

104TH CONGRESS
1ST SESSION

S. 117

To amend rule XXXV of the Standing Rules of the Senate.

IN THE SENATE OF THE UNITED STATES

JANUARY 4, 1995

Mr. WELLSTONE (for himself and Mr. FEINGOLD) introduced the following bill; which was read twice and referred to the Committee on Rules and Administration

A BILL

To amend rule XXXV of the Standing Rules of the Senate.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SENATE GIFT RULE.**

4 The text of rule XXXV of the Standing Rules of the
5 Senate is amended to read as follows:

6 “1. No member, officer, or employee of the Senate
7 shall accept a gift, knowing that such gift is provided by
8 a lobbyist, a lobbying firm, or an agent of a foreign prin-
9 cipal registered under the Foreign Agents Registration
10 Act of 1938 (22 U.S.C. 611 et seq.) in violation of this
11 rule.

1 “2. (a) In addition to the restriction on receiving gifts
2 from registered lobbyists, lobbying firms, and agents of
3 foreign principals provided by paragraph 1 and except as
4 provided in this rule, no member, officer, or employee of
5 the Senate shall knowingly accept a gift from any other
6 person.

7 “(b)(1) For the purpose of this rule, the term ‘gift’
8 means any gratuity, favor, discount, entertainment, hospi-
9 tality, loan, forbearance, or other item having monetary
10 value. The term includes gifts of services, training, trans-
11 portation, lodging, and meals, whether provided in kind,
12 by purchase of a ticket, payment in advance, or reimburse-
13 ment after the expense has been incurred.

14 “(2) A gift to the spouse or dependent of a member,
15 officer, or employee (or a gift to any other individual based
16 on that individual’s relationship with the member, officer,
17 or employee) shall be considered a gift to the member, offi-
18 cer, or employee if it is given with the knowledge and ac-
19 quiescence of the member, officer, or employee and the
20 member, officer, or employee has reason to believe the gift
21 was given because of the official position of the member,
22 officer, or employee.

23 “(c) The restrictions in subparagraph (a) shall apply
24 to the following:

1 “(1) Anything provided by a lobbyist or a for-
2 foreign agent which is paid for, charged to, or reim-
3 bursed by a client or firm of such lobbyist or foreign
4 agent.

5 “(2) Anything provided by a lobbyist, a lobby-
6 ing firm, or a foreign agent to an entity that is
7 maintained or controlled by a member, officer, or
8 employee of the Senate.

9 “(3) A charitable contribution (as defined in
10 section 170(c) of the Internal Revenue Code of
11 1986) made by a lobbyist, a lobbying firm, or a for-
12 foreign agent on the basis of a designation, rec-
13 ommendation, or other specification of a member, of-
14 ficer, or employee of the Senate (not including a
15 mass mailing or other solicitation directed to a
16 broad category of persons or entities).

17 “(4) A contribution or other payment by a lob-
18 byist, a lobbying firm, or a foreign agent to a legal
19 expense fund established for the benefit of a mem-
20 ber, officer, or employee of the Senate.

21 “(5) A charitable contribution (as defined in
22 section 170(c) of the Internal Revenue Code of
23 1986) made by a lobbyist, a lobbying firm, or a for-
24 foreign agent in lieu of an honorarium to a member,
25 officer, or employee of the Senate.

1 “(6) A financial contribution or expenditure
2 made by a lobbyist, a lobbying firm, or a foreign
3 agent relating to a conference, retreat, or similar
4 event, sponsored by or affiliated with an official con-
5 gressional organization, for or on behalf of members,
6 officers, or employees of the Senate.

7 “(d) The restrictions in subparagraph (a) shall not
8 apply to the following:

9 “(1) Anything for which the member, officer, or
10 employee pays the market value, or does not use and
11 promptly returns to the donor.

12 “(2) A contribution, as defined in the Federal
13 Election Campaign Act of 1971 (2 U.S.C. 431 et
14 seq.) that is lawfully made under that Act, or at-
15 tendance at a fundraising event sponsored by a po-
16 litical organization described in section 527(e) of the
17 Internal Revenue Code of 1986.

18 “(3) Anything provided by an individual on the
19 basis of a personal or family relationship unless the
20 member, officer, or employee has reason to believe
21 that, under the circumstances, the gift was provided
22 because of the official position of the member, offi-
23 cer, or employee and not because of the personal or
24 family relationship. The Select Committee on Ethics
25 shall provide guidance on the applicability of this

1 clause and examples of circumstances under which
2 a gift may be accepted under this exception.

3 “(4) A contribution or other payment to a legal
4 expense fund established for the benefit of a mem-
5 ber, officer, or employee, that is otherwise lawfully
6 made, if the person making the contribution or pay-
7 ment is identified for the Select Committee on
8 Ethics.

9 “(5) Any food or refreshments which the recipi-
10 ent reasonably believes to have a value of less than
11 \$20.

12 “(6) Any gift from another member, officer, or
13 employee of the Senate or the House of Representa-
14 tives.

15 “(7) Food, refreshments, lodging, and other
16 benefits—

17 “(A) resulting from the outside business or
18 employment activities (or other outside activi-
19 ties that are not connected to the duties of the
20 member, officer, or employee as an officeholder)
21 of the member, officer, or employee, or the
22 spouse of the member, officer, or employee, if
23 such benefits have not been offered or enhanced
24 because of the official position of the member,

1 officer, or employee and are customarily pro-
2 vided to others in similar circumstances;

3 “(B) customarily provided by a prospective
4 employer in connection with bona fide employ-
5 ment discussions; or

6 “(C) provided by a political organization
7 described in section 527(e) of the Internal Rev-
8 enue Code of 1986 in connection with a fund-
9 raising or campaign event sponsored by such an
10 organization.

11 “(8) Pension and other benefits resulting from
12 continued participation in an employee welfare and
13 benefits plan maintained by a former employer.

14 “(9) Informational materials that are sent to
15 the office of the member, officer, or employee in the
16 form of books, articles, periodicals, other written
17 materials, audio tapes, videotapes, or other forms of
18 communication.

19 “(10) Awards or prizes which are given to com-
20 petitors in contests or events open to the public, in-
21 cluding random drawings.

22 “(11) Honorary degrees (and associated travel,
23 food, refreshments, and entertainment) and other
24 bona fide, nonmonetary awards presented in recogni-
25 tion of public service (and associated food, refresh-

1 ments, and entertainment provided in the presen-
2 tation of such degrees and awards).

3 “(12) Donations of products from the State
4 that the member represents that are intended pri-
5 marily for promotional purposes, such as display or
6 free distribution, and are of minimal value to any in-
7 dividual recipient.

8 “(13) An item of little intrinsic value such as
9 a greeting card, baseball cap, or a T shirt.

10 “(14) Training (including food and refresh-
11 ments furnished to all attendees as an integral part
12 of the training) provided to a member, officer, or
13 employee, if such training is in the interest of the
14 Senate.

15 “(15) Bequests, inheritances, and other trans-
16 fers at death.

17 “(16) Any item, the receipt of which is author-
18 ized by the Foreign Gifts and Decorations Act, the
19 Mutual Educational and Cultural Exchange Act, or
20 any other statute.

21 “(17) Anything which is paid for by the Federal
22 Government, by a State or local government, or se-
23 cured by the Government under a Government con-
24 tract.

1 “(18) A gift of personal hospitality of an indi-
2 vidual, as defined in section 109(14) of the Ethics
3 in Government Act.

4 “(19) Free attendance at a widely attended
5 event permitted pursuant to subparagraph (e).

