Recent Developments in Foreign and Domestic Criminal Commercial Bribery Laws

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Recent Developments in Foreign and Domestic Criminal Commercial Bribery Laws

Ryan J. Rohlfsen†

INTRODUCTION

The concept of bribery generally conjures notions of payments made by private citizens to government officials as part of a corrupt effort to obtain a government contract or some sort of unfair advantage. But the involvement of a public actor is not required; rather, bribery may include corrupt payments between purely private parties. This may occur, for example, when a vendor makes an improper payment to the purchasing director of a company to buy that vendor’s goods instead of another vendor’s.

Various jurisdictions have enacted laws criminalizing such “commercial” or “private” bribery. While the majority of US states have criminal commercial bribery laws, there is no general federal statute. In recent years, a number of international non-governmental organizations (NGOs) have pressed for countries to implement stringent criminal anti-commercial bribery laws. Major economies, such as the United Kingdom, have subsequently passed broad measures that address commercial bribery.

Anti-commercial bribery laws are generally based upon classic agency principles regarding the impropriety of influencing an agent to breach a duty it owes to a principal. The legal formulations, however, are not uniform.

This Article explores criminal commercial bribery concepts both globally and in the United States. Part I notes key formulations of anti-commercial bribery laws in various foreign jurisdictions and by NGOs. Part II sets forth the US federal framework

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for prosecuting acts of commercial bribery through the Travel Act and highlights various approaches taken by US states. Part III concludes.

I. GLOBAL ANTI-COMMERCIAL BRIBERY FORMULATIONS

Laws prohibiting commercial bribery are not new. Commercial bribery statutes in various forms have been in force for decades in jurisdictions around the world. Reported cases of enforcement of those laws, however, have not been prevalent. Countries take different legal approaches to combating private sector bribery.

Global awareness of, and focus on, corruption have increased steadily over the last twenty years. Much of that increase has come from major international bodies championing global standards on antibribery laws. Additionally, the aggressive enforcement in several major jurisdictions (including the United States) of laws prohibiting bribery of public officials in connection with international business transactions has led business and political leaders to focus on compliance with these laws. Indeed, until late in the 1990s, bribery in some instances was a tax-deductible expense in many nations. One influential NGO has noted that permissiveness toward private sector bribery may foster a business climate conducive to bribery of public officials.

Corruption can lead to several negative consequences. It can distort fair competition. It may increase costs ultimately

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1. The Appendix provides a survey of state antibribery laws.
4. See id.
5. See, for example, Peter J. Henning, A Warning as Wall Street Moves Into Emerging Markets, NY Times F12 (Sept 29, 2011).
borne by companies, their shareholders, and consumers. And private bribery can also create public safety risks when products or services are chosen for improper reasons, instead of for merit.

Against this backdrop, as detailed further below, many key NGOs have recommended (and a number of countries have implemented) laws criminalizing bribery between private citizens in transactions that do not involve government business. Notably, the United Kingdom has recently enacted a stringent new antibribery law that includes private bribery.9 The following is an overview of some key activities in this area.10

A. International Conventions and Positions Regarding Criminal Commercial Bribery

1. UN Convention against Corruption.

In 1996, the United Nations (UN) General Assembly issued its Declaration against Corruption and Bribery in International Commercial Transactions (the "UN Declaration").11 The UN Declaration called on UN member states to take actions to combat bribery in international commercial dealings.12

In 2005, the United Nations Convention against Corruption (the "UN Corruption Convention") entered into force.13 The UN Corruption Convention includes recommendations regarding member states' adoption of laws relating to corrupt activities.14 This category includes corrupt commercial activities between purely private parties that involve no contact whatsoever with the public sector.15

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9 See Bribery Act 2010, c 23 s 1 (UK).
10 The intent of this Article is to explore concepts and examples of general criminal commercial bribery formulations. This Article is not comprehensive of all laws that may conceivably prohibit such activity.
11 United Nations General Assembly, United Nations Declaration against Corruption (cited in note 6).
12 See id.
14 See id at 9–17.
The UN Corruption Convention prohibits both “active” and “passive” commercial bribery. A bribe is “active” under the UN Corruption Convention when a person makes an affirmative act to provide another some sort of undue advantage to receive a commercial benefit in kind. That undue advantage can be tangible or intangible, pecuniary or nonpecuniary. Moreover, the UN Corruption Convention recommends a flexible approach to the giving of the benefit; it recognizes that one could give a benefit directly to the person or indirectly to another for the benefit of that person, and the benefit need not be temporally proximate to the request for the improper act. As with bribery of public officials, a person committing active commercial bribery must intend for the conferred benefit to constitute a bribe. Under the UN’s formulation, though, criminal liability may attach even when the attempted bribe is ultimately unsuccessful.

“Passive” commercial bribery is the act of soliciting or accepting a bribe. As with active bribery, the bribe may go directly to the person of influence, or indirectly through other, related persons or entities. The requisite mental state for criminal liability to attach is “only that of intending to solicit or accept the undue advantage for the purpose of altering one’s conduct in breach of his or her duties, in the course of economic, financial or commercial activities.”

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16 Id at 104–06. See also United Nations Office on Drugs and Crime, United Nations Convention against Corruption at 19 (cited in note 13). Article 21 of the UN Corruption Convention, “Bribery in the private sector,” provides:

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities: (a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting; [and] (b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.

18 Id.
19 Id.
20 Id.
22 Id at 106.
Since its passage in 2005, 140 UN member states—including the United States—have signed the UN Corruption Convention. These signatories have implemented the UN Corruption Convention in varying degrees.

2. Other key international positions regarding commercial bribery.

Leading international bodies, in addition to the UN, have also issued antibribery declarations that include commercial bribery prohibitions. Some contain formulations similar to that in the UN Corruption Convention.

The Council of Europe (the COE) has enacted a Criminal Law Convention on Corruption (the "COE Convention"). As with the UN Corruption Convention, the COE Convention prohibits active and passive bribery in the public sector. Unlike most public sector bribery rules, private bribery under the COE Convention requires an actual breach of duty. In other words, one would not be guilty of private bribery if the target of the

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26 See id at Arts 7–8. Specifically, the COE Convention provides in Article 7, "Active bribery in the private sector":

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally in the course of business activity, the promising, offering or giving, directly or indirectly, of any undue advantage to any persons who direct or work for, in any capacity, private sector entities, for themselves or for anyone else, for them to act, or refrain from acting, in breach of their duties.

Article 8 of the COE Convention, captioned "Passive bribery in the private sector," provides:

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, in the course of business activity, the request or receipt, directly or indirectly, by any persons who direct or work for, in any capacity, private sector entities, of any undue advantage or the promise thereof for themselves or for anyone else, or the acceptance of an offer or a promise of such an advantage, to act or refrain from acting in breach of their duties.

Id.
bribe did not agree to take the bribe. It does not matter, however, what relationship the bribe recipient has with the commercial organization. Rather, the key is that the bribe target has the ability to direct relevant work.

When passing these provisions, the COE explained that corruption in the private sector had historically been addressed primarily in the civil arena through competition or labor laws and through general criminal law provisions. The COE concluded that specifically criminalizing private corruption was a "pioneering but necessary effort to avoid gaps in a comprehensive strategy to combat corruption." According to the COE, private corruption, even in the absence of specific pecuniary harm, "causes damage to society as a whole." Moreover, many formerly public industries have become privatized, further blurring the distinction between public and private corruption. The COE convention has been ratified in varying degrees by the member states.

The International Chamber of Commerce (the ICC) has also been a proponent of stringent antibribery criminal laws. Indeed, the ICC's Anti-Corruption Rules prohibiting bribery make no distinction between public officials or private persons, whether foreign or domestic.

The OECD Working Group on Bribery has issued a convention regarding prohibition of bribery of foreign public officials in international business transactions, but determined that private sector bribery was outside its mandate. As a result, the

28 Id at ¶ 54.
29 Id.
30 Id at ¶ 52.
31 Council of Europe, Explanatory Report at ¶ 52 (cited in note 27).
32 Id.
33 Id.
OECD Working Group deferred providing guidance on the issue until its prohibition against public sector bribery is "successfully implemented." The OECD Working Group, however, echoed many concerns about commercial bribery raised by others:

[P]ermissiveness toward private sector bribery could result in a business climate conducive to foreign  bribery, particularly given that the private sector in many countries is larger than the public sector, thus providing more opportunities for corrupt dealings. Moreover, the distinction between public sector and private sector officials is not always clear, especially in countries where there has been significant privatisation, including in high-risk areas such as energy, telecommunications and transport.39

In short, a number of influential international groups and NGOs have recognized the importance of combating private sector bribery. The growing consensus among these organizations is to support criminal prohibitions against bribing private organization officials for improper commercial advantage.

B. The UK Bribery Act

Several nations have strict laws criminalizing commercial bribery.40 Most recently, the United Kingdom implemented its Bribery Act,41 which modernized UK’s antibribery laws by including a prohibition against commercial bribery.

