

PROPOSED CHANGES TO CHAPTER 294A OF NRS

Chapter 294A NRS is hereby amended by adding thereto the provisions set forth herein as Sections 1 through 8:

Section 1. *“Electioneering communication” means:*

1. Any communication that is broadcast from a cable, satellite, television, or radio broadcast station; published in any periodical or newspaper; or sent by mail at a bulk rate, and that:

(a) Refers to a clearly identifiable candidate;

(b) Is made, or scheduled to be made, during the period beginning the day after the last day to withdraw as a candidate pursuant to NRS 293.202 and the date of the general election; and

(c) Costs \$100.00 or more.

2. The term does not include:

(a) a communication appearing in a news story, commentary, or editorial distributed through the facilities of any broadcasting station, unless such facilities are owned or controlled by any political party, political action committee, or candidate;

(b) a communication which constitutes an expenditure or an independent expenditure under this Chapter; or

(c) a communication which constitutes a candidate debate or forum, or which solely promotes such a debate or forum and is made by or on behalf of the person sponsoring the debate or forum;

Section 2. *“Independent expenditure” means:*

1. An electioneering communication; or

2. Any payment of money for, or the in-kind provision of, advertising on television, radio, billboards, posters, mailers, and in newspapers and any other payment or in-kind provision made for communications to advocate expressly the election or defeat of a clearly identified candidate or group of candidates or question or group of questions on the ballot;

→ which is made by a person who is not under the direction or control of a candidate for office at any election, of a group of candidates or of any person involved in the campaign of that candidate or group, and which is not coordinated with, solicited or approved by the candidate or group of candidates.

Section 3. NRS 294A.0075 “Expenditures” defined. *“Expenditures” means:*

1. Money paid for independent expenditures ~~Those expenditures made for advertising on television, radio, billboards, posters and in newspapers;~~ and

2. All other ~~expenditures made~~monies paid;

→ to advocate expressly the election or defeat of a clearly identified candidate or group of candidates or the passage or defeat of a clearly identified question or group of questions on the ballot, including any payments made to a candidate or any person who is related to the candidate within the second degree of consanguinity or affinity.

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Section 4. Personal use of Campaign Contributions by Candidate Prohibited.

1. It is unlawful for a candidate to spend money received as a campaign contribution for the candidate's personal use.
2. "Personal use" as used in this section means typically personal and household expenses if the particular use would fulfill a commitment, obligation or expense that would exist irrespective of the candidate's campaign or duties as an officeholder. "Personal use" includes but is not limited to the use of campaign contributions for:
 - (a) Household food items or supplies;
 - (b) Funeral, cremation or burial expenses;
 - (c) Clothing, other than items of de minimis value that are used in the campaign, such as campaign "T-shirts" or caps with campaign slogans;
 - (d) Tuition payments, other than those associated with training campaign staff;
 - (e) Mortgage, rent or utility payments:
 - (1) For any part of any personal residence of the candidate or a member of the candidate's family; or
 - (2) For real or personal property that is owned by the candidate or a member of the candidate's family and used for campaign purposes, to the extent the payments exceed the fair market value of the property usage;
 - (f) Admission to a sporting event, concert, theater or other form of entertainment, unless part of a specific campaign or officeholder activity;
 - (g) Dues, fees or gratuities at a country club, health club, recreational facility or other nonpolitical organization, unless they are part of the costs of a specific fundraising event that takes place on the organization's premises; and
 - (h) Salary payments to a member of the candidate's family, unless the family member is providing bona fide services to the campaign.
3. "Personal use" as used in this section does not include the following:
 - (a) campaign expenses; or
 - (b) expenses associated with or used to defray any ordinary and necessary expenses incurred in connection with the holding of public office.
4. Any and all expenses paid from a candidate's campaign contributions must be reported by the candidate as set forth in NRS 294A.200.

Section 5. Reporting of Balance of Campaign Account.

1. Public officials and candidates shall report the total balance of their campaign accounts, as required to be established by NRS 294A.130, on the first contributions and expenses report of each calendar year that the public official or candidate is required to file pursuant to NRS 294A.120, 294A.200, 294A.286 or 294A.360.

