

## SENATE COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 1386

AN ACT

To repeal sections 105.465, 105.470, 575.040, 575.050, 575.160, 575.270, 575.280, and 576.030, RSMo, and to enact in lieu thereof eleven new sections relating to ethics, with penalty provisions.

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

Section A. Sections 105.465, 105.470, 575.040, 575.050, 575.160, 575.270, 575.280, and 576.030, RSMo, is repealed and eleven new sections enacted in lieu thereof, to be known as sections 21.403, 21.405, 105.465, 105.470, 575.040, 575.050, 575.160, 575.270, 575.280, 575.330, and 576.030, to read as follows:

21.403. 1. If an individual who has been subpoenaed to testify or provide other information at a proceeding before a body of the general assembly has refused to give or provide such testimony or other information on the basis of his or her privilege against self-incrimination, the president pro tempore or speaker of the originating body of the general assembly may request the court to issue an order requiring such individual to testify or provide other information, and if the court finds that such request has been approved by an affirmative vote of a three-fifths majority of the members of such body of the general assembly, the court shall issue an order requiring such individual to give such testimony or provide other information

requested or subpoenaed by such body of the general assembly, which shall become effective as provided under this section.

2. After being provided written notice that an order has been issued under this section, the witness shall not refuse to comply with the order on the basis of his or her privilege against self-incrimination. However, no testimony or other information compelled under such order, or any information directly or indirectly derived from such testimony or other information, shall be used against the witness in any criminal proceeding except for perjury, giving false statement, or otherwise failing to comply with such order.

21.405. 1. If a person is subpoenaed as a witness by a body of the general assembly to give testimony or to produce documents and he or she willfully:

(1) Fails to appear to testify;

(2) After having appeared, refuses to answer any question pertinent to the question under inquiry; or

(3) Fails to produce required documents,

a statement of facts constituting such failure or refusal may be reported to and filed with the president pro tempore or speaker of the originating body of the general assembly. Upon receipt of such statement of facts, the president pro tempore or the speaker may certify such statement of facts to the prosecuting attorney or such other attorney having jurisdiction for prosecution under section 575.330. The state attorney general shall have concurrent original jurisdiction to commence such criminal action throughout the state where such violation has occurred.

2. Upon request by the president pro tempore or speaker of the originating body of the general assembly who has certified a statement of facts under this section, the court shall within fifteen days of the request appoint independent counsel, who shall have jurisdiction to prosecute under section 575.330. In the event independent counsel is appointed under this section, such independent counsel shall have sole jurisdiction to prosecute under section 575.330.

105.465. 1. Any person who registers as a lobbyist shall dissolve his or her candidate committee. In the course of dissolving such committee, such person shall not disburse moneys from such committee, except for the purpose of:

(1) Returning a contribution made to the candidate committee to the entity responsible for making the contribution to the committee;

(2) Donating moneys to a nonprofit entity qualified as exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended; or

(3) Transferring moneys to a political party committee.

2. For purposes of this section, the term "lobbyist" shall have the same meaning given to such term under section 105.470, and the terms "candidate", "committee", "candidate committee", "contribution", and "political party committee" shall have the same meanings given to such terms under section 130.011.

3. This section shall not apply to any of the following:

(1) Any person holding a municipal office which is filled by a vote of registered voters or any person who has filed to be a candidate for such office;

(2) Any person holding a school district office which is filled by a vote of registered voters or any person who has filed to be a candidate for such office; or

(3) Any person holding office a political party office which is filled by a vote of registered voters or any person who has filed to be a candidate for such office.

105.470. As used in section 105.473, unless the context requires otherwise, the following words and terms mean:

(1) "Elected local government official lobbyist", any natural person employed specifically for the purpose of attempting to influence any action by a local government official elected in a county, city, town, or village with an annual operating budget of over ten million dollars;

(2) "Executive lobbyist", any natural person who acts for the purpose of attempting to influence any action by the executive branch of government or by any elected or appointed official, employee, department, division, agency or board or commission thereof and in connection with such activity, meets the requirements of any one or more of the following:

(a) Is acting in the ordinary course of employment on behalf of or for the benefit of such person's employer; or

(b) Is engaged for pay or for any valuable consideration for the purpose of performing such activity; or

(c) Is designated to act as a lobbyist by any person, business entity, governmental entity, religious organization, nonprofit corporation, association or other entity; or

(d) Makes total expenditures of fifty dollars or more during the twelve-month period beginning January first and ending

December thirty-first for the benefit of one or more public officials or one or more employees of the executive branch of state government in connection with such activity.

