

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 97

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

AN ACT

RELATING TO PUBLIC FINANCING OF ELECTIONS; REMOVING SEED MONEY
REQUIREMENTS; ALLOWING CERTAIN CONTRIBUTIONS; DEFINING TERMS;
CHANGING DISTRIBUTION AND MATCHING FUND PROVISIONS; LIMITING
DISTRIBUTION OF FUNDS TO CANDIDATES IN UNCONTESTED RACES;
CLARIFYING PENALTY PROVISIONS; AMENDING, REPEALING AND ENACTING
SECTIONS OF THE VOTER ACTION ACT.

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

SECTION 1. Section 1-19A-1 NMSA 1978 (being Laws 2003,
Chapter 14, Section 1) is amended to read:

"1-19A-1. SHORT TITLE.--~~[Sections 1 through 17 of this
act]~~ Chapter 1, Article 19A NMSA 1978 may be cited as the
"Voter Action Act"."

SECTION 2. Section 1-19A-2 NMSA 1978 (being Laws 2003,
Chapter 14, Section 2, as amended) is amended to read:

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underscoring material = new
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1 "1-19A-2. DEFINITIONS.--As used in the Voter Action Act:

2 A. "applicant candidate" means a candidate who is
3 running for a covered office and who is seeking to be a
4 certified candidate in a primary or general election;

5 B. "certified candidate" means a candidate running
6 for a covered office who chooses to obtain financing pursuant
7 to the Voter Action Act and is certified as a Voter Action Act
8 candidate;

9 C. "contested election" means an election in which
10 there are more candidates for a position than the number to be
11 elected to that position;

12 D. "contribution" means a gift, subscription, loan,
13 advance or deposit of money or other thing of value, including
14 the estimated value of an in-kind contribution, that is made or
15 received for the purpose of supporting or opposing the
16 nomination for election or election of a candidate for public
17 office, including payment of a debt incurred in an election
18 campaign and also including a coordinated expenditure, but
19 "contribution" does not include a qualifying contribution, nor
20 the value of services provided without compensation or
21 unreimbursed travel or other personal expenses of individuals
22 who volunteer a portion or all of their time on behalf of a
23 candidate;

24 E. "coordinated expenditure" means an expenditure
25 that is made:

1 (1) by a person other than a candidate or
2 campaign committee;

3 (2) at the request or suggestion of, or in
4 cooperation, consultation or concert with, a candidate,
5 campaign committee or political party or any agent or
6 representative of such a candidate, campaign committee or
7 political party; and

8 (3) for the purpose of:

9 (a) supporting or opposing the
10 nomination or election of a candidate; or

11 (b) paying for an advertisement that
12 refers to a clearly identified candidate and that is published
13 and disseminated to the relevant electorate in New Mexico
14 within thirty days before the primary election or sixty days
15 before the general election in which the candidate is on the
16 ballot;

17 ~~[D.]~~ F. "covered office" means any office of the
18 judicial department subject to statewide elections and the
19 office of public regulation commissioner;

20 ~~[E.]~~ ~~"election cycle" means the primary and general~~
21 ~~elections for the same term of the same covered office,~~
22 ~~beginning on the day after the last general election for the~~
23 ~~office and ending with the general election. The primary~~
24 ~~election cycle begins on the first day of the election cycle~~
25 ~~and ends on the day of the primary election. The general~~

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underscored material = new
[bracketed material] = delete

1 ~~election begins on the day after the primary election and ends~~
2 ~~on the day of the general election;]~~

3 G. "expenditure" means a payment, transfer or
4 distribution of, or a promise to pay, transfer or distribute,
5 any money or other thing of value for the purpose of supporting
6 or opposing the nomination or election of a candidate;

7 ~~[F.]~~ H. "fund" means the public election fund;

8 ~~[G. "noncertified candidate" means either a~~
9 ~~candidate running for a covered office who does not choose to~~
10 ~~participate in the Voter Action Act and who is not seeking to~~
11 ~~be a certified candidate or a candidate who files a declaration~~
12 ~~of intent to participate but who fails to qualify;~~

