

GIFTS TO THE STATE AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karen Kwan

Senate Sponsor: _____

LONG TITLE

General Description:

This bill addresses a public official's acceptance of a gift on behalf of the state.

Highlighted Provisions:

This bill:

▶ under certain conditions, exempts from the expenditure provisions of the Lobbyist Disclosure and Regulation Act a gift received by a public official on behalf of the state; and

▶ establishes provisions for the retention or disposal of a gift that a public official accepts on behalf of the state.

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 2015, Chapters 32, 188, and 264

ENACTS:

63G-22-101, Utah Code Annotated 1953

63G-22-102, Utah Code Annotated 1953

63G-22-103, Utah Code Annotated 1953



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

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

36-11-102. 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 public 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 public 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 public official, regardless of whether the expenditures were attributed to different clients.

(2) "Approved activity" means a tour or a meeting:

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

(ii) attendance at which is approved by:

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

(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) "Capitol hill complex" means the same as that term is defined in Section **63C-9-102**.

(4) (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;

- 59 (ii) a bonus;
- 60 (iii) a benefit;
- 61 (iv) a contribution to a retirement program or account;
- 62 (v) a payment includable in gross income, as defined in Section 62, Internal Revenue
63 Code, and subject to Social Security deductions, including a payment in excess of the
64 maximum amount subject to deduction under Social Security law;
- 65 (vi) an amount that the individual authorizes to be deducted or reduced for salary
66 deferral or other benefits authorized by federal law; or
- 67 (vii) income based on an individual's ownership interest.
- 68 (5) "Compensation payor" means a person who pays compensation to a public official
69 in the ordinary course of business:
- 70 (a) because of the public official's ownership interest in the compensation payor; or
- 71 (b) for services rendered by the public official on behalf of the compensation payor.
- 72 (6) "Event" means entertainment, a performance, a contest, or a recreational activity
73 that an individual participates in or is a spectator at, including a sporting event, an artistic
74 event, a play, a movie, dancing, or singing.
- 75 (7) "Executive action" means:
- 76 (a) a nomination or appointment by the governor;
- 77 (b) the proposal, drafting, amendment, enactment, or defeat by a state agency of a rule
78 made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
- 79 (c) agency ratemaking proceedings; or
- 80 (d) an adjudicative proceeding of a state agency.
- 81 (8) (a) "Expenditure" means any of the items listed in this Subsection (8)(a) when
82 given to or for the benefit of a public official unless consideration of equal or greater value is
83 received:
- 84 (i) a purchase, payment, or distribution;
- 85 (ii) a loan, gift, or advance;
- 86 (iii) a deposit, subscription, or forbearance;
- 87 (iv) services or goods;
- 88 (v) money;
- 89 (vi) real property;

- 90 (vii) a ticket or admission to an event; or
- 91 (viii) a contract, promise, or agreement, whether or not legally enforceable, to provide
- 92 any item listed in Subsections (8)(a)(i) through (vii).
- 93 (b) "Expenditure" does not mean:
- 94 (i) a commercially reasonable loan made in the ordinary course of business;
- 95 (ii) a campaign contribution reported in accordance with Title 20A, Chapter 11,
- 96 Campaign and Financial Reporting Requirements;
- 97 (iii) printed informational material that is related to the performance of the recipient's
- 98 official duties;
- 99 (iv) a devise or inheritance;
- 100 (v) any item listed in Subsection (8)(a) if:
- 101 (A) given by a relative;
- 102 (B) given by a compensation payor for a purpose solely unrelated to the public
- 103 official's position as a public official;
- 104 (C) the item is food or beverage with a value that does not exceed the food
- 105 reimbursement rate, and the aggregate daily expenditures for food and beverage do not exceed
- 106 the food reimbursement rate; or
- 107 (D) the item is not food or beverage, has a value of less than \$10, and the aggregate
- 108 daily expenditures do not exceed \$10;
- 109 (vi) food or beverage that is provided at an event, a tour, or a meeting to which the
- 110 following are invited:
- 111 (A) all members of the Legislature;
- 112 (B) all members of a standing or interim committee;
- 113 (C) all members of an official legislative task force;
- 114 (D) all members of a party caucus; or
- 115 (E) all members of a group described in Subsections (8)(b)(vi)(A) through (D) who are
- 116 attending a meeting of a national organization whose primary purpose is addressing general
- 117 legislative policy;
- 118 (vii) food or beverage that is provided at an event, a tour, or a meeting to a public
- 119 official who is:
- 120 (A) giving a speech at the event;