An "executive lobbyist" shall not include a member of the general assembly, an elected state official, or any other person solely due to such person's participation in any of the following activities:

a. Appearing or inquiring in regard to a complaint, citation, summons, adversary proceeding, or contested case before a state board, commission, department, division or agency of the executive branch of government or any elected or appointed officer or employee thereof;

b. Preparing, filing or inquiring, or responding to any audit, regarding any tax return, any public document, permit or contract, any application for any permit or license or certificate, or any document required or requested to be filed with the state or a political subdivision;

c. Selling of goods or services to be paid for by public funds, provided that such person is attempting to influence only the person authorized to authorize or enter into a contract to purchase the goods or services being offered for sale;

d. Participating in public hearings or public proceedings on rules, grants, or other matters;

e. Responding to any request for information made by any public official or employee of the executive branch of government;

f. Preparing or publication of an editorial, a newsletter, newspaper, magazine, radio or television broadcast, or similar

news medium, whether print or electronic;

g. Acting within the scope of employment by the general assembly, or acting within the scope of employment by the executive branch of government when acting with respect to the department, division, board, commission, agency or elected state officer by which such person is employed, or with respect to any duty or authority imposed by law to perform any action in conjunction with any other public official or state employee; or

h. Testifying as a witness before a state board, commission or agency of the executive branch;

(3) "Expenditure", any payment made or charge, expense, cost, debt or bill incurred; any gift, honorarium or item of value bestowed including any food or beverage; any price, charge or fee which is waived, forgiven, reduced or indefinitely delayed; any loan or debt which is cancelled, reduced or otherwise forgiven; the transfer of any item with a reasonably discernible cost or fair market value from one person to another or provision of any service or granting of any opportunity for which a charge is customarily made, without charge or for a reduced charge; except that the term "expenditure" shall not include the following:

(a) Any item, service or thing of value transferred to any person within the third degree of consanguinity of the transferor which is unrelated to any activity of the transferor as a lobbyist;

(b) Informational material such as books, reports, pamphlets, calendars or periodicals informing a public official regarding such person's official duties, or souvenirs or mementos

valued at less than ten dollars;

(c) Contributions to the public official's campaign committee or candidate committee which are reported pursuant to the provisions of chapter 130;

(d) Any loan made or other credit accommodations granted or other payments made by any person or entity which extends credit or makes loan accommodations or such payments in the regular ordinary scope and course of business, provided that such are extended, made or granted in the ordinary course of such person's or entity's business to persons who are not public officials;

(e) Any item, service or thing of de minimis value offered to the general public, whether or not the recipient is a public official or a staff member, employee, spouse or dependent child of a public official, and only if the grant of the item, service or thing of de minimis value is not motivated in any way by the recipient's status as a public official or staff member, employee, spouse or dependent child of a public official;

(f) The transfer of any item, provision of any service or granting of any opportunity with a reasonably discernible cost or fair market value when such item, service or opportunity is necessary for a public official or employee to perform his or her duty in his or her official capacity, including but not limited to entrance fees to any sporting event, museum, or other venue when the official or employee is participating in a ceremony, public presentation or official meeting therein;

(g) Any payment, gift, compensation, fee, expenditure or anything of value which is bestowed upon or given to any public official or a staff member, employee, spouse or dependent child

of a public official when it is compensation for employment or given as an employment benefit and when such employment is in addition to their employment as a public official;

(4) "Judicial lobbyist", any natural person who acts for the purpose of attempting to influence any purchasing decision by the judicial branch of government or by any elected or appointed official or any employee thereof and in connection with such activity, meets the requirements of any one or more of the following:

(a) Is acting in the ordinary course of employment which primary purpose is to influence the judiciary in its purchasing decisions on a regular basis on behalf of or for the benefit of such person's employer, except that this shall not apply to any person who engages in lobbying on an occasional basis only and not as a regular pattern of conduct; or

(b) Is engaged for pay or for any valuable consideration for the purpose of performing such activity; or

(c) Is designated to act as a lobbyist by any person, business entity, governmental entity, religious organization, nonprofit corporation or association; or

(d) Makes total expenditures of fifty dollars or more during the twelve-month period beginning January first and ending December thirty-first for the benefit of one or more public officials or one or more employees of the judicial branch of state government in connection with attempting to influence such purchasing decisions by the judiciary.

