

**GIFTS AND MEAL PROVISIONS FOR
PUBLIC OFFICIALS**

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gregory S. Bell

House Sponsor: Brad L. Dee

LONG TITLE

General Description:

This bill addresses the provision and reporting of gifts and meals to public officials.

Highlighted Provisions:

This bill:

- ▶ addresses the definition of "tangible personal property";
- ▶ includes admission to various events in the definition of "gift";
- ▶ requires reporting of meals costing more than \$25 provided to a public official

under certain circumstances; 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

36-11-201, as last amended by Laws of Utah 2007, Chapters 233 and 239

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

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

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

30 **36-11-102. Definitions.**

31 As used in this chapter:

32 (1) "Aggregate daily expenditures" means:

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

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

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

42 (2) "Executive action" means:

43 (a) nominations and appointments by the governor;

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

46 (c) agency ratemaking proceedings.

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

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

51 (ii) a contract, promise, or agreement, whether or not legally enforceable, to provide
52 any of the items listed in Subsection (3)(a)(i).

53 (b) "Expenditure" does not mean:

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

55 (ii) a campaign contribution reported in accordance with Title 20A, Chapter 11,
56 Campaign and Financial Reporting Requirements;

57 (iii) printed informational material that is related to the performance of the recipient's

58 official duties;

59 (iv) a devise or inheritance;

60 (v) any item listed in Subsection (3)(a) if given by a relative;

61 (vi) a modest item of food or refreshment such as a beverage or pastry offered other
62 than as part of a meal, the value of which does not exceed \$5;

63 (vii) a greeting card or other item of little intrinsic value that is intended solely for
64 presentation; or

65 (viii) plaques, commendations, or awards presented in public and having a cash value
66 not exceeding \$50.

67 (4) "Gift" is as defined in Section 36-11-304.

68 [~~4~~] (5) (a) "Government officer" means:

69 (i) an individual elected to a position in state or local government, when acting within
70 the government officer's official capacity; or

71 (ii) an individual appointed to or employed in a full-time position by state or local
72 government, when acting within the scope of the individual's employment.

73 (b) "Government officer" does not mean a member of the legislative branch of state
74 government.

75 [~~5~~] (6) "Immediate family" means:

76 (a) a spouse;

77 (b) a child residing in the household; or

78 (c) an individual claimed as a dependent for tax purposes.

79 [~~6~~] (7) "Interested person" means an individual defined in Subsections [~~9~~]
80 (10)(b)(iii) and (viii).

81 [~~7~~] (8) "Legislative action" means:

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

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

85 [~~8~~] (9) "Lobbying" means communicating with a public official for the purpose of

86 influencing the passage, defeat, amendment, or postponement of legislative or executive
87 action.

88 [~~9~~] (10) (a) "Lobbyist" means:

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

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

92 (b) "Lobbyist" does not include:

93 (i) a government officer;

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

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

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

101 (v) a representative of a political party;

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

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

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

112 [~~10~~] (11) "Lobbyist group" means two or more lobbyists, principals, government
113 officers, and any combination of lobbyists, principals, and officers who each contribute a

114 portion of an expenditure made to benefit a public official or member of the public official's
115 immediate family.

116 ~~[(11)]~~ (12) "Multiclient lobbyist" means a single lobbyist, principal, or government
117 officer who represents two or more clients and divides the aggregate daily expenditure made to
118 benefit a public official or member of the public official's immediate family between two or
119 more of those clients.

120 ~~[(12)]~~ (13) "Person" includes individuals, bodies politic and corporate, partnerships,
121 associations, and companies.

122 ~~[(13)]~~ (14) "Principal" means a person that employs an individual to perform lobbying
123 either as an employee or as an independent contractor.

124 ~~[(14)]~~ (15) "Public official" means:

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

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

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

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

130 (B) drafts legislation or makes rules;

131 (C) determines rates or fees; or

132 (D) makes adjudicative decisions; or

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

134 ~~[(15)]~~ (16) "Public official type" means a notation to identify whether a public official
135 is:

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

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

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

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

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

143 ~~[(16)]~~ (17) "Quarterly reporting period" means the three-month period covered by each
144 financial report required under Subsection 36-11-201(2)(a).

