

1 HB369
2 157460-1
3 By Representative Ball
4 RFD: Ethics and Campaign Finance
5 First Read: 30-JAN-14

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8 SYNOPSIS: The State Ethics Law prohibits the use or
9 disclosure of confidential information by a public
10 official or employee for private gain, and for such
11 purpose the term "confidential information" means a
12 complaint filed pursuant to the State Ethics Law
13 with any statement, conversation, or knowledge of
14 certain other information received by the
15 complainant.

16 This bill would amend the definition of
17 "confidential information" in the State Ethics Law
18 to mean information that is available to a public
19 official or employee that is available solely by
20 virtue of a public position, and not otherwise
21 available to the public.

22
23 A BILL
24 TO BE ENTITLED
25 AN ACT
26

1 To amend Section 36-25-1, Code of Alabama 1975,
2 relating to the State Ethics Law and the definition of
3 "confidential information"; to provide that for purposes of
4 prohibiting the use of such information by a public official
5 or employee for private gain, the term "confidential
6 information" is information that is available to a public
7 official or employee that is available solely by virtue of a
8 public position, and not otherwise available to the public.

9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

10 Section 1. This act shall be known as the "Alabama
11 Ethics Law Reform Act of 2014."

12 Section 2. Section 36-25-1, Code of Alabama 1975, is
13 amended to read as follows:

14 "§36-25-1.

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

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

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

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

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

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

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

9 "(7) CONFIDENTIAL INFORMATION. ~~A complaint filed~~
10 ~~pursuant to this chapter, together with any statement,~~
11 ~~conversations, knowledge of evidence, or information received~~
12 ~~from the complainant, witness, or other person related to such~~
13 ~~complaint~~ Information available to a public official or public
14 employee solely by virtue of his or her public position that
15 is otherwise not available to the general public.

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

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

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

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

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

21 "(9) DAY. Calendar day.

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

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

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

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

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

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

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

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

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

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

26 "(20) LOBBY or LOBBYING. The practice of promoting,
27 opposing, or in any manner influencing or attempting to

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

10 "(21) LOBBYIST.

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

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

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

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

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

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

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

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

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

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

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

23 "6. A person whose primary duties or
24 responsibilities do not include lobbying, but who may, from
25 time to time, organize social events for members of a
26 legislative body to meet and confer with members of
27 professional organizations and who may have only irregular

1 contacts with members of a legislative body when the body is
2 not in session or when the body is in recess.

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

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

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

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

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

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

25 "(26) PUBLIC EMPLOYEE. Any person employed at the
26 state, county, or municipal level of government or their
27 instrumentalities, including governmental corporations and

1 authorities, but excluding employees of hospitals or other
2 health care corporations including contract employees of those
3 hospitals or other health care corporations, who is paid in
4 whole or in part from state, county, or municipal funds. For
5 purposes of this chapter, a public employee does not include a
6 person employed on a part-time basis whose employment is
7 limited to providing professional services other than
8 lobbying, the compensation for which constitutes less than 50
9 percent of the part-time employee's income.

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

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

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

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

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

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

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

23 "(34) THING OF VALUE.

24 "a. Any gift, benefit, favor, service, gratuity,
25 tickets or passes to an entertainment, social or sporting
26 event, unsecured loan, other than those loans and forbearances
27 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.

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

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

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

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

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

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

21 "12. Payment of or reimbursement for actual and
22 necessary transportation and lodging expenses, as well as
23 waiver of registration fees and similar costs, to facilitate
24 the attendance of a public official or public employee, and
25 the spouse of the public official or public employee, at an
26 educational function or widely attended event of which the
27 person is a primary sponsor. This exclusion applies only if

1 the public official or public employee meaningfully
2 participates in the event as a speaker or a panel participant,
3 by presenting information related to his or her agency or
4 matters pending before his or her agency, or by performing a
5 ceremonial function appropriate to his or her official
6 position; or if the public official's or public employee's
7 attendance at the event is appropriate to the performance of
8 his or her official duties or representative function.

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

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

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

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

1 fifty dollars (\$150) per year; and not to exceed for a
2 principal fifty dollars (\$50) per meal with a limit of two
3 hundred fifty dollars (\$250) per year. Notwithstanding the
4 foregoing, the lobbyist's limits herein shall not count
5 against the principal's limits and likewise, the principal's
6 limits shall not count against the lobbyist's limits.

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

22 "18. Any benefit received as a discount on
23 accommodations, when the discount is given to the public
24 official because the public official is a member of an
25 organization or association whose entire membership receives
26 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 Section 3. This act shall become effective on the
15 first day of the third month following its passage and
16 approval by the Governor, or its otherwise becoming law.