



Notice of Adoption

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

September 26, 2012

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 September 14, 2012 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):

Amendments to Rule 1:

Rule 1. Definitions

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

a-1.1.1 A medical emergency involving the individual responsible for filing or ~~his or her~~ THE INDIVIDUAL'S immediate family, ~~including~~. THE MEDICAL EMERGENCY CAN INCLUDE BUT IS NOT LIMITED TO incapacitation, hospitalization, death, or debilitating illness or injury; ~~or~~.

b-1.1.2 A practical emergency including extraordinary obstacles out of the control of the lobbyist or lobbyist firm that preclude timely disclosure, ~~such as~~. FOR EXAMPLE:

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

(b) ~~or other compelling reasons beyond the lobbyist's or lobbyist firm's control, or a~~
A web site error that made it impossible to file a required registration document;
OR

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

² Section 24-4-103(3)(a), C.R.S. (2012).

³ 8 CCR 1505-8.

⁴ Section 24-4-103(3)(a), C.R.S. (2012).

- (c) OTHER COMPELLING REASONS BEYOND THE LOBBYIST’S OR LOBBYIST FIRM’S CONTROL.

~~e-1.1.3~~ The following are not ~~considered~~ a “bona fide personal emergency:”

- ~~i-~~(a) Failure to timely file registration documents ~~as a result of lack of planning~~ DUE TO FAILURE TO PLAN;
- ~~ii-~~(b) Misunderstandings of applicable disclosure requirements and deadlines;
- ~~iii-~~(c) Mistakes in electronic filing submissions, including incomplete filings;
- ~~iv-~~(d) Lack of access to the internet or personal computer; ~~and~~ OR
- ~~v-~~(e) Lack of credit card or other means for making online payments.

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 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.

~~1-2-1.3~~ “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.

1.4 “STANDARD,” AS USED IN SECTIONS 24-6-301(1.7)(b) AND 24-6-301(3.5)(a)(IV), C.R.S., MEANS A CRITERION MEASURING ACCEPTABILITY, QUALITY, ACCURACY, WEIGHT, OR AN AMOUNT, OR A THRESHOLD FOR AGENCY JURISDICTION ADOPTED BY A STATE AGENCY HAVING RULEMAKING AUTHORITY.

~~1-3-1.5~~ “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~~ IN ACCORDANCE WITH section 24-6-303.5(1)(a), C.R.S.

~~1-4-1.6~~ “Substantial Violation” means any one of the following violations of Part 3 of Article 6 of Title 24, C.R.S.:

~~a-1.6.1~~ Failure to register as a lobbyist ~~pursuant to~~ IN ACCORDANCE WITH sections 24-6-303 or 24-6-303.5, C.R.S.;

~~b-1.6.2~~ Failure to file a monthly disclosure statement within 15 days after the due date while the general assembly is in session, ~~pursuant to~~ IN ACCORDANCE WITH sections 24-6-303(3)(a) and 24-6-303.5(2)(b), C.R.S.;

~~e-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, ~~pursuant to~~ IN ACCORDANCE WITH sections 24-6-303(3)(a) and 24-6-303.5(2)(b), C.R.S.;

~~d-1.6.4~~ Knowingly underreporting any item of income or expenditures by any amount on the disclosure statement;

~~e-1.6.5~~ Underreporting income or expenditures by twenty percent or more on the entire disclosure statement;

- f.1.6.6 Any violation of ~~the provisions of~~ sections 24-6-306, 24-6-307, or 24-6-308, C.R.S.;
- g.1.6.7 Any other violation that the Secretary of State ~~deems~~ FINDS “substantial,” taking into consideration the following factors ~~derived from *Fabee v. Beck*, 922 P.2d 330 (Colo. 1996)~~:
 - i.(a) The extent of noncompliance;
 - ii.(b) The purpose of the applicable provision and whether that purpose is substantially achieved despite the alleged noncompliance; and
 - iii.(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.

