

LOBBYING DISCLOSURE

These resources are current as of 2018: We do our best to periodically update these resources and welcome any comments or questions regarding new developments in the law. Please email us at advocacy@afj.org.

This guide summarizes key aspects of laws and regulations governing lobbying on the state level. It is not intended to provide legal advice or to serve as a substitute for legal advice

In some jurisdictions, city, county, or special district regulations may also apply to certain political activities. Check with the appropriate local jurisdiction before undertaking any activity.

DEFINITIONS

Lobbyist:

- Lobbyist - [A]ny individual who acts to promote, advocate, influence or oppose any matter pending before the General Assembly by direct communication with the General Assembly or any matter pending before a state agency by direct communication with that state agency, and who in connection therewith either:
 1. Has received or is to receive compensation in whole or in part from any person; or
 2. Is authorized to act as a representative of any person who has as a substantial purpose the influencing of legislative or administrative action; or
 3. Expends any funds during the calendar year for the type of expenditures listed in § 5835(b) of this title.

Provided no reportable expenditures occur (discussed under Reports below), under 29 Del.Code § 5831(b) a lobbyist does *not* include:

- Professional drafting of bills or regulations or rendering opinions to clients regarding pending legislation or regulation;
- State employees, even with expenditures;
- Elected Officials or their representatives, even with expenditures;

- Activity in relation to a person’s employment or at the direction of their employer, so long as it is done once or infrequently [e.g., “Lobby Days”]
- Communicating with legislators or state agencies as an expression of personal belief, so long as not at the direction or on behalf of an employer and no additional compensation or reward as a result of the communication from an employer is received.
- Testifying at public hearings conducted by the General Assembly or a state agency.
- Communicating on behalf of a religious organization regarding legislation or regulation related to a religious belief or practice, so long as the organization does not otherwise lobby.
- Attorneys representing clients in a criminal, civil, tax, or other judicial proceeding.

“Grass Roots” Lobbying

It is important to recognize that Delaware does not distinguish between types of lobbyists, as some states do. A lobbyist working on behalf of a nonprofit follows the same rules and laws as a paid lobbyist for a private entity.

The Public Integrity Commission has made it clear that compensation is not required to be a lobbyist. It has emphasized a non-compensated person who act a representative and has a substantial purpose in influencing actions is still within the definition. (*Commission Opinion No. 96-37*)

The Commission has also said that if a core group of organization members are developed with lobbying as a substantial purpose, even if they’re unpaid, they should register. (*Commission Opinion No. 96-36*).

However, a nonprofit organizing and mobilizing its “rank and file” membership does not mean that every member of the organization needs to register. This means members may call, email, or otherwise contact their legislators directly or at community events such as forums in response to a call to action.

Employer & Compensation

- Both of these terms are broadly defined to include receiving money, thing of value, or any economic benefit in return for acting on behalf of another person. Person also includes entities, corporations, and organizations.

Direct Communication

- Used in several contexts, this term generally means communication with members of the General Assembly (House and Senate members), the Lieutenant Governor, or the Governor, or, regarding any proposed regulation pending before a state agency, employees or officials of that state agency.

State Employee & State Agency

- State employees are not just those who are paid by the state, but also those who are appointed members, trustees or directors of a State Agency. A State Agency is not only the various departments, but also all committees, boards, and other bodies that are created by either a law or the state Constitution, except for political subdivisions like the counties and municipalities and their agencies.

REGISTRATION

Delaware does not distinguish between types of lobbyists. If you fall within the definition of lobbyist discussed above, you must register with the Public Integrity Commission (PIC). The Commission's materials are available online for new lobbyists and the statute requires electronic filing.¹ However, if electronic filing is unavailable, it may be sent by registered or certified mail. There is no fee to make this filing.

When to File (29 Del.Code § 5832(a))

- If the person is receiving compensation or is acting as representative of any person or entity intending to influence a bill or administrative action, before any lobbying activity; or
- If the person makes a reportable expenditure, within five days of that expenditure, if not already filed as a lobbyist.

What to Include (29 Del.Code § 5832(b))

- The name, residence or business address and occupation of each lobbyist;
- The name and business address of the employer of such lobbyist;
- The date on which the employment as lobbyist commenced;
- The length of time the employment is to continue; and
- The subject matter of legislation, regulation or administrative action as to which the employment relates at that time.

Note that any changes to your profile must be reported within five (5) business days. This can be also done using the tool above.

