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8 SYNOPSIS: This bill would substantially improve,
9 strengthen, and clarify the Alabama Ethics Act. The
10 bill codifies existing law, including the decisions
11 of the Alabama Supreme Court and the Alabama Court
12 of Criminal Appeals, as well as various advisory
13 opinions from the Alabama Ethics Commission. The
14 bill achieves three important goals: (1)
15 encouraging honest people to serve in government by
16 clearly defining the line between legal and illegal
17 activity; (2) creating a clear and definite process
18 through which people serving in government can
19 obtain guidance regarding where a particular
20 situation falls on that line; and (3) ensuring that
21 those persons who violate the public's trust are
22 held accountable.

23 Specifically, the Act has been revised as
24 follows: Improves the definition of "principal" to
25 make clear that any person in a business that
26 directs the activities of a lobbyist is a
27 principal, while others in the business or on
28 boards are not necessarily principals. This bill

1 also gives the Ethics Commission more flexibility
2 in identifying principals in disclosure forms.

3 Enforcement for minor violations are improved
4 by giving the Ethics Commission and Attorney
5 General or appropriate District Attorney more
6 flexibility, subject to specified criteria, in
7 resolving minor violations through administrative
8 resolutions for public employees. The minor
9 violation maximum has also been increased from \$250
10 to \$1,500 for public officials and the maximum
11 administrative fine is increased to \$6,000, which
12 is the same maximum fine as a misdemeanor.

13 This bill also narrows the Act's application to
14 lower level public employees to ease compliance and
15 improve enforcement. To that end, this bill exempts
16 grade school teachers, higher education athletic
17 coaches, police officers, firefighters, and other
18 first responders from the limitations on taking
19 things of value from lobbyists and principals,
20 filing statements of economic interest, and asking
21 a lobbyist for something. Other lower level public
22 employees are also exempted from filing statements
23 of economic interests and the bill further provides
24 discretion for the Ethics Commission and the
25 Attorney General to exempt any class of public
26 employee supervisors, subject to certain criteria.

27 The definition of "de minimis" is increased
28 from \$25 per occasion/\$50 per year to \$50 per
29 occasion/\$250 per year, which was the previous

1 limit imposed on principals for meals, food,
2 beverages, etc. The bill specifically allows public
3 officials and public employees to ask for and take
4 items of de minimis value.

5 The Ethics Commission is given more flexibility
6 in determining what is and what is not a widely
7 attended event, subject to certain criteria. The
8 Commission is also required to develop
9 administrative rules and regulations, subject to
10 public view and comment, to govern widely attended
11 events. A Caucus lunch exception is added to exempt
12 that activity from the definition of "widely
13 attended events".

14 The definition of "thing of value" has been
15 substantially improved. This bill recognizes that
16 part-time legislators and other similarly situated
17 public officials should be able to obtain economic
18 and professional opportunities available to private
19 citizens, so long as the public's confidence in the
20 integrity of government is maintained. The bill
21 makes clear the things that public officials may
22 ask for or take if they are not related to their
23 public service and things they may ask for or take
24 as long as the asking or taking is not corrupt as
25 defined in this bill.

26 For example, a newly elected legislator should
27 not be required to quit his or her career job for a
28 company simply because the employer is a registered
29 principal. Consequently, the compensation and other

1 benefits exemption must both be clear so that
2 honest public officials and public employees can
3 have confidence that their actions do not violate
4 the Act and also strong in order to protect the
5 public's trust in their government, as well as to
6 prevent wrongdoers from exploiting the Act. To
7 achieve these goals, this bill updates the
8 definition of "business with which a person is
9 associated" to expressly include those businesses
10 with which the public official or public employee
11 is a consultant.

This bill makes clear that full-time economic development professionals are not lobbyists and therefore do not have to register and that the Ethics Commission and Public Service Commission are regulatory bodies and that their members may not vote with a conflict of interest.

The definition of "conflict of interest" has been updated and improved to codify the current law, as well as deleting the superfluous definition in 36-25-5(f).

This bill, and its companion Fair Campaign Practices Act bill, also make clear what it means to convert a campaign contribution to personal use. The companion FCPA bill incorporates the Ethics Commission's previous advisory opinion on this issue and amends Section 17-5-7. This bill repeals Section 36-25-6 to avoid duplicative statutes

criminalizing personal use of campaign contributions.

This bill makes clear that public employees at universities and board of trustee members may conduct fundraising for a school from anyone, including lobbyists and principals.

The definition of "mantle of office" has been added to this bill. That term was not formally defined in the Act, even though it has been routinely used by the Ethics Commission.

This bill strengthens the Act by making clear that public officials cannot take anything for a corrupt purpose and may not be corruptly influenced, as well as forbidding public officials from taking any money, other than their state paycheck, for doing their public job. Likewise, this bill makes clear that public officials cannot be lobbyists at the same time. Revolving door provisions have also been clarified.

This bill provides a broad definition of "official action" and "official act", which is consistent with the principles of federalism and a sovereign State's role in setting the standards of good government for state and local officials.

The operation of the Ethics Commission has also been improved by overruling previous opinions of the Commission that are inconsistent with this bill. Additionally, this bill requires formal opinion requests to be submitted under oath and

1 with all material facts, limits informal opinions
2 to only advice covered by a previous formal
3 opinion, and requiring the Commission to develop a
4 questionnaire form to facilitate good faith
5 disclosure by opinion requestors. Secrecy
6 requirements for complaints filed with the
7 Commission have also been improved consistent with
8 the First Amendment.

9 Other improvements include requiring Ethics
10 training for the first year of each new
11 quadrennium, allowing for virtual attendance for
12 training through a webinar for lobbyists, allowing
13 public officials and public employees to set up a
14 legal defense fund with the Ethics Commission while
15 prohibiting lobbyists and principals from donating
16 to the fund, allowing the Commission to have more
17 flexibility in developing statement of economic
18 interests forms, subject to a minimum "floor" of
19 disclosures, including two separate forms for
20 public officials and public employees, allowing the
21 Commission and the Attorney General to remove
22 sensitive information from public scrutiny to
23 ensure the safety of minor children and law
24 enforcement, prevent identity theft, prevent
25 irreparable harm to businesses, and protect
26 constitutional rights. Reasonable enforcement
27 measures are established to ensure good faith
28 compliance with statement of economic interests
29 rules.

Deterrence and enforcement of the Act is also improved by prohibiting anyone convicted of a felony Ethics Law violation after the Act is passed from ever registering as a lobbyist, increasing the statute of limitations for felonies from 4 to 6 years to be in line with the statute of limitations for theft of public funds, and allowing all things of value or illegal personal gain to be recovered as restitution to the State General Fund.

Amendment 621 of the Constitution of Alabama of 1901, now appearing as Section 111.05 of the Official Recompilation of the Constitution of Alabama of 1901, as amended, prohibits a general law whose purpose or effect would be to require a new or increased expenditure of local funds from becoming effective with regard to a local governmental entity without enactment by a 2/3 vote unless: it comes within one of a number of specified exceptions; it is approved by the affected entity; or the Legislature appropriates funds, or provides a local source of revenue, to the entity for the purpose.

The purpose or effect of this bill would be to require a new or increased expenditure of local funds within the meaning of the amendment. However, the bill does not require approval of a local governmental entity or enactment by a 2/3 vote to become effective because it comes within one of the specified exceptions contained in the amendment.

1
2 A BILL
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4 TO BE ENTITLED
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6 AN ACT
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8 Relating to ethics; to amend Sections 36-25-1, 36-25-2, 36-25-
9 3, 36-25-4, 36-25-4.2, 36-25-5, 36-25-5.1, 36-25-5.2, 36-25-7,
10 36-25-8, 36-25-9, 36-25-10, 36-25-11, 36-25-12, 36-25-13, 36-
11 25-14, 36-25-15, 36-25-17, 36-25-18, 36-25-19, 36-25-23, 36-
12 25-24, 36-25-26, and 36-25-27, of the Code of Alabama 1975; to
13 add Sections 36-25-3.1, 36-25-3.2, 36-25-3.3, 36-25-4.4, 36-
14 25-7.1, and 36-25-7.2, to the Code of Alabama 1975, and to
15 repeal Sections 36-25-1.1 and 36-25-6 of the Code of Alabama
16 1975, to substantially amend the Alabama Ethics Act; to revise
17 existing definitions and add new definitions; to specify when
18 gifts or other income are not a thing of value; to exempt
19 certain public education and police and first responder
20 employees from specified provisions of the code of ethics; to
21 allow caucuses to solicit and receive meals from a lobbyist or
22 principal in limited circumstances; to authorize the creation
23 of legal defense funds; to prohibit use of the mantle of
24 office, as defined, for personal gain; to create the crime of
25 extortion of a public official or public employee; to revise
26 the filing requirements for statements of economic interests
27 for public officials and public employees; to provide for
28 redacting of statements of economic interests; to prohibit a
29 person convicted of a violation of the code of ethics from
being registered as a lobbyist; and in connection therewith
would have as its purpose or effect the requirement of a new

1 or increased expenditure of local funds within the meaning of
2 Amendment 621 of the Constitution of Alabama of 1901, as
3 amended.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

5 Section 1. Sections 36-25-1, 36-25-2, and 36-25-3 of
6 the Code of Alabama 1975, are amended to read as follows:

7 "§36-25-1.

8 "(a) This chapter shall be known and may be cited as
9 the Alabama Ethics Act.

10 " (b) Whenever used in this chapter, the following
11 words and terms shall have the following meanings:

12 " (1) BUSINESS. Any corporation, partnership,
13 proprietorship, firm, enterprise, franchise, association,
14 organization, self-employed individual person, business,
15 union, committee, club, or other organization, or any other
16 legal entity of any kind or character, non-profit or for-
17 profit. The term includes a given entity's subsidiaries,
18 affiliates, parent corporations, related companies, or holding
19 companies.

20 **ATTORNEY GENERAL'S ANNOTATIONS:**

21 *This bill clarifies the definition of business by adding*
22 *to the list of entities covered under the definition so as to*
23 *make explicit that it is intended to include all forms of*
24 *legal entities. This revised definition is intended to be*
25 *consistent with the original intent of the definition in the*
26 *Act, as well as the manner in which the term has been*
27 *interpreted and applied.*

28 " (2) BUSINESS WITH WHICH THE PERSON IS ASSOCIATED.
29 Any business of which the person or a member of his or her

1 family is an officer; owner; partner; board of director
2 member; employee, including an independent contractor or a
3 consultant; or holder of more than five percent of the fair
4 market value of the business.

5 **ATTORNEY GENERAL'S ANNOTATIONS:**

6 *This bill clarifies the definition of business with which*
7 *the person is associated by explicitly stating that*
8 *independent contractors and consultants are included within*
9 *the term "employee." This revised definition is intended to be*
10 *consistent with the original intent of the definition in the*
11 *Act, as well as the manner in which the term has been*
12 *interpreted and applied.*

13 "(3) CANDIDATE. This term as used in this chapter
14 shall have the same meaning ascribed to it in Section 17-22A-2
15 17-5-2.

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

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

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

22 "(7) CONFIDENTIAL INFORMATION. Information that is
23 available to a public official or public employee by virtue of
24 his or her public position and is not generally available to
25 the public. A complaint filed pursuant to this chapter,
26 ~~together with any statement, conversations, knowledge of~~
27 ~~evidence, or information received from the complainant,~~
28 ~~witness, or other person related to such complaint.~~

29 **ATTORNEY GENERAL'S ANNOTATIONS:**

1 This bill revises this definition to improve and
2 strengthen Section 36-25-8. That section prohibits the use of
3 confidential information for private financial gain. The new
4 definition in this bill fixes the statutory interpretation
5 that "confidential information" only included complaints filed
6 with the Ethics Commission. The old definition is also no
7 longer necessary because all complaints are now subject to the
8 Grand Jury Secrecy Act.

9 "(8) CONFLICT OF INTEREST. a. A conflict on the
10 part of a public official or public employee between his or
11 her private interests and the official responsibilities
12 inherent in an office of public trust. ~~A conflict of interest~~
13 ~~involves any action, inaction, or decision by a public~~
14 ~~official or public employee in the discharge of his or her~~
15 ~~official duties which would materially affect his or her~~
16 ~~financial interest or those of his or her family members or~~
17 ~~any business with which the person is associated in a manner~~
18 ~~different from the manner it affects the other members of the~~
19 ~~class to which he or she belongs. A conflict of interest shall~~
20 ~~exist when a public official or public employee, family member~~
21 ~~of the public official or public employee, or any business~~
22 ~~with which the person is associated is uniquely affected by~~
23 ~~any pending or proposed legislation, official action or~~
24 ~~withholding of official action, or decision by a public~~
25 ~~official or public employee in the discharge of his or her~~
26 ~~official duties. For purposes of this paragraph, the term~~
27 ~~"uniquely affected" means affected individually or as a member~~
28 ~~of a small class, but not equally with other members of a~~
29 ~~large class or in the same manner as the entire community.~~

1 **"b.** A conflict of interest shall not include any of
2 the following:

3 **"a. 1.** A loan or financial transaction made or
4 conducted in the ordinary course of business and on terms
5 generally available to the public.

6 **"b. 2.** An occasional nonpecuniary award publicly
7 presented by an organization for performance of public
8 service.

9 **"c. 3.** Payment of, or reimbursement for, actual and
10 necessary transportation and lodging expenses, as well as
11 waiver of registration fees and similar costs, to facilitate
12 the attendance of a public official or public employee, and
13 the spouse of the public official or public employee, at an
14 educational function or widely attended event of which the
15 person is a sponsor, provided that:

16 **i. the public official or public employee**
17 meaningfully participates in the event as a speaker or a panel
18 participant by presenting information related to his or her
19 agency or matters pending before his or her agency;

20 **ii. the public official or public employee performs**
21 a ceremonial function appropriate to his or her official
22 position; or

23 **iii. the public official's or public employee's**
24 attendance at the event is appropriate to the performance of
25 his or her official duties or representative function. Payment
26 ~~of or reimbursement for actual and necessary expenditures for~~
27 ~~travel and subsistence for the personal attendance of a public~~
28 ~~official or public employee at a convention or other meeting~~
29 ~~at which he or she is scheduled to meaningfully participate in~~

1 connection with his or her official duties and for which
2 attendance no reimbursement is made by the state.

3 "d. 4. Any contribution reported under Chapter 5 of
4 Title 17, a contribution to an inaugural or transition
5 committee, a campaign contribution for a federal election
6 which is otherwise lawful, or a contribution to a legal
7 defense fund. Any campaign contribution, including the
8 purchase of tickets to, or advertisements in journals, for
9 political or testimonial dinners, if the contribution is
10 actually used for political purposes and is not given under
11 circumstances from which it could reasonably be inferred that
12 the purpose of the contribution is to substantially influence
13 a public official in the performance of his or her official
14 duties.

15 **ATTORNEY GENERAL'S ANNOTATIONS:**

16 A fundamental principle in the Ethics Act is to require
17 "public officials to be independent and impartial." § 36-25-
18 2(a)(1), Ala. Code (1975). But "public confidence in the
19 integrity of government" "is impaired whenever there exists a
20 conflict of interest between the private interests of a public
21 official or public employee and the duties of the public
22 official or public employee." §§ 36-25-2(a)(4), 36-25-2(a)(5).
23 Accordingly, "[t]he public interest requires that the law
24 protect against such conflicts of interest and establish
25 appropriate ethical standards with respect to the conduct of
26 public officials and public employees in situations where
27 conflicts exist." § 36-25-2(a)(6).

28 To effectuate these principles "essential to the proper
29 operation of democratic government", § 36-25-2(a)(1), the

1 Legislature long ago passed a law prohibiting any legislator
2 from voting on "any legislation in which he or she knows or
3 should have known that he or she had a conflict of interest."
4 § 36-25-5(b). The current Ethics Act defines this term in two
5 places, which is problematic for several reasons. This bill
6 provides one, clear definition to the term "conflict of
7 interest".

8 This change would make it clear that a legislator cannot
9 participate or vote on any legislation that uniquely affects
10 the public official, the public official's family, or the
11 public official's business, unless the public official's
12 interest is affected in same manner that it affects everyone
13 else. For example, a residential architect serving in the
14 legislature may properly vote on legislation affecting the
15 large class of all architects in Alabama, but is prohibited
16 from voting on legislation that only affects the smaller class
17 of residential architects. Thus, a residential architect
18 legislator could vote for legislation decreasing license fees
19 for all architects, but not a bill that only lowers fees for
20 residential architecture licenses. This definition codifies
21 decisions of the Alabama Supreme Court. See Opinion of the
22 Justices No. 368, 716 So.2d 1149 (Ala. 1998); Opinion of the
23 Justices No. 317, 474 So.2d 700 (1985).

24 Lastly, stylistic changes have been made to the
25 subparagraph stating what is not a conflict of interest in
26 order to mirror its counterpart in the exceptions to the
27 definition of a "thing of value". It does not change existing
28 law.

1 " (9) CORRUPTLY INFLUENCE or CORRUPT PURPOSE. A bad
2 or improper purpose, motive, or action in connection with an
3 expected or actual breach of some official responsibility to
4 the government or the public at large.

5 **ATTORNEY GENERAL'S ANNOTATIONS:**

6 The current Ethics Act defines corrupt in Section 36-25-
7 (e). This bill replaces that definition and applies it to the
8 entire Act. The federal system has developed the meaning of
9 the word "corrupt" in several contexts. First, federal courts
10 agree that "[a] fundamental component of a corrupt act is a
11 breach of some official duty owed to the Government or to the
12 public at large." *United States v. Ford*, 435 F.3d 204, 211 (2d
13 Cir. 2006). There is also agreement that the word "corrupt" is
14 synonymous with the words "bad" or "improper". See *United*
15 *States v. Kay*, 513 F.3d 461 (5th Cir. 2008) (upheld Foreign
16 *Corrupt Practices Act* jury instruction defining corrupt as a
17 "bad" or "improper" purpose").

18 In the context of a federal tampering with a witness
19 charge, 18 U.S.C. 1512, the phrase "corruptly persuades" was
20 explained as follows:

21 The word "corruptly" has several different
22 meanings. Its root, the adjective "corrupt," is
23 defined as morally degenerate and perverted and
24 characterized by improper conduct (as bribery or
25 the selling of favors). The verb "corrupt" has
26 both transitive, as to change someone from good
27 to bad in morals, manners, or actions; bribe, and
28 intransitive, as to become oneself morally
29 debased, meanings.

1 *United States v. Baldridge, 559 F.3d 1126, 1142 (10th Cir.*

2 *2009).*

3 *This bill adapts these principles to the Ethics Act. An*
4 *act that is done to "corruptly influence" or with a "corrupt*
5 *purpose" must first be bad or improper. Secondly, the bad or*
6 *improper act must also happen in connection with a breach of*
7 *the public's trust.*

8 *For example, a public official should always weigh*
9 *decisions made in an official capacity based on what is in the*
10 *public's interest. While there are almost always competing*
11 *interests in this decision-making process, it is never*
12 *permissible for a public official to weigh whether he or she*
13 *stands to obtain personal or private financial gain. This*
14 *definition captures this and similar instances of corrupt*
15 *activity.*

16 "(10) CRIMINAL NEGLIGENCE. This term as used in this
17 chapter shall have the same meaning ascribed to it in Section
18 13A-2-2.

19 **ATTORNEY GENERAL'S ANNOTATIONS:**

20 *This bill does not change existing law regarding*
21 *criminal intent applicable to the Ethics Act. Instead, this*
22 *bill incorporates the definitions from the criminal code that*
23 *already apply to the Act.*

24 "~~(9)~~(11) DAY. Calendar day.

25 "~~(10)~~(12) DEPENDENT. Any person, regardless of his
26 or her legal residence or domicile, who receives 50 percent or
27 more of his or her support from the public official or public
28 employee or his or her spouse or any person who resided with
29 the public official or public employee for more than 180 days

1 during the reporting period. This definition includes any
2 person claimed as a dependent on the state or federal tax
3 return of the public official or public employee or his or her
4 spouse.

5 "(11) (13) DE MINIMIS. A value twenty-five dollars
6 ~~(\$25)~~ fifty dollars (\$50) or less per occasion and an
7 aggregate of ~~fifty dollars (\$50)~~ two hundred fifty dollars
8 (\$250) or less in a calendar year from any single provider, or
9 such other amounts as may be prescribed by the ~~Ethics~~
10 ~~Commission~~ commission from time to time by rule pursuant to
11 the Administrative Procedure Act or adjusted each four years
12 from August 1, ~~2012~~ 2017, to reflect any increase in the cost
13 of living as indicated by the United States Department of
14 Labor Consumer Price Index or any succeeding equivalent index.

15 **ATTORNEY GENERAL'S ANNOTATIONS:**

16 This bill raises the total aggregate amount of de
17 minimis to the \$250 per year limit that is currently
18 established for meals, food, beverages, etc. for principals,
19 as well as the current minor violation threshold. The Ethics
20 Act is intended to deter and punish corruption and other
21 conduct that undermines the public's confidence in the
22 integrity of government. While no dollar amount is required
23 for an act to be corrupt, the raising of the de minimis amount
24 allows safe harbor for persons and businesses subject to the
25 Act that do not have criminal intent when soliciting,
26 receiving, offering, or providing items or things of value
27 that are de minimis.

28 "(12) (14) ECONOMIC DEVELOPMENT FUNCTION. Any
29 function reasonably and directly related to the advancement of

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

3 "(15) ECONOMIC DEVELOPMENT PROFESSIONAL. A person
4 employed full-time to advance specific, good-faith economic
5 development or trade promotion projects or related objectives
6 for his or her employer. The term does not include public
7 officials, employees of lobbyists, or persons who are
8 otherwise lobbyists.

9 **ATTORNEY GENERAL'S ANNOTATIONS:**

10 *This bill recognizes the vital role economic
11 development plays in our State. This definition and related
12 provisions are intended to exempt those people that work full-
13 time as economic development professionals from registering as
14 lobbyists. This exemption does not apply to people that are
15 part-time economic development professionals, lobbyists,
16 principals, or public officials.*

17 "(13)-(16) EDUCATIONAL FUNCTION. A meeting, event, or
18 activity held within the State of Alabama, or if the function
19 is predominantly attended by participants from other states,
20 held within the continental United States, which is organized
21 around a formal program or agenda of educational or
22 informational speeches, debates, panel discussions, or other
23 presentations concerning matters within the scope of the
24 participants' official duties or other matters of public
25 policy, including social services and community development
26 policies, economic development or trade, ethics, government
27 services or programs, or government operations, and which,
28 taking into account the totality of the program or agenda,

1 could not reasonably be perceived as a subterfuge for a purely
2 social, recreational, or entertainment function.

3 **"(17) FAIR MARKET VALUE.** The fair market price or
4 value of the same or a like thing, if purchased or sold by a
5 member of the general public. For purposes of this definition,
6 the average retail value of a thing is the fair market value
7 of that thing.

8 **ATTORNEY GENERAL'S ANNOTATIONS:**

9 This definition incorporates the current definition
10 in the act for "value." See Section 36-25-1(35) ("The fair
11 market price of a like item if purchased by a private citizen.
12 In the case of tickets to social and sporting events and
13 associated passes, the value is the face value of the
14 ticket.").

15 The first sentence has been moved to the new
16 definition above and improved to clarify that the term
17 contemplates the purchase or sale of an item by members of the
18 general public, as well as specifically stating that the
19 average retail price is determinative for those items.

20 The second sentence regarding tickets was moved to
21 an exception to "thing of value" to make clear that a ticket
22 is not a thing of value when the buyer pays the face value of
23 the ticket, regardless of whether the purchase or sale is
24 related to the buyer's public service.

25 **"(14)-(18) FAMILY MEMBER OF THE PUBLIC EMPLOYEE.** The
26 spouse or a dependent of the public employee.

27 **"(15)-(19) FAMILY MEMBER OF THE PUBLIC OFFICIAL.** The
28 spouse, a dependent, an adult child and his or her spouse, a

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

"~~(16)~~ (20) GOVERNMENTAL CORPORATIONS AND AUTHORITIES.

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

ATTORNEY GENERAL'S ANNOTATIONS:

This bill does not change existing law regarding the exemption granted to hospital employees. That exemption was merely moved to the definition of "public employee".

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

"(22) INTENTIONAL. This term as used in this chapter shall have the same meaning ascribed to it in Section 13A-2-2.

"(23) KNOWINGLY. This term as used in this chapter shall have the same meaning ascribed to it in Section 13A-2-2.

ATTORNEY GENERAL'S ANNOTATIONS:

This bill does not change existing law regarding criminal intent applicable to the Ethics Act. Instead, this bill incorporates the definitions from the criminal code that already apply to the Act.

"(18) (24) LAW ENFORCEMENT OFFICER. An officer, employee, or agent of the State of Alabama or any political

1 subdivision thereof who is required by law to: (i) maintain
2 public order; (ii) make arrests for offenses, whether that
3 duty extends to all offenses or is limited to specific
4 offenses; and (iii) investigate the commission or suspected
5 commission of offenses. A full-time employee of a governmental
6 unit responsible for the prevention or investigation of crime
7 who is authorized by law to carry firearms, execute search
8 warrants, and make arrests.

9 **ATTORNEY GENERAL'S ANNOTATIONS:**

10 *This bill does not change existing law. Instead, it*
11 *incorporates the definition of this term as used in the*
12 *Alabama Rules of Criminal Procedure.*

13 "(25) LEGAL DEFENSE FUND. All contributions
14 received, held, or expended for the legal defense of a public
15 official or public employee pursuant to Section 36-25-4.4.

16 "(19)-(26) LEGISLATIVE BODY. The term "legislative
17 body" includes the following:

18 "a. The Legislature of Alabama, which includes both
19 the Senate of Alabama and the House of Representatives of
20 Alabama, unless specified otherwise by the express language of
21 any provision herein, and any committee or subcommittee
22 thereof.

23 "b. A county commission and any committee or
24 subcommittee thereof.

25 "c. A city council, city commission, town council,
26 or other municipal council or commission, and any committee or
27 subcommittee thereof.

28 "(20)-(27) LOBBY or LOBBYING. The practice of
29 promoting, opposing, or in any manner influencing or

1 attempting to influence the introduction, defeat, or enactment
2 of 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~~ repeal of
7 regulations before any regulatory body. The term includes
8 promoting, or otherwise attempting to influence, the award of
9 a grant or contract with any department or agency of the
10 executive, legislative, or judicial branch of state
11 government. The term does not include providing public
12 testimony before a legislative body or regulatory body or any
13 committee thereof. or otherwise lawful activities of economic
14 development professionals.

15 "-(21)-(28) LOBBYIST.

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

17 "1. A person who receives compensation or

18 reimbursement from another person, group, or entity to lobby.

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

22 "3. A consultant to the state, county, or municipal
23 levels of government or their instrumentalities, in any manner
24 employed to influence legislation, or regulation, or the award
25 of a grant or contract with any department or agency of the
26 executive, legislative, or judicial branch of state

27 government, regardless of whether the consultant is paid in
28 whole or in part from state, county, municipal, or private
29 funds.

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

6 "b. The term lobbyist does not include any of the
7 following:

8 "1. ~~An elected A~~ public official acting on a matter
9 which involves that person's official duties and is not done
10 for compensation other than that provided by law.

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

18 "3. Reporters and editors ~~while~~ pursuing normal
19 reportorial and editorial duties.

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

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

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

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

"8. A state governmental agency head or ~~his or her~~ designee who provides public employees designated by the agency head to provide or communicates, or both, information relating to policy or positions, or both, affecting the governmental agencies which he or she represents.

9. Economic development professionals.

ATTORNEY GENERAL'S ANNOTATIONS:

This bill moves part of the language from 36-25-1.1 to the definitions of "lobbying" and "lobbyist". It does not change existing law, except that it exempts economic development professionals from the definition of "lobbyist".

"(29) MANTLE OF OFFICE. The prestige, power, and influence inherent in one's public office or position.

ATTORNEY GENERAL'S ANNOTATIONS:

This bill adds this definition to the Act based on its use by the Ethics Commission. This definition is intended to be applied to violations of 36-25-5(a) (Use of office for

1 personal gain). While the Ethics Commission has always used
2 the term "mantle of office" to apply to Section 5(a), this
3 bill codifies that definition and clarifies existing law.

4 **"(22)(30) MINOR VIOLATION.**

5 **"a. Any violation of this chapter in which the**
6 **public official or public employee receives an economic gain**
7 **in an amount less than two hundred fifty dollars (\$250) one**
8 **thousand five hundred dollars (\$1,500) or the governmental**
9 **entity has an economic loss of less than two hundred fifty**
10 **dollars (\$250) one thousand five hundred dollars (\$1,500).**

11 **"b. Any violation of this chapter by a public**
12 **employee as determined in the discretion of the commission**
13 **based upon consideration of the following factors:**

14 **"1. The public employee had made substantial or full**
15 **restitution to the victim or victims.**

16 **"2. The violation did not involve multiple**
17 **participants.**

18 **"3. The violation did not involve great monetary**
19 **gain to the public employee or great monetary loss to the**
20 **victim or the victims.**

21 **"4. The violation did not involve a high degree of**
22 **sophistication or planning; did not occur over a lengthy**
23 **period of time, or did not involve multiple victims and did**
24 **not involve a single victim which was victimized more than**
25 **once.**

26 **"5. The public employee has resigned or has been**
27 **terminated from the position occupied during which the**
28 **violation occurred and is otherwise not a current public**
29 **employee.**

1 "c. The Attorney General or the district attorney
2 for the appropriate jurisdiction must approve the
3 determination of a minor violation by the commission.

4 **ATTORNEY GENERAL'S ANNOTATIONS:**

5 *This bill increases the threshold amount for a minor*
6 *offense and gives more discretion to the commission, subject*
7 *to Attorney General or district attorney approval, to classify*
8 *a violation of the Act by a public employee as a minor*
9 *offense. These revisions are intended to conserve law*
10 *enforcement and judicial resources by allowing for resolution*
11 *of truly minor violations of the Act short of felony*
12 *prosecutions.*

13 "(31) OFFICIAL ACTION OR OFFICIAL ACT. Any decision,
14 action, promise, withholding of an action, or exercise of
15 discretion made in a public official's or public employee's
16 official capacity, the course of the official duties or
17 responsibilities of a public official or public employee, or
18 placed in such public official's or public employee's trust,
19 duty, or responsibility. The term includes decisions, actions,
20 or promises to act that a reasonable person would believe to
21 be within the public official's or public employee's official
22 capacity or the course or scope of the official duties or
23 responsibility of the official or employee.

24 **ATTORNEY GENERAL'S ANNOTATIONS:**

25 *This bill provides a broad definition of these terms to*
26 *ensure that any official action or official act that is*
27 *corruptly influenced or done with a corrupt purpose is*
28 *captured by the Act's prohibitions. This is consistent with*

1 the principles of federalism recently described by the United
2 States Supreme Court:

3 "A State defines itself as a sovereign through
4 the structure of its government, and the
5 character of those who exercise government
6 authority. **That includes the prerogative to**
7 **regulate the permissible scope of interactions**
8 **between state officials and their constituents.**
9 Here, where a more limited interpretation of
10 'official act' is supported by both text and
11 precedent, we decline to construe the statute in
12 a manner that leaves its outer boundaries
13 ambiguous and involves the Federal Government in
14 setting standards of good government for local
15 and state officials."

16 *McDonnell v. United States*, 136 S. Ct. 2355, 2373 (2016)
17 (internal citations and quotations omitted) (emphasis added).

18 The Ethics Act's definition of these terms should
19 therefore be broader than the federal definition because
20 federalism requires the States to take the primary role in
21 enforcement and setting the standards of good government for
22 local and state officials. In other words, while federalism
23 supports limiting the definition of "official act" in federal
24 prosecutions, it does not and should not limit a sovereign
25 State from defining "official act" broadly to deter and punish
26 corruption, as well as protecting the public's confidence in
27 the integrity of government.

28 "+(23)(32) PERSON. ~~A business, A human being~~
29 ~~individual, corporation, partnership, union, association,~~

1 firm, committee, club, or other organization or group of
2 ~~persons~~ human beings.

3 "24) (33) PRINCIPAL. A

4 "a. The term includes:

5 "1. A person or business which ~~that~~ employs, hires,
6 or otherwise retains a lobbyist.

7 "2. A business that employs, hires, or otherwise
8 retains a lobbyist.

9 "3. A person who individually has the authority to
10 hire, fire, or direct the activities of a lobbyist either on
11 his or her own behalf or on behalf of a business with which
12 the person is associated, including a business for which the
13 person performs compensated work in any capacity, or a
14 business on whose board of directors the person serves. For
15 purposes of this subparagraph, the business may expressly
16 grant or confer authority upon the person or his or her
17 position, or the person may demonstrate their authority in
18 fact by his or her actions or conduct.

19 "b. The term does not include a person or business
20 that is merely a member of an association unless the person or
21 business otherwise meets the criteria of paragraph (a).

22 "A principal is not a lobbyist but is not allowed to
23 give a thing of value.

24 **ATTORNEY GENERAL'S ANNOTATIONS:**

25 This bill clarifies several matters with regard to
26 the definition of "principal". First, it does not change
27 existing law that a principal may be a person or a business.
28 Second, the term is further defined so as to give people and

1 businesses clear guidance on which people within a business
2 are considered principals.

3 This bill does these two things as follows: it
4 defines a principal as a "person" (i.e., a human being) that
5 employs, hires, or otherwise retains a lobbyist. And a
6 "principal" is also a business that does the same. Again, this
7 does not change existing law. Instead, the traditional
8 interpretation of this term, as used by the Ethics Commission,
9 remains unchanged - namely, that a person serving at the top-
10 level, executive, or decisionmaking roles of business are
11 principals under the Act (i.e., CEO, President, etc.).

12 The definition further makes clear that other
13 persons in the business (outside of these top-level roles) are
14 principals, so long as they have individual decisionmaking or
15 directing authority. As a result, those people with the
16 authority to hire, fire, or otherwise direct the activity of a
17 lobbyist are considered principals, while those people who do
18 not have such authority are not considered principals. In
19 other words, not every single person within a business that
20 employs a lobbyist is considered a principal. Only those
21 persons with the requisite decisionmaking or directing
22 authority fall within the definition.

23 Although the question of who has "authority" is a
24 factual, case-by-case issue, this bill clearly defines the
25 ways in which that authority is shown. A person demonstrates
26 his or her authority by: (1) having the authority expressly
27 given to him or her by the business; (2) having the authority
28 expressly given to the position held by the person; or (3)
29 taking action that establishes his or her authority in fact.

1 Under this term, businesses and people can be
2 certain about their status as a principal. The definition also
3 prevents confusion and subterfuge by classifying as principals
4 those persons that take action or exercise their authority in
5 fact to direct the activities of a lobbyist. The use of the
6 word "individually" to describe the authority further
7 clarifies that not all members of a board of directors are
8 necessarily principals - only those board members that
9 demonstrate their authority in one of the three ways set forth
10 above.

11 For example, an individual board member that
12 personally directs the activities of a lobbyist is considered
13 a principal. But a board member that merely acts collectively
14 with fellow board members, such as voting to approve payment
15 to a lobbyist for services rendered, would not be a principal
16 absent other facts demonstrating his or her individual
17 authority. Likewise, the term does not necessarily include
18 persons or businesses who are merely members of an
19 association, even though the association employs or hires a
20 lobbyist, unless they demonstrate their authority in one of
21 the three ways set forth above.

22 "(25) (34) PROBABLE CAUSE. A finding that the
23 allegations are more likely than not to have occurred.

24 "(26) (35) PUBLIC EMPLOYEE. Any person employed at
25 the state, county, or municipal level of government or their
26 instrumentalities, including governmental corporations and
27 authorities, ~~but excluding employees of hospitals or other~~
28 ~~health care corporations including contract employees of those~~
29 ~~hospitals or other health care corporations,~~ who is paid in

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

ATTORNEY GENERAL'S ANNOTATIONS:

11 *This bill does not change existing law regarding the
12 exemption granted to hospital employees. That exemption was
13 merely moved from the first sentence to the last sentence.*

14 "(27)(36) PUBLIC OFFICIAL. Any person elected to
15 public office, whether or not that person has taken office, by
16 the vote of the people at the state, county, or municipal
17 level of government or their instrumentalities, including
18 governmental corporations, and any person appointed to a
19 position at the state, county, or municipal level of
20 government or their instrumentalities, including governmental
21 corporations. For purposes of this chapter, a public official
22 includes the chairs and vice-chairs or the equivalent offices
23 of each state political party as defined in Section 17-13-40.
24 The term does not include persons who are officials of
25 hospitals or other health care corporations.

ATTORNEY GENERAL'S ANNOTATIONS:

27 *This bill does not change existing law. It merely
28 clarifies that the term does not include hospital employees.*

1 "(37) RECKLESSLY. This term as used in this chapter
2 shall have the same meaning ascribed to it in Section 13A-2-2.

3 **ATTORNEY GENERAL'S ANNOTATIONS:**

4 This bill does not change existing law regarding
5 criminal intent applicable to the Ethics Act. Instead, this
6 bill incorporates the definitions from the criminal code that
7 already apply to the Act.

8 "~~(28)~~(38) REGULATORY BODY. A state agency which
9 issues regulations in accordance with the Alabama
10 Administrative Procedure Act or a state, county, or municipal
11 department, agency, board, ~~or~~ commission, or governmental
12 corporation or authority which controls, according to rule or
13 regulation, the activities, business licensure, or functions
14 of any group, person, or persons. The term includes, but is
15 not limited to, the commission, the State Board of Adjustment,
16 and the Public Service Commission.

17 **ATTORNEY GENERAL'S ANNOTATIONS:**

18 This bill does not change existing law. Instead, it
19 clarifies that regulatory bodies include all governmental
20 corporations or authorities as defined in this bill, as well
21 as specifically noting that the Ethics Commission, State Board
22 of Adjustment, and Public Service Commission are all
23 considered regulatory bodies.

24 "~~(29)~~(39) REPORTING PERIOD. The reporting official's
25 or employee's fiscal tax year as it applies to his or her
26 United States personal income tax return.

27 "~~(30)~~(40) REPORTING YEAR. The reporting official's
28 or employee's fiscal tax year as it applies to his or her
29 United States personal income tax return.

1 "(31)(41) RESPONDENT. A person alleged to have
2 violated a provision of this chapter and against whom a
3 complaint has been filed with the commission.

4 "(42) SERVICES. The term shall have the same meaning
5 ascribed to it in Section 13A-8-10.

6 **ATTORNEY GENERAL'S ANNOTATIONS:**

7 *This bill makes distinctions between "items" and
8 "services", which is crucial when applying the definition and
9 exceptions to "thing of value". The definition of services
10 added here is from the criminal code.*

11 "(32)(43) STATEMENT OF ECONOMIC INTERESTS. A
12 financial disclosure form ~~made available adopted~~ by the
13 commission which shall be completed and filed with the
14 commission ~~prior to~~ before April 30 of each year covering the
15 preceding calendar year by certain public officials and public
16 employees.

17 **ATTORNEY GENERAL'S ANNOTATIONS:**

18 *This bill recognizes that the revised section on
19 statement of economic interests requires the Commission to
20 develop two new forms - one for public officials and another
21 for public employees. The revised section sets the required
22 fields that must appear in the two types of forms, but
23 provides flexibility to the Commission to create and develop
24 these forms through an administrative public notice and
25 comment procedure.*

26 "(33)(44) SUPERVISOR. Any person having authority to
27 hire, transfer, suspend, lay off, recall, promote, discharge,
28 assign, or discipline other public employees, or any person
29 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) (45)~~ THING OF VALUE.

6 "a. Any money or lawful United States currency;
7 gift_r; benefit_r; favor_r; service_r; gratuity_r; tickets or
8 passes to an entertainment, social or sporting event_r;
9 unsecured loan, other than those loans and forbearances made
10 in the ordinary course of business and on terms generally
11 available to the public; r reward_r; employment or promise of
12 future employment_r; or honoraria; a contribution to a legal
13 defense fund; or other item of monetary value.

14 **ATTORNEY GENERAL'S ANNOTATIONS:**

15 *This bill codifies existing law or otherwise updates*
16 *the definition of "thing of value" to include bitcoin or other*
17 *digital currency and contributions to a legal defense fund. It*
18 *is a broad term that captures most tangible or intangible*
19 *things. But the term is limited by the specific exceptions*
20 *listed below to allow legitimate activity.*

21 "b. The term includes anything offered, provided,
22 solicited, or received either where the recipient expressly or
23 impliedly agrees to accept anything for the purpose of
24 corruptly influencing any decision, official action, or the
25 withholding of official action by the recipient in the
26 recipient's official capacity, or with the expectation that
27 the recipient will be corruptly influenced. ~~The term, thing of~~
28 ~~value, does not include any of the following, provided that no~~

1 particular course of action is required as a condition to the
2 receipt thereof:

3 **ATTORNEY GENERAL'S ANNOTATIONS:**

4 *This bill does not change existing law in the above
5 subparagraph. It merely restates the long-held principle that
6 anything can be a "thing of value" when a corrupt purpose or
7 corrupt influence is shown.*

8 "c. Subject to paragraph b., the term does not
9 include the following:

10 "1. Gifts or reciprocal expressions of friendship
11 offered or provided by a friend of the recipient, so long as
12 the circumstances make it clear that the gift or reciprocal
13 expression of friendship was offered or provided for reasons
14 motivated by friendship and was not offered or provided for
15 reasons related to the recipient's official position; or gifts
16 or reciprocal expressions of friendship solicited or received
17 from a friend of the recipient, as long as the circumstances
18 make it clear that the gift or reciprocal expression of
19 friendship was solicited or received for reasons motivated by
20 friendship and was not offered or provided for reasons related
21 to the recipient's official position. This exception does not
22 apply to business or professional dealings of any kind. It
23 shall be *prima facie* evidence that the circumstances are not
24 clear when the person offering or providing the thing of value
25 has direct and specific interests before the recipient in the
26 recipient's official capacity.

27 **ATTORNEY GENERAL'S ANNOTATIONS:**

28 *In 2010, the Legislature took bold and necessary action*
29 *to limit the influence of lobbyists and the people and*

1 businesses that hire lobbyists. For over seven years, it has
2 been illegal for public officials to ask for or take "things
3 of value" from lobbyists and principals. See § 36-25-5.1(a).
4 The Legislature, however, also excluded gifts and other items
5 exchanged in friendship "under circumstances which make it
6 clear that [the exchange] is motivated by friendship and not
7 because of the recipient's official position." § 36-25-
8 1(34) (b) (3). In other words, friends should be allowed to give
9 gifts to each other and, for example, take vacations with each
10 other without worrying about who pays for what, as long as it
11 is "clear" that the exchange is only about friendship and has
12 nothing to do with a public official's position of public
13 trust.

14 The law currently does not give any express guidance on
15 what circumstances are "clear" and what circumstances are not.
16 But any fair reading of the law means that if a lobbyist has
17 interests before a public official who is also his or her
18 friend, then the circumstances of exchanging gifts will not be
19 clear and the gift exchange would frustrate the purpose of the
20 law, which includes promoting the public's confidence in the
21 integrity of government. The same is true for one-sided
22 business or professional dealings between lobbyists and public
23 officials.

24 This bill provides a better explanation of when the
25 circumstances are "clear" and not "clear" for public officials
26 to exchange gifts or other items based on friendships with
27 lobbyists and principals. Under this bill, friends of public
28 officials who are lobbyists or principals under the Act could
29 exchange gifts and engage in other reciprocal activity, so

1 long as: (1) they do not have any official state business with
2 each other or (2) they would otherwise do so regardless of the
3 public official's position of public trust. The bill also
4 makes clear that friendly gift exchanges do not involve
5 private business or professional dealings of any kind.
6 Further, under this bill, public officials are also free to
7 accept gifts from people who are not lobbyists or principals,
8 provided that they do not use their office for personal gain
9 or take things for the purpose of being corruptly influenced.

10 "2. Money or lawful United States currency offered
11 or provided in exchange for an item sold or conveyed, as long
12 as the item was sold or conveyed at fair market value and
13 under circumstances that make it clear the reasons for the
14 sale or conveyance are not related to the recipient's official
15 position. It shall be *prima facie* evidence that the
16 circumstances are not clear if the item is not available for
17 purchase by the general public and the sale or conveyance was
18 not conducted in the ordinary course of business.

19 **ATTORNEY GENERAL'S ANNOTATIONS:**

20 While the Ethics Act is not designed to prevent
21 public officials from being "denied the opportunity, available
22 to all other citizens, to acquire and retain private economic
23 interests" conflicts between those interests and public
24 officials' and public employees' responsibility to the public
25 must be avoided. § 36-25-2(b).

26 This bill makes clear the kinds of business public
27 officials and public employees may engage in, even with
28 lobbyists and principals. For example, a public official may
29 sell any item to anyone at a fair market price, provided that

1 the transaction was conducted in the ordinary course of
2 business, available to all members of the general public, and
3 has nothing to do with the public official's position. Thus, a
4 legislator who is also a small business owner can sell items
5 to lobbyists and principals in generally the same manner as he
6 or she would sell them to private citizens, but not under
7 circumstances that would undermine the public's confidence in
8 the integrity of government.

9 "3. Prospective or actual compensation and other
10 benefits earned from an employer, vendor, client, prospective
11 employer, or other business relationship for services rendered
12 in the ordinary course of employment or business activities,
13 as long as the circumstances make it clear that the
14 compensation and other benefits are provided for reasons
15 unrelated to the recipient's official position. It shall be
16 prima facie evidence that the circumstances are not clear if
17 any of the following exist:

18 "(i) The services rendered are consulting services
19 or other similar on-demand or as-needed services, except for
20 the services of an attorney representing a client before the
21 judicial branch or a regulatory body, provided that the
22 attorney's representation of his or her client does not
23 include lobbying.

