

BAN ON GIFTS

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Ralph Becker

This act modifies the Lobbyist Disclosure and Regulation Act. This act defines gifts and prohibits legislators from receiving gifts and repeals the existing section governing gifts.

This act makes technical corrections.

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

AMENDS:

36-11-103, as last amended by Chapter 338, Laws of Utah 2000

36-11-401, as last amended by Chapter 338, Laws of Utah 2000

63-95-403, as renumbered and amended by Chapter 210, Laws of Utah 2000

63A-1-105, as enacted by Chapter 212, Laws of Utah 1993

63E-1-404 (Effective 07/01/02), as enacted by Chapter 201, Laws of Utah 2001

ENACTS:

36-11-501, Utah Code Annotated 1953

36-11-502, Utah Code Annotated 1953

REPEALS:

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

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

Section 1. Section **36-11-103** is amended to read:

36-11-103. Licensing requirements.

(1) (a) Before engaging in any lobbying, a lobbyist shall obtain a license from the lieutenant governor by completing the form required by this section.

(b) The lieutenant governor shall issue licenses to qualified lobbyists.

(c) The lieutenant governor shall prepare a Lobbyist License Application Form that includes:



- 28 (i) a place for the lobbyist's name and business address;
- 29 (ii) a place for the name and business address of each principal for whom the lobbyist
- 30 works or is hired as an independent contractor;
- 31 (iii) a place for the name and address of the person who paid or will pay the lobbyist's
- 32 registration fee, if the fee is not paid by the lobbyist;
- 33 (iv) a place for the lobbyist to disclose any elected or appointed position that the lobbyist
- 34 holds in state or local government, if any;
- 35 (v) a place for the lobbyist to disclose the types of expenditures for which the lobbyist will
- 36 be reimbursed; and
- 37 (vi) a certification to be signed by the lobbyist that certifies that the information provided
- 38 in the form is true, accurate, and complete to the best of the lobbyist's knowledge and belief.
- 39 (2) Each lobbyist who obtains a license under this section shall update the licensure
- 40 information when the lobbyist accepts employment for lobbying by a new client.
- 41 (3) (a) Except as provided in Subsection (4), the lieutenant governor shall grant a lobbying
- 42 license to an applicant who:
- 43 (i) files an application with the lieutenant governor that contains the information required
- 44 by this section; and
- 45 (ii) pays a \$25 filing fee.
- 46 (b) A license entitles a person to serve as a lobbyist on behalf of one or more principals
- 47 and expires on December 31 of each even-numbered year.
- 48 (4) (a) The lieutenant governor may disapprove an application for a lobbying license:
- 49 (i) if the applicant has been convicted of violating Section 76-8-103, 76-8-107, 76-8-108,
- 50 or 76-8-303 within five years before the date of the lobbying license application;
- 51 (ii) if the applicant has been convicted of violating Section 76-8-104 or 76-8-304 within
- 52 one year before the date of the lobbying license application;
- 53 (iii) for the term of any suspension imposed under Section 36-11-401; or
- 54 (iv) if, within one year before the date of the lobbying license application, the applicant
- 55 has been found to have willingly and knowingly:
- 56 (A) violated Section 36-11-103, 36-11-201, 36-11-301, 36-11-302, 36-11-303,
- 57 [~~36-11-304~~], 36-11-305, [~~or~~] 36-11-403, or 36-11-502; or
- 58 (B) filed a document required by this chapter that the lobbyist knew contained materially

59 false information or omitted material information.

60 (b) An applicant may appeal the disapproval in accordance with the procedures established
61 by the lieutenant governor under this chapter and Title 63, Chapter 46b, Administrative Procedures
62 Act.

63 (5) The lieutenant governor shall deposit license fees in the General Fund.

64 (6) A principal need not obtain a license under this section, but if the principal makes
65 expenditures to benefit a public official without using a lobbyist as an agent to confer those
66 benefits, the principal shall disclose those expenditures as required by Sections 36-11-201.

67 (7) Government officers need not obtain a license under this section, but shall disclose any
68 expenditures made to benefit public officials as required by Sections 36-11-201.

69 Section 2. Section **36-11-401** is amended to read:

70 **36-11-401. Penalties.**

71 (1) Any person who willfully and knowingly violates Section 36-11-103, 36-11-201,
72 36-11-301, 36-11-302, 36-11-303, [~~36-11-304,~~] 36-11-305, [~~or~~] 36-11-403, or 36-11-502 is subject
73 to the following penalties:

74 (a) an administrative penalty of up to \$1,000 for each violation; and

75 (b) for each subsequent violation of that same section within 24 months, either:

76 (i) an administrative penalty of up to \$5,000; or

77 (ii) suspension of the violator's lobbying license for up to one year, if the person is a
78 lobbyist.

