

House Bill 736

In The House

February 12, 1981

Introduced and referred
to Committee on State
Administration.

April 23, 1981

Died in Committee.

1 House BILL NO. 736
2 INTRODUCED BY Baldanone

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE
5 LAW RELATING TO REGISTRATION OF LOBBYISTS; REVISING AND
6 REENACTING KEY ELEMENTS OF INITIATIVE NO. 85; AMENDING
7 SECTIONS 2-15-411, 13-37-101, AND 13-37-102, MCA; AND
8 REPEALING SECTIONS 1, 3 THROUGH 15, AND 17 THROUGH 22 OF
9 INITIATIVE NO. 85 AND SECTIONS 5-7-101, 5-7-103 THROUGH
10 5-7-105, 5-7-201 THROUGH 5-7-207, AND 5-7-301 THROUGH
11 5-7-305, MCA."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 NEW SECTION. Section 1. Purpose and findings. (1) The
15 legislature finds that, in order to maintain a high level of
16 confidence among the people of the state that public
17 decisions are made on the merits of the issues involved
18 rather than on the basis of the amount of money spent to
19 influence these decisions, there is a compelling state
20 interest in the disclosure of the amount of money spent for
21 lobbying in state government.

22 (2) The legislature also finds that there must be
23 continued guarantees of high ethical standards and
24 protection against unfair and unethical practices in
25 lobbying in state government.

1 (3) The legislature also finds that the right of the
2 individual citizen to petition his government must be
3 protected.

4 (4) It is the purpose of [sections 1 through 15] to
5 provide the safeguards and accomplish the goals found
6 necessary in this section.

7 NEW SECTION. Section 2. Definitions. As used in
8 [sections 1 through 15], the following definitions apply:

9 (1) "Agency" has the same meaning ascribed to it in
10 2-15-102.

11 (2) "Commissioner" means the commissioner of political
12 practices created by 2-15-411.

13 (3) "Elected official" means a person holding an
14 office filled by the electors in any jurisdiction at either
15 the state or local level.

16 (4) "Lobby" means to engage in lobbying.

17 (5) "Lobbying" means:

18 (a) the practice of promoting or opposing passage or
19 introduction of a bill or resolution in the legislature or
20 promoting, opposing, or attempting to influence the content
21 of any bill or resolution in, or proposed to be introduced
22 in, the legislature through direct communication with a
23 legislator, legislator-elect, or committee of the
24 legislature by a person other than a legislator or
25 legislator-elect; and

1 (b) the practice of promoting or opposing the taking
 2 of an official action or attempting to influence the content
 3 of a proposed official action through direct communication
 4 with a public official participating in taking the action,
 5 other than by a person who does so because he is employed
 6 in, elected to, or appointed to a government position in
 7 which the responsibility to participate in the decision or
 8 advise the decisionmaker inheres.

9 (6) "Lobbyist" means one who engages in lobbying.

10 (7) (a) "Official action" means:

- 11 (i) the adoption, amendment, or repeal of a rule;
 12 (ii) the issuance, revocation, or modification of a
 13 license; or
 14 (iii) the setting or modification of rates or tariffs
 15 of a regulated industry.

16 (b) "License" and "rule" have the meanings ascribed to
 17 them in 2-4-102.

18 (8) "Principal" means a person who retains or employs
 19 another for valuable consideration to lobby on his behalf.

20 (9) "Trivial benefit" has the same meaning ascribed to
 21 it in 45-7-104.

22 NEW SECTION. Section 3. Unprofessional conduct. A
 23 lobbyist is guilty of unprofessional conduct if he knowingly
 24 engages in any of the following:

25 (1) lobbying in a manner that reflects discredit on

1 the practice of lobbying or on the legislative or executive
 2 branches of government;

3 (2) lobbying for compensation dependent in any manner
 4 upon the passage or defeat of any proposed official action
 5 of any public official or body or upon any contingency
 6 connected with that action;

7 (3) solicitation of employment from a principal;

8 (4) instigation of the introduction of legislation or
 9 promotion of the taking of an official action by a public
 10 official for the purpose of obtaining employment in
 11 opposition thereto;

12 (5) attempting to influence the action of any public
 13 official on any legislation or other official action by:

