

FIRST REGULAR SESSION
[PERFECTED]
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 794
103RD GENERAL ASSEMBLY

1752H.04P

JOSEPH ENGLER, Chief Clerk

AN ACT

To repeal sections 115.105 and 115.107, RSMo, and to enact in lieu thereof nine new sections relating to elections.

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

Section A. Sections 115.105 and 115.107, RSMo, are repealed and nine new sections
2 enacted in lieu thereof, to be known as sections 115.105, 115.107, 115.1630, 130.170,
3 130.173, 130.176, 130.179, 130.185, and 130.188, to read as follows:

115.105. 1. The chair of the county committee of each political party named on the
2 ballot shall have the right to designate a challenger for each polling place, who may be
3 present ~~[until all]~~ **while** ballots are cast on ~~[the day of]~~ **election day, or in first class counties**
4 **and charter counties, during the absentee voting period**, and a challenger for each location
5 at which absentee ballots are counted, who may be present while the ballots are being
6 prepared for counting and counted. No later than four business days before ~~[the election]~~ **a**
7 **challenger may enter a polling location**, the chair of each county committee of each
8 political party named on the ballot shall provide signed official designation forms with the
9 names of the designated challengers and substitutes to the local election authority for
10 confirmation of eligibility to serve as a challenger. The local election authority, after
11 verifying the eligibility of each designated and substitute challenger, shall sign off on the
12 official designation forms, unless the challenger is found not to have the qualifications
13 established by subsection 4 of this section. If the election authority determines that a
14 challenger does not meet the qualifications of subsection 4 of this section, the designating
15 party chair may designate a replacement challenger and provide the local election authority
16 with the name of the replacement challenger before 5:00 p.m. of the Monday preceding the

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.

17 election. The designating chair may substitute challengers at his or her discretion during such
18 hours.

19 2. Challenges may only be made when the challenger believes the election laws of
20 this state have been or will be violated, and each challenger shall report any such belief to the
21 election judges, or to the election authority if not satisfied with the decision of the election
22 judges.

23 3. Prior to the close of the polls, challengers may list and give out the names of those
24 who have voted. The listing and giving out of names of those who have voted by a challenger
25 shall not be considered giving information tending to show the state of the count.

26 4. All persons selected as challengers shall have the same qualifications required by
27 section 115.085 for election judges, except that such challenger shall be a registered voter in
28 the jurisdiction of the election authority for which the challenger is designated as a challenger.

29 5. Any challenge by a challenger to a voter's identification for validity shall be made
30 only to the election judges or other election authority. If the poll challenger is not satisfied
31 with the decision of the election judges, then he or she may report his or her belief that the
32 election laws of this state have been or will be violated to the election authority as allowed
33 under this section.

115.107. 1. At every election, the chairman of the county committee of each political
2 party named on the ballot shall have the right to designate a watcher for each place votes are
3 counted. **No later than four business days before a watcher may enter a polling or**
4 **counting location, the chair of each county committee of each political party named on**
5 **the ballot shall provide signed official designation forms with the names of the**
6 **designated watchers and substitutes to the local election authority for confirmation of**
7 **eligibility to serve as a watcher. The local election authority, after verifying the eligibility**
8 **of each designated and substitute watcher, shall sign off on the official designation**
9 **forms, unless the watcher is found not to have the qualifications established by**
10 **subsection 5 of this section. If the election authority determines that a watcher does not**
11 **meet the qualifications of subsection 5 of this section, the designating party chair may**
12 **designate a replacement watcher and provide the local election authority with the name**
13 **of the replacement watcher before 5:00 p.m. of the Monday preceding the election. The**
14 **designating chair may substitute watchers at his or her discretion during such hours.**

15 2. Watchers are to observe the counting of the votes and present any complaint of
16 irregularity or law violation to the election judges, or to the election authority if not satisfied
17 with the decision of the election judges. No watcher may be substituted for another on
18 election day.

19 3. No watcher shall report to anyone the name of any person who has or has not
20 voted.

21 4. A watcher may remain present until all closing certification forms are completed,
22 all equipment is closed and taken down, the transportation case for the ballots is sealed,
23 election materials are returned to the election authority or to the designated collection place
24 for a polling place, and any other duties or procedures required under sections 115.447 to
25 115.491 are completed. A watcher may also remain present at each **in-person absentee**
26 **voting location in first class counties and charter counties** at which absentee ballots are
27 counted **or prepared for counting** and may remain present while such ballots are being
28 prepared for counting and counted.

