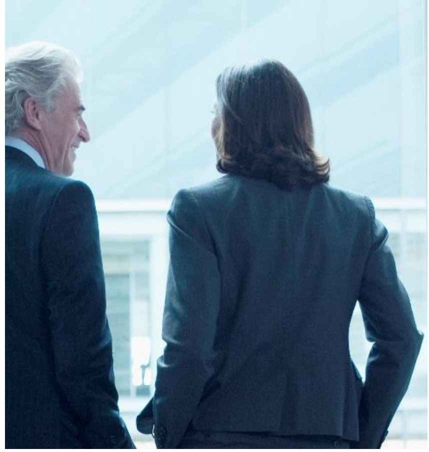
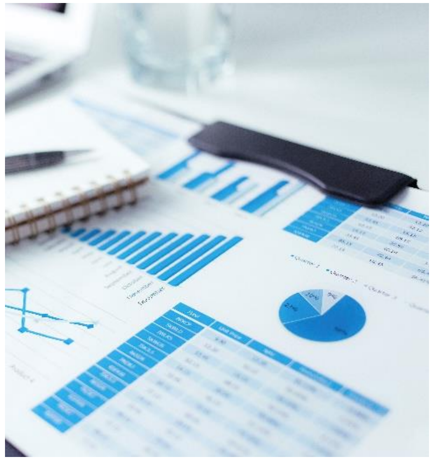




State Compliance: January 2018

Public Affairs Council Webinar

Adie Olson

312-715-5222

Adie.Olson@Quarles.com

Quarles & Brady LLP

Goals for Today

- Learn to spot compliance issues
- Break down issues into core questions
- Develop tools to address the challenges
- Review recent changes in the law

Major Areas of Compliance

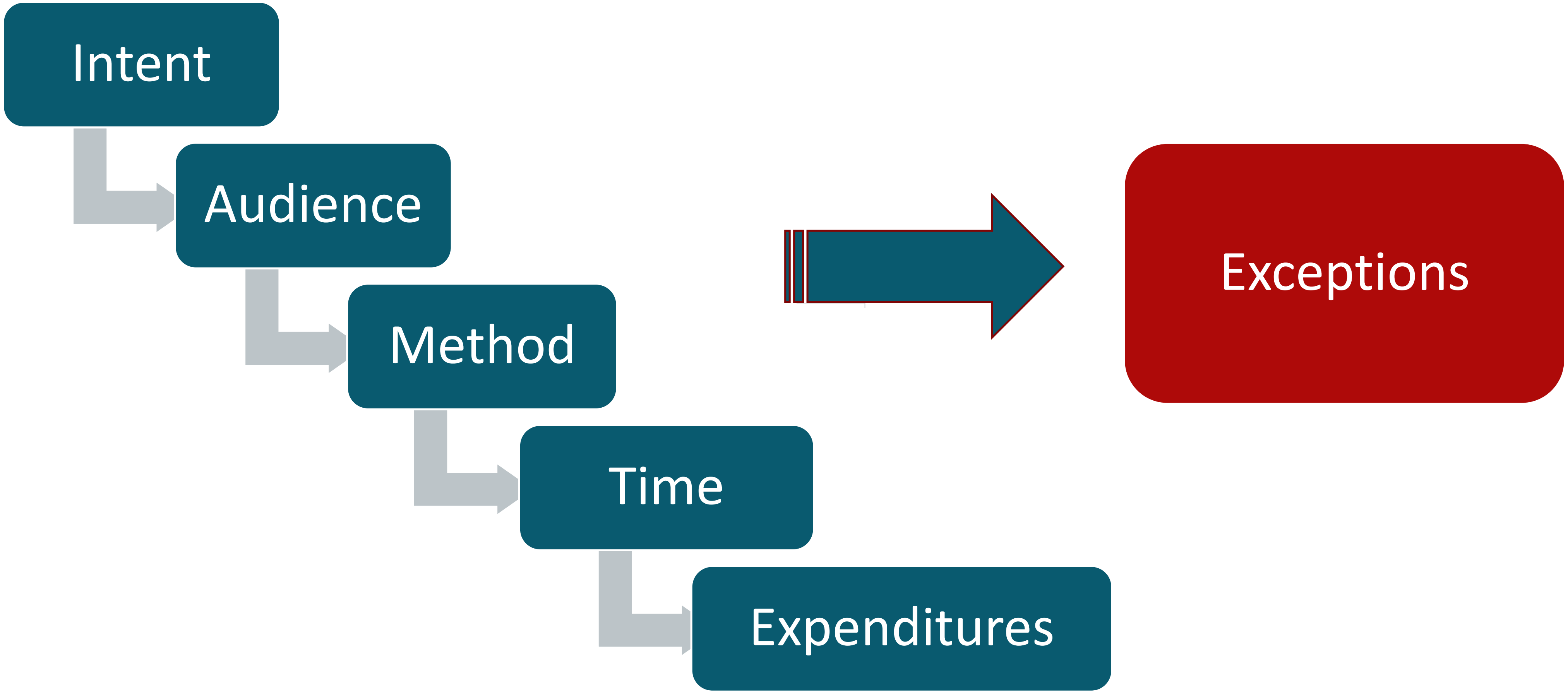
- Lobbying Registration
- Lobbying Reporting
- Ethics/Gifts
- Campaign Finance and Pay-to-Play

