

HOUSE BILL NO. 689

INTRODUCED BY A. OLSON, BRUEGGEMAN

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS RELATING TO LOBBYING REGISTRATION AND REPORTING BY PRINCIPALS; ~~REVISING DEFINITIONS; REVISING REPORTING REQUIREMENTS; EXTENDING THE TIME FOR AN APPEAL OF DENIAL OF A LOBBYING LICENSE; PROVIDING FOR ADJUSTMENT OF REPORTING THRESHOLD AMOUNTS FOR INFLATION; REVISING DEFINITIONS; REVISING REPORTING REQUIREMENTS; PROVIDING FOR ADJUSTMENT OF REPORTING THRESHOLD AMOUNTS FOR INFLATION;~~ AMENDING SECTIONS ~~5-7-102~~, 5-7-102, ~~5-7-103~~, ~~5-7-105~~, AND 5-7-208, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE ~~AND A RETROACTIVE APPLICABILITY DATE~~ AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~Section 1.~~ Section 5-7-102, MCA, is amended to read:

~~"5-7-102. Definitions.~~ The following definitions apply in this chapter:

~~(1) "Appointed state official" means an individual appointed:~~

~~(a) to a public office in state government by the governor or the chief justice of the Montana supreme court and who is subject to confirmation by the senate; or~~

~~(b) by the board of regents of higher education to serve as the commissioner of higher education or as the president or chief executive officer of a unit of the Montana university system.~~

~~(1)(2) "Business" means:~~

~~(a) a holding or interest whose fair market value is greater than \$1,000, in a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, self-employed person, holding company, joint-stock company, receivership, trust, or other entity or property held in anticipation of profit, but does not include nonprofit organizations; and~~

~~(b) present or past employment from which benefits, including retirement allowances, are received.~~

~~(2)(3) "Commissioner" means the commissioner of political practices.~~

~~(3)(4) "Docket" means the register of lobbyists and principals maintained by the commissioner pursuant to 5-7-201.~~

~~(5) "Elected federal official" means a person elected to a federal office, including but not limited to a~~

~~member of the United States senate or house of representatives. The term includes an individual appointed to fill the unexpired term of an elected federal official and an individual who has been elected to a federal office but who has not yet been sworn in.~~

~~———— (6) "Elected local official" means an elected officer of a county, a consolidated government, an incorporated city or town, a school district, or a special district. The term includes an individual appointed to fill the unexpired term of an elected local official and an individual who has been elected to a local office but who has not yet been sworn in.~~

~~———— (4)(7) (a) "Elected state official" means a public official holding a state office filled by a statewide vote of all the electors of Montana or a state district office, including but not limited to legislators, public service commissioners, and district court judges. The term "official-elect" also applies to the offices. The term includes an individual appointed to fill the unexpired term of an elected state official and an individual who has been elected to a state office but who has not yet been sworn in.~~

~~———— (b) The term does not include legislators.~~

~~———— (8) "Elected tribal official" means an elected member of a tribal council or other elected office filled by a vote of the tribal members. The term includes an individual appointed to fill the unexpired term of an elected state official and an individual who has been elected to a state office but who has not yet been sworn in.~~

~~———— (5)(9) "Individual" means a human being.~~

~~———— (10) "Legislator" means an individual holding public office as a state senator or state representative. The term includes an individual who has been elected to the legislature but who has not yet been sworn in.~~

~~———— (6)(11) (a) "Lobbying" means:~~

~~———— (a)(i) the practice of promoting or opposing the introduction or enactment of legislation before the legislature or the members of the legislature by a person other than a member of the legislature or a public official legislators; and~~

~~———— (b)(ii) the practice of promoting or opposing official action by any public official.~~

~~———— (b) The term does not include actions described in subsection (11)(a) when performed by a legislator, an elected state official, an elected local official, an elected federal official, or an elected tribal official when acting in an official governmental capacity.~~

~~———— (7) "Lobbying for hire" includes activities of the officers, agents, attorneys, or employees of a principal who are paid, reimbursed, or retained by the principal and whose duties include lobbying. If an individual is reimbursed only for his personal living and travel expenses, which together are less than \$1,000 per calendar year, that individual is not considered to be lobbying for hire.~~

