

1 SB298
2 105528-1
3 By Senator Barron
4 RFD: Governmental Affairs
5 First Read: 05-FEB-09

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8 SYNOPSIS: Under existing law, there is no time period
9 within which complaints filed with the Ethics
10 Commission are to be investigated.

11 This bill would provide that a complaint
12 filed with the Ethics Commission must be
13 investigated within 30 days from the date the
14 complaint was filed.

15
16 A BILL
17 TO BE ENTITLED
18 AN ACT
19

20 To amend Section 36-25-4, Code of Alabama 1975,
21 relating to complaints filed with the Ethics Commission, to
22 provide that a complaint filed with the commission must be
23 investigated within 30 days from the date the complaint was
24 filed.

25 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

26 Section 1. Section 36-25-4, Code of Alabama 1975, is
27 amended to read as follows:

1 "§36-25-4.

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

3 "(1) Prescribe forms for statements required to be
4 filed by this chapter and make the forms available to persons
5 required to file such statements.

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

9 "(3) Accept and file any written information
10 voluntarily supplied that exceeds the requirements of this
11 chapter.

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

15 "(5) Make reports and statements filed with the
16 commission available during regular business hours to public
17 inquiry subject to such regulations as the commission may
18 prescribe including, but not limited to, regulations requiring
19 identification by name, occupation, address, and telephone
20 number of each person examining information on file with the
21 commission.

22 "(6) Preserve reports and statements for a period
23 consistent with the statute of limitations as contained in
24 this chapter. The reports and statements, when no longer
25 required to be retained, shall be disposed of by shredding the
26 reports and statements and disposing of or recycling them, or
27 otherwise disposing of the reports and statements in any other

1 manner prescribed by law. Nothing in this section shall in any
2 manner limit the Department of Archives and History from
3 receiving and retaining any documents pursuant to existing
4 law.

5 "(7) Make investigations with respect to statements
6 filed pursuant to this chapter, and with respect to alleged
7 failures to file, or omissions contained therein, any
8 statement required pursuant to this chapter and, upon
9 complaint by any individual, with respect to alleged violation
10 of any part of this chapter to the extent authorized by law
11 when in its opinion a thorough audit of any person or any
12 business should be made in order to determine whether this
13 chapter has been violated, the commission shall direct the
14 Examiner of Public Accounts to have an audit made and a report
15 thereof filed with the commission. The Examiner of Public
16 Accounts shall, upon receipt of the directive, comply
17 therewith.

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

20 "(9) Issue and publish advisory opinions on the
21 requirements of this chapter, based on a real or hypothetical
22 set of circumstances. Such advisory opinions shall be adopted
23 by a majority vote of the members of the commission present
24 and shall be effective and deemed valid until expressly
25 overruled or altered by the commission or a court of competent
26 jurisdiction. The written advisory opinions of the commission
27 shall protect the person at whose request the opinion was

1 issued and any other person reasonably relying, in good faith,
2 on the advisory opinion in a materially like circumstance from
3 liability to the state, a county, or a municipal subdivision
4 of the state because of any action performed or action
5 refrained from in reliance of the advisory opinion. Nothing in
6 this section shall be deemed to protect any person relying on
7 the advisory opinion if the reliance is not in good faith, is
8 not reasonable, is not in a materially like circumstance. The
9 commission may impose reasonable charges for publication of
10 the advisory opinions and monies shall be collected,
11 deposited, dispensed, or retained as provided herein. On
12 October 1, 1995, all prior advisory opinions of the commission
13 in conflict with this chapter, shall be ineffective and
14 thereby deemed invalid and otherwise overruled unless there
15 has been any action performed or action refrained from in
16 reliance of a prior advisory opinion.

17 "(10) Initiate and continue, where practicable,
18 programs for the purpose of educating candidates, officials,
19 employees, and citizens of Alabama on matters of ethics in
20 government service.

