

SECOND REGULAR SESSION

# SENATE BILL NO. 804

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHAAF.

Read 1st time January 30, 2014, and ordered printed.

TERRY L. SPIELER, Secretary.

5750S.011

## AN ACT

To repeal sections 536.010 and 546.720, RSMo, and to enact in lieu thereof two new sections relating to the death penalty.

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

Section A. Sections 536.010 and 546.720, RSMo, are repealed and two new  
2 sections enacted in lieu thereof, to be known as sections 536.010 and 546.720, to  
3 read as follows:

536.010. For the purpose of this chapter:

2 (1) "Affected small business" or "affects small business" means any  
3 potential or actual requirement imposed upon a small business or minority small  
4 business through a state agency's proposed or adopted rule that will cause direct  
5 and significant economic burden upon a small business or minority small  
6 business, or that is directly related to the formation, operation, or expansion of  
7 a small business;

8 (2) "Agency" means any administrative officer or body existing under the  
9 constitution or by law and authorized by law or the constitution to make rules or  
10 to adjudicate contested cases, except those in the legislative or judicial branches;

11 (3) "Board" means the small business regulatory fairness board, except  
12 when the word is used in section 536.100;

13 (4) "Contested case" means a proceeding before an agency in which legal  
14 rights, duties or privileges of specific parties are required by law to be determined  
15 after hearing;

16 (5) The term "decision" includes decisions and orders whether negative or  
17 affirmative in form;

18 (6) "Rule" means each agency statement of general applicability that  
19 implements, interprets, or prescribes law or policy, or that describes the

20 organization, procedure, or practice requirements of any agency. The term  
21 includes the amendment or repeal of an existing rule, but does not include:

22 (a) A statement concerning only the internal management of an agency  
23 and which does not substantially affect the legal rights of, or procedures available  
24 to, the public or any segment thereof;

25 (b) A declaratory ruling issued pursuant to section 536.050, or an  
26 interpretation issued by an agency with respect to a specific set of facts and  
27 intended to apply only to that specific set of facts;

28 (c) An intergovernmental, interagency, or intraagency memorandum,  
29 directive, manual or other communication which does not substantially affect the  
30 legal rights of, or procedures available to, the public or any segment thereof;

31 (d) A determination, decision, or order in a contested case;

32 (e) An opinion of the attorney general;

33 (f) Those portions of staff manuals, instructions or other statements  
34 issued by an agency which set forth criteria or guidelines to be used by its staff  
35 in auditing, in making inspections, in settling commercial disputes or negotiating  
36 commercial arrangements, or in the selection or handling of cases, such as  
37 operational tactics or allowable tolerances or criteria for the defense, prosecution,  
38 or settlement of cases, when the disclosure of such statements would enable law  
39 violators to avoid detection, facilitate disregard of requirements imposed by law,  
40 or give a clearly improper advantage to persons who are in an adverse position  
41 to the state;

42 (g) A specification of the prices to be charged for goods or services sold by  
43 an agency as distinguished from a license fee, or other fees;

44 (h) A statement concerning only the physical servicing, maintenance or  
45 care of publicly owned or operated facilities or property;

46 (i) A statement relating to the use of a particular publicly owned or  
47 operated facility or property, the substance of which is indicated to the public by  
48 means of signs or signals;

49 (j) A decision by an agency not to exercise a discretionary power;

50 (k) **Except for statements concerning the execution of inmates**, a  
51 statement concerning only inmates of an institution under the control of the  
52 department of corrections and human resources or the division of youth services,  
53 students enrolled in an educational institution, or clients of a health care facility,  
54 when issued by such an agency;

55 (l) Statements or requirements establishing the conditions under which

56 persons may participate in exhibitions, fairs or similar activities, managed by the  
57 state or an agency of the state;

58 (m) Income tax or sales forms, returns and instruction booklets prepared  
59 by the state department of revenue for distribution to taxpayers for use in  
60 preparing tax returns;

61 (7) "Small business" means a for-profit enterprise consisting of fewer than  
62 one hundred full- or part-time employees;

63 (8) "State agency" means each board, commission, department, officer or  
64 other administrative office or unit of the state other than the general assembly,  
65 the courts, the governor, or a political subdivision of the state, existing under the  
66 constitution or statute, and authorized by the constitution or statute to make  
67 rules or to adjudicate contested cases.

