

UNANNOTATED

CHAPTER 14 Records, Rules, Legal Notices, Oaths

ARTICLE 1

Preservation, Restoration and Destruction of Records

14-1-1. [Filing certified copy of document when original is in danger of damage or destruction.]

Whenever any map, plat or other document on file with or in the official custody of any county clerk in this state shall be in danger of damage or destruction by reason of age, mutilation or any other cause, it shall be lawful for the board of county commissioners of such county to authorize the county clerk to have a true and correct copy thereof made and filed in the office of said county clerk, after having been certified by such county clerk to be a true, correct and compared copy of the original.

History: Laws 1939, ch. 130, § 1; 1941 Comp., § 13-401; 1953 Comp., § 71-4-1.

14-1-2. [Effect of filing certified copy.]

The filing of such certified copy of map, plat or other document in the office of the county clerk shall relate back to the date of the filing of the original and such certified copy shall have the same validity and effect as the original.

History: Laws 1939, ch. 130, § 2; 1941 Comp., § 13-402; 1953 Comp., § 71-4-2.

14-1-3. [Method of copying.]

That copies of such maps, plats or other documents may be made in any manner which the county clerk shall determine to be best to correctly and completely exemplify the original, including the making of copies by photographic, photostatic or any other mechanical process.

History: Laws 1939, ch. 130, § 3; 1941 Comp., § 13-403; 1953 Comp., § 71-4-3.

14-1-4. ["Public officer" defined for purpose of microfilming records.]

The term public officer means any officer of the legislative, executive and judicial departments of the state whether elected or appointed, including officers of the boards, commissions, bureaus and all other agencies of this state and the departments thereof,

and including officers of the state legislature and the officers and clerks of the courts of this state and, in like manner, the county and municipal officers of the counties, cities, towns and villages of this state.

History: 1941 Comp., § 13-406, enacted by Laws 1947, ch. 185, § 1; 1953 Comp., § 71-4-6.

14-1-5. Authorization.

Any public officer of the state may cause any or all records, papers or documents kept by the officer to be photographed, microfilmed, microphotographed, maintained as an electronic record or reproduced on film. The electronic record, photographic film and the device used to reproduce the records on film shall be one that accurately reproduces the original in all details.

History: 1941 Comp., § 13-407, enacted by Laws 1947, ch. 185, § 2; 1953 Comp., § 71-4-7; 1978 Comp., § 14-1-5; 2023, ch. 62, § 1.

14-1-6. Presumption of authenticity.

Such photographs, microfilms, electronic records, photographic film or microphotographs shall be deemed to be an original record for all purposes, including introduction in evidence in all courts or administrative agencies. A transcript, exemplification or certified copy of the transcript shall, for all purposes recited in this section, be deemed to be a transcript, exemplification or certified copy of the original.

History: 1941 Comp., § 13-408, enacted by Laws 1947, ch. 185, § 3; 1953 Comp., § 71-4-8; 1978 Comp., § 14-1-6; 2023, ch. 62, § 2.

14-1-7. Destruction of obsolete county records.

The following county records shall be deemed obsolete and may be destroyed:

- A. purchase vouchers which are six years old;
- B. chattel mortgages six years after the expiration of their term;
- C. security agreements filed under the Uniform Commercial Code [Chapter 55 NMSA 1978] six years after the expiration of their term;
- D. copies of state highway project contracts filed by the chief highway engineer three years after the date of filing;
- E. duplicate information reports filed in the offices of county officials, including but not limited to duplicate reports of the county treasurer, sheriff, county agricultural agents and county health officers, which are two years old;

F. chattel mortgage releases six years after the date of filing; and

G. termination statements filed under the Uniform Commercial Code six years after the date of filing.

History: 1953 Comp., § 71-4-10, enacted by Laws 1957, ch. 192, § 1; 1965, ch. 123, § 1; 1967, ch. 82, § 1.

14-1-8. [Obsolete county records; notice of proposed destruction; preservation desired by state records administrator; delivery of documents.]

An official charged with the custody of any records and who intends to destroy those records, shall give notice by registered or certified mail to the state records administrator, state records center, Santa Fe, New Mexico, of the date of the proposed destruction and the type and date of the records he intends to destroy. The notice shall be sent at least sixty days before the date of the proposed destruction. If the state records administrator wishes to preserve any of the records, the official shall allow the state records administrator to have the documents by calling for them at the place of storage.

History: 1953 Comp., § 71-4-11, enacted by Laws 1957, ch. 192, § 2; 1961, ch. 81, § 1.

ARTICLE 2

Inspection of Public Records

14-2-1. Right to inspect public records; exceptions.

Every person has a right to inspect public records of this state except:

A. records pertaining to physical or mental examinations and medical treatment of persons confined to an institution;

B. letters of reference concerning employment, licensing or permits;

C. letters or memoranda that are matters of opinion in personnel files or students' cumulative files;

D. portions of law enforcement records as provided in Section 14-2-1.2 NMSA 1978;

E. as provided by the Confidential Materials Act [14-3A-1, 14-3A-2 NMSA 1978];

F. trade secrets;

G. attorney-client privileged information;

H. long-range or strategic business plans of public hospitals discussed in a properly closed meeting;

I. tactical response plans or procedures prepared for or by the state or a political subdivision of the state, the publication of which could reveal specific vulnerabilities, risk assessments or tactical emergency security procedures that could be used to facilitate the planning or execution of a terrorist attack;

J. information concerning information technology systems, the publication of which would reveal specific vulnerabilities that compromise or allow unlawful access to such systems; provided that this subsection shall not be used to restrict requests for:

(1) records stored or transmitted using information technology systems;

(2) internal and external audits of information technology systems, except for those portions that would reveal ongoing vulnerabilities that compromise or allow unlawful access to such systems; or

(3) information to authenticate or validate records received pursuant to a request fulfilled pursuant to the Inspection of Public Records Act;

K. submissions in response to a competitive grant, land lease or scholarship and related scoring materials and evaluation reports until finalists are publicly named or the award is announced; and

L. as otherwise provided by law.

History: 1941 Comp., § 13-501, enacted by Laws 1947, ch. 130, § 1; 1953 Comp., § 71-5-1; Laws 1973, ch. 271, § 1; 1981, ch. 47, § 3; 1993, ch. 260, § 1; 1998 (1st S.S.), ch. 3, § 1; 1999, ch. 158, § 1; 2003, ch. 288, § 1; 2005, ch. 126, § 1; 2011, ch. 134, § 2; 2019, ch. 27, § 1; 2023, ch. 67, § 2.

14-2-1.1. Personal identifier information.

Protected personal identifier information contained in public records may be redacted by a public body before inspection or copying of a record. The presence of protected personal identifier information on a record does not exempt the record from inspection. Unredacted records that contain protected personal identifier information shall not be made available on publicly accessible websites operated by or managed on behalf of a public body.

History: 1978 Comp., § 14-2-1.1, enacted by Laws 2019, ch. 27, § 2.

14-2-1.2. Law enforcement records.

A. Law enforcement records are public records, except as provided by law and this subsection, and provided that the presence of nonpublic information may be redacted from a written record or digitally obscured in a visual or audio record, including:

(1) before charges are filed, names, addresses, contact information or protected personal identifier information of individuals who are victims of or non-law-enforcement witnesses to an alleged crime of:

(a) assault with intent to commit a violent felony pursuant to Section 30-3-3 NMSA 1978 when the violent felony is criminal sexual penetration;

(b) assault against a household member with intent to commit a violent felony pursuant to Section 30-3-14 NMSA 1978 when the violent felony is criminal sexual penetration;

(c) stalking pursuant to Section 30-3A-3 NMSA 1978;

(d) aggravated stalking pursuant to Section 30-3A-3.1 NMSA 1978;

(e) criminal sexual penetration pursuant to Section 30-9-11 NMSA 1978;

(f) criminal sexual contact pursuant to Section 30-9-12 NMSA 1978; or

(g) sexual exploitation of children pursuant to Section 30-6A-3 NMSA 1978;

(2) before charges are filed, names, addresses, contact information or protected personal identifier information of individuals who are accused but not charged with a crime;

(3) visual depiction of a dead body, unless a law enforcement officer, acting in that capacity, caused or is reasonably alleged or suspected to have caused the death;

(4) visual depiction of great bodily harm, as defined in Section 30-1-12 NMSA 1978, or acts of severe violence resulting in great bodily harm, unless a law enforcement officer, acting in that capacity, caused or is reasonably alleged or suspected to have caused the great bodily harm or act of severe violence;

(5) visual depiction of an individual's intimate body parts, including the genitals, pubic area, anus or postpubescent female nipple, whether nude or visible through less than opaque clothing;

(6) visual or audio depiction of the notification to a member of the public of a family member's death;

(7) confidential sources, methods or information; or

(8) records pertaining to physical or mental examination and medical treatment of persons unless the information could be relevant to a criminal investigation or an investigation of misfeasance, malfeasance or other suspected violation of law conducted by a person elected to or employed by a public body.

B. A request for release of video or audio shall specify at least one of the following:

- (1) the computer-aided dispatch record number;
- (2) the police report number;
- (3) the date or date range with reasonable specificity and at least one of the following:
 - (a) the name of a law enforcement officer or first responder;
 - (b) the approximate time; or
 - (c) the approximate location; or
- (4) other criteria established and published by a law enforcement agency to facilitate access to videos.

C. Except for confidential sources, methods or information, a request to view video or hear audio on-site of a public body is not subject to the restrictions in Subsections A and B of this section. Any recording or copying of video or audio from such viewing or listening is subject to the restrictions in this section.

D. As used in this section, "law enforcement records" includes evidence in any form received or compiled in connection with a criminal investigation or prosecution by a law enforcement or prosecuting agency, including inactive matters or closed investigations to the extent that they contain the information listed in this subsection; provided that the presence of such information on a law enforcement record does not exempt the record from inspection.

History: 1978 Comp., § 14-2-1.2, enacted by Laws 2023, ch. 67, § 3.

14-2-2. Repealed.

14-2-2.1. Copies of public records furnished.

When a copy of any public record is required by the veterans' administration to be used in determining the eligibility of any person to participate in benefits made available by the veterans' administration, the official custodian of such public record shall, without charge, provide the applicant for such benefits, or any person acting on his behalf, or

the authorized representative of the veterans' administration, with a certified copy of such record.

History: Laws 1979, ch. 23, § 1.

14-2-3. Repealed.

14-2-4. Short title.

Chapter 14, Article 2 NMSA 1978 may be cited as the "Inspection of Public Records Act".

History: Laws 1993, ch. 258, § 1.

14-2-5. Purpose of act; declaration of public policy.

Recognizing that a representative government is dependent upon an informed electorate, the intent of the legislature in enacting the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978] is to ensure, and it is declared to be the public policy of this state, that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of public officers and employees. It is the further intent of the legislature, and it is declared to be the public policy of this state, that to provide persons with such information is an essential function of a representative government and an integral part of the routine duties of public officers and employees.

History: Laws 1993, ch. 258, § 2.

14-2-6. Definitions.

As used in the Inspection of Public Records Act:

A. "custodian" means any person responsible for the maintenance, care or keeping of a public body's public records, regardless of whether the records are in that person's actual physical custody and control;

B. "file format" means the internal structure of an electronic file that defines the way it is stored and used;

C. "information technology systems" means computer hardware, storage media, networking equipment, physical devices, infrastructure, processes and code, firmware, software and ancillary products and services, including:

- (1) systems design and analysis;

(2) development or modification of hardware or solutions used to create, process, store, secure or exchange electronic data;

(3) information storage and retrieval systems;

(4) voice, radio, video and data communication systems;

(5) network, hosting and cloud-based systems;

(6) simulation and testing;

(7) interactions between a user and an information system; and

(8) user and system credentials;

D. "inspect" means to review all public records that are not excluded in Section 14-2-1 NMSA 1978;

E. "person" means any individual, corporation, partnership, firm, association or entity;

F. "protected personal identifier information" means:

(1) all but the last four digits of a:

(a) taxpayer identification number;

(b) financial account number;

(c) credit or debit card number; or

(d) driver's license number;

(2) all but the year of a person's date of birth;

(3) a social security number; and

(4) with regard to a nonelected employee of a public body in the context of the person's employment, the employee's nonbusiness home street address, but not the city, state or zip code;

G. "public body" means the executive, legislative and judicial branches of state and local governments and all advisory boards, commissions, committees, agencies or entities created by the constitution or any branch of government that receives any public funding, including political subdivisions, special taxing districts, school districts and institutions of higher education;

H. "public records" means all documents, papers, letters, books, maps, tapes, photographs, recordings and other materials, regardless of physical form or characteristics, that are used, created, received, maintained or held by or on behalf of any public body and relate to public business, whether or not the records are required by law to be created or maintained; and

I. "trade secret" means trade secret as defined in Subsection D of Section 57-3A-2 NMSA 1978.

History: Laws 1993, ch. 258, § 3; 2011, ch. 134, § 3; 2011, ch. 181, § 1; 2011, ch. 182, § 1; 2013, ch. 117, § 1; 2013, ch. 214, § 2; 2018, ch. 61, § 1; 2023, ch. 67, § 4.

14-2-7. Designation of custodian; duties.

Each public body shall designate at least one custodian of public records who shall:

A. receive requests, including electronic mail or facsimile, to inspect public records;

B. respond to requests in the same medium, electronic or paper, in which the request was made in addition to any other medium that the custodian deems appropriate;

C. provide proper and reasonable opportunities to inspect public records;

D. provide reasonable facilities to make or furnish copies of the public records during usual business hours; and

E. post in a conspicuous location at the administrative office and on the publicly accessible web site, if any, of each public body a notice describing:

(1) the right of a person to inspect a public body's records;

(2) procedures for requesting inspection of public records, including the contact information for the custodian of public records;

(3) procedures for requesting copies of public records;

(4) reasonable fees for copying public records; and

(5) the responsibility of a public body to make available public records for inspection.

History: Laws 1993, ch. 258, § 4; 2001, ch. 204, § 1; 2011, ch. 182, § 2.

14-2-8. Procedure for requesting records.

A. Any person wishing to inspect public records may submit an oral or written request to the custodian. However, the procedures set forth in this section shall be in response to a written request. The failure to respond to an oral request shall not subject the custodian to any penalty.

B. Nothing in the Inspection of Public Records Act shall be construed to require a public body to create a public record.

C. A written request shall provide the name, address and telephone number of the person seeking access to the records and shall identify the records sought with reasonable particularity. No person requesting records shall be required to state the reason for inspecting the records.

D. A custodian receiving a written request shall permit the inspection immediately or as soon as is practicable under the circumstances, but not later than fifteen days after receiving a written request. If the inspection is not permitted within three business days, the custodian shall explain in writing when the records will be available for inspection or when the public body will respond to the request. The three-day period shall not begin until the written request is delivered to the office of the custodian.

E. In the event that a written request is not made to the custodian having possession of or responsibility for the public records requested, the person receiving the request shall promptly forward the request to the custodian of the requested public records, if known, and notify the requester. The notification to the requester shall state the reason for the absence of the records from that person's custody or control, the records' location and the name and address of the custodian.

F. For the purposes of this section, "written request" includes an electronic communication, including email or facsimile; provided that the request complies with the requirements of Subsection C of this section.

History: Laws 1993, ch. 258, § 5; 2009, ch. 75, § 1.

14-2-9. Procedure for inspection.

A. Requested public records containing information that is exempt and nonexempt from disclosure shall be separated by the custodian prior to inspection, and the nonexempt information shall be made available for inspection. If necessary to preserve the integrity of computer data or the confidentiality of exempt information contained in a database, a partial printout of data containing public records or information may be furnished in lieu of an entire database. Exempt information in an electronic document shall be removed along with the corresponding metadata prior to disclosure by utilizing methods or redaction tools that prevent the recovery of exempt information from a redacted electronic document.

B. A custodian shall provide a copy of a public record in electronic format if the public record is available in electronic format and an electronic copy is specifically requested. However, a custodian is only required to provide the electronic record in the file format in which it exists at the time of the request.

C. A custodian:

(1) may charge reasonable fees for copying the public records, unless a different fee is otherwise prescribed by law;

(2) shall not charge fees in excess of one dollar (\$1.00) per printed page for documents eleven inches by seventeen inches in size or smaller;

(3) may charge the actual costs associated with downloading copies of public records to a computer disk or storage device, including the actual cost of the computer disk or storage device;

(4) may charge the actual costs associated with transmitting copies of public records by mail, electronic mail or facsimile;

(5) may require advance payment of the fees before making copies of public records;

(6) shall not charge a fee for the cost of determining whether any public record is subject to disclosure; and

(7) shall provide a receipt, upon request.

D. Nothing in this section regarding the provision of public data in electronic format shall limit the ability of the custodian to engage in the sale of data as authorized by Sections 14-3-15.1 and 14-3-18 NMSA 1978, including imposing reasonable restrictions on the use of the database and the payment of a royalty or other consideration.

History: Laws 1993, ch. 258, § 6; 2011, ch. 181, § 2; 2011, ch. 182, § 3; 2013, ch. 117, § 2.

14-2-10. Procedure for excessively burdensome or broad requests.

If a custodian determines that a written request is excessively burdensome or broad, an additional reasonable period of time shall be allowed to comply with the request. The custodian shall provide written notification to the requester within fifteen days of receipt of the request that additional time will be needed to respond to the written request. The requester may deem the request denied and may pursue the remedies available pursuant to the Inspection of Public Records Act if the custodian does not permit the records to be inspected in a reasonable period of time.

History: Laws 1993, ch. 258, § 7.

14-2-11. Procedure for denied requests.

A. Unless a written request has been determined to be excessively burdensome or broad, a written request for inspection of public records that has not been permitted within fifteen days of receipt by the office of the custodian may be deemed denied. The person requesting the public records may pursue the remedies provided in the Inspection of Public Records Act.

B. If a written request has been denied, the custodian shall provide the requester with a written explanation of the denial. The written denial shall:

- (1) describe the records sought;
- (2) set forth the names and titles or positions of each person responsible for the denial; and
- (3) be delivered or mailed to the person requesting the records within fifteen days after the request for inspection was received.

C. A custodian who does not deliver or mail a written explanation of denial within fifteen days after receipt of a written request for inspection is subject to an action to enforce the provisions of the Inspection of Public Records Act and the requester may be awarded damages. Damages shall:

- (1) be awarded if the failure to provide a timely explanation of denial is determined to be unreasonable;
- (2) not exceed one hundred dollars (\$100) per day;
- (3) accrue from the day the public body is in noncompliance until a written denial is issued; and
- (4) be payable from the funds of the public body.

History: Laws 1993, ch. 258, § 8.

14-2-12. Enforcement.

A. An action to enforce the Inspection of Public Records Act may be brought by:

- (1) the attorney general or the district attorney in the county of jurisdiction; or
- (2) a person whose written request has been denied.

B. A district court may issue a writ of mandamus or order an injunction or other appropriate remedy to enforce the provisions of the Inspection of Public Records Act.

C. The exhaustion of administrative remedies shall not be required prior to bringing any action to enforce the procedures of the Inspection of Public Records Act.

D. The court shall award damages, costs and reasonable attorneys' fees to any person whose written request has been denied and is successful in a court action to enforce the provisions of the Inspection of Public Records Act.

History: Laws 1993, ch. 258, § 9.

ARTICLE 2A

Use of Police Reports

14-2A-1. Protection of victims of crimes or accidents; police reports; commercial solicitation prohibited.

No attorney, health care provider or their agents shall inspect, copy or use police reports or information obtained from police reports for the purpose of the solicitation of victims or the solicitation of the relatives of victims of reported crimes or accidents.

History: Laws 1993, ch. 123, § 1.

ARTICLE 3

Public Records

14-3-1. Short title.

Chapter 14, Article 3 NMSA 1978 may be cited as the "Public Records Act".

History: 1953 Comp., § 71-6-1, enacted by Laws 1959, ch. 245, § 1; 1995, ch. 110, § 7.

14-3-2. Definitions.

As used in the Public Records Act:

A. "administrator" means the state records administrator;

B. "agency" means any state agency, department, bureau, board, commission, institution or other organization of the state government, the territorial government and the Spanish and Mexican governments in New Mexico;

C. "commission" means the state commission of public records;

D. "microphotography" means the transfer of images onto film and electronic imaging or other information storage techniques that meet the performance guidelines for legal acceptance of public records produced by information system technologies pursuant to regulations adopted by the commission;

E. "microphotography system" means all microphotography equipment, services and supplies;

F. "personal identification information" means the name, social security number, military identification number, home address, telephone number, email address, fingerprint, photograph, identifying biometric data, genetic identification, personal financial account number, state identification number, including driver's license number, alien registration number, government passport number, personal taxpayer identification number, or government benefit account number of a natural person;

G. "public records" means all books, papers, maps, photographs or other documentary materials, regardless of physical form or characteristics, made or received by any agency in pursuance of law or in connection with the transaction of public business and preserved, or appropriate for preservation, by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the government or because of the informational and historical value of data contained therein. Library or museum material of the state library, state institutions and state museums, extra copies of documents preserved only for convenience of reference and stocks of publications and processed documents are not included;

H. "records center" means the central records depository that is the principal state facility for the storage, disposal, allocation or use of noncurrent records of agencies or materials obtained from other sources;

I. "records custodian" means the statutory head of the agency using or maintaining the records or the custodian's designee; and

J. "records retention and disposition schedules" means rules adopted by the commission pursuant to Section 14-3-6 NMSA 1978 describing records of an agency, establishing a timetable for their life cycle and providing authorization for their disposition.

History: 1953 Comp., § 71-6-2, enacted by Laws 1959, ch. 245, § 2; 1963, ch. 186, § 1; 1977, ch. 301, § 1; 1995, ch. 27, § 2; 2005, ch. 79, § 1.

14-3-3. State commission of public records; creation.

A. A "state commission of public records" is established consisting of:

- (1) the secretary of state;
- (2) the secretary of general services;
- (3) the librarian of the supreme court law library;
- (4) the secretary of cultural affairs;
- (5) the state auditor;
- (6) the attorney general; and

(7) a recognized, professionally trained historian in the field of New Mexico history, who is a resident in New Mexico, appointed by the governor for a term of six years.

B. Each member of the commission may designate an alternate to serve in the member's stead.

C. The commission shall elect one of its members to be chair and another to be secretary. The members of the commission shall serve without compensation other than actual expenses of attending meetings of the commission or while in performance of their official duties in connection with the business of the commission.

D. The commission shall hold not less than four meetings during each calendar year and may hold special meetings as may be necessary to transact business of the commission. All meetings shall be called by the chair or when requested in writing by any two members of the commission. Four members of the commission shall constitute a quorum.

E. The administrator shall attend all meetings of the commission.

History: 1953 Comp., § 71-6-3, enacted by Laws 1959, ch. 245, § 3; 1977, ch. 247, § 181; 1983, ch. 301, § 32; 2015, ch. 19, § 2.

14-3-4. Duties and powers of commission.

It shall be the duty of the commission to:

A. employ as state records administrator a competent, experienced person professionally trained as an archivist and records manager who shall serve at the pleasure of the commission. He need not be a resident of New Mexico at the time of his employment. His salary shall be fixed by the commission;

B. approve the biennial budget covering costs of the operations set forth in this act [Chapter 14, Article 3 NMSA 1978], as prepared by the administrator for presentation to the state legislature;

C. decide, by majority vote, any disagreements between the administrator and any state officer regarding the disposition of records within the custody of said officer, such decisions to have the effect of law;

D. consider the recommendations of the administrator for the destruction of specifically reported records, and by unanimous vote either order or forbid such destruction;

E. approve in writing, or reject, the written terms and conditions of each proposed loan of documentary material to the records center, as agreed upon by the lender and the administrator;

F. adopt and publish rules and regulations to carry out the purposes of the Public Records Act;

G. request any agency to designate a records liaison officer to cooperate with, assist and advise the administrator in the performance of his duties and to provide such other assistance and data as will enable the commission and administrator properly to carry out the purposes of the Public Records Act; and

H. prepare an annual report to the governor on the operations conducted under the terms of this act during the previous year, including a complete fiscal report on costs and effected savings, and cause same to be published.

History: 1953 Comp., § 71-6-4, enacted by Laws 1959, ch. 245, § 4.

14-3-5. Gifts, donations and loans.

A. The commission may receive from private sources financial or other donations to assist in building, enlarging, maintaining or equipping a records center or for the acquisition by purchase of documentary material, in accordance with plans made and agreed upon by the commission and the administrator. The commission may also receive from private sources financial or other donations for support of specific agency functions if the donations are so designated. Funds thus received shall be administered by the commission separately from funds supplied by the state for the execution of the Public Records Act but shall be audited by the state. Such funds shall not be subject to reversion to the general fund if unexpended at the close of the fiscal year. Although all material acquired by expenditure of such donated funds and all such donated material shall become the unqualified and unrestricted property of the state, permanent public acknowledgment of the names of the donors may, in each case, be made in an appropriate manner.

B. The commission may receive either as donations or loans from private sources, other state agencies, counties, municipalities, the federal government and other states or countries documentary materials of any physical form or characteristics that are deemed to be of value to the state and the general public for historical reference or research purposes. Acceptance of both donations and loans shall be at the discretion of the commission upon advice of the administrator. Accepted donations shall become, without qualification or restriction, the property of the state of New Mexico. Loans shall be accepted only after a written agreement covering all terms and conditions of each loan shall have been signed by the lender and the administrator and approved by the commission.

History: 1953 Comp., § 71-6-5, enacted by Laws 1959, ch. 245, § 5; 2011, ch. 132, § 1.

14-3-6. Administrator; duties.

The administrator is the official custodian and trustee for the state of all public records and archives of whatever kind which are transferred to him from any public office of the state or from any other source. He shall have overall administrative responsibility for carrying out the purposes of the Public Records Act, and may employ necessary personnel, purchase equipment and provide facilities as may be required in the execution of the powers conferred and duties imposed upon him. He shall keep the commission advised throughout the year of operations conducted and future operations projected, and shall report annually to the commission which records have been destroyed, transferred or otherwise processed during the year. The administrator shall establish a records management program for the application of efficient and economical management methods to the creation, utilization, maintenance, retention, preservation and disposal of official records. It shall be the duty of the administrator, in cooperation with and with the approval of the general services department, to establish standards, procedures and techniques for effective management of public records, to make continuing surveys of paperwork operations, and to recommend improvements in current records management practices including the use of space, equipment and supplies employed in creating, maintaining and servicing records. It shall be the duty of the head of each state agency to cooperate with the administrator in conducting surveys and to establish and maintain an active, continuing program for the economical and efficient management of the agency's records. The administrator shall establish records disposal schedules for the orderly retirement of records and adopt regulations necessary for the carrying out of the Public Records Act. Records disposal schedules shall be filed with the librarian of the supreme court library, and shall not become effective until thirty days after the date of filing. Records so scheduled may be transferred to the records center at regular intervals, in accordance with the regulations of the administrator.

History: 1953 Comp., § 71-6-6, enacted by Laws 1959, ch. 245, § 6; 1965, ch. 81, § 1; 1983, ch. 301, § 33.

14-3-7. Inspection and survey of public records.

The administrator is authorized to inspect or survey the records of any agency, and to make surveys of records management and records disposal practices in the various agencies, and he shall be given the full cooperation of officials and employees of the agencies in such inspections and surveys. Records, the use of which is restricted by or pursuant to law or for reasons of security or the public interest, may be inspected or surveyed by the administrator, subject to the same restrictions imposed upon employees of the agency holding the records.

History: 1953 Comp., § 71-6-7, enacted by Laws 1959, ch. 245, § 7.

14-3-7.1. Access to confidential records.

A. Notwithstanding any other provision of law, any public record deemed by law to be confidential and required by a records retention and disposition schedule to be maintained longer than twenty-five years shall not, after twenty-five years from the date of creation, be confidential and shall be accessible to the public, except:

(1) personal identification information deemed confidential by law, which shall remain confidential for one hundred years after the date of creation, unless a shorter duration is otherwise required by law;

(2) records that are confidential pursuant to Section 2-3-13 NMSA 1978, which shall remain confidential for seventy-five years after the date of creation;

(3) records that are confidential pursuant to Section 18-6-11.1 NMSA 1978;
and

(4) records whose disclosure is prohibited by court action or federal law.

B. Nothing in this section shall limit or remove the discretion of a records custodian to withhold a public record pursuant to Section 14-2-1 NMSA 1978.

History: Laws 2005, ch. 79, § 2.

14-3-8. Records center.

A records center is established in Santa Fe under the supervision and control of the administrator. The center, in accordance with the regulations established by the administrator and the commission, shall be the facility for the receipt, storage or disposition of all inactive and infrequently used records of present or former state agencies or former territorial agencies which at or after the effective date of this act may be in custody of any state agency or instrumentality, and which are not required by law to be kept elsewhere, or which are not ordered destroyed by the commission.

Records required to be confidential by law and which are stored in the center shall be available promptly when called for by the originating agency, but shall not be made

available for public inspection except as provided by law. All other records retained by the center shall be open to the inspection of the general public, subject to reasonable rules and regulations prescribed by the administrator. Facilities for the use of these records in research by the public shall be provided in the center.

History: 1953 Comp., § 71-6-8, enacted by Laws 1959, ch. 245, § 8.

14-3-8.1. Records center revolving fund; created; revenues from sales deposited in fund.

The "records center revolving fund" is created in the state treasury. Money from the sale of state records center publications, services, equipment, supplies and materials shall be deposited in the fund. The fund shall be administered by the state records center, and money in the fund is appropriated to the state records center to carry out the administrative purposes of the Public Records Act and the State Rules Act [Chapter 14, Article 4 NMSA 1978]. Expenditures from the fund shall be by warrant of the secretary of finance and administration upon vouchers signed by the state records administrator or his authorized representative.

History: Laws 2002, ch. 56, § 2.

14-3-9. Disposition of public records.

Upon completion of an inspection or survey of the public records of any agency by the administrator, or at the request of the commission or the head of any agency, the administrator, attorney general and the agency official in charge of the records of that agency shall together make a determination as to whether:

- A. the records shall be retained in the custody of the agency;
- B. the records shall be transferred to the records center; or
- C. a recommendation for destruction of the records shall be made to the commission.

If it is determined that the records are to be transferred to the records center, they shall be within a reasonable time so transferred. A list of the records so transferred shall be retained in the files of the agency from which the records were transferred.

Public records in the custody of the administrator may be transferred or destroyed only upon order of the commission.

History: 1953 Comp., § 71-6-9, enacted by Laws 1959, ch. 245, § 9.

14-3-10. Disagreement as to value of records.

In the event the attorney general and the administrator determine that any records in the custody of a public officer including the administrator are of no legal, administrative or historical value, but the public officer having custody of the records or from whose office the records originated fails to agree with such determination or refuses to dispose of the records, the attorney general and the administrator may request the state commission of public records to make its determination as to whether the records should be disposed of in the interests of conservation of space, economy or safety.

History: 1953 Comp., § 71-6-10, enacted by Laws 1959, ch. 245, § 10.

14-3-11. Destruction of records.

If it is determined by the administrator, attorney general and agency head that destruction of records will be recommended, the administrator shall have prepared a list of records, together with a brief description of their nature, and shall place upon the agenda of the next meeting of the commission the matter of destruction of the records. The records may be stored in the center awaiting decision of the commission.

The commission's decision with reference to destruction of the records shall be entered on its minutes, together with the date of its order to destroy the records and a general description of the records which it orders to be destroyed. A copy of the commission's order shall be filed with the librarian of the supreme court library.

No public records shall be destroyed if the law prohibits their destruction.

History: 1953 Comp., § 71-6-11, enacted by Laws 1959, ch. 245, § 11; 1965, ch. 81, § 2.

14-3-12. Transfer of records upon termination of state agencies.

All public records of any agency, upon the termination of the existence and functions of that agency, shall be checked by the administrator and the attorney general and either transferred to the custody of another agency having a use for the records, or to the custody of the administrator at the center in accordance with the procedure of the Public Records Act [Chapter 14, Article 3 NMSA 1978].

When an agency is terminated or reduced by the transfer of its powers and duties to another agency or to other agencies, its appropriate public records shall pass with the powers and duties so transferred.

History: 1953 Comp., § 71-6-12, enacted by Laws 1959, ch. 245, § 12.

14-3-13. Protection of records.

The administrator and every other custodian of public records shall carefully protect and preserve such records from deterioration, mutilation, loss or destruction and,

whenever advisable, shall cause them to be properly repaired and renovated. All paper, ink and other materials used in public offices for the purposes of permanent records shall be of durable quality.

History: 1953 Comp., § 71-6-13, enacted by Laws 1959, ch. 245, § 13.

14-3-14. Advisory groups.

The commission upon recommendation of the administrator may from time to time appoint advisory groups to more effectively obtain the best professional thinking of the bar, historians, political scientists, librarians, accountants, genealogists, patriotic groups, associations of public officials and other groups, on the steps to be taken with regard to any particular group or type of records.

History: 1953 Comp., § 71-6-14, enacted by Laws 1959, ch. 245, § 14.

14-3-15. Reproduction on film; evidence; review, inventory and approval of systems.

A. Any public officer of the state or of any district or political subdivision may cause any public records, papers or documents kept by him to be photographed, microphotographed or reproduced on film.

B. The state records administrator shall review any proposed state agency microphotography system and shall advise and consult with the agency. The administrator has the authority to approve or disapprove the system of any state agency.

C. The microphotography system used pursuant to this section shall comply with the minimum standards approved by the New Mexico commission of public records. The microphotography system used to reproduce such records on film shall be one which accurately reproduces the original in all details.

D. The administrator shall establish and maintain an inventory of all microfilm equipment owned or leased by state agencies. The administrator is authorized to arrange the transfer of microphotography equipment from a state agency which does not use it, and which has released it, to a state agency needing such equipment for a current microphotography system.

E. Photographs, microphotographs or photographic film made pursuant to this section shall be deemed to be original records for all purposes, including introduction in evidence in all courts and administrative agencies. A transcript, exemplification or certified copy, for all purposes, shall be deemed to be a transcript, exemplification or certified copy of the original.

F. Whenever such photographs, microphotographs or reproductions on film are properly certified and are placed in conveniently accessible files, and provisions are made for preserving, examining and using them, any public officer may cause the original records from which the photographs or microphotographs have been made, or any part thereof, to be disposed of according to methods prescribed by Sections 14-3-9 through 14-3-11 NMSA 1978. Copies shall be certified by their custodian as true copies of the originals before the originals are destroyed or lost, and the certified copies shall have the same effect as the originals. Copies of public records transferred from the office of origin to the administrator, when certified by the administrator or his deputy, shall have the same legal effect as if certified by the original custodian of the records.

G. For the purposes of this section, "state agency" shall include the district courts.

History: 1953 Comp., § 71-6-15, enacted by Laws 1959, ch. 245, § 15; 1975, ch. 215, § 1; 1977, ch. 301, § 2.

14-3-15.1. Records of state agencies; public records; copy fees; computer databases; criminal penalty.

A. Except as otherwise provided by federal or state law, information contained in information systems databases shall be a public record and shall be subject to disclosure in printed or typed format by the state agency that has inserted that information into the database, in accordance with the Public Records Act, upon the payment of a reasonable fee for the service.

B. The administrator shall recommend to the commission the procedures, schedules and technical standards for the retention of computer databases.

C. The state agency that has inserted data in a database may authorize a copy to be made of a computer tape or other medium containing a computerized database of a public record for any person if the person agrees:

- (1) not to make unauthorized copies of the database;
- (2) not to use the database for any political or commercial purpose unless the purpose and use is approved in writing by the state agency that created the database;
- (3) not to use the database for solicitation or advertisement when the database contains the name, address or telephone number of any person unless such use is otherwise specifically authorized by law;
- (4) not to allow access to the database by any other person unless the use is approved in writing by the state agency that created the database; and
- (5) to pay a royalty or other consideration to the state as may be agreed upon by the state agency that created the database.

D. If more than one state agency is responsible for the information inserted in the database, the agencies shall enter into an agreement designating a lead agency. If the agencies cannot agree as to the designation of a lead state agency, the commission shall designate one of the state agencies as the lead agency to carry out the responsibilities set forth in this section.

E. Subject to any confidentiality provisions of law, any state agency may permit another state agency access to all or any portion of a computerized database created by a state agency.

F. If information contained in a database is searched, manipulated or retrieved or a copy of the database is made for any private or nonpublic use, a fee shall be charged by the state agency permitting access or use of the database.

G. Except as authorized by law or rule of the commission, any person who reveals to any unauthorized person information contained in a computer database or who uses or permits the unauthorized use or access of any computer database is guilty of a misdemeanor, and upon conviction the court shall sentence that person to jail for a definite term not to exceed one year or to payment of a fine not to exceed five thousand dollars (\$5,000) or both. That person shall not be employed by the state for a period of five years after the date of conviction.

History: Laws 1986, ch. 81, § 9; 1993, ch. 197, § 11; 1978 Comp., § 15-1-9, amended and recompiled as 1978 Comp., § 14-3-15.1 by Laws 1995, ch. 110, § 8.

14-3-15.2. Electronic authentication; substitution for signature.

Whenever there is a requirement for a signature on any document, electronic authentication that meets the standards promulgated by the commission may be substituted.

History: Laws 1995, ch. 27, § 1.

14-3-16. Attorney general may replevin state records.

On behalf of the state and the administrator, the attorney general may replevin any papers, books, correspondence or other public records which were formerly part of the records or files of any public office in the territory or state of New Mexico, and which the state still has title to or interest in and which have passed out of the official custody of the state, its agencies or instrumentalities.

History: 1953 Comp., § 71-6-16, enacted by Laws 1959, ch. 245, § 16.

14-3-17. Approval of existing state agency systems.

Upon the effective date of this act, the state records administrator shall review any existing state agency microphotography system and, after consultation with the agency, shall approve, disapprove or require modification to the system. For the purposes of this section, "state agency" shall include the district courts. Upon disapproval, the agency shall cease to use the system. Modifications shall be completed within a period specified by the administrator.

History: 1953 Comp., § 71-6-17, enacted by Laws 1975, ch. 215, § 2.

14-3-18. County and municipal records; geographic information system; computer databases; copy fees.

A. The administrator may advise and assist county and municipal officials in the formulation of programs for the disposition of public records maintained in county and municipal offices.

B. Notwithstanding the provisions of Subsection E of this section, a county or municipality may charge a reasonable fee, as adopted by ordinance of the respective board of county commissioners or governing body of a municipality, for a document or product generated by a geographic information system.

C. Except as otherwise provided by federal or state law, information contained in a computer database shall be a public record and shall be subject to disclosure in printed or typed format by a county or municipality that has inserted that information into the database, in accordance with the Public Records Act.

D. The administrator may advise and assist county and municipal officials with the procedures, schedules and technical standards for the retention of computer databases.

E. A county or municipality that has inserted data in a computer database shall authorize an electronic copy to be made of the computer database of a public record on a currently available electronic medium for a person if the person agrees to pay a reasonable fee based upon the cost of:

- (1) materials;
- (2) making an electronic copy of the computer database; and
- (3) personnel time to research and retrieve the electronic record.

F. Subject to any confidentiality provisions of law, a county or municipality may permit another federal, state or local government entity access to all or any portion of a computer database created by the county or municipality.

G. A county or municipality may at its option, and if it has the capability, permit access or use of its computer and network system to search, manipulate or retrieve

information from a computer database and charge reasonable fees based on the cost of materials, personnel time, access time and the use of the county or municipality's computer network.

History: 1953 Comp., § 71-6-17.1, enacted by Laws 1963, ch. 186, § 2; 1965, ch. 81, § 3; 2005, ch. 217, § 1.

14-3-19. Storage equipment, supplies and materials; microfilm services and supplies; purchase by state commission of public records for resale.

The state commission of public records may purchase for resale such storage boxes, forms, microfilm supplies necessary to the providing of microfilm services and other supplies and materials as in its judgment are necessary to facilitate the various aspects of its programs. The commission may sell such items and services at cost plus a five percent handling charge. All receipts from such sales shall go into the records center revolving fund.

History: 1953 Comp., § 71-6-18, enacted by Laws 1968, ch. 14, § 1; 2002, ch. 56, § 1.

14-3-20. Interstate compacts; filing; index.

A. Each agency of this state and each political subdivision of the state entering into or administering an interstate compact or other intergovernmental agreement between or among states, subdivisions of this state and other states or between this state or any subdivision and the federal government, having the force of law and to which this state or any subdivision is a party, shall file with the records center:

- (1) a certified copy of the compact or agreement;
- (2) a listing of all other jurisdictions party to the compact or agreement and the date on which each jurisdiction entered into participation;
- (3) the status of each compact or agreement with respect to withdrawals of participating jurisdictions;
- (4) citations to any act or resolution of the congress of the United States consenting to the compact or agreement; and
- (5) any amendment, supplementary agreement or administrative rule or regulation having the force of law and implementing or modifying the compact or agreement.

B. The records center shall index these documents and make them available for inspection upon request of any person during normal business hours.

C. The provisions of this section are in addition to other requirements of law for filing, publication or distribution.

D. No compact or agreement entered into after the effective date of this section shall become effective until filed as required in this section.

E. The executive official in charge of any state agency or political subdivision which fails to file any compact or agreement required by this section to be filed is guilty of a misdemeanor.

F. The records center shall be furnished copies of all interstate compacts, when available, as defined in this section, which have been filed with the supreme court librarian.

History: 1953 Comp., § 71-6-19, enacted by Laws 1963, ch. 185, § 1; 1981, ch. 221, § 1.

14-3-21. [State publications; manuals of procedure; rules; reports; uniform style and form.]

The state records administrator shall develop and recommend to the state commission of public records uniform standards of style and format for the following:

A. manuals of procedure prepared and published by state agencies for the guidance of public officers and employees engaged in operations required for the efficient operation of state and local government, including but not limited to acquiring space, budgeting, accounting, purchasing, contracting, vouchering, printing, appointment and dismissal of employees and record maintenance;

B. manuals of procedures prepared and published by state agencies for the guidance of their own employees and for their own operations;

C. official rules and regulations and reprints of laws published by state agencies, excluding session laws published by the secretary of state; and

D. official reports of state agencies required by law, excluding the budget document presented to the legislature.

The state commission of public records, after consultation with the affected agencies, and with the approval of the governor, shall adopt and promulgate uniform standards of style and format for the above publications and a schedule of distribution for each class of publication which shall be binding upon all state agencies. "Agencies" means, for the purposes of this section, all state departments, bureaus, commissions, committees, institutions and boards, except those agencies of the legislative and judicial branches, and those educational institutions listed in Article 12, Section 11 of the New Mexico Constitution.

History: 1953 Comp., § 71-6-20, enacted by Laws 1965, ch. 154, § 1.

14-3-22. Public policy on certain publications; state commission of public records duties.

A. It is the intent of the legislature and the public policy of this state to reduce unnecessary expense to the taxpayers of this state in connection with publications of state agencies designed primarily for the purpose of reporting to or the informing of the governor, the legislature, other state agencies or the political subdivisions of this state.

B. The state commission of public records shall develop and adopt regulations which shall be binding upon all state agencies. The regulations shall provide for uniform standards for those publications set forth in Subsection A of this section and shall include but be not limited to:

- (1) a standard size format to accommodate paper of the most economical type available;
- (2) prohibiting the use of expensive covers, binders and fasteners;
- (3) prohibiting the use of photographs, art work and design, unless absolutely necessary for clarification of the report;
- (4) limiting the use of color stock paper, where such color stock would be more expensive than the use of white paper; and
- (5) requiring offset or mimeograph or other means of duplication when it cannot be demonstrated that printing of such publication would be equal to or less than the cost of offset, mimeograph or other means of duplication.

C. The state commission of public records shall maintain constant and continuing supervision of such publications by state agencies and shall report persistent violations of the regulations made pursuant to this act [Chapter 14, Article 3 NMSA 1978] to the secretary of general services.

History: 1953 Comp., § 71-6-21, enacted by Laws 1977, ch. 209, § 1; 1983, ch. 301, § 34.

14-3-23. [Manuals of procedure; preparation by state agencies; review by state records administrator; publication.]

Each state agency which has an official duty to establish methods and procedures involved in the internal structure and operation of state government, including but not limited to acquiring space, budgeting, accounting, purchasing, contracting, vouchering, printing, appointment and dismissal of employees and record-keeping, shall prepare,

within the means provided by current operating budgets, manuals of procedure for the guidance of public officers and employees engaged in such work. Such manual or manuals shall be reviewed and ordered published by the state records administrator and in accordance with uniform standards of style and format promulgated by the state commission of public records.

History: 1953 Comp., § 71-6-22, enacted by Laws 1965, ch. 154, § 3.

14-3-24, 14-3-25. Recompiled.

ARTICLE 3A Confidential Materials

14-3A-1. Short title.

Sections 1 and 2 [14-3A-1, 14-3A-2 NMSA 1978] of this act may be cited as the "Confidential Materials Act".

History: Laws 1981, ch. 47, § 1.

14-3A-2. Donation of confidential material.

A. Any library, college, university, museum or institution of the state or any of its political subdivisions may hold in confidence materials of a historical or educational value upon which the donor or seller has imposed restrictions with respect to access to and inspection of the materials for a definite period of time as specified by the donor or seller.

B. Access to and inspection of such materials may be restricted during the period specified by the donor or seller in the manner specified by the donor or seller.

C. The provisions of Subsections A and B of this section do not apply to materials which were public records of New Mexico as defined in Section 14-2-1 NMSA 1978 while in the possession of the donor or seller at the time of the donation or sale.

History: Laws 1981, ch. 47, § 2.

ARTICLE 4 State Rules

14-4-1. Short title.

Chapter 14, Article 4 NMSA 1978 may be cited as the "State Rules Act".

History: 1953 Comp., § 71-7-1, enacted by Laws 1967, ch. 275, § 1; 1995, ch. 110, § 1.

14-4-2. Definitions.

As used in the State Rules Act:

A. "agency" means any agency, board, commission, department, institution or officer of the state government except the judicial and legislative branches of the state government;

B. "person" includes individuals, associations, partnerships, companies, business trusts, political subdivisions and corporations;

C. "proceeding" means a formal agency process or procedure that is commenced or conducted pursuant to the State Rules Act;

D. "proposed rule" means a rule that is provided to the public by an agency for review and public comment prior to its adoption, amendment or repeal, and for which there is specific legal authority authorizing the proposed rule;

E. "provide to the public" means for an agency to distribute rulemaking information by:

(1) posting it on the agency website, if any;

(2) posting it on the sunshine portal;

(3) making it available in the agency's district, field and regional offices, if any;

(4) sending it by electronic mail to persons who have made a written request for notice from the agency of announcements addressing the subject of the rulemaking proceeding and who have provided an electronic mail address to the agency;

(5) sending it by electronic mail to persons who have participated in the rulemaking and who have provided an electronic mail address to the agency;

(6) sending written notice that includes, at a minimum, an internet and street address where the information may be found to persons who provide a postal address; and

(7) providing it to the New Mexico legislative council for distribution to appropriate interim and standing legislative committees;

F. "rule" means any rule, regulation, or standard, including those that explicitly or implicitly implement or interpret a federal or state legal mandate or other applicable law and amendments thereto or repeals and renewals thereof, issued or promulgated by

any agency and purporting to affect one or more agencies besides the agency issuing the rule or to affect persons not members or employees of the issuing agency, including affecting persons served by the agency. An order or decision or other document issued or promulgated in connection with the disposition of any case or agency decision upon a particular matter as applied to a specific set of facts shall not be deemed such a rule, nor shall it constitute specific adoption thereof by the agency. "Rule" does not include rules relating to the management, confinement, discipline or release of inmates of any penal or charitable institution, the New Mexico boys' school, the girls' welfare home or any hospital; rules made relating to the management of any particular educational institution, whether elementary or otherwise; or rules made relating to admissions, discipline, supervision, expulsion or graduation of students from any educational institution; and

G. "rulemaking" means the process for adoption of a new rule or the amendment, readoption or repeal of an existing rule.

History: 1953 Comp., § 71-7-2, enacted by Laws 1967, ch. 275, § 2; 1969, ch. 92, § 1; 2017, ch. 137, § 1.

14-4-3. Format of rules; filing; distribution.

A. Each agency promulgating any rule shall place the rule in the format and style required by rule of the state records administrator and shall deliver the rule to the state records administrator or the administrator's designee, accompanied by the concise explanatory statement required by the State Rules Act. The state records administrator or the administrator's designee shall note thereon the date and hour of filing.

B. The state records administrator or the administrator's designee shall maintain a copy of the rule as a permanent record open to public inspection during office hours, on the website of the records center, published in a timely manner in the New Mexico register and compiled into the New Mexico Administrative Code.

C. At the time of filing, an agency may submit to the state records administrator or the administrator's designee a copy, for annotation with the date and hour of filing, to be returned to the agency.

D. The state records administrator, after written notification to the filing agency, may make minor, nonsubstantive corrections in spelling, grammar and format in filed rules. The state records administrator shall make a record of the correction and shall deliver the record to the filing agency and issuing authority within ten days of the change. Within thirty days of receiving that state records administrator's record of a correction, the agency shall provide to the public notice of the correction in the same manner as the agency used to give notice of the rulemaking proceeding pursuant to Section 4 of this 2017 act [14-4-5.2 NMSA 1978].

History: 1953 Comp., § 71-7-3, enacted by Laws 1967, ch. 275, § 3; 1969, ch. 92, § 2; 1987, ch. 40, § 1; 1995, ch. 110, § 2; 2017, ch. 137, § 2.

14-4-4. Publication filing and distribution; official depository.

Each agency issuing any publication, pamphlet, report, notice, proclamation or similar instrument shall immediately file five copies thereof with the records center. The records center shall deliver three copies to the state library, which shall keep one copy available for public inspection during office hours. All other copies may be circulated. The state library is designated to be an official depository of all such publications, pamphlets, reports, notices, proclamations and similar instruments.

History: 1953 Comp., § 71-7-5, enacted by Laws 1967, ch. 275, § 5; 1969, ch. 92, § 3; 1995, ch. 110, § 3.

14-4-5. Time limit on adoption of a proposed rule; filing and compliance required for validity.

A. Except in the case of an emergency rule, no rule shall be valid or enforceable until it is published in the New Mexico register as provided by the State Rules Act.

