

HOUSE BILL REPORT

ESSB 5925

As Reported by House Committee On:
Civil Rights & Judiciary

Title: An act relating to the general powers and duties of the attorney general's office.

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

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Hansen, Lovick, Dhingra, Hasegawa, Nobles, Pedersen and Stanford; by request of Attorney General).

Brief History:

Committee Activity:

Civil Rights & Judiciary: 2/18/26, 2/24/26 [DPA].

Brief Summary of Engrossed Substitute Bill
(As Amended by Committee)

- Authorizes the Attorney General to issue civil investigative demands for documents, oral testimony, and answers to interrogatories when investigating possible violations of the United States 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.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: Do pass as amended. Signed by 7 members: Representatives Taylor, Chair; Farivar, Vice Chair; Entenman, Goodman, Peterson, Salahuddin and Thai.

Minority Report: Do not pass. Signed by 5 members: Representatives Walsh, Ranking

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.

Minority Member; Abell, Assistant Ranking Minority Member; Burnett, Jacobsen and Walen.

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.

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 Amended Bill:

The Attorney General is authorized to issue written civil investigative demands if an assistant attorney general of the division conducting the investigation reviews and approves the demand and facts and circumstances would reasonably lead to possible violations of:

- the United States Constitution;
- the Washington Constitution;
- the Washington Law Against Discrimination;
- the City and County Jails Act;
- laws addressing 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

documents or have knowledge of information relevant to 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 the Attorney General's Criminal Justice Division or to criminal investigations or 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 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 investigation or 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.

Any sharing and use of civil investigative demand materials must be consistent with Keep Washington Working Act state agency restrictions and requirements.

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 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.

Amended Bill Compared to Engrossed Substitute Bill:

The amended bill prohibits the Criminal Justice Division of the Attorney General's Office from issuing civil investigative demands under the act.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) The Attorney General has the power to issue civil investigative demands to investigate violations of some laws, including the Consumer Protection Act, the Medicaid

False Claims Act, and a statute related to performing rights organizations. This authority has grown up in a hodgepodge fashion with no real analysis of where this authority should or should not be granted. The bill gives the Attorney General the tools needed to investigate civil violations in important areas of public interest. A core function of the Attorney General's Office is enforcing the civil laws, but the Attorney General does not have the same tools to investigate possible violations of the law against discrimination or wage theft that it has in other contexts. As a result, these investigations can take much longer and be more costly. The bill does not give the Attorney General any new authority to enforce laws. It just allows the Attorney General to conduct more effective and efficient investigations.

(Opposed) This bill grants the Attorney General's Office new investigatory authority and power. It allows the Attorney General to investigate any person or entity, including separately elected constitutional officers, local elected officials, law enforcement, small businesses, and others. It allows secret prelitigation compelled testimony targeting religious organizations, advocacy groups, and families. It is a new tool allowing the Attorney General's Office to go on fishing expeditions because it provides carte blanche investigative authority and subpoena power before a lawsuit is filed and without court review or judicial safeguards for a warrant or probable cause. Washington does not need a new tool for political intimidation dressed up as civil rights enforcement.

Governments should be helping each other serve the public, not suing each other. The bill allows the Attorney General to bring a law enforcement agency to its knees. Demands for documents, information, and compelled testimony can be incredibly disrupting to a law enforcement profession that ranks fifty-first in the nation. This bill and others raise the question of the proper role of the Attorney General's Office. It cannot be both a law enforcement agency and a watchdog over law enforcement agencies.

Persons Testifying: (In support) Senator Drew Hansen, prime sponsor; and Chalia Stallings-Ala'ilima, Attorney General Office.

(Opposed) James McMahan, WA Assoc Sheriffs and Police Chiefs; Preston McCollam, Spokane Prosecuting Attorney; and Jeannie Magdua.

Persons Signed In To Testify But Not Testifying: Ryan Lufkin, WACOPS - Washington Council of Police and Sheriffs; Eric Lundberg; and Ron Bemis.