

# MONTANA

## LOBBYING DISCLOSURE

**These resources are current as of 6/22/18. 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](mailto:advocacy@afj.org).**

### What's New in This Guide

The following changes/additions have been made since the previous version of this guide:

- ◆ Payment threshold for lobbyist licensing, and principal registration and reporting (currently \$2,550) will be adjusted following the 2018 general election and prior to the start of the 2019 legislative session.
- ◆ Additional references were added in Definitions to clarify that the Commissioner of Political Practices interprets Montana's Lobbying Disclosure Act to apply only to legislative lobbying of legislators, and not to regulate grassroots lobbying.

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 and/or county regulations may also apply to certain political activities. Check with the appropriate local jurisdiction before undertaking any activity.

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## DEFINITIONS

### Lobbying

- Lobbying – the practice of promoting or opposing the introduction or enactment of legislation before the legislature or legislators; and the practice of promoting or opposing official action of any public official or the legislature. [MCA § 5-7-102\(11\)\(a\)](#).
- Lobbying includes direct communications with public officials to promote or oppose official action, all time spent preparing and presenting oral or written testimony to one or more public officials promoting or opposing official action, and signing a sign-in sheet as an opponent or proponent of official action at a legislative hearing. [ARM 44.12.102\(3\)](#).
- Lobbying includes time spent to support or assist lobbying, including preparation and planning activities after a decision has been made to support or oppose official action, and research and other background work that is intended, at the time it is performed, for use in lobbying. It does not include:
  - information or testimony submitted to the legislature or a legislative committee in response to a subpoena;
  - actions of public officials in performing judicial, quasi-judicial, or ministerial acts or the actions of any person to influence the actions of public officials in performing judicial, quasi-judicial, or ministerial acts;
  - journalists gathering and disseminating news, information, commentaries or editorials to the general public;
  - activities involving communications by a membership organization or corporation to its members, shareholders, or employees;
  - information or testimony compelled by statute, rule, executive order, or other action of the legislature, the governor, or a state agency, including information or testimony compelled by a state contract, grant, loan, permit, or license; or
  - information or testimony provided in response to an oral or written request from a legislative committee, the legislature, or a public official made during a public hearing or other public proceeding if the information or testimony solicited

during the public hearing or public proceeding does not support or oppose the official action under consideration.

[ARM 44.12.102\(4\)](#).

- The Commissioner of Political Practices only applies Montana’s Lobbying Disclosure Act to legislative lobbying of legislators. [ARM 44.12.101A](#); [Lobbying Reporting and Disclosure Requirements, COPP-2017-AO-001 \(February 27, 2017\)](#). The Attorney General and county attorneys share jurisdiction with the Commissioner to enforce the Act, and a citizen also may initiate enforcement in some circumstances. [MCA § 5-7-305](#).
- A “legislator” means an individual holding public office as a representative or senator in the Montana legislature, including those who have been elected but are not yet sworn in. [MCA § 5-7-102\(10\)](#).

**Important Note:** The payment threshold for lobbyist licensing, and principal registration and reporting is \$2,550 as of the date of this guide. This amount will be adjusted by the Commissioner of Political Practices following the 2018 general election and prior to the 2019 legislative session. [MCA § 5-7-112](#); [ARM 44.12.204](#). Check the [Commission of Political Practices website](#) for updated information at that time.

### Types of Lobbyists

- Lobbyist – a person who is paid \$2,550 or more per calendar year by one or more persons to engage in the practice of lobbying. [MCA § 5-7-102\(12\)](#). The term “lobbyist” does not include:
  - an individual lobbying or acting on his or her own behalf;
  - a public official, elected local official, elected federal official, or elected tribal official acting in an official government capacity who promotes or opposes the introduction or enactment of legislation before the legislature or the members of the legislature; or
  - an individual working for the same principal as a licensed lobbyist if the individual does not have direct communication with a public official regarding an official action on behalf of the principal (e.g., a researcher or secretary who supports a licensed lobbyist).

[MCA §§ 5-7-102\(11\) and \(12\)](#); [ARM 44.12.102\(5\)](#).

### Principal

- Principal – a person who employs a lobbyist or a person who, while not employing a lobbyist, spends more than the threshold amount on lobbying. [MCA § 5-7-102\(15\)](#).