29 5. All persons selected as watchers shall have the same qualifications required by
30 section 115.085 for election judges, except that such watcher shall be a registered voter in the
31 jurisdiction of the election authority for which the watcher is designated as a watcher.

115.1630. 1. As used in this section, the following terms shall mean:

2 (1) "Donation", a payment, gift, subscription, loan, advance, deposit, or
3 anything of value given to a person without consideration;

4 (2) "Election administration", any function directly related to the
5 administration of elections, including voter registration, election security, ballot
6 processing, and election official training. For the purposes of this section, "election
7 administration" shall not include any post-election canvass, recount, contest, or audit
8 processes;

9 (3) "Election officers", individuals who administer, implement, or oversee
10 election-related policies, procedures, or technologies on behalf of any municipality,
11 municipal agency, state, or state agency. Election officers include, but are not limited to,
12 the secretary of state; any registrar of voters; any town, city, or county clerk; any
13 member of a board or commission of elections; any member of the independent
14 redistricting commission; or any of the aforementioned individual's agents, employees,
15 representatives, or assigns;

16 (4) "Entity", an individual, partnership, association, corporation, organization,
17 or any other combination or group of individuals;

18 (5) "Foreign donations", donations provided by a foreign national;

19 (6) "Foreign national", includes:

20 (a) An individual who is not a citizen of the United States;

21 (b) A government, or subdivision, of a foreign country or municipality thereof;

22 (c) A foreign political party; or

23 (d) Any entity, such as a partnership, association, corporation, organization, or
24 other combination of persons, that is organized under the laws of or has its principal
25 place of business in a foreign country;

26 (7) "Government entity", a state, county, local, or municipal government entity,
27 or an officer, employee, or volunteer of one of these entities;

28 (8) "State officer", includes all elected officers and directors of the executive
29 branch of state government.

30 2. No government entity shall solicit, accept, or use any funds or in-kind goods or
31 services for election administration if those funds or in-kind goods or services are
32 donated directly or indirectly by any person other than a government entity. An
33 election officer may, however, solicit, accept, or use funds or in-kind goods or services of
34 de minimis value.

35 3. Government entities shall not be members of or participate in programs run
36 by organizations that engage in election administration and receive foreign funding.
37 Subject to the provisions of subsection 4 of this section, no government entity or election
38 officer shall join the membership of any entity, participate in any program, or purchase
39 any services from any entity unless the entity complies with the following certification
40 requirements:

41 (1) The certification shall state that the entity:

42 (a) Has not directly or indirectly financed election administration; and

43 (b) Has been certified as being free of direct or indirect foreign donations;

44 (2) Certifications under subdivision (1) of subsection 3 of this section shall be:

45 (a) Renewed on an annual basis;

46 (b) Updated within five business days after obtaining information unknown at
47 the time of the initial certification; and

48 (c) Dated and sworn under penalty of perjury.

49

50 The restrictions in this subsection shall not apply to membership in professional
51 organizations or memberships of individuals in a private capacity, unrelated to election
52 administration.

53 4. If, in his or her private capacity, an election officer joins or considers joining
54 the membership of an entity, or participates or considers participating in any program
55 described in subsection 3 of this section, the election officer has a duty to disclose his or
56 her participation, membership, or potential participation or membership, and to have
57 such participation, membership, or potential participation or membership considered in
58 a public hearing and disclosed on public websites, but shall not be required to appear on
59 personal websites. The disclosure shall:

60 (1) Be conspicuous, publicly accessible, and publicly viewable;

61 (2) Be prepared in at least 14-point Times New Roman font, and in a contrasting
62 color from the background of the website;

