

FIRST REGULAR SESSION

# HOUSE BILL NO. 888

## 101ST GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE DOLL.

1772H.011

DANA RADEMAN MILLER, Chief Clerk

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### 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 penalty provisions and a delayed effective date.

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Section A. Sections 105.472, 105.957, and 105.961, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 105.472, 105.957, 105.961, and 105.986, to read as follows: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

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.

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) To administer oaths and affirmations;

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

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

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

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

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

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

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

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

13. If, in the opinion of the commission, the complaining party was motivated by malice or reason contrary to the spirit of any law on which such complaint was based, in filing the 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, as defined under section 105.470, shall complete sexual  
5 harassment training offered by the Missouri ethics commission within ninety days of  
6 appointment as a legislative liaison.**



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

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

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

16           **5. The Missouri ethics commission shall establish, maintain, and publish an online**  
17 **list, available to members of the public, of the legislative lobbyists and legislative liaisons**  
18 **subject to the requirements of subsection 1 of this section. For each legislative lobbyist and**  
19 **for each legislative liaison, such list shall indicate:**

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

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

24           **6. The Missouri ethics commission shall promulgate rules governing the content of**  
25 **the training required under subsection 1 of this section. Any rule or portion of a rule, as**  
26 **that term is defined in section 536.010, that is created under the authority delegated in this**  
27 **section shall become effective only if it complies with and is subject to all of the provisions**  
28 **of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are**  
29 **nonseverable, and if any of the powers vested with the general assembly pursuant to**  
30 **chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are**  
31 **subsequently held unconstitutional, then the grant of rulemaking authority and any rule**  
32 **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, 2022.

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