

DEPARTMENT OF STATE

BUREAU OF ELECTIONS

LOBBYIST REGISTRATION AND REPORTING

(By authority conferred on the secretary of state by section 16 of Act No. 472 of the Public Acts of 1978, being S4.426 of the Michigan Compiled Laws)

PART 1. GENERAL PROVISIONS

R 4.411 Definitions.

Rule 1. (1) As used in the act or these rules:

(a) "Act" means Act No. 472 of the Public Acts of 1978, being S4.411 et seq. of the Michigan Compiled Laws.

(b) "Communicating directly" means actual verbal conversations conducted in person or transmitted by electronic means, or written communications addressed to a public official, for the purpose of influencing legislative or administrative action.

(c) "Elected or appointed public officials of state or local government means officials whose term of office is prescribed by statute, charter, ordinance, or the state constitution of 1963 or who serve at the pleasure of their appointing authority.

(d) "Expenditures related to the performance of lobbying" and expenditures for lobbying includes all of the following expenditures of a lobbyist or lobbyist agent:

(i) A payment made on behalf of a public official for the purpose of influencing legislative or administrative action.

(ii) A payment made to influence legislative or administrative action.

(iii) Actual expenses for lobbying other than travel expenses, whether received in the form of an advance or subsequent reimbursement.

(iv) An expenditure for providing or using information, statistics, studies, or analysis in communicating directly with an official that would not have been incurred but for the activity of communicating directly.

(e) "Honorarium" means a payment for speaking at an event, participating in a panel or seminar, or engaging in any similar activity. Free admission, food, beverages, and similar nominal benefits provided to a public official at an event at which he or she speaks, participates in a panel or seminar, or performs a similar service, and a reimbursement or advance for actual travel, meals, and necessary accommodations provided directly in connection with the event, are not payments.

(f) "Interested person" means a lobbyist, lobbyist agent, or other person upon whom a requested declaratory ruling is legally binding and whose course of action is directly affected by the ruling.

(g) "Petty cash transaction" means an expenditure of less than \$5.00 for goods or services for which a receipt or proof of purchase is not normally available and was not obtained.

(h) "State level boards and commissions" means those boards and commissions of statewide jurisdiction which are established by statute or the state constitution of 1963.

(i) "Travel expense" means the cost of travel to visit and return from visiting a public official for the purpose of communicating with the public official, and the costs of meals and lodging away from home.

(2) A term defined in the act has the same meaning when used in these rules.

History: 1981 AACCS.

R 4.412 Duties and prohibitions; commencement.

Rule 2. When a duty or prohibition is imposed upon a lobbyist or lobbyist agent by the act, that duty or prohibition extends to all employees of those persons who are, or should be, registered as a lobbyist or lobbyist agent under section 7 of the act and extends to all contacts by such persons with public officials. These duties and prohibitions commence as of the date a lobbyist or lobbyist agent contracts with or employs a lobbyist agent, or influences or attempts to influence a public official in a manner which shall or should be reflected on a report filed pursuant to section 8 of the act, or makes an expenditure which has a purpose of influencing legislative or administrative action.

History: 1981 AACCS.

R 4.413 Declaratory rulings.

Rule 3. (1) The secretary of state, upon written request of an interested person, may issue a declaratory ruling as to the applicability of the act or these rules to an actual state of facts.

(2) A request for a declaratory ruling shall contain all of the following information:

(a) A clear, concise, and complete statement of the actual state of facts upon which a ruling may be based.

(b) A precise statement of the legal question or issue asked.

(c) The signature of the interested person making the request.

(3) If the interested person so desires, the person may submit with the request a brief or other reference to legal authorities upon which the person believes the declaratory ruling should be based.

(4) The secretary of state shall decline to issue a declaratory ruling in any of the following situations:

(a) The subject matter of a request is frivolous on its face.

(b) The statement of actual facts or issues contained in a request is indefinite, incomplete, or lacks specificity.