Quarles & Brady LLP

Lobbying Registration

Quarles & Brady LLP

Lobbying Registration: Major Considerations



Lobbying Registration: Examples

Expenditure or Direct Communication Threshold

Illinois: must register prior to engaging in a direct communication with a public official with the intent to influence a legislative or administrative matter. "Communication" includes making an expenditure to benefit the public official.

Time and Compensation Threshold

California: For an in-house employee, registration is required when an employee spends a third of his or her compensated time in a calendar month engaging in direct lobbying communication. Consultants are subject to a different threshold of $2,000 of lobbying compensation in a calendar month with a rebuttable presumption that all payments to a consultant lobbyist are compensation for lobbying.

Compensation and Expenditures Threshold

New York: registration is required when, during a biennial period, a lobbyist or employer expends $5,000 in combined reportable expenditures and compensation for expenses for lobbying at the state or local level.

Lobbying Registration: Updates in the Law

Oregon: reduced the time period for registration from 10 days to 3 after entering into a lobbyist engagement.

Rhode Island: consolidated executive and legislative branch lobbying registration.

Texas: changed the threshold from 5% of an employee's time in a calendar quarter to 40 hours in a calendar quarter, including preparatory time.

Michigan: adjusted its registration threshold per indexing.

Lobbying Registration: Updates in the Law

Vermont: one year revolving door provision enacted.

Indiana: advisory opinion issued to clarify examples of what constitutes grassroots lobbying.

Illinois: requires sexual harassment training when a lobbyist registers. The entity must also certify it has a sexual harassment policy in place throughout their company.

