

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 247

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

AN ACT

RELATING TO LICENSING; ADDING AND CLARIFYING DEFINITIONS AND PROVISIONS OF THE UNIFORM LICENSING ACT; CLARIFYING PROVISIONS RELATED TO INCOMPLETE APPLICATIONS, HEARINGS AND EXPEDITED LICENSURE; ALLOWING VIRTUAL REMOTE HEARINGS AND RECORDING BY DIGITAL TECHNOLOGY; CHANGING DATES FOR ACTIONS RELATED TO HEARINGS AND DECISIONS; ALLOWING FOR SUMMARY SUSPENSION OF A LICENSE OR PROBATION OF A LICENSEE; ALLOWING FOR APPEAL OF SUMMARY SUSPENSION AS A FINAL AGENCY ACTION; INCREASING THE PENALTY FOR UNLICENSED ACTIVITY.

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

SECTION 1. Section 61-1-2 NMSA 1978 (being Laws 1957, Chapter 247, Section 2, as amended) is amended to read:

"61-1-2. DEFINITIONS.--As used in the Uniform Licensing Act:

.225518.2

underscored material = new
[bracketed material] = delete

1 A. "board" means:

2 (1) the construction industries commission,
3 the construction industries division and the electrical bureau,
4 mechanical bureau and general construction bureau of the
5 construction industries division of the regulation and
6 licensing department;

7 (2) the manufactured housing committee and the
8 manufactured housing division of the regulation and licensing
9 department;

10 (3) the crane operators licensure examining
11 council;

12 (4) a board, commission or agency that
13 administers a profession or occupation licensed pursuant to
14 Chapter 61 NMSA 1978; and

15 (5) any other state agency to which the
16 Uniform Licensing Act is applied by law;

17 B. "applicant" means a person who has applied for a
18 license;

19 C. "expedited license", whether by examination,
20 endorsement, credential or reciprocity, means a license issued
21 to a person in this state based on licensure in another state
22 or territory of the United States, the District of Columbia or
23 a foreign country, as applicable;

24 D. "initial license" means the first regular
25 license received from a board for a person who has not been

1 previously licensed;

2 E. "license" means a certificate, permit or other
3 authorization to engage in a profession or occupation regulated
4 by a board;

5 F. "licensing jurisdiction" means another state or
6 territory of the United States, the District of Columbia or a
7 foreign country, as applicable;

8 G. "party" means a respondent licensee, applicant
9 or unlicensed person who is the subject of a disciplinary
10 proceeding or the civil administrative prosecutor representing
11 the state and the board;

12 H. "probation" means to allow, for a stated period
13 of time, the conduct authorized by a license, subject to
14 conditions or other restrictions that are reasonably related to
15 the grounds for probation;

16 [~~G.~~] I. "regular license" means a license that is
17 not issued as a temporary or provisional license;

18 [~~H.~~] J. "~~[revoke a license]~~ revocation" means to
19 prohibit the conduct authorized by the license for an
20 indefinite period of time; and

21 [~~I.~~] K. "~~[suspend a license]~~ suspension" means to
22 prohibit, for a stated period of time, the conduct authorized
23 by the license. [~~"Suspend a license" also means to allow, for~~
24 ~~a stated period of time, the conduct authorized by the license,~~
25 ~~subject to conditions that are reasonably related to the~~

.225518.2

1 ~~grounds for suspension.]"~~

2 SECTION 2. Section 61-1-3 NMSA 1978 (being Laws 1957,
3 Chapter 247, Section 3, as amended) is amended to read:

4 "61-1-3. OPPORTUNITY FOR LICENSEE OR APPLICANT TO HAVE
5 HEARING.--Every licensee or applicant shall be afforded notice
6 and an opportunity to be heard before the board has authority
7 to take any action that would result in:

8 A. denial of permission to take an examination for
9 licensing for which a complete application has been properly
10 made as required by board rule;

11 B. denial of a license after examination for any
12 cause other than failure to pass an examination;

13 C. denial of a license for which a complete
14 application has been properly made as required by board rule on
15 the basis of expedited licensure, reciprocity or endorsement or
16 acceptance of a national certificate of qualification;

17 D. withholding the renewal of a license for which a
18 complete application has been properly made for any cause other
19 than:

20 (1) failure to pay any required renewal fee;

21 (2) failure to meet continuing education
22 requirements; or

23 (3) issuance of a temporary license extension
24 if authorized by statute;

25 E. suspension of a license;

.225518.2

1 F. revocation of a license;

2 G. probation of a license, including restrictions
3 or limitations on the scope of a practice;

4 H. the requirement that the applicant complete a
5 program of remedial education or treatment;

6 I. monitoring of the practice by a supervisor
7 approved by the board, excluding supervision required for
8 initial licensure;

9 J. the censure or reprimand of the licensee or
10 applicant, including an action that constitutes formal
11 discipline or is subject to reporting to a state or national
12 organization;

13 K. compliance with conditions of probation or
14 suspension for a specific period of time;

15 L. payment of a fine [~~for a violation not to exceed~~
16 ~~one thousand dollars (\$1,000) for each violation, unless a~~
17 ~~greater amount is provided by law~~];

18 M. corrective action, as specified by the board; or

19 N. a refund to the consumer of fees that were
20 billed to and collected from the consumer by the licensee."

21 SECTION 3. Section 61-1-3.1 NMSA 1978 (being Laws 1981,
22 Chapter 349, Section 3, as amended) is amended to read:

23 "61-1-3.1. LIMITATIONS.--

24 A. An action that would have any of the effects
25 specified in Subsections D through N of Section 61-1-3 NMSA

.225518.2

underscored material = new
[bracketed material] = delete

1 1978 or an action related to unlicensed activity shall not be
2 initiated by a board later than two years after the discovery
3 by the board of the conduct that would be the basis for the
4 action, except as provided in [~~Subsection C of~~] this section or
5 otherwise provided by law. Discovery by the board is
6 considered the date on which a complaint or other information
7 that would reasonably connect the allegations to the person was
8 received by a board or board staff.

9 B. The time limitation contained in Subsection A of
10 this section shall be tolled by any civil or criminal
11 litigation in which the licensee or applicant is a party
12 arising from substantially the same facts, conduct or
13 transactions that would be the basis for the board's action.

14 C. The New Mexico state board of psychologist
15 examiners shall not initiate an action that would result in any
16 of the actions specified in Subsections D through N of Section
17 61-1-3 NMSA 1978 later than five years after the conduct of the
18 psychologist or psychologist associate that is the basis for
19 the action. However, if the conduct that is the basis for the
20 action involves a minor or a person adjudicated incompetent,
21 the action shall be initiated, in the case of a minor, no later
22 than one year after the minor's eighteenth birthday or five
23 years after the conduct, whichever is last and, in the case of
24 a person adjudicated incompetent, one year after the
25 adjudication of incompetence is terminated or five years after

.225518.2

1 the conduct, whichever is last.

2 D. The New Mexico public accountancy board shall
3 not initiate an action under the 1999 Public Accountancy Act
4 that would result in any of the actions specified in
5 Subsections D through N of Section 61-1-3 NMSA 1978 later than
6 two years following the discovery by the board of a violation
7 of that act."

8 SECTION 4. Section 61-1-3.2 NMSA 1978 (being Laws 2003,
9 Chapter 334, Section 3) is amended to read:

10 "61-1-3.2. UNLICENSED ACTIVITY--DISCIPLINARY
11 PROCEEDINGS--CIVIL PENALTY.--

12 A. A person who is not licensed to engage in a
13 profession or occupation regulated by a board is subject to
14 disciplinary proceedings by the board.

15 B. A board may impose a civil penalty in an amount
16 not to exceed [~~one thousand dollars (\$1,000)~~] ten thousand
17 dollars (\$10,000) for each violation against a person who,
18 without [~~a~~] an active license, engages in a profession or
19 occupation regulated by the board. [~~In addition, the board may~~
20 ~~assess the person for administrative costs, including~~
21 ~~investigative costs and the cost of conducting a hearing.~~]"

22 SECTION 5. Section 61-1-3.4 NMSA 1978 (being Laws 2019,
23 Chapter 209, Section 4) is amended to read:

24 "61-1-3.4. FINGERPRINTS NOT REQUIRED FOR LICENSE
25 RENEWAL.--When a professional or occupational board requires

.225518.2

1 submission of fingerprints as part of the initial license
2 application, and a licensee has provided fingerprints and the
3 license has been issued, the board shall not require a licensee
4 to submit fingerprints again to renew the license, but a
5 licensee shall submit to a background investigation if required
6 by law or rule of the board."

7 SECTION 6. Section 61-1-3.5 NMSA 1978 (being Laws 2022,
8 Chapter 39, Section 3) is amended to read:

9 "61-1-3.5. INCOMPLETE APPLICATION--NOTICE--EXPIRATION.--
10 An application for licensure is considered incomplete if it is
11 submitted on an application form missing required information
12 or without providing required supporting documentation. If a
13 board or a board's designee deems an application for licensure
14 incomplete, the board or designee shall notify the applicant
15 within thirty days [~~including the ways in which~~] from the date
16 the application was received by the board or designee and
17 include how the application is incomplete and what is needed to
18 complete the application. An incomplete application expires
19 [~~after~~] one year from the date the application was first
20 received by the board."

21 SECTION 7. Section 61-1-4 NMSA 1978 (being Laws 1957,
22 Chapter 247, Section 4, as amended) is amended to read:

23 "61-1-4. NOTICE OF CONTEMPLATED BOARD ACTION--REQUEST FOR
24 HEARING--NOTICE OF HEARING.--

25 A. When investigating complaints against licensees,

1 applicants or unlicensed persons, a board may issue civil
2 investigative subpoenas prior to the issuance of a notice of
3 contemplated action as provided in this section. The authority
4 to issue a specific civil investigative subpoena under this
5 section may be delegated by the board to staff.

