

1 SB183
2 135132-1
3 By Senators Keahey and Brewbaker
4 RFD: Constitution, Campaign Finance, Ethics, and Elections
5 First Read: 07-FEB-12

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8 SYNOPSIS: Under existing law, gifts to public school
9 teachers from a student or parents of the student
10 with specific monetary value are not permissible;
11 however, gifts of nominal value are acceptable.

12 This bill would further define the term
13 "thing of value" by providing that gifts from a
14 pupil or his or her immediate family member to a
15 principal, teacher, or other person employed by a
16 local school system of an insignificant economic
17 value of less than \$100 if the aggregate value of
18 the gifts is less than \$250 during any one calendar
19 year under circumstances which make it clear that
20 no quid pro quo was understood or implied.

21
22 A BILL
23 TO BE ENTITLED
24 AN ACT
25

1 To amend Section 36-25-1, Code of Alabama 1975,
2 relating to ethics; to further define the term "thing of
3 value" by providing that gifts from a pupil or his or her
4 immediate family member to a principal, teacher, or other
5 person employed by a local school system of an insignificant
6 economic value of less than \$100 if the aggregate value of the
7 gifts is less than \$250 during any one calendar year under
8 circumstances which make it clear that no quid pro quo was
9 understood or implied.

10 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

11 Section 1. Section 36-25-1, Code of Alabama 1975, is
12 amended to read as follows:

13 "§36-25-1.

14 "Whenever used in this chapter, the following words
15 and terms shall have the following meanings:

16 "(1) BUSINESS. Any corporation, partnership,
17 proprietorship, firm, enterprise, franchise, association,
18 organization, self-employed individual, or any other legal
19 entity.

20 "(2) BUSINESS WITH WHICH THE PERSON IS ASSOCIATED.
21 Any business of which the person or a member of his or her
22 family is an officer, owner, partner, board of director
23 member, employee, or holder of more than five percent of the
24 fair market value of the business.

1 "(3) CANDIDATE. This term as used in this chapter
2 shall have the same meaning ascribed to it in Section 17-22A-2.

3 "(4) COMMISSION. The State Ethics Commission.

4 "(5) COMPLAINT. Written allegation or allegations
5 that a violation of this chapter has occurred.

6 "(6) COMPLAINANT. A person who alleges a violation
7 or violations of this chapter by filing a complaint against a
8 respondent.

9 "(7) CONFIDENTIAL INFORMATION. A complaint filed
10 pursuant to this chapter, together with any statement,
11 conversations, knowledge of evidence, or information received
12 from the complainant, witness, or other person related to such
13 complaint.

14 "(8) CONFLICT OF INTEREST. A conflict on the part of
15 a public official or public employee between his or her
16 private interests and the official responsibilities inherent
17 in an office of public trust. A conflict of interest involves
18 any action, inaction, or decision by a public official or
19 public employee in the discharge of his or her official duties
20 which would materially affect his or her financial interest or
21 those of his or her family members or any business with which
22 the person is associated in a manner different from the manner
23 it affects the other members of the class to which he or she
24 belongs. A conflict of interest shall not include any of the
25 following:

1 "a. A loan or financial transaction made or
2 conducted in the ordinary course of business.

3 "b. An occasional nonpecuniary award publicly
4 presented by an organization for performance of public
5 service.

6 "c. Payment of or reimbursement for actual and
7 necessary expenditures for travel and subsistence for the
8 personal attendance of a public official or public employee at
9 a convention or other meeting at which he or she is scheduled
10 to meaningfully participate in connection with his or her
11 official duties and for which attendance no reimbursement is
12 made by the state.

13 "d. Any campaign contribution, including the
14 purchase of tickets to, or advertisements in journals, for
15 political or testimonial dinners, if the contribution is
16 actually used for political purposes and is not given under
17 circumstances from which it could reasonably be inferred that
18 the purpose of the contribution is to substantially influence
19 a public official in the performance of his or her official
20 duties.

21 "(9) DAY. Calendar day.

22 "(10) DEPENDENT. Any person, regardless of his or
23 her legal residence or domicile, who receives 50 percent or
24 more of his or her support from the public official or public
25 employee or his or her spouse or who resided with the public

1 official or public employee for more than 180 days during the
2 reporting period.

3 "(11) ECONOMIC DEVELOPMENT FUNCTION. Any function
4 reasonably and directly related to the advancement of a
5 specific, good-faith economic development or trade promotion
6 project or objective.

