

SENATE SUBSTITUTE
FOR
SENATE BILL NO. 152
AN ACT

To amend chapter 130, RSMo, by adding thereto six new sections relating to campaign finance.

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

Section A. Chapter 130, RSMo, is amended by adding thereto
2 six new sections, to be known as sections 130.170, 130.173,
3 130.176, 130.179, 130.185, and 130.188, to read as follows:

130.170. For purposes of sections 130.170 to 130.188,
2 the following terms mean:

3 (1) "Committee", the same meaning as otherwise
4 provided in section 130.011, except it shall not include
5 candidate committees;

6 (2) "Directly or indirectly", acting either alone or
7 jointly with, through, or on behalf of any other committee,
8 organization, person, or other entity;

9 (3) "Foreign national", any of the following:

10 (a) An individual who is not a citizen or lawful
11 permanent resident of the United States of America;

12 (b) A government, or subdivision, of a foreign country
13 or municipality thereof;

14 (c) A foreign political party;

15 (d) Any entity, such as a partnership, association,
16 corporation, organization, or other combination of persons,
17 that is organized under the laws of, or has its principal
18 place of business in, a foreign country; or

19 (e) Any entity organized pursuant to the laws of the
20 United States of America or any state thereof that is wholly
21 or majority owned by a person or entity described in
22 paragraphs (a) to (d) of this subdivision, unless:

23 a. Any contribution or expenditure it makes derives
24 entirely from funds generated by the entity's United States
25 operations; and

26 b. All decisions concerning the contribution or
27 expenditure are made by individuals who are United States
28 citizens or lawful permanent residents, except for setting
29 overall budget amounts;

30 (4) "Funds obtained through the usual course of
31 business", funds generated entirely by the entity's United
32 States operations;

33 (5) "Lobbyist", the same meaning as in section 105.470;

34 (6) "Prohibited sources", contributions from or
35 expenditures by a foreign national made with the intent to
36 use such funds to influence an election on a ballot measure;

37 (7) "Preliminary activity", includes, but is not
38 limited to, conducting a poll, drafting ballot measure
39 language, conducting a focus group, making telephone calls,
40 and travel;

41 (8) "Tax-exempt organization", an organization that is
42 described in section 501(c) of the Internal Revenue Code of
43 1986 and is exempt from taxation under section 501(a) of
44 such Code. A political organization organized pursuant to
45 section 527 of such Code shall not be considered a tax-
46 exempt organization.

130.173. 1. Upon creating, forming, or registering a
2 committee, the treasurer shall file an accompanying
3 certification that no preliminary activity was funded by
4 prohibited sources, whether directly or indirectly.

5 2. After a committee has been created, formed, or
6 registered the committee shall not knowingly or willfully
7 receive, solicit, or accept contributions from a prohibited
8 source, whether directly or indirectly.

9 3. Any report filed pursuant to this chapter shall
10 include an affirmation that the committee has not knowingly
11 or willfully received, solicited, or accepted, directly or
12 indirectly, contributions from a prohibited source.

13 4. Any committee or person that makes an expenditure
14 in support of or in opposition to a ballot measure shall
15 keep records of any contribution or expenditure and retain
16 such records in the same manner and for the same period of
17 time as is required by section 130.036.

130.176. 1. Upon a committee's receipt of a
2 contribution of more than two thousand dollars, the
3 treasurer shall obtain from the donor an affirmation that
4 the donor is not a foreign national and has not knowingly or
5 willfully accepted funds, directly or indirectly,
6 aggregating in excess of ten thousand dollars from one or
7 more prohibited sources within the two-year period
8 immediately preceding the date the contribution is made, in
9 the case of an individual, or within the four-year period
10 immediately preceding the date the contribution is made, in
11 case of any other entity. Receipt of an affirmation by a
12 committee pursuant to this subsection shall create a
13 rebuttable presumption of compliance with this subsection on
14 the part of the committee. Nothing in this subsection shall
15 prohibit the attorney general from pursuing any action
16 pursuant to section 130.188 if the attorney general has
17 found a willful violation of this subsection.

18 2. Each disclosure report filed pursuant to section
19 130.041 shall require the treasurer of a committee to affirm
20 that the donor associated with each contribution is not a
21 foreign national and has not knowingly or willfully
22 received, solicited, or accepted, whether directly or
23 indirectly, contributions from one or more prohibited
24 sources aggregating in excess of ten thousand dollars within

25 the four-year period immediately preceding the date of the
26 contribution.

