

1 HOUSE BILL 416

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

3 INTRODUCED BY

4 Nate Gentry

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10 AN ACT

11 RELATING TO EMPLOYMENT; EXEMPTING CERTAIN EMPLOYERS OF WORKERS
12 WHO ARE HIRED ON OR AFTER JULY 1, 2016 FROM THE PROHIBITIONS OF
13 THE EMPLOYEE PRIVACY ACT.

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

16 SECTION 1. Section 50-11-1 NMSA 1978 (being Laws 1991,
17 Chapter 244, Section 1) is amended to read:

18 "50-11-1. SHORT TITLE.--~~[This act]~~ Chapter 50, Article 11
19 NMSA 1978 may be cited as the "Employee Privacy Act"."

20 SECTION 2. Section 50-11-2 NMSA 1978 (being Laws 1991,
21 Chapter 244, Section 2) is amended to read:

22 "50-11-2. DEFINITIONS.--As used in the Employee Privacy
23 Act:

24 A. "employee" means a person that performs a
25 service for wages or other remuneration under a contract of

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1 hire, written or oral, express or implied, and includes a
2 person employed by the state or a political subdivision of the
3 state;

4 B. "employer" means a person that has one or more
5 employees and includes an agent of an employer and the state or
6 a political subdivision of the state; [~~and~~]

7 C. "health care practitioner" means:

8 (1) a person licensed pursuant to the
9 provisions of the Optometry Act;

10 (2) a person licensed, registered or certified
11 pursuant to the provisions of the Nursing Practice Act;

12 (3) a person licensed or certified pursuant to
13 the provisions of the Chiropractic Physician Practice Act;

14 (4) a person licensed or certified pursuant to
15 the Dental Health Care Act;

16 (5) a person licensed pursuant to the
17 provisions of the Medical Practice Act;

18 (6) a person licensed pursuant to the
19 provisions of the Anesthesiologist Assistants Act;

20 (7) a person licensed pursuant to the
21 provisions of the Podiatry Act;

22 (8) a person licensed pursuant to the
23 provisions of the Polysomnography Practice Act;

24 (9) a person licensed pursuant to the
25 provisions of the Professional Psychologist Act;

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1 (10) a person licensed or registered pursuant
2 to the provisions of the Counseling and Therapy Practice Act;

3 (11) an osteopathic physician licensed
4 pursuant to the provisions of Chapter 61, Article 10 NMSA 1978
5 or a person licensed pursuant to the provisions of the
6 Osteopathic Physicians' Assistants Act;

7 (12) a person licensed or registered pursuant
8 to the provisions of the Pharmacy Act;

9 (13) a person licensed, registered or
10 certified pursuant to the provisions of the Occupational
11 Therapy Act;

12 (14) a person licensed pursuant to the
13 provisions of the Respiratory Care Act;

14 (15) a person licensed pursuant to the
15 provisions of the Massage Therapy Practice Act;

16 (16) a person licensed pursuant to the
17 provisions of the Physical Therapy Act;

18 (17) a person licensed pursuant to the
19 provisions of the Naprapathic Practice Act;

20 (18) a person licensed pursuant to the
21 provisions of the Acupuncture and Oriental Medicine Practice
22 Act;

23 (19) a person licensed pursuant to the Speech-
24 Language Pathology, Audiology and Hearing Aid Dispensing
25 Practices Act;

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1 (20) a person licensed, certified or
2 credentialed pursuant to the Medical Imaging and Radiation
3 Therapy Health and Safety Act;

4 (21) a person registered by the department of
5 health as a certified nurse-midwife;

6 (22) a person licensed pursuant to the
7 provisions of the Social Work Practice Act; or

8 (23) a person licensed or certified pursuant
9 to the provisions of the Emergency Medical Services Act;

10 D. "health care worker" means a person other than a
11 health care practitioner:

12 (1) whose work involves contact with patients;

13 (2) who is employed by a health facility; or

14 (3) who provides wellness, care coordination
15 or disease prevention and management services directly to an
16 insured under a health insurance plan or to an enrollee of a
17 managed care health plan;

18 E. "health facility" means a public hospital,
19 profit or nonprofit private hospital, general or special
20 hospital, outpatient facility, maternity home or shelter, adult
21 daycare facility, nursing home, intermediate care facility,
22 boarding home not under the control of an institution of higher
23 learning, child care center, shelter care home, diagnostic and
24 treatment center, rehabilitation center, infirmary, community
25 mental health center, residential treatment center, day

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1 treatment center, health service organization operating as a
2 freestanding hospice or home health agency and a clinical
3 laboratory that is accredited pursuant to 42 U.S.C. Section
4 263a but that is not a laboratory in a physician's office or in
5 a hospital defined pursuant to 42 U.S.C. Section 1395x;

6 F. "nonprofit corporation" means a corporation no
7 part of the income or profit of which is distributable to its
8 members, directors or officers; and

9 ~~[G.]~~ G. "person" means an individual, sole
10 proprietorship, partnership, corporation, association or any
11 other legal entity."

12 SECTION 3. A new section of the Employee Privacy Act is
13 enacted to read:

14 "[NEW MATERIAL] EXEMPTIONS.--

15 A. The provisions of the Employee Privacy Act do
16 not apply to:

17 (1) an employer of a health care practitioner
18 or of a health care worker; or

19 (2) an employer that is a nonprofit
20 corporation whose stated mission includes at least one of the
21 following:

- 22 (a) tobacco use prevention;
23 (b) smoking cessation;
24 (c) support for smoke-free environments;
25 (d) education regarding the health

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1 consequences of tobacco use or the addictive properties of
2 nicotine; and

3 (e) the prevention, treatment or cure of
4 disease or illness associated with the use of tobacco or
5 exposure to tobacco products.

6 B. An employer exempted from the Employee Privacy
7 Act pursuant to Subsection A of this section shall be subject
8 to that act with respect to an employee hired on or before June
9 30, 2016."