Amendments to Rule 2:

Rule 2. Fees

- 2.1 The fee for filing a professional lobbyist registration statement is \$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.2.2.1 The lobbyist derives ~~his or her lobbyist~~ compensation solely from the organization; and
 - b.2.2.2 i.(a) The ~~lobbyist’s~~ organization can demonstrate that ~~the organization~~ IT is operating under financial hardship conditions; or
 - ii.(b) 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~~ TO receive a REGISTRATION FEE 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.2.3.1 State the information required by Rule 2.2 of these rules; and
 - b.2.3.2 Include the organization’s Internal Revenue Service form 1024, or 990, if requesting a waiver under Rule ~~2.2(b)(i)~~ 2.2.2(a) of these rules.

Amendments to Rule 3:

Rule 3. Electronic Filing

- 3.1 ~~All registration and disclosure statements filed with the Secretary of State pursuant to Part 3 of Article 6 of Title 24, C.R.S., shall be filed electronically~~ A LOBBYIST MUST ELECTRONICALLY FILE ALL REGISTRATION AND DISCLOSURE STATEMENTS REQUIRED BY PART 3 OF ARTICLE 6 OF TITLE 24, C.R.S. ~~Any statement presented for manual filing to the office of the Secretary of State shall not be accepted~~ THE SECRETARY OF STATE WILL NOT ACCEPT MANUAL FILINGS. The Secretary ~~shall~~ MUST make a computer terminal available in the Secretary’s main office ~~to allow a lobbyist to electronically file~~ FOR FILING ELECTRONIC 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~~ THE Secretary of State has granted MAY GRANT an exception to the electronic filing requirement ~~after written application~~ based on hardship or other good cause shown.
- 3.3 All applications for an exception ~~shall~~MUST include a brief statement of the hardship or good cause for ~~which the REQUESTED exception is sought. Applications must be received by~~A LOBBYIST MUST SUBMIT AN APPLICATION TO the Secretary of State at least 15 calendar days prior to the first applicable filing deadline, unless the exception is based on emergency circumstances arising after ~~such~~ THE deadline, in which case the LOBBYIST MUST DESCRIBE THE nature of the emergency ~~shall be described in the application. The filing of an~~ FILING THE application for exception based on emergency circumstances does not delay any reporting deadlines, ~~however, if~~ 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 ~~may be set aside or reduced in~~ accordance with section 24-6-302(7), C.R.S.
- ~~3.3-3.4~~ For the purposes of this Rule 3, “electronic filing” means the filing of THE registration and disclosure statements required by Part 3 of Article 6 of Title 24, C.R.S., ~~utilizing~~ USING the internet system created by the Secretary of State ~~pursuant to~~ IN ACCORDANCE WITH section 24-6-303(6.3)(a), C.R.S.
- ~~3.4-3.5~~ When ~~the~~A lobbyist or authorized agent ~~utilizes~~ USES the electronic filing system to submit ~~to the Secretary of State~~ a registration or disclosure statement, ~~such~~ THE submission ~~shall constitute~~ CONSTITUTES the lobbyist’s or agent’s electronic signature ~~as provided by~~ IN ACCORDANCE WITH section 24-71-101, C.R.S., under penalty of perjury ~~as provided by law~~.
- ~~3.5-3.6~~ 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~~ IN ACCORDANCE WITH section 24-21-104, C.R.S.

Amendments to Rule 4:

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 \$50.00 or more, whether or not the lobbyist made any expenditure for such gifts. 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:
- a.4.2.1 The monthly disclosure statement for A professional lobbyists ~~shall fulfill all~~ MUST MEET THE requirements of sections 24-6-301(1.9) and 24-6-302(2.5), C.R.S.
 - b.4.2.2 The monthly disclosure statement for a lobbying firm ~~shall fulfill all~~ MUST MEET THE requirements of sections 24-6-301(1.9) and 24-6-302(2), C.R.S.
 - e.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 ~~shall~~ MUST MEET THE ~~fulfill all~~ requirements of section 24-6-303.5(2)(a), C.R.S.

i.(A) Professional lobbyists ~~who are~~ registered under sections 24-6-302 or 24-6-303, C.R.S., ~~but~~ AND 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~~ MUST continue to file disclosure statements ~~pursuant to~~ IN ACCORDANCE WITH sections 24-6-302 and 24-6-303, C.R.S.

d.4.2.4 ~~Pursuant to~~ IN ACCORDANCE WITH 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~~ MUST report their lobbying activities to the state liaison for the principal department.

