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AN ACT

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

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

B. To perform 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

1 regulations;

2 (2) delegate authority to subordinates as  
3 the superintendent deems necessary and appropriate, clearly  
4 delineating such delegated authority and the limitations  
5 thereto;

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

10 (4) within the limitations of available  
11 appropriations and applicable laws, employ and fix the  
12 compensation of those persons necessary to discharge the  
13 superintendent's duties;

14 (5) take administrative action by issuing  
15 orders and instructions, not inconsistent with the law, to  
16 assure implementation of and compliance with the provisions  
17 of law for whose administration or execution the  
18 superintendent is responsible and to enforce those orders and  
19 instructions by appropriate administrative action or actions  
20 in the courts;

21 (6) conduct research and studies that will  
22 improve the operations of the department and the provision of  
23 services to the residents of the state;

24 (7) provide courses of instruction and  
25 practical training for employees of the department and other

1 persons involved in the administration of programs, with the  
2 objective of improving the operations and efficiency of  
3 administration;

4 (8) prepare an annual budget of the  
5 department;

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

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

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

12 (c) resolve by agreement the manner and  
13 extent to which the department shall provide budgeting,  
14 recordkeeping and related clerical assistance to  
15 administratively attached agencies;

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

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

1 the costs of these bonds; and

2 (12) require performance bonds of such  
3 department employees and officers as the superintendent deems  
4 necessary, as provided in the Surety Bond Act. The  
5 department shall pay the costs of these bonds.

6 C. The superintendent may apply for and receive,  
7 with the governor's approval, in the name of the department  
8 any public or private funds, including United States  
9 government funds, available to the department to carry out  
10 its programs, duties or services.

11 D. The superintendent may make and adopt such  
12 reasonable and procedural rules and regulations as may be  
13 necessary to carry out the duties of the department and its  
14 divisions; provided that where a licensing entity requires  
15 submission of fingerprints as part of the initial license  
16 application, and a licensee has provided fingerprints and the  
17 license has been issued, the licensing entity shall not  
18 require a licensee to submit fingerprints again to renew the  
19 license, but a licensee shall submit to a background  
20 investigation if required; and provided further that the  
21 prohibition against requiring additional fingerprints shall  
22 not apply to the financial institutions division of the  
23 department when utilizing the nationwide multistate licensing  
24 system and registry. No rule or regulation promulgated by  
25 the director of any division in carrying out the functions

1 and duties of the division shall be effective until approved  
2 by the superintendent, unless otherwise provided by statute.  
3 Unless otherwise provided by statute, no regulation affecting  
4 any person or agency outside the department shall be adopted,  
5 amended or repealed without a public hearing on the proposed  
6 action before the superintendent or a hearing officer  
7 designated by the superintendent. The public hearing shall  
8 be held in Santa Fe unless otherwise permitted by statute.  
9 Notice of the subject matter of the regulation, the action  
10 proposed to be taken, the time and place of the hearing, the  
11 manner in which interested persons may present their views  
12 and the method by which copies of the proposed regulation,  
13 proposed amendment or repeal of an existing regulation may be  
14 obtained shall be published once at least thirty days prior  
15 to the hearing date in a newspaper of general circulation and  
16 mailed at least thirty days prior to the hearing date to all  
17 persons who have made a written request for advance notice of  
18 hearing. All rules and regulations shall be filed in  
19 accordance with the State Rules Act."

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

22 "22-10A-5. BACKGROUND CHECKS--KNOWN CONVICTIONS--  
23 ALLEGED ETHICAL MISCONDUCT--REPORTING REQUIRED--PENALTY FOR  
24 FAILURE TO REPORT.--

25 A. As used in this section, "ethical misconduct"

1 means unacceptable behavior or conduct engaged in by a  
2 licensed school employee and includes inappropriate touching,  
3 sexual harassment, discrimination and behavior intended to  
4 induce a child into engaging in illegal, immoral or other  
5 prohibited behavior.

