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HOUSE BILL 315

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Brian K. Moore

FOR THE LEGISLATIVE FINANCE COMMITTEE

AN ACT

RELATING TO LICENSURE; CHANGING REQUIREMENTS AND STANDARDS FOR
SOCIAL WORKERS; EXPANDING LICENSE CLASSIFICATIONS; PROVIDING
FOR BOARD IMMUNITY AND CONFIDENTIALITY.

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

Section 1. Section 61-31-3 NMSA 1978 (being Laws 1989,
Chapter 51, Section 3) is amended to read:

"61-31-3. DEFINITIONS.--As used in the Social Work
Practice Act:

A. "advisory committee" means an evaluation
advisory committee;

B. "appropriate supervision" means supervision by
an independent social worker or a master social worker with two
years of supervised social work practice experience or other
supervision ~~[which]~~ that is deemed by the board to be

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1 equivalent to supervision by a master social worker;

2 C. "baccalaureate social worker" means a person who
3 uses the title of social worker and has a bachelor's degree in
4 social work from a program [~~accredited by the council on social~~
5 ~~work education~~] approved by the board;

6 D. "board" means the board of social work
7 examiners;

8 E. "department" means the regulation and licensing
9 department;

10 F. "executive agency" means any agency within the
11 executive branch of government;

12 G. "independent social worker" means a person who
13 uses the title of social worker and has a master's degree or a
14 doctoral degree in social work from a [~~graduate school of~~
15 ~~social work accredited by the council on social work education~~]
16 program approved by the board and who has had two years of
17 postgraduate social work practice under appropriate
18 supervision;

19 H. "master social worker" means a person who uses
20 the title of social worker and has a master's degree or a
21 doctoral degree in social work from a [~~graduate school of~~
22 ~~social work accredited by the council on social work education~~]
23 program approved by the board; and

24 I. "professional code of ethics" means a code of
25 ethics and rules adopted by the board, designed to protect the

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1 public and to regulate the professional conduct of social
2 workers."

3 Section 2. A new section of the Social Work Practice Act,
4 Section 61-31-4.1 NMSA 1978, is enacted to read:

5 "61-31-4.1. [NEW MATERIAL] UNLAWFUL PRACTICE.--

6 A. Except as otherwise provided in the Social Work
7 Practice Act, it is unlawful for any person to engage in the
8 practice of:

9 (1) baccalaureate social work unless duly
10 licensed as a baccalaureate social worker under the applicable
11 provisions of the Social Work Practice Act;

12 (2) master's social work unless duly licensed
13 as a master social worker under the applicable provisions of
14 the Social Work Practice Act; and

15 (3) clinical social work unless duly licensed
16 as a clinical social worker under the applicable provisions of
17 the Social Work Practice Act.

18 B. A person shall not offer social work services or
19 use the designation social worker, licensed baccalaureate
20 social worker, licensed master's social worker, licensed
21 independent social worker or the initials LBSW, LMSW, LISW or
22 LCSW or any other designation indicating licensure status or
23 hold himself out as practicing social work as a baccalaureate
24 social worker, master social worker or clinical social worker
25 unless duly licensed as such.

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1 C. The provisions of social work services to a
2 person in this state through telephonic, electronic or other
3 means, regardless of the location of the social worker, is
4 subject to regulation.

5 D. Any person engaging in the practice of social
6 work without first complying with the provisions of the Social
7 Work Practice Act is guilty of a misdemeanor and upon
8 conviction shall be sentenced pursuant to the provisions of
9 Section 31-19-1 NMSA 1978.

10 E. Students currently participating in a social
11 work program approved by the board are exempt from licensure
12 under the Social Work Practice Act when completing internship,
13 externship or other social work experience requirements for
14 such programs.

15 F. A person licensed to practice social work in
16 another jurisdiction who is providing services within the scope
17 of practice designated by such license in response to a
18 disaster declared by the appropriate authority or governor of
19 this state may upon prior written notice to the board provide
20 such services in this jurisdiction for a period of time not to
21 exceed sixty consecutive days per year without applying for a
22 license. The practitioner who provides services under this
23 subsection shall be deemed to have submitted to the
24 jurisdiction of the applicable board and be bound by the laws
25 of this state."

