

Clearinghouse Rule 20-019

SS# 114-19, Wisconsin Administrative Register No. 767B, 11/25/2019

WISCONSIN ETHICS COMMISSION Proposed Rule Making Order

INTRODUCTORY CLAUSE

The Wisconsin Ethics Commission proposes a rule to renumber WIS. ADMIN. CODE ETH 26.03 (3); to amend ETH 26.02 (1) (a), (b), (c), (d), and (e), (2) (a) to (i), (3) (a) to (d), (6) (a) and (b), (7) (a) and (b), (8) (a) and (b), 26.03 (1) (b), (c), (d), and (e), and 26.04 (1) (a) and (b), to specify either business or calendar days; and to create ETH 26.03 (3) and 26.03 (4) to establish additional settlement schedules for unauthorized lobbying and late payment of lobbying fees, relating to settlement of potential campaign finance, lobbying, and ethics violations.

RULE SUMMARY

- A. **Statutes interpreted:** s. 19.49(2)(b)10., Stats.
- B. **Statutory authority:** The Wisconsin Ethics Commission is specifically directed to promulgate this rule pursuant to s. 19.49(2)(b)10., Stats.

10. The commission shall, by rule, prescribe categories of civil offenses which the commission will agree to compromise and settle without a formal investigation upon payment of specified amounts by the alleged offender.

The Commission also has general authority for the promulgation of rules to carry out the requirements of Chapters 11, 13, and 19.

s. 11.1304(17), Stats.:

11.1304 Duties of the ethics commission. The commission shall:
(17) Promulgate rules to administer this chapter.

s. 19.48(1), Stats.:

19.48 Duties of the ethics commission. The commission shall:
(1) Promulgate rules necessary to carry out ch. 11, subch. III of ch. 13, and this subchapter.

s. 227.11(2)(a), Stats.:

227.11 Extent to which chapter confers rule-making authority.
(2) Rule-making authority is expressly conferred on an agency as follows:

(a) Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation.

Explanation of agency authority: The Ethics Commission is required to prescribe, by rule, categories of civil offenses which the Commission will agree to compromise and settle without a formal investigation upon payment of specified amounts by the alleged offender. The Commission may only settle alleged offenses, which in the opinion of the Commission, constitute a minor violation, a violation caused by excusable neglect, or which for other good cause shown is not in the public interest to prosecute.

C. **Related statute(s) or rule(s):** ss. 11.1400, 13.69, and 19.579, Stats.

D. **Plain language analysis:** The rule would set forth settlement schedules in the following two additional categories: (1) unauthorized lobbying, and (2) late payment of lobbying fees. The amendments to the rule would clarify the word “days” in prior settlement schedules throughout the rule as either calendar or business days.

E. **Summary of, and comparison with, existing or proposed federal regulations:**

The Lobbying Disclosure Act requires the employer of lobbyists (in-house or lobbying firms) to register the client for which the registrant has an employee that meets the federal definition of a lobbyist, provided they have exceeded the de minimis requirements for registration. The registration is filed with the Secretary of the Senate and the Clerk of the House of Representatives within forty-five days after a lobbyist makes a first contact, or is retained to do so, whichever is earlier. 2 U.S.C. § 1603(a)(1). There are no fees associated with registration. Whoever knowingly fails to (1) correct a defective filing within 60 days after notice of defect by Secretary of the Senate or Clerk of the House; or (2) to comply with any other provision of the Lobbying Disclosure Act, may be subject to a civil fine of not more than \$200,000. Whoever knowingly and corruptly fails to comply with the Act may be imprisoned for not more than five years or fined, or both. 2 U.S.C. § 1606.

F. **Comparison with similar rules in adjacent states:**

Illinois

Both lobbyists and entities that employ lobbyists must register with the Secretary of State prior to engaging in any lobbying activity, or within two working days of an agreement to conduct any lobbying activity. 25 ILL. COMP. STAT. §§ 170/3 (a). There is a \$300 registration fee due annually. 25 ILL. COMP. STAT. §§ 170/5 (f). Any person who violates the Lobbyist Registration Act shall be fined not more than \$10,000 for each violation, with every day that a report or registration is late counting as a separate violation. 25 ILL. COMP. STAT. §§ 170/10 (a). Additionally, any person convicted of violating the Lobbyist Registration Act is prohibited from lobbying for three years from the date of conviction. 25 ILL. COMP. STAT. §§ 170/10 (b).

Iowa

Iowa only requires registration of lobbyists that will be lobbying the executive branch. All executive branch lobbyists, regardless of compensation, must register with the chief clerk of the house of representatives or the secretary of the senate prior to any lobbying activity. IOWA ADMIN. CODE. r. 351—8.7(1). There are no required registration fees. Failure to register timely may result in up to a \$500 civil penalty. IOWA ADMIN. CODE. r. 351—9.4(7).