## Grassroots Lobbying

- Montana does not regulate grassroots lobbying. [Lobbying Frequently Asked Questions at page 3 \(January, 2011\)](#); [ARM 44.12.101A](#); [Lobbying Reporting and Disclosure Requirements, COPP-2017-AO-001 \(February 27, 2017\)](#).

## **REGISTRATION**

### Registration of Principals

- Principals that have made payments or intend to make payments of \$2,550 or more to *one individual or, in total, to multiple individuals* for lobbying during any calendar year must register by filing a [Form L-3](#) with the Commissioner of Political Practices. On the Form L-3, the principal must disclose the issues on which that person is authorized to lobby.
- Additionally, principals must authorize lobbyists to lobby on their behalf, by filing a [Form L-2](#). This form requires the same information as is disclosed on the Form L-3.
- Timing
  - The Form L-3 must be filed within five business days of paying, or agreeing to pay, \$2,550 or more to individuals to lobby the legislature on one's behalf.
  - The Form L-2 must be filed within five business days of paying, or agreeing to pay, the threshold amount or more to a single individual to lobby.
- Fee – No fee is required for filing the Form L-2 or L-3.
- Renewing Registration – Lobbying registration is based on the legislative session year (odd-numbered years) and expires on December 31 of each even-numbered year. Principals and lobbyists are required to re-register during every legislative session (odd-numbered year) in which they meet the threshold.

### Registration of Lobbyists

- Timing – A lobbyist must apply for a lobbying license by filing a [Form L-1](#) within five business days after receiving payments of \$2,550 or more to lobby on another's behalf, or entering an oral or written agreement to do so.
- Disclosures – A lobbyist's license application must disclose the following information:

- The lobbyist's contact information;
- The contact information for each of their principals;
- The topics on which they are authorized to lobby for each of their principals; and
- The date on which each principal hired them for lobbying.

[Form L-1](#).

- Renewing Registration – Lobbying licenses expire on December 31 of each even-numbered year, unless employment is terminated sooner, and must be renewed for each legislature in each odd-numbered year. [ARM 44.12.212\(1\)\(d\)](#).
- Fee – Lobbyists are required to pay a \$150 registration fee when filing Form L-1, but the fee may be waived in cases of hardship. [MCA § 5-7-103\(1\)](#). Factors to be considered in granting waivers include: whether the lobbyist is full or part time; whether working for more than one principal; compensation received through lobbying as opposed to other employment; and total compensation received through lobbying for the previous 12 months. [ARM 44-12-212\(2\)\(b\)\(i-iv\)](#).

## REPORTING

**Important Note:** Only principals (not individual lobbyists) are required to file reports periodically, see [MCA § 5-7-208](#), but it is the duty of each individual lobbyist to maintain records relating to information required to be reported and exemptions claimed. Each individual lobbyist and individual engaged in lobbying activities must provide such information to the principal promptly enough to allow timely reporting by the principal, [ARM 44.12.103](#).

### Reporting by Principals

- Reporting Schedule – The schedule on which principals are required to file reporting is contained in a chart at the beginning of [Form L-5](#). Form L-5 may be faxed or emailed to the Commissioner of Political Practices to meet a deadline, but a signed original must be submitted immediately thereafter.
  - Lobbying payments must be reported on the following schedule:
    - By February 15 of years in which the legislature is in session, disclosing all payments made from January 1 through January 31 of that year;
    - By the 15<sup>th</sup> day of the calendar month following any calendar month in which the principal spent \$5,000 or more, disclosing all payments made during the prior calendar month; and

- No later than 30 days following adjournment of a legislative session, disclosing all payments made during the session that were not previously reported.
- If a principal makes no payments during a reporting period in a session year, it must file a statement stating that fact. Reporting also is required in a non-session year in the event of a special legislative session.

[Form L-5](#); [MCA § 5-7-208](#).

