

LFC Requester:

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AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: 2/22/2025

Check all that apply:

Bill Number: SB 400

Original X

Correction

Amendment

Substitute

Sponsor: Sen. Antoinette Sedillo Lopez

Agency Name and 305 – New Mexico

Code Number: Department of Justice

Person Writing

Analysis: Walter Hart

Short Title: RELEASE OF CERTAIN
PEOPLE FROM RENT

Title: AGREEMENT

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator's request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis:

SECTION 1. Section 1 of Senate Bill 400 ("SB400" or the "Bill") seeks to amend NMSA 1978, Section 47-8-33 of the Owner-Resident Relations Act under NMSA 1978, Sections 47-8-1 to 52. The Bill makes stylistic changes to the language and adds to Section 47-8-33(J) the phrase "or of sexual assault" in describing a resident who may assert a defense to action for possession by the owner of an apartment based on the commission of a "substantial violation" pursuant to Section 47-8-3(I).

SECTION 2. SB 400 seeks to add a new section to the Owner-Resident Relations Act to create a right to terminate a rental agreement and limit obligations to the owner when the resident "is the victim of domestic violence or sexual assault" provided:

- "the resident [must] provide to the owner written notice that the resident is the victim of domestic violence or sexual assault that occurred in the dwelling unit or on the premises". *See* new subsection (A). [NOTE: For an act of sexual assault, an owner's action for possession may be based on a substantial violation that occurs off of the "premises" if the substantial violation occurs "within three hundred feet of the premises". *See* § 47-8-3(T)]
- the written notice must "request[] release from the rental agreement with a mutually agreed on release date within the next thirty days". *See* new subsection (A).
- the written notice must be "accompanied by "a copy of a protective order issued to the resident who is a victim of domestic violence or sexual abuse" or "a letter or form from a provider of services for victims of domestic violence that states that the resident is a victim of domestic violence or sexual assault in the dwelling unit or on the premises". *See* new subsection (A)(1).
- "the actions, events or circumstances that resulted in the resident being a victim of domestic violence or sexual assault occurred within the thirty-day period immediately preceding the written notice of termination unless the thirty-day limitation is waived by the owner". *See* new subsection (B).

Additionally, the victim resident must do the following, but the consequence of the resident's failure to do so is not stated:

- the resident must pay the owner all amounts owed for periods prior to termination “on or before the date the resident vacates the dwelling unit.” *See* new subsection (C).

Under new subsection (A), a victim “resident’s rights and obligations pursuant to the rental agreement are terminated” and “avoid[s] liability for future rent and shall not incur early termination penalties or fees”. But different provisions apply under new subsection (C), which applies to rental agreements for which the victim resident is *solely* or *jointly* liability – but apparently not to rental agreements for which the resident is *severally* or *jointly and severally* liable.

Under new subsection (C) (under a rental agreement for which the victim resident is *solely* or *jointly* liable), if the above conditions are met, the obligations that a victim resident need not fulfill include:

- Any obligation to complete the contractual term of the rental agreement, but it is unclear if the obligation to pay rent ends on the date of the notice or on the mutually agreed release date. *Compare* new subsection (A) with new subsection (C).
- Any obligation to pay early termination penalties or fees. *See* new subsection (C).
- Any obligation to permit a security deposit to be withheld due to early termination of the rental agreement. *See* new subsection (C).

New subsection (D) contains provisions that relate to an owner who “installs a new lock at the resident’s request,” and permits the owner to retain a copy of the key to the new lock, and to refuse to provide the new key to the person alleged to have committed domestic violence or sexual assault (as evidenced by an order of protection or a letter).

New subsection (E) prohibits the owner from allowing the person alleged to have committed domestic violence or sexual assault (as evidenced by an order of protection or a letter) from providing access to the dwelling unit to reclaim property without a law enforcement officer escort.

New subsection (F) provides that a resident who terminates a rental agreement pursuant to the new section and who is “convicted of falsely filing an order of protection” is liable to the owner for treble damages.

New subsection (G) provides that anyone “alleged to have committed domestic violence or sexual assault in an order of protection or letter” who “provokes an early termination of a rental agreement” “is deemed to have interfered with the rental agreement” and “may be civilly liable for all economic losses incurred by an owner[.]”

New subsection (H) provides that a termination under the new subsection terminates the tenancy of all tenants under the rental agreement. New subsection (H) further provides that the other tenants (other than the alleged perpetrator and alleged victim) “may be released from financial obligations due” under the rental agreement and “may be allowed to enter into a new rental agreement with the owner.”

New subsection (I) provides that “An emergency order of protection or a protective order that is issued to a resident of a rental property automatically applies to the entire residential rental property in which the resident has a rental agreement.”

SECTION 3. SB 400 provides an effective date of July 1, 2025.

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

SECTION 1. The existing language of NMSA 1978, Section 47-8-33(J) provides the defense to a “victim of domestic violence,” may already cover a victim of “sexual abuse” and may be redundant. The term “domestic *violence*” is not a defined term in the Owner-Resident Relations Act and is not typically a defined term in other New Mexico statutes but is used generically without specific definition in many statutes.

