

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 385

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

AN ACT

RELATING TO EMPLOYMENT; EXPANDING THE LIST OF CRIMINAL RECORDS
THAT CANNOT BE CONSIDERED IN AN APPLICATION FOR PUBLIC
EMPLOYMENT, LICENSE OR OTHER AUTHORITY; ENACTING NEW SECTIONS
OF CHAPTER 61 NMSA 1978 TO PROHIBIT THE EXCLUSION FROM
PROFESSIONAL LICENSURE OF PERSONS CONVICTED OF CERTAIN
FELONIES.

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

SECTION 1. Section 28-2-3 NMSA 1978 (being Laws 1974,
Chapter 78, Section 3, as amended) is amended to read:

"28-2-3. EMPLOYMENT ELIGIBILITY DETERMINATION.--

A. Subject to the provisions of Subsection B of
this section and Sections 28-2-4 and 28-2-5 NMSA 1978, in
determining eligibility for employment with the state or any of
its political subdivisions or for a license, permit,

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underscored material = new
[bracketed material] = delete

1 certificate or other authority to engage in any regulated
2 trade, business or profession, the board or other department or
3 agency having jurisdiction may take into consideration a
4 conviction, but the conviction shall not operate as an
5 automatic bar to obtaining public employment or license or
6 other authority to practice the trade, business or profession.

7 ~~[A board, department or agency of the state or any of its~~
8 ~~political subdivisions shall not make an inquiry regarding a~~
9 ~~conviction on an initial application for employment and shall~~
10 ~~only take into consideration a conviction after the applicant~~
11 ~~has been selected as a finalist for the position.]~~

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

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

18 ~~(2) misdemeanor convictions not involving~~
19 ~~moral turpitude;]~~

20 (2) a conviction that has been sealed,
21 dismissed, expunged or pardoned;

22 (3) a juvenile adjudication; or

23 (4) a conviction that occurred more than three
24 years before the date of the petition or a conviction for a
25 crime that is not directly related to the duties or

1 responsibilities of the licensed occupation, except for a
 2 conviction of:

3 (a) a felony committed with violence
 4 against a person, threatened violence or a likelihood of
 5 serious bodily injury; in which the defendant was personally
 6 armed with or personally used a deadly weapon in the commission
 7 of the crime; or in which the defendant personally inflicted
 8 great bodily injury in the commission of the crime; or

9 (b) a felony in violation of any
 10 provision of Chapter 30, Article 9 NMSA 1978."

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

13 "61-1-1. SHORT TITLE.--~~[Sections 67-26-1 through 67-26-31~~
 14 ~~NMSA 1953]~~ Chapter 61, Article 1 NMSA 1978 may be cited as the
 15 "Uniform Licensing Act"."

16 SECTION 3. A new section of the Uniform Licensing Act is
 17 enacted to read:

18 "[NEW MATERIAL] EXCLUSION FROM PROFESSIONAL LICENSURE--
 19 PROHIBITION--EXCEPTIONS.--

20 A. A board shall not deny licensure to an
 21 individual who is otherwise qualified for licensure on the sole
 22 basis that the individual has been previously convicted of a
 23 felony, unless the conviction was for a crime related to the
 24 profession for which the individual seeks licensure.

25 B. By September 1, 2019, a board shall adopt and

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1 promulgate rules relating to licensing requirements to
2 explicitly list the specific criminal convictions that could
3 disqualify an applicant from receiving a license on the basis
4 of a previous felony conviction. A board shall not use vague
5 or generic terms, including "moral turpitude" or "good
6 character". A board may only list disqualifying felony
7 convictions that are specific and directly related to the
8 duties and responsibilities for the licensed occupation.

