

NEW MEXICO  
LEGISLATIVE  
**ETHICS**  
GUIDE

LEGISLATIVE COUNCIL SERVICE  
DECEMBER 2020

New Mexico Legislative Council Service  
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Santa Fe, New Mexico 87501  
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[www.nmlegis.gov](http://www.nmlegis.gov)  
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**S**everal sources of authority govern the conduct of legislators: the Constitution of New Mexico, statutes, the rules of the house and senate and advisory opinions from the various ethics committees. This guide captures the essence of the law, rule or opinion cited as it applies to legislators. Members are strongly urged to consult the specific law, rule or opinion.

All legislators should become familiar with the following acts, which appear in full in the Appendix section of this guide.

**Governmental Conduct Act**

(Chapter 10, Article 16 NMSA 1978)

**Lobbyist Regulation Act**

(Chapter 2, Article 11 NMSA 1978)

**Campaign Reporting Act**

(Sections 1-19-25 through 1-19-36  
NMSA 1978)

**Financial Disclosure Act**

(Sections 10-16A-1 through 10-16A-8  
NMSA 1978)

**Gift Act**

(Chapter 10, Article 16B NMSA  
1978)

**State Ethics Commission Act**

(Chapter 10, Article 16G NMSA  
1978)

Legislators who do business with the state should also pay particular attention to the **Procurement Code** (Sections 13-1-28 through 13-1-199 NMSA 1978), which applies to many state purchases.

The rules of the house and the senate govern the specific conduct of house and senate members. Each house adopts its own rules. Copies of the rules are included in the legislative handbook and are posted on the legislature's website ([www.nmlegis.gov](http://www.nmlegis.gov)). Advisory opinions are also posted on the website.

This guide divides the parameters of legislative conduct into two categories: what you must do (required conduct) and what you must not do (prohibited conduct). What you must do is generally related to campaign reporting and financial disclosure. What you must not do generally relates to the jobs you may not hold, the contracts into which you may not enter and the ways in which you must separate your legislative life from your business and your personal life.

You may contact any of the following agencies for further assistance.

The State Ethics Commission  
800 Bradbury Drive SE, Suite 215  
Albuquerque, NM 87106  
(505) 554-7706

The Attorney General's Office  
P.O. Drawer 1508  
Santa Fe, New Mexico 87504-1508  
(505) 490-4060

The Secretary of State's Office  
State Capitol Annex North  
325 Don Gaspar, Suite 300  
Santa Fe, New Mexico 87501  
(505) 827-3600

Legislative Council Service  
411 State Capitol  
Santa Fe, New Mexico 87501  
(505) 986-4600





## REQUIRED CONDUCT



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### *Campaign Fund Reporting*

In a non-election year or in a year in which a legislator is not a candidate, a legislator shall file a report of campaign expenditures and contributions, or a statement of no activity, on the second Monday in April and October. In an election year in which a legislator is a candidate, a legislator shall file no later than the second Monday in April, the second Monday in May, the second Monday in September, the second Monday in October, the Thursday before a primary or general election, 30 days after a primary election and January 7 after a general election. In addition, any contribution of more than \$1,000 received in the week before a primary or general election must generally be reported within 24 hours (Subsections A and B of Section 1-19-29 NMSA 1978).

### *Employment*

Members shall attempt to ensure that their private employment does not impair their impartiality (Senate Rule 26-1(B)(2), House Rule 26-1(B)(2)).



### ***Ethics Training***

Members shall attend a minimum of two hours of ethics continuing education and training biennially (Subsection E of Section 10-16-11 NMSA 1978, Senate Rule 26-2, House Rule 26-2).

Members shall sign a code of ethics (Senate Rule 26-2, House Rule 26-2).

### ***Financial Disclosure***

Each legislative candidate shall file a financial disclosure statement upon becoming a candidate. Members shall, during the month of January, file financial disclosure statements. The statements shall set out all sources of gross income greater than \$5,000, a general description of New Mexico real estate owned, New Mexico business interests of \$10,000 or more, memberships on for-profit boards, the name of each state agency to which was sold \$5,000 or more in goods or services in the previous year and each state agency before which they represented or assisted clients in the course of employment (Subsections A, B and D of Section 10-16A-3 NMSA 1978).



### ***Lobbyist Expenditures***

Lobbyists and lobbyists' employers shall report every expenditure, even if unrelated to lobbying, and political contributions made on behalf of members (Subsection A of Section 2-11-6 NMSA 1978). Although members face no requirement under this section, they should be aware of the requirement on lobbyists and lobbyists' employers.

### ***Public Service***

Members shall conduct themselves in a manner that justifies the confidence placed in them by the people and maintain the integrity of, and discharge ethically the high responsibilities of, public service (Subsection B of Section 10-16-3 NMSA 1978, Senate Rule 26-1(A), House Rule 26-1(A)).

### ***Public Trust***

Members shall treat their government positions as public trusts and use the powers and resources of their offices only to advance the public interest (Subsection A of Section 10-16-3 NMSA 1978).



### ***Voting - House***

Representatives shall vote on each question unless excused by a majority vote (House Rule 7-5).

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### ***Voting - Senate***

Senators shall vote on each question unless they have a direct personal or pecuniary interest in the question (Senate Rule 7-5).

## PROHIBITED CONDUCT



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### *Appearance Before a State Agency*

Members shall not appear for, assist or represent anyone before a state agency, unless without compensation or for the benefit of a constituent, except attorneys or other professionals engaged in their professions, and in those cases, members shall refrain from references to their legislative capacities and from communications on legislative stationery (Subsection B of Section 10-16-9 NMSA 1978, Senate Rule 26-1(C)(1), House Rule 26-1(C)(1), interpreted in Interim Legislative Ethics Committee, Advisory Opinion No. 19-02).

### *Business Cards*

Members may distribute legislative business cards in virtually any situation because business cards serve only to introduce the legislator, but members should not distribute legislative business cards when they are campaigning (Interim Legislative Ethics Committee, Advisory Opinion No. 97-1).



***Business with the State or a Municipality***

Members shall not be directly or indirectly interested in any contract with the state or a municipality authorized by any law passed during the legislators' terms and for one year thereafter (Article 4, Section 28 of the Constitution of New Mexico).

Members and their families shall not enter into any contract with a state agency unless the contract is awarded in accordance with the Procurement Code, except they shall not be eligible for sole source or small purchase contracts (Subsection A of Section 10-16-9 NMSA 1978, Senate Rule 26-1(D)(1), House Rule 26-1(D)(1)).

Members shall not represent another person in a sale to a state agency unless the transaction occurs pursuant to the Procurement Code (Senate Rule 26-1(C)(2), House Rule 26-1(C)(2)).

***Campaigns - Funds and Contributions***

Candidates shall not use campaign funds except for expenditures for their own campaigns; donations to another candidate covered by the Campaign Reporting Act,



which includes only state, county and judicial candidates (but see next paragraph), a political committee or a political party; donations to the state General Fund; donations to certain charitable, educational, religious or governmental organizations; or refunds to contributors, except that members may use campaign funds for expenditures that are reasonably related to performing the duties of the office, except personal and legislative session living expenses.

The Attorney General's Office has concluded that the restriction limiting a candidate to making donations only to other candidates covered by the Campaign Reporting Act may be vulnerable to legal challenge and that it is permissible to donate to federal candidates (Subsection A of Section 1-19-29.1 NMSA 1978, Attorney General Advisory Letters to Legislative Council Service, July 23, 2009 and June 24, 2010).

The Attorney General's Office, noting that "campaign expenditures necessarily arise from or relate to a campaign" and that "the purpose of a campaign is to convince voters to elect the candidate", suggested



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that the Secretary of State's Office reconsider its approval of expenditures by a political committee for advertisements urging the public to call their elected representatives on a matter pending before the legislature, suggesting that "the committee is using campaign contributions to lobby the legislature on an issue that is important to the governor and her administration" and that "the expenditures appear to be more related to the current agenda of the governor's office than to a reelection campaign" (Attorney General Letter to the Secretary of State dated March 29, 2011).

The Attorney General's Office has advised candidates to be cautious when distributing campaign items that have value, e.g., telephone calling cards or food, to ensure that the expenditures are not construed as illegal bribes to voters. "There should be no understanding that voters should vote in a certain manner or for a certain candidate in exchange for the gifts." (Attorney General Letter dated May 19, 2008)



The Secretary of State's Office concluded that it is a violation of the Campaign Reporting Act to spend campaign funds to treat a back injury aggravated by door-to-door campaigning (Secretary of State Letter dated October 25, 2012).

The Secretary of State's Office concluded that it is not a violation of the Campaign Reporting Act to spend campaign funds for meals during meetings with constituents during a legislative session, for professional football tickets to be auctioned at a fundraiser, for golf tournament expenses associated with a fundraiser and for campaign office furniture (Secretary of State Letter dated August 31, 2012).

The Secretary of State's Office concluded that it is not a violation of the Campaign Reporting Act to spend campaign funds to repair and maintain vehicles that are used for campaigning and legislative business (Secretary of State Letters dated September 12, 2008 and August 31, 2012).





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For the 2022 election cycle, a legislative candidate shall not solicit or accept from a person, including a political committee, campaign contributions totaling more than \$5,000 in a primary election cycle or \$5,000 in a general election cycle, as adjusted for inflation on January 1 following each general election (Subsections A and F of Section 1-19-34.7 NMSA 1978).

Members and candidates shall not solicit campaign contributions between January 1 and the adjournment of a regular session, nor from the time a proclamation has been issued calling a special session and the adjournment of that session (Subsection A of Section 1-19-34.1 NMSA 1978).

Lobbyists and lobbyists' employers shall not make campaign contributions to legislators or legislative candidates between January 1 and the adjournment of a regular session, nor from the time a proclamation is issued calling for a special session and the adjournment of that session (Subsections B and C of Section 2-11-8.1 NMSA 1978).



Members shall not solicit or receive contributions for any purpose on the floor or in the lobby of the senate or the house (Senate Rule 1-5, House Rule 1-5).

### ***Campaigns - Lobbyists***

Lobbyists shall not serve as campaign chairs, treasurers or fundraising chairs for candidates (Subsection A of Section 2-11-8.1 NMSA 1978).

### ***Civil Office***

Members shall not, during the term for which they were elected, be appointed to any civil office in the state, nor shall they within one year thereafter be appointed to any civil office created, or the emoluments of which were increased, during such term (Article 4, Section 28 of the Constitution of New Mexico).

### ***Confidential Information***

Members shall not use confidential information acquired by virtue of their offices for private gain (Section 10-16-6 NMSA 1978, Senate Rule 26-1(D)(3), House Rule 26-1(D)(3)).



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### ***Employment***

Members shall not accept employment if the members know that it is being afforded them with the intent to influence their conduct (Senate Rule 26-1(B)(5), House Rule 26-1(B)(5)).

### ***Kickbacks, Bribes, Money and Gifts***

Members shall not solicit or receive a kickback, bribe or rebate in exchange for referring business to a person who may be paid with public money (Section 30-41-1 NMSA 1978).

Members shall not vote or use their influence for or against any pending matter in consideration of money or any other thing of value, or solicit money or any other thing of value, for their votes or influence (Article 4, Section 39 of the Constitution of New Mexico).

Legislators shall not request or accept anything of value that is conditioned upon promised performance of an official act (Subsection D of Section 10-16-3 NMSA 1978, Section 30-24-2 NMSA 1978).

Members shall not accept anything of

value that improperly influences an official act (Senate Rule 26-1(B)(1), House Rule 26-1(B)(1)).

Members shall not receive compensation as a state officer or employee or compensation unauthorized by law for rendering services, advice or assistance as legislators (Section 2-1-3 NMSA 1978, Senate Rule 26-1(B)(3), House Rule 26-1(B)(3)).

Members shall neither request nor receive an honorarium of money, or any other thing of value in excess of \$100, for a speech or service that relates to the performance of public duties (Section 10-16-4.1 NMSA 1978).

Members, their spouses and their dependent children may not accept a gift worth more than \$250 from lobbyists, lobbyists' clients, persons doing business or seeking to do business with the legislature or persons who will be financially affected by the member's official duties in a way that is greater than the effect on the public generally or a





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substantial class of persons to which the donor belongs (Subsection A of Section 10-16B-3 NMSA 1978).

A lobbyist, lobbyist's client or government contractor shall not give gifts worth more than \$1,000 in a year to a member (Subsection B of Section 10-16B-3 NMSA 1978).

The Attorney General's Office concluded that, for the purposes of the Gift Act, the value of a ticket to a charitable or fundraising event given to a legislator is whatever the legislator would have had to pay to attend the event, not just the portion of the cost that is not attributable to the event's fundraising purpose (Attorney General Letter dated October 1, 2008).

Members shall not accept gifts, other than lawfully collected campaign contributions, from persons affected by legislation where it is known that the purpose of the donation is either to influence the member or to reward the member's actions (Senate Rule 26-1(B)(4), House Rule 26-1(B)(4)).



### ***Railroad Travel***

Members shall not use a pass for or receive transportation over any railroad upon terms not open to the public (Article 4, Section 37 of the Constitution of New Mexico).

### ***Resources of Public Office***

Members shall not grant to, or obtain a special privilege or exemption for, themselves or others if the privilege or exemption is not readily available to members of the general community or class to which the beneficiary belongs (Senate Rule 26-1(D)(2), House Rule 26-1(D)(2)).

Members shall not use the powers and resources of their offices to obtain personal benefits or pursue private interests (Subsection A of Section 10-16-3 NMSA 1978).

Members shall not use their offices for private gain (Senate Rule 26-1(A), House Rule 26-1(A)).

Members should not include campaign messages or graphics in the signature block



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or as part of an email sent from the nmlegis.gov domain (Interim Legislative Ethics Committee, Advisory Opinion No. 08-02).

Members are cautioned about including links to websites that may contain a mix of legislative and political content in the signature block of emails sent from the nmlegis.gov domain (Interim Legislative Ethics Committee, Advisory Opinion No. 08-02).

Members are cautioned about sponsoring capital outlay requests that benefit a family member and advised that the more direct the benefit to the legislator's family member, the less appropriate it is for the member to sponsor the request (Interim Legislative Ethics Committee, Advisory Opinion No. 08-01).

Members should not use the state seal except for "matters that relate to the conduct of official business of the state" (Interim Legislative Ethics Committee, Advisory Opinion No. 96-1).





Members shall not allow the use of their offices in the State Capitol for the filming of political advertisements or other campaign activities (Interim Legislative Ethics Committee, Advisory Opinion No. 19-01).

### ***Stationery***

Members should use official legislative stationery, which is stationery that contains the state seal, only for matters that relate to the conduct of legislative business (Interim Legislative Ethics Committee, Advisory Opinion Nos. 96-1 and 97-1).

Members should refrain from using official legislative stationery to write letters to state agencies on behalf of constituents who are immediate family members, except when the immediate family member is a part of a larger class of similarly situated constituents (Interim Legislative Ethics Committee, Advisory Opinion No. 97-2).

The Secretary of State's Office concluded that it is not a violation of the Governmental Conduct Act for a legislator



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to use legislative letterhead to invite community leaders of an area not yet represented by the legislator that will be in the district as a result of redistricting and may be represented by the legislator depending on the outcome of the election (Secretary of State Letter dated May 25, 2012).

## PROCEDURES

In addition to civil procedures, which may be initiated by the State Ethics Commission, or civil and criminal procedures, which may be initiated by the secretary of state, the attorney general or a district attorney, there are several other ways in which action against a member or candidate may be initiated.

### *Complaints*

Any legislator or member of the public may file a written, sworn complaint with the New Mexico Legislative Council alleging that a legislator has acted unethically (Subsection D of Section 2-15-9 NMSA 1978). The complaint will be referred to the Interim Legislative Ethics Committee.

Any person may file a written complaint with the State Ethics Commission or the secretary of state alleging that provisions of the Financial Disclosure Act, Campaign Reporting Act or Lobbyist Regulation Act have been violated (Subsection A of Section 10-16A-6 NMSA 1978, Subsection B of





Section 1-19-34.4 NMSA 1978, Section 1-19-34.8 NMSA 1978, Section 2-11-8.3 NMSA 1978, Subsection B of Section 2-11-8.2 NMSA 1978).

Any person may file a sworn complaint with the State Ethics Commission alleging violations of the Gift Act, the Governmental Conduct Act or the Procurement Code (Section 10-16B-5 NMSA 1978, Section 10-16-14 NMSA 1978, Section 10-16G-10 NMSA 1978, Section 13-1-196.1 NMSA 1978).

A public official, public employee, candidate, person subject to the Campaign Reporting Act, government contractor, lobbyist or lobbyist's employee may request an advisory opinion on matters relating to ethics from the State Ethics Commission (Section 10-16G-8 NMSA 1978).

