

FIRST REGULAR SESSION

# HOUSE BILL NO. 1007

## 94TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE CUNNINGHAM (86).

Read 1st time February 28, 2007 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

2313L.01I

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### AN ACT

To repeal sections 105.957, 105.961, and 130.054, RSMo, and to enact in lieu thereof four new sections relating to ethics complaints, with penalty provisions.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Sections 105.957, 105.961, and 130.054, RSMo, are repealed and four new  
2 sections enacted in lieu thereof, to be known as sections 105.957, 105.961, 130.054, and  
3 130.059, to read as follows:

105.957. 1. The commission shall receive any complaints alleging violation of the  
2 provisions of:

3 (1) The requirements imposed on lobbyists by sections 105.470 to 105.478;

4 (2) The financial interest disclosure requirements contained in sections 105.483 to  
5 105.492;

6 (3) The campaign finance disclosure requirements contained in chapter 130, RSMo;

7 (4) Any code of conduct promulgated by any department, division or agency of state  
8 government, or by state institutions of higher education, or by executive order;

9 (5) The conflict of interest laws contained in sections 105.450 to [105.468] **105.467** and  
10 section 171.181, RSMo; and

11 (6) The provisions of the constitution or state statute or order, ordinance or resolution  
12 of any political subdivision relating to the official conduct of officials or employees of the state  
13 and political subdivisions.

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

14           2. Complaints filed with the commission shall be in writing and filed only by a natural  
15 person. The complaint shall contain **the name, address, and telephone numbers of the**  
16 **complainant, and** all facts known by the complainant that have given rise to the complaint and  
17 the complaint shall be sworn to, under penalty of perjury, by the complainant. No complaint  
18 shall be investigated unless the complaint alleges facts which, if true, fall within the jurisdiction  
19 of the commission. Within five days after receipt of a complaint by the commission, a copy of  
20 the complaint, including the name of the complainant, shall be delivered to the alleged violator.

21           3. No complaint shall be investigated which concerns alleged criminal conduct which  
22 allegedly occurred previous to the period of time allowed by law for criminal prosecution for  
23 such conduct. The commission may refuse to investigate any conduct which is the subject of  
24 civil or criminal litigation. The commission, its executive director or an investigator shall not  
25 investigate any complaint concerning conduct which is not criminal in nature which occurred  
26 more than two years prior to the date of the complaint. A complaint alleging misconduct on the  
27 part of a candidate for public office, other than those alleging failure to file the appropriate  
28 financial interest statements or campaign finance disclosure reports, shall not be accepted by the  
29 commission within sixty days prior to the primary election at which such candidate is running  
30 for office, and until after the general election.

31           4. If the commission finds that any complaint is frivolous in nature or finds no probable  
32 cause to believe that there has been a violation, the commission shall dismiss the case. For  
33 purposes of this subsection, "frivolous" shall mean a complaint clearly lacking any basis in fact  
34 or law. Any person who submits a frivolous complaint shall be liable for actual and  
35 compensatory damages to the alleged violator for holding the alleged violator before the public  
36 in a false light. If the commission finds that a complaint is frivolous or that there is not probable  
37 cause to believe there has been a violation, the commission shall issue a public report to the  
38 complainant and the alleged violator stating with particularity its reasons for dismissal of the  
39 complaint. Upon such issuance, the complaint and all materials relating to the complaint shall  
40 be a public record as defined in chapter 610, RSMo.

41           5. Complaints which allege violations as described in this section which are filed with  
42 the commission shall be handled as provided by section 105.961.

