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SENATE BILL 55

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

INTRODUCED BY

Clinton D. Harden

AN ACT

RELATING TO EXECUTIVE ORGANIZATION; ASSIGNING REGULATORY RESPONSIBILITIES FOR MANUFACTURED HOUSING TO THE CONSTRUCTION INDUSTRIES DIVISION OF THE REGULATION AND LICENSING DEPARTMENT; PROVIDING POWERS AND DUTIES; REPEALING OBSOLETE PROVISIONS OF LAW; TRANSFERRING FUNCTIONS, APPROPRIATIONS, PROPERTY, CONTRACTUAL OBLIGATIONS AND STATUTORY REFERENCES; AMENDING AND REPEALING SECTIONS OF THE NMSA 1978.

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

SECTION 1. Section 9-16-4 NMSA 1978 (being Laws 1983, Chapter 297, Section 20, as amended) is amended to read:

"9-16-4. DEPARTMENT ESTABLISHED.--There is created in the executive branch the "regulation and licensing department".

The department shall not be a cabinet department. The department shall consist of but not be limited to ~~six~~ five

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1 divisions as follows:

2 A. the administrative services division;

3 B. the construction industries division;

4 C. the financial institutions division;

5 D. the securities division; and

6 [~~E. the manufactured housing division; and~~

7 ~~F.] E. the alcohol and gaming division."~~

8 SECTION 2. Section 9-16-14 NMSA 1978 (being Laws 1987,
9 Chapter 298, Section 1, as amended) is amended to read:

10 "9-16-14. REGULATION AND LICENSING DEPARTMENT OPERATING
11 FUND.--

12 A. There is established in the state treasury the
13 "regulation and licensing department operating fund" to be
14 administered by the department.

15 B. All money received by the administrative
16 services division, the construction industries division, the
17 financial institutions division and the securities division
18 [~~and the manufactured housing division~~], other than money
19 earmarked for revolving funds, shall be deposited with the
20 state treasurer and held in a separate suspense account for
21 each division. In the seventy-sixth fiscal year, all money
22 deposited in the suspense accounts shall be transferred monthly
23 to the general fund until the sum of all money transferred to
24 the general fund equals the total amount deposited and
25 transferred to the general fund from those divisions in the

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1 seventy-fourth fiscal year. All additional money deposited in
2 the divisions' suspense accounts during the seventy-sixth
3 fiscal year shall be transferred to the regulation and
4 licensing department operating fund on June 30, 1988.

5 C. In the seventy-seventh fiscal year and each
6 fiscal year thereafter, on the last day of each month, the
7 department shall transfer all money received during the month
8 from the divisions' suspense accounts to the general fund."

9 SECTION 3. Section 40-5A-3 NMSA 1978 (being Laws 1995,
10 Chapter 25, Section 3, as amended) is amended to read:

11 "40-5A-3. DEFINITIONS.--As used in the Parental
12 Responsibility Act:

13 A. "applicant" means an obligor who is applying for
14 issuance of a license;

15 B. "board" means:

16 (1) the construction industries commission,
17 the construction industries division and the electrical bureau,
18 mechanical bureau and general construction bureau of the
19 construction industries division of the regulation and
20 licensing department;

21 [~~(2) the manufactured housing committee and~~
22 ~~manufactured housing division of the regulation and licensing~~
23 ~~department;~~

24 ~~(3)] (2) a board, commission or agency that~~

25 administers a profession or occupation licensed pursuant to

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1 Chapter 61 NMSA 1978;

2 [~~(4)~~] (3) any other state agency to which the
3 Uniform Licensing Act is applied by law;

4 [~~(5)~~] (4) a licensing board or other authority
5 that issues a license, certificate, registration or permit to
6 engage in a profession or occupation regulated in New Mexico;

7 [~~(6)~~] (5) the department of game and fish;

8 [~~(7)~~] (6) the motor vehicle division of the
9 taxation and revenue department; or

10 [~~(8)~~] (7) the alcohol and gaming division of
11 the regulation and licensing department;

12 C. "certified list" means a verified list that
13 includes the names, social security numbers and last known
14 addresses of obligors not in compliance;

15 D. "compliance" means that:

16 (1) an obligor is no more than thirty days in
17 arrears in payment of amounts required to be paid pursuant to
18 an outstanding judgment and order for support; and

19 (2) an obligor has, after receiving
20 appropriate notice, complied with subpoenas or warrants
21 relating to paternity or child support proceedings;

22 E. "department" means the human services
23 department;

24 F. "judgment and order for support" means the
25 judgment entered against an obligor by the district court or a

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1 tribal court in a case enforced by the department pursuant to
2 Title IV-D of the Social Security Act;

3 G. "license" means a liquor license or other
4 license, certificate, registration or permit issued by a board
5 that a person is required to have to engage in a profession or
6 occupation in New Mexico; "license" includes a commercial
7 driver's license, driver's license and recreational licenses,
8 including hunting, fishing or trapping licenses;

9 H. "licensee" means an obligor to whom a license
10 has been issued; and

11 I. "obligor" means the person who has been
12 ordered to pay child or spousal support pursuant to a
13 judgment and order for support."

