

Senate Bill No. 718

An act relating to lobbying; amending s. 11.045, F.S.; revising procedures for appointing a designated lobbyist to represent a principal that is represented by two or more lobbyists; requiring that a lobbyist file an expenditure report for each period during which the lobbyist is registered; requiring a principal that retains a lobbyist to ensure that expenditure reports are properly filed with the Division of Legislative Information Services within the Office of Legislative Services; revising the period for filing expenditure reports; deleting a requirement that certain supplemental reports be filed; limiting the amount of certain fines that may be assessed against a lobbyist; revising the period for paying fines; authorizing the President of the Senate and the Speaker of the House of Representatives to waive the required filing of an expenditure report; providing for the automatic suspension of a lobbyist's registration following failure to pay a fine; amending s. 112.3215, F.S.; modifying the definition of lobbyist for purpose of lobbying before the Executive Branch or the Constitution Revision Commission; requiring registered lobbyists to submit biannual expenditure reports; modifying dates for filing such reports; providing a fine of up to a maximum of \$5,000 per late report per day; extending time period for payment of such fine and for waiver and appeals; requiring the Department of Banking and Finance to collect such fines as claims of the state; authorizing the department to assign collection to a collection agent; providing responsibility of lobbyists and principals for filing expenditure reports; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (3) of section 11.045, Florida Statutes, is amended to read:

11.045 Lobbyists; registration and reporting; exemptions; penalties.—

(3) Each house of the Legislature shall provide by rule the following reporting requirements:

(a) Statements shall be filed by all registered lobbyists two times per year ~~and after each special session of the Legislature, which must statements~~ shall disclose all lobbying expenditures by the lobbyist and the principal and the source of funds for such expenditures. All expenditures made by the lobbyist and the principal for the purpose of lobbying must be reported. Reporting of expenditures shall be made on an accrual basis. The report of such expenditures must identify whether the expenditure was made directly by the lobbyist, directly by the principal, initiated or expended by the lobbyist and paid for by the principal, or initiated or expended by the principal and paid for by the lobbyist. The principal is responsible for the accuracy of the expenditures reported as lobbying expenditures made by the principal. The lobbyist is responsible for the accuracy of the expenditures reported as

lobbying expenditures made by the lobbyist. Expenditures made must be reported by the category of the expenditure, including, but not limited to, the categories of food and beverages, entertainment, research, communication, media advertising, publications, travel, and lodging. Lobbying expenditures do not include a lobbyist's or principal's salary, office expenses, and personal expenses for lodging, meals, and travel.

(b) If a principal is represented by two or more lobbyists, the first lobbyist who registers to represent that principal shall be the designated lobbyist. The designated lobbyist's ~~A principal who is represented by two or more lobbyists shall designate one lobbyist whose~~ expenditure report shall include all lobbying expenditures made directly by the principal and those expenditures of the designated lobbyist on behalf of that principal as required by paragraph (a). All other lobbyists registered to represent that principal shall file a report pursuant to paragraph (a). The report of lobbying expenditures by the principal shall be made pursuant to the requirements of paragraph (a). The principal is responsible for the accuracy of figures reported by the designated lobbyist as lobbying expenditures made directly by the principal. The designated lobbyist is responsible for the accuracy of the figures reported as lobbying expenditures made by that lobbyist. Each lobbyist shall file an expenditure report for each period during any portion of which he or she was registered, and each principal shall ensure that an expenditure report is filed for each period during any portion of which the principal was represented by a registered lobbyist.

(c) For each reporting period the division shall aggregate the expenditures reported by all of the lobbyists for a principal represented by more than one lobbyist. Further, the division shall aggregate figures that provide a cumulative total of expenditures reported as spent by and on behalf of each principal for the calendar year.

(d) The reporting statements shall be filed no later than 45 days after the end of the reporting period. The first report shall include the expenditures for the period from January 1 through June 30 ~~the date of adjournment of the regular session of the Legislature, including an extension, if any.~~ The second report shall disclose expenditures for the period from July 1 through December 31 ~~the remainder of the calendar year.~~ A supplemental report shall be filed no later than 45 days after each special session of the Legislature which shall disclose expenditures incurred during the period since the filing of the last previous report through adjournment of the special session. The statements shall be rendered in the identical form provided by the respective houses and shall be open to public inspection. Reporting statements may be filed by electronic means, when feasible.

(e) Reports shall be filed not later than 5 p.m. of the report due date. However, any report that is postmarked by the United States Postal Service no later than midnight of the due date shall be deemed to have been filed in a timely manner, and a certificate of mailing obtained from and dated by the United States Postal Service at the time of the mailing, or a receipt from an established courier company which bears a date on or before the due date, shall be proof of mailing in a timely manner.