43           **6. In addition to the contents required for each complaint under subdivision (3) of**  
44 **subsection 1 of this section, the copy of the complaint supplied to the person or entity**  
45 **named in the complaint shall include the personal information of the person filing the**  
46 **complaint, including the person's name, address, and telephone number or numbers.**

47           **7. Except as provided in subsection 6 of this section, any complaint filed under this**  
48 **section shall be deemed a closed record under chapter 610, RSMo. No information relating**  
49 **to any complaint filed under this section shall be disclosed in any form to the public until**

50 the commission has completed the investigation of the complaint and has rendered its  
51 findings and conclusions on the complaint. Any person or entity who discloses any such  
52 information relating to a complaint before the commission has rendered its findings and  
53 conclusions on the complaint shall be subject to a civil penalty not to exceed two thousand  
54 five hundred dollars, and upon conviction, shall be subject to a criminal penalty of a fine  
55 not to exceed two thousand five hundred dollars or a term of imprisonment not to exceed  
56 one year, or both. The commission shall provide a method requiring the complainant to  
57 acknowledge that the complainant understands that the complaint is a closed record and  
58 to acknowledge that the complainant understands the penalties for violating this section  
59 in substantially the following form:

60 "This complaint is a closed record and is protected from disclosure under the  
61 authority of chapter 610, RSMo. Any person or entity who discloses any information  
62 contained in this complaint before the commission has rendered its findings and  
63 conclusions shall be subject to a civil penalty not to exceed two thousand five hundred  
64 dollars and, upon conviction, shall be subject to a criminal penalty of a fine not to exceed  
65 two thousand five hundred dollars or a term of imprisonment not to exceed one year, or  
66 both the fine and imprisonment."

105.961. 1. Upon receipt of a complaint as described by section 105.957, the  
2 commission shall assign the complaint to a special investigator, who may be a commission  
3 employee, who shall investigate and determine the merits of the complaint. Within ten days of  
4 such assignment, the special investigator shall review such complaint and disclose, in writing,  
5 to the commission any conflict of interest which the special investigator has or might have with  
6 respect to the investigation and subject thereof. Within one hundred twenty days of receipt of  
7 the complaint from the commission, the special investigator shall submit the special  
8 investigator's report to the commission. The commission, after review of such report, shall  
9 determine:

10 (1) That there is reasonable grounds for belief that a violation has occurred; or

11 (2) That there are no reasonable grounds for belief that a violation exists and the  
12 complaint should be dismissed; or

13 (3) That additional time is necessary to complete the investigation, and the status and  
14 progress of the investigation to date. The commission, in its discretion, may allow the  
15 investigation to proceed for additional successive periods of one hundred twenty days each,  
16 pending reports regarding the status and progress of the investigation at the end of each such  
17 period.

18 2. When the commission concludes, based on the report from the special investigator,  
19 or based on an audit conducted pursuant to section 105.959, that there are reasonable grounds

20 to believe that a violation of any criminal law has occurred, and if the commission believes that  
21 criminal prosecution would be appropriate upon a vote of four members of the commission, the  
22 commission shall refer the report to the Missouri office of prosecution services, prosecutors  
23 coordinators training council established in section 56.760, RSMo, which shall submit a panel  
24 of five attorneys for recommendation to the court having criminal jurisdiction, for appointment  
25 of an attorney to serve as a special prosecutor; except that, the attorney general of Missouri or  
26 any assistant attorney general shall not act as such special prosecutor. The court shall then  
27 appoint from such panel a special prosecutor pursuant to section 56.110, RSMo, who shall have  
28 all the powers provided by section 56.130, RSMo. The court shall allow a reasonable and  
29 necessary attorney's fee for the services of the special prosecutor. Such fee shall be assessed as  
30 costs if a case is filed, or ordered by the court if no case is filed, and paid together with all other  
31 costs in the proceeding by the state, in accordance with rules and regulations promulgated by the  
32 state courts administrator, subject to funds appropriated to the office of administration for such  
33 purposes. If the commission does not have sufficient funds to pay a special prosecutor, the  
34 commission shall refer the case to the prosecutor or prosecutors having criminal jurisdiction.  
35 If the prosecutor having criminal jurisdiction is not able to prosecute the case due to a conflict  
36 of interest, the court may appoint a special prosecutor, paid from county funds, upon  
37 appropriation by the county or the attorney general to investigate and, if appropriate, prosecute  
38 the case. The special prosecutor or prosecutor shall commence an action based on the report by  
39 the filing of an information or seeking an indictment within sixty days of the date of such  
40 prosecutor's appointment, or shall file a written statement with the commission explaining why  
41 criminal charges should not be sought. If the special prosecutor or prosecutor fails to take either  
42 action required by this subsection, upon request of the commission, a new special prosecutor,  
43 who may be the attorney general, shall be appointed. The report may also be referred to the  
44 appropriate disciplinary authority over the person who is the subject of the report.