14 SECTION 4. Section 60-14-2 NMSA 1978 (being Laws 1978,
15 Chapter 79, Section 1, as amended) is amended to read:

16 "60-14-2. DEFINITIONS.--As used in the Manufactured
17 Housing Act:

18 A. "broker" means any person who, for a fee,
19 commission or valuable consideration, lists, sells, offers
20 for sale, exchanges, offers to exchange, rents or leases or
21 offers to rent or lease preowned manufactured homes for
22 another person or who negotiates, offers to negotiate,
23 locates or brings together a buyer and a seller or offers to
24 locate or bring together a buyer and a seller in conjunction
25 with the sale, exchange, rental or lease of a preowned

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1 manufactured home. A broker may or may not be an agent of
2 any party involved in the transaction. No person shall be
3 considered a broker unless engaged in brokerage activities
4 related to the sale, exchange or lease-purchase of two or
5 more preowned manufactured homes to consumers in any
6 consecutive twelve-month period;

7 B. "certificate of qualification" means a
8 certificate issued by the division to a qualifying party;

9 C. "committee" means the manufactured housing
10 committee;

11 D. "consumer" means any person who seeks or
12 acquires by purchase, exchange or lease-purchase a
13 manufactured home;

14 E. "dealer" means any person engaged in the
15 business of buying for resale, selling or exchanging
16 manufactured homes or offering manufactured homes for sale,
17 exchange or lease-purchase to consumers. No person shall be
18 considered a dealer unless engaged in the sale, exchange or
19 lease-purchase of two or more manufactured homes to consumers
20 in any consecutive twelve-month period. A dealer may also
21 engage in any brokerage activities included under the
22 definition of broker in this section; provided that "dealer"
23 shall not include:

24 (1) receivers, trustees, administrators,
25 executors, guardians or other persons appointed by or acting

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1 under judgment, decree or order of any court;

2 (2) public officers while performing their
3 duties as such officers; and

4 (3) finance companies, banks and other
5 lending institutions covering sales of repossessed
6 manufactured houses;

7 F. "director" means the director of the
8 [~~manufactured housing~~] division;

9 G. "division" means the [~~manufactured housing~~]
10 construction industries division of the regulation and
11 licensing department;

12 H. "inspection agency" means any firm,
13 partnership, corporation, association or any combination
14 [~~thereof~~] approved in accordance with [~~regulations~~] rules
15 adopted by the division as having the personnel and equipment
16 available to adequately inspect for the proper construction
17 of manufactured homes or house trailers not used exclusively
18 for recreational purposes;

19 I. "inspector" means a person appointed by the
20 division as being qualified to adequately inspect the
21 construction, electrical installations and mechanical
22 installations of manufactured homes and their repair and
23 modification, as well as the installation, tie-downs,
24 blocking, skirting and water, gas and sewer connections of
25 any manufactured homes in New Mexico;

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1 J. "installer" means any person who installs
2 manufactured homes for remuneration;

3 K. "installation" [~~means, but is not limited to~~]
4 includes preparation by an installer of a manufactured home
5 site, construction of tie-down facilities and connection to
6 on-site utility terminals;

7 L. "manufacturer" means any resident or
8 nonresident person who manufactures or assembles manufactured
9 homes or any component of manufactured homes;

10 M. "manufactured home" means a movable or
11 portable housing structure over thirty-two feet in length or
12 over eight feet in width constructed to be towed on its own
13 chassis and designed to be installed with or without a
14 permanent foundation for human occupancy as a residence and
15 [~~which~~] that may include one or more components that can be
16 retracted for towing purposes and subsequently expanded for
17 additional capacity or may be two or more units separately
18 towable but designed to be joined into one integral unit, as
19 well as a single unit. "Manufactured home" does not include
20 recreational vehicles or modular or premanufactured homes,
21 built to Uniform Building Code standards, designed to be
22 permanently affixed to real property. "Manufactured home"
23 includes any movable or portable housing structure over
24 twelve feet in width and forty feet in length [~~which~~] that is
25 used for nonresidential purposes;

