

FIRST REGULAR SESSION

SENATE BILL NO. 180

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR LUETKEMEYER.

0475S.01I

ADRIANE D. CROUSE, Secretary

AN ACT

To repeal sections 536.021 and 536.175, RSMo, and to enact in lieu thereof two new sections relating to administrative rules.

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

Section A. Sections 536.021 and 536.175, RSMo, are
2 repealed and two new sections enacted in lieu thereof, to be
3 known as sections 536.021 and 536.175, to read as follows:

536.021. 1. No rule shall hereafter be proposed,
2 adopted, amended or rescinded by any state agency unless
3 such agency shall first file with the secretary of state a
4 notice of proposed rulemaking and a subsequent final order
5 of rulemaking, both of which shall be published in the
6 Missouri Register by the secretary of state as soon as
7 practicable after the filing thereof in that office; except
8 that a notice of proposed rulemaking is not required for the
9 establishment of hunting or fishing seasons and limits or
10 for the establishment of state program plans required under
11 federal education acts or regulations. The secretary of
12 state shall not publish any proposed rulemaking or final
13 order of rulemaking that has not fully complied with the
14 provisions of section 536.024 or an executive order,
15 whichever appropriately applies. If the joint committee on
16 administrative rules disapproves any proposed order of
17 rulemaking, final order of rulemaking or portion thereof,
18 the committee shall report its finding to the house of

representatives and the senate. No proposed order of rulemaking, final order of rulemaking or portion thereof shall take effect, or be published by the secretary of state, so long as the general assembly shall disapprove such by concurrent resolution pursuant to Article IV, Section 8 within thirty legislative days occurring during the same regular session of the general assembly. The secretary of state shall not publish any order, or portion thereof, that is the subject of a concurrent resolution until the expiration of time necessary to comply with the provisions of Article III, Section 32.

2. A notice of proposed rulemaking shall contain:

(1) An explanation of any proposed rule or any change in an existing rule, and the reasons therefor;

(2) The legal authority upon which the proposed rule is based;

(3) The text of the entire proposed rule or the entire text of any affected section or subsection of an existing rule which is proposed to be amended, with all new matter printed in boldface type and with all deleted matter placed in brackets, except that when a proposed rule consists of material so extensive that the publication thereof would be unduly cumbersome or expensive, the secretary of state need publish only a summary and description of the substance of the proposed rule so long as a complete copy of the rule is made immediately available to any interested person upon application to the adopting state agency at a cost not to exceed the actual cost of reproduction. A proposed rule may incorporate by reference only if the material so incorporated is retained at the headquarters of the state agency and made available to any interested person at a cost not to exceed the actual cost of the reproduction of a

51 copy. When a proposed amendment to an existing rule is to
52 correct a typographical or printing error, or merely to make
53 a technical change not affecting substantive matters, the
54 amendment may be described in general terms without
55 reprinting the entire existing rule, section or subsection;

56 (4) The number and general subject matter of any
57 existing rule proposed to be rescinded;

58 (5) Notice that anyone may file a statement in support
59 of or in opposition to the proposed rulemaking at a
60 specified place and within a specified time not less than
61 thirty days after publication of the notice of proposed
62 rulemaking in the Missouri Register; and

63 (6) Notice of the time and place of a hearing on the
64 proposed rulemaking if a hearing is ordered, which hearing
65 shall be not less than thirty days after publication of the
66 notice of proposed rulemaking in the Missouri Register; or a
67 statement that no hearing has been ordered if such is the
68 case.

69 3. Any state agency issuing a notice of proposed
70 rulemaking may order a hearing thereon, but no such hearing
71 shall be necessary unless otherwise required by law.

72 4. Any state agency which has issued in the Missouri
73 Register a notice of proposed rulemaking to be made without
74 a hearing, but which thereafter concludes that a hearing is
75 desirable, shall withdraw the earlier notice and file a new
76 notice of proposed rulemaking which fully complies with the
77 provisions of subdivision (6) of subsection 2 of this
78 section, and the state agency shall not schedule the hearing
79 for a time less than thirty days following the publication
80 of the new notice.

81 5. Within ninety days after the expiration of the time
82 for filing statements in support of or in opposition to the

83 proposed rulemaking, or within ninety days after the hearing
84 on such proposed rulemaking if a hearing is held thereon,
85 the state agency proposing the rule shall file with the
86 secretary of state a final order of rulemaking either
87 adopting the proposed rule, with or without further changes,
88 or withdrawing the proposed rule, which order of rulemaking
89 shall be published in the Missouri Register. Such ninety
90 days shall be tolled for the time period any rule is held
91 under abeyance pursuant to an executive order. If the state
92 agency fails to file the order of rulemaking as indicated in
93 this subsection, the proposed rule shall lapse and shall be
94 null, void and unenforceable.

95 6. The final order of rulemaking shall contain:

96 (1) Reference to the date and page or pages where the
97 notice of proposed rulemaking was published in the Missouri
98 Register;

99 (2) An explanation of any change between the text of
100 the rule as contained in the notice of proposed rulemaking
101 and the text of the rule as finally adopted, together with
102 the reason for any such change;

103 (3) The full text of any section or subsection of the
104 rule as adopted which has been changed from that contained
105 in the notice of proposed rulemaking;

106 (4) A brief summary of the general nature and extent
107 of comments submitted in support of or in opposition to the
108 proposed rule and a concise summary of the testimony
109 presented at the hearing, if any, held in connection with
110 said rulemaking, together with a concise summary of the
111 state agency's findings with respect to the merits of any
112 such testimony or comments which are opposed in whole or in
113 part to the proposed rule; and

114 (5) The legal authority upon which the order of
115 rulemaking is based.

116 7. Except as provided in section 536.025, any rule, or
117 amendment or rescission thereof, shall be null, void and
118 unenforceable unless made in accordance with the provisions
119 of this section.

120 8. Except as provided in subsection 1 of this section
121 and subsection 4 of section 536.031, after the final order
122 of rulemaking has been published in the Missouri Register,
123 the text of the entire rule shall be published in full in
124 the Missouri code of state regulations. No rule, except an
125 emergency rule, shall become effective prior to the
126 thirtieth day after the date of publication of the revision
127 to the Missouri code of state regulations. The secretary of
128 state shall distribute revisions of the Missouri code of
129 state regulations to all subscribers of the Missouri code of
130 state regulations on or before the date of publication of
131 such revision. The publication date of each rule shall be
132 printed below the rule in the Missouri code of state
133 regulations, provided further, that rules pertaining to
134 changes in hunting or fishing seasons and limits that must
135 comply with federal requirements or that are necessary
136 because of documented changes in fish and game populations
137 may become effective no earlier than on the tenth day after
138 the filing of the final order of rulemaking.

139 9. If it is found in a contested case by an
140 administrative or judicial fact finder that a state agency's
141 action was based upon a statement of general applicability
142 which should have been adopted as a rule, as required by
143 sections 536.010 to 536.050, and that agency was put on
144 notice in writing of such deficiency prior to the
145 administrative or judicial hearing on such matter, then the

administrative or judicial fact finder shall award the prevailing nonstate agency party its reasonable attorney's fees incurred prior to the award, not to exceed the amount in controversy in the original action. This award shall constitute a reviewable order. If a state agency in a contested case grants the relief sought by the nonstate party prior to a finding by an administrative or judicial fact finder that the agency's action was based on a statement of general applicability which should have been adopted as a rule, but was not, then the affected party may bring an action in the circuit court of Cole County for the nonstate party's reasonable attorney's fees incurred prior to the relief being granted, not to exceed the amount in controversy in the original action.

10. The actions authorized by subsection 9 of this section shall not apply to the department of revenue if that department implements the authorization hereby granted to the director or the director's duly authorized agents to issue letter rulings which shall bind the director or the director's agents and their successors for a minimum of three years, subject to the terms and conditions set forth in properly published regulations. An unfavorable letter ruling shall not bind the applicant and shall not be appealable to any forum. Subject to appropriations, letter rulings shall be published periodically with information identifying the taxpayer deleted. For the purposes of this subsection, the term "letter ruling" means a written interpretation of law by the director to a specific set of facts provided by a nonstate party.

11. No rule shall be adopted or amended by any state agency pursuant to this section unless such agency rescinds a rule that is unnecessary, obsolete, or burdensome.

Pursuant to subdivision (4) of subsection 2 of this section, the rule to be rescinded shall be listed in the notice of proposed rulemaking. The joint committee on administrative rules may grant an exception to the requirement of this subsection upon application by the state agency for good cause. This subsection shall not apply to the following:

(1) A proposed amendment to an existing rule for a correction of typographical or printing errors;

(2) A proposed rule or proposed amendment to an existing rule in which the rule or amendment does not:

(a) Affect substantive matters; and

(b) Impose new burdens or requirements on individuals, businesses, or political subdivisions; or

(3) A proposed rule or proposed amendment to an existing rule was necessitated and created pursuant to rulemaking authority newly delegated by an act of the general assembly to the agency.

12. All rules adopted by any state agency pursuant to this section shall expire on January 1 of the fifth year after the year in which the rule takes effect, unless the rule contains an earlier expiration date. All rules in effect on January 1, 2022 shall expire on January 1, 2027. The expiration date of a rule shall be extended each time that a rule amending an unexpired rule takes effect. Subsection 11 of this section shall not apply to an order of rulemaking reauthorizing a rule set to expire or an expired rule.

