

1 SB284
2 130020-3
3 By Senator Orr
4 RFD: Constitution, Campaign Finance, Ethics, and Elections
5 First Read: 24-MAR-11

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

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11 To amend Sections 17-5-2, 17-5-8, and 17-5-12, Code
12 of Alabama 1975, relating to paid electioneering
13 communications and political advertising, to provide, with
14 certain exceptions, that electioneering communications and
15 paid political advertisements paid for by an organization or
16 entity shall disclose the names of the source of the funding
17 of the organization or entity.

18 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

19 Section 1. (a) The Legislature determines that there
20 is a compelling state and public interest in the disclosure of
21 the source of funds used to advertise or otherwise influence
22 public opinion with regard to elections as defined in Section
23 17-5-2(3), Code of Alabama 1975. The Legislature further finds
24 that these compelling interests should be designed to protect
25 the public's right to know while protecting free speech of
26 individuals as guaranteed in the U.S. Constitution and the
27 Constitution of Alabama of 1901.

1 (b) Currently, the Fair Campaign Practices Act,
2 Title 17, Chapter 5, commencing with Section 17-5-1, et seq.,
3 Code of Alabama 1975, regulates the disclosure of
4 contributions and expenditures made for the purpose of
5 influencing the outcome of an election. This 2011 amendatory
6 act is intended to regulate the disclosure of contributions
7 and expenditures for "electioneering communications" which
8 currently do not fall within the ambit of the Fair Campaign
9 Practices Act.

10 (c) The Legislature finds and declares that Alabama
11 voters have a right to know who pays for the costs of
12 electioneering communications.

13 Section 2. Sections 17-5-2, 17-5-8, and 17-5-12 of
14 the Code of Alabama 1975, are amended to read as follows:

15 "§17-5-2.

16 "(a) For purposes of this chapter, the following
17 terms shall have the following meanings:

18 "(1) CANDIDATE. An individual who has done any of
19 the following:

20 "a. Taken the action necessary under the laws of the
21 state to qualify himself or herself for nomination or for
22 election to any state office or local office or in the case of
23 an independent seeking ballot access, on the date when he or
24 she files a petition with the judge of probate in the case of
25 county offices, with the appropriate qualifying municipal
26 official in the case of municipal offices, or the Secretary of
27 State in all other cases.

1 "b. Received contributions or made expenditures, or
2 given his or her consent for any other person or persons to
3 receive contributions or make expenditures, with a view to
4 bringing about his or her nomination or election to any state
5 office or local office. Notwithstanding the foregoing, no
6 person shall be considered a candidate within the meaning of
7 this subdivision until the time that he or she has either
8 received contributions or made expenditures as provided herein
9 in the following amounts:

10 "1. Twenty-five thousand dollars (\$25,000) or more,
11 with a view toward bringing about nomination or election to
12 any state office other than one filled by election of the
13 registered voters of any circuit or district within the state.

14 "2. Five thousand dollars (\$5,000) or more, with a
15 view toward bringing about nomination or election to any state
16 office, excluding legislative office, filled by election of
17 the registered voters of any circuit or district.

18 "3. Ten thousand dollars (\$10,000) or more, with a
19 view toward bringing about nomination or election to the
20 Alabama Senate and five thousand dollars (\$5,000) or more,
21 with a view toward bringing about nomination or election to
22 the Alabama House of Representatives.

23 "4. One thousand dollars (\$1,000) or more, with a
24 view toward bringing about nomination or election to any local
25 office.

26 "(2) CONTRIBUTION.

1 "a. Any of the following shall be considered a
2 contribution:

3 "1. A gift, subscription, loan, advance, deposit of
4 money or anything of value, a payment, a forgiveness of a
5 loan, or payment of a third party, made for the purpose of
6 influencing the result of an election.

7 "2. A contract or agreement to make a gift,
8 subscription, loan, advance, or deposit of money or anything
9 of value for the purpose of influencing the result of an
10 election.

11 "3. Any transfer of anything of value received by a
12 political committee from another political committee,
13 political party, or other source.