B. An agency shall not adopt a rule until the public comment period has ended. If the agency fails to take action on a proposed rule within two years after the notice of proposed rulemaking is published in the New Mexico register, the rulemaking is automatically terminated unless the agency takes action to extend the period. The agency may extend the period of time for adopting the proposed rule for an additional period of two years by filing a statement of good cause for the extension in the rulemaking record, but it shall provide for additional public participation, comments and rule hearings prior to adopting the rule.

C. An agency may terminate a rulemaking at any time by publishing a notice of termination in the New Mexico register. If a rulemaking is terminated pursuant to this section, the agency shall provide notice to the public.

D. Within fifteen days after adoption of a rule, an agency shall file the adopted rule with the state records administrator or the administrator's designee and shall provide to the public the adopted rule. The state records administrator or the administrator's designee shall publish rules as soon as practicable after filing, but in no case later than ninety days after the date of adoption of the proposed rule. Unless a later date is otherwise provided by law or in the rule, the effective date of a rule shall be the date of publication in the New Mexico register.

E. A proposed rule shall not take effect unless it is adopted and filed within the time limits set by this section.

History: 1953 Comp., § 71-7-6, enacted by Laws 1967, ch. 275, § 6; 1969, ch. 92, § 4; 1995, ch. 110, § 4; 2017, ch. 137, § 3.

14-4-5.1. Temporary provision.

Notwithstanding the provisions of 14-4-5 NMSA 1978, rules filed prior to July 1, 1995 shall continue in effect if such rules were filed with the state records center in accordance with the law applicable at the time of filing, and they have not otherwise been repealed, amended, or superseded.

History: Laws 1995, ch. 110, § 10.

14-4-5.2. Notice of proposed rulemaking.

A. Not later than thirty days before a public rule hearing, the agency proposing the rule shall provide to the public and publish in the New Mexico register a notice of proposed rulemaking. The notice shall include:

- (1) a summary of the full text of the proposed rule;
- (2) a short explanation of the purpose of the proposed rule;
- (3) a citation to the specific legal authority authorizing the proposed rule and the adoption of the rule;
- (4) information on how a copy of the full text of the proposed rule may be obtained;
- (5) information on how a person may comment on the proposed rule, where comments will be received and when comments are due;
- (6) information on where and when a public rule hearing will be held and how a person may participate in the hearing; and
- (7) a citation to technical information, if any, that served as a basis for the proposed rule, and information on how the full text of the technical information may be obtained.

B. An agency may charge a reasonable fee for providing any records in nonelectronic form when provided to a person pursuant to this section. An agency shall not charge a fee for providing any records in electronic form when provided to a person pursuant to this section.

C. An internet link providing free access to the full text of the proposed rule shall be included on the notice of proposed rulemaking.

D. If the agency changes the date of the public rule hearing or the deadline for submitting comments as stated in the notice, the agency shall provide notice to the public of the change.

E. The state records administrator or the administrator's designee shall timely publish the notice of proposed rulemaking in the next publication of the New Mexico register.

History: Laws 2017, ch. 137, § 4.

14-4-5.3. Public participation, comments and rule hearings.

A. The notice of proposed rulemaking shall specify a public comment period of at least thirty days after publication in the New Mexico register during which a person may submit information and comment on the proposed rule. The information or comment may be submitted in an electronic or written format or at a public rule hearing pursuant to Subsection B of this section. The agency shall consider all information and comment on a proposed rule that is submitted within the comment period.

B. At the public rule hearing, members of the public shall be given a reasonable opportunity to submit data, views or arguments orally or in writing. Each agency shall determine, in accordance with governing statutory and case law, the manner in which parties to the proceeding and members of the public will be able to participate in public hearings. All public hearings shall be conducted in a fair and equitable manner. Except as otherwise provided by law, an agency representative or hearing officer shall preside over a public rule hearing.

C. The public rule hearing shall be open to the public and be recorded.

History: Laws 2017, ch. 137, § 5.

14-4-5.4. Agency record in rulemaking proceeding.

A. An agency shall maintain a rulemaking record for each rule it proposes to adopt. The record and materials incorporated by reference in the proposed rule shall be readily available for public inspection in the central office of the agency and available for public display on the state sunshine portal. If an agency determines that any part of the rulemaking record cannot be practicably displayed or is inappropriate for public display on the sunshine portal, the agency shall describe that part of the record, shall note on the sunshine portal that the part of the record is not displayed and shall provide instructions for accessing or inspecting that part of the record.

B. A rulemaking record shall contain:

(1) a copy of all publications in the New Mexico register relating to the proposed rule;

(2) a copy of any technical information that was relied upon in formulating the final rule;

(3) any official transcript of a public rule hearing or, if not transcribed, any audio recording or verbatim transcript of the hearing, and any memoranda summarizing the contents of the hearing prepared by the hearing officer or agency official who presided over the hearing;

(4) a copy of all comments and other material received by the agency during the public comment period and at the public hearing;

(5) a copy of the full text of the initial proposed rule and the full text of the final adopted rule and the concise explanatory statement filed with the state records administrator or the administrator's designee; and

(6) any corrections made by the state records administrator pursuant to Section 14-4-3 NMSA 1978.

History: Laws 2017, ch. 137, § 6.

14-4-5.5. Concise explanatory statement.

At the time it adopts a rule, an agency shall provide to the public a concise explanatory statement containing:

- A. the date the agency adopted the rule;
- B. a reference to the specific statutory or other authority authorizing the rule; and
- C. any findings required by a provision of law for adoption of the rule.

History: Laws 2017, ch. 137, § 7.

14-4-5.6. Emergency rule.

A. An agency shall comply with the rulemaking procedures of the State Rules Act unless the agency finds that the time required to complete the procedures would:

- (1) cause an imminent peril to the public health, safety or welfare;
- (2) cause the unanticipated loss of funding for an agency program; or
- (3) place the agency in violation of federal law.

B. The agency shall provide to the public a record of any finding pursuant to Subsection A of this section and a detailed justification for that finding before issuing an

emergency rule. The record shall include a statement that the emergency rule is temporary. After such record has been provided to the public, the agency may issue the emergency rule immediately without a public rule hearing or with any abbreviated notice and hearing that it finds practicable.

C. When an agency makes a finding pursuant to Subsection A of this section, the agency shall follow the provisions of this section in addition to any more specific requirements in statute that pertain to the agency regarding promulgating emergency or interim rules.

D. Emergency rules may take effect immediately upon filing with the state records administrator or the administrator's designee or at a later date specified in the emergency rule. Emergency rules shall be published in the New Mexico register.

E. No emergency rule shall permanently amend or repeal an existing rule. An emergency rule shall remain in effect until a permanent rule takes effect under the normal rulemaking process. If no permanent rule is adopted within one hundred eighty days from the effective date of the emergency rule, the emergency rule shall expire and may not be readopted as an emergency rule. If an expired emergency rule temporarily amended or repealed an existing rule, the rule shall revert to what it would have been had the emergency rule not been issued.

History: Laws 2017, ch. 137, § 8.

14-4-5.7. Conflicts between rule and statute; variance between proposed and final action.

A. No rule is valid or enforceable if it conflicts with statute. A conflict between a rule and a statute is resolved in favor of the statute.

B. A word or phrase that is defined in an applicable statute should not be defined in rule. A conflict between a definition that appears in a rule and in an applicable statute is resolved in favor of the statute.

History: Laws 2017, ch. 137, § 9.

14-4-5.8. Procedural rules.

No later than January 1, 2018, the attorney general shall adopt default procedural rules for public rule hearings for use by agencies that have not adopted their own procedural rules consistent with the State Rules Act. Each agency may adopt its own procedural rules, or continue in effect existing rules, which shall provide at least as much opportunity for participation by parties and members of the public as is provided in the procedural rules adopted by the attorney general. An agency that adopts its own procedural rules shall send a copy of those procedural rules to the attorney general and shall maintain those procedural rules on the agency's website.

History: Laws 2017, ch. 137, § 10.

14-4-6. [Trade, sale and exchange of agency rules, publications and reports by records center.]

The records center is hereby authorized to trade, sell or exchange such rules, pamphlets, reports or similar instruments for rules, pamphlets, reports or similar instruments of similar value and to sell the same at a reasonable price.

History: 1953 Comp., § 71-7-7, enacted by Laws 1967, ch. 275, § 7.

14-4-7. Current listing of rules; rule repeals.

A. The state records administrator shall prepare and publish a listing and index of all current rules which are filed with the records center.

B. All pamphlets, reports, proclamations or similar instruments which are filed with the librarian of the supreme court law library of the state of New Mexico on the effective date of the State Rules Act and which would, if filed after the effective date of the State Rules Act, be filed with the records center shall be transferred to the records center.

C. The records center shall be furnished a reasonable opportunity to obtain copies of all rules, as defined in the State Rules Act, filed with the librarian of the supreme court law library of the state of New Mexico on the effective date of the State Rules Act.

D. All rules filed with the librarian of the supreme court law library that have not been filed with the records center pursuant to the State Rules Act by June 30, 1991 are repealed.

History: 1953 Comp., § 71-7-8, enacted by Laws 1967, ch. 275, § 10; 1969, ch. 92, § 5; 1991, ch. 221, § 1.

14-4-7.1. New Mexico register.

A. The state records administrator shall provide for publication of a New Mexico register at least twice a month. The New Mexico register shall be published in such a way as to minimize the cost to the state. To accomplish this, the state records administrator is authorized to provide for charges for subscriptions and for publication of notice and other items, including advertising, in the register.

B. The New Mexico register shall be the official publication for all notices of rule makings and filings of adopted rules, including emergency rules, by agencies.

(1) The register shall include the full text of any adopted rules, including emergency rules. Proposed rules may be published in full or in part at the discretion of the issuing agency.

(2) Upon request of an issuing agency, the state records administrator may determine that publication in the register of the full text of an adopted rule would be unduly cumbersome, expensive or otherwise inexpedient, and may publish instead a synopsis of the adopted rule and a statement that a copy of the rule is available from the issuing agency.

C. The New Mexico register shall be available by subscription and single copy purchase to any person, including agencies of the executive, judicial and legislative branches of state government and its political subdivisions, at a reasonable charge approved by the state records administrator. The administrator may authorize distribution of a certain number of copies of the register without charge to agencies or political subdivisions as deemed economically feasible and appropriate.

D. The New Mexico register may include a summary or the text of any governor's executive order, a summary, listing or the text of any attorney general's opinion, a calendar listing the date, time and place of all or selected agency rule-making hearings, a list of gubernatorial appointments of state officials and board and commission members or other material related to administrative law and practice.

E. The state records administrator shall adopt and promulgate rules necessary for the implementation and administration of this section.

History: Laws 1989, ch. 38, § 1; 1995, ch. 110, § 5.

14-4-7.2. New Mexico Administrative Code.

A. The state records administrator shall create and have published a New Mexico Administrative Code, which shall contain all adopted rules. The administrator shall adopt regulations setting forth procedures for the compilation of the code and prescribing the format and structure of the code, including provisions for at least annual supplementation or revision.

B. All rulemaking agencies shall revise, restate and repromulgate their existing rules as needed to expedite publication of the New Mexico Administrative Code.

History: 1978 Comp., § 14-4-7.2, enacted by Laws 1995, ch. 110, § 6.

14-4-8. Documents not required to be filed with state library.

The state librarian may by appropriate written instructions advise the records center that he no longer desires a particular class of instrument to be filed with the state library and thereafter such records center shall no longer file such class of documents with the

state library unless such rejection is rescinded in writing and sent to such agency or agencies.

History: 1953 Comp., § 71-7-9, enacted by Laws 1967, ch. 275, § 11; 1977, ch. 246, § 47.

14-4-9. [Law governing filing of agency rules, documents and publications.]

Wherever any law requires an agency to file a rule, pamphlet, document or publication with the librarian of the supreme court law library such shall be accomplished by the delivery and filing as provided in the State Rules Act.

History: 1953 Comp., § 71-7-10, enacted by Laws 1967, ch. 275, § 12.

14-4-10. State publications for sale or issue by state agencies; listing by state records administrator.

The state records administrator shall maintain a file of all state publications which are for sale or issue by agencies of the state. He shall prepare and publish a list of all such publications which are current and effective. The list shall include such documents as books, manuals, pamphlets, bulletins, monographs and periodicals designed to instruct, inform or direct either the general public or public officers and employees. Correspondence and those documents developed by agencies for their own internal administration are excluded.

History: 1953 Comp., § 71-6-23, enacted by Laws 1967, ch. 275, § 8; 1977, ch. 301, § 3; 1978 Comp., § 14-3-24, recompiled as 1978 Comp., § 14-4-10 by Laws 1995, ch. 110, § 9.

14-4-11. [Personal files, records and documents of elected state officials; placing in state archives by the state records administrator.]

The state records administrator may accept and place in the state archives the personal files, records and documents of elected state officials or of former elected state officials, subject to any reasonable restrictions, moratoriums and requirements concerning their use by other persons. Such restrictions, moratoriums and requirements made by the donor, however, shall not prevent the archivist of the state records center from having access to the files, records and documents for indexing and cataloguing purposes.

History: 1953 Comp., § 71-6-24, enacted by Laws 1967, ch. 275, § 9; 1978 Comp., § 14-3-25, recompiled as 1978 Comp., § 14-4-11 by Laws 1995, ch. 110, § 9.

ARTICLE 4A

Small Business Regulatory Relief Act

14-4A-1. Short title.

This act [14-4A-1 to 14-4A-6 NMSA 1978] may be cited as the "Small Business Regulatory Relief Act".

History: Laws 2005, ch. 244, § 1.

14-4A-2. Legislative findings.

The legislature finds that:

- A. a vibrant and growing small business sector is critical to creating jobs in a dynamic economy;
- B. small businesses bear a disproportionate share of regulatory costs and burdens;
- C. fundamental changes that are needed in the regulatory culture of state agencies to make them more responsive to small business can be made without compromising the statutory missions of the agencies;
- D. when adopting rules to protect the health, safety and economic welfare of the state, agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on small businesses;
- E. uniform regulatory reporting requirements can impose unnecessary and disproportionately burdensome demands, including legal, accounting and consulting costs, upon small businesses with limited resources;
- F. the failure to recognize differences in the scale and resources of regulated businesses can adversely affect competition in the marketplace, discourage innovation and restrict improvements in productivity;
- G. unnecessary rules create entry barriers in many industries and discourage potential entrepreneurs from introducing beneficial products and processes;
- H. the practice of treating all regulated businesses as equivalent may lead to inefficient use of agency resources, enforcement problems and, in some cases, to actions inconsistent with stated legislative intent of health, safety, environmental, economic welfare and other legislation;

I. alternative regulatory approaches that do not conflict with applicable statutes may be available to minimize the significant economic impact of rules on small businesses; and

J. the process by which state rules are developed and adopted should be reformed to require agencies to solicit the ideas and comments of small businesses, to examine the effect of proposed and existing rules on such businesses and to review the continued need for existing rules.

History: Laws 2005, ch. 244, § 2.

14-4A-3. Definitions.

As used in the Small Business Regulatory Relief Act:

A. "agency" means every department, agency, board, commission, committee or institution of the executive branch of state government;

B. "commission" means the small business regulatory advisory commission;

C. "proposed rule" means a proposal by an agency for a new rule or for a change in, addition to or repeal of an existing rule;

D. "rule" means any rule, regulation, order, standard or statement of policy, including amendments to or repeals of any of those, issued or promulgated by an agency and purporting to affect one or more agencies besides the agency issuing the rule or to affect persons not members or employees of the issuing agency. An order or decision or other document issued or promulgated in connection with the disposition of any case or agency decision upon a particular matter as applied to a specific set of facts shall not be deemed a rule nor shall it constitute specific adoption of a rule by the agency. "Rule" does not include rules relating to the management, confinement, discipline or release of inmates of any penal or charitable institution, the New Mexico boys' school, the girls' welfare home or a public hospital; or rules made relating to the management of any particular educational institution, whether elementary or otherwise; or rules made relating to admissions, discipline, supervision, expulsion or graduation of students from an educational institution; and

E. "small business" means a business entity, including its affiliates, that is independently owned and operated and employs fifty or fewer full-time employees.

History: Laws 2005, ch. 244, § 3.

14-4A-4. Rules affecting small business.

A. Prior to the adoption of a proposed rule that may have an adverse effect on small business, an agency shall provide a copy of the proposed rule to the commission at the same time as persons who have requested advance notice of rulemaking.

B. Prior to the adoption of a proposed rule that the agency deems to have an adverse effect on small business, the agency shall consider regulatory methods that accomplish the objectives of the applicable law while minimizing the adverse effects on small business.

History: Laws 2005, ch. 244, § 4.

14-4A-5. Small business regulatory advisory commission created; membership; powers and duties.

A. The "small business regulatory advisory commission" is created. The commission shall consist of nine members who are current or former small business owners, five appointed by the governor and two each appointed by the speaker of the house of representatives and the president pro tempore of the senate. Each member shall be from a different geographic region of the state. Members shall serve two-year terms. A member shall not serve more than three consecutive terms. Members shall name the chairperson of the commission. The commission shall meet at the call of the chairperson. A majority of the members constitutes a quorum for the conduct of business. Members are entitled to per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

B. The commission is administratively attached to the economic development department, and staff for the commission shall be provided by the department.

C. The commission may:

(1) provide state agencies with input regarding proposed rules that may adversely affect small business;

(2) consider requests from small business owners to review rules adopted by an agency;

(3) review rules promulgated by an agency to determine whether a rule places an unnecessary burden on small business and make recommendations to the agency to mitigate the adverse effects; and

(4) provide an annual evaluation report to the governor and the legislature, including recommendations and evaluations of agencies regarding regulatory fairness for small businesses.

D. The commission does not have authority to:

- (1) interfere with, modify, prevent or delay an agency or administrative enforcement action;
- (2) intervene in legal actions; or
- (3) subpoena witnesses to testify or to produce documents, but it may request witnesses to voluntarily testify or produce documents.

History: Laws 2005, ch. 244, § 5.

14-4A-6. Periodic review of rules.

A. By July 1, 2010, each agency shall have reviewed all of its rules that existed on the effective date of the Small Business Regulatory Relief Act to determine whether the rules should be continued without change or should be amended or repealed to minimize the economic impact of the rules on small businesses, subject to compliance with the stated objectives of the laws pursuant to which the rules were adopted.

B. Rules adopted and promulgated after the effective date of the Small Business Regulatory Relief Act shall be reviewed every five years to ensure that they continue to minimize economic impacts on small businesses while implementing the state objectives of the laws pursuant to which the rules were adopted.

C. In reviewing its rules to minimize economic impacts on small businesses, an agency shall consider the following factors:

- (1) continued need for the rule;
- (2) the nature of complaints or comments received from the public concerning the rule;
- (3) the complexity of the rule;
- (4) the extent to which the rule overlaps, duplicates or conflicts with other federal, state and local government rules; and
- (5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions or other factors have changed in the topical area affected by the rule.

History: Laws 2005, ch. 244, § 6.

ARTICLE 5

Public Records Recovery

14-5-1. Short title.

This act [14-5-1 to 14-5-10 NMSA 1978] may be cited as the "Public Records Recovery Act".

History: 1953 Comp., § 71-8-1, enacted by Laws 1973, ch. 270, § 1.

14-5-2. Definitions.

As used in the Public Records Recovery Act:

A. "public officer" means any officer or employee of the legislative, executive or judicial departments of the state or any of its agencies, and any officer or employee of any of the political subdivisions of the state, who is the official custodian of any public record or class of public records; and

B. "public record" means all instruments and documents duly recorded in the records of the county clerk, district court or probate court, which affect interest in real property.

History: 1953 Comp., § 71-8-2, enacted by Laws 1973, ch. 270, § 2.

14-5-3. Recovery authorized.

Any public officer is authorized to recover public records and to duplicate copies of them in the possession of any private party.

History: 1953 Comp., § 71-8-3, enacted by Laws 1973, ch. 270, § 3.

14-5-4. Method of recovery.

Upon determining that a particular public record is not in the hands of the official custodian of such record and upon forming a reasonable belief that those records or copies of them are in the possession of a private party or parties, the public officer shall send a postage prepaid, certified letter, return receipt requested, to the party believed to be in possession of the records or copies of them, making demand for the production of the record if he has it and if he does not have it, any copy of the record. The letter shall:

A. name with particularity the record, the original or copy of which is believed to be in the possession of the private party;

B. allege that the public record is not in the hands of the official custodian of the record;

C. state the grounds on which the public officer believes that the private party is in possession of the public record or a copy of it; and

D. demand that within thirty days of the receipt of the letter, the recipient shall appear at a time and place stated in the letter, bringing the named public record or if the demand is for a copy, the copy with him.

History: 1953 Comp., § 71-8-4, enacted by Laws 1973, ch. 270, § 4.

14-5-5. Return of public record.

If the recipient of the public officer's letter complies with the demand and produces the document or documents, the public officer:

A. shall determine if the document produced is a missing record or a copy of a missing record; and

B. then shall duplicate the document and return the private party's document to him if it is a copy, or if it is the original public record, give the private party a copy and keep the original public record.

History: 1953 Comp., § 71-8-5, enacted by Laws 1973, ch. 270, § 5.

14-5-6. Refusal to appear and produce document; procedure.

If within thirty days of the receipt of the letter, the recipient fails to appear or fails to produce the requested document or documents without showing cause, the public officer making the demand shall apply to the district court in the judicial district where the documents are allegedly located for an order compelling production of the documents for recovery or copying as provided above.

A. The application shall:

(1) name with particularity the record, the original or copy of which is believed to be in the possession of the third party;

(2) allege that the public record is not in the hands of the official custodian of the record;

(3) state the grounds upon which the public officer believes that the private party is in possession of the public record or copies of it; and

(4) state, by affidavit or otherwise, that due demand as required by the Public Records Recovery Act has been made and that the private party or parties have either failed or refused to produce the document or documents.

B. The application shall be docketed in the district court as a civil proceeding and shall proceed as a civil suit under the rules of civil procedure of the district courts.

History: 1953 Comp., § 71-8-6, enacted by Laws 1973, ch. 270, § 6.

14-5-7. District court findings and orders.

If the district court finds that the petition of the public officer is true and that the named document or documents are in the possession of the named party or parties, the court shall order that the document or documents be turned over for recovery or duplication as required in Subsection B [D] of Section 4 [14-5-4 NMSA 1978] of the Public Records Recovery Act.

History: 1953 Comp., § 71-8-7, enacted by Laws 1973, ch. 270, § 7.

14-5-8. Replacement of recovered document.

Records recovered by any public officer or duplicated by the public officer pursuant to the Public Records Recovery Act shall immediately be returned to the official custodian entitled to possession of the record. Prior to replacing the recovered documents, the public officer shall attach a certificate to each of them in a manner that it cannot be removed without destruction of the document stating the date on which the documents were recovered and the name of the person who had possession of the original or copy, the statement under oath of the person who had possession as to the authenticity of the original or copy, and if possible attesting to the belief of the public officer that the recovered documents are previously missing public records, or true copies of them.

History: 1953 Comp., § 71-8-8, enacted by Laws 1973, ch. 270, § 8.

14-5-9. Effect of replacement of recovered document.

Nothing in the Public Records Recovery Act shall be construed to enlarge the rights of a person claiming an interest in real property under a document recovered under the terms of that act, or to make any conclusive presumptions as to the authenticity of the recovered documents.

History: 1953 Comp., § 71-8-9, enacted by Laws 1973, ch. 270, § 9.

14-5-10. Alternative method.

The remedies provided in this act [14-5-1 to 14-5-10 NMSA 1978] are in addition to and not in lieu of any remedies contained in Section 14-3-16 NMSA 1978 or any other statute relating to the recovery of public records.

History: 1953 Comp., § 71-8-10, enacted by Laws 1973, ch. 270, § 10.

ARTICLE 6

Health and Hospital Records

14-6-1. Health information; confidentiality; immunity from liability for furnishing.

A. All health information that relates to and identifies specific individuals as patients is strictly confidential and shall not be a matter of public record or accessible to the public even though the information is in the custody of or contained in the records of a governmental agency or its agent, a state educational institution, a duly organized state or county association of licensed physicians or dentists, a licensed health facility or staff committees of such facilities.

B. A custodian of information classified as confidential in Subsection A may furnish the information upon request to a governmental agency or its agent, a state educational institution, a duly organized state or county association of licensed physicians or dentists, a licensed health facility or staff committees of such facilities, and the custodian furnishing the information shall not be liable for damages to any person for having furnished the information.

C. Statistical studies and research reports based upon confidential information may be published or furnished to the public, but these studies and reports shall not in any way identify individual patients directly or indirectly nor in any way violate the privileged or confidential nature of the relationship and communications between practitioner and patient.

D. This section does not affect the status of original medical records of individual patients and the rules of confidentiality and accessibility applicable to these records continue in force. This section does not affect the status of vital statistical records of the health and environment department.

History: 1953 Comp., § 12-18-1, enacted by Laws 1971, ch. 137, § 1, and recompiled as 1953 Comp., § 12-25-6, by Laws 1972, ch. 51, § 9; 1977, ch. 253, § 37.

14-6-2. Hospital records; retention.

