

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 328

100TH GENERAL ASSEMBLY

Reported from the Committee on Government Reform, March 7, 2019, with recommendation that the Senate Committee Substitute do pass.

1757S.02C

ADRIANE D. CROUSE, Secretary.

AN ACT

To repeal sections 536.015, 536.025, 536.031, 536.033, 536.200, and 536.205, RSMo, and to enact in lieu thereof six new sections relating to the administrative rulemaking process.

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

Section A. Sections 536.015, 536.025, 536.031, 536.033, 536.200, and
2 536.205, RSMo, are repealed and six new sections enacted in lieu thereof, to be
3 known as sections 536.015, 536.025, 536.031, 536.033, 536.200, and 536.205, to
4 read as follows:

536.015. There is established a publication to be known as the "Missouri
2 Register", which shall be published in a format and medium as prescribed by the
3 secretary of state [and in writing upon request] no less frequently than monthly
4 by the secretary of state.

536.025. 1. A rule may be made, amended or rescinded by a state agency
2 without following the provisions of section 536.021, only if the state agency:

3 (1) Finds that an immediate danger to the public health, safety or welfare
4 requires emergency action or the rule is necessary to preserve a compelling
5 governmental interest that requires an early effective date as permitted pursuant
6 to this section;

7 (2) Follows procedures best calculated to assure fairness to all interested
8 persons and parties under the circumstances;

9 (3) Follows procedures which comply with the protections extended by the
10 Missouri and United States Constitutions; and

11 (4) Limits the scope of such rule to the circumstances creating an

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

12 emergency and requiring emergency action.

13 2. At the time of or prior to the adoption of such rule, the agency shall file
14 with the secretary of state and the joint committee on administrative rules the
15 text of the rule **and the fiscal note required by sections 536.200 and**
16 **536.205**, together with the specific facts, reasons, and findings which support the
17 agency's conclusion that the agency has fully complied with the requirements of
18 subsection 1 of this section. If an agency finds that a rule is necessary to
19 preserve a compelling governmental interest that requires an early effective date,
20 the agency shall certify in writing the reasons therefor.

21 3. [Material filed with the secretary of state and the joint committee on
22 administrative rules under the provisions of subsection 2 of this section shall be
23 published in the Missouri Register by the secretary of state as soon as practicable
24 after the filing thereof.] **After a filing by an agency of materials pursuant**
25 **to subsection 2 of this section, the secretary of state shall:**

26 **(1) As soon as practicable, publish such materials in the Missouri**
27 **Register;**

28 **(2) Within three business days, email such materials to persons**
29 **who have registered to be notified of the agency's action through the**
30 **secretary of state's administrative rules notification systems; and**

31 **(3) Within three business days, publish such materials on the**
32 **official website of the secretary of state.**

33 Any rule adopted pursuant to this section shall be reviewed by the secretary of
34 state to determine compliance with the requirements for its publication and
35 adoption established in this section, and in the event that the secretary of state
36 determines that such proposed material does not meet those requirements, the
37 secretary of state shall not publish the rule. The secretary of state shall inform
38 the agency of its determination, and offer the agency a chance to either withdraw
39 the rule or to have it published as a proposed rule.

40 4. The committee may file with the secretary of state any comments or
41 recommendations that the committee has concerning a proposed or final order of
42 rulemaking. Such comments shall be published in the Missouri Register.

43 5. The committee may refer comments or recommendations concerning
44 such rule to the appropriations and budget committee of the house of
45 representatives and the appropriations committee of the senate for further action.

46 6. Rules adopted under the provisions of this section shall be known as
47 "emergency rules" and shall, along with the findings and conclusions of the state

48 agency in support of its employment of emergency procedures, be judicially
49 reviewable under section 536.050 or other appropriate form of judicial
50 review. The secretary of state and any employee thereof, acting in the scope of
51 employment, shall be immune from suit in actions regarding the adoption of rules
52 pursuant to this section.

53 7. A rule adopted under the provisions of this section shall clearly state
54 the interval during which it will be in effect. Emergency rules shall not be in
55 effect for a period exceeding one hundred eighty calendar days or thirty
56 legislative days, whichever period is longer. For the purposes of this section, a
57 "legislative day" is each Monday, Tuesday, Wednesday and Thursday beginning
58 the first Wednesday after the first Monday in January and ending the first Friday
59 after the second Monday in May, regardless of whether the legislature meets.

60 8. A rule adopted under the provisions of this section shall not be
61 renewable, nor shall an agency adopt consecutive emergency rules that have
62 substantially the same effect, although a state agency may, at any time, adopt an
63 identical rule under normal rulemaking procedures.

