

FIRST REGULAR SESSION

HOUSE BILL NO. 648

95TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES YATES (Sponsor), ZIMMERMAN, DUSENBERG, LeVOTA, NANCE, STORCH, BROWN (30), HARRIS, MOLENDORP, STILL, LIPKE, GRILL, KRAUS, BROWN (73), ENGLUND, FISCHER (107) AND KANDER (Co-sponsors).

0342L.05I

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 105.456 and 105.955, RSMo, and to enact in lieu thereof seven new sections relating to ethics violations, with penalty provisions.

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

Section A. Sections 105.456 and 105.955, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as sections 8.925, 21.085, 105.456, 105.459, 105.955, 115.344, and 130.027, to read as follows:

8.925. No fund-raising activities or fund-raising event, as defined in section 130.011, RSMo, supporting or opposing any candidate, ballot measure, political party, or political party committee shall occur on any property or in any building owned or leased by the state.

21.085. 1. Any member of the general assembly who is found guilty of or pleads guilty to any felony shall immediately forfeit and vacate the office, and no such member shall thereafter qualify as a candidate for elective public office in this state or any of its political subdivisions.

2. No person who is found guilty of or pleads guilty to any felony shall be employed in the capitol building as an employee of the house of representatives or the senate or any member or committee thereof.

105.456. 1. No member of the general assembly or the governor, lieutenant governor, attorney general, secretary of state, state treasurer or state auditor shall:

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.

3 (1) Perform any service for the state or any political subdivision of the state or any
4 agency of the state or any political subdivision thereof or act in his or her official capacity or
5 perform duties associated with his or her position for any person for any consideration other than
6 the compensation provided for the performance of his or her official duties; or

7 (2) Sell, rent or lease any property to the state or political subdivision thereof or any
8 agency of the state or any political subdivision thereof for consideration in excess of five hundred
9 dollars per transaction or one thousand five hundred dollars per annum unless the transaction is
10 made pursuant to an award on a contract let or sale made after public notice and in the case of
11 property other than real property, competitive bidding, provided that the bid or offer accepted
12 is the lowest received; or

13 (3) Attempt, for compensation other than the compensation provided for the performance
14 of his or her official duties, to influence the decision of any agency of the state on any matter,
15 except that this provision shall not be construed to prohibit such person from participating for
16 compensation in any adversary proceeding or in the preparation or filing of any public document
17 or conference thereon. The exception for a conference upon a public document shall not permit
18 any member of the general assembly or the governor, lieutenant governor, attorney general,
19 secretary of state, state treasurer or state auditor to receive any consideration for the purpose of
20 attempting to influence the decision of any agency of the state on behalf of any person with
21 regard to any application, bid or request for a state grant, loan, appropriation, contract, award,
22 permit other than matters involving a driver's license, or job before any state agency,
23 commission, or elected official. Notwithstanding Missouri supreme court rule 1.10 of rule 4 or
24 any other court rule or law to the contrary, other members of a firm, professional corporation or
25 partnership shall not be prohibited pursuant to this subdivision from representing a person or
26 other entity solely because a member of the firm, professional corporation or partnership serves
27 in the general assembly, provided that such official does not share directly in the compensation
28 earned, so far as the same may reasonably be accounted, for such activity by the firm or by any
29 other member of the firm. This subdivision shall not be construed to prohibit any inquiry for
30 information or the representation of a person without consideration before a state agency or in
31 a matter involving the state if no consideration is given, charged or promised in consequence
32 thereof.

33 2. No sole proprietorship, partnership, joint venture, or corporation in which a member
34 of the general assembly, governor, lieutenant governor, attorney general, secretary of state, state
35 treasurer, state auditor or spouse of such official, is the sole proprietor, a partner having more
36 than a ten percent partnership interest, or a coparticipant or owner of in excess of ten percent of
37 the outstanding shares of any class of stock, shall:

38 (1) Perform any service for the state or any political subdivision thereof or any agency
39 of the state or political subdivision for any consideration in excess of five hundred dollars per
40 transaction or one thousand five hundred dollars per annum unless the transaction is made
41 pursuant to an award on a contract let or sale made after public notice and competitive bidding,
42 provided that the bid or offer accepted is the lowest received; or

43 (2) Sell, rent, or lease any property to the state or any political subdivision thereof or any
44 agency of the state or political subdivision thereof for consideration in excess of five hundred
45 dollars per transaction or one thousand five hundred dollars per annum unless the transaction is
46 made pursuant to an award on a contract let or a sale made after public notice and in the case of
47 property other than real property, competitive bidding, provided that the bid or offer accepted
48 is the lowest and best received.