27 3. Within forty-eight hours of making one or more
28 expenditures supporting or opposing a ballot measure, the
29 entity making the expenditure shall affirm to the Missouri
30 ethics commission that it has not knowingly or willfully
31 accepted funds, directly or indirectly, aggregating in
32 excess of ten thousand dollars from one or more prohibited
33 sources within the four-year period immediately preceding
34 the date the expenditure is made and that it will not do so
35 through the remainder of the calendar year in which the
36 ballot measure will appear on the ballot. Each disclosure
37 report filed pursuant to section 130.041 shall require the
38 entity making the expenditure to affirm that it has not
39 knowingly or willfully accepted funds, directly or
40 indirectly, aggregating in excess of ten thousand dollars
41 from one or more prohibited sources within the four-year
42 period immediately preceding the date the expenditure is
43 made. Receipt of an affirmation from a donor that it is not
44 a foreign national shall create a rebuttable presumption
45 that the entity has not knowingly or willingly accepted
46 funds, directly or indirectly, aggregating in excess of ten
47 thousand dollars from one or more prohibited sources.
48 Nothing in this subsection shall prohibit the attorney
49 general from pursuing any action pursuant to section 130.188
50 if the attorney general has found a willful violation of
51 this subsection.

52 4. Notwithstanding any provision of this section to
53 the contrary, a donor or entity that makes a contribution to
54 a committee or an expenditure in support of or in opposition
55 to a ballot measure from its own funds obtained through the
56 usual course of business or in any commercial or other

57 transaction from any source and which are not contributions
58 does not violate this section.

59 5. A committee shall not accept an in-kind
60 contribution from any foreign national or from any
61 individual or entity that has knowingly or willfully
62 accepted funds, directly or indirectly, aggregating in
63 excess of ten thousand dollars from one or more foreign
64 nationals within the four year period immediately preceding
65 the date the in-kind contribution is made. A foreign
66 national shall not make an in-kind expenditure for the
67 purpose of supporting or opposing any ballot measure.

130.179. 1. A foreign national may not direct,
2 dictate, control or directly or indirectly participate in
3 the decision-making process of any person with regard to
4 that person's activities to influence an election on a
5 ballot measure, such as decisions concerning the making of
6 contributions to influence an election on a ballot measure.

7 2. A foreign national may not solicit, directly or
8 indirectly, the making of a donation, contribution or
9 expenditure by another person to influence an election on a
10 ballot measure.

11 3. Nothing in sections 130.170 to 130.188 shall be
12 deemed to create or eliminate any existing rights or duties
13 beyond those specifically enumerated in such sections.

130.185. 1. Lawful donors to a tax-exempt
2 organization possess a right of privacy in their donations.
3 Any investigation of an alleged violation of sections
4 130.170 to 130.188 shall occur in a manner that shields the
5 identity of lawful donors as much as possible. The attorney
6 general shall not collect or require the submission of
7 information on the identity of any donor to a tax-exempt
8 organization other than those directly related to an alleged
9 violation of sections 130.170 to 130.188. Any collection or

10 required submission of information by the attorney general
11 regarding the identity of any donor to a tax-exempt
12 organization beyond that permitted by sections 130.170 to
13 130.188 shall be deemed a violation of section 105.1500.

14 2. The attorney general shall not disclose to the
15 public, or another government official not directly involved
16 in the investigation, information revealing the identity of
17 the entity under investigation or any donor to a tax-exempt
18 organization, unless the information is regarding the
19 identity of the entity or of a donor that engaged in conduct
20 prohibited by sections 130.170 to 130.188 after a final
21 determination has been made that the entity or donor
22 violated sections 130.170 to 130.188. The unlawful
23 disclosure of information revealing the identity of any
24 entity under investigation or donor to a tax-exempt
25 organization in connection with a committee shall be deemed
26 a violation of section 105.1500.

130.188. 1. (1) If the attorney general has
2 reasonable cause to believe that a person or entity has
3 engaged in, is engaging in, or is about to engage in, a
4 violation of sections 130.170 to 130.185, the attorney
5 general may execute in writing and cause to be served upon
6 any person who is believed to have information, documentary
7 material, or physical evidence relevant to the alleged or
8 suspected violation, a civil investigative demand requiring
9 such person to appear and testify, or to produce relevant
10 documentary material or physical evidence or examination, at
11 such reasonable time and place as may be stated in the civil
12 investigative demand, concerning the subject matter of the
13 investigation. Service of any civil investigative demand,
14 notice, or subpoena may be made by any person authorized by
15 law to serve process or by any duly authorized employee of
16 the attorney general.

