

HOUSE No. 3853

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act improving the laws relating to ethics and lobbying..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 39 of said chapter 3 of the General Laws, as appearing in the 2006
2 Official Edition, is hereby amended by striking out the definition of “Client” and inserting in
3 place thereof the following definition:-

4 “Client”, any person, corporation, partnership, association, or other entity that contracts
5 with another person, corporation, partnership, association, or other entity to receive lobbying
6 services.

7 SECTION 2. Said section 39 of said chapter 3 of the General Laws, as so appearing, is
8 hereby further amended by striking out the definition of “Executive agent” and inserting in place
9 thereof the following definitions:-

10 “Executive agent”, a person who for compensation or reward engages in executive
11 lobbying, which includes at least one communication with a government employee. The term
12 “executive agent” shall include a person who, as part of his regular and usual business or
13 professional activities and not simply incidental thereto, engages in executive lobbying, whether

14 or not any compensation in addition to the salary for such activities is received for such services.
15 For the purposes of this definition a person shall be presumed to be engaged in executive
16 lobbying that is simply incidental to his regular and usual business or professional activities if
17 he: (i) engages in executive lobbying for not more than 10 hours during any reporting period; or
18 (ii) receives less than \$2,500 during any reporting period for executive lobbying.

19 “Executive lobbying,” any act to influence or to attempt to influence the decision of any
20 officer or employee of the executive branch or an authority, including but not limited to,
21 statewide constitutional officers and employees thereof, where such decision concerns legislation
22 or the adoption, defeat or postponement of a standard, rate, rule or regulation promulgated
23 pursuant to any general or special law, or any act to communicate directly with a covered
24 executive official to influence a decision concerning policy or procurement; provided further,
25 that executive lobbying shall include acts to influence or attempt to influence the decision of any
26 officer or employee of a city or town when those acts are intended to carry out a common
27 purpose with executive lobbying at the state level; and provided further, that executive lobbying
28 shall include strategizing, planning, research, and other background work if performed in
29 connection with, or for use in, an actual communication with a government employee.

30 SECTION 3. Said section 39 of said chapter 3 of the General Laws, as so appearing, is
31 hereby further amended by striking out the definition of “Legislative agent” and inserting in
32 place thereof the following definitions:-

33 “Legislative agent”, a person who for compensation or reward engages in legislative
34 lobbying, which includes at least one communication with a government employee. The term
35 “legislative agent” shall include a person who, as part of his regular and usual business or

36 professional activities and not simply incidental thereto, engages in legislative lobbying, whether
37 or not any compensation in addition to the salary for such activities is received for such services.
38 For purposes of this definition a person shall be presumed to be engaged legislative lobbying that
39 is simply incidental to his regular and usual business or professional activities if he: (i) engages
40 in legislative lobbying for not more than 10 hours during any reporting period; or (ii) receives
41 less than \$2,500 during any reporting period for legislative lobbying.

42 “Legislative lobbying,” any act to monitor, promote, oppose or influence legislation, or to
43 monitor, promote, oppose or influence the governor’s approval or veto thereof including, without
44 limitation, any action to influence the introduction, sponsorship, consideration, action or
45 nonaction with respect to any legislation; provided further, that legislative lobbying shall include
46 acts to influence or attempt to influence the decision of any officer or employee of a city or town
47 when those acts are intended to carry out a common purpose with legislative lobbying at the state
48 level; and provided further, that legislative lobbying shall include strategizing, planning,
49 research, and other background work if performed in connection with or for use in an actual
50 communication with a government employee.

51 SECTION 4. Section 41 of said chapter 3 of the General Laws, as so appearing, is hereby
52 amended by inserting after the first paragraph the following paragraph:-

53 The state secretary shall offer educational seminars on the requirements of sections 39 to
54 50, inclusive, for all legislative agents and executive agents. The seminars shall be conducted in-
55 person or offered online through the state secretary’s website. All legislative and executive
56 agents shall: (i) before registering with the state secretary and annually thereafter, complete an
57 in-person or online seminar offered by the state secretary; and (ii) complete an in-person or

58 online seminar offered by the state secretary upon any material change to sections 39 to 50,
59 inclusive, or any regulations promulgated pursuant thereto. The superintendent of the bureau of
60 state office buildings shall, upon request of the state secretary, provide at no cost to the state
61 secretary suitable facilities for such seminars. The state secretary shall adopt regulations for the
62 administration and enforcement of this section.