7 "(12) EDUCATIONAL FUNCTION. A meeting, event, or
8 activity held within the State of Alabama, or if the function
9 is predominantly attended by participants from other states,
10 held within the continental United States, which is organized
11 around a formal program or agenda of educational or
12 informational speeches, debates, panel discussions, or other
13 presentations concerning matters within the scope of the
14 participants' official duties or other matters of public
15 policy, including social services and community development
16 policies, economic development or trade, ethics, government
17 services or programs, or government operations, and which,
18 taking into account the totality of the program or agenda,
19 could not reasonably be perceived as a subterfuge for a purely
20 social, recreational, or entertainment function.

21 "(13) FAMILY MEMBER OF THE PUBLIC EMPLOYEE. The
22 spouse or a dependent of the public employee.

23 "(14) FAMILY MEMBER OF THE PUBLIC OFFICIAL. The
24 spouse, a dependent, an adult child and his or her spouse, a
25 parent, a spouse's parents, a sibling and his or her spouse,
26 of the public official.

1 "(15) GOVERNMENTAL CORPORATIONS AND AUTHORITIES.

2 Public or private corporations and authorities, including but
3 not limited to, hospitals or other health care corporations,
4 established pursuant to state law by state, county or
5 municipal governments for the purpose of carrying out a
6 specific governmental function. Notwithstanding the foregoing,
7 all employees, including contract employees, of hospitals or
8 other health care corporations and authorities are exempt from
9 the provisions of this chapter.

10 "(16) HOUSEHOLD. The public official, public
11 employee, and his or her spouse and dependents.

12 "(17) LAW ENFORCEMENT OFFICER. A full-time employee
13 of a governmental unit responsible for the prevention or
14 investigation of crime who is authorized by law to carry
15 firearms, execute search warrants, and make arrests.

16 "(18) LEGISLATIVE BODY. The Senate of Alabama, the
17 House of Representatives of Alabama, a county commission, city
18 council, city commission, town council, or municipal council
19 or commission, and any committee or subcommittee thereof.

20 "(19) LOBBY or LOBBYING. The practice of promoting,
21 opposing, or in any manner influencing or attempting to
22 influence the introduction, defeat, or enactment of
23 legislation before any legislative body; opposing or in any
24 manner influencing the executive approval, veto, or amendment
25 of legislation; or the practice of promoting, opposing, or in
26 any manner influencing or attempting to influence the

1 enactment, promulgation, modification, or deletion of
2 regulations before any regulatory body. The term does not
3 include providing public testimony before a legislative body
4 or regulatory body or any committee thereof.

5 "(20) LOBBYIST.

6 "a. The term lobbyist includes any of the following:

7 "1. A person who receives compensation or
8 reimbursement from another person, group, or entity to lobby.

9 "2. A person who lobbies as a regular and usual part
10 of employment, whether or not any compensation in addition to
11 regular salary and benefits is received.

12 "3. A consultant to the state, county, or municipal
13 levels of government or their instrumentalities, in any manner
14 employed to influence legislation or regulation, regardless
15 whether the consultant is paid in whole or part from state,
16 county, municipal, or private funds.

17 "4. An employee, a paid consultant, or a member of
18 the staff of a lobbyist, whether or not he or she is paid, who
19 regularly communicates with members of a legislative body
20 regarding pending legislation and other matters while the
21 legislative body is in session.

22 "b. The term lobbyist does not include any of the
23 following:

24 "1. An elected official on a matter which involves
25 that person's official duties.

1 "2. A person or attorney rendering professional
2 services in drafting bills or in advising clients and in
3 rendering opinions as to the construction and effect of
4 proposed or pending legislation, executive action, or rules or
5 regulations, where those professional services are not
6 otherwise connected with legislative, executive, or regulatory
7 action.

8 "3. Reporters and editors while pursuing normal
9 reportorial and editorial duties.

10 "4. Any citizen not lobbying for compensation who
11 contacts a member of a legislative body, or gives public
12 testimony on a particular issue or on particular legislation,
13 or for the purpose of influencing legislation and who is
14 merely exercising his or her constitutional right to
15 communicate with members of a legislative body.

16 "5. A person who appears before a legislative body,
17 a regulatory body, or an executive agency to either sell or
18 purchase goods or services.

19 "6. A person whose primary duties or
20 responsibilities do not include lobbying, but who may, from
21 time to time, organize social events for members of a
22 legislative body to meet and confer with members of
23 professional organizations and who may have only irregular
24 contacts with members of a legislative body when the body is
25 not in session or when the body is in recess.

