

FIRST REGULAR SESSION

SENATE BILL NO. 563

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WIELAND.

Read 1st time February 26, 2015, and ordered printed.

ADRIANE D. CROUSE, Secretary.

2046S.05I

AN ACT

To repeal sections 217.040, 536.010, and 546.720, RSMo, and to enact in lieu thereof three new sections relating to administrative rules, with an effective date for a certain section.

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

Section A. Sections 217.040, 536.010, and 546.720, RSMo, are repealed
2 and three new sections enacted in lieu thereof, to be known as sections 217.040,
3 536.010, and 546.720, to read as follows:

217.040. 1. The department shall have the authority to adopt, amend and
2 repeal rules and regulations under the provisions of this section and chapter 536
3 as necessary or desirable to carry out the provisions of this chapter **and any**
4 **other duties assigned to the department by statute** which are not
5 inconsistent with the constitution of this state. **By August 28, 2016, the**
6 **department shall promulgate rules concerning inmates in institutions**
7 **under the control of the department and operating regulations**
8 **concerning the internal management of the department and its**
9 **divisions.** [No rule or portion of a rule promulgated under the authority of this
10 chapter shall become effective unless it has been promulgated pursuant to the
11 provisions of section 536.024.]

12 2. The department shall adopt policies and operating regulations
13 concerning only its internal management which need not be published in the
14 Missouri Register or the code of state regulations under chapter 536, but these
15 regulations shall be available for public inspection and review.

16 3. Divisions of the department shall jointly or separately adopt
17 regulations, policies and procedures concerning internal management which shall

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

18 be consistent with the department's policies and regulations, and need not be
19 published in the Missouri Register or the code of state regulations under chapter
20 536.

21 4. Chief administrative officers, managers or supervisors of correctional
22 centers, sections, units, or offices of the department or its divisions shall make
23 such orders, rules or regulations governing their correctional center, section, unit,
24 or office as required by their division or department and consistent with policy
25 and procedure adopted by the department.

26 5. **Any rule or portion of a rule, as that term is defined in section**
27 **536.010 that is created under the authority delegated in this section**
28 **shall become effective only if it complies with and is subject to all of**
29 **the provisions of chapter 536, and, if applicable, section 536.028. This**
30 **section and chapter 536 are nonseverable and if any of the powers**
31 **vested with the general assembly pursuant to chapter 536, to review, to**
32 **delay the effective date, or to disapprove and annul a rule are**
33 **subsequently held unconstitutional, then the grant of rulemaking**
34 **authority and any rule proposed or adopted after August 28, 2015, shall**
35 **be invalid and void.**

36 6. **No rule promulgated under the authority of this section shall**
37 **be determined to be arbitrary and capricious because the rule**
38 **authorizes the discipline of inmates.**

39 7. **Because of the need for rules governing correctional facilities**
40 **to protect public safety, the promulgation of rules concerning inmates**
41 **in institutions under the control of the department is deemed to be**
42 **necessary for the immediate preservation of public health, safety, and**
43 **welfare for purposes of section 536.025.**

44 8. **The provisions of subsections 2 and 3 of this section shall**
45 **expire on August 28, 2016.**

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) [A statement concerning only inmates of an institution under the
51 control of the department of corrections and human resources or the division of
52 youth services, students enrolled in an educational institution, or clients of a
53 health care facility, when issued by such an agency;

54 (l) Statements or requirements establishing the conditions under which
55 persons may participate in exhibitions, fairs or similar activities, managed by the
56 state or an agency of the state;

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

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

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

9 2. The director of the department of corrections shall select an execution
10 team which shall consist of those persons who administer lethal gas or lethal
11 chemicals and those persons, such as medical personnel, who provide direct
12 support for the administration of lethal gas or lethal chemicals. The identities
13 of members of the execution team, as defined in the execution protocol of the
14 department of corrections, shall be kept confidential. Notwithstanding any

15 provision of law to the contrary, any portion of a record that could identify a
16 person as being a current or former member of an execution team shall be
17 privileged and shall not be subject to discovery, subpoena, or other means of legal
18 compulsion for disclosure to any person or entity, the remainder of such record
19 shall not be privileged or closed unless protected from disclosure by law. The
20 section of an execution protocol that directly relates to the administration of
21 lethal gas or lethal chemicals is an open record, the remainder of any execution
22 protocol of the department of corrections is a closed record.

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

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

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

30 (a) Actual damages; and

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

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

42 **5. The department of corrections shall promulgate rules to**
43 **administer the provisions of this section. Any rule or portion of a rule,**
44 **as that term is defined in section 536.010, that is created under the**
45 **authority delegated in this section shall become effective only if it**
46 **complies with and is subject to all of the provisions of chapter 536 and,**
47 **if applicable, section 536.028. This section and chapter 536 are**
48 **nonseverable and if any of the powers vested with the general assembly**
49 **under chapter 536 to review, to delay the effective date, or to**
50 **disapprove and annul a rule are subsequently held unconstitutional,**

51 **then the grant of rulemaking authority and any rule proposed or**
52 **adopted after August 28, 2015, shall be invalid and void.**

Section B. The repeal and reenactment of section 536.010 of section A of
2 this act shall become effective August 28, 2016.

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Unofficial

Bill

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