- 121 (B) participating in a panel discussion at the event; or
122 (C) presenting or receiving an award at the event;
123 (viii) a plaque, commendation, or award that:
124 (A) is presented in public;
125 (B) has the name of the individual receiving the plaque, commendation, or award
126 inscribed, etched, printed, or otherwise permanently marked on the plaque, commendation, or
127 award;
128 (ix) a gift that:
129 (A) is an item that is not consumable and not perishable;
130 (B) a public official accepts on behalf of the state;
131 (C) the public official promptly remits to the state;
132 (D) a property administrator does not reject under Section [63G-22-103](#);
133 (E) does not constitute a direct benefit to the public official before or after the public
134 official remits the gift to the state; and
135 (F) after being remitted to the state, is not transferred, divided, distributed, or used to
136 distribute a gift or benefit to one or more public officials in a manner that would otherwise
137 qualify the gift as an expenditure if the gift were given directly to a public official;
138 [~~(ix)~~] (x) a publication having a cash value not exceeding \$30;
139 [~~(x)~~] (xi) admission to or attendance at an event, a tour, or a meeting, the primary
140 purpose of which is:
141 (A) to solicit contributions reportable under:
142 (I) Title 20A, Chapter 11, Campaign and Financial Reporting Requirements; or
143 (II) 2 U.S.C. Sec. 434; or
144 (B) charitable solicitation, as defined in Section [13-22-2](#);
145 [~~(xi)~~] (xii) travel to, lodging at, food or beverage served at, and admission to an
146 approved activity;
147 [~~(xii)~~] (xiii) sponsorship of an event that is an approved activity;
148 [~~(xiii)~~] (xiv) notwithstanding Subsection (8)(a)(vii), admission to, attendance at, or
149 travel to or from an event, a tour, or a meeting:
150 (A) that is sponsored by a governmental entity; or
151 (B) that is widely attended and related to a governmental duty of a public official; or

152 [~~(xiv)~~] (xv) travel to a widely attended tour or meeting related to a governmental duty
153 of a public official if that travel results in a financial savings to the state.

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

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

158 (i) an individual elected to a position in state or local government, when acting within
159 the government officer's official capacity; or

160 (ii) an individual appointed to or employed in a full-time position by state or local
161 government, when acting within the scope of the individual's employment.

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

164 (11) "Immediate family" means:

165 (a) a spouse;

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

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

168 (12) "Legislative action" means:

169 (a) a bill, resolution, amendment, nomination, veto override, or other matter pending or
170 proposed in either house of the Legislature or its committees or requested by a legislator; and

171 (b) the action of the governor in approving or vetoing legislation.

172 (13) "Lobbying" means communicating with a public official for the purpose of
173 influencing the passage, defeat, amendment, or postponement of legislative or executive action.

174 (14) (a) "Lobbyist" means:

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

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

178 (b) "Lobbyist" does not include:

179 (i) a government officer;

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

181 (iii) a person, including a principal, while appearing at, or providing written comments
182 to, a hearing conducted in accordance with Title 63G, Chapter 3, Utah Administrative

183 Rulemaking Act or Title 63G, Chapter 4, Administrative Procedures Act;

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

187 (v) a representative of a political party;

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

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

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

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

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

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

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

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

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

214 those clients.

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

217 (19) "Public official" means:

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

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

220 (iii) an individual appointed to or employed in a position in the executive or legislative
221 branch of state government if that individual:

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

223 (B) drafts legislation or makes rules;

224 (C) determines rates or fees; or

225 (D) makes adjudicative decisions; or

226 (b) an immediate family member of a person described in Subsection (19)(a).

227 (20) "Public official type" means a notation to identify whether a public official is:

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

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

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

232 (iv) an individual appointed to or employed in a position in the executive branch of
233 state government who meets the definition of public official under Subsection (19)(a)(iii); or

234 (b) an immediate family member of a person described in Subsection (19)(a).

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

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

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

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

244 (a) viewing a facility;

- 245 (b) viewing the sight of a natural disaster; or
246 (c) assessing a circumstance in relation to which a public official may need to take
247 action within the scope of the public official's duties.

248 Section 2. Section **63G-22-101** is enacted to read:

249 **CHAPTER 22. PROPERTY DONATED TO STATE BY PUBLIC OFFICIAL**
250 **63G-22-101. Title.**

251 This chapter is known as "Property Donated to State by Public Official."

252 Section 3. Section **63G-22-102** is enacted to read:

253 **63G-22-102. Definitions.**

254 As used in this chapter:

255 (1) "Public official" means the same as that term is defined in Section [36-11-102](#).

256 (2) "Public official" includes a judge or justice of:

257 (a) the Utah Supreme Court;

258 (b) the Utah Court of Appeals; or

259 (c) a district court.

260 Section 4. Section **63G-22-103** is enacted to read:

261 **63G-22-103. Gifts to the state.**

262 (1) A public official may accept a gift on behalf of the state if the public official, after
263 accepting the gift, promptly:

264 (a) notifies the property administrator appointed under Subsection (2) for the branch of
265 state government with which the public official is affiliated of the public official's acceptance
266 of the gift; and

267 (b) remits the gift to the branch of state government with which the public official is
268 affiliated.

269 (2) The following persons shall select a property administrator for the person's branch
270 of state government:

271 (a) for the executive branch, the governor or the governor's designee;

272 (b) for the legislative branch, the Legislative Management Committee or the
273 Legislative Management Committee's designee; and

274 (c) for the judicial branch, the chief justice of the Supreme Court or the chief justice's
275 designee.

- 276 (3) A property administrator appointed under Subsection (2):
277 (a) shall manage the retention or disposal of a gift that a public official remits to the
278 state under Subsection (1); and
279 (b) may reject a gift that a public official accepts on behalf of the state.
280 (4) If a property administrator rejects a gift under Subsection (3)(b), the public official
281 who accepted the gift shall promptly:
282 (a) return the gift; or
283 (b) dispose of the gift in a manner authorized by law.
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Legislative Review Note
Office of Legislative Research and General Counsel