6 B. When a board contemplates taking an action of a
7 type specified in Subsection A, B or C of Section 61-1-3 NMSA
8 1978, it shall serve upon the applicant a written notice
9 containing a statement:

10 (1) that the applicant has failed to satisfy
11 the board of the applicant's qualifications to be examined or
12 to be issued a license, as the case may be;

13 (2) indicating in what respects the applicant
14 has failed to satisfy the board;

15 (3) that the applicant may secure a hearing
16 before the board by depositing in the mail within twenty days
17 after service of the notice a certified return receipt
18 requested letter addressed to the board and containing a
19 request for a hearing; and

20 (4) calling the applicant's attention to the
21 applicant's rights under Section 61-1-8 NMSA 1978.

22 C. In a board proceeding to take an action of a
23 type specified in Subsection A, B or C of Section 61-1-3 NMSA
24 1978, the burden of satisfying the board of the applicant's
25 qualifications shall be upon the applicant.

.225518.2

1 D. When a board contemplates taking an action of a
2 type specified in Subsections D through N of Section 61-1-3
3 NMSA 1978 or Section 61-1-3.2 NMSA 1978, it shall serve upon
4 the licensee, applicant or unlicensed person a written notice
5 containing a statement:

6 (1) that the board has sufficient evidence
7 that, if not rebutted or explained, [~~will~~] may justify the
8 board in taking the contemplated action;

9 (2) indicating the general nature of the
10 evidence and allegations, including specific laws or rules that
11 are alleged to have been violated;

12 (3) that unless the licensee, applicant or
13 unlicensed person within twenty days after service of the
14 notice deposits in the mail a certified return receipt
15 requested letter addressed to the board and containing a
16 request for a hearing, the board [~~shall~~] may take the
17 contemplated action; and

18 (4) calling the licensee's, applicant's or
19 unlicensed person's attention to the [~~licensee's~~] rights [~~as~~]
20 provided in Section 61-1-8 NMSA 1978.

21 E. Except as provided in Section 61-1-15 NMSA 1978,
22 if the licensee, [~~or~~] applicant or unlicensed person does not
23 mail a request for a hearing within the time and in the manner
24 required by this section, the board may take the action
25 contemplated in the notice and such action shall be final and

1 not subject to judicial review as a matter of right.

2 F. If the licensee, [~~or~~] applicant or unlicensed
 3 person does mail a request for a hearing as required by this
 4 section, the board shall, within twenty days of receipt of the
 5 request, notify the licensee, [~~or~~] applicant or unlicensed
 6 person of the time and place of hearing, the name of the person
 7 who shall conduct the hearing for the board and the statutes
 8 and rules authorizing the board to take the contemplated
 9 action. The hearing shall be held not more than sixty nor less
 10 than fifteen days from the date [~~of service of~~] the notice of
 11 hearing is deposited in the mail, certified return receipt
 12 requested, or the date of personal service.

13 [~~G. Licensees shall bear all costs of disciplinary~~
 14 ~~proceedings unless they are excused by the board from paying~~
 15 ~~all or part of the fees or if they prevail at the hearing and~~
 16 ~~an action specified in Section 61-1-3 NMSA 1978 is not taken by~~
 17 ~~the board.~~

18 H.] G. All fines collected by a board shall be
 19 deposited to the credit of the current school fund as provided
 20 in Article 12, Section 4 of the constitution of New Mexico."

21 SECTION 8. Section 61-1-5 NMSA 1978 (being Laws 1957,
 22 Chapter 247, Section 5, as amended) is amended to read:

23 "61-1-5. METHOD OF SERVICE.--Any notice required to be
 24 served by Section 61-1-4 or 61-1-21 NMSA 1978 and any decision
 25 required to be served by Section 61-1-14 or 61-1-21 NMSA 1978

.225518.2

1 may be served either personally or by certified mail, return
2 receipt requested, directed to the licensee, ~~[or]~~ applicant or
3 unlicensed person at ~~[his]~~ the last ~~[know]~~ known address as
4 shown by the records of the board. Unlicensed persons with no
5 address on record with the board shall receive notice by
6 personal service. If the notice or decision is served
7 personally, service shall be made in the same manner as is
8 provided for service by the Rules of Civil Procedure for the
9 District Courts. Where the notice or decision is served by
10 certified mail, it shall be deemed to have been served on the
11 date borne by the return receipt showing delivery or the last
12 attempted delivery of the notice or decision to the addressee
13 or refusal of the addressee to accept delivery of the notice or
14 decision. Service of correspondence sent by a licensee,
15 applicant or unlicensed person through other methods, including
16 electronic mail or physical mail, should be reasonably accepted
17 and processed by the board."

