

1 HB432
2 189523-2
3 By Representatives Baker, Fridy, Faulkner, South, England,
4 Hill, Black, Weaver and Daniels
5 RFD: Ethics and Campaign Finance
6 First Read: 15-FEB-18

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8 SYNOPSIS: Under existing law, the State Ethics
9 Commission has investigatory powers and the power
10 to levy administrative fines for minor violations
11 of state ethics laws.

12 This bill would revise the definition of
13 minor violation, revise the manner in which a
14 criminal investigation may be initiated by the
15 State Ethics Commission, increase the size of
16 administrative penalties the commission may impose
17 for minor violations, and clarify that in addition
18 to circuit courts, district courts have
19 jurisdiction to hear cases involving potential
20 violations of ethics laws.

21
22 A BILL
23 TO BE ENTITLED
24 AN ACT

25
26 Relating to state ethics laws; to amend Sections
27 36-25-1, 36-25-4, and 36-25-27, Code of Alabama 1975, to

1 revise the definition of minor violation; to revise the manner
2 in which a criminal investigation may be initiated by the
3 State Ethics Commission; to increase the size of
4 administrative penalties the commission may impose for minor
5 violations, and to provide that district courts have
6 jurisdiction to hear cases involving potential violations of
7 ethics laws.

8 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

9 Section 1. Sections 36-25-1, 36-25-4, and 36-25-27,
10 Code of Alabama 1975, are amended to read as follows:

11 "§36-25-1.

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

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

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

23 "(3) CANDIDATE. This term as used in this chapter
24 shall have the same meaning ascribed to it in Section
25 17-22A-2.

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

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

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

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

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

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

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

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

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

16 "(9) DAY. Calendar day.

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

23 "(11) DE MINIMIS. A value twenty-five dollars (\$25)
24 or less per occasion and an aggregate of fifty dollars (\$50)
25 or less in a calendar year from any single provider, or such
26 other amounts as may be prescribed by the Ethics Commission
27 from time to time by rule pursuant to the Administrative

1 Procedure Act or adjusted each four years from August 1, 2012,
2 to reflect any increase in the cost of living as indicated by
3 the United States Department of Labor Consumer Price Index or
4 any succeeding equivalent index.

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

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

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

25 "(15) FAMILY MEMBER OF THE PUBLIC OFFICIAL. The
26 spouse, a dependent, an adult child and his or her spouse, a

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

3 "(16) GOVERNMENTAL CORPORATIONS AND AUTHORITIES.

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

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

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

18 "(19) LEGISLATIVE BODY. The term "legislative body"
19 includes the following:

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

25 "b. A county commission, and any committee or
26 subcommittee thereof.

1 "c. A city council, city commission, town council,
2 or other municipal council or commission, and any committee or
3 subcommittee thereof.

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

15 "(21) 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, regardless
25 whether the consultant is paid in whole or part from state,
26 county, municipal, or private 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 official on a matter which involves
9 that person's official duties.

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

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

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

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

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

8 "7. A person who is a member of a business,
9 professional, or membership organization by virtue of the
10 person's contribution to or payment of dues to the
11 organization even though the organization engages in lobbying
12 activities.

13 "8. A state governmental agency head or his or her
14 designee who provides or communicates, or both, information
15 relating to policy or positions, or both, affecting the
16 governmental agencies which he or she represents.

17 "(22) MINOR VIOLATION.

18 "a. Any violation of this chapter in which the
19 public official ~~or public employee~~ receives an economic gain
20 in an amount less than ~~two hundred fifty dollars (\$250)~~ one
21 thousand five hundred dollars (\$1,500) or the governmental
22 entity has an economic loss of less than ~~two hundred fifty~~
23 ~~dollars (\$250)~~ one thousand five hundred dollars (\$1,500).

24 "b. Any violation of this chapter by a public
25 employee as determined in the discretion of the commission and
26 the Attorney General or the district attorney for the

1 appropriate jurisdiction based upon consideration of the
2 following factors:

3 "1. The public employee has made substantial or full
4 restitution to the victim or victims.

5 "2. The violation did not involve multiple
6 participants.

7 "3. The violation did not involve great monetary
8 gain to the public employee or great monetary loss to the
9 victim or victims.

10 "4. The violation did not involve a high degree of
11 sophistication or planning; did not occur over a lengthy
12 period of time, or did not involve multiple victims and did
13 not involve a single victim that was victimized more than
14 once.

15 "5. The public employee has resigned or been
16 terminated from the position occupied during which the
17 violation occurred and is otherwise not a current public
18 employee.

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

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

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

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

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

23 "(28) REGULATORY BODY. A state agency which issues
24 regulations in accordance with the Alabama Administrative
25 Procedure Act or a state, county, or municipal department,
26 agency, board, or commission which controls, according to rule

1 or regulation, the activities, business licensure, or
2 functions of any group, person, or persons.

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

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

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

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

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

25 "(34) THING OF VALUE.

26 "a. Any gift, benefit, favor, service, gratuity,
27 tickets or passes to an entertainment, social or sporting

1 event, unsecured loan, other than those loans and forbearances
2 made in the ordinary course of business, reward, promise of
3 future employment, or honoraria or other item of monetary
4 value.

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

8 "1. A contribution reported under Chapter 5 of Title
9 17 or a contribution to an inaugural or transition committee.

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

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

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

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

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

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

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

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

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

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

24 "12. Payment of or reimbursement for actual and
25 necessary transportation and lodging expenses, as well as
26 waiver of registration fees and similar costs, to facilitate
27 the attendance of a public official or public employee, and

1 the spouse of the public official or public employee, at an
2 educational function or widely attended event of which the
3 person is a primary sponsor. This exclusion applies only if
4 the public official or public employee meaningfully
5 participates in the event as a speaker or a panel participant,
6 by presenting information related to his or her agency or
7 matters pending before his or her agency, or by performing a
8 ceremonial function appropriate to his or her official
9 position; or if the public official's or public employee's
10 attendance at the event is appropriate to the performance of
11 his or her official duties or representative function.

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

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

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

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

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

26 "18. Any benefit received as a discount on
27 accommodations, when the discount is given to the public

1 official because the public official is a member of an
2 organization or association whose entire membership receives
3 the discount.

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

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

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

17 "§36-25-4.

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

19 "(1) Prescribe forms for statements required to be
20 filed by this chapter and make the forms available to persons
21 required to file such statements.

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

25 "(3) Accept and file any written information
26 voluntarily supplied that exceeds the requirements of this
27 chapter.

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

4 "(5) Make reports and statements filed with the
5 commission available during regular business hours and online
6 via the Internet to public inquiry subject to such regulations
7 as the commission may prescribe.

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

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

1 thereof filed with the commission. The Examiner of Public
2 Accounts, upon receipt of the directive, shall comply
3 therewith.

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

6 "(9) Issue and publish advisory opinions on the
7 requirements of this chapter, based on a real or hypothetical
8 set of circumstances. Such advisory opinions shall be adopted
9 by a majority vote of the members of the commission present
10 and shall be effective and deemed valid until expressly
11 overruled or altered by the commission or a court of competent
12 jurisdiction. The written advisory opinions of the commission
13 shall protect the person at whose request the opinion was
14 issued and any other person reasonably relying, in good faith,
15 on the advisory opinion in a materially like circumstance from
16 liability to the state, a county, or a municipal subdivision
17 of the state because of any action performed or action
18 refrained from in reliance of the advisory opinion. Nothing in
19 this section shall be deemed to protect any person relying on
20 the advisory opinion if the reliance is not in good faith, is
21 not reasonable, or is not in a materially like circumstance.
22 The commission may impose reasonable charges for publication
23 of the advisory opinions and monies shall be collected,
24 deposited, dispensed, or retained as provided herein. On
25 October 1, 1995, all prior advisory opinions of the commission
26 in conflict with this chapter, shall be ineffective and
27 thereby deemed invalid and otherwise overruled unless there

1 has been any action performed or action refrained from in
2 reliance of a prior advisory opinion.

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

7 "(11) In accordance with Sections 41-22-1 to
8 41-22-27, inclusive, the Alabama Administrative Procedure Act,
9 prescribe, publish, and enforce rules to carry out this
10 chapter.

11 "(b) Additionally, the commission shall work with
12 the Secretary of State to implement the reporting requirements
13 of the Alabama Fair Campaign Practices Act and shall do all of
14 the following:

15 "(1) Approve all forms required by the Fair Campaign
16 Practices Act.

17 "(2) Suggest accounting methods for candidates,
18 principal campaign committees, and political action committees
19 in connection with reports and filings required by the Fair
20 Campaign Practices Act.

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

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

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

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

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

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

18 "(9) Make investigations with respect to statements
19 filed pursuant to the Fair Campaign Practices Act, and with
20 respect to alleged failures to file, or omissions contained
21 therein, any statement required pursuant to the Fair Campaign
22 Practices Act and, upon complaint by any individual, with
23 respect to alleged violation of any part of that act to the
24 extent authorized by law. When in its opinion a thorough audit
25 of any person or any business should be made in order to
26 determine whether the Fair Campaign Practices Act has been
27 violated, the commission shall direct the Examiner of Public

1 Accounts to have an audit made and a report thereof filed with
2 the commission. The Examiner of Public Accounts, upon receipt
3 of the directive, shall comply therewith.

4 "(10) Issue and publish advisory opinions on the
5 requirements of the Fair Campaign Practices Act, based on a
6 real or hypothetical set of circumstances. Such advisory
7 opinions shall be adopted by a majority vote of the members of
8 the commission present and shall be effective and deemed valid
9 until expressly overruled or altered by the commission or a
10 court of competent jurisdiction. The written advisory opinions
11 of the commission shall protect the person at whose request
12 the opinion was issued and any other person reasonably
13 relying, in good faith, on the advisory opinion in a
14 materially like circumstance from liability of any kind
15 because of any action performed or action refrained from in
16 reliance of the advisory opinion. Nothing in this section
17 shall be deemed to protect any person relying on the advisory
18 opinion if the reliance is not in good faith, is not
19 reasonable, or is not in a materially like circumstance. The
20 commission may impose reasonable charges for publication of
21 the advisory opinions and monies shall be collected,
22 deposited, dispensed, or retained as provided herein.

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

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

21 "(d) The commission shall not take any investigatory
22 action on a telephonic or written complaint against a
23 respondent so long as the complainant remains anonymous.
24 Investigatory action on a complaint from an identifiable
25 source shall not be initiated until the true identity of the
26 source has been ascertained and written verification of such
27 ascertainment is in the commission's files. The complaint may

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

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

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

1 commission may not require the respondent to be a witness
2 against himself or herself.

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

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

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

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

1 17.3, and 17.4 of the Alabama Rules of Criminal Procedure. The
2 commission upon seeking issuance of the subpoena shall serve a
3 notice to the recipient of the intent to serve such subpoena.
4 Upon the expiration of 10 days from the service of the notice
5 and the proposed subpoena shall be attached to the notice. Any
6 person or entity served with a subpoena may serve an objection
7 to the issuance of the subpoena within 10 days after service
8 of the notice on the grounds set forth under Rule 17.3(c) of
9 the Alabama Rules of Criminal Procedure, and in such event the
10 subpoena shall not issue until an order to dismiss, modify, or
11 issue the subpoena is entered by a state court of proper
12 jurisdiction, the order to be entered within 30 days after
13 making of the objection. Any vote taken by the members of the
14 commission relative to the issuance of a subpoena shall be
15 protected by and subject to the restrictions relating to
16 secrecy and nondisclosure of information, conversation,
17 knowledge, or evidence of Sections 12-16-214 to 12-16-216,
18 inclusive.

19 "(i) After receiving or initiating a complaint, the
20 commission has 180 days to determine whether probable cause
21 exists. At the expiration of 180 days from the date of receipt
22 or commencement of a complaint, if the commission does not
23 find probable cause, the complaint shall be deemed dismissed
24 and cannot be reinstated based on the same facts alleged in
25 the complaint. Upon good cause shown from the general counsel
26 and chief investigator, the director may request from the
27 commission a one-time extension of 180 days. Upon the majority

1 vote of the commission, the staff may be granted a one-time
2 extension of 180 days in which to complete the investigation.
3 If the commission finds probable cause that a person covered
4 by this chapter has violated it or that the person covered by
5 the Fair Campaign Practices Act has violated that act, the
6 case and the commission's findings shall be forwarded to the
7 district attorney for the jurisdiction in which the alleged
8 acts occurred or to the Attorney General. The case, along with
9 the commission's findings, shall be referred for appropriate
10 legal action. Nothing in this section shall be deemed to limit
11 the commission's ability to take appropriate legal action when
12 so requested by the district attorney for the appropriate
13 jurisdiction or by the Attorney General.

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

1 status update from the Attorney General or district attorney
2 from time to time.

3 "§36-25-27.

4 "(a) (1) Except as otherwise provided, any person
5 subject to this chapter who intentionally violates any
6 provision of this chapter other than those for which a
7 separate penalty is provided for in this section shall, upon
8 conviction, be guilty of a Class B felony.

9 "(2) Any person subject to this chapter who violates
10 any provision of this chapter other than those for which a
11 separate penalty is provided for in this section shall, upon
12 conviction, be guilty of a Class A misdemeanor.

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

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

22 "(5) Any person who makes false statements to an
23 employee of the commission or to the commission itself
24 pursuant to this chapter without reason to believe the
25 accuracy of the statements shall, upon conviction, be guilty
26 of a Class A misdemeanor.

1 "(6) Any person subject to this chapter who
2 intentionally violates this chapter relating to secrecy shall,
3 upon conviction, be guilty of a Class C felony.

4 "(7) Any person subject to this chapter who
5 intentionally fails to disclose information required by this
6 chapter shall, upon conviction, be guilty of a Class A
7 misdemeanor.

8 "~~(b) The commission, if petitioned or agreed to by a~~
9 ~~respondent and the Attorney General or district attorney~~
10 ~~having jurisdiction, by unanimous vote of the members present,~~
11 If a respondent petitions the commission or the respondent
12 otherwise agrees to an administrative resolution of the
13 complaint filed against him or her, the commission may
14 administratively resolve a complaint filed pursuant to this
15 chapter for minor violations upon a unanimous vote and
16 subsequent approval by the appropriate District Attorney or
17 the Attorney General. The commission may ~~levy~~ impose an
18 administrative penalty not to exceed ~~one thousand dollars~~
19 ~~(\$1,000)~~ six thousand dollars (\$6,000) for any minor violation
20 of this chapter. ~~including, but not limited to, the failure to~~
21 ~~timely file a complete and correct statement of economic~~
22 ~~interests. The commission shall, in~~ In addition to any
23 administrative penalty, the commission shall order restitution
24 in the amount of any economic loss to the state, county, ~~and~~
25 ~~municipal governments and their instrumentalities and such~~
26 ~~restitution shall when collected~~ municipality, or
27 instrumentality of the state, county, or municipality, and

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

24 "(c) The enforcement of this chapter shall be vested
25 in the commission; provided, however, nothing in this chapter
26 shall be deemed to limit or otherwise prohibit the Attorney
27 General or the district attorney for the appropriate

1 jurisdiction from enforcing any provision of this chapter as
2 they deem appropriate. In the event the commission, by
3 majority vote, finds that any provision of this chapter has
4 been violated, the alleged violation and any investigation
5 conducted by the commission shall be referred to the district
6 attorney of the appropriate jurisdiction or the Attorney
7 General. The commission shall provide any and all appropriate
8 assistance to such district attorney or Attorney General. Upon
9 the request of such district attorney or the Attorney General,
10 the commission may institute, prosecute, or take such other
11 appropriate legal action regarding such violations, proceeding
12 therein with all rights, privileges, and powers conferred by
13 law upon assistant attorneys general.

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

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

23 "(f) If a person fails to pay any penalty, fine, or
24 restitution imposed by the commission pursuant to this
25 chapter, the commission may file an action to collect the
26 penalty, fine, or restitution in the District Court or Circuit
27 Court of Montgomery County. The person shall be responsible

1 for paying all costs associated with the collection of the
2 penalty, fine, or restitution.

3 ~~"(f)~~ (g) Each district or circuit court of this
4 state shall have jurisdiction ~~of~~ in all cases and actions
5 ~~relative to judicial review, violations, or relating to~~ the
6 enforcement of this chapter, and the venue of any action
7 pursuant to this chapter shall be in the county in which the
8 alleged violation occurred, or in those cases where the
9 alleged violation or violations occurred outside the State of
10 Alabama or for failure to properly or timely file any form
11 required by the commission, in Montgomery County. In the case
12 of judicial review of any administrative decision of the
13 commission, the commission's order, rule, or decision shall be
14 taken as prima facie just and reasonable and the court shall
15 not substitute its judgment for that of the commission as to
16 the weight of the evidence on questions of fact except where
17 otherwise authorized by law.

18 ~~"(g)~~ (h) Any felony prosecution brought pursuant to
19 this chapter shall be commenced within four years after the
20 commission of the offense.

21 ~~"(h)~~ (i) Any misdemeanor prosecution brought
22 pursuant to this chapter shall be commenced within two years
23 after the commission of the offense.

24 ~~"(i)~~ (j) Nothing in this chapter is intended to nor
25 is to be construed as repealing in any way the provisions of
26 any of the criminal laws of this state."

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