

Representative Michael K. McKell proposes the following substitute bill:

LOBBYIST EXPENDITURES AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael K. McKell

Senate Sponsor: _____

LONG TITLE

General Description:

This bill enacts restrictions on a lobbyist's expenditures on certain local and education officials.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires a lobbyist to file certain reports related to the lobbyist's expenditure on a local official or education official;
- ▶ establishes limits for a lobbyist's expenditures on a local official or education official;
- ▶ establishes provisions for the disposal of a publication that qualifies as an expenditure;
- ▶ establishes criminal and civil penalties;
- ▶ grants rulemaking authority to the director of elections within the Office of the Lieutenant Governor; and
- ▶ makes most of the provisions of the Lobbyist Disclosure and Regulation Act applicable to expenditures for a local official or an education official by incorporating those provisions into a Local Government and Board of Education



26 Lobbyist Disclosure and Regulation Act.

27 **Money Appropriated in this Bill:**

28 None

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **11-49-201**, as enacted by Laws of Utah 2012, Chapter 202

34 **63A-14-202**, as enacted by Laws of Utah 2013, Chapter 426

35 **63E-1-401**, as enacted by Laws of Utah 2001, Chapter 201

36 **63E-1-404**, as enacted by Laws of Utah 2001, Chapter 201

37 **76-10-1602**, as last amended by Laws of Utah 2014, Chapter 167

38 ENACTS:

39 **36-11a-101**, Utah Code Annotated 1953

40 **36-11a-102**, Utah Code Annotated 1953

41 **36-11a-201**, Utah Code Annotated 1953

42 **36-11a-202**, Utah Code Annotated 1953

43 **36-11a-203**, Utah Code Annotated 1953

44 **36-11a-301**, Utah Code Annotated 1953

45 **36-11a-302**, Utah Code Annotated 1953

46 **36-11a-303**, Utah Code Annotated 1953



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

49 Section 1. Section **11-49-201** is amended to read:

50 **11-49-201. Commission established -- Membership.**

51 (1) There is established a Political Subdivisions Ethics Review Commission.

52 (2) The commission is composed of seven persons, each of whom is registered to vote

53 in this state and appointed by the governor with the advice and consent of the Senate, as

54 follows:

55 (a) one member who has served, but no longer serves, as a judge of a court of record in

56 this state;

57 (b) one member who has served as a mayor or municipal council member no more
58 recently than four years before the date of appointment;

59 (c) one member who has served as a member of a local board of education no more
60 recently than four years before the date of appointment;

61 (d) two members who are lay persons; and

62 (e) two members, each of whom is one of the following:

63 (i) a municipal mayor no more recently than four years before the date of appointment;

64 (ii) a municipal council member no more recently than four years before the date of
65 appointment;

66 (iii) a county mayor no more recently than four years before the date of appointment;

67 (iv) a county commissioner no more recently than four years before the date of
68 appointment;

69 (v) a special service district administrative control board member no more recently
70 than four years before the date of appointment;

71 (vi) a local district board of trustees member no more recently than four years before
72 the date of appointment; or

73 (vii) a judge who has served, but no longer serves, as a judge of a court of record in
74 this state.

75 (3) A member of the commission may not, during the member's term of office on the
76 commission, act or serve as:

77 (a) a political subdivision officer;

78 (b) a political subdivision employee;

79 (c) an agency head as defined in Section [67-16-3](#);

80 (d) a lobbyist as defined in Section [36-11-102](#) or [36-11a-102](#); or

81 (e) a principal as defined in Section [36-11-102](#) or [36-11a-102](#).

82 (4) (a) (i) Except as provided in Subsection (4)(a)(ii), each member of the commission
83 shall serve a four-year term.

84 (ii) When appointing the initial members upon formation of the commission, a member
85 described in Subsections (2)(b) through (d) shall be appointed to a two-year term so that
86 approximately half of the commission is appointed every two years.

87 (b) (i) When a vacancy occurs in the commission's membership for any reason, a

88 replacement member shall be appointed for the unexpired term of the vacating member using
89 the procedures and requirements of Subsection (2).

90 (ii) For the purposes of this section, an appointment for an unexpired term of a
91 vacating member is not considered a full term.

92 (c) A member may not be appointed to serve for more than two full terms, whether
93 those terms are two or four years.

94 (d) A member of the commission may resign from the commission by giving one
95 month's written notice of the resignation to the governor.

96 (e) The governor shall remove a member from the commission if the member:

97 (i) is convicted of, or enters a plea of guilty to, a crime involving moral turpitude;

98 (ii) enters a plea of no contest or a plea in abeyance to a crime involving moral
99 turpitude; or

100 (iii) fails to meet the qualifications of office as provided in this section.

101 (f) If a commission member is accused of wrongdoing in a complaint, or if a
102 commission member determines that the commission member has a conflict of interest in
103 relation to a complaint, a temporary commission member shall be appointed to serve in that
104 member's place for the purposes of reviewing that complaint using the procedures and
105 requirements of Subsection (2).

106 (5) (a) Except as provided in Subsection (5)(b)(i), a member of the commission may
107 not receive compensation or benefits for the member's service.

108 (b) (i) A member may receive per diem and expenses incurred in the performance of
109 the member's official duties at the rates established by the Division of Finance under Sections
110 [63A-3-106](#) and [63A-3-107](#).

111 (ii) A member may decline to receive per diem and expenses for the member's service.

