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SENATE BILL 507

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

INTRODUCED BY

Mark Boitano

AN ACT

RELATING TO LICENSING; EXTENDING THE EXISTENCE OF THE NEW MEXICO REAL ESTATE COMMISSION; CHANGING CERTAIN PROVISIONS FOR LICENSING, FEES AND MISCONDUCT OF REAL ESTATE LICENSEES; CREATING THE REAL ESTATE COMMISSION FUND; AMENDING AND REPEALING SECTIONS OF THE NMSA 1978.

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 any ]~~ No person ~~[ business association or corporation to ]~~ may engage in the business of, act in the capacity of, advertise ~~[ or ]~~, display in any manner or ~~[ otherwise ]~~ assume to engage in the business of or act as a real estate broker or real estate ~~[ salesman within ]~~ salesperson in this state without a license

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1 issued by the [~~New Mexico real estate~~] commission. "

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

4 "61-29-2. DEFINITIONS AND EXCEPTIONS. - -

5 [~~A. A real estate "broker" within the meaning of~~  
6 ~~Chapter 61, Article 29 NMSA 1978, is a person, business~~  
7 ~~association or corporation who for a salary, fee, commission~~  
8 ~~or valuable consideration lists, sells or offers for sale,~~  
9 ~~buys or offers to buy or negotiates the purchase or sale or~~  
10 ~~exchange of real estate or who leases or offers to lease, or~~  
11 ~~rents or offers for rent or auctions or offers or attempts or~~  
12 ~~agrees to auction real estate or who buys or offers to buy,~~  
13 ~~sell or offers to sell or otherwise deals in options on real~~  
14 ~~estate or advertises or holds himself out as being engaged in~~  
15 ~~the business of buying, selling, exchanging, renting, leasing,~~  
16 ~~auctioning or dealing with options on any real estate or the~~  
17 ~~improvement thereon for others, as a whole or partial~~  
18 ~~vocation. The term "broker" also includes any person employed~~  
19 ~~by or on behalf of the owner of real estate to conduct the~~  
20 ~~sale, leasing or other disposition thereof at a salary or fee,~~  
21 ~~commission or any other consideration. It also includes any~~  
22 ~~person who engages in the business of charging an advance fee~~  
23 ~~or contracting for collection of a fee in connection with any~~  
24 ~~contract whereby he undertakes primarily to promote the sale~~  
25 ~~of real estate through its listing in a publication issued~~

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1 ~~primarily for such purpose or for referral of information~~  
2 ~~concerning such real estate to brokers, or both. The term]~~

3

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

5 (1) "broker" means a person who:

6 (a) for consideration from another,  
7 lists, sells or offers to sell real estate; buys or offers to  
8 buy real estate; or negotiates the purchase, sale or exchange  
9 of real estate or options on real estate;

10 (b) leases, rents or auctions or offers  
11 to lease, rent or auction real estate;

12 (c) advertises or holds himself out as  
13 being engaged in the business of buying, selling, exchanging,  
14 renting, leasing, auctioning or dealing with options on real  
15 estate for others as a whole or partial vocation; or

16 (d) engages in the business of charging  
17 an advance fee or contracting for collection of a fee in  
18 connection with a contract under which he undertakes primarily  
19 to promote the sale of real estate through its listing in a  
20 publication issued primarily for that purpose or for the  
21 purpose of referral of information concerning real estate to  
22 brokers;

23 (2) "commission" means the New Mexico real  
24 estate commission created pursuant to Section 61-29-4 NMSA  
25 1978;

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1                   (3) "license" means a real estate broker's  
2 license issued by the commission; and

3                   (4) "real estate" [as used in Chapter 61,  
4 Article 29 NMSA 1978, shall include] includes leaseholds and  
5 other interest less than leaseholds, including rights to use  
6 property [~~Resident managers of apartment buildings are not~~  
7 ~~required to be licensed, provided they do not carry on any~~  
8 ~~other real estate activity and do not serve as a resident~~  
9 ~~manager for more than one employer]; and~~

10                   [~~B. A real estate~~] "salesperson" [within the  
11 meaning of Chapter 61, Article 29 NMSA 1978, is any] means a  
12 person who for a compensation or valuable consideration is  
13 associated with or engaged under contract either directly or  
14 indirectly by or on behalf of a licensed broker to participate  
15 in any activity included in Subparagraph (a) or (b) of  
16 Paragraph (1) of this subsection [A of this section] or in the  
17 pursuance of [~~such~~] the broker's business, as a whole or  
18 partial vocation.

19                   [~~C. Any one~~] B. A single act of a person  
20 [~~business association or corporation~~] in performing or  
21 attempting to perform an activity [~~set forth~~] described in  
22 Subparagraphs (a) through (d) of Paragraph (1) of Subsection A  
23 of this section [shall constitute] constitutes the person  
24 [~~business association or corporation a real estate~~] a broker.  
25 [~~or~~] A single act of a person in performing or attempting to

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1 perform an activity described in Subparagraph (a) or (b) of  
2 Paragraph (1) of Subsection A of this section constitutes the  
3 person a real estate salesperson.