45 3. When the commission concludes, based on the report from the special investigator or  
46 based on an audit conducted pursuant to section 105.959, that there are reasonable grounds to  
47 believe that a violation of any law has occurred which is not a violation of criminal law or that  
48 criminal prosecution is not appropriate, the commission shall conduct a hearing which shall be  
49 a closed meeting and not open to the public. The hearing shall be conducted pursuant to the  
50 procedures provided by sections 536.063 to 536.090, RSMo, and shall be considered to be a  
51 contested case for purposes of such sections. The commission shall determine, in its discretion,  
52 whether or not that there is probable cause that a violation has occurred. If the commission  
53 determines, by a vote of at least four members of the commission, that probable cause exists that  
54 a violation has occurred, the commission may refer its findings and conclusions to the  
55 appropriate disciplinary authority over the person who is the subject of the report, as described

56 in subsection 7 of this section. After the commission determines by a vote of at least four  
57 members of the commission that probable cause exists that a violation has occurred, and the  
58 commission has referred the findings and conclusions to the appropriate disciplinary authority  
59 over the person subject of the report, the subject of the report may appeal the determination of  
60 the commission to the administrative hearing commission. Such appeal shall stay the action of  
61 the Missouri ethics commission. Such appeal shall be filed not later than the fourteenth day after  
62 the subject of the commission's action receives [actual] notice of the commission's action.

63 4. If the appropriate disciplinary authority receiving a report from the commission  
64 pursuant to subsection 3 of this section fails to follow, within sixty days of the receipt of the  
65 report, the recommendations contained in the report, or if the commission determines, by a vote  
66 of at least four members of the commission that some action other than referral for criminal  
67 prosecution or for action by the appropriate disciplinary authority would be appropriate, the  
68 commission shall take any one or more of the following actions:

69 (1) Notify the person to cease and desist violation of any provision of law which the  
70 report concludes was violated and that the commission may seek judicial enforcement of its  
71 decision pursuant to subsection 5 of this section;

72 (2) Notify the person of the requirement to file, amend or correct any report, statement,  
73 or other document or information required by sections 105.473, 105.483 to 105.492, or chapter  
74 130, RSMo, and that the commission may seek judicial enforcement of its decision pursuant to  
75 subsection 5 of this section; and

76 (3) File the report with the executive director to be maintained as a public document; or

77 (4) Issue a letter of concern or letter of reprimand to the person, which would be  
78 maintained as a public document; or

79 (5) Issue a letter that no further action shall be taken, which would be maintained as a  
80 public document; or

81 (6) Through reconciliation agreements or civil action, the power to seek fees for  
82 violations in an amount not greater than one thousand dollars or double the amount involved in  
83 the violation.

84 5. Upon vote of at least four members, the commission may initiate formal judicial  
85 proceedings seeking to obtain any of the following orders:

86 (1) Cease and desist violation of any provision of sections 105.450 to 105.496, or chapter  
87 130, RSMo, or sections 105.955 to 105.963;

88 (2) Pay any civil penalties required by sections 105.450 to 105.496 or chapter 130,  
89 RSMo;

90 (3) File any reports, statements, or other documents or information required by sections  
91 105.450 to 105.496, or chapter 130, RSMo; or

92 (4) Pay restitution for any unjust enrichment the violator obtained as a result of any  
93 violation of any criminal statute as described in subsection 6 of this section.

94

95 The Missouri ethics commission shall give [actual] notice to the subject of the complaint of the  
96 proposed action as set out in this section. The subject of the complaint may appeal the action  
97 of the Missouri ethics commission, other than a referral for criminal prosecution, to the  
98 [administrative hearing commission] **circuit court of Cole County**. Such appeal shall stay the  
99 action of the Missouri ethics commission. Such appeal shall be filed no later than fourteen days  
100 after the subject of the commission's actions receives actual notice of the commission's actions.

101 6. In the proceeding in circuit court, the commission may seek restitution against any  
102 person who has obtained unjust enrichment as a result of violation of any provision of sections  
103 105.450 to 105.496, or chapter 130, RSMo, and may recover on behalf of the state or political  
104 subdivision with which the alleged violator is associated, damages in the amount of any unjust  
105 enrichment obtained and costs and attorney's fees as ordered by the court.

106 7. The appropriate disciplinary authority to whom a report shall be sent pursuant to  
107 subsection 2 or 3 of this section shall include, but not be limited to, the following:

108 (1) In the case of a member of the general assembly, the ethics committee of the house  
109 of which the subject of the report is a member;

110 (2) In the case of a person holding an elective office or an appointive office of the state,  
111 if the alleged violation is an impeachable offense, the report shall be referred to the ethics  
112 committee of the house of representatives;

113 (3) In the case of a person holding an elective office of a political subdivision, the report  
114 shall be referred to the governing body of the political subdivision;

115 (4) In the case of any officer or employee of the state or of a political subdivision, the  
116 report shall be referred to the person who has immediate supervisory authority over the  
117 employment by the state or by the political subdivision of the subject of the report;

118 (5) In the case of a judge of a court of law, the report shall be referred to the commission  
119 on retirement, removal and discipline, or if the inquiry involves an employee of the judiciary to  
120 the applicable presiding judge;

121 (6) In the case of a person holding an appointive office of the state, if the alleged  
122 violation is not an impeachable offense, the report shall be referred to the governor;

123 (7) In the case of a statewide elected official, the report shall be referred to the attorney  
124 general;

125 (8) In a case involving the attorney general, the report shall be referred to the prosecuting  
126 attorney of Cole County.

127           8. The special investigator having a complaint referred to the special investigator by the  
128 commission shall have the following powers:

129           (1) To request and shall be given access to information in the possession of any person  
130 or agency which the special investigator deems necessary for the discharge of the special  
131 investigator's responsibilities;

132           (2) To examine the records and documents of any person or agency, unless such  
133 examination would violate state or federal law providing for confidentiality;

134           (3) To administer oaths and affirmations;

135           (4) Upon refusal by any person to comply with a request for information relevant to an  
136 investigation, an investigator may issue a subpoena for any person to appear and give testimony,  
137 or for a subpoena duces tecum to produce documentary or other evidence which the investigator  
138 deems relevant to a matter under the investigator's inquiry. The subpoenas and subpoenas duces  
139 tecum may be enforced by applying to a judge of the circuit court of Cole County or any county  
140 where the person or entity that has been subpoenaed resides or may be found, for an order to  
141 show cause why the subpoena or subpoena duces tecum should not be enforced. The order and  
142 a copy of the application therefor shall be served in the same manner as a summons in a civil  
143 action, and if, after hearing, the court determines that the subpoena or subpoena duces tecum  
144 should be sustained and enforced, the court shall enforce the subpoena or subpoena duces tecum  
145 in the same manner as if it had been issued by the court in a civil action; and

146           (5) To request from the commission such investigative, clerical or other staff assistance  
147 or advancement of other expenses which are necessary and convenient for the proper completion  
148 of an investigation. Within the limits of appropriations to the commission, the commission may  
149 provide such assistance, whether by contract to obtain such assistance or from staff employed  
150 by the commission, or may advance such expenses.

151           9. (1) Any retired judge may request in writing to have the judge's name removed from  
152 the list of special investigators subject to appointment by the commission or may request to  
153 disqualify himself or herself from any investigation. Such request shall include the reasons for  
154 seeking removal;

155           (2) By vote of four members of the commission, the commission may disqualify a judge  
156 from a particular investigation or may permanently remove the name of any retired judge from  
157 the list of special investigators subject to appointment by the commission.

158           10. Any person who is the subject of any investigation pursuant to this section shall be  
159 entitled to be represented by counsel at any proceeding before the special investigator or the  
160 commission.

161           11. The provisions of sections 105.957, 105.959 and 105.961 are in addition to other  
162 provisions of law under which any remedy or right of appeal or objection is provided for any

163 person, or any procedure provided for inquiry or investigation concerning any matter. The  
164 provisions of this section shall not be construed to limit or affect any other remedy or right of  
165 appeal or objection.

166 12. No person shall be required to make or file a complaint to the commission as a  
167 prerequisite for exhausting the person's administrative remedies before pursuing any civil cause  
168 of action allowed by law.

169 13. If, in the opinion of the commission, the complaining party was motivated by malice  
170 or reason contrary to the spirit of any law on which such complaint was based, in filing the  
171 complaint without just cause, **[this] the complaining party may be assessed the reasonable**  
172 **costs incurred by the subject party of the complaint and any other person or entity named**  
173 **therein, in defending against the complaint, and the reasonable costs incurred by the**  
174 **commission in investigating the complaint. Additionally, the commission's finding shall be**  
175 reported to appropriate law enforcement authorities. Any person who knowingly files a  
176 complaint without just cause, or with malice, [is guilty of a class A misdemeanor] **may be**  
177 **subject to a criminal penalty of a fine not to exceed two thousand five hundred dollars or**  
178 **a term of imprisonment not to exceed one year, or both.**

179 14. A respondent party who prevails in a formal judicial action brought by the  
180 commission shall be awarded those reasonable fees and expenses incurred by that party in the  
181 formal judicial action, unless the court finds that the position of the commission was  
182 substantially justified or that special circumstances make such an award unjust.

183 15. The special investigator and members and staff of the commission shall maintain  
184 confidentiality with respect to all matters concerning a complaint until and if a report is filed  
185 with the commission, with the exception of communications with any person which are  
186 necessary to the investigation. The report filed with the commission resulting from a complaint  
187 acted upon under the provisions of this section shall not contain the name of the complainant or  
188 other person providing information to the investigator, if so requested in writing by the  
189 complainant or such other person. Any person who violates the confidentiality requirements  
190 imposed by this section or subsection 17 of section 105.955 required to be confidential is guilty  
191 of a class A misdemeanor and shall be subject to removal from or termination of employment  
192 by the commission.

193 16. Any judge of the court of appeals or circuit court who ceases to hold such office by  
194 reason of the judge's retirement and who serves as a special investigator pursuant to this section  
195 shall receive annual compensation, salary or retirement for such services at the rates of  
196 compensation provided for senior judges by subsections 1, 2 and 4 of section 476.682, RSMo.  
197 Such retired judges shall by the tenth day of each month following any month in which the judge  
198 provided services pursuant to this section certify to the commission and to the state courts

199 administrator the amount of time engaged in such services by hour or fraction thereof, the dates  
200 thereof, and the expenses incurred and allowable pursuant to this section. The commission shall  
201 then issue a warrant to the state treasurer for the payment of the salary and expenses to the extent,  
202 and within limitations, provided for in this section. The state treasurer upon receipt of such  
203 warrant shall pay the same out of any appropriations made for this purpose on the last day of the  
204 month during which the warrant was received by the state treasurer.

130.054. 1. Notwithstanding the provisions of subsection 3 of section 105.957, RSMo,  
2 any natural person may file a complaint with the Missouri ethics commission alleging failure to  
3 timely or accurately file a personal financial disclosure statement, a campaign finance disclosure  
4 report or a violation of the provisions of this chapter by any candidate for elective office, within  
5 sixty days prior to the primary election at which such candidate is running for office, until after  
6 the general election. Any such complaint shall be in writing, shall state all facts known by the  
7 complainant which have given rise to the complaint, and shall be sworn to, under penalty of  
8 perjury, by the complainant.

9 2. Within the first business day after receipt of a complaint pursuant to this section, the  
10 executive director shall supply a copy of the complaint to the person or entity named in the  
11 complaint, [deleting] **including** any material identifying the name, **address, and telephone**  
12 **numbers** of the complainant. The executive director shall notify the complainant and the person  
13 or entity named in the complaint of the date and time at which the commission shall audit and  
14 investigate the allegations contained in the complaint pursuant to subsection 3 of this section.

15 3. Within fifteen business days of receipt of a complaint pursuant to this section, the  
16 commission shall audit and investigate the allegations contained in the complaint and shall  
17 determine by a vote of at least four members of the commission that there are reasonable grounds  
18 to believe that a violation of law has occurred within the jurisdiction of the commission. The  
19 respondent may reply in writing or in person to the allegations contained in the complaint and  
20 may state justifications to dismiss the complaint. The complainant may also present evidence  
21 in support of the allegations contained in the complaint, but such evidence shall be limited in  
22 scope to the allegations contained in the original complaint, and such complaint may not be  
23 supplemented or otherwise enlarged in scope.

24 4. If, after audit and investigation of the complaint and upon a vote of at least four  
25 members of the commission, the commission determines that there are reasonable grounds to  
26 believe that a violation of law has occurred within the jurisdiction of the commission, the  
27 commission shall proceed with such complaint as provided by sections 105.957 to 105.963,  
28 RSMo. If the commission does not determine that there are reasonable grounds to believe that  
29 such a violation of law has occurred, the complaint shall be dismissed. If a complaint is

30 dismissed, the fact that such complaint was dismissed, with a statement of the nature of the  
31 complaint, shall be made public within twenty-four hours of the commission's action.

32 **5. Except as provided in subsection 2 of this section,** any complaint made pursuant  
33 to this section, and all proceedings and actions concerning such a complaint, shall be subject to  
34 the provisions of subsection 15 of section 105.961, RSMo.

35 **6.** No complaint shall be accepted by the commission within fifteen days prior to the  
36 primary or general election at which such candidate is running for office.

37 **7. Except as provided in subsection 2 of this section, any complaint filed under this**  
38 **section shall be deemed a closed record under chapter 610, RSMo. No information relating**  
39 **to any complaint filed under this section shall be disclosed in any form to the public until**  
40 **the commission has completed the investigation of the complaint and has rendered its**  
41 **findings and conclusions on the complaint. Any person or entity who discloses any such**  
42 **information relating to a complaint before the commission has rendered its findings and**  
43 **conclusions on the complaint shall be subject to a civil penalty not to exceed two thousand**  
44 **five hundred dollars, and upon conviction, shall be subject to a criminal penalty of a fine**  
45 **not to exceed two thousand five hundred dollars or a term of imprisonment not to exceed**  
46 **one year, or both. The commission shall provide a method requiring the complainant to**  
47 **acknowledge that the complainant understands that the complaint is a closed record and**  
48 **to acknowledge that the complainant understands the penalties for violating this section**  
49 **in substantially the following form:**

50 **"This complaint is a closed record and is protected from disclosure under the**  
51 **authority of chapter 610, RSMo. Any person or entity who discloses any information**  
52 **contained in this complaint before the commission has rendered its findings and**  
53 **conclusions shall be subject to a civil penalty not to exceed two thousand five hundred**  
54 **dollars and, upon conviction, shall be subject to a criminal penalty of a fine not to exceed**  
55 **two thousand five hundred dollars or a term of imprisonment not to exceed one year, or**  
56 **both the fine and imprisonment."**

**130.059. All persons requesting to inspect or copy disclosure reports made and filed**  
2 **under this chapter or chapter 105, RSMo, shall provide photo identification with which to**  
3 **compare and verify their signatures before the disclosure reports are made available for**  
4 **inspection or copying.**

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