63 SECTION 5. Said section 41 of said chapter 3 of the General Laws, as so appearing, is
64 hereby amended by striking out the last paragraph and inserting in place thereof the following 3
65 paragraphs:-

66 Upon registration, the state secretary shall issue to each legislative agent and executive
67 agent a license which shall entitle the holder to act as a legislative agent and executive agent for
68 a client that has filed a registration statement pursuant to this section. A nontransferable
69 identification card shall evidence this license and shall include the agent's name and photograph.
70 Each license shall expire on December 31 of each year. Out-of-state legislative agents and
71 executive agents shall submit 3 passport-sized photographs to the state secretary upon
72 registration.

73 The state secretary shall promulgate regulations pursuant to chapter 30A for
74 administration and enforcement of sections 39 to 50, inclusive.

75 The state secretary shall, upon written request from a person who is or may be subject to
76 sections 39 to 50, inclusive, render advisory opinions on the requirements of those sections. An
77 opinion rendered by the state secretary, unless amended or revoked, shall be a defense in a
78 criminal action brought pursuant to sections 39 to 50, inclusive, and shall be binding on the state
79 secretary, the attorney general or the district attorney in any subsequent proceedings concerning

80 the person who requested the opinion and who acted in good faith, unless material facts were
81 omitted or misstated by the person in the request for an opinion. Such requests shall be
82 confidential; provided, however, that the state secretary may publish such opinions if the name of
83 the requesting person and any other identifying information is not included in such publication
84 unless the requesting person consents to such inclusion.

85 SECTION 6. Section 43 of said chapter 3 of the General Laws, as so appearing, is hereby
86 amended by striking out, in line 4, the words “appearing on the docket”

87 SECTION 7. Said section 43 of said chapter 3 of the General Laws, as so appearing, is
88 hereby further amended by striking out the third paragraph and inserting in place thereof the
89 following paragraph:-

90 Every legislative agent and executive agent shall include in the statement required by this
91 section for the relevant reporting period: (1) the identification of each client for whom the
92 legislative or executive agent provided lobbying services; (2) a list of all bill numbers and names
93 of legislation and other governmental action that the executive or legislative agent acted to
94 monitor, promote, oppose or influence; (3) a list of all line-item numbers in any appropriation
95 bill that the executive or legislative agent acted to monitor, promote, oppose or influence; (4) a
96 statement of the executive or legislative agent’s position, if any, on each such bill, line item or
97 other governmental action; (5) the identification of the client or clients on whose behalf the
98 executive or legislative agent was acting with respect to each such bill, line item or governmental
99 action; (6) the amount of compensation received for executive or legislative lobbying from each
100 client with respect to such lobbying services; and (7) all direct business associations with public
101 officials. The disclosure shall be required regardless of whether the legislative agent or executive

102 agent specifically referenced the bill number or name, line item number or other governmental
103 action while acting to promote, oppose or influence legislation, and shall be as complete as
104 practicable.

105 SECTION 8. The fourth paragraph of said section 43 of said chapter 3 of the General
106 Laws, as so appearing, is hereby further amended by striking out the second sentence and
107 inserting in place thereof the following sentence:- Said penalty shall be in the amount of \$50 per
108 day up to the twentieth day and an additional \$100 per day for every day after the twentieth day
109 until the statement is filed. The state secretary may waive the above penalties for good cause.

110 SECTION 9. Said chapter 3 of the General Laws is hereby further amended by striking
111 out section 45 and inserting in place thereof the following section:-

112 Section 45. (a) Upon receipt of a sworn complaint signed under pains and penalties of
113 perjury, or upon receipt of evidence which is deemed sufficient by the state secretary, the state
114 secretary shall initiate a preliminary inquiry into any alleged violation of sections 39 to 50,
115 inclusive. At the commencement of a preliminary inquiry into any such alleged violation, the
116 state secretary shall notify the attorney general. All proceedings and records relating to a
117 preliminary inquiry or initial staff review used to determine whether to initiate an inquiry shall
118 be confidential, except that the state secretary may provide to: (1) the attorney general, the
119 United States Attorney or a district attorney of competent jurisdiction evidence which may be
120 used in a criminal proceeding; (2) the inspector general information concerning fraud, waste, or
121 abuse in the expenditure of public funds; (3) the state ethics commission concerning violations of
122 chapters 268A and 268B; and (4) the director of the office of campaign and political finance
123 information concerning violations of chapter 55. Any information provided by the state secretary

124 pursuant to this section shall be confidential pursuant to this section and section 4 of chapter
125 268B, except that such information may be used by the officer or agency to whom it was
126 provided in any investigation or subsequent proceedings. The state secretary shall notify any
127 person who is the subject of the preliminary inquiry of the existence of such inquiry and the
128 general nature of the alleged violation within 30 days of the commencement of the inquiry.

