

SENATE BILL 103

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

INTRODUCED BY

Michael Padilla

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

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 APPEAL OF DENIAL OR TERMINATION OF EMPLOYMENT BASED UPON INFORMATION OBTAINED THROUGH THE BACKGROUND CHECKS; REPEALING SECTION

.221618.1SAAIC February 3, 2022 (4:40pm)

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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
act] Chapter 9, Article 26 NMSA 1978 may be cited as the
"Workforce Solutions Department Act"."

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

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

A. The department shall require SHPAC→~~and obtain~~
~~electronic fingerprinting data~~←SHPAC SHPAC→~~a fingerprint-based~~
~~criminal history record~~←SHPAC on:

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

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

B. The department shall SHPAC→~~provide the~~
~~electronic fingerprinting data obtained~~←SHPAC SHPAC→~~request~~
~~the fingerprint-based criminal history record~~←SHPAC for each
subject required pursuant to Subsection A SHPAC→~~to~~←SHPAC
SHPAC→~~from~~←SHPAC:

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

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

(b) provide the SHPAC→**electronic fingerprinting data**←SHPAC SHPAC→**fingerprint-based criminal history record**←SHPAC to the federal bureau of investigation to obtain a national criminal history background check to determine the existence and content of a record of convictions and arrests of the subject in other law enforcement jurisdictions, in accordance with regulations of the federal bureau of investigation; and

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

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

C. Subject to any restrictions imposed by federal

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law, the department shall have access to the information furnished by the federal bureau of investigation, the department of public safety and any other law enforcement agency or organization pursuant to Subsection B of this section.

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

E. Before entering into a contract with the department or with a contractor of the department, a prospective contractor or subcontractor who may have access to federal tax information pursuant to specific duties that would be assigned to that person by the department shall arrange to have criminal history background checks to be conducted by the department of public safety and the necessary law enforcement agencies as required pursuant to Subsection B of this section for department employees and finalists for employment by the department. That person shall bear the costs associated with obtaining the criminal history background checks.

F. The department shall use the information obtained from a criminal history background check pursuant to this section only to investigate and determine whether a department employee or finalist for employment by the

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department or prospective contractor or prospective subcontractor with the department has been convicted of a crime that has a direct impact on the ability of that person to meet federal requirements or to perform the specific duties assigned to that person. The provisions of the Criminal Offender Employment Act shall govern consideration of criminal history records of employees and finalists for employment obtained pursuant to this section. SHPAC→The secretary may deny or terminate employment of a person who has been convicted of a felony or a crime involving moral turpitude that has a direct impact on the suitability of that person to access federal tax information.←SHPAC

G. The department shall conduct a legal residency background check for eligibility to legally work as a citizen or legal resident of the United States on each department and each finalist for employment by the department who has or may have access to federal tax information. The department shall complete a citizenship or residency check for each department employee with expiring employment eligibility and shall document and monitor the employee's citizenship or residency status for continued compliance.

H. The information obtained from criminal history background checks or legal residency background checks pursuant to this section is confidential and shall not be released or

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disclosed by the department except pursuant to a court order or with written consent of the person who is the subject of the records. A person who releases or discloses information obtained pursuant to a criminal history background check or legal residency background check in violation of the provisions of this subsection is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

I. A department employee or a finalist for employment by the department who is denied employment or whose employment is terminated based on information in a background check pursuant to this section SHPAC→shall receive a written determination from the department that states the reason for the decision. That person←SHPAC is entitled to review the information obtained pursuant to this section and to SHPAC→appeal the decision←SHPAC SHPAC→request administrative reconsideration by submitting a written appeal to the secretary within fifteen calendar days of the decision to deny or terminate employment. A person may appeal the final decision of the secretary←SHPAC to the district court by filing in district court a notice of appeal pursuant to Section SHPAC→39-1-1.1←SHPAC SHPAC→39-3-1.1←SHPAC NMSA 1978 within thirty days of the date of the SHPAC→secretary's final←SHPAC decision to deny or terminate employment."

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

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