

1 AN ACT

2 RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
3 AMENDING AND ENACTING SECTIONS OF THE ELECTION CODE;
4 PROHIBITING PERSONS ACTING UNDER COLOR OF LAW OR OTHERWISE
5 FROM ORDERING TROOPS TO A PLACE WHERE AN ELECTION IS HELD
6 UNLESS NECESSARY TO REPEL ARMED ENEMIES OF THE UNITED STATES;
7 PROHIBITING INTERFERENCE WITH A PERSON'S RIGHT OF SUFFRAGE AT
8 AN ELECTION; PROVIDING PENALTIES; PROVIDING REMEDIES;
9 PROVIDING PROCEDURES FOR ELECTIONS FOLLOWING A DECLARATION OF
10 A STATE OF EMERGENCY.

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

13 SECTION 1. A new section of the Election Code, Section
14 1-1-29 NMSA 1978, is enacted to read:

15 "1-1-29. UNDER COLOR OF LAW.--As used in the Election
16 Code, "under color of law" means acting or purporting to act
17 in the performance of official duties, under the authority of
18 a statute, ordinance, regulation, proclamation or order of
19 the United States or this state."

20 SECTION 2. A new section of the Election Code, Section
21 1-1-30 NMSA 1978, is enacted to read:

22 "1-1-30. PEACE OFFICER.--As used in the Election Code,
23 "peace officer" means any full-time salaried or certified
24 part-time salaried officer of a police or sheriff's
25 department that is part of or administered by the state or

1 any political subdivision of the state who by virtue of
2 office or public employment is vested by law with the duty to
3 maintain the public peace."

4 SECTION 3. A new section of the Election Code is
5 enacted to read:

6 "INTERFERENCE WITH ELECTIONS.--

7 A. A person acting under color of law or otherwise
8 shall not:

9 (1) order, bring or keep a troop or armed
10 person or persons in the civil, military or naval service of
11 the United States to any location used as a polling place,
12 including parking areas for the polling location, or within
13 fifty feet of a monitored secured container as used in
14 Subsection E of Section 1-6-9 NMSA 1978, beginning
15 twenty-eight days before an election through election day,
16 unless such force is necessary to repel armed enemies of the
17 United States;

18 (2) prescribe, fix or attempt to prescribe
19 or fix the qualifications of voters at an election in this
20 state contrary to the laws of the state;

21 (3) impose or attempt to impose a rule,
22 standard or practice for conducting an election in this state
23 contrary to the laws of the state; or

24 (4) interfere in any manner with the conduct
25 of the election or the secretary of state, a county clerk, a

1 municipal clerk or an employee or agent of the secretary of
2 state, an employee or agent of a county clerk, an employee or
3 agent of a municipal clerk or a member of an election board,
4 voter, challenger or watcher in the discharge of the person's
5 duties pursuant to the Election Code.

6 B. A person who violates Subsection A of this
7 section is guilty of a fourth degree felony, in addition to
8 any other offense provided by law.

9 C. The following persons may bring a civil action
10 in district court to enforce the provisions of this section:

11 (1) the attorney general;

12 (2) the secretary of state;

13 (3) a county clerk with respect to
14 violations that occur within the county clerk's county; and

15 (4) a voter who experienced intimidation as
16 used in Section 1-20-14 NMSA 1978, or was not able to vote
17 due to obstruction or disturbance of the polling place as
18 used in Sections 1-20-17 and 1-20-20 NMSA 1978, as a result
19 of a violation of this section.

20 D. In a civil action brought pursuant to this
21 section, a court may:

22 (1) grant temporary, preliminary or
23 permanent injunctive relief;

24 (2) impose a civil penalty of not less than
25 five thousand dollars (\$5,000) and not more than fifty

1 thousand dollars (\$50,000) per violation; and

2 (3) award any other appropriate relief.

