

SENATE COMMITTEE SUBSTITUTE

FOR

HOUSE COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 192

AN ACT

To repeal sections 479.011, 543.270, and 558.006, RSMo, and to enact in lieu thereof three new sections relating to court procedures, with penalty provisions.

---

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI, AS FOLLOWS:

Section A. Sections 479.011, 543.270, and 558.006, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 479.011, 543.270, and 558.006, to read as follows:

479.011. 1. (1) [The following cities may establish an administrative adjudication system under this section:

(a) Any city not within a county;

(b) Any home rule city with more than four hundred thousand inhabitants and located in more than one county;

(c) Any home rule city with more than seventy-three thousand but fewer than seventy-five thousand inhabitants; and

(d) Any home rule city with more than one hundred fifty-five thousand but fewer than two hundred thousand inhabitants.

(2) The cities listed in subdivision (1) of this subsection] A city or village may establish, by [order or] ordinance, an administrative system for adjudicating housing,

property maintenance, nuisance, parking, [and] other civil, nonmoving [municipal code violations] traffic violations, and minor traffic violations and municipal ordinance violations as defined in section 479.350, as administrative adjudications consistent with applicable state law. The city or village shall designate a hearing officer who shall be licensed to practice as an attorney at law in the state of Missouri and may be the municipal judge.

(2) Such administrative adjudication system shall be subject to practice, procedure, and pleading rules established by the state supreme court, circuit court, or municipal court, except as provided within this section. This section shall not be construed to affect the validity of other administrative adjudication systems authorized by state law and created before August 28, 2004.

(3) Such administrative adjudications shall not be considered contested cases under chapter 536 and shall be governed by the provisions of this section.

(4) Any municipal judge may refer any case pending before such judge, which would fall within the jurisdiction of the administrative tribunal, to such administrative tribunal. The dismissal of the municipal court case shall occur upon notification by the administrative tribunal of acceptance of the case. No costs shall be taxed in the event of such a dismissal. If the reason for such referral is, in part, due to the respondent having not responded to the original summons as required on the matter referred, the court shall forward a certification of nonappearance to the administrative tribunal.

(5) An administrative adjudication under such administrative tribunal may be commenced by serving a code violation notice upon the respondent by a person designated by the city or village for such purpose. Such notice shall, at a minimum, inform the respondent of the time and place of the hearing, the sections of the code or ordinance which are alleged to have been violated, the time and place of the alleged violation, and the range of penalties for such violation. The code violation notice shall inform the respondent that the respondent has a right to appear at the hearing, to present evidence, to question the witnesses appearing, to subpoena witnesses, and to be represented by an attorney at the respondent's cost. Such notice may be served on the respondent by regular mail if the respondent signs and returns an acknowledgment of receipt, or personal service, by registered mail with return receipt. If the city or village has attempted by regular mail and the respondent fails to acknowledge receipt, then the cost of personal service or service by registered mail may be taxed to the respondent regardless of outcome of the matter unless the respondent can show good cause for having failed to do so.

2. The [order or] ordinance creating the administrative adjudication system shall designate the administrative tribunal and its jurisdiction, including the code or ordinance violations to be reviewed. The administrative tribunal may operate under the supervision of the municipal court, parking commission, or other entity designated by [order or] ordinance and in a manner consistent with state law. [The administrative tribunal shall

adopt policies and procedures for administrative hearings, and filing and notification requirements for appeals to the municipal or circuit court, subject to the approval of the municipal or circuit court.]

3. The administrative adjudication process authorized in this section shall ensure a fair and impartial review of contested municipal code violations, and shall afford the parties due process of law. The hearing need not be recorded and the tribunal shall not be considered a court of record. The formal rules of evidence shall not apply in any administrative review or hearing authorized in this section. Evidence, including hearsay, may be admitted only if it is the type of evidence commonly relied upon by reasonably prudent persons in the conduct of their affairs. The code violation notice, property record, and related documentation in the proper form, or a copy thereof, shall be prima facie evidence of the municipal code violation. The officer who issued the code violation citation need not be present. On a finding that service has been properly affected, the administrative tribunal may proceed with the hearing regardless of whether the respondent participates. The hearing officer shall enter a written finding, but the findings of fact and conclusions of law shall not be required.

