

HB0110S01 compared with HB0110

~~deleted text~~ shows text that was in HB0110 but was deleted in HB0110S01.

Inserted text shows text that was not in HB0110 but was inserted into HB0110S01.

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Representative Jeremy A. Peterson proposes the following substitute bill:

LOBBYIST LICENSING MODIFICATIONS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jeremy A. Peterson

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions of the Lobbyist Disclosure and Regulation Act.

Highlighted Provisions:

This bill:

- ▶ clarifies provisions relating to financial reports;
- ▶ requires the lieutenant governor to provide, and a lobbyist to take, an annual training course relating to ~~unlawful~~ harassment;
- ▶ amends existing rulemaking authority within the Office of the Lieutenant Governor;
- ▶ prohibits a lobbyist from:
 - engaging in ~~unlawful~~ harassment;
 - retaliating against an individual for filing ~~an unlawful~~ a harassment complaint or another complaint described in this bill;

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- retaliating against a person for cooperating in an investigation described in this bill; or
- otherwise interfering with an investigation described in this bill;

~~{ → grants rulemaking authority to the director of elections within the Office of the Lieutenant Governor relating to a complaint and investigation described in this bill;~~

- ‡
- ▶ requires a lobbyist to cooperate with an investigation described in this bill;
 - ▶ provides penalties for a lobbyist who violates the provisions of this bill;
 - ▶ permits a lobbyist to file a complaint of harassment against an executive worker or a legislative worker; and
 - ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

36-11-103, as last amended by Laws of Utah 2015, Chapter 188

36-11-106, as last amended by Laws of Utah 2002, Chapter 317

36-11-307, as enacted by Laws of Utah 2011, Chapter 389

36-11-401, as last amended by Laws of Utah 2015, Chapter 258

36-11-404, as last amended by Laws of Utah 2008, Chapter 382

ENACTS:

36-11-501, Utah Code Annotated 1953

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

Section 1. 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

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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.
- (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 \$110 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:

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(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~~ during the term of any suspension imposed under Section 36-11-401;

(iv) during the term of a suspension or revocation imposed under Subsection 36-11-307(7);

~~(iv)~~ (v) 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)~~ (vi) 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 each license fee into the General Fund as a dedicated credit to be used by the lieutenant governor to pay the cost of administering the license 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 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. Section **36-11-106** is amended to read:

36-11-106. Financial reports are public documents.

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(1) Any person may:

(a) without charge, inspect a license application or financial report filed with the lieutenant governor in accordance with this chapter; and

(b) make a copy of a financial report after paying for the actual costs of the copy.

(2) The lieutenant governor shall make financial reports filed in accordance with this chapter available for viewing on the Internet at the lieutenant governor's website within seven calendar days after the day on which the report is received by the lieutenant governor.

Section 3. Section **36-11-307** is amended to read:

36-11-307. Ethics and unlawful harassment training course for lobbyists -- Internet availability -- Content -- Participation tracking -- Penalty.

(1) (a) As used in this section, "harassment" means the same as that term is defined in Subsection 36-11-501(1)(b).

[~~(+)~~ (b)] The lieutenant governor shall develop and maintain [an ethics training course] training courses for lobbyists on ethics and ~~{unlawful}~~ harassment.

(2) [The ethics] A training course described in Subsection (1) shall include training materials and exercises that are available on the Internet to lobbyists and to the public.

(3) The lieutenant governor shall design the ethics training course [shall be designed] to assist lobbyists in understanding and complying with current ethical and campaign finance requirements under state law, legislative rules, and federal law.

(4) The lieutenant governor:

(a) shall design the ~~{unlawful}~~ harassment training course to assist lobbyists in understanding and complying with state and federal legal requirements, legislative rules, and administrative rules relating to unlawful harassment~~{,};~~ and

(b) may enter into an agreement with the Department of Human Resource Management to assist the lieutenant governor in providing the harassment training described in this section.

[~~(4)~~ (5) [The ethics] A training course described in this section shall include provisions for verifying when a lobbyist has successfully completed [key training exercises] the training.

