



Notice of Adoption

Office of the Secretary of State Rules Concerning Lobbyist Regulation 8 CCR 1505-8

October 11, 2013

I. Adopted Rule Amendments

As authorized by Colorado laws regarding lobbyist regulation¹ and the State Administrative Procedure Act², the Colorado Secretary of State gives notice that the following amendments to the rules concerning lobbyist regulation³ are adopted on a permanent basis.

The following rules were considered at the October 4, 2013 rulemaking hearing in accordance with the State Administrative Procedure Act⁴.

(SMALL CAPS indicate proposed additions to the current rules. ~~Stricken type~~ indicates proposed deletions from current rules. *Annotations* may be included):

[Current 8 CCR 1505-8 is stricken in its entirety and re-codified as follows:]

Rule 1. Definitions

[Current Rule 1.1 concerning bona fide personal emergency is amended and integrated into New Rule 5.3.1(g)]

[Current Rules 1.2 – 1.4 concerning rate, rule-making official, standard are amended and relocated to New Rule 2.1]

~~1.5-1.1~~ “State Liaison” means the one person designated by each principal department of state government who is responsible for any lobbying by a state official or employee on behalf of the principal department, in accordance with section 24-6-303.5(1)(a), C.R.S.

~~1.6~~ “Substantial Violation” means any one of the following violations of Part 3 of Article 6 of Title 24, C.R.S.:

~~1.6.1~~ Failure to register as a lobbyist in accordance with sections 24-6-303 or 24-6-303.5, C.R.S.;

¹ Part 3 of Article 6 of Title 24, C.R.S. (2013).

² Section 24-4-103(3)(a), C.R.S. (2013).

³ 8 CCR 1505-8.

⁴ Section 24-4-103(3)(a), C.R.S. (2013).

- ~~1.6.2 Failure to file a monthly disclosure statement within 15 days after the due date while the general assembly is in session, in accordance with sections 24-6-303(3)(a) and 24-6-303.5(2)(b), C.R.S.;~~
- ~~1.6.3 Failure to file a monthly disclosure statement within 30 days after the due date while the general assembly is not in session, in accordance with sections 24-6-303(3)(a) and 24-6-303.5(2)(b), C.R.S.;~~
- ~~1.6.4 Knowingly underreporting any item of income or expenditures by any amount on the disclosure statement;~~
- ~~1.6.5 Underreporting income or expenditures by twenty percent or more on the entire disclosure statement;~~
- ~~1.6.6 Any violation of sections 24-6-306, 24-6-307, or 24-6-308, C.R.S.;~~
- ~~1.6.7 Any other violation that the Secretary of State finds "substantial," taking into consideration the following factors:~~

[Current Rules 1.6 is repealed, except current Rules 1.6.7(a)-(c) are amended and moved to New Rule 5.6]

Amendments to current Rule 2:

Rule 2. Fees-REGISTRATION

~~1.3-2.1 "Rule making official," as used in section 24-6-301(1.7)(b), C.R.S., means~~ A RULE-MAKING OFFICIAL INCLUDES an official of a state agency who has jurisdiction or authority to adopt any rule, standard, or rate. OF THE FOLLOWING:

2.1.1 A RULE;

~~1.4-2.1.2 "Rate," as used in sections 24-6-301(1.7)(b) and 24-6-301(3.5)(a)(IV), C.R.S., means~~ A RATE, MEANING a ratio of valuation, percentage, percentage change, annual adjustment, or an amount charged for a good or service, adopted by a state agency having rulemaking authority.; OR

~~1.4-2.1.3 "Standard," as used in sections 24-6-301(1.7)(b) and 24-6-301(3.5)(a)(IV), C.R.S., means~~ A STANDARD, MEANING a criterion measuring acceptability, quality, accuracy, weight, or an amount, or a threshold for agency jurisdiction adopted by a state agency having rulemaking authority.

