

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website (www.nmlegis.gov).

FISCAL IMPACT REPORT

SPONSOR Romero, A/Moores **ORIGINAL DATE** 02/01/21
LAST UPDATED 03/08/21 **HB** 96/aHSEIC/aHF1#1
SHORT TITLE Criminal Records & Public Employment **SB** _____
ANALYST Jorgensen

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY21 | FY22 | FY23 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|------|------|------|----------------------|------------------------------|------------------|
| Total | NFI | NFI | NFI | | | |

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with House Bill 128

SOURCES OF INFORMATION

LFC Files

Responses Received From

General Services Department (GSD)
 New Mexico Attorney General (NMAG)
 Public Education Department (PED)
 Regulation and Licensing Department (RLD)
 State Personnel Office (SPO)
 Board of Nursing (BON)

SUMMARY

Synopsis of HF1 #1 Amendment

House Floor #1 amendment to House Bill 96 strikes the House State Government, Elections and Indian Affairs Committee (HSEIC) amendment and inserts a new section making changes to Section 28-2-4 NMSA 1978. The House Floor #1 amendment is identical to the HSEIC amendment, but adds human trafficking to the list of offenses for which a licensing authority may refuse to grant or renew or may suspend or revoke any public employment license.

Synopsis of HSEIC Amendment

The House State Government, Elections and Indian Affairs Committee amendment to House Bill 96 (HB96) strikes language from Section 28-2-4 NMSA 1978 allowing a board to refuse to grant or suspend or revoke any public employment license. Specifically, the amendment strikes references to misdemeanor convictions for moral turpitude as well as language relating to the time period or requirements necessary to create a presumption of sufficient rehabilitation.

Synopsis of Original Bill

House Bill 96 (HB96) revises the list of criminal records that *cannot* be considered when applying for public employment, licensure, or other authority to practice a trade, business or profession. Currently, only records of arrest not followed by a valid conviction and misdemeanor convictions not involving moral turpitude are expressly prohibited from consideration from application. HB96 would expand the list to include:

1. Convictions that have been sealed, dismissed, expunged, or pardoned;
2. Juvenile adjudications; or
3. Convictions for a crime that is not recent enough and sufficiently job-related to be predicative of performance in the position sought, given the position's duties and responsibilities.

Section 3 of HB96 provides for a new section to the Uniform Licensing Act (ULA) that prohibits state-regulated boards from excluding 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.” Additionally, Section 3 requires all state licensing boards to create a specific list of offenses which could disqualify an individual from receiving a license on the basis of a criminal conviction. The bill specifically disallows the use of the terms “moral turpitude” or “good character” in listing offenses which may result in disqualification from licensure. Finally, the bill requires boards to produce an annual report containing information including: the number of candidates for licensure; number of licenses granted; number of applicants with a potential disqualifying criminal conviction; and the number of applicants who were granted a license.

FISCAL IMPLICATIONS

HB96 will require boards to promulgate new rules and produce annual reports. However, RLD reported no fiscal impact attributable to the enactment of HB96 so that any additional duties will be absorbed by the affected board in the current operating budget.

SIGNIFICANT ISSUES

The term, “moral turpitude” appears in at least three PED rules related to licensure and at least two not directly related to licensure but otherwise related to service qualifications, including for armed security personnel. PED Rule 6.12.12 NMAC, Armed Public School Security Personnel, employs the term, “moral turpitude.” That rule relies on Section 22-10A-40 NMSA 1978 of the School Personnel Act as statutory authority, which requires the department to promulgate rules related to persons prohibited from employment as school security personnel for “commitment of a misdemeanor involving moral turpitude that has bearing on the job of school security personnel.”

Both NMAG and SPO raised concerns about granting latitude to boards to determine which convictions should disqualify an individual from licensure. SPO notes that allowing individual boards to make these decisions might lead to inconsistency between boards, while NMAG states this may potentially create increased liability to state entities because of its discretion and ambiguity. It is unclear what the test for whether a conviction is “recent enough” or “sufficiently job-related to be predicative of performance” would be.

RLD reports the following:

Section 3 uses the term “disqualifying criminal conviction” in paragraphs A, C and D and also defines the term in paragraph E. However, paragraph B, which requires each board to promulgate and post a list of “specific criminal convictions that could disqualify an applicant,” is the only reference to “felony conviction.” This term is only used on page 3, line 20. In New Mexico, a misdemeanor offense includes domestic violence and some forms of criminal sexual contact. While a misdemeanor conviction would ordinarily not be the sole reason for denying a license to an applicant, there will be instances when such a conviction, or convictions, would be a valid reason to deny, suspend or revoke a license. Particularly for safety sensitive professionals who will regularly have unmonitored access to vulnerable individuals, such as counselors, social workers and medical practitioners. We suggest removing the term “felony” and using the term “disqualifying criminal” conviction for these reasons and to keep consistent with the remaining paragraphs and definition.

The Board of Nursing reports that, “in the area of professional nursing, advanced practice nursing, and certain unlicensed assistive personnel, there is no research to support which crimes are predictive of performance. A list of qualifying crimes allows for the development of a subjective list.”

ADMINISTRATIVE IMPLICATIONS

HB96 requires boards to promulgate rules listing specific criminal convictions that may disqualify an applicant from licensure by December 31, 2021.

Additionally, all boards are required to publish an annual report by October 31 containing information that includes the number of licenses applied for and granted, the number of applicants with potential disqualifying criminal convictions, and the number of licenses granted to these applicants.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB96 conflicts with House Bill 128, School Personnel Background & Training, which addresses background checks, employment history, and criminal background of school personnel. That bill uses the term “moral turpitude” in several instances and specifically defines that term.

OTHER SUBSTANTIVE ISSUES

According to SPO, the Criminal Offender Employment Act (COEA) already prohibits boards, departments and agencies of the state from making any inquiry regarding a conviction on an initial application for employment. Under the current COEA, convictions can only be taken into consideration “after the applicant has been selected as a finalist for the position.”

CJ/rl/al/rl/al