

1 HOUSE BILL NO. 938

2 INTRODUCED BY N. NICOL

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LOBBYING LAWS; PROVIDING THAT A LOBBYIST
5 FILE A DISCLOSURE IDENTIFYING IF A STATE OR LOCAL GOVERNMENT OR A NONGOVERNMENTAL
6 ORGANIZATION TO WHICH THE LOBBYIST PROVIDES SERVICES RECEIVES FEDERAL MONEY AND A
7 VERIFICATION THAT THE LOBBYIST'S COMPENSATION IS NOT DERIVED FROM FEDERAL MONEY;
8 REQUIRING A FILING FEE; PROVIDING DEFINITIONS; AMENDING SECTIONS 5-7-102 AND 5-7-112, MCA;
9 AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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11 WHEREAS, the Anti-Lobbying Act, 18 U.S.C. 1913, provides that: "No part of the money appropriated
12 by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or
13 indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter,
14 or other device, intended or designed to influence in any manner a Member of Congress, a jurisdiction, or an
15 official of any government, to favor, adopt, or oppose, by vote or otherwise, any legislation, law, ratification,
16 policy, or appropriation, whether before or after the introduction of any bill, measure, or resolution proposing
17 such legislation, law, ratification, policy, or appropriation... "; and

18 WHEREAS, the United States Department of Government Efficiency has determined that state and
19 local government agencies and nongovernmental organizations routinely receive federal funds that result from
20 congressional appropriations; and

21 WHEREAS, state and local government agencies and nongovernmental organizations routinely engage
22 in lobbying in Montana; and

23 WHEREAS, there exists little or no oversight to verify that state and local government agencies and
24 nongovernmental organizations that receive federal funds comply with 18 U.S.C. 1913.

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

27
28 NEW SECTION. **Section 1. Lobbying on behalf of state or local government or**

1 **nongovernmental organization -- disclosure requirements -- filing fee -- penalties.** (1) A lobbyist may not
2 engage in lobbying on behalf of an agency of state or local government or a nongovernmental organization
3 prior to filing a disclosure under oath that identifies whether the agency or organization receives federal money
4 prior to commencing services. The lobbyist shall pay a \$10 filing fee.

5 (2) A lobbyist to which subsection (1) applies may not engage in lobbying unless the disclosure
6 required by subsection (1) includes a verification under oath that the lobbyist's compensation is not derived
7 from federal money, which is supported by a disclosure under oath that traces the receipt and use of federal
8 money received by the agency or organization.

9 (3) A lobbyist who fails to comply with this section is subject to the penalties provided in 5-7-305
10 and 5-7-306(1). A lobbyist who knowingly files a false, erroneous, or incomplete statement commits the offense
11 of unsworn falsification to authorities.

12 (4) The commissioner shall deposit the filing fee provided for in subsection (1) in the general fund.
13

14 **Section 2.** Section 5-7-102, MCA, is amended to read:

15 **"5-7-102. Definitions.** The following definitions apply in this chapter:

16 (1) "Appointed state official" means an individual who is appointed:

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

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

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

22 (2) "Business" means:

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

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

28 (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. 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) "Federal money" means any money appropriated by an enactment of congress.

(10) "Individual" means a human being.

~~(40)~~(11) "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)~~ (12) (a) "Lobbying" means:

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

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

(b) The term does not include:

(i) actions described in subsections ~~(11)(a)(i)-(12)(a)(i)~~ and ~~(11)(a)(ii)-(12)(a)(ii)~~ when performed by a legislator, an elected state official, an appointed state official, an elected local official, an elected federal official, or an elected tribal official while acting in an official governmental capacity; or

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

~~(12)(13)~~(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 legislator or the legislature 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 legislators or the legislature.

(14) "Nongovernmental organization" means a private organization operated outside of governmental control for the purpose of advocating with respect to community, national, and international levels to serve social or political goals.

~~(13)(15)~~(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 a legislator or the legislature;

(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.

1 ~~(14)~~(16)"Person" means an individual, corporation, association, firm, partnership, state or local
2 government or subdivision of state or local government, or other organization or group of persons.

3 ~~(45)~~(17)"Principal" means a person who employs a lobbyist or a person required to report pursuant to
4 5-7-208.

5 ~~(46)~~(18)"Unprofessional conduct" means:

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

16
17 **Section 3.** Section 5-7-112, MCA, is amended to read:

18 **"5-7-112. Payment threshold -- inflation adjustment.** For calendar year 2004, the payment
19 threshold referred to in ~~5-7-102 (12)(b)(iii)~~ 5-7-102(13)(b)(iii), 5-7-103, and 5-7-208 is \$2,150. The
20 commissioner shall adjust the threshold amount following a general election by multiplying the threshold
21 amount valid for the year in which the general election was held by an inflation factor, adopted by the
22 commissioner by rule. The rule must be written to reflect the annual average change in the consumer price
23 index from the prior year to the year in which the general election is held. The resulting figure must be rounded
24 up or down to the nearest \$50 increment. The commissioner shall adopt the adjusted amount by rule."

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26 NEW SECTION. **Section 4. Codification instruction.** [Section 1] is intended to be codified as an
27 integral part of Title 5, chapter 7, part 2, and the provisions of Title 5, chapter 7, part 2, apply to [section 1].
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