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FISCAL IMPACT REPORT

ORIGINAL DATE 02/10/14

SPONSOR Ortiz y Pino **LAST UPDATED** _____ **HB** _____

SHORT TITLE Healthcare Employer Privacy Exemptions **SB** 251

ANALYST Martinez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General’s Office (AGO)
 State Personnel Office (SPO)
 Regulation and Licensing Department (RLD)

SUMMARY

Synopsis of Bill

Senate Bill 251 amends the Employee Privacy Act by adding definitions of a health care practitioner, health care worker and a health facility all in an effort to make it lawful for an employer to refuse to hire or to discharge any health care practitioner or healthcare worker, or to otherwise disadvantage any health care practitioner or healthcare worker, with respect to compensation, terms, conditions or privileges of employment because the health care practitioner or healthcare worker is a smoker.

SB 251 defines health care practitioner as anyone licensed under the following Acts:

- the Optometry Act;
- the Nursing Practice Act;
- Chiropractic Physician Practice Act;
- the Dental Health Care Act;
- the Medical Practice Act;

- the Anesthesiologist Assistants Act;
- the Podiatry Act;
- the Polysomnography Practice Act;
- the Professional Psychologist Act;
- the Counseling and Therapy Practice Act;
- the provisions of Chapter 61, Article 10 NMSA 1978;
- the Osteopathic Physicians' Assistants Act;
- the Pharmacy Act;
- the Occupational Therapy Act;
- the Respiratory Care Act;
- the Massage Therapy Practice Act;
- the Physical Therapy Act; the Naprapathic Practice Act;
- the Acupuncture and Oriental Medicine Practice Act;
- the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act;
- the Medical Imaging and Radiation Therapy Health and Safety Act;
- those registered at the department of health as a midwife;
- the provisions of the Social Work Practice Act; or,
- the Emergency Medical Services Act.

SB 251 amends Employee Privacy Act- Definitions by defining health care worker as a person, other than a health care practitioner, whose work involves contact with patients; who is employed by a health facility; or who provides wellness, care coordination or disease prevention and management services directly to an insured under a health insurance plan or to an enrollee of a managed care health plan;

SB 251 amends Employee Privacy Act- Definitions by defining health facility as a public hospital, profit or nonprofit private hospital, general or special hospital, outpatient facility, maternity home or shelter, adult daycare facility, nursing home, intermediate care facility, boarding home not under the control of an institution of higher learning, child care center, shelter care home, diagnostic and treatment center, rehabilitation center, infirmary, community mental health center, residential treatment center, day treatment center, health service organization operating as a freestanding hospice or home health agency and a clinical laboratory that is accredited pursuant to 42 U.S.C. Section 263a, but that is not a laboratory in a physician's office or in a hospital defined pursuant to 42 U.S.C.

SB 251 would create a new section of the Privacy Act that expressly exempts employers of health care practitioners or health care workers, as those two categories are defined in the Bill, from the provisions of the Privacy Act. The exemption would only apply to health care practitioners or health care workers who apply for employment or are hired after July 1, 2015.

FISCAL IMPLICATIONS

No Fiscal Impact

SIGNIFICANT ISSUES

Currently the Employee Privacy Act makes it unlawful for an employer to refuse to hire or to discharge any individual, or otherwise disadvantage any individual, because the individual is a

smoker or require as a condition of employment that any employee or applicant for employment abstain from smoking or using tobacco products during nonworking hours.

SB 251 would make it lawful for an employer to refuse to hire or to discharge any health care practitioner or healthcare worker, or to otherwise disadvantage any health care practitioner or healthcare worker, with respect to compensation, terms, conditions or privileges of employment because the health care practitioner or healthcare worker is a smoker or nonsmoker.

SB 251 would also make it lawful for an employer to require as a condition of employment that any health care practitioner or healthcare worker or applicant for employment abstain from smoking or using tobacco products during nonworking hours.

The Regulation and Licensing Department writes:

There is a fundamental constitutional issue as to SB 251 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 State Personnel Office writes:

Similar legislation does not appear to have been legally challenged. Missouri has passed a similar exception to “Employee Privacy” legislation for health care organizations. Also, hospitals in Florida, Georgia, Massachusetts, Missouri, Ohio, Pennsylvania, Tennessee and Texas, among approximately 11 others, stopped hiring smokers since 2007, and more are openly considering the option. “A number of these organizations have justified the new policies as advancing their institutional missions of promoting personal well-being and finding ways to reduce the growth in health care costs.

See <http://www.nytimes.com/2011/02/11/us/11smoking.html?pagewanted=all>

About 1 in 5 Americans still smoke, and smoking remains the leading cause of preventable deaths. Employees who smoke cost, on average, \$3,391 more per year each for health care and lost productivity, according to federal estimates.

RM/ds