

SENATE BILL No. 394

AN ACT concerning state and judicial government contracts and other actions; relating to transparency; amending K.S.A. 46-225, 46-237, 46-269 and 46-271 and K.S.A. 2017 Supp. 46-222, 46-237a and 46-265 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2017 Supp. 46-222 is hereby amended to read as follows: 46-222. (a) “Lobbyist” means:

- (1) Any person employed in considerable degree for lobbying;
- (2) any person formally appointed as the primary representative of an organization or other person to lobby in person on state-owned or leased property; ~~or~~
- (3) any person who makes expenditures in an aggregate amount of \$1,000 or more, exclusive of personal travel and subsistence expenses, in any calendar year for lobbying; *or*
- (4) *any person hired as an independent contractor and compensated by an executive agency, as defined in K.S.A. 46-225, and amendments thereto, for the purpose of evaluation, management, consulting or acting as a liaison for the executive agency and who engages in lobbying, except an attorney or law firm representing the executive agency in a legal matter.*

(b) “Lobbyist” shall not include:

- (1) Any state officer or employee engaged in carrying out the duties of their office;
- (2) the employer of a lobbyist, if such lobbyist has registered the name and address of such employer under K.S.A. 46-265, and amendments thereto;
- (3) any nonprofit organization which has qualified under 501(c)(3) of the internal revenue code of 1986, as amended, which is interstate in its operations and of which a primary purpose is the nonpartisan analysis, study or research of legislative procedures or practices and the dissemination of the results thereof to the public, irrespective of whether such organization may recommend a course of action as a result of such analysis, study or research;
- (4) any justice or commissioner of the supreme court or judge of the judicial branch or employee or officer of the judicial branch or, any member of a board, council or commission who is appointed by the supreme court or who is elected or appointed to exercise duties pertaining to functions of the judicial branch, when such person is engaged in performing a function or duty for the judicial branch; *or*
- (5) any appointed member of an advisory council, commission or board, who serves without compensation other than amounts for expense allowances or reimbursement of expenses as provided for in K.S.A. 75-3223(e), and amendments thereto, when such member is engaged in performing a function or duty for such council, commission or board.

Sec. 2. K.S.A. 46-225 is hereby amended to read as follows: 46-225.

(a) *Except as otherwise provided*, “lobbying” means:

(1) Promoting or opposing in any manner action or nonaction by the legislature on any legislative matter ~~or the adoption or nonadoption of any rule and regulation by any state agency; or~~

(2) *promoting or opposing in any manner an action or nonaction by any executive agency on any executive administrative matter;*

(3) *promoting or opposing in any manner an action or nonaction by any judicial agency on any judicial administrative matter; or*

(4) entertaining any state officer or employee or giving any gift, honorarium or payment to a state officer or employee in an aggregate value of \$40 or more within any calendar year, if at any time during such year the person supplying the entertainment, gifts, honoraria or payments has a financial interest in any contract with, or action, proceeding or other matter before the state agency in which such state officer or employee serves, or if such person is the representative of a person having such a financial interest.

(c) “Lobbying” does not include any expenditure from amounts appropriated by the legislature for official hospitality.

(d) “Lobbying” does not include representation of a claimant on a claim filed by the claimant under K.S.A. 46-907 and 46-912 ~~to through~~ 46-919, ~~inclusive~~, and amendments thereto, in proceedings before the joint committee on special claims against the state.

(e) “Lobbying” does not include bona fide personal or business entertaining.

(f) No legislator may be hired as a lobbyist to represent anyone before any state agency.