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1 Section 3. Section 61-31-7 NMSA 1978 (being Laws 1989,
2 Chapter 51, Section 7, as amended) is amended to read:

3 "61-31-7. BOARD CREATED.--

4 A. [~~There is created~~] The "board of social work
5 examiners" is created.

6 B. The board shall be administratively attached to
7 the department.

8 C. The board shall consist of seven members who are
9 representative of the geographic and ethnic groups within New
10 Mexico, who are United States citizens and who have been New
11 Mexico residents for at least five years prior to their
12 appointment. Of the seven members:

13 (1) four members shall have been engaged in
14 social work practice for at least five years; at least two of
15 the four shall hold a master's degree in social work; and at
16 least two shall hold a bachelor's degree in social work from
17 schools of social work that are [~~accredited by the council on~~
18 ~~social work education~~] approved by the board. At least one of
19 these members shall be engaged primarily in clinical social
20 work practice; one member shall be engaged primarily in
21 education; one member shall be engaged primarily in
22 administration or research in social work practice; and at
23 least one member shall be engaged primarily in community
24 organization, planning and development. These members shall
25 not hold office in any professional organization of social

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1 workers during their tenure on the board; and

2 (2) three members shall represent the public.

3 The public members shall not have been licensed or have
4 practiced as social workers. Public members shall not have any
5 significant financial interest, whether direct or indirect, in
6 social work practice.

7 D. Members of the board shall be appointed by the
8 governor for staggered terms of three years, except that, in
9 making the initial appointments, three members shall be
10 appointed for terms ending June 30, 1990; three members for
11 terms ending June 30, 1991; and four members for terms ending
12 June 30, 1992. Each member shall hold office until [~~his~~] that
13 member's successor is appointed and qualified. Vacancies shall
14 be filled for the unexpired term in the same manner as original
15 appointments.

16 E. Except for the representatives of the public on
17 the board, the governor shall appoint board members from a list
18 of nominees submitted by social work organizations and
19 individual social work professionals.

20 F. Members of the board shall be reimbursed as
21 provided in the Per Diem and Mileage Act and shall receive no
22 other compensation, perquisite or allowance.

23 G. The board shall elect a [~~chairman~~] chairperson
24 and other officers as deemed necessary to administer its
25 duties.

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1 H. A simple majority of the board members currently
2 serving shall constitute a quorum of the board.

3 I. The board shall meet at least once a year and at
4 such other times as it deems necessary. Other meetings may be
5 called by the [~~chairman~~] chairperson upon the written request
6 of a quorum of the board.

7 J. The governor may remove any member from the
8 board for the neglect of any duty required by law, for
9 incompetence, for improper or unprofessional conduct as defined
10 by board regulation or for any reason that would justify the
11 suspension or revocation of [~~his~~] that member's license to
12 practice social work.

13 K. [~~No~~] A board member shall not serve more than
14 two consecutive terms, and any member failing to attend, after
15 proper notice, three [~~executive~~] consecutive meetings shall
16 automatically be removed as a board member, unless excused for
17 reasons set forth in board regulations.

18 L. In the event of a vacancy for any reason, the
19 board secretary shall immediately notify the governor and the
20 board of the vacancy and the reason for its occurrence to
21 expedite the appointment of a new board member within a
22 six-month period."

23 Section 4. Section 61-31-8 NMSA 1978 (being Laws 1989,
24 Chapter 51, Section 8, as amended) is amended to read:

25 "61-31-8. BOARD'S AUTHORITY.--In addition to any

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1 authority provided by law, the board shall have the authority
2 to:

3 A. adopt and file, in accordance with the State
4 Rules Act, rules and regulations necessary to carry out the
5 provisions of the Social Work Practice Act, in accordance with
6 the provisions of the Uniform Licensing Act, including the
7 procedures for an appeal of an examination failure;

8 B. select, prepare and administer, at least
9 annually, written examinations for licensure [~~that shall~~
10 ~~include a testing of the knowledge of New Mexico cultures~~];

11 C. adopt a professional code of ethics;

12 D. appoint advisory committees pursuant to Section
13 61-31-19 NMSA 1978;

14 E. conduct hearings on an appeal of a denial of a
15 license based on the applicant's failure to meet the minimum
16 qualifications for licensure. The hearing shall be conducted
17 pursuant to the Uniform Licensing Act;

18 F. require and establish criteria for continuing
19 education;

20 G. issue subpoenas, statements of charges,
21 statements of intent to deny licenses and orders and delegate
22 in writing to a designee the authority to issue subpoenas,
23 statements of charges and statements of intent to deny licenses
24 and establish procedures for receiving, investigating and
25 conducting hearings on complaints;

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1 H. approve appropriate supervision for those
2 persons seeking licensure as independent social workers;

3 I. issue provisional licenses and licenses based on
4 credentials to persons meeting the requirements set forth in
5 the Social Work Practice Act;

6 J. determine qualifications for licensure,
7 including the requirement to demonstrate an awareness and
8 knowledge of New Mexico cultures;

9 K. set fees for licenses as authorized by the
10 Social Work Practice Act and authorize all disbursements
11 necessary to carry out the provisions of the Social Work
12 Practice Act; and

13 L. keep a record of all proceedings and shall make
14 an annual report to the governor."

15 Section 5. A new section of the Social Work Practice Act,
16 Section 61-31-8.1 NMSA 1978, is enacted to read:

17 "61-31-8.1. [NEW MATERIAL] ACTIONS OF BOARD--IMMUNITY--
18 CERTAIN RECORDS NOT PUBLIC RECORDS.--

19 A. A member of the board or a person working on
20 behalf of the board shall not be civilly liable or subject to
21 civil damages for any good faith action undertaken or performed
22 within the proper functions of the board.

23 B. All written and oral communications made by a
24 person to the board relating to actual or potential
25 disciplinary action shall be confidential communications and

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1 are not public records for the purposes of the Public Records
2 Act. All data, communications and information acquired by the
3 board relating to actual or potential disciplinary action shall
4 not be disclosed except:

5 (1) to the extent necessary to carry out the
6 board's functions;

7 (2) as needed for judicial review of the
8 board's actions; or

9 (3) pursuant to a court order issued by a
10 court of competent jurisdiction.

11 C. Notwithstanding the provisions of Subsection B
12 of this section, at the conclusion of an actual disciplinary
13 action by the board, all data, communications and information
14 acquired by the board relating to an actual disciplinary action
15 taken against a person subject to the provisions of the Social
16 Work Practice Act shall be public records, pursuant to the
17 provisions of the Public Records Act."

18 Section 6. Section 61-31-9 NMSA 1978 (being Laws 1989,
19 Chapter 51, Section 9) is amended to read:

20 "61-31-9. REQUIREMENTS FOR LICENSURE.--

21 A. The board shall issue a license as a
22 baccalaureate social worker to any person who files a completed
23 application, accompanied by the required fees, and who submits
24 satisfactory evidence that the applicant:

25 (1) has reached the age of majority;

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1 (2) has at least a bachelor's degree in social
2 work from a program [~~accredited by the council on social work~~
3 ~~education~~] approved by the board; and

4 (3) demonstrates professional competence by
5 satisfactorily passing a written examination as prescribed by
6 the board.

7 B. The board shall issue a license as a master
8 social worker to any person who files a completed application,
9 accompanied by the required fees, and who submits satisfactory
10 evidence that the applicant:

11 (1) has reached the age of majority;

12 (2) has obtained a master's degree or a
13 doctoral degree in social work from a graduate school of social
14 work [~~accredited by the council on social work education~~]
15 approved by the board; and

16 (3) demonstrates professional competence by
17 satisfactorily passing a written examination as prescribed by
18 the board.

19 C. The board shall issue a license as an
20 independent social worker to any person who files a completed
21 application, accompanied by the required fees, and who submits
22 satisfactory evidence that the applicant:

23 (1) has reached the age of majority;

24 (2) has obtained a master's degree in social
25 work from a graduate school of social work [~~accredited by the~~

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1 ~~council on social work education]~~ approved by the board;

2 (3) has two years of postgraduate social work
3 practice as a licensed master social worker or its equivalent
4 under appropriate supervision; and

5 (4) demonstrates professional competence by
6 satisfactorily passing a written examination as prescribed by
7 the board.

8 D. Notwithstanding the provisions of this section,
9 the board may grant a license on a case-by-case basis to those
10 employees of an executive agency who are currently practicing
11 social work as defined in Section [~~6 of the Social Work~~
12 ~~Practice Act]~~ 61-31-6 NMSA 1978 and have been so employed for
13 at least ten years prior to the effective date of [~~that]~~ the
14 Social Work Practice Act."

15 Section 7. Section 61-31-13 NMSA 1978 (being Laws 1989,
16 Chapter 51, Section 13) is amended to read:

17 "61-31-13. LICENSURE BY CREDENTIALS.--The board may
18 license an applicant without written examination, provided
19 [~~that he]~~ the applicant possesses a valid social worker license
20 issued by the appropriate examining board under the laws of any
21 other state or territory of the United States, the District of
22 Columbia or any foreign nation [~~which]~~ that, in the judgment of
23 the board, has requirements [~~including knowledge of New Mexico~~
24 ~~cultures, substantially equivalent to or exceeding those in the~~
25 ~~Social Work Practice Act]~~ equivalent to or exceeding those in

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1 the Social Work Practice Act. Applicants applying for
2 licensure by credentials shall also demonstrate by means
3 established by the board that they have awareness and knowledge
4 of New Mexico cultures for the licensure level sought."

5 Section 8. Section 61-31-14 NMSA 1978 (being Laws 1989,
6 Chapter 51, Section 14, as amended) is amended to read:

7 "61-31-14. LICENSE RENEWAL.--

8 A. Each licensee shall renew his license annually
9 by submitting a renewal application on a form provided by the
10 board. At the time of license renewal, the board shall require
11 a licensee to produce evidence of continuing education, as
12 prescribed by the board.

