

1 SB389
2 158723-2
3 By Senators Brewbaker, Waggoner, Marsh, Williams, and Orr
4 RFD: Constitution, Campaign Finance, Ethics, and Elections
5 First Read: 20-FEB-14

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8 SYNOPSIS: Under existing law, there is a code of
9 ethics for public officials, employees, and
10 lobbyists.

11 This bill would clarify that the definition
12 of principal includes entities or individuals that
13 directly or indirectly employ or retain the
14 services of a lobbyist, and that are the true or
15 primary beneficiary of the lobbyist's lobbying
16 activities.

17 This bill would further require, in addition
18 to identifying the business entities or individuals
19 directly employing or compensating a lobbyist, that
20 lobbyists identify the employing or compensating
21 entity's principal or principals that stand to
22 benefit from the lobbyist's activities when the
23 employing entities or individuals are also directly
24 engaged in lobbying activities as covered under
25 this act.

26
27 A BILL

1 TO BE ENTITLED

2 AN ACT

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4 To amend Sections 36-25-1 and 36-25-18 of the Code
5 of Alabama 1975, relating to the code of ethics for public
6 officials, employees, and lobbyists; to include within the
7 definition of principal, business entities or individuals that
8 directly or indirectly employ or compensate a lobbyist and
9 business entities or individuals that are the true
10 beneficiaries of the lobbyist's lobbying activities; to
11 require that when a business entity or individual that
12 directly employs or compensates a lobbyist is itself engaged
13 in lobbying activities, the lobbyist must identify, in
14 addition to the employing or compensating entity or
15 individual, the employing entity's principal or principals
16 that stand to benefit from the lobbyist's lobbying activities.

17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

18 Section 1. Sections 36-25-1 and 36-25-18 of the Code
19 of Alabama 1975, are amended to read as follows:

20 "§36-25-1.

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

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

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

6 "(3) CANDIDATE. This term as used in this chapter
7 shall have the same meaning ascribed to it in Section
8 17-22A-2.

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

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

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

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

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

1 the person is associated in a manner different from the manner
2 it affects the other members of the class to which he or she
3 belongs. A conflict of interest shall not include any of the
4 following:

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

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

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

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

25 "(9) DAY. Calendar day.

26 "(10) DEPENDENT. Any person, regardless of his or
27 her legal residence or domicile, who receives 50 percent or

1 more of his or her support from the public official or public
2 employee or his or her spouse or who resided with the public
3 official or public employee for more than 180 days during the
4 reporting period.

5 "(11) DE MINIMIS. A value twenty-five dollars (\$25)
6 or less per occasion and an aggregate of fifty dollars (\$50)
7 or less in a calendar year from any single provider, or such
8 other amounts as may be prescribed by the Ethics Commission
9 from time to time by rule pursuant to the Administrative
10 Procedure Act or adjusted each four years from August 1, 2012,
11 to reflect any increase in the cost of living as indicated by
12 the United States Department of Labor Consumer Price Index or
13 any succeeding equivalent index.

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

18 "(13) EDUCATIONAL FUNCTION. A meeting, event, or
19 activity held within the State of Alabama, or if the function
20 is predominantly attended by participants from other states,
21 held within the continental United States, which is organized
22 around a formal program or agenda of educational or
23 informational speeches, debates, panel discussions, or other
24 presentations concerning matters within the scope of the
25 participants' official duties or other matters of public
26 policy, including social services and community development
27 policies, economic development or trade, ethics, government

1 services or programs, or government operations, and which,
2 taking into account the totality of the program or agenda,
3 could not reasonably be perceived as a subterfuge for a purely
4 social, recreational, or entertainment function.

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

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

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

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

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

26 "(19) LEGISLATIVE BODY. The Senate of Alabama, the
27 House of Representatives of Alabama, a county commission, city

1 council, city commission, town council, or municipal council
2 or commission, and any committee or subcommittee thereof.

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

14 "(21) LOBBYIST.

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

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

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

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

26 "4. An employee, a paid consultant, or a member of
27 the staff of a lobbyist, whether or not he or she is paid, who

1 regularly communicates with members of a legislative body
2 regarding pending legislation and other matters while the
3 legislative body is in session.