24 "(ii) The services rendered are outside the
25 recipient's field of expertise.

26 "(iii) The amount of compensation and other benefits
27 earned by the recipient are substantially different from the
28 amount of compensation and other benefits customarily earned
29 by a private citizen for the same or similar services.

1 "(iv) The employer or prospective employer has
2 direct and specific interests before the recipient in the
3 recipient's official capacity.

4 "(v) The employer or prospective employer did not
5 make the position generally available to potential recipients
6 other than the public official or public employee.

7 "(vi) The services are for fundraising of any kind
8 or character and the compensation and other benefits include a
9 commission, bonus, or other incentive based in whole or in
10 part on the amount of funds raised by the recipient.

11 "(vii) The services are related to the recipient's
12 service as a public official or public employee.

13 **ATTORNEY GENERAL'S ANNOTATIONS:**

14 Public officials serving the State in a part-time
15 capacity, such as legislators, should not be required to quit
16 their jobs to work in public service. Nor should they have to
17 resign from state service before seeking new jobs in the
18 private sector upon leaving their public job. While the Ethics
19 Act prohibits public officials from taking "things of value"
20 from lobbyists and principals, the 2010 amendments recognized
21 that many public officials may take paychecks for their work
22 from businesses that employ lobbyists. Thus, the "compensation
23 and other benefits" exception was designed to allow legitimate
24 work done by public officials in their private job to
25 continue, as well as to allow public officials leaving
26 government service to find new employment in the private
27 sector without a gap in employment.

28 The current bill clarifies this exception, much like it
29 clarifies the "friendship exception", to identify when

1 circumstances are and are not "clear" - that is, a public
2 official can work for a principal when it is "clear" that the
3 work has nothing to do with the public official's official
4 position. Therefore, the above revised provision allows a
5 public official to legally work or provide bona fide services
6 in his or her profession to anyone, including lobbyists and
7 principals, under certain circumstances.

8 For example, this revised exception makes clear that a
9 barber-legislator can provide haircuts to lobbyists and
10 principals without violating the Ethics Act, while at the same
11 time prohibiting public officials from receiving lucrative
12 consultant contracts from businesses with interests in the
13 Legislature or other similar illegal conduct.

14 The exceptions set forth above also use the standard
15 criminal code phrase "prima facie evidence" to create a bright
16 line for persons seeking to comply with the Act, while
17 simultaneously holding those persons accountable who violate
18 the public's trust. See § 13A-8-16, Ala Code (Receiving Stolen
19 Property) and § 13A-11-71, Ala. Code. (Committing crime when
20 armed; evidence of intent). This bright line codifies the
21 Ethics Commission's advisory opinion No. 2016-27 to Mac
22 McArthur.

23 The *prima facie* standard has two goals. First, it ensures
24 that persons engaging in legitimate gift giving or lawful
25 employment will know where the line is drawn in the Ethics
26 Act. This will ensure that honest persons serving the State
27 will be able to take solace by knowing when their activity
28 falls outside the scope of actions prohibited by the Act.

1 For example, Section 36-25-5.1 is not intended to
2 prohibit gifts between life-long friends that do not interact
3 with each other in an official capacity. Nor is it intended to
4 require a recently elected legislator to quit his or her
5 career as an employee of an insurance business, even though
6 the business is a registered principal. The *prima facie*
7 evidence language provides that certainty.

8 Additionally, if an honest person desires to comply with
9 the law, but specific circumstances distort the clarity of his
10 or her intentions, then that person may request a formal
11 advisory opinion from the Ethics Commission to remedy the
12 uncertainty. For instance, if the newly elected legislator
13 quits his or her insurance job to be a consultant for
14 insurance companies, then this bill should be a caution light
15 for the legislator. That is, the consulting job might be
16 permissible depending on the circumstances. See AO-2016-27.
17 But without a formal advisory opinion evaluating all of the
18 circumstances, clarity eludes the honest legislator and
19 undermines the public's confidence.

20 The second goal of the *prima facie* evidence standard is
21 to hold wrongdoers accountable. For example, a corrupt public
22 official is not likely to ask the Commission for an advisory
23 opinion if he or she knows the conduct is prohibited by the
24 Act. Nor is the Commission likely to give such an opinion. In
25 that case, assuming the public official moves forward with the
26 forbidden conduct, he or she must be held accountable. Here,
27 the clarity of the law aids deterrence, enforcement,
28 prosecution, and conviction.

1 It is essential for good government and the confidence of
2 the people in their government that both of these goals be
3 properly served in the Ethics Act. The above provisions do
4 just that.

5 "d. Subject to paragraph b., the term also does not
6 include:

7 **ATTORNEY GENERAL'S ANNOTATIONS:**

8 Below is a list of exceptions to "thing of value"
9 that persons subject to the Act may take regardless of the
10 circumstances, so long as the activity is not corrupt. This
11 would include discounts on hotel accommodations provided to an
12 entire class of public officials or public employees, a free
13 cup of coffee for all police officers, etc.

14 "1. A contribution reported under Chapter 5 of Title
15 17, ~~or~~ a contribution to an inaugural or transition committee,
16 or a campaign contribution for a federal election which is
17 otherwise lawful.

18 "2. Anything ~~given offered or provided~~ by a family
19 member of the recipient under circumstances which make it
20 clear that it ~~is was~~ motivated by a family relationship ~~or~~
21 anything solicited or received from a family member of the
22 recipient under circumstances that make it clear that the
23 offer, provision, solicitation, or receipt was motivated by a
24 family relationship.

25 "3. Anything ~~given by a friend of the recipient~~
26 ~~under circumstances which make it clear that it is motivated~~
27 ~~by a friendship and not given because of the recipient's~~
28 ~~official position. Relevant factors include whether the~~
29 ~~friendship preexisted the recipient's status as a public~~

1 employee, public official, or candidate and whether gifts have
2 been previously exchanged between them.

3 "4.3. Greeting cards; flowers for funerals; and
4 other items, services with little intrinsic value which are
5 intended solely for presentation, such as plaques,
6 certificates, and trophies; promotional items commonly
7 distributed to the general public; and items or services of
8 de minimis value.

9 "5.4. Loans from banks and other financial
10 institutions made in the ordinary course of business on terms
11 generally available to the public.

12 "6.5. Opportunities and benefits, including
13 favorable rates and commercial discounts, available to the
14 public or to a class consisting of all government employees.

15 "7.6. Rewards and prizes given to competitors in
16 contests or events, including random drawings, which are open
17 to the entire class of people invited to an educational
18 function or 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.

27 "10. Compensation and other benefits earned from a
28 non-government employer, vendor, client, prospective employer,
29 or other business relationship in the ordinary course of

1 employment or non-governmental business activities under
2 circumstances which make it clear that the thing is provided
3 for reasons unrelated to the recipient's public service as a
4 public official or public employee.

5 "11.7. Any assistance provided or rendered in
6 connection with a safety or a health emergency.

7 "12.8. Payment of or reimbursement for actual and
8 necessary transportation and lodging expenses, as well as
9 waiver of registration fees and similar costs, to facilitate
10 the attendance of a public official or public employee, and
11 the spouse of the public official or public employee, at an
12 educational function or widely attended event of which the
13 person is a primary sponsor. This exclusion applies only if:

14 i. the public official or public employee
15 meaningfully participates in the event as a speaker or a panel
16 participant by presenting information related to his or her
17 agency or matters pending before his or her agency;

18 ii. the public official or public employee performs
19 a ceremonial function appropriate to his or her official
20 position; or

21 iii. the public official's or public employee's
22 attendance at the event is appropriate to the performance of
23 his or her official duties or representative function. the
24 public official or public employee meaningfully participates
25 in the event as a speaker or a panel participant, by
26 presenting information related to his or her agency or matters
27 pending before his or her agency, or by performing a
28 ceremonial function appropriate to his or her official
29 position; or if the public official's or public employee's

1 attendance at the event is appropriate to the performance of
2 his or her official duties or representative function.

3 "13.9. Payment of, or reimbursement for, actual and
4 necessary transportation and lodging expenses to facilitate a
5 public official's or public employee's participation in an
6 economic development function.

7 "14.10. Hospitality, meals, and other food and
8 beverages provided to a public official or public employee,
9 and the spouse of the public official or public employee, as
10 an integral part of an educational function, economic
11 development function, work session, or widely attended event,
12 such as a luncheon, banquet, or reception hosted by a civic
13 club, chamber of commerce, charitable or educational
14 organization, or trade or professional association.

15 "15.11. Any function or activity pre-certified by
16 the ~~Director~~ director of the ~~Ethics Commission~~ commission as
17 a function that meets any of the above criteria.

18 "16.12. Meals and other food and beverages provided
19 to a public official or public employee in a setting other
20 than any of the above functions not to exceed for a lobbyist
21 or a principal twenty-five dollars (\$25) per meal with a limit
22 of one hundred fifty dollars (\$150) per year; and not to
23 exceed for a principal fifty dollars (\$50) per meal with a
24 limit of two hundred fifty dollars (\$250) per year. For
25 purposes of this subparagraph, if a principal is a business,
26 the limit applies regardless of how many persons at that
27 business qualify as principals. A business that is a principal
28 and any person within that business who qualifies as a
29 principal by virtue of his or her position within that

1 business may not aggregate or stack his or her spending limit
2 to avoid the limitation in this subparagraph. Any spending by
3 a lobbyist counts toward his or her own limit, whether or not
4 the principal reimburses the lobbyist. A person employed by a
5 principal, who is not himself or herself a principal or a
6 lobbyist, is not limited by this subparagraph unless the
7 principal is directly or indirectly acting through the person
8 to avoid the limits in this subparagraph. Notwithstanding the
9 foregoing, the lobbyist's limits herein shall not count
10 against the principal's limits and likewise, the principal's
11 limits shall not count against the lobbyist's limits.

12 "17.13. Anything either (i) provided by an
13 association or organization to which the state or, in the case
14 of a local government official or employee, the local
15 government pays annual dues as a membership requirement or
16 (ii) provided by an association or organization to a public
17 official who is a member of the association or organization
18 and, as a result of his or her service to the association or
19 organization, is deemed to be a public official. Further
20 included in this exception is payment of reasonable
21 compensation by a professional or local government association
22 or corporation to a public official who is also an elected
23 officer or director of the professional or local government
24 association or corporation for services actually provided to
25 the association or corporation in his or her capacity as an
26 officer or director.

27 "18.14. Any benefit received as a discount on
28 accommodations, when the discount is given to the public
29 official because the public official is a member of an

1 organization or association whose entire membership receives
2 the discount.

3 "15. Any tax-deductible contribution, charitable
4 donation, or other donation to a charity or other non-profit,
5 except where the public official, public employee, or family
6 member of the public official or public employee benefits
7 financially, directly or indirectly, from the donation or
8 contribution.

9 **ATTORNEY GENERAL'S ANNOTATIONS:**

10 *The current Ethics Act does not exempt charitable*
11 *contributions. This bill does, which dramatically improves the*
12 *current law. The only exception is that private financial*
13 *benefit from the donations to public officials and their*
14 *family members is prohibited. If the public official or member*
15 *of his or her family is employed by the charity, then the*
16 *compensation and other benefits exception would determine*
17 *whether the employment was lawful.*

18 "16. Prospective or actual compensation and other
19 benefits earned by a public official or public employee in his
20 or her official capacity and as provided by law.

21 "17. A ticket or pass to an entertainment, social,
22 or sporting event bought or purchased with money or lawful
23 United States currency by a public official or public employee
24 at the face value printed on the ticket.

25 "18. An item bought or purchased with money or
26 lawful United States currency by a public official or public
27 employee at a fair market value.

28 "19. Anything that is solicited, received, offered,
29 or provided by a governmental entity or an entity created by a

1 governmental entity to support the governmental entity or
2 secured by a governmental entity under contract, provided that
3 the thing solicited, received, offered, or provided is
4 reasonably related to the performance of the recipient's
5 official duties or the administration of the recipient's
6 public office. This exception does not include tickets to a
7 sporting event offered by an educational institution to anyone
8 other than faculty, staff, or administration of the
9 institution.

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

14 "f. Nothing in this subdivision shall be construed
15 as shifting the burden of proof in a criminal case to the
16 defendant.

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

21 "~~(36) (46) WIDELY ATTENDED EVENT.~~ A gathering,
22 dinner, reception, or other event of mutual interest to a
23 number of parties at which it is reasonably expected that ~~more~~
24 ~~than 12~~ a significant number of persons ~~individuals~~ will
25 attend, and that the persons ~~individuals~~ present will have
26 ~~with~~ a diversity of views or interests, and that the event's
27 activities will be integral to the event and not merely
28 collateral to the event present. The commission shall develop,

1 promulgate, and implement, pursuant to administrative rule,
2 the criteria for widely attended events.

3 **ATTORNEY GENERAL'S ANNOTATIONS:**

4 This definition was changed to provide the
5 Ethics Commission more flexibility in determining the criteria
6 for a widely attended event. Although this exception has
7 historically been used to permit a Caucus lunch during the
8 session, that practice has been removed from this definition
9 and given its own exemption in the Act. As such, a specific
10 number of people is no longer required in the definition.

11 Under this new definition, the criteria for a widely
12 attended event is defined by general guidance in order to
13 apply the term to various types of activities intended to be
14 covered, while also setting restrictions, such as the
15 exclusion of collateral (or non-integral) activities from an
16 event. For example, a reception that includes a three-day
17 Caribbean cruise as part of the event would not meet the
18 general criteria set forth here. The definition also requires
19 the Commission to develop through a public notice and comment
20 administrative process the specific rules and regulations to
21 implement this term.

22 "§36-25-2.

23 "(a) All provisions of this Code shall be
24 interpreted consistent with the following provisions, which
25 ~~the~~ Legislature hereby finds and declares:

26 **ATTORNEY GENERAL'S ANNOTATIONS:**

27 Although it is preferable to begin the Act in
28 Section 1 with its findings and declarations, the potential
29 for confusion would be too high to move the definitions out of

1 Section 1 because, among other things, court decisions,
2 advisory opinions, and other statutes have consistently
3 referred to Section 1 as the definition section since the laws
4 initial passage decades ago. The changes below are intended to
5 improve the clarity of the purposes of the Act without making
6 any substantive changes to those purposes.

7 "(1) ~~It is essential to the~~ The proper operation of
8 democratic government requires that public officials be
9 independent, and impartial, and responsible to the people.

10 "(2) Governmental decisions and policy should be
11 made in the proper channels of the governmental structure.

12 "(3) No public office should be used for personal or
13 private gain other than the ~~remuneration~~ compensation
14 by law.

15 "(4) ~~It is important that there be public~~ Public
16 confidence in the integrity of government is essential.

17 "(5) A conflict of interest between the private
18 interests of a public official or a public employee and the
19 duties of the public official or public employee impairs the
20 attainment of the ends set forth in this subsection. The
21 attainment of one or more of the ends set forth in this
22 subsection is impaired whenever there exists a conflict of
23 interest between the private interests of a public official or
24 a public employee and the duties of the public official or
25 public employee.

26 "(6) The public interest requires that the law
27 protect against such conflicts of interest and establish
28 appropriate ethical standards with respect to the conduct of

1 public officials and public employees in situations where
2 conflicts exist.

3 "(7) The proper operation of government also
4 requires that those best qualified be encouraged to serve in
5 government.

6 "(8) Accordingly, legal safeguards against conflicts
7 of interest shall be so designed as to not unnecessarily or
8 unreasonably impede the service of those persons who are
9 elected or appointed to a position of public trust.

10 "(9) Although public officials and public employees
11 should not be denied the opportunity, available to all other
12 citizens, to acquire and retain private economic and other
13 interests, conflicts between those interests and public
14 officials' and public employees' responsibility to the public
15 must be avoided.

16 "(10) The operation of responsible democratic
17 government also requires that the fullest opportunity be
18 afforded to the people to petition their government for the
19 redress of grievances and to express freely to the legislative
20 bodies and to officials of the Executive Branch their opinions
21 on legislation, on pending governmental actions, and on
22 current issues.

23 "(11) To preserve and maintain the integrity of the
24 legislative and administrative processes, it is necessary that
25 the identity, expenditures, and activities of certain persons
26 who engage in efforts to persuade members of the legislative
27 bodies or members of the Executive Branch to take specific
28 actions, either by direct communication to these officials, or

1 by solicitation of others to engage in such efforts, be
2 publicly and regularly disclosed.

3 " (b) The Legislature declares that it is the policy
4 and purpose of this chapter to implement these objectives of
5 protecting the integrity of all governmental units of this
6 state and of facilitating the service of qualified personnel
7 by prescribing essential restrictions against conflicts of
8 interest in public service without creating unnecessary
9 barriers thereto. It is also essential to the proper operation
10 of government that those best qualified be encouraged to serve
11 in government. Accordingly, legal safeguards against conflicts
12 of interest shall be so designed as not to unnecessarily or
13 unreasonably impede the service of those men and women who are
14 elected or appointed to do so. An essential principle
15 underlying the staffing of our governmental structure is that
16 its public officials and public employees should not be denied
17 the opportunity, available to all other citizens, to acquire
18 and retain private economic and other interests, except where
19 conflicts with the responsibility of public officials and
20 public employees to the public cannot be avoided.

21 " (c) This chapter shall be liberally construed to
22 promote complete disclosure of all relevant information and to
23 ensure that the public interest is fully protected and to
24 discourage corrupt practices by those in public service. The
25 Legislature declares that the operation of responsible
26 democratic government requires that the fullest opportunity be
27 afforded to the people to petition their government for the
28 redress of grievances and to express freely to the legislative
29 bodies and to officials of the Executive Branch, their

1 opinions on legislation, on pending governmental actions, and
2 on current issues. To preserve and maintain the integrity of
3 the legislative and administrative processes, it is necessary
4 that the identity, expenditures, and activities of certain
5 persons who engage in efforts to persuade members of the
6 legislative bodies or members of the Executive Branch to take
7 specific actions, either by direct communication to these
8 officials, or by solicitation of others to engage in such
9 efforts, be publicly and regularly disclosed. This chapter
10 shall be liberally construed to promote complete disclosure of
11 all relevant information and to insure that the public
12 interest is fully protected.

13 "(d) It is the policy and purpose of this chapter to
14 implement these objectives of protecting the integrity of all
15 governmental units of this state and of facilitating the
16 service of qualified personnel by prescribing essential
17 restrictions against conflicts of interest in public service
18 without creating unnecessary barriers thereto.

19 "§36-25-3.

20 "(a) There is hereby created a State Ethics
21 Commission composed of five members, each of whom shall be a
22 fair, equitable citizen of this state and of high moral
23 character and ability. The following persons shall not be
24 eligible to be appointed as members: (1) a public official;
25 (2) a candidate; (3) a registered lobbyist and his or her
26 principal; or (4) a former employee of the commission. No
27 member of the commission shall be eligible for reappointment
28 to succeed himself or herself. The members of the commission
29 shall be appointed by the following officers: The Governor;

1 the Lieutenant Governor, or in the absence of a Lieutenant
2 Governor, the Presiding Officer of the Senate~~;~~ and the
3 Speaker of the House of Representatives. Appointments shall be
4 subject to Senate confirmation and persons appointed shall
5 assume their duties upon confirmation by the Senate. The
6 members of the first commission shall be appointed for terms
7 of office expiring one, two, three, four, and five years,
8 respectively, from September 1, 1975. Successors to the
9 members of the first commission shall serve for a term of five
10 years beginning service on September 1 of the year appointed
11 and serving until their successors are appointed and
12 confirmed. If at any time there should be a vacancy on the
13 commission, a successor member to serve for the unexpired term
14 applicable to such vacancy shall be appointed by the Governor.
15 The commission shall elect one member to serve as chair of the
16 commission and one member to serve as vice chair. The vice
17 chair shall act as chair in the absence or disability of the
18 chair or in the event of a vacancy in that office.

19 "Beginning with the first vacancy on the ~~Ethics~~
20 ~~Commission~~ commission after October 1, 1995, if there is not a
21 Black member serving on the commission, that vacancy shall be
22 filled by a Black appointee. Any vacancy thereafter occurring
23 on the commission shall also be filled by a Black appointee if
24 there is no Black member serving on the commission at that
25 time.

26 "Beginning with the first vacancy on the ~~State~~
27 ~~Ethics~~ ~~Commission~~ commission after January 1, 2011, the
28 commission shall always have as a member a State of Alabama-
29 licensed attorney in good standing.

1 "Beginning with the first vacancy on the ~~State~~
2 ~~Ethics Commission~~ commission after January 1, 2016, the
3 commission shall always have as a member a former elected
4 public official who served at least two terms of office.

5 "(b) A vacancy in the commission shall not impair
6 the right of the remaining members to exercise all the powers
7 of the commission, and three members thereof shall constitute
8 a quorum.

9 "(c) The commission shall at the close of each
10 fiscal year, or as soon thereafter as practicable, report to
11 the Legislature and the Governor concerning the actions it has
12 taken; ~~the name, salary, and duties of the director;~~ the
13 names and duties of all persons ~~individuals~~ in its employ; ~~the~~
14 the money it has disbursed; ~~other~~ other relevant matters within its
15 jurisdiction; ~~and~~ and such recommendations for legislation as the
16 commission deems appropriate.

17 "(d) Members of the commission, while serving on the
18 business of the commission, shall be entitled to receive
19 compensation at the rate of fifty dollars (\$50) per day, and
20 each member shall be paid his or her travel expenses incurred
21 in the performance of his or her duties as a member of the
22 commission as other state employees and officials are paid
23 when approved by the chair. If for any reason a member of the
24 commission wishes not to claim and accept the compensation or
25 travel expenses, the member shall inform the director, in
writing, of the refusal. The member may at any time during his
or her term begin accepting compensation or travel expenses;
however, the member's refusal for any covered period shall act
as an irrevocable waiver for that period.

1 "(e) All members, officers, agents, attorneys, and
2 employees of the commission shall be subject to this chapter.
3 The director, members of the commission, and all employees of
4 the commission may not engage in partisan political activity,
5 including the making of campaign contributions, on the state,
6 county, and local levels. The prohibition shall in no way act
7 to limit or restrict such persons' ability to vote in any
8 election.

9 "(f) The commission shall appoint a full-time
10 director. Appointment of the director shall be subject to
11 Senate confirmation, and the person appointed shall assume his
12 or her duties upon confirmation by the Senate. If the Senate
13 fails to vote on an appointee's confirmation before adjourning
14 sine die during the session in which the director is
15 appointed, the appointee is deemed to be confirmed. No
16 appointee whose confirmation is rejected by the Senate may be
17 reappointed. The director shall serve at the pleasure of the
18 commission and shall appoint such other employees as needed.
19 All such employees, except the director, shall be employed
20 subject to the state Merit System law, and their compensation
21 shall be prescribed pursuant to that law. The employment of
22 attorneys shall be subject to subsection (h). The compensation
23 of the director shall be fixed by the commission, payable as
24 the salaries of other state employees. The director shall be
25 responsible for the administrative operations of the
26 commission and shall administer this chapter in accordance
27 with the commission's policies. No rule shall be implemented
28 by the director until adopted by the commission in accordance

1 with Sections 41-22-1 to 41-22-27, inclusive, the Alabama
2 Administrative Procedure Act.