Quarles & Brady LLP

Lobbying Registration: Updates in the Law

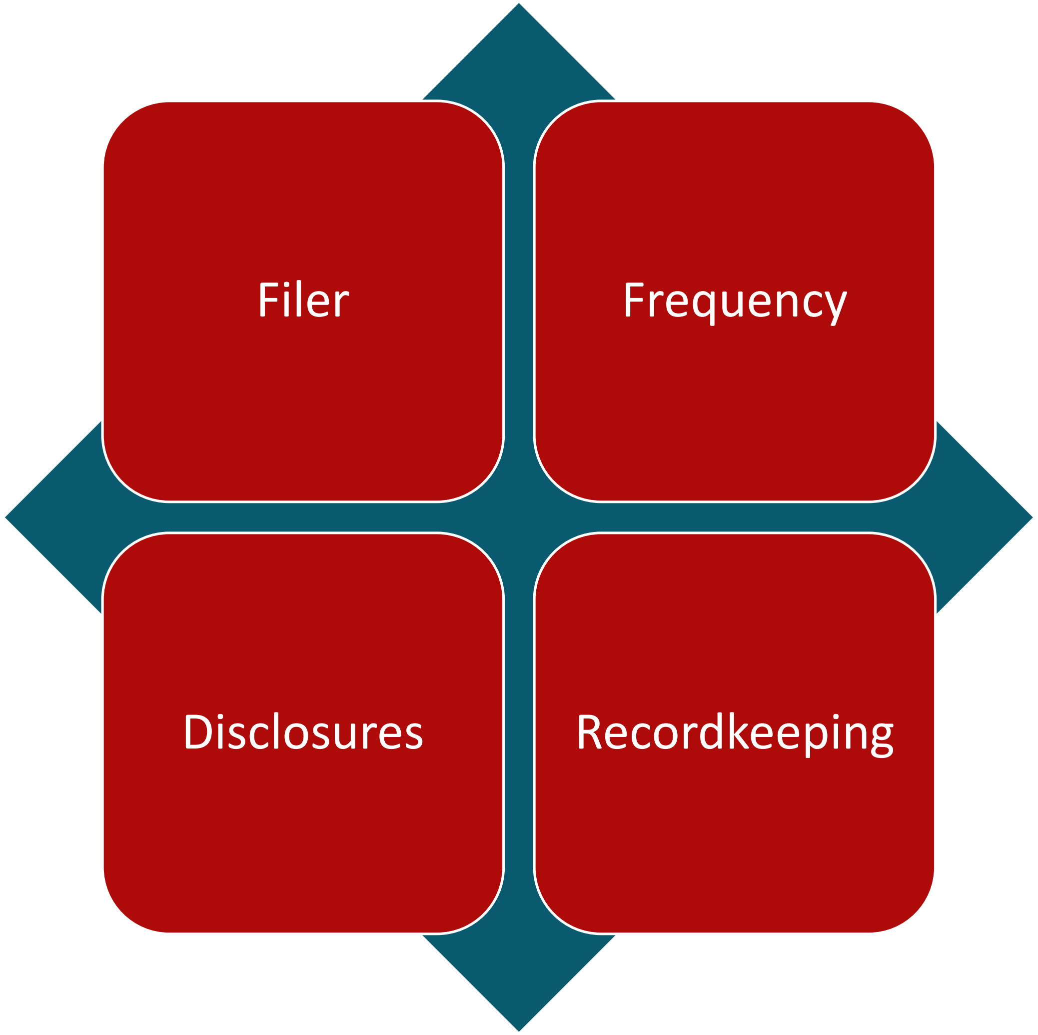
Pennsylvania: increased threshold from $2,500 to $3,000 per statute.

California: ride along exception clarified. A knowledgeable person may attend meetings with qualifying officials along with his or her employer's lobbyist and not become a lobbyist him or herself. The changes clarify that the accompanying person must be an employee of the lobbyist employer and require that the accompanying person participates only as a subject matter expert regarding a legislative or administrative active at issue.

Quarles & Brady LLP

Lobbying Reporting

Lobbying Reporting: Major Considerations



Lobbying Reporting: Filer

- Principal/Employer
- Employee
- Consultant Lobbyist
- Consultant Lobbying Firm
- Any combination of the above

Quarles & Brady LLP

Lobbying Reporting: Filer Examples

Wisconsin: principal files twice yearly; in-house lobbyists and consultants certify time.

Illinois: principal files twice per month; lobbyist certifies reports twice annually.

Texas: a principal that is required to register/report may avoid doing so if the lobbyist captures all of the company's expenditures.

Massachusetts: all lobbyists and types of entities report twice annually.

Pennsylvania: principals report quarterly. A lobbyist or lobbying firm does not need to file a separate report if their expenses are captured by the principal.

Quarles & Brady LLP

How many lobbying reports are potentially due each year?

a. 279

b. 452

c. 137

d. 313

Lobbying Reporting: Frequency

Reporting frequency varies:

- Twice monthly
- Monthly
- Staggered at 3, 4 and 5 month interval
- Quarterly
- Annually
- Monthly during session only
- Monthly during session and quarterly thereafter

Quarles & Brady LLP

Lobbying Reporting: Frequency Examples

Vermont: 7 times annually; monthly for activity January through May, then consolidated reports for June-August and September-December.

Washington: monthly for lobbyist and annually for principals in February.

Minnesota: semi-annual lobbyist report and annual principal report in March.

New Jersey: quarterly lobbying agent report and annual employer report.

Florida: in-house lobbyists and principals do not file reports. Lobbying firms are required to file reports in February, May, September and November.

Quarles & Brady LLP

Lobbying Reporting Frequency: Changes in the Law

New Mexico: increased reporting frequency to three times annually at staggered periods of 3, 4, and 5 months respectively.

