

1 **FINANCIAL DISCLOSURE AND CONFLICT**
2 **OF INTEREST AMENDMENTS**

3 2010 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Gregory H. Hughes**

6 Senate Sponsor: Wayne L. Niederhauser

7 Cosponsors: Eric K. Hutchings Paul Ray

8
9 **LONG TITLE**

10 **General Description:**

11 This bill modifies and enacts provisions of the Utah Code that relate to financial
12 disclosures and the declaration of conflicts of interest by certain public officeholders
13 and candidates.

14 **Highlighted Provisions:**

15 This bill:

16 ▶ requires candidates for the following offices to file a financial disclosure at the time
17 of filing a declaration of candidacy:

18 • governor, lieutenant governor, state auditor, state treasurer, and attorney
19 general;

20 • the Legislature; and
21 • the State Board of Education;

22 ▶ prohibits a filing officer from accepting a declaration of candidacy unless a
23 financial disclosure has been filed;

24 ▶ provides procedures and requirements for filing financial disclosures;

25 ▶ requires a candidate's financial disclosure to be made publicly available:

26 • at the filing officer's place of business; and

27 • on the Statewide Electronic Voter Information Website administered by the
28 lieutenant governor;

29 ▶ modifies provisions of the criminal statute that regulates failure to disclose

- 30 conflicts of interest;
- 31 ▶ provides and modifies definitions;
- 32 ▶ requires the following officeholders to file a financial disclosure at specified times:
- 33 • governor, lieutenant governor, state auditor, state treasurer, and attorney
- 34 general;
- 35 • members of the Legislature; and
- 36 • members of the State Board of Education;
- 37 ▶ specifies what information the financial disclosure must contain;
- 38 ▶ provides a criminal penalty if a regulated officeholder engages in an official action
- 39 that constitutes a conflict of interest if:
- 40 • the conflict of interest has not been provided on the financial disclosure; and
- 41 • the officeholder fails to publicly declare a conflict of interest at the time of the
- 42 action;
- 43 ▶ requires conflicts of interest that are declared at the time of the action to be
- 44 recorded on official records;
- 45 ▶ requires blank financial disclosure forms to be available for regulated officeholders
- 46 and the public;
- 47 ▶ requires financial disclosures that are filed by officeholders to be made available:
- 48 • on the Internet;
- 49 • at the lieutenant governor's office, for executive branch officeholders; and
- 50 • at the offices for the Senate or House of Representatives, for legislators; and
- 51 ▶ makes technical changes.

52 **Monies Appropriated in this Bill:**

53 None

54 **Other Special Clauses:**

55 This bill provides an immediate effective date.

56 **Utah Code Sections Affected:**

57 AMENDS:

58 20A-9-201, as last amended by Laws of Utah 2008, Chapters 11, 13, 14, and 225

59 76-8-109, as last amended by Laws of Utah 1995, Chapter 191

60 ENACTS:

61 20A-11-1501, Utah Code Annotated 1953

62 20A-11-1502, Utah Code Annotated 1953

63 20A-11-1503, Utah Code Annotated 1953



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

66 Section 1. Section 20A-9-201 is amended to read:

67 **20A-9-201. Declarations of candidacy -- Candidacy for more than one office or**
68 **of more than one political party prohibited with exceptions -- General filing and form**
69 **requirements -- Affidavit of impecuniosity.**

70 (1) Before filing a declaration of candidacy for election to any office, a person shall:

71 (a) be a United States citizen; and

72 (b) meet the legal requirements of that office.

73 (2) (a) Except as provided in Subsection (2)(b), a person may not:

74 (i) file a declaration of candidacy for, or be a candidate for, more than one office in
75 Utah during any election year; or

76 (ii) appear on the ballot as the candidate of more than one political party.

77 (b) A person may file a declaration of candidacy for, or be a candidate for, President
78 or Vice President of the United States and another office, if the person resigns the person's
79 candidacy for the other office after the person is officially nominated for President or Vice
80 President of the United States.

