



## NOTICE OF ADOPTION

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

May 10, 2011

Pursuant to sections 24-6-303(1.3)(a), 24-6-303(6.3)(a), 24-6-305(2)(b), C.R.S., (2010), and the rulemaking provisions of the State Administrative Procedure Act, section 24-4-103(3)(a), C.R.S., (2010), I, Scott Gessler, Colorado Secretary of State, do hereby adopt and give **NOTICE** of the permanent adoption this 10th day of May, 2011 of the following amended rules of the Colorado Secretary of State Rules Concerning Lobbyist Regulation, 8 C.C.R. 1505-8. (Additions to the current rules are reflected in **SMALL CAPS** and deletions from current rules are shown in ~~stricken type~~. *Annotations may be included*):

The Rules Concerning Lobbyist Regulation are amended as follows:

#### Rule 1. Definitions

1.1 "Bona fide personal emergency," as used in section 24-6-302(7), C.R.S., means:

~~1.1.1~~A. A medical emergency involving the individual responsible for filing or his or her immediate family, including incapacitation, hospitalization, death, or debilitating illness or injury; or

~~1.1.2~~B. A practical emergency including extraordinary obstacles out of the control of the lobbyist or lobbyist firm that preclude timely disclosure, such as the loss or unavailability of records, or a computer due to fire, flood, or theft, or other compelling reasons beyond the lobbyist's or lobbyist firm's control, OR A WEB SITE ERROR THAT MADE IT IMPOSSIBLE TO FILE A REQUIRED REGISTRATION DOCUMENT.

C. THE FOLLOWING ARE NOT CONSIDERED A "BONA FIDE PERSONAL EMERGENCY."

- I. FAILURE TO TIMELY FILE REGISTRATION DOCUMENTS AS A RESULT OF LACK OF PLANNING;
- II. MISUNDERSTANDINGS OF APPLICABLE DISCLOSURE REQUIREMENTS AND DEADLINES;

- III. MISTAKES IN ELECTRONIC FILING SUBMISSIONS, INCLUDING INCOMPLETE FILINGS;
- IV. LACK OF ACCESS TO THE INTERNET OR PERSONAL COMPUTER; AND
- V. LACK OF CREDIT CARD OR OTHER MEANS FOR MAKING ONLINE PAYMENTS.

1.2 “Rule-making official,” as used in section 24-6-301(1.7)(b), C.R.S., means an official of a state agency who has jurisdiction or authority to adopt any rule, standard, or rate.

1.3 “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, pursuant to section 24-6-303.5(1)(a), C.R.S.

1.4 “Substantial Violation” means any one of the following violations of Part 3 of ARTICLE 6 OF Title 24, C.R.S. of the Colorado Revised Statutes:

- a. Failure to register as a lobbyist pursuant to sections 24-6-303 or 24-6-303.5, C.R.S.;
- b. Failure to file a monthly disclosure statement within ~~fifteen~~ (15) days after the due date while the general assembly is in session, pursuant to sections 24-6-303(3)(a) and 24-6-303.5(2)(b), C.R.S.;
- c. Failure to file a monthly disclosure statement within ~~thirty~~ (30) days after the due date while the general assembly is not in session, pursuant to sections 24-6-303(3)(a) and 24-6-303.5(2)(b), C.R.S.;
- d. Knowingly underreporting any item of income or expenditures by any amount on the disclosure statement;
- e. Underreporting income or expenditures by twenty percent or more on the entire disclosure statement;
- f. Any violation of the provisions of sections 24-6-306, 24-6-307, or 24-6-308, C.R.S.;
- g. Any other violation that the Secretary of State deems “substantial,” taking into consideration the following factors derived from *Fabec v. Beck*, 922 P.2d 330 (Colo. 1996):
  - i. †The extent of noncompliance;
  - ii. †The purpose of the applicable provision and whether that purpose is substantially achieved despite the alleged noncompliance; and
  - iii. †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.

