

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

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

As Engrossed: H2/24/21

A Bill

HOUSE BILL 1354

5 By: Representative Cavanaugh
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 PROHIBIT GIFTS FROM
11 LOBBYISTS TO DIRECTORS OF STATE GOVERNMENT ENTITIES;
12 TO AMEND THE LAW CONCERNING THE ARKANSAS ETHICS
13 COMMISSION; TO AMEND THE LAW RESULTING FROM INITIATED
14 ACT 1 OF 1988; AND FOR OTHER PURPOSES.
15

Subtitle

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

30 21-8-311. gifts from lobbyists to certain state officials prohibited –
31 Penalties – Enforcement.

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

36 (1) Secretary of the Department of Agriculture;



- 1 (2) Secretary of the Department of Commerce;
2 (3) Secretary of the Department of Corrections;
3 (4) Secretary of the Department of Education;
4 (5) Secretary of the Department of Energy and Environment;
5 (6) Secretary of the Department of Finance and Administration;
6 (7) Secretary of the Department of Health;
7 (8) Secretary of the Department of Human Services;
8 (9) Secretary of the Department of Inspector General;
9 (10) Secretary of the Department of Labor and Licensing;
10 (11) Secretary of the Department of the Military;
11 (12) Secretary of the Department of Parks, Heritage, and
12 Tourism;
13 (13) Secretary of the Department of Public Safety;
14 (14) Secretary of the Department of Transformation and Shared
15 Services;
16 (15) Secretary of the Department of Veterans Affairs; and
17 (16) A director, senior executive, or administrative head of a
18 state government entity.

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

21 (2) The Arkansas Ethics Commission shall:

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

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

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

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

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

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

36 (B)(i) The commission shall not proceed with an

1 investigation of an alleged violation of this section if the commission
2 determines that a person would be eligible to raise the affirmative defense
3 under subdivision (b)(3)(A) of this section.

4 (ii) If the commission does not proceed with an
5 investigation of an alleged violation under subdivision (b)(3)(B)(i) of this
6 section, the person shall not be considered to have committed a violation.

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

9
10 SECTION 2. Arkansas Code § 21-8-402, resulting from Initiated Act 1 of
11 1988, is amended to read as follows:

12 21-8-402. Definitions.

13 As used in this subchapter and § 21-8-311, § 21-8-601 et seq., § 21-8-
14 701 et seq., and § 21-8-801 et seq., unless the context otherwise requires:

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

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

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

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

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

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

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

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

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

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

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

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

13 (v) Campaign contributions;

14 (vi) Any devise or inheritance;

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

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

22 (viii) Wedding presents and engagement gifts;

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

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

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

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

1 service;

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

4 (xiv) Food or beverages provided in return for
5 participation in a bona fide panel, seminar, or speaking engagement at which
6 the audience is a civic, social, or cultural organization or group;

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

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

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

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

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

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

36 (7)(A) "Income" or "compensation" means any money or anything of

1 value received or to be received as a claim for future services, whether in
2 the form of a retainer, fee, salary, expense, allowance, forbearance,
3 forgiveness, interest, dividend, royalty, rent, or any other form of
4 recompense or any combination thereof. It includes a payment made under
5 obligation for services or other value received.

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

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

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

20 (A) The General Assembly;

21 (B) A quorum court of any county;

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

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

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

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

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

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

35 (C) Expends four hundred dollars (\$400) or more in a
36 calendar quarter, including postage, for the express purpose of soliciting

1 others to communicate with any public servant to influence any legislative
2 action or administrative action of one (1) or more governmental bodies unless
3 the communication has been filed with the Secretary of State or the
4 communication has been published in the news media. If the communication is
5 filed with the Secretary of State, the filing shall include the approximate
6 number of recipients;

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (19) "Registered lobbyist" means a lobbyist registered pursuant

1 to the provisions of this subchapter and § 21-8-601 et seq., § 21-8-701 et
2 seq., and § 21-8-801 et seq.;

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

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

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/s/Cavanaugh