

SECOND REGULAR SESSION

[P E R F E C T E D]

SENATE SUBSTITUTE NO. 2 FOR

# SENATE BILL NO. 552

99TH GENERAL ASSEMBLY

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INTRODUCED BY SENATOR DIXON.

Offered March 28, 2018.

Senate Substitute No. 2 adopted, March 28, 2018.

Taken up for Perfection March 28, 2018. Bill declared Perfected and Ordered Printed.

ADRIANE D. CROUSE, Secretary.

4915S.05P

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## 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.

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

Section A. Sections 105.478 and 576.040, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 105.478, 531.070, 576.040, 576.042, and 595.219, to read as follows:

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 offense involves more than seven hundred fifty dollars in value of any combination of goods or services, in which case such person shall be guilty of a class A misdemeanor;**

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

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

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

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

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

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

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

26 [(3)] (4) Knowingly collects taxes when none are due, or exacts or  
27 demands more than is due;

28 [(4)] (5) Is a city or county treasurer, city or county clerk, or other  
29 municipal or county officer and knowingly orders the payment of any money, or  
30 draws any warrant, or pays over any money for any purpose other than the  
31 specific purpose for which the same was assessed, levied and collected, unless it  
32 is or shall have become impossible to use such money for that specific purpose;

33 [(5)] (6) Is an officer or employee of any court and knowingly charges,  
34 collects or receives less fee for his services than is provided by law;

35 [(6)] (7) Is an officer or employee of any court and knowingly, directly or  
36 indirectly, buys, purchases or trades for any fee taxed or to be taxed as costs in  
37 any court of this state, or any county warrant, at less than par value which may  
38 be by law due or to become due to any person by or through any such court; or

39 [(7)] (8) Is a county officer, deputy or employee and knowingly traffics

40 for or purchases at less than the par value or speculates in any county warrant  
41 issued by order of the county commission of his or her county, or in any claim or  
42 demand held against such county.

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

**576.042. A prosecuting attorney or circuit attorney or law  
2 enforcement agency may request the state auditor or his or her  
3 authorized representatives to audit all or part of any political  
4 subdivision, its employees or its elected officials, exclusively as part of  
5 an investigation of official misconduct relating to the receipt and  
6 expenditure of public funds. The state auditor shall report any findings  
7 to the requesting entity. Nothing in this section shall be construed to  
8 violate the provisions established in Article IV, Section 13 of the  
9 Missouri Constitution.**

**595.219. 1. In addition to the court's authority to order a  
2 defendant to make restitution for the damage or loss caused by his or  
3 her offense as provided in section 559.105, the court may enter a  
4 judgment of restitution against the offenders convicted of official  
5 misconduct pursuant to the provisions of this section.**

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

7 (1) The victim;

8 (2) Any governmental entity; or

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

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

17 4. Payment of restitution to a victim under this section has  
18 priority over payment of restitution to any governmental entity.

19 5. A restitution hearing to determine the liability of the  
20 defendant shall be held not later than thirty days after final disposition  
21 of the case and may be extended by the court for good cause. In the  
22 restitution hearing, a written statement or bill for medical, dental,  
23 hospital, funeral, or burial expenses shall be prima facie evidence that  
24 the amount indicated on the written statement or bill represents a fair

25 and reasonable charge for the services or materials provided. The  
26 burden of proving that the amount indicated on the written statement  
27 or bill is not fair and reasonable shall be on the person challenging the  
28 fairness and reasonableness of the amount.

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

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

38       8. A judgment of restitution ordered pursuant to this section  
39 against a defendant shall not be a bar to a proceeding against the  
40 defendant pursuant to section 537.045 or section 8.150 for the balance  
41 of the damages not paid pursuant to this section.

Bill ✓

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