Section 6. Candidates To Report Contributions and Campaign Expenses in Excess of \$1000 in Expedited Manner.

1. A candidate who receives a contribution in excess of \$1,000.00 shall report electronically the contribution within 72 hours in a format designed and made available by the Secretary of State.
2. A candidate who incurs a campaign expense in excess \$1,000.00 shall report the campaign expense within 72 hours in a format designed and made available by the Secretary of State.

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3. *The reporting required by this section is in addition to a candidate's reporting obligations under NRS 294A.120, 294A.200, 294A.286 and 294A.360 and does not relieve a candidate from reporting the same contributions and expenses for the appropriate report period as set forth in NRS 294A.120, 294A.200, 294A.286 and 294A.360.*

Section 7. NRS 294A.160 ~~Personal use by candidate prohibited~~; use authorized for certain legal expenses; disposition of unspent contributions; penalty.

~~1. It is unlawful for a candidate to spend money received as a campaign contribution for the candidate's personal use.~~ [Only change to 294A.160 is to remove subsection (1)]

Section 8. NRS 294A.420 Enforcement of chapter: Institution of court proceedings; civil penalty; limitation and waiver of civil penalty.

1. If the Secretary of State receives information that a person, committee or entity that is subject to the provisions of NRS 294A.120, 294A.128, 294A.140, 294A.150, 294A.200, 294A.210, 294A.220, 294A.230, 294A.250, 294A.270, 294A.280, 294A.286 or 294A.360 has not filed a report or form for registration pursuant to the applicable provisions of those sections, the Secretary of State may, after giving notice to that person, committee or entity, cause the appropriate proceedings to be instituted in the First Judicial District Court.

2. ~~Except as otherwise provided in this section, a~~ A person, committee or entity that violates an applicable provision of this chapter is subject to a civil penalty ~~of not more than \$5,000~~ for each violation and payment of court costs and attorney's fees. The civil penalty must be recovered in a civil action brought in the name of the State of Nevada by the Secretary of State in the First Judicial District Court and deposited by the Secretary of State for credit to the State General Fund in the bank designated by the State Treasurer. *In addition to any civil penalty, the Secretary of State may seek equitable relief to obtain compliance with the provisions of this chapter.*

3. If a civil penalty is imposed because a person, committee or entity has *filed its contributions and expenses report* ~~reported its contributions, expenses or expenditures~~ after the date the report is due, except as otherwise provided in this subsection, the amount of the civil penalty is:

(a) If the report is not more than 7 days late, \$25 for each day the report is late.

(b) If the report is more than 7 days late but not more than 15 days late, \$50 for each day the report is late.

(c) If the report is more than 15 days late, \$100 for each day the report is late.

→ A civil penalty imposed pursuant to this subsection against a public officer who by law is not entitled to receive compensation for his or her office or a candidate for such an office must not exceed a total of \$100 if the public officer or candidate received no contributions and made no expenditures during the relevant reporting periods.

4. *For any other violation of this chapter besides the violation described in subsection 3, the Secretary of State may impose a civil penalty in a range from an amount equal to the amount of money at issue in the violation up to an amount three times the amount of money at issue in the violation, or \$5,000 per violation, whichever is greater.*

54. For good cause shown, the Secretary of State may waive a civil penalty that would otherwise be imposed pursuant to this section. If the Secretary of State waives a civil penalty pursuant to this subsection, the Secretary of State shall:

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- (a) Create a record which sets forth that the civil penalty has been waived and describes the circumstances that constitute the good cause shown; and
- (b) Ensure that the record created pursuant to paragraph (a) is available for review by the general public.

PROPOSED CHANGES FOR THE PURPOSE OF IDENTIFYING ACCEPTABLE GIFTS FOR PUBLIC OFFICIALS AND CANDIDATES AND ENFORCING THE DISCLOSURE OF GIFTS BY PUBLIC OFFICIALS AND CANDIDATES FOR THE PURPOSES OF CHAPTER 281 STATEMENTS OF FINANCIAL DISCLOSURE:

Chapter 294A of NRS is hereby amended by adding thereto the provisions set forth herein as Sections 9 through 11:

Section 9. "Gift" means a rendering of anything of value in return for which legal consideration of equal or greater value is not given or received.

