

HOUSE BILL 98

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

William "Bill" R. Rehm

Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

RELATING TO LICENSURE; PROHIBITING REQUIRING RESUBMISSION OF FINGERPRINTS TO RENEW A BUSINESS, PROFESSIONAL OR OCCUPATIONAL LICENSE SJC→; **CREATING EXCEPTIONS**←SJC.

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

SECTION 1. Section 9-16-6 NMSA 1978 (being Laws 1983, Chapter 297, Section 22) is amended to read:

"9-16-6. SUPERINTENDENT--DUTIES AND GENERAL POWERS.--

A. The superintendent is responsible to the governor for the operation of the department. It is [~~his~~] the

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superintendent's duty to manage all operations of the department and to administer and enforce the laws with which [he] the superintendent or the department is charged.

B. To perform [his] the superintendent's duties, the superintendent has every power expressly enumerated in the laws, whether granted to the superintendent or the department or any division of the department, except where authority conferred upon any division is explicitly exempted from the superintendent's authority by statute. In accordance with these provisions, the superintendent shall:

(1) except as otherwise provided in the Regulation and Licensing Department Act, exercise general supervisory and appointing authority over all department employees, subject to any applicable personnel laws and regulations;

(2) delegate authority to subordinates as [he] the superintendent deems necessary and appropriate, clearly delineating such delegated authority and the limitations thereto;

(3) organize the department into those organizational units [he] the superintendent deems will enable it to function most efficiently, subject to any provisions of law requiring or establishing specific organizational units;

(4) within the limitations of available appropriations and applicable laws, employ and fix the

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compensation of those persons necessary to discharge [~~his~~] the superintendent's duties;

(5) take administrative action by issuing orders and instructions, not inconsistent with the law, to assure implementation of and compliance with the provisions of law for whose administration or execution [~~he~~] the superintendent is responsible and to enforce those orders and instructions by appropriate administrative action or actions in the courts;

(6) conduct research and studies that will improve the operations of the department and the provision of services to the [~~citizens~~] residents of the state;

(7) provide courses of instruction and practical training for employees of the department and other persons involved in the administration of programs, with the objective of improving the operations and efficiency of administration;

(8) prepare an annual budget of the department;

(9) provide cooperation, at the request of heads of administratively attached agencies, in order to:

(a) minimize or eliminate duplication of services and jurisdictional conflicts;

(b) coordinate activities and resolve problems of mutual concern; and

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(c) resolve by agreement the manner and extent to which the department shall provide budgeting, [~~record-keeping~~] recordkeeping and related clerical assistance to administratively attached agencies;

(10) appoint, with the governor's consent, a "director" for each division. These appointed positions are exempt from the provisions of the Personnel Act. Persons appointed to these positions shall serve at the pleasure of the superintendent;

(11) give bond in the penal sum of twenty-five thousand dollars (\$25,000) and require directors to each give bond in the penal sum of ten thousand dollars (\$10,000) conditioned upon the faithful performance of duties, as provided in the Surety Bond Act. The department shall pay the costs of these bonds; and

(12) require performance bonds of such department employees and officers as [~~he~~] the superintendent deems necessary, as provided in the Surety Bond Act. The department shall pay the costs of these bonds.

C. The superintendent may apply for and receive, with the governor's approval, in the name of the department any public or private funds, including [~~but not limited to~~] United States government funds, available to the department to carry out its programs, duties or services.

D. The superintendent may make and adopt such

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reasonable and procedural rules and regulations as may be necessary to carry out the duties of the department and its divisions; provided that where a licensing entity requires submission of fingerprints as part of the initial license application, and a licensee has provided fingerprints and the license has been issued, the licensing entity shall not require a licensee to submit fingerprints again to renew the license, but a licensee shall submit to a background investigation if required SJC→; and provided further that the prohibition against requiring additional fingerprints shall not apply to the financial institutions division of the department when utilizing the nationwide multistate licensing system and registry←SJC. No rule or regulation promulgated by the director of any division in carrying out the functions and duties of the division shall be effective until approved by the superintendent, unless otherwise provided by statute. Unless otherwise provided by statute, no regulation affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the superintendent or a hearing officer designated by [him] the superintendent. The public hearing shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the regulation, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views

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and the method by which copies of the proposed regulation, proposed amendment or repeal of an existing regulation may be obtained shall be published once at least thirty days prior to the hearing date in a newspaper of general circulation and mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice of hearing. All rules and regulations shall be filed in accordance with the State Rules Act."

