

SECOND REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NOS. 2523 & 2524

99TH GENERAL ASSEMBLY

6524H.03P

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 109.210 and 610.027, RSMo, and to enact in lieu thereof four new sections relating to the sunshine law, with penalty provisions.

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

Section A. Sections 109.210 and 610.027, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 109.210, 109.320, 610.027, and 610.031, to read as follows:

109.210. As used in sections 109.200 to ~~[109.310]~~ **109.320** the following words and terms have the meanings indicated, unless the context clearly requires otherwise:

(1) "Agency", any department, office, commission, board or other unit of state government or any political or administrative subdivisions created for any purpose under the authorities of or by the state of Missouri;

(2) "Boards", the local records board;

(3) "Commission", the state records commission;

(4) "Local record", any record not a state record;

(5) "Record", document, book, paper, photograph, map, sound recording or other material, regardless of physical form or characteristics, made or received pursuant to law or in connection with the transaction of official business. Library and museum material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference, and stocks of publications and of processed documents are not included within the definition of records as used in sections 109.200 to ~~[109.310]~~ **109.320**, and are hereinafter designated as "nonrecord" materials;

(6) "Secretary", the secretary of state;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 (7) "State record", any record designated or treated as a state record under state law.

18 **109.320. 1. The remedies provided in this section against agencies shall be in**
19 **addition to those provided in any other provision of law. Any aggrieved person, the**
20 **attorney general, or the prosecuting attorney may seek judicial enforcement of the**
21 **requirements of section 109.260, 109.265, and 109.270. Suits to enforce such sections shall**
22 **be brought in the circuit court for the county in which the agency has its principal place**
23 **of business. Upon service of a summons, petition, complaint, counterclaim, or cross-claim**
24 **in a civil action brought to enforce the provisions of section 109.260, 109.265, or 109.270,**
25 **the custodian of any material that is the subject matter of such civil action shall not**
26 **transfer custody, alter, destroy, or otherwise dispose of the material, notwithstanding the**
27 **assertion that the material is not a record or that the material is closed or confidential**
28 **under any provision of law, until the court makes a ruling about the status of such**
29 **material.**

30 **2. If a party seeking judicial enforcement of section 109.260, 109.265, or 109.270**
31 **demonstrates to the court that the agency in question is subject to the requirements of this**
32 **chapter and has destroyed or failed to retain any material at issue, the burden of**
33 **persuasion shall be on the agency to demonstrate compliance with the requirements of this**
34 **chapter.**

35 **3. Upon a finding by a preponderance of the evidence that an agency or a member**
36 **of an agency has knowingly violated section 109.260, 109.265, or 109.270, the agency or the**
37 **member shall be subject to a civil penalty in an amount not less than five hundred dollars**
38 **but not more than ten thousand dollars. If the court finds that there is a knowing violation**
39 **of section 109.260, 109.265, or 109.270, the court shall order such agency or member to pay**
40 **all costs and reasonable attorney's fees to any party successfully establishing a violation.**
41 **The court shall determine the amount of the penalty by considering the size of the**
42 **jurisdiction, the seriousness of the offense, and whether the agency or member has**
43 **previously violated any provisions of this chapter or chapter 610. Any person who**
44 **knowingly violates section 109.260, 109.265, or 109.270 shall be guilty of a class B**
45 **misdemeanor.**

46 **4. Upon a finding by a preponderance of the evidence that an agency or member**
47 **of any agency has violated section 109.260, 109.265, or 109.270 but that such violation was**
48 **not committed knowingly, the court may impose a civil penalty in an amount not more than**
49 **one thousand dollars. The court may order such agency or member to pay all costs and**
50 **reasonable attorney's fees to any party successfully establishing a violation. The court**
51 **shall determine the amount of the penalty by considering the size of the jurisdiction, the**
52 **seriousness of the offense, the degree of culpability and fault on the part of the agency or**

36 member, and whether the agency or member has previously violated any provisions of this
37 chapter or chapter 610.

38 5. Any suit brought under this section shall be brought within one year after the
39 violation is discovered.

40 6. The circuit courts of this state shall have jurisdiction and authority to issue
41 injunctions to enforce the provisions of sections 109.260, 109.265, and 109.270.

