

## SB0147S01 compared with SB0147

~~{deleted text}~~ shows text that was in SB0147 but was deleted in SB0147S01.

Inserted text shows text that was not in SB0147 but was inserted into SB0147S01.

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Senator Don L. Ipson proposes the following substitute bill:

### LOBBYIST LICENSING MODIFICATIONS

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Don L. Ipson**

House Sponsor: \_\_\_\_\_

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#### LONG TITLE

#### General Description:

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

#### Highlighted Provisions:

This bill:

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

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complaint described in this bill;

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

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

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

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

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

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

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

ENACTS:

**36-11-501**, Utah Code Annotated 1953

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

Section 1. Section **36-11-103** is amended to read:

**36-11-103. Licensing requirements.**

(1) (a) Before engaging in any lobbying, a lobbyist shall obtain a license from the lieutenant governor by completing the form required by this section.

(b) The lieutenant governor shall issue licenses to qualified lobbyists.

(c) The lieutenant governor shall prepare a Lobbyist License Application Form that includes:

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- (i) a place for the lobbyist's name and business address;
  - (ii) a place for the following information for each principal for whom the lobbyist works or is hired as an independent contractor:
    - (A) the principal's name;
    - (B) the principal's business address;
    - (C) the name of each public official that the principal employs and the nature of the employment with the public official; and
    - (D) the general purposes, interests, and nature of the principal;
  - (iii) a place for the name and address of the person who paid or will pay the lobbyist's registration fee, if the fee is not paid by the lobbyist;
  - (iv) a place for the lobbyist to disclose:
    - (A) any elected or appointed position that the lobbyist holds in state or local government, if any; and
    - (B) the name of each public official that the lobbyist employs and the nature of the employment with the public official, if any;
  - (v) a place for the lobbyist to disclose the types of expenditures for which the lobbyist will be reimbursed; and
  - (vi) a certification to be signed by the lobbyist that certifies that the information provided in the form is true, accurate, and complete to the best of the lobbyist's knowledge and belief.
- (2) Each lobbyist who obtains a license under this section shall update the licensure information when the lobbyist accepts employment for lobbying by a new client.
- (3) (a) Except as provided in Subsection (4), the lieutenant governor shall grant a lobbying license to an applicant who:
- (i) files an application with the lieutenant governor that contains the information required by this section; and
  - (ii) pays a ~~[\$110]~~ \$60 filing fee.
- (b) A license entitles a person to serve as a lobbyist on behalf of one or more principals and expires on December 31 ~~[of]~~ each ~~[even-numbered]~~ year.
- (4) (a) The lieutenant governor may disapprove an application for a lobbying license:
- (i) if the applicant has been convicted of violating Section 76-8-103, 76-8-107,

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76-8-108, or 76-8-303 within five years before the date of the lobbying license application;

(ii) if the applicant has been convicted of violating Section 76-8-104 or 76-8-304 within one year before the date of the lobbying license application;

(iii) ~~[for]~~ during the term of any suspension imposed under Section 36-11-401;

(iv) if the applicant has not complied with Subsection 36-11-307(6);

~~(fv)v~~ during the term of a suspension ~~for revocation~~ imposed under Subsection ~~36-11-307(7);~~

~~[(iv)](v)~~ 36-11-501(6);

(vi) if the lobbyist fails to pay a fine imposed under Subsection 36-11-501(6);

~~[(iv)](vii)~~ (vii) if, within one year before the date of the lobbying license application, the applicant has been found to have willingly and knowingly:

(A) violated this section or Section 36-11-201, 36-11-301, 36-11-302, 36-11-303, 36-11-304, 36-11-305, or 36-11-403; or

(B) filed a document required by this chapter that the lobbyist knew contained materially false information or omitted material information; or

~~(v)~~ ~~(vi)~~ viii if the applicant is prohibited from becoming a lobbyist under Title 67, Chapter 24, Lobbying Restrictions Act.

(b) An applicant may appeal the disapproval in accordance with the procedures established by the lieutenant governor under this chapter and Title 63G, Chapter 4, Administrative Procedures Act.

(5) The lieutenant governor shall deposit each license fee into the General Fund as a dedicated credit to be used by the lieutenant governor to pay the cost of administering the license program described in this section.

(6) A principal need not obtain a license under this section, but if the principal makes expenditures to benefit a public official without using a lobbyist as an agent to confer those benefits, the principal shall disclose those expenditures as required by Section 36-11-201.

(7) Government officers need not obtain a license under this section, but shall disclose any expenditures made to benefit public officials as required by Section 36-11-201.

(8) Surrender, cancellation, or expiration of a lobbyist license does not absolve the lobbyist of the duty to file the financial reports if the lobbyist is otherwise required to file the reports by Section 36-11-201.

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Section 2. Section **36-11-106** is amended to read:

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

(1) Any person may:

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

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

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

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

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

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

~~(1) (b)~~ (b) The lieutenant governor shall develop and maintain ~~[an ethics training course]~~ online training courses for lobbyists on ethics and harassment.

