

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NOS. 215, 218, 115 & 83
92ND GENERAL ASSEMBLY

Reported from the Committee on Conservation and Natural Resources, March 6, 2003, with recommendation that the House Committee Substitute for House Bill Nos. 215, 218, 115 & 83 Do Pass.

STEPHEN S. DAVIS, Chief Clerk

0675L.03C

AN ACT

To repeal sections 260.273 and 640.010, RSMo, and to enact in lieu thereof four new sections relating to environmental regulation.

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

Section A. Sections 260.273 and 640.010, RSMo, are repealed and four new sections
2 enacted in lieu thereof, to be known as sections 260.273, 640.010, 640.020, and 640.037, to read
3 as follows:

260.273. 1. Any person purchasing a new tire may present to the seller the used tire or
2 remains of such used tire for which the new tire purchased is to replace.

3 2. A fee for each new tire sold at retail shall be imposed on any person engaging in the
4 business of making retail sales of new tires within this state. The fee shall be charged by the
5 retailer to the person who purchases a tire for use and not for resale. Such fee shall be imposed
6 at the rate of fifty cents for each new tire sold. Such fee shall be added to the total cost to the
7 purchaser at retail after all applicable sales taxes on the tires have been computed. The fee
8 imposed, less six percent of fees collected, which shall be retained by the tire retailer as
9 collection costs, shall be paid to the department of revenue in the form and manner required by
10 the department of revenue and shall include the total number of new tires sold during the
11 preceding month. The department of revenue shall promulgate rules and regulations necessary
12 to administer the fee collection and enforcement. The terms "sold at retail" and "retail sales" do
13 not include the sale of new tires to a person solely for the purpose of resale, if the subsequent
14 retail sale in this state is to the ultimate consumer and is subject to the fee.

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

15 3. The department of revenue shall administer, collect and enforce the fee authorized
16 pursuant to this section pursuant to the same procedures used in the administration, collection
17 and enforcement of the general state sales and use tax imposed pursuant to chapter 144, RSMo,
18 except as provided in this section. The proceeds of the new tire fee, less four percent of the
19 proceeds, which shall be retained by the department of revenue as collection costs, shall be
20 transferred by the department of revenue into an appropriate subaccount of the solid waste
21 management fund, created pursuant to section 260.330.

22 4. Up to five percent of the revenue available may be allocated, upon appropriation, to
23 the department of natural resources to be used cooperatively with the department of elementary
24 and secondary education for the purposes of developing educational programs and curriculum
25 pursuant to section 260.342.

26 5. Up to twenty-five percent of the moneys received pursuant to this section may, upon
27 appropriation, be used to administer the programs imposed by this section. Up to five percent
28 of the moneys received under this section may, upon appropriation, be used for the grants
29 authorized in subdivision (2) of subsection 6 of this section and authorized in section 260.274.
30 All remaining moneys shall be allocated, upon appropriation, for the projects authorized in
31 section 260.276.

32 6. The department shall promulgate, by rule, a statewide plan for the use of moneys
33 received pursuant to this section to accomplish the following:

34 (1) Removal of waste tires from illegal tire dumps;

35 (2) Providing grants to persons that will use products derived from waste tires, or used
36 waste tires as a fuel or fuel supplement; and

37 (3) Resource recovery activities conducted by the department pursuant to section
38 260.276.

39 7. The fee imposed in subsection 2 of this section shall terminate January 1, [2004] **2009**.

640.010. 1. There is hereby created a department of natural resources in charge of a
2 director appointed by the governor, by and with the advice and consent of the senate. The
3 director shall administer the programs assigned to the department relating to environmental
4 control and the conservation and management of natural resources. The director shall coordinate
5 and supervise all staff and other personnel assigned to the department. He shall faithfully cause
6 to be executed all policies established by the boards and commissions assigned to the
7 department, be subject to their decisions as to all substantive and procedural rules and his
8 decisions shall be subject to appeal to the board or commission on request of the board or
9 commission or by **directly** affected parties. The director shall recommend policies to the various
10 boards and commissions assigned to the department to achieve effective and coordinated
11 environmental control and natural resource conservation policies.

