

CHAPTER VI
LOBBYING

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INTRODUCTION

This chapter discusses the Nevada Lobbying Disclosure and Regulation Act (Lobbying Act), which applies to people who lobby the Legislative Department of State Government. (Ch. 218H of NRS) In simplest terms, this Act contemplates the registration and disclosure requirements for lobbyists and prohibits certain conduct of lobbyists. (*Id.*)

ADMINISTRATION

The Lobbying Act is administered by the Director of the Legislative Counsel Bureau (Director), who is authorized to interpret the Lobbying Act and take other actions that are necessary to administer the Lobbying Act. (NRS 218H.500 to 218H.530, inclusive) Additionally, the Legislative Commission is authorized to adopt regulations to carry out the Lobbying Act, and the Legislative Commission has done so in its adoption of the *Guidance on Lobbying*, which was adopted on December 28, 2022, and can be found on the Legislature’s Internet website. (NRS 218H.500)

WHO IS A “LOBBYIST”?

The Lobbying Act applies to persons who meet the definition of a “lobbyist.” That term is defined as follows:

1. “Lobbyist” means, except as limited by subsection 2, a person who communicates directly with a member of the Legislative Branch on behalf of someone other than himself or herself to influence legislative action, whether or not any compensation is received for the communication.
2. “Lobbyist” does not include:
 - (a) Persons who confine their activities to formal appearances before legislative committees and who clearly identify themselves and the interest or interests for whom they are testifying.
 - (b) Employees of a bona fide news medium who meet the definition of “lobbyist” set forth in subsection 1 only in the course of their professional duties and who contact Legislators for the sole purpose of carrying out their news gathering function.
 - (c) Employees of departments, divisions or agencies of the state government who appear before legislative committees only to explain the effect of legislation or any other legislative action related to their departments, divisions or agencies.

(d) Members of the Legislative Branch who are exercising, performing or carrying out their powers, functions, duties or responsibilities on matters relating to legislation or any other legislative action.

(e) Elected officers of this State and its political subdivisions who confine their lobbying activities to issues directly related to the scope of the office to which they were elected.

(f) Persons who contact the Legislators who are elected from the district in which they reside.

(g) Persons who are clients of a lobbyist, unless those persons engage in any activities that independently meet the definition of “lobbyist” set forth in subsection 1.

(h) Persons who confine their lobbying activities to communicating directly with one or more members of the Legislative Branch only on an infrequent or irregular basis and who do not otherwise engage in any lobbying activities, unless those persons engage in a pattern of conduct that is substantially similar to engaging in lobbying activities on a recurrent or regular basis.

(NRS 218H.080)

REGISTRATION

A person who acts as a lobbyist during a regular or special session is required to file a registration statement with the Director not later than 2 days after beginning the lobbying activity. (NRS 218H.200) The registration statement must be filed electronically on the Legislature’s Internet website and the lobbyist must pay a registration fee under certain circumstances. (*Guidance on Lobbying Adopted by the Legis. Comm’n* (Nev. Dec. 28, 2022)) The registration fees are as follows:

- Paid lobbyists must pay \$300 for regular sessions and \$50 for special sessions.
- Paid lobbyists representing only nonprofit organizations must pay \$100 for regular sessions and \$20 for special sessions.
- Nonpaid lobbyists must pay \$20 for regular sessions and \$20 for special sessions.
- Nonpaid veteran lobbyists must pay \$0 for regular session and \$0 for special sessions.