79 (2) Any person who willfully and knowingly fails to file a financial report required by this
80 chapter, omits material information from a license application form or financial report, or files
81 false information on a license application form or financial report, is subject to the following
82 penalties:

83 (a) an administrative penalty of up to \$1,000 for each violation; or

84 (b) suspension of the violator's lobbying license for up to one year, if the person is a
85 lobbyist.

86 (3) Any person who willfully and knowingly fails to file a financial report required by this
87 chapter on the date that it is due shall, in addition to the penalties, if any, imposed under
88 Subsection (1) or (2), pay a penalty of up to \$50 per day for each day that the report is late.

89 (4) (a) When a lobbyist is convicted of violating Section 76-8-103, 76-8-107, 76-8-108,

90 or 76-8-303, the lieutenant governor shall suspend the lobbyist's license for up to five years from
91 the date of the conviction.

92 (b) When a lobbyist is convicted of violating Section 76-8-104 or 76-8-304, the lieutenant
93 governor shall suspend a lobbyist's license for up to one year from the date of conviction.

94 (5) (a) Any person who willfully and knowingly violates Section 36-11-301, 36-11-302,
95 or 36-11-303 is guilty of a class B misdemeanor.

96 (b) The lieutenant governor shall suspend the lobbyist license of any person convicted
97 under any of these sections for up to one year.

98 (c) The suspension shall be in addition to any administrative penalties imposed by the
99 lieutenant governor under this section.

100 (d) Any person with evidence of a possible violation of this chapter may submit that
101 evidence to the lieutenant governor for investigation and resolution.

102 (6) Nothing in this chapter creates a third-party cause of action or appeal rights.
103 Section 3. Section **36-11-501** is enacted to read:

104 **Part 5. Gifts to Legislators**

105 **36-11-501. Definitions.**

106 As used in this part:

107 (1) (a) "Gift" means a transfer of real or personal property for less than fair and adequate
108 consideration.

109 (b) "Gift" does not mean:

110 (i) a campaign contribution properly received and reported as required by Title 20A,
111 Chapter 11, Campaign and Financial Reporting Requirements;

112 (ii) compensation, food, beverages, entertainment, transportation, lodging, or other goods
113 or services extended to a legislator by the legislator's private employer ~~h~~ [or by the state] ~~h~~ ;

114 (iii) a usual and customary commercial loan made in the ordinary course of business,
115 without regard to the recipient's status as a legislator, by a person or institution authorized by law
116 to engage in the business of making loans;

117 (iv) unsolicited awards of appreciation, honorary degrees, or bona fide awards in
118 recognition of public service in the form of a certificate, plaque, trophy, desk item, wall memento,
119 or commemorative token of less than \$50 value provided that the item is not in a form that can be
120 readily converted to cash;

121 (v) informational, educational, or promotional items, such as books, articles, periodicals,
 122 other written materials, audiotapes, videotapes, or other forms of communication with no
 123 substantial resale value and related to the performance of the recipient's official duties;

124 (vi) a subscription to a ~~h [newspaper, news magazine, or other news publication or] h~~
 124a legislative
 125 periodical;

126 (vii) anything received from a person related by blood or marriage or a member of the
 127 legislator's household unless the donor is acting as an agent or intermediary for another person not
 128 so related;

129 (viii) any devise or inheritance from a person related by blood or marriage or a member
 130 of the legislator's household unless the donor is acting as an agent or intermediary for another
 131 person not so related;

132 (ix) a gift that is not used and, no later than 30 days after receipt, is:

133 (A) returned to the donor;

134 (B) donated to a public body or to the Department of Administrative Services; ~~h [or~~

135 ~~(C) delivered to a bona fide nonprofit charitable or educational organization and is not~~
 136 ~~claimed as a charitable contribution for federal income tax purposes;] h~~

137 (x) a gift or gifts from one member of the Legislature to another member of the
 138 Legislature;

139 (xi) anything for which the legislator pays or gives full value;

140 (xii) any service spontaneously extended to a legislator in an emergency situation;

141 (xiii) items received from a bona fide charitable, professional, educational, or business
 142 organization to which the legislator belongs as a dues-paying member, if the items are given to all
 143 members of the organization without regard to individual members' status or positions held outside
 144 of the organization and if the dues paid are not inconsequential when compared to the items
 145 received;

146 (xiv) funeral flowers or memorials to a church or a nonprofit organization given to honor
 147 a legislator, a person related to the legislator by blood or marriage, or to a member of the
 148 legislator's household;

149 (xv) unsolicited flowers, plants, and floral arrangements valued at less than \$50;

150 (xvi) items valued at less than \$50 for a wedding or 25th or 50th wedding anniversary
 151 celebration;