12 2. The director shall appoint directors of staff to service each of the policy making
13 boards or commissions assigned to the department. Each director of staff shall be qualified by
14 education, training and experience in the technical matters of the board to which he is assigned
15 and his appointment shall be approved by the board to which he is assigned and he shall be
16 removed or reassigned on their request in writing to the director of the department. All other
17 employees of the department and of each board and commission assigned to the department shall
18 be appointed by the director of the department in accord with chapter 36, RSMo, and shall be
19 assigned and may be reassigned as required by the director of the department in such a manner
20 as to provide optimum service, efficiency and economy.

21 3. The air conservation commission, chapter 203, RSMo, and others, the clean water
22 commission, chapter 204, RSMo, and others, are transferred by type II transfer to the department
23 of natural resources. The governor shall appoint the members of these bodies in accord with the
24 laws establishing them, with the advice and consent of the senate. The bodies hereby transferred
25 shall retain all rulemaking and hearing powers allotted by law, as well as those of any bodies
26 transferred to their jurisdiction. All the powers, duties and functions of the state environmental
27 improvement authority, chapter 260, RSMo, and others, are transferred by type III transfer to the
28 air conservation commission. All the powers, duties and functions of the water resources board,
29 chapter 256, RSMo, and others, are transferred by type I transfer to the clean water commission
30 and the board is abolished. No member of the clean water commission shall receive or shall
31 have received, during the previous two years from the date of his appointment, a significant
32 portion of his income directly or indirectly from permit holders or applicants for a permit under
33 the jurisdiction of the clean water commission. The state park board, chapter 253, RSMo, is
34 transferred to the department of natural resources by type I transfer.

35 4. All the powers, duties and functions of the state soil and water districts commission,
36 chapter 278, RSMo, and others, are transferred by a type II transfer to the department.

37 5. All the powers, duties and functions of the state geologist, chapter 256, RSMo, and
38 others, are transferred by type I transfer to the department of natural resources. All the powers,
39 duties and functions of the state land survey authority, chapter 60, RSMo, are transferred to the
40 department of natural resources by type I transfer and the authority is abolished. All the powers,
41 duties and functions of the state oil and gas council, chapter 259, RSMo, and others are
42 transferred to the department of natural resources by type II transfer. The director of the
43 department shall appoint a state geologist who shall have the duties to supervise and coordinate
44 the work formerly done by the departments or authorities abolished by this subsection, and shall
45 provide staff services for the state oil and gas council.

46 6. All the powers, duties and functions of the land reclamation commission, chapter 444,
47 RSMo, and others, are transferred to the department of natural resources by type II transfer. All

48 necessary personnel required by the commission shall be selected, employed and discharged by
49 the commission. The director of the department shall not have the authority to abolish positions.

50 7. The functions performed by the division of health in relation to the maintenance of
51 a safe quality of water dispensed to the public, sections 640.100 to 640.115, and others, and for
52 licensing and regulating solid waste management systems and plans are transferred by type I
53 transfer to the department of natural resources.

54 8. (1) The state interagency council for outdoor recreation, chapter 258, RSMo, is
55 transferred to the department of natural resources by type II transfer. The council shall consist
56 of representatives of the following state agencies: department of agriculture; department of
57 conservation; office of administration; department of natural resources; department of economic
58 development; department of social services; department of transportation; and the University of
59 Missouri.

60 (2) The council shall function as provided in chapter 258, RSMo, except that the
61 department of natural resources shall provide all staff services as required by the council
62 notwithstanding the provisions of sections 258.030 and 258.040, RSMo, and all personnel and
63 property of the council are hereby transferred by type I transfer to the department of natural
64 resources and the office of executive secretary to the council is abolished.