[~~(5)~~ (6)] A lobbyist shall successfully complete the [key training exercises of the ethics training course] training courses described in this section once each ~~{calendar}~~ one-year period that begins on January 16 and ends on January 15 of the following year.

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~~[(6) A lobbyist who does not complete the training required by this section is subject to a penalty as provided in Section 36-11-401.]~~

(7) (a) If a lobbyist fails to complete the training described in this section ~~{before}~~ within the ~~{end of a calendar year}~~ time period described in Subsection (6), the lieutenant governor shall immediately suspend the lobbyist's lobbying license.

(b) The lieutenant governor shall lift a suspension described in Subsection (7)(a) if:

(i) the lobbyist completes the training described in this section;

(ii) the lobbyist pays a \$1,000 fine; and

(iii) the lobbyist's license is not otherwise suspended or revoked.

(c) If a lobbyist completes the training described in this section after the annual deadline, the completion:

(i) satisfies the training requirement for the previous ~~{calendar year}~~ one-year period;
and

(ii) does not satisfy the training requirement for the current ~~{calendar year}~~ one-year period.

(d) The lieutenant governor shall revoke the lobbying license of a lobbyist who does not comply with Subsections (7)(b)(i) and (ii) within 180 days after the day on which the lobbyist's license is suspended under Subsection (7)(a).

(e) A lobbyist whose license is revoked under Subsection (7)(d) may not obtain a new lobbying license unless the lobbyist:

(i) applies for, and qualifies to receive, a new lobbying license;

(ii) completes the training described in this section; and

(iii) pays a \$2,000 fine.

(f) The lieutenant governor shall, within one business day after the day on which the lieutenant governor takes action described in this Subsection (7), provide written notice of the action to the secretary of the Senate and the clerk of the House of Representatives.

Section 4. Section **36-11-401** is amended to read:

36-11-401. Penalties.

(1) Any person who intentionally violates Section 36-11-103, 36-11-201, 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:

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

(2) Any person who intentionally 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 intentionally 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 intentionally 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:]~~

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~~[(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 within 24 months, suspension of the lobbyist's lobbying license.]~~

~~[(7)]~~ (6) Nothing in this chapter creates a third-party cause of action or appeal rights.

Section 5. Section **36-11-404** is amended to read:

36-11-404. Lieutenant governor's procedures.

(1) ~~[The lieutenant governor]~~ Except as otherwise provided under Section 36-11-501 ~~or rules made under Subsection 36-11-501(4)]~~, the director of elections within the Office of the Lieutenant Governor shall make rules that provide:

(a) for the appointment of an administrative law judge to adjudicate alleged violations of this ~~[section]~~ chapter and to impose penalties under this ~~[section]~~ chapter;

(b) procedures for license applications, disapprovals, suspensions, revocations, and reinstatements that comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act.

(2) The lieutenant governor shall develop forms needed for the registration and disclosure provisions ~~[of]~~ described in this chapter.

Section 6. Section **36-11-501** is enacted to read:

Part 5. Unlawful Harassment

36-11-501. Unlawful harassment -- Investigation -- Penalties.

(1) As used in this section ~~{, "harassment" includes harassment}~~:

(a) "Executive worker" means an elected or appointed officer, employee, or volunteer of the state executive branch.

(b) (i) "Harassment" means unwelcome conduct that is:

(A) based on race, color, religion, sex, sexual orientation, ~~{pregnancy}~~ gender identity, national origin, age, ~~{or disability}~~ disability, citizenship status, or genetic information; and

(B) intimidating, hostile, offensive, or otherwise unlawful.

(ii) "Harassment" based on sex includes sexual harassment and harassment based on gender or pregnancy.

(c) "Legislative worker" means a member, employee, or volunteer of the Legislature.

(d) "Sexual harassment" includes:

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(i) unwelcome sexual advances;

(ii) unwelcome requests for sexual favors; or

(iii) other unwelcome verbal or physical conduct of a sexual nature.