13 ~~H.]~~ I. "qualifying contribution" means a donation
14 of five dollars (\$5.00) in the form of cash or a check or money
15 order payable to the fund in support of an applicant candidate
16 that is:

17 (1) made by a ~~[registered]~~ voter who is
18 eligible to vote for the covered office that the applicant
19 candidate is seeking;

20 (2) made during the designated qualifying
21 period and obtained through efforts made with the knowledge and
22 approval of the applicant candidate; and

23 (3) acknowledged by a receipt that identifies
24 the contributor's name and residential address on forms
25 provided by the bureau of elections and that is signed by the

1 contributor, one copy of which is attached to the list of
 2 contributors and sent to the bureau of elections;

3 ~~[F.]~~ J. "qualifying period" means:

4 (1) for major party applicant candidates for
 5 covered offices, the period beginning October 1 immediately
 6 preceding the election year and ending at 5:00 p.m. on the
 7 third Tuesday of March of the election year; and

8 (2) for independent and minor party
 9 candidates, the period beginning ~~[February]~~ January 1 of the
 10 election year and ending that year at 5:00 p.m. on the filing
 11 date for independent or minor party candidates for the office
 12 for which the candidate is running; and

13 ~~[J.]~~ K. "secretary" means the secretary of state or
 14 the office of the secretary of state ~~[and~~

15 ~~K. "seed money" means a contribution raised for the~~
 16 ~~primary purpose of enabling applicant candidates to collect~~
 17 ~~qualifying contributions and petition signatures]."~~

18 **SECTION 3.** Section 1-19A-3 NMSA 1978 (being Laws 2003,
 19 Chapter 14, Section 3) is amended to read:

20 "1-19A-3. TERMS OF PARTICIPATION--DECLARATION OF
 21 INTENT.--

22 A. A ~~[candidate]~~ person choosing to obtain
 23 financing pursuant to the Voter Action Act shall first file
 24 with the secretary a declaration of intent to participate in
 25 that act as an applicant candidate for a stated covered office.

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1 The declaration of intent shall be filed with the secretary
2 prior to or during the qualifying period according to forms and
3 procedures developed by the secretary.

4 B. To become an applicant candidate [~~choosing to~~]
5 and participate in the Voter Action Act, a person shall submit
6 a declaration of intent prior to collecting any qualifying
7 contributions or other contributions and make explicit in the
8 declaration that the candidate has complied with and will
9 continue to comply with that act's contribution and expenditure
10 limits and all other requirements set forth in that act and
11 rules issued by the secretary.

12 C. Except as provided in Subsection D of this
13 section, a [~~candidate~~] person shall not be eligible to become
14 an applicant candidate if the [~~candidate~~] person has accepted
15 contributions totaling [~~five hundred dollars (\$500) or more or~~ or
16 ~~made expenditures totaling five hundred dollars (\$500) or more~~
17 ~~between the beginning of the qualifying period and filing a~~
18 ~~declaration of intent~~] more than one hundred dollars (\$100)
19 from any one contributor during the election cycle in which the
20 person is running for office.

21 D. A person who has accepted contributions of more
22 than one hundred dollars (\$100) from any one contributor during
23 the election cycle in which the person decides to run for a
24 covered office is still eligible to become an applicant
25 candidate if:

1 (1) the contributions were for a candidacy for
2 an office other than a covered office and no money was raised
3 for or expended on any campaign-related activity for a covered
4 office during the time those contributions were made;

5 (2) the person does not solicit or accept
6 contributions for a candidacy for an office other than a
7 covered office or for the purpose of supporting or opposing a
8 ballot measure or another candidate after the person declares
9 candidacy for a covered office or becomes an applicant
10 candidate;

11 (3) the person places all campaign account
12 money that was collected before the person became an applicant
13 candidate in a segregated bank account and does not transfer
14 any money into or out of that account for the duration of the
15 person's campaign for a covered office; and

16 (4) the person agrees, that, if elected to the
17 covered office, the person will transfer all money in the
18 campaign account to the public election fund."

19 SECTION 4. Section 1-19A-6 NMSA 1978 (being Laws 2003,
20 Chapter 14, Section 6) is amended to read:

21 "1-19A-6. CERTIFICATION.--

22 A. Upon receipt of a final submittal of qualifying
23 contributions by an applicant candidate, the secretary shall
24 determine from the applicant candidate's statement whether the
25 applicant candidate has:

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1 (1) signed and filed a declaration of intent
2 to obtain financing pursuant to the Voter Action Act in
3 accordance with the requirements of that act;

4 (2) collected and submitted the appropriate
5 number of qualifying contributions after filing a declaration
6 of intent;

7 (3) [~~qualified as~~] met the qualifications to
8 be a candidate pursuant to other applicable state election law;

9 (4) complied with [~~seed money~~] contribution
10 and expenditure restrictions; and

11 (5) otherwise met the requirements for
12 obtaining financing pursuant to the Voter Action Act.

13 B. The secretary shall certify applicant candidates
14 complying with the requirements of this section as certified
15 candidates as soon as possible and no later than ten days after
16 final submittal of qualifying contributions and certification
17 as a candidate pursuant to other applicable state election law.

18 C. A certified candidate shall comply with all
19 requirements of the Voter Action Act after certification and
20 throughout the primary election and general election cycles. A
21 certified candidate who accepts public campaign finance funds
22 for the primary election shall comply with all the requirements
23 of the Voter Action Act for the remainder of the election cycle
24 in question, even if [~~he~~] the certified candidate decides not
25 to accept such funds for the general election."

1 SECTION 5. Section 1-19A-7 NMSA 1978 (being Laws 2003,
2 Chapter 14, Section 7, as amended) is amended to read:

3 "1-19A-7. GUIDELINES AND RESTRICTIONS FOR CONTRIBUTIONS
4 TO AND EXPENDITURES OF CERTIFIED CANDIDATES.--

5 A. All money distributed to a certified candidate
6 shall be used only for that candidate's campaign-related
7 purposes in the election [~~cycle~~] in which the money was
8 distributed.

9 B. Money from the fund received by a candidate
10 shall not be used for:

11 (1) the candidate's personal living expenses
12 or compensation to the candidate or the candidate's spouse,
13 children or stepchildren or a business owned by the candidate
14 or the candidate's spouse, children or stepchildren;

15 (2) a contribution to another campaign of the
16 candidate or a payment to retire debt from another such
17 campaign;

18 (3) a contribution to the campaign of another
19 candidate or to a political party or political committee or to
20 a campaign supporting or opposing a ballot proposition;

21 (4) an expenditure supporting the election of
22 another candidate or the passage or defeat of a ballot
23 proposition or the defeat of any candidate other than an
24 opponent of the participating candidate;

25 (5) payment of legal expenses or any fine

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1 levied by a court or the secretary; or

2 (6) any gift or transfer for which
3 compensating value is not received.

4 ~~[B.]~~ C. A certified candidate shall return to the
5 fund any amount that is unspent or unencumbered at the time
6 that person ceases to be a candidate before a primary or
7 general election for which the fund money was distributed.

8 ~~[G.]~~ D. A certified candidate shall limit total
9 campaign expenditures ~~[and debts]~~ to the amount of money
10 distributed to that candidate from the fund, money received
11 from a political party pursuant to Section 1-19A-8 NMSA 1978
12 and contributions collected pursuant to Section 8 of this 2017
13 act. A certified candidate shall not accept contributions ~~[or~~
14 ~~loans]~~ from any other source except the certified candidate's
15 political party, as specified in Section 1-19A-8 NMSA 1978 and
16 contributions collected pursuant to Section 8 of this 2017 act.

17 ~~[D.]~~ E. A certified candidate that does not remain
18 a candidate in the general election shall ~~[return to the~~
19 ~~secretary]~~, within thirty days after the primary election, ~~[any~~
20 ~~amount that is]~~ transfer to the secretary for deposit in the
21 fund any amount received from the fund, from a political party
22 pursuant to Section 1-19A-8 NMSA 1978 or from private
23 contributors pursuant to Section 8 of this 2017 act that
24 remains unspent or unencumbered by the date of the primary
25 election. ~~[for direct deposit into the fund.]~~