Michigan

Lobbyists must register with the secretary of state's office no more than fifteen days after becoming a lobbyist. MICH. COMP. LAWS § 4.417(1). Persons that meet the definition of a lobbyist agent must register within three calendar days of becoming a lobbyist agent. MICH. COMP. LAWS § 4.417(2). There are no fees for registering as a lobbyist or lobbyist agent in Michigan. A lobbyist or lobbyist agent that fails to register timely shall pay a late registration fee of \$10 for each day the person is not registered and remains in violation, not to exceed \$300. A person that fails to register within thirty days is guilty of a misdemeanor, and shall be fined not more than \$1,000. MICH. COMP. LAWS § 4.417(3).

Minnesota

There are no registration fees for registering as a lobbyist in Minnesota. Lobbyists must register with the Minnesota Campaign Finance and Public Disclosure Board within five days of meeting the definition of a lobbyist, or being engaged by a new individual, association, political subdivision, or public higher education system. MINN. STAT. § 10A.03, subd. 1. Lobbyists accrue a late fee of \$25 per day the registration is late (\$1,000 maximum). The Board must send a certified mail notice within ten business days after the registration was due. A lobbyist that fails to file a registration within seven days of the certified mail notice being sent is subject to a civil penalty of up to \$1,000. MINN. STAT. § 10A.03, subd. 5.

- G. **Summary of factual data and analytical methodologies:** The Commission and its staff examined the history of instances of unauthorized lobbying and late payment of lobbying fees to establish reasonable settlement amounts sufficient to deter violations while still allowing for escalation in the case of repeat offenders or more significant delays, all while staying within the limits established by law.
- H. **Analysis and supporting documentation used to determine effect on small businesses:**
N/A
- I. **Effect on small business:** N/A
- J. **Agency contact person:**

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K. Place where comments are to be submitted and deadline for submission:

Written comments on the proposed rule will be accepted and receive consideration if they are received by August 17, 2020. Written comments should be addressed by mail to: David Buerger, P.O. Box 7125, Madison, WI 53707-7125; or by email to: eth.rulecomments@wi.gov.

Fiscal Estimate: The creation of this rule does not affect business.

Initial Regulatory Flexibility Analysis: The creation of this rule has no fiscal effect.

TEXT OF RULE

See attached.

TEXT OF RULE

SECTION 1. ETH 26.02 (1) (a) is amended to read:

- (a) If the commission receives a continuing or September report within 30 calendar days after the due date for that report, the commission may issue a written warning to the registrant.

SECTION 2. ETH 26.02 (1) (b) (intro.) is amended to read:

- (b) If the commission receives a continuing or September report within 31 to 60 calendar days after the due date for that report, the commission may extend a settlement offer to the registrant as follows:

SECTION 3. ETH 26.02 (1) (c) (intro.) is amended to read:

- (c) If the commission receives a continuing or September report within 61 to 90 calendar days after the due date for that report, the commission may extend a settlement offer to the registrant as follows:

SECTION 4. ETH 26.02 (1) (d) (intro.) is amended to read:

- (d) If the commission receives a continuing or September report within 91 to 120 calendar days after the due date for that report, the commission may extend a settlement offer to the registrant as follows:

SECTION 5. ETH 26.02 (1) (e) is amended to read:

- (e) If the commission receives a continuing or September report more than 120 calendar days after the due date for that report, the commission may extend a settlement offer of \$500.

SECTION 6. ETH 26.02 (2) (a) to (i) are amended to read:

- (a) If the commission receives a preprimary, preelection, or post-election report one calendar day after the due date for that report, the commission may extend a settlement offer of \$100.
- (b) If the commission receives a preprimary, preelection, or post-election report 2 calendar days after the due date for that report, the commission may extend a settlement offer of \$150.
- (c) If the commission receives a preprimary, preelection, or post-election report 3 calendar days after the due date for that report, the commission may extend a settlement offer of \$200.
- (d) If the commission receives a preprimary, preelection, or post-election report 4 calendar days after the due date for that report, the commission may extend a settlement offer of \$250.
- (e) If the commission receives a preprimary, preelection, or post-election report 5 calendar days after the due date for that report, the commission may extend a settlement offer of \$300.
- (f) If the commission receives a preprimary, preelection, or post-election report 6 calendar days after the due date for that report, the commission may extend a settlement offer of \$350.

- (g) If the commission receives a preprimary, preelection, or post-election report 7 calendar days after the due date for that report, the commission may extend a settlement offer of \$400.
- (h) If the commission receives a preprimary, preelection, or post-election report 8 calendar days after the due date for that report, the commission may extend a settlement offer of \$450.
- (i) If the commission receives a preprimary, preelection, or post-election report 9 or more calendar days after the due date for that report, the commission may extend a settlement offer of \$500.

SECTION 7. ETH 26.02 (3) (a) to (d) are amended to read:

- (a) If the commission receives a filing fee within one to 15 calendar days after the due date, the commission may issue a written warning to the registrant.
- (b) If the commission receives a filing fee within 16 to 45 calendar days after the due date, the commission may extend a settlement offer of \$300.
- (c) If the commission receives a filing fee within 46 to 90 calendar days after the due date, the commission may extend a settlement offer of \$500.
- (d) If the commission receives a filing fee more than 90 calendar days after the due date, the commission may extend a settlement offer of \$800.

