
Civil Rights & Judiciary Committee

HB 2161

Brief Description: Concerning the general powers and duties of the attorney general's office.

Sponsors: Representatives Farivar, Berry, Ryu, Leavitt, Reed, Mena, Zahn, Street, Scott, Gregerson, Ormsby, Reeves, Thai, Macri, Fosse, Salahuddin, Pollet and Timmons; by request of Attorney General.

Brief Summary of Bill

- Authorizes the Attorney General to issue civil investigative demands for documents, oral testimony, and answers to interrogatories when investigating possible violations of the United State Constitution, the Washington Constitution, and other specified laws.
- Provides standards for required contents of a demand and how it must be served; the process for production of documents and information; the confidentiality of disclosed documents, testimony, and information; and court action for contesting, modifying, or enforcing a demand.

Hearing Date: 1/20/26

Staff: Edie Adams (786-7180).

Background:

The Attorney General has broad authority under state law to investigate and enforce violation of civil laws. Among other powers and duties, state law directs the Attorney General to appear for and represent the state before the Supreme Court or the Court of Appeals in all cases in which the state is interested. The Washington Supreme Court has interpreted this statutory provision as granting the Attorney General discretionary authority to act in any court on a matter of public concern, provided that there is a cognizable common law or statutory cause of action.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

The Attorney General has authority to issue civil investigative demands when investigating potential violations of certain statutes. A civil investigative demand allows the Attorney General to obtain discovery of material information relevant to an investigation prior to the commencement of a civil action. A civil investigative demand may be issued to require persons and entities to produce documents, permit inspection and copying of records, answer written interrogatories, and give oral testimony.

The Attorney General's authority to issue civil investigative demands currently applies when investigating potential violations of the Consumer Protection Act, the Medicaid Fraud False Claims Act, the Service Members' Civil Relief Act, and laws addressing rent stabilization, firearm industry controls, charitable corporations, performing rights societies, and criminal records information in hiring.

Summary of Bill:

The Attorney General is authorized to issue written civil investigative demands when investigating possible violations of:

- the United State Constitution;
- the Washington Constitution;
- the Washington Law Against Discrimination;
- the City and County Jails Act;
- laws addressing permissible use of force by peace officers, peace officer tactics and use of equipment, and law enforcement agency restrictions relating to federal immigration enforcement; and
- laws addressing wage requirements and labor standards, including prevailing wages, minimum wage, and overtime.

When the Attorney General believes that a person or entity may be in possession of tangible documents or have knowledge of any information relevant to the subject matter of an investigation, the Attorney General may issue a civil investigative demand, prior to institution of a civil suit, requiring the person or entity to produce the documentary material, permit inspection and copying, answer written interrogatories, or give oral testimony relating to the documentary material or information. Authority to issue a civil investigative demand does not apply to criminal prosecutions.

Contents.

A civil investigative demand must: indicate the general subject matter of the investigation and statutes governing the alleged violation; describe the documentary material to be produced with reasonable specificity; specify the date for compliance with the demand; and identify the members of the Attorney General's staff who will receive the documents and information or conduct the examination for oral testimony.

A civil investigative demand must not contain any requirement that would be unreasonable or

improper if contained in a discovery request or subpoena duces tecum; or require the disclosure of any documentary material that would be privileged or would not be required by a subpoena duces tecum.

Service.

Service of a civil investigative demand may be made by: delivery to the person or to an entity's officer or managing agent; delivery to the person or entity's principal place of business in this state; or mailing by registered or certified mail addressed to the person or entity at the person's or entity's principal office or place of business.

Production.

Documentary material must be produced for inspection and copying during normal business hours at the principal office or place of business of the person or entity served, or as otherwise agreed. Written interrogatories must be answered, and oral testimony taken, in the same manner as provided in the civil rules for superior court.

Disclosure.

Documentary material, answers to written interrogatories, or transcripts of oral testimony produced pursuant to a demand may not be disclosed to anyone other than an authorized employee of the Attorney General without consent of the person or entity subject to the demand, except:

- by court order for good cause shown;
- to the person or entity subject to the demand, or an authorized representative, subject to reasonable terms and conditions imposed by the Attorney General; or
- to an official of the state, federal government, or another state who is charged with the enforcement of federal or state laws, if the official agrees in writing that the information may not be disclosed to anyone other than that official or authorized employees.

Disclosed material may not be used in a criminal prosecution.

A person or entity may not disclose the existence or content of a demand that, pursuant to court approval, specifically prohibits such disclosure, except for disclosure to counsel for the recipient of the demand or unless otherwise required by law. A violation is a misdemeanor offense. This prohibition does not apply to specified financial institutions.

The Attorney General may use copies of disclosed documents and information in the enforcement of federal or state law, including presentation before any court. Documents and information that contain trade secrets may not be presented except with court approval and prior notice to the person or entity that produced the documents or information.

Court Proceedings.

A person or entity served with a civil investigative demand may file a petition to extend the time to respond; modify or set aside the demand; or require the Attorney General to comply with obligations relating to the demand. The petition and any other petition in connection with a demand may be filed in the superior court for Thurston County or in the county where the parties

reside.

If a person or entity fails to comply with a civil investigative demand, the Attorney General may file a petition for a court order to enforce the demand. The petition may be filed in the superior court of the county in which the person or entity resides, is found, or transacts business.

In court proceedings relating to civil investigative demands, the court has jurisdiction to impose sanctions as provided for in the civil rules for superior court with respect to discovery motions.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.