1 ~~E.~~ F. A certified candidate shall ~~[return to the~~
 2 ~~secretary]~~, within thirty days after the general election, ~~[any~~
 3 ~~amount that is]~~ transfer to the secretary for deposit in the
 4 fund any amount received from the fund, from a political party
 5 pursuant to Section 1-19A-8 NMSA 1978 or from private
 6 contributors pursuant to Section 8 of this 2017 act that
 7 remains unspent or unencumbered by the date of the general
 8 election ~~[for direct deposit into the fund].~~

9 G. If a certified candidate ceases to be a
 10 certified candidate for any reason, the previously certified
 11 candidate or candidate's campaign committee shall, within
 12 thirty days thereafter, transfer to the secretary for deposit
 13 in the fund any amount received from the fund, from a political
 14 party pursuant to Section 1-19A-8 NMSA 1978 or from private
 15 contributors pursuant to Section 8 of this 2017 act that
 16 remains unspent or unencumbered by the date the candidate
 17 ceases to be a certified candidate."

18 SECTION 6. Section 1-19A-9 NMSA 1978 (being Laws 2003,
 19 Chapter 14, Section 9) is amended to read:

20 "1-19A-9. CANDIDATE REPORTING REQUIREMENTS.--

21 A. The secretary shall publish guidelines outlining
 22 permissible campaign-related expenditures and penalties for
 23 violations of the Voter Action Act by September 1, 2017.

24 B. Applicant candidates shall file a report listing
 25 ~~[seed money]~~ contributions and expenditures with their

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1 application for certification.

2 C. Applicant candidates shall file qualifying
3 contributions with the secretary during the qualifying period
4 according to procedures developed by the secretary. In
5 developing these procedures, the secretary shall use existing
6 campaign reporting procedures and deadlines whenever practical.

7 D. Certified candidates shall report all
8 contributions and expenditures according to the campaign
9 reporting [~~requirements~~] schedule specified in the [~~Election~~
10 Code~~.~~

11 ~~E. In addition to the campaign contribution and~~
12 ~~expenditure reports specified in the Election Code, all~~
13 ~~noncertified candidates who have as an opponent a certified~~
14 ~~candidate shall report to the secretary ten days before the~~
15 ~~primary and general elections the amount of money spent by that~~
16 ~~noncertified candidate. This report shall include all~~
17 ~~previously unreported transactions through 5:00 p.m. two days~~
18 ~~before the report is due.~~

19 ~~F. A person or political committee that makes~~
20 ~~expenditures to influence a race involving a certified~~
21 ~~candidate shall report to the secretary the amount that person~~
22 ~~or political committee has spent. These reports shall include~~
23 ~~all previously unreported transactions through 5:00 p.m. two~~
24 ~~days before the report is due, and shall be submitted as~~
25 follows:

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1 ~~(1) for the primary election, by 5:00 p.m. on~~
 2 ~~the second Monday in May, by 5:00 p.m. on the eleventh day~~
 3 ~~before the election and by 5:00 p.m. on the Thursday before the~~
 4 ~~election; and~~

5 ~~(2) for the general election, by 5:00 p.m. the~~
 6 ~~first Tuesday in October, by 5:00 p.m. on the eleventh day~~
 7 ~~before the election and by 5:00 p.m. on the Thursday before the~~
 8 ~~election] Campaign Reporting Act."~~

9 SECTION 7. Section 1-19A-10 NMSA 1978 (being Laws 2003,
 10 Chapter 14, Section 10, as amended) is amended to read:

11 "1-19A-10. PUBLIC ELECTION FUND--CREATION--USE.--

12 A. There is created in the state treasury the
 13 "public election fund" solely for the purposes of:

14 (1) financing the election campaigns of
 15 certified candidates for covered offices;

16 (2) paying administrative and enforcement
 17 costs of the Voter Action Act; and

18 (3) carrying out all other specified
 19 provisions of the Voter Action Act.

20 B. The state treasurer shall invest the funds as
 21 other state funds are invested, and all income derived from the
 22 fund shall be credited directly to the fund. Remaining
 23 balances at the end of a fiscal year shall remain in the public
 24 election fund and not revert to the general fund.

