

Representative Chad E. Bennion proposes to substitute the following bill:

**RESTRICTIONS ON GIFTS TO
LEGISLATORS**

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Joseph G. Murray

This act modifies the Lobbyist Disclosure and Regulation Act. This act allows public officials to receive gifts of any value from a lobbyist, principal, or government officer but requires the lobbyist, principal, or government officer to report each gift, including the name of the recipient. This act removes current prohibitions on lobbyists, principals, and government officers giving, and elected officials accepting, tangible gifts.

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

AMENDS:

36-11-102, as last amended by Chapter 13, Laws of Utah 1998

36-11-201, as last amended by Chapter 338, Laws of Utah 2000

36-11-304, as enacted by Chapter 192, Laws of Utah 1995

67-16-5, as last amended by Chapters 13 and 92, Laws of Utah 1998

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

Section 1. Section **36-11-102** is amended to read:

36-11-102. Definitions.

As used in this chapter:

(1) "Aggregate daily expenditures" means the total expenditures made within a 24-hour period.

(2) "Executive action" means:

(a) nominations and appointments by the governor;

(b) the proposal, drafting, amendment, enactment, or defeat by a state agency of any rule



26 made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act; and

27 (c) agency ratemaking proceedings.

28 (3) (a) "Expenditure" means any of the items listed in this subsection when given to or for
29 the benefit of a public official or his immediate family:

30 (i) a purchase, payment, distribution, loan, gift, advance, deposit, subscription,
31 forbearance, services, or goods, unless consideration of equal or greater value is received; and

32 (ii) a contract, promise, or agreement, whether or not legally enforceable, to provide any
33 of the items listed in Subsection (3)(a)(i).

34 (b) "Expenditure" does not mean:

35 (i) a commercially reasonable loan made in the ordinary course of business;

36 (ii) a campaign contribution reported in accordance with Title 20A, Chapter 11, Corrupt
37 Practices in Elections;

38 (iii) printed informational material;

39 (iv) a devise or inheritance;

40 (v) any item listed in Subsection (3)(a) if given by a relative;

41 (vi) a modest item of food or refreshment such as a beverage or pastry offered other than
42 as part of a meal;

43 (vii) a greeting card or other item of little intrinsic value that is intended solely for
44 presentation;

45 (viii) plaques, commendations, or awards; or

46 (ix) reimbursement of reasonable expenses for or providing travel, lodging, or meals to
47 a public official when:

48 (A) those expenses are directly related to the public official's attendance and participation
49 in a regularly scheduled meeting of an organization, association, or group; and

50 (B) that organization, association, or group pays or provides those expenses.

51 (4) (a) "Government officer" means:

52 (i) an individual elected to a position in state or local government, when acting within his
53 official capacity; or

54 (ii) an individual appointed to or employed in a full-time position by state or local
55 government, when acting within the scope of his employment.

56 (b) "Government officer" does not mean a member of the legislative branch of state

57 government.

58 (5) "Immediate family" means a spouse, a child residing in the household, or an individual
59 claimed as a dependent for tax purposes.

60 (6) "Interested person" means an individual defined in Subsections (9)(b)(ii) and (viii).

61 (7) "Legislative action" means:

62 (a) bills, resolutions, amendments, nominations, and other matters pending or proposed
63 in either house of the Legislature or its committees or requested by a legislator; and

64 (b) the action of the governor in approving or vetoing legislation.

65 (8) "Lobbying" means communicating with a public official for the purpose of influencing
66 the passage, defeat, amendment, or postponement of legislative or executive action.

67 (9) (a) "Lobbyist" means an individual who is employed by a principal or who contracts
68 for economic consideration, other than reimbursement for reasonable travel expenses, with a
69 principal to lobby a public official.

70 (b) "Lobbyist" does not include:

71 (i) a public official while acting in his official capacity on matters pertaining to his office
72 or a state employee while acting within the scope of his employment;

73 (ii) any person appearing at, or providing written comments to, a hearing conducted in
74 accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act or Title 63, Chapter
75 46b, Administrative Procedures Act;

76 (iii) any person participating on or appearing before an advisory or study task force,
77 commission, board, or committee, constituted by the Legislature or any agency or department of
78 state government, except legislative standing, appropriation, or interim committees;

79 (iv) a representative of a political party;

80 (v) an individual representing a bona fide church solely for the purpose of protecting the
81 right to practice the religious doctrines of the church unless the individual or church makes an
82 expenditure that confers a benefit on a public official;

83 (vi) a newspaper, television station or network, radio station or network, periodical of
84 general circulation, or book publisher for the purpose of publishing news items, editorials, other
85 comments, or paid advertisements that directly or indirectly urge legislative or executive action;

86 (vii) an elected official of a local government while acting within the scope of his official
87 capacity on matters pertaining to his office or an employee of a local government while acting

88 within the scope of his employment; or

89 (viii) an individual who appears on his own behalf before a committee of the Legislature
90 or an executive branch agency solely for the purpose of testifying in support of or in opposition
91 to legislative or executive action.