129 (b) If a preliminary inquiry fails to indicate reasonable cause for belief that there has been
130 a violation of sections 39 to 50, inclusive, the state secretary shall immediately terminate the
131 inquiry and shall within 10 days so notify, in writing, the complainant, if any, and the person
132 who had been the subject of the inquiry.

133 (c) If a preliminary inquiry indicates reasonable cause for belief that there has been a
134 violation of sections 39 to 50, inclusive, the state secretary may initiate an adjudicatory
135 proceeding to determine whether there has been such a violation.

136 (d) The state secretary may require by summons the attendance and testimony of
137 witnesses and the production of books, papers and other records relating to any matter being
138 investigated pursuant to sections 39 to 50, inclusive. Such summons may be issued by the state
139 secretary and shall be served in the same manner as summonses for witnesses in criminal cases,
140 issued on behalf of the commonwealth and all the provisions of law relative to summonses
141 issued in such cases shall apply to summonses issued under this section so far as applicable. Any
142 justice of the supreme judicial court or the superior court may upon application by the state
143 secretary compel the attendance of witnesses summoned as aforesaid and the giving of
144 testimony under oath before said director in furtherance of any investigation in the same manner
145 and to the same extent as before said courts.

146 (e) The state secretary, or his designee, may administer oaths and may hear testimony or
147 receive other evidence in any proceeding.

148 (f) All testimony in an adjudicatory proceeding shall be under oath. All parties shall have
149 the right to call and examine witnesses, to introduce exhibits, to cross-examine witnesses who
150 testify, to submit evidence, and to be represented by counsel. Before testifying, all witnesses
151 shall be given a copy of the regulations governing adjudicatory proceedings.

152 (g) Any person whose name is mentioned during an adjudicatory proceeding of the state
153 secretary and who may be adversely affected thereby may appear personally before the state
154 secretary on his own behalf, with or without counsel, to give a statement in opposition to such
155 adverse mention or file a written statement of such opposition for incorporation into the record of
156 the proceeding.

157 (h) All adjudicatory proceedings of the state secretary pursuant to this section shall be
158 public and shall be subject to chapter 30A.

159 (i) Within 30 days after completion of deliberations, the state secretary shall publish a
160 written report of his findings and conclusions.

161 (j) Upon a finding pursuant to an adjudicatory proceeding that there has been a violation,
162 the state secretary may issue an order: (1) requiring the violator to cease and desist such
163 violation; (2) requiring the violator to file any report, statement or other information as required
164 by sections 39 to 50, inclusive; (3) suspending for a specified period or revoking the license and
165 registration of the violator; or (4) requiring the violator to pay a civil penalty of not more than
166 \$10,000 for each violation.

167 The state secretary may file a civil action in superior court to enforce this order.

168 (k) Final action by the state secretary under this section shall be subject to review in
169 superior court upon petition of any party in interest filed within 30 days after the action for
170 which review is sought. The court shall enter a judgment enforcing, modifying, or setting aside
171 the order of the state secretary, or it may remand the proceedings to the state secretary for such
172 further action as the court may direct. If the court modifies or sets aside the state secretary's
173 order or remands the proceedings to the state secretary, the court shall determine whether such
174 modification, set aside, or remand is substantial. If the court does find such modification, set
175 aside, or remand to be substantial, the petitioner shall be entitled to be reimbursed from the
176 treasury of the commonwealth for reasonable attorneys' fees and all court costs incurred by him
177 in the defense of the charges contained in the proceedings. The amount of such reimbursement
178 shall be awarded by the court but shall not exceed \$20,000 per person, per case.

179 (l) Any person who violates the confidentiality of an inquiry under this section shall be
180 punished by a fine of not more than \$1,000 or by imprisonment for not more than 1 year, or both.

181 SECTION 10. Section 47 of said chapter 3 of the General Laws, as so appearing, is
182 hereby further amended by striking out, in lines 4 and 5, inclusive, the words "whose name
183 appears upon the docket"

184 SECTION 11. The second paragraph of said section 47 of said chapter 3 of the General
185 Laws, as so appearing, is hereby further amended by striking out the second sentence and
186 inserting in place thereof the following sentence:- This penalty shall be in the amount of \$50 per
187 day up to the twentieth day and an additional \$100 per day for every day after the twentieth day
188 until the statement is filed. The state secretary may waive these penalties for good cause.

