

1 **FINANCIAL DISCLOSURE AND CONFLICT**
2 **OF INTEREST AMENDMENTS**

3 2010 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Gregory H. Hughes**

6 Senate Sponsor: Wayne L. Niederhauser

7
8 **LONG TITLE**

9 **General Description:**

10 This bill modifies and enacts provisions of the Utah Code that relate to financial
11 disclosures and the declaration of conflicts of interest by certain public officeholders
12 and candidates.

13 **Highlighted Provisions:**

14 This bill:

- 15 ▶ requires candidates for the following offices to file a financial disclosure at the time
16 of filing a declaration of candidacy:
- 17 • governor, lieutenant governor, state auditor, state treasurer, and attorney general;
 - 18 • the Legislature; and
 - 19 • the State Board of Education;
- 20 ▶ prohibits a filing officer from accepting a declaration of candidacy unless a financial
21 disclosure has been filed;
- 22 ▶ provides procedures and requirements for filing financial disclosures;
- 23 ▶ requires a candidate's financial disclosure to be made publicly available:
- 24 • at the filing officer's place of business; and
 - 25 • on the Statewide Electronic Voter Information Website administered by the
26 lieutenant governor;
- 27 ▶ modifies provisions of the criminal statute that regulate failure to disclose conflicts



28 of interest;

- 29 ▶ provides and modifies definitions;
- 30 ▶ requires the following officeholders to file a financial disclosure at specified times:
 - 31 • governor, lieutenant governor, state auditor, state treasurer, and attorney general;
 - 32 • members of the Legislature; and
 - 33 • members of the State Board of Education;
- 34 ▶ specifies what information the financial disclosure must contain;
- 35 ▶ provides a criminal penalty if a regulated officeholder engages in an official action

36 that constitutes a conflict of interest if:

- 37 • the conflict of interest has not been provided on the financial disclosure; and
- 38 • the officeholder fails to publicly declare a conflict of interest at the time of the

39 action;

- 40 ▶ requires conflicts of interest that are declared at the time of the action to be recorded
- 41 on official records;

- 42 ▶ requires blank financial disclosure forms to be available for regulated officeholders
- 43 and the public;

- 44 ▶ requires financial disclosures that are filed by officeholders to be made available:

- 45 • on the Internet;
- 46 • at the lieutenant governor's office, for executive branch officeholders;
- 47 • at the offices for the Senate or House of Representatives, for legislators; and

- 48 ▶ makes technical changes.

49 **Monies Appropriated in this Bill:**

50 None

51 **Other Special Clauses:**

52 This bill provides an immediate effective date.

53 **Utah Code Sections Affected:**

54 AMENDS:

55 **20A-9-201**, as last amended by Laws of Utah 2008, Chapters 11, 13, 14, and 225

56 **76-8-109**, as last amended by Laws of Utah 1995, Chapter 191

57 ENACTS:

58 **20A-11-1501**, Utah Code Annotated 1953

59 20A-11-1502, Utah Code Annotated 1953

60 20A-22-1503, Utah Code Annotated 1953



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

63 Section 1. Section 20A-9-201 is amended to read:

64 **20A-9-201. Declarations of candidacy -- Candidacy for more than one office or of**
65 **more than one political party prohibited with exceptions -- General filing and form**
66 **requirements -- Affidavit of impecuniosity.**

67 (1) Before filing a declaration of candidacy for election to any office, a person shall:

68 (a) be a United States citizen; and

69 (b) meet the legal requirements of that office.

70 (2) (a) Except as provided in Subsection (2)(b), a person may not:

71 (i) file a declaration of candidacy for, or be a candidate for, more than one office in
72 Utah during any election year; or

73 (ii) appear on the ballot as the candidate of more than one political party.

74 (b) A person may file a declaration of candidacy for, or be a candidate for, President or
75 Vice President of the United States and another office, if the person resigns the person's
76 candidacy for the other office after the person is officially nominated for President or Vice
77 President of the United States.