- 63 (3) Be enclosed inside a box, separated from other text and graphics;
- 64 (4) Be displayed on the home page of the election officer's website, reasonably
- 65 close to the top of the page; and
- 66 (5) Include the following:
- 67 (a) The full name and title of the election officer;
- 68 (b) The date that the election officer participated in the program, joined the
- 69 entity, or is scheduled to begin participation in the program;
- 70 (c) The full name of the program or entity;
- 71 (d) An accurate description of the program or entity;
- 72 (e) A certification that the entity or program has not been, directly or indirectly,
- 73 the recipient of foreign donations and a statement that the entity or program has not
- 74 been the recipient of foreign donations or a statement that the entity or program has not
- 75 submitted such certification; and
- 76 (f) The date of any public hearing at which membership or participation in the
- 77 program is to be considered.
- 78 5. All disclosures filed under subsection 4 of this section shall include, in a
- 79 publicly accessible format, all resources and documents received by the election officer
- 80 from the entity or program, along with a disclosure of any funding for the program
- 81 known to the election officer. All resources and documents received by the election
- 82 officer shall be added to the disclosure within ten days of receipt.
- 83 6. If the election officer does not have a public website, the disclosure shall be
- 84 included on the official homepage of the website most closely associated with the election
- 85 officer, including that of his or her superior or supervisor. If there is no appropriate
- 86 public website, the disclosure shall be submitted and displayed on the secretary of state's
- 87 website.
- 88 7. All disclosures made under this section shall remain posted and accessible for
- 89 at least thirty days before participation in the program or joining the entity and shall
- 90 remain posted for one hundred eighty days after the program or membership in the
- 91 entity ends.
- 92 8. Violation of the provisions of this section shall be a class B misdemeanor,
- 93 enforceable only if a government entity knowingly accepts foreign-influenced funds for
- 94 election administration.
- 130.170. For purposes of sections 130.170 to 130.188, the following terms mean:
- 2 (1) "Committee", the same meaning as otherwise provided in section 130.011,
- 3 except it shall not include candidate committees;
- 4 (2) "Directly or indirectly", acting either alone or jointly with, through, or on
- 5 behalf of any other committee, organization, person, or other entity;

6 (3) "Foreign national", any of the following:

7 (a) An individual who is not a citizen or lawful permanent resident of the United
8 States of America;

9 (b) A government, or subdivision, of a foreign country or municipality thereof;

10 (c) A foreign political party;

11 (d) Any entity, such as a partnership, association, corporation, organization, or
12 other combination of persons, that is organized under the laws of, or has its principal
13 place of business in, a foreign country; or

14 (e) Any entity organized pursuant to the laws of the United States of America or
15 any state thereof that is wholly or majority owned by a person or entity described in
16 paragraphs (a) to (d) of this subdivision, unless:

17 a. Any contribution or expenditure it makes derives entirely from funds
18 generated by the entity's United States operations; and

19 b. All decisions concerning the contribution or expenditure are made by
20 individuals who are United States citizens or lawful permanent residents, except for
21 setting overall budget amounts;

22 (4) "Funds obtained through the usual course of business", funds generated
23 entirely by the entity's United States operations;

24 (5) "Lobbyist", the same meaning as in section 105.470;

25 (6) "Prohibited sources", contributions from or expenditures by a foreign
26 national made with the intent to use such funds to influence an election on a ballot
27 measure;

28 (7) "Preliminary activity", includes, but is not limited to, conducting a poll,
29 drafting ballot measure language, conducting a focus group, making telephone calls,
30 and travel;

31 (8) "Tax-exempt organization", an organization that is described in section 501
32 (c) of the Internal Revenue Code of 1986 and is exempt from taxation under section 501
33 (a) of such Code. A political organization organized pursuant to section 527 of such
34 Code shall not be considered a tax-exempt organization.

130.173. 1. Upon creating, forming, or registering a committee, the treasurer
2 shall file an accompanying certification that no preliminary activity was funded by
3 prohibited sources, whether directly or indirectly.

4 2. After a committee has been created, formed, or registered the committee shall
5 not knowingly or willfully receive, solicit, or accept contributions from a prohibited
6 source, whether directly or indirectly.

7 **3. Any report filed pursuant to this chapter shall include an affirmation that the**
8 **committee has not knowingly or willfully received, solicited, or accepted, directly or**
9 **indirectly, contributions from a prohibited source.**

10 **4. Any committee or person that makes an expenditure in support of or in**
11 **opposition to a ballot measure shall keep records of any contribution or expenditure and**
12 **retain such records in the same manner and for the same period of time as is required**
13 **by section 130.036.**

130.176. 1. Upon a committee's receipt of a contribution of more than two
2 **thousand dollars, the treasurer shall obtain from the donor an affirmation that the**
3 **donor is not a foreign national and has not knowingly or willfully accepted funds,**
4 **directly or indirectly, aggregating in excess of ten thousand dollars from one or more**
5 **prohibited sources within the two-year period immediately preceding the date the**
6 **contribution is made, in the case of an individual, or within the four-year period**
7 **immediately preceding the date the contribution is made, in case of any other entity.**
8 **Receipt of an affirmation by a committee pursuant to this subsection shall create a**
9 **rebuttable presumption of compliance with this subsection on the part of the committee.**
10 **Nothing in this subsection shall prohibit the attorney general from pursuing any action**
11 **pursuant to section 130.188 if the attorney general has found a willful violation of this**
12 **subsection.**

