

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 43.10  
4 RCW to read as follows:

5 (1) The attorney general may issue written civil investigative  
6 demands for documents, oral testimony, and answers to written  
7 interrogatories when facts and circumstances would reasonably lead to  
8 possible violations of the United States Constitution, Washington  
9 state Constitution, RCW 10.93.160 and 43.10.315, and chapters 39.12,  
10 49.46, 49.48, 49.52, 49.60, and 70.48 RCW, as reviewed and approved  
11 by an assistant attorney general in the division conducting the  
12 investigation.

13 (2)(a) Whenever the attorney general believes that any person or  
14 entity:

15 (i) May be in possession, custody, or control of any original or  
16 copy of any book, record, report, memorandum, paper, communication,  
17 tabulation, map, chart, photograph, mechanical transcription, or  
18 other tangible document or recording, wherever situate, which he or  
19 she believes to be relevant to the subject matter of an investigation  
20 of a possible violation of state or federal law under subsection (1)  
21 of this section; or

22 (ii) May have knowledge of any information which the attorney  
23 general believes relevant to the subject matter of such an  
24 investigation, he or she may, prior to the institution of a civil  
25 proceeding thereon, execute in writing and cause to be served upon  
26 such a person, a civil investigative demand requiring such person or  
27 entity to produce such documentary material and permit inspection and  
28 copying, to answer in writing written interrogatories, to give oral  
29 testimony, or any combination of such demands pertaining to such  
30 documentary material or information.

31 (b) A civil investigative demand must comply with the following  
32 criteria: (i) The investigation must be within the authority of the

1 office of the attorney general; (ii) the demand must not be too  
2 indefinite; and (iii) any information sought must be reasonably  
3 relevant to the investigation.

4 (c) A civil investigative demand may not be issued under this  
5 section in an investigation of any federal government agency or its  
6 officers or employees for conduct undertaken in the course of their  
7 official duties.

8 (d) This section is not applicable to criminal investigations or  
9 prosecutions. The criminal justice division of the office of the  
10 attorney general is prohibited from issuing civil investigative  
11 demands under this section.

12 (3) Each such demand shall:

13 (a) State the statute and section or sections thereof, the  
14 alleged violation of which is under investigation, and the general  
15 subject matter of the investigation;

16 (b) If the demand is for the production of documentary material,  
17 describe the class or classes of documentary material to be produced  
18 thereunder with reasonable specificity so as fairly to indicate the  
19 material demanded;

20 (c) Prescribe a return date within which the documentary material  
21 is to be produced, the answers to written interrogatories are to be  
22 made, or a date, time, and place at which oral testimony is to be  
23 taken; and

24 (d) Identify the members of the attorney general's staff to whom  
25 such documentary material is to be made available for inspection and  
26 copying, to whom answers to written interrogatories are to be made,  
27 or who are to conduct the examination for oral testimony.

28 (4) No such demand shall:

29 (a) Contain any requirement which would be unreasonable or  
30 improper if contained in a subpoena duces tecum, a request for  
31 answers to written interrogatories, or a request for deposition upon  
32 oral examination issued by a court of this state; or

33 (b) Require the disclosure of any documentary material which  
34 would be privileged, or which for any other reason would not be  
35 required by a subpoena duces tecum issued by a court of this state.

36 (5) Service of any such demand may be made by:

37 (a) Delivering a duly executed copy thereof to the person to be  
38 served, or, if such person is not a natural person, to any officer or  
39 managing agent of the entity to be served; or

1 (b) Delivering a duly executed copy thereof to the principal  
2 place of business in this state of the person or entity to be served;  
3 or

4 (c) Mailing by registered or certified mail a duly executed copy  
5 thereof addressed to the person or entity to be served at the  
6 principal place of business in this state, or, if said person or  
7 entity has no place of business in this state, to his, her, or its  
8 principal office or place of business.

9 (6) (a) Documentary material demanded pursuant to the provisions  
10 of this section shall be produced for inspection and copying during  
11 normal business hours at the principal office or place of business of  
12 the person or entity served, or at such other times and places as may  
13 be agreed upon by the person or entity served and the attorney  
14 general.

15 (b) Written interrogatories in a demand served under this section  
16 shall be answered in the same manner as provided in the civil rules  
17 for superior court.

18 (c) The oral testimony of any person or entity obtained pursuant  
19 to a demand served under this section shall be taken in the same  
20 manner as provided in the civil rules for superior court for the  
21 taking of depositions. In the course of the deposition, the assistant  
22 attorney general conducting the examination may exclude from the  
23 place where the examination is held all persons other than the person  
24 being examined, the person's counsel, and the officer before whom the  
25 testimony is to be taken.

26 (d) Any person or entity compelled to appear pursuant to a demand  
27 for oral testimony under this section may be accompanied by counsel.

28 (e) The oral testimony of any person or entity obtained pursuant  
29 to a demand served under this section shall be taken in the county  
30 within which the person or entity resides, is found, or transacts  
31 business, or in such other place as may be agreed upon between the  
32 person or entity served and the attorney general.

