

Open Delaware

The Case for Strengthening Delaware's Lobbying Law

“ . . . the citizens have a right in an orderly manner to meet together, and to apply to persons entrusted with the powers of government, for redress of grievances or other proper purposes, by petition, remonstrance or address.”

Delaware Constitution, Article I

February 2011

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Introduction

Delaware's laws regulating lobbyists are weak compared to other states, and requiring greater disclosure of lobbyists' activities is especially important in the post-*Citizens United* era, when many of their clients are now free to make unlimited political expenditures. Unlike many states, Delaware does not require lobbyists to report their salaries or the specific bills on which they have been working. Nor does Delaware have a revolving door law that requires former legislators to wait for a certain period before becoming paid lobbyists.

Since Delaware's lobbying law was last revised, a number of trends have reinforced the need for greater disclosure and transparency. First, money spent on state-level lobbying in all 50 states has soared, reaching an estimated \$1.3 billion in 2006.¹ Second, the rising cost of running for public office has increased the clout—and, just as importantly, the perceived clout—of lobbyists whose clients make large campaign contributions. Third, states are harnessing the power of the Internet and “Google government” to give people instant access to information about lobbyists' activities. And fourth, the U.S. Supreme Court's *Citizens United* has given many lobbyists' clients a powerful new tool for influencing elections and public policy—the ability to make unlimited political expenditures.

While Delaware's constitution guarantees citizens the right to petition their government “for redress of grievances,” the days of citizen-petitioning have been largely eclipsed by the era of professional lobbying. The state's lobbying law should reflect this reality, and empower the public to understand how professional lobbyists are shaping public policy. Nothing helps makes the case for transparency like transparency: once the public is empowered to track lobbyists' spending more thoroughly, then funding for the Public Integrity Commission, which has the legal responsibility for tracking lobbyists in Delaware, will gain new urgency.

Delaware's Current System of Lobbyist Registration

Delaware currently requires lobbyists to file quarterly reports showing how much they have spent on gifts, meals, travel, recreation, and entertainments for elected officials. For 2009, the total amount reported in these categories by all lobbyists was \$96,077. This information is useful, but only tells a very small part of the story when it comes to their clients' expenditures on all lobbying-related activity. A citizen who goes to Dover to lobby on a volunteer basis for

herself or her community will rightly want to know how much money is being spent against her. As shown in Figure A on p. 4 of this report, a disclosure law that requires full reporting of salaries and related expenditures is far more helpful—often revealing up to 20 times the amount of total expenditures.

Lobbyist Registration in Other States

In response to political scandals involving influence-peddling by lobbyists, many states have gone well beyond requiring stronger disclosure of lobbyists' compensation and the issues on which they are lobbying. Connecticut bans all campaign contributions by lobbyists, while Maine bans them while its legislature is in session. Maryland prohibits lobbyists from buying individual legislators meals, limits them to inviting entire committees to “legislative unit receptions,” and requires lobbyists to disclose the time and place of these receptions five days in advance. With one of the strongest lobbyist laws in the country, Maryland also prohibits lobbyists from serving as chairs of political fundraising committees and from engaging in charitable fundraising activity at the request of a public official—a good example of a measure that protects both the public and lobbyists from attempts to exert undue influence.

As shown in Figure C on pages 8-9 of this report, Delaware is one of eight states that do not have a lobbyist registration fee, and is one of twenty-five that do not require lobbyists to report compensation from their clients. A 2003 report card by the Center for Public Integrity gave Delaware an “F” for its lobbyist disclosure laws.ⁱⁱ

Case Study #1: Expenditures Reported by Top Lobbyists in Delaware vs. Maryland.

According to a study by the *Wilmington News Journal*, Delaware lobbyists reported \$818,000 in expenditures from 2003-2007—a figure that would be much, much higher if Delaware also required lobbyists to report the compensation they receive from each of their clients, and required lobbying organizations to report money spent on communicating or encouraging people to communicate with elected officials.

According to the Maryland State Ethics Commission, Maryland lobbyists spent \$9,608,370 on food, entertainment, lodging, travel, recreations, and gifts from 2003-2007. **The figure for**

lobbyists' compensation, and money spent on communicating with legislators, was \$171,936,473 for this same period, or 18 times as much.

While Maryland's population is approximately six times that of Delaware, and its state legislature has 188 members to Delaware's 62, the ratio of money spent on gifts and entertainment to the money spent on the full range of lobbying-related activity suggests how much lobbyists may be spending in Delaware.

Figure A: Lobbying Expenditures in Delaware & Maryland, 2003-2007

DE: Partial Disclosure	DE: Full Disclosure	MD: Partial Disclosure	MD: Full Disclosure
\$818,724	?	\$9,608,370	\$171,936,473

Figure B: Reported Expenditures by Companies Lobbying in Delaware & Maryland, 2003-2007ⁱⁱⁱ

Lobbying Entity	DE Partial Disclosure	DE: Full Disclosure	MD: Full Disclosure
Verizon	\$67,511	?	\$1,668,211
American Insurance Association	\$25,939	?	\$273,883
American Petroleum Institute	\$19,985	?	\$462,740
State Farm Insurance	\$14,289	?	\$611,876
Bank of America	\$3,431	?	\$343,798

Definitions

Delaware Partial Disclosure: includes expenditures on food, entertainment, lodging, travel, recreation, gifts.

Maryland Partial Disclosure: includes expenditures on food entertainment, lodging, travel, recreation, gifts.

Maryland Full Disclosure: includes items listed under Partial Disclosure, plus these categories:

- expenditures on total compensation paid to registered lobbyists;
- salaries and expenses of staff of registered lobbyists;

- office expenses;
- cost of professional and technical research;
- cost of publications which expressly encourage persons to communicate with officials or employees, and fees and expenses paid to witnesses.

Case Study #2: Disclosure of Lobbying Expenditures by the Tobacco Industry in Delaware vs. Maryland

In 2003, Common Cause released a study of \$45,000 in campaign contributions made from 1999-2002 by the tobacco industry and its allies to candidates in Delaware. A similar study of the tobacco industry's influence in Maryland from 1999-2002 found \$226,000 in campaign contributions by the industry and its allies, **and found an additional \$1 million in lobbying expenditures by tobacco companies , thanks to Maryland's stronger lobbyist disclosure law.**

The Delaware study found that many of the lobbyists working on behalf of the tobacco companies in Delaware were able to draw on close personal ties with key legislators. Some examples included:

- Robert Byrd, the lobbyist for U.S. Tobacco, was a former member of the House of Representatives. He also lobbied on behalf of Dover Downs, an ally of the tobacco industry in opposing Clean Indoor Air legislation. In addition, Byrd served as chairman of the Delaware Economic Advisory Council, a group appointed by the governor to estimate future state revenues.
- Joseph Petrilli, a lobbyist for Philip Morris, was the former majority leader of the Delaware House of Representatives.
- Ned Davis and his daughter, Mary Davis, lobbied on behalf of Dover Downs and Altria (formerly Philip Morris). A former employee of Ned Davis' firm also worked for Governor Ruth Ann Minner (D) managing appointments to state boards and commissions.
- Scott Kidner was a lobbyist for Lorillard and the Brown and Williamson tobacco companies. His wife, Rebecca Kidner, was formerly an attorney for the Senate democrats. At the time of the 2003 report, she was a lobbyist for the Delaware

Standardbred Owners Association, while Scott Kidner represented the Thoroughbred Association. The horse racing industry was a close ally of the tobacco companies on opposing Clean Indoor Air legislation.

According to the 2003 report, a more subtle method used by the tobacco industry to increase its influence in the legislature involved partnering with subsidiary firms such as Kraft Foods and Miller Brewing (both owned by Philip Morris) and trade associations from other industries that were willing to support Big Tobacco's cause. Such groups benefit by increased tobacco sales and/or by decreased regulation. Subsidiary firms offer legislators political cover by allowing them to accept contributions that do not come directly from the tobacco companies, even though tobacco subsidiaries are financially tied to the success of their parent companies.

In 2011, tobacco lobbyists are working against further tax increases on cigarettes, and working to preserve the state's special tax rate for snuff. On the other side of this issue, a 2010 study by the Campaign for Tobacco-Free Kids found that raising Delaware's cigarette tax by an additional \$1 would:

- Prevent 6,400 kids from becoming smokers;
- Spur 3,300 current adult smokers to quit;
- Save 2,900 residents from premature, smoking-caused deaths; and
- Save \$143.4 million in health care costs.

On tobacco—as with any issue—the public must be empowered to follow the money and judge what its impact may be on public policy. Unfortunately, Delaware's current lobbying law leaves the public largely in the dark.

Recommendations

- Require legislators to wait at least a year after leaving office before becoming paid lobbyists;
- Require lobbyists who are paid \$1000 or more by a client in a calendar quarter to report compensation from that client to the Public Integrity Commission;
- Require organizations spending more than \$1000 on lobbying in a calendar quarter to report expenditures on all lobbying-related activities, including publications that urge people to communicate with elected officials;
- Increase funding for the Public Integrity Commission, and create a fully searchable, sortable database of lobbyist expenditures.

About Common Cause Delaware

Common Cause Delaware is a nonpartisan, grassroots organization dedicated to restoring the core values of American democracy, reinventing an open, honest and accountable government capable of solving today's challenges to the public interest, and empowering ordinary people to make their voices heard in a government that belongs to them. Since its founding in 1975, CC/DE has been one of the state's most effective watchdog groups and has played a leading role in the passage of major reforms at the state and local levels.

Figure C: Lobbyist Disclosure in all 50 States in 2009

Source: COGEL Blue Book: 2010 Lobbying Update On Litigation and Legislation, U.S. & Canada

http://cogel.org/sites/default/files/2010_COGEL_Lobbying_Update.pdf

	Fee	Fee application	Expenditures	Salaries?	Lobbyists	Principals	Registration threshold
AK	250	per client, per year	\$15,754,352	yes	128	365	10 days in a 30-day period
AL	100	for all registrations	not required	no	650	745	\$100/year
AS	0		not required	no	402	n/a	\$400/quarter
AZ	25	for principals per lobbyist, per year	\$560,496	no	3208	1163	Anyone who lobbies for \$
CA	25		\$553,843,326	yes	DNR	DNR	\$5,000/quarter
CO	40	per lobbyist	\$30,664,286	yes	482	2215	Anyone who lobbies for \$
CT	150	per client, per year	\$22,185,077	yes	701	870	\$2,000/quarter
DE	0		\$96,077	no	335	857	Anyone who lobbies
FL	20	per client, per year	DNR	yes	1991	3068	Anyone who lobbies for \$
GA	200/10	first/each additional	\$1,527,215	no	1806	n/a	\$250/year
HI	0		\$4,986,862	no	307	315	\$750/year
IA	0		\$387,543	no	563	598	Anyone who lobbies
ID	10	per client, per year	\$505,977	no	400	533	\$250/quarter
IL	300	for principals	\$1,355,072	no	1791	1781	Any principal who lobbies
IN	100/50	for-profit/non-profit 300 if spending 1,000+	\$25,813,420	yes	1600	n/a	\$500/year
KS	35/300		\$1,345,514	no	521	1501	\$100/year in expenses
KY	250	for principals	\$14,245,894	yes	637	660	Principals who hire lobbyists
LA	110	per client, per year	\$527,282	no	534	n/a	\$500/year
MA	100/1000	lobbyist/principal	DNR	yes	DNR	DNR	\$5,000 or 50 hours in 6 months
MD	100	per client, per year	\$41,464,274	yes	648	3146	\$2,500/6 months
ME	200	per lobbyist	\$3,289,673	yes	277	329	8 hours/month
MI	0		DNR	yes	DNR	DNR	\$1,100/year
MN	0		\$61,133,000	yes	1127	1201	\$3,000/year
MO	10	for all registrations	\$993,468	no	1,000	n/a	Anyone who lobbies for \$
MS	25	per client, per year	\$21,957,264	yes	463	620	Anyone who lobbies for \$
MT	150	for all registrations	\$6,000,000	yes	442	445	\$2,400/year
NC	100	per client, per year	\$23,753,584	yes	746	799	5% of time in 30 day period
ND	25/5	first/each additional	\$675	no	90	200	Anyone who lobbies
NE	200/15	paid/volunteer	\$13,347,028	yes	350	503	Anyone who lobbies
NH	50	per client, per year	DNR	no	DNR	DNR	Anyone who lobbies for \$
NJ	425	per principal	\$33,214,649	yes	964	2060	\$2,500/year
NM	25	per client, per year	DNR	no	620	771	Anyone who lobbies for \$
NV	300/20	paid/volunteer	DNR	no	912	1137	Anyone who lobbies

NY	200	for all registrations	\$197,800,000	yes	5447	1137	\$5,000/year
OH	25	per client, per year	\$407,322	no	1539	1578	Anyone who lobbies for \$
OK	100	for all registrations	\$102,757	no	358	814	Anyone who lobbies for \$
OR	0		DNR	no	DNR	DNR	\$100 or 24hrs/quarter
PA	200	per client, per year	\$470,000,000	yes	1500	1700	\$2,500 or 20hrs/quarter
RI	5	for all registrations	n/a	no	n/a	n/a	Anyone who lobbies
SC	100	per client, per year	\$19,203,491	yes	570	532	Lobbying for someone else
SD	40	per client, per year	n/a	no	644	361	Anyone who lobbies for \$
TN	150	per client, per year*	\$23.8M- \$54.7M	yes	489	646	Anyone who lobbies for \$
TX	500	for all registrations	\$4,973,569	no	1518	18933	\$1,000/quarter
UT	100	for all registrations	n/a	no	490	2261	Anyone who lobbies
VA	50	per client, per year	\$15,335,115	yes	900	800	\$500/year
VT	25/5	first/each additional	\$6,983,858	yes	411	399	\$500/year
WA	0		\$48,726,971	yes	898	1313	Anyone who lobbies
WI	250/400	one client/multiple	\$36,205,937	yes	811	783	Anyone who lobbies for \$
WV	100	per client, per year	\$326,600	no	394	399	Anyone who lobbies for \$
WY	25	for all registrations	\$2,008	no	87	87	\$500/year

COGEL=Council on Governmental Ethics Laws

Key to abbreviations in Figure C: n/a=not applicable; DNR=did not respond to COGEL survey

ⁱ Center for Public Integrity, <http://projects.publicintegrity.org/hiredguns/chart.aspx?act=lobbyspending>

ⁱⁱ Ibid, <http://projects.publicintegrity.org/hiredguns/iys.aspx>

ⁱⁱⁱ Source for 2003-2007 Delaware expenditures: *Wilmington News Journal*; source for Maryland expenditures: Maryland State Ethics Commission.