18 SECTION 9. Section 61-1-6 NMSA 1978 (being Laws 1957,
19 Chapter 247, Section 6) is amended to read:

20 "61-1-6. VENUE OF HEARING.--Board hearings held ~~[under]~~
21 pursuant to provisions of the Uniform Licensing Act shall be
22 conducted at the election of the board in the county in which
23 ~~[the person whose license is involved]~~ the licensee, applicant
24 or unlicensed person maintains ~~[his]~~ residence or ~~[at the~~
25 ~~election of the board]~~ in ~~[any]~~ a county in which the act ~~[or~~

.225518.2

1 ~~acts~~] complained of occurred; except that in cases involving
 2 initial licensing, hearings shall be held in the county where
 3 the board maintains its office. In any case, however, the
 4 person whose license or application is involved or the person
 5 who performed the unlicensed act and the board may agree that
 6 the hearing is to be held in some other county or by virtual
 7 remote means."

8 SECTION 10. Section 61-1-7 NMSA 1978 (being Laws 1957,
 9 Chapter 247, Section 7, as amended) is amended to read:

10 "61-1-7. HEARING OFFICERS--HEARINGS--PUBLIC--EXCEPTION--
 11 EXCUSAL--PROTECTION OF WITNESS AND INFORMATION.--

12 A. All hearings [~~under~~] held pursuant to provisions
 13 of the Uniform Licensing Act shall be conducted either by the
 14 board or, at the election of the board, by a hearing officer
 15 who may be a member or employee of the board or any other
 16 person designated by the board in its discretion. A hearing
 17 officer shall, within thirty days after [~~any~~] a hearing, submit
 18 to the board a report setting forth [~~his~~] the hearing officer's
 19 findings of fact and recommendations.

20 B. All hearings [~~under~~] held pursuant to provisions
 21 of the Uniform Licensing Act shall be open to the public;
 22 provided that in cases in which [~~any~~] a constitutional right of
 23 privacy of [an applicant or] a licensee, applicant or
 24 unlicensed person may be irreparably damaged, a board or
 25 hearing officer may hold a closed hearing if the board or

.225518.2

1 hearing officer so desires and states the reasons for this
2 decision in the record. The [~~applicant or~~] licensee, applicant
3 or unlicensed person may, for good cause shown, request a board
4 or hearing officer to hold either a public or a closed hearing.

5 C. Each party may peremptorily excuse one board
6 member or a hearing officer by filing with the board a notice
7 of peremptory excusal at least twenty days prior to the date of
8 the hearing, but this privilege of peremptory excusal may not
9 be exercised in any case in which its exercise would result in
10 less than a quorum of the board being able to hear or decide
11 the matter. Any party may request that the board excuse a
12 board member or a hearing officer for good cause by filing with
13 the board a motion of excusal for cause at least twenty days
14 prior to the date of the hearing. In any case in which a
15 combination of peremptory excusals and excusals for good cause
16 would result in less than a quorum of the board being able to
17 hear or decide the matter, the peremptory excusals that would
18 result in removing the member [~~or members~~] of the board
19 necessary for a quorum shall not be effective.

20 D. In any case in which excusals for cause result
21 in less than a quorum of the board being able to hear or decide
22 the matter, the governor shall, upon request by the board,
23 appoint as many temporary board members as are necessary for a
24 quorum to hear or decide the matter. These temporary members
25 shall have all of the qualifications required for permanent

.225518.2

1 members of the board.

2 E. In any case in which excusals result in less
3 than a quorum of the board being able to hear or decide the
4 matter, the board, including any board members who have been
5 excused, may designate a hearing officer to conduct the entire
6 hearing.

7 F. Each board shall have power where a proceeding
8 has been dismissed, either on the merits or otherwise, to
9 relieve the [~~applicant or~~] licensee, applicant or unlicensed
10 person from any possible odium that may attach by reason of the
11 proceeding, by such public exoneration as it [~~shall see~~] sees
12 fit to make, if requested by the [~~applicant or~~] licensee,
13 applicant or unlicensed person to do so.

14 G. There shall be no liability on the part of and
15 no action for damages against a person who provides information
16 to a board in good faith and without malice in the reasonable
17 belief that such information is accurate. A [~~licensee~~] party
18 who directly or through an agent intimidates, threatens,
19 injures or takes [~~any~~] adverse action against a person for
20 providing information to a board shall be subject to
21 disciplinary action."