42 7. An agency that is in doubt about destroying or disposing of material may seek
43 a formal opinion from the attorney general. Any agency relying in good faith on such an
44 opinion shall not be deemed to have violated subsections 3 and 4 of this section.

610.027. 1. The remedies provided by this section against public governmental bodies
2 shall be in addition to those provided by any other provision of law. Any aggrieved person,
3 taxpayer to, or citizen of, this state, or the attorney general or prosecuting attorney, may seek
4 judicial enforcement of the requirements of sections 610.010 to 610.026. Suits to enforce
5 sections 610.010 to 610.026 shall be brought in the circuit court for the county in which the
6 public governmental body has its principal place of business. Upon service of a summons,
7 petition, complaint, counterclaim, or cross-claim in a civil action brought to enforce the
8 provisions of sections 610.010 to 610.026, the custodian of the public record that is the subject
9 matter of such civil action shall not transfer custody, alter, destroy, or otherwise dispose of the
10 public record sought to be inspected and examined, notwithstanding the applicability of an
11 exemption pursuant to section 610.021 or the assertion that the requested record is not a public
12 record until the court directs otherwise.

13 2. Once a party seeking judicial enforcement of sections 610.010 to 610.026
14 demonstrates to the court that the body in question is subject to the requirements of sections
15 610.010 to 610.026 and has held a closed meeting, record or vote, the burden of persuasion shall
16 be on the body and its members to demonstrate compliance with the requirements of sections
17 610.010 to 610.026.

18 3. Upon a finding by a preponderance of the evidence that a public governmental body
19 or a member of a public governmental body has knowingly violated sections 610.010 to 610.026,
20 the public governmental body or the member shall be subject to a civil penalty in an amount [~~up~~
21 ~~to one thousand dollars~~] **not less than five hundred dollars but not more than ten thousand**
22 **dollars**. If the court finds that there is a knowing violation of sections 610.010 to 610.026, the
23 court [~~may~~] **shall** order the payment by such body or member of all costs and reasonable attorney
24 fees to any party successfully establishing a violation. The court shall determine the amount of
25 the penalty by taking into account the size of the jurisdiction, the seriousness of the offense, and
26 whether the public governmental body or member of a public governmental body has violated

27 sections 610.010 to 610.026 previously. **A person who knowingly violates sections 610.010**
28 **to 610.026 shall be guilty of a class B misdemeanor.**

29 4. Upon a finding by a preponderance of the evidence that a public governmental body
30 or a member of a public governmental body has [~~purpose~~ly] violated sections 610.010 to
31 610.026[, the public governmental body or the member shall be subject to a civil penalty in an
32 amount up to five thousand dollars. If the court finds that there was a purposeful violation of
33 sections 610.010 to 610.026, then the court shall order the payment by such body or member of
34 all costs and reasonable attorney fees to any party successfully establishing such a violation. The
35 court shall determine the amount of the penalty by taking into account the size of the jurisdiction;
36 the seriousness of the offense, and whether the public governmental body or member of a public
37 governmental body has violated sections 610.010 to 610.026 previously] **but the violation was**
38 **not committed knowingly, the court may impose a penalty of not more than one thousand**
39 **dollars and may order the payment by such body or member of all costs and reasonable**
40 **attorney's fees to any party successfully establishing a violation. The court shall determine**
41 **the amount of the penalty by taking into account the size of the jurisdiction, the seriousness**
42 **of the offense, the degree of culpability and fault on the part of the public governmental**
43 **body or member, and whether the public governmental body or member has previously**
44 **violated sections 610.010 to 610.026.**

45 5. Upon a finding by a preponderance of the evidence that a public governmental body
46 has violated any provision of sections 610.010 to 610.026, a court shall void any action taken in
47 violation of sections 610.010 to 610.026, if the court finds under the facts of the particular case
48 that the public interest in the enforcement of the policy of sections 610.010 to 610.026 outweighs
49 the public interest in sustaining the validity of the action taken in the closed meeting, record or
50 vote. Suit for enforcement shall be brought within one year from which the violation is
51 ascertainable and in no event shall it be brought later than two years after the violation. This
52 subsection shall not apply to an action taken regarding the issuance of bonds or other evidence
53 of indebtedness of a public governmental body if a public hearing, election or public sale has
54 been held regarding the bonds or evidence of indebtedness.

