

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 2

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

AN ACT

RELATING TO CRIMINAL RECORDS; PROVIDING FOR EXPUNGEMENT OF
ARREST AND CONVICTION RECORDS FOR CERTAIN CANNABIS OFFENSES;
PROVIDING FOR DISMISSAL OF SENTENCES OF INCARCERATED PERSONS;
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; AMENDING
THE CRIMINAL RECORD EXPUNGEMENT ACT.

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

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underscored material = new
[bracketed material] = delete

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

22 (3) juvenile adjudications; or

23 (4) convictions for a crime that is not job-
24 related for the position in question and consistent with
25 business necessity."

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

5 "28-2-4. POWER TO REFUSE, RENEW, SUSPEND OR REVOKE PUBLIC
6 EMPLOYMENT OR LICENSE.--

7 A. Any board or other agency having jurisdiction
8 over employment by the state or any of its political
9 subdivisions or the practice of any trade, business or
10 profession may refuse to grant or renew or may suspend or
11 revoke any public employment or license or other authority to
12 engage in the public employment, trade, business or profession
13 for ~~[any one or any combination]~~ one or both of the following
14 causes:

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

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

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Act". "

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