The UK Bribery Act criminalizes bribery regardless of whether the target of the bribe is a UK public official or the officer of a private company.42 The UK Bribery Act prohibits offering, promising, or giving a financial or other advantage to another person with the specific intent of improperly influencing that person’s performance of his or her duties.43 It also criminalizes the giving of such advantage if the person understands that an

38 Id (citations omitted).
39 Id at 12.
40 See, for example, Brazilian Crimes against Industrial Property Act, Law No. 9279/96; German Criminal Code Section 299; Swiss Law against Unfair Competition, Article 4a.
41 Bribery Act 2010, c 23.
42 See Bribery Act 2010, c 23 s 1. The Act has a separate provision regarding bribery of foreign public officials, which is beyond the scope of this Article. See Bribery Act 2010, c 23 s 6.
43 Bribery Act 2010, c 23 s 1.
official's acceptance in itself constitutes improper performance of the official's job.\textsuperscript{44} The UK Bribery Act further criminalizes the receipt of improper advantages by a private or public official.\textsuperscript{45}

Beyond a specific act of bribery, the British law also criminalizes a company's failure to prevent bribes by one of its employees or agents related to the company's business.\textsuperscript{46} There is no limit to the potential monetary fine for a company convicted of this offense.\textsuperscript{47}

The UK Bribery Act does, however, provide an affirmative defense for companies: a company is not liable for such acts where it had in place "adequate procedures designed to prevent persons associated with" the commercial organization from making bribes.\textsuperscript{48} The UK Bribery Act directed the British government to provide guidance as to what constitutes such adequate procedures.\textsuperscript{49} The resulting guidance purports to provide a common sense, risk-based approach.\textsuperscript{50} The guidance sets forth several principles for companies to follow in enacting an antibribery compliance program.\textsuperscript{51}

The UK Bribery Act has a broad jurisdictional reach.\textsuperscript{52} It applies not only to acts by British citizens and organizations, but also to acts by companies that do business in the UK.\textsuperscript{53} British courts could also seek to exercise jurisdiction where any bribery-related acts take place in the UK.\textsuperscript{54}

In short, the Bribery Act sets forth a sweeping, modern formulation of criminal liability for commercial bribery that largely tracks the recommendations by key NGOs. The UK government

\textsuperscript{44} Bribery Act 2010, c 23 s 1.
\textsuperscript{45} Bribery Act 2010, c 23 s 2.
\textsuperscript{46} Bribery Act 2010, c 23 s 7.
\textsuperscript{47} Bribery Act 2010, c 23 s 11.
\textsuperscript{48} Bribery Act 2010, c 23 s 7.
\textsuperscript{49} Bribery Act 2010, c 23 s 9.
\textsuperscript{51} See id at 20–31.
\textsuperscript{52} See Bribery Act 2010, c 23 s 12.
\textsuperscript{54} See Ministry of Justice, \textit{Bribery Act 2010—Guidance} at 16 (cited in note 50).
has further indicated that it intends to rigorously enforce the new law, including its commercial bribery provision.\textsuperscript{55}

\section*{II. US Anti-Commercial Bribery Legal Framework}

The United States does not have a federal law criminalizing general commercial bribery; but this does not mean that there is no federal liability for commercial bribes. Instead of a single federal standard for commercial bribery, the Travel Act creates federal criminal liability for certain violations of state bribery laws.

\subsection*{A. The Travel Act}

In 1961, Congress passed the Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprises Act.\textsuperscript{56} This statute was enacted as a comprehensive response to state and local governments’ inability to cope with the complex and multi-jurisdictional nature of criminal enterprises.\textsuperscript{57} The law has become commonly known as the “Travel Act,” as it may be implicated in certain situations where crimes are committed while traveling across state or national boundaries.\textsuperscript{58}

Specifically, the Travel Act applies to any person who travels “in interstate or foreign commerce,” or who uses the “mail or any facility in interstate or foreign commerce,” with the intent to commit certain criminal acts.\textsuperscript{59} One such enumerated act is to

\begin{footnotesize}

\begin{quote}
Another significant feature of the Bribery Act is the way that it applies to private sector bribery as well as public sector bribery. We are not just concerned with bribery of foreign public officials. We will also be looking at bribery within the private sector whether in the UK or abroad. This is already a feature of our work and I expect to see more cases.
\end{quote}

\textsuperscript{56} Pub L No 87-228, 75 Stat 498 (1961), codified at 18 USC § 1952 (“Travel Act”).

\textsuperscript{57} See \textit{Perrin v United States}, 444 US 37, 41 (1979). See also \textit{P.L. 87-228, Racketeering Enterprises—Travel or Transportation}, HR Rep No 87-966, 87th Cong, 1st Sess 4 (1961), reprinted in 1961 USCCAN 2664, 2666 (containing a letter from Attorney General Robert F. Kennedy to the Speaker of the House of Representatives noting that the law was designed to “impose criminal sanctions upon the person whose work takes him across State or National boundaries in aid of certain unlawful activities”).

\textsuperscript{58} See 18 USC § 1952(a). See also \textit{Erlenbaugh v United States}, 409 US 239, 246 (1972) (noting that the Travel Act is “an effort to deny individuals who act [with the requisite] criminal purpose access to the channels of commerce”).

\textsuperscript{59} 18 USC § 1952(a).
\end{footnotesize}
distribute "the proceeds of any unlawful activity."\(^6^0\) Another is to "otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity."\(^6^1\) The term "unlawful activity" also has several specific definitions, including bribery "in violation of the laws of the State in which committed," or US federal law.\(^6^2\) Violating the Travel Act may result in a fine and up to five years of incarceration.\(^6^3\)

As noted above, there is no federal law directly penalizing private-to-private commercial bribery. Many states, however, have anti-commercial bribery laws. US courts have recognized that these laws may provide a basis for charging a federal Travel Act violation.

The watershed case addressing a federal prosecution of commercial bribery is the 1979 US Supreme Court decision of *Perrin v United States*.\(^6^4\) In *Perrin*, certain individuals obtained commercial information by bribing an employee of a private, Louisiana-based company. Those individuals then used that information for their commercial gain.\(^6^5\) The conspirators operated their scheme from Louisiana and made interstate phone calls and ordered materials from Texas in furtherance thereof.\(^6^6\) Those individuals were later tried and convicted of conspiracy and violation of the Travel Act.\(^6^7\) The Travel Act charges were based upon the Louisiana commercial bribery statute, which carried a maximum sentence of $500 and six months imprisonment.\(^6^8\)

On appeal to the Supreme Court, defendant Perrin argued that the Travel Act was designed to combat bribery of public officials and thus had no application to commercial bribery situations.\(^6^9\) The Court noted that, although there was no general fed-

\(^{60}\) 18 USC § 1952(a)(1).
\(^{61}\) 18 USC § 1952(a)(3).
\(^{62}\) 18 USC § 1952(b). This Article discusses the framework in which the Travel Act may apply to commercial bribery matters. Detailed application of the Travel Act in practice, such as the various items required to establish a Travel Act violation, is beyond the scope of this Article. Also outside the scope are federal mail and wire frauds, and related theories.
\(^{63}\) 18 USC § 1952(a).
\(^{64}\) 444 US 37 (1979).
\(^{65}\) Id at 40.
\(^{66}\) Id at 40–41 & n 5. See also *United States v Perrin*, 580 F2d 730, 735–36 (5th Cir 1978).
\(^{67}\) *Perrin*, 444 US at 40–41 & n 6.
\(^{68}\) *Perrin*, 580 F2d at 733 & n 3.
\(^{69}\) *Perrin*, 444 US at 41.
eral commercial bribery statute, many states had such laws when the Travel Act was passed by Congress. Further, several federal laws prohibited certain specific acts of bribery of individuals acting in a private capacity. As a result, the Court recognized that commercial bribery could form the basis of a Travel Act violation.

Perrin also asserted that the Travel Act does not apply to "white collar" offenses—such as commercial bribery. The Court rejected that assertion as well, noting that Congress recognized that "bribery of private persons was widely used in highly organized criminal efforts," which was an area Congress sought to address by enacting the Travel Act.

Only a handful of reported cases after Perrin involve application of the Travel Act to a commercial bribery situation. In 2003, the Tenth Circuit issued a key decision in United States v Welch, which strongly reaffirmed the use of the Travel Act in commercial bribery cases.

In Welch, the defendants were the senior chief executives of the Salt Lake City Bid Committee for the 2002 Olympic Winter Games, a not-for-profit corporation. The defendants allegedly engaged in a conspiracy to bribe members of the International Olympic Committee (the IOC), an international non-governmental non-profit organization based in Switzerland. These bribes, worth approximately $1 million, were allegedly provided to IOC members through means of both interstate and international commerce.

