

LOBBYING BY STATE AGENCIES AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Marc K. Roberts

Senate Sponsor: _____

LONG TITLE

General Description:

This bill prohibits an employee of the state from engaging in lobbying on a legislative action.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ prohibits an employee of the state from engaging in lobbying on a legislative action;
- ▶ provides exceptions; and
- ▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

36-11-102, as last amended by Laws of Utah 2015, Chapters 32, 188, and 264

ENACTS:

36-11-308, Utah Code Annotated 1953

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



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

29 **36-11-102. Definitions.**

30 As used in this chapter:

31 (1) "Aggregate daily expenditures" means:

32 (a) for a single lobbyist, principal, or government officer, the total of all expenditures
33 made within a calendar day by the lobbyist, principal, or government officer for the benefit of
34 an individual public official;

35 (b) for an expenditure made by a member of a lobbyist group, the total of all
36 expenditures made within a calendar day by every member of the lobbyist group for the benefit
37 of an individual public official; or

38 (c) for a multicient lobbyist, the total of all expenditures made by the multicient
39 lobbyist within a calendar day for the benefit of an individual public official, regardless of
40 whether the expenditures were attributed to different clients.

41 (2) "Approved activity" means a tour or a meeting:

42 (a) (i) to which a legislator is invited; and

43 (ii) attendance at which is approved by:

44 (A) the speaker of the House of Representatives, if the public official is a member of
45 the House of Representatives; or

46 (B) the president of the Senate, if the public official is a member of the Senate; or

47 (b) (i) to which a public official who holds a position in the executive branch of state
48 government is invited; and

49 (ii) attendance at which is approved by the governor or the lieutenant governor.

50 (3) "Capitol hill complex" means the same as that term is defined in Section
51 [63C-9-102](#).

52 (4) (a) "Compensation" means anything of economic value, however designated, that is
53 paid, loaned, granted, given, donated, or transferred to an individual for the provision of
54 services or ownership before any withholding required by federal or state law.

55 (b) "Compensation" includes:

56 (i) a salary or commission;

57 (ii) a bonus;

58 (iii) a benefit;

- 59 (iv) a contribution to a retirement program or account;
- 60 (v) a payment includable in gross income, as defined in Section 62, Internal Revenue
- 61 Code, and subject to Social Security deductions, including a payment in excess of the
- 62 maximum amount subject to deduction under Social Security law;
- 63 (vi) an amount that the individual authorizes to be deducted or reduced for salary
- 64 deferral or other benefits authorized by federal law; or
- 65 (vii) income based on an individual's ownership interest.
- 66 (5) "Compensation payor" means a person who pays compensation to a public official
- 67 in the ordinary course of business:
 - 68 (a) because of the public official's ownership interest in the compensation payor; or
 - 69 (b) for services rendered by the public official on behalf of the compensation payor.
- 70 (6) "Event" means entertainment, a performance, a contest, or a recreational activity
- 71 that an individual participates in or is a spectator at, including a sporting event, an artistic
- 72 event, a play, a movie, dancing, or singing.
- 73 (7) "Executive action" means:
 - 74 (a) a nomination or appointment by the governor;
 - 75 (b) the proposal, drafting, amendment, enactment, or defeat by a state agency of a rule
 - 76 made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
 - 77 (c) agency ratemaking proceedings; or
 - 78 (d) an adjudicative proceeding of a state agency.
- 79 (8) (a) "Expenditure" means any of the items listed in this Subsection (8)(a) when
- 80 given to or for the benefit of a public official unless consideration of equal or greater value is
- 81 received:
 - 82 (i) a purchase, payment, or distribution;
 - 83 (ii) a loan, gift, or advance;
 - 84 (iii) a deposit, subscription, or forbearance;
 - 85 (iv) services or goods;
 - 86 (v) money;
 - 87 (vi) real property;
 - 88 (vii) a ticket or admission to an event; or
 - 89 (viii) a contract, promise, or agreement, whether or not legally enforceable, to provide

90 any item listed in Subsections (8)(a)(i) through (vii).

