

LOBBYIST DISCLOSURE AND REGULATION ACT

AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Travis M. Seegmiller

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions relating to the Lobbyist Disclosure and Regulation Act.

Highlighted Provisions:

This bill:

- ▶ provides that the fact that a lobbyist, principal, or government officer is a friend of a public official does not excuse the lobbyist, principal, or government officer from complying with the requirements of the Lobbyist Disclosure and Regulation Act;
- ▶ provides that the state auditor will receive reports and impose administrative fines for violations of the Lobbyist Disclosure and Regulation Act if the public official to or for whom an expenditure is made is the governor, the lieutenant governor, or an employee of the Lieutenant Governor's Office; and
- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

36-11-102, as last amended by Laws of Utah 2018, Chapters 19 and 67



28 **36-11-106**, as last amended by Laws of Utah 2002, Chapter 317
29 **36-11-201**, as last amended by Laws of Utah 2015, Chapter 296
30 **36-11-304**, as last amended by Laws of Utah 2015, Chapters 32 and 188
31 **36-11-401**, as last amended by Laws of Utah 2015, Chapter 258

32 ENACTS:

33 **36-11-107**, Utah Code Annotated 1953

34

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

36 Section 1. Section **36-11-102** is amended to read:

37 **36-11-102. Definitions.**

38 As used in this chapter:

39 (1) "Aggregate daily expenditures" means:

40 (a) for a single lobbyist, principal, or government officer, the total of all expenditures
41 made within a calendar day by the lobbyist, principal, or government officer for the benefit of
42 an individual public official;

43 (b) for an expenditure made by a member of a lobbyist group, the total of all
44 expenditures made within a calendar day by every member of the lobbyist group for the benefit
45 of an individual public official; or

46 (c) for a multiclient lobbyist, the total of all expenditures made by the multiclient
47 lobbyist within a calendar day for the benefit of an individual public official, regardless of
48 whether the expenditures were attributed to different clients.

49 (2) "Applicable reporting authority" means:

50 (a) subject to Subsection (2)(b), the lieutenant governor; or

51 (b) the state auditor, if the public official to or for whom an expenditure is made is the
52 governor, the lieutenant governor, or an employee of the Lieutenant Governor's Office.

53 ~~[(2)]~~ (3) "Approved activity" means a tour or a meeting:

54 (a) (i) to which a legislator is invited; and

55 (ii) attendance at which is approved by:

56 (A) the speaker of the House of Representatives, if the public official is a member of
57 the House of Representatives; or

58 (B) the president of the Senate, if the public official is a member of the Senate; or

(b) (i) to which a public official who holds a position in the executive branch of state government is invited; and

(ii) attendance at which is approved by the governor or the lieutenant governor.

~~[(3)]~~ (4) "Capitol hill complex" means the same as that term is defined in Section 63C-9-102.

~~[(4)]~~ (5) (a) "Compensation" means anything of economic value, however designated, that is paid, loaned, granted, given, donated, or transferred to an individual for the provision of services or ownership before any withholding required by federal or state law.

(b) "Compensation" includes:

(i) a salary or commission;

(ii) a bonus;

(iii) a benefit;

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

(v) a payment includable in gross income, as defined in Section 62, Internal Revenue Code, and subject to Social Security deductions, including a payment in excess of the maximum amount subject to deduction under Social Security law;

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

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

~~[(5)]~~ (6) "Compensation payor" means a person who pays compensation to a public official in the ordinary course of business:

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

(b) for services rendered by the public official on behalf of the compensation payor.

~~[(6)]~~ (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.

~~[(7)]~~ (8) "Executive action" means:

(a) a nomination or appointment by the governor;

(b) the proposal, drafting, amendment, enactment, or defeat by a state agency of a rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(c) agency ratemaking proceedings; or

(d) an adjudicative proceeding of a state agency.

~~[(8)]~~ (9) (a) "Expenditure" means any of the items listed in this Subsection ~~[(8)]~~ (9)(a) when given to or for the benefit of a public 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)]~~ (9)(a)(i) through (vii).

