

HB0391S01 compared with HB0391

{deleted text} shows text that was in HB0391 but was deleted in HB0391S01.

Inserted text shows text that was not in HB0391 but was inserted into HB0391S01.

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Representative Val L. Peterson proposes the following substitute bill:

LOBBYING BY STATE AGENCIES AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Val L. Peterson

Senate Sponsor: _____

LONG TITLE

General Description:

This bill prohibits lobbying and related action by certain state employees and entities.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ prohibits certain state employees from engaging in lobbying on legislative action;
- ▶ prohibits certain state entities from taking a public position on legislative action;
- and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

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None

Utah Code Sections Affected:

AMENDS:

36-11-102, as last amended by Laws of Utah 2015, Chapters 32, 188, and 264

ENACTS:

36-11-308, 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 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 activity" means a tour or a meeting:

(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) "Capitol hill complex" means the same as that term is defined in Section

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63C-9-102.

(4) (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.

(5) "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.

(6) "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.

(7) "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.

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

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- (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 an event; or
 - (viii) a contract, promise, or agreement, whether or not legally enforceable, to provide any item listed in Subsections (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 (8)(a) if:
 - (A) given by a relative;
 - (B) given by a compensation payor for a purpose solely unrelated to the public official's position as a public official;
 - (C) the item is food or beverage with a value that does not exceed the food reimbursement rate, and the aggregate daily expenditures for food and beverage do not exceed the food reimbursement rate; or
 - (D) the item is not food or beverage, has a value of less than \$10, and 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

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(E) all members of a group described in Subsections (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 that:

- (A) is presented in public;
- (B) has the name of the individual receiving the plaque, commendation, or award inscribed, etched, printed, or otherwise permanently marked on the plaque, commendation, or award;

(ix) a publication having a cash value not exceeding \$30;

(x) 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;

(xi) travel to, lodging at, food or beverage served at, and admission to an approved activity;

(xii) sponsorship of an event that is an approved activity;

(xiii) notwithstanding Subsection (8)(a)(vii), admission to, attendance at, or travel to or from an 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

(xiv) travel to a widely attended tour or meeting related to a governmental duty of a public official if that travel results in a financial savings to the state.

(9) "Food reimbursement rate" means the total amount set by the director of the Division of Finance, by rule, under Section 63A-3-107, for in-state meal reimbursement, for an

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employee of the executive branch, for an entire day.

(10) (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.

(11) "Immediate family" means:

- (a) a spouse;
- (b) a child residing in the household; or
- (c) an individual claimed as a dependent for tax purposes.

(12) "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.

(13) "Lobbying" means communicating with a public official for the purpose of influencing the passage, defeat, amendment, or postponement of legislative or executive action.

(14) (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, including a principal, while appearing at, or providing written comments to, a hearing 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;

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- (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;
 - (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; or
 - (ix) an individual representing a business, entity, or industry, who:
 - (A) interacts with a public official, in the public official's capacity as a public official, while accompanied by a registered lobbyist who is lobbying in relation to the subject of the interaction or while presenting at a legislative committee meeting at the same time that the registered lobbyist is attending another legislative committee meeting; and
 - (B) does not make an expenditure for, or on behalf of, a public official in relation to the interaction or during the period of interaction.
- (15) "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.
- (16) "Meeting" means a gathering of people to discuss an issue, receive instruction, or make a decision, including a conference, seminar, or summit.
- (17) "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.
- (18) "Principal" means a person that employs an individual to perform lobbying, either as an employee or as an independent contractor.
- (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 (19)(a).
- (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 (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 (19)(a)(iii); or
- (b) an immediate family member of a person described in Subsection (19)(a).
- (21) "Quarterly reporting period" means the three-month period covered by each financial report required under Subsection 36-11-201(2)(a).
- (22) "Related person" means a person, agent, or employee who knowingly and intentionally assists a lobbyist, principal, or government officer in lobbying.
- (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.
- (24) (a) "State employee" means an individual employed by any of the executive branch of state government, following when acting within the scope or capacity of the individual's employment..
- (i) the executive branch of state government; or
 - (ii) a local school district.
- (b) "State employee" does not include:
- (i) the governor, lieutenant governor, attorney general, state auditor, or state treasurer;

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- (ii) {an individual employed by the state legislative branch;
 - (iii) a member of the State Board of Education; or; the director of a department of the executive branch of state government;
 - (iii) the state superintendent of public instruction;
 - (iv) the president of a state institution of higher education, as defined in Section 53B-3-102;
 - (v) in addition to an individual described in Subsections (24)(b)(i) through (iv), one designee of the individual, if the individual files a written document with the lieutenant governor specifying the designee;
 - (vi) a state legislator;
 - (vii) an individual employed by the state legislative branch;
 - (viii) a member of the State Board of Education; or
 - (ix) a member of the State Tax Commission.
- (25) (a) "State entity" means:
- (i) any unit of the state executive branch within a department, including a division, an office, or a bureau{.}; or
 - (ii) a local school district.
- (b) "State entity" does not include:
- (i) an executive branch department;
 - (ii) the State Board of Education;
 - (iii) the State Tax Commission; or
 - (iv) the School and Institutional Trust Lands Administration, created in Section 53C-1-201.

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

- (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 **36-11-308** is enacted to read:

36-11-308. Lobbying by certain state employees or entities prohibited --

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Exceptions.

(1) As used in this section only:

(a) "Legislative action" means a bill, resolution, amendment, nomination, veto override, or other matter that is:

(i) requested by a legislator; or

(ii) pending or proposed in either house of the Legislature or a committee of the Legislature.

(b) (i) "Lobbying" means an act done with the intent or in a way to influence or tend to influence, directly or indirectly, a legislator to refrain from voting on, or to vote for or against, legislative action.

(ii) "Lobbying" does not include:

(A) requesting a legislator to sponsor legislation;

(B) testifying before a legislative body, including a legislative committee or task force;
or

(C) answering questions asked by a legislator.

(2) A state employee may not engage in lobbying.

(3) A state entity may not take a public position on legislative action.

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Legislative Review Note

Office of Legislative Research and General Counsel (4) This section does not prohibit an individual from exercising the individual's right to free speech on the individual's own behalf by lobbying outside of the individual's scope or capacity of employment as a state employee.