3 "(g) The director may appoint part-time stenographic
4 reporters or certified court reporters, as needed, to take and
5 transcribe the testimony in any formal or informal hearing or
6 investigation before the commission or before any person
7 authorized by the commission. The reporters are not full-time
8 employees of the commission, are not subject to the Merit
9 System law, and may not participate in the State Retirement
10 System.

11 "(h) The director, with the approval of the Attorney
12 General, may appoint competent attorneys as legal counsel for
13 the commission. Each attorney so appointed shall be of good
14 moral and ethical character, licensed to practice law in this
15 state, and be a member in good standing of the Alabama State
16 Bar Association. Each attorney shall be commissioned as an
17 assistant or deputy attorney general and, in addition to the
18 powers and duties herein conferred, shall have the authority
19 and duties of an assistant or deputy attorney general, except,
20 that his or her entire time shall be devoted to the
21 commission. Each attorney shall act on behalf of the
22 commission in actions or proceedings brought by or against the
23 commission pursuant to any law under the commission's
24 jurisdiction or in which the commission joins or intervenes as
25 to a matter within the commission's jurisdiction or as a
26 friend of the court or otherwise.

27 "(i) The director shall designate in writing the
28 chief investigator, should there be one, and a maximum of
29 eight full-time investigators who shall be and are hereby

1 constituted law enforcement officers of the State of Alabama
2 with full and unlimited police power and jurisdiction to
3 enforce the laws of this state pertaining to the operation and
4 administration of the commission and this chapter.

5 Investigators shall meet the requirements of the Alabama Peace
6 Officers' Standards and Training Act, Sections 36-21-40 to 36-
7 21-51, inclusive, and shall in all ways and for all purposes
8 be considered law enforcement officers entitled to all
9 benefits provided in Section 36-15-6(f). Notwithstanding the
10 foregoing, the investigators shall only exercise their power
11 of arrest as granted under this chapter pursuant to an order
12 issued by a court of competent jurisdiction."

13 Section 2. Sections 36-25-3.1, 36-25-3.2, and 36-25-
14 3.3 are added to the Code of Alabama 1975, to read as follows:

15 §36-25-3.1.

16 (a) An employee of an educational institution is not
17 subject to Section 36-25-5.1, Section 36-25-14, and Section
18 36-25-23.

19 (b) For purposes of this section, an "employee of an
20 educational institution" means a public employee employed by a
21 pre-school, elementary school, middle or junior high school,
22 high school, kindergarten through twelfth grade educational
23 institution, or other secondary school, or a public employee
24 employed as a coach or subordinate of a coach of an athletic
25 team of any institution of higher education that receives
26 state funds. The term does not include persons identified in
27 Subdivisions (8) and (9) of subsection (a) of Section 36-25-14
28 or a public employee that is also a public official.

ATTORNEY GENERAL'S ANNOTATIONS:

This bill creates a new section above (3.1) to narrow the Act's application to employees of an educational institution. This was done, in part, to respond to valid criticism that the Act should not treat the Governor in the same way that it treats a kindergarten teacher. It also expressly clarifies that the Act does not prohibit fundraising for higher education institutions.

§36-25-3.2.

23 (a) Except for persons occupying a chief or deputy
24 chief position, a law enforcement officer or a first-responder
25 employee who is not otherwise a public official is not subject
26 Section 36-25-5.1, Section 36-25-14, and Section 36-25-23.

27 (b) For purposes of this section, a "first-responder
28 employee" means a public employee employed as a full-time
29 firefighter, emergency medical technician, certified first

1 responder, emergency medical responder, medical first
2 responder, or paramedic.

3 **ATTORNEY GENERAL'S ANNOTATIONS:**

4 This bill creates a new section above (3.2) to
5 narrow the Act's application to law enforcement and first
6 responders. This was done, in part, to respond to valid
7 criticism that the Act should not treat the Governor in the
8 same way that it treats a police officer.

9
10 Section 36-25-3.3 is added to the Code of Alabama
11 1975, to read as follows:

12 §36-25-3.3.

13 (a) Notwithstanding Section 36-25-1(b) (41)d., the
14 caucuses of each state political party, as defined in Section
15 17-13-40, in the Senate of Alabama or the House of
16 Representatives of Alabama may solicit or receive meals and
17 other food and beverages from a lobbyist, subordinate of a
18 lobbyist, or principal, so long as all of the following
19 requirements are met:

20 (1) the items are provided during an event where a
21 majority of the caucus members are present;

22 (2) the event occurs while the Legislature is in
23 session;

24 (3) the event occurs within the geographical limits
25 of Montgomery County, Alabama;

26 (4) the fair market value of the items does not
27 exceed twenty five dollars (\$25) per caucus member for each
28 event, with a yearly limit of two hundred and fifty dollars
29 (\$250) per caucus member; and

(5) an integral part of the event involves presenting information by the lobbyist, a subordinate of a lobbyist, or a principal related to matters pending before members of the caucus in their official capacities.

(b) Notwithstanding Section 36-25-1(b)(41)d., a lobbyist, subordinate of a lobbyist, or principal may offer or provide the items referenced in subsection (a), so long as the criteria set forth in subdivision (a)(1) through (a)(5) are satisfied.

(c) For purposes of this section, if a principal is a business, this limit applies regardless of how many persons at that business qualify as principals. A business that is a principal and any persons within that business who qualify as principals by virtue of their position within that business may not aggregate or stack their spending limit to avoid the limitations in this subparagraph. Any spending by a lobbyist counts toward his or her own limit, whether or not the principal reimburses the lobbyist. A person employed by a principal, who is not himself or herself a principal or a lobbyist, is not limited by this subparagraph unless the principal is directly or indirectly acting through the person to avoid the limits in this section.

(d) The lobbyist or principal shall report any expenditure pursuant to this section to the commission including the date, time, and location of the event; the name of the caucus; the members of the caucus who attended the event; the total amount paid for the items; and a general description of the information provided by the lobbyist, subordinate of the lobbyist, or principal. Such report shall

1 be made a public record and shall be filed no later than the
2 end of the month following the month in which the event was
3 held.

4 **ATTORNEY GENERAL'S ANNOTATIONS:**

5 This bill creates a new section above (3.3) to
6 remove certain Legislative Caucus activities from the
7 definition of widely attended event. This new provision
8 remedies the problem, inherent in the prior definition of
9 widely attended event, of requiring a certain minimum number
10 of attendees since that definition applies to numerous types
11 of events whose attendance may vary widely.

12 Section 3. Section 36-25-4 and 36-25-4.2, Code of
13 Alabama 1975, are amended to read as follows:

14 "§36-25-4.

15 "(a) The commission shall do all of the following:

16 "(1) Prescribe forms for statements required to be
17 filed by this chapter and make the forms available to persons
18 required to file such statements.

19 "(2) Prepare guidelines setting forth recommended
20 uniform methods of reporting for use by persons required to
21 file statements required by this chapter.

22 "(3) Accept and file any written information
23 voluntarily supplied that exceeds the requirements of this
24 chapter.

25 "(4) Develop, where practicable, a filing, coding,
26 and cross-indexing system consistent with the purposes of this
27 chapter.

28 "(5) Make reports and statements filed with the
29 commission available during regular business hours and online

1 via the Internet to public inquiry subject to such regulations
2 as the commission may prescribe.

3 "(6) Preserve reports and statements for a period
4 consistent with the statute of limitations as contained in
5 this chapter. The reports and statements, when no longer
6 required to be retained, shall be disposed of by shredding the
7 reports and statements and disposing of or recycling them, or
8 otherwise disposing of the reports and statements in any other
9 manner prescribed by law. Nothing in this section shall in any
10 manner limit the Department of Archives and History from
11 receiving and retaining any documents pursuant to existing
12 law.

13 "(7) Make investigations with respect to statements
14 filed pursuant to this chapter, and with respect to alleged
15 failures to file, or omissions contained therein, any
16 statement required pursuant to this chapter and, upon
17 complaint by any individual person, with respect to alleged
18 violation of any part of this chapter to the extent authorized
19 by law. When in its opinion a thorough audit of any person or
20 any business should be made in order to determine whether this
21 chapter has been violated, the commission shall direct the
22 Examiner of Public Accounts to have an audit made and a report
23 thereof filed with the commission. The Examiner of Public
24 Accounts, upon receipt of the directive, shall comply
25 therewith.

26 "(8) Report suspected violations of law to the
27 appropriate law-enforcement authorities.

28 "(9) Issue and publish advisory opinions on the
29 requirements of this chapter, based on a real or hypothetical

1 set of circumstances. Such advisory opinions shall be adopted
2 by a majority vote of the members of the commission present
3 and shall be effective and deemed valid until expressly
4 overruled or altered by the commission or a court of competent
5 jurisdiction. The written advisory opinions of the commission
6 shall protect the person at whose request the opinion was
7 issued and any other person reasonably relying, in good faith,
8 on the advisory opinion in a materially like circumstance from
9 liability to the state, a county, or a municipal subdivision
10 of the state because of any action performed or action
11 refrained from in reliance ~~off~~ on the advisory opinion. Nothing
12 in this section shall be deemed to protect any person relying
13 on the advisory opinion if the reliance is not in good faith,
14 is not reasonable, or is not in a materially like
15 circumstance. The commission may impose reasonable charges for
16 publication of the advisory opinions, and monies shall be
17 collected, deposited, dispensed, or retained as provided
18 herein. ~~On October 1, 1995, Further, the director or general~~
19 counsel of the commission may provide informal advice or
20 guidance to public officials or public employees at the
21 request of public officials or public employees only if a
22 previous formal written opinion of the commission applies to
23 the request on its face. Such informal advice or guidance
24 shall be in writing. By rule, the commission shall develop and
25 implement a written questionnaire form for the purpose of
26 facilitating the good faith disclosure of all material facts
27 by requestors seeking formal or informal opinions. Before a
28 formal or informal opinion may be issued by the commission, an
29 affidavit or other statement under oath must be submitted by

1 the requestor which certifies that, to the best of the
2 requestor's knowledge, all material facts have been fully
3 disclosed and are true and accurate. On the effective date of
4 the act adding this language, all prior advisory opinions of
5 the commission in conflict with this chapter, shall be
6 ineffective and thereby deemed invalid and otherwise
7 overruled. unless there has been any action performed or
8 action refrained from Notwithstanding the foregoing, a prior
9 opinion in conflict with this chapter is effective with
10 respect to a person who has taken or refrained from any action
11 in reliance of on a prior advisory the opinion.

12 **ATTORNEY GENERAL'S ANNOTATIONS:**

13 This bill sets forth the specific requirements
14 necessary to obtain a formal or informal opinion. First, this
15 bill codifies the practice of providing informal opinions,
16 which is not in the current Act. Second, it limits the
17 circumstances when an informal opinion may be given to
18 instances when the answer to a request for an informal opinion
19 requires the application of an existing opinion. This
20 procedure allows the public to know that published advisory
21 opinions of the Commission reflect the current law and keeps
22 non-public informal opinions from being given that represent a
23 change in the law or address a novel issue. This change
24 promotes government transparency and public confidence. It
25 likewise ensures that public officials are able to make well-
26 informed decisions regarding contemplated courses of action
27 based on a complete understanding of how the Act has been
28 interpreted. This also avoids the problem of public officials
29 receiving conflicting advice on their ability to undertake a

1 course of action because one person acted upon an unpublished
2 informal opinion while another person obtained a published
3 formal opinion.

4 Thirdly, this bill requires the commission to
5 develop a questionnaire form to assist a person with the
6 disclosure of all material facts when seeking a formal or
7 informal opinion. The questionnaire form will assist public
8 officials in understanding what information he or she should
9 submit to the commission. In turn, the Ethics Commission and
10 its staff will be able to understand the exact issue on which
11 they are being asked to give an opinion. The form is designed
12 to create a process whereby the requestor may easily provide
13 the pertinent facts and the commission may obtain all of the
14 information necessary to issue an opinion. This process allows
15 the public official to use the completed questionnaire form to
16 create an affidavit, which would then be submitted to the
17 commission for decision.

18 The requirement to submit an affidavit recognizes
19 that opinions offer certain protections from criminal
20 liability under the Act and therefore require a high-level of
21 certainty that all material facts are known by the commission.
22 Further, an affidavit leaves no doubt as to what information
23 was actually provided by the requestor. Finally, the
24 requirement also deters corrupt public officials from
25 intentionally misleading the commission into providing an
26 opinion that may later be used to create reasonable doubt in a
27 prosecution under the Act. Thus, the affidavit meets the
28 established goals of encouraging honest people to serve in
29 government by clearly defining the line between legal and

1 illegal activity, creating a clear and definite process
2 through which people serving in government can obtain guidance
3 regarding where a particular situation falls on that line, and
4 ensuring that those persons who violate the public's trust are
5 held accountable.

6 This bill also allows inconsistent previous advisory
7 opinions to be overruled, while reaffirming opinions that have
8 been codified or unchanged.

9 "(10) Initiate and continue, where practicable,
10 programs for the purpose of educating candidates, officials,
11 employees, and citizens of Alabama on matters of ethics in
12 government service.

13 "(11) In accordance with Sections 41-22-1 to 41-22-
14 27, inclusive, the Alabama Administrative Procedure Act,
15 prescribe, publish, and enforce rules to carry out this
16 chapter.

17 "(b) Additionally, the commission shall work with
18 the Secretary of State to implement the reporting requirements
19 of the Alabama Fair Campaign Practices Act and shall do all of
20 the following:

21 "(1) Approve all forms required by the Fair Campaign
22 Practices Act.

23 "(2) Suggest accounting methods for candidates,
24 principal campaign committees, and political action committees
25 in connection with reports and filings required by the Fair
26 Campaign Practices Act.

27 "(3) Approve a retention policy for all reports,
28 filings, and underlying documentation required by the Fair
29 Campaign Practices Act.

1 "(4) Approve a manual for all candidates, principal
2 campaign committees, and political action committees,
3 describing the requirements of the Fair Campaign Practices Act
4 that shall be published by the Secretary of State.

5 "(5) Investigate and hold hearings for receiving
6 evidence regarding alleged violations of the Fair Campaign
7 Practices Act as set forth in this chapter that demonstrates a
8 likelihood that the Fair Campaign Practices Act has been
9 violated.

10 "(6) Conduct or authorize audits of any filings
11 required under the Fair Campaign Practices Act if evidence
12 exists that an audit is warranted because of the filing of a
13 complaint in the form required by this chapter or if there
14 exists a material discrepancy or conflict on the face of any
15 filing required by the Fair Campaign Practices Act.

16 "(7) Affirm, set aside, or reduce civil penalties as
17 provided in Section 17-5-19.2.

18 "(8) Refer all evidence and information necessary to
19 the Attorney General or appropriate district attorney for
20 prosecution of any criminal violation of the Fair Campaign
21 Practices Act as set forth in this chapter.

22 "(9) Make investigations with respect to statements
23 filed pursuant to the Fair Campaign Practices Act, and with
24 respect to alleged failures to file, or omissions contained
25 therein, any statement required pursuant to the Fair Campaign
26 Practices Act and, upon complaint by any individual person,
27 with respect to alleged violation of any part of that act to
28 the extent authorized by law. When in its opinion a thorough
29 audit of any person or any business should be made in order to

1 determine whether the Fair Campaign Practices Act has been
2 violated, the commission ~~shall~~ may direct the Examiner of
3 Public Accounts to have an audit made and a report thereof
4 filed with the commission. The Examiner of Public Accounts,
5 upon receipt of the directive, shall comply therewith.

6 "(10) Issue and publish advisory opinions on the
7 requirements of the Fair Campaign Practices Act, based on a
8 real or hypothetical set of circumstances. Such advisory
9 opinions shall be adopted by a majority vote of the members of
10 the commission present and shall be effective and deemed valid
11 until expressly overruled or altered by the commission or a
12 court of competent jurisdiction. The written advisory opinions
13 of the commission shall protect the person at whose request
14 the opinion was issued and any other person reasonably
15 relying, in good faith, on the advisory opinion in a
16 materially like circumstance from liability of any kind
17 because of any action performed or action refrained from in
18 reliance ~~of~~ on the advisory opinion. Nothing in this section
19 shall be deemed to protect any person relying on the advisory
20 opinion if the reliance is not in good faith, is not
21 reasonable, or is not in a materially like circumstance. The
22 director or general counsel of the commission may provide
23 informal advice or guidance to a public official or public
24 employee at the request of the public official or public
25 employee only if a previous formal written opinion of the
26 commission applies to the request on its face. Such informal
27 advice or guidance shall be in writing. By rule, the
28 commission shall develop and implement a written questionnaire
29 form for the purpose of facilitating the good faith disclosure

1 of all material facts by requestors seeking formal or informal
2 opinions. Before a formal or informal opinion may be issued by
3 the commission, an affidavit or other statement under oath
4 must be submitted by the requestor which certifies that, to
5 the best of the requestor's knowledge, all material facts have
6 been fully disclosed and are true and accurate. On the
7 effective date of the act adding this language, all prior
8 advisory opinions of the commission in conflict with Chapter 5
9 of Title 17 shall be ineffective and thereby deemed invalid
10 and otherwise overruled. Notwithstanding the foregoing, a
11 prior advisory opinion in conflict with Chapter 5 of Title 17
12 is effective with respect to a person who has taken or
13 refrained from any action in reliance on the opinion. The
14 commission may impose reasonable charges for publication of
15 the advisory opinions and monies shall be collected,
16 deposited, dispensed, or retained as provided herein.

17 **ATTORNEY GENERAL'S ANNOTATIONS:**

18 *This section of the bill makes the exact same*
19 *changes discussed above relating to the process of seeking*
20 *informal and formal guidance from the commission to the*
21 *portion of the Act addressed to the FCPA.*

22 "(11) In accordance with Sections 41-22-1 to 41-22-
23 27, inclusive, the Alabama Administrative Procedure Act,
24 prescribe, publish, and enforce rules to carry out this
25 section.

26 "(c) (1) The commission may disclose or provide to
27 the Attorney General or a district attorney any information or
28 evidence concerning the investigation of any complaint
29 initiated in accordance with this chapter. All disclosures

1 pursuant to this subsection shall be subject to the
2 restrictions set forth in subdivision (2).

3 "(2) ~~Except as necessary to permit the sharing of~~
4 ~~information and evidence with the Attorney General or a~~
5 ~~district attorney, a~~ A complaint filed pursuant to this
6 chapter or the Fair Campaign Practices Act, together with any
7 statement, evidence, or information received from the
8 complainant, witnesses, or other persons shall be protected by
9 and subject to the same restrictions relating to secrecy and
10 nondisclosure of information, conversation, knowledge, or
11 evidence of Sections 12-16-214 to 12-16-216, inclusive, except
12 that a violation of this section shall constitute a Class C
13 felony. Such restrictions shall apply to all investigatory
14 activities taken by the director, the commission, or a member
15 thereof, staff, employees, or any person engaged by the
16 commission in response to a complaint filed with the
17 commission and to all proceedings relating thereto before the
18 commission. ~~Such restrictions shall also apply to all~~
19 ~~information and evidence supplied to the Attorney General or~~
20 ~~district attorney. Such restrictions shall also apply to the~~
21 ~~complainant regarding all proceedings before the commission,~~
22 ~~unless and until any investigation of the complaint has~~
23 ~~concluded or until a finding of probable cause has been made~~
24 ~~by the commission.~~

25 "(3) Notwithstanding any provision in the Alabama
26 Rules of Criminal Procedure, any and all of the commission's
27 law enforcement investigative reports; related investigative
28 material; records; field notes; witness statements or
29 prospective witness statements; memoranda; witness lists;

1 communications among or between the commission or its staff
2 and any law enforcement officer or agency or any prosecutor;
3 and other investigative writings or recordings, in connection
4 with the investigation or prosecution of a matter are
5 privileged communications protected from disclosure, except
6 where the material is requested by the Attorney General or
7 district attorney or is subpoenaed by a state or federal grand
8 jury. Nothing in this subsection shall be construed to limit
9 the discovery of exculpatory material or other material to
10 which a defendant in a criminal case is entitled under
11 constitutional provisions.

12 **ATTORNEY GENERAL'S ANNOTATIONS:**

13 *This bill clarifies the Ethics Commission's role as*
14 *a law enforcement agency and provides the protections*
15 *necessary to enforce the law. This bill protects sensitive law*
16 *enforcement information from being disclosed, consistent with*
17 *the protections available to other law enforcement agencies*
18 *under the Alabama Code, Rules of Criminal Procedure, and Rules*
19 *of Evidence. See Ala. Code § 12-21-3.1, Ala. R. Crim. P.*
20 *16.1(e), and Ala. R. Evid. 508.*

21 *This bill also clarifies the incorporation of the*
22 *Grand Jury Secrecy Act into this Act. Specifically, it makes*
23 *clear, consistent with the First Amendment, that proceedings*
24 *before the Commission are secret unless and until the*
25 *investigation has concluded. See §§ 12-16-214 et seq.;*
26 *Butterworth v. Smith, 494 U.S. 624 (1990).*

27 "(d) The commission shall not take any investigatory
28 action on a telephonic or written complaint against a
29 respondent so long as the complainant remains anonymous.

1 Investigatory action on a complaint from an identifiable
2 source shall not be initiated until the true identity of the
3 source has been ascertained and written verification of such
4 ascertainment is in the commission's files. The complaint may
5 only be filed by a person who has ~~or persons who have~~ credible
6 and verifiable information supporting the allegations
7 contained in the complaint. A complainant may not file a
8 complaint for another person ~~or persons~~ in order to circumvent
9 this subsection. Before Prior to commencing any investigation,
10 the commission shall: (1) receive a written and signed
11 complaint which sets forth in detail the specific charges
12 against a respondent, and the factual allegations which
13 support such charges; and (2) the director shall conduct a
14 preliminary inquiry in order to make an initial determination
15 that the complaint, on its face alleges facts which if true,
16 would constitute a violation of this chapter or the Fair
17 Campaign Practices Act and that reasonable cause exists to
18 conduct an investigation. If the director determines that the
19 complaint does not allege a violation or that reasonable cause
20 does not exist, the charges shall be dismissed, but such
21 action must be reported to the commission. The commission
22 shall be entitled to authorize an investigation upon written
23 consent of four commission members, upon an express finding
24 that probable cause exists that a violation or violations of
25 this chapter or the Fair Campaign Practices Act have occurred.
26 Upon the commencement of any investigation, the Alabama Rules
27 of Criminal Procedure as applicable to the grand jury process
28 promulgated by the Alabama Supreme Court shall apply and shall
29 remain in effect until the complaint is dismissed or disposed

1 of in some other manner. A complaint may be initiated by a
2 vote of four members of the commission, provided, however,
3 that the commission shall not conduct the hearing, but rather
4 the hearing shall be conducted by three active or retired
5 judges, who shall be appointed by the Chief Justice of the
6 Alabama Supreme Court, at least one of whom shall be Black.
7 The three-judge panel shall conduct the hearing in accordance
8 with the procedures contained in this chapter and in
9 accordance with the rules of the commission. If the three-
10 judge panel unanimously finds that a person covered by this
11 chapter has violated it or that the person covered by the Fair
12 Campaign Practices Act has violated that act, the three-judge
13 panel shall forward the case to the district attorney for the
14 jurisdiction in which the alleged acts occurred or to the
15 Attorney General. In all matters that come before the
16 commission concerning a complaint on a person ~~an individual~~,
17 the laws of due process shall apply.