(b) "Expenditure" does not mean:

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

(ii) a campaign contribution reported in accordance with Title 20A, Chapter 11, Campaign and Financial Reporting Requirements;

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

(iv) a devise or inheritance;

(v) any item listed in Subsection ~~[(8)]~~ (9)(a) if:

(A) given by a relative;

(B) given by a compensation payor for a purpose solely unrelated to the public official's position as a public official;

(C) the item is food or beverage with a value that does not exceed the food reimbursement rate, and the aggregate daily expenditures for food and beverage do not exceed the food reimbursement rate; or

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

(vi) food or beverage that is provided at an event, a tour, or a meeting to which the following are invited:

- 121 (A) all members of the Legislature;
- 122 (B) all members of a standing or interim committee;
- 123 (C) all members of an official legislative task force;
- 124 (D) all members of a party caucus; or
- 125 (E) all members of a group described in Subsections ~~[(8)]~~ (9)(b)(vi)(A) through (D)
- 126 who are attending a meeting of a national organization whose primary purpose is addressing
- 127 general legislative policy;
- 128 (vii) food or beverage that is provided at an event, a tour, or a meeting to a public
- 129 official who is:
- 130 (A) giving a speech at the event, tour, or meeting;
- 131 (B) participating in a panel discussion at the event, tour, or meeting; or
- 132 (C) presenting or receiving an award at the event, tour, or meeting;
- 133 (viii) a plaque, commendation, or award that:
- 134 (A) is presented in public;
- 135 (B) has the name of the individual receiving the plaque, commendation, or award
- 136 inscribed, etched, printed, or otherwise permanently marked on the plaque, commendation, or
- 137 award;
- 138 (ix) a gift that:
- 139 (A) is an item that is not consumable and not perishable;
- 140 (B) a public official accepts on behalf of the state;
- 141 (C) the public official promptly remits to the state;
- 142 (D) a property administrator does not reject under Section 63G-23-103;
- 143 (E) does not constitute a direct benefit to the public official before or after the public
- 144 official remits the gift to the state; and
- 145 (F) after being remitted to the state, is not transferred, divided, distributed, or used to
- 146 distribute a gift or benefit to one or more public officials in a manner that would otherwise
- 147 qualify the gift as an expenditure if the gift were given directly to a public official;
- 148 (x) a publication having a cash value not exceeding \$30;
- 149 (xi) admission to or attendance at an event, a tour, or a meeting, the primary purpose of
- 150 which is:
- 151 (A) to solicit contributions reportable under:

152 (I) Title 20A, Chapter 11, Campaign and Financial Reporting Requirements; or
153 (II) 2 U.S.C. Sec. 434; or
154 (B) charitable solicitation, as defined in Section 13-22-2;
155 (xii) travel to, lodging at, food or beverage served at, and admission to an approved
156 activity;
157 (xiii) sponsorship of an event that is an approved activity;
158 (xiv) notwithstanding Subsection ~~[(8)]~~ (9)(a)(vii), admission to, attendance at, or travel
159 to or from an event, a tour, or a meeting:
160 (A) that is sponsored by a governmental entity; or
161 (B) that is widely attended and related to a governmental duty of a public official; or
162 (xv) travel to a widely attended tour or meeting related to a governmental duty of a
163 public official if that travel results in a financial savings to the state.
164 ~~[(9)]~~ (10) "Food reimbursement rate" means the total amount set by the director of the
165 Division of Finance, by rule, under Section 63A-3-107, for in-state meal reimbursement, for an
166 employee of the executive branch, for an entire day.
167 ~~[(10)]~~ (11) (a) "Government officer" means:
168 (i) an individual elected to a position in state or local government, when acting within
169 the government officer's official capacity; or
170 (ii) an individual appointed to or employed in a full-time position by state or local
171 government, when acting within the scope of the individual's employment.
172 (b) "Government officer" does not mean a member of the legislative branch of state
173 government.
174 ~~[(11)]~~ (12) "Immediate family" means:
175 (a) a spouse;
176 (b) a child residing in the household; or
177 (c) an individual claimed as a dependent for tax purposes.
178 ~~[(12)]~~ (13) "Legislative action" means:
179 (a) a bill, resolution, amendment, nomination, veto override, or other matter pending or
180 proposed in either house of the Legislature or its committees or requested by a legislator; and
181 (b) the action of the governor in approving or vetoing legislation.
182 ~~[(13)]~~ (14) "Lobbying" means communicating with a public official for the purpose of

183 influencing the passage, defeat, amendment, or postponement of legislative or executive action.