Any senator may file a complaint with the Senate Ethics Committee alleging unethical conduct by a senator (Senate Rule 9-13-3).

Any member of the public and any representative may file a complaint with the House Rules and Order of Business Committee



alleging unethical conduct by a representative (House Rule 9-13-2).

Any person may report an incident of harassment by a legislator to the director of the Legislative Council Service or to the chief clerk of the appropriate legislative body (Anti-Harassment Policy, Sections 2-15-7 through 2-15-12 NMSA 1978, Senate Rules 9-13-1 through 9-13-6, House Rules 9-13-1 through 9-13-7, Legislative Council Policy No. 15).

### ***Advisory Opinions***

Any legislator may seek an advisory opinion from the Interim Legislative Ethics Committee or, during a session, the House Rules and Order of Business Committee or the Senate Ethics Committee (Subsection C of Section 2-15-9 NMSA 1978, Senate Rule 9-13-2, House Rule 9-13-1).

A public official, public employee, candidate, person subject to the Campaign Reporting Act, government contractor, lobbyist or lobbyist's employee may request an advisory opinion on matters relating to ethics from the State Ethics Commission (Section 10-16G-8 NMSA 1978).



***Expulsion***

Any member may move under Article 4, Section 11 of the Constitution of New Mexico for the expulsion of another member upon a vote of two-thirds of the chamber's membership.

# APPENDIX





## **Governmental Conduct Act**

### **Governmental Conduct Act**

#### **10-16-1. Short title.**

Chapter 10, Article 16 NMSA 1978 may be cited as the "Governmental Conduct Act".

#### **10-16-2. Definitions.**

As used in the Governmental Conduct Act:

A. "business" means a corporation, partnership, sole proprietorship, firm, organization or individual carrying on a business;

B. "confidential information" means information that by law or practice is not available to the public;

C. "contract" means an agreement or transaction having a value of more than one thousand dollars (\$1,000) with a state or local government agency for:

(1) the rendition of services, including professional services;

(2) the furnishing of any material, supplies or equipment;

(3) the construction, alteration or repair of any public building or public work;

(4) the acquisition, sale or lease of any land or building;

(5) a licensing arrangement;

(6) a loan or loan guarantee; or

(7) the purchase of financial securities or instruments;

D. "employment" means rendering of services for compensation in the form of salary as an employee;

E. "family" means an individual's spouse, parents, children or siblings, by consanguinity or affinity;

## **Governmental Conduct Act**

F. "financial interest" means an interest held by an individual or the individual's family that is:

(1) an ownership interest in business or property; or

(2) any employment or prospective employment for which negotiations have already begun;

G. "local government agency" means a political subdivision of the state or an agency of a political subdivision of the state;

H. "official act" means an official decision, recommendation, approval, disapproval or other action that involves the use of discretionary authority;

I. "public officer or employee" means any elected or appointed official or employee of a state agency or local government agency who receives compensation in the form of salary or is eligible for per diem or mileage but excludes legislators;

J. "standards" means the conduct required by the Governmental Conduct Act;

K. "state agency" means any branch, agency, instrumentality or institution of the state; and

L. "substantial interest" means an ownership interest that is greater than twenty percent.

### **10-16-3. Ethical principles of public service; certain official acts prohibited; penalty.**

A. A legislator or public officer or employee shall treat the legislator's or public officer's or employee's government position as a public trust. The legislator or public officer or employee shall use the powers and resources of public office only to advance the public interest and not to obtain personal benefits or pursue private interests.

## **Governmental Conduct Act**

B. Legislators and public officers and employees shall conduct themselves in a manner that justifies the confidence placed in them by the people, at all times maintaining the integrity and discharging ethically the high responsibilities of public service.

C. Full disclosure of real or potential conflicts of interest shall be a guiding principle for determining appropriate conduct. At all times, reasonable efforts shall be made to avoid undue influence and abuse of office in public service.

D. No legislator or public officer or employee may request or receive, and no person may offer a legislator or public officer or employee, any money, thing of value or promise thereof that is conditioned upon or given in exchange for promised performance of an official act. Any person who knowingly and willfully violates the provisions of this subsection is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

### **10-16-3.1. Prohibited political activities.**

A public officer or employee is prohibited from:

A. directly or indirectly coercing or attempting to coerce another public officer or employee to pay, lend or contribute anything of value to a party, committee, organization, agency or person for a political purpose;

B. threatening to deny a promotion or pay increase to an employee who does or does not vote for certain candidates, requiring an employee to contribute a percentage of the employee's pay to a political fund, influencing a subordinate employee to purchase a ticket to a political fundraising dinner or similar event, advising an employee to take part in political activity or similar activities; or

## **Governmental Conduct Act**

C. violating the officer's or employee's duty not to use property belonging to a state agency or local government agency, or allow its use, for other than authorized purposes.

### **10-16-4. Official act for personal financial interest prohibited; disqualification from official act; providing a penalty.**

A. It is unlawful for a public officer or employee to take an official act for the primary purpose of directly enhancing the public officer's or employee's financial interest or financial position. Any person who knowingly and willfully violates the provisions of this subsection is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

B. A public officer or employee shall be disqualified from engaging in any official act directly affecting the public officer's or employee's financial interest, except a public officer or employee shall not be disqualified from engaging in an official act if the financial benefit of the financial interest to the public officer or employee is proportionately less than the benefit to the general public.

C. No public officer during the term for which elected and no public employee during the period of employment shall acquire a financial interest when the public officer or employee believes or should have reason to believe that the new financial interest will be directly affected by the officer's or employee's official act.

#### **10-16-4.1. Honoraria prohibited.**

No legislator, public officer or employee may request or receive an honorarium for a speech or service rendered

## **Governmental Conduct Act**

that relates to the performance of public duties. For the purposes of this section, "honorarium" means payment of money, or any other thing of value in excess of one hundred dollars (\$100), but does not include reasonable reimbursement for meals, lodging or actual travel expenses incurred in making the speech or rendering the service, or payment or compensation for services rendered in the normal course of a private business pursuit.

### **10-16-4.2. Disclosure of outside employment.**

A public officer or employee shall disclose in writing to the officer's or employee's respective office or employer all employment engaged in by the officer or employee other than the employment with or service to a state agency or local government agency.

### **10-16-4.3. Prohibited employment.**

It is unlawful for a state agency employee or local government agency employee who is participating directly or indirectly in the contracting process to become or to be, while such an employee, the employee of any person or business contracting with the governmental body by whom the employee is employed.

### **10-16-5. Repealed.**

### **10-16-6. Confidential information.**

No legislator or public officer or employee shall use or disclose confidential information acquired by virtue of the legislator's or public officer's or employee's position with a state agency or local government agency for the legislator's, public officer's or employee's or another's private gain.

## **Governmental Conduct Act**

### **10-16-7. Contracts involving public officers or employees.**

A. A state agency shall not enter into a contract with a public officer or employee of the state, with the family of the public officer or employee or with a business in which the public officer or employee or the family of the public officer or employee has a substantial interest unless the public officer or employee has disclosed through public notice the public officer's or employee's substantial interest and unless the contract is awarded pursuant to a competitive process; provided that this section does not apply to a contract of official employment with the state. A person negotiating or executing a contract on behalf of a state agency shall exercise due diligence to ensure compliance with the provisions of this section.

B. Unless a public officer or employee has disclosed the public officer's or employee's substantial interest through public notice and unless a contract is awarded pursuant to a competitive process, a local government agency shall not enter into a contract with a public officer or employee of that local government agency, with the family of the public officer or employee or with a business in which the public officer or employee or the family of the public officer or employee has a substantial interest.

C. Subsection B of this section does not apply to a contract of official employment with a political subdivision. A person negotiating or executing a contract on behalf of a local government agency shall exercise due diligence to ensure compliance with the provisions of this section.

## **Governmental Conduct Act**

### **10-16-8. Contracts involving former public officers or employees; representation of clients after government service.**

A. A state agency shall not enter into a contract with, or take any action favorably affecting, any person or business that is:

(1) represented personally in the matter by a person who has been a public officer or employee of the state within the preceding year if the value of the contract or action is in excess of one thousand dollars (\$1,000) and the contract is a direct result of an official act by the public officer or employee; or

(2) assisted in the transaction by a former public officer or employee of the state whose official act, while in state employment, directly resulted in the agency's making that contract or taking that action.

B. A former public officer or employee shall not represent a person in the person's dealings with the government on a matter in which the former public officer or employee participated personally and substantially while a public officer or employee.

C. A local government agency shall not enter into a contract with, or take any action favorably affecting, any person or business that is:

(1) represented personally in the matter by a person who has been a public officer or employee of that local government agency within the preceding year if the value of the contract or action is in excess of one thousand dollars (\$1,000) and the contract is a direct result of an official act by the public officer or employee; or

(2) assisted in the transaction by a former public officer or employee of that political subdivision of the state whose official act, while in employment with that political subdivision of the state, directly resulted in the agency's making that contract or taking that action.

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D. For a period of one year after leaving government service or employment, a former public officer or employee shall not represent for pay a person before the state agency or local government agency at which the former public officer or employee served or worked.

### **10-16-9. Contracts involving legislators; representation before state agencies.**

A. A state agency shall not enter into a contract for services, construction or items of tangible personal property with a legislator, the legislator's family or with a business in which the legislator or the legislator's family has a substantial interest unless the legislator has disclosed the legislator's substantial interest and unless the contract is awarded in accordance with the provisions of the Procurement Code [13-1-28 to 13-1-199 NMSA 1978], except the potential contractor shall not be eligible for a sole source or small purchase contract. A person negotiating or executing a contract on behalf of a state agency shall exercise due diligence to ensure compliance with the provisions of this subsection.

B. A legislator shall not appear for, represent or assist another person in a matter before a state agency, unless without compensation or for the benefit of a constituent, except for legislators who are attorneys or other professional persons engaged in the conduct of their professions and, in those instances, the legislator shall refrain from references to the legislator's legislative capacity except as to matters of scheduling, from communications on legislative stationery and from threats or implications relating to legislative actions.

### **10-16-10. Repealed.**



## **Governmental Conduct Act**

### **10-16-11. Codes of conduct.**

A. Each elected statewide executive branch public officer shall adopt a general code of conduct for employees subject to the officer's control. The New Mexico legislative council shall adopt a general code of conduct for all legislative branch employees. The general codes of conduct shall be based on the principles set forth in the Governmental Conduct Act.

B. Within thirty days after the general codes of conduct are adopted, they shall be given to and reviewed with all executive and legislative branch officers and employees. All new public officers and employees of the executive and legislative branches shall review the employees' general code of conduct prior to or at the time of being hired.

C. The head of every executive and legislative agency and institution of the state may draft a separate code of conduct for all public officers and employees in that agency or institution. The separate agency code of conduct shall prescribe standards, in addition to those set forth in the Governmental Conduct Act and the general codes of conduct for all executive and legislative branch public officers and employees, that are peculiar and appropriate to the function and purpose for which the agency or institution was created or exists. The separate codes, upon approval of the responsible executive branch public officer for executive branch public officers and employees or the New Mexico legislative council for legislative branch employees, govern the conduct of the public officers and employees of that agency or institution and, except for those public officers and employees removable only by impeachment, shall, if violated, constitute cause for dismissal, demotion or suspension. The head of each executive and legislative branch agency shall adopt

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ongoing education programs to advise public officers and employees about the codes of conduct. All codes shall be filed with the state ethics commission and are open to public inspection.

D. Codes of conduct shall be reviewed at least once every four years. An amended code shall be filed as provided in Subsection C of this section.

E. All legislators shall attend a minimum of two hours of ethics continuing education and training developed and provided, in consultation with the director of the legislative council service, by the state ethics commission or a national state legislative organization of which the state is a member, approved by the director, biennially.

### **10-16-11.1. State agency or local government agency authority.**

Nothing in the Governmental Conduct Act shall be construed to preclude a state agency or local government agency from adopting and publishing ordinances, rules or standards that are more stringent than those required by the Governmental Conduct Act.

### **10-16-12. Repealed.**

### **10-16-13. Prohibited bidding.**

No state agency or local government agency shall accept a bid or proposal from a person who directly participated in the preparation of specifications, qualifications or evaluation criteria on which the specific competitive bid or proposal was based. A person accepting a bid or proposal on behalf of a state agency or local government agency shall exercise due diligence to ensure compliance with this section.

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### **10-16-13.1. Education and voluntary compliance.**

A. The state ethics commission shall advise and seek to educate all persons required to perform duties under the Governmental Conduct Act of those duties. This includes advising all those persons at least annually of that act's ethical principles.

B. The state ethics commission shall seek first to ensure voluntary compliance with the provisions of the Governmental Conduct Act. A person who violates that act unintentionally or for good cause shall be given ten days' notice to correct the matter. Referrals for civil enforcement of that act shall be pursued only after efforts to secure voluntary compliance with that act have failed.

### **10-16-13.2. Certain business sales to the employees of state agencies and local government agencies prohibited.**

A. A public officer or employee shall not sell, offer to sell, coerce the sale of or be a party to a transaction to sell goods, services, construction or items of tangible personal property directly or indirectly through the public officer's or employee's family or a business in which the public officer or employee has a substantial interest, to an employee supervised by the public officer or employee. A public officer or employee shall not receive a commission or shall not profit from the sale or a transaction to sell goods, services, construction or items of tangible personal property to an employee supervised by the public officer or employee. The provisions of this subsection shall not apply if the supervised employee initiates the sale. It is not a violation of this subsection if a public officer or employee, in good faith, is not aware that the employee to whom the goods, services, construction or items of tangible personal property are being sold is under the supervision of the public officer or employee.

## **Governmental Conduct Act**

B. A public officer or employee shall not sell, offer to sell, coerce the sale of or be a party to a transaction to sell goods, services, construction or items of tangible personal property, directly or indirectly through the public officer's or employee's family or a business in which the public officer or employee has a substantial interest, to a person over whom the public officer or employee has regulatory authority.

C. A public officer or employee shall not receive a commission or profit from the sale or a transaction to sell goods, services, construction or items of tangible personal property to a person over whom the public officer or employee has regulatory authority.

D. A public officer or employee shall not accept from a person over whom the public officer or employee has regulatory authority an offer of employment or an offer of a contract in which the public officer or employee provides goods, services, construction, items of tangible personal property or other things of value to the person over whom the public officer or employee has regulatory authority.

### **10-16-13.3. Prohibited contributions; financial service contractors.**

A. A business that contracts with a state agency or local government agency to provide financial services involving the investment of public money or issuance of bonds for public projects shall not knowingly contribute anything of value to a public officer or employee of that state agency or local government agency who has authority over the investment of public money or issuance of bonds, the revenue of which is used for public projects in the state.

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B. A public officer or employee of a state agency or local government agency that has authority over the investment of public money or issuance of bonds, the revenue of which is used for public projects in the state, shall not knowingly accept a contribution of anything of value from a business that contracts with that state agency or local government agency to provide financial services involving the investment of public money or issuance of bonds for public projects.

C. For the purposes of this section:

(1) "anything of value" means any money, property, service, loan or promise, but does not include food and refreshments with a value of less than one hundred dollars (\$100) consumed in a day; and

(2) "contribution" means a donation or transfer to a recipient for the personal use of the recipient, without commensurate consideration.

### **10-16-14. Enforcement procedures.**

A. The state ethics commission may investigate suspected violations of the Governmental Conduct Act and forward its findings and evidence to the attorney general, district attorney or appropriate state agency or legislative body for enforcement. If a suspected violation involves the office of the state ethics commission, the attorney general may enforce that act. If a suspected violation involves the office of the attorney general, a district attorney may enforce that act.

B. Violation of the provisions of the Governmental Conduct Act by any legislator is grounds for discipline by the appropriate legislative body.

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C. If the state ethics commission determines that there is sufficient cause to file a complaint to remove from office a public officer removable only by impeachment, the commission shall refer the matter to the house of representatives of the legislature. If within thirty days after the referral the house of representatives has neither formally declared that the charges contained in the complaint are not substantial nor instituted hearings on the complaint, the state ethics commission shall make public the nature of the charges but shall make clear that the merits of the charges have never been determined. Days during which the legislature is not in session shall not be included in determining the thirty-day period.

D. Violation of the provisions of the Governmental Conduct Act by any public officer or employee, other than those covered by Subsection C of this section, is grounds for discipline, including dismissal, demotion or suspension. Complaints against executive branch employees may be filed with the agency head and reviewed pursuant to the procedures provided in the Personnel Act. Complaints against legislative branch employees may be filed with and reviewed pursuant to procedures adopted by the New Mexico legislative council. Complaints against judicial branch employees may be filed and reviewed pursuant to the procedures provided in the judicial personnel rules. Complaints against employees subject to the State Ethics Commission Act may also be filed with the state ethics commission, which shall determine whether to forward a complaint to the appropriate state agency or investigate the complaint on its own.

