

**Effective 3/29/2014**

**63G-6a-2404 Unlawful conduct -- Exceptions -- Classification of offenses.**

- (1)
  - (a) It is unlawful for a person who has or is seeking a contract with or a grant from a public entity knowingly to give, or offer, promise, or pledge to give, a gratuity or kickback to:
    - (i) the public entity;
    - (ii) a procurement professional or contract administration professional; or
    - (iii) an individual who the person knows is a family member of an individual described in Subsection (1)(a)(ii).
  - (b) It is not unlawful for a public agency to give, offer, promise, or pledge to give a contribution to another public agency.
  - (c) A person is not guilty of unlawful conduct under Subsection (1)(a) for:
    - (i) giving or offering, promising, or pledging to give a contribution to a public entity, unless done with the intent to induce the public entity, in exchange, to:
      - (A) award a contract or grant;
      - (B) make a procurement decision; or
      - (C) take an action relating to the administration of a contract or grant; or
    - (ii) giving or offering, promising, or pledging to give something of value to an organization to which a procurement professional or contract administration professional belongs, unless done with the intent to induce a public entity, in exchange, to:
      - (A) award a contract or grant;
      - (B) make a procurement decision; or
      - (C) take an action relating to the administration of a contract or grant.
- (2)
  - (a) It is unlawful for a procurement professional or contract administration professional, or a family member of either, knowingly to receive or accept, offer or agree to receive or accept, or ask for a promise or pledge of, a gratuity or kickback from a person who has or is seeking a contract with or a grant from a public entity.
  - (b) An individual is not guilty of unlawful conduct under Subsection (2)(a) for receiving or accepting, offering or agreeing to receive or accept, or asking for a promise or pledge of a contribution on behalf of a public entity, unless done with the intent that the public entity, in exchange:
    - (i) award a contract or grant;
    - (ii) make a procurement decision; or
    - (iii) take an action relating to the administration of a contract or grant.
- (3) Notwithstanding Subsections (1) and (2), it is not unlawful for a person to give or receive, offer to give or receive, or promise or pledge to give or ask for a promise or pledge of, a hospitality gift, if:
  - (a) the total value of the hospitality gift is less than \$10; and
  - (b) the aggregate value of all hospitality gifts from the person to the recipient in a calendar year is less than \$50.
- (4) A person who engages in the conduct made unlawful under Subsection (1) or (2) is guilty of:
  - (a) a second degree felony, if the total value of the gratuity or kickback is \$1,000 or more;
  - (b) a third degree felony, if the total value of the gratuity or kickback is \$250 or more but less than \$1,000;
  - (c) a class A misdemeanor, if the total value of the gratuity or kickback is \$100 or more but less than \$250; and
  - (d) a class B misdemeanor, if the total value of the gratuity or kickback is less than \$100.

- (5) The criminal sanctions described in Subsection (4) do not preclude the imposition of other penalties for conduct made unlawful under this part, in accordance with other applicable law, including:
- (a) dismissal from employment or other disciplinary action;
  - (b) for an elected officer listed in Section 77-6-1, removal from office as provided in Title 77, Chapter 6, Removal by Judicial Proceedings;
  - (c) requiring the public officer or employee to return the value of the unlawful gratuity or kickback; and
  - (d) any other civil penalty provided by law.

Enacted by Chapter 196, 2014 General Session