18 "(e) Not less than 45 days before ~~prior to~~ any
19 hearing before the commission, the respondent shall be given
20 notice that a complaint has been filed against him or her and
21 shall be given a summary of the charges contained therein.
22 Upon the timely request of the respondent, a continuance of
23 the hearing for not less than 30 days shall be granted for
24 good cause shown. The respondent charged in the complaint
25 shall have the right to be represented by retained legal
26 counsel. The commission may not require the respondent to be a
27 witness against himself or herself.

1 "(f) The commission shall provide discovery to the
2 respondent pursuant to the Alabama Rules of Criminal Procedure
3 as promulgated by the Alabama Supreme Court.

4 "(g) (1) All fees, penalties, and fines collected by
5 the commission pursuant to this chapter shall be deposited
6 into the State General Fund.

7 "(2) All monies collected as reasonable payment of
8 costs for copying, reproductions, publications, and lists
9 shall be deemed a refund against disbursement and shall be
10 deposited into the appropriate fund account for the use of the
11 commission.

12 "(h) In the course of an investigation, the
13 commission may subpoena witnesses and compel their attendance
14 and may also require the production of books, papers,
15 documents, and other evidence. If any person fails to comply
16 with any subpoena lawfully issued, or if any witness refuses
17 to produce evidence or to testify as to any matter relevant to
18 the investigation, it shall be the duty of any court of
19 competent jurisdiction or the judge thereof, upon the
20 application of the director, to compel obedience upon penalty
21 for contempt, as in the case of disobedience of a subpoena
22 issued for such court or a refusal to testify therein. A
23 subpoena may be issued only upon the vote of four members of
24 the commission upon the express written request of the
25 director. The subpoena shall be subject to Rules 17.1, 17.2,
26 17.3, and 17.4 of the Alabama Rules of Criminal Procedure. The
27 commission upon seeking issuance of the subpoena shall serve a
28 notice to the recipient of the intent to serve such subpoena.
29 ~~Upon the expiration of 10 days from the service of the notice~~

1 and the The proposed subpoena shall be attached to the notice.
2 Any person or entity served with a subpoena may serve an
3 objection to the issuance of the subpoena within 10 days after
4 service of the notice on the grounds set forth under Rule
5 17.3(c) of the Alabama Rules of Criminal Procedure, and in
6 such event the subpoena shall not issue until an order to
7 dismiss, modify, or issue the subpoena is entered by a state
8 court of proper jurisdiction, the order to be entered within
9 30 days after making of the objection. Any vote taken by the
10 members of the commission relative to the issuance of a
11 subpoena shall be protected by and subject to the restrictions
12 relating to secrecy and nondisclosure of information,
13 conversation, knowledge, or evidence of Sections 12-16-214 to
14 12-16-216, inclusive.

15 "(i) After receiving or initiating a complaint, the
16 commission has 180 days to determine whether probable cause
17 exists. At the expiration of 180 days from the date of receipt
18 or commencement of a complaint, if the commission does not
19 find probable cause, the complaint shall be deemed dismissed
20 and cannot be reinstated based on the same facts alleged in
21 the complaint. Upon good cause shown from the general counsel
22 and chief investigator, the director may request from the
23 commission a one-time extension of 180 days. Upon the majority
24 vote of the commission, the staff may be granted a one-time
25 extension of 180 days in which to complete the investigation.
26 If the commission finds probable cause that a person covered
27 by this chapter has violated it or that the person covered by
28 the Fair Campaign Practices Act has violated that act, the
29 case and the commission's findings shall be forwarded to the

1 district attorney for the jurisdiction in which the alleged
2 acts occurred or to the Attorney General. ~~The case, along with~~
3 ~~the commission's findings, shall be referred for appropriate~~
4 ~~legal action.~~ Nothing in this section shall be deemed to limit
5 the commission's ability to take appropriate legal action when
6 so requested by the district attorney for the appropriate
7 jurisdiction or by the Attorney General.

8 "(j) Within 180 days of receiving a case referred by
9 the commission, the Attorney General or district attorney to
10 whom the case was referred may, upon written request of the
11 commission notify the commission, in writing, stating whether
12 he or she intends to take action against the respondent,
13 including an administrative disposition or settlement, conduct
14 further investigation, or close the case without taking
15 action. If the Attorney General or district attorney decides
16 to pursue the case, he or she, upon written request of the
17 commission, may inform the commission of the final disposition
18 of the case. The written information pursuant to this section
19 shall be maintained by the commission and made available upon
20 request as a public record. The director may request an oral
21 status update from the Attorney General or district attorney
22 from time to time."

23 Section 4. Section 36-25-4.2, Code of Alabama 1975,
24 is amended to read as follows:

25 "§36-25-4.2.

26 "(a) At the beginning of each legislative
27 quadrennium, the ~~State Ethics Commission~~ commission shall
28 provide for and administer training programs on the State
29 Ethics Law, in the format determined by the director, for

1 members of the Legislature, state constitutional officers,
2 cabinet officers, executive staff, municipal mayors, council
3 members and commissioners, county commissioners, and
4 lobbyists.

5 "(1) The training program for legislators shall be
6 held at least once at the beginning of each quadrennium for
7 members of the Legislature. An additional training program
8 shall be held if any substantial changes are made to this
9 chapter, and shall be held within three months of the
10 effective date of the changes. The time and place of the
11 training programs shall be determined by the ~~Executive~~
12 ~~Director~~ director of the ~~State Ethics Commission~~ commission
13 and the Legislative Council. Each legislator must attend the
14 training programs. The ~~State Ethics Commission~~ commission
15 shall also provide a mandatory program for any legislator
16 elected in a special election within three months of the date
17 that the legislator assumes office in the format determined by
18 the director.

19 "(2) The training program for the state
20 constitutional officers, cabinet members, and executive staff,
21 as determined by the Governor, shall be held within the first
22 30 days after the Governor has been sworn into office. An
23 additional training program shall be held if any changes are
24 made to this chapter, and shall be held within three months of
25 the effective date of the changes. The specific date of the
26 training program shall be established by the ~~Executive~~
27 ~~Director~~ director of the ~~State Ethics Commission~~ commission
28 with the advice of the Governor and other constitutional
29 officers.

1 "(3) The training program for lobbyists shall be
2 held four times annually as designated by the ~~Executive~~
3 ~~Director~~ director of the ~~State Ethics Commission~~ commission,
4 the first of which shall be held within the first 30 days of
5 the year. Each lobbyist must attend a training program within
6 90 days of registering as a lobbyist, and at least one
7 training program during the first calendar year of each
8 legislative quadrennium. A lobbyist who fails to attend a
9 training program required by this section shall not be allowed
10 to lobby the Legislature, Executive Branch, Judicial Branch,
11 public officials, or public employees. ~~After attending one~~
12 ~~training program, until that lobbyist re-registers with the~~
13 ~~commission and attends a training program within 90 days after~~
14 ~~re-registering. Except for the mandatory initial and~~
15 ~~quadrennial training programs set forth in this subsection, a~~
16 lobbyist shall not be required to attend an additional
17 training program unless any substantial changes are made to
18 this chapter. Such additional ~~mandatory~~ training program shall
19 be mandatory and shall be held within three months of the
20 effective date of the changes. Notwithstanding the provisions
21 of this chapter, the director may permit any lobbyist, in lieu
22 of physical attendance for a training program, to attend
23 virtually, online, or through a webinar.

24 "(4) All municipal mayors, council members and
25 commissioners, county commissioners, and members of any local
26 board of education in office as of January 1, 2011, shall
27 obtain training within 120 days of that date. Thereafter, all
28 municipal mayors, council members and commissioners, and
29 county commissioners shall obtain training within 120 days of

1 being sworn into office. Training shall be available online
2 and may be conducted either online or in person. Evidence of
3 completion of the training shall be provided to the commission
4 via an electronic reporting system provided on the official
5 website. The scheduling of training opportunities for
6 municipal mayors, council members and commissioners, and
7 county commissioners shall be established by the ~~Executive~~
8 ~~Director~~ director of the ~~State Ethics Commission~~ commission
9 with the advice and assistance of the Alabama League of
10 Municipalities and the Association of County Commissions of
11 Alabama. Any provision of this section to the contrary
12 notwithstanding, the training for county commissioners
13 required by this subdivision shall be satisfied by the
14 successful completion of the 10-hour course on ethical
15 requirements of public officials provided by the Alabama Local
16 Government Training Institute established pursuant to Article
17 2 of Chapter 3 of Title 11. The Alabama Local Government
18 Training Institute shall quarterly provide written notice to
19 the ~~State Ethics Commission~~ commission the names of those
20 county commissioners completing the institute's program.

21 "(b) The curriculum of each session and faculty for
22 the training program shall be determined by the ~~Executive~~
23 ~~Director~~ director of the ~~State Ethics Commission~~ commission.
24 The curriculum shall include, but not be limited to, a review
25 of the current law, a discussion of actual cases and advisory
26 opinions on which the ~~State Ethics Commission~~ commission has
27 ruled, and a question and answer period for attendees. The
28 faculty for the training program may include the staff of the
29 ~~State Ethics Commission~~ commission, members of the faculties

1 of the various law schools in the state, and other persons
2 deemed appropriate by the ~~Executive Director~~ director of the
3 ~~State Ethics Commission~~ commission, and shall include experts
4 in the field of ethics law, persons affected by the ethics
5 law, and members of the press and media.

6 "(c) Except as provided herein, attendance at any
7 session of the training program shall be mandatory, except in
8 the event the person is suffering a catastrophic illness.

9 "(d) This section shall not preclude the penalizing,
10 prosecution, or conviction of any member of the Legislature,
11 any public official, or public employee ~~prior to~~ before such
12 person attending a mandatory training program.

13 "(e) All public employees required to file the
14 Statement of Economic Interests required by Section 36-25-14,
15 no later than May 1, 2011, shall participate in an online
16 educational review of the Alabama Ethics Law provided on the
17 official website of the commission. Employees hired after
18 January 1, 2011, shall have 90 days to comply with this
19 subsection. Evidence of completion of the educational review
20 shall be provided to the commission via an electronic
21 reporting system provided on the official website."

22 Section 5. Section 36-25-4.4 is added to the Code of
23 Alabama 1975, to read as follows:

24 §36-25-4.4

25 **ATTORNEY GENERAL'S ANNOTATIONS:**

26 *This bill creates a new section (4.4) that
27 establishes a process for the creation of a legal defense fund
28 for violations of this Act and the FCPA. This bill also
29 expressly states that contributions to a legal defense fund*

1 are a "thing of value" and are therefore subject to the
2 provisions of this Act. This section of the bill promotes
3 transparency, public confidence in the government, and creates
4 a process for a public official to raise funds to defend
5 against violations of this Act and the FCPA so that the
6 raising of those funds does not violate either law.

7 (a) A public official or public employee may file
8 with the commission a written request to form a legal defense
9 fund. The request shall contain all of the following:

10 (1) The name, street address, telephone number, and
11 public office or public position of the public official or
12 public employee who is the beneficiary of the legal defense
13 fund.

14 (2) The name, street address, and telephone number
15 of the person designated as the treasurer of the legal defense
16 fund. The treasurer of the legal defense fund may not be the
17 public official or public employee or an attorney who
18 represents the public official or public employee.

19 (3) A sworn statement of the public official or
20 public employee verifying that he or she is a person under
21 investigation for a violation of this chapter, or Chapter 5 of
22 Title 17, has been arrested or indicted for a violation of
23 this chapter or Chapter 5 of Title 17, is the subject of a
24 pending complaint filed with the commission, or is the subject
25 of a matter which has been referred by the commission to the
26 Attorney General or a district attorney.

27 (4) The name, street address, and telephone number
28 of the legal defense fund. The name of the legal defense fund
29 shall include the words "legal defense fund" and the full name

1 of the public employee or public official who is the
2 beneficiary of the legal defense fund.

3 (b) The director shall approve the request to form a
4 legal defense fund upon receipt of information that satisfies
5 all the requirements of subsection (a). The commission shall
6 require a statement of organization to be filed with the
7 commission within ten days of approval of the request. The
8 statement of organization shall contain the information in
9 subsection (a) and is a public record.

10 (c) If any of the information required in a
11 statement of organization under this section changes, the
12 legal defense fund shall file an amended statement of
13 organization containing the updated information within ten
14 days.

15 (d) When a legal defense fund is dissolved, the
16 public employee or public official shall file a statement of
17 dissolution with the commission and shall return any
18 unexpended funds pro rata to the contributors of the funds or
19 forward the unexpended funds to the State Treasurer for
20 deposit into the state General Fund. A legal defense fund is
21 dissolved by operation of law upon the conclusion of any of
22 the matters set forth in subsection (a)(3), upon expiration of
23 the time for filing a notice of appeal of a conviction, or, if
24 an appeal is taken from the judgment of conviction, the
25 completion of the person's direct appeal.

26 (e) The treasurer of a legal defense fund shall file
27 a monthly report with the commission. The report is a public
28 record and shall contain the following information:

(1) All contributions received by the fund for the preceding month; the name, address, and telephone number of any contributor; the amount of the contribution; the date on which the contribution was made; the cumulative amount contributed by that contributor; and the contributor's occupation, employer, and principal place of business.

(2) All expenditures of the fund for the preceding month; the name, address, and telephone number of the person or business to whom the expenditure was made; the amount of the expenditure; the date of the expenditure; and the purpose of the expenditure.

(f) No public official, public employee, or any other person or business may solicit or receive a contribution for the purpose of defending the public official or public employee in a matter in which the public official or public employee is a person under investigation for a violation of this chapter or Chapter 5 of Title 17; has been arrested or indicted for a violation of this chapter or Chapter 5 of Title 17; is the subject of a pending complaint filed with the commission; or is the subject of a matter which has been referred by the commission to the Attorney General or a district attorney, unless the contribution is made to a legal defense fund that complies with the requirements of this section.

(g) No person or business may offer or provide an anonymous contribution. The treasurer of a legal defense fund may not solicit or receive an anonymous contribution. An anonymous contribution to a legal defense fund shall not be

1 deposited in the fund, but shall be forwarded to the State
2 Treasurer for deposit into the State General Fund.

3 (h) (1) A lobbyist, subordinate of a lobbyist, or
4 principal may not offer or provide a contribution, directly or
5 indirectly, to any legal defense fund.

6 (2) A person or business may not solicit or receive
7 a contribution, directly or indirectly, to a legal defense
8 fund from a lobbyist, subordinate of a lobbyist, or principal.

9 (3) A person or business may not solicit or receive
10 a contribution, directly or indirectly, to a legal defense
11 fund from a principal campaign committee as defined in Section
12 17-5-2, an inaugural or transition committee, any campaign
13 account organized under Chapter 5 of Title 17, any campaign
14 account organized for a federal election, or any state or
15 federal political action committee.

16 (i) Contributions to a legal defense fund may be
17 used only for the following items or services:

18 (1) The services of an attorney representing the
19 public official or public employee in a matter in which the
20 public official or public employee is a person under
21 investigation for a violation of this chapter or Chapter 5 of
22 Title 17, has been arrested or indicted for a violation of
23 this chapter or Chapter 5 of Title 17, is the subject of a
24 pending complaint filed with the commission, or is the subject
25 of a matter which has been referred by the commission to the
26 Attorney General or a district attorney.

27 (2) The services of an expert witness, a jury
28 consultant, or other litigation support staff retained by the

public official or public employee in a matter specified in subdivision (1).

(3) Any item reasonably related to providing the services set forth in subdivision (1) or (2).

(j) Contributions to a legal defense fund may not be used for any purpose other than those expressly set forth in this section. Prohibited expenditures include, but are not limited to, the following:

(1) Legal services for a public official or public employee who has not received approval from the commission to organize a legal defense fund.

(2) The services of an attorney or any other person representing a witness in a criminal investigation or an indicted criminal case.

(3) Any civil, administrative, or impeachment matter.

(4) The services of any public relations, media, or press consultants.

(5) Any advertising or promotional material communicated by television, radio, newspaper, magazine, internet, or other media.

(6) Any state or federal campaign activities.

(k) Contributions may only be made in the form of money or lawful United States currency.

(l) Neither the attorney-client privilege nor the attorney work-product doctrine applies to any information related to a legal defense fund's contributions, expenditures, or compliance with this section.

(m) The commission shall adopt rules and procedures consistent with this section.

Section 6. Section 36-25-5, 36-25-5.1, 36-25-6, and 36-25-7, Code of Alabama 1975, are amended to read as follows:

"§36-25-5.

"(a) No public official or public employee shall use, or cause to be used, his or her official position or office, including his or her mantle of office, to obtain personal gain for himself or herself, or his or her family member of the public employee or family member of the public official, or any business with which the person is associated unless the use and gain are otherwise specifically authorized by law. Personal gain is achieved when the public official, public employee, or a family member thereof receives, obtains, exerts control over, or otherwise converts to personal use the object constituting such personal gain.

"(b) Unless prohibited by the Constitution of Alabama of 1901, nothing herein shall be construed to prohibit a public official from introducing bills, ordinances, resolutions, or other legislative matters, serving on committees, or making statements or taking action in the exercise of his or her duties as a public official. A No member of a legislative body may not vote on or participate in any legislation matter in his or her official capacity which he or she knows, or should have known, that he or she has a conflict of interest.

"(c) No public official or public employee shall ~~use~~
misuse or cause to be ~~used~~ misused equipment, facilities,
time, materials, human labor, or other public property under

1 his or her discretion or control. for the private benefit or
2 business benefit of the public official, public employee, any
3 other person, or principal campaign committee as defined in
4 Section 17-22A-2, which would materially affect his or her
5 financial interest, except as otherwise provided by law or as
6 provided pursuant to a lawful employment agreement regulated
7 by agency policy. For purposes of this subsection, the term
8 "misuse" means to act with a corrupt purpose or to act in a
9 way that materially affects the financial interest of the
10 public official, public employee, the family member of the
11 public official or public employee, any business with which
12 the public official or public employee is associated, the
13 public official's or public employee's principal campaign
14 committee as defined in Section 17-5-2, or any other person or
15 business. Provided, however, nothing in this subsection shall
16 be deemed to limit or otherwise prohibit communication between
17 public officials or public employees and eleemosynary or
18 membership organizations or such organizations communicating
19 with public officials or public employees.

20 **ATTORNEY GENERAL'S ANNOTATIONS:**

21 This bill maintains existing law with respect to
22 violations involving the misuse of state equipment, human
23 labor, etc. But this bill also covers those instances of
24 misuse that, while corrupt, do not materially affect a
25 financial interest. For example, a mayor ordering a police
26 officer to harass a local journalist because of negative
27 newspaper articles is clearly a corrupt use of time, human
28 labor, etc.. under the mayor's control. Absent a material
29 financial interest, however, the corrupt mayor may not be held

1 accountable under the old version of the Act. This bill closes
2 that potential loophole and ensures that corrupt conduct
3 involving the misuse of government property and resources will
4 be deterred and punished regardless of whether the corrupt
5 conduct benefited the public official financially.

6 "(d) No person shall ~~solicit corruptly~~ influence a
7 public official or public employee to use, or cause to be
8 used, equipment, facilities, time, materials, human labor, or
9 other public property for such person's private benefit or
10 business benefit, ~~which would materially affect his or her~~
11 ~~financial interest, except as otherwise provided by law.~~

12 "(e) No public official or public employee shall,
13 ~~other than in the ordinary course of business,~~ solicit a thing
14 of value from a subordinate or person or business ~~with whom~~
15 ~~that~~ he or she directly inspects, regulates, or supervises in
16 his or her official capacity.

17 "(f) Nothing in this section shall be deemed to
18 limit, or otherwise prohibit, communication between public
19 officials or public employees and charitable or membership
20 organizations or such organizations communicating with public
21 officials or public employees. ~~A conflict of interest shall~~
22 ~~exist when a member of a legislative body, public official, or~~
23 ~~public employee has a substantial financial interest by reason~~
24 ~~of ownership of, control of, or the exercise of power over any~~
25 ~~interest greater than five percent of the value of any~~
26 ~~corporation, company, association, or firm, partnership,~~
27 ~~proprietorship, or any other business entity of any kind or~~
28 ~~character which is uniquely affected by proposed or pending~~
29 ~~legislation; or who is an officer or director for any such~~

1 corporation, company, association, or firm, partnership,
2 proprietorship, or any other business entity of any kind or
3 character which is uniquely affected by proposed or pending
4 legislation.

5 "§36-25-5.1.

6 "(a) (1) No lobbyist, subordinate of a lobbyist, or
7 principal shall offer or provide a thing of value, directly or
8 indirectly, to a public employee, or a public official, or to
9 a family member of the public employee, or a family member of
10 the public official.

11 "(2) and no No public employee, or public official, or
12 family member of the public employee, or family member of
13 the public official shall solicit or receive a thing of value, or
14 directly or indirectly, from a lobbyist, a subordinate of a
15 lobbyist, or a principal. Notwithstanding the foregoing, a
16 lobbyist, or principal may offer or provide and a public
17 official, public employee, or candidate may solicit or receive
18 items of de minimis value.

19 "(b) Notwithstanding subsection (a), a lobbyist or
20 principal may offer or provide items of de minimis value, and
21 a public official or public employee may solicit or receive
22 items of de minimis value. A lobbyist does not provide a thing
23 of value, for purposes of this section, merely by arranging,
24 facilitating, or coordinating with his or her principal that
25 is providing and paying for those items.

26 **ATTORNEY GENERAL'S ANNOTATIONS:**

27 This bill repeals Section 36-25-6, which prohibits
28 the conversion of campaign contributions for personal use. The
29 prohibition against such conduct, however, is still contained

in Section 17-5-7 of the FCPA. That law is amended with a companion bill that strengthens and improves the FCPA by codifying the Commission's advisory opinion that specifically delineates what items are considered personal use under the law. See AO No. 2016-23.

"§36-25-7.

"(a) No person or business shall offer or give provide anything to a public official, or a public employee, or a member of the household of a public employee or a member of the household of the public official a family member of a public official or public employee, or a business with which a public official or public employee is associated, and none of the aforementioned shall solicit or receive anything for the purpose of corruptly influencing official action, or withholding of official action by the public official or public employee in his or her official capacity. regardless of whether or not the thing solicited or received is a thing of value.

