[STATE] BRIBE IS A BRIBE ACT

Model State Legislation

This is model legislation drafted by The Existentialist Republic. Bracketed terms such as [State], [State Legislature], and [State] Supreme Court are placeholders; an adopting state replaces each with its own equivalent.

Section 1. Findings and Purpose

The [State Legislature] finds that:

(a) Corruption affecting state residents, state funds, or state governmental processes causes direct and substantial harm to the people of this state.

(b) The state possesses inherent authority to prosecute crimes committed within its borders or affecting its residents.

(c) Federal enforcement of anti-corruption laws has proven inadequate to protect state residents from corrupt conduct, and federal courts have repeatedly narrowed the reach of federal anti-corruption statutes. The Supreme Court of the United States narrowed the meaning of an "official act" under the federal bribery statute in McDonnell v. United States, 579 U.S. 550 (2016), and held in Snyder v. United States, 603 U.S. 1 (2024), that the principal federal statute reaching state and local officials, 18 U.S.C. § 666, does not criminalize gratuities accepted for past official acts.

(d) The state has a compelling interest in maintaining public integrity and ensuring that government serves the people rather than private interests.

(e) Corruption, bribery, self-dealing, and the acceptance of gratuities for official conduct can never constitute conduct necessary and proper to any official duty, regardless of who employs the official. The Supreme Court recognized in In re Neagle, 135 U.S. 1 (1890), that the immunity a federal officer enjoys from state prosecution reaches only conduct necessary and proper to a legitimate federal duty.

(f) As a sovereign, this state has independent authority to define and prosecute crimes against its peace and dignity, and this authority exists concurrently with federal authority. The Supreme Court confirmed in Gamble v. United States, 587 U.S. 678 (2019), that the state and federal governments are separate sovereigns, so that a state prosecution for conduct that also violates federal law is a separate offense, and neither sovereign's decision to prosecute or decline prosecution bars the other.

The purpose of this Act is to establish comprehensive state authority to investigate and prosecute corrupt conduct affecting the people of this state.

Section 2. Definitions

(a) "Covered conduct" means:

(1) Bribery: soliciting, accepting, offering, or providing anything of value to or from any person in exchange for, because of, or with intent to influence any official action, decision, or exercise of discretion.

(2) Gratuities: soliciting, accepting, offering, or providing anything of value to or from any person as a reward for any official action, decision, or exercise of discretion, whether such action occurred before or after the thing of value is promised, offered, or given.

(3) Theft of public funds: obtaining, retaining, or misapplying money or property belonging to any governmental entity, whether federal, state, or local, when such conduct occurs within or from this state or affects residents of this state.

(4) Fraud against state residents: making false statements, representations, or omissions in connection with any governmental program, contract, or proceeding that affects residents of this state.

(5) Self-dealing: taking official action or making official decisions that provide financial benefit to oneself, one's family members, or one's business associates, without full public disclosure and approval.

(6) Abuse of public office: using the power, resources, or influence of public office for private gain or to confer an unwarranted benefit, regardless of whether a specific agreement or exchange is proven.

(7) Extortion under color of office: obtaining anything of value from any person through the wrongful use of actual or threatened official action.

(8) Obstruction: destroying, concealing, or falsifying evidence, or intimidating witnesses, in connection with any investigation or proceeding under this Act.

(b) "Anything of value" includes money, property, services, employment, business opportunities, favorable treatment, promises of future benefit, access, introductions, and any other tangible or intangible benefit, regardless of the form in which it is conferred.

(c) "Official action" means any decision, action, inaction, vote, opinion, recommendation, approval, disapproval, or exercise of discretion in relation to any matter within the official's jurisdiction, including the setting up of meetings, making introductions, providing access, hosting events, communicating with other officials, or any use of official position to advance any interest.

(d) "Person" means any natural person, regardless of office, title, employment status, or governmental affiliation. A person's status as a federal official or employee does not exempt that

person from this Act.

(e) "Public official" means any person holding any office, position, employment, or agency relationship with any governmental entity, whether federal, state, or local, elected or appointed, compensated or uncompensated.

Section 3. Jurisdiction

(a) This state has jurisdiction over covered conduct when:

(1) The conduct occurs in whole or in part within or from this state; or

(2) The conduct produces or is intended to produce effects within this state; or

(3) The victim of the conduct is a resident of this state or an entity organized under the laws of this state; or

(4) The proceeds of the conduct are located within this state; or

(5) The person who engaged in the conduct resides in this state, maintains an office in this state, or conducts business within this state.

(b) Jurisdiction under this Act exists regardless of:

(1) The office or position held by the person who engaged in the covered conduct;

(2) The governmental entity, if any, that employs or employed such person;

(3) Whether the conduct is also subject to prosecution under federal law or the laws of another state;

(4) Any claim of immunity based on federal employment or office.

(c) Corruption, bribery, acceptance of gratuities, self-dealing, abuse of public office, and the other conduct covered by this Act can never, as a matter of law, constitute conduct necessary and proper to any official duty. No person may claim immunity from prosecution under this Act on the ground that covered conduct was performed in the course of official duties.

Section 4. Investigative Authority

(a) The Attorney General has exclusive authority to investigate covered conduct under this Act.

(b) Before filing any charges, the Attorney General may:

(1) Issue subpoenas compelling the production of documents, records, communications, financial statements, and other materials relevant to an investigation, without prior judicial approval;

(2) Issue civil investigative demands requiring any person to answer interrogatories under oath;

(3) Compel testimony from any person with information relevant to an investigation;

(4) Petition any court of competent jurisdiction for orders enforcing compliance with subpoenas, civil investigative demands, or testimony requirements;

(5) Enter into agreements with witnesses providing immunity or other consideration in exchange for cooperation;

(6) Convene or request the convening of a grand jury;

(7) Apply for authorization to conduct wiretaps and electronic surveillance in accordance with state law.

(c) Investigations under this Act may be conducted confidentially. Any person who discloses the existence or substance of a confidential investigation, other than as required by law, is guilty of a misdemeanor.

(d) No person may refuse to comply with a subpoena, civil investigative demand, or testimony requirement issued under this Act on the basis of any privilege other than the Fifth Amendment privilege against self-incrimination.

(e) The Attorney General may coordinate with law enforcement agencies of this state and other states in conducting investigations under this Act.

Section 5. Prima Facie Proof in Civil Proceedings

(a) If any person, having been served with a subpoena, civil investigative demand, or order to testify issued under this Act:

(1) Refuses to attend or be sworn; or

(2) Refuses to answer any material question when not asserting a recognized privilege; or

(3) Refuses to produce any document, record, or material described in the subpoena or demand;

Such refusal shall constitute prima facie proof that the person has engaged in covered conduct, and the burden shall shift to such person to prove that no covered conduct occurred.

(b) This section applies in civil proceedings under Section 7 of this Act and in proceedings to enforce compliance under Section 4. It does not apply in criminal proceedings under Section 6 of this Act.

Section 6. Criminal Enforcement

(a) Civil enforcement and misdemeanors. Any person who engages in covered conduct is liable for civil penalties and, where the conduct constitutes a misdemeanor under this section, criminal penalties. Proof of specific intent to engage in corruption is not required for civil enforcement or misdemeanor prosecution. It is sufficient to prove that:

(1) The person engaged in the conduct; and

(2) The person knew the nature of their actions, or could have known the nature of their actions with reasonable effort, or made no reasonable effort to ascertain the nature of their actions.

(b) Misdemeanor penalties. Any person who engages in covered conduct is guilty of a misdemeanor and upon conviction shall be sentenced to imprisonment for not more than one year, fined not more than ten thousand dollars, or both.

(c) Felony penalties. Any person who engages in covered conduct with intent to engage in corruption is guilty of a felony and upon conviction shall be sentenced to imprisonment for not less than two years and not more than twenty years, and shall be fined not less than twenty-five thousand dollars or twice the value obtained or sought through the covered conduct, whichever is greater.

(d) Aggravated felony penalties. Any person who engages in covered conduct with intent to engage in corruption, and:

(1) The value involved exceeds one hundred thousand dollars; or

(2) The person holds or held a position of significant public trust; or

(3) The conduct involves a pattern of corrupt activity affecting multiple victims or transactions;

is guilty of aggravated corruption and upon conviction shall be sentenced to imprisonment for not less than five years and not more than thirty years, and shall be fined not less than one hundred thousand dollars or three times the value obtained or sought through the covered conduct, whichever is greater. The sentence shall include a mandatory minimum term of imprisonment of five years without possibility of parole.

(e) Forfeiture. Any person convicted under this Act shall forfeit to the state:

(1) All proceeds obtained through covered conduct;

(2) All property used or intended for use in covered conduct;

(3) All property traceable to proceeds of covered conduct.

(f) Disqualification. Any person convicted under this Act is permanently disqualified from:

(1) Holding any public office or position of public trust in this state;

(2) Contracting with any governmental entity in this state for a period of ten years;

(3) Lobbying any governmental entity in this state for a period of ten years.

(g) Professional consequences. The Attorney General shall notify any relevant licensing board of any conviction under this Act, and such conviction shall constitute grounds for revocation of any professional license.

Section 7. Civil Enforcement

(a) The Attorney General may bring a civil action against any person who engages in covered conduct.

(b) In any civil action under this Act, the Attorney General may seek:

(1) Injunctive relief prohibiting continued covered conduct;

(2) Disgorgement of all proceeds obtained through covered conduct;

(3) Civil penalties of up to two hundred fifty thousand dollars per violation;

(4) Recovery of the costs of investigation and prosecution;

(5) Any other relief the court deems appropriate.

(c) The standard of proof in civil actions under this Act is preponderance of the evidence. Proof of specific intent is not required.

(d) The Attorney General may seek injunctive relief under this Act without proving irreparable harm.

Section 8. Private Enforcement

(a) This section effects a partial assignment by the state of its claims for civil penalties and damages under this Act. Any resident of this state may bring a civil action under this Act on behalf of the state as a partial assignee of the state's claim. A person bringing such action does not thereby become an officer, employee, or agent of the state.

(b) Before filing a civil action under this section, the person must:

(1) Submit a written complaint to the Attorney General, under seal, describing the covered conduct and providing all supporting evidence in the person's possession;

(2) Serve a copy of the complaint and evidence on the Attorney General;

(3) Wait one hundred twenty days from the date of submission before serving the complaint on the defendant, unless the Attorney General consents to earlier service.

(c) The complaint shall remain under seal for one hundred twenty days, during which time the Attorney General shall investigate the allegations.

(d) Within one hundred twenty days, or any extension granted by the court, the Attorney General shall notify the court and the person whether the Attorney General will:

(1) Intervene and assume primary responsibility for the action;

(2) Decline to intervene, in which case the person may proceed with the action;

(3) Move to dismiss the action, which the court shall grant if the Attorney General demonstrates that dismissal serves the interests of justice.

(e) If the Attorney General intervenes, the Attorney General may settle the action, dismiss charges, or pursue any claims, subject to court approval of any settlement.

(f) In any civil action brought under this section, the person bringing the action is entitled to:

(1) Twenty-five percent of any monetary recovery if the Attorney General does not intervene;

(2) Fifteen percent of any monetary recovery if the Attorney General intervenes and assumes primary responsibility for the action;

(3) Reasonable attorney's fees and costs if the action is successful.

(g) No action may be brought under this section based on allegations or transactions that are the subject of a pending criminal prosecution or civil action brought by the Attorney General.

(h) No action may be brought under this section based substantially on publicly disclosed information, unless the person bringing the action is an original source of such information.

Section 9. Whistleblower Protection

(a) No person may discharge, demote, suspend, threaten, harass, discriminate against, or take any adverse action against any individual because that individual:

(1) Reported suspected covered conduct to the Attorney General, any law enforcement agency, or any supervisor;

(2) Participated or is expected to participate in any investigation or proceeding under this Act;

(3) Refused to participate in covered conduct;

(4) Filed or is expected to file an action under Section 8 of this Act.

(b) Any individual who suffers retaliation in violation of this section may bring a civil action and is entitled to:

(1) Reinstatement to the same position or an equivalent position;

(2) Two times the amount of back pay with interest;

(3) Compensation for any special damages sustained as a result of the retaliation, including litigation costs and reasonable attorney's fees;

(4) Punitive damages where the retaliation was willful.

(c) A civil action under this section must be commenced within three years of the retaliatory act.

Section 10. Statute of Limitations

(a) Criminal prosecutions under this Act must be commenced within ten years after the commission of the offense.

(b) Civil actions brought by the Attorney General under this Act must be commenced within ten years after the violation.

(c) Civil actions brought under Section 8 of this Act must be commenced within six years after the violation.

(d) The limitations period is tolled:

(1) During any period when the person who engaged in covered conduct holds any public office or position of public trust;

(2) During any period when the person who engaged in covered conduct actively conceals the covered conduct;

(3) During any period when the person who engaged in covered conduct is absent from this state;

(4) During the pendency of any criminal prosecution of the person for conduct arising from the same transaction or occurrence.

