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SENATE BILL 119

**49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010**

INTRODUCED BY

Clinton D. Harden

AN ACT

RELATING TO HEALTH CARE SERVICES; AMENDING THE TORT CLAIMS ACT TO COVER ACTIVE MEDICAL STAFF AT MINERS' COLFAX MEDICAL CENTER AS "PUBLIC EMPLOYEES"; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2009.

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

Section 1. Section 41-4-3 NMSA 1978 (being Laws 1976, Chapter 58, Section 3, as amended by Laws 2009, Chapter 8, Section 2 and by Laws 2009, Chapter 129, Section 2 and also by Laws 2009, Chapter 249, Section 2) is amended to read:

"41-4-3. DEFINITIONS.--As used in the Tort Claims Act:

A. "board" means the risk management advisory board;

B. "governmental entity" means the state or any local public body as defined in Subsections C and H of this

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1 section;

2 C. "local public body" means all political  
3 subdivisions of the state and their agencies, instrumentalities  
4 and institutions and all water and natural gas associations  
5 organized pursuant to Chapter 3, Article 28 NMSA 1978;

6 D. "law enforcement officer" means a full-time  
7 salaried public employee of a governmental entity, or a  
8 certified part-time salaried police officer employed by a  
9 governmental entity, whose principal duties under law are to  
10 hold in custody any person accused of a criminal offense, to  
11 maintain public order or to make arrests for crimes, or members  
12 of the national guard when called to active duty by the  
13 governor;

14 E. "maintenance" does not include:

15 (1) conduct involved in the issuance of a  
16 permit, driver's license or other official authorization to use  
17 the roads or highways of the state in a particular manner; or

18 (2) an activity or event relating to a public  
19 building or public housing project that was not foreseeable;

20 F. "public employee" means an officer, employee or  
21 servant of a governmental entity, excluding independent  
22 contractors except for individuals defined in Paragraphs (7),  
23 (8), (10), (14), ~~[and]~~ (17) and (18) of this subsection, or of  
24 a corporation organized pursuant to the Educational Assistance  
25 Act, the Small Business Investment Act or the Mortgage Finance

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1 Authority Act or a licensed health care provider, who has no  
2 medical liability insurance, providing voluntary services as  
3 defined in Paragraph (16) of this subsection and including:

4 (1) elected or appointed officials;

5 (2) law enforcement officers;

6 (3) persons acting on behalf or in service of  
7 a governmental entity in any official capacity, whether with or  
8 without compensation;

9 (4) licensed foster parents providing care for  
10 children in the custody of the human services department,  
11 corrections department or department of health, but not  
12 including foster parents certified by a licensed child  
13 placement agency;

14 (5) members of state or local selection panels  
15 established pursuant to the Adult Community Corrections Act;

16 (6) members of state or local selection panels  
17 established pursuant to the Juvenile Community Corrections Act;

18 (7) licensed medical, psychological or dental  
19 arts practitioners providing services to the corrections  
20 department pursuant to contract;

21 (8) members of the board of directors of the  
22 New Mexico medical insurance pool;

23 (9) individuals who are members of medical  
24 review boards, committees or panels established by the  
25 educational retirement board or the retirement board of the

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1 public employees retirement association;

2 (10) licensed medical, psychological or dental  
3 arts practitioners providing services to the children, youth  
4 and families department pursuant to contract;

5 (11) members of the board of directors of the  
6 New Mexico educational assistance foundation;

7 (12) members of the board of directors of the  
8 New Mexico student loan guarantee corporation;

9 (13) members of the New Mexico mortgage  
10 finance authority;

11 (14) volunteers, employees and board members  
12 of court-appointed special advocate programs;

13 (15) members of the board of directors of the  
14 small business investment corporation;

15 (16) health care providers licensed in New  
16 Mexico who render voluntary health care services without  
17 compensation in accordance with rules promulgated by the  
18 secretary of health. The rules shall include requirements for  
19 the types of locations at which the services are rendered, the  
20 allowed scope of practice and measures to ensure quality of  
21 care; ~~and~~

22 (17) an individual while participating in the  
23 state's adaptive driving program and only while using a  
24 special-use state vehicle for evaluation and training purposes  
25 in that program; and

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1                   (18) licensed medical, psychological or dental  
2 arts practitioners providing services to miners' Colfax medical  
3 center pursuant to contract;

4                   G. "scope of duty" means performing any duties that  
5 a public employee is requested, required or authorized to  
6 perform by the governmental entity, regardless of the time and  
7 place of performance; and

8                   H. "state" or "state agency" means the state of New  
9 Mexico or any of its branches, agencies, departments, boards,  
10 instrumentalities or institutions."