"(b) No public official, public employee, family member of a public official or public employee, or a business with which a public official or public employee is associated shall solicit or receive anything from any person or business for the purpose of corruptly influencing official action or the withholding of official action by the public official or public employee in his or her official capacity. No public official or public employee shall solicit or receive anything for himself or herself or for a family member of the public employee or family member of the public official for the purpose of corruptly influencing official action, regardless

1 of whether or not the thing solicited or received is a thing
2 of value.

3 "(c) No person shall offer or give a family member
4 of the public official or family member of the public employee
5 anything for the purpose of corruptly influencing official
6 action, regardless of whether or not the thing offered or
7 given is a thing of value.

8 "(d) (c) No public official or public employee, shall
9 solicit or receive any money, lawful United States currency,
10 in addition to that received by the public official or public
11 employee in an official capacity or item of monetary value
12 from any person or business in exchange for any of the
13 following:

14 "(1) Consulting services, for advice, or assistance
15 on matters concerning the Legislature, or any committee or
16 subcommittee thereof.

17 "(2) Lobbying Lobbying a legislative body or any
18 committee or subcommittee thereof.

19 "(3) Lobbying the Office of the Governor, including
20 any other an executive department or agency.

21 "(4) Lobbying any state, county, or municipal
22 governmental agency, board, regulatory body, governmental
23 corporation or authority, or commission.

24 "(5) Lobbying any governmental body any public
25 regulatory board, commission or other body of which he or she
26 is a member.

27 "(6) Lobbying governmental departments, agencies,
28 offices, or public officials or employees of other states or
29 the Federal government.

1 "(7) Performing any other official duty or
2 responsibility of the public official or public employee.

3 **ATTORNEY GENERAL'S ANNOTATIONS:**

4 *This bill makes clear that a person may not be a
5 lobbyist and a public official at the same time. It also makes
6 clear that people serving the public trust should only be
7 compensated by the government for doing government work. This
8 clarity is important to ensure that the people have confidence
9 that public officials, particularly officials elected by the
10 people, are acting on behalf of their constituents and not for
11 some personal financial motive.*

12 "(d) Nothing in subsection (c) Notwithstanding the
13 foregoing, nothing in this section shall be construed to
14 prohibit a public official or public employee ~~from~~ in the
15 performance of his or her official duties or responsibilities.
16 from soliciting or receiving compensation from the State of
17 Alabama in an official capacity.

18 "(e) For purposes of this section, ~~to act corruptly~~
19 ~~means to act voluntarily, deliberately, and dishonestly to~~
20 ~~either accomplish an unlawful end or result or to use an~~
21 ~~unlawful method or means to accomplish an otherwise lawful end~~
22 ~~or result. it shall be prima facie evidence that the thing~~
23 ~~provided or received was for a corrupt purpose, or that the~~
24 ~~money or item of monetary value was exchanged for the conduct~~
25 in subsection (c), under either of the following
26 circumstances:

27 "(1) The providing or receiving occurs within six
28 months of the decision, official action, or the withholding of
29 official action by the public official or public employee.

1 "(2) The exchange occurs within six months of the
2 conduct in subsection (c)."

3 **ATTORNEY GENERAL'S ANNOTATIONS:**

4 *Consistent with the amendments to the definition of*
5 *"thing of value" in Section 1 above, this bill again uses the*
6 *prima facie standard to draw a bright line to provide solace*
7 *to the honest public official while at the same time improving*
8 *the ability of law enforcement to hold a corrupt public*
9 *official accountable. The honest person will know that helping*
10 *a business with an issue in their official capacity is not*
11 *illegal, provided that the business is not paying him or her*
12 *to do so. Further, the clarity of this section may deter even*
13 *a corrupt person from taking money from someone in exchange*
14 *for assistance provided in his or her official capacity. And,*
15 *if a person nevertheless engages in the forbidden conduct,*
16 *then enforcement of the Act is aided by making it prima facie*
17 *evidence that these facts show a corrupt purpose. The clarity*
18 *of this Section thus aids public officials, law enforcement,*
19 *and helps the people have confidence in the integrity of the*
20 *government.*

21 Section 7. Section 36-25-7.1 and 36-25-7.2 are added
22 to the Code of Alabama 1975, to read as follows:

23 **§36-25-7.1.**

24 No member of the Legislature, for a fee, reward, or
25 other compensation in addition to that received in his or her
26 official capacity, shall represent any person or business
27 before the Office of Governor of the State of Alabama or any
28 other executive department or agency.

29 **ATTORNEY GENERAL'S ANNOTATIONS:**

1 *This bill does not change existing law. The above*
2 *language in new Section 7.1 is essentially a restatement of*
3 *the second paragraph of Section 1.1.*

4 §36-25-7.2.

5 (a) A person commits the crime of extortion of a
6 public official or public employee if he or she, by use of a
7 threat, attempts to corruptly influence the vote, opinion,
8 judgment, exercise of discretion, or other action of a public
9 official or public employee in his or her official capacity.

10 (b) For purposes of this section, the term "threat"
11 shall have the same meaning ascribed to it in Section 13A-8-1.

12 (c) A violation of subsection (a) shall be a Class B
13 felony.

14 **ATTORNEY GENERAL'S ANNOTATIONS:**

15 *This bill defines a new crime intended to deter and*
16 *punish those persons that extort public officials or employees*
17 *by use of a threat (as defined in the criminal code) to*
18 *corruptly influence the official action of a public official*
19 *or public employee. This section remedies an existing loophole*
20 *in the criminal code crime of extortion.*

21 Section 8. Sections 36-25-8, 36-25-9, 36-25-10, 36-
22 25-11, 36-25-12, 36-25-13, 36-25-14, 36-25-15, 36-25-17, 36-
23 25-18, 36-25-19, 36-25-23, 36-25-24, 36-25-26, and 36-25-27
24 Code of Alabama 1975, are amended to read as follows:

25 "§36-25-8.

26 "(a) No public official, public employee, former
27 public official, or former public employee, for a period
28 consistent with the statute of limitations as contained in
29 this chapter, shall use or disclose confidential information

1 gained in the course of, or by reason of, his or her position
2 or employment in any way that could result in financial gain
3 ~~either than his or her regular salary as such public official~~
4 ~~or public employee~~ for himself or herself, a family member of
5 the public employee or family member of the public official,
6 or for any other person or business.

7 **"(b) Nothing in this section prohibits a public**
8 **official or public employee from receiving any compensation or**
9 **other benefits earned in his or her official capacity from the**
10 **State of Alabama.**

11 **ATTORNEY GENERAL'S ANNOTATIONS:**

12 *See annotation under the definition of "confidential*
13 *information".*

14 "§36-25-9.

15 "(a) Unless expressly provided otherwise by law, no
16 person shall serve as a member or employee of a state, county,
17 or municipal regulatory board or commission or other body that
18 regulates any business with which he or she is associated.
19 Nothing herein shall prohibit real estate brokers, agents,
20 developers, appraisers, mortgage bankers, or other persons in
21 the real estate field, or other state-licensed professionals,
22 from serving on any planning ~~boards~~ board or ~~commissions~~
23 commission, housing ~~authorities~~ authority, zoning board, board
24 of adjustment, code enforcement board, industrial board,
25 utilities board, state board, or commission.

26 "(b) All county or municipal regulatory boards,
27 authorities, or commissions currently comprised of any real
28 estate brokers, agents, developers, appraisers, mortgage
29 bankers, or other persons in the real estate industry may

1 allow these persons ~~individuals~~ to continue to serve out their
2 current term if appointed before December 31, 1991, except
3 that at the conclusion of such term subsequent appointments
4 shall reflect that membership of real estate brokers and
5 agents shall not exceed more than one less than ~~of~~ a majority
6 of any county or municipal regulatory board or commission
7 effective January 1, 1994.

8 "(c) No member of any county or municipal agency,
9 board, council, or commission shall vote or participate in any
10 matter in in his or her official capacity which the member
11 knows or should have known that he or she has a conflict of
12 interest ~~or family member of the member~~ has any financial gain
13 ~~or interest~~.

14 **ATTORNEY GENERAL'S ANNOTATIONS:**

15 This bill improves the law by using the same
16 prohibition on voting with a conflict of interest applicable
17 to legislators as the standard for city and county legislative
18 bodies.

19 "(d) All acts, actions, and votes taken by such
20 local boards and commissions between January 1, 1991 and
21 December 31, 1993 are affirmed and ratified.

22 "§36-25-10.

23 "If a public official or public employee, or family
24 member of the public employee or family member of the public
25 official, or a business with which the person is associated,
26 represents a client or constituent for a fee before any quasi-
27 judicial board or commission, regulatory body, or executive
28 department or agency, notice of the representation shall be
29 given within 10 days after the first day of the appearance.

1 Notice shall be filed with the commission in the manner
2 ~~prescribed by it.~~ No member of the Legislature, ~~shall~~ for a
3 fee, reward, or other compensation, ~~shall~~ represent any person
4 ~~or business, firm, or corporation before the Public Service~~
5 ~~Commission, or the State Board of Adjustment any regulatory~~
6 ~~body. Nothing in this section prohibits a member of the~~
7 ~~Legislature who is an attorney from representing a client,~~
8 ~~including himself, before the judicial branch or a regulatory~~
9 ~~body, provided that the representation does not include~~
10 ~~lobbying.~~

11 **ATTORNEY GENERAL'S ANNOTATIONS:**

12 This bill deletes a notice provision from the
13 present Act in response to numerous requests from
14 stakeholders. It also clarifies the well-established
15 prohibition on legislators representing clients before
16 regulatory bodies, except when serving as an attorney in a
17 non-lobbying capacity.

18
19 "§36-25-11.

20 "(a) Unless exempt pursuant to Alabama competitive
21 bid laws or otherwise permitted by law, no public official, ~~or~~
22 public employee, ~~or a~~ member of the household of the public
23 employee ~~or the public official or public employee, and no or~~
24 business ~~with which the person is associated~~ ~~public official~~
25 ~~or public employee is an officer; owner; partner; board of~~
26 ~~director; member; employee; or holder of more than the fair~~
27 ~~market value of the business,~~ shall enter into any contract to
28 provide goods or services which is to be paid in whole or in
29 part out of state, county, or municipal funds unless the

1 contract has been awarded through a process of competitive
2 bidding and a copy of the contract is filed with the
3 commission. All such contract awards shall be made as a result
4 of original bid takings, and no awards from negotiations after
5 bidding shall be allowed.

6 "(b) A copy of each contract referenced in
7 subsection (a), regardless of the amount, ~~entered into by a~~
8 ~~public official, public employee, a member of the household of~~
9 ~~the public employee or the public official, and any business~~
10 ~~with which the person is associated~~ shall be filed with the
11 commission within 10 days after the contract has been entered
12 into and is a public record with the commission. The
13 commission may make appropriate redactions to such contracts
14 consistent with the procedures set forth in Section 36-25-14 .

15 **ATTORNEY GENERAL'S ANNOTATIONS:**

16 *This bill improves the Act by narrowing the scope of*
17 *persons or businesses required to submit a copy of a contract*
18 *to provide goods and services to the state, county, or*
19 *municipal government. This was done in response to numerous*
20 *stakeholder requests to narrow the application of the Act to*
21 *family members of public officials.*

22 "§36-25-12.

23 "(a) No person or business shall offer or ~~give~~
24 provide, directly or indirectly, a thing of value to a member
25 or employee of a regulatory body, governmental agency, board,
26 or commission, or to any family member of the member or
27 employee that regulates such person or business a business
28 with which the person is associated.

1 "(b), and ~~n~~o member or employee of a regulatory
2 body, governmental agency, board, or commission, shall solicit
3 or ~~accept~~ receive, directly or indirectly, a thing of value
4 from a person or business with which the person is associated
5 which is regulated by the regulatory body, governmental
6 agency, board, or commission. ~~while the member or employee is~~
7 ~~associated with the regulatory body other than in the ordinary~~
8 ~~course of business.~~

9 "(c) No member or employee of a regulatory body,
10 governmental agency, board, or commission, or a family member
11 of the member or employee, shall solicit or receive, directly
12 or indirectly, a thing of value from any person or business
13 that has a substantial financial interest or substantial
14 business relationship with a business regulated by the
15 regulatory body, governmental agency, board, or commission.
16 For purposes of this subsection, it shall be prima facie
17 evidence that the person or business has a substantial
18 financial interest if they are a holder of more than five
19 percent of the fair market value of the business.

20 Additionally, for purposes of this subsection, it shall be
21 prima facie evidence that the person or business has a
22 substantial business relationship if they receive more than
23 fifty percent of their gross income or gross revenue from a
24 regulated business.

25 "(d) No member of a regulatory body, governmental
26 agency, board, or commission shall vote or participate in any
27 matter in his or her official capacity which the member knows,
28 or should have known, that he or she has a conflict of
29 interest, unless specifically authorized by law.

1 "(e) In addition to the foregoing, the The
2 Commissioner of the Department of Agriculture and Industries
3 and a any candidate for the office of commissioner may not
4 accept solicit or receive a campaign contribution from a
5 person or a business with which the person is associated with
6 a business which is regulated by the department.

7 **ATTORNEY GENERAL'S ANNOTATIONS:**

8 This bill improves the Act by making regulatory
9 bodies subject to the same law as legislative bodies and
10 prohibits the taking of a thing of value by regulators from
11 regulated persons and businesses. This bill also recognizes
12 that many regulated businesses have significant financial
13 relationships with other businesses that cause their interests
14 to be aligned on government matters. Accordingly, the Act
15 applies in those situations as well. The prohibition on
16 campaign contributions from persons or businesses regulated by
17 the Agriculture Department is clarified.

18
19 "§36-25-13.

20 "(a) No former public official shall serve for a fee
21 as a lobbyist or otherwise represent clients, including his or
22 her employer before the board, agency, commission, department,
23 regulatory body, or legislative body, of which he or she is a
24 former member for a period of two years after he or she leaves
25 such membership. For the purposes of this subsection, such the
26 prohibition shall not include an attorney representing a
27 client before the judicial branch or a regulatory body,
28 provided that the attorney's representation of his or her
29 client does not include lobbying a former member of the

1 Alabama judiciary who as an attorney represents a client in a
2 ~~legal, non-lobbying capacity.~~

3 "(b) No former public official who leaves office
4 before the expiration of the term to which he or she was
5 elected or appointed shall serve for a fee as a lobbyist or
6 otherwise represent clients, including his or her employer,
7 before the board, agency, commission, department, regulatory
8 body, or legislative body of which he or she is a former
9 member during the remainder of the term for which the former
10 public official was previously elected or appointed to serve.
11 Nor shall such public official serve for a fee as a lobbyist
12 or otherwise represent clients, including his or her employer,
13 before the board, agency, commission, department, regulatory
14 body, or legislative body of which he or she is a former
15 member for two years after the expiration of the term of
16 office for which the public official was elected or appointed
17 to serve, whether or not the public official served the entire
18 term. For purposes of this subsection, this prohibition shall
19 not include an attorney representing a client before the
20 judicial branch or a regulatory body, provided the attorney's
21 representation of his or her client does not include lobbying.
22 ~~Notwithstanding the provisions of subsection (a), no public~~
23 ~~official elected to a term of office shall serve for a fee as~~
24 ~~a lobbyist or otherwise represent clients, including his or~~
25 ~~her employer, before the board, agency, commission,~~
26 ~~department, or legislative body of which he or she is a former~~
27 ~~member for a period of two years following the term of office~~
28 ~~for which he or she was elected, irrespective of whether the~~
29 ~~member left the office prior to the expiration of the term to~~

1 which he or she was elected. For the purposes of this
2 subsection, such prohibition shall not include a former member
3 of the Alabama judiciary who as an attorney represents a
4 client in a legal, non-lobbying capacity.

5 "(c) No former public employee shall serve for a fee
6 as a lobbyist or otherwise represent clients, including his or
7 her employer, before the board, agency, commission, or
8 department, or regulatory body of which he or she is a former
9 public employee or worked pursuant to an arrangement such as a
10 consulting agreement, agency transfer, loan, or similar
11 agreement, for a period of two years after he or she leaves
12 such public employment or working arrangement. For the
13 purposes of this subsection, such prohibition shall not
14 include an attorney representing a client before the judicial
15 branch or a regulatory body, provided that the attorney's
16 representation of his or her client does not include lobbying
17 a former employee of the Alabama judiciary who as an attorney
18 represents a client in a legal, non-lobbying capacity.

19 "(d) Except as specifically set out in this section,
20 no public official; director; assistant director;
21 department or division chief; purchasing or procurement agent
22 having the authority to make purchases; or any person who
23 participates in the negotiation or approval of contracts,
24 grants, or awards; or any person who negotiates or approves
25 contracts, grants, or awards shall enter into, solicit, or
26 negotiate a contract, grant, or award with the governmental
27 agency of which the person was a member or employee for a
28 period of two years after he or she leaves the membership or
29 employment of such governmental agency. Notwithstanding the

1 prohibition in this subsection, a person serving full-time as
2 the director ~~or~~ of a department or a division chief who has
3 retired from a governmental agency may enter into a contract
4 with the governmental agency of which the person was an
5 employee for the specific purpose of providing assistance to
6 the governmental agency during the transitional period
7 following retirement, but only if all of the following
8 conditions are met:

9 "(1) The contract does not extend for more than
10 three months following the date of retirement.

11 "(2) The retiree is at all times in compliance with
12 Section 36-27-8.2.

13 "(3) The compensation paid to the retiree through
14 the contract, when combined with the monthly retirement
15 compensation paid to the retiree, does not exceed the gross
16 monthly compensation paid to the retiree on the date of
17 retirement.

18 "(4) The contract is submitted to and approved by
19 the ~~Director~~ director of the ~~Ethics~~ Commission commission as
20 satisfying the above conditions ~~prior to~~ before the date the
21 retiree begins work under the contract.

22 "(e) Notwithstanding subsection (d), a municipality
23 may rehire a retired law enforcement officer or a retired
24 firefighter formerly employed by the municipality at any time
25 to provide public safety services if all of the following
26 conditions are satisfied:

27 "(1) A local law is enacted authorizing the rehire
28 of retired law enforcement officers or firefighters formerly
29 employed by the municipality.

1 "(2) The municipality rehiring a retiree provides a
2 copy of the local law referenced in subdivision (1) to the
3 Director of the Ethics Commission.

4 "(3) Upon a determination to rehire a retired law
5 enforcement officer or firefighter, the municipality
6 immediately provides notice to the Director of the Ethics
7 Commission that the former employee is being rehired.

8 "(f) No public official or public employee who
9 personally participates in the direct regulation, audit, or
10 investigation of a private business, corporation, partnership,
11 or person individual shall, within two years of his or her
12 departure from such employment, shall solicit or accept
13 employment with receive a thing of value from such the private
14 business, corporation, partnership, or person individual. For
15 the purposes of this subsection, Section 36-25-1(b) (4)c.3.
16 does not apply.

17 "(g) ~~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.~~
28 ~~This prohibition shall extend to all judicial proceedings or~~
29 ~~other matters in which the state is a party or has a direct~~

1 and substantial interest, whether arising during or subsequent
2 to the public official or public employee's term of office or
3 employment.

4 "(g) Nothing in this chapter shall be deemed to
5 limit the right of a public official or public employee to
6 publicly or privately express his or her support for, or to
7 encourage others to support and contribute to, any candidate,
8 political committee as defined in Section 17-5-1, referendum,
9 ballot question, issue, or constitutional amendment.

10 "(h) No former member of the House of
11 Representatives or the Senate of the State of Alabama shall be
12 extended floor privileges of either body in a lobbying
13 capacity.

14 **ATTORNEY GENERAL'S ANNOTATIONS:**

15 This bill improves and clarifies the revolving door
16 provisions in the Act. This section prohibits the actions of
17 former public officials for specific periods of time.
18 Specifically, a former public official cannot lobby his or her
19 former government office during the term to which he or she
20 was elected - nor may he or she do so for two years following
21 the end of the term, regardless of whether the person served
22 the entire term. The language in this section relating to
23 current public officials was moved to Section 23. Exceptions
24 were granted to attorneys practicing in non-lobbying
25 capacities, part of which was the deletion of former section
26 (g).

27 "§36-25-14.

28 "(a) In accordance with this chapter, all persons
29 who met any of the following qualifications during any part of

1 the preceding calendar year shall complete and file with the
2 commission a statement of economic interests for the preceding
3 calendar year by April 30: A statement of economic interests
4 shall be completed and filed in accordance with this chapter
5 with the commission no later than April 30 of each year
6 covering the period of the preceding calendar year by each of
7 the following:

8 **ATTORNEY GENERAL'S ANNOTATIONS:**

9 *This bill significantly changes the section on*
10 *statements of economic interests. First, it reduces the number*
11 *of filers by approximately fifty percent (50%). Second, it*
12 *adds a filing requirement to certain classes of people who are*
13 *not currently required to file such a statement, but who hold*
14 *positions with access to sensitive, non-public information and*
15 *therefore require greater transparency. Thirdly, it provides a*
16 *procedure to exempt other classes of employees, subject to*
17 *certain established criteria.*

18

19 "(1) All elected public officials at the state,
20 county, or municipal level of government or their
21 instrumentalities.

22 "(2) Any person appointed as a All public employees
23 official and any person employed as a public employee at the
24 state, county, or municipal level of government or their
25 instrumentalities who occupyies a position whose the base pay
26 of which is seventy-five thousand dollars (\$75,000) or more
27 annually, as adjusted by the commission by January 31 of each
28 year to reflect changes in the U.S. Department of Labor's
29 Consumer Price Index, or a successor index.

1 "(3) All candidates, provided the statement is filed
2 on the date the candidate files his or her qualifying papers
3 or, in the case of an independent candidate, on the date the
4 candidate complies with the requirements of Section 17-9-3.

5 "(4) All ~~M~~members of the Alabama Ethics Commission;.

6 "(5) All members of any state appointed members of
7 boards; and or ~~commissions~~ commission, ~~having statewide~~
8 ~~jurisdiction~~ (but ~~excluding~~ not members of state boards or
9 commissions that are exclusively advisory in nature or
10 operation solely advisory boards).

11 "(5)(6) All full-time nonmerit employees, but not
12 those employed in maintenance, janitorial, ether than those
13 employed in maintenance, clerical, secretarial, or other
14 similar positions.

15 "(7) All employees of the Legislature, Judicial
16 Branch, and Office of the Governor, but not those employed in
17 maintenance, janitorial, or similar positions.

18 "(8) All city or county school superintendents,
19 school board members, principals, or school administrators.

20 "(9) Any person who is a public official or public
21 employee, regardless of his or her base pay, who occupies a
22 position in which any of the following circumstances exist:

23 "a. The person's primary duty is to invest public
24 funds, but not a public employee that merely handles money,
25 lawful United States currency, or checks as part of his or her
26 job duties.

27 "b. The person has the power to grant or deny land
28 development permits.

