

FIRST REGULAR SESSION

SENATE BILL NO. 459

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR LIBLA.

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ADRIANE D. CROUSE, Secretary.

2119S.011

AN ACT

To repeal sections 1.310 and 536.205, RSMo, and to enact in lieu thereof four new sections relating to administrative rulemaking.

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

Section A. Sections 1.310 and 536.205, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 1.310, 536.205, 536.225, and 536.360, to read as follows:

1.310. 1. This section shall be known and may be cited as the "Big Government Get Off My Back Act".

2. Any federal mandate compelling the state to enact, enforce, or administer a federal regulatory program shall be subject to authorization through appropriation or statutory enactment.

3. No user fees imposed by the state of Missouri shall increase for the [five-year] **ten-year** period beginning on August 28, 2009, unless such fee increase is to implement a federal program administered by the state or is a result of an act of the general assembly. For purposes of this section, "user fee" does not include employer taxes or contributions, assessments to offset the cost of examining insurance or financial institutions, any health-related taxes approved by the Center for Medicare and Medicaid Services, or any professional or occupational licensing fees set by a board of members of that profession or occupation and required by statute to be set at a level not to exceed the cost of administration.

4. For the [five-year] **ten-year** period beginning on August 28, 2009, any state agency proposing a rule as that term is defined in subdivision (6) of section 536.010, other than any rule promulgated as a result of a federal mandate, or to

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

19 implement a federal program administered by the state or an act of the general
20 assembly, shall either:

21 (1) Certify that the rule does not have an adverse impact on small
22 businesses consisting of fewer than fifty full- or part-time employees; or

23 (2) Certify that the rule is necessary to protect the life, health or safety
24 of the public; or

25 (3) Exempt any small business consisting of fewer than fifty full- or
26 part-time employees from coverage.

27 5. The provisions of this section shall not be construed to prevent or
28 otherwise restrict an agency from promulgating emergency rules pursuant to
29 section 536.025, or from rescinding any existing rule pursuant to section 536.021.

536.205. 1. Any state agency filing a notice of proposed rulemaking, as
2 required by section 536.021, whereby the adoption, amendment, or rescission of
3 the rule would require an expenditure of money by or a reduction in income for
4 any person, firm, corporation, association, partnership, proprietorship or business
5 entity of any kind or character which is estimated to cost more than five hundred
6 dollars in the aggregate, shall at the time of filing the notice with the secretary
7 of state file a fiscal note containing the following information and estimates of
8 cost:

9 (1) An estimate of the number of persons, firms, corporations,
10 associations, partnerships, proprietorships or business entities of any kind or
11 character by class which would likely be affected by the adoption of the proposed
12 rule, amendment or rescission of a rule;

13 (2) A classification by types of the business entities in such manner as to
14 give reasonable notice of the number and kind of businesses which would likely
15 be affected;

16 (3) An estimate in the aggregate as to the cost of compliance with the
17 rule, amendment or rescission of a rule by the affected persons, firms,
18 corporations, associations, partnerships, proprietorships or business entities of
19 any kind or character.

20 **2. Any person, firm, corporation, association, partnership,**
21 **proprietorship, or business entity of any kind or character financially**
22 **impacted by the adoption, amendment, or rescission of a rule due to the**
23 **requirement of an expenditure of money or by a reduction in income,**
24 **may, within one calendar year after the implementation of the rule, file**
25 **a statement of actual cost to such person or entity with the state**

26 agency which promulgated the adoption, amendment, or rescission of
27 the rule and with the joint committee on administrative rules. The
28 state agency shall compile such statements of actual cost and if at the
29 end of the first full fiscal year after the implementation of the rule,
30 amendment, or rescission the cost to all affected entities has exceeded
31 by ten percent or more the estimated cost in the fiscal note or has
32 exceeded five hundred dollars if an affidavit has been filed stating the
33 proposed change will cost less than five hundred dollars, the original
34 estimated cost together with the actual cost during the first fiscal year
35 shall be published by the adopting agency in the Missouri Register
36 within ninety days after the close of the fiscal year. Such costs shall be
37 determined by the adopting agency. If the adopting agency fails to
38 publish such costs as required by this section, the rule, amendment, or
39 rescission shall be void and of no further force or effect.

40 3. The fiscal note shall be published in the Missouri Register
41 contemporary with and adjacent to the notice of proposed rulemaking, and failure
42 to do so shall render any rule promulgated thereunder void and of no force and
43 effect.

44 [3.] 4. Any challenge to a rule based on failure to meet the requirements
45 of this section shall be commenced no later than five years after the effective date
46 of the rule.

47 [4.] 5. In the event that any rule published prior to June 3, 1994, shall
48 have failed to provide a fiscal note as required by this section, such agency shall
49 publish the required fiscal note prior to August 28, 1995, and in that event the
50 rule shall not be void. Any such rule shall be deemed to have met the
51 requirements of this section until that date.

536.225. Any rule, amendment, or rescission for which a
2 statement of actual cost is published in the Missouri Register, pursuant
3 to section 536.200 or 536.205, shall expire one year after the publication
4 of the statement of actual cost. The secretary of state shall publish
5 notice of such expiration as a part of the rule in the code of state
6 regulations. If a state agency desires for such rule, amendment, or
7 rescission to remain in effect, the rule shall be repromulgated pursuant
8 to this chapter.

536.360. 1. Any state agency filing a notice of proposed
2 rulemaking, as required by section 536.021, whereby the adoption,
3 amendment, or rescission of a rule would affect business, as defined in

4 section 144.010, the state agency shall meet the following filing
5 requirements in addition to any other requirements existing in law:

6 (1) If the adoption, amendment, or rescission of the rule has any
7 fiscal impact on businesses, in addition to the fiscal note requirements
8 contained in section 536.205, the agency shall also provide in the fiscal
9 note:

10 (a) A description of the business entities that will be required to
11 comply with the proposed rules;

12 (b) Specific examples of the fiscal impact on business;

13 (c) Whether additional training of business employees and the
14 level of such training will be necessary to implement the provisions of
15 the rule; and

16 (d) The monetary costs and benefits to the implementing agency
17 and other agencies directly affected;

18 (2) Designate staff or an ombudsman to address business
19 concerns regarding implementation of the rule;

20 (3) Create provisions which will delay implementation of the new
21 provisions for a minimum of one year for business entities currently in
22 existence.

23 2. Any state agency which promulgates a rule affecting business
24 and containing a penalty or fine shall be prohibited from enforcing
25 such fine or penalty for the first year after promulgation. Further, the
26 state agency shall be required to work with businesses affected by such
27 fine or penalty to evaluate the reason for the violation, suggest
28 solutions to remediate the violation and educate businesses to avoid
29 future violations.

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