

HOUSE BILL 325

**54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020**

INTRODUCED BY

Andrea Romero

AN ACT

RELATING TO EMPLOYMENT; EXPANDING THE CRIMINAL OFFENDER  
EMPLOYMENT ACT LIST OF CRIMINAL RECORDS THAT CANNOT BE  
CONSIDERED IN AN APPLICATION FOR PUBLIC EMPLOYMENT OR  
LICENSURE; REQUIRING PUBLIC AGENCIES TO PROMULGATE RULES  
IDENTIFYING MITIGATING CIRCUMSTANCES AND DISQUALIFYING CRIMINAL  
CONVICTIONS; ESTABLISHING EMPLOYMENT OR LICENSURE ELIGIBILITY  
CONSIDERATIONS FOR APPLICANTS WITH CRIMINAL RECORDS; REQUIRING  
NOTICE OF DISQUALIFYING EVENTS AND AN APPLICANT'S RIGHT TO  
CHALLENGE OR PROVIDE JUSTIFICATION OF DISQUALIFYING EVENTS;  
REQUIRING ANNUAL REPORTING OF THE NUMBER OF APPLICANTS WITH  
POTENTIAL DISQUALIFYING CRIMINAL CONVICTIONS; AMENDING THE  
UNIFORM LICENSING ACT TO ALIGN WITH THE CRIMINAL OFFENDER  
EMPLOYMENT ACT.

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

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1           SECTION 1. A new section of the Criminal Offender  
2 Employment Act, Section 28-2-2.1 NMSA 1978, is enacted to read:

3           "28-2-2.1. [NEW MATERIAL] DEFINITIONS.--As used in the  
4 Criminal Offender Employment Act:

5           A. "employment or licensing authority" means the  
6 state or any of its political subdivisions or a board,  
7 commission, council, department or other regulatory agency  
8 having jurisdiction over employment, licensing or other  
9 authority for an individual to engage in employment or a  
10 regulated trade, occupation, profession or business;

11           B. "license" means a certificate, registration,  
12 permit or other authorization to engage in the professions or  
13 occupations regulated by a licensing authority in this state;

14           C. "occupation" means employment, trade, business  
15 or profession; and

16           D. "potential disqualifying criminal conviction"  
17 means a criminal conviction that an employment or licensing  
18 authority determines through rule promulgation may disqualify  
19 an applicant from employment or licensure."

20           SECTION 2. Section 28-2-3 NMSA 1978 (being Laws 1974,  
21 Chapter 78, Section 3, as amended) is amended to read:

22           "28-2-3. EMPLOYMENT ELIGIBILITY DETERMINATION.--

23           A. ~~[Subject to the provisions of Subsection B of~~  
24 ~~this section and]~~ Except as provided in Sections 28-2-4 and  
25 28-2-5 NMSA 1978, in determining eligibility for employment

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1 with the state or any of its political subdivisions or for a  
2 license [~~permit, certificate or other authority~~] to engage in  
3 any regulated [~~trade, business or profession, the board or~~  
4 ~~other department or agency~~] occupation, the employment or  
5 licensing authority having jurisdiction may take into  
6 consideration a conviction, but the conviction shall not  
7 operate as an automatic bar to obtaining public employment or a  
8 license [~~or other authority~~] to practice [~~the trade, business~~  
9 ~~or profession. A board, department or agency~~] an occupation.  
10 An employment or licensing authority of the state or any of its  
11 political subdivisions shall not make an inquiry regarding a  
12 conviction on an initial application for employment or  
13 licensing and shall only take into consideration a conviction  
14 after the applicant has been selected as a finalist [~~for the~~  
15 ~~position~~].

16 B. The following criminal records shall not be  
17 [~~used~~] distributed, [~~or~~] disseminated or used by an employment  
18 or licensing authority as a bar to employment or licensure in  
19 connection with an application for any public employment or an  
20 occupational license [~~or other authority~~]:

21 (1) records of arrest not followed by a valid  
22 conviction; [~~and~~

23 ~~(2) misdemeanor convictions not involving~~  
24 ~~moral turpitude]~~

25 (2) a conviction that has been sealed,

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1 dismissed, expunged or pardoned;

2 (3) a juvenile adjudication; or

3 (4) a conviction for a crime that is not  
4 directly related to the duties or responsibilities of the  
5 employment or licensed occupation.