92 (10) "Person" includes individuals, bodies politic and corporate, partnerships, associations,
93 and companies.

94 (11) "Policy official" means an individual appointed to or employed in the executive or
95 legislative branch if that individual:

96 (a) occupies a policymaking position or makes purchasing or contracting decisions;

97 (b) drafts legislation or makes rules;

98 (c) determines rates or fees; or

99 (d) makes adjudicative decisions.

100 [~~11~~] (12) "Principal" means a person who employs a lobbyist either as an employee or
101 as an independent contractor.

102 [~~12~~] (13) "Public official" means:

103 (a) a member of the Legislature;

104 (b) an individual elected to a position in the executive branch; or

105 (c) an individual appointed to or employed in the executive or legislative branch if that
106 individual:

107 (i) occupies a policymaking position or makes purchasing or contracting decisions;

108 (ii) drafts legislation or makes rules;

109 (iii) determines rates or fees; or

110 (iv) makes adjudicative decisions.

111 [~~13~~] (14) "Related person" means any person, or agent or employee of a person, who
112 knowingly and intentionally assists a lobbyist, principal, or government officer in lobbying.

113 [~~14~~] (15) "Relative" means a spouse, child, parent, grandparent, grandchild, brother,
114 sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, first cousin, or
115 spouse of any of these individuals.

116 Section 2. Section **36-11-201** is amended to read:

117 **36-11-201. Lobbyist, principal, and government officer financial reporting**
118 **requirements -- Prohibition for related person to make expenditures.**

119 (1) (a) (i) Each lobbyist, principal, and government officer shall file an annual financial
 120 report with the lieutenant governor on January 10 of each year or on the next succeeding business
 121 day if January 10 falls on a Saturday, Sunday, or legal holiday. The report shall be considered
 122 timely filed if postmarked on its due date.

123 (ii) The report shall disclose expenditures made to benefit public officials or members of
 124 their immediate families as provided in this section.

125 (iii) If the lobbyist made no expenditures since the last expenditure reported on the last
 126 report filed, the lobbyist shall file a financial report listing the amount of expenditures as "none."

127 (b) The January 10 report shall contain:

128 (i) the total amount of expenditures made to benefit public officials during the last calendar
 129 year;

130 (ii) (A) the total travel expenditures that the lobbyist, principal, or government officer
 131 made to benefit public officials and their immediate families during the last calendar year; and

132 (B) a travel expenditure statement that:

133 (I) describes the destination of each trip and its purpose;

134 (II) identifies the total amount of expenditures made to benefit each public official and
 135 members of the public official's immediate family for each trip;

136 (III) names all individuals that took each trip;

137 (IV) provides the name and address of the organization that sponsored each trip; and

138 (V) identifies specific expenditures for food, lodging, gifts, and sidetrips;

139 (iii) for aggregate daily expenditures made to benefit public officials or members of their
 140 immediate families that are not reportable under Subsection (1)(b):

141 [~~(A) when the amount does not exceed \$50 per person;~~]

142 [~~(F) the date of the expenditure;~~]

143 [~~(H) the purpose of the expenditure; and~~]

144 [~~(HH) the total monetary worth of the benefit conferred on the public officials or members
 145 of their immediate families;~~]

146 [~~(B) when the amount exceeds \$50 per person;~~]

147 [~~(F)~~] (A) the date, location, and purpose of the event, activity, or expenditure;

148 [~~(H)~~] (B) the name of the public official or member of the public official's immediate
 149 family who attended the event or activity or received the benefit of the expenditure; and

150 ~~[(HH)]~~ (C) the total monetary worth of the benefit conferred on the public official or
151 member of the public official's immediate family;

152 (iv) a list of each public official who was employed by the lobbyist, principal, or
153 government officer or who performed work as an independent contractor for the lobbyist,
154 principal, or government officer during the last year that details the nature of the employment or
155 contract;

156 (v) each bill or resolution by number and short title on behalf of which the lobbyist,
157 principal, or government officer made an expenditure to a public official for which a report is
158 required by this section, if any;

159 (vi) a description of each executive action on behalf of which the lobbyist, principal, or
160 government officer made an expenditure to a public official for which a report is required by this
161 section, if any; and

162 (vii) the general purposes, interests, and nature of the organization or organizations that
163 the lobbyist, principal, or government officer filing the report represents.

