

ARTICLE 11

Lobbyist Regulation

Sec.

2-11-1. Short title.

2-11-2. Definitions.

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

2-11-4. Recompiled.

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

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

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

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

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

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

2-11-8.3. State ethics commission; jurisdiction. (Effective January 1, 2020.)

2-11-9. Penalties.

2-11-1. Short title.

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

History: 1953 Comp., § 2-13-1, enacted by Laws 1977, ch. 261, § 1; 1993, ch. 46, § 18.

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 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 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.

History: 1953 Comp., § 2-13-2, enacted by Laws 1977, ch. 261, § 2; 1985, ch. 16, § 1; 1993, ch. 46, § 19; 1994, ch. 85, § 1.

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;
 - (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.

History: 1953 Comp., § 2-13-3, enacted by Laws 1977, ch. 261, § 3; 1985, ch. 16, § 2; 1993, ch. 46, § 20; 2015, ch. 56, § 1; 2016, ch. 13, § 2.

2-11-4. Recompiled.

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.

History: 1953 Comp., § 2-13-5, enacted by Laws 1977, ch. 261, § 5.

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, 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 [14-15-1 through 14-15-6 NMSA 1978] and the Uniform Electronic Transactions Act [Chapter 14, Article 16 NMSA 1978]. 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, 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.

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, 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.

History: 1953 Comp., § 2-13-6, enacted by Laws 1977, ch. 261, § 6; 1985, ch. 16, § 3; 1993, ch. 46, § 21; 1994, ch. 84, § 2; 1995, ch. 153, § 20; 1997, ch. 112, § 6; 2005, ch. 330, § 1; 2015, ch. 56, § 2; 2016, ch. 13, § 3; 2019, ch. 35, § 1.

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 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.

History: 1953 Comp., § 2-13-7, enacted by Laws 1977, ch. 261, § 7; 1993, ch. 46, § 22; 2015, ch. 56, § 3; 2016, ch. 13, § 4.

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.

History: 1953 Comp., § 2-13-8, enacted by Laws 1977, ch. 261, § 8.

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:

(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.

History: 1978 Comp., § 2-11-8.1, enacted by Laws 1993, ch. 46, § 23; 1995, ch. 153, § 21; 2016, ch. 13, § 5.

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 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.

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.

History: 1953 Comp., § 2-13-4, enacted by Laws 1977, ch. 261, § 4; amended and recompiled as § 2-11-8.2 NMSA 1978 by Laws 1993, ch. 46, § 24; 1995, ch. 153, § 22; 1997, ch. 112, § 7.

2-11-8.3. State ethics commission; jurisdiction. (Effective January 1, 2020.)

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 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.

History: Laws 2019, ch. 86, § 21.

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.

History: 1953 Comp., § 2-13-9, enacted by Laws 1977, ch. 261, § 9; 1993, ch. 46, § 25.