

1 SB305
2 136461-1
3 By Senators Ward and Whatley
4 RFD: Constitution, Campaign Finance, Ethics, and Elections
5 First Read: 14-FEB-12

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8 SYNOPSIS: Under existing law relating to ethics, the
9 term "de minimis" is not defined.

10 This bill would, in relation to the ethics
11 laws, define the term "de minimis" as a gift of
12 less than \$25.

13
14 A BILL
15 TO BE ENTITLED
16 AN ACT

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18 To amend Section 36-25-1, as last amended by Act
19 2010-764, 2010 First Special Session, Code of Alabama 1975,
20 relating to ethics; to define the term "de minimis" as a gift
21 of less than \$25.

22 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

23 Section 1. Section 36-25-1, as last amended by Act
24 2010-764, 2010 First Special Session, Code of Alabama 1975, is
25 amended to read as follows:

26 "§36-25-1.

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

3 "(1) BUSINESS. Any corporation, partnership,
4 proprietorship, firm, enterprise, franchise, association,
5 organization, self-employed individual, or any other legal
6 entity.

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

12 "(3) CANDIDATE. This term as used in this chapter
13 shall have the same meaning ascribed to it in Section
14 17-22A-2.

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

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

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

21 "(7) CONFIDENTIAL INFORMATION. A complaint filed
22 pursuant to this chapter, together with any statement,
23 conversations, knowledge of evidence, or information received
24 from the complainant, witness, or other person related to such
25 complaint.

26 "(8) CONFLICT OF INTEREST. A conflict on the part of
27 a public official or public employee between his or her

1 private interests and the official responsibilities inherent
2 in an office of public trust. A conflict of interest involves
3 any action, inaction, or decision by a public official or
4 public employee in the discharge of his or her official duties
5 which would materially affect his or her financial interest or
6 those of his or her family members or any business with which
7 the person is associated in a manner different from the manner
8 it affects the other members of the class to which he or she
9 belongs. A conflict of interest shall not include any of the
10 following:

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

13 "b. An occasional nonpecuniary award publicly
14 presented by an organization for performance of public
15 service.

16 "c. Payment of or reimbursement for actual and
17 necessary expenditures for travel and subsistence for the
18 personal attendance of a public official or public employee at
19 a convention or other meeting at which he or she is scheduled
20 to meaningfully participate in connection with his or her
21 official duties and for which attendance no reimbursement is
22 made by the state.

23 "d. Any campaign contribution, including the
24 purchase of tickets to, or advertisements in journals, for
25 political or testimonial dinners, if the contribution is
26 actually used for political purposes and is not given under
27 circumstances from which it could reasonably be inferred that

1 the purpose of the contribution is to substantially influence
2 a public official in the performance of his or her official
3 duties.

4 "(9) DAY. Calendar day.

5 "(10) DEPENDENT. Any person, regardless of his or
6 her legal residence or domicile, who receives 50 percent or
7 more of his or her support from the public official or public
8 employee or his or her spouse or who resided with the public
9 official or public employee for more than 180 days during the
10 reporting period.

11 "(11) DE MINIMIS. A gift of less than twenty-five
12 dollars (\$25).

13 "~~(11)~~(12) ECONOMIC DEVELOPMENT FUNCTION. Any
14 function reasonably and directly related to the advancement of
15 a specific, good-faith economic development or trade promotion
16 project or objective.

17 "~~(12)~~(13) EDUCATIONAL FUNCTION. A meeting, event, or
18 activity held within the State of Alabama, or if the function
19 is predominantly attended by participants from other states,
20 held within the continental United States, which is organized
21 around a formal program or agenda of educational or
22 informational speeches, debates, panel discussions, or other
23 presentations concerning matters within the scope of the
24 participants' official duties or other matters of public
25 policy, including social services and community development
26 policies, economic development or trade, ethics, government
27 services or programs, or government operations, and which,

1 taking into account the totality of the program or agenda,
2 could not reasonably be perceived as a subterfuge for a purely
3 social, recreational, or entertainment function.

4 "~~(13)~~ (14) FAMILY MEMBER OF THE PUBLIC EMPLOYEE. The
5 spouse or a dependent of the public employee.

6 "~~(14)~~ (15) FAMILY MEMBER OF THE PUBLIC OFFICIAL. The
7 spouse, a dependent, an adult child and his or her spouse, a
8 parent, a spouse's parents, a sibling and his or her spouse,
9 of the public official.

10 "~~(15)~~ (16) GOVERNMENTAL CORPORATIONS AND AUTHORITIES.
11 Public or private corporations and authorities, including but
12 not limited to, hospitals or other health care corporations,
13 established pursuant to state law by state, county or
14 municipal governments for the purpose of carrying out a
15 specific governmental function. Notwithstanding the foregoing,
16 all employees, including contract employees, of hospitals or
17 other health care corporations and authorities are exempt from
18 the provisions of this chapter.

19 "~~(16)~~ (17) HOUSEHOLD. The public official, public
20 employee, and his or her spouse and dependents.

21 "~~(17)~~ (18) LAW ENFORCEMENT OFFICER. A full-time
22 employee of a governmental unit responsible for the prevention
23 or investigation of crime who is authorized by law to carry
24 firearms, execute search warrants, and make arrests.

25 "~~(18)~~ (19) LEGISLATIVE BODY. The Senate of Alabama,
26 the House of Representatives of Alabama, a county commission,
27 city council, city commission, town council, or municipal

1 council or commission, and any committee or subcommittee
2 thereof.

3 "~~(19)~~ (20) LOBBY or LOBBYING. The practice of
4 promoting, opposing, or in any manner influencing or
5 attempting to influence the introduction, defeat, or enactment
6 of legislation before any legislative body; opposing or in any
7 manner influencing the executive approval, veto, or amendment
8 of legislation; or the practice of promoting, opposing, or in
9 any manner influencing or attempting to influence the
10 enactment, promulgation, modification, or deletion of
11 regulations before any regulatory body. The term does not
12 include providing public testimony before a legislative body
13 or regulatory body or any committee thereof.

14 "~~(20)~~ (21) LOBBYIST.

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

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

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

21 "3. A consultant to the state, county, or municipal
22 levels of government or their instrumentalities, in any manner
23 employed to influence legislation or regulation, regardless
24 whether the consultant is paid in whole or part from state,
25 county, municipal, or private funds.

26 "4. An employee, a paid consultant, or a member of
27 the staff of a lobbyist, whether or not he or she is paid, who

1 regularly communicates with members of a legislative body
2 regarding pending legislation and other matters while the
3 legislative body is in session.

4 "b. The term lobbyist does not include any of the
5 following:

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

8 "2. A person or attorney rendering professional
9 services in drafting bills or in advising clients and in
10 rendering opinions as to the construction and effect of
11 proposed or pending legislation, executive action, or rules or
12 regulations, where those professional services are not
13 otherwise connected with legislative, executive, or regulatory
14 action.

15 "3. Reporters and editors while pursuing normal
16 reportorial and editorial duties.

17 "4. Any citizen not lobbying for compensation who
18 contacts a member of a legislative body, or gives public
19 testimony on a particular issue or on particular legislation,
20 or for the purpose of influencing legislation and who is
21 merely exercising his or her constitutional right to
22 communicate with members of a legislative body.

23 "5. A person who appears before a legislative body,
24 a regulatory body, or an executive agency to either sell or
25 purchase goods or services.

26 "6. A person whose primary duties or
27 responsibilities do not include lobbying, but who may, from

1 time to time, organize social events for members of a
2 legislative body to meet and confer with members of
3 professional organizations and who may have only irregular
4 contacts with members of a legislative body when the body is
5 not in session or when the body is in recess.

6 "7. A person who is a member of a business,
7 professional, or membership organization by virtue of the
8 person's contribution to or payment of dues to the
9 organization even though the organization engages in lobbying
10 activities.

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

15 "~~(21)~~(22) MINOR VIOLATION. Any violation of this
16 chapter in which the public official or public employee
17 receives an economic gain in an amount less than two hundred
18 fifty dollars (\$250) or the governmental entity has an
19 economic loss of less than two hundred fifty dollars (\$250).

20 "~~(22)~~(23) PERSON. A business, individual,
21 corporation, partnership, union, association, firm, committee,
22 club, or other organization or group of persons.

23 "~~(23)~~(24) PRINCIPAL. A person or business which
24 employs, hires, or otherwise retains a lobbyist. A principal
25 is not a lobbyist but is not allowed to give a thing of value.

