

Working Draft of Proposed Rules (Clean Version)

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

February 23, 2018

Disclaimer:

The following is a working draft concerning the Lobbyist Regulation Rules. The Secretary values your input and is seeking feedback about the proposed revisions before a formal notice of rulemaking.

Please send your feedback by 5:00 PM on March 9, 2018. Please reference the specific page and line number in your comments. We will consider all comments submitted by this date for inclusion in the official rulemaking draft.

1 *[8 CCR 1505-8 is stricken in its entirety and recodified as follows.]*

2 **Rule 1. Definitions**

3 1.1 “Client” means a person or entity who initially hires, engages, or otherwise pays or contributes
4 money to a professional lobbyist for lobbying services. “Client” does not include a lobbying firm
5 that employs a professional lobbyist or a professional lobbyist who is, on a subcontract basis,
6 working for another professional lobbyist.¹

7 1.2 “Covered official” means the governor, lieutenant governor, a member of the general assembly,
8 any member of legislative council staff, a member of a rulemaking board or commission, or a
9 rulemaking official of a state agency who has jurisdiction over the subject matter of a rule,
10 standard, or rate.²

11 1.3 “Lobbying:”

12 1.3.1 Means communicating directly, or soliciting others to communicate, with a covered
13 official for the purpose of aiding or influencing:

14 (a) The drafting, introduction, sponsorship, consideration, debate, amendment,
15 passage, defeat, approval, or veto on any:

16 (1) Bill, resolution, amendment, nomination, appointment, or report, whether
17 or not in writing, pending or proposed for consideration by the general
18 assembly, whether or not the general assembly is in session;

19 (2) Any other matter pending or proposed in writing by a covered official,
20 whether or not the general assembly is in session;

¹ Section 24-6-301 (1), C.R.S.

² Section 24-6-301 (1.7), C.R.S

- 1 (b) The preparation of an initial fiscal impact statement for an initiated measure to be
2 considered by the title setting board;
- 3 (c) The convening of a special session of the general assembly or the specification of
4 business to be transacted during the special session; or
- 5 (d) The drafting, consideration, amendment adoption, or defeat of any rule, standard,
6 or rate of any state agency that has rulemaking authority.³
- 7 1.3.2 Does not include:
- 8 (a) Communications required by a statute, rule, regulation, or order;⁴
- 9 (b) Appearing before a committee of the general assembly or a rulemaking board or
10 commission if the committee, board, or commission issued a mandatory order or
11 subpoena commanding appearance and testimony or commanding a person to
12 appear as a respondent;⁵
- 13 (c) Appearing before a committee of the general assembly or a rulemaking board or
14 commission at the request of public official or employees. This exemption
15 applies only to a person who is not already registered as a lobbyist, and the
16 person must clearly identify themselves and the interest for whom they are
17 testifying.⁶
- 18 (d) Communications made by an attorney at law on behalf of a client that constitute
19 the practice of law if the client is clearly identified.⁷ This exemption applies only
20 to an attorney who is representing his or her client's legal rights before a tribunal
21 or adjudicative body that contains covered officials. Examples include, but are
22 not limited to, the state title setting board, administrative licensure hearings, and
23 legislative ethics panels This exemption does not extend to an attorney who is
24 merely lobbying, as defined above, on behalf of a client.
- 25 (e) Appearance as a witness in a rule, standard, or rate-making proceeding;⁸
- 26 (f) A political committee, volunteer, lobbyist, or citizen who lobbies on his or her
27 own behalf, a state official acting in his or her official capacity, or a public
28 official acting in his or her official capacity.⁹
- 29 (g) Activity that could otherwise be considered lobbying if that activity is performed
30 by an employee of an organization and the activity occurs once a year or less and
31 the employee is not paid solely to lobby. This exclusion from lobbying covers

³ Section 24-6-301 (3.5), C.R.S.

⁴ Section 24-6-301 (3.5) (c), C.R.S.

⁵ Section 24-6-301 (3.5) (d), C.R.S.

⁶ Section 24-6-301 (3.5) (d), C.R.S.

⁷ Section 24-6-301 (3.5) (e), C.R.S.

⁸ Section 24-6-303 (5), C.R.S.

⁹ Section 24-6-303 (6), C.R.S.

1 “grassroots” lobbying by employees of an organization who contact members of
2 the organization in response to a piece of legislation or rule.