1 "7. A person who is a member of a business,
2 professional, or membership organization by virtue of the
3 person's contribution to or payment of dues to the
4 organization even though the organization engages in lobbying
5 activities.

6 "8. A state governmental agency head or his or her
7 designee who provides or communicates, or both, information
8 relating to policy or positions, or both, affecting the
9 governmental agencies which he or she represents.

10 "(21) MINOR VIOLATION. Any violation of this chapter
11 in which the public official or public employee receives an
12 economic gain in an amount less than two hundred fifty dollars
13 (\$250) or the governmental entity has an economic loss of less
14 than two hundred fifty dollars (\$250).

15 "(22) PERSON. A business, individual, corporation,
16 partnership, union, association, firm, committee, club, or
17 other organization or group of persons.

18 "(23) PRINCIPAL. A person or business which employs,
19 hires, or otherwise retains a lobbyist. A principal is not a
20 lobbyist but is not allowed to give a thing of value.

21 "(24) PROBABLE CAUSE. A finding that the allegations
22 are more likely than not to have occurred.

23 "(25) PUBLIC EMPLOYEE. Any person employed at the
24 state, county, or municipal level of government or their
25 instrumentalities, including governmental corporations and
26 authorities, but excluding employees of hospitals or other

1 health care corporations including contract employees of those
2 hospitals or other health care corporations, who is paid in
3 whole or in part from state, county, or municipal funds. For
4 purposes of this chapter, a public employee does not include a
5 person employed on a part-time basis whose employment is
6 limited to providing professional services other than
7 lobbying, the compensation for which constitutes less than 50
8 percent of the part-time employee's income.

9 "(26) PUBLIC OFFICIAL. Any person elected to public
10 office, whether or not that person has taken office, by the
11 vote of the people at state, county, or municipal level of
12 government or their instrumentalities, including governmental
13 corporations, and any person appointed to a position at the
14 state, county, or municipal level of government or their
15 instrumentalities, including governmental corporations. For
16 purposes of this chapter, a public official includes the
17 chairs and vice-chairs or the equivalent offices of each state
18 political party as defined in Section 17-13-40.

19 "(27) REGULATORY BODY. A state agency which issues
20 regulations in accordance with the Alabama Administrative
21 Procedure Act or a state, county, or municipal department,
22 agency, board, or commission which controls, according to rule
23 or regulation, the activities, business licensure, or
24 functions of any group, person, or persons.

1 "(28) REPORTING PERIOD. The reporting official's or
2 employee's fiscal tax year as it applies to his or her United
3 States personal income tax return.

4 "(29) REPORTING YEAR. The reporting official's or
5 employee's fiscal tax year as it applies to his or her United
6 States personal income tax return.

7 "(30) RESPONDENT. A person alleged to have violated
8 a provision of this chapter and against whom a complaint has
9 been filed with the commission.

10 "(31) STATEMENT OF ECONOMIC INTERESTS. A financial
11 disclosure form made available by the commission which shall
12 be completed and filed with the commission prior to April 30
13 of each year covering the preceding calendar year by certain
14 public officials and public employees.

15 "(32) SUPERVISOR. Any person having authority to
16 hire, transfer, suspend, lay off, recall, promote, discharge,
17 assign, or discipline other public employees, or any person
18 responsible to direct them, or to adjust their grievances, or
19 to recommend personnel action, if, in connection with the
20 foregoing, the exercise of the authority is not of a merely
21 routine or clerical nature but requires the use of independent
22 judgment.

23 "(33) THING OF VALUE.

24 "a. Any gift, benefit, favor, service, gratuity,
25 tickets or passes to an entertainment, social or sporting
26 event, unsecured loan, other than those loans and forbearances

1 made in the ordinary course of business, reward, promise of
2 future employment, or honoraria or other item of monetary
3 value.

4 "b. The term, thing of value, does not include any
5 of the following, provided that no particular course of action
6 is required as a condition to the receipt thereof:

7 "1. A contribution reported under Chapter 5 of Title
8 17 or a contribution to an inaugural or transition committee.

9 "2. Anything given by a family member of the
10 recipient under circumstances which make it clear that it is
11 motivated by a family relationship.

12 "3. Anything given by a friend of the recipient
13 under circumstances which make it clear that it is motivated
14 by a friendship and not given because of the recipient's
15 official position. Relevant factors include whether the
16 friendship preexisted the recipient's status as a public
17 employee, public official, or candidate and whether gifts have
18 been previously exchanged between them.

19 "4. Greeting cards, items, services with little
20 intrinsic value which are intended solely for presentation,
21 such as plaques, certificates, and trophies, promotional items
22 commonly distributed to the general public, and items or
23 services of de minimis value.

24 "5. Loans from banks and other financial
25 institutions on terms generally available to the public.

1 "6. Opportunities and benefits, including favorable
2 rates and commercial discounts, available to the public or to
3 a class consisting of all government employees.

4 "7. Rewards and prizes given to competitors in
5 contests or events, including random drawings, which are open
6 to the public.

7 "8. Anything that is paid for by a governmental
8 entity or an entity created by a governmental entity to
9 support the governmental entity or secured by a governmental
10 entity under contract, except for tickets to a sporting event
11 offered by an educational institution to anyone other than
12 faculty, staff, or administration of the institution.

13 "9. Anything for which the recipient pays full
14 value.

15 "10. Compensation and other benefits earned from a
16 non-government employer, vendor, client, prospective employer,
17 or other business relationship in the ordinary course of
18 employment or non-governmental business activities under
19 circumstances which make it clear that the thing is provided
20 for reasons unrelated to the recipient's public service as a
21 public official or public employee.

22 "11. Any assistance provided or rendered in
23 connection with a safety or a health emergency.

24 "12. Payment of or reimbursement for actual and
25 necessary transportation and lodging expenses, as well as
26 waiver of registration fees and similar costs, to facilitate

1 the attendance of a public official or public employee, and
2 the spouse of the public official or public employee, at an
3 educational function or widely attended event of which the
4 person is a primary sponsor. This exclusion applies only if
5 the public official or public employee meaningfully
6 participates in the event as a speaker or a panel participant,
7 by presenting information related to his or her agency or
8 matters pending before his or her agency, or by performing a
9 ceremonial function appropriate to his or her official
10 position; or if the public official's or public employee's
11 attendance at the event is appropriate to the performance of
12 his or her official duties or representative function.

13 "13. Payment of or reimbursement for actual and
14 necessary transportation and lodging expenses to facilitate a
15 public official's or public employee's participation in an
16 economic development function.

17 "14. Hospitality, meals, and other food and
18 beverages provided to a public official or public employee,
19 and the spouse of the public official or public employee, as
20 an integral part of an educational function, economic
21 development function, work session, or widely attended event,
22 such as a luncheon, banquet, or reception hosted by a civic
23 club, chamber of commerce, charitable or educational
24 organization, or trade or professional association.

1 "15. Any function or activity pre-certified by the
2 Director of the Ethics Commission as a function that meets any
3 of the above criteria.

4 "16. Meals and other food and beverages provided to
5 a public official or public employee in a setting other than
6 any of the above functions not to exceed for a lobbyist
7 twenty-five dollars (\$25) per meal with a limit of one hundred
8 fifty dollars (\$150) per year; and not to exceed for a
9 principal fifty dollars (\$50) per meal with a limit of two
10 hundred fifty dollars (\$250) per year. Notwithstanding the
11 foregoing, the lobbyist's limits herein shall not count
12 against the principal's limits and likewise, the principal's
13 limits shall not count against the lobbyist's limits.

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

1 or corporation in his or her capacity as an officer or
2 director.

3 "18. Any benefit received as a discount on
4 accommodations, when the discount is given to the public
5 official because the public official is a member of an
6 organization or association whose entire membership receives
7 the discount.

8 "19. Gifts from a pupil or his or her immediate
9 family member to a principal, teacher, or other person
10 employed by a local school system of an insignificant economic
11 value of less than one hundred dollars (\$100) if the aggregate
12 value of the gifts is less than two hundred fifty dollars
13 (\$250) during any one calendar year under circumstances which
14 make it clear that no quid pro quo was understood or implied.

15 "c. Nothing in this chapter shall be deemed to
16 limit, prohibit, or otherwise require the disclosure of gifts
17 through inheritance received by a public employee or public
18 official.

19 "(34) VALUE. The fair market price of a like item if
20 purchased by a private citizen. In the case of tickets to
21 social and sporting events and associated passes, the value is
22 the face value printed on the ticket.

23 "(35) WIDELY ATTENDED EVENT. A gathering, dinner,
24 reception, or other event of mutual interest to a number of
25 parties at which it is reasonably expected that more than 12

1 individuals will attend and that individuals with a diversity
2 of views or interest will be present."

3 Section 2. This act shall become effective on the
4 first day of the third month following its passage and
5 approval by the Governor, or its otherwise becoming law.