

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2013

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HOUSE BILL 640

Short Title: Reporting of Gifts. (Public)

Sponsors: Representative R. Brawley (Primary Sponsor).

For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Rules, Calendar, and Operations of the House.

April 10, 2013

A BILL TO BE ENTITLED

AN ACT TO REQUIRE REPORTING OF ALL GIFTS GIVEN BY LOBBYISTS AND LOBBYIST PRINCIPALS TO LEGISLATORS, LEGISLATIVE EMPLOYEES, AND PUBLIC SERVANTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 138A-32 reads as rewritten:

"§ 138A-32. Gifts.

(a) A covered person or a legislative employee shall not knowingly, directly or indirectly, ask, accept, demand, exact, solicit, seek, assign, receive, or agree to receive anything of value for the covered person or legislative employee, or for another person, in return for being influenced in the discharge of the covered person's or legislative employee's official responsibilities, other than that which is received by the covered person or the legislative employee from the State for acting in the covered person's or legislative employee's official capacity.

(b) A covered person may not solicit for a charitable purpose any thing of monetary value from any subordinate State employee. This subsection shall not apply to generic written solicitations to all members of a class of subordinates. Nothing in this subsection shall prohibit a covered person from serving as the honorary head of the State Employees Combined Campaign.

(c) ~~No A public servant, legislator, or legislative employee shall knowingly~~ may accept a gift from a lobbyist or lobbyist principal registered under Chapter 120C of the General Statutes. ~~No A legislator or legislative employee shall knowingly~~ may accept a gift from liaison personnel designated under Chapter 120C of the General Statutes. ~~No public servant, legislator, or legislative employee shall accept a gift knowing all of the following:~~

(1) ~~The gift was obtained indirectly from a lobbyist, lobbyist principal, or liaison personnel registered under Chapter 120C of the General Statutes.~~

(2) ~~The lobbyist, lobbyist principal, or liaison personnel registered under Chapter 120C of the General Statutes intended for an ultimate recipient of the gift to be a public servant, legislator, or legislative employee as provided in G.S. 120C-303.~~

(d) ~~No public servant shall knowingly accept a gift from a person whom the public servant knows or has reason to know any of the following:~~

(1) ~~Is doing or is seeking to do business of any kind with the public servant's employing entity.~~



- 1 ~~(2) Is engaged in activities that are regulated or controlled by the public~~
2 ~~servant's employing entity.~~
- 3 ~~(3) Has financial interests that may be substantially and materially affected, in a~~
4 ~~manner distinguishable from the public generally, by the performance or~~
5 ~~nonperformance of the public servant's official duties.~~
- 6 ~~(d1) No public servant shall accept a gift knowing all of the following:~~
- 7 ~~(1) The gift was obtained indirectly from a person described under subdivision~~
8 ~~(d)(1), (2), or (3) of this section.~~
- 9 ~~(2) The person described under subdivision (d)(1), (2), or (3) of this section~~
10 ~~intended for an ultimate recipient of the gift to be a public servant.~~
- 11 ~~(e) Subsections (c), (d), and (d1) of this section shall not apply to any of the following:~~
- 12 ~~(1) Food and beverages for immediate consumption in connection with any of~~
13 ~~the following:~~
- 14 ~~a. An open meeting of a public body, provided that the open meeting is~~
15 ~~properly noticed under Article 33C of Chapter 143 of the General~~
16 ~~Statutes.~~
- 17 ~~b. A gathering of a person or governmental unit with at least 10 or more~~
18 ~~individuals in attendance open to the general public, provided that a~~
19 ~~sign or other communication containing a message that is reasonably~~
20 ~~designed to convey to the general public that the gathering is open to~~
21 ~~the general public is displayed at the gathering.~~
- 22 ~~e. A gathering of a person or governmental unit to which the entire~~
23 ~~board of which a public servant is a member, at least 10 public~~
24 ~~servants, all the members of the House of Representatives, all the~~
25 ~~members of the Senate, all the members of a county or municipal~~
26 ~~legislative delegation, all the members of a recognized legislative~~
27 ~~caucus with regular meetings other than meetings with one or more~~
28 ~~lobbyists, all the members of a committee, a standing subcommittee,~~
29 ~~a joint committee or joint commission of the House of~~
30 ~~Representatives, the Senate, or the General Assembly, or all~~
31 ~~legislative employees are invited, and one of the following applies:~~
- 32 ~~1. At least 10 individuals associated with the person or~~
33 ~~governmental unit actually attend, other than the covered~~
34 ~~person or legislative employee, or the immediate family of~~
35 ~~the covered person or legislative employee.~~
- 36 ~~2. All shareholders, employees, board members, officers,~~
37 ~~members, or subscribers of the person or governmental unit~~
38 ~~located in North Carolina are notified and invited to attend.~~
- 39 ~~For purposes of this sub-subdivision only, the term "invited" shall~~
40 ~~mean written notice from at least one host or sponsor of the gathering~~
41 ~~containing the date, time, and location of the gathering given at least~~
42 ~~24 hours in advance of the gathering to the specific qualifying group~~
43 ~~listed in this sub-subdivision. If it is known at the time of the written~~
44 ~~notice that at least one sponsor is a lobbyist or lobbyist principal, the~~
45 ~~written notice shall also state whether or not the gathering is~~
46 ~~permitted under this section.~~
- 47 ~~(2) Informational materials relevant to the duties of the covered person or~~
48 ~~legislative employee.~~
- 49 ~~(3) Reasonable actual expenditures of the legislator, public servant, or~~
50 ~~legislative employee for food, beverages, registration, travel, lodging, other~~
51 ~~incidental items of nominal value, and entertainment, in connection with (i)~~