91 (b) "Expenditure" does not mean:

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

93 (ii) a campaign contribution reported in accordance with Title 20A, Chapter 11,

94 Campaign and Financial Reporting Requirements;

95 (iii) printed informational material that is related to the performance of the recipient's

96 official duties;

97 (iv) a devise or inheritance;

98 (v) any item listed in Subsection (8)(a) if:

99 (A) given by a relative;

100 (B) given by a compensation payor for a purpose solely unrelated to the public

101 official's position as a public official;

102 (C) the item is food or beverage with a value that does not exceed the food

103 reimbursement rate, and the aggregate daily expenditures for food and beverage do not exceed

104 the food reimbursement rate; or

105 (D) the item is not food or beverage, has a value of less than \$10, and the aggregate

106 daily expenditures do not exceed \$10;

107 (vi) food or beverage that is provided at an event, a tour, or a meeting to which the

108 following are invited:

109 (A) all members of the Legislature;

110 (B) all members of a standing or interim committee;

111 (C) all members of an official legislative task force;

112 (D) all members of a party caucus; or

113 (E) all members of a group described in Subsections (8)(b)(vi)(A) through (D) who are

114 attending a meeting of a national organization whose primary purpose is addressing general

115 legislative policy;

116 (vii) food or beverage that is provided at an event, a tour, or a meeting to a public

117 official who is:

118 (A) giving a speech at the event;

119 (B) participating in a panel discussion at the event; or

120 (C) presenting or receiving an award at the event;

- 121 (viii) a plaque, commendation, or award that:
- 122 (A) is presented in public;
- 123 (B) has the name of the individual receiving the plaque, commendation, or award
- 124 inscribed, etched, printed, or otherwise permanently marked on the plaque, commendation, or
- 125 award;
- 126 (ix) a publication having a cash value not exceeding \$30;
- 127 (x) admission to or attendance at an event, a tour, or a meeting, the primary purpose of
- 128 which is:
- 129 (A) to solicit contributions reportable under:
- 130 (I) Title 20A, Chapter 11, Campaign and Financial Reporting Requirements; or
- 131 (II) 2 U.S.C. Sec. 434; or
- 132 (B) charitable solicitation, as defined in Section 13-22-2;
- 133 (xi) travel to, lodging at, food or beverage served at, and admission to an approved
- 134 activity;
- 135 (xii) sponsorship of an event that is an approved activity;
- 136 (xiii) notwithstanding Subsection (8)(a)(vii), admission to, attendance at, or travel to or
- 137 from an event, a tour, or a meeting:
- 138 (A) that is sponsored by a governmental entity; or
- 139 (B) that is widely attended and related to a governmental duty of a public official; or
- 140 (xiv) travel to a widely attended tour or meeting related to a governmental duty of a
- 141 public official if that travel results in a financial savings to the state.
- 142 (9) "Food reimbursement rate" means the total amount set by the director of the
- 143 Division of Finance, by rule, under Section 63A-3-107, for in-state meal reimbursement, for an
- 144 employee of the executive branch, for an entire day.
- 145 (10) (a) "Government officer" means:
- 146 (i) an individual elected to a position in state or local government, when acting within
- 147 the government officer's official capacity; or
- 148 (ii) an individual appointed to or employed in a full-time position by state or local
- 149 government, when acting within the scope of the individual's employment.
- 150 (b) "Government officer" does not mean a member of the legislative branch of state
- 151 government.

152 (11) "Immediate family" means:

153 (a) a spouse;

154 (b) a child residing in the household; or

155 (c) an individual claimed as a dependent for tax purposes.

156 (12) "Legislative action" means:

157 (a) a bill, resolution, amendment, nomination, veto override, or other matter pending or
158 proposed in either house of the Legislature or its committees or requested by a legislator; [~~and~~]
159 or

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

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

163 (14) (a) "Lobbyist" means:

164 (i) an individual who is employed by a principal; or

165 (ii) an individual who contracts for economic consideration, other than reimbursement
166 for reasonable travel expenses, with a principal to lobby a public official.

167 (b) "Lobbyist" does not include:

168 (i) a government officer;

169 (ii) a member or employee of the legislative branch of state government;

170 (iii) a person, including a principal, while appearing at, or providing written comments
171 to, a hearing conducted in accordance with Title 63G, Chapter 3, Utah Administrative
172 Rulemaking Act, or Title 63G, Chapter 4, Administrative Procedures Act;

173 (iv) a person participating on or appearing before an advisory or study task force,
174 commission, board, or committee, constituted by the Legislature or any agency or department
175 of state government, except legislative standing, appropriation, or interim committees;

176 (v) a representative of a political party;

177 (vi) an individual representing a bona fide church solely for the purpose of protecting
178 the right to practice the religious doctrines of the church, unless the individual or church makes
179 an expenditure that confers a benefit on a public official;

180 (vii) a newspaper, television station or network, radio station or network, periodical of
181 general circulation, or book publisher for the purpose of publishing news items, editorials,
182 other comments, or paid advertisements that directly or indirectly urge legislative or executive

183 action;

184 (viii) an individual who appears on the individual's own behalf before a committee of
185 the Legislature or an agency of the executive branch of state government solely for the purpose
186 of testifying in support of or in opposition to legislative or executive action; or

187 (ix) an individual representing a business, entity, or industry, who:

188 (A) interacts with a public official, in the public official's capacity as a public official,
189 while accompanied by a registered lobbyist who is lobbying in relation to the subject of the
190 interaction or while presenting at a legislative committee meeting at the same time that the
191 registered lobbyist is attending another legislative committee meeting; and

192 (B) does not make an expenditure for, or on behalf of, a public official in relation to the
193 interaction or during the period of interaction.