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

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

(4) The lieutenant governor:

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

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

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

~~(5) (6)~~ (6) ~~A lobbyist shall successfully complete the~~ ~~{}~~ key training exercises of the

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ethics training course ~~{ } training courses described in this section~~ once each ~~{one-year period that begins on January 16 and ends on January 15 of the following } year.~~ ]

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

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

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

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

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

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

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

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

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

~~—— (d) The lieutenant governor shall revoke the lobbying license of a lobbyist who does not comply with Subsections (7)(b)(i) and (ii) within 180 days after shall, within 30 days before the day on which the  ~~lobbyist's license is suspended under Subsection (7)(a).~~~~

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

~~—— (i) applies for, and qualifies to receive, a new or a lobbying license  ~~; } renewal:~~~~

~~—— (ii)  (iii) } a }  ~~completes } successfully complete~~ the training courses described in this section; and~~

~~—— (iii) pays a \$2,000 fine.~~

~~—— (f) The lieutenant governor shall, within one business day after the day on which b) provide to the lieutenant governor  ~~takes action described in this Subsection (7), provide written notice of the action to the secretary of the Senate and the clerk of the House of Representatives} a document, signed by the lobbyist, indicating that the lobbyist has read, understands, and will comply with Subsections 36-11-501 (2) and (3), the Legislature's harassment policy, and the state executive branch's harassment policies.~~~~

(7) A signature described in Subsection (6)(b) may be an electronic signature.

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

### **36-11-401. Penalties.**

(1) Any person who intentionally violates Section 36-11-103, 36-11-201, 36-11-301, 36-11-302, 36-11-303, 36-11-304, 36-11-305, or 36-11-403, is subject to the following penalties:

- (a) an administrative penalty of up to \$1,000 for each violation; and
- (b) for each subsequent violation of that same section within 24 months, either:
  - (i) an administrative penalty of up to \$5,000; or
  - (ii) suspension of the violator's lobbying license for up to one year, if the person is a lobbyist.

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

- (a) an administrative penalty of up to \$1,000 for each violation; or
- (b) suspension of the violator's lobbying license for up to one year, if the person is a lobbyist.

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

(4) (a) When a lobbyist is convicted of violating Section 76-8-103, 76-8-107, 76-8-108, or 76-8-303, the lieutenant governor shall suspend the lobbyist's license for up to five years from the date of the conviction.

(b) When a lobbyist is convicted of violating Section 76-8-104 or 76-8-304, the lieutenant governor shall suspend a lobbyist's license for up to one year from the date of conviction.

(5) (a) Any person who intentionally violates Section 36-11-301, 36-11-302, or 36-11-303 is guilty of a class B misdemeanor.

(b) The lieutenant governor shall suspend the lobbyist license of any person convicted under any of these sections for up to one year.

(c) The suspension shall be in addition to any administrative penalties imposed by the

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lieutenant governor under this section.

(d) Any person with evidence of a possible violation of this chapter may submit that evidence to the lieutenant governor for investigation and resolution.

~~[(6) A lobbyist who does not complete the training required by Section 36-11-307 is subject to the following penalties:]~~

~~[(a) an administrative penalty of up to \$1,000 for each failure to complete the training required by Section 36-11-307; and]~~

~~[(b) for two or more failures to complete the training required by Section 36-11-307 within 24 months, suspension of the lobbyist's lobbying license.]~~

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

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

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

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

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

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

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

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

### **Part 5. Unlawful Harassment**

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

(1) As used in this section:

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

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

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



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

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

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

(d) "Sexual harassment" includes:

(i) unwelcome sexual advances;

(ii) unwelcome requests for sexual favors; or

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

(2) A lobbyist may not:

(a) engage in harassment;

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

(c) retaliate against a complainant, witness, or other person for:

(i) conducting or cooperating with an investigation of an alleged violation of this section; or

(ii) taking action to remediate harassment; or

(d) otherwise interfere with an investigation of an alleged violation of this section.

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

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

(b) a designee of the lieutenant governor, the Legislature, or the executive branch.

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

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

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

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

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

(ii) the executive branch or the executive branch's designee may, if warranted, conduct

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an investigation and take action to remediate any violation.

(5) (a) ~~The {speaker of the House of Representatives, the president of the Senate, or the legislative general counsel may recommend that}~~ lieutenant governor may take an action described in Subsection (6) against a lobbyist if the lieutenant governor ~~{take action under Subsection (6) if a}~~ finds, after giving the lobbyist notice and an opportunity to be heard, that ~~the lobbyist:~~

(i) ~~{is found to have}~~ engaged in a serious violation, or multiple violations, of this section, the Legislature's harassment policy, or a state executive branch's harassment policy;

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

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

(B) conducting or cooperating with an investigation; or

(C) taking action to remediate unlawful harassment; or

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

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

~~—— (i) is found to have engaged in a serious violation, or multiple violations, of a state}~~ governor's website a copy of the Legislature's harassment policy and the executive ~~{branch}~~ branch's harassment ~~{policy};~~

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

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

~~—— (B) conducting or cooperating with an investigation; or~~

~~—— (C) taking action to remediate unlawful harassment; or~~

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

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

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

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

(7) A record that relates to an investigation under this section is a protected record, to the extent permitted by Title 63G, Chapter 2, Government Records Access and Management Act.

(~~7~~8) (a) A lobbyist who is a victim of harassment by an executive worker may file a complaint under the state executive branch's applicable harassment policy.

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