145 ~~[(17)]~~ (18) "Related person" means any person, or agent or employee of a person, who
146 knowingly and intentionally assists a lobbyist, principal, or government officer in lobbying.

147 ~~[(18)]~~ (19) "Relative" means a spouse, child, parent, grandparent, grandchild, brother,
148 sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, first cousin, or
149 spouse of any of these individuals.

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

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

155 Section 2. Section **36-11-201** is amended to read:

156 **36-11-201. Lobbyist, principal, and government officer financial reporting**
157 **requirements -- Prohibition for related person to make expenditures.**

158 (1) (a) (i) Each lobbyist shall file quarterly financial reports with the lieutenant
159 governor on or before the due dates under Subsection (2)(a).

160 (ii) If the lobbyist has not made an expenditure during the quarterly reporting period,
161 the lobbyist shall file a quarterly financial report listing the amount of expenditures as "none."

162 (b) Each government officer or principal that makes an expenditure during any of the
163 quarterly reporting periods under Subsection (2)(a) shall file a quarterly financial report with
164 the lieutenant governor on or before the date that a report for that quarter is due.

165 (2) (a) Quarterly expense reports shall be due on the following dates:

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

167 (ii) July 10, for the period of April 1 through June 30;

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

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

170 (b) If the due date for a financial report falls on a Saturday, Sunday, or legal holiday,
171 the report shall be considered to be due on the next succeeding business day.

172 (c) A financial report shall be considered timely filed if it is:

173 (i) postmarked on its due date; or

174 (ii) filed electronically on or before the due date.

175 (3) A quarterly financial report shall contain:

176 (a) the total amount of expenditures made to benefit any public official during the
177 quarterly reporting period;

178 (b) the total amount of expenditures made, by public official type, during the quarterly
179 reporting period;

180 (c) for the report due on January 10:

181 (i) the total amount of expenditures made to benefit any public official during the last
182 calendar year; and

183 (ii) the total amount of expenditures made, by public official type, during the last
184 calendar year;

185 (d) a disclosure of each expenditure made during the quarterly reporting period to
186 reimburse or pay for the travel or lodging expenses of a public official, including for each trip:

187 (i) the purpose and each destination of the trip;

188 (ii) the name of each public official that participated in the trip;

189 (iii) the public official type of each public official named;

190 (iv) for each public official named, a listing of the amount and purpose of each
191 expenditure made for travel or lodging that benefitted the public official; and

192 (v) the total amount of expenditures made to benefit each public official named;

193 (e) a disclosure of each expenditure made during the quarterly reporting period that
194 was not disclosed under Subsection (3)(d), to be provided as follows:

195 (i) using Schedule A under Section 36-11-201.3, a disclosure of each of the following
196 expenditures:

197 (A) an expenditure made for the cost or value of admission to a [~~professional or~~

198 ~~collegiate sporting event]~~ sporting, recreational, or artistic event, whether as a spectator or a
199 participant;

200 (B) an expenditure made for [~~tangible personal property~~] a gift, if the aggregate daily
201 expenditures benefitting the public official are greater than \$10;

202 (C) an expenditure made for food or beverage, if the aggregate daily expenditures
203 benefitting the public official are greater than [~~\$50; and~~] \$25 unless the food or beverage is
204 provided in connection with an event to which:

205 (I) all of the members of the Legislature, a standing or interim committee or official
206 legislative task force, or a party caucus are invited; or

207 (II) all attendees from a house of the Legislature are invited, if the event is held in
208 conjunction with a meeting of a regional or national organization the members of which are
209 comprised of state legislatures or legislators; and

210 (D) any expenditure not otherwise reported in Subsection (3)(d), or this Subsection
211 (3)(e)(i), [~~if the aggregate daily expenditures benefitting the public official are greater than~~
212 ~~\$50; and~~] except for an expenditure for food and beverage provided in connection with an
213 event to which:

