

**LEGISLATOR REPORTING OF GIFTS AND
OTHER ITEMS**

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Mark A. Wheatley

Senate Sponsor: _____

LONG TITLE

General Description:

This bill requires a legislator to report the receipt of certain gifts, meals, and admissions.

Highlighted Provisions:

This bill:

- ▶ defines "gift";
- ▶ requires legislators to quarterly report the receipt of:
 - gifts received from someone other than a relative;
 - food and beverage for which the legislator pays less than fair market value; and
 - certain admissions for which the legislator pays less than fair market value;
- ▶ applies administrative penalties to a legislator who violates gift reporting

provisions; and

- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



36-11-102, as last amended by Laws of Utah 2008, Chapter 382

36-11-304, as last amended by Laws of Utah 2007, Chapter 233

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

ENACTS:

36-11-203, Utah Code Annotated 1953

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

Section 1. Section 36-11-102 is amended to read:

36-11-102. Definitions.

As used in this chapter:

(1) "Aggregate daily expenditures" means:

(a) for a single lobbyist, principal, or government officer, the total of all expenditures made within a calendar day by the lobbyist, principal, or government officer for the benefit of an individual public official;

(b) when an expenditure is made by a member of a lobbyist group, the total of all expenditures made within a calendar day by every member of the lobbyist group for the benefit of an individual public official; or

(c) for a multiclient lobbyist, the total of all expenditures made by the multiclient lobbyist within a calendar day for the benefit of an individual public official, regardless of whether expenditures were attributed to different clients.

(2) "Executive action" means:

(a) nominations and appointments by the governor;

(b) the proposal, drafting, amendment, enactment, or defeat by a state agency of any rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(c) agency ratemaking proceedings.

(3) (a) "Expenditure" means any of the items listed in this Subsection (3)(a) when given to or for the benefit of a public official:

(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 (3)(a)(i).

- (b) "Expenditure" does not mean:
- (i) a commercially reasonable loan made in the ordinary course of business;
 - (ii) a campaign contribution reported in accordance with Title 20A, Chapter 11, Campaign and Financial Reporting Requirements;
 - (iii) printed informational material that is related to the performance of the recipient's official duties;
 - (iv) a devise or inheritance;
 - (v) any item listed in Subsection (3)(a) if given by a relative;
 - (vi) a modest item of food or refreshment such as a beverage or pastry offered other than as part of a meal, the value of which does not exceed \$5;
 - (vii) a greeting card or other item of little intrinsic value that is intended solely for presentation; or
 - (viii) plaques, commendations, or awards presented in public and having a cash value not exceeding \$50.
- (4) (a) "Gift" means a transfer of real property or tangible personal property for less than fair and adequate consideration.
- (b) "Gift" does not include a plaque, commendation, or award that is presented in public.
- ~~[(4)]~~ (5) (a) "Government officer" means:
- (i) an individual elected to a position in state or local government, when acting within the government officer's official capacity; or
 - (ii) an individual appointed to or employed in a full-time position by state or local government, when acting within the scope of the individual's employment.
- (b) "Government officer" does not mean a member of the legislative branch of state government.
- ~~[(5)]~~ (6) "Immediate family" means:
- (a) a spouse;
 - (b) a child residing in the household; or
 - (c) an individual claimed as a dependent for tax purposes.
- ~~[(6)]~~ (7) "Interested person" means an individual defined in Subsections ~~[(9)]~~ (10)(b)(iii) and (viii).

[~~(7)~~] (8) "Legislative action" means:

(a) bills, resolutions, amendments, nominations, and other matters pending or proposed in either house of the Legislature or its committees or requested by a legislator; and

(b) the action of the governor in approving or vetoing legislation.

[~~(8)~~] (9) "Lobbying" means communicating with a public official for the purpose of influencing the passage, defeat, amendment, or postponement of legislative or executive action.

[~~(9)~~] (10) (a) "Lobbyist" means:

(i) an individual who is employed by a principal; or

(ii) an individual who contracts for economic consideration, other than reimbursement for reasonable travel expenses, with a principal to lobby a public official.

(b) "Lobbyist" does not include:

(i) a government officer;

(ii) a member or employee of the legislative branch of government;

(iii) any person appearing at, or providing written comments to, a hearing conducted in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act or Title 63G, Chapter 4, Administrative Procedures Act;

(iv) 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;

(v) a representative of a political party;

(vi) 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;

(vii) 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; or

(viii) an individual who appears on the individual's 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.

[~~(10)~~] (11) "Lobbyist group" means two or more lobbyists, principals, government

officers, and any combination of lobbyists, principals, and officers who each contribute a portion of an expenditure made to benefit a public official or member of the public official's immediate family.

~~[(11)]~~ (12) "Multiclient lobbyist" means a single lobbyist, principal, or government officer who represents two or more clients and divides the aggregate daily expenditure made to benefit a public official or member of the public official's immediate family between two or more of those clients.

