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SENATE BILL 281

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Carroll H. Leavell

AN ACT

RELATING TO LICENSING BOARDS; EXEMPTING THE BOARD OF PHARMACY,
THE BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE, THE NEW MEXICO
STATE BOARD OF PUBLIC ACCOUNTANCY AND THE NEW MEXICO REAL
ESTATE COMMISSION FROM CERTAIN STATE LAWS; MAKING EXCEPTIONS
TO SECTIONS OF THE NMSA 1978 PERTAINING TO PUBLIC MONEY,
PERSONNEL, RETIREMENT, TORT CLAIMS AND ATTORNEY GENERAL AND
STATE AUDITOR SERVICES; PROVIDING FOR TRANSFERS OF MONEY,
APPROPRIATIONS AND PROPERTY TO THE LICENSING BOARDS.

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

Section 1. Section 61-11-5 NMSA 1978 (being Laws 1969,
Chapter 29, Section 4, as amended) is amended to read:

"61-11-5. BOARD MEETINGS- - QUORUM - OFFICERS- - BONDS- -
EXPENSES. - -

A. The board shall annually elect a chairman, vice

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1 chairman and secretary-treasurer from its membership.

2 B. The board shall meet at least once every three
3 months. Special meetings may be called by the chairman and
4 shall be called upon the written request of two or more
5 members of the board. Notification of special meetings shall
6 be made by certified mail unless the notice is waived by the
7 entire board and noted in the minutes. Notice of all regular
8 meetings shall be made by regular mail at least ten days prior
9 to the meeting, and copies of the minutes of all meetings
10 shall be mailed to each board member within forty-five days
11 after any meeting.

12 C. A majority of the board constitutes a quorum.

13 D. Members of the board shall ~~[be reimbursed as~~
14 ~~provided in the Per Diem and Mileage Act and shall receive no~~
15 ~~other compensation, perquisite or allowance]~~ serve without
16 compensation other than reasonable reimbursement for mileage
17 and per diem as determined by the board and paid from board
18 funds. "

19 Section 2. Section 61-11-6 NMSA 1978 (being Laws 1969,
20 Chapter 29, Section 5, as amended) is amended to read:

21 "61-11-6. POWERS AND DUTIES OF BOARD. --

22 A. The board shall:

23 [~~(1) adopt, amend or repeal rules and~~
24 ~~regulations necessary to carry out the provisions of the~~
25 ~~Pharmacy Act in accordance with the provisions of the Uniform~~

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1 ~~Licensing Act;~~

2 ~~(2)~~] (1) provide for examinations of
3 applicants for licensure as pharmacists;

4 ~~[(3)]~~ (2) provide for the issuance and
5 renewal of licenses for pharmacists;

6 ~~[(4)]~~ (3) require and establish criteria for
7 continuing education as a condition of annual renewal of
8 licensure for pharmacists;

9 ~~[(5)]~~ (4) provide for the issuance and annual
10 renewal of licenses for pharmacist interns and for their
11 training, supervision and discipline;

12 ~~[(6)]~~ (5) provide for the licensing of retail
13 pharmacies, nonresident pharmacies, wholesale drug
14 distributors, drug manufacturers, hospital pharmacies, nursing
15 home drug facilities, industrial and public health clinics and
16 all places where dangerous drugs are stored, distributed,
17 dispensed or administered and provide for the inspection of
18 the facilities and activities;

19 ~~[(7)]~~ (6) enforce the provisions of all laws
20 of the state pertaining to the practice of pharmacy and the
21 manufacture, production, sale or distribution of drugs or
22 cosmetics and their standards of strength and purity;

23 ~~[(8)]~~ (7) conduct hearings upon charges
24 relating to the discipline of a registrant or licensee or the
25 denial, suspension or revocation of a registration or a

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1 license in accordance with the Uniform Licensing Act; and
2 [~~(9)~~] ~~cause the prosecution of any person~~
3 ~~violating the Pharmacy Act, the New Mexico Drug, Device and~~
4 ~~Cosmetic Act or the Controlled Substances Act;~~

5 ~~(10)]~~ (8) keep a record of all proceedings of
6 the board.

7 [~~(11)~~] ~~make an annual report to the governor;~~

8 B. The board may:

9 (1) adopt, amend or repeal rules necessary to
10 carry out the provisions of the Pharmacy Act in accordance
11 with the provisions of the Uniform Licensing Act;

12 (2) cause the prosecution of any person
13 violating the Pharmacy Act, the New Mexico Drug, Device and
14 Cosmetic Act or the Controlled Substances Act;

15 [~~(12)~~] (3) appoint and employ, in the board's
16 discretion, a qualified person who is not a member of the
17 board to serve as executive director and define his duties and
18 responsibilities; except that the power to deny, revoke or
19 suspend any license or registration authorized by the Pharmacy
20 Act shall not be delegated by the board;

21 [~~(13)~~] (4) appoint and employ inspectors
22 necessary to enforce the provisions of all acts under the
23 administration of the board, which inspectors shall be
24 pharmacists and have all the powers and duties of peace
25 officers. Notwithstanding any other provisions of the

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1 Pharmacy Act, inspectors are state employees and are not
2 exempt from the Personnel Act or other provisions of law
3 relating to state employees;

4 [~~(14)~~] (5) provide for other qualified
5 employees necessary to carry out the provisions of the
6 Pharmacy Act, which employees, unless otherwise provided in
7 that act, serve at the pleasure of the board and are exempt
8 from the provisions of the Personnel Act. The board may
9 provide for health insurance or other benefits for its
10 employees;

