

	<b>Principles of Ethics</b>	<b>Current Act</b>	<b>HB 227</b>
Personal gain	<p><b>Does not have to be financial “gain”</b> but should be applied more broadly: i.e. –</p> <ul style="list-style-type: none"> <li>○ using government office to pursue a vendetta against another person,</li> <li>○ to assist a family member to gain admission to an education institution or find employment,</li> <li>○ to promote the interests of a private charity,</li> <li>○ or to advance the interests of a former employer.</li> </ul> <p>§ 301</p>	<p><b>Does not have to be financial “gain.”</b></p> <p>Personal gain is achieved when the public official, public employee, or a family member thereof receives, obtains, exerts control over, or otherwise converts to personal use the object constituting such personal gain.</p> <p>§ 36-25-5(a)</p>	<p><b>There must be financial “gain.”</b></p>
	<b>Principles of Ethics</b>	<b>Current Act</b>	<b>HB 227</b>
Gift ban for public servants	<p>Limits gifts from prohibited sources to public servants.</p> <p>A public servant subject to disclosure requirements should disclose <b>all gifts</b> that are of more than nominal value.</p> <p>Permits friends and family members who are prohibited sources to give “gifts” only if and a “reasonable person could infer” the gift was motivated by the relationship, based on <b>clearly defined standards</b>. If a gift from a “friend” has a “substantial market value” and the friend is not also a family member, the friend exception does not apply unless certain strict criteria are met.</p> <p>§ 215 &amp; 615</p>	<p>Limits gifts from prohibited sources to public servants.</p> <p>Requires disclosure of <b>all</b> permitted expenses of more than \$250 from a prohibited source.</p> <p>Permits friends and family members who are prohibited sources to give “gifts” only if they satisfy the <b>factors</b> provided for friend and family member.</p> <p>§§ 36-25-5.1 &amp; 36-25-19(a)</p>	<p>Limits gifts from prohibited sources to public servants.</p> <p>Requires <b>ONLY</b> disclosure of registration and travel expenses, and food, beverages, and hospitality.</p> <p>Permits friends and family members who are prohibited sources to give “gifts.” <b>FRIEND IS NOT DEFINED</b>, no standards are provided, and the gift is <b>presumed to be permitted</b> unless you can prove the person is NOT a friend.</p>

<p><b>If HB 227 passes: The gift ban will be essentially meaningless.</b></p> <p>A prohibited source (including a principal or lobbyist) can give <b>anything</b> to a fiancée, domestic partner, sibling, adult child, parent, uncle, cousin, etc. of a public servant <b>without disclosure or restriction, even during session.</b></p> <p>The proposed change encourages lobbyists to exploit the loopholes in the ban by timing their gift around their registration date. It would have to be proven that the lobbyist “intended” to seek official action from that public servant when the gift was made. There could be substantial gifting prior to the registration date that would be difficult or impossible to prove violated the gift ban. The gift does not have to be disclosed.</p> <p>A prohibited source claiming to be a friend of the public servant may give <b>unlimited gifts, even during session</b>, without disclosure unless a prosecutor can prove <b>BOTH</b> of the following:</p> <ol style="list-style-type: none"> <li>1 - the gift is NOT motivated by friendship AND</li> <li>2 - the gift is intended to <b>substantially</b> influence the recipient’s official activities. (Substantially is not defined)</li> </ol> <p>This is a <b>significant departure</b> from the national standard and the current Ethics Act which both presume a gift from a prohibited source was given because of the public position unless circumstances make it clear it was not. The proposed bill presumes the opposite: the gift was given because of friendship and requires a prosecutor to prove there was NOT a friendship without providing any definition or guidelines to rebut that presumption, which would be difficult or impossible to prove.</p> <p>An <b>employee of a prohibited source</b> can gift <b>any amount</b> to a legislator, <b>even during session</b>, or any public servant without violating this section if they are not a person signing on behalf of a principal and directing the activities of a lobbyist. The gift does not have to be disclosed.</p>			
	<b>Principles of Ethics</b>	<b>Current Act</b>	<b>HB 227</b>
Corrupt influence/Bribery	<p>A public servant should not solicit or accept any gift or engage in any financial transaction or financial relationship under circumstances in which <b>a reasonable person would infer</b> that the gift or transaction <b>could</b> affect the public servant’s performance of official duties.</p> <p>§ 201</p>	<p>No public official or public employee shall solicit or receive anything for himself or herself or for a family member of the public employee or family member of the public official <b>for the purpose of corruptly influencing official action</b>, regardless of whether or</p>	<p>(2) While a public servant, he or she solicits, accepts, or agrees to anything for himself, herself, or any other person <b>upon an agreement or understanding</b> that the public servant’s vote, opinion, judgment, exercise of discretion, or other action as a public servant will thereby be corruptly influenced.</p>

