

Pennsylvania Department of State

SUMMARY OF ACT 134 OF 2006

HOUSE BILL 700

PRINTER'S NUMBER 4887

This summary is provided as a courtesy to those interested in lobbying disclosure and is not an interpretation by the Department of State (Department) or by the Pennsylvania State Ethics Commission (Commission) of the provisions of Act 134 of 2006 (Act). For answers to questions on forms and filing, contact the Bureau of Commissions, Elections and Legislation at the Pennsylvania Department of State at (717) 787-5280. For official advisories regarding compliance with the Act, contact the Commission at 309 Finance Building, P.O. Box 11470, Harrisburg, PA 17108-1470. The Commission may be contacted by telephone at 1-800-932-0936 or (717) 783-1610. However, the Commission does not issue advisories by telephone.

LOBBYING DISCLOSURE INTRODUCTORY SUMMARY:

This Act amends Title 65 (relating to public officers) further providing for ethical standards definitions and for lobby regulation and disclosure. The Act deletes existing Chapter 13 regarding Lobby Disclosure, and inserts a new Chapter 13-A, which provides for all of the following:

The Act recounts the authority of the legislature to regulate persons employed to influence the actions of the General Assembly and the Executive Department in a "fair and equitable manner." It expressly states that membership in a regulated profession shall not excuse a lobbyist from compliance with this chapter.

SCOPE:

The Act defines lobbying as "an effort to influence legislative action or administrative action" and includes direct or indirect communication, office expenses, and providing any gift, hospitality, transportation or lodging to a state official or employee for the purpose of advancing the interest of a lobbyist or principal.

The Act defines "administrative action" to include such things as:

- an agency's: proposal, consideration, promulgation or rescission of a regulation;
- development or modification of a statement of policy;
- approval or rejection of a regulation; or
- procurement of supplies, services and construction under 62 Pa.C.S.. (relating to procurement).
- the review, revision, approval or disapproval of a regulation under the Regulatory Review Act.

- the Governor's approval or veto of legislation.
- the nomination or appointment of an individual as an officer or employee of the Commonwealth.
- the proposal, consideration, promulgation or rescission of an executive order.

The Act defines "legislative action" to include an action taken by a state official or employee involving the preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, tabling, postponement, defeat or rejection of: legislation; legislative motions; a veto by the governor; or confirmation of appointments by the governor or appointments to public boards or commissions by a member of the General Assembly.

REGISTRATION:

The Act requires lobbyists, lobbying firms or principals to register, unless otherwise excluded in the Act. Each registration shall be accompanied by a \$100 biennial registration fee (subject to adjustments for inflation). Exclusions are granted to:

- persons who limit their lobbying to testifying before a committee or agency;
- employees of those who publish or broadcast news while engaged in gathering, disseminating or commenting on the news to the general public in the ordinary course of business;
- persons who do not receive economic consideration for lobbying;
- persons who do not receive more than \$2,500 in the aggregate in any one reporting period (quarterly);
- persons who lobby on behalf of an employer if lobbying represents less than 20 hours during any reporting period;
- persons whose total expenses for lobbying purposes do not exceed \$2,500 during any reporting period;
- elected or appointed state officials, state employees, or officials of political subdivisions acting in their official capacity;
- an individual representing a bona fide church or bona fide religious body of which the individual is a member where the lobbying is solely for the purpose of protecting the constitutional right to the free exercise of religion;
- persons who serve on an advisory board, working group or task force at the request of an agency or the general assembly;
- participating as a party or as an attorney at law or representative of a party, case or controversy in any administrative adjudication;
- expenditures and other transactions subject to reporting under Article XVI of the Pennsylvania Election Code (relating to campaign finance); and
- vendor activities under 62 Pa.C.S. §§ 514 (relating to small procurements), 516 (relating to emergency procurements) and efforts directly related to responding to publicly advertised invitations to bid and requests for proposals.

EXPENSE REPORTING:

The Act requires a registered principal, under oath or affirmation, to file quarterly expense reports with the Department no later than 30 days after the last day of the quarter. Each expense report shall include the total costs of all lobbying for the period. The total shall include all office expenses, personnel expenses, expenditures related to gifts, hospitality, transportation and lodging to state officials or employees, and any other lobbying costs. The total amount reported under this paragraph shall be allocated in its entirety among the following categories:

- the costs for gifts, hospitality, transportation and lodging given to or provided to state officials or employees or their immediate families;
- the costs for direct communication; or
- the costs for indirect communication.

The Act requires a lobbying firm or a lobbyist not associated with a lobbying firm to sign the reports submitted by each principal for whom the lobbying firm or lobbyist is registered to attest to the validity and accuracy to the best of the attestor's knowledge. A lobbying firm or lobbyist may attach a statement to the report of a principal, describing the limits of the knowledge of the lobbying firm or lobbyist concerning the information contained in the expense report.

PROHIBITED ACTIVITIES:

The Act prohibits a lobbyist from serving as a treasurer or other officer who must, for purposes of the Pennsylvania Election Code, be included in a registration statement for a candidate's political committee or a candidate's political action committee if the candidate is seeking a statewide office or the office of Senator or Representative in the General Assembly.