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1 N. "permit" means a certificate issued by the
2 division to the dealer or installer of a manufactured home
3 indicating that the manufactured home meets the minimum
4 requirements for occupancy provided for by codes or
5 [~~regulations~~] rules of the division;

6 O. "person" includes an individual, firm,
7 partnership, corporation, association or other legal entity
8 [~~or any combination thereof~~];

9 P. "qualifying party" means any individual who
10 submits to the examination for a license, other than a
11 broker's or salesperson's license, to be issued under the
12 Manufactured Housing Act to a licensee, other than an
13 individual, and who after passing such an examination is
14 responsible for the licensee's compliance with the
15 requirements of that act and with the rules, [~~regulations~~]
16 codes and standards adopted and promulgated in accordance
17 with the provisions of the Manufactured Housing Act;

18 Q. "repairman" means any person who, for
19 remuneration or consideration, modifies, alters or repairs
20 the structural, mechanical or electrical systems of a
21 manufactured home; and

22 R. "salesperson" means any person who for any
23 form of compensation sells or lease-purchases or offers to
24 sell or lease-purchase manufactured homes to consumers as an
25 employee or agent of a dealer."

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1 SECTION 5. Section 60-14-4 NMSA 1978 (being Laws 1978,
2 Chapter 80, Section 1, as amended) is amended to read:

3 "60-14-4. POWERS AND DUTIES OF DIVISION.--The division
4 shall:

5 A. prepare, administer and grade examinations for
6 licensure under the classification sought by each applicant;

7 B. issue licenses and certificates of
8 qualification in accordance with the provisions of the
9 Manufactured Housing Act;

10 C. establish and collect fees authorized to be
11 collected by the division pursuant to the Manufactured
12 Housing Act;

13 D. ~~[subject to the approval of the committee]~~
14 adopt rules ~~[and regulations]~~ relating to the construction,
15 repair, modification, installation, tie-down, hookup and sale
16 of all manufactured homes, which ~~[regulations]~~ rules shall be
17 uniform throughout the state and shall be enforced by
18 inspectors for the division to insure minimum standards of
19 safety within the state and any of its political
20 subdivisions. Ordinances of any political subdivision of New
21 Mexico relating to gas, including natural gas, liquefied
22 petroleum gas or synthetic natural gas; electricity; sanitary
23 plumbing; and installation or sale of manufactured homes
24 shall not be inconsistent with any rules, ~~[regulations]~~ codes
25 or standards adopted by the division pursuant to the

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1 Manufactured Housing Act;

2 E. adopt a budget and submit it to the regulation
3 and licensing department for approval;

4 F. make an annual report to the superintendent of
5 regulation and licensing concerning the operations of the
6 division. The report shall contain the division's
7 recommendations for legislation that it deems necessary to
8 improve the licensing and the ethical and technical practices
9 of the manufactured housing industry and to protect the
10 public welfare;

11 G. ~~[subject to the approval of the committee]~~
12 adopt such rules, ~~[regulations]~~ codes and standards as are
13 necessary to carry out the provisions of the Manufactured
14 Housing Act;

15 H. prepare a uniform manufacturer's warranty and
16 require its adoption as a condition of licensure by all
17 manufacturers of manufactured homes doing business in New
18 Mexico;

19 I. ~~[subject to the approval of the committee]~~
20 adopt by ~~[regulation]~~ rule the mobile home construction and
21 safety standards contained in the National Mobile Home
22 Construction and Safety Standards Act of 1974, 42 U.S.C. 5401
23 et seq., as amended;

24 J. ~~[subject to the approval of the committee]~~
25 adopt by ~~[regulation]~~ rule the mobile home procedural and

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1 enforcement regulations, 24 C.F.R. 3282, as amended,
2 promulgated by the department of housing and urban
3 development pursuant to the National Mobile Home Construction
4 and Safety Standards Act of 1974, 42 U.S.C. 5401 et seq., as
5 amended;

6 K. issue permits and provide for a single
7 inspection of every installation in New Mexico, regardless of
8 the location;

