

HOUSE BILL 62

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

INTRODUCED BY

Christine Chandler

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 INVESTIGATIVE DEMANDS; ESTABLISHING A UNIFORM INVESTIGATIVE DEMAND PROCEDURE; MAKING TECHNICAL AND CONFORMING CHANGES; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

SECTION 1. A new section of Chapter 8, Article 5 NMSA 1978 is enacted to read:

.229219.1SAAIC February 19, 2025 (8:40pm)

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"[NEW MATERIAL] CIVIL INVESTIGATIVE DEMAND.--

A. When there is reason to believe that a person may be in possession, custody or control of any document or other tangible object relevant to the subject matter of a civil investigation by the state department of justice, the attorney general may, before initiating a civil proceeding,

HGEIC→~~execute~~←HGEIC HGEIC→**apply to the district court of Santa Fe county for approval to issue a civil investigative demand.**

The district court shall approve the issuance of a civil investigative demand if it finds that there is a basis for the civil investigation and that there is reason to believe the person has information, documents or objects relevant to the investigation. Once approved, the attorney general may demand←HGEIC in writing and cause to be served on the person a

civil investigative demand that requires the person to answer written interrogatories under oath or to produce the document or object for inspection and copying. HGEIC→**Court approval to issue a civil investigative demand extends to all demands to the person within the scope of the same investigation.**←HGEIC

B. The civil investigative demand of the attorney general HGEIC→**and all court records, including dockets, applications, petitions, motions and other papers filed pursuant to this section,**←HGEIC shall not be a matter of public record and shall not be published by the attorney general except by order of the court.

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C. Each civil investigative demand shall:

- (1) state the general subject matter of the investigation;
- (2) describe the classes of documentary material to be produced with reasonable certainty;
- (3) prescribe the date on which material is to be produced, which in no case shall be less than HGEIC→ten←HGEIC HGEIC→fifteen←HGEIC days after the date of service; and
- (4) identify the member of the attorney general's staff to whom the documentary material is to be produced.

D. No civil investigative demand shall:

- (1) contain a requirement that would be unreasonable or improper if contained in a subpoena duces tecum issued by a court of this state;
- (2) require the disclosure of HGEIC→testimony←
or documentary←HGEIC material that would be privileged or that for any other reason would not be required by a subpoena duces tecum issued by a court of this state; or
- (3) require the removal of any documentary material from the custody of the person upon whom the demand is served except in accordance with the provisions of Subsection F of this section.

E. Service of the civil investigatory demand may be

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made by:

(1) delivering a duly executed copy to the person to be served, or if the person is not a natural person, to the statutory agent for the person or to any officer of the person;

(2) delivering a duly executed copy to the principal place of business in this state of the person to be served;

(3) mailing by registered or certified mail a duly executed copy addressed to the person to be served at the person's principal place of business in this state, or, if the person has no place of business in this state, to the person's principal office or place of business; or

(4) otherwise serving a duly executed copy in the manner required for service of process in this state.

F. Documentary material demanded pursuant to the provisions of this section shall be produced for inspection and copying during normal business hours at the principal office or place of business of the person served or may be inspected and copied at other times and places as may be agreed upon by the person served and the attorney general.

G. No documentary material or answers to interrogatories produced pursuant to a civil investigatory demand or copies of documentary material or answers shall be produced for inspection or copying by anyone other than an

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authorized employee or agent of the attorney general unless ordered by a court, for good cause shown, or upon agreement between the person served and the attorney general, nor shall the contents of the documentary material or answers be disclosed to anyone other than an authorized employee or agent of the attorney general, authorized employees of any state or federal law enforcement agency or in a court in an action relating to a violation of state law.

H. At any time before the return date of the civil investigatory demand, a petition to set aside the demand, modify the demand or extend the return date may be filed in the district court of Santa Fe county, and the court on a showing of good cause may set aside the demand, modify the demand or extend the return date of the demand.

I. After service of the civil investigative demand on a person, if a person neglects or refuses to comply with the demand, the attorney general may invoke the aid of the court in the enforcement of the demand. In appropriate cases, the court shall issue its order requiring the person to appear and produce the documentary material required in the demand and may, on failure of the person to comply with the order, punish the person for contempt.

