

1 AN ACT

2 RELATING TO CIVIL RIGHTS; ENACTING THE NEW MEXICO CIVIL
3 RIGHTS ACT; PERMITTING AN INDIVIDUAL TO BRING A CLAIM AGAINST
4 A PUBLIC BODY OR PERSON ACTING ON BEHALF OF OR UNDER THE
5 AUTHORITY OF A PUBLIC BODY FOR A VIOLATION OF THE
6 INDIVIDUAL'S RIGHTS, PRIVILEGES OR IMMUNITIES ARISING
7 PURSUANT TO THE BILL OF RIGHTS OF THE CONSTITUTION OF NEW
8 MEXICO; PROHIBITING THE USE OF THE DEFENSE OF QUALIFIED
9 IMMUNITY; PERMITTING ATTORNEY FEES; LIMITING RECOVERY;
10 PROVIDING A THREE-YEAR STATUTE OF LIMITATIONS.

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

13 SECTION 1. SHORT TITLE.--This act may be cited as the
14 "New Mexico Civil Rights Act".

15 SECTION 2. DEFINITION.--As used in the New Mexico Civil
16 Rights Act, "public body" means a state or local government,
17 an advisory board, a commission, an agency or an entity
18 created by the constitution of New Mexico or any branch of
19 government that receives public funding, including political
20 subdivisions, special tax districts, school districts and
21 institutions of higher education, but not including an
22 acequia or community ditch, a soil and water conservation
23 district, a land grant-merced, a mutual domestic water
24 consumers association or other association organized pursuant
25 to the Sanitary Projects Act or a water users' association.

1 SECTION 3. CLAIM FOR VIOLATION OF RIGHTS ESTABLISHED
2 PURSUANT TO THE BILL OF RIGHTS OF THE CONSTITUTION OF NEW
3 MEXICO.--

4 A. A public body or person acting on behalf of,
5 under color of or within the course and scope of the
6 authority of a public body shall not subject or cause to be
7 subjected any resident of New Mexico or person within the
8 state to deprivation of any rights, privileges or immunities
9 secured pursuant to the bill of rights of the constitution of
10 New Mexico.

11 B. A person who claims to have suffered a
12 deprivation of any rights, privileges or immunities pursuant
13 to the bill of rights of the constitution of New Mexico due
14 to acts or omissions of a public body or person acting on
15 behalf of, under color of or within the course and scope of
16 the authority of a public body may maintain an action to
17 establish liability and recover actual damages and equitable
18 or injunctive relief in any New Mexico district court.

19 C. Claims brought pursuant to the New Mexico Civil
20 Rights Act shall be brought exclusively against a public
21 body. Any public body named in an action filed pursuant to
22 the New Mexico Civil Rights Act shall be held liable for
23 conduct of individuals acting on behalf of, under color of or
24 within the course and scope of the authority of the public
25 body.

1 D. Individuals employed by a public body shall be
2 prohibited from using the New Mexico Civil Rights Act to
3 pursue a claim arising from the individual's employment by
4 the public body.

5 E. The remedies provided for in the New Mexico
6 Civil Rights Act are not exclusive and shall be in addition
7 to any other remedies prescribed by law or available pursuant
8 to common law.

9 **SECTION 4. PROHIBITING THE USE OF THE DEFENSE OF**
10 **QUALIFIED IMMUNITY.--**In any claim for damages or relief under
11 the New Mexico Civil Rights Act, no public body or person
12 acting on behalf of, under color of or within the course and
13 scope of the authority of a public body shall enjoy the
14 defense of qualified immunity for causing the deprivation of
15 any rights, privileges or immunities secured by the bill of
16 rights of the constitution of New Mexico.

17 **SECTION 5. ATTORNEY FEES.--**In any action brought under
18 the New Mexico Civil Rights Act, the court may, in its
19 discretion, allow a prevailing plaintiff or plaintiffs
20 reasonable attorney fees and costs to be paid by the
21 defendant.

22 **SECTION 6. LIMITATION ON RECOVERY.--**

23 A. In any action for damages against a public body
24 pursuant to the New Mexico Civil Rights Act, the liability
25 per occurrence shall not exceed the sum of two million

1 dollars (\$2,000,000) per claimant, inclusive of the
2 claimant's costs of action and reasonable attorney fees. In
3 jury cases, the jury shall not be given any instructions
4 dealing with this limitation. Interest shall be allowed on
5 judgments against a public body at a rate equal to two
6 percentage points above the bank prime loan rate published by
7 the board of governors of the federal reserve system on the
8 last business day of the month preceding entry of the
9 judgment. Interest shall be computed daily from the date of
10 the entry of the judgment until the date of payment.

11 B. As of July 1, 2022 and on July 1 of each
12 successive year, the maximum recovery limit shall be
13 increased for the cost of living as provided in Subsection C
14 of this section.