The Welch defendants were charged with conspiracy, mail fraud, wire fraud, and Travel Act violations. The Travel Act charges were based on Utah's misdemeanor commercial bribery

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70 Id at 43–44.
71 Id at 43.
72 Id at 45. Indeed, in 1961 then-Attorney General Robert Kennedy expressed concern to the House and the Senate about sports-related bribery and testified regarding the need to curb "bribery" of labor and management officials involved in labor disputes. See id at 46. It was thus well understood by Congress in 1961 that criminal "bribery" concepts were not limited to public officials.
73 Perrin, 444 US at 46.
74 Id at 48.
75 327 F3d 1081 (10th Cir 2003).
76 Id at 1084.
77 Id at 1084–85.
78 Id at 1085–86 & n 5.
79 Welch, 327 F3d at 1084–85.
statute. On the defendants' motion, the district court dismissed the entire indictment. The district court provided a variety of reasons to support its dismissal of the Travel Act counts. Key among them were the district court's conclusion that a Travel Act charge required conduct associated with organized crime and the district court's concerns related to specific application of the Utah commercial bribery statute.

On appeal, the Tenth Circuit reversed the district court's dismissal. The Tenth Circuit recognized that the Travel Act on its face is not limited to organized crime situations and has been applied routinely to offenses having nothing to do with criminal enterprises. The Court noted that an actual violation of the Utah commercial bribery statute "is not an element" of a Travel Act violation; rather, the government need only prove that the defendants intended to promote, or facilitate the promotion of, "unlawful activity,"—for example, bribery. Thus, it was unnecessary to prove that the defendants specifically intended to violate the underlying state commercial bribery statute.

The Tenth Circuit also found irrelevant the notion that the Utah legislature might not have intended its commercial bribery statute to serve as the grounds for the federal prosecution of an international bribery scheme. It noted that most statutes "deal with the untold and unforeseen variations on factual situations." The Tenth Circuit further rejected alleged vagueness and definitional issues related to key concepts in the Utah statute. The court dismissed the district court's federalism-based concern that the prosecution was an attempt by the federal government to assert jurisdiction over a state and local issue.

The Welch decision strongly reinforced the effectiveness of using a state commercial bribery statute as an underlying predicate to a federal Travel Act charge, even where it is a rarely or narrowly used misdemeanor law. More broadly, the court recognized a common sense approach to commercial bribery situations

80 Id at 1086.
81 Id at 1085.
82 Id at 1087–88.
83 Welch, 327 F3d at 1085.
84 Id at 1091.
85 Id at 1092.
86 Id at 1096 & n 15.
87 Welch, 327 F3d at 1097–98 (citation omitted).
88 Id at 1098–1103.
89 Id at 1093.
under the Travel Act, based upon an everyday understanding of the propriety of business-related activities.\textsuperscript{90}

B. State Criminal Commercial Bribery Laws

As detailed in the chart following this Article, the majority of US states have criminal commercial bribery laws. The laws vary, however, in a number of respects. Some are only misdemeanor statutes, while others are felonies.\textsuperscript{91} Many statutes have a general commercial application, while some are limited to specific activities, such as sports.\textsuperscript{92} There are also a variety of formulation differences, including degrees of culpability, levels of intent, relationships among the parties, and showings of harm, among others.

For example, California's commercial bribery law focuses on the acts that would breach the trust between the putative bribe recipient and his or her employer.\textsuperscript{93} Both soliciting and offering bribes are prohibited under the act.\textsuperscript{94} The California law, however, exempts benefits worth less than \$250.\textsuperscript{95} Providing items of value between \$250 and \$1,000 in violation of the law is a misdemeanor, and the act is a felony if the bribe exceeds \$1,000.\textsuperscript{96}

Comparatively, Rhode Island's law is similar to the UK Bribery Act formulation in that it makes no distinction between bribing a public official and bribing a private sector employee.\textsuperscript{97} Under the Rhode Island law, it is not necessary for the bribe target to actually accept the bribe.\textsuperscript{98} Both active and passive bribery acts are felonies in Rhode Island, punishable by up to twenty years in prison.\textsuperscript{99}

\textsuperscript{90} After the Tenth Circuit’s decision in Welch, the defendants were tried on the original charges. They were acquitted by the district court before submitting the case to the jury, based primarily upon the district court’s conclusion that insufficient evidence of criminal intent by the defendants existed. See Lex Hemphill, \textit{Acquittals End Bid Scandal That Dogged Winter Games}, NY Times D1 (Dec 6, 2003).

\textsuperscript{91} Compare, for example, Ala Code Ann § 13A-11-120(b) (defining commercial bribery as a class A misdemeanor), with Alaska Stat Ann § 11.46.670(b) (defining commercial bribery as a class C felony).

\textsuperscript{92} See, for example, Ga Code Ann § 16-22-33 (discussing sports-related bribery); Or Rev Stat § 165.085 (limited to sports-related bribery); Wyo Stat § 6-3-609 (limited to sports-related bribery).

\textsuperscript{93} See Cal Penal Code § 641.3.

\textsuperscript{94} See Cal Penal Code § 641.3.

\textsuperscript{95} Cal Penal Code § 641.3.

\textsuperscript{96} Cal Penal Code § 641.3.

\textsuperscript{97} See RI Gen Laws §§ 11-7-3, 11-7-4.

\textsuperscript{98} RI Gen Laws §§ 11-7-3, 11-7-4.

\textsuperscript{99} RI Gen Laws § 11-7-5.
The largest US states all have general anti-commercial bribery laws. Thus, it is clear that conduct touching on a large number of state jurisdictions could trigger Travel Act liability relating to commercial bribery.

III. CONCLUSION

Criminal anti-commercial bribery laws are not new. Recent efforts to combat corruption at all levels, however, have brought commercial bribery into renewed focus. Modern formulations of antibribery laws, such as that set forth in the UK Bribery Act, make no legal distinction between bribery of private persons and domestic public officials. US prosecutors have an existing framework through the Travel Act and state anti-commercial bribery laws to prosecute corrupt commercial activities. Given the combination of globalization and continued strong antibribery enforcement in the US and other major world economies, it will be interesting to see whether potential acts of commercial bribery will face increased scrutiny worldwide.
### Appendix. Overview of State Commercial Bribery Laws