78 (3) (a) (i) Except for presidential candidates, before the filing officer may accept any
79 declaration of candidacy, the filing officer shall:

80 (A) read to the prospective candidate the constitutional and statutory qualification
81 requirements for the office that the candidate is seeking; and

82 (B) require the candidate to state whether or not the candidate meets those
83 requirements.

84 (ii) Before accepting a declaration of candidacy for the office of county attorney, the
85 county clerk shall ensure that the person filing that declaration of candidacy is:

86 (A) a United States citizen;

87 (B) an attorney licensed to practice law in Utah who is an active member in good
88 standing of the Utah State Bar;

89 (C) a registered voter in the county in which he is seeking office; and

90 (D) a current resident of the county in which he is seeking office and either has been a
91 resident of that county for at least one year or was appointed and is currently serving as county
92 attorney and became a resident of the county within 30 days after appointment to the office.

93 (iii) Before accepting a declaration of candidacy for the office of district attorney, the
94 county clerk shall ensure that, as of the date of the election, the person filing that declaration of
95 candidacy is:

96 (A) a United States citizen;

97 (B) an attorney licensed to practice law in Utah who is an active member in good
98 standing of the Utah State Bar;

99 (C) a registered voter in the prosecution district in which he is seeking office; and

100 (D) a current resident of the prosecution district in which he is seeking office and either
101 will have been a resident of that prosecution district for at least one year as of the date of the
102 election or was appointed and is currently serving as district attorney and became a resident of
103 the prosecution district within 30 days after receiving appointment to the office.

104 (iv) Before accepting a declaration of candidacy for the office of county sheriff, the
105 county clerk shall ensure that the person filing the declaration of candidacy:

106 (A) as of the date of filing:

107 (I) is a United States citizen;

108 (II) is a registered voter in the county in which the person seeks office;

109 (III) (Aa) has successfully met the standards and training requirements established for
110 law enforcement officers under Title 53, Chapter 6, Part 2, Peace Officer Training and
111 Certification Act; or

112 (Bb) has passed a certification examination as provided in Section 53-6-206; and

113 (IV) is qualified to be certified as a law enforcement officer, as defined in Section
114 53-13-103; and

115 (B) as of the date of the election, shall have been a resident of the county in which the
116 person seeks office for at least one year.

117 (v) Before accepting a declaration of candidacy for the office of governor, lieutenant
118 governor, state auditor, state treasurer, attorney general, state legislator, or State Board of
119 Education member, the filing officer shall ensure:

120 (A) that the person filing the declaration of candidacy also files the financial disclosure

121 required by Section 20A-11-1503; and

122 (B) if the filing officer is not the lieutenant governor, that the financial disclosure is
123 provided to the lieutenant governor according to the procedures and requirements of Section
124 20A-11-1503.

125 (b) If the prospective candidate states that he does not meet the qualification
126 requirements for the office, the filing officer may not accept the prospective candidate's
127 declaration of candidacy.

128 (c) If the candidate meets the requirements of Subsection (3)(a) and states that he meets
129 the requirements of candidacy, the filing officer shall:

130 (i) inform the candidate that:

131 (A) the candidate's name will appear on the ballot as it is written on the declaration of
132 candidacy;

133 (B) the candidate may be required to comply with state or local campaign finance
134 disclosure laws; and

135 (C) the candidate is required to file a financial statement before the candidate's political
136 convention under:

137 (I) Section 20A-11-204 for a candidate for constitutional office;

138 (II) Section 20A-11-303 for a candidate for the Legislature; or

139 (III) local campaign finance disclosure laws, if applicable;

140 (ii) provide the candidate with a copy of the current campaign financial disclosure laws
141 for the office the candidate is seeking and inform the candidate that failure to comply will
142 result in disqualification as a candidate and removal of the candidate's name from the ballot;

143 (iii) provide the candidate with a copy of Section 20A-7-801 regarding the Statewide
144 Electronic Voter Information Website Program and inform the candidate of the submission
145 deadline under Subsection 20A-7-801(4)(a);

146 (iv) provide the candidate with a copy of the pledge of fair campaign practices
147 described under Section 20A-9-206 and inform the candidate that:

148 (A) signing the pledge is voluntary; and

149 (B) signed pledges shall be filed with the filing officer;

150 (v) accept the candidate's declaration of candidacy; and

151 (vi) if the candidate has filed for a partisan office, provide a certified copy of the

152 declaration of candidacy to the chair of the county or state political party of which the
153 candidate is a member.

154 (d) If the candidate elects to sign the pledge of fair campaign practices, the filing
155 officer shall:

156 (i) accept the candidate's pledge; and

157 (ii) if the candidate has filed for a partisan office, provide a certified copy of the
158 candidate's pledge to the chair of the county or state political party of which the candidate is a
159 member.

160 (4) Except for presidential candidates, the form of the declaration of candidacy shall be
161 substantially as follows:

162 "State of Utah, County of _____

163 I, _____, declare my intention of becoming a candidate for the office of
164 _____ as a candidate for the _____ party. I do solemnly swear that: I will meet the qualifications
165 to hold the office, both legally and constitutionally, if selected; I reside at _____ in
166 the City or Town of _____, Utah, Zip Code _____ Phone No. _____; I will not knowingly violate
167 any law governing campaigns and elections; I will file all campaign financial disclosure reports
168 as required by law; and I understand that failure to do so will result in my disqualification as a
169 candidate for this office and removal of my name from the ballot. The mailing address that I
170 designate for receiving official election notices is _____.

171 _____

172 Subscribed and sworn before me this _____(month\day\year).

173 Notary Public (or other officer qualified to administer oath.)"

174 (5) (a) Except for presidential candidates, the fee for filing a declaration of candidacy
175 is:

176 (i) \$25 for candidates for the local school district board; and

177 (ii) 1/8 of 1% of the total salary for the full term of office legally paid to the person
178 holding the office, but not less than \$5, for all other federal, state, and county offices.

179 (b) Except for presidential candidates, the filing officer shall refund the filing fee to
180 any candidate:

181 (i) who is disqualified; or

182 (ii) who the filing officer determines has filed improperly.

183 (c) (i) The county clerk shall immediately pay to the county treasurer all fees received
184 from candidates.

185 (ii) The lieutenant governor shall:

186 (A) apportion to and pay to the county treasurers of the various counties all fees
187 received for filing of nomination certificates or acceptances; and

188 (B) ensure that each county receives that proportion of the total amount paid to the
189 lieutenant governor from the congressional district that the total vote of that county for all
190 candidates for representative in Congress bears to the total vote of all counties within the
191 congressional district for all candidates for representative in Congress.

192 (d) (i) A person who is unable to pay the filing fee may file a declaration of candidacy
193 without payment of the filing fee upon a prima facie showing of impecuniosity as evidenced by
194 an affidavit of impecuniosity filed with the filing officer and, if requested by the filing officer,
195 a financial statement filed at the time the affidavit is submitted.

196 (ii) A person who is able to pay the filing fee may not claim impecuniosity.

197 (iii) (A) False statements made on an affidavit of impecuniosity or a financial
198 statement filed under this section shall be subject to the criminal penalties provided under
199 Sections 76-8-503 and 76-8-504 and any other applicable criminal provision.

200 (B) Conviction of a criminal offense under Subsection (5)(d)(iii)(A) shall be
201 considered an offense under this title for the purposes of assessing the penalties provided in
202 Subsection 20A-1-609(2).

203 (iv) The filing officer shall ensure that the affidavit of impecuniosity is printed in
204 substantially the following form:

205 "Affidavit of Impecuniosity

206 Individual Name

207 _____ Address _____

208 Phone Number _____

209 I, _____ (name), do solemnly [swear] [affirm], under penalty of law
210 for false statements, that, owing to my poverty, I am unable to pay the filing fee required by
211 law.

