

1 SB469
2 160429-1
3 By Senators Taylor, Waggoner, Singleton and Orr
4 RFD: Constitution, Campaign Finance, Ethics, and Elections
5 First Read: 18-MAR-14

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8 SYNOPSIS: This bill would amend and supplement the
9 Fair Campaign Practices Act (FCPA) to exempt
10 elected officials that have closed their principal
11 campaign committees from annual reporting
12 requirements; would provide further for the
13 authority of the judge of probate and Secretary of
14 State to assess civil fines for failing to timely
15 and correctly file a report; would provide for an
16 administrative review of contested fines; and would
17 authorize the Secretary of State to promulgate
18 rules necessary to administer the FCPA.

19
20 A BILL
21 TO BE ENTITLED
22 AN ACT

23
24 To amend Sections 17-5-8 and 17-5-19, Code of
25 Alabama 1975, relating to the filing of annual reports and
26 civil penalties pursuant to the Fair Campaign Practices Act
27 (FCPA); and to add Sections 17-5-19.1, 17-5-19.2, and 17-5-21

1 to the Code of Alabama 1975, related to the FCPA; to provide
2 further for annual filing requirements pursuant to the FCPA,
3 provide that the Secretary of State and judge of probate may
4 asses and levy administrative fines; to provide for the
5 administrative review of contested fines for late or
6 inaccurate filings; and to provide for the Secretary of State
7 to promulgate administrative rules related to the Fair
8 Campaign Practices Act.

9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

10 Section 1. Sections 17-5-8 and 17-5-19, Code of
11 Alabama 1975, are amended to read as follows:

12 "§17-5-8.

13 "The treasurer, designated filing agent, or
14 candidate, shall file with the Secretary of State or judge of
15 probate, as designated in Section 17-5-9, periodic reports of
16 contributions and expenditures at the following times once a
17 principal campaign committee files its statement under Section
18 17-5-4 or a political action committee files its statement of
19 organization under Section 17-5-5:

20 "(1) Beginning after the 2012 election cycle,
21 regardless of whether a candidate has opposition in any
22 election, monthly reports not later than the second business
23 day of the subsequent month, beginning 12 months before the
24 date of any primary, special, runoff, or general election for
25 which a political action committee or principal campaign
26 committee receives contributions or makes expenditures with a
27 view toward influencing such election's result. A monthly

1 report shall include all reportable transactions for the
2 previous full month period. Reports shall be required as
3 provided in subdivisions (2) and (3).

4 "(2) With regard to a primary, special, runoff, or
5 general election, a report shall be required weekly on the
6 Monday of the succeeding week for each of the four weeks
7 before the election that includes all reportable activities
8 for the previous week.

9 "(3)a. In addition to the reporting dates specified
10 in subdivisions (1) and (2), reports required to be filed with
11 the Secretary of State shall be filed with the Secretary of
12 State on the eighth, seventh, sixth, fifth, fourth, third, and
13 second day preceding a legislative, state school board, or
14 other statewide primary, special, runoff, or general election,
15 and by 12:01 p.m. on the day preceding a legislative, state
16 school board, or statewide, primary, special, runoff, or
17 general election if any principal campaign committee or
18 political action committee receives or spends in the aggregate
19 five thousand dollars (\$5,000) or more on any day with a view
20 toward influencing an election's results. If a daily report is
21 required pursuant to this subdivision, the report shall
22 include all reportable activity occurring on the day of the
23 report as well as all reportable activity that has occurred on
24 each day since the most recent prior report. Principal
25 campaign committees and political action committees that are
26 exempt from electronic filing and principal campaign
27 committees and political action committees required to make

1 daily reports pursuant to this subdivision for the 2012
2 election cycle may file reports by facsimile (FAX)
3 transmission provided they keep proper documentation in their
4 office.

5 "b. Electronic filing on the Secretary of State's
6 website may be implemented sooner than the 2014 election cycle
7 as an alternative method of reporting; however, electronic
8 filing shall be required beginning with the 2014 election
9 cycle. Electronic filings shall be available to the public on
10 a searchable database maintained on the Secretary of State's
11 website.

12 "(b) Except as provided in subsection (k), each
13 principal campaign committee, political action committee, and
14 elected state and local official covered under the provisions
15 of this chapter who has not closed his or her principal
16 campaign committee, shall annually file with the Secretary of
17 State or judge of probate, as designated in Section 17-5-9,
18 reports of contributions and expenditures made during that
19 year. The annual reports required under this subsection shall
20 be made on or before January 31 of the succeeding year.

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

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

25 "(2) The identification of each person who has made
26 contributions to such committee or candidate within the
27 calendar year in an aggregate amount greater than one hundred

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

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

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

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

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

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

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

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

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

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

1 "(e) Commencing with the 2014 election cycle,
2 electronic filing of contributions and expenditures for any
3 legislative, state school board, and statewide primary,
4 special, runoff, or general election shall be mandatory,
5 except as provided in subsection (g). The Secretary of State
6 may provide electronic reporting sooner than the 2014 election
7 cycle. Electronic filing shall satisfy any filing requirements
8 of this chapter and no paper filing is required for any report
9 filed electronically.

