

HB0393S01 compared with HB0393

~~text~~ shows text that was in HB0393 but was deleted in HB0393S01.

Inserted text shows text that was not in HB0393 but was inserted into HB0393S01.

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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;

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- ▶ 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 Lobbyist Disclosure and Regulation Act.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

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

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

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

ENACTS:

36-11a-101, Utah Code Annotated 1953

36-11a-102, Utah Code Annotated 1953

36-11a-201, Utah Code Annotated 1953

36-11a-202, Utah Code Annotated 1953

36-11a-203, Utah Code Annotated 1953

36-11a-301, Utah Code Annotated 1953

36-11a-302, Utah Code Annotated 1953

36-11a-303, Utah Code Annotated 1953

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

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

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

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

(2) The commission is composed of seven persons, each of whom is registered to vote in this state and appointed by the governor with the advice and consent of the Senate, as follows:

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

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

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

(d) two members who are lay persons; and

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

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

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

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

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

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

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

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

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

(a) a political subdivision officer;

(b) a political subdivision employee;

(c) an agency head as defined in Section 67-16-3;

(d) a lobbyist as defined in Section 36-11-102 or 36-11a-102; or

(e) a principal as defined in Section 36-11-102 or 36-11a-102.

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

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

(b) (i) When a vacancy occurs in the commission's membership for any reason, a replacement member shall be appointed for the unexpired term of the vacating member using the procedures and requirements of Subsection (2).

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

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

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

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

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

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

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

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

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

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

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

(6) (a) The commission members shall convene a meeting annually each January and

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elect, by a majority vote, a commission chair from among the commission members.

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

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

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

Part 1. General Provisions

36-11a-101. Title.

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

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

36-11a-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 local official or education 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 local official or education 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 local official or education official, regardless of whether the expenditures were attributed to different clients.

(2) "Board of education" means:

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

(b) the State Board of Education;

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

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

(3) (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.

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(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.

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

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

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

(5) "Education action" means:

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

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

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

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

(e) a purchasing or contracting decision;

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

(g) determining a rate or fee; or

(h) making an adjudicative decision.

(6) "Education official" means:

(a) a member of a board of education;

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

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that individual:

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

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

(iii) determines rates or fees; or

(iv) makes adjudicative decisions; or

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

(7) "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.

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

(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:

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

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

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

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(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 local official's or education official's position as a local official or education 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 a local official or education 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;

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

(A) is presented in public; and

(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;

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

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

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

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

(C) charitable solicitation, as defined in Section 13-22-2;

(x) notwithstanding Subsection (8)(a)(vii), admission to, attendance at, or travel to or

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from an event, a tour, or a meeting for a local official or education official:

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

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

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

(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 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 in the capacity of the state or local government position;

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

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

(iv) an individual appointed to or employed in a full-time position by state government, local government, or board of education, when acting in the capacity of the individual's appointment or 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) "Lobbying" means communicating with a local official or education official for the purpose of influencing a local action or education action.

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(13) (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 local official or education 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 participating on or appearing before an advisory or study task force, commission, board, or committee, constituted by a local government or board of education;

(iv) a representative of a political party;

(v) 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 local official or education official;

(vi) 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 local action or education action;

(vii) an individual who appears on the individual's own behalf before a board of education, the governing body of a local government, or a committee of a local government or board of education, solely for the purpose of testifying in support of or in opposition to local action or education action; or

(viii) an individual representing a business, entity, or industry, who:

(A) interacts with a local official or education official, in the local official's or education official's capacity as a local official or education official, while accompanied by a lobbyist who is lobbying in relation to the subject of the interaction; and

(B) does not make an expenditure for, or on behalf of, a local official or education official in relation to the interaction or during the period of interaction.

(14) "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 local official or education official or member of the local official's or education official's immediate family.

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(15) "Local action" means:

- (a) an ordinance or resolution for consideration by a local government;
- (b) a nomination or appointment by a local official or a local government;
- (c) an administrative action taken by a vote of a local government's legislative body;
- (d) an adjudicative proceeding over which a local official has direct or indirect control;
- (e) a purchasing or contracting decision;
- (f) drafting or making a policy, resolution, or rule;
- (g) determining a rate or fee; or
- (h) making an adjudicative decision.