- ~~(8)(12) (a) "Lobbyist" means a person who engages in the practice of lobbying for hire:~~
- ~~(b) Lobbyist does not include:~~
- ~~(i) an individual acting solely on his the individual's own behalf; or~~
- ~~(ii) an individual working for the same principal as a licensed lobbyist if the individual does not have personal contact involving lobbying with a public official on behalf of his the lobbyist's principal; or~~
- ~~(iii) an individual who directly promotes or opposes the introduction or enactment of legislation or who promotes or opposes official action by an elected state official, elected local official, or public official if the RECEIVES payment to influence legislation or official action THAT does not exceed the payment threshold specified pursuant to [section 4] for the calendar year, excluding personal and necessary living and travel expenses:~~
- ~~(c) Nothing in this section subsection (12) deprives an individual who is not lobbying for hire of the constitutional right to communicate with elected local officials, elected federal officials, or public officials:~~
- ~~(9)(13) (a) "Payment" means distribution, transfer, loan, advance, deposit, gift, or other rendering made or to be made of money, property, or anything of value:~~
- ~~(i) to influence legislation or OFFICIAL action by an elected local official or A public official;~~
- ~~(ii) directly or indirectly to a lobbyist by a principal, such as salary, fee, compensation, or reimbursement for LOBBYING expenses; or~~
- ~~(iii) in support of or assistance to a lobbyist or a lobbying activity, including but not limited to the direct payment of expenses incurred at the request or suggestion of the lobbyist:~~
- ~~(b) The term does not include payments or reimbursements for personal and necessary travel and living expenses:~~
- ~~(10) "Payment to influence official action" means any of the following types of payment:~~
- ~~(a) direct or indirect payment to a lobbyist by a principal, such as salary, fee, compensation, or reimbursement for expenses, excluding personal living expenses; or~~
- ~~(b) payment in support of or assistance to a lobbyist or a lobbying activity, including but not limited to the direct payment of expenses incurred at the request or suggestion of the lobbyist:~~
- ~~(11)(14) "Person" means an individual, corporation, association, firm, partnership, state or local government or subdivision of state or local government, or other organization or group of persons:~~
- ~~(12)(15) "Principal" means a person who employs a lobbyist or a person required to report pursuant to 5-7-208:~~
- ~~(13)(16) (a) "Public official" means an individual, elected state official or appointed state official, acting in his an official capacity for the state government.~~

~~_____ (b) The term does not include those acting in a judicial or quasi-judicial capacity or performing ministerial acts.~~

~~_____ (14)(17) "Unprofessional conduct" means:~~

~~_____ (a) violating any of the provisions of this chapter;~~

~~_____ (b) instigating action by a public official for the purpose of obtaining employment;~~

~~_____ (c) attempting to influence the action of a public official on a measure pending or to be proposed by:~~

~~_____ (i) promising financial support; or~~

~~_____ (ii) making public any unsubstantiated charges of improper conduct on the part of a lobbyist, a principal, or a legislator; or~~

~~_____ (d) attempting to knowingly deceive a public official with regard to the pertinent facts of an official matter or attempting to knowingly misrepresent pertinent facts of an official matter to a public official."~~

SECTION 1. SECTION 5-7-102, MCA, IS AMENDED TO READ:

"5-7-102. Definitions. The following definitions apply in this chapter:

(1) "Business" means:

(a) a holding or interest whose fair market value is greater than \$1,000, in a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, self-employed person, holding company, joint-stock company, receivership, trust, or other entity or property held in anticipation of profit, but does not include nonprofit organizations; and

(b) present or past employment from which benefits, including retirement allowances, are received.

(2) "Commissioner" means the commissioner of political practices.

(3) "Docket" means the register of lobbyists and principals maintained by the commissioner pursuant to 5-7-201.

(4) "Elected official" means a public official holding a state office filled by a statewide vote of all the electors of Montana or a state district office, including but not limited to legislators, public service commissioners, and district court judges. The term "official-elect" also applies to the offices.

(5) "Individual" means a human being.

(6) "Lobbying" means:

(a) the practice of promoting or opposing the introduction or enactment of legislation before the legislature or the members of the legislature by a person other than a member of the legislature or a public official; and

(b) the practice of promoting or opposing official action by any public official.

