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HOUSE BILL 96

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

Andrea Romero

AN ACT

RELATING TO EMPLOYMENT; REVISING THE LIST OF CRIMINAL RECORDS THAT CANNOT BE CONSIDERED IN AN APPLICATION FOR PUBLIC EMPLOYMENT, LICENSURE OR OTHER AUTHORITY TO PRACTICE A TRADE, BUSINESS OR PROFESSION; ENACTING A NEW SECTION OF THE UNIFORM LICENSING ACT TO PROHIBIT THE EXCLUSION FROM PROFESSIONAL LICENSURE OF PERSONS WITH CERTAIN CRIMINAL RECORDS.

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) convictions that have been sealed,
21 dismissed, expunged or pardoned;

22 (3) juvenile adjudications; or

23 (4) convictions for a crime that is not recent
24 enough and sufficiently job-related to be predictive of
25 performance in the position sought, given the position's duties

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1 and responsibilities."

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

4 "61-1-1. SHORT TITLE.--~~[Sections 67-26-1 through 67-26-31~~
5 ~~NMSA 1953]~~ Chapter 61, Article 1 NMSA 1978 may be cited as the
6 "Uniform Licensing Act"."

7 SECTION 3. A new section of the Uniform Licensing Act is
8 enacted to read:

9 "[NEW MATERIAL] CRIMINAL CONVICTIONS--EXCLUSION FROM
10 LICENSURE--DISCLOSURE REQUIREMENT.--

11 A. A board shall not exclude from licensure an
12 individual who is otherwise qualified on the sole basis that
13 the individual has been previously arrested for or convicted of
14 a crime, unless the individual has a disqualifying criminal
15 conviction.

16 B. By December 31, 2021, a board shall promulgate
17 and post on the board's website rules relating to licensing
18 requirements to list the specific criminal convictions that
19 could disqualify an applicant from receiving a license on the
20 basis of a previous felony conviction. Rules relating to
21 licensing requirements promulgated by a board shall not use the
22 terms "moral turpitude" or "good character". A board shall
23 only list disqualifying criminal convictions.

24 C. In any administrative hearing or agency appeal,
25 a board shall carry the burden of proof on the question of

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1 whether the exclusion from professional licensure is based upon
2 a disqualifying criminal conviction.

3 D. No later than October 31 of each year, while
4 ensuring the confidentiality of individual applicants, a board
5 shall make available to the public an annual report for the
6 prior fiscal year containing the following information:

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

9 (2) the number of applicants for licensure or
10 license renewal with a potential disqualifying criminal
11 conviction who received notice of potential disqualification;

12 (3) the number of applicants for licensure or
13 license renewal with a potential disqualifying criminal
14 conviction who provided a written justification with evidence
15 of mitigation or rehabilitation; and

16 (4) the number of applicants for licensure or
17 license renewal with a potential disqualifying criminal
18 conviction who were granted a license, denied a license for any
19 reason or denied a license because of a conviction.

20 E. As used in this section, "disqualifying criminal
21 conviction" means a conviction for a crime that is recent
22 enough and sufficiently job-related to be predictive of
23 performance in the position sought, given the position's duties
24 and responsibilities."

25 SECTION 4. EFFECTIVE DATE.--The effective date of the

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1 provisions of this act is July 1, 2021.

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