214 (I) all of the members of the Legislature, a standing or interim committee or official
215 legislative task force, or a party caucus are invited; or

216 (II) all attendees from a house of the Legislature are invited, if the event is held in
217 conjunction with a meeting of a regional or national organization the members of which are
218 comprised of state legislatures or legislators; and

219 (ii) using Schedule B under Section 36-11-201.3, a disclosure of every expenditure not
220 reported in Subsection (3)(d) or (3)(e)(i);

221 (f) for each public official who was employed by the lobbyist, principal, or
222 government officer or who performed work as an independent contractor for the lobbyist,
223 principal, or government officer during the last year, a list that provides:

224 (i) the name of the public official; and

225 (ii) the nature of the employment or contract with the public official;

226 (g) each bill or resolution, by number and short title, on behalf of which the lobbyist,
227 principal, or government officer made an expenditure to a public official for which a report is
228 required by this section, if any;

229 (h) a description of each executive action on behalf of which the lobbyist, principal, or
230 government officer made an expenditure to a public official for which a report is required by
231 this section, if any;

232 (i) the general purposes, interests, and nature of the organization or organizations that
233 the lobbyist, principal, or government officer filing the report represents; and

234 (j) for a lobbyist, a certification that the information provided in the report is true,
235 accurate, and complete to the lobbyist's best knowledge and belief.

236 (4) In reporting expenditures under this section for events to which all legislators are
237 invited, each lobbyist, principal, and government officer:

238 (a) may not divide the cost of the event by the number of legislators who actually
239 attend the event and report that cost as an expenditure made to those legislators;

240 (b) shall divide the total cost by the total number of Utah legislators and others invited
241 to the event and report that quotient as the amount expended for each legislator who actually
242 attended the event; and

243 (c) may not report any expenditure as made to a legislator who did not attend the
244 event.

245 (5) A related person may not, while assisting a lobbyist, principal, or government
246 officer in lobbying, make an expenditure that benefits a public official under circumstances
247 which would otherwise fall within the disclosure requirements of this chapter if the
248 expenditure was made by the lobbyist, principal, or government officer.

249 (6) The lieutenant governor shall:

250 (a) (i) develop preprinted forms for all financial reports required by this section; and

251 (ii) make copies of the forms available to each person who requests them; and

252 (b) provide a reporting system that allows financial reports to be submitted via the
253 Internet.

254 (7) (a) Each lobbyist and each principal shall continue to file the quarterly financial
255 reports required by this section until the lobbyist or principal files a statement with the
256 lieutenant governor that:

257 (i) states:

258 (A) for a lobbyist, that the lobbyist has ceased lobbying activities; or

259 (B) for a principal, that the principal no longer employs an individual as a lobbyist;

260 (ii) in the case of a lobbyist, states that the lobbyist is surrendering the lobbyist's
261 license;

262 (iii) contains a listing, as required by this section, of all previously unreported
263 expenditures that have been made through the date of the statement; and

264 (iv) states that the lobbyist or principal will not make any additional expenditure that
265 is not disclosed on the statement unless the lobbyist or principal complies with the disclosure
266 and licensing requirements of this chapter.

267 (b) A lobbyist that fails to renew the lobbyist's license or otherwise ceases to be
268 licensed shall be required to file quarterly reports until the lobbyist files the statement required
269 by Subsection (7)(a).

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

271 **36-11-304. Gift Provisions.**

272 (1) As used in this section and Section 36-11-201:

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

275 (b) Notwithstanding Subsection (1)(a), "gift" includes:

276 (i) admission to a sporting, recreational, or artistic event whether as a spectator or a
277 participant; and

278 (ii) cash.

279 ~~(b)~~ (c) "Gift" does not include a plaque, commendation, or award that is presented in
280 public.

281 (2) Except as provided in Subsection (3), a lobbyist, principal, or government officer

282 may not offer to or give any public official any gift or loan if the public official has been, or is
283 now, or in the near future may be involved in any governmental action directly affecting the
284 donor or lender.

285 (3) Subsection (2) does not apply to the following:

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

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

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

290 (d) gifts to a relative.