



SPONSOR: Sen. Katz & Rep. Hudson
Sens. Bunting, Peterson & Sokola

DELAWARE STATE SENATE
146th GENERAL ASSEMBLY

SENATE BILL NO. 141

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO LOBBYISTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend §5831(a)(5), Title 29, Delaware Code, by adding after the word “individual”, the phrase
2 “required to register as a lobbyist under §5832 of this Title”, and further by deleting all language in that paragraph after the
3 phrase “state agency”, and by substituting in lieu thereof a period “.”.

4 Section 2. Amend §5831(b), Title 29, Delaware Code, by striking the phrase “subparagraphs a. and b. of
5 subsection” , and by substituting in lieu thereof , the word “subsection”, and further by deleting paragraphs (3), (4), and (5)
6 of that subsection, and by redesignating the remaining paragraphs accordingly.

7 Section 3. Amend §5831, Title 29, Delaware Code, by adding a new subsection (c) and (d) to read as follows:

8 “(c) The following activities are exempt from regulation under this subtitle if the individual engages in no other
9 acts during the reporting period that require registration:

10 (1) Professional services in drafting bills or in advising clients on the construction or effect of proposed or
11 pending legislation;

12 (2) Appearances before the entire General Assembly, or any committee or subcommittee of the General
13 Assembly, at the specific request of the body involved;

14 (3) Appearances before a legislative committee at the specific request of a regulated lobbyist, if the
15 witness notifies the committee that the witness is testifying at the request of the regulated lobbyist:

16 a. appearances before an executive unit at the specific request of the executive unit involved; or

17 b. appearances before an executive unit at the specific request of a regulated lobbyist, if the
18 witness notifies the executive unit that the witness is testifying at the request of the regulated
19 lobbyist.

20 (4) An elementary, secondary, or postsecondary school student or student organization that communicates
21 as part of a course or student activity is not subject to the registration requirements;

22 (5) Appearances as part of the official duties of an officer, director, member, or employee of an
23 association engaged exclusively in representing counties or municipal corporations, to the extent that the
24 appearance is not on behalf of any other entity;

25 (6) Actions of a member of the news media, to the extent the actions are in the ordinary course of
26 gathering and disseminating news or making editorial comment to the general public;

27 (7) Actions as part of the official duties of a trustee, an administrator, or a faculty member of a nonprofit
28 independent college or university in the state, provided the official duties of the individual do no consist primarily
29 of attempting to influence legislative action or executive action;

30 (8) Subsection (a)(5) of this section does not apply to a bona fide salesperson or commercial selling
31 agency employed or maintained by an employer for the purpose of soliciting or securing a procurement contract
32 unless the person engages in acts during the reporting period that require registration under subsection (a)(5) of
33 this section;

34 (9) If the person engages in no other acts during the reporting period that require registration, subsection
35 (a)(4) of this section does not apply to:

36 a. a bona fide full-time official or employee of a business entity seeking to secure a business
37 grant or loan; or

38 b. a person who seeks to secure a business grant or loan for the purpose of locating, relocating,
39 or expanding a business in or into the state.

40 (d) (1) Except for providing the authorization required by §5833 of this subtitle and the reports required by
41 §5835 of this subtitle, an entity that compensates one or more regulated lobbyists, and that reasonably believes that
42 all expenditures requiring registration will be reported by the regulated lobbyist or lobbyists, is exempt from the
43 registration and reporting requirements of this subtitle if the entity engages in no other act that requires
44 registration;

45 (2) If a regulated lobbyist compensated by an entity that is exempt under paragraph (1) of this subsection
46 fails to report the information required by this subtitle, the entity immediately shall become subject to the
47 registration and reporting requirements of this subtitle.”

48 Section 4. Amend §5832(a), Title 29, Delaware Code, by striking the phrase “§5833 of this title”, and by
49 substituting in lieu thereof, the phrase “subsection (a) of this section”, and further by deleting the phrase “§5831(a)(5) a. or
50 b.”, and substituting in lieu thereof, the phrase “§5832(a)”, and further by deleting the phrase “in accordance with
51 §5831(a)(5)c. of this title”, and further by redesignating subsections (a), (b), (c), and (d), as (b), (c), (d), and (e).

52 Section 5. Amend §5832, Title 29, Delaware Code, by inserting a new subsection (a), to read as follows:

53 “(a) A lobbyist shall register with the Public Integrity Commission pursuant to this part if it or he or she:

54 (1) receives or agrees to receive compensation or reimbursement for actual expenses, or both, in a
55 combined amount of one thousand dollars or more in a calendar quarter for lobbying, whether that receipt of
56 compensation or reimbursement or agreement to receive such compensation or reimbursement is solely for
57 lobbying or the lobbying is incidental to that person's regular employment; or

58 (2) makes or incurs an obligation to make expenditures of one thousand dollars or more in a calendar
59 quarter for lobbying.”