184 ~~[(14)]~~ (15) (a) "Lobbyist" means:

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

186 (ii) an individual who contracts for economic consideration, other than reimbursement
187 for reasonable travel expenses, with a principal to lobby a public official.

188 (b) "Lobbyist" does not include:

189 (i) a government officer;

190 (ii) a member or employee of the legislative branch of state government;

191 (iii) a person, including a principal, while appearing at, or providing written comments
192 to, a hearing conducted in accordance with Title 63G, Chapter 3, Utah Administrative
193 Rulemaking Act, or Title 63G, Chapter 4, Administrative Procedures Act;

194 (iv) a person participating on or appearing before an advisory or study task force,
195 commission, board, or committee, constituted by the Legislature or any agency or department
196 of state government, except legislative standing, appropriation, or interim committees;

197 (v) a representative of a political party;

198 (vi) an individual representing a bona fide church solely for the purpose of protecting
199 the right to practice the religious doctrines of the church, unless the individual or church makes
200 an expenditure that confers a benefit on a public official;

201 (vii) a newspaper, television station or network, radio station or network, periodical of
202 general circulation, or book publisher for the purpose of publishing news items, editorials,
203 other comments, or paid advertisements that directly or indirectly urge legislative or executive
204 action;

205 (viii) an individual who appears on the individual's own behalf before a committee of
206 the Legislature or an agency of the executive branch of state government solely for the purpose
207 of testifying in support of or in opposition to legislative or executive action; or

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

209 (A) interacts with a public official, in the public official's capacity as a public official,
210 while accompanied by a registered lobbyist who is lobbying in relation to the subject of the
211 interaction or while presenting at a legislative committee meeting at the same time that the
212 registered lobbyist is attending another legislative committee meeting; and

213 (B) does not make an expenditure for, or on behalf of, a public official in relation to the

interaction or during the period of interaction.

~~[(15)]~~ (16) "Lobbyist group" means two or more lobbyists, principals, government officers, or any combination of lobbyists, principals, and officers who each contribute a portion of an expenditure made to benefit a public official or member of the public official's immediate family.

~~[(16)]~~ (17) "Meeting" means a gathering of people to discuss an issue, receive instruction, or make a decision, including a conference, seminar, or summit.

~~[(17)]~~ (18) "Multiclient lobbyist" means a single lobbyist, principal, or government officer who represents two or more clients and divides the aggregate daily expenditure made to benefit a public official or member of the public official's immediate family between two or more of those clients.

~~[(18)]~~ (19) "Principal" means a person that employs an individual to perform lobbying, either as an employee or as an independent contractor.

~~[(19)]~~ (20) "Public official" means:

(a) (i) a member of the Legislature;
(ii) an individual elected to a position in the executive branch of state government; or
(iii) an individual appointed to or employed in a position in the executive or legislative branch of state government if that individual:

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

(B) drafts legislation or makes rules;

(C) determines rates or fees; or

(D) makes adjudicative decisions; or

(b) an immediate family member of a person described in Subsection ~~[(19)]~~ (20)(a).

~~[(20)]~~ (21) "Public official type" means a notation to identify whether a public official is:

(a) (i) a member of the Legislature;

(ii) an individual elected to a position in the executive branch of state government;

(iii) an individual appointed to or employed in a position in the legislative branch of state government who meets the definition of public official under Subsection ~~[(19)]~~ (20)(a)(iii); or

(iv) an individual appointed to or employed in a position in the executive branch of

state government who meets the definition of public official under Subsection ~~[(19)]~~
(20)(a)(iii); or

(b) an immediate family member of a person described in Subsection ~~[(19)]~~ (20)(a).

~~[(21)]~~ (22) "Quarterly reporting period" means the three-month period covered by each
financial report required under Subsection 36-11-201(2)(a).

~~[(22)]~~ (23) "Related person" means a person, agent, or employee who knowingly and
intentionally assists a lobbyist, principal, or government officer in lobbying.

~~[(23)]~~ (24) "Relative" means a spouse, child, parent, grandparent, grandchild, brother,
sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, first cousin, or
spouse of any of these individuals.

~~[(24)]~~ (25) "Tour" means visiting a location, for a purpose relating to the duties of a
public official, and not primarily for entertainment, including:

(a) viewing a facility;

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

(c) assessing a circumstance in relation to which a public official may need to take
action within the scope of the public official's duties.