3 E. A court shall expedite the scheduling and
4 disposition of a civil action brought pursuant to this
5 section if the action is filed during the period beginning
6 twenty-eight days before election day and ending with the
7 completion of the state canvass.

8 F. A prevailing plaintiff who is a voter with
9 standing pursuant to Subsection C of this section shall be
10 awarded reasonable attorney fees and litigation costs.

11 G. The provisions of this section shall not
12 prevent a qualified elector from exercising the right of
13 suffrage in an election in this state and shall not be
14 construed to authorize an action that would be prohibited by
15 federal law or to limit any federal authority that is validly
16 exercised pursuant to federal law."

17 SECTION 4. A new section of the Election Code is
18 enacted to read:

19 "EMERGENCY ELECTIONS PROCEDURES.--

20 A. Upon issuance of an executive order declaring a
21 state of emergency or an executive order for an impending
22 emergency, the secretary of state shall authorize county
23 clerks in impacted counties to evaluate and develop emergency
24 contingency plans to ensure maximum participation in the
25 electoral process and to provide a safe and orderly procedure

1 for impacted elections.

2 B. A county clerk shall notify the secretary of
3 state in writing of a natural disaster or other emergency
4 impacting election operations. As soon as possible following
5 the issuance of an executive order declaring an emergency:

6 (1) the county clerk shall identify the
7 number of polling places that are functional and the number
8 of polling places that are no longer functional. If a
9 polling place is destroyed, inaccessible or unsafe, the
10 county clerk shall work with federal, state and local
11 emergency management agencies to permit the orderly
12 establishment of a new polling place. An alternate emergency
13 location shall be designated by the county clerk and
14 authorized by the secretary of state and shall meet the
15 requirements for a voter convenience center pursuant to
16 Section 1-3-4 NMSA 1978. The designation of a new polling
17 location shall not require court approval. The secretary of
18 state may authorize a county to loan a mobile voting unit to
19 another county;

20 (2) the county clerk shall notify the
21 secretary of state in writing of any impact to mailed ballot
22 delivery. The secretary of state may authorize the county
23 clerk to transmit ballot and balloting materials by secured
24 electronic transmission available to the county clerk to
25 voters who have submitted an emergency mailed ballot request

1 on a form prescribed by the secretary of state. Any delays,
2 closures of secured monitored containers or additional
3 changes affecting the ability of voters to receive or return
4 a mailed ballot shall be posted as soon as practicable on the
5 county clerk's website with information on how voters may
6 participate in the election;

7 (3) the county clerk shall publish in a
8 newspaper of general circulation in the county and post to
9 the county clerk's website the details of any changes to the
10 voting process pursuant to this section, including any
11 changes to voting times and locations; and

12 (4) contingency plans involving the
13 elimination or consolidation of a polling place or the
14 establishment of an alternative voting or mobile voting unit
15 within an Indian nation, tribe or pueblo shall occur pursuant
16 to Section 1-21A-9 NMSA 1978.

17 C. Nothing in this section shall be interpreted as
18 extending or authorizing an extension of the time period for
19 an election."

20 SECTION 5. Section 1-12-5 NMSA 1978 (being Laws 1969,
21 Chapter 240, Section 244, as amended) is amended to read:

22 "1-12-5. CONDUCT OF ELECTION--STATE POLICE--OTHER PEACE
23 OFFICERS.--

24 A. Any member of the New Mexico state police or
25 other peace officer may enter a polling place upon request

1 for the purpose of observing the conduct of the election.

2 B. No member of the New Mexico state police or
3 other peace officer shall interfere in any way with a member
4 of the election board, a voter or the conduct of the election
5 except to assist in maintaining order and orderly control of
6 access when requested by the presiding judge, an election
7 judge, a county clerk or the secretary of state.

8 C. Any member of the New Mexico state police or
9 other peace officer violating Subsection B of this section is
10 guilty of a petty misdemeanor and in addition to any other
11 penalty provided by law shall be subject to dismissal and is
12 ineligible for reinstatement."

13 SECTION 6. Section 1-20-3 NMSA 1978 (being Laws 1969,
14 Chapter 240, Section 428, as amended by Laws 1993, Chapter
15 314, Section 60 and by Laws 1993, Chapter 316, Section 58) is
16 amended to read:

17 "1-20-3. REGISTRATION OFFENSES.--

18 A. Registration offenses consist of performing,
19 under color of law or otherwise, any of the following acts
20 willfully and with knowledge and intent to deceive any
21 registration officer or to subvert the registration
22 requirements of the law or rights of any qualified elector:

23 (1) signing or offering to sign a
24 certificate of registration when not a qualified elector;

25 (2) falsifying any information on the

1 certificate of registration;

2 (3) soliciting, procuring, aiding, abetting,
3 inducing or attempting to solicit, procure, aid, abet or
4 induce any person to register or attempt to register with the
5 name of any other person, whether real, deceased or
6 fictitious; or

7 (4) destroying the certificate of
8 registration of any qualified elector, or removing such
9 certificate from its proper binder or file, except as
10 provided in the Election Code.

11 B. Whoever commits a registration offense is
12 guilty of a fourth degree felony, in addition to any other
13 offense provided by law."

14 SECTION 7. Section 1-20-4 NMSA 1978 (being Laws 1969,
15 Chapter 240, Section 429) is amended to read:

16 "1-20-4. UNLAWFUL OPENING OF A BALLOT BOX.--

17 A. Unlawful opening of a ballot box consists of,
18 under color of law or otherwise, opening any ballot box or
19 inspecting or removing the contents thereof without lawful
20 authority, or conspiring with others to have the same done.

21 B. Whoever commits unlawful opening of a ballot
22 box is guilty of a fourth degree felony, in addition to any
23 other offense provided by law."

24 SECTION 8. Section 1-20-5 NMSA 1978 (being Laws 1969,
25 Chapter 240, Section 430) is amended to read:

1 "1-20-5. UNLAWFUL OPENING OF A VOTING MACHINE.--

2 A. Unlawful opening of a voting machine consists
3 of, under color of law or otherwise, without lawful
4 authority, opening, unlocking, inspecting, tampering,
5 resetting or adjusting a voting machine owned by any county,
6 or conspiring with others to have the same done.

7 B. Whoever commits unlawful opening of a voting
8 machine is guilty of a fourth degree felony, in addition to
9 any other offense provided by law."

10 SECTION 9. Section 1-20-6 NMSA 1978 (being Laws 1969,
11 Chapter 240, Section 431, as amended) is amended to read:

12 "1-20-6. UNLAWFUL POSSESSION OF KEYS.--

13 A. Unlawful possession of keys consists of, under
14 color of law or otherwise, the possession at any time of any
15 key to a voting machine, ballot box or monitored secured
16 container, or possession of an imitation or duplicate
17 thereof, or making or causing to be made any imitation or
18 duplicate thereof, unless authorized by the Election Code.

19 B. Whoever commits unlawful possession of keys is
20 guilty of a fourth degree felony, in addition to any other
21 offense provided by law."

22 SECTION 10. Section 1-20-7 NMSA 1978 (being Laws 1971,
23 Chapter 111, Section 1, as amended) is amended to read:

24 "1-20-7. UNLAWFUL POSSESSION OF ABSENTEE BALLOT.--

25 Unlawful possession of absentee ballot consists of, under

1 color of law or otherwise, the possession at any time of
2 absentee ballot materials when not authorized by the Election
3 Code to be in possession of such materials, or when such
4 materials were obtained in an unlawful manner, and includes
5 the establishment, designation or operation of any container
6 or receptacle to receive voted ballots by a person who is not
7 authorized by the Election Code and entering information into
8 or altering the absentee ballot register. As used in this
9 section, "absentee ballot materials" means an absentee
10 ballot, absentee ballot envelopes, the absentee ballot
11 register or an absentee ballot return. Whoever commits
12 unlawful possession of absentee ballot is guilty of a fourth
13 degree felony, in addition to any other offense provided by
14 law."