1 a legislator's, public servant's, or legislative employee's attendance at an
2 educational meeting for purposes primarily related to the public duties and
3 responsibilities of the legislator, public servant, or legislative employee; (ii)
4 a legislator's, public servant's, or legislative employee's participation as a
5 speaker or member of a panel at a meeting; (iii) a legislator's or legislative
6 employee's attendance and participation in meetings of a nonpartisan state,
7 regional, national, or international legislative organization of which the
8 General Assembly is a member or that the legislator or legislative employee
9 is a member or participant of by virtue of that legislator's or legislative
10 employee's public position, or as a member of a board, agency, or committee
11 of such organization; or (iv) a public servant's attendance and participation
12 in meetings as a member of a board, agency, or committee of a nonpartisan
13 state, regional, national, or international organization of which the public
14 servant's agency is a member or the public servant is a member by virtue of
15 that public servant's public position, provided the following conditions are
16 met:

- 17 a. ~~The reasonable actual expenditures shall be made by a lobbyist~~
18 ~~principal, and not a lobbyist.~~
- 19 b. ~~Any meeting must be attended by at least 10 or more participants,~~
20 ~~have a formal agenda, and notice of the meeting has been given at~~
21 ~~least 10 days in advance.~~
- 22 c. ~~Any food, beverages, transportation, or entertainment must be~~
23 ~~provided to all attendees or defined groups of 10 or more attendees as~~
24 ~~part of the meeting or in conjunction with the meeting.~~
- 25 d. ~~Any entertainment must be incidental to the principal agenda of the~~
26 ~~meeting.~~
- 27 e. ~~If the legislator, public servant, or legislative employee is~~
28 ~~participating as a speaker or member of a panel, then that legislator,~~
29 ~~public servant, or legislative employee must be a bona fide speaker~~
30 ~~or participant.~~

31 (4) ~~A plaque or similar nonmonetary memento recognizing individual services~~
32 ~~in a field or specialty or to a charitable cause.~~

33 (5) ~~Gifts accepted on behalf of the State for use by the State or for the benefit of~~
34 ~~the State.~~

35 (6) ~~Anything generally made available or distributed to the general public or all~~
36 ~~other State employees by lobbyists or lobbyist principals, or persons~~
37 ~~described in subdivisions (d)(1), (2), or (3) of this section.~~

38 (7) ~~Gifts from the covered person's or legislative employee's extended family, or~~
39 ~~a member of the same household of the covered person or legislative~~
40 ~~employee.~~

41 (8) ~~Gifts given to a public servant not otherwise subject to an exception under~~
42 ~~this subsection, where the gift is food and beverages, transportation, lodging,~~
43 ~~entertainment or related expenses associated with the public business of~~
44 ~~industry recruitment, promotion of international trade, or the promotion of~~
45 ~~travel and tourism, and the public servant is responsible for conducting the~~
46 ~~business on behalf of the State, provided all the following conditions apply:~~

47 a. ~~The public servant did not solicit the gift, and the public servant did~~
48 ~~not accept the gift in exchange for the performance of the public~~
49 ~~servant's official duties.~~

50 b. ~~The public servant reports electronically to the Commission within~~
51 ~~30 days of receipt of the gift or of the date set for disclosure of public~~

1 records under G.S. 132-6(d), if applicable. The report shall include a
2 description and value of the gift and a description how the gift
3 contributed to the public business of industry recruitment, promotion
4 of international trade, or the promotion of travel and tourism. This
5 report shall be posted to the Commission's public Web site.

