

State of Arkansas

CALL ITEM 2

76th General Assembly

Third Extraordinary Session, 1988

HOUSE BILL 1033

By: Rep. D. Roberts

"AN ACT TO AMEND THE ARKANSAS CODE, TITLE 10, CHAPTER 2, SUBCHAPTER 4, TO PROVIDE FOR REGISTRATION OF PERSONS ENGAGED IN LOBBYING AND THE FILING OF ACTIVITY REPORTS BY THOSE ENGAGED IN LOBBYING; AND FOR OTHER PURPOSES."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code, title 10, chapter 2, subchapter 4, is hereby amended to read as follows:

"SUBCHAPTER 4.

10-2-401. TITLE. This subchapter shall be entitled 'The Lobbying Registration Law.'

10-2-402. PURPOSE. The operation of responsible democratic government requires that the people be afforded the fullest opportunity to petition their government for the redress of grievances and to express freely their opinions on legislation, pending executive actions, and current issues to individual members of the legislature, legislative committees, state agencies, and members of the executive branch. To preserve and maintain the integrity of the legislative and administrative processes, it is necessary to disclose publicly and regularly the identity, expenditures, and activities of certain persons who, by direct communication with government officers, engage in efforts to persuade members of the legislative or executive branch to take specific actions.

10-2-403. DEFINITIONS. As used in this subchapter:

(a) 'Administrative action' means rulemaking, licensing, or any other

matter that may be the subject of action by a state agency, including the proposal, consideration, or approval of the matter.

(b) 'Communicates directly with' or any variation of the phrase means contact in person or by telephone, telegraph or letter.

(c) 'Compensation' means money, service, facility, or other thing of value or financial benefit that is received or is to be received in return for or in connection with services rendered or to be rendered.

(d) 'Member of the executive branch' means an officer, officer-elect, candidate for, or employee of any state agency, department, or office in the executive branch of state government.

(e) 'Expenditure' means a payment, distribution, loan, advance, reimbursement, deposit, or gift of money or any thing of value and includes a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure.

(f) 'Legislation' means:

(1) a bill, resolution, amendment, nomination, or other matter pending in either house of the legislature;

(2) any matter that is or may be the subject of action by either house or by a legislative committee, including the introduction, consideration, passage, defeat, approval, or veto of the matter; or

(3) any matter pending in a constitutional convention or that may be the subject of action by a constitutional convention.

(g) 'Member of the legislative branch' means a member, member-elect, candidate for, or officer of the legislature or of a legislative committee, or an employee of the legislature.

(h) 'Person' means an individual, corporation, association, firm, partnership, committee, club, organization, or group of persons who are voluntarily acting in concert.

(i) 'Registrant' means a person required to register under Section 10-2-404.

(j) 'Secretary' means the Arkansas Secretary of State.

10-2-404. PERSONS REQUIRED TO REGISTER. (a) a person must register with the Secretary under this subchapter if the person:

(1) makes a total expenditure of more than two hundred dollars (\$200.00) in a calendar quarter, not including the person's own travel, food,

or lodging expenses or the person's own membership dues, or activities described in Section 10-2-407(b) to communicate directly with one or more members of the legislative or executive branch to influence legislation or administrative action; and

(2) receives compensation or reimbursement of more than two hundred dollars (\$200.00) in a calendar quarter from another person to communicate directly with a member of the legislative or executive branch to influence legislation or administrative action.

(b) Subsection (a)(2) requires a person, other than a member of the judicial, legislative, or executive branch, to register if the person, as part of his regular employment, has communicated directly with a member of the legislative or executive branch to influence legislation on behalf of the person by whom he is compensated or reimbursed, whether or not the person receives any compensation for the communication in addition to the salary for that regular employment.

10-2-405. EXCEPTION. (a) The following persons are not required to register under this subchapter:

(1) a person who owns, publishes, or is employed by a newspaper, any other regularly published periodical, a radio station, a television station, a wire service, or any other bona fide news medium that in the ordinary course of business disseminates news, letters to the editors, editorial or other comment, or paid advertisements that directly or indirectly oppose or promote legislation or administrative action if the person does not engage in further or other activities that require registration under this subchapter and does not represent another person in connection with influencing legislation or administrative action;

(2) a person whose only direct communication with a member of the legislative or executive branch to influence legislative or administrative action is an appearance before or testimony to one or more members of the legislative or executive branch in a hearing conducted by or on behalf of either the legislative or the executive branch and who does not receive special or extra compensation for the appearance other than actual expenses incurred in attending the hearing;

(3) a person whose only activity is to encourage or solicit members, employees, or stockholders of an entity by whom the person is reim-

bursed, employed, or retained to communicate directly with members of the legislative or executive branch to influence legislation or administrative action;

(4) a person whose only activity to influence legislation or administrative action is to compensate or reimburse an individual registrant to act in the person's behalf to communicate directly with a member of the legislative or executive branch to influence legislation or administrative action;

(5) a person whose only activity to influence legislation or administrative action is attendance at a meeting or entertainment event attended by a member of the legislative or executive branch if the total cost of the meeting or entertainment event is paid by a business entity, union, or association; and

(6) a person whose only compensation subject to Section 10-2-404(a)(2) consists of reimbursement for any wages not earned due to attendance at a meeting or entertainment event, travel to and from the meeting or entertainment event, admission to the meeting or entertainment event, and any food and beverage consumed at the meeting or entertainment event if the meeting or entertainment event is attended by a member of the legislative or executive branch and if the total cost of the meeting or entertainment event is paid by a business entity, union, or association.