(c) The same, or substantially the same, course of action is under investigation or is, or has been, the subject of a current action, order, judgment, or decree initiated or obtained by the secretary of state, the attorney general, or a prosecuting attorney.

(5) If the secretary of state declines to issue a declaratory ruling, the interested person making the request shall be notified of the reason for the refusal.

(6) Each declaratory ruling issued shall contain a statement or findings of fact, a conclusion of law based on all legal authority upon which the department relies for its rulings, if any, and the ruling or determination made.

(7) Once issued, a ruling is binding on the department and shall not retroactively be changed, but nothing in this rule shall prohibit the department from prospectively changing a ruling.

History: 1981 AACCS.

R 4.414 Interpretive statements.

Rule 4. (1) The secretary of state, upon written request of any person, may issue an interpretive statement relative to the act. After declining to issue a declaratory ruling, the secretary of state may issue an interpretive statement relative to any issue raised in a defective declaratory ruling request or any related issue.

(2) An interpretive statement issued pursuant to this rule is for information and explanatory purposes only and does not carry the force or effect of law.

History: 1981 AACCS.

PART 2. LOBBYISTS AND LOBBYIST AGENTS

R 4.421 Lobbyists; expenditures for lobbying.

Rule 21. For the purpose of determining whether a person's expenditures for lobbying are more than \$1,000.00 in value in any 12-month period, or are more than \$250.00 in value in any 12-month period if expended on lobbying a single public official, the following expenditures shall be combined:

(a) Expenditures made on behalf of a public official for the purpose of influencing legislative or administrative action.

(b) Expenditures, other than travel expenses, incurred at the request or suggestion of a lobbyist agent or member of a lobbyist, or furnished for the assistance or use of a lobbyist agent or member of a lobbyist while engaged in lobbying.

(c) The compensation paid or payable to lobbyist agents, employees of the lobbyist, and members of a lobbyist for that portion of their time devoted to lobbying.

History: 1981 AACCS.

R 4.422 Lobbyist agents; compensation and reimbursement for lobbying.

Rule 22. For the purpose of determining whether a person receives compensation or reimbursement for actual expenses, or both, in a combined amount in excess of \$250.00 in any 12-month period for lobbying, the following compensation and reimbursement shall be combined:

(a) Reimbursement for expenditures made on behalf of a public official for the purpose of influencing legislative or administrative action.

(b) Reimbursement for expenditures, other than travel expenses, made to influence legislative or administrative action.

(c) Compensation received for that portion of time devoted to lobbying.

History: 1981 AACCS.

R 4.423 Employer and employee lobbyist agents distinguished.

Rule 23. (1) A person retaining a person to communicate directly with a public official for the purpose of influencing or attempting to influence legislative or administrative action is a lobbyist if the retaining person's expenditures for lobbying exceed the amounts prescribed in section 5 of the act.

(2) A person retained by a person for the purpose of influencing or attempting to influence legislative or administrative action is a lobbyist agent if the retained person engages in lobbying and the retained person's compensation or reimbursement for lobbying exceeds the amount prescribed in section 5 of the act.

(3) An employee or agent of a person who qualifies as a lobbyist agent is a lobbyist agent if the employee or agent engages in lobbying and receives compensation or reimbursement for lobbying in excess of the amount prescribed in section 5 of the act.

History: 1981 AACCS.

R 4.424 Lobbyists and lobbyist agents; state executive departments.

Rule 24. (1) A state executive department is a lobbyist as that term is defined in section 5 of the act.

(2) An employee of a state executive department, other than an official in the executive branch, is a lobbyist agent if the employee engages in lobbying on behalf of the department and his or her compensation or reimbursement for lobbying exceeds the amount prescribed in section 5 of the act.

History: 1981 AACCS.

R 4.425 Lobbyists and lobbyist agents; state level boards and commissions.

Rule 25. (1) A state level board or commission is a lobbyist if the board or commission engages in lobbying or compensates or reimburses a lobbyist agent and if its expenditures for lobbying exceed the amounts prescribed in section 5 of the act.

