

HB0431S03 compared with HB0431S02

~~{deleted text}~~ shows text that was in HB0431S02 but was deleted in HB0431S03.

Inserted text shows text that was not in HB0431S02 but was inserted into HB0431S03.

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~~{Representative Tim Quinn}~~Senator Kevin T. Van Tassell proposes the following substitute bill:

GOVERNMENT EMPLOYEES REIMBURSEMENT AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Tim Quinn

Senate Sponsor: ~~{~~ Kevin T. Van Tassell

LONG TITLE

General Description:

This bill prohibits government officers or employees from making personal purchases with public funds.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ prohibits a government officer or employee from:
 - making a personal use expenditure with public funds; and
 - incurring indebtedness or liability on behalf of, or payable by, a governmental entity, institution of higher education, or political subdivision for a personal use expenditure;~~{and}~~

HB0431S03 compared with HB0431S02

- ▶ establishes administrative penalties for government officers or employees making personal use expenditures with public funds.

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- ▶ prohibits a government officer or employee who has been convicted of misusing public money from disbursing public funds or accessing public accounts; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-8-402, as last amended by Laws of Utah 1999, Chapter 106

ENACTS:

11-55-101, Utah Code Annotated 1953

11-55-102, Utah Code Annotated 1953

11-55-103, Utah Code Annotated 1953

11-55-104, Utah Code Annotated 1953

53B-7-106, Utah Code Annotated 1953

63A-3-110, Utah Code Annotated 1953

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

Section 1. Section **11-55-101** is enacted to read:

**CHAPTER 55. PERSONAL USE EXPENDITURES FOR
POLITICAL SUBDIVISION OFFICERS AND EMPLOYEES**

11-55-101. Title.

This chapter is known as "Personal Use Expenditures for Political Subdivision Officers and Employees."

Section 2. Section **11-55-102** is enacted to read:

11-55-102. Definitions.

As used in this chapter:

HB0431S03 compared with HB0431S02

(1) "Employee" means a person who is not an elected or appointed officer and who is employed on a full- or part-time basis by a political subdivision.

(2) "Officer" means a person who is elected or appointed to an office or position within a political subdivision.

(3) (a) "Personal use expenditure" means an expenditure made without the authority of law that:

(i) is not directly related to the performance of an activity as an officer or employee of a political subdivision;

(ii) primarily furthers a personal interest of an officer or employee of a political subdivision or the family, a friend, or an associate of an officer or employee of a political subdivision; and

(iii) would constitute taxable income under federal law.

(b) "Personal use expenditure" does not include:

(i) a de minimis or incidental expenditure; or

(ii) a state vehicle or a monthly stipend for a vehicle that an officer or employee uses to travel to and from the officer or employee's official duties, including a minimal allowance for a detour as provided by the political subdivision.

(4) "Political subdivision" means any county, city, town, school district, community reinvestment agency, special improvement or taxing district, local district, special service district, entity created by an interlocal agreement adopted under Title 11, Chapter 13, Interlocal Cooperation Act, or other governmental subdivision or public corporation.

(5) "Public funds" means the same as that term is defined in Section 51-7-3.

Section 3. Section **11-55-103** is enacted to read:

11-55-103. Personal use expenditures prohibited.

(1) An officer or employee of a political subdivision may not:

(a) use public funds for a personal use expenditure; or

(b) incur indebtedness or liability on behalf of, or payable by, a political subdivision for a personal use expenditure.

(2) If a political subdivision determines that a political subdivision officer or employee has made a personal use expenditure in violation of Subsection (1), the political subdivision shall:

HB0431S03 compared with HB0431S02

(a) require the political subdivision officer or employee to deposit the amount of the personal use expenditure into the fund or account from which:

(i) the personal use expenditure was disbursed; or

(ii) payment for the indebtedness or liability for a personal use expenditure was disbursed;

(b) require the political subdivision officer or employee to remit an administrative penalty in an amount equal to 50% of the personal use expenditure to the political subdivision; and

(c) deposit the money received under Subsection (2)(b) into the operating fund of the political subdivision.

(3) (a) Any officer or employee of a political subdivision who has been found by the political subdivision to have made a personal use expenditure in violation of Subsection (1) may appeal the finding of the political subdivision.

(b) The political subdivision shall establish an appeal process for an appeal made under Subsection (3)(a).

(4) (a) Subject to Subsection (4)(b), a political subdivision may withhold all or a portion of the wages of an officer or employee of the political subdivision who has violated Subsection (1) until the requirements of Subsection (2) have been met.

(b) If the officer or employee has requested an appeal under Subsection (3), the political subdivision may only withhold the wages of the officer or employee after the appeal process has confirmed that the officer or employee violated Subsection (1).

Section 4. Section ~~53B-7-106~~11-55-104 is enacted to read:

11-55-104. Relation to other actions -- Prohibition on disbursing funds and accessing accounts.

(1) Nothing in this chapter immunizes a political subdivision officer or employee from or precludes any criminal prosecution or civil or employment action for an unlawful personal use expenditure.

(2) A political subdivision officer or employee who has been convicted of misusing public money under Section 76-8-402 may not disburse public funds or access public accounts.

Section 5. Section 53B-7-106 is enacted to read:

53B-7-106. Personal use expenditures for officers and employees of institutions of

HB0431S03 compared with HB0431S02

higher education.

(1) As used in this section:

(a) "Employee" means a person who is not an elected or appointed officer and who is employed on a full- or part-time basis by an institution of higher education.

(b) "Institution of higher education" means an institution that is part of the state system of higher education as described in Section 53B-1-102.

(c) "Officer" means a person who is elected or appointed to an office or position within an institution of higher education.

(d) (i) "Personal use expenditure" means an expenditure ~~made without the authority of law~~ that:

(A) is not directly related to the performance of an activity as an officer or employee of an institution of higher education;

(B) primarily furthers a personal interest of an officer or employee of an institution of higher education or the family, a friend, or an associate of an officer or employee of an institution of higher education; and

(C) would constitute taxable income under federal law.

(ii) "Personal use expenditure" does not include:

(A) a de minimis or incidental expenditure; or

(B) a state vehicle or a monthly stipend for a vehicle that an officer or employee uses to travel to and from the officer or employee's official duties, including a minimal allowance for a detour as provided by the institution of higher education.

(e) "Public funds" means the same as that term is defined in Section 51-7-3.

(2) An officer or employee of an institution of higher education may not:

(a) use public funds for a personal use expenditure; or

(b) incur indebtedness or liability on behalf of, or payable by, an institution of higher education for a personal use expenditure.

(3) If the institution of higher education determines that an officer or employee of an institution of higher education has made a personal use expenditure in violation of Subsection (2), the institution of higher education shall:

(a) require the officer or employee to deposit the amount of the personal use expenditure into the fund or account from which:

HB0431S03 compared with HB0431S02

(i) the personal use expenditure was disbursed; or

(ii) payment for the indebtedness or liability for a personal use expenditure was disbursed;

(b) require the officer or employee to remit an administrative penalty in an amount equal to 50% of the personal use expenditure to the institution of higher education; and

(c) deposit the money received under Subsection (3)(b) into the operating fund of the institution of higher education.

(4) (a) Any officer or employee of an institution of higher education who has been found by the institution of higher education to have made a personal use expenditure in violation of Subsection (2) may appeal the finding of the institution of higher education.

(b) The institution of higher education shall establish an appeal process for an appeal made under Subsection (4)(a).

(5) (a) Subject to Subsection (5)(b), an institution of higher education may withhold all or a portion of the wages of an officer or employee of the institution of higher education who has violated Subsection (2) until the requirements of Subsection (3) have been met.

(b) If the officer or employee has requested an appeal under Subsection (4), the institution of higher education may only withhold the wages of the officer or employee after the appeal process has confirmed that the officer or employee violated Subsection (2).

(6) Nothing in this chapter immunizes an officer or employee of an institution of higher education from or precludes any criminal prosecution or civil or employment action for an unlawful personal use expenditure.

(7) An officer or employee of an institution of higher education who has been convicted of misusing public money under Section 76-8-402 may not disburse public funds or access public accounts.

Section ~~5~~6. Section **63A-3-110** is enacted to read:

63A-3-110. Personal use expenditures for state officers and employees.

(1) As used in this section:

(a) "Employee" means a person who is not an elected or appointed officer and who is employed on a full- or part-time basis by a governmental entity.

(b) "Governmental entity" means:

(i) an executive branch agency of the state, the offices of the governor, lieutenant

HB0431S03 compared with HB0431S02

governor, state auditor, attorney general, and state treasurer, the ~~Board of Pardons and Parole,~~ ~~the Board of Examiners, the National Guard, the Career Service Review Office, the State~~ Board of Education, and the State Board of Regents~~, and the State Archives~~;

(ii) the Office of the Legislative Auditor General, the Office of the Legislative Fiscal Analyst, the Office of Legislative Research and General Counsel, the Legislature, and legislative committees;

(iii) courts, the Judicial Council, the Office of the Court Administrator, and similar administrative units in the judicial branch;

(iv) independent state entities created under Title 63H, Independent State Entities; or

(v) the Utah Science Technology and Research Governing Authority created under Section 63M-2-301.