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<thead>
<tr>
<th>State</th>
<th>Statute</th>
<th>Text</th>
<th>Highest Level of Offense</th>
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</table>
| Alabama   | Commercial Bribery, Ala Code Ann § 13A-11-120 (1975). | (a) A person commits the crime of commercial bribery if he: (1) Confers, or agrees or offers to confer, any benefit upon any employee or agent without the consent of the latter's employer or principal, with intent to improperly influence his conduct in relation to his employer's or principal's affairs; or (2) Confers, or agrees or offers to confer, any benefit upon any fiduciary without the consent of the latter's beneficiary, with intent to improperly influence him to act or conduct himself contrary to his fiduciary obligation.  
  (b) Commercial bribery is a Class A misdemeanor. |
|          | Receiving Commercial Bribe, Ala Code Ann § 13A-11-121 (1975). | (a) A person commits the crime of receiving a commercial bribe if: (1) As an employee or agent, and without the consent of his employer or principal, he solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that the benefit will improperly influence his conduct in relation to his employer's or principal's affairs; or (2) As a hiring agent or an official or employee in charge of employment, he solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that someone shall be hired, retained in employment or discharged or suspended from employment; or (3) As a fiduciary, and without the consent of his beneficiary, he solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that the benefit will improperly influence his conduct in his fiduciary capacity.  
  (b) Subdivision (a)(2) of this section does not apply to any person conducting a private employment agency licensed and operating under the laws of Alabama.  
  (c) Receiving a commercial bribe is a Class A misdemeanor. | Misdemeanor |
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<tr>
<th>State</th>
<th>Statute</th>
<th>Text</th>
<th>Highest Level of Offense</th>
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<tbody>
<tr>
<td>Alaska</td>
<td>Commercial Bribery, Alaska Stat Ann § 11.46.670 (2012).</td>
<td>(a) A person commits the crime of commercial bribery if, knowing that another is subject to a duty described in AS 11.46.660(a) and with intent to influence the other to violate that duty, the person confers, offers to confer, or agrees to confer a benefit on the other. (\text{\textvisiblespace})</td>
<td>Felony</td>
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<tr>
<td></td>
<td></td>
<td>(b) Commercial bribery is a class C felony.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Commercial Bribe Receiving, Alaska Stat Ann § 11.46.660 (2012).</td>
<td>(a) A person commits the crime of commercial bribe receiving if the person solicits, accepts, or agrees to accept a benefit with intent to violate a duty to which that person is subject as (1) an agent or employee of another; (2) a trustee, guardian, or other fiduciary; (3) a lawyer, physician, accountant, appraiser, or other professional adviser; (4) an officer, director, partner, manager, or other participant in the direction of the affairs of an organization; or (5) an arbitrator or other purportedly disinterested adjudicator or referee. (\text{\textvisiblespace})</td>
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<tr>
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<td>(b) Commercial bribe receiving is a class C felony.</td>
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<td>State</td>
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<td>Highest Level of Offense</td>
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<tr>
<td>Arizona</td>
<td>Commercial Bribery; classification; exception, Ariz Rev Stat Ann § 13-2605 (West 2012).</td>
<td>A. A person commits commercial bribery if: 1. Such person confers any benefit on an employee without the consent of such employee’s employer, corruptly intending that such benefit will influence the conduct of the employee in relation to the employer’s commercial affairs, and the conduct of the employee causes economic loss to the employer. 2. While an employee of an employer such employee accepts any benefit from another person, corruptly intending that such benefit will influence his conduct in relation to the employer’s commercial affairs, and such conduct causes economic loss to the employer or principal. B. Commercial bribery is a class 5 felony if the value of the benefit is more than one thousand dollars. Commercial bribery is a class 6 felony if the value of the benefit is not more than one thousand dollars but not less than one hundred dollars. Commercial bribery is a class 1 misdemeanor if the value of the benefit is less than one hundred dollars. C. This section shall not be construed to prohibit a person from recruiting an employee of another employer unless, pursuant to an agreement between such person and the employee that such employee engage in conduct which will cause economic loss to his employer, such employee engages in conduct while an employee of his original employer and such conduct causes economic loss to the employer.</td>
<td>Felony</td>
</tr>
<tr>
<td>Arkansas</td>
<td>Secret payments or allowance of rebates, refunds, etc.—Penalty, Ark Code Ann § 4-75-208 (Lexis 2011).</td>
<td>(a) The secret payment or allowance of rebates, refunds, commissions, or unearned discounts is an unfair trade practice, whether in the form of money or otherwise or secretly extending to certain purchasers special services or privileges not extended to all purchasers purchasing upon like terms and conditions to the injury of a competitor and where the payment or allowance tends to destroy competition. (b) Any person, firm, partnership, corporation, or association resorting to such trade practice shall be guilty of a Class A misdemeanor.</td>
<td>Misdemeanor</td>
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| California | Commercial bribery; monetary value; punishment; definitions, Cal Penal Code § 641.3 (West 2012). | (a) Any employee who solicits, accepts, or agrees to accept money or any thing of value from a person other than his or her employer, other than in trust for the employer, corruptly and without the knowledge or consent of the employer, in return for using or agreeing to use his or her position for the benefit of that other person, and any person who offers or gives an employee money or any thing of value under those circumstances, is guilty of commercial bribery.  
(b) This section does not apply where the amount of money or monetary worth of the thing of value is two hundred fifty dollars ($250) or less.  
(c) Commercial bribery is punishable by imprisonment in the county jail for not more than one year if the amount of the bribe is one thousand dollars ($1,000) or less, or by imprisonment in the county jail, or in the state prison for 16 months, or two or three years if the amount of the bribe exceeds one thousand dollars ($1,000).  
(d) For purposes of this section: (1) "Employee" means an officer, director, agent, trustee, partner, or employee. (2) "Employer" means a corporation, association, organization, trust, partnership, or sole proprietorship. (3) "Corruptly" means that the person specifically intends to injure or defraud (A) his or her employer, (B) the employer of the person to whom he or she offers, gives, or agrees to give the money or a thing of value, (C) the employer of the person from whom he or she requests, receives, or agrees to receive the money or a thing of value, or (D) a competitor of any such employer. | Felony                    |
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<td>Colorado</td>
<td>Commercial bribery and breach of duty to act disinterestedly,</td>
<td>(1) A person commits a class 6 felony if he solicits, accepts, or agrees to accept any benefit as consideration for knowingly violating or agreeing to violate a duty of fidelity to which he is subject as: (a) Agent or employee; or (b) Trustee, guardian, or other fiduciary; or (c) Lawyer, physician, accountant, appraiser, or other professional adviser; or (d) Officer, director, partner, manager, or other participant in the direction of the affairs of an incorporated or unincorporated association; or (e) Duly elected or appointed representative or trustee of a labor organization or employee welfare trust fund; or (f) Arbitrator or other purportedly disinterested adjudicator or referee.</td>
<td>Felony</td>
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<td>Colo Rev Stat § 18-5-401 (2012).</td>
<td>(2) A person who holds himself out to the public as being engaged in the business of making disinterested selection, appraisal, or criticism of commodities, property, or services commits a class 6 felony if he knowingly solicits, accepts, or agrees to accept any benefit to alter, modify, or change his selection, appraisal, or criticism.</td>
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<td>(3) A person commits a class 6 felony if he confers or offers or agrees to confer any benefit the acceptance of which would be a felony under subsections (1) and (2) of this section.</td>
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<td>Connecticut</td>
<td>Commercial bribery,</td>
<td>(a) A person is guilty of commercial bribery when he confers, or agrees to confer, any benefit upon any employee, agent or fiduciary without the consent of the latter's employer or principal, with intent to influence his conduct in relation to his employer's or principal's affairs.</td>
<td>Felony</td>
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<td>Conn Gen Stat § 53a-160 (2012).</td>
<td>(b) Commercial bribery is a class D felony.</td>
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<td>Receiving a commercial bribe,</td>
<td>(a) An employee, agent or fiduciary is guilty of receiving a commercial bribe when, without consent of his employer or principal, he solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that such benefit will influence his conduct in relation to his employer's or principal's affairs.</td>
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<td>Conn Gen Stat § 53a-161 (2012).</td>
<td>(b) Receiving a commercial bribe is a class D felony.</td>
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| Delaware  | Bribery Not Involving Public Servants, 11 Del Code Ann § 881 (2012). | A person is guilty of bribing when:  
(1) The person offers, confers or agrees to confer any benefit upon any employee, agent or fiduciary without the consent of the latter’s employer or principal, with intent to influence the latter to take some action with regard to the latter’s employer’s or principal’s affairs which would not be warranted upon reasonable consideration of the factors which that person should have taken into account; or  
(2) The person offers, confers or agrees to confer any benefit upon duly appointed representative of a labor organization or duly appointed trustee or representative of an employee welfare trust fund, with intent to influence the latter in respect to any of that person’s acts, decisions or duties as a representative or trustee; or  
(3) The person offers, confers or agrees to confer any benefit upon a participant in a sports contest, with intent to influence that the participant not to give the best effort in a sports contest; or  
(4) The person offers, confers or agrees to confer any benefit upon an official in a sports contest, with intent to influence the official to perform duties improperly. | Misdemeanor               |
| Florida   | Commercial bribery, Fla Stat § 838.16 (2012).    | (1) A person commits the crime of commercial bribery if, knowing that another is subject to a duty described in § 838.15(1) and with intent to influence the other person to violate that duty, the person confers, offers to confer, or agrees to confer a benefit on the other.  
(2) Commercial bribery is a third degree felony, punishable as provided in § 775.082, § 775.083, or § 775.084.  
Note: Florida’s commercial bribe receiving statute, at Fla Stat § 838.15, was invalidated by the Florida Supreme Court in Roque v State, 664 S2d 928, 930 (Fla 1995). | Felony                   |
<p>| Georgia   | No general statute                                | [Limited to sports-related bribery. See Ga Code Ann § 16-12-33.]                                                                                                                                                                                                                                                                   |                          |</p>
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| Hawaii| Commercial bribery, Hawaii Rev Stat § 708-880 (2011). | (1) A person commits the offense of commercial bribery if: (a) He confers or offers or agrees to confer, directly or indirectly, any benefit upon: (i) An agent with intent to influence the agent to act contrary to a duty to which, as an agent, he is subject; or (ii) An appraiser with intent to influence the appraiser in his selection, appraisal, or criticism; or (b) Being an agent, an appraiser, or agent in charge of employment, he solicits, accepts, or agrees to accept, directly or indirectly, any benefit from another person with intent: (i) In the case of an agent, that he will thereby be influenced to act contrary to a duty to which, as an agent, he is subject; or (ii) In the case of an appraiser, that he will thereby be influenced in his selection, appraisal, or criticism; or (iii) In the case of an agent in charge of employment, that he will thereby be influenced in the exercise of his discretion or power with respect to hiring someone, or retaining someone in employment, or discharging or suspending someone from employment. 