- Penalty for Filing Delay – A principal that fails to file a report on time is subject to a civil penalty of \$50 for each working day that the report is late, up to a maximum of \$2,500 for each late report. A principal that receives a notice of imposition of a civil penalty may request, within ten (10) days, an informal hearing before the Commissioner of Political Practices. At the hearing, the Commissioner must consider any mitigating factors and may reduce or waive the penalty. [MCA § 5-7-306](#).
- Disclosure Required – Each report must:
  - Identify all lobbyists paid on the principal's behalf;
  - List all payments for lobbying in each of the following categories:
    - printing;
    - advertising, including production costs;
    - postage;
    - travel expenses;
    - salaries and fees, including allowances, rewards, and contingency fees;
    - entertainment, including all foods and refreshments;
    - telephone and telegraph; and
    - other office expenses;
  - Itemize each separate payment of \$25 or more paid to benefit a public official (e.g., entertainment, meals, beverages, etc.), and each separate payment of \$100 or more paid to benefit more than one public official (e.g., banquets, receptions etc.); these payments must identify the beneficiaries, except that for a dinner or function to which all senators or all representatives have been invited, the principal may simply identify the group without separately listing each person who attended;
  - Identify each donor who whose contributions or membership fees totaled \$250 or more for the calendar year and were paid to the principal for the purpose of lobbying. The principal must provide the donor's address and the issue area, if any, for which the

payment was paid for the purpose of lobbying. “Paid for the purpose of lobbying” means solicited to be used primarily for paying lobbying expenses, paid to a group formed or existing primarily for the purpose of lobbying, or earmarked or intended by the donor to be used for payment of lobbying expenses ([ARM 44.12.201](#)); and

- List each official action on which the principal or the principal’s agents exerted a major lobbying effort, together with a statement of the principal’s position for or against the action. “Major effort” is defined as any official action on which a principal’s agent engages in direct communication with any public official on two or more occasions to support, oppose or modify the official action. [ARM 44.12.102\(6\)](#).

[MCA § 5-7-208](#).

#### Reporting by Lobbyists

- Lobbyists are not required to file reports, but they must provide certain information to the principals on whose behalf they lobby, to facilitate the principals’ reporting. The records provided by the lobbyist to the principal must:
  - Identify each date on which the lobbyist was paid to lobby, and dates on which other individuals were paid to support or assist a lobbying activity;
  - Indicate the reportable time spent by a lobbyist or an individual lobbying or assisting or supporting a lobbying activity for each calendar day identified above; and
  - Identify each official action on which the lobbyist or the individual lobbied or supported or assisted a lobbying activity during the reporting period.

See [MCA § 5-7-208](#); [ARM 44.12.202](#); [ARM 44.12.103](#).

- Communications by an organization to its members are not reportable as lobbying expenditures. [ARM 44.12.102\(4\)\(e\)](#).

## **LOBBYING REGULATIONS**

#### Time Restrictions on Lobbying

- None.

#### Identification of Lobbyists

- There is no requirement that lobbyists wear a badge, although most legislative lobbyists do wear distinctive name tags of their own fashioning.

### Revolving Door

- A person may not be licensed as a lobbyist for a two-year period after serving as a state legislator, state official, or certain staff positions. [MCA § 5-7-310](#).

### Gifts, Trips and Hospitality

- Lobbyists are permitted to give gifts, trips and hospitality to legislators and other public officials. However, the lobbyist must permit the legislator or official to reimburse the lobbyist for the cost of the gift, trip or hospitality, if the legislator or official requests. [MCA § 5-7-210](#).

## **CONTACT INFORMATION FOR STATE AND LOCAL AGENCIES**

### **Commissioner of Political Practices**

1209 Eighth Avenue

Post Office Box 202401

Helena, MT 59620-2401

Tel: 406-444-2942

Fax: 406-444-1643

[www.politicalpractices.mt.gov](http://www.politicalpractices.mt.gov)

### **Jeff Mangan**

Commissioner of Political Practices

[jeff.mangan@mt.gov](mailto:jeff.mangan@mt.gov)

Written by Mike Meloy, Meloy Law Firm, Bluestone Building, 80 South Warren, Helena, MT 59601  
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## **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](mailto:advocacy@afj.org)  
Telephone: 1-866-NPLOBBY  
(675-6229)**

**For assistance regarding state law in Montana, please contact:**

**Mike Meloy,  
Meloy Law Firm  
Bluestone Building  
80 South Warren  
Helena, MT 59601  
Telephone: 406-442-8670**

**Montana State Law Resources 2018 Update By:**

**Laura Hoehn  
Trister, Ross, Schadler & Gold, PLLC  
P.O. Box 6631  
Bozeman, MT 59771  
Telephone: 406-219-3511**