

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 247

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

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

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 ~~Sf11~~ **IN CERTAIN CASES AND REQUIRING A COURT TO ISSUE A PRELIMINARY INJUNCTION IN OTHER**

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CASES ← Sf11 ; 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:

A. "board" means:

(1) the construction industries commission, the construction industries division and the electrical bureau, mechanical bureau and general construction bureau of the construction industries division of the regulation and licensing department;

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

(3) the crane operators licensure examining council;

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

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

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

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

D. "initial license" means the first regular license received from a board for a person who has not been previously licensed;

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

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

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

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

[G.] I. "regular license" means a license that is

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not issued as a temporary or provisional license;

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

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

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

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

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

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

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

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

- (1) failure to pay any required renewal fee;
- (2) failure to meet continuing education

requirements; or

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

E. suspension of a license;

F. revocation of a license;

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

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

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

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

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

L. payment of a fine [~~for a violation not to exceed one thousand dollars (\$1,000) for each violation, unless a~~

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~~greater amount is provided by law];~~

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

N. a refund to the consumer of fees that were

billed to and collected from the consumer by the licensee."

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

"61-1-3.1. LIMITATIONS.--

A. An action that would have any of the effects specified in Subsections D through N of Section 61-1-3 NMSA 1978 or an action related to unlicensed activity shall not be initiated by a board later than two years after the discovery by the board of the conduct that would be the basis for the action, except as provided in [~~Subsection C of~~] this section or otherwise provided by law. Discovery by the board is considered the date on which a complaint or other information that would reasonably connect the allegations to the person was received by a board or board staff.

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

C. The New Mexico state board of psychologist examiners shall not initiate an action that would result in any of the actions specified in Subsections D through N of Section

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61-1-3 NMSA 1978 later than five years after the conduct of the psychologist or psychologist associate that is the basis for the action. However, if the conduct that is the basis for the action involves a minor or a person adjudicated incompetent, the action shall be initiated, in the case of a minor, no later than one year after the minor's eighteenth birthday or five years after the conduct, whichever is last and, in the case of a person adjudicated incompetent, one year after the adjudication of incompetence is terminated or five years after the conduct, whichever is last.

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

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

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

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

B. A board may impose a civil penalty in an amount not to exceed [~~one thousand dollars (\$1,000)~~] ten thousand

.225518.2AIC February 27, 2023 (12:22pm)

dollars (\$10,000) for each violation against a person who, without [a] an active license, engages in a profession or occupation regulated by the board. [~~In addition, the board may assess the person for administrative costs, including investigative costs and the cost of conducting a hearing.~~]"

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

"61-1-3.4. FINGERPRINTS NOT REQUIRED FOR LICENSE RENEWAL.--When a professional or occupational board requires submission of fingerprints as part of the initial license application, and a licensee has provided fingerprints and the license has been issued, the board shall not require a licensee to submit fingerprints again to renew the license, but a licensee shall submit to a background investigation if required by law or rule of the board."

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

"61-1-3.5. INCOMPLETE APPLICATION--NOTICE--EXPIRATION.--An application for licensure is considered incomplete if it is submitted on an application form missing required information or without providing required supporting documentation. If a board or a board's designee deems an application for licensure incomplete, the board or designee shall notify the applicant within thirty days [~~including the ways in which~~] from the date the application was received by the board or designee and

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include how the application is incomplete and what is needed to complete the application. An incomplete application expires [after] one year from the date the application was first received by the board."

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

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

A. When investigating complaints against licensees, applicants or unlicensed persons, a board may issue civil investigative subpoenas prior to the issuance of a notice of contemplated action as provided in this section. The authority to issue a specific civil investigative subpoena under this section may be delegated by the board to staff.