J. This section shall not be applicable to criminal prosecutions."

SECTION 2. Section 6-4-22 NMSA 1978 (being Laws 2003,

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Chapter 114, Section 9, as amended) is amended to read:

"6-4-22. PENALTIES AND OTHER REMEDIES.--

A. It is unlawful for a person to:

(1) affix a tax stamp or otherwise pay the tax due on a package or other container of cigarettes of a tobacco product manufacturer or a brand family that is not included in the directory; or

(2) sell, offer for sale or possess for any purpose other than personal use cigarettes of a tobacco product manufacturer or a brand family that is not included in the directory.

B. The secretary may revoke or suspend the registration or license of a person licensed or registered pursuant to Section 7-12-9.1 or 7-12A-7 NMSA 1978 that violates Subsection A of this section.

C. Each stamp affixed, payment of tobacco tax, offer to sell, possession for any purpose other than personal use or sale of cigarettes in violation of Subsection A of this section constitutes a separate violation. For each violation, the secretary may impose a civil penalty in an amount not to exceed the greater of five thousand dollars (\$5,000) or five hundred percent of the retail value of the cigarettes sold, offered for sale or possessed for any purpose other than personal use.

D. Cigarettes that have been sold, offered for sale

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or possessed for any purpose other than personal use in this state in violation of Subsection A of this section are contraband, are subject to seizure and forfeiture and shall be destroyed.

E. It is unlawful for a person to sell, distribute, acquire, hold, own, possess, transport, import or cause to be imported cigarettes that the person knows or should know are intended for distribution or sale in violation of Subsection A of this section. A person who violates this subsection is guilty of a misdemeanor and shall be sentenced in accordance with Section 31-19-1 NMSA 1978.

F. A tobacco product manufacturer, stamping agent or importer of cigarettes, or any officer, employee or agent of any such entity, who knowingly makes any materially false statement in any record required by the Tobacco Escrow Fund Act or Section 6-4-13 NMSA 1978 to be filed with the attorney general is guilty of a fourth degree felony and upon conviction shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

G. The attorney general or the department may seek an injunction to compel compliance with or to restrain a threatened or actual violation of Subsection A of this section. In any action brought pursuant to this subsection, the state shall be entitled to recover the costs of investigation, costs of the action and reasonable attorney fees, if the state

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prevails.

~~[H. The attorney general may issue a civil investigative demand based on reasonable belief that any person may be in possession, custody or control of an original or copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription or other document or recording relevant to the subject matter of an investigation of a probable violation of the Tobacco Escrow Fund Act. The attorney general may, prior to the institution of a civil proceeding, execute in writing and cause to be served upon the person a civil investigative demand requiring the person to produce documentary material and permit the inspection and copying of the material.~~

~~].~~ H. For the purposes of this section, fewer than one thousand cigarettes shall be presumed to be for personal use."

SECTION 3. Section 6-27-9 NMSA 1978 (being Laws 2015, Chapter 69, Section 9) is amended to read:

"6-27-9. INVESTIGATION OF AFFORDABLE HOUSING ACT VIOLATIONS--PENALTIES--REMEDIES.--

A. The attorney general shall investigate an alleged violation of the Affordable Housing Act reported by the authority. ~~[If the attorney general has reasonable belief that a person is in possession, custody or control of an original or copy of a document or recording, including a record, report,~~

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~~memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription or other tangible document or recording that the attorney general believes to be relevant to the subject matter of an investigation of a probable violation of the Affordable Housing Act, the attorney general may, prior to the institution of a civil proceeding, execute in writing and cause to be served upon the person a civil investigative demand requiring the person to produce for inspection or copying the document or recording.]~~

B. If the attorney general has reasonable belief that a person has violated a provision of the Affordable Housing Act and that instituting a proceeding against that person would be in the public interest, the attorney general may bring a civil action on behalf of the state alleging a violation of the Affordable Housing Act. The action may be brought in the district court of the county in which the person alleged to have violated that act resides or in which the person's principal place of business is located. The attorney general shall not be required to post bond when seeking a temporary or permanent injunction in the civil action.

C. The attorney general may, in addition to or as an alternative to pursuing a civil action, as provided in this section, pursue criminal charges against a person for an alleged violation of the Affordable Housing Act under the applicable provisions of the Criminal Code. Venue for any

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criminal action shall be in the judicial district where the violation occurred.

D. In a civil action brought under this section for an alleged violation of the Affordable Housing Act, if a court finds that a person willfully committed an act in violation of the Affordable Housing Act, the attorney general may seek to recover a civil penalty not exceeding the amount of five thousand dollars (\$5,000) per violation, in addition to any equitable relief imposed by the court.

