

Compliance Across the States

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MultiState Associates Inc.

Presenters:



Carrie Castro, MultiState's Vice President, manages the firm's Project Administration and Lobbying Registration and Reporting Service.

Carrie joined MultiState's compliance unit in 2000. She is a specialist in the complex field of lobbying registration and reporting, managing that responsibility for all lobbying clients. In an ever-changing compliance environment, this is a critical area for our clients when it comes to federal, state and local legislative, executive and procurement-related filings.

Carrie E. Castro

Vice President

MultiState Associates Inc.

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Presenters:



Scott Stetson
Counsel & Compliance
Manager
MultiState Associates Inc.

Scott Stetson joined MultiState in 2014 as Counsel & Compliance Manager. In addition to being an attorney, he is also a Certified Compliance and Ethics Professional (CCEP). He combines in-depth legal knowledge with 14 years of experience to help clients maintain compliance with the complex and constantly changing laws and administrative regulations governing lobbying activity at the federal, state, and local level.

Scott holds a master's degree in political science from the University of Akron and a Juris Doctor degree from the University of Akron School of Law. He also holds a bachelor's degree in political science from Youngstown State University.

Since graduating from law school, Scott has advised and assisted clients with: lobbyist registration and reporting compliance; corporate campaign contributions; lobbyist campaign contributions; and government ethics.

Kelley Drye & Warren LLP

Presenters:



David E. Frulla

Partner

Kelley Drye & Warren,
LLP

David Frulla practices in the areas of government relations and public policy, campaign finance and political law, litigation and environmental law. A determined advocate, effective negotiator, registered lobbyist and proven litigator, Mr. Frulla's clients include corporations, lobbying firms, trade associations and labor organizations. He also represents and counsels public officials, federal candidates, independent political committees and private citizens.

Mr. Frulla is, among other things, involved in federal, state and local campaign finance and lobbying registration, reporting and activity; foreign agent registration and reporting; and other political law-related matters. He designs innovative solutions for clients with a wide range of governmental customers and clients.

Mr. Frulla truly understands law and policy from the inside out. He consistently provides the requisite expertise and reach needed to ensure his client's objectives are leveraged throughout the public policy process. Mr. Frulla's practical skills in navigating the terrain of Washington, D.C., the complexities of evolving laws and regulations, and the ever-changing political climate allow him to devise strategies that are end game-oriented.

Trends in State Lobbying Laws

What is “lobbying”? Who is a “lobbyist”?

❖ What is “lobbying”?

- Attempting to influence government action
- Includes legislative, administrative, and executive acts

❖ Who is a “lobbyist”? Three factor test:

- Time spent communicating with covered officials
 - *Based on number or overall time of contact*
 - *Can include preparation time*
 - *May be percentage based*
- Content of communications with covered officials
- Expenditures made relating to covered officials
 - *Gifts & entertainment*
 - *Compensation (can include fringes and bonus compensation).*

Scope of Lobbying Laws

- ❖ State lobbying laws typically characterize lobbying as:
 - Legislative only;
 - Legislative and administrative, which covers procurement because of the breadth of its general definition of “lobbying”;
 - Legislative and administrative, with a specific provision relating to procurement; or
 - Legislative and administrative, with specific provisions that do not extend to procurement.
- ❖ Procurement lobbying exceptions for salespeople (bona fide selling agents) in certain jurisdictions.

States Requiring Greater Oversight

- ❖ Oregon now requires registration within three business days of qualifying as a lobbyist.
- ❖ New York has lowered the source of funding threshold from \$5,00 to \$2,500 for contributions and from \$50,000 to \$15,000 in lobbying spending.
- ❖ California now requires itemization of expenditures greater than \$2,500 for the category of “other attempts to influence.”

States Requiring Greater Oversight

- ❖ Before lobbying the Florida House on any issue, lobbyists are required to electronically file a notice of appearance that identifies the specific matter and each principal represented.
- ❖ Rhode Island has streamlined their lobbying law by doing away with separate registration and reporting for legislative and executive branches.
- ❖ New Mexico went from semi-annual reporting to now requiring three reports a year.

