

1 HB10
2 179098-1
3 By Representatives Patterson, Chesteen, Givan, Shedd, Polizos,
4 Boyd, South, Todd, Daniels, Farley, Hanes, Crawford,
5 Whorton (R), Whorton (I), Collins, Faulkner, Sanderford,
6 Henry, Beech, Moore (M), Scott, Sessions, McCutcheon, Lee,
7 Boothe, Greer, Lindsey, Black, Ford, Moore (B), Rowe,
8 Standridge, Knight, Warren, Robinson, Harbison, Hall, Wood
9 and Fridy
10 RFD: Ethics and Campaign Finance
11 First Read: 15-AUG-16

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8 SYNOPSIS: Under existing law, a teacher or other
9 employee of a public K-12 school is prohibited from
10 accepting a gift from a student if the value of the
11 gift is over \$25.

12 This bill would allow a teacher or other
13 support employee of a public K-12 school to accept
14 a gift of any value from a student if the gift does
15 not require or involve any action, inaction, or
16 decision by the teacher or employee in the
17 discharge of his or her official duties.

18 Amendment 621 of the Constitution of Alabama
19 of 1901, now appearing as Section 111.05 of the
20 Official Recompilation of the Constitution of
21 Alabama of 1901, as amended, prohibits a general
22 law whose purpose or effect would be to require a
23 new or increased expenditure of local funds from
24 becoming effective with regard to a local
25 governmental entity without enactment by a 2/3 vote
26 unless: it comes within one of a number of
27 specified exceptions; it is approved by the

1 affected entity; or the Legislature appropriates
2 funds, or provides a local source of revenue, to
3 the entity for the purpose.

4 The purpose or effect of this bill would be
5 to require a new or increased expenditure of local
6 funds within the meaning of the amendment. However,
7 the bill does not require approval of a local
8 governmental entity or enactment by a 2/3 vote to
9 become effective because it comes within one of the
10 specified exceptions contained in the amendment.

11
12 A BILL
13 TO BE ENTITLED
14 AN ACT
15

16 To amend Section 36-25-1, Code of Alabama 1975,
17 relating to the Code of Ethics, to authorize gifts from
18 students to teachers and certain employees of public K-12
19 schools under certain conditions; and in connection therewith
20 would have as its purpose or effect the requirement of a new
21 or increased expenditure of local funds within the meaning of
22 Amendment 621 of the Constitution of Alabama of 1901, now
23 appearing as Section 111.05 of the Official Recompilation of
24 the Constitution of Alabama of 1901, as amended.

25 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

1 "§36-25-1.

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

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

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

13 "(3) CANDIDATE. This term as used in this chapter
14 shall have the same meaning ascribed to it in Section
15 17-22A-2.

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

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

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

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

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

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

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

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

25 "d. Any campaign contribution, including the
26 purchase of tickets to, or advertisements in journals, for
27 political or testimonial dinners, if the contribution is

1 actually used for political purposes and is not given under
2 circumstances from which it could reasonably be inferred that
3 the purpose of the contribution is to substantially influence
4 a public official in the performance of his or her official
5 duties.

6 "(9) DAY. Calendar day.

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

13 "(11) DE MINIMIS. A value twenty-five dollars (\$25)
14 or less per occasion and an aggregate of fifty dollars (\$50)
15 or less in a calendar year from any single provider, or such
16 other amounts as may be prescribed by the Ethics Commission
17 from time to time by rule pursuant to the Administrative
18 Procedure Act or adjusted each four years from August 1, 2012,
19 to reflect any increase in the cost of living as indicated by
20 the United States Department of Labor Consumer Price Index or
21 any succeeding equivalent index.

22 "(12) ECONOMIC DEVELOPMENT FUNCTION. Any function
23 reasonably and directly related to the advancement of a
24 specific, good-faith economic development or trade promotion
25 project or objective.