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

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

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

(3) that the applicant may secure a hearing before the board by depositing in the mail within twenty days

.225518.2AIC February 27, 2023 (12:22pm)

after service of the notice a certified return receipt requested letter addressed to the board and containing a request for a hearing; and

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

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

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

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

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

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

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contemplated action; and

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

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

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

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

.225518.2AIC February 27, 2023 (12:22pm)

~~the board.~~

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

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

"61-1-5. METHOD OF SERVICE.--Any notice required to be served by Section 61-1-4 or 61-1-21 NMSA 1978 and any decision required to be served by Section 61-1-14 or 61-1-21 NMSA 1978 may be served either personally or by certified mail, return receipt requested, directed to the licensee, ~~[or]~~ applicant or unlicensed person at ~~[his]~~ the last ~~[know]~~ known address as shown by the records of the board. Unlicensed persons with no address on record with the board shall receive notice by personal service. If the notice or decision is served personally, service shall be made in the same manner as is provided for service by the Rules of Civil Procedure for the District Courts. Where the notice or decision is served by certified mail, it shall be deemed to have been served on the date borne by the return receipt showing delivery or the last attempted delivery of the notice or decision to the addressee or refusal of the addressee to accept delivery of the notice or decision. Service of correspondence sent by a licensee, applicant or unlicensed person through other methods, including electronic mail or physical mail, should be reasonably accepted

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and processed by the board."

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

"61-1-6. VENUE OF HEARING.--Board hearings held [~~under~~] pursuant to provisions of the Uniform Licensing Act shall be conducted at the election of the board in the county in which [~~the person whose license is involved~~] the licensee, applicant or unlicensed person maintains [~~his~~] residence or [~~at the election of the board~~] in [~~any~~] a county in which the act [~~or acts~~] complained of occurred; except that in cases involving initial licensing, hearings shall be held in the county where the board maintains its office. In any case, however, the person whose license or application is involved or the person who performed the unlicensed act and the board may agree that the hearing is to be held in some other county or by virtual remote means."

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

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

A. All hearings [~~under~~] held pursuant to provisions of the Uniform Licensing Act shall be conducted either by the board or, at the election of the board, by a hearing officer who may be a member or employee of the board or any other person designated by the board in its discretion. A hearing

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officer shall, within thirty days after [~~any~~] a hearing, submit to the board a report setting forth [~~his~~] the hearing officer's findings of fact and recommendations.

B. All hearings [~~under~~] held pursuant to provisions of the Uniform Licensing Act shall be open to the public; provided that in cases in which [~~any~~] a constitutional right of privacy of [~~an applicant or~~] a licensee, applicant or unlicensed person may be irreparably damaged, a board or hearing officer may hold a closed hearing if the board or hearing officer so desires and states the reasons for this decision in the record. The [~~applicant or~~] licensee, applicant or unlicensed person may, for good cause shown, request a board or hearing officer to hold either a public or a closed hearing.

C. Each party may peremptorily excuse one board member or a hearing officer by filing with the board a notice of peremptory excusal at least twenty days prior to the date of the hearing, but this privilege of peremptory excusal may not be exercised in any case in which its exercise would result in less than a quorum of the board being able to hear or decide the matter. Any party may request that the board excuse a board member or a hearing officer for good cause by filing with the board a motion of excusal for cause at least twenty days prior to the date of the hearing. In any case in which a combination of peremptory excusals and excusals for good cause would result in less than a quorum of the board being able to

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hear or decide the matter, the peremptory excusals that would result in removing the member [~~or members~~] of the board necessary for a quorum shall not be effective.

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

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

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

G. There shall be no liability on the part of and no action for damages against a person who provides information to a board in good faith and without malice in the reasonable

.225518.2AIC February 27, 2023 (12:22pm)

belief that such information is accurate. A [~~licensee~~] party who directly or through an agent intimidates, threatens, injures or takes [~~any~~] adverse action against a person for providing information to a board shall be subject to disciplinary action."

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

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

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

B. Upon written request to another party, any party

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is entitled to:

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

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

C. The party to whom ~~such~~ a request is made shall comply with ~~it~~ the request within ten days after the ~~mailing~~ service or delivery of the request. No ~~such~~ request shall be made less than fifteen days before the hearing.

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

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

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

A. In connection with any hearing held under the Uniform Licensing Act, the board or hearing officer shall have power to have counsel to develop the case; to subpoena, for purposes of discovery and of the hearing, witnesses and relevant books, papers, documents and other evidence; to

.225518.2AIC February 27, 2023 (12:22pm)

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administer oaths or affirmations to witnesses called to testify; to take testimony; to examine witnesses; and to direct a continuance of any case. Boards or hearing officers may also hold conferences before or during the hearing for the settlement or simplification of the issues, but such settlement or simplification shall only be with the consent of the ~~[applicant or licensee]~~ party.

B. Geographical limits upon the subpoena power shall be the same as if the board or hearing officer were a district court sitting at the location at which the hearing or discovery proceeding is to take place. The method of service, including tendering of witness and mileage fees, shall be the same as that under the Rules of Civil Procedure for the District Courts, except that those rules requiring the tender of fees in advance shall not apply to the state.

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

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

"61-1-12. RECORD.--In all hearings conducted ~~[under]~~ pursuant to the Uniform Licensing Act, a complete record shall be made of all evidence received during the course of the hearing. The record shall be preserved by any stenographic

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method in use in the district courts of this state or, in the discretion of the board, by [~~tape~~] digital recording technology. The board shall observe any standards pertaining to [~~tape~~] digital recordings established for the district courts of this state."

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

"61-1-13. DECISION.--

A. After a hearing has been completed, the members of the board shall proceed to consider the case and as soon as practicable shall render their decision, provided that the decision shall be rendered by a quorum of the board. In cases in which the hearing is conducted by a hearing officer, all members who were not present throughout the hearing shall familiarize themselves with the record, including the hearing officer's report, before participating in the decision. In cases in which the hearing is conducted by the board, all members who were not present throughout the hearing shall thoroughly familiarize themselves with the entire record, including all evidence taken at the hearing, before participating in the decision.

B. A final decision and order based on the hearing shall be made by a quorum of the board and signed and executed by the person designated by the board within [~~sixty days after the completion of the preparation of the record or submission~~

.225518.2AIC February 27, 2023 (12:22pm)

~~of a hearing officer's report, whichever is later. In any case, the decision must be rendered and signed within~~ ninety days after the hearing is closed by the board."

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

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

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

"61-1-15. PROCEDURE WHERE PERSON FAILS TO REQUEST OR APPEAR FOR HEARING.--If a person who has requested a hearing does not appear and no continuance has been granted, the board or hearing officer may hear the evidence of such witnesses as may have appeared, and the board may proceed to consider the matter and dispose of it on the basis of the weight of the evidence before it in the manner required by Section 61-1-13 NMSA 1978. Where, because of accident, sickness or other extraordinary cause, a person fails to request a hearing or fails to appear for a hearing ~~[which he]~~ that the person has requested, the person may within a reasonable time apply to the board to reopen the proceeding, and the board upon finding such cause sufficient shall immediately fix a time and place for hearing and give the person notice as required by Sections

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61-1-4 and 61-1-5 NMSA 1978. At the time and place fixed, a hearing shall be held in the same manner as would have been employed if the person had appeared in response to the original notice of hearing."

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

"61-1-16. CONTENTS OF DECISION.--The final decision and order of the board shall contain findings of fact made by the board, conclusions of law reached by the board, the order of the board based upon these findings of fact and conclusions of law and a statement informing the applicant or licensee of ~~[his]~~ the applicant's or licensee's right to judicial review and the time within which such review ~~[must]~~ shall be sought."