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

36-11-106. Reports are public documents.

(1) Any person may:

(a) without charge, inspect a license application or financial report filed with the
~~[lieutenant governor]~~ applicable reporting authority in accordance with this chapter; and

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

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

Section 3. Section **36-11-107** is enacted to read:

36-11-107. Friendship not an exception.

The fact that a lobbyist, principal, or government officer is a friend of a public official
does not excuse the lobbyist, principal, or government officer from complying with the
requirements of this chapter in relation to the public official.

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

36-11-201. 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~~] applicable reporting authority 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 with the applicable reporting authority 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~~] applicable reporting authority 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 public official during the quarterly reporting period;

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

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

- 307 (i) the total amount of expenditures made to benefit any public official during the last
308 calendar year; and
- 309 (ii) the total amount of expenditures made, by the type of public official, during the last
310 calendar year;
- 311 (d) a disclosure of each expenditure made during the quarterly reporting period to
312 reimburse or pay for travel or lodging for a public official, including:
- 313 (i) each travel destination and each lodging location;
- 314 (ii) the name of each public official who benefitted from the expenditure on travel or
315 lodging;
- 316 (iii) the public official type of each public official named;
- 317 (iv) for each public official named, a listing of the amount and purpose of each
318 expenditure made for travel or lodging; and
- 319 (v) the total amount of expenditures listed under Subsection (3)(d)(iv);
- 320 (e) a disclosure of aggregate daily expenditures greater than \$10 made during the
321 quarterly reporting period including:
- 322 (i) the date and purpose of the expenditure;
- 323 (ii) the location of the expenditure;
- 324 (iii) the name of any public official benefitted by the expenditure;
- 325 (iv) the type of the public official benefitted by the expenditure; and
- 326 (v) the total monetary worth of the benefit that the expenditure conferred on any public
327 official;
- 328 (f) for each public official who was employed by the lobbyist, principal, or government
329 officer, a list that provides:
- 330 (i) the name of the public official; and
- 331 (ii) the nature of the employment with the public official;
- 332 (g) each bill or resolution, by number and short title, on behalf of which the lobbyist,
333 principal, or government officer made an expenditure to a public official;
- 334 (h) a description of each executive action on behalf of which the lobbyist, principal, or
335 government officer made an expenditure to a public official;
- 336 (i) the general purposes, interests, and nature of the entities that the lobbyist, principal,
337 or government officer filing the report represents; and

(j) 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 public official 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]~~ applicable reporting authority shall:

(a) (i) develop a preprinted form for a financial report required by this section; and

(ii) make copies of the form available to a lobbyist, principal, or government officer who requests a form; and

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

(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]~~ applicable reporting authority that:

(i) states:

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

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

(ii) in the case of a lobbyist, states that the lobbyist is surrendering the lobbyist's license;

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

(iv) 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 and licensing requirements of this chapter.

(b) Except as provided in Subsection (1)(a)(ii), a person that fails to renew the lobbyist's license or otherwise ceases to be licensed is required to file a financial report quarterly with the applicable reporting authority until the person files the statement required by Subsection (6)(a).

Section 5. Section **36-11-304** is amended to read:

36-11-304. 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 36-11-201:

- (i) food;
- (ii) beverage;
- (iii) travel;
- (iv) lodging; or
- (v) admission to or attendance at a tour or meeting that is not an approved activity; or
- (b) except as provided in Section 36-11-107, if the expenditure is made for a purpose

solely unrelated to the public official's position as a public official.

Section 6. 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, imposed by the applicable reporting authority, 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, imposed by the applicable reporting authority, of up to \$5,000; or

(ii) suspension of the violator's lobbying license, by the lieutenant governor, 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, imposed by the applicable reporting authority, of up to \$1,000 for each violation; or

(b) suspension of the violator's lobbying license, by the lieutenant governor, 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 to the applicable reporting authority for each day that the report is late.

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

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

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

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

(c) The suspension shall be in addition to any administrative penalties imposed by the ~~[lieutenant governor]~~ applicable reporting authority under this section.

(d) Any person with evidence of a possible violation of this chapter may submit that evidence to the ~~[lieutenant governor]~~ applicable reporting authority 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, imposed by the lieutenant governor, 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 by the lieutenant governor.

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