The Legislature
of the
State of New Mexico

53rd Legislature, 1st Session

LAWS 2017

CHAPTER 52

HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR

HOUSE BILL 295

Introduced by

[Stamp: Great Seal of the State of New Mexico]
CHAPTER 52

AN ACT

RELATING TO PROFESSIONAL LICENSURE; CHANGING MEMBERSHIP OF CERTAIN LICENSING BOARDS; EXTENDING SUNSET DATES OF CERTAIN BOARDS; INCREASING PENALTIES FOR UNLICENSED ACTIVITIES OF CERTAIN PROFESSIONS.

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

SECTION 1. A new section of the Professional Athletic Competition Act is enacted to read:

"UNLICENSED ACTIVITY--DISCIPLINARY PROCEEDINGS--CIVIL PENALTY.--A person who is not licensed to engage in a professional athletic competition activity regulated by the board is subject to disciplinary proceedings by the board as provided in the Uniform Licensing Act. The provisions of Section 61-1-3.2 NMSA 1978 notwithstanding, the board may impose a civil penalty in an amount not to exceed two thousand dollars ($2,000) against a person who engages in a professional athletic competition activity regulated by the board without a license. In addition, the board may assess the person for administrative costs, including investigative costs and the cost of conducting a hearing."

SECTION 2. Section 60-2A-30 NMSA 1978 (being Laws 1980, Chapter 90, Section 30, as amended) is amended to read:

"60-2A-30. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The New Mexico athletic commission is terminated on
July 1, 2023 pursuant to the Sunset Act. The commission
shall continue to operate according to the provisions of the
Professional Athletic Competition Act until July 1, 2024.
Effective July 1, 2024, Chapter 60, Article 2A NMSA 1978 is
repealed."

SECTION 3. Section 61-14A-19 NMSA 1978 (being Laws
1993, Chapter 158, Section 27) is amended to read:
"61-14A-19. PENALTIES.--
A. A person who violates a provision of the
Acupuncture and Oriental Medicine Practice Act is guilty of a
misdemeanor and upon conviction shall be punished as provided
in Section 31-19-1 NMSA 1978.

B. In addition to criminal penalties, a person who
engages in acupuncture or oriental medicine without a license
is subject to disciplinary proceedings by the board. The
provisions of Section 61-1-3.2 NMSA 1978 notwithstanding, the
board may impose a civil penalty in an amount not to exceed
two thousand dollars ($2,000) against such person and may
assess the person for administrative costs, including
investigative costs and the cost of conducting a hearing.
The fine shall be deposited to the credit of the current
school fund."

SECTION 4. Section 61-14A-22 NMSA 1978 (being Laws
1993, Chapter 158, Section 30, as amended) is amended to
read:
"61-14A-22. TERMINATION OF AGENCY LIFE--DELAYED

REPEAL.--The board of acupuncture and oriental medicine is
terminated on July 1, 2023 pursuant to the Sunset Act. The
board shall continue to operate according to the Acupuncture
and Oriental Medicine Practice Act until July 1, 2024.
Effective July 1, 2024, Chapter 61, Article 14A NMSA 1978 is
repealed."

SECTION 5. Section 61-15-3 NMSA 1978 (being Laws 1979,
Chapter 362, Section 3, as amended) is amended to read:

"61-15-3. BOARD OF EXAMINERS FOR ARCHITECTS CREATED--
TERMS--QUALIFICATIONS.--

A. The "board of examiners for architects" is
created consisting of seven members appointed by the governor
for staggered terms of three years each. Six of the members
shall be architects having ten years or more experience in
the profession, five years of which shall have been in
responsible charge of architectural projects, and shall have
been registered as architects in New Mexico for at least five
years. One of these six architects shall be in architectural
education in an accredited college of architecture, and one
of the six architects shall be from the public sector and not
in private practice. The seventh member shall be a public
member who is a voting member. The public member of the
board shall not have been licensed as an architect, nor shall
the public member have any significant financial interest,
whether direct or indirect, in the occupation regulated.

B. Each member of the board shall be at least thirty years of age, a citizen of the United States and a resident of New Mexico for at least five years prior to the date of appointment.

C. Members of the board shall be appointed for staggered terms of three years each made in such a manner that the terms of not more than two members expire on June 30 of each year. Each member shall serve until a successor has been appointed and qualified. A vacancy shall be filled for the unexpired term by appointment by the governor of a person having similar qualifications as the member that the person replaces. Each member of the board whose term has not expired on the effective date of this section shall serve out the member's unexpired term.

D. Each member of the board shall receive a certificate of appointment from the governor and, before beginning the member's term of office, shall file with the secretary of state the constitutional oath of office. The governor may remove any member from the board for the neglect of any duty required by law, for incompetence or, if the member is a licensed architect, for any improper or unprofessional conduct as defined by rules of the board.

