

SENATE BILL

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO EMPLOYMENT OF EX-CONVICTS; EXTENDING THE PROVISIONS
OF THE CRIMINAL OFFENDER EMPLOYMENT ACT TO INCLUDE PRIVATE
EMPLOYERS.

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 any private employment or
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]~~ an
employer or a board or other department or agency having

.205040.2

1 jurisdiction may take into consideration a conviction, but the
2 conviction shall not operate as an automatic bar to obtaining
3 private or public employment or license or other authority to
4 practice the trade, business or profession. An employer or a
5 board, department or agency of the state or any of its
6 political subdivisions shall not make an inquiry regarding a
7 conviction on an initial application for employment, if the
8 employer, board, department, agency or political subdivision
9 uses an initial application, and shall only take into
10 consideration a conviction after the applicant has been
11 selected as a finalist for the position.

12 B. The following criminal records shall not be
13 used, distributed or disseminated in connection with an
14 application for any ~~[public]~~ employment, license or other
15 authority:

16 (1) records of arrest not followed by a valid
17 conviction; and

18 (2) misdemeanor convictions not involving
19 moral turpitude."

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

24 "28-2-4. POWER TO REFUSE, RENEW, SUSPEND OR REVOKE
25 PRIVATE OR PUBLIC EMPLOYMENT OR LICENSE.--

1 A. Any private employer or board or other agency
2 having jurisdiction over employment by the state or any of its
3 political subdivisions or the practice of any trade, business
4 or profession may refuse to grant or renew or may suspend or
5 revoke any private or public employment or license or other
6 authority to engage in the [~~public~~] employment, trade, business
7 or profession for any one or any combination of the following
8 causes:

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

13 (2) where the applicant, employee or licensee
14 has been convicted of a felony or a misdemeanor involving moral
15 turpitude and the criminal conviction does not directly relate
16 to the particular employment, trade, business or profession, if
17 the private employer or the board or other agency determines
18 after investigation that the person so convicted has not been
19 sufficiently rehabilitated to warrant the public trust; or

20 (3) where the applicant, employee or licensee
21 has been convicted of homicide, kidnapping, trafficking in
22 controlled substances, criminal sexual penetration or related
23 sexual offenses or child abuse and the applicant, employee or
24 licensee has applied for reinstatement, renewal or issuance of
25 a teaching certificate, a license to operate a child-care

1 facility or employment at a child-care facility, regardless of
2 rehabilitation.

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

14 SECTION 3. EFFECTIVE DATE.--The effective date of the
15 provisions of this act is July 1, 2017.