(f) Each house of the Legislature shall provide by rule, or both houses may provide by joint rule, a procedure by which a lobbyist who fails to timely file a report shall be notified and assessed fines. The rule shall provide for the following:

1. Upon determining that the report is late, the person designated to review the timeliness of reports shall immediately notify the lobbyist as to the failure to timely file the report and that a fine is being assessed for each late day. The fine shall be \$50 per day per report for each late day, not to exceed \$5,000 per report.

2. Upon receipt of the report, the person designated to review the timeliness of reports shall determine the amount of the fine due based upon the earliest of the following:

a. When a report is actually received by the lobbyist registration and reporting office.

b. When the report is postmarked.

c. When the certificate of mailing is dated.

d. When the receipt from an established courier company is dated.

3. Such fine shall be paid within ~~30~~ 20 days after ~~receipt of~~ the notice of payment due is transmitted by the Lobbyist Registration Office, unless appeal is made to the division. The moneys shall be deposited into the Legislative Lobbyist Registration Trust Fund.

4. A fine shall not be assessed against a lobbyist the first time any reports for which the lobbyist is responsible are not timely filed. However, to receive the one-time fine waiver, all reports for which the lobbyist is responsible must be filed within ~~30~~ 20 days after ~~receipt of~~ notice that any reports have not been timely filed is transmitted by the Lobbyist Registration Office. A fine shall be assessed for any subsequent late-filed reports.

5. Any lobbyist may appeal or dispute a fine, based upon unusual circumstances surrounding the failure to file on the designated due date, and may request and shall be entitled to a hearing before the General Counsel of the Office of Legislative Services, who shall recommend to the President of the Senate and the Speaker of the House of Representatives, or their respective designees, that the fine be waived in whole or in part for good cause shown. The President of the Senate and the Speaker of the House of Representatives, or their respective designees, may concur in the recommendation and waive the fine in whole or in part. Any such request shall be made within ~~30~~ 20 days after ~~receipt of~~ the notice of payment due is transmitted by the Lobbyist Registration Office. In such case, the lobbyist shall, within the ~~30-day~~ 20-day period, notify the person designated to review the timeliness of reports in writing of his or her intention to request a hearing.

6. A lobbyist, a lobbyist's legal representative, or the principal of a lobbyist may request that the filing of an expenditure report be waived upon good cause shown, based on unusual circumstances. The request must be filed

with the General Counsel of the Office of Legislative Services, who shall make a recommendation concerning the waiver request to the President of the Senate and the Speaker of the House of Representatives. The President of the Senate and the Speaker of the House of Representatives may grant or deny the request. The registration of a lobbyist who fails to timely pay a fine is automatically suspended until the fine is paid or waived.

7.6. The person designated to review the timeliness of reports shall notify the director of the division of the failure of a lobbyist to file a report after notice or of the failure of a lobbyist to pay the fine imposed.

Section 2. Section 112.3215, Florida Statutes, is amended to read:

112.3215 Lobbyists before the Executive Branch or the Constitution Revision Commission; registration and reporting; investigation by commission.—

(1) For the purposes of this section:

(a) “Agency” means the Governor, Governor and Cabinet, or any department, division, bureau, board, commission, or authority of the executive branch. In addition, “agency” shall mean the Constitution Revision Commission as provided by s. 2, Art. XI of the State Constitution.

(b) “Expenditure” means a payment, distribution, loan, advance, reimbursement, deposit, or anything of value made by a lobbyist or principal for the purpose of lobbying.

(c) “Fund” means the Executive Branch Lobby Registration Trust Fund.

(d) “Lobbies” means seeking, on behalf of another person, to influence an agency with respect to a decision of the agency in the area of policy or procurement or an attempt to obtain the goodwill of an agency official or employee. “Lobbies” also means influencing or attempting to influence, on behalf of another, the Constitution Revision Commission’s action or nonaction through oral or written communication or an attempt to obtain the goodwill of a member or employee of the Constitution Revision Commission.

(e) “Lobbyist” means a person who is employed and receives payment, or who contracts for economic consideration, for the purpose of lobbying, or a person who is principally employed for governmental affairs by another person or governmental entity to lobby on behalf of that other person or governmental entity. “Lobbyist” does not include a person who is:

1. An attorney, or any person, who represents a client in a judicial proceeding or in a formal administrative proceeding conducted pursuant to chapter 120 or any other formal hearing before an agency, board, commission, or authority of this state.

2. An employee of an agency or of a legislative or judicial branch entity acting in the normal course of his or her duties.

3. A confidential informant who is providing, or wishes to provide, confidential information to be used for law enforcement purposes.

4. A person who lobbies to procure a contract pursuant to chapter 287 which contract is less than the threshold for CATEGORY ONE as provided in s. 287.017(1)(a).

(f) "Principal" means the person, firm, corporation, or other entity which has employed or retained a lobbyist.