64 9. A rule adopted under the provisions of this section may be effective not
65 less than ten days after the filing thereof in the office of the secretary of state, or
66 at such later date as may be specified in the rule, and may be terminated at any
67 time by the state agency by filing an order with the secretary of state fixing the
68 date of such termination, which order shall be published by the secretary of state
69 in the Missouri Register as soon as practicable after the filing thereof.

70 10. If it is found in a contested case by an administrative or judicial fact
71 finder that an agency rule should not have been adopted as an emergency rule as
72 provided by subsection 1 of this section, then the administrative or judicial fact
73 finder shall award the nonstate party who prevails, as defined in this section, its
74 reasonable fees and expenses, as defined in this section. This award shall
75 constitute a reviewable order. If a state agency in a contested case grants the
76 relief sought by the party prior to a finding by an administrative or judicial fact
77 finder that the state agency's action was based on a statement of general
78 applicability which should not have been adopted as an emergency rule, but was
79 in fact adopted as an emergency rule pursuant to this section, then the affected
80 party may bring an action in circuit court of Cole County for the nonstate party's
81 reasonable fees and expenses, as defined in this section.

82 11. For the purposes of this section, the following terms mean:

83 (1) "Prevails", obtains a favorable order, decision, judgment or dismissal

84 in a civil action or agency proceeding;

85 (2) "Reasonable fees and expenses" includes the reasonable expenses of
86 expert witnesses, the reasonable cost of any study, analysis, engineering report,
87 test or project which is found by the court or agency to be necessary for the
88 preparation of the party's case, and reasonable attorney or agent fees.

536.031. 1. There is established a publication to be known as the "Code
2 of State Regulations", which shall be published in a format and medium as
3 prescribed [and in writing upon request] by the secretary of state [as soon as
4 practicable after ninety days following January 1, 1976, and may be republished]
5 from time to time thereafter as determined by the secretary of state.

6 2. The code of state regulations shall contain the full text of all rules of
7 state agencies in force and effect upon the effective date of the first publication
8 thereof, and effective September 1, 1990, it shall be revised no less frequently
9 than monthly thereafter so as to include all rules of state agencies subsequently
10 made, amended or rescinded. The code may also include citations, references, or
11 annotations, prepared by the state agency adopting the rule or by the secretary
12 of state, to any intraagency ruling, attorney general's opinion, determination,
13 decisions, order, or other action of the administrative hearing commission, or any
14 determination, decision, order, or other action of a court interpreting, applying,
15 discussing, distinguishing, or otherwise affecting any rule published in the code.

16 3. [The code of state regulations shall be published in looseleaf form in
17 one or more volumes upon request and a format and medium as prescribed by the
18 secretary of state with an appropriate index, and revisions in the text and index
19 may be made by the secretary of state as necessary and provided in written
20 format upon request.

21 4.] An agency may incorporate by reference rules, regulations, standards,
22 and guidelines of an agency of the United States or a nationally or
23 state-recognized organization or association without publishing the material in
24 full. The reference in the agency rules shall fully identify the incorporated
25 material by publisher, address, and date in order to specify how a copy of the
26 material may be obtained, and shall state that the referenced rule, regulation,
27 standard, or guideline does not include any later amendments or additions, except
28 that:

29 (1) Hospital licensure regulations promulgated under this chapter and
30 chapter 197 may incorporate by reference Medicare conditions of participation,
31 as defined in section 197.005, and later additions or amendments to such

32 conditions of participation; and

33 (2) Hospital licensure regulations governing life safety code standards
34 promulgated under this chapter and chapter 197 to implement section 197.065
35 may incorporate, by reference, later additions or amendments to such rules,
36 regulations, standards, or guidelines as needed to consistently apply current
37 standards of safety and practice.

38 [5.] 4. The agency adopting a rule, regulation, standard, or guideline
39 under this section shall maintain a copy of the referenced rule, regulation,
40 standard, or guideline at the headquarters of the agency and shall make it
41 available to the public for inspection and copying at no more than the actual cost
42 of reproduction. The secretary of state may omit from the code of state
43 regulations such material incorporated by reference in any rule the publication
44 of which would be unduly cumbersome or expensive.

45 [6.] 5. The courts of this state shall take judicial notice, without proof,
46 of the contents of the code of state regulations.

536.033. 1. Copies or subscription of the register or code shall be made
2 available to the public by the secretary of state upon request for a reasonable
3 charge to be established by him, said charge not to exceed the actual cost [of
4 publishing and delivery].