11 [~~(15) have the authority to~~] (6) may employ
12 a competent attorney to give advice and counsel in regard to
13 any matter connected with the duties of the board, to
14 represent the board in any legal proceedings and to aid in the
15 enforcement of the laws in relation to the pharmacy profession
16 and to fix the compensation to be paid to the attorney;
17 provided, however, that the attorney shall be compensated from
18 the money of the board, including that provided for in Section
19 61-11-19 NMSA 1978. The board may request the attorney
20 general to provide the legal services the board needs for the
21 administration of the Pharmacy Act;

22 [~~(16)~~] (7) register and regulate
23 qualifications, training and permissible activities of
24 pharmacy technicians;

25 [~~(17)~~] (8) provide a registry of all persons

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1 licensed as pharmacists or pharmacist interns in the state;
2 [~~and~~

3 ~~(18)~~] (9) adopt rules and regulations that
4 prescribe the activities and duties of pharmacy owners and
5 pharmacists in the provision of pharmaceutical care, drug
6 regimen review and patient counseling in each practice
7 setting;

8 [B. ~~The board may:~~

9 ~~(1)~~] (10) delegate its authority to the
10 executive director to issue temporary licenses as provided in
11 Section 61-11-14 NMSA 1978; [~~and~~

12 ~~(2)~~] (11) provide by regulation for the
13 electronic transmission of prescriptions; and

14 (12) enter into contracts. "

15 Section 3. A new section of the Pharmacy Act is enacted
16 to read:

17 "[NEW MATERIAL] EXEMPTION FROM CERTAIN ACTS. --

18 A. Except as otherwise provided in Section 61-11-6
19 NMSA 1978, the board is specifically exempted from the
20 provisions of the Procurement Code, the Art in Public Places
21 Act and Sections 6-3-1 through 6-3-25, 13-6-1 through 13-6-4
22 and 15-3-1 through 15-3-34 NMSA 1978.

23 B. The board is also specifically exempted from
24 the provisions of the Deferred Compensation Act, the Group
25 Benefits Act, the Public Employee Bargaining Act, the Per Diem

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1 and Mileage Act and Sections 10-7-1 through 10-7-19 NMSA 1978.
2 The board is also specifically exempted from the provisions of
3 the Public Employees Retirement Act and the Retiree Health
4 Care Act. The board is also specifically exempted from the
5 provisions of the Personnel Act. "

6 Section 4. A new section of the Pharmacy Act is enacted
7 to read:

8 "[NEW MATERIAL] APPLICABILITY OF OTHER ACTS. --The board
9 is subject to the provisions of the Tort Claims Act, the Joint
10 Powers Agreements Act, the Inspection of Public Records Act,
11 the Public Records Act, the Open Meetings Act, the
12 Governmental Conduct Act, the Financial Disclosure Act and any
13 other state law applicable to the board unless specifically
14 exempted by the Pharmacy Act. "

15 Section 5. A new section of the Pharmacy Act is enacted
16 to read:

17 "[NEW MATERIAL] BOARD FUNDS. --

18 A. Money received by the board shall be deposited
19 in an account in a federally insured financial institution
20 qualified to do business in New Mexico. Money in the account
21 shall only be withdrawn by the board to carry out the
22 provisions of the Pharmacy Act.

23 B. The state auditor may examine the board's
24 accounts, books and records. The governor may request special
25 audits by the state auditor for the protection and oversight

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1 of the board's money.

2 C. The board's money is not public money or state
3 funds within the meaning of state law relating to investment,
4 deposit, security or expenditure of public money.

5 D. The board's money shall only be used to carry
6 out the provisions of the Pharmacy Act, duties assigned to the
7 board by other laws and the promotion of pharmacy education
8 and standards.

9 E. Money that has accumulated to the credit of the
10 pharmacy fund shall be continued for use by the board. "

11 Section 6. Section 61-14A-3 NMSA 1978 (being Laws 1993,
12 Chapter 158, Section 11, as amended) is amended to read:

13 "61-14A-3. DEFINITIONS. -- As used in the Acupuncture and
14 Oriental Medicine Practice Act:

15 A. "acupuncture" means the use of needles inserted
16 into and removed from the human body and the use of other
17 devices, modalities and procedures at specific locations on
18 the body for the prevention, cure or correction of any
19 disease, illness, injury, pain or other condition by
20 controlling and regulating the flow and balance of energy and
21 functioning of the person to restore and maintain health;

22 B. "board" means the board of acupuncture and
23 oriental medicine;

24 [~~C. "department" means the regulation and~~
25 ~~licensing department;~~

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1 ~~D-~~ C. "doctor of oriental medicine" means a
2 person licensed as a physician to practice acupuncture and
3 oriental medicine with the ability to practice independently,
4 serve as a primary care provider and as necessary collaborate
5 with other health care providers;

6 ~~E-~~ D. "moxibustion" means the use of heat on or
7 above specific locations or on acupuncture needles at specific
8 locations on the body for the prevention, cure or correction
9 of any disease, illness, injury, pain or other condition;

10 ~~F-~~ E. "oriental medicine" means the distinct
11 system of primary health care that uses all allied techniques
12 of oriental medicine, both traditional and modern, to
13 diagnose, treat and prescribe for the prevention, cure or
14 correction of any disease, illness, injury, pain or other
15 physical or mental condition by controlling and regulating the
16 flow and balance of energy and functioning of the person to
17 restore and maintain health;

18 ~~G-~~ F. "primary care provider" means a health
19 care professional acting within the scope of his license who
20 provides the first level of basic or general health care for
21 an individual's health needs, including diagnostic and
22 treatment services; and

23 ~~H-~~ G. "techniques of oriental medicine" means:

24 (1) the diagnostic and treatment techniques
25 used in oriental medicine that include diagnostic procedures;

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1 acupuncture; moxibustion; manual therapy, also known as tui
2 na; other physical medicine modalities and therapeutic
3 procedures; breathing and exercise techniques; and dietary,
4 nutritional and lifestyle counseling;