14 (a) the promise of support or opposition at any future
 15 election or by a promise of financial support;

16 (b) making an unsubstantiated charge of improper
 17 conduct on the part of another lobbyist, a principal, or a
 18 public officer or employee;

19 (c) attempting to deceive a public official with
 20 regard to the pertinent facts related to the action or
 21 attempting to misrepresent pertinent facts related to the
 22 action to any public official;

23 (d) participation in ex parte consultation except as
 24 authorized by 2-4-613; or

25 (e) any means other than argument on the merits of the

1 action;

2 (6) violation of any of the provisions of [sections 1
3 through 15];

4 (7) commission of an offense of bribery or corrupt
5 influence as provided in Title 45, chapter 7, part 1; or

6 (8) encouraging another person to engage in any of the
7 above.

8 NEW SECTION. Section 4. Reimbursement for trivial
9 benefits. (1) The legislature recognizes the fact that
10 lobbyists and principals commonly employ various techniques
11 for gathering public officials together for purposes such as
12 expressing the purposes, goals, and objectives of the
13 principal or lobbyist involved or for the development of
14 good will. A meal, beverage, or entertainment provided in
15 such cases constitutes a trivial benefit to the recipient
16 and involves no substantial risk of undermining official
17 impartiality.

18 (2) The legislature nonetheless finds that to maintain
19 a high level of confidence among the people in the public
20 officials elected and appointed to serve in government, the
21 reimbursement and reporting provisions of this section are
22 required.

23 (3) Whenever a principal or lobbyist confers a trivial
24 benefit upon a public official, he shall, upon request of
25 that official supply the official with the true or estimated

1 cost of the benefit and allow the official to reimburse him
2 for the cost of the benefit. A principal required to submit
3 a financial report under [section 11] shall indicate the
4 value of all reimbursements received in the reporting period
5 involved in the report.

6 NEW SECTION. Section 5. Registration required for
7 lobbyists and principals -- exceptions. (1) No person may
8 lobby unless he has first registered with the commissioner
9 as provided in [section 6] or unless he has been excepted
10 from the application of this section.

11 (2) No person who is a principal and who is not
12 excepted from the application of this section may authorize
13 a lobbyist employed by him to lobby until the lobbyist and
14 principal and the interests authorized to be represented
15 have been registered with the commissioner as provided in
16 [sections 6 and 7].

17 (3) This section does not apply to:

18 (a) an individual lobbying solely on his own behalf;
19 (b) a news organization or an executive, employee, or
20 agent of that organization which in the ordinary course of
21 business publishes or broadcasts news items, editorials, or
22 other comments or paid advertisements that may urge
23 legislative or administrative action when engaged in the
24 ordinary course of the news-related business of that
25 organization;

1 (c) a person invited or compelled to appear before a
2 committee of the legislature or before an agency;

3 (d) the governor, lieutenant governor, secretary of
4 state, attorney general, superintendent of public
5 instruction, state auditor, member of the legislature,
6 justice of the supreme court or judge of the district court,
7 or a person who has been elected to fill any such position
8 who may not yet have assumed office;

9 (e) when acting in his official capacity:

10 (i) an elected public official or official-elect not
11 excepted by subsection (d) above;

12 (ii) a state official appointed by the governor and
13 confirmed by the senate;

14 (iii) a local government official holding a position
15 created by law and appointed by the local governing body;

16 (iv) a public employee; or

17 (v) an officer or employee of the United States;

18 (f) a lobbyist who serves for no reimbursement or who
19 is reimbursed for actual and necessary personal expenses
20 incurred in connection with his lobbying not to exceed
21 \$1,000 in a calendar year; or

22 (g) a principal who reimburses one or more lobbyists
23 only for actual and necessary personal expenses in
24 connection with lobbying activities not to exceed a total of
25 \$1,000 in a calendar year.

1 NEW SECTION. Section 6. Lobbyist registration. (1)
2 Any citizen of the United States who is not under state or
3 federal supervision for any offense against this or any
4 other state or the United States at the time of application
5 or whose previous registration as a lobbyist is not under a
6 term of suspension or revoked at the time of application for
7 registration may register as a lobbyist.