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E. Subject to the provisions of this section, the provisions of the Governmental Conduct Act may be enforced by the state ethics commission. Except as regards legislators, state employees or statewide elected officials, a district attorney in the county where a person who allegedly violated the provisions resides or where an alleged violation occurred may also enforce that act. Enforcement actions may include seeking civil injunctive or other appropriate orders.

### **10-16-15. Repealed.**

### **10-16-16. Recompiled.**

### **10-16-17. Criminal penalties.**

Unless specified otherwise in the Governmental Conduct Act, any person who knowingly and willfully violates any of the provisions of that act is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars (\$1,000) or by imprisonment for not more than one year or both. Nothing in the Governmental Conduct Act shall preclude criminal prosecution for bribery or other provisions of law set forth in the constitution of New Mexico or by statute.

### **10-16-18. Enforcement; civil penalties.**

A. If the state ethics commission reasonably believes that a person committed, or is about to commit, a violation of the Governmental Conduct Act, the state ethics commission may refer the matter to the attorney general or a district attorney for enforcement.

B. The state ethics commission may institute a civil action in district court or refer a matter to the attorney general or a district attorney to institute a civil action in

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district court if a violation has occurred or to prevent a violation of any provision of the Governmental Conduct Act. Relief may include a permanent or temporary injunction, a restraining order or any other appropriate order, including an order for a civil penalty of two hundred fifty dollars (\$250) for each violation not to exceed five thousand dollars (\$5,000).



## **Lobbyist Regulation Act**

### **Lobbyist Regulation Act**

#### **2-11-1. Short title.**

Chapter 2, Article 11 NMSA 1978 may be cited as the "Lobbyist Regulation Act".

#### **2-11-2. Definitions.**

As used in the Lobbyist Regulation Act:

A. "compensation" means any money, per diem, salary, fee or portion thereof or the equivalent in services rendered or in-kind contributions received or to be received in return for lobbying services performed or to be performed;

B. "expenditure" means a payment, transfer or distribution or obligation or promise to pay, transfer or distribute any money or other thing of value but does not include a lobbyist's own personal living expenses and the expenses incidental to establishing and maintaining an office in connection with lobbying activities or compensation paid to a lobbyist by a lobbyist's employer;

C. "legislative committee" means a committee created by the legislature, including interim and standing committees of the legislature;

D. "lobbying" means attempting to influence:  
(1) a decision related to any matter to be considered or being considered by the legislative branch of state government or any legislative committee or any legislative matter requiring action by the governor or awaiting action by the governor; or

(2) an official action;

E. "lobbyist" means any individual who is compensated for the specific purpose of lobbying; is designated by an interest group or organization to represent it on a substantial or regular basis for the purpose of lobbying; or in the course of his employment is engaged in

## **Lobbyist Regulation Act**

lobbying on a substantial or regular basis. "Lobbyist" does not include:

(1) an individual who appears on his own behalf in connection with legislation or an official action;

(2) any elected or appointed officer of the state or its political subdivisions or an Indian tribe or pueblo acting in his official capacity;

(3) an employee of the state or its political subdivisions, specifically designated by an elected or appointed officer of the state or its political subdivision, who appears before a legislative committee or in a rulemaking proceeding only to explain the effect of legislation or a rule on his agency or political subdivision, provided the elected or appointed officer of the state or its political subdivision keeps for public inspection, and files with the secretary of state, such designation;

(4) any designated member of the staff of an elected state official, provided the elected state official keeps for public inspection and files with the secretary of state such designation;

(5) a member of the legislature, the staff of any member of the legislature or the staff of any legislative committee when addressing legislation;

(6) any witness called by a legislative committee or administrative agency to appear before that legislative committee or agency in connection with legislation or an official action;

(7) an individual who provides only oral or written public testimony in connection with a legislative committee or in a rulemaking proceeding and whose name and the interest on behalf of which he testifies have been clearly and publicly identified; or

(8) a publisher, owner or employee of the print media, radio or television, while gathering or

## **Lobbyist Regulation Act**

disseminating news or editorial comment to the general public in the ordinary course of business;

F. "lobbyist's employer" means the person whose interests are being represented and by whom a lobbyist is directly or indirectly retained, compensated or employed;

G. "official action" means the action or nonaction of a state official or state agency, board or commission acting in a rulemaking proceeding;

H. "person" means an individual, partnership, association, committee, federal, state or local governmental entity or agency, however constituted, public or private corporation or any other organization or group of persons who are voluntarily acting in concert;

I. "political contribution" means a gift, subscription, loan, advance or deposit of any money or other thing of value, including the estimated value of an in-kind contribution, that is made or received for the purpose of influencing a primary, general or statewide election, including a constitutional or other question submitted to the voters, or for the purpose of paying a debt incurred in any such election;

J. "prescribed form" means a form prepared and prescribed by the secretary of state;

K. "rulemaking proceeding" means a formal process conducted by a state agency, board or commission for the purpose of adopting a rule, regulation, standard, policy or other requirement of general applicability and does not include adjudicatory proceedings; and

L. "state public officer" means a person holding a statewide office provided for in the constitution of New Mexico.

## **Lobbyist Regulation Act**

### **2-11-3. Registration statement to be filed; contents; modification to statement.**

A. In the month of January prior to each regular session or before any service covered by the Lobbyist Regulation Act commences, any individual who is initially employed or retained as a lobbyist shall register with the secretary of state by paying an annual filing fee of fifty dollars (\$50.00) for each of the lobbyist's employers and by filing a single registration statement under oath in an electronic format as prescribed by the secretary of state that states:

- (1) the lobbyist's full name, permanent business address and business address while lobbying; and
- (2) the name and address of each of the lobbyist's employers.

B. No registration fee shall be required of individuals receiving only reimbursement of personal expenses and no other compensation or salary for lobbying. Except as required by Subsection D of Section 2-11-6 NMSA 1978, no expenditure report shall be required if the lobbyist anticipates making or incurring and makes or incurs no expenditures or political contributions under Section 2-11-6 NMSA 1978. The lobbyist shall indicate in the lobbyist's registration statement whether those circumstances apply to the lobbyist.

C. Upon receipt of the online registration and payment, the secretary of state shall publish the registration information on the secretary of state's lobbying disclosure website.

D. For each employer listed in Paragraph (2) of Subsection A of this section, the lobbyist shall file the following information:

- (1) a full disclosure of the sources of funds used for lobbying;

## **Lobbyist Regulation Act**

(2) an affirmation from each of the lobbyist's employers authorizing the lobbyist to lobby on the employer's behalf;

(3) a brief description of the matters in reference to which the service is to be rendered; and

(4) the name and address of the person, if other than the lobbyist or the lobbyist's employer, who will have custody of the accounts, bills, receipts, books, papers and documents required to be kept under the provisions of the Lobbyist Regulation Act.

E. For each succeeding year that an individual is employed or retained as a lobbyist by the same employer, and for whom all the information disclosed in the initial registration statement remains substantially the same, the lobbyist shall file a simple annual registration renewal in January and pay the fifty-dollar (\$50.00) filing fee for each of the lobbyist's employers together with a short, abbreviated prescribed form for renewal.

F. Whenever there is a modification of the facts required to be set forth by this section or there is a termination of the lobbyist's employment as a lobbyist before the end of the calendar year, the lobbyist shall notify the secretary of state using the electronic registration system within one week of such occurrence and shall furnish full information concerning the modification or termination. If the lobbyist's employment terminates at the end of a calendar year, no separate termination need be reported.

### **2-11-4. Recompiled.**

## **Lobbyist Regulation Act**

### **2-11-5. Other powers and duties of attorney general not limited or restricted.**

The powers and duties of the attorney general pursuant to the Lobbyist Regulation Act shall not be construed to limit or restrict the exercise of his power or the performance of his duties.

### **2-11-6. Expenditure report to be filed; contents; reporting periods.**

A. Each lobbyist who receives compensation or lobbyist's employer who makes or incurs expenditures or makes political contributions for the benefit of or in opposition to a state legislator or candidate for the state legislature, a state public officer or candidate for state public office, a board or commission member or state employee who is involved in an official action affecting the lobbyist's employer or in support of or in opposition to a ballot issue or pending legislation or official action shall file an expenditure report with the secretary of state using an electronic reporting system approved by the secretary of state in accordance with Section 2-11-7 NMSA 1978. The expenditure report shall include a sworn statement that sets forth:

(1) the cumulative total of all individual expenditures of less than one hundred dollars (\$100) made or incurred by the employer or lobbyist during the covered reporting period, separated into the following categories:

- (a) meals and beverages;
- (b) other entertainment

expenditures; and

- (c) other expenditures;

(2) each individual expenditure of one hundred dollars (\$100) or more made or incurred by the employer or lobbyist during the covered reporting period,

## **Lobbyist Regulation Act**

indicating the amount spent and a description of the expenditure. The list shall be separated into the following categories:

- (a) meals and beverages;
- (b) other entertainment

expenditures; and

- (c) other expenditures;

(3) each political contribution made, and whether the contribution is from the lobbyist's employer or the lobbyist on the lobbyist's own behalf, identified by amount, date and name of the candidate or ballot issue supported or opposed; and

(4) the names, addresses, employers and occupations of other contributors and the amounts of their separate political contributions if the lobbyist or lobbyist's employer delivers directly or indirectly separate contributions from those contributors to a candidate, a campaign committee or anyone authorized by a candidate to receive funds on the candidate's behalf.

B. The expenditure report shall be filed electronically and shall be electronically authenticated by the lobbyist or the lobbyist's employer using an electronic signature as prescribed by the secretary of state in conformance with the Electronic Authentication of Documents Act and the Uniform Electronic Transactions Act. For the purposes of the Lobbyist Regulation Act, a report that is electronically authenticated in accordance with the provisions of this subsection shall be deemed to have been subscribed and sworn to by the lobbyist or the lobbyist's employer that is required to file the report.

C. In identifying expenditures pursuant to the provisions of Paragraphs (1) and (2) of Subsection A of this section, in the case of special events, including parties, dinners, athletic events, entertainment and other functions,

## **Lobbyist Regulation Act**

to which all members of the legislature, to which all members of either house or any legislative committee or to which all members of a board or commission are invited, expenses need not be allocated to each individual who attended, but the date, location, name of the body invited and total expenses incurred shall be reported.

D. A lobbyist who accepts compensation for lobbying but does not incur expenditures or make political contributions during a reporting period may file a statement of no activity in lieu of a full report for that period in accordance with the reporting schedule in Subsection E of this section.

E. The reports required pursuant to the provisions of the Lobbyist Regulation Act shall be filed:

- (1) no later than January 15 for all expenditures and political contributions made or incurred during the preceding year and not previously reported;
- (2) within forty-eight hours for each separate expenditure made or incurred during a legislative session that was for five hundred dollars (\$500) or more;
- (3) no later than the first Wednesday after the first Monday in May for all expenditures and political contributions made or incurred through the first Monday in May of the current year and not previously reported; and
- (4) no later than the first Wednesday after the first Monday in October for all expenditures and political contributions made or incurred through the first Monday in October of the current year and not previously reported.

F. A lobbyist's personal living expenses and the expenses incidental to establishing and maintaining an office in connection with lobbying activities or compensation paid to a lobbyist by a lobbyist's employer need not be reported.



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G. A lobbyist or lobbyist's employer shall obtain and preserve all records, accounts, bills, receipts, books, papers and documents necessary to substantiate the financial statements required to be made under the Lobbyist Regulation Act for a period of two years from the date of filing of the report containing such items. When the lobbyist is required under the terms of the lobbyist's employment to turn over any such records to the lobbyist's employer, responsibility for the preservation of them as required by this section and the filing of reports required by this section shall rest with the employer. Such records shall be made available to the secretary of state or attorney general upon written request.

H. A lobbyist's employer who also engages in lobbying shall also comply with the provisions of this section. A lobbyist and the lobbyist's employer shall coordinate their reporting to ensure that the contributions and expenditures that each have reported are not duplicative.

I. An organization of two or more persons, including an individual who makes any representation as being an organization, that within one calendar year expends funds in excess of two thousand five hundred dollars (\$2,500) not otherwise reported under the Lobbyist Regulation Act to conduct an advertising campaign for the purpose of lobbying shall register with the secretary of state within forty-eight hours after expending two thousand five hundred dollars (\$2,500). Such registration shall indicate the name of the organization and the names, addresses and occupations of any of its principals, organizers or officers and shall include the name of any lobbyist or lobbyist's employer who is a member of the organization. Within fifteen days after a legislative session, the organization shall report the contributions, pledges to contribute,

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expenditures and commitments to expend for the advertising campaign for the purpose of lobbying, including the names, addresses, employers and occupations of the contributors, to the secretary of state on a prescribed form.

### **2-11-7. Registration and expenditure report; preservation as public record; online reports.**

A. Each registration and expenditure report as required by the Lobbyist Regulation Act shall be archived and accessible on the secretary of state's lobbyist disclosure website for a period of at least ten years from the date of filing as a public record, open to public inspection at any reasonable time. Unless an action or prosecution is pending that requires preserving the report, it may be destroyed ten years after the date of filing.

B. Lobbyist registrations and expenditure reports shall be kept and maintained on the secretary of state's lobbyist disclosure website and shall be available in searchable and downloadable formats.

C. With respect to the secretary of state's lobbyist disclosure website, all items in the records shall be easily searchable, sortable and downloadable by the public to the extent technically practicable.

D. The secretary of state shall ensure that contributions reported by persons pursuant to the Lobbyist Regulation Act are reported in a manner that is nonduplicative and as consistent as practicable with the reporting requirements of the Campaign Reporting Act [1-19-25 through 1-19-36 NMSA 1978]. To the extent possible, the electronic reporting system used for registration and reporting required by the Lobbyist Regulation Act shall be integrated with the electronic

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reporting system used for compliance with the Campaign Reporting Act.

E. Reporting individuals under the Campaign Reporting Act shall receive automatic electronic notice of the contributions to them reported by lobbyists and lobbyists' employers within twenty-four hours of the filing of each expenditure report.

### **2-11-8. Contingent fees prohibited in lobbying the legislative branch of state government.**

No person shall accept employment as a lobbyist and no lobbyist's employer shall employ a lobbyist for compensation contingent in whole or in part upon the outcome of the lobbying activities before the legislative branch of state government or the approval or veto of any legislation by the governor.

#### **2-11-8.1. Restrictions on campaign activities and contributions.**

A. No lobbyist may serve as a campaign chair, treasurer or fundraising chair for a candidate for the legislature or other state office.

B. It is unlawful during the prohibited period for any lobbyist or lobbyist's employer to contribute to or act as an agent or intermediary for political contributions to or arrange for the making of political contributions to the campaign funds of any statewide elected official or legislator or any candidate for those offices.

C. For purposes of this section, "prohibited period" is that period beginning January 1 prior to any regular session of the legislature or, in the case of a special session, after the proclamation has been issued, and ending on:

- (1) the day the session ends for:

## **Lobbyist Regulation Act**

(a) any statewide elected official or candidate for statewide office except the governor; and

(b) a legislator or any candidate for the legislature; and

(2) the twentieth day following the adjournment of the regular or special session for the governor or candidate for governor.

### **2-11-8.2. Compliance with act; enforcement of act; binding arbitration; civil penalties.**

A. The secretary of state shall advise and seek to educate all persons required to perform duties pursuant to the Lobbyist Regulation Act of those duties. This includes advising all registered lobbyists at least annually of the Lobbyist Regulation Act's deadlines for submitting required reports. The secretary of state, in consultation with the attorney general, shall issue advisory opinions, when requested to do so in writing, on matters concerning the Lobbyist Regulation Act. All prescribed forms prepared shall be clear and easy to complete.

B. The secretary of state may conduct thorough examinations of reports and initiate investigations to determine whether the Lobbyist Regulation Act has been violated. Additionally, any person who believes that a provision of that act has been violated may file a written complaint with the secretary of state. The secretary of state shall adopt procedures for issuing advisory opinions, processing complaints and notifications of violations.

C. The secretary of state shall at all times seek to ensure voluntary compliance with the provisions of the Lobbyist Regulation Act. If the secretary of state determines that a provision of that act for which a penalty may be imposed has been violated, the secretary of state shall by written notice set forth the violation and the fine

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imposed and inform the person that he has ten working days to provide a written explanation, under penalty of perjury, stating any reason the violation occurred. If a timely explanation is filed and the secretary of state determines that good cause exists, the secretary of state may by a written notice of final action partially or fully waive any fine imposed. A written notice of final action shall be sent by certified mail.

D. If the person charged disputes the secretary of state's determination, including an advisory opinion, the person charged may request binding arbitration within ten working days of the date of the final action. Any penalty imposed shall be due and payable within ten working days of the notice of final action. No additional penalty shall accrue pending issuance of the arbitration decision. Fines paid pursuant to a notice of final action that are subsequently reduced or dismissed shall be reimbursed with interest within ten working days after the filing of the arbitration decision with the secretary of state. Interest on the reduced or dismissed portion of the fine shall be the same as the rate of interest earned by the secretary of state's escrow account to be established by the department of finance and administration.

E. An arbitration hearing shall be conducted by a single arbitrator selected within ten days by the person against whom the penalty has been imposed from a list of five arbitrators provided by the secretary of state. Neither the secretary of state nor a person subject to the Lobbyist Regulation Act, Campaign Reporting Act [1-19-25 through 1-19-36 NMSA 1978] or Financial Disclosure Act [10-16A-1 through 10-16A-8 NMSA 1978] may serve as an arbitrator. Arbitrators shall be considered to be independent contractors, not public officers or employees, and shall not be paid per diem and mileage.

## **Lobbyist Regulation Act**

F. The arbitrator may impose any penalty and take any action the secretary of state is authorized to take. The arbitrator shall state the reasons for his decision in a written document that shall be a public record. The decision shall be final and binding. The decision shall be issued and filed with the secretary of state within thirty days of the conclusion of the hearing. Unless otherwise provided for in this section, or by rule or regulation adopted by the secretary of state, the procedures for the arbitration shall be governed by the Uniform Arbitration Act [44-7A-1 through 44-7A-32 NMSA 1978]. No arbitrator shall be subject to liability for actions taken pursuant to this section.

G. Any person who files a report after the deadline imposed by the Lobbyist Regulation Act, or any person who files a false or incomplete report, shall be liable for and shall pay to the secretary of state fifty dollars (\$50.00) per day for each regular working day after the time required for the filing of the report until the complete report is filed, up to a maximum of five thousand dollars (\$5,000).

H. The secretary of state may refer a matter to the attorney general or a district attorney for a civil injunctive or other appropriate order or enforcement.

### **2-11-8.3. State ethics commission; jurisdiction.**

A. On and after January 1, 2020:

(1) the state ethics commission shall have jurisdiction to investigate and adjudicate a complaint alleging a civil violation of a provision of the Lobbyist Regulation Act in accordance with the provisions of that act; and

(2) the state ethics commission shall share jurisdiction to investigate and adjudicate complaints, or any aspect of a complaint, with the secretary of state as

## **Lobbyist Regulation Act**

formalized through an agreement. The secretary of state shall forward complaints it receives alleging violations of the Lobbyist Regulation Act to the state ethics commission in accordance with the agreement.

B. The state ethics commission and the secretary of state shall make recommendations to the first session of the fifty-fifth legislature on any changes to the Lobbyist Regulation Act necessary for the efficient administration and enforcement of the provisions of that act.

### **2-11-9. Penalties.**

In addition to any other penalties that may be assessed, any person who knowingly and willfully violates any of the provisions of the Lobbyist Regulation Act shall be punished by a fine of up to five thousand dollars (\$5,000) and may have his lobbyist registration revoked or his lobbying activities enjoined for up to three years.

## **Campaign Reporting Act**

### **Campaign Reporting Act**

#### **1-19-25. Short title.**

Sections 1-19-25 through 1-19-36 NMSA 1978 may be cited as the "Campaign Reporting Act".

#### **1-19-26. Definitions.**

A. "advertisement" means a communication referring to a candidate or ballot question that is published, disseminated, distributed or displayed to the public by print, broadcast, satellite, cable or electronic media, including recorded phone messages, or by printed materials, including mailers, handbills, signs and billboards, but "advertisement" does not include:

(1) a communication by a membership organization or corporation to its current members, stockholders or executive or administrative personnel;

(2) a communication appearing in a news story or editorial distributed through a print, broadcast, satellite, cable or electronic medium;

(3) a candidate debate or forum or a communication announcing a candidate debate or forum paid for on behalf of the debate or forum sponsor; provided that two or more candidates for the same position have been invited to participate or, in the case of an uncontested election, that the single candidate for the position has been invited to participate;

(4) nonpartisan voter guides allowed by the federal Internal Revenue Code of 1986, as amended, for Section 501(c)(3) organizations; or

(5) statements made to a court or administrative board in the course of a formal judicial or administrative proceeding;

B. "anonymous contribution" means a contribution the contributor of which is unknown to the



## **Campaign Reporting Act**

candidate or the candidate's agent or the political committee or its agent who accepts the contribution;

C. "ballot question" means a constitutional amendment or other question submitted to the voters in an election;

D. "bank account" means an account in a financial institution regulated by the United States or a state of the United States;

E. "campaign committee" means an association of two or more persons authorized by a candidate to act on the candidate's behalf for the purpose of electing the candidate to office; provided that a candidate shall not authorize more than one campaign committee;

F. "campaign expenditure" means an expenditure that is made by a campaign committee or by a candidate in support of the candidate's campaign in an election;

G. "candidate" means an individual who seeks or considers an office in an election covered by the Campaign Reporting Act, including a public official, who has filed a declaration of candidacy and has not subsequently filed a statement of withdrawal or:

(1) for a nonstatewide office, has received contributions or made expenditures of more than one thousand dollars (\$1,000) or authorized another person or campaign committee to receive contributions or make expenditures of more than one thousand dollars (\$1,000) for the purpose of seeking election to the office; or

(2) for a statewide office, has received contributions or made expenditures of more than three thousand dollars (\$3,000) or authorized another person or campaign committee to receive contributions or make expenditures of more than three thousand dollars (\$3,000) for the purpose of seeking election to the office or for

## **Campaign Reporting Act**

candidacy exploration purposes in the years prior to the year of the election;

H. "contribution":

(1) means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made or received for a political purpose, including payment of a debt incurred in an election campaign;

(2) includes a coordinated expenditure;

(3) does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee; and

(4) does not include the value of the incidental use of the candidate's personal property, home or business office for campaign purposes;

I. "coordinated expenditure" means an expenditure that is made:

(1) by a person other than a candidate or campaign committee;

(2) at the request or suggestion of, or in cooperation, consultation or concert with, a candidate, campaign committee or political party or any agent or representative of a candidate, campaign committee or political party; and

(3) for the purpose of:

(a) supporting or opposing the nomination or election of a candidate; or

(b) paying for an advertisement that refers to a clearly identified candidate and is published and disseminated to the relevant electorate in New Mexico

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within thirty days before the primary election or sixty days before the general election in which the candidate is on the ballot;

J. "deliver" or "delivery" means to deliver by certified or registered mail, telecopier, electronic transmission or facsimile or by personal service;

K. "election" means any primary, general or statewide special election in New Mexico and includes county and judicial retention elections but excludes federal, municipal, school board and special district elections;

L. "election year" means an even-numbered year in which an election covered by the Campaign Reporting Act is held;

M. "expenditure" means a payment, transfer or distribution or obligation or promise to pay, transfer or distribute any money or other thing of value for a political purpose, including payment of a debt incurred in an election campaign or pre-primary convention;

N. "independent expenditure" means an expenditure that is:

- (1) made by a person other than a candidate or campaign committee;
- (2) not a coordinated expenditure as defined in the Campaign Reporting Act; and
- (3) made to pay for an advertisement that:
  - (a) expressly advocates the election or defeat of a clearly identified candidate or the passage or defeat of a clearly identified ballot question;
  - (b) is susceptible to no other reasonable interpretation than as an appeal to vote for or against a clearly identified candidate or ballot question; or
  - (c) refers to a clearly identified candidate or ballot question and is published and disseminated to the relevant electorate in New Mexico

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within thirty days before the primary election or sixty days before the general election at which the candidate or ballot question is on the ballot;

O. "legislative caucus committee" means a political committee established by the members of a political party in a chamber of the legislature;

P. "person" means an individual or entity;

Q. "political committee" means:

(1) a political party;

(2) a legislative caucus committee;

(3) an association that consists of two or more persons whose primary purpose is to make contributions to candidates, campaign committees or political committees or make coordinated expenditures or any combination thereof; or

(4) an association that consists of two or more persons whose primary purpose is to make independent expenditures and that has received more than five thousand dollars (\$5,000) in contributions or made independent expenditures of more than five thousand dollars (\$5,000) in the election cycle;

R. "political party" means an association that has qualified as a political party pursuant to the provisions of Section 1-7-2 NMSA 1978;

S. "political purpose" means for the purpose of supporting or opposing a ballot question or the nomination or election of a candidate;

T. "prescribed form" means a form or electronic format prepared and prescribed by the secretary of state;

U. "public official" means a person elected to an office in an election covered by the Campaign Reporting Act or a person appointed to an office that is subject to an election covered by that act; and

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V. "reporting individual" means a public official, candidate or treasurer of a campaign committee or a treasurer of a political committee.

### **1-19-26.1. Political committees; registration; disclosures.**

A. It is unlawful for a political committee to continue to receive or make any contribution or expenditure for a political purpose if the committee fails to meet the requirements of Subsections B and C of this section.

B. A political committee shall appoint and maintain a treasurer, file a statement of organization with the secretary of state and pay a filing fee of fifty dollars (\$50.00).

C. A statement of organization required by Subsection B of this section shall be made under oath on a prescribed form showing:

(1) the full name of the committee, which shall fairly and accurately reflect the identity of the committee, including any sponsoring organization, and its address;

(2) a statement of the purpose for which the committee was organized;

(3) the names and addresses of the officers of the committee; and

(4) an identification of any bank account used by the committee to receive or make contributions or make expenditures.

D. Any changes to the information provided in the statement of organization shall be reported to the secretary of state within ten days.

E. The provisions of this section do not apply to a political committee that is located in another state and is registered with the federal election commission if the

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political committee reports on federal reporting forms filed with the federal election commission all expenditures for and contributions made to reporting individuals in New Mexico and files with the secretary of state, according to the schedule required for the filing of forms with the federal election commission, a copy of either the full report or the cover sheet and the portions of the federal reporting forms that contain the information on expenditures for and contributions made to reporting individuals in New Mexico.

### **1-19-26.2. Rules and regulations.**

The secretary of state may adopt and promulgate rules and regulations to implement the provisions of the Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978]. In adopting and promulgating these rules and regulations, the secretary of state shall comply with the provisions of the Administrative Procedures Act [Chapter 12, Article 8 NMSA 1978]. In addition to any other notification required pursuant to the provisions of Paragraph (2) of Subsection A of Section 12-8-4 NMSA 1978, the secretary of state shall notify all qualified political parties in the state and the New Mexico legislative council prior to adopting, amending or repealing any rule or regulation.

### **1-19-26.3. Campaign committee and political committee expenditures; disclosure; telephone calls; records.**

A. A campaign committee or political committee that is required to register pursuant to the Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978] shall not expend campaign or political committee funds to directly or indirectly pay for a telephone call without

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disclosing to the recipient the name of the organization that authorized or paid for the call if the call:

(1) is one of five hundred or more calls that are similar in nature made during an election cycle by an individual or individuals, or by electronic means; and

(2) advocates support for, or opposition to, a candidate for public office or ballot measure.

B. The campaign committee or political committee that pays for a call referred to in Subsection A of this section shall be disclosed in the call unless the organization that authorized the call and in whose name it is placed has filing obligations pursuant to the Campaign Reporting Act and the name announced in the call is either:

(1) the full name by which the organization or individual is identified in any statement or report required to be filed pursuant to the Campaign Reporting Act; or

(2) the name by which the organization or individual is commonly known.

C. A campaign committee or political committee that pays directly or indirectly for telephone calls as described in Subsection A of this section shall maintain a record of the script of the calls for at least ninety days following election day. If any of the calls qualifying pursuant to Subsection A of this section are recorded messages, a copy of the recording shall also be maintained for that period.

D. A campaign committee or political committee may not contract with a phone bank vendor that does not disclose the information required to be disclosed by Subsection A or B of this section.

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### **1-19-26.4. Disclaimers in advertisements.**

A. A person who makes a campaign expenditure, a coordinated expenditure or an independent expenditure for an advertisement in an amount that exceeds one thousand dollars (\$1,000), or in an amount that, when added to the aggregate amount of the campaign expenditures, coordinated expenditures and independent expenditures for advertisements made by the same person during the election cycle, exceeds one thousand dollars (\$1,000), shall ensure that the advertisement contains the name of the candidate, committee or other person who authorized and paid for the advertisement.

B. The requirements of Subsection A of this section do not apply to the following:

(1) bumper stickers, pins, buttons, pens and similar small items upon which the disclaimer cannot be conveniently printed; or

(2) skywriting, water towers, wearing apparel or other means of displaying an advertisement of such a nature that the inclusion of a disclaimer would be impracticable.

C. The disclaimer statements required by Subsection A of this section shall be set forth legibly on any advertisement that is disseminated or displayed by visual media. If the advertisement is transmitted by audio media, the statement shall be clearly spoken during the advertisement. If the advertisement is transmitted by audiovisual media, the statement shall be both written legibly and spoken clearly during the advertisement.

### **1-19-27. Reports required; electronic reporting system; campaign reporting system fund.**

A. All reporting individuals shall file with the secretary of state reports of expenditures and contributions



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and statements of no activity when required by the Campaign Reporting Act [1-19-25 through 1-19-36 NMSA 1978] in an electronic format prescribed by the secretary of state.

B. The secretary of state shall develop or contract for services to develop an electronic reporting system for reporting individuals to register with the secretary of state and file all reports of expenditures and contributions and statements of no activity as required by the Campaign Reporting Act. The electronic reporting system shall:

(1) enable a person to register and file reports online by electronically submitting the relevant data to the secretary of state's website;

(2) for the submission of data, use unique identifiers and master drop-down lists of candidates, political committees, lobbyists and, to the extent reasonably possible, master lists of contributors, occupations, expenditure types and contribution types;

(3) provide the data in open, structured formats for easy search and download to allow for public inspection of all report data from the secretary of state's website;

(4) provide for cross-checking and compliance features;

(5) provide for online registration and fee payment for political committees and lobbyists;

(6) integrate, to the extent possible, with the reporting required by the Lobbyist Regulation Act [Chapter 2, Article 11 NMSA 1978];

(7) to the extent possible, provide for a mechanism to directly upload the required data from other third-party tools; and

(8) provide for encrypted transmissions.

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C. Registration fees collected by the secretary of state from lobbyists and political committees shall be deposited in the "campaign reporting system fund", which is hereby created in the state treasury. Money in the fund is appropriated to the secretary of state for the purposes of paying for upgrades, maintenance and operation of the electronic reporting system. Money remaining in the fund at the end of a fiscal year shall not revert to the general fund.

### **1-19-27.1, 1-19-27.2. Repealed.**

### **1-19-27.3. Independent expenditures; reporting requirements.**

A. A person who makes an independent expenditure not otherwise required to be reported under the Campaign Reporting Act shall file a report with the secretary of state within:

(1) three days of making the expenditure if the expenditure, by itself or aggregated with all independent expenditures made by the same person during the election cycle, exceeds one thousand dollars (\$1,000) in a nonstatewide election or three thousand dollars (\$3,000) in a statewide election; or

(2) twenty-four hours of making the expenditure if the expenditure is in an amount of three thousand dollars (\$3,000) or more and is made within seven days before a nonstatewide or statewide election.

B. The report required by Subsection A of this section shall state:

(1) the name and address of the person who made the independent expenditure;

(2) the name and address of the person to whom the independent expenditure was made and the

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amount, date and purpose of the independent expenditure. If no reasonable estimate of the monetary value of a particular expenditure is practicable, it is sufficient to report instead a description of the services, property or rights furnished through the expenditure; and

(3) the source of the contributions used to make the independent expenditure as provided in Subsections C and D of this section.

C. A person who makes independent expenditures required to be reported under this section in an amount totaling three thousand dollars (\$3,000) or less in a nonstatewide election or nine thousand dollars (\$9,000) or less in a statewide election shall report the name and address of each person who has made contributions of more than a total of two hundred dollars (\$200) in the election cycle that were earmarked or made in response to a solicitation to fund independent expenditures and shall report the amount of each such contribution made by that person.

D. A person who makes independent expenditures required to be reported under this section in an amount totaling more than three thousand dollars (\$3,000) in a nonstatewide election or nine thousand dollars (\$9,000) in a statewide election, in addition to reporting the information specified in Subsection C of this section, shall either:

(1) if the expenditures were made exclusively from a segregated bank account consisting only of funds contributed to the account by individuals to be used for making independent expenditures, report the name and address of, and amount of each contribution made by, each contributor who contributed more than two hundred dollars (\$200) to that account in the election cycle; or

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(2) if the expenditures were made in whole or part from funds other than those described in Paragraph (1) of this subsection, report the name and address of, and amount of each contribution made by, each contributor who contributed more than a total of five thousand dollars (\$5,000) during the election cycle to the person making the expenditures; provided, however, that a contribution is exempt from reporting pursuant to this paragraph if the contributor requested in writing that the contribution not be used to fund independent or coordinated expenditures or to make contributions to a candidate, campaign committee or political committee.

E. If a person who has made a report required by this section is required to make subsequent reports during the election cycle, the information concerning contributions in the subsequent reports shall cover only contributions not previously reported.

### **1-19-28. Furnishing report forms; political committees; candidates.**

A. The secretary of state annually shall furnish to all reporting individuals the prescribed forms for the reporting of expenditures and contributions, supplemental reports and a statement of no activity and the specific dates the reports and statement are due.

B. In addition to the provisions of Subsection A of this section, at the time of filing a declaration of candidacy or a nominating petition, the secretary of state shall give the candidate the prescribed reporting forms and the schedule of specific dates for filing the required reports or a statement of no activity. The prescribed forms shall also be made available to all reporting individuals at the office of the secretary of state and in each county at the office of the county clerk.

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### **1-19-29. Time and place of filing reports.**

A. Except as otherwise provided in this section, all reporting individuals shall file with the secretary of state no later than the second Monday in April and October a report of all expenditures made and contributions received on or before the first Monday in those months and not previously reported. The report shall be filed biannually until the provisions specified in Subsection F, G or H of this section have been satisfied.

B. In an election year, instead of the biannual reports provided for in Subsection A of this section, all reporting individuals, except for public officials who are not candidates in an election that year, shall file reports of all expenditures made and contributions received or, if applicable, statements of no activity, according to the following schedule:

(1) no later than the second Monday in April, a report of all expenditures made and contributions received on or before the first Monday in April and not previously reported;

(2) no later than the second Monday in May, a report of all expenditures made and contributions received on or before the first Monday in May and not previously reported;

(3) no later than the second Monday in September, a report of all expenditures made and contributions received on or before the first Monday in September and not previously reported;

(4) no later than the second Monday in October, a report of all expenditures made and contributions received on or before the first Monday in October and not previously reported; provided that if the second Monday of October is a state holiday, the report shall be made on the following day;

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(5) no later than the Thursday before a primary, general or statewide special election, a report of all expenditures made and contributions received by 5:00 p.m. on the Tuesday before the election and not previously reported. Any contribution or pledge to contribute that is received after 5:00 p.m. on the Tuesday before the election and that is for more than one thousand dollars (\$1,000) in a nonstatewide election, or more than three thousand dollars (\$3,000) in a statewide election, shall be reported to the secretary of state either in a supplemental report on a prescribed form within twenty-four hours of receipt or in the report to be filed no later than the Thursday before a primary, general or statewide special election, except that any such contribution or pledge to contribute that is received after 5:00 p.m. on the Friday before the election may be reported by 12:00 noon on the Monday before the election;

(6) no later than the thirtieth day after a primary election, a report by all reporting individuals, except those individuals that become candidates after the primary election, of all expenditures made and contributions received on or before the twenty-fifth day after the primary election and not previously reported;

(7) no later than the thirtieth day after a statewide special election, a report of all expenditures made and contributions received on or before the twenty-fifth day after the statewide special election and not previously reported; and

(8) no later than January 7 after a general election, a report of all expenditures made and contributions received on or before December 31 after the general election and not previously reported.

C. If a candidate, political committee, campaign committee or public official has not received any

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contributions and has not made any expenditures since the candidate's, committee's or official's last report was filed with the proper filing officer, the candidate, committee or official shall only be required to file a statement of no activity, which shall not be required to be notarized, in lieu of a full report when that report would otherwise be due and shall not be required to file a full report until the next required filing date occurring after an expenditure is made or a contribution is received.

D. In an election year, a public official who is not a candidate shall file biannual reports of expenditures made and contributions received or statements of no activity in accordance with the schedule provided for in Subsection A of this section.

E. A report of expenditures and contributions filed after a deadline set forth in this section shall not be deemed to have been timely filed.

F. Except for candidates, campaign committees and public officials who file a statement of no activity, each candidate, campaign committee or public official shall file a report of expenditures and contributions pursuant to the filing schedules set forth in this section, regardless of whether any expenditures were made or contributions were received during the reporting period. Reports shall be required until the reporting individual delivers a report to the secretary of state stating that:

(1) there are no outstanding campaign debts;

(2) all money has been expended in accordance with the provisions of Section 1-19-29.1 NMSA 1978; and

(3) the bank accounts have been closed.

G. If, during a nonelection year, a political committee has not received any contributions or made any

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coordinated or independent expenditures since it filed its last report pursuant to this section, it need not file any report under this section until the next reporting period, if any, in which it receives contributions or makes expenditures. A political committee that has not received any contributions or made any coordinated or independent expenditures for a continuous period of at least one year may cancel its registration as a political committee by submitting an appropriate request in writing to the secretary of state. The committee shall retain the obligation to submit a new registration pursuant to Section 1-19-26.1 NMSA 1978 in the event that its future activities meet the requisites for registration under that section.

H. A reporting individual who is a candidate within the meaning of the Campaign Reporting Act because of the amount of contributions the candidate receives or expenditures the candidate makes and who does not ultimately file a declaration of candidacy or a nominating petition with the secretary of state and does not file a statement of no activity shall file biannual reports in accordance with Subsection A of this section.

I. Reports required by this section shall be subscribed and sworn to by the candidate or the treasurer of the political committee or, in the case of candidates for judicial office, by the treasurer of the candidate's campaign committee. A report filed electronically shall be electronically authenticated by the candidate or the treasurer of the committee using an electronic signature in conformance with the Electronic Authentication of Documents Act and the Uniform Electronic Transactions Act. For the purposes of the Campaign Reporting Act, a report that is electronically authenticated in accordance with the provisions of this subsection shall be deemed to have been subscribed and sworn to by the candidate or the



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treasurer of the committee who was required to file the report.

J. Reports required by this section shall be filed electronically by all reporting individuals.

K. Reporting individuals may apply to the secretary of state for exemption from electronic filing in case of hardship, which shall be defined by the secretary of state.

### **1-19-29.1. Campaign funds; limitation on use.**

A. It is unlawful for a candidate or the candidate's agent to make an expenditure of contributions received, except for the following purposes or as otherwise provided in this section:

- (1) expenditures of the campaign;
- (2) expenditures of legislators that are reasonably related to performing the duties of the office held, including mail, telephone and travel expenditures to serve constituents, but excluding personal and legislative session living expenses;
- (3) donations to the state general fund;
- (4) donations to an organization to which a federal income tax deduction would be permitted under Subparagraph (A) of Paragraph (1) of Subsection (b) of Section 170 of the Internal Revenue Code of 1986, as amended;
- (5) expenditures to eliminate the campaign debt of the candidate for the office sought or expenditures incurred by the candidate when seeking election to another public office covered by the Campaign Reporting Act;
- (6) donations to a political committee or to another candidate seeking election to public office; or
- (7) disbursements to return unused funds pro rata to the contributors if no campaign debt exists.

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B. A judge subject to a nonpartisan retention election or a candidate for judicial office shall solicit or accept campaign funds and return unused funds in accordance with the provisions of the Code of Judicial Conduct.

C. No contributions solicited for or received in a federal election campaign may be used in a state election campaign.

### **1-19-30. Repealed.**

### **1-19-31. Contents of report.**

Each required report of expenditures and contributions shall be typed or printed legibly, or on a computer disc or format approved by the secretary of state, and shall include:

A. the name and address of the person or entity to whom an expenditure was made or from whom a contribution was received, except as provided for anonymous contributions or contributions received from special events as provided in Section 1-19-34 NMSA 1978; provided that for contributors, the name of the entity or the first and last names of any individual shall be the full name of the entity or individual, and initials only shall not constitute a full name unless that is the complete legal name;

B. the occupation, name and type of business, as applicable, of any individual or entity making contributions of two hundred dollars (\$200) or more in the aggregate per election;

C. the amount of the expenditure or contribution or value thereof;

D. the purpose of the expenditure;

E. the date that the expenditure was made or the contribution was received;

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F. the opening and closing cash balance for the bank accounts maintained by the reporting individual during the reporting period and the name of the financial institution for each account; and

G. the amount of each unpaid debt and the identity of the person to whom the debt is owed.

### **1-19-32. Inspection of public records.**

A. Each of the following documents is a public record open to public inspection during regular office hours in the office in which the document was filed or from which the document was issued:

- (1) a statement of no activity;
- (2) a report of expenditures and

contributions;

(3) an advisory opinion issued by the state ethics commission; except for the name of the person who requested the opinion;

(4) a document specified as a public record in the Campaign Reporting Act; and

(5) an arbitration decision issued by an arbitration panel and filed with the secretary of state or state ethics commission.

B. Each public record described in Subsection A of this section shall be retained by the state for five years and may be destroyed five years after the date of filing unless a legal action or prosecution is pending that requires the preservation of the public record.

C. The secretary of state shall provide for electronic access to reports of expenditures and contributions and statements of no activity submitted electronically by reporting individuals. Electronic access shall include access via the internet and shall be in an easily searchable format.

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### **1-19-32.1. Reports examination; forwarding of reports.**

A. The secretary of state shall conduct a thorough examination of at least ten percent of all reports filed during a year by reporting individuals, selected at random at least forty days after the general election and ten days after the April reports are filed in a nonelection year, to determine compliance with the provisions of the Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978]. The examination may include an investigation of any discrepancies, including a cross-reference to reports filed by any other reporting individual. A reporting individual shall be notified in writing if a discrepancy is found in the report filed and shall be permitted to file a written explanation for the discrepancy within ten working days of the date of the notice. The notice, penalty and arbitration provisions set forth in Section 1-19-34.4 NMSA 1978 shall apply to examinations conducted under this section.

B. After the date stated in the notice of final action for submission of a written explanation, the secretary of state shall prepare an annual report of any unresolved discrepancies found after examination of the random sample provided for in Subsection A of this section. A copy of this report shall be transmitted to the attorney general for enforcement pursuant to the provisions of Section 1-19-36 NMSA 1978. This report is a public record open to public inspection and subject to the retention and destruction provisions set forth in Section 1-19-32 NMSA 1978.

### **1-19-33. Repealed.**

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### **1-19-34. Candidates; political or campaign committees; treasurer; bank account; anonymous contributions; contributions from special events; credit and debit card contributions.**

A. A political or campaign committee or a candidate shall ensure that:

(1) a treasurer has been appointed and is constantly maintained; provided, however, that when a duly appointed treasurer is unable for any reason to continue as treasurer, the candidate or committee shall appoint a successor and notify the secretary of state within ten days; and provided further that a candidate may serve as the candidate's own treasurer;

(2) all disbursements of money and receipts of contributions are authorized by and through the candidate or treasurer;

(3) a bank account has been established and all receipts of money contributions are deposited in and all expenditures of money are disbursed from one or more bank accounts maintained by the treasurer in the name of the candidate or committee; provided that nothing in this section shall prohibit investments from a bank account to earn interest as long as the investments and earnings are fully reported. All disbursements except for disbursements made from a petty cash fund of one hundred dollars (\$100) or less shall be made in a form such that the date, amount and payee of the transaction are automatically recorded or by check made payable to the person or entity receiving the disbursement and not to "cash" or "bearer"; and

(4) the treasurer upon disbursing or receiving money or other things of value immediately enters and thereafter keeps a proper record preserved by the treasurer, including a full, true and itemized statement and account of each sum disbursed or received, the date of such disbursal or receipt, to whom disbursed or from whom

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received and the object or purpose for which it was disbursed or received.

B. No anonymous contributions shall be accepted for more than one hundred dollars (\$100). The aggregate amount of anonymous contributions received by a reporting individual during a primary or general election or a statewide special election shall not exceed two thousand dollars (\$2,000) for statewide races and five hundred dollars (\$500) for all other races.

C. Cash contributions received at special events that are unidentifiable as to specific contributor but identifiable as to the special event are not subject to the anonymous contribution limits provided for in this section so long as no single special event raises, after expenses, more than one thousand dollars (\$1,000) in such cash contributions. For those contributions, due diligence and best efforts shall be made to disclose on a special prescribed form the sponsor, date, place, total amount received, expenses incurred, estimated number of persons in attendance and other identifiable factors that describe the special event. For purposes of this subsection, "special event" includes an event such as a barbecue or similar fundraiser where tickets costing twenty-five dollars (\$25.00) or less are sold or an event such as a coffee, tea or similar reception; provided that no candidate shall accept contributions of more than twenty-five dollars (\$25.00) in cash at a special event from any one contributor.

D. Any contributions received pursuant to this section in excess of the limits established in Subsections B and C of this section shall be donated to the state general fund or an organization to which a federal income tax deduction would be available under Subparagraph (A) of Paragraph (1) of Subsection (b) of Section 170 of the federal Internal Revenue Code of 1986, as amended.

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E. A candidate or political committee shall not accept a contribution made by a credit card or a debit card via the internet or where the card is not physically present unless, at the time the contribution is made, the contributor provides the card security code assigned to and printed or imprinted on the card and the billing address associated with the card.

### **1-19-34.1. Legislative session fundraising prohibition.**

A. It is unlawful during the prohibited period for a state legislator, the attorney general, the secretary of state, the state treasurer, the commissioner of public lands or the state auditor or a candidate for state legislator, attorney general, secretary of state, state treasurer, commissioner of public lands or state auditor, or any agent on behalf of the attorney general, the secretary of state, the state treasurer, the commissioner of public lands or the state auditor or a candidate for attorney general, the secretary of state, state treasurer, commissioner of public lands or state auditor, to knowingly solicit a contribution governed by the Campaign Reporting Act. For purposes of this subsection, "prohibited period" means that period beginning January 1 prior to any regular session of the legislature or, in the case of a special session, after the proclamation has been issued, and ending on adjournment of the regular or special session.

B. It is unlawful during the prohibited period for the governor or the lieutenant governor, or any agent on the governor's or the lieutenant governor's behalf, to knowingly solicit a contribution governed by the Campaign Reporting Act. For purposes of this subsection, "prohibited period" means that period beginning January 1 prior to any regular session of the legislature or, in the case of a special session, after the proclamation has been issued, and ending

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on the twentieth day following the adjournment of the regular or special session.

### **1-19-34.2. Regulated industry solicitations prohibited.**

It is unlawful for an elected state official, public officer or employee who works for a regulatory office or a candidate who seeks election to a regulatory office or anyone authorized by a candidate to solicit funds on his behalf to knowingly solicit a contribution from an entity or its officers or employees or a person that is directly regulated by the office. For purposes of this section, an entity or person is directly regulated by an office when the entity's or person's charges for services offered to the public are set or directly subject to approval by the regulatory office or when a license to do business in the state is determined by the regulatory office.

### **1-19-34.3. Contributions in one name given for another prohibited; concealing source of contributions used for independent expenditures.**

A. It is unlawful for a person to make a contribution in the name of another person, and no person shall knowingly accept a contribution made by one person in the name of another person.

B. No person shall make contributions or expenditures with an intent to conceal the names of persons who are the true source of funds used to make independent expenditures or the true recipients of the expenditures.

### **1-19-34.4. Education and voluntary compliance; investigations; binding arbitration; referrals for enforcement.**

A. The secretary of state shall advise and seek to educate all persons required to perform duties under the



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Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978] of those duties. This includes advising all known reporting individuals at least annually of that act's deadlines for submitting required reports and statements of exception. The secretary of state, in consultation with the attorney general, shall issue advisory opinions, when requested in writing to do so, on matters concerning that act. All prescribed forms prepared shall be clear and easy to complete.

B. The secretary of state may initiate investigations to determine whether any provision of the Campaign Reporting Act has been violated. Additionally, any person who believes that a provision of that act has been violated may file a written complaint with the secretary of state any time prior to ninety days after an election, except that no complaints from the public may be filed within eight days prior to an election. The secretary of state shall adopt procedures for issuing advisory opinions and processing complaints and notifications of violations.

C. The secretary of state shall at all times seek to ensure voluntary compliance with the provisions of the Campaign Reporting Act. If the secretary of state determines that a provision of that act for which a penalty may be imposed has been violated, the secretary of state shall by written notice set forth the violation and the fine imposed and inform the reporting individual that he has ten working days from the date of the letter to correct the matter and to provide a written explanation, under penalty of perjury, stating any reason why the violation occurred. If a timely explanation is filed and the secretary of state determines that good cause exists to waive the fine imposed, the secretary of state may by a written notice of final action partially or fully waive any fine imposed for

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any late, incomplete or false report or statement of exception. A written notice of final action shall be sent by certified mail.

