

1 SB36
2 159239-5
3 By Senator Marsh
4 RFD: Constitution, Campaign Finance, Ethics, and Elections
5 First Read: 14-JAN-14
6 PFD: 10/31/2013

1 SB36

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4 ENROLLED, An Act,

5 To amend Sections 36-25-1, 36-25-13 and 36-25-23,
6 Code of Alabama 1975, relating to prohibited lobbying
7 activities of former public officials; to revise the
8 definition of "legislative body" to include the Legislature of
9 Alabama which includes both the Senate of Alabama and the
10 House of Representatives of Alabama; to establish that a
11 former member of the Legislature of Alabama would be precluded
12 from lobbying either the Senate or the House of
13 Representatives for a period of two years following the term
14 of office for which the member was elected; to prohibit an
15 elected public official from lobbying any legislative body or
16 any branch of state or local government, including the
17 executive or judicial branches of government, and including
18 the Legislature of Alabama or any board, agency, department
19 thereof, to which he or she is or was elected during the term
20 of office or remainder of the term of office for which he or
21 she was elected; to exclude former members of the Alabama
22 Judiciary for non-lobbying activities; and to provide for
23 prospective application.

24 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. Sections 36-25-1 and 36-25-23, Code of
2 Alabama 1975, are amended to read as follows:

3 "§36-25-1.

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

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

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

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

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

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

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

24 "(7) CONFIDENTIAL INFORMATION. A complaint filed
25 pursuant to this chapter, together with any statement,

1 conversations, knowledge of evidence, or information received
2 from the complainant, witness, or other person related to such
3 complaint.

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

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

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

21 "c. Payment of or reimbursement for actual and
22 necessary expenditures for travel and subsistence for the
23 personal attendance of a public official or public employee at
24 a convention or other meeting at which he or she is scheduled
25 to meaningfully participate in connection with his or her

1 official duties and for which attendance no reimbursement is
2 made by the state.

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

11 "(9) DAY. Calendar day.

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

18 "(11) DE MINIMIS. A value twenty-five dollars (\$25)
19 or less per occasion and an aggregate of fifty dollars (\$50)
20 or less in a calendar year from any single provider, or such
21 other amounts as may be prescribed by the Ethics Commission
22 from time to time by rule pursuant to the Administrative
23 Procedure Act or adjusted each four years from August 1, 2012,
24 to reflect any increase in the cost of living as indicated by

1 the United States Department of Labor Consumer Price Index or
2 any succeeding equivalent index.

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

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

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

23 "(15) FAMILY MEMBER OF THE PUBLIC OFFICIAL. The
24 spouse, a dependent, an adult child and his or her spouse, a

1 parent, a spouse's parents, a sibling and his or her spouse,
2 of the public official.

3 "(16) GOVERNMENTAL CORPORATIONS AND AUTHORITIES.

4 Public or private corporations and authorities, including but
5 not limited to, hospitals or other health care corporations,
6 established pursuant to state law by state, county or
7 municipal governments for the purpose of carrying out a
8 specific governmental function. Notwithstanding the foregoing,
9 all employees, including contract employees, of hospitals or
10 other health care corporations and authorities are exempt from
11 the provisions of this chapter.

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

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

18 "(19) LEGISLATIVE BODY. ~~The Senate of Alabama, the~~
19 ~~House of Representatives of Alabama, a county commission, city~~
20 ~~council, city commission, town council, or municipal council~~
21 ~~or commission, and any committee or subcommittee thereof.~~ term
22 "legislative body" includes the following:

23 "1. The Legislature of Alabama, which includes both
24 the Senate of Alabama and the House of Representatives of
25 Alabama, unless specified otherwise by the express language of

1 any provision herein, and any committee or subcommittee
2 thereof.

3 "2. A county commission, and any committee or
4 subcommittee thereof.

5 "3. A city council, city commission, town council,
6 or other municipal council or commission, and any committee or
7 subcommittee thereof.

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

19 "(21) LOBBYIST.

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

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

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

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

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

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

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

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

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

24 "4. Any citizen not lobbying for compensation who
25 contacts a member of a legislative body, or gives public

1 testimony on a particular issue or on particular legislation,
2 or for the purpose of influencing legislation and who is
3 merely exercising his or her constitutional right to
4 communicate with members of a legislative body.

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

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

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

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

24 "(22) MINOR VIOLATION. Any violation of this chapter
25 in which the public official or public employee receives an

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

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

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

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

12 "(26) 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 "(27) PUBLIC OFFICIAL. Any person elected to public
25 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 "(28) 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 "(29) 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 "(30) 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 "(31) 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 "(32) STATEMENT OF ECONOMIC INTERESTS. A financial
25 disclosure form made available by the commission which shall

1 be completed and filed with the commission prior to April 30
2 of each year covering the preceding calendar year by certain
3 public officials and public employees.

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

12 "(34) THING OF VALUE.

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

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

22 "1. A contribution reported under Chapter 5 of Title
23 17 or a contribution to an inaugural or transition committee.

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

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

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

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

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

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

24 "8. Anything that is paid for by a governmental
25 entity or an entity created by a governmental entity to

1 support the governmental entity or secured by a governmental
2 entity under contract, except for tickets to a sporting event
3 offered by an educational institution to anyone other than
4 faculty, staff, or administration of the institution.

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

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

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

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

1 matters pending before his or her agency, or by performing a
2 ceremonial function appropriate to his or her official
3 position; or if the public official's or public employee's
4 attendance at the event is appropriate to the performance of
5 his or her official duties or representative function.

