

HOUSE BILL 244

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

Greg Nibert and Daymon Ely

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO ETHICS; CLARIFYING ADMINISTRATIVE AND ENFORCEMENT DUTIES OF THE STATE ETHICS COMMISSION AND SECRETARY OF STATE WITH RESPECT TO THE CAMPAIGN REPORTING ACT, VOTER ACTION ACT, FINANCIAL DISCLOSURE ACT AND LOBBYIST REGULATION ACT; PROVIDING FOR PENALTIES; PROVIDING RULEMAKING AUTHORITY; REQUIRING STATE ETHICS COMMISSION COMMISSIONERS TO FILE ANNUAL FINANCIAL DISCLOSURE STATEMENTS PURSUANT TO THE FINANCIAL DISCLOSURE ACT; REMOVING THE REQUIREMENT THAT COMPLAINTS FILED WITH THE STATE

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ETHICS COMMISSION BE NOTARIZED; CLARIFYING THE VENUE PROVISION FOR ETHICS COMPLAINT COURT ACTIONS; REQUIRING ACKNOWLEDGMENT OF RESPONSIBILITIES BY POLITICAL COMMITTEE TREASURERS; PROVIDING FOR THE RESIGNATION AND REPLACEMENT OF TREASURERS SRC→; REPEALING SECTION 1-19-1 NMSA 1978 (BEING LAWS 1969, CHAPTER 240, SECTION 405)←SRC .

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

SECTION 1. Section 1-19-26.1 NMSA 1978 (being Laws 1993, Chapter 46, Section 2, as amended) is amended to read:

"1-19-26.1. POLITICAL COMMITTEES--REGISTRATION--DISCLOSURES--PENALTIES.--

A. It is unlawful for a political committee to continue to receive or make any contribution or expenditure for a political purpose if the committee fails to meet the requirements of Subsections B and C of this section.

B. A political committee shall appoint and maintain a treasurer, file a statement of organization with the secretary of state and pay a filing fee of fifty dollars (\$50.00).

C. A statement of organization required by Subsection B of this section shall be made under oath on a prescribed form showing:

(1) the full name of the committee, which shall fairly and accurately reflect the identity of the

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committee, including any sponsoring organization, and its address;

(2) a statement of the purpose for which the committee was organized;

(3) the names and addresses of the officers of the committee; and

(4) an identification of any bank account used by the committee to receive or make contributions or make expenditures.

D. Any changes to the information provided in the statement of organization shall be reported to the secretary of state within ten days.

E. If a political committee fails to update the statement of organization within the time prescribed in Subsection D of this section, the political committee is subject to a fine of five hundred dollars (\$500).

F. A state political party shall furnish to the secretary of state a list of each county political party associated with it and the names and contact information of the county party officers as submitted to the state political party. The list shall be updated quarterly if there have been any reported changes.

[E.] G. The provisions of this section do not apply to a political committee that is located in another state and is registered with the federal election commission if the

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political committee reports on federal reporting forms filed with the federal election commission all expenditures for and contributions made to reporting individuals in New Mexico and files with the secretary of state, according to the schedule required for the filing of forms with the federal election commission, a copy of either the full report or the cover sheet and the portions of the federal reporting forms that contain the information on expenditures for and contributions made to reporting individuals in New Mexico."

**SECTION 2.** Section 1-19-32.1 NMSA 1978 (being Laws 1981, Chapter 331, Section 9, as amended) is amended to read:

"1-19-32.1. REPORTS EXAMINATION--FORWARDING OF REPORTS.--

A. The secretary of state shall conduct a thorough examination of at least ten percent of all reports filed during a year by reporting individuals, selected at random at least forty days after the general election and ten days after the April reports are filed in a non-election year, to determine compliance with the provisions of the Campaign Reporting Act. The examination may include an investigation of any discrepancies, including a cross-reference to reports filed by any other reporting individual. A reporting individual shall be notified in writing if a discrepancy is found in the report filed and shall be permitted to file a written explanation for the discrepancy and come into voluntary compliance within ten working days of the date of the notice.

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~~[The notice, penalty and arbitration provisions set forth in Section 1-19-34.4 NMSA 1978 shall apply to examinations conducted under this section.]~~

B. After the date stated in the notice ~~[of final action]~~ for submission of a written explanation, the secretary of state shall prepare an annual report of any unresolved discrepancies found after examination of the random sample provided for in Subsection A of this section. A copy of this report shall be transmitted to the state ethics commission and the attorney general for enforcement pursuant to the provisions of ~~[Section]~~ Sections 1-19-34.6 and 1-19-36 NMSA 1978. This report is a public record open to public inspection and subject to the retention and destruction provisions set forth in Section 1-19-32 NMSA 1978."

