

SENATE AMENDMENT NO. _____

Offered by _____ of _____

Amend SS/Senate Bill No. 305, Page 1, Section title, Line 8,

of the title, by striking "ethics"; and inserting in lieu thereof the following: "official misconduct"; and

Further amend said bill and page, Section A, Line 7 of said page, by inserting after said line the following:

"29.225. When requested by a prosecuting attorney or circuit attorney or law enforcement agency, the auditor or his or her authorized representatives may audit all or part of any political subdivision or other government entity as part of an investigation of improper government activities, including official misconduct, fraud, misappropriation, mismanagement, waste of resources, or a violation of state or federal law, rule, or regulation."; and

Further amend said bill, Page 22, Section 105.474, line 1 of said page, by inserting immediately after said line the following:

"105.478. Any person guilty of knowingly violating any of the provisions of sections 105.450 to 105.498 shall be punished as follows:

(1) **[For the first offense, such person is guilty of a]** The offense is a class B misdemeanor, unless the person has previously been found guilty of knowingly violating any of the

1 provisions of sections 105.450 to 105.498, in which case such
2 person shall be guilty of a class E felony;

3 (2) [For the second and subsequent offenses] For any
4 offense involving more than seven hundred fifty dollars in value
5 of any combination of goods or services, such person is guilty of
6 a class E felony.

7 105.480. 1. For the purposes of this section, the
8 following terms shall mean:

9 (1) "Coordinated activity", any activity made in
10 cooperation, consultation or concert with, or at the request or
11 suggestion of, a candidate, a candidate's campaign committee, or
12 not-for-profit organization, which qualifies for tax exempt
13 status under Section 501(c)(4) of the United States Internal
14 Revenue Code of 1986, as now or hereafter amended, or an agent
15 thereof;

16 (2) "Coordinated communication", communication which is
17 paid for, in whole or in part, by a person other than the
18 candidate or the candidate's campaign committee and is created,
19 produced, or distributed at the request or suggestion of a
20 candidate, the candidate's campaign committee, or a not-for-
21 profit organization, which qualifies for tax exempt status under
22 Section 501(c)(4) of the United States Internal Revenue Code of
23 1986, as now or hereafter amended, or an agent thereof.

24 2. Any person shall have a cause of action against a not-
25 for-profit organization, which qualifies for tax exempt status
26 under Section 501(c)(4) of the United States Internal Revenue
27 Code of 1986, as now or hereafter amended, and a campaign
28 committee as defined under section 130.011 when such person can
29 prove by a preponderance of the evidence that such entities have

1 engaged in a coordinated activity or coordinated communication.
2 If such party prevails, then damages shall equal to five times
3 the total amount of the funds raised by the not-for-profit
4 organization in the preceding five fiscal years. The not-for-
5 profit organization and the campaign committee shall each be
6 equally liable for fifty percent of such amount.

7 2. Any party receiving a judgment final for purposes of
8 appeal for damages in any case filed pursuant to this section in
9 any division of any circuit court of the state of Missouri shall
10 notify the attorney general of the state of Missouri of such
11 award. The state of Missouri shall have a lien for deposit into
12 the state legal expense fund created under section 105.711 to the
13 extent of fifty percent of the final judgment which shall attach
14 in any such case after deducting attorney's fees and reasonable
15 expenses incurred. In each case, the attorney general shall
16 serve a lien notice by certified mail or registered mail upon the
17 party or parties against whom the state has a claim for
18 collection of its share of the final judgment. On a petition
19 filed by the state, the court, on written notice to all
20 interested parties, shall adjudicate the rights of the parties
21 and enforce the lien. The state can file its lien in all cases
22 where damages are awarded upon the entry of the judgment final
23 for purposes of appeal for actions filed pursuant to this
24 section. Cases resolved by arbitration, mediation or compromise
25 settlement prior to a final judgment are not exempt from the
26 provisions of this subsection. Nothing in this section shall
27 hinder or in any way affect the right or ability of the parties
28 to any claim or lawsuit to compromise or settle such claim or
29 litigation on any terms and at any time the parties desire.

1 3. The prevailing party of an action brought pursuant to
2 subsection 1 of this section shall be awarded reasonable fees and
3 expenses incurred by that party in the action, including court
4 costs and attorney's fees."; and

5 Further amend said bill, Page 32, Section 130.034, Line 1 of
6 said page, by inserting immediately after said line the
7 following:

8 "531.070. A finding of guilt of the offenses of official
9 misconduct in the first degree or official misconduct in the
10 second degree shall be admissible as prima facie evidence in
11 support of an information in the nature of a quo warranto.