The initial registration statement must include the lobbyist’s name, a photograph of the lobbyist, certain contact information concerning the lobbyist and the employer or business of the lobbyist, and certain other information. (NRS 218H.210) The initial

registration statement must also identify the lobbyist's clients and certain associations with legislators under certain circumstances. (*Id.*)

Once the Director registers the lobbyist, the lobbyist will be furnished an identification badge that must be worn whenever the lobbyist appears in the Legislative Building. (NRS 218H.300)

If any information changes on the lobbyist's initial registration statement, the lobbyist must file a supplementary registration statement with the Director not later than 24 hours after the change, if it occurred during a regular or special session, or not later than 14 days after the change if it occurred during the interim. (NRS 218H.220) If the lobbyist terminates the lobbying activity during a regular or special session, the person must file a termination notice with the Director not later than 30 days after the termination. (NRS 218H.230)

REPORTING REQUIREMENTS

During a regular or special session, each lobbyist is required to electronically file a report concerning their lobbying activities for the previous month with the Director. (NRS 218H.400) Each lobbyist is also required to electronically file a final report with the Director not later than 30 days after the close of the session. (*Id.*)

The reports must disclose the lobbyist's expenditures, and if the total expenditures exceed \$50, the expenditures must be itemized on the report. (*Id.*) The term "expenditure" is defined under the Lobbying Act as follows:

1. "Expenditure" means any of the following acts by a lobbyist while the Legislature is in a regular or special session:

(a) Any payment, conveyance, transfer, distribution, deposit, advance, loan, forbearance, subscription, pledge or rendering of money, services or anything else of value; or

(b) Any contract, agreement, promise or other obligation, whether or not legally enforceable, to make any such expenditure.

2. The term includes, without limitation:

(a) Anything of value provided for an educational or informational meeting, event or trip.

(b) The cost of a party, meal, function or other social event to which every Legislator is invited.

3. The term does not include:

(a) A prohibited gift.

(b) A lobbyist's personal expenditures for his or her own food, beverages, lodging, travel expenses or membership fees or dues.

(NRS 218H.050)

If a lobbyist files a report late, the lobbyist must pay a \$10 late fee to the Director, unless the lobbyist is a nonpaid lobbyist or nonpaid veteran lobbyist, in which case there is not a late filing fee. (NRS 218H.410; *Guidance on Lobbying Adopted by the Legis. Comm'n* (Nev. Dec. 22, 2022))

PROHIBITED CONDUCT

The Lobbying Act prohibits certain conduct of lobbyists. (NRS 218H.900, 218H.930, and 218H.950) A violation of any such prohibition is punishable as a misdemeanor. (NRS 218H.960) Additionally, the Director of the Legislative Counsel Bureau may suspend or revoke the registration of a lobbyist who violates the Lobbying Act. (NRS 218H.530) Moreover, a district court may issue an injunction to enforce the Lobbying Act upon application by the Attorney General. (NRS 218H.540)

Misrepresentations

The Lobbying Act prohibits a lobbyist from indicating that the lobbyist has authorization from a legislator to request a professional service from an employee of the Legislative Counsel Bureau when the lobbyist does not have that authorization. (NRS 218H.900) Additionally, if a lobbyist obtains a legislator's authorization to request a professional service from an employee of the Legislative Counsel Bureau, the lobbyist is prohibited from misrepresenting the scope of that authorization. For purposes of these prohibitions, "professional service" means "conducting legal, fiscal or policy research or analysis, drafting a bill, resolution or amendment, or otherwise engaging in work for which an employee is professionally trained or qualified." (*Id.*)

A lobbyist is also prohibited from knowingly or willfully making false statements or misrepresentations of facts to members of the Legislative Branch for the purpose of persuading or influencing the member into taking a legislative action. (NRS 218H.930)

Finally, a lobbyist is prohibited from knowingly or willfully making a false statement or misrepresentation of fact in a registration statement or report required under the Lobbying Act. In this vein, and with certain exceptions, a person is prohibited from knowingly acting as a lobbyist during a regular or special session without being registered as a lobbyist. (*Id.*)

Gifts

One of the main aspects of the Lobbying Act is its gift prohibitions, which act to: (1) restrict lobbyists from knowingly and willfully giving gifts to members of the Legislative Branch and their immediate family; and (2) restrict members of the Legislative Branch and their immediate family from knowingly or willfully soliciting or accepting a gift from a lobbyist. (NRS 218H.930) This prohibition applies year-round regardless of whether the Legislature is in session. (*Id.*)

PROHIBITED GIFT RECIPIENTS

The Lobbying Act identifies two groups of people as prohibited gift recipients: (1) members of the Legislative Branch; and (2) immediate family of those persons. (*Id.*) However, each of these groups are composed of several subgroups of people who are prohibited gift recipients.