SECTION 3. Section 1-19-34.4 NMSA 1978 (being Laws 1993, Chapter 46, Section 15, as amended) is amended to read:

"1-19-34.4. EDUCATION AND VOLUNTARY COMPLIANCE--  
INVESTIGATIONS--~~[BINDING ARBITRATION]~~ REFERRALS FOR  
ENFORCEMENT.--

A. The secretary of state shall advise and seek to educate all persons required to perform duties under the Campaign Reporting Act of those duties. This includes advising all known reporting individuals at least annually of that act's deadlines for submitting required reports and statements of ~~[exception]~~ no activity. The ~~[secretary of state, in~~

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~~consultation with the attorney general]~~ state ethics commission, in consultation with the secretary of state, shall issue advisory opinions, when requested in writing to do so, on matters concerning that act. ~~[All prescribed forms prepared shall be clear and easy to complete.]~~

B. The secretary of state may conduct examinations of reports filed pursuant to Section 1-19-29 NMSA 1978 and the state ethics commission may initiate investigations to determine whether any provision of the Campaign Reporting 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 any time prior to ninety days after an election, except that no complaints from the public may be filed within eight days prior to an election. The secretary of state shall adopt procedures for issuing advisory opinions and processing complaints and notifications of violations.]~~

C. Any person who believes that a provision of the Campaign Reporting Act has been violated may file a written complaint with the state ethics commission pursuant to the terms of the State Ethics Commission Act. If the commission has jurisdiction for the complaint, the state ethics commission shall refer the complaint to the secretary of state. Upon referral, the secretary of state shall attempt to achieve voluntary compliance with the Campaign Reporting Act. Within

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thirty-five days after receiving the complaint from the state ethics commission, the secretary of state shall return the complaint to the state ethics commission and certify to the state ethics commission whether voluntary compliance was achieved. If the secretary of state certifies voluntarily compliance, the state ethics commission shall dismiss the complaint or that part of the complaint alleging a violation of the Campaign Reporting Act. If the secretary of state does not certify voluntarily compliance, the state ethics commission shall proceed with the complaint pursuant to the terms of the State Ethics Commission Act.

[G.] D. The secretary of state and the state ethics commission shall at all times seek to ensure voluntary compliance with the provisions of the Campaign Reporting 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 reporting individual that he has ten working days from the date of the letter to correct the matter and to provide a written explanation, under penalty of perjury, stating any reason why the violation occurred. If a timely explanation is filed and the secretary of state determines that good cause exists to waive the fine imposed, the secretary of state may by a written notice of final action partially or fully waive any fine~~

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~~imposed for any late, incomplete or false report or statement of exception. A written notice of final action shall be sent by certified mail.~~

~~D. Upon receipt of the notice of final action, the person against whom the penalty has been imposed may protest the secretary of state's determination, including an advisory opinion, by submitting on a prescribed form a written request for binding arbitration to the secretary of state within ten working days of the date of the notice of final action. Any fine imposed shall be due and payable within ten working days of the date of notice of final action. No additional fine shall accrue pending the 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 Campaign~~

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~~Reporting Act, Lobbyist Regulation Act or Financial Disclosure Act 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 shall conduct the hearing within thirty days of the request for arbitration. The arbitrator may impose any penalty the secretary of state is authorized to impose. 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. No arbitrator shall be subject to liability for actions taken pursuant to this section.~~

~~G.]~~ E. At any time, the secretary of state may refer a matter to the state ethics commission SRC → , the attorney general or a district attorney ← SRC for a civil injunctive or other appropriate order or to the attorney general or a district attorney for criminal enforcement."

SECTION 4. Section 1-19-34.6 NMSA 1978 (being Laws 1995, Chapter 153, Section 19, as amended) is amended to read:

"1-19-34.6. CIVIL PENALTIES.--

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A. If the secretary of state exhausts efforts in seeking voluntary compliance and reasonably believes that a person committed, or is about to commit, a violation of the Campaign Reporting Act, the secretary of state shall refer the matter to the state ethics commission SRC→, ~~the attorney general or a district attorney~~←SRC for enforcement; provided, however, that if the secretary of state waives the imposition of a fine pursuant to Subsection D of Section 1-19-35 NMSA 1978, the matter shall not be referred.

B. With or without a referral from the secretary of state, the state ethics commission SRC→, ~~the attorney general or district attorney~~←SRC may institute a civil action in district court for any violation of the Campaign Reporting Act or to prevent a violation of that act that involves an unlawful solicitation or the making or acceptance of an unlawful contribution. An action for relief may include a permanent or temporary injunction, a restraining order or any other appropriate order, including a civil penalty of up to one thousand dollars (\$1,000) for each violation not to exceed a total of twenty thousand dollars (\$20,000), and forfeiture of any contribution received as a result of an unlawful solicitation or unlawful contribution. Each unlawful solicitation and each unlawful contribution made or accepted shall be deemed a separate violation of the Campaign Reporting Act.

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C. With or without a referral from the secretary of state, the state ethics commission SRC→, ~~the attorney general or district attorney~~←SRC may institute a civil action in district court if a violation has occurred or to prevent a violation of any provision of the Campaign Reporting Act other than that specified in Subsection B of this section. Relief may include a permanent or temporary injunction, a restraining order or any other appropriate order, including an order for a civil penalty of up to one thousand dollars (\$1,000) for each violation not to exceed a total of twenty thousand dollars (\$20,000)."

SECTION 5. Section 1-19-34.8 NMSA 1978 (being Laws 2019, Chapter 86, Section 19) is amended to read:

"1-19-34.8. STATE ETHICS COMMISSION--JURISDICTION.--

SRC→~~A. On and after January 1, 2020:~~←SRC

SRC→~~(1) the~~←SRC

SRC→**A. The**←SRC state ethics commission shall have jurisdiction to investigate and adjudicate a complaint alleging a civil violation of a provision of the Campaign Reporting Act in accordance with the provisions of that act SRC→; ~~and~~←SRC  
SRC→.←SRC

SRC→~~(2) the~~←SRC

SRC→**B. The**←SRC [~~state ethics commission shall share jurisdiction to investigate and adjudicate complaints, or any aspect of a complaint, with the secretary of state as~~

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~~formalized through an agreement. The~~] secretary of state shall forward complaints it receives alleging violations of the Campaign Reporting Act to the state ethics commission in accordance with the provisions of the Campaign Reporting Act and a formalized agreement.

SRC → ~~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 Campaign Reporting Act necessary for the efficient administration and enforcement of the provisions of that act.~~ ← SRC "

SECTION 6. Section 1-19-35 NMSA 1978 (being Laws 1979, Chapter 360, Section 11, as amended) is amended to read:

"1-19-35. REPORTS AND STATEMENTS--LATE FILING PENALTY--FAILURE TO FILE.--

A. Except for the report required to be filed and delivered the Thursday prior to the election and any supplemental report, as required in Paragraph (5) of Subsection B of Section 1-19-29 NMSA 1978, [~~that is due prior to the election, and subject to the provisions of Section 1-19-34.4 NMSA 1978~~] if a statement of no activity or a report of expenditures and contributions [~~contains false or incomplete information~~] is not filed or is filed after any deadline imposed by the Campaign Reporting Act, the responsible reporting individual or political committee [~~in addition to any~~

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~~other penalties or remedies prescribed by the Election Code]~~  
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 by the Campaign Reporting Act for the  
filing of statements of no activity or reports of expenditures  
and contributions until the complete ~~[or true]~~ statement or  
report is filed, up to a maximum ~~[of five thousand dollars  
(\$5,000)]~~ fine as provided in Subsection H of this section.

B. If any reporting individual fails to file or  
files a ~~[false, intentionally incomplete or]~~ late report of  
expenditures and contributions due on the Thursday prior to the  
election, the reporting individual or political committee shall  
be liable and pay to the secretary of state five hundred  
dollars (\$500) for the first working day and fifty dollars  
(\$50.00) for each subsequent working day after the time  
required for the filing of the report until the ~~[true and]~~  
complete report is filed, up to a maximum ~~[of five thousand  
dollars (\$5,000)]~~ fine as provided in Subsection H of this  
section.

C. If a reporting individual fails to file or files  
a late supplemental report of expenditures and contributions as  
required in Paragraph (5) of Subsection B of Section 1-19-29  
NMSA 1978, the reporting individual or political committee  
shall be liable for and pay to the secretary of state a penalty  
equal to the amount of each contribution received or pledged

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after the Tuesday before the election that was not timely filed.

D. If the secretary of state determines that a reporting individual or political committee has failed to file or has filed a report past the deadline, the secretary of state shall by written notice set forth the violation and the fine that may be imposed and inform the reporting individual that the individual has ten working days from the date of the letter to come into voluntary compliance and to provide a written explanation, under penalty of perjury, stating any reason why the violation occurred. If a timely explanation is filed and the secretary of state determines that good cause exists to waive or reduce the imposition of the fine, the secretary of state may by a written notice of final action partially or fully waive the imposition of a fine for any late report or statement of no activity. A written notice of final action shall be sent by certified mail. The secretary of state may file a petition with the court to remit outstanding fines for good cause or refer unpaid fines for enforcement under Subsection A of Section 1-19-34.6 NMSA 1978.

~~[D-]~~ E. All sums collected for the penalty shall be deposited in the state general fund. A report or statement of no activity shall be deemed timely filed only if it is received by the secretary of state by the date and time prescribed by law.

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[E-] F. Any candidate who fails or refuses to file a report of expenditures and contributions or statement of no activity or to pay a penalty imposed by the secretary of state as required by the Campaign Reporting Act shall not, in addition to any other penalties provided by law:

(1) have the candidate's name printed upon the ballot if the violation occurs before and through the final date for the withdrawal of candidates; or

(2) be issued a certificate of nomination or election, if the violation occurs after the final date for withdrawal of candidates or after the election, until the candidate satisfies all reporting requirements of the Campaign Reporting Act and pays all penalties owed.

[F-] G. Any candidate who loses an election and who failed or refused to file a report of expenditures and contributions or a statement of no activity or to pay a penalty imposed by the secretary of state as required by the Campaign Reporting Act shall not be, in addition to any other penalties provided by law, permitted to file a declaration of candidacy or nominating petition for any future election until the candidate satisfies all reporting requirements of that act and pays all penalties owed.

H. The maximum cumulative penalties for each report for which fines are assessed in accordance with Subsections A and B of this section are as follows:

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- (1) five thousand dollars (\$5,000) for statewide candidate committees and political committees;
- (2) two thousand five hundred dollars (\$2,500) for legislative, district judge, district attorney and public education commission candidate committees;
- (3) one thousand dollars (\$1,000) for county candidate committees running in a county designated as class A; and
- (4) five hundred dollars (\$500) for all other non-class A county candidate committees."

SECTION 7. Section 1-19-36 NMSA 1978 (being Laws 1979, Chapter 360, Section 12, as amended) is amended to read:

"1-19-36. CRIMINAL PENALTIES.--

A. Any person who knowingly and willfully violates any provision of the Campaign Reporting Act is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars (\$1,000) or by imprisonment for not more than one year or both.

B. The Campaign Reporting Act may be enforced by the attorney general or the district attorney in the county where the candidate resides, where a political committee has its principal place of business or where the violation occurred."

SECTION 8. Section 1-19A-15.1 NMSA 1978 (being Laws 2019, Chapter 86, Section 20) is amended to read:

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"1-19A-15.1. STATE ETHICS COMMISSION--JURISDICTION.--

SRC→~~A. On and after January 1, 2020:~~←SRC

SRC→~~(1) the~~←SRC

SRC→A. The←SRC state ethics commission shall have jurisdiction to investigate and adjudicate a complaint alleging a civil violation of a provision of the Voter Action Act in accordance with the provisions of [~~that act~~] the State Ethics Commission Act SRC→; ~~and~~←SRC SRC→.←SRC

SRC→~~(2) the~~←SRC

SRC→B. The←SRC [~~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 Voter Action Act to the state ethics commission in accordance with [~~the~~] a formalized agreement.

SRC→~~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 Voter Action Act necessary for the efficient administration and enforcement of the provisions of that act.~~←SRC "

SECTION 9. Section 1-19A-17 NMSA 1978 (being Laws 2003, Chapter 14, Section 17, as amended) is amended to read:

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

A. In addition to other penalties that may be

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applicable, a person who violates a provision of the Voter Action Act is subject to a civil penalty of up to ten thousand dollars (\$10,000) per violation. In addition to a fine, a certified candidate found in violation of that act may be required to return to the fund all amounts distributed to the candidate from the fund. If the ~~[secretary]~~ state ethics commission makes a determination that a violation of that act has occurred, the ~~[secretary]~~ state ethics commission shall impose a fine and, if the violation is willful or knowing, transmit the finding to the attorney general for criminal prosecution pursuant to Subsection B of this section. In determining whether a certified candidate is in violation of the expenditure limits of that act, the ~~[secretary]~~ state ethics commission may consider as a mitigating factor any circumstances out of the candidate's control.

B. A person who willfully or knowingly violates the provisions of the Voter Action Act or knowingly makes a false statement in a report required by that act is guilty of a fourth degree felony and, if the person is a certified candidate, shall return to the fund all money distributed to that candidate."

SECTION 10. Section 2-11-8.2 NMSA 1978 (being Laws 1977, Chapter 261, Section 4, as amended) is amended to read:

"2-11-8.2. COMPLIANCE WITH ACT--ENFORCEMENT OF ACT--  
~~[BINDING ARBITRATION]~~ CIVIL PENALTIES.--

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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]~~ state ethics commission, in consultation with the secretary of state, 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.]~~

B. The secretary of state may conduct examinations of reports and the state ethics commission may initiate investigations to determine whether the Lobbyist Regulation Act has been violated. Any person who believes that a provision of the Lobbyist Regulation Act has been violated may file a written complaint with the state ethics commission pursuant to

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the terms of the State Ethics Commission Act. If the commission has jurisdiction for the complaint, the state ethics commission shall refer the complaint to the secretary of state. Upon referral, the secretary of state shall attempt to achieve voluntary compliance with the Lobbyist Regulation Act. Within twenty days after receiving the complaint from the state ethics commission, the secretary of state shall return the complaint to the state ethics commission and certify to the state ethics commission whether voluntary compliance was achieved. If the secretary of state certifies voluntary compliance, the state ethics commission shall dismiss the complaint or that part of the complaint alleging a violation of the Lobbyist Regulation Act. If the secretary of state does not certify voluntary compliance, the state ethics commission shall proceed with the complaint pursuant to the terms of the State Ethics Commission Act.

C. The secretary of state and the state ethics commission 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.]~~

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~~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 or Financial Disclosure~~

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~~Act 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. No arbitrator shall be subject to liability for actions taken pursuant to this section.]~~

Additionally, the state ethics commission shall give a person who violates that act unintentionally or for good cause ten days' notice to come into compliance before the commission takes any action on a complaint filed with or referred to the commission against that person.

~~[G.]~~ D. Any person who fails to file or 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

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complete report is filed, up to a maximum of five thousand dollars (\$5,000).

E. If the secretary of state determines that a reporting entity subject to the reporting provisions of the Lobbyist Regulation Act has failed to file or has filed a report after the deadline, the secretary of state shall by written notice set forth the violation and the fine that may be imposed and inform the reporting individual that the individual has ten working days from the date of the letter to come into voluntary compliance and to provide a written explanation, under penalty of perjury, stating any reason why the violation occurred. If a timely explanation is filed and the secretary of state determines that good cause exists to waive the imposition of a fine, the secretary of state may by a written notice of final action partially or fully waive the imposition of a fine for any late report or statement of no activity. A written notice of final action shall be sent by certified mail. The secretary of state may file an appropriate court action to remit outstanding fines for good cause or refer unpaid fines for enforcement pursuant to Subsection F of this section.