[Current Rules 1.2, 1.3, and 1.4 are amended and relocated to New Rule 2.1 as shown above]

~~2.1-2.2~~ PROFESSIONAL LOBBYISTS

2.2.1 The fee for filing a professional lobbyist registration statement is \$40.00.

~~2.2-2.2.2~~ WAIVER OF REGISTRATION FEE

- (A) Upon written request, the Secretary of State may waive the registration fee for a professional lobbyist for a ~~not for profit~~ NONPROFIT organization if:

~~2.2.1~~(1) The lobbyist derives compensation solely from the organization; and

~~2.2.2~~(2) ~~(a)~~(I) The organization can demonstrate that it is operating under financial hardship conditions; or

~~(b)~~(II) The lobbyist will have particular interest in only one issue or bill and does not intend to lobby throughout the State fiscal year.

- ~~2.3~~(B) To receive a registration fee waiver, a professional lobbyist for a ~~not for profit~~ NONPROFIT organization must obtain SECRETARY OF STATE approval ~~prior to filing the~~ BEFORE registration. The written request must:

~~2.3.1~~(1) State the information required by Rule ~~2.2 of these rules~~ 2.2.2(A); and

~~2.3.2~~(2) Include A COPY OF the organization's MOST RECENTLY FILED Internal Revenue Service form ~~1024, or 990, if requesting a waiver under Rule 2.2.2(a) of these rules~~ 990EZ, OR 990-N FORM SHOWING GROSS ANNUAL REVENUE OF \$50,000 OR LESS.

2.2.3 IN ACCORDANCE WITH SECTION 24-6-302(2.5)(A), C.R.S., THE FOLLOWING MUST FILE SEPARATE REGISTRATION STATEMENTS:

(A) AN INDIVIDUAL THAT OWNS OR IS EMPLOYED BY A PRINCIPAL ORGANIZED FOR LOBBYING PURPOSES; AND

(B) THE PRINCIPAL.

2.3 A STATE LIAISON'S REGISTRATION STATEMENTS MUST INCLUDE INFORMATION FOR:

2.3.1 EACH "STATE OFFICIAL OR EMPLOYEE," AS DEFINED IN SECTION 24-6-303.5(3), C.R.S., LOBBYING FOR STATE PRINCIPAL DEPARTMENTS, INCLUDING ANY SUBDIVISION.

2.3.2 LOBBYISTS HIRED BY THE PRINCIPAL DEPARTMENT ON A CONTRACT BASIS WHO ARE NOT REGISTERED AS PROFESSIONAL LOBBYISTS AS DESCRIBED IN RULE 3.3.1 BUT EXCLUDING PERSONS LOBBYING ON BEHALF OF AN INSTITUTION OR GOVERNING BOARD OF HIGHER EDUCATION.

Current Rule 4 is amended and relocated to New Rule 3:

Rule 4-3. Disclosure

4.1-3.1 Article XXIX of the Colorado Constitution prohibits lobbyists from offering or giving a gift or thing of value, of any kind or nature to a covered official.

4.2 ~~Contents of the monthly disclosure statement:~~

~~4.2.1 The monthly disclosure statement for A professional lobbyist must meet the requirements of sections 24-6-301(1.9) and 24-6-302(2.5), C.R.S.~~

~~4.2.2 The monthly disclosure statement for a lobbying firm must meet the requirements of sections 24-6-301(1.9) and 24-6-302(2), C.R.S.~~

~~4.2.3 The monthly disclosure statement for state liaisons and state officials or employees lobbying on behalf of an institution or governing board of higher education must meet the requirements of section 24-6-303.5(2)(a), C.R.S.~~

3.2 PROFESSIONAL LOBBYISTS

~~4.2.3(a)-3.2.1 Professional lobbyists registered under sections 24-6-302 or 24-6-303, C.R.S., and who contract A PROFESSIONAL LOBBYIST WHO CONTRACTS to lobby on behalf of a principal department or an institution or governing board of higher education and who are not state officials or employees must continue to file PROFESSIONAL LOBBYIST disclosure statements in accordance with sections 24-6-302 and 24-6-303, C.R.S.~~

3.2.2 THE FOLLOWING SUBCONTRACTOR REQUIREMENTS APPLY TO A LOBBYIST OR ANY FIRM ORGANIZED FOR PROFESSIONAL LOBBYING PURPOSES THAT CONTRACTS TO PERFORM ANY LOBBYING ACTIVITIES FOR ANOTHER LOBBYIST OR LOBBYING FIRM.

(A) A LOBBYIST OR LOBBYING FIRM THAT SUBCONTRACTS LOBBYING ACTIVITIES TO ANOTHER LOBBYIST OR LOBBYING FIRM MUST DISCLOSE:

- (1) THE NAME OF EACH SUBCONTRACTOR;
- (2) THE DATE AND AMOUNT OF EACH PAYMENT OR OTHER COMPENSATION FOR SUBCONTRACTING WORK; AND
- (3) THE NAME OF THE PRINCIPAL FOR WHOM THE SUBCONTRACTOR IS PERFORMING THE LOBBYING ACTIVITIES.

(B) A SUBCONTRACTOR THAT PERFORMS LOBBYING ACTIVITIES FOR ANOTHER LOBBYIST OR LOBBYIST FIRM MUST DISCLOSE:

- (1) THE NAME OF THE LOBBYIST OR LOBBYING FIRM PAYING THE SUBCONTRACTOR TO PERFORM LOBBYING ACTIVITIES;
- (2) THE DATE AND AMOUNT OF EACH PAYMENT OR OTHER COMPENSATION RECEIVED FROM THE LOBBYIST OR LOBBYING FIRM FOR PERFORMING LOBBYING ACTIVITIES; AND

- (3) A DESCRIPTION OF THE LOBBYING ACTIVITY, POSITION TAKEN, AND THE NAME OF THE PRINCIPAL FOR WHOM THE SUBCONTRACTOR PERFORMS THE LOBBYING ACTIVITIES.

3.3 LOBBYING BY STATE OFFICIALS AND EMPLOYEES

4.2.4.3.3.1 In accordance with section 24-6-303.5(3), C.R.S., lobbyists hired on a contract basis to lobby on behalf of a principal department ~~and~~ who are not registered as professional lobbyists under sections 24-6-302 or 24-6-303, C.R.S., at the time of hiring must report their lobbying activities to the state liaison for the principal department.

4.3.3.3.2 ~~The registration and disclosure statements of each state liaison must include the information required by section 24-6-303.5, C.R.S., for every "state official or employee", as that term is defined in section 24-6-303.5(3), C.R.S., within the state principal department, including state officials and employees lobbying on behalf of any commission, board, council, agency, or other subdivision of the principal department, and including any lobbyist hired by the principal department on a contract basis who is not registered as a professional lobbyist as described in Rule 4.2.4, but excluding persons lobbying on behalf of an institution or governing board of higher education. A STATE LIAISON'S DISCLOSURE STATEMENTS MUST INCLUDE INFORMATION FOR:~~

- (A) EACH "STATE OFFICIAL OR EMPLOYEE," AS DEFINED IN SECTION 24-6-303.5(3), C.R.S., LOBBYING FOR STATE PRINCIPAL DEPARTMENTS, INCLUDING ANY SUBDIVISION.
- (B) LOBBYISTS HIRED BY THE PRINCIPAL DEPARTMENT ON A CONTRACT BASIS WHO ARE NOT REGISTERED AS PROFESSIONAL LOBBYIST AS DESCRIBED IN RULE 3.3.1 BUT EXCLUDING PERSONS LOBBYING ON BEHALF OF AN INSTITUTION OR GOVERNING BOARD OF HIGHER EDUCATION.

4.4.3.3.3 Nothing in these rules or section 24-6-303.5, C.R.S., authorizes a state liaison to manage, control, supervise, or direct the lobbying activities of any state official or employee ~~of the principal department~~ except as ~~may be~~ necessary to enable the state liaison to comply with ~~the~~ registration and reporting requirements ~~of the statutes and these rules.~~

Current Rule 3 is amended and renumbered as New Rule 4:

Rule 3-4. Electronic Filing ~~FILING AND RECORD RETENTION~~

3.1 ~~A lobbyist must electronically file all registration and disclosure statements required by Part 3 of Article 6 of Title 24, C.R.S. The Secretary of State will not accept manual filings. The Secretary must make a computer terminal available in the Secretary's main office for filing electronic registration and disclosure statements.~~

4.1 ELECTRONIC FILING.

4.1.1 A PROFESSIONAL LOBBYIST OR STATE LIAISON MUST FILE REGISTRATION AND DISCLOSURE STATEMENTS ELECTRONICALLY USING THE SECRETARY OF STATE'S SYSTEM.