(2) An appointed member of a state level board or commission which is a lobbyist is not a lobbyist agent merely because of membership on the board or commission. An appointed member of the board or commission is a lobbyist agent if the member engages in lobbying and his or her

compensation or reimbursement for lobbying exceeds the amount prescribed in section 5 of the act.

History: 1981 AACCS.

PART 3. RECORDS

R 4.431 Records; itemized accounts; accounting method; posting; allocation or proration.

Rule 31. (1) A lobbyist or a lobbyist agent may use any reasonable accounting method in maintaining the itemized accounts required by section 9 of the act. The method selected shall be utilized consistently and shall reasonably reflect the expenditures and financial transactions of the lobbyist and lobbyist agent during any given accounting period.

(2) If any expenditure is incurred wholly or partially in connection with lobbying, it shall be posted in the appropriate itemized account required by section 9 of the act after being incurred. An expenditure incurred partially in connection with lobbying may be allocated or prorated by any reasonable accounting method. The accounting method used shall be described in detail in an attachment to the itemized account.

History: 1981 AACCS.

R 4.432 Records; original source records; information.

Rule 32. The itemized accounts required by section 9(1) of the act shall be supported by original source records, including bills, receipts, books, papers, invoices, cancelled checks, and other documents, or an exact copy of the record. An original source record shall indicate all of the following information for each transaction except petty cash transactions:

(a) The name and address of the payee.

(b) The name and address and official position, if any, of the beneficiary of the payment if other than the payee, lobbyist, or lobbyist agent.

(c) A description of the consideration or a notation of the purpose of the expenditure.

History: 1981 AACCS.

R 4.433 Records; inspection by department.

Rule 33. (1) A lobbyist or lobbyist agent shall permit a department representative to inspect any record, including itemized accounts and original source records, in the possession of the lobbyist or lobbyist agent upon receipt of a written request for inspection which is received not less than 5 business days in advance of the time proposed for inspection. A department representative shall not inspect any record which is either confidential or privileged pursuant to law.

(2) An inspection shall take place during the regular business hours of a lobbyist or a lobbyist agent and shall occur at the office by the lobbyist or lobbyist agent, at a

location deemed mutually convenient by a department representative and the lobbyist or lobbyist agent, or, if agreed to by the lobbyist or lobbyist agent, at a department office.

(3) The lobbyist or lobbyist agent shall permit a department representative to make a copy of any record inspected.

History: 1981 AACCS.

PART 4. REGISTRATIONS

R 4.441 Registrations; format.

Rule 41. (1) A registration required to be filed by the act shall be filed in duplicate on a form prescribed or previously approved by the department. An attachment to a form shall be on a page of the same dimensions as the form prescribed by the department.

(2) An entry or statement on a registration shall be printed legibly in ink or typed.

(3) A person filing a registration other than an amended registration shall complete each item of information indicated on the form or shall clearly note that the item of information is not applicable to the filer. An item shall not be left blank and the department shall not accept or consider as filed a registration which is incomplete.

(4) If the lobbyist or lobbyist agent is an individual, the lobbyist or lobbyist agent shall sign the registration. If the lobbyist or lobbyist agent is not an individual, an authorized individual, on behalf of the lobbyist or lobbyist agent, shall sign the registration. The signature shall appear on the line indicated following the registration statement.

History: 1981 AACCS.

R 4.442 Registrations; identification symbol.

Rule 42. Upon receipt of a registration from a lobbyist or lobbyist agent, the department shall assign an identification symbol to the lobbyist or lobbyist agent, acknowledge in writing receipt of the registration, and notify the lobbyist or lobbyist agent of the identification symbol. The identification symbol shall be entered by the lobbyist or lobbyist agent on each page of any report subsequently filed pursuant to section 8 of the act and on all communications with the department concerning registrations, statements, or reports.

History: 1981 AACCS.

