

1 State of Arkansas
2 94th General Assembly
3 Regular Session, 2023
4

A Bill

HOUSE BILL 1149

5 By: Representative Cavanaugh
6

For An Act To Be Entitled

8 AN ACT TO PROHIBIT GIFTS FROM LOBBYISTS TO CABINET-
9 LEVEL DEPARTMENT SECRETARIES; TO AMEND THE LAW
10 CONCERNING THE ARKANSAS ETHICS COMMISSION; TO AMEND
11 THE LAW RESULTING FROM INITIATED ACT 1 OF 1988; AND
12 FOR OTHER PURPOSES.
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Subtitle

15 TO PROHIBIT GIFTS FROM LOBBYISTS TO
16 CABINET-LEVEL DEPARTMENT SECRETARIES; TO
17 AMEND THE LAW CONCERNING THE ARKANSAS
18 ETHICS COMMISSION; AND TO AMEND THE LAW
19 RESULTING FROM INITIATED ACT 1 OF 1988.
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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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25 SECTION 1. Arkansas Code Title 21, Chapter 8, Subchapter 3, is amended
26 to add an additional section to read as follows:

27 21-8-311. Gifts from lobbyists to secretaries of cabinet-level
28 departments.

29 (a) Persons appointed, hired, or serving in the following positions in
30 the state shall not knowingly solicit or accept a gift from a lobbyist, a
31 person acting on behalf of a lobbyist, or a person employing or contracting
32 with a lobbyist:

- 33 (1) Secretary of the Department of Agriculture;
34 (2) Secretary of the Department of Commerce;
35 (3) Secretary of the Department of Corrections;
36 (4) Secretary of the Department of Education;



- 1 (5) Secretary of the Department of Energy and Environment;
- 2 (6) Secretary of the Department of Finance and Administration;
- 3 (7) Secretary of the Department of Health;
- 4 (8) Secretary of the Department of Human Services;
- 5 (9) Secretary of the Department of Inspector General;
- 6 (10) Secretary of the Department of Labor and Licensing;
- 7 (11) Secretary of the Department of the Military;
- 8 (12) Secretary of the Department of Parks, Heritage, and
- 9 Tourism;
- 10 (13) Secretary of the Department of Public Safety;
- 11 (14) Secretary of the Department of Transformation and Shared
- 12 Services; and
- 13 (15) Secretary of the Department of Veterans Affairs.

14 (b)(1) A person who knowingly violates this section is guilty of a
 15 Class B misdemeanor.

16 (2) The Arkansas Ethics Commission shall:

17 (A) Promulgate rules to implement and administer this
 18 section as necessary;

19 (B) Issue advisory opinions and guidelines on the
 20 requirements of this section; and

21 (C) Investigate complaints of alleged violations of this
 22 section and issue findings and disciplinary action for those complaints.

23 (3)(A) It is an affirmative defense to prosecution or
 24 disciplinary action under subdivisions (b)(1) and (2) of this section that a
 25 person appointed, hired, or serving in a position under subsection (a) of
 26 this section takes one (1) of the following actions within thirty (30) days
 27 of discovering or learning of an unintentional violation of this section:

28 (i) Returns the gift to the donor; or

29 (ii) If the gift is not returnable, pays the donor
 30 consideration that is equal to or greater than the value of the gift.

31 (B)(i) The commission shall not proceed with an
 32 investigation of an alleged violation of this section if the commission
 33 determines that a person would be eligible to raise the affirmative defense
 34 under subdivision (b)(3)(A) of this section.

35 (ii) If the commission does not proceed with an
 36 investigation of an alleged violation under subdivision (b)(3)(B)(i) of this

1 section, the person shall not be considered to have committed a violation.

2 (C) This subdivision (b)(3) does not authorize a person to
 3 knowingly solicit or accept a gift in violation of this section.

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 5 SECTION 2. Arkansas Code § 21-8-402, resulting from Initiated Act 1 of
 6 1988, is amended to read as follows:

7 21-8-402. Definitions.

8 As used in this subchapter and § 21-8-311, § 21-8-601 et seq., § 21-8-
 9 701 et seq., and § 21-8-801 et seq., unless the context otherwise requires:

10 (1)(A) “Administrative action” means any decision on, or
 11 proposal, consideration, or making of any rule, ratemaking proceeding, or
 12 policy action by a governmental body.