10-2-406. REGISTRATION. (a) Each person required to register under this subchapter shall file a registration form with the Secretary not later than the fifth day after the date on which the person makes the first direct communication with a member of the legislative or executive branch that requires the person's registration.

(b) The registration must be written and verified and must contain:

- (1) the registrant's full name and address;
- (2) the registrant's normal business and business address;
- (3) the full name and address of each person;

(A) who reimburses, retains, or employs the registrant to communicate directly with a member of the legislative or executive branch to influence legislation or administrative action; and

(B) on whose behalf the registrant has communicated directly with a member of the legislative or executive branch to influence legislation

or administrative action; and

(4) a list of the specific categories of subject matters about which the registrant has communicated directly with a member of the legislative or executive branch to influence legislation or administrative action.

(c) If a registrant's activities are done on behalf of the members of a group other than a corporation, the registration form must include a statement of the number of members in the group, the name of each person in the group or organization who determines the policy of the group or organization relating to influencing legislative or administrative action, and a full description of the methods by which the registrant develops and makes decisions about positions on policy.

(d) If there is a change in the information required to be reported by a registrant under this section, the registrant shall file an amended statement reflecting the change with the Secretary not later than the date on which the next report is due under Section 10-2-408.

#### 10-2-407. SUPPLEMENTAL REGISTRATION AND ACTIVITIES REPORT.

(a) Each registrant shall file with the Secretary a written, verified report concerning the activities described by this section.

(b) The report must contain the total expenditures under a category listed in this subsection that the registrant made to communicate directly with a member of the legislative or executive branch to influence legislation or administrative action. The report must also include expenditures for the direct communications under a category listed in this subsection that other people made on the registrant's behalf if the expenditures were made with the registrant's consent or were ratified by the registrant. The expenditures must be stated in the following categories:

(1) entertainment, including food, beverages, maintenance of a hospitality room, sporting events, theatrical and musical events, and any transportation, lodging, or admission expenses incurred in connection with the entertainment; and

(2) gifts, awards, or loans, other than campaign contributions.

(c) The report must also list the total expenditures made by the registrant or by others on the registrant's behalf and with the registrant's consent or ratification for broadcast or print advertisements, direct mailings, and other mass media communications if:

(1) the expenditures are made to a person other than a member, employee, or stockholder of an entity that reimburses, retains, or employs the registrant; and

(2) the communications support, oppose or encourage another to support or oppose pending legislation or administrative action.

(d) The report must also contain a list of specific categories of subject matters about which the registrant, any person the registrant retains or employs to appear on the registrant's behalf or any other person appearing on the registrant's behalf communicated directly with a member of the legislative or executive branch. The list must include the number or other designation assigned to the legislation or administrative action, if known.

(e) A registrant or other person may request an advisory opinion from the secretary under Section 10-2-420.

#### 10-2-408. FILING DATES FOR SUPPLEMENTAL REPORTS.

(a) The registrant must file the report required by Section 10-2-407 between the 1st and 10th day of each month following a month in which the legislature is in session. The report must cover the activities occurring during the previous month.

(b) When the legislature is not in session, the registrant must file the report covering the activities occurring during the preceding calendar quarter between the 1st and 10th day of April, July, October, and January.

(c) A person who made expenditures on the registrant's behalf that are required to be reported under Section 10-2-407 or a person who has other information that is required to be reported by the registrant under this subchapter shall provide a full, verified account of the expenditures to the registrant not later than the seventh day before the date on which the registrant's report is due.

(d) The first quarterly report following a legislative session may omit an expenditure previously reported under this subchapter.

#### 10-2-409. TIMELINESS OF FILING REGISTRATIONS AND REPORTS.

(a) A registration or report filed by first class United States mail or by common or contract carrier is timely if:

(1) it is properly addressed with postage or handling charges prepaid; and

(2) it bears a post office cancellation mark or a receipt mark from a common or contract carrier indicating a time within the applicable filing period or before the applicable filing deadline, or if the person required to file furnishes satisfactory proof that it was deposited in the mail or with a common or contract carrier within that period or before that deadline.

10-2-410. TERMINATION NOTICE. (a) A person who ceases to engage in activities requiring registration under this subchapter shall file a written, verified statement with the Secretary acknowledging the termination of activities. The notice is effective immediately.

(b) A person who files a notice of termination under this section must file the reports required by Section 10-2-407 for any reporting period during which the person was registered.