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

25 "(b) A complaint filed pursuant to this chapter,
26 together with any statement, evidence, or information received
27 from the complainant, witnesses, or other persons shall be

1 protected by and subject to the same restrictions relating to
2 secrecy and nondisclosure of information, conversation,
3 knowledge, or evidence of Sections 12-16-214 to 12-16-216,
4 inclusive. Such restrictions shall apply to all investigatory
5 activities taken by the director, the commission or a member
6 thereof, staff, employees, or any person engaged by the
7 commission in response to a complaint filed with the
8 commission and to all proceedings relating thereto before the
9 commission.

10 "(c) The commission shall not take any investigatory
11 action on a telephonic or written complaint against a
12 respondent so long as the complainant remains anonymous.
13 Investigatory action on a complaint from an identifiable
14 source shall not be initiated until the true identity of the
15 source has been ascertained and written verification of such
16 ascertainment is in the commission's files. The complaint may
17 only be filed by a person who has or persons who have actual
18 knowledge of the allegations contained in the complaint. A
19 complainant may not file a complaint for another person or
20 persons in order to circumvent this subsection. Prior to
21 commencing any investigation, the commission shall: (1)
22 receive a written and signed complaint which sets forth in
23 detail the specific charges against a respondent, and the
24 factual allegations which support such charges and (2) the
25 director shall conduct a preliminary inquiry in order to make
26 an initial determination that reasonable cause exists to
27 conduct an investigation. The investigation must be conducted

1 within 30 days after the complaint has been filed with the
2 commission. If the director determines reasonable cause does
3 not exist, the charges shall be dismissed, but such action
4 must be reported to the commission. The commission shall be
5 entitled to authorize an investigation upon a unanimous
6 written consent of all five (5) commission members, upon an
7 express finding that probable cause exists that a violation or
8 violations of this chapter have occurred. A complaint may be
9 initiated by the unanimous vote of the commission, provided,
10 however, that the commission shall not conduct the hearing,
11 but rather the hearing shall be conducted by three (3) active
12 or retired judges, who shall be appointed by the Chief Justice
13 of the Alabama Supreme Court, at least one of whom shall be
14 Black. The three (3) judge panel shall conduct the hearing in
15 accordance with the procedures contained in this chapter and
16 in accordance with the rules and regulations of the
17 commission. If the three (3) judge panel unanimously finds
18 that a person covered by this chapter has violated it, the
19 three (3) judge panel shall forward the case to the district
20 attorney for the jurisdiction in which the alleged acts
21 occurred or to the Attorney General. In all matters that come
22 before the commission concerning a complaint on an individual,
23 the laws of due process shall apply.

24 " (d) Not less than 45 days prior to any hearing
25 before the commission, the respondent shall be given notice
26 that a complaint has been filed against him or her and shall
27 be given a summary of the charges contained therein. Upon the

1 timely request of the respondent, a continuance of the hearing
2 for not less than 30 days shall be granted for good cause
3 shown. The respondent charged in the complaint shall have the
4 right to be represented by retained legal counsel. The
5 commission may not require the respondent to be a witness
6 against himself or herself.

7 "(e) The commission shall provide discovery to the
8 respondent pursuant to the Alabama Rules of Criminal Procedure
9 as promulgated by the Alabama Supreme Court.

10 "(f) (1) All fees, penalties, and fines collected by
11 the commission pursuant to this chapter shall be deposited
12 into the State General Fund.

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

18 "(g) If the commission finds cause that a person
19 covered by this chapter has violated it, the case and the
20 commission's findings shall be forwarded to the district
21 attorney for the jurisdiction in which the alleged acts
22 occurred or to the Attorney General. The case, along with the
23 commission's findings, shall be referred for appropriate legal
24 action. Nothing in this section shall be deemed to limit the
25 commission's ability to take appropriate legal action when so
26 requested by the district attorney for the appropriate
27 jurisdiction or by the Attorney General."

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