

1 **BAN ON GIFTS TO ELECTED OFFICIALS**

2 2006 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Patricia W. Jones**

5 Senate Sponsor: _____

6

LONG TITLE

7 **General Description:**

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

10 **Highlighted Provisions:**

11 This bill:

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

14 **Monies Appropriated in this Bill:**

15 None

16 **Other Special Clauses:**

17 None

18 **Utah Code Sections Affected:**

19 AMENDS:

20 **36-11-103**, as last amended by Chapter 27, Laws of Utah 2003

21 **36-11-401**, as last amended by Chapter 338, Laws of Utah 2000

22 **63A-1-105**, as last amended by Chapter 176, Laws of Utah 2002

23 **63E-1-404**, as enacted by Chapter 201, Laws of Utah 2001

24 ENACTS:

25 **36-11-501**, Utah Code Annotated 1953

26 **36-11-502**, Utah Code Annotated 1953



28 REPEALS:

29 **36-11-304**, as enacted by Chapter 192, Laws of Utah 1995



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

32 Section 1. Section **36-11-103** is amended to read:

33 **36-11-103. Licensing requirements.**

34 (1) (a) Before engaging in any lobbying, a lobbyist shall obtain a license from the
35 lieutenant governor by completing the form required by this section.

36 (b) The lieutenant governor shall issue licenses to qualified lobbyists.

37 (c) The lieutenant governor shall prepare a Lobbyist License Application Form that
38 includes:

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

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

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

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

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

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

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

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

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

57 (ii) pays a \$25 filing fee.

58 (b) A license entitles a person to serve as a lobbyist on behalf of one or more principals

59 and expires on December 31 of each even-numbered year.

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

61 (i) if the applicant has been convicted of violating Section 76-8-103, 76-8-107,
62 76-8-108, or 76-8-303 within five years before the date of the lobbying license application;

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

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

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

68 (A) violated Section 36-11-103, 36-11-201, 36-11-301, 36-11-302, 36-11-303,
69 [~~36-11-304,~~] 36-11-305, [~~or~~] 36-11-403, or 36-11-502; or

70 (B) filed a document required by this chapter that the lobbyist knew contained
71 materially false information or omitted material information.

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

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

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

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

81 (8) Surrender, cancellation, or expiration of a lobbyist license does not absolve the
82 lobbyist of the duty to file the financial reports if the lobbyist is otherwise required to file the
83 reports by Section 36-11-201.

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

85 **36-11-401. Penalties.**

86 (1) Any person who willfully and knowingly violates Section 36-11-103, 36-11-201,
87 36-11-301, 36-11-302, 36-11-303, [~~36-11-304,~~] 36-11-305, [~~or~~] 36-11-403, or 36-11-502 is
88 subject to the following penalties:

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

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

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

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

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

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

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

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

104 (4) (a) When a lobbyist is convicted of violating Section 76-8-103, 76-8-107, 76-8-108,
105 or 76-8-303, the lieutenant governor shall suspend the lobbyist's license for up to five years
106 from the date of the conviction.

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

110 (5) (a) Any person who willfully and knowingly violates Section 36-11-301,
111 36-11-302, or 36-11-303 is guilty of a class B misdemeanor.