As relates to the first group of prohibited gift recipients, the term “members of the Legislative Branch” is defined as “any Legislator, any member of the Legislator’s staff or any officer, employee, assistant or other person employed with reference to the legislative duties of the Legislator or the Legislative Branch, regardless of whether they are paid or otherwise compensated to serve in their positions.” (NRS 218H.090, 218H.930) Thus, the term “member of the Legislative Branch” can be further broken down into two subgroups of people: (1) legislators; and (2) legislative staff.

Although, the term “legislator” is not a defined term under the Lobbying Act, the term is defined for the purpose of Title 17 of NRS, which encompasses the Lobbying Act. Therefore, the title-wide definition for “legislator” applies for purposes of the Lobbying Act and means “a person elected or appointed as a member of the Senate or Assembly.” (NRS 218A.072) Thus, all legislators, regardless of the method by which they are seated, are prohibited gift recipients under the Lobbying Act. However, it is important to note that the timing of when the gift prohibitions apply to the legislator is dependent on when the legislator begins their term of office.

For purposes of elected legislators, their terms of office in the Senate or Assembly begin on the day after their election. Therefore, the gift prohibitions would apply to elected legislators on the day after their election, regardless of whether the member-elect has taken the official oath of office or has been seated in the Senate or Assembly. (Nev. Const. Art. 4, Secs. 3 and 4)

Contrastingly, appointed legislators begin their terms of office “from the time of their qualification,” which means at the time that they receive their certificate of appointment and take the official oath of office. (Nev. Const. Art. 4, Sec. 12; Art. 15, Sec. 2; NRS 218A.220, 218A.260, 282.010, and 283.130) Once the appointee completes these tasks, they are qualified to take office, and therefore subject to the gift prohibition provisions of the Lobbying Act, regardless of whether the appointed legislator has been seated in the Senate or Assembly. (NRS 282.010)

The second group of people covered under the umbrella term “members of the Legislative Branch” is “any member of the Legislator’s staff or any officer, employee, assistant or other person employed with reference to the legislative duties of the Legislator or the Legislative Branch, regardless of whether they are paid or otherwise compensated to serve in their positions.” (NRS 218H.090) It is important to note that this part of the definition is not dependent on compensation or full-time employment.

Therefore, the gift prohibitions would apply broadly to all legislative staff, including full-time and part-time employees and unpaid volunteers and interns.

The second group of people to which the gift prohibitions apply is the “immediate family” of members of the Legislative Branch. (NRS 218H.930) The term “immediate family” means any of the following: (1) the spouse or domestic partner of the person; (2) a relative who lives in the same home or dwelling as the person; or (3) a relative who does not live in the same home or dwelling as the person but who is dependent on and receiving substantial support from the person. (NRS 218H.065) Moreover, a “relative” is someone related to the person, or to the spouse or domestic partner of the person by blood, adoption, marriage, or domestic partnership within the third degree of consanguinity or affinity. (*Id.*) Therefore, any such spouse, domestic partner, or relative of a legislator or legislative staff is similarly restricted by the gift prohibitions under the Lobbyist Act.

WHAT IS A “GIFT”?

