

1 HB118
2 115047-1
3 By Representative Todd
4 RFD: Judiciary
5 First Read: 12-JAN-10
6 PFD: 01/06/2010

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8 SYNOPSIS: Under existing state ethics law, registered
9 lobbyists are required to report expenditures
10 exceeding \$250 a day on public officials and
11 persons who lobby the Executive Branch are not
12 required to register with the commission.

13 This bill would require lobbyists to
14 disclose all expenditures on public officials, and
15 require those persons who lobby the Executive
16 Branch to register with the Ethics Commission.

17
18 A BILL
19 TO BE ENTITLED
20 AN ACT

21
22 Relating to the Alabama Ethics Act; to amend
23 Sections 36-25-1 and 36-25-19, Code of Alabama 1975, relating
24 to the State Ethics Law, to require lobbyists to disclose all
25 expenditures on public officials, and require those persons
26 who lobby the Executive Branch to register with the Ethics
27 Commission.

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

2 Section 1. Sections 36-25-1 and 36-25-19, Code of
3 Alabama 1975, are amended to read as follows:

4 "§36-25-1.

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

7 "(1) BUSINESS. Any corporation, partnership,
8 proprietorship, firm, enterprise, franchise, association,
9 organization, self-employed individual, or any other legal
10 entity.

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

16 "(3) CANDIDATE. This term as used in this chapter
17 shall have the same meaning ascribed to it in Section
18 17-22A-2.

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

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

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

25 "(7) CONFIDENTIAL INFORMATION. A complaint filed
26 pursuant to this chapter, together with any statement,
27 conversations, knowledge of evidence, or information received

1 from the complainant, witness, or other person related to such
2 complaint.

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

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

17 "b. An occasional nonpecuniary award publicly
18 presented by an organization for performance of public
19 service.

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

1 "d. Any campaign contribution, including the
2 purchase of tickets to, or advertisements in journals, for
3 political or testimonial dinners, if the contribution is
4 actually used for political purposes and is not given under
5 circumstances from which it could reasonably be inferred that
6 the purpose of the contribution is to substantially influence
7 a public official in the performance of his or her official
8 duties.

9 "(9) DAY. Calendar day.

10 "(10) DEPENDENT. Any person, regardless of his or
11 her legal residence or domicile, who receives 50 percent or
12 more of his or her support from the public official or public
13 employee or his or her spouse or who resided with the public
14 official or public employee for more than 180 days during the
15 reporting period.

16 "(11) FAMILY MEMBER OF THE PUBLIC EMPLOYEE. The
17 spouse or a dependent of the public employee.

18 "(12) FAMILY MEMBER OF THE PUBLIC OFFICIAL. The
19 spouse, a dependent, an adult child and his or her spouse, a
20 parent, a spouse's parents, a sibling and his or her spouse,
21 of the public official.

22 "(13) GOVERNMENTAL CORPORATIONS AND AUTHORITIES.
23 Public or private corporations and authorities, including but
24 not limited to, hospitals or other health care corporations,
25 established pursuant to state law by state, county or
26 municipal governments for the purpose of carrying out a
27 specific governmental function. Notwithstanding the foregoing,

1 all employees, including contract employees, of hospitals or
2 other health care corporations and authorities are exempt from
3 the provisions of this chapter.

4 "(14) HOUSEHOLD. The public official, public
5 employee, and his or her spouse and dependents.

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

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

14 "(17) LOBBYING. The practice of promoting, opposing,
15 or in any manner influencing or attempting to influence the
16 introduction, defeat, or enactment of legislation before any
17 legislative body; opposing or in any manner influencing the
18 executive approval, veto, or amendment of legislation; or the
19 practice of promoting, opposing, or in any manner influencing
20 or attempting to influence the enactment, promulgation,
21 modification, or deletion of regulations before any regulatory
22 body; provided, however, that providing public testimony
23 before a legislative body or regulatory body or any committee
24 thereof shall not be deemed lobbying. Notwithstanding the
25 foregoing, the term "lobbying" includes the practice of
26 attempting to influence the exercise of executive authority by
27 any constitutional officer of the State of Alabama, any

1 political appointee thereof, or any commission, board, agency,
2 or other body or entity appointed or assigned to exercise
3 governance over the State of Alabama.