112 (6) (a) The commission members shall convene a meeting annually each January and
113 elect, by a majority vote, a commission chair from among the commission members.

114 (b) A person may not serve as chair for more than two consecutive years.

115 Section 2. Section **36-11a-101** is enacted to read:

116 **CHAPTER 11a. LOCAL GOVERNMENT AND BOARD OF EDUCATION LOBBYIST**
117 **DISCLOSURE AND REGULATION ACT**

118 **Part 1. General Provisions**

119 **36-11a-101. Title.**

120 This chapter is known as the "Local Government and Board of Education Lobbyist
121 Disclosure and Regulation Act."

122 Section 3. Section **36-11a-102** is enacted to read:

123 **36-11a-102. Definitions.**

124 As used in this chapter:

125 (1) "Aggregate daily expenditures" means:

126 (a) for a single lobbyist, principal, or government officer, the total of all expenditures
127 made within a calendar day by the lobbyist, principal, or government officer for the benefit of
128 an individual local official or education official;

129 (b) for an expenditure made by a member of a lobbyist group, the total of all
130 expenditures made within a calendar day by every member of the lobbyist group for the benefit
131 of an individual local official or education official; or

132 (c) for a multiclient lobbyist, the total of all expenditures made by the multiclient
133 lobbyist within a calendar day for the benefit of an individual local official or education
134 official, regardless of whether the expenditures were attributed to different clients.

135 (2) "Board of education" means:

136 (a) a local school board described in Title 53G, Chapter 4, School Districts;

137 (b) the State Board of Education;

138 (c) the State Charter School Board created under Section [53G-5-201](#); or

139 (d) a charter school governing board described in Title 53G, Chapter 5, Charter
140 Schools.

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

144 (b) "Compensation" includes:

145 (i) a salary or commission;

146 (ii) a bonus;

147 (iii) a benefit;

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

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

150 Code, and subject to social security deductions, including a payment in excess of the maximum
151 amount subject to deduction under social security law;

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

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

155 (4) "Compensation payor" means a person who pays compensation to a local official or
156 education official in the ordinary course of business:

157 (a) because of the local official's or education official's ownership interest in the
158 compensation payor; or

159 (b) for services rendered by the local official or education official on behalf of the
160 compensation payor.

161 (5) "Education action" means:

162 (a) a resolution, policy, or other official action for consideration by a board of
163 education;

164 (b) a nomination or appointment by an education official or a board of education;

165 (c) an administrative action taken by a vote of a board of education;

166 (d) an adjudicative proceeding over which an education official has direct or indirect
167 control;

168 (e) a purchasing or contracting decision;

169 (f) drafting or making a policy, resolution, or rule;

170 (g) determining a rate or fee; or

171 (h) making an adjudicative decision.

172 (6) "Education official" means:

173 (a) a member of a board of education;

174 (b) an individual appointed to or employed in a position under a board of education if
175 that individual:

176 (i) occupies a policymaking position or makes purchasing or contracting decisions;

177 (ii) drafts resolutions or policies or drafts or makes rules;

178 (iii) determines rates or fees; or

179 (iv) makes adjudicative decisions; or

180 (c) an immediate family member of an individual described in Subsection (6)(a) or (b).

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

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

187 (i) a purchase, payment, or distribution;

188 (ii) a loan, gift, or advance;

189 (iii) a deposit, subscription, or forbearance;

190 (iv) services or goods;

191 (v) money;

192 (vi) real property;

193 (vii) a ticket or admission to an event; or

194 (viii) a contract, promise, or agreement, whether or not legally enforceable, to provide
195 any item listed in Subsections (8)(a)(i) through (vii).

196 (b) "Expenditure" does not mean:

197 (i) a commercially reasonable loan made in the ordinary course of business;

198 (ii) a campaign contribution:

199 (A) reported in accordance with Title 20A, Chapter 11, Campaign Finance and
200 Reporting Requirements, Section 10-3-208 or Section 17-16-6.5, or an applicable ordinance
201 described in Subsection 10-3-208(5) or Subsection 17-16-6.5(1); or

202 (B) lawfully given to a person that is not required to report the contribution under a law
203 or ordinance described in Subsection (8)(b)(ii)(A);

204 (iii) printed informational material that is related to the performance of the recipient's
205 official duties;

206 (iv) a devise or inheritance;

207 (v) any item listed in Subsection (8)(a) if:

208 (A) given by a relative;

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

211 (C) the item is food or beverage with a value that does not exceed the food

212 reimbursement rate, and the aggregate daily expenditures for food and beverage do not exceed
213 the food reimbursement rate; or

214 (D) the item is not food or beverage, has a value of less than \$10, and the aggregate
215 daily expenditures do not exceed \$10;

216 (vi) food or beverage that is provided at an event, a tour, or a meeting to a local official
217 or education official who is:

218 (A) giving a speech at the event;

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

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

221 (vii) a plaque, commendation, or award that:

222 (A) is presented in public; and

223 (B) has the name of the individual receiving the plaque, commendation, or award
224 inscribed, etched, printed, or otherwise permanently marked on the plaque, commendation, or
225 award;

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

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

229 (A) to solicit a contribution that is reportable under 2 U.S.C. Sec. 434, Title 20A,
230 Chapter 11, Campaign and Financial Reporting Requirements, Section [10-3-208](#) or Section
231 [17-16-6.5](#), or an applicable ordinance described in Subsection [10-3-208\(5\)](#) or Subsection
232 [17-16-6.5\(1\)](#);

