

SB0097S02 compared with SB0097S01

~~text~~ shows text that was in SB0097S01 but was deleted in SB0097S02.

text shows text that was not in SB0097S01 but was inserted into SB0097S02.

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Senator Todd Weiler proposes the following substitute bill:

LOBBYIST DISCLOSURE AND REGULATION ACT

AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: _____

LONG TITLE

General Description:

This bill amends Title 36, Chapter 11, Lobbyist Disclosure and Regulation Act.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ describes and clarifies the difference between an event, a tour, and a meeting;
- ▶ describes reporting and other requirements relating to an event, a tour ~~and a meeting~~, and a meeting;
- ▶ requires a lobbyist or principal, that provides donated time to an individual who is seeking to fill a midterm vacancy for an elective office in the executive or

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legislative branch of state government, to file certain reports with the lieutenant governor in relation to the donated time:

- ▶ provides penalties for a lobbyist or principal that fails to comply with the reporting requirements described in the preceding paragraph:
- ▶ addresses public posting requirements for reports described in this bill; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

36-11-102, as last amended by Laws of Utah 2011, Chapter 212

36-11-103, as last amended by Laws of Utah 2010, Chapter 325

36-11-304, as repealed and reenacted by Laws of Utah 2010, Chapter 325

36-11-401, as last amended by Laws of Utah 2011, Chapter 389

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) for an expenditure 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

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lobbyist within a calendar day for the benefit of an individual public official, regardless of whether the expenditures were attributed to different clients.

(2) "Approved [~~meeting or~~ activity]" means a tour or a meeting [~~or activity~~]:

(a) (i) to which a legislator is invited; and

(ii) attendance at which is approved by:

(A) the speaker of the House of Representatives, if the public official is a member of the House of Representatives; or

(B) the president of the Senate, if the public official is a member of the Senate; or

(b) (i) to which a public official who holds a position in the executive branch of state government is invited; and

(ii) attendance at which is approved by the governor or the lieutenant governor.

(3) (a) "Compensation" means anything of economic value, however designated, that is paid, loaned, granted, given, donated, or transferred to an individual for the provision of services or ownership before any withholding required by federal or state law.

(b) "Compensation" includes:

(i) a salary or commission;

(ii) a bonus;

(iii) a benefit;

(iv) a contribution to a retirement program or account;

(v) a payment includable in gross income, as defined in Section 62, Internal Revenue Code, and subject to Social Security deductions, including a payment in excess of the maximum amount subject to deduction under Social Security law;

(vi) an amount that the individual authorizes to be deducted or reduced for salary deferral or other benefits authorized by federal law; or

(vii) income based on an individual's ownership interest.

(4) "Compensation payor" means a person who pays compensation to a public official in the ordinary course of business:

(a) because of the public official's ownership interest in the compensation payor; or

(b) for services rendered by the public official on behalf of the compensation payor.

(5) "Donated time" means the time provided by a principal or lobbyist, or by an employee or independent contractor of a principal or lobbyist at the direction of the principal or

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lobbyist, without charge or at a reduced rate, for the benefit of a prospective appointee.

~~(5)~~ (6) "Executive action" means:

- (a) a nomination or appointment by the governor;
- (b) the proposal, drafting, amendment, enactment, or defeat by a state agency of a rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
- (c) agency ratemaking proceedings; or
- (d) an adjudicative proceeding of a state agency.

~~(6)~~ (7) "Event" means entertainment, a performance, a contest, or a recreational activity that an individual participates in or is a spectator at, including a sporting event, an artistic event, a play, a movie, dancing, or singing.

~~(6)~~ ~~(7)~~ (8) (a) "Expenditure" means any of the items listed in this Subsection ~~(6)~~ ~~(7)~~ (8) (a) when given to or for the benefit of a public official unless consideration of equal or greater value is received:

- (i) a purchase, payment, or distribution;
- (ii) a loan, gift, or advance;
- (iii) a deposit, subscription, or forbearance;
- (iv) services or goods;
- (v) money;
- (vi) real property;
- (vii) a ticket or admission to [~~a sporting, recreational, or artistic~~] an event; or
- (viii) a contract, promise, or agreement, whether or not legally enforceable, to provide any item listed in Subsections ~~(6)~~ ~~(7)~~ (8) (a) (i) through (vii).

(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 ~~(6)~~ ~~(7)~~ (8) (a) if:
 - (A) given by a relative;

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(B) given by a compensation payor for a purpose solely unrelated to the public official's position as a public official; or

(C) (I) the item has a value of less than \$10; and

(II) the aggregate daily expenditures do not exceed \$10;

(vi) food or beverage that is provided at an event, a tour, or a meeting to which the following are invited:

(A) all members of the Legislature;

(B) all members of a standing or interim committee;

(C) all members of an official legislative task force;

(D) all members of a party caucus; or

(E) all members of a group described in Subsections [(6)] (~~(7)~~8)(b)(vi)(A) through (D) who are attending a meeting of a national organization whose primary purpose is addressing general legislative policy;

(vii) food or beverage that is provided at an event, a tour, or a meeting to a public official who is:

(A) giving a speech at the event;

(B) participating in a panel discussion at the event; or

(C) presenting or receiving an award at the event;

(viii) a plaque, commendation, or award presented in public and having a cash value not exceeding \$50;

(ix) admission to or attendance at an event, a tour, or a meeting, the primary purpose of which is:

(A) to solicit contributions reportable under:

(I) Title 20A, Chapter 11, Campaign and Financial Reporting Requirements; or

(II) 2 U.S.C. Sec. 434; or

(B) charitable solicitation, as defined in Section 13-22-2;

(x) travel to, lodging at, food or beverage served at, and admission to an approved [~~meeting or~~] activity;

(xi) sponsorship of an [~~official event or official entertainment of~~] event that is an approved [~~meeting or~~] activity;

(xii) notwithstanding Subsection [(6)] (~~(7)~~8)(a)(vii), admission to or attendance at an

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event, a tour, or a meeting:

- (A) that is sponsored by a governmental entity; or
- (B) that is widely attended and related to a governmental duty of a public official; or
- (xiii) travel to a widely attended ~~[event]~~ tour or meeting related to a governmental duty

of a public official if that travel results in a financial savings to the state.

~~[(7)]~~ ~~(8;9)~~ (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.

~~[(8)]~~ ~~(9;10)~~ "Immediate family" means:

(a) a spouse;

(b) a child residing in the household; or

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

~~[(9)]~~ ~~(10;11)~~ "Legislative action" means:

(a) a bill, resolution, amendment, nomination, veto override, or other matter 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.

~~[(10)]~~ ~~(11;12)~~ "Lobbying" means communicating with a public official for the purpose of influencing the passage, defeat, amendment, or postponement of legislative or executive action.

~~[(11)]~~ ~~(12;13)~~ (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 state government;

(iii) a person while appearing at, or providing written comments to, a hearing

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conducted in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act or Title 63G, Chapter 4, Administrative Procedures Act;

(iv) a 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 agency of the executive branch of state government solely for the purpose of testifying in support of or in opposition to legislative or executive action.

~~[(12)]~~ ~~(13)~~14 "Lobbyist group" means two or more lobbyists, principals, government officers, or 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.

~~(14)~~15 "Meeting" means a gathering of people to discuss an issue, receive instruction, or make a decision, including a conference, seminar, or summit.

~~[(13)]~~ ~~(15)~~16 "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.

(17) "Prospective appointee" means an individual who is seeking to fill a midterm vacancy for an elective office in the executive or legislative branch of state government.

~~[(14)]~~ ~~(16)~~18 "Principal" means a person that employs an individual to perform lobbying, either as an employee or as an independent contractor.

~~[(15)]~~ ~~(17)~~19 "Public official" means:

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(a) (i) a member of the Legislature;
(ii) an individual elected to a position in the executive branch of state government; or
(iii) an individual appointed to or employed in a position in the executive or legislative branch of state government 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 [(15)]

~~(17)~~19(a).

[(16)] ~~(18)~~20 "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 of state government;
(iii) an individual appointed to or employed in a position in the legislative branch of state government who meets the definition of public official under Subsection [(15)]

~~(17)~~19(a)(iii); or

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

~~(17)~~19(a)(iii); or

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

~~(17)~~19(b).

[(17)] ~~(19)~~21 "Quarterly reporting period" means the three-month period covered by each financial report required under Subsection 36-11-201(2)(a).

[(18)] ~~(20)~~22 "Related person" means a person, agent, or employee who knowingly and intentionally assists a lobbyist, principal, or government officer in lobbying.

[(19)] ~~(21)~~23 "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.

~~(22)~~24 "Tour" means visiting a location, for a purpose relating to the duties of a public official, and not for entertainment, including:

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(a) viewing a facility;

(b) viewing the sight of a natural disaster; or

(c) assessing a circumstance in relation to which a public official may need to take action within the scope of the public official's duties.

Section 2. Section 36-11-103 is amended to read:

36-11-103. Licensing requirements.

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

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

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

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

(ii) a place for the following information for each principal for whom the lobbyist works or is hired as an independent contractor:

(A) the principal's name;

(B) the principal's business address;

(C) the name of each public official that the principal employs and the nature of the employment with the public official; and

(D) the general purposes, interests, and nature of the principal;

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

(iv) a place for the lobbyist to disclose:

(A) any elected or appointed position that the lobbyist holds in state or local government, if any; and

(B) the name of each public official that the lobbyist employs and the nature of the employment with the public official, if any;

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

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

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

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

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

(ii) pays a \$100 filing fee.

(b) A license entitles a person to serve as a lobbyist on behalf of one or more principals and expires on December 31 of each even-numbered year.

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

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

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

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

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

(A) violated this section or Section 36-11-201, 36-11-301, 36-11-302, 36-11-303, 36-11-304, 36-11-305, or 36-11-403; or

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

(v) if the applicant is prohibited from becoming a lobbyist under Title 67, Chapter 24, Lobbying Restrictions Act.

(b) An applicant may appeal the disapproval in accordance with the procedures established by the lieutenant governor under this chapter and Title 63G, Chapter 4, Administrative Procedures Act.

(5) The lieutenant governor shall deposit license fees in the General Fund as a dedicated credit, to be used by the lieutenant governor to administer the licensing program described in this section.

(6) A principal need not obtain a license under this section, but if the principal makes expenditures to benefit a public official without using a lobbyist as an agent to confer those

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benefits, the principal shall disclose those expenditures as required by Section 36-11-201.

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

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

Section ~~{2}~~3. Section ~~{36-11-304}~~36-11-203 is ~~{amended to read:~~
~~{enacted to read:~~

36-11-203. Reporting requirements for donated time to benefit prospective appointee.

(1) Within one business day after the earlier of the day on which a lobbyist or principal agrees to provide, or the day on which the lobbyist or principal begins to provide, donated time to a prospective appointee, the lobbyist or principal shall file a written report with the lieutenant governor that includes:

- (a) the name, address, and telephone number of the lobbyist or principal;
- (b) the name of the prospective appointee;
- (c) the elective office for which the prospective appointee is seeking to be appointed;

and

(d) a statement that the lobbyist or principal has agreed to provide or begun to provide donated time to the prospective appointee.

(2) A lobbyist or principal described in Subsection (1) shall, within three business days after the day on which the lobbyist or principal provides donated time to a prospective appointee, file a written report with the lieutenant governor that includes:

- (a) the name, address, and telephone number of the lobbyist or principal;
- (b) the name of the prospective appointee;
- (c) the elective office for which the prospective appointee is seeking to be appointed;
- (d) the number of hours of donated time, per day, that:
 - (i) the lobbyist or principal has provided to the prospective appointee; and
 - (ii) were not included in a previous report filed under this Subsection (2); and
- (e) a description of the services provided to the prospective appointee during the

donated time.

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(3) The lieutenant governor shall:

(a) post each report described in this section on the lieutenant governor's website within one business day after the day on which the lieutenant governor receives the report; and

(b) ensure that an individual may view a report described in Subsection (3)(a) by searching for the prospective appointee's name from same location on the lieutenant governor's website that an individual uses to search for the name of a reporting entity in order to view a financial statement filed by the reporting entity.

Section 4. Section 36-11-304 is amended to read:

36-11-304. Expenditures over \$10 prohibited -- Exceptions.

(1) Except as provided in Subsection (2), a lobbyist, principal, or government officer may not make or offer to make aggregate daily expenditures that exceed \$10.

(2) A lobbyist, principal, or government officer may make aggregate daily expenditures that exceed \$10:

(a) for the following items, if the expenditure is reported in accordance with Section 36-11-201:

(i) food;

(ii) beverage;

(iii) travel;

(iv) lodging; or

(v) admission to or attendance at a tour or meeting [~~or activity~~] that is not an approved [~~meeting or~~] activity; or

(b) if the expenditure is made for a purpose solely unrelated to the public official's position as a public official.

Section 5. Section 36-11-401 is amended to read:

36-11-401. Penalties.

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

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

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

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

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(ii) suspension of the violator's lobbying license for up to one year, if the person is a 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) A lobbyist who does not complete the training required by Section 36-11-307 is subject to the following penalties:

(a) an administrative penalty of up to \$1,000 for each failure to complete the training required by Section 36-11-307; and

(b) for two or more failures to complete the training required by Section 36-11-307

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within 24 months, suspension of the lobbyist's lobbying license.

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