Virginia: reverted back to an annual report in July, instead of semi-annual disclosures.

Oklahoma: changed reporting date deadlines to the 15th of January and July.

States to watch: Michigan and New York.

Quarles & Brady LLP

Lobbying Reporting: Disclosures

Disclosure requirements vary greatly and may include:

- Expenditures to benefit public officials
- Compensation to consultants
- Pro-rata compensation for in-house lobbyists
- Matters lobbied
- Officials lobbied
- Overhead and other related expenses (rent, phone, internet, car, etc.)
- Gifts and entertainment
- Reception expenses when officials are invited
- Travel costs for in-house lobbyists
- Grassroots lobbying expenses
- Local lobbying expenses
- Persons responsible for compliance oversight
- Campaign finance contributions
- Business relationships with officials
- Behested charitable contributions

Quarles & Brady LLP

Lobbying Reporting: Disclosure Examples

Massachusetts: everything except the name of your first born child. Cab receipts with to/from, flights with to/from, matters lobbied and positions taken on matters, detailed expenditure reporting for all meals/lodging, office overhead, rent, compensation to lobbying consultants, compensation for services related to lobbying, compensation to in-house lobbyists.

Illinois: expenditures to benefit public officials.

Mississippi: compensation, in-house lobbyist travel and other expenses, office overhead, payments to consultants, non-lobbyist employee legislative support, non-lobbying consultant legal support, local lobbying expense, lobbying related dues.

Kentucky: matters lobbied, pro rata in-house lobbyist compensation, consultant compensation, professional and technical research and assistance costs, itemized gifts, advertising costs, polling expense, and grassroots expenses.

Delaware: matters lobbied including specific bill, resolution or regulation; and gifts and entertainment.

Quarles & Brady LLP

Lobbying Reporting Disclosure: Changes in the Law

Virginia: gift notices are now required to be sent to statewide elected officials, cabinet secretaries, and legislators summarizing any gifts that lobbyist made to that person or their family between January 1 and the end of the legislative session.

Rhode Island: simplified lobbyist disclosure requirements.

Florida: now requires lobbyists to regularly disclose, through a new online portal, the issues/bills they are working on and on whose behalf.

Quarles & Brady LLP

Lobbying Reporting Disclosure: Changes in the Law

South Dakota: IM22 was passed in November 2016, and then repealed by the Governor. A similar constitutional measure will now be on the November 2018 ballot. If passed, Constitutional Amendment W would create an independent ethics commission, decrease limits on campaign donations, bar gifts from lobbyists to many public officials, and prevent the Legislature from altering or rejecting laws approved by ballot question without returning to the ballot.

California: lobbyist employers must itemize "other lobbying expense" of $2,500 ore more

Quarles & Brady LLP

Lobbying Reporting: Recordkeeping

Good recordkeeping is necessary for, among other things:

- Accurate and timely reporting
- Following internal retention policies
- Complying with corporate records laws
- Response to state audits
- Response to internal audits