(16) "Local government" means:

- (a) a county, city, town, or metro township;
- (b) a local district governed by Title 17B, Limited Purpose Local Government Entities

- Local Districts:

(c) a special service district governed by Title 17D, Chapter 1, Special Service District

Act;

(d) a community reinvestment agency governed by Title 17C, Limited Purpose Local

Government Entities - Community Reinvestment Agency Act;

(e) a conservation district governed by Title 17D, Chapter 3, Conservation District Act;

(f) a redevelopment agency; or

(g) an interlocal entity or a joint or cooperative undertaking governed by Title 11,

Chapter 13, Interlocal Cooperation Act.

(17) "Local official" means:

(a) an elected member of a local government;

(b) an individual appointed to or employed in a position in a local government if that

individual:

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

(ii) drafts ordinances or resolutions or drafts or makes rules;

(iii) determines rates or fees; or

(iv) makes adjudicative decisions; or

(c) an immediate family member of an individual described in Subsection (17)(a) or

(b).

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(18) "Meeting" means a gathering of people to discuss an issue, receive instruction, or make a decision, including a conference, seminar, or summit.

(19) "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 local official or education official or member of the local official's or education official's immediate family between two or more of those clients.

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

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

(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) a spouse;

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

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

(24) "Tour" means the visit of a location by a local official or education official, for a purpose relating to the duties of the local official or education 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 local official or education official may need to take action within the scope of the local official's or education official's duties.

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

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

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

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

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

Part 2. Disclosure of Expenditures

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

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

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

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

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

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

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

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

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

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

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

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

(3) A financial report shall contain:

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

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

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

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

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

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

(i) each travel destination and each lodging location;

(ii) the name of each local official or education official who benefitted from the expenditure on travel or lodging;

(iii) the type of official of each local official or education official named;

(iv) for each local official or education official named, a listing of the amount and purpose of each expenditure made for travel or lodging; and

(v) the total amount of expenditures listed under Subsection (3)(d)(iv);

(e) a disclosure of aggregate daily expenditures greater than \$10 made during the quarterly reporting period including:

(i) the date and purpose of the expenditure;

(ii) the location of the expenditure;

(iii) the name of any local official or education official benefitted by the expenditure;

(iv) the type of official benefitted by the expenditure; and

(v) the total monetary worth of the benefit that the expenditure conferred on any local official or education official;

(f) for each local official or education official who was employed by the lobbyist, principal, or government officer, a list that provides:

(i) the name of the local official or education official; and

(ii) the nature of the employment with the local official or education official;

(g) a description of each local action or education action regarding which the lobbyist, principal, or government officer made an expenditure to a local official or education official;

(h) the general purposes, interests, and nature of the entities that the lobbyist, principal, or government officer filing the report represents; and

(i) for a lobbyist, a certification that the information provided in the report is true, accurate, and complete to the lobbyist's best knowledge and belief.

(4) A related person may not, while assisting a lobbyist, principal, or government officer in lobbying, make an expenditure that benefits a local official or education official

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under circumstances that would otherwise fall within the disclosure requirements of this chapter if the expenditure was made by the lobbyist, principal, or government officer.

(5) The lieutenant governor:

(a) shall provide a reporting system that allows a lobbyist, principal, or government officer to submit a financial report required by this chapter via the Internet; and

(b) may integrate the reporting system described in Subsection (5)(a) with the reporting system described in Subsection 36-11-201(5)(b).

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) food;

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(ii) beverage;

(iii) travel;

(iv) lodging; or

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

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

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

36-11a-203. Disposal of publications.

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

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

Part 3. Penalties and Statutory Construction

36-11a-301. Penalties.

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

(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 registered lobbyist under Section 36-11-103.

(2) Any person who intentionally fails to file a financial report required by this chapter, omits material information from a financial report, or files false information on a 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 registered lobbyist under Section 36-11-103.

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

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

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

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

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

The director of elections within the Office of the Lieutenant Governor shall make rules in accordance with Title 63G, Chapter 4, Administrative Procedures Act, that provide for the appointment of an administrative law judge to adjudicate alleged violations of this chapter and to impose penalties under this chapter.

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

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

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

(~~f1~~a) a person's right of freedom of expression and participation in government; or

(~~f2~~b) freedom of the press.

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

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

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

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

(i) two members who served:

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

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

(ii) one member who:

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

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

(iii) two citizen members.

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

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

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

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

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

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

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

(a) an officeholder as defined in Section 20A-11-101;

(b) an agency head as defined in Section 67-16-3;

(c) a lobbyist as defined in Section 36-11-102 or 36-11a-102;

(d) a principal as defined in Section 36-11-102 or 36-11a-102; or

(e) an employee of the state.

