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SENATE BILL 103

55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022

INTRODUCED BY

Michael Padilla

AN ACT

RELATING TO THE WORKFORCE SOLUTIONS DEPARTMENT; PROVIDING FOR
CRIMINAL HISTORY BACKGROUND CHECKS FOR EMPLOYEES, FINALISTS FOR
EMPLOYMENT, CONTRACTORS AND SUBCONTRACTORS OF THE WORKFORCE
SOLUTIONS DEPARTMENT UNDER CERTAIN CIRCUMSTANCES; PROVIDING FOR
LIMITED USE AND REQUIRING CONFIDENTIALITY OF INFORMATION
OBTAINED THROUGH THE BACKGROUND CHECKS; PROVIDING FOR APPEAL OF
DENIAL OR TERMINATION OF EMPLOYMENT BASED UPON INFORMATION
OBTAINED THROUGH THE BACKGROUND CHECKS; REPEALING SECTION
9-26-15 NMSA 1978 (BEING LAWS 2007, CHAPTER 200, SECTION 23);
PROVIDING A PENALTY.

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

SECTION 1. Section 9-26-1 NMSA 1978 (being Laws 2007,
Chapter 200, Section 1) is amended to read:

"9-26-1. SHORT TITLE.--~~[Sections 1 through 14 of this~~
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1 ~~act]~~ Chapter 9, Article 26 NMSA 1978 may be cited as the
2 "Workforce Solutions Department Act".

3 SECTION 2. A new section of the Workforce Solutions
4 Department Act is enacted to read:

5 "[NEW MATERIAL] BACKGROUND CHECKS--AUTHORIZATION--
6 PROCEDURES--RULEMAKING--CONFIDENTIALITY--PENALTIES.--

7 A. The department shall require and obtain
8 electronic fingerprinting data on:

9 (1) department employees who have or will have
10 access to federal tax information; and

11 (2) finalists for employment by the department
12 who have or may have access to federal tax information.

13 B. The department shall provide the electronic
14 fingerprinting data obtained for each subject required pursuant
15 to Subsection A to:

16 (1) the department of public safety, which
17 shall:

18 (a) conduct a criminal history
19 background check to determine the existence and content of a
20 record of convictions and arrests of the subject in this state,
21 in accordance with rules of the department of public safety;

22 (b) provide the electronic
23 fingerprinting data to the federal bureau of investigation to
24 obtain a national criminal history background check to
25 determine the existence and content of a record of convictions

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1 and arrests of the subject in other law enforcement
2 jurisdictions, in accordance with regulations of the federal
3 bureau of investigation; and

4 (c) compile and provide the information
5 determined and obtained pursuant to this subsection to the
6 department; and

7 (2) the law enforcement agency of each county
8 and municipality in which the subject lived, worked or attended
9 any high school or post-secondary educational institution,
10 which shall conduct a criminal history background check to
11 determine the existence and content of a record of convictions
12 and arrests of the subject in the law enforcement agency's
13 respective jurisdiction within the last five years and provide
14 that information to the department.

15 C. Subject to any restrictions imposed by federal
16 law, the department shall have access to the information
17 furnished by the federal bureau of investigation, the
18 department of public safety and any other law enforcement
19 agency or organization pursuant to Subsection B of this
20 section.

21 D. A finalist for employment by the department
22 shall not be hired for a position that provides access to
23 federal tax information before the completion of the criminal
24 history background checks required by this section.

25 E. Before entering into a contract with the

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1 department or with a contractor of the department, a
2 prospective contractor or subcontractor who may have access to
3 federal tax information pursuant to specific duties that would
4 be assigned to that person by the department shall arrange to
5 have criminal history background checks to be conducted by the
6 department of public safety and the necessary law enforcement
7 agencies as required pursuant to Subsection B of this section
8 for department employees and finalists for employment by the
9 department. That person shall bear the costs associated with
10 obtaining the criminal history background checks.

11 F. The department shall use the information
12 obtained from a criminal history background check pursuant to
13 this section only to investigate and determine whether a
14 department employee or finalist for employment by the
15 department or prospective contractor or prospective
16 subcontractor with the department has been convicted of a crime
17 that has a direct impact on the ability of that person to meet
18 federal requirements or to perform the specific duties assigned
19 to that person. The provisions of the Criminal Offender
20 Employment Act shall govern consideration of criminal history
21 records of employees and finalists for employment obtained
22 pursuant to this section.

23 G. The department shall conduct a legal residency
24 background check for eligibility to legally work as a citizen
25 or legal resident of the United States on each department and

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1 each finalist for employment by the department who has or may
2 have access to federal tax information. The department shall
3 complete a citizenship or residency check for each department
4 employee with expiring employment eligibility and shall
5 document and monitor the employee's citizenship or residency
6 status for continued compliance.

7 H. The information obtained from criminal history
8 background checks or legal residency background checks pursuant
9 to this section is confidential and shall not be released or
10 disclosed by the department except pursuant to a court order or
11 with written consent of the person who is the subject of the
12 records. A person who releases or discloses information
13 obtained pursuant to a criminal history background check or
14 legal residency background check in violation of the provisions
15 of this subsection is guilty of a misdemeanor and shall be
16 sentenced pursuant to the provisions of Section 31-19-1 NMSA
17 1978.

18 I. A department employee or a finalist for
19 employment by the department who is denied employment or whose
20 employment is terminated based on information in a background
21 check pursuant to this section is entitled to review the
22 information obtained pursuant to this section and to appeal the
23 decision to the district court by filing in district court a
24 notice of appeal pursuant to Section 39-1-1.1 NMSA 1978 within
25 thirty days of the date of the decision to deny or terminate

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employment."

SECTION 3. REPEAL.--Section 9-26-15 NMSA 1978 (being Laws
2007, Chapter 200, Section 23) is repealed.

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