14 "4. The payment of compensation by any person for
15 the personal services or expenses of any other person if the
16 services are rendered or expenses incurred on behalf of a
17 candidate, political committee, or political party without
18 payment of full and adequate compensation by the candidate,
19 political committee, or political party. Provided, however,
20 that the payment of compensation by a corporation for the
21 purpose of establishing, administering, or soliciting
22 voluntary contributions to a separate, segregated fund as
23 permitted by Section 10-1-2, shall not constitute a
24 contribution.

25 "b. The term "contribution" does not include:

1 "1. The value of services provided without
2 compensation by individuals who volunteer a portion or all of
3 their time on behalf of a candidate or political committee.

4 "2. The use of real or personal property and the
5 cost of invitations, food, or beverages, voluntarily provided
6 by an individual to a candidate or political committee in
7 rendering voluntary personal services on the individual's
8 residential or business premises for election-related
9 activities.

10 "3. The sale of any food or beverage by a vendor for
11 use in an election campaign at a charge to a candidate or
12 political committee less than the normal comparable charge, if
13 the charge to the political committee for use in an election
14 campaign is at least equal to the cost of the food or beverage
15 to the vendor.

16 "4. Any unreimbursed payment for travel expenses
17 made by an individual who, on his or her own behalf,
18 volunteers personal services to a candidate or political
19 committee.

20 "5. The payment by a state or local committee of a
21 political party of the cost of preparation, display, or
22 mailing or other distribution incurred by the committee with
23 respect to a printed slate card or sample ballot, or other
24 printed listing of two or more candidates for any public
25 office for which an election is held in the state, except that
26 this subparagraph shall not apply in the case of costs
27 incurred by the committee with respect to a display of the

1 listing made on broadcasting stations, or in newspapers,
2 magazines, or other similar types of general public political
3 advertising.

4 "6. The value or cost of polling data and voter
5 preference data and information if provided to a candidate or
6 political committee, unless the information was compiled with
7 the advance knowledge of and approval of the candidate or the
8 political committee.

9 "(3) ELECTION. Unless otherwise specified, any
10 general, special, primary, or runoff election, or any
11 convention or caucus of a political party held to nominate a
12 candidate, or any election at which a constitutional amendment
13 or other proposition is submitted to the popular vote.

14 "(4) ELECTIONEERING COMMUNICATION. Any communication
15 disseminated through any federally regulated broadcast media,
16 any mailing, or other distribution, electronic communication,
17 phone bank, or publication which (i) contains the name or
18 image of a candidate; (ii) is made within 120 days of an
19 election in which the candidate will appear on the ballot;
20 (iii) the only reasonable conclusion to be drawn from the
21 presentation and content of the communication is that it is
22 intended to influence the outcome of an election; and (iv)
23 entails an expenditure in excess of one thousand dollars
24 (\$1,000).

25 "~~(4)~~ (5) EXPENDITURE.

26 "a. The following shall be considered expenditures:

1 "1. A purchase, payment, distribution, loan,
2 advance, deposit, or gift of money or anything of value made
3 for the purpose of influencing the result of an election.

4 "2. A contract or agreement to make any purchase,
5 payment, distribution, loan, advance, deposit, or gift of
6 money or anything of value, for the purpose of influencing the
7 result of an election.

8 "3. The transfer, gift, or contribution of funds of
9 a political committee to another political committee.

10 "b. The term "expenditure" does not include:

11 "1. Any news story, commentary, or editorial
12 prepared by and distributed through the facilities of any
13 broadcasting station, newspaper, magazine, or other periodical
14 publication, unless the facilities are owned or controlled by
15 any political party or political committee.

16 "2. Nonpartisan activity designed to encourage
17 individuals to register to vote, or to vote.

18 "3. Any communication by any membership organization
19 to its members or by a corporation to its stockholders and
20 employees if the membership organization or corporation is not
21 organized primarily for the purpose of influencing the result
22 of an election.

23 "4. The use of real or personal property and the
24 cost of invitations, food, or beverages, voluntarily provided
25 by an individual in rendering voluntary personal services on
26 the individual's residential or business premises for
27 election-related activities.

1 "5. Any unreimbursed payment for travel expenses
2 made by an individual who, on his or her own behalf,
3 volunteers personal services to a candidate or political
4 committee.

5 "6. Any communication by any person which is not
6 made for the purposes of influencing the result of an
7 election.