One of the main considerations in determining whether the gift prohibitions have been violated is the determination of whether the thing or service exchanged qualifies as a “gift.” The term “gift” is defined in relevant part as “any payment, conveyance, transfer, distribution, deposit, advance, loan, forbearance, subscription, pledge or rendering of money, services or anything else of value.” (NRS 218H.060) In simple terms, a “gift” means anything with even a *de minimis* value, including, goods, services, food, beverages, entertainment, etc. (*Id.*) This point is further emphasized from the legislative history of the gift prohibition section of law, which used to allow gifts that were valued less than \$100. (Section 12 of Senate Bill 307, chapter 320, Statutes of Nevada 2015, at 1717 (amending NRS 218H.930)) Therefore, if the exchanged good or service has any value, it would be considered a gift under the Lobbying Act, unless one of the specific exceptions applies to the exchange. These exceptions are explained in greater detail in the following sections.

EQUAL OR GREATER CONSIDERATION EXCEPTION

The Lobbying Act does not consider something a “gift” if “consideration of equal or greater value is received.” (NRS 218H.060)

For example, if a lobbyist is also a lawyer and a legislator hires the lobbyist-lawyer and pays fair market value for private legal services, such as representing the legislator in an administrative or judicial proceeding, the private legal services would not be included within the definition of the term “gift” because the legislator provided consideration of equal or greater value in the exchange for the private legal services.

By contrast, if the legislator hires the lobbyist-lawyer to represent the legislator in an administrative or judicial proceeding, but the lobbyist-lawyer provides the private

legal services to the legislator for free or “pro bono,” the free private legal services would be included within the definition of the term “gift,” unless another one of the exceptions applies. For example, the free private legal services would not be included within the definition of the term “gift” if the lobbyist-lawyer is a member of the legislator’s household or a relative of the legislator within the third degree of consanguinity or affinity.

It should be noted, however, that a lobbyist-lawyer who provides legal services as part of the legislative process on behalf of the lobbyist-lawyer’s client who is not a legislator, such as proposing, drafting, or reviewing bills or amendments on behalf of the lobbyist-lawyer’s client, is not providing legal services to a legislator. Instead, the lobbyist-lawyer is providing legal services to the lobbyist-lawyer’s private client, and those legal services would not be considered a gift to the legislator.

Thus, if adequate consideration is provided in exchange for the good or service, it is not a “gift” for purposes of the Lobbying Act.

POLITICAL CONTRIBUTION EXCEPTION

The Lobbying Act specifically excludes “a political contribution of money or services related to a political campaign” from the meaning of “gift.” (NRS 218H.060) Practically, this exception means that a legislator may accept a lobbyist’s political contribution without violating the gift prohibition provisions of the Lobbying Act. However, such political contributions are prohibited during certain statutorily prescribed black-out periods. (NRS 218H.930 and 294A.300)

COMMERCIALLY REASONABLE LOAN EXCEPTION

The definition of “gift” under the Lobbying Act also explicitly excludes “a commercially reasonable loan made in the ordinary course of business.” (NRS 218H.060) It is important to note that the loan must require repayment on commercially reasonable terms, including at an interest rate that is considered commercially reasonable, and the loan must be made in the ordinary course of business in the same manner as similar loans to any other person. Practically, this means that a lobbyist may make a commercially reasonable loan to a legislator or legislative staff, or their family, without violating the gift prohibition provisions of the Lobbying Act.

EDUCATIONAL OR INFORMATIONAL MEETING, EVENT, OR TRIP EXCEPTION

The Lobbying Act provides a specific exception to the meaning of “gift” for educational or informational meetings, events, or trips. (NRS 218H.060) The term “educational or informational meeting, event or trip” is defined as follows:

1. “Educational or informational meeting, event or trip” means any meeting, event or trip undertaken or attended by a Legislator if, in connection with the meeting, event or trip:

(a) The Legislator or a member of the Legislator’s household receives anything of value from a lobbyist to undertake or attend the meeting, event or trip; and

(b) The Legislator provides or receives any education or information on matters relating to the legislative, administrative or political action of the Legislator.

2. The term includes, without limitation, any reception, gathering, conference, convention, discussion, forum, roundtable, seminar, symposium, speaking engagement or other similar meeting, event or trip with an educational or informational component.

