

HOUSE BILL NO. 2063

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE MITTEN.

4549H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 105.472, 105.957, and 105.961, RSMo, 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Section A. Sections 105.472, 105.957, and 105.961, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 105.472, 105.957, 105.961, and 105.986, to read as follows:

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

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

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;

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.

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, 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; ~~and~~

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

80 ~~[(4)]~~ (5) Issue a letter of concern or letter of reprimand to the person, which would be
81 maintained as a public document; or

82 ~~[(5)]~~ (6) Issue a letter that no further action shall be taken, which would be maintained
83 as a public document; or

84 ~~[(6)]~~ (7) Through reconciliation agreements or civil action, the power to seek fees for
85 violations in an amount not greater than one thousand dollars or double the amount involved in
86 the violation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

137 (3) To administer oaths and affirmations;

138 (4) Upon refusal by any person to comply with a request for information relevant to an
139 investigation, an investigator may issue a subpoena for any person to appear and give testimony,

140 or for a subpoena duces tecum to produce documentary or other evidence which the investigator
141 deems relevant to a matter under the investigator's inquiry. The subpoenas and subpoenas duces
142 tecum may be enforced by applying to a judge of the circuit court of Cole County or any county
143 where the person or entity that has been subpoenaed resides or may be found, for an order to
144 show cause why the subpoena or subpoena duces tecum should not be enforced. The order and
145 a copy of the application therefor shall be served in the same manner as a summons in a civil
146 action, and if, after hearing, the court determines that the subpoena or subpoena duces tecum
147 should be sustained and enforced, the court shall enforce the subpoena or subpoena duces tecum
148 in the same manner as if it had been issued by the court in a civil action; and

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

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

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

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

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

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

172 13. If, in the opinion of the commission, the complaining party was motivated by malice
173 or reason contrary to the spirit of any law on which such complaint was based, in filing the
174 complaint without just cause, this finding shall be reported to appropriate law enforcement

175 authorities. Any person who knowingly files a complaint without just cause, or with malice, is
176 guilty of a class A misdemeanor.

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

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

191 16. Any judge of the court of appeals or circuit court who ceases to hold such office by
192 reason of the judge's retirement and who serves as a special investigator pursuant to this section
193 shall receive annual compensation, salary or retirement for such services at the rates of
194 compensation provided for senior judges by subsections 1, 2 and 4 of section 476.682. Such
195 retired judges shall by the tenth day of each month following any month in which the judge
196 provided services pursuant to this section certify to the commission and to the state courts
197 administrator the amount of time engaged in such services by hour or fraction thereof, the dates
198 thereof, and the expenses incurred and allowable pursuant to this section. The commission shall
199 then issue a warrant to the state treasurer for the payment of the salary and expenses to the extent,
200 and within limitations, provided for in this section. The state treasurer upon receipt of such
201 warrant shall pay the same out of any appropriations made for this purpose on the last day of the
202 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. The enactment of section 105.986 and the repeal and reenactment of sections
2 105.472, 105.957, and 105.961 of this act shall become effective on January 1, 2020.

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