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FISCAL IMPACT REPORT

ORIGINAL DATE 2/12/2020

SPONSOR Romero, A./Moores LAST UPDATED 2/15/2020 HB 325/aHSEIC/aHFL#1

SHORT TITLE Criminal Records Considered for Employment SB _____

ANALYST Dick-Peddie

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY20	FY21	FY22	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	No Fiscal Implications					

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Defender Department (PDD)
 Administrative Office of the Courts (AOC)
 Department of Public Safety (DPS)
 New Mexico Attorney General (NMAG)
 New Mexico Corrections Department (NMCD)

SUMMARY

Synopsis of House Floor #1 Amendment

The House Floor #1 Amendment strikes the State Governemnt, Elections, and Indian Affairs Committee Amendment # 4, which struck the work “and”. The House Floor Amendment also excludes the judicial branch from the provisions in HB325, and strikes the paragraph of HB325 which established a 30-day deadline after job denial for an applicant to request a written justification from an employment or licensing authority.

Synopsis of HSEIC Amendment

The House State Government, Elections, and Indian Affairs Committee amendment to HB325 strikes lines 13 through 18 in their entirety, removing the requirement for employers to provide a denied applicant a copy of how the individual’s criminal conviction directly relates to the position they applied for, including a copy of the record of conviction the licensing authority used to determine this.

The committee also amended the bill to remove paragraph 5 on page 7, which mandated an employer's consideration of an applicant's fitness to perform job duties include possible rehabilitation and mitigating circumstances after a conviction.

Synopsis of Original Bill

House Bill 325 proposes to amend the employment eligibility provision of the Criminal Offender Employment Act, 28-2-3 NMSA 1978, to prohibit an employment or licensing authority of the state or any of its political subdivisions from inquiring about a conviction on an initial application for employment or licensing.

Current law specifically precludes the use or dissemination of criminal records concerning: 1) arrests not followed by a valid conviction or 2) a misdemeanor conviction not involving moral turpitude in connection with an application for public employment or licensure.

House Bill 325 removes the reference to misdemeanors involving moral turpitude and instead adds additional categories of criminal history that cannot be used or disseminated by an employment or licensing body as a bar to employment or licensure. House Bill 325 adds the following:

- A conviction that has been sealed, dismissed, expunged, or pardoned;
- A juvenile adjudication; or
- A conviction for a crime that is not directly related to the duties or responsibilities of the employment or licensed occupation.

The bill also requires the employment and licensing agency to post the disqualifying convictions on the authority's website. On October 31 of each year the authority shall make available various statistics regarding how many individuals were denied licenses or jobs based on prior convictions, while maintaining the confidentiality of the applicants.

If an authority intends to disqualify an applicant based solely on a conviction, under HB325 they must provide the applicant with a written notice informing the applicant of each potential criminal conviction, the applicant's right to provide a written challenge, the applicant's right to provide written justification demonstrating that the conviction should not prevent employment or licensure, the deadline upon which the authority must receive the documents, and the rules adopted by the authority outlining their justification.

There is no effective date of this bill. It is assumed that the effective date is 90 days following adjournment of the Legislature.

FISCAL IMPLICATIONS

The House State Government, Elections, and Indian Affairs Committee amendment does not affect the fiscal implications outlined below.

The expansion of records not to be initially considered for employment may reduce costs stemming from recidivism by making it easier for ex-offenders to obtain and retain employment. "Ban the Box" statistics often state that maintaining employment is a main factor in reducing recidivism. The All of Us or None campaign identified job discrimination as a main barrier to the successful return of offenders to their communities. It is difficult to measure the success of these

initiatives and the impact the bill would have for New Mexico.

The Public Defender Department (PDD) noted that economic self-sufficiency is the most important determinant of a successful reintegration after incarceration, and the provisions provided for in HB 325 would broaden the ability of formerly indigent clients to successfully avoid “legal black-markets” and “problematic situations”. The agency notes that successful integration would lead to fewer “repeat” indigent clients, resulting in long-term reduced caseloads for public defense attorneys.

The Department of Public Safety agency analysis stated the requirements for licensure boards to promulgate and publish specific disqualifications for job candidates would result in some fiscal impact on the agency, but did not provide an estimated cost to implement the changes. It is assumed that agencies can absorb the cost of publishing candidate disqualifications on their respective websites.

SIGNIFICANT ISSUES

The New Mexico Attorney General submitted the following apparent contradiction in HB325:

The bill currently requires only that a board, department or agency of the state or any of its political subdivisions (collectively, “public employer”) refrain from making inquiry regarding a conviction on an initial application for employment. The bill further dictates that a public employer “shall only take into consideration a conviction after the applicant has been selected as a finalist for the position.” The bill extends this requirement to refrain from making inquiry regarding a conviction to licensing authorities, such that a licensing authority cannot make an inquiry regarding a conviction on an initial application for licensing.

This new prohibition against a licensing authority inquiring on a conviction in an initial application conflicts with proposed § 28-2-3(E). That provision proposes to require licensing boards, when considering disqualifying an applicant for licensure based on a potential disqualifying criminal conviction, to issue a notice detailing the subject criminal convictions to the applicant prior to issuing an NCA. Functionally speaking, a licensing authority could not issue this newly required notice unless the potential disqualifying criminal conviction were disclosed in an applicant’s application. Thus, prohibiting a licensing authority from inquiring about a criminal conviction on an initial application, as the bill proposes to do, would thwart the ability for a licensing authority to issue the newly required notice in proposed § 28-2-3(E). Proposed § 28-2-3(A) should be revised in consideration of this conflict. The revision should also account for the proposed continued use of the term “finalist” in that section, since, in the context of applicants for licensure, there are no “finalists.”

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The current provisions in the Criminal Offender Employment Act, 28-2-3 NMSA 1978, will continue to dictate how employers address potential candidates with prior convictions.