

New York State Joint Commission on Public Ethics

Reform K (Amended)

This proposal would amend section 1-o of Article 1-a of the Legislative Law to provide for the potential debarment of any lobbyist or client who fails to file a required statement or report, files a false statement, or violates the prohibition on gifts to public officials. The provision increases the potential period of debarment, extends the period during which a subsequent violation may trigger debarment, increases the qualifying offenses which can prohibit initial or future lobbyist registration, and adds factors the Commission may consider in assessing monetary or debarment penalties.

Section 1. Subdivisions (a), (b) and (c) of article 1-A of § 1-o of the Legislative Law are hereby amended to read as follows:

§ 1-o. Penalties.

- (a) (i) Any lobbyist, public corporation, or client who knowingly and wilfully fails to file timely a report or statement required by this section or knowingly and wilfully files false information or knowingly and wilfully violates section one-m of this article shall be guilty of a class A misdemeanor **and may be barred from engaging in lobbying activities, as that term is defined in subdivision (c) of section one-c of this article, for a period of up to two years;** and
- (ii) any lobbyist, public corporation, or client who knowingly and wilfully fails to file timely a report or statement required by this section or knowingly and wilfully files false information or knowingly and wilfully violates section one-m of this article, after having previously been convicted in the preceding [five] **ten** years of the crime described in paragraph (i) of this subdivision, shall be guilty of a class E felony. Any lobbyist, **public corporation or client** convicted of or pleading guilty to a felony under the provisions of this section [may] **shall** be barred **from engaging in lobbying activities, as that term is defined in subdivision (c) of section one-c of this article** [acting as a lobbyist] for a period of [one year] **no less than two years and no more than six years** from the date of the conviction. For the purposes of this subdivision, the chief administrative officer of any organization required to file a statement or report shall be the person responsible for making and filing such statement or report unless some other person prior to the due date thereof has been duly designated to make and file such statement or report.
- (b) (i) A lobbyist, public corporation, or client who knowingly and wilfully fails to file a statement or report within the time required for the filing of such report or knowingly and wilfully violates section one-m of this article shall be subject to a civil penalty for each such failure or violation, in an amount not to exceed the greater of twenty-five thousand dollars or three times the amount the person failed to report properly or unlawfully contributed, expended, gave or received, to be assessed by the commission.
- (ii) A lobbyist, public corporation, or client who knowingly and wilfully files a false statement or report shall be subject to a civil penalty, in an amount not to exceed the greater of fifty thousand dollars or five times the amount the person failed to report properly, to be assessed by the commission.
- (iii) (A) A lobbyist or client who knowingly and wilfully violates the provisions of subdivision one of section one-n of this article shall be subject to a civil penalty not to exceed ten thousand dollars for an initial violation.
- (B) If, after a lobbyist or client has been found to have violated subdivision one of section one-n of this article, a lobbyist or client knowingly and wilfully violates the provisions of subdivision one of section one-n of this article within [four] **ten** years of such finding, the lobbyist or client shall be subject to a civil penalty not to exceed twenty-five thousand dollars.
- (iv) Any lobbyist or client that knowingly and wilfully fails to file a statement or report within the time required for the filing of such report, knowingly and wilfully files a false statement or report, or knowingly and wilfully violates section one-m of this article, after having been found

by the commission to have knowing and wilfully committed such conduct or violation in the preceding [five] **ten** years, may be subject to a determination that the lobbyist or client is [prohibited] **barred** from engaging in lobbying activities, as that term is defined in [paragraph (v) of] subdivision (c) of section one-c of this article, for a period of [one] **no less than two years and no more than six** years.

(v) Any lobbyist, **public corporation** or client that knowingly and wilfully engages in lobbying activities, as that term is defined in [paragraph (v) of] subdivision (c) of section one-c of this article, during the period in which **commission determined that** they are [prohibited] **barred** from engaging in lobbying activities, [as that term is defined in paragraph (v) of subdivision (c) of section one-c of this article] pursuant to this [subdivision] **section, shall be guilty of a class E felony and** may be subject to a determination that the lobbyist, **public corporation** or client is prohibited from engaging in lobbying activities [, as that term is defined in paragraph (v) of subdivision (c) of section one-c of this article,] for a period of [up to four] **not less than two and no more than ten** years, and **such lobbyist, public corporation or client, in addition to or in lieu of such penalty** shall be subject to a civil penalty not to exceed fifty thousand dollars, plus a civil penalty in an amount equal to five times the value of any gift, compensation or benefit received as a result of the violation.

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(c) (i) Any assessment or order to debar **rendered by the commission pursuant to this section** shall be determined only after a hearing at which the party shall be entitled to appear, present evidence and be heard. **In ordering debarment, the commission shall consider whether the facts, circumstances and public interest warrant any firm, partnership or corporation of, or in which such lobbyist is or becomes a shareholder, owner, member, partner, director or officer be barred from acting as a lobbyist. If it so finds, then such order of debarment shall apply to such firm, partnership or corporation, as well.** Any assessment or order to debar pursuant to this section may only be imposed after the commission sends by certified and first class mail written notice of intent to assess a penalty or order to debar and the basis for the penalty or order to debar. Any assessment may be recovered in an action brought by the attorney general **and, if assessed against a firm, partnership or corporation may, if the commission so finds the facts, circumstances and public interest so warrant, notwithstanding any other law to the contrary, be assessed jointly and severally against the shareholders, owners, members, partners, directors and officers of such firm, partnership or corporation.**

(ii) In assessing any fine or penalty pursuant to this section, the commission shall consider:

(A) as a mitigating factor that the lobbyist, public corporation or client has not previously been required to register, and

(B) **(1)** as an aggravating factor that the lobbyist, public corporation or client has **received written notice pursuant to subdivision 13 of section 94 of the executive law of the existence of a possible violation or violations of law, previously entered into a settlement with the commission or had otherwise been the subject of an investigation commenced pursuant to such subdivision, or** had fines or penalties assessed against it in the past. The amount of compensation expended, incurred or received shall be a factor to consider in determining a proportionate penalty.

(2) For the purposes of this section, where the lobbyist is an individual, past penalties shall include any penalties levied against such lobbyist or levied against any firm, partnership, or corporation of or in which such lobbyist participated in and shared culpability for the acts resulting in such past penalties.

Section 2. Sections 1-c of the Legislative Law is hereby amended to read as follows:

§ 1-c. Definitions. As used in this article unless the context otherwise requires:

(a) The term "lobbyist" shall mean every person or organization retained, employed or designated by any client to engage in lobbying. The term "lobbyist" shall not include any officer, director, trustee, employee, counsel or agent of the state, or any municipality or subdivision thereof of New York when discharging their official duties; except those officers, directors, trustees, employees, counsels, or agents of colleges, as defined by section two of the education law.

(i) Any individual who stands convicted of a felony defined in article two hundred or four hundred ninety-six or section 195.20 of the penal law, **or of a felony defined in this chapter, or of any offense which includes all of the essential elements of any such felony, or in any other jurisdiction of an offense which includes all of the essential elements of any such felony for which a sentence to a term of imprisonment in excess of one year was authorized irrespective of whether such sentence was imposed,** may not be retained, employed or designated by any client to engage in lobbying for compensation.

(ii) Any individual who stands convicted of a misdemeanor defined in article two hundred, article four hundred ninety-six, section 195.00 or an attempt to commit a violation of section 195.20 of the penal law, **or of an offense defined in this chapter, or of any offense which includes all of the essential elements of any such offense, or in any other jurisdiction of an offense which includes all of the essential elements of any such offense irrespective of the sentence imposed,** may not be retained, employed or designated by any client to engage in lobbying for compensation for a period of five years from the date of conviction, provided that in the event such conviction is the result of a plea agreement resulting in a plea to such charge in lieu of a plea or conviction of a felony defined in section 195.20, article two hundred or article four hundred ninety-six of the penal law, all parties to such agreement may agree that the period of such bar may be for a period of up to ten years from the date of conviction.