81 (3) (a) (i) Except for presidential candidates, before the filing officer may accept any
82 declaration of candidacy, the filing officer shall:

83 (A) read to the prospective candidate the constitutional and statutory qualification
84 requirements for the office that the candidate is seeking; and

85 (B) require the candidate to state whether or not the candidate meets those

86 requirements.

87 (ii) Before accepting a declaration of candidacy for the office of county attorney, the
88 county clerk shall ensure that the person filing that declaration of candidacy is:

89 (A) a United States citizen;

90 (B) an attorney licensed to practice law in Utah who is an active member in good
91 standing of the Utah State Bar;

92 (C) a registered voter in the county in which he is seeking office; and

93 (D) a current resident of the county in which he is seeking office and either has been a
94 resident of that county for at least one year or was appointed and is currently serving as county
95 attorney and became a resident of the county within 30 days after appointment to the office.

96 (iii) Before accepting a declaration of candidacy for the office of district attorney, the
97 county clerk shall ensure that, as of the date of the election, the person filing that declaration
98 of candidacy is:

99 (A) a United States citizen;

100 (B) an attorney licensed to practice law in Utah who is an active member in good
101 standing of the Utah State Bar;

102 (C) a registered voter in the prosecution district in which he is seeking office; and

103 (D) a current resident of the prosecution district in which he is seeking office and
104 either will have been a resident of that prosecution district for at least one year as of the date of
105 the election or was appointed and is currently serving as district attorney and became a
106 resident of the prosecution district within 30 days after receiving appointment to the office.

107 (iv) Before accepting a declaration of candidacy for the office of county sheriff, the
108 county clerk shall ensure that the person filing the declaration of candidacy:

109 (A) as of the date of filing:

110 (I) is a United States citizen;

111 (II) is a registered voter in the county in which the person seeks office;

112 (III) (Aa) has successfully met the standards and training requirements established for
113 law enforcement officers under Title 53, Chapter 6, Part 2, Peace Officer Training and

114 Certification Act; or

115 (Bb) has passed a certification examination as provided in Section 53-6-206; and

116 (IV) is qualified to be certified as a law enforcement officer, as defined in Section

117 53-13-103; and

118 (B) as of the date of the election, shall have been a resident of the county in which the
119 person seeks office for at least one year.

120 (v) Before accepting a declaration of candidacy for the office of governor, lieutenant
121 governor, state auditor, state treasurer, attorney general, state legislator, or State Board of
122 Education member, the filing officer shall ensure:

123 (A) that the person filing the declaration of candidacy also files the financial
124 disclosure required by Section 20A-11-1503; and

125 (B) if the filing officer is not the lieutenant governor, that the financial disclosure is
126 provided to the lieutenant governor according to the procedures and requirements of Section
127 20A-11-1503.

128 (b) If the prospective candidate states that he does not meet the qualification
129 requirements for the office, the filing officer may not accept the prospective candidate's
130 declaration of candidacy.

131 (c) If the candidate meets the requirements of Subsection (3)(a) and states that he
132 meets the requirements of candidacy, the filing officer shall:

133 (i) inform the candidate that:

134 (A) the candidate's name will appear on the ballot as it is written on the declaration of
135 candidacy;

136 (B) the candidate may be required to comply with state or local campaign finance
137 disclosure laws; and

138 (C) the candidate is required to file a financial statement before the candidate's
139 political convention under:

140 (I) Section 20A-11-204 for a candidate for constitutional office;

141 (II) Section 20A-11-303 for a candidate for the Legislature; or

142 (III) local campaign finance disclosure laws, if applicable;

143 (ii) provide the candidate with a copy of the current campaign financial disclosure

144 laws for the office the candidate is seeking and inform the candidate that failure to comply will

145 result in disqualification as a candidate and removal of the candidate's name from the ballot;