**640.020. 1. Other provisions of law notwithstanding, the department of natural
2 resources, including any board or commission assigned to the department of natural
3 resources in accordance with section 640.010 that is authorized by statute to adopt rules,
4 shall have the authority to promulgate such rules, pursuant to chapter 536, RSMo, to
5 ensure that the state of Missouri is in compliance with the provisions of any applicable
6 federal statutes and federal regulations.**

7 **(1) The clean air commission shall have the authority to promulgate such rules to
8 establish standards, guidelines and requirements to ensure that the state of Missouri is in
9 compliance with the substantive provisions of the federal Clean Air Act, as amended,
10 relating to air pollution control;**

11 **(2) The clean water commission shall have the authority to promulgate such rules
12 to establish standards, guidelines and requirements to ensure that the state of Missouri is
13 in compliance with the substantive provisions of the federal Clean Water Act, as amended,
14 relating to water pollution control, and subtitle I of the federal Resource Conservation and
15 Recovery Act, as amended, relating to underground storage tanks;**

16 **(3) The hazardous waste management commission shall have the authority to
17 promulgate such rules to establish standards, guidelines and requirements to ensure that
18 the state of Missouri is in compliance with the substantive provisions of the federal
19 Resource Conservation and Recovery Act, as amended, relating to hazardous waste**

20 management;

21 (4) The land reclamation commission shall have the authority to promulgate such
22 rules to establish standards, guidelines and requirements to ensure that the state of
23 Missouri is in compliance with the substantive provisions of the federal Surface Mining
24 Control and Reclamation Act, as amended, relating to surface mining and land
25 reclamation;

26 (5) The safe drinking water commission shall have the authority to promulgate such
27 rules to establish standards, guidelines and requirements to ensure that the state of
28 Missouri is in compliance with the substantive provisions of the federal Safe Drinking
29 Water Act, as amended, relating to drinking water systems; and

30 (6) The department shall have the authority to promulgate such rules to establish
31 standards, guidelines and requirements to ensure that the state of Missouri is in
32 compliance with the substantive provisions of subtitle D of the federal Resource
33 Conservation and Recovery Act, as amended, relating to solid waste management.

34 2. The rules promulgated after August 28, 2003, by the department or any
35 commission or board assigned to the department and listed in subsection 1 of this section
36 shall not be any stricter than the scope or subject matter of existing state regulations,
37 except as provided in subsections 3 and 4 of this section. The scope and subject matter of
38 existing state regulation for purposes of this section is that set forth in any and all
39 applicable state statutes or in any and all applicable rules or regulations promulgated
40 before August 28, 2003. If there are no existing state statutes or regulations with respect
41 to a particular subject matter, then the scope of existing state regulation is zero and the
42 department or any commission or board assigned to the department and listed in
43 subsection 1 of this section shall not adopt regulations with respect to that subject matter,
44 except as provided in subsections 3 and 4 of this section.

45 3. The department or any commission or board assigned to the department and
46 listed in subsection 1 of this section may adopt rules after August 28, 2003, that are stricter
47 than the scope or subject matter of existing state regulation if the rulemaking body makes
48 specific findings, based on competent and substantial evidence in the administrative
49 record, that:

50 (1) Specific circumstances or conditions in the state of Missouri are causing, or have
51 the potential to cause, specific harm to human health or the environment, including water
52 quality; and

53 (2) Either:

54 (a) The specific circumstances or conditions are not subject to regulation by any
55 applicable state statute or existing state regulation; or

56 **(b) The scope or subject matter of existing state regulation is not sufficient to**
57 **adequately protect human health or the environment, including water quality, in the state**
58 **of Missouri; and**

59 **(3) A more restrictive rule is necessary to address the specific circumstance or**
60 **condition in order to prevent or alleviate the specific harm caused to human health or the**
61 **environment, including water quality.**

62 **4. The department or any commission or board assigned to the department and**
63 **listed in subsection 1 of this section may adopt rules after August 28, 2003, that are stricter**
64 **than the scope or subject matter of existing state regulation prior to making the specific**
65 **findings required by subsection 3 of this section if the director of the department**
66 **determines that immediate action is necessary to protect human health or the environment,**
67 **including water quality; provided that in doing so the department shall be required to**
68 **provide written justification as to why the immediate action was necessary, and shall make**
69 **the specific findings required by subsection 3 of this section no later than one hundred**
70 **eighty days after such rule was adopted.**