6           B. An applicant for initial licensure shall be  
7 fingerprinted only upon initial licensure and shall provide  
8 two fingerprint cards or the equivalent electronic  
9 fingerprints to the department to obtain the applicant's  
10 federal bureau of investigation record. Convictions of  
11 felonies or misdemeanors contained in the federal bureau of  
12 investigation record shall be used in accordance with the  
13 Criminal Offender Employment Act. Other information  
14 contained in the federal bureau of investigation record, if  
15 supported by independent evidence, may form the basis for the  
16 denial, suspension or revocation of a license for good and  
17 just cause. Records and related information shall be  
18 privileged and shall not be disclosed to a person not  
19 directly involved in the licensure or employment decisions  
20 affecting the specific applicant. The applicant for initial  
21 licensure shall pay for the cost of obtaining the federal  
22 bureau of investigation record.

23           C. Local school boards and regional education  
24 cooperatives shall develop policies and procedures to require  
25 background checks on an applicant who has been offered

1 employment, a contractor or a contractor's employee with  
2 unsupervised access to students at a public school.

3 D. An applicant for employment who has been  
4 initially licensed within twenty-four months of applying for  
5 employment with a local school board, regional education  
6 cooperative or a charter school shall not be required to  
7 submit to another background check if the department has  
8 copies of the applicant's federal bureau of investigation  
9 records on file. An applicant who has been offered  
10 employment, a contractor or a contractor's employee with  
11 unsupervised access to students at a public school shall  
12 provide two fingerprint cards or the equivalent electronic  
13 fingerprints to the local school board, regional education  
14 cooperative or charter school to obtain the applicant's  
15 federal bureau of investigation record. The applicant,  
16 contractor or contractor's employee who has been offered  
17 employment by a regional education cooperative or at a public  
18 school may be required to pay for the cost of obtaining a  
19 background check. At the request of a local school board,  
20 regional education cooperative or charter school, the  
21 department is authorized to release copies of federal bureau  
22 of investigation records that are on file with the department  
23 and that are not more than twenty-four months old.

24 Convictions of felonies or misdemeanors contained in the  
25 federal bureau of investigation record shall be used in

1 accordance with the Criminal Offender Employment Act;  
2 provided that other information contained in the federal  
3 bureau of investigation record, if supported by independent  
4 evidence, may form the basis for the employment decisions for  
5 good and just cause. Records and related information shall  
6 be privileged and shall not be disclosed to a person not  
7 directly involved in the employment decision affecting the  
8 specific applicant who has been offered employment,  
9 contractor or contractor's employee with unsupervised access  
10 to students at a public school.

11 E. A local superintendent, charter school  
12 administrator or regional education cooperative shall report  
13 to the department any known conviction of a felony or  
14 misdemeanor involving moral turpitude of a licensed school  
15 employee that results in any type of action against the  
16 licensed school employee.

17 F. A local superintendent, charter school  
18 administrator or director of a regional education cooperative  
19 or their respective designees shall investigate all  
20 allegations of ethical misconduct about any licensed school  
21 employee who resigns, is being discharged or terminated or  
22 otherwise leaves employment after an allegation has been  
23 made. If the investigation results in a finding of  
24 wrongdoing, the local superintendent, charter school  
25 administrator or director of a regional education cooperative



1 shall report the identity of the licensed school employee and  
2 attendant circumstances of the ethical misconduct on a  
3 standardized form to the department and the licensed school  
4 employee within thirty days following the separation from  
5 employment. Copies of that form shall not be maintained in  
6 public school, school district or regional education  
7 cooperative records. No agreement between a departing  
8 licensed school employee and the local school board, school  
9 district, charter school or regional education cooperative  
10 shall diminish or eliminate the responsibility of  
11 investigating and reporting the alleged ethical misconduct,  
12 and any such agreement to the contrary is void. Unless the  
13 department has commenced its own investigation of the  
14 licensed school employee prior to receipt of the form, the  
15 department shall serve the licensed school employee with a  
16 notice of contemplated action involving that employee's  
17 license within ninety days of receipt of the form. If that  
18 notice of contemplated action is not served on the licensed  
19 school employee within ninety days of receipt of the form,  
20 the form, together with any documents related to the alleged  
21 ethical misconduct, shall be expunged from the licensed  
22 school employee's records with the department and shall not  
23 be subject to public inspection.