25 C. Money received from the following sources shall

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1 be deposited directly into the fund:

2 (1) qualifying contributions that have been
3 submitted to the secretary;

4 (2) any recurring balance of unspent fund
5 money distributed to a certified candidate who does not remain
6 a candidate through the primary or general election period for
7 which the money was distributed;

8 (3) money that remains unspent or unencumbered
9 by a certified candidate following the date of the primary
10 election;

11 (4) money that remains unspent or unencumbered
12 by a certified candidate following the date of the general
13 election;

14 (5) unspent [~~seed money that cannot be used~~
15 ~~for any other purpose~~] contributions to a candidate;

16 (6) money distributed to the fund from funds
17 received pursuant to the Uniform Unclaimed Property Act (1995);
18 and

19 (7) money appropriated by the legislature or
20 as otherwise provided by law.

21 D. A subaccount shall be established in the fund,
22 and money in the subaccount shall only be used to pay the costs
23 of carrying out the provisions of the Voter Action Act related
24 to public regulation commission elections.

25 E. Two hundred thousand dollars (\$200,000) per year

1 shall be collected and deposited in the subaccount for public
2 regulation commission elections as follows:

3 (1) one hundred thousand dollars (\$100,000)
4 from inspection and supervision fees collected pursuant to
5 Section 62-8-8 NMSA 1978; and

6 (2) one hundred thousand dollars (\$100,000)
7 from utility and carrier inspection fees collected pursuant to
8 Section 63-7-20 NMSA 1978."

9 SECTION 8. A new section of the Voter Action Act is
10 enacted to read:

11 "[NEW MATERIAL] ALLOWABLE CONTRIBUTIONS--PROHIBITION ON
12 COORDINATED EXPENDITURES--EXCEPTION.--

13 A. An applicant candidate may collect contributions
14 during the sixty days immediately preceding the qualifying
15 period and throughout the qualifying period from qualified
16 electors registered to vote in the state. An applicant
17 candidate shall not accept contributions from any other source.

18 B. A certified candidate may collect contributions
19 from qualified electors registered to vote in the state. A
20 certified candidate shall not accept contributions from any
21 other source, except as allowed pursuant to Section 1-19A-8
22 NMSA 1978.

23 C. Total contributions from a qualified elector to
24 a candidate shall not exceed one hundred dollars (\$100) per
25 election cycle."

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1 SECTION 9. Section 1-19A-13 NMSA 1978 (being Laws 2003,
2 Chapter 14, Section 13, as amended) is amended to read:

3 "1-19A-13. AMOUNT OF FUND DISTRIBUTION.--

4 A. By ~~[August 1, 2007]~~ September 1 of each odd-
5 numbered year, the secretary shall determine the amount of
6 money to be distributed to each certified candidate for the
7 election cycle ending with the next general election [~~in 2008~~],
8 based on the type of election and the provisions of Subsections
9 B through F of this section.

10 B. For contested primary elections, the amount of
11 money to be distributed to a certified candidate is equal to
12 the following:

13 (1) for the office of public regulation
14 commissioner, twenty-five cents (\$.25) for each voter of the
15 candidate's party in the district of the office for which the
16 candidate is running; and

17 (2) for the office of justice of the supreme
18 court and judge of the court of appeals, fifteen cents (\$.15)
19 for each voter of the candidate's party in the state.

20 C. For uncontested primary elections in which
21 another candidate has filed a declaration of candidacy for
22 nomination in another party's primary for the same office, the
23 amount of money to be distributed to a certified candidate is
24 equal to [~~fifty~~] twenty percent of the amount specified in
25 Subsection B of this section.

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1 D. For contested general elections, the amount of
2 money to be distributed to a certified candidate is equal to
3 the following:

4 (1) for the office of public regulation
5 commissioner, twenty-five cents (\$.25) for each voter in the
6 district of the office for which the candidate is running; and

7 (2) for the office of justice of the supreme
8 court and judge of the court of appeals, fifteen cents (\$.15)
9 for each voter in the state.