5 (2) the prescription or administration of any
6 herbal medicine, homeopathic medicine, vitamins, minerals,
7 enzymes, glandular products, amino acids, and dietary and
8 nutritional supplements;

9 (3) the prescription or administration of
10 devices, restricted devices and prescription devices, as those
11 devices are defined in the New Mexico Drug, Device and
12 Cosmetic Act, if the board determines by rule that such
13 devices are necessary in the practice of oriental medicine and
14 if the prescribing doctor of oriental medicine has fulfilled
15 requirements for prescriptive authority in accordance with
16 rules promulgated by the board for the devices enumerated in
17 this paragraph;

18 (4) the prescription or administration of
19 cosmetics, therapeutic serum and over-the-counter drugs, other
20 than those enumerated in Paragraph (2) of this subsection, as
21 those are defined in the New Mexico Drug, Device and Cosmetic
22 Act, if the prescribing doctor of oriental medicine has
23 fulfilled the requirements for prescriptive authority in
24 accordance with rules promulgated by the board for the
25 substances enumerated in this paragraph; and

1 (5) the prescription or administration of the
2 following dangerous drugs as they are defined in the New
3 Mexico Drug, Device and Cosmetic Act, if the prescribing
4 doctor of oriental medicine has fulfilled the requirements for
5 prescriptive authority in accordance with rules promulgated by
6 the board for the substances enumerated in this paragraph:

- 7 (a) sterile water;
- 8 (b) sterile saline;
- 9 (c) sarapin or its generic;
- 10 (d) vapocoolants;
- 11 (e) topical application of naturally
12 occurring hormones; and
- 13 (f) any of the drugs or substances
14 enumerated in Paragraphs (2) and (4) of this subsection if at
15 any time these substances or drugs are classified as dangerous
16 drugs. "

17 Section 7. Section 61-14A-7 NMSA 1978 (being Laws 1993,
18 Chapter 158, Section 15) is amended to read:

19 "61-14A-7. BOARD CREATED-- APPOINTMENT-- OFFICERS--
20 COMPENSATION.--

21 A. There is created the "board of acupuncture and
22 oriental medicine".

23 [~~B. The board shall be administratively attached~~
24 ~~to the department.~~

25 ~~C.] B. The board shall consist of seven members~~

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1 appointed by the governor for terms of three years each. Four
2 members of the board shall be doctors of oriental medicine who
3 have been licensed to practice acupuncture and oriental
4 medicine in New Mexico for at least five years and have
5 practiced in New Mexico for at least two years preceding the
6 date of their appointment. Three members shall be appointed
7 to represent the public and shall not have practiced
8 acupuncture and oriental medicine in this or any other
9 jurisdiction or have any financial interest in the profession
10 regulated. No more than two board members shall be:

11 (1) owners of institutes offering educational
12 programs in acupuncture and oriental medicine;

13 (2) faculty members at institutes offering
14 educational programs in acupuncture and oriental medicine;

15 (3) private tutors offering educational
16 programs in acupuncture and oriental medicine; or

17 (4) officers in a professional association of
18 acupuncture and oriental medicine.

19 ~~[D.]~~ C. Members of the board shall be appointed by
20 the governor for staggered terms of three years that shall be
21 made in such a manner that the terms of board members will
22 expire on July 1. When a board member's term has expired, he
23 shall serve until his successor has been appointed and
24 qualified. Vacancies from an unexpired term shall be filled
25 for the remainder of the term in the same manner as the

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1 original appointment.

2 [E-] D. No board member shall serve more than two
3 consecutive full terms, and any member failing to attend,
4 after he has received proper notice, three consecutive
5 meetings shall be recommended for removal as a board member
6 unless excused for reasons set forth by rule.

7 [F-] E. The board shall elect annually from its
8 membership a chairman and other officers as necessary to carry
9 out its duties.

10 [G-] F. The board shall meet at least once each
11 year and at other times deemed necessary. Other meetings may
12 be called by the chairman, a majority of board members or the
13 governor. A simple majority of the board members serving
14 constitutes a quorum of the board.

15 [H-] G. Members of the board shall [~~be reimbursed~~
16 ~~as provided in the Per Diem and Mileage Act and shall receive~~
17 ~~no other compensation, perquisite or allowance~~] serve without
18 compensation other than reasonable reimbursement for mileage
19 and per diem as determined by the board and paid from board
20 funds. "

21 Section 8. Section 61-14A-8 NMSA 1978 (being Laws 1993,
22 Chapter 158, Section 16) is amended to read:

23 "61-14A-8. BOARD--POWERS. --In addition to any authority
24 provided by law, the board shall have the power to:

25 A. enforce the provisions of the Acupuncture and

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- 1 Oriental Medicine Practice Act;
- 2 B. adopt, publish and file, in accordance with the
- 3 Uniform Licensing Act and the State Rules Act, all rules and
- 4 regulations necessary for the implementation and enforcement
- 5 of the provisions of the Acupuncture and Oriental Medicine
- 6 Practice Act;
- 7 C. adopt a code of ethics;
- 8 D. adopt and use a seal;
- 9 E. inspect institutes, tutorships and the offices
- 10 of licensees;
- 11 F. adopt rules implementing continuing education
- 12 requirements for the purpose of protecting the health and
- 13 well-being of the citizens of this state and maintaining and
- 14 continuing informed professional knowledge and awareness;
- 15 G. employ agents [~~or attorneys~~];
- 16 H. issue investigative subpoenas for the purpose
- 17 of investigating complaints against licensees prior to the
- 18 issuance of a notice of contemplated action;
- 19 I. administer oaths and take testimony on any
- 20 matters within the board's jurisdiction;
- 21 J. conduct hearings upon charges relating to the
- 22 discipline of licensees, including the denial, suspension or
- 23 revocation of a license in accordance with the Uniform
- 24 Licensing Act; [~~and~~]
- 25 K. grant, deny, renew, suspend or revoke licenses

