

Pay-to-Play Spotlight

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In December 2006, Ohio implemented one of the broadest pay-to-play laws in the country. Subsequently, this law has come under judicial scrutiny due to a host of drafting errors and underlying concerns about its overall constitutionality.

Under Ohio's pay-to-play law, a corporation (which is already prohibited under state law from making contributions to state and local candidates) is banned from receiving a contract with a value in excess of \$500 or contracts with an aggregate value of \$10,000 from a state or local government, board, or agency if any of the following contributions are made in the two years preceding the contract to the state or local officer with ultimate responsibility over the contract:

- Aggregate contributions in excess of \$1,000 by a 20% or more owner of the company, his or her spouse, or children under the age of 17;
- Aggregate contributions in excess of \$2,000 by the company's PAC; and
- Aggregate contributions in excess of \$2,000 by all owners of 20% or more of the company, their spouses, their children under 17, and the company's PAC.

In addition, once a company has a state or local contract, those same contribution prohibitions apply during the term of the contract and for one year following contract termination.

In the original bill, the pay-to-play restrictions were applied retroactively, which caused a county court of common pleas judge to declare the new law unconstitutional. In response, the Ohio Legislature removed the retroactivity, so that the law applied to contracts after January 2, 2007 and to contributions after April 4, 2007.

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In December 2007, the same common pleas judge again struck down the pay-to-play law, this time on the grounds that the bill signed into law did not match the bill passed by the legislature. According to press reports, the law is still in effect, pending appeal.

Despite the uncertainty surrounding the constitutionality of the law, it remains in place. Therefore, any company either currently contracting with an Ohio state or local entity or desiring to do so in the future must ensure that its substantial owners and PACs do not make contributions that could render the company ineligible for future contracts or cause it to lose the Ohio contracts it already holds.