8 (2) To apply for registration a person must:

9 (a) submit the following information on a form
10 provided by the commissioner:

11 (i) the name and business address, or home address if
12 there is no business address, of the lobbyist;

13 (ii) the name and address of the principal, if there is
14 a principal;

15 (iii) the policy matter upon which the lobbyist is
16 authorized to lobby on behalf of each principal listed or a
17 statement that he is authorized to lobby on all matters in
18 which the principal has an interest or, if there is no
19 principal, a similar statement of the interests on which the
20 lobbyist intends to lobby; and

21 (iv) a signed statement attesting that the applicant is
22 qualified under subsection (1) to register as a lobbyist;

23 (b) submit a statement of authorization on a form
24 provided by the commissioner and signed by the principal for
25 each principal named by the lobbyist that indicates a grant

1 of authority by the principal for the lobbyist to represent
2 him and the matter on which he is authorized to lobby.

3 (3) When the commissioner finds that a qualified
4 applicant has submitted a complete application, he shall
5 issue a certificate of registration to the lobbyist that
6 indicates the lobbyist's name, certificate number, and the
7 expiration date of the certificate. No application may be
8 disapproved without affording the applicant a hearing. The
9 hearing must be held in accordance with Title 2, chapter 4,
10 part 6.

11 (4) A registration expires on December 31 of each
12 odd-numbered year or upon a request by the registered
13 lobbyist to terminate his registration.

14 NEW SECTION. Section 7. Principal to submit lobbyist
15 authorization. (1) A principal who is required to register
16 under [section 5] shall, within 1 week of employing a
17 lobbyist, submit to the commissioner, on a form provided by
18 the commissioner, the name of the lobbyist employed and the
19 policy matter upon which the lobbyist is authorized to
20 represent the principal. The authorization required under
21 this section may be a copy of the authorization required by
22 [subsection (2)(b) of section 6] to be filed by the lobbyist
23 but must be submitted separately by the principal.

24 (2) Upon termination of employment by the principal of
25 the lobbyist as a lobbyist, the principal shall, within 1

1 week of such termination, notify the commissioner in writing
2 that the lobbyist is no longer authorized to lobby on his
3 behalf.

4 NEW SECTION. Section 8. Updating registration
5 information. A principal or lobbyist subject to registration
6 under [section 5] shall, within 1 week of any change in the
7 information required to be filed under [section 6 or 7],
8 report the change to the commissioner.

9 NEW SECTION. Section 9. Docket -- contents -- public
10 access. (1) The commissioner shall prepare and keep a docket
11 in which he shall enter the name and address of each
12 registered lobbyist, each principal of each lobbyist, and
13 the policy matter upon which the lobbyist is authorized or
14 intends to lobby.

15 (2) The commissioner shall update the docket entries
16 from time to time as lobbyists and principals report
17 changes.

18 (3) The docket and supporting documents must be
19 available for public inspection during the regular office
20 hours of the commissioner.

21 (4) The commissioner shall report weekly to the
22 legislature while the legislature is in session and monthly
23 to the governor the docket information not previously
24 reported.

25 NEW SECTION. Section 10. Lobbying by state employees

1 -- registration -- restrictions. (1) No employee of any
2 agency may lobby before the legislature on behalf of that
3 agency or any other agency unless he has been registered to
4 do so with the office of the governor as provided in this
5 section.

6 (2) The department head or officer in charge of the
7 agency in which an employee whose duties include legislative
8 lobbying is employed shall register the employee with the
9 office of the governor as an authorized representative of
10 the agency and indicate the policy matter on which the
11 employee is authorized to represent the agency. The
12 department head or officer may add or remove an employee's
13 name or amend the policy matter authorization at any time.

14 (3) The governor shall provide a copy of the
15 registration list to the commissioner, president of the
16 senate, and speaker of the house on the first day of any
17 regular or special session. He shall submit a list of
18 amendments every 2 weeks during the session. The list shall
19 be available for inspection at all reasonable times during
20 normal working hours in the office of the governor.

21 (4) No agency employee may lobby on any matter for
22 which he is not registered under this section unless he is
23 lobbying on his own behalf as a private citizen. If he
24 represents himself at a time when he would normally be on
25 duty in his agency employment, he must be on an approved

1 leave status during that time.

2 (5) This section does not apply to a public employee
3 who appears in response to a written request of a member or
4 a committee of the legislature.