A. Unless provided otherwise in this section, a hospital shall retain and preserve all records directly relating to the care and treatment of a patient for a period of ten years following the last discharge of the patient. Retention and preservation of such records in microfilm or other photographically reproduced form shall be deemed compliance with this subsection and such reproduced and retained copies shall be deemed originals for the purposes of the rules of evidence promulgated by the supreme court of New Mexico.

B. Laboratory test records and reports may be destroyed one year after the date of the test recorded or reported therein provided that one copy is placed in the patient's record. If a copy of the laboratory test records and reports is not placed in the patient's record, they may not be destroyed for a period of four years from the date of the test recorded or reported.

C. X-ray films may be destroyed four years after the date of exposure, if there are in the hospital record written findings of a radiologist who has read such x-ray films. At any time after the third year after the date of exposure, and upon proper identification, the patient may recover his own x-ray films as may be retained pursuant to this section. Such written radiological findings shall be retained as provided in Subsection A of this section.

D. At any time after the retention periods specified in Subsections A, B and C of this section, the hospital may, without thereby incurring liability, destroy such records, by burning, shredding or other effective method in keeping with the confidential nature of their contents; provided, however, that destruction of such records must be in the ordinary course of business and no record shall be destroyed on an individual basis.

E. For the purposes of this section, "hospital" means an institution for the reception and care of the ill or infirm which is licensed by the health and social services department [department of health].

History: 1953 Comp., § 12-34-24, enacted by Laws 1977, ch. 371, § 1.

14-6-3. Access to medical records by applicants for disability benefits; violations.

A. Within thirty days of receiving a request from a patient or former patient who is applying for benefits based on social security disability or who is appealing a denial of such benefits or from an authorized representative of such a patient or former patient, a health care provider shall furnish the requestor with a copy of that patient's medical records. A fee as established by the department of health, may be charged by the health care provider to the requestor for the copies or for the service in obtaining the records.

B. A request made pursuant to Subsection A of this section shall include a statement or document from the agency that administers the benefits that confirms the application or appeal.

C. As used in this section:

(1) "health care provider" means a person who is licensed, certified or otherwise authorized by law to provide or render health care in the ordinary course of business or practice of a profession and includes a facility employing, or contracting with, such a person; and

(2) "medical records" means information in a medical or mental health patient file, including drug or alcohol treatment records, medical reports, clinical notes, nurses' notes, history of injury, subjective and objective complaints, test contents and results, interpretations of tests, reports and summaries of interpretations of tests and other reports, diagnoses and prognoses, bills, invoices, referral requests, consultative reports and reports of services requested by the health care provider.

D. Nothing in this section shall be interpreted to grant access for a patient or patient's representative to medical records that are otherwise protected by law.

E. The department of health shall enforce the provisions of this section and may impose a civil penalty in an amount not to exceed one hundred dollars (\$100) for a violation of this section. The department may promulgate rules necessary for the implementation and enforcement of the provisions of this section, including a fee schedule by obtaining records as provided in Subsection A of this section for a patient who has a financial ability to pay.

History: Laws 1999, ch. 206, § 1.

ARTICLE 7

Financial Institution Records

14-7-1. Requiring notice of intent to gain access to records of financial institutions.

A. At least seven days prior to a state agency, board or commission requesting or gaining access to or copies of the records of a person, corporation, company or organization maintained by a bank, savings and loan association, small loan company or other similar financial institution, the agency, board or commission shall notify by certified or registered mail the person, corporation, company or other organization of its intent to gain access or acquire such records.

B. The requirement of notice set forth in Subsection A of this section shall not apply to the audit of, compliance monitoring of or preparation of reports concerning any bank, savings and loan association, small loan company or other similar financial institution by a state agency, when conducted pursuant to the agency's statutory directive.

C. The provisions of Subsection A of this section shall not apply to requests for records made pursuant to an administrative subpoena. In such instances, at least twenty-four hours' notice shall be given to the person, corporation, company or organization.

History: 1953 Comp., § 48-10-13, enacted by Laws 1977, ch. 291, § 1; 2007, ch. 86, § 1.

14-7-2. Requirements of state agencies, boards and commissions prior to access to a financial institution's records.

A. Prior to a state agency, board or commission receiving access to or copies of the records of a person, corporation, company or organization maintained by a bank, savings and loan association, small loan company or other similar financial institution, the agency, board or commission shall:

(1) allow the institution forty-eight hours to comply with an administrative subpoena;

(2) allow the institution to provide authenticated copies of original records rather than the original copies in response to an administrative subpoena; and

(3) pay the institution the reasonable cost of production of such records including both the cost of materials and wages.

B. The provisions of Subsection A of this section shall not apply to the audit of any bank, savings and loan association, small loan company or other similar financial institution by a state agency when conducted pursuant to the agency's statutory directive.

History: 1953 Comp., § 48-10-14, enacted by Laws 1977, ch. 337, § 1.

ARTICLE 8 Recording

14-8-1. County clerks to be recorders.

The county clerks of the different counties of this state shall be ex officio recorders in their respective counties.

History: Laws 1855-1856, p. 18, § 1; C.L. 1865, ch. 88, § 1; C.L. 1884, § 429; C.L. 1897, § 776; Code 1915, § 4779; C.S. 1929, § 118-101; 1941 Comp., § 13-101; 1953 Comp., § 71-1-1; 2011, ch. 134, § 4.

14-8-2. County clerk; duty as recorder.

It is the duty of the county clerk to maintain permanently all documents that by law should be recorded.

History: Laws 1855-1856, p. 18, § 2; C.L. 1865, ch. 88, § 2; C.L. 1884, § 430; C.L. 1897, § 777; Code 1915, § 4780; C.S. 1929, § 118-102; 1941 Comp., § 13-102; 1953 Comp., § 71-1-2; 2011, ch. 134, § 5.

14-8-3. Recording books.

When used in Chapter 14, Articles 1 through 5 and 8 through 10 NMSA 1978, "book" includes microfilm and digitized documents.

History: 1953 Comp., § 71-1-2.1, enacted by Laws 1963, ch. 52, § 1; 2011, ch. 134, § 6.

14-8-4. Acknowledgment necessary for recording; exceptions; recording of duplicates.

A. Any original instrument of writing duly acknowledged may be filed and recorded. Any instrument of writing not duly acknowledged may not be filed and recorded or considered of record, though so entered, unless otherwise provided in this section.

B. For purposes of this section, "acknowledged" means notarized by a person empowered to perform notarial acts pursuant to the Revised Uniform Law on Notarial Acts [14-14A-1 to 14-14A-32 NMSA 1978].

C. The following documents need not be acknowledged but may be filed and recorded:

- (1) court-certified copies of a court order, judgment or other judicial decree;
- (2) court-certified transcripts of any money judgment obtained in a court of New Mexico or, pursuant to Section 14-9-9 NMSA 1978, in the United States district court for the district of New Mexico;
- (3) land patents and land office receipts;
- (4) notice of lis pendens filed pursuant to Section 38-1-14 NMSA 1978;
- (5) provisional orders creating improvement districts pursuant to Section 4-55A-7 NMSA 1978;
- (6) notices of levy on real estate under execution or writ of attachment when filed by a peace officer pursuant to Section 39-4-4 NMSA 1978;
- (7) surveys of land that do not create a division of land but only show existing tracts of record when filed by a professional surveyor pursuant to Section 61-23-28.2 NMSA 1978;
- (8) certified copies of foreign wills, marriages or birth certificates duly authenticated; and

(9) instruments of writing in any manner affecting lands in the state filed pursuant to Section 14-9-7 NMSA 1978, when these instruments have been duly executed by an authorized public officer.

D. If an original instrument of writing is unavailable but, if it were available, could be filed and recorded in accordance with this section, a duplicate of that instrument shall be accepted for filing and recording if accompanied by an affidavit executed pursuant to this subsection. The affidavit shall:

- (1) provide the name, telephone number and mailing address of the affiant;
- (2) provide information regarding the execution of the instrument, consideration paid, delivery or other information establishing that the original instrument, if it were available, would be entitled to be recorded pursuant to Subsection A of this section;
- (3) specify the reason the duplicate is filed and recorded in place of the original instrument;
- (4) include a statement that the duplicate is a true and correct copy of the original instrument; and
- (5) be acknowledged and made under oath confirming that the statements set forth in the affidavit are true and correct and of the personal knowledge of the affiant.

E. The filing of a duplicate instrument in accordance with Subsection D of this section shall not incur a fee in addition to the fee, if any, charged for filing an original instrument. When the clerk records the instrument, the grantor and grantee shall be those of the duplicate instrument and the name of the affiant shall be indexed under miscellaneous information.

F. Any filing or recording permitted or required under the provisions of the Uniform Commercial Code need not comply with the requirements of this section.

G. Instruments acknowledged on behalf of a corporation need not have the corporation's seal affixed thereto in order to be filed and recorded.

History: Laws 1901, ch. 62, § 18; Code 1915, § 4795; C.S. 1929, § 118-119; 1941 Comp., § 13-103; 1953 Comp., § 71-1-3; Laws 1961, ch. 96, § 11-118; 1967, ch. 10, § 1; 1981, ch. 219, § 1; 2011, ch. 134, § 7; 2013, ch. 214, § 3; 2019, ch. 130, § 1; 2021, ch. 21, § 34.

14-8-5. [Mining location notices; recording.]

All recordings of unacknowledged mining location notices and amended or additional notices made pursuant to Sections 69-3-1, 69-3-2, 69-3-12 or 69-3-21 [repealed] NMSA

1978, and the record thereof in the office of the county clerk, are hereby confirmed and made valid, the provisions of Section 14-8-4 NMSA 1978 notwithstanding; provided, however, existing or intervening rights of others are not affected. Hereafter, such notices need not be acknowledged but may be filed, recorded and considered of record if properly signed by the locator.

History: 1953 Comp., § 71-1-3.1, enacted by Laws 1971, ch. 202, § 1.

14-8-6. County clerks; to endorse and record land titles; notice.

When any land title or other document is delivered to the county clerk to be recorded, it is the clerk's duty to endorse immediately on that document or other paper the day, month and year in which the clerk received it, and the clerk shall record it in the book of record as soon as possible. The documents, from the date on which they were delivered to the county clerk, shall be considered as recorded, and this shall be sufficient notice to the public of the contents thereof.

History: Laws 1855-1856, p. 18, § 3; C.L. 1865, ch. 88, § 3; C.L. 1884, § 431; C.L. 1897, § 778; Code 1915, § 4781; C.S. 1929, § 118-103; 1941 Comp., § 13-104; 1953 Comp., § 71-1-4; 2011, ch. 134, § 8.

14-8-7. Standards; durability requirements.

It is the duty of county clerks in this state in recording all instruments of writing that by law they are required to record to do so by a method that ensures permanency and durability. The county clerk of each county in the state shall provide, at the expense of the clerk's respective county, such books or technology as may be necessary and suitable in which to record notices, affidavits and other documents.

History: Laws 1923, ch. 114, § 1; C.S. 1929, § 118-114; 1941 Comp., § 13-105; 1953 Comp., § 71-1-5; 2011, ch. 134, § 9.

14-8-8. Repealed.

History: Laws 1923, ch. 114, § 2; C.S. 1929, § 118-115; 1941 Comp., § 13-106; 1953 Comp., § 71-1-6; repealed by Laws 2011, ch. 134, § 24.

14-8-9. Security of books of record; delivery to successors.

It is the duty of the county clerks to keep their books of record well secured, and when they leave office as clerks, they shall deliver them complete to their successors, including all necessary keys, combinations and passwords.

History: Laws 1855-1856, p. 18, § 4; C.L. 1865, ch. 88, § 4; C.L. 1884, § 432; C.L. 1897, § 779; Code 1915, § 4782; C.S. 1929, § 118-104; 1941 Comp., § 13-107; 1953 Comp., § 71-1-7; 2011, ch. 134, § 10.

14-8-9.1. Public records; inspection; exceptions.

A. Except as provided in this section, all documents filed and recorded in the office of the county clerk are public records.

B. The county clerk shall publicly post in the office of the county clerk and on the county's web page a notice that documents recorded in the office of the county clerk are public records, subject to inspection and disclosure.

C. Before purchasing or digitizing of documents by third parties, protected personal identifier information, as defined in the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978], shall be redacted.

D. Documents containing health information that relates to and identifies specific individuals as patients are exempt as a public record pursuant to Section 14-6-1 NMSA 1978.

E. Discharge papers of a veteran of the armed forces of the United States recorded in the office of the county clerk shall be segregated from public records in the office of the county clerk. Discharge papers recorded before July 1, 2005 that have been commingled with public records and that remain unsegregated are available for inspection in the office of the county clerk but shall not be purchased, copied or digitized by any third party, except by those persons authorized in this section. As the technology becomes available, county clerks shall segregate commingled discharge papers from the public records in the office of the county clerk. Discharge papers recorded in the office of the county clerk are available only to:

- (1) the veteran who filed the papers;
- (2) the veteran's next of kin;
- (3) the deceased veteran's properly appointed personal representative or executor;
- (4) a person holding the veteran's general power of attorney; or
- (5) a person designated by the veteran in an acknowledged statement to receive the records.

F. Death certificates that have been recorded in the office of the county clerk may be inspected, but shall not be purchased, copied or digitized by any third party unless fifty years have elapsed after the date of death. Death certificates and other vital

records recorded in the office of the county clerk are exempt from the restrictions contained in Subsection A of Section 24-14-27 NMSA 1978. The act of recording a death certificate in the office of the county clerk is considered a convenience; provided that no person shall be required to record a death certificate in the office of the county clerk to effect change of title or interest in property.

History: Laws 2011, ch. 134, § 21; 2017, ch. 87, § 3.

14-8-10. County clerks; failure to perform duties as recorder.

For failure to comply with the responsibilities and duties in Chapter 14, Article 8 NMSA 1978, each county clerk is responsible on the clerk's official bond for damages suffered by the injured party.

History: Laws 1855-1856, p. 18, § 5; C.L. 1865, ch. 88, § 5; C.L. 1884, § 433; C.L. 1897, § 780; Code 1915, § 4783; C.S. 1929, § 118-105; 1941 Comp., § 13-108; 1953 Comp., § 71-1-8; Laws 1965, ch. 97, § 1; 2011, ch. 134, § 11.

14-8-11. Repealed.

History: Laws 1939, ch. 179, § 1; 1941 Comp., § 13-109; 1953 Comp., § 71-1-9; 1978 Comp., § 14-8-11, repealed by Laws 2011, ch. 134, § 24.

14-8-12. Repealed.

History: Laws 1939, ch. 179, § 2; 1941 Comp., § 13-110; Laws 1941, ch. 22, § 1; 1953 Comp., § 71-1-10; Laws 1953, ch. 51, § 1; 1955, ch. 213, § 1; 1957, ch. 95, § 1; 1959, ch. 253, § 2; 1977, ch. 179, § 5; 1979, ch. 185, § 1; 1980, ch. 48, § 1; 1985, ch. 122, § 1; 1978 Comp., § 14-2-12, repealed by Laws 2008, ch. 66, § 3.

14-8-12.1. Temporary provision; validation.

Any instrument received for recording after June 16, 1977 and before the effective date of this act and which would have been validly filed but for the provisions of Laws 1979, Chapter 185, Section 1, Subsection D or Laws 1977, Chapter 179, Section 5, Subsection D shall be conclusively presumed to have been validly filed on the date received for recording.

History: Laws 1980, ch. 48, § 2.

14-8-12.2. County clerk recording and filing fund; uses.

A. A "county clerk recording and filing fund" is established in each county.

B. Expenditures from the county clerk recording and filing fund shall be determined annually by the county clerk and approved by the board of county commissioners.

C. Expenditures from the county clerk recording and filing fund may be expended only:

(1) to rent, purchase, lease or lease-purchase recording equipment and for supplies, training and maintenance for such equipment;

(2) to rent, purchase, lease or lease-purchase vehicles associated with all regular duties in the county clerk's office and for supplies, training and maintenance for such vehicles, provided that the county clerk shall report annually to the board of county commissioners the usage, mileage and necessity of any vehicle acquired pursuant to this paragraph;

(3) for technical assistance or for training associated with all regular duties of the county clerk's office; or

(4) for staff travel associated with all regular duties of the county clerk's office pursuant to the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

History: 1978 Comp., § 14-8-12.2, enacted by Laws 1985, ch. 122, § 2; 1987, ch. 288, § 1; 1994, ch. 28, § 1; 1995, ch. 26, § 1; 2002, ch. 97, § 1; 2008, ch. 66, § 1; 2011, ch. 134, § 12; 2019, ch. 130, § 2.

14-8-12.3. Repealed.

History: 1978 Comp., § 14-8-12.3, enacted by Laws 1985, ch. 122, § 3; 1987, ch. 288, § 2; 2008, ch. 66, § 2; repealed by Laws 2011, ch. 134, § 24.

14-8-12.4. Repealed.

History: 1978 Comp., § 14-8-12.4, enacted by Laws 1985, ch. 122, § 4; repealed by Laws 2011, ch. 134, § 24.

14-8-13. [Fees; copying records; issuing licenses; acknowledgments.]

The county clerk shall be allowed the following fees: for recording letters testamentary or of administration, one dollar [(\$1.00)]; for filing the bond of the executor or administrator, fifty cents [(\$.50)]; for order appointing guardian or curator, twelve and one-half cents [(\$.125)]; for filing and preserving bond of guardian or curator, fifty cents [(\$.50)]; for every order of publication, twenty-five cents [(\$.25)]; for every order relating to executors, administrators or guardians, not otherwise provided for, twelve and one-half cents [(\$.125)]; for copying any order, record or paper, for every one hundred

words, ten cents [(\$.10)]; for entering any judgment and verdict, twelve and one-half cents [(\$.125)]; for proof of every will and codicil taken by the probate judge, twenty-five cents [(\$.25)]; for every certificate and seal, twenty-five cents [(\$.25)]; for issuing every subpoena, twenty-five cents [(\$.25)]; for administering every oath, three cents [(\$.03)]; for keeping abstracts of demands, for each defendant, three cents [(\$.03)]; for certifying the amount, date and classes of any demand, without seal, five cents [(\$.05)]; for entering every motion or rule, five cents [(\$.05)]; for swearing and entering a jury, twenty-five cents [(\$.25)]; for entering every trial, five cents [(\$.05)]; for a commission to take depositions, twenty-five cents [(\$.25)]; for every execution, fifty cents [(\$.50)]; for every continuance of a cause, five cents [(\$.05)]; for entering an appeal, twelve and one-half cents [(\$.125)]; for every writ to summon a jury, twelve and one-half cents [(\$.125)]; for every order to distribute effects among heirs, etc., twelve and one-half cents [(\$.125)]; for every settlement of executor, administrator or guardian, whether annual or final, twenty-five cents [(\$.25)]; for every order appointing road overseers, twenty-five cents [(\$.25)]; for filing and preserving constable's bond, to be paid for by the constable, twenty-five cents [(\$.25)]; for all services in filing, taking and safekeeping the collectors' bonds for territorial taxes, to be paid by the territory, one dollar [(\$1.00)]; for like services for collectors' bonds for county taxes, to be paid by the territory and county, each for its own, for every one hundred words, ten cents [(\$.10)]; for issuing any license, to be paid for by the applicant, fifty cents [(\$.50)]; for taking, filing and safekeeping of every other bond not otherwise provided for, fifty cents [(\$.50)]; for issuing each writ, and receiving, filing and docketing the return, fifty cents [(\$.50)]; for taking every acknowledgment to a deed or writing, twenty-five cents [(\$.25)].

History: Kearny Code, Fees, § 2; C.L. 1865, ch. 46, § 2; C.L. 1884, § 1251; C.L. 1897, § 1768; Code 1915, § 1240; C.S. 1929, § 33-4306; 1941 Comp., § 13-111; 1953 Comp., § 71-1-11.

14-8-14. Searching records; reproduction of records; fees.

A. Records maintained in the office of the county clerk are available to be searched without charge during regular business hours.

B. County clerks:

(1) may charge reasonable fees for conducting searches and for reproducing or permitting reproduction of their records as well as for certifying documents;

(2) shall not charge fees in excess of one dollar (\$1.00) per page for documents eleven inches by seventeen inches in size or smaller;

(3) may require advance payment of fees before making copies of public records;

(4) shall not charge a fee for the cost of determining whether any public record is subject to disclosure; and

(5) shall provide a receipt, upon request.

C. County clerks shall establish reasonable fees for conducting searches and for reproducing or copying records maintained at the office of the county clerk.

History: Laws 1886-1887, ch. 10, § 6; C.L. 1897, § 3958; Code 1915, § 4785; C.S. 1929, § 118-107; 1941 Comp., § 13-112; 1953 Comp., § 71-1-12; 2011, ch. 134, § 13.

14-8-15. Payment of fees; disposition.

A. No county clerk shall receive any instrument of writing for filing or record unless the fees for such filing and recording have first been paid.

B. Unless otherwise specified by law, the county clerk shall collect a recording fee of twenty-five dollars (\$25.00) for each document filed or recorded by the county clerk.

C. If a document being filed or recorded contains more than ten entries to the county recording index, the county clerk shall collect an additional fee of twenty-five dollars (\$25.00) for each additional block of ten or fewer entries to the county recording index from the document.

D. To the extent documents described in Section 14-8-13 NMSA 1978 are filed or recorded in the office of the county clerk, the documents shall be received pursuant to the fees described in this section.

E. For each fee of twenty-five dollars (\$25.00) collected by the county clerk pursuant to this section, eighteen dollars (\$18.00) shall be deposited in the county general fund and seven dollars (\$7.00) shall be deposited in the county clerk recording and filing fund.

History: Laws 1901, ch. 62, § 19; 1909, ch. 49, § 1; Code 1915, § 4797; C.S. 1929, § 118-121; 1941 Comp., § 13-113; 1953 Comp., § 71-1-13; 2011, ch. 134, § 14.

14-8-15.1. Repealed.

History: Laws 2011, ch. 134, § 22; repealed by Laws 2019, ch. 130, § 4.

14-8-16. Filings of legal descriptions and plats of real property authorized; recording.

A. A person owning real property that is subject to property taxation under the Property Tax Code [Chapter 7, Articles 35 through 38 NMSA 1978] may file for record in the office of the county clerk of the county where the real property is located a legal description or a plat of the real property. The legal description or plat shall be acknowledged and shall be certified by a professional surveyor licensed in the state.

B. The United States, the state or its political subdivisions and any agency, department or instrumentality of the United States, the state or its political subdivisions may file for record in the office of the county clerk of the county where the real property is located a legal description or a plat of real property. The legal description or plat shall be acknowledged and shall be certified by a professional surveyor licensed in the state and shall show the governmental agency, department or political subdivision under whose supervision and direction the description or plat was prepared.

C. The county clerk shall number descriptions filed under this section consecutively and shall number plats filed under this section consecutively. Immediately upon receiving a description or plat for filing, the county clerk shall note on the instrument the filing number, the date and the time of filing and shall make proper entries in the reception book and in the index to general real estate records.

D. The county clerk shall record all descriptions and plats in the same manner as other similar instruments affecting real property are recorded. The county clerk shall charge a fee as provided for in Section 14-8-15 NMSA 1978 for recording documents in the office of the county clerk.

E. If the county clerk has the appropriate technology, the clerk shall record the plat electronically, return the original to the person who submitted the plat and forward an electronic copy to the county assessor. Otherwise, all plats to be recorded shall be filed in duplicate with the county clerk. One copy shall be recorded by the county clerk, and one copy shall be delivered by the county clerk to the county assessor.

History: 1953 Comp., § 71-1-14, enacted by Laws 1973, ch. 258, § 150; 1989, ch. 106, § 1; 1994, ch. 28, § 2; 1995, ch. 26, § 2; 2002, ch. 97, § 2; 2011, ch. 134, § 15.

14-8-17. Documents recorded without cost.

The county clerk shall record free of charge:

A. oaths of public office made pursuant to Article 20, Section 1 of the constitution of New Mexico;

B. the discharge papers of any person who was accepted for service and served in the armed forces of the United States for thirty days or more;

C. notices of state tax liens filed by the taxation and revenue department pursuant to Section 7-1-38 NMSA 1978;

D. tax delinquency lists filed by the county treasurer pursuant to Section 7-38-61 NMSA 1978;

E. notices and warrants issued by the secretary of workforce solutions for defaults on payments to the unemployment compensation administration fund filed pursuant to Section 51-1-36 NMSA 1978; and

F. a claim of lien under oath of the state engineer, artesian well supervisor or an officer of an artesian conservancy district filed pursuant to Section 72-13-8 NMSA 1978.

History: Laws 1921, ch. 61, § 1; C.S. 1929, § 122-401; 1941, ch. 103, § 1; 1941 Comp., § 66-1501; 1953 Comp., § 74-2-1; 1987, ch. 217, § 1; 1978 Comp., § 28-13-16 recompiled as § 14-8-17 by Laws 2004, ch. 19, § 31; 2011, ch. 134, § 16; 2013, ch. 214, § 4.

ARTICLE 9

Records Affecting Real Property

14-9-1. Instruments affecting real estate; recording.

All deeds, mortgages, leases of an initial term plus option terms in excess of five years, or memoranda of the material terms of such leases, assignments or amendments to such leases, leasehold mortgages, United States patents and other writings affecting the title to real estate shall be recorded in the office of the county clerk of the county or counties in which the real estate affected thereby is situated. Leases of any term or memoranda of the material terms thereof, assignments or amendments thereto may be recorded in the manner provided in this section. As used in this section, "memoranda of the material terms of a lease" means a memorandum containing the names and mailing addresses of all lessors, lessees or assignees; if known, a description of the real property subject to the lease; and the terms of the lease, including the initial term and the term or terms of all renewal options, if any.