SJC→SECTION 2. Section 22-10A-5 NMSA 1978 (being Laws 1997, Chapter 238, Section 1, as amended) is amended to read:

"22-10A-5. BACKGROUND CHECKS--KNOWN CONVICTIONS--ALLEGED ETHICAL MISCONDUCT--REPORTING REQUIRED--~~[LIMITED IMMUNITY]~~ PENALTY FOR FAILURE TO REPORT.--

A. As used in this section, "ethical misconduct" means unacceptable behavior or conduct engaged in by a licensed school employee and includes inappropriate touching, sexual harassment, discrimination and behavior intended to induce a child into engaging in illegal, immoral or other prohibited behavior.

B. An applicant for initial licensure shall be fingerprinted only upon initial licensure and shall provide two fingerprint cards or the equivalent electronic fingerprints to the department to obtain the applicant's federal bureau of investigation record. Convictions of felonies or misdemeanors contained in the federal bureau of investigation record shall

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be used in accordance with the Criminal Offender Employment Act. Other information contained in the federal bureau of investigation record, if supported by independent evidence, may form the basis for the denial, suspension or revocation of a license for good and just cause. Records and related information shall be privileged and shall not be disclosed to a person not directly involved in the licensure or employment decisions affecting the specific applicant. The applicant for initial licensure shall pay for the cost of obtaining the federal bureau of investigation record.

C. Local school boards and regional education cooperatives shall develop policies and procedures to require background checks on an applicant who has been offered employment, a contractor or a contractor's employee with unsupervised access to students at a public school.

D. An applicant for employment who has been initially licensed within twenty-four months of applying for employment with a local school board, regional education cooperative or a charter school shall not be required to submit to another background check if the department has copies of the applicant's federal bureau of investigation records on file. An applicant who has been offered employment, a contractor or a contractor's employee with unsupervised access to students at a public school shall provide two fingerprint cards or the

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equivalent electronic fingerprints to the local school board, regional education cooperative or charter school to obtain the applicant's federal bureau of investigation record. The applicant, contractor or contractor's employee who has been offered employment by a regional education cooperative or at a public school may be required to pay for the cost of obtaining a background check. At the request of a local school board, regional education cooperative or charter school, the department is authorized to release copies of federal bureau of investigation records that are on file with the department and that are not more than twenty-four months old. Convictions of felonies or misdemeanors contained in the federal bureau of investigation record shall be used in accordance with the Criminal Offender Employment Act; provided that other information contained in the federal bureau of investigation record, if supported by independent evidence, may form the basis for the employment decisions for good and just cause. Records and related information shall be privileged and shall not be disclosed to a person not directly involved in the employment decision affecting the specific applicant who has been offered employment, contractor or contractor's employee with unsupervised access to students at a public school.

E. A local superintendent, charter school

administrator or regional education cooperative shall report to

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the department any known conviction of a felony or misdemeanor involving moral turpitude of a licensed school employee that results in any type of action against the licensed school employee.