(2) In this section: (a) "Agent" means: (i) An agent or employee of another; (ii) A trustee, guardian, or other fiduciary; (iii) A lawyer, physician, accountant, appraiser, or other professional adviser or informant; (iv) An officer, director, partner, manager, or other participant in the direction of the affairs of an incorporated or unincorporated association; or (v) An arbitrator or other purportedly disinterested adjudicator or referee; (b) "Appraiser" means a person who holds himself out to the public as being engaged in the business of making disinterested selection, appraisal, or criticism of commodities or services; (c) "Agent in charge of employment" does not include any person conducting a private employment agency licensed and operating in accordance with law. 
(3) Commercial bribery is a misdemeanor, except in the event that the value of the benefit referred to in subsection (1) exceeds $1,000, in which case commercial bribery shall be a class C felony. | Felony |
<p>| Idaho | None                                |                                                                                                                                                                                                     |                          |</p>
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<td>Illinois</td>
<td>Commercial Bribery, Ill Rev Stat ch 720, § 5/29A (2012).</td>
<td>Sec. 29A-1. A person commits commercial bribery when he confers, or offers or agrees to confer, any benefit upon any employee, agent or fiduciary without the consent of the latter's employer or principal, with intent to influence his conduct in relation to his employer's or principal's affairs. Sec. 29A-2. An employee, agent or fiduciary commits commercial bribe receiving when, without consent of his employer or principal, he solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that such benefit will influence his conduct in relation to his employer's or principal's affairs. Sec. 29A-3. Sentence. (a) If the benefit offered, conferred, or agreed to be conferred, solicited, accepted or agreed to be accepted is less than $500,000, commercial bribery or commercial bribe receiving is a Class A misdemeanor and the sentence shall include, but not be limited to, a fine not to exceed $5,000. (b) If the benefit offered, conferred, or agreed to be conferred, solicited, accepted, or agreed to be accepted in violation of this Article is $500,000 or more, the offender is guilty of a Class 3 felony. Sec. 29A-4. Corporate Crime Fund. (a) In addition to any fines, penalties, and assessments otherwise authorized under this Code, any person convicted of a violation of this Article or Section 17-26 or 17-27 of this Code shall be assessed a penalty of not more than 3 times the value of all property involved in the criminal activity. (b) The penalties assessed under subsection (a) shall be deposited into the Corporate Crime Fund, a special fund hereby created in the State treasury. Moneys in the Fund shall be used to make restitution to a person who has suffered property loss as a result of violations of this Article. The court may determine the reasonable amount, terms, and conditions of the restitution. In determining the amount and method of payment of restitution, the court shall take into account all financial resources of the defendant.</td>
<td>Felony</td>
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<td>Indiana</td>
<td>None in force</td>
<td>[Repealed Ind Code § 35-18-10-2.]</td>
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<td>Iowa</td>
<td>Commercial bribery, Iowa Code § 722.10 (2012).</td>
<td>1. As used in subsection 2, the following definitions shall apply unless the context otherwise requires: a. &quot;Employer&quot; means any sole proprietor, partnership, corporation, association, or other entity or organization. b. &quot;Employee&quot; includes every officer, employee, agent or representative. c. &quot;Gratuity&quot; means consideration in any form, including but not limited to a gift, commission, discount and bonus. 2. It is unlawful for a person to offer or deliver directly or indirectly for the personal benefit of an employee acting on behalf of the employee's employer in a business transaction or course of transactions with the person a gratuity in consideration of an act or omission which the person has reason to know is in conflict with the employment relation and duties of the employee to the employer. It is unlawful for an employee acting on behalf of the employee's employer in a business transaction or course of transactions with a person to solicit or receive from the person a gratuity directly or indirectly for the personal benefit of the employee in consideration of an act or omission which the employee has reason to know is in conflict with the employment relation and duties of the employee to the employer. 3. A violation of subsection 2 is a class &quot;D&quot; felony.</td>
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<td>Kansas</td>
<td>Commercial Bribery, Kan Stat Ann § 21-6506 (2011).</td>
<td>(a) Commercial bribery is conferring, offering or agreeing to confer, or soliciting, accepting or agreeing to accept, any benefit as consideration for knowingly violating or agreeing to violate a duty of fidelity or trust by: (1) An agent or employee of another; (2) a person acting in a fiduciary capacity; (3) a lawyer, physician, accountant, appraiser or other professional adviser; (4) an officer, director, partner, manager or other participant in the affairs of a corporation, partnership or unincorporated association; or (5) an arbitrator or other purportedly disinterested adjudicator or referee. (b) Commercial bribery is a severity level 8, non-person felony. (c) A person who violates the provisions of this section may also be prosecuted for, convicted of, and punished for theft.</td>
<td>Felony</td>
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<td>Kentucky</td>
<td>Commercial bribery, Ky Rev Ann Stat § 518.020 (2011).</td>
<td>(1) A person is guilty of commercial bribery when he: (a) Offers, confers or agrees to confer any benefit upon any employee or agent without the consent of the latter's employer or principal with intent to influence his conduct contrary to his employer's or principal's best interests; or (b) Offers, confers or agrees to confer any benefit upon any fiduciary without the consent of the latter's beneficiary with intent to influence him to act or conduct himself contrary to his fiduciary obligation. (2) Commercial bribery is a Class A misdemeanor.</td>
<td>Misdemeanor</td>
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<td>Receiving commercial bribe, Ky Rev Ann Stat § 518.030 (2011).</td>
<td>(1) A person is guilty of receiving a commercial bribe when: (a) As an employee or agent, and without the consent of his employer or principal, he knowingly solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that the benefit will influence his conduct contrary to his employer's or principal's best interest; or (b) As a fiduciary, and without the consent of his beneficiary, he knowingly solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that the benefit will influence his conduct contrary to his fiduciary obligation. (2) Receiving a commercial bribe is a Class A misdemeanor.</td>
<td>Misdemeanor</td>
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<td>Louisiana</td>
<td>Commercial bribery, La Rev Stat Ann § 14:73 (West 2011).</td>
<td>Commercial bribery is the giving or offering to give, directly or indirectly, anything of apparent present or prospective value to any private agent, employee, or fiduciary, without the knowledge and consent of the principal or employer, with the intent to influence such agent’s, employee’s, or fiduciary’s action in relation to the principal’s or employer’s affairs. The agent’s, employee’s or fiduciary’s acceptance of or offer to accept, directly or indirectly, anything of apparent present or prospective value under such circumstances shall also constitute commercial bribery. The offender under this article who states the facts, under oath, to the district attorney charged with prosecution of the offense, and who gives evidence tending to convict any other offender under this article, may, in the discretion of the district attorney, be granted full immunity from prosecution for commercial bribery, in respect to the particular offense reported. Whoever commits the crime of commercial bribery shall be fined not more than five hundred dollars, or imprisoned for not more than six months, or both.</td>
<td>Misdemeanor</td>
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A. He promises, offers or gives any pecuniary benefits to (1) an employee or agent with the intention to influence his conduct adversely to the interest of the employer or principal of the agent or employee; (2) a hiring agent or an official or employee in charge of employment upon agreement or understanding that a particular person, including the actor, shall be hired, retained in employment or discharged or suspended from employment; (3) a fiduciary with the intent to influence him to act contrary to his fiduciary duty; (4) a sports participant with the intent to influence him not to give his best efforts in a sports contest; (5) a sports official with the intent to influence him to perform his duties improperly; (6) a person in a position of trust and confidence in his relationship to a 3rd person, with the intention that the trust or confidence will be used to influence the 3rd person to become a customer of the actor, or as compensation for the past use of such influence; or  
B. He knowingly solicits, accepts or agrees to accept any benefit, the giving of which would be criminal under subsection 1, paragraph A.  
2. Private bribery is a Class D crime. | Felony |
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<td>Maryland</td>
<td>None</td>
<td>Whoever, in relation to any transaction or matter concerning the business affairs of an employer, principal or beneficiary (1) offers, gives or agrees to give an agent or fiduciary of another person any benefit or anything of value with intent to influence the recipient's conduct, or (2) as an agent or fiduciary, solicits, accepts or agrees to accept any benefit or anything of value from another person who is not an employee, principal, or beneficiary upon an agreement or understanding that such benefit or thing of value will influence his conduct, shall be punished by imprisonment in the state prison for not more than five years, or by a fine of not more than ten thousand dollars, or both.</td>
<td>Felony</td>
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<td>Massachusetts</td>
<td>Gifts to influence business affairs, Mass Gen Laws Ann ch 271, § 39(a) (West 2012).</td>
<td>(1) A person shall not give, offer, or promise a commission, gift, or gratuity to an agent, employee, or other person or do or offer to do an act beneficial to an agent, employee, or other person with intent to influence the action of the agent or employee in relation to his or her principal's or employer's business. (2) An agent or employee shall not request or accept a commission, gift, or gratuity, or a promise of a commission, gift, or gratuity, for the agent, employee, or another person or the doing of an act or offer of an act beneficial to the agent, employee, or another person according to an agreement or understanding between the agent or employee and any other person that the agent or employee shall act in a particular manner in relation to his or her principal's or employer's business. (3) A person shall not use or give to an agent, employee, or other person, and an agent or employee shall not use, approve, or certify, with intent to deceive the principal or employer, a receipt, account, invoice, or other document concerning which the principal or employer is interested that contains a statement that is materially false, erroneous, or defective or omits to state fully any commission, money, property, or other valuable thing given or agreed to be given to the agent or employee. (4) Evidence is not admissible in any proceeding or prosecution under this section to show that a gift or acceptance of a commission, money, property, or other valuable thing described in this section is customary in a business, trade, or calling. The customary nature of a transaction is not a defense in a proceeding or prosecution under this section. (5) In a proceeding or prosecution under this</td>
<td>Misdemeanor</td>
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<td>Michigan</td>
<td>Bribery of persons, agents, or employees with intent to influence action in relation to his, principal's, or employer's business; defenses; compulsion of testimony or documentary evidence, Mich Comp Laws § 750.125 (2012).</td>
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<td>Misdemeanor</td>
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section, a person shall not be excused from attending and testifying or from producing documentary evidence pursuant to a subpoena on the ground that the testimony or evidence may tend to incriminate him or her or subject him or her to a penalty or forfeiture. Truthful testimony, evidence, or other truthful information compelled under this section and any information derived directly or indirectly from that truthful testimony, evidence, or other truthful information shall not be used against the witness in a criminal case, except for impeachment purposes or in a prosecution for perjury or otherwise failing to testify or produce evidence as required.

