

SENATE BILL NO. 1

INTRODUCED BY D. KARY

BY REQUEST OF THE STATE ADMINISTRATION AND VETERAN AFFAIRS INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LOBBYING LAWS; REVISING THE DEFINITION OF LOBBYING; CLARIFYING THAT LOBBYING AND REPORTING REQUIREMENTS RELATE TO PROMOTING OR OPPOSING OFFICIAL ACTION BY A LEGISLATOR OR THE LEGISLATURE; REVISING OUTDATED TERMINOLOGY; REVISING HOW LONG LOBBYING REPORTS MUST BE RETAINED; AND AMENDING SECTIONS 5-7-101, 5-7-102, 5-7-112, 5-7-120, 5-7-208, 5-7-209, 5-7-210, AND 5-7-305, MCA."

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

**Section 1.** Section 5-7-101, MCA, is amended to read:

**"5-7-101. Purposes of chapter -- applicability.** (1) The purposes of this chapter are to promote a high standard of ethics in the practice of lobbying, to prevent unfair and unethical lobbying practices, to provide for the licensing of lobbyists and the suspension or revocation of the licenses, ~~to require elected officials to make public their business, financial, and occupational interests,~~ and to require disclosure of the amounts of money spent for lobbying.

(2) This chapter does not subject an individual lobbying on the individual's own behalf to any reporting requirements or deprive an individual of the constitutional right to communicate with ~~public officials~~ legislators."

**Section 2.** 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

1 education or as the chief executive officer of a campus of the Montana university system; or

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

3 (2) "Business" means:

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

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

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

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

12 (5) "Elected federal official" means a person elected to a federal office, including but not limited to a  
13 member of the United States senate or house of representatives. The term includes an individual appointed to  
14 fill the unexpired term of an elected federal official and an individual who has been elected to a federal office  
15 but who has not yet been sworn in.

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

20 (7) (a) "Elected state official" means an individual holding a state office filled by a statewide vote of all  
21 the electors of Montana or a state district office, including but not limited to public service commissioners and  
22 district court judges. The term includes an individual appointed to fill the unexpired term of an elected state  
23 official and an individual who has been elected to a statewide office but who has not yet been sworn in.

24 (b) The term does not include a legislator.

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

28 (9) "Individual" means a human being.

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

4 (11) (a) "Lobbying" means:

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

7 (ii) the practice of promoting or opposing official action of any ~~public official~~ legislator or the legislature.

8 (b) The term does not include:

9 (i) actions described in subsections (11)(a)(i) and (11)(a)(ii) when performed by a ~~public official~~  
10 legislator, elected state official, appointed state official, an elected local official, an elected federal official, or an  
11 elected tribal official while acting in an official governmental capacity; or

12 (ii) federal lobbying as described in 5-7-120.

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

14 (b) Lobbyist does not include:

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

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

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

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

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

25 (i) to a lobbyist to influence legislation or official action by ~~an elected local official, a public official, a~~  
26 legislator or the legislature;

27 (ii) directly or indirectly to a lobbyist by a principal, such as salary, fee, compensation, or  
28 reimbursement for lobbying expenses; or

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

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

4 (i) personal and necessary living expenses; or

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

6 (14) "Person" means an individual, corporation, association, firm, partnership, state or local  
7 government or subdivision of state or local government, or other organization or group of persons.

8 (15) "Principal" means a person who employs a lobbyist or a person required to report pursuant to 5-7-  
9 208.

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

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

14 ~~(17)~~(16) "Unprofessional conduct" means:

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

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

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

20 (i) promising financial support; or

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

23 (d) attempting to knowingly deceive a ~~public official~~ legislator or the legislature with regard to the  
24 pertinent facts of an official matter or attempting to knowingly misrepresent pertinent facts of an official matter to  
25 a ~~public official~~ legislator or the legislature."