History: Laws 1886-1887, ch. 10, § 1; C.L. 1897, § 3953; Code 1915, § 4786; C.S. 1929, § 118-108; 1941 Comp., § 13-201; 1953 Comp., § 71-2-1; 1991, ch. 234, § 1.

14-9-2. [Constructive notice of contents.]

Such records shall be notice to all the world of the existence and contents of the instruments so recorded from the time of recording.

History: Laws 1886-1887, ch. 10, § 2; C.L. 1897, § 3954; Code 1915, § 4787; C.S. 1929, § 118-109; 1941 Comp., § 13-202; 1953 Comp., § 71-2-2.

14-9-3. Unrecorded instruments; effect.

No deed, mortgage or other instrument in writing not recorded in accordance with Section 14-9-1 NMSA 1978 shall affect the title or rights to, in any real estate, of any purchaser, mortgagee in good faith or judgment lien creditor, without knowledge of the

existence of such unrecorded instruments. Possession alone based on an unrecorded executory real estate contract shall not be construed against any subsequent purchaser, mortgagee in good faith or judgment lien creditor either to impute knowledge of or to impose the duty to inquire about the possession or the provisions of the instruments.

History: Laws 1886-1887, ch. 10, § 3; C.L. 1897, § 3955; Code 1915, § 4788; Laws 1923, ch. 11, § 1; C.S. 1929, § 118-110; 1941 Comp., § 13-203; 1953 Comp., § 71-2-3; Laws 1990, ch. 72, § 1.

14-9-4. Filing for record; effect; reception book.

The time of the recording of an instrument shall be the time of its deposit in the office of the county clerk and his entry thereof in the reception book as herein provided. It shall be the duty of every county clerk immediately on the receipt for record of any deed, mortgage or other writing affecting the title to real estate, to enter the same by the name of the grantor, mortgagor or other persons [person] whose title is affected thereby, in a proper book, arranged in alphabetical or numerical order, to be known as the reception book, together with the date, hour and minute of such record. Any county clerk failing to make such entry immediately, shall be punished by a fine of one hundred dollars [(\$100)], and shall also be liable for damages to any person injured by such neglect, to the extent of such injury.

History: Laws 1886-1887, ch. 10, § 4; C.L. 1897, § 3956; Laws 1899, ch. 22, § 1; 1913, ch. 84, § 1; Code 1915, § 4789; C.S. 1929, § 118-111; Laws 1939, ch. 179, § 3; 1941 Comp., § 13-204; 1953 Comp., § 71-2-4.

14-9-5. Repealed.

14-9-6. [Wills not affected.]

None of the provisions of this chapter shall be so construed as to extend to last wills and testaments.

History: Laws 1851-1852, p. 376; C.L. 1865, ch. 44, § 23; C.L. 1884, § 2770; C.L. 1897, § 3967; Code 1915, § 4794; C.S. 1929, § 118-118; 1941 Comp., § 13-208; 1953 Comp., § 71-2-8.

14-9-7. Conveyances to state and public corporations; recording; filing in lieu of recording; maximum fee.

A. The state, the public boards and commissions thereof, municipalities, districts and subdivisions of the state, including conservancy and irrigation districts, shall be entitled to have instruments affecting real estate which have been made to them as grantees or vendees, including rights-of-way for roads, easements or other instruments

affecting real estate, to be duly recorded in the offices of the county clerks and ex officio recorders of the various counties in which the real estate is situated.

B. The state, the public boards or commissions thereof, municipalities, districts or subdivisions of the state, including conservancy and irrigation districts, may file the original instruments affecting such real estate with the county clerk and ex officio recorder in the county where the property is situated, and such filings shall be properly indexed by the county clerk and ex officio recorder in the county, and such filings shall have the full legal effect of recording and be legal notice of the rights of the public entities or districts in and to said rights-of-way, easements or other interests conveyed or granted by the instruments affecting the real estate.

C. The county clerks and ex officio recorders shall be paid the statutory recording fee for each instrument recorded or filed and indexed under the terms of this section.

History: Laws 1931, ch. 137, § 1; 1941 Comp., § 13-209; 1953 Comp., § 71-2-9; Laws 1961, ch. 77, § 1; 1987, ch. 233, § 1.

14-9-8. [Lost patent; recording certified copy; effect.]

Any person or persons who have acquired and hold any real estate by purchase or otherwise, and have lost or are unable to procure the original patent issued by the United States for such real estate, and such patent never having been recorded in the office of the county clerk of the county wherein such real estate is situated, may procure a certified copy of such patent from the recorder of the general land office of the United States, and have the same recorded in the same manner as the original patent therefor might have been recorded. And the record of such certified copy of the patent issued for such lands shall have the same force and effect as if the original patent therefor had been recorded.

History: Laws 1909, ch. 18, § 1; Code 1915, § 4796; C.S. 1929, § 118-120; 1941 Comp., § 13-210; 1953 Comp., § 71-2-10.

14-9-9. [Federal court judgment; county for filing; lien against realty.]

A transcript of any money judgment obtained in the United States district court for the district of New Mexico, may be filed in the office of the county clerk of any county, wherein the judgment debtor or debtors have property, and when so filed and entered in the judgment lien record of said county shall be a lien against the real estate of such judgment debtor or debtors within said county from the date of such filing and entry in such judgment lien record.

History: Laws 1923, ch. 123, § 1; C.S. 1929, § 76-112; 1941 Comp., § 13-211; 1953 Comp., § 71-2-11.

ARTICLE 9A

Uniform Real Property Electronic Recording Act

14-9A-1. Short title.

This act [14-9A-1 to 14-9A-7 NMSA 1978] may be cited as the "Uniform Real Property Electronic Recording Act".

History: Laws 2007, ch. 261, § 1.

14-9A-2. Definitions.

As used in the Uniform Real Property Electronic Recording Act:

A. "document" means information that is:

(1) inscribed on a tangible medium or that is stored in an electronic or other medium and that is retrievable in perceivable form; and

(2) eligible to be recorded in the land records maintained by a county clerk;

B. "electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities;

C. "electronic document" means a document that is received by a county clerk in an electronic form;

D. "electronic signature" means an electronic sound, symbol or process attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document;

E. "person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency or instrumentality or any other legal or commercial entity; and

F. "state" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

History: Laws 2007, ch. 261, § 2.

14-9A-3. Validity of electronic documents.

A. If a law requires, as a condition for recording, that a document be an original, be on paper or another tangible medium or be in writing, the requirement is satisfied by an electronic document satisfying the Uniform Real Property Electronic Recording Act.

B. If a law requires, as a condition for recording, that a document be signed, the requirement is satisfied by an electronic signature.

C. A requirement that a document or a signature associated with a document be notarized, acknowledged, verified, witnessed or made under oath is satisfied if the electronic signature of the person authorized to perform that act and all other information required to be included is attached to or logically associated with the document or signature. A physical or electronic image of a stamp, impression or seal need not accompany an electronic signature.

History: Laws 2007, ch. 261, § 3.

14-9A-4. Recording of documents.

A. In this section, "paper document" means a document that is received by the county clerk in a form that is not electronic.

B. A county clerk:

(1) who implements any of the functions listed in this section shall do so in compliance with standards established by the information technology commission and the state commission of public records, in consultation with the county clerks of New Mexico, pursuant to Section 5 [14-9A-5 NMSA 1978] of the Uniform Real Property Electronic Recording Act;

(2) may receive, index, store, archive and transmit electronic documents;

(3) may provide for access to and for search and retrieval of documents and information by electronic means;

(4) who accepts electronic documents for recording shall continue to accept paper documents as authorized by state law and shall place entries for both types of documents in the same index;

(5) may convert paper documents accepted for recording into electronic form;

(6) may convert into electronic form information recorded before the county clerk began to record electronic documents;

(7) may accept electronically any fee that the county clerk is authorized to collect; and

(8) may agree with other officials of a state, of a political subdivision of a state or of the United States on procedures or processes to facilitate the electronic satisfaction of prior approvals and conditions precedent to recording and the electronic payment of fees.

History: Laws 2007, ch. 261, § 4.

14-9A-5. Administration and standards.

A. The information technology commission and the state commission of public records, in consultation with the county clerks of New Mexico, shall adopt standards to implement the Uniform Real Property Electronic Recording Act.

B. To keep the standards and practices of county clerks in this state in harmony with the standards and practices of recording offices in other jurisdictions that enact substantially the Uniform Real Property Electronic Recording Act and to keep the technology used by county clerks in this state compatible with technology used by recording offices in other jurisdictions that enact substantially the Uniform Real Property Electronic Recording Act, the information technology commission and the state commission of public records, in consultation with the county clerks of New Mexico, so far as is consistent with the purposes, policies and provisions of the Uniform Real Property Electronic Recording Act, in adopting, amending and repealing standards shall consider:

- (1) standards and practices of other jurisdictions;
- (2) the most recent standards promulgated by national standard-setting bodies, such as the property records industry association;
- (3) the views of interested persons and governmental officials and entities;
- (4) the needs of counties of varying size, population and resources; and
- (5) standards requiring adequate information security protection to ensure that electronic documents are accurate, authentic, adequately preserved and resistant to tampering.

C. The secretary of state may adopt and promulgate rules to implement the provisions of Subsection C of Section 14-9A-3 NMSA 1978 by providing for the electronic notarization, acknowledgment, verification, swearing or affirming under oath and other notarial acts by notaries public with respect to a document or signature.

History: Laws 2007, ch. 261, § 5; 2008, ch. 28, § 1.

14-9A-6. Uniformity of application and construction.

In applying and construing the Uniform Real Property Electronic Recording Act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

History: Laws 2007, ch. 261, § 6.

14-9A-7. Relation to Electronic Signatures in Global and National Commerce Act.

The Uniform Real Property Electronic Recording Act modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act but does not modify, limit or supersede Section 101(c) of that act or authorize electronic delivery of any of the notices described in Section 103(b) of that act.

History: Laws 2007, ch. 261, § 7.

ARTICLE 10 Index of Records

14-10-1. Index.

For the convenience of the public and the better preservation of titles to real property, there shall be a complete and accurate county recording index made of all instruments of record affecting real property made by the county clerk of each county.

History: Laws 1903, ch. 87, § 1; Code 1915, § 4798; C.S. 1929, § 118-122; 1941 Comp., § 13-301; 1953 Comp., § 71-3-1; 2013, ch. 214, § 5.

14-10-2. Index books.

For the purpose of the county recording index created pursuant to Section 14-10-1 NMSA 1978, the county clerk shall maintain a searchable database, which may include index books, and all instruments affecting title to real estate shall be indexed.

History: Laws 1903, ch. 87, § 2; Code 1915, § 4799; C.S. 1929, § 118-123; 1941 Comp., § 13-302; 1953 Comp., § 71-3-2; 2013, ch. 214, § 6.

14-10-3. County recording index; required fields.

The county recording index shall contain, at a minimum:

A. the following administrative fields:

- (1) the book and page or instrument number; and

(2) the date and time of recordation; and

B. the following descriptive fields:

(1) the name of the grantor or grantors;

(2) the name of the grantee or grantees; and

(3) legal descriptions, references to recorded instruments in the county containing legal descriptions and miscellaneous information.

History: Laws 1903, ch. 87, § 3; Code 1915, § 4800; C.S. 1929, § 118-124; 1941 Comp., § 13-303; 1953 Comp., § 71-3-3; 2013, ch. 214, § 7.

14-10-4. Entries to the index; description of lands.

Each name, descriptor or reference placed in a descriptive field constitutes a separate entry in the county recording index. All real property or lands shall be entered and described in the county recording index in the manner indicated, according to numbers, metes or bounds; provided that where this is impossible from the nature of the description, the tract or tracts may be described by some appropriate title.

History: Laws 1903, ch. 87, § 4; Code 1915, § 4801; C.S. 1929, § 118-125; 1941 Comp., § 13-304; 1953 Comp., § 71-3-4; 2013, ch. 214, § 8.

14-10-5. Standard form.

The form of county recording index provided in Chapter 14, Article 10 NMSA 1978 shall be the standard form of index and shall be used throughout the state.

History: Laws 1903, ch. 87, § 5; Code 1915, § 4802; C.S. 1929, § 118-126; 1941 Comp., § 13-305; 1953 Comp., § 71-3-5; 2013, ch. 214, § 9.

ARTICLE 11

Publication of Notice

14-11-1. "Legal notices and advertisements" defined.

Any notice or other written matter whatsoever required to be published in a newspaper by any law of this state, or by the order of any court of record of this state, shall be deemed and held to be a legal notice or advertisement within the meaning of this act [14-11-1 to 14-11-4, 14-11-7, 14-11-8 NMSA 1978].

History: Laws 1937, ch. 167, § 1; 1941 Comp., § 12-201; 1953 Comp., § 10-2-1.

14-11-2. Requirement for publication of legal notice or advertisement.

Any and every legal notice or advertisement shall be published in a daily, tri-weekly, a semi-weekly or a weekly newspaper of general circulation that can be obtained by single copy and that is entered under the second class postage privilege in the county in which the notice or advertisement is required to be published; which newspaper, if published tri-weekly, semi-weekly or weekly, shall have been so published in the county continuously and uninterrupted during the period of at least twenty-six consecutive weeks next prior to the first issue thereof containing any such notice or advertisement, and which newspaper, if published daily, shall have been so published in the county uninterrupted and continuously during the period of at least six months next prior to the first issue thereof containing any such notice or advertisement; provided that the mere change in the name of any newspaper or the removal of the principal business office or seat of publication of any newspaper from one place to another in the same county shall not break or affect the continuity in the publication of any such newspaper if the newspaper is in fact continuously and uninterrupted printed and published within the county as provided in this section; provided further that a newspaper shall not lose its rights as a legal publication if it fails to publish one or more of its issues by reason of fire, flood, accident, transportation embargo or tie-up or other casualty beyond the control of the publisher; provided further that any legal notice which fails of publication for the required number of insertions by reasons beyond the control of the publisher shall not be declared illegal if the publication has been made in one issue of the publication; and provided further that if in any county in this state there has not been published any newspaper for the prescribed period at the time when any such notice or advertisement is required to be published, the notice or advertisement may be published in any newspaper having a general circulation or published and printed in whole or in part in that county and that can be obtained by single copy in that county.

History: Laws 1937, ch. 167, § 2; 1941 Comp., § 12-202; 1953 Comp., § 10-2-2; 1999, ch. 63, § 1.

14-11-3. [Frequency of newspaper's publication; effect.]

Except as otherwise provided by law in express terms or by necessary implication, daily, weekly, semiweekly and triweekly newspapers shall all be equally competent as media for the publication of all legal notices and advertisements.

History: Laws 1937, ch. 167, § 4; 1941 Comp., § 12-203; 1953 Comp., § 10-2-3.

14-11-4. Proof of publication.

Proof of the publication of any such legal notice or advertisement may be made by the affidavit of the printer, business manager, editor, publisher or proprietor of the newspaper in which the publication is made, or by any other competent person who has personal knowledge of the essential facts, which affidavit, in addition to the other

matters required by law to be set forth therein, shall state that such notice or advertisement was published in a newspaper duly qualified for that purpose within the meaning of this act [14-11-1 to 14-11-4, 14-11-7, 14-11-8 NMSA 1978], and that payment therefore has been made or assessed as court costs.

History: Laws 1937, ch. 167, § 3; 1941 Comp., § 12-204; 1953 Comp., § 10-2-4.

14-11-5. [Affidavit of proof; contents.]

Proof of the publication of any notice required by law to be published shall be made by the publisher, editor or business manager of the newspaper in which said notice is published, making an affidavit, which affidavit shall recite the name of the newspaper in which said notice is published and the date or dates upon which said publication is made; there shall also be attached to said affidavit a copy of the notice as published, which copy when so attached to said affidavit shall be taken and considered as part of the affidavit of publication.

History: Laws 1931, ch. 120, § 1; 1941 Comp., § 12-205; 1953 Comp., § 10-2-5.

14-11-6. [Filing affidavit of publication; evidential value.]

Any officer, board, commission or party to any legal proceeding required to publish any notice required by law shall obtain and file in his or its office, or with the clerk of the court in which any suit or legal proceeding is pending, as the case may require, the affidavit of publication referred to in Section one [14-11-5 NMSA 1978] hereof. Such affidavit so filed shall be prima facie evidence of the facts therein stated as to such publication.

History: Laws 1931, ch. 120, § 2; 1941 Comp., § 12-206; 1953 Comp., § 10-2-6.

14-11-7. Rates for legal notice or advertisement; costs.

For publication of all legal notices or advertisements that a governmental entity is required by law or the order of any court of record in this state to publish in newspapers, the publishers shall be paid a reasonable rate, to be set by rule or regulation of the secretary of general services. Changes in economic conditions within the newspaper industry, the general economy and inflation shall be considered in determining a reasonable rate.

The clerk of any court in the state or any public trustee, county treasurer or other public officer required by law to publish legal notices or advertisements shall tax the cost of publishing notices or advertisements, as prescribed in this section, as part of the costs of the cause or proceeding and shall collect for publication before the cause or proceeding is closed and shall remit to the publisher the proper cost of the legal notices or advertisements.

History: Laws 1937, ch. 167, § 5; 1941 Comp., § 12-207; Laws 1947, ch. 188, § 1; 1953 Comp., § 10-2-7; Laws 1957, ch. 103, § 1; 1965, ch. 62, § 1; 1975, ch. 238, § 1; 1980, ch. 149, § 1; 1981, ch. 202, § 1; 1991, ch. 207, § 1; 1993, ch. 35, § 1.

14-11-8. [Violation of legal publication law; penalty.]

Violation of any of the foregoing provisions [14-11-1 to 14-11-4, 14-11-7 NMSA 1978] shall be deemed a misdemeanor and upon conviction thereof, such violator or violators shall be punished by a fine of not less than \$100, nor more than \$500.

History: Laws 1937, ch. 167, § 6; 1941 Comp., § 12-208; 1953 Comp., § 10-2-8.

14-11-9. [Legal publications by county, municipality or school district; payment.]

All publications required to be made by any county or incorporated city, town or village, or by any board of education or school directors, or by any officer thereof, shall be paid for out of the general fund of such county, city, town or village. Provided: that the cost of such publications pertaining to school matters shall be paid out of school funds.

History: Laws 1912, ch. 49, § 10; Code 1915, § 4652; C.S. 1929, § 113-108; 1941 Comp., § 12-209; 1953 Comp., § 10-2-9.

14-11-10. Litigation; publication of notice; posting.

Except as provided in the [Uniform] Probate Code [Chapter 45 NMSA 1978], all legal notices in connection with suits in the district courts, including notices of sale of property under any writ of execution, judgment, decree or other process issued out of the district court, and any notice of sale of personal property by virtue of any security interest, except as provided by the Uniform Commercial Code [Chapter 55 NMSA 1978], where the amount involved, including interest and costs, exceeds three hundred dollars (\$300), shall be published in the English language in some newspaper of general circulation published in the county where such publication is required to be made, once each week for four consecutive weeks. If such publication shall be the notice of the pendency of a suit in the district court, the last insertion shall be at least twenty days before the date on or before which the defendant is notified to appear. In all other cases, the last insertion shall be at least three days before the date fixed in such notice for the taking of the action concerning which the publication is made. In case there be no newspaper published in the county where such publication is required, then publication shall be made by posting notice in at least six conspicuous places within the county for and during the period of time specified in the case of newspaper publications.

History: Laws 1931, ch. 150, § 1; 1937, ch. 113, § 1; 1941 Comp., § 12-210; 1953 Comp., § 10-2-10; Laws 1961, ch. 96, § 11-101; 1978, ch. 159, § 1.

14-11-10.1. Legal notices; simple description also required.

In order to allow the general public to determine the location of real property being described in a legal notice, all legal notices containing a legal description of real property shall also contain a simple description of the real property in commonly used terms sufficient to indicate its location in relation to roads, towns, streets, neighborhoods, or other fixed objects.

History: 1978 Comp., § 14-11-10.1, enacted by Laws 1987, ch. 28, § 1.

14-11-10.2. Electronic posting of legal notices.

A. Legal notices and advertisements of a state agency shall be posted on the state agency's web site. If a county, municipality, board of education or other political subdivision of the state has a web site, it shall post its legal notices and advertisements on its web site. Electronic posting is not a substitute for required publication of legal notices and advertisements, and failure to electronically post shall not constitute grounds to challenge, void, set aside or otherwise delay a proceeding properly noticed and advertised pursuant to nonelectronic notice requirements.

B. Electronically posted legal notices and advertisements shall be indexed in such a way that the general public is able to easily find a particular legal notice or advertisement by subject.

History: Laws 2003, ch. 186, § 1.

14-11-11. [County and municipal boards and officers; publication of proceedings; language requirements.]

All publications of proceedings of boards of county commissioners, city and town councils, boards of trustees, boards of education or school directors and of all other officers of any county, municipality, district or other subdivision of the state, which are required by law to be made shall be published once only. In all counties, cities or towns, in which the publication [population] is not less than seventy-five percent English speaking, the publication of such notices in English shall be sufficient; that in all counties, cities and towns, in which the population is not less than seventy-five percent Spanish speaking, the publication of such notices in the Spanish language shall be sufficient; that in all counties, cities and towns, in which the publication [population] using either language is between twenty-five percent and seventy-five percent of the whole, such notices shall be published in both English and Spanish, provided, there be legal newspapers published in both languages in the county, city or town, by different publishers, otherwise, publication in either language shall be sufficient. And, provided further, that in case of question, or disagreement, as to the percentage of the population of any county, city or town, using either language, the district judge of the judicial district of which such county, city or town, is a part, shall determine such percentage upon such

information as he may have, without special investigation in the matter, and his opinion and determination thereon shall be conclusive.

History: Laws 1912, ch. 49, § 6; Code 1915, § 4648; Laws 1919, ch. 72, § 1; 1923, ch. 148, § 1431; C.S. 1929, § 113-104; 1941 Comp., § 12-212; 1953 Comp., § 10-2-11.

14-11-12. [Publication in lieu of posting.]

All legal process against nonresidents, unknown or absent parties, notices of sale of real estate under foreclosure of mortgages or executions, trespass warnings and other documents, the publication of which is required by law to be made by posting written or printed notices in public places, may be published instead of being pasted up, in English and Spanish, in some newspaper published in the county, if there be one, if not, then in some newspaper published in some other county of the state for the same length of time it may be required to be posted, and when so published it shall not be necessary to post such notices in public places: provided, that the person who may have to pay for such publication shall have the right to designate the newspaper in which the same may be published: and provided, further, that no newspaper shall be allowed to charge more than the price fixed by law to be charged for legal advertisements.

History: Laws 1891, ch. 46, § 1; C.L. 1897, § 3114a; Code 1915, § 2197; C.S. 1929, § 46-108; 1941 Comp., § 12-213; 1953 Comp., § 10-2-12.

14-11-13. Official Spanish newspapers.

For the purpose of publishing legal notices in Spanish as required by law for any agencies of the state, the *Santa Rosa News* published at Santa Rosa, the *Santa Fe New Mexican* and the *Santa Fe News*, both published at Santa Fe, *El Hispano* and *El Semanario de Nuevo Mexico*, both published at Albuquerque, the *Alpha News* published at Las Vegas, the *Rio Grande Sun* published at Espanola, the *Taos News* published at Taos, the *Camino Real* published at Santa Fe and *Mas New Mexico* published at Santa Fe and Albuquerque are recognized as official Spanish language newspapers of this state.

History: 1953 Comp., § 10-2-13, enacted by Laws 1965, ch. 254, § 1; 1967, ch. 114, § 1; 1978 Comp., § 14-11-13; 2009, ch. 77, § 1; 2011, ch. 43, § 1; 2023, ch. 187, § 1.

ARTICLE 12

Notaries Public (Repealed.)

14-12-1 to 14-12-20. Repealed.

ARTICLE 12A

Notary Public (Repealed.)

14-12A-1. Repealed.

History: Laws 2003, ch. 286, § 1; repealed by Laws 2021, ch. 21, § 36.

14-12A-2. Repealed.

History: Laws 2003, ch. 286, § 2; repealed by Laws 2021, ch. 21, § 36.

14-12A-3. Repealed.

History: Laws 2003, ch. 286, § 3; repealed by Laws 2021, ch. 21, § 36.

14-12A-4. Repealed.

History: Laws 2003, ch. 286, § 4; repealed by Laws 2021, ch. 21, § 36.

14-12A-5. Repealed.

History: Laws 2003, ch. 286, § 5; repealed by Laws 2021, ch. 21, § 36.

14-12A-6. Repealed.

History: Laws 2003, ch. 286, § 6; repealed by Laws 2021, ch. 21, § 36.

14-12A-7. Repealed.

History: Laws 2003, ch. 286, § 7; repealed by Laws 2021, ch. 21, § 36.

14-12A-8. Repealed.

History: Laws 2003, ch. 286, § 8; repealed by Laws 2021, ch. 21, § 36.

14-12A-9. Repealed.

History: Laws 2003, ch. 286, § 9; repealed by Laws 2021, ch. 21, § 36.