22 SECTION 11. Section 61-1-8 NMSA 1978 (being Laws 1957,
23 Chapter 247, Section 8, as amended) is amended to read:

24 "61-1-8. RIGHTS OF [PERSON] PARTY ENTITLED TO HEARING.--

25 A. A [~~person~~] party entitled to be heard [~~under~~]

.225518.2

1 pursuant to the provisions of the Uniform Licensing Act shall
2 have the right to be represented by counsel [~~or by a licensed~~
3 ~~member of his own profession or occupation or both~~]; to present
4 all relevant evidence by means of witnesses, books, papers,
5 documents and other evidence; to examine all opposing witnesses
6 who appear on [~~any~~] a matter relevant to the issues; and to
7 have subpoenas and subpoenas duces tecum issued as of right
8 prior to the commencement of the hearing to compel discovery
9 and the attendance of witnesses and the production of relevant
10 books, papers, documents and other evidence upon making written
11 request [~~therefor~~] for them to the board or hearing officer.
12 The issuance of such subpoenas after the commencement of the
13 hearing rests in the discretion of the board or the hearing
14 officer. All notices issued pursuant to Section 61-1-4 NMSA
15 1978 shall contain a statement of these rights.

16 B. Upon written request to another party, any party
17 is entitled to:

18 (1) obtain the names and addresses of
19 witnesses who will or may be called by the other party to
20 testify at the hearing; and

21 (2) inspect and copy [~~any~~] documents or items
22 [~~which~~] that the other party will or may introduce in evidence
23 at the hearing.

24 C. The party to whom [~~such~~] a request is made shall
25 comply with [~~it~~] the request within ten days after the

1 [mailing] service or delivery of the request. No [such]
2 request shall be made less than fifteen days before the
3 hearing.

4 [G.—Any] D. A party may take depositions after
5 service of notice in accordance with the Rules of Civil
6 Procedure for the District Courts. Depositions may be used as
7 in proceedings governed by those rules."

8 SECTION 12. Section 61-1-9 NMSA 1978 (being Laws 1957,
9 Chapter 247, Section 9, as amended) is amended to read:

10 "61-1-9. POWERS OF BOARD OR HEARING OFFICER IN CONNECTION
11 WITH HEARINGS.--

12 A. In connection with any hearing held under the
13 Uniform Licensing Act, the board or hearing officer shall have
14 power to have counsel to develop the case; to subpoena, for
15 purposes of discovery and of the hearing, witnesses and
16 relevant books, papers, documents and other evidence; to
17 administer oaths or affirmations to witnesses called to
18 testify; to take testimony; to examine witnesses; and to direct
19 a continuance of any case. Boards or hearing officers may also
20 hold conferences before or during the hearing for the
21 settlement or simplification of the issues, but such settlement
22 or simplification shall only be with the consent of the
23 [applicant or licensee] party.

24 B. Geographical limits upon the subpoena power
25 shall be the same as if the board or hearing officer were a

.225518.2

1 district court sitting at the location at which the hearing or
2 discovery proceeding is to take place. The method of service,
3 including tendering of witness and mileage fees, shall be the
4 same as that under the Rules of Civil Procedure for the
5 District Courts, except that those rules requiring the tender
6 of fees in advance shall not apply to the state.

7 C. The board or hearing officer may impose any
8 appropriate evidentiary sanction against a party or other
9 person who fails to provide discovery or to comply with a
10 subpoena."

11 SECTION 13. Section 61-1-12 NMSA 1978 (being Laws 1957,
12 Chapter 247, Section 12, as amended) is amended to read:

13 "61-1-12. RECORD.--In all hearings conducted [~~under~~]
14 pursuant to the Uniform Licensing Act, a complete record shall
15 be made of all evidence received during the course of the
16 hearing. The record shall be preserved by any stenographic
17 method in use in the district courts of this state or, in the
18 discretion of the board, by [~~tape~~] digital recording
19 technology. The board shall observe any standards pertaining
20 to [~~tape~~] digital recordings established for the district
21 courts of this state."

22 SECTION 14. Section 61-1-13 NMSA 1978 (being Laws 1957,
23 Chapter 247, Section 13, as amended) is amended to read:

24 "61-1-13. DECISION.--

25 A. After a hearing has been completed, the members

1 of the board shall proceed to consider the case and as soon as
2 practicable shall render their decision, provided that the
3 decision shall be rendered by a quorum of the board. In cases
4 in which the hearing is conducted by a hearing officer, all
5 members who were not present throughout the hearing shall
6 familiarize themselves with the record, including the hearing
7 officer's report, before participating in the decision. In
8 cases in which the hearing is conducted by the board, all
9 members who were not present throughout the hearing shall
10 thoroughly familiarize themselves with the entire record,
11 including all evidence taken at the hearing, before
12 participating in the decision.

13 B. A final decision and order based on the hearing
14 shall be made by a quorum of the board and signed and executed
15 by the person designated by the board within [~~sixty days after~~
16 ~~the completion of the preparation of the record or submission~~
17 ~~of a hearing officer's report, whichever is later. In any~~
18 ~~case, the decision must be rendered and signed within~~] ninety
19 days after the hearing is closed by the board."