8 "7. The payment by a state or local committee of a
9 political party of the cost of preparation, display, or
10 mailing or other distribution incurred by the committee with
11 respect to a printed slate card or sample ballot, or other
12 printed listing of two or more candidates for any public
13 office for which an election is held in the state, except that
14 this subparagraph shall not apply in the case of costs
15 incurred by the committee with respect to a display of the
16 listing made on broadcasting stations, or in newspapers,
17 magazines, or other similar types of general public political
18 advertising.

19 "~~(5)~~ (6) IDENTIFICATION. The full name and complete
20 address.

21 "~~(6)~~ (7) LOAN. A transfer of money, property, or
22 anything of value in consideration of a promise or obligation,
23 conditional or not, to repay in whole or part.

24 "~~(7)~~ (8) LOCAL OFFICE. Any office under the
25 constitution and laws of the state, except circuit, district,
26 or legislative offices, filled by election of the registered

1 voters of a single county or municipality, or by the voters of
2 a division contained within a county or municipality.

3 "~~(8)~~(9) PERSON. An individual, partnership,
4 committee, association, corporation, labor organization, or
5 any other organization or group of persons.

6 "~~(9)~~(10) PERSONAL AND LEGISLATIVE LIVING EXPENSES.
7 Household supplies, personal clothing, tuition payments,
8 mortgage, rent, or utility payments for a personal residence;
9 admission to an entertainment event or fees for a country club
10 or social club, unless tied to a specific campaign event or
11 functions involving constituents; and any other expense,
12 excluding food and beverages, that would exist irrespective of
13 the candidate's campaign or duties as a legislator. Personal
14 and legislative living expenses shall not include expenses for
15 food, beverages, travel, or communications incurred by the
16 legislator in the performance of the office held.

17 "~~(10)~~(11) POLITICAL ACTION COMMITTEE. Any political
18 action committee, club, association, political party, or other
19 group of one or more persons which receives or anticipates
20 receiving contributions or makes or anticipates making
21 expenditures to or on behalf of any elected official,
22 proposition, candidate, principal campaign committee or other
23 political action committee. For the purposes of this chapter,
24 an individual who makes a personal political contribution
25 shall not be considered a political action committee.

26 "~~(11)~~(12) PRINCIPAL CAMPAIGN COMMITTEE. The
27 principal campaign committee designated by a candidate under

1 Section 17-5-4. A political action committee established
2 primarily to benefit an individual candidate or an individual
3 elected official shall be considered a principal campaign
4 committee for purposes of this chapter.

5 "~~(12)~~(13) PROPOSITION. Any proposal for submission
6 to the general public for its approval or rejection, including
7 proposed as well as qualified ballot questions.

8 "~~(13)~~(14) PUBLIC OFFICIAL. Any person elected to
9 public office, whether or not that person has taken office, by
10 the vote of the people at the state, county, or municipal
11 level of government or their instrumentalities, including
12 governmental corporations, and any person appointed to a
13 position at the state, county, or municipal level of
14 government or their instrumentalities, including governmental
15 corporations. For purposes of this chapter, a public official
16 includes the chairs and vice chairs or the equivalent offices
17 of each state political party as defined in Section 17-13-40.

18 "~~(14)~~(15) STATE. The State of Alabama.

19 "~~(15)~~(16) STATE OFFICE. All offices under the
20 constitution and laws of the state filled by election of the
21 registered voters of the state or of any circuit or district
22 and shall include legislative offices.

23 "(b) The words and terms used in this chapter shall
24 have the same meanings respectively ascribed to them in
25 Section 36-25-1.

26 "§17-5-8.

1 "(a) Each principal campaign committee or political
2 action committee shall file with the Secretary of State or
3 judge of probate, as designated in Section 17-5-9, reports of
4 contributions and expenditures at the following times in any
5 year in which an election is held:

6 "(1) Regardless of whether the candidate has
7 opposition in any election, between 50 and 45 days before and
8 between 10 and five days before the date of any primary,
9 special, runoff, or general election for which a political
10 action committee or principal campaign committee receives
11 contributions or makes expenditures with a view toward
12 influencing such election's result.

13 "(2) Provided, however, that with regard to a runoff
14 election a report shall not be required except between five
15 and 10 days before the runoff election.

16 "(b) Each principal campaign committee, political
17 action committee, and elected state and local official covered
18 under the provisions of this chapter, shall annually file with
19 the Secretary of State or judge of probate, as designated in
20 Section 17-5-9, reports of contributions and expenditures made
21 during that year. The annual reports required under this
22 subsection shall be made on or before January 31 of the
23 succeeding year.

24 "(c) Each report under this section shall disclose:

25 "(1) The amount of cash or other assets on hand at
26 the beginning of the reporting period and forward until the
27 end of that reporting period and disbursements made from same.

1 "(2) The identification of each person who has made
2 contributions to such committee or candidate within the
3 calendar year in an aggregate amount greater than one hundred
4 dollars (\$100), together with the amount and date of all such
5 contributions; provided, however, in the case of a political
6 action committee identification shall mean the name and city
7 of residence of each person who has made contributions within
8 the calendar year in an aggregate amount greater than one
9 hundred dollars (\$100).

10 "(3) The total amount of other contributions
11 received during the calendar year but not reported under
12 subdivision (c) (2) of this section.

13 "(4) Each loan to or from any person within the
14 calendar year in an aggregate amount greater than one hundred
15 dollars (\$100), together with the identification of the
16 lender, the identification of the endorsers, or guarantors, if
17 any, and the date and amount of such loans.

18 "(5) The total amount of receipts from any other
19 source during such calendar year.

20 "(6) The grand total of all receipts by or for such
21 committee during the calendar year.

22 "(7) The identification of each person to whom
23 expenditures have been made by or on behalf of such committee
24 or elected official within the calendar year in an aggregate
25 amount greater than one hundred dollars (\$100), the amount,
26 date, and purpose of each such expenditure, and, if
27 applicable, the designation of each constitutional amendment

1 or other proposition with respect to which an expenditure was
2 made.

3 "(8) The identification of each person to whom an
4 expenditure for personal services, salaries, and reimbursed
5 expenses greater than one hundred dollars (\$100) has been
6 made, and which is not otherwise reported or exempted from the
7 provisions of this chapter, including the amount, date, and
8 purpose of such expenditure.

9 "(9) The grand total of all expenditures made by
10 such committee or elected official during the calendar year.

11 "(10) The amount and nature of debts and obligations
12 owed by or to the committee or elected official, together with
13 a statement as to the circumstances and conditions under which
14 any such debt or obligation was extinguished and the
15 consideration therefor.

16 "(d) Each report required by this section shall be
17 signed and filed by the elected official or on behalf of the
18 political action committee by its chair or treasurer and, if
19 filed on behalf of a principal campaign committee, by the
20 candidate represented by such committee. There shall be
21 attached to each such report an affidavit subscribed and sworn
22 to by the official or chair or treasurer and, if filed by a
23 principal campaign committee, the candidate represented by
24 such committee, setting forth in substance that such report is
25 to the best of his or her knowledge and belief in all respects
26 true and complete, and, if made by a candidate, that he or she

1 has not received any contributions or made any expenditures
2 which are not set forth and covered by such report.

3 "(e) In connection with any electioneering
4 communication paid for by a person, nonprofit corporation,
5 entity, principal campaign committee, or other political
6 committee or entity, the payor shall disclose its
7 contributions and expenditures in accordance with this
8 section. The disclosure shall be made in the same form and at
9 the same time as is required of political action committees in
10 this section; provided, however, no duplicate reporting shall
11 be required by a political committee.

12 "(f) Notwithstanding any disclosure requirements of
13 subsection (e), churches are exempt from the requirements of
14 this section unless the church's expenditures are used to
15 influence the outcome of an election. Nothing herein shall
16 require a church to disclose the identities, donations, or
17 contributions of members of the church. As used in this
18 section, the term "church" is defined in accordance with and
19 recognized by Internal Revenue Service guidelines and
20 regulations.

21 "(g) Notwithstanding the disclosure requirements of
22 this section, the provisions of this section shall not be
23 interpreted to nor shall they require any disclosure for
24 expenses incurred for any electioneering communication used by
25 any membership or trade organization to communicate with or
26 inform its members, its members' families, or its members'
27 employees.

1 "(h) The corporate contribution limits contained in
2 Sections 10A-21-1.02, 10A-21-1.03, and 10A-21-1.04 shall not
3 apply in any respect to an electioneering communication;
4 provided, however, the corporate contribution limits contained
5 in Sections 10A-21-1.02, 10A-21-1.03, and 10A-21-1.04 shall
6 continue in force and effect for contributions by corporations
7 to principal campaign committees, political committees, and to
8 political parties.

9 "§17-5-12.

10 "(a) Any paid political advertisement or
11 electioneering communication appearing in any print media or
12 broadcast on any electronic media shall be clearly identified
13 or marked as a paid political advertisement and provide the
14 identification required by Section 17-5-2(a)(5) clearly and
15 distinctly identify the entity responsible for paying for the
16 advertisement or electioneering communication. It shall be
17 unlawful for any person, nonprofit corporation, entity,
18 candidate, principal campaign committee, nonprofit
19 corporation, entity, or other political action committee to
20 broadcast, publish, or circulate any campaign literature or,
21 political advertisement, or electioneering communication
22 without a notice appearing on the face or front page of any
23 printed matter with a clear and unmistakable identification of
24 the entity responsible for directly paying for the
25 advertisement or electioneering communication, or on the
26 broadcast at the beginning, during, or end of a radio or
27 television spot, stating that the communication was a paid

1 ~~political~~ advertisement, clearly identifying the entity
2 directly responsible for paying for the advertisement or
3 electioneering communication, and giving the identification of
4 the person, nonprofit corporation, entity, principal campaign
5 committee, or political action committee or entity that paid
6 for ~~or otherwise authorized~~ such communication.

7 "(b) This section does not apply to any political
8 advertisement or electioneering communication used by a
9 candidate and the candidate's supporters or by a political
10 committee if the message or advertisement is:

11 "(1) Designed to be worn by a person.

12 "(2) Placed as a paid link on an Internet website,
13 provided the message or advertisement is no more than 200
14 characters in length and the link directs the user to another
15 Internet website that complies with subsection (a).

16 "(3) Placed as a graphic or picture link where
17 compliance with the requirements of this section is not
18 reasonably practical due to the size of the graphic or picture
19 link and the link directs the user to another Internet website
20 that complies with subdivision (1).

21 "(4) Placed at no cost on an Internet website for
22 which there is no cost to post content for public users.

23 "(5) Placed or distributed on an unpaid profile
24 account which is available to the public without charge or on
25 a social networking Internet website, as long as the source of
26 the message or advertisement is patently clear from the
27 content or format of the message or advertisement. A candidate

1 or political committee may prominently display a statement
2 indicating that the website or account is an official website
3 or account of the candidate or political committee and is
4 approved by the candidate or political committee. A website or
5 account may not be marked as official without prior approval
6 by the candidate or political committee.

7 "(6) Distributed as a text message or other message
8 via Short Message Service, provided the message is no more
9 than 200 characters in length or requires the recipient to
10 sign up or opt in to receive it.

11 "(7) Connected with or included in any software
12 application or accompanying function, provided that the user
13 signs up, opts in, downloads, or otherwise accesses the
14 application from or through a website that complies with
15 subsection (a).

16 "(8) Sent by a third-party user from or through a
17 campaign or committee's website, provided the website complies
18 with subsection (a).

19 "(9) Contained in or distributed through any other
20 technology related item, service, or device for which
21 compliance with subdivision (1) is not reasonably practical
22 due to the size or nature of such item, service, or device as
23 available, or the means of displaying the message or
24 advertisement makes compliance with subdivision (1)
25 impracticable."

26 Section 3. The provisions of this act are severable.
27 If any part of this act is declared invalid or

1 unconstitutional, that declaration shall not affect the part
2 which remains.

3 Section 4. This act shall become effective July 1,
4 2011, following its passage and approval by the Governor, or
5 its otherwise becoming law.

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Senate

Read for the first time and referred to the Senate
committee on Constitution, Campaign Finance, Eth-
ics, and Elections..... 24-MAR-11

Read for the second time and placed on the calen-
dar..... 31-MAR-11

Read for the third time and passed as amended 25-MAY-11

Yeas 32
Nays 0

Patrick Harris
Secretary