4. An administrative tribunal may impose a fine for a violation of any ordinance within its jurisdiction. An administrative tribunal may not impose incarceration or any fine in excess of the amount allowed by law for municipal courts hearing similar cases. In addition to any fine, the administrative tribunal may assess the reasonable costs of the

hearing or of prosecution, not including costs of notice except as provided within this section, to the respondent if the respondent is found to have violated the municipal ordinance. If the respondent is found to have violated any municipal ordinance which such violation could have been prosecuted in the municipal court, the administrative tribunal shall assess any fees authorized under sections 488.607, 488.5026, and 488.5336, in the same manner as in municipal courts. Any sanction, fine or costs, or part of any fine, other sanction, or costs, remaining unpaid after the exhaustion of, or the failure to exhaust, [judicial] administrative review procedures under chapter 536 shall be a debt due and owing the city or village, and may be collected in accordance with applicable law. Any final decision or disposition of a code violation by an administrative tribunal shall constitute a conviction as defined in section 302.010. Points shall be assessed by the department of revenue for driving violations in the same manner as in municipal court proceedings. Upon conviction by the administrative tribunal and if authorized by the city or village ordinance, the department of revenue shall assess an additional two points if the municipal court issued a certification of nonappearance, as provided within this section, and the administrative tribunal finds that the respondent has presented no just cause for nonappearance.

5. Any final decision or disposition of a code or ordinance violation by an administrative tribunal shall constitute a final determination for purposes of judicial review. Such determination is subject to review under chapter 536 or, at the request of the [defendant] respondent made within ten days, a

trial de novo in the circuit court. After expiration of the judicial review period under chapter 536, unless stayed by a court of competent jurisdiction, the administrative tribunal's decisions, findings, rules, and orders may be enforced in the same manner as a judgment entered by a court of competent jurisdiction. Upon being recorded in the manner required by state law or the uniform commercial code, a lien may be imposed on the real or personal property of any [defendant entering a plea of nolo contendere, pleading guilty to, or found guilty of a municipal code violation] respondent against whom a judgement has been entered in the amount of any debt due the city or village under this section and enforced in the same manner as a judgment lien under a judgment of a court of competent jurisdiction. The city or village may also issue a special tax bill to collect [fines issued for housing, property maintenance, and nuisance code violations] judgments entered under this section.

543.270. [1. When any person shall be unable to pay any fine and costs assessed against him, the associate circuit judge shall have power, at the request of the defendant, to commute such fine and costs to imprisonment in the county jail, which shall be credited at the rate of ten dollars of such fine and costs for each day's imprisonment.

2.] When a fine is assessed by [an] a municipal judge, associate circuit judge, or circuit judge, it shall be within his or her discretion to provide for the payment of the fine on an installment basis under such terms and conditions as he or she may deem appropriate. In no event shall the recovery of costs incurred by a municipality or county for the detention,

imprisonment, or holding of any person be the subject of any condition of probation, nor shall the failure to pay such costs be the sole basis for the issuance of a warrant.

558.006. [1.] When an offender sentenced to pay a fine defaults in the payment of the fine or in any installment, [the court upon motion of the prosecuting attorney or upon its own motion may require him or her to show cause why he or she should not be imprisoned for nonpayment. The court may issue a warrant of arrest or a summons for his or her appearance.

2. Following an order to show cause under subsection 1 of this section, unless the offender shows that his or her default was not attributable to an intentional refusal to obey the sentence of the court, or not attributable to a failure on his or her part to make a good faith effort to obtain the necessary funds for payment, the court may order the defendant imprisoned for a term not to exceed one hundred eighty days if the fine was imposed for conviction of a felony or thirty days if the fine was imposed for conviction of a misdemeanor or infraction. The court may provide in its order that payment or satisfaction of the fine at any time will entitle the offender to his or her release from such imprisonment or, after entering the order, may at any time reduce the sentence for good cause shown, including payment or satisfaction of the fine.

3. If it appears that the default in the payment of a fine is excusable under the standards set forth in subsection 2 of this section, the court may enter an order allowing the offender additional time for payment, reducing the amount of the fine or of each installment, or revoking the fine or the unpaid portion

in whole or in part.

4. When a fine is imposed on a corporation it is the duty of the person or persons authorized to make disbursement of the assets of the corporation and their superiors to pay the fine from the assets of the corporation. The failure of such persons to do so shall render them subject to imprisonment under subsections 1 and 2 of this section.

5. Upon default in the payment of a] the fine or [any] installment [thereof, the fine may] shall be collected by any means authorized for the [enforcement] collection of money judgments, other than a lien against real estate, or may be waived at the discretion of the sentencing judge.