

1 SB36  
2 155134-2  
3 By Senator Marsh  
4 RFD: Constitution, Campaign Finance, Ethics, and Elections  
5 First Read: 14-JAN-14  
6 PFD: 10/31/2013

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8 SYNOPSIS: Under existing law, a public official may  
9 not lobby a board, agency, department, or  
10 legislative body of which the official was a member  
11 for two years after he or she leaves the board,  
12 agency, department, or legislative body.  
13 Legislative body is defined for those purposes to  
14 include the Senate and the House of  
15 Representatives. Under this definition, a former  
16 member of one house of the Legislature may lobby  
17 the other house immediately after leaving office  
18 but may not lobby the house of which he or she was  
19 a member for two years.

20 The bill would revise the definition of  
21 legislative body to include the Legislature of  
22 Alabama so that a member of the Legislature would  
23 be precluded from lobbying either the Senate or the  
24 House of Representatives for two years after  
25 leaving office.

26 This bill would also prohibit an elected  
27 public official from lobbying the board, agency,

1 department, or legislative body to which he or she  
2 is elected during the term for which he or she was  
3 elected; would exclude former members of the  
4 Alabama Judiciary engaged in non-lobbying legal  
5 services; and would provide for prospective  
6 application.

7  
8 A BILL  
9 TO BE ENTITLED  
10 AN ACT  
11

12 To amend Sections 36-25-1 and 36-25-23, Code of  
13 Alabama 1975, relating to prohibited lobbying activities of  
14 former public officials; to provide further for the definition  
15 of "legislative body" and to prohibit an elected public  
16 official from lobbying the board, agency, department, or  
17 legislative body to which he or she was elected during the  
18 term of office for which he or she was elected; to exclude  
19 former members of the Alabama Judiciary for non-lobbying  
20 activities; and to provide for prospective application.

21 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

24 "§36-25-1.

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

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

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

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

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

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

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

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

24           "(8) CONFLICT OF INTEREST. A conflict on the part of  
25 a public official or public employee between his or her  
26 private interests and the official responsibilities inherent  
27 in an office of public trust. A conflict of interest involves

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

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

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

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

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

1 a public official in the performance of his or her official  
2 duties.

3 "(9) DAY. Calendar day.

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

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

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

23 "(13) EDUCATIONAL FUNCTION. A meeting, event, or  
24 activity held within the State of Alabama, or if the function  
25 is predominantly attended by participants from other states,  
26 held within the continental United States, which is organized  
27 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 "(14) FAMILY MEMBER OF THE PUBLIC EMPLOYEE. The  
11 spouse or a dependent of the public employee.

12 "(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 "(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.

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

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

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

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

21           "(21) LOBBYIST.

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

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

25           "2. A person who lobbies as a regular and usual part  
26 of employment, whether or not any compensation in addition to  
27 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  
26 testimony on a particular issue or on particular legislation,  
27 or for the purpose of influencing legislation and who is

1 merely exercising his or her constitutional right to  
2 communicate with members of a legislative body.

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

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

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

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

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

1           "(23) PERSON. A business, individual, corporation,  
2 partnership, union, association, firm, committee, club, or  
3 other organization or group of persons.

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

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

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

21           "(27) PUBLIC OFFICIAL. Any person elected to public  
22 office, whether or not that person has taken office, by the  
23 vote of the people at state, county, or municipal level of  
24 government or their instrumentalities, including governmental  
25 corporations, and any person appointed to a position at the  
26 state, county, or municipal level of government or their  
27 instrumentalities, including governmental corporations. For

1 purposes of this chapter, a public official includes the  
2 chairs and vice-chairs or the equivalent offices of each state  
3 political party as defined in Section 17-13-40.

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

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

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

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

24 "(33) SUPERVISOR. Any person having authority to  
25 hire, transfer, suspend, lay off, recall, promote, discharge,  
26 assign, or discipline other public employees, or any person  
27 responsible to direct them, or to adjust their grievances, or

1 to recommend personnel action, if, in connection with the  
2 foregoing, the exercise of the authority is not of a merely  
3 routine or clerical nature but requires the use of independent  
4 judgment.

5 "(34) THING OF VALUE.

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

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

15 "1. A contribution reported under Chapter 5 of Title  
16 17 or a contribution to an inaugural or transition committee.

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

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

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

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

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

11           "7. Rewards and prizes given to competitors in  
12 contests or events, including random drawings, which are open  
13 to the public.

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

20           "9. Anything for which the recipient pays full  
21 value.

22           "10. Compensation and other benefits earned from a  
23 non-government employer, vendor, client, prospective employer,  
24 or other business relationship in the ordinary course of  
25 employment or non-governmental business activities under  
26 circumstances which make it clear that the thing is provided

1 for reasons unrelated to the recipient's public service as a  
2 public official or public employee.

3 "11. Any assistance provided or rendered in  
4 connection with a safety or a health emergency.

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

20 "13. Payment of or reimbursement for actual and  
21 necessary transportation and lodging expenses to facilitate a  
22 public official's or public employee's participation in an  
23 economic development function.

24 "14. Hospitality, meals, and other food and  
25 beverages provided to a public official or public employee,  
26 and the spouse of the public official or public employee, as  
27 an integral part of an educational function, economic

1 development function, work session, or widely attended event,  
2 such as a luncheon, banquet, or reception hosted by a civic  
3 club, chamber of commerce, charitable or educational  
4 organization, or trade or professional association.

5 "15. Any function or activity pre-certified by the  
6 Director of the Ethics Commission as a function that meets any  
7 of the above criteria.

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

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

1 a public official who is also an elected officer or director  
2 of the professional or local government association or  
3 corporation for services actually provided to the association  
4 or corporation in his or her capacity as an officer or  
5 director.

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

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

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

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

24 "§36-25-23.

25 "(a) No elected public official shall serve for a  
26 fee as a lobbyist or otherwise represent a client, including  
27 his or her employer, before the board, agency, commission,

1 department, or legislative body to which the official was  
2 elected during the term for which the official was elected.  
3 For purposes of this subsection, such prohibition shall not  
4 include a former member of the Alabama Judiciary who as an  
5 attorney represents a client in a legal, non-lobbying  
6 capacity.

7 "~~(a)~~ (b) No former member of the House of  
8 Representatives or the Senate of the State of Alabama shall be  
9 extended floor privileges of either body in a lobbying  
10 capacity.

11 "~~(b)~~ (c) No public official, public employee, or  
12 group of public officials or public employees shall solicit  
13 any lobbyist to give any thing whether or not the thing  
14 solicited is a thing of value to any person or entity for any  
15 purpose other than a campaign contribution.

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

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