49 **3. No member of the general assembly, nor the governor, lieutenant governor,**
50 **attorney general, secretary of state, state treasurer, or state auditor, shall accept any**
51 **compensation from any committee, as such term is defined in chapter 130, RSMo, that is**
52 **subject to regulation by the Missouri ethics commission under this chapter, nor shall**
53 **accept any compensation in exchange for influencing or attempting to influence the action**
54 **of voters for or against the nomination or election to public office of any candidate, nor**
55 **shall accept any compensation from any independent entity or organization that accepts**
56 **any funding from any committee, as such term is defined in chapter 130, RSMo, that is**
57 **subject to regulation by the Missouri ethics commission under this chapter.**

58 **4. No member of the general assembly shall accept any tangible or intangible item,**
59 **service, or thing of value from any lobbyist, as defined in section 105.470.**

105.459. 1. No elected or appointed official of the state or any political subdivision
2 **thereof shall enter into any contract to perform any duty for or to provide any goods or**
3 **services to the state or any political subdivision.**

4 **2. No employee of the state of any political subdivision thereof shall engage in any**
5 **activity on behalf of any political campaign while on duty.**

6 **3. No elected or appointed official shall register or act as a lobbyist within the one-**
7 **year period after leaving office or leaving employment of the state or political subdivision.**

8 **4. In the event that any elected or appointed official of the state or any employee**
9 **of the executive or legislative branch of state government is placed on voluntary or**
10 **involuntary administrative leave pending the outcome of a criminal investigation or**
11 **prosecution, and is removed from office or employment for any reason directly related to**
12 **the outcome of the investigation or prosecution, such official or employee shall be liable to**
13 **the state for all salary and benefits and other compensation received from the state during**
14 **such administrative leave.**

105.955. 1. A bipartisan "Missouri Ethics Commission", composed of six members, is hereby established. The commission shall be assigned to the office of administration with supervision by the office of administration only for budgeting and reporting as provided by subdivisions (4) and (5) of subsection 6 of section 1 of the Reorganization Act of 1974. Supervision by the office of administration shall not extend to matters relating to policies, regulative functions or appeals from decisions of the commission, and the commissioner of administration, any employee of the office of administration, or the governor, either directly or indirectly, shall not participate or interfere with the activities of the commission in any manner not specifically provided by law and shall not in any manner interfere with the budget request of or withhold any moneys appropriated to the commission by the general assembly. All members of the commission shall be appointed by the governor with the advice and consent of the senate from lists submitted pursuant to this section. Each congressional district committee of the political parties having the two highest number of votes cast for their candidate for governor at the last gubernatorial election shall submit two names of eligible nominees for membership on the commission to the governor, and the governor shall select six members from such nominees to serve on the commission.

2. Within thirty days of submission of the person's name to the governor as provided in subsection 1 of this section, and in order to be an eligible nominee for appointment to the commission, a person shall file a financial interest statement in the manner provided by section 105.485 and shall provide the governor, the president pro tempore of the senate, and the commission with a list of all political contributions and the name of the candidate or committee, political party, or continuing committee, as defined in chapter 130, RSMo, to which those contributions were made within the four-year period prior to such appointment, made by the nominee, the nominee's spouse, or any business entity in which the nominee has a substantial interest. The information shall be maintained by the commission and available for public inspection during the period of time during which the appointee is a member of the commission. In order to be an eligible nominee for membership on the commission, a person shall be a citizen and a resident of the state and shall have been a registered voter in the state for a period of at least five years preceding the person's appointment.

3. The term of each member shall be for four years, except that of the members first appointed, the governor shall select three members from even-numbered congressional districts and three members from odd-numbered districts. Not more than three members of the commission shall be members of the same political party, nor shall more than one member be from any one United States congressional district. Not more than two members appointed from the even-numbered congressional districts shall be members of the same political party, and no more than two members from the odd-numbered congressional districts shall be members of the

37 same political party. Of the members first appointed, the terms of the members appointed from
38 the odd-numbered congressional districts shall expire on March 15, 1994, and the terms of the
39 members appointed from the even-numbered congressional districts shall expire on March 15,
40 1996. Thereafter all successor members of the commission shall be appointed for four-year
41 terms. Terms of successor members of the commission shall expire on March fifteenth of the
42 fourth year of their term. No member of the commission shall serve on the commission after the
43 expiration of the member's term. No person shall be appointed to more than one full four-year
44 term on the commission.

