



Public Affairs Council

# Compliance Webinar: State Lobbying Rules and Regulations

---

June 29, 2023

**Kenneth A. Gross**  
Senior Political Law Counsel and Consultant

kgross@akingump.com  
Washington, DC  
+1 202.887.4133



# Lobbying Laws

- Three categories of activities may trigger lobby registration and reporting requirements at federal, state and local levels:
  - Category 1: Attempt to influence legislation
  - Category 2: Attempt to influence legislation or executive branch rulemaking
  - Category 3: 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

# Category 3 Lobbying Laws

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

Federal

Alabama

Arizona

Arkansas

California (placement agents)

Connecticut

Delaware

D.C.

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

# 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)

# 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

# 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



# 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 (including Illinois, effective as of last year)
  - 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

# Recent Developments

- Beginning 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.
- Effective December 31, 2022, Florida implemented a six-year cooling off period for public officials (including statewide elected officials, legislators, county commissioners) before they may lobby for compensation
- Effective April 2023, Hawaii lobbyists have mandatory biennial trainings (live in-person or virtual). 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 January 1, 2022, changes to Illinois state lobbying law:
  - State registration for local lobbying
  - Preemption of inconsistent local lobbying laws, except for Chicago
  - Registration for grassroots lobbying
  - Reporting of certain expenses for outside consultants providing “behind-the-scenes” advice
  - Certain deputy statewide officials now covered under statute
  - Restrictions on compensated lobbying of other levels of government by local and state officials
- Michigan lobbying registration thresholds increased in 2023. Registration is required if an individual receives more than \$725 in compensation during a 12-month period, or spends (1) more than \$2,900 for all lobbying activity, or (2) more than \$725 for lobbying a single public official, during a 12-month period. Food and beverage expenditure limits increased to \$72 per month and \$450 annually.

# Recent Developments

- 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 January 3, 2023, Minnesota 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
- In 2023, South Dakota's annual limit on gifts from lobbyists and lobbyist employers in increased by 7 percent to \$115.47
- Tennessee gift limits increased to \$73 per event and \$147 annually for 2023
- Texas lobbying registration thresholds increased this year: (1) expenditures of more than \$880 in a calendar quarter or (2) compensation of more than \$1,760 in a calendar quarter (plus more than 40 hours lobbying)

# Recent Developments

- Effective July 23, 2023, Washington state implemented new disclosure requirements for grassroots legislative lobbying:
  - Sponsor of a grassroots campaign must register within 24 hours (for campaigns beginning within 30 days of, or during, the legislative session) and 5 business days (for campaigns beginning during any other time period)
  - Registration must disclose persons who contribute \$25 or more to the campaign
  - Grassroots communications must disclose the sponsor's name and address
  - For grassroots communications costing \$1,000 or more, must disclose the top 5 contributors to the grassroots campaign
- Effective June 8, 2023, West Virginia adopted higher thresholds for grassroots activity
  - Previously, reporting required for any person spending more than \$500 in the aggregate over a three-month period or \$200 in the aggregate over a one-month period for a grassroots legislative lobbying campaign
  - Thresholds increased to \$5,000 and \$1,000, respectively
  - Registration required within 30 days of expenditure for each grassroots campaign

# Enforcement

- Civil fines to criminal penalties under lobby 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



# 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

# Gift Law Compliance

- Types of preclearance strategy
  - Preclear everyone and everything
  - Preclearance thresholds
- Gift preclearance software

# Questions?