10 "(f) In the 2012 election cycle the provisions for
11 the time of filing contained in subsection (a) shall apply to
12 the paper or facsimile (FAX) filings for any legislative,
13 state school board, or statewide primary, special, runoff, or
14 general election.

15 "(g) Electronic filing of reports shall not apply to
16 any campaign, principal campaign committee, or political
17 action committee receiving ten thousand dollars (\$10,000) or
18 less per election cycle.

19 "(h) In connection with any electioneering
20 communication paid for by a person, nonprofit corporation,
21 entity, principal campaign committee, or other political
22 committee or entity, the payor shall disclose its
23 contributions and expenditures in accordance with this
24 section. The disclosure shall be made in the same form and at
25 the same time as is required of political action committees in
26 this section; provided, however, no duplicate reporting shall
27 be required by a political committee.

1 "(i) Notwithstanding any disclosure requirements of
2 subsection (h), churches are exempt from the requirements of
3 this section unless the church's expenditures are used to
4 influence the outcome of an election. Nothing herein shall
5 require a church to disclose the identities, donations, or
6 contributions of members of the church. As used in this
7 section, the term church is defined in accordance with and
8 recognized by Internal Revenue Service guidelines and
9 regulations.

10 "(j) Notwithstanding the disclosure requirements of
11 this section, the provisions of this section shall not be
12 interpreted to nor shall they require any disclosure for
13 expenses incurred for any electioneering communication used by
14 any membership or trade organization to communicate with or
15 inform its members, its members' families, or its members'
16 employees or for any electioneering communication by a
17 business entity of any type to its employees or stockholders
18 or their families.

19 "(k) Each report required by this section shall
20 include all reportable transactions occurring since the most
21 recent prior report; however, duplicate reporting is not
22 required by this section. A political action committee or
23 principal campaign committee that is required to file a daily
24 report is not required to also file a weekly report for the
25 week preceding an election specified in subdivision (3) of
26 subsection (a); a committee required to file a weekly report
27 is not required to also file a monthly report in the month in

1 which the election is held; and a committee required to file a
2 monthly report is not required to also file an annual report
3 in the year in which the election is held. The monetary
4 balance in a report of each committee shall begin at the
5 monetary amount appearing in the most recent prior report.

6 "(1) The Secretary of State may promulgate
7 administrative rules pursuant to the Alabama Administrative
8 Procedure Act as are necessary to implement and administer the
9 changes made to this section by Act 2012-477.

10 "§17-5-19.

11 "(a) Except as otherwise provided in this section, a
12 person who intentionally violates any provision of this
13 chapter shall be guilty, upon conviction, of a Class A
14 misdemeanor.

15 "(b) A person who intentionally violates any
16 reporting requirement of Sections 17-5-4, 17-5-5, or 17-5-8
17 shall be guilty, upon conviction, of a Class A misdemeanor. A
18 person's failure to promptly file a required report upon
19 discovering or receiving notice from any person that the
20 report has not been filed, or the failure to promptly correct
21 an omission, error, or other discrepancy in a filed report
22 upon discovering or receiving notice of the discrepancy, shall
23 create a rebuttable presumption of intent to violate the
24 applicable reporting requirement.

25 "(c) Any person who intentionally violates Section
26 17-5-7 shall be guilty, upon conviction, of a Class B felony.

1 ~~"(d) A person who fails to timely or accurately file~~
2 ~~any report required by this chapter shall be assessed a civil~~
3 ~~penalty of the greater of three hundred dollars (\$300) or ten~~
4 ~~percent of the amount not properly reported for a first~~
5 ~~offense in an election cycle, six hundred dollars (\$600) or 15~~
6 ~~percent of the amount not properly reported for a second~~
7 ~~offense in an election cycle, and one thousand two hundred~~
8 ~~dollars (\$1,200) or 20 percent of the amount not properly~~
9 ~~reported for a third or subsequent offense in an election~~
10 ~~cycle. A fourth failure to timely or accurately file a report~~
11 ~~in an election cycle shall create a rebuttable presumption of~~
12 ~~intent to violate the reporting requirements of this chapter.~~
13 ~~Civil penalties shall be paid to the appropriate filing~~
14 ~~official. All penalties collected by a judge of probate shall~~
15 ~~be distributed to that county's general fund, and all~~
16 ~~penalties collected by the Secretary of State shall be~~
17 ~~distributed to the State General Fund. A person who~~
18 ~~voluntarily files an amended report to correct an error in an~~
19 ~~otherwise timely filed report, without being prompted by a~~
20 ~~filing official shall not be subjected to a civil penalty~~
21 ~~under this subsection, so long as, in the case of a candidate,~~
22 ~~the corrected report is filed prior to the election at issue,~~
23 ~~and so long as, in the case of a political action committee,~~
24 ~~the corrected report is filed prior to the election which the~~
25 ~~contribution was given to influence.~~

26 ~~"(e) (d) The Attorney General or district attorney~~
27 ~~for the appropriate jurisdiction may prosecute violations of~~

1 this chapter. Venue for cases involving violations of this
2 chapter shall be in the county in which the violation occurred
3 or the county in which the alleged violator resides or is
4 incorporated. If the alleged violator resides or is
5 incorporated outside of the State of Alabama or if the
6 violation or violations occurred outside the State of Alabama,
7 venue shall be in Montgomery County.

8 "~~(f)~~ (e) No prosecution for violation of this chapter
9 shall be commenced later than two years after the date of
10 violation. Notwithstanding the foregoing, a prosecution
11 brought pursuant to Section 17-5-7 shall be commenced within
12 four years after the commission of the offense."

13 Section 2. Sections 17-5-19.1, 17-5-19.2, and
14 17-5-21 are added to the Code of Alabama 1975, to read as
15 follows:

16 §17-5-19.1

17 (a) The Secretary of State or judge of probate, as
18 appropriate based on the location of filing, may assess and
19 levy an administrative fine, as provided in subsection (b),
20 against any person who he or she finds, by probable cause, has
21 failed to timely or accurately file any report required by
22 this chapter.

23 (b) Administrative fines assessed pursuant to
24 subsection (a) shall be as follows:

25 (1) For a first offense in an election cycle, not
26 more than the greater of three hundred dollars (\$300) or 10

1 percent of the amount of contributions or expenditures not
2 properly reported.

3 (2) For a second offense in an election cycle, not
4 more than the greater of six hundred dollars (\$600) or 15
5 percent of the amount of contributions or expenditures not
6 properly reported.

7 (3) For a third or subsequent offense in an election
8 cycle, not more than the greater of one thousand two hundred
9 dollars (\$1,200) or 20 percent of the amount of contributions
10 or expenditures not properly reported.

11 (c) A fourth failure to timely or accurately file a
12 report in an election cycle shall create a rebuttable
13 presumption of intent to violate the reporting requirements of
14 this chapter. The Secretary of State or judge of probate, as
15 appropriate based on the location of filing, shall notify the
16 Attorney General and the appropriate district attorney of all
17 persons who violate the filing requirements four or more times
18 in an election cycle.

19 (d) Upon imposition of an administrative fine
20 pursuant to this section, the appropriate officer shall send
21 the person upon whom the fine is being assessed proper
22 notification of the assessment by certified mail. If an
23 electronic mail address is on file with the Secretary of
24 State, the Secretary of State shall also provide such
25 notification by electronic mail.

26 (e) Administrative fines assessed pursuant to this
27 section shall be paid to the assessing official within 30 days

1 of the date the notice required by subsection (d) is mailed,
2 unless contested pursuant to Section 17-5-19.2. The assessing
3 official may permit a fine to be paid out of the funds of the
4 principal campaign committee or the political action committee
5 to which the untimely or inaccurate report pertains. The
6 Secretary of State or judge of probate, through his or her
7 attorney, may institute proceedings to recover any fines
8 assessed pursuant to this section and, in addition, may
9 recover necessary fees and costs associated with the
10 collection action.

11 (f) All fines collected by a judge of probate shall
12 be distributed to that county's general fund, and all fines
13 collected by the Secretary of State shall be distributed to
14 the State General Fund.

15 (g) A person who voluntarily files an amended report
16 to correct an error in an otherwise timely filed report,
17 without being prompted by a filing official, shall not be
18 subjected to an administrative fine under this subsection, so
19 long as, in the case of a candidate, the corrected report is
20 filed prior to the election at issue, and so long as, in the
21 case of a political action committee, the corrected report is
22 filed prior to the election which the contribution was given
23 to influence.

24 §17-5-19.2.

25 (a) Any person upon whom an administrative fine has
26 been assessed pursuant to Section 17-5-19.1 may contest the
27 assessment by seeking administrative review. The person shall

1 submit a written request for administrative review,
2 accompanied by relevant documentary evidence, to the assessing
3 official, postmarked no later than 14 days after the date on
4 which notification of the assessment was mailed to such
5 person's last known address in accordance with Section
6 17-5-19.1. Upon receipt of a timely request for administrative
7 review, the secretary of state or judge of probate shall
8 determine, based on the evidence accompanying the request,
9 whether to reduce or set aside the fine on a finding of good
10 cause or finalize the assessment. If the assessment is
11 finalized, the assessing official shall notify the person
12 against whom the fine is assessed by certified mail, and the
13 person shall pay the fine to the assessing official within 30
14 days of the date the notice was mailed. In conducting an
15 administrative review pursuant to subsection (a), the
16 Secretary of State or Judge of Probate may request the
17 production of any and all relevant documents. An
18 administrative review shall be completed within 30 days. A
19 person who has exhausted the process of administrative review
20 of a contested assessment is entitled to judicial review,
21 pursuant to Section 41-22-20.

22 §17-5-21.

23 The Secretary of State is authorized to promulgate
24 administrative rules pursuant to the Alabama Administrative
25 Procedure Act as are necessary to implement and administer the
26 Alabama Fair Campaign Practices Act.

1 Section 3. This act shall become effective
2 immediately following its passage and approval by the
3 Governor, or its otherwise becoming law.