Quarles & Brady LLP

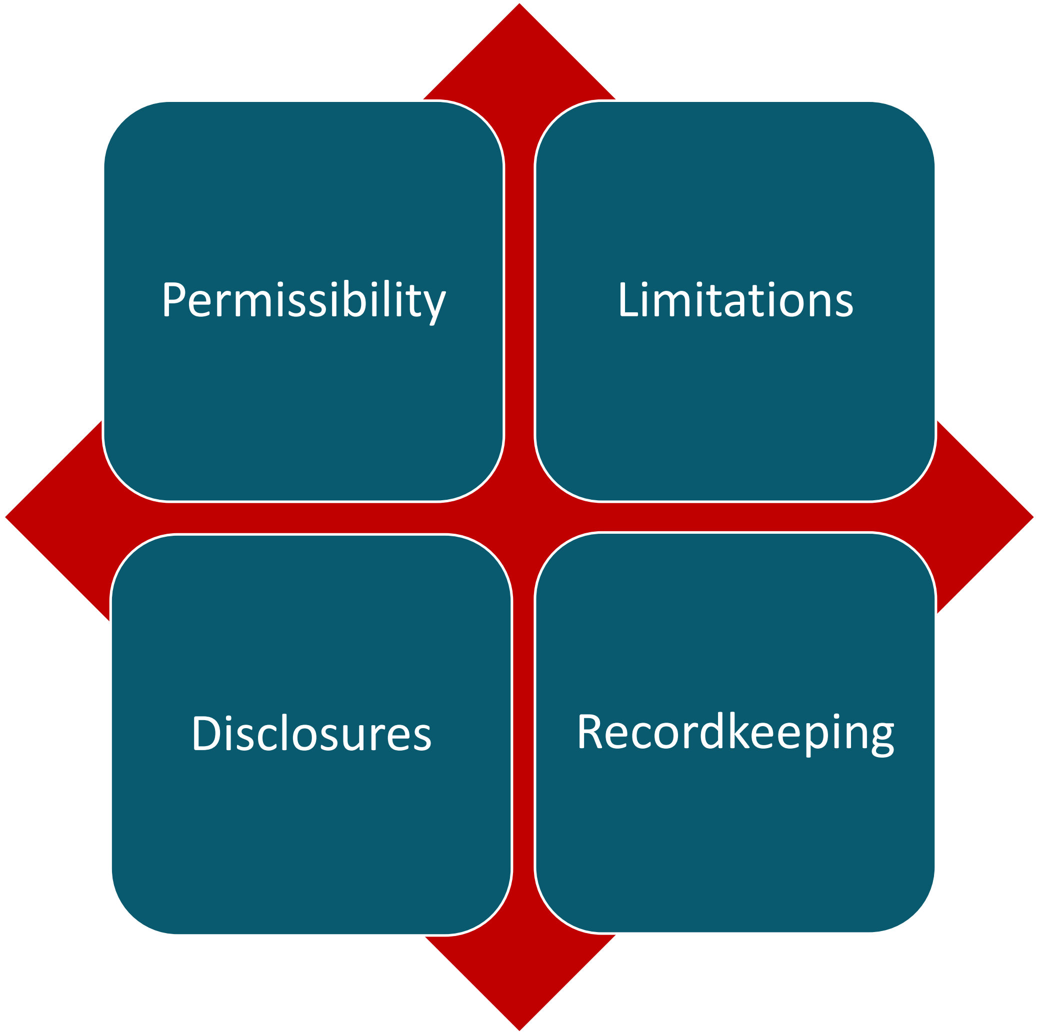
Lobbying Reporting: Recordkeeping Recommendations

- Clearly define internal responsibilities for recordkeeping for time and expenditures
- Consistently organize and file disclosures and related back up information
- Avoid at all costs, non-uniform systems of recordkeeping and solely personal document retention systems
- Train all applicable personnel on recordkeeping requirements
- Explore centralized recordkeeping for political law compliance documents

Quarles & Brady LLP

Ethics

Major Considerations for Ethics



Ethics: Permissibility

Permissibility varies and can include:

- Total ban
- Banned for lobbyists/permitted for others
- Banned for those doing business with the state
- Banned for those with issues pending before an official/agency
- Permitted with other restrictions (time/place)
- Permitted without restrictions

Ethics: Limitations

Limitations on gifts can include those based on:

- Dollar amount per year
- Dollar amount per occasion
- Timing (session freeze)
- Business relationship
- Relationships (personal friendship, family, special occasion)

Ethics: Reporting

Reporting requirements may include itemized or non-itemized disclosures by:

- Principal
- Lobbyist
- Official
- State (if gift to agency)
- No one at all

Quarles & Brady LLP

Ethics: Recordkeeping

- Good recordkeeping is always critical, but special attention should be paid for any expenditures to benefit any public official by the government affairs team or any company personnel.
- Company policies and expense systems should have explicit protocols for pre-approval of gifts/entertainment to benefit a public official.
- Training is critical, especially for those employees not familiar with government affairs.

Ethics: Updates in the Law

Virginia: A $100 limit on lobbyist gifts to legislators and officials was passed in 2015. Now the exception for large events open to "individuals who share a common interest" was eliminated. Events attended by members of a civic organization or from a particular industry, are still valid. A new reception exception was created. The "toothpick rule" similar to the U.S. Senate and House has been adopted, exempting from the definition of "gift" a reception where food, such as hors d'oeuvres, and beverages can be conveniently consumed by a person while standing or walking." Gift notices are now required. The Governor has a executive order in place that should also be consulted.