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

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

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

(d) The governor may not appoint a member to serve more than two full terms, whether

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those terms are two or four years.

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

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

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

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

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

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

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

(6) The commission:

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

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

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

63E-1-401. Definitions.

As used in this part:

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

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

(b) stock or other investments;

(c) goodwill;

(d) real property;

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(e) an ownership interest;

(f) a license;

(g) a cause of action; and

(h) any similar property.

(2) "Business interest" means:

(a) holding the position of trustee, director, officer, or other similar position with a business entity; or

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

(i) an individual;

(ii) the individual's spouse;

(iii) a minor child of the individual; or

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

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

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

(b) during the privatization of an independent entity.

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

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

(b) during the privatization of an independent entity.

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

(i) is privately owned;

(ii) is unaffiliated to the state; and

(iii) receives any asset of the independent entity.

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

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

(ii) the dissolution of the independent entity;

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- (iii) the merger or consolidation of the independent entity with another entity; or
- (iv) the sale of all or substantially all of the assets of the independent entity.

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

63E-1-404. Penalties for violation.

(1) A person who knowingly violates this part:

(a) is guilty of a third degree felony if the combined value of any compensation or assets received by the person as a result of the violation is equal to or greater than \$10,000; or

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

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

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

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

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

76-10-1602. Definitions.

As used in this part:

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

(2) "Pattern of unlawful activity" means engaging in conduct which constitutes the commission of at least three episodes of unlawful activity, which episodes are not isolated, but have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics. Taken together, the episodes shall demonstrate continuing unlawful conduct and be related either to each other or to the enterprise. At least one of the episodes comprising a pattern of unlawful activity shall have

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occurred after July 31, 1981. The most recent act constituting part of a pattern of unlawful activity as defined by this part shall have occurred within five years of the commission of the next preceding act alleged as part of the pattern.

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

(4) "Unlawful activity" means to directly engage in conduct or to solicit, request, command, encourage, or intentionally aid another person to engage in conduct which would constitute any offense described by the following crimes or categories of crimes, or to attempt or conspire to engage in an act which would constitute any of those offenses, regardless of whether the act is in fact charged or indicted by any authority or is classified as a misdemeanor or a felony:

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

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

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

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

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

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

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

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

(i) any act prohibited by the criminal provisions of Title 63G, Chapter 6a, Utah

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Procurement Code;

- (j) assault or aggravated assault, Sections 76-5-102 and 76-5-103;
- (k) a threat of terrorism, Section 76-5-107.3;
- (l) criminal homicide, Sections 76-5-201, 76-5-202, and 76-5-203;
- (m) kidnapping or aggravated kidnapping, Sections 76-5-301 and 76-5-302;
- (n) human trafficking, human smuggling, or aggravated human trafficking, Sections 76-5-308, 76-5-309, and 76-5-310;
- (o) sexual exploitation of a minor, Section 76-5b-201;
- (p) arson or aggravated arson, Sections 76-6-102 and 76-6-103;
- (q) causing a catastrophe, Section 76-6-105;
- (r) burglary or aggravated burglary, Sections 76-6-202 and 76-6-203;
- (s) burglary of a vehicle, Section 76-6-204;
- (t) manufacture or possession of an instrument for burglary or theft, Section 76-6-205;
- (u) robbery or aggravated robbery, Sections 76-6-301 and 76-6-302;
- (v) theft, Section 76-6-404;
- (w) theft by deception, Section 76-6-405;
- (x) theft by extortion, Section 76-6-406;
- (y) receiving stolen property, Section 76-6-408;
- (z) theft of services, Section 76-6-409;
- (aa) forgery, Section 76-6-501;
- (bb) fraudulent use of a credit card, Sections 76-6-506.2, 76-6-506.3, 76-6-506.5, and 76-6-506.6;
- (cc) deceptive business practices, Section 76-6-507;
- (dd) bribery or receiving bribe by person in the business of selection, appraisal, or criticism of goods, Section 76-6-508;
- (ee) bribery of a labor official, Section 76-6-509;
- (ff) defrauding creditors, Section 76-6-511;
- (gg) acceptance of deposit by insolvent financial institution, Section 76-6-512;
- (hh) unlawful dealing with property by fiduciary, Section 76-6-513;
- (ii) bribery or threat to influence contest, Section 76-6-514;
- (jj) making a false credit report, Section 76-6-517;