D. Upon receipt of the notice of final action, the person against whom the penalty has been imposed may protest the secretary of state's determination, including an advisory opinion, by submitting on a prescribed form a written request for binding arbitration to the secretary of state within ten working days of the date of the notice of final action. Any fine imposed shall be due and payable within ten working days of the date of notice of final action. No additional fine shall accrue pending the issuance of the arbitration decision. Fines paid pursuant to a notice of final action that are subsequently reduced or dismissed shall be reimbursed with interest within ten working days after the filing of the arbitration decision with the secretary of state. Interest on the reduced or dismissed portion of the fine shall be the same as the rate of interest earned by the secretary of state's escrow account to be established by the department of finance and administration.

E. An arbitration hearing shall be conducted by a single arbitrator selected within ten days by the person against whom the penalty has been imposed from a list of five arbitrators provided by the secretary of state. Neither the secretary of state nor a person subject to the Campaign Reporting Act, Lobbyist Regulation Act [Chapter 2, Article 11 NMSA 1978] or Financial Disclosure Act [10-16A-1 through 10-16A-8 NMSA 1978] may serve as an arbitrator. Arbitrators shall be considered to be independent contractors, not public officers or employees, and shall not be paid per diem and mileage.

F. The arbitrator shall conduct the hearing within thirty days of the request for arbitration. The

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arbitrator may impose any penalty the secretary of state is authorized to impose. The arbitrator shall state the reasons for his decision in a written document that shall be a public record. The decision shall be final and binding. The decision shall be issued and filed with the secretary of state within thirty days of the conclusion of the hearing. Unless otherwise provided for in this section or by rule or regulation adopted by the secretary of state, the procedures for the arbitration shall be governed by the Uniform Arbitration Act [Chapter 44, Article 7A NMSA 1978]. No arbitrator shall be subject to liability for actions taken pursuant to this section.

G. The secretary of state may refer a matter to the attorney general or a district attorney for a civil injunctive or other appropriate order or for criminal enforcement.

### **1-19-34.5. Presumptions; civil action.**

A. For purposes of a civil action, it shall be presumed that a public official or a candidate for public office subject to the Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978] has authorized and approved each solicitation for campaign contributions made by his campaign committee or a person authorized by the candidate to solicit campaign contributions on his behalf.

B. For purposes of a civil action, it shall be presumed that a candidate who seeks election to a regulatory office, as described in Section 1-19-34.2 NMSA 1978, has advised his campaign committee and all persons authorized by the candidate to solicit campaign contributions on his behalf that it is unlawful to solicit contributions from an entity or its officers or employees or a person that is directly regulated by the office the candidate seeks.

## **Campaign Reporting Act**

### **1-19-34.6. Civil penalties.**

A. If the secretary of state reasonably believes that a person committed, or is about to commit, a violation of the Campaign Reporting Act, the secretary of state shall refer the matter to the attorney general or a district attorney for enforcement.

B. With or without a referral from the secretary of state, the attorney general or district attorney may institute a civil action in district court for any violation of the Campaign Reporting Act or to prevent a violation of that act that involves an unlawful solicitation or the making or acceptance of an unlawful contribution. An action for relief may include a permanent or temporary injunction, a restraining order or any other appropriate order, including a civil penalty of up to one thousand dollars (\$1,000) for each violation not to exceed a total of twenty thousand dollars (\$20,000), and forfeiture of any contribution received as a result of an unlawful solicitation or unlawful contribution. Each unlawful solicitation and each unlawful contribution made or accepted shall be deemed a separate violation of the Campaign Reporting Act.

C. With or without a referral from the secretary of state, the attorney general or district attorney may institute a civil action in district court if a violation has occurred or to prevent a violation of any provision of the Campaign Reporting Act other than that specified in Subsection B of this section. Relief may include a permanent or temporary injunction, a restraining order or any other appropriate order, including an order for a civil penalty of up to one thousand dollars (\$1,000) for each violation not to exceed a total of twenty thousand dollars (\$20,000).

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### **1-19-34.7. Contribution limitations; candidates; political committees.**

A. Except as provided in Subsections H through J of this section:

(1) a person, including a political committee, shall not make a contribution to a candidate, including the candidate's campaign committee, or to a political committee in an amount that will cause that person's total contributions to the candidate or political committee to exceed five thousand dollars (\$5,000) during a primary election cycle or five thousand dollars (\$5,000) during a general election cycle; provided that a person may make a contribution attributable to the general election cycle during the primary election cycle even though the person has contributed the maximum amount allowed for the primary election cycle:

(a) if that contribution is not used to pay for any expenditure related to the primary election; and

(b) if the candidate is not on the general election ballot, all contributions made to the candidate for the general election are returned to the persons who made the contributions or deposited in the public election fund; and

(2) a primary election candidate who does not become a candidate on the general election ballot shall remain subject to the contribution limits of the primary election cycle and shall not accept a contribution from a person who has contributed the maximum allowable amount during the primary election cycle to pay for primary election expenditures of the campaign.

B. A person, including a political committee, shall not make a contribution to a candidate committee authorized for the purpose of electing a candidate for governor in an amount that will cause that person's total

## **Campaign Reporting Act**

contributions to the committee to exceed two times the limit imposed pursuant to Subsection A of this section.

C. Except as provided in Subsection K of this section, a person, including a political committee, shall not make a contribution to a political party or legislative caucus committee in an amount that will cause that person's total contributions to the political party or legislative caucus committee to exceed five times the limit imposed pursuant to Subsection A of this section.

D. All contributions made by a person to a candidate, either directly or indirectly, including contributions that are in any way earmarked or otherwise directed through another person to a candidate, shall be treated as contributions from the person to that candidate.

E. A person, including a political committee, shall not knowingly accept or solicit a contribution, directly or indirectly, including a contribution earmarked or otherwise directed or coordinated through another person, including a political committee, that violates the contribution limits provided for in this section.

F. On January 1 after each general election, the contribution amounts provided in Subsection A of this section shall be increased by the percentage of the preceding two calendar years' increase of the consumer price index for all urban consumers, United States city average for all items, published by the United States department of labor. The amount of the increase shall be rounded to the nearest multiple of one hundred dollars (\$100). The secretary of state shall publish by October 1 before each general election the adjusted contribution limits that shall take effect the January 1 following general election.

G. All contributions in excess of the limits imposed by the provisions of this section shall be

## **Campaign Reporting Act**

deposited in the public election fund upon a finding by the secretary of state that the contribution limits have been exceeded.

H. The limitation on contributions to a candidate provided for in Subsection A of this section shall not apply to a candidate's own contribution from the candidate's personal funds to the candidate's own campaign.

I. The limitations on contributions to political committees provided for in Subsection A of this section shall not apply to a political committee that makes only independent expenditures or to a contribution to a political committee that is deposited in a segregated bank account that may only be used to make independent expenditures.

J. The limitations on contributions to candidates or campaign committees provided for in Subsection A of this section shall not apply to the value of in-kind contributions from a political party or legislative caucus committee to a candidate nominated by that party in a general election cycle.

K. The limitations on contributions to political parties or legislative caucus committees provided for in Subsection C of this section shall not apply to contributions from a campaign committee authorized for the purpose of electing a candidate from that party in a primary or general election cycle. For purposes of this subsection, "campaign committee" includes a candidate committee regulated by the federal election commission.

L. The members of a political party in a chamber of the legislature shall not maintain more than one legislative caucus committee in each chamber.

### **1-19-34.8. State ethics commission; jurisdiction.**

A. On and after January 1, 2020:

(1) the state ethics commission shall have jurisdiction to investigate and adjudicate a complaint alleging

## **Campaign Reporting Act**

a civil violation of a provision of the Campaign Reporting Act in accordance with the provisions of that act; and

(2) the state ethics commission shall share jurisdiction to investigate and adjudicate complaints, or any aspect of a complaint, with the secretary of state as formalized through an agreement. The secretary of state shall forward complaints it receives alleging violations of the Campaign Reporting Act to the state ethics commission in accordance with the agreement.

B. The state ethics commission and the secretary of state shall make recommendations to the first session of the fifty-fifth legislature on any changes to the Campaign Reporting Act necessary for the efficient administration and enforcement of the provisions of that act.

### **1-19-35. Reports and statements; late filing penalty; failure to file.**

A. Except for the report required to be filed and delivered the Thursday prior to the election and any supplemental report, as required in Paragraph (5) of Subsection B of Section 1-19-29 NMSA 1978, that is due prior to the election, and subject to the provisions of Section 1-19-34.4 NMSA 1978, if a statement of no activity or a report of expenditures and contributions contains false or incomplete information or is filed after any deadline imposed by the Campaign Reporting Act, the responsible reporting individual or political committee, in addition to any other penalties or remedies prescribed by the Election Code, shall be liable for and shall pay to the secretary of state fifty dollars (\$50.00) per day for each regular working day after the time required by the Campaign Reporting Act for the filing of statements of no activity or reports of expenditures and contributions until the complete or true statement or



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report is filed, up to a maximum of five thousand dollars (\$5,000).

B. If any reporting individual files a false, intentionally incomplete or late report of expenditures and contributions due on the Thursday prior to the election, the reporting individual or political committee shall be liable and pay to the secretary of state five hundred dollars (\$500) for the first working day and fifty dollars (\$50.00) for each subsequent working day after the time required for the filing of the report until the true and complete report is filed, up to a maximum of five thousand dollars (\$5,000).

C. If a reporting individual fails to file or files a late supplemental report of expenditures and contributions as required in Paragraph (5) of Subsection B of Section 1-19-29 NMSA 1978, the reporting individual or political committee shall be liable for and pay to the secretary of state a penalty equal to the amount of each contribution received or pledged after the Tuesday before the election that was not timely filed.

D. All sums collected for the penalty shall be deposited in the state general fund. A report or statement of no activity shall be deemed timely filed only if it is received by the secretary of state by the date and time prescribed by law.

E. Any candidate who fails or refuses to file a report of expenditures and contributions or statement of no activity or to pay a penalty imposed by the secretary of state as required by the Campaign Reporting Act shall not, in addition to any other penalties provided by law:

(1) have the candidate's name printed upon the ballot if the violation occurs before and through the final date for the withdrawal of candidates; or

## **Campaign Reporting Act**

(2) be issued a certificate of nomination or election, if the violation occurs after the final date for withdrawal of candidates or after the election, until the candidate satisfies all reporting requirements of the Campaign Reporting Act and pays all penalties owed.

F. Any candidate who loses an election and who failed or refused to file a report of expenditures and contributions or a statement of no activity or to pay a penalty imposed by the secretary of state as required by the Campaign Reporting Act shall not be, in addition to any other penalties provided by law, permitted to file a declaration of candidacy or nominating petition for any future election until the candidate satisfies all reporting requirements of that act and pays all penalties owed.

### **1-19-36. Penalties.**

A. Any person who knowingly and willfully violates any provision of the Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978] is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars (\$1,000) or by imprisonment for not more than one year or both.

B. The Campaign Reporting Act may be enforced by the attorney general or the district attorney in the county where the candidate resides, where a political committee has its principal place of business or where the violation occurred.

## **Financial Disclosure Act**

### **Financial Disclosure Act**

#### **10-16A-1. Short title; Financial Disclosure Act.**

Chapter 10, Article 16A NMSA 1978 may be cited as the "Financial Disclosure Act".

#### **10-16A-2. Definitions.**

As used in the Financial Disclosure Act:

A. "business" means a corporation, partnership, sole proprietorship, firm, organization or individual carrying on a business;

B. "employment" means rendering of services for compensation in the form of salary as an employee;

C. "financial interest" means an interest held by an individual or his spouse that is:

(1) an ownership interest in business; or

(2) any employment or prospective employment for which negotiations have already begun;

D. "official act" means an official decision, recommendation, approval, disapproval or other action that involves the use of discretionary authority;

E. "person" means an individual or entity; and

F. "public officer or employee" means any person who has been elected to, appointed to or hired for any state office and who receives compensation in the form of salary or is eligible for per diem or mileage, but excludes legislators and judges.

#### **10-16A-3. Required disclosures for certain candidates and public officers and employees; condition for placement on ballot or appointment.**

A. A person holding a legislative or statewide office shall file with the secretary of state a financial disclosure statement during the month of January every year that the person holds public office.

## **Financial Disclosure Act**

B. A candidate for legislative or statewide office who has not already filed a financial disclosure statement with the secretary of state in the same calendar year shall file with the proper filing officer, as defined in the Election Code, a financial disclosure statement at the time of filing a declaration of candidacy. If the proper filing officer is not the secretary of state, the proper filing officer shall forward a copy of the financial disclosure statement to the secretary of state within three days.

C. A state agency head, an official whose appointment to a board or commission is subject to confirmation by the senate or a member of the insurance nominating committee shall file with the secretary of state a financial disclosure statement within thirty days of appointment and during the month of January every year thereafter that the person holds public office.

D. The financial disclosure statement shall include for any person identified in Subsection A, B or C of this section and the person's spouse the following information for the prior calendar year:

(1) the full name, mailing address and residence address of each person covered in the disclosure statement, except the address of the spouse need not be disclosed; the name and address of the person's and spouse's employer and the title or position held; and a brief description of the nature of the business or occupation;

(2) all sources of gross income of more than five thousand dollars (\$5,000) to each person covered in the disclosure statement, identified by general category descriptions that disclose the nature of the income source, in the following broad categories: law practice or consulting operation or similar business, finance and banking, farming and ranching, medicine and health care, insurance (as a business and not as payment on an

## **Financial Disclosure Act**

insurance claim), oil and gas, transportation, utilities, general stock market holdings, bonds, government, education, manufacturing, real estate, consumer goods sales with a general description of the consumer goods and the category "other", with direction that the income source be similarly described. In describing a law practice, consulting operation or similar business of the person or spouse, the major areas of specialization or income sources shall be described, and if the spouse or a person in the reporting person's or spouse's law firm, consulting operation or similar business is or was during the reporting calendar year or the prior calendar year a registered lobbyist under the Lobbyist Regulation Act, the names and addresses of all clients represented for lobbying purposes during those two years shall be disclosed;

(3) a general description of the type of real estate owned in New Mexico, other than a personal residence, and the county where it is located;

(4) all other New Mexico business interests not otherwise listed of ten thousand dollars (\$10,000) or more in a New Mexico business or entity, including any position held and a general statement of purpose of the business or entity;

(5) all memberships held by the reporting individual and the individual's spouse on boards of for-profit businesses in New Mexico;

(6) all New Mexico professional licenses held;

(7) each state agency that was sold goods or services in excess of five thousand dollars (\$5,000) during the prior calendar year by a person covered in the disclosure statement; and

(8) each state agency, other than a court, before which a person covered in the disclosure statement

## **Financial Disclosure Act**

represented or assisted clients in the course of the person's employment during the prior calendar year.

E. A complete financial disclosure statement shall be filed every year. The secretary of state shall deliver to each elected official required to file a financial disclosure statement a copy of any statement the person filed the previous year.

F. The financial disclosure statements filed pursuant to this section are public records open to public inspection during regular office hours and shall be retained by the state for five years from the date of filing.

G. A person who files a financial disclosure statement may file an amended statement at any time to reflect significant changed circumstances that occurred since the last statement was filed.

H. A person who files to be a candidate for a legislative or statewide office who fails or refuses to file a financial disclosure statement required by this section before the final date for qualification of the person as a candidate as provided for in the Election Code shall not be qualified by the proper filing officer as a candidate.

I. For a state agency head, an official whose appointment to a board or commission is subject to confirmation by the senate or a member of the insurance nominating committee, the filing of the financial disclosure statement required by this section is a condition of entering upon and continuing in state employment or holding an appointed position.

### **10-16A-4. Disclosures by certain public officers or employees of state agencies; condition of employment.**

A. Every employee who is not otherwise required to file a financial disclosure statement under the Financial Disclosure Act and who has a financial interest

## **Financial Disclosure Act**

that he believes or has reason to believe may be affected by his official act or actions of the state agency by which he is employed shall disclose the nature and extent of that interest. The disclosures shall be made in writing to the secretary of state before entering state employment and during the month of January every year thereafter.

B. Every public officer who is not otherwise required to file a financial disclosure statement under the Financial Disclosure Act and who has a financial interest that he believes or has reason to believe may be affected by his official act or actions of the board or commission to which he is appointed shall disclose the nature and extent of that interest. The disclosures shall be made in writing to the secretary of state before taking office and during the month of January every year thereafter.

C. The information on the disclosures shall be made available by the secretary of state for inspection to any citizen of this state.

D. The filing of disclosures pursuant to this section is a condition of entering upon and continuing in state employment or, for persons subject to Subsection B of this section, of holding public office.