E. The board shall elect a chair, a vice chair and a secretary and any other officers it deems necessary."
SECTION 6. Section 61-15-13 NMSA 1978 (being Laws 1979, Chapter 362, Section 10, as amended) is amended to read:

"61-15-13. TERMINATION OF AGENCY LIFE--DELAYED

REPEAL.--The board of examiners for architects is terminated on July 1, 2023 pursuant to the provisions of the Sunset Act. The board shall continue to operate according to the provisions of the Architectural Act until July 1, 2024. Effective July 1, 2024, the Architectural Act is repealed."

SECTION 7. Section 61-23-32 NMSA 1978 (being Laws 1987, Chapter 336, Section 32, as amended) is amended to read:

"61-23-32. TERMINATION OF AGENCY LIFE--DELAYED

REPEAL.--The state board of licensure for professional engineers and professional surveyors is terminated on July 1, 2023 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of the Engineering and Surveying Practice Act until July 1, 2024. Effective July 1, 2024, the Engineering and Surveying Practice Act is repealed."

SECTION 8. Section 61-27B-6 NMSA 1978 (being Laws 2007, Chapter 115, Section 6) is amended to read:

"61-27B-6. PRIVATE INVESTIGATIONS ADVISORY BOARD--CREATED--MEMBERS.--

A. The "private investigations advisory board" is created.

B. The superintendent of regulation and licensing
shall appoint members to the advisory board to assist in the
conduct of the examination process for licensees and
registrants and to assist the department in other manners as
requested by the superintendent or provided for in rules of
the department.

C. The advisory board members shall consist of at
least the following:

(1) one private investigator;
(2) one private patrol operator;
(3) one polygraph examiner; and
(4) two members of the public.

D. Members of the advisory board shall be
reimbursed pursuant to the Per Diem and Mileage Act and shall
receive no other compensation, perquisite or allowance for
each day spent in the discharge of their duties.

E. The public members of the advisory board or
their spouses shall not:

(1) have been licensed pursuant to the
Private Investigations Act or any prior similar statutory
provisions; or

(2) have a direct or indirect financial
interest in a private investigation company, private patrol
company, polygraph business or a related business."

SECTION 9. Section 61-27B-27 NMSA 1978 (being Laws
1993, Chapter 212, Section 14, as amended) is amended to
read:

"61-27B-27. HEARING--PENALTIES.--

A. A person who is denied a license or registration or who has a license or registration suspended or revoked shall be entitled to a hearing before the department if within twenty days after the denial, suspension or revocation a request for a hearing is received by the department. The procedures of the Uniform Licensing Act shall be followed pertaining to the hearing to the extent that they do not conflict with the provisions of the Private Investigations Act.

B. In accordance with the provisions of the Uniform Licensing Act, and in addition to other penalties provided by law, the department may impose the following:

(1) for a violation of the Private Investigations Act, a civil penalty not to exceed one thousand dollars ($1,000) for each violation; and

(2) against a person who is found by the department to be engaging in a practice regulated by the department without an appropriate license or registration, civil penalties not to exceed two thousand dollars ($2,000).

SECTION 10. Section 61-24C-17 NMSA 1978 (being Laws 1993, Chapter 83, Section 5, as amended) is amended to read:

"61-24C-17. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The interior design board is terminated on July 1,
2023 pursuant to the provisions of the Sunset Act. The board shall continue to operate according to the provisions of the Interior Designers Act until July 1, 2024. Effective July 1, 2024, Chapter 61, Article 24C NMSA 1978 is repealed."

SECTION 11. Section 61-27B-36 NMSA 1978 (being Laws 2007, Chapter 115, Section 35, as amended) is amended to read:

"61-27B-36. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The private investigations advisory board is terminated on July 1, 2023 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of the Private Investigations Act until July 1, 2024. Effective July 1, 2024, Chapter 61, Article 27B NMSA 1978 is repealed."