13 **2. Each disclosure report filed pursuant to section 130.041 shall require the**
14 **treasurer of a committee to affirm that the donor associated with each contribution is**
15 **not a foreign national and has not knowingly or willfully received, solicited, or accepted,**
16 **whether directly or indirectly, contributions from one or more prohibited sources**
17 **aggregating in excess of ten thousand dollars within the four-year period immediately**
18 **preceding the date of the contribution.**

19 **3. Within forty-eight hours of making one or more expenditures supporting or**
20 **opposing a ballot measure, the entity making the expenditure shall affirm to the**
21 **Missouri ethics commission that it has not knowingly or willfully accepted funds,**
22 **directly or indirectly, aggregating in excess of ten thousand dollars from one or more**
23 **prohibited sources within the four-year period immediately preceding the date the**
24 **expenditure is made and that it will not do so through the remainder of the calendar**
25 **year in which the ballot measure will appear on the ballot. Each disclosure report filed**
26 **pursuant to section 130.041 shall require the entity making the expenditure to affirm**
27 **that it has not knowingly or willfully accepted funds, directly or indirectly, aggregating**
28 **in excess of ten thousand dollars from one or more prohibited sources within the four-**
29 **year period immediately preceding the date the expenditure is made. Receipt of an**
30 **affirmation from a donor that it is not a foreign national shall create a rebuttable**

31 presumption that the entity has not knowingly or willingly accepted funds, directly or
32 indirectly, aggregating in excess of ten thousand dollars from one or more prohibited
33 sources. Nothing in this subsection shall prohibit the attorney general from pursuing
34 any action pursuant to section 130.188 if the attorney general has found a willful
35 violation of this subsection.

36 4. Notwithstanding any provision of this section to the contrary, a donor or
37 entity that makes a contribution to a committee or an expenditure in support of or in
38 opposition to a ballot measure from its own funds obtained through the usual course of
39 business or in any commercial or other transaction from any source and which are not
40 contributions does not violate this section.

41 5. A committee shall not accept an in-kind contribution from any foreign
42 national or from any individual or entity that has knowingly or willfully accepted funds,
43 directly or indirectly, aggregating in excess of ten thousand dollars from one or more
44 foreign nationals within the four year period immediately preceding the date the in-kind
45 contribution is made. A foreign national shall not make an in-kind expenditure for the
46 purpose of supporting or opposing any ballot measure.

130.179. 1. A foreign national may not direct, dictate, control or directly or
2 indirectly participate in the decision-making process of any person with regard to that
3 person's activities to influence an election on a ballot measure, such as decisions
4 concerning the making of contributions to influence an election on a ballot measure.

5 2. A foreign national may not solicit, directly or indirectly, the making of a
6 donation, contribution or expenditure by another person to influence an election on a
7 ballot measure.

8 3. Nothing in sections 130.170 to 130.188 shall be deemed to create or eliminate
9 any existing rights or duties beyond those specifically enumerated in such sections.

130.185. 1. Lawful donors to a tax-exempt organization possess a right of
2 privacy in their donations. Any investigation of an alleged violation of sections 130.170
3 to 130.188 shall occur in a manner that shields the identity of lawful donors as much as
4 possible. The attorney general shall not collect or require the submission of information
5 on the identity of any donor to a tax-exempt organization other than those directly
6 related to an alleged violation of sections 130.170 to 130.188. Any collection or required
7 submission of information by the attorney general regarding the identity of any donor to
8 a tax-exempt organization beyond that permitted by sections 130.170 to 130.188 shall be
9 deemed a violation of section 105.1500.

10 2. The attorney general shall not disclose to the public, or another government
11 official not directly involved in the investigation, information revealing the identity of
12 the entity under investigation or any donor to a tax-exempt organization, unless the

13 information is regarding the identity of the entity or of a donor that engaged in conduct
14 prohibited by sections 130.170 to 130.188 after a final determination has been made that
15 the entity or donor violated sections 130.170 to 130.188. The unlawful disclosure of
16 information revealing the identity of any entity under investigation or donor to a tax-
17 exempt organization in connection with a committee shall be deemed a violation of
18 section 105.1500.