Employer Authorization (29 Del.Code § 5833)

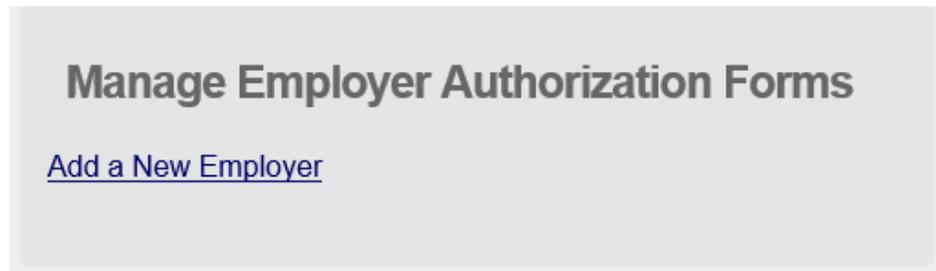
To complete registration, the lobbyist and the information submitted regarding the representation must also be verified by the employer within fifteen (15) days of lobbyist registration. This process is made approachable by using the online resources.

¹ 29 Del.Code § 5832 *see* <https://depic.delaware.gov/lobbying/new-lobbyist/>

1. "Manage My Employers"



2. Add a New Employer



3. Search for an existing employer to select; if not present, "Create a New Employer"



Registering Your Activity (29 Del.Code § 5836)

Within five (5) business days of first direct communication, or by June 29 of each year, the lobbyist must report electronically to the Public Integrity Commission:

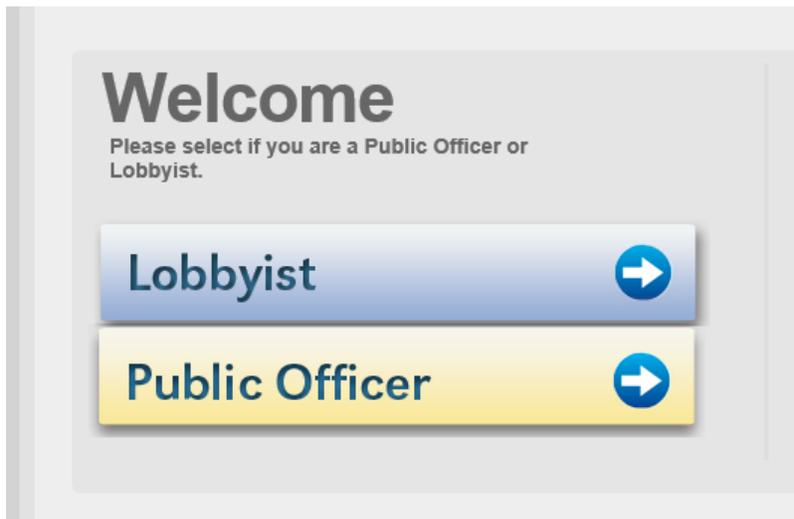
- Each bill or resolution number;
- Number and/or title of each regulation; and
- Section of the budget appropriation bill, bond and capital improvements bill as designated by the Controller General and Office of Management and Budget.

Communications *before* numbering of bill or resolution or initial public notice of regulation must be disclosed within five (5) days of introduction.

All such reports are public. However, *not* required is whom the lobbyist directly communicates with in the course of lobbying the reported activities.

It is worth noting that the online system allows a lobbyist to easily select their activities using the following steps:

1. Enter your profile



2. Select "My Lobbying Activity"



3. After choosing an employer, if multiple exist, the lobbying activities can be easily selected using the “Lobbying Activity” tool:

Lobbying Activity
Medical Society of Delaware

Enter all lobbying activity on behalf of this employer.

What type of action are you lobbying?
Legislative Administrative

Penalties Failure to File or False Reporting (29 Del.Code § 5839)

- Knowingly failing to file as a lobbyist is a misdemeanor.
- Knowingly furnishing false information in a registration or authorization in a misdemeanor.
- Lobbyists are prohibited from reregistering or acting as a lobbyist until delinquent authorizations are filed.
- The Speaker of the House, presiding officer of the Senate, Legislative Council, or any member of the General Assembly *shall* suspected violations to the Public Integrity Commission and/or the Attorney General. Others *may* refer.

REPORTING

Financial Report Valuation (29 Del.Code § 5835)

Reports must be filed electronically by lobbyists quarterly with the Public Integrity Commission. Reports are filed per-employer and must contain total direct expenditures made to members of the General Assembly or members or employees of any state agency. Campaign contributions are not included in this valuation.

