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HOUSE BILL 434

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Alonzo Baldonado

AN ACT

RELATING TO THE LEGISLATURE; AMENDING THE LOBBYIST REGULATION
ACT; PROVIDING PENALTIES.

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

SECTION 1. Section 2-11-2 NMSA 1978 (being Laws 1977,
Chapter 261, Section 2, as amended) is amended to read:

"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. "corruption statute" includes:

(1) the Election Code;

(2) the Campaign Reporting Act;

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- 1 (3) the Lobbyist Regulation Act;
2 (4) the Governmental Conduct Act;
3 (5) the Financial Disclosure Act;
4 (6) the Gift Act;
5 (7) the Procurement Code;
6 (8) the New Mexico Uniform Securities Act;
7 (9) the 1999 Public Accountancy Act;
8 (10) fraud, as provided in Section 30-16-6
9 NMSA 1978;
10 (11) embezzlement, as provided in Section
11 30-16-8 NMSA 1978;
12 (12) forgery, as provided in Section 30-16-10
13 NMSA 1978;
14 (13) misconduct by officials, as provided in
15 Sections 30-23-1 through 30-23-7 NMSA 1978;
16 (14) bribery, as provided in Sections 30-24-1
17 through 30-24-3.1 NMSA 1978;
18 (15) non-disclosure of third-party marketers,
19 as provided in Sections 6-8-22 and 22-11-54 NMSA 1978;
20 (16) perjury and false affirmation, as
21 provided in Section 30-25-1 NMSA 1978; and
22 (17) tampering with public records, as
23 provided in Section 30-26-1 NMSA 1978;

24 [~~B-~~] C. "expenditure" means a payment, transfer or
25 distribution or obligation or promise to pay, transfer or

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1 distribute any money or other thing of value, but does not
2 include a lobbyist's own personal living expenses and the
3 expenses incidental to establishing and maintaining an office
4 in connection with lobbying activities or compensation paid to
5 a lobbyist by a lobbyist's employer;

6 ~~[G.]~~ D. "legislative committee" means a committee
7 created by the legislature, including interim and standing
8 committees of the legislature;

9 ~~[D.]~~ E. "lobbying" means attempting to influence:

10 (1) a decision related to any matter to be
11 considered or being considered by the legislative branch of
12 state government or any legislative committee or any
13 legislative matter requiring action by the governor or awaiting
14 action by the governor; or

15 (2) an official action;

16 ~~[E.]~~ F. "lobbyist" means any individual who is
17 compensated for the specific purpose of lobbying; is designated
18 by an interest group or organization to represent it on a
19 substantial or regular basis for the purpose of lobbying; or in
20 the course of [~~his~~] employment, is engaged in lobbying on a
21 substantial or regular basis. "Lobbyist" does not include:

22 (1) an individual who appears on [~~his~~] the
23 individual's own behalf in connection with legislation or an
24 official action;

25 (2) [~~any~~] an elected or appointed officer of

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1 the state or its political subdivisions or an Indian tribe or
2 pueblo acting in ~~[his]~~ the officer's official capacity;

3 (3) an employee of the state or its political
4 subdivisions, specifically designated by an elected or
5 appointed officer of the state or its political subdivision,
6 who appears before a legislative committee or in a rulemaking
7 proceeding only to explain the effect of legislation or a rule
8 on ~~[his]~~ the designated employee's agency or political
9 subdivision, provided the elected or appointed officer of the
10 state or its political subdivision keeps for public inspection
11 and files with the secretary of state such designation;

12 (4) ~~[any]~~ a designated member of the staff of
13 an elected state official, provided the elected state official
14 keeps for public inspection and files with the secretary of
15 state such designation;

16 (5) a member of the legislature, the staff of
17 ~~[any]~~ a member of the legislature or the staff of ~~[any]~~ a
18 legislative committee when addressing legislation;

19 (6) ~~[any]~~ a witness called by a legislative
20 committee or administrative agency to appear before that
21 legislative committee or agency in connection with legislation
22 or an official action;

23 (7) an individual who provides only oral or
24 written public testimony in connection with a legislative
25 committee or in a rulemaking proceeding and whose name and the

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1 interest on behalf of which [~~he~~] the individual testifies have
2 been clearly and publicly identified; or

3 (8) a publisher, owner or employee of the
4 print media, radio or television, while gathering or
5 disseminating news or editorial comment to the general public
6 in the ordinary course of business;

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

10 [~~G.~~] H. "official action" means the action or
11 nonaction of a state official or state agency, board or
12 commission acting in a rulemaking proceeding;

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

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

25 [~~J.~~] K. "prescribed form" means a form prepared and

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1 prescribed by the secretary of state;

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

7 ~~[.]~~ M. "state public officer" means a person
8 holding a statewide office provided for in the constitution of
9 New Mexico; and

10 N. "substantive provision" means a provision, the
11 violation of which requires conduct involving
12 misrepresentation, dishonesty, moral turpitude or corruption."

