

LOBBYIST REGULATION ACT

ARTICLE 11 Lobbyist Regulation

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| 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. | Sec.
2-11-7. Registration and expenditure statement; preservation as public records.
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.
2-11-9. Penalties. |
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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 [Chapter 2, Article 11 NMSA 1978]:

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 rule-making 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 [Chapter 2, Article 11 NMSA 1978] 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 twenty-five dollars (\$25.00) for each of the lobbyist's employers and by filing a single registration statement under oath on a prescribed form showing:

(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. No expenditure statement required by Section 2-11-6 NMSA 1978 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 his registration statement whether those circumstances apply to him.

C. 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) a written statement from each of the lobbyist's employers authorizing him 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 his 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.

D. 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 twenty-five dollar (\$25.00) filing fee for each of the lobbyist's employers together with a short, abbreviated prescribed form for renewal.

E. 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 within one month 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 report need be filed.

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

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 [Chapter 2, Article 11 NMSA 1978] 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 or lobbyist's employer who makes or incurs expenditures or 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 on a prescribed form or in an electronic format approved by the secretary of state. The expenditure report shall include a sworn statement that sets forth:

(1) the cumulative total of the expenditures made or incurred, separated into categories that identify the total separate amounts spent on:

(a) meals and beverages;

- (b) other entertainment expenditures;
- (c) gifts; and
- (d) other expenditures;

(2) each political contribution made, identified by amount, date and name of the candidate or ballot issue supported or opposed; and

(3) the names, addresses 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 in excess of five hundred dollars (\$500) in the aggregate for each election to a candidate, a campaign committee or anyone authorized by a candidate to receive funds on the candidate's behalf.

B. If the expenditure report is filed electronically, the report 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 NMSA 1978] and the Uniform Electronic Transactions Act [14-16-1 NMSA 1978]. For the purposes of the Lobbyist Regulation Act [Chapter 2, Article 11 NMSA 1978], 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 Paragraph (1) of Subsection A of this section, any individual expenditure that is more than the threshold level established in the Internal Revenue Code of 1986, as amended, that must be reported separately to claim a business expense deduction, as published by the secretary of state, shall be identified by amount, date, purpose, type of expenditure and name of the person who received or was benefited by the expenditure; provided, 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. The reports required pursuant to the provisions of the Lobbyist Regulation Act shall be filed:

(1) by 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; and

(3) by May 1 for all expenditures and political contributions made or incurred through April 25 of the current year and not previously reported.

E. 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.

F. 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.

G. Any lobbyist's employer who also engages in lobbying shall comply with the provisions of the Lobbyist Regulation Act.

H. An organization of two or more persons, including an individual who holds himself out as 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 hun-

dred 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 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.

2-11-7. Registration and expenditure statement; preservation as public record.

Each registration and expenditure statement as required by the Lobbyist Regulation Act [Chapter 2, Article 11 NMSA 1978] shall be preserved by the secretary of state for a period of two 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 two years after the date of filing.

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

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 chairman, treasurer or fundraising chairman for a candidate for the legislature or a statewide 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.

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 [Chapter 2, Article 11 NMSA 1978] 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 to 1-19-36 NMSA 1978] or Financial Disclosure Act [10-16A-1 to 10-16A-7 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 [44-7-1 to 44-7-22 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.

2-11-9. 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 [Chapter 2, Article 11 NMSA 1978] 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.