R 4.443 Registrations; late registration fees; computation and collection.

Rule 43. (1) If a registration is filed after the date due, the registration form shall be accepted by the department and considered filed as of the date accepted.

(2) The department shall compute a late fee concerning each late filing of a registration and shall give written notice to the filer of the amount of the late registration fee due and unpaid. The department may accept payment of the late registration fee.

(3) If payment of a late registration fee is not made within 30 days after written notice of the amount due is given to the filer, the department shall notify the department of treasury of the failure to make payment.

(4) A late registration fee accepted by the department shall be forwarded to the state treasurer for deposit to the credit of the general fund of the state.

History: 1981 AACCS.

R 4.444 Registrations; terminations for persons who have not lobbied; terminations for persons who have lobbied.

Rule 44. (1) A person who has filed a lobbyist or lobbyist agent registration form pursuant to section 7 of the act, but who is not and has been a lobbyist or lobbyist agent since filing the registration form, may at any time terminate registration by filing a notice of termination.

(2) If a lobbyist files a notice of termination, the lobbyist may at the same time file any report required by section 7(4) of the act for the reporting period during which the termination notice was filed.

History: 1981 AACCS.

PART 5. STATEMENTS AND REPORTS

R 4.451 Statements and reports; filing; format.

Rule 51. (1) A statement or report required under section 8 of the act shall be filed in duplicate on a form prescribed or previously approved by the department. An attachment to a form shall be on a page of the same dimensions as the form prescribed by the department.

(2) A statement on a report shall be printed legibly in ink or typed.

(3) A person filing a statement or report other than an amended statement or report shall complete each item of information indicated on the form or shall clearly note that the item is not applicable to the filer. An item shall not be left blank and the department shall not accept or consider as filed a statement or report which is incomplete.

(4) If the lobbyist or lobbyist agent is an individual, the lobbyist or lobbyist agent shall sign the statement or report. If the lobbyist or lobbyist agent is not an individual, an authorized individual, on behalf of the lobbyist or lobbyist agent, shall sign the statement or report. The signature shall appear on the line indicated.

History: 1981 AACCS.

R 4.452 Statements and reports; late reporting fees; computation; collection.

Rule 52. (1) If a statement or report is filed after the date due, the statement or report shall be accepted by the department and considered filed as of the date accepted.

(2) The department shall compute a late fee concerning each late filing of a statement or report and shall give written notice to the filer of the amount of the late reporting fee due and unpaid. The department may accept payment of the late reporting fee.

(3) If payment of a late reporting fee is not made within 30 days after written notice of the amount due is given to the filer, the department shall notify the department of treasury of the failure to make payment.

(4) A late reporting fee accepted by the department shall be forwarded to the state treasurer for deposit to the credit of the general fund of the state.

History: 1981 AACCS.

R 4.453 Statements and reports; late reporting fees; waiver.

Rule 53. (1) Upon receipt of a written request from a lobbyist or lobbyist agent for the waiver of payment of a late reporting fee which is accompanied by documentation sufficient to satisfy the department, the department may waive the payment of the late fee for good cause stated in the request.

(2) Good cause for failure to file a required statement or report and for waiver of a late reporting fee consists of any of the following reasons:

(a) Incapacitating physical illness, hospitalization, accident involvement, death, or incapacitation for medical reasons of a person required to file, a person whose participation is essential to the filing of a statement or report, or a member of the immediate family of these persons.

(b) Other unique, unintentional factors beyond the filer's control not stemming from a negligent act or non-action such that a reasonably prudent person would excuse the filing on a temporary basis. These factors include loss or unavailability of records due to fire, floods, theft, and similar reasons, and difficulties related to transmission of the filing to the department, such as exceptionally bad weather or strikes involving transportation systems.

(3) If the department determines to waive a late reporting fee, written notice of the waiver shall be conveyed to the filer.

History: 1981 AACCS.

R 4.454 Statements and reports; extension of filing period.