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

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

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

"61-1-19. STAY.--At any time before or during the review proceeding pursuant to Section 61-1-17 NMSA 1978, the aggrieved

[person] party may apply to the board or file a motion in accordance with the Rules of Civil Procedure for the District Courts in the reviewing court for an order staying the operation of the board decision pending the outcome of the review. The board or court may grant or deny the stay in its discretion. No order granting or denying a stay shall be reviewable."

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

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

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

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

C. The granting or refusing of a request to reopen the case shall be within the board's discretion. The board may

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reopen the case on its own motion at any time before petition for review is filed; thereafter, it may do so only with the permission of the reviewing court. If the board reopens the case, it shall provide notice and a hearing to the applicant or licensee. The notice of the hearing shall be served upon the applicant or licensee within fifteen days after service of the decision to reopen the case. The hearing shall be held within forty-five days after service of the notice, and a decision shall be rendered, signed and served upon the applicant or licensee within thirty days after the hearing.

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

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

"61-1-25.1. [NEW MATERIAL] Sf11→PRELIMINARY INJUNCTION AND HEARING--←Sf11 SUMMARY SUSPENSION Sf11→OF LICENSE←Sf11 OR PROBATION Sf11→OF LICENSEE←Sf11 .--

Sf11→A. When a board finds that evidence in its possession indicates that a licensee poses a clear and immediate danger to the public health and safety if the licensee continues to practice, it may seek a preliminary injunction from the district court in the county in which the principal office of the licensee is located or, if the principal office is not in New Mexico, in the district court

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for Santa Fe county. If the injunction is granted, the board shall hold an expedited hearing for the suspension of the license or probation of the licensee. The board shall follow the hearing procedures of the Uniform Licensing Act, but times shall be shortened in accordance with the injunction or at the request of the licensee.←Sf11

Sf11→A.←Sf11 Sf11→B.←Sf11 A board may summarily suspend a license issued by the board or place a licensee on probation without a hearing, simultaneously with or at any time after the initiation of proceedings for a hearing provided pursuant to the Uniform Licensing Act, if the board finds that evidence in its possession indicates that the licensee:

Sf11→(1)←Sf11 ~~poses a clear and immediate danger to the public health and safety if the licensee continues to practice;~~←Sf11

Sf11→(2)←Sf11 Sf11→(1)←Sf11 has been adjudged mentally incompetent by a final order or adjudication by a court of competent jurisdiction; or

Sf11→(3)←Sf11 Sf11→(2)←Sf11 has pled guilty to or been found guilty of any offense directly related to the practice of the respective license.

Sf11→B.←Sf11 Sf11→C.←Sf11 A licensee is not required to comply with a summary action until service has been made or the licensee has actual knowledge of the order, whichever occurs first. The licensee may appeal the summary

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suspension as a final agency action as provided in Section 39-3-1.1 NMSA 1978.

Sf11→~~C.~~←Sf11 Sf11→D.←Sf11 When a board takes action to summarily suspend a license or place a licensee on probation pursuant to this section, it shall serve upon the licensee a written notice containing a statement:

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

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

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

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

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

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

A. A board that issues an occupational or

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

(1) process the completed application; and
(2) issue a license to [~~a~~] the qualified applicant who submits satisfactory evidence that the applicant:

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

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

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

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

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

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

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

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

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

.225518.2AIC February 27, 2023 (12:22pm)

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

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

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

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

- (1) process the application; and
- (2) issue a license prima facie to a qualified

applicant who submits satisfactory evidence that the applicant holds a license that is current and in good standing, issued by another jurisdiction, including a branch of the armed forces of the United States.

B. A license issued pursuant to this section is a

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

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

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

E. As used in this section:

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

.225518.2AIC February 27, 2023 (12:22pm)

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

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

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

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

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

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

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

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

A. A board shall not exclude from licensure a

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

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

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

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

- (1) the number of applicants for licensure and, of that number, the number granted a license;
- (2) the number of applicants for licensure or

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

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

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

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

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

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

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