4 ~~[D.]~~ C. The provisions of Chapter 61, Article 29  
5 NMSA 1978 ~~[shall]~~ do not apply to ~~[be construed to include,~~  
6 ~~held to include or apply to]:~~

7 (1) ~~[any]~~ a person ~~[business association or~~  
8 ~~corporation]~~ who as owner or lessor performs any of the  
9 activities included in this section with reference to property  
10 owned or leased by him, the employees of the owner or lessor  
11 or the employees of a ~~[real estate]~~ broker acting on behalf of  
12 the owner or lessor, with respect to the property owned or  
13 leased, ~~[where]~~ if the acts are performed in the regular  
14 course of or incident to the management of the property and  
15 the investments, except ~~[where]~~ when the sale or offering for  
16 sale or the lease or offering for lease of the property  
17 constitutes a subdivision containing one hundred or more  
18 parcels;

19 (2) isolated or sporadic transactions not  
20 exceeding two transactions annually ~~[where]~~ in which a person  
21 acts as attorney-in-fact under a duly executed power of  
22 attorney delivered by an owner authorizing the person to  
23 finally consummate and to perform under any contract the sale,  
24 leasing or exchange of real estate on behalf of the owner; and  
25 the owner or attorney-in-fact have not used a power of

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1 attorney for the purpose of evading the provisions of Chapter  
2 61, Article 29 NMSA 1978;

3 (3) transactions where a person acts as  
4 attorney-in-fact under a duly executed power of attorney  
5 delivered by an owner related to the attorney-in-fact [ ~~by up~~  
6 ~~to~~] within the fourth degree of consanguinity or closer,  
7 authorizing the person to finally consummate and to perform  
8 under any contract for the sale, leasing or exchange of real  
9 estate on behalf of the owner;

10 (4) the services rendered by an attorney at  
11 law in the performance of his duties as an attorney at law;

12 (5) a person acting in the capacity of a  
13 receiver, trustee in bankruptcy, administrator or executor, a  
14 person selling real estate pursuant to an order of any court  
15 or a trustee acting under a trust agreement, deed of trust or  
16 will or the regular salaried employee of a trustee;

17 (6) the activities of a salaried employee of  
18 a governmental agency acting within the scope of his  
19 employment; or

20 (7) persons who deal exclusively in mineral  
21 leases or the sale or purchase of mineral rights or royalties  
22 in any case in which the fee to the land or the surface rights  
23 are in no way involved in the transaction. "

24 Section 3. Section 61-29-4 NMSA 1978 (being Laws 1959,  
25 Chapter 226, Section 3, as amended) is amended to read:

1 "61-29-4. CREATION OF COMMISSION-- POWERS AND DUTIES. --

2 [~~There is created~~]

3 A. The New Mexico real estate commission [~~called~~  
4 "~~the commission~~" in Chapter 61, Article 29 NMSA 1978] is  
5 created. The commission [~~shall be appointed by the governor~~  
6 ~~and shall consist~~] consists of five members [~~who shall have~~  
7 ~~been~~] appointed by the governor. Members must have been  
8 residents of the state for three consecutive years immediately  
9 prior to their appointment. Four [~~of whom shall have been~~  
10 ~~real estate~~] shall be brokers licensed in New Mexico and one  
11 [~~of whom~~] shall be a [~~member of the public~~] natural person who  
12 has never been licensed as a real estate broker or salesperson  
13 [~~provided~~] pursuant to Chapter 61, Article 29 NMSA 1978. Not  
14 more than one member [~~shall~~] may be from [~~any~~] one county  
15 [~~within the state~~]. The members of the commission shall serve  
16 for a period of five years or until their successors are  
17 appointed and qualified. Members appointed to fill vacancies  
18 shall [~~be appointed~~] serve for [~~any~~] the unexpired term. The  
19 governor may remove any member for cause.

20 B. The commission [~~shall possess all~~] has the  
21 powers and [~~perform all the~~] duties prescribed by Chapter 61,  
22 Article 29 NMSA 1978 and [~~as otherwise provided~~] prescribed by  
23 [~~law, and~~] other laws. It [~~is expressly vested with~~] has the  
24 power [~~and authority~~] to make and enforce [~~any~~] rules [~~and~~  
25 ~~regulations~~] to carry out the provisions of [~~that article~~]

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1 Chapter 61, Article 29 NMSA 1978. Prior to [~~any~~] final action  
2 on any proposed changes or amendments to the rules [~~and~~  
3 ~~regulations~~] of the commission, the commission [~~may~~] shall  
4 publish notice of the proposed action in its official  
5 publication, distribute the publication to each active  
6 licensee and give the time and place for a public hearing on  
7 the proposed changes. The hearing shall be held at least  
8 thirty days prior to any proposed final action. Any changes  
9 or amendments to the rules [~~and regulations~~] shall be filed  
10 [~~in accordance with the procedures of~~] pursuant to the State  
11 Rules Act [~~and shall become effective thirty days after~~  
12 ~~notification to all active licensees of the filing of the~~  
13 ~~changes or amendments~~]. The commission may employ any staff  
14 it deems necessary to assist in carrying out its duties and in  
15 keeping its records.

16 C. The "real estate commission fund" is created in  
17 the state treasury. Money received by the commission pursuant  
18 to law, except money received pursuant to the Real Estate  
19 Recovery Fund Act, shall be paid to the treasurer to be  
20 deposited in the fund and invested. Income from investment of  
21 the real estate commission fund shall be deposited in the  
22 fund. Money in the fund is appropriated to the commission to  
23 be expended in carrying out its duties under and administering  
24 the provisions of Chapter 61, Article 29 NMSA 1978. Balances  
25 in the fund do not revert to the general fund. "



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1           Section 4. Section 61-29-4.1 NMSA 1978 (being Laws 1985,  
2 Chapter 89, Section 1, as amended) is amended to read:

3           "61-29-4.1. ADDITIONAL POWERS OF COMMISSION--CONTINUING  
4 EDUCATION PROGRAMS--MINIMUM REQUIREMENTS. -- [ ~~In addition to the~~  
5 ~~powers and duties granted the commission under the provisions~~  
6 ~~of Section 61-29-4 NMSA 1978~~] The commission shall adopt  
7 [~~regulations~~] rules providing for continuing educational  
8 programs that offer courses in selling, leasing or managing  
9 residential, commercial and industrial property as well as  
10 courses reviewing basic real estate law and practice. The  
11 [~~regulations~~] rules shall require that every licensee except  
12 licensees who are sixty-five years of age or older and who  
13 have a minimum of twenty [~~years~~] years of continuously  
14 licensed experience in the selling, leasing or managing of  
15 real property, as a condition of his license renewal, shall  
16 successfully complete thirty [~~classroom~~] credit hours of  
17 instruction every three years in courses approved by the  
18 commission. The [~~regulations~~] rules shall prescribe areas of  
19 specialty or expertise and may require that a certain part of  
20 the thirty credit hours of classroom instruction be devoted to  
21 courses in the area of a licensee's specialty or expertise. "

22           Section 5. Section 61-29-5 NMSA 1978 (being Laws 1959,  
23 Chapter 226, Section 4) is amended to read:

24           "61-29-5. ORGANIZATION OF COMMISSION. -- The commission  
25 shall organize by electing a president, vice president and

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1 secretary from its members. A majority of the commission  
2 [~~shall constitute~~] constitutes a quorum and may exercise all  
3 powers and duties devolving upon it and do all things  
4 necessary to carry into effect the provisions of [~~this act~~]  
5 Chapter 61, Article 29 NMSA 1978. The [~~secretary of the~~]  
6 commission shall keep a record of its proceedings, a register  
7 of persons licensed as real estate brokers and as real estate  
8 [~~salesmen~~] salespersons showing the name, place of business of  
9 each and the date and number of his [~~or her certificate~~]  
10 license and a record of all licenses [~~or certificates~~] issued,  
11 refused, [~~removed~~] suspended or revoked. This record shall be  
12 open to public inspection at all reasonable times. "

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

15 "61-29-7. REIMBURSEMENT AND EXPENSES. -- Each member of  
16 the commission shall receive per diem and mileage as provided  
17 in the Per Diem and Mileage Act and shall receive no other  
18 compensation, perquisite or allowance. The commission may  
19 select and appoint an administrator, who shall serve as  
20 executive secretary to the commission on annual salary, to  
21 perform the duties prescribed by [~~this act~~] Chapter 61,  
22 Article 29 NMSA 1978 and such additional duties as the  
23 commission may determine. The commission may employ  
24 subordinate officers, stenographers, clerks, an attorney and  
25 such other assistance as may be needed and fix their

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1 compensation to be paid from the real estate commission fund  
2 and ~~[to]~~ purchase such supplies, equipment and records and  
3 ~~[to]~~ incur such other expenses as may be necessary to carry  
4 out the provisions of ~~[this act]~~ Chapter 61, Article 29 NMSA  
5 1978. "

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

8 "61-29-8. LICENSE FEES ~~[DISPOSITION]~~. --

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

11 (1) ~~for each examination, a fee of sixty~~  
12 ~~dollars (\$60.00);~~

13 (2) ~~for each broker's license issued, a fee~~  
14 ~~of one hundred eighty dollars (\$180) and for each renewal~~  
15 ~~thereof, a fee of one hundred eighty dollars (\$180);~~

16 (3) ~~for each salesperson's license issued, a~~  
17 ~~fee of one hundred eighty dollars (\$180) and for each renewal~~  
18 ~~thereof, a fee of one hundred eighty dollars (\$180);~~

19 (4) ~~subject to the provisions of Paragraph~~  
20 ~~(11) of this subsection, for each change of place of business~~  
21 ~~or change of employer or contractual associate, a fee of~~  
22 ~~twenty dollars (\$20.00);~~

23 ~~[(5) for each duplicate license, where the~~  
24 ~~license is lost or destroyed and affidavit is made thereof, a~~  
25 ~~fee of twenty dollars (\$20.00);~~

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1                   ~~(6) for each license history, a fee of~~  
2 ~~twenty-five dollars (\$25.00);~~

3                   ~~(7) for copying of documents by the~~  
4 ~~commission, a fee set by the commission not to exceed one~~  
5 ~~dollar (\$1.00) per copy;~~

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

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

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

15                   ~~(11) when a license must be reissued for a~~  
16 ~~salesperson because of change of address of the licensed~~  
17 ~~broker's office, death of the licensed broker when a successor~~  
18 ~~licensed broker is replacing the decedent and the salesperson~~  
19 ~~remains in the office or change of name of the office or the~~  
20 ~~entity of the licensed broker, the licensed broker or~~  
21 ~~successor licensed broker as the case may be shall pay to the~~  
22 ~~commission as the affected salesperson's license reissue fee~~  
23 ~~twenty dollars (\$20.00), but if there are eleven or more~~  
24 ~~affected salespersons in the licensed broker's office, the~~  
25 ~~total fee paid to effect reissuance of all of those licenses~~

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1 ~~shall not exceed two hundred dollars (\$200).~~

2 B.] All fees [~~set~~] charged by the commission shall  
3 be set by rule [~~or regulation and only after all requirements~~  
4 ~~have been met as prescribed by Chapter 61, Article 29 NMSA~~  
5 ~~1978. Any changes or amendments to the rules and regulations~~  
6 ~~shall be filed in accordance with the provisions of the State~~  
7 ~~Rules Act.~~

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

22 D.] but no fee shall not exceed two hundred  
23 dollars (\$200). The commission shall by [~~regulation~~] rule  
24 provide for a proportionate refund of the license issuance fee  
25 or the license renewal fee if the license is issued or renewed

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1 for a period of [~~two or~~] three years pursuant to Section  
2 61-29-11 NMSA 1978 and is terminated with more than one year  
3 remaining. "

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

6 "61-29-9. QUALIFICATIONS FOR LICENSE. --

7 A. Licenses shall be granted only to persons who  
8 are deemed by the commission to be of good repute and  
9 competent to transact the business of a real estate broker or  
10 salesperson in [~~such~~] a manner [~~as to~~] that will safeguard the  
11 interests of the public.