## Rule 2. Fees

- 2.1 The fee for filing a professional lobbyist registration statement is ~~forty dollars (\$40.00)~~.
- 2.2 Upon written request, the Secretary of State may waive the registration fee for a professional lobbyist for a not-for-profit organization if:
- a. The lobbyist derives his or her lobbyist compensation solely from the organization; and
  - b.
    - i. The lobbyist's organization CAN DEMONSTRATE THAT THE ORGANIZATION is operating under financial hardship conditions; or
    - 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 IN ORDER TO RECEIVE A WAIVER OF THE REGISTRATION FEE, A PROFESSIONAL LOBBYIST FOR A NOT-FOR-PROFIT ORGANIZATION MUST OBTAIN APPROVAL PRIOR TO FILING THE REGISTRATION. THE WRITTEN REQUEST MUST:
- A. STATE THE INFORMATION REQUIRED BY RULE 2.2 OF THESE RULES; AND
  - B. INCLUDE THE ORGANIZATION'S INTERNAL REVENUE SERVICE FORM 1024, OR 990, IF REQUESTING A WAIVER UNDER RULE 2.2(B)(I) OF THESE RULES.

## Rule 3. Electronic Filing

- 3.1 ~~Except as provided in Rule 3.2, a~~All registration and disclosure statements filed with the Secretary of State pursuant to PART 3 OF ARTICLE 6 OF TITLE 24, C.R.S., ~~Title 24, Article 6, Part 3~~ shall be filed electronically. ~~Statements required to be filed electronically with the Secretary of State under this rule that are~~ ANY STATEMENT presented for manual filing TO THE OFFICE OF THE SECRETARY OF STATE shall not be accepted. ~~This rule shall not apply to annual cumulative disclosure statements filed pursuant to section 24-6-302 (3)(b), C.R.S.~~ THE SECRETARY SHALL MAKE A COMPUTER TERMINAL AVAILABLE IN THE SECRETARY'S MAIN OFFICE TO ALLOW A LOBBYIST TO ELECTRONICALLY FILE REGISTRATION AND DISCLOSURE STATEMENTS.
- 3.2 In accordance with section 24-21-111, C.R.S., registration and disclosure statements are not required to be filed electronically if the Secretary of State has granted an exception to the electronic filing requirement after written application based on hardship or other good cause shown. All applications for an exception shall include a brief statement of the hardship or good cause for which the exception is sought. Applications must be received by the Secretary of State at least ~~fifteen (15)~~ calendar days prior to the first applicable filing deadline, unless the exception is based on emergency circumstances arising after such deadline, in which case the nature of the emergency shall be described in the application. The filing of an application for exception based on emergency circumstances does not delay any reporting deadlines, however; if a penalty is imposed for failure to file

a disclosure statement on the due date, the penalty may be set aside or reduced in accordance with section 24-6-302(7), C.R.S.

- 3.3 For the purposes of this Rule 3, “electronic filing” means the filing of registration and disclosure statements required by ~~Title 24, Article 6, Part 3 of the Colorado Revised Statutes~~ PART 3 OF ARTICLE 6 OF TITLE 24, C.R.S., utilizing the internet system created by the Secretary of State pursuant to section 24-6-303(6.3)(a), C.R.S.
- 3.4 When the lobbyist or authorized agent utilizes the electronic filing system to submit to the Secretary of State a registration or disclosure statement, such submission shall constitute the lobbyist’s or agent’s electronic signature as provided by section 24-71-101, C.R.S., under penalty of perjury as provided by law.
- 3.5 Automated extraction of bulk data from the Secretary of State’s web site, such as by means of computerized “robots” or “data mining”, is prohibited. Upon request, the Secretary of State will provide bulk data for a fee established pursuant to section 24-21-104, C.R.S.

