

1 HB466
2 142427-5
3 By Representative Love
4 RFD: Ethics and Campaign Finance
5 First Read: 01-MAR-12

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ENROLLED, An Act,

To amend Section 36-25-1, as last amended by Act 2010-764, 2010 First Special Session, Code of Alabama 1975, relating to ethics; to define the term "de minimis" as a gift of less than \$25 and an aggregate value of \$50 or less in a calendar year from any provider; and to provide that the value of a de minimis would be adjusted based on the increase in the consumer price index each four years from the date of the enactment of this act.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 36-25-1, as last amended by Act 2010-764, 2010 First Special Session, Code of Alabama 1975, is 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

1 member, employee, or holder of more than five percent of the
2 fair market value of the business.

3 "(3) CANDIDATE. This term as used in this chapter
4 shall have the same meaning ascribed to it in Section
5 17-22A-2.

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

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

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

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

17 "(8) CONFLICT OF INTEREST. A conflict on the part of
18 a public official or public employee between his or her
19 private interests and the official responsibilities inherent
20 in an office of public trust. A conflict of interest involves
21 any action, inaction, or decision by a public official or
22 public employee in the discharge of his or her official duties
23 which would materially affect his or her financial interest or
24 those of his or her family members or any business with which
25 the person is associated in a manner different from the manner

1 it affects the other members of the class to which he or she
2 belongs. A conflict of interest shall not include any of the
3 following:

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

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

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

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

24 "(9) DAY. Calendar day.

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

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

17 "~~(11)~~(12) ECONOMIC DEVELOPMENT FUNCTION. Any
18 function reasonably and directly related to the advancement of
19 a specific, good-faith economic development or trade promotion
20 project or objective.

21 "~~(12)~~(13) EDUCATIONAL FUNCTION. A meeting, event, or
22 activity held within the State of Alabama, or if the function
23 is predominantly attended by participants from other states,
24 held within the continental United States, which is organized
25 around a formal program or agenda of educational or

1 informational speeches, debates, panel discussions, or other
2 presentations concerning matters within the scope of the
3 participants' official duties or other matters of public
4 policy, including social services and community development
5 policies, economic development or trade, ethics, government
6 services or programs, or government operations, and which,
7 taking into account the totality of the program or agenda,
8 could not reasonably be perceived as a subterfuge for a purely
9 social, recreational, or entertainment function.

10 "~~(13)~~ (14) FAMILY MEMBER OF THE PUBLIC EMPLOYEE. The
11 spouse or a dependent of the public employee.

12 "~~(14)~~ (15) FAMILY MEMBER OF THE PUBLIC OFFICIAL. The
13 spouse, a dependent, an adult child and his or her spouse, a
14 parent, a spouse's parents, a sibling and his or her spouse,
15 of the public official.

16 "~~(15)~~ (16) GOVERNMENTAL CORPORATIONS AND AUTHORITIES.
17 Public or private corporations and authorities, including but
18 not limited to, hospitals or other health care corporations,
19 established pursuant to state law by state, county or
20 municipal governments for the purpose of carrying out a
21 specific governmental function. Notwithstanding the foregoing,
22 all employees, including contract employees, of hospitals or
23 other health care corporations and authorities are exempt from
24 the provisions of this chapter.

1 "~~(16)~~ (17) HOUSEHOLD. The public official, public
2 employee, and his or her spouse and dependents.

3 "~~(17)~~ (18) LAW ENFORCEMENT OFFICER. A full-time
4 employee of a governmental unit responsible for the prevention
5 or investigation of crime who is authorized by law to carry
6 firearms, execute search warrants, and make arrests.

7 "~~(18)~~ (19) LEGISLATIVE BODY. The Senate of Alabama,
8 the House of Representatives of Alabama, a county commission,
9 city council, city commission, town council, or municipal
10 council or commission, and any committee or subcommittee
11 thereof.

12 "~~(19)~~ (20) LOBBY or LOBBYING. The practice of
13 promoting, opposing, or in any manner influencing or
14 attempting to influence the introduction, defeat, or enactment
15 of legislation before any legislative body; opposing or in any
16 manner influencing the executive approval, veto, or amendment
17 of legislation; or the practice of promoting, opposing, or in
18 any manner influencing or attempting to influence the
19 enactment, promulgation, modification, or deletion of
20 regulations before any regulatory body. The term does not
21 include providing public testimony before a legislative body
22 or regulatory body or any committee thereof.

23 "~~(20)~~ (21) LOBBYIST.

24 "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

1 otherwise connected with legislative, executive, or regulatory
2 action.

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

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

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

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

21 "7. A person who is a member of a business,
22 professional, or membership organization by virtue of the
23 person's contribution to or payment of dues to the
24 organization even though the organization engages in lobbying
25 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 "~~(21)~~(22) MINOR VIOLATION. Any violation of this
6 chapter in which the public official or public employee
7 receives an economic gain in an amount less than two hundred
8 fifty dollars (\$250) or the governmental entity has an
9 economic loss of less than two hundred fifty dollars (\$250).

10 "~~(22)~~(23) PERSON. A business, individual,
11 corporation, partnership, union, association, firm, committee,
12 club, or other organization or group of persons.

13 "~~(23)~~(24) PRINCIPAL. A person or business which
14 employs, hires, or otherwise retains a lobbyist. A principal
15 is not a lobbyist but is not allowed to give a thing of value.

16 "~~(24)~~(25) PROBABLE CAUSE. A finding that the
17 allegations are more likely than not to have occurred.

18 "~~(25)~~(26) PUBLIC EMPLOYEE. Any person employed at
19 the 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

1 person employed on a part-time basis whose employment is
2 limited to providing professional services other than
3 lobbying, the compensation for which constitutes less than 50
4 percent of the part-time employee's income.

5 "~~(26)~~ (27) PUBLIC OFFICIAL. Any person elected to
6 public office, whether or not that person has taken office, by
7 the vote of the people at state, county, or municipal level of
8 government or their instrumentalities, including governmental
9 corporations, and any person appointed to a position at the
10 state, county, or municipal level of government or their
11 instrumentalities, including governmental corporations. For
12 purposes of this chapter, a public official includes the
13 chairs and vice-chairs or the equivalent offices of each state
14 political party as defined in Section 17-13-40.

15 "~~(27)~~ (28) REGULATORY BODY. A state agency which
16 issues regulations in accordance with the Alabama
17 Administrative Procedure Act or a state, county, or municipal
18 department, agency, board, or commission which controls,
19 according to rule or regulation, the activities, business
20 licensure, or functions of any group, person, or persons.

21 "~~(28)~~ (29) REPORTING PERIOD. The reporting official's
22 or employee's fiscal tax year as it applies to his or her
23 United States personal income tax return.

1 "~~(29)~~(30) REPORTING YEAR. The reporting official's
2 or employee's fiscal tax year as it applies to his or her
3 United States personal income tax return.

4 "~~(30)~~(31) RESPONDENT. A person alleged to have
5 violated a provision of this chapter and against whom a
6 complaint has been filed with the commission.

7 "~~(31)~~(32) STATEMENT OF ECONOMIC INTERESTS. A
8 financial disclosure form made available by the commission
9 which shall be completed and filed with the commission prior
10 to April 30 of each year covering the preceding calendar year
11 by certain public officials and public employees.

12 "~~(32)~~(33) SUPERVISOR. Any person having authority to
13 hire, transfer, suspend, lay off, recall, promote, discharge,
14 assign, or discipline other public employees, or any person
15 responsible to direct them, or to adjust their grievances, or
16 to recommend personnel action, if, in connection with the
17 foregoing, the exercise of the authority is not of a merely
18 routine or clerical nature but requires the use of independent
19 judgment.

20 "~~(33)~~(34) THING OF VALUE.

21 "a. Any gift, benefit, favor, service, gratuity,
22 tickets or passes to an entertainment, social or sporting
23 event, unsecured loan, other than those loans and forbearances
24 made in the ordinary course of business, reward, promise of

1 future employment, or honoraria or other item of monetary
2 value.

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

6 "1. A contribution reported under Chapter 5 of Title
7 17 or a contribution to an inaugural or transition committee.

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

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

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

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

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

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

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

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

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

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

24 "12. Payment of or reimbursement for actual and
25 necessary transportation and lodging expenses, as well as

1 waiver of registration fees and similar costs, to facilitate
2 the attendance of a public official or public employee, and
3 the spouse of the public official or public employee, at an
4 educational function or widely attended event of which the
5 person is a primary sponsor. This exclusion applies only if
6 the public official or public employee meaningfully
7 participates in the event as a speaker or a panel participant,
8 by presenting information related to his or her agency or
9 matters pending before his or her agency, or by performing a
10 ceremonial function appropriate to his or her official
11 position; or if the public official's or public employee's
12 attendance at the event is appropriate to the performance of
13 his or her official duties or representative function.

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

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

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

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

14 "17. Anything either (i) provided by an association
15 or organization to which the state or, in the case of a local
16 government official or employee, the local government pays
17 annual dues as a membership requirement or (ii) provided by an
18 association or organization to a public official who is a
19 member of the association or organization and, as a result of
20 his or her service to the association or organization, is
21 deemed to be a public official. Further included in this
22 exception is payment of reasonable compensation by a
23 professional or local government association or corporation to
24 a public official who is also an elected officer or director
25 of the professional or local government association or

1 corporation for services actually provided to the association
2 or corporation in his or her capacity as an officer or
3 director.

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

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

13 "~~(34)~~(35) VALUE. The fair market price of a like
14 item if purchased by a private citizen. In the case of tickets
15 to social and sporting events and associated passes, the value
16 is the face value printed on the ticket.

17 "~~(35)~~(36) WIDELY ATTENDED EVENT. A gathering,
18 dinner, reception, or other event of mutual interest to a
19 number of parties at which it is reasonably expected that more
20 than 12 individuals will attend and that individuals with a
21 diversity of views or interest will be present."

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

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Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 10-APR-12.

Greg Pappas
Clerk

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Senate
House
Senate

26-APR-12

08-MAY-12

09-MAY-12

Amended and Passed
Passed, as amended
by Conference Com-
mittee Report
Passed, as amended
by Conference Com-
mittee Report