24 G. The secretary may suspend, revoke or refuse to  
25 renew the license of a local superintendent, charter school

1 administrator or regional education cooperative director who  
2 fails to report as required by Subsections E and F of this  
3 section."

4 SECTION 3. Section 60-1A-7 NMSA 1978 (being Laws 2007,  
5 Chapter 9, Section 7) is amended to read:

6 "60-1A-7. ALL LICENSE APPLICATIONS--BACKGROUND  
7 INVESTIGATIONS--RULES.--

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

14 (1) an applicant for a license shall submit  
15 two fingerprint cards to the commission, with one card to be  
16 submitted to the board for a statewide check and the other  
17 card to be submitted to the federal bureau of investigation  
18 for a nationwide check;

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

25 (3) an applicant shall provide all of the

1 information required by the commission; and

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

4 B. An applicant for a license who is denied the  
5 license by the commission shall have an opportunity to  
6 inspect and challenge the validity of the record on which the  
7 denial of the license was based."

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

10 "FINGERPRINTS NOT REQUIRED FOR LICENSE RENEWAL.--When a  
11 professional or occupational board requires submission of  
12 fingerprints as part of the initial license application, and  
13 a licensee has provided fingerprints and the license has been  
14 issued, the board shall not require a licensee to submit  
15 fingerprints again to renew the license, but a licensee shall  
16 submit to a background investigation if required."

17 SECTION 5. Section 61-9-11.2 NMSA 1978 (being Laws  
18 2009, Chapter 51, Section 4) is amended to read:

19 "61-9-11.2. CRIMINAL BACKGROUND CHECKS.--

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

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

25 (2) requiring applicants for licensure to be

1 fingerprinted only upon initial licensure;

2 (3) providing for an applicant who has been  
3 denied licensure to inspect or challenge the validity of the  
4 background check record;

5 (4) establishing a fingerprint and  
6 background check fee not to exceed seventy-five dollars  
7 (\$75.00) to be paid by the applicant; and

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

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

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

20 **SECTION 6.** Section 61-27B-34 NMSA 1978 (being Laws  
21 2007, Chapter 115, Section 34) is amended to read:

22 "61-27B-34. BACKGROUND INVESTIGATIONS.--

23 A. The department shall adopt rules that:

24 (1) are developed in conjunction with the  
25 department of public safety that require background

1 investigations of all persons licensed or registered pursuant  
2 to the Private Investigations Act to determine if the person  
3 has a criminal history;

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

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

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

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

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

25 D. Electronic live scans may be used for

1 conducting criminal history investigations."

2 SECTION 7. Section 61-29-4.4 NMSA 1978 (being Laws  
3 2005, Chapter 35, Section 6, as amended) is amended to read:

4 "61-29-4.4. ADDITIONAL POWERS OF COMMISSION--  
5 FINGERPRINTING AND CRIMINAL HISTORY BACKGROUND CHECKS.--

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

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

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

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

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

22 C. Criminal history records obtained by the  
23 commission pursuant to the provisions of this section are  
24 confidential. The commission is authorized to use criminal  
25 history records obtained from the federal bureau of

1 investigation and the department of public safety to conduct  
2 background checks on applicants for certification as provided  
3 for in Chapter 61, Article 29 NMSA 1978.

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

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

18 SECTION 8. Section 61-30-15.1 NMSA 1978 (being Laws  
19 2014, Chapter 33, Section 20) is amended to read:

20 "61-30-15.1. CRIMINAL HISTORY BACKGROUND CHECKS.--

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

24 (1) requiring criminal history background  
25 checks of applicants for registration, certified licensure or

1 licensure pursuant to the Real Estate Appraisers Act;

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

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

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

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

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

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

25 SECTION 9. EFFECTIVE DATE.--The effective date of the



