

SECOND REGULAR SESSION

# HOUSE BILL NO. 2223

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SWAN.

5657H.011

D. ADAM CRUMBLISS, Chief Clerk

## AN ACT

To repeal 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 two new sections relating to complaints filed with the ethics commission.

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

Section A. 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and section 105.961 as enacted by senate bill no. 16, eighty-ninth general assembly, first regular session, are repealed and two new sections enacted in lieu thereof, to be known as sections 105.957 and 105.961, to read as follows:

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

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

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

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

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

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

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

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

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

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

14 2. Complaints filed with the commission shall be in writing and filed [only by a natural  
15 person] **either anonymously or by an identified natural person or an organization.** The  
16 complaint shall contain all facts known by the complainant that have given rise to the complaint  
17 [and the complaint shall be sworn to, under penalty of perjury, by the complainant]. No  
18 complaint shall be investigated unless the complaint alleges facts which, if true, fall within the  
19 jurisdiction of the commission. **The commission may decline to investigate an anonymous**  
20 **complaint of its own volition and without investigation, but it shall be permissible for the**  
21 **commission to investigate and act on such complaints.** Within five days after receipt **by the**  
22 **commission** of a complaint [by the commission] **that alleges facts that, if true, fall within the**  
23 **jurisdiction of the commission,** a copy of the complaint[, including the name of the  
24 complainant,] shall be delivered to the alleged violator.

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

35 4. If the commission finds that any complaint **filed by a named individual or**  
36 **organization** is frivolous in nature or finds no probable cause to believe that there has been a  
37 violation, the commission shall dismiss the case. For purposes of this subsection, "frivolous"  
38 shall mean a complaint clearly lacking any basis in fact or law. [Any person who submits a  
39 frivolous complaint shall be liable for actual and compensatory damages to the alleged violator  
40 for holding the alleged violator before the public in a false light.] If the commission finds that  
41 a complaint is frivolous or that there is not probable cause to believe there has been a violation,

42 the commission shall issue a public report to the complainant and the alleged violator stating  
43 with particularity its reasons for dismissal of the complaint. Upon such issuance, the complaint  
44 and all materials relating to the complaint shall be a public record as defined in chapter 610. **No**  
45 **record on an anonymous complaint if such complaint is rejected, or reason for rejecting**  
46 **an anonymous complaint, shall be filed or treated as a public record under chapter 610.**

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

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

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

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

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

22 2. When the commission concludes, based on the report from the special  
23 investigator, or based on an investigation conducted pursuant to section 105.959,  
24 that there are reasonable grounds to believe that a violation of any criminal law  
25 has occurred, and if the commission believes that criminal prosecution would be  
26 appropriate upon a vote of four members of the commission, the commission  
27 shall refer the report to the Missouri office of prosecution services, prosecutors  
28 coordinators training council established in section 56.760, which shall submit  
29 a panel of five attorneys for recommendation to the court having criminal  
30 jurisdiction, for appointment of an attorney to serve as a special prosecutor;  
31 except that, the attorney general of Missouri or any assistant attorney general  
32 shall not act as such special prosecutor. The court shall then appoint from such  
33 panel a special prosecutor pursuant to section 56.110 who shall have all the  
34 powers provided by section 56.130. The court shall allow a reasonable and  
35 necessary attorney's fee for the services of the special prosecutor. Such fee shall  
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 **filed by a natural person or organization** as  
2 described by section 105.957, the commission shall assign the complaint to a special  
3 investigator, who may be a commission employee, who shall investigate and determine the  
4 merits of the complaint. Within ten days of such assignment, the special investigator shall  
5 review such complaint and disclose, in writing, to the commission any conflict of interest which  
6 the special investigator has or might have with respect to the investigation and subject thereof.  
7 Within one hundred twenty days of receipt of the complaint from the commission, the special  
8 investigator shall submit the special investigator's report to the commission. The commission,  
9 after review of such report, shall 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; 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, 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 (3) File any reports, statements, or other documents or information required by sections  
90 105.450 to 105.496, or chapter 130; or

91 (4) Pay restitution for any unjust enrichment the violator obtained as a result of any  
92 violation of any criminal statute as described in subsection 6 of this section. The Missouri ethics  
93 commission shall give actual notice to the subject of the complaint of the proposed action as set  
94 out in this section. The subject of the complaint may appeal the action of the Missouri ethics  
95 commission, other than a referral for criminal prosecution, to the administrative hearing  
96 commission. Such appeal shall stay the action of the Missouri ethics commission. Such appeal  
97 shall be filed no later than fourteen days after the subject of the commission's actions receives  
98 actual notice of the commission's actions.

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

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

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

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

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

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

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

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

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

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

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

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

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

132 (3) To administer oaths and affirmations;

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

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

149 9. (1) Any retired judge may request in writing to have the judge's name removed from  
150 the list of special investigators subject to appointment by the commission or may request to  
151 disqualify himself or herself from any investigation. Such request shall include the reasons for  
152 seeking removal;

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

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

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

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

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

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

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

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

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

198 **17. The commission may follow the procedures of this section when investigating**  
199 **anonymous complaints and shall employ the same remedies for confirmed violations under**  
200 **this section, but is under no obligation to investigate anonymous complaints at all or to**  
201 **expend resources to follow the same investigative procedure as mandated by this section**  
202 **for those complaints filed by named individuals or organizations.**

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