

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 4

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

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; MANDATING ATTORNEY FEES; LIMITING RECOVERY; 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

1 government, an advisory board, a commission, an agency or an
2 entity created by the constitution of New Mexico or any branch
3 of government that receives public funding, including political
4 subdivisions, special tax districts, school districts and
5 institutions of higher education.

6 SECTION 3. [NEW MATERIAL] CLAIM FOR VIOLATION OF RIGHTS
7 ESTABLISHED PURSUANT TO THE BILL OF RIGHTS OF THE CONSTITUTION
8 OF NEW MEXICO.--

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

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

24 C. Claims brought pursuant to the New Mexico Civil
25 Rights Act shall be brought exclusively against a public body.

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1 Any public body named in an action filed pursuant to the New
2 Mexico Civil Rights Act shall be held liable for conduct of
3 individuals acting on behalf of, under color of or within the
4 course and scope of the authority of the public body.

5 D. Individuals employed by a public body shall be
6 prohibited from using the New Mexico Civil Rights Act to pursue
7 a claim arising from the individual's employment by the public
8 body.

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

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

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

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

A. In any action for damages against a public body pursuant to the New Mexico Civil Rights Act, the liability shall not exceed the sum of two million dollars (\$2,000,000) for each claim, 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 prime rate as published in the Wall Street Journal on the date of the 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 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

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1 the increase rounded to the nearest multiple of ten thousand
2 dollars (\$10,000); however, the maximum recovery limit shall
3 not be adjusted downward as a result of a decrease in the cost
4 of living. The risk management division of the general
5 services department shall publish by May 1 of each year the
6 adjusted maximum recovery limit that shall take effect the
7 following July 1.

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

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

24 SECTION 9. [NEW MATERIAL] WAIVER OF SOVEREIGN IMMUNITY.--
25 The state shall not have sovereign immunity for itself or any

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

7 SECTION 10. [NEW MATERIAL] COMMON LAW JUDICIAL AND
8 LEGISLATIVE IMMUNITY.--The prohibition on the use of the
9 defense of qualified immunity pursuant to Section 4 of the New
10 Mexico Civil Rights Act and the waiver of sovereign immunity
11 pursuant to Section 9 of that act shall not abrogate common law
12 judicial, legislative or other established immunity.

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