14-12A-10. Repealed.

History: Laws 2003, ch. 286, § 10; repealed by Laws 2021, ch. 21, § 36.

14-12A-11. Repealed.

History: Laws 2003, ch. 286, § 11; repealed by Laws 2021, ch. 21, § 36.

14-12A-12. Repealed.

History: Laws 2003, ch. 286, § 12; repealed by Laws 2021, ch. 21, § 36.

14-12A-13. Repealed.

History: Laws 2003, ch. 286, § 13; repealed by Laws 2021, ch. 21, § 36.

14-12A-14. Repealed.

History: Laws 2003, ch. 286, § 14; repealed by Laws 2021, ch. 21, § 36.

14-12A-15. Repealed.

History: Laws 2003, ch. 286, § 15; repealed by Laws 2021, ch. 21, § 36.

14-12A-16. Repealed.

History: Laws 2003, ch. 286, § 16; repealed by Laws 2021, ch. 21, § 36.

14-12A-17. Repealed.

History: Laws 2003, ch. 286, § 17; repealed by Laws 2021, ch. 21, § 36.

14-12A-18. Repealed.

History: Laws 2003, ch. 286, § 18; repealed by Laws 2021, ch. 21, § 36.

14-12A-19. Repealed.

History: Laws 2003, ch. 286, § 19; repealed by Laws 2021, ch. 21, § 36.

14-12A-20. Repealed.

History: Laws 2003, ch. 286, § 20; repealed by Laws 2021, ch. 21, § 36.

14-12A-21. Repealed.

History: Laws 2003, ch. 286, § 21; repealed by Laws 2021, ch. 21, § 36.

14-12A-22. Repealed.

History: Laws 2003, ch. 286, § 22; repealed by Laws 2021, ch. 21, § 36.

14-12A-23. Repealed.

History: Laws 2003, ch. 286, § 23; repealed by Laws 2021, ch. 21, § 36.

14-12A-24. Repealed.

History: Laws 2003, ch. 286, § 24; repealed by Laws 2021, ch. 21, § 36.

14-12A-25. Repealed.

History: Laws 2003, ch. 286, § 25; repealed by Laws 2021, ch. 21, § 36.

14-12A-26. Repealed.

History: Laws 2003, ch. 286, § 26; repealed by Laws 2021, ch. 21, § 36.

ARTICLE 13

Acknowledgments and Oaths

14-13-1. [Administration of oath.]

Whenever any person shall be required to take an oath before he enters upon the discharge of any office, place or business, or on any lawful occasion, any person administering the oath shall do so in the following form, viz: the person swearing shall, with his right hand uplifted, follow the words required in the oath as administered, beginning: I do solemnly swear, and closing: so help me God.

History: Laws 1893, ch. 42, § 1; C.L. 1897, § 2559; Code 1915, § 3933; C.S. 1929, § 94-110; 1941 Comp., § 46-101; 1953 Comp., § 43-1-1.

14-13-2. [Administration of affirmation in lieu of oath.]

Whenever any person is required to take or subscribe an oath and shall have conscientious scruples against taking the same, he shall be permitted, instead of such oath, to make a solemn affirmation, with uplifted right hand, in the following form, viz: you do solemnly, sincerely and truly declare and affirm, and close with: and this I do under the pains and penalties of perjury, which affirmation shall be equally valid as if such person had taken an oath in the usual form; and every person guilty of falsely, willfully or corruptly declaring as aforesaid, shall be liable to punishment for the same as for perjury.

History: Laws 1893, ch. 42, § 2; C.L. 1897, § 2560; Code 1915, § 3934; C.S. 1929, § 94-111; 1941 Comp., § 46-102; 1953 Comp., § 43-1-2.

14-13-3. Oaths; power to administer.

The secretary of state, county clerks, court clerks and all notarial officers are hereby authorized and empowered to administer oaths and affirmations within the state.

History: Laws 1882, ch. 28, § 1; C.L. 1884, § 1742; C.L. 1897, § 2558; Code 1915, § 3932; Laws 1929, ch. 78, § 1; C.S. 1929, § 94-109; 1941 Comp., § 46-103; 1953 Comp., § 43-1-3; Laws 1977, ch. 98, § 1; 1978 Comp. § 14-13-3; 2023, ch. 110, § 1.

14-13-4 to 14-13-10. Repealed.

14-13-11. Wage and salary assignments.

A. All assignments of wages or salaries due or to become due to any person, in order to be valid, shall be acknowledged by the party making the assignment before a notary public or other officer authorized to take acknowledgments. The assignment shall be recorded in the office of the county clerk of the county in which the money is to be paid and a copy served upon the employer or person who is to make payment.

B. Any assignment of wages or salary is void if it provides for an assignment of more than twenty-five percent of the assignor's disposable earnings for any pay period. As used in this section, "disposable earnings" means that part of the assignor's wage or salary remaining after deducting the amounts which are required by law to be withheld.

History: Laws 1929, ch. 128, § 1; C.S. 1929, § 8-101; 1941 Comp., § 46-111; 1953 Comp., § 43-1-12; Laws 1971, ch. 172, § 1.

14-13-12. [Instrument needs no acknowledgment in absence of statutory requirement.]

An acknowledgment of an instrument of writing shall not be necessary to its execution unless expressly so provided by statute.

History: Laws 1901, ch. 62, § 17; Code 1915, § 1; C.S. 1929, § 1-101; 1941 Comp., § 46-112; 1953 Comp., § 43-1-13.

14-13-13. [Validation of former acknowledgments; 1951 act.]

All acknowledgments taken outside the state of New Mexico prior to the passage and approval of this act [this section], before any officer authorized by the laws of this state to take such acknowledgments, under the seal of such officer, and all acknowledgments taken within this state before the passage and approval of this act, before any officer authorized by law to take acknowledgments, notwithstanding any defect in the form of a certificate of acknowledgment or the failure to show the date of the expiration of the commission of the officer before whom such acknowledgment was

taken or the failure to show that the seal of said officer was affixed to the instrument acknowledged and/or notwithstanding the failure of such acknowledgment to comply with the provisions of Section 14-13-10 NMSA 1978, if the marital status of any married woman uniting with her husband in the execution of any instrument may otherwise appear from the body of the instrument so acknowledged, and the record thereof in the office of the county clerk, are hereby confirmed and made valid to the extent as though said certificate of acknowledgment and the record thereof had been in the form prescribed by law.

History: 1941 Comp., § 46-114, enacted by Laws 1951, ch. 14, § 1; 1953 Comp., § 43-1-14.

14-13-14. [Validation of former acknowledgments; 1957 act.]

All acknowledgments taken outside the state of New Mexico prior to the passage and approval of this act [this section], before any officer authorized by the laws of this state to take such acknowledgments, under the seal of such officer, and all acknowledgments taken within this state before the passage and approval of this act, before any officer authorized by law to take acknowledgments, notwithstanding any defect in the form of a certificate of acknowledgment or the failure to show the date of the expiration of the commission of the officer before whom such acknowledgment was taken or the failure to show that the seal of said officer was affixed to the instrument acknowledged and/or notwithstanding the failure of such acknowledgment to comply with the provisions of Section 14-13-10 NMSA 1978, if the marital status of any married woman uniting with her husband in the execution of any instrument may otherwise appear from the body of the instrument so acknowledged, and the record thereof in the office of the county clerk, are hereby confirmed and made valid to the extent as though said certificate of acknowledgment and the record thereof has been in the form prescribed by law.

History: 1953 Comp., § 43-1-14.1, enacted by Laws 1957, ch. 110, § 1.

14-13-15. [Validation of former acknowledgments; 1965 act.]

All acknowledgments taken outside the state of New Mexico prior to the passage and approval of this act [this section], before any officer authorized by the laws of this state to take such acknowledgments, under the seal of such officer, and all acknowledgments taken within this state before the passage and approval of this act, before any officer authorized by law to take acknowledgments, notwithstanding any defect in the form of a certificate of acknowledgment or the failure to show the date of the expiration of the commission of the officer before whom such acknowledgment was taken or the failure to show that the seal of said officer was affixed to the instrument acknowledged and/or notwithstanding the failure of such acknowledgment to comply with the provisions of Section 14-13-10 NMSA 1978, if the marital status of any married woman uniting with her husband in the execution of any instrument may otherwise appear from the body of the instrument so acknowledged, and the record thereof in the

office of the county clerk, are hereby confirmed and made valid to the extent as though said certificate of acknowledgment and the record thereof has been in the form prescribed by law.

History: 1953 Comp., § 43-1-14.2, enacted by Laws 1965, ch. 186, § 1.

14-13-16. Validation of former acknowledgments; 1967 act.

All acknowledgments taken outside the state of New Mexico prior to the passage and approval of this act [this section], before any officer authorized by the laws of this state to take such acknowledgments, under the seal of such officer, and all acknowledgments taken within this state before the passage and approval of this act, before any officer authorized by law to take acknowledgments, notwithstanding any defect in the form of a certificate of acknowledgment or the failure to show the date of the expiration of the commission of the officer before whom such acknowledgment was taken or the failure to show that the seal of said officer was affixed to the instrument acknowledged and/or notwithstanding the failure of such acknowledgment to comply with the provisions of Section 14-13-10 NMSA 1978, if the marital status of any married woman uniting with her husband in the execution of any instrument may otherwise appear from the body of the instrument so acknowledged, and the record thereof in the office of the county clerk, are hereby confirmed and made valid to the extent as though said certificate of acknowledgment and the record thereof has been in the form prescribed by law.

History: 1953 Comp., § 43-1-14.3, enacted by Laws 1967, ch. 80, § 1.

14-13-17. Validation of former acknowledgments; 1971 act.

All acknowledgments taken outside the state of New Mexico prior to the passage and approval of this act [this section], before any officer authorized by the laws of this state to take such acknowledgments, under the seal of such officer, and all acknowledgments taken within this state before the passage and approval of this act, before any officer authorized by law to take acknowledgments, notwithstanding any defect in the form of a certificate of acknowledgment or the failure to show the date of the expiration of the commission of the officer before whom such acknowledgment was taken or the failure to show that the seal of said officer was affixed to the instrument acknowledged and/or notwithstanding the failure of such acknowledgment to comply with the provisions of Section 14-13-10 NMSA 1978, if the marital status of any married woman uniting with her husband in the execution of any instrument may otherwise appear from the body of the instrument so acknowledged, and the record thereof in the office of the county clerk, are hereby confirmed and made valid to the extent as though said certificate of acknowledgment and the record thereof has been in the form prescribed by law.

History: 1953 Comp., § 43-1-14.4, enacted by Laws 1971, ch. 165, § 1.

14-13-18. Validation of former acknowledgments; 1975 act.

All acknowledgments taken outside the state of New Mexico prior to the passage and approval of this act [this section], before any officer authorized by the laws of this state to take such acknowledgments, under the seal of such officer, and all acknowledgments taken within this state before the passage and approval of this act, before any officer authorized by law to take acknowledgments, notwithstanding any defect in the form of a certificate of acknowledgment or the failure to show the date of the expiration of the commission of the officer before whom such acknowledgment was taken or the failure to show that the seal of said officer was affixed to the instrument acknowledged and/or notwithstanding the failure of such acknowledgment to comply with the provisions of Section 14-13-10 NMSA 1978, if the marital status of any married woman uniting with her husband in the execution of any instrument may otherwise appear from the body of the instrument so acknowledged, and the record thereof in the office of the county clerk, are hereby confirmed and made valid to the extent as though said certificate of acknowledgment and the record thereof has been in the form prescribed by law.

History: 1953 Comp., § 43-1-14.5, enacted by Laws 1975, ch. 198, § 1.

14-13-19 to 14-13-23. Repealed.

14-13-24. [Validation of certain prior acknowledgments.]

All acknowledgments taken outside the state of New Mexico prior to the passage and approval of this act [this section], before any officer authorized by either the laws of the jurisdiction where taken or the laws of this state to take such acknowledgments, and all acknowledgments taken within this state before the passage and approval of this act, before any officer authorized by law to take acknowledgments, notwithstanding the form of the certificate of acknowledgment or the failure to show the date of the expiration of the commission of the officer before whom such acknowledgment [acknowledgment] was taken or the failure to show that the seal of said officer was affixed to the instrument acknowledged and/or notwithstanding the failure of such acknowledgment to comply with the provisions of Section 14-13-10 NMSA 1978, if the marital status of any married woman uniting with her husband in the execution of any instrument may otherwise appear from the body of the instrument so acknowledged, and the record thereof in the office of the county clerk, are hereby confirmed and made valid to the extent as though said certificate of acknowledgment and the record thereof has been in the form prescribed by law.

History: Laws 1981, ch. 212, § 3.

14-13-25. Validation of certain prior acknowledgments.

All acknowledgments taken outside the state before any officer authorized by either the laws of the jurisdiction where taken or the laws of this state to take such

acknowledgments, and all acknowledgments taken within this state before any officer authorized by law to take acknowledgments, that have been filed and are of record in the appropriate office as provided by law for a period of ten years or more without challenge to the form or content of the acknowledgment, are considered valid, notwithstanding the form of the certificate of acknowledgment or the failure to show the date of the expiration of the commission of the officer before whom the acknowledgment was taken or the failure to show that the seal of the officer was affixed to the instrument acknowledged, and notwithstanding the failure of the acknowledgment to comply with the provisions of Section 14-13-10 NMSA 1978 if the marital status of any married woman uniting with her husband in the execution of any instrument may otherwise appear from the body of the instrument so acknowledged, and the record thereof in the office of the county clerk, are hereby confirmed and made valid to the extent as though the certificate of acknowledgment and the record thereof had been in the form prescribed by law.

History: Laws 1991, ch. 92, § 1.

ARTICLE 14

Uniform Law on Notarial Acts (Repealed.)

14-14-1. Repealed.

History: Laws 1993, ch. 281, § 1; repealed by Laws 2021, ch. 21, § 36.

14-14-2. Repealed.

History: Laws 1993, ch. 281, § 2; repealed by Laws 2021, ch. 21, § 36.

14-14-3. Repealed.

History: Laws 1993, ch. 281, § 3; repealed by Laws 2021, ch. 21, § 36.

14-14-4. Repealed.

History: Laws 1993, ch. 281, § 4; repealed by Laws 2021, ch. 21, § 36.

14-14-5. Repealed.

History: Laws 1993, ch. 281, § 5; repealed by Laws 2021, ch. 21, § 36.

14-14-6. Repealed.

History: Laws 1993, ch. 281, § 6; repealed by Laws 2021, ch. 21, § 36.

14-14-7. Repealed.

History: Laws 1993, ch. 281, § 7; repealed by Laws 2021, ch. 21, § 36.

14-14-8. Repealed.

History: Laws 1993, ch. 281, § 8; repealed by Laws 2021, ch. 21, § 36.

14-14-9. Repealed.

History: Laws 1993, ch. 281, § 9; repealed by Laws 2021, ch. 21, § 36.

14-14-10. Repealed.

History: Laws 1993, ch. 281, § 10; repealed by Laws 2021, ch. 21, § 36.

14-14-11. Repealed.

History: Laws 1993, ch. 281, § 11; repealed by Laws 2021, ch. 21, § 36.

ARTICLE 14A

Revised Uniform Law on Notarial Acts

14-14A-1. Short title.

Chapter 14, Article 14A NMSA 1978 may be cited as the "Revised Uniform Law on Notarial Acts".

History: Laws 2021, ch. 21, § 1; 2023, ch. 110, § 2.

14-14A-2. Definitions.

In addition to the general definitions provided in Section 12-2A-3 NMSA 1978 of the Uniform Statute and Rule Construction Act [12-2A-1 to 12-2A-20 NMSA 1978], as used in the Revised Uniform Law on Notarial Acts:

A. "acknowledgment" means a declaration by an individual before a notarial officer that:

- (1) the individual has signed a record for the purpose stated in the record; and
- (2) if the record is signed in a representative capacity, the individual signed the record with proper authority and signed it as the act of the individual or entity identified in the record;

B. "automatic notarial officer" means any of the following who has registered an official stamp with the secretary of state:

(1) a judicial officer;

(2) the secretary of state or a full-time staff member of the secretary of state's office while performing a notarial act within the scope of the secretary of state's or staff member's duties;

(3) a county clerk or deputy county clerk while performing a notarial act within the scope of the county clerk's or deputy county clerk's duties; and

(4) an individual who is a member of the state bar of New Mexico and licensed to practice law;

C. "electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities;

D. "electronic signature" means an electronic symbol, sound or process attached to or logically associated with a record and executed or adopted by an individual with the intent to sign the record;

E. "foreign state" means a government other than the United States, a state or a federally recognized Indian tribe;

F. "in a representative capacity" means acting as:

(1) an authorized officer, agent, partner, trustee or other representative for a person other than an individual;

(2) a public officer, personal representative, guardian or other representative, in the capacity stated in a record;

(3) an agent or attorney-in-fact for a principal; or

(4) an authorized representative of another in any other capacity;

G. "judicial officer" means:

(1) a judge of a state court of this state;

(2) a special commissioner or hearing officer appointed pursuant to supreme court rule and employed by a state court;

(3) a special master appointed pursuant to supreme court rule or state statute; and

(4) a court clerk or deputy court clerk of a state court of this state;

H. "licensed to practice law" means a person who is a member of the state bar of New Mexico and, based on such membership, is authorized to practice law before the courts of this state;

I. "notarial act" means an act, whether performed with respect to a tangible or electronic record, that a notarial officer may perform under the law of this state. The term includes taking an acknowledgment, administering an oath or affirmation, taking a verification on oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy and noting a protest of a negotiable instrument, but does not apply to any act that would otherwise be a notarial act if:

(1) the act is performed by a judicial officer within the scope of the judicial officer's duties; and

(2) the record is filed in the court of the judicial officer;

J. "notarial officer" means:

(1) an automatic notarial officer; and

(2) a notary public;

K. "notary public" means an individual commissioned by the secretary of state to be a notary public and authorized by such commission to perform notarial acts pursuant to the Revised Uniform Law on Notarial Acts;

L. "official notary seal" means the great seal of the state of New Mexico, unless the secretary of state has adopted a seal specific for use by notarial officers; provided that as applied to automatic notarial officers, "official notary seal" includes as an option:

(1) for judicial officers, the seal of the court, if the supreme court has approved a seal for such court and the seal has been filed with the secretary of state;

(2) for the secretary of state or a full-time staff member of the secretary of state's office, the seal of the secretary of state, if the secretary of state has approved a seal and the seal has been filed with the secretary of state;

(3) for county clerks or deputy county clerks, the seal of the county, if the board of county commissioners has approved a seal for the county and the seal has been filed with the secretary of state; and

(4) for a person who is licensed to practice law and who is not performing a notarial act pursuant to Paragraphs (1) through (3) of this subsection, a seal approved

by the state bar of New Mexico for such purpose and the seal has been filed with the secretary of state;

M. "official stamp" means a physical image affixed to or embossed on a tangible record or an electronic image attached to or logically associated with an electronic record and includes an official notary seal;

N. "person" also includes a statutory trust, public corporation, government or governmental subdivision, agency or instrumentality;

O. "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

P. "sign" or "subscribe", when used with present intent to authenticate or adopt a record, means to:

(1) execute or adopt a tangible symbol; or

(2) attach to or logically associate with the record an electronic symbol, sound or process;

Q. "signature" means a tangible symbol or an electronic signature that evidences the signing of a record;

R. "stamping device" means:

(1) a physical device capable of affixing to or embossing on a tangible record an official stamp; or

(2) an electronic device or process capable of attaching to or logically associating with an electronic record an official stamp; and

S. "verification on oath or affirmation" means a declaration, made by an individual on oath or affirmation before a notarial officer, that a statement in a record is true.

History: Laws 2021, ch. 21, § 2; 2023, ch. 110, § 3.

14-14A-3. Authority to perform notarial act.

A. A notarial officer shall perform all notarial acts pursuant to the Revised Uniform Law on Notarial Acts or by law of this state other than the Revised Uniform Law on Notarial Acts.

B. A notarial officer shall not perform a notarial act with respect to a record to which the officer or the officer's spouse or domestic partner is a party or in which either of

them has a direct beneficial interest. A notarial act performed in violation of this subsection is voidable.

C. A notarial officer may certify that a tangible copy of an electronic record is an accurate copy of the electronic record.

History: Laws 2021, ch. 21, § 3; 2023, ch. 110, § 4.

14-14A-4. Requirements for certain notarial acts.

A. A notarial officer who takes an acknowledgment of a record shall determine, from personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before the officer and making the acknowledgment has the identity claimed and that the signature on the record is the signature of the individual.

B. A notarial officer who takes a verification of a statement on oath or affirmation shall determine, from personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before the officer and making the verification has the identity claimed and that the signature on the statement verified is the signature of the individual.

C. A notarial officer who witnesses or attests to a signature shall determine, from personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before the officer and signing the record has the identity claimed.

D. A notarial officer who certifies or attests a copy of a record or an item that was copied shall determine that the copy is a full, true and accurate transcription or reproduction of the record or item.

E. A notarial officer who makes or notes a protest of a negotiable instrument shall determine the matters set forth in Subsection B of Section 55-3-505 NMSA 1978.

History: Laws 2021, ch. 21, § 4.

14-14A-5. Personal appearance required; exception authorized for remote notarizations.

A. If a notarial act relates to a statement made in or a signature executed on a record, the individual making the statement or executing the signature shall appear personally before the notarial officer.

B. A remotely located individual may comply with this section or with any other requirement of the laws of this state that state that a person appear before a notarial officer at the time of a notarial act by using communication technology to appear before a notarial officer.

C. A notarial officer located in this state may perform a notarial act using communication technology for a remotely located individual if:

(1) the notarial officer:

(a) has personal knowledge of the identity of the individual pursuant to Subsection A of Section 14-14A-6 NMSA 1978;

(b) has taken the required class and has satisfactory evidence of the identity of the remotely located individual by oath or affirmation from a credible witness appearing before the notary public pursuant to Subsection B of Section 14-14A-6 NMSA 1978 or this section; or

(c) has obtained satisfactory evidence of the identity of the remotely located individual by using at least two different types of identity proofing;

(2) the notarial officer is able to reasonably confirm that a record before the notarial officer is the same record in which the remotely located individual made a statement or on which the individual executed a signature;

(3) the notarial officer, or a person acting on behalf of the notarial officer, creates an audiovisual recording of the performance of the notarial act; and

(4) for a remotely located individual located outside the United States:

(a) the record: 1) is to be filed with or relates to a matter before a public official or court, governmental entity or other entity subject to the jurisdiction of the United States; or 2) involves property located in the territorial jurisdiction of the United States or involves a transaction substantially connected with the United States;

(b) the notarial act is deemed to be performed in this state and therefore does not require an apostille in the form otherwise prescribed by the Hague Convention of October 5, 1961; and

(c) the act of making the statement or signing the record is not prohibited by the foreign state in which the remotely located individual is located.

D. If a notarial act is performed pursuant to this section, the certificate of notarial act required by Section 14-14A-15 NMSA 1978 and the short-form certificate provided in Section 14-14A-15 NMSA 1978 shall indicate that the notarial act was performed using communication technology.

E. A short-form certificate provided pursuant to Section 14-14A-15 NMSA 1978 for a notarial act subject to this section is sufficient if it:

(1) complies with rules adopted under Paragraph (1) of Subsection H of this section; or

(2) is in the form provided in Section 14-14A-15 NMSA 1978 and contains a statement substantially as follows: "This notarial act involved the use of communication technology."

F. A notarial officer, a guardian, a conservator or an agent of a notarial officer or a personal representative of a deceased notarial officer shall retain the audiovisual recording created pursuant to Paragraph (3) of Subsection C of this section or cause the recording to be retained by a repository designated by or on behalf of the person required to retain the recording. Unless a different period is required by rule adopted pursuant to Paragraph (4) of Subsection H of this section, the recording must be retained for a period of at least ten years after the recording is made.

G. Before a notarial officer performs the notarial officer's initial notarial act with a remotely located individual under this section, the notarial officer shall notify the secretary of state that the notarial officer will be performing notarial acts with respect to remotely located individuals and identify the technologies the notarial officer intends to use. If the secretary of state has established standards pursuant to Subsection H of this section and Section 14-14A-26 NMSA 1978 for approval of communication technology or identity proofing, the communication technology and identity proofing shall conform to the standards.

H. In addition to adopting rules pursuant to Section 14-14A-26 NMSA 1978, the secretary of state may adopt rules under this section regarding performance of a notarial act. The rules may:

(1) prescribe the means of performing a notarial act involving a remotely located individual using communication technology;

(2) establish standards for communication technology and identity proofing;

(3) establish requirements or procedures to approve providers of communication technology and the process of identity proofing; and

(4) establish standards and a period for the retention of an audiovisual recording created pursuant to Paragraph (3) of Subsection C of this section.

I. Before adopting, amending or repealing a rule governing performance of a notarial act with respect to a remotely located individual, the secretary of state shall consider:

(1) the most recent standards regarding the performance of a notarial act with respect to a remotely located individual promulgated by national standard-setting

organizations and the recommendations of the national association of secretaries of state;

(2) standards, practices and customs of other jurisdictions that have laws substantially similar to this section; and

(3) input from governmental officials and entities and other interested persons.

