



Public Affairs Council

Compliance Webinar: State Lobbying Rules and Regulations

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Lobbying Laws

What is Lobbying?

- Lobbying activity typically includes:
 - Lobbying contacts even if the communication does not include words of influence
 - Research and preparation for such contacts
 - Strategizing, planning and possibly other background work
 - “Education” is often a good description of lobbying activity
- Covered officials:
 - Concept varies widely across states. Some states cover virtually all public employees, unlike the federal definition.
 - Important to understand who is covered for compliance.
- Travel time
- Door opening
- Hide-behind lobbying

Lobbying Laws

- Three categories of activities may trigger lobby registration and reporting requirements at federal, state and local levels:
 - Attempt to influence legislation
 - Attempt to influence legislation or executive branch rulemaking
 - Attempt to influence legislation or any decision of executive branch agency and procurement lobbying

Traditional Lobbying Laws

- Category 1 lobbying (attempting to influence legislation)

Maine

Montana

Nebraska

Nevada

North Dakota

Oregon

South Dakota

Wyoming

- Category 2 lobbying (attempting to influence legislation or rulemakings)

Alaska

California (except retirement systems)

Colorado

Hawaii

Iowa

Minnesota (as to state actions/decisions)

New Mexico

South Carolina

Utah (as to state actions/decisions)

Vermont

Washington

West Virginia

Wisconsin

Trend Toward Category 3 Lobbying Laws

- Beyond “traditional” lobbying, trend toward regulation of Category 3 lobbying (including procurement)

Alabama

Arizona

Arkansas

California (placement agents)

Connecticut

Delaware

D.C.

Federal

Florida

Georgia

Idaho

Illinois

Indiana

Kansas

Kentucky

Louisiana

Maryland

Massachusetts

Michigan

Minnesota*

Mississippi

New Hampshire

New Jersey

New York

North Carolina

Ohio

Oklahoma

Pennsylvania

Puerto Rico

Rhode Island

Tennessee

Texas

Utah**

Virginia

* Metropolitan governmental units only

** Local and educational decisions only

Local Lobbying

- Some state lobby laws cover local lobbying
 - Alabama, Arkansas, Georgia, Illinois, Louisiana, Massachusetts, Minnesota, Mississippi, Missouri, New York and Utah
- Some Florida county lobby laws cover lobbying municipalities within the county, such as Miami-Dade County, Broward County, Palm Beach County and Hillsborough County (Tampa)
- Several local jurisdictions have their own lobby laws
- Major cities:
 - New York City
 - Chicago
 - Los Angeles
 - Houston
 - Detroit
 - Louisville (new law effective 2023)

Compliance

- Tracking of time
 - Necessary to determine if employee or company has exceeded registration thresholds.
 - Preference is contemporaneous tracking of time.
 - At least keeping time on a weekly basis, if not daily.
 - Estimating time without back-up is not advised
 - Putting down 100% is not a solution if not lobbying all the time.
- Pre-clear non-registered employees' communications with public officials to avoid unregistered lobbying activity.

Compliance - Tracking Issues

- General rules for the disclosure of issues on which the registered lobbyists work.
 - Generally, a filer does not disclose issues that only non-registered employees work on.
 - A company or trade association does not disclose contacts and lobbying activities of its outside consultants, only the contacts and activities of its in-house lobbyists.
- Description of issues should include bill number (if applicable), a brief description of the legislation and the portions of the bill lobbied.
- Typically, state law does not require the filer to identify by name the individual lobbied.

Contingent Fee Restrictions

- Contingent fee bans under the lobbying laws
- Restrictions in 40 states, including: California, Connecticut, Florida, Massachusetts and New York
- Types of compensation that could be permissible:
 - Retainer or flat fee
 - Target-based compensation (carries some risk)
 - Discretionary bonus
 - Should take into account multiple factors
 - Not formula-based
 - No portion of compensation traced to a particular contract

“In its inception, the offer ... necessarily invited and tended to induce improper solicitations, and it intensified the inducement by the contingency of the reward.”

- Justice Oliver Wendell Holmes, Jr. on contingent fees

Grassroots Lobbying

- Grassroots lobbying: communicating with the public or segment of the public, including with vendors and employees, asking them to contact their government representatives regarding legislation
 - In 30 states, grassroots lobbying triggers registration.
 - In five additional states, grassroots lobbying does not trigger registration but if already registered, grassroots expenditures must be reported (Alaska, Florida, Kentucky, Texas and Wisconsin).
 - Grassroots communications may require disclaimers identifying sources of funding.