26 "~~(24)~~(25) PROBABLE CAUSE. A finding that the
27 allegations are more likely than not to have occurred.

1 "~~(25)~~(26) PUBLIC EMPLOYEE. Any person employed at
2 the state, county, or municipal level of government or their
3 instrumentalities, including governmental corporations and
4 authorities, but excluding employees of hospitals or other
5 health care corporations including contract employees of those
6 hospitals or other health care corporations, who is paid in
7 whole or in part from state, county, or municipal funds. For
8 purposes of this chapter, a public employee does not include a
9 person employed on a part-time basis whose employment is
10 limited to providing professional services other than
11 lobbying, the compensation for which constitutes less than 50
12 percent of the part-time employee's income.

13 "~~(26)~~(27) PUBLIC OFFICIAL. Any person elected to
14 public office, whether or not that person has taken office, by
15 the vote of the people at state, county, or municipal level of
16 government or their instrumentalities, including governmental
17 corporations, and any person appointed to a position at the
18 state, county, or municipal level of government or their
19 instrumentalities, including governmental corporations. For
20 purposes of this chapter, a public official includes the
21 chairs and vice-chairs or the equivalent offices of each state
22 political party as defined in Section 17-13-40.

23 "~~(27)~~(28) REGULATORY BODY. A state agency which
24 issues regulations in accordance with the Alabama
25 Administrative Procedure Act or a state, county, or municipal
26 department, agency, board, or commission which controls,

1 according to rule or regulation, the activities, business
2 licensure, or functions of any group, person, or persons.

3 "~~(28)~~ (29) REPORTING PERIOD. The reporting official's
4 or employee's fiscal tax year as it applies to his or her
5 United States personal income tax return.

6 "~~(29)~~ (30) REPORTING YEAR. The reporting official's
7 or employee's fiscal tax year as it applies to his or her
8 United States personal income tax return.

9 "~~(30)~~ (31) RESPONDENT. A person alleged to have
10 violated a provision of this chapter and against whom a
11 complaint has been filed with the commission.

12 "~~(31)~~ (32) STATEMENT OF ECONOMIC INTERESTS. A
13 financial disclosure form made available by the commission
14 which shall be completed and filed with the commission prior
15 to April 30 of each year covering the preceding calendar year
16 by certain public officials and public employees.

17 "~~(32)~~ (33) SUPERVISOR. Any person having authority to
18 hire, transfer, suspend, lay off, recall, promote, discharge,
19 assign, or discipline other public employees, or any person
20 responsible to direct them, or to adjust their grievances, or
21 to recommend personnel action, if, in connection with the
22 foregoing, the exercise of the authority is not of a merely
23 routine or clerical nature but requires the use of independent
24 judgment.

25 "~~(33)~~ (34) THING OF VALUE.

26 "a. Any gift, benefit, favor, service, gratuity,
27 tickets or passes to an entertainment, social or sporting

1 event, unsecured loan, other than those loans and forbearances
2 made in the ordinary course of business, reward, promise of
3 future employment, or honoraria or other item of monetary
4 value.

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

8 "1. A contribution reported under Chapter 5 of Title
9 17 or a contribution to an inaugural or transition committee.

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

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

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

25 "5. Loans from banks and other financial
26 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
27 the attendance of a public official or public employee, and

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

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

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

24 "15. Any function or activity pre-certified by the
25 Director of the Ethics Commission as a function that meets any
26 of the above criteria.

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

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

26 "18. Any benefit received as a discount on
27 accommodations, when the discount is given to the public

1 official because the public official is a member of an
2 organization or association whose entire membership receives
3 the discount.

4 "c. Nothing in this chapter shall be deemed to
5 limit, prohibit, or otherwise require the disclosure of gifts
6 through inheritance received by a public employee or public
7 official.

8 "~~(34)~~(35) VALUE. The fair market price of a like
9 item if purchased by a private citizen. In the case of tickets
10 to social and sporting events and associated passes, the value
11 is the face value printed on the ticket.

12 "~~(35)~~(36) WIDELY ATTENDED EVENT. A gathering,
13 dinner, reception, or other event of mutual interest to a
14 number of parties at which it is reasonably expected that more
15 than 12 individuals will attend and that individuals with a
16 diversity of views or interest will be present."

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