

West's New Mexico Statutes Annotated

Chapter 28. Human Rights

Article 2. Criminal Offender Employment Act

N. M. S. A. 1978, Ch. 28, Art. 2, Refs & Annos

[Currentness](#)

NMSA 1978, Ch. 28, Art. 2, Refs & Annos, NM ST Ch. 28, Art. 2, Refs & Annos

Current through chapters effective July 1, 2024 of the 2024 Second Regular Session of the 56th Legislature (2023). The Second Regular Session convened January 16, 2024 and adjourned February 15, 2024.

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Chapter 28. Human Rights

Article 2. Criminal Offender Employment Act (Refs & Annos)

N. M. S. A. 1978, § 28-2-1

§ 28-2-1. Short title

Effective: June 14, 2019

[Currentness](#)

Chapter 28, Article 2 NMSA 1978 may be cited as the “Criminal Offender Employment Act”.

Credits

L. 1974, Ch. 78, § 1; L. 2019, Ch. 176, § 1, eff. June 14, 2019.

Formerly 1953 Comp., § 41-24-1.

NMSA 1978, § 28-2-1, NM ST § 28-2-1

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Article 2. Criminal Offender Employment Act (Refs & Annos)

N. M. S. A. 1978, § 28-2-2

§ 28-2-2. Purpose of act

Currentness

The legislature finds that the public is best protected when criminal offenders or ex-convicts are given the opportunity to secure employment or to engage in a lawful trade, occupation or profession and that barriers to such employment should be removed to make rehabilitation feasible.

Credits

L. 1974, Ch. 78, § 2.

Formerly 1953 Comp., § 41-24-2.

NMSA 1978, § 28-2-2, NM ST § 28-2-2

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Article 2. Criminal Offender Employment Act (Refs & Annos)

N. M. S. A. 1978, § 28-2-3

§ 28-2-3. Employment eligibility determination

Effective: June 29, 2021

Currentness

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, certificate or other authority to engage in any regulated trade, business or profession, the board or other department or agency having jurisdiction may take into consideration a conviction, but the conviction shall not operate as an automatic bar to obtaining public employment or license or other authority to practice the trade, business or profession. A board, department or agency of the state or any of its political subdivisions shall not make an inquiry regarding a conviction on an initial application for employment and shall only take into consideration a conviction after the applicant has been selected as a finalist for the position.

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

- (1) records of arrest not followed by a valid conviction;
- (2) convictions that have been sealed, dismissed, expunged or pardoned;
- (3) juvenile adjudications; or
- (4) convictions for a crime that is not job-related for the position in question and consistent with business necessity.

Credits

L. 1974, Ch. 78, § 3; L. 2010, Ch. 76, § 1, eff. May 19, 2010; L. 2021, 1st Sp. Sess., Ch. 3, § 1, eff. June 29, 2021.

Formerly 1953 Comp., § 41-24-3.

§ 28-2-3. Employment eligibility determination, NM ST § 28-2-3

NMSA 1978, § 28-2-3, NM ST § 28-2-3

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Article 2. Criminal Offender Employment Act (Refs & Annos)

N. M. S. A. 1978, § 28-2-3.1

§ 28-2-3.1. Employment eligibility determination; private employers

Effective: June 14, 2019

[Currentness](#)

A. If a private employer uses a written or electronic employment application, the employer shall not make an inquiry regarding an applicant's history of arrest or conviction on the employment application but may take into consideration an applicant's conviction after review of the applicant's application and upon discussion of employment with the applicant. Nothing in this section shall prohibit an employer from notifying the public or an applicant that the law or the employer's policy could disqualify an applicant who has a certain criminal history from employment in particular positions with that employer.

B. An applicant who claims to be aggrieved by a violation of Subsection A of this section may seek relief under the Human Rights Act pursuant to the process set out in [Sections 28-1-10 through 28-1-13 NMSA 1978](#).

Credits

Added by [L. 2019, Ch. 176, § 2, eff. June 14, 2019](#).

NMSA 1978, § 28-2-3.1, NM ST § 28-2-3.1

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Article 2. Criminal Offender Employment Act (Refs & Annos)

N. M. S. A. 1978, § 28-2-4

§ 28-2-4. Power to refuse, renew, suspend or revoke public employment or license

Effective: June 29, 2021

[Currentness](#)

A. Any board or other agency having jurisdiction over employment by the state or any of its political subdivisions or the practice of any trade, business or profession may refuse to grant or renew or may suspend or revoke any public employment or license or other authority to engage in the public employment, trade, business or profession for one or both of the following causes:

(1) where the applicant, employee or licensee has been convicted of a felony and the criminal conviction directly relates to the particular employment, trade, business or profession; and

(2) where the applicant, employee or licensee has been convicted of homicide, kidnapping, human trafficking, trafficking in controlled substances, criminal sexual penetration or related sexual offenses or child abuse and the applicant, employee or licensee has applied for reinstatement, renewal or issuance of a teaching certificate, a license to operate a child-care facility or employment at a child-care facility, regardless of rehabilitation.

B. The board or other agency shall explicitly state in writing the reasons for a decision that prohibits the person from engaging in the employment, trade, business or profession if the decision is based in whole or in part on conviction of any crime described in Paragraphs (1) and (2) of Subsection A of this section.

Credits

L. 1974, Ch. 78, § 4; L. 1985, Ch. 234, § 1; L. 1997, Ch. 238, § 5; L. 1997, Ch. 251, § 1, eff. July 1, 1997; L. 2021, 1st Sp. Sess., Ch. 3, § 2, eff. June 29, 2021.

Formerly 1953 Comp., § 41-24-4.

NMSA 1978, § 28-2-4, NM ST § 28-2-4

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Article 2. Criminal Offender Employment Act (Refs & Annos)

N. M. S. A. 1978, § 28-2-5

§ 28-2-5. Nonapplicability to law enforcement agencies

Currentness

The Criminal Offender Employment Act is not applicable to any law enforcement agency; however, nothing herein shall be construed to preclude a law enforcement agency in its discretion from adopting the policy set forth herein.

Credits

L. 1974, Ch. 78, § 5.

Formerly 1953 Comp., § 41-24-5.

NMSA 1978, § 28-2-5, NM ST § 28-2-5

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Article 2. Criminal Offender Employment Act (Refs & Annos)

N. M. S. A. 1978, § 28-2-6

§ 28-2-6. Applicability

Currentness

The provisions of the Criminal Offender Employment Act relating to any board or other agency which has jurisdiction over the practice of any trade, business or profession apply to authorities made subject to its coverage by law, or by any such authorities' rules or regulations if permitted by law.

Credits

L. 1974, Ch. 78, § 6.

Formerly 1953 Comp., § 41-24-6.

NMSA 1978, § 28-2-6, NM ST § 28-2-6

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