

**BAN ON GIFTS TO LEGISLATORS**

2009 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Christine A. Johnson**

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

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**LONG TITLE**

**General Description:**

This bill modifies the Lobbyist Disclosure and Regulation Act by banning certain gifts from lobbyists to public officials.

**Highlighted Provisions:**

This bill:

- ▶ defines gifts;
- ▶ prohibits public officials from receiving certain gifts;
- ▶ repeals the existing section governing gifts;
- ▶ addresses donations to the state; and
- ▶ makes technical changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

- 36-11-103**, as last amended by Laws of Utah 2008, Chapter 382
- 36-11-401**, as last amended by Laws of Utah 2000, Chapter 338
- 63A-1-105**, as last amended by Laws of Utah 2002, Chapter 176
- 63E-1-404**, as enacted by Laws of Utah 2001, Chapter 201



28 ENACTS:

29 **36-11-501**, Utah Code Annotated 1953

30 **36-11-502**, Utah Code Annotated 1953

31 REPEALS:

32 **36-11-304**, as last amended by Laws of Utah 2007, Chapter 233

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

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

36 **36-11-103. Licensing requirements.**

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

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

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

42 (i) a place for the lobbyist's name and business address;

43 (ii) a place for the name and business address of each principal for whom the lobbyist  
44 works or is hired as an independent contractor;

45 (iii) a place for the name and address of the person who paid or will pay the lobbyist's  
46 registration fee, if the fee is not paid by the lobbyist;

47 (iv) a place for the lobbyist to disclose any elected or appointed position that the  
48 lobbyist holds in state or local government, if any;

49 (v) a place for the lobbyist to disclose the types of expenditures for which the lobbyist  
50 will be reimbursed; and

51 (vi) a certification to be signed by the lobbyist that certifies that the information  
52 provided in the form is true, accurate, and complete to the best of the lobbyist's knowledge and  
53 belief.

54 (2) Each lobbyist who obtains a license under this section shall update the licensure  
55 information when the lobbyist accepts employment for lobbying by a new client.

56 (3) (a) Except as provided in Subsection (4), the lieutenant governor shall grant a  
57 lobbying license to an applicant who:

58 (i) files an application with the lieutenant governor that contains the information

59 required by this section; and

60 (ii) pays a \$25 filing fee.

61 (b) A license entitles a person to serve as a lobbyist on behalf of one or more principals  
62 and expires on December 31 of each even-numbered year.

63 (4) (a) The lieutenant governor may disapprove an application for a lobbying license:

64 (i) if the applicant has been convicted of violating Section 76-8-103, 76-8-107,  
65 76-8-108, or 76-8-303 within five years before the date of the lobbying license application;

66 (ii) if the applicant has been convicted of violating Section 76-8-104 or 76-8-304  
67 within one year before the date of the lobbying license application;

68 (iii) for the term of any suspension imposed under Section 36-11-401; or

69 (iv) if, within one year before the date of the lobbying license application, the applicant  
70 has been found to have willingly and knowingly:

71 (A) violated Section 36-11-103, 36-11-201, 36-11-301, 36-11-302, 36-11-303,  
72 ~~36-11-304,~~ 36-11-305, ~~or~~ 36-11-403, or 36-11-502; or

73 (B) filed a document required by this chapter that the lobbyist knew contained  
74 materially false information or omitted material information.

75 (b) An applicant may appeal the disapproval in accordance with the procedures  
76 established by the lieutenant governor under this chapter and Title 63G, Chapter 4,  
77 Administrative Procedures Act.

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

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

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

84 (8) Surrender, cancellation, or expiration of a lobbyist license does not absolve the  
85 lobbyist of the duty to file the financial reports if the lobbyist is otherwise required to file the  
86 reports by Section 36-11-201.

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

88 **36-11-401. Penalties.**

89 (1) Any person who willfully and knowingly violates Section 36-11-103, 36-11-201,

90 36-11-301, 36-11-302, 36-11-303, [~~36-11-304,~~] 36-11-305, [~~or~~] 36-11-403, or 36-11-502, is  
91 subject to the following penalties:

- 92 (a) an administrative penalty of up to \$1,000 for each violation; and
- 93 (b) for each subsequent violation of that same section within 24 months, either:
  - 94 (i) an administrative penalty of up to \$5,000; or
  - 95 (ii) suspension of the violator's lobbying license for up to one year, if the person is a  
96 lobbyist.

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

- 101 (a) an administrative penalty of up to \$1,000 for each violation; or
- 102 (b) suspension of the violator's lobbying license for up to one year, if the person is a  
103 lobbyist.

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

107 (4) (a) When a lobbyist is convicted of violating Section 76-8-103, 76-8-107, 76-8-108,  
108 or 76-8-303, the lieutenant governor shall suspend the lobbyist's license for up to five years  
109 from the date of the conviction.

