

SECOND REGULAR SESSION

HOUSE BILL NO. 2558

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE LAMPE.

Read 1st time April 1, 2008 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

5449L.01I

AN ACT

To repeal sections 610.025 and 610.027, RSMo, and to enact in lieu thereof two new sections relating to the Missouri sunshine law.

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

Section A. Sections 610.025 and 610.027, RSMo, are repealed and two new sections
2 enacted in lieu thereof, to be known as sections 610.025 and 610.027, to read as follows:

610.025. Any member of a public governmental body who transmits any message
2 relating to public business by electronic means shall also concurrently transmit that message to
3 either the member's public office computer or the custodian of records in the same format. The
4 provisions of this section shall only apply to messages sent to two or more members of that body
5 so that, when counting the sender, a majority of the body's members are copied. Any such
6 message received by the custodian or at the member's office computer shall be a public record
7 subject to the exceptions of section 610.021. **As used in this section, "mobile communication**
8 **device" includes, but is not limited to any cellular phone or other mobile electronic device**
9 **able to send e-mail.**

610.027. 1. The remedies provided by this section against public governmental bodies
2 shall be in addition to those provided by any other provision of law. Any aggrieved person,
3 taxpayer to, or citizen of, this state, or the attorney general or prosecuting attorney, may seek
4 judicial enforcement of the requirements of sections 610.010 to 610.026. Suits to enforce
5 sections 610.010 to 610.026 shall be brought in the circuit court for the county in which the
6 public governmental body has its principal place of business. Upon service of a summons,

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 petition, complaint, counterclaim, or cross-claim in a civil action brought to enforce the
8 provisions of sections 610.010 to 610.026, the custodian of the public record that is the subject
9 matter of such civil action shall not transfer custody, alter, destroy, or otherwise dispose of the
10 public record sought to be inspected and examined, notwithstanding the applicability of an
11 exemption pursuant to section 610.021 or the assertion that the requested record is not a public
12 record until the court directs otherwise.

13 2. [Once a party seeking judicial enforcement of sections 610.010 to 610.026
14 demonstrates to the court that the body in question is subject to the requirements of sections
15 610.010 to 610.026 and has held a closed meeting, record or vote, the burden of persuasion shall
16 be on the body and its members to demonstrate compliance with the requirements of sections
17 610.010 to 610.026.] **In any legal proceeding, there shall be a presumption that a meeting,
18 record, or vote is open to the public. The burden shall be on a public governmental body
19 or a member of a public governmental body to prove that such meeting, record, or vote is
20 closed to the public.**

21 3. Upon a finding by a preponderance of the evidence that a public governmental body
22 or a member of a public governmental body has [knowingly] violated sections 610.010 to
23 610.026, the public governmental body or the member shall be subject to a civil penalty in an
24 amount up to [one] ~~ten~~ thousand dollars. If the court finds that there is a [knowing] violation
25 of sections 610.010 to 610.026, the court may order the payment by such body or member of all
26 costs and reasonable attorney fees to any party successfully establishing a violation. The court
27 shall determine the amount of the penalty by taking into account the size of the jurisdiction, the
28 seriousness of the offense, and whether the public governmental body or member of a public
29 governmental body has violated sections 610.010 to 610.026 previously.

30 4. [Upon a finding by a preponderance of the evidence that a public governmental body
31 or a member of a public governmental body has purposely violated sections 610.010 to 610.026,
32 the public governmental body or the member shall be subject to a civil penalty in an amount up
33 to five thousand dollars. If the court finds that there was a purposeful violation of sections
34 610.010 to 610.026, then the court shall order the payment by such body or member of all costs
35 and reasonable attorney fees to any party successfully establishing such a violation. The court
36 shall determine the amount of the penalty by taking into account the size of the jurisdiction, the
37 seriousness of the offense, and whether the public governmental body or member of a public
38 governmental body has violated sections 610.010 to 610.026 previously.

39 5.] Upon a finding by a preponderance of the evidence that a public governmental body
40 has violated any provision of sections 610.010 to 610.026, a court shall void any action taken in
41 violation of sections 610.010 to 610.026, if the court finds under the facts of the particular case
42 that the public interest in the enforcement of the policy of sections 610.010 to 610.026 outweighs

43 the public interest in sustaining the validity of the action taken in the closed meeting, record or
44 vote. Suit for enforcement shall be brought within one year from which the violation is
45 ascertainable and in no event shall it be brought later than two years after the violation. This
46 subsection shall not apply to an action taken regarding the issuance of bonds or other evidence
47 of indebtedness of a public governmental body if a public hearing, election or public sale has
48 been held regarding the bonds or evidence of indebtedness.

49 [6.] **5.** A public governmental body which is in doubt about the legality of closing a
50 particular meeting, record or vote [may] **shall** bring suit at the expense of that public
51 governmental body in the circuit court of the county of the public governmental body's principal
52 place of business to ascertain the propriety of any such action, or seek a formal opinion of the
53 attorney general [or an attorney for the governmental body].

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