3 1.4 “Lobbying firm” means a person or entity who employs a professional lobbyist on behalf of a
4 client. “Lobbying firm” includes a self-employed professional lobbyist.¹⁰

5 1.5 “Monitoring” status means that a registered lobbyist is not currently communicating support or
6 opposition, or influencing or attempting to influence a covered official on the drafting,
7 introduction, sponsorship, consideration, debate, amendment, passage, defeat, approval, or veto of
8 any bill, resolution, amendment, nomination, appointment, or report, pending or proposed.

9 1.6 “Professional lobbyist” means a person, a business entity, including a sole proprietorship, or an
10 employee of a client, who is compensated by a client, another professional lobbyist, or lobbying
11 firm for lobbying services.¹¹

12 1.7 “Rate” means a ratio of valuation, percentage, percentage change, annual adjustment, or an
13 amount charged for a good or service, adopted by a state agency having rulemaking authority.

14 1.8 “Standard” means a criterion measuring acceptability, quality, accuracy, weight, or an amount, or
15 a threshold for agency jurisdiction adopted by a state agency having rulemaking authority.

16 1.9 “State Liaison” means the one person designated by each principal department of state
17 government who is responsible for any lobbying by a state official or employee on behalf of the
18 principal department.¹²

19 1.10 “Volunteer lobbyist” means a person who engages in lobbying but whose only receipt of money
20 for doing so consists of nothing more than reimbursement for actual and reasonable expenses for
21 meal, travel, lodging and parking.¹³

22 **Rule 2. Professional Lobbyists**

23 2.1 Registration

24 2.1.1 A professional lobbyist must register electronically via the Secretary of State’s website
25 before lobbying. The statement must contain:

26 (a) The professional lobbyist’s full name, business address, and business telephone
27 number;

28 (b) The name, address, and telephone number of the lobbying firm or any other
29 person or entity that employs the professional lobbyist;

30 (c) The name, address, and telephone number of all clients that engage the
31 professional lobbyist;

¹⁰ Section 24-6-301 (1.3), C.R.S.

¹¹ Section 24-6-301 (6), C.R.S.

¹² Section 24-6-303.5 (1) (a), C.R.S.

¹³ Section 24-6-301 (7), C.R.S.

1 (d) The name, address, and telephone number of any other professional lobbyist for
2 whom the professional lobbyist is lobbying on a subcontract basis.¹⁴

3 2.1.2 The fee for filing a professional lobbyist registration statement is \$40.00.

4 (a) Upon request, the Secretary of State may waive the registration fee for a
5 professional lobbyist who is lobbying for a nonprofit organization if the
6 professional lobbyist's only compensation is from the nonprofit organization. To
7 receive a waiver, the professional lobbyist must submit a written request to the
8 Secretary of State along with a copy of the nonprofit organization's most recent
9 IRS form 990, 990EZ, or 990-N showing gross annual revenue of \$50,000 or
10 less.¹⁵

11 2.1.3 A professional lobbyist must file an updated registration statement on or before July 15
12 each year.¹⁶

13 2.2 Disclosure

14 2.2.1 A professional lobbyist must file a monthly disclosure statement electronically via the
15 Secretary of State's website on or before the 15th day of the month following the month in
16 which the professional lobbyist began lobbying, and monthly thereafter. The statement
17 must contain:¹⁷

18 (a) The name and address of each client or other professional lobbyist who has paid
19 the professional lobbyist \$100 or more for lobbying and the amount paid by the
20 client or other professional lobbyist since the previous disclosure statement;¹⁸

21 (1) If the client or other professional lobbyist is an individual, a description
22 of the business activity in which the individual is engaged;

23 (2) If the client or other professional lobbyist is a business entity, a
24 description of the business in which the entity is engaged and the names
25 of any chief executive officer, partners, or other designated contact
26 person; or

27 (3) If the client or other professional lobbyist is an industry, trade,
28 organization, or group of persons, or professional association, a
29 description of the industry, trade, organization, or group of persons, or
30 professional association.¹⁹

31 (b) The total amount of money paid to or for the professional lobbyist since the
32 previous disclosure statement and during the fiscal year;²⁰

¹⁴ Section 24-6-303 (1), C.R.S.

¹⁵ Section 24-6-303 (1.3) (a), C.R.S.

¹⁶ Section 24-6-303 (1.5), C.R.S.

¹⁷ Section 24-6-302 (2.5), C.R.S.

¹⁸ Section 24-6-301 (1.9) (a) (1), C.R.S.

¹⁹ Section 24-6-301 (1.9) (a) (XI), C.R.S.

²⁰ Section 24-6-301 (1.9) (a) (II), (III), and (VIII), C.R.S.

