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HOUSE BILL 138

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

Thomas E. Swisstack

FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE

AN ACT

RELATING TO PUBLIC EMPLOYMENT; ALLOWING FOR DISCHARGE,
TERMINATION OR REFUSAL TO RENEW AN EMPLOYMENT CONTRACT PURSUANT
TO THE CRIMINAL OFFENDER EMPLOYMENT ACT; RECONCILING MULTIPLE
AMENDMENTS IN LAWS 1997.

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

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

"28-2-1. SHORT TITLE. -- [~~Sections 1 through 6 of this act]~~
Chapter 28, Article 2 NMSA 1978 may be cited as the "Criminal
Offender Employment Act". "

Section 2. Section 28-2-4 NMSA 1978 (being Laws 1974,
Chapter 78, Section 4, as amended by Laws 1997, Chapter 238,
Section 5 and also by Laws 1997, Chapter 251, Section 1) is
amended to read:

1 "28-2-4. POWER TO REFUSE, RENEW, SUSPEND OR REVOKE PUBLIC
2 EMPLOYMENT OR LICENSE. --

3 A. Any board or other agency having jurisdiction
4 over employment by the state or any of its political
5 subdivisions or the practice of any trade, business or
6 profession may refuse to grant or renew any public employment,
7 may terminate any public employment or may suspend or revoke
8 [~~any public employment or~~] a license or other authority to
9 engage in the public employment, trade, business or profession
10 for any one or any combination of the following causes:

11 (1) where the applicant, employee or licensee
12 has been convicted of a felony or a misdemeanor involving moral
13 turpitude and the criminal conviction directly relates to the
14 particular employment, trade, business or profession;

15 (2) where the applicant, employee or licensee
16 has been convicted of a felony or a misdemeanor involving moral
17 turpitude and the criminal conviction does not directly relate
18 to the particular employment, trade, business or profession, if
19 the board or other agency determines after investigation that
20 the person so convicted has not been sufficiently rehabilitated
21 to warrant the public trust; or

22 (3) where the applicant, employee or licensee
23 has been convicted of homicide, kidnapping, trafficking in
24 controlled substances, criminal sexual penetration or related
25 sexual offenses or child abuse and the applicant, employee or

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underscored material = new
[bracketed material] = delete

1 licensee has applied for reinstatement, renewal or issuance of
2 a teaching certificate, a license to operate a child care
3 facility or employment at a child care facility, regardless of
4 rehabilitation.

5 B. The board or other agency shall explicitly state
6 in writing the reasons for a decision [~~which~~] that prohibits
7 the person from engaging in the employment, trade, business or
8 profession if the decision is based in whole or in part on
9 conviction of any crime described in Paragraphs (1) and (3) of
10 Subsection A of this section. Completion of probation or
11 parole supervision or expiration of a period of three years
12 after final discharge or release from any term of imprisonment
13 without any subsequent conviction shall create a presumption of
14 sufficient rehabilitation for purposes of Paragraph (2) of
15 Subsection A of this section."