

1 SENATE BILL 385

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

4 Mark Moores and Bill B. O'Neill

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10 AN ACT

11 RELATING TO PROFESSIONAL LICENSURE; ENACTING A NEW SECTION OF
12 CHAPTER 61 NMSA 1978 TO PROHIBIT THE EXCLUSION FROM
13 PROFESSIONAL LICENSURE OF PERSONS CONVICTED OF CERTAIN
14 FELONIES.

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

17 SECTION 1. A new section of Chapter 61 NMSA 1978 is
18 enacted to read:

19 "[NEW MATERIAL] EXCLUSION FROM PROFESSIONAL LICENSURE--
20 PROHIBITION--EXCEPTIONS.--

21 A. A board that grants professional licensure under
22 the provisions of Chapter 61 NMSA 1978 shall not deny licensure
23 to an individual who is otherwise qualified for licensure on
24 the sole basis that the individual has been previously
25 convicted of a felony, unless the conviction was for a crime

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1 related to the profession for which the individual seeks
2 licensure.

3 B. By September 1, 2019, a board shall adopt and
4 promulgate rules relating to licensing requirements to
5 explicitly list the specific criminal convictions that could
6 disqualify an applicant from receiving a license on the basis
7 of a previous felony conviction. A board shall not use vague
8 or generic terms, including "moral turpitude" or "good
9 character", or consider arrests without a subsequent
10 conviction. A board may only list disqualifying felony
11 convictions that are specific and directly related to the
12 duties and responsibilities for the licensed occupation.

13 C. A board shall use the clear and convincing
14 standard of proof in examining the factors to determine whether
15 an applicant with a disqualifying felony conviction will be
16 denied a license. The board shall make its determination based
17 on the following factors:

18 (1) the nature and seriousness of the crime
19 for which the individual was convicted;

20 (2) the passage of time since the commission
21 of the crime;

22 (3) the relationship of the crime to the
23 ability, capacity and fitness required to perform the duties
24 and discharge the responsibilities of the occupation; and

25 (4) any evidence of rehabilitation or

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1 treatment undertaken by the individual that might mitigate
2 against a disqualification.

3 D. If an individual has a felony conviction for a
4 crime that could disqualify the individual from receiving a
5 license, the disqualification shall not last longer than five
6 years from the date of conviction; provided that:

7 (1) the individual has not been convicted of
8 any other felony during the five-year disqualification period;
9 and

10 (2) the disqualification period permitted
11 pursuant to this subsection may last longer if an applicant
12 with a disqualifying criminal conviction was incarcerated for a
13 felony at any time during the preceding five years. In this
14 case, the disqualification may last no longer than five years
15 from the date the individual was released from incarceration.

16 E. An individual with a felony conviction may
17 petition a board at any time for a determination of whether the
18 individual's felony conviction will disqualify the individual
19 from obtaining a license as follows:

20 (1) the petition shall include details on the
21 individual's felony conviction; and

22 (2) the board shall inform the individual of
23 the individual's standing within thirty days of receiving the
24 petition from the applicant. The board may charge a fee to
25 recoup its costs not to exceed twenty-five dollars (\$25.00) for

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1 each petition.

2 F. If a board denies an individual a license solely
3 or in part because of the individual's prior conviction of a
4 crime, the board shall notify the individual in writing of the
5 following:

6 (1) the grounds and reasons for the denial or
7 disqualification;

8 (2) that the individual has the right to a
9 hearing to challenge the board's decision;

10 (3) the earliest date the person may reapply
11 for a license; and

12 (4) the evidence of rehabilitation that may be
13 considered upon reapplication.

14 G. Any written determination by the board that an
15 applicant's felony conviction is specifically listed as a
16 disqualifying conviction and is directly related to the duties
17 and responsibilities for the licensed occupation shall be
18 documented in written findings for each of the factors listed
19 in Subsection C of this section by clear and convincing
20 evidence sufficient for a reviewing court.

21 H. In any administrative hearing or civil
22 litigation authorized under this section, the board shall carry
23 the burden of proof on the question of whether the applicant's
24 criminal conviction directly relates to the occupation for
25 which the license is sought.

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I. A board shall adopt and promulgate necessary rules for the implementation of this section.

J. As used in this section:

(1) "board" means a professional licensing body that regulates a professional practice pursuant to Chapter 61 NMSA 1978; and

(2) "felony" means any crime so designated by law or if upon conviction thereof a sentence of death or of imprisonment for a term of one year or more is authorized."