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1 to practice acupuncture and oriental medicine in accordance
2 with the provisions of the Uniform Licensing Act for any cause
3 stated in the Acupuncture and Oriental Medicine Practice Act
4 or the rules and regulations of the board;

5 L. employ staff to carry out the board's duties
6 pursuant to the Acupuncture and Oriental Medicine Practice Act
7 and provide for health insurance and other employee benefits.
8 Employees serve at the pleasure of the board and are exempt
9 from the provisions of the Personnel Act; and

10 M enter into contracts. "

11 Section 9. A new section of the Acupuncture and Oriental
12 Medicine Practice Act is enacted to read:

13 "[NEW MATERIAL] LEGAL SERVICES. -- Upon request of the
14 board, the attorney general shall provide such legal services
15 to the board necessary for the administration of the
16 Acupuncture and Oriental Medicine Practice Act; provided,
17 however, that the board may, in its discretion, employ or
18 contract for the services of other attorneys to assist it in
19 the administration of that act. "

20 Section 10. A new section of the Acupuncture and
21 Oriental Medicine Practice Act is enacted to read:

22 "[NEW MATERIAL] EXEMPTION FROM CERTAIN ACTS. --

23 A. The board is specifically exempted from the
24 provisions of the Procurement Code, the Art in Public Places
25 Act and Sections 6-3-1 through 6-3-25, 13-6-1 through 13-6-4

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1 and 15-3-1 through 15-3-34 NMSA 1978.

2 B. The board is also specifically exempted from
3 the provisions of the Deferred Compensation Act, the Group
4 Benefits Act, the Public Employee Bargaining Act, the Per Diem
5 and Mileage Act and Sections 10-7-1 through 10-7-19 NMSA 1978.
6 The board is also specifically exempted from the provisions of
7 the Public Employees Retirement Act and the Retiree Health
8 Care Act. The board is also specifically exempted from the
9 provisions of the Personnel Act. "

10 Section 11. A new section of the Acupuncture and
11 Oriental Medicine Practice Act is enacted to read:

12 "[NEW MATERIAL] APPLICABILITY OF OTHER ACTS. --The board
13 is subject to the provisions of the Tort Claims Act, the Joint
14 Powers Agreements Act, the Inspection of Public Records Act,
15 the Public Records Act, the Open Meetings Act, the
16 Governmental Conduct Act, the Financial Disclosure Act and any
17 other state law applicable to the board unless specifically
18 exempted by the Acupuncture and Oriental Medicine Practice
19 Act. "

20 Section 12. A new section of the Acupuncture and
21 Oriental Medicine Practice Act is enacted to read:

22 "[NEW MATERIAL] BOARD FUNDS. --

23 A. Money received by the board shall be deposited
24 in an account in a federally insured financial institution
25 qualified to do business in New Mexico. Money in the account

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1 shall only be withdrawn by the board to carry out the
2 provisions of the Acupuncture and Oriental Medicine Practice
3 Act.

4 B. The state auditor may examine the board's
5 accounts, books and records. The governor may request special
6 audits by the state auditor for the protection and oversight
7 of the board's money.

8 C. The board's money is not public money or state
9 funds within the meaning of state law relating to investment,
10 deposit, security or expenditure of public money. "

11 Section 13. Section 61-14A-22 NMSA 1978 (being Laws
12 1993, Chapter 158, Section 30) is amended to read:

13 "61-14A-22. TERMINATION OF AGENCY LIFE--DELAYED
14 REPEAL. --The board of acupuncture and oriental medicine is
15 terminated on July 1, [1999] 2003 pursuant to the Sunset Act.
16 The board shall continue to operate according to [Sections
17 ~~61-14A-1 through 61-14A-21~~] Chapter 61, Article 14A NMSA 1978
18 until July 1, [2000] 2004. Effective July 1, [2000, Sections
19 ~~61-14A-1 through 61-14A-21 NMSA 1978 are~~] 2004, Chapter 61,
20 Article 14A NMSA 1978 is repealed. "

21 Section 14. Section 61-28A-1 NMSA 1978 (being Laws 1992,
22 Chapter 10, Section 1) is amended to read:

23 "61-28A-1. SHORT TITLE. -- [Sections 1 through 26, 28 and
24 ~~29 of this act~~] Chapter 61, Article 28A NMSA 1978 may be cited
25 as the "Public Accountancy Act". "

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1 Section 15. Section 61-28A-3 NMSA 1978 (being Laws 1992,
2 Chapter 10, Section 3, as amended) is amended to read:

3 "61-28A-3. DEFINITIONS. -- As used in the Public
4 Accountancy Act:

5 A. "board" means the New Mexico state board of
6 public accountancy;

7 B. "certified public accountant" means an
8 individual who has successfully met the certification
9 requirements for certified public accountant set forth in the
10 Public Accountancy Act and who has been granted a certificate
11 by the board;

12 C. "continuing professional education" means
13 courses in accounting, auditing, tax or other functions of
14 public accountancy identified and approved by the board and
15 provided to individuals seeking to maintain a valid permit to
16 practice;

17 D. "firm" means a sole proprietorship, a
18 professional corporation, a partnership, a limited liability
19 company or other form of business entity permitted by state
20 law;

21 [~~E.~~] ~~"fund" means the public accountancy fund;~~

22 [~~F.~~] E. "person" means an individual or firm;

23 [~~G.~~] F. "practice" means the performance of
24 public accountancy or the offering to perform public
25 accountancy for a client or potential client by a person

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1 holding himself out to the public as a permit holder or
2 registered firm;

3 ~~[H.]~~ G. "practitioner" means a registered firm or
4 an individual engaged in the practice of public accountancy
5 holding a valid certificate and permit;