~~[(12)]~~ (13) "Person" includes individuals, bodies politic and corporate, partnerships, associations, and companies.

~~[(13)]~~ (14) "Principal" means a person that employs an individual to perform lobbying either as an employee or as an independent contractor.

~~[(14)]~~ (15) "Public official" means:

(a) (i) a member of the Legislature;

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

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

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

(B) drafts legislation or makes rules;

(C) determines rates or fees; or

(D) makes adjudicative decisions; or

(b) an immediate family member of a person described in Subsection ~~[(14)]~~ (15)(a).

~~[(15)]~~ (16) "Public official type" means a notation to identify whether a public official is:

(a) (i) a member of the Legislature;

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

(iii) an individual appointed to or employed in a position in the legislative branch who meets the definition of public official under Subsection ~~[(14)]~~ (15)(a)(iii); or

(iv) an individual appointed to or employed in a position in the executive branch who meets the definition of public official under Subsection ~~[(14)]~~ (15)(a)(iii); or

(b) an immediate family member of a person described in Subsection ~~[(14)]~~ (15)(b).

~~[(16)]~~ (17) "Quarterly reporting period" means the three-month period covered by each

financial report required under Subsection 36-11-201(2)(a).

~~[(+7)]~~ (18) "Related person" means any person, or agent or employee of a person, who knowingly and intentionally assists a lobbyist, principal, or government officer in lobbying.

~~[(+8)]~~ (19) "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.

~~[(+9)]~~ (20) (a) "Tangible personal property" means an item having a description that is consistent with the meaning of tangible personal property found in the Utah Constitution, Article XIII.

(b) "Tangible personal property" does not include the admission price or cost for events, meals, recreation, outings, or functions.

Section 2. Section **36-11-203** is enacted to read:

36-11-203. Legislator reporting of certain gifts, meals, and admissions.

(1) A legislator shall file a quarterly report with the lieutenant governor on or before the dates listed in Subsection (2).

(2) (a) A quarterly report required by this section is due:

(i) April 10, for the period of January 1 through March 31;

(ii) July 10, for the period of April 1 through June 31;

(iii) October 10, for the period of July 1 through September 30; and

(iv) January 10, for the period of October 1 through December 31.

(b) If the due date for a quarterly report falls on a Saturday, Sunday, or legal holiday, the report is due the following business day.

(3) (a) A quarterly report required by this section shall contain:

(i) a listing of any gift the legislator received during the reporting period, including the name of the person giving the gift and an estimate of the value of the gift;

(ii) a listing of any food and beverage received during the reporting period for which the legislator did not pay fair market value, including the name of the person providing the food and beverage and an estimate of the value of the food and beverage; and

(iii) a listing of any admission to a sporting, recreational, or artistic event, whether as a spectator or participant, for which the legislator did not pay fair market value, including the name of the person providing the admission and an estimate of the value of the admission.

183 (b) If a legislator receives no gifts, food and beverage, or admissions required to be
184 reported under Subsection (3)(a), the legislator shall file a quarterly report indicating that fact.

185 (4) Subsection (3) does not apply to a gift, food and beverage, or admission provided
186 by a relative.

187 Section 3. Section **36-11-304** is amended to read:

188 **36-11-304. Prohibition on certain gifts of real or tangible personal property.**

189 ~~[(1) As used in this section:]~~

190 ~~[(a) "Gift" means a transfer of real property or tangible personal property for less than~~
191 ~~fair and adequate consideration.]~~

192 ~~[(b) "Gift" does not include a plaque, commendation, or award that is presented in~~
193 ~~public.]~~

194 ~~[(2)]~~ (1) Except as provided in Subsection ~~[(3)]~~ (2), a lobbyist, principal, or
195 government officer may not offer to or give any public official any gift or loan if the public
196 official has been, or is now, or in the near future may be involved in any governmental action
197 directly affecting the donor or lender.

198 ~~[(3)]~~ (2) Subsection ~~[(2)]~~ (1) does not apply to the following:

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

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

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

203 (d) gifts to a relative.

204 Section 4. Section **36-11-401** is amended to read:

205 **36-11-401. Penalties.**

206 (1) Any person who willfully and knowingly violates Section 36-11-103, 36-11-201,
207 36-11-203, 36-11-301, 36-11-302, 36-11-303, 36-11-304, 36-11-305, or 36-11-403, is subject
208 to the following penalties:

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

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

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

212 (ii) suspension of the violator's lobbying license for up to one year, if the person is a
213 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.

Legislative Review Note
as of 1-26-09 11:27 AM

Office of Legislative Research and General Counsel

H.B. 268 - Legislator Reporting of Gifts and Other Items

Fiscal Note

2009 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for businesses or local governments. Individuals may incur expenses accounting for and reporting gifts covered by this legislation.
