

SENATE BILL 426

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

Joseph Cervantes

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO CIVIL RIGHTS; ESTABLISHING THE CIVIL RIGHTS DIVISION IN THE OFFICE OF THE ATTORNEY GENERAL; AUTHORIZING CIVIL INVESTIGATIVE DEMANDS.

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

SECTION 1. A new Section 8-5-23 NMSA 1978 is enacted to read:

"8-5-23. [NEW MATERIAL] CIVIL RIGHTS DIVISION--CREATED--

.224547.1AIC March 20, 2023 (10:20am)

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CIVIL INVESTIGATIVE DEMANDS.--

A. The "civil rights division" is created within the office of the attorney general. The civil rights division shall have the authority to investigate civil rights violations, intervene in civil actions for civil rights violations and bring civil actions for civil rights violations in the name of the state when, in the attorney general's judgment, the interest of the state requires such prosecution.

B. The attorney general may hire employees for the civil rights division on a full- or part-time basis, at salaries to be fixed by the attorney general within budget allowances and appropriation limits as the business of the civil rights division shall require, and the attorney general may assign duties for the civil rights division.

C. The civil rights division may issue a civil investigative demand to a person or public body for the production of documentary material and the inspection and copying of the material when there is reason to believe the person or public body is in possession, custody or control of an original copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription or other tangible document or recording and the civil rights division determines the material to be relevant to the subject matter of an investigation. A civil investigative demand shall:

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(1) state generally the subject matter of the investigation;

(2) describe with reasonable certainty the classes of documentary material to be produced;

(3) provide a date by which the documentary material is to be produced, which shall be no less than ten days after the date the demand is served;

(4) identify the members of the attorney general's staff to whom the documentary material is to be made available for inspection and copying; and

(5) contain no requirement that would be unreasonable or improper if contained in a subpoena duces tecum issued by a court of this state.

D. SJC→~~Notwithstanding any confidentiality provision established by law, a~~←SJC SJC→A←SJC person or public body that is issued a civil investigative demand pursuant to Subsection C of this section shall comply with that demand SJC→**regardless of any confidentiality provision established by state or local law**←SJC .

E. The attorney general may petition the SJC→**district**←SJC court for enforcement of a civil investigative demand, and, in appropriate cases, the court shall order the production of the documentary material required in the demand. Upon petition and for good cause shown, the court may set aside or modify a civil investigative demand or

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extend the production date.

F. A civil investigative demand and any documentary material produced in response to a civil investigative demand shall not be made public or used for purposes other than investigations and prosecutions by the civil rights division, except as otherwise provided in this section.

G. In lieu of beginning or continuing a civil action under this section, the civil rights division may accept a written assurance of the discontinuance of a civil rights violation from the person or public body engaged in the civil rights violation. A violation of an assurance entered into pursuant to this subsection shall constitute prima facie evidence of the alleged civil rights violation in any civil action commenced by the civil rights division.

H. The civil rights division may collect information upon request and make policy recommendations for public bodies to adopt measures to ensure the protection of civil rights. The civil rights division may publish and report information, statistics, findings or conclusions regarding its civil rights investigations if the release of this information is in the public interest or made upon request by the legislature or any appropriate legislative committee; provided that the civil rights division shall redact names and personal identifying information.

I. In the case of any conflict of interest between

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the attorney general's duties under this section and the attorney general's duty to represent an entity pursuant to Section 8-5-2 NMSA 1978, the entity shall be entitled to alternative representation by special counsel or as determined by the risk management division of the general services department.

J. As used in this section:

(1) "civil rights violation" means an act, practice or pattern of conduct by any person or public body that:

(a) subjects, or causes to be subjected, other persons to the deprivation of any rights, privileges or immunities secured by the constitution or laws of this state or the United States; or

(b) interferes, or attempts to interfere, by threats, intimidation or coercion with the exercise or enjoyment by other persons of any rights, privileges or immunities secured by the constitution of this state or the United States; HJC→and←HJC

HJC→(2) "person" means a person acting on behalf of, under color of or within the course and scope of the authority of a public body; and←HJC

HJC→(2)←HJC HJC→(3)←HJC "public body" means a state or local government, an advisory board, a commission, an agency or an entity created by the constitution of New

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Mexico or any branch of government that receives public funding, including political subdivisions, special tax districts, school districts and institutions of higher education, but not including an acequia or community ditch, a soil and water conservation district, a land grant-merced, a mutual domestic water consumers association or other association organized pursuant to the Sanitary Projects Act or a water users' association."

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