20 SECTION 15. Section 61-1-14 NMSA 1978 (being Laws 1957,
21 Chapter 247, Section 14, as amended) is amended to read:

22 "61-1-14. SERVICE OF DECISION.--Within fifteen days after
23 the decision is [~~rendered and~~] signed and executed, the board
24 shall serve upon the [~~applicant or licensee~~] parties a copy of
25 the written decision."

.225518.2

1 SECTION 16. Section 61-1-15 NMSA 1978 (being Laws 1957,
2 Chapter 247, Section 15, as amended) is amended to read:

3 "61-1-15. PROCEDURE WHERE PERSON FAILS TO REQUEST OR
4 APPEAR FOR HEARING.--If a person who has requested a hearing
5 does not appear and no continuance has been granted, the board
6 or hearing officer may hear the evidence of such witnesses as
7 may have appeared, and the board may proceed to consider the
8 matter and dispose of it on the basis of the weight of the
9 evidence before it in the manner required by Section 61-1-13
10 NMSA 1978. Where, because of accident, sickness or other
11 extraordinary cause, a person fails to request a hearing or
12 fails to appear for a hearing [~~which he~~] that the person has
13 requested, the person may within a reasonable time apply to the
14 board to reopen the proceeding, and the board upon finding such
15 cause sufficient shall immediately fix a time and place for
16 hearing and give the person notice as required by Sections
17 61-1-4 and 61-1-5 NMSA 1978. At the time and place fixed, a
18 hearing shall be held in the same manner as would have been
19 employed if the person had appeared in response to the original
20 notice of hearing."

21 SECTION 17. Section 61-1-16 NMSA 1978 (being Laws 1957,
22 Chapter 247, Section 16, as amended) is amended to read:

23 "61-1-16. CONTENTS OF DECISION.--The final decision and
24 order of the board shall contain findings of fact made by the
25 board, conclusions of law reached by the board, the order of

.225518.2

1 the board based upon these findings of fact and conclusions of
2 law and a statement informing the applicant or licensee of
3 ~~[his]~~ the applicant's or licensee's right to judicial review
4 and the time within which such review ~~[must]~~ shall be sought."

5 SECTION 18. Section 61-1-17 NMSA 1978 (being Laws 1957,
6 Chapter 247, Section 17, as amended) is amended to read:

7 "61-1-17. PETITION FOR REVIEW.--A ~~[person]~~ party entitled
8 to a hearing provided for in the Uniform Licensing Act, who is
9 aggrieved by an adverse decision of a board issued after
10 hearing, may obtain a review of the decision in the district
11 court pursuant to the provisions of Section 39-3-1.1 NMSA
12 1978."

13 SECTION 19. Section 61-1-19 NMSA 1978 (being Laws 1957,
14 Chapter 247, Section 19, as amended) is amended to read:

15 "61-1-19. STAY.--At any time before or during the review
16 proceeding pursuant to Section 61-1-17 NMSA 1978, the aggrieved
17 ~~[person]~~ party may apply to the board or file a motion in
18 accordance with the Rules of Civil Procedure for the District
19 Courts in the reviewing court for an order staying the
20 operation of the board decision pending the outcome of the
21 review. The board or court may grant or deny the stay in its
22 discretion. No order granting or denying a stay shall be
23 reviewable."

24 SECTION 20. Section 61-1-21 NMSA 1978 (being Laws 1957,
25 Chapter 247, Section 21, as amended) is amended to read:

.225518.2

1 "61-1-21. POWER OF BOARD TO REOPEN THE CASE.--

2 A. At any time after the hearing and prior to the
3 filing of a petition for review, the ~~[person]~~ party aggrieved
4 may request the board to reopen the case to receive additional
5 evidence or for other cause.

6 B. The board need not reconvene and may be polled
7 about whether to grant or refuse a request to reopen the case.
8 The board shall grant or refuse the request in writing, and
9 that decision and the request shall be made a part of the
10 record. The decision to grant or refuse a request to reopen
11 the case shall be made, signed by the person designated by the
12 board within fifteen days after the board receives the request
13 ~~and served upon the [applicant or licensee within fifteen days~~
14 ~~after the board receives the request]~~ parties.

15 C. The granting or refusing of a request to reopen
16 the case shall be within the board's discretion. The board may
17 reopen the case on its own motion at any time before petition
18 for review is filed; thereafter, it may do so only with the
19 permission of the reviewing court. If the board reopens the
20 case, it shall provide notice and a hearing to the applicant or
21 licensee. The notice of the hearing shall be served upon the
22 applicant or licensee within fifteen days after service of the
23 decision to reopen the case. The hearing shall be held within
24 forty-five days after service of the notice, and a decision
25 shall be rendered, signed and served upon the applicant or

.225518.2

1 licensee within thirty days after the hearing.

2 D. The board's decision to refuse a request to
3 reopen the case shall not be reviewable except for an abuse of
4 discretion."

