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New Mexico Civil Rights Act now law

By Robert Nott
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One of the most contentious bills in this year's legislative session became law Thursday.

And many attorneys are hailing it as a breakthrough in protecting residents' civil rights.

The New Mexico Civil Rights Act allows New Mexicans to launch lawsuits against governmental entities in state court if they believe their civil rights have been violated, and it eliminates "qualified immunity" as a legal defense in such complaints.

Qualified immunity shields government workers from personal liability under federal law when workers violate people's constitutional rights.

Lawmakers backing the New Mexico Civil Rights Act said it would hold governmental agencies accountable in a way that was only possible by going through the federal courts.

Several New Mexico civil rights attorneys said they expect an uptick in such cases being filed in state courts, but not right away.

"It may take a while," said Albuquerque civil rights lawyer Maureen Sanders. "It will only apply to actions that take place after July 1, so if something happened to you two years ago, you can't bring it [to court] under this law."

She said the new law is significant because "in the past we have not had an effective way to sue for damages for a violation of our state constitutional rights because we didn't have a statute that says you can sue for damages."

Infringement of freedom of speech, religion or elections are among the civil rights violations that citizens could pursue under the new law.

Residents could also sue if they feel they were unduly or cruelly punished or unlawfully held against their will by governmental agencies.

Lysette Romero Córdova, who worked as an appellate attorney before becoming an assistant professor at the University of New Mexico School of Law, said the statute is important because "what good is a right without a remedy?"

She said only one other state — Colorado — has enacted a similar law.

“What we are doing is novel and historic,” she said. “It’s good we are doing something innovative.”

She said it’s too early to tell what the law’s ramifications will be.

“You can have well-intentioned legislation, but you just don’t know how it’s going to work out in individual cases,” she said. “I know there are problems that will arise — things you can’t predict at the drafting stage that you can’t see until a case is in court.”

But lawmakers can address those problems with amendments in future legislative sessions, she said.

House Bill 4 did not move through the legislative session with ease. Some Republican lawmakers and governmental officials said city and county governments would become uninsurable or face financial challenges in litigating such cases.

Grace Philips, general counsel for the New Mexico Association of Counties, has said the act could cost local governments millions of dollars.

On Thursday, she said the association remains “very concerned that there will be costs. We have a law now and we will wait and see and we will be delighted if we are wrong.”

Córdova said such concerns are legitimate. In a follow-up email, she wrote, “We can either be okay with leaving New Mexicans without a remedy when the government violates a state constitutional right, or we can give them a remedy and be okay with the cost of that.

“That’s a judgment the Legislature had to make, and it did. It decided the fiscal implications did not outweigh the benefits of greater government accountability and compensating victims of government misconduct.”

The law sets a cap of \$2 million in damages for any governmental entity to pay, and it does not allow plaintiffs to sue individual employees, such as a police officer or teacher. It also leaves it up to the courts to award attorney fees in cases where the plaintiff wins.

Several New Mexico lawyers said holding governmental entities accountable can make a difference in cutting down on civil rights violations. Governments could initiate training programs to try to prevent individual misconduct from occurring again.

Albuquerque civil rights lawyer Laura Schauer Ives said government agencies — not individual employees — will be the ones who end up paying the bill in cases they lose.

“There was really no sense in exposing individuals to the fear of individual liability when it’s the employer who has to pay,” she said.

Santa Fe attorney Richard Rosenstock said people tend to see such cases in terms of police misconduct and abuse, but HB 4 “is not a police bill,” he said. “This is a bill providing for lawsuits against government officials for violations of the New Mexico state constitution. And there’s a lot of New Mexico government officials who are not police officers.”

He said many civil rights cases in the federal courts have nothing to do with the police but deal with violations of the First Amendment or employment claims.

“An area where I can see claims coming is the CYFD [Children, Youth and Families Department],” he said. “There could be plenty of those, maybe ... like putting a kid in a foster home where they get raped or improperly taking a kid away from the family.”

Civil rights lawyer Ryan Villa of Albuquerque said one downside to not being able to file against an individual is you cannot easily track an employee’s repeat violations.

“Suing the person helps to identify repeat offenders,” he said. “If I sue Joe Smith and another lawyer sues Joe Smith and then another lawyer sues Joe Smith, there’s a record, and you can say there’s a pattern here.

“The state civil rights statute sets it up where you don’t get to name Joe Smith, so you are relying on the governmental entity to tell you that in the course of a lawsuit — if Joe Smith does three bad things. And we know a lot of entities don’t tell us on purpose or because their data systems are not set up so they can actually ascertain that.”

Still, the law will hold government workers’ accountable “in the form of money,” he said.

“Whether you get some change on the ground or get that employer to do things differently remains to be seen,” he said.