

2016 Regular Session

HOUSE BILL NO. 744

BY REPRESENTATIVES JACKSON AND MIKE JOHNSON

ATTORNEY GENERAL: Authorizes the attorney general to issue a civil investigative demand prior to the commencement of a civil proceeding for the production of documents relevant to an investigation

1 AN ACT

2 To enact R.S. 49:260 and 261, relative to civil discovery procedures conducted by the
3 attorney general; to provide for a civil investigative demand; to provide for an
4 investigative deposition; to provide for procedures for conducting investigative
5 demands and depositions; to provide definitions; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 49:260 and 261 are hereby enacted to read as follows:

8 §260. Civil investigative demand

9 A. When the attorney general has information, evidence, or reason to believe
10 that any person or entity may be in possession, custody, or control of any
11 documentary material, information, or physical evidence relevant to an investigation
12 for a possible violation of any law of this state, he or any of his assistants may issue
13 to the person or entity a civil investigative demand before the commencement of a
14 civil proceeding to require the production of the information, documentary material,
15 or physical evidence for inspection, copying, or reproduction, or the answering under
16 oath and in writing of interrogatories. Any civil investigative demand issued
17 pursuant to this Section shall state a general description of the subject matter being
18 investigated and a statement of the applicable provisions of law constituting the
19 alleged violation. A civil investigative demand for the production of documentary

1 material shall describe each class of documentary material to be produced with such
2 specificity as to permit such material to be fairly identified. A civil investigative
3 demand for answers to written interrogatories shall set forth with specificity the
4 written interrogatories to be answered. Each investigative demand shall set a return
5 date of no earlier than twenty days after service of the demand upon the person or his
6 representative or agent.

7 (1) A civil investigative demand shall not contain a requirement that would
8 be unreasonable if contained in a subpoena or subpoena duces tecum issued by a
9 court in a grand jury investigation or require the production of written answers to
10 interrogatories, or the production of documentary material that would be privileged
11 from disclosure.

12 (2) The production of documentary material in response to a civil
13 investigative demand served pursuant to this Section shall be made under a sworn
14 certificate that shall state that all of the documentary material required by the
15 demand and in the possession, custody, or control of the person to whom the demand
16 is directed has been produced and made available to the attorney general or his
17 assistant:

18 (a) If the demand is on a natural person, the person to whom the demand is
19 directed shall make the certification.

20 (b) If the demand is on a person other than a natural person, a person having
21 knowledge of the facts and circumstances relating to the production and authorized
22 to act on behalf of the person shall make the certification.

23 B. A civil investigative demand issued pursuant to this Section may be
24 served by the sheriff or a post-certified investigator employed by the attorney general
25 when the demand is issued to a resident or domestic business entity found in this
26 state. A civil investigative demand issued to a non-resident or a foreign business
27 entity may be served as provided by the Code of Civil Procedure.

1 C. Upon failure to comply with the civil investigative demand the attorney
2 general may apply to the district court having jurisdiction over the person to compel
3 compliance with the civil investigative demand.

4 D. Except as otherwise provided in this Section, no documentary material,
5 answers to interrogatories, or copies thereof, produced pursuant to this Section, or
6 information derived from the foregoing, or transcripts and information derived from
7 investigative depositions conducted under R.S. 49:261, shall be subject to disclosure,
8 discovery, subpoena, or other means of legal compulsion for their release, by any
9 person or entity except as determined by the attorney general and subject to any
10 conditions imposed by him for effective enforcement of the laws of this state.
11 Nothing in this Section shall be construed to prohibit or limit the attorney general
12 from sharing any documentary material, answers to interrogatories, or copies thereof,
13 or information derived from the foregoing, or transcripts and information derived
14 from investigative depositions conducted under R.S. 49:261 with the United States
15 government or with any other state government, or any federal or state agency, or
16 any person or entity that may be assisting in the investigation or prosecution of the
17 subject matter of the civil investigative demand.

18 E. The attorney general or any of his assistants may use documentary
19 material derived from information obtained pursuant to this Section, or copies of that
20 material, as the attorney general determines necessary for the enforcement of the
21 laws of this state, including presentation before a court.

22 F. The attorney general, upon the written request of the person or entity who
23 produced documentary material pursuant to a request authorized by this Section,
24 shall destroy or return to such person or entity any such material which has not been
25 submitted into the control of any court, grand jury, or agency through introduction
26 into the record of such case or proceeding if any of the following occur:

27 (1) Any case or proceeding before the court or grand jury arising out of such
28 investigation has been completed.

1 (2) Any proceeding before any state agency involving such material has been
2 completed.

3 (3) No case or proceeding in which such material may be used has been
4 commenced within a reasonable time after analysis of all documentary material and
5 other information assembled in the course of the investigation.

6 G. Any documentary material, answers to written interrogatories, or oral
7 testimony provided under any civil investigative demand or investigative deposition
8 shall be exempt from disclosure under the Louisiana Public Records Law, R.S. 44:1
9 et seq.

10 H. "Documentary material" as used in this Section includes but is not limited
11 to all electronically stored information, including writings, drawings, graphs, charts,
12 photographs, sound recordings, images, and other data or data compilations, that
13 would be subject to a request for production under Rule 34 of the Federal Rules of
14 Civil Procedure.