(g) “Lobbying” does not include:

(1) *Written communications by an employee of a private business seeking a contract, agreement or lease with an executive agency or judicial agency solely for the purpose of describing goods or services to be provided or for preparing a bid, proposal or other document relating to a contract, agreement or lease, such as factual information, specifications, terms, conditions, timing or similar technical or commercial information or communications by an employee of a private business awarded a bid or contract for the purpose of carrying out ongoing negotiations following the award of the bid or contract;*

(2) *communications by an attorney representing a client involving ongoing legal work with respect to an executive administrative matter or judicial administrative matter, or an administrative proceeding or hearing and negotiations conducted by and with attorneys for executive agencies or judicial agencies, or interactions between parties in litigation or other contested matters, and testimony by a witness in an administrative hearing or communications to or by investigators or authorities in the course of any investigation;*

(3) *communications among and between members of the legislature or executive or judicial officials or employees;*

(4) *providing written information in response to a written request from an executive agency for technical advice or factual information regarding a standard, rate, rule or regulation, policy or procurement or from a judicial agency regarding a procurement;*

(5) *communications regarding a contract, lease or agreement of \$5,000 or less;*

(6) *communications made by or on behalf of a private business for the purpose of securing a grant, loan or tax benefit pursuant to a Kansas economic development program for the purpose of locating, relocating or expanding a private business within or into Kansas; or*

(7) *communications made by officers or employees of a certified business or disabled veteran business, as defined in K.S.A. 75-3740, and amendments thereto.*

(h) *As used in this section, “executive administrative matter” means any rule and regulation, utility ratemaking decision, any agreement, contract, bid or bid process, or any procurement decision, including, but not limited to, any financial services agreement, software licensing, servicing or procurement agreement, any lease, grant, award, loan, bond issue, certificate, license, permit, administrative order or any other matter that is within the official jurisdiction or cognizance of the executive agency.*

(i) *As used in this section, “judicial administrative matter” means any administrative matter regarding an agreement, contract, bid or bid process, any procurement decision, including, but not limited to, any financial services agreement, software licensing, servicing or procurement agreement, lease, or any other administrative procurement or contractual matter.*

(j) *As used in this section, “executive agency” means any state agency, state office or state officer, state officer elect, or employee of the executive branch and includes, but is not limited to, the board of regents and state board of education, but does not include local boards of education of school districts or municipalities or other political subdivisions.*

(k) *As used in this section, “judicial agency” means any department, institution, office, officer, employee, commission, board or bureau, or any agency, division or unit thereof, of the judicial branch of government and includes any justice or commissioner of the supreme court or judge or judge elect of the judicial branch, or any member of a board, council or commission who is appointed by the supreme court or who is elected and is performing a function or duty of the judicial branch that constitutes a judicial administrative matter.*

(l) *As used in this section, “written communications” or “written information” includes email or other electronic forms of communication that are retained as a record by the executive agency or judicial agency.*

Sec. 3. K.S.A. 46-237 is hereby amended to read as follows: 46-237.

(a) Except as provided by this section, no state officer or employee, can-

didate for state office or state officer elect shall accept, or agree to accept any:

(1) Economic opportunity, gift, loan, gratuity, special discount, favor, hospitality or service having an aggregate value of \$40 or more in any calendar year; or

(2) hospitality in the form of recreation having an aggregate value of \$100 or more in any calendar year from any one person known to have a special interest, under circumstances where such person knows or should know that a major purpose of the donor is to influence such person in the performance of their official duties or prospective official duties.

(b) Except as provided by this section, no person with a special interest shall offer, pay, give or make any:

(1) Economic opportunity, gift, loan, gratuity, special discount, favor, hospitality or service having an aggregate value of \$40 or more in any calendar year; or

(2) hospitality in the form of recreation having an aggregate value of \$100 or more in any calendar year to any state officer or employee, candidate for state office or state officer elect with a major purpose of influencing such officer or employee, candidate for state office or state officer elect in the performance of official duties or prospective official duties *or to a member or member elect or employee of the judicial branch with a major purpose of influencing the member or member elect or employee of the judicial branch in the performance of official duties or prospective official duties pertaining to a judicial administrative matter, as defined in K.S.A. 46-225, and amendments thereto.*

(c) No person licensed, inspected or regulated by a state agency shall offer, pay, give or make any economic opportunity, gift, loan, gratuity, special discount, favor, hospitality or service having an aggregate value of \$40 or more in any calendar year to such agency or any state officer or employee, candidate for state office or state officer elect of that agency.

