

1 SB79
2 135125-2
3 By Senators Whatley, Ward, Blackwell and Dial
4 RFD: Constitution, Campaign Finance, Ethics, and Elections
5 First Read: 07-FEB-12
6 PFD: 12/13/2011

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8 SYNOPSIS: Under existing law, gifts to public school
9 teachers from a student or parents of the students
10 with a 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 seasonal gifts
14 from a pupil or his or her immediate family member
15 to a principal, teacher, or other person employed
16 by a local school system of an insignificant
17 economic value of less than \$100 if the aggregate
18 value of the gifts is less than \$250 during any one
19 calendar year under circumstances which make it
20 clear that no quid pro quo was understood or
21 implied.

22
23 A BILL
24 TO BE ENTITLED
25 AN ACT
26

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 seasonal gifts from a pupil or his or
4 her 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.

25 "(3) CANDIDATE. This term as used in this chapter
26 shall have the same meaning ascribed to it in Section
27 17-22A-2.

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

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

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

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

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

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

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

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

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

19 "(9) DAY. Calendar day.

20 "(10) DEPENDENT. Any person, regardless of his or
21 her legal residence or domicile, who receives 50 percent or
22 more of his or her support from the public official or public
23 employee or his or her spouse or who resided with the public
24 official or public employee for more than 180 days during the
25 reporting period.

26 "(11) ECONOMIC DEVELOPMENT FUNCTION. Any function
27 reasonably and directly related to the advancement of a

1 specific, good-faith economic development or trade promotion
2 project or objective.

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

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

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

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

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

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

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

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

15 "(19) LOBBY or LOBBYING. The practice of promoting,
16 opposing, or in any manner influencing or attempting to
17 influence the introduction, defeat, or enactment of
18 legislation before any legislative body; opposing or in any
19 manner influencing the executive approval, veto, or amendment
20 of legislation; or the practice of promoting, opposing, or in
21 any manner influencing or attempting to influence the
22 enactment, promulgation, modification, or deletion of
23 regulations before any regulatory body. The term does not
24 include providing public testimony before a legislative body
25 or regulatory body or any committee thereof.

26 "(20) LOBBYIST.

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

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

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

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

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

16 "b. The term lobbyist does not include any of the
17 following:

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

20 "2. A person or attorney rendering professional
21 services in drafting bills or in advising clients and in
22 rendering opinions as to the construction and effect of
23 proposed or pending legislation, executive action, or rules or
24 regulations, where those professional services are not
25 otherwise connected with legislative, executive, or regulatory
26 action.

1 "3. Reporters and editors while pursuing normal
2 reportorial and editorial duties.

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

9 "5. A person who appears before a legislative body,
10 a regulatory body, or an executive agency to either sell or
11 purchase goods or services.

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

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

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

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

6 "(22) PERSON. A business, individual, corporation,
7 partnership, union, association, firm, committee, club, or
8 other organization or group of persons.

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

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

14 "(25) PUBLIC EMPLOYEE. Any person employed at the
15 state, county, or municipal level of government or their
16 instrumentalities, including governmental corporations and
17 authorities, but excluding employees of hospitals or other
18 health care corporations including contract employees of those
19 hospitals or other health care corporations, who is paid in
20 whole or in part from state, county, or municipal funds. For
21 purposes of this chapter, a public employee does not include a
22 person employed on a part-time basis whose employment is
23 limited to providing professional services other than
24 lobbying, the compensation for which constitutes less than 50
25 percent of the part-time employee's income.

26 "(26) PUBLIC OFFICIAL. Any person elected to public
27 office, whether or not that person has taken office, by the

1 vote of the people at state, county, or municipal level of
2 government or their instrumentalities, including governmental
3 corporations, and any person appointed to a position at the
4 state, county, or municipal level of government or their
5 instrumentalities, including governmental corporations. For
6 purposes of this chapter, a public official includes the
7 chairs and vice-chairs or the equivalent offices of each state
8 political party as defined in Section 17-13-40.

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

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

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

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

24 "(31) STATEMENT OF ECONOMIC INTERESTS. A financial
25 disclosure form made available by the commission which shall
26 be completed and filed with the commission prior to April 30

1 of each year covering the preceding calendar year by certain
2 public officials and public employees.

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

11 "(33) THING OF VALUE.

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

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

21 "1. A contribution reported under Chapter 5 of Title
22 17 or a contribution to an inaugural or transition committee.

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

26 "3. Anything given by a friend of the recipient
27 under circumstances which make it clear that it is motivated

1 by a friendship and not given because of the recipient's
2 official position. Relevant factors include whether the
3 friendship preexisted the recipient's status as a public
4 employee, public official, or candidate and whether gifts have
5 been previously exchanged between them.

6 "4. Greeting cards, items, services with little
7 intrinsic value which are intended solely for presentation,
8 such as plaques, certificates, and trophies, promotional items
9 commonly distributed to the general public, and items or
10 services of de minimis value.

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

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

16 "7. Rewards and prizes given to competitors in
17 contests or events, including random drawings, which are open
18 to the public.

19 "8. Anything that is paid for by a governmental
20 entity or an entity created by a governmental entity to
21 support the governmental entity or secured by a governmental
22 entity under contract, except for tickets to a sporting event
23 offered by an educational institution to anyone other than
24 faculty, staff, or administration of the institution.

25 "9. Anything for which the recipient pays full
26 value.

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

8 "11. Any assistance provided or rendered in
9 connection with a safety or a health emergency.

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

25 "13. Payment of or reimbursement for actual and
26 necessary transportation and lodging expenses to facilitate a

1 public official's or public employee's participation in an
2 economic development function.

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

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

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

24 "17. Anything either (i) provided by an association
25 or organization to which the state or, in the case of a local
26 government official or employee, the local government pays
27 annual dues as a membership requirement or (ii) provided by an

1 association or organization to a public official who is a
2 member of the association or organization and, as a result of
3 his or her service to the association or organization, is
4 deemed to be a public official. Further included in this
5 exception is payment of reasonable compensation by a
6 professional or local government association or corporation to
7 a public official who is also an elected officer or director
8 of the professional or local government association or
9 corporation for services actually provided to the association
10 or corporation in his or her capacity as an officer or
11 director.

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

17 "19. Seasonal gifts from a pupil or his or her
18 immediate family member to a principal, teacher, or other
19 person employed by a local school system under circumstances
20 which make it clear that no quid pro quo was understood or
21 implied.

22 "c. Nothing in this chapter shall be deemed to
23 limit, prohibit, or otherwise require the disclosure of gifts
24 through inheritance received by a public employee or public
25 official.

26 "(34) VALUE. The fair market price of a like item if
27 purchased by a private citizen. In the case of tickets to

1 social and sporting events and associated passes, the value is
2 the face value printed on the ticket.

3 "(35) WIDELY ATTENDED EVENT. A gathering, dinner,
4 reception, or other event of mutual interest to a number of
5 parties at which it is reasonably expected that more than 12
6 individuals will attend and that individuals with a diversity
7 of views or interest will be present."

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