J. By allowing its communication technology or identity proofing to facilitate a notarial act for a remotely located individual or by providing storage of the audiovisual recording created pursuant to Paragraph (3) of Subsection C of this section, the provider of the communication technology, identity proofing or storage appoints the secretary of state as the provider's agent for service of process in a civil action in this state related to the notarial act.

K. As used in this section:

(1) "communication technology" means an electronic device or process that:

(a) allows a notarial officer and a remotely located individual to communicate with each other simultaneously by sight and sound; and

(b) when necessary and consistent with other applicable law, facilitates communication with a remotely located individual who has a vision, hearing or speech impairment;

(2) "identity proofing" means a process or service by which a third person provides a notarial officer with the means to verify the identity of a remotely located individual by a review of personal information from public or private data sources;

(3) "outside the United States" means a location outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands and any territory, insular possession or other location subject to the jurisdiction of the United States; and

(4) "remotely located individual" means an individual who is not in the physical presence of the notarial officer who performs a notarial act under Subsection C of this section.

History: Laws 2021, ch. 21, § 5; 2023, ch. 110, § 5.

14-14A-6. Identification of individual.

A. A notarial officer has personal knowledge of the identity of an individual appearing before the officer if the individual is personally known to the officer through

dealings sufficient to provide reasonable certainty that individual has the identity claimed.

B. A notarial officer has satisfactory evidence of the identity of an individual appearing before the officer if the officer can identify the individual:

(1) by means of:

(a) a passport, driver's license or government-issued nondriver identification card, which is current or expired not more than one year before performance of the notarial act; or

(b) another form of government identification issued to an individual, which is current or expired not more than one year before performance of the notarial act, contains the signature or a photograph of the individual and is satisfactory to the officer; or

(2) by a verification on oath or affirmation of a credible witness personally appearing before the officer, who is unrelated to and unaffected by the document or transaction, and known to the officer and whom the officer can identify on the basis of a passport, driver's license or government-issued nondriver identification card, which is current or expired not more than one year before performance of the notarial act.

C. A notarial officer may require an individual to provide additional information or identification credentials necessary to assure the officer of the identity of the individual.

History: Laws 2021, ch. 21, § 6.

14-14A-7. Authority to refuse to perform notarial acts.

A. A notarial officer may refuse to perform a notarial act if the officer is not satisfied that:

(1) the individual executing the record is competent or has the capacity to execute the record; or

(2) the individual's signature is knowingly and voluntarily made.

B. A notarial officer may refuse to perform a notarial act unless refusal is prohibited by a state or federal law other than the Revised Uniform Law on Notarial Acts.

C. In accordance with the Human Rights Act [Chapter 28, Article 1 NMSA 1978], a notary public or notarial officer shall not discriminate in the refusal to perform or the manner in which a notarial act is performed pursuant to the Revised Uniform Law on Notarial Acts.

History: Laws 2021, ch. 21, § 7; 2023, ch. 110, § 6.

14-14A-8. Signature if individual is unable to sign.

If an individual is physically unable to sign a record, the individual may direct an individual other than the notarial officer to sign the individual's name on the record. The notarial officer shall insert "Signature affixed by (name of other individual) at the direction of (name of individual)" or words of similar import.

History: Laws 2021, ch. 21, § 8.

14-14A-9. Notarial acts in this state.

A. A notarial act may be performed in this state by:

- (1) a notary public of this state; or
- (2) an automatic notarial officer of this state.

B. The signature and title of an individual performing a notarial act in this state are prima facie evidence that the signature is genuine and that the individual holds the designated title.

C. The signature and title of a notarial officer described in Subsection A of this section conclusively establish the authority of the officer to perform the notarial act. An official stamp is required unless a state law specifies that an official stamp is not required for that notarial act.

History: Laws 2021, ch. 21, § 9; 2023, ch. 110, § 7.

14-14A-10. Notarial act in another state.

A. A notarial act performed in another state has the same effect under the law of this state as if performed by a notarial officer of this state if the act performed in that state is performed by a notarial officer or other individual authorized by the law of that state to perform the notarial act.

B. The signature and title of an individual performing a notarial act in another state are prima facie evidence that the signature is genuine and that the individual holds the designated title.

C. The signature and title of a notarial officer described in Subsection A of this section conclusively establish the authority of the officer to perform the notarial act. An official stamp is required unless a state law specifies that an official stamp is not required by that notarial officer or for that notarial act.

History: Laws 2021, ch. 21, § 10; 2023, ch. 110, § 8.

14-14A-11. Notarial act under the authority of a federally recognized Indian nation, tribe or pueblo.

A. A notarial act performed under the authority and in the jurisdiction of a federally recognized Indian nation, tribe or pueblo has the same effect as if performed by a notarial officer of this state if the act performed in the jurisdiction of the nation, tribe or pueblo is performed by a notarial officer or other individual authorized by the written law of the nation, tribe or pueblo to perform the notarial act.

B. The signature and title of an individual performing a notarial act under the authority of and in the jurisdiction of a federally recognized Indian nation, tribe or pueblo are prima facie evidence that the signature is genuine and that the individual holds the designated title.

C. The signature and title of a notarial officer described in Subsection A of this section conclusively establish the authority of the officer to perform the notarial act. An official stamp is required unless the laws of the nation, tribe or pueblo specify that an official stamp is not required by that notarial officer for that notarial act.

History: Laws 2021, ch. 21, § 11; 2023, ch. 110, § 9.

14-14A-12. Notarial act under federal authority.

A. A notarial act performed under federal law has the same effect under the law of this state as if performed by a notarial officer of this state if the act performed under federal law is performed by:

- (1) a judge;
- (2) a court clerk or deputy court clerk;
- (3) an individual in military service or performing duties under the authority of military service who is authorized to perform notarial acts under federal law;
- (4) an individual designated a notarizing officer by the United States department of state for performing notarial acts overseas; or
- (5) any other individual authorized by federal law to perform a specified notarial act.

B. The signature and title of an individual acting under federal authority and performing a notarial act are prima facie evidence that the signature is genuine and that the individual holds the designated title.

C. The signature and title of an officer described in Subsection A of this section conclusively establish the authority of the officer to perform the notarial act. An official stamp is required unless a law specifies that an official stamp is not required by that federal notarial officer or for that notarial act.

History: Laws 2021, ch. 21, § 12; 2023, ch. 110, § 10.

14-14A-13. Foreign notarial acts.

A. If a notarial act is performed under authority and in the jurisdiction of a foreign state or constituent unit of the foreign state or is performed under the authority of a multinational or international governmental organization, the act has the same effect under the law of this state as if performed by a notarial officer of this state.

B. If the title of office and indication of authority to perform notarial acts in a foreign state appears in a digest of foreign law or in a list customarily used as a source for that information, the authority of an officer with that title to perform notarial acts is conclusively established.

C. The signature and official stamp of an individual holding an office described in Subsection B of this section are prima facie evidence that the signature is genuine and the individual holds the designated title. An official stamp is required unless a law of the foreign state specifies that an official stamp is not required by that notarial officer or for that notarial act.

D. An apostille in the form prescribed by the Hague Convention of October 5, 1961 and issued by a foreign state party to the Hague Convention of October 5, 1961 conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the indicated office.

E. A consular authentication issued by an individual designated by the United States department of state as a notarizing officer for performing notarial acts overseas and attached to the record with respect to which the notarial act is performed conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the indicated office.

History: Laws 2021, ch. 21, § 13; 2023, ch. 110, § 11.

14-14A-14. Certificate of notarial act.

A. A notarial act shall be evidenced by a certificate. The certificate shall:

- (1) be executed contemporaneously with the performance of the notarial act;
- (2) be signed and dated by the notarial officer in the same manner as on file with the secretary of state;

- (3) identify the jurisdiction in which the notarial act is performed;
- (4) contain the title of office of the notarial officer;
- (5) if the notarial officer is a notary public, indicate the notary public's commission number and the date of expiration of the notarial officer's commission; and
- (6) if the notarial officer is an automatic notarial officer:
 - (a) identify the judicial district or area served if the notarial officer is a judicial officer;
 - (b) identify the county served if the notarial officer is a county clerk or deputy county clerk; and
 - (c) identify the state bar number if the notarial officer is an attorney but is not performing a notarial act pursuant to Subparagraph (a) or (b) of this paragraph and is not a judge.

B. If a notarial act regarding a tangible record is performed by a notary public, an official stamp shall be affixed to or embossed on the certificate. If a notarial act is performed regarding a tangible record by an automatic notarial officer and the certificate contains the information specified in Paragraphs (2), (3), (4), (5) and (6) of Subsection A of this section, an official stamp shall be affixed to or embossed on the certificate. If a notarial act regarding an electronic record is performed by a notarial officer and the certificate contains the information specified in Paragraphs (2), (3), (4), (5) and (6) of Subsection A of this section, an official stamp shall be attached to or logically associated with the certificate.

C. A certificate of a notarial act is sufficient if it meets the requirements of Subsections A and B of this section and:

- (1) is in a short-form set forth in Section 14-14A-15 NMSA 1978;
- (2) is in a form otherwise permitted by the laws of this state;
- (3) is in a form permitted by law applicable in the jurisdiction in which the notarial act was performed; or
- (4) sets forth the actions of the notarial officer, and the actions are sufficient to meet the requirements of the notarial act as provided in Sections 14-14A-4 through 14-14A-6 NMSA 1978 or law of this state other than the Revised Uniform Law on Notarial Acts.

D. By executing a certificate of a notarial act, a notarial officer certifies that the officer has complied with the requirements and made the determinations specified in Sections 14-14A-4 through 14-14A-6 NMSA 1978.

E. A notarial officer shall not affix the officer's signature to, or logically associate it with, a certificate until after the notarial act has been performed.

F. If a notarial act is performed regarding a tangible record, a certificate shall be part of, or securely attached to, the record. If a notarial act is performed regarding an electronic record, the certificate shall be affixed to, or logically associated with, the electronic record. If the secretary of state has established standards pursuant to Section 14-14A-26 NMSA 1978 for attaching, affixing or logically associating the certificate, the process shall conform to the standards.

History: Laws 2021, ch. 21, § 14; 2023, ch. 110, § 12.

14-14A-15. Short-form certificates.

The following short-form certificates of notarial acts are sufficient for the purposes indicated, if completed with the information required by Subsections A and B of Section 14-14A-14 NMSA 1978:

A. for an acknowledgment in an individual capacity:

State of _____

[County] of _____

This record was acknowledged before me on _____

Date

by _____.

Name(s) of individual(s)

Signature of notarial officer

Stamp

[_____]

Title of office

[New Mexico state bar identification number, judicial district or area, county or notary public commission number and date of commission expiration: _____];

B. for an acknowledgment in a representative capacity:

State of _____

[County] of _____

This record was acknowledged before me on _____ by

Date

Name(s) of individual(s) as (type of authority, such as officer or trustee) of (name of party on behalf of whom record was executed).

Signature of notarial officer

Stamp

[_____]

Title of office

[New Mexico state bar identification number, judicial district or area, county served or notary public commission number and date of commission expiration: _____];

C. for a verification on oath or affirmation:

State of _____

[County] of _____

Signed and sworn to (or affirmed) before me on _____

Date

by _____.

Name(s) of individual(s) making statement

Signature of notarial officer

Stamp

[_____]

Title of office

[New Mexico state bar identification number, judicial district or area, county served or notary public commission number and date of commission expiration: _____];

D. for witnessing or attesting a signature:

State of _____

[County] of _____

Signed (or attested) before me on _____ by

Date

_____.

Name(s) of individual(s)

Signature of notarial officer

Stamp

[_____]

Title of office

[New Mexico state bar identification number, judicial district or area, county served or notary public commission number and date of commission expiration: _____]; and

E. for certifying a copy of a record:

State of _____

[County] of _____

I certify that this is a true and correct copy of a record in the possession of _____.

Dated _____

Signature of notarial officer

Stamp

[_____]

Title of office

[New Mexico state bar identification number, judicial district or area, county served or notary public commission number and date of commission expiration: _____].

History: Laws 2021, ch. 21, § 15; 2023, ch. 110, § 13.

14-14A-16. Official stamp.

The official stamp of a notarial officer shall:

A. include the notarial officer's name, New Mexico state bar identification number if the notary public is licensed to practice law, judicial district or area served if the notarial officer is a judge, court clerk or deputy court clerk, county if the notarial officer is a county clerk or deputy county clerk or notary public commission number and date of commission expiration, the notarial officer's official notary seal and other information required by the secretary of state;

B. be capable of being copied together with the record to which it is affixed or attached or with which it is logically associated; and

C. be filed with the secretary of state before the notarial officer performs the notarial officer's initial notarial act.

History: Laws 2021, ch. 21, § 16; 2023, ch. 110, § 14.

14-14A-17. Stamping device.

A. A notarial officer is responsible for the security of the notarial officer's stamping device and may not allow another individual to use the device to perform a notarial act. On resignation from, or the revocation or expiration of, a notary public's commission, or on the expiration of the date set forth in the stamping device, if any, the notary public

shall disable the stamping device by destroying, defacing, damaging, erasing or securing it against use in a manner that renders it unusable. On the death or adjudication of incompetency of a notarial officer, the notarial officer's personal representative or guardian or any other person knowingly in possession of the stamping device shall render it unusable by destroying, defacing, damaging, erasing or securing it against use in a manner that renders it unusable.

B. If a notarial officer's stamping device is lost or stolen, the notarial officer or the notarial officer's personal representative or guardian shall promptly notify the secretary of state on discovering that the device is lost or stolen.

History: Laws 2021, ch. 21, § 17; 2023, ch. 110, § 15.

14-14A-18. Journal.

A. A notarial officer in this state shall maintain a journal in which the notarial officer chronicles all notarial acts that the notarial officer performs. The notarial officer shall retain the journal for ten years after the performance of the last notarial act chronicled in the journal.

B. A journal may be created on a tangible medium or in an electronic format. A notarial officer performing notarial acts pursuant to Subsection E of this section shall maintain only one journal at a time to chronicle all notarial acts, whether those notarial acts are performed regarding tangible or electronic records; provided that a notarial officer may keep a journal in a tangible medium for tangible records and an electronic journal for electronic records. If the journal is maintained on a tangible medium, it must be a permanent, bound register with numbered pages. If the journal is maintained in an electronic format, it must be in a permanent, tamper-evident electronic format complying with the rules of the secretary of state.

C. An entry in a journal must be made contemporaneously with performance of the notarial act and contain the following information:

- (1) the date and time of the notarial act;
- (2) a description of the record, if any, and type of notarial act;
- (3) the full name and address of each individual for whom the notarial act is performed;
- (4) if identity of the individual is based on personal knowledge, a statement to that effect;
- (5) if identity of the individual is based on satisfactory evidence, a brief description of the method of identification and the identification credential presented, if any, including the date of issuance and expiration of any identification credential; and

(6) the fee, if any, charged by the notarial officer.

D. If a notarial officer's journal is lost or stolen, the notarial officer shall promptly notify the secretary of state on discovering that the journal is lost or stolen.

E. Pursuant to the requirements provided in Subsections B and C of this section, a notarial officer licensed to practice law shall maintain a journal when performing notarial acts for members of the public unrelated to an established attorney-client relationship.

F. On resignation from, or the revocation or suspension of, a notary public's commission, the notary public shall retain the notary public's journal in accordance with Subsection A of this section and inform the secretary of state of where the journal is located.

G. Instead of retaining a journal as provided in Subsections A and F of this section, a current or former notarial officer may transmit the journal to the secretary of state, the state records administrator or a repository approved by the secretary of state.

H. On the death or adjudication of incompetency of a current or former notarial officer, the notarial officer's personal representative or guardian or any other person knowingly in possession of the journal shall transmit the journal to the secretary of state, the state records officer or a repository approved by the secretary of state.

History: Laws 2021, ch. 21, § 18; 2023, ch. 110, § 16.

14-14A-19. Notification regarding performance of notarial act on electronic record; selection of technology.

A. A notarial officer shall select one or more tamper-evident technologies to perform notarial acts with respect to electronic records. A person may not require a notarial officer to perform a notarial act with respect to an electronic record with a technology that the notarial officer has not selected.

B. Before performing the notarial officer's initial notarial act with respect to an electronic record, a notarial officer shall notify the secretary of state that the notarial officer will be performing notarial acts with respect to electronic records and identify the technology the notarial officer intends to use. If the secretary of state has established standards for approval of technology pursuant to Section 14-14A-26 NMSA 1978, the technology must conform to the standards. If the technology conforms to those standards, the secretary of state shall approve the use of the technology.

History: Laws 2021, ch. 21, § 19; 2023, ch. 110, § 17.

14-14A-20. Commission as notary public qualifications; no immunity or benefit.

A. An individual may apply to the secretary of state for a commission as a notary public. The applicant shall comply with and provide the information required by rules established by the secretary of state and pay any application fee.

B. To qualify for the commission as a notary public, an applicant:

- (1) shall be at least eighteen years of age;
- (2) shall be a resident of or have a place of employment in this state;
- (3) shall be able to read and write English;
- (4) shall not be disqualified to receive a commission under Section 14-14A-22 NMSA 1978;
- (5) shall have passed the examination required pursuant to Subsection A of Section 14-14A-21 NMSA 1978; and
- (6) if a judicial officer, the secretary of state or a full-time staff member of the secretary of state's office, county clerk or deputy county clerk who is not licensed to practice law, may also be commissioned as a notary public to perform notarial acts outside the individual's scope of duties as an automatic notarial officer.

C. Before issuance of a commission as a notary public, an applicant for the commission shall execute an oath of office pursuant to the laws of this state and submit it to the secretary of state.

D. Before issuance of a commission as a notary public, the notary public or applicant for a commission shall submit to the secretary of state an assurance in the form of a surety bond or its functional equivalent in the amount of ten thousand dollars (\$10,000). The assurance must be issued by a surety or other entity licensed or authorized to do business in this state. The assurance must cover acts performed during the term of the notary public's commission and must be in the form prescribed by the secretary of state. If a notary public violates law with respect to notaries public in this state, the surety or issuing entity is liable under the assurance. The surety or issuing entity shall give thirty days notice to the secretary of state before canceling the assurance. The surety or issuing entity shall notify the secretary of state not later than thirty days after making a payment to a claimant under the assurance. A notary public may perform notarial acts in this state only during the period that a valid assurance is on file with the secretary of state.

E. On compliance with this section, the secretary of state shall issue a commission as a notary public to an applicant for a term of four years.

F. A commission to act as a notary public authorizes the notary public to perform notarial acts. The commission does not provide the notary public any immunity or benefit conferred by law of this state on public officials or employees.

G. At least thirty days before expiration of each notarial officer's commission, the secretary of state shall mail a notice of expiration to the notarial officer's mailing address of record. A notarial officer may be reappointed upon making an application in the same manner as required for an original application.

History: Laws 2021, ch. 21, § 20; 2023, ch. 110, § 18.

14-14A-21. Examination of notary public and notarial officers; continuing legal education requirements for automatic notarial officers.

A. An applicant for a commission as a notary public who does not hold a commission in this state is required to pass an examination administered by the secretary of state or an entity approved by the secretary of state. The examination will be based on the course of study described in Subsection B of this section.

B. The secretary of state or an entity approved by the secretary of state shall offer regularly a course of study to applicants who do not hold commissions as notaries public in this state. The course must cover the laws, rules, procedures and ethics relevant to notarial acts.

C. A person qualified to be an automatic notarial officer is required to attend a course, not to exceed ninety minutes, delivered by the secretary of state or an entity approved by the secretary of state. The course may be delivered in person or online. Attendance in the course is required before the person's seal may be registered with the secretary of state, and attendees shall demonstrate an understanding of the course material. The course shall cover laws, rules, procedures and ethics relevant to being an automatic notarial officer.

D. An automatic notarial officer may obtain continuing legal education credit, pursuant to rules established by the board of bar commissioners of the state of New Mexico, for participating in continuing legal education related to performing the notarial acts.

History: Laws 2021, ch. 21, § 21; 2023, ch. 110, § 19.

14-14A-22. Grounds to deny, refuse to renew, revoke, suspend or condition commission of notarial officer.

A. The state ethics commission may revoke, suspend or impose a condition on a notarial officer for any act or omission that demonstrates that the individual lacks the honesty, integrity, competence or reliability to act as a notarial officer, including:

- (1) failure to comply with the Revised Uniform Law on Notarial Acts;
- (2) a fraudulent, dishonest or deceitful misstatement or omission in the application for a commission as a notary public;
- (3) a conviction of the applicant or automatic notarial officer of any felony or a crime involving fraud, dishonesty or deceit during the preceding four years;
- (4) a finding against, or admission of liability by, the applicant or notarial officer in any legal proceeding or disciplinary action based on the applicant's or notarial officer's fraud, dishonesty or deceit;
- (5) failure by the notarial officer to discharge any duty required of a notarial officer, whether by the provisions of the Revised Uniform Law on Notarial Acts, rules of the secretary of state or any federal or state law;
- (6) violation by the notarial officer of an obligation required of a notarial officer, whether by the provisions of the Revised Uniform Law on Notarial Acts, rules of the secretary of state or any federal or state law;
- (7) use of false or misleading advertising or representation by the notary public representing that the notary has a duty, right or privilege that the notary does not have;
- (8) denial, refusal to renew, revocation, suspension or conditioning of a notary public commission in another state;
- (9) failure of the notary public to maintain an assurance as provided in Subsection D of Section 14-14A-20 NMSA 1978; or
- (10) if the individual ceases to be a resident of this state or ceases to be employed in this state.

B. The secretary of state may deny or refuse to renew an applicant upon notice from the state ethics commission of adverse action upon an applicant or a notarial officer.

C. The authority of the state ethics commission to deny, refuse to renew, suspend, revoke or impose conditions on a notarial officer does not prevent a person from seeking and obtaining other criminal or civil remedies provided by law.

History: Laws 2021, ch. 21, § 22; 2023, ch. 110, § 20.

14-14A-23. Database of notarial officers.

The secretary of state shall maintain an electronic database of notarial officers providing the following:

A. information and a means through which a person may verify the authority of a notarial officer to perform notarial acts; and

B. indication of whether a notarial officer has notified the secretary of state that the notarial officer will be performing notarial acts on electronic records.

History: Laws 2021, ch. 21, § 23; 2023, ch. 110, § 21.

14-14A-24. Prohibited acts.

A. A commission as a notary public or status as an automatic notarial officer does not by itself authorize an individual to:

(1) assist persons in drafting legal records, give legal advice or otherwise practice law;

(2) act as an immigration consultant or an expert on immigration matters;

(3) represent a person in a judicial or administrative proceeding relating to immigration to the United States, United States citizenship or related matters; or

(4) receive compensation for performing any of the activities listed in this subsection.

B. A notarial officer shall not engage in false or deceptive advertising.

C. A notarial officer, other than an attorney licensed to practice law in this state, shall not use the term "notario" or "notario publico".

D. A notarial officer who is not licensed to practice law shall not advertise or represent that the notarial officer may assist persons in drafting legal records, give legal advice or otherwise practice law. If a notarial officer who is not an attorney licensed to practice law in any manner advertises or represents that the notary public offers notarial services, whether orally or in a record, including broadcast media, print media and the internet, the notarial officer shall include the following statement or an alternate statement authorized or required by the secretary of state, in the advertisement or representation, prominently and in each language used in the advertisement or representation: "I am not an attorney licensed to practice law in this state. I am not allowed to draft legal records, give advice on legal matters, including immigration, or charge a fee for those activities.". If the form of advertisement or representation is not broadcast media, print media or the internet and does not permit inclusion of the

statement required by this subsection because of size, the statement shall be displayed prominently or provided at the place of performance of the notarial act before the notarial act is performed.

E. Except as otherwise allowed by law, a notarial officer shall not withhold access to or possession of an original record provided by a person that seeks performance of a notarial act by the notarial officer.

F. A notarial officer shall not:

- (1) perform a notarial act on a blank or incomplete record;
- (2) certify or authenticate a photograph;
- (3) perform a notarial act with intent to deceive or defraud; or
- (4) use the title of notary public, notarial officer or official stamp to endorse, promote, denounce or oppose any product, service, contest, candidate or other offering.

G. A notarial officer shall not:

- (1) make or deliver a certificate of notarial act containing statements that the notarial officer knows to be false; or
- (2) knowingly perform a notarial act for an individual who does not comply with Section 14-14A-6 NMSA 1978.

H. A notarial officer who violates any of the provisions of Subsections A through G of this section is guilty of a misdemeanor for each violation and upon conviction shall be punished by a fine not exceeding one thousand dollars (\$1,000) or by imprisonment for a period not exceeding six months, or both.

I. An individual who performs a purported notarial act with knowledge that the individual's commission as a notary public has expired or that the individual is otherwise disqualified from being a notarial officer is guilty of a misdemeanor for each purported notarial act and upon conviction shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

History: Laws 2021, ch. 21, § 24; 2023, ch. 110, § 22.

14-14A-25. Validity of notarial acts.

Except as otherwise provided in Subsection B of Section 14-14A-3 NMSA 1978, the failure of a notarial officer to perform a duty or meet a requirement specified in the Revised Uniform Law on Notarial Acts does not invalidate a notarial act performed by the notarial officer. The validity of a notarial act under the Revised Uniform Law on

Notarial Acts does not prevent an aggrieved person from seeking to invalidate the record or transaction that is the subject of the notarial act or from seeking other remedies based on law of this state other than the Revised Uniform Law on Notarial Acts or law of the United States. This section does not validate a purported notarial act performed by an individual who does not have the authority to perform notarial acts.