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

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

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

21 "16. Meals and other food and beverages provided to
22 a public official or public employee in a setting other than
23 any of the above functions not to exceed for a lobbyist
24 twenty-five dollars (\$25) per meal with a limit of one hundred
25 fifty dollars (\$150) per year; and not to exceed for a

1 principal fifty dollars (\$50) per meal with a limit of two
2 hundred fifty dollars (\$250) per year. Notwithstanding the
3 foregoing, the lobbyist's limits herein shall not count
4 against the principal's limits and likewise, the principal's
5 limits shall not count against the lobbyist's limits.

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

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

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

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

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

14 "§36-25-13.

15 (a) No public official shall serve for a fee as a
16 lobbyist or otherwise represent clients, including his or her
17 employer before the board, agency, commission, department, or
18 legislative body, of which he or she is a former member for a
19 period of two years after he or she leaves such membership.
20 For the purposes of this subsection, such prohibition shall
21 not include a former member of the Alabama judiciary who as an
22 attorney represents a client in a legal, non-lobbying
23 capacity.

24 (b) Notwithstanding the provisions of subsection (a)
25 of this section, no public official elected to a term of

1 office shall serve for a fee as a lobbyist or otherwise
2 represent clients, including his or her employer, before the
3 board, agency, commission, department, or legislative body of
4 which he or she is a former member for a period of two years
5 following the term of office for which he or she was elected,
6 irrespective of whether the member left the office prior to
7 the expiration of the term to which he or she was elected. For
8 the purposes of this subsection, such prohibition shall not
9 include a former member of the Alabama judiciary who as an
10 attorney represents a client in a legal, non-lobbying
11 capacity.

12 ~~(b)~~(c) No public employee shall serve for a fee as a
13 lobbyist or otherwise represent clients, including his or her
14 employer before the board, agency, commission, or department,
15 of which he or she is a former employee for a period of two
16 years after he or she leaves such employment. For the purposes
17 of this subsection, such prohibition shall not include a
18 former employee of the Alabama judiciary who as an attorney
19 represents a client in a legal, non-lobbying capacity.

20 ~~(c)~~(d) No public official, director, assistant
21 director, department or division chief, purchasing or
22 procurement agent having the authority to make purchases, or
23 any person who participates in the negotiation or approval of
24 contracts, grants, or awards or any person who negotiates or
25 approves contracts, grants, or awards shall enter into,

1 solicit, or negotiate a contract, grant, or award with the
2 governmental agency of which the person was a member or
3 employee for a period of two years after he or she leaves the
4 membership or employment of such governmental agency.

5 ~~(d)~~(e) No public official or public employee who
6 personally participates in the direct regulation, audit, or
7 investigation of a private business, corporation, partnership,
8 or individual shall within two years of his or her departure
9 from such employment solicit or accept employment with such
10 private business, corporation, partnership, or individual.

11 ~~(e)~~(f) No former public official or public employee
12 of the state may, within two years after termination of office
13 or employment, act as attorney for any person other than
14 himself or herself or the state, or aid, counsel, advise,
15 consult or assist in representing any other person, in
16 connection with any judicial proceeding or other matter in
17 which the state is a party or has a direct and substantial
18 interest and in which the former public official or public
19 employee participated personally and substantially as a public
20 official or employee or which was within or under the public
21 official or public employee's official responsibility as an
22 official or employee. This prohibition shall extend to all
23 judicial proceedings or other matters in which the state is a
24 party or has a direct and substantial interest, whether

1 arising during or subsequent to the public official or public
2 employee's term of office or employment.

3 ~~(f)~~(g) Nothing in this chapter shall be deemed to
4 limit the right of a public official or public employee to
5 publicly or privately express his or her support for or to
6 encourage others to support and contribute to any candidate,
7 political committee as defined in Section 17-22A-2,
8 referendum, ballot question, issue, or constitutional
9 amendment.

10 "§36-25-23.

11 "(a) No public official elected to a term of office
12 shall serve for a fee as a lobbyist or otherwise represent a
13 client, including his or her employer, before any legislative
14 body or any branch of state or local government, including the
15 executive and judicial branches of government, and including
16 the Legislature of Alabama or any board, agency, commission,
17 or department thereof, during the term or remainder of the
18 term for which the official was elected. For purposes of this
19 subsection, such prohibition shall not include a former member
20 of the Alabama Judiciary who as an attorney represents a
21 client in a legal, non-lobbying capacity.

22 "~~(a)~~(b) No former member of the House of
23 Representatives or the Senate of the State of Alabama shall be
24 extended floor privileges of either body in a lobbying
25 capacity.

1 "~~(b)~~ (c) No public official, public employee, or
2 group of public officials or public employees shall solicit
3 any lobbyist to give any thing whether or not the thing
4 solicited is a thing of value to any person or entity for any
5 purpose other than a campaign contribution.

6 "~~(c)~~ (d) No principal or lobbyist shall accept
7 compensation for, or enter into a contract to provide lobbying
8 services which is contingent upon the passage or defeat of any
9 legislative action."

10 Section 2. This act shall become effective
11 immediately following its passage and approval by the
12 Governor, or its otherwise becoming law and shall apply to
13 public officials elected or re-elected on or after that date.

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB36

Senate 04-FEB-14

I hereby certify that the within Act originated in and passed the Senate, as amended.

Patrick Harris
Secretary

House of Representatives
Amended and passed 03-APR-14

Senate concurred in House amendment 03-APR-14

By: Senator Marsh