5 NEW SECTION. Section 11. Financial reports required
6 -- content -- records -- audit. (1) A principal required to
7 register under [section 5] shall file reports of payments
8 made for lobbying with the commissioner. The reports must be
9 made at the time and be categorized as required by this
10 section.

11 (2) The reports required by this section must be filed
12 in accordance with the following schedule:

13 (a) Before February 16 of each year, a report must be
14 filed disclosing the sum of all payments made for lobbying
15 in the prior calendar year.

16 (b) Before February 16 of a year in which there is a
17 regular legislative session in January, a report must be
18 filed disclosing the sum of all payments made for lobbying
19 during that January;

20 (c) Before the 16th of any month following a month in
21 which the principal spent \$5,000 or more for lobbying, a
22 report must be filed disclosing all money spent for lobbying
23 in the prior month.

24 (d) Before the 16th day of the month following the
25 last day allowed for the governor to approve legislation

1 passed by the legislature, a report must be filed disclosing
2 all money spent for lobbying during each month during which
3 the legislature was in session and any other month during
4 which the governor was allowed to approve legislation.

5 (e) For each of the above periods, if no report was
6 required for the period in question, a report must be filed
7 disclosing that fact.

8 (3) Each report filed under this section must report
9 the sum of all money spent by the principal for lobbying in
10 the following categories:

11 (a) that part of salaries, fees, allowances, rewards,
12 and contingency fees paid for lobby on his behalf;

13 (b) (i) money spent in support of lobbying done on
14 behalf of the principal, including:

15 (A) that part of salaries, fees, allowances, rewards,
16 and contingency fees paid for research;

17 (B) preparation and printing of position papers,
18 drafts of documents such as draft bills, resolutions, or
19 rules, and letters or other written communications;

20 (C) postage;

21 (D) telephone and telegraph; and

22 (E) other reasonably attributable support expenses;

23 (ii) normal office expenses that would have been
24 incurred by the principal in the normal course of his
25 business had he not engaged a lobbyist need not be allocated

1 to lobbying activity or reported under subsection (3)(b)(i);

2 (c) entertainment and good will, including expenses
3 incurred by the principal for trivial benefits and including
4 an itemized accounting of the following:

5 (i) each separate payment of \$10 or more conferring a
6 trivial benefit upon a public official;

7 (ii) each separate payment conferring \$100 or more in
8 trivial benefits upon more than one public official,
9 regardless of individual benefit. If the principal has made
10 a payment in this category for an entertainment function or
11 other gathering to which all senators or all representatives
12 or an entire committee or caucus of either house of the
13 legislature is invited and more than 10 such invitees
14 attend, the beneficiary may be listed as all members of the
15 invited group without listing each person who attended. In
16 computing the \$100 under this subsection 3(c)(ii), the total
17 cost of any function may be reduced in proportion to the
18 ratio of public officials and other persons who attended the
19 function.

20 (iii) the value of all reimbursements received under
21 [section 4].

22 (4) A principal required to file a report under this
23 section shall keep all records required to support such a
24 report for not less than 7 years from the date of filing.

25 (5) The commissioner may examine and audit reports

1 filed under this section and shall investigate any
 2 irregularities that appear to him to require investigation.
 3 A principal required to file under this section shall
 4 produce any records required by the commissioner in
 5 connection with an examination, audit, or investigation of a
 6 report filed by him. The commissioner shall report any
 7 apparent violations of [sections 1 through 15] discovered by
 8 him to an attorney authorized to prosecute that violation.

9 NEW SECTION. Section 12. Disclosure of contributions,
 10 membership fees, and payees. A principal required to file a
 11 report under [section 11] shall, at the same time that
 12 report is filed, file a report disclosing the name and
 13 address of each person who made a contribution or paid a
 14 membership fee to the principal that amounted to \$250 or
 15 more when aggregated over the reporting period. The amount
 16 of each contribution and payment must be itemized along with
 17 an indication of the issue area, if any, for which the
 18 contribution or payment was earmarked.

19 NEW SECTION. Section 13. Administrative suspension of
 20 lobbyist registration. (1) The commissioner shall suspend
 21 the registration of a registered lobbyist upon a finding
 22 that the lobbyist is guilty of unprofessional conduct, has
 23 secured his registration through fraud or error, has
 24 represented a principal without authorization, or has been
 25 convicted of an offense that would have prevented him from

1 qualifying to register originally.