### **10-16A-5. Education and voluntary compliance.**

A. The secretary of state shall advise and seek to educate all persons required to perform duties under the Financial Disclosure Act of those duties. This includes providing timely advance notice of the required financial disclosure statement and preparing forms that are clear and easy to complete.

B. The secretary of state shall seek first to ensure voluntary compliance with the provisions of the Financial Disclosure Act. A person who violates that act unintentionally or for good cause shall be given ten days' notice to correct the matter before fines are imposed.

## **Financial Disclosure Act**

Referrals to the state ethics commission for civil enforcement of the Financial Disclosure Act shall be pursued only after efforts to secure voluntary compliance with that act have failed.

### **10-16A-6. Investigations; binding arbitration; fines; enforcement.**

A. The state ethics commission and the secretary of state may conduct thorough examinations of statements and initiate investigations to determine whether the Financial Disclosure Act has been violated. Any person who believes that act has been violated may file a written complaint with the state ethics commission. The commission shall adopt procedures for processing complaints and notifications of violations.

B. If the state ethics commission determines that a violation has occurred for which a penalty should be imposed, the commission shall so notify the person charged and impose the penalty. If the person charged disputes the commission's determination, the person charged may request binding arbitration.

C. The arbitration decision shall be decided by a single arbitrator selected within ten days by the person against whom the penalty has been imposed from a list of five arbitrators provided by the state ethics commission. No arbitrator may be a person subject to the Financial Disclosure Act, Campaign Reporting Act or Lobbyist Regulation Act. Arbitrators shall be considered to be independent contractors, not public officers or employees, and shall not be paid per diem and mileage.

D. The arbitrator may take any action the state ethics commission is authorized to take. The arbitrator shall state the reasons for the decision in a written document that shall be a public record. The decision shall



## **Financial Disclosure Act**

be final and binding. The decision shall be issued within thirty days of the conclusion of the hearing. Unless otherwise provided for in this section, or by rule or regulation adopted by the state ethics commission, the procedures for the arbitration shall be governed by the Uniform Arbitration Act. No arbitrator shall be subject to liability for actions taken pursuant to this section.

E. Any person who files a statement or report after the deadline imposed by the Financial Disclosure Act or any person who files a false or incomplete statement or report is liable for and shall pay to the secretary of state, at or from the time initially required for the filing, fifty dollars (\$50.00) per day for each regular working day after the time required for the filing of the statement or report until the complete report is filed, up to a maximum of five thousand dollars (\$5,000).

F. The secretary of state may refer a matter to the state ethics commission, attorney general or a district attorney for a civil injunctive or other appropriate order or enforcement.

### **10-16A-7. Criminal penalties.**

Any person who knowingly and willfully violates any of the provisions of the Financial Disclosure Act is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars (\$1,000) or by imprisonment for not more than one year or both.

### **10-16A-8. Enforcement; civil penalties.**

A. If the state ethics commission reasonably believes that a person committed, or is about to commit, a violation of the Financial Disclosure Act, the commission may refer the matter to the attorney general or a district attorney for enforcement.

## **Financial Disclosure Act**

B. The state ethics commission may institute a civil action in district court or refer a matter to the attorney general or a district attorney to institute a civil action in district court if a violation has occurred or to prevent a violation of any provision of the Financial Disclosure Act. Relief may include a permanent or temporary injunction, a restraining order or any other appropriate order, including an order for a civil penalty of two hundred fifty dollars (\$250) for each violation not to exceed five thousand dollars (\$5,000).

*Gift Act*

**10-16B-1. Short title.**

Chapter 10, Article 16B NMSA 1978 may be cited as the "Gift Act".

**10-16B-2. Definitions.**

As used in the Gift Act:

A. "family" means a spouse and dependent children;

B. "gift" means any donation or transfer without commensurate consideration of money, property, service, loan, promise or any other thing of value, including food, lodging, transportation and tickets for entertainment or sporting events, but does not include:

(1) any activity, including but not limited to the acceptance of a donation, transfer or contribution, or the making of an expenditure or reimbursement, that is authorized by the Campaign Reporting Act [1-19-25 through 1-19-36 NMSA 1978] or the Federal Election Campaign Act of 1971, as amended;

(2) a gift given under circumstances that make it clear that the gift is motivated by a family relationship or close personal relationship rather than the recipient's position as a state officer or employee or candidate for state office;

(3) compensation for services rendered or capital invested that is:

(a) normal and reasonable in amount;

(b) commensurate with the value of the service rendered or the magnitude of the risk taken on the investment;

(c) in no way increased or enhanced by reason of the recipient's position as a state officer or employee or candidate for state office; and

(d) not otherwise prohibited by law;

## Gift Act

(4) payment for a sale or lease of tangible or intangible property that is commensurate with the value of the services rendered and is in no way increased or enhanced by reason of the recipient's position as a state officer or employee or candidate for state office;

(5) a commercially reasonable loan made in the ordinary course of the lender's business on terms that are available to all similarly qualified borrowers;

(6) reimbursement for out-of-pocket expenses actually incurred in the course of performing a service for the person making the reimbursement;

(7) any gift accepted on behalf of and to be used by the state or a political subdivision of the state, including travel, subsistence and related expenses accepted by a state agency in connection with a state officer's or employee's official duties that take place away from the state official's or employee's station of duty;

(8) anything for which fair market value is paid or reimbursed by the state officer or employee or candidate for state office;

(9) reasonable expenses for a bona fide educational program that is directly related to the state officer's or employee's official duties; or

(10) a retirement gift;

C. "market value" means the retail cost a person would incur to purchase a gift;

D. "restricted donor" means a person who:

(1) is or is seeking to be a party to any one or any combination of sales, purchases, leases or contracts to, from or with the agency in which the donee holds office or is employed;

(2) will personally be, or is the agent of a person who will be, directly and substantially affected financially by the performance or nonperformance of the

donee's official duty in a way that is greater than the effect on the public generally or on a substantial class of persons to which the person belongs as a member of a profession, occupation, industry or region;

(3) is personally, or is the agent of a person who is, the subject of or party to a matter that is pending before a regulatory agency and over which the donee has discretionary authority as part of the donee's official duties or employment within the regulatory agency; or

(4) is a lobbyist or a client of a lobbyist with respect to matters within the donee's jurisdiction; and

E. "state officer or employee" means any person who has been elected to, appointed to or hired for any state office and who receives compensation in the form of salary or is eligible for per diem or mileage.

**10-16B-3. Limitation on gifts.**

A. A state officer or employee or a candidate for state office, or that person's family, shall not knowingly accept from a restricted donor, and a restricted donor shall not knowingly donate to a state officer or employee or a candidate for state office, or that person's family, a gift of a market value greater than two hundred fifty dollars (\$250).

B. A lobbyist registered with the secretary of state, the lobbyist's employer or a government contractor shall not donate gifts of an aggregate market value greater than one thousand dollars (\$1,000) in a calendar year to any one state officer or employee or to any one candidate for state office.

C. A state officer or employee shall not solicit gifts for a charity from a business or corporation regulated by the state agency for which the state officer or employee works and shall not otherwise solicit donations for a charity

## **Gift Act**

in such a manner that it appears that the purpose of the donor in making the gift is to influence the state officer or employee in the performance of an official duty.

### **10-16B-4. Penalties.**

A person who violates the provisions of the Gift Act is guilty of a petty misdemeanor and upon conviction shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

### **10-16B-5. Investigations; complaints; enforcement.**

A. The state ethics commission may initiate investigations to determine whether the provisions of the Gift Act have been violated. A person who believes that a violation of the Gift Act has occurred may file a complaint with the state ethics commission.

B. If the state ethics commission determines that a violation has occurred, the commission shall refer the matter to the attorney general for criminal prosecution.

## *State Ethics Commission Act*

### *State Ethics Commission Act*

#### **10-16G-1. Short title.**

Sections 1 through 16 [10-16G-1 to 10-16G-16 NMSA 1978] of this act may be cited as the "State Ethics Commission Act".

#### **10-16G-2. Definitions.**

As used in the State Ethics Commission Act:

A. "commission" means the state ethics commission;

B. "commissioner" means a member of the commission;

C. "complainant" means a person who files a verified complaint with the commission;

D. "complaint" means a complaint that has been signed by the complainant and the complainant attests under oath and subject to penalty of perjury before a notary public that the information in the complaint, and any attachments provided with the complaint, are true and accurate;

E. "director" means the executive director of the commission;

F. "government contractor" means a person who has a contract with a public agency or who has submitted a competitive sealed proposal or competitive sealed bid for a contract with a public agency;

G. "legislative body" means the house of representatives or the senate;

H. "lobbyist" means a person who is required to register as a lobbyist pursuant to the provisions of the Lobbyist Regulation Act;

I. "political party" means a political party that has been qualified in accordance with the provisions of the Election Code;

J. "public agency" means any department, commission, council, board, committee, agency or institution

## **State Ethics Commission Act**

of the executive or legislative branch of government of the state or any instrumentality of the state, including the New Mexico mortgage finance authority, the New Mexico finance authority, the New Mexico exposition center authority, the New Mexico hospital equipment loan council and the New Mexico renewable energy transmission authority;

K. "public employee" means an employee of a public agency;

L. "public official" means a person elected to an office of the executive or legislative branch of the state or a person appointed to a public agency; and

M. "respondent" means a person against whom a complaint has been filed with or by the commission.

### **10-16G-3. State ethics commission created; membership; terms; removal.**

A. The "state ethics commission", as created in Article 5, Section 17 of the constitution of New Mexico, is composed of seven commissioners, appointed as follows:

(1) one commissioner appointed by the speaker of the house of representatives;

(2) one commissioner appointed by the minority floor leader of the house of representatives;

(3) one commissioner appointed by the president pro tempore of the senate;

(4) one commissioner appointed by the minority floor leader of the senate;

(5) two commissioners appointed by the four legislatively appointed commissioners; and

(6) one commissioner appointed by the governor, who shall be a retired judge and who shall chair the commission.

B. No more than three members of the commission may be members of the same political party.



## *State Ethics Commission Act*

C. The appointing authorities shall give due regard to the cultural diversity of the state and to achieving geographical representation from across the state. Each appointing authority shall file letters of appointment with the secretary of state.

D. Commissioners shall be appointed for staggered terms of four years beginning July 1, 2019. The initial commissioners appointed by the speaker of the house of representatives and senate minority floor leader shall serve an initial term of four years; members appointed by the president pro tempore of the senate and house minority floor leader shall serve an initial term of two years; members appointed by the legislatively appointed members shall serve an initial term of one year; and the member appointed by the governor shall serve an initial term of three years. Members shall serve until their successors are appointed and qualified.

E. A person shall not serve as a commissioner for more than two consecutive four-year terms.

F. When any member of the commission dies, resigns or no longer has the qualifications required for the commissioner's original selection, the commissioner's position on the commission becomes vacant. The director shall notify the original appointing authority of the vacant position. The original appointing authority shall select a successor in the same manner as the original selection was made. A vacancy shall be filled by appointment by the original appointing authority no later than sixty days following notification of a vacancy for the remainder of the unexpired term. A vacancy on the commission shall be filled by appointment by the original appointing authority for the remainder of the unexpired term.

G. The commission shall meet as necessary to carry out its duties pursuant to the State Ethics Commission Act. Commissioners are entitled to receive per diem and mileage as provided in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance.

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H. Four commissioners consisting of two members of the largest political party in the state and two members of the second largest political party in the state constitute a quorum for the transaction of business. No action shall be taken by the commission unless at least four members, including at least two members of the largest political party in the state and two members of the second largest political party in the state, concur.

I. A commissioner may be removed only for incompetence, neglect of duty or malfeasance in office. A proceeding for the removal of a commissioner may be commenced by the commission or by the attorney general upon the request of the commission. A commissioner shall be given notice of hearing and an opportunity to be heard before the commissioner is removed. The supreme court has original jurisdiction over proceedings to remove commissioners, and its decision shall be final. A commissioner is also liable to impeachment pursuant to Article 4, Section 36 of the constitution of New Mexico.

### **10-16G-4. Commissioners; qualifications; limitations.**

A. To qualify for appointment to the commission, a person shall:

- (1) be a qualified elector of New Mexico;
- (2) not have changed party registration in the five years next preceding the member's appointment in such a manner that the member's prior party registration would make the member ineligible to serve on the commission;
- (3) not continue to serve as a commissioner if the member changes party registration after the date of appointment in such a manner as to make the member ineligible to serve on the commission; and
- (4) not be, or within the two years prior to appointment shall not have been, in New Mexico, any of the following:

- (a) a public official;

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- (b) a public employee;
- (c) a candidate;
- (d) a lobbyist;
- (e) a government contractor; or
- (f) an office holder in a political party

at the state or federal level.

B. Before entering upon the duties of the office of commissioner, each commissioner shall review the State Ethics Commission Act and other laws and rules pertaining to the commission's responsibilities and to ethics and governmental conduct in New Mexico. Each commissioner shall take the oath of office as provided in Article 20, Section 1 of the constitution of New Mexico.

C. For a period of one calendar year following a commissioner's tenure or following the resignation or removal of a commissioner, the commissioner shall not:

- (1) represent a respondent, unless appearing on the commissioner's own behalf; or
- (2) accept employment or otherwise provide services to a respondent unless the commissioner accepted employment or provided services prior to the filing of a complaint against the respondent.

D. During a commissioner's tenure, a commissioner shall not hold another public office or be:

- (1) a public employee;
- (2) a candidate;
- (3) a lobbyist;
- (4) a government contractor; or
- (5) an office holder in a political party at the

state or federal level.

E. A commissioner who changes political party affiliation in violation of the provisions of Subsection A of this section or who chooses to seek or hold an office in violation of Subsection D of this section shall resign from the commission or be deemed to have resigned.

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### **10-16G-5. Commission; duties and powers.**

A. The commission shall:

(1) employ an executive director, who shall be an attorney, upon approval of at least five commissioners;

(2) develop, adopt and promulgate the rules necessary for it to implement and administer the provisions of the State Ethics Commission Act; and

(3) establish qualifications for hearing officers and rules for hearing procedures and appeals.

B. Beginning January 1, 2020, the commission shall:

(1) receive and investigate complaints alleging ethics violations against public officials, public employees, candidates, persons subject to the Campaign Reporting Act, government contractors, lobbyists and lobbyists' employers;

(2) hold hearings in appropriate cases to determine whether there has been an ethics violation;

(3) compile, index, maintain and provide public access to all advisory opinions and reports required to be made public pursuant to the State Ethics Commission Act;

(4) draft a proposed code of ethics for public officials and public employees and submit the proposed code to each elected public official and public agency for adoption; and

(5) submit an annual report of its activities, including any recommendations regarding state ethics laws or the scope of its powers and duties, in December of each year to the legislature and the governor.

C. Beginning January 1, 2020, the commission may:

(1) by approval of at least five commissioners, initiate complaints alleging ethics violations against a public official, public employee, candidate, person subject to the Campaign Reporting Act, government contractor, lobbyist or lobbyist's employer;

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(2) petition a district court to issue subpoenas under seal requiring the attendance of witnesses and the production of books, records, documents or other evidence relevant or material to an investigation;

(3) issue advisory opinions in accordance with the provisions of the State Ethics Commission Act;

(4) compile, adopt, publish and make available to all public officials, public employees, government contractors and lobbyists an ethics guide that clearly and plainly explains the ethics requirements set forth in state law, including those that relate to conducting business with the state and public agencies; and

(5) offer annual ethics training to public officials, public employees, government contractors, lobbyists and other interested persons.

### **10-16G-6. Executive director; appointment; duties and powers.**

A. The commission shall appoint an executive director who shall be knowledgeable about state ethics laws and who shall be appointed without reference to party affiliation and solely on the grounds of fitness to perform the duties of the office. The director shall hold office from the date of appointment until such time as the director is removed by the commission.

B. The director shall:

(1) take the oath of office required by Article 20, Section 1 of the constitution of New Mexico;

(2) hire a general counsel who may serve for no more than five years, unless rehired for up to an additional five years;

(3) hire additional personnel as may be necessary to carry out the duties of the commission;

(4) prepare an annual budget for the commission and submit it to the commission for approval;

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(5) make recommendations to the commission of proposed rules or legislative changes needed to provide better administration of the State Ethics Commission Act;

(6) perform other duties as assigned by the commission; and

(7) be required to reapply for the position after six years of service and may serve as director for no more than twelve years.

C. The director may:

(1) enter into contracts and agreements on behalf of the commission; and

(2) have the general counsel administer oaths and take depositions subject to the Rules of Civil Procedure for the District Courts.

D. For a period of one calendar year immediately following termination of the director's employment with the commission, the director shall not:

(1) represent a respondent, unless appearing on the director's own behalf; or

(2) accept employment or otherwise provide services to a respondent, unless the director accepted employment or provided services prior to the filing of a complaint against the respondent.

