

SENATE SUBSTITUTE
FOR
SENATE BILL NO. 552

AN ACT

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

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1 Section A. Sections 105.478 and 576.040, RSMo, are repealed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 five new sections enacted in lieu thereof, to be known as
3 sections 105.478, 531.070, 576.040, 576.042, and 595.219, to read
4 as follows:

5 105.478. Any person guilty of knowingly violating any of
6 the provisions of sections 105.450 to 105.498 shall be punished
7 as follows:

8 (1) [For the first offense, such person is guilty of a] The
9 offense is a class B misdemeanor, unless the offense involves
10 more than seven hundred fifty dollars in value of any combination
11 of goods or services, in which case such person shall be guilty
12 of a class A misdemeanor;

13 (2) For the second and subsequent offenses, such person is
14 guilty of a class E felony.

15 531.070. A finding of guilt of the offense of official
16 misconduct shall be admissible as prima facie evidence in support
17 of an information in the nature of a quo warranto.

18 576.040. 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 if he or she:

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

7 (2) Exercises an official function relating to his or her
8 office or knowingly refrains from performing a duty imposed upon
9 him or her by law for the sole purpose of obtaining an undue or
10 unreasonable financial benefit for himself or herself or another
11 person related within the third degree of consanguinity, or
12 another person who is a business associate, or another person
13 when such financial benefit also directly or indirectly benefits
14 the public servant, and the result of the undue or unreasonable
15 financial benefit would affect the public servant or other person
16 in a substantially different manner or degree than the manner or
17 degree in which the public in general will be affected or, if the
18 matter affects only a special class of persons, then affected in
19 a substantially different manner or degree than the manner or
20 degree in which such class will be affected, except that such
21 public servant may act on increases in compensation subject to
22 the restrictions of Section 13 of Article VII of the Missouri
23 Constitution;

24 (3) Knowingly demands or receives any fee or reward for the
25 execution of any official act or the performance of a duty
26 imposed by law or by the terms of his or her employment, that is
27 not due, or that is more than is due, or before it is due;

28 [(3)] (4) Knowingly collects taxes when none are due, or

1 exacts or demands more than is due;

2 [(4)] (5) Is a city or county treasurer, city or county
3 clerk, or other municipal or county officer and knowingly orders
4 the payment of any money, or draws any warrant, or pays over any
5 money for any purpose other than the specific purpose for which
6 the same was assessed, levied and collected, unless it is or
7 shall have become impossible to use such money for that specific
8 purpose;

9 [(5)] (6) Is an officer or employee of any court and
10 knowingly charges, collects or receives less fee for his services
11 than is provided by law;

12 [(6)] (7) Is an officer or employee of any court and
13 knowingly, directly or indirectly, buys, purchases or trades for
14 any fee taxed or to be taxed as costs in any court of this state,
15 or any county warrant, at less than par value which may be by law
16 due or to become due to any person by or through any such court;
17 or

18 [(7)] (8) Is a county officer, deputy or employee and
19 knowingly traffics for or purchases at less than the par value or
20 speculates in any county warrant issued by order of the county
21 commission of his or her county, or in any claim or demand held
22 against such county.

23 2. The offense of official misconduct is a class A
24 misdemeanor.

25 576.042. A prosecuting attorney or circuit attorney or law
26 enforcement agency may request the state auditor or his or her
27 authorized representatives to audit all or part of any political
28 subdivision, its employees or its elected officials, exclusively

1 as part of an investigation of official misconduct relating to
2 the receipt and expenditure of public funds. The state auditor
3 shall report any findings to the requesting entity. Nothing in
4 this section shall be construed to violate the provisions
5 established in Article IV, Section 13 of the Missouri
6 Constitution.

7 595.219. 1. In addition to the court's authority to order
8 a defendant to make restitution for the damage or loss caused by
9 his or her offense as provided in section 559.105, the court may
10 enter a judgment of restitution against the offenders convicted
11 of official misconduct pursuant to the provisions of this
12 section.

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

15 (1) The victim;

16 (2) Any governmental entity; or

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

20 3. Restitution payments to the victim have priority over
21 restitution payments to a third-party payor. If the victim has
22 been compensated for the victim's loss by a third-party payor,
23 the court may order restitution payments to the third-party payor
24 in the amount that the third-party payor compensated the victim.

25 4. Payment of restitution to a victim under this section
26 has priority over payment of restitution to any governmental
27 entity.

28 5. A restitution hearing to determine the liability of the

1 defendant shall be held not later than thirty days after final
2 disposition of the case and may be extended by the court for good
3 cause. In the restitution hearing, a written statement or bill
4 for medical, dental, hospital, funeral, or burial expenses shall
5 be prima facie evidence that the amount indicated on the written
6 statement or bill represents a fair and reasonable charge for the
7 services or materials provided. The burden of proving that the
8 amount indicated on the written statement or bill is not fair and
9 reasonable shall be on the person challenging the fairness and
10 reasonableness of the amount.

11 6. A judgment of restitution against a defendant may not be
12 entered unless the defendant has been afforded a reasonable
13 opportunity to be heard and to present appropriate evidence in
14 his or her behalf. The defendant shall be advised of his or her
15 right to obtain counsel for representation at the hearing. A
16 hearing under this section may be held as part of a final
17 disposition hearing for the case.

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

21 8. A judgment of restitution ordered pursuant to this
22 section against a defendant shall not be a bar to a proceeding
23 against the defendant pursuant to section 537.045 or section
24 8.150 for the balance of the damages not paid pursuant to this
25 section.