Rule 54. (1) Upon receipt of a written request from a lobbyist or lobbyist agent for an extension of the date by which a statement or report is required to be filed, accompanied by documentation which is sufficient to satisfy the department, the department may approve the request and extend the period if the request states

sufficient grounds for extension. An extension that is granted shall be for a period not to exceed the time necessary to accomplish filing, but shall not exceed 60 days.

(2) Sufficient grounds for extension of the date by which a statement or report is required to be filed consist of any of the following reasons:

(a) Incapacitating physical illness, hospitalization, accident involvement, death, or incapacitation for medical reasons of a person required to file, a person whose participation is essential to the filing of a statement or report, or a member of the immediate family of these persons.

(b) Other unique, unintentional factors beyond the filer's control not stemming from a negligent act or non-action such that a reasonably prudent person would extend the filing period on a limited basis. These factors include loss or unavailability of records due to fire, flood, theft, or similar reasons, and difficulties related to transmission of the filing to the department, such as exceptionally bad weather or strikes involving transportation systems.

History: 1981 AACCS.

R 4.455 Statements and reports; employer lobbyist agent's reports.

Rule 55. An employer lobbyist agent shall report all expenditures incurred by an employee lobbyist agent of the employer in the report of the employer lobbyist agent. An employee lobbyist agent employed by an employer lobbyist agent, regardless of whether the report of the employer lobbyist agent reflects the activities of the employee lobbyist agent under section 8(4) of the act, shall prepare and cause to be filed the statements and reports required by section 8 of the act.

History: 1981 AACCS.

R .456 Statements and reports; expenditures for food and beverage.

Rule 56. (1) A lobbyist or lobbyist agent filing a statement or report under section 8 of the act shall, in determining the total amount expended for the category termed food and beverage for public officials, report 1 amount reflecting all expenditures for food and beverage provided to public officials during a reporting period, regardless of amount.

(2) The itemized information required by section 8(2) of the act shall be reported in each applicable case.

History: 1981 AACCS.

R 4.457 Statements and reports; expenditures for advertising and mass mailings.

Rule 57. (1) A lobbyist or lobbyist agent filing a statement or report under section 8 of the act shall, in determining the total amount expended for the category termed advertising and mass mailing expenses, report 1 amount representing the total amount expended for all of the following subcategories of expenditure:

(a) Payments to a person for the writing or authoring of written, verbal, or visual materials, for acting, reading, producing, airing, or printing of materials designed to be disseminated, broadcasted, or otherwise transmitted to a public official to influence legislative or administrative action.

(b) Payments to a person for envelopes, postage, and handling of advertising materials disseminated by means of mass mailing, except that if the advertising materials are part of a larger publication the primary purpose of which is not to influence legislative or administrative action, a mass mailing expense shall not be reported.

(2) For the purpose of this rule, an allocated portion of compensation paid or payable to a person is includable for that portion of the person's compensated time as is devoted to advertising or mass mailing.

History: 1981 AACCS.

R 4.458 Statements and reports; all other expenditures for lobbying.

Rule 58. A lobbyist or lobbyist agent filing a statement or report under section 8 of the act shall, in determining the total amount expended for the category termed all other expenditures for lobbying, report 1 amount representing the total amount expended for all of the following subcategories of expenditure:

(a) Expenditures made on behalf of a public official for the purpose of influencing legislative or administrative action.

(b) Expenditures, other than travel expenses, incurred at the request or suggestion of a lobbyist agent or member of a lobbyist, or furnished for the assistance or use of a lobbyist agent or member of a lobbyist while engaged in lobbying.

(c) The compensation paid or payable to lobbyist agents and employees for that portion of their time devoted to lobbying.

History: 1981 AACCS.

R 4.459 Statements and reports; summaries.

Rule 59. (1) The department shall publish 2 semiannual summaries and 1 combined annual summary of the statements and reports received from lobbyists and lobbyist agents under section 8 of the act.