4 "(18) LOBBYIST.

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

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

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

11 "3. A person who expends in excess of one hundred
12 dollars (\$100) for a thing of value, not including funds
13 expended for travel, subsistence expenses, and literature,
14 buttons, stickers, publications, or other acts of free speech,
15 during a calendar year to lobby.

16 "4. A consultant to the state, county, or municipal
17 levels of government or their instrumentalities, in any manner
18 employed to influence legislation or regulation, regardless
19 whether the consultant is paid in whole or part from state,
20 county, municipal, or private funds.

21 "5. An employee, a paid consultant, or a member of
22 the staff of a lobbyist, whether or not he or she is paid, who
23 regularly communicates with members of a legislative body
24 regarding pending legislation and other matters while the
25 legislative body is in session.

26 "b. The term lobbyist does not include any of the
27 following:

1 "1. A member of a legislative body on a matter which
2 involves that person's official duties.

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

10 "3. Reporters and editors while pursuing normal
11 reportorial and editorial duties.

12 "4. Any citizen not expending funds as set out above
13 in paragraph a.3. or not lobbying for compensation who
14 contacts a member of a legislative body, or gives public
15 testimony on a particular issue or on particular legislation,
16 or for the purpose of influencing legislation and who is
17 merely exercising his or her constitutional right to
18 communicate with members of a legislative body.

19 "5. A person who appears before a legislative body,
20 a regulatory body, or an executive agency to either sell or
21 purchase goods or services.

22 "6. A person whose primary duties or
23 responsibilities do not include lobbying, but who may, from
24 time to time, organize social events for members of a
25 legislative body to meet and confer with members of
26 professional organizations and who may have only irregular

1 contacts with members of a legislative body when the body is
2 not in session or when the body is in recess.

3 "(19) MINOR VIOLATION. Any violation of this chapter
4 in which the public official or public employee receives an
5 economic gain in an amount less than two hundred fifty dollars
6 (\$250) or the governmental entity has an economic loss of less
7 than two hundred fifty dollars (\$250).

8 "(20) PERSON. A business, individual, corporation,
9 partnership, union, association, firm, committee, club, or
10 other organization or group of persons.

11 "(21) PRINCIPAL. A person or business which employs,
12 hires, or otherwise retains a lobbyist. Nothing in this
13 chapter shall be deemed to prohibit a principal from
14 simultaneously serving as his or her own lobbyist.

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

17 "(23) PUBLIC EMPLOYEE. Any person employed at the
18 state, county, or municipal level of government or their
19 instrumentalities, including governmental corporations and
20 authorities, but excluding employees of hospitals or other
21 health care corporations including contract employees of those
22 hospitals or other health care corporations, who is paid in
23 whole or in part from state, county or municipal funds. For
24 purposes of this chapter, a public employee does not include a
25 person employed on a part-time basis whose employment is
26 limited to providing professional services other than

1 lobbying, the compensation for which constitutes less than 50
2 percent of the part-time employee's income.

3 "(24) PUBLIC OFFICIAL. Any person elected to public
4 office, whether or not that person has taken office, by the
5 vote of the people at state, county, or municipal level of
6 government or their instrumentalities, including governmental
7 corporations, and any person appointed to a position at the
8 state, county, or municipal level of government or their
9 instrumentalities, including governmental corporations. For
10 purposes of this chapter, a public official includes the
11 chairs and vice-chairs or the equivalent offices of each state
12 political party as defined in Section 17-16-2.

13 "(25) REGULATORY BODY. A state agency which issues
14 regulations in accordance with the Alabama Administrative
15 Procedure Act or a state, county, or municipal department,
16 agency, board, or commission which controls, according to rule
17 or regulation, the activities, business licensure, or
18 functions of any group, person, or persons.

