

SECOND REGULAR SESSION

# SENATE BILL NO. 1041

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHAAF.

Read 1st time February 27, 2018, and ordered printed.

ADRIANE D. CROUSE, Secretary.

6631S.011

## AN ACT

To amend chapter 105, RSMo, by adding thereto two new sections relating to elected official communications.

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

Section A. Chapter 105, RSMo, is amended by adding thereto two new sections, to be known as sections 105.1450 and 105.1452, to read as follows:

**105.1450. As used in this section and section 105.1452, the following terms shall mean:**

(1) "Commission", the Missouri ethics commission established in section 105.955;

(2) "Donation", a payment or transfer of money or anything of value from a nongovernmental source. A donation of anything of value shall be deemed to have a money value equivalent to its fair market value;

(3) "Elected official", any member or member-elect of the general assembly, or any other person holding an elective office of state government;

(4) "Elected official communication":

(a) A communication made by an organization affiliated with an elected official, which:

a. Is in the form of:

(i) Radio, television, cable, or satellite broadcast;

(ii) Printed material, such as advertisements, pamphlets, circulars, flyers, brochures, or letters;

(iii) Telephone communication; or

(iv) Paid internet advertising; and

b. Includes the name, voice, or likeness of an elected official with

22 whom the organization is affiliated;

23 (b) An "elected official communication" shall not include a  
24 communication:

25 a. With a professional journalist or newscaster, including an  
26 editorial board or editorial or opinion writer of a newspaper, magazine,  
27 news agency, press association, or wire service;

28 b. Directed, sent, or distributed only to individuals who  
29 affirmatively consent to be members of the distributing organization,  
30 donate funds to the distributing organization, or, pursuant to the  
31 distributing organization's articles or bylaws, have the right to vote  
32 directly or indirectly for the election of directors or officers, or on  
33 changes to bylaws, disposition of all or substantially all of the  
34 distributing organization's assets, or the merger or dissolution of the  
35 distributing organization; or

36 c. Promoting or staging any candidate debate, town hall, or  
37 similar forum to which at least two candidates seeking the same office,  
38 or two proponents of differing positions on a proposed official action  
39 of a governmental body, are invited as participants, and which does not  
40 promote or advance one candidate or position over another;

41 (5) "Immediate family member", a spouse, child, parent,  
42 grandparent, brother, half-brother, sister, half-sister, and the spouses  
43 of such persons;

44 (6) "Organization affiliated with an elected official":

45 (a) A nonprofit entity, including an entity exempt from taxation  
46 under any provision of section 501(c) of the Internal Revenue Code of  
47 1986, as amended:

48 a. Which has received at least one donation in the current or  
49 previous calendar year; and

50 b. Over which an elected official, or an agent or immediate  
51 family member of such official, exercises control. An "agent" of an  
52 elected official shall include, but shall not be limited to, an appointee  
53 of the elected official serving at the pleasure of such official. There  
54 shall be a rebuttable presumption of control by an elected official  
55 where such official, or an agent or immediate family member of such  
56 official, appoints a majority of seats on the board of the entity, not  
57 including appointees nominated by another individual or entity that is  
58 not an agent or immediate family member of the elected official, or is

59 a principal officer of the entity.

60 (b) In determining whether an elected official exercises control  
61 over an organization, the commission shall consider the totality of the  
62 circumstances, including:

63 a. Whether the organization was created by the elected official,  
64 an agent or immediate family member of such official, or an individual  
65 who was previously employed by, or was a paid political consultant of,  
66 such official, and, if so, how recently such organization was created;

67 b. Whether the board of the organization is chaired by the  
68 elected official, or an agent or immediate family member of such  
69 official;

70 c. Whether board members appointed by the elected official  
71 serve for terms or are appointed only upon nomination of other  
72 individuals or entities that are not agents or immediate family  
73 members of such official; and

74 d. The degree of direction exercised by the elected official in the  
75 organization's policies, operations, and fundraising activities, including  
76 in decisions regarding the making of elected official communications.