6 C. No later than July 1, 2021, an employment or  
7 licensing authority shall promulgate rules for compliance with  
8 the provisions of the Criminal Offender Employment Act and  
9 shall specifically promulgate rules that identify mitigating  
10 factors, such as rehabilitation, the passage of time without  
11 offending or an applicant's fitness to perform employment or  
12 occupational duties and shall additionally include a  
13 comprehensive list of the specific potential disqualifying  
14 criminal convictions relating to employment or licensure that  
15 could disqualify an applicant from employment or licensure.  
16 The list of all potential disqualifying criminal convictions  
17 shall be posted on each employment or licensing authority's  
18 website and a link to the list provided for use on the sunshine  
19 portal. In developing a list of potential disqualifying  
20 criminal convictions, an employment or licensing authority  
21 shall:

22 (1) not use vague, generic or subjective  
23 terms, including "moral turpitude" or "good character";

24 (2) only list specific potential disqualifying  
25 criminal convictions that are directly related to the duties

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1 and responsibilities of the employment or license sought;

2 (3) not include lifetime disqualifying  
3 criminal convictions absent articulating convincing evidence  
4 that employment or licensure in the specific occupation  
5 substantially increases the likelihood of reoffending; and

6 (4) provide a reasonable time limit for  
7 applicability of a listed potential disqualifying criminal  
8 conviction based on research documenting the reduced likelihood  
9 of reoffending over time.

10 D. In determining an applicant's eligibility for  
11 employment or licensure, the employment or licensing authority  
12 shall consider:

13 (1) the public policy of this state, as  
14 provided in the Criminal Offender Employment Act, to encourage  
15 the licensure of individuals with arrest and conviction  
16 records;

17 (2) whether the elements of an applicant's  
18 potential disqualifying criminal conviction are directly  
19 related to the specific duties and responsibilities of the  
20 employment or license sought;

21 (3) whether the employment or license sought  
22 by an applicant offers an unwarranted opportunity for the same  
23 or a similar crime as that of the applicant's prior conviction  
24 to occur; and

25 (4) the relationship, if any, of the

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1 applicant's potential disqualifying criminal conviction to the  
2 public safety purposes of regulating the employment or licensed  
3 occupation sought.

4 E. If an employment or licensing authority intends  
5 to disqualify an applicant for employment or licensure based  
6 solely or in part on the applicant's potential disqualifying  
7 criminal conviction, prior to issuing a notice of contemplated  
8 action pursuant to rules issued by the personnel board or to  
9 Subsection B of Section 61-1-4 NMSA 1978 or a similar document  
10 that initiates disciplinary action, the employment or licensing  
11 authority shall provide the applicant with a written notice  
12 that informs the applicant of:

13 (1) each potential disqualifying criminal  
14 conviction that forms the basis of the pending denial and the  
15 reason each conviction is directly related to the duties and  
16 responsibilities of the employment or license sought and  
17 include a copy of the applicant's criminal history report on  
18 which the employment or licensing authority relies;

19 (2) the applicant's right to provide a written  
20 challenge of the accuracy of each conviction;

21 (3) the applicant's right to provide a written  
22 justification demonstrating that the applicant's prior  
23 potential disqualifying criminal conviction should not bar  
24 employment or licensure;

25 (4) the deadline upon which the employment or

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1 licensing authority must receive the applicant's written  
2 challenge or justification; the deadline to be thirty calendar  
3 days from the date of the written notice; and

4 (5) the rules adopted by the employment or  
5 licensing authority outlining the attributes of a justification  
6 that demonstrates rehabilitation, mitigating circumstances or  
7 an applicant's fitness to perform the duties and  
8 responsibilities of the employment or licensed occupation,  
9 including a list of possible mitigating factors that may be  
10 presented in the justification.

11 F. No later than October 31 of each year, while  
12 ensuring the confidentiality of individual applicants, each  
13 employment or licensing authority shall make available to the  
14 public an annual report containing the following:

15 (1) the number of applicants for licensure  
16 and, of that number, the number granted a license;

17 (2) the number of applicants for employment,  
18 licensure or license renewal with a potential disqualifying  
19 criminal conviction record who received notice of potential  
20 disqualification;

21 (3) the number of applicants for employment,  
22 licensure or license renewal with a potential disqualifying  
23 criminal conviction who provided a written justification with  
24 evidence of mitigation or rehabilitation; and

25 (4) the number of applicants for employment,

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1 licensure or license renewal with a potential disqualifying  
2 criminal conviction that were employed, granted a license,  
3 denied employment or a license for any reason or denied  
4 employment or a license because of a conviction."