6 ~~[I.]~~ H. "public accountancy" means the performance
7 of one or more kinds of services involving accounting or
8 auditing skills, including the issuance of reports on
9 financial statements, the performance of one or more kinds of
10 management, financial advisory or consulting services, the
11 preparation of tax returns or the furnishing of advice on tax
12 matters;

13 ~~[J.]~~ I. "quality review" or "peer review" means a
14 study, appraisal or review of one or more aspects of the
15 accounting and auditing work of a practitioner by a
16 practitioner who is not affiliated with the person or firm
17 being reviewed;

18 ~~[K.]~~ J. "reciprocal jurisdiction" means a state or
19 foreign country identified by the board by rule as having
20 standards for authorizing a person to practice public
21 accountancy equivalent to those prescribed in New Mexico law
22 and by board rule;

23 ~~[L.]~~ K. "registered firm" means a firm that has
24 been granted a registration by the board pursuant to the
25 Public Accountancy Act;

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1 ~~[M-]~~ L. "registered public accountant" means an
2 individual who, prior to December 31, 1990, successfully met
3 the certification requirements for registered public
4 accountant set forth in the Public Accountancy Act or in prior
5 law and who has been granted a certificate by the board;

6 ~~[N-]~~ M. "report" means an opinion or other writing
7 that:

8 (1) states or implies assurance as to the
9 reliability of any financial statements;

10 (2) includes or is accompanied by any
11 statement or implication that the person issuing it has
12 special knowledge or competency in accounting or auditing
13 indicated by the use of names, titles or abbreviations likely
14 to be understood to identify the author of the report as a
15 practitioner; and

16 (3) includes the following types of reports
17 as they are defined by board rule:

- 18 (a) a compilation report;
- 19 (b) a review report; or
- 20 (c) an audit report;

21 ~~[O-]~~ N. "rule" means any written directive of
22 general application duly adopted by the board; and

23 ~~[P-]~~ O. "state" means any state or insular
24 possession of the United States, including the District of
25 Columbia, Puerto Rico, the United States Virgin Islands and

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1 Guam "

2 Section 16. Section 61-28A-7 NMSA 1978 (being Laws 1992,
3 Chapter 10, Section 7) is amended to read:

4 "61-28A-7. BOARD-- OFFICERS-- MEETINGS-- REIMBURSEMENT. --

5 A. The board shall elect annually from among its
6 members a chairman and a secretary-treasurer. Surety bond
7 coverage shall be in accordance with the Surety Bond Act.

8 B. The board shall meet at such times and places
9 as may be fixed by the board. A majority of the board members
10 then in office shall constitute a quorum at any meeting duly
11 called. Meetings of the board shall be open to the public as
12 required by the Open Meetings Act.

13 C. Each member of the board shall [~~receive per~~
14 ~~diem and mileage as provided in the Per Diem and Mileage Act~~
15 ~~and shall receive no other compensation, perquisite or~~
16 ~~allowance~~] serve without compensation other than reasonable
17 reimbursement for mileage and per diem as determined by the
18 board and paid from board funds.

19 D. The limit and extent of immunity provided to
20 members of the board shall be defined by the Tort Claims Act."

21 Section 17. Section 61-28A-8 NMSA 1978 (being Laws 1992,
22 Chapter 10, Section 8, as amended) is amended to read:

23 "61-28A-8. BOARD-- POWERS AND DUTIES. --

24 A. The board shall retain or arrange for the
25 retention of all applications, all documents under oath that

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1 are filed with the board and all records of its proceedings,
2 and it shall maintain a registry of the names and addresses of
3 all certificate and permit holders and registered firms.

4 B. The board may employ an executive director [as
5 ~~an exempt employee~~] and such other personnel as it deems
6 necessary for its administration and enforcement of the Public
7 Accountancy Act and provide for health insurance and other
8 benefits. Employees shall serve at the pleasure of the board
9 and are exempt from the provisions of the Personnel Act.

10 C. The board may retain its own counsel to advise
11 and assist it [~~in addition to such~~] or may request the advice
12 and assistance [~~as is provided by~~] of the attorney general.

13 D. The board may sue and be sued in its official
14 name [~~as an agency of New Mexico~~]. To promote fair and
15 complete investigations and hearings, the board may issue
16 subpoenas to compel the attendance of witnesses and the
17 production of documents, administer oaths, take testimony and
18 receive evidence concerning all matters within its
19 jurisdiction according to the provisions of the Uniform
20 Licensing Act and pursuant to rules adopted by the board.

21 E. The board shall adopt rules governing its
22 administration and enforcement of the Public Accountancy Act.
23 All rule-making activities shall be carried out pursuant to
24 the provisions of the Uniform Licensing Act.

25 F. The board may conduct investigations and

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1 hearings upon its own motion or after receiving notice from
2 any person of an alleged violation of the Public Accountancy
3 Act. All hearings regarding alleged violations of that act
4 shall be conducted pursuant to the provisions of the Uniform
5 Licensing Act. Injunctions and appeals from board orders or
6 decisions shall be pursued according to the provisions of the
7 Uniform Licensing Act and the rules of civil procedure in the
8 district courts.

9 G. The board shall promulgate rules governing the
10 professional and ethical conduct of practitioners.

11 H. The board shall exercise such powers as are
12 necessary to carry out the provisions of the Public
13 Accountancy Act.

14 I. The board shall establish by rule the standards
15 and means by which a practitioner may use a title, designation
16 or abbreviation that indicates he is a specialist or has
17 special expertise in conjunction with the practice of public
18 accountancy. "

19 Section 18. A new section of the Public Accountancy Act
20 is enacted to read:

21 "[NEW MATERIAL] EXEMPTION FROM CERTAIN ACTS. --

22 A. The board is specifically exempted from the
23 provisions of the Procurement Code, the Art in Public Places
24 Act and Sections 6-3-1 through 6-3-25, 13-6-1 through 13-6-4
25 and 15-3-1 through 15-3-34 NMSA 1978.

