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AN ACT

RELATING TO CRIMINAL RECORDS; PROVIDING FOR EXPUNGEMENT OF  
ARREST AND CONVICTION RECORDS FOR CERTAIN CANNABIS OFFENSES;  
PROVIDING FOR DISMISSAL OF SENTENCES OF INCARCERATED PERSONS;  
REVISING THE LIST OF CRIMINAL RECORDS THAT CANNOT BE  
CONSIDERED IN AN APPLICATION FOR PUBLIC EMPLOYMENT, LICENSURE  
OR OTHER AUTHORITY TO PRACTICE A TRADE, BUSINESS OR  
PROFESSION; AMENDING THE CRIMINAL RECORD EXPUNGEMENT ACT.

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

SECTION 1. Section 28-2-3 NMSA 1978 (being Laws 1974,  
Chapter 78, Section 3, as amended) is amended to read:

"28-2-3. EMPLOYMENT ELIGIBILITY DETERMINATION.--

A. Subject to the provisions of Subsection B of  
this section and Sections 28-2-4 and 28-2-5 NMSA 1978, in  
determining eligibility for employment with the state or any  
of its political subdivisions or for a license, permit,  
certificate or other authority to engage in any regulated  
trade, business or profession, the board or other department  
or agency having jurisdiction may take into consideration a  
conviction, but the conviction shall not operate as an  
automatic bar to obtaining public employment or license or  
other authority to practice the trade, business or  
profession. A board, department or agency of the state or  
any of its political subdivisions shall not make an inquiry

1 regarding a conviction on an initial application for  
2 employment and shall only take into consideration a  
3 conviction after the applicant has been selected as a  
4 finalist for the position.

5 B. The following criminal records shall not be  
6 used, distributed or disseminated in connection with an  
7 application for any public employment, license or other  
8 authority:

9 (1) records of arrest not followed by a  
10 valid conviction;

11 (2) convictions that have been sealed,  
12 dismissed, expunged or pardoned;

13 (3) juvenile adjudications; or

14 (4) convictions for a crime that is not  
15 job-related for the position in question and consistent with  
16 business necessity."

17 SECTION 2. Section 28-2-4 NMSA 1978 (being Laws 1974,  
18 Chapter 78, Section 4, as amended by Laws 1997, Chapter 238,  
19 Section 5 and also by Laws 1997, Chapter 251, Section 1) is  
20 amended to read:

21 "28-2-4. POWER TO REFUSE, RENEW, SUSPEND OR REVOKE  
22 PUBLIC EMPLOYMENT OR LICENSE.--

23 A. Any board or other agency having jurisdiction  
24 over employment by the state or any of its political  
25 subdivisions or the practice of any trade, business or

1 profession may refuse to grant or renew or may suspend or  
2 revoke any public employment or license or other authority to  
3 engage in the public employment, trade, business or  
4 profession for one or both of the following causes:

5 (1) where the applicant, employee or  
6 licensee has been convicted of a felony and the criminal  
7 conviction directly relates to the particular employment,  
8 trade, business or profession; and

9 (2) where the applicant, employee or  
10 licensee has been convicted of homicide, kidnapping, human  
11 trafficking, trafficking in controlled substances, criminal  
12 sexual penetration or related sexual offenses or child abuse  
13 and the applicant, employee or licensee has applied for  
14 reinstatement, renewal or issuance of a teaching certificate,  
15 a license to operate a child-care facility or employment at a  
16 child-care facility, regardless of rehabilitation.

17 B. The board or other agency shall explicitly  
18 state in writing the reasons for a decision that prohibits  
19 the person from engaging in the employment, trade, business  
20 or profession if the decision is based in whole or in part on  
21 conviction of any crime described in Paragraphs (1) and (2)  
22 of Subsection A of this section."

23 SECTION 3. Section 29-3A-1 NMSA 1978 (being Laws 2019,  
24 Chapter 203, Section 1) is amended to read:

25 "29-3A-1. SHORT TITLE.--Chapter 29, Article 3A NMSA

1 1978 may be cited as the "Criminal Record Expungement Act"."

2 SECTION 4. Section 29-3A-4 NMSA 1978 (being Laws 2019,  
3 Chapter 203, Section 4) is amended to read:

4 "29-3A-4. EXPUNGEMENT OF RECORDS UPON RELEASE WITHOUT  
5 CONVICTION.--

6 A. One year from the date of the final disposition  
7 in the case, a person released without conviction for a  
8 violation of a municipal ordinance, misdemeanor, felony,  
9 penalty assessments under the Criminal Code and the Motor  
10 Vehicle Code or violations and deferred sentences under the  
11 Motor Vehicle Code may petition the district court in the  
12 district in which the charges against the person originated  
13 for an order to expunge arrest records and public records  
14 related to that case.