(d) Hospitality in the form of food and beverages is presumed not to be given to influence a state officer or employee, candidate for state office or state officer elect in the performance of official duties or prospective official duties, *or to influence a member or member elect or employee of the judicial branch in the performance of official duties or prospective official duties pertaining to a judicial administrative matter as defined in K.S.A. 46-225, and amendments thereto*, except when a particular course of official action is to be followed as a condition thereon.

(e) Except when a particular course of official action is to be followed as a condition thereon, this section shall not apply to: (1) Any contribution reported in compliance with the campaign finance act; or (2) a commercially reasonable loan or other commercial transaction in the ordinary course of business.

(f) No state officer or employee shall accept any payment of honoraria for any speaking engagement except that a member of the state legislature or a part-time officer or employee of the executive branch of government shall be allowed to receive reimbursement in the preparation for and the making of a presentation at a speaking engagement in an amount fixed by the commission prior to the acceptance of the speaking engagement. Nothing in this section shall be construed to prohibit the reimbursement of state officers and employees for reasonable expenses incurred in attending seminars, conferences and other speaking engagements.

(g) The provisions of this section shall not be applicable to or prohibit the acceptance of gifts from governmental agencies of foreign nations except that any gift accepted from such foreign governmental agency, having an aggregate value of \$100 or more, shall be accepted on behalf of the state of Kansas.

(h) No legislator shall solicit any contribution to be made to any organization for the purpose of paying for travel, subsistence and other expenses incurred by such legislator or other members of the legislature in attending and participating in meetings, programs and activities of such organization or those conducted or sponsored by such organization, but nothing in this act or the act of which this act is amendatory shall be construed to prohibit any legislator from accepting reimbursement for actual expenses for travel, subsistence, hospitality, entertainment and other expenses incurred in attending and participating in meetings, programs and activities sponsored by the government of any foreign nation, or any organization organized under the laws of such foreign nation or

any international organization or any national, nonprofit, nonpartisan organization established for the purpose of serving, informing, educating and strengthening state legislatures in all states of the nation, when paid from funds of such organization and nothing shall be construed to limit or prohibit the expenditure of funds of and by any such organization for such purposes.

Sec. 4. K.S.A. 2017 Supp. 46-237a is hereby amended to read as follows: 46-237a. (a) The provisions of this section shall apply to:

- (1) The governor;
- (2) the lieutenant governor;
- (3) the governor's spouse;
- (4) all officers and employees of the executive branch of state government; and
- (5) all members of boards, commissions and authorities of the executive branch of state government.

(b) No person subject to the provisions of this section shall solicit or accept any gift, economic opportunity, loan, gratuity, special discount or service provided because of such person's official position, except:

- (1) A gift having an aggregate value of less than \$40 given at a ceremony or public function where the person is accepting the gift in such person's official capacity;~~or~~
- (2) gifts from relatives or gifts from personal friends when it is obvious to the person that the gift is not being given because of the person's official position;~~or~~
- (3) anything of value received by the person on behalf of the state that inures to the benefit of the state or that becomes the property of the state; or
- (4) contributions solicited on behalf of a nonprofit organization which is exempt from taxation under paragraph (3) of subsection (c) of section 501 of the internal revenue code of 1986, as amended.