4.3 The registration and disclosure statements of each state liaison ~~shall~~ MUST include the information required by section 24-6-303.5, C.R.S., for every “state official or employee”, as ~~such~~ 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.

4.4 Nothing in these rules or section 24-6-303.5, C.R.S., ~~shall be construed to~~ 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.

Amendments to Rule 5:

Rule 5. Record Retention

5.1 Professional lobbyists and lobbyist firms ~~shall~~ MUST retain the following in accordance with section 24-6-304(1), C.R.S.:

a.5.1.1 Receipts for expenditures or contributions made;

b.5.1.2 Documentation of income; and

c.5.1.3 Contracts.

Amendments to Rule 6:

Rule 6. Enforcement

6.1 Waiver Process.

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

i.(A) The REGISTERED LOBBYIST’S name ~~of the registered lobbyist~~;

- ~~ii.~~(B) The REQUEST date ~~of the request~~;
- ~~iii.~~(C) The due date of the delinquently filed disclosure statement(s);
- ~~iv.~~(D) The ~~actual~~-filing date ~~of the~~ LOBBYIST ACTUALLY ~~delinquently~~-filed THE disclosure statement(s) ;
- ~~v.~~(E) A brief summary of the reasons, circumstances, or other justification of the “bona fide personal emergency”, as defined in Rule 1.1;
- ~~vi.~~(F) Any measures the lobbyist or firm has instituted or plans to institute to avoid future delinquencies, if applicable; and
- ~~vii.~~(G) Other relevant information.

~~b-6.1.2~~ The Secretary of State ~~will~~MAY take into account all appropriate facts and circumstances when granting or rejecting a waiver request or in reducing an imposed fine. ~~the secretary~~ 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 lobbyist regulation.

6.2 Complaints. ~~a-6.2.1~~ — In accordance with section ~~24-6-305(2)(e)~~, 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 verified complaint with the Secretary of State. ANY PERSON WHO BELIEVES A LOBBYIST OR LOBBYIST FIRM IS NOT COMPLYING WITH THE COLORADO LOBBYIST REGULATION LAWS OR RULE 4, 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.

~~i-6.2.1~~ A written complaint filed with the Secretary of State ~~shall~~MUST BE NOTARIZED AND 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~~THE alleged violation, which may include a reference to the particular statute or rule;
- ~~D.~~(D) The LOBBYIST OR FIRM’S ~~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.

~~ii-6.2.2~~ The Secretary of State ~~shall~~WILL review all PROPERLY SUBMITTED complaints ~~submitted in writing and conduct such investigations as may be necessary and~~ INVESTIGATE AS

appropriate. If the Secretary of State determines that a violation may have occurred, the Secretary of State shall MUST take appropriate action as set forth in UNDER section 24-6-305, C.R.S.

~~iii-6.2.3~~ Upon receipt of a properly submitted complaint, the Secretary of State shall MUST:

- ~~A-(A)~~ Notify ~~via certified mail~~ the person against whom the complaint is filed BY CERTIFIED MAIL; and
- ~~B-(B)~~ In the case of a state liaison, notify ~~in writing~~ the head of the principal department IN WRITING;
- ~~C-(C)~~ In the case of a state official or employee lobbying on behalf of a principal department, notify ~~in writing~~ the state liaison IN WRITING; 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~~ THE institution or governing board IN WRITING.

~~iv-6.2.4~~ Notification of a complaint in accordance with Rule ~~6(iii)-6.2.3~~ shall MUST 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~~ THAT THE LOBBYIST OR FIRM ALLEGEDLY violated;
- ~~C-(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.~~

6.3.1 THE SECRETARY OF STATE WILL INVESTIGATE, PROVIDE NOTICE, 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.

e-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.