### **10-16G-7. Recusal and disqualification of a commissioner.**

A. A commissioner may recuse from a particular matter.

B. A commissioner shall recuse from any matter in which the commissioner is unable to make a fair and impartial decision or in which there is a reasonable doubt about whether the commissioner can make a fair and impartial decision, including:

(1) when the commissioner has a personal bias or prejudice concerning a party to the proceeding or has

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prejudged a disputed evidentiary fact involved in a proceeding prior to a hearing. For the purposes of this paragraph, "personal bias or prejudice" means a predisposition toward a person based on a previous or ongoing relationship that renders the commissioner unable to exercise the commissioner's functions impartially;

(2) when the commissioner has a pecuniary interest in the outcome of the matter; or

(3) when in previous employment the commissioner served as an attorney, adviser, consultant or witness in the matter in controversy.

C. A party to the proceeding may request the recusal of a commissioner and shall provide the commission with the grounds for the request. If the commissioner declines to recuse upon request of a party to the proceeding, the commissioner shall provide a full explanation in support of the refusal to recuse.

D. A party may appeal a commissioner's refusal to recuse, or if the propriety of a commissioner's participation in a particular matter is otherwise questioned, the issue shall be decided by a majority of the other commissioners present and voting.

E. A disqualified commissioner shall not participate in any proceedings with reference to the matter from which the commissioner is disqualified or recused, and the commissioner shall be excused from that portion of any meeting at which the matter is discussed.

F. Minutes of commission meetings shall record the name of any commissioner not voting on a matter by reason of disqualification or recusal.

G. If two or more commissioners have recused themselves or are disqualified from participating in a proceeding, the remaining commissioners shall appoint temporary commissioners to participate in that proceeding. Appointments of temporary commissioners shall be made by

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a majority vote of the remaining commissioners in accordance with the political affiliation and geographical representation requirements and the qualifications set forth in the State Ethics Commission Act.

H. The commission shall promulgate rules for the recusal and disqualification of commissioners, for an appeal of a recusal decision and for the appointment of temporary commissioners.

### **10-16G-8. Advisory opinions.**

A. The commission may issue advisory opinions on matters related to ethics. Advisory opinions shall:

(1) be requested in writing by a public official, public employee, candidate, person subject to the Campaign Reporting Act, government contractor, lobbyist or lobbyist's employer;

(2) identify a specific set of circumstances involving an ethics issue;

(3) be issued within sixty days of receipt of the request unless the commission notifies the requester of a delay in issuance and continues to notify the requester every thirty days until the advisory opinion is issued; and

(4) be published after omitting the requester's name and identifying information.

B. A request for an advisory opinion shall be confidential and not subject to the provisions of the Inspection of Public Records Act.

C. Unless amended or revoked, an advisory opinion shall be binding on the commission in any subsequent commission proceedings concerning a person who acted in good faith and in reasonable reliance on the advisory opinion.

### **10-16G-9. Commission jurisdiction; compliance provisions.**

A. The commission has jurisdiction to enforce the applicable civil compliance provisions for public officials,



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public employees, candidates, persons subject to the Campaign Reporting Act, government contractors, lobbyists and lobbyists' employers of:

- (1) the Campaign Reporting Act;
- (2) the Financial Disclosure Act;
- (3) the Gift Act;
- (4) the Lobbyist Regulation Act;
- (5) the Voter Action Act;
- (6) the Governmental Conduct Act;
- (7) the Procurement Code;
- (8) the State Ethics Commission Act; and
- (9) Article 9, Section 14 of the constitution

of New Mexico.

B. All complaints filed with a public agency regarding the statutes listed in Subsection A of this section shall be forwarded to the commission.

C. The commission may choose to act on some or all aspects of a complaint and forward other aspects of a complaint to another state or federal agency with jurisdiction over the matter in accordance with Subsection E of this section.

D. If the commission decides not to act on a complaint, whether the complaint was filed with the commission or forwarded from another public agency, or decides only to act on part of a complaint, the commission shall promptly forward the complaint, or any part of a complaint on which it does not wish to act, to the public agency that has appropriate jurisdiction within ten days of the decision. The complainant and respondent shall be notified in writing when the complainant's request has been forwarded to another agency unless otherwise provided pursuant to Subsection H of Section 10 [10-16G-10 NMSA 1978] of the State Ethics Commission Act.

E. The commission may share jurisdiction with other public agencies having authority to act on a complaint

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or any aspect of a complaint. Such shared jurisdiction shall be formalized through an agreement entered into by all participating agencies involved with the complaint and the director. The commission may also investigate a complaint referred to the commission by the legislature, or a legislative committee, in accordance with an agreement entered into pursuant to policies of the New Mexico legislative council or rules of the house of representatives or senate.

F. The commission may file a court action to enforce the civil compliance provisions of an act listed in Subsection A of this section. The court action shall be filed in the district court in the county where the respondent resides.

### **10-16G-10. Complaints; investigations; subpoenas.**

A. A complaint of an alleged ethics violation committed by a public official, public employee, candidate, person subject to the Campaign Reporting Act, government contractor, lobbyist, lobbyist's employer or a restricted donor subject to the Gift Act may be filed with the commission by a person who has actual knowledge of the alleged ethics violation.

B. The complainant shall set forth in detail the specific charges against the respondent and the factual allegations that support the charges and shall sign the complaint under penalty of false statement. The complainant shall submit any evidence the complainant has that supports the complaint. Evidence may include documents, records and names of witnesses. The commission shall prescribe the forms on which complaints are to be filed. The complaint form shall be signed and sworn by the complainant and notarized.

C. Except as provided in Subsection H of this section, the respondent shall be notified within seven days of the filing of the complaint and offered an opportunity to file a response on the merits of the complaint.

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D. The director shall determine if the complaint is subject to referral to another state agency pursuant to an agreement or outside the jurisdiction of the commission, and if so, promptly refer the complaint to the appropriate agency. If the director determines that the complaint is within the commission's jurisdiction, the director shall have the general counsel initiate an investigation.

E. The general counsel shall conduct an investigation to determine whether the complaint is frivolous or unsubstantiated. If the general counsel determines that the complaint is frivolous or unsubstantiated, the complaint shall be dismissed, and the complainant and respondent shall be notified in writing of the decision and reasons for the dismissal. The commission shall not make public a complaint that has been dismissed pursuant to this subsection or the reasons for the dismissal.

F. If the general counsel and the respondent reach a settlement on the matters of the complaint, the settlement shall be submitted to the commission for its approval, and if the matter has been resolved to the satisfaction of the commission, the complaint and terms of the settlement shall be subject to public disclosure.

G. If the general counsel determines that there is probable cause, the director shall promptly notify the respondent of the finding of probable cause and of the specific allegations in the complaint that are being investigated and that a public hearing will be set. If the finding of probable cause involves a discriminatory practice or actions by the respondent against the complainant, no settlement agreement shall be reached without prior consultation with the complainant. In any case, the notification, complaint, specific allegations being investigated and any response to the complaint shall be made public thirty days following notice to the respondent.

H. Notwithstanding the provisions of Subsections C and G of this section, the director may delay notifying a respondent and complainant and releasing to the public the

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complaint and related information required by Subsection G of this section if it is deemed necessary to protect the integrity of a criminal investigation. A decision whether to delay notifying a respondent shall be taken by a majority vote of the commission and shall be documented in writing with reasonable specificity.

I. As part of an investigation, the general counsel may administer oaths, interview witnesses and examine books, records, documents and other evidence reasonably related to the complaint. All testimony in an investigation shall be under oath, and the respondent may be represented by legal counsel. If the general counsel determines that a subpoena is necessary to obtain the testimony of a person or the production of books, records, documents or other evidence, the director shall request that the commission petition a district court to issue a subpoena.

J. The commission may petition the court for a subpoena for the attendance and examination of witnesses or for the production of books, records, documents or other evidence reasonably related to an investigation. If a person neglects or refuses to comply with a subpoena, the commission may apply to a district court for an order enforcing the subpoena and compelling compliance. All proceedings in the district court prior to the complaint being made public pursuant to Subsection G of this section, or upon entry of a settlement agreement, shall be sealed. A case is automatically unsealed upon notice by the commission to the court that the commission has made the complaint public. No later than July 1 of each even-numbered year, the chief justice of the supreme court shall appoint an active or pro tempore district judge to consider the issuance and enforcement of subpoenas provided for in this section. The appointment shall end on June 30 of the next even-numbered year after appointment.

K. A public official or state public employee who is a respondent who is subject to a complaint alleging a

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violation made in the performance of the respondent's duties shall be entitled to representation by the risk management division of the general services department.

### **10-16G-11. Status of investigation; reports to commission.**

A. If a hearing has not been scheduled concerning the disposition of a complaint within ninety days after the complaint is received, the director shall report to the commission on the status of the investigation. The commission may dismiss the complaint or instruct the director to continue the investigation of the complaint. Unless the commission dismisses the complaint, the director shall report to the commission every ninety days thereafter on the status of the investigation.

B. Upon dismissal of a complaint or a decision to continue an investigation of a complaint, the commission shall notify the complainant and respondent in writing of its action. If the commission has not notified a respondent pursuant to the provisions of Subsection G of Section 10 [10-16G-10 NMSA 1978] of the State Ethics Commission Act, the commission shall vote on whether to notify the respondent. A decision whether to continue to delay notifying the respondent shall be taken by a majority vote of a quorum of the commission and shall be documented in writing with reasonable specificity.

### **10-16G-12. Investigation report; commission hearings; decisions and reasons given; disclosure of an ethics violation.**

A. Upon receipt of the general counsel's recommendation, the commission or hearing officer shall:

- (1) dismiss a complaint and notify the complainant and the respondent of the dismissal; or
- (2) set a public hearing, as soon as practicable.

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B. At any time before or during a hearing provided for in Subsection A of this section, the hearing officer may, at a public meeting, approve a disposition of a complaint agreed to by the general counsel and the respondent, as approved by the commission.

C. The hearing provided for in Subsection A of this section shall be pursuant to the rules of evidence that govern proceedings in the state's courts and procedures established by the commission. An audio recording shall be made of the hearing. The respondent may be represented by counsel. The parties may present evidence and testimony, request the director to compel the presence of witnesses and examine and cross-examine witnesses.

D. The hearing officer shall issue a written decision that shall include the reasons for the decision. If the hearing officer finds by a preponderance of the evidence that the respondent's conduct constituted a violation, the decision may include recommendations for disciplinary action against the respondent, and the hearing officer may impose any fines provided for by law. A finding of fraudulent or willful misconduct shall require clear and convincing evidence.

E. The complainant or respondent may appeal a decision of the hearing officer within thirty days of the decision to the full commission, which shall hear the matter within sixty days of notice of the appeal and issue its decision within 180 days.

F. The commission shall publicly disclose a decision, including a dismissal following a finding of probable cause or the terms of a settlement, issued pursuant to this section. The commission shall provide the decision to the complainant, the respondent and the:

- (1) house of representatives if the respondent is a public official who is subject to impeachment;
- (2) appropriate legislative body if the respondent is a member of the legislature;

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(3) respondent's appointing authority if the respondent is an appointed public official;

(4) appropriate public agency if the respondent is a public employee;

(5) public agency with which the respondent has a government contract if the respondent is a government contractor; and

(6) secretary of state and the respondent's employer, if any, if the respondent is a lobbyist.

G. The commission shall produce a quarterly report subject to public inspection containing the following information:

(1) the number of complaints filed with and referred to the commission;

(2) the disposition of the complaints; and

(3) the type of violation alleged in the complaints.

### **10-16G-13. Confidentiality of records; penalty.**

A. A decision that a respondent's conduct constituted a violation, and the terms of a settlement approved by the commission, are public records. Pleadings, motions, briefs and other documents or information related to the decision are public records, except for information that is confidential or protected pursuant to attorney-client privilege, provider-patient privilege or state or federal law.

B. If a complaint is determined to be frivolous, unsubstantiated or outside the jurisdiction of the commission, the complaint shall not be made public by the commission; provided that the commission shall not prohibit the complainant or respondent from releasing the commission's decision or other information concerning the complaint.

C. Except as otherwise provided in the acts listed in Section 9 [Section 10-16G-9 NMSA 1978] of the State Ethics Commission Act, all complaints, reports, files, records

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and communications collected or generated by the commission, hearing officer, general counsel or director that pertain to alleged violations shall not be disclosed by the commission or any commissioner, agent or employee of the commission, unless:

- (1) disclosure is necessary to pursue an investigation by the commission;
- (2) disclosure is required pursuant to the provisions of the State Ethics Commission Act; or
- (3) they are offered into evidence by the commission, respondent or another party at a judicial, legislative or administrative proceeding, including a hearing before a hearing officer.

D. Information and reports containing information made confidential by law shall not be disclosed by the commission or its director, staff or contractors.

E. A commissioner, director, staff or contractor who knowingly discloses any confidential complaint, report, file, record or communication in violation of the State Ethics Commission Act is guilty of a petty misdemeanor.

### **10-16G-14. Criminal violations; referral.**

If the commission finds at any time that a respondent's conduct amounts to a criminal violation, the director shall consult with the attorney general or an appropriate district attorney, and the commission may refer the matter to the attorney general or an appropriate district attorney. The commission may provide the attorney general or district attorney with all evidence collected during the commission's investigation. Nothing in this section prevents the commission from taking any action authorized by the State Ethics Commission Act or deciding to suspend an investigation pending resolution of any criminal charges.



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### **10-16G-15. Time limitations on jurisdiction.**

A. The commission shall not accept or consider a complaint unless the complaint is filed with the commission within the later of two years from the date:

- (1) on which the alleged conduct occurred; or
- (2) the alleged conduct could reasonably have been discovered.

B. The commission shall not adjudicate a complaint filed against a candidate, except pursuant to the Campaign Reporting Act or Voter Action Act, less than sixty days before a primary or general election. During that time period, the commission may dismiss complaints that are frivolous or unsubstantiated or refer complaints that are outside the jurisdiction of the commission.

C. A complainant shall be notified in writing of the provisions of this section and shall also be notified in writing that the complainant may refer allegations of criminal conduct to the attorney general or the appropriate district attorney.

D. When commission action on a complaint is suspended pursuant to the provisions of this section, the respondent shall promptly be notified that a complaint has been filed and of the specific allegations in the complaint and the specific violations charged in the complaint.

### **10-16G-16. Prohibited actions.**

A. A person shall not take or threaten to take any retaliatory, disciplinary or other adverse action against another person who in good faith:

- (1) files a verified complaint with the commission that alleges a violation; or
- (2) provides testimony, records, documents or other information to the commission during an investigation or at a hearing.

B. A complainant and a respondent shall not communicate ex parte with any hearing officer, commissioner or other person involved in a determination of the complaint.

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C. Nothing in the State Ethics Commission Act precludes civil or criminal actions for libel or slander or other civil or criminal actions against a person who files a false claim.

## House of Representatives Oath

### FIFTY-FIFTH LEGISLATURE FIRST SESSION

#### Oath of Ethical Conduct

*I, REPRESENTATIVE \_\_\_\_\_, duly elected member of the House of Representatives from District \_\_\_\_\_, do hereby recognize the irrefutable principle that a public office is a public trust and do solemnly swear that:*

- 1. I shall faithfully support the United States Constitution and the Constitution of New Mexico.*
- 2. I shall discharge with integrity and ethically the high responsibilities placed upon me by the Constitution of New Mexico and the voters of my district.*
- 3. I shall abide by the spirit as well as the letter of those House rules pertaining to ethical conduct.*
- 4. I shall not use my office for personal gain and shall scrupulously avoid any act of impropriety or any act that gives the appearance of impropriety.*

*Signed and Sealed at the State Capitol,  
in the City of Santa Fe*

\_\_\_\_\_  
REPRESENTATIVE  
District \_\_\_\_\_

## **Senate Oath**

### **FIFTY-FIFTH LEGISLATURE FIRST SESSION**

#### **OATH OF ETHICAL CONDUCT**

*I, Senator \_\_\_\_\_, duly elected member of the Senate from District No. \_\_\_\_, do hereby recognize the irrefutable principle that a public office is a public trust and do solemnly swear that:*

- 1. I shall faithfully support the United States Constitution and the Constitution of New Mexico.*
- 2. I shall ethically and with integrity discharge the high responsibilities placed upon me by the Constitution of New Mexico and the voters of my district.*
- 3. I shall abide by the spirit as well as the letter of the Senate rules pertaining to ethical conduct.*
- 4. I shall not use my office for personal gain and shall scrupulously avoid any act of impropriety or any act that gives the appearance of impropriety.*

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*Senator*