(c) No person subject to the provisions of this section shall solicit or accept free or special discount meals from a source outside of state government, except:

- (1) Meals, the provision of which is motivated by a personal or family relationship or provided at events that are widely attended. An occasion is "widely attended" when it is obvious to the person accepting the meal that the reason for providing the meal is not a pretext for exclusive or nearly exclusive access to the person;
- (2) meals provided at public events in which the person is attending in an official capacity;
- (3) meals provided to a person subject to this act when it is obvious such meals are not being provided because of the person's official position;
- (4) food such as soft drinks, coffee or snack foods not offered as part of a meal;
- (5) any meal, the value of which is ~~\$25~~ \$40 or less, *not provided by a lobbyist registered pursuant to K.S.A. 46-265, and amendments thereto*;
- (6) meals provided to a person when the person's presence at the event or meeting at which the meal is provided serves a legitimate state purpose or interest and the agency of which such person is an officer or employee authorizes such person's attendance at such event or meeting;

~~and~~

- (7) meals provided to the governor's spouse and members of the governor's immediate family at the event or meeting at which the meal is provided serve a legitimate state purpose or interest; *and*

- (8) *any meal, if provided by a lobbyist registered pursuant to K.S.A. 46-265, and amendments thereto, and the lobbyist reports providing the meal as required pursuant to K.S.A. 46-269, and amendments thereto, except when a particular course of official action is to be followed as a condition of accepting the meal.*

(d) No person subject to the provisions of this section shall solicit or accept free or special discount travel or related expenses from a source outside state government, except:

- (1) When it is obvious to the person accepting the same that the free or special discount travel and related expenses are not being provided because of the person's official position; or
- (2) when the person's presence at a meeting, seminar or event serves

a legitimate state purpose or interest and the person's agency authorizes or would authorize payment for such travel and expenses.

(e) No person subject to the provisions of this section shall solicit or accept free or special discount tickets or access to entertainment or sporting events or activities such as plays, concerts, games, golf, exclusive swimming, hunting or fishing or other recreational activities when the free or special discount tickets or access are provided because of the person's official position. The provisions of this subsection shall not apply to persons whose official position requires or obliges them to be present at such events or activities.

(f) (1) Violations of the provisions of this section by any classified employee in the civil service of the state of Kansas shall be considered personal conduct detrimental to the state service and shall be a basis for suspension, demotion or dismissal, subject to applicable state law.

(2) Violations of the provisions of this section by any unclassified employee shall subject such employee to discipline up to and including termination.

(3) In addition to the penalty prescribed under paragraphs (1) and (2), the commission may assess a civil fine, after proper notice and an opportunity to be heard, against any person for a violation of this section, in an amount not to exceed \$5,000 for the first violation, not to exceed \$10,000 for the second violation and not to exceed \$15,000 for the third violation and for each subsequent violation. All fines assessed and collected under this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the governmental ethics fee fund established by K.S.A. 25-4119e, and amendments thereto.

(4) *Receiving a meal provided by a lobbyist who is not registered pursuant to K.S.A. 46-265, and amendments thereto, or who fails to report providing the meal as required pursuant to K.S.A. 46-269, and amendments thereto, or as required by subsection (c)(8), shall not be considered a violation of this section, unless the recipient knew the lobbyist was not registered or requested that the lobbyist not report the meal.*

Sec. 5. K.S.A. 2017 Supp. 46-265 is hereby amended to read as follows: 46-265. (a) Every lobbyist shall register with the secretary of state by completing and signing a registration form prescribed and provided by the commission. ~~Such~~ The registration shall show the name and address of the lobbyist, the name and address of the person compensating the lobbyist for lobbying, the purpose of the employment, *the name of each state agency or state office and any agency, division or unit thereof and each judicial department, institution, office, commission, board or bureau and any agency, division or unit thereof and whether the lobbyist will lobby the legislative branch* and the method of determining and computing the compensation of the lobbyist. If the lobbyist is compensated or to be compensated for lobbying by more than one employer or is to be engaged in more than one employment, the relevant facts listed above shall be stated separately for each employer and each employment. Whenever any new lobbying employment or lobbying position is accepted by a lobbyist already registered as provided in this section, ~~such~~ the lobbyist shall report the same on forms prescribed and provided by the commission before engaging in any lobbying activity related to ~~such~~ the new employment or position, and ~~such~~ the report shall be filed with the secretary of state. When a lobbyist is an employee of a lobbying group or firm which contracts to lobby and not an owner or partner of ~~such~~ *the lobbying group or firm*, the lobbyist shall report each client of the group, firm or entity whose interest the lobbyist represents. Whenever the lobbying of a lobbyist concerns a legislative matter, the secretary of state promptly shall transmit copies of each registration and each report filed under this act to the secretary of the senate and the chief clerk of the house of representatives.