212 Date _____ Signature _____

213 Affiant

214 Subscribed and sworn to before me on _____ (month\day\year)

215 _____
216 (signature)

217 Name and Title of Officer Authorized to Administer Oath _____"

218 (v) The filing officer shall provide to a person who requests an affidavit of
219 impecuniosity a statement printed in substantially the following form, which may be included
220 on the affidavit of impecuniosity:

221 "Filing a false statement is a criminal offense. In accordance with Section 20A-1-609, a
222 candidate who is found guilty of filing a false statement, in addition to being subject to criminal
223 penalties, will be removed from the ballot."

224 (vi) The filing officer may request that a person who makes a claim of impecuniosity
225 under this Subsection (5)(d) file a financial statement on a form prepared by the election
226 official.

227 (6) Any person who fails to file a declaration of candidacy or certificate of nomination
228 within the time provided in this chapter is ineligible for nomination to office.

229 (7) A declaration of candidacy filed under this section may not be amended or
230 modified after the final date established for filing a declaration of candidacy.

231 Section 2. Section **20A-11-1501** is enacted to read:

232 **Part 15. Candidate Financial Disclosures**

233 **20A-11-1501. Title.**

234 This part is known as "Candidate Financial Disclosures."

235 Section 3. Section **20A-11-1502** is enacted to read:

236 **20A-11-1502. Definitions.**

237 (1) "Filing officer" is as defined in Section 20A-9-101.

238 (2) "State constitutional officer" means the governor, the lieutenant governor, the state
239 auditor, the state treasurer, or the attorney general.

240 Section 4. Section **20A-22-1503** is enacted to read:

241 **20A-22-1503. Financial disclosure form -- Required when filing for candidacy --**

242 **Public availability.**

243 (1) Candidates seeking the following offices shall file a financial disclosure with the
244 filing officer at the time of filing a declaration of candidacy:

245 (a) state constitutional officer;

246 (b) state legislator; or

247 (c) State Board of Education member.

248 (2) A filing officer shall not accept a declaration of candidacy for an office listed in
 249 Subsection (1) unless the declaration of candidacy is accompanied by the financial disclosure
 250 required by this section.

251 (3) The financial disclosure form shall contain the same requirements and shall be in
 252 the same format as the financial disclosure form described in Section 76-8-109.

253 (4) The financial disclosure form shall:

254 (a) be made available for public inspection at the filing officer's place of business;

255 (b) if the filing officer is an individual other than the lieutenant governor, be provided
 256 to the lieutenant governor within five business days of the date of filing and be made publicly
 257 available at the Office of the Lieutenant Governor; and

258 (c) be made publicly available on the Statewide Electronic Voter Information Website
 259 administered by the lieutenant governor.

260 Section 5. Section **76-8-109** is amended to read:

261 **76-8-109. Failure to disclose conflict of interest.**

262 (1) As used in this section:

263 [~~(a) "Business in which the legislator is associated" means any business in which a~~
 264 ~~legislator is a director, officer, owner, member, partner, employee, or is a holder of stocks or~~
 265 ~~bonds in the company that have a fair market value of \$10,000 or more. This does not include~~
 266 ~~business associations by members of the legislator's immediate family.]~~

267 [(~~b~~) (a) "Conflict of interest" means [legislation or action by a legislator that the
 268 legislator] an action that is taken by a regulated officeholder that the officeholder reasonably
 269 believes may cause direct financial benefit or detriment to [him] the officeholder, a member of
 270 the [legislator's] officeholder's immediate family, or [a business in which the legislator is
 271 associated] an entity that the officeholder is required to disclose under the provisions of this
 272 section, and that benefit or detriment is distinguishable from the effects of that action on the
 273 public or on the [legislator's] officeholder's profession, occupation, or association generally.

274 (b) "Entity" means a corporation, a partnership, a limited liability company, a limited
 275 partnership, a sole proprietorship, an association, a cooperative, a trust, an organization, a joint

276 venture, a governmental entity, an unincorporated organization, or any other legal entity,
277 whether established primarily for the purpose of gain or economic profit or not.

278 (c) "Filer" means the individual filing a financial declaration under this section.

279 ~~[(c)]~~ (d) "Immediate family" means the [legislator's] regulated officeholder's spouse
280 and children living in the [legislator's] officeholder's immediate household.

281 ~~[(2) In addition to the Declaration of Conflict of Interest form provided for in~~
282 ~~Subsection (3), before]~~

283 (e) "Income" means earnings, compensation, or any other payment made to an
284 individual for gain, regardless of source, whether denominated as wages, salary, commission,
285 pay, bonus, severance pay, incentive pay, contract payment, interest, per diem, expenses,
286 reimbursement, dividends, or otherwise.

287 (f) "Regulated officeholder" means an individual that is required to file a financial
288 disclosure under the provisions and requirements of this section.

289 (g) "State constitutional officer" means the governor, the lieutenant governor, the state
290 auditor, the state treasurer, or the attorney general.

291 (2) (a) Before or during the execution of any order, settlement, declaration, contract, or
292 any other official act of office in which a state constitutional officer has actual knowledge that
293 the officer has a conflict of interest which is not stated on the financial disclosure form required
294 under Subsection (4), the officer shall publicly declare that the officer may have a conflict of
295 interest and what that conflict of interest is.

296 (b) Before or during any vote on legislation or any legislative matter in which a
297 legislator has actual knowledge that [he] the legislator has a conflict of interest which is not
298 stated on the [conflict of interest form, that] the financial disclosure form required under
299 Subsection (4), the legislator shall orally declare to the committee or body before which the
300 matter is pending that the legislator may have a conflict of interest and what that conflict is.
301 ~~[This declaration of conflict of interest shall be noted in the minutes of any committee meeting~~
302 ~~or in the Senate or House Journal.]~~

303 ~~[(3) (a) A legislator shall file a Declaration of Conflict of Interest form with the~~
304 ~~Secretary of the Senate if the legislator is a senator or with the Chief Clerk of the House of~~
305 ~~Representatives if the legislator is a representative to satisfy that legislator's disclosure of any~~
306 ~~conflict of interest as required by Subsection (2).]~~

307 ~~[(b) This Declaration of Conflict of Interest form shall include the businesses in which~~
308 ~~the legislator is associated and the general legislative subject areas in which the legislator may~~
309 ~~have a conflict of interest.]~~

310 ~~[(c) This Declaration of Conflict of Interest form is available to the public.]~~

311 (c) Before or during any vote on any rule, resolution, order, or any other board matter
312 in which a member of the State Board of Education has actual knowledge that the member has
313 a conflict of interest which is not stated on the financial disclosure form required under
314 Subsection (4), the member shall orally declare to the board that the member may have a
315 conflict of interest and what that conflict of interest is.

316 (3) Any public declaration of a conflict of interest that is made under Subsection (2)
317 shall be noted:

318 (a) on the official record of the action taken, for a state constitutional officer;

319 (b) in the minutes of the committee meeting or in the Senate or House Journal, as
320 applicable, for a legislator; or

321 (c) in the minutes of the meeting or on the official record of the action taken, for a
322 member of the State Board of Education.

323 (4) (a) The following individuals shall file a financial disclosure form:

324 (i) a state constitutional officer, to be due on the tenth day of January of each year, or
325 the following business day if the due date falls on a weekend or holiday;

326 (ii) a legislator, at the following times:

327 (A) on the first day of each general session of the Legislature; and

328 (B) each time the legislator changes employment;

329 (iii) a member of the State Board of Education, at the following times:

330 (A) on the tenth day of January of each year, or the following business day if the due
331 date falls on a weekend or holiday; and

332 (B) each time the member changes employment.

