



PRIMER AND UPDATE:

PROFESSIONAL &
OCCUPATIONAL
LICENSING

LICENSING IN NEW MEXICO

- Public Policy
- History in New Mexico
- Uniform Licensing & Chapter 61
- Citizenship & Residency
- Criminal Convictions
- Expedited & Military Licensure
- House Bill 191
- Executive Order 2021-060
- Trends & Obstacles



PUBLIC POLICY

REASON FOR REGULATION

PUBLIC HEALTH

- 1523 – College of Physicians in England
- 1858 – General Medical Council in England
- 1870 – State regulations appear in United States
- 1900s – Federal programs increase need for regulation

Evolving scope of practice and new license types



PROFESSIONAL LICENSING

- 12th century – monarchs granted guilds exclusive practice by Charter
- 16th century – end of Hanseatic League in Europe
- 18th century – professions licensed in the American Colonies
- 1907 – First US state to require a license for engineers



Licensing of non-medical professions more inconsistent between states



PROTECTING CONSUMER TRUST IN THE MARKETPLACE

- Standardized Competency
- Continuing Education and Audits
- Safer Practices
- Sanitation
- Quality of Service
- Accountability (bonds and discipline)





HISTORY IN NEW MEXICO

ADMINISTRATIVE LICENSING

- Individual Boards and Commissions
 - History and Consolidation
 - Authority: Rulemaking and Discipline
 - Regulation and Licensing Department
 - Boards and Commissions Division
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ADMINISTRATIVELY ATTACHED

Executive Reorganization Act, NMSA 1978, Section 9-1-13

- The control of the professional and occupational licensing functions of the executive branch of state government may be consolidated under the supervision of the regulation and licensing department upon executive order issued by the governor
- It is the express purpose and intent of the legislature to authorize the consolidation of professional and occupational licensing functions in the regulation and licensing department so as to effect the more economical use and expenditure of public money by eliminating the duplication of services, operations and administration of the various professional and occupational licensing functions for the benefit of the citizens of the state.

Regulation and Licensing Department, NMSA 1978, Sections 9-16-1 to -16

- To provide implementation of licensure processes, budgeting, recordkeeping, procurement, contracting, hiring and supervision of staff and related administrative and clerical assistance for administratively attached agencies
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UNIFORM
LICENSING &
CHAPTER 61

CHAPTER 61

- Articles 1 through 37
 - Not Uniform
 - Chapter 60 Inclusions
 - Construction Industries
 - Manufactured Housing
 - Athletic Commission, etc.
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THE UNIFORM LICENSING ACT

- Focus on uniform due process procedures
- No uniformity with licensing procedures, terminology
- Recent updates include directives on reducing barriers to licensure





CITIZENSHIP
& RESIDENCY

THE UNIFORM LICENSING ACT

Section 61-1-35 (2020)

- It is the policy of this state that a person is eligible for occupational or professional licensure or certification for which that person is qualified, regardless of the person's citizenship or immigration status.

Section 61-1-37 (2022)

- A person who otherwise meets the requirements for a professional or occupational license shall not be denied licensure or relicensure because the person does not live in New Mexico.
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CRIMINAL
CONVICTION
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CRIMINAL OFFENDER EMPLOYMENT ACT


Sections 28-2-1 to -6

- “The legislature finds that the public is best protected when criminal offenders or ex-convicts are given the opportunity to secure employment or to engage in a lawful trade, occupation or profession and that barriers to such employment should be removed to make rehabilitation feasible.”
 - Licenses can only be denied or disciplined if convicted of a felony that directly relates to the profession
 - Must be applied by law to individual boards or commissions
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THE UNIFORM LICENSING ACT

Section 61-1-36

- “A board shall not exclude from licensure a person who is otherwise qualified on the sole basis that the person has been previously arrested for or convicted of a crime, unless the person has a disqualifying criminal conviction.”
 - “[E]ach board shall promulgate and post on the board's website rules relating to licensing requirements to list the specific criminal convictions that could disqualify an applicant from receiving a license on the basis of a previous felony conviction. Rules relating to licensing requirements promulgated by a board shall not use the terms “moral turpitude” or “good character”. A board shall only list disqualifying criminal convictions.”
 - “[A] board shall carry the burden of proof on the question of whether the exclusion from occupational or professional licensure is based upon a disqualifying criminal conviction.”
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EXPEDITED &
MILITARY
LICENSURE

THE UNIFORM LICENSING ACT

Section 61-1-34

- Reducing barriers for military members, veterans, and eligible spouses and dependents
 - Eliminates licensing fee (first 3 years)
 - Expedites processing to 30 days
 - No background check required
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THE UNIFORM LICENSING ACT

