

HOUSE BILL 96

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

Andrea Romero and Mark Moores

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO EMPLOYMENT; 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; ENACTING A NEW SECTION OF THE UNIFORM LICENSING ACT TO PROHIBIT THE EXCLUSION FROM PROFESSIONAL LICENSURE OF PERSONS WITH CERTAIN CRIMINAL RECORDS.

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

.218655.3AIC March 5, 2021 (10:57am)

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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 regarding a 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 moral turpitude]~~

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(2) convictions that have been sealed, dismissed, expunged or pardoned;  
(3) juvenile adjudications; or  
(4) convictions for a crime that is not recent enough and sufficiently job-related to be predictive of performance in the position sought, given the position's duties and responsibilities."

Hf11→HSEIC→~~SECTION 2. Section 28-2-4 NMSA 1978 (being Laws 1974, Chapter 78, Section 4, as amended by Laws 1997, Chapter 238, Section 5 and also by Laws 1997, Chapter 251, Section 1) is amended to read:~~

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

~~A. Any board or other agency having jurisdiction over employment by the state or any of its political subdivisions or the practice of any trade, business or profession may refuse to grant or renew or may suspend or revoke any public employment or license or other authority to engage in the public employment, trade, business or profession for any one or any combination of the following causes:~~

~~(1) where the applicant, employee or licensee has been convicted of a felony [or a misdemeanor involving moral turpitude] and the criminal conviction directly relates to the particular employment, trade, business or profession; or~~

~~{(2) where the applicant, employee or licensee~~

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~~has been convicted of a felony or a misdemeanor involving moral turpitude and the criminal conviction does not directly relate to the particular employment, trade, business or profession, if the board or other agency determines after investigation that the person so convicted has not been sufficiently rehabilitated to warrant the public trust; or~~

~~(3)] (2) where the applicant, employee or licensee has been convicted of homicide, kidnapping, trafficking in controlled substances, criminal sexual penetration or related sexual offenses or child abuse and the applicant, employee or licensee has applied for reinstatement, renewal or issuance of a teaching certificate, a license to operate a child-care facility or employment at a child-care facility, regardless of rehabilitation.~~

~~B. The board or other agency shall explicitly state in writing the reasons for a decision [which] that prohibits the person from engaging in the employment, trade, business or profession if the decision is based in whole or in part on conviction of any crime described in Paragraphs (1) and [(3)] (2) of Subsection A of this section. [Completion of probation or parole supervision or expiration of a period of three years after final discharge or release from any term of imprisonment without any subsequent conviction shall create a presumption of sufficient rehabilitation for purposes of Paragraph (2) of~~

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~~Subsection A of this section.]"~~ ← HSEIC ← Hf11

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(1) where the applicant, employee or licensee has been convicted of a felony [~~or a misdemeanor involving moral turpitude~~] and the criminal conviction directly relates to the particular employment, trade, business or profession; or

~~[(2) where the applicant, employee or licensee has been convicted of a felony or a misdemeanor involving moral turpitude and the criminal conviction does not directly relate to the particular employment, trade, business or profession, if the board or other agency determines after investigation that the person so convicted has not been sufficiently rehabilitated~~

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~~to warrant the public trust; or~~

~~(3)] (2) where the applicant, employee or licensee has been convicted of homicide, kidnapping, human trafficking, trafficking in controlled substances, criminal sexual penetration or related sexual offenses or child abuse and the applicant, employee or licensee has applied for reinstatement, renewal or issuance of a teaching certificate, a license to operate a child-care facility or employment at a child-care facility, regardless of rehabilitation.~~

~~B. The board or other agency shall explicitly state in writing the reasons for a decision [which] that prohibits the person from engaging in the employment, trade, business or profession if the decision is based in whole or in part on conviction of any crime described in Paragraphs (1) and ~~(3)] (2)~~ of Subsection A of this section. ~~[Completion of probation or parole supervision or expiration of a period of three years after final discharge or release from any term of imprisonment without any subsequent conviction shall create a presumption of sufficient rehabilitation for purposes of Paragraph (2) of Subsection A of this section.]~~"~~

SECTION Hf11 ~~HSEIC~~ ~~2.~~ ~~HSEIC~~ ~~HSEIC~~ ~~3.~~ ~~HSEIC~~ Hf11  
Hf11 ~~3.~~ Hf11 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~~

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~~NMSA 1953~~] Chapter 61, Article 1 NMSA 1978 may be cited as the "Uniform Licensing Act".

SECTION ~~Hf11~~→~~HSEIC~~→~~3.~~←~~HSEIC~~ ~~HSEIC~~→~~4.~~←~~HSEIC~~←Hf11

Hf11→~~4.~~←Hf11 A new section of the Uniform Licensing Act is enacted to read:

"[NEW MATERIAL] CRIMINAL CONVICTIONS--EXCLUSION FROM LICENSURE--DISCLOSURE REQUIREMENT.--

A. A board shall not exclude from licensure an individual who is otherwise qualified on the sole basis that the individual has been previously arrested for or convicted of a crime, unless the individual has a disqualifying criminal conviction.

B. By December 31, 2021, a board shall promulgate and post on the board's website rules relating to licensing requirements to list the specific criminal convictions that could disqualify an applicant from receiving a license on the basis of a previous felony conviction. Rules relating to licensing requirements promulgated by a board shall not use the terms "moral turpitude" or "good character". A board shall only list disqualifying criminal convictions.

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

D. No later than October 31 of each year, while

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ensuring the confidentiality of individual applicants, a board shall make available to the public an annual report for the prior fiscal year containing the following information:

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

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

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

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

E. As used in this section, "disqualifying criminal conviction" means a conviction for a crime that is recent enough and sufficiently job-related to be predictive of performance in the position sought, given the position's duties and responsibilities."

SECTION Hf11→HSEIC→4.←HSEIC HSEIC→5.←HSEIC←Hf11  
Hf11→5.←Hf11 EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2021.

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