45 4. Vacancies or expired terms on the commission shall be filled in the same manner as
46 the original appointment was made, except as provided in this subsection. Within thirty days of
47 the vacancy or ninety days before the expiration of the term, the names of two eligible nominees
48 for membership on the commission shall be submitted to the governor by the congressional
49 district committees of the political party or parties of the vacating member or members, from the
50 even- or odd-numbered congressional districts, based on the residence of the vacating member
51 or members, other than from the congressional district committees from districts then represented
52 on the commission and from the same congressional district party committee or committees
53 which originally appointed the member or members whose positions are vacated. Appointments
54 to fill vacancies or expired terms shall be made within forty-five days after the deadline for
55 submission of names by the congressional district committees, and shall be subject to the same
56 qualifications for appointment and eligibility as is provided in subsections 2 and 3 of this section.
57 Appointments to fill vacancies for unexpired terms shall be for the remainder of the unexpired
58 term of the member whom the appointee succeeds, and such appointees shall be eligible for
59 appointment to one full four-year term. If the congressional district committee does not submit
60 the required two nominees within the thirty days or if the congressional district committee does
61 not submit the two nominees within an additional thirty days after receiving notice from the
62 governor to submit the nominees, then the governor may appoint a person or persons who shall
63 be subject to the same qualifications for appointment and eligibility as provided in subsections
64 2 and 3 of this section.

65 5. The governor, with the advice and consent of the senate, may remove any member
66 only for substantial neglect of duty, inability to discharge the powers and duties of office, gross
67 misconduct or conviction of a felony or a crime involving moral turpitude. Members of the
68 commission also may be removed from office by concurrent resolution of the general assembly
69 signed by the governor. If such resolution receives the vote of two-thirds or more of the
70 membership of both houses of the general assembly, the signature of the governor shall not be
71 necessary to effect removal. The office of any member of the commission who moves from the

72 congressional district from which the member was appointed shall be deemed vacated upon such
73 change of residence.

74 6. The commission shall elect biennially one of its members as the chairman. The
75 chairman may not succeed himself or herself after two years. No member of the commission
76 shall succeed as chairman any member of the same political party as himself or herself. At least
77 four members are necessary to constitute a quorum, and at least four affirmative votes shall be
78 required for any action or recommendation of the commission.

79 7. No member or employee of the commission, during the person's term of service, shall
80 hold or be a candidate for any other public office.

81 8. In the event that a retired judge is appointed as a member of the commission, the judge
82 shall not serve as a special investigator while serving as a member of the commission.

83 9. No member of the commission shall, during the member's term of service or within
84 one year thereafter:

85 (1) Be employed by the state or any political subdivision of the state;

86 (2) Be employed as a lobbyist;

87 (3) Serve on any other governmental board or commission;

88 (4) Be an officer of any political party or political organization;

89 (5) Permit the person's name to be used, or make contributions, in support of or in
90 opposition to any candidate or proposition;

91 (6) Participate in any way in any election campaign; except that a member or employee
92 of the commission shall retain the right to register and vote in any election, to express the
93 person's opinion privately on political subjects or candidates, to participate in the activities of
94 a civic, community, social, labor or professional organization and to be a member of a political
95 party.

96 10. Each member of the commission shall receive, as full compensation for the member's
97 services, the sum of one hundred dollars per day for each full day actually spent on work of the
98 commission, and the member's actual and necessary expenses incurred in the performance of the
99 member's official duties.

100 11. The commission shall appoint an executive director who shall serve subject to the
101 supervision of and at the pleasure of the commission, but in no event for more than six years.
102 The executive director shall be responsible for the administrative operations of the commission
103 and perform such other duties as may be delegated or assigned to the director by law or by rule
104 of the commission. The executive director shall employ staff and retain such contract services
105 as the director deems necessary, within the limits authorized by appropriations by the general
106 assembly.