146 (iii) provide the candidate with a copy of Section 20A-7-801 regarding the Statewide

147 Electronic Voter Information Website Program and inform the candidate of the submission

148 deadline under Subsection 20A-7-801(4)(a);

149 (iv) provide the candidate with a copy of the pledge of fair campaign practices

150 described under Section 20A-9-206 and inform the candidate that:

151 (A) signing the pledge is voluntary; and

152 (B) signed pledges shall be filed with the filing officer;

153 (v) accept the candidate's declaration of candidacy; and

154 (vi) if the candidate has filed for a partisan office, provide a certified copy of the

155 declaration of candidacy to the chair of the county or state political party of which the

156 candidate is a member.

157 (d) If the candidate elects to sign the pledge of fair campaign practices, the filing

158 officer shall:

159 (i) accept the candidate's pledge; and

160 (ii) if the candidate has filed for a partisan office, provide a certified copy of the

161 candidate's pledge to the chair of the county or state political party of which the candidate is a

162 member.

163 (4) Except for presidential candidates, the form of the declaration of candidacy shall

164 be substantially as follows:

165 "State of Utah, County of ____

166 I, _____, declare my intention of becoming a candidate for the office of

167 ____ as a candidate for the ____ party. I do solemnly swear that: I will meet the qualifications

168 to hold the office, both legally and constitutionally, if selected; I reside at _____ in

169 the City or Town of _____, Utah, Zip Code _____ Phone No. _____; I will not knowingly violate

170 any law governing campaigns and elections; I will file all campaign financial disclosure
171 reports as required by law; and I understand that failure to do so will result in my
172 disqualification as a candidate for this office and removal of my name from the ballot. The
173 mailing address that I designate for receiving official election notices is

174 _____
175 _____

176 Subscribed and sworn before me this _____(month\day\year).

177 Notary Public (or other officer qualified to administer oath.)"

178 (5) (a) Except for presidential candidates, the fee for filing a declaration of candidacy
179 is:

- 180 (i) \$25 for candidates for the local school district board; and
- 181 (ii) 1/8 of 1% of the total salary for the full term of office legally paid to the person
182 holding the office, but not less than \$5, for all other federal, state, and county offices.

183 (b) Except for presidential candidates, the filing officer shall refund the filing fee to
184 any candidate:

- 185 (i) who is disqualified; or
- 186 (ii) who the filing officer determines has filed improperly.
- 187 (c) (i) The county clerk shall immediately pay to the county treasurer all fees received
188 from candidates.

189 (ii) The lieutenant governor shall:

190 (A) apportion to and pay to the county treasurers of the various counties all fees
191 received for filing of nomination certificates or acceptances; and

192 (B) ensure that each county receives that proportion of the total amount paid to the
193 lieutenant governor from the congressional district that the total vote of that county for all
194 candidates for representative in Congress bears to the total vote of all counties within the
195 congressional district for all candidates for representative in Congress.

196 (d) (i) A person who is unable to pay the filing fee may file a declaration of candidacy
197 without payment of the filing fee upon a prima facie showing of impecuniosity as evidenced

198 by an affidavit of impecuniosity filed with the filing officer and, if requested by the filing
199 officer, a financial statement filed at the time the affidavit is submitted.

200 (ii) A person who is able to pay the filing fee may not claim impecuniosity.

201 (iii) (A) False statements made on an affidavit of impecuniosity or a financial
202 statement filed under this section shall be subject to the criminal penalties provided under
203 Sections 76-8-503 and 76-8-504 and any other applicable criminal provision.

204 (B) Conviction of a criminal offense under Subsection (5)(d)(iii)(A) shall be
205 considered an offense under this title for the purposes of assessing the penalties provided in
206 Subsection 20A-1-609(2).

207 (iv) The filing officer shall ensure that the affidavit of impecuniosity is printed in
208 substantially the following form:

209 "Affidavit of Impecuniosity

210 Individual Name

211 _____ Address _____

212 Phone Number _____

213 I, _____ (name), do solemnly [swear] [affirm], under penalty of law
214 for false statements, that, owing to my poverty, I am unable to pay the filing fee required by
215 law.