South Dakota: See constitutional measure noted above, which would reduce gift limits from lobbyists.

Quarles & Brady LLP

Ethics: Updates in the Law

New Hampshire: gift limit changed from $50 to $250 in the aggregate per year. The ethics statutes were amended to remove legislative officials from the former regulations, and essentially replicate the regulations in a new chapter.

Missouri: Executive order prohibits executive branch employees from accepting a gift from a lobbyist.

Pennsylvania: state to watch for legislative gift changes. Executive order on gift ban already in place.

Quarles & Brady LLP

Campaign Finance

Quarles & Brady LLP

Campaign Finance Considerations: Permissibility

Factors related to the permissibility of a contribution include consideration of the source and recipient. A jurisdiction may allow:

- Direct corporate contributions
- Corporate PAC contributions
- Personal/ individual contributions
- Contributions only from non-lobbyists/principals
- Public funding of campaigns only
- Contributions to PACs or restricted accounts but not candidates
- A mix of the above

Quarles & Brady LLP

Campaign Finance Considerations: Limitations

Limitations on permissible contributions include consideration of the:

- Amount
- Source
- Timing
- Delivery

Quarles & Brady LLP

Campaign Finance Considerations: Reporting

Reporting varies across jurisdictions:

- Contributor reports
- Recipient reports
- Both report
- Include on lobbying reports
- Report based on timing (changes with session and/or election)
- Transmittal letters

Quarles & Brady LLP

Campaign Finance Considerations: Pay to Play

- Pay to Play laws are common now at the state and local level.
- These laws prohibit or restrict political contributions by state and local contractors and bidders.
- The prohibition or restriction may apply to political contributions by the company, its PAC, officers, directors, senior manager, and even spouses and children.
- There can be a look back provision, as well as a future restriction/prohibition.
- The penalties can be significant, including voiding the contract and imposing restrictions on future contracting.
- These laws can be found in the campaign finance statutes, state contracting laws and rules, and on the bidding documents themselves.
- Companies that engage in public contracts need to consider putting pre-approval systems in place for corporate and employee political contributions.

Recent Updates in the Law: Campaign Finance

California: The DISCLOSE Act goes into effect January 1 that requires the top funders of a political ad to be displayed prominently for ads paid by outside groups and ballot measure committees (applies to all forms of media). Most electronic advertising will be required to provide a web link that goes directly to the sponsor information. Earmarked contributions over $500 will also need to be disclosed differently. The intent is to require the names of the actual donors, even if there has been a middle recipient committee.

Missouri: These changes need to be monitored, as they have been altered several times throughout the year by constitutional amendment, judicial order, and agency implementation. Contributions to legislative committees are no longer limited; however contributions to parties still are. The State Chamber is currently suing over the right to contribute to its own PAC; although corporations are still permitted to contribute to other unconnected PACs.

Quarles & Brady LLP

Recent Updates in the Law: Campaign Finance

Michigan: codified *Citizens United* and amended other provisions primarily related to independent expenditures. Public Acts 119 and 120 of 2017.

The amended laws most significantly:

1. Creates a new category of committee, Independent Expenditure Committee (SuperPACs), and specifies registration, filing requirements and specific regulations for this new committee type. These changes were prompted by the 2010 US Supreme Court decision commonly known as the Citizens United Decision.
2. Requires the Annual Campaign Statement be filed by local committees as it was prior to 2014.
3. Changes the filing official for certain Independent Expenditure Reports under Section 51 and provides for the assessment of late filing fees for missed or late-filed reports.
4. Requires committees to provide an email address to the filing official.

Quarles & Brady LLP

Recent Updates in the Law: Campaign Finance

North Dakota: amended its campaign finance statutes in 2017 (effective February 1, 2018). There are two areas of note. There is a new requirement that a political party report contributions it receives to its building fund, to which your entity contributes, annually by February 1. There are additional disclosure requirements for political action committees and parties. These new disclosure requirements do not apply to a federal PAC contributing in the State.

South Dakota: see ballot measure above which would reduce all contribution limits, if passed.

Quarles & Brady LLP

Thank you!

Quarles & Brady LLP

Any questions?

Adie Olson
Partner, Quarles & Brady LLP
Adie.Olson@Quarles.com
312-715-5222

Quarles & Brady LLP