15 C. On July 1, 2022 and on July 1 of each
16 successive year, the maximum recovery limit shall be
17 increased by the increase in the cost of living. The
18 increase in the cost of living shall be measured by the
19 percentage increase as of August of the immediately preceding
20 year over the level as of August of the previous year of the
21 consumer price index for all urban consumers, United States
22 city average for all items, or its successor index, as
23 published by the United States department of labor or its
24 successor agency, with the amount of the increase rounded to
25 the nearest multiple of ten thousand dollars (\$10,000);

1 however, the maximum recovery limit shall not be adjusted
2 downward as a result of a decrease in the cost of living.
3 The risk management division of the general services
4 department shall publish by May 1 of each year the adjusted
5 maximum recovery limit that shall take effect the following
6 July 1.

7 **SECTION 7. STATUTE OF LIMITATIONS AND ABATEMENT.--A**
8 claim made pursuant to the New Mexico Civil Rights Act shall
9 be commenced no later than three years from the date a claim
10 can be brought for the deprivation of a right, privilege or
11 immunity pursuant to the bill of rights of the constitution
12 of New Mexico unless a longer statute of limitations is
13 otherwise provided by state law.

14 **SECTION 8. INDEMNIFICATION BY PUBLIC BODY.--A** judgment
15 awarded pursuant to the New Mexico Civil Rights Act against a
16 person acting on behalf of, under color of or within the
17 course and scope of the authority of the public body shall be
18 paid by the public body. The public body shall also pay for
19 all litigation costs for the public body and for any person
20 acting on behalf of, under color of or within the course and
21 scope of the authority of the public body, including attorney
22 fees.

23 **SECTION 9. WAIVER OF SOVEREIGN IMMUNITY.--The** state
24 shall not have sovereign immunity for itself or any public
25 body within the state for claims brought pursuant to the New

1 Mexico Civil Rights Act, and the public body or person acting
2 on behalf of, under color of or within the course and scope
3 of the authority of the public body provided pursuant to the
4 New Mexico Civil Rights Act shall not assert sovereign
5 immunity as a defense or bar to an action.

6 SECTION 10. COMMON LAW JUDICIAL, LEGISLATIVE OR OTHER
7 ESTABLISHED IMMUNITY.--The prohibition on the use of the
8 defense of qualified immunity pursuant to Section 4 of the
9 New Mexico Civil Rights Act and the waiver of sovereign
10 immunity pursuant to Section 9 of that act shall not abrogate
11 judicial immunity, legislative immunity or any other
12 constitutional, statutory or common law immunity.

13 SECTION 11. RECORDS OF CLAIMS.--Each public body shall
14 maintain a record of all final judgments and settlements paid
15 by the public body for claims made pursuant to the New Mexico
16 Civil Rights Act and attach a copy of the complaint to each
17 record. All judgments, settlements and complaints are
18 subject to disclosure pursuant to the Inspection of Public
19 Records Act.

20 SECTION 12. PROSPECTIVE APPLICATION.--Claims arising
21 solely from acts or omissions that occurred prior to July 1,
22 2021 may not be brought pursuant to the New Mexico Civil
23 Rights Act.

24 SECTION 13. NOTICE OF CLAIMS.--

25 A. Every person who claims damages from an act or

1 omission of a certified law enforcement officer under the New
2 Mexico Civil Rights Act shall cause to be presented to the
3 certified law enforcement officer's agency or department,
4 within one year after an occurrence giving rise to a claim
5 under the New Mexico Civil Rights Act, a written notice
6 stating the time, place and circumstances of the loss or
7 injury.

8 B. No suit or action for which immunity has been
9 waived under the New Mexico Civil Rights Act shall be
10 maintained, and no court shall have jurisdiction to consider
11 any suit or action against the state or any local public
12 body, unless notice has been given as required by this
13 section or unless the governmental entity had actual notice
14 of the occurrence. The time for giving notice does not
15 include the time, not exceeding one year, during which the
16 injured person is incapacitated from giving the notice by
17 reason of injury.

18 C. When a claim for which immunity has been waived
19 under the New Mexico Civil Rights Act is one for wrongful
20 death, the required notice may be presented by, or on behalf
21 of, the personal representative of the deceased person or any
22 person claiming benefits of the proceeds of a wrongful death
23 action, or the consular officer of a foreign country of which
24 the deceased was a citizen, within one year and six months
25 after the date of the occurrence of the injury that resulted

1 in the death; but if the person for whose death the claim is
2 made has presented a notice that would have been sufficient
3 had the person lived, an action for wrongful death may be
4 brought without any additional notice.

5 SECTION 14. EFFECTIVE DATE.--The effective date of the
6 provisions of this act is July 1, 2021. _____

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25