(6) A person who violates this section is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than $1,000.00, or both.
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| Minnesota | Commercial bribery, Minn Stat § 609.86 (2012).                        | Subdivision 1. Definition. “Corruptly” means that the actor intends the action to injure or defraud: (1) the actor’s employer or principal; or (2) the employer or principal of the person to whom the actor offers, gives or agrees to give the bribe or from whom the actor requests, receives or agrees to receive the bribe.  

Subd. 2. Acts constituting. Whoever does any of the following, when not consistent with usually accepted business practices, is guilty of commercial bribery and may be sentenced as provided in subdivision 3: (1) corruptly offers, gives, or agrees to give, directly or indirectly, any benefit, consideration, compensation, or reward to any employee, agent or fiduciary of a person with the intent to influence the person’s performance of duties as an employee, agent, or fiduciary in relation to the person’s employer’s or principal’s business; or (2) being an employee, agent or fiduciary of a person, corruptly requests, receives or agrees to receive, directly or indirectly, from another person any benefit, consideration, compensation, or reward with the understanding or agreement to be influenced in the performance of duties as an employee, agent, or fiduciary in relation to the employer’s or principal’s business.  

Subd. 3. Sentence. Whoever commits commercial bribery may be sentenced as follows: (1) to imprisonment for not more than five years or to payment of a fine of not more than $10,000, or both, if the value of the benefit, consideration, compensation or reward is greater than $500; (2) in all other cases where the value of the benefit, consideration, compensation or reward is $500 or less, to imprisonment for not more than 90 days or to payment of a fine of not more than $1,000; provided, however, in any prosecution of the value of the benefit, consideration, compensation or reward received by the defendant within any six-month period may be aggregated and the defendant charged accordingly in applying the provisions of this subdivision; provided that when two or more offenses are committed by the same person in two or more counties, the accused may be prosecuted in any county in which one of the offenses was committed, or all of the offenses aggregated under this clause. | Felony |
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| Mississippi | Commercial bribery, Miss Code § 97-9-10 (2011). | (1) Commercial bribery is the giving or offering to give, directly or indirectly, anything of apparent present or prospective value to any private agent, employee or fiduciary, without the knowledge and consent of the principal or employer, with the intent to influence such agent’s, employee’s or fiduciary’s action in relation to the principal’s or employer’s affairs.  

(2) The agent’s, employee’s or fiduciary’s acceptance of or offer to accept, directly or indirectly, anything of apparent present or prospective value under the circumstances set forth in subsection (1) of this section shall also constitute commercial bribery.  

(3) The offender under this section who states the facts, under oath, to the district attorney charged with prosecution of the offense, who gives evidence tending to convict any other offender under this section and who testifies in support of the evidence he gives when requested by the district attorney, may, in the discretion of the district attorney, be granted full immunity from prosecution for commercial bribery, in respect to the particular offense reported.  

(4) Any person violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than five hundred dollars ($500.00) or by imprisonment for not more than six (6) months, or by both such fine or imprisonment. | Misdemeanor |
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<td>Missouri</td>
<td>Commercial bribery, Mo Rev Stat § 570.150 (2012).</td>
<td>1. A person commits the crime of commercial bribery: (1) If he solicits, accepts or agrees to accept any benefits consideration for knowingly violating or agreeing to violate a duty of fidelity to which he is subject as: (a) Agent or employee of another; (b) Trustee, guardian or other fiduciary; (c) Lawyer, physician, accountant, appraiser or other professional adviser or informant; (d) Officer, director, partner, manager or other participant in the direction of the affairs of an incorporated or unincorporated association; or (e) Arbitrator or other purportedly disinterested adjudicator or referee; (2) If as a person who holds himself or herself out to the public as being engaged in the business of making disinterested selection, appraisal or criticism of commodities or services, he solicits, accepts or agrees to accept any benefit to influence his selection, appraisal or criticism; (3) If he confers or offers or agrees to confer any benefit the acceptance of which would be criminal under subdivisions (1) and (2) of this section.</td>
<td>Misdemeanor</td>
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<td>Montana</td>
<td>None</td>
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<td>Nebraska</td>
<td>Commercial bribery and breach of duty to act disinterestedly; penalty, Neb Rev Stat § 28-613 (2011).</td>
<td>1. A person commits a Class I misdemeanor if he or she solicits, accepts, or agrees to accept any benefit as consideration for knowingly violating or agreeing to violate a duty of fidelity to which he or she is subject as: (a) Agent or employee; or (b) Trustee, guardian, or other fiduciary; or (c) Lawyer, physician, accountant, appraiser, or other professional advisor; or (d) Officer, director, partner, limited liability company member, manager, or other participant in the direction of the affairs of an incorporated or unincorporated association; or (e) Duly elected or appointed representative or trustee of a labor organization or employee of a welfare trust fund; or (f) Arbitrator or other purportedly disinterested adjudicator or referee. (2) A person who holds himself or herself out to the public as being engaged in the business of making disinterested selection, appraisal, or criticism of commodities, property, or services commits a Class I misdemeanor if he or she solicits, accepts, or agrees to accept any benefit to alter, modify, or change his or her selection, appraisal, or criticism. (3) A person commits a Class I misdemeanor if he or she confers or offers or agrees to confer any benefit the acceptance of which would be an offense under subsection (1) or (2) of this section.</td>
<td>Misdemeanor</td>
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<td>Nevada</td>
<td>Commercial bribery, Nev Rev Stat § 207.295 (2011).</td>
<td>Any person who, with corrupt intent: 1. Offers, confers or agrees to confer any benefit upon any employee, agent or fiduciary without the consent of the employer or principal of that employee, agent or fiduciary in order to influence adversely that person's conduct in relation to the commercial affairs of his or her employer or principal; or 2. While an employee, agent or fiduciary, solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that the benefit will influence adversely his or her conduct in relation to the commercial affairs of his or her employer or principal, commits commercial bribery and is guilty of a misdemeanor.</td>
<td>Misdemeanor</td>
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<tr>
<td>New Hampshire</td>
<td>Commercial Bribery, NH Rev Stat Ann § 638:7 (Equity 2012).</td>
<td>1. A person is guilty of commercial bribery when, without the consent of employer or principal, contrary to the best interests of the employer or principal: (a) He confers, offers, or agrees to confer upon the employee, agent or fiduciary of such employer or principal, any benefit with the purpose of influencing the conduct of the employee, agent or fiduciary in relation to his employer's or principal's affairs; or (b) He, as an employee, agent or fiduciary of such employer or principal, solicits, accepts or agrees to accept any benefit from another upon an agreement or understanding that such benefit will influence his conduct in relation to his employer's or principal's affairs: provided that this section does not apply to inducements made or accepted solely for the purpose of causing a change in employment by an employee, agent or fiduciary. II. A person is also guilty of commercial bribery if he holds himself out to the public as being engaged in the business of making disinterested selection, appraisal or criticism of goods or services and he solicits, accepts, or agrees to accept any benefit to influence his selection, appraisal or criticism. III. (a) Commercial bribery is: (1) A class A felony if the value of the benefit referred to in paragraphs I and II is more than $1,500; (2) A class B felony if the value of the benefit referred to in paragraphs I and II is more than $1,000, but is not more than $1,500; and (3) A misdemeanor in all other cases. (b) The value shall be determined according to the provisions of RSA 637:2, V.</td>
<td>Felony</td>
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| New Jersey | Commercial bribery and breach of duty to act disinterestedly, NJ Rev Stat § 2C:21-10 (2012). | a. A person commits a crime if he solicits, accepts or agrees to accept any benefit as consideration for knowingly violating or agreeing to violate a duty of fidelity to which he is subject as: (1) An agent, partner or employee of another; (2) A trustee, guardian, or other fiduciary; (3) A lawyer, physician, accountant, appraiser, or other professional adviser or informant; (4) An officer, director, manager or other participant in the direction of the affairs of an incorporated or unincorporated association; (5) A labor official, including any duly appointed representative of a labor organization or any duly appointed trustee or representative of an employee welfare trust fund; or (6) An arbitrator or other purportedly disinterested adjudicator or referee.  

b. A person who holds himself out to the public as being engaged in the business of making disinterested selection, appraisal, or criticism of commodities, real properties or services commits a crime if he solicits, accepts or agrees to accept any benefit to influence his selection, appraisal or criticism.  

c. A person commits a crime if he confers, or offers or agrees to confer, any benefit the acceptance of which would be criminal under this section.  