~~3.2~~4.1.2 The Secretary of State may grant an exception to the electronic filing requirement based on hardship or good cause shown.

~~3.3~~(A) All applications for an exception must include a brief statement of the hardship or good cause for the requested exception.

(B) A lobbyist must submit an application to the Secretary of State at least 15 calendar days ~~prior to~~ BEFORE the first applicable filing deadline, unless the exception is based on emergency circumstances arising after the deadline, in which case the lobbyist must describe the nature of the emergency in the application.

(C) Filing the application for exception based on emergency circumstances does not delay any reporting deadlines. If, however, a penalty is imposed for failure to file a disclosure statement on the due date, the Secretary of State may reduce or set the penalty aside in accordance with section 24-6-302(7), C.R.S.

~~3.4~~ For the purposes of this Rule 3, "electronic filing" means filing the registration and disclosure statements required by Part 3 of Article 6 of Title 24, C.R.S., using the internet system created by the Secretary of State in accordance with section 24-6-303(6.3)(a), C.R.S.

~~3.5~~4.1.3 When a lobbyist or authorized agent uses the electronic filing system to submit a registration or disclosure statement, the submission constitutes the lobbyist's or agent's electronic signature in accordance with section 24-71-101, C.R.S., under penalty of perjury.

~~3.6~~ Automated extraction of bulk data from the Secretary of State's web site by means of computerized "robots" or "data mining", is prohibited. Upon request, the Secretary of State will provide bulk data for a fee established in accordance with section 24-21-104, C.R.S.

[Current Rule 3.6 is repealed.]

Rule 5. Record Retention

~~5.1~~4.2 ~~Professional lobbyists and lobbyist firms~~ ANY PERSON WHO IS REQUIRED TO FILE STATEMENTS OR REPORTS UNDER PART 3 OF ARTICLE 6 OF TITLE 24, C.R.S., must retain the following in accordance with section 24-6-304(1), C.R.S.: RECEIPTS FOR EXPENDITURES OR CONTRIBUTIONS MADE, DOCUMENTATION OF INCOME, AND CONTRACTS FOR FIVE YEARS.

~~5.1.1 Receipts for expenditures or contributions made;~~

~~5.1.2 Documentation of income; and~~

~~5.1.3 Contracts.~~

[Current Rule 5 is amended and integrated into New Rule 4 as shown above.]

[Current Rule 6 is amended and renumbered New Rule 5]

Rule 6-5. Enforcement

5.1 FOR THE PURPOSES OF THIS RULE 5, THE TERM “LOBBYIST” INCLUDES A PROFESSIONAL LOBBYIST, STATE LIAISON, AND A STATE OFFICIAL OR EMPLOYEE LOBBYING ON BEHALF OF AN INSTITUTION OR GOVERNING BOARD OF HIGHER EDUCATION, UNLESS OTHERWISE SPECIFIED.

~~6.2-5.2~~ Complaints. Any person who believes a lobbyist or lobbyist firm is not complying with the Colorado Lobbyist Regulation laws or ~~Rule 4~~ THESE RULES, may file a complaint with the Secretary of State in accordance with Section 24-6-305(2)(c), C.R.S. ~~For the purposes of this Rule 6.2, “lobbyist” includes a state liaison and state official or employee lobbying on behalf of an institution or governing board of higher education.~~

~~6.2-1-5.2.1~~ A written complaint filed with the Secretary of State must be VERIFIED AND notarized and contain the following information:

- (a) The complainant’s name;
- (b) The complainant’s ~~full residence~~ RESIDENTIAL address and mailing address (if different from residence);
- (c) The alleged violation, which may include a reference to the ~~particular~~ SPECIFIC statute or rule;
- (d) The lobbyist or ~~firm’s~~ FIRM name;
- (e) The date and location of the alleged violation, if known; and
- (f) Other applicable or relevant information.

~~6.2-2-5.2.2~~ The Secretary of State will review all properly submitted complaints and investigate as appropriate. If the Secretary determines that a violation occurred, the Secretary must take appropriate action under section 24-6-305, C.R.S.