71 **5. For any rule promulgated pursuant to subsection 3 of this section, the**
72 **department, commission or board shall specifically enumerate in the administrative record**
73 **and shall publish in the Missouri Register, along with the notice of proposed rulemaking,**
74 **findings of fact relative to the specific circumstances or conditions causing harm, the**
75 **nature and scope of the specific harm to human health or the environment, including water**
76 **quality, and the health-based or science-based reasons justifying why the adoption of a**
77 **more restrictive rule will prevent or alleviate the specific harm to human health or the**
78 **environment, including water quality.**

79 **6. For any rule promulgated pursuant to subsection 3 of this section, the fiscal notes**
80 **required by sections 536.200 and 536.205, RSMo, shall contain, in addition to the**
81 **requirements imposed by those sections, a discussion and explanation of the consideration**
82 **by the department, commission or board of the effects on human health or the**
83 **environment, including water quality, economics, pollution prevention, and the**
84 **effectiveness and cost of reasonably available control methods for the proposed more**
85 **restrictive rule.**

86 **7. Any rule that is more restrictive than the scope or subject matter of existing state**
87 **regulation that is adopted after August 28, 2003, by the department or a commission or**
88 **board assigned to the department without complying with the procedures set forth in this**
89 **section is void.**

90 **8. No rule or portion of a rule promulgated pursuant to the authority of this section**
91 **shall become effective unless it has been promulgated pursuant to chapter 536, RSMo.**

92 **9. No rule or portion of a rule promulgated pursuant to the authority of this section**
93 **that pertains only to a specific defined area within this state shall become effective unless**
94 **the department or the appropriate commission or board assigned to the department and**
95 **listed in subsection 1 of this section conducts a public hearing within such specific defined**
96 **area. If no suitable facility to conduct a hearing exists within such area, the hearing shall**
97 **be conducted as near to the area as is possible. The department, the appropriate**
98 **commission, or board assigned to the department and listed in subsection 1 of this section**
99 **shall publish a notice of the hearing once a week for two consecutive weeks in any**
100 **newspapers qualified pursuant to section 493.050, RSMo, to publish legal notices in each**
101 **county containing any portion of such specific defined area. The second such notice shall**
102 **be published at least ten days before such hearing is scheduled. The department, any**
103 **commission, or board assigned to the department and listed in subsection 1 of this section**
104 **shall also provide notice of the hearing by registered mail to the governing body of each**
105 **county containing any portion of such area at least ten days before such hearing is**
106 **scheduled.**

107 **10. This section may be referred to as the "Environmental Regulation Consistency**
108 **Act".**

640.037. 1. Any person who holds a permit issued by the department of natural
2 **resources or any of its programs, divisions, or commissions, and fails to file any required**
3 **report by the date specified by such permit shall not be issued a notice of violation or be**
4 **subject to any fine or penalty for failure to file such report until:**

5 **(1) The department has made a reasonable attempt to notify the holder of the**
6 **permit by registered mail that the required report has not been received; and**

7 **(2) The holder of the permit fails to file the required report within thirty days after**
8 **such notification.**

9 **2. The provisions of subsection 1 of this section shall not apply to any such permit**
10 **holder who has previously failed to file:**

11 **(1) Two or more reports by the required date during the twelve months**
12 **immediately preceding the date the current report is due; or**

13 **(2) Four or more reports by the required date during the sixty months immediately**
14 **preceding the date the current report is due.**

15 **3. Notwithstanding any other provision of law to the contrary, any person who**
16 **holds a permit issued by the department of natural resources or any of its programs,**
17 **divisions, or commissions, and is issued a notice of violation for failure to file any required**
18 **report by the date specified by such permit shall not be subject to a fine or penalty for**
19 **failure to file such report of more than five hundred dollars for the first violation.**