12 B. [~~Each~~] An applicant for a broker's license  
13 shall be a legal resident of the United States, have reached  
14 the age of majority and [~~have been an actual bona fide~~] be a  
15 resident of New Mexico [~~for six months next preceding the~~  
16 ~~filing of application.~~ Each] at the time of application for  
17 licensing. As a prerequisite for licensing, an applicant for  
18 a real estate broker's license shall:

19 (1) have [~~performed actively~~] been active as  
20 a real estate salesperson in New Mexico for at least twenty-  
21 four months out of the preceding thirty-six months immediately  
22 prior to filing application and shall furnish the commission a  
23 certificate that he has completed successfully [~~ninety~~  
24 ~~classroom hours of instruction in basic real estate courses~~] a  
25 broker basics course approved by the commission;

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1                                    [~~(2)~~— furnish the commission a certificate  
2 that he has completed successfully one hundred eighty  
3 classroom hours of instruction in basic real estate courses  
4 approved by the commission;

5                                    ~~(3)~~] (2) furnish the commission a certificate  
6 that he is a duly licensed real estate broker in good standing  
7 in another state, providing he has completed successfully  
8 [~~ninety~~] sixty classroom hours of instruction in basic real  
9 estate courses approved by the commission; or

10                                    [~~(4)~~] (3) furnish the commission satisfactory  
11 proof of his equivalent experience in an activity closely  
12 related to or associated with real estate and furnish the  
13 commission a certificate that he has completed successfully  
14 [~~ninety~~] sixty classroom hours of instruction in basic real  
15 estate courses approved by the commission.

16                                    C. [~~Each~~] An applicant for a salesperson's license  
17 shall be a legal resident of the United States, have reached  
18 the age of majority and be a resident of New Mexico [~~preceding~~  
19 ~~the filing of~~] at the time of application [~~and~~] for licensing.  
20 As a prerequisite for licensing, an applicant shall furnish  
21 the commission a certificate that he has completed  
22 successfully [~~sixty~~] one hundred twenty hours of classroom  
23 [~~hours of~~] pre-licensing instruction in basic real estate  
24 courses approved by the commission.

25                                    D. The commission shall require [~~such~~] the

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1 information [as] it [~~may deem~~] deems necessary from every  
2 applicant to determine his honesty, trustworthiness and  
3 competency. Corporations, partnerships or associations [ ~~shall~~  
4 ~~be entitled to~~] may hold a broker's license issued in the name  
5 of the corporation, partnership or association [ ~~provided~~] if  
6 at least one member of the partnership or association, or one  
7 officer or employee of a corporation, who actively engages in  
8 the real estate business first secures a broker's license.  
9 Such license shall be issued in the name of the corporation,  
10 partnership or association, naming the partner, associate,  
11 officer or employee as qualifying broker for the corporation,  
12 partnership or association. "

13 Section 9. Section 61-29-10 NMSA 1978 (being Laws 1959,  
14 Chapter 226, Section 9, as amended) is amended to read:

15 "61-29-10. APPLICATION FOR LICENSE AND EXAMINATION. --

16 A. All applications for licenses to act as real  
17 estate brokers and real estate salesmen shall be made in  
18 writing to the [~~New Mexico real estate~~] commission and shall  
19 contain such data and information as may be required upon a  
20 form to be prescribed and furnished by the commission. [ ~~Such~~]  
21 The applications shall be accompanied by:

- 22 (1) the recommendation of two reputable
- 23 citizens who own real estate in the county in which the
- 24 applicant resides or has his place of business, which
- 25 recommendation shall certify that the applicant is of good



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1 moral character, honest and trustworthy; and

2 (2) the [~~annual~~] triennial license fee  
3 prescribed by the commission [~~which shall not be refunded in~~  
4 ~~any event~~].

5 B. In addition to proof of honesty,  
6 trustworthiness and good reputation, [~~each~~] an applicant shall  
7 pass satisfactorily a written examination prepared by or under  
8 the supervision of the commission. The examination shall be  
9 given at [~~such~~] the time and [~~such~~] places within the state as  
10 the commission shall prescribe; however, the license  
11 examination for brokers shall be given not less than two times  
12 during each calendar year and the examination for salesmen  
13 shall be given not less than six times during each calendar  
14 year. The examination for a broker's license shall include  
15 business ethics, writing, composition, arithmetic, elementary  
16 principles of land economics and appraisals, a general  
17 knowledge of the statutes of this state relating to deeds,  
18 mortgages, contracts of sale, agency and brokerage and the  
19 provisions of Sections 61-29-1 through 61-29-18 NMSA 1978.  
20 The examination for a broker's license shall be of a more  
21 exacting nature and scope and more stringent than the  
22 examination for a salesman's license.

23 C. No applicant is permitted to engage in the real  
24 estate business [~~either as a broker or salesman~~] until he has  
25 satisfactorily passed the examination, complied with the other

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1 requirements of Sections 61-29-1 through 61-29-18 NMSA 1978,  
2 and until a license has been issued to him

3 D. Notice of passing or failing to pass the  
4 examination shall be given by the commission to [ each] an  
5 applicant not later than three weeks following the date of the  
6 examination.