5 2. All [costs of printing and mailing the Missouri Register and the code
6 of state regulations shall be paid by the office of the secretary of state from funds
7 appropriated for this purpose and all] fees collected from the sale thereof by the
8 secretary of state shall be deposited to general revenue.

9 3. The secretary of state may correct typographical or spelling errors in
10 the publication of any rule, notice of proposed rulemaking, or order of rulemaking.

536.200. 1. Any state agency filing a notice of proposed rulemaking, as
2 required by section 536.021, **or an emergency rule, as required by section**
3 **536.025**, wherein the adoption, amendment, or rescission of the rule would
4 require or result in an expenditure of public funds by or a reduction of public
5 revenues for that agency or any other state agency of the state government or any
6 political subdivision thereof including counties, cities, towns, and villages, and
7 school, road, drainage, sewer, water, levee, or any other special purpose district
8 which is estimated to cost more than five hundred dollars in the aggregate to any
9 such agency or political subdivision, shall at the time of filing the notice with the
10 secretary of state file a fiscal note estimating the cost to each affected agency or
11 to each class of the various political subdivisions to be affected. The fiscal note

12 shall contain a detailed estimated cost of compliance and shall be supported with
13 [an affidavit] **a declaration subject to section 575.060** by the director of the
14 department to which the agency belongs that in the director's opinion the
15 estimate is reasonably accurate. If no fiscal note is filed, the director of the
16 department to which the agency belongs shall file [an affidavit] **a declaration**
17 **subject to section 575.060** which states that the proposed change will cost less
18 than five hundred dollars in the aggregate to all such agencies and political
19 subdivisions.

20 2. **A fiscal note for an emergency rule filed pursuant to section**
21 **536.025 shall only reflect the fiscal costs for the duration of the**
22 **emergency rule.**

23 3. If at the end of the first full fiscal year after the implementation of the
24 rule, amendment, or rescission the cost to all affected entities has exceeded by ten
25 percent or more the estimated cost in the fiscal note or has exceeded five hundred
26 dollars if [an affidavit] **a declaration subject to section 575.060** has been
27 filed stating the proposed change will cost less than five hundred dollars, the
28 original estimated cost together with the actual cost during the first fiscal year
29 shall be published by the adopting agency in the Missouri Register within ninety
30 days after the close of the fiscal year. Such costs shall be determined by the
31 adopting agency. If the adopting agency fails to publish such costs as required
32 by this section, the rule, amendment, or rescission shall be void and of no further
33 force or effect.

34 [3.] 4. The estimated cost in the aggregate shall be published in the
35 Missouri Register contemporary with and adjacent to the notice of [proposed]
36 rulemaking, and failure to do so shall render any rule promulgated thereunder
37 void and of no force or effect.

38 [4.] 5. Any challenge to a rule based on failure to meet the requirements
39 of this section shall be commenced within five years after the effective date of the
40 rule.

41 [5.] 6. In the event that any rule published prior to June 3, 1994, shall
42 have failed to provide a fiscal note as required by this section, such agency shall
43 publish the required fiscal note cross-referenced to the applicable rule prior to
44 August 28, 1995, and in that event the rule shall not be void. Any such rule shall
45 be deemed to have met the requirements of this section until that date.

536.205. 1. Any state agency filing a notice of proposed rulemaking, as
2 required by section 536.021, **or an emergency rule, as required by section**

3 **536.025**, whereby the adoption, amendment, or rescission of the rule would
4 require an expenditure of money by or a reduction in income for any person, firm,
5 corporation, association, partnership, proprietorship or business entity of any
6 kind or character which is estimated to cost more than five hundred dollars in the
7 aggregate, shall at the time of filing the notice with the secretary of state file a
8 fiscal note containing the following information and estimates of 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. A fiscal note for an emergency rule filed pursuant to section**
21 **536.025 shall only reflect the fiscal costs for the duration of the**
22 **emergency rule.**

23 **3.** The fiscal note shall be published in the Missouri Register
24 contemporary with and adjacent to the notice of [proposed] rulemaking, and
25 failure to do so shall render any rule promulgated thereunder void and of no force
26 and effect.

27 [3.] **4.** Any challenge to a rule based on failure to meet the requirements
28 of this section shall be commenced no later than five years after the effective date
29 of the rule.

30 [4.] **5.** In the event that any rule published prior to June 3, 1994, shall
31 have failed to provide a fiscal note as required by this section, such agency shall
32 publish the required fiscal note prior to August 28, 1995, and in that event the
33 rule shall not be void. Any such rule shall be deemed to have met the
34 requirements of this section until that date.

✓