216 Date _____ Signature _____

217 Affiant

218 Subscribed and sworn to before me on _____ (month\day\year)

219 _____
220 (signature)

221 Name and Title of Officer Authorized to Administer Oath _____"

222 (v) The filing officer shall provide to a person who requests an affidavit of
223 impecuniosity a statement printed in substantially the following form, which may be included
224 on the affidavit of impecuniosity:

225 "Filing a false statement is a criminal offense. In accordance with Section 20A-1-609,

226 a candidate who is found guilty of filing a false statement, in addition to being subject to
227 criminal penalties, will be removed from the ballot."

228 (vi) The filing officer may request that a person who makes a claim of impecuniosity
229 under this Subsection (5)(d) file a financial statement on a form prepared by the election
230 official.

231 (6) Any person who fails to file a declaration of candidacy or certificate of nomination
232 within the time provided in this chapter is ineligible for nomination to office.

233 (7) A declaration of candidacy filed under this section may not be amended or
234 modified after the final date established for filing a declaration of candidacy.

235 Section 2. Section **20A-11-1501** is enacted to read:

236 **Part 15. Candidate Financial Disclosures**

237 **20A-11-1501. Title.**

238 This part is known as "Candidate Financial Disclosures."

239 Section 3. Section **20A-11-1502** is enacted to read:

240 **20A-11-1502. Definitions.**

241 (1) "Filing officer" is as defined in Section 20A-9-101.

242 (2) "State constitutional officer" means the governor, the lieutenant governor, the state
243 auditor, the state treasurer, or the attorney general.

244 Section 4. Section **20A-11-1503** is enacted to read:

245 **20A-11-1503. Financial disclosure form -- Required when filing for candidacy --**
246 **Public availability.**

247 (1) Candidates seeking the following offices shall file a financial disclosure with the
248 filing officer at the time of filing a declaration of candidacy:

249 (a) state constitutional officer;

250 (b) state legislator; or

251 (c) State Board of Education member.

252 (2) A filing officer shall not accept a declaration of candidacy for an office listed in
253 Subsection (1) unless the declaration of candidacy is accompanied by the financial disclosure

254 required by this section.

255 (3) The financial disclosure form shall contain the same requirements and shall be in
256 the same format as the financial disclosure form described in Section 76-8-109.

257 (4) The financial disclosure form shall:

258 (a) be made available for public inspection at the filing officer's place of business;

259 (b) if the filing officer is an individual other than the lieutenant governor, be provided
260 to the lieutenant governor within five business days of the date of filing and be made publicly
261 available at the Office of the Lieutenant Governor; and

262 (c) be made publicly available on the Statewide Electronic Voter Information Website
263 administered by the lieutenant governor.

264 Section 5. Section **76-8-109** is amended to read:

265 **76-8-109. Failure to disclose conflict of interest.**

266 (1) As used in this section:

267 [~~(a) "Business in which the legislator is associated" means any business in which a~~
268 ~~legislator is a director, officer, owner, member, partner, employee, or is a holder of stocks or~~
269 ~~bonds in the company that have a fair market value of \$10,000 or more. This does not include~~
270 ~~business associations by members of the legislator's immediate family.]~~

271 [~~(b)~~] (a) "Conflict of interest" means [~~legislation or action by a legislator that the~~
272 ~~legislator]~~ an action that is taken by a regulated officeholder that the officeholder reasonably
273 believes may cause direct financial benefit or detriment to [~~him]~~ the officeholder, a member of
274 the [~~legislator's]~~ officeholder's immediate family, or [~~a business in which the legislator is~~
275 ~~associated]~~ an entity that the officeholder is required to disclose under the provisions of this
276 section, and that benefit or detriment is distinguishable from the effects of that action on the
277 public or on the [~~legislator's]~~ officeholder's profession, occupation, or association generally.

