

FIRST REGULAR SESSION

SENATE BILL NO. 176

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR DIXON.

Pre-filed December 1, 2016, and ordered printed.

ADRIANE D. CROUSE, Secretary.

0535S.011

AN ACT

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

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Section A. Sections 105.478 and 576.040, RSMo, are repealed and six new
2 sections enacted in lieu thereof, to be known as sections 29.225, 105.478, 531.070,
3 576.040, 576.041, and 595.219, to read as follows:

**29.225. When requested by a prosecuting attorney or circuit
2 attorney or law enforcement agency, the auditor or his or her
3 authorized representatives may audit all or part of any political
4 subdivision or other government entity as part of an investigation of
5 improper government activities, including official misconduct, fraud,
6 misappropriation, mismanagement, waste of resources, or a violation
7 of state or federal law, rule, or regulation.**

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

3 (1) [For the first offense, such person is guilty of a] **The offense is a
4 class B misdemeanor, unless the person has previously been found guilty
5 of knowingly violating any of the provisions of sections 105.450 to
6 105.498, in which case such person shall be guilty of a class E felony;**

7 (2) [For the second and subsequent offenses] **For any offense involving
8 more than seven hundred fifty dollars in value of any combination of
9 goods or services, such person is guilty of a class E felony.**

**531.070. A finding of guilt of the offenses of official misconduct
2 in the first degree or official misconduct in the second degree shall be**

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

3 **admissible as prima facie evidence in support of an information in the**
4 **nature of a quo warranto.**

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

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 **Knowingly 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 purpose of obtaining an improper, undue, or**
10 **unreasonable financial benefit for himself or herself or another;**

11 (2) Knowingly demands or receives any fee or reward for the execution of
12 any official act or the performance of a duty imposed by law or by the terms of his
13 or her employment, that is not due, or that is more than is due, or before it is
14 due;

15 (3) Knowingly collects taxes when none are due, or exacts or demands
16 more than is due; **or**

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

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

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

28 (7) Is a county officer, deputy or employee and knowingly traffics for or
29 purchases at less than the par value or speculates in any county warrant issued
30 by order of the county commission of his or her county, or in any claim or demand
31 held against such county].

32 2. The offense of official misconduct **in the first degree** is a class [A
33 misdemeanor] **E felony**.

576.041. 1. A public servant, in such person's public capacity or

2 under color of such person's office or employment, commits the offense
3 of official misconduct in the second degree if he or she:

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

8 (2) Is an officer or employee of any court and knowingly charges,
9 collects, or receives less fee for his or her services than is provided by
10 law;

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

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

20 2. The offense of official misconduct in the second degree is a
21 class A misdemeanor.

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 in the first or second degrees pursuant to the provisions of
6 this section.

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

8 (1) The victim;

9 (2) Any governmental entity; or

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

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

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

20 5. A restitution hearing to determine the liability of the
21 defendant shall be held not later than thirty days after final disposition
22 of the case and may be extended by the court for good cause. In the
23 restitution hearing, a written statement or bill for medical, dental,
24 hospital, funeral, or burial expenses shall be prima facie evidence that
25 the amount indicated on the written statement or bill represents a fair
26 and reasonable charge for the services or materials provided. The
27 burden of proving that the amount indicated on the written statement
28 or bill is not fair and reasonable shall be on the person challenging the
29 fairness and reasonableness of the amount.

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

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

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

Copy ✓