

***Pennsylvania Testimony by Mark Quiner
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Talking Points: Lobbyist Regulations

Issue Overview: Lobbying —generally defined as a citizens' right to speak freely to affect decisions and petition the government— is a crucial right and an important part of the legislative process. This right has also created a lobbying *industry* whose numbers and influence have increased dramatically over the years, along with a matching growth in related restrictions, registration, and reporting requirements. These have been passed on the accepted basis that such a job that, by definition, involves attempting to influence government action has high potential for impropriety.

State legislatures take a wide range of approach to protect the integrity of the system from improper influence, while still enabling interested parties to contribute to the policymaking process. Though the best approach remains a matter of debate, thoughtful regulation may serve both the interests of the profession and governance institutions.

Remember: Each state is different and must do what will work best for the officials and their constituents! And while I am unable to provide comment/testimony on individual bills, I can share some overall national perspective.

Below are a few talking points covering general lobbying principles and regulations:

- Lobbying and Lobbyist Definition

States generally define lobbying as an attempt to influence government action through either written or oral communication. However, each state may have unique elements for what constitutes lobbying, exceptions to the definitions, and exceptions to those exceptions. **The definition of a lobbyist typically revolves around lobbying on behalf of another for compensation.** Several states such as Arkansas (\$400 or more per quarter) and Georgia (\$1,000 or more per calendar year) stipulate compensation thresholds, so that an individual is required to register only after receiving a certain amount of compensation.

Furthermore, lobbyists are not simply individuals who engage in lobbying. As an example of one common exception, a legislator attempting to gather support for a bill through the normal course of legislative operations would not be considered a lobbyist in Connecticut (Conn. Gen. Stat. Ann. § 1-91). A constituent making a call to a policymaker regarding a matter of personal concern would similarly be exempt.

The definition of what constitutes a lobbying activity or qualifies as a lobbyist would determine whether a host of laws such as gift restrictions and disclosures may come into effect in each state.

- Revolving Door Prohibitions

Ethics laws in most states set mandatory waiting periods before a public official or employee may register as a lobbyist or engage in lobbying activities. **The length of these terms generally varies between six months to two years.** For legislators, some states start the clock on the cooling-off period as soon as an individual leaves public service, i.e., in Colorado (C.R.S.A. Const. Art. 29, § 4), while others begin at the end of a session or the end of the session for which a legislator was elected to serve, such as in California (Cal. Gov't Code § 87406). Florida will have the longest cooling off period at six years, set to take effect on December 31, 2022 (West's F.S.A. Const. Art. 12 § 38).

Some revolving door laws provide for unique exceptions or nuances. For example, **some states exempt lobbying on behalf of an agency or other governmental entity. Restrictions may also not apply to uncompensated lobbying or unpaid lobbying with expenses reimbursed,** such as in Alaska (Alaska Stat. Ann. § 24.45.121). A few states prohibit legislators from representing others before the legislature or agencies if personally involved in the formation of related legislation, such as Ohio (Ohio Rev. Code Ann. § 102.03)

- Limiting Public Funds for Lobbying

A handful of states have statutes that prohibit agencies from using public funds to retain a lobbyist. **This could mean that agencies have no designated representative to communicate with the legislature, but often this means that an agency may only use state employees in dealing with the legislative branch,** i.e., Virginia (Va. Code Ann. § 2.2-434). **Some states require agencies to have a designated person to act as a liaison, while others provide for a special class of lobbyist,** i.e., North Carolina (N.C. Gen. Stat. Ann. § 163A-345). **Other states' laws** such as in West Virginia, Vermont and Tennessee **are completely silent on the matter.**

- Lobbyist Registration Requirements

Professional lobbyists must register before lobbying in every state. Some states also require those who hire lobbyists to register the name of the lobbyist authorized to represent them. (Fla. Stat. Ann. § 11.045). Registration fees range from nothing to several hundred. Some states may require individual lobbyists or lobbying firms to pay filing fees for each client whose interests they represent before the legislature. Registration fees may be waived or reduced for government lobbyists.

The information required to disclose varies substantially by state and may include the **filer's contact and address, client information, and subject matters of interest to the lobbyist's work**. A few states may also require photos for ID cards, subcontracted lobbyists, reporting of direct business association or partnerships with the lobbyist's employer or current legislators, terms of compensation for lobbying work, attestation that the lobbyist has read and completed ethics training course, a description of business activity of the lobbyist and more.

Some states may lack substantial detail in the statutes that describe what must be disclosed in lobbyist registration forms. This may be regulated by administrative rule or by the appropriate ethics commission. An ethics commission may have a substantial degree of discretion in the content, form, and cost of filing.

- Lobbyist Activity Report Requirements

Nearly all states require lobbyists to submit periodic disclosure reports. These laws generally require lobbyists to submit public reports that identify expenditures spent on lobbying, what legislative issues are being lobbied, and for which officials' benefit the expenditures are made. Some states such as Massachusetts and South Carolina require additional detailed statements showing any direct business association or partnership with any public official, candidate, or members of the household of such public official or candidate.

State laws are relatively uniform in terms of reporting requirements. One of the largest areas of disagreement regards **how often reports need to be submitted**. Some states require lobbyists to file monthly reports throughout the year, or monthly reports only while the legislature is in session. Other states require lobbyists to submit quarterly reports or an annual disclosure statement. States may have very different rules regarding how much needs to be spent before disclosure is necessary, or differences in the form of disclosure.

- Personal Financial Disclosure: Lobbyist Connection Requirements

Most states require legislators to disclose a range of financial information. Some of the disclosure requirements apply to legislators' dealings with lobbyists in the same way as any other individual or business.

However, **roughly half of states apply additional disclosure requirements specifically for legislators with connections to lobbyists.** For example, filers may have to disclose the identities of family members who work as lobbyists, as in the case in Kentucky (Ky. Rev. Stat. Ann. § 6.787). States may place additional requirements on disclosing income or gifts received if from a lobbyist or an employer of lobbyists.

Other points of interest:

Generally speaking, I think state lobbying restrictions are growing more uniform. Legislators are looking at other states for precedent and are adopting what works - so we're starting to see the same type of regulations across the board.

More recently, in reaction to COVID-19, several states extended the deadlines for registering as lobbyist - but I doubt that will be a permanent trend. Just a temporary hold over. Lobbying, like everything else, had to change dramatically. Virtual lobbying was done by necessity.

Additionally, state ethics boards are starting to look more closely at social media and technology as it relates to public influence and lobbying. It may be difficult to do, but some say lobbying through ads or social media should be regulated.