

Section X:

(a) A lobbyist or principal may not offer or give a gift to any public official, candidate, or public employee, or to the spouse or dependent child of such individual, unless under the circumstances it is not reasonable to infer that the gift was intended to influence the public official, candidate, or public employee.¹

(b) A public official, candidate, or public employee, or the spouse or dependent child of such individual may not solicit or accept a gift from any of the following, unless under the circumstances it is not reasonable to infer that the gift was intended to influence the public official, candidate, or public employee:

(1) A lobbyist or principal.

(2) An individual or entity the public official, candidate, or public employee knows or has reason to know:

- a. Is doing or seeking to do business of any kind, regardless of amount, within the governmental body or agency in which the public official serves, the candidate will potentially serve, or the public employee works;
- b. Is engaged in activities that are regulated or controlled by the governmental body or agency.
- c. Has financial interests that may be substantially and materially affected, in a manner; or distinguishable from the public generally, by the performance or nonperformance of the official duties of the public official, candidate, or public employee.²

(c) For purposes of this section, gift means anything of more than de minimis value given in any form including, but not limited to, a benefit, favor, service, gratuity, *money*, loan, travel, lodging, food, beverage, entertainment, discount³, reward, forbearance, promise⁴, employment or promise of future employment⁵, honoraria, or other item of monetary value. The term does not include any of the following:⁶

(1) Food, beverages, or travel expenses provided pursuant to Section Y.

(2) A contribution reported under Chapter 5 of Title 17, a contribution to an inaugural or transition committee, *or a lawful campaign contribution for a federal election*.

(3) *A donation to a non-profit organization except where a public official, candidate, public employee, or spouse or dependent child of such individual benefits financially, directly or indirectly, from the donation.*

(4) Anything offered or given by a family member of the recipient *or anything solicited or accepted from a family member of the recipient* under circumstances which make it clear that the gift is motivated by a family relationship.

¹ General language of this subsection is similar to NY gift ban. Also, “spouse or dependent child” is similar to AL Code definition of “household” as well as definition of “family member of the public employee.”

² General language of this subsection is similar to WV and MD gift ban, but is drafted to mirror the format and terms used in subsection (a).

³ From NY definition of “gift.”

⁴ From NY definition of “gift.”

⁵ “Promise of future employment” is not necessary if “promise” is added to the definition.

⁶ General language of this subsection is similar to AL definition of “thing of value.” All deviations from the current definition are italicized and derive from SB343 (AG bill), unless otherwise noted by footnote.

(5) Anything offered or given by a friend of the recipient *or anything solicited or accepted from a friend of the recipient* under circumstances which make it clear that the gift is motivated by a friendship and not given because of the recipient's official position. *Relevant factors include whether the friendship preexisted the recipient's status as a public official, candidate, or public employee and whether gifts have been previously exchanged between them. It shall be prima facie evidence that the circumstances are not clear when the person offering or giving the gift has direct and specific interests before the recipient in the recipient's official capacity.*

(6) Items with little intrinsic value which are intended solely for presentation, such as plaques, certificates, and trophies.

(7) Promotional items commonly distributed to the general public and having no substantial resale value.

(8) Greeting cards *or flowers for major life events* with little intrinsic value.⁷

(9) Loans from banks or other financial institutions *made in the ordinary course of business* on terms generally available to the public.

(10) Opportunities and benefits, including favorable rates and commercial discounts, available to the public or to a class consisting of all government employees.

(11) Rewards and prizes given to competitors in contests or events, including random drawings, which are open to *an entire class of people invited to an education function or to the public.*

(12) Any assistance provided or rendered in connection with a safety or health emergency.

(13) Anything that is paid for by a governmental entity or an entity created by a governmental entity to support the governmental entity or secured by a governmental entity under contract, except for tickets to a sporting event offered by an educational institution to anyone other than faculty, staff, or administration of the institution.

(14) Anything either (i) provided by an association or organization to which the state or, in the case of a local government official or employee, the local government pays annual dues as a membership requirement, or (ii) provided by an association or organization to a public official who is a member of the association or organization and, as a result of his or her service to the association or organization, is deemed to be a public official. Further included in this exception is payment of reasonable compensation by a professional or local government association or corporation to a public official who is also an elected officer or director of the professional or local government association or corporation for services actually provided to the association or corporation in his or her capacity as an officer or director.

(15) Any benefit received as a discount on accommodations, when the discount is given to the public official because the public official is a member of an organization or association whose entire membership receives the discount.

(16) Anything for which the recipient pays or gives full value.

(d) The prohibitions against lobbyists and principals in this section only apply to the extent that the recipient of a gift is a public official or public employee who serves or works or is a candidate who potentially serves within a unit of government identified by the lobbyist on the registration form under Section 36-25-18.

⁷ Subdivisions (6) through (8) were rearranged from current AL Code language.

Section Y:

(a) The following items are not considered a gift for purposes of Section X:

(1) Food and beverages at a reception or dinner where 50 or more public officials or public employees are invited.

(2) Food and beverages at an event where all members of a legislative body, legislative caucus or legislative committee are invited.

(3) Travel expenses for a public official or public employee and the spouse of the public official or public employee at an event where the public official or public employee is an honoree or participant and attendance at the event is appropriate to the performance of the public official's or public employee's official duties. Travel expenses include transportation, lodging, food, and beverages. Travel expenses also include entertainment if the entertainment is an integral part of the event. If the entertainment is not an integral part of the event, the public official or public employee must pay the face value in order to participate in the entertainment.⁸

(b) Notwithstanding Section X, a lobbyist or a principal may provide food and beverages to a public official or public employee and to the spouse of the public official or public employee in a setting other than any of the functions listed in subsection (a), provided the total cost of food and beverages for each recipient may not exceed fifty dollars (\$50) per day and the aggregate cost per calendar year for each recipient may not exceed two hundred fifty dollars (\$250). Notwithstanding the foregoing, the lobbyist's limits herein shall not count against the principal's limits and likewise, the principal's limits shall not count against the lobbyist's limits.⁹

(c) The head of any department or agency may establish internal policies that outline under what circumstances food, beverages, and travel expenses provided by any outside individual or entity would not tend to impair the impartiality and independent judgment of the public official or public employee and may therefore be accepted without violating this section.¹⁰

NOTE: This draft only addresses a gift ban.

Legislation must still be drafted to address conflicts of interest, outside employment, and recusals.

⁸ This subsection derived from the food, beverage, and travel exceptions to the definition of "thing of value" in the AL Code, in conjunction with July 9th subcommittee discussion.

⁹ This subsection derived from paragraph 16 of the AL Code definition of "thing of value," in conjunction with SB343 which would provide parity with regard to the monetary limits allowed for lobbyists and principals.

¹⁰ Based on July 9th subcommittee discussion.