15 I. Any person who has received a civil investigative demand issued pursuant
16 to the provisions of this Section may file, in the state judicial district within which
17 such person resides, is found, or transacts business, a petition for an order of the
18 court to modify or set aside such demand. If no such jurisdiction exists, the person
19 may file the petition in the 19th Judicial District Court.

20 (1) Any petition under this Subsection shall be filed within twenty days after
21 the date of service of the civil investigative demand, or at any time before the return
22 date specified in the demand, whichever date is earlier.

23 (2) The petition shall specify each ground upon which the petitioner relies
24 in seeking relief pursuant to this Section, and may be based upon any failure of the
25 demand to comply with the provisions of this Section or upon any constitutional or
26 other legal right or privilege of such person.

27 (3) During the pendency of the petition in the court, the court may stay, as
28 it deems proper, the running of the time allowed for compliance with the demand,

1 in whole or in part, except that the person filing the petition shall comply with any
2 portions of the demand not sought to be modified or set aside.

3 §261. Investigative deposition

4 A. When the attorney general has information, evidence, or reason to believe
5 that a violation of the laws of this state has occurred, the attorney general or any of
6 his assistants may issue an investigative subpoena for deposition testimony to any
7 person or entity that may have information or knowledge relevant to the matter under
8 investigation, or for the purpose of revealing, identifying, or explaining documentary
9 material or other physical evidence sought. This investigative subpoena shall contain
10 a general description of the matter under investigation, and a notice informing the
11 prospective deponent of his right to counsel at the deposition with opportunity for
12 cross-examination. The deposition shall be conducted at the principal place of
13 business of the deponent, at his place of residence, at his domicile, or, if agreeable
14 to the deponent, at some other place convenient to the attorney general or the
15 deponent, and the lawful and designated attorney representative of the deponent.
16 The deposition shall be held at a date no earlier than seven days after the date on
17 which demand is received, unless the attorney general or an assistant attorney
18 general designated by the attorney general determines that exceptional circumstances
19 are present which warrant the commencement of such testimony within a lesser
20 period of time.

21 B. An investigative subpoena issued pursuant to this Section may be served
22 by the sheriff or a post-certified investigator employed by the attorney general when
23 the demand is issued to a resident or domestic business entity found in this state. An
24 investigative subpoena issued to a non-resident or a foreign business entity may be
25 served as provided for in the Code of Civil Procedure.

26 C. When the investigative subpoena is issued to a business entity, the entity
27 shall designate one or more officers, directors, or managing agents, and may set
28 forth, for each person designated, the matters on which he will testify. The persons

1 so designated shall testify as to matters known or reasonably available to the
2 organization.

3 D. Upon failure to comply with the investigative subpoena, the attorney
4 general may apply to the district court having jurisdiction over the person to compel
5 compliance with the investigative subpoena. Failure to comply with a court order
6 is punishable by contempt.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 744 Original

2016 Regular Session

Jackson

Abstract: Authorizes and provides procedures for the attorney general to institute a civil investigative demand and a investigative deposition.

Proposed law provides that when the attorney general has information, evidence, or reason to believe that any person or entity may be in possession, custody, or control of any documentary material, information, or physical evidence relevant to an investigation for a possible violation of any law of this state, he or any of his assistants may issue to the person or entity a civil investigative demand before the commencement of a civil proceeding to require the production of the information, documentary material, or physical evidence for inspection, copying, or reproduction, or the answering under oath and in writing of interrogatories.

Proposed law provides the procedures and requirements for a civil investigative demand.

Proposed law prohibits a civil investigative demand from containing a requirement that would be unreasonable if contained in a subpoena or subpoena duces tecum issued by a court in a grand jury investigation or require the production of written answers to interrogatories, or the production of documentary material that would be privileged from disclosure.

Proposed law provides that a civil investigative demand may be served by the sheriff or a post-certified investigator employed by the attorney general.

Proposed law provides that upon failure to comply with the civil investigative demand, the attorney general may apply to the district court having jurisdiction over the person to compel compliance with the civil investigative demand.

Proposed law prohibits the release of documentary material, answers to interrogatories, or copies thereof, produced pursuant to proposed law, but also provides that nothing in proposed law shall be construed to prohibit or limit the attorney general from sharing any documentary material, answers to interrogatories, or copies thereof, or information derived from the foregoing, or transcripts and information derived from investigative depositions with the U.S. government or with any other state government, or any federal or state agency, or any person or entity that may be assisting in the investigation or prosecution of the subject matter of the civil investigative demand.

Proposed law requires the attorney general, upon the written request of the person or entity who produced documentary material to destroy or return to such person or entity any such

material which has not been submitted into the control of any court, grand jury, or agency through introduction into the record of such case or proceeding with certain limiting factors.

Proposed law provides that any documentary material, answers to written interrogatories, or oral testimony provided under any civil investigative demand or investigative deposition shall be exempt from disclosure under the Louisiana Public Records Law (R.S. 44:1 et seq.).

Authorizes any person who has received a civil investigative demand issued pursuant to proposed law to petition for an order of the court to modify or set aside such demand.

Proposed law authorizes the attorney general to issue an investigative subpoena for deposition testimony to any person or entity that may have information or knowledge relevant to the matter under investigation, and provides the procedures for conducting such depositions.

Proposed law provides that upon failure to comply with the investigative subpoena, the attorney general may apply to the district court having jurisdiction over the person to compel compliance with the investigative subpoena, and that failure to comply with a court order is punishable by contempt.

(Adds R.S. 49:260 and 261)