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## FISCAL IMPACT REPORT

ORIGINAL DATE 01/28/13  
 SPONSOR SJC LAST UPDATED 02/25/13 HB \_\_\_\_\_  
 SHORT TITLE Nonresident Real Estate Broker Licensing SB 212/SJCS  
 ANALYST Weber

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		NFI				

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Regulation and Licensing (RLD)

### SUMMARY

#### Synopsis of SJC Substitute

SJC substitute of Senate Bill 212 proposes the following changes related to real estate brokers and licensure.

1. amend the definitions of “client” and “customer” of a real estate broker to conform with the definitions of those terms in the Real Estate Commission Rules;
2. delete the definition of “salesperson”, an obsolete term replaced by the term “associate broker” several years ago;
3. delete duplicative language relating to an exemption from licensure for a person selling their own property;
4. adds the definition of a qualifying broker and expands on the possible activities in which a qualifying or associate broker may engage;
5. increase the statutory premium cap for professional liability insurance, also known as errors and omissions (E&O) insurance, from \$300 to \$500;
6. clarify the requirements for an out-of-state broker to receive a waiver of New Mexico pre-licensing education and examination requirements;
7. clarify license surrender requirements for associate brokers and qualifying brokers whose licenses are suspended or revoked by Commission order;
8. delete the “foreign broker” provision whereby an out-of-state broker can practice real estate in New Mexico without a New Mexico license by entering into a written co-brokerage agreement with a New Mexico licensed qualifying broker;

9. make unlicensed brokerage activity, fraud, misrepresentation, and wrongful conversion of funds fourth-degree felonies, but violation of all other provisions of the Real Estate License law a misdemeanor.

## FISCAL IMPLICATIONS

No fiscal impacts were identified.

## SIGNIFICANT ISSUES

The Regulation and Licensing (RLD) identifies the following as the changes of greatest significance:

1. The proposed increase in the statutory premium cap for errors and omissions (E&O) insurance: the Real Estate License Law provides that if the Real Estate Commission cannot provide brokers a group E&O policy within certain coverage, deductible, and premium caps, the requirement for brokers to maintain E&O insurance is suspended. At the present rate of growth of E&O claim costs, the current \$300 premium cap will be exceeded in two years, resulting in the suspension of the E&O requirement. Such a suspension could potentially disrupt the continuous coverage required by E&O insurance companies to cover claims, and could deprive consumers of an important avenue for recovering damages incurred as a result of errors and omissions made by brokers in the course of real estate transactions.
2. The repeal of the foreign broker provision in the Real Estate License Law: Although the foreign broker provision was originally written to allow brokers to pay and receive real estate brokerage referral fees across state lines, the actual effect of the provision has been to allow out-of-state brokers to practice real estate in New Mexico without a license by simply finding a New Mexico brokerage willing to sign a co-brokerage agreement allowing the out-of-state broker to conduct the transaction. However, signing such an agreement does not relieve the New Mexico broker of responsibility for the transaction. Another related amendment would waive certain pre-licensing requirements for out-of-state brokers, but would result in the out-of-state broker obtaining a full New Mexico broker's license. The ability of New Mexico brokers to pay and receive referral fees is retained.
3. The clarification that unlicensed activity, fraud, misrepresentation, and wrongful conversion of funds are fourth-degree felonies, but violation of all other provisions of the Real Estate License Law a misdemeanor: The License Law was amended in 2011 with the intent of making unlicensed activity a fourth-degree felony in hopes of deterring unlicensed activity and encouraging prosecutors to prosecute unlicensed activity. However, as currently written, violation of any provision of the License law is a fourth-degree felony. The language has affected administrative prosecutions of license law violations by making brokers reluctant to admit to any violations of the license law for fear of admitting to a felony-level crime.