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The Maze of Lobbying

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Lobbying is an integral part of the legislative process.

While Congress sorts out lobbying reform, state public officials wonder what all the fuss is about. For years, states have operated under restrictions and regulations for lobbyists, with few scandals or complaints. Although it is true that more than 50 versions of lobbying laws exist in states and territories, each variation reflects local issues, circumstances and public reactions.

The people's interest in lobbying regulation stems from the need for a clear line between making public policy and the pressure of influencing it. Yet, lobbying—the freedom of speech to talk to public officials—is an integral part of the legislative process.

Navigating the labyrinth of state law begins with definitions of who is a lobbyist and what is lobbying. A clear path in the labyrinth is that all states have a basic definition of lobbying as an attempt to influence government action. They include written or oral communication as the way to execute this influence. The path becomes less clear when states include other activities as synonymous with lobbying and define lobbyist differently.

The definition of a lobbyist usually revolves around compensation.

Who Is a Lobbyist? The definition of a lobbyist usually revolves around compensation. Who qualifies as a lobbyist is important, because states require lobbyists to comply with their registration and reporting laws. Most states define a lobbyist as someone who receives any amount of compensation or reimbursement to lobby. Among the exceptions are Hawaii, Minnesota and New York. These states stipulate threshold amounts of money and time spent on lobbying and, if these thresholds are reached, an individual becomes a lobbyist.

All states recognize exceptions for activities that might be considered lobbying.

Who Are not Lobbyists? All states recognize certain exceptions for activities that might be construed as “lobbying,” but do not meet the statutory definition. Legislators who attempt to persuade their colleagues to vote for their bills are not considered lobbyists in all states. Also exempt are citizens, in some circumstances. Alabama's statute is typical in that citizens, if they receive no compensation, are exempt from the definition of lobbying if they are merely exercising their constitutional right of free speech to communicate with members of a legislative body. Some states exempt such activities as testifying at committee hearings, meetings, writing letters and casual conversations.

Some states exempt state employees, including statewide elected officials, who merely discuss a bill with legislators. Utah does not include as lobbyists public officials who act in their official capacity on matters pertaining to their office or within their scope of employment. In some states, inter-agency communications between state employees also are outside of the statutory definition of lobbyist.

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Colorado's "volunteer lobbyist" category includes any individual who engages in lobbying and only receives reimbursement of actual and reasonable expenses. Missouri exempts those who engage in lobbying only occasionally. In Nevada, a member of the legislative or executive branch cannot receive compensation for personally engaging in lobbying.

At least 14 states specify that members of the press are not lobbyists. Kentucky excludes news, editorial and advertising statements published in the media. Michigan excludes a publisher, owner or working member of the media who is disseminating news or editorial comment to the general public in the ordinary course of business.

Who Cannot Lobby? Most states specifically prohibit legislators from receiving compensation from an outside firm to lobby their colleagues. Where states do not specifically forbid this practice, such action usually would fall under conflict of interest laws. In Iowa, statewide elected officials cannot lobby unless they represent the official position of the agency. In Mississippi, an executive, legislative or public employee cannot lobby except in a official capacity.

What Does Lobbying Include? Three states—Delaware, Kansas and Texas—include in their definitions of lobbying providing entertainment, gifts, recreational events, and food and beverages to legislators. The remaining states regulate the disclosure of and the amounts spent on such activities.

Less controversial are expenditures by lobbyists on printing, salaries, postage, telecommunications and other costs clearly connected to written and verbal communication. Although these expenses generally are regarded as necessary and legitimate, they interest some state regulators when they exceed certain amounts.

Vermont uses the term "goodwill" as part of its lobbying definition. Lobby or lobbying means: "...an attempt to obtain the goodwill of a legislator or administrative official by communications or activities...intended ultimately to influence legislative or administrative action." Michigan exempts "technical information" from the definition of lobbying, defined as "...empirically verifiable data provided by a person recognized as an expert in the subject area to which the information provided is related."

Twenty-five states and the District of Columbia include "grassroots lobbying" in their regulation of lobbying. Grassroots lobbying occurs when interest groups attempt to mobilize citizens to contact or pressure legislators on behalf of or against a measure. In Maryland, registration is required if a group spends at least \$2,000 to influence legislation. In Minnesota, lobbying includes spending more than \$250 for, among other things, "communicating or urging others to communicate with public or local officials."

Principals. States often include the client or principal of the lobbyists in their definition of lobbyists. The principal is the person or group that hires the lobbyist and is subject along with lobbyists to legal requirements in some states. South Carolina and Virginia make it clear that members of the group are not considered a principal or a lobbyist. A 50-state chart and more information on this topic are available at www.ncsl.org/ethics.

In at least 14 states, members of the press are not considered lobbyists.

Twenty-five states and the District of Columbia regulate grassroots lobbying.

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