15 B. A petitioner shall provide notice by first-  
16 class United States mail of the filed petition to the  
17 following parties, which parties shall be given thirty days  
18 in which to provide to the district court any objections to  
19 the petition:

20 (1) the district attorney for that district;  
21 and

22 (2) the department of public safety.

23 C. A single petition filed pursuant to Subsection  
24 A of this section may include a request to expunge multiple  
25 arrest records and public records that originated within the

1 jurisdiction of a district. A petition shall be filed under  
2 seal or under pseudonym. Petitions brought pursuant to the  
3 Criminal Record Expungement Act and all records of  
4 proceedings thereunder shall be expunged upon the conclusion  
5 of proceedings. The petitioner shall attach to and file with  
6 the petition copies of the petitioner's record of arrest and  
7 prosecutions from the department of public safety dated no  
8 earlier than ninety days prior to the date the petition is  
9 filed.

10 D. A party that seeks to object to a petition on  
11 the basis of the contents of a petitioner's record of arrest  
12 and prosecutions from the federal bureau of investigation  
13 must provide a copy of that record to a petitioner at no  
14 charge at the time the party objects.

15 E. After a hearing on the petition, the court  
16 shall issue an order within thirty days of the hearing  
17 requiring that all arrest records and public records related  
18 to the case be expunged if it finds that no other charge or  
19 proceeding is pending against the petitioner and if the  
20 petitioner was released without a conviction, including:

- 21 (1) an acquittal or finding of not guilty;
- 22 (2) a nolle prosequi, a no bill or other  
23 dismissal;
- 24 (3) a referral to a preprosecution diversion  
25 program;

1 (4) an order of conditional discharge  
2 pursuant to Section 31-20-13 NMSA 1978; or

3 (5) the proceedings were otherwise  
4 discharged.

5 F. The court shall cause a copy of the order to be  
6 delivered to all relevant law enforcement agencies and  
7 courts. The order shall prohibit all relevant law  
8 enforcement agencies and courts from releasing copies of the  
9 records to any person, except upon order of the court."

10 SECTION 5. A new section of the Criminal Record  
11 Expungement Act is enacted to read:

12 "EXPUNGEMENT OF ARREST AND CONVICTION  
13 RECORDS--PROCEDURE.--If a person was charged with an offense  
14 involving cannabis that is no longer a crime on the effective  
15 date of the Cannabis Regulation Act or that would have  
16 resulted in a lesser offense if that act had been in effect  
17 at the time of the offense, whether or not the person is  
18 convicted, all public records held by a court or an agency of  
19 the state or a local jurisdiction that relate to the person's  
20 arrest or conviction shall be automatically expunged two  
21 years after the date of the person's conviction or the date  
22 of the person's arrest if there was no conviction; provided  
23 that if the arrest or conviction included multiple charges,  
24 only the portions of the public records related to the  
25 cannabis charge shall be expunged. If the person is or was

1 under eighteen years of age at the time of the arrest or  
2 conviction, the public records shall be retained for two  
3 years or until the person is eighteen years of age, whichever  
4 comes first, and shall then be automatically expunged;  
5 provided that if the arrest or conviction included multiple  
6 charges, only the portions of the public records related to  
7 the cannabis charge shall be expunged. The public records  
8 shall be removed from all statewide criminal databases. The  
9 supreme court shall promulgate rules to implement the  
10 provisions of this section."

11 SECTION 6. A new section of the Criminal Record  
12 Expungement Act is enacted to read:

13 "DISMISSAL OF SENTENCES--INCARCERATED PERSONS.--

14 A. Within thirty days following the effective date  
15 of this section, a correctional facility, a county jail or a  
16 juvenile correctional facility in which a person is currently  
17 incarcerated for an offense that is no longer a crime  
18 pursuant to the provisions of the Cannabis Regulation Act, or  
19 that would have resulted in a lesser offense if that act had  
20 been in effect at the time of the offense, shall notify the  
21 court that the convicted person's case may be:

22 (1) reopened to consider possible dismissal  
23 of the person's sentence; or

24 (2) expunged pursuant to the provisions of  
25 the Criminal Record Expungement Act.

1           B. A court shall reopen a case pursuant to  
2 Subsection A of this section and dismiss the person's  
3 sentence if it is legally invalid.

4           C. A person who has completed the person's  
5 sentence for a conviction, whether by trial or negotiated  
6 plea, who would not have been guilty of an offense or who  
7 would have been guilty of a lesser offense if the Cannabis  
8 Regulation Act had been in effect at the time of the offense  
9 is entitled to have the conviction dismissed and expunged  
10 because the prior conviction is now legally invalid or  
11 redesignated as a penalty assessment citation.

