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FISCAL IMPACT REPORT

SPONSOR Ortiz y Pino **ORIGINAL DATE** 1/31/15
LAST UPDATED _____ **HB** _____
SHORT TITLE Employee Privacy Act Exemptions **SB** 243
ANALYST Jorgensen

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Unknown	Unknown	Unknown	Unknown	Recurring	General

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Medical Board (MB)

Regulation and Licensing Department (RLD)

State Personnel Office (SPO)

SUMMARY

Synopsis of Bill

Senate Bill 243 exempts the employers of health care practitioners, health care workers, and certain nonprofit corporations from the provisions of the Employee Privacy Act which prohibits employers from refusing to hire or to discharge any individual, or otherwise disadvantage any individual because the individual is a smoker or a nonsmoker.

SB 243 defines:

- (1) "health care practitioner" to be a person who is licensed to practice in New Mexico in some variety of health care under 23 different laws;
- (2) "health care worker" is someone other than a health care practitioner whose work involves patient contact, is employed by a health facility and provides care services directly to an insured under a health insurance plan or an enrollee of a managed care health plan; and
- (3) "health facility" broadly includes all hospitals, child care centers, shelter care home, residential treatment center and the like and clinical laboratories not located in a physician's office or a hospital.

Exempted nonprofit corporations are those whose stated mission includes at least one of the following: tobacco use prevention, smoking cessation, support for smoke-free environments, education regarding health consequences of tobacco use or addictive properties of nicotine and the prevention, treatment of cure illnesses related to tobacco use.

The provisions of the bill would affect employees hired on or after July 1, 2015

FISCAL IMPLICATIONS

Because potential changes to state health care hiring practices resulting from enactment of SB 243 are not known, the fiscal impact of this legislation is unquantifiable.

According to federal estimates, an employee who smokes costs, on average, \$3,391 more than a non-smoker per year due to increased health care costs and lost productivity.

SIGNIFICANT ISSUES

The Regulation and Licensing Department noted in a prior-year analysis of similar legislation:

There is a fundamental constitutional issue at play because there is a lack of a rational purpose for the adoption of such a bill that would pass constitutional muster. That is, there is no stated reason to deprive a prospective employee of an opportunity to work in a licensed trade occupation or profession because of smoking cigarettes, nicotine or otherwise, in a non-work environment

The MB notes:

As written, SB 243 may be too broad. A health care practitioner that is licensed under the Medical Practice Act, but is employed in a telemedicine manner, could be discharged under the auspices of this bill despite the fact that he or she does not see patients physically or even enter a physical workplace where patients may be present.

CJ/je