26  
27 **Section 3.** Section 5-7-112, MCA, is amended to read:

28 **"5-7-112. Payment threshold -- inflation adjustment.** For calendar year 2004, the payment

1 threshold referred to in 5-7-102(12)(b)(iii), 5-7-103, and 5-7-208 is \$2,150. The commissioner shall adjust the  
2 threshold amount following a general election by multiplying the threshold amount valid for the year in which the  
3 general election was held by an inflation factor, adopted by the commissioner by rule. The rule must be written  
4 to reflect the annual average change in the consumer price index from the prior year to the year in which the  
5 general election is held. The resulting figure must be rounded up or down to the nearest \$50 increment. The  
6 commissioner shall adopt the adjusted amount by rule."

7

8 **Section 4.** Section 5-7-120, MCA, is amended to read:

9 **"5-7-120. Full disclosure of public expenditures on federal lobbying.** (1) Each quarter of a fiscal  
10 year that a state agency or a local government, as the terms are defined in 2-2-102, makes an expenditure for  
11 the services of a lobbyist to lobby an elected federal official or an appointee of an elected federal official, the  
12 state agency or local government shall make readily available for public inspection upon request a summary  
13 report itemizing each lobbying service provided and how much money was spent for each service.

14 (2) Each state agency and local government subject to subsection (1) shall:

15 (a) designate an office from which a copy of the report may be obtained; and

16 (b) post a copy of the report to the agency's or local government's website on the internet, if the  
17 agency or local government has a website.

18 (3) For purposes of this section:

19 (a) "expenditure" means a payment by the state agency or local government or a payment by a  
20 contractor of the state agency or local government; and

21 (b) "lobbying" means the practice of promoting or opposing an official action by an elected federal  
22 official or an appointee of an elected federal official."

23

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

25 **"5-7-208. Principals to file report.** (1) A principal subject to this chapter shall file with the  
26 commissioner a report of payments made for the purpose of lobbying. A principal is subject to the reporting  
27 requirements of this section only if the principal makes total payments for the purpose of lobbying that exceed  
28 the amount specified under 5-7-112 during a calendar year.

- 1 (2) If payments are made solely to influence legislative action, a report must be made:
- 2 (a) by February 15th of any year the legislature is in session and must include all payments made in  
3 that calendar year prior to February 1;
- 4 (b) by the 15th day of the calendar month following a calendar month in which the principal spent  
5 \$5,000 or more and must include all payments made during the prior calendar month; and
- 6 (c) no later than 30 days following adjournment of a legislative session and must include all payments  
7 made during the session, except as previously reported.
- 8 (3) If payments are made to influence any other official action by a ~~public official~~ legislator or made to  
9 influence other action and legislative action, a report must be made:
- 10 (a) by February 15th of the calendar year following the payments and must include all payments  
11 made during the prior calendar year; and
- 12 (b) by the 15th day of the calendar month following a calendar month in which the principal spent  
13 \$5,000 or more and must include all payments made during the prior calendar month.
- 14 (4) If payments are not made during the reporting periods provided in subsections (2)(a), (2)(c), and  
15 (3)(a), the principal shall file a report stating that fact.
- 16 (5) Each report filed under this section must:
- 17 (a) list all payments for lobbying in each of the following categories:
- 18 (i) printing;
- 19 (ii) advertising, including production costs;
- 20 (iii) postage;
- 21 (iv) travel expenses;
- 22 (v) salaries and fees, including allowances, rewards, and contingency fees;
- 23 (vi) entertainment, including all foods and refreshments;
- 24 (vii) ~~telephone and telegraph~~ voice or any electronic communication; and
- 25 (viii) other office expenses;
- 26 (b) itemize, identifying the payee and the beneficiary:
- 27 (i) each separate payment conferring \$25 or more benefit to any ~~public official~~ legislator when the  
28 payment was made for the purpose of lobbying; and

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

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

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

10 (e) be kept by the commissioner for a period of ~~10~~ 4 years."  
 11

12 **Section 6.** Section 5-7-209, MCA, is amended to read:

13 **"5-7-209. Payments prohibited unless reported -- penalty for late filing, failure to report, or**  
 14 **false statement.** A principal may not make payments to influence official action by any ~~public official~~ legislator  
 15 or the legislature unless that principal files the reports required under this chapter. A principal who fails to file a  
 16 required report within the time required by this chapter is subject to the penalties provided in 5-7-305 and 5-7-  
 17 306(1). A principal who knowingly files a false, erroneous, or incomplete statement commits the offense of  
 18 unsworn falsification to authorities."  
 19

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

21 **"5-7-210. Reimbursement.** Whenever a lobbyist invites a ~~public official~~ legislator to attend a function  
 22 that the lobbyist or the lobbyist's principal has fully or partially funded or sponsored or whenever a lobbyist  
 23 offers a ~~public official~~ legislator a gift, the lobbyist shall, upon request, supply the recipient ~~public official~~  
 24 legislator with the benefit's true or estimated cost and allow the ~~public official~~ legislator to reimburse. The  
 25 expenditures must be itemized in the principal's reports with a notation "reimbursed by benefactee"."  
 26

27 **Section 8.** Section 5-7-305, MCA, is amended to read:

28 **"5-7-305. Penalties and enforcement.** (1) A person who violates any of the provisions of this chapter

1 is subject to civil penalties of not less than \$250 and not more than \$7,500 according to the discretion of the  
2 district court, as court of original jurisdiction. A lobbyist who violates any of the provisions of this chapter must  
3 have the lobbyist's license suspended or revoked according to the discretion of the court. Any ~~public official~~  
4 ~~holding elective office~~ legislator adjudged in violation of the provisions of this chapter is additionally subject to  
5 recall under the Montana Recall Act, Title 2, chapter 16, part 6, and the violation constitutes an additional basis  
6 for recall to those mentioned in 2-16-603(3).

7 (2) The attorney general, the commissioner, or the county attorney of the county in which the violation  
8 takes place may bring a civil action in the name of the state for any appropriate civil remedy.

9 (3) If a civil penalty action is undertaken by the attorney general or the commissioner, all costs  
10 associated with the prosecution must be paid by the state of Montana.

11 (4) (a) Any individual who has notified the attorney general, the commissioner, and the appropriate  
12 county attorney in writing that there is reason to believe that some portion of this chapter is being violated may  
13 bring in the name of the state an action (referred to as a citizen's action) authorized under this chapter if:

14 (i) the attorney general, the commissioner, or the appropriate county attorney has failed to commence  
15 an action within 90 days after notice; and

16 (ii) the attorney general, the commissioner, or the county attorney fails to commence an action within  
17 10 days after receiving a written notice that a citizen's action will be brought if the attorney general, the  
18 commissioner, or the county attorney does not bring an action.

19 (b) Each notification tolls the applicable statute of limitations until the expiration of the waiting period.

20 (c) If the individual who brings the citizen's action prevails, the individual is entitled to be reimbursed  
21 by the state of Montana for costs and attorney fees incurred. However, in the case of a citizen's action that is  
22 dismissed and that the court also finds was brought without reasonable cause, the court may order the  
23 individual commencing the action to pay all costs of trial and reasonable attorney fees incurred by the  
24 defendant.

25 (5) A civil action may not be brought under this section more than 3 years after the occurrence of the  
26 facts that give rise to the action.

27 (6) All civil penalties imposed pursuant to this section must be deposited in the state general fund.

28 (7) A hearing under this chapter must be held by the court unless the defendant-licensee demands a



1 jury trial. The trial must be held as soon as possible but at least 20 days after the filing of the charges and must  
2 take precedence over all other matters pending before the court.

3 (8) If the court finds for the plaintiff, judgment must be rendered revoking or suspending the license  
4 and the clerk of court shall file a certified copy of the judgment with the commissioner."

5 - END -