13 SECTION 2. Section 2-11-8.2 NMSA 1978 (being Laws 1977,
14 Chapter 261, Section 4, as amended) is amended to read:

15 "2-11-8.2. COMPLIANCE WITH ACT--ENFORCEMENT OF ACT--
16 BINDING ARBITRATION--CIVIL PENALTIES.--

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

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1 and easy to complete.

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

10 C. The secretary of state shall at all times seek
11 to ensure voluntary compliance with the provisions of the
12 Lobbyist Regulation Act. If the secretary of state determines
13 by a preponderance of the evidence that a provision of that act
14 for which a penalty may be imposed has been violated, the
15 secretary of state shall by written notice set forth the
16 violation and the fine imposed and inform the person that ~~he~~
17 the person has ten working days to provide a written
18 explanation, under penalty of perjury, stating any reason the
19 violation occurred. If a timely explanation is filed and the
20 secretary of state determines that good cause exists, the
21 secretary of state may by a written notice of final action
22 partially or fully waive any fine imposed. A written notice of
23 final action shall be sent by certified mail.

24 D. Except at provided in Subsection H of this
25 section, if the person charged disputes the secretary of

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

14 E. An arbitration hearing shall be conducted by a
15 single arbitrator selected within ten days by the person
16 against whom the penalty has been imposed from a list of five
17 arbitrators provided by the secretary of state. Neither the
18 secretary of state nor a person subject to the Lobbyist
19 Regulation Act, Campaign Reporting Act or Financial Disclosure
20 Act may serve as an arbitrator. Arbitrators shall be
21 considered to be independent contractors, not public officers
22 or employees, and shall not be paid per diem and mileage.

23 F. The arbitrator may impose any penalty and take
24 any action the secretary of state is authorized to take. The
25 arbitrator shall state the reasons for ~~[his]~~ the arbitrator's

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1 decision in a written document that shall be a public record.
2 The decision shall be final and binding. The decision shall be
3 issued and filed with the secretary of state within thirty days
4 of the conclusion of the hearing. Unless otherwise provided
5 for in this section, or by rule or regulation adopted by the
6 secretary of state, the procedures for the arbitration shall be
7 governed by the Uniform Arbitration Act. No arbitrator shall
8 be subject to liability for actions taken pursuant to this
9 section.

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

17 H. Pursuant to the provisions of Subsection C of
18 this section, if the secretary of state determines that a
19 person has violated a substantive provision of a corruption
20 statute, the secretary shall, in addition to any other
21 penalties provided for by law, revoke that person's lobbyist
22 registration. That person shall be permanently enjoined from
23 registering as a lobbyist unless that person is acquitted in a
24 court of law or pardoned. A person permanently enjoined from
25 registering as a lobbyist pursuant to this subsection may

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1 appeal the secretary's determination pursuant to the provisions
2 of Section 39-3-1.1 NMSA 1979.

3 [H.] I. The secretary of state may refer a matter
4 to the attorney general or a district attorney for a civil
5 injunctive or other appropriate order or enforcement."

6 SECTION 3. Section 2-11-9 NMSA 1978 (being Laws 1977,
7 Chapter 261, Section 9, as amended) is amended to read:

8 "2-11-9. PENALTIES.--

9 A. In addition to any other penalties that may be
10 assessed, any person who knowingly and willfully violates [~~any~~
11 ~~of the provisions~~] a nonsubstantive provision of the Lobbyist
12 Regulation Act shall be punished by a fine of up to five
13 thousand dollars (\$5,000) and may have [~~his~~] the person's
14 lobbyist registration revoked or [~~his~~] the person's lobbying
15 activities enjoined for up to three years.

16 B. In addition to any other penalties that may be
17 assessed, any person who is convicted of violating any
18 substantive provision of a corruption statute shall be punished
19 by a fine of up to five thousand dollars (\$5,000) and shall
20 have the person's lobbyist registration revoked and the
21 person's lobbying activities enjoined permanently."