SECTION 8. ETH 26.02 (6) (a) and (b) are amended to read:

- (a) If contributor information is not included on a campaign finance report, but is received within 30 calendar days after notification from the commission, the commission may issue a written warning to the registrant.
- (b) If contributor information is not included on a campaign finance report, but is received more than 30 calendar days after notification from the commission, the commission may extend a settlement offer of \$100 plus 10 percent of the total amount of contributions with incomplete contributor information.

SECTION 9. ETH 26.02 (7) (a) and (b) are amended to read:

- (a) If disbursement information is not included on a campaign finance report, but is received within 30 calendar days after notification from the commission, the commission may issue a written warning to the registrant.
- (b) If disbursement information is not included on a campaign finance report, but is received more than 30 calendar days after notification from the commission, the commission may extend a settlement offer of \$100 plus 10 percent of the total amount of disbursements with incomplete disbursement information.

SECTION 10. ETH 26.02 (8) (a) and (b) are amended to read:

- (a) Within 30 calendar days after notification from the commission, the commission may issue a written warning to the registrant.
- (b) More than 30 calendar days after notification from the commission, the commission may extend a settlement offer of \$100 plus 10 percent of the cash balance discrepancy.

SECTION 11. ETH 26.03 (1) (b) (intro.) is amended to read:

(b) If the commission receives a statement of lobbying activity and expenditures within 3 to 5 business days after the due date for that report:

SECTION 12. ETH 26.03 (1) (c) (intro.) is amended to read:

(c) If the commission receives a statement of lobbying activity and expenditures within 6 to 15 business days after the due date for that report:

SECTION 13. ETH 26.03 (1) (d) (intro.) is amended to read:

(d) If the commission receives a statement of lobbying activity and expenditures within 16 to 29 business days after the due date for that report:

SECTION 14. ETH 26.03 (1) (e) (intro.) is amended to read:

(e) If the commission receives a statement of lobbying activity and expenditures 30 business days or more after the due date for that report:

SECTION 15. ETH 26.03 (3) is renumbered ETH 26.03 (5).

SECTION 16. ETH 26.03 (3a) is created to read:

(3a) UNAUTHORIZED LOBBYING. If a lobbyist makes a lobbying communication on behalf of a lobbying principal prior to authorization as required by s. 13.65, Stats.:

(a) If the lobbyist has committed no prior offenses, the commission may extend a settlement offer of \$100 per unauthorized lobbying communication that occurred that legislative session on behalf of the principal, up to an aggregate total maximum of \$1,000 per principal per session.

(b) If the lobbyist has committed a prior offense, the commission may extend a settlement offer of \$200 per unauthorized lobbying communication that occurred that legislative session on behalf of the principal, up to an aggregate total maximum of \$1,000 per principal per session.

(c) If the principal has committed no prior offenses, the commission may extend a settlement offer of \$200 per unauthorized lobbying communication that occurred that legislative session on behalf of the principal, up to an aggregate total maximum of \$2,000 per lobbyist per session.

(d) If the principal has committed a prior offense, the commission may extend a settlement offer of \$400 per unauthorized lobbying communication that occurred that legislative session on behalf of the principal, up to an aggregate total maximum of \$2,000 per lobbyist per session.

SECTION 17. ETH 26.03 (4) is created to read:

(4) FAILURE TO TIMELY PAY LOBBYING FEES.

(a) *Lobbyist license fees.*

1. If the commission receives a lobbyist license fee within one to 30 calendar days after the due date, the commission may issue a written warning to the lobbyist.
2. If the commission receives a lobbyist license fee within 31 to 45 calendar days after the due date, the commission may extend a settlement offer of \$100.
3. If the commission receives a lobbyist license fee within 46 to 60 calendar days after the due date, the commission may extend a settlement offer of \$200.
4. If the commission receives a lobbyist license fee more than 60 calendar days after the due date, the commission may extend a settlement offer of \$300.

(b) *Lobbying principal registration fees or lobbying principal authorization fees.*

1. If the commission receives a lobbying principal registration fee or lobbying principal authorization fee within one to 30 calendar days after the due date, the commission may issue a written warning to the principal.
2. If the commission receives a lobbying principal registration fee or lobbying principal authorization fee within 31 to 45 calendar days after the due date, the commission may extend a settlement offer of \$200.
3. If the commission receives a lobbying principal registration fee or lobbying principal authorization fee within 46 to 60 calendar days after the due date, the commission may extend a settlement offer of \$400.
4. If the commission receives a lobbying principal registration fee or lobbying principal authorization fee more than 60 calendar days after the due date, the commission may extend a settlement offer of \$600.

SECTION 18. ETH 26.04 (1) (a) and (b) are amended to read:

(a) If the commission receives a statement of economic interests within 15 calendar days after the due date for the statement of economic interests, the commission may issue a written warning to the individual.

(b) If the commission receives a statement of economic interests 16 or more calendar days after the due date for the statement of economic interests, the commission may extend a settlement offer of \$100, plus \$100 for every additional 15 calendar days after the 16th day following the due date.

SECTION 19. EFFECTIVE DATE.

This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2), Stats.