

DRAFT BILL

xxTH LEGISLATURE - STATE OF NEW MEXICO _____, 2020

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO CIVIL RIGHTS; ENACTING THE NEW MEXICO CIVIL RIGHTS ACT; ALLOWING 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 FROM THE CONSTITUTION OF NEW MEXICO; PROHIBITING THE USE OF QUALIFIED IMMUNITY; MANDATING ATTORNEY FEES; 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 the state and local governments and all advisory boards, commissions, committees, agencies or entities created by the constitution of New Mexico or

any branch of government that receives public funding, including political subdivisions, special taxing districts, school districts and institutions of higher education.

SECTION 3. [NEW MATERIAL] CLAIM FOR VIOLATIONS OF STATE CONSTITUTIONAL RIGHTS.--

A. It is unlawful for any public body or person acting on behalf of, under color of, or within the course and scope of the authority of a public body to subject, or cause to be subjected, any resident of New Mexico or other person within the state to the deprivation of any rights, privileges or immunities secured by the constitution of New Mexico.

B. Any person who claims to have suffered a deprivation of any rights, privileges or immunities secured by 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 and injunctive relief in any district court of New Mexico.

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

SECTION 4. [NEW MATERIAL] PROHIBITING THE USE 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 constitution of New Mexico.

SECTION 5. [NEW MATERIAL] MANDATING ATTORNEY FEES.— The court shall award to any person who is successful in a court action to enforce the provisions of the New Mexico Civil Rights Act award reasonable litigation expenses and attorney fees for all work reasonably necessary to obtain the successful result. In determining litigation expenses and reasonable attorney fees, the court shall not exclude work on other claims that was inextricably intertwined with work performed to obtain the successful result under the New Mexico Civil Rights Act.

SECTION 6. [NEW MATERIAL] STATUTE OF LIMITATIONS.—Every claim permitted by the New Mexico Civil Rights Act shall be forever barred unless brought within years from the date of the occurrence resulting in deprivation of any rights, privileges, or immunities secured by the New Mexico Constitution.

SECTION 7. [NEW MATERIAL] INDEMNIFICATION BY PUBLIC BODY.--Any 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 a public body shall be paid by the public body.

SECTION 8. [NEW MATERIAL] WAIVER OF SOVEREIGN IMMUNITY.--The state of New Mexico, on behalf of itself and every public body within its jurisdiction, waives its

sovereign immunity for all claims brought pursuant to the New Mexico Civil Rights Act. In any action brought pursuant to the New Mexico Civil Rights Act, the 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 assert sovereign immunity as a defense or bar to such action.

SECTION 9. [NEW MATERIAL]—Each public body shall maintain a file of all final judgments and settlements by the public body in cases involving claims under the New Mexico Civil Rights Act and attach to each judgment and settlement a copy of the complaint filed in that case. All judgments, settlements and complaints are public records subject to disclosure under the New Mexico Inspection of Public Records Act.