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1 B. The board is also specifically exempted from
2 the provisions of the Deferred Compensation Act, the Group
3 Benefits Act, the Public Employee Bargaining Act, the Per Diem
4 and Mileage Act and Sections 10-7-1 through 10-7-19 NMSA 1978.
5 The board is also specifically exempted from the provisions of
6 the Public Employees Retirement Act and the Retiree Health
7 Care Act. The board is also specifically exempted from the
8 provisions of the Personnel Act. "

9 Section 19. A new section of the Public Accountancy Act
10 is enacted to read:

11 "[NEW MATERIAL] APPLICABILITY OF OTHER ACTS. --The board
12 is specifically subject to the Tort Claims Act, the Joint
13 Powers Agreements Act, the Inspection of Public Records Act,
14 the Public Records Act, the Open Meetings Act, the
15 Governmental Conduct Act, the Financial Disclosure Act and any
16 other state law applicable to the board unless otherwise
17 specifically exempted in the Public Accountancy Act. "

18 Section 20. A new section of the Public Accountancy Act
19 is enacted to read:

20 "[NEW MATERIAL] BOARD FUNDS. --

21 A. Money received by the board shall be deposited
22 in an account in a federally insured financial institution
23 qualified to do business in New Mexico. Money in the account
24 shall only be withdrawn by the board to carry out the
25 provisions of the Public Accountancy Act.

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1 B. The state auditor may examine the board's
2 accounts, books and records. The governor may request special
3 audits by the state auditor for the protection and oversight
4 of the board's money.

5 C. The board's money is not public money or state
6 funds within the meaning of state law relating to investment,
7 deposit, security or expenditure of public money. "

8 Section 21. Section 61-28A-28 NMSA 1978 (being Laws
9 1993, Chapter 83, Section 6) is amended to read:

10 "61-28A-28. TERMINATION OF AGENCY LIFE--DELAYED
11 REPEAL. --The New Mexico state board of public accountancy is
12 terminated on July 1, [1999] 2003 pursuant to the provisions
13 of the Sunset Act. The board shall continue to operate
14 according to the provisions of the Public Accountancy Act
15 until July 1, [2000] 2004. Effective July 1, [2000] 2004, the
16 Public Accountancy Act is repealed. "

17 Section 22. Section 61-29-7 NMSA 1978 (being Laws 1959,
18 Chapter 226, Section 6, as amended) is amended to read:

19 "61-29-7. REIMBURSEMENT AND EXPENSES. --Each member of
20 the commission shall [~~receive per diem and mileage as provided~~
21 ~~in the Per Diem and Mileage Act and shall receive no other~~
22 ~~compensation, perquisite or allowance~~] serve without
23 compensation other than reasonable reimbursement for mileage
24 and per diem as determined by the commission and paid from
25 commission funds. The commission may select and appoint an

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1 administrator, who shall serve as executive secretary to the
2 commission on annual salary, to perform the duties prescribed
3 by ~~[this act]~~ Chapter 61, Article 29 NMSA 1978 and such
4 additional duties as the commission may determine. The
5 commission may employ subordinate officers, stenographers,
6 clerks ~~[an attorney]~~ and such other assistance as may be
7 needed and fix their compensation to be paid ~~[from]~~ by the
8 ~~[real estate]~~ commission ~~[fund and to]~~. The commission may
9 provide for health insurance and other benefits for its staff.
10 Employees serve at the pleasure of the commission and are
11 exempt from the provisions of the Personnel Act. The
12 commission may enter into contracts and purchase such
13 supplies, equipment and records and ~~[to]~~ incur such other
14 expenses as may be necessary to carry out the provisions of
15 ~~[this act]~~ Chapter 61, Article 29 NMSA 1978."

16 Section 23. A new section of Chapter 61, Article 29 NMSA
17 1978 is enacted to read:

18 "[NEW MATERIAL] LEGAL SERVICES.--Upon request of the
19 commission, the attorney general shall provide such legal
20 services to the commission necessary for the administration of
21 Chapter 61, Article 29 NMSA 1978; provided, however, that the
22 commission may, in its discretion, employ or contract for the
23 services of other attorneys to assist it in the administration
24 of that article."

25 Section 24. A new section of Chapter 61, Article 29 NMSA

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1 1978 is enacted to read:

2 "[NEW MATERIAL] EXEMPTION FROM CERTAIN ACTS. --

3 A. The commission is specifically exempted from
4 the provisions of the Procurement Code, the Art in Public
5 Places Act and Sections 6-3-1 through 6-3-25, 13-6-1 through
6 13-6-4 and 15-3-1 through 15-3-34 NMSA 1978.

7 B. The commission is also specifically exempted
8 from the provisions of the Deferred Compensation Act, the
9 Group Benefits Act, the Public Employee Bargaining Act, the
10 Per Diem and Mileage Act and Sections 10-7-1 through 10-7-19
11 NMSA 1978. The commission is also specifically exempted from
12 the provisions of the Public Employees Retirement Act and the
13 Retiree Health Care Act. The commission is also specifically
14 exempted from the provisions of the Personnel Act. "

15 Section 25. A new section of Chapter 61, Article 29 NMSA
16 1978 is enacted to read:

17 "[NEW MATERIAL] APPLICABILITY OF OTHER ACTS. --The
18 commission, as an organization and its individual members and
19 employees, is specifically subject to and covered by the
20 provisions of the Tort Claims Act, the Joint Powers Agreements
21 Act, the Inspection of Public Records Act, the Public Records
22 Act, the Open Meetings Act, the Governmental Conduct Act, the
23 Financial Disclosure Act and any other state law applicable to
24 the commission unless otherwise specifically exempted in
25 Chapter 61, Article 29 NMSA 1978. "