233 (B) to solicit a campaign contribution that a person is not required to report under a law
234 or ordinance described in Subsection (8)(b)(ix)(A); or

235 (C) charitable solicitation, as defined in Section [13-22-2](#);

236 (x) notwithstanding Subsection (8)(a)(vii), admission to, attendance at, or travel to or
237 from an event, a tour, or a meeting for a local official or education official:

238 (A) that is sponsored by a governmental entity, a public school, a charter school, or an
239 organization that represents only local governmental entities, public schools, or charter schools,
240 including the Utah Association of Counties, the Utah League of Cities and Towns, the Utah
241 Association of Special Districts, or the Utah Association of Public Charter Schools; or

242 (B) that is widely attended and related to a governmental duty of the local official or

243 education official; or

244 (xi) travel to a widely attended tour or meeting related to a governmental duty of a
245 local official or education official if that travel results in a financial savings to the local
246 government or board of education to which the local official or education official belongs.

247 (9) "Food reimbursement rate" means the total amount set by the director of the
248 Division of Finance, by rule, under Section [63A-3-107](#), for in-state meal reimbursement, for an
249 employee of the executive branch, for an entire day.

250 (10) (a) "Government officer" means:

251 (i) an individual elected to a position in state or local government, when acting in the
252 capacity of the state or local government position;

253 (ii) an individual elected or appointed to a board of education, when acting in the
254 capacity of a member of a board of education;

255 (iii) an individual appointed to fill a vacancy in a position described in Subsection
256 (10)(a)(i) or (ii), when acting in the capacity of the position; or

257 (iv) an individual appointed to or employed in a full-time position by state government,
258 local government, or board of education, when acting in the capacity of the individual's
259 appointment or employment.

260 (b) "Government officer" does not mean a member of the legislative branch of state
261 government.

262 (11) "Immediate family" means:

263 (a) a spouse;

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

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

266 (12) "Lobbying" means communicating with a local official or education official for
267 the purpose of influencing a local action or education action.

268 (13) (a) "Lobbyist" means:

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

270 (ii) an individual who contracts for economic consideration, other than reimbursement
271 for reasonable travel expenses, with a principal to lobby a local official or education official.

272 (b) "Lobbyist" does not include:

273 (i) a government officer;

- 274 (ii) a member or employee of the legislative branch of state government;
275 (iii) a person participating on or appearing before an advisory or study task force,
276 commission, board, or committee, constituted by a local government or board of education;
277 (iv) a representative of a political party;
278 (v) an individual representing a bona fide church solely for the purpose of protecting
279 the right to practice the religious doctrines of the church, unless the individual or church makes
280 an expenditure that confers a benefit on a local official or education official;
281 (vi) a newspaper, television station or network, radio station or network, periodical of
282 general circulation, or book publisher for the purpose of publishing news items, editorials,
283 other comments, or paid advertisements that directly or indirectly urge local action or education
284 action;
285 (vii) an individual who appears on the individual's own behalf before a board of
286 education, the governing body of a local government, or a committee of a local government or
287 board of education, solely for the purpose of testifying in support of or in opposition to local
288 action or education action; or
289 (viii) an individual representing a business, entity, or industry, who:
290 (A) interacts with a local official or education official, in the local official's or
291 education official's capacity as a local official or education official, while accompanied by a
292 lobbyist who is lobbying in relation to the subject of the interaction; and
293 (B) does not make an expenditure for, or on behalf of, a local official or education
294 official in relation to the interaction or during the period of interaction.
295 (14) "Lobbyist group" means two or more lobbyists, principals, government officers, or
296 any combination of lobbyists, principals, and officers, who each contribute a portion of an
297 expenditure made to benefit a local official or education official or member of the local
298 official's or education official's immediate family.
299 (15) "Local action" means:
300 (a) an ordinance or resolution for consideration by a local government;
301 (b) a nomination or appointment by a local official or a local government;
302 (c) an administrative action taken by a vote of a local government's legislative body;
303 (d) an adjudicative proceeding over which a local official has direct or indirect control;
304 (e) a purchasing or contracting decision;

- 305 (f) drafting or making a policy, resolution, or rule;
- 306 (g) determining a rate or fee; or
- 307 (h) making an adjudicative decision.
- 308 (16) "Local government" means:
- 309 (a) a county, city, town, or metro township;
- 310 (b) a local district governed by Title 17B, Limited Purpose Local Government Entities
- 311 - Local Districts;
- 312 (c) a special service district governed by Title 17D, Chapter 1, Special Service District
- 313 Act;
- 314 (d) a community reinvestment agency governed by Title 17C, Limited Purpose Local
- 315 Government Entities - Community Reinvestment Agency Act;
- 316 (e) a conservation district governed by Title 17D, Chapter 3, Conservation District Act;
- 317 (f) a redevelopment agency; or
- 318 (g) an interlocal entity or a joint or cooperative undertaking governed by Title 11,
- 319 Chapter 13, Interlocal Cooperation Act.
- 320 (17) "Local official" means:
- 321 (a) an elected member of a local government;
- 322 (b) an individual appointed to or employed in a position in a local government if that
- 323 individual:
- 324 (i) occupies a policymaking position or makes purchasing or contracting decisions;
- 325 (ii) drafts ordinances or resolutions or drafts or makes rules;
- 326 (iii) determines rates or fees; or
- 327 (iv) makes adjudicative decisions; or
- 328 (c) an immediate family member of an individual described in Subsection (17)(a) or
- 329 (b).
- 330 (18) "Meeting" means a gathering of people to discuss an issue, receive instruction, or
- 331 make a decision, including a conference, seminar, or summit.
- 332 (19) "Multiclient lobbyist" means a single lobbyist, principal, or government officer
- 333 who represents two or more clients and divides the aggregate daily expenditure made to benefit
- 334 a local official or education official or member of the local official's or education official's
- 335 immediate family between two or more of those clients.

