

1 SB33  
2 155391-1  
3 By Senator Brewbaker  
4 RFD: Constitution, Campaign Finance, Ethics, and Elections  
5 First Read: 14-JAN-14  
6 PFD: 10/29/2013

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8 SYNOPSIS: Under existing law, a public official is  
9 prohibited from serving as a lobbyist or  
10 representing clients before a board, agency,  
11 commission, or legislative body of which he or she  
12 is a former member for a period of two years after  
13 he or she leaves such membership.

14 This bill would prohibit a member of the  
15 Legislature from serving as a lobbyist or  
16 representing clients before either chamber of the  
17 Legislature for a period of three years.

18  
19 A BILL  
20 TO BE ENTITLED  
21 AN ACT

22  
23 To amend Sections 36-25-1 and 36-25-13, Code of  
24 Alabama 1975, to prohibit a member of the Legislature from  
25 serving as a lobbyist or representing clients before either  
26 chamber of the Legislature for a period of three years.

27 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1                   Section 1. Sections 36-25-1 and 36-25-13, 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,  
26 conversations, knowledge of evidence, or information received

1 from the complainant, witness, or other person related to such  
2 complaint.

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

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

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

20 "c. Payment of or reimbursement for actual and  
21 necessary expenditures for travel and subsistence for the  
22 personal attendance of a public official or public employee at  
23 a convention or other meeting at which he or she is scheduled  
24 to meaningfully participate in connection with his or her  
25 official duties and for which attendance no reimbursement is  
26 made by the state.

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

9           "(9) DAY. Calendar day.

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

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

25           "(12) ECONOMIC DEVELOPMENT FUNCTION. Any function  
26 reasonably and directly related to the advancement of a

1 specific, good-faith economic development or trade promotion  
2 project or objective.

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

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

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

23 "(16) GOVERNMENTAL CORPORATIONS AND AUTHORITIES.  
24 Public or private corporations and authorities, including but  
25 not limited to, hospitals or other health care corporations,  
26 established pursuant to state law by state, county or  
27 municipal governments for the purpose of carrying out a

1 specific governmental function. Notwithstanding the foregoing,  
2 all employees, including contract employees, of hospitals or  
3 other health care corporations and authorities are exempt from  
4 the provisions of this chapter.

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

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

11 "(19) LEGISLATIVE BODY. The ~~Senate of Alabama, the~~  
12 ~~House of Representatives of Alabama~~ Legislature, a county  
13 commission, city council, city commission, town council, or  
14 municipal council or commission, and any committee or  
15 subcommittee thereof.

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

27 "(21) LOBBYIST.

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

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

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

7           "3. A consultant to the state, county, or municipal  
8 levels of government or their instrumentalities, in any manner  
9 employed to influence legislation or regulation, regardless  
10 whether the consultant is paid in whole or part from state,  
11 county, municipal, or private funds.

12           "4. An employee, a paid consultant, or a member of  
13 the staff of a lobbyist, whether or not he or she is paid, who  
14 regularly communicates with members of a legislative body  
15 regarding pending legislation and other matters while the  
16 legislative body is in session.

17           "b. The term lobbyist does not include any of the  
18 following:

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

21           "2. A person or attorney rendering professional  
22 services in drafting bills or in advising clients and in  
23 rendering opinions as to the construction and effect of  
24 proposed or pending legislation, executive action, or rules or  
25 regulations, where those professional services are not  
26 otherwise connected with legislative, executive, or regulatory  
27 action.



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

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

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

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

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

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

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

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

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

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

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

26           "(27) PUBLIC OFFICIAL. Any person elected to public  
27 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  
26 be completed and filed with the commission prior to April 30

1 of each year covering the preceding calendar year by certain  
2 public officials and public employees.

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

11 "(34) THING OF VALUE.

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

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

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

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

26 "3. Anything given by a friend of the recipient  
27 under circumstances which make it clear that it is motivated

1 by a friendship and not given because of the recipient's  
2 official position. Relevant factors include whether the  
3 friendship preexisted the recipient's status as a public  
4 employee, public official, or candidate and whether gifts have  
5 been previously exchanged between them.

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

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

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

16 "7. Rewards and prizes given to competitors in  
17 contests or events, including random drawings, which are open  
18 to the public.

19 "8. Anything that is paid for by a governmental  
20 entity or an entity created by a governmental entity to  
21 support the governmental entity or secured by a governmental  
22 entity under contract, except for tickets to a sporting event  
23 offered by an educational institution to anyone other than  
24 faculty, staff, or administration of the institution.