33 (7) If, after prior court approval, a civil investigative demand  
34 specifically prohibits disclosure of the existence or content of the  
35 demand, unless otherwise ordered by a superior court for good cause  
36 shown, it shall be a misdemeanor for any person or entity if not a  
37 bank, trust company, mutual savings bank, credit union, or savings  
38 and loan association organized under the laws of the United States or  
39 of any one of the United States to disclose to any other person or  
40 entity the existence or content of the demand, except for disclosure

1 to counsel for the recipient of the demand or unless otherwise  
2 required by law.

3 (8) (a) No documentary material, answers to written  
4 interrogatories, or transcripts of oral testimony produced pursuant  
5 to a demand, or copies thereof, shall, unless otherwise ordered by a  
6 superior court for good cause shown, be produced for inspection or  
7 copying by, nor shall the contents thereof be disclosed to other than  
8 an authorized employee of the attorney general, without the consent  
9 of the person or entity who produced such material, answered written  
10 interrogatories, or gave oral testimony, except as otherwise provided  
11 in this section.

12 (b) (i) Under such reasonable terms and conditions as the attorney  
13 general shall prescribe, the copies of such documentary material,  
14 answers to written interrogatories, or transcripts of oral testimony  
15 shall be available for inspection and copying by the person or entity  
16 who produced such material, answered written interrogatories, or gave  
17 oral testimony, or any duly authorized representative of such person  
18 or entity.

19 (ii) (A) Except as provided in (b) (ii) (B) of this subsection, and  
20 consistent with RCW 43.17.425, the attorney general may provide  
21 copies of such documentary material, answers to written  
22 interrogatories, or transcripts of oral testimony to an official of  
23 this state, the federal government, or other state, who is charged  
24 with the enforcement of federal or state laws, if before the  
25 disclosure the receiving official agrees in writing that the  
26 information may not be disclosed to anyone other than that official  
27 or the official's authorized employees. The material provided under  
28 this subsection (8) (b) (ii) is subject to the confidentiality  
29 restrictions set forth in this section and may not be introduced as  
30 evidence in a criminal investigation or prosecution.

31 (B) The attorney general may not provide copies of documentary  
32 material, answers to written interrogatories, or transcripts of oral  
33 testimony to any state, local, or federal law enforcement agency, or  
34 to any person or entity for purposes of any criminal law enforcement  
35 investigation.

36 (c) Consistent with RCW 43.17.425, the attorney general or any  
37 assistant attorney general may use such copies of documentary  
38 material, answers to written interrogatories, or transcripts of oral  
39 testimony as he or she determines necessary in the enforcement of  
40 federal or state law, including presentation before any court.

1 However, any such material, answers to written interrogatories, or  
2 transcripts of oral testimony which contain trade secrets shall not  
3 be presented except with the approval of the court in which action is  
4 pending after adequate notice to the person or entity furnishing such  
5 material, answers to written interrogatories, or oral testimony.

6 (9) At any time before the return date specified in the demand,  
7 or within 30 days after the demand has been served, whichever period  
8 is shorter, a petition to extend the return date for, or to modify or  
9 set aside a demand issued pursuant to subsection (1) of this section,  
10 stating good cause, may be filed in the superior court for Thurston  
11 county, or in such other county where the parties reside. A petition,  
12 by the person or entity on whom the demand is served, stating good  
13 cause, to require the attorney general or any person to perform any  
14 duty imposed by the provisions of this section, and all other  
15 petitions in connection with a demand, may be filed in the superior  
16 court for Thurston county, or in the county where the parties reside.  
17 The court shall have jurisdiction to impose such sanctions as are  
18 provided for in the civil rules for superior court with respect to  
19 discovery motions.

20 (10) Whenever any person or entity fails to comply with any civil  
21 investigative demand for documentary material, answers to written  
22 interrogatories, or oral testimony duly served upon him, her, or it  
23 under this section, or whenever satisfactory copying or reproduction  
24 of any such material cannot be done and such person or entity refuses  
25 to surrender such material, the attorney general may file, in the  
26 trial court of general jurisdiction of the county in which such  
27 person or entity resides, is found, or transacts business, and serve  
28 upon such person or entity a petition for an order of such court for  
29 the enforcement of this section, except that if such person or entity  
30 transacts business in more than one county such petition shall be  
31 filed in the county in which such person or entity maintains his,  
32 her, or its principal place of business, or in such other county as  
33 may be agreed upon by the parties to such petition. Whenever any  
34 petition is filed in the trial court of general jurisdiction of any  
35 county under this section, such court shall have jurisdiction to hear  
36 and determine the matter so presented and to enter such order or  
37 orders as may be required to carry into effect the provisions of this  
38 section, and may impose such sanctions as are provided for in the  
39 civil rules for superior court with respect to discovery motions.

1           (11) Within four years of the effective date of this section, the  
2 attorney general shall provide a report to the appropriate committees  
3 of the legislature detailing any use of civil investigative demand  
4 authority granted under this section. The report must include, but is  
5 not limited to:

6           (a) The number of civil investigative demands issued by year;

7           (b) The number of civil investigative demands set aside by the  
8 court by year;

9           (c) The number of civil investigative demands by year that  
10 resulted in an informal, presuit resolution of alleged violations of  
11 law; and

12           (d) The number of civil investigative demands by year that  
13 resulted in the attorney general filing an action in superior court  
14 to enforce alleged violations of law.

15           (12) This section does not supersede or displace the authority of  
16 the attorney general related to civil investigative demands under  
17 other statutes."

18           Correct the title.

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