#### **Rule 4. Disclosure**

- 4.1 In accordance with section 24-6-301(1.9)(a)(IV), C.R.S., a lobbyist shall disclose in monthly disclosure statements specific gifts to covered officials with a value of ~~fifty dollars~~ (\$50.00) or more, whether or not the lobbyist made any expenditure for such gifts.
- 4.2 Contents of the monthly disclosure statement:
  - ~~4.2.1A.~~ The monthly disclosure statement for A professional lobbyists shall fulfill all requirements of sections 24-6-301(1.9) AND 24-6-302(2.5) ~~and 24-6-301 (1.9),~~ C.R.S.
  - ~~4.2.2B.~~ The monthly disclosure statement for a lobbying firm shall fulfill all requirements of sections 24-6-301(1.9) AND 24-6-302(2) ~~and 24-6-301 (1.9),~~ C.R.S.
  - ~~4.2.3C.~~ The monthly disclosure statement for state liaisons and state officials or employees lobbying on behalf of an institution or governing board of higher education shall fulfill all requirements of section 24-6-303.5(2)(a), C.R.S.
    - ~~4.2.3.4i.~~ Professional lobbyists who are registered under sections 24-6-302 or 24-6-303, C.R.S., but who contract 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 shall continue to file disclosure statements pursuant to sections 24-6-302 and 24-6-303, C.R.S.
  - ~~4.2.4D.~~ Pursuant to section 24-6-303.5(3), C.R.S., lobbyists who are 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 shall report their lobbying activities to the state liaison for the principal department.

- 4.3 The registration and disclosure statements of each state liaison shall include the information required by section 24-6-303.5, C.R.S., for every “state official or employee”, as such 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.
- 4.4 Nothing in these rules or section 24-6-303.5, C.R.S., shall be construed to authorize 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.

### **Rule 5. Record Retention**

- 5.1 Professional lobbyists and lobbyist firms shall retain the following in accordance with section 24-6-304(1), C.R.S.:
- a. Receipts for expenditures or contributions made;
  - b. Documentation of income; and
  - c. Contracts.

### **Rule 6. Enforcement**

#### **6.1 Waiver Process**

~~6.1.1~~A. Pursuant to section 24-6-302(7), C.R.S., any professional lobbyist or lobbyist firm registered with the Secretary of State may request an imposed fine to be excused or reduced by submitting a written request by letter, email, fax or hand-delivery within ~~thirty~~ (30) days of the imposition of fine. The request should include:

- ~~a~~.I. The name of the registered lobbyist;
- ~~b~~.II. The date of the request;
- ~~e~~.III. The due date of the delinquently filed disclosure statement(s);
- ~~d~~.IV. The actual filing date of the delinquently filed disclosure statement(s);
- ~~e~~.V. A brief summary of the reasons, circumstances, or other justification of the “bona fide personal emergency”, as defined in Rule 1.1;
- ~~f~~.VI. Any measures the lobbyist or firm has instituted or plans to institute to avoid future delinquencies, if applicable; and

~~§~~VII. Other relevant information.

- B. THE SECRETARY OF STATE WILL 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 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 LOBBYIST REGULATION.

## 6.2 Complaints

~~6.2.1~~A. In accordance with section 24-6-305(2)(c), C.R.S., any person who believes a lobbyist, including a state liaison and a state official or employee lobbying on behalf of an institution or governing board of higher education, or lobbyist firm has not complied with the requirements of section 24-6-302 *et seq.*, C.R.S., or this Rule 6 may file a ~~written~~ VERIFIED complaint with the Secretary of State.

~~6.2.1.1~~I. A written complaint filed with the Secretary of State shall contain the following information:

- ~~a~~-A. The complainant's name;
- ~~b~~-B. The complainant's full residence address and mailing address (if different from residence);
- ~~c~~-C. A description of the alleged violation, which may include a reference to the particular statute or rule;
- ~~d~~-D. The name of the lobbyist or lobbyist firm;
- ~~e~~-E. The date and location of the alleged violation, if known; and
- ~~f~~-F. Other applicable or relevant information.