Valuation includes the cost or value (whichever is higher) of:

- (1) Food and refreshment;
- (2) Entertainment, including the cost of maintaining a hospitality room;
- (3) Lodging expenses away from home;
- (4) Fair value of travel if the trip exceeds 100 miles;
- (5) Recreation expenses; and
- (6) Gifts or contributions, excluding political contributions.

Information in the Report (29 Del.Code § 5835)

- Total expenditures during the reporting period;
- The recipient for any expenditures over \$50 per day;
- Value of any gift in excess of \$50.

PIC Ethic Bulletin 010 further clarifies that lobbyists report the full value even if the lobbyist pays only part of the value or pays a reduced price with part going to charity.

The Commission has stated that even non-profit volunteers who register as lobbyists must file reports even if no expenditures are made. The report will simply be a \$0 report. (*Commission Opinion No. 96-83*).

Records shall be retained for 4 years from date of filing and are made publicly.

Gifts (Executive Order 1, 2009)

No Cabinet-level officials, division directors, or professional staff members of the Governor's office may accept gifts from lobbyists. Gifts do not include:

- Unsolicited items freely available to the public;
- Items returned or donated to charity;
- Items of immaterial value such as informational cards, t-shirts, honorary degrees or awards, plaques, or other certificates;
- Food or drink of less than \$39 consumed on-site; and
- Complimentary attendance or invitations to publicly-advertised or regularly-scheduled functions of non-profits or similar groups.

Failure to File or False Reporting (29 Del.Code § 5839)

- Knowingly furnishing false information in a report is a misdemeanor.
- Lobbyists are prohibited from reregistering or acting as a lobbyist until delinquent reports are filed.
- Failure to file an authorization or report cancels the lobbyist's registration and triggers a fine of \$25 and \$10 for each subsequent day the report is delinquent, up to \$100. This may be waived in the discretion of the Commission.
- The Speaker of the House, presiding officer of the Senate, Legislative Council, or any member of the General Assembly *shall* suspected violations to the Public Integrity Commission and/or the Attorney General. Others *may* refer.

LOBBYING RESTRICTIONS

Former General Assembly Members (29 Del.Code § 5837)

- No members of the General Assembly may act as a lobbyist *for compensation* for a period of one year. Violation is a misdemeanor.

Post-State Employment Restrictions (29 Del.Code § 5805(d))

- For two (2) years, state employees and officers may not represent private enterprises on matters that they gave an opinion, investigated, or otherwise were directly and materially responsible for.

Note: The Public Integrity Commission does read this restriction narrowly. Seek legal review for a case-by-case analysis as each are fact-specific, but under *Beebe Medical Center v. Certificate of Need Appeals Board*, C.A. No. 94A-01-004 “Delaware Courts have held that although there may be a subject matter overlap in the State work and the post-employment work, that where a former State official was not involved in a particular matter while with the State, then he was not ‘directly and materially responsible’ for that matter.”

State Employee Representing Another’s Interests (29 Del.Code § 5805(b))

- No state employee or official may represent or assist a private enterprise with respect to a matter before the agency that employs that employee or official, unless within the exercise of official duties.
- No state officer may assist a private entity before the State unless in the exercise of official duties.

Conflicts of Interest (29 Del.Code § 5805(b))

- No state employee, state officer or honorary state official may represent or otherwise assist any private enterprise with respect to any matter before the state agency with which the employee, officer or official is associated by employment or appointment.

Contingency Payments (29 Del.Code § 5834)

- No more than half of lobbyist compensation may be contingent upon the outcome of legislative or administrative action.

Delaware’s Chancery Court in *Re: Bennett vs. Lally*, 2014 WL 4674623 discussed that, in addition to monthly compensation, a contract provision awarding a 10% ownership interest in a potentially-large enterprise contingent upon successfully winning an RFP “appear[s] to run afoul of the statute.”

CONTACT INFORMATION FOR STATE AND LOCAL AGENCIES

Public Integrity Commission
410 Federal St., Ste 3
Dover, DE 19901
(302) 739-2399
<https://depic.delaware.gov/>

FOR FURTHER ASSISTANCE

For assistance regarding these resources or for more information about federal law, please contact our attorney one-on-one counseling service:

**Email: Advocacy@afj.org
Telephone: 1-866-NPLOBBY
(675-6229)**

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