336 (20) "Principal" means a person that employs an individual to perform lobbying, either
337 as an employee or as an independent contractor.

338 (21) "Quarterly reporting period" means the three-month period covered by each
339 financial report required under Section [36-11a-201](#).

340 (22) "Related person" means a person, agent, or employee who knowingly and
341 intentionally assists a lobbyist, principal, or government officer in lobbying.

342 (23) "Relative" means:

343 (a) a spouse;

344 (b) a child, parent, grandparent, grandchild, brother, sister, parent-in-law,
345 brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin; or

346 (c) a spouse of an individual described in Subsection (23)(b).

347 (24) "Tour" means the visit of a location by a local official or education official, for a
348 purpose relating to the duties of the local official or education official, and not primarily for
349 entertainment, including:

350 (a) viewing a facility;

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

352 (c) assessing a circumstance in relation to which a local official or education official
353 may need to take action within the scope of the local official's or education official's duties.

354 (25) "Type of public official" means a notation to identify whether an individual is:

355 (a) a local official, including a notation of the type of local government for which the
356 individual is a local official;

357 (b) an education official, including a notation of the type of board of education for
358 which the individual is an education official; or

359 (c) an immediate family member of an individual described in Subsection (6)(a),
360 (6)(b), (17)(a), or (17)(b).

361 Section 4. Section **36-11a-201** is enacted to read:

362 **Part 2. Disclosure of Expenditures**

363 **36-11a-201. Lobbyist, principal, and government officer financial reporting**
364 **requirements -- Prohibition for related person to make expenditures.**

365 (1) (a) (i) Except as provided in Subsection (1)(a)(ii), a lobbyist shall file financial
366 reports with the lieutenant governor on or before the due dates specified in Subsection (2).

367 (ii) A lobbyist who has not made an expenditure during a quarterly reporting period is
368 not required to file a quarterly financial report for that quarterly reporting period.

369 (iii) A lobbyist who is not required to file any quarterly reports under this section for a
370 calendar year shall, on or before January 10 of the following year, file a financial report listing
371 the amount of the expenditures for the entire preceding year as "none."

372 (b) A government officer or principal that makes an expenditure during any of the
373 quarterly reporting periods under Subsection (2)(a) shall file a financial report with the
374 lieutenant governor on or before the date that a report for that quarter is due.

375 (2) (a) A financial report is due quarterly on the following dates:

376 (i) April 10, for the period of January 1 through March 31;

377 (ii) July 10, for the period of April 1 through June 30;

378 (iii) October 10, for the period of July 1 through September 30; and

379 (iv) January 10, for the period of October 1 through December 31 of the previous year.

380 (b) If the due date for a financial report falls on a Saturday, Sunday, or legal holiday,
381 the report is due on the next succeeding business day.

382 (c) A financial report is timely filed if it is filed electronically before the close of
383 regular office hours on or before the due date.

384 (3) A financial report shall contain:

385 (a) the total amount of expenditures made to benefit any local official or education
386 official during the quarterly reporting period;

387 (b) the total amount of expenditures made, by the type of official, during the quarterly
388 reporting period;

389 (c) for the financial report due on January 10:

390 (i) the total amount of expenditures made to benefit any local official or education
391 official during the last calendar year; and

392 (ii) the total amount of expenditures made, by the type of official, during the last
393 calendar year;

394 (d) a disclosure of each expenditure made during the quarterly reporting period to
395 reimburse or pay for travel or lodging for a local official or education official, including:

396 (i) each travel destination and each lodging location;

397 (ii) the name of each local official or education official who benefitted from the

398 expenditure on travel or lodging;
399 (iii) the type of official of each local official or education official named;
400 (iv) for each local official or education official named, a listing of the amount and
401 purpose of each expenditure made for travel or lodging; and
402 (v) the total amount of expenditures listed under Subsection (3)(d)(iv);
403 (e) a disclosure of aggregate daily expenditures greater than \$10 made during the
404 quarterly reporting period including:
405 (i) the date and purpose of the expenditure;
406 (ii) the location of the expenditure;
407 (iii) the name of any local official or education official benefitted by the expenditure;
408 (iv) the type of official benefitted by the expenditure; and
409 (v) the total monetary worth of the benefit that the expenditure conferred on any local
410 official or education official;
411 (f) for each local official or education official who was employed by the lobbyist,
412 principal, or government officer, a list that provides:
413 (i) the name of the local official or education official; and
414 (ii) the nature of the employment with the local official or education official;
415 (g) a description of each local action or education action regarding which the lobbyist,
416 principal, or government officer made an expenditure to a local official or education official;
417 (h) the general purposes, interests, and nature of the entities that the lobbyist, principal,
418 or government officer filing the report represents; and
419 (i) for a lobbyist, a certification that the information provided in the report is true,
420 accurate, and complete to the lobbyist's best knowledge and belief.
421 (4) A related person may not, while assisting a lobbyist, principal, or government
422 officer in lobbying, make an expenditure that benefits a local official or education official
423 under circumstances that would otherwise fall within the disclosure requirements of this
424 chapter if the expenditure was made by the lobbyist, principal, or government officer.
425 (5) The lieutenant governor:
426 (a) shall provide a reporting system that allows a lobbyist, principal, or government
427 officer to submit a financial report required by this chapter via the Internet; and
428 (b) may integrate the reporting system described in Subsection (5)(a) with the reporting

429 system described in Subsection [36-11-201\(5\)\(b\)](#).