546.720. 1. The manner of inflicting the punishment of death shall be by  
2 the administration of lethal gas or by means of the administration of lethal  
3 injection. And for such purpose the director of the department of corrections is  
4 hereby authorized and directed to provide a suitable and efficient room or place,  
5 enclosed from public view, within the walls of a correctional facility of the  
6 department of corrections, and the necessary appliances for carrying into  
7 execution the death penalty by means of the administration of lethal gas or by  
8 means of the administration of lethal injection. **The department shall not**  
9 **purchase lethal gas or chemicals with paper money or coins.**

10 2. The director of the department of corrections shall select an execution  
11 team which shall consist of those persons who administer lethal gas or lethal  
12 chemicals and those persons, such as medical personnel, who provide direct  
13 support for the administration of lethal gas or lethal chemicals. **The execution**  
14 **team shall not include any person who operates, owns, is an agent of,**  
15 **or is employed by a supplier of equipment or chemicals used in**  
16 **executions.** The identities of members of the execution team, as defined in the  
17 execution protocol of the department of corrections, shall be kept  
18 confidential. Notwithstanding any provision of law to the contrary, any portion  
19 of a record that could identify a person as being a current or former member of  
20 an execution team shall be privileged and shall not be subject to discovery,  
21 subpoena, or other means of legal compulsion for disclosure to any person or  
22 entity, the remainder of such record shall not be privileged or closed unless  
23 protected from disclosure by law. The section of an execution protocol that  
24 directly relates to the administration of lethal gas or lethal chemicals is an open

25 record, the remainder of any execution protocol of the department of corrections  
26 is a closed record.

27 3. A person may not, without the approval of the director of the  
28 department of corrections, knowingly disclose the identity of a current or former  
29 member of an execution team or disclose a record knowing that it could identify  
30 a person as being a current or former member of an execution team. Any person  
31 whose identity is disclosed in violation of this section shall:

32 (1) Have a civil cause of action against a person who violates this section;

33 (2) Be entitled to recover from any such person:

34 (a) Actual damages; and

35 (b) Punitive damages on a showing of a willful violation of this section.

36 4. Notwithstanding any provision of law to the contrary, if a member of  
37 the execution team is licensed by a board or department, the licensing board or  
38 department shall not censure, reprimand, suspend, revoke, or take any other  
39 disciplinary action against the person's license because of his or her participation  
40 in a lawful execution. All members of the execution team are entitled to coverage  
41 under the state legal expense fund established by section 105.711 for conduct of  
42 such execution team member arising out of and performed in connection with his  
43 or her official duties on behalf of the state or any agency of the state, provided  
44 that moneys in this fund shall not be available for payment of claims under  
45 chapter 287.

46 **5. The department of corrections shall promulgate rules to**  
47 **administer the provisions of this section. Any rule or portion of a rule,**  
48 **as that term is defined in section 536.010, that is created under the**  
49 **authority delegated in this section shall become effective only if it**  
50 **complies with and is subject to all of the provisions of chapter 536 and,**  
51 **if applicable, section 536.028. This section and chapter 536 are**  
52 **nonseverable and if any of the powers vested with the general assembly**  
53 **under chapter 536 to review, to delay the effective date, or to**  
54 **disapprove and annul a rule are subsequently held unconstitutional,**  
55 **then the grant of rulemaking authority and any rule proposed or**  
56 **adopted after August 28, 2014, shall be invalid and void.**

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