12 576.040. 1. A public servant, in such person's public
13 capacity or under color of such person's office or employment,
14 commits the offense of official misconduct in the first degree if
15 he or she:

16 (1) [Knowingly discriminates against any employee or any
17 applicant for employment on account of race, creed, color, sex or
18 national origin, provided such employee or applicant possesses
19 adequate training and educational qualifications] Knowingly
20 exercises an official function relating to his or her office or
21 knowingly refrains from performing a duty imposed upon him or her
22 by law for the purpose of obtaining an improper, undue, or
23 unreasonable financial benefit for himself or herself or another
24 person related within the third degree of consanguinity, or
25 another person who is a business associate, or another person
26 when such financial benefit also directly or indirectly benefits
27 the official;

28 (2) Knowingly demands or receives any fee or reward for the
29 execution of any official act or the performance of a duty

1 imposed by law or by the terms of his or her employment, that is
2 not due, or that is more than is due, or before it is due;

3 (3) Knowingly collects taxes when none are due, or exacts
4 or demands more than is due; or

5 (4) Is a city or county treasurer, city or county clerk, or
6 other municipal or county officer and knowingly orders the
7 payment of any money, or draws any warrant, or pays over any
8 money for any purpose other than the specific purpose for which
9 the same was assessed, levied and collected, unless it is or
10 shall have become impossible to use such money for that specific
11 purpose[;

12 (5) Is an officer or employee of any court and knowingly
13 charges, collects or receives less fee for his services than is
14 provided by law;

15 (6) Is an officer or employee of any court and knowingly,
16 directly or indirectly, buys, purchases or trades for any fee
17 taxed or to be taxed as costs in any court of this state, or any
18 county warrant, at less than par value which may be by law due or
19 to become due to any person by or through any such court; or

20 (7) Is a county officer, deputy or employee and knowingly
21 traffics for or purchases at less than the par value or
22 speculates in any county warrant issued by order of the county
23 commission of his or her county, or in any claim or demand held
24 against such county].

25 2. The offense of official misconduct in the first degree
26 is a class [A misdemeanor] E felony.

27 576.041. 1. A public servant, in such person's public
28 capacity or under color of such person's office or employment,
29 commits the offense of official misconduct in the second degree

1 if he or she:

2 (1) Knowingly discriminates against any employee or any
3 applicant for employment on account of race, creed, color, sex,
4 or national origin, provided such employee or applicant possesses
5 adequate training and educational qualifications;

6 (2) Is an officer or employee of any court and knowingly
7 charges, collects, or receives less fee for his or her services
8 than is provided by law;

9 (3) Is an officer or employee of any court and knowingly,
10 directly or indirectly, buys, purchases, or trades for any fee
11 taxed or to be taxed as costs in any court of this state, or any
12 county warrant, at less than par value which may be by law due or
13 to become due to any person by or through any such court; or

14 (4) Is a county officer, deputy, or employee and knowingly
15 traffics for or purchases at less than the par value or
16 speculates in any county warrant issued by order of the county
17 commission of his or her county, or in any claim or demand held
18 against such county.

19 2. The offense of official misconduct in the second degree
20 is a class A misdemeanor.

21 595.219. 1. In addition to the court's authority to order
22 a defendant to make restitution for the damage or loss caused by
23 his or her offense as provided in section 559.105, the court may
24 enter a judgment of restitution against the offenders convicted
25 of official misconduct in the first or second degrees pursuant to
26 the provisions of this section.

27 2. The court may order the defendant to make restitution
28 to:

29 (1) The victim;

1 (2) Any governmental entity; or

2 (3) A third-party payor, including an insurer that has made
3 payment to the victim to compensate the victim for a property
4 loss or a pecuniary loss.

5 3. Restitution payments to the victim have priority over
6 restitution payments to a third-party payor. If the victim has
7 been compensated for the victim's loss by a third-party payor,
8 the court may order restitution payments to the third-party payor
9 in the amount that the third-party payor compensated the victim.

10 4. Payment of restitution to a victim under this section
11 has priority over payment of restitution to any governmental
12 entity.

13 5. A restitution hearing to determine the liability of the
14 defendant shall be held not later than thirty days after final
15 disposition of the case and may be extended by the court for good
16 cause. In the restitution hearing, a written statement or bill
17 for medical, dental, hospital, funeral, or burial expenses shall
18 be prima facie evidence that the amount indicated on the written
19 statement or bill represents a fair and reasonable charge for the
20 services or materials provided. The burden of proving that the
21 amount indicated on the written statement or bill is not fair and
22 reasonable shall be on the person challenging the fairness and
23 reasonableness of the amount.

24 6. A judgment of restitution against a defendant may not be
25 entered unless the defendant has been afforded a reasonable
26 opportunity to be heard and to present appropriate evidence in
27 his or her behalf. The defendant shall be advised of his or her
28 right to obtain counsel for representation at the hearing. A
29 hearing under this section may be held as part of a final

1 disposition hearing for the case.

2 7. The judgment may be enforced in the same manner as
3 enforcing monetary judgments by the prosecuting attorney on
4 behalf of the victim.

5 8. A judgment of restitution ordered pursuant to this
6 section against a defendant shall not be a bar to a proceeding
7 against the defendant pursuant to section 537.045 or section
8 8.150 for the balance of the damages not paid pursuant to this
9 section."; and

10 Further amend the title and enacting clause accordingly.