through 61-29-18 NMSA 1978, the
20 attorney general or the district attorney of the judicial
21 district in which the person resides or the judicial district
22 in which the violation has occurred or is occurring shall, upon
23 petition to the court, recover on behalf of the state a civil
24 penalty not exceeding five thousand dollars (\$5,000) per
25 violation and attorney fees and costs."

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