



## March 16, 2011 Implementation Deadline for New Ethics Law

In December 2010, the Alabama Legislature passed sweeping ethics legislation. This alert is focused on the primary changes to Alabama's lobbying and gift laws. For most entities, two new provisions will have the greatest potential effect and will require the most thoughtful consideration:

- The expansion of the definition of lobbying to include "promoting or attempting to influence the awarding of a grant or contract with any department or agency of the executive, legislative, or judicial branch of state government."<sup>1</sup> (emphasis added); and
- The prohibition on any public official or employee (state, county and local – approximately 290,000 people in Alabama) soliciting or receiving "anything" from any person (not just lobbyists or principals) "for the purpose of influencing official action. . ." <sup>2</sup> (emphasis added).

At this point, the Alabama Ethics Commission ("the Commission") has issued only two advisory opinions. Since the Commission intends to interpret the law through advisory opinions, much of the interpretation is forthcoming. In addition, legislation has been introduced to clarify the language prohibiting the provision of "anything" for the purpose of influencing official action to read: "anything for the purpose of corruptly influencing official action. . ." (emphasis added). Unfortunately, this part of the law becomes effective March 16, 2011 (other portions were effective January 1, 2011), thereby requiring immediate compliance in the absence of legislative clarification.

### Major Changes in the Legislation

The legislation makes the following major changes:

- The two changes discussed above.
- Changes the exceptions to the definition of "thing of value"
- Places a per occurrence and an annual limitation on the value of food and beverages that principals and lobbyists may provide to public officials and public employees in certain settings
- Establishes an ethics training requirement for lobbyists and principals (effective January 1, 2011)
- Provides the Ethics Commission with subpoena power

<sup>1</sup> Ala. Code § 36-25-1.5. Ethics Commission Advisory Opinion 2011-02 has interpreted this provision so that: (1) "line" sales employees in the ordinary course of sales activities do not have to register as a lobbyist; (2) those who supervise sales employees (district manager/supervisor/others) likely must register as a lobbyist if they have frequent contact with state agencies and departments; (3) third-party sales persons who represent various entities (does not address exclusive representation) likely have to register (this is an issue on which some businesses are seeking clarification); and (4) third parties who do not engage in sales, just influencing the process, have to register (traditional lobbyist types).

<sup>2</sup> Ala. Code § 36-25-7(a). The Ethics Commission has written a letter to the Legislature requesting a change to this provision so that it prohibits providing "anything for the purpose of corruptly influencing official action. . .", as it "would alleviate any questions relating to vagueness and enforceability." (emphasis added).

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### Changes Not Included

While the ethics law makes numerous changes, it did not make other changes that were originally proposed or that could have been proposed:

- Fails to ban explicitly all food or gifts from principals and lobbyists<sup>3</sup>
- Fails to require the reporting of all expenditures on public officials and public employees
- Fails to change the information reported by lobbyists and principals

### Recommended Compliance Steps

As a result of these changes, it is recommended that entities conduct the following activities:

- Review the definitions of lobbying<sup>4</sup> and lobbyist<sup>5</sup> to ensure compliance with the law
- Determine whether the expanded definition of lobbying to include promoting or attempting to influence certain grant and contracting activities with state government requires anyone associated with the entity to register as a lobbyist
- Establish an internal education and compliance program (if not in place already)
- Consider a gift ban to all state and local public officials and employees until the Commission or Legislature provides additional guidance

For more information about this legislation, please contact David Stewart or an attorney with our [Government Affairs Practice Group](#).

## Former Chief of Staff to Governor Riley, Dave Stewart, Joins Bradley Arant Boulton Cummings

Dave Stewart, former Chief of Staff to Alabama Governor Bob Riley, has joined the firm as Senior Advisor for Government Affairs and Economic Development. Stewart, who has spent his career serving in high-level positions in government, politics and the private sector, works with the firm's government relations and economic development teams as a non-attorney professional. His experience as a senior official in the Riley Administration for eight years gives him a unique understanding of how government works and how it may be used to solve problems and create opportunities. *Inside Alabama Politics*, a publication widely known as Alabama's No. 1 source for insider political news, recently reported that Dave's "political savvy, leadership experience and strong track record make him an enviable hire." We are excited to welcome Dave to the team.

<sup>3</sup> The legislation did not explicitly prohibit principals and lobbyists from providing food or beverages (or any other gifts) as some states have proposed. Instead, there are 18 exceptions to "thing of value" that seem to allow these gifts from principals and lobbyists. The legislation, however, may have indirectly established a gift ban with the prohibition on any person providing "anything for the purpose of influencing official action, regardless of whether or not the thing solicited or received is a thing of value." Ala. Code § 36-25-7(a).

<sup>4</sup> In addition to seeking to influence state contracts and grants, lobbying generally includes seeking to influence legislation and regulations at the state, county and local levels of government.

<sup>5</sup> To be a lobbyist, one must receive compensation or reimbursement to lobby and not all lobbying activities make one a lobbyist, which requires registration and reporting. Employees must register as a lobbyist if they lobby as a "regular and usual part of employment".

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