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HOUSE BILL 382

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

Andrea Romero

AN ACT

RELATING TO EMPLOYMENT; EXPANDING THE LIST OF CRIMINAL RECORDS THAT SHALL NOT BE CONSIDERED IN APPLICATION FOR ANY PUBLIC EMPLOYMENT, LICENSE OR OTHER AUTHORITY; CREATING A PROCESS TO ALLOW A PERSON TO PETITION A BOARD AT ANY TIME FOR A DECISION ON WHETHER THE PERSON'S CRIMINAL RECORD WOULD DISQUALIFY THE PERSON FROM LICENSURE.

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

SECTION 1. Section 28-2-3 NMSA 1978 (being Laws 1974, Chapter 78, Section 3, as amended) is amended to read:

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

A. Subject to the provisions of Subsection B of this section and Sections 28-2-4 and 28-2-5 NMSA 1978, in determining eligibility for employment with the state or any of its political subdivisions or for a license, permit,

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

12 B. The following criminal records shall not be
13 used, distributed or disseminated in connection with an
14 application for any public employment, license or other
15 authority:

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

18 ~~(2) misdemeanor convictions not involving~~
19 ~~moral turpitude;]~~

20 (2) a conviction that has been sealed,
21 dismissed, expunged or pardoned;

22 (3) a juvenile adjudication; or

23 (4) a conviction that occurred more than three
24 years before the date of the petition except for a conviction
25 of:

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1 (a) a felony committed with violence
2 against a person, threatened violence or a likelihood of
3 serious bodily injury; in which the defendant was personally
4 armed with or personally used a deadly weapon in the commission
5 of the crime; or in which the defendant personally inflicted
6 great bodily injury in the commission of the crime; or

7 (b) a felony in violation of any
8 provision of Chapter 30, Article 9 NMSA 1978."

9 SECTION 2. A new section of Chapter 28, Article 2 NMSA
10 1978 is enacted to read:

11 "[NEW MATERIAL] PETITION FOR REVIEW OF CRIMINAL RECORD.--

12 A. An individual with a criminal record may
13 petition a board at any time, including before obtaining any
14 required education or training, for a decision of whether the
15 individual's criminal record will disqualify the individual
16 from obtaining a license.

17 B. The individual shall include in the petition the
18 individual's criminal record or shall authorize the board to
19 obtain the individual's criminal record.

20 C. The individual may include, and a board shall
21 consider, additional information, including:

- 22 (1) the time elapsed since the offense;
23 (2) completion of the criminal sentence;
24 (3) any certificate of rehabilitation or good
25 conduct;

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1 (4) completion of, or active participation in,
2 rehabilitative drug or alcohol treatment;

3 (5) testimonials and recommendations,
4 including a progress report from the individual's probation or
5 parole officer;

6 (6) other evidence of rehabilitation;

7 (7) training;

8 (8) employment history;

9 (9) employment aspirations;

10 (10) personal information, including the age
11 of the individual when the individual committed the offense and
12 the individual's current family responsibilities; or

13 (11) any remedial actions taken in response to
14 board recommendations issued pursuant to Subsection F of this
15 section.

16 D. A board shall not consider:

17 (1) records of arrest not followed by a valid
18 conviction;

19 (2) a conviction that has been sealed,
20 dismissed, expunged or pardoned;

21 (3) a juvenile adjudication; or

22 (4) a conviction that occurred more than three
23 years before the date of the petition except for a conviction
24 of:

25 (a) a felony offense committed with

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1 violence against a person, threatened violence or a likelihood
2 of serious bodily injury; one in which the defendant was
3 personally armed with or personally used a deadly weapon in the
4 commission of the crime; or one in which the defendant
5 personally inflicted great bodily injury in the commission of
6 the crime; or

7 (b) a felony in violation of any
8 provision of Chapter 30, Article 9 NMSA 1978.

9 E. A board shall not find that the individual's
10 criminal record disqualifies the individual from obtaining a
11 license unless the board establishes by clear and convincing
12 evidence that:

13 (1) the individual was convicted of a felony
14 not excluded by Subsection D of this section that is directly,
15 substantially and adversely related to the state's interest in
16 protecting public safety; and

17 (2) granting the individual a license would
18 put the individual in a position in which the individual would
19 more likely than not cause harm.

20 F. A board shall issue its decision no later than
21 ninety days after the board receives the petition. The
22 decision shall be in writing and include findings of fact and
23 conclusions of law. If the board decides that the individual's
24 criminal record would disqualify the individual from obtaining
25 a license, the board may recommend actions the individual may

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1 take to remedy the disqualification.

2 G. The individual may submit a new petition to a
3 board after one year following the decision on the initial
4 petition and any subsequent decision.

5 H. If a board decides that the individual's
6 criminal record would not disqualify the individual from
7 obtaining a license and the individual subsequently files an
8 application for a license, the board shall not deny the
9 individual a license based solely on the individual's criminal
10 record; provided that the individual's criminal record shall
11 not have changed since the date of the board's last decision
12 issued pursuant to this section.

13 I. A board may charge a reasonable fee for the
14 review of a petition filed pursuant to this section, but in no
15 case shall the fee exceed the actual cost to the board.

16 J. A board's decision shall be final and not
17 appealable.

18 K. A board's decision shall not prohibit a person
19 from filing an application for any license, permit, certificate
20 or other authority to engage in any regulated trade, business
21 or profession in this state.

22 L. As used in this section:

23 (1) "board" means:

24 (a) the construction industries
25 commission, the construction industries division and the

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1 electrical bureau, mechanical bureau and general construction
2 bureau of the construction industries division of the
3 regulation and licensing department;

4 (b) the manufactured housing committee
5 and manufactured housing division of the regulation and
6 licensing department;

7 (c) a board, commission or agency that
8 administers a profession or occupation licensed pursuant to
9 Chapter 61 NMSA 1978; and

10 (d) any other state agency to which the
11 Uniform Licensing Act is applied by law; and

12 (2) "license" means a license, permit,
13 certificate or other authority to engage in any regulated
14 trade, business or profession in this state."

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