

FIRST REGULAR SESSION

[PERFECTED]

SENATE SUBSTITUTE FOR

# SENATE BILL NO. 152

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR BROWN (26).

1095S.13P

KRISTINA MARTIN, Secretary

## 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  
69 campaign committee shall be liable in their personal



70 capacity, jointly and severally, for the refund of said  
71 funds.

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

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

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

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

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

99 7. In addition to the penalties in subsection 6 of  
100 this section and any other remedies provided by law, if the  
101 court finds a knowingly or willful violation of sections

102 130.170 to 130.188, the court may assess a penalty of up to  
103 three times the statutory damages.

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