- 1 (c) If the professional lobbyist has made an expenditure that exceeds the current
2 dollar gift limit, as established by the Independent Ethics Commission and posted
3 on the Secretary of State website, on behalf of a covered official for gift or
4 entertainment purposes, whether or not the professional lobbyist was reimbursed:
- 5 (1) The name of the covered official; and
- 6 (2) The amount, date, and principal purpose of the gift or entertainment;²¹
- 7 (d) The total amount of expenditures made by or on behalf of the professional
8 lobbyist in connection with lobbying, other than for gift or entertainment
9 purposes;²²
- 10 (e) If the professional lobbyist has made an expenditure or given a contribution to a
11 paper, periodical, magazine, radio or TV station, or other media of mass
12 communication:
- 13 (1) The name of the entity; and
- 14 (2) The amount given to the entity;²³
- 15 (f) The specific legislation, standards, rules, or rates for which the professional
16 lobbyist is lobbying or, if not known, the nature of the legislation, standards,
17 rules, or rates, including:
- 18 (1) The bill number of the legislation; and
- 19 (2) Whether the lobbyist is supporting, opposing, amending, or monitoring
20 the legislation.²⁴
- 21 (g) Any direct business association the professional lobbyist has with any pending
22 legislation, measure, or question.²⁵
- 23 2.2.2 In addition to the monthly disclosure statement described in Rule 2.2.1, a professional
24 lobbyist must file an annual disclosure statement for the entire fiscal year no later than
25 July 15. The annual disclosure statement must include the name of and total gross income
26 the professional lobbyist has received from each client or other professional lobbyist. If a
27 subcontract relationship exists between two professional lobbyists, both lobbyists must
28 disclose the amount of money paid and received on the annual disclosure statement.²⁶
- 29 2.2.3 In addition to the monthly and annual disclosure statements described in Rules 2.2.1 and
30 2.2.2, when a professional lobbyist enters into a new oral or written agreement with a
31 client or other professional lobbyist for lobbying that isn't disclosed in the registration

²¹ Section 24-6-301 (1.9) (a) (1) (IV), C.R.S.

²² Section 24-6-301 (1.9) (a) (1) (V) and (VII), C.R.S.

²³ Section 24-6-301 (1.9) (a) (1) (IX), C.R.S.

²⁴ Section 24-6-301 (1.9) (a) (1) (X), C.R.S.

²⁵ Section 24-6-301 (1.9) (a) (1) (XII), C.R.S.

²⁶ Section 24-6-302 (3), C.R.S.

1 statement described in Rule 2.1.1, the professional lobbyist must notify the Secretary of
2 State.

3 (a) If the new engagement occurs while the general assembly is not in session the
4 professional lobbyist must notify the Secretary within five working days.

5 (b) If the new engagement occurs while the general assembly is in session the
6 professional lobbyist must notify the Secretary within 24 hours, except that, if the
7 agreement is oral, the notification must occur within 24 hours after the date of the
8 subsequent written agreement.

9 (c) In addition to the notification, the professional lobbyist must:

10 (1) File, concurrently with the next disclosure statement, a signed written
11 statement that contains the name and address of the new client and a
12 summary of the terms of the agreement;

13 (2) Update the professional lobbyist's registration statement within 24
14 hours.²⁷

15 2.2.4 If a professional lobbyist changes his or her position on a bill between monitoring,
16 oppose, or support, the lobbyist must file an amended disclosure statement that reflects
17 the change in position within 72 hours of the change.

18 **Rule 3. Lobbying Firms**

19 3.1 Registration

20 3.1.1 There is no registration requirement for a lobbying firm, but a lobbyist firm must file
21 disclosure statements in accordance with statute and as described in Rule 3.2 below.

22 3.2 Disclosure

23 3.2.1 Except as specified in paragraph (a) below, a lobbying firm must file a monthly
24 disclosure statement electronically via the Secretary of State's website on or before the
25 15th day of the month following the month in which the lobbying firm began lobbying,
26 and monthly thereafter.²⁸

27 (a) A single-member lobbying firm that consists solely of one professional lobbyist
28 need not file a lobbying-firm disclosure statement if the professional lobbyist's
29 disclosure statement contains the name of both the professional lobbyist and the
30 single-member firm that employs the professional lobbyist.²⁹

31 3.2.2 The statement must contain:³⁰

²⁷ Section 24-6-302 (6) (b), C.R.S.

²⁸ Section 24-6-302 (2.5) (a), C.R.S.

²⁹ Section 24-6-302 (2.5) (a), C.R.S.

³⁰ Section 24-6-302 (2.5), C.R.S.