The Act prohibits a lobbyist from charging a fee or receiving economic consideration based on an oral or written contract that any part of the fee or consideration will be converted into a contribution to a candidate for public office or a political committee subject to reporting requirements under Article XVI of the Pennsylvania Election Code (relating to campaign finance).

The Act also prohibits a registrant from lobbying on behalf of a principal on any subject matter which represents a conflict of interest with another principal also represented by the lobbyist or previously represented by the lobbyist (or with the lobbyist's own interests), unless the lobbyist reasonably believes that he or she will be able to provide competent and diligent representation to each affected principal; written notice is given to each affected principal; and each affected principal provides informed consent waiving the conflict of interest.

The Act prohibits contingent fee compensation by a lobbyist based on the outcome of legislative or administrative action.

The Act sets forth a list of ten specific prohibited activities for lobbyists and principals, including:

- making it unlawful to instigate the introduction of legislation for the purpose of obtaining employment to lobby in opposition to that legislation;
- knowingly counseling a person to violate this chapter or any other federal or state statute;
- engaging in or counseling a person to engage in fraudulent conduct;
- attempting to influence a state official or employee on legislative or administrative action by making or facilitating the making of a loan to the individual;
- refusing to disclose to a state official or employee, upon request, the identity of the principal while engaged on his/her behalf;
- committing a criminal offense arising from lobbying;
- influencing or attempting to influence a state official or employee by coercion, bribery or threat of economic sanction;
- committing extortion;
- attempting to influence a state official or employee on legislative or administrative action by promising financial support or the financing of opposition to the candidacy of the state official or employee at a future election;
- and
- engaging in conduct which brings the practice of lobbying or the legislative or executive branches of state government into disrepute.

The Act empowers the Commission to receive complaints, to impose administrative penalties for violations, to refer matters to the Attorney General or the Disciplinary Board of the Pennsylvania Supreme Court (Board), and to prohibit a lobbyist from lobbying for economic consideration for up to 5 years.

The Act provides that the Commission shall provide an advice/opinion to a lobbyist, a lobbying firm, a principal, the Department, the Board or a state official or employee that seeks advice regarding compliance with the Act. A person who acts in good faith based on the written advice or opinion of the Commission shall not be held liable for a violation of the Act if the material facts are as stated in the request.

PUBLIC AVAILABILITY OF REPORTS:

The Department is required to make all filed registration reports and finance expense reports available to the public both online and in paper form (subject to reasonable copying costs), and available in electronic format for such requests.

The Act requires the Department to compile and submit an annual report to the General Assembly on lobbying activities with detailed information, including lists of registered principals, lobbying firms and lobbyists with each firm, as well as affiliated political action committees of principals and lobbying firms.

Record retention is set at 4 years, and there is a requirement to complete a confidential audit of 3% of all completed registration forms and financial expense reports every quarter within 60 days of the close of each fourth quarter reporting period.

By May 1 of each odd-numbered year, the Department shall produce and distribute a directory of all registered lobbyists, including photographs and registered lobbying firms. Copies of the directory shall be made available to the public at a price not to exceed the actual cost of production. All revenue received by the Department from the sales of the directory shall be deposited into the fund.

The Department shall provide the Legislative Data Processing Committee data relating to registration statements and amendments to registration statements, expense reports and notices of termination. This committee shall make information under this subsection available on a publicly accessible Internet website.

ENFORCEMENT:

The Act vests the Commission and the Attorney General with enforcement authority. Registration and reporting requirements may be enforced through a process involving the issuance of a notice of alleged noncompliance by the Commission. Such notice may be appealed to the Commission. The Act provides for the Commission to impose various forms of penalties, including but not limited to a \$50 per-day administrative penalty for negligent noncompliance and a prohibition against lobbying for economic consideration for up to 5 years. The Act also provides for criminal penalties, granting the Attorney General jurisdiction to investigate and prosecute violations under the Act. Intentional violations constitute misdemeanors of the second or third degree, depending upon the nature of the offense. The Act provides that a court may impose a fine not to exceed \$25,000 against a principal found guilty of an intentional violation of the Act.

FUNDING:

The Act creates a special fund, the Lobbying Disclosure Fund, into which biennial registration fees shall be deposited, and from which funds will be appropriated to the Department as a continuing appropriation for administration of this Act.

REGULATIONS:

The Act creates a 9-person committee to promulgate regulations within 180 days after enactment, consisting of the Attorney General, the Department of State, the Commission, the Disciplinary Board of the Supreme Court, a lobbyist appointed by the Governor and each legislative caucus. The Department is charged with providing administrative support for the committee.

EFFECTIVE DATE:

The Act takes effect, primarily, on January 1, 2007, except for sections 1308-A(b) (relating to the Department's development of forms) and 1310-A(d) (relating to the development of regulations by the lobbying committee), which take effect immediately. The Governor signed the Act on November 1, 2006.

QUESTIONS:

For answers to questions on forms and filing, contact the Bureau of Commissions, Elections and Legislation at the Pennsylvania Department of State at (717) 787-5280 or at 210 North Office Building, Harrisburg, PA 17120. For official advisories regarding compliance with the Act, contact the Commission at 309 Finance Building, P.O. Box 11470, Harrisburg, PA 17108-1470. The Commission may be contacted by telephone at 1-800-932-0936 or (717) 783-1610. However, the Commission does not issue advisories by telephone.