

SENATE SUBSTITUTE  
FOR  
SENATE BILL NO. 552

AN ACT

To repeal sections 105.478 and 576.040, RSMo, and to enact in lieu thereof six new sections relating to official misconduct, with penalty provisions.

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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,  
AS FOLLOWS:

1           Section A. Sections 105.478 and 576.040, RSMo, are repealed  
2 and six new sections enacted in lieu thereof, to be known as  
3 sections 29.225, 105.478, 531.070, 576.040, 576.041 and 595.219,  
4 to read as follows:

5           29.225. When requested by a prosecuting attorney or circuit  
6 attorney or law enforcement agency, the auditor or his or her  
7 authorized representatives may audit all or part of any political  
8 subdivision, its employees or its elected officials, as part of  
9 an investigation of improper government activities, including  
10 official misconduct, fraud, misappropriation, mismanagement,  
11 waste of resources, or a violation of state or federal law, rule,  
12 or regulation. Nothing in this section shall be construed to  
13 violate Article IV, Section 13 of the Missouri Constitution.

14           105.478. Any person guilty of knowingly violating any of  
15 the provisions of sections 105.450 to 105.498 shall be punished  
16 as follows:

17           (1) 【For the first offense, such person is guilty of a】 The  
18 offense is a class B misdemeanor, unless the person has

1 previously been found guilty of knowingly violating any of the  
2 provisions of sections 105.450 to 105.498, in which case such  
3 person shall be guilty of a class E felony;

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

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] exercises an  
20 official function relating to his or her office or knowingly  
21 refrains from performing a duty imposed upon him or her by law  
22 for the purpose of obtaining an improper, undue, or unreasonable  
23 financial benefit for himself or herself or another person  
24 related within the third degree of consanguinity, or another  
25 person who is a business associate, or another person when such  
26 financial benefit also directly or indirectly benefits the  
27 official;

28 (2) Knowingly demands or receives any fee or reward for the

1 execution of any official act or the performance of a duty  
2 imposed by law or by the terms of his or her employment, that is  
3 not due, or that is more than is due, or before it is due;

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

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

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

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

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

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

28 576.041. 1. A public servant, in such person's public

1 capacity or under color of such person's office or employment,  
2 commits the offense of official misconduct in the second degree  
3 if he or she:

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

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

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

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

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

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

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

3           (1) The victim;

4           (2) Any governmental entity; or

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

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

13           4. Payment of restitution to a victim under this section  
14 has priority over payment of restitution to any governmental  
15 entity.

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

27           6. A judgment of restitution against a defendant may not be  
28 entered unless the defendant has been afforded a reasonable

1 opportunity to be heard and to present appropriate evidence in  
2 his or her behalf. The defendant shall be advised of his or her  
3 right to obtain counsel for representation at the hearing. A  
4 hearing under this section may be held as part of a final  
5 disposition hearing for the case.

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

9 8. A judgment of restitution ordered pursuant to this  
10 section against a defendant shall not be a bar to a proceeding  
11 against the defendant pursuant to section 537.045 or section  
12 8.150 for the balance of the damages not paid pursuant to this  
13 section.