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1 Section 26. Section 61-29-8 NMSA 1978 (being Laws 1959,
2 Chapter 226, Section 7, as amended) is amended to read:

3 "61-29-8. LICENSE FEES--DISPOSITION.--

4 A. The following fees shall be charged by the
5 commission [~~and paid into the real estate commission fund~~]:

6 (1) for each examination, a fee of sixty
7 dollars (\$60.00);

8 (2) for each broker's license issued, a fee
9 of one hundred eighty dollars (\$180) and for each renewal
10 thereof, a fee of one hundred eighty dollars (\$180);

11 (3) for each salesperson's license issued, a
12 fee of one hundred eighty dollars (\$180) and for each renewal
13 thereof, a fee of one hundred eighty dollars (\$180);

14 (4) subject to the provisions of Paragraph
15 (11) of this subsection, for each change of place of business
16 or change of employer or contractual associate, a fee of
17 twenty dollars (\$20.00);

18 (5) for each duplicate license, where the
19 license is lost or destroyed and affidavit is made thereof, a
20 fee of twenty dollars (\$20.00);

21 (6) for each license history, a fee of
22 twenty-five dollars (\$25.00);

23 (7) for copying of documents by the
24 commission, a fee set by the commission, not to exceed one
25 dollar (\$1.00) per copy;

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1 (8) for each additional license law and rules
2 and regulations booklet, a fee set by the commission not to
3 exceed ten dollars (\$10.00) per booklet;

4 (9) for each additional directory of licensed
5 real estate brokers and salespersons, a fee set by the
6 commission not to exceed twenty dollars (\$20.00);

7 (10) for each supplement to the directory of
8 licensed real estate brokers and salespersons, a fee set by
9 the commission not to exceed twenty dollars (\$20.00); and

10 (11) when a license must be reissued for a
11 salesperson because of change of address of the licensed
12 broker's office, death of the licensed broker when a successor
13 licensed broker is replacing the decedent and the salesperson
14 remains in the office or change of name of the office or the
15 entity of the licensed broker, the licensed broker or
16 successor licensed broker as the case may be shall pay to the
17 commission as the affected salesperson's license reissue fee
18 twenty dollars (\$20.00), but if there are eleven or more
19 affected salespersons in the licensed broker's office, the
20 total fee paid to effect reissuance of all of those licenses
21 shall not exceed two hundred dollars (\$200).

22 B. All fees set by the commission shall be set by
23 rule or regulation and only after all requirements have been
24 met as prescribed by Chapter 61, Article 29 NMSA 1978. Any
25 changes or amendments to the rules and regulations shall be

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1 filed in accordance with the provisions of the State Rules
2 Act.

3 ~~[C. The commission shall deposit all money~~
4 ~~received by it from fees in accordance with the provisions of~~
5 ~~Chapter 61, Article 29 NMSA 1978 with the state treasurer, who~~
6 ~~shall keep that money in a separate fund to be known as the~~
7 ~~"real estate commission fund", and money so deposited in that~~
8 ~~fund is appropriated for the purpose of carrying out the~~
9 ~~provisions of Chapter 61, Article 29 NMSA 1978 or to maintain~~
10 ~~the real estate recovery fund as required by the Real Estate~~
11 ~~Recovery Fund Act and shall be paid out of the fund upon the~~
12 ~~vouchers of the president and secretary of the commission;~~
13 ~~provided that the total fees and charges collected and paid~~
14 ~~into the state treasury and any money so deposited shall be~~
15 ~~expended only for the purposes authorized by Chapter 61,~~
16 ~~Article 29 NMSA 1978.~~

17 ~~D.]~~ C. The commission shall by regulation provide
18 for a proportionate refund of the license issuance fee or the
19 license renewal fee if the license is issued or renewed for a
20 period of two or three years pursuant to Section 61-29-11 NMSA
21 1978 and is terminated with more than one year remaining.

22 D. Money received by the commission shall be
23 deposited in an account in a federally insured financial
24 institution qualified to do business in New Mexico. Money in
25 the account shall only be withdrawn by the commission to carry

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1 out the provisions of Chapter 61, Article 29 NMSA 1978.

2 E. The state auditor may examine the commission's
3 accounts, books and records. The governor may request special
4 audits by the state auditor for the protection and oversight
5 of the board's money.

6 F. The commission's money is not public money or
7 state funds within the meaning of state law relating to
8 investment, deposit, security or expenditure of public money. "

9 Section 27. Section 61-29-19 NMSA 1978 (being Laws 1978,
10 Chapter 203, Section 2, as amended by Laws 1993, Chapter 83,
11 Section 7 and also by Laws 1993, Chapter 253, Section 3) is
12 amended to read:

13 "61-29-19. TERMINATION OF AGENCY LIFE--DELAYED
14 REPEAL. --The New Mexico real estate commission is terminated
15 on July 1, [~~1999~~] 2003 pursuant to the Sunset Act. The
16 commission shall continue to operate according to the
17 provisions of Chapter 61, Article 29 NMSA 1978 until July 1,
18 2000. Effective July 1, [~~2000~~] 2004, Chapter 61, Article 29
19 NMSA 1978 is repealed. "

20 Section 28. Section 61-29-20 NMSA 1978 (being Laws 1980,
21 Chapter 82, Section 1) is amended to read:

22 "61-29-20. SHORT TITLE. --Sections [~~1 through 10 of this~~
23 ~~act~~] 61-29-20 through 61-29-29 NMSA 1978 may be cited as the
24 "Real Estate Recovery Fund Act". "

