

Representative John Dougall proposes the following substitute bill:

STATE EMPLOYEE ETHICS AMENDMENTS

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: John Dougall

LONG TITLE

General Description:

This bill modifies the Public Officers' and Employees' Ethics Act to restrict certain gifts given to public employees.

Highlighted Provisions:

This bill:

- modifies the Public Officers' and Employees' Ethics Act to prohibit public employees and their immediate family members from receiving certain gifts if the gift is given primarily as a result of their status as a public employee; and
- clarifies that the definition of gift established for public employees also applies to public employees governed by the ethics rules under the Alcoholic Beverage Control Act.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

32A-12-308, as last amended by Chapter 314, Laws of Utah 2003

67-16-5, as last amended by Chapters 13 and 92, Laws of Utah 1998



ENACTS:

67-16-5.1, Utah Code Annotated 1953

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

Section 1. Section **32A-12-308** is amended to read:

32A-12-308. Offering or soliciting bribes or gifts.

(1) As used in this section, "gift" means:

(a) a gift as defined in Section 67-16-5, if the recipient or intended recipient is a public officer as defined in Section 67-16-3; or

(b) a gift as defined in Section 67-16.5.1, if the recipient or intended recipient is a public employee as defined in Section 67-16-3.

~~[(1)]~~ (2) A person having sold, selling, or offering any alcoholic product for sale to the commission or department may not offer, make, tender, or in any way deliver or transfer any bribe, gift ~~[as defined in Section 67-16-5]~~, or share of profits to:

(a) any commissioner;

(b) the department director;

(c) any department employee; or

(d) any law enforcement officer responsible for the enforcement of this title.

~~[(2)]~~ (3) A commissioner, the department director, any department employee, or any law enforcement officer responsible for the enforcement of this title may not knowingly solicit, receive, accept, take, or seek, directly or indirectly, any commission, compensation as defined in Section 67-16-3, gift ~~[as defined in Section 67-16-5]~~, or loan whatsoever from any person, association, or corporation having sold, selling, or offering any alcoholic product for sale.

~~[(3)]~~ (4) A violation of this section is punishable under the provisions of Section 67-16-12.

Section 2. Section **67-16-5** is amended to read:

67-16-5. Accepting gift, compensation, or loan -- When prohibited for public officers and legislators.

(1) As used in this section, "economic benefit tantamount to a gift" includes:

(a) a loan at an interest rate that is substantially lower than the commercial rate then currently prevalent for similar loans; and

(b) compensation received for private services rendered at a rate substantially exceeding the fair market value of the services.

(2) It is an offense for a public officer~~[-public employee,]~~ or legislator, under circumstances not amounting to a violation of Section 63-56-72 or 76-8-105, to knowingly receive, accept, take, seek, or solicit, directly or indirectly, or for himself or another, a gift of substantial value or a substantial economic benefit tantamount to a gift:

(a) that would tend improperly to influence a reasonable person in the person's position to depart from the faithful and impartial discharge of the person's public duties;

(b) that the person knows or that a reasonable person in that position should know under the circumstances is primarily for the purpose of rewarding the person for official action taken; or

(c) if he recently has been, is now, or in the near future may be involved in any governmental action directly affecting the donor or lender, unless a disclosure of the gift, compensation, or loan and other relevant information has been made in the manner provided in Section 67-16-6.

(3) Subsection (2) does not apply to:

(a) an occasional nonpecuniary gift, having a value of not in excess of \$50;

(b) an award publicly presented in recognition of public services;

(c) any bona fide loan made in the ordinary course of business; or

(d) a political campaign contribution.

Section 3. Section **67-16-5.1** is enacted to read:

67-16-5.1. Accepting gift, compensation, or loan -- When prohibited for public employees.

(1) As used in this section:

(a) "Gift" means a transfer of any tangible or intangible property, or any item of value, for less than fair and adequate consideration.

(b) "Gift" does not mean:

(i) an award publicly presented in recognition of public services;

(ii) the cost of food and beverages provided for immediate consumption at a reception, meal, or meeting that is away from the recipient's place of work and that the recipient attends for the purpose of:

88 (A) making a speech;

89 (B) answering questions; or

90 (C) receiving an award publicly presented in recognition of public services;

91 (iii) an unsolicited, honorary membership in a service or fraternal organization;

92 (iv) a gift provided for participating in a charitable activity, if the gift is available to all
93 participants;

94 (v) an unsolicited item or memento having a value not exceeding \$5;

95 (vi) informational, educational, or promotional item, including a book, article,
96 periodical, audio recording, video recording, or other form of communication that has no
97 substantial resale value and that is related to the performance of the recipient's official duties;
98 or

99 (vii) a bona fide loan made in the ordinary course of business.

100 (2) It is an offense for a public employee, under circumstances not amounting to a
101 violation of Section 63-56-72 or 76-8-105, to knowingly accept, take, seek, or solicit a gift,
102 either directly or indirectly, or for himself or another, if the public employee knows or a
103 reasonable person in the public employee's position should know, under the circumstances, that
104 the gift is given primarily as a result of the public employee's status as a public employee.

Fiscal Note**State Employee Ethics Amendments***18-Feb-05***Bill Number HB0282S01***12:36 PM*

State Impact

Provisions of this bill can be handled within existing budgets.

Individual and Business Impact

Minimal impact.

Office of the Legislative Fiscal Analyst