(2) A lobbyist may not:

(a) engage in ~~unlawful~~ harassment;

(b) retaliate against an individual for filing a complaint alleging a violation of this

section;

(c) retaliate against a ~~person for cooperating in~~ complainant, witness, or other person

for:

(i) conducting or cooperating with an investigation ~~conducted by the lieutenant governor or the lieutenant governor's designee in relation to this section~~ of an alleged violation of this section; or

(ii) taking action to remediate harassment; or

(d) otherwise interfere with an investigation ~~conducted by the lieutenant governor or the lieutenant governor's designee in relation to~~ of an alleged violation of this section.

(3) A lobbyist shall fully cooperate with an investigation of an alleged violation of this section conducted by:

(a) the lieutenant governor, the Legislature, or the executive branch; or

(b) a designee of the lieutenant ~~governor's designee in relation to this section~~ governor, the Legislature, or the executive branch.

(4) (a) If a lobbyist violates Subsection (2) ~~for (3)~~ and the alleged victim is a legislative worker:

(i) any legislative worker may file a complaint with the compliance officer designated in the Legislature's harassment policy; and

(ii) the Legislature or the Legislature's designee may, if warranted, conduct an investigation and take action to remediate any violation.

(b) If a lobbyist violates Subsection (2) and the alleged victim is an executive worker:

(i) any executive worker may file a complaint with an individual designated in the state executive branch's applicable harassment policy; and

(ii) the executive branch or the executive branch's designee may, if warranted, conduct an investigation and take action to remediate any violation.

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(5) (a) The speaker of the House of Representatives, the president of the Senate, or the legislative general counsel may recommend that the lieutenant governor take action under Subsection (6) if a lobbyist:

(i) is found to have engaged in a serious violation, or multiple violations, of the Legislature's harassment policy;

(ii) retaliates against a complainant, a witness, or another person for:

(A) filing a complaint alleging a violation of this section;

(B) conducting or cooperating with an investigation; or

(C) taking action to remediate unlawful harassment; or

(iii) interferes with, or fails to fully cooperate with, an investigation of an alleged violation of this section.

(b) The governor, state auditor, state treasurer, attorney general, or an executive director may recommend that the lieutenant governor take action under Subsection (6) if a lobbyist:

(i) is found to have engaged in a serious violation, or multiple violations, of a state executive branch harassment policy;

(ii) retaliates against a complainant, a witness, or another person for:

(A) filing a complaint alleging a violation of this section;

(B) conducting or cooperating with an investigation; or

(C) taking action to remediate unlawful harassment; or

(iii) interferes with, or fails to fully cooperate with, an investigation of an alleged violation of this section.

(6) If the lieutenant governor receives a recommendation under Subsection (5), the lieutenant governor may, after ensuring that the lobbyist has notice and an opportunity to be heard and taking into account the seriousness of the violation and the number of violations, do either or both of the following:

(a) impose an administrative fine against the lobbyist, not to exceed \$2,000; ~~and~~ or

(b) suspend the lobbyist's license for a period of up to five years.

~~(5) The director of elections within the Office of the Lieutenant Governor shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establishing a procedure:~~

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~~_____ (a) for an individual to}~~ 7) (a) A lobbyist who is a victim of harassment by an executive worker may file a complaint ~~{with the lieutenant governor or the lieutenant governor's designee alleging that a lobbyist violated Subsection (2) or (3); and~~

~~_____ (b) for investigating a violation of Subsection (2) or (3);~~

~~_____ (6) The rules described in Subsection (5) shall:~~

~~_____ (a) protect the due process rights of all persons in relation to a complaint or investigation described in this section; and~~

~~_____ (b) to the extent practicable, protect the privacy of all persons in relation to a complaint or investigation described in this section;~~

~~_____ (7) The lieutenant governor may enter into an agreement with the Department of Human Resource Management to assist the lieutenant governor in fulfilling the duties described in this section and in providing the unlawful harassment training course described in Section 36-11-307.~~

Legislative Review Note

~~Office of Legislative Research and General Counsel~~ under the state executive branch's applicable harassment policy.

(a) A lobbyist who is a victim of harassment by a legislative worker may file a complaint under the Legislature's harassment policy.