6 “(20) Opportunities and benefits which are—

7 “(A) available to the public or to a class
8 consisting of all Federal employees, whether or
9 not restricted on the basis of geographic consid-
10 eration;

11 “(B) offered to members of a group or
12 class in which membership is unrelated to con-
13 gressional employment;

14 “(C) offered to members of an organiza-
15 tion, such as an employees’ association or con-
16 gressional credit union, in which membership is
17 related to congressional employment and similar
18 opportunities are available to large segments of
19 the public through organizations of similar size;

20 “(D) offered to any group or class that is
21 not defined in a manner that specifically dis-
22 criminates among Government employees on the
23 basis of branch of Government or type of re-
24 sponsibility, or on a basis that favors those of
25 higher rank or rate of pay;

1 “(E) in the form of loans from banks and
2 other financial institutions on terms generally
3 available to the public; or

4 “(F) in the form of reduced membership or
5 other fees for participation in organization ac-
6 tivities offered to all Government employees by
7 professional organizations if the only restric-
8 tions on membership relate to professional
9 qualifications.

10 “(21) A plaque, trophy, or other memento of
11 modest value.

12 “(22) Anything for which, in an unusual case,
13 a waiver is granted by the Select Committee on
14 Ethics.

15 “(e)(1) Except as prohibited by paragraph 1, a mem-
16 ber, officer, or employee may accept an offer of free at-
17 tendance at a widely attended convention, conference,
18 symposium, forum, panel discussion, dinner, viewing, re-
19 ception, or similar event, provided by the sponsor of the
20 event, if—

21 “(A) the member, officer, or employee partici-
22 pates in the event as a speaker or a panel partici-
23 pant, by presenting information related to Congress
24 or matters before Congress, or by performing a cere-

1 monial function appropriate to the member's, offi-
2 cer's, or employee's official position; or

3 “(B) attendance at the event is appropriate to
4 the performance of the official duties or representa-
5 tive function of the member, officer, or employee.

6 “(2) A member, officer, or employee who attends an
7 event described in clause (1) may accept a sponsor's unso-
8 licited offer of free attendance at the event for an accom-
9 panying individual if others in attendance will generally
10 be similarly accompanied or if such attendance is appro-
11 priate to assist in the representation of the Senate.

12 “(3) Except as prohibited by paragraph 1, a member,
13 officer, or employee, or the spouse or dependent thereof,
14 may accept a sponsor's unsolicited offer of free attendance
15 at a charity event, except that reimbursement for trans-
16 portation and lodging may not be accepted in connection
17 with the event.

18 “(4) For purposes of this paragraph, the term ‘free
19 attendance’ may include waiver of all or part of a con-
20 ference or other fee, the provision of local transportation,
21 or the provision of food, refreshments, entertainment, and
22 instructional materials furnished to all attendees as an in-
23 tegral part of the event. The term does not include enter-
24 tainment collateral to the event, or food or refreshments

1 taken other than in a group setting with all or substan-
2 tially all other attendees.

3 “(f)(1) No member, officer, or employee may accept
4 a gift the value of which exceeds \$250 on the basis of
5 the personal relationship exception in subparagraph (d)(3)
6 or the close personal friendship exception in clause (2) un-
7 less the Select Committee on Ethics issues a written deter-
8 mination that one of such exceptions applies.

9 “(2)(A) A gift given by an individual under cir-
10 cumstances which make it clear that the gift is given for
11 a nonbusiness purpose and is motivated by a family rela-
12 tionship or close personal friendship and not by the posi-
13 tion of the member, officer, or employee of the Senate
14 shall not be subject to the prohibition in clause (1).

15 “(B) A gift shall not be considered to be given for
16 a nonbusiness purpose if the individual giving the gift
17 seeks—

18 “(i) to deduct the value of such gift as a busi-
19 ness expense on the individual’s Federal income tax
20 return, or

21 “(ii) direct or indirect reimbursement or any
22 other compensation for the value of the gift from a
23 client or employer of such lobbyist or foreign agent.

1 “(C) In determining if the giving of a gift is moti-
2 vated by a family relationship or close personal friendship,
3 at least the following factors shall be considered:

4 “(i) The history of the relationship between the
5 individual giving the gift and the recipient of the
6 gift, including whether or not gifts have previously
7 been exchanged by such individuals.

8 “(ii) Whether the gift was purchased by the in-
9 dividual who gave the item.

10 “(iii) Whether the individual who gave the gift
11 also at the same time gave the same or similar gifts
12 to other members, officers, or employees of the
13 Senate.

14 “(g)(1) The Committee on Rules and Administration
15 is authorized to adjust the dollar amount referred to in
16 subparagraph (d)(5) on a periodic basis, to the extent nec-
17 essary to adjust for inflation.

18 “(2) The Select Committee on Ethics shall provide
19 guidance setting forth reasonable steps that may be taken
20 by members, officers, and employees, with a minimum of
21 paperwork and time, to prevent the acceptance of prohib-
22 ited gifts from lobbyists.

23 “(3) When it is not practicable to return a tangible
24 item because it is perishable, the item may, at the discre-

1 tion of the recipient, be given to an appropriate charity
2 or destroyed.

3 “3. (a)(1) Except as prohibited by paragraph 1, a re-
4 imbursement (including payment in kind) to a member,
5 officer, or employee for necessary transportation, lodging
6 and related expenses for travel to a meeting, speaking en-
7 gagement, factfinding trip or similar event in connection
8 with the duties of the member, officer, or employee as an
9 officeholder shall be deemed to be a reimbursement to the
10 Senate and not a gift prohibited by this rule, if the mem-
11 ber, officer, or employee—

12 “(A) in the case of an employee, receives ad-
13 vance authorization, from the member or officer
14 under whose direct supervision the employee works,
15 to accept reimbursement, and

16 “(B) discloses the expenses reimbursed or to be
17 reimbursed and the authorization to the Secretary of
18 the Senate within 30 days after the travel is com-
19 pleted.

20 “(2) For purposes of clause (1), events, the activities
21 of which are substantially recreational in nature, shall not
22 be considered to be in connection with the duties of a
23 member, officer, or employee as an officeholder.

1 “(b) Each advance authorization to accept reimburse-
2 ment shall be signed by the member or officer under whose
3 direct supervision the employee works and shall include—

4 “(1) the name of the employee;

5 “(2) the name of the person who will make the
6 reimbursement;

7 “(3) the time, place, and purpose of the travel;
8 and

9 “(4) a determination that the travel is in con-
10 nection with the duties of the employee as an office-
11 holder and would not create the appearance that the
12 employee is using public office for private gain.

13 “(c) Each disclosure made under subparagraph
14 (a)(1) of expenses reimbursed or to be reimbursed shall
15 be signed by the member or officer (in the case of travel
16 by that Member or officer) or by the member or officer
17 under whose direct supervision the employee works (in the
18 case of travel by an employee) and shall include—

19 “(1) a good faith estimate of total transpor-
20 tation expenses reimbursed or to be reimbursed;

21 “(2) a good faith estimate of total lodging ex-
22 penses reimbursed or to be reimbursed;

23 “(3) a good faith estimate of total meal ex-
24 penses reimbursed or to be reimbursed;

1 “(4) a good faith estimate of the total of other
2 expenses reimbursed or to be reimbursed;

3 “(5) a determination that all such expenses are
4 necessary transportation, lodging, and related ex-
5 penses as defined in this paragraph; and

6 “(6) in the case of a reimbursement to a mem-
7 ber or officer, a determination that the travel was in
8 connection with the duties of the member or officer
9 as an officeholder and would not create the appear-
10 ance that the member or officer is using public office
11 for private gain.

12 “(d) For the purposes of this paragraph, the term
13 ‘necessary transportation, lodging, and related ex-
14 penses’—

15 “(1) includes reasonable expenses that are nec-
16 essary for travel for a period not exceeding 3 days
17 exclusive of traveltime within the United States or 7
18 days exclusive of traveltime outside of the United
19 States unless approved in advance by the Select
20 Committee on Ethics;

21 “(2) is limited to reasonable expenditures for
22 transportation, lodging, conference fees and mate-
23 rials, and food and refreshments, including reim-
24 bursement for necessary transportation, whether or

1 not such transportation occurs within the periods de-
2 scribed in clause (1);

3 “(3) does not include expenditures for rec-
4 reational activities, or entertainment other than that
5 provided to all attendees as an integral part of the
6 event; and

7 “(4) may include travel expenses incurred on
8 behalf of either the spouse or a child of the member,
9 officer, or employee, subject to a determination
10 signed by the member or officer (or in the case of
11 an employee, the member or officer under whose di-
12 rect supervision the employee works) that the at-
13 tendance of the spouse or child is appropriate to as-
14 sist in the representation of the Senate.

15 “(e) The Secretary of the Senate shall make available
16 to the public all advance authorizations and disclosures
17 of reimbursement filed pursuant to subparagraph (a) as
18 soon as possible after they are received.

19 “4. In this rule:

20 “(a) The term ‘client’ means any person or en-
21 tity that employs or retains another person for fi-
22 nancial or other compensation to conduct lobbying
23 activities on behalf of that person or entity. A per-
24 son or entity whose employees act as lobbyists on its
25 own behalf is both a client and an employer of such

1 employees. In the case of a coalition or association
2 that employs or retains other persons to conduct lob-
3 bying activities, the client is—

4 “(1) the coalition or association and not its
5 individual members when the lobbying activities
6 are conducted on behalf of its membership and
7 financed by the coalition’s or association’s dues
8 and assessments; or

9 “(2) an individual member or members,
10 when the lobbying activities are conducted on
11 behalf of, and financed separately by, 1 or more
12 individual members and not by the coalition’s or
13 association’s dues and assessments.

14 “(b) The term ‘lobbying firm’—

15 “(A) means a person or entity that has 1
16 or more employees who are lobbyists on behalf
17 of a client other than that person or entity; and

18 “(B) includes a self-employed individual
19 who is a lobbyist.

20 “(c) The term ‘lobbyist’ means a person reg-
21 istered under section 308 of the Federal Regulation
22 of Lobbying Act (2 U.S.C. 267) or required to be
23 registered under any successor statute.

24 “(d) The term ‘State’ means each of the several
25 States, the District of Columbia, and any common-

1 wealth, territory, or possession of the United
2 States.”.

3 **SEC. 2. MISCELLANEOUS PROVISIONS.**

4 (a) AMENDMENTS TO THE ETHICS IN GOVERNMENT
5 ACT.—Section 102(a)(2)(B) of the Ethics in Government
6 Act (5 U.S.C. 102, App. 6) is amended by adding at the
7 end thereof the following: “Reimbursements deemed ac-
8 cepted by the Senate pursuant to Rule XXXV of the
9 Standing Rules of the Senate shall be reported as required
10 by such rule and need not be reported under this section.”.

11 (b) REPEAL OF OBSOLETE PROVISION.—Section 901
12 of the Ethics Reform Act of 1989 (2 U.S.C. 31–2) is
13 repealed.

14 (c) GENERAL SENATE PROVISIONS.—The Senate
15 Committee on Rules and Administration, on behalf of the
16 Senate, may accept gifts provided they do not involve any
17 duty, burden, or condition, or are not made dependent
18 upon some future performance by the United States. The
19 Committee on Rules and Administration is authorized to
20 promulgate regulations to carry out this section.

21 **SEC. 3. EXERCISE OF SENATE RULEMAKING POWERS.**

22 Sections 1 and 2(c) are enacted by the Senate—

23 (1) as an exercise of the rulemaking power of
24 the Senate and pursuant to section 7353(b)(1) of
25 title 5, United States Code, and accordingly, they

1 shall be considered as part of the rules of the Sen-
2 ate, and such rules shall supersede other rules only
3 to the extent that they are inconsistent therewith;
4 and

5 (2) with full recognition of the constitutional
6 right of the Senate to change such rules at any time
7 and in the same manner and to the same extent as
8 in the case of any other rule of the Senate.

9 **SEC. 4. EFFECTIVE DATE.**

10 This Act and the amendments made by this Act shall
11 take effect on May 31, 1995.

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