25 Section 29. Section 61-29-21 NMSA 1978 (being Laws 1980,

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1 Chapter 82, Section 2) is amended to read:

2 "61-29-21. FUND CREATED. -- ~~[There is created in the state~~
3 ~~treasury a fund which shall be]~~ The commission shall create
4 and maintain an account known as the "real estate recovery
5 fund" to be administered by the ~~[real-estate]~~ commission in
6 accordance with the provisions of the Real Estate Recovery
7 Fund Act. All money received by the ~~[real-estate]~~ commission
8 pursuant to the Real Estate Recovery Fund Act shall be
9 ~~[credited to the real-estate recovery fund]~~ deposited in an
10 account in a federally insured financial institution qualified
11 to do business in New Mexico. Money in the account shall be
12 separate from other commission money. The ~~[state-treasurer]~~
13 commission may invest money in the real estate recovery fund
14 in United States bonds or treasury certificates ~~[under]~~
15 pursuant to such rules and regulations as may be prescribed by
16 the ~~[state-board-of-finance]~~ commission; provided that no
17 investments shall be made ~~[which]~~ that will impair the
18 necessary liquidity required to satisfy judgment payments
19 awarded pursuant to the Real Estate Recovery Fund Act. All
20 interest earned from such investments shall be credited to the
21 fund to pay any future judgments only. The state auditor may
22 examine the commission's accounts, books and records relating
23 to the performance of its duties pursuant to the Real Estate
24 Recovery Fund Act. The governor may request special audits by
25 the state auditor for the protection and oversight of the

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1 fund. Money in the fund is not public money or state funds
2 within the meaning of state law relating to investment,
3 deposit, security or expenditure of public money. "

4 Section 30. Section 61-29-22 NMSA 1978 (being Laws 1980,
5 Chapter 82, Section 3, as amended) is amended to read:

6 "61-29-22. ADDITIONAL FEES. --

7 A. [~~On and after the effective date of the Real~~
8 ~~Estate Recovery Fund Act]~~ The commission shall collect an
9 annual fee not in excess of ten dollars (\$10.00) from each
10 real estate licensee prior to the issuance of the next
11 license.

12 B. [~~On and after the effective date of the Real~~
13 ~~Estate Recovery Fund Act]~~ The commission shall collect from
14 each successful applicant for an original real estate license,
15 in addition to his original license fee, a fee not in excess
16 of ten dollars (\$10.00).

17 C. The additional fees provided by this section
18 shall be [~~credited to~~] deposited to the real estate recovery
19 fund. The amount of the real estate recovery fund shall be
20 maintained at two hundred fifty thousand dollars (\$250,000).
21 If the real estate recovery fund falls below this amount, the
22 commission shall have authority to adjust the annual amount of
23 additional fees to be charged licensees or to draw on the real
24 estate commission [~~fund~~] account established pursuant to
25 Section 61-29-8 NMSA 1978 in order to maintain the fund level

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1 as required in this section. "

2 Section 31. TEMPORARY PROVISION--TRANSFER OF PROPERTY. --

3 A. On the effective date of this act, all
4 appropriations, money and property of the board of pharmacy
5 held by the state shall be transferred to the board. All
6 agreements and contractual obligations of the regulation and
7 licensing department pertaining to the board of pharmacy shall
8 be binding on the board. All existing rules relating to
9 licensing of pharmacists shall continue to be binding on the
10 board of pharmacy.

11 B. On the effective date of this act, all
12 appropriations, money and property of the board of acupuncture
13 and oriental medicine held by the state shall be transferred
14 to the board. All agreements and contractual obligations of
15 the regulation and licensing department pertaining to the
16 board of acupuncture and oriental medicine shall be binding on
17 the board. All existing rules relating to licensing of
18 acupuncturists and oriental medicine practitioners shall
19 continue to be binding on the board of acupuncture and
20 oriental medicine.

21 C. On the effective date of this act, all
22 appropriations, money and property of the New Mexico state
23 board of public accountancy held by the state shall be
24 transferred to the board. All agreements and contractual
25 obligations of the regulation and licensing department

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1 pertaining to the New Mexico state board of public accountancy
2 shall be binding on the board. All existing rules relating to
3 licensing of accountants shall continue to be binding on the
4 New Mexico state board of public accountancy.

5 D. On the effective date of this act, all
6 appropriations, money and property of the New Mexico real
7 estate commission, including the real estate recovery fund,
8 held by the state shall be transferred to the commission. All
9 agreements and contractual obligations of the regulation and
10 licensing department pertaining to the New Mexico real estate
11 commission shall be binding on the commission. All existing
12 rules relating to licensing of real estate brokers and
13 salespersons shall continue to be binding on the New Mexico
14 real estate commission.

15 Section 32. REPEAL. -- Sections 61-11-19, 61-14A-18 and
16 61-28A-22 NMSA 1978 (being Laws 1969, Chapter 29, Section 18,
17 Laws 1993, Chapter 158, Section 26, and Laws 1992, Chapter 10,
18 Section 22, as amended) are repealed.

19 Section 33. EFFECTIVE DATE. -- The effective date of the
20 provisions of this act is July 1, 1999.

1 FORTY- FOURTH LEGISLATURE

2 FIRST SESSION, 1999

3
4
5 March 3, 1999

6
7 Mr. President:

8
9 Your PUBLIC AFFAIRS COMMITTEE, to whom has been
10 referred
11

12
13 SENATE BILL 281

14
15 has had it under consideration and reports same with
16 recommendation that it DO PASS, and thence referred to the
17 CORPORATIONS & TRANSPORTATION COMMITTEE.

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19 Respectfully submitted,
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Shannon Robinson, Chairman

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Adopted _____ Not

Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 5 For 0 Against

Yes: 5

No: 0

Excused: Boitano, Garcia, Stockard, Smith

Absent: None

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