~~6.2-3-5.2.3~~ Upon receipt of a properly submitted complaint, the Secretary of State must:

- (a) Notify the person against whom the complaint is filed by certified mail; and

- (b) In the case of a state liaison, notify the head of the principal department in writing;
- (c) In the case of a state official or employee lobbying on behalf of a principal department, notify the state liaison in writing; or
- (d) In the case of a state official or employee lobbying on behalf of an institution or governing board of higher education, notify the institution or governing board in writing.

6.2.4-5.2.4 Notification of a complaint in accordance with Rule ~~6.2.3~~-5.2.3 must include:

- (a) The date and factual basis of each act ~~with which the lobbyist or firm is charged~~-ALLEGED;
- (b) The particular provision of the statute that the lobbyist or firm allegedly violated;
- (c) The action(s) the Secretary of State plans to take; and
- (d) Other relevant information.

[Current Rule 6.2 is amended and renumbered New Rule 5.2]

~~6.1-5.3 Waiver Process.~~ PENALTY WAIVER PROCESS

~~6.1.1-5.3.1~~ Under ~~section 24-6-302(7), C.R.S., any~~ A REGISTERED professional lobbyist or lobbyist firm ~~registered with the Secretary of State~~ may ask the Secretary OF STATE to excuse or reduce an imposed fine by submitting a written request by ~~letter~~-MAIL, email, fax or hand-delivery within 30 days of the imposition of fine. The request should include:

- (a) The ~~registered~~-PROFESSIONAL lobbyist's name;
- (b) The request date;
- (c) The due date of the delinquently filed disclosure statement(s);
- (d) The filing date the PROFESSIONAL lobbyist actually filed the disclosure statement(s);
- ~~(e) A brief summary of the reason, circumstance, or other justification of the "bona fide personal emergency", as defined in Rule 1.1;~~

[Current Rule 6.1.1(e) is amended and relocated to New Rule 5.3.1(g) below]

- (f) Any measures the PROFESSIONAL lobbyist or firm has instituted or plans to institute to avoid future delinquencies, if applicable; and

~~(g)~~ — Other relevant information.

~~(e)~~(G) A brief summary of the reason, circumstance, or other justification of the “bona fide personal emergency,” as defined in Rule 1.1;

1.1(1) A “Bona fide personal emergency,” as used in section 24-6-302(7), C.R.S., means INCLUDES:

1.1.1(A) A medical emergency involving the individual responsible for filing or the individual’s immediate family. The medical emergency can include but is not limited to incapacitation, hospitalization, death, or debilitating illness or injury.

1.1.2(B) A practical emergency, including extraordinary obstacles ~~out of~~ BEYOND the control of the PROFESSIONAL lobbyist or lobbyist firm, that ~~preclude~~ PRECLUDES timely disclosure. For example:

~~(a)~~(I) The loss or unavailability of records, or a computer due to fire, flood, or theft;

~~(b)~~(II) A web site error that made it impossible to file a required registration document; or

~~(c)~~(III) Other compelling reasons beyond the PROFESSIONAL lobbyist’s or lobbyist firm’s control.

1.1.3(2) The following are not a “bona fide personal emergency EMERGENCIES:”

~~(a)~~(A) Failure to timely file registration documents due to failure to plan;

~~(b)~~(B) Misunderstandings of applicable disclosure requirements and deadlines;

~~(c)~~(C) Mistakes in electronic filing submissions, including incomplete filings;

~~(d)~~(D) Lack of access to the internet or personal computer; or

~~(e)~~(E) Lack of credit card or other means ~~for~~ OF making online payments.

[Current Rule 1.1 is amended and integrated into New Rule 5.3.1(g) as shown above.]

6.1.2-5.3.2 The Secretary of State may take into account all appropriate facts and circumstances when granting or rejecting a waiver request or in reducing an

imposed fine. The Secretary may also consider the frequency of the requests to excuse or reduce a fine within a two-year period, efforts to mitigate or remedy the failure to register or file, and the registrant's demonstrated commitment to meet the requirements of Colorado's laws concerning PROFESSIONAL lobbyist regulation.