10-2-411. MAINTENANCE OF REPORTS. (a) All reports filed under this subchapter are public records and shall be made available for public inspection during regular business hours.

(b) The Secretary shall:

(1) design and provide appropriate forms, covering only the items required to be disclosed under this subchapter, to be used for the registration and reporting of required information;

(2) maintain registrations and reports in a separate alphabetical file;

(3) remove registrations and reports from the files after five years from the date of filing; and

(4) maintain a deputy available to receive registrations and reports and make the registrations and reports available to the public for inspection.

10-2-412. FALSE COMMUNICATIONS. (a) A person, for the purpose of influencing legislation or administrative action, may not:

(1) knowingly or wilfully make a false statement or misrepresentation of the facts to a member of the legislative or executive branch; or

(2) cause a copy of a document the person knows to contain a false statement to be received by a member of the legislative or executive branch without notifying the member in writing of the truth.

10-2-413. CONTINGENT FEES. (a) A person may not retain or employ another person to influence legislation for compensation that is totally or partially contingent on the passage or defeat of any legislation or the governor's approval or veto of any legislation.

(b) A person may not accept any employment or render any service to influence legislation for compensation contingent on the passage or defeat of any legislation or the governor's approval or veto of any legislation.

10-2-414. CRIMINAL PENALTIES. (a) A person commits an offense if the person violates a provision of this subchapter other than Section 10-2-413. An offense under this subchapter is a Class A misdemeanor.

(b) A person commits an offense if the person violates Section 10-2-413. An offense under this subsection is a Class D felony.

(c) This subchapter does not affect the criminal responsibility of a person under the state laws relating to perjury.

10-2-415. CIVIL PENALTY FOR FAILURE TO REGISTER. In addition the criminal penalties prescribed by Section 10-2-414, a person who receives compensation or reimbursement or makes an expenditure for engaging in direct communication to influence legislation or administrative action and who fails to file a registration form or activities report required to be filed under this chapter shall pay to the state an amount equal to three times the compensation, reimbursement, or expenditure.

10-2-416. CIVIL PENALTY FOR LATE FILING. (a) The Secretary shall determine from any available evidence whether a registration or report required to be filed with the Secretary under this subchapter is late. On making a determination that a required registration or report is late, the Secretary shall immediately mail a notice of the determination to the person responsible for the filing and to the appropriate Prosecuting Attorney of the District wherein an alleged violation occurred.

(b) If the registration or report is determined to be late, the person responsible for the filing is liable to the state for payment of a civil penalty of one hundred dollars (\$100.00).

(c) The Prosecuting Attorney for the District wherein the alleged viola-



tion occurred may not initiate suit for the penalty until the 10th day after the day on which the notice is mailed under Subsection (a). If the penalty is paid before the 10th day after the mailing, the Secretary shall notify said prosecuting attorney for the state, and the civil suit under this section may not be initiated.

(d) A penalty paid voluntarily under this section shall be deposited to the credit of the General Revenue Fund.

(e) This section is in addition to any other available sanctions for late filings of registrations or reports.

10-2-417. FAILURE TO FILE ALL REQUIRED FORMS. (a) The Secretary shall determine whether all persons registered under this subchapter have filed all required forms, statements, and reports.

(b) Whenever the Secretary determines that a person has failed to file any required form, statement, or report as required by this subchapter, the Secretary shall send a written statement of this finding to the person involved. Notice to the person involved must be sent by certified mail.

(c) If the person fails to file the form, statement, or report as required by this subchapter before the 21st day after the date on which the notice was sent, the Secretary shall file a sworn complaint of the violation with the appropriate Prosecuting Attorney for the District wherein the alleged violation occurred.

10-2-418. ENFORCEMENT. (a) The Prosecuting Attorney for the District wherein an alleged violation occurred may enforce this subchapter.

(b) On the application of any citizen of this state, a chancery court in Pulaski County may issue an injunction to enforce this subchapter.

(c) Any person may file with the Prosecuting Attorney for the District wherein the alleged violation occurred a written, sworn statement alleging a violation of this subchapter.

10-2-419. VENUE. An offense under this subchapter, including perjury, may be prosecuted in any county wherein the alleged violation occurred.

10-2-420. ADVISORY OPINIONS. (a) In response to a written request, the secretary shall issue a written advisory opinion based on a real or hypotheti-

cal situation relating to this subchapter.

(b) The secretary shall make the opinion available for public inspection at the office of the secretary. The secretary shall publish each opinion made under this section in the Arkansas Register in a timely manner after the opinion has been issued.

(c) It is a defense in a criminal prosecution or civil proceeding arising under this subchapter that the conduct for which the prosecution or proceeding is instituted was performed in reasonable reliance on an advisory opinion made by the secretary under this section stating that the conduct would not result in liability under this subchapter.

(d) The secretary shall adopt rules to expedite the processing of requests for advisory opinions under this section."

SECTION 2. All laws and parts of laws in conflict with this Act are hereby repealed.