Section 10. "Restricted donor" means:

1. A person who is in any of the following categories:

(a) Is or is seeking to be a party to any one or any combination of sales, purchases, leases, or contracts to, from, or with the agency in which the donee holds office or is employed.

(b) Will personally be, or is the agent of a person who will be, directly and substantially affected financially by the performance or nonperformance of the donee's official duty in a way that is greater than the effect on the public generally or on a substantial class of persons to which the person belongs as a member of a profession, occupation, industry, or region.

(c) Is personally, or is the agent of a person who is, the subject of or party to a matter which is pending before a subunit of a regulatory agency and over which the donee has discretionary authority as part of the donee's official duties or employment within the regulatory agency subunit.

(d) Is a lobbyist or a client of a lobbyist with respect to matters within the donee's jurisdiction

Section 11. Gifts accepted or received.

1. Except as otherwise provided in this section, a public official, public employee, or candidate, or that person's immediate family member shall not, directly or indirectly, accept or receive any gift or series of gifts from a restricted donor. A public official, public employee, candidate, or the person's immediate family member shall not solicit any gift or series of gifts from a restricted donor at any time.

2. Except as otherwise provided in this section, a restricted donor shall not, directly or indirectly, offer or make a gift or a series of gifts to a public official, public employee, or candidate. Except as otherwise provided in this section, a restricted donor shall not, directly or indirectly, join with one or more other restricted donors to offer or make a gift or a series of gifts to a public official, public employee, or candidate.

3. A restricted donor may give, and a public official, public employee, or candidate, or the person's immediate family member, may accept an otherwise prohibited nonmonetary gift or a series of otherwise prohibited nonmonetary gifts and not be in violation of this section if the nonmonetary gift or series of nonmonetary gifts is donated within thirty days to a public body, the department of administrative services, or a bona fide educational or charitable organization, if no part of the net earnings of the educational or charitable organization inures to the benefit of any private stockholder or other individual. All such items donated to the department of administrative services shall be disposed of by assignment to state agencies for official use or by public sale.

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4. *Notwithstanding subsections 1 and 2, the following gifts may be received by public officials, public employees, candidates, or members of the immediate family of public officials, public employees, or candidates:*
- (a) Contributions to a candidate or a candidate's committee.*
 - (b) Informational material relevant to a public official's or public employee's official functions, such as books, pamphlets, reports, documents, periodicals, or other information that is recorded in a written, audio, or visual format.*
 - (c) Anything received from anyone related within the third degree of consanguinity or affinity, unless the donor is acting as an agent or intermediary for another person not so related.*
 - (d) An inheritance.*
 - (e) Anything available or distributed free of charge to members of the general public without regard to the official status of the recipient. This paragraph shall not apply to functions described under paragraph "s".*
 - (f) Items received from a bona fide charitable, professional, educational, or business organization to which the donee belongs as a dues-paying member, if the items are given to all members of the organization without regard to individual members' status or positions held outside of the organization and if the dues paid are not inconsequential when compared to the items received.*
 - (g) Actual expenses of a donee for food, beverages, registration, travel, and lodging for a meeting, which is given in return for participation in a panel or speaking engagement at the meeting when the expenses relate directly to the day or days on which the donee has participation or presentation responsibilities.*
 - (h) Plaques or items of negligible resale value which are given as recognition for the public services of the recipient.*
 - (i) Food and beverages provided at a meal that is part of a bona fide event or program at which the recipient is being honored for public service.*
 - (j) Nonmonetary items with a value of three dollars or less that are received from any one donor during one calendar day.*
 - (k) Items or services solicited by or given to a state, national, or regional government organization in which the state of Nevada or a political subdivision of the state is a member for purposes of a business or educational conference, seminar, or other meeting; or solicited by or given to state, national, or regional government organizations, whose memberships and officers are primarily composed of state or local government officials or employees, for purposes of a business or educational conference, seminar, or other meeting.*
 - (l) Items or services received by members or representatives of members at a regularly scheduled event that is part of a business or educational conference, seminar, or other meeting that is sponsored and directed by any state, national, or regional government organization in which the state of Nevada or a political subdivision of the state is a member, or received at such an event by members or representatives of members of state, national, or regional government organizations whose memberships and officers are primarily composed of state or local government officials or employees.*
 - (m) Funeral flowers or memorials to a church or nonprofit organization.*
 - (n) Gifts which are given to a public official or public employee for the public official's or public employee's wedding or twenty-fifth or fiftieth wedding anniversary.*
 - (o) Payment of salary or expenses by a person's employer or the firm in which the person is a*