SECTION 12. Section 61-28B-20 NMSA 1978 (being Laws 1999, Chapter 179, Section 20, as amended) is amended to read:

"61-28B-20. ENFORCEMENT--ADMINISTRATIVE VIOLATIONS AND REMEDIES.--

A. The board may take, after providing a person due process pursuant to the Uniform Licensing Act, corrective action identified in Subsection B of this section following a finding that an applicant or licensee:

(1) committed fraud or deceit in obtaining a certificate or permit;
(2) lost a certificate or permit through cancellation, revocation, suspension or refusal of renewal in any other state for cause, as defined by board rule;

(3) failed to maintain compliance with the requirements of the 1999 Public Accountancy Act and board rules for issuance or renewal of a certificate or permit or failed to report material changes to the board, as required by board rule;

(4) lost the authorization to practice in any state or before any federal agency through revocation or suspension of that authorization;

(5) committed dishonest, fraudulent or grossly negligent acts in the practice of public accountancy or in the filing or failure to file the applicant's or licensee's own income or other federal, state or local tax returns;

(6) violated a provision of the 1999 Public Accountancy Act or a rule promulgated by the board pursuant to that act;

(7) violated a rule of professional conduct promulgated by the board pursuant to the 1999 Public Accountancy Act;

(8) has been convicted of a felony or of a crime an element of which is dishonesty or fraud under the laws of the United States, of New Mexico or of any other
state, or of any other jurisdiction, if the acts involved
would have constituted a crime under the laws of New Mexico;
(9) performed a fraudulent act while holding
a certificate or permit issued pursuant to the 1999 Public
Accountancy Act or prior law; or
(10) participated in any conduct reflecting
adversely upon the applicant's or licensee's fitness to
engage in practice.

B. After a finding by the board that an applicant
or licensee has committed a violation identified in
Subsection A of this section, the board may take, with or
without terms, conditions and limitations, one or more of the
following corrective actions:
(1) deny an application or revoke a
certificate or permit issued pursuant to the 1999 Public
Accountancy Act or corresponding provisions of prior law;
(2) suspend a certificate or permit for a
period of not more than five years;
(3) reprimand, censure or limit the scope of
practice of a licensee;
(4) impose an administrative fine not
exceeding ten thousand dollars ($10,000); or
(5) place the licensee on probation.

C. In lieu of or in addition to a remedy
specifically provided in Subsection B of this section, the
board may require of a licensee:

   (1) a quality review conducted in such a
   fashion as the board may specify;
   
   (2) satisfactory completion of such
   continuing professional education programs as the board may
   specify;
   
   (3) correction of the violation identified;
   
   and
   
   (4) any other suitable remedial action as
   determined by the board.

   D. In a proceeding in which a remedy provided by
   Subsection B or C of this section is imposed, the board may
   also require the respondent to pay the costs of the
   proceeding.

   E. The provisions of Section 61-1-3.2 NMSA 1978
   notwithstanding, the board may impose a civil penalty in an
   amount not to exceed two thousand dollars ($2,000) against a
   person who engages in public accountancy without a license.
   In addition, the board may assess the person for
   administrative costs, including investigative costs and the
   cost of conducting a hearing."

SECTION 13. Section 61-28B-29 NMSA 1978 (being Laws
1999, Chapter 179, Section 29, as amended) is amended to
read:

"61-28B-29. TERMINATION OF AGENCY LIFE--DELAYED
REPEAL.--The New Mexico public accountancy board is
terminated on July 1, 2023 pursuant to the provisions of the
Sunset Act. The board shall continue to operate according to
the provisions of the 1999 Public Accountancy Act until July
1, 2024. Effective July 1, 2024, the 1999 Public Accountancy
Act is repealed."

SECTION 14. Section 61-30-22 NMSA 1978 (being Laws
1990, Chapter 75, Section 22, as amended) is amended to read:

"61-30-22. CIVIL AND CRIMINAL PENALTIES--INJUNCTIVE
RELIEF.--

A. Any person who violates any provision of the
Real Estate Appraisers Act is guilty of a misdemeanor and
shall be punished by a fine of not more than one thousand
dollars ($1,000) or by imprisonment for not more than six
months or both.

B. In the event any person has engaged in or
proposes to engage in any act or practice violating a
provision of the Real Estate Appraisers Act, the attorney
general or the district attorney of the judicial district in
which the person resides or the judicial district in which
the violation has occurred or will occur shall, upon
application of the board, maintain an action in the name of
the state to prosecute the violation or to enjoin the
proposed act or practice.

C. The board may impose a civil penalty in an
amount not to exceed one thousand dollars ($1,000) for each
violation of the Real Estate Appraisers Act and assess
administrative costs for any investigation and administrative
or other proceedings against a real estate appraiser trainee,
a state licensed residential real estate appraiser or a state
certified real estate appraiser. The provisions of Section
61-1-3.2 NMSA 1978 notwithstanding, the board may impose a
civil penalty not to exceed two thousand dollars ($2,000)
against any person who is found, through an administrative
proceeding, to have acted without a license. Appeals from
decisions of the board shall be taken as provided in Section
39-3-1.1 NMSA 1978."

SECTION 15. Section 61-30-24 NMSA 1978 (being Laws
1993, Chapter 269, Section 21, as amended) is amended to
read:

"61-30-24. TERMINATION OF AGENCY LIFE--DELAYED
REPEAL.--The real estate appraisers board is terminated
effective July 1, 2023. The Real Estate Appraisers Act shall
continue in effect until July 1, 2024. Chapter 61, Article
30 NMSA 1978 is repealed effective July 1, 2024."