12           D. On or before January 1, 2022, the department of  
13 public safety shall review the public records in the state  
14 criminal history databases and shall identify all past  
15 convictions that are potentially eligible for dismissal and  
16 expungement or redesignation pursuant to the Cannabis  
17 Regulation Act. The department of public safety shall notify  
18 the corrections department, prosecutors and defense counsel  
19 of record in the case resulting in the conviction of all  
20 cases that are eligible for dismissal and expungement or  
21 redesignation.

22           E. The prosecutor of the case shall have until  
23 July 1, 2022 to review all cases and determine whether to  
24 challenge the dismissal and expungement or redesignation.

25           F. The prosecutor of the case may challenge the

1 resentencing of a person pursuant to this section when the  
2 person does not meet the criteria established under the  
3 Cannabis Regulation Act.

4 G. On or before July 1, 2022, the prosecutor of  
5 the case shall inform the court and defense counsel of record  
6 in the case resulting in the conviction when the prosecutor  
7 of the case is challenging a particular dismissal and  
8 expungement or redesignation. The prosecutor of the case  
9 shall also inform the court when the prosecutor of the case  
10 is not challenging a particular dismissal and expungement or  
11 redesignation.

12 H. If the prosecutor of the case does not  
13 challenge the dismissal and expungement or redesignation by  
14 July 1, 2022, the court shall notify the department of public  
15 safety that the case has been dismissed. Upon notice, the  
16 department of public safety shall expunge the public record  
17 pertaining to the offense; provided that if the arrest  
18 included multiple charges, only the portions of the public  
19 records related to the cannabis charge shall be expunged.

20 I. A person who is currently incarcerated or who  
21 was incarcerated in the past for a cannabis offense that is  
22 no longer a crime may at any time petition to modify the  
23 person's criminal sentence or to have the person's conviction  
24 vacated. If the petition is granted, the court shall issue  
25 an order within thirty days of the granting of the petition

1 requiring that the portions of the public records related to  
2 the cannabis offense, as well as all records of proceedings  
3 related to the petition for expungement, be expunged.

4 J. Nothing in this section is intended to diminish  
5 or abrogate any rights or remedies otherwise available to a  
6 person who was convicted of or incarcerated for a cannabis  
7 offense.

8 K. The provisions of this section shall apply  
9 equally to juvenile delinquency adjudications and convictions  
10 of a juvenile if the juvenile would not have been guilty  
11 of an offense or would have been guilty of a lesser offense  
12 as provided in the Cannabis Regulation Act.

13 L. No fee or cost of any kind shall be imposed  
14 upon a person whose sentence is reviewed pursuant to this  
15 section."

16 SECTION 7. Section 61-1-1 NMSA 1978 (being Laws 1957,  
17 Chapter 247, Section 1, as amended) is amended to read:

18 "61-1-1. SHORT TITLE.--Chapter 61, Article 1 NMSA 1978  
19 may be cited as the "Uniform Licensing Act"."

20 SECTION 8. A new section of the Uniform Licensing Act  
21 is enacted to read:

22 "CRIMINAL CONVICTIONS--EXCLUSION FROM  
23 LICENSURE--DISCLOSURE REQUIREMENT.--

24 A. A board shall not exclude from licensure a  
25 person who is otherwise qualified on the sole basis that the

1 person has been previously arrested for or convicted of a  
2 crime, unless the person has a disqualifying criminal  
3 conviction.

4 B. By December 31, 2021, each board shall  
5 promulgate and post on the board's website rules relating to  
6 licensing requirements to list the specific criminal  
7 convictions that could disqualify an applicant from receiving  
8 a license on the basis of a previous felony conviction.

9 Rules relating to licensing requirements promulgated by a  
10 board shall not use the terms "moral turpitude" or "good  
11 character". A board shall only list disqualifying criminal  
12 convictions.

13 C. In an administrative hearing or agency appeal,  
14 a board shall carry the burden of proof on the question of  
15 whether the exclusion from occupational or professional  
16 licensure is based upon a disqualifying criminal conviction.

17 D. No later than October 31 of each year, while  
18 ensuring the confidentiality of individual applicants, a  
19 board shall make available to the public an annual report for  
20 the prior fiscal year containing the following information:

21 (1) the number of applicants for licensure  
22 and, of that number, the number granted a license;

23 (2) the number of applicants for licensure  
24 or license renewal with a potential disqualifying criminal  
25 conviction who received notice of potential disqualification;

1 (3) the number of applicants for licensure  
2 or license renewal with a potential disqualifying criminal  
3 conviction who provided a written justification with evidence  
4 of mitigation or rehabilitation; and

5 (4) the number of applicants for licensure  
6 or license renewal with a potential disqualifying criminal  
7 conviction who were granted a license, denied a license for  
8 any reason or denied a license because of the conviction.

9 E. As used in this section, "disqualifying  
10 criminal conviction" means a conviction for a crime that is  
11 job-related for the position in question and consistent with  
12 business necessity."

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