26 "(13) EDUCATIONAL FUNCTION. A meeting, event, or
27 activity held within the State of Alabama, or if the function

1 is predominantly attended by participants from other states,
2 held within the continental United States, which is organized
3 around a formal program or agenda of educational or
4 informational speeches, debates, panel discussions, or other
5 presentations concerning matters within the scope of the
6 participants' official duties or other matters of public
7 policy, including social services and community development
8 policies, economic development or trade, ethics, government
9 services or programs, or government operations, and which,
10 taking into account the totality of the program or agenda,
11 could not reasonably be perceived as a subterfuge for a purely
12 social, recreational, or entertainment function.

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

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

19 "(16) GOVERNMENTAL CORPORATIONS AND AUTHORITIES.
20 Public or private corporations and authorities, including but
21 not limited to, hospitals or other health care corporations,
22 established pursuant to state law by state, county or
23 municipal governments for the purpose of carrying out a
24 specific governmental function. Notwithstanding the foregoing,
25 all employees, including contract employees, of hospitals or
26 other health care corporations and authorities are exempt from
27 the provisions of this chapter.

1 "(17) HOUSEHOLD. The public official, public
2 employee, and his or her spouse and dependents.

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

7 "(19) LEGISLATIVE BODY. The term "legislative body"
8 includes the following:

9 "a. The Legislature of Alabama, which includes both
10 the Senate of Alabama and the House of Representatives of
11 Alabama, unless specified otherwise by the express language of
12 any provision herein, and any committee or subcommittee
13 thereof.

14 "b. A county commission, and any committee or
15 subcommittee thereof.

16 "c. A city council, city commission, town council,
17 or other municipal council or commission, and any committee or
18 subcommittee thereof.

19 "(20) LOBBY or LOBBYING. The practice of promoting,
20 opposing, or in any manner influencing or attempting to
21 influence the introduction, defeat, or enactment of
22 legislation before any legislative body; opposing or in any
23 manner influencing the executive approval, veto, or amendment
24 of legislation; or the practice of promoting, opposing, or in
25 any manner influencing or attempting to influence the
26 enactment, promulgation, modification, or deletion of
27 regulations before any regulatory body. The term does not

1 include providing public testimony before a legislative body
2 or regulatory body or any committee thereof.

3 "(21) LOBBYIST.

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

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

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

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

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

20 "b. The term lobbyist does not include any of the
21 following:

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

24 "2. A person or attorney rendering professional
25 services in drafting bills or in advising clients and in
26 rendering opinions as to the construction and effect of
27 proposed or pending legislation, executive action, or rules or

1 regulations, where those professional services are not
2 otherwise connected with legislative, executive, or regulatory
3 action.

4 "3. Reporters and editors while pursuing normal
5 reportorial and editorial duties.

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

12 "5. A person who appears before a legislative body,
13 a regulatory body, or an executive agency to either sell or
14 purchase goods or services.

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

22 "7. A person who is a member of a business,
23 professional, or membership organization by virtue of the
24 person's contribution to or payment of dues to the
25 organization even though the organization engages in lobbying
26 activities.

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

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

10 "(23) PERSON. A business, individual, corporation,
11 partnership, union, association, firm, committee, club, or
12 other organization or group of persons.

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

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

18 "(26) PUBLIC EMPLOYEE. Any person employed at the
19 state, county, or municipal level of government or their
20 instrumentalities, including governmental corporations and
21 authorities, but excluding employees of hospitals or other
22 health care corporations including contract employees of those
23 hospitals or other health care corporations, who is paid in
24 whole or in part from state, county, or municipal funds. For
25 purposes of this chapter, a public employee does not include a
26 person employed on a part-time basis whose employment is
27 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 "(27) 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 17-13-40.

13 "(28) 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 "(29) 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 "(30) 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 "(31) 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 "(32) 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 "(33) 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 "(34) THING OF VALUE.

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

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

24 "1. A contribution reported under Chapter 5 of Title
25 17 or a contribution to an inaugural or transition committee.

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

4 "3. Anything given by a friend of the recipient
5 under circumstances which make it clear that it is motivated
6 by a friendship and not given because of the recipient's
7 official position. Relevant factors include whether the
8 friendship preexisted the recipient's status as a public
9 employee, public official, or candidate and whether gifts have
10 been previously exchanged between them.

11 "4. Greeting cards, and other items, services with
12 little intrinsic value which are intended solely for
13 presentation, such as plaques, certificates, and trophies,
14 promotional items commonly distributed to the general public,
15 and items or services of de minimis value.

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

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

21 "7. Rewards and prizes given to competitors in
22 contests or events, including random drawings, which are open
23 to the public.

24 "8. Anything that is paid for by a governmental
25 entity or an entity created by a governmental entity to
26 support the governmental entity or secured by a governmental
27 entity under contract, except for tickets to a sporting event

1 offered by an educational institution to anyone other than
2 faculty, staff, or administration of the institution.

3 "9. Anything for which the recipient pays full
4 value.

5 "10. Compensation and other benefits earned from a
6 non-government employer, vendor, client, prospective employer,
7 or other business relationship in the ordinary course of
8 employment or non-governmental business activities under
9 circumstances which make it clear that the thing is provided
10 for reasons unrelated to the recipient's public service as a
11 public official or public employee.

12 "11. Any assistance provided or rendered in
13 connection with a safety or a health emergency.

14 "12. Payment of or reimbursement for actual and
15 necessary transportation and lodging expenses, as well as
16 waiver of registration fees and similar costs, to facilitate
17 the attendance of a public official or public employee, and
18 the spouse of the public official or public employee, at an
19 educational function or widely attended event of which the
20 person is a primary sponsor. This exclusion applies only if
21 the public official or public employee meaningfully
22 participates in the event as a speaker or a panel participant,
23 by presenting information related to his or her agency or
24 matters pending before his or her agency, or by performing a
25 ceremonial function appropriate to his or her official
26 position; or if the public official's or public employee's

1 attendance at the event is appropriate to the performance of
2 his or her official duties or representative function.

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

7 "14. Hospitality, meals, and other food and
8 beverages provided to a public official or public employee,
9 and the spouse of the public official or public employee, as
10 an integral part of an educational function, economic
11 development function, work session, or widely attended event,
12 such as a luncheon, banquet, or reception hosted by a civic
13 club, chamber of commerce, charitable or educational
14 organization, or trade or professional association.

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

18 "16. Meals and other food and beverages provided to
19 a public official or public employee in a setting other than
20 any of the above functions not to exceed for a lobbyist
21 twenty-five dollars (\$25) per meal with a limit of one hundred
22 fifty dollars (\$150) per year; and not to exceed for a
23 principal fifty dollars (\$50) per meal with a limit of two
24 hundred fifty dollars (\$250) per year. Notwithstanding the
25 foregoing, the lobbyist's limits herein shall not count
26 against the principal's limits and likewise, the principal's
27 limits shall not count against the lobbyist's limits.

1 "17. Anything either (i) provided by an association
2 or organization to which the state or, in the case of a local
3 government official or employee, the local government pays
4 annual dues as a membership requirement or (ii) provided by an
5 association or organization to a public official who is a
6 member of the association or organization and, as a result of
7 his or her service to the association or organization, is
8 deemed to be a public official. Further included in this
9 exception is payment of reasonable compensation by a
10 professional or local government association or corporation to
11 a public official who is also an elected officer or director
12 of the professional or local government association or
13 corporation for services actually provided to the association
14 or corporation in his or her capacity as an officer or
15 director.

16 "18. Any benefit received as a discount on
17 accommodations, when the discount is given to the public
18 official because the public official is a member of an
19 organization or association whose entire membership receives
20 the discount.

21 "19. A gift of any value to a teacher or a support
22 employee, as defined in Section 16-22-4.1, of a public K-12
23 school by a student under circumstances which make it clear
24 the gift does not require or involve any action, inaction, or
25 decision by the teacher in the discharge of his or her
26 official duties.

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

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

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

14 Section 2. Although this bill would have as its
15 purpose or effect the requirement of a new or increased
16 expenditure of local funds, the bill is excluded from further
17 requirements and application under Amendment 621, now
18 appearing as Section 111.05 of the Official Recompilation of
19 the Constitution of Alabama of 1901, as amended, because the
20 bill defines a new crime or amends the definition of an
21 existing crime.

22 Section 3. This act shall become effective
23 immediately following its passage and approval by the
24 Governor, or its otherwise becoming law.