- 1 (a) The name and address of each client or other professional lobbyist who has paid
2 the lobbying firm \$100 or more for lobbying and the amount paid by the client or
3 other professional lobbyist since the previous disclosure statement;³¹
- 4 (1) If the client or other professional lobbyist is an individual, a description
5 of the business activity in which the individual is engaged;
- 6 (2) If the client or other professional lobbyist is a business entity, a
7 description of the business in which the entity is engaged and the names
8 of any chief executive officer, partners, or other designated contact
9 person; or
- 10 (3) If the client or other professional lobbyist is an industry, trade,
11 organization, or group of persons, or professional association, a
12 description of the industry, trade, organization, or group of persons, or
13 professional association.³²
- 14 (b) The total amount of money paid to or for the lobbying firm since the previous
15 disclosure statement and during the fiscal year;³³
- 16 (c) If the lobbying firm has made an expenditure that exceeds the current dollar gift
17 limit, as established by the Independent Ethics Commission and posted on the
18 Secretary of State website, on behalf of a covered official for gift or
19 entertainment purposes, whether or not the professional lobbyist was reimbursed:
- 20 (1) The name of the covered official; and
- 21 (2) The amount, date, and principal purpose of the gift or entertainment;³⁴
- 22 (d) The total amount of expenditures made by or on behalf of the lobbying firm in
23 connection with lobbying, other than for gift or entertainment purposes;³⁵
- 24 (e) If the lobbying firm has made an expenditure or given a contribution to a paper,
25 periodical, magazine, radio or TV station, or other media of mass
26 communication:
- 27 (1) The name of the entity; and
- 28 (2) The amount given to the entity;³⁶
- 29 (f) The specific legislation, standards, rules, or rates for which the lobbying firm is
30 lobbying or, if not known, the nature of the legislation, standards, rules, or rates,
31 including:

³¹ Section 24-6-301 (1.9) (a) (1), C.R.S.

³² Section 24-6-301 (1.9) (a) (XI), C.R.S.

³³ Section 24-6-301 (1.9) (a) (II), (III), and (VIII), C.R.S.

³⁴ Section 24-6-301 (1.9) (a) (1) (IV), C.R.S.

³⁵ Section 24-6-301 (1.9) (a) (1) (V) and (VII), C.R.S.

³⁶ Section 24-6-301 (1.9) (a) (1) (IX), C.R.S.

- 1 (1) The bill number of the legislation; and
- 2 (2) Whether the lobbying firm is supporting, opposing, amending, or
3 monitoring the legislation.³⁷
- 4 (g) Any direct business association the lobbying firm has with any pending
5 legislation, measure, or question.³⁸

6 **Rule 4. Complaints and Enforcement**

7 4.1 Any person who believes that a lobbyist or lobbyist firm is not complying with the Colorado
8 Lobbyist Regulation laws or these rules, may file a complaint with the Secretary of State.³⁹

9 4.1.1 A written complaint filed with the Secretary of State must be verified and notarized and
10 contain the following information:

- 11 (a) The complainant's name;
- 12 (b) The complainant's residential address and mailing address (if different from
13 residence);
- 14 (c) The alleged violation, which may include a reference to the specific statute or
15 rule;
- 16 (d) The lobbyist or firm name;
- 17 (e) The date and location of the alleged violation, if known; and
- 18 (f) Other applicable or relevant information.

19 4.1.2 The Secretary of State will review all properly submitted complaints and investigate as
20 appropriate. If the Secretary determines that a violation occurred, the Secretary will take
21 appropriate action under section 24-6-305, C.R.S.

22 4.1.3 Upon receipt of a properly submitted complaint, the Secretary of State will:

- 23 (a) Notify the person against whom the complaint is filed by certified mail; and
- 24 (b) In the case of a state liaison, notify the head of the principal department in
25 writing;
- 26 (c) In the case of a state official or employee lobbying on behalf of a principal
27 department, notify the state liaison in writing; or
- 28 (d) In the case of a state official or employee lobbying on behalf of an institution or
29 governing board of higher education, notify the institution or governing board in
30 writing.

³⁷ Section 24-6-301 (1.9) (a) (1) (X), C.R.S.

³⁸ Section 24-6-301 (1.9) (a) (1) (XII), C.R.S.

³⁹ Section 24-6-305 (2) (c), C.R.S.

1 4.1.4 Notification of a complaint in accordance with Rule 4.1.3 will include:

- 2 (a) The date and factual basis of each act alleged;
- 3 (b) The particular provision of the statute that the lobbyist or firm allegedly violated;
- 4 (c) The action the Secretary of State plans to take; and
- 5 (d) Other relevant information.

