

ETHIC LAW AMENDMENTS

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: Martin R. Stephens

Perry Buckner

AN ACT RELATING TO ETHICS; CLARIFYING DISTINCTIONS BETWEEN CERTAIN BRIBERY CRIMES AND OTHER ETHICAL VIOLATIONS; MODIFYING THE ELEMENTS AND PENALTIES OF CERTAIN BRIBERY CRIMES; AND MAKING TECHNICAL CORRECTIONS.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

10-3-1304, as last amended by Chapter 188, Laws of Utah 1997

10-3-1305, as last amended by Chapter 77, Laws of Utah 1992

17-16a-4, as enacted by Chapter 46, Laws of Utah 1983

17-33-13, as enacted by Chapter 81, Laws of Utah 1981

67-16-4, as last amended by Chapter 188, Laws of Utah 1997

67-16-5, as last amended by Chapter 188, Laws of Utah 1997

67-16-6, as last amended by Chapter 147, Laws of Utah 1989

67-16-11, as last amended by Chapter 147, Laws of Utah 1989

76-8-103, as last amended by Chapter 42, Laws of Utah 1993

REPEALS AND REENACTS:

76-8-105, as last amended by Chapter 241, Laws of Utah 1991

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

Section 1. Section **10-3-1304** is amended to read:

10-3-1304. Use of office for personal benefit prohibited.

(1) As used in this section, "economic benefit tantamount to a gift" includes:

(a) a loan at an interest rate that is substantially lower than the commercial rate then currently prevalent for similar loans; and

(b) compensation received for private services rendered at a rate substantially exceeding

the fair market value of the services.

(2) [~~An~~] It is an offense for an elected or appointed officer or municipal employee [may not], under circumstances not amounting to a violation of Section 63-56-72 or 76-8-105, to:

(a) disclose or improperly use private, controlled, or protected information acquired by reason of his official position or in the course of official duties in order to further substantially the officer's or employee's personal economic interest or to secure special privileges or exemptions for himself or others;

(b) use or attempt to use his official position to:

(i) further substantially the officer's or employee's personal economic interest; or

(ii) secure special privileges for himself or others; or

(c) knowingly receive, accept, take, seek, or solicit, directly or indirectly, for himself or another a gift of substantial value or a substantial economic benefit tantamount to a gift that:

(i) would tend improperly to influence a reasonable person in the person's position to depart from the faithful and impartial discharge of the person's public duties; or

(ii) the person knows or that a reasonable person in that position should know under the circumstances is primarily for the purpose of rewarding the person for official action taken.

(3) Subsection (2)(c) does not apply to:

(a) an occasional nonpecuniary gift having a value of less than \$50;

(b) an award publicly presented in recognition of public services;

(c) any bona fide loan made in the ordinary course of business; or

(d) a political campaign contribution.

Section 2. Section **10-3-1305** is amended to read:

10-3-1305. Compensation for assistance in transaction involving municipality -- Public disclosure and filing required.

(1) As used in this section, "municipal body" means any public board, commission, committee, or other public group organized to make public policy decisions or to advise persons who make public policy decisions.

(2) [~~An~~] It is an offense for an elected officer, or appointed officer, who is a member of a

public body, [may not] under circumstances not amounting to a violation of Section 63-56-72 or 76-8-105, to receive or agree to receive compensation for assisting any person or business entity in any transaction involving the municipality in which he is an officer unless he:

(a) files with the mayor a sworn statement giving the information required by this section;

and

(b) discloses the information required by Subsection (5) in an open meeting to the members of the body of which he is a member immediately before the discussion.

(3) [~~An~~] It is an offense for an appointed officer who is not a member of a public body or a municipal employee [may not] to receive or agree to receive compensation for assisting any person or business entity in any transaction involving the municipality by which he is employed unless [~~he~~] the officer or employee:

(a) files with the mayor a sworn statement giving the information required by this section;

and

(b) discloses the information required by Subsection (5) to:

(i) his immediate supervisor; and

(ii) any other municipal officer or employee who may rely upon the employee's representations in evaluating or approving the transaction.

(4) (a) The officer or employee shall file the statement required to be filed by this section ten days before the date of any agreement between the elected or appointed officer or municipal employee and the person or business entity being assisted or ten days before the receipt of compensation by the officer or employee, whichever is earlier.

(b) The statement is public information and shall be available for examination by the public.

(5) The statement and disclosure shall contain:

(a) the name and address of the officer or municipal employee;

(b) the name and address of the person or business entity being or to be assisted or in which the appointed or elected official or municipal employee has a substantial interest; and

(c) a brief description of the transaction as to which service is rendered or is to be rendered and of the nature of the service performed or to be performed.

Section 3. Section **17-16a-4** is amended to read:

17-16a-4. Prohibited use of official position.

~~[(1)]~~ (1) It is an offense for an elected or appointed officer ~~[shall], under circumstances not amounting to a violation of Section 63-56-72 or 76-8-105, to:~~

~~[(1)]~~ (a) disclose confidential information acquired by reason of his official position or use ~~[such] that~~ information to secure special privileges or exemptions for himself or others;

~~[(2)]~~ (b) use or attempt to use his official position to secure special privileges for himself or others; or

~~[(3)]~~ (c) knowingly receive, accept, take, seek or solicit, directly or indirectly, any gift or loan for himself or another if the gift or loan tends to influence him in the discharge of his official duties.

(2) This ~~[subsection] section~~ is inapplicable to:

(a) an occasional nonpecuniary gift having a value of less than \$50; ~~[or]~~

(b) an award publicly presented; ~~[or]~~

(c) any bona fide loan made in the ordinary course of business; or

(d) political campaign contributions actually used in a political campaign.

Section 4. Section **17-33-13** is amended to read:

17-33-13. Prohibited actions.

(1) ~~[(1)]~~ It is an offense for a person ~~[may] to~~ make any false statement, certificate, mark, rating, or report with regard to any test, certification, or appointment made under any provision of this law or in any manner commit or attempt to commit any fraud preventing the impartial execution of this chapter.

(2) ~~[(2)]~~ It is an offense for a person ~~[may], under circumstances not amounting to a violation of Section 76-8-103 or 76-8-105, to~~ directly or indirectly, give, render, pay, offer, solicit, or accept any money, service, or other valuable consideration for any appointment, proposed appointment, promotion, or proposed promotion to, or for any advantage in, a position in the career service.

(3) ~~[(3)]~~ It is an offense for any employee of the personnel department, examiner, or other

person [may] to:

(a) defeat, deceive, or obstruct any person in his or her right to examination, eligibility, certification, or appointment under this chapter[.]; or

(b) furnish to any person any special or secret information for the purpose of affecting the rights or prospects of any person with respect to employment in the career service.

Section 5. Section **67-16-4** is amended to read:

67-16-4. Improperly disclosing or using private, controlled, or protected information -- Using position to secure privileges or exemptions -- Accepting employment which would impair independence of judgment or ethical performance.

[A] It is an offense for a public officer, public employee, or legislator [may not], under circumstances not amounting to a violation of Section 63-56-72 or 76-8-105, to:

(1) accept employment or engage in any business or professional activity that he might reasonably expect would require or induce him to improperly disclose controlled information that he has gained by reason of his official position;

(2) disclose or improperly use controlled, private, or protected information acquired by reason of his official position or in the course of official duties in order to further substantially the officer's or employee's personal economic interest or to secure special privileges or exemptions for himself or others;

(3) use or attempt to use his official position to:

(a) further substantially the officer's or employee's personal economic interest; or

(b) secure special privileges or exemptions for himself or others;

(4) accept other employment that he might expect would impair his independence of judgment in the performance of his public duties; or

(5) accept other employment that he might expect would interfere with the ethical performance of his public duties.

Section 6. Section **67-16-5** is amended to read:

67-16-5. Accepting gift, compensation, or loan -- When prohibited.

(1) As used in this section, "economic benefit tantamount to a gift" includes:

(a) a loan at an interest rate that is substantially lower than the commercial rate then currently prevalent for similar loans; and

(b) compensation received for private services rendered at a rate substantially exceeding the fair market value of the services.

(2) [A] It is an offense for a public officer, public employee, or legislator [may not], under circumstances not amounting to a violation of Section 63-56-72 or 76-8-105, to knowingly receive, accept, take, seek, or solicit, directly or indirectly for himself or another a gift of substantial value or a substantial economic benefit tantamount to a gift:

(a) that would tend improperly to influence a reasonable person in the person's position to depart from the faithful and impartial discharge of the person's public duties;

(b) that the person knows or that a reasonable person in that position should know under the circumstances is primarily for the purpose of rewarding the person for official action taken; or

(c) he recently has been, or is now, or in the near future may be involved in any governmental action directly affecting the donor or lender, unless a disclosure of the gift, compensation, or loan and other relevant information has been made in the manner provided in Section 67-16-6.