333 (b) The financial disclosure form shall include:

334 (i) the filer's name;

335 (ii) the name and address of the filer's primary employer;

336 (iii) a brief description of the filer's employment, including the filer's occupation, and
337 as applicable, job title;

- 338 (iv) for each entity in which the filer is an owner or an officer:
- 339 (A) the name of the entity;
- 340 (B) a brief description of the type of business or activity conducted by the entity; and
- 341 (C) the filer's position in the entity;
- 342 (v) for each entity that has paid \$5,000 or more in income to the filer within the
- 343 one-year period ending immediately before the date of the disclosure form:
- 344 (A) the name of the entity; and
- 345 (B) a brief description of the type of business or activity conducted by the entity;
- 346 (vi) for each entity in which the filer holds any stocks or bonds having a fair market
- 347 value of \$5,000 or more as of the date of the disclosure form:
- 348 (A) the name of the entity; and
- 349 (B) a brief description of the type or business or activity conducted by the entity;
- 350 (vii) for each entity not listed in Subsections (4)(b)(iv) through (4)(b)(vi), in which the
- 351 filer serves on the board of directors or in any other type of formal advisory capacity:
- 352 (A) the name of the entity or organization;
- 353 (B) a brief description of the type of business or activity conducted by the entity; and
- 354 (C) the type of advisory position held by the filer;
- 355 (viii) at the option of the filer, any real property in which the filer holds an ownership
- 356 or other financial interest that the filer believes may constitute a conflict of interest, including:
- 357 (A) a description of the real property; and
- 358 (B) a description of the type of interest held by the filer in the property;
- 359 (ix) the name of the filer's spouse, as applicable;
- 360 (x) a brief description of the employment of the filer's spouse, as applicable, including
- 361 the spouse's occupation;
- 362 (xi) at the option of the filer, a description of any other matter or interest that the filer
- 363 believes may constitute a conflict of interest;
- 364 (xii) the date the form was completed;
- 365 (xiii) a statement that the filer believes that the form is true and accurate to the best of
- 366 the filer's knowledge; and
- 367 (xiv) the signature of the filer.
- 368 (c) (i) The financial disclosure shall be filed with:

369 (A) the secretary of the Senate, for a legislator that is a senator;
370 (B) the chief clerk of the House of Representatives, for a legislator that is a
371 representative; or
372 (C) the lieutenant governor, for all other regulated officeholders.
373 (ii) The lieutenant governor, the secretary of the Senate, and the chief clerk of the
374 House of Representatives shall ensure that blank financial disclosure forms are available on the
375 Internet and at their offices.
376 (d) Financial disclosure forms that are filed under the procedures and requirements of
377 this section shall be made available to the public:
378 (i) on the Internet; and
379 (ii) at the office where the form was filed.
380 ~~[(d)]~~ (e) This [requirement of disclosure of any] section's requirement to disclose a
381 conflict of interest does not prohibit a [legislator] regulated officeholder from voting [on any
382 legislation or legislative] or acting on any matter.
383 ~~[(4) Every member of the Legislature who has a conflict of interest in any measure or~~
384 ~~bill proposed or pending before the Legislature of which he is a member and does not disclose~~
385 ~~the fact to the house of which he is a member and votes thereon]~~
386 (5) A regulated officeholder who violates the requirements of Subsection (2) is guilty
387 of a class B misdemeanor.
388 Section 6. **Effective date.**
389 If approved by two-thirds of all the members elected to each house, this bill takes effect
390 upon approval by the governor, or the day following the constitutional time limit of Utah
391 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
392 the date of veto override.

Legislative Review Note
as of 1-29-10 10:11 AM

Office of Legislative Research and General Counsel

H.B. 270 - Financial Disclosure and Conflict of Interest Amendments

Fiscal Note

2010 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