(2) The Executive Branch Lobby Registration Trust Fund is hereby created within the commission to be used for the purpose of funding any office established to administer the registration of lobbyists lobbying an agency, including the payment of salaries and other expenses. The trust fund is not subject to the service charge to General Revenue provisions of chapter 215. All annual registration fees collected pursuant to this section shall be deposited into such fund.

(3) A person may not lobby an agency until such person has registered as a lobbyist with the commission. Such registration shall be due upon initially being retained to lobby and is renewable on a calendar year basis thereafter. Upon registration the person shall provide a statement signed by the principal or principal's representative that the registrant is authorized to represent the principal. The registration shall require the lobbyist to disclose, under oath, the following information:

- (a) Name and business address;
- (b) The name and business address of each principal represented;
- (c) His or her area of interest;
- (d) The agencies before which he or she will appear; and

(e) The existence of any direct or indirect business association, partnership, or financial relationship with any employee of an agency with which he or she lobbies, or intends to lobby, as disclosed in the registration.

(4) The annual lobbyist registration fee shall be set by the commission by rule, not to exceed \$40 for each principal represented.

(5)(a) A registered lobbyist must also submit to the commission, biannually quarterly, a signed expenditure report summarizing all lobbying expenditures by the lobbyist and the principal for each six-month period during any portion of which the lobbyist is registered. All expenditures made by the lobbyist and the principal for the purpose of lobbying must be reported. Reporting of expenditures shall be on an accrual basis. The report of such expenditures must identify whether the expenditure was made directly by the lobbyist, directly by the principal, initiated or expended by the lobbyist and paid for by the principal, or initiated or expended by the principal and paid for by the lobbyist. The principal is responsible for the accuracy of the expenditures reported as lobbying expenditures made by the principal. The lobbyist is responsible for the accuracy of the expenditures reported as lobbying expenditures made by the lobbyist. Expenditures made must be reported by the category of the expenditure, including, but not limited to, the categories of food and beverages, entertainment, research, communication,

media advertising, publications, travel, and lodging. Lobby expenditures do not include a lobbyist's or principal's salary, office expenses, and personal expenses for lodging, meals, and travel.

(b) A principal who is represented by two or more lobbyists shall designate one lobbyist whose expenditure report shall include all lobbying expenditures made directly by the principal and those expenditures of the designated lobbyist on behalf of that principal as required by paragraph (a). All other lobbyists registered to represent that principal shall file a report pursuant to paragraph (a). The report of lobbying expenditures by the principal shall be made pursuant to the requirements of paragraph (a). The principal is responsible for the accuracy of figures reported by the designated lobbyist as lobbying expenditures made directly by the principal. The designated lobbyist is responsible for the accuracy of the figures reported as lobbying expenditures made by that lobbyist.

(c) For each reporting period the commission shall aggregate the expenditures of all lobbyists for a principal represented by more than one lobbyist. Further, the commission shall aggregate figures that provide a cumulative total of expenditures reported as spent by and on behalf of each principal for the calendar year.

(d) The reporting statements shall be filed no later than 45 days after the end of each reporting period and shall include the expenditures for the period from January 1 through ~~March 31~~, ~~April 1 through June 30~~, and July 1 through ~~September 30~~, and ~~October 1 through December 31~~, respectively.

(e) Reports shall be filed not later than 5 p.m. of the report due date. However, any report that is postmarked by the United States Postal Service no later than midnight of the due date shall be deemed to have been filed in a timely manner, and a certificate of mailing obtained from and dated by the United States Postal Service at the time of the mailing, or a receipt from an established courier company which bears a date on or before the due date, shall be proof of mailing in a timely manner.

(f) The commission shall provide by rule a procedure by which a lobbyist who fails to timely file a report shall be notified and assessed fines. The rule shall provide for the following:

1. Upon determining that the report is late, the person designated to review the timeliness of reports shall immediately notify the lobbyist as to the failure to timely file the report and that a fine is being assessed for each late day. The fine shall be \$50 per day per report for each late day up to a maximum of \$5,000 per late report.

2. Upon receipt of the report, the person designated to review the timeliness of reports shall determine the amount of the fine due based upon the earliest of the following:

a. When a report is actually received by the lobbyist registration and reporting office.

b. When the report is postmarked.