55 6. A public governmental body which is in doubt about the legality of closing a particular
56 meeting, record or vote may bring suit at the expense of that public governmental body in the
57 circuit court of the county of the public governmental body's principal place of business to
58 ascertain the propriety of any such action, or seek a formal opinion of the attorney general or an
59 attorney for the governmental body.

60 7. **There is created within the office of the attorney general a transparency division.**
61 **No assistant attorney general while assigned to the transparency division shall participate**
62 **in the prosecution or defense of any civil claim on behalf of the state, any agency of the**

63 state, or any officer of the state, except the prosecution of an action alleging a violation of
64 any provision of chapter 109 or this chapter.

65 **8. To the extent that any action brought by the attorney general or by an assistant**
66 **attorney general in the transparency division creates an actual or potential conflict of**
67 **interest under the Missouri rules of professional conduct 4-1.7 or 4-1.9, the state, all**
68 **agencies of the state, and all officers of the state in their official capacity shall be deemed**
69 **to have waived such actual or potential conflicts under such sections of the Missouri rules**
70 **of professional conduct, provided that no attorney other than the attorney general and**
71 **assistant attorneys general assigned to the transparency division shall participate in the**
72 **prosecution of such action.**

610.031. 1. If the attorney general concludes that any person may have engaged in
2 **any act, conduct, or practice that violates any provision of chapter 109 or this chapter, the**
3 **attorney general may serve a civil investigative demand on any person who the attorney**
4 **general believes may have information or evidence relevant to the suspected violation. A**
5 **civil investigative demand issued under this section may seek any information and**
6 **documents that could be obtained by means of a subpoena duces tecum issued by a court**
7 **of this state. A civil investigative demand issued under this section may also require**
8 **answers to written interrogatories that would be permitted by the Missouri supreme court**
9 **rules.**

10 **2. A civil investigative demand issued under this section shall:**

11 **(1) State the statute or statutes that the attorney general believes may have been**
12 **violated;**

13 **(2) Describe the class or classes of information and evidence to be produced with**
14 **sufficient specificity so as to fairly indicate the material demanded;**

15 **(3) Prescribe a return date by which the information and evidence is to be**
16 **produced; and**

17 **(4) Identify the members of the attorney general's staff to whom the information**
18 **and evidence requested is to be produced.**

19 **3. Service of a civil investigative demand issued under this section may be made by:**

20 **(1) Delivering a duly executed copy thereof to the person to be served, or to a**
21 **partner or any officer or agent authorized by appointment or by law to receive service of**
22 **process on behalf of such person;**

23 **(2) Delivering a duly executed copy thereof to the principal place of business or the**
24 **residence in this state of the person to be served;**

25 **(3) Mailing by registered or certified mail a duly executed copy thereof addressed**
26 **to the person to be served, at the person's principal place of business or residence in this**

27 state, or if such person has no place of business or residence in this state, to his or her
28 principal office, place of business, or his or her residence; or

29 (4) Mailing by registered or certified mail a duly executed copy thereof, requesting
30 a return receipt signed by the addressee only, to the last known place of business,
31 residence, or abode within or without this state of such person.

32 4. At any time prior to the return date specified in a civil investigative demand
33 issued under this section or within twenty days after the civil investigative demand is
34 served, whichever is earlier, the recipient of the civil investigative demand may file a
35 petition in the circuit court of Cole County seeking to extend the return date for good cause
36 or to quash or modify any portion of the civil investigative demand. A civil investigative
37 demand issued under this section shall only be quashed or modified on the same basis as
38 a subpoena duces tecum issued by a court of this state.

39 5. If any person fails to comply with any portion of a civil investigative demand
40 served under this section, the attorney general may file a petition for an order to enforce
41 the civil investigative demand. The attorney general may file such petition in the circuit
42 court of Cole County or in any circuit court where such person has his or her principal
43 place of business or residence. Any person who refuses to comply with an order enforcing
44 a civil investigative demand shall be found in contempt.

45 6. Any person who, with the intent to avoid, evade, or prevent compliance with a
46 civil investigative demand issued under this section, removes, conceals, withholds, destroys,
47 alters, or falsifies any information or evidence responsive to a civil investigative demand
48 served under this section shall be guilty of a class A misdemeanor. The attorney general
49 shall have concurrent jurisdiction to enforce the provisions of this subsection.

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