13 (B) “Administrative action” does not include ministerial
 14 action;

15 (2) “Business” means any corporation, partnership, sole
 16 proprietorship, firm, enterprise, franchise, association, organization, self-
 17 employed individual, receivership, trust, or any legal entity through which
 18 business is conducted;

19 (3) “County government” means any office, department,
 20 commission, council, board, bureau, committee, legislative body, agency, or
 21 other establishment of a county;

22 (4) “Family” means an individual’s spouse, children of that
 23 individual or his or her spouse, or brothers, sisters, or parents of the
 24 individual or his or her spouse;

25 (5)(A) “Gift” means any payment, entertainment, advance,
 26 services, or anything of value, unless consideration of equal or greater
 27 value has been given therefor.

28 (B) The term “gift” does not include:

29 (i)(a) Informational material such as books,
 30 reports, pamphlets, calendars, or periodicals informing a public servant
 31 regarding his or her official duties.

32 (b) Payments for travel or reimbursement for
 33 any expenses are not informational material;

34 (ii) The giving or receiving of food, lodging, or
 35 travel which bears a relationship to the public servant’s office and when
 36 appearing in an official capacity;

1 (iii) Gifts which are not used and which, within
 2 thirty (30) days after receipt, are returned to the donor;

3 (iv) Gifts from an individual's spouse, child,
 4 parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-
 5 law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the
 6 spouse of any of these persons, unless the person is acting as an agent or
 7 intermediary for any person not covered by this subdivision (5)(B)(iv);

8 (v) Campaign contributions;

9 (vi) Any devise or inheritance;

10 (vii)(a) Anything with a value of one hundred
 11 dollars (\$100) or less.

12 (b) The value of an item shall be considered
 13 to be less than one hundred dollars (\$100) if the public servant reimburses
 14 the person from whom the item was received any amount over one hundred
 15 dollars (\$100) and the reimbursement occurs within ten (10) days from the
 16 date the item was received;

17 (viii) Wedding presents and engagement gifts;

18 (ix) A monetary or other award presented to an
 19 employee of a public school district, the Arkansas School for the Blind, the
 20 Arkansas School for the Deaf, the Arkansas School for Mathematics, Sciences,
 21 and the Arts, a university, a college, a technical college, a technical
 22 institute, a comprehensive life-long learning center, or a community college
 23 in recognition of the employee's contribution to education;

24 (x) Tickets to charitable fund-raising events held
 25 within this state by a nonprofit organization which is exempt from taxation
 26 under section 501(c)(3) of the Internal Revenue Code;

27 (xi) A personalized award, plaque, or trophy with a
 28 value of one hundred and fifty dollars (\$150) or less;

29 (xii) An item which appointed or elected members of
 30 a specific governmental body purchase with their own personal funds and
 31 present to a fellow member of that governmental body in recognition of public
 32 service;

33 (xiii) Food or beverages provided at a conference-
 34 scheduled event that is part of the program of the conference;

35 (xiv) Food or beverages provided in return for
 36 participation in a bona fide panel, seminar, or speaking engagement at which

1 the audience is a civic, social, or cultural organization or group;

2 (xv)(a) A monetary or other award publicly presented
3 to an employee of state government in recognition of his or her contributions
4 to the community and State of Arkansas when the presentation is made by the
5 employee's supervisors or peers, individually or through a nonprofit
6 organization which is exempt from taxation under section 501(c)(3) of the
7 Internal Revenue Code, and the employee's receipt of the award would not
8 result in or create the appearance of the employee using his or her position
9 for private gain, giving preferential treatment to any person, or losing
10 independence or impartiality.

11 (b) The exception in subdivision (5)(B)(xv)(a)
12 of this section shall not apply to an award presented to an employee of state
13 government by a person having economic interests which may be affected by the
14 performance or nonperformance of the employee's duties or responsibilities;
15 and

16 (xvi) Anything of value provided by a political
17 party under § 7-1-101 or § 7-7-205 when serving as the host of the following
18 events to all attendees as part of attendance at the event:

19 (a) The official swearing-in, inaugural, and
20 recognition events of constitutional officers and members of the General
21 Assembly; and

22 (b) An official event of a recognized
23 political party so long as all members of either house of the General
24 Assembly affiliated with the recognized political party are invited to the
25 official event;

26 (6) "Governmental body" means any office, department,
27 commission, council, board, committee, legislative body, agency, or other
28 establishment of the executive, judicial, or legislative branch of the state,
29 municipality, county, school district, improvement district, or any political
30 district or subdivision thereof;

31 (7)(A) "Income" or "compensation" means any money or anything of
32 value received or to be received as a claim for future services, whether in
33 the form of a retainer, fee, salary, expense, allowance, forbearance,
34 forgiveness, interest, dividend, royalty, rent, or any other form of
35 recompense or any combination thereof. It includes a payment made under
36 obligation for services or other value received.