430 (6) (a) A lobbyist and a principal shall continue to file a financial report required by
431 this section until the lobbyist or principal files a statement with the lieutenant governor that:

432 (i) (A) for a lobbyist, states that the lobbyist has ceased lobbying activities; or

433 (B) for a principal, states that the principal no longer employs an individual as a
434 lobbyist;

435 (ii) contains a listing, as required by this section, of all previously unreported
436 expenditures that have been made through the date of the statement; and

437 (iii) states that the lobbyist or principal will not make any additional expenditure that is
438 not disclosed on the statement unless the lobbyist or principal complies with the disclosure
439 requirements of this chapter.

440 (b) Except as provided in Subsection (1)(a)(ii), a lobbyist or principal that is required
441 to file a financial report under this section is required to file the report quarterly until the
442 lobbyist or principal files the statement required by Subsection (6)(a).

443 Section 5. Section **36-11a-202** is enacted to read:

444 **36-11a-202. Expenditures over certain amounts prohibited -- Exceptions.**

445 (1) Except as provided in Subsection (2), a lobbyist, principal, or government officer
446 may not make or offer to make aggregate daily expenditures that exceed:

447 (a) for food or beverage, the food reimbursement rate; or

448 (b) \$10 for expenditures other than food or beverage.

449 (2) A lobbyist, principal, or government officer may make aggregate daily expenditures
450 that exceed the limits described in Subsection (1):

451 (a) for the following items, if the expenditure is reported in accordance with Section
452 [36-11a-201](#):

453 (i) food;

454 (ii) beverage;

455 (iii) travel;

456 (iv) lodging; or

457 (v) admission to or attendance at a tour or meeting; or

458 (b) if the expenditure is made for a purpose solely unrelated to the local official's or
459 education official's position as a local official or education official.

460 Section 6. Section **36-11a-203** is enacted to read:

461 **36-11a-203. Disposal of publications.**

462 If a lobbyist, principal, or government officer makes an expenditure, in the form of a
463 publication, to a local official or education official, the local official or education official may
464 return the publication to the lobbyist, principal, or government officer, donate the publication
465 to a charity or a government entity, or destroy the publication.

466 Section 7. Section **36-11a-301** is enacted to read:

467 **Part 3. Penalties and Statutory Construction**

468 **36-11a-301. Penalties.**

469 (1) A person who intentionally violates Section [36-11a-201](#) or [36-11a-202](#) is subject to
470 the following penalties:

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

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

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

474 (ii) suspension of the violator's lobbying license for up to one year, if the person is a
475 registered lobbyist under Section [36-11-103](#).

476 (2) Any person who intentionally fails to file a financial report required by this chapter,
477 omits material information from a financial report, or files false information on a financial
478 report, is subject to the following penalties:

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

480 (b) suspension of the violator's lobbying license for up to one year, if the person is a
481 registered lobbyist under Section [36-11-103](#).

482 (3) In addition to any penalty imposed under Subsection (1) or (2), a person who
483 intentionally fails to file a financial report required by this chapter on the date the report is due
484 is subject to a penalty of up to \$50 per day for each day that the report is late.

485 (4) A person with evidence of a possible violation of this chapter may submit the
486 evidence to the lieutenant governor for investigation.

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

488 Section 8. Section **36-11a-302** is enacted to read:

489 **36-11a-302. Lieutenant governor's procedures.**

490 The director of elections within the Office of the Lieutenant Governor shall make rules

491 in accordance with Title 63G, Chapter 4, Administrative Procedures Act, that provide for the
492 appointment of an administrative law judge to adjudicate alleged violations of this chapter and
493 to impose penalties under this chapter.

494 Section 9. Section **36-11a-303** is enacted to read:

495 **36-11a-303. Construction and interpretation -- Freedom of expression,**
496 **participation, and press -- Non-preemption.**

497 (1) No provision of this chapter may be construed in a manner that limits:

498 (a) a person's right of freedom of expression and participation in government; or

499 (b) freedom of the press.

500 (2) This chapter does not prevent a local government or public education entity from
501 enacting an ordinance or adopting a policy, that the local government or public education entity
502 otherwise has the lawful authority to enact or adopt, that is stricter than the requirements of this
503 chapter.

504 Section 10. Section **63A-14-202** is amended to read:

505 **63A-14-202. Independent Executive Branch Ethics Commission -- Membership.**

506 (1) (a) There is created the Independent Executive Branch Ethics Commission,
507 consisting of the following five members appointed by the governor, each of whom shall be
508 registered to vote in the state at the time of appointment:

509 (i) two members who served:

510 (A) as elected officials in state government no more recently than four years before the
511 day on which the member is appointed; or

512 (B) in a management position in the state executive branch no more recently than four
513 years before the day on which the member is appointed;

514 (ii) one member who:

515 (A) has served, but no longer actively serves, as a judge of a court in the state; or

516 (B) is a licensed attorney in the state and is not, and has not been, a judge; and

517 (iii) two citizen members.