F. A local superintendent, charter school administrator or director of a regional education cooperative or their respective designees shall investigate all allegations of ethical misconduct about any licensed school employee who resigns, is being discharged or terminated or otherwise leaves employment after an allegation has been made. If the investigation results in a finding of wrongdoing, the local superintendent, charter school administrator or director of a regional education cooperative shall report the identity of the licensed school employee and attendant circumstances of the ethical misconduct on a standardized form to the department and the licensed school employee within thirty days following the separation from employment. Copies of that form shall not be maintained in public school, school district or regional education cooperative records. No agreement between a departing licensed school employee and the local school board, school district, charter school or regional education cooperative shall diminish or eliminate the responsibility of investigating and reporting the alleged ethical misconduct, and any such agreement to the contrary is void. Unless the

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department has commenced its own investigation of the licensed school employee prior to receipt of the form, the department shall serve the licensed school employee with a notice of contemplated action involving that employee's license within ninety days of receipt of the form. If that notice of contemplated action is not served on the licensed school employee within ninety days of receipt of the form, the form, together with any documents related to the alleged ethical misconduct, shall be expunged from the licensed school employee's records with the department and shall not be subject to public inspection.

G. The secretary may suspend, revoke or refuse to renew the license of a local superintendent, charter school administrator or regional education cooperative director who fails to report as required by Subsections E and F of this section.

~~[H. A person who in good faith reports as provided in Subsections E and F of this section shall not be held liable for civil damages as a result of the report. The person being accused shall have the right to sue for any damages sustained as a result of negligent or intentional reporting of inaccurate information or the disclosure of any information to an unauthorized person.]~~"←SJC

SECTION SJC→2. 3.←SJC Section 60-1A-7 NMSA 1978 (being

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Laws 2007, Chapter 9, Section 7) is amended to read:

"60-1A-7. ALL LICENSE APPLICATIONS--BACKGROUND INVESTIGATIONS--RULES.--

A. A person applying for a license pursuant to the Horse Racing Act shall submit to a background investigation to be conducted by the board. The commission and the board shall adopt rules to coordinate the manner in which the background investigations are conducted. The rules shall at minimum require that:

(1) an applicant for a license [~~or license renewal~~] shall submit two fingerprint cards to the commission, with one card to be submitted to the board for a statewide check and the other card to be submitted to the federal bureau of investigation for a nationwide check;

(2) arrest record information from a law enforcement agency or the federal bureau of investigation and information obtained as a result of the background investigation conducted by the board is privileged and shall not be disclosed to persons not directly involved in the decision affecting the specific applicant;

(3) an applicant shall provide all of the information required by the commission; and

(4) the cost of the background investigation shall be paid by the applicant.

B. An applicant for a license who is denied the

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license by the commission shall have an opportunity to inspect and challenge the validity of the record on which the denial of the license was based."

SJC→SECTION 4. A new section of the Uniform Licensing Act is enacted to read:

"[NEW MATERIAL] 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."

SECTION 5. Section 61-9-11.2 NMSA 1978 (being Laws 2009, Chapter 51, Section 4) is amended to read:

"61-9-11.2. CRIMINAL BACKGROUND CHECKS.--

A. The board may adopt rules that provide for criminal background checks for all licensees to include:

(1) requiring criminal history background checks of applicants for licensure pursuant to the Professional Psychologist Act;

(2) requiring applicants for licensure to be fingerprinted only upon initial licensure;

(3) providing for an applicant who has been

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denied licensure to inspect or challenge the validity of the background check record;

(4) establishing a fingerprint and background check fee not to exceed seventy-five dollars (\$75.00) to be paid by the applicant; and

(5) providing for submission of an applicant's fingerprint cards to the federal bureau of investigation to conduct a national criminal history background check and to the department of public safety to conduct a state criminal history check.

B. Arrest record information received from the department of public safety and the federal bureau of investigation shall be privileged and shall not be disclosed to persons not directly involved in the decision affecting the applicant.

