

BAN ON GIFTS TO ELECTED OFFICIALS

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: Ralph Becker

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- defines gifts and prohibits public officials from receiving certain gifts; and
- repeals the existing section governing gifts.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

36-11-103, as last amended by Chapter 27, Laws of Utah 2003

36-11-401, as last amended by Chapter 338, Laws of Utah 2000

63A-1-105, as last amended by Chapter 176, Laws of Utah 2002

63E-1-404, as enacted by Chapter 201, Laws of Utah 2001

ENACTS:

36-11-501, Utah Code Annotated 1953

36-11-502, Utah Code Annotated 1953

REPEALS:



36-11-304, as enacted by Chapter 192, Laws of Utah 1995

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 36-11-502; 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.

(8) Surrender, cancellation, or expiration of a lobbyist license does not absolve the lobbyist of the duty to file the financial reports if the lobbyist is otherwise required to file the reports by Section 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, or 36-11-502 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 **36-11-501** is enacted to read:

Part 5. Gifts

36-11-501. Definitions.

As used in this part:

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

(b) "Gift" does not mean:

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

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

(iii) compensation, food, beverages, entertainment, transportation, lodging, or other goods or services extended to a legislator by the legislator's private employer;

(iv) a usual and customary commercial loan made in the ordinary course of business, without regard to the recipient's status as a public official, by a person or institution authorized by law to engage in the business of making loans;

(v) unsolicited awards of appreciation, honorary degrees, or bona fide awards in recognition of public service in the form of a certificate, plaque, trophy, desk item, wall memento, or commemorative token of less than \$50 value, but only if the item is in a form that cannot be readily converted to cash;

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

(vii) subscriptions to newspapers or periodicals directly related to the public official's official responsibilities;

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

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

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

(A) returned to the donor; or

(B) donated to a public body or to the Department of Administrative Services;

- 152 (xi) a gift or gifts from one member of the Legislature to another member of the
153 Legislature;
- 154 (xii) anything for which the public official pays or gives full value;
- 155 (xiii) any service spontaneously extended to a public official in an emergency situation;
- 156 (xiv) items received from a bona fide charitable, professional, educational, or business
157 organization to which the public official belongs as a dues-paying member, if the items are
158 given to all members of the organization without regard to individual members' status or
159 positions held outside of the organization and if the dues paid are not inconsequential when
160 compared to the items received;
- 161 (xv) funeral flowers or memorials to a church or a nonprofit organization given to
162 honor a public official, a person related to the public official by blood or marriage, or to a
163 member of the public official's household;
- 164 (xvi) unsolicited flowers, plants, and floral arrangements valued at less than \$50;
- 165 (xvii) items valued at less than \$50 for a wedding or 25th or 50th wedding anniversary
166 celebration;
- 167 (xviii) the cost of admission, attendance, or participation, and of food and beverages
168 consumed, at a public policy activity to which all members of the Legislature or all members of
169 a legislative committee, a legislative subcommittee, or a task force are invited;
- 170 (xix) the cost paid, reimbursed, raised, or obtained by or for a public official for
171 attendance or participation, and for food and beverages consumed at, or in connection with, and
172 activities offered at or in connection with, and funds, goods, and services provided at or in
173 connection with, or for conducting, conventions, conferences, or other events sponsored or
174 coordinated by multistate or national organizations of, or including, state governments, state
175 legislatures, or state legislators; or
- 176 (xx) travel and accommodations provided to a public official when the public official
177 is representing the state in an official or ceremonial capacity, and travel and accommodations
178 provided to a legislator or spouse for which prior approval has been obtained from the
179 president or speaker, when the legislator is representing the Legislature, or a chamber of the
180 Legislature, in an official or ceremonial capacity.
- 181 (2) "Immediate family" means:
- 182 (a) the public official's spouse; and

(b) children or other persons living in the public official's household.

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

36-11-502. Gifts prohibited.

A lobbyist, principal, or government officer may not offer or give a gift valued at more than \$5 to any public official or member of the public official's immediate family.

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

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

(1) The governor shall:

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

(b) establish the executive director's salary within the salary range fixed by the Legislature in Title 67, Chapter 22, State Officer Compensation.

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

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

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

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

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

63E-1-404. Penalties for violation.

(1) A person who knowingly violates this part:

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

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

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

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

(3) Notwithstanding [~~Subsection~~] Section 36-11-401[~~(3)~~], if a lobbyist violates

214 Subsection 63E-1-402(2)(b)(i)[,];
215 (a) the lobbyist is guilty of the crime outlined in Subsection (1)[~~which~~]; and
216 (b) the crime shall be determined by the value of compensation or assets received by
217 the lobbyist.
218 Section 7. **Repealer.**
219 This bill repeals:
220 Section **36-11-304, Offering gift or loan -- When prohibited.**

Legislative Review Note
as of 11-27-04 2:27 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note**Bill Number HB0144****Ban on Gifts to Elected Officials***01-Feb-05**10:54 AM*

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst