

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR  
SENATE BILL 103

**55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022**

AN ACT

RELATING TO THE WORKFORCE SOLUTIONS DEPARTMENT; PROVIDING FOR  
CRIMINAL HISTORY BACKGROUND CHECKS FOR EMPLOYEES, FINALISTS FOR  
EMPLOYMENT, CONTRACTORS AND SUBCONTRACTORS OF THE WORKFORCE  
SOLUTIONS DEPARTMENT UNDER CERTAIN CIRCUMSTANCES; PROVIDING FOR  
LIMITED USE AND REQUIRING CONFIDENTIALITY OF INFORMATION  
OBTAINED THROUGH THE BACKGROUND CHECKS; PROVIDING FOR DENIAL OR  
TERMINATION OF EMPLOYMENT BASED UPON INFORMATION OBTAINED  
THROUGH THE BACKGROUND CHECKS; REPEALING SECTION 9-26-15 NMSA  
1978 (BEING LAWS 2007, CHAPTER 200, SECTION 23); PROVIDING A  
PENALTY.

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

**SECTION 1.** Section 9-26-1 NMSA 1978 (being Laws 2007,  
Chapter 200, Section 1) is amended to read:

"9-26-1. SHORT TITLE.--~~[Sections 1 through 14 of this~~  
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1 ~~act~~] Chapter 9, Article 26 NMSA 1978 may be cited as the  
2 "Workforce Solutions Department Act".

3 SECTION 2. A new section of the Workforce Solutions  
4 Department Act is enacted to read:

5 "[NEW MATERIAL] BACKGROUND CHECKS--AUTHORIZATION--  
6 PROCEDURES--RULEMAKING--CONFIDENTIALITY--PENALTIES.--

7 A. The department shall require fingerprint-based  
8 records on:

9 (1) department employees who have or will have  
10 access to federal tax information; and

11 (2) finalists for employment by the department  
12 who have or may have access to federal tax information.

13 B. The department shall request the fingerprint-  
14 based criminal history record for each subject required  
15 pursuant to Subsection A from:

16 (1) the department of public safety, which  
17 shall:

18 (a) conduct a criminal history  
19 background check to determine the existence and content of a  
20 record of convictions and arrests of the subject in this state,  
21 in accordance with rules of the department of public safety;

22 (b) provide the fingerprint-based record  
23 to the federal bureau of investigation to obtain a national  
24 criminal history background check to determine the existence  
25 and content of a record of convictions and arrests of the

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1 subject in other law enforcement jurisdictions, in accordance  
2 with regulations of the federal bureau of investigation; and

3 (c) compile and provide the information  
4 determined and obtained pursuant to this subsection to the  
5 department; and

6 (2) the law enforcement agency of each county  
7 and municipality in which the subject lived, worked or attended  
8 any high school or post-secondary educational institution,  
9 which shall conduct a criminal history background check to  
10 determine the existence and content of a record of convictions  
11 and arrests of the subject in the law enforcement agency's  
12 respective jurisdiction within the last five years and provide  
13 that information to the department.

14 C. Subject to any restrictions imposed by federal  
15 law, the department shall have access to the information  
16 furnished by the federal bureau of investigation, the  
17 department of public safety and any other law enforcement  
18 agency or organization pursuant to Subsection B of this  
19 section.

20 D. A finalist for employment by the department  
21 shall not be hired for a position that provides access to  
22 federal tax information before the completion of the criminal  
23 history background checks required by this section.

24 E. Before entering into a contract with the  
25 department or with a contractor of the department, a

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1 prospective contractor or subcontractor who may have access to  
2 federal tax information pursuant to specific duties that would  
3 be assigned to that person by the department shall arrange to  
4 have criminal history background checks to be conducted by the  
5 department of public safety and the necessary law enforcement  
6 agencies as required pursuant to Subsection B of this section  
7 for department employees and finalists for employment by the  
8 department. That person shall bear the costs associated with  
9 obtaining the criminal history background checks.

10 F. The department shall use the information  
11 obtained from a criminal history background check pursuant to  
12 this section only to investigate and determine whether a  
13 department employee or finalist for employment by the  
14 department or prospective contractor or prospective  
15 subcontractor with the department has been convicted of a crime  
16 that has a direct impact on the ability of that person to meet  
17 federal requirements or to perform the specific duties assigned  
18 to that person. The provisions of the Criminal Offender  
19 Employment Act shall govern consideration of criminal history  
20 records of employees and finalists for employment obtained  
21 pursuant to this section. The secretary may deny or terminate  
22 employment of a person who has been convicted of a felony or  
23 other crime that directly reflects on the person's ability to  
24 access federal tax information.

25 G. The department shall conduct a check for

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1 eligibility to legally work in the United States on each  
2 department employee and each finalist for employment by the  
3 department who has or may have access to federal tax  
4 information. The department shall complete a check every five  
5 years for continued eligibility to legally work in the United  
6 States.

7 H. The information obtained from criminal history  
8 background checks or legal residency background checks pursuant  
9 to this section is confidential and shall not be released or  
10 disclosed by the department except pursuant to a court order or  
11 with written consent of the person who is the subject of the  
12 records. A person who releases or discloses information  
13 obtained pursuant to a criminal history background check or  
14 legal residency background check in violation of the provisions  
15 of this subsection is guilty of a misdemeanor and shall be  
16 sentenced pursuant to the provisions of Section 31-19-1 NMSA  
17 1978."

18 SECTION 3. REPEAL.--Section 9-26-15 NMSA 1978 (being Laws  
19 2007, Chapter 200, Section 23) is repealed.