~~6.3 — Suspension, Revocation, and Other Appropriate Actions.~~

~~6.3.1-5.4~~ The Secretary of State will investigate, provide notice OF HEARINGS, and hold hearings for a violation of Part 3 of Article 6 of Title 24, C.R.S., in accordance with ~~section 24-4-105, C.R.S.~~ THE STATE ADMINISTRATIVE PROCEDURE ACT (ARTICLE 4 OF TITLE 24, C.R.S.).

~~6.3.2 — If the Secretary of State finds a violation that does not warrant suspension or revocation, the Secretary may admonish the professional lobbyist.~~

~~(a) — The Secretary of State may admonish a professional lobbyist if:~~

~~(1) — The lobbyist violates a provision of Part 3 of Article 6 of Title 24, C.R.S., but the violation is not a substantial violation as defined in Rule 1.6 of these Rules;~~

~~(2) — The lobbyist commits a substantial violation, as defined by Rule 1.6 of these Rules, but takes prompt action to correct or remedy the violation;~~

~~(3) — The lobbyist fails to pay penalties within 45 days of the assessment of the penalties; or~~

~~(4) — The lobbyist's violation was inadvertent, was an isolated event, and the lobbyist has made a good faith effort to comply.~~

~~(b) — Upon issuing an admonishment, the Secretary of State must notify the lobbyist and give the lobbyist 30 days to respond. The Secretary of State may reverse the admonishment, based on any additional information provided by the lobbyist.~~

~~6.3.3 — The Secretary of State may pursue suspension of a professional lobbyist's certificate of registration if:~~

~~(a) — The lobbyist commits a substantial violation and takes no action to remedy or correct the violation;~~

~~(b) — The lobbyist was previously admonished by the Secretary of State and commits the same violation; or~~

~~(c) — The lobbyist has a pattern of noncompliance and the Secretary of State reasonably believes that the pattern of noncompliance will likely continue.~~

~~6.3.4 The Secretary of State will pursue revocation of a professional lobbyist's certificate of registration if:~~

- ~~(a) The lobbyist knowingly and willfully commits a substantial violation of Part 3 of Article 6 of Title 24, C.R.S.;~~
- ~~(b) The lobbyist continues to lobby during the period of suspension of the lobbyist's certificate of registration; or~~
- ~~(c) The lobbyist was suspended by the Secretary of State and willfully commits the same violation.~~

[Current Rule 6.3 is repealed except Current Rule 6.3.1 is amended and renumbered New Rule 5.4 as shown above]

5.5 IN ACCORDANCE WITH SECTION 24-6-305, C.R.S., THE SECRETARY OF STATE:

5.5.1 MAY SUSPEND, REVOKE, OR BAR FROM REGISTRATION ANY LOBBYIST WHO FAILS TO:

- (A) FILE DISCLOSURE STATEMENTS UNDER SECTION 24-6-303, C.R.S.;
- (B) UPON REQUEST OF THE SECRETARY OF STATE, PROVIDE BOOKS AND RECORDS FOR THE SECRETARY OF STATE'S EXAMINATION UNDER SECTION 24-6-304.5, C.R.S.; OR
- (C) PAY PENALTIES IN FULL UNDER SECTION 24-6-302(7), C.R.S.

5.5.2 WILL REVOKE THE REGISTRATION CERTIFICATE OF AN INDIVIDUAL WHO:

- (A) IS CONVICTED IN DISTRICT COURT OF VIOLATING ANY PROVISION OF PART 3 OF ARTICLE 6 OF TITLE 24, C.R.S.; OR
- (B) HAS BEEN SUSPENDED FROM LOBBYING BY THE GENERAL ASSEMBLY.

5.6 IF THE SECRETARY OF STATE DEEMS ANY OF THE VIOLATIONS CONTAINED IN RULE 5.5 TO BE SUBSTANTIAL VIOLATIONS, THE SECRETARY OF STATE WILL NOTIFY THE PRESIDENT OF THE SENATE AND SPEAKER OF THE HOUSE. IN DETERMINING WHETHER THE VIOLATION IS SUBSTANTIAL, THE SECRETARY OF STATE WILL CONSIDER:

- (a) The extent of noncompliance;
- (b) The purpose of the applicable provision and whether that purpose is substantially achieved despite the alleged noncompliance; and
- (c) Whether there was a good-faith effort to comply or whether noncompliance is based on a conscious decision to lobby covered officials without registering or filing disclosure statements.

