

LEGISLATOR REPORTING OF GIFTS

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Jackie Biskupski

This act modifies Title 36, Legislature. This act requires that legislators report certain expenditures made to benefit them and their immediate families and defines the scope and process for meeting that requirement. This act repeals provisions requiring lobbyists, principals, and government officers to report expenditures made to legislators.

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

ENACTS:

36-11a-101, Utah Code Annotated 1953

36-11a-102, Utah Code Annotated 1953

36-11a-201, Utah Code Annotated 1953

REPEALS:

36-11-201, as last amended by Chapter 317, Laws of Utah 2002

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:

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



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

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

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

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

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

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

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

(i) files an application with the lieutenant governor that contains the information required by this section; and

(ii) pays a \$25 filing fee.

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

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

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

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

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

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

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

(B) filed a document required by this chapter that the lobbyist knew contained

materially false information or omitted material information.

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

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

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

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

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

36-11-401. Penalties.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) Nothing in this chapter creates a third-party cause of action or appeal rights.

Section 3. Section **36-11a-101** is enacted to read:

CHAPTER 11a. LEGISLATIVE DISCLOSURE ACT.

36-11a-101. Title.

This chapter is known as the "Legislative Disclosure Act."

Section 4. Section **36-11a-102** is enacted to read:

36-11a-102. Definitions.

As used in this chapter:

(1) "Aggregate daily expenditures" means the total expenditures made within a 24-hour period.

(2) (a) "Expenditure" means any of the items listed in this Subsection (2) when given for the benefit of a legislator or members of the legislator's immediate family:

(i) a purchase, payment, distribution, loan, gift, advance, deposit, subscription, forbearance, services, or goods, unless consideration of equal or greater value is received; and

(ii) a contract, promise, or agreement, whether or not legally enforceable, to provide any of the items listed in Subsection (2)(a)(i).

(b) "Expenditure" does not mean:

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

121 (ii) a campaign contribution reported in accordance with Title 20A, Chapter 11,
122 Campaign and Financial Reporting Requirements;
123 (iii) printed informational material;
124 (iv) a devise or inheritance;
125 (v) any item listed in Subsection (2)(a) if given by a relative;
126 (vi) a modest item of food or refreshment such as a beverage or pastry offered other
127 than as part of a meal;
128 (vii) a greeting card or other item of little intrinsic value that is intended solely for
129 presentation;
130 (viii) plaques, commendations, or awards; or
131 (ix) reimbursement of reasonable expenses for or providing travel, lodging, or meals to
132 a public official when:
133 (A) those expenses are directly related to the public official's attendance and
134 participation in a regularly scheduled meeting of an organization, association, or group; and
135 (B) that organization, association, or group pays or provides those expenses.
136 (3) "Immediate family" means a spouse, a child residing in the household, or an
137 individual claimed as a dependent for tax purposes.
138 (4) "Legislative action" means:
139 (a) bills, resolutions, amendments, nominations, and other matters pending or proposed
140 in either house of the Legislature or its committees or requested by a legislator; and
141 (b) the action of the governor in approving or vetoing legislation.
142 (5) "Lobbying" means communicating with a legislator for the purpose of influencing
143 the passage, defeat, amendment, or postponement of legislative action.
144 (6) (a) "Lobbyist" means an individual who is employed by a principal or who
145 contracts for economic consideration, other than reimbursement for reasonable travel expenses,
146 with a principal to lobby a public official.
147 (b) "Lobbyist" does not include:
148 (i) a public official while acting in his official capacity on matters pertaining to his
149 office or a state employee while acting within the scope of his employment;
150 (ii) any person appearing at, or providing written comments to, a hearing conducted in
151 accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act or Title 63,

Chapter 46b, Administrative Procedures Act;

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

(iv) a representative of a political party;

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

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

(vii) an elected official of a local government while acting within the scope of his official capacity on matters pertaining to his office or an employee of a local government while acting within the scope of his employment; or

(viii) an individual who appears on his own behalf before a committee of the Legislature or an executive branch agency solely for the purpose of testifying in support of or in opposition to legislative or executive action.

(7) "Person" includes individuals, bodies politic and corporate, partnerships, associations, and companies.

(8) "Principal" means a person who employs a lobbyist either as an employee or as an independent contractor.

(9) "Public official" means:

(a) a member of the Legislature;

(b) an individual elected to a position in the executive branch; or

(c) an individual appointed to or employed in the executive or legislative branch if that individual:

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

(ii) drafts legislation or makes rules;

(iii) determines rates or fees; or

(iv) makes adjudicative decisions.