130.188. 1. (1) If the attorney general has reasonable cause to believe that a
2 person or entity has engaged in, is engaging in, or is about to engage in, a violation of
3 sections 130.170 to 130.185, the attorney general may execute in writing and cause to be
4 served upon any person who is believed to have information, documentary material, or
5 physical evidence relevant to the alleged or suspected violation, a civil investigative
6 demand requiring such person to appear and testify, or to produce relevant
7 documentary material or physical evidence or examination, at such reasonable time
8 and place as may be stated in the civil investigative demand, concerning the subject
9 matter of the investigation. Service of any civil investigative demand, notice, or
10 subpoena may be made by any person authorized by law to serve process or by any duly
11 authorized employee of the attorney general.

12 (2) In the process of a civil investigative demand being executed pursuant to
13 subdivision (1) of this subsection, the provisions of sections 407.040 to 407.090 shall
14 apply.

15 2. (1) If the attorney general has reasonable cause to believe that a committee,
16 person, or other entity has engaged in, is engaging in, or is about to engage in, a
17 violation of sections 130.170 to 130.185, the attorney general may bring a civil action to
18 enforce sections 130.170 to 130.188. The provisions of section 130.054 and 105.957 to
19 105.963 shall not apply to violations of sections 130.170 to 130.188.

20 (2) A committee, person, or other entity alleged to have violated sections 130.170
21 to 130.188 shall be provided a notice of the civil action, with opportunity for discovery
22 and opportunity to be heard as provided by law for civil actions generally before being
23 found liable for a violation of sections 130.170 to 130.188.

24 (3) In all actions brought pursuant to this section, the burden of proof shall be on
25 the attorney general.

26 (4) (a) Prior to discovery, the court shall set a hearing to determine if there is
27 probable cause to believe that a committee, person, or other entity has violated sections
28 130.170 to 130.188.

29 (b) If, after the hearing, the court determines that no probable cause exists to
30 believe that a violation of sections 130.170 to 130.188 has occurred, the court shall enter
31 an order of dismissal.

32 (c) If, after the hearing, the court determines that probable cause does exist to
33 believe that a violation of sections 130.170 to 130.188 has occurred, the court shall enter
34 an order to that effect and the case should proceed to trial on an expedited basis.

35 (5) Subject to the provisions of section 130.185, the committee, person, or other
36 entity alleged to have violated sections 130.170 to 130.188 may, at a time to be
37 determined by the court prior to the scheduling of trial, present evidence sufficient to
38 rebut the probable cause finding by making an ex parte presentation of records to the
39 court for in camera review.

40 (6) A non-prevailing party under paragraph (c) of subdivision (4) of this
41 subsection has the right to:

42 (a) An interlocutory expedited appeal; and

43 (b) A stay of proceedings in the trial court.

44 3. (1) Within thirty days of a court finding that a committee has violated
45 sections 130.170 to 130.188, the committee shall refund the contribution to the original
46 contributor. In the event of an appeal, the contribution shall be placed in escrow, after
47 which the funds shall be disbursed in accordance with the final order.

48 (2) If the committee is unable to return the funds, the directors, officers or
49 executive members of the campaign committee shall be liable in their personal capacity,
50 jointly and severally, for the refund of said funds.

51 4. Within thirty days of a court finding that a committee, person, or other entity
52 making an expenditure covered by sections 130.170 to 130.188 has violated such
53 sections, the committee, person, or other entity shall disgorge to the attorney general
54 funds in an amount equal to the reported cost of the expenditure. If the committee,
55 person, or entity is unable to disgorge the requisite funds, the person or the directors,
56 officers or executive members of the committee or other entity shall be liable in their
57 personal capacities, jointly and severally, for the payment of the amount due. In the
58 event of an appeal, the funds subject to disgorgement shall be placed in escrow, after
59 which they shall be disbursed in accordance with the final order.

60 5. If any lobbyist violates any of the provisions of sections 130.170 to 130.188, the
61 lobbyist's registration may be revoked or suspended and the lobbyist may be enjoined
62 from receiving compensation or making expenditures for lobbying.

63 6. If the attorney general prevails in an action brought under this section, the
64 court shall award:

65 (1) Injunctive relief sufficient to prevent the defendant from violating sections
66 130.170 to 130.188 or engaging in acts that aid or abet violations of such sections; and

67 (2) Statutory damages up to twice the amount of the prohibited contribution or
68 expenditure.

69 **7. In addition to the penalties in subsection 6 of this section and any other**
70 **remedies provided by law, if the court finds a knowingly or willful violation of sections**
71 **130.170 to 130.188, the court may assess a penalty of up to three times the statutory**
72 **damages.**

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