6 e. ~~A tangible gift, other than food or beverages, not otherwise subject to~~
7 ~~an exception under this subsection shall be turned over as State~~
8 ~~property to the Department of Commerce within 30 days of receipt,~~
9 ~~except as permitted under subsection (f) of this section.~~

10 (9) ~~Gifts of personal property valued at less than one hundred dollars (\$100.00)~~
11 ~~given to a public servant in the commission of the public servant's official~~
12 ~~duties if the gift is given to the public servant as a personal gift in another~~
13 ~~country as part of an overseas trade mission, and the giving and receiving of~~
14 ~~such personal gifts is considered a customary protocol in the other country.~~

15 (10) ~~Gifts given or received as part of a business, civic, religious, fraternal,~~
16 ~~personal, or commercial relationship provided all of the following conditions~~
17 ~~are met:~~

18 a. ~~The relationship is not related to the public servant's, legislator's, or~~
19 ~~legislative employee's public service or position.~~

20 b. ~~The gift is made under circumstances that a reasonable person would~~
21 ~~conclude that the gift was not given to lobby.~~

22 (11) ~~Food and beverages for immediate consumption and related transportation~~
23 ~~provided all of the following conditions are met:~~

24 a. ~~The food, beverage, or transportation is given by a lobbyist principal~~
25 ~~and not a lobbyist.~~

26 b. ~~The food, beverage, or transportation is provided during a~~
27 ~~conference, meeting, or similar event and is available to all attendees~~
28 ~~of the same class as the recipient.~~

29 e. ~~The recipient of the food, beverage, or transportation is a director,~~
30 ~~officer, governing board member, employee, or independent~~
31 ~~contractor of one of the following:~~

32 1. ~~The lobbyist principal giving the food, beverage, or~~
33 ~~transportation.~~

34 2. ~~A third party that received the funds to purchase the food,~~
35 ~~beverages, or transportation.~~

36 (12) ~~Food and beverages for immediate consumption at an organized gathering of~~
37 ~~a person, the State, or a governmental unit to which a public servant is~~
38 ~~invited to attend for purposes primarily related to the public servant's public~~
39 ~~service or position, and to which at least 10 individuals, other than the public~~
40 ~~servant, or the public servant's immediate family, actually attend, or to which~~
41 ~~all shareholders, employees, board members, officers, members, or~~
42 ~~subscribers of the person or governmental unit who are located in a specific~~
43 ~~North Carolina office or county are notified and invited to attend.~~

44 (f) ~~A prohibited gift that would constitute an expense appropriate for reimbursement by~~
45 ~~the public servant's employing entity if it had been incurred by the public servant personally~~
46 ~~shall be considered a gift accepted by or donated to the State, provided the public servant has~~
47 ~~been approved by the public servant's employing entity to accept or receive such things of~~
48 ~~value on behalf of the State. The fact that the employing entity's reimbursement rate for the~~
49 ~~type of expense is less than the value of a particular gift shall not render the gift prohibited.~~

50 (g) ~~A prohibited gift shall be, and a permissible gift may be, promptly declined,~~
51 ~~returned, paid for at fair market value, or donated to charity or the State.~~

1 (h) A covered person or legislative employee shall not accept an honorarium from a
2 source other than the employing entity for conducting any activity where any of the following
3 apply:

- 4 (1) The employing entity reimburses the covered person or legislative employee
5 for travel, subsistence, and registration expenses.
- 6 (2) The employing entity's work time or resources are used.
- 7 (3) The activity would be considered official duty or would bear a reasonably
8 close relationship to the covered person's or legislative employee's official
9 duties.

10 An outside source may reimburse the employing entity for actual expenses incurred by a
11 covered person or legislative employee in conducting an activity within the duties of the
12 covered person or legislative employee, or may pay a fee to the employing entity, in lieu of an
13 honorarium, for the services of the covered person or legislative employee. ~~An honorarium
14 permissible under this subsection shall not be considered a gift for purposes of subsection (c) of
15 this section.~~

16 (i) Acceptance or solicitation of a gift in compliance with this section without corrupt
17 intent shall not constitute a violation of the statutes related to bribery under G.S. 14-217,
18 14-218, or 120-86."