518 (b) The governor shall make appointments to the commission as follows:

519 (i) each executive branch elected official, other than the governor, shall select, and
520 provide to the governor, at least two names for potential appointment to one of the membership
521 positions described in Subsection (1)(a);

522 (ii) the governor shall determine which of the executive branch elected officials
523 described in Subsection (1)(b)(i) shall select names for which membership position;

524 (iii) the governor shall appoint to the commission one of the names provided by each
525 executive branch elected official described in Subsection (1)(b)(i);

526 (iv) the governor shall directly appoint the remaining member of the commission; and

527 (v) if an executive branch elected official fails to submit names to the governor within
528 15 days after the day on which the governor makes the determination described in Subsection
529 (1)(b)(ii), the governor shall directly appoint a person to fill the applicable membership
530 position.

531 (2) A member of the commission may not, during the member's term of office on the
532 commission, act or serve as:

533 (a) an officeholder as defined in Section [20A-11-101](#);

534 (b) an agency head as defined in Section [67-16-3](#);

535 (c) a lobbyist as defined in Section [36-11-102](#) or [36-11a-102](#);

536 (d) a principal as defined in Section [36-11-102](#) or [36-11a-102](#); or

537 (e) an employee of the state.

538 (3) (a) Except as provided in Subsection (3)(b), each member of the commission shall
539 serve a four-year term.

540 (b) The governor shall set the first term of two of the members of the commission at
541 two years, so that approximately half of the commission is appointed, or reappointed, every
542 two years.

543 (c) When a vacancy occurs in the commission's membership for any reason, the
544 governor shall appoint a replacement member for the unexpired term of the vacating member,
545 in accordance with Subsection (1).

546 (d) The governor may not appoint a member to serve more than two full terms, whether
547 those terms are two or four years.

548 (e) (i) The governor, or a majority of the commission, may remove a member from the
549 commission only for cause.

550 (ii) The governor may not remove a member from the commission during any period of
551 time when the commission is investigating or considering a complaint alleging an ethics
552 violation against the governor or lieutenant governor.

553 (f) If a commission member determines that the commission member has a conflict of
554 interest in relation to a complaint, the remaining members of the commission shall appoint an
555 individual to serve in that member's place for the purpose of reviewing that complaint.

556 (4) (a) A member of the commission may not receive compensation or benefits for the
557 member's service, but may receive per diem and expenses incurred in the performance of the
558 member's official duties at the rates established by the Division of Finance under Sections
559 63A-3-106 and 63A-3-107.

560 (b) A member may decline to receive per diem and expenses for the member's service.

561 (5) (a) The commission members shall convene a meeting annually each January and
562 elect, by majority vote, a chair from among the commission members.

563 (b) An individual may not serve as chair for more than two consecutive years.

564 (6) The commission:

565 (a) is established within the department for budgetary and general administrative
566 purposes only; and

567 (b) is not under the direction or control of the department, the executive director, or
568 any other officer or employee of the department.

569 Section 11. Section 63E-1-401 is amended to read:

570 **63E-1-401. Definitions.**

571 As used in this part:

572 (1) "Asset" means property of all kinds, real and personal, tangible and intangible, and
573 includes:

574 (a) cash, except reasonable compensation or salary for services rendered;

575 (b) stock or other investments;

576 (c) goodwill;

577 (d) real property;

578 (e) an ownership interest;

579 (f) a license;

580 (g) a cause of action; and

581 (h) any similar property.

582 (2) "Business interest" means:

583 (a) holding the position of trustee, director, officer, or other similar position with a

584 business entity; or

585 (b) the ownership, either legally or equitably, of at least 10% of the outstanding shares
586 of a corporation or 10% interest in any other business entity, being held by:

587 (i) an individual;

588 (ii) the individual's spouse;

589 (iii) a minor child of the individual; or

590 (iv) any combination of Subsections (2)(b)(i) through (iii).

591 (3) "Interested party" means a person that held or holds the position of trustee, director,
592 officer, or other similar position with an independent entity within:

593 (a) five years prior to the date of an action described in Subsection (5); or

594 (b) during the privatization of an independent entity.

595 (4) "Lobbyist" is a person that provided or provides services as a lobbyist, as defined in
596 Section [36-11-102](#) or [36-11a-102](#), within:

597 (a) five years prior to the date of an action described in Subsection (5); or

598 (b) during the privatization of an independent entity.

599 (5) (a) "Privatized" means an action described in Subsection (5)(b) taken under
600 circumstances in which the operations of the independent entity are continued by a successor
601 entity that:

602 (i) is privately owned;

603 (ii) is unaffiliated to the state; and

604 (iii) receives any asset of the independent entity.

605 (b) An action referred to in Subsection (5)(a) includes:

606 (i) the repeal of the authorizing statute of an independent entity and the revision to state
607 laws to terminate the relationship between the state and the independent entity;

608 (ii) the dissolution of the independent entity;

609 (iii) the merger or consolidation of the independent entity with another entity; or

610 (iv) the sale of all or substantially all of the assets of the independent entity.

611 Section 12. Section **63E-1-404** is amended to read:

612 **63E-1-404. Penalties for violation.**

613 (1) A person who knowingly violates this part:

614 (a) is guilty of a third degree felony if the combined value of any compensation or

615 assets received by the person as a result of the violation is equal to or greater than \$10,000; or

616 (b) is guilty of a class A misdemeanor if the combined value of any compensation or
617 assets received by the person as a result of the violation is less than \$10,000.

