

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

1 SB284

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4 ENROLLED, An Act,

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

12 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

22 (b) Currently, the Fair Campaign Practices Act,
23 Title 17, Chapter 5, commencing with Section 17-5-1, et seq.,
24 Code of Alabama 1975, regulates the disclosure of
25 contributions and expenditures made for the purpose of

1 influencing the outcome of an election. This 2011 amendatory
2 act is intended to regulate the disclosure of contributions
3 and expenditures for "electioneering communications" which
4 currently do not fall within the ambit of the Fair Campaign
5 Practices Act.

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

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

11 "§17-5-2.

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

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

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

24 "b. Received contributions or made expenditures, or
25 given his or her consent for any other person or persons to

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

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

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

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

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

24 "(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

1 this subparagraph shall not apply in the case of costs
2 incurred by the committee with respect to a display of the
3 listing made on broadcasting stations, or in newspapers,
4 magazines, or other similar types of general public political
5 advertising.

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

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

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

1 entails an expenditure in excess of one thousand dollars
2 (\$1,000).

3 "(5) EXPENDITURE.

4 "a. The following shall be considered expenditures:

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

8 "2. A contract or agreement to make any purchase,
9 payment, distribution, loan, advance, deposit, or gift of
10 money or anything of value, for the purpose of influencing the
11 result of an election.

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

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

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

20 "2. Nonpartisan activity designed to encourage
21 individuals to register to vote, or to vote.

22 "3. Any communication by any membership organization
23 to its members or by a corporation to its stockholders and
24 employees if the membership organization or corporation is not

1 organized primarily for the purpose of influencing the result
2 of an election.

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

8 "5. Any unreimbursed payment for travel expenses
9 made by an individual who, on his or her own behalf,
10 volunteers personal services to a candidate or political
11 committee.

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

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

1 "(6) IDENTIFICATION. The full name and complete
2 address.

3 "(7) LOAN. A transfer of money, property, or
4 anything of value in consideration of a promise or obligation,
5 conditional or not, to repay in whole or part.

6 "(8) LOCAL OFFICE. Any office under the constitution
7 and laws of the state, except circuit, district, or
8 legislative offices, filled by election of the registered
9 voters of a single county or municipality, or by the voters of
10 a division contained within a county or municipality.

11 "(9) PERSON. An individual, partnership, committee,
12 association, corporation, labor organization, or any other
13 organization or group of persons.

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

1 "(11) POLITICAL ACTION COMMITTEE. Any political
2 action committee, club, association, political party, or other
3 group of one or more persons which receives or anticipates
4 receiving contributions or makes or anticipates making
5 expenditures to or on behalf of any elected official,
6 proposition, candidate, principal campaign committee or other
7 political action committee. For the purposes of this chapter,
8 an individual who makes a personal political contribution
9 shall not be considered a political action committee.

10 "(12) PRINCIPAL CAMPAIGN COMMITTEE. The principal
11 campaign committee designated by a candidate under Section
12 17-5-4. A political action committee established primarily to
13 benefit an individual candidate or an individual elected
14 official shall be considered a principal campaign committee
15 for purposes of this chapter.

16 "(13) PROPOSITION. Any proposal for submission to
17 the general public for its approval or rejection, including
18 proposed as well as qualified ballot questions.

19 "(14) PUBLIC OFFICIAL. Any person elected to public
20 office, whether or not that person has taken office, by the
21 vote of the people at the state, county, or municipal level of
22 government or their instrumentalities, including governmental
23 corporations, and any person appointed to a position at the
24 state, county, or municipal level of government or their
25 instrumentalities, including governmental corporations. For

1 purposes of this chapter, a public official includes the
2 chairs and vice chairs or the equivalent offices of each state
3 political party as defined in Section 17-13-40.

4 "(15) STATE. The State of Alabama.

5 "(16) STATE OFFICE. All offices under the
6 constitution and laws of the state filled by election of the
7 registered voters of the state or of any circuit or district
8 and shall include legislative offices.

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

12 "§17-5-8.

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

18 "(1) Regardless of whether the candidate has
19 opposition in any election, between 50 and 45 days before and
20 between 10 and five days before the date of any primary,
21 special, runoff, or general election for which a political
22 action committee or principal campaign committee receives
23 contributions or makes expenditures with a view toward
24 influencing such election's result.

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

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

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

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

16 "(2) The identification of each person who has made
17 contributions to such committee or candidate within the
18 calendar year in an aggregate amount greater than one hundred
19 dollars (\$100), together with the amount and date of all such
20 contributions; provided, however, in the case of a political
21 action committee identification shall mean the name and city
22 of residence of each person who has made contributions within
23 the calendar year in an aggregate amount greater than one
24 hundred dollars (\$100).

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

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

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

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

13 "(7) The identification of each person to whom
14 expenditures have been made by or on behalf of such committee
15 or elected official within the calendar year in an aggregate
16 amount greater than one hundred dollars (\$100), the amount,
17 date, and purpose of each such expenditure, and, if
18 applicable, the designation of each constitutional amendment
19 or other proposition with respect to which an expenditure was
20 made.

21 "(8) The identification of each person to whom an
22 expenditure for personal services, salaries, and reimbursed
23 expenses greater than one hundred dollars (\$100) has been
24 made, and which is not otherwise reported or exempted from the

1 provisions of this chapter, including the amount, date, and
2 purpose of such expenditure.

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

5 "(10) The amount and nature of debts and obligations
6 owed by or to the committee or elected official, together with
7 a statement as to the circumstances and conditions under which
8 any such debt or obligation was extinguished and the
9 consideration therefor.

10 "(d) Each report required by this section shall be
11 signed and filed by the elected official or on behalf of the
12 political action committee by its chair or treasurer and, if
13 filed on behalf of a principal campaign committee, by the
14 candidate represented by such committee. There shall be
15 attached to each such report an affidavit subscribed and sworn
16 to by the official or chair or treasurer and, if filed by a
17 principal campaign committee, the candidate represented by
18 such committee, setting forth in substance that such report is
19 to the best of his or her knowledge and belief in all respects
20 true and complete, and, if made by a candidate, that he or she
21 has not received any contributions or made any expenditures
22 which are not set forth and covered by such report.

23 "(e) In connection with any electioneering
24 communication paid for by a person, nonprofit corporation,
25 entity, principal campaign committee, or other political

1 committee or entity, the payor shall disclose its
2 contributions and expenditures in accordance with this
3 section. The disclosure shall be made in the same form and at
4 the same time as is required of political action committees in
5 this section; provided, however, no duplicate reporting shall
6 be required by a political committee.

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

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

23 "(h) The corporate contribution limits contained in
24 Sections 10A-21-1.02, 10A-21-1.03, and 10A-21-1.04 shall not
25 apply in any respect to an electioneering communication;

1 provided, however, the corporate contribution limits contained
2 in Sections 10A-21-1.02, 10A-21-1.03, and 10A-21-1.04 shall
3 continue in force and effect for contributions by corporations
4 to principal campaign committees, political committees, and to
5 political parties.

6 "§17-5-12.

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

1 principal campaign committee, or political action committee or
2 entity that paid for such communication.

3 "(b) This section does not apply to any political
4 advertisement or electioneering communication used by a
5 candidate and the candidate's supporters or by a political
6 committee if the message or advertisement is:

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

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

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

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

19 "(5) Placed or distributed on an unpaid profile
20 account which is available to the public without charge or on
21 a social networking Internet website, as long as the source of
22 the message or advertisement is patently clear from the
23 content or format of the message or advertisement. A candidate
24 or political committee may prominently display a statement
25 indicating that the website or account is an official website

1 or account of the candidate or political committee and is
2 approved by the candidate or political committee. A website or
3 account may not be marked as official without prior approval
4 by the candidate or political committee.

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

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

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

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

24 Section 3. The provisions of this act are severable.
25 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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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB284

Senate 25-MAY-11

I hereby certify that the within Act originated in and passed the Senate, as amended.

Patrick Harris
Secretary

House of Representatives
Passed: 09-JUN-11

By: Senator Orr