164 (2) A related person may not, while assisting a lobbyist, principal, or government officer
165 in lobbying, make an expenditure that benefits a public official or member of the public official's
166 immediate family under circumstances which would otherwise fall within the disclosure
167 requirements of this chapter if the expenditure was made by the lobbyist, principal, or government
168 officer.

169 (3) (a) Each lobbyist, principal, and government officer who makes expenditures ~~[totaling~~
170 ~~">\$50 or more~~] to benefit public officials or members of their immediate families since the date of
171 the last financial report filed shall file a financial report with the lieutenant governor on:

- 172 (i) the date ten days after the last day of each annual general session;
- 173 (ii) the date seven days before a regular general election; and
- 174 (iii) the date seven days after the end of a special session or veto override session.

175 (b) (i) If any date specified in this Subsection (3) falls on a Saturday, Sunday, or legal
176 holiday, the report is due on the next business day or on the next succeeding business day, if the
177 due date falls on a Saturday, Sunday, or legal holiday.

178 (ii) The report shall be considered timely filed if it is postmarked on its due date.

179 (c) Each report shall contain a listing of all expenditures made since the last expenditure
180 reported on the last report filed in the form specified in Subsection (1)(b).

181 (4) Each financial report filed by a lobbyist shall contain a certification that the
182 information provided in the report is true, accurate, and complete to the lobbyist's best knowledge
183 and belief.

184 (5) The lieutenant governor shall:

185 (a) develop preprinted suggested forms for all statements required by this section; and

186 (b) make copies of the forms available to each person who requests them.

187 Section 3. Section **36-11-304** is amended to read:

188 **36-11-304. Offering gift or loan -- When prohibited.**

189 (1) As used in this section:

190 (a) "Gift" means a transfer of real or tangible personal property for less than fair and
191 adequate consideration. It does not include plaques, commendations, or awards.

192 (b) "Tangible personal property" does not include the admission price for events, meals,
193 recreation, outings, or functions, and is intended to be interpreted consistent with the meaning of
194 tangible personal property found in the Utah Constitution Article XIII.

195 [(+) (2) A lobbyist, principal, or government officer may not offer to or give any [public]
196 policy official or member of his immediate family any gift or loan if the [public] policy official has
197 been, or is now, or in the near future may be involved in any governmental action directly affecting
198 the donor or lender.

199 [(2) (3) Subsection [(+) (2) does not apply to the following:

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

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

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

203 (d) gifts to a relative.

204 [(3) For the purposes of this section:]

205 [(a) "Gift" means a transfer of real or tangible personal property for less than fair and
206 adequate consideration. It does not include plaques, commendations, or awards.]

207 [(b) "Tangible personal property" does not include the admission price for events, meals,
208 recreation, outings, or functions, and is intended to be interpreted consistent with the meaning of
209 tangible personal property found in the Utah Constitution Article XIII.]

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

211 **67-16-5. Accepting gift, compensation, or loan -- When prohibited.**

- 212 (1) As used in this section, "economic benefit tantamount to a gift" includes:
- 213 (a) a loan at an interest rate that is substantially lower than the commercial rate then
- 214 currently prevalent for similar loans; and
- 215 (b) compensation received for private services rendered at a rate substantially exceeding
- 216 the fair market value of the services.
- 217 (2) It is an offense for a public officer[;] or public employee, [~~or legislator,~~] under
- 218 circumstances not amounting to a violation of Section 63-56-72 or 76-8-105, to knowingly receive,
- 219 accept, take, seek, or solicit, directly or indirectly for himself or another a gift of substantial value
- 220 or a substantial economic benefit tantamount to a gift:
- 221 (a) that would tend improperly to influence a reasonable person in the person's position
- 222 to depart from the faithful and impartial discharge of the person's public duties;
- 223 (b) that the person knows or that a reasonable person in that position should know under
- 224 the circumstances is primarily for the purpose of rewarding the person for official action taken; or
- 225 (c) if he recently has been, is now, or in the near future may be involved in any
- 226 governmental action directly affecting the donor or lender, unless a disclosure of the gift,
- 227 compensation, or loan and other relevant information has been made in the manner provided in
- 228 Section 67-16-6.
- 229 (3) Subsection (2) does not apply to:
- 230 (a) an occasional nonpecuniary gift, having a value of not in excess of \$50;
- 231 (b) an award publicly presented in recognition of public services;
- 232 (c) any bona fide loan made in the ordinary course of business; or
- 233 (d) a political campaign contribution.