

**ETHICS PROVISIONS**

2009 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Sheryl L. Allen**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill creates the Legislative Ethics Commission.

**Highlighted Provisions:**

This bill:

- ▶ establishes a legislative code of conduct, and provides criminal penalties for its violation;
- ▶ defines terms;
- ▶ creates the Legislative Ethics Commission;
- ▶ provides for membership and other requirements for the commission;
- ▶ prescribes the commission's duties;
- ▶ addresses the filing of an initial complaint against a legislator for violating certain rules and statutes;
- ▶ requires the commission staff to conduct an investigation of an initial complaint and recommend action to the commission;
- ▶ requires the commission to act on an initial complaint;
- ▶ provides for the filing of a formal complaint against a legislator;
- ▶ addresses pre-hearing proceedings after a formal complaint is filed;
- ▶ outlines hearing procedures;
- ▶ addresses commission deliberations and recommendations;
- ▶ requires the commission to forward any recommendation concerning a legislator to



28 the Senate or House of Representatives, respectively; and

29       ▶ provides for notifying certain county attorneys of criminal conduct.

30 **Monies Appropriated in this Bill:**

31       None

32 **Other Special Clauses:**

33       None

34 **Utah Code Sections Affected:**

35 ENACTS:

36       **36-19-2**, Utah Code Annotated 1953

37       **36-27-101**, Utah Code Annotated 1953

38       **36-27-102**, Utah Code Annotated 1953

39       **36-27-201**, Utah Code Annotated 1953

40       **36-27-202**, Utah Code Annotated 1953

41       **36-27-203**, Utah Code Annotated 1953

42       **36-27-301**, Utah Code Annotated 1953

43       **36-27-302**, Utah Code Annotated 1953

44       **36-27-303**, Utah Code Annotated 1953

45       **36-27-304**, Utah Code Annotated 1953



47 *Be it enacted by the Legislature of the state of Utah:*

48       Section 1. Section **36-19-2** is enacted to read:

49       **36-19-2. Code of official conduct for legislators -- Criminal penalty.**

50       (1) Each legislator shall comply with the guidelines established in Subsection (2).

51       (2) The following rules apply to a legislator:

52       (a) While in session, a member of the Senate and House shall disclose any conflict of  
53 interest on any legislation or legislative matter as provided in legislative rules.

54       (b) A member of the Senate and House may accept small gifts, awards, or contributions  
55 that are otherwise permitted by law.

56       (c) A member of the House or Senate may not violate Sections 76-8-103, 76-8-104,  
57 76-8-105, 76-8-106, 76-8-107, 76-8-108, 76-8-109, 76-8-201, and 76-8-202.

58       (d) A legislator may not suggest or threaten retributive action against the employment

59 or agency budget of a public officer, public employee, or public entity who does not comply  
60 with a demand made by the legislator.

61 (e) A legislator may not interfere with or attempt to influence the preparation of any  
62 document, analysis, or audit provided for by law or legislative rule prepared by the Office of  
63 Legislative Research and General Counsel, the Office of the Legislative Fiscal Analyst, or the  
64 Office of the Legislative Auditor General, except to the extent the law or legislative rule  
65 authorizes the legislator to influence the preparation.

66 (f) A legislator may not request that a public officer or public employee be terminated  
67 from the public officer's or employee's employment, except to the extent otherwise allowed by  
68 law.

69 (g) A legislator may not recommend or request that a public entity contract with any  
70 specific company for services to be provided to the entity, unless the legislator is employed by  
71 the entity in a capacity that requires the legislator to make recommendations or requests for  
72 entering into contracts.

73 (h) A legislator may not use any information that is not publicly available and is  
74 obtained by reason of the legislator's official position to gain any commercial advantage in  
75 business with the state or its political subdivisions.

76 (i) A legislator may not broker a campaign contribution from a political action  
77 committee, political issues committee, or other person to another legislator in return for  
78 obtaining support for legislation or a legislative matter.

79 (j) A legislator may not solicit a contribution from a political action committee,  
80 political issues committee, or other person in behalf of any other person than the legislator's  
81 own campaign committee.

82 (k) A legislator may not attempt to influence the contractual relationship between a  
83 lobbyist and the lobbyist's principal.

84 (l) A legislator who is not a party or representing a party in a civil, criminal, or juvenile  
85 matter before a court of this state may not attempt to influence the outcome of a judicial  
86 controversy by communicating with a judge or justice concerning the matter.

87 (3) Except as provided by other law, a legislator who violates Subsection (1) is guilty  
88 of a class B misdemeanor.

89 Section 2. Section **36-27-101** is enacted to read:

CHAPTER 27. LEGISLATIVE ETHICS COMMISSION ACT

Part 1. General Provisions

**36-27-101. Title.**

This chapter is known as the "Legislative Ethics Commission Act."

Section 3. Section **36-27-102** is enacted to read:

**36-27-102. Definitions.**

As used in this chapter:

(1) "Commission" means the Legislative Ethics Commission created in this chapter.

(2) "Executive director" means the executive director appointed in accordance with

Section 36-27-201.

Section 4. Section **36-27-201** is enacted to read:

**Part 2. Legislative Ethics Commission**

**36-27-201. Legislative Ethics Commission -- Creation -- Membership -- Chairs -- Per diem and expenses -- Staff -- Chair -- Quorum -- Commission action.**

(1) There is created the Legislative Ethics Commission composed of five members as follows:

(a) one member appointed by the president of the Senate, who may not be a legislator, registered lobbyist, or employee of an entity that hires a registered lobbyist;

(b) one member appointed by the minority leader of the Senate, who may not be a legislator, registered lobbyist, or employee of an entity that hires a registered lobbyist;

(c) one member appointed by the speaker of the House of Representatives, who may not be a legislator, registered lobbyist, or employee of an entity that hires a registered lobbyist;

(d) one member appointed by the minority leader of the House of Representatives, who may not be a legislator, registered lobbyist, or employee of an entity that hires a registered lobbyist; and

(e) one member appointed jointly by the president of the Senate and the speaker of the House of Representatives.

(2) (a) Members who are not government employees shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the members' official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

- 121           (b) Members may decline to receive per diem and expenses for their service.
- 122           (3) (a) State government officer and employee members who do not receive salary, per
- 123 diem, or expenses from their agency for their service may receive per diem and expenses
- 124 incurred in the performance of their official duties from the commission at the rates established
- 125 by the Division of Finance under Sections 63A-3-106 and 63A-3-107.
- 126           (b) State government officer and employee members may decline to receive per diem
- 127 and expenses for their service.
- 128           (4) (a) The commission shall employ an executive director, who shall be licensed to
- 129 practice law in Utah.
- 130           (b) The commission may employ additional staff within budgetary constraints.
- 131           (5) A majority of the commission constitutes a quorum for the conduct of business.
- 132           (6) The action of a majority of a quorum present constitutes the action of the
- 133 commission.
- 134           (7) The commission shall elect a chair from among its members.
- 135           Section 5. Section **36-27-202** is enacted to read:
- 136           **36-27-202. Duties.**
- 137           The commission shall:
- 138           (1) receive complaints concerning legislators;
- 139           (2) investigate any complaint concerning a legislator that it receives;
- 140           (3) conduct hearings in accordance with this chapter;
- 141           (4) issue a recommendation concerning discipline to the Senate or House of
- 142 Representatives, respectively, in accordance with this chapter;
- 143           (5) issue advisory opinions concerning a legislator's ethical duties upon request by a
- 144 legislator or legislative committee;
- 145           (6) create and administer a training program for legislators in accordance with Section
- 146 36-27-203;
- 147           (7) investigate, study, and make recommendations for improving matters of ethical
- 148 concern to the Legislature;
- 149           (8) make policies to carry out its duties; and
- 150           (9) meet as necessary.
- 151           Section 6. Section **36-27-203** is enacted to read:

152 **36-27-203. Ethics training.**

153 (1) The commission shall create an ethics training program for legislators that  
154 addresses the following topics:

- 155 (a) the Code of Official Conduct for legislators, as found in Section 36-19-2;
- 156 (b) provisions of federal and state criminal law that may be applicable to legislators;
- 157 (c) campaign finance and gift disclosure requirements;
- 158 (d) harassment and discrimination provisions of federal and state law; and
- 159 (e) any other matters the commission considers appropriate for an ethics training  
160 program.

161 (2) A legislator shall complete the commission-provided ethics training:

- 162 (a) in person before the end of the legislator's first legislative general session as a  
163 legislator; and
- 164 (b) in person or electronically in each calendar year after the calendar year in which the  
165 legislator's first legislative general session as a legislator occurs.

166 (3) The commission shall make an online training program that satisfies this section  
167 available to legislators no later than July 1, 2010.

168 Section 7. Section **36-27-301** is enacted to read:

169 **Part 3. Commission Procedures**

170 **36-27-301. Initial complaints -- Investigation.**

171 (1) (a) Any person, except a member of the commission or its staff, may file an initial  
172 complaint against a legislator for a violation of a legislative rule or criminal statute.

173 (b) An initial complaint may not be filed more than four years after the conduct  
174 complained of occurs or reasonably should have been discovered.

175 (2) (a) Upon filing, an initial complaint is:

- 176 (i) confidential; and
- 177 (ii) classified as a protected record under Title 63G, Chapter 2, Government Records  
178 Access and Management Act.

179 (b) The commission and its staff shall keep an initial complaint confidential, except to  
180 the extent disclosure is necessary to investigate the complaint, including disclosure to the  
181 legislator who is the subject of the initial complaint.

182 (3) (a) Upon receiving an initial complaint, the executive director and commission staff

183 shall investigate the complaint to determine if it merits further consideration by the  
184 commission.

185 (b) (i) In investigating an initial complaint under this section, the executive director or  
186 the commission may issue a subpoena to compel the production of documents or other  
187 evidence, or to compel the appearance of a witness.

188 (ii) A subpoena issued in accordance with this section may be enforced in the manner  
189 provided by Section 36-14-5.

190 (c) Within 30 days after receiving the initial complaint, the executive director shall  
191 make a recommendation to the commission concerning whether the initial complaint should be  
192 dismissed or whether the commission should proceed with further investigation of the matter.

193 (d) Notwithstanding Subsection (3)(c), the commission may, for good cause, grant the  
194 commission staff additional time to investigate the initial complaint and make a  
195 recommendation for good cause.

196 (4) After receiving a recommendation from the executive director under Subsection  
197 (3)(c), the commission shall determine whether to dismiss a complaint or to proceed with  
198 further investigation of a matter that is the subject of an initial complaint.

199 (5) If the commission determines there is reasonable suspicion justifying further  
200 investigation of a matter that is the subject of an initial complaint, it shall order the executive  
201 director to prepare a formal complaint, in accordance with Section 36-27-302, against the  
202 legislator who was the subject of the initial complaint.

203 (6) Any commission proceeding concerning an initial complaint or matters concerning  
204 the investigation of an initial complaint shall be closed in accordance with Title 52, Chapter 4,  
205 Open and Public Meetings Act.

206 Section 8. Section **36-27-302** is enacted to read:

207 **36-27-302. Formal complaint -- Response -- Subpoenas -- Evidence -- Hearing.**

208 (1) (a) Except as provided in Subsection (1)(b), within 30 days after being ordered to  
209 prepare a formal complaint against a legislator under Section 36-27-301(5), the executive  
210 director shall file the formal complaint, which shall include:

211 (i) the name of the legislator who is accused of violating the Code of Official Conduct  
212 in Section 36-19-2 or a criminal statute;

213 (ii) the facts surrounding the complaint, to the extent they are known from the initial

214 complaint and the investigation of the initial complaint;

215 (iii) the identity of the initial complainant; and

216 (iv) an identification of the provision of Section 36-19-2 or criminal statute alleged to  
217 have been violated.

218 (b) Except upon a two-thirds vote of the commission, a formal complaint may not be  
219 filed against a legislator within 30 days before a primary or general election in which the  
220 legislator is a candidate for any office.

221 (2) Upon filing the formal complaint with the commission, the formal complaint is a  
222 public document.

223 (3) The executive director shall cause a copy of the formal complaint to be served on  
224 the legislator who is the subject of the formal complaint.

225 (4) (a) A legislator who is the subject of a formal complaint may submit a response,  
226 which may include any motion to dismiss, to the formal complaint within 20 days after the day  
227 on which the formal complaint is served on the legislator.

228 (b) The commission may act on a motion to dismiss before adjudicating the matters  
229 contained in the formal complaint.

230 (5) (a) The commission shall begin a hearing to adjudicate the matters contained in the  
231 formal complaint:

232 (i) within 45 days after receiving a legislator's response to a formal complaint under  
233 Subsection (4); or

234 (ii) within 45 days after the day on which a legislator could last submit a response  
235 under Subsection (4), if no response is submitted.

