

HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 295

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

AN ACT

RELATING TO PROFESSIONAL LICENSURE; CHANGING MEMBERSHIP OF
CERTAIN LICENSING BOARDS; EXTENDING SUNSET DATES OF CERTAIN
BOARDS; INCREASING PENALTIES FOR UNLICENSED ACTIVITIES OF
CERTAIN PROFESSIONS.

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

SECTION 1. A new section of the Professional Athletic
Competition Act is enacted to read:

"~~[NEW MATERIAL]~~ UNLICENSED ACTIVITY--DISCIPLINARY
PROCEEDINGS--CIVIL PENALTY.--A person who is not licensed to
engage in a professional athletic competition activity
regulated by the board is subject to disciplinary proceedings
by the board as provided in the Uniform Licensing Act. The
provisions of Section 61-1-3.2 NMSA 1978 notwithstanding, the
board may impose a civil penalty in an amount not to exceed two

.208167.1

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1 thousand dollars (\$2,000) against a person who engages in a
2 professional athletic competition activity regulated by the
3 board without a license. In addition, the board may assess the
4 person for administrative costs, including investigative costs
5 and the cost of conducting a hearing."

6 SECTION 2. Section 60-2A-30 NMSA 1978 (being Laws 1980,
7 Chapter 90, Section 30, as amended) is amended to read:

8 "60-2A-30. TERMINATION OF AGENCY LIFE--DELAYED
9 REPEAL.--The New Mexico athletic commission is terminated on
10 July 1, [~~2017~~] 2023 pursuant to the Sunset Act. The commission
11 shall continue to operate according to the provisions of the
12 Professional Athletic Competition Act until July 1, [~~2018~~]
13 2024. Effective July 1, [~~2018~~] 2024, Chapter 60, Article 2A
14 NMSA 1978 is repealed."

15 SECTION 3. Section 61-14A-19 NMSA 1978 (being Laws 1993,
16 Chapter 158, Section 27) is amended to read:

17 "61-14A-19. PENALTIES.--[~~Any~~]

18 A. A person who violates [~~any~~] a provision of the
19 Acupuncture and Oriental Medicine Practice Act is guilty of a
20 misdemeanor and upon conviction shall be punished as provided
21 in Section 31-19-1 NMSA 1978.

22 B. In addition to criminal penalties, a person who
23 engages in acupuncture or oriental medicine without a license
24 is subject to disciplinary proceedings by the board. The
25 provisions of Section 61-1-3.2 NMSA 1978 notwithstanding, the

1 board may impose a civil penalty in an amount not to exceed two
 2 thousand dollars (\$2,000) against such person and may assess
 3 the person for administrative costs, including investigative
 4 costs and the cost of conducting a hearing. The fine shall be
 5 deposited to the credit of the current school fund."

6 SECTION 4. Section 61-14A-22 NMSA 1978 (being Laws 1993,
 7 Chapter 158, Section 30, as amended) is amended to read:

8 "61-14A-22. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--
 9 The board of acupuncture and oriental medicine is terminated on
 10 July 1, [~~2017~~] 2023 pursuant to the Sunset Act. The board
 11 shall continue to operate according to the Acupuncture and
 12 Oriental Medicine Practice Act until July 1, [~~2018~~] 2024.
 13 Effective July 1, [~~2018~~] 2024, Chapter 61, Article 14A NMSA
 14 1978 is repealed."

15 SECTION 5. Section 61-15-3 NMSA 1978 (being Laws 1979,
 16 Chapter 362, Section 3, as amended) is amended to read:

17 "61-15-3. BOARD OF EXAMINERS FOR ARCHITECTS CREATED--
 18 TERMS--QUALIFICATIONS.--

19 A. [~~There is created a~~] The "board of examiners for
 20 architects" is created consisting of seven members appointed by
 21 the governor for staggered terms of three years each. Six of
 22 the members shall be architects having ten years or more
 23 experience in the profession, five years of which shall have
 24 been in responsible charge of architectural projects, and shall
 25 have been registered as architects in New Mexico for at least

.208167.1

1 five years. One of these six architects shall be in
2 architectural education in an accredited college of
3 architecture, [~~The seventh member shall be a public member who~~
4 ~~is a voting member. The public member of the board shall not~~
5 ~~have been licensed as an architect, nor shall the public~~
6 ~~member]~~ and one of the six architects shall be from the public
7 sector and not in private practice. The seventh member shall
8 be a public member who is a voting member. The public member
9 of the board shall not have been licensed as an architect, nor
10 shall the public member have any significant financial
11 interest, whether direct or indirect, in the occupation
12 regulated.

13 B. Each member of the board shall be at least
14 thirty years of age, a citizen of the United States and a
15 resident of New Mexico for at least five years prior to the
16 date of appointment.

17 C. Members of the board shall be appointed for
18 staggered terms of three years each made in such a manner that
19 the terms of not more than two members expire on June 30 of
20 each year. Each member shall serve until [~~his~~] a successor has
21 been appointed and qualified. A vacancy shall be filled for
22 the unexpired term by appointment by the governor of a person
23 having similar qualifications as the member that [~~he~~] the
24 person replaces. Each member of the board whose term has not
25 expired on the effective date of this section shall serve out

1 ~~[his]~~ the member's unexpired term.

2 D. Each member of the board shall receive a
3 certificate of appointment from the governor and, before
4 beginning ~~[his]~~ the member's term of office, shall file with
5 the secretary of state the constitutional oath of office. The
6 governor may remove any member from the board for the neglect
7 of any duty required by law, for incompetence or, if the member
8 is a licensed architect, for any improper or unprofessional
9 conduct as defined by ~~[regulations]~~ rules of the board.

10 E. The board shall elect a ~~[chairman]~~ chair, a vice
11 ~~[chairman]~~ chair and a secretary and any other officers it
12 deems necessary."

13 **SECTION 6.** Section 61-15-13 NMSA 1978 (being Laws 1979,
14 Chapter 362, Section 10, as amended) is amended to read:

15 "61-15-13. TERMINATION OF AGENCY LIFE--DELAYED
16 REPEAL.--The board of examiners for architects is terminated on
17 July 1, ~~[2017]~~ 2023 pursuant to the provisions of the Sunset
18 Act. The board shall continue to operate according to the
19 provisions of the Architectural Act until July 1, ~~[2018]~~ 2024.
20 Effective July 1, ~~[2018]~~ 2024, the Architectural Act is
21 repealed."

22 **SECTION 7.** Section 61-23-32 NMSA 1978 (being Laws 1987,
23 Chapter 336, Section 32, as amended) is amended to read:

24 "61-23-32. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--
25 The state board of licensure for professional engineers and

.208167.1

1 professional surveyors is terminated on July 1, [~~2017~~] 2023
2 pursuant to the Sunset Act. The board shall continue to
3 operate according to the provisions of the Engineering and
4 Surveying Practice Act until July 1, [~~2018~~] 2024. Effective
5 July 1, [~~2018~~] 2024, the Engineering and Surveying Practice Act
6 is repealed."

7 SECTION 8. Section 61-27B-6 NMSA 1978 (being Laws 2007,
8 Chapter 115, Section 6) is amended to read:

9 "61-27B-6. PRIVATE INVESTIGATIONS ADVISORY BOARD--
10 CREATED--MEMBERS.--

11 A. The "private investigations advisory board" is
12 created.

13 B. The superintendent of regulation and licensing
14 shall appoint members to the advisory board to assist in the
15 conduct of the examination process for licensees and
16 registrants and to assist the department in other manners as
17 requested by the superintendent or provided for in rules of the
18 department.

19 C. The advisory board members shall consist of at
20 least the following:

- 21 (1) [~~two~~] one private [~~investigators~~]
22 investigator;
- 23 (2) one private patrol operator;
- 24 (3) one polygraph examiner; and
- 25 (4) [~~one member~~] two members of the public.

1 D. Members of the advisory board shall be
2 reimbursed pursuant to the Per Diem and Mileage Act and shall
3 receive no other compensation, perquisite or allowance for each
4 day spent in the discharge of their duties.

5 E. The public [~~member~~] members of the advisory
6 board or [~~the public member's spouse~~] their spouses shall not:

7 (1) have been licensed pursuant to the Private
8 Investigations Act [~~the Private Investigators and Polygraphers~~
9 ~~Act~~] or any prior similar statutory provisions; or

10 (2) have a direct or indirect financial
11 interest in a private investigation company, private patrol
12 company, polygraph business or a related business."

13 SECTION 9. Section 61-27B-27 NMSA 1978 (being Laws 1993,
14 Chapter 212, Section 14, as amended) is amended to read:

15 "61-27B-27. HEARING--PENALTIES.--

16 A. A person who is denied a license or registration
17 or who has a license or registration suspended or revoked shall
18 be entitled to a hearing before the department if within twenty
19 days after the denial, suspension or revocation a request for a
20 hearing is received by the department. The procedures of the
21 Uniform Licensing Act shall be followed pertaining to the
22 hearing to the extent that they do not conflict with the
23 provisions of the Private Investigations Act.

24 B. In accordance with the provisions of the Uniform
25 Licensing Act, and in addition to other penalties provided by

.208167.1

1 law, the department may impose the following:

2 (1) for a violation of the Private
3 Investigations Act, a civil penalty not to exceed one thousand
4 dollars (\$1,000) for each violation; and

5 (2) against a person who is found by the
6 department to be engaging in a practice regulated by the
7 department without an appropriate license or registration,
8 civil penalties not to exceed [~~one thousand dollars (\$1,000)~~]
9 two thousand dollars (\$2,000)."

10 SECTION 10. Section 61-24C-17 NMSA 1978 (being Laws 1993,
11 Chapter 83, Section 5, as amended) is amended to read:

12 "61-24C-17. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--
13 The interior design board is terminated on July 1, [~~2017~~] 2023
14 pursuant to the provisions of the Sunset Act. The board shall
15 continue to operate according to the provisions of the Interior
16 Designers Act until July 1, [~~2018~~] 2024. Effective July 1,
17 [~~2018~~] 2024, Chapter 61, Article 24C NMSA 1978 is repealed."

18 SECTION 11. Section 61-27B-36 NMSA 1978 (being Laws 2007,
19 Chapter 115, Section 35, as amended) is amended to read:

20 "61-27B-36. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--
21 The private investigations advisory board is terminated on July
22 1, [~~2017~~] 2023 pursuant to the Sunset Act. The board shall
23 continue to operate according to the provisions of the Private
24 Investigations Act until July 1, [~~2018~~] 2024. Effective July
25 1, [~~2018~~] 2024, Chapter 61, Article 27B NMSA 1978 is repealed."

1 SECTION 12. Section 61-28B-20 NMSA 1978 (being Laws 1999,
2 Chapter 179, Section 20, as amended) is amended to read:

3 "61-28B-20. ENFORCEMENT--ADMINISTRATIVE VIOLATIONS AND
4 REMEDIES.--

5 A. The board may take, after providing a person due
6 process pursuant to the Uniform Licensing Act, corrective
7 action identified in Subsection B of this section following a
8 finding that an applicant or licensee:

9 (1) committed fraud or deceit in obtaining a
10 certificate or permit;

11 (2) lost a certificate or permit through
12 cancellation, revocation, suspension or refusal of renewal in
13 any other state for cause, as defined by board rule;

14 (3) failed to maintain compliance with the
15 requirements of the 1999 Public Accountancy Act and board rules
16 for issuance or renewal of a certificate or permit or failed to
17 report material changes to the board, as required by board
18 rule;

19 (4) lost the authorization to practice in any
20 state or before any federal agency through revocation or
21 suspension of that authorization;

22 (5) committed dishonest, fraudulent or grossly
23 negligent acts in the practice of public accountancy or in the
24 filing or failure to file the applicant's or licensee's own
25 income or other federal, state or local tax returns;

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1 (6) violated a provision of the 1999 Public
2 Accountancy Act or a rule promulgated by the board pursuant to
3 that act;

4 (7) violated a rule of professional conduct
5 promulgated by the board pursuant to the 1999 Public
6 Accountancy Act;

7 (8) has been convicted of a felony or of a
8 crime an element of which is dishonesty or fraud under the laws
9 of the United States, of New Mexico or of any other state, or
10 of any other jurisdiction, if the acts involved would have
11 constituted a crime under the laws of New Mexico;

12 (9) performed a fraudulent act while holding a
13 certificate or permit issued pursuant to the 1999 Public
14 Accountancy Act or prior law; or

15 (10) participated in any conduct reflecting
16 adversely upon the applicant's or licensee's fitness to engage
17 in practice.

18 B. After a finding by the board that an applicant
19 or licensee has committed a violation identified in Subsection
20 A of this section, the board may take, with or without terms,
21 conditions and limitations, one or more of the following
22 corrective actions:

23 (1) deny an application or revoke a
24 certificate or permit issued pursuant to the 1999 Public
25 Accountancy Act or corresponding provisions of prior law;

.208167.1

1 (2) suspend a certificate or permit for a
2 period of not more than five years;

3 (3) reprimand, censure or limit the scope of
4 practice of a licensee;

5 (4) impose an administrative fine not
6 exceeding ten thousand dollars (\$10,000); or

7 (5) place the licensee on probation.

8 C. In lieu of or in addition to a remedy
9 specifically provided in Subsection B of this section, the
10 board may require of a licensee:

11 (1) a quality review conducted in such a
12 fashion as the board may specify;

13 (2) satisfactory completion of such continuing
14 professional education programs as the board may specify;

15 (3) correction of the violation identified;

16 and

17 (4) any other suitable remedial action as
18 determined by the board.

19 D. In a proceeding in which a remedy provided by
20 Subsection B or C of this section is imposed, the board may
21 also require the respondent to pay the costs of the proceeding.

22 E. The provisions of Section 61-1-3.2 NMSA 1978
23 notwithstanding, the board may impose a civil penalty in an
24 amount not to exceed two thousand dollars (\$2,000) against a
25 person who engages in public accountancy without a license. In

.208167.1

1 addition, the board may assess the person for administrative
2 costs, including investigative costs and the cost of conducting
3 a hearing."

4 SECTION 13. Section 61-28B-29 NMSA 1978 (being Laws 1999,
5 Chapter 179, Section 29, as amended) is amended to read:

6 "61-28B-29. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--
7 The New Mexico public accountancy board is terminated on July
8 1, [2017] 2023 pursuant to the provisions of the Sunset Act.
9 The board shall continue to operate according to the provisions
10 of the 1999 Public Accountancy Act until July 1, [2018] 2024.
11 Effective July 1, [2018] 2024, the 1999 Public Accountancy Act
12 is repealed."

13 SECTION 14. Section 61-30-22 NMSA 1978 (being Laws 1990,
14 Chapter 75, Section 22, as amended) is amended to read:

15 "61-30-22. CIVIL AND CRIMINAL PENALTIES--INJUNCTIVE
16 RELIEF.--

17 A. Any person who violates any provision of the
18 Real Estate Appraisers Act is guilty of a misdemeanor and shall
19 be punished by a fine of not more than one thousand dollars
20 (\$1,000) or by imprisonment for not more than six months or
21 both.

22 B. In the event any person has engaged in or
23 proposes to engage in any act or practice violating a provision
24 of the Real Estate Appraisers Act, the attorney general or the
25 district attorney of the judicial district in which the person

1 resides or the judicial district in which the violation has
 2 occurred or will occur shall, upon application of the board,
 3 maintain an action in the name of the state to prosecute the
 4 violation or to enjoin the proposed act or practice.

5 C. The board may impose a civil penalty in an
 6 amount not to exceed one thousand dollars (\$1,000) for each
 7 violation of the Real Estate Appraisers Act and assess
 8 administrative costs for any investigation and administrative
 9 or other proceedings against a real estate appraiser trainee, a
 10 state licensed residential real estate appraiser or a state
 11 certified real estate appraiser [~~or~~]. The provisions of
 12 Section 61-1-3.2 NMSA 1978 notwithstanding, the board may
 13 impose a civil penalty not to exceed two thousand dollars
 14 (\$2,000) against any person who is found, through an
 15 administrative proceeding, to have acted without a license.
 16 Appeals from decisions of the board shall be taken as provided
 17 in Section 39-3-1.1 NMSA 1978."

18 SECTION 15. Section 61-30-24 NMSA 1978 (being Laws 1993,
 19 Chapter 269, Section 21, as amended) is amended to read:

20 "61-30-24. TERMINATION OF AGENCY LIFE--DELAYED
 21 REPEAL.--The real estate appraisers board is terminated
 22 effective July 1, [~~2017~~] 2023. The Real Estate Appraisers Act
 23 shall continue in effect until July 1, [~~2018~~] 2024. Chapter
 24 61, Article 30 NMSA 1978 is repealed effective July 1, [~~2018~~]
 25 2024."