9 L. ~~[subject to the approval of the committee]~~
10 adopt ~~[regulations]~~ rules prescribing standards for the
11 installation or use of electrical wiring; the installation of
12 all fixtures, plumbing, consumer's gas pipe, including
13 natural gas, liquefied petroleum gas and synthetic natural
14 gas, appliances and materials installed in the course of
15 mechanical installation; and the construction, alteration,
16 installation and repair of all manufactured homes intended
17 for use in flood or mudslide areas designated pursuant to
18 Section 3-18-7 NMSA 1978. The ~~[regulations]~~ rules shall give
19 due regard to standards prescribed by the federal insurance
20 administration pursuant to regulation 1910, Subsection 7(d),
21 79 Stat. 670, Section 1361, 82 Stat. 587 and 82 Stat. 5757,
22 all as amended, and shall give due regard to physical,
23 climatic and other conditions peculiar to New Mexico;

24 M. conduct "inspector schools" so that each
25 inspector under the division's jurisdiction is capable of

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1 giving a complete one-time inspection for the sufficiency of
2 unit installation, construction and mechanical and electrical
3 systems;

4 N. enter into cooperative agreements with federal
5 agencies relating to manufactured housing and accept and use
6 federal grants, matching funds or other financial assistance
7 to further the purposes of the Manufactured Housing Act. The
8 division may enter into agreements with municipalities and
9 counties to provide for the inspection of manufactured homes
10 by employees of municipalities and counties, to be performed
11 under the supervision and control of the division. The
12 division may allow all or a portion of the inspection fee
13 collected by a local public body to be retained by the local
14 public body. The portion of the fee retained shall be
15 determined by the division and shall be related to the
16 completeness of the inspection performed;

17 O. administer oaths through any member of the
18 division, the director or a hearing officer;

19 P. ~~[subject to the approval of the committee]~~
20 adopt rules ~~[and regulations]~~ for the conducting of hearings
21 and the presentation of views, consistent with the
22 regulations promulgated by the department of housing and
23 urban development, 24 C.F.R. 3282.151 through 3282.156, as
24 amended;

25 Q. ~~[subject to the approval of the committee]~~

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1 adopt by [~~regulation~~] rule a requirement that dealers,
2 repairmen and installers provide to consumers warranties on
3 their product and work and prescribe by [~~regulation~~] rule
4 minimum requirements of such warranties;

5 R. coordinate with and qualify inspectors for any
6 multiple inspection program provided by the [~~construction~~
7 ~~industries~~] division [~~of the regulation and licensing~~
8 ~~department~~] for inspection of manufactured homes; and

9 S. [~~subject to the approval of the committee~~]
10 adopt [~~regulations~~] rules, codes and standards for
11 manufactured homes used for nonresidential purposes; provided
12 that such manufactured homes being used for nonresidential
13 purposes on May 18, 1988 shall not be required to meet
14 Uniform Building Code standards, except as to requirements
15 for access to the handicapped, but manufactured homes being
16 used for nonresidential purposes after May 18, 1988 shall be
17 required to meet Uniform Building Code standards. None of
18 the provisions contained in this subsection shall apply to
19 retailers licensed by the motor vehicle division of the
20 taxation and revenue department [~~and~~

21 ~~T. with the approval of the superintendent of~~
22 ~~regulation and licensing, employ such personnel as the~~
23 ~~director deems necessary for the exclusive purposes of~~
24 ~~investigating violations of the Manufactured Housing Act,~~
25 ~~enforcing Section 60-14-17 NMSA 1978 and instituting legal~~

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1 ~~action in the name of the division to enforce the provisions~~
2 ~~of Section 60-14-19 NMSA 1978]."~~

3 SECTION 6. Section 60-14-5 NMSA 1978 (being Laws 1977,
4 Chapter 245, Section 220, as amended) is amended to read:

5 "60-14-5. MANUFACTURED HOUSING COMMITTEE CREATED--
6 MEMBERSHIP--COMPENSATION--DUTIES.--

7 A. ~~[There is created within the division]~~ The
8 "manufactured housing committee" is created as an advisory
9 committee for the division. It shall be composed of seven
10 members who are residents of New Mexico and who ~~[shall]~~ serve
11 at the pleasure of the governor and ~~[be]~~ are appointed by
12 ~~[him]~~ the governor as follows:

13 (1) one member who is or is the designated
14 representative of a manufacturer licensed under the
15 Manufactured Housing Act;

16 (2) one member who is or is the qualifying
17 party of a dealer licensed under the Manufactured Housing
18 Act;

19 (3) one member who is or is the qualifying
20 party of an installer licensed under the Manufactured Housing
21 Act;

22 (4) one member who is a broker licensed
23 under the Manufactured Housing Act; and

24 (5) three members who are manufactured
25 housing unit owners not subject to licensure under the

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1 Manufactured Housing Act.