- c. When the certificate of mailing is dated.
- d. When the receipt from an established courier company is dated.
3. Such fine shall be paid within ~~30~~ 20 days after receipt of the notice of payment due is transmitted by the lobbyist registration office, unless appeal is made to the commission. The moneys shall be deposited into the Executive Branch Lobby Registration Trust Fund.
4. A fine shall not be assessed against a lobbyist the first time any reports for which the lobbyist is responsible are not timely filed. However, to receive the one-time fine waiver, all reports for which the lobbyist is responsible must be filed within ~~30~~ 20 days after ~~the receipt of~~ notice that any reports have not been timely filed is transmitted by the lobbyist registration office. A fine shall be assessed for any subsequent late-filed reports.
5. Any lobbyist may appeal or dispute a fine, based upon unusual circumstances surrounding the failure to file on the designated due date, and may request and shall be entitled to a hearing before the commission, which shall have the authority to waive the fine in whole or in part for good cause shown. Any such request shall be made within ~~30~~ 20 days after receipt of the notice of payment due is transmitted by the lobbyist registration office. In such case, the lobbyist shall, within the ~~30-day~~ 20-day period, notify the person designated to review the timeliness of reports in writing of his or her intention to bring the matter before the commission.
6. The person designated to review the timeliness of reports shall notify the commission of the failure of a lobbyist to file a report after notice or of the failure of a lobbyist to pay the fine imposed.
7. Notwithstanding any provision of ch. 120, any fine imposed under this subsection that is not waived by final order of the commission and that remains unpaid more than 60 days after the notice of payment due or more than 60 days after the commission renders a final order on the lobbyist's appeal shall be collected by the Department of Banking and Finance as a claim, debt, or other obligation owed to the state, and the department may assign the collection of such fine to a collection agent as provided in s. 17.20.
- (g) The commission shall adopt a rule which allows reporting statements to be filed by electronic means, when feasible.
- (h) Each lobbyist and each principal shall preserve for a period of 4 years all accounts, bills, receipts, computer records, books, papers, and other documents and records necessary to substantiate lobbying expenditures. Any documents and records retained pursuant to this section may be inspected under reasonable circumstances by any authorized representative of the commission. The right of inspection may be enforced by appropriate writ issued by any court of competent jurisdiction.
- (6) A lobbyist shall promptly send a written statement to the commission canceling the registration for a principal upon termination of the lobbyist's representation of that principal. Notwithstanding this requirement, the commission may remove the name of a lobbyist from the list of registered

lobbyists if the principal notifies the office that a person is no longer authorized to represent that principal. Each lobbyist is responsible for filing an expenditure report for each period during any portion of which he or she was registered, and each principal is responsible for seeing that an expenditure report is filed for each period during any portion of which the principal was represented by a registered lobbyist.

(7) The commission shall investigate every sworn complaint that is filed with it alleging that a person covered by this section has failed to register, has failed to submit an expenditure report, or has knowingly submitted false information in any report or registration required in this section. All proceedings, the complaint, and other records relating to the investigation are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, and any meetings held pursuant to an investigation are exempt from the provisions of s. 286.011(1) and s. 24(b), Art. I of the State Constitution either until the alleged violator requests in writing that such investigation and associated records and meetings be made public or until the commission determines, based on the investigation, whether probable cause exists to believe that a violation has occurred.

(8) If the commission finds no probable cause to believe that a violation of this section occurred, it shall dismiss the complaint, whereupon the complaint, together with a written statement of the findings of the investigation and a summary of the facts, shall become a matter of public record, and the commission shall send a copy of the complaint, findings, and summary to the complainant and the alleged violator. If the commission finds probable cause to believe that a violation occurred, it shall report the results of its investigation to the Governor and Cabinet and send a copy of the report to the alleged violator by certified mail. Such notification and all documents made or received in the disposition of the complaint shall then become public records. Upon request submitted to the Governor and Cabinet in writing, any person whom the commission finds probable cause to believe has violated any provision of this section shall be entitled to a public hearing. Such person shall be deemed to have waived the right to a public hearing if the request is not received within 14 days following the mailing of the probable cause notification. However, the Governor and Cabinet may on its own motion require a public hearing and may conduct such further investigation as it deems necessary.

(9) If the Governor and Cabinet finds that a violation occurred, it may reprimand the violator, censure the violator, or prohibit the violator from lobbying all agencies for a period not to exceed 2 years.

(10) Any person, when in doubt about the applicability and interpretation of this section to himself or herself in a particular context, may submit in writing the facts of the situation to the commission with a request for an advisory opinion to establish the standard of duty. An advisory opinion shall be rendered by the commission and, until amended or revoked, shall be binding on the conduct of the person who sought the opinion, unless material facts were omitted or misstated in the request.

(11) Agencies shall be diligent to ascertain whether persons required to register pursuant to this section have complied. An agency may not know-

ingly permit a person who is not registered pursuant to this section to lobby the agency.

(12) Upon discovery of violations of this section an agency or any person may file a sworn complaint with the commission.

(13) The commission shall adopt rules to administer this section, which shall prescribe forms for registration and expenditure reports, procedures for registration, and procedures that will prevent disclosure of information that is confidential as provided in this section.

Section 3. This act shall take effect upon becoming a law.

Approved by the Governor June 7, 2000.

Filed in Office Secretary of State June 7, 2000.