6 4.2 Penalty waiver process

7 4.2.1 A registered professional lobbyist or lobbyist firm may ask the Secretary of State to
8 excuse or reduce an imposed fine by submitting a written request by mail, email, fax, or
9 hand-delivery within 30 days of the imposition of fine. The request must include:

- 10 (a) The professional lobbyist's name;
- 11 (b) The request date;
- 12 (c) The due date of the delinquently filed disclosure statement;
- 13 (d) The filing date the professional lobbyist actually filed the disclosure statement;
- 14 (e) Any measures the professional lobbyist or firm has instituted or will institute to
15 avoid future delinquencies, if applicable; and
- 16 (f) A brief summary of the reason, circumstance, or other justification of the bona
17 fide personal emergency;

18 (1) A Bona fide personal emergency, includes:

19 (A) A medical emergency involving the individual responsible for
20 filing or the individual's immediate family. The medical
21 emergency can include but is not limited to incapacitation,
22 hospitalization, death, or debilitating illness or injury.

23 (B) A practical emergency, including extraordinary obstacles beyond
24 the control of the professional lobbyist or lobbyist firm, that
25 precludes timely disclosure. For example:

26 (i) The loss or unavailability of records, or a computer due
27 to fire, flood, or theft;

28 (ii) A web site error that made it impossible to file a
29 required registration document; or

30 (iii) Other compelling reasons beyond the professional
31 lobbyist's or lobbyist firm's control.

32 (2) The following are not bona fide personal emergencies:

- 1 (A) Failure to timely file registration documents due to failure to
2 plan;
- 3 (B) Misunderstandings of applicable disclosure requirements and
4 deadlines;
- 5 (C) Mistakes in electronic filing submissions, including incomplete
6 filings;
- 7 (D) Lack of access to the internet or personal computer; or
- 8 (E) Lack of credit card or other means of making online payments.

9 4.2.2 The Secretary of State may take into account all appropriate facts and circumstances
10 when granting or rejecting a waiver request or in reducing an imposed fine. The Secretary
11 may also consider the frequency of the requests to excuse or reduce a fine within a two-
12 year period, efforts to mitigate or remedy the failure to register or file, and the registrant's
13 demonstrated commitment to meet the requirements of Colorado's laws concerning
14 professional lobbyist regulation.

15 4.3 The Secretary of State will investigate, provide notice of hearings, and hold hearings for a
16 violation of Part 3 of Article 6 of Title 24, C.R.S., in accordance with the State Administrative
17 Procedure Act (Article 4 of Title 24, C.R.S.).

18 4.4 In accordance with section 24-6-305, C.R.S., the Secretary of State:

19 4.4.1 May suspend, revoke, or bar from registration any lobbyist who fails to:

- 20 (a) File disclosure statements under section 24-6-303, C.R.S.;
- 21 (b) Upon request of the Secretary of State, provide books and records for the
22 Secretary of State's examination under section 24-6-304.5, C.R.S.; or
- 23 (c) Pay penalties in full under section 24-6-302(7), C.R.S.

24 4.4.2 Will revoke the registration certificate of an individual who:

- 25 (a) Is convicted in district court of violating any provision of Part 3 of Article 6 of
26 Title 24, C.R.S.; or
- 27 (b) Has been suspended from lobbying by the General Assembly.

28 4.5 If the Secretary of State deems any of the violations contained in Rule 4.4 to be substantial
29 violations, the Secretary of State will notify the president of the senate and speaker of the house.
30 In determining whether the violation is substantial, the Secretary of State will consider:

31 4.5.1 The extent of noncompliance;

32 4.5.2 The purpose of the applicable provision and whether that purpose is substantially
33 achieved despite the alleged noncompliance; and

1 4.5.3 Whether there was a good-faith effort to comply or whether noncompliance is based on a
2 conscious decision to lobby covered officials without registering or filing disclosure
3 statements.

4 **Rule 5 Electronic Filing Hardship Exemption**

5 5.1 The Secretary of State may grant an exception to the electronic filing requirement based on
6 hardship or good cause shown.

7 5.1.1 All applications for an exception must include a brief statement of the hardship or good
8 cause for the requested exception.

9 5.1.2 A lobbyist must submit an application to the Secretary of State at least 15 calendar days
10 before the first applicable filing deadline, unless the exception is based on emergency
11 circumstances arising after the deadline, in which case the lobbyist must describe the
12 nature of the emergency in the application.

13 5.1.3 Filing the application for exception based on emergency circumstances does not delay
14 any reporting deadlines. If, however, a penalty is imposed for failure to file a disclosure
15 statement on the due date, the Secretary of State may reduce or set the penalty aside in
16 accordance with section 24-6-302(7), C.R.S.