2 ~~[The term of office of each member of the committee is~~
3 ~~four years; provided that members shall be appointed for~~
4 ~~staggered terms beginning July 1, 1983 so that two terms end~~
5 ~~on June 30, 1985, two terms end on June 30, 1986 and three~~
6 ~~terms end on June 30, 1987. Thereafter, all members shall be~~
7 ~~appointed to four-year terms.]~~

8 B. Members shall be appointed to provide adequate
9 representation of all geographic areas of the state.

10 ~~[B.]~~ C. Each member of the committee ~~[shall]~~ is
11 entitled to receive per diem and mileage as provided in the
12 Per Diem and Mileage Act and shall receive no other
13 compensation, perquisite or allowance.

14 ~~[G.]~~ D. The committee shall annually elect a
15 ~~[chairman]~~ chair and vice ~~[chairman]~~ chair from its
16 membership. The director of the division shall serve as the
17 executive secretary of the committee.

18 ~~[D.]~~ E. The committee shall meet at ~~[least~~
19 ~~bimonthly at]~~ the call of the ~~[chairman]~~ chair.

20 ~~[E.]~~ F. The committee shall provide technical and
21 policy advice to the division and review ~~[and approve or~~
22 ~~disapprove]~~ all rules, ~~[regulations]~~ standards and codes
23 ~~[subject to its approval]~~ proposed under the provisions of
24 the Manufactured Housing Act ~~[and~~

25 ~~(1) establish by regulation classifications~~

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1 of licenses issued by the division and qualifications and
2 examinations necessary for licensure under the Manufactured
3 Housing Act; and

4 (2) ~~suspend or revoke for cause any license~~
5 ~~or certificate of qualification issued by the division]."~~

6 SECTION 7. Section 60-14-6 NMSA 1978 (being Laws 1978,
7 Chapter 81, Section 1, as amended) is amended to read:

8 "60-14-6. BONDING REQUIREMENTS--DEALERS, BROKERS,
9 SALESPERSONS, MANUFACTURERS, REPAIRMEN AND INSTALLERS.--

10 A. The division [~~with the approval of the~~
11 ~~committee~~] may by [~~regulation~~] rule require each dealer,
12 broker, salesperson, manufacturer, repairman and installer to
13 furnish and maintain with the division a consumer protection
14 bond underwritten by a corporate surety authorized to
15 transact business in New Mexico, in a sum to be determined by
16 [~~regulation~~] rule and in such form, and with either unit or
17 blanket coverage, as required by [~~regulation~~] rule, to be
18 conditioned upon the dealer, broker, salesperson,
19 manufacturer, repairman or installer complying with the
20 provisions of the Manufactured Housing Act and any other law
21 applying to the licensee, and also as indemnity for any loss
22 sustained by any person damaged:

23 (1) as a result of a violation by the
24 licensee of any provision of the Manufactured Housing Act or
25 of any [~~regulation~~] rule of the division adopted pursuant to

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1 that act;

2 (2) as a result of a violation of any
3 ~~[regulation]~~ rule adopted by the division;

4 (3) by fraud of a licensee in the execution
5 or performance of a contract; or

6 (4) by misrepresentation or the making of
7 false promises through the advertising or the agents of a
8 licensee.

9 B. The consumer protection bond may include
10 provisions for the indemnification for any loss sustained by
11 any consumer as the result of the refusal, failure or
12 inability to transfer good and sufficient legal title to the
13 consumer by the transferor or any other party claiming title.

14 C. The committee may attach and disburse for
15 cause any consumer protection bond furnished to the division
16 pursuant to this section. The division ~~[subject to the~~
17 ~~approval of the committee]~~ shall adopt the necessary rules
18 ~~[and regulations]~~ to administer the provisions of this
19 section."

20 SECTION 8. Section 60-14-7 NMSA 1978 (being Laws 1975,
21 Chapter 331, Section 8, as amended) is amended to read:

22 "60-14-7. LICENSE REQUIRED--CLASSIFICATION--
23 EXAMINATION.--

24 A. No person shall engage in business as a
25 manufacturer, dealer, broker, repairman, installer or

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1 salesperson unless licensed as provided in the Manufactured
2 Housing Act.

3 B. The [~~committee~~] division shall adopt
4 [~~regulations~~] rules creating a system of license
5 classifications covering the occupations of dealer, broker,
6 manufacturer, repairman, installer and salesperson and
7 providing for the qualifications and examination for each
8 class of license.

9 C. No person shall import for sale or exchange,
10 or engage in the business of selling, leasing or exchanging
11 or offering for sale, lease or exchange, any manufactured
12 home manufactured by any person who is not licensed as a
13 manufacturer under the Manufactured Housing Act."

14 SECTION 9. Section 60-14-8 NMSA 1978 (being Laws 1977,
15 Chapter 6, Section 1, as amended) is amended to read:

16 "60-14-8. LICENSURE--EXEMPTION.--The provisions of
17 Section 60-14-7 NMSA 1978 shall not apply to:

18 A. licensed real estate brokers or salesmen
19 acting as agents for another person in the sale of real
20 property on which is located one or more manufactured homes
21 whose installation has been approved as provided in
22 [~~regulations~~] rules of the [~~committee~~] division; or

23 B. technicians working on weatherization projects
24 that do not exceed a cost of three thousand five hundred
25 dollars (\$3,500) and that are administered by a state or

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1 federal agency."

2 SECTION 10. Section 60-14-9 NMSA 1978 (being Laws 1975,
3 Chapter 331, Section 9, as amended) is amended to read:

4 "60-14-9. LICENSE--APPLICATION--ISSUANCE.--

5 A. Application for a license required under
6 Section 60-14-7 NMSA 1978 for one of the classified
7 occupations, or for a certificate of qualification of a
8 qualifying party of a licensee other than an individual
9 licensee, shall be submitted to the division on forms
10 prescribed and furnished by the division. The application
11 shall contain such information and be accompanied by such
12 attachments as are required by [~~regulations~~] rule of the
13 division. The forms shall be accompanied by the prescribed
14 fee.

15 B. No license shall be issued by the division to
16 [~~any~~] a person unless the division is satisfied that [~~he~~] the
17 person is or has in [~~his~~] the person's employ a qualifying
18 party who is qualified for the classification for which the
19 application is made and who has satisfied the requirements of
20 Subsection C of this section.

21 C. An applicant for licensure shall:
22 (1) demonstrate financial responsibility as
23 required by [~~regulations~~] rules of the [~~committee~~] division;
24 (2) be of good reputation;
25 (3) not have engaged illegally in the

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1 licensed classification that [~~he~~] the applicant is applying
2 for within one year prior to making the application;

3 (4) demonstrate familiarity with the rules
4 [~~and regulations~~] adopted by the [~~committee~~] division
5 concerning the classification for which application is made;

6 (5) if a corporation, have complied with the
7 laws of New Mexico regarding qualifications for doing
8 business in this state or have been incorporated in New
9 Mexico and have and maintain a registered agent and a
10 registered office in this state;

11 (6) if an individual or partnership, have
12 maintained a residence or street address in New Mexico for at
13 least thirty days preceding the date of application;

14 (7) submit proof of registration with the
15 revenue processing division of the taxation and revenue
16 department and submit a current tax identification number;
17 and

18 (8) personally or through the applicant's
19 qualifying party successfully pass an examination
20 administered by the division in the license classification
21 for which application is made."

22 SECTION 11. Section 60-14-10 NMSA 1978 (being Laws
23 1975, Chapter 331, Section 10, as amended) is amended to
24 read:

25 "60-14-10. QUALIFYING PARTY--EXAMINATION--

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1 CERTIFICATE.--

2 A. Except as provided in Subsection C of this
3 section, no certificate of qualification shall be issued to
4 [~~any~~] an individual desiring to be a qualifying party until
5 [~~he~~] the individual has passed with a satisfactory score an
6 examination prepared, administered and graded by the
7 division.

8 B. The examination where applicable shall consist
9 of:

10 (1) general business knowledge, the rules [~~and~~
11 ~~regulations~~] of the division [~~and committee~~] and the
12 provisions of the Manufactured Housing Act;

13 (2) technical knowledge and familiarity with
14 the prescribed codes and minimum standards, which may be
15 prepared and administered by an employee of the division who
16 is expert in the particular classification for which
17 certification is sought; and

18 (3) general knowledge of the statutes of this
19 state relating to the sale, exchange or lease of manufactured
20 homes, contracts of sale, agency and brokerage.

21 C. If a licensee is subject to suspension by the
22 [~~committee~~] division for failure of the licensee to have a
23 qualifying party in [~~his~~] the licensee's employ, and the
24 employment of the qualifying party is terminated without
25 fault of the licensee, then an employee of the licensee who

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1 is experienced in the classification for which the
2 certificate of qualification was issued and who has been
3 employed two or more years by the licensee shall be issued
4 without examination a temporary certificate of qualification
5 in the classification for which the licensee is licensed.
6 The temporary qualifying party shall be subject to passing
7 the examination as set forth in this section within one year
8 from the date of the temporary certificate's issuance.

9 D. A certificate of qualification is not
10 transferable."

11 SECTION 12. Section 60-14-11 NMSA 1978 (being Laws
12 1975, Chapter 331, Section 11, as amended) is amended to
13 read:

14 "60-14-11. DIVISION FEES.--The division shall by
15 [~~regulation~~] rule establish reasonable annual license fees,
16 fees for examinations and inspection and permit fees. Fees
17 shall be set to reflect the actual cost of licensing and
18 regulation, and, in the case of the examination, they shall
19 reflect the actual cost of preparing and administering the
20 examination. All fees shall be paid to the state treasurer
21 for deposit and transfer as provided in Section 9-16-14 NMSA
22 1978."

23 SECTION 13. Section 60-14-12 NMSA 1978 (being Laws
24 1975, Chapter 331, Section 12, as amended) is amended to
25 read:

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1 "60-14-12. SUSPENSION AND REVOCATION.--Any license or
2 certificate of qualification issued by the division shall be
3 suspended for a definite period or revoked under the
4 procedures of the Uniform Licensing Act by the [~~committee~~
5 division for any of the following causes:

6 A. if a licensee or a qualifying party of a
7 licensee violates any provision of the Manufactured Housing
8 Act or any [~~regulations~~] rules adopted by the division [~~or~~
9 ~~committee~~] pursuant to that act;

10 B. false, misleading or deceptive advertising;

11 C. knowingly contracting or performing a service
12 beyond the scope of the license;

13 D. misrepresentation of a material fact by the
14 applicant in obtaining a license or certificate;

15 E. misrepresentation or omission of a material fact
16 in any manufactured home transaction;

17 F. failure to comply with the warranty requirements
18 of the Manufactured Housing Act or any [~~regulation~~] rule of
19 the [~~committee~~] division pursuant to those requirements;

20 G. failure by a manufacturer or dealer to transfer
21 good and sufficient title to the purchaser of a manufactured
22 home;

23 H. failure by a broker or dealer to provide the
24 buyer and the seller of a preowned manufactured home with a
25 closing statement as required by [~~regulation~~] rule of the

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1 ~~[committee]~~ division;

2 I. conviction of a licensee or a qualifying party
3 of a licensee in any court of competent jurisdiction of a
4 felony or any offense involving moral turpitude; or

5 J. failure by a dealer or broker in the transfer of
6 a preowned manufactured home not owned at the time of the
7 transaction by the dealer or broker to comply with title
8 transfer provisions set forth by ~~[regulation]~~ rule of the
9 division."

10 SECTION 14. Section 60-14-14 NMSA 1978 (being Laws
11 1975, Chapter 331, Section 14, as amended) is amended to
12 read:

13 "60-14-14. HEARING OFFICER.--The division ~~[or~~
14 ~~committee]~~ may designate a hearing officer to preside over
15 and take evidence at any hearing held pursuant to the
16 Manufactured Housing Act."

17 SECTION 15. Section 60-14-15 NMSA 1978 (being Laws
18 1975, Chapter 331, Section 23, as amended) is amended to
19 read:

20 "60-14-15. ~~[COMMITTEE AND]~~ DIVISION--CONSUMER
21 COMPLAINTS--ORDERS--SUSPENSION--REVOCATION.--In addition to
22 the other duties imposed on the ~~[committee and]~~ division
23 under the Manufactured Housing Act, the ~~[committee and]~~
24 division shall receive complaints from ~~[any]~~ a consumer who
25 claims to be harmed by ~~[any]~~ a licensee and shall attempt to

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1 have the complaints adjusted to the reasonable satisfaction
2 of the consumer. If the [~~committee or~~] division cannot
3 secure a proper adjustment, the [~~committee or~~] division shall
4 prepare a formal complaint for the consumer, and, pursuant to
5 the provisions of the Uniform Licensing Act, the [~~committee~~
6 division] shall determine whether the licensee is in violation
7 of the Manufactured Housing Act or of rules [~~and regulations~~]
8 promulgated under that act. If the licensee is in violation
9 of the Manufactured Housing Act or of the rules [~~and~~
10 ~~regulations~~] promulgated under that act, the [~~committee~~
11 division] may order [~~him~~] the licensee to comply, may suspend
12 [~~his~~] the licensee's license until such time as the licensee
13 complies with the order of the [~~committee~~] division or may
14 revoke [~~his~~] the license."