~~(7) "Lobbying for hire" includes activities of the officers, agents, attorneys, or employees of a principal who are paid, reimbursed, or retained by the principal and whose duties include lobbying. If an individual is reimbursed only for his personal living and travel expenses, which together are less than \$1,000 per calendar year, that individual is not considered to be lobbying for hire.~~

~~(8)(7)~~ (a) "Lobbyist" means a person who engages in the practice of lobbying ~~for hire~~.

(b) Lobbyist does not include:

(i) an individual acting solely on ~~his~~ the individual's own behalf; ~~or~~

(ii) an individual working for the same principal as a licensed lobbyist if the individual does not have personal contact involving lobbying with a public official on behalf of ~~his~~ the lobbyist's principal; ~~or~~

(iii) an individual who receives payments from one or more persons that total less than the amount specified under [section 5] in a calendar year.

(c) Nothing in this ~~section~~ chapter deprives an individual who is not lobbying for hire ~~a lobbyist~~ of the constitutional right to communicate with public officials.

~~(9)(8)~~ (a) "Payment" means distribution, transfer, loan, advance, deposit, gift, or other rendering made or to be made of money, property, or anything of value:

(i) to a lobbyist to influence legislation or official action by an elected local official or a public official;

(ii) directly or indirectly;

~~— (10) "Payment to influence official action" means any of the following types of payment:~~

~~— (a) direct or indirect payment to a lobbyist by a principal, such as salary, fee, compensation, or reimbursement for lobbying expenses, excluding personal living expenses; or~~

~~(b)(iii) payment in support of or assistance to a lobbyist or a lobbying activity, including but not limited to the direct payment of expenses incurred at the request or suggestion of the lobbyist.~~

(b) The term does not include payments or reimbursements for:

(i) personal and necessary living expenses; or

(ii) travel expenses, unless a principal is otherwise required to report expenses pursuant to 5-7-208.

~~(11)(9)~~ "Person" means an individual, corporation, association, firm, partnership, state or local government or subdivision of state or local government, or other organization or group of persons.

~~(12)(10)~~ "Principal" means a person who employs a lobbyist or a person required to report pursuant to 5-7-208.

~~(13)(11)~~ "Public official" means an individual, elected or appointed, acting in ~~his~~ an official capacity for

the state government. The term does not include those acting in a judicial or quasi-judicial capacity or performing ministerial acts.

~~(14)~~(12) "Unprofessional conduct" means:

- (a) violating any of the provisions of this chapter;
- (b) instigating action by a public official for the purpose of obtaining employment;
- (c) attempting to influence the action of a public official on a measure pending or to be proposed by:
 - (i) promising financial support; or
 - (ii) making public any unsubstantiated charges of improper conduct on the part of a lobbyist, a principal, or a legislator; or
- (d) attempting to knowingly deceive a public official with regard to the pertinent facts of an official matter or attempting to knowingly misrepresent pertinent facts of an official matter to a public official."

Section 2. Section 5-7-103, MCA, is amended to read:

"5-7-103. Licenses -- fees -- eligibility -- waiver. (1) Any adult of good moral character who is otherwise qualified under this chapter may be licensed as a lobbyist. The commissioner shall provide a license application form. The application form may be obtained from and must be filed in the office of the commissioner. Upon approval of the application and receipt of the license fee by the commissioner, a license must be issued that entitles the licensee to practice lobbying on behalf of one or more enumerated principals. The license fee is \$150 for each lobbyist EXCEPT AS PROVIDED IN SUBSECTION (5) OR UNLESS THE FEE IS WAIVED FOR HARDSHIP REASONS UNDER THIS SUBSECTION. Each license expires on December 31 of each even-numbered year or may be terminated at the request of the lobbyist. A lobbyist who believes that payment of the license fee may constitute a hardship may apply to the commissioner for a waiver of the fee required by this section. The commissioner may waive all or a portion of the license fee upon proof by the lobbyist that payment of the fee constitutes a hardship.

(2) (a) Except as provided in subsection (2)(b), an application may not be disapproved without affording the applicant a hearing. The hearing must be held and the decision entered within ~~10~~ 20 10 business days of the date of the filing of the application, excluding the date on which the application is filed.

