

SECOND REGULAR SESSION

HOUSE BILL NO. 1777

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE LOVASCO.

4309H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 115.642 and 115.646, RSMo, and to enact in lieu thereof two new sections relating to the expenditure of public funds on printed matter.

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

Section A. Sections 115.642 and 115.646, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 115.642 and 115.646, to read as follows:

115.642. 1. Any person may file a complaint with the secretary of state stating the name of any person who has violated any of the provisions of sections 115.629 to 115.646 and stating the facts of the alleged offense, sworn to, under penalty of perjury.

2. Within thirty days of receiving a complaint, the secretary of state shall notify the person filing the complaint whether or not the secretary has dismissed the complaint or will commence an investigation. The secretary of state shall dismiss frivolous complaints. For purposes of this subsection, "frivolous complaint" shall mean an allegation clearly lacking any basis in fact or law. Any person who makes a frivolous complaint pursuant to this section shall be liable for actual and compensatory damages to the alleged violator for holding the alleged violator before the public in a false light. If reasonable grounds appear that the alleged offense was committed, the secretary of state may issue a probable cause statement. If the secretary of state issues a probable cause statement, he or she may refer the offense to the appropriate prosecuting attorney.

3. Notwithstanding the provisions of section 27.060, 56.060, or 56.430 to the contrary, when requested by the prosecuting attorney or circuit attorney, the secretary of state or his or her authorized representatives may aid any prosecuting attorney or circuit attorney in the commencement and prosecution of election offenses as provided in sections 115.629 to 115.646.

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.

18 4. The secretary of state may investigate any suspected violation of any of the provisions
19 of sections 115.629 to 115.646.

20 **5. This subsection shall only apply to violations of section 115.646.**

21 **(1) For violations of section 115.646 by a state department or the director of a state**
22 **department, any person may file a complaint with the secretary of state alleging the**
23 **violation. For violations of section 115.646 by a political subdivision or the principal**
24 **officer or lead administrator of the political subdivision, any person within the jurisdiction**
25 **of the political subdivision may file a complaint with the secretary of state alleging the**
26 **violation.**

27 **(2) Within thirty days of receiving a complaint, the secretary of state shall notify**
28 **the person filing the complaint whether the secretary of state has dismissed the complaint**
29 **or will commence an investigation. The secretary of state shall also notify the person filing**
30 **the complaint at the conclusion of the investigation and indicate whether the complaint was**
31 **dismissed or legal action under subdivision (3) of this subsection was taken.**

32 **(3) The secretary of state, upon finding reasonable evidence that a violation of**
33 **section 115.646 occurred, or any person with standing as described in subdivision (1) of**
34 **this subsection, upon a belief that section 115.646 has been violated and after the secretary**
35 **of state has investigated and declined to take action, shall follow the following procedure:**

36 **(a) For violations of 115.646 by a state department or the director of a state**
37 **department, file a petition in the circuit court of Cole County naming the state department**
38 **and director of the state department as defendants;**

39 **(b) For violations of 115.646 by a political subdivision or the principal officer or**
40 **lead administrator of the political subdivision, file a petition in the circuit court with**
41 **jurisdiction over the political subdivision naming the political subdivision and the principal**
42 **officer or lead administrator of the political subdivision as defendants; and**

43 **(c) File a petition that shall identify the specific violation of section 115.646, provide**
44 **evidence of the violation, and ask the court to grant the relief provided for in this**
45 **subsection.**

46 **(4) The court shall hear arguments and consider the evidence presented by both**
47 **parties in making its decision. If the court determines that there was a violation of section**
48 **115.646, it shall impose the following penalties:**

49 **(a) The department or political subdivision shall be subject to a civil penalty in an**
50 **amount equal to ten times the expenditure that violated section 115.646 or ten thousand**
51 **dollars, whichever is greater;**

52 **(b) The director of the state department or the principal officer or lead**
53 **administrator of the political subdivision shall be subject to a civil penalty in an amount**

54 equal to ten times the expenditure that violated section 115.646 or one thousand dollars,
55 whichever is lesser;

56 (c) The defendant shall be ordered to pay the plaintiff's costs and attorney's fees;
57 and

58 (d) The department or political subdivision shall be permanently enjoined from
59 publishing printed matter and shall post a bond of at least ten thousand dollars that shall
60 be forfeited if the department or political subdivision publishes printed matter.

115.646. 1. No contribution or expenditure of public funds shall be made directly by any
2 officer, employee, **director, board member**, or agent of any **state department or political**
3 **subdivision of this state** to advocate, support, [or] oppose, **or provide education on** any ballot
4 measure, **any matter pending before the general assembly**, or candidate for public office. This
5 section shall not be construed to prohibit any public official of a political subdivision from
6 making public appearances or from issuing press releases concerning any such ballot measure.

7 2. It shall not be a violation of subsection 1 of this section for a **state department or**
8 **political subdivision to publish the full text of a proposed ballot measure or the ballot**
9 **language approved by the secretary of state if that ballot measure is scheduled to appear**
10 **on the ballot within sixty days of the publication. Nothing in subsection 1 of this section**
11 **shall prohibit any publication that is required to comply with federal law or the laws of this**
12 **state.**

13 3. Any printed matter that is published by a state department or political
14 subdivision of this state under subsection 2 of this section shall, in a clear and conspicuous
15 manner, contain the words "Paid for by" followed by the department or political
16 subdivision that paid for the printed matter, as well as the name of the director, principal
17 officer, or other lead administrator.

18 4. For the purposes of this section, the term "printed matter" shall include any
19 pamphlet, circular, handbill, sample ballot, advertisement, sign, bumper stickers, or other
20 imprinted or lettered material; but shall not include any news story, commentary, or
21 editorial published by a newspaper, periodical, or news website without charge to the
22 department, political subdivision, or any other person.

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