5 SECTION 21. A new section of the Uniform Licensing Act,
6 Section 61-1-25.1 NMSA 1978, is enacted to read:

7 "61-1-25.1. [NEW MATERIAL] SUMMARY SUSPENSION OF LICENSE
8 OR PROBATION OF LICENSEE.--

9 A. A board may summarily suspend a license issued
10 by the board or place a licensee on probation without a
11 hearing, simultaneously with or at any time after the
12 initiation of proceedings for a hearing provided pursuant to
13 the Uniform Licensing Act, if the board finds that evidence in
14 its possession indicates that the licensee:

15 (1) poses a clear and immediate danger to the
16 public health and safety if the licensee continues to practice;

17 (2) has been adjudged mentally incompetent by
18 a final order or adjudication by a court of competent
19 jurisdiction; or

20 (3) has pled guilty to or been found guilty of
21 any offense directly related to the practice of the respective
22 license.

23 B. A licensee is not required to comply with a
24 summary action until service has been made or the licensee has
25 actual knowledge of the order, whichever occurs first. The

.225518.2

1 licensee may appeal the summary suspension as a final agency
2 action as provided in Section 39-3-1.1 NMSA 1978.

3 C. When a board takes action to summarily suspend a
4 license or place a licensee on probation pursuant to this
5 section, it shall serve upon the licensee a written notice
6 containing a statement:

7 (1) that the board has sufficient evidence to
8 justify the board in issuing the summary suspension or
9 probation;

10 (2) indicating the general nature of the
11 evidence and allegations, including specific laws or rules that
12 are alleged to have been violated;

13 (3) that unless the licensee within thirty
14 days after service of the notice deposits in the mail a
15 certified return receipt requested letter addressed to the
16 board and containing a request for a hearing, the summary
17 suspension or probation shall be final; and

18 (4) that the licensee is entitled to a hearing
19 by the board pursuant to the Uniform Licensing Act within
20 fifteen days from the date a request for hearing is received by
21 the board from the licensee."

22 SECTION 22. Section 61-1-31.1 NMSA 1978 (being Laws 2016,
23 Chapter 19, Section 1, as amended) is amended to read:

24 "61-1-31.1. EXPEDITED LICENSURE--ISSUANCE.--

25 A. A board that issues an occupational or

.225518.2

1 professional license [~~pursuant to this 2022 act~~] shall, as soon
 2 as practicable but no later than thirty days after an out-of-
 3 state licensee files [~~an~~] a complete application for an
 4 expedited license accompanied by any required fees:

5 (1) process the completed application; and

6 (2) issue a license to [~~a~~] the qualified
 7 applicant who submits satisfactory evidence that the applicant:

8 (a) holds a license that is current and
 9 in good standing issued by another licensing jurisdiction;

10 (b) has practiced and held an active
 11 license in the profession or occupation for which expedited
 12 licensure is sought for a period required by New Mexico law;
 13 and

14 (c) provides fingerprints and other
 15 information necessary for a state [~~and~~] or national criminal
 16 background check or both if required by law or rule of the
 17 board.

18 B. An expedited license is a one-year provisional
 19 license that confers the same rights, privileges and
 20 responsibilities as regular licenses issued by a board;
 21 provided that a board may allow for the initial term of an
 22 expedited license to be greater than one year by board rule or
 23 may extend an expedited license upon a showing of extenuating
 24 circumstances.

25 C. Before the end of the expedited license [~~period~~]

.225518.2

1 term and upon application, a board shall issue a regular
2 license through its license renewal process. If a board
3 requires a state or national examination for initial licensure
4 that was not required when the out-of-state applicant was
5 licensed in the other licensing jurisdiction, the board shall
6 issue the expedited license and may require the license holder
7 to pass the required examination prior to renewing the license.

8 D. A board by rule shall determine those states and
9 territories of the United States and the District of Columbia
10 from which the board will not accept an applicant for expedited
11 licensure and [~~those~~] determine any foreign countries from
12 which the board will accept an applicant for expedited
13 licensure. The list of those licensing jurisdictions shall be
14 posted on the board's website. The list of disapproved
15 licensing jurisdictions shall include the specific reasons for
16 disapproval. The lists shall be reviewed by the board annually
17 to determine if amendments to the rule are warranted."

18 SECTION 23. Section 61-1-31.2 NMSA 1978 (being Laws 2022,
19 Chapter 39, Section 8) is amended to read:

20 "61-1-31.2. TEMPORARY OR PROVISIONAL LICENSE--EVIDENCE OF
21 INSURANCE.--A board may issue a temporary or other provisional
22 license, including an expedited license, to a person licensed
23 in another licensing jurisdiction, which [~~license is~~] may be
24 limited as to [~~a~~] time, practice or other [~~requirement~~]
25 condition of a regular [~~licensure~~] license. If a board

.225518.2

1 requires [~~regular~~] licensees to carry professional or
 2 occupational liability or other insurance, the board shall
 3 require the applicant for a temporary or provisional license to
 4 show evidence of having required insurance that will cover the
 5 person in New Mexico during the term of the temporary or
 6 provisional license. Each board shall provide information on
 7 the board's website that describes the insurance requirements
 8 for practice in New Mexico, if applicable."

