State 'Baby FARA' Laws Create Compliance Maze for Businesses

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Lawmakers in Texas, Louisiana, Nebraska, Arkansas, and Oklahoma have crafted their own versions of the federal Foreign Agents Registration Act, aiming to address foreign influence in state policy. Legislatures in many other states are considering similar bills, including several new bills introduced this year.

Businesses, nonprofits, and universities are now navigating an increasingly complex and dizzying compliance maze, as many of these "baby FARA" laws require registration for the same kinds of activity that may otherwise be exempt under the federal statute. Organizations should expect more scrutiny and map their activities against state requirements in response.

While the state FARA laws vary in scope, they generally require persons engaged in influencing state action on behalf of (or with the support of) a foreign principal to publicly disclose the relationship and submit detailed reports about the work.

All of the current state laws, except Oklahoma, target activities on behalf of principals from countries of concern. Texas, Louisiana, and Nebraska identify China, Russia, Iran, North Korea, Cuba, and the Maduro regime in Venezuela as countries of concern, while Arkansas designates China, Iran, North Korea, and Russia.

Many of the laws cover not only foreign governments, but also any company or its subsidiaries that have a principal place of business in a country of concern or that is organized under the laws of those countries.

These state laws notably don't contain many of the common exemptions to the federal statute. For example, none of the state laws exempt purely commercial activity. The federal FARA statute exempts certain "bona fide" trade or commerce and other activities that don't predominantly serve foreign interests. The baby FARA laws also don't contain exemptions for purely academic activity, which is exempt under the federal statute, subject to some limitations.

Although the scope of these exemptions has been uncertain given the Trump administration's slow and obscure rollout of FARA regulations and guidance, many businesses and nonprofits commonly rely on these exemptions as a basis for nonregistration.

The Texas and Nebraska laws are the most expansive. Nebraska's law, which went into effect in October, covers activity on behalf of foreign governments in foreign adversary countries.

It also covers activity on behalf of businesses headquartered in those countries, entities with 20% or more ownership by foreign entities, and individuals located abroad in foreign adversary countries. The Nebraska law exempts diplomats, foreign government officers, purely legal representation, and certain immigration advocacy.

Texas' new law, effective as of September, requires agents of foreign adversaries (or related entities) to register with the state *and* bans them from receiving any compensation for covered activities.

This ban—together with the sweeping definition of foreign adversary to include entities organized under the laws of China, Russia, Iran, Cuba, North Korea, and Venezuela—can be read to prohibit US subsidiaries of these foreign companies from paying employees (or outside consultants) to lobby in the state. The ban is vulnerable to

constitutional challenge because restricting compensation for activities covered by the statute would raise serious First Amendment issues.

The state FARA laws that only impose registration and reporting obligations are also vulnerable to constitutional challenges on federal preemption grounds—that is, the federal government's regulation of foreign agents through the federal FARA statute arguably occupies the entire field and leaves no room for state regulation. The counterpoint to this argument is that the federal statute doesn't *clearly* regulate foreign lobbying on state policy, at least with respect to lobbying on behalf of foreign private companies.

The baby FARA rules accompany other related state initiatives aimed at combating foreign influence. Notably, Florida enacted a law last year prohibiting nonprofits that solicit donations in Florida from accepting donations from individuals or entities associated with "foreign countries of concern." The law doesn't establish a de minimis exception to distinguish large and small donations and requires nonprofits to certify to the state that they don't solicit or accept contributions from prohibited persons.

The state-level baby FARA and related laws represent a significant shift in how foreign influence is regulated in the US. While some uncertainties regarding implementation remain, organizations engaged in advocacy or with a nexus to countries of concern must proactively map their activities against state requirements, implement robust tracking systems, and prepare for a heightened threat of scrutiny.

Specifically, organizations with foreign ties should conduct thorough audits of their activities to identify any interactions with state governments or officials that could fall under these new baby FARA laws. Because many state-level laws don't include exemptions that exist under federal FARA, internal audits and tracking should be detailed enough to monitor activities that might not have been considered regulated previously.

Organizations should also anticipate increased regulatory attention as these laws take effect. Counsel should be proactively involved to interpret potentially complex scenarios, particularly in states with broad definitions of key terms and limited exceptions.

Finally, organizations with foreign ties should recognize that this regulatory landscape is evolving rapidly. More states have already introduced baby FARA bills this year, and we expect state agencies to roll out regulations interpreting existing laws in the coming year. Continuous monitoring and coordination with government relations teams are essential to ensure that these new requirements are integrated into compliance processes.

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