A "judicial lobbyist" shall not include a member of the general assembly, an elected state official, or any other person solely



due to such person's participation in any of the following activities:

a. Appearing or inquiring in regard to a complaint, citation, summons, adversary proceeding, or contested case before a state court;

b. Participating in public hearings or public proceedings on rules, grants, or other matters;

c. Responding to any request for information made by any judge or employee of the judicial branch of government;

d. Preparing, distributing or publication of an editorial, a newsletter, newspaper, magazine, radio or television broadcast, or similar news medium, whether print or electronic; or

e. Acting within the scope of employment by the general assembly, or acting within the scope of employment by the executive branch of government when acting with respect to the department, division, board, commission, agency or elected state officer by which such person is employed, or with respect to any duty or authority imposed by law to perform any action in conjunction with any other public official or state employee;

(5) "Legislative lobbyist", any natural person who acts for the purpose of attempting to influence the taking, passage, amendment, delay or defeat of any official action on any bill, resolution, amendment, nomination, appointment, report or any other action or any other matter pending or proposed in a legislative committee in either house of the general assembly, or in any matter which may be the subject of action by the general assembly and in connection with such activity, meets the requirements of any one or more of the following:

(a) Is acting in the ordinary course of employment, which primary purpose is to influence legislation on a regular basis, on behalf of or for the benefit of such person's employer, except that this shall not apply to any person who engages in lobbying on an occasional basis only and not as a regular pattern of conduct; or

(b) Is engaged for pay or for any valuable consideration for the purpose of performing such activity; or

(c) Is designated to act as a lobbyist by any person, business entity, governmental entity, religious organization, nonprofit corporation, association or other entity; or

(d) Makes total expenditures of fifty dollars or more during the twelve-month period beginning January first and ending December thirty-first for the benefit of one or more public officials or one or more employees of the legislative branch of state government in connection with such activity.

A "legislative lobbyist" shall include an attorney at law engaged in activities on behalf of any person unless excluded by any of the following exceptions. A "legislative lobbyist" shall not include any legislative liaison. For purposes of this subdivision, "legislative liaison" means any state employee hired to communicate with members of the general assembly on behalf of any elected official of the state; the judicial branch of state government; or any department, agency, board, or commission of the state, provided such entity is a part of the executive branch of state government. Any state employee employed as a legislative liaison who performs lobbying services for any other entity shall register as a lobbyist with respect to such lobbying

services. A "legislative lobbyist" shall also not include any member of the general assembly, an elected state official, or any other person solely due to such person's participation in any of the following activities:

a. Responding to any request for information made by any public official or employee of the legislative branch of government;

b. Preparing or publication of an editorial, a newsletter, newspaper, magazine, radio or television broadcast, or similar news medium, whether print or electronic;

c. Acting within the scope of employment of the legislative branch of government when acting with respect to the general assembly or any member thereof;

d. Testifying as a witness before the general assembly or any committee thereof;

(6) "Lobbyist", any natural person defined as an executive lobbyist, judicial lobbyist, elected local government official lobbyist, or a legislative lobbyist;

(7) "Lobbyist principal", any person, business entity, governmental entity, religious organization, nonprofit corporation or association who employs, contracts for pay or otherwise compensates a lobbyist;

(8) "Public official", any member or member-elect of the general assembly, judge or judicial officer, or any other person holding an elective office of state government or any agency head, department director or division director of state government or any member of any state board or commission and any designated decision-making public servant designated by persons

described in this subdivision.

575.040. 1. A person commits the offense of perjury if, with the purpose to deceive, he or she knowingly testifies falsely to any material fact upon oath or affirmation legally administered, in any official proceeding before any court, public body, notary public or other officer authorized to administer oaths.

2. A fact is material, regardless of its admissibility under rules of evidence, if it could substantially affect, or did substantially affect, the course or outcome of the cause, matter or proceeding.

3. Knowledge of the materiality of the statement is not an element of this crime, and it is no defense that:

(1) The person mistakenly believed the fact to be immaterial; or

(2) The person was not competent, for reasons other than mental disability or immaturity, to make the statement.

4. It is a defense to a prosecution under subsection 1 of this section that the person retracted the false statement in the course of the official proceeding in which it was made provided he or she did so before the falsity of the statement was exposed. Statements made in separate hearings at separate stages of the same proceeding, including but not limited to statements made before a grand jury, at a preliminary hearing, at a deposition or at previous trial, are made in the course of the same proceeding.

5. The defendant shall have the burden of injecting the issue of retraction under subsection 4 of this section.

6. The offense of perjury committed in any proceeding not

involving a felony charge is a class E felony.

7. The offense of perjury committed in any proceeding involving a felony charge is a class D felony unless:

(1) It is committed during a criminal trial for the purpose of securing the conviction of an accused for any felony except murder, in which case it is a class B felony; or

(2) It is committed during a criminal trial for the purpose of securing the conviction of an accused for murder, in which case it is a class A felony.