[Current Rules 1.6.7(a)-(c) are amended and moved to New Rule 5.6 as shown above]

[Current Rule 7 is renumbered as New Rule 6. Associated sub-rules are renumbered accordingly.]

II. Basis, Purpose, and Specific Statutory Authority

A Statement of Basis, Purpose, and Specific Statutory Authority follows this notice and is incorporated by reference.

III. Effective Date of Adopted Rules

These new and amended rules will become permanently effective twenty days after publication in the Colorado Register.⁵

Dated this 11th day of October, 2013,



Suzanne Staiert
Deputy Secretary of State

For

Scott Gessler
Colorado Secretary of State

⁵ Section 24-4-103(5), C.R.S. (2013).



Statement of Basis, Purpose, and Specific Statutory Authority

Office of the Secretary of State Rules Concerning Lobbyist Regulation 8 CCR 1505-8

October 11, 2013

I. Basis and Purpose

This statement explains amendments and recodification of the Colorado Secretary of State Rules Concerning Lobbyist Regulation.

The amendments are intended to ensure uniform and proper administration, implementation, and enforcement of Colorado lobbyist regulation law¹. Specifically, the recodification is intended to: (a) improve organization and readability; (b) clarify existing laws and regulations; and (c) address questions arising under State lobbyist laws. Annotations concerning specific rule amendments included in the recodification are as follows:

- Amendments to Current Rule 1 include repealing unnecessary definitions and moving operative rules to the appropriate substantive rules as follows:
 - Current Rule 1.1 that describes a bona fide personal emergency is amended and integrated into New Rule 5.3.1(g) concerning penalty waiver requests.
 - Current Rules 1.2 to 1.4 that describe rate, rule-making official, and standard are amended and relocated to New Rule 2.1 concerning registration.
 - Current Rule 1.6 is repealed as unnecessary except that Rules 1.6.7(a) through (c) are moved to New Rule 5.6, that concerns enforcement, in order to clarify what the Secretary of State will consider in determining whether a violation is substantial.
- Amendments to Current Rule 2 broaden the rule's subject matter to address registration issues.
 - New Rule 2.1 (formerly Rule 1.3) explains who qualifies as a rule-making official. Subsequent rules are renumbered as necessary.

¹ Part 3 of Article 6 of Title 24, C.R.S. (2012).

- New Rule 2.2 (formerly Rule 2.1) consolidates professional lobbyist registration requirements.
 - New Rule 2.2.2 (formerly Rule 2.2) consolidates rules concerning registration fee waivers.
 - New Rule 2.2.2(b)(2) (formerly Rule 2.3.2) clarifies the types of IRS forms that a professional lobbyist for a nonprofit organization must submit when requesting a registration fee waiver.
 - New Rule 2.2.3 clarifies that, in accordance with statutory law, an individual that owns or is employed by a principal organized for lobbying purposes must file registration statements separately from the principal. The rule will help reduce the incidence of noncompliance in filing an additional registration statement if a firm is organized for lobbying purposes.
- New Rule 2.3 specifies the information that state liaisons must include in their registration statements.
- New Rule 3: current Rule 4 concerning disclosure is amended and renumbered as New Rule 3.
 - Current Rule 4.2, concerning the contents of a monthly disclosure statement, is repealed as duplicative of statute.
 - New Rule 3.2 consolidates professional lobbyist disclosure requirements.
 - New Rule 3.2.1 (formerly Rule 4.2.3(a)) clarifies that a professional lobbyist who contracts to lobby on behalf of a principal department or an institution or governing board of higher education must continue to file professional lobbyist disclosure statements.
 - New Rule 3.2.2 specifies subcontractor disclosure requirements for lobbyists and firms organized for professional lobbying purposes that contract to perform any lobbying activities for another lobbyist or lobbying firm. The rule is necessary to help reduce the incidence of noncompliance in what is required to be filed on a disclosure statement.
 - New Rule 3.3 consolidates lobbyist disclosure requirements for state officials and employees
 - New Rule 3.3.2 (formerly Rule 4.3) specifies the information that state liaisons must include in their disclosure statements.
 - Current Rules 3.1, 3.4, and 3.6 have been repealed as unnecessary.
- New Rule 4: current Rule 3 concerning electronic filing and record retention is amended and renumbered as New Rule 4.

