

1 SB221
2 188820-4
3 By Senators Pittman, Glover, Brewbaker and Hightower
4 RFD: Constitution, Ethics and Elections
5 First Read: 25-JAN-18

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8 SYNOPSIS: Existing law does not provide a process for
9 the evaluation of business arrangements entered
10 into by members of the Alabama Legislature.

11 This bill would require a member of the
12 Legislature who enters into certain business
13 arrangements with a client for which the member is
14 compensated to seek preapproval from the Ethics
15 Commission prior to receiving compensation under
16 the arrangement.

17 This bill would provide a presumption that
18 certain business arrangements are appropriate under
19 this act.

20 This bill would provide guidance to the
21 Ethics Commission in determining whether to
22 preapprove a business arrangement.

23 This bill would provide limited protection
24 to a member of the Legislature for certain business
25 arrangements entered into by a member.

26 This bill would require members to submit to
27 the Ethics Commission certain detailed information.

1 This bill would authorize the Ethics
2 Commission to adopt rules.

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4 A BILL
5 TO BE ENTITLED
6 AN ACT

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8 Relating to the Code of Ethics; to add Section
9 36-25-7.1 to the Code of Alabama 1975; to require a member of
10 the Legislature who enters into certain business arrangements
11 with a client for which the member is compensated to seek
12 preapproval from the Ethics Commission prior to receiving
13 compensation under the arrangement; to provide a presumption
14 that certain business arrangements are appropriate under this
15 act; to provide guidance to the Ethics Commission in
16 determining whether to preapprove a business arrangement; to
17 provide limited protection to a member of the Legislature who
18 is compensated for providing professional services in certain
19 circumstances; to require members to submit to the Ethics
20 Commission certain detailed information; and to authorize the
21 Ethics Commission to adopt rules.

22 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

23 Section 1. Section 36-25-7.1 is added to the Code of
24 Alabama 1975, to read as follows:

25 (a) For the purposes of this section, the following
26 words have the following meanings:

1 (1) BUSINESS ARRANGEMENT. A contract or agreement
2 entered into between a member and a client whereby the client
3 promises to provide compensation to the member, whether
4 directly or through another entity, in exchange for goods or
5 services provided by the member. The term does not include
6 arrangements that are personal in nature or where the
7 compensation to the member is routine or de minimis and in a
8 trade in which the member actively engaged before the member
9 qualified to run for legislative office.

10 (2) CLIENT. An individual, business or other entity,
11 board, commission, or political subdivision of the state.

12 (3) COMPENSATION. The payment of money. The term
13 includes commissions.

14 (4) MEMBER. A member of the state Legislature.

15 (b) A member may not accept compensation pursuant to
16 any business arrangement until the member has submitted a
17 detailed written request seeking preapproval from the
18 commission regarding the business arrangement in accordance
19 with this section.

20 (c) After receiving a request, the commission has 60
21 days to determine whether to preapprove the business
22 arrangement; provided, however, the commission shall have up
23 to 30 additional days to make its determination if the
24 commission finds it needs additional information to make a
25 determination. The member shall cooperate with any request
26 from the commission for additional information, documentation,
27 or other evidence the commission deems appropriate.

1 (d) The commission shall consider all of the
2 following factors, taken together with the totality of the
3 circumstances, when determining whether to preapprove a
4 business arrangement:

5 (1) The level of expertise or knowledge the member
6 possesses with regard to any specific service the member would
7 provide under the business arrangement.

8 (2) The extent to which the performance to be
9 provided by the member under the business arrangement is of
10 the like and kind the client would customarily or routinely
11 seek.

12 (3) The rate of compensation to the member for
13 services compared to the usual and customary rate for the
14 services provided in that field.

15 (4) The rate of compensation to the member for goods
16 provided compared to the fair market value or the usual and
17 customary cost charged for those goods.

18 (e) There shall be a presumption that the following
19 types of business arrangements under this section are
20 appropriate:

21 (1) The continuation of services or goods provided
22 where the business relationship between the member and the
23 client existed before the member qualified to run for
24 legislative office and the performance by the member would be
25 substantially similar to the performance provided by the
26 member to that particular client in the past.

1 (2) Professional services provided in a field of
2 work in which the member regularly engages at a compensation
3 rate that is usual and customary for that field.

4 (3) Goods provided by a member in a business in
5 which the member regularly engages, purchased at their fair
6 market value and are of the like, kind, and quantity that is
7 usual and customary for the member's business.

8 (f) Preapproval under this section requires a
9 majority vote of the members of the commission present. If a
10 regularly scheduled meeting of the commission does not occur
11 in a time frame that allows the commission to make a
12 determination under this section, the director shall call a
13 special meeting for consideration of the business arrangement.
14 A preapproval by the commission shall be effective and deemed
15 valid only to the extent that the facts presented, assertions
16 alleged, and information provided by the member to the
17 commission are complete and accurate.

18 (g) The member shall notify the commission of any
19 material change in a business arrangement or if the member
20 becomes aware of additional information that may potentially
21 affect the commission's determination under this section.

22 (h) The provisions of this section may not require
23 the disclosure of any lawyer-client privilege or
24 doctor-patient privilege otherwise protected by law, provided
25 the compensation rate for the services rendered or goods
26 provided by the member are at usual and customary rates.

1 (i) Preapproval by the commission of a business
2 arrangement pursuant to this section shall protect the member
3 from civil and criminal liability to the state or any
4 political subdivision of the state for services rendered or
5 goods provided in reliance on the commission's approval of the
6 business arrangement; provided, however, the protection
7 granted under this subsection only applies to the extent that
8 the facts presented, assertions alleged, and information
9 provided by the member to the commission are complete and
10 accurate. Failure by the commission to preapprove a business
11 arrangement pursuant to this section does not by itself
12 constitute evidence of any wrongdoing on the part of the
13 member.

14 (j) (1) Except as provided in subdivision (2),
15 records generated to comply with the provisions of this
16 section are public records for purposes of Section 36-12-40.

17 (2) Upon request by the member and a showing of good
18 cause by the member that public disclosure of information
19 relating to the business arrangement may cause harm to the
20 member or the other parties to the business arrangement, the
21 commission may withhold such information from public
22 disclosure, provided; however, the fact that a request for
23 preapproval by the member was made shall remain a public
24 record.

25 (k) In addition to the statement of economic
26 interest filed pursuant to this chapter, no later than the
27 date a member is sworn into office, each member shall file

1 with the commission a detailed list of all clients with which
2 the member was engaged in a business arrangement at the time
3 the member qualified to run for office.

4 (1) The commission may adopt rules to carry out this
5 section.

6 Section 2. This act shall become effective
7 immediately following its passage and approval by the
8 Governor, or its otherwise becoming law and shall apply to
9 members of the Legislature on and after November 7, 2018.