d. If the benefit offered, conferred, agreed to be conferred, solicited, accepted or agreed to be accepted in violation of this section is $75,000.00 or more, the offender is guilty of a crime of the second degree. If the benefit exceeds $1,000.00, but is less than $75,000.00, the offender is guilty of a crime of the third degree. If the benefit is $1,000.00 or less, the offender is guilty of a crime of the fourth degree. | Felony |
<p>| New Mexico | No general statute                                                       | [Limited to alcohol-related activities. See NM Stat Ann § 60-8A-1.]                                                                                                                                |                          |</p>
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<td>New York</td>
<td>Bribery Not Involving Public Servants, and Related Offenses, NY Penal Law § 180 et seq (McKinney 2012).</td>
<td>180.00. Commercial bribing in the second degree. A person is guilty of commercial bribing in the second degree when he confers, or offers or agrees to confer, any benefit upon any employee, agent or fiduciary without the consent of the latter's employer or principal, with intent to influence his conduct in relation to his employer's or principal's affairs. Commercial bribing in the second degree is a class A misdemeanor. 180.03. Commercial bribing in the first degree. A person is guilty of commercial bribing in the first degree when he confers, or offers or agrees to confer, any benefit upon any employee, agent or fiduciary without the consent of the latter's employer or principal, with intent to influence his conduct in relation to his employer's or principal's affairs, and when the value of the benefit conferred or offered or agreed to be conferred exceeds one thousand dollars and causes economic harm to the employer or principal in an amount exceeding two hundred fifty dollars. Commercial bribing in the first degree is a class E felony. 180.05. Commercial bribe receiving in the second degree. An employee, agent or fiduciary is guilty of commercial bribe receiving in the second degree when, without the consent of his employer or principal, he solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that such benefit will influence his conduct in relation to his employer's or principal's affairs. Commercial bribe receiving in the second degree is a class A misdemeanor. 180.08. Commercial bribe receiving in the first degree. An employee, agent or fiduciary is guilty of commercial bribe receiving in the first degree when, without the consent of his employer or principal, he solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that such benefit will influence his conduct in relation to his employer's or principal's affairs, and when the value of the benefit solicited, accepted or agreed to be accepted exceeds one thousand dollars and causes economic harm to the employer or principal in an amount exceeding two hundred fifty dollars. Commercial bribe receiving in the first degree is a class E felony.</td>
<td>Felony</td>
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<td>North Carolina</td>
<td>Influencing agents and servants in violating duties owed employers,</td>
<td>Any person who gives, offers or promises to an agent, employee or servant any gift or gratuity whatever with intent to influence his action in relation to his principal's, employer's or master's business; any agent, employee or servant who requests or accepts a gift or gratuity or a promise to make a gift or to do an act beneficial to himself, under an agreement or with an understanding that he shall act in any particular manner in relation to his principal's, employer's or master's business; any agent, employee or servant who, being authorized to procure materials, supplies or other articles either by purchase or contract for his principal, employer or master, or to employ service or labor for his principal, employer or master, receives, directly or indirectly, for himself or for another, a commission, discount or bonus from the person who makes such sale or contract, or furnishes such materials, supplies or other articles, or from a person who renders such service or labor, and any person who gives or offers such an agent, employee or servant such commission, discount or bonus, shall be guilty of a Class 2 misdemeanor.</td>
<td>Misdemeanor</td>
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| North Dakota  | Commercial bribery, ND Cent Code § 12.1-12-08 (2011).                   | 1. A person is guilty of a class C felony if he: a. Confers, agrees, or offers to confer any benefit upon an employee or agent without the consent of the latter's employer or principal, with intent to influence his conduct in relation to his employer's or principal's affairs; or b. Confers, agrees, or offers to confer any benefit upon any fiduciary without the consent of the beneficiary, with intent to influence the fiduciary to act or conduct himself contrary to his fiduciary obligation.
   2. A person is guilty of a class C felony if he knowingly solicits, accepts, or agrees to accept any benefit, the giving of which is prohibited under subsection 1. | Felony                   |
<p>| | | | |
|               |                                                                        |                                                                                                                          |                          |
| Ohio          | None                                                                   |                                                                                                                          |                          |
| Oklahoma      | No general statute                                                     | [Limited to bribery involving certain banks. See 21 Okla Stat § 380.1.]                                                             |                          |
| Oregon        | No general statute                                                     | [Limited to sports-related bribery. See Or Rev Stat § 165.085.]                                                                 |                          |</p>
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| Pennsylvania | Commercial bribery and breach of duty to act disinterestedly, 18 Pa Cons Stat Ann § 4108 (Purdon 2012). | (a) Corrupt employee, agent or fiduciary.--An employee, agent or fiduciary commits a misdemeanor of the second degree when, without the consent of his employer or principal, he solicits, accepts, or agrees to accept any benefit from another person upon agreement or understanding that such benefit will influence his conduct in relation to the affairs of his employer or principal.  
(b) Corrupt disinterested person.--A person who holds himself out to the public as being engaged in the business of making disinterested selection, appraisal, or criticism of commodities or services commits a misdemeanor of the second degree if he solicits, accepts or agrees to accept any benefit to influence his selection, appraisal or criticism.  
(c) Solicitation.--A person commits a misdemeanor of the second degree if he confers, or offers or agrees to confer, any benefit the acceptance of which would be criminal under subsections (a) or (b) of this section. | Misdemeanor              |
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<tr>
<td>Rhode Island</td>
<td>Solicitation or acceptance of bribe by agent, employee, or public official, RI Gen Laws § 11-7-3 (2012).</td>
<td>(a) No person in public or private employ, or public official shall corruptly accept, or obtain or agree to accept, or attempt to obtain from any person, for himself or herself or any other person, any gift or valuable consideration as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any act in relation to the business of his or her principal, master, employer, or state, city, or town of which he or she is an official, or for showing or forbearing to show favor or disfavor to any person in relation to the business of his or her principal, master, employer, or state, city, or town of which he or she is an official. (b) It shall not be a defense to a prosecution under this section that the person did not have the power or authority to perform the act or omission for which the reward or inducement was offered, solicited, accepted, or agreed upon.</td>
<td>Felony</td>
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<tr>
<td>Rhode Island</td>
<td>Bribery of agent, employee, or public official, RI Gen Laws § 11-7-4 (2012).</td>
<td>(a) No person shall corruptly give or offer any gift or valuable consideration to any person in public or private employ, or any public official as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any act in relation to the business of his or her principal, master, or employer, or the state, city, or town of which he or she is an official, or for showing or forbearing to show favor or disfavor to any person in relation to the business of his or her principal, master, employer, or state, city, or town of which he or she is an official. (b) It shall not be a defense to a prosecution under this section that the person did not have the power or authority to perform the act or omission for which the reward or inducement was offered, solicited, accepted, or agreed upon.</td>
<td>Felony</td>
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<tr>
<td>Rhode Island</td>
<td>Penalty for violations, RI Gen Laws § 11-7-5 (2012).</td>
<td>Any person who violates any of the provisions of § 11-7-3 or § 11-7-4 shall be deemed guilty of a felony, and shall, upon conviction, be fined not less than five thousand dollars ($5,000) nor more than fifty thousand dollars ($50,000) or three times the monetary equivalent of the gift or valuable consideration, whichever is greater, or imprisoned for not more than twenty (20) years, or both.</td>
<td>Felony</td>
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| South Carolina     | Bribery with respect to agents, servants or employees, SC Code Ann § 16-17-540 (2011). | Any:  
(1) Person who corruptly gives, offers or promises to an agent, employee or servant any gift or gratuity whatever, with intent to influence his action in relation to his principal's, employer's or master's business;  
(2) Agent, employee or servant who corruptly requests or accepts a gift or gratuity or a promise to make a gift or to do an act beneficial to himself under an agreement or with an understanding that he shall act in any particular manner in relation to his principal's, employer's or master's business;  
(3) Agent, employee or servant who, being authorized to procure materials, supplies or other articles, either by purchase or contract for his principal, employer or master, receives, directly or indirectly, for himself or for another, a commission, discount or bonus from the person who makes such sale or contract or furnishes such materials, supplies or other articles or from a person who renders such service or labor; and  
(4) Person who gives or offers such an agent, employee or servant such commission, discount or bonus;  
Shall be punished by a fine of not more than five hundred dollars or by such fine and by imprisonment for not more than one year. | Misdemeanor               |
<p>| South Dakota       | Commercial bribery, SD Cod Laws § 22-43-1 (2011). | Any person who confers, or agrees to confer, directly or indirectly, any benefit upon any employee, agent, or fiduciary without the consent of the latter's employer or principal, with intent to influence the employee's, agent's, or fiduciary's conduct in relation to that person's employer's or principal's affairs, is guilty of commercial bribery. Commercial bribery is a Class 1 misdemeanor. | Misdemeanor               |
|                    | Receiving a commercial bribe, SD Cod Laws § 22-43-2 (2011). | Any employee, agent, or fiduciary who, without consent of that person's employer or principal, solicits, accepts, or agrees to accept any benefit, directly or indirectly, from another person upon an agreement or understanding that such benefit will influence his or her conduct in relation to that person's employer's or principal's affairs, is guilty of receiving a commercial bribe. Receiving a commercial bribe is a Class 1 misdemeanor. | Misdemeanor               |
| Tennessee          | None                                             | None                                                                                                                                                                                                  | None                     |</p>
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<th>Highest Level of Offense</th>
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| Texas | Commercial Bribery, Tex Penal Code Ann § 32.43 (Vernon 2011).        | (a) For purposes of this section: (1) "Beneficiary" means a person for whom a fiduciary is acting. (2) "Fiduciary" means: (A) an agent or employee; (B) a trustee, guardian, custodian, administrator, executor, conservator, receiver, or similar fiduciary; (C) a lawyer, physician, accountant, appraiser, or other professional advisor; or (D) an officer, director, partner, manager, or other participant in the direction of the affairs of a corporation or association.  
(b) A person who is a fiduciary commits an offense if, without the consent of his beneficiary, he intentionally or knowingly solicits, accepts, or agrees to accept any benefit from another person on agreement or understanding that the benefit will influence the conduct of the fiduciary in relation to the affairs of his beneficiary.  
(c) A person commits an offense if he offers, confers, or agrees to confer any benefit the acceptance of which is an offense under Subsection (b).  
(d) An offense under this section is a state jail felony.  
(e) In lieu of a fine that is authorized by Subsection (d), and in addition to the imprisonment that is authorized by that subsection, if the court finds that an individual who is a fiduciary gained a benefit through the commission of an offense under Subsection (b), the court may sentence the individual to pay a fine in an amount fixed by the court, not to exceed double the value of the benefit gained. This subsection does not affect the application of Section 12.51(c) to an offense under this section committed by a corporation or association. | Felony                   |
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| Utah   | Bribery of or receiving bribe by person in the business of selection, appraisal, or criticism of goods or services, Utah Code Ann § 76-6-508 (2011). | (1) A person is guilty of a class A misdemeanor when, without the consent of the employer or principal, contrary to the interests of the employer or principal: (a) he confers, offers, or agrees to confer upon the employee, agent, or fiduciary of an employer or principal any benefit with the purpose of influencing the conduct of the employee, agent, or fiduciary in relating to his employer's or principal's affairs; or (b) he, as an employee, agent, or fiduciary of an employer or principal, solicits, accepts, or agrees to accept any benefit from another upon an agreement or understanding that such benefit will influence his conduct in relation to his employer's or principal's affairs; provided that this section does not apply to inducements made or accepted solely for the purpose of causing a change in employment by an employee, agent, or fiduciary.  
(2) A person is guilty of violation of this section if he holds himself out to the public as being engaged in the business of making disinterested selection, appraisal, or criticism of goods or services and he solicits, accepts, or agrees to accept any benefit to influence his selection, appraisal, or criticism. | Misdemeanor               |
| Vermont| Kickbacks; private corporations, 13 Vt Stat Ann § 1108 (Equity 2012). | (a) An officer or agent of, or person employed by a private corporation or business entity, who, being authorized to procure material, supplies or other articles by purchase or contract, or to employ service or labor, shall not, directly or indirectly, solicit, ask, demand, exact, seek, accept, receive or agree to receive, with intent that he or she will be influenced adversely to the interest of the employer or principal, any benefit from a person who makes such contract, furnishes such material, supplies or other articles, or from a person who renders service or labor under such contract, nor shall a person give or offer such benefit.  
(b) A person who violates this section shall, if the value of the benefit is less than $500.00, be imprisoned not more than two years or fined not more than $5,000.00, or both. A person who violates this section shall, if the value of the benefit is $500.00 or more, be imprisoned not more than five years or fined not more than $10,000.00, or both. | Felony                    |
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| Virginia| Corruptly influencing, or being influenced as, agents, etc., Va Code § 18.2-444 (2012). | (1) Any person who gives, offers or promises to an agent, employee or servant any gift or gratuity whatever, without the knowledge and consent of the principal, employer or master of such agent, employee or servant, with intent to influence his action to the prejudice of his principal's, employer's or master's business; or  
(2) An agent, employee or servant who, without the knowledge and consent of his principal, employer or master requests or accepts a gift or gratuity or a promise to make a gift or to do an act beneficial to himself, under an agreement or with an understanding that he shall act in any particular manner as to his principal's, employer's or master's business; or  
(3) An agent, employee or servant who, being authorized to procure materials, supplies or other articles either by purchase or contract for his principal, employer or master or to employ service or labor for his principal, employer or master receives directly or indirectly, for himself or for another, a commission, discount or bonus from the person who makes such sale or contract, or furnishes such materials, supplies or other articles, or from a person who renders such service or labor; or  
(4) Any person who gives or offers such an agent, employee or servant such commission, discount or bonus; shall be guilty of a Class 3 misdemeanor. | Misdemeanor              |
### DEVELOPMENTS IN COMMERCIAL BRIBERY LAWS