- New Rule 4.1 consolidates electronic filing requirements.
 - New Rule 4.1.1 clarifies that both professional lobbyists and state liaisons must file registration statements and disclosure statements electronically using the Secretary of State's system.
- Obsolete current Rule 3.6 is repealed.
- New Rule 4.2 (formerly Rule 5.1) clarify that persons required to file statements or reports under Part 3 of Article 6 of Title 24, C.R.S., must retain receipts for expenditures or contributions made, documentation of income, and contracts for five years.
- New Rule 5: current Rule 6 concerning enforcement is amended and renumbered as New Rule 5.
 - New Rule 5.1 defines the term "lobbyist" for the purposes of Rule 5.
 - Amendments to Rule 5.2 (formerly Rule 6.2) eliminate language which was amended and integrated into New Rule 5.1.
 - Amendments to Rule 5.4 (formerly Rule 6.3.1) clarify that the Secretary will provide notice of enforcement hearings and reference the full name of the applicable statute, the State Administrative Procedure Act.
 - Current Rules 6.3.2 through 6.3.4 are repealed. While the admonishment procedures are repealed from the rules, it is still within the Secretary of State's discretion to admonish a lobbyist for violations that do not warrant suspension or revocation.
 - New Rule 5.5 provides that the Secretary of State may take specific types of enforcement action when a lobbyist violates Colorado lobbyist regulation law:
 - New Rule 5.5.1 indicates that the Secretary of State may suspend, revoke, or bar from registration lobbyists who fail to file disclosure statements; fail to provide books and records to the Secretary for examination; or fail to pay penalties in full.
 - New Rule 5.5.2 indicates that the Secretary of state will also revoke the certificate of registration of any individual who violates the Colorado lobbying regulation law or who has been suspended from lobbying by the General Assembly.
 - New Rule 5.6 provides that if the Secretary of State deems any of the violations under New Rule 5.5.1 to be substantial, the Secretary will notify the President of the Senate and the Speaker of the House. New Rule 5.6 also incorporates criteria formerly located in Rule 1.6.7 for determining whether the violation is substantial. Overall, the amendments clarify that a final determination as to whether a lobbyist has committed

a substantial violation will be made during an administrative hearing held in accordance with the State Administrative Procedure Act.

- Current Rule 7 is renumbered New Rule 6.
- Other changes to rules not specifically listed are entirely non-substantive. Some words and phrases are changed to simplify or clarify, but the meaning is not intended to be altered unless as described above. Cross-references in rules are also corrected or updated. Unnecessary statutory references are removed. Renumbering the rules is necessary for consistency with Department rulemaking format/style.

On August 13, 2013, the Secretary issued a request for public comment to help our office develop possible amendments to the rules concerning lobbyist regulation. The comments we received in anticipation of rulemaking are available online at: http://www.sos.state.co.us/pubs/rule_making/lobbyRuleComments.html. Additional comments received during the official rulemaking proceedings are available online at: http://www.sos.state.co.us/pubs/rule_making/hearings/2013/LobbyRulesHearing20131004.html. All comments are incorporated into the official rulemaking record.

II. Rulemaking Authority

The statutory authority is as follows:

1. Section 24-6-303 (1.3) (a), C.R.S., (2013), which authorizes the Secretary of State to set registration fees by rule promulgated in accordance with article 4 of Title 24.
2. Section 24-6-303 (6.3), C.R.S., (2013), which authorizes the Secretary of State to promulgate rules concerning electronic filing of required reports.
3. Section 24-6-304 (1), C.R.S., (2013), which authorizes the Secretary of State to specify by rule the records relating to statements and reports that are necessary for the effective implementation of the Colorado lobbyist regulation law.
4. Section 24-6-305 (2) (b), C.R.S., (2013), which authorizes the Secretary of State to adopt rules and regulations to define, interpret, implement, and enforce the provisions of the Colorado lobbyist regulation law (Part 3, Article 6, Title 24 of the Colorado Revised Statutes).