15 SECTION 16. Section 60-14-18 NMSA 1978 (being Laws
16 1979, Chapter 400, Section 2, as amended) is amended to read:

17 "60-14-18. [~~COMMITTEE OR~~] DIVISION--POWERS OF
18 INJUNCTIONS--MANDAMUS.--The division [~~or committee~~] may
19 enforce the provisions of the Manufactured Housing Act by
20 injunction, mandamus or any proper legal proceeding in the
21 district court of the county in which the offense was
22 committed."

23 SECTION 17. Section 60-14-19 NMSA 1978 (being Laws
24 1983, Chapter 295, Section 24, as amended) is amended to
25 read:

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1 "60-14-19. PENALTIES.--

2 A. Any person who knowingly and willfully violates
3 a provision of the Manufactured Housing Act or any rule
4 [~~regulation~~] or administrative order of the [~~committee or~~]
5 division in a manner that threatens the health or safety of
6 any purchaser or consumer is guilty of a misdemeanor and on
7 conviction shall be fined not more than one thousand dollars
8 (\$1,000) or shall be confined in the county jail not longer
9 than one year or both.

10 B. In any action brought to enforce any provision
11 of the Manufactured Housing Act, the division, upon petition
12 to the court, may recover on behalf of the state a civil
13 penalty not to exceed one thousand dollars (\$1,000) for each
14 violation, except that the maximum civil penalty [~~may~~] shall
15 not exceed one million dollars (\$1,000,000) for any related
16 series of violations occurring within one year from the date
17 of the first violation.

18 C. Failure by a manufacturer or dealer to comply
19 with the warranty provisions of the Manufactured Housing Act
20 or any implied warranties or the violation of any provision
21 of the Manufactured Housing Act by any person is an unfair or
22 deceptive trade practice in addition to those practices
23 defined in the Unfair Practices Act and is actionable
24 pursuant to the Unfair Practices Act. As such, the venue
25 provisions and all remedies available in the Unfair Practices

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1 Act apply to and are in addition to the remedies in the
2 Manufactured Housing Act.

3 D. The director may issue a license to an applicant
4 who at any time within one year prior to making an
5 application has acted as an unlicensed dealer, broker,
6 salesperson, repairman, manufacturer or installer in New
7 Mexico without a license as required by the division if:

8 (1) the applicant in addition to all other
9 requirements for licensure pays an additional fee as follows:

10 (a) in an amount up to ten percent of the
11 contract price or the value of the unlicensed work in the
12 discretion of the [~~committee~~] division; or

13 (b) if the applicant has bid or offered a
14 price on a project and was not the successful bidder or
15 offeror, the fee shall be at least one percent but not more
16 than five percent of the total bid amount in the discretion
17 of the [~~committee~~] division; and

18 (2) the director is satisfied that no incident
19 of unlicensed work:

20 (a) caused monetary damage to any person;

21 or

22 (b) resulted in an unresolved consumer
23 complaint being filed against the applicant.

24 E. Any unlicensed person who has performed
25 unlicensed work may settle the claims against that unlicensed

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1 person without becoming licensed if the administrative claims
2 arise from that person's first offense and that person pays
3 an administrative fee calculated pursuant to Paragraph (1) of
4 Subsection D of this section. In addition to the
5 administrative fee, an additional ten percent of the amount
6 of the administrative fee shall be assessed as a service fee.

7 F. If the total fee to be paid by the unlicensed
8 person pursuant to the provisions of Subsection D or E of
9 this section is twenty-five dollars (\$25.00) or less, the fee
10 may be waived by the director."

11 SECTION 18. TEMPORARY PROVISIONS--TRANSFER OF
12 FUNCTIONS, PERSONNEL, PROPERTY, CONTRACTUAL OBLIGATIONS AND
13 STATUTORY REFERENCES.--

14 A. On the effective date of this act, all
15 functions, personnel, appropriations, money, records,
16 furniture, equipment, supplies and other property of the
17 manufactured housing division and manufactured housing
18 committee of the regulation and licensing department are
19 transferred to the construction industries division of that
20 department.

21 B. On the effective date of this act, all
22 contractual obligations of the manufactured housing division
23 or manufactured housing committee of the regulation and
24 licensing department are binding on the construction
25 industries division of that department.

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1 C. On the effective date of this act, all statutory
2 references to the manufactured housing division of the
3 regulation and licensing department are deemed to be
4 references to the construction industries division of that
5 department.

6 **SECTION 19. REPEAL.**--Sections 9-16-13 and 60-14-13 NMSA
7 1978 (being Laws 1983, Chapter 297, Section 29 and Laws 1975,
8 Chapter 331, Section 13, as amended) are repealed.

9 **SECTION 20. EFFECTIVE DATE.**--The effective date of the
10 provisions of this act is July 1, 2012.