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## FISCAL IMPACT REPORT

ORIGINAL DATE 3/03/19  
 LAST UPDATED 3/08/19

SPONSOR SJC HB CS/CS/SB385/SPACS/  
 SHORT TITLE Professional Licensure of Certain Felons SB SJCS/aSF1#1

ANALYST Edwards

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

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	See Fiscal Implications	See Fiscal Implications	See Fiscal Implications	See Fiscal Implications	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to House Bill 382.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From (in response to Original Bill)

Regulation and Licensing Department (RLD)

#### Responses Not Received From

State Personnel Office (SPO)

Regulation and Licensing Department (RLD)

Department of Workforce Solutions (DWS)

### SUMMARY

#### Synopsis of Senate Floor Amendment #1

Senate Floor Amendment #1 to the Senate Judiciary Committee substitute for the Senate Public Affairs Committee Substitute for Senate Bill 385 clarifies that rules regarding disqualifying convictions relating to licensing requirements should be posted on individual board's websites, not the RLD website.

#### Synopsis of Bill

The Senate Judiciary Committee substitute for Senate Public Affairs Committee Substitute for Senate Bill 385 amends Section 28-2-3 NMSA 1978, dealing with an employment eligibility determination, by striking the ability of a board, department, or agency from inquiring about arrests or convictions on initial applications for employment. A conviction may be considered after the applicant is selected as a finalist for a position.

In the same section of law, the bill adds a list of criminal records that shall not be used in connection with an application for public employment.

The bill amends Chapter 61, Article 1 NMSA 1978 to change the citation of the act to the “Uniform Licensing Act.”

The bill adds a new section to the Uniform Licensing Act which states an applicant shall not be denied a license solely on the basis that an individual has been previously arrested or convicted, unless that conviction was for a crime related to the profession for which licensure is sought.

The bill requires licensing boards to promulgate rules no later than January 1, 2020, identifying specific criminal convictions that could disqualify an applicant from obtaining a license. Such rules cannot use “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.

The bill requires that 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.

## **FISCAL IMPLICATIONS**

Senate Floor amendment #1 does not create an additional fiscal impact.

This bill could create additional steps for professional licensing boards and may require some boards to meet more frequently, potentially creating the need for RLD to add staff to help process petitions and application.

RLD explained, in response to the original bill:

The bill's petition requirement could have a serious impact on the various boards and commissions because the 30-day written determination requirement for each individual who submits a petition to determine whether their conviction would prevent their licensure would require boards to meet more often. Most licensing boards do not meet monthly, so special board meetings would have to be called to meet the imposed 30-day response time required by the bill. Each time a board meets, per diem and mileage is paid to the Board members. Also, with the 30-day turnaround requirement, some of those board meetings could conceivably involve only one individual's petition request. The \$25 fee would not cover the costs associated with posting a meeting notice in the proper publication and paying the Per diem and Mileage costs of a meeting, nor does it compensate for the increased staff hours required to set up and notice the meetings.

While the SJC substitute removes the 30-day requirement and fees, the requirements of the bill may still carry a fiscal impact to RLD. In response to House Bill 382, which has similar requirements to this bill, RLD stated there could be a need for more FTE; the average cost for one FTE at RLD is about \$75.2 thousand.

## SIGNIFICANT ISSUES

Previous New Mexico Sentencing Commission analyses on employment and convictions have stated that having any lifetime arrest dims employment prospects more than any other employment-related characteristic. Given the large number of individuals arrested in the U.S. annually and the high lifetime prevalence of arrest (Brame, Turner, Paternoster, & Bushway, 2012), this is discouraging for those who become involved in the criminal justice system. The finding that even an arrest (whether it results in a conviction, jail, or prison time) narrows employment prospects heightens the importance of diversion programs and reducing official reliance on the criminal justice system.

RLD states:

Senate Bill 385 would appear to require licensure of registered sex offenders unless the board can prove [...] that the profession for which the sex offender seeks licensure involves a responsibility specifically related to the sex offense for which the offender was convicted. The same would be the case for other violent offenders.

Most licensing boards in New Mexico are already subject to the Criminal Offender Employment Act, NMSA 1978 Section 28-2-1 et seq. which precludes denying licensure to convicted felons with certain exceptions.

Currently, the burden to prove that an applicant is qualified for licensure rests on the applicant. CS/CS Senate Bill 385 switches that burden to the licensing board [...]. This higher burden is atypical of administrative proceedings and will require the board member's to be trained accordingly.

### Clarification is needed for business entities licensed under Chapter 61 NMSA 1978

The Financial Institutions Division (FID) licenses Collection Agencies and Repossessors under provisions of the Collection Agency Regulatory Act (CARA) §61-18A-1 et seq. The bill repeatedly uses the term “board” when specifying the changes in law under the bill. This creates some lack of clarity as to whether these business entities would be subject to the provisions outlined in the bill.

### Conflicts with CARA §61-18A-11 (C) NMSA 1978

If the bill does apply to licenses issued under the Collection Agency Regulatory Act, the CARA establishes licensing requirements for Collection Agency Managers actively in charge of a collection agency that directly conflicts with the provisions outlined in the bill. Pursuant to §61-18A-11 (C) NMSA a Collection Agency Manager applicant is disqualified from licensure if that individual has “been convicted of a felony or crime involving moral turpitude”.

### Conflicts with CARA §61-18A-13 (C) NMSA 1978

The CARA establishes licensing requirements for Collection Agencies and Repossessors that directly conflicts the provisions outlined in the bill. Pursuant to §61-18A-13 (C) NMSA 1978, the applicant is disqualified for licensure if such applicant, or any partner, officer, director, trustee, stockholder or employee of the applicant has “been convicted of a felony or any crime involving moral turpitude”.

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Relates to House Bill 382.

TE/sb/al