(2) A summary shall include all of the following information for each lobbyist and lobbyist agent reporting for the reporting period covered:

(a) Name and office address.

(b) The name of each lobbyist agent compensated or reimbursed and the name of each lobbyist or lobbyist agent represented.

(c) A figure representing all expenditures for food and beverage provided to public officials.

(d) A figure representing all expenditures for advertising and mass mailings.

(e) A figure representing all other reported expenditures for lobbying.

(f) A figure representing the total of all reportable financial transactions.

(g) An indication as to whether a notice of termination of lobbying activities has been filed.

History: 1981 AACCS.

PART 6. INSPECTIONS, INVESTIGATIONS, AND SWORN COMPLAINTS

R 4.461 Inspections and copying.

Rule 61. (1) Public inspection and copying of registrations, statements, and reports filed with and in the custody of the department shall take place during regular business hours in a department office designated by the secretary of state.

(2) A list of inspection and copying procedures and a schedule of charges for copying shall be posted in the department office where filings are available for public inspection.

History: 1981 AACCS.

R 4.462 Reviews, investigations, and hearings.

Rule 62. (1) The department shall review each filed registration, statement, and report for accuracy and completeness and shall note where a report has not been filed after registration has occurred.

(2) When 30 days have expired after the date due for the filing of a registration, statement, or report and if a discovered error or omission is not corrected or a noted report is not made, the department may, in the absence of a satisfactory explanation for the error, omission, or failure, commence and conduct an investigation to determine if probable cause exists that a violation of the act has occurred.

(3) If, after completion of an investigation, a preliminary determination of probable cause is made, the department may conduct a hearing to officially determine if probable cause exists. The person alleged to have violated the act shall be notified of the time and place of

the hearing and shall be given an opportunity to appear. The notice of hearing shall indicate that the person may appear in person or by counsel, may, but need not, give testimony, and may present records, documents, or exhibits relevant to the matter.

(4) If, following the hearing, the secretary of state determines that probable cause does not exist, the alleged violator shall be notified of that decision. If the secretary of state determines that probable cause does exist, the secretary of state shall forward the official record of the proceedings to the attorney general and shall notify the alleged violator of that action and the determination.

History: 1981 AACCS.

R 4.463 Sworn complaints.

Rule 63. (1) A person who believes a violation of the act or these rules has occurred may, in person or by mail, file a sworn complaint with the

secretary of state.

(2) A complaint shall be typewritten or handwritten in ink and shall indicate the complaint's name, address, and telephone number. The complaint shall include a verification statement worded exactly as follows: "I certify that the statements set forth above are true to the best of my knowledge, information, and belief." A complaint shall be signed by the complainant immediately following the verification statement.

(3) A complaint shall name the alleged violator, set forth the alleged violator's address, describe the alleged violation in reasonable detail, and identify all known evidentiary material.

(4) Upon receipt of a sworn complaint, the secretary of state shall determine whether the complaint is complete in all respects. If the complaint is complete, the secretary of state shall forward it to the attorney general and shall notify the complainant that it has been forwarded. If the complaint is incomplete, it shall be returned to the complainant with a written explanation as to how it is incomplete.

History: 1981 AACCS.

PART 7. GIFTS

R 4.471 Gifts; prohibition.

Rule 71. A lobbyist or lobbyist agent, or anyone acting on behalf of a lobbyist or lobbyist agent, may give a gift to a person who is not a public official as defined in the act.

History: 1981 AACCS.

R 4.472 Gifts, extension of credit.

Rule 72. The extension of credit to a public official by a business entity under the same terms as such credit is extended to the general public is not a gift or a loan.

History: 1981 AACCS.

R 4.473 Gifts; honorarium.

Rule 73. An honorarium paid directly to a public official by a lobbyist or lobbyist agent shall be considered a gift within the meaning of section 11 of the act when it is clear from all of the surrounding circumstances that the services provided by the public official do not represent equal or greater value than the payment received.

History: 1981 AACCS.