25 "9. Anything for which the recipient pays full  
26 value.

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

8           "11. Any assistance provided or rendered in  
9 connection with a safety or a health emergency.

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

25           "13. Payment of or reimbursement for actual and  
26 necessary transportation and lodging expenses to facilitate a

1 public official's or public employee's participation in an  
2 economic development function.

3 "14. Hospitality, meals, and other food and  
4 beverages provided to a public official or public employee,  
5 and the spouse of the public official or public employee, as  
6 an integral part of an educational function, economic  
7 development function, work session, or widely attended event,  
8 such as a luncheon, banquet, or reception hosted by a civic  
9 club, chamber of commerce, charitable or educational  
10 organization, or trade or professional association.

11 "15. Any function or activity pre-certified by the  
12 Director of the Ethics Commission as a function that meets any  
13 of the above criteria.

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

24 "17. Anything either (i) provided by an association  
25 or organization to which the state or, in the case of a local  
26 government official or employee, the local government pays  
27 annual dues as a membership requirement or (ii) provided by an

1 association or organization to a public official who is a  
2 member of the association or organization and, as a result of  
3 his or her service to the association or organization, is  
4 deemed to be a public official. Further included in this  
5 exception is payment of reasonable compensation by a  
6 professional or local government association or corporation to  
7 a public official who is also an elected officer or director  
8 of the professional or local government association or  
9 corporation for services actually provided to the association  
10 or corporation in his or her capacity as an officer or  
11 director.

12 "18. Any benefit received as a discount on  
13 accommodations, when the discount is given to the public  
14 official because the public official is a member of an  
15 organization or association whose entire membership receives  
16 the discount.

17 "c. Nothing in this chapter shall be deemed to  
18 limit, prohibit, or otherwise require the disclosure of gifts  
19 through inheritance received by a public employee or public  
20 official.

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

25 "(36) WIDELY ATTENDED EVENT. A gathering, dinner,  
26 reception, or other event of mutual interest to a number of  
27 parties at which it is reasonably expected that more than 12



1 individuals will attend and that individuals with a diversity  
2 of views or interest will be present.

3 "§36-25-13.

4 "(a) (1) Except as otherwise provided in subdivision  
5 (2), no ~~No~~ public official shall serve for a fee as a lobbyist  
6 or otherwise represent clients, including his or her employer  
7 before the board, agency, commission, department, or  
8 legislative body, of which he or she is a former member for a  
9 period of two years after he or she leaves such membership.  
10 For the purposes of this subsection, such prohibition shall  
11 not include a former member of the Alabama judiciary who as an  
12 attorney represents a client in a legal, non-lobbying  
13 capacity.

14 "(2) Notwithstanding subdivision (1), no member of  
15 the Legislature shall serve for a fee as a lobbyist or  
16 otherwise represent clients, including his or her employer,  
17 before either chamber of the Legislature for a period of three  
18 years after he or she leaves such membership.

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

1           "(c) No public official, director, assistant  
2 director, department or division chief, purchasing or  
3 procurement agent having the authority to make purchases, or  
4 any person who participates in the negotiation or approval of  
5 contracts, grants, or awards or any person who negotiates or  
6 approves contracts, grants, or awards shall enter into,  
7 solicit, or negotiate a contract, grant, or award with the  
8 governmental agency of which the person was a member or  
9 employee for a period of two years after he or she leaves the  
10 membership or employment of such governmental agency.

11           "(d) No public official or public employee who  
12 personally participates in the direct regulation, audit, or  
13 investigation of a private business, corporation, partnership,  
14 or individual shall within two years of his or her departure  
15 from such employment solicit or accept employment with such  
16 private business, corporation, partnership, or individual.

17           "(e) No former public official or public employee of  
18 the state may, within two years after termination of office or  
19 employment, act as attorney for any person other than himself  
20 or herself or the state, or aid, counsel, advise, consult or  
21 assist in representing any other person, in connection with  
22 any judicial proceeding or other matter in which the state is  
23 a party or has a direct and substantial interest and in which  
24 the former public official or public employee participated  
25 personally and substantially as a public official or employee  
26 or which was within or under the public official or public  
27 employee's official responsibility as an official or employee.

1 This prohibition shall extend to all judicial proceedings or  
2 other matters in which the state is a party or has a direct  
3 and substantial interest, whether arising during or subsequent  
4 to the public official or public employee's term of office or  
5 employment.

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

13 Section 2. This act shall become effective  
14 immediately following its passage and approval by the  
15 Governor, and shall apply to legislators elected or re-elected  
16 on or after that date.