3. The term does not include:

(a) A meeting, event or trip undertaken or attended by a Legislator or a member of the Legislator’s household for personal reasons or for reasons relating to any professional or occupational license held by the Legislator or the member of the Legislator’s household, unless the Legislator or the member of the Legislator’s household participates as one of the primary speakers, instructors or presenters at the meeting, event or trip.

(b) A meeting, event or trip undertaken or attended by a Legislator or a member of the Legislator’s household if the meeting, event or trip is undertaken or attended as part of his or her bona fide employment or service as an employee or independent contractor and anything of value received by the Legislator or the member of the Legislator’s household for the meeting, event or trip or otherwise paid for or reimbursed to the Legislator or the member of the Legislator’s household as part of his or her bona fide employment or service as an employee or independent contractor.

(c) A party, meal, function or other social event to which every Legislator is invited where educational or informational displays or materials are available but no formal speech, presentation or other similar action to educate or inform the Legislators occurs.

4. For the purposes of this section, “anything of value” includes, without limitation, any actual expenses for food, beverages, registration fees, travel or lodging provided or given to or paid for the benefit of the Legislator or a member of the Legislator’s household or reimbursement for any such actual expenses paid by the Legislator or a member of the Legislator’s household, if the expenses are incurred on a day during which the Legislator or a member of the Legislator’s household undertakes or attends the meeting, event or trip or during which the Legislator or a member of the Legislator’s household travels to or from the meeting, event or trip.

(NRS 218H.045)

It is important to note that the educational or informational meeting, event, or trip exception is specific to legislators and members of their households, and therefore, does not apply to legislative staff.

Practically, a legislator may accept an invitation from a lobbyist to attend an educational or informational meeting, event, or trip that is conducted, sponsored, hosted, or requested by an organization for educational or informational purposes, and the lobbyist may pay for or reimburse, in whole or in part, any expenses of the legislator or a member of the legislator's household to undertake or attend the meeting, event, or trip. (NRS 218H.045 and 218H.060) If the lobbyist makes the expenditures for the educational or informational meeting, event, or trip while the Legislature is in a regular or special session, the lobbyist must include those expenditures on the report of lobbying activities submitted by the lobbyist to the Legislative Counsel Bureau. (NRS 218H.050 and 218H.400)

However, it should be noted that the definition of an "educational or informational meeting, event or trip" does exclude various types of educational or informational meetings, events, or trips. (NRS 218H.045) Thus, the particular details of the educational or informational meeting, event, or trip should be analyzed to ensure that it falls within one of the exceptions.

PARTY, MEAL, FUNCTION, AND SOCIAL EVENT EXCEPTION

Another exception to the definition of "gift" is "the cost of a party, meal, function, or other social event to which every Legislator is invited, including, without limitation, the cost of food or beverages provided at the party, meal, function, or other social event." (NRS 218H.060) There is a presumption that every legislator is invited to the event if: (1) it is held at a governmental building, facility, or other property; or (2) the invitation or notice for the event indicates that it is a legislative event. (*Id.*)

It should be noted that this exception is not dependent on whether the member of the Legislative Branch actually attends the event. Thus, a lobbyist may pay for entertainment, food, and beverages provided to members of the Legislative Branch at a party, meal, function, or other social event, if every legislator is invited, without violating the gift prohibitions of the Lobbying Act.

If the party, meal, function, or other social event is hosted by the lobbyist while the Legislature is in a regular or special session, the lobbyist must include those expenditures on the report of lobbying activities submitted by the lobbyist to the Legislative Counsel Bureau. (NRS 218H.050 and 218H.400)

CEREMONIAL GIFT EXCEPTION

A ceremonial gift received for a birthday, wedding, anniversary, holiday, or other ceremonial occasion from a donor who is not a lobbyist is also an exception to the

definition of the term “gift.” (NRS 218H.060) This exception hinges on whether the person who gives the ceremonial gift is a lobbyist. If the donor is not a lobbyist, the ceremonial gift will be excluded from the prohibited gift provisions of the Lobbying Act. (*Id.*)