Social Media

- Direct lobbying
 - Email
 - Direct messages
 - Tagging
 - Texting
- Indirect lobbying (laws governing grassroots may cover these activities)
 - Tweeting
 - Retweets
 - Facebook

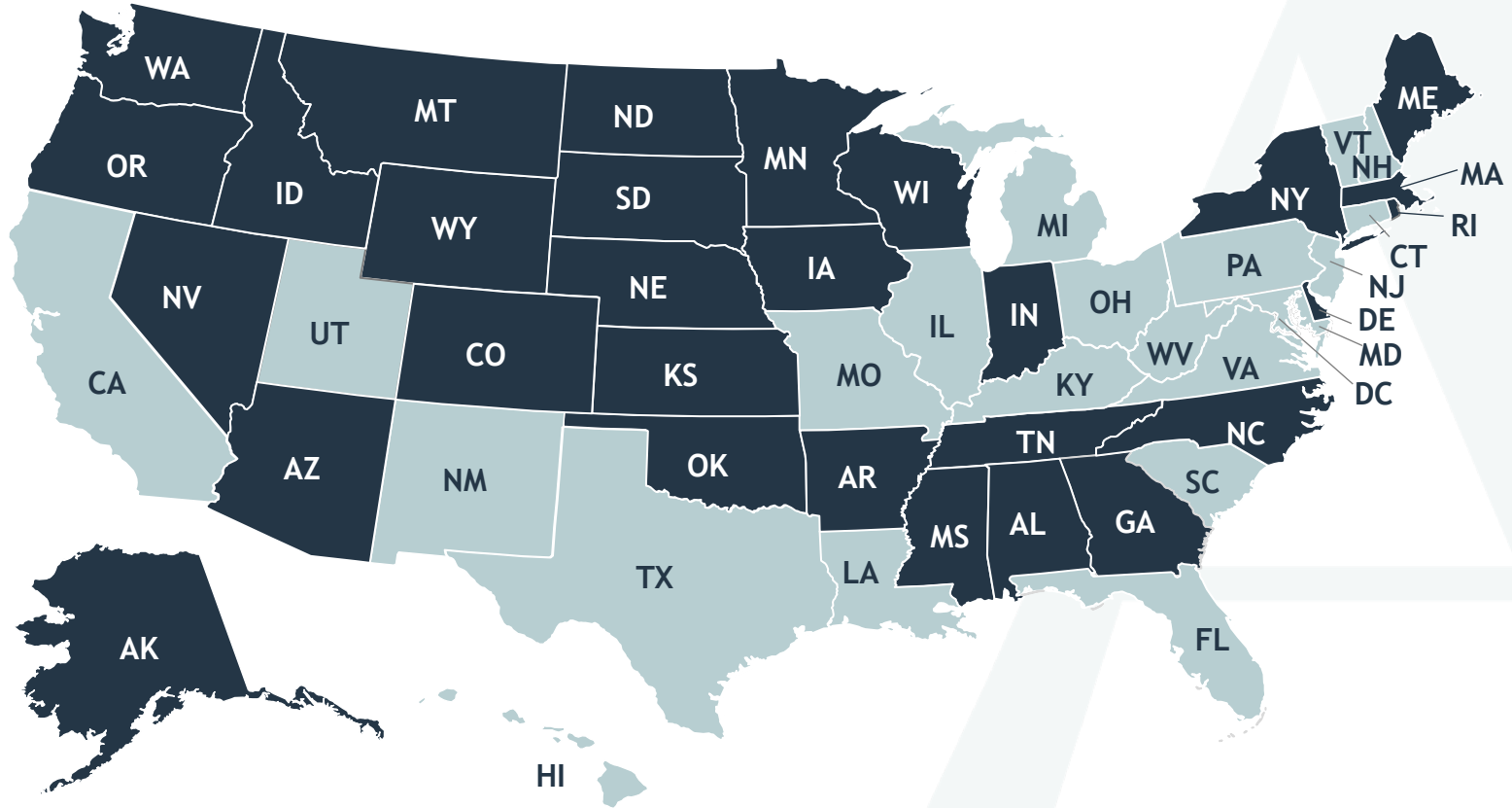
Pay-to-play and Gift Laws

State and Local Pay-to-Play Laws

- Strict liability may come into play when a company has a contract with a state or locality and makes political contributions to certain elected officials in those jurisdictions.
- Some jurisdictions cover contributions by spouses and/or children (e.g., Connecticut, New Jersey, Denver, Illinois, Kentucky, Pennsylvania and Philadelphia).
- In some jurisdictions, like New York City, registered lobbyists are subject to lower limits on political contributions. In others, registered lobbyists/employers have additional disclosure obligations.
- An increasing number of jurisdictions are imposing strict liability for government contractors for gifts, including meals or other things of value, not just political contributions.
- More and more RFPs requiring certification no gifts have been provided.

State Pay-to-Play Laws

The jurisdictions highlighted in light blue have statewide pay-to-play requirements. These laws vary between disclosure requirements and restrictions on contributions.



Select Pay-to-Play Municipalities

- Albuquerque, NM
- Allentown, PA
- Boston, MA
- Broward County, FL
- Buffalo, NY
- Chicago, IL
- Cincinnati, OH
- Cook County, IL
- Dallas, TX
- Denver, CO
- El Paso, TX
- Houston, TX
- Los Angeles, CA
- Miami-Dade County, FL
- Milwaukee County, WI
- New Orleans, LA
- New York City, NY
- Orange County, CA
- Philadelphia, PA
- Salt Lake City, UT
- Seattle, WA
- St. Louis County, MO

Types of State and Local Gift Laws

- Absolute ban regardless of value (e.g., Florida lobbyist law)
- Dollar limits - Some are per occasion (e.g., Florida interested party law - \$100 per occasion) and some are per period (e.g., California - \$590 per 12-month period - increased this year and effective through 2024)
- Prohibition on gifts that may reasonably tend to influence an official. Most common gift restriction language.

Practical Considerations

- Valuation
 - Fair market value/face value vs. cost vs. value on secondary market
- Tax and tip
- Buydowns
- Splitting
- Bargained-for in an arm's-length agreement
- Gift to agency

Pay-to-play and Gift Law Compliance

- Pre-clearance is the most effective way to achieve compliance
- Types of preclearance strategy
 - Preclear everyone and everything
 - Preclearance thresholds
- Gift preclearance software

Enforcement of Lobby, Pay-to-play and Gift Laws

- Civil fines to criminal penalties under lobby laws
- Strict liability under pay-to-play laws
- Losing business in jurisdictions where procurement activity is defined as lobbying
- **Illinois**: former House Speaker Madigan trial and the “ComEd Four” bribery verdicts
- **Federal**: Honest Services Fraud (18 U.S.C. § 1346), but Supreme Court has overturned recent convictions
 - *Skilling v. United States* (2010)
 - *McDonnell v. United States* (2016)
 - *Percoco v. United States* (2023)
 - Action against former official who was private citizen
 - Courts have been very skeptical of prosecutors’ efforts to enforce this statute without a quid pro quo
- **Federal**: Federal funds bribery/gratuities (18 U.S.C. § 666) challenged at Supreme Court this year in *Snyder v. United States*. Federal prosecutors have used this statute to prosecute “gratuities” to state/local government officials without a quid pro quo.

Recent Developments

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- Effective on July 1, 2024, Chicago, IL will reimpose lobbying registration thresholds.
 - Registration required if an individual if: (1) they are paid and/or spend more than \$1,250 for lobbying in a calendar quarter, or (2) they spend more than 20 hours lobbying in a calendar quarter (excluding time spent preparing to lobby).
 - New registration exemption for employees of non-profits with total expenses or net assets of \$5 million or less.
- Effective July 1, 2024, Maryland will require government contractors to disclose beneficial owners of the corporation when they register with State Board of Elections (rather than Secretary of State) under the pay-to-play law. These requirements will apply to local government contractors as well.
- During the 2024 legislative sessions, legislatures in several states considered laws requiring persons engaged in lobbying and other activities on behalf of foreign persons to register as foreign agents - like the federal Foreign Agents Registration Act (FARA). Those states included Arizona, California, Georgia, Oklahoma and Tennessee.
 - Georgia's bill, which was broader than FARA, passed both chambers with near unanimous support but was vetoed by Governor Kemp in May. When he vetoed the legislation, Kemp noted that he did₂₂ so at the request of the bill's sponsor, citing “unintended” registration requirements.