[H.] F. The secretary of state may refer a matter to the state ethics commission SRC→, ~~the attorney general or a district attorney~~←SRC for a civil injunctive or other appropriate order or enforcement."

SECTION 11. Section 2-11-8.3 NMSA 1978 (being Laws 2019, .218442.9SAAIC March 10, 2021 (9:48am)

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Chapter 86, Section 21) is amended to read:

"2-11-8.3. STATE ETHICS COMMISSION--JURISDICTION.--

SRC→~~A. On and after January 1, 2020:~~←SRC

SRC→~~(1) the~~←SRC

SRC→A. The←SRC 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 SRC→; and←SRC  
SRC→.←SRC

SRC→~~(2) the~~←SRC

SRC→B. The←SRC [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 Lobbyist Regulation Act and a formalized agreement.

SRC→~~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.~~←SRC "

SECTION 12. Section 10-16A-3 NMSA 1978 (being Laws 1993,

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Chapter 46, Section 41, as amended) is amended to read:

"10-16A-3. REQUIRED DISCLOSURES FOR CERTAIN CANDIDATES AND PUBLIC OFFICERS AND EMPLOYEES--CONDITION FOR PLACEMENT ON BALLOT OR APPOINTMENT.--

A. A person holding a legislative or statewide office shall file with the secretary of state a financial disclosure statement during the month of January every year that the person holds public office.

B. A candidate for legislative or statewide office who has not already filed a financial disclosure statement with the secretary of state in the same calendar year shall file with the proper filing officer, as defined in the Election Code, a financial disclosure statement at the time of filing a declaration of candidacy. If the proper filing officer is not the secretary of state, the proper filing officer shall forward a copy of the financial disclosure statement to the secretary of state within three days.

C. A state agency head, an official whose appointment to a board or commission is subject to confirmation by the senate, [or] a member of the insurance nominating committee or a member of the state ethics commission shall file with the secretary of state a financial disclosure statement within thirty days of appointment and during the month of January every year thereafter that the person holds public office.

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D. The financial disclosure statement shall include for any person identified in Subsection A, B or C of this section and the person's spouse the following information for the prior calendar year:

(1) the full name, mailing address and residence address of each person covered in the disclosure statement, except the address of the spouse need not be disclosed; the name and address of the person's and spouse's employer and the title or position held; and a brief description of the nature of the business or occupation;

(2) all sources of gross income of more than five thousand dollars (\$5,000) to each person covered in the disclosure statement, identified by general category descriptions that disclose the nature of the income source, in the following broad categories: law practice or consulting operation or similar business, finance and banking, farming and ranching, medicine and health care, insurance (as a business and not as payment on an insurance claim), oil and gas, transportation, utilities, general stock market holdings, bonds, government, education, manufacturing, real estate, consumer goods sales with a general description of the consumer goods and the category "other", with direction that the income source be similarly described. In describing a law practice, consulting operation or similar business of the person or spouse, the major areas of specialization or income sources

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shall be described, and if the spouse or a person in the reporting person's or spouse's law firm, consulting operation or similar business is or was during the reporting calendar year or the prior calendar year a registered lobbyist under the Lobbyist Regulation Act, the names and addresses of all clients represented for lobbying purposes during those two years shall be disclosed;

(3) a general description of the type of real estate owned in New Mexico, other than a personal residence, and the county where it is located;

(4) all other New Mexico business interests not otherwise listed of ten thousand dollars (\$10,000) or more in a New Mexico business or entity, including any position held and a general statement of purpose of the business or entity;

(5) all memberships held by the reporting individual and the individual's spouse on boards of for-profit businesses in New Mexico;

(6) all New Mexico professional licenses held;

(7) each state agency that was sold goods or services in excess of five thousand dollars (\$5,000) during the prior calendar year by a person covered in the disclosure statement; and

(8) each state agency, other than a court, before which a person covered in the disclosure statement represented or assisted clients in the course of the person's

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employment during the prior calendar year.

E. A complete financial disclosure statement shall be filed every year. The secretary of state shall deliver to each elected official required to file a financial disclosure statement a copy of any statement the person filed the previous year.

F. The financial disclosure statements filed pursuant to this section are public records open to public inspection during regular office hours and shall be retained by the state for five years from the date of filing.

G. A person who files a financial disclosure statement may file an amended statement at any time to reflect significant changed circumstances that occurred since the last statement was filed.

H. A person who files to be a candidate for a legislative or statewide office who fails or refuses to file a financial disclosure statement required by this section before the final date for qualification of the person as a candidate as provided for in the Election Code shall not be qualified by the proper filing officer as a candidate.

I. For a state agency head, an official whose appointment to a board or commission is subject to confirmation by the senate, [✕] a member of the insurance nominating committee or a member of the state ethics commission, the filing of the financial disclosure statement required by this

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section is a condition of entering upon and continuing in state employment or holding an appointed position."