278 (b) "Entity" means a corporation, a partnership, a limited liability company, a limited
279 partnership, a sole proprietorship, an association, a cooperative, a trust, an organization, a
280 joint venture, a governmental entity, an unincorporated organization, or any other legal entity,
281 whether established primarily for the purpose of gain or economic profit or not.

282 (c) "Filer" means the individual filing a financial declaration under this section.

283 ~~[(c)]~~ (d) "Immediate family" means the [legislator's] regulated officeholder's spouse
284 and children living in the [legislator's] officeholder's immediate household.

285 ~~[(2) In addition to the Declaration of Conflict of Interest form provided for in~~
286 ~~Subsection (3), before]~~

287 (e) "Income" means earnings, compensation, or any other payment made to an
288 individual for gain, regardless of source, whether denominated as wages, salary, commission,
289 pay, bonus, severance pay, incentive pay, contract payment, interest, per diem, expenses,
290 reimbursement, dividends, or otherwise.

291 (f) "Regulated officeholder" means an individual that is required to file a financial
292 disclosure under the provisions and requirements of this section.

293 (g) "State constitutional officer" means the governor, the lieutenant governor, the state
294 auditor, the state treasurer, or the attorney general.

295 (2) (a) Before or during the execution of any order, settlement, declaration, contract, or
296 any other official act of office in which a state constitutional officer has actual knowledge that
297 the officer has a conflict of interest which is not stated on the financial disclosure form
298 required under Subsection (4), the officer shall publicly declare that the officer may have a
299 conflict of interest and what that conflict of interest is.

300 (b) Before or during any vote on legislation or any legislative matter in which a
301 legislator has actual knowledge that [he] the legislator has a conflict of interest which is not
302 stated on the [conflict of interest form, that] the financial disclosure form required under
303 Subsection (4), the legislator shall orally declare to the committee or body before which the
304 matter is pending that the legislator may have a conflict of interest and what that conflict is.
305 ~~[This declaration of conflict of interest shall be noted in the minutes of any committee meeting~~
306 ~~or in the Senate or House Journal.]~~

307 ~~[(3) (a) A legislator shall file a Declaration of Conflict of Interest form with the~~
308 ~~Secretary of the Senate if the legislator is a senator or with the Chief Clerk of the House of~~
309 ~~Representatives if the legislator is a representative to satisfy that legislator's disclosure of any~~

310 conflict of interest as required by Subsection (2).]

311 ~~[(b) This Declaration of Conflict of Interest form shall include the businesses in which~~
312 ~~the legislator is associated and the general legislative subject areas in which the legislator may~~
313 ~~have a conflict of interest.]~~

314 ~~[(c) This Declaration of Conflict of Interest form is available to the public.]~~

315 (c) Before or during any vote on any rule, resolution, order, or any other board matter
316 in which a member of the State Board of Education has actual knowledge that the member has
317 a conflict of interest which is not stated on the financial disclosure form required under
318 Subsection (4), the member shall orally declare to the board that the member may have a
319 conflict of interest and what that conflict of interest is.

320 (3) Any public declaration of a conflict of interest that is made under Subsection (2)
321 shall be noted:

322 (a) on the official record of the action taken, for a state constitutional officer;

323 (b) in the minutes of the committee meeting or in the Senate or House Journal, as
324 applicable, for a legislator; or

325 (c) in the minutes of the meeting or on the official record of the action taken, for a
326 member of the State Board of Education.

327 (4) (a) The following individuals shall file a financial disclosure form:

328 (i) a state constitutional officer, to be due on the tenth day of January of each year, or
329 the following business day if the due date falls on a weekend or holiday;

330 (ii) a legislator, at the following times:

331 (A) on the first day of each general session of the Legislature; and

332 (B) each time the legislator changes employment;

333 (iii) a member of the State Board of Education, at the following times:

334 (A) on the tenth day of January of each year, or the following business day if the due
335 date falls on a weekend or holiday; and

336 (B) each time the member changes employment.

337 (b) The financial disclosure form shall include:

- 338 (i) the filer's name;
- 339 (ii) the name and address of the filer's primary employer;
- 340 (iii) a brief description of the filer's employment, including the filer's occupation and,
- 341 as applicable, job title;
- 342 (iv) for each entity in which the filer is an owner or an officer:
- 343 (A) the name of the entity;
- 344 (B) a brief description of the type of business or activity conducted by the entity; and
- 345 (C) the filer's position in the entity;
- 346 (v) for each entity that has paid \$5,000 or more in income to the filer within the
- 347 one-year period ending immediately before the date of the disclosure form:
- 348 (A) the name of the entity; and
- 349 (B) a brief description of the type of business of activity conducted by the entity;
- 350 (vi) for each entity in which the filer holds any stocks or bonds having a fair market
- 351 value of \$5,000 or more as of the date of the disclosure form, but excluding funds that are
- 352 managed by a third party, including blind trusts, managed investment accounts, and mutual
- 353 funds:
- 354 (A) the name of the entity; and
- 355 (B) a brief description of the type of business or activity conducted by the entity;
- 356 (vii) for each entity not listed in Subsections (4)(b)(iv) through (4)(b)(vi), in which the
- 357 filer serves on the board of directors or in any other type of formal advisory capacity:
- 358 (A) the name of the entity or organization;
- 359 (B) a brief description of the type of business or activity conducted by the entity; and
- 360 (C) the type of advisory position held by the filer;
- 361 (viii) at the option of the filer, any real property in which the filer holds an ownership
- 362 or other financial interest that the filer believes may constitute a conflict of interest, including:
- 363 (A) a description of the real property; and
- 364 (B) a description of the type of interest held by the filer in the property;
- 365 (ix) the name of the filer's spouse and any other adult residing in the filer's household

366 that is not related by blood or marriage, as applicable;

367 (x) a brief description of the employment and occupation of the filer's spouse and any
368 other adult residing in the filer's household that is not related by blood or marriage, as
369 applicable;

370 (xi) at the option of the filer, a description of any other matter or interest that the filer
371 believes may constitute a conflict of interest;

372 (xii) the date the form was completed;

373 (xiii) a statement that the filer believes that the form is true and accurate to the best of
374 the filer's knowledge; and

375 (xiv) the signature of the filer.

376 (c) (i) The financial disclosure shall be filed with:

377 (A) the secretary of the Senate, for a legislator that is a senator;

378 (B) the chief clerk of the House of Representatives, for a legislator that is a
379 representative; or

380 (C) the lieutenant governor, for all other regulated officeholders.

381 (ii) The lieutenant governor, the secretary of the Senate, and the chief clerk of the
382 House of Representatives shall ensure that blank financial disclosure forms are available on
383 the Internet and at their offices.

384 (d) Financial disclosure forms that are filed under the procedures and requirements of
385 this section shall be made available to the public:

386 (i) on the Internet; and

387 (ii) at the office where the form was filed.

388 ~~[(d)]~~ (e) This [requirement of disclosure of any] section's requirement to disclose a
389 conflict of interest does not prohibit a [legislator] regulated officeholder from voting [on any
390 legislation or legislative] or acting on any matter.

391 ~~[(4) Every member of the Legislature who has a conflict of interest in any measure or~~
392 ~~bill proposed or pending before the Legislature of which he is a member and does not disclose~~
393 ~~the fact to the house of which he is a member and votes thereon]~~

394 (5) A regulated officeholder who violates the requirements of Subsection (2) is guilty
395 of a class B misdemeanor.

396 Section 6. **Effective date.**

397 If approved by two-thirds of all the members elected to each house, this bill takes effect
398 upon approval by the governor, or the day following the constitutional time limit of Utah
399 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
400 the date of veto override.