

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 385

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

RELATING TO EMPLOYMENT; EXPANDING THE LIST OF CRIMINAL RECORDS THAT CANNOT BE CONSIDERED IN AN APPLICATION FOR PUBLIC EMPLOYMENT, LICENSE OR OTHER AUTHORITY; ENACTING A NEW SECTION OF CHAPTER 61 NMSA 1978 TO PROHIBIT THE EXCLUSION FROM PROFESSIONAL LICENSURE OF PERSONS CONVICTED OF CERTAIN FELONIES.

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

SECTION 1. Section 28-2-3 NMSA 1978 (being Laws 1974,

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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 regarding ~~[a]~~ an arrest or conviction on an initial application for employment and shall only take into consideration a conviction after the applicant has been selected as a finalist for the position.

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

(1) records of arrest not followed by a valid conviction; ~~[and~~

~~(2) misdemeanor convictions not involving~~

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~~moral turpitude;~~

(2) a conviction that has been sealed,
dismissed, expunged or pardoned;

(3) a juvenile adjudication; or

(4) a conviction for a crime that is not
directly related to the duties or responsibilities of the
licensed occupation."

SECTION 2. Section 61-1-1 NMSA 1978 (being Laws 1957,
Chapter 247, Section 1, as amended) is amended to read:

"61-1-1. SHORT TITLE.--~~[Sections 67-26-1 through 67-26-31
NMSA 1953]~~ Chapter 61, Article 1 NMSA 1978 may be cited as the
"Uniform Licensing Act"."

SECTION 3. A new section of the Uniform Licensing Act is
enacted to read:

"[NEW MATERIAL] EXCLUSION FROM PROFESSIONAL LICENSURE--
PROHIBITION--EXCEPTIONS.--

A. A board shall not deny licensure to an
individual who is otherwise qualified for licensure on the sole
basis that the individual has been previously arrested for or
convicted of a felony, unless the individual was convicted and
the conviction was for a crime related to the profession for
which the individual seeks licensure.

B. By January 31, 2020, a board shall promulgate
rules relating to licensing requirements to list and shall post
on the Sfl→~~regulation and licensing department~~←Sfl
Sfl→board's←Sfl website the specific criminal convictions that
could disqualify an applicant from receiving a license on the
basis of a previous felony conviction. A board shall not use

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vague or generic terms, such as "moral turpitude" or "good character". A board may only list disqualifying felony convictions that are directly related to the duties and responsibilities for each specific license.

C. A board that denies an application for a license based in whole or in part on an applicant's felony conviction shall provide written findings.

D. In any administrative hearing or agency appeal, the board shall carry the burden of proof on the question of whether the applicant's criminal conviction directly relates to the occupation for which the license is sought."

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