15 SECTION 11. Section 1-20-9 NMSA 1978 (being Laws 1969,
16 Chapter 240, Section 433, as amended) is amended to read:

17 "1-20-9. FALSIFYING ELECTION DOCUMENTS.--

18 A. Falsifying election documents consists of,
19 under color of law or otherwise, performing any of the
20 following acts willfully and with knowledge and intent to
21 deceive or mislead any voter, precinct board, canvassing
22 board or other election official:

23 (1) printing, causing to be printed,
24 distributing or displaying false or misleading instructions
25 pertaining to voting or the conduct of the election;

1 (2) printing, causing to be printed,
2 distributing or displaying any official ballot, sample
3 ballot, facsimile diagram or pretended ballot that includes
4 the name of any person not entitled by law to be on the
5 ballot, or omits the name of any person entitled by law to be
6 on the ballot, or otherwise contains false or misleading
7 information or headings;

8 (3) defacing, altering, forging, making
9 false entries in or changing in any way a certificate of
10 nomination, registration record or election return required
11 by or prepared and issued pursuant to the Election Code;

12 (4) suppressing any certificate of
13 nomination, registration record or election return required
14 by or prepared and issued pursuant to the Election Code;

15 (5) preparing or submitting any false
16 certificate of nomination, registration record or election
17 return; or

18 (6) knowingly falsifying any information on
19 a nominating petition.

20 B. Whoever falsifies election documents is guilty
21 of a fourth degree felony, in addition to any other offense
22 provided by law."

23 SECTION 12. Section 1-20-13.1 NMSA 1978 (being Laws
24 1995, Chapter 198, Section 15) is amended to read:

25 "1-20-13.1. COERCION OF VOTERS.--

1 A. Coercion of voters consists of, under color of
2 law or otherwise, compelling any voter at any election to
3 vote for or to refrain from voting for any candidate, party,
4 proposition, question or constitutional amendment either
5 against the voter's will or in the absence of the voter's
6 ability to understand the purpose and effect of the voter's
7 vote.

8 B. Whoever commits coercion of voters is guilty of
9 a fourth degree felony, in addition to any other offense
10 provided by law, and shall be sentenced pursuant to the
11 provisions of Section 31-18-15 NMSA 1978."

12 SECTION 13. Section 1-20-14 NMSA 1978 (being Laws 1969,
13 Chapter 240, Section 438, as amended) is amended to read:

14 "1-20-14. INTIMIDATION.--

15 A. Intimidation consists of inducing or attempting
16 to induce fear in the secretary of state, a county clerk, a
17 municipal clerk or an employee or agent of the secretary of
18 state, an employee or agent of a county clerk, an employee or
19 agent of a municipal clerk, a member of an election board, a
20 voter, a challenger or a watcher by use of or threatened use
21 of force, violence, infliction of damage, harm or loss, or
22 any form of economic retaliation upon the secretary of state,
23 a county clerk, a municipal clerk or an employee or agent of
24 the secretary of state, an employee or agent of a county
25 clerk, an employee or agent of a municipal clerk, a member of

1 an election board, a voter, a challenger or a watcher for the
2 purpose of impeding or preventing the free exercise of the
3 elective franchise or the impartial administration of the
4 election or Election Code, under color of law or otherwise.

5 B. Whoever commits intimidation is guilty of a
6 fourth degree felony, in addition to any other offense
7 provided by law."

8 SECTION 14. Section 1-20-15 NMSA 1978 (being Laws 1969,
9 Chapter 240, Section 439) is amended to read:

10 "1-20-15. CONSPIRACY TO VIOLATE ELECTION CODE.--

11 A. Conspiracy to violate the Election Code
12 consists of, under color of law or otherwise, knowingly
13 combining, uniting or agreeing with any other person to omit
14 any duty or commit any act, the omission of which duty, or
15 commission of such act, would by the provisions of the
16 Election Code constitute a fourth degree felony.

