

Representative John Dougall proposes the following substitute bill:

STATE EMPLOYEE ETHICS AMENDMENTS

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: John Dougall

LONG TITLE

General Description:

This bill modifies the Public Officers' and Employees' Ethics Act to restrict certain gifts given to public employees.

Highlighted Provisions:

This bill:

- ▶ modifies the Public Officers' and Employees' Ethics Act to prohibit public employees and their immediate family members from receiving certain gifts if the gift is given primarily as a result of their status as a public employee; and
- ▶ clarifies that the definition of gift established for public employees also applies to public employees governed by the ethics rules under the Alcoholic Beverage Control Act.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

32A-12-308, as last amended by Chapter 314, Laws of Utah 2003

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



26 ENACTS:

27 **67-16-5.1**, Utah Code Annotated 1953



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

30 Section 1. Section **32A-12-308** is amended to read:

31 **32A-12-308. Offering or soliciting bribes or gifts.**

32 (1) As used in this section, "gift" means:

33 (a) a gift as defined in Section 67-16-5, if the recipient or intended recipient is a public
34 officer as defined in Section 67-16-3; or

35 (b) a gift as defined in Section 67-16.5.1, if the recipient or intended recipient is a
36 public employee as defined in Section 67-16-3.

37 ~~[(1)]~~ (2) A person having sold, selling, or offering any alcoholic product for sale to the
38 commission or department may not offer, make, tender, or in any way deliver or transfer any
39 bribe, gift ~~[as defined in Section 67-16-5]~~, or share of profits to:

- 40 (a) any commissioner;
- 41 (b) the department director;
- 42 (c) any department employee; or
- 43 (d) any law enforcement officer responsible for the enforcement of this title.

44 ~~[(2)]~~ (3) A commissioner, the department director, any department employee, or any
45 law enforcement officer responsible for the enforcement of this title may not knowingly solicit,
46 receive, accept, take, or seek, directly or indirectly, any commission, compensation as defined
47 in Section 67-16-3, gift ~~[as defined in Section 67-16-5]~~, or loan whatsoever from any person,
48 association, or corporation having sold, selling, or offering any alcoholic product for sale.

49 ~~[(3)]~~ (4) A violation of this section is punishable under the provisions of Section
50 67-16-12.

51 Section 2. Section **67-16-5** is amended to read:

52 **67-16-5. Accepting gift, compensation, or loan -- When prohibited for public**
53 **officers and legislators.**

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

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

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

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

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

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

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

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

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

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

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

76 (d) a political campaign contribution.

77 Section 3. Section **67-16-5.1** is enacted to read:

78 **67-16-5.1. Accepting gift, compensation, or loan -- When prohibited for public**
79 **employees.**

80 (1) As used in this section:

81 (a) "Gift" means a transfer of any tangible or intangible property, or any item of value,
82 for less than fair and adequate consideration.

83 (b) "Gift" does not mean:

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

85 (ii) the cost of food and beverages provided for immediate consumption at a reception,
86 meal, or meeting that is away from the recipient's place of work and that the recipient attends
87 for the purpose of:

- 88 (A) making a speech;
- 89 (B) answering questions; or
- 90 (C) receiving an award publicly presented in recognition of public services;
- 91 (iii) an unsolicited, honorary membership in a service or fraternal organization;
- 92 (iv) a gift provided for participating in a charitable activity, if the gift is available to all
- 93 participants;
- 94 (v) an unsolicited item or memento having a value not exceeding ~~Ĥ→ [\$5] \$25 ←Ĥ~~ ;
- 95 (vi) informational, educational, or promotional item, including a book, article,
- 96 periodical, audio recording, video recording, or other form of communication that has no
- 97 substantial resale value and that is related to the performance of the recipient's official duties;
- 98 ~~Ĥ→~~ [or] ~~←Ĥ~~
- 99 (vii) a bona fide loan made in the ordinary course of business ~~Ĥ→ [;] ; or~~
- 99a (viii) a gift from a charitable organization to the public employee or his immediate
- 99b family. ←Ĥ
- 100 (2) It is an offense for a public employee, under circumstances not amounting to a
- 101 violation of Section 63-56-72 or 76-8-105, to knowingly accept, take, seek, or solicit a gift,
- 102 either directly or indirectly, or for himself or another, if the public employee knows or a
- 103 reasonable person in the public employee's position should know, under the circumstances, that
- 104 the gift is given primarily as a result of the public employee's status as a public employee.