C. Electronic live fingerprint scans may be used when conducting criminal history background checks."

SECTION 6. Section 61-27B-34 NMSA 1978 (being Laws 2007, Chapter 115, Section 34) is amended to read:

"61-27B-34. BACKGROUND INVESTIGATIONS.--

A. The department shall adopt rules that:

(1) are developed in conjunction with the department of public safety that require background investigations of all persons licensed or registered pursuant

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to the Private Investigations Act to determine if the person has a criminal history;

(2) require all applicants for licensure or registration to be fingerprinted only upon initial licensure or registration on two fingerprint cards or electronically as required for submission to the federal bureau of investigation to conduct a national criminal history investigation and for submission to the department of public safety to conduct a state criminal history investigation;

(3) provide for an applicant to inspect or challenge the validity of the record developed by the background investigation if the applicant is denied a license or registration; and

(4) establish a fee for fingerprinting and conducting a background investigation for an applicant.

B. Arrest record information received from the federal bureau of investigation and department of public safety shall be privileged and shall not be disclosed to individuals not directly involved in the decision affecting the specific applicant or employee.

C. The applicant shall pay the cost of obtaining criminal history information from the federal bureau of investigation and the department of public safety.

D. Electronic live scans may be used for conducting

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criminal history investigations."

SECTION 7. Section 61-29-4.4 NMSA 1978 (being Laws 2005, Chapter 35, Section 6, as amended) is amended to read:

"61-29-4.4. ADDITIONAL POWERS OF COMMISSION--
FINGERPRINTING AND CRIMINAL HISTORY BACKGROUND CHECKS.--

A. All applicants for licensure as provided for in Chapter 61, Article 29 NMSA 1978 shall:

(1) be required to provide fingerprints only upon initial licensure on two fingerprint cards for submission to the federal bureau of investigation to conduct a national criminal history background check and to the department of public safety to conduct a state criminal history background check;

(2) pay the cost of obtaining the fingerprints and criminal history background checks; and

(3) have the right to inspect or challenge the validity of the records resulting from the background check if the applicant is denied licensure as established by commission rule.

B. Electronic live scans may be used for conducting criminal history background checks.

C. Criminal history records obtained by the commission pursuant to the provisions of this section are confidential. The commission is authorized to use criminal

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history records obtained from the federal bureau of investigation and the department of public safety to conduct background checks on applicants for certification as provided for in Chapter 61, Article 29 NMSA 1978.

D. Criminal history records obtained by the commission pursuant to the provisions of this section shall not be used for any purpose other than conducting background checks. Criminal history records obtained pursuant to the provisions of this section and the information contained in those records shall not be released or disclosed to any other person or agency, except pursuant to a court order or with the written consent of the person who is the subject of the records.

E. A person who releases or discloses the criminal history records or information contained in those records in violation of the provisions of this section is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978."

SECTION 8. Section 61-30-15.1 NMSA 1978 (being Laws 2014, Chapter 33, Section 20) is amended to read:

"61-30-15.1. CRIMINAL HISTORY BACKGROUND CHECKS.--

A. The board may adopt rules that provide for criminal history background checks for all registrants, certified licensees and licensees to include:

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(1) requiring criminal history background checks of applicants for registration, certified licensure or licensure pursuant to the Real Estate Appraisers Act;

(2) requiring applicants for registration, or certified licensure or licensure to be fingerprinted only upon initial licensure or registration;

(3) providing for an applicant who has been denied registration or certified licensure or licensure to inspect or challenge the validity of the criminal history background check record;

(4) establishing a fingerprint and criminal history background check fee not to exceed fees as determined by the department of public safety to be paid by the applicant; and

(5) providing for submission of an applicant's fingerprint cards to the federal bureau of investigation to conduct a national criminal history background check and to the department of public safety to conduct a state criminal history background check.

B. Arrest record information received from the department of public safety and the federal bureau of investigation shall be privileged and shall not be disclosed to persons not directly involved in the decision affecting the

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applicant.

C. Electronic live fingerprint scans may be used when conducting criminal history background checks."←SJC

SECTION SJC→3. 9.←SJC EFFECTIVE DATE.--The effective date of the provisions of this act is HJC→July 1, 2019←HJC
SJC→HJC→January 1, 2020←HJC←SJC SJC→July 1,←SJC
SJC→2019←SJC SJC→2020←SJC.