SECTION 13. Section 10-16A-6 NMSA 1978 (being Laws 1993, Chapter 46, Section 44, as amended) is amended to read:

"10-16A-6. INVESTIGATIONS--~~[BINDING ARBITRATION]~~ FINES-- ENFORCEMENT.--

A. The state ethics commission ~~[and the secretary of state]~~ may conduct thorough examinations of statements and initiate investigations to determine whether the Financial Disclosure Act has been violated. Any person who believes that act has been violated may file a written complaint with the state ethics commission. The commission shall adopt procedures for processing complaints and notifications of violations.

B. If the state ethics commission determines that a violation has occurred for which a penalty should be imposed, the commission shall so notify the person charged and impose the penalty. ~~[If the person charged disputes the commission's determination, the person charged may request binding arbitration.]~~

~~C. The arbitration decision shall be decided 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 state ethics commission. No arbitrator may be a person subject to the Financial Disclosure Act, Campaign Reporting Act or Lobbyist Regulation Act.~~

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~~Arbitrators shall be considered to be independent contractors, not public officers or employees, and shall not be paid per diem and mileage.~~

~~D. The arbitrator may take any action the state ethics commission is authorized to take. The arbitrator shall state the reasons for the decision in a written document that shall be a public record. The decision shall be final and binding. The decision shall be issued within thirty days of the conclusion of the hearing. Unless otherwise provided for in this section, or by rule or regulation adopted by the state ethics commission, the procedures for the arbitration shall be governed by the Uniform Arbitration Act. No arbitrator shall be subject to liability for actions taken pursuant to this section.~~

~~E.]~~ C. Any person who files a statement or report after the deadline imposed by the Financial Disclosure Act [~~or any person who files a false or incomplete statement or report]~~ is liable for and shall pay to the secretary of state, at or from the time initially required for the filing, fifty dollars (\$50.00) per day for each regular working day after the time required for the filing of the statement or report until the complete report is filed, up to a maximum of five thousand dollars (\$5,000).

~~[F.]~~ D. The secretary of state may refer a matter to the state ethics commission, attorney general or a district

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attorney for a civil injunctive or other appropriate order or enforcement."

SECTION 14. Section 10-16G-2 NMSA 1978 (being Laws 2019, Chapter 86, Section 2) is amended to read:

"10-16G-2. DEFINITIONS.--As used in the State Ethics Commission Act:

- A. "commission" means the state ethics commission;
- B. "commissioner" means a member of the commission;
- C. "complainant" means a person who files a verified complaint with the commission;
- D. "complaint" means a complaint that has been signed by the complainant and the complainant attests under oath and subject to penalty of perjury [~~before a notary public~~] that the information in the complaint, and any attachments provided with the complaint, are true and accurate;
- E. "director" means the executive director of the commission;
- F. "government contractor" means a person who has a contract with a public agency or who has submitted a competitive sealed proposal or competitive sealed bid for a contract with a public agency;
- G. "legislative body" means the house of representatives or the senate;
- H. "lobbyist" means a person who is required to register as a lobbyist pursuant to the provisions of the

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Lobbyist Regulation Act;

I. "political party" means a political party that has been qualified in accordance with the provisions of the Election Code;

J. "public agency" means any department, commission, council, board, committee, agency or institution of the executive or legislative branch of government of the state or any instrumentality of the state, including the New Mexico mortgage finance authority, the New Mexico finance authority, the New Mexico exposition center authority, the New Mexico hospital equipment loan council and the New Mexico renewable energy transmission authority;

K. "public employee" means an employee of a public agency;

L. "public official" means a person elected to an office of the executive or legislative branch of the state or a person appointed to a public agency; and

M. "respondent" means a person against whom a complaint has been filed with or by the commission."

SECTION 15. Section 10-16G-4 NMSA 1978 (being Laws 2019, Chapter 86, Section 4) is amended to read:

"10-16G-4. COMMISSIONERS--QUALIFICATIONS--LIMITATIONS.--

A. To qualify for appointment to the commission, a person shall:

(1) be a qualified elector of New Mexico;

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(2) not have changed party registration in the five years next preceding the member's appointment in such a manner that the member's prior party registration would make the member ineligible to serve on the commission;

(3) not continue to serve as a commissioner if the member changes party registration after the date of appointment in such a manner as to make the member ineligible to serve on the commission; and

(4) not be, or within the two years prior to appointment shall not have been, in New Mexico, any of the following:

- (a) a public official;
- (b) a public employee;
- (c) a candidate;
- (d) a lobbyist;
- (e) a government contractor; or
- (f) an office holder in a political party at the state or federal level.

B. Before entering upon the duties of the office of commissioner, each commissioner shall review the State Ethics Commission Act and other laws and rules pertaining to the commission's responsibilities and to ethics and governmental conduct in New Mexico. Each commissioner shall take the oath of office as provided in Article 20, Section 1 of the constitution of New Mexico and, pursuant to the Financial

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Disclosure Act, file with the secretary of state a financial disclosure statement within thirty days of appointment and during the month of January every year thereafter that the commissioner serves on the commission.