7 E. The commission ~~may~~ establish educational  
8 programs and procure qualified personnel, facilities and  
9 materials for the instruction of persons desiring to become  
10 real estate brokers or [~~salesmen~~] licensed salespersons or  
11 desiring to improve their proficiency as real estate brokers  
12 or [~~salesmen~~] salespersons. The commission ~~may~~ inspect and  
13 accredit educational programs and courses of study and ~~may~~  
14 establish standards of accreditation for educational programs  
15 conducted in this state. The expenses incurred by the  
16 commission in activities [~~enabled under~~] authorized pursuant  
17 to the provisions of this subsection shall not exceed the  
18 total revenues received and accumulated by the commission. "

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

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

23 A. The commission shall issue to each qualified  
24 applicant a [~~permanent~~] license in [~~such~~] a form and size [~~as~~  
25 ~~shall be~~] prescribed by the commission.

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1           B. ~~[This]~~ The license shall show the name and  
2 address of the licensee and in the case of a real estate  
3 salesperson's license shall show the name of the real estate  
4 broker by whom he is engaged. The license of each real estate  
5 salesperson shall be delivered or mailed to the real estate  
6 broker by whom ~~[such]~~ the real estate salesperson is engaged  
7 and shall be kept in the custody and control of that broker.

8           C. Every license shall be renewed every three  
9 years on or before the last day of the month following the  
10 licensee's month of birth. Upon written request for renewal  
11 by the licensee, the commission shall certify renewal of  
12 ~~[each]~~ a license ~~[in the absence of any]~~ if there is no reason  
13 or condition that might warrant the refusal of the renewal ~~[ of~~  
14 ~~a license, upon written request for renewal by the licensee]~~.  
15 The licensee shall provide proof of compliance with continuing  
16 education requirements and ~~[ receipt of]~~ pay the renewal fee.  
17 ~~[In the event any]~~ If a licensee has not made application for  
18 renewal of license, furnished proof of compliance with  
19 continuing education requirements and paid the renewal fee by  
20 his license renewal date, ~~[ the]~~ his license shall expire. The  
21 commission may, in its discretion, require ~~[ the]~~ a person  
22 whose license has expired to apply for a license as if he had  
23 not been previously licensed under Chapter 61, Article 29 NMSA  
24 1978 and further require that he ~~[ be reexamined]~~ reexamine.  
25 The commission shall require ~~[ the]~~ a person whose license has

underscored material = new  
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1 expired to pay when he applies for a license, in addition to  
2 any other fee, a late fee of one hundred dollars (\$100). If  
3 during a period of one year from the date the license expires  
4 the person or his spouse is either absent from this state on  
5 active duty military service or the person is suffering from  
6 an illness or injury of such severity that the person is  
7 physically or mentally incapable of making application for a  
8 license, payment of the late fee and reexamination shall not  
9 be required by the commission if, within three months of the  
10 person's permanent return to this state or sufficient recovery  
11 from illness or injury to allow the person to make an  
12 application, the person makes application to the commission  
13 for a license. A copy of that [ ~~person~~ ] person's or his  
14 spouse's military orders or a certificate from the applicant's  
15 physician shall accompany the application. Any person excused  
16 by reason of active duty military service, illness or injury  
17 as provided for in this subsection may make application for a  
18 license without imposition of the late fee. All fees  
19 collected pursuant to this subsection shall be disposed of in  
20 accordance with the provisions of Section 61-29-8 NMSA 1978.  
21 The revocation of a broker's license [ ~~shall~~ ] automatically  
22 [ ~~suspend~~ ] suspends every real estate salesperson's license  
23 granted to [ ~~any~~ ] a person by virtue of his association with  
24 the broker whose license has been revoked, pending a change of  
25 broker and the issuance of a new salesperson's license.

underscored material = new  
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1 [Such] The new salesperson's license shall be issued without  
2 charge if granted during the same year in which the  
3 salesperson's license was granted.

4 D. Each [~~resident~~] licensed broker shall maintain  
5 a fixed office within this state, which shall be so located as  
6 to conform with local regulations. Every office operated by a  
7 licensed broker [~~under Chapter 61, Article 29 NMSA 1978~~] shall  
8 have a licensed broker who is a natural person in charge. The  
9 license of the broker and the license of each salesperson  
10 associated with or under contract to that broker shall be  
11 prominently displayed in the office. The address of the  
12 office shall be designated in the broker's license, and no  
13 license issued shall authorize the licensee to transact real  
14 estate business at any other address except a licensed branch  
15 office. In case of removal from the designated address, the  
16 licensee shall make application to the commission before such  
17 removal or within ten days thereafter, designating the new  
18 location of his office and paying the required fee, whereupon  
19 the commission shall issue a license for the new location if  
20 the new location complies with the terms of Chapter 61,  
21 Article 29 NMSA 1978. Each licensed broker shall maintain a  
22 sign on his office of such size and content as the commission  
23 prescribes. In making application for a license or for a  
24 change of address, the [~~licensee~~] licensed broker shall verify  
25 that his office conforms with local regulations.

underscored material = new  
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1           E. When any real estate salesperson is discharged  
2 or terminates his association employment with the real estate  
3 broker with whom he is associated, it is the duty of that real  
4 estate broker to immediately deliver or mail to the commission  
5 that real estate salesperson's license. The commission shall  
6 hold the license on inactive status. It is unlawful for any  
7 real estate salesperson to perform any of the acts  
8 contemplated by Chapter 61, Article 29 NMSA 1978 either  
9 directly or indirectly under authority of [~~such~~] an inactive  
10 license after his association has been terminated and his  
11 license as salesperson has been returned to the commission as  
12 provided in that article until the appropriate fee has been  
13 paid and the license has been reissued by the commission.

14           ~~[F. During the period from July 1, 1995 through~~  
15 ~~June 30, 1998, the commission in its discretion may renew~~  
16 ~~licenses for periods of one, two or three years for the~~  
17 ~~purpose of coordinating continuing education requirements with~~  
18 ~~license renewal requirements.]"~~

19           Section 11. Section 61-29-12 NMSA 1978 (being Laws 1959,  
20 Chapter 226, Section 11, as amended) is amended to read:

21           "61-29-12. REFUSAL, SUSPENSION OR REVOCATION OF LICENSE  
22 FOR CAUSES ENUMERATED. --

23           A. The commission [~~shall have the power to~~] may  
24 refuse [~~a license for cause or~~] to issue or may suspend or  
25 revoke a license [~~at any time where~~] if the licensee has [~~by~~

underscored material = new  
[bracketed material] = delete

1 ~~false or fraudulent representations]~~ obtained a license by  
2 false or fraudulent representations or ~~[where the licensee]~~ in  
3 performing or attempting to perform any of the actions  
4 ~~[mentioned]~~ specified in Chapter 61, Article 29 NMSA 1978 ~~[is~~  
5 ~~deemed to be guilty of]~~ has:

6 ~~[A.—making]~~ (1) made a substantial  
7 misrepresentation;

8 ~~[B.—pursuing]~~ (2) pursued a continued and  
9 flagrant course of misrepresentation; ~~[making]~~ made false  
10 promises through ~~[agents, salespersons]~~ advertising or  
11 otherwise; or ~~[using]~~ used any trade name or insignia of  
12 membership in any real estate organization of which the  
13 licensee is not a member;

14 ~~[C.—paying]~~ (3) paid or ~~[receiving]~~ received  
15 any rebate, profit, compensation or commission to or from any  
16 unlicensed person except his principal or other party to the  
17 transaction, and then only with his principal's written  
18 consent;

19 ~~[D.—representing]~~ (4) if the licensee is a  
20 real estate salesperson, represented or ~~[attempting]~~ attempted  
21 to represent a real estate broker other than the licensed  
22 broker with whom he is licensed without the express knowledge  
23 and consent of ~~[the]~~ that licensed broker;

24 ~~[E.—failing]~~ (5) failed within a reasonable  
25 time to account for or to remit any money coming into his

underscored material = new  
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1 possession that belongs to others, [~~commingling~~] commingled  
2 funds of others with his own or [~~failing~~] failed to keep  
3 [~~such~~] funds of others in an escrow or trustee account or  
4 [~~failing~~] failed to furnish legible copies of all listing and  
5 sales contracts to all parties executing them;

6 [~~F.—conviction~~] (6) been convicted in any  
7 court of competent jurisdiction of a felony or [~~any~~] an  
8 offense involving moral turpitude;

9 [~~G.—employing~~] (7) employed or  
10 [~~compensating~~] compensated directly or indirectly [~~any~~] a  
11 person for performing any of the acts regulated by Chapter 61,  
12 Article 29 NMSA 1978 [~~who is~~] if that person was not a  
13 licensed broker or a licensed salesperson [~~provided, however,~~  
14 ~~that~~] at the time of employment or compensation; except a  
15 licensed broker may pay a commission to a [~~licensed~~] broker  
16 [~~of~~] licensed in another state [~~provided further that~~], but  
17 the nonresident broker [~~does~~] shall not conduct in this state  
18 any of the negotiations for which a fee, compensation or  
19 commission is paid except in cooperation with a licensed  
20 broker of this state;

21 [~~H.—failing, if a broker~~] (8) if the  
22 licensee is a licensed broker, failed to place as soon after  
23 receipt as is practicably possible any deposit money or other  
24 money received by him in a real estate transaction in a  
25 custodial, trust or escrow account maintained by him in a bank



underscored material = new  
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1 or savings and loan institution or title company authorized to  
2 do business in this state, in which the funds shall be kept  
3 until the transaction is consummated or otherwise terminated,  
4 at which time a full accounting of the funds shall be made by  
5 the licensed broker. Records relative to the deposit,  
6 maintenance and withdrawal of [~~such~~] those funds shall contain  
7 information as may be prescribed by the rules [~~and~~  
8 ~~regulations~~] of the commission. Nothing in this [~~subsection~~  
9 ~~shall prohibit any~~] paragraph prohibits a licensed broker from  
10 depositing nontrust funds in an amount not to exceed the  
11 required minimum balance in each trust account so as to meet  
12 the minimum balance requirements of the bank necessary to  
13 maintain the account and avoid charges. This minimum balance  
14 deposit shall not be considered commingling and shall not be  
15 subject to levy, attachment or garnishment. This subsection  
16 [~~however, shall~~] does not prohibit a licensed broker from  
17 depositing any deposit money or other money received by him in  
18 a real estate transaction with another cooperating broker who  
19 shall in turn comply with this [~~subsection~~] paragraph;  
20 [I. ~~failing, if a salesperson~~] (9) if the  
21 licensee is a salesperson, failed to place as soon after  
22 receipt as is practicably possible in the custody of his  
23 [~~registered~~] licensed broker any deposit money or other money  
24 entrusted to him by any person dealing with him as the  
25 representative of his [~~registered~~] licensed broker;

underscored material = new  
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1                                    [~~J. violating any provisions~~] (10) violated  
2 a provision of Chapter 61, Article 29 NMSA 1978 or [~~any~~  
3 ~~reasonable~~] a rule [~~or regulation~~] adopted and promulgated by  
4 the commission; [~~in the interests of the public and in~~  
5 ~~conformance with the provisions of Chapter 61, Article 29 NMSA~~  
6 ~~1978; or~~

7                                    [~~K. any other conduct~~] (11) committed acts,  
8 whether of the same or different character from that specified  
9 in this section, that [~~is~~] were related to his dealings as a  
10 real estate broker or real estate salesperson and that  
11 [~~constitutes~~] constituted or [~~demonstrates~~] demonstrated bad  
12 faith, incompetency, untrustworthiness, impropriety, fraud,  
13 dishonesty, negligence or [~~any~~] an unlawful act; or

14                                    (12) was licensed to practice real estate in  
15 any jurisdiction, territory or possession of the United States  
16 or another country and was the subject of disciplinary action  
17 as a licensee.

18                                    [~~Any~~] B. An unlawful act or violation of [~~any of~~  
19 ~~the provisions~~] a provision of Chapter 61, Article 29 NMSA  
20 1978 by any real estate salesperson, employee, partner or  
21 associate of a licensed real estate broker shall not be cause  
22 for the revocation of a license of any real estate broker  
23 unless it appears to the satisfaction of the commission that  
24 the real estate broker had guilty knowledge of the unlawful  
25 act or violation. "

underscored material = new  
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1           Section 12. Section 61-29-14 NMSA 1978 (being Laws 1959,  
2 Chapter 226, Section 13, as amended) is amended to read:

3           "61-29-14. NONRESIDENT BROKERS. -- [ No]

4           A. An application for issuance of a license or  
5 renewal of an existing broker's license shall be accepted from  
6 [any] a nonresident applicant who is [not] a broker licensed  
7 in another state [which] only if the other state extends the  
8 privilege of reciprocal licensure to [real-estate] brokers  
9 licensed in New Mexico. A qualifying nonresident may become a  
10 [real-estate] licensed broker by conforming to all the  
11 conditions of Chapter 61, Article 29 NMSA 1978.

12           B. In its discretion, the commission may  
13 recognize, in lieu of the recommendations and certificates  
14 required to accompany an application for a broker's license,  
15 the broker's license issued to a nonresident in another state,  
16 provided the other state extends the privilege of licensure to  
17 real estate brokers licensed in New Mexico. The license shall  
18 be issued upon payment of the license fee, verification that  
19 the applicant has complied with his resident state's current  
20 education requirements, of which [ninety] sixty classroom  
21 hours for a nonresident broker must be approved by the [ New  
22 Mexico real-estate] commission, and the filing by the  
23 applicant with the commission of a certified copy of the  
24 applicant's license issued by the other state [ provided that  
25 ~~A. the applicant shall have~~ ] if the applicant:

underscored material = new  
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1                   (1) maintained an active place of business in  
2 the state by which he is licensed, [~~shall establish~~  
3 establishes and [~~maintain~~] maintains an active place of  
4 business in this state and [~~shall pass~~] passes the written  
5 examination required by Section 61-29-10 NMSA 1978;

6                   [~~B. the applicant shall file~~] (2) files with  
7 the commission an irrevocable consent that suits and actions  
8 may be commenced against him in the proper court of any county  
9 of this state in which a cause of action may arise or in which  
10 the plaintiff may reside, by the service of any process or  
11 pleadings authorized by the laws of this state on the  
12 commission, the consent stipulating and agreeing that [~~such~~]  
13 service of process or pleadings on the commission [~~shall be~~  
14 ~~taken and held in all courts to be~~] is as valid and binding as  
15 if personal service had been made upon the applicant in New  
16 Mexico. The instrument containing the consent shall be [~~duly~~]  
17 acknowledged and, if executed on behalf of a corporation or  
18 association, shall be accompanied by [~~the duly~~] a certified  
19 copy of the resolution of the proper officers or managing  
20 board authorizing the [~~proper~~] executing officer to execute  
21 the instrument. [~~In case any~~] Process or [~~pleading mentioned~~]  
22 pleadings in the case [~~is~~] shall be served in duplicate upon  
23 the [~~board, it shall be by duplicate copies~~] commission, and  
24 one [~~of which~~] shall be filed in the office of the commission  
25 and the other immediately forwarded by registered mail to the

underscored material = new  
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1 main office of the applicant [~~against~~] to which the process or  
2 pleadings are directed; and

3 [~~C. the applicant shall file~~] (3) files a bond in  
4 form and content [~~the same as is~~] identical to that required  
5 of resident applicants under Chapter 61, Article 29 NMSA  
6 1978. "

7 Section 13. Section 61-29-15 NMSA 1978 (being Laws 1959,  
8 Chapter 226, Section 14) is amended to read:

9 "61-29-15. [~~PUBLICATION~~] MAINTENANCE OF LIST OF  
10 LICENSEES. -- The commission shall [~~at least annually, publish~~]  
11 maintain a list of the names and addresses of all licensees  
12 licensed by it under the provisions of [~~this act~~] Chapter 61,  
13 Article 29 NMSA 1978, and of all persons whose license has  
14 been suspended or revoked within that year, together with such  
15 other information relative to the enforcement of the  
16 provisions of [~~this act~~] Chapter 61, Article 29 NMSA 1978 as  
17 it may deem of interest to the public. The commission shall  
18 also [~~prepare~~] maintain a statement of all funds received by  
19 it and a statement of all disbursements [~~and~~] made by it.  
20 Copies of [~~such~~] these statements shall be mailed by the  
21 commission to any person in this state upon request. "

22 Section 14. Section 61-29-16 NMSA 1978 (being Laws 1959,  
23 Chapter 226, Section 15) is amended to read:

24 "61-29-16. SUIT BY BROKER OR [SALESMAN] SALESPERSON. -- No  
25 action for the collection of commission or compensation earned

underscored material = new  
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1 by ~~[any person as]~~ a ~~[real estate]~~ broker or ~~[salesman]~~  
2 salesperson required to be licensed under the provisions of  
3 ~~[this act]~~ Chapter 61, Article 29 NMSA 1978 shall be  
4 maintained in the courts of the state unless ~~[such person was~~  
5 ~~a duly licensed]~~ the broker or ~~[salesman]~~ salesperson was  
6 licensed at the time the alleged cause of action arose. ~~[In~~  
7 ~~any event, suit against a member of the public as~~  
8 ~~distinguished from any person licensed under this act shall be~~  
9 ~~maintained only in the name of the broker.]"~~

