

Article 16B

Gift Act

Sec.

10-16B-1. Short title.

10-16B-1. Short title (Effective January 1, 2020.)

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(Effective January 1, 2020.)

10-16B-1. Short title.

This act [10-16B-1 through 10-16B-4 NMSA 1978] may be cited as the "Gift Act".

History: Laws 2007, ch. 226, § 1.

10-16B-1. Short title (Effective January 1, 2020.)

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

History: Laws 2007, ch. 226, § 1; 2019, ch. 86, § 31.

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;

(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.

History: Laws 2007, ch. 226, § 2.

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 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.

History: Laws 2007, ch. 226, § 3.

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.

History: Laws 2007, ch. 226, § 4.

10-16B-5. Investigations; complaints; enforcement. (Effective January 1, 2020.)

- 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.*

History: Laws 2019, ch. 86, § 32.