(10) "Relative" means a spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, first cousin, or spouse of any of these individuals.

Section 5. Section **36-11a-201** is enacted to read:

36-11a-201. Legislator financial reporting requirements -- Prohibition for related person to make expenditures.

(1) (a) (i) (A) Each legislator shall file an annual financial report with the lieutenant governor on January 10 of each year or on the next succeeding business day if January 10 falls on a Saturday, Sunday, or legal holiday.

(B) The report shall be considered timely filed if postmarked on its due date.

(ii) The report shall disclose expenditures made to benefit legislators or members of their immediate families as provided in this section.

(iii) If the legislator or a member of the legislator's immediate family received no expenditures made by lobbyists, principals, or government officers to benefit them since the last expenditure reported on the last report filed, the legislator shall file a financial report listing the amount of expenditures as "none."

(b) The January 10 report shall contain:

(i) the total amount of expenditures received by the legislator from lobbyists, principals, and government officers to benefit them or members of their immediate family during the last calendar year;

(ii) (A) the total travel expenditures that the legislator and their immediate families received from lobbyists, principals, and government officers to benefit them during the last calendar year; and

(B) a travel expenditure statement that:

(I) describes the destination of each trip and its purpose;

(II) identifies the total amount of expenditures received by the legislator and members of the public official's immediate family from lobbyists, principals, and government officers to benefit them for each trip;

(III) names all individuals that took each trip;

(IV) provides the name and address of the organization that sponsored each trip; and

(V) identifies specific expenditures for food, lodging, gifts, and sidetrips made to

benefit the legislator or members of the legislator's immediate family;

(iii) for aggregate daily expenditures made by lobbyists, principals, and government officers to benefit legislators or members of their immediate families that are not reportable under Subsection (1)(b):

(A) when the amount does not exceed \$50 per person:

(I) the date of the expenditure;

(II) the purpose of the expenditure; and

(III) the total monetary worth of the benefit conferred on the legislator or members of their immediate families by lobbyists, principals, and government officers;

(B) when the amount exceeds \$50 per person:

(I) the date, location, and purpose of the event, activity, or expenditure;

(II) the name of the legislator or the legislator's immediate family who attended the event or activity or received the benefit of the expenditure; and

(III) the total monetary worth of the benefit conferred on the legislator or member of the legislator's immediate family; and

(iv) a list of each lobbyist, principal, or government officer who employed the legislator or for whom the legislator worked as an independent contractor during the last year that details the nature of the employment or contract.

(2) (a) Each legislator who receives expenditures totaling \$50 or more to benefit the legislator or members of the legislator's immediate family since the date of the last financial report filed shall file a financial report with the lieutenant governor on:

(i) the date ten days after the last day of each annual general session;

(ii) the date seven days before a regular general election; and

(iii) the date seven days after the end of a special session or veto override session.

(b) (i) If any date specified in this Subsection (2) falls on a Saturday, Sunday, or legal holiday, the report is due on the next business day or on the next succeeding business day, if the due date falls on a Saturday, Sunday, or legal holiday.

(ii) The report shall be considered timely filed if it is postmarked on its due date.

(c) Each report shall contain a listing of all expenditures received since the last expenditure reported on the last report filed in the form specified in Subsection (1)(b).

(3) Each financial report filed by a legislator shall contain a certification that the

245 information provided in the report is true, accurate, and complete to the legislator's best
246 knowledge and belief.

247 (4) The lieutenant governor shall:

248 (a) develop preprinted suggested forms for all statements required by this section; and

249 (b) make copies of the forms available to each person who requests them.

250 **Section 6. Repealer.**

251 This act repeals:

252 **Section 36-11-201, Lobbyist, principal, and government officer financial reporting**
253 **requirements -- Prohibition for related person to make expenditures.**

Legislative Review Note
as of 1-17-03 1:20 PM

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

Office of Legislative Research and General Counsel

Fiscal Note**Bill Number HB0120****Legislator Reporting of Gifts***06-Feb-03**11:48 AM*

State Impact

It is estimated to cost \$9,000 from the General Fund in FY 04 to implement provisions of this bill. Computer programming requirements and printing of new forms would be the majority of new expenditures.

	<u>FY 04 Approp.</u>	<u>FY 05 Approp.</u>	<u>FY 04 Revenue</u>	<u>FY 05 Revenue</u>
General Fund	\$9,000	\$0	\$0	\$0
TOTAL	\$9,000	\$0	\$0	\$0

Individual and Business Impact

Minimal fiscal impact to businesses or individuals.

Office of the Legislative Fiscal Analyst