States Requiring Greater Oversight

- ❖ Missouri Executive Order #2 bans gifts from lobbyists to executive branch employees.
- ❖ Indiana Senate Bill 289 would ban gifts from lobbyists to a legislative person.
- ❖ Missouri HB 212 Prohibits elected officials from accepting or lobbyists offering gifts.
- ❖ Missouri HB 229 Prohibits lobbyists from giving gifts to local officials.

What is a “gift”?

- ❖ Anything of value
- ❖ Common forms of business entertainment can be highly restricted when they involve public officials or government employees
 - Business lunches
 - Bringing in bagels for in-house breakfast
 - Sporting event tickets
 - Holiday gift baskets
 - Charitable events (providing a seat at a fundraiser)
 - Golf outings
 - Conferences (attendance, food, swag and materials, travel)

Considerations for Giving Gifts and Entertainment

- ❖ Federal, state, county, and municipal laws and regulations place various prohibitions and limits on gifts to public officials and government employees.
- ❖ Gifts must always be given without any expectation of reciprocity or quid pro quo, either express or implied from a public official or government employee.
- ❖ Practical Considerations:
 - Intent can matter (or else “appearance”)
 - Gifts given to broader public might not constitute a “gift”
 - Friendship may matter, but not for business “expensed” gifts
 - Rules especially strict for public contractors

Municipal Lobbying

- ❖ Its not just the big cities that regulate lobbying.
- ❖ More and more municipalities are enacting lobbying ordinances.
- ❖ The Village of Palmetto Bay, Florida, population 24,339, has a lobbying ordinance.
- ❖ Cities such as Reno, NV attempted to pass a lobbying ordinance last year.

What lead to the increase in lobbying regulations?

JCOPE Fines Registered Lobbyist More Than \$60,000 For Repeated Lobbying Act Violations – JCOPE May 5, 2016

Redflex Lobbyist John Raphael Sentenced To 15 Months For Extortion – NBC4i.com June 8, 2016

Complaint Charges Unregistered Lobbying For Daily Fantasy Sports – Albany Times Union June 14, 2016

Food Industry Lobby Engaged In ‘Egregious’ Money Laundering In 2013 Vote – Seattlepi.com February 17, 2016

Councilman Funneled \$10K In Taxpayer Cash To Lobbyist -New York Post February 22, 2016

Apopka’s Hired Lobbyist Not Registered For City In 2014, 2015 – Orlando Sentinel February 11, 2016

Gifts and Pay-to-Play Rules

Federal Law & Federal Contractors

Federal law prohibits contributions from federal contractors.

§115.2 Prohibition.

(a) It shall be unlawful for a Federal contractor, as defined in §115.1(a), to make, either directly or indirectly, any contribution or expenditure of money or other thing of value, or to promise expressly or impliedly to make any such contribution or expenditure to any political party, committee, or candidate for Federal office or to any person for any political purpose or use. This prohibition does not apply to contributions or expenditures in connection with State or local elections.

(b) This prohibition runs for the time period set forth in §115.1(b).

(c) It shall be unlawful for any person knowingly to solicit any such contribution from a Federal contractor.

