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MISSOURI SENATE

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TO: Senator Kehoe

FROM: Scott Svagera, Staff Attorney

DATE: May 5, 2017

RE: SS/SB 305 - Ethics

Per your request, please find attached a Senate Substitute for SB 305 relating to ethics.

This Senate Substitute differs from the previous Senate Substitute by adding two sections relating to investment of campaign funds (Sections 130.021 & 130.034).

This Senate Substitute differs from the introduced version in the following respects:

- Does not include gifts, honorariums, or forgiven loans or debts as an expenditure. (Section 105.470(4));
- Includes new provisions relating to constituent expenditures. (Sections 105.470(1) and 105.473.3(2)(c));
- Exempts flowers and plants sent as an expression of condolence or congratulations from the definition of expenditure. (Section 105.470(4));
- Modifies group reporting requirements such that expenditures do not need to be "for an occasion." (Section 105.473.3(2)(e));
- Prohibits public officials from accepting expenditures of more than \$40 on any calendar day. (Section 105.474.1(1));
- Permits public officials to reimburse for excess expenditures received. (Section 105.474.1(3));
- Imposes a gift ban with a corresponding definition for gift. (Sections 105.470(5) and 105.474.2);
- Inserts provisions relating to the investment of campaign funds. (Sections 130.021 and 130.034); and
- Changes the title from "lobbyist expenditures" to "ethics".

NOTE: Section 105.473 appears twice in this act because it is doubly-enacted due to the Missouri Supreme Court decision in *Legends Bank v. Missouri*, 361 SW3d 383 (2012), which struck down SB 844 (2010) for a violation of Article III, Section 21 of the Constitution (original purpose). As such, this act repeals the version enacted by SB 844 and amends the version in force prior to SB 844.

Summary

This act modifies provisions of law relating ethics.

DEFINITION OF EXPENDITURE: (SECTION 105.470(4))

Under current law, gifts and honorariums are considered to be an expenditure. This act repeals those provisions. The act also exempts the following from the definition of expenditure:

- Any item, service, or thing of value transferred to any person within the third degree of affinity of the transferor which is unrelated to any activity of the transferor as a lobbyist;
- Flowers and plants sent as an expression of condolence or congratulations within a reasonable time of the occasion being observed; and
- Any plaque or award that signifies the honorary recognition of a service or other notable accomplishment, provided such plaque or award does not exceed \$50.

The act further stipulates that in order to be considered an expenditure, the following conditions must be met:

- The expenditure must be made by a lobbyist, lobbyist principal, or a person acting on behalf of a lobbyist or lobbyist principal;
- The expenditure must be made on behalf of a public official, or such public official's staff, spouse, or dependent children; and
- The lobbyist, lobbyist principal, or person acting on behalf of the lobbyist or lobbyist principal must be present for the consumption or enjoyment of the expenditure by the recipient.

CONSTITUENT EXPENDITURE REPORTING (SECTION 105.473.3(2)(c))

The act requires a lobbyist or a lobbyist principal to report, as part of their monthly reports, all constituent expenditures made on behalf of all public officials.

A constituent expenditure is defined as any item of value:

- that is given by a lobbyist, lobbyist principal, or person acting on behalf of a lobbyist or lobbyist

- principal;
- on behalf of an elected public official;
- for the exclusive benefit of an individual or group of individuals who are constituents of the public official;
- that is received for an occasion at the capitol building.

GROUP EXPENDITURE REPORTING: (SECTION 105.473.3(2)(e))

Under current law, group expenditures are only permitted to be reported when certain groups are invited for occasions. This act repeals the requirement that the expenditure be for an occasion. The act further stipulates that expenditures are only permitted to be reported as a group when any of the following are invited in writing or by electronic means:

- All members of the Senate;
- All members of the House;
- All members of the General Assembly; or
- All statewide elected officials.

Such invitations may or may not include staff and employees.

EXPENDITURE LIMITS: (SECTION 105.474.1)

The act prohibits public officials, or the staff, spouse, or dependent children of such public officials, from accepting any expenditure or combination of expenditures from any lobbyist, lobbyist principal, and person acting on behalf of a lobbyist or lobbyist principal in excess of \$40 on any one calendar day.

Any public official who accepts expenditures in excess of \$40 on any one calendar day shall be permitted to cure such violation by reimbursing the lobbyist, lobbyist principal, or person acting on behalf of a lobbyist or lobbyist principal within 30 days of being notified by the Ethics Commission.

GIFT BAN (SECTION 105.474.2)

The act prohibits public officials, or the staff, spouse, or dependent children of such public officials, from accepting gifts from lobbyists, lobbyist principals, or any person acting on behalf of a lobbyist or lobbyist principal.

INVESTMENT OF CAMPAIGN FUNDS (SECTIONS 130.021, 130.034)

Under current law, a committee treasurer, deputy treasurer, or candidate may withdraw funds from a committee's account for the purpose of investing in the committee's name in any C.D., bond, or security. This act permits investment in any mutual fund.