17 B. Whoever commits conspiracy to violate the
18 Election Code is guilty of a fourth degree felony, in
19 addition to any other offense provided by law."

20 SECTION 15. Section 1-20-16 NMSA 1978 (being Laws 1969,
21 Chapter 240, Section 440, as amended) is amended to read:

22 "1-20-16. ELECTIONEERING TOO CLOSE TO THE POLLING PLACE.--

23 A. Electioneering too close to the polling place
24 consists of, under color of law or otherwise, any form of
25 campaigning within:

1 (1) one hundred feet of the building in
2 which the polling place is located on election day when
3 voting at a school, church or private residence; and

4 (2) one hundred feet of the door through
5 which voters may enter to vote at the office of the county
6 clerk, an alternate voting location, a mobile voting site or
7 any location used as a polling place on election day that is
8 not a school, church or private residence.

9 B. Electioneering includes the display or
10 distribution of signs or campaign literature, campaign
11 buttons, t-shirts, hats, pins or other such items and
12 includes the verbal or electronic solicitation of votes for a
13 candidate or question.

14 C. Whoever commits electioneering too close to the
15 polling place is guilty of a petty misdemeanor, in addition
16 to any other offense provided by law."

17 SECTION 16. Section 1-20-17 NMSA 1978 (being Laws 1969,
18 Chapter 240, Section 441, as amended) is amended to read:

19 "1-20-17. OBSTRUCTING THE POLLING PLACE.--

20 A. Obstructing the entrance to the polling place
21 consists of, under color of law or otherwise, a person other
22 than an authorized individual approaching nearer than fifty
23 feet from the door through which voters may enter to vote at
24 a polling place or a person who willfully blocks access to a
25 monitored secured container or the entrance to a polling

1 place so as to prevent free ingress and egress.

2 B. Intentionally obstructing access to the polling
3 place consists of, under color of law or otherwise,
4 intentionally preventing free ingress and egress to or from a
5 voting location due to rendering ingress or egress
6 impassable, intimidation or disturbance of the polling place
7 as used in Sections 1-20-14 NMSA 1978 and 1-20-20 NMSA 1978.

8 C. A person conducting lawful,
9 non-election-related business nearer than fifty feet from the
10 door through which voters may enter to vote is not guilty of
11 obstructing a polling place, provided the person does not
12 willfully block access to a monitored secured container or
13 the entrance to the polling place.

14 D. As used in this section, "authorized
15 individual" means an individual who is not electioneering and
16 who is:

- 17 (1) a voter offering to vote;
- 18 (2) a member of the election board;
- 19 (3) a lawfully appointed watcher, challenger
20 or election observer;
- 21 (4) an individual giving assistance to a
22 specific person offering to vote;
- 23 (5) an election official or contractor
24 having business in the polling place;
- 25 (6) an attorney representing the county or

1 state, a political party or a candidate having business in
2 the polling place; or

3 (7) a language translator where required by
4 federal law.

5 E. Whoever obstructs the entrance to the polling
6 place is guilty of a petty misdemeanor, in addition to any
7 other offense provided by law.

8 F. Whoever intentionally obstructs the polling
9 place is guilty of a fourth degree felony, in addition to any
10 other offense provided by law."

11 SECTION 17. Section 1-20-20 NMSA 1978 (being Laws 1969,
12 Chapter 240, Section 444) is amended to read:

13 "1-20-20. DISTURBING THE POLLING PLACE.--

14 A. Disturbing the polling place consists of, under
15 color of law or otherwise, creating any disorder or
16 disruption at the polling place beginning twenty-eight days
17 before an election through election day.

18 B. Whoever disturbs the polling place is guilty of
19 a petty misdemeanor, in addition to any other offense provided
20 by law."