GIFTS FROM RELATIVES AND HOUSEHOLD MEMBERS EXCEPTION

The Lobbying Act excludes certain gifts given to a member of the Legislative Branch or their immediate family by: (1) a person who is related to the recipient, or to the spouse or domestic partner of the recipient, by blood, adoption, marriage, or domestic partnership within the third degree of consanguinity or affinity; and (2) a person who is a member of the recipient’s household. (NRS 218H.060) For example, if a lobbyist is the spouse of a legislator, the lobbyist-spouse would be able to give a gift to the legislator without violating the prohibited gift provisions of the Lobbying Act.

GIFTS TO EMPLOYEE OR INDEPENDENT CONTRACTOR EXCEPTION

The final exception to what is considered a “gift” under the Lobbying Act is “anything of value received by a person as part of the person’s bona fide employment or service as an employee or independent contractor or otherwise paid for or reimbursed to the person as part of his or her bona fide employment or service as an employee or independent contractor.” (NRS 218H.060)

Accordingly, if a public or private employer provides an employee or independent contractor with any of the following, the employer is doing so in exchange for the services of the employee or independent contractor:

- Free meals, drinks, snacks, desserts, or other food or beverages.
- Advances, payments, or reimbursements for job-related travel expenses, including, without limitation, airfare, ground transportation, mileage costs, lodging, incidentals, meals, per diem, and other travel expenses.
- Job-related training, education, instruction, and information.

The following are some examples to illustrate these principles, but the examples are not intended to be exhaustive or exclusive:

- If a public or private employer provides coffee, snacks, food, or other beverages at the workplace for its employees and independent contractors, the employer is doing so in exchange for the services of its employees and independent contractors, so the food or beverages are not a gift.

- If a public or private employer pays for a holiday party or other celebratory event for its employees and independent contractors, the employer is doing so in exchange for the services of its employees and independent contractors, so any food, beverages, awards, or prizes provided at the party or event are not a gift.
- If the State reimburses a legislator for legislative-related travel expenses, the State is doing so in exchange for the service of the legislator, and the reimbursement is not a gift.
- If a legislator is an accountant and the legislator-accountant's private employer reimburses the legislator-accountant for travel expenses related to the legislator's private employment as an accountant, the private employer is doing so in exchange for the services of the legislator as an accountant, and the reimbursement is not a gift.
- If a public or private employer pays or provides job-related training, education, instruction, or information, whether in-house or outsourced, the employer is doing so in exchange for the services of its employees and independent contractors, and the training, education, instruction, or information is not a gift.

Thus, certain services and goods provided to legislators and their immediate families in the context of their employment are not considered gifts for the purposes of the prohibited gift provisions of the Lobbying Act.

Conduct Related to Money and Employment

The Lobbying Act also prohibits certain compensation, reimbursement, and employment schemes. For example, a client of a lobbyist is prohibited from making the lobbyist's compensation or reimbursement contingent on the outcome of any legislative action. (NRS 218H.930) Additionally, a member of the Legislative or Executive Department of State Government and an elected officer or employee of a political subdivision is prohibited from receiving compensation or reimbursement other than from the State or political subdivision for personally engaging in lobbying. However, an elected officer or employee of a political subdivision may receive compensation or reimbursement from an organization whose membership consists of elected or appointed public officers. (*Id.*)

In this vein, a lobbyist may not instigate the introduction of legislation for the purpose of obtaining employment to lobby in opposition of the legislation. (*Id.*) Additionally, with certain exceptions, a former legislator is prohibited from receiving compensation or other consideration to act as a lobbyist from the time the legislator leaves office to the date on which the next regular session adjourns sine die. (NRS 218H.950)

Finally, a lobbyist is prohibited from making, committing to make, or offering to make a monetary contribution to a legislator and certain other public officials and public officials-elect during certain time periods. (NRS 218H.930)