236 (b) The legislator who is the subject of the formal complaint may waive the 45-day  
237 requirement of Subsection (5)(a).

238 (6) The commission and the executive director may issue subpoenas to compel the  
239 production of documents or other evidence, or to compel the appearance of a witness.

240 (7) (a) Documentary evidence in the possession of the commission, the commission  
241 staff, or the legislator who is the subject of the formal complaint shall be served on or mailed to  
242 the commission, the commission staff, and the legislator at least 10 days before the day on  
243 which the hearing under this section is scheduled to begin.

244 (b) The commission may refuse to consider evidence not provided to the commission,

245 the commission staff, or the legislator in accordance with Subsection (7)(a).

246 (8) A legislator who is the subject of a formal complaint may stipulate to facts with the  
247 concurrence of the commission.

248 (9) (a) A hearing held under this chapter is an open meeting under Title 52, Chapter 4,  
249 Open and Public Meetings Act.

250 (b) A hearing held under this chapter is not subject to Title 63G, Chapter 4,  
251 Administrative Procedures Act.

252 Section 9. Section **36-27-303** is enacted to read:

253 **36-27-303. Hearing Procedure.**

254 (1) (a) At a hearing to adjudicate a formal complaint held in accordance with this  
255 chapter, the chair shall make rulings concerning the admissibility of evidence and testimony.

256 (b) The commission may overrule the chair's decision on the admissibility of evidence  
257 or testimony by a majority vote.

258 (c) The chair and the commission are not required to follow the Utah Rules of  
259 Evidence in making decisions concerning the admissibility of evidence or testimony.

260 (2) (a) The legislator who is the subject of the formal complaint, the complainant, and  
261 any witness who is subpoenaed to testify at the hearing are entitled to have counsel present.

262 (b) Counsel for the legislator who is the subject of the formal complaint and counsel  
263 for the complainant may question any witness.

264 (c) Counsel for a witness:

265 (i) may not question any witness; and

266 (ii) may not assist the witness unless the witness requests counsel's assistance.

267 (d) The executive director may question witnesses and make oral argument.

268 (e) In a formal hearing, the legislator's guilt must be proved by a preponderance of the  
269 evidence.

270 (3) At the conclusion of the presentation of evidence in the hearing, the commission  
271 may permit counsel for the legislator who is the subject of the formal complaint and for the  
272 complainant to make oral arguments.

273 (4) (a) At the conclusion of the presentation of evidence and any oral argument, the  
274 commission shall deliberate.

275 (b) The commission's deliberations concerning a formal complaint are a closed meeting

276 under Title 52, Chapter 4, Open and Public Meetings Act.  
277 (5) The commission may:  
278 (a) dismiss a formal complaint after the hearing;  
279 (b) recommend discipline against the legislator who is the subject of the formal  
280 complaint; or  
281 (c) make other recommendations it considers appropriate.  
282 (6) If the commission finds probable cause that a legislator who is the subject of a  
283 formal complaint violates Section 36-19-2 or any criminal provision, the commission shall:  
284 (a) notify the county attorney for the county in which the conduct occurred and a  
285 county attorney affiliated with a different political party of the conduct for potential  
286 prosecution; and  
287 (b) share any evidence in the commission's possession with the county attorneys  
288 notified under Subsection (6)(a).  
289 Section 10. Section **36-27-304** is enacted to read:  
290 **36-27-304. Commission disposition of complaints.**  
291 (1) Within 30 days after the conclusion of a hearing under Section 36-27-303, the  
292 commission shall forward any recommendation, including any findings of fact or conclusions  
293 of law, to the Senate or the House of Representatives, respectively, for further consideration.  
294 (2) A recommendation of the commission is a public document under Title 63G,  
295 Chapter 2, Government Records Access and Management Act, when the commission forwards  
296 the recommendation to the Senate or House of Representatives under Subsection (1).

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**Legislative Review Note**  
**as of 2-5-09 4:09 PM**

**Office of Legislative Research and General Counsel**

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**H.B. 159 - Ethics Provisions**

**Fiscal Note**

2009 General Session

State of Utah

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**State Impact**

The Office of Legislative Research and General Counsel provides staff assistance to the House and Senate Ethics Committees. To the extent that this bill results in additional work for these two committees, it could create a fiscal impact. It is unknown at this time what additional requirements for staff time the bill would create. No additional appropriation is needed at this time.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

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