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member for the cost of attending a meeting of a subunit of an agency when the person whose expenses are being paid serves on a board, commission, committee, council, or other subunit of the agency and the person is not entitled to receive compensation or reimbursement of expenses from the state or a political subdivision of the state for attending the meeting.

(p) Gifts of food, beverages, travel, or lodging received by a public official or public employee if all of the following apply:

(1) The public official or public employee is officially representing an agency in a delegation whose sole purpose is to attract a specific new business to locate in the state, encourage expansion or retention of an existing business already established in the state, or to develop markets for Nevada businesses or products.

(2) The donor of the gift is not the business or businesses being contacted. However, food or beverages provided by the business or businesses being contacted which are consumed during the meeting are not a gift under this section.

(3) The public official or public employee plays a significant role in the presentation to the business or businesses on behalf of the public official's or public employee's agency.

(q) Gifts other than food, beverages, travel, and lodging received by a public official or public employee which are received from a person who is a citizen of a country other than the United States and are given during a ceremonial presentation or as a result of a custom of the other country and are of personal value only to the donee.

(r) Actual registration costs for informational meetings or sessions which assist a public official or public employee in the performance of the person's official functions. The costs of food, drink, lodging and travel are not "registration costs" under this paragraph. Meetings or sessions which a public official or public employee attends for personal or professional licensing purposes are not "informational meetings or sessions which assist a public official or public employee in the performance of the person's official functions" under this paragraph.

(s) Gifts of food, beverage, and entertainment received at a function where every member of the legislature has been invited to attend, when the function takes place during a regular session of the legislature. A sponsor of a function under this paragraph shall file a registration prior to the function taking place identifying the sponsor and the date, time, and location of the function. The registration shall be filed with the person or persons designated by the Secretary of the Senate and the Chief Clerk of the Assembly. After a function takes place, the sponsor of the function shall file a report disclosing the total amount expended, including in-kind expenditures, on food, beverage, and entertainment for the function. The report shall be filed with the person or persons designated by the secretary of the senate and the chief clerk of the assembly within twenty-eight calendar days following the date of the function.

5. For purposes of determining the value of an item given or received, an individual who gives an item on behalf of more than one person shall not divide the value of the item by the number of persons on whose behalf the item is given and the value of an item received shall be the value actually received by the donee.

6. A gift shall not be considered to be received by a public official or public employee if the state is the donee of the gift and the public official or public employee is required to receive the gift on behalf of the state as part of the performance of the person's duties of office or employment.

7. A person shall not request, and a member of the legislature shall not agree, that a member of the legislature sell tickets for a community-related social event that is to be held for members

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of the legislature Carson City during the legislative session. This section shall not apply to Carson City events that are open to the public generally or are held only for Carson City legislators.

8. Except as otherwise provided in subsection 4, an organization or association which has as one of its purposes the encouragement of the passage, defeat, introduction, or modification of legislation shall not give and a member of the legislature shall not receive food, beverages, registration, or scheduled entertainment with a per person value in excess of three dollars.

9. A public official or candidate required to file a statement of financial disclosure pursuant to NRS 281.558 through NRS 281.581, that receives a gift that may be received pursuant to this section shall disclose the gift in his or her statement of financial disclosure pursuant to NRS 281.571(1)(e).