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

113 (5) (a) Any person who willfully and knowingly violates Section 36-11-301,  
114 36-11-302, or 36-11-303 is guilty of a class B misdemeanor.

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

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

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

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

123 **Part 5. Gifts**

124 **36-11-501. Definitions.**

125 As used in this part:

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

128 (b) "Gift" does not mean:

129 (i) a campaign contribution properly received and reported as required under Title 20A,  
130 Chapter 11, Campaign and Financial Reporting Requirements;

131 (ii) compensation, food, beverages, entertainment, transportation, lodging, or other  
132 goods or services extended to a public official by a public official's employer;

133 (iii) a usual and customary commercial loan made in the ordinary course of business;

134 (iv) an award publicly presented in recognition of public service if the award is valued  
135 at less than \$50;

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

139 (vi) anything received from a person related by blood or marriage or a member of the  
140 public official's household unless the donor is acting as an agent or intermediary for another  
141 person not so related;

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

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

146 (A) returned to the donor;

147 (B) donated to a bona fide nonprofit charitable or educational organization and is not  
148 claimed as a charitable contribution for federal or state income tax purposes; or

149 (C) donated to a government entity, public body, or to the Department of  
150 Administrative Services;

151 (ix) a gift or gifts from one member of the Legislature to another member of the

152 Legislature:

153 (x) anything for which the public official pays or gives full value;

154 (xi) any service spontaneously extended to a public official in an emergency situation;

155 (xii) items received from a bona fide charitable, professional, educational, or business

156 organization to which the public official belongs as a dues-paying member, if:

157 (A) the items are given to all members of the organization without regard to individual

158 members' status or positions held outside of the organization; and

159 (B) the dues paid are not inconsequential when compared to the items received;

160 (xiii) funeral flowers or memorials given to honor a public official, a person related to

161 the public official by blood or marriage, or to a member of the public official's household;

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

163 (xv) the cost of admission, attendance, or participation, and of food and beverages

164 consumed, at a public policy activity to which all members of the Legislature or all members of

165 a legislative committee, a legislative subcommittee, or a task force are invited;

166 (xvi) items valued at less than \$50 for a wedding or 25th, 50th, or 75th wedding

167 anniversary celebration; or

168 (xvii) the cost paid, reimbursed, raised, or obtained by or for a public official for

169 attendance or participation, and for food and beverages consumed at, or in connection with, and

170 activities offered at or in connection with, and funds, goods, and services provided at or in

171 connection with, or for conducting conventions, conferences, or other events sponsored or

172 coordinated by multistate or national organization of, or including, state governments, state

173 legislatures, or state legislators.

174 (2) "Public official's immediate family" means:

175 (a) the public official's spouse;

176 (b) children living in the public official's household; or

177 (c) other persons living in the public official's household.

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

179 **36-11-502. Gifts prohibited.**

180 A lobbyist, principal, or government officer may not offer or give a gift valued at more

181 than \$5 to any public official or member of the public official's immediate family.

182 Section 5. Section **63A-1-105** is amended to read:

183 **63A-1-105. Appointment of executive director -- Compensation.**

184 (1) The governor shall:

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

186 (b) establish the executive director's salary within the salary range fixed by the

187 Legislature in Title 67, Chapter 22, State Officer Compensation.

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

189 (3) For items donated to the state under Section 36-11-501, the executive director or  
190 designee shall dispose of each donated items by either:

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

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

194 Section 6. Section **63E-1-404** is amended to read:

195 **63E-1-404. Penalties for violation.**

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

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

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

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

204 (b) If the assets received by the person in violation of this part are no longer in the  
205 possession of the person, the person shall pay the successor of the independent entity an  
206 amount equal to the fair market value of the asset at the time the person received the asset.

207 (3) Notwithstanding [~~Subsection~~] Section 36-11-401~~[(3)]~~, if a lobbyist violates  
208 Subsection 63E-1-402(2)(b)(i)~~;~~:

209 (a) the lobbyist is guilty of the crime outlined in Subsection (1)~~[, which]; and~~

210 (b) the crime shall be determined by the value of compensation or assets received by  
211 the lobbyist.

212 Section 7. **Repealer.**

213 This bill repeals:

214           Section **36-11-304, Prohibition on certain gifts of real or tangible personal**  
215 **property.**

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**Legislative Review Note**  
**as of 1-16-09 8:18 AM**

**Office of Legislative Research and General Counsel**

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**H.B. 213 - Ban on Gifts to Legislators**

**Fiscal Note**

2009 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations. If items are donated to the state through provisions of this bill some revenue may be generated when those items are sold. It is unknown at this time what items might be donated and therefore no revenue can be estimated.

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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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