8. The offense of perjury committed in any proceeding before a body of the general assembly is a class D felony.

575.050. 1. A person commits the offense of making a false affidavit if, with purpose to mislead any person, he or she, in any affidavit, swears falsely to a fact which is material to the purpose for which said affidavit is made.

2. The provisions of subsections 2 and 3 of section 575.040 shall apply to prosecutions under subsection 1 of this section.

3. It is a defense to a prosecution under subsection 1 of this section that the person retracted the false statement by affidavit or testimony but this defense shall not apply if the retraction was made after:

(1) The falsity of the statement was exposed; or

(2) Any person took substantial action in reliance on the statement.

4. The defendant shall have the burden of injecting the issue of retraction under subsection 3 of this section.

5. The offense of making a false affidavit is a class C misdemeanor, unless done for the purpose of misleading a public

servant in the performance of his or her duty, in which case it is a class A misdemeanor.

6. The offense of making a false affidavit when done in any proceeding before a body of the general assembly is a class A misdemeanor.

575.160. 1. A person commits the offense of interference with legal process if, knowing another person is authorized by law to serve process, he or she interferes with or obstructs such person for the purpose of preventing such person from effecting the service of any process.

2. "Process" includes any writ, summons, subpoena, warrant other than an arrest warrant, or other process or order of a court or body of the general assembly.

3. The offense of interference with legal process is a class B misdemeanor.

575.270. 1. A person commits the offense of tampering with a witness or victim if:

(1) With the purpose to induce a witness or a prospective witness to disobey a subpoena or other legal process, absent himself or herself, avoid subpoena or other legal process, withhold evidence, information, or documents, or testify falsely, he or she:

(a) Threatens or causes harm to any person or property; or

(b) Uses force, threats or deception; or

(c) Offers, confers or agrees to confer any benefit, direct or indirect, upon such witness; or

(d) Conveys any of the foregoing to another in furtherance of a conspiracy; or

(2) He or she purposely prevents or dissuades or attempts to prevent or dissuade any person who has been a victim of any crime or a person who is acting on behalf of any such victim from:

(a) Making any report of such victimization to any peace officer, state, local or federal law enforcement officer, prosecuting agency, or judge;

(b) Causing a complaint, indictment or information to be sought and prosecuted or assisting in the prosecution thereof;

(c) Arresting or causing or seeking the arrest of any person in connection with such victimization.

2. The offense of tampering with a witness or victim is a class A misdemeanor, unless the original charge is a felony, in which case tampering with a witness or victim is a class D felony. Persons convicted under this section shall not be eligible for parole.

3. The offense of tampering with a witness subpoenaed in a proceeding before a body of the general assembly is a class E felony.

575.280. 1. A person commits the offense of acceding to corruption if he or she:

(1) Is a judge, juror, special master, referee or arbitrator and knowingly solicits, accepts, or agrees to accept any benefit, direct or indirect, on the representation or understanding that it will influence his or her official action in a judicial proceeding pending in any court or before such official or juror;

(2) Is a witness or prospective witness in any official

proceeding and knowingly solicits, accepts, or agrees to accept any benefit, direct or indirect, on the representation or understanding that he or she will disobey a subpoena or other legal process, absent himself or herself, avoid subpoena or other legal process, withhold evidence, information or documents, or testify falsely.

2. The offense of acceding to corruption under subdivision (1) of subsection 1 of this section is a class C felony. The offense of acceding to corruption under subdivision (2) of subsection 1 of this section in a felony prosecution [or], on the representation or understanding of testifying falsely, or in a proceeding before a body of the general assembly is a class D felony. Otherwise acceding to corruption is a class A misdemeanor.

575.330. 1. A person commits the offense of contempt of a body of the general assembly if he or she was subpoenaed as a witness by a body of the general assembly to give testimony or to produce documents or provide other information upon any matter under inquiry before the body of the general assembly and he or she willfully:

(1) Fails to appear to testify;

(2) After having appeared, refuses to answer any question pertinent to the question under inquiry; or

(3) Fails to produce required documents.

2. The offense of contempt of a body of the general assembly is a class A misdemeanor.

3. The offense of contempt of a body of the general assembly after an order has been issued under section 21.403 is a



class E felony.

576.030. 1. A person commits the offense of obstructing government operations if he or she purposely obstructs, impairs, hinders or perverts the performance of a governmental function by the use or threat of harm, intimidation, coercion, violence, force, or other physical interference or obstacle.

2. The offense of obstructing government operations is a class [B] A misdemeanor, unless committed against a body of the general assembly, in which case it is a class E felony.