Section 61-1-31.1

- Original expedited licensure/reciprocity for health licensing boards
 - Not properly followed or executed
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HOUSE BILL 191 (2022)

EXPEDITED LICENSURE

HB 191

“Expedited license’, whether by examination, endorsement, credential or reciprocity, means a license issued to a person in this state based on licensure in another state or territory of the United States, the District of Columbia or a foreign country, as applicable”

Conditions for Expedited Licensure to a qualified applicant:

1. Holds a license in good standing in another jurisdiction;
 2. Has practiced the profession or occupation for a period required by New Mexico law (statute);
 3. Completes background check (if required); and
 4. Carries insurance (if required).
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HB 191

Other Conditions of Section 31.1:

- 30 day deadline to issue license
 - May require exam in order to renew license
 - Each board may decide which jurisdictions to exclude
 - Excluded jurisdictions must include reasons for disapproval
 - Boards required to promulgate rules hold a presumption to accept jurisdictions unless excluded
 - Excluded lists to be reviewed annually
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HB 191

- 36 individual practice acts were amended
- Not all practice acts were amended to require rulemaking

The board by rule shall determine those states and territories of the United States and the District of Columbia from which it will not accept an applicant for expedited licensure and shall determine any foreign countries from which it will accept an applicant for expedited licensure. The board shall post the lists of disapproved and approved licensing jurisdictions on its website. The list of disapproved licensing jurisdictions shall include the specific reasons for disapproval. The lists shall be reviewed annually to determine if amendments to the rule are warranted.

Section 61-2-9(C) (Optometry)

HB 191

- 17 RLD boards under deadline for rulemakings

SECTION 105. TEMPORARY PROVISION--RULE CHANGES TO COMPLY WITH ACT.--A board that is required by this act to change its licensing provisions to allow for new or different expedited licensure shall have rules in place and operational by January 1, 2023.

HB 191

Compliance with HB 191

- Analysis of 56 states and jurisdictions requirements
 - Template rule
 - Rulemaking
 - Annual review
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HB 191

Other Changes Include:

- Cannot deny a license based on residency in another state (61-1-37)
 - Rulemaking reference updated to reference State Rules Act (61-1-29)
 - Miscellaneous housekeeping of practice acts
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EXECUTIVE ORDER 2021- 060

REDUCING UNNECESSARY BARRIERS TO
LICENSING



State of New Mexico

Michelle Lujan Grisham
Governor

EXECUTIVE ORDER 2021-060

ELIMINATING AND REDUCING UNNECESSARY REGULATORY BURDENS AND COSTS

WHEREAS, regulations play an indispensable role in protecting public health and safety, consumers, and the environment;

WHEREAS, regulations can also impose significant burdens and costs on businesses and the public, which stifle innovation, growth, and job creation;

WHEREAS, regulatory burdens and costs can also discourage underserved populations, such as women and racial minority groups, from actively participating in economic growth and business activities;

WHEREAS, no regulatory burden or cost should be imposed absent a commensurate justification;

WHEREAS, many unjustified regulatory burdens and costs may be promptly eliminated or streamlined through rule changes while others require carefully tailored legislative action; and

WHEREAS, eliminating unjustified regulatory burdens and costs will encourage economic growth and innovation in our State while continuing to protect New Mexicans and the environment.

EXECUTIVE ORDER 2021-060

5. All boards, commissions, and local jurisdictions are strongly encouraged to reduce, streamline, and eliminate rules imposing a regulatory burden or cost on members of the public to the greatest extent practicable, in conformity with the principles of this Order. If requested, the Regulation and Licensing Department and the Economic Development Department shall collaborate with any board, commission, or local jurisdiction in carrying out such regulatory reform.

Government has prioritized the simplification and reduction of unnecessary barriers in the professional licensing process.

How will individual boards and commissions with rulemaking authority respond?



TRENDS & OBSTACLES

HB 191

Challenges:

- Multiple pathways for licensure
 - Maintaining excluded jurisdictions list
 - Statutory analysis of possible conflicts
 - Analyzing rules for conflicts and clean up
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MOVING FORWARD

Compacts

- Interstate Medical Licensure Compact
- Psychology Interjurisdictional Compact
- Nurse Licensure Compact*
- Advanced Practice Nursing Compact
- Physical Therapy Compact
- Emergency Medical Technician Compact

RLD Staffing

- Reorganization and Bureaus
- Clarification and Active Role

Uniform Requirements

- Mobility
- Simplicity

Legislative Intervention

- Streamline processes
- Housekeeping

QUESTIONS



QUESTIONS



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PUBLIC LAW SECTION

