

HOUSE LABOR, VETERANS' AND MILITARY AFFAIRS  
COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 382

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

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 NEW SECTIONS  
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,  
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,

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1 certificate or other authority to engage in any regulated  
2 trade, business or profession, the board or other department or  
3 agency having jurisdiction may take into consideration a  
4 conviction, but the conviction shall not operate as an  
5 automatic bar to obtaining public employment or license or  
6 other authority to practice the trade, business or profession.  
7 A board, department or agency of the state or any of its  
8 political subdivisions shall not make an inquiry regarding [a]  
9 an arrest or conviction on an initial application for  
10 employment and shall only take into consideration a conviction  
11 after the applicant has been selected as a finalist for the  
12 position.

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

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

19 ~~(2) misdemeanor convictions not involving~~  
20 ~~moral turpitude;]~~

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

23 (3) a juvenile adjudication; or

24 (4) a conviction that occurred more than three  
25 years before the date of the application or a conviction for a

1 crime that is not directly related to the duties or  
2 responsibilities of the licensed occupation, except for a  
3 conviction of:

4 (a) a felony committed with violence  
5 against a person, threatened violence or a likelihood of  
6 serious bodily injury; in which the defendant was personally  
7 armed with or personally used a deadly weapon in the commission  
8 of the crime; or in which the defendant personally inflicted  
9 great bodily injury in the commission of the crime; or

10 (b) a felony in violation of any  
11 provision of Chapter 30, Article 9 NMSA 1978."

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

14 "61-1-1. SHORT TITLE.--~~[Sections 67-26-1 through 67-26-31~~  
15 ~~NMSA 1953]~~ Chapter 61, Article 1 NMSA 1978 may be cited as the  
16 "Uniform Licensing Act"."

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

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

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

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1 which the individual seeks licensure.

2 B. By September 1, 2019, a board shall promulgate  
3 rules relating to licensing requirements to list the specific  
4 criminal convictions that could disqualify an applicant from  
5 receiving a license on the basis of a previous felony  
6 conviction. A board shall not use vague or generic terms, such  
7 as "moral turpitude" or "good character". A board may only  
8 list disqualifying felony convictions that are directly related  
9 to the duties and responsibilities for each specific license.

10 C. When promulgating the list of criminal  
11 convictions that could disqualify an applicant from receiving a  
12 license pursuant to Subsection B of this section, the board  
13 shall consider:

14 (1) the public policy of this state, as  
15 expressed in the Criminal Offender Employment Act, to encourage  
16 the licensure of persons with arrest and conviction records;

17 (2) whether the elements of the crime are  
18 directly related to the specific duties and responsibilities of  
19 that occupation and within the scope of that license;

20 (3) whether the occupation offers the  
21 opportunity for the same or a similar crime to occur;

22 (4) the relationship of the crime to the  
23 purposes of state regulation of the occupation for which the  
24 license is required; and

25 (5) the length of time since the crime

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1 occurred.

2 D. A board shall use the clear and convincing  
 3 standard of proof in examining the factors to determine whether  
 4 an applicant with a disqualifying felony conviction will be  
 5 denied a license. The board shall make its determination based  
 6 on the following factors:

7 (1) the nature and seriousness of the crime  
 8 for which the individual was convicted;

9 (2) the passage of time since the commission  
 10 of the crime;

11 (3) the relationship of the crime to the  
 12 ability, capacity and fitness required to perform the duties  
 13 and discharge the responsibilities of the occupation; and

14 (4) any evidence of rehabilitation or  
 15 treatment undertaken by the individual that might mitigate  
 16 against a disqualification.

17 E. If an individual has a felony conviction for a  
 18 crime that could disqualify the individual from receiving a  
 19 license, the disqualification shall not last longer than three  
 20 years from the date of conviction.

21 F. If a board denies an individual a license solely  
 22 or in part because of the individual's prior conviction of a  
 23 crime, the board shall notify the individual in writing of the  
 24 following:

25 (1) the grounds and reasons for the denial or

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1 disqualification;

2 (2) that the individual has the right to a  
3 hearing to request reconsideration of the board's decision;

4 (3) if no reconsideration is requested, the  
5 earliest date the person may reapply for a license; and

6 (4) examples of rehabilitation that may be  
7 considered upon reapplication.

8 G. Any written determination by the board that an  
9 applicant's felony conviction is specifically listed as a  
10 disqualifying conviction and is directly related to the duties  
11 and responsibilities for the licensed occupation shall be  
12 documented in written findings for each of the factors listed  
13 in Subsection D of this section by clear and convincing  
14 evidence sufficient for a reviewing court.

15 H. An individual with a felony conviction may  
16 petition a board at any time for a determination of whether the  
17 individual's felony conviction will disqualify the individual  
18 from obtaining a license as follows:

19 (1) the petition shall include details on the  
20 individual's felony conviction; and

21 (2) the board shall inform the individual of  
22 the individual's standing within thirty days of receiving the  
23 petition from the applicant. The board may charge a fee to  
24 recoup its costs not to exceed twenty-five dollars (\$25.00) for  
25 each petition.

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1 I. In any administrative hearing or civil  
 2 litigation authorized under this section, the board shall carry  
 3 the burden of proof on the question of whether the applicant's  
 4 criminal conviction directly relates to the occupation for  
 5 which the license is sought."

6 SECTION 4. A new section of the Uniform Licensing Act is  
 7 enacted to read:

8 "[NEW MATERIAL] MITIGATION AND REHABILITATION--FITNESS FOR  
 9 OCCUPATION.--An applicant with a conviction directly related to  
 10 an occupation for which a license is sought upon  
 11 reconsideration shall not be disqualified from licensure if the  
 12 applicant can demonstrate sufficient mitigation or  
 13 rehabilitation and fitness to perform the duties of the  
 14 occupation. The applicant may provide evidence:

15 A. that at least one year has elapsed since the  
 16 applicant's release from any correctional institution;

17 B. that the applicant has complied with all terms  
 18 and conditions of probation or parole; and

19 C. that the applicant has not been convicted of any  
 20 crime since the applicant's conviction for a crime directly  
 21 related to the occupation for which a license is sought; or

22 D. of mitigation or rehabilitation and present  
 23 fitness, including:

24 (1) mitigating circumstances relevant to the  
 25 crime or social conditions surrounding the applicant at the

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1 time the crime was committed;

2 (2) the age of the applicant at the time the  
3 crime was committed;

4 (3) the time elapsed since the crime was  
5 committed;

6 (4) evidence of work history, particularly any  
7 training or work experience related to the occupation for which  
8 the license is sought; or

9 (5) references from persons in contact with  
10 the applicant since the applicant's release from any local,  
11 state or federal correctional institution."

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