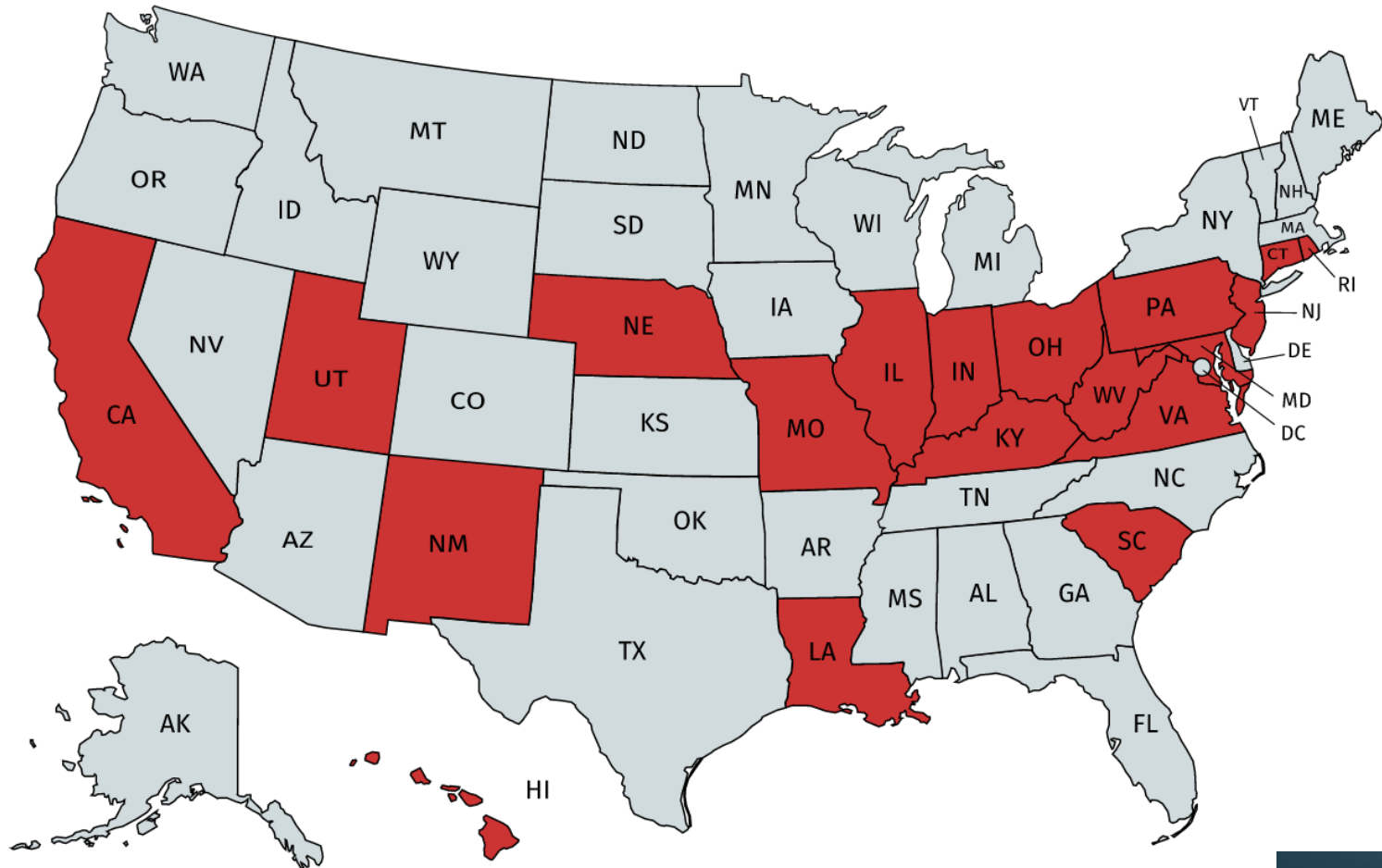
Application of the ban to individual vs. business entity contractors

Individuals: May not contribute to any federal candidate, party, or PAC

This applies only to individuals who contract directly with the federal government, not to employees of business entity contractors

Businesses: May not contribute to Super PACs, despite *Citizens United*, but may sponsor a federal PAC that supports candidates, parties, PACs, or Super PACs

19 States Regulate Contractors' Contributions



Regulations Vary Among States

- ❖ Regulations ranges from requiring a contractor to register or disclose contributions to the state, to outright banning certain contributions (or some combination of all three)
 - **Prohibition** –16 states (e.g., **CA**)
 - **Registration** – 2 states (e.g., **MD**)
 - **Disclosure** – 7 states (e.g., **UT**)
- ❖ Related “covered industry bans” impact only certain industries, such as gaming, lottery, investment services, agriculture, and public utilities



“Pay-to-Play”

No Two Laws Are The Same

- ❖ Each law uses different definitions
- ❖ These laws also vary in which contributors are subject to contribution restrictions
- ❖ Many local jurisdictions have also enacted P2P laws for their vendors' political contributions (e.g., **NJ**)