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

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

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

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

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

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

26 "6. A person whose primary duties or
27 responsibilities do not include lobbying, but who may, from

1 time to time, organize social events for members of a
2 legislative body to meet and confer with members of
3 professional organizations and who may have only irregular
4 contacts with members of a legislative body when the body is
5 not in session or when the body is in recess.

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

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

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

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

23 "(24) PRINCIPAL. A person or business which employs,
24 hires, compensates, or otherwise retains a lobbyist, either
25 directly or indirectly. For the purposes of this chapter
26 including, but not limited to, Section 36-25-18, a principal
27 is the entity that would be an actual or significant

1 beneficiary of lobbying activities by a lobbyist. A principal
2 is not a lobbyist, but is not allowed to give a thing of
3 value.

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

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

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

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

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

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

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

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

21 "(33) SUPERVISOR. Any person having authority to
22 hire, transfer, suspend, lay off, recall, promote, discharge,
23 assign, or discipline other public employees, or any person
24 responsible to direct them, or to adjust their grievances, or
25 to recommend personnel action, if, in connection with the
26 foregoing, the exercise of the authority is not of a merely

1 routine or clerical nature but requires the use of independent
2 judgment.

3 "(34) THING OF VALUE.

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

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

13 "1. A contribution reported under Chapter 5 of Title
14 17 or a contribution to an inaugural or transition committee.

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

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

25 "4. Greeting cards, and other items, services with
26 little intrinsic value which are intended solely for
27 presentation, such as plaques, certificates, and trophies,

1 promotional items commonly distributed to the general public,
2 and items or services of de minimis value.

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

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

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

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

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

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

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

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

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

20 "14. Hospitality, meals, and other food and
21 beverages provided to a public official or public employee,
22 and the spouse of the public official or public employee, as
23 an integral part of an educational function, economic
24 development function, work session, or widely attended event,
25 such as a luncheon, banquet, or reception hosted by a civic
26 club, chamber of commerce, charitable or educational
27 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
26 corporation for services actually provided to the association

1 or corporation in his or her capacity as an officer or
2 director.

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

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

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

21 "§36-25-18.

22 "(a) Every lobbyist shall register by filing a form
23 prescribed by the commission no later than January 31 of each
24 year or within 10 days after the first undertaking requiring
25 such registration. Each lobbyist, except public employees who
26 are lobbyists, shall pay an annual fee of one hundred dollars

1 (\$100) on or before January 31 of each year or within 10 days
2 of the first undertaking requiring such registration.

3 "(b) The registration shall be in writing and shall
4 contain the following information:

5 "(1) The registrant's full name and business
6 address.

7 "(2) The registrant's normal business and address.

8 "(3) The full name and address of the registrant's
9 principal or principals. Consistent with subdivision (24) of
10 Section 36-25-1, a lobbyist that is employed or compensated by
11 a business entity or individual that is itself engaged in
12 lobbying activities under this chapter, in addition to
13 identifying the business entity or individual directly
14 employing or compensating the lobbyist, shall identify the
15 employing or compensating entity's principal or principals for
16 which the lobbyist lobbies.

17 "(4) The listing of the categories of subject
18 matters on which the registrant is to communicate directly
19 with a member of the legislative body to influence legislation
20 or legislative action.

21 "(5) If a registrant's activity is done on behalf of
22 the members of a group other than a corporation, a categorical
23 disclosure of the number of persons of the group as follows:
24 1-5; 6-10; 11-25; over 25.

25 "(6) A statement signed by each principal that he or
26 she has read the registration, knows its contents and has
27 authorized the registrant to be a lobbyist in his or her

1 behalf as specified therein, and that no compensation will be
2 paid to the registrant contingent upon passage or defeat of
3 any legislative measure.

4 "(c) A registrant shall file a supplemental
5 registration indicating any substantial change or changes in
6 the information contained in the prior registration within 10
7 days after the date of the change."

8 Section 2. This law shall become effective 30 days
9 after its passage and signing by the Governor, or its
10 otherwise becoming law.