(c) "Officer" means a person who is elected or appointed to an office or position within a governmental entity.

(d) (i) "Personal use expenditure" means an expenditure made without the authority of law that:

(A) is not directly related to the performance of an activity as a state officer or employee;

(B) primarily furthers a personal interest of a state officer or employee or a state officer's or employee's family, friend, or associate; and

(C) would constitute taxable income under federal law.

(ii) "Personal use expenditure" does not include:

(A) a de minimis or incidental expenditure; or

(B) a state vehicle or a monthly stipend for a vehicle that an officer or employee uses to travel to and from the officer or employee's official duties, including a minimal allowance for a detour as provided by the state.

(e) "Public funds" means the same as that term is defined in Section 51-7-3.

(2) A state officer or employee may not:

(a) use public funds for a personal use expenditure; or

(b) incur indebtedness or liability on behalf of, or payable by, a governmental entity for a personal use expenditure.

(3) If the Division of Finance or the responsible governmental entity determines that a

HB0431S03 compared with HB0431S02

state officer or employee has made a personal use expenditure in violation of Subsection (2), the ~~{Division of Finance}~~ governmental entity shall:

(a) require the state officer or employee to deposit the amount of the personal use expenditure into the fund or account from which:

(i) the personal use expenditure was disbursed; or

(ii) payment for the indebtedness or liability for a personal use expenditure was disbursed;

(b) require the state officer or employee to remit an administrative penalty in an amount equal to 50% of the personal use expenditure to the Division of Finance; and

(c) deposit the money received under Subsection (3)(b) into the General Fund.

(4) (a) Any state officer or employee who has been found by ~~{the Division of Finance}~~ a governmental entity to have made a personal use expenditure in violation of Subsection (2) may appeal the finding of the ~~{Division of Finance to the state auditor}~~ governmental entity.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the ~~{state auditor}~~ Division of Finance shall make rules regarding an appeal process for an appeal made under Subsection (4)(a), including the designation of an appeal authority.

(5) (a) Subject to Subsection (5)(b), the Division of Finance may withhold all or a portion of the wages of a state officer or employee who has violated Subsection (2) until the requirements of Subsection (3) have been met.

(b) If the state officer or employee has requested an appeal under Subsection (4), the Division of Finance may only withhold the wages of the officer or employee after the ~~{state auditor}~~ appeal authority described in Subsection (4)(b) has confirmed that the officer or employee violated Subsection (2).

(6) Nothing in this chapter immunizes a state officer or employee from or precludes any criminal prosecution or civil or employment action for an unlawful personal use expenditure.

(7) A state officer or employee who has been convicted of misusing public money under Section 76-8-402 may not disburse public funds or access public accounts.

Section 7. Section 76-8-402 is amended to read:

76-8-402. Misusing public money.

HB0431S03 compared with HB0431S02

(1) Every public officer of this state or a political subdivision, or of any county, city, town, precinct, or district of this state, and every other person charged, either by law or under contract, with the receipt, safekeeping, transfer, disbursement, or use of public money commits an offense if the officer or other charged person:

(a) appropriates the money or any portion of it to his own use or benefit or to the use or benefit of another without authority of law;

(b) loans or transfers the money or any portion of it without authority of law;

(c) fails to keep the money in his possession until disbursed or paid out by authority of law;

(d) unlawfully deposits the money or any portion in any bank or with any other person;

(e) knowingly keeps any false account or makes any false entry or erasure in any account of or relating to the money;

(f) fraudulently alters, falsifies, conceals, destroys, or obliterates any such account;

(g) willfully refuses or omits to pay over, on demand, any public money in his hands, upon the presentation of a draft, order, or warrant drawn upon such money by competent authority;

(h) willfully omits to transfer the money when the transfer is required by law; or

(i) willfully omits or refuses to pay over, to any officer or person authorized by law to receive it, any money received by him under any duty imposed by law so to pay over the same.

(2) A violation of Subsection (1) is a felony of the third degree, except it is a felony of the second degree if:

(a) the value of the money exceeds \$5,000;

(b) the amount of the false account exceeds \$5,000;

(c) the amount falsely entered exceeds \$5,000;

(d) the amount that is the difference between the original amount and the fraudulently altered amount exceeds \$5,000; or

(e) the amount falsely erased, fraudulently concealed, destroyed, obliterated, or falsified in the account exceeds \$5,000.

(3) In addition to the penalty described in Subsection (2), a public officer who violates Subsection (1):

(a) is subject to the penalties described in Section 76-8-404[-]; and

HB0431S03 compared with HB0431S02

(b) may not disburse public funds or access public accounts.