SECTION 16. Section 61-32-6 NMSA 1978 (being Laws 1993,
Chapter 204, Section 6, as amended) is amended to read:

"61-32-6. BOARD POWERS.--
A. In addition to any other authority provided by
law, the board has the power to:
(1) adopt, in accordance with the provisions
of the Uniform Licensing Act, and file, in accordance with
the State Rules Act, rules necessary to carry out the
provisions of the Funeral Services Act;

(2) adopt rules implementing continuing
education requirements;

(3) conduct hearings upon charges relating
to the discipline of licensees and take administrative
actions pursuant to Section 61-1-3 NMSA 1978;

(4) establish reasonable fees to carry out
the provisions of the Funeral Services Act;

(5) provide for investigations necessary to
determine violations of the Funeral Services Act;

(6) establish committees as the board deems
necessary for carrying out the provisions of the Funeral
Services Act;

(7) apply for injunctive relief to enforce
the provisions of the Funeral Services Act or to restrain any
violation of that act; and

(8) conduct criminal background checks on
applicants for licensure.

B. No action or other legal proceedings for
damages shall be instituted against the board, any board
member or employee of the board for any act performed in good
faith and in the intended performance of any power or duty
granted under the Funeral Services Act or for any neglect or
default in the good faith performance or exercise of any such
power or duty."

SECTION 17. Section 61-32-23 NMSA 1978 (being Laws
1993, Chapter 204, Section 23, as amended) is amended to
read:

"61-32-23. FEES AND FINES.--The board shall establish
by rule a schedule of reasonable fees and fines for
applications, examinations, licenses, inspections, renewals,
penalties, reinstatements and necessary administrative fees.
All fees collected shall be deposited in accordance with
Section 61-32-26 NMSA 1978. All fines collected shall be
deposited in the current school fund."

SECTION 18. Section 61-32-26 NMSA 1978 (being Laws
1993, Chapter 204, Section 26, as amended) is amended to
read:

"61-32-26. FUND ESTABLISHED.--

A. There is created in the state treasury the
"funeral services fund".

B. All fees and costs received or collected by the
board or the department pursuant to provisions of the Funeral
Services Act shall be deposited with the state treasurer for
credit to the funeral services fund. The state treasurer
shall invest the fund as other state funds are invested. All
balances in the fund at the end of any fiscal year shall
remain in the fund and shall not revert to the general fund.

   C. Money in the funeral services fund is
appropriated to the board and shall be used only for the
purpose of carrying out the provisions of the Funeral
Services Act."

SECTION 19. Section 61-32-30.1 NMSA 1978 (being Laws
2003, Chapter 420, Section 11, as amended) is amended to
read:

"61-32-30.1. UNLICENSED ACTIVITY--CIVIL PENALTY.--The
provisions of Section 61-1-3.2 NMSA 1978 notwithstanding, the
board may impose a fine in an amount not to exceed two
thousand dollars ($2,000) and costs on a person who is found
to have acted without a license in violation of the Funeral
Services Act by a court or an administrative proceeding as
provided for in the Funeral Services Act."

SECTION 20. Section 61-32-31 NMSA 1978 (being Laws
1993, Chapter 204, Section 31, as amended) is amended to
read:

"61-32-31. TERMINATION OF AGENCY LIFE--DELAYED
REPEAL.--The board of funeral services is terminated on
July 1, 2023 pursuant to the provisions of the Sunset Act.
The board shall continue to operate according to the
provisions of Section 12-9-18 NMSA 1978 until July 1, 2024.
Effective July 1, 2024, the Funeral Services Act is
repealed."
SECTION 21. TEMPORARY PROVISION--BOARD PUBLIC MEMBERS.--In carrying out the statutory requirement to replace professional members with public members on the board of examiners for architects and the private investigations advisory board, the governor shall appoint a public member to replace the applicable professional member whose term first expires after the effective date of this act. If a vacancy occurs in an applicable professional member position prior to the expiration of that term, the governor shall appoint a public member, and that position shall become a public member position.
BRIAN EGOLF, SPEAKER
HOUSE OF REPRESENTATIVES

LISA M. ORTIZ MCCUTCHEON, CHIEF CLERK
HOUSE OF REPRESENTATIVES

JOHN A. SANCHEZ, PRESIDENT
SENATE

LENORE M. NARANJO, CHIEF CLERK
SENATE

Approved by me this ___ day of April, 2017

SUSANA MARTINEZ, GOVERNOR
STATE OF NEW MEXICO