1 "c. The person is a purchasing or procurement agent
2 having the authority to make any purchase, but not a public
3 employee who merely handles money, lawful United States
4 currency, or checks as part of his or her job duties.

5 "d. Any portion of the person's responsibilities
6 include the awarding of grants.

7 "e. 1. Subject to subparagraph 2., the person serves
8 full-time as a supervisor, including, but not limited to, an
9 employee serving as a chief county or municipal clerk, a chief
10 county or municipal manager, a chief county or municipal
11 administrator, a chief county or municipal administrative
12 officer, a chief or assistant county or municipal building
13 inspector, a chief of police, a fire chief, a director or an
14 assistant director of a state agency, a chief financial or
15 accounting director, a chief grant coordinator, or other
16 similar supervisory position.

17 2. Except where otherwise required by this section,
18 the commission may exempt any class of public employee
19 supervisor from the requirements of this section, so long as
20 the commission unanimously votes to exempt the class of
21 supervisors and the Attorney General provides written
22 approval, and the commission determines all of the following
23 factors exist:

24 "(i) The average base pay for the class of
25 supervisor is substantially less than seventy five thousand
26 dollars (\$75,000).

27 "(ii) The number of persons occupying the class of
28 supervisor is substantially greater than other classes.

1 “(iii) The class of supervisor is limited to public
2 employees at the county or municipal level of government

3 “(iv) The class of supervisors consists of
4 intermediate or middle level management

5 “3. The commission shall publish a document setting
6 forth its consideration of the factors specified in
7 subparagraph 2. Following the written approval of an exemption
8 for a class of supervisor. The document, the vote of the
9 commission, and the written approval of the Attorney General
10 are public records.

11 “(6) Chief clerks and chief managers.

12 “(7) Chief county clerks and chief county managers.

13 “(8) Chief administrators.

14 “(9) Chief county administrators.

15 “(10) Any public official or public employee whose
16 primary duty is to invest public funds.

17 “(11) Chief administrative officers of any political
18 subdivision.

19 “(12) Chief and assistant county building
20 inspectors.

21 “(13) Any county or municipal administrator with
22 power to grant or deny land development permits.

23 “(14) Chief municipal clerks.

24 “(15) Chiefs of police.

25 “(16) Fire chiefs.

26 “(17) City and county school superintendents and
27 school board members.

28 “(18) City and county school principals or
29 administrators.

1 "(19) Purchasing or procurement agents having the
2 authority to make any purchase.

3 "(20) Directors and assistant directors of state
4 agencies.

5 "(21) Chief financial and accounting directors.

6 "(22) Chief grant coordinators.

7 "(23) Each employee of the Legislature or of
8 agencies, including temporary committees and commissions
9 established by the Legislature, other than those employed in
10 maintenance, clerical, secretarial, or similar positions.

11 "(24) Each employee of the Judicial Branch of
12 government, including active supernumerary district attorneys
13 and judges, other than those employed in maintenance,
14 clerical, secretarial, or other similar positions.

15 "(25) Every full-time public employee serving as a
16 supervisor.

17 "(b) Unless otherwise required by law, no public
18 employee occupying a position earning less than seventy-five
19 thousand dollars (\$75,000) per year shall be required to file
20 a statement of economic interests, as adjusted by the
21 commission by January 31 of each year to reflect changes in
22 the U.S. Department of Labor's Consumer Price Index, or a
23 successor index. Notwithstanding the provisions of subsection
24 (a) or any other provision of this chapter, no coach of an
25 athletic team of any four-year institution of higher education
26 which receives state funds shall be required to include any
27 income, donations, gifts, or benefits, other than salary, on
28 the statement of economic interests, if the income, donations,
29 gifts, or benefits are a condition of the employment contract.

1 Such statement shall be made on a form made available by the
2 commission. The duty to file the statement of economic
3 interests shall rest with the person covered by this chapter.
4 Nothing in this chapter shall be construed to exclude any
5 public employee or public official from this chapter
6 regardless of whether they are required to file a statement of
7 economic interests. The commission shall adopt a statement of
8 economic interest form for public officials and candidates by
9 rule. The form shall be submitted under penalty of perjury by
10 the person making the filing. The form, at a minimum, The
11 statement shall contain also require, the following
12 information on the person public official or candidate making
13 the filing:

14 **ATTORNEY GENERAL'S ANNOTATIONS:**

15 The paragraphs below list the minimum information
16 that public officials and candidates for public office must
17 disclose in a statement of economic interest. The commission
18 is required to develop a form for the disclosure of such
19 information through its public administrative procedures. The
20 commission may also require the disclosure of additional
21 information, consistent with the provisions and purposes of
22 this Act, through its public administrative procedures.

23 "(1) Name, and residential address, ~~business~~; name,
24 and address, ~~and business~~ of living spouse and dependents;
25 name of living adult children, ~~or name of~~ parents, and
26 siblings, ~~or name of~~ and living parents of spouse. Undercover
27 law enforcement officers may have their residential addresses
28 and the names of family members removed from public scrutiny
29 by filing an affidavit stating that publicizing this

1 information would potentially endanger their families. The
2 public office currently held by the public official, including
3 the date the public official was elected or appointed to the
4 public office, the date of expiration of the public official's
5 current term of office, and, if the public official has
6 resigned or been removed from public office, the date of the
7 resignation or removal.

8 "(2) A list of each entity of which the public
9 official, candidate, or a family member of the official or
10 candidate is an officer, owner, partner, board of director
11 member, employee, independent contractor, consultant, or the
12 holder of more than five percent of the fair market value of
13 the business. ~~occupations to which one third or more of~~
14 ~~working time was given during previous reporting year by the~~
15 ~~public official, public employee, or his or her spouse.~~

16 "(3) A listing list of any income, salaries, fees,
17 dividends, profits, commissions, and other compensation to the
18 public official, candidate, or spouse of the public official
19 or candidate, from any business with which the public official
20 or candidate is associated, in excess of one thousand five
21 hundred dollars (\$1,500). ~~total combined household income of~~
22 ~~the public official or public employee during the most recent~~
23 ~~reporting year as to income from salaries, fees, dividends,~~
24 ~~profits, commissions, and other compensation and listing the~~
25 ~~names of each business and the income derived from such~~
26 ~~business in the following categorical amounts: less than one~~
27 ~~thousand dollars (\$1,000); at least one thousand dollars~~
28 ~~(\$1,000) and less than ten thousand dollars (\$10,000); at~~
29 ~~least ten thousand dollars (\$10,000) and less than fifty~~

1 thousand dollars (\$50,000); at least fifty thousand dollars
2 (\$50,000) and less than one hundred fifty thousand dollars
3 (\$150,000); at least one hundred fifty thousand dollars
4 (\$150,000) and less than two hundred fifty thousand dollars
5 (\$250,000); or at least two hundred fifty thousand dollars
6 (\$250,000) or more. The person reporting shall also name any
7 business or subsidiary thereof in which he or she or his or
8 her spouse or dependents, jointly or severally, own five
9 percent or more of the stock or in which he or she or his or
10 her spouse or dependents serves as an officer, director,
11 trustee, or consultant where the service provides income of at
12 least one thousand dollars (\$1,000) and less than five
13 thousand dollars (\$5,000); or at least five thousand dollars
14 (\$5,000) or more for the reporting period.

15 " (4) A list of any consulting or other similar
16 services rendered by the public official or spouse of the
17 public official on behalf of any person or business,
18 regardless of whether the services rendered were performed
19 inside or outside the State of Alabama. This list does not
20 include the services of an attorney representing a client
21 before the judicial branch or a regulatory body, provided that
22 the attorney's representation of his or her client does not
23 include lobbying. This list shall include a description of the
24 services, the identity of the person or business who paid for
25 the services, and the amount paid for the services rendered by
26 the public official or the spouse of the public official.

27 " (5) The public official or candidate shall also
28 disclose family relationships with lobbyists and principals in
29 a manner set forth by the commission in accordance with this

1 section. If the filing public official or public employee, or
2 his or her spouse, has engaged in a business during the last
3 reporting year which provides legal, accounting, medical or
4 health related, real estate, banking, insurance, educational,
5 farming, engineering, architectural management, or other
6 professional services or consultations, then the filing party
7 shall report the number of clients of such business in each of
8 the following categories and the income in categorical amounts
9 received during the reporting period from the combined number
10 of clients in each category: Electric utilities, gas
11 utilities, telephone utilities, water utilities, cable
12 television companies, intrastate transportation companies,
13 pipeline companies, oil or gas exploration companies, or both,
14 oil and gas retail companies, banks, savings and loan
15 associations, loan or finance companies, or both,
16 manufacturing firms, mining companies, life insurance
17 companies, casualty insurance companies, other insurance
18 companies, retail companies, beer, wine or liquor companies or
19 distributors, or combination thereof, trade associations,
20 professional associations, governmental associations,
21 associations of public employees or public officials,
22 counties, and any other businesses or associations that the
23 commission may deem appropriate. Amounts received from
24 combined clients in each category shall be reported in the
25 following categorical amounts: Less than one thousand dollars
26 (\$1,000); more than one thousand dollars (\$1,000) and less
27 than ten thousand dollars (\$10,000); at least ten thousand
28 dollars (\$10,000) and less than twenty-five thousand dollars
29 (\$25,000); at least twenty-five thousand dollars (\$25,000) and

1 less than fifty thousand dollars (\$50,000); at least fifty
2 thousand dollars (\$50,000) and less than one hundred thousand
3 dollars (\$100,000); at least one hundred thousand dollars
4 (\$100,000) and less than one hundred fifty thousand dollars
5 (\$150,000); at least one hundred fifty thousand dollars
6 (\$150,000) and less than two hundred fifty thousand dollars
7 (\$250,000); or at least two hundred fifty thousand dollars
8 (\$250,000) or more.

9 "(5) If retainers are in existence or contracted for
10 in any of the above categories of clients, a listing of the
11 categories along with the anticipated income to be expected
12 annually from each category of clients shall be shown in the
13 following categorical amounts: Less than one thousand dollars
14 (\$1,000); at least one thousand dollars (\$1,000) and less than
15 five thousand dollars (\$5,000); or at least five thousand
16 dollars (\$5,000) or more.

17 "(6) The fair market value of any real estate owned
18 by the public official, the total amount of any rent or lease
19 income received by the public official from any real estate
20 that is held for investment or revenue production by the
21 public official or for the benefit of the public official, and
22 the counties in which the real estate is located. For real
23 estate owned by the public official that is used for
24 commercial purposes, but not residential purposes, the public
25 official shall also disclose the name of any business which is
26 located on the real estate. Any real estate associated with
27 the homestead of the person filing is exempted from this
28 disclosure requirement. If real estate is held for investment
29 or revenue production by a public official, his or her spouse

1 or dependents, then a listing thereof in the following fair
2 market value categorical amounts: Under fifty thousand dollars
3 (\$50,000); at least fifty thousand dollars (\$50,000) and less
4 than one hundred thousand dollars (\$100,000); at least one
5 hundred thousand dollars (\$100,000) and less than one hundred
6 fifty thousand dollars (\$150,000); at least one hundred fifty
7 thousand dollars (\$150,000) and less than two hundred fifty
8 thousand dollars (\$250,000); at least two hundred fifty
9 thousand dollars (\$250,000) or more. A listing of annual gross
10 rent and lease income on real estate shall be made in the
11 following categorical amounts: Less than ten thousand dollars
12 (\$10,000); at least ten thousand dollars (\$10,000) and less
13 than fifty thousand dollars (\$50,000); fifty thousand dollars
14 (\$50,000) or more. If a public official or a business in which
15 the person is associated received rent or lease income from
16 any governmental agency in Alabama, specific details of the
17 lease or rent agreement shall be filed with the commission.

18 "(7) A listing of any debt in excess of ten thousand
19 dollars (\$10,000), of the public official or the spouse of the
20 public official to any bank, credit union, savings and loan
21 association, insurance company, mortgage firm, financial
22 institution, and any other person or business, including the
23 amount of the original debt, the current balance, and identity
24 of the creditor. The listing shall also include any loan or
25 line of credit personally guaranteed, in whole or in part, by
26 the public official. indebtedness to businesses operating in
27 Alabama showing types and number of each as follows: Banks,
28 savings and loan associations, insurance companies, mortgage
29 firms, stockbrokers and brokerages or bond firms; and the

1 indebtedness to combined organizations in the following
2 categorical amounts: less than twenty five thousand dollars
3 (\$25,000); twenty five thousand dollars (\$25,000) and less
4 than fifty thousand dollars (\$50,000); fifty thousand dollars
5 (\$50,000) and less than one hundred thousand dollars
6 (\$100,000); one hundred thousand dollars (\$100,000) and less
7 than one hundred fifty thousand dollars (\$150,000); one
8 hundred fifty thousand dollars (\$150,000) and less than two
9 hundred fifty thousand dollars (\$250,000); two hundred fifty
10 thousand dollars (\$250,000) or more. The commission may add
11 additional business to this listing. Indebtedness associated
12 with the homestead of the person filing is exempted from this
13 disclosure requirement.

14 "(8) A list of any contracts, including real estate
15 or lease agreements, the parties to which include both the
16 public official, family member of the public official, or
17 entity specified pursuant to subdivision (2) and any federal,
18 state, county, or municipal government agency, board,
19 commission, department or any other governmental entity. The
20 listing shall include the identity of the parties to the
21 contract, the amount agreed to or paid under the terms of the
22 contract, and a description of the contract.

23 "(9) A list of all matters in which the public
24 official did not vote or participate because of a conflict of
25 interest, including a description of the matter, a description
26 of the conflict of interest, and the date on which the public
27 official knew the conflict of interest existed.

28 "(10) A list of economic development functions,
29 educational functions, or widely attended events the public

1 official attended if a person or business, other than the
2 State of Alabama, or the public official making the filing,
3 paid in excess of fifteen hundred dollars (\$1,500), in whole
4 or in part, for the public official to attend. This listing
5 shall include the name and date of the event, the address of
6 the event, the identity of the person or business that paid
7 for the public official to attend, and the amount paid by the
8 person or business for the public official to attend.

9 "(c) The commission shall adopt a statement of
10 economic interest form for public employees by rule. The form
11 shall be 102 submitted under penalty of perjury by the person
12 making the filing. The form, at a minimum, shall contain the
13 following information on the public employee making the
14 filings:

15 **ATTORNEY GENERAL'S ANNOTATIONS:**

16 *The paragraphs below list the minimum floor that*
17 *public employees must disclose. The commission is required to*
18 *develop a form through its public administrative procedures.*
19 *This bill recognizes that public employees are typically less*
20 *powerful and less influential than public officials and should*
21 *therefore not be required to disclose as much information. The*
22 *commission may require the disclosure of additional*
23 *information, consistent with the provisions and purposes of*
24 *this Act, through its public administrative procedures.*

25 "(1) The name and residential address of the public
26 employee and family members of the public employee.

27 "(2) A list of each entity of which the public
28 employee or a family member of the public employee is an
29 officer, owner, partner, board of director member, employee,

1 independent contractor, consultant, or the holder of more than
2 five percent of the fair market value of the business.

3 "(3) For each entity listed in subdivision (2),
4 whether the amount of income, salaries, fees, dividends,
5 profits, commissions, and other compensation to the public
6 employee or family member of the public employee was greater
7 than ten thousand dollars (\$10,000).

8 "(4) A list of any contracts, including real estate
9 or lease agreements, the parties to which include both the
10 public employee, family member of the public employee, or any
11 entity specified pursuant to subdivision (2) and any federal,
12 state, county, or municipal government agency, board,
13 commission, department or any other government entity. The
14 listing shall include the identity of the parties to the
15 contract and whether the contract is in excess of ten thousand
16 dollars (\$10,000).

17 "(5) A list of any consulting or other similar
18 services rendered by the public employee or spouse of the
19 public employee on behalf of any person or business,
20 regardless of whether the services rendered were performed
21 inside or outside the State of Alabama. This list does not
22 include the services of an attorney representing a client
23 before the judicial branch or a regulatory body, provided that
24 the attorney's representation of his or her client does not
25 include lobbying. This list shall include a description of the
26 services, the identity of the person or business who paid for
27 the services, and whether the amount paid for the services
28 rendered by the public employee or the spouse of the public
29 employee was in excess of ten thousand dollars (\$10,000).

1 “(6) The public employee shall also disclose family
2 relationships with lobbyists and principals in a manner set
3 forth by the commission in accordance with this section.

4 "~~(e)~~(d) Filing required by this section shall
5 reflect information and facts in existence at the end of the
6 reporting year.

7 "~~(d)~~(e) If the information required herein is not
8 filed as required, the commission shall do all of the
9 following: notify the public official or public employee
10 concerned as to his or her failure to so file and the public
11 official or public employee shall have 10 days to file the
12 report after receipt of the notification. The commission may,
13 in its discretion, assess a fine of ten dollars (\$10) a day,
14 not to exceed one thousand dollars (\$1,000), for failure to
15 file timely.

16 **ATTORNEY GENERAL'S ANNOTATIONS:**

17 The paragraphs below list the procedure by which
18 this section is enforced. First, non-filers and their
19 employers or supervisors are notified in writing of their
20 failure to file no later than August 1st (or 93 days after the
21 due date). Next, non-filers are listed on a public document no
22 later than October 1st (or 154 days after the due date). Then,
23 the Commission must send out orders to the non-filers by
24 December 1st (or 215 days after the due date) to appear at the
25 next Commission meeting to show cause for their failure to
26 file. The Commission must then refer any non-filer who does
27 not show up or fails to show good cause for prosecution to the
28 Attorney General or appropriate district attorney no later
29 than the first Commission meeting held after December 31st (245

1 days after the due date). A final deadline is imposed for all
2 non-filers, such as persons who received a brief extension
3 after demonstrating good cause, of March 1st (or 305 days from
4 the due date). At that time, all non-filers are referred for
5 prosecution. To ensure timely prosecution, the two-year
6 statute of limitations does not begin to accrue until referral
7 by Commission or by the March 1st final deadline.

8 This bill modifies existing law to prohibit
9 intentionally false material statements by filers in their
10 forms. While this crime exists under current law, this bill
11 incorporates the language commonly used in perjury or other
12 false statement statutes.

13 "(1) No later than August 1 of each calendar year,
14 notify, in writing, the public official, public employee, or
15 candidate, with a copy to the head of the state, county, or
16 municipal agency with which the person is employed, as to his
17 or her failure to file the information required in this
18 section. The public official or public employee shall have
19 until midnight on August 1 of that calendar year to file the
20 required information.

21 "(2) No later than October 1 of each calendar year,
22 release publicly a list of the public officials, public
23 employees, and candidates that have not filed the required
24 information.

25 "(3) No later than December 1 of each calendar year,
26 order any public official, public employee, or candidate who
27 has not filed the required information to appear at the next
28 regular open meeting of the commission to show good cause for
29 his or her failure to file the required information. If the

1 required information is filed before the date on which the
2 person was ordered to appear, the person is excused from his
3 or her appearance.

4 "(4) At the next regular open meeting occurring
5 after December 31 of each calendar year, identify any person
6 who either failed to appear pursuant to subdivision (3) or
7 failed to show good cause and vote to refer such matter to the
8 Attorney General or the district attorney for the appropriate
9 jurisdiction. The commission may also impose a fine on any
10 public official or candidate, not to exceed one thousand
11 dollars (\$1,000), or on any public employee, not to exceed two
12 hundred and fifty dollars (\$250), who fails to appear or fails
13 to show good cause. If a person appears before the commission
14 and shows good cause, the commission may grant an extension
15 for the person to file the required information, but the
16 extension shall not be later than the next regular open
17 meeting following the person's appearance.

18 "(5) No later than March 1 of each calendar year,
19 vote to refer to the Attorney General or the district attorney
20 for the appropriate jurisdiction all matters where a person
21 has failed to file the required information for the previous
22 calendar year.

23 "(e) (f) Any person who unintentionally neglects to
24 include any information relating to the financial disclosure
25 filing requirements of this chapter shall have 90 days to file
26 an amended statement of economic interests without penalty.
27 Any person who intentionally makes a materially false,
28 fictitious, or fraudulent statement or representation in his

1 or her statement of economic interest, upon conviction, shall
2 be guilty of a Class C felony.

3 "(g) Except as provided in subsection (f), ~~A any~~
4 public employee person who intentionally violates any
5 provision of this section, upon conviction, shall be guilty of
6 a Class A misdemeanor. ~~financial disclosure filing requirement~~
7 ~~of this chapter shall be subject to administrative fines~~
8 ~~imposed by the commission, or shall, upon conviction, be~~
9 guilty of a Class A misdemeanor, or both.

10 **ATTORNEY GENERAL'S ANNOTATIONS:**

11 *The above penalty provision excludes the intentional*
12 *false statement crime section, but makes all convicted non-*
13 *filer public employees guilty of a Class A misdemeanor.*

14 "(h) Except as provided in subsection (f), any
15 public official or candidate who intentionally violates any
16 provision of this section, upon conviction, shall be guilty of
17 a Class D felony.

18 **ATTORNEY GENERAL'S ANNOTATIONS:**

19 *The above penalty provision excludes the intentional*
20 *false statement crime section, but makes all convicted non-*
21 *filer public officials guilty of a Class D felony, which*
22 *results in his or her removal from office.*

23

24 "(i) Notwithstanding any other provision of law, the
25 venue for any violation of this section shall be in Montgomery
26 County, Alabama.

27 "(j) Notwithstanding any other provision of law, the
28 statute of limitations for failing to file the required
29 information shall not begin to run until the commission has

1 voted to refer the matter to the Attorney General or the
2 district attorney for the appropriate jurisdiction. If the
3 matter was not referred by the commission, then the statute of
4 limitations shall begin to run on the date that the commission
5 was required to refer the matter pursuant to this section.

6 "(k) Notwithstanding any other provision of law, a
7 public official or candidate may not use any funds from any
8 contribution reported under Chapter 5 of Title 17 or a
9 contribution to an inaugural or transition committee, any
10 funds from any campaign contribution for a federal election
11 which is otherwise lawful, or funds from any legal defense
12 fund to pay any fine levied by the commission under this
13 section.

14 "(l) The commission may develop and implement
15 statement of economic interest forms that are consistent with
16 the requirements of this section, including, but not limited
17 to, requiring supplemental or additional information
18 reasonably related to the requirements of this section. The
19 commission may not excuse or exempt any person from any filing
20 requirement, except as otherwise provided in this section.

21 "(m) The commission shall implement reasonable
22 measures to ensure the safety of minor children and law
23 enforcement personnel and to protect against identity theft,
24 including the following:

25 "(1) Redacting certain information submitted by any
26 person in law enforcement, including a prosecutor and a member
27 of his or her staff.

1 "(2) Redacting the street number and street name,
2 but not the city, county, state, or zip code, from any address
3 submitted by any person.

4 "(3) Redacting any information that directly relates
5 to minor children.

6 "(4) Redacting any information that has a
7 substantial likelihood of exposing any person to identify
8 theft.

9 "(5) Redacting any other information from public
10 scrutiny which would potentially endanger any person; subject
11 any person to identity theft; irreparably harm the business or
12 professional activity of a person; or violate any person's
13 constitutional rights, so long as the redaction is approved in
14 writing by a unanimous vote of all of the members of the
15 commission and by the Attorney General.

16 **ATTORNEY GENERAL'S ANNOTATIONS:**

17 The above paragraph is intended to allow lawful
18 redaction of information that should not be public.

19 "(n) Any person may request, in writing with a copy
20 to the Attorney General, that the commission redact any
21 information required to be disclosed under this section if the
22 disclosure of such information would potentially endanger any
23 person, irreparably harm the business or professional
24 activities of the person, or violate the person's rights under
25 the Constitution of Alabama of 1901, or the United States
26 Constitution. Such a request must be approved in writing by a
27 unanimous vote of all of the members of the commission and by
28 the Attorney General.

29 **ATTORNEY GENERAL'S ANNOTATIONS:**

The above paragraph is intended to be a safety valve to prevent the disclosure of information that should not be public for compelling reasons.

"(o) The commission may require the head of any state, county, or municipal agency or department to provide the commission with a list of persons employed by the agency or department who are required to complete a statement of economic interest form for each calendar year.

"p) For purposes of this section, the redaction of any information exempts the information from the requirements of Section 36-12-40.

ATTORNEY GENERAL'S ANNOTATIONS:

The above paragraph exempts redacted information from being considered a public record.

"(q) For purposes of this section, a person who is not otherwise a public official who is appointed to an unelected and uncompensated position at the county or municipal level of government or their instrumentalities, including governmental corporations, shall file a form pursuant to subsection (c).

"§36-25-15.

"(a) Candidates at every level of government shall file a completed statement of economic interests form for the previous calendar year with the ~~State Ethics Commission~~ commission simultaneously with the date such candidate files his or her qualifying papers with the appropriate election official or in the case of an independent candidate, the date the person complies with the requirements of Section 17-9-3. Nothing in this section shall be deemed to require a second

1 filing of the person's statement of economic interests if a
2 current statement of economic interests is on file with the
3 commission.

4 "(b) Each election official who receives a
5 declaration of candidacy or petition to appear on the ballot
6 for election from a candidate shall, within five days of the
7 receipt, notify the commission of the name of the candidate,
8 as defined in this chapter, and the date on which the person
9 became a candidate. ~~The commission shall, within~~ Within five
10 business days of receipt of such notification, the commission
11 shall notify the election official whether the candidate has
12 complied with the provisions of this section.

13 "(c) Other provisions of the law notwithstanding, if
14 a candidate does not submit a statement of economic interests
15 or, when applicable, an amended statement of economic
16 interests in accordance with the requirements of this chapter,
17 the name of the person shall not appear on the ballot and the
18 candidate shall be deemed not qualified as a candidate in that
19 election. Notwithstanding the foregoing, the commission may,
20 for good cause shown, allow the candidate an additional five
21 days to file such statement of economic interests. If a
22 candidate is deemed not qualified, the appropriate election
23 official shall remove the name of the candidate from the
24 ballot.

25 "§36-25-17.

26 "(a) Every governmental agency head shall, within 10
27 days, shall file reports with the commission on any matters
28 that come to his or her attention in his or her official
29 capacity which constitute a violation of this chapter. Nothing

1 in this chapter prohibits the director or a member of the
2 commission from reporting to the Attorney General or the
3 district attorney for the appropriate jurisdiction any matter
4 that constitutes a violation of this chapter which comes to
5 his or her attention in his or her official capacity .

6 "(b) Governmental agency heads shall cooperate in
7 every possible manner in connection with any investigation or
8 hearing, public or private, which may be conducted by the
9 commission.

10 "§36-25-18.

11 "(a) A person may not lobby unless registered
12 pursuant to this section.

13 "~~(a)~~(b) Every lobbyist shall register by filing a
14 form prescribed by the commission no later than January 31 of
15 each calendar year or within 10 days after the first
16 undertaking requiring such registration. Each lobbyist, ~~except~~
17 ~~public employees who are lobbyists,~~ shall pay an annual fee of
18 one hundred dollars (\$100) on or before January 31 of each
19 calendar year or within 10 days of the first undertaking
20 requiring such registration.

21 "~~(b)~~(c) The commission shall adopt a registration
22 form. The form, at minimum, shall require the following
23 information. The registration shall be in writing and shall
24 contain the following information:

25 "(1) The registrant's full name and business
26 address.

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

28 "(3) The full name and address of the registrant's
29 principal or principals.

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

5 "(5) If a registrant's activity is done on behalf of
6 the members of a group other than a corporation, a categorical
7 disclosure of the number of persons of the group as follows:
8 1-5; 6-10; 11-25; over 25.

9 "(6) A statement signed by each principal that he or
10 she has read the registration, knows its contents and has
11 authorized the registrant to be a lobbyist in his or her
12 behalf as specified therein, and that no compensation will be
13 paid to the registrant contingent upon passage or defeat of
14 any legislative measure.

15 "~~(e)~~(d) A registrant shall file a supplemental
16 registration indicating any substantial change or changes in
17 the information contained in the prior registration within 10
18 days after the date of the change.

19 "(e) After the effective date of the act adding this
20 subsection, a person convicted of a felony violation of this
21 chapter may not register as a lobbyist, regardless of whether
22 a pardon has been issued by the Board of Pardons and Paroles,
23 and a person registered as a lobbyist who is convicted of a
24 felony violation of this chapter shall forfeit his or her
25 registration immediately upon conviction.

26 **ATTORNEY GENERAL'S ANNOTATIONS:**

27 The above paragraph prohibits any person convicted
28 of a violation of this Act after this bill is passed from ever
29 registering as a lobbyist.

1 "§36-25-19.

2 "(a) Every person registered as a lobbyist pursuant
3 to Section 36-25-18 and every principal employing any lobbyist
4 shall file with the commission a report provided by the
5 commission pertaining to the activities set out in that
6 section. The commission may require or permit a principal to
7 file one report that includes all who are principals by virtue
8 of their role within the entity. The report shall be filed
9 with the commission no later than January 31, April 30, July
10 31, and October 31 for each preceding calendar quarter, and
11 contain, but not be limited to, the following information:

12 "(1) The cost of those items excluded from the
13 definition of a thing of value which are described in Section
14 36-25-1(b) 41 c. and d. and which are expended within a 24-hour
15 period on a public official, public employee, and members of
16 his or her respective household in excess of two hundred fifty
17 dollars (\$250) with the name or names of the recipient or
18 recipients and the date of the expenditure.

19 "(2) The nature and date of any financial
20 transaction between the public official, candidate, or member
21 of the household of such public official or candidate and the
22 lobbyist or principal of a value in excess of five hundred
23 dollars (\$500) in the prior quarter, excluding those financial
24 transactions which are required to be reported by candidates
25 under the Fair Campaign Practices Act as provided in Chapter
26 ~~22A~~ 5 (commencing with Section ~~17-22A-1~~ 17-5-1) of Title 17.

27 "(3) A detailed statement showing the exact amount
28 of any loan given or promised to a public official, candidate,
29 public official or candidate.

1 "(4) A detailed statement showing any direct
2 business association or partnership with any public official,
3 candidate, or members of the household of such public official
4 or candidate; provided, however, that campaign expenditures
5 shall not be deemed a business association or partnership.

6 "(b) Any person not otherwise deemed a lobbyist
7 pursuant to this chapter who negotiates or attempts to
8 negotiate a contract, sells or attempts to sell goods or
9 services, engages or attempts to engage in a financial
10 transaction with a public official or public employee in their
11 official capacity and who within a calendar day expends in
12 excess of two hundred fifty dollars (\$250) on such public
13 employee, public official, and his or her respective household
14 shall file a detailed quarterly report of the expenditure with
15 the commission.

16 "(c) Any other provision of this chapter to the
17 contrary notwithstanding, no organization whose officer or
18 employee serves as a public official under this chapter shall
19 be required to report expenditures or reimbursement paid to
20 such officer or employee in the performance of the duties with
21 the organization.

22 "§36-25-23.

23 "(a) No public official ~~elected to a term of office~~
24 shall serve for a fee, reward, or other compensation, in
25 addition to that received in his or her official capacity, as
26 a lobbyist or otherwise represent a client, including his or
27 her employer, before any legislative body, the Office of the
28 Governor for the State of Alabama, any executive department or
29 agency, any regulatory body, any governmental agency, any

1 board, any commission, the judicial branch, or a county or
2 municipal government, or agency thereof. or any branch of
3 state or local government, including the executive and
4 judicial branches of government, and including the Legislature
5 of Alabama or any board, agency, commission, or department
6 thereof, during the term or remainder of the term for which
7 the official was elected. For purposes of this subsection,
8 such prohibition shall not include an attorney representing
9 clients before the judicial branch or a regulatory body,
10 provided that the attorney's representation of his or her
11 client does not include lobbying. a former member of the
12 Alabama Judiciary who as an attorney represents a client in a
13 legal, non-lobbying capacity.

14 " (b) No former member of the House of
15 Representatives or the Senate of the State of Alabama shall be
16 extended floor privileges of either body in a lobbying
17 capacity.

18 " (c) (b) No public official, public employee, or
19 group of public officials or public employees shall solicit
20 any lobbyist to give any thing offer or provide anything,
21 whether or not the thing solicited is a thing of value, to any
22 person or entity for any purpose, other than a campaign
23 contribution. except for either of the following:

24 " (1) A contribution reported under Chapter 5 of
25 Title 17 or a contribution to an inaugural or transition
26 committee, or a campaign contribution for a federal election
27 which is otherwise lawful.

28 " (2) Items of de minimis value.

1 "(d)(c) No principal or lobbyist shall accept
2 compensation for, or enter into, a contract to provide
3 lobbying services which is contingent upon the passage or
4 defeat of any legislative action.

5 "(d) Except where the privilege against self-
6 incrimination under the Constitution of the State of Alabama
7 or the United States applies, any member of the Legislative or
8 Executive Branch, lobbyist, subordinate of a lobbyist, or a
9 principal, who intentionally fails to report a violation of
10 this section to the commission, upon conviction, shall be
11 guilty of a Class A misdemeanor.

12 "§36-25-24.

13 "(a) A supervisor shall not discharge, demote,
14 transfer, or otherwise discriminate against a public employee
15 regarding such employee's compensation, terms, conditions, or
16 privileges of employment based on the employee's reporting a
17 violation, or what he or she believes in good faith to be a
18 violation, of this chapter or giving truthful statements or
19 truthful testimony concerning an alleged ethics violation.

20 "(b) Nothing in this chapter shall be construed in
21 any manner to prevent, or prohibit, or otherwise limit a
22 supervisor from disciplining, discharging, transferring, or
23 otherwise affecting the terms and conditions of a public
24 employee's employment so long as the disciplinary action does
25 not result from, or is in no other manner connected with, the
26 public employee's filing a complaint with the commission,
27 giving truthful statements, and truthfully testifying.

28 "(c) No public employee shall file a complaint or
29 otherwise initiate action against a public official or other

1 public employee without a good faith basis for believing the
2 complaint to be true and accurate.

3 "(d) A supervisor who is alleged to have violated
4 this section shall be subject to civil action in the circuit
5 courts of this state pursuant to the Alabama Rules of Civil
6 Procedure as promulgated by the Alabama Supreme Court.

7 "(e) A public employee who files a complaint against
8 a supervisor without a good faith belief in the truthfulness
9 and accuracy of a the complaint ~~filed against a supervisor~~,
10 shall be subject to a civil action in the circuit courts in
11 the State of Alabama pursuant to the Alabama Rules of Civil
12 Procedure as promulgated by the Supreme Court. Additionally, a
13 public employee who files a complaint against a supervisor
14 without a the good faith belief in the truthfulness and
15 accuracy of a complaint ~~as filed against a supervisor~~ shall be
16 subject to appropriate and applicable personnel action.

17 "(f) Nothing in this section shall be construed to
18 allow a public employee to file a false complaint to prevent,
19 mitigate, lessen, or otherwise to extinguish existing or
20 anticipated personnel action by a supervisor. A public
21 employee who ~~willfully~~ intentionally files such a complaint
22 against a supervisor shall, upon conviction, be guilty of the
23 crime of false reporting.

24 "§36-25-26.

25 "(a) No person, for the purpose of influencing
26 legislation, may do either of the following:

27 "(1) Knowingly or ~~willfully~~ intentionally make any
28 false statement or misrepresentation of the facts to a member
29 of the Legislative or Executive Branch.

1 "(2) Knowing With knowledge that a document to
2 contains a false statement, cause a copy of the document to be
3 received by a member of the Legislative or Executive Branch
4 without notifying the member in writing of the truth.

5 "(b) Any member of the Legislative or Executive
6 Branch who acts or refrains from acting, in his or her
7 official capacity in reliance on a materially false statement,
8 material misrepresentation, a document containing a materially
9 false statement, or other conduct constituting a violation of
10 subsection (a) shall report the violation to the commission
11 upon discovery of the falsity of such statement,
12 representation, or document. For purposes of this subsection,
13 any member who intentionally fails to comply with this
14 subsection, upon conviction, shall be guilty of a Class A
15 misdemeanor.

16 "§36-25-27.

17 "(a) ~~(1)~~ Except as otherwise provided, any person
18 subject to in this chapter, the following penalties apply to
19 any violation of this chapter:

20 "(1) Any person subject to this chapter who
21 intentionally violates any provision of this chapter other
22 ~~than those for which a separate penalty is provided for in~~
23 ~~this section shall, upon conviction, shall~~ be guilty of a
24 Class B felony.

25 **ATTORNEY GENERAL'S ANNOTATIONS:**

26 The above paragraph does not change existing law.
27 Intentional violations of this Act, except where a specific
28 penalty is otherwise set forth, are Class B felonies.

1 "(2) Any person subject to this chapter who
2 knowingly, recklessly, or with criminal negligence violates
3 any provision of this chapter ~~other than those for which a~~
4 ~~separate penalty is provided for in this section shall~~, upon
5 conviction, shall be guilty of a Class A misdemeanor.

6 **ATTORNEY GENERAL'S ANNOTATIONS:**

7 The above paragraph does not change existing law.
8 Violations of this Act that are done with any level of
9 criminal intent, except for intentional violations or where a
10 specific penalty is set forth, are Class A misdemeanors. The
11 levels of criminal intent have been expressly added and
12 defined in this bill.

13 "(3) Any person subject to this chapter who
14 knowingly violates any disclosure requirement of this chapter
15 ~~shall~~, upon conviction, shall be guilty of a Class A
16 misdemeanor.

17 **ATTORNEY GENERAL'S ANNOTATIONS:**

18 The above paragraph does not change existing law.
19 Violations of this Act related to the disclosure of
20 information are Class A misdemeanors.

21 "(4) Any person who knowingly makes or transmits a
22 false report or complaint pursuant to this chapter ~~shall~~, upon
23 conviction, shall be guilty of a Class A misdemeanor and shall
24 be liable for the actual legal expenses incurred by the
25 respondent against whom the false report or complaint was
26 filed.

27 "(5) Any person who knowingly, recklessly, or with
28 criminal negligence makes false statements to an employee of
29 the commission or to the commission itself pursuant to this

1 chapter without reason to believe the accuracy of the
2 ~~statements shall~~, upon conviction, shall be guilty of a Class
3 A misdemeanor.

4 **ATTORNEY GENERAL'S ANNOTATIONS:**

5 The above paragraph does not change existing law.
6 Violations of this paragraph that are done with any level of
7 criminal intent, except for intentional violations or where a
8 specific penalty is set forth, are Class A misdemeanors. The
9 levels of criminal intent have been expressly added and
10 defined in this bill.

11 "(6) Any person subject to this chapter who
12 intentionally violates this chapter relating to secrecy ~~shall~~,
13 upon conviction, shall be guilty of a Class C felony.

14 "(7) Any person subject to this chapter who
15 intentionally fails to disclose information required by this
16 chapter ~~shall~~, upon conviction, shall be guilty of a Class A
17 misdemeanor.

18 "(b) ~~The commission, if petitioned or agreed to by a~~
19 ~~respondent and the Attorney General or district attorney~~
20 ~~having jurisdiction, by unanimous vote of the members present,~~
21 If a respondent petitions the commission or if the respondent
22 and the Attorney General or district attorney having
23 jurisdiction agree, the commission, by unanimous vote of the
24 members present, may administratively resolve a complaint
25 filed pursuant to this chapter for minor violations. The
26 commission may ~~levy~~ impose an administrative penalty not to
27 exceed one thousand dollars (\$1,000) ~~six thousand dollars~~
28 (\$6,000) for any minor violation of this chapter including,
29 but not limited to, the failure to timely file a complete and

1 correct statement of economic interests. In addition to any
2 administrative penalty, The the commission shall, in addition
3 to any administrative penalty, order restitution in the amount
4 of any economic loss to the state, county, and municipal
5 governments and their instrumentalities and such, when
6 collected, the restitution shall when collected be paid by the
7 commission, to the entity having the economic loss. In any
8 case in which an administrative penalty is imposed, the
9 administrative penalty shall not be less than three times the
10 amount of any economic loss to the state, county, and
11 municipal governments or their instrumentalities or any
12 economic gain or benefit to the public official or public
13 employee, or whichever sum is greater. The commission, through
14 its attorney, shall institute proceedings to recover any
15 penalties or restitution or other such funds so ordered
16 pursuant to this section which are not paid by, or on behalf
17 of, the public official or public employee or other person who
18 has violated this chapter. Nothing in this section shall be
19 deemed in any manner to prohibit the commission and the
20 respondent from entering into a consent decree settling a
21 complaint which has previously been designated by the
22 commission for administrative resolution, so long as the
23 consent decree is approved by the commission. If the
24 commission, the respondent, and the Attorney General or
25 district attorney having jurisdiction, all concur that a
26 complaint is deemed to be handled administratively, the action
27 shall preclude any criminal prosecution pursuant to this
28 chapter at the state, county, or municipal level.

29 **ATTORNEY GENERAL'S ANNOTATIONS:**

1 *This bill improves existing law by increasing the*
2 *maximum fine for an administrative resolution from \$1,000 to*
3 *\$6,000. This is consistent with the maximum fine available for*
4 *misdemeanors and the structure of offenses, penalties, and*
5 *minor violation criteria in this bill.*

6 "(c) The enforcement of this chapter shall be vested
7 in the commission; provided, however, nothing in this chapter
8 shall be deemed to limit or otherwise prohibit the Attorney
9 General or the district attorney for the appropriate
10 jurisdiction from enforcing any provision of this chapter as
11 they deem appropriate. In the event the commission, by
12 majority vote, finds that any provision of this chapter has
13 been violated, the alleged violation and any investigation
14 conducted by the commission shall be referred to the district
15 attorney of the appropriate jurisdiction or the Attorney
16 General. The commission shall provide any and all appropriate
17 assistance to such district attorney or Attorney General. Upon
18 the request of such district attorney or the Attorney General,
19 the commission may institute, prosecute, or take such other
20 appropriate legal action regarding such violations, proceeding
21 therein with all rights, privileges, and powers conferred by
22 law upon assistant attorneys general. The fact that the
23 commission declined to investigate a complaint for any reason,
24 investigated a complaint before closing the matter for any
25 reason, did not hold a vote determining probable cause, or
26 voted that there was not probable cause for a violation shall
27 not be a prerequisite or a bar to obtaining an indictment from
28 any grand jury of this state for any violation of this
29 chapter. Nor shall any of those facts constitute a defense to

1 a violation of this chapter in a criminal case or constitute
2 the legal basis for the dismissal of an indictment. No
3 evidence of these facts is admissible at a trial in any
4 criminal case for a violation of this chapter, provided that
5 an indictment was returned by a grand jury of this state.

6 **ATTORNEY GENERAL'S ANNOTATIONS:**

7 *This bill recognizes that a finding of probable*
8 *cause by the Ethics Commission is not, and should not, be*
9 *required before an indictment by a grand jury may be returned*
10 *for a violation of the Act. The right to be indicted by a*
11 *grand jury for any felony is protected by the Alabama State*
12 *Constitution. See Ala. Const. Art. I, § 8.*

13 "(d) Nothing in this chapter limits the power of the
14 state to punish any person for any conduct which otherwise
15 constitutes a crime by statute or at common law.

16 "(e) The penalties prescribed in this chapter do not
17 in any manner limit the power of a legislative body to
18 discipline its own members or to impeach public officials and
19 do not limit the powers of agencies, departments, boards, or
20 commissions to discipline their respective officials, members,
21 or employees.

22 "(f) Each circuit court of this state shall have
23 jurisdiction ~~of~~ in all cases and actions relative to judicial
24 review, violations, or the enforcement of this chapter, and
25 the venue of any action pursuant to this chapter shall be in
26 the county in which the alleged violation occurred, or in
27 those cases where the violation or violations occurred outside
28 the State of Alabama, in Montgomery County. In the case of
29 judicial review of any administrative decision of the

1 commission, the commission's order, rule, or decision shall be
2 taken as *prima facie* just and reasonable and the court shall
3 not substitute its judgment for that of the commission as to
4 the weight of the evidence on questions of fact except where
5 otherwise authorized by law.

6 "(g) Any felony prosecution brought pursuant to this
7 chapter shall be commenced within ~~four~~ six years after the
8 commission of the offense.

9 "(h) Any misdemeanor prosecution brought pursuant to
10 this chapter shall be commenced within two years after the
11 commission of the offense.

12 "(i) Nothing in this chapter is intended to, nor is
13 to be construed as, repealing in any way the provisions of any
14 of the criminal laws of this state.

15 "(j) It is not a defense to any prosecution under
16 this chapter that the violation or any part thereof occurred
17 outside the State of Alabama or involved non-public funds.

18 **ATTORNEY GENERAL'S ANNOTATIONS:**

19 *This bill does not change existing law. See Fitch v.*
20 *State, 851 So.2d 103 (Ala. Crim. App. 2001).*

21 "(k) All things of value and all personal gain that
22 form the basis for a criminal charge under this chapter shall
23 be recoverable as restitution to the state upon conviction.
24 Any restitution ordered pursuant to this section shall be paid
25 to the state General Fund."

26 **ATTORNEY GENERAL'S ANNOTATIONS:**

27 *This bill improves existing law by prohibiting a*
28 *convicted person from retaining any ill-gotten gains and then*

1 provides that anything recovered shall be paid to the General
2 Fund.

3 Section 9. Although this bill would have as its
4 purpose or effect the requirement of a new or increased
5 expenditure of local funds, the bill is excluded from further
6 requirements and application under Amendment 621, now
7 appearing as Section 111.05 128 of the Official Recompilation
8 of the Constitution of Alabama of 1901, as amended, because
9 the bill defines a new crime or amends the definition of an
10 existing crime.

11 Section 10. Sections 36-25-1.1 and 36-25-6 of the
12 Code of Alabama 1975, are repealed.

13 Section 11. This act shall become effective
14 immediately following its passage and approval by the
15 Governor, or its otherwise becoming law.