(b) On or after October 1, in any year any person may register as a lobbyist under this section for the succeeding calendar year. ~~Such~~ The registration shall expire annually on December 31 of the year for which the lobbyist is registered. In any calendar year, before engaging in lobbying, persons to whom this section applies shall register or renew their registration as provided in this section. Except for employees of lobbying

groups or firms, every person registering or renewing registration who anticipates spending \$1,000 or less for lobbying in ~~such~~ the registration year on behalf of any one employer shall pay to the secretary of state a fee of \$50 for lobbying for each ~~such~~ employer. Except for employees of lobbying groups or firms, every person registering or renewing registration who anticipates spending more than \$1,000 for lobbying in ~~such~~ the registration year on behalf of any one employer shall pay to the secretary of state a fee of \$350 for lobbying for ~~such~~ the employer. Any lobbyist who at the time of initial registration anticipated spending less than \$1,000, on behalf of any one employer, but at a later date spends in excess of ~~such~~ that amount, within three days of the date when expenditures exceed ~~such~~ that amount, shall file an amended registration form which shall be accompanied by an additional fee of \$300 for ~~such~~ the year. Every person registering or renewing registration as a lobbyist who is an employee of a lobbying group or firm and not an owner or partner of ~~such~~ ~~entity~~ the lobbying group or firm shall pay an annual fee of \$450. The secretary of state shall remit all moneys received under this section to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the governmental ethics commission fee fund.

(c) Any person who has registered as a lobbyist pursuant to this act may file, upon termination of ~~such~~ the person's lobbying activities, a statement terminating ~~such~~ the person's registration as a lobbyist. ~~Such~~ The statement shall be on a form prescribed by the commission and shall state the name and address of the lobbyist, the name and address of the person compensating the lobbyist for lobbying and the date of the termination of the lobbyist's lobbying activities.

(d) No person who has failed or refused to pay any civil penalty imposed pursuant to K.S.A. 46-280, and amendments thereto, shall be authorized or permitted to register as a lobbyist in accordance with this section until ~~such~~ the penalty has been paid in full.

Sec. 6. K.S.A. 46-269 is hereby amended to read as follows: 46-269. Each report required to be filed by K.S.A. 46-268, and amendments thereto, is a public record and shall be open to public inspection upon request. Such report shall disclose the following:

(a) The full name and address of each person who has paid compensation for lobbying to the lobbyist or has paid for expenses of lobbying by the lobbyist during the period reported.

(b) The aggregate amount or value of all expenditures made, except for expenses of general office overhead, by the lobbyist or by the lobbyist's employer for or in direct relation to lobbying during the reporting period, if such expenditures exceed \$100. Individual expenditures of less than \$2 shall not be required to be reported under this subsection. Every lobbyist shall keep detailed accounts of all expenditures required to be reported pursuant to K.S.A. 46-268, and amendments thereto. ~~Such~~ The expenditures shall be reported according to the following categories of expenditures:

- (1) Food and beverages provided as hospitality;
- (2) entertainment, gifts, honoraria or payments;
- (3) mass media communications;
- (4) recreation provided as hospitality;
- (5) communications for the purpose of influencing legislative or executive action; and
- (6) all other reportable expenditures made in the performance of services as a lobbyist.

