

SECOND REGULAR SESSION

SENATE BILL NO. 1039

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR HEGEMAN.

Read 1st time February 26, 2018, and ordered printed.

ADRIANE D. CROUSE, Secretary.

6640S.011

AN ACT

To repeal sections 536.025, 536.200, and 536.205, RSMo, and to enact in lieu thereof three new sections relating to emergency rules.

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

Section A. Sections 536.025, 536.200, and 536.205, RSMo, are repealed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

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 A rule may be made, amended or rescinded by a state agency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
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

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

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.] **As soon as practicable after a filing by an agency
25 of materials pursuant to subsection 2 of this section, the secretary of
26 state shall:**

27 **(1) Publish such materials in the Missouri Register;**

28 **(2) Email such materials to persons who have registered to be
29 notified of the agency's actions through the secretary of state's
30 administrative rules notification system; and**

31 **(3) Publish such materials on the official website of the secretary
32 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
66 **complies with the provisions of subdivisions (2) and (3) of subsection**
67 **3 of this section**, or at such later date as may be specified in the rule, and may
68 be terminated at any time by the state agency by filing an order with the
69 secretary of state fixing the date of such termination, which order shall be
70 published by the secretary of state in the Missouri Register as soon as practicable
71 after the filing thereof.

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

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

85 (1) "Prevails", obtains a favorable order, decision, judgment or dismissal
86 in a civil action or agency proceeding;

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

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 by the director of the department to which the agency belongs that
14 in the director's opinion the estimate is reasonably accurate. If no fiscal note is
15 filed, the director of the department to which the agency belongs shall file an
16 affidavit which states that the proposed change will cost less than five hundred
17 dollars in the aggregate to all such agencies and political subdivisions.

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

28 3. The estimated cost in the aggregate shall be published in the Missouri
29 Register contemporary with and adjacent to the notice of proposed rulemaking,
30 and failure to do so shall render any rule promulgated thereunder void and of no
31 force or effect.

32 4. Any challenge to a rule based on failure to meet the requirements of
33 this section shall be commenced within five years after the effective date of the
34 rule.

35 5. In the event that any rule published prior to June 3, 1994, shall have
36 failed to provide a fiscal note as required by this section, such agency shall

37 publish the required fiscal note cross-referenced to the applicable rule prior to
38 August 28, 1995, and in that event the rule shall not be void. Any such rule shall
39 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. The fiscal note shall be published in the Missouri Register
21 contemporary with and adjacent to the notice of proposed rulemaking, and failure
22 to do so shall render any rule promulgated thereunder void and of no force and
23 effect.

24 3. Any challenge to a rule based on failure to meet the requirements of
25 this section shall be commenced no later than five years after the effective date
26 of the rule.

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

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