

1 State of Arkansas  
2 93rd General Assembly  
3 Regular Session, 2021  
4

# A Bill

HOUSE BILL 1354

5 By: Representative Cavenaugh  
6 By: Senator J. English  
7

## For An Act To Be Entitled

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

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16 TO PROHIBIT GIFTS FROM LOBBYISTS TO  
17 CABINET-LEVEL DEPARTMENT SECRETARIES; TO  
18 AMEND THE LAW CONCERNING THE ARKANSAS  
19 ETHICS COMMISSION; AND TO AMEND THE LAW  
20 RESULTING FROM INITIATED ACT 1 OF 1988.  
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24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
25

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

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

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

34 (1) Secretary of the Department of Agriculture;

35 (2) Secretary of the Department of Commerce;

36 (3) Secretary of the Department of Corrections;



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

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

17           (2) The Arkansas Ethics Commission shall:

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

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

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

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

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

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

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

36                   (ii) If the commission does not proceed with an

1 investigation of an alleged violation under subdivision (b)(3)(B)(i) of this  
 2 section, the person shall not be considered to have committed a violation.

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

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 6 SECTION 2. Arkansas Code § 21-8-402, resulting from Initiated Act 1 of  
 7 1988, is amended to read as follows:

8 21-8-402. Definitions.

9 As used in this subchapter and § 21-8-311, § 21-8-601 et seq., § 21-8-  
 10 701 et seq., and § 21-8-801 et seq., unless the context otherwise requires:

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

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

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

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

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

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

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

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

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

35 (ii) The giving or receiving of food, lodging, or  
 36 travel which bears a relationship to the public servant’s office and when

1 appearing in an official capacity;

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

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

9 (v) Campaign contributions;

10 (vi) Any devise or inheritance;

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

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

18 (viii) Wedding presents and engagement gifts;

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

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

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

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

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

36 (xiv) Food or beverages provided in return for

1 participation in a bona fide panel, seminar, or speaking engagement at which  
2 the audience is a civic, social, or cultural organization or group;

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

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

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

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

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

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

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

1 obligation for services or other value received.

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

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

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

16 (A) The General Assembly;

17 (B) A quorum court of any county;

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

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

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

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

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

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

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

1 filed with the Secretary of State, the filing shall include the approximate  
2 number of recipients;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 invited; and

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

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