10 E. ~~[For uncontested general elections, except as~~
11 ~~provided in Subsection I of this section, the amount of money~~
12 ~~to be distributed to a certified candidate is equal to fifty~~
13 ~~percent of the amount specified in Subsection D of this~~
14 ~~section.]~~ If a general election race that is initially
15 uncontested later becomes contested because of the
16 qualification of an independent or minor party candidate to
17 appear on the ballot for that race, an ~~[additional]~~ amount of
18 money shall be distributed to the certified candidate to make
19 that candidate's ~~[total]~~ distribution amount equal to the
20 amount distributed pursuant to Subsection D of this section.

21 F. Once the certification for candidates for the
22 primary election has been completed, the secretary shall
23 calculate the total amount of money to be distributed in the
24 primary election cycle, based on the number of certified
25 candidates and the allocations specified in this section. ~~[The~~

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1 ~~secretary shall increase the total amount by twenty percent to~~
2 ~~provide funds for additional matching funds in the primary~~
3 ~~election.]~~ The secretary shall also prepare an estimate of the
4 total amount of money that might be distributed in the general
5 election cycle. ~~[This estimate shall be increased by twenty~~
6 ~~percent to provide funds for additional matching funds in the~~
7 ~~general election.]~~ If the total amount to be distributed in the
8 primary election cycle ~~[plus the added twenty percent]~~ and the
9 estimated total amount to be distributed in the general
10 election cycle ~~[plus the added twenty percent, all]~~ taken
11 together exceed the amount expected to be available in the
12 fund, the secretary shall allocate the amount available between
13 the primary and general election cycles. This allocation shall
14 be based on the ratio of the two total amounts.

15 G. If the allocation specified in Subsection F of
16 this section is greater than the total amount available for
17 distribution, then the amounts to be distributed to individual
18 candidates, specified in Subsections B through E of this
19 section, shall each be reduced by the same percentage as the
20 reduction by which the total amount needed has been reduced
21 relative to the total amount available.

22 H. At least every two years after January 1, 2007,
23 the secretary shall evaluate and modify as necessary the dollar
24 values originally determined by Subsections B through E of this
25 section and shall ~~[consider and account for inflation in the~~

1 ~~evaluations]~~ increase the amounts by the percentage of the
 2 preceding two calendar years' increase of the consumer price
 3 index for all urban consumers, United States city average for
 4 all items, published by the United States department of labor.

5 I. No money shall be distributed to candidates in
 6 judicial retention elections. [~~No money shall be distributed~~
 7 ~~to judicial candidates in uncontested general elections;~~
 8 ~~provided that if a general election race that is initially~~
 9 ~~uncontested later becomes contested, the certified judicial~~
 10 ~~candidate shall receive a distribution in accordance with~~
 11 ~~Subsection D of this section.]"~~

12 SECTION 10. Section 1-19A-17 NMSA 1978 (being Laws 2003,
 13 Chapter 14, Section 17) is amended to read:

14 "1-19A-17. PENALTIES.--

15 A. In addition to other penalties that may be
 16 applicable, a person who violates a provision of the Voter
 17 Action Act is subject to a civil penalty of up to ten thousand
 18 dollars (\$10,000) per violation. In addition to a fine, a
 19 certified candidate found in violation of that act may be
 20 required to return to the fund all amounts distributed to the
 21 candidate from the fund. If the secretary makes a
 22 determination that a violation of that act has occurred, the
 23 secretary shall impose a fine [~~or~~] and transmit the finding to
 24 the attorney general for criminal prosecution pursuant to
 25 Subsection B of this section. In determining whether a

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1 certified candidate is in violation of the expenditure limits
2 of that act, the secretary may consider as a mitigating factor
3 any circumstances out of the candidate's control.

4 B. A person who willfully or knowingly violates the
5 provisions of the Voter Action Act or rules of the secretary or
6 knowingly makes a false statement in a report required by that
7 act is guilty of a fourth degree felony and, if ~~[he]~~ the person
8 is a certified candidate, shall return to the fund all money
9 distributed to that candidate."

10 SECTION 11. REPEAL.--Sections 1-19A-5 and 1-19A-14 NMSA
11 1978 (being Laws 2003, Chapter 14, Sections 5 and 14, as
12 amended) are repealed.

13 SECTION 12. EFFECTIVE DATE.--The effective date of the
14 provisions of this act is July 1, 2017.

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[bracketed material] = delete