

1 SENATE BILL 376

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY

4 Joseph Cervantes

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10 AN ACT

11 RELATING TO THE TORT CLAIMS ACT; PROHIBITING THE USE OF THE
12 DEFENSE OF QUALIFIED IMMUNITY; CREATING LIMITATIONS ON
13 RECOVERY; REQUIRING ATTORNEY FEES; ESTABLISHING STATUTES OF
14 LIMITATIONS.

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

17 SECTION 1. Section 41-4-12 NMSA 1978 (being Laws 1976,
18 Chapter 58, Section 12, as amended) is amended to read:

19 "41-4-12. LIABILITY--LAW ENFORCEMENT OFFICERS.--

20 A. The immunity granted pursuant to Subsection A of
21 Section 41-4-4 NMSA 1978 does not apply to liability for
22 personal injury, bodily injury, wrongful death or property
23 damage resulting from assault, battery, false imprisonment,
24 false arrest, malicious prosecution, abuse of process, libel,
25 slander, defamation of character, violation of property rights,

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1 the independent tort of negligent spoliation of evidence or the
2 independent tort of intentional spoliation of evidence, failure
3 to comply with duties established pursuant to statute or law or
4 any other deprivation of any rights, privileges or immunities
5 secured by the constitution and laws of the United States or
6 New Mexico when caused by law enforcement officers while acting
7 within the scope of their duties. For purposes of this
8 section, "law enforcement officer" means a public officer or
9 employee vested by law with the power to maintain order, to
10 make arrests for crime or to detain persons suspected of or
11 convicted of committing a crime, whether that duty extends to
12 all crimes or is limited to specific crimes.

13 B. In any claim for damages or relief under this
14 section, it shall not be a defense that the law prohibiting any
15 alleged conduct was not clearly established at the time of the
16 acts or omissions alleged. It shall not be a defense that any
17 action was undertaken in good faith. The subjective knowledge
18 of a party shall not be a defense to any claim brought under
19 this section. No defense of qualified immunity shall be
20 available as a defense to claims brought under this section.
21 Liability under this section shall be established by proving
22 that a violation of this section occurred.

23 C. In any successful action or proceeding brought
24 under this section, the court shall award reasonable litigation
25 expenses and attorney fees to any prevailing party.

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1 D. The provisions of this section shall apply to
2 all cases pending or on appeal on the date of enactment."

3 SECTION 2. Section 41-4-15 NMSA 1978 (being Laws 1976,
4 Chapter 58, Section 14, as amended) is amended to read:

5 "41-4-15. STATUTE OF LIMITATIONS AND ABATEMENT.--

6 A. Actions against a governmental entity or a
7 public employee for torts shall be forever barred unless such
8 action is commenced within two years after the date of
9 occurrence resulting in loss, injury or death, except that a
10 minor under the full age of seven years shall have until [his]
11 the minor's ninth birthday in which to file. This subsection
12 applies to all persons regardless of minority or other legal
13 disability.

14 B. ~~[The provisions of Subsection A of this section~~
15 ~~shall not apply to any occurrence giving rise to a claim which~~
16 ~~occurred before July 1, 1976.]~~ A claim made pursuant to this
17 section shall be commenced no later than three years from the
18 date a claim can be brought unless a longer statute of
19 limitations is otherwise provided by state law."

20 SECTION 3. Section 41-4-19 NMSA 1978 (being Laws 1976,
21 Chapter 58, Section 17, as amended) is amended to read:

22 "41-4-19. MAXIMUM LIABILITY.--

23 A. Unless limited by Subsection B of this section,
24 in any action for damages against a governmental entity or a
25 public employee while acting within the scope of the employee's

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1 duties as provided in the Tort Claims Act, the liability shall
2 not exceed:

3 (1) the sum of [~~two hundred thousand dollars~~
4 ~~(\$200,000)~~] five hundred thousand dollars (\$500,000) for each
5 legally described real property for damage to or destruction of
6 that legally described real property arising out of a single
7 occurrence;

8 (2) the sum of [~~three hundred thousand dollars~~
9 ~~(\$300,000)~~] eight hundred thousand dollars (\$800,000) for all
10 past and future medical and medically related expenses arising
11 out of a single occurrence; and

12 (3) the sum of [~~four hundred thousand dollars~~
13 ~~(\$400,000)~~] one million two hundred thousand dollars
14 (\$1,200,000) to any person for any number of claims arising out
15 of a single occurrence for all damages other than real property
16 damage and medical and medically related expenses as permitted
17 under the Tort Claims Act.

18 B. The total liability for all claims pursuant to
19 Paragraphs (1) and (3) of Subsection A of this section that
20 arise out of a single occurrence shall not exceed [~~seven~~
21 ~~hundred fifty thousand dollars (\$750,000)~~] two million dollars
22 (\$2,000,000).

23 C. Interest shall be allowed on judgments against a
24 governmental entity or public employee for a tort for which
25 immunity has been waived under the Tort Claims Act at a rate
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1 equal to two percentage points above the prime rate as
2 published in the *Wall Street Journal* on the date of the entry
3 of the judgment. Interest shall be computed daily from the
4 date of the entry of the judgment until the date of payment.

5 D. On July 1, 2022 and on July 1 of each successive
6 year, the maximum recovery limit shall be increased by the
7 increase in the cost of living. The increase in the cost of
8 living shall be measured by the percentage increase as of
9 August of the immediately preceding year over the level as of
10 August of the previous year of the consumer price index for all
11 urban consumers, United States city average for all items, or
12 its successor index as published by the United States
13 department of labor or its successor agency, with the amount of
14 the increase rounded to the nearest multiple of ten thousand
15 dollars (\$10,000); however, the maximum recovery limit shall
16 not be adjusted downward as a result of a decrease in the cost
17 of living. The risk management division of the general
18 services department shall publish by May 1 of each year the
19 adjusted maximum recovery limit that shall take effect the
20 following July 1.

21 ~~[D.]~~ E. No judgment against a governmental entity
22 or public employee for any tort for which immunity has been
23 waived under the Tort Claims Act shall include an award for
24 exemplary or punitive damages or for interest prior to
25 judgment.

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F. The provisions of this section shall apply to all cases pending or on appeal on the date of enactment."