C. For a period of one calendar year following a commissioner's tenure or following the resignation or removal of a commissioner, the commissioner shall not:

(1) represent a respondent, unless appearing on the commissioner's own behalf; or

(2) accept employment or otherwise provide services to a respondent unless the commissioner accepted employment or provided services prior to the filing of a complaint against the respondent.

D. During a commissioner's tenure, a commissioner shall not hold another public office or be:

(1) a public employee;

(2) a candidate;

(3) a lobbyist;

(4) a government contractor; or

(5) an office holder in a political party at the state or federal level.

E. A commissioner who changes political party affiliation in violation of the provisions of Subsection A of this section or who chooses to seek or hold an office in violation of Subsection D of this section shall resign from the

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commission or be deemed to have resigned."

SECTION 16. Section 10-16G-9 NMSA 1978 (being Laws 2019, Chapter 86, Section 9) is amended to read:

"10-16G-9. COMMISSION JURISDICTION--COMPLIANCE PROVISIONS.--

A. The commission has jurisdiction to enforce the applicable civil compliance provisions for public officials, public employees, candidates, persons subject to the Campaign Reporting Act, government contractors, lobbyists and lobbyists' employers of:

- (1) the Campaign Reporting Act;
- (2) the Financial Disclosure Act;
- (3) the Gift Act;
- (4) the Lobbyist Regulation Act;
- (5) the Voter Action Act;
- (6) the Governmental Conduct Act;
- (7) the Procurement Code;
- (8) the State Ethics Commission Act; and
- (9) Article 9, Section 14 of the constitution

of New Mexico.

B. All complaints filed with a public agency regarding the statutes listed in Subsection A of this section shall be forwarded to the commission.

C. The commission may choose to act on some or all aspects of a complaint and forward other aspects of a complaint

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to another state or federal agency with jurisdiction over the matter in accordance with Subsection E of this section.

D. If the commission decides not to act on a complaint, whether the complaint was filed with the commission or forwarded from another public agency, or decides only to act on part of a complaint, the commission shall promptly forward the complaint, or any part of a complaint on which it does not wish to act, to the public agency that has appropriate jurisdiction within ten days of the decision. The complainant and respondent shall be notified in writing when the complainant's request has been forwarded to another agency unless otherwise provided pursuant to Subsection H of Section ~~[10 of the State Ethics Commission Act]~~ 10-16G-10 NMSA 1978.

E. The commission may share jurisdiction with other public agencies having authority to act on a complaint or any aspect of a complaint. Such shared jurisdiction shall be formalized through an agreement entered into by all participating agencies involved with the complaint and the director. The commission may also investigate a complaint referred to the commission by the legislature, or a legislative committee, in accordance with an agreement entered into pursuant to policies of the New Mexico legislative council or rules of the house of representatives or senate.

F. The commission may file a court action to enforce the civil compliance provisions of an act listed in

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Subsection A of this section. The court action shall be filed in the district court in the county where the ~~respondent~~ defendant resides."

SECTION 17. Section 10-16G-10 NMSA 1978 (being Laws 2019, Chapter 86, Section 10) is amended to read:

"10-16G-10. COMPLAINTS--INVESTIGATIONS--SUBPOENAS.--

A. A complaint of an alleged ethics violation committed by a public official, public employee, candidate, person subject to the Campaign Reporting Act, government contractor, lobbyist, lobbyist's employer or a restricted donor subject to the Gift Act may be filed with the commission by a person who has actual knowledge of the alleged ethics violation.

B. The complainant shall set forth in detail the specific charges against the respondent and the factual allegations that support the charges and shall sign the complaint under penalty of false statement. The complainant shall submit any evidence the complainant has that supports the complaint. Evidence may include documents, records and names of witnesses. The commission shall prescribe the forms on which complaints are to be filed. The complaint form shall be signed ~~and sworn~~ under oath by the complainant ~~and notarized~~.

C. Except as provided in Subsection H of this section, the respondent shall be notified within seven days of

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the filing of the complaint and offered an opportunity to file a response on the merits of the complaint.

D. The director shall determine if the complaint is subject to referral to another state agency pursuant to an agreement or outside the jurisdiction of the commission, and if so, promptly refer the complaint to the appropriate agency. If the director determines that the complaint is within the commission's jurisdiction, the director shall have the general counsel initiate an investigation.

E. The general counsel shall conduct an investigation to determine whether the complaint is frivolous or unsubstantiated. If the general counsel determines that the complaint is frivolous or unsubstantiated, the complaint shall be dismissed, and the complainant and respondent shall be notified in writing of the decision and reasons for the dismissal. The commission shall not make public a complaint that has been dismissed pursuant to this subsection or the reasons for the dismissal.

F. If the general counsel and the respondent reach a settlement on the matters of the complaint, the settlement shall be submitted to the commission for its approval, and if the matter has been resolved to the satisfaction of the commission, the complaint and terms of the settlement shall be subject to public disclosure.

G. If the general counsel determines that there is

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probable cause, the director shall promptly notify the respondent of the finding of probable cause and of the specific allegations in the complaint that are being investigated and that a public hearing will be set. If the finding of probable cause involves a discriminatory practice or actions by the respondent against the complainant, no settlement agreement shall be reached without prior consultation with the complainant. In any case, the notification, complaint, specific allegations being investigated and any response to the complaint shall be made public thirty days following notice to the respondent.