13 B. A thirty-day grace period shall be allowed each
14 licensee after each annual licensing period, during which time
15 licenses may be renewed upon payment of the renewal fee and
16 providing evidence of continuing education as [~~required under~~
17 ~~the Social Work Practice Act~~] prescribed by the board.

18 C. Any licensee who allows his license to lapse for
19 longer than three months shall have the license automatically
20 revoked and shall be required to take a written examination.

21 D. A late penalty fee shall be assessed after the
22 thirty-day grace period has expired for anyone attempting to
23 renew a license to practice social work.

24 E. Any person licensed under the Social Work
25 Practice Act who wishes to assume inactive status in the

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1 practice of social work shall notify the board's administrator
2 in writing prior to the July 1 expiration of that person's
3 current license. As part of the written request for inactive
4 status, the licensee shall show proof of having completed the
5 required continuing education hours. If the licensee has not
6 met the continuing education requirements, inactive status may
7 be granted, but the licensee shall be subject to all rules
8 related to continuing education if reinstatement of license is
9 requested. The practice of social work in New Mexico under an
10 inactive license is strictly prohibited. Any person licensed
11 under the Social Work Practice Act who has assumed inactive
12 status may notify the board, in writing, of that person's
13 desire to resume active practice. The applicant seeking
14 reinstatement of an inactive license shall, in addition to
15 other requirements established by the board, provide
16 satisfactory proof of completion of no less than ten hours of
17 continuing education for each year of inactive status;

18 F. The board shall not accept applications for
19 inactive status from licensees who are under investigation for
20 violations of the Social Work Practice Act or who have an
21 inactive complaint pending with the board.

22 G. The board shall accept applications from a
23 social worker who is impaired as defined in the Social Work
24 Practice Act and who is participating in a rehabilitation plan
25 approved by the board. The board may, at its discretion,

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1 require that an applicant for reinstatement take and pass a
2 written or oral examination as prescribed by the board."

3 Section 9. A new section of the Social Work Practice Act,
4 Section 61-31-14.1 NMSA 1978, is enacted to read:

5 "61-31-14.1. [NEW MATERIAL] RETIREMENT STATUS.--

6 A. Any person licensed under the Social Work
7 Practice Act who wishes to retire from practice shall notify
8 the board's administrator in writing prior to the July 1
9 expiration of the person's current license. As part of the
10 written request for retirement status, the licensee shall show
11 proof of having completed the required continuing education
12 hours. If the licensee has not met the continuing education
13 requirements, retirement status may be granted but the licensee
14 shall be subject to all rules related to continuing education
15 if reinstatement of license is requested.

16 B. Upon approval by the board of the request for
17 retirement status, the licensee shall assume retirement status
18 and be exempt from payment of the yearly renewal fees during
19 the period of retirement.

20 C. The practice of social work in New Mexico under
21 a retired license is strictly prohibited. Any person licensed
22 under the Social Work Practice Act who has retired may notify
23 the board in writing of that person's desire to resume active
24 practice.

25 D. The person seeking reinstatement of a retired

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1 license shall in addition to other requirements established by
2 the board, provide satisfactory proof of:

3 (1) completion of no less than five hours of
4 continuing education for each year of retirement; such
5 continuing education to be accumulated in accordance with the
6 rules; and

7 (2) completion of all continuing education
8 requirements determined to have been unmet at the time
9 retirement status was granted.

10 E. The board may at its discretion require that an
11 applicant for reinstatement take and pass a written or oral
12 examination as prescribed by the board.

13 F. A retired person licensed under the Social Work
14 Practice Act shall not reactivate his practice until receipt of
15 the new license.

16 G. The board shall not accept applications for
17 retirement from licensees who are under investigation for
18 violations of the Social Work Practice Act or who have an
19 active complaint pending with the board.

20 H. The board shall accept applications under this
21 section from any social worker who is impaired as defined in
22 the Social Work Practice Act and is participating in a
23 rehabilitation plan approved by the board."

24 Section 10. Section 61-31-16 NMSA 1978 (being Laws 1989,
25 Chapter 51, Section 16) is amended to read:

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"61-31-16. FUND ESTABLISHED.--

A. ~~[There is created in the state treasury]~~ The "board of social work examiners fund" is created in the state treasury.

B. All money received by the board under the Social Work Practice Act shall be deposited with the state treasurer for credit to the fund. The state treasurer shall invest the fund as other state funds are invested, and all income derived from investment of the fund shall be credited to the fund. Money in the fund is subject to appropriation by the legislature. All balances in the fund shall remain in the fund and shall not revert to the general fund.

C. Money in the fund is appropriated to the board and shall be used only for the purpose of meeting the necessary expenses incurred in carrying out the provisions of the Social Work Practice Act."