189 SECTION 12. Section 48 of chapter 3 of the General Laws, as so appearing, is hereby
190 amended by striking out, in line 3, the words “five thousand dollars” and inserting in place
191 thereof the following words:- \$10,000, or by imprisonment in the state prison for not more than 5
192 years, or in a jail or house of correction for not more than 2 1/2 years, or both

193 SECTION 13. Section 49 of said chapter 3 of the General Laws, as so appearing, is
194 hereby amended by inserting after the first sentence the following 2 sentences:- The supreme
195 judicial court or superior court may, upon application of the attorney general, grant equitable or
196 mandamus relief to enforce sections 41 through 43, inclusive, prohibiting the offering or giving
197 of or paying for gifts, meals, beverages, or other items. Relief under this section may include (a)
198 an order to pay to the commonwealth an amount equal to the value of any compensation or thing
199 paid or received in violation of section 42, or the value of any gift, meal, beverage, or other item
200 given or received in violation of section 43; and (b) a civil penalty of up to \$10,000 for each
201 violation of sections 41 through 47, inclusive.

202 SECTION 14. Section 9 of chapter 53 of the General Laws, as so appearing, is hereby
203 amended by striking out, in lines 21 through 22, inclusive, and 25, the words “fifty-five A” and
204 inserting in place thereof, in each instance, the following figure:- 55C

205 SECTION 15. Said section 1 of said chapter 55 is hereby further amended by striking
206 out, in line 55, the words “and (6)” and inserting in place thereof the following words:- (6) any
207 donations received or payments made by a legal defense, inaugural or recount fund established
208 pursuant to section 18E; and (7)

209 SECTION 16. The eighth paragraph of section 3 of said chapter 55 of the General Laws,
210 as so appearing, is hereby amended by adding the following two sentences:- The name of a

211 candidate who fails to file any statement or report after receiving notice under this section of
212 such failure and who continues to fail to file such statement or report after the institution of civil
213 proceedings under this section to compel such filing shall not appear on a state ballot after the
214 initiation of such civil proceedings, until such time as the statement or report is filed, and the
215 director shall inform the state secretary of such failure prior to the deadline for filing nomination
216 papers with the state secretary for such candidate pursuant to chapter 53. Any candidate who
217 files such statement or report with the director after the deadline for filing nomination papers
218 with the secretary shall not be allowed on the state ballot.

219 SECTION 17. Said section 3 of chapter 55 of the General Laws, as so appearing, is
220 hereby further amended by inserting, after the word “requested,” in line 111, the following
221 words:- by personal delivery, by leaving a copy of the notice at the person’s last and usual place
222 of residence or by delivering a copy of the notice to an attorney who has appeared on behalf of
223 the alleged violator,

224 SECTION 18. The eleventh paragraph of said section 3 of chapter 55, as so appearing, is
225 hereby further amended by striking the last sentence and inserting in place thereof the following
226 three sentences:- For a candidate who is holding elective office whose term of office is 3 or more
227 years, for the treasurer of the political committee organized on behalf of such candidate, or for
228 any person or entity supporting or opposing such candidate, evidence of any violation of this
229 chapter, if submitted to the attorney general prior to the next election for the office held by the
230 candidate that occurs after the violation, shall be submitted no later than 2 years prior to such
231 election, and if submitted after the election, such evidence may not be submitted more than 3
232 years after said election. For all other persons or entities under investigation for violations
233 relating to an identifiable election, evidence of any violation of this chapter shall be presented by

234 the director to the attorney general only after the next relevant election, but within 3 years after
235 said election. If the evidence does not relate to an identifiable election, referral shall take place
236 within 3 years of the violation.

237 SECTION 19. The twelfth paragraph of said section 3 of said chapter 55 of the General
238 Laws, as so appearing, is hereby further amended by striking out the second sentence and
239 inserting in place thereof the following sentence:- Said civil penalty shall be in the amount of
240 \$25 per day; provided, however, that the maximum penalty the director may assess shall be no
241 greater than \$5,000 for any one report, statement or affidavit which is filed later than the
242 prescribed date.

243 SECTION 20. Section 8 of said chapter 55 of the General Laws, as so appearing, is
244 hereby amended by inserting after the word “business”, in line 7, the following words:- or
245 professional

246 SECTION 21. Section 18 of said chapter 55 of the General Laws, as so appearing, is
247 hereby amended by striking out the first paragraph, and inserting in place thereof the following
248 paragraph:-