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

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

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

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

119 Section 3. Section **36-11-501** is enacted to read:

120 **Part 5. Gifts**

121 **36-11-501. Definitions.**122 As used in this part:123 (1) (a) "Gift" means a transfer of real or personal property for less than fair and
124 adequate consideration.125 (b) "Gift" does not mean:126 (i) a campaign contribution properly received and reported as required under Title 20A,
127 Chapter 11, Campaign and Financial Reporting Requirements;128 (ii) compensation, food, beverages, entertainment, transportation, lodging, or other
129 goods or services extended to a public official by a public official's employer;130 (iii) a usual and customary commercial loan made in the ordinary course of business,
131 without regard to the recipient's status as a public official, by a person or institution authorized
132 by law to engage in the business of making loans;133 (iv) unsolicited awards of appreciation, honorary degrees, or bona fide awards in
134 recognition of public service in the form of a certificate, plaque, trophy, desk item, wall
135 memento, or commemorative token of less than \$50 value, but only if the item is in a form that
136 cannot be readily converted to cash;137 (v) informational, educational, or promotional items, such as books, articles,
138 periodicals, other written materials, audiotapes, videotapes, or other forms of communication
139 with no substantial resale value and related to the performance of the recipient's official duties;140 (vi) subscriptions to newspapers or periodicals directly related to the public official's
141 official responsibilities;142 (vii) anything received from a person related by blood or marriage or a member of the
143 public official's household unless the donor is acting as an agent or intermediary for another
144 person not so related;145 (viii) any devise or inheritance from a person related by blood or marriage or a member
146 of the public official's household unless the donor is acting as an agent or intermediary for
147 another person not so related;148 (ix) a gift that is not used and, no later than 30 days after receipt, is:149 (A) returned to the donor; or150 (B) donated to a public body or to the Department of Administrative Services;151 (x) a gift or gifts from one member of the Legislature to another member of the

152 Legislature:

153 (xi) anything for which the public official pays or gives full value;

154 (xii) any service spontaneously extended to a public official in an emergency situation;

155 (xiii) items received from a bona fide charitable, professional, educational, or business

156 organization to which the public official belongs as a dues-paying member, if:

157 (A) the items are given to all members of the organization without regard to individual

158 members' status or positions held outside of the organization; and

159 (B) the dues paid are not inconsequential when compared to the items received;

160 (xiv) funeral flowers or memorials to a church or a nonprofit organization given to

161 honor a public official, a person related to the public official by blood or marriage, or to a

162 member of the public official's household;

163 (xv) unsolicited flowers, plants, and floral arrangements valued at less than \$50;

164 (xvi) items valued at less than \$50 for a wedding or 25th or 50th wedding anniversary

165 celebration;

166 (xvii) the cost of admission, attendance, or participation, and of food and beverages

167 consumed, at a public policy activity to which all members of the Legislature or all members of

168 a legislative committee, a legislative subcommittee, or a task force are invited;

169 (xviii) the cost paid, reimbursed, raised, or obtained by or for a public official in

170 connection with a convention, conference, or other event sponsored or coordinated by

171 multistate or national organizations of, or including, state governments, state legislatures, or

172 state legislators for:

173 (A) attendance at, participation in, or conducting the event;

174 (B) food or beverages consumed at, or in connection with, the event;

175 (C) activities offered at, or in connection with, the event; or

176 (D) funds, goods, or services provided at, or in connection with, the event; or

177 (xix) travel and accommodations provided to a public official when the public official

178 is representing the state in an official or ceremonial capacity, and travel and accommodations

179 provided to a legislator or spouse for which prior approval has been obtained from the

180 president or speaker, when the legislator is representing the Legislature, or a chamber of the

181 Legislature, in an official or ceremonial capacity.

182 (2) "Public official's immediate family" means:

183 (a) the public official's spouse; and

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

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

186 **36-11-502. Gifts prohibited.**

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

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

190 **63A-1-105. Appointment of executive director -- Compensation.**

191 (1) The governor shall:

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

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

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

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

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

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

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

202 **63E-1-404. Penalties for violation.**

203 (1) A person who knowingly violates this part:

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

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

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

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

214 (3) Notwithstanding [~~Subsection~~] Section 36-11-401[~~(3)~~], if a lobbyist violates
215 Subsection 63E-1-402(2)(b)(i)[~~7~~];
216 (a) the lobbyist is guilty of the crime outlined in Subsection (1)[~~which~~]; and
217 (b) the crime shall be determined by the value of compensation or assets received by
218 the lobbyist.
219 Section 7. **Repealer.**
220 This bill repeals:
221 Section **36-11-304, Offering gift or loan -- When prohibited.**

Legislative Review Note
as of **12-9-05 8:16 AM**

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 HB0094

Ban on Gifts to Elected Officials

16-Jan-06

5:20 PM

State Impact

Provisions of this bill can be enacted within existing budgets.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst