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SENATE BILL 43

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Joseph A. Fidel

AN ACT

RELATING TO LICENSING LAWS; REVISING REAL ESTATE LICENSING FEES; REQUIRING CONSENT TO BE SUED IN NEW MEXICO AS A QUALIFICATION FOR OBTAINING A REAL ESTATE LICENSE; REMOVING THE STATUTORY LIMIT ON LATE FEES FOR LICENSE RENEWAL; PROVIDING THAT A CERTAIN BALANCE IN THE REAL ESTATE RECOVERY FUND BE TRANSFERRED TO 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 61-29-4 NMSA 1978 (being Laws 1959, Chapter 226, Section 3, as amended) is amended to read:

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

There is created the "New Mexico real estate commission"
[called "~~the commission~~" in Chapter 61, Article 29 NMSA 1978].

The ~~commission~~ shall be appointed by the governor and shall

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1 consist of five members who shall have been residents of the
2 state for three consecutive years immediately prior to their
3 appointment, four of whom shall have been real estate brokers
4 licensed in New Mexico and one of whom shall be a member of the
5 public who has never been licensed as a real estate broker or
6 salesperson; provided not more than one member shall be from
7 any one county within the state. The members of the commission
8 shall serve for a period of five years or until their
9 successors are appointed and qualified. Members to fill
10 vacancies shall be appointed for any unexpired term. The
11 governor may remove any member for cause. The commission shall
12 possess all the powers and perform all the duties prescribed by
13 Chapter 61, Article 29 NMSA 1978 and as otherwise provided by
14 law, and it is expressly vested with power and authority to
15 make and enforce any rules and regulations to carry out the
16 provisions of that article. Prior to any final action on any
17 proposed changes or amendments to the rules and regulations of
18 the commission, the commission may publish notice of the
19 proposed action in its official publication, distribute the
20 publication to each active licensee and give the time and place
21 for a public hearing on the proposed changes. The hearing
22 shall be held at least thirty days prior to any proposed final
23 action. Any changes or amendments to the rules [and
24 regulations] shall be filed in accordance with the procedures
25 of the State Rules Act and shall become effective thirty days

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1 after notification to all active licensees of the filing of the
2 changes or amendments. [~~The commission may employ any staff it~~
3 ~~deems necessary to assist in carrying out its duties and in~~
4 ~~keeping its records.]"~~

5 Section 2. Section 61-29-7 NMSA 1978 (being Laws 1959,
6 Chapter 226, Section 6, as amended) is amended to read:

7 "61-29-7. REIMBURSEMENT AND EXPENSES. -- Each member of the
8 commission shall receive per diem and mileage as provided in
9 the Per Diem and Mileage Act and shall receive no other
10 compensation, perquisite or allowance. [~~The commission may~~
11 ~~select and appoint an administrator, who shall serve as~~
12 ~~executive secretary to the commission on annual salary, to~~
13 ~~perform the duties prescribed by this act and such additional~~
14 ~~duties as the commission may determine. The commission may~~
15 ~~employ subordinate officers, stenographers, clerks, an attorney~~
16 ~~and such other assistance as may be needed and fix their~~
17 ~~compensation to be paid from the real estate commission fund~~
18 ~~and to purchase such supplies, equipment and records and to~~
19 ~~incur such other expenses as may be necessary to carry out the~~
20 ~~provisions of this act.]"~~

21 Section 3. Section 61-29-8 NMSA 1978 (being Laws 1959,
22 Chapter 226, Section 7, as amended) is amended to read:

23 "61-29-8. LICENSE FEES--DISPOSITION. --

24 A. The following fees shall be established and
25 charged by the commission and paid into the real estate

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1 commission fund:

2 (1) for each examination, a fee not to exceed
3 ninety-five dollars (\$95.00);

4 (2) for each broker's license issued, a fee
5 not to exceed [~~one hundred eighty dollars (\$180)~~] two hundred
6 seventy dollars (\$270) and for each renewal thereof, a fee not
7 to exceed [~~one hundred eighty dollars (\$180)~~] two hundred
8 seventy dollars (\$270);

9 (3) for each real estate salesperson's license
10 issued, a fee not to exceed [~~one hundred eighty dollars (\$180)~~]
11 two hundred seventy dollars (\$270) and for each renewal
12 thereof, a fee not to exceed [~~one hundred eighty dollars~~
13 ~~(\$180)~~] two hundred seventy dollars (\$270);

14 (4) subject to the provisions of Paragraph
15 (10) of this subsection, for each change of place of business
16 or change of employer or contractual associate, a fee not to
17 exceed 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 not to exceed twenty dollars (\$20.00);

21 (6) for each license history, a fee not to
22 exceed twenty-five dollars (\$25.00);

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

25 (8) for each license law and rules and

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1 regulations booklet, a fee not to exceed ten dollars (\$10.00)
2 per booklet;

3 (9) for each hard copy or electronic list of
4 licensed real estate brokers and salespersons, a fee not to
5 exceed twenty dollars (\$20.00); ~~[and]~~

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

20 (11) for each application to the commission to
21 become an approved sponsor of pre-licensing and continuing
22 education courses, a fee not to exceed five hundred dollars
23 (\$500) and for each renewal thereof a fee not to exceed five
24 hundred dollars (\$500);

25 (12) for each application to the commission to

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1 become an approved instructor of pre-licensing and continuing
2 education courses, a fee not to exceed seventy dollars (\$70.00)
3 per course; and

4 (13) for each application to the commission to
5 renew certification as a commission-approved instructor, a fee
6 not to exceed one hundred dollars (\$100).

7 B. All fees set by the commission shall be set by
8 rule and only after all requirements have been met as
9 prescribed by Chapter 61, Article 29 NMSA 1978. Any changes or
10 amendments to the rules shall be filed in accordance with the
11 provisions of the State Rules Act.

12 C. The commission shall deposit all money received
13 by it from fees in accordance with the provisions of Chapter
14 61, Article 29 NMSA 1978 with the state treasurer, who shall
15 keep that money in a separate fund to be known as the "real
16 estate commission fund", and money so deposited in that fund is
17 appropriated for the purpose of carrying out the provisions of
18 Chapter 61, Article 29 NMSA 1978 or to maintain the real estate
19 recovery fund as required by the Real Estate Recovery Fund Act
20 and shall be paid out of the fund upon the vouchers of the
21 executive secretary of the commission or his designee; provided
22 that the total fees and charges collected and paid into the
23 state treasury and any money so deposited shall be expended
24 only for the purposes authorized by Chapter 61, Article 29 NMSA
25 1978.

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1 D. The commission shall by rule provide for a
2 proportionate refund of the license issuance fee or the license
3 renewal fee if the license is issued or renewed for a period of
4 three years pursuant to Section 61-29-11 NMSA 1978 and is
5 terminated with more than one year remaining. "

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

8 "61-29-9. QUALIFICATIONS FOR LICENSE. --

9 A. Licenses shall be granted only to persons who
10 are deemed by the commission to be of good repute and competent
11 to transact the business of a real estate broker or salesperson
12 in a manner that safeguards the interests of the public.

13 B. An applicant for a broker's license shall be a
14 legal resident of the United States and have reached the age of
15 majority [~~and, except as provided in Section 61-29-14 NMSA~~
16 ~~1978, be a resident of New Mexico~~]. Each applicant for a
17 broker's license shall have passed the real estate examination
18 approved by the commission and shall:

19 (1) have performed actively as a real estate
20 salesperson for at least twenty-four months out of the
21 preceding thirty-six months immediately prior to filing
22 application and furnish the commission a certificate that he
23 has completed successfully a broker basics course approved by
24 the commission;

25 (2) furnish the commission a certificate that

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1 he has completed successfully one hundred eighty classroom
2 hours of instruction in basic real estate courses approved by
3 the commission;

4 (3) furnish the commission a certificate that
5 he is a duly licensed real estate broker in good standing in
6 another state, providing he has completed successfully ninety
7 classroom hours of instruction in basic real estate courses
8 approved by the commission, thirty hours of which shall have
9 been a broker basics course; or

10 (4) furnish the commission satisfactory proof
11 of his equivalent experience in an activity closely related to
12 or associated with real estate and furnish the commission a
13 certificate that he has completed successfully ninety classroom
14 hours of instruction in basic real estate courses approved by
15 the commission, thirty hours of which shall have been a broker
16 basics course; and

17 (5) file with the commission an irrevocable
18 consent that lawsuits and actions may be commenced against him
19 in the proper court of any county of this state in which a
20 cause of action may arise or in which the plaintiff may reside,
21 by the service of any process or pleadings authorized by the
22 laws of this state on the commission, the consent stipulating
23 and agreeing that such service of process or pleadings on the
24 commission is as valid and binding as if personal service had
25 been made upon the applicant in New Mexico. The instrument

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1 containing the consent shall be acknowledged and, if executed
2 on behalf of a corporation or association, shall be accompanied
3 by a certified copy of the resolution of the proper officers or
4 managing board authorizing the executing officer to execute the
5 instrument. Service of process or pleadings shall be served in
6 duplicate upon the commission; one shall be filed in the office
7 of the commission and the other immediately forwarded by
8 registered mail to the main office of the applicant against
9 which the process or pleadings are directed.

10 C. Each applicant for a real estate salesperson's
11 license shall be a legal resident of the United States, have
12 reached the age of majority, have passed the real estate
13 examination approved by the commission and furnish the
14 commission a certificate that he has completed successfully
15 sixty classroom hours of instruction in basic real estate
16 courses approved by the commission.

17 D. The commission shall require the information it
18 deems necessary from every applicant to determine his honesty,
19 trustworthiness and competency. Corporations, partnerships or
20 associations may hold a broker's license issued in the name of
21 the corporation, partnership or association, provided at least
22 one member of the partnership or association or one officer or
23 employee of a corporation who actively engages in the real
24 estate business first secures a broker's license. The license
25 shall be issued in the name of the corporation, partnership or

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1 association, naming the partner, associate, officer or employee
2 as qualifying broker for the corporation, partnership or
3 association. "

4 Section 5. Section 61-29-11 NMSA 1978 (being Laws 1959,
5 Chapter 226, Section 10, as amended) is amended to read:

6 "61-29-11. ISSUANCE, RENEWAL AND SURRENDER OF
7 LICENSES. --

8 A. The commission shall issue to each qualified
9 applicant a license in the form and size prescribed by the
10 commission.

11 B. The license shall show the name and address of
12 the licensee. A real estate salesperson's license shall show
13 the name of the broker by whom he is engaged. The license of
14 the real estate salesperson shall be delivered or mailed to the
15 broker by whom the real estate salesperson is engaged and shall
16 be kept in the custody and control of that broker.

17 C. Every license shall be renewed every three years
18 on or before the last day of the month following the licensee's
19 month of birth. Upon written request for renewal by the
20 licensee, the commission shall certify renewal of a license if
21 there is no reason or condition that might warrant the refusal
22 of the renewal of a license. The licensee shall provide proof
23 of compliance with continuing education requirements and pay
24 the renewal fee. If a licensee has not made application for
25 renewal of license, furnished proof of compliance with

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1 continuing education requirements and paid the renewal fee by
2 the license renewal date, the license shall expire. The
3 commission may require a person whose license has expired to
4 apply for a license as if he had not been previously licensed
5 under Chapter 61, Article 29 NMSA 1978 and further require that
6 he be reexamined. The commission shall require a person whose
7 license has expired to pay when he applies for a license, in
8 addition to any other fee, a late fee [~~of one hundred dollars~~
9 ~~(\$100)~~]. If during a period of one year from the date the
10 license expires the person or his spouse is either absent from
11 this state on active duty military service or the person is
12 suffering from an illness or injury of such severity that the
13 person is physically or mentally incapable of making
14 application for a license, payment of the late fee and
15 reexamination shall not be required by the commission if,
16 within three months of the person's permanent return to this
17 state or sufficient recovery from illness or injury to allow
18 the person to make an application, the person makes application
19 to the commission for a license. A copy of that person's or
20 his spouse's military orders or a certificate from the
21 applicant's physician shall accompany the application. A
22 person excused by reason of active duty military service,
23 illness or injury as provided for in this subsection may make
24 application for a license without imposition of the late fee.
25 All fees collected pursuant to this subsection shall be

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1 disposed of in accordance with the provisions of Section
2 61-29-8 NMSA 1978. The revocation of a broker's license
3 automatically suspends every real estate salesperson's license
4 granted to any person by virtue of association with the broker
5 whose license has been revoked, pending a change of broker.
6 Upon the naming of a new broker, the suspended license [will]
7 shall be reactivated without charge if granted during the
8 three-year renewal cycle.

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

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1 size and content as the commission prescribes. In making
2 application for a license or for a change of address, the
3 licensee shall verify that his office conforms with local
4 regulations.

5 E. When a real estate salesperson is discharged or
6 terminates his association or employment with the broker with
7 whom he is associated, it is the duty of that broker to deliver
8 or mail to the commission that real estate salesperson's
9 license within forty-eight hours. The commission shall hold
10 the license on inactive status. It is unlawful for a real
11 estate salesperson to perform any of the acts authorized by
12 Chapter 61, Article 29 NMSA 1978 either directly or indirectly
13 under authority of an inactive license after his association
14 has been terminated and his license as salesperson has been
15 returned to the commission as provided in that article until
16 the appropriate fee has been paid and the license has been
17 reissued by the commission. "

18 Section 6. Section 61-29-22 NMSA 1978 (being Laws 1980,
19 Chapter 82, Section 3, as amended) is amended to read:

20 "61-29-22. ADDITIONAL FEES. --

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

25 B. [~~On and after the effective date of the Real~~

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1 ~~Estate Recovery Fund Act]~~ The commission shall collect from
2 each successful applicant for an original real estate license,
3 in addition to his original license fee, a fee not in excess of
4 ten dollars (\$10.00).

5 C. The additional fees provided by this section
6 shall be credited to the real estate recovery fund. The amount
7 of the real estate recovery fund shall be maintained at two
8 hundred fifty thousand dollars (\$250,000). If the real estate
9 recovery fund falls below this amount, the commission shall
10 have authority to adjust the annual amount of additional fees
11 to be charged licensees or to draw on the real estate
12 commission fund in order to maintain the fund level as required
13 in this section. If on July 1 of any year, the balance in the
14 fund exceeds four hundred thousand dollars (\$400,000), the
15 amount over four hundred thousand dollars (\$400,000) shall be
16 transferred to the real estate commission fund to be used for
17 the purposes of carrying out the provisions of Chapter 61,
18 Article 29 NMSA 1978."

19 Section 7. REPEAL. -- Section 61-29-14 NMSA 1978 (being
20 Laws 1959, Chapter 226, Section 13, as amended) is repealed.