19 "(26) REPORTING PERIOD. The reporting official's or
20 employee's fiscal tax year as it applies to his or her United
21 States personal income tax return.

22 "(27) REPORTING YEAR. The reporting official's or
23 employee's fiscal tax year as it applies to his or her United
24 States personal income tax return.

25 "(28) RESPONDENT. A person alleged to have violated
26 a provision of this chapter and against whom a complaint has
27 been filed with the commission.

1 "(29) STATEMENT OF ECONOMIC INTERESTS. A financial
2 disclosure form made available by the commission which shall
3 be completed and filed with the commission prior to April 30
4 of each year covering the preceding calendar year by certain
5 public officials and public employees.

6 "(30) SUPERVISOR. Any person having authority to
7 hire, transfer, suspend, lay off, recall, promote, discharge,
8 assign, or discipline other public employees, or any person
9 responsible to direct them, or to adjust their grievances, or
10 to recommend personnel action, if, in connection with the
11 foregoing, the exercise of the authority is not of a merely
12 routine or clerical nature but requires the use of independent
13 judgment.

14 "(31) THING OF VALUE.

15 "a. Any gift, benefit, favor, service, gratuity,
16 tickets or passes to an entertainment, social or sporting
17 event offered only to public officials, unsecured loan, other
18 than those loans made in the ordinary course of business,
19 reward, promise of future employment, or honoraria.

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

23 "1. Campaign contribution.

24 "2. Seasonal gifts of an insignificant economic
25 value of less than one hundred dollars (\$100) if the aggregate
26 value of such gifts from any single donor is less than two
27 hundred fifty dollars (\$250) during any one calendar year.

1 "3. Hospitality extended to a public official,
2 public employee, and his or her respective household as a
3 social occasion in the form of food and beverages where the
4 provider is present, lodging in the continental United States
5 and Alaska incidental to the social occasion, and tickets to
6 social or sporting events if the hospitality does not extend
7 beyond three consecutive days and is not continuous in nature
8 and the aggregate value of such hospitality ~~in excess of two~~
9 ~~hundred fifty dollars (\$250) within a calendar day~~ is reported
10 to the commission by the provider provided that the reporting
11 requirement contained in this section shall not apply where
12 the expenditures are made to or on behalf of an organization
13 to which a federal income tax deduction is permitted under
14 subparagraph (A) of paragraph (1) of subsection (b) of Section
15 170 of the Internal Revenue Code of 1986, as amended, or any
16 charitable, education or eleemosynary cause of Section 501 of
17 Title 26 of the U.S. Code, and where the public official or
18 public employee does not receive any direct financial benefit.
19 The reporting shall include the name or names of the recipient
20 or recipients, the value of the entire expenditure, the date
21 or dates of the expenditure, and the type of expenditure.

22 "4. Reasonable transportation, food and beverages
23 where the provider is present, and lodging expenses in the
24 continental United States and Alaska which are provided in
25 conjunction with an educational or informational purpose,
26 together with any hospitality associated therewith; provided,
27 that such hospitality is less than 50 percent of the time

1 spent at such event, and provided further that ~~if the~~
2 ~~aggregate value of such transportation, lodging, food,~~
3 ~~beverages, and any hospitality provided to such public~~
4 ~~employee, public official, and his or her respective household~~
5 ~~is in excess of two hundred fifty dollars (\$250) within a~~
6 ~~calendar day~~ the total amount expended shall be reported to
7 the commission by the provider. The reporting shall include
8 the name or names of the recipient or recipients, the value of
9 the entire expenditure, the date or dates of the expenditure,
10 and the type of expenditure.

11 "5. Payment of or reimbursement for actual and
12 necessary expenditures for travel and subsistence of a public
13 official or public employee in connection with an economic
14 development research or trade mission, or for attendance at a
15 mission or meeting in which he or she is scheduled to
16 meaningfully participate, or regarding matters related to his
17 or her official duties, and for which attendance no
18 reimbursement is made by the state; provided, that any
19 hospitality in the form of entertainment, recreation, or
20 sporting events shall constitute less than 25% of the time
21 spent in connection with the event. ~~If the aggregate value of~~
22 ~~any such hospitality extended to the public employee, public~~
23 ~~official, and his or her respective household is in excess of~~
24 ~~two hundred fifty dollars (\$250) within a calendar day, the~~
25 ~~total amount expended for that day~~ and the total amount
26 expended shall be reported to the commission by the provider.
27 The reporting shall include the name or names of the recipient

1 or recipients, the value of such expenditures, the date or
2 dates of the expenditure, and the type of expenditure.

3 "6. Promotional items commonly distributed to the
4 general public and food or beverages of a nominal value.

5 "c. Nothing in this chapter shall be deemed to
6 limit, prohibit, or otherwise require the disclosure of a
7 personal gift made to a public official or public employee
8 from a spouse, intended spouse, dependent, adult child,
9 sibling, parent, grandparent, uncle, aunt, nephews, nieces or
10 cousins of the public official or public employee, except as
11 otherwise provided by law.

12 "d. Nothing in this chapter shall be deemed to
13 limit, prohibit, or otherwise require the disclosure of gifts
14 through inheritance received by a public employee or public
15 official.

16 "(32) VALUE. The fair market price of a like item if
17 purchased by a private citizen.

18 "§36-25-19.

19 "(a) Every person registered as a lobbyist pursuant
20 to Section 36-25-18 and every principal employing any lobbyist
21 shall file with the commission a report provided by the
22 commission pertaining to the activities set out in that
23 section. The report shall be filed with the commission no
24 later than January 31, April 30, July 31, and October 31 for
25 each preceding calendar quarter, and contain, but not be
26 limited to, the following information:

1 "(1) The cost of those items excluded from the
2 definition of a thing of value which are described in Section
3 36-25-1(32)b. and which are expended ~~within a 24-hour period~~
4 on a public official, public employee, and members of his or
5 her respective household ~~in excess of two hundred fifty~~
6 ~~dollars (\$250)~~ with the name or names of the recipient or
7 recipients and the date of the expenditure.

8 "(2) The nature and date of any financial
9 transaction between the public official, candidate, or member
10 of the household of such public official or candidate and the
11 lobbyist or principal of ~~a~~ any value ~~in excess of five hundred~~
12 ~~dollars (\$500)~~ in the prior quarter, excluding those financial
13 transactions which are required to be reported by candidates
14 under the Fair Campaign Practices Act as provided in Chapter
15 22A (commencing with Section 17-22A-1) of Title 17.

16 "(3) A detailed statement showing the exact amount
17 of any loan given or promised to a public official, candidate,
18 public official or candidate.

19 "(4) A detailed statement showing any direct
20 business association or partnership with any public official,
21 candidate, or members of the household of such public official
22 or candidate; provided, however, that campaign expenditures
23 shall not be deemed a business association or partnership.

24 "(b) Any person not otherwise deemed a lobbyist
25 pursuant to this chapter who negotiates or attempts to
26 negotiate a contract, sells or attempts to sell goods or
27 services, engages or attempts to engage in a financial

1 transaction with a public official or public employee in their
2 official capacity and who ~~within a calendar day expends in~~
3 ~~excess of two hundred fifty dollars (\$250)~~ expends any
4 monetary amount on such public employee, public official, and
5 his or her respective household shall file a detailed
6 quarterly report of the expenditure with the commission.

7 "(c) Any other provision of this chapter to the
8 contrary notwithstanding, no organization whose officer or
9 employee serves as a public official under this chapter shall
10 be required to report expenditures or reimbursement paid to
11 such officer or employee in the performance of the duties with
12 the organization."

13 Section 2. The provisions of this act are severable.
14 If any part of this act is declared invalid or
15 unconstitutional, that declaration shall not affect the part
16 which remains.

17 Section 3. 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.