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- (kk) criminal simulation, Section 76-6-518;
- (ll) criminal usury, Section 76-6-520;
- (mm) fraudulent insurance act, Section 76-6-521;
- (nn) retail theft, Section 76-6-602;
- (oo) computer crimes, Section 76-6-703;
- (pp) identity fraud, Section 76-6-1102;
- (qq) mortgage fraud, Section 76-6-1203;
- (rr) sale of a child, Section 76-7-203;
- (ss) bribery to influence official or political actions, Section 76-8-103;
- (tt) threats to influence official or political action, Section 76-8-104;
- (uu) receiving bribe or bribery by public servant, Section 76-8-105;
- (vv) receiving bribe or bribery for endorsement of person as public servant, Section 76-8-106;
- (ww) official misconduct, Sections 76-8-201 and 76-8-202;
- (xx) obstruction of justice, Section 76-8-306;
- (yy) acceptance of bribe or bribery to prevent criminal prosecution, Section 76-8-308;
- (zz) false or inconsistent material statements, Section 76-8-502;
- (aaa) false or inconsistent statements, Section 76-8-503;
- (bbb) written false statements, Section 76-8-504;
- (ccc) tampering with a witness or soliciting or receiving a bribe, Section 76-8-508;
- (ddd) retaliation against a witness, victim, or informant, Section 76-8-508.3;
- (eee) extortion or bribery to dismiss criminal proceeding, Section 76-8-509;
- (fff) tampering with evidence, Section 76-8-510.5;
- (ggg) falsification or alteration of government record, Section 76-8-511, if the record is a record described in Title 20A, Election Code, [or] Title 36, Chapter 11, Lobbyist Disclosure and Regulation Act, or Title 36, Chapter 11a, Local Government and Board of Education Lobbyist Disclosure and Regulation Act;
- (hhh) public assistance fraud in violation of Section 76-8-1203, 76-8-1204, or 76-8-1205;
- (iii) unemployment insurance fraud, Section 76-8-1301;
- (jjj) intentionally or knowingly causing one animal to fight with another, Subsection

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76-9-301(2)(d) or (e), or Section 76-9-301.1;

(kkk) possession, use, or removal of explosives, chemical, or incendiary devices or parts, Section 76-10-306;

(lll) delivery to common carrier, mailing, or placement on premises of an incendiary device, Section 76-10-307;

(mmm) possession of a deadly weapon with intent to assault, Section 76-10-507;

(nnn) unlawful marking of pistol or revolver, Section 76-10-521;

(ooo) alteration of number or mark on pistol or revolver, Section 76-10-522;

(ppp) forging or counterfeiting trademarks, trade name, or trade device, Section 76-10-1002;

(qqq) selling goods under counterfeited trademark, trade name, or trade devices, Section 76-10-1003;

(rrr) sales in containers bearing registered trademark of substituted articles, Section 76-10-1004;

(sss) selling or dealing with article bearing registered trademark or service mark with intent to defraud, Section 76-10-1006;

(ttt) gambling, Section 76-10-1102;

(uuu) gambling fraud, Section 76-10-1103;

(vvv) gambling promotion, Section 76-10-1104;

(www) possessing a gambling device or record, Section 76-10-1105;

(xxx) confidence game, Section 76-10-1109;

(yyy) distributing pornographic material, Section 76-10-1204;

(zzz) inducing acceptance of pornographic material, Section 76-10-1205;

(aaaa) dealing in harmful material to a minor, Section 76-10-1206;

(bbbb) distribution of pornographic films, Section 76-10-1222;

(cccc) indecent public displays, Section 76-10-1228;

(dddd) prostitution, Section 76-10-1302;

(eeee) aiding prostitution, Section 76-10-1304;

(ffff) exploiting prostitution, Section 76-10-1305;

(gggg) aggravated exploitation of prostitution, Section 76-10-1306;

(hhhh) communications fraud, Section 76-10-1801;

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(iii) any act prohibited by the criminal provisions of Part 19, Money Laundering and Currency Transaction Reporting Act;

(jjjj) vehicle compartment for contraband, Section 76-10-2801;

(kkkk) any act prohibited by the criminal provisions of the laws governing taxation in this state; and

(llll) any act illegal under the laws of the United States and enumerated in 18 U.S.C. Sec. 1961(1)(B), (C), and (D).

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Legislative Review Note

Office of Legislative Research and General Counsel