152 (xvii) the cost of admission, attendance, or participation, and of food and beverages
 153 consumed, at a public policy activity to which all members of the Legislature or all members of
 154 a legislative committee, a legislative subcommittee, or a task force are invited;

155 (xviii) the cost paid, reimbursed, raised, or obtained by or for a public official for
 156 attendance or participation, and for food and beverages consumed at, or in connection with, and
 157 activities offered at or in connection with, and funds, goods, and services provided at or in
 158 connection with, or for conducting, conventions, conferences, or other events sponsored or
 159 coordinated by multistate or national organizations of, or including, state governments, state
 160 legislatures, or state legislators; or

161 (xix) travel and accommodations provided to a public official when the public official is
 162 representing the state in an official or ceremonial capacity, and travel and accommodations
 163 provided to a legislator ~~h~~ [~~persons related to the legislator by blood or marriage, and members of the~~
 164 ~~legislator's household~~]OR SPOUSE ~~h~~ , for which prior approval has been obtained from the president
 164a or speaker,
 165 when the legislator is representing the Legislature, or a chamber of the Legislature, in an official
 166 or ceremonial capacity.

167 (2) "Immediate family" means:

168 (a) the public official's spouse; and

169 (b) children or other persons living in the public official's household.

170 Section 4. Section **36-11-502** is enacted to read:

171 **36-11-502. Gifts prohibited.**

172 A lobbyist, principal, or government officer may not offer or give a gift valued at more than
 173 \$5 to any public official or member of the public official's immediate family.

174 Section 5. Section **63-95-403** is amended to read:

175 **63-95-403. Penalties for violation.**

176 (1) A person who knowingly violates this part:

177 (a) is guilty of a third degree felony if the combined value of any compensation or assets
 178 received by the person as a result of the violation is equal to or greater than \$10,000; or

179 (b) is guilty of a class A misdemeanor if the combined value of any compensation or assets
 180 received by the person as a result of the violation is less than \$10,000.

181 (2) (a) In addition to any penalty imposed under Subsection (1), a person that violates this
 182 part shall return to the successor of the quasi-governmental entity any compensation or assets

183 received in violation of this part.

184 (b) If the assets received by the person in violation of this part are no longer in the
185 possession of the person, the person shall pay the successor of the quasi-governmental entity an
186 amount equal to the fair market value of the asset at the time the person received the asset.

187 (3) Notwithstanding [~~Subsection~~] Section 36-11-401[~~(3)(a)~~], if a lobbyist violates
188 Subsection 63-95-401(2)(b)(i), the lobbyist is guilty the crime outlined in Subsection (1), which
189 crime shall be determined by the value of compensation or assets received by the lobbyist.

190 Section 6. Section **63A-1-105** is amended to read:

191 **63A-1-105. Appointment of executive director -- Compensation.**

192 (1) The governor shall:

193 (a) appoint the executive director with the advice and consent of the Senate; and

194 (b) establish the executive director's salary within the salary range fixed by the Legislature
195 in Title 67, Chapter 22, State Officer Compensation.

196 (2) The executive director shall serve at the pleasure of the governor.

197 (3) For items donated to the state under Section 36-11-501, the executive director shall
198 dispose of each donated item by either:

199 (a) assigning the item to a state agency for its official use; or

200 (b) selling the item at a public sale and depositing the net proceeds from the sale into the
201 General Fund.

202 Section 7. Section **63E-1-404 (Effective 07/01/02)** is amended to read:

203 **63E-1-404 (Effective 07/01/02). Penalties for violation.**

204 (1) A person who knowingly violates this part:

205 (a) is guilty of a third degree felony if the combined value of any compensation or assets
206 received by the person as a result of the violation is equal to or greater than \$10,000; or

207 (b) is guilty of a class A misdemeanor if the combined value of any compensation or assets
208 received by the person as a result of the violation is less than \$10,000.

209 (2) (a) In addition to any penalty imposed under Subsection (1), a person that violates this
210 part shall return to the successor of the independent entity any compensation or assets received in
211 violation of this part.

212 (b) If the assets received by the person in violation of this part are no longer in the
213 possession of the person, the person shall pay the successor of the independent entity an amount

214 equal to the fair market value of the asset at the time the person received the asset.

215 (3) Notwithstanding [~~Subsection~~] Section 36-11-401[~~(3)~~], if a lobbyist violates Subsection
216 63E-1-402(2)(b)(i), the lobbyist is guilty of the crime outlined in Subsection (1), which crime shall
217 be determined by the value of compensation or assets received by the lobbyist.

218 Section 8. **Repealer.**

219 This act repeals:

220 Section **36-11-304, Offering gift or loan -- When prohibited.**

Legislative Review Note
as of 12-27-01 8:53 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel