

FIRST REGULAR SESSION

HOUSE BILL NO. 1180

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE MITTEN.

0730H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 105.472, RSMo, sections 105.957 and 105.961 as enacted by senate bill no. 844, ninety-fifth general assembly, second regular session, section 105.957 as enacted by house bill no. 1900, ninety-third general assembly, second regular session, and section 105.961 as enacted by senate bill no. 16, eighty-ninth general assembly, first regular session, and to enact in lieu thereof four new sections relating to the ethics commission, with a delayed effective date.

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

Section A. Section 105.472, RSMo, sections 105.957 and 105.961 as enacted by senate
2 bill no. 844, ninety-fifth general assembly, second regular session, section 105.957 as enacted
3 by house bill no. 1900, ninety-third general assembly, second regular session, and section
4 105.961 as enacted by senate bill no. 16, eighty-ninth general assembly, first regular session, are
5 repealed and four new sections enacted in lieu thereof, to be known as sections 105.472,
6 105.957, 105.961, and 105.986, to read as follows:

105.472. **1.** All complaints against lobbyists, **legislative liaisons**, elected or appointed
2 officials, including judges, or employees of the state or any political subdivision thereof shall be
3 made in writing to the Missouri ethics commission. The complaints shall name the person
4 allegedly violating the provisions of sections 105.450 to 105.482 **or section 105.986**, the nature
5 of the violation and the date of the commission of the violation and shall be signed by the
6 complainant and shall contain the complainant's statement under oath that the complainant
7 believes, to the best of the complainant's knowledge, the truthfulness of the statements contained
8 therein.

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.

9 **2. "Legislative liaison" shall have the same meaning given to such term under**
10 **section 105.986.**

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

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

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

6 ~~(3) The campaign finance disclosure requirements contained in chapter~~
7 ~~130;~~

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

11 ~~(5) The conflict of interest laws contained in sections 105.450 to 105.468~~
12 ~~and section 171.181; and~~

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

16 ~~2. Complaints filed with the commission shall be in writing and filed~~
17 ~~only by a natural person. The complaint shall contain all facts known by the~~
18 ~~complainant that have given rise to the complaint and the complaint shall be~~
19 ~~sworn to, under penalty of perjury, by the complainant. No complaint shall be~~
20 ~~investigated unless the complaint alleges facts which, if true, fall within the~~
21 ~~jurisdiction of the commission. Within five days after receipt by the commission~~
22 ~~of a complaint which is properly signed and notarized, and which alleges facts~~
23 ~~which, if true, fall within the jurisdiction of the commission, a copy of the~~
24 ~~complaint, including the name of the complainant, shall be delivered to the~~
25 ~~alleged violator.~~

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

38 ~~4. If the commission finds that any complaint is frivolous in nature, the~~
39 ~~commission shall dismiss the case. For purposes of this subsection, "frivolous"~~
40 ~~shall mean a complaint clearly lacking any basis in fact or law. Any person who~~
41

42 ~~submits a frivolous complaint shall be liable for actual and compensatory~~
43 ~~damages to the alleged violator for holding the alleged violator before the public~~
44 ~~in a false light. If the commission finds that a complaint is frivolous, the~~
45 ~~commission shall issue a public report to the complainant and the alleged violator~~
46 ~~stating with particularity its reasons for dismissal of the complaint. Upon such~~
47 ~~issuance, the complaint and all materials relating to the complaint shall be a~~
48 ~~public record as defined in chapter 610.~~

49 ~~5. Complaints which allege violations as described in this section which~~
50 ~~are filed with the commission shall be handled as provided by section 105.961.]~~

51

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;

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 and section
10 171.181; ~~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; **and**

14 **(7) The requirements imposed on legislative lobbyists and legislative liaisons under**
15 **section 105.986.**

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

23 3. No complaint shall be investigated which concerns alleged criminal conduct which
24 allegedly occurred previous to the period of time allowed by law for criminal prosecution for
25 such conduct. The commission may refuse to investigate any conduct which is the subject of
26 civil or criminal litigation. The commission, its executive director or an investigator shall not
27 investigate any complaint concerning conduct which is not criminal in nature which occurred
28 more than two years prior to the date of the complaint. A complaint alleging misconduct on the

29 part of a candidate for public office, other than those alleging failure to file the appropriate
 30 financial interest statements or campaign finance disclosure reports, shall not be accepted by the
 31 commission within sixty days prior to the primary election at which such candidate is running
 32 for office, and until after the general election.

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

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

~~105.961. 1. Upon receipt of a complaint as described by section 105.957
 2 or upon notification by the commission of an investigation under subsection 5 of
 3 section 105.959, the commission shall assign the complaint or investigation to
 4 a special investigator, who may be a commission employee, who shall investigate
 5 and determine the merits of the complaint or investigation. Within ten days of
 6 such assignment, the special investigator shall review such complaint and
 7 disclose, in writing, to the commission any conflict of interest which the special
 8 investigator has or might have with respect to the investigation and subject
 9 thereof. Within ninety days of receipt of the complaint from the commission, the
 10 special investigator shall submit the special investigator's report to the
 11 commission. The commission, after review of such report, shall determine:~~

~~12 (1) That there is reasonable grounds for belief that a violation has
 13 occurred; or~~

~~14 (2) That there are no reasonable grounds for belief that a violation exists
 15 and the complaint or investigation shall be dismissed; or~~

~~16 (3) That additional time is necessary to complete the investigation, and
 17 the status and progress of the investigation to date. The commission, in its
 18 discretion, may allow the investigation to proceed for no more than two
 19 additional successive periods of ninety days each, pending reports regarding the
 20 status and progress of the investigation at the end of each such period.~~

~~21 2. When the commission concludes, based on the report from the special
 22 investigator, or based on an investigation conducted pursuant to section 105.959,
 23 that there are reasonable grounds to believe that a violation of any criminal law
 24 has occurred, and if the commission believes that criminal prosecution would be~~

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

53 ~~3. When the commission concludes, based on the report from the special~~
54 ~~investigator or based on an investigation conducted pursuant to section 105.959,~~
55 ~~that there are reasonable grounds to believe that a violation of any law has~~
56 ~~occurred which is not a violation of criminal law or that criminal prosecution is~~
57 ~~not appropriate, the commission shall conduct a hearing which shall be a closed~~
58 ~~meeting and not open to the public. The hearing shall be conducted pursuant to~~
59 ~~the procedures provided by sections 536.063 to 536.090 and shall be considered~~
60 ~~to be a contested case for purposes of such sections. The commission shall~~
61 ~~determine, in its discretion, whether or not that there is probable cause that a~~
62 ~~violation has occurred. If the commission determines, by a vote of at least four~~
63 ~~members of the commission, that probable cause exists that a violation has~~
64 ~~occurred, the commission may refer its findings and conclusions to the~~
65 ~~appropriate disciplinary authority over the person who is the subject of the report,~~
66 ~~as described in subsection 8 of this section.~~

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

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

77 ~~(2) Notify the person of the requirement to file, amend or correct any~~
78 ~~report, statement, or other document or information required by sections 105.473,~~
79 ~~105.483 to 105.492, or chapter 130 and that the commission may seek judicial~~
80 ~~enforcement of its decision pursuant to subsection 5 of this section; and-~~

81 ~~(3) File the report with the executive director to be maintained as a public~~
82 ~~document; or-~~

83 ~~(4) Issue a letter of concern or letter of reprimand to the person, which~~
84 ~~would be maintained as a public document; or-~~

85 ~~(5) Issue a letter that no further action shall be taken, which would be~~
86 ~~maintained as a public document; or-~~

87 ~~(6) Through reconciliation agreements or action of the commission, the~~
88 ~~power to seek fees for violations in an amount not greater than one thousand~~
89 ~~dollars or double the amount involved in the violation.-~~

90 ~~5. Upon vote of at least four members, the commission may initiate~~
91 ~~formal judicial proceedings in the circuit court of Cole County seeking to obtain~~
92 ~~any of the following orders:-~~

93 ~~(1) Cease and desist violation of any provision of sections 105.450 to~~
94 ~~105.496, or chapter 130, or sections 105.955 to 105.963;-~~

95 ~~(2) Pay any civil penalties required by sections 105.450 to 105.496 or~~
96 ~~chapter 130;-~~

97 ~~(3) File any reports, statements, or other documents or information~~
98 ~~required by sections 105.450 to 105.496, or chapter 130; or-~~

99 ~~(4) Pay restitution for any unjust enrichment the violator obtained as a~~
100 ~~result of any violation of any criminal statute as described in subsection 7 of this~~
101 ~~section.-~~

102 ~~6. After the commission determines by a vote of at least four members~~
103 ~~of the commission that a violation has occurred, other than a referral for criminal~~
104 ~~prosecution, and the commission has referred the findings and conclusions to the~~
105 ~~appropriate disciplinary authority over the person who is the subject of the report,~~
106 ~~or has taken an action under subsection 4 of this section, the subject of the report~~
107 ~~may appeal the determination of the commission to the circuit court of Cole~~
108 ~~County. The court shall conduct a de novo review of the determination of the~~
109 ~~commission. Such appeal shall stay the action of the Missouri ethics~~

110 commission. Such appeal shall be filed not later than the fourteenth day after the
111 subject of the commission's action receives actual notice of the commission's
112 action. If a petition for judicial review of a final order is not filed as provided in
113 this section or when an order for fees under subsection 4 of this section becomes
114 final following an appeal to the circuit court of Cole County, the commission
115 may file a certified copy of the final order with the circuit court of Cole County.
116 When any order for fees under subsection 4 of this section becomes final, the
117 commission may file a certified copy of the final order with the circuit court of
118 Cole County. The order so filed shall have the same effect as a judgment of the
119 court and may be recorded, enforced, or satisfied in the same manner as a
120 judgment of the court.

121 ~~7. In the proceeding in the circuit court of Cole County, the commission~~
122 ~~may seek restitution against any person who has obtained unjust enrichment as~~
123 ~~a result of violation of any provision of sections 105.450 to 105.496, or chapter~~
124 ~~130 and may recover on behalf of the state or political subdivision with which the~~
125 ~~alleged violator is associated, damages in the amount of any unjust enrichment~~
126 ~~obtained and costs and attorney's fees as ordered by the court.~~

127 ~~8. The appropriate disciplinary authority to whom a report shall be sent~~
128 ~~pursuant to subsection 2 or 3 of this section shall include, but not be limited to,~~
129 ~~the following:~~

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

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

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

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

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

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

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

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

- 152 ~~9. The special investigator having a complaint referred to the special~~
153 ~~investigator by the commission shall have the following powers:-~~
- 154 ~~(1) To request and shall be given access to information in the possession~~
155 ~~of any person or agency which the special investigator deems necessary for the~~
156 ~~discharge of the special investigator's responsibilities;-~~
- 157 ~~(2) To examine the records and documents of any person or agency,~~
158 ~~unless such examination would violate state or federal law providing for~~
159 ~~confidentiality;-~~
- 160 ~~(3) To administer oaths and affirmations;-~~
- 161 ~~(4) Upon refusal by any person to comply with a request for information~~
162 ~~relevant to an investigation, an investigator may issue a subpoena for any person~~
163 ~~to appear and give testimony, or for a subpoena duces tecum to produce~~
164 ~~documentary or other evidence which the investigator deems relevant to a matter~~
165 ~~under the investigator's inquiry. The subpoenas and subpoenas duces tecum may~~
166 ~~be enforced by applying to a judge of the circuit court of Cole County or any~~
167 ~~county where the person or entity that has been subpoenaed resides or may be~~
168 ~~found, for an order to show cause why the subpoena or subpoena duces tecum~~
169 ~~should not be enforced. The order and a copy of the application therefor shall be~~
170 ~~served in the same manner as a summons in a civil action, and if, after hearing,~~
171 ~~the court determines that the subpoena or subpoena duces tecum should be~~
172 ~~sustained and enforced, the court shall enforce the subpoena or subpoena duces~~
173 ~~tecum in the same manner as if it had been issued by the court in a civil action;~~
174 ~~and-~~
- 175 ~~(5) To request from the commission such investigative, clerical or other~~
176 ~~staff assistance or advancement of other expenses which are necessary and~~
177 ~~convenient for the proper completion of an investigation. Within the limits of~~
178 ~~appropriations to the commission, the commission may provide such assistance,~~
179 ~~whether by contract to obtain such assistance or from staff employed by the~~
180 ~~commission, or may advance such expenses.-~~
- 181 ~~10. (1) Any retired judge may request in writing to have the judge's name~~
182 ~~removed from the list of special investigators subject to appointment by the~~
183 ~~commission or may request to disqualify himself or herself from any~~
184 ~~investigation. Such request shall include the reasons for seeking removal;-~~
- 185 ~~(2) By vote of four members of the commission, the commission may~~
186 ~~disqualify a judge from a particular investigation or may permanently remove the~~
187 ~~name of any retired judge from the list of special investigators subject to~~
188 ~~appointment by the commission.-~~
- 189 ~~11. Any person who is the subject of any investigation pursuant to this~~
190 ~~section shall be entitled to be represented by counsel at any proceeding before the~~
191 ~~special investigator or the commission.-~~
- 192 ~~12. The provisions of sections 105.957, 105.959 and 105.961 are in~~
193 ~~addition to other provisions of law under which any remedy or right of appeal or~~
194 ~~objection is provided for any person, or any procedure provided for inquiry or~~

195 investigation concerning any matter. The provisions of this section shall not be
 196 construed to limit or affect any other remedy or right of appeal or objection.

197 ~~13. No person shall be required to make or file a complaint to the~~
 198 ~~commission as a prerequisite for exhausting the person's administrative remedies~~
 199 ~~before pursuing any civil cause of action allowed by law.~~

200 ~~14. If, in the opinion of the commission, the complaining party was~~
 201 ~~motivated by malice or reason contrary to the spirit of any law on which such~~
 202 ~~complaint was based, in filing the complaint without just cause, this finding shall~~
 203 ~~be reported to appropriate law enforcement authorities. Any person who~~
 204 ~~knowingly files a complaint without just cause, or with malice, is guilty of a class~~
 205 ~~A misdemeanor.~~

206 ~~15. A respondent party who prevails in a formal judicial action brought~~
 207 ~~by the commission shall be awarded those reasonable fees and expenses incurred~~
 208 ~~by that party in the formal judicial action, unless the court finds that the position~~
 209 ~~of the commission was substantially justified or that special circumstances make~~
 210 ~~such an award unjust.~~

211 ~~16. The special investigator and members and staff of the commission~~
 212 ~~shall maintain confidentiality with respect to all matters concerning a complaint,~~
 213 ~~with the exception of communications with any person which are necessary to the~~
 214 ~~investigation. Any person who violates the confidentiality requirements imposed~~
 215 ~~by this section or subsection 17 of section 105.955 required to be confidential is~~
 216 ~~guilty of a class A misdemeanor and shall be subject to removal from or~~
 217 ~~termination of employment by the commission.~~

218 ~~17. Any judge of the court of appeals or circuit court who ceases to hold~~
 219 ~~such office by reason of the judge's retirement and who serves as a special~~
 220 ~~investigator pursuant to this section shall receive annual compensation, salary or~~
 221 ~~retirement for such services at the rates of compensation provided for senior~~
 222 ~~judges by subsections 1, 2 and 4 of section 476.682. Such retired judges shall by~~
 223 ~~the tenth day of each month following any month in which the judge provided~~
 224 ~~services pursuant to this section certify to the commission and to the state courts~~
 225 ~~administrator the amount of time engaged in such services by hour or fraction~~
 226 ~~thereof, the dates thereof, and the expenses incurred and allowable pursuant to~~
 227 ~~this section. The commission shall then issue a warrant to the state treasurer for~~
 228 ~~the payment of the salary and expenses to the extent, and within limitations,~~
 229 ~~provided for in this section. The state treasurer upon receipt of such warrant shall~~
 230 ~~pay the same out of any appropriations made for this purpose on the last day of~~
 231 ~~the month during which the warrant was received by the state treasurer.]~~

232

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

42 required by this subsection, upon request of the commission, a new special prosecutor, who may
43 be the attorney general, shall be appointed. The report may also be referred to the appropriate
44 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 and shall be considered to be a contested
51 case for purposes of such sections. The commission shall determine, in its discretion, whether
52 or not that there is probable cause that a violation has occurred. If the commission determines,
53 by a vote of at least four members of the commission, that probable cause exists that a violation
54 has occurred, the commission may refer its findings and conclusions to the appropriate
55 disciplinary authority over the person who is the subject of the report, as described in subsection
56 7 of this section. After the commission determines by a vote of at least four members of the
57 commission that probable cause exists that a violation has occurred, and the commission has
58 referred the findings and conclusions to the appropriate disciplinary authority over the person
59 subject of the report, the subject of the report may appeal the determination of the commission
60 to the administrative hearing commission. Such appeal shall stay the action of the Missouri
61 ethics commission. Such appeal shall be filed not later than the fourteenth day after the subject
62 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 and that the commission may seek judicial enforcement of its decision pursuant to
75 subsection 5 of this section;

76 **(3) Notify the person of the requirement to complete the training under section**
77 **105.986 and that the commission may seek judicial enforcement of its decision under**
78 **subsection 5 of this section; and**

79 ~~[(3)]~~ **(4)** File the report with the executive director to be maintained as a public
80 document; or

81 ~~[(4)]~~ **(5)** Issue a letter of concern or letter of reprimand to the person, which would be
82 maintained as a public document; or

83 ~~[(5)]~~ **(6)** Issue a letter that no further action shall be taken, which would be maintained
84 as a public document; or

85 ~~[(6)]~~ **(7)** Through reconciliation agreements or civil action, the power to seek fees for
86 violations in an amount not greater than one thousand dollars or double the amount involved in
87 the violation.

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

90 (1) Cease and desist violation of any provision of sections 105.450 to 105.496, or chapter
91 130, or sections 105.955 to 105.963;

92 (2) Pay any civil penalties required by sections 105.450 to 105.496 or chapter 130;

93 (3) File any reports, statements, or other documents or information required by sections
94 105.450 to 105.496, or chapter 130;

95 **(4) Complete the training required under section 105.986; or**

96 ~~[(4)]~~ **(5)** Pay restitution for any unjust enrichment the violator obtained as a result of any
97 violation of any criminal statute as described in subsection 6 of this section.

98

99 The Missouri ethics commission shall give actual notice to the subject of the complaint of the
100 proposed action as set out in this section. The subject of the complaint may appeal the action
101 of the Missouri ethics commission, other than a referral for criminal prosecution, to the
102 administrative hearing commission. Such appeal shall stay the action of the Missouri ethics
103 commission. Such appeal shall be filed no later than fourteen days after the subject of the
104 commission's actions receives actual notice of the commission's actions.

105 6. In the proceeding in circuit court, the commission may seek restitution against any
106 person who has obtained unjust enrichment as a result of violation of any provision of sections
107 105.450 to 105.496, or chapter 130 and may recover on behalf of the state or political
108 subdivision with which the alleged violator is associated, damages in the amount of any unjust
109 enrichment obtained and costs and attorney's fees as ordered by the court.

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

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

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

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

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

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

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

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

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

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

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

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

138 (3) To administer oaths and affirmations;

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

148 should be sustained and enforced, the court shall enforce the subpoena or subpoena duces tecum
149 in the same manner as if it had been issued by the court in a civil action; and

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

155 9. (1) Any retired judge may request in writing to have the judge's name removed from
156 the list of special investigators subject to appointment by the commission or may request to
157 disqualify himself or herself from any investigation. Such request shall include the reasons for
158 seeking removal;

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

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

165 11. The provisions of sections 105.957, 105.959 and 105.961 are in addition to other
166 provisions of law under which any remedy or right of appeal or objection is provided for any
167 person, or any procedure provided for inquiry or investigation concerning any matter. The
168 provisions of this section shall not be construed to limit or affect any other remedy or right of
169 appeal or objection.