9 C. When promulgating the list of specific criminal
10 convictions that could disqualify an applicant from receiving a
11 license pursuant to Subsection B of this section, the board
12 shall consider:

13 (1) the public policy of this state, as
14 expressed in the Criminal Offender Employment Act, to encourage
15 the licensure of persons with arrest and conviction records;

16 (2) whether the elements of the crime are
17 directly related to the specific duties and responsibilities of
18 that occupation;

19 (3) whether the occupation offers the
20 opportunity for the same or a similar crime to occur;

21 (4) the relationship of the crime to the
22 purposes of regulating the occupation for which the license is
23 required; and

24 (5) the length of time since the crime
25 occurred.

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1 D. A board shall use the clear and convincing
2 standard of proof in examining the factors to determine whether
3 an applicant with a disqualifying felony conviction will be
4 denied a license. The board shall make its determination based
5 on the following factors:

6 (1) the nature and seriousness of the crime
7 for which the individual was convicted;

8 (2) the passage of time since the commission
9 of the crime;

10 (3) the relationship of the crime to the
11 ability, capacity and fitness required to perform the duties
12 and discharge the responsibilities of the occupation; and

13 (4) any evidence of rehabilitation or
14 treatment undertaken by the individual that might mitigate
15 against a disqualification.

16 E. If an individual has a felony conviction for a
17 crime that could disqualify the individual from receiving a
18 license, the disqualification shall not last longer than three
19 years from the date of conviction.

20 F. If a board denies an individual a license solely
21 or in part because of the individual's prior conviction of a
22 crime, the board shall notify the individual in writing of the
23 following:

24 (1) the grounds and reasons for the denial or
25 disqualification;

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1 (2) that the individual has the right to a
2 hearing to challenge the board's decision;

3 (3) the earliest date the person may reapply
4 for a license; and

5 (4) the evidence of rehabilitation that may be
6 considered upon reapplication.

7 G. Any written determination by the board that an
8 applicant's felony conviction is specifically listed as a
9 disqualifying conviction and is directly related to the duties
10 and responsibilities for the licensed occupation shall be
11 documented in written findings for each of the factors listed
12 in Subsection D of this section by clear and convincing
13 evidence sufficient for a reviewing court.

14 H. An individual with a felony conviction may
15 petition a board at any time for a determination of whether the
16 individual's felony conviction will disqualify the individual
17 from obtaining a license as follows:

18 (1) the petition shall include details on the
19 individual's felony conviction; and

20 (2) the board shall inform the individual of
21 the individual's standing within thirty days of receiving the
22 petition from the applicant. The board may charge a fee to
23 recoup its costs not to exceed twenty-five dollars (\$25.00) for
24 each petition.

25 I. In any administrative hearing or civil

1 litigation authorized under this section, the board shall carry
 2 the burden of proof on the question of whether the applicant's
 3 criminal conviction directly relates to the occupation for
 4 which the license is sought.

5 J. A board shall adopt and promulgate necessary
 6 rules for the implementation of this section."

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

9 "[NEW MATERIAL] MITIGATION AND REHABILITATION-- FITNESS
 10 FOR OCCUPATION.--An applicant with a conviction directly
 11 related to an occupation for which a license is sought shall
 12 not be automatically disqualified from licensure if the
 13 applicant can demonstrate sufficient mitigation or
 14 rehabilitation and fitness to perform the duties of the
 15 occupation. The applicant may provide evidence:

16 A. that at least one year has elapsed since the
 17 applicant's release from any correctional institution;

18 B. that the applicant has complied with all terms
 19 and conditions of probation or parole; and

20 C. that the applicant has not been convicted of any
 21 crime since the applicant's conviction for a crime directly
 22 related to the occupation for which a license is sought; or

23 D. of mitigation or rehabilitation and present
 24 fitness, including:

25 (1) mitigating circumstances relevant to the

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1 crime or social conditions surrounding the applicant at the
2 time the crime was committed;

3 (2) the age of the applicant at the time the
4 crime was committed;

5 (3) the time elapsed since the crime was
6 committed;

7 (4) evidence of work history, particularly any
8 training or work experience related to the occupation for which
9 the license is sought; or

10 (5) references from persons in contact with
11 the applicant since the applicant's release from any local,
12 state or federal correctional institution."