194 (15) "Lobbyist group" means two or more lobbyists, principals, government officers, or
195 any combination of lobbyists, principals, and officers who each contribute a portion of an
196 expenditure made to benefit a public official or member of the public official's immediate
197 family.

198 (16) "Meeting" means a gathering of people to discuss an issue, receive instruction, or
199 make a decision, including a conference, seminar, or summit.

200 (17) "Multiclient lobbyist" means a single lobbyist, principal, or government officer
201 who represents two or more clients and divides the aggregate daily expenditure made to benefit
202 a public official or member of the public official's immediate family between two or more of
203 those clients.

204 (18) "Principal" means a person that employs an individual to perform lobbying, either
205 as an employee or as an independent contractor.

206 (19) "Public official" means:

207 (a) (i) a member of the Legislature;

208 (ii) an individual elected to a position in the executive branch of state government; or

209 (iii) an individual appointed to or employed in a position in the executive or legislative
210 branch of state government if that individual:

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

212 (B) drafts legislation or makes rules;

213 (C) determines rates or fees; or

- 214 (D) makes adjudicative decisions; or
- 215 (b) an immediate family member of a person described in Subsection (19)(a).
- 216 (20) "Public official type" means a notation to identify whether a public official is:
- 217 (a) (i) a member of the Legislature;
- 218 (ii) an individual elected to a position in the executive branch of state government;
- 219 (iii) an individual appointed to or employed in a position in the legislative branch of
- 220 state government who meets the definition of public official under Subsection (19)(a)(iii); or
- 221 (iv) an individual appointed to or employed in a position in the executive branch of
- 222 state government who meets the definition of public official under Subsection (19)(a)(iii); or
- 223 (b) an immediate family member of a person described in Subsection (19)(a).
- 224 (21) "Quarterly reporting period" means the three-month period covered by each
- 225 financial report required under Subsection 36-11-201(2)(a).
- 226 (22) "Related person" means a person, agent, or employee who knowingly and
- 227 intentionally assists a lobbyist, principal, or government officer in lobbying.
- 228 (23) "Relative" means a spouse, child, parent, grandparent, grandchild, brother, sister,
- 229 parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, first cousin, or spouse
- 230 of any of these individuals.
- 231 (24) (a) "State employee" means an individual employed by the executive branch of
- 232 state government, when acting within the scope of the individual's employment.
- 233 (b) "State employee" does not include:
- 234 (i) the governor, lieutenant governor, attorney general, state auditor, or state treasurer;
- 235 (ii) a member of the executive staff of an individual described in Subsection (24)(b)(i);
- 236 or
- 237 (iii) an employee of the state legislative branch.
- 238 (25) "State entity" means an administrative subunit of the state that employs a state
- 239 employee.
- 240 [~~24~~] (26) "Tour" means visiting a location, for a purpose relating to the duties of a
- 241 public official, and not primarily for entertainment, including:
- 242 (a) viewing a facility;
- 243 (b) viewing the sight of a natural disaster; or
- 244 (c) assessing a circumstance in relation to which a public official may need to take

245 action within the scope of the public official's duties.

246 Section 2. Section **36-11-308** is enacted to read:

247 **36-11-308. Lobbying by state employees prohibited -- Exceptions.**

248 (1) As used in this section only:

249 (a) "Lobbying" means an act done with the intent or in a way to influence or tend to
250 influence, directly or indirectly, a legislator to refrain from voting on, or to vote for or against,
251 a legislative action described in Subsection [36-11-102\(12\)\(a\)](#).

252 (b) "Lobbying" does not include:

253 (i) requesting a legislator to sponsor legislation;

254 (ii) testifying before a legislative body, including a legislative committee or task force;

255 or

256 (iii) answering questions asked by a legislator.

257 (2) A state employee may not engage in lobbying.

258 (3) A state entity may not take a public stance on a legislative action.

Legislative Review Note
Office of Legislative Research and General Counsel