		not the thing solicited or received is a thing of value.  § 36-25-7	
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There can be <b>unlimited</b> gifting without violating this section unless there is an <b>agreement or understanding</b> that the gifts are intended to corruptly influence official action which will be difficult or impossible to prove.			
	<b>Principles of Ethics</b>	<b>Current Act</b>	<b>HB 227</b>
Compliance and Independence	<p>(a) Every jurisdiction should establish rules and procedures to promote and enforce its public servants' compliance with its ethics rules and provide penalties for noncompliance.</p> <p>(b) Compliance should be promoted through:</p> <ol style="list-style-type: none"> <li>1) education and training;</li> <li>2) counseling individual public servants with respect to a specific issue or problem;</li> <li>3) adopting interpretative rules and regulations;</li> <li>4) investigating complaints and possible instances of noncompliance;</li> <li>5) imposing penalties for noncompliance;</li> <li>6) the authority to recommend criminal prosecution.</li> </ol> <p>(c) An independent ethics agency, as described in § 702, should play a leading</p>	<p>Current Act is consistent with the Principles of Ethics.</p> <p>Current Commission:</p> <ol style="list-style-type: none"> <li>1) Provides education and training</li> <li>2) Counsels public servants and provides informal and formal opinions</li> <li>3) Adopts administrative rules</li> <li>4) Investigates complaints</li> <li>5) Imposes administrative penalties</li> <li>6) Recommends prosecution when appropriate</li> </ol> <p><b>Requires</b> DA or AG approval for any administrative resolution (civil fine) and cannot take any unilateral action regarding an alleged violation of the law.</p>	<p><b>Removes</b> the two fundamental ethics laws from the jurisdiction of an independent ethics agency: use of office for personal gain and corruptly influencing official action — contrary to the Principles of Ethics.</p> <p><b>Eliminates</b> education and training regarding use of office and corruption.</p> <p><b>Eliminates</b> counseling public servants with specific problems by independent ethics agency.</p> <p><b>Eliminates</b> at least fourteen years of current formal and informal opinions for use of office and corruption.</p> <p><b>Eliminates</b> investigations by an independent law enforcement agency of use of office and corruption.</p> <p><b>Eliminates</b> imposing civil penalties for use of office for personal gain and corruption.</p>

	<p>role in securing compliance with ethics requirements. Other law-enforcement agencies should also be involved.</p> <p>§ 701</p>	<p>§ 36-25-4</p>	<p><b>Extends the impeachment process</b> that applies only to constitutional officers and public officials to a <b>public employee</b>, the Director of the Commission, but with a stark departure from the procedure required by the Constitution. Specifically, instead of the House of Representatives recommending impeachment by a vote of their membership, the <b>Attorney General alone</b>, who is a public official subject to the Ethics Act, can make an impeachment recommendation. Further, instead of a majority vote to impeach by the Senate, all that is required is a <b>majority vote of the legislative council</b>. <u>This is the only statutorily authorized impeachment under Section 173 of the Constitution of any public employee in the State of Alabama of which we are aware.</u> This provision directly challenges the independence of the Commission itself.</p>
<p><b>If HB 227 passes:</b></p> <p>There will be no longer be an independent, non-political agency to provide guidance, education, training, protection from prosecution, or analysis regarding use of office for personal gain.</p> <p>Violations of this section can only be criminally prosecuted.</p> <p>The accused will lose the right to be informed of the potential charges prior to indictment.</p> <p>The accused will lose the right to present evidence prior to indictment.</p> <p>The accused will lose the right to get discovery or exculpatory evidence in the investigation prior to indictment.</p> <p>Removes the requirement of governmental agency heads to report a violation for using their office for personal gain opening the door to agency cover-ups.</p>			

Upon the passage of the 2010 revision of the Ethics Act, Governor Bob Riley said, "Passing [the Ethics Act] represents a sea change of historic proportions and will make Alabama the new standard for ethical government in the United States."<sup>1</sup> At the request of Representative Simpson, Richard Briffault from the American Law Institute discussed the Principles of Ethics of Ethics at a committee meeting of the House Ethics and Finance Committee.<sup>2</sup> The Principles of Ethics he discussed is as close to a national "gold standard" as exists, and Alabama's **current Ethics Act** mirrors the Principles of Ethics in most ways. The proposed bill departs from this gold standard in significant ways, is a **move backwards** for ethics in Alabama, and will be viewed that way nationally.

All ethics laws center around and are derived from two fundamental principles: use of office for personal gain and corruptly influencing official action. The proposed bill removes those provisions from the jurisdiction of the Ethics Commission and makes the enforcement and interpretation subject to **political influence** and thereby **eliminates** the recommended function of an independent ethics agency. The American Law Institute says, "An independent ethics agency... should play a **leading role** in securing compliance with ethics requirements. Other law-enforcement agencies should also be involved."<sup>3</sup> The removal of those provisions from the Ethics Act undermines the effectiveness of any remaining ethics laws.

The proposed bill effectively eliminates an independent Ethics Commission for the state contrary to the national standard. The current Ethics Commission is an independent executive branch agency with limited authority and whose decisions are subject to review and approval by a district attorney, the Attorney General, or a court of competent jurisdiction providing **appropriate checks and balances**. The current Ethics Commission mirrors the national standard in duties and independence.

Any statement or assertion that this proposed bill strengthens the ethics law overall, improves enforcement, provides more clarity, or provides more support and guidance to those regulated is inaccurate and not supported by the plain language of the bill itself.

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<sup>1</sup> [https://www.al.com/spotnews/2010/12/in\\_alabama\\_legislature\\_ethics.html](https://www.al.com/spotnews/2010/12/in_alabama_legislature_ethics.html)

<sup>2</sup> American Law Institute, *The Principles of the Law Government Ethics*, Tentative Draft No. 4, April 2023

<sup>3</sup> American Law Institute, *The Principles of the Law Government Ethics*, Tentative Draft No. 4, April 2023, § 701.