9 SECTION 24. Section 61-1-34 NMSA 1978 (being Laws 2013,
 10 Chapter 33, Section 1, as amended) is amended to read:

11 "61-1-34. EXPEDITED LICENSURE--MILITARY SERVICE MEMBERS,
 12 INCLUDING SPOUSES AND DEPENDENTS, AND VETERANS--WAIVER OF
 13 FEES.--

14 A. A board that issues an occupational or
 15 professional license pursuant to Chapter 61 NMSA 1978 shall, as
 16 soon as practicable but no later than thirty days after a
 17 military service member or a veteran files [~~an~~] a complete
 18 application, and provides a background check if required:

19 (1) process the application; and

20 (2) issue a license prima facie to a qualified
 21 applicant who submits satisfactory evidence that the applicant
 22 holds a license that is current and in good standing, issued by
 23 another jurisdiction, including a branch of the armed forces of
 24 the United States.

25 B. A license issued pursuant to this section is a

.225518.2

1 provisional license but shall confer the same rights,
2 privileges and responsibilities as a regular license. If the
3 military service member or veteran was licensed in a licensing
4 jurisdiction that did not require examination, a board may
5 require the military service member or veteran to take a board-
6 required examination [~~before making application for renewal~~]
7 prior to renewing the license.

8 C. A military service member or a veteran who is
9 issued a license pursuant to this section shall not be charged
10 [~~a~~] an initial or renewal licensing fee for the first three
11 years of licensure.

12 D. Each board that issues a license to practice a
13 trade or profession shall, upon the conclusion of the state
14 fiscal year, prepare a report on the number and type of
15 licenses that were issued during the fiscal year under this
16 section. The report shall be provided to the director of the
17 office of military base planning and support not later than
18 ninety days after the end of the fiscal year.

19 E. As used in this section:

20 (1) "licensing fee" means a fee charged at the
21 time an initial or renewal application for a professional or
22 occupational license is submitted to the state agency, board or
23 commission and any fee charged for the processing of the
24 application for such license; "licensing fee" does not include
25 a fee for an annual inspection or examination of a licensee, a

.225518.2

1 late fee or a fee charged for copies of documents, replacement
 2 licenses or other expenses related to a professional or
 3 occupational license;

4 (2) "military service member" means a person
 5 who is:

6 (a) serving in the armed forces of the
 7 United States as an active duty member, or in an active reserve
 8 component of the armed forces of the United States, including
 9 the national guard;

10 (b) the spouse of a person who is
 11 serving in the armed forces of the United States or in an
 12 active reserve component of the armed forces of the United
 13 States, including the national guard, or a surviving spouse of
 14 a member who at the time of the member's death was serving on
 15 active duty; or

16 (c) the child of a military service
 17 member if the child is also a dependent of that person for
 18 federal income tax purposes; and

19 (3) "veteran" means a person who has received
 20 an honorable discharge or separation from military service."

21 **SECTION 25.** Section 61-1-36 NMSA 1978 (being Laws 2021
 22 (1st S.S.), Chapter 3, Section 8) is amended to read:

23 "61-1-36. CRIMINAL CONVICTIONS--EXCLUSION FROM
 24 LICENSURE--DISCLOSURE REQUIREMENT.--

25 A. A board shall not exclude from licensure a

.225518.2

1 person who is otherwise qualified on the sole basis that the
2 person has been previously arrested for or convicted of a
3 crime, unless the person has a disqualifying criminal
4 conviction.

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

14 C. In an administrative hearing or agency appeal, a
15 board shall carry the burden of proof on the question of
16 whether the exclusion from occupational or professional
17 licensure is based upon a potentially disqualifying criminal
18 conviction.

19 D. No later than October 31 of each year, while
20 ensuring the confidentiality of individual applicants, a board
21 shall make available to the public an annual report for the
22 prior fiscal year containing the following information:

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

25 (2) the number of applicants for licensure or

1 license renewal with a potential disqualifying criminal
 2 conviction who received notice of potential disqualification;

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

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

11 E. As used in this section, "disqualifying criminal
 12 conviction" means a conviction for a crime that is job-related
 13 for the position in question and consistent with business
 14 necessity."

15 SECTION 26. Section 61-1-37 NMSA 1978 (being Laws 2022,
 16 Chapter 39, Section 2) is amended to read:

17 "61-1-37. RESIDENCY IN NEW MEXICO NOT A REQUIREMENT FOR
 18 LICENSURE.--A person who otherwise meets the requirements for a
 19 professional or occupational license shall not be denied
 20 licensure or [~~relicensure~~] license renewal because the person
 21 does not live in New Mexico."