~~6.2.1.2~~II. The Secretary of State shall review all complaints submitted in writing and conduct such investigations as may be necessary and appropriate. If the Secretary of State determines that a violation may have occurred, the Secretary of State shall take appropriate action as set forth in section 24-6-305, C.R.S.

~~6.2.1.3~~III. Upon receipt of a properly submitted complaint, the Secretary of State shall:

- ~~a~~-A. Notify via certified mail the person against whom the complaint is filed; and
- ~~b~~-B. In the case of a state liaison, notify in writing the head of the principal department;

e.C. In the case of a state official or employee lobbying on behalf of a principal department, notify in writing the state liaison; or

d.D. In the case of a state official or employee lobbying on behalf of an institution or governing board of higher education, notify in writing such institution or governing board.

~~6.2.1.4~~iv. Notification of a complaint in accordance with Rule ~~6.2.1.3-6~~(III) shall include:

a.A. The date and factual basis of each act with which the lobbyist or firm is being charged;

b.B. The particular provision of the statute alleged to have been violated;

e.C. The action(s) the Secretary of State plans to take; and

d.D. Other relevant information.

### 6.3 SUSPENSION, REVOCATION, AND OTHER APPROPRIATE ACTIONS

A. IF THE SECRETARY OF STATE FINDS A VIOLATION OF PART 3 OF ARTICLE 6 OF TITLE 24, C.R.S., THE SECRETARY SHALL SUSPEND, REVOKE, OR TAKE OTHER APPROPRIATE ACTION ACCORDING TO THIS RULE.

B. THE SECRETARY OF STATE SHALL NOTIFY A PROFESSIONAL LOBBYIST THAT THE LOBBYIST IS UNDER INVESTIGATION FOR A VIOLATION OF PART 3 OF ARTICLE 6 OF TITLE 24, C.R.S., AND THAT THE INVESTIGATION MAY LEAD TO ADMONISHMENT OF THE LOBBYIST, SUSPENSION OF THE LOBBYIST'S CERTIFICATE OF REGISTRATION, OR REVOCATION OF THE LOBBYIST'S CERTIFICATE OF REGISTRATION.

I. THE LOBBYIST SHALL BE GIVEN 30 DAYS TO RESPOND AND PROVIDE ADDITIONAL INFORMATION THAT MAY AFFECT THE SECRETARY OF STATE'S INVESTIGATION AND DECISION TO PURSUE FURTHER ACTION.

II. THE SECRETARY OF STATE SHALL NOTIFY THE LOBBYIST IF NO FURTHER ACTION WILL BE TAKEN OR IF THE SECRETARY IS PURSUING ADMONISHMENT, SUSPENSION, OR REVOCATION.

C. IF THE SECRETARY OF STATE FINDS A VIOLATION THAT DOES NOT WARRANT SUSPENSION OR REVOCATION, THE SECRETARY MAY ADMONISH THE PROFESSIONAL LOBBYIST.