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<tr>
<td>Washington</td>
<td>Commercial bribery, Wash Rev Code § 9A.68.060 (2012)</td>
<td>(1) For purposes of this section: (a) &quot;Claimant&quot; means a person who has or is believed by an actor to have an insurance claim. (b) &quot;Service provider&quot; means a person who directly or indirectly provides, advertises, or otherwise claims to provide services. (c) &quot;Services&quot; means health care services, motor vehicle body or other motor vehicle repair, and preparing, processing, presenting, or negotiating an insurance claim. (d) &quot;Trusted person&quot; means: (i) An agent, employee, or partner of another; (ii) An administrator, executor, conservator, guardian, receiver, or trustee of a person or an estate, or any other person acting in a fiduciary capacity; (iii) An accountant, appraiser, attorney, physician, or other professional adviser; (iv) An officer or director of a corporation, or any other person who participates in the affairs of a corporation, partnership, or unincorporated association; or (v) An arbitrator, mediator, or other purportedly disinterested adjudicator or referee. (2) A person is guilty of commercial bribery if: (a) He or she offers, confers, or agrees to confer a pecuniary benefit directly or indirectly upon a trusted person under a request, agreement, or understanding that the trusted person will violate a duty of fidelity or trust arising from his or her position as a trusted person; (b) Being a trusted person, he or she requests, accepts, or agrees to accept a pecuniary benefit for himself, herself, or another under a request, agreement, or understanding that he or she will violate a duty of fidelity or trust arising from his or her position as a trusted person; or (c) Being an employee or agent of an insurer, he or she requests, accepts, or agrees to accept a pecuniary benefit for himself or herself, or a person other than the insurer, under a request, agreement, or understanding that he or she will or a threat that he or she will not refer or induce claimants to have services performed by a service provider. (3) It is not a defense to a prosecution under this section that the person sought to be influenced was not qualified to act in the desired way, whether because the person had not yet assumed his or her position, lacked authority, or for any other reason. (4) Commercial bribery is a class B felony.</td>
<td>Felony</td>
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<td>West Virginia</td>
<td>None</td>
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| Wisconsin | Bribery of agent, etc., Wis Stat § 134.05 (2011). | (1) Whoever corruptly gives, offers or promises to an agent, employee or servant, any gift or gratuity whatever, with intent to influence the agent's, employee's or servant's action in relation to the business of the agent's, employee's or servant's principal, employer or master shall be penalized as provided in sub. (4).

(2) An agent, employee or servant who does any of the following shall be penalized as provided in sub. (4): (a) Corruptly requests or accepts a gift or gratuity or a promise to make a gift or to do an act beneficial to himself or herself, under an agreement or with an understanding that he or she shall act in any particular manner in relation to the business of the agent's, employee's or servant's principal, employer or master. (b) Being authorized to procure materials, supplies or other articles either by purchase or contract for his or her principal, employer or master, or to employ service or labor for his or her principal, employer or master, receives directly or indirectly, for himself or herself or for another, a commission, discount or bonus from the person who makes such sale or contract, or furnishes such materials, supplies or other articles, or from a person who renders such service or labor.

(3) A person who gives or offers an agent, employee or servant authorized as described in sub. (2)(b) a commission, discount or bonus of the type described in sub. (2)(b), shall be penalized as provided in sub. (4).

(4) Whoever violates sub. (1), (2) or (3) may be fined not more than $10,000 or imprisoned for not more than 9 months or both. | Misdemeanor |
| Wyoming | No general statute                           | [Limited to sports-related bribery. See Wyo Stat § 6-3-609.]                                                                                                                                        |                          |
### DEVELOPMENTS IN COMMERCIAL BRIBERY LAWS

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| Model Penal Code       | Commercial Bribery and Breach of Duty to Act Disinterestedly, Model Penal Code § 224.8 (2010). | (1) A person commits a misdemeanor if he solicits, accepts or agrees to accept any benefit as consideration for knowingly violating or agreeing to violate a duty of fidelity to which he is subject as: (a) partner, agent, or employee of another; (b) trustee, guardian, or other fiduciary; (c) lawyer, physician, accountant, appraiser, or other professional adviser or informant; (d) officer, director, manager or other participant in the direction of the affairs of an incorporated or unincorporated association; or (e) arbitrator or other purportedly disinterested adjudicator or referee.  
(2) A person who holds himself out to the public as being engaged in the business of making disinterested selection, appraisal, or criticism of commodities or services commits a misdemeanor if he solicits, accepts or agrees to accept any benefit to influence his selection, appraisal or criticism.  
(3) A person commits a misdemeanor if he confers, or offers or agrees to confer, any benefit the acceptance of which would be criminal under this Section. | Misdemeanor               |