

1 HB26
2 108689-1
3 By Representative Mitchell
4 RFD: Judiciary
5 First Read: 12-JAN-10
6 PFD: 09/23/2009

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8 SYNOPSIS: Under existing law, certain elected
9 officials are prohibited from soliciting funds on
10 behalf of a nonprofit organization.

11 This bill would allow an elected official to
12 solicit the necessary funds required to operate a
13 nonprofit organization.

14
15 A BILL
16 TO BE ENTITLED
17 AN ACT
18

19 To amend Section 36-25-1, Code of Alabama 1975, to
20 provide for an exception to the definition of "conflict of
21 interest" for elected officials engaging in fund-raising
22 activities for nonprofit organizations.

23 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

26 "§36-25-1.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 "e. When an elected official solicits funds from any
5 person, not a registered lobbyist, on behalf of a governmental
6 or tax exempt nonprofit organization without personal gain for
7 himself or herself or a family member from the fund-raising
8 activity.

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.

25 "(18) LOBBYIST.

26 "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 person who expends in excess of one hundred
7 dollars (\$100) for a thing of value, not including funds
8 expended for travel, subsistence expenses, and literature,
9 buttons, stickers, publications, or other acts of free speech,
10 during a calendar year to lobby.

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

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

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

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

25 "2. A person or attorney rendering professional
26 services in drafting bills or in advising clients and in
27 rendering opinions as to the construction and effect of

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

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

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

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

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

24 "(19) MINOR VIOLATION. Any violation of this chapter
25 in which the public official or public employee receives an
26 economic gain in an amount less than two hundred fifty dollars

1 (\$250) or the governmental entity has an economic loss of less
2 than two hundred fifty dollars (\$250).

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

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

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

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

24 "(24) PUBLIC OFFICIAL. Any person elected to public
25 office, whether or not that person has taken office, by the
26 vote of the people at state, county, or municipal level of
27 government or their instrumentalities, including governmental

1 corporations, and any person appointed to a position at the
2 state, county, or municipal level of government or their
3 instrumentalities, including governmental corporations. For
4 purposes of this chapter, a public official includes the
5 chairs and vice-chairs or the equivalent offices of each state
6 political party as defined in Section 17-16-2.

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

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

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

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

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

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

9 "(31) THING OF VALUE.

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

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

18 "1. Campaign contribution.

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

23 "3. Hospitality extended to a public official,
24 public employee, and his or her respective household as a
25 social occasion in the form of food and beverages where the
26 provider is present, lodging in the continental United States
27 and Alaska incidental to the social occasion, and tickets to

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

17 "4. Reasonable transportation, food and beverages
18 where the provider is present, and lodging expenses in the
19 continental United States and Alaska which are provided in
20 conjunction with an educational or informational purpose,
21 together with any hospitality associated therewith; provided,
22 that such hospitality is less than 50 percent of the time
23 spent at such event, and provided further that if the
24 aggregate value of such transportation, lodging, food,
25 beverages, and any hospitality provided to such public
26 employee, public official, and his or her respective household
27 is in excess of two hundred fifty dollars (\$250) within a

1 calendar day the total amount expended shall be reported to
2 the commission by the provider. The reporting shall include
3 the name or names of the recipient or recipients, the value of
4 the entire expenditure, the date or dates of the expenditure,
5 and the type of expenditure.

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

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

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

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

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

14 Section 2. This act shall become effective
15 immediately following its passage and approval by the
16 Governor, or its otherwise becoming law.