

SENATE BILL NO. 172
INTRODUCED BY J. TROPILA
BY REQUEST OF THE COMMISSIONER OF POLITICAL PRACTICES

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LOBBYING LAWS TO CLARIFY THE APPLICATION OF THE LAWS TO THE LEGISLATURE AND LEGISLATORS; AND AMENDING SECTIONS 5-7-102, 5-7-208, 5-7-209, AND 5-7-210, MCA."

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 who is appointed:

(a) to 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 Montana senate;

(b) by the board of regents of higher education to serve either as the commissioner of higher education or as the chief executive officer of a campus of the Montana university system; or

(c) by the board of trustees of a community college to serve as president.

(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.

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

(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.

(7) (a) "Elected state official" means an individual 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 public service commissioners and district court judges ~~but not including legislators for the purposes of this chapter~~. 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 statewide office but who has not yet been sworn in.

(b) The term does not include a legislator.

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

(9) "Individual" means a human being.

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

(11) (a) "Lobbying" means:

(i) the practice of promoting or opposing the introduction or enactment of legislation before the legislature ~~or the members of the legislature~~ legislators; and

(ii) the practice of promoting or opposing official action ~~by~~ OF any public official, the legislature, or legislators.

(b) The term does not include actions described in subsections (11)(a)(i) and (11)(a)(ii) when performed by a legislator, a public official, an elected local official, an elected federal official, or an elected tribal official while acting in an official governmental capacity.

(12) (a) "Lobbyist" means a person who engages in the practice of lobbying.

(b) Lobbyist does not include:

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

(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, the legislature, or legislators on behalf of the lobbyist's principal; or

(iii) an individual who receives payments from one or more persons that total less than the amount specified under 5-7-112 in a calendar year.

(c) Nothing in this chapter deprives an individual who is not a lobbyist of the constitutional right to communicate with public officials, the legislature, or legislators.

(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 a lobbyist to influence legislation or official action by an elected local official, ~~or~~ a public official, the legislature, or legislators;

(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 for 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.

(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.

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

(16) (a) "Public official" means an elected state official or an appointed state official acting in an official capacity for state government.

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

(17) "Unprofessional conduct" means:

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

(b) instigating action by a public official, the legislature, or a legislator for the purpose of obtaining employment;

(c) attempting to influence the action of a public official, the legislature, or a legislator 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, the legislature, or legislators 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, the legislature, or legislators."

Section 2. 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 total payments for the purpose of lobbying that exceed the amount specified under 5-7-112 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 payments are not made during the reporting periods provided in subsections (2)(a), (2)(c), and (3)(a), 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;

- (v) salaries and fees, including allowances, rewards, and contingency fees;
- (vi) entertainment, including all foods and refreshments;
- (vii) telephone and telegraph; and
- (viii) other office expenses;
- (b) itemize, identifying the payee and the beneficiary:
 - (i) each separate payment conferring \$25 or more benefit to any public official or legislator when the payment was made for the purpose of lobbying; and
 - (ii) each separate payment conferring \$100 or more benefit to more than one public official or legislator, 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 that 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 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."

Section 3. Section 5-7-209, MCA, is amended to read:

"5-7-209. Payments prohibited unless reported -- penalty for late filing, failure to report, or false statement. A principal may not make payments to influence official action by any public official, the legislature, or a legislator unless that principal files the reports required under this chapter. A principal who fails to file a required report within the time required by this chapter is subject to the penalties provided in 5-7-305 and 5-7-306(1). A principal who knowingly files a false, erroneous, or incomplete statement commits the offense of unsworn falsification to authorities."

Section 4. Section 5-7-210, MCA, is amended to read:

"5-7-210. Reimbursement. Whenever a lobbyist invites a public official or legislator to attend a function ~~which that~~ the lobbyist or ~~his~~ the lobbyist's principal has fully or partially funded or sponsored; or whenever a lobbyist offers a public official or legislator a gift, the lobbyist ~~must~~ shall, upon request, supply the recipient public official or legislator with the benefit's true or estimated cost and allow the public official or legislator to reimburse.

~~Such~~ The expenditures must be itemized in the principal's reports with a notation "reimbursed by benefactee".

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