(3) Subsection [(1)] (2) does not apply to [the following]:

(a) an occasional nonpecuniary gift, having a value of not in excess of \$50;

(b) an award publicly presented in recognition of public services;

(c) any bona fide loan made in the ordinary course of business; or

(d) a political campaign contribution.

Section 7. Section **67-16-6** is amended to read:

67-16-6. Receiving compensation for assistance in transaction involving an agency -- Filing sworn statement.

(1) [No] It is an offense for a public officer or public employee [shall], under circumstances not amounting to a violation of Section 63-56-72 or 76-8-105, to receive or agree to receive compensation for assisting any person or business entity in any transaction involving an agency unless the public officer or public employee files [with] a sworn, written statement containing the

information required by Subsection (2) with:

- (a) the head of his own agency[;];
- (b) the agency head of the agency with which the transaction is being conducted[;]; and
- (c) the state attorney general [~~a sworn written statement giving the following information:~~].

(2) The statement shall contain:

- (a) the name and address of the public officer or public employee involved;
- (b) the name of the public officer's or public employee's agency;
- (c) the name and address of the person or business entity being or to be [sø] assisted; and
- (d) a brief description of:
 - (i) the transaction as to which service is rendered or is to be rendered; and [of]
 - (ii) the nature of the service performed or to be performed.

~~[(2)]~~ (3) The statement required to be filed under Subsection (1) shall be filed within ten days after the date of any agreement between the public officer or public employee and the person or business entity being assisted or the receipt of compensation, whichever is earlier.

(4) The statement is public information and shall be available for examination by the public.

Section 8. Section **67-16-11** is amended to read:

67-16-11. Applicability of provisions.

The provisions of this chapter apply to all public officers and public employees [~~and supersede the provisions of any such other law, charter, or ordinance~~].

Section 9. Section **76-8-103** is amended to read:

76-8-103. Bribery or offering a bribe.

(1) A person is guilty of [~~a felony of the third degree if: (a) he~~] bribery or offering a bribe if that person promises, offers, or agrees to give or gives, directly or indirectly, any [pecuniary] benefit to another with the purpose [of influencing the other's] or intent to influence an action, decision, opinion, recommendation, judgment, vote, nomination, or [other] exercise of discretion [as] of a public servant, party official, or voter[; or].

~~[(b) as a public servant, juror, party official, candidate for electoral office, or voter, he solicits, accepts, or agrees to accept any pecuniary benefit from another, knowing the other's purpose~~

to be as described in Subsection (1)(a).]

~~[(2) It is not a violation of this section to give a pecuniary benefit to a public servant if that benefit is reasonably related to an exchange of information on an issue within the responsibility of the public servant.]~~

(2) It is not a defense to a prosecution under this statute that:

(a) the person sought to be influenced was not qualified to act in the desired way, whether because the person had not assumed office, lacked jurisdiction, or for any other reason;

(b) the person sought to be influenced did not act in the desired way; or

(c) the benefit is not conferred, solicited, or accepted until after:

(i) the action, decision, opinion, recommendation, judgment, vote, nomination, or exercise of discretion, has occurred; or

(ii) the public servant ceases to be a public servant.

(3) Bribery or offering a bribe is:

(a) a third degree felony when the value of the benefit asked for, solicited, accepted, or conferred is less than \$1,000; and

(b) a second degree felony when the value of the benefit asked for, solicited, accepted, or conferred is \$1,000 or more.

Section 10. Section **76-8-105** is repealed and reenacted to read:

76-8-105. Receiving or soliciting bribe or bribery by public servant.

(1) A person is guilty of receiving or soliciting a bribe if that person asks for, solicits, accepts, or receives, directly or indirectly, any benefit with the understanding or agreement that the purpose or intent is to influence an action, decision, opinion, recommendation, judgment, vote, nomination, or exercise of discretion, of a public servant, party official, or voter.

(2) It is not a defense to a prosecution under this statute that:

(a) the person sought to be influenced was not qualified to act in the desired way, whether because the person had not assumed office, lacked jurisdiction, or for any other reason;

(b) the person sought to be influenced did not act in the desired way; or

(c) the benefit is not asked for, conferred, solicited, or accepted until after:

(i) the action, decision, opinion, recommendation, judgment, vote, nomination, or exercise of discretion, has occurred; or

(ii) the public servant ceases to be a public servant.

(3) Receiving or soliciting a bribe is:

(a) a third degree felony when the value of the benefit asked for, solicited, accepted, or conferred is \$1,000 or less; and

(b) a second degree felony when the value of the benefit asked for, solicited, accepted, or conferred exceeds \$1,000.