

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 4

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

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; ENACTING THE NEW MEXICO CIVIL RIGHTS ACT; PERMITTING AN INDIVIDUAL TO BRING A CLAIM AGAINST A PUBLIC BODY OR PERSON ACTING ON BEHALF OF OR UNDER THE AUTHORITY OF A PUBLIC BODY FOR A VIOLATION OF THE INDIVIDUAL'S RIGHTS, PRIVILEGES OR IMMUNITIES ARISING PURSUANT TO THE BILL OF RIGHTS OF THE CONSTITUTION OF NEW MEXICO; PROHIBITING THE USE OF THE DEFENSE OF QUALIFIED IMMUNITY; Sf11→MANDATING←Sf11
Sf11→PERMITTING←Sf11 ATTORNEY FEES; LIMITING RECOVERY;

.219528.4AIC March 18, 2021 (10:52am)

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

PROVIDING A THREE-YEAR STATUTE OF LIMITATIONS.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be cited as the "New Mexico Civil Rights Act".

SECTION 2. [NEW MATERIAL] DEFINITION.--As used in the New Mexico Civil Rights Act, "public body" means a state or local government, an advisory board, a commission, an agency or an entity created by the constitution of New Mexico or any branch of government that receives public funding, including political subdivisions, special tax districts, school districts and institutions of higher education SJC→SHPAC→, but not including an acequia association, a land grant-merced, a mutual domestic water consumers and sanitation association district or a water users association←SHPAC←SJC Sf12→SJC→, but not including an acequia or community ditch, 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←SJC←Sf12 Sf12→, 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←Sf12

.

SECTION 3. [NEW MATERIAL] CLAIM FOR VIOLATION OF RIGHTS

underscoring material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

ESTABLISHED PURSUANT TO THE BILL OF RIGHTS OF THE CONSTITUTION OF NEW MEXICO.--

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

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

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

D. Individuals employed by a public body shall be prohibited from using the New Mexico Civil Rights Act to pursue

.219528.4AIC March 18, 2021 (10:52am)

a claim arising from the individual's employment by the public body.

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

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

~~Sf11→SECTION 5. [NEW MATERIAL] MANDATORY ATTORNEY FEES.--The court in any action brought under this section shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow costs of the action and reasonable attorney fees to be paid by the defendant.←Sf11~~

Sf11→SECTION 5. [NEW MATERIAL] ATTORNEY FEES.--In any action brought under the New Mexico Civil Rights Act, the court may, in its discretion, allow a prevailing plaintiff or plaintiffs reasonable attorney fees and costs to be paid by the defendant.←Sf11

SECTION 6. [NEW MATERIAL] LIMITATION ON RECOVERY.--

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

A. In any action for damages against a public body pursuant to the New Mexico Civil Rights Act, the liability SJC→per occurrence←SJC shall not exceed the sum of two million dollars (\$2,000,000) SJC→for each claim←SJC SJC→per claimant←SJC, inclusive of the claimant's costs of action and reasonable attorney fees. In jury cases, the jury shall not be given any instructions dealing with this limitation. Interest shall be allowed on judgments against a public body at a rate equal to two percentage points above the SJC→prime rate as published in the Wall Street Journal on the date of the←SJC SJC→bank prime loan rate published by the board of governors of the federal reserve system on the last business day of the month preceding←SJC entry of the judgment. Interest shall be computed daily from the date of the entry of the judgment until the date of payment.

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

C. On July 1, 2022 and on July 1 of each successive year, the maximum recovery limit shall be increased by the increase in the cost of living. The increase in the cost of living shall be measured by the percentage increase as of August of the immediately preceding year over the level as of August of the previous year of the consumer price index for all

.219528.4AIC March 18, 2021 (10:52am)

urban consumers, United States city average for all items, or its successor index, as published by the United States department of labor or its successor agency, with the amount of the increase rounded to the nearest multiple of ten thousand dollars (\$10,000); however, the maximum recovery limit shall not be adjusted downward as a result of a decrease in the cost of living. The risk management division of the general services department shall publish by May 1 of each year the adjusted maximum recovery limit that shall take effect the following July 1.

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

SECTION 8. [NEW MATERIAL] INDEMNIFICATION BY PUBLIC BODY.--A judgment awarded pursuant to the New Mexico Civil Rights Act against a person acting on behalf of, under color of or within the course and scope of the authority of the public body shall be paid by the public body. The public body shall also pay for all litigation costs for the public body and for any person acting on behalf of, under color of or within the course and scope of the authority of the public body, including

underscored material = new
[bracketed material] = delete
Amendments: new = bold, blue, highlight
delete = bold, red, highlight, strikethrough

attorney fees.

SECTION 9. [NEW MATERIAL] WAIVER OF SOVEREIGN IMMUNITY.--

The state shall not have sovereign immunity for itself or any public body within the state for claims brought pursuant to the New Mexico Civil Rights Act, and the public body or person acting on behalf of, under color of or within the course and scope of the authority of the public body provided pursuant to the New Mexico Civil Rights Act shall not assert sovereign immunity as a defense or bar to an action.

SECTION 10. [NEW MATERIAL] COMMON LAW JUDICIAL

Hf11→AND←Hf11 Hf11→,←Hf11 LEGISLATIVE Hf11→OR OTHER

ESTABLISHED←Hf11 IMMUNITY.--The prohibition on the use of the defense of qualified immunity pursuant to Section 4 of the New Mexico Civil Rights Act and the waiver of sovereign immunity pursuant to Section 9 of that act shall not abrogate

Hf11→common law judicial, legislative or other established

immunity←Hf11 Hf11→judicial immunity, legislative immunity or

any other constitutional, statutory or common law immunity←Hf11

.

SECTION 11. [NEW MATERIAL] RECORDS OF CLAIMS.--Each

public body shall maintain a record of all final judgments and settlements paid by the public body for claims made pursuant to the New Mexico Civil Rights Act and attach a copy of the complaint to each record. All judgments, settlements and complaints are subject to disclosure pursuant to the Inspection

.219528.4AIC March 18, 2021 (10:52am)

of Public Records Act.

Sf11→SJC→SECTION 12. ~~EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2021.~~←SJC←Sf11

Sf11→SECTION 12. [NEW MATERIAL] PROSPECTIVE APPLICATION.--Claims arising solely from acts or omissions that occurred prior to July 1, 2021 may not be brought pursuant to the New Mexico Civil Rights Act.

SECTION 13. [NEW MATERIAL] NOTICE OF CLAIMS.--

A. Every person who claims damages from an act or omission of a certified law enforcement officer under the New Mexico Civil Rights Act shall cause to be presented to the certified law enforcement officer's agency or department, within one year after an occurrence giving rise to a claim under the New Mexico Civil Rights Act, a written notice stating the time, place and circumstances of the loss or injury.

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

C. When a claim for which immunity has been waived

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

under the New Mexico Civil Rights Act is one for wrongful death, the required notice may be presented by, or on behalf of, the personal representative of the deceased person or any person claiming benefits of the proceeds of a wrongful death action, or the consular officer of a foreign country of which the deceased was a citizen, within one year and six months after the date of the occurrence of the injury that resulted in the death; but if the person for whose death the claim is made has presented a notice that would have been sufficient had the person lived, an action for wrongful death may be brought without any additional notice.

SECTION 14. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2021.←Sf11

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←