107 12. Beginning on January 1, 1993, all lobbyist registration and expenditure reports filed
108 pursuant to section 105.473, financial interest statements filed pursuant to subdivision (1) of
109 section 105.489, and campaign finance disclosure reports filed other than with election
110 authorities or local election authorities as provided by section 130.026, RSMo, shall be filed with
111 the commission.

112 13. Within sixty days of the initial meeting of the first commission appointed, the
113 commission shall obtain from the clerk of the supreme court or the state courts administrator a
114 list of retired appellate and circuit court judges who did not leave the judiciary as a result of
115 being defeated in an election. The executive director shall determine those judges who indicate
116 their desire to serve as special investigators and to investigate any and all complaints referred to
117 them by the commission. The executive director shall maintain an updated list of those judges
118 qualified and available for appointment to serve as special investigators. Such list shall be
119 updated at least annually. The commission shall refer complaints to such special investigators
120 on that list on a rotating schedule which ensures a random assignment of each special
121 investigator. Each special investigator shall receive only one unrelated investigation at a time
122 and shall not be assigned to a second or subsequent investigation until all other eligible
123 investigators on the list have been assigned to an investigation. In the event that no special
124 investigator is qualified or available to conduct a particular investigation, the commission may
125 appoint a special investigator to conduct such particular investigation.

126 14. The commission shall have the following duties and responsibilities relevant to the
127 impartial and effective enforcement of sections 105.450 to 105.496 and chapter 130, RSMo, as
128 provided in sections 105.955 to 105.963:

129 (1) Receive and review complaints regarding alleged violation of sections 105.450 to
130 105.496 and chapter 130, RSMo, conduct initial reviews and investigations regarding such
131 complaints as provided herein; refer complaints to appropriate prosecuting authorities and
132 appropriate disciplinary authorities along with recommendations for sanctions; and initiate
133 judicial proceedings as allowed by sections 105.955 to 105.963;

134 (2) Review and audit any reports and statements required by the campaign finance
135 disclosure laws contained in chapter 130, RSMo, and financial interest disclosure laws or
136 lobbyist registration and reporting laws as provided by sections 105.470 to 105.492, for
137 timeliness, accuracy and completeness of content as provided in sections 105.955 to 105.963;

138 (3) Develop appropriate systems to file and maintain an index of all such reports and
139 statements to facilitate public access to such information, except as may be limited by
140 confidentiality requirements otherwise provided by law, including cross-checking of information
141 contained in such statements and reports. The commission may enter into contracts with the

142 appropriate filing officers to effectuate such system. Such filing officers shall cooperate as
143 necessary with the commission as reasonable and necessary to effectuate such purposes;

144 (4) Provide information and assistance to lobbyists, elected and appointed officials, and
145 employees of the state and political subdivisions in carrying out the provisions of sections
146 105.450 to 105.496 and chapter 130, RSMo;

147 (5) Make recommendations to the governor and general assembly or any state agency
148 on the need for further legislation with respect to the ethical conduct of public officials and
149 employees and to advise state and local government in the development of local government
150 codes of ethics and methods of disclosing conflicts of interest as the commission may deem
151 appropriate to promote high ethical standards among all elected and appointed officials or
152 employees of the state or any political subdivision thereof and lobbyists;

153 (6) Render advisory opinions as provided by this section;

154 (7) Promulgate rules relating to the provisions of sections 105.955 to 105.963 and
155 chapter 130, RSMo. All rules and regulations issued by the commission shall be prospective
156 only in operation;

157 (8) Request and receive from the officials and entities identified in subdivision (6) of
158 section 105.450 designations of decision-making public servants.

159 15. In connection with such powers provided by sections 105.955 to 105.963 and chapter
160 130, RSMo, the commission may:

161 (1) Subpoena witnesses and compel their attendance and testimony. Subpoenas shall be
162 served and enforced in the same manner provided by section 536.077, RSMo;

163 (2) Administer oaths and affirmations;

164 (3) Take evidence and require by subpoena duces tecum the production of books, papers,
165 and other records relating to any matter being investigated or to the performance of the
166 commission's duties or exercise of its powers. Subpoenas duces tecum shall be served and
167 enforced in the same manner provided by section 536.077, RSMo;

168 (4) Employ such personnel, including legal counsel, and contract for services including
169 legal counsel, within the limits of its appropriation, as it deems necessary provided such legal
170 counsel, either employed or contracted, represents the Missouri ethics commission before any
171 state agency or before the courts at the request of the Missouri ethics commission. Nothing in
172 this section shall limit the authority of the Missouri ethics commission as provided for in
173 subsection 2 of section 105.961; [and]

174 (5) Obtain information from any department, division or agency of the state or any
175 political subdivision reasonably calculated to lead to the discovery of evidence which will
176 reasonably assist the commission in carrying out the duties prescribed in sections 105.955 to
177 105.963 and chapter 130, RSMo;

(6) Impose a fine not to exceed five hundred dollars for each violation of sections 105.450 to 105.496 and chapter 130, RSMo.

