HB136

138674-3

By Representative McCutcheon

RFD: Ethics and Campaign Finance

First Read: 07-FEB-12

PFD: 02/02/2012

ENGROSSED

A BILL
TO BE ENTITLED
AN ACT

To amend Section 36-25-1, as amended by Act 2010-764 of the 2010 First Special Session and Section 36-25-14, Code of Alabama 1975, relating to ethics; to increase the threshold for filing a statement of economic interests and allow the commission to adjust the amount pursuant to the cost-of-living index and exempt employees who do not have the authority to expend public funds; to provide that every public employee serving as a supervisor shall be required to file a statement of economic interests.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 36-25-1, as amended by Act 2010-764 of the 2010 First Special Session and Section 36-25-14, Code of Alabama 1975, are amended to read as follows:

"§36-25-1.

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

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

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

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

"(4) COMMISSION. The State Ethics Commission.

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

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

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

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

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

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

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

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

"(9) DAY. Calendar day.

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

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

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

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

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

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

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

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

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

(19) LOBBY or LOBBYING. The practice of promoting, opposing, or in any manner influencing or attempting to influence the introduction, defeat, or enactment of legislation before any legislative body; opposing or in any

manner influencing the executive approval, veto, or amendment of legislation; or the practice of promoting, opposing, or in any manner influencing or attempting to influence the enactment, promulgation, modification, or deletion of regulations before any regulatory body. The term does not include providing public testimony before a legislative body or regulatory body or any committee thereof.

"(20) LOBBYIST.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"(33) THING OF VALUE.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"§36-25-14.

"(a) A statement of economic interests shall be completed and filed in accordance with this chapter with the commission no later than April 30 of each year covering the period of the preceding calendar year by each of the following:

"(1) All elected public officials at the state, county, or municipal level of government or their instrumentalities.

"(2) Any person appointed as a public official and any person employed as a public employee at the state, county, or municipal level of government or their instrumentalities who occupies a position whose base pay is ~~fifty thousand dollars ($50,000)~~ seventy-five thousand dollars ($75,000) or more annually, as adjusted by the commission by January 31 of each year to reflect changes in the U.S. Department of Labor's Consumer Price Index, or a successor index.

"(3) All candidates, simultaneously with the date he or she becomes a candidate as defined in Section 17-22A-2, or the date the candidate files his or her qualifying papers, whichever comes first.

"(4) Members of the Alabama Ethics Commission; appointed members of boards and commissions having statewide jurisdiction (but excluding members of solely advisory boards).

"(5) All full-time nonmerit employees, other than those employed in maintenance, clerical, secretarial, or other similar positions.

"(6) Chief clerks and chief managers.

"(7) Chief county clerks and chief county managers.

"(8) Chief administrators.

"(9) Chief county administrators.

"(10) Any public official or public employee whose primary duty is to invest public funds.

"(11) Chief administrative officers of any political subdivision.

"(12) Chief and assistant county building inspectors.

"(13) Any county or municipal administrator with power to grant or deny land development permits.

"(14) Chief municipal clerks.

"(15) Chiefs of police.

"(16) Fire chiefs.

"(17) City and county school superintendents and school board members.

"(18) City and county school principals or administrators.

"(19) Purchasing or procurement agents having the authority to make any purchase.

"(20) Directors and assistant directors of state agencies.

"(21) Chief financial and accounting directors.

"(22) Chief grant coordinators.

"(23) Each employee of the Legislature or of agencies, including temporary committees and commissions established by the Legislature, other than those employed in maintenance, clerical, secretarial, or similar positions.

"(24) Each employee of the Judicial Branch of government, including active supernumerary district attorneys and judges, other than those employed in maintenance, clerical, secretarial, or other similar positions.

"(25) Every full-time public employee serving as a supervisor.

"(b) Unless otherwise required by law, no public employee occupying a position earning less than ~~fifty thousand dollars ($50,000)~~ seventy-five thousand dollars ($75,000) per year shall be required to file a statement of economic interests, as adjusted by the commission by January 31 of each year to reflect changes in the U.S. Department of Labor's Consumer Price Index, or a successor index. Notwithstanding the provisions of subsection (a) or any other provision of this chapter, no coach of an athletic team of any four-year institution of higher education which receives state funds shall be required to include any income, donations, gifts, or benefits, other than salary, on the statement of economic interests, if the income, donations, gifts, or benefits are a condition of the employment contract. Such statement shall be made on a form made available by the commission. The duty to file the statement of economic interests shall rest with the person covered by this chapter. Nothing in this chapter shall be construed to exclude any public employee or public official from this chapter regardless of whether they are required to file a statement of economic interests. The statement shall contain the following information on the person making the filing:

"(1) Name, residential address, business; name, address, and business of living spouse and dependents; name of living adult children; name of parents and siblings; name of living parents of spouse. Undercover law enforcement officers may have their residential addresses and the names of family members removed from public scrutiny by filing an affidavit stating that publicizing this information would potentially endanger their families.

"(2) A list of occupations to which one third or more of working time was given during previous reporting year by the public official, public employee, or his or her spouse.

"(3) A listing of total combined household income of the public official or public employee during the most recent reporting year as to income from salaries, fees, dividends, profits, commissions, and other compensation and listing the names of each business and the income derived from such business in the following categorical amounts: less than one thousand dollars ($1,000); at least one thousand dollars ($1,000) and less than ten thousand dollars ($10,000); at least ten thousand dollars ($10,000) and less than fifty thousand dollars ($50,000); at least fifty thousand dollars ($50,000) and less than one hundred fifty thousand dollars ($150,000); at least one hundred fifty thousand dollars ($150,000) and less than two hundred fifty thousand dollars ($250,000); or at least two hundred fifty thousand dollars ($250,000) or more. The person reporting shall also name any business or subsidiary thereof in which he or she or his or her spouse or dependents, jointly or severally, own five percent or more of the stock or in which he or she or his or her spouse or dependents serves as an officer, director, trustee, or consultant where the service provides income of at least one thousand dollars ($1,000) and less than five thousand dollars ($5,000); or at least five thousand dollars ($5,000) or more for the reporting period.

"(4) If the filing public official or public employee, or his or her spouse, has engaged in a business during the last reporting year which provides legal, accounting, medical or health related, real estate, banking, insurance, educational, farming, engineering, architectural management, or other professional services or consultations, then the filing party shall report the number of clients of such business in each of the following categories and the income in categorical amounts received during the reporting period from the combined number of clients in each category: Electric utilities, gas utilities, telephone utilities, water utilities, cable television companies, intrastate transportation companies, pipeline companies, oil or gas exploration companies, or both, oil and gas retail companies, banks, savings and loan associations, loan or finance companies, or both, manufacturing firms, mining companies, life insurance companies, casualty insurance companies, other insurance companies, retail companies, beer, wine or liquor companies or distributors, or combination thereof, trade associations, professional associations, governmental associations, associations of public employees or public officials, counties, and any other businesses or associations that the commission may deem appropriate. Amounts received from combined clients in each category shall be reported in the following categorical amounts: Less than one thousand dollars ($1,000); more than one thousand dollars ($1,000) and less than ten thousand dollars ($10,000); at least ten thousand dollars ($10,000) and less than twenty-five thousand dollars ($25,000); at least twenty-five thousand dollars ($25,000) and less than fifty thousand dollars ($50,000); at least fifty thousand dollars ($50,000) and less than one hundred thousand dollars ($100,000); at least one hundred thousand dollars ($100,000) and less than one hundred fifty thousand dollars ($150,000); at least one hundred fifty thousand dollars ($150,000) and less than two hundred fifty thousand dollars ($250,000); or at least two hundred fifty thousand dollars ($250,000) or more.

"(5) If retainers are in existence or contracted for in any of the above categories of clients, a listing of the categories along with the anticipated income to be expected annually from each category of clients shall be shown in the following categorical amounts: less than one thousand dollars ($1,000); at least one thousand dollars ($1,000) and less than five thousand dollars ($5,000); or at least five thousand dollars ($5,000) or more.

"(6) If real estate is held for investment or revenue production by a public official, his or her spouse or dependents, then a listing thereof in the following fair market value categorical amounts: Under fifty thousand dollars ($50,000); at least fifty thousand dollars ($50,000) and less than one hundred thousand dollars ($100,000); at least one hundred thousand dollars ($100,000) and less than one hundred fifty thousand dollars ($150,000); at least one hundred fifty thousand dollars ($150,000) and less than two hundred fifty thousand dollars ($250,000); at least two hundred fifty thousand dollars ($250,000) or more. A listing of annual gross rent and lease income on real estate shall be made in the following categorical amounts: Less than ten thousand dollars ($10,000); at least ten thousand dollars ($10,000) and less than fifty thousand dollars ($50,000); fifty thousand dollars ($50,000) or more. If a public official or a business in which the person is associated received rent or lease income from any governmental agency in Alabama, specific details of the lease or rent agreement shall be filed with the commission.

"(7) A listing of indebtedness to businesses operating in Alabama showing types and number of each as follows: Banks, savings and loan associations, insurance companies, mortgage firms, stockbrokers and brokerages or bond firms; and the indebtedness to combined organizations in the following categorical amounts: Less than twenty-five thousand dollars ($25,000); twenty-five thousand dollars ($25,000) and less than fifty thousand dollars ($50,000); fifty thousand dollars ($50,000) and less than one hundred thousand dollars ($100,000); one hundred thousand dollars ($100,000) and less than one hundred fifty thousand dollars ($150,000); one hundred fifty thousand dollars ($150,000) and less than two hundred fifty thousand dollars ($250,000); two hundred fifty thousand dollars ($250,000) or more. The commission may add additional business to this listing. Indebtedness associated with the homestead of the person filing is exempted from this disclosure requirement.

"(c) Filing required by this section shall reflect information and facts in existence at the end of the reporting year.

"(d) If the information required herein is not filed as required, the commission shall notify the public official or public employee concerned as to his or her failure to so file and the public official or public employee shall have 10 days to file the report after receipt of the notification. The commission may, in its discretion, assess a fine of ten dollars ($10) a day, not to exceed one thousand dollars ($1,000), for failure to file timely.

"(e) A person who intentionally violates any financial disclosure filing requirement of this chapter shall be subject to administrative fines imposed by the commission, or shall, upon conviction, be guilty of a Class A misdemeanor, or both.

"Any person who unintentionally neglects to include any information relating to the financial disclosure filing requirements of this chapter shall have 90 days to file an amended statement of economic interests without penalty."

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

House of Representatives

Read for the first time and referred to the House of Representatives committee on Ethics and Campaign Finance...................... .... 07-FEB-12

Read for the second time and placed on the calendar with 1 substitute and................................ .... 08-MAR-12

Read for the third time and passed as amended......................... .... 22-MAR-12

Yeas 100, Nays 0, Abstains 1

Greg Pappas
Clerk