Keys to a Compliance Policy

- ❖ Designing a compliance policy requires:
 - Matching P2P jurisdictions with company operations and political support
 - Identifying the donors subject to restriction
 - Communicating the applicable law and company policy
 - Follow-up with key employees
- ❖ The policy must address both the compliance threat and corporate culture



HR is Pivotal to Compliance

- ❖ P2P can burden hiring, internal promotions, and assignments
- ❖ Identify prospective employees' past and planned contribution activity
- ❖ Don't forget the "tail," as restrictions may apply even after a covered employee is transferred or promoted—or leaves the job
- ❖ Under some P2P laws, *de minimus* contributions may be ok

Mitigating Contracting Risks

- ❖ Unlike errors in PAC or lobbying disclosure, P2P penalties are often more severe, ranging from \$250 fines (e.g., **NJ**), to felony prison sentences (e.g., **KY**), to voiding current contracts and debarment from future contracts (e.g., **IL**)
- ❖ Options beyond, “What me, worry?”
 - Contribution pre-clearance procedures
 - Another option may be, if feasible, to limit certain current or prospective employees’ business in jurisdictions where they are politically active
 - Following a \$11 million dollar settlement, Goldman Sachs implemented a partner contribution ban



What you need to know to minimize risk

Challenge 1:

Deciphering between myths versus reality.

“I can register later.”

“If I am with my contract lobbyist, I do not need to register.”

“My contract lobbyist handles all of the companies registrations and reports.”

“I don’t have to register if I am only testifying.”

“I never step foot inside the state capitol.”

Challenge 2:

- ❖ Hundreds of jurisdictions require registration and reporting.
- ❖ Different thresholds for each jurisdiction.
- ❖ Varying filing requirements for...
 - The **type** of lobbying taking place (e.g. Legislative, executive or procurement)
 - **How often the organization** has to report
 - **How often you**, as the lobbyist, need to report
 - The **fees** associated with filings
 - The deadlines by when to file

Tracking all of the above!

The Consequences of Being a Lobbyist

- ❖ **Registration requirements**
- ❖ **Reporting requirements**
 - Periodic disclosures of lobbying activities
 - Periodic disclosures lobbying expenses, including gifts
- ❖ **Limits and prohibitions (for lobbyist and employer)**
 - On gifts to public officials and employee
 - On political contributions
 - Contingent or success fee arrangements
- ❖ **Ethics tests and training**
- ❖ **“Pay to play” in procurement context**

What Do You Report?

- ❖ Bills, executive agency decisions
- ❖ Issues
- ❖ Compensation
- ❖ Expenditures (some states require disclosure of personal expenditures)
- ❖ Grassroots efforts
- ❖ Meetings, calls, e-mails, etc., to covered officials

Recordkeeping

- ❖ Recordkeeping should follow lobbying laws
 - Time
 - Content
 - Expenditures
- ❖ Track lobbying activities (not just actual contacts) by level of government and jurisdiction.
- ❖ Some states require detailed information, such as which issue and or bill was lobbied on, expenditures on that issue, etc.
- ❖ Lobbying expenses often include compensation, gifts to covered officials and payments to outside lobbyists.
- ❖ Careful record keeping and coordination between accounts payable and compliance or expenses.

Compliance Recommendations

- ❖ Policies and procedures
 - Regarding contact with public officials
 - Regarding restrictions or preclearance of gift and entertainment expenditures
- ❖ System or tool to log requests and maintain permission documentation
- ❖ Proactively train employees on limits and thresholds
- ❖ Keeping an up-to-date resource on:
 - Lobbying laws and rules
 - The policies of individual public clients

Penalties for Noncompliance

- ❖ Fines
- ❖ Criminal Penalties
- ❖ Suspension and debarment
- ❖ Adverse publicity
- ❖ Reputational harm

Check the Laws!

Before making any contacts in a jurisdiction, review the laws governing lobbying and lobbyists.*

** Information provided is not legal advice and is not a substitute for actual legal advice and counsel directed at your specific situation.*

Questions? Comments?

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