

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

**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 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, 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 for a crime that is not  
25 directly related to the duties or responsibilities of the

1 licensed occupation."

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

4 "61-1-1. SHORT TITLE.--~~[Sections 67-26-1 through 67-26-31~~  
5 ~~NMSA 1953]~~ Chapter 61, Article 1 NMSA 1978 may be cited as the  
6 "Uniform Licensing Act"."

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

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

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

17 B. By January 31, 2020, a board shall promulgate  
18 rules relating to licensing requirements to list and shall post  
19 on the regulation and licensing department website the specific  
20 criminal convictions that could disqualify an applicant from  
21 receiving a license on the basis of a previous felony  
22 conviction. A board shall not use vague or generic terms, such  
23 as "moral turpitude" or "good character". A board may only  
24 list disqualifying felony convictions that are directly related  
25 to the duties and responsibilities for each specific license.

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

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

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