77 (c) An "organization affiliated with an elected official" shall not  
78 include:

79 a. A committee, as defined in section 130.011; or

80 b. A department, agency, board, commission, institution, or other  
81 entity of the state or any of its political subdivisions.

82 (7) "Person", an individual, corporation, partnership, committee,  
83 proprietorship, joint venture, union, labor organization, limited  
84 liability company, association, including any trade, professional, or  
85 business association, political party or any executive committee  
86 thereof, club, or any other organization or entity however constituted.

105.1452. 1. An organization affiliated with an elected official  
2 that spends, or reasonably expects to spend, ten thousand dollars or  
3 more in the current or next calendar year on the production or  
4 dissemination of elected official communications shall file a report with  
5 the commission annually by August first. Such report shall include:

6 (1) The name of the organization;

7 (2) The name of each elected official, or of any agent or  
8 immediate family member of such official, who is affiliated with the  
9 organization;

10           **(3) The names of the principal officers and board members of the**  
11 **organization;**

12           **(4) Whether the organization has tax-exempt status pursuant to**  
13 **section 501(c) of the Internal Revenue Code of 1986, as amended, and,**  
14 **if so, the provision of such section that grants tax-exempt status;**

15           **(5) The website address of the organization, if any;**

16           **(6) The name and address, including the city and state of**  
17 **residence or state of incorporation, as applicable, of any person who**  
18 **made one or more donations with a monetary value of five thousand**  
19 **dollars or more in the aggregate to the organization during the**  
20 **previous calendar year, along with the date and amount of each**  
21 **donation from such person; and**

22           **(7) An accounting of all payments made by the organization**  
23 **during the previous calendar year for the production or dissemination**  
24 **of elected official communications, including the date, amount, payee,**  
25 **and purpose of each payment.**

26           **2. To ensure the effective implementation of this section, the**  
27 **commission shall:**

28           **(1) Develop and publish forms and printed instructions for use**  
29 **in filing reports pursuant to this section;**

30           **(2) Develop and maintain a system for filing reports pursuant to**  
31 **this section, and preserve such reports for a period of not less than five**  
32 **years;**

33           **(3) Maintain and regularly update a publicly accessible list on its**  
34 **website of all organizations that reported, and all information**  
35 **disclosed, to the commission pursuant to this section;**

36           **(4) Promulgate rules as are necessary to implement the reporting**  
37 **required by this section. In addition, the commission shall promulgate**  
38 **rules establishing procedures whereby a nonprofit entity may apply for**  
39 **a formal determination that an elected official, or an agent or**  
40 **immediate family member of such official, does not exercise control**  
41 **over such entity, consistent with the considerations included in the**  
42 **definition of "organization affiliated with an elected official" in section**  
43 **105.1450, and may seek to rebut the presumption contained in such**  
44 **definition. To the extent practicable, the commission shall make a**  
45 **determination within sixty days of receiving a complete**  
46 **application. Where the commission has determined that a nonprofit**

47 entity is not controlled by an elected official, such entity shall be  
48 exempt from the provisions of this section for so long as there is no  
49 material change in the circumstances set forth in the application for a  
50 formal determination made pursuant to this subdivision;

51 (5) Render advisory opinions in accordance with section 105.955;  
52 and

53 (6) Within thirty days of an elected official taking office for the  
54 first time, notify the elected official in writing of the reporting for  
55 organizations affiliated with an elected official required by this section.

56 3. Any complaint alleging a violation of this section shall be filed  
57 with the ethics commission in the form described in section  
58 105.957. The ethics commission shall investigate such complaints in  
59 accordance with section 105.961.

60 4. Any person guilty of knowingly violating any provision of this  
61 section shall be punished in accordance with section 105.478.

✓

Bill

Copy