History: Laws 2021, ch. 21, § 25; 2023, ch. 110, § 23.

14-14A-26. Rules.

A. The secretary of state may adopt rules to implement the secretary's responsibilities pursuant to the Revised Uniform Law on Notarial Acts. Rules adopted regarding the performance of notarial acts with respect to electronic records may not require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification. The rules may:

- (1) prescribe the manner of performing notarial acts regarding tangible and electronic records;
- (2) include provisions to ensure that any change to or tampering with a record bearing a certificate of a notarial act is self-evident;
- (3) include provisions to ensure integrity in the creation, transmittal, storage or authentication of electronic records or signatures;
- (4) prescribe the process of granting or renewing a notary public commission;
- (5) include provisions to prevent fraud or mistake in the performance of notarial acts;
- (6) establish the process for approving and accepting surety bonds and other forms of assurance pursuant to Subsection D of Section 14-14A-20 NMSA 1978;
- (7) provide for the administration of the examination pursuant to Subsection A of Section 14-14A-21 NMSA 1978 and the course of study pursuant to Subsection B of Section 14-14A-21 NMSA 1978; and
- (8) provide for the administration of continuing legal education for notarial officers authorized to practice law in this state in collaboration with the board of bar commissioners of the state of New Mexico and pursuant to rules adopted by the board of bar commissioners of the state of New Mexico.

B. In adopting, amending or repealing rules about notarial acts with respect to electronic records, the secretary of state shall consider, so far as is consistent with the Revised Uniform Law on Notarial Acts:

(1) the most recent standards regarding electronic records promulgated by national bodies, such as the national association of secretaries of state;

(2) standards, practices and customs of other jurisdictions that substantially enact the Revised Uniform Law on Notarial Acts; and

(3) the views of governmental officials and entities and other interested persons.

C. The state ethics commission may adopt rules to implement the commission's responsibilities pursuant to the Revised Uniform Law on Notarial Acts. The rules may:

(1) prescribe the process of submitting a complaint;

(2) provide for the administration of the adjudication of complaints;

(3) prescribe the procedure by which the state ethics commission shall handle complaints;

(4) prescribe the procedure the state ethics commission shall follow in approving a hearing officer's recommendation; and

(5) prescribe the procedure of appealing the state ethics commission's determination.

History: Laws 2021, ch. 21, § 26; 2023, ch. 110, § 24.

14-14A-27. Effect of adoption of and amendments to act.

A. A commission as a notary public in effect on the effective date of the Revised Uniform Law on Notarial Acts continues until its date of expiration.

B. A notarial officer, in performing notarial acts after the effective date of the Revised Uniform Law on Notarial Acts or any amendments to the Revised Uniform Law on Notarial Acts shall comply with the most recent version of the Revised Uniform Law on Notarial Acts in effect.

C. When changes to the official stamp are adopted in the Revised Uniform Law on Notarial Acts or by rules issued by the secretary of state, a notarial officer who has registered a stamp with the secretary of state may continue to use the registered stamp until:

(1) the expiration of the officer's commission, in the case of a notary public; or

(2) one year following the effective date of the change, in the case of an automatic notarial officer.

D. The secretary of state shall notify notarial officers when a change to the official stamp is adopted.

History: Laws 2021, ch. 21, § 27; 2023, ch. 110, § 25.

14-14A-28. Fees.

A. A notarial officer may charge the maximum fee specified in this section, charge less than the maximum fee or waive the fee.

B. An employer shall not establish fees for notarial services that are in excess of those specified in this section nor on the attributes of the principal as delineated.

C. The maximum fees that may be charged by a notarial officer for notarial acts are:

- (1) for acknowledgments, five dollars (\$5.00) per acknowledgment;
- (2) for oaths or affirmations without a signature, five dollars (\$5.00) per person;
- (3) for jurats, five dollars (\$5.00) per jurat; and
- (4) for copy certifications, fifty cents (\$.50) per page with a minimum total charge of five dollars (\$5.00).

D. A notarial officer may charge a travel fee when traveling to perform a notarial act if:

- (1) the notarial officer and the person requesting the notarial act agree upon the travel fee in advance of the travel; and
- (2) the notarial officer explains to the person requesting the notarial act that the travel fee is separate from the notarial fees and not mandated by law.

E. In addition to the fees prescribed in Subsections C and D of this section, a notarial officer may charge a technology fee not to exceed twenty-five dollars (\$25.00) or other amount established by rule by the secretary of state per notarial act performed with respect to an electronic record.

History: Laws 2021, ch. 21, § 28; 2023, ch. 110, § 26.

14-14A-29. Repealed.

History: Laws 2021, ch. 21, § 29; repealed by Laws 2022, ch. 27, § 1.

14-14A-30. Saving clause.

The Revised Uniform Law on Notarial Acts does not affect the validity or effect of a notarial act performed before the effective date of the Revised Uniform Law on Notarial Acts or any amendments to the Revised Uniform Law on Notarial Acts.

History: Laws 2021, ch. 21, § 30; 2023, ch. 110, § 27.

14-14A-31. Uniformity of application and construction.

In applying and construing the Revised Uniform Law on Notarial Acts, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

History: Laws 2021, ch. 21, § 31.

14-14A-32. Relation to federal Electronic Signatures in Global and National Commerce Act.

The Revised Uniform Law on Notarial Acts modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act, but does not modify, limit or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

History: Laws 2021, ch. 21, § 32.

ARTICLE 15 Electronic Authentication of Documents

14-15-1. Short title.

This act [14-15-1 to 14-15-6 NMSA 1978] may be cited as the "Electronic Authentication of Documents Act".

History: Laws 1996, ch. 11, § 1.

14-15-2. Purpose.

The purpose of the Electronic Authentication of Documents Act is to:

- A. provide a centralized technical approach to authenticating electronic documents;
- B. promote electronic commerce by eliminating barriers resulting from uncertainties over signature requirements and promoting the development of the legal and business infrastructure necessary to implement secure electronic commerce;

C. facilitate electronic filing of documents with government agencies and promote efficient delivery of government services by means of reliable, secure electronic records and document transactions;

D. establish a coherent approach to rules and standards regarding the authentication of electronic records; and

E. promote technological neutrality in electronic authentication.

History: Laws 1996, ch. 11, § 2; 1999, ch. 32, § 1; 2001, ch. 69, § 1.

14-15-3. Definitions.

As used in the Electronic Authentication of Documents Act:

A. "authenticate" means to ascertain the identity of the originator, verify the integrity of the electronic data and establish a link between the data and the originator;

B. "document" means an identifiable collection of words, letters or graphical knowledge representations, regardless of the mode of representation. "Document" includes correspondence, agreements, invoices, reports, certifications, maps, drawings and images in both electronic and hard copy formats;

C. "electronic authentication" means the electronic signing of a document that establishes a verifiable link between the originator of a document and the document by means of optical, electrical, digital, magnetic, electromagnetic, wireless, telephonic, biological, a public key and private key system or other technology providing similar capabilities;

D. "office" means the information technology management office;

E. "originator" means the person who signs a document electronically;

F. "person" means an individual or entity, including:

(1) an estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture or syndicate; and

(2) any federal, state or local governmental unit or subdivision or any agency, department or instrumentality thereof;

G. "signed" or "signature" means a symbol executed or adopted or a security procedure employed or adopted using electronic means or otherwise, by or on behalf of a person with the intent to authenticate a record; and

H. "technological neutrality" means the methods selected to carry out electronic authentication that do not require or accord greater legal status or effect to the implementation or application of a specific technology or technical specification for performing the functions of creating, storing, generating, receiving, communicating or authenticating electronic records or electronic signatures.

History: Laws 1996, ch. 11, § 3; 1999, ch. 32, § 2; 2001, ch. 69, § 2.

14-15-4. Repealed.

14-15-5. Rules.

A. The information technology commission shall adopt rules and standards to accomplish the purposes of the Electronic Authentication of Documents Act.

B. The rules shall address circumstances under which standards other than adopted standards may be used.

History: Laws 1996, ch. 11, § 5; 2001, ch. 69, § 3.

14-15-6. Contracting services.

The office may contract with a private, public or quasi-public organization for the provision of services under the Electronic Authentication of Documents Act. A contract for services shall comply with rules adopted pursuant to the Electronic Authentication of Documents Act and the provisions of the Public Records Act [Chapter 14, Article 3 NMSA 1978] and the Procurement Code [13-1-28 to 13-1-199 NMSA 1978].

History: Laws 1996, ch. 11, § 6; 2001, ch. 69, § 4.

ARTICLE 16

Uniform Electronic Transactions

14-16-1. Short title.

Chapter 14, Article 16 NMSA 1978 may be cited as the "Uniform Electronic Transactions Act".

History: Laws 2001, ch. 131, § 1; 2013, ch. 30, § 1; 2013, ch. 68, § 1.

14-16-2. Definitions.

As used in the Uniform Electronic Transactions Act:

(1) "agreement" means the bargain of the parties in fact, as found in their language or inferred from other circumstances and from rules and procedures given the effect of agreements under laws otherwise applicable to a particular transaction;

(2) "automated transaction" means a transaction conducted or performed, in whole or in part, by electronic means or electronic records, in which the acts or records of one or both parties are not reviewed by an individual in the ordinary course in forming a contract, performing under an existing contract or fulfilling an obligation required by the transaction;

(3) "computer program" means a set of statements or instructions to be used directly or indirectly in an information processing system in order to bring about a certain result;

(4) "contract" means the total legal obligation resulting from the parties' agreement as affected by the Uniform Electronic Transactions Act and other applicable law;

(5) "electronic" means relating to technology having electrical, digital, magnetic, wireless, telephonic, optical, electromagnetic or similar capabilities;

(6) "electronic agent" means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances, in whole or in part, without review or action by an individual;

(7) "electronic record" means a record created, generated, sent, communicated, received or stored by electronic means;

(8) "electronic signature" means an electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record;

(9) "governmental agency" means an executive, legislative or judicial agency, department, board, commission, authority, institution or instrumentality of the federal government or of a state or of a county, municipality or other political subdivision of a state;

(10) "information" means data, text, images, sounds, codes, computer programs, software, databases or the like;

(11) "information processing system" means an electronic system for creating, generating, sending, receiving, storing, displaying or processing information;

(12) "person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation or any other legal or commercial entity;

(13) "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in a perceivable form;

(14) "security procedure" means a procedure employed for the purpose of verifying that an electronic signature, record or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, callback or other acknowledgment procedures;

(15) "state" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe, an Indian band or an Alaskan native village, which is recognized by federal law or formally acknowledged by a state; and

(16) "transaction" means an action or set of actions occurring between two or more persons relating to the conduct of business, commercial affairs or governmental affairs.

History: Laws 2001, ch. 131, § 2.

14-16-3. Scope.

A. Except as otherwise provided in Subsection B of this section, the Uniform Electronic Transactions Act applies to electronic records and electronic signatures relating to a transaction.

B. The Uniform Electronic Transactions Act does not apply to:

(1) a transaction to the extent it is governed by:

(a) a law governing the creation and execution of wills, codicils or testamentary trusts;

(b) the Uniform Commercial Code [Chapter 55 NMSA 1978], other than Chapter 55, Articles 2 and 2A NMSA 1978; or

(c) court orders, notices or official court documents, including briefs, pleadings and other records, required to be executed in connection with court proceedings;

(2) a notice concerning:

(a) the cancellation or termination of utility services, including water, gas, heat or power services;

(b) default, acceleration, repossession, foreclosure, eviction or the right to cure, under a credit agreement secured by or a rental agreement for a primary residence of an individual; or

(c) the cancellation or termination of health insurance or benefits or life insurance or benefits, but not including annuities; or

(3) any document required to accompany any transportation or handling of hazardous materials, pesticides or other toxic or dangerous materials.

C. The Uniform Electronic Transactions Act applies to an electronic record or electronic signature otherwise excluded from the application of that act under Subsection B of this section to the extent it is governed by a law other than those specified in Subsection B of this section.

D. A transaction subject to the Uniform Electronic Transactions Act is also subject to other applicable substantive law.

History: Laws 2001, ch. 131, § 3; 2007, ch. 323, § 27; 2013, ch. 137, § 1.

14-16-4. Prospective application.

The Uniform Electronic Transactions Act applies to any electronic record or electronic signature created, generated, sent, communicated, received or stored on or after the effective date of that act.

History: Laws 2001, ch. 131, § 4.

14-16-5. Use of electronic records and electronic signatures; variation by agreement.

(a) The Uniform Electronic Transactions Act does not require a record or signature to be created, generated, sent, communicated, received, stored or otherwise processed or used by electronic means or in electronic form.

(b) The Uniform Electronic Transactions Act applies only to transactions between parties each of which has agreed to conduct transactions by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct.

(c) A party that agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means. The right granted by this subsection may not be waived by agreement.

(d) Except as otherwise provided in the Uniform Electronic Transactions Act, the effect of any of its provisions may be varied by agreement. The presence in certain

provisions of the Uniform Electronic Transactions Act of the words "unless otherwise agreed", or words of similar import, does not imply that the effect of other provisions may not be varied by agreement.

(e) Whether an electronic record or electronic signature has legal consequences is determined by the Uniform Electronic Transactions Act and other applicable law.

History: Laws 2001, ch. 131, § 5.

14-16-6. Construction and application.

The Uniform Electronic Transactions Act must be construed and applied:

(1) to facilitate electronic transactions consistent with other applicable law;

(2) to be consistent with reasonable practices concerning electronic transactions and with the continued expansion of those practices; and

(3) to effectuate its general purpose to make uniform the law with respect to the subject of the Uniform Electronic Transactions Act among states enacting it.

History: Laws 2001, ch. 131, § 6.

14-16-7. Legal recognition of electronic records, electronic signatures and electronic contracts.

(a) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.

(b) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.

(c) If a law requires a record to be in writing, an electronic record satisfies the law.

(d) If a law requires a signature, an electronic signature satisfies the law.

History: Laws 2001, ch. 131, § 7.

14-16-8. Provision of information in writing; presentation of records.

(a) If parties have agreed to conduct a transaction by electronic means and a law requires a person to provide, send or deliver information in writing to another person, the requirement is satisfied if the information is provided, sent or delivered, as the case may be, in an electronic record capable of retention by the recipient at the time of

receipt. An electronic record is not capable of retention by the recipient if the sender or its information processing system inhibits the ability of the recipient to print or store the electronic record.

(b) If a law other than the Uniform Electronic Transactions Act requires a record (i) to be posted or displayed in a certain manner, (ii) to be sent, communicated or transmitted by a specified method, or (iii) to contain information that is formatted in a certain manner, the following rules apply:

(1) The record must be posted or displayed in the manner specified in the other law.

(2) Except as otherwise provided in Subsection (d)(2), the record must be sent, communicated or transmitted by the method specified in the other law.

(3) The record must contain the information formatted in the manner specified in the other law.

(c) If a sender inhibits the ability of a recipient to store or print an electronic record, the electronic record is not enforceable against the recipient.

(d) The requirements of this section may not be varied by agreement, but:

(1) to the extent a law other than the Uniform Electronic Transactions Act requires information to be provided, sent or delivered in writing but permits that requirement to be varied by agreement, the requirement under Subsection (a) that the information be in the form of an electronic record capable of retention may also be varied by agreement; and

(2) a requirement under a law other than the Uniform Electronic Transactions Act to send, communicate or transmit a record by first-class mail, postage prepaid or regular United States mail, may be varied by agreement to the extent permitted by the other law.

History: Laws 2001, ch. 131, § 8.

14-16-9. Attribution and effect of electronic record and electronic signature.

(a) An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.

(b) The effect of an electronic record or electronic signature attributed to a person under Subsection (a) is determined from the context and surrounding circumstances at

the time of its creation, execution or adoption, including the parties' agreement, if any, and otherwise as provided by law.

History: Laws 2001, ch. 131, § 9.

14-16-10. Effect of change or error.

If a change or error in an electronic record occurs in a transmission between parties to a transaction, the following rules apply:

(1) If the parties have agreed to use a security procedure to detect changes or errors and one party has conformed to the procedure, but the other party has not, and the nonconforming party would have detected the change or error had that party also conformed, the conforming party may avoid the effect of the changed or erroneous electronic record.

(2) In an automated transaction involving an individual, the individual may avoid the effect of an electronic record that resulted from an error made by the individual in dealing with the electronic agent of another person if the electronic agent did not provide an opportunity for the prevention or correction of the error and, at the time the individual learns of the error, the individual:

(A) promptly notifies the other person of the error and that the individual did not intend to be bound by the electronic record received by the other person;

(B) takes reasonable steps, including steps that conform to the other person's reasonable instructions, to return to the other person or, if instructed by the other person, to destroy the consideration received, if any, as a result of the erroneous electronic record; and

(C) has not used or received any benefit or value from the consideration, if any, received from the other person.

(3) If neither Paragraph (1) nor Paragraph (2) applies, the change or error has the effect provided by other law, including the law of mistake, and the parties' contract, if any.

(4) Paragraphs (2) and (3) may not be varied by agreement.

History: Laws 2001, ch. 131, § 10.

14-16-11. Notarization and acknowledgment.

If a law requires a signature or record to be notarized, acknowledged, verified or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be

included by other applicable law, is attached to or logically associated with the signature or record.

History: Laws 2001, ch. 131, § 11.

14-16-12. Retention of electronic records; originals.

(a) If a law requires that a record be retained, the requirement is satisfied by retaining an electronic record of the information in the record which:

(1) accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise; and

(2) remains accessible for later reference.

(b) A requirement to retain a record in accordance with Subsection (a) does not apply to any information the sole purpose of which is to enable the record to be sent, communicated or received.

(c) A person may satisfy Subsection (a) by using the services of another person if the requirements of that subsection are satisfied.

(d) If a law requires a record to be presented or retained in its original form, or provides consequences if the record is not presented or retained in its original form, that law is satisfied by an electronic record retained in accordance with Subsection (a).

(e) If a law requires retention of a check, that requirement is satisfied by retention of an electronic record of the information on the front and back of the check in accordance with Subsection (a).

(f) A record retained as an electronic record in accordance with Subsection (a) satisfies a law requiring a person to retain a record for evidentiary, audit or like purposes, unless a law enacted after the effective date of the Uniform Electronic Transactions Act specifically prohibits the use of an electronic record for the specified purpose.

(g) This section does not preclude a governmental agency of this state from specifying additional requirements for the retention of a record subject to the agency's jurisdiction.

History: Laws 2001, ch. 131, § 12.

14-16-13. Admissibility in evidence.

In a proceeding, evidence of a record or signature may not be excluded solely because it is in electronic form.

History: Laws 2001, ch. 131, § 13.

14-16-14. Automated transaction.

In an automated transaction, the following rules apply:

(1) A contract may be formed by the interaction of electronic agents of the parties, even if no individual was aware of or reviewed the electronic agents' actions or the resulting terms and agreements.

(2) A contract may be formed by the interaction of an electronic agent and an individual, acting on the individual's own behalf or for another person, including by an interaction in which the individual performs actions that the individual is free to refuse to perform and which the individual knows or has reason to know will cause the electronic agent to complete the transaction or performance.

(3) The terms of the contract are determined by the substantive law applicable to it.

History: Laws 2001, ch. 131, § 14.

14-16-15. Time and place of sending and receipt.

(a) Unless otherwise agreed between the sender and the recipient, an electronic record is sent when it:

(1) is addressed properly or otherwise directed properly to an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record;

(2) is in a form capable of being processed by that system; and

(3) enters an information processing system outside the control of the sender or of a person that sent the electronic record on behalf of the sender or enters a region of the information processing system designated or used by the recipient which is under the control of the recipient.

(b) Unless otherwise agreed between a sender and the recipient, an electronic record is received when:

(1) it enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record; and

(2) it is in a form capable of being processed by that system.

(c) Subsection (b) applies even if the place the information processing system is located is different from the place the electronic record is deemed to be received under Subsection (d).

(d) Unless otherwise expressly provided in the electronic record or agreed between the sender and the recipient, an electronic record is deemed to be sent from the sender's place of business and to be received at the recipient's place of business. For purposes of this subsection, the following rules apply:

(1) If the sender or recipient has more than one place of business, the place of business of that person is the place having the closest relationship to the underlying transaction.

(2) If the sender or the recipient does not have a place of business, the place of business is the sender's or recipient's residence, as the case may be.

(e) An electronic record is received under Subsection (b) even if no individual is aware of its receipt.

(f) Receipt of an electronic acknowledgment from an information processing system described in Subsection (b) establishes that a record was received but, by itself, does not establish that the content sent corresponds to the content received.

(g) If a person is aware that an electronic record purportedly sent under Subsection (a), or purportedly received under Subsection (b), was not actually sent or received, the legal effect of the sending or receipt is determined by other applicable law. Except to the extent permitted by the other law, the requirements of this subsection may not be varied by agreement.

History: Laws 2001, ch. 131, § 15.

14-16-16. Transferable records.

(a) As used in this section, "transferable record" means an electronic record that:

(1) would be a note under Chapter 55, Article 3 NMSA 1978 or a document under Chapter 55, Article 7 NMSA 1978 if the electronic record were in writing; and

(2) the issuer of the electronic record expressly has agreed is a transferable record.

(b) A person has control of a transferable record if a system employed for evidencing the transfer of interests in the transferable record reliably establishes that person as the person to which the transferable record was issued or transferred.

(c) A system satisfies Subsection (b), and a person is deemed to have control of a transferable record, if the transferable record is created, stored and assigned in such a manner that:

(1) a single authoritative copy of the transferable record exists which is unique, identifiable and, except as otherwise provided in Paragraphs (4), (5) and (6), unalterable;

(2) the authoritative copy identifies the person asserting control as:

(A) the person to which the transferable record was issued; or

(B) if the authoritative copy indicates that the transferable record has been transferred, the person to which the transferable record was most recently transferred;

(3) the authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(4) copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) any revision of the authoritative copy is readily identifiable as authorized or unauthorized.

(d) Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in Section 55-1-201 NMSA 1978, of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under the Uniform Commercial Code [Chapter 55 NMSA 1978], including, if the applicable statutory requirements under Sections 55-3-302, 55-7-501 or 55-9-308 NMSA 1978 are satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable document of title has been duly negotiated or a purchaser, respectively. Delivery, possession and indorsement are not required to obtain or exercise any of the rights under this subsection.

(e) Except as otherwise agreed, an obligor under a transferable record has the same rights and defenses as an equivalent obligor under equivalent records or writings under the Uniform Commercial Code.

(f) If requested by a person against which enforcement is sought, the person seeking to enforce the transferable record shall provide reasonable proof that the person is in control of the transferable record. Proof may include access to the authoritative copy of the transferable record and related business records sufficient to

review the terms of the transferable record and to establish the identity of the person having control of the transferable record.

History: Laws 2001, ch. 131, § 16.

14-16-17. Creation and retention of electronic records and conversion of written records by governmental agencies.

Each governmental agency of this state shall determine whether, and the extent to which, it will create and retain electronic records and convert written records to electronic records.

History: Laws 2001, ch. 131, § 17.

14-16-18. Acceptance and distribution of electronic records by governmental agencies.

The state records administrator shall issue rules for the implementation of the provisions of the Uniform Electronic Transactions Act that shall apply to all governmental agencies; provided that a governmental agency, giving due consideration to security, may instead issue its own rules that specify:

A. the manner and format in which the electronic records must be created, generated, sent, communicated, received and stored and the systems established for those purposes;

B. if electronic records must be signed by electronic means, the type of electronic signature required, the manner and format in which the electronic signature must be affixed to the electronic record and the identity of, or criteria that must be met by, any third party used by a person filing a document to facilitate the process;

C. control processes and procedures as appropriate to ensure adequate preservation, disposition, integrity, security, confidentiality and auditability of electronic records; and

D. any other required attributes for electronic records that are specified for corresponding nonelectronic records or reasonably necessary under the circumstances.

History: Laws 2001, ch. 131, § 18; 2013, ch. 214, § 10.

14-16-19. Interoperability.

The governmental agency of this state which adopts standards pursuant to Section 18 [14-16-18 NMSA 1978] may encourage and promote consistency and interoperability with similar requirements adopted by other governmental agencies of this and other

states and the federal government and nongovernmental persons interacting with governmental agencies of this state. If appropriate, those standards may specify differing levels of standards from which governmental agencies of this state may choose in implementing the most appropriate standard for a particular application.

History: Laws 2001, ch. 131, § 19.

14-16-20. Electronic certifications, permits, registrations and licenses.

A governmental agency may provide by rule the manner by which an applicant may satisfy by electronic means all agency requirements relating to certifications, permits, registrations, and licenses including but not limited to obtaining, renewing, reactivating, and reinstating, a professional or occupational certification, permit, registration or license.

History: Laws 2013, ch. 30, § 2.

14-16-21. Electronic certifications, permits, registrations and licenses.

A governmental agency may provide by rule the manner by which an applicant may satisfy by electronic means all agency requirements to obtain, renew, reactivate and reinstate a professional or occupational certification, permit, registration or license.

History: Laws 2013, ch. 68, § 2.