E. As used in this section, "person" means an individual, including a municipal or county government employee or elected official, or a corporate entity, including any organization formed under state law to carry out business or other activities."

SECTION 4. Section 57-22-9.1 NMSA 1978 (being Laws 1999, Chapter 124, Section 16) is amended to read:

"57-22-9.1. [~~INVESTIGATIVE DEMAND~~] CIVIL PENALTY.--

~~[A. Whenever the attorney general has reason to believe that any person may be in possession, custody or control of information or documentary material, including an original or copy of any book, record, report, memorandum, paper, communication, tabulation, chart, photograph, mechanical transcription or other tangible document or recording, that the attorney general believes to be relevant to the subject matter of an investigation of a probable violation of the Charitable~~

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~~Solicitations Act, the attorney general may, prior to the institution of a civil proceeding, execute in writing and cause to be served upon the person a civil investigative demand. The demand shall require the person to answer interrogatories or to produce documentary material and permit the inspection and copying of the material. The demand of the attorney general shall not be a matter of public record and shall not be published by him except by order of the court.~~

~~B. Each demand shall:~~

- ~~(1) state the general subject matter of the investigation;~~
- ~~(2) describe with reasonable certainty the information or documentary material to be provided;~~
- ~~(3) identify the time period within which the information or documentary material is to be provided, which in no case shall be less than ten days after the date of service of the demand; and~~
- ~~(4) state the date on which any documentary material shall be available for inspection and copying.~~

~~C. No demand shall:~~

- ~~(1) contain any requirement that would be unreasonable or improper if contained in a subpoena duces tecum issued by a court of the state;~~
- ~~(2) require the disclosure of any documentary material that would be privileged or that for any other reason~~

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~~would not be required by a subpoena duces tecum by a court of the state; or~~

~~(3) require the removal of any documentary material from the custody of the person upon which the demand is served except in accordance with the provisions of Subsection E of this section.~~

~~D. Service of the demand may be made by:~~

~~(1) delivering a duly executed copy of the demand to the person to be served or, if the person is not a natural person, to the registered or statutory agent for the person to be served;~~

~~(2) delivering a duly executed copy of the demand to the principal place of business in New Mexico of the person to be served; or~~

~~(3) mailing by registered mail or certified mail a duly executed copy of the demand addressed to the person to be served at his principal place of business in the state or, if the person has no place of business in the state, to his principal place of business.~~

~~E. Documentary material demanded pursuant to Subsection A of this section shall be produced for inspection and copying during normal business hours at the principal place of business of the person served or may be inspected and copied at such other times and places as may be agreed upon by the person served and the attorney general.~~

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~~F. Documentary material and its contents produced pursuant to a demand or answers to interrogatories shall not be produced for inspection or copying by anyone other than an authorized employee of the attorney general. The district court in the county in which the person resides or has his principal place of business or is about to perform or is performing the practice that is alleged to be unlawful under the Charitable Solicitations Act may order documentary material, its contents or answers to interrogatories to be produced for inspection or copying by someone other than an authorized employee of the attorney general.~~

~~G. At any time before the return date of the demand, a petition to set aside the demand, modify the demand or extend the return date on the demand may be filed in the district court in the county in which the person resides or has his principal place of business or is about to perform or is performing the practice that is alleged to be unlawful under the Charitable Solicitations Act, and the court upon showing of good cause may set aside the demand, modify it or extend the return date on the demand.~~

~~H. If after service of the demand the person neglects or refuses to comply with the demand, the attorney general may invoke the aid of the court in the enforcement of the demand.~~

~~I. This section shall not be applicable to criminal~~

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prosecutions.

↕] In an action brought pursuant to the Charitable Solicitations Act, if the court finds that a person has violated a provision of that act or rules promulgated pursuant to that act, the attorney general may recover, on behalf of the state, a maximum civil penalty of five thousand dollars (\$5,000) per violation."

SECTION 5. REPEAL.--Sections 47-6-25.1, 57-1-5, 57-12-12, 57-13-9 and 57-15-6 NMSA 1978 (being Laws 1981, Chapter 148, Section 7, Laws 1979, Chapter 374, Section 6, Laws 1967, Chapter 268, Section 10, Laws 1973, Chapter 377, Section 9 and Laws 1967, Chapter 270, Section 2, as amended) are repealed.

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