17 (2) In the process of a civil investigative demand
18 being executed pursuant to subdivision (1) of this
19 subsection, the provisions of sections 407.040 to 407.090
20 shall apply.

21 2. (1) If the attorney general has reasonable cause
22 to believe that a committee, person, or other entity has
23 engaged in, is engaging in, or is about to engage in, a
24 violation of sections 130.170 to 130.185, the attorney
25 general may bring a civil action to enforce sections 130.170
26 to 130.188. The provisions of section 130.054 and 105.957
27 to 105.963 shall not apply to violations of sections 130.170
28 to 130.188.

29 (2) A committee, person, or other entity alleged to
30 have violated sections 130.170 to 130.188 shall be provided
31 a notice of the civil action, with opportunity for discovery
32 and opportunity to be heard as provided by law for civil
33 actions generally before being found liable for a violation
34 of sections 130.170 to 130.188.

35 (3) In all actions brought pursuant to this section,
36 the burden of proof shall be on the attorney general.

37 (4) (a) Prior to discovery, the court shall set a
38 hearing to determine if there is probable cause to believe
39 that a committee, person, or other entity has violated
40 sections 130.170 to 130.188.

41 (b) If, after the hearing, the court determines that
42 no probable cause exists to believe that a violation of
43 sections 130.170 to 130.188 has occurred, the court shall
44 enter an order of dismissal.

45 (c) If, after the hearing, the court determines that
46 probable cause does exist to believe that a violation of
47 sections 130.170 to 130.188 has occurred, the court shall
48 enter an order to that effect and the case should proceed to
49 trial on an expedited basis.

50 (5) Subject to the provisions of section 130.185, the
51 committee, person, or other entity alleged to have violated
52 sections 130.170 to 130.188 may, at a time to be determined
53 by the court prior to the scheduling of trial, present
54 evidence sufficient to rebut the probable cause finding by
55 making an ex parte presentation of records to the court for
56 in camera review.

57 (6) A non-prevailing party under paragraph (c) of
58 subdivision (4) of this subsection has the right to:

59 (a) An interlocutory expedited appeal; and

60 (b) A stay of proceedings in the trial court.

61 3. (1) Within thirty days of a court finding that a
62 committee has violated sections 130.170 to 130.188, the
63 committee shall refund the contribution to the original
64 contributor. In the event of an appeal, the contribution
65 shall be placed in escrow, after which the funds shall be
66 disbursed in accordance with the final order.

67 (2) If the committee is unable to return the funds,
68 the directors, officers or executive members of the campaign
69 committee shall be liable in their personal capacity,
70 jointly and severally, for the refund of said funds.

71 4. Within thirty days of a court finding that a
72 committee, person, or other entity making an expenditure
73 covered by sections 130.170 to 130.188 has violated such
74 sections, the committee, person, or other entity shall
75 disgorge to the attorney general funds in an amount equal to
76 the reported cost of the expenditure. If the committee,
77 person, or entity is unable to disgorge the requisite funds,
78 the person or the directors, officers or executive members
79 of the committee or other entity shall be liable in their
80 personal capacities, jointly and severally, for the payment
81 of the amount due. In the event of an appeal, the funds
82 subject to disgorgement shall be placed in escrow, after

83 which they shall be disbursed in accordance with the final
84 order.

85 5. If any lobbyist violates any of the provisions of
86 sections 130.170 to 130.188, the lobbyist's registration may
87 be revoked or suspended and the lobbyist may be enjoined
88 from receiving compensation or making expenditures for
89 lobbying.

90 6. If the attorney general prevails in an action
91 brought under this section, the court shall award:

92 (1) Injunctive relief sufficient to prevent the
93 defendant from violating sections 130.170 to 130.188 or
94 engaging in acts that aid or abet violations of such
95 sections; and

96 (2) Statutory damages up to twice the amount of the
97 prohibited contribution or expenditure.

98 7. In addition to the penalties in subsection 6 of
99 this section and any other remedies provided by law, if the
100 court finds a knowingly or willful violation of sections
101 130.170 to 130.188, the court may assess a penalty of up to
102 three times the statutory damages.