5 SECTION 3. Section 28-2-4 NMSA 1978 (being Laws 1974,  
6 Chapter 78, Section 4, as amended by Laws 1997, Chapter 238,  
7 Section 5 and also by Laws 1997, Chapter 251, Section 1) is  
8 amended to read:

9 "28-2-4. POWER TO REFUSE, RENEW, SUSPEND OR REVOKE PUBLIC  
10 EMPLOYMENT OR LICENSE.--

11 A. ~~[Any board or other agency]~~ An employment or  
12 licensing authority having jurisdiction over employment by the  
13 state or any of its political subdivisions or the practice of  
14 any trade, business or profession may refuse to grant or renew  
15 or may suspend or revoke any public employment or license or  
16 other authority to engage in the public employment, trade,  
17 business or profession for any one or any combination of the  
18 following causes:

19 (1) where the applicant, employee or licensee  
20 has been convicted of a felony ~~[or a misdemeanor involving~~  
21 ~~moral turpitude]~~ and the criminal conviction directly relates  
22 to the particular employment, trade, business or profession;

23 ~~[(2) where the applicant, employee or licensee~~  
24 ~~has been convicted of a felony or a misdemeanor involving moral~~  
25 ~~turpitude and the criminal conviction does not directly relate~~

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1 ~~to the particular employment, trade, business or profession, if~~  
2 ~~the board or other agency determines after investigation that~~  
3 ~~the person so convicted has not been sufficiently rehabilitated~~  
4 ~~to warrant the public trust;]~~ or

5           ~~[(3)]~~ (2) where the applicant, employee or  
6 licensee has been convicted of homicide, kidnapping,  
7 trafficking in controlled substances, criminal sexual  
8 penetration or related sexual offenses or child abuse and the  
9 applicant, employee or licensee has applied for reinstatement,  
10 renewal or issuance of a teaching certificate, a license to  
11 operate a child-care facility or employment at a child-care  
12 facility, regardless of rehabilitation.

13           B. The ~~[board or other agency]~~ employment or  
14 licensing authority shall explicitly state in writing the  
15 reasons for a decision ~~[which]~~ that prohibits the person from  
16 engaging in the employment, trade, business, occupation or  
17 profession if the decision is based in whole or in part on  
18 conviction of any crime described in ~~[Paragraphs]~~ Paragraph (1)  
19 ~~[and (3)]~~ or (2) of Subsection A of this section. ~~[Completion~~  
20 ~~of probation or parole supervision or expiration of a period of~~  
21 ~~three years after final discharge or release from any term of~~  
22 ~~imprisonment without any subsequent conviction shall create a~~  
23 ~~presumption of sufficient rehabilitation for purposes of~~  
24 ~~Paragraph (2) of Subsection A of this section.]"~~

25           SECTION 4. Section 28-2-6 NMSA 1978 (being Laws 1974,

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1 Chapter 78, Section 6) is amended to read:

2 "28-2-6. APPLICABILITY.--The provisions of the Criminal  
3 Offender Employment Act relating to ~~[any board or other agency~~  
4 ~~which]~~ an employment or licensing authority that has  
5 jurisdiction over the practice of any trade, business,  
6 occupation or profession apply to authorities made subject to  
7 its coverage by law or ~~[by any such]~~ by those authorities'  
8 rules ~~[or regulations]~~ if permitted by law."

9 SECTION 5. Section 61-1-1 NMSA 1978 (being Laws 1957,  
10 Chapter 247, Section 1, as amended) is amended to read:

11 "61-1-1. SHORT TITLE.--~~[Sections 67-26-1 through 67-26-31~~  
12 ~~NMSA 1953]~~ Chapter 61, Article 1 NMSA 1978 may be cited as the  
13 "Uniform Licensing Act".

14 SECTION 6. Section 61-1-2 NMSA 1978 (being Laws 1957,  
15 Chapter 247, Section 2, as amended) is amended to read:

16 "61-1-2. DEFINITIONS.--As used in the Uniform Licensing  
17 Act:

18 A. "board" means:

19 (1) the construction industries commission,  
20 the construction industries division and the electrical bureau,  
21 mechanical bureau and general construction bureau of the  
22 construction industries division of the regulation and  
23 licensing department;

24 (2) the manufactured housing committee and  
25 manufactured housing division of the regulation and licensing

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1 department;

2 (3) a board, commission or agency that  
3 administers a profession or occupation licensed pursuant to  
4 Chapter 61 NMSA 1978; ~~and~~

5 (4) an employment or licensing authority  
6 pursuant to the provisions of the Criminal Offender Employment  
7 Act; and

8 ~~(4)~~ (5) any other state agency to which the  
9 Uniform Licensing Act is applied by law;

10 B. "applicant" means a person who has applied for a  
11 license;

12 C. "license" means a certificate, permit or other  
13 authorization to engage in each of the professions and  
14 occupations regulated by the boards enumerated in Subsection A  
15 of this section;

16 D. "revoke a license" means to prohibit the conduct  
17 authorized by the license;

18 E. "suspend a license" means to prohibit, for a  
19 stated period of time, the conduct authorized by the license.  
20 "Suspend a license" also means to allow, for a stated period of  
21 time, the conduct authorized by the license, subject to  
22 conditions that are reasonably related to the grounds for  
23 suspension; and

24 F. "emergency" includes any man-made or natural  
25 disaster causing or threatening widespread physical or economic

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1 harm that is beyond local control and requires the resources of  
2 the state."

3 SECTION 7. Section 61-1-4 NMSA 1978 (being Laws 1957,  
4 Chapter 247, Section 4, as amended) is amended to read:

5 "61-1-4. NOTICE OF CONTEMPLATED BOARD ACTION--REQUEST FOR  
6 HEARING--NOTICE OF HEARING.--

7 A. For the purpose of investigating complaints  
8 against licensees, the board may issue investigative subpoenas  
9 prior to the issuance of a notice of contemplated action as  
10 provided in this section.

11 B. When a board contemplates taking [~~any~~] an action  
12 of a type specified in Subsection A, B or C of Section 61-1-3  
13 NMSA 1978, [~~it~~] after meeting the requirements of Subsection E  
14 of Section 28-2-3 NMSA 1978, if applicable, the board shall  
15 serve upon the applicant a written notice containing a  
16 statement:

17 (1) that the applicant has failed to satisfy  
18 the board of [~~his~~] the applicant's qualifications to be  
19 examined or to be issued a license, as the case may be;

20 (2) indicating in what respects the applicant  
21 has failed to satisfy the board;

22 (3) that the applicant may secure a hearing  
23 before the board by depositing in the mail within twenty days  
24 after service of the notice a certified return receipt  
25 requested letter addressed to the board and containing a

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1 request for a hearing; and

2 (4) calling the applicant's attention to [~~his~~]  
3 the applicant's rights under Section 61-1-8 NMSA 1978.

4 C. In [~~any~~] a board proceeding to take [~~any~~] an  
5 action of a type specified in Subsection A, B or C of Section  
6 61-1-3 NMSA 1978, the burden of satisfying the board of the  
7 applicant's qualifications shall be upon the applicant.

8 D. When a board contemplates taking [~~any~~] an action  
9 of a type specified in Subsections D through N of Section  
10 61-1-3 NMSA 1978, it shall serve upon the licensee a written  
11 notice containing a statement:

12 (1) that the board has sufficient evidence  
13 that, if not rebutted or explained, will justify the board in  
14 taking the contemplated action;

15 (2) indicating the general nature of the  
16 evidence;

17 (3) that unless the licensee within twenty  
18 days after service of the notice deposits in the mail a  
19 certified return receipt requested letter addressed to the  
20 board and containing a request for a hearing, the board will  
21 take the contemplated action; and

22 (4) calling the licensee's attention to [~~his~~]  
23 the licensee's rights as provided in Section 61-1-8 NMSA 1978.

24 E. If the licensee or applicant does not mail a  
25 request for a hearing within the time and in the manner

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1 required by this section, the board may take the action  
2 contemplated in the notice and such action shall be final and  
3 not subject to judicial review.

4 F. If the licensee or applicant does mail a request  
5 for a hearing as required by this section, the board shall,  
6 within twenty days of receipt of the request, notify the  
7 licensee or applicant of the time and place of hearing, the  
8 name of the person who shall conduct the hearing for the board  
9 and the statutes and regulations authorizing the board to take  
10 the contemplated action. The hearing shall be held not more  
11 than sixty nor less than fifteen days from the date of service  
12 of the notice of hearing.

13 G. Licensees shall bear all costs of disciplinary  
14 proceedings unless they are excused by the board from paying  
15 all or part of the fees or if they prevail at the hearing and  
16 an action specified in Section 61-1-3 NMSA 1978 is not taken by  
17 the board."

18 SECTION 8. Section 61-1-33 NMSA 1978 (being Laws 1981,  
19 Chapter 349, Section 23) is amended to read:

20 "61-1-33. DECLARATORY RULINGS.--

21 A. ~~[Any]~~ An applicant before a board or licensee of  
22 a board whose rights may be affected by the application of any  
23 statute enforced or administered by that board or by any  
24 decision, order or regulation of that board may request in  
25 writing a declaratory ruling from the board concerning the

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1 applicability of the statute, decision, order or regulation to  
2 a particular set of facts. The board shall respond in writing  
3 to such a written request within [~~one hundred twenty days~~]  
4 ninety days from receipt of the request.

5 B. The board may also issue declaratory rulings on  
6 its own motion.

7 C. The effect of a declaratory ruling shall be  
8 limited to the board and to the licensee, if any, who requested  
9 the declaratory ruling."