60 Section 6. Amend §5835, Title 29, Delaware Code, by deleting that section, and by substituting in lieu thereof, a
61 new §5835, to read as follows:

62 “§5835. Reports by Lobbyists.

63 (a) Each client lobbyist registrant shall file with the Public Integrity Commission by the twentieth day of January,
64 April, July and October a financial report, signed under penalty of false statement. If the client lobbyist registrant is not an
65 individual, an authorized officer or agent of the client lobbyist registrant shall sign the form.

66 (b) An individual lobbyist shall file a separate report for each person from whom he received compensation or
67 reimbursement.

68 (c) These reports shall contain total expenditures in connection with influencing executive action or legislative
69 action in each of the following categories:

70 (1) total individual regulated lobbyist's compensation;

71 (2) office expenses of the regulated lobbyist;

72 (3) professional and technical research and assistance;

73 (4) publications and advertising that expressly encourage communication with one or more officials or
74 employees;

75 (5) witnesses, including the name of each and the fees and expenses paid to each;

76 (6) meals and beverages for officials, employees, or members of the immediate families of officials or
77 employees;

78 (7) entertainment, including the cost of maintaining a hospitality room;

79 (8) lodging expenses away from home;

80 (9) fair value of travel if the trip exceeds 100 miles;

81 (10) recreation expenses; and

82 (11) gifts.

83 (d) Notwithstanding any provision of this subsection to the contrary, a business organization to which one or more
84 individual communicator lobbyist registrants belong may file a single report for each client lobbyist in lieu of any separate
85 reports that individual registrants are required to file pursuant to this subsection.”

86 Section 7. Amend §5836, Title 29, Delaware Code, by deleting that section in its entirety, and by substituting in
87 lieu thereof, a new §5836 to read as follows:

88 “§5836. Electronic filing of lobbyist registrations and activity reports with the Public Integrity Commission.

89 (a) Each registrant required to file any financial reports shall do so in electronic form using software created by the
90 Public Integrity Commission for that purpose.

91 (b) On or before May 1, 2012, the Public Integrity Commission shall make all computerized data from financial
92 reports required by this section available in a fully searchable, sortable, online database that the public can use to track
93 lobbyist expenditures and activities.”

94 Section 8. Amend §5837, Title 29, Delaware Code, by deleting §5837 in its entirety, and by substituting in lieu
95 thereof, the following:

96 “§5837. Retention of Records by Registered Lobbyists, and Random Audits by Public Integrity Commission.

97 (a) Each registrant shall obtain and preserve all accounts, bills, receipts and other documents necessary to
98 substantiate the financial reports required by section for a period of three years from the date of the filing of the report
99 referring to such financial matters.

100 (b) The Public Integrity Commission may require, on a random basis, any registrant to make all such documents
101 substantiating financial reports concerning lobbying activities in the last three years. No registrant shall be subject to such
102 requirement more than one time during any three consecutive years. The public integrity commission shall select registrants
103 to be audited by lot in a ceremony which shall be open to the public. Nothing in this subsection shall require a registrant to
104 make any documents concerning non-lobbying activities available to the Public Integrity Commission for inspection and
105 copying.”

106 Section 9. Amend Chapter 58, Title 29, Delaware Code, by adding the following:

107 “§5838. Violations, Penalties, and Prohibited Activities.

108 (a) Any person who knowingly fails to register as a lobbyist as required by this subchapter shall be guilty of a
109 misdemeanor.

110 (b) Any person who knowingly furnishes false information in any registration, authorization or report required by
111 this subchapter shall be guilty of a misdemeanor.

112 (c) Any person who fails to file an authorization or report as required by this subchapter shall be deemed to have
113 voluntarily cancelled registration as a lobbyist and shall be prohibited from reregistering or acting as a lobbyist until all
114 delinquent authorizations and/or reports have been filed.

115 (d) The Commission may refer to the Commission Counsel for investigation and/or refer any suspected violation
116 of this subchapter to the Attorney General for investigation and prosecution. The Speaker of the House, the presiding
117 officer of the Senate, the Legislative Council or any member of the General Assembly shall refer, or any other person may
118 refer, any suspected violation of this subchapter to the Commission and/or the Attorney General of the State.

119 (e) The Superior Court shall have exclusive jurisdiction over all offenses under this subchapter.

120 (f) Political committees. A lobbyist may not serve as a treasurer for a candidate's political committee or a
121 candidate's political action committee if the candidate is seeking a statewide office or the office of senator or representative
122 in the General Assembly.

123 (g) Fee restrictions. A lobbyist may not charge a fee or receive economic consideration based on a contract, either
124 written or oral, that any part of the fee or economic consideration will be converted into a contribution to a candidate for
125 public office or a political committee.

126 (h) Conflicts of interest.

127 (1) Except as permitted by paragraph (2) of this subsection, a registrant may not lobby on behalf of a
128 principal on any subject matter in which the principal's interests are directly adverse to the interests of another
129 principal currently represented by the lobbyist or previously represented by the lobbyist during the current session
130 of the general assembly or the lobbyist's own interests.

131 (2) A lobbyist may represent a principal in circumstances described in paragraph (1) if:

- 132 a. The lobbyist reasonably believes that the lobbyist will be able to provide competent and
133 diligent representation to each affected principal;
- 134 b. The lobbyist provides written notice to each affected principal upon becoming aware of the
135 conflict; and
- 136 c. Each affected principal provides informed consent waiving the conflict of interest.

137 (3) If a lobbyist represents a principal in violation of this section or if multiple representation properly
138 accepted becomes improper under this section and the conflict is not waived, the lobbyist shall promptly withdraw
139 from one or more representations to the extent necessary for remaining representation to not be in violation of this
140 section.

141 (4) If a lobbyist is prohibited by this section from engaging in particular conduct, an employer of the
142 lobbyist or a partner or other person associated with the lobbyist may not engage in the particular conduct.

143 (5) The commission may receive complaints regarding violations of this subsection. If the commission
144 determines a violation of this subsection has occurred, the commission, after investigation, notice and hearing:

145 a. shall impose an administrative penalty in an amount not to exceed \$2,000; and

146 b. may prohibit a lobbyist from lobbying for economic consideration for up to five years.

147 (6) A lobbyist and principal shall maintain the records relating to the conflict of interest set forth in
148 paragraph (2) for a four-year period beginning on the date the conflict is discovered and, in the case of an
149 investigation conducted under paragraph (6), provide copies of the records to the commission upon request.

150 (d) Multiple principals--nothing in this section shall be construed to require a lobbyist representing multiple
151 principals who each have an interest in the state budget process to comply with subsection (d)(2) unless a conflict of
152 interest exists under subsection (d)(1)

153 (e) Contingent compensation.

154 (1) A person may not compensate or incur an obligation to compensate a person to engage in lobbying for
155 compensation contingent in whole or in part upon any of the following:

156 a. occurrence, nonoccurrence or amendment of legislative action.

157 b. occurrence, nonoccurrence or amendment of an administrative action other than procurement
158 described in paragraph (1)(iv) of the definition of 'administrative action.'

159 (2) A person may not engage in or agree to engage in lobbying for compensation contingent in whole or
160 in part upon any:

161 a. occurrence, nonoccurrence or amendment of legislative action.

162 b. occurrence, nonoccurrence or amendment of an administrative action other than procurement
163 described in paragraph (1)(iv) of the definition of 'administrative action'.

164 (3) This subsection shall not apply to vendors.

165 (f) Unlawful acts.

166 (1) A lobbyist or principal may not:

167 a. Instigate the introduction of legislation for the purpose of obtaining employment to lobby in
168 opposition to that legislation.

169 b. Knowingly counsel a person to violate this chapter or any other federal or state statute.

170 c. Engage in or counsel a person to engage in fraudulent conduct.

171 d. Attempt to influence a state official or employee on legislative or
172 administrative action by making or facilitating the making of a loan to the state official or employee.
173 e. While engaging in lobbying on behalf of the principal, refuse to disclose to a state official or
174 employee, upon request, the identity of the principal.
175 f. Commit a criminal offense arising from lobbying.
176 g. Influence or attempt to influence, by coercion, bribery or threat of
177 economic sanction, a state official or employee in the discharge of the duties of office.
178 h. Extort or otherwise unlawfully retaliate against a state official or
179 employee by reason of the state official's or employee's position with respect to or vote on administrative
180 or legislative action.
181 (g) The commission may receive complaints regarding violations of this section. If the commission determines a
182 violation of this subsection has occurred, the commission, after investigation, notice and hearing:
183 (1) shall impose an administrative penalty in an amount not to exceed \$2,000; and
184 (2) may prohibit a lobbyist from lobbying for economic consideration for up to five years.
185 (h) The commission may, as it deems appropriate, refer an alleged violation of this subsection to the Attorney
186 General for investigation and prosecution.”

SYNOPSIS

This Bill adds comprehensive lobbyist reform provisions including additional financial reporting requirements. It also adds conflict of interest prohibitions and limitations on unethical conduct making such conduct illegal.

Author: Senator Katz