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

173 13. If, in the opinion of the commission, the complaining party was motivated by malice
174 or reason contrary to the spirit of any law on which such complaint was based, in filing the
175 complaint without just cause, this finding shall be reported to appropriate law enforcement
176 authorities. Any person who knowingly files a complaint without just cause, or with malice, is
177 guilty of a class A misdemeanor.

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

182 15. The special investigator and members and staff of the commission shall maintain
183 confidentiality with respect to all matters concerning a complaint until and if a report is filed

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

192 16. Any judge of the court of appeals or circuit court who ceases to hold such office by
193 reason of the judge's retirement and who serves as a special investigator pursuant to this section
194 shall receive annual compensation, salary or retirement for such services at the rates of
195 compensation provided for senior judges by subsections 1, 2 and 4 of section 476.682. Such
196 retired judges shall by the tenth day of each month following any month in which the judge
197 provided services pursuant to this section certify to the commission and to the state courts
198 administrator the amount of time engaged in such services by hour or fraction thereof, the dates
199 thereof, and the expenses incurred and allowable pursuant to this section. The commission shall
200 then issue a warrant to the state treasurer for the payment of the salary and expenses to the extent,
201 and within limitations, provided for in this section. The state treasurer upon receipt of such
202 warrant shall pay the same out of any appropriations made for this purpose on the last day of the
203 month during which the warrant was received by the state treasurer.

**105.986. 1. (1) A legislative lobbyist, as defined under section 105.470, shall
2 complete sexual harassment training offered by the Missouri ethics commission within
3 ninety days of registration as a legislative lobbyist.**

**4 (2) A legislative liaison shall complete sexual harassment training offered by the
5 Missouri ethics commission within ninety days of appointment as a legislative liaison.**

**6 2. The training required under subsection 1 of this section shall include a detailed
7 survey of the requirements of chapter 213. Such training may also review additional ethics
8 rules enacted by the general assembly or a chamber of the general assembly.**

**9 3. The Missouri ethics commission shall offer the training required under
10 subsection 1 of this section at least four times each year.**

**11 4. Notwithstanding the provisions of subsection 1 of this section, for good cause
12 shown, the Missouri ethics commission may grant any legislative lobbyist or legislative
13 liaison one extension, of up to ninety days, to complete the training required under
14 subsection 1 of this section.**

**15 5. The Missouri ethics commission shall establish, maintain, and publish an online
16 list, available to members of the public, of the legislative lobbyists and legislative liaisons**

17 **subject to the requirements of subsection 1 of this section. For each legislative lobbyist and**
18 **for each legislative liaison, such list shall indicate:**

19 **(1) Whether such person has completed the training required under subsection 1**
20 **of this section; and**

21 **(2) Whether such person received an extension of time to complete such training**
22 **under subsection 4 of this section.**

23 **6. For purposes of this section, "legislative liaison" means any person appointed**
24 **to communicate between members of the general assembly and other agencies or**
25 **departments of the state or political subdivisions of the state.**

26 **7. The Missouri ethics commission shall promulgate rules governing the content of**
27 **the training required under subsection 1 of this section. Any rule or portion of a rule, as**
28 **that term is defined in section 536.010, that is created under the authority delegated in this**
29 **section shall become effective only if it complies with and is subject to all of the provisions**
30 **of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are**
31 **nonseverable, and if any of the powers vested with the general assembly pursuant to**
32 **chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are**
33 **subsequently held unconstitutional, then the grant of rulemaking authority and any rule**
34 **proposed or adopted after the effective date of this section shall be invalid and void.**

Section B. Section A of this act shall become effective on January 1, 2018.

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