(b) An application may not be approved if a principal has failed to file reports required under 5-7-208.

(3) The fines collected under this chapter must be deposited in the state treasury.

(4) The commissioner shall deposit the license fee provided for in subsection (1) as follows:

(a) \$50 in the general fund; and

(b) \$100 in the state special revenue account provided for in 5-11-1112.

(5) A LOBBYIST WHO RECEIVES PAYMENTS FROM ONE OR MORE PRINCIPALS THAT TOTAL LESS THAN \$2,150 THE AMOUNT SPECIFIED UNDER [SECTION 5] IN A CALENDAR YEAR IS NOT REQUIRED TO PAY THE LICENSE FEE OR FILE AN APPLICATION FORM AS PROVIDED FOR IN SUBSECTION (1).

(5)(6) The commissioner may adopt rules to implement the waiver provisions of subsection (1) SUBSECTIONS (1) AND (5)."

SECTION 3. SECTION 5-7-105, MCA, IS AMENDED TO READ:

"5-7-105. Suspension of lobbying privileges. ~~No~~ A lobbyist whose license has been suspended and ~~no~~ a person who has been adjudged guilty of a violation of any provision of this chapter may not engage in lobbying ~~for hire~~ until that person has been reinstated to the practice and duly licensed."

Section 4. Section 5-7-208, MCA, is amended to read:

"5-7-208. Principals to file report. (1) A principal subject to this chapter shall file with the commissioner a report of payments made for the purpose of lobbying. A principal is subject to the reporting requirements of this section only if the principal makes payments exceeding the threshold amount specified in [section 4] A TOTAL OF \$2,150 THE AMOUNT SPECIFIED UNDER [SECTION 5] TO A LOBBYIST ONE OR MORE LOBBYISTS during a calendar year.

(2) If payments are made solely to influence legislative action, a report must be made:

(a) by February 15th of any year the legislature is in session and must include all payments made in that calendar year prior to February 1;

(b) by the 15th day of the calendar month following a calendar month in which the principal spent \$5,000 or more and must include all payments made during the prior calendar month; and

(c) no later than 30 days following adjournment of a legislative session and must include all payments made during the session, except as previously reported.

(3) If payments are made to influence any other official action by a public official or made to influence other action and legislative action, a report must be made:

(a) by February 15th of the calendar year following the payments and must include all payments made during the prior calendar year; and

(b) by the 15th day of the calendar month following a calendar month in which the principal spent \$5,000 or more and must include all payments made during the prior calendar month.

(4) If ~~no~~ payments are not made during the reporting periods provided in subsections (2)(a), (2)(c), and (3)(a) ~~above~~, the principal shall file a report stating that fact.

(5) Each report filed under this section must:

(a) list all payments for lobbying in each of the following categories:

(i) printing;

(ii) advertising, including production costs;

(iii) postage;

~~(iv) travel expenses;~~

(IV) TRAVEL EXPENSES;

~~(v)(iv)(V) salaries and fees, including allowances, rewards, and AND contingency fees, and payments made to an individual exempt under 5-7-102(12)(b)(iii) when the payments exceed the payment threshold amount established pursuant to [section 4];~~

~~(vi)(v)(VI) entertainment, including all foods and refreshments;~~

~~(vii)(vi)(VII) telephone and telegraph; and~~

~~(viii)(vii)(VIII) other office expenses;~~

(b) itemize, identifying the payee and the beneficiary:

(i) each separate payment conferring \$25 or more benefit to any ~~legislator, elected local official, elected federal official, or~~ public official when the payment was made for the purpose of lobbying; and

(ii) each separate payment conferring \$100 or more benefit to more than one ~~legislator, elected local official, elected federal official, or~~ public official, regardless of individual benefit when the payment was made for the purpose of lobbying, except that in regard to a dinner or other function to which all senators or all representatives have been invited, the beneficiary may be listed as all members of that group without listing separately each person who attended;

(c) list each contribution and membership fee which amounts to \$250 or more when aggregated over the period of 1 calendar year paid to the principal for the purpose of lobbying, with the full address of each payer and the issue area, if any, for which the payment was earmarked;

(d) list each official action on which the principal or ~~his~~ the principal's agents exerted a major effort to support, oppose, or modify, together with a statement of the principal's position for or against the action; and

(e) be kept by the commissioner for a period of 10 years."