2 (2) The commissioner shall suspend the authorization
 3 of a lobbyist to represent the interests of a principal who
 4 has failed to file a financial report he was required to
 5 file under [section 11 or 12] or who has filed an incomplete
 6 or incorrect report.

7 (3) A lobbyist must be given notice and an opportunity
 8 for a hearing prior to a suspension under this section. In
 9 the giving of notice and providing of a hearing, the
 10 provisions of Title 2, chapter 4, part 6, apply.

11 NEW SECTION. Section 14. Violation -- penalties. (1)
 12 A person adjudged to have violated a provision of [sections
 13 1 through 15] is subject to a civil penalty of not less than
 14 \$250 and not to exceed \$7,500. A registered lobbyist
 15 adjudged to have violated a provision of [sections 1 through
 16 15] is in addition subject to the suspension or revocation
 17 of his registration.

18 (2) The attorney general, attorney for the
 19 commissioner, or county attorney of the county in which the
 20 violation occurs may bring an action for an appropriate
 21 remedy.

22 (3) If a remedy is pursued by a county attorney, all
 23 costs associated with pursuing the remedy must be paid by
 24 the state.

25 NEW SECTION. Section 15. Rulemaking authorized. The

1 commissioner may adopt such rules as he finds necessary to
2 carry out the provisions of [sections 1 through 15].

3 Section 16. Section 2-15-411, MCA, is amended to read:

4 "2-15-411. Commissioner of ~~campaign---finances---~~and
5 political practices. (1) There is a commissioner of ~~campaign~~
6 ~~finances---~~and political practices who is appointed as
7 provided in 13-37-102.

8 (2) The office of the commissioner is attached to the
9 office of the secretary of state for administrative purposes
10 only, as specified in 2-15-121, except that the provisions
11 of subsections (1)(b), (1)(c), (2)(a), (2)(b), (2)(d),
12 (2)(e), and (3)(a) of 2-15-121 do not apply."

13 Section 17. Section 13-37-101, MCA, is amended to
14 read:

15 "13-37-101. Commissioner of ~~campaign--finances---~~and
16 political practices. In this chapter, "commissioner" means
17 the commissioner of ~~campaign---finances---~~and political
18 practices created by 13-37-102, unless the context clearly
19 indicates otherwise."

20 Section 18. Section 13-37-102, MCA, is amended to
21 read:

22 "13-37-102. Creation of office. (1) There is a
23 commissioner of ~~campaign-finances--~~and political practices
24 who is appointed by the governor, subject to confirmation by
25 a majority of the senate. A four-member selection committee

1 comprised of the speaker of the house, the president of the
2 senate, and the minority floor leaders of both houses of the
3 legislature shall submit to the governor a list of not less
4 than two or more than five names of individuals for his
5 consideration. A majority of the members of the selection
6 committee shall agree upon each nomination.

7 (2) The individual selected to serve as commissioner
8 of ~~campaign-finances-and~~ political practices may be removed
9 by the governor prior to the expiration of the term only for
10 incompetence, malfeasance, or neglect of duty. The
11 sufficiency of such causes shall be subject to judicial
12 review."

13 Section 19. Name change. The name of the office of the
14 "commissioner of campaign finances and practices" created by
15 2-15-411 and 13-37-102 is changed to "commissioner of
16 political practices". Whenever the term "commissioner of
17 campaign finances and practices" occurs in the Montana Code
18 Annotated (MCA), it means "commissioner of political
19 practices". The code commissioner shall make appropriate
20 changes in the MCA in accordance with this section.

21 Section 20. Severability. If a part of this act is
22 invalid, all valid parts that are severable from the invalid
23 part remain in effect. If a part of this act is invalid in
24 one or more of its applications, the part remains in effect
25 in all valid applications that are severable from the

LC 1259/01

1 invalid applications.

2 Section 21. Repealer. Sections 1, 3 through 15, and 17
3 through 22 of Initiative No. 85 and sections 5-7-101,
4 5-7-103 through 5-7-105, 5-7-201 through 5-7-207, and
5 5-7-301 through 5-7-305, MCA, are repealed.

-End-