With regard to expenditures for entertainment or hospitality ~~which~~ that is primarily recreation, food and beverages, only amounts expended on a state officer or employee or *state officer elect* or on an employee or officer or *officer elect of the judicial branch* or on such officer or employee's spouse shall be considered to be for or in direct relation to lobbying. Notwithstanding the requirements of this subsection and subsection (d), no lobbyist shall be responsible to report any expenditure by the lobbyist's employer of which such person has no knowledge.

(c) (1) In addition to the information reported pursuant to subsection (b), each lobbyist expending an aggregate amount of \$100 or more for lobbying in any reporting period shall report any gift, entertainment or

hospitality provided to ~~members of the legislature, state officers or employees or state officers elect or to members, members elect or employees of the judicial branch of government and any employees of the legislature or judicial branch of government.~~ Such report shall disclose the full name of the legislator *or legislator elect*, member, *member elect or employee of the judicial branch and or the state officer or employee or state officer elect* who received such gift, entertainment or hospitality ~~and~~, the amount expended on such gift, entertainment or hospitality *and the date the gift, entertainment or hospitality was provided.*

(2) No report shall be required to be filed pursuant to this subsection (c) for the following:

(A) Meals, the provision of which is motivated by a personal or family relationship;

(B) meals provided at public events in which the person is attending in an official capacity;

(C) meals provided to a person subject to this section when it is obvious such meals are not being provided because of the person's official position;

(D) food such as soft drinks, coffee or snack foods not offered as part of a meal; and

(E) entertainment or hospitality in the form of recreation, food and beverages provided at an event to which the following have been invited:

(i) All members of the legislature or all members of either house of the legislature; or

(ii) all members of a political party caucus of the legislature or all members of a political party caucus of either house of the legislature.

(d) Except as provided by subsection (c), whenever an individual lobbyist contributes to a single special event, such lobbyist shall report only the aggregate amount or value of the expenditure contributed by such lobbyist.

(e) Whenever more than one lobbyist is employed by a single employer, the reports required by this section relating to such employer shall be made by only one such lobbyist and that lobbyist shall be the lobbyist who is most directly connected with the particular expenditure or gift, honoraria or payment. No expenditure or gift, honoraria or payment required to be reported by this section shall be reported by more than one lobbyist.

(f) All accounts, records and documents of the lobbyist which relate to every expenditure reported or which should have been reported shall be maintained and preserved by the lobbyist for a period of five years from the date of the filing of such report or statement and may be inspected under conditions determined by the commission.

Sec. 7. K.S.A. 46-271 is hereby amended to read as follows: 46-271. No lobbyist shall offer, pay, give or make any economic opportunity, gift, loan, gratuity, special discount, favor, hospitality, or service having an aggregate value of \$40 or more in any calendar year to any state officer or employee or candidate for state office *or to any officer or candidate for office or employee of the judicial branch* with a major purpose of influencing ~~such~~ *the state officer or employee or candidate for state office in the performance of official duties or prospective official duties or the officer or candidate for office or employee of the judicial branch in the performance of any judicial administrative matter, as defined in K.S.A. 46-225, and amendments thereto.* Hospitality in the form of recreation, food and beverages are presumed not to be given to influence a state officer or employee or candidate for state office in the performance of official duties, *or an officer or candidate for office or employee of the judicial branch in the performance of any judicial administrative matter, as defined in K.S.A. 46-225, and amendments thereto,* except when a particular course of official action is to be followed as a condition thereon.

Except when a particular course of official action is to be followed as a condition thereon, this section shall not apply to: (1) Any contribution reported in compliance with the campaign finance act as amended; or (2) a commercially reasonable loan or other commercial transaction in the ordinary course of business.

Sec. 8. K.S.A. 46-225, 46-237, 46-269 and 46-271 and K.S.A. 2017 Supp. 46-222, 46-237a and 46-265 are hereby repealed.

Sec. 9. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE concurred in
HOUSE amendments _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.