~~NEW SECTION. Section 4. Payment threshold -- adjustment of amount. For calendar years 2002 through 2004, the payment threshold in 5-7-102 and 5-7-208 is \$2,150. The commissioner shall adjust the threshold amount in January of each succeeding calendar year following a general election for that year's inflation~~

by multiplying the prior year's threshold amount by an inflation factor, as provided in 15-30-101. ~~ADOPTED BY THE COMMISSIONER BY RULE. THE RULE MUST BE WRITTEN TO REFLECT THE CHANGE IN THE CONSUMER PRICE INDEX FROM THE PRIOR YEAR TO THE YEAR IN WHICH GENERAL ELECTIONS ARE HELD.~~ The resulting figure must be rounded to the nearest \$50 increment. ~~The commissioner shall adopt the adjusted amount by rule.~~

NEW SECTION. SECTION 5. PAYMENT THRESHOLD -- INFLATION ADJUSTMENT. FOR CALENDAR YEARS 2002 THROUGH 2004, THE PAYMENT THRESHOLD IN 5-7-102 AND 5-7-208 IS \$2,150. THE COMMISSIONER SHALL ADJUST THE THRESHOLD AMOUNT FOLLOWING A GENERAL ELECTION BY MULTIPLYING THE THRESHOLD AMOUNT VALID FOR THE YEAR IN WHICH THE GENERAL ELECTION WAS HELD BY AN INFLATION FACTOR, ADOPTED BY THE COMMISSIONER BY RULE. THE RULE MUST BE WRITTEN TO REFLECT THE ANNUAL AVERAGE CHANGE IN THE CONSUMER PRICE INDEX FROM THE PRIOR YEAR TO THE YEAR IN WHICH THE GENERAL ELECTION IS HELD. THE RESULTING FIGURE MUST BE ROUNDED UP OR DOWN TO THE NEAREST \$50 INCREMENT. THE COMMISSIONER SHALL ADOPT THE ADJUSTED AMOUNT BY RULE.

NEW SECTION. Section 6. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

NEW SECTION. Section 7. Coordination. If [this act] and Senate Bill No. 7 are both passed and approved:

(1) AND AMEND 5-7-102, THEN 5-7-102(13)(C) OF SENATE BILL NO. 7 MUST READ:

"NOTHING IN THIS CHAPTER DEPRIVES AN INDIVIDUAL WHO IS NOT A LOBBYIST OF THE CONSTITUTIONAL RIGHT TO COMMUNICATE WITH PUBLIC OFFICIALS."

(2) AND AMEND 5-7-103, then the amendments to 5-7-103 contained in Senate Bill No. 7 are void.

~~NEW SECTION. Section 7. Codification instruction.~~ [Section 4] is intended to be codified as an integral part of Title 5, chapter 7, part 1, and the provisions of Title 5, chapter 7, part 1, apply to [section 4].

NEW SECTION. SECTION 8. CODIFICATION INSTRUCTION. [SECTION 5] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 5, CHAPTER 7, PART 1, AND THE PROVISIONS OF TITLE 5, CHAPTER 7, PART 1, APPLY TO [SECTION 5].

NEW SECTION. Section 9. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. Section 10. Effective date. [This act] is effective on passage and approval.

~~NEW SECTION. Section 10. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to all occurrences CONCERNING FILING OR REPORTING on or after September 1, 2002. THIS SECTION MAY NOT BE CONSTRUED TO REQUIRE A REFUND OF ANY FEE PAID ON OR AFTER SEPTEMBER 1, 2002.~~

NEW SECTION. SECTION 11. RETROACTIVE APPLICABILITY. [THIS ACT] APPLIES RETROACTIVELY, WITHIN THE MEANING OF 1-2-109, TO ALL OCCURRENCES CONCERNING FILING OR REPORTING ON OR AFTER SEPTEMBER 1, 2002. THIS SECTION MAY NOT BE CONSTRUED TO REQUIRE A REFUND OF ANY FEE PAID ON OR AFTER SEPTEMBER 1, 2002.

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