10 Section 15. Section 61-29-19 NMSA 1978 (being Laws 1978,  
11 Chapter 203, Section 2, as amended by Laws 1993, Chapter 83,  
12 Section 7 and also by Laws 1993, Chapter 253, Section 3) is  
13 amended to read:

14 "61-29-19. TERMINATION OF AGENCY LIFE--DELAYED  
15 REPEAL. --The New Mexico real estate commission is terminated  
16 on July 1, ~~[1999]~~ 2005 pursuant to the Sunset Act. The  
17 commission shall continue to operate according to the  
18 provisions of Chapter 61, Article 29 NMSA 1978 until July 1,  
19 ~~[2000]~~ 2006. Effective July 1, ~~[2000]~~ 2006, Chapter 61,  
20 Article 29 NMSA 1978 is repealed."

21 Section 16. DELAYED REPEAL. --Sections 1 through 14 of  
22 this act are repealed on July 1, 2002.

1 FORTY- FOURTH LEGISLATURE

SB 507/a

2 FIRST SESSION, 1999

3  
4  
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6  
7 February 27, 1999

8  
9  
10 Mr. President:

11  
12 Your CORPORATIONS & TRANSPORTATION COMMITTEE, to  
13 whom has been referred

14  
15 SENATE BILL 507

16  
17 has had it under consideration and reports same with  
18 recommendation that it DO PASS, amended as follows:

19  
20  
21 1. On page 1, line 14, strike "CREATING THE REAL ESTATE  
22 COMMISSION FUND;".

23  
24 2. On page 5, strike all of line 11 and strike line 12  
25 through the comma.

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underscored material = new  
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FORTY-FOURTH LEGISLATURE  
FIRST SESSION, 1999

SCORC/SB 507

Page 32

3. On page 8, line 20, after "fund" strike the remainder of the line, strike all of line 21 and on line 22, strike "fund".

4. On page 14, lines 23 and 24, remove the brackets and line-through.

5. On page 14, line 24, strike "a" and strike line 25 up to the semi colon.

6. On page 15, lines 1 through 4, remove the bracket and line-through.

7. Renumber the succeeding paragraphs accordingly.

8. On page 15, line 8, remove the brackets and line-through and strike the underscored material.

9. On page 15, line 14, remove the brackets and line-through and strike the underscored material.



FORTY-FOURTH LEGISLATURE  
FIRST SESSION, 1999

SCORC/SB 507

Page 33

10. On page 15, line 22, remove the brackets and line-through and strike the underscored material.
11. On page 18, line 10, strike "licensed".
12. On page 21, line 4, strike "licensed".
13. On page 21, line 24, strike "licensed".
14. On page 22, line 4, strike "immediately" and insert in lieu thereof "within forty-eight hours".
15. On page 24, line 3, strike "an escrow or trustee" and insert in lieu thereof "a trust".
16. On page 24, line 23, after "possible" insert "after having secured signatures of all parties to the transaction".
17. On page 24, line 25, strike "custodial,".
18. On page 24, line 25, strike "or escrow".

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underscored material = new  
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FORTY-FOURTH LEGISLATURE  
FIRST SESSION, 1999

SCORC/SB 507

Page 34

19. On page 25, line 5, strike "licensed".

20. On page 25, line 9, strike "licensed".

21. On page 25, line 16, strike "licensed".

22. On page 25, line 23, strike "licensed".

23. On page 25, line 25, strike "licensed".

24. On page 27, line 10, strike "licensed".

25. On page 27, line 20, remove the brackets and line-through and strike the underscored material.

26. On page 28, line 5, after the semicolon insert "and".

27. On page 29, line 2, strike "; and" and insert in lieu thereof a period.

28. On page 29, strike lines 3 through 5 and strike line 6

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underscored material = new  
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FORTY- FOURTH LEGISLATURE  
FIRST SESSION, 1999

SCORC/SB 507

Page 35

up to the quotation mark.

29. On page 30, lines 21 and 22, strike Section 16 in its  
entirety.

30. On page 3, line 10, subparagraph (b) before "leases"  
insert "for consideration from another, ",

and thence referred to the JUDICIARY COMMITTEE.

Respectfully submitted,

Roman M. Maes, Chairman

Adopted \_\_\_\_\_ Not

Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

FORTY- FOURTH LEGI SLATURE  
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SCORC/SB 507

Page 36

Date \_\_\_\_\_

The roll call vote was 6 For 0 Against

Yes: 6

No: 0

Excused: Aragon, Kysar, McKi bben, Robi nson

Absent: None

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1 FORTY-FOURTH LEGISLATURE

2 FIRST SESSION, 1999

3 SB 507/a

4  
5  
6 March 14, 1999

7  
8 Mr. President:

9  
10 Your JUDICIARY COMMITTEE, to whom has been referred

11  
12 SENATE BILL 507, as amended

13  
14 has had it under consideration and reports same with  
15 recommendation that it DO PASS, amended as follows:

- 16  
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18 1. On page 13, line 22, strike "not".

19  
20 Respectfully submitted,

FORTY-FOURTH LEGISLATURE  
FIRST SESSION, 1999

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Page 38

Michael S. Sanchez, Chairman

Adopted \_\_\_\_\_ Not

Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 5 For 0 Against

Yes: 5

No: None

Excused: Aragon, Davis, Lopez

Absent: None

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