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HOUSE BILL 350

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

INTRODUCED BY

Nate Gentry

AN ACT

RELATING TO TORTS; AMENDING THE DEFINITION OF "PUBLIC EMPLOYEE"  
IN THE TORT CLAIMS ACT TO INCLUDE LICENSED MEDICAL,  
PSYCHOLOGICAL OR DENTAL ARTS PRACTITIONERS PROVIDING SERVICES  
TO JAILS AND DETENTION FACILITIES UNDER THE JURISDICTION OF  
LOCAL PUBLIC BODIES.

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) 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  
section;

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

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

13           E. "maintenance" does not include:

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

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

19           F. "public employee" means an officer, employee or  
20 servant of a governmental entity, excluding independent  
21 contractors except for individuals defined in Paragraphs (7),  
22 (8), (10), (14) and (17) of this subsection, or of a  
23 corporation organized pursuant to the Educational Assistance  
24 Act, the Small Business Investment Act or the Mortgage Finance  
25 Authority Act or a licensed health care provider, who has no

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1 medical liability insurance, providing voluntary services as  
2 defined in Paragraph (16) of this subsection and including:

3 (1) elected or appointed officials;

4 (2) law enforcement officers;

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

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

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

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

17 (7) licensed medical, psychological or dental  
18 arts practitioners providing services, pursuant to a contract,  
19 to the corrections department [~~pursuant to contract~~] or  
20 providing services, pursuant to a contract, to a local public  
21 body that pertain to a person held in a jail or detention  
22 facility under the local public body's jurisdiction;

23 (8) members of the board of directors of the  
24 New Mexico medical insurance pool;

25 (9) individuals who are members of medical

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1 review boards, committees or panels established by the  
2 educational retirement board or the retirement board of the  
3 public employees retirement association;

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

7 (11) members of the board of directors of the  
8 New Mexico educational assistance foundation;

9 (12) members of the board of directors of the  
10 New Mexico student loan guarantee corporation;

11 (13) members of the New Mexico mortgage  
12 finance authority;

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

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

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

24 (17) an individual while participating in the  
25 state's adaptive driving program and only while using a

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1 special-use state vehicle for evaluation and training purposes  
2 in that program; and

3 (18) the staff and members of the board of  
4 directors of the New Mexico health insurance exchange  
5 established pursuant to the New Mexico Health Insurance  
6 Exchange Act;

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

11 H. "state" or "state agency" means the state of New  
12 Mexico or any of its branches, agencies, departments, boards,  
13 instrumentalities or institutions."