Recent Developments

- In May 2024, a New York appellate court upheld lower court decision finding Commission on Ethics and Lobbying in Government unconstitutional. Lawsuit was brought by former Gov. Cuomo.
- Effective January 8, 2024, Washington changed reporting requirements for grassroots lobbying activities
 - A person who makes grassroots expenditures not otherwise reported by a registered lobbyist or political committee exceeding (i) \$3,000 in a three-month period or (ii) \$1,500 in a one-month period must register as a sponsor of a grassroots lobbying campaign. This more than doubled the previous registration thresholds.
 - Registration required within 24 hours or five business days depending on campaign's proximity to a legislative session. Sources of funding of over \$100 must be disclosed on registration.

Recent Developments

- Effective January 2024, Michigan increased registration and reporting thresholds:
 - Individuals who receive more than \$775 for lobbying during any 12-month period must register (increased from \$725).
 - Employers who spend more than \$3,075 for lobbying or more than \$775 for lobbying a single public official in any 12-month period must register (increased from \$2,900 and \$725, respectively)
 - Gift limits also increased.
- Effective January 1, 2024, Texas increased its lobbyist registration and reporting thresholds:
 - A person must register as a lobbyist if the person receives compensation/reimbursement in excess of \$1,870 in a calendar quarter (increased from \$1,760). The 40 hour per quarter de minimis exception remains unchanged.
 - A person must also register as a lobbyist if the person spends more than \$940 in a calendar quarter to communicate with state officials (increased from \$880).
 - The threshold for filing monthly rather than annual lobbyist reports was increased as well. A lobbyist who makes expenditures in excess of \$2,150 in a calendar year must file monthly. The prior threshold was \$2,020 per year.

Recent Developments

- Effective January 1, 2024, Minnesota's lobbying law now covers attempts to influence any political subdivision of the state. This includes county and city governments, school districts and townships. Previously, only metropolitan areas with populations over 50,000 were covered. Lobbyist principals must also now round the amounts spent on categories of lobbying activities to the nearest \$9,000 instead of \$20,000 on their annual reports.
 - Minnesota also recently amended the definition of lobbyist to include any individual who is compensated over \$3,000 in a calendar year from a business whose primary source of revenue is derived from providing government affairs services.
 - An individual who provides administrative support to a registered lobbyist (and who makes no lobbying contacts) is not required to register, but expenses for lobbying activities must be reported by the lobbyist.
 - The expenditure threshold for citizen lobbyists increased from more than \$250 in personal funds spent on lobbying annually to more than \$3,000 annually.
 - These changes became effective on January 1, 2023.

Recent Developments

- Effective January 1, 2024, South Carolina increased the expenditure limits for lobbyist principals to \$70 per day and \$560 per calendar year, per public official. The previous limits were \$60 per day and \$480 per calendar year.
- Effective this year, Arkansas and Maine rolled out new websites for lobbyists to file public disclosures
- Effective October 25, 2023, Maine shortened the time period for lobbyists to register. Now, a lobbyist must register within 10 calendar days after he or she spends more than eight hours lobbying in a calendar month. The prior deadline was 15 days. Additionally, a one-year cooling off period went into effect for certain executive branch officials before they may lobby.
- Effective June 2023, Hawaii banned political contributions and gifts from lobbyists to state candidates and officials while the legislature is in session.
 - Additionally, Hawaii lobbyists have mandatory biennial trainings (live in-person or virtual) as of April 2023.
 - Beginning January 1, 2025, lobbyist reports must disclose a bill number, resolution number, or budget cost or program identification number for legislative or administrative actions lobbied.

Recent Developments

- Effective June 8, 2023, West Virginia increased the registration and reporting thresholds for grassroots lobbying. A person spending more than \$1,000 in a one-month or more than \$5,000 in a three-month period for a legislative grassroots campaign must register. The previous thresholds were \$200 and \$500, respectively. Registration is required within 30 days of expenditure for each grassroots campaign.
- Effective beginning in 2023, New Jersey pre-empted local pay-to-play laws and lowered de minimis contribution limit from \$300 to \$200.
- Effective in 2023, Alabama increased de minimis gift limits for lobbyists and lobbyist employers to \$32 per occasion and \$64 in the aggregate per calendar year.
- In April 2023, a federal court rejected a challenge to Missouri's revolving door ban, which prevents state legislators and legislative staff from working as lobbyists for two years.
- Effective in 2023, South Dakota's annual limit on gifts from lobbyists and lobbyist employers in increased by 7 percent to \$115.47.
- Effective in 2023, Tennessee's gift limits increased to \$73 per event and \$147 annually.

Questions?



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