

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.