I. A PROFESSIONAL LOBBYIST MAY BE ADMONISHED IF:

A. 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 1.4 OF THESE RULES;

- B. THE LOBBYIST COMMITS A SUBSTANTIAL VIOLATION, AS DEFINED BY RULE 1 OF THESE RULES, BUT TAKES PROMPT ACTION TO CORRECT OR REMEDY THE VIOLATION;
  - C. THE LOBBYIST FAILS TO PAY PENALTIES WITHIN 90 DAYS OF THE ASSESSMENT OF THE PENALTIES; OR
  - D. THE LOBBYIST'S VIOLATION WAS INADVERTENT, WAS AN ISOLATED EVENT, AND THE LOBBYIST HAS MADE A GOOD FAITH EFFORT TO COMPLY.
- II. UPON ISSUING AN ADMONISHMENT, THE SECRETARY OF STATE SHALL 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.
- D. THE SECRETARY OF STATE MAY PURSUE SUSPENSION OF A PROFESSIONAL LOBBYIST'S CERTIFICATE OF REGISTRATION IF:
    - I. THE LOBBYIST COMMITS A SUBSTANTIAL VIOLATION AND TAKES NO ACTION TO REMEDY OR CORRECT THE VIOLATION;
    - II. THE LOBBYIST WAS ADMONISHED BY THE SECRETARY OF STATE AND COMMITS THE SAME VIOLATION; OR
    - III. THE LOBBYIST HAS A PATTERN OF NONCOMPLIANCE AND THE SECRETARY OF STATE REASONABLY BELIEVES THAT THE PATTERN OF NONCOMPLIANCE WILL LIKELY CONTINUE.
- E. THE SECRETARY OF STATE WILL PURSUE REVOCATION OF A PROFESSIONAL LOBBYIST'S CERTIFICATE OF REGISTRATION IF:
    - I. THE LOBBYIST KNOWINGLY AND WILLFULLY COMMITS A SUBSTANTIAL VIOLATION OF PART 3 OF ARTICLE 6 OF TITLE 24, C.R.S.;
    - II. THE LOBBYIST CONTINUES TO LOBBY DURING THE PERIOD OF SUSPENSION OF THE LOBBYIST'S CERTIFICATE OF REGISTRATION; OR
    - III. THE LOBBYIST WAS SUSPENDED BY THE SECRETARY OF STATE AND WILLFULLY COMMITS THE SAME VIOLATION.

These new and amended rules shall take effect twenty (20) days after publication in the Colorado Register in accordance with the State Administrative Procedures Act.

A written Statement of Basis, Purpose and Specific Statutory Authority is attached and hereby incorporated herein by reference.

Dated this 10th day of May, 2011,



William A. Hobbs  
William A. Hobbs  
Deputy Secretary of State

For

Scott Gessler  
Colorado Secretary of State



## STATEMENT OF BASIS, PURPOSE, AND SPECIFIC STATUTORY AUTHORITY

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

May 10, 2011

#### I. Basis and Purpose

The statement pertains to the amendments and revisions to the Colorado Secretary of State "Rules Concerning Lobbyist Regulation." The amendments and revisions to these rules are intended to achieve the uniform and proper administration and enforcement of and to answer questions arising under Part 3, Article 6, of Title 24 of the Colorado Revised Statutes.

The adoption of specific amendments to the Rules Concerning Lobbyist Regulation is necessary as follows:

- Rule 1.1 is amended to clarify what is not a bona fide personal emergency.
- Rule 2.2 is amended to clarify the requirements for a not-for-profit organization to be eligible for a fee waiver.
- New Rule 2.3 clarifies information that is required to be included in a request for fee waiver.
- Amendments to Rule 3.1 extend the existing mandatory electronic filing requirement to include the annual cumulative disclosure report.
- New Rule 6.3 clarifies the criteria for suspension, revocation, and other appropriate corrective action for lobbyist who violate any provision of Part 3 of Article 6 of Title 24, C.R.S. This rule was added as a result of a recommendation made in a 2008 performance audit report issued by the Colorado Office of the State Auditor.
- All other revisions are nonsubstantive formatting and style changes.

#### II. Statutory Authority

Amendments to the Colorado Secretary of State "Rules Concerning Lobbyist Regulation" are adopted pursuant to the following statutory and constitutional provisions:

1. Section 24-6-303(1.3)(a), C.R.S., (2010), 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., (2010), which authorizes the Secretary of State to promulgate rules concerning the manner in which reports required to be filed may be filed electronically.
3. Section 24-6-305(2)(b), C.R.S., (2010), which authorizes the Secretary of State to adopt rules and regulations to define, interpret, implement, and enforce the provisions of the Lobbyist Regulation Law.