Section 11. Non-Deferral

(a) The Attorney General's authority to investigate and prosecute covered conduct under this Act is independent and exclusive within this state.

(b) The pendency of any federal investigation or prosecution does not divest the Attorney General of authority under this Act, stay any proceeding under this Act, or require the Attorney General to defer action.

(c) No provision of this Act shall be construed to require or authorize the Attorney General to defer to, coordinate with, or transfer jurisdiction to any federal agency or official.

(d) A federal pardon or commutation does not bar prosecution under this Act, affect any conviction under this Act, or require release of any person imprisoned under this Act.

Section 12. Removal to Federal Court

(a) If any prosecution under this Act is removed to federal court, the Attorney General shall oppose removal and seek remand to state court.

(b) It is the finding of the [State Legislature] that covered conduct under this Act can never constitute conduct necessary and proper to any federal duty. Removal under 28 U.S.C. § 1442 requires a federal officer to raise a colorable federal defense, as the Supreme Court held in Mesa v. California, 489 U.S. 121 (1989). Because corruption is no part of any legitimate federal function, that statute does not apply to prosecutions under this Act.

Section 13. Public Integrity Unit

(a) There is established within the Office of the Attorney General a Public Integrity Unit.

(b) The Public Integrity Unit shall have primary responsibility for:

(1) Investigating allegations of covered conduct;

(2) Prosecuting violations of this Act;

(3) Operating a confidential tip line for reporting suspected corruption;

(4) Administering a reward program for information leading to successful prosecution, with rewards of up to fifty thousand dollars;

(5) Providing training and guidance to state and local law enforcement on corruption investigation;

(6) Publishing an annual report on enforcement activities and the state of public integrity.

(c) The Public Integrity Unit may initiate investigations on its own initiative, without referral from any other agency or official.

Section 14. Severability

If any provision of this Act, or the application of any provision to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications that can be given effect without the invalid provision or application. To this end, the provisions of this Act are severable.

Section 15. Savings Clause

(a) Nothing in this Act limits any other state or federal remedy, civil or criminal, that may be available for covered conduct.

(b) Nothing in this Act shall be construed to regulate the operations of the federal government. This Act addresses only the criminal and civil liability of individual persons for covered conduct.

(c) All existing state criminal laws applicable to the conduct covered by this Act remain in full force and effect, and the Attorney General may prosecute any person for violation of such laws in addition to or instead of prosecution under this Act.

Section 16. Effective Date

This Act takes effect immediately upon ratification.

Section 17. Conflict of Interest and Special Prosecutor

(a) If the Attorney General, any employee of the Office of the Attorney General, or any member of the Attorney General's immediate family is the subject of an allegation of covered conduct, the Attorney General shall immediately recuse the Office of the Attorney General from any investigation or prosecution of such allegation.

(b) Upon recusal under subsection (a), the Governor shall appoint a Special Prosecutor to investigate and, if warranted, prosecute the matter. The Special Prosecutor shall have all powers granted to the Attorney General under this Act.

(c) If the Governor is the subject of an allegation of covered conduct, the Attorney General shall retain authority. If both the Governor and the Attorney General are subjects of related allegations, the Chief Justice of the [State] Supreme Court shall appoint a Special Prosecutor.

(d) A Special Prosecutor appointed under this section:

(1) Shall be a member in good standing of the [State] bar with at least ten years of experience in criminal prosecution;

(2) Shall have no personal, professional, or financial relationship with any subject of the investigation;

(3) Shall serve until the matter is resolved and may not be removed except for cause;

(4) Shall be compensated at a rate determined by the appointing authority, payable from funds appropriated under Section 18.

Section 18. Appropriations and Funding

(a) The [State Legislature] shall appropriate funds sufficient to establish and maintain the Public Integrity Unit created under Section 13.

(b) In addition to appropriated funds, the Public Integrity Unit may be funded by:

(1) The state's share of any monetary recovery obtained under this Act, after payment of any amounts owed to private enforcers under Section 8;

(2) Criminal fines collected under this Act;

(3) Proceeds from forfeiture under Section 6(e).

(c) Funds collected under subsection (b) shall be deposited in a dedicated Public Integrity Fund and shall be used exclusively for enforcement of this Act.

(d) The Attorney General shall include an accounting of the Public Integrity Fund in the annual report required under Section 13(b)(6).

This model legislation was drafted by The Existentialist Republic.