536.175. 1. Each state agency shall periodically review all of its rules according to the following review schedule:

4 (1) Rules contained in titles 1 through 6 of the code
5 of state regulations shall begin the review process no later
6 than July 1, 2015, and every five years thereafter;

7 (2) Rules contained in titles 7 through 10 of the code
8 of state regulations shall begin the review process no later
9 than July 1, 2016, and every five years thereafter;

10 (3) Rules contained in titles 11 through 14 of the
11 code of state regulations shall begin the review process no
12 later than July 1, 2017, and every five years thereafter;

13 (4) Rules contained in titles 15 through 19 of the
14 code of state regulations shall begin the review process no
15 later than July 1, 2018, and every five years thereafter; and

16 (5) Rules contained in titles 20 and higher of the
17 code of state regulations shall begin the review process no
18 later than July 1, 2019, and every five years thereafter.

19 2. The joint committee on administrative rules shall
20 cause a notification of agency review to be published in the
21 Missouri Register indicating rules being reviewed under this
22 section and shall contain:

23 (1) Which titles of the code of state regulations will
24 be under review;

25 (2) A notice that anyone may file comments concerning
26 the rules being reviewed no later than sixty days after
27 publication of the notice in the Missouri Register;

28 (3) A notice that all comments must identify the
29 commenter, must specify the rule being commented upon, and
30 must contain comments directly associated to that rule;

31 (4) A listing of agency designee assigned to receive
32 comments on rules under review.

33 3. State agencies shall provide the joint committee on
34 administrative rules contact information for the agency

35 designee assigned to receive comments under subsection 2 of
36 this section.

37 4. Each agency with rules being reviewed shall prepare
38 a report containing the results of its periodic rule
39 review. The report shall consider and include the following:

40 (1) Whether the rule continues to be necessary, taking
41 into consideration the purpose, scope, and intent of the
42 statute under which the rule was adopted;

43 (2) Whether the rule is obsolete, taking into
44 consideration the length of time since the rule was modified
45 and the degree to which technology, economic conditions, or
46 other relevant factors have changed in the subject area
47 affected by the rule;

48 (3) Whether the rule overlaps, duplicates, or
49 conflicts with other state rules, and to the extent
50 feasible, with federal and local governmental rules;

51 (4) Whether a less restrictive, more narrowly
52 tailored, or alternative rule could adequately protect the
53 public or accomplish the same statutory purpose;

54 (5) Whether the rule needs amendment or rescission to
55 reduce regulatory burdens on individuals, businesses, or
56 political subdivisions or eliminate unnecessary paperwork;

57 (6) Whether the rule incorporates a text or other
58 material by reference and, if so, whether the text or other
59 material incorporated by reference meets the requirements of
60 section 536.031;

61 (7) For rules that affect small business, the specific
62 public purpose or interest for adopting the rules and any
63 other reasons to justify its continued existence; and

64 (8) The nature of the comments received by the agency
65 under subsection 2 of this section, a summary of which shall

66 be attached to the report as an appendix and shall include
67 the agency's responses thereto.

68 5. Each agency with rules subject to review shall
69 cause their report to be filed electronically with the joint
70 committee on administrative rules and the small business
71 regulatory fairness board no later than June thirtieth of
72 the year after publication of agency review in the Missouri
73 Register under subsection 2 of this section. The reports
74 shall also be made available on the state agency's website.
75 If the state agency fails to file the report as required by
76 this section for any rule and has not received an extension
77 for good cause from the joint committee on administrative
78 rules, the joint committee on administrative rules shall
79 notify the secretary of state to publish a notice as soon as
80 practicable in the Missouri Register as to which rules the
81 delinquency exists. The rule shall be void and of no
82 further effect after the first sixty legislative days of the
83 next regular session of the general assembly unless the
84 state agency corrects the delinquency by providing the
85 required review within ninety days after publication. Upon
86 determination that the agency has complied with the
87 requirements of this section regarding any delinquency that
88 resulted in notice being published, the joint committee on
89 administrative rules shall notify the secretary of state to
90 remove the rule from the notice of rules scheduled to become
91 null and void.

92 **6. Any rules identified in the report as unnecessary,**
93 **obsolete, overlapping, duplicating, or conflicting with**
94 **other state rules, accomplished by a less restrictive rule,**
95 **or burdensome shall be amended or rescinded pursuant to**
96 **section 536.021 no later than a year after the report is**
97 **submitted to the joint committee on administrative rules,**

98 unless the state agency provides good cause to the joint
99 committee on administrative rules as to why the rule shall
100 not be amended or rescinded to address the considerations
101 listed in subdivisions (1) to (5) of subsection 4 of this
102 section.

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