618 (2) (a) In addition to any penalty imposed under Subsection (1), a person that violates
619 this part shall return to the successor of the independent entity any compensation or assets
620 received in violation of this part.

621 (b) If the assets received by the person in violation of this part are no longer in the
622 possession of the person, the person shall pay the successor of the independent entity an
623 amount equal to the fair market value of the asset at the time the person received the asset.

624 (3) Notwithstanding [~~Subsection~~] Subsections 36-11-401(3) and 36-11a-304(3), if a
625 lobbyist violates Subsection 63E-1-402(2)(b)(i), the lobbyist is guilty of the crime outlined in
626 Subsection (1), which crime shall be determined by the value of compensation or assets
627 received by the lobbyist.

628 Section 13. Section **76-10-1602** is amended to read:

629 **76-10-1602. Definitions.**

630 As used in this part:

631 (1) "Enterprise" means any individual, sole proprietorship, partnership, corporation,
632 business trust, association, or other legal entity, and any union or group of individuals
633 associated in fact although not a legal entity, and includes illicit as well as licit entities.

634 (2) "Pattern of unlawful activity" means engaging in conduct which constitutes the
635 commission of at least three episodes of unlawful activity, which episodes are not isolated, but
636 have the same or similar purposes, results, participants, victims, or methods of commission, or
637 otherwise are interrelated by distinguishing characteristics. Taken together, the episodes shall
638 demonstrate continuing unlawful conduct and be related either to each other or to the
639 enterprise. At least one of the episodes comprising a pattern of unlawful activity shall have
640 occurred after July 31, 1981. The most recent act constituting part of a pattern of unlawful
641 activity as defined by this part shall have occurred within five years of the commission of the
642 next preceding act alleged as part of the pattern.

643 (3) "Person" includes any individual or entity capable of holding a legal or beneficial
644 interest in property, including state, county, and local governmental entities.

645 (4) "Unlawful activity" means to directly engage in conduct or to solicit, request,

646 command, encourage, or intentionally aid another person to engage in conduct which would
647 constitute any offense described by the following crimes or categories of crimes, or to attempt
648 or conspire to engage in an act which would constitute any of those offenses, regardless of
649 whether the act is in fact charged or indicted by any authority or is classified as a misdemeanor
650 or a felony:

651 (a) any act prohibited by the criminal provisions of Title 13, Chapter 10, Unauthorized
652 Recording Practices Act;

653 (b) any act prohibited by the criminal provisions of Title 19, Environmental Quality
654 Code, Sections 19-1-101 through 19-7-109;

655 (c) taking, destroying, or possessing wildlife or parts of wildlife for the primary
656 purpose of sale, trade, or other pecuniary gain, in violation of Title 23, Wildlife Resources
657 Code of Utah, or Section 23-20-4;

658 (d) false claims for medical benefits, kickbacks, and any other act prohibited by Title
659 26, Chapter 20, Utah False Claims Act, Sections 26-20-1 through 26-20-12;

660 (e) any act prohibited by the criminal provisions of Title 32B, Chapter 4, Criminal
661 Offenses and Procedure Act;

662 (f) any act prohibited by the criminal provisions of Title 57, Chapter 11, Utah Uniform
663 Land Sales Practices Act;

664 (g) any act prohibited by the criminal provisions of Title 58, Chapter 37, Utah
665 Controlled Substances Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act,
666 Title 58, Chapter 37c, Utah Controlled Substance Precursor Act, or Title 58, Chapter 37d,
667 Clandestine Drug Lab Act;

668 (h) any act prohibited by the criminal provisions of Title 61, Chapter 1, Utah Uniform
669 Securities Act;

670 (i) any act prohibited by the criminal provisions of Title 63G, Chapter 6a, Utah
671 Procurement Code;

672 (j) assault or aggravated assault, Sections 76-5-102 and 76-5-103;

673 (k) a threat of terrorism, Section 76-5-107.3;

674 (l) criminal homicide, Sections 76-5-201, 76-5-202, and 76-5-203;

675 (m) kidnapping or aggravated kidnapping, Sections 76-5-301 and 76-5-302;

676 (n) human trafficking, human smuggling, or aggravated human trafficking, Sections

- 677 76-5-308, 76-5-309, and 76-5-310;
- 678 (o) sexual exploitation of a minor, Section 76-5b-201;
- 679 (p) arson or aggravated arson, Sections 76-6-102 and 76-6-103;
- 680 (q) causing a catastrophe, Section 76-6-105;
- 681 (r) burglary or aggravated burglary, Sections 76-6-202 and 76-6-203;
- 682 (s) burglary of a vehicle, Section 76-6-204;
- 683 (t) manufacture or possession of an instrument for burglary or theft, Section 76-6-205;
- 684 (u) robbery or aggravated robbery, Sections 76-6-301 and 76-6-302;
- 685 (v) theft, Section 76-6-404;
- 686 (w) theft by deception, Section 76-6-405;
- 687 (x) theft by extortion, Section 76-6-406;
- 688 (y) receiving stolen property, Section 76-6-408;
- 689 (z) theft of services, Section 76-6-409;
- 690 (aa) forgery, Section 76-6-501;
- 691 (bb) fraudulent use of a credit card, Sections 76-6-506.2, 76-6-506.3, 76-6-506.5, and
- 692 76-6-506.6;
- 693 (cc) deceptive business practices, Section 76-6-507;
- 694 (dd) bribery or receiving bribe by person in the business of selection, appraisal, or
- 695 criticism of goods, Section 76-6-508;
- 696 (ee) bribery of a labor official, Section 76-6-509;
- 697 (ff) defrauding creditors, Section 76-6-511;
- 698 (gg) acceptance of deposit by insolvent financial institution, Section 76-6-512;
- 699 (hh) unlawful dealing with property by fiduciary, Section 76-6-513;
- 700 (ii) bribery or threat to influence contest, Section 76-6-514;
- 701 (jj) making a false credit report, Section 76-6-517;
- 702 (kk) criminal simulation, Section 76-6-518;
- 703 (ll) criminal usury, Section 76-6-520;
- 704 (mm) fraudulent insurance act, Section 76-6-521;
- 705 (nn) retail theft, Section 76-6-602;
- 706 (oo) computer crimes, Section 76-6-703;
- 707 (pp) identity fraud, Section 76-6-1102;