1 (B) The term "compensation" does not include anything of
2 value presented to an employee of a public school district, the Arkansas
3 School for the Blind, the Arkansas School for the Deaf, the Arkansas School
4 for Mathematics, Sciences, and the Arts, a university, a college, a technical
5 college, a technical institute, a comprehensive life-long learning center, or
6 a community college in recognition of the employee's contribution to
7 education;

8 (8) "Legislative action" means introduction, sponsorship,
9 consideration, debate, amendment, passage, defeat, approval, veto, or any
10 other official action or nonaction on any bill, ordinance, law, resolution,
11 amendment, nomination, appointment, report, or other matter pending or
12 proposed before a committee or house of the General Assembly, a quorum court,
13 or a city council or board of directors of a municipality;

14 (9) "Legislator" means any person who is a member of:

15 (A) The General Assembly;

16 (B) A quorum court of any county;

17 (C) The city council or board of directors of any
18 municipality; or

19 (D) A member of a school district board of directors;

20 (10) "Lobbying" means communicating directly or soliciting
21 others to communicate with any public servant with the purpose of influencing
22 legislative action or administrative action;

23 (11) "Lobbyist" means a person who:

24 (A) Receives income or reimbursement in a combined amount
25 of four hundred dollars (\$400) or more in a calendar quarter for lobbying one
26 (1) or more governmental bodies;

27 (B) Expends four hundred dollars (\$400) or more in a
28 calendar quarter for lobbying one (1) or more governmental bodies, excluding
29 the cost of personal travel, lodging, meals, or dues; or

30 (C) Expends four hundred dollars (\$400) or more in a
31 calendar quarter, including postage, for the express purpose of soliciting
32 others to communicate with any public servant to influence any legislative
33 action or administrative action of one (1) or more governmental bodies unless
34 the communication has been filed with the Secretary of State or the
35 communication has been published in the news media. If the communication is
36 filed with the Secretary of State, the filing shall include the approximate

1 number of recipients;

2 (12) "Municipal government" means any office, department,
3 commission, council, board, bureau, committee, legislative body, agency, or
4 other establishment of a municipality;

5 (13) "Official capacity" means activities which:

6 (A) Arise solely because of the position held by the
7 public servant;

8 (B) Would be subject to expense reimbursement by the
9 agency with which the public servant is associated; and

10 (C) Involve matters which fall within the official
11 responsibility of the public servant;

12 (14) "Person" means a business, individual, corporation, union,
13 association, firm, partnership, committee, club, or other organization or
14 group of persons;

15 (15)(A) "Public appointee" means an individual who is appointed
16 to a governmental body.

17 (B) "Public appointee" shall not include an individual
18 appointed to an elective office;

19 (16)(A) "Public employee" means an individual who is employed by
20 a governmental body or who is appointed to serve a governmental body.

21 (B) "Public employee" shall not include public officials
22 or public appointees;

23 (17)(A) "Public official" means a legislator or any other person
24 holding an elective office of any governmental body, whether elected or
25 appointed to the office, and shall include such persons during the time
26 period between the date they were elected and the date they took office.

27 (B) "Public official" includes without limitation a member
28 of a school district board of directors;

29 (18) "Public servant" means all public officials, public
30 employees, and public appointees;

31 (19) "Registered lobbyist" means a lobbyist registered pursuant
32 to the provisions of this subchapter and § 21-8-601 et seq., § 21-8-701 et
33 seq., and § 21-8-801 et seq.;

34 (20) "Special event" means a planned activity to which a
35 specific governmental body or identifiable group of public servants is
36 invited; and

1 (21) "State government" means any office, department,
 2 commission, council, board, bureau, committee, legislative body, agency, or
 3 other establishment of the State of Arkansas.

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 5 SECTION 3. DO NOT CODIFY. Rules.

6 (a) When adopting the initial rules required under this act, the
 7 Arkansas Ethics Commission shall file the final rules with the Secretary of
 8 State for adoption under § 25-15-204(f):

9 (1) On or before January 1, 2024; or

10 (2) If approval under § 10-3-309 has not occurred by January 1,
 11 2024, as soon as practicable after approval under § 10-3-309.

12 (b) The commission shall file the proposed rules with the Legislative
 13 Council under § 10-3-309(c) sufficiently in advance of January 1, 2024, so
 14 that the Legislative Council may consider the rules for approval before
 15 January 1, 2024.