Alabama Gift Law

A.C. §36-25-1

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

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

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

(13) FAMILY MEMBER OF THE PUBLIC EMPLOYEE. The spouse or a dependent of the public employee.

(14) FAMILY MEMBER OF THE PUBLIC OFFICIAL. The 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) HOUSEHOLD. The public official, public employee, and his or her spouse and dependents.

(33) THING OF VALUE.

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

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

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

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

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

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

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

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

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

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

9. Anything for which the recipient pays full value.

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

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

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

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

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

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

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

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

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

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

(35) WIDELY ATTENDED EVENT. A gathering, dinner, reception, or other event of mutual interest to a number of parties at which it is reasonably expected that more than 12 individuals will attend and that individuals with a diversity of views or interest will be present.
A.C. §36-25-5.1

(a) No lobbyist, subordinate of a lobbyist, or principal shall offer or provide a thing of value to a public employee or public official or to a family member of the public employee or family member of the public official; and no public employee or public official or family member of the public employee or family member of the public official shall solicit or receive a thing of value from a lobbyist, subordinate of a lobbyist, or principal. Notwithstanding the foregoing, a lobbyist, or principal may offer or provide and a public official, public employee, or candidate may solicit or receive items of de minimis value.

(b) A lobbyist does not provide a thing of value, for purposes of this section, merely by arranging, facilitating, or coordinating with his or her principal that is providing and paying for those items.

A.C. §36-25-7

(a) No person shall offer or give to a public official or public employee or a member of the household of a public employee or a member of the household of the public official and none of the aforementioned shall solicit or receive anything for the purpose of corruptly influencing official action, regardless of whether or not the thing solicited or received is a thing of value.

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

(e) For purposes of this section, to act corruptly means to act voluntarily, deliberately, and dishonestly to either accomplish an unlawful end or result or to use an unlawful method or means to accomplish an otherwise lawful end or result.
HB466

142427-5

By Representative Love

RFD: Ethics and Campaign Finance

First Read: 01-MAR-12
ENROLLED, An Act,

To amend Section 36-25-1, as last amended by Act 2010-764, 2010 First Special Session, Code of Alabama 1975, relating to ethics; to define the term "de minimis" as a gift of less than $25 and an aggregate value of $50 or less in a calendar year from any provider; and to provide that the value of a de minimis would be adjusted based on the increase in the consumer price index each four years from the date of the enactment of this act.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 36-25-1, as last amended by Act 2010-764, 2010 First Special Session, Code of Alabama 1975, is amended to read as follows:

"§36-25-1.

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

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

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

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

"(4) COMMISSION. The State Ethics Commission.

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

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

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

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

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

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

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

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

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

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

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

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

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

"(14)(15) FAMILY MEMBER OF THE PUBLIC OFFICIAL. The 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.

"(15)(16) GOVERNMENTAL CORPORATIONS AND AUTHORITIES. Public or private corporations and authorities, including but not limited to, hospitals or other health care corporations, 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.
"(16)(17) HOUSEHOLD. The public official, public
employee, and his or her spouse and dependents.

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

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

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

"(20)(21) LOBBYIST.

"a. The term lobbyist includes any of the following:
"1. A person who receives compensation or reimbursement from another person, group, or entity to lobby.

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

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

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

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

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

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

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

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

"5. A person who appears before a legislative body, a regulatory body, or an executive agency to either sell or 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 contribution to or payment of dues to the organization even though the organization engages in lobbying activities.
8. A state governmental agency head or his or her
designee who provides or communicates, or both, information
relating to policy or positions, or both, affecting the
governmental agencies which he or she represents.

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

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

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

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

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

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

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

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

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

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

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

"(33) (34) THING OF VALUE.

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

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

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

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

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

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

"5. Loans from banks and other financial institutions on terms generally available to the public.
"6. Opportunities and benefits, including favorable rates and commercial discounts, available to the public or to a class consisting of all government employees.

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

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

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

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

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

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

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

"14. Hospitality, meals, and other food and
beverages provided to a public official or public employee,
and the spouse of the public official or public employee, as
an integral part of an educational function, economic
development function, work session, or widely attended event,
such as a luncheon, banquet, or reception hosted by a civic
club, chamber of commerce, charitable or educational
organization, or trade or professional association.
"15. Any function or activity pre-certified by the Director of the Ethics Commission as a function that meets any of the above criteria.

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

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

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

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

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

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

Section 2. This act shall become effective on the
first day of the third month following its passage and
approval by the Governor, or its otherwise becoming law.
Speaker of the House of Representatives

President and Presiding Officer of the Senate

I hereby certify that the within Act originated in and was passed by the House 10-APR-12.

Greg Pappas
Clerk

Amended and Passed
Passed, as amended by Conference Committee Report
Passed, as amended by Conference Committee Report