- 708 (qq) mortgage fraud, Section 76-6-1203;
- 709 (rr) sale of a child, Section 76-7-203;
- 710 (ss) bribery to influence official or political actions, Section 76-8-103;
- 711 (tt) threats to influence official or political action, Section 76-8-104;
- 712 (uu) receiving bribe or bribery by public servant, Section 76-8-105;
- 713 (vv) receiving bribe or bribery for endorsement of person as public servant, Section
- 714 76-8-106;
- 715 (ww) official misconduct, Sections 76-8-201 and 76-8-202;
- 716 (xx) obstruction of justice, Section 76-8-306;
- 717 (yy) acceptance of bribe or bribery to prevent criminal prosecution, Section 76-8-308;
- 718 (zz) false or inconsistent material statements, Section 76-8-502;
- 719 (aaa) false or inconsistent statements, Section 76-8-503;
- 720 (bbb) written false statements, Section 76-8-504;
- 721 (ccc) tampering with a witness or soliciting or receiving a bribe, Section 76-8-508;
- 722 (ddd) retaliation against a witness, victim, or informant, Section 76-8-508.3;
- 723 (eee) extortion or bribery to dismiss criminal proceeding, Section 76-8-509;
- 724 (fff) tampering with evidence, Section 76-8-510.5;
- 725 (ggg) falsification or alteration of government record, Section 76-8-511, if the record is
- 726 a record described in Title 20A, Election Code, [or] Title 36, Chapter 11, Lobbyist Disclosure
- 727 and Regulation Act, or Title 36, Chapter 11a, Local Government and Board of Education
- 728 Lobbyist Disclosure and Regulation Act;
- 729 (hhh) public assistance fraud in violation of Section 76-8-1203, 76-8-1204, or
- 730 76-8-1205;
- 731 (iii) unemployment insurance fraud, Section 76-8-1301;
- 732 (jjj) intentionally or knowingly causing one animal to fight with another, Subsection
- 733 76-9-301(2)(d) or (e), or Section 76-9-301.1;
- 734 (kkk) possession, use, or removal of explosives, chemical, or incendiary devices or
- 735 parts, Section 76-10-306;
- 736 (lll) delivery to common carrier, mailing, or placement on premises of an incendiary
- 737 device, Section 76-10-307;
- 738 (mmm) possession of a deadly weapon with intent to assault, Section 76-10-507;

739 (nnn) unlawful marking of pistol or revolver, Section 76-10-521;
740 (ooo) alteration of number or mark on pistol or revolver, Section 76-10-522;
741 (ppp) forging or counterfeiting trademarks, trade name, or trade device, Section
742 76-10-1002;
743 (qqq) selling goods under counterfeited trademark, trade name, or trade devices,
744 Section 76-10-1003;
745 (rrr) sales in containers bearing registered trademark of substituted articles, Section
746 76-10-1004;
747 (sss) selling or dealing with article bearing registered trademark or service mark with
748 intent to defraud, Section 76-10-1006;
749 (ttt) gambling, Section 76-10-1102;
750 (uuu) gambling fraud, Section 76-10-1103;
751 (vvv) gambling promotion, Section 76-10-1104;
752 (www) possessing a gambling device or record, Section 76-10-1105;
753 (xxx) confidence game, Section 76-10-1109;
754 (yyy) distributing pornographic material, Section 76-10-1204;
755 (zzz) inducing acceptance of pornographic material, Section 76-10-1205;
756 (aaaa) dealing in harmful material to a minor, Section 76-10-1206;
757 (bbbb) distribution of pornographic films, Section 76-10-1222;
758 (cccc) indecent public displays, Section 76-10-1228;
759 (dddd) prostitution, Section 76-10-1302;
760 (eeee) aiding prostitution, Section 76-10-1304;
761 (ffff) exploiting prostitution, Section 76-10-1305;
762 (gggg) aggravated exploitation of prostitution, Section 76-10-1306;
763 (hhhh) communications fraud, Section 76-10-1801;
764 (iiii) any act prohibited by the criminal provisions of Part 19, Money Laundering and
765 Currency Transaction Reporting Act;
766 (jjjj) vehicle compartment for contraband, Section 76-10-2801;
767 (kkkk) any act prohibited by the criminal provisions of the laws governing taxation in
768 this state; and
769 (llll) any act illegal under the laws of the United States and enumerated in 18 U.S.C.

770 Sec. 1961(1)(B), (C), and (D).