

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas  
94th General Assembly  
Regular Session, 2023

# A Bill

HOUSE BILL 1149

By: Representative Cavanaugh

## For An Act To Be Entitled

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

## Subtitle

TO PROHIBIT GIFTS FROM LOBBYISTS TO CABINET-LEVEL DEPARTMENT SECRETARIES; TO AMEND THE LAW CONCERNING THE ARKANSAS ETHICS COMMISSION; AND TO AMEND THE LAW RESULTING FROM INITIATED ACT 1 OF 1988.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 21, Chapter 8, Subchapter 3, is amended to add an additional section to read as follows:

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

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

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



- (5) Secretary of the Department of Energy and Environment;
- (6) Secretary of the Department of Finance and Administration;
- (7) Secretary of the Department of Health;
- (8) Secretary of the Department of Human Services;
- (9) Secretary of the Department of Inspector General;
- (10) Secretary of the Department of Labor and Licensing;
- (11) Secretary of the Department of the Military;
- (12) Secretary of the Department of Parks, Heritage, and

Tourism;

- (13) Secretary of the Department of Public Safety;
  - (14) Secretary of the Department of Transformation and Shared
- Services; and
- (15) Secretary of the Department of Veterans Affairs.

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

(2) The Arkansas Ethics Commission shall:

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

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

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

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

(i) Returns the gift to the donor; or

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

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

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

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

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

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

21-8-402. Definitions.

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

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

(B) "Administrative action" does not include ministerial action;

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

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

(4) "Family" means an individual's spouse, children of that individual or his or her spouse, or brothers, sisters, or parents of the individual or his or her spouse;

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

(B) The term "gift" does not include:

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

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

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

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

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

(v) Campaign contributions;

(vi) Any devise or inheritance;

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

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

(viii) Wedding presents and engagement gifts;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) “Legislator” means any person who is a member of:

(A) The General Assembly;

(B) A quorum court of any county;

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

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

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

(11) “Lobbyist” means a person who:

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

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

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

number of recipients;

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

(13) "Official capacity" means activities which:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 3. DO NOT CODIFY. Rules.

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

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

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

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