However, the term “domestic abuse” is a defined term in the Family Violence Protection Act (NMSA 1978, Sections 40-13-1 to -13). *See* Section 40-13-2(D) (defining “domestic abuse” inclusively to mean “an incident of ... sexual assault[.]”) Further, the Family Violence Protection Act provides for the entry of orders of protection for victims of domestic abuse; *see also* Senate Bill 26 (which includes a proposed amendment to NMSA 1978, Section 40-13-2 to change the term “domestic abuse” to “abuse” while retaining the same definition for the new term “abuse” as is currently provided for the term “domestic abuse”). *See* Section 40-13-2(I) (defining “order of protection); Section 40-13-3(A) (“A victim of domestic abuse may petition the court under the Family Violence Protection Act for an order of protection.”). Thus, for purposes of Section 47-8-33(J), the term “domestic violence” probably includes “domestic abuse” as defined in the Family Violence Protection Act, which definition includes sexual assault.

SECTION 2. The proposed new language in the Owner-Resident Relations Act regarding a resident’s right to terminate a rental agreement presents and creates a multitude of issues.

The new language in Subsection A appears to provide a victim resident broad discretion to terminate a rental agreement which could impair the rights and obligations of an “innocent” owner and other “innocent” residents. Subsection A also indicates there must be a “mutually agreed” upon release date but does not say what happens if there is no mutual agreement as to a release date.

Under Subsection B, it is unclear whether a resident who suffered multiple instances of domestic violence or sexual assault but became a victim *for the first time* more than thirty (30) days prior, would have the right to terminate the rental agreement.

Under Subsection C it is unclear if it is intended that the victim resident’s failure to pay in full “the amount due from the resident” before vacating the residence will nullify a prior written notice of termination; also, it is not clear what if anything must be paid by a resident who is “severally” or “jointly and severally” liable under the rental agreement.

Subsection F provides that a resident “who is convicted of falsely filing an order of protection ... is liable to the owner for treble damages for premature termination” but does not identify the criminal statute pursuant to which the resident must have been convicted.

Subsection G does not explain or define the meaning of the term “provokes an early termination” in relation to a person who incurs potential liability to an owner and does not state the basis for judicial discretion to impose or not to impose such liability on “the person named” in an order of

protection or letter.

Subsection H provides discretion that other innocent residents “*may* be released from financial obligations due pursuant to the previously existing rental agreement” (emphasis added), which suggests that the other innocent residents “*may not*” be so released even though their tenancy has been terminated. In new subsection (I) the intended meanings of the terms “resident,” “automatically applies,” “entire residential rental property” are unclear.

Section 2 establishes a discretionary right on the part of a victim resident to terminate the entire rental agreement. Such a termination would affect not only the rights and obligations of the victim resident, but also the rights and obligations of the “innocent” owner, the perpetrator resident, and any other “innocent” residents under the rental agreement. Additionally, the rights and obligations of “innocent” owners, alleged perpetrator residents, and “innocent” residents can be impaired and burdened without any opportunity on their part to be heard or to obtain a prior judicial determination of the validity of the victim resident’s exercise of the right of termination. In this respect, it should be noted that (1) a temporary order of protection may be entered ex parte on a mere finding of probable cause to believe domestic abuse has occurred, NMSC 1978, Section 40-13-4(A)(1); and (2) an order of protection may be issued upon stipulation of the parties, *see* NMSC 1978, Section 40-13-5(A). Thus, whereas usually a termination of a rental agreement would require proof in a court by a preponderance of the evidence that a party to the rental agreement had violated the rental agreement, here the law authorizes non-judicial discretionary termination that may be supported only by the victim resident’s allegations of domestic violence (e.g., an ex parte affidavit) or of sexual assault (e.g., a provider’s letter or form accepting the resident’s allegations as true).

These considerations give rise to potential constitutional concerns. Article I, Section 10, Constitution of the United States, provides that “No State shall * * * pass any * * * Law impairing the Obligation of Contracts, * * *.” Furthermore, Art. II, Section 19, Constitution of New Mexico, states that “No * * * law impairing the obligation of contracts shall be enacted by the legislature.” To the extent that the new legislation would apply to existing contractual relationships, it could be argued that it violates these provisions. *Cf. Southwest Distributing Co. v. Olympia Brewing Co.*, 1977-NMSC-050. Also, because Section 2 authorizes a victim resident to terminate the rental agreement by means that do not provide prior opportunity for owners or other residents to assert their interests or to contest termination (i.e., by merely producing either a protective order from a hearing not attended by the owner or a letter from provider of services for victims), it may violate substantive or procedural due process requirements.

While Section 2 proposes language “No Penalty Termination of Rental Agreement” appears to relate to a victim resident’s discretionary authority to terminate a rental agreement, Subsection D appears to address circumstances that could only arise when a rental agreement is not terminated. It does not seem probable that an owner would ever even “install[] a new lock at the resident’s request” if the rental agreement with the resident has been terminated.

While Subsection D provides the owner discretion not to provide an alleged perpetrator resident a key to the new lock, the failure to do so would likely constitute material grounds for the alleged perpetrator resident to terminate or to obtain judicial termination of the rental agreement because, not having access to the dwelling, the principal purpose and consideration of the rental agreement would be defeated. *Cf. Davies v. Boyd*, 163-NMSC-164, ¶ 6. It is unlikely that not having a key to permit use of the dwelling as a residence would be considered by a court to be something that does not defeat the object and essential purpose of the contract and destroy the

essential consideration for the agreement. Nor does it seem likely that the “notwithstanding any provision in the rental agreement” language in Subsection D would avoid this conclusion.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Senate Bill 26 includes a proposed amendment to NMSA 1978, Section 40-13-2 to change the term “domestic abuse” to “abuse” while retaining the same definition for the new term “abuse” as is currently provided for the term “domestic abuse.”

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

N/A