~~i~~(A) ~~A~~-THE SECRETARY OF STATE MAY ADMONISH A professional lobbyist ~~may be admonished~~ if:

~~A~~(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 ~~1-4~~1.6 of these Rules;

~~B~~(2) The lobbyist commits a substantial violation, as defined by Rule ~~1-4~~1.6 of these Rules, but takes prompt action to correct or remedy the violation;

~~C~~(3) The lobbyist fails to pay penalties within ~~90~~45 days of the assessment of the penalties; or

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

~~ii~~(B) Upon issuing an admonishment, the Secretary of State ~~shall~~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.

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

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

~~ii~~(B) The lobbyist was PREVIOUSLY admonished by the Secretary of State and commits the same violation; or

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

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

~~i~~(A) The lobbyist knowingly and willfully commits a substantial violation of Part 3 of Article 6 of Title 24, C.R.S.;

~~ii~~(B) The lobbyist continues to lobby during the period of suspension of the lobbyist's certificate of registration; or

~~iii~~(C) The lobbyist was suspended by the ~~secretary~~SECRETARY of State and willfully commits the same violation.

New Rule 7:

RULE 7: COLLECTIONS

7.1 IF A LOBBYIST OR FIRM FAILS TO PAY A PENALTY WITHIN 90 DAYS, THE SECRETARY OF STATE WILL SEND THE PENALTY TO COLLECTIONS.

7.2 THE SECRETARY OF STATE WILL REMOVE A REGISTRATION STATEMENT RESTRICTION IF A LOBBYIST OR FIRM WITH PENALTIES IN COLLECTIONS IS MAKING PAYMENTS AND SHOWING A GOOD FAITH EFFORT TO CURE THE FINE.

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 26th day of September, 2012,



Suzanne Staiert
Deputy Secretary of State

For

Scott Gessler
Colorado Secretary of State

⁵ Section 24-4-103(5), C.R.S. (2012).



Statement of Basis, Purpose, and Specific Statutory Authority

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

September 26, 2012

I. Basis and Purpose

This statement is about amendments to 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 laws¹ as follows:

- Amendments to Rule 1 include new rules to define the terms “standard” and “rate”. Currently, there are no statutory definitions for these terms. The new definitions explain reports that lobbyist must file if they engage in these activities.
- Rule 4.1 is amended in accordance with Article XXIX of the Colorado Constitution. Article XXIX is a voter-approved Amendment 41 that took effect December 31, 2006. The amendment prohibits lobbyists from offering or giving a gift or thing of value, of any kind or nature, to a covered official.
- Rules 6.3(a) and (b) are repealed and New Rule 6.3.1 is adopted to clarify that the Secretary will investigate, provide notice, and hold hearings for violations of the Colorado lobbyist regulation laws in accordance with the State Administrative Procedure Act.
- Amendments to new Rule 6.3.2(a)(3), formerly 6.3(c)(i)(C), provide that the Secretary of State may admonish a professional lobbyist if he/she fails to pay penalties within 45 days of the assessment of penalties. The current rule provides 90 days. The change is necessary to help reduce the incidence of noncompliance in paying penalties assessed for untimely disclosure statement reporting.
- New Rule 7.1 clarifies that the Secretary of State will send a penalty to collections if a lobbyist or firm fails to pay the penalty within 90 days.
- New Rule 7.2 clarifies that the Secretary of State will remove a registration statement restriction if a lobbyist or firm with penalties in collection is making payments and showing a good faith effort to cure the fine.

¹ Part 3, Article 6, Title 24 of the Colorado Revised Statutes.

- 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. Renumbering the rules is necessary for consistency with Department rulemaking format/style.

II. Rulemaking Authority

The statutory and constitutional authority is as follows:

1. Section 24-6-303(1.3)(a), C.R.S., (2012), 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., (2012), 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., (2012), which authorizes the Secretary of State to adopt rules and regulations to define, interpret, implement, and enforce the provisions of the Lobbyist Regulation Law.