19 **SECTION 2.** G.S. 120C-303 reads as rewritten:

20 "**§ 120C-303. Gifts by lobbyists and lobbyist principals prohibited.**

21 (a) ~~Except as provided in subsection (b) of this section, no lobbyist or lobbyist principal
22 may do any of the following:~~

- 23 ~~(1) Knowingly give a gift to a designated individual.~~
- 24 ~~(2) Knowingly give a gift with the intent that a designated individual be an
25 ultimate recipient.~~

26 ~~(b) Subsection (a) of this section shall not apply to gifts as described in
27 G.S. 138A-32(e).~~

28 (c) The offering or giving of a gift in compliance with this Chapter without corrupt
29 intent shall not constitute a violation of the statutes related to bribery under G.S. 14-217,
30 14-218, or 120-86, but shall be subject to civil fines under G.S. 120C-602(b).

31 ~~(d) Gifts made to a nonpartisan state, regional, national, or international legislative
32 organization of which the General Assembly is a member or a legislator or legislative employee
33 is a member or participant of by virtue of that legislator's or legislative employee's public
34 position, or to an affiliated organization of that nonpartisan state, regional, national, or
35 international organization, shall not constitute a violation of subdivision (a)(2) of this section or
36 of G.S. 138A-32(e).~~

37 ~~(e) Gifts made to a nonpartisan state, regional, national, or international organization of
38 which a public servant's agency is a member or a public servant is a member or participant of
39 by virtue of that public servant's public position, or to an affiliated organization of that
40 nonpartisan state, regional, national, or international organization, shall not constitute a
41 violation of subdivision (a)(2) of this section or of G.S. 138A-32(e)."~~

42 **SECTION 3.** G.S. 120C-401(j) reads as rewritten:

43 "(j) The Secretary of State shall make available a report form that may be filed by a
44 designated individual or a member of the designated individual's immediate family who
45 promptly declines, returns, pays fair market value for, or donates a reportable ~~expenditure in
46 accordance with G.S. 138A-32(g).~~ expenditure not retained by the designated individual or
47 member of the designated individual's immediate family. The Secretary of State shall index the
48 filing of this form together with the lobbyist or lobbyist principal who gave the reportable
49 expenditure."

50 **SECTION 4.** G.S. 120C-402(b)(4) reads as rewritten:

1 "(4) All reportable expenditures for ~~gifts given under G.S. 138A-32(e)(1)-(9),~~
2 ~~138A-32(e)(11), 138A-32(e)(12), and all gifts given under~~
3 ~~G.S. 138A-32(e)(10) with a value of more than ten dollars (\$10.00).gifts."~~

4 **SECTION 5.** G.S. 120C-403(b)(5) reads as rewritten:

5 "(5) All reportable expenditures for ~~gifts given under G.S. 138A-32(e)(1)-(9),~~
6 ~~138A-32(e)(11), 138A-32(e)(12), and all gifts given under~~
7 ~~G.S. 138A-32(e)(10) with a value of more than two hundred dollars~~
8 ~~(\$200.00).gifts."~~

9 **SECTION 6.** G.S. 126-14(a1) reads as rewritten:

10 "(a1) It is unlawful for an individual as defined in G.S. 138A-3(30)a. to coerce ~~a person as~~
11 ~~described in G.S. 138A-32(d)(1), (2), or (3)~~ any of the following persons to support or
12 contribute to a political candidate, a political committee as defined in G.S. 163-278.6, or a
13 political party by threatening discipline or promising preferential treatment with regard to that
14 person's business with the individual's State office or that person's activities regulated by the
15 individual's State ~~office.~~office:

16 (1) A person that is doing or is seeking to do business of any kind with the
17 public servant's employing entity.

18 (2) A person that is engaged in activities that are regulated or controlled by the
19 public servant's employing entity.

20 (3) A person that has financial interests that may be substantially and materially
21 affected, in a manner distinguishable from the public generally, by the
22 performance or nonperformance of the public servant's official duties."

23 **SECTION 7.** G.S. 120C-602(b) reads as rewritten:

24 "(b) In addition to the criminal penalties set forth in this section, the Secretary of State
25 may levy civil fines for a violation of any provision of Articles 2, 4, or 8 of this Chapter up to
26 five thousand dollars (\$5,000) per violation. In addition to the criminal penalties set forth in
27 this section, the Secretary of State may levy civil fines for a violation of failing to report a
28 reportable expenditure under any provision of Article 4 of this Chapter up to three times the
29 amount of the reportable expenditure. In addition to the criminal penalties set forth in this
30 section, the Commission may levy civil fines for a violation of any provision of this Chapter
31 except Article 2, 4, or 8 of this Chapter up to five thousand dollars (\$5,000) per violation."

32 **SECTION 8.** This act becomes effective December 1, 2013, and applies to actions
33 on or after that date.