

1 **MODIFICATIONS TO LOBBYIST DISCLOSURE AND**
2 **REGULATION ACT**

3 2015 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Todd Weiler**

6 House Sponsor: _____

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies provisions of the Lobbyist Disclosure and Regulation Act.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ defines terms;
- 14 ▶ subject to an exception, requires a lobbyist or principal to file certain reports with

15 the lieutenant governor in relation to time donated to an individual who is seeking
16 to fill a midterm vacancy for an elective office in the executive or legislative branch
17 of state government;

18 ▶ provides penalties for a lobbyist or principal that fails to comply with the reporting
19 requirements described in the preceding paragraph;

- 20 ▶ addresses public posting requirements for reports described in this bill; and

- 21 ▶ makes technical changes.

22 **Money Appropriated in this Bill:**

23 None

24 **Other Special Clauses:**

25 None

26 **Utah Code Sections Affected:**

27 AMENDS:



28 **36-11-102**, as last amended by Laws of Utah 2014, Chapter 335

29 **36-11-401**, as last amended by Laws of Utah 2014, Chapter 335

30 ENACTS:

31 **36-11-203**, Utah Code Annotated 1953



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

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

35 **36-11-102. Definitions.**

36 As used in this chapter:

37 (1) "Aggregate daily expenditures" means:

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

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

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

47 (2) "Approved meeting or activity" means a meeting or activity:

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

49 (ii) attendance at which is approved by:

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

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

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

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

56 (3) "Capitol hill complex" is as defined in Section **63C-9-102**.

57 (4) (a) "Compensation" means anything of economic value, however designated, that is
58 paid, loaned, granted, given, donated, or transferred to an individual for the provision of

59 services or ownership before any withholding required by federal or state law.

60 (b) "Compensation" includes:

61 (i) a salary or commission;

62 (ii) a bonus;

63 (iii) a benefit;

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

65 (v) a payment includable in gross income, as defined in Section 62, Internal Revenue

66 Code, and subject to Social Security deductions, including a payment in excess of the

67 maximum amount subject to deduction under Social Security law;

68 (vi) an amount that the individual authorizes to be deducted or reduced for salary

69 deferral or other benefits authorized by federal law; or

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

71 (5) "Compensation payor" means a person who pays compensation to a public official

72 in the ordinary course of business:

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

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

75 (6) (a) "Donated time" means, except as provided in Subsection (6)(b), the time

76 provided by a principal or lobbyist, or by an employee or independent contractor of a principal

77 or lobbyist at the direction of the principal or lobbyist, without charge or at a reduced rate for

78 the benefit of a prospective appointee.

79 (b) "Donated time" does not include time provided without charge by a principal or a

80 lobbyist if the principal or lobbyist provides the time:

81 (i) in the principal's or lobbyist's capacity as a private citizen and not in the capacity of

82 a principal or lobbyist; and

83 (ii) to a prospective appointee who, if appointed, will fill a midterm vacancy for an

84 office for which the principal or lobbyist would be eligible to vote if an election were being

85 held for that office.

86 [~~6~~] (7) "Executive action" means:

87 (a) a nomination or appointment by the governor;

88 (b) the proposal, drafting, amendment, enactment, or defeat by a state agency of a rule

89 made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

- 90 (c) agency ratemaking proceedings; or
- 91 (d) an adjudicative proceeding of a state agency.
- 92 ~~[(7)]~~ (8) (a) "Expenditure" means any of the items listed in this Subsection ~~[(7)]~~ (8)(a)
- 93 when given to or for the benefit of a public official unless consideration of equal or greater
- 94 value is received:
- 95 (i) a purchase, payment, or distribution;
- 96 (ii) a loan, gift, or advance;
- 97 (iii) a deposit, subscription, or forbearance;
- 98 (iv) services or goods;
- 99 (v) money;
- 100 (vi) real property;
- 101 (vii) a ticket or admission to a sporting, recreational, or artistic event; or
- 102 (viii) a contract, promise, or agreement, whether or not legally enforceable, to provide
- 103 any item listed in Subsections ~~[(7)]~~ (8)(a)(i) through (vii).
- 104 (b) "Expenditure" does not mean:
- 105 (i) a commercially reasonable loan made in the ordinary course of business;
- 106 (ii) a campaign contribution reported in accordance with Title 20A, Chapter 11,
- 107 Campaign and Financial Reporting Requirements;
- 108 (iii) printed informational material that is related to the performance of the recipient's
- 109 official duties;
- 110 (iv) a devise or inheritance;
- 111 (v) any item listed in Subsection ~~[(7)]~~ (8)(a) if:
- 112 (A) given by a relative;
- 113 (B) given by a compensation payor for a purpose solely unrelated to the public
- 114 official's position as a public official; or
- 115 (C) (I) the item has a value of less than \$10; and
- 116 (II) the aggregate daily expenditures do not exceed \$10;
- 117 (vi) food or beverage that is provided at an event to which the following are invited:
- 118 (A) all members of the Legislature;
- 119 (B) all members of a standing or interim committee;
- 120 (C) all members of an official legislative task force;

- 121 (D) all members of a party caucus; or
- 122 (E) all members of a group described in Subsections [~~(7)~~] (8)(b)(vi)(A) through (D)
- 123 who are attending a meeting of a national organization whose primary purpose is addressing
- 124 general legislative policy;
- 125 (vii) food or beverage that is provided at an event to a public official who is:
- 126 (A) giving a speech at the event;
- 127 (B) participating in a panel discussion at the event; or
- 128 (C) presenting or receiving an award at the event;
- 129 (viii) a plaque, commendation, or award presented in public and having a cash value
- 130 not exceeding \$50;
- 131 (ix) admission to or attendance at an event, the primary purpose of which is:
- 132 (A) to solicit contributions reportable under:
- 133 (I) Title 20A, Chapter 11, Campaign and Financial Reporting Requirements; or
- 134 (II) 2 U.S.C. Sec. 434; or
- 135 (B) charitable solicitation, as defined in Section [13-22-2](#);
- 136 (x) travel to, lodging at, food or beverage served at, and admission to an approved
- 137 meeting or activity;
- 138 (xi) sponsorship of an official event or official entertainment of an approved meeting
- 139 or activity;
- 140 (xii) notwithstanding Subsection [~~(7)~~] (8)(a)(vii), admission to or attendance at an
- 141 event:
- 142 (A) that is sponsored by a governmental entity; or
- 143 (B) that is widely attended and related to a governmental duty of a public official; or
- 144 (xiii) travel to a widely attended event related to a governmental duty of a public
- 145 official if that travel results in a financial savings to the state.
- 146 [~~(8)~~] (9) (a) "Government officer" means:
- 147 (i) an individual elected to a position in state or local government, when acting within
- 148 the government officer's official capacity; or
- 149 (ii) an individual appointed to or employed in a full-time position by state or local
- 150 government, when acting within the scope of the individual's employment.
- 151 (b) "Government officer" does not mean a member of the legislative branch of state

152 government.

153 ~~[(9)]~~ (10) "Immediate family" means:

154 (a) a spouse;

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

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

157 ~~[(10)]~~ (11) "Legislative action" means:

158 (a) a bill, resolution, amendment, nomination, veto override, or other matter pending or
159 proposed in either house of the Legislature or its committees or requested by a legislator; and

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

161 ~~[(11)]~~ (12) "Lobbying" means communicating with a public official for the purpose of
162 influencing the passage, defeat, amendment, or postponement of legislative or executive action.

163 ~~[(12)]~~ (13) (a) "Lobbyist" means:

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

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

167 (b) "Lobbyist" does not include:

168 (i) a government officer;

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

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

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

176 (v) a representative of a political party;

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

180 (vii) a newspaper, television station or network, radio station or network, periodical of
181 general circulation, or book publisher for the purpose of publishing news items, editorials,
182 other comments, or paid advertisements that directly or indirectly urge legislative or executive

183 action; or

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

187 ~~[(13)]~~ (14) "Lobbyist group" means two or more lobbyists, principals, government
188 officers, or any combination of lobbyists, principals, and officers who each contribute a portion
189 of an expenditure made to benefit a public official or member of the public official's immediate
190 family.

191 ~~[(14)]~~ (15) "Multiclient lobbyist" means a single lobbyist, principal, or government
192 officer who represents two or more clients and divides the aggregate daily expenditure made to
193 benefit a public official or member of the public official's immediate family between two or
194 more of those clients.

195 ~~[(15)]~~ (16) "Principal" means a person that employs an individual to perform lobbying,
196 either as an employee or as an independent contractor.

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

199 ~~[(16)]~~ (18) "Public official" means:

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

201 (ii) an individual elected to a position in the executive branch of state government; or

202 (iii) an individual appointed to or employed in a position in the executive or legislative
203 branch of state government if that individual:

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

205 (B) drafts legislation or makes rules;

206 (C) determines rates or fees; or

207 (D) makes adjudicative decisions; or

208 (b) an immediate family member of a person described in Subsection ~~[(16)]~~ (18)(a).

209 ~~[(17)]~~ (19) "Public official type" means a notation to identify whether a public official
210 is:

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

212 (ii) an individual elected to a position in the executive branch of state government;

213 (iii) an individual appointed to or employed in a position in the legislative branch of

214 state government who meets the definition of public official under Subsection [~~(16)~~]
215 (18)(a)(iii); or

216 (iv) an individual appointed to or employed in a position in the executive branch of
217 state government who meets the definition of public official under Subsection [~~(16)~~]
218 (18)(a)(iii); or

219 (b) an immediate family member of a person described in Subsection [~~(16)~~] (18)(a).

220 [~~(18)~~] (20) "Quarterly reporting period" means the three-month period covered by each
221 financial report required under Subsection 36-11-201(2)(a).

222 [~~(19)~~] (21) "Related person" means a person, agent, or employee who knowingly and
223 intentionally assists a lobbyist, principal, or government officer in lobbying.

224 [~~(20)~~] (22) "Relative" means a spouse, child, parent, grandparent, grandchild, brother,
225 sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, first cousin, or
226 spouse of any of these individuals.

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

228 **36-11-203. Reporting requirements for donated time to benefit prospective**
229 **appointee.**

230 (1) As used in this section, "provide" includes providing donated time in person, or
231 providing donated time indirectly by directing a person to provide donated time or
232 recompensing a person for providing donated time.

233 (2) Within one business day after the earlier of the day on which a lobbyist or principal
234 agrees to provide, or the day on which the lobbyist or principal begins to provide, donated time
235 to a prospective appointee, the lobbyist or principal shall file an electronic report with the
236 lieutenant governor that includes:

237 (a) the name, address, and telephone number of the lobbyist or principal;

238 (b) the name of the prospective appointee;

239 (c) the elective office for which the prospective appointee is seeking to be appointed;

240 and

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

243 (3) A lobbyist or principal described in Subsection (2) shall, within three business days
244 after the day on which the lobbyist or principal provides donated time to a prospective

245 appointee, file an electronic report with the lieutenant governor that includes:

- 246 (a) the name, address, and telephone number of the lobbyist or principal;
 247 (b) the name of the prospective appointee;
 248 (c) the elective office for which the prospective appointee is seeking to be appointed;
 249 (d) the number of hours of donated time, per day, that:
 250 (i) the lobbyist or principal has provided to the prospective appointee; and
 251 (ii) were not included in a previous report filed under this Subsection (3); and
 252 (e) a description of the services provided to the prospective appointee during the
 253 donated time.

254 (4) The lieutenant governor shall:

- 255 (a) post each report described in this section on the lieutenant governor's website
 256 within one business day after the day on which the lieutenant governor receives the report; and
 257 (b) ensure that an individual may view a report described in Subsection (4)(a) by
 258 searching for the prospective appointee's name from the same location on the lieutenant
 259 governor's website that an individual uses to search for the name of a reporting entity, as
 260 defined in Section [20A-11-101](#), in order to view a financial statement filed by the reporting
 261 entity.

262 Section 3. Section **36-11-401** is amended to read:

263 **36-11-401. Penalties.**

264 (1) Any person who intentionally violates Section [36-11-103](#), [36-11-201](#), [36-11-203](#),
 265 [36-11-301](#), [36-11-302](#), [36-11-303](#), [36-11-304](#), [36-11-305](#), [36-11-308](#), or [36-11-403](#), is subject
 266 to the following penalties:

- 267 (a) an administrative penalty of up to \$1,000 for each violation; and
 268 (b) for each subsequent violation of that same section within 24 months, either:
 269 (i) an administrative penalty of up to \$5,000; or
 270 (ii) suspension of the violator's lobbying license for up to one year, if the person is a
 271 lobbyist.

272 (2) Any person who intentionally fails to file a financial report required by this chapter,
 273 omits material information from a license application form or financial report, or files false
 274 information on a license application form or financial report, is subject to the following
 275 penalties:

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

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

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

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

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

288 (5) (a) Any person who intentionally violates Section 36-11-301, 36-11-302, or
289 36-11-303 is guilty of a class B misdemeanor.

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

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

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

296 (6) A lobbyist who does not complete the training required by Section 36-11-307 is
297 subject to the following penalties:

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

300 (b) for two or more failures to complete the training required by Section 36-11-307
301 within 24 months, suspension of the lobbyist's lobbying license.

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

Legislative Review Note
as of 6-9-14 4:18 PM

Office of Legislative Research and General Counsel