16. (1) Upon written request for an advisory opinion received by the commission, and if the commission determines that the person requesting the opinion would be directly affected by the application of law to the facts presented by the requesting person, the commission shall issue a written opinion advising the person who made the request, in response to the person's particular request, regarding any issue that the commission can receive a complaint on pursuant to section 105.957. The commission may decline to issue a written opinion by a vote of four members and shall provide to the requesting person the reason for the refusal in writing. The commission shall give an approximate time frame as to when the written opinion shall be issued. Such advisory opinions shall be issued no later than ninety days from the date of receipt by the commission. Such requests and advisory opinions, deleting the name and identity of the requesting person, shall be compiled and published by the commission on at least an annual basis. Advisory opinions issued by the commission shall be maintained and made available for public inspection and copying at the office of the commission during normal business hours. Any advisory opinion or portion of an advisory opinion rendered pursuant to this subsection shall be withdrawn by the commission if, after hearing thereon, the joint committee on administrative rules finds that such advisory opinion is beyond or contrary to the statutory authority of the commission or is inconsistent with the legislative intent of any law enacted by the general assembly, and after the general assembly, by concurrent resolution, votes to adopt the findings and conclusions of the joint committee on administrative rules. Any such concurrent resolution adopted by the general assembly shall be published at length by the commission in its publication of advisory opinions of the commission next following the adoption of such resolution, and a copy of such concurrent resolution shall be maintained by the commission, along with the withdrawn advisory opinion, in its public file of advisory opinions. The commission shall also send a copy of such resolution to the person who originally requested the withdrawn advisory opinion. Any advisory opinion issued by the ethics commission shall act as legal direction to any person requesting such opinion and no person shall be liable for relying on the opinion and it shall act as a defense of justification against prosecution. An advisory opinion of the commission shall not be withdrawn unless:

- (a) The authorizing statute is declared unconstitutional;
- (b) The opinion goes beyond the power authorized by statute; or
- (c) The authorizing statute is changed to invalidate the opinion.

(2) Upon request, the attorney general shall give the attorney general's opinion, without fee, to the commission, any elected official of the state or any political subdivision, any member of the general assembly, or any director of any department, division or agency of the state, upon

214 any question of law regarding the effect or application of sections 105.450 to 105.496, or chapter
215 130, RSMo. Such opinion need be in writing only upon request of such official, member or
216 director, and in any event shall be rendered within sixty days [that] **after** such request is
217 delivered to the attorney general.

218 17. The state auditor and the state auditor's duly authorized employees who have taken
219 the oath of confidentiality required by section 29.070, RSMo, may audit the commission and in
220 connection therewith may inspect materials relating to the functions of the commission. Such
221 audit shall include a determination of whether appropriations were spent within the intent of the
222 general assembly, but shall not extend to review of any file or document pertaining to any
223 particular investigation, audit or review by the commission, an investigator or any staff or person
224 employed by the commission or under the supervision of the commission or an investigator. The
225 state auditor and any employee of the state auditor shall not disclose the identity of any person
226 who is or was the subject of an investigation by the commission and whose identity is not public
227 information as provided by law.

228 18. From time to time but no more frequently than annually the commission may request
229 the officials and entities described in subdivision (6) of section 105.450 to identify for the
230 commission in writing those persons associated with such office or entity which such office or
231 entity has designated as a decision-making public servant. Each office or entity delineated in
232 subdivision (6) of section 105.450 receiving such a request shall identify those so designated
233 within thirty days of the commission's request.

**115.344. No person shall qualify as a candidate for elective public office in this state
2 if such person has any unpaid fines imposed by the Missouri ethics commission.**

**130.027. No person or entity who contracts with the state shall contribute more
2 than one thousand dollars to any candidate for a state office.**

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