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1 SECTION 16. Section 61-32-6 NMSA 1978 (being Laws 1993,
2 Chapter 204, Section 6, as amended) is amended to read:

3 "61-32-6. BOARD POWERS.--

4 A. In addition to any other authority provided by
5 law, the board has the power to:

6 (1) adopt, in accordance with the provisions
7 of the Uniform Licensing Act, and file, in accordance with the
8 State Rules Act, rules necessary to carry out the provisions of
9 the Funeral Services Act;

10 (2) adopt rules implementing continuing
11 education requirements;

12 (3) conduct hearings upon charges relating to
13 the discipline of licensees and take administrative actions
14 pursuant to Section 61-1-3 NMSA 1978;

15 (4) establish reasonable fees to carry out the
16 provisions of the Funeral Services Act;

17 (5) provide for investigations necessary to
18 determine violations of the Funeral Services Act;

19 (6) establish committees as the board deems
20 necessary for carrying out the provisions of the Funeral
21 Services Act;

22 (7) apply for injunctive relief to enforce the
23 provisions of the Funeral Services Act or to restrain any
24 violation of that act; and

25 ~~[(8) impose a fine not to exceed five thousand~~

1 ~~dollars (\$5,000) for each violation, in addition to other~~
 2 ~~administrative or disciplinary costs, and all fines shall be~~
 3 ~~deposited in the funeral services fund; and~~

4 ~~(9)]~~ (8) conduct criminal background checks on
 5 applicants for licensure.

6 B. No action or other legal proceedings for damages
 7 shall be instituted against the board, any board member or
 8 employee of the board for any act performed in good faith and
 9 in the intended performance of any power or duty granted under
 10 the Funeral Services Act or for any neglect or default in the
 11 good faith performance or exercise of any such power or duty."

12 SECTION 17. Section 61-32-23 NMSA 1978 (being Laws 1993,
 13 Chapter 204, Section 23, as amended) is amended to read:

14 "61-32-23. FEES AND FINES.--The board shall establish by
 15 [~~regulation~~] rule a schedule of reasonable fees and fines for
 16 applications, examinations, licenses, inspections, renewals,
 17 penalties, reinstatements and necessary administrative fees.
 18 All fees collected shall be deposited in accordance with
 19 Section 61-32-26 NMSA 1978. All fines collected shall be
 20 deposited in the current school fund."

21 SECTION 18. Section 61-32-26 NMSA 1978 (being Laws 1993,
 22 Chapter 204, Section 26, as amended) is amended to read:

23 "61-32-26. FUND ESTABLISHED.--

24 A. There is created in the state treasury the
 25 "funeral services fund".

1 B. All ~~[money]~~ fees and costs received or collected
2 by the board or the department pursuant to provisions of the
3 Funeral Services Act shall be deposited with the state
4 treasurer for credit to the funeral services fund. The state
5 treasurer shall invest the fund as other state funds are
6 invested. All balances in the fund at the end of any fiscal
7 year shall remain in the fund and shall not revert to the
8 general fund.

9 C. Money in the funeral services fund is
10 appropriated to the board and shall be used only for the
11 purpose of carrying out the provisions of the Funeral Services
12 Act."

13 **SECTION 19.** Section 61-32-30.1 NMSA 1978 (being Laws
14 2003, Chapter 420, Section 11, as amended) is amended to read:

15 "61-32-30.1. UNLICENSED ACTIVITY--CIVIL PENALTY.--The
16 provisions of Section 61-1-3.2 NMSA 1978 notwithstanding, the
17 board may impose a fine in an amount not to exceed two thousand
18 dollars (\$2,000) and costs [~~as set forth in the Funeral~~
19 ~~Services Act~~] on a person who is found to have acted without a
20 license in violation of the Funeral Services Act by a court or
21 an administrative proceeding as provided for in the Funeral
22 Services Act."

23 **SECTION 20.** Section 61-32-31 NMSA 1978 (being Laws 1993,
24 Chapter 204, Section 31, as amended) is amended to read:

25 "61-32-31. TERMINATION OF AGENCY LIFE--DELAYED

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1 REPEAL.--The board of funeral services is terminated on July 1,
2 [2017] 2023 pursuant to the provisions of the Sunset Act. The
3 board shall continue to operate according to the provisions of
4 Section 12-9-18 NMSA 1978 until July 1, [2018] 2024. Effective
5 July 1, [2018] 2024, the Funeral Services Act is repealed."

6 SECTION 21. TEMPORARY PROVISION--BOARD PUBLIC MEMBERS.--

7 In carrying out the statutory requirement to replace
8 professional members with public members on the board of
9 examiners for architects and the private investigations
10 advisory board, the governor shall appoint a public member to
11 replace the applicable professional member whose term first
12 expires after the effective date of this act. If a vacancy
13 occurs in an applicable professional member position prior to
14 the expiration of that term, the governor shall appoint a
15 public member, and that position shall become a public member
16 position.

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