H. Notwithstanding the provisions of Subsections C and G of this section, the director may delay notifying a respondent and complainant and releasing to the public the complaint and related information required by Subsection G of this section if it is deemed necessary to protect the integrity of a criminal investigation. A decision whether to delay notifying a respondent shall be taken by a majority vote of the commission and shall be documented in writing with reasonable specificity.

I. As part of an investigation, the general counsel may administer oaths, interview witnesses and examine books, records, documents and other evidence reasonably related to the complaint. All testimony in an investigation shall be under oath, and the respondent may be represented by legal counsel.

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If the general counsel determines that a subpoena is necessary to obtain the testimony of a person or the production of books, records, documents or other evidence, the director shall request that the commission petition a district court to issue a subpoena.

J. The commission may petition the court for a subpoena for the attendance and examination of witnesses or for the production of books, records, documents or other evidence reasonably related to an investigation. If a person neglects or refuses to comply with a subpoena, the commission may apply to a district court for an order enforcing the subpoena and compelling compliance. All proceedings in the district court prior to the complaint being made public pursuant to Subsection G of this section, or upon entry of a settlement agreement, shall be sealed. A case is automatically unsealed upon notice by the commission to the court that the commission has made the complaint public. No later than July 1 of each even-numbered year, the chief justice of the supreme court shall appoint an active or pro tempore district judge to consider the issuance and enforcement of subpoenas provided for in this section. The appointment shall end on June 30 of the next even-numbered year after appointment.

K. A public official or state public employee who is a respondent who is subject to a complaint alleging a violation made in the performance of the respondent's duties

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shall be entitled to representation by the risk management division of the general services department."

SECTION 18. A new section of the Campaign Reporting Act is enacted to read:

"[NEW MATERIAL] POLITICAL COMMITTEES--ACKNOWLEDGMENT OF RESPONSIBILITIES--PENALTY.--

A. Beginning on July 1, 2021, for all new political committees registering with the secretary of state, the treasurer for the political committee shall submit an electronically signed statement acknowledging the political committee's responsibilities on a form prescribed by the secretary of state within ten days of registering the political committee. The signed acknowledgment statement serves as notification of the responsibilities of the political committee to comply with the financial reporting prescribed in the Campaign Reporting Act and the potential personal liability of the treasurer for penalties assessed against the political committee.

B. The secretary of state shall notify the political committee of any individual who has failed to submit the acknowledgment statement. Failure to return the acknowledgment statement is a violation of this section for which a fine of one hundred dollars (\$100) may be assessed against the political committee. This section also applies to individuals named in an updated or amended registration who

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have not previously submitted an acknowledgment statement for the political committee.

C. For all political committees already registered with the secretary of state prior to July 1, 2021, the secretary of state shall notify the principal officer and treasurer of record requiring the treasurer to submit an acknowledgment form required in Subsection A of this section. If the political committee does not respond to the request made by the secretary of state or disputes current responsibility for the political committee, the political committee shall not raise or spend any funds until the registration is amended and the acknowledgment form has been signed.

D. If there are already fines accrued against a political committee previously registered with the secretary of state, the treasurer of record shall sign the acknowledgment statement accepting personal liability from that date forward. Outstanding fines are still due unless the secretary of state is compelled to file a petition in court to have the fines dissolved."

**SECTION 19.** A new section of the Campaign Reporting Act is enacted to read:

"[NEW MATERIAL] POLITICAL COMMITTEES--NOTICE OF RESIGNATION OR REMOVAL OF TREASURER.--

A. An individual who resigns as the treasurer of a political committee shall submit a written resignation

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statement to the secretary of state. An individual's resignation is not effective until the secretary of state receives the written resignation statement from the individual and a replacement treasurer is appointed for the political committee. If an individual is involuntarily removed from the position of treasurer, the political committee shall notify the secretary of state by amending the electronic registration maintained by the secretary of state. An individual who resigns as the treasurer of a political committee remains personally liable for any penalties or fines accrued during the time that the individual served in the position.

B. The secretary of state shall prescribe the form and process for notifying the secretary of state of a resignation or replacement of a treasurer and shall maintain all records electronically to the extent practicable."

**SECTION 20.** A new section of the Lobbyist Regulation Act is enacted to read:

"[NEW MATERIAL] RULEMAKING AUTHORITY.--The secretary of state may promulgate rules to implement the provisions of the Lobbyist Regulation Act. In promulgating the rules, the secretary of state shall comply with the provisions of the State Rules Act."

**SECTION 21.** A new section of the Financial Disclosure Act is enacted to read:

"[NEW MATERIAL] RULEMAKING AUTHORITY.--The secretary of

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state may promulgate rules to implement the provisions of the Financial Disclosure Act. In promulgating the rules, the secretary of state shall comply with the provisions of the State Rules Act."

SRC→SECTION 22. REPEAL.--Section 1-19-1 NMSA 1978 (being Laws 1969, Chapter 240, Section 405) is repealed.←SRC

SECTION SRC→22.←SRC SRC→23.←SRC EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2021.

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