

SECOND REGULAR SESSION

[PERFECTED]

HOUSE BILL NO. 1616

92ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES HANAWAY (Sponsor), TOWNLEY, RICHARD, ENGLER,
BIVINS, REINHART, PAGE, MOORE, MAY, RUESTMAN, BROWN,
WILSON (119) AND CUNNINGHAM (86) (Co-sponsors).

Read 1st time March 3, 2004, and copies ordered printed.

Read 2nd time March 4, 2004 and referred to the Committee on Judiciary March 4, 2004.

Reported from the Committee on Judiciary March 11, 2004, with recommendation that the bill Do Pass.

Taken up for Perfection March 17, 2004. House Bill No. 1616 ordered Perfected and printed.

STEPHEN S. DAVIS, Chief Clerk

4447L.01P

AN ACT

To repeal sections 536.015, 536.021, 536.023, and 536.031, RSMo, and to enact in lieu thereof four new sections relating to the publication of administrative rules.

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

Section A. Sections 536.015, 536.021, 536.023, and 536.031, RSMo, are repealed and
2 four new sections enacted in lieu thereof, to be known as sections 536.015, 536.021, 536.023,
3 and 536.031, to read as follows:

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

536.021. 1. No rule shall hereafter be proposed, adopted, amended or rescinded by any
2 state agency unless such agency shall first file with the secretary of state a notice of proposed
3 rulemaking and a subsequent final order of rulemaking, both of which shall be published in the
4 Missouri Register by the secretary of state as soon as practicable after the filing thereof in that
5 office; except that a notice of proposed rulemaking is not required for the establishment of
6 hunting or fishing seasons and limits or for the establishment of state program plans required
7 under federal education acts or regulations. The secretary of state shall not publish any proposed

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.

8 rulemaking or final order of rulemaking that has not fully complied with the provisions of section
9 536.024 or an executive order, whichever appropriately applies. If the joint committee on
10 administrative rules disapproves any proposed order of rulemaking, final order of rulemaking
11 or portion thereof, the committee shall report its finding to the house of representatives and the
12 senate. No proposed order of rulemaking, final order of rulemaking or portion thereof shall take
13 effect, or be published by the secretary of state, so long as the general assembly shall disapprove
14 such by concurrent resolution pursuant to article IV, section 8 within thirty legislative days
15 occurring during the same regular session of the general assembly. The secretary of state shall
16 not publish any order, or portion thereof, that is the subject of a concurrent resolution until the
17 expiration of time necessary to comply with the provisions of article III, section 32.

18 2. A notice of proposed rulemaking shall contain:

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

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

22 (3) The text of the entire proposed rule or the entire text of any affected section or
23 subsection of an existing rule which is proposed to be amended, with all new matter [underlined
24 or] printed in boldface type and with all deleted matter placed in brackets, except that when a
25 proposed rule consists of material so extensive that the publication thereof would be unduly
26 cumbersome or expensive, the secretary of state need publish only a summary and description
27 of the substance of the proposed rule so long as a complete copy of the rule is made immediately
28 available to any interested person upon application to the adopting state agency at a cost not to
29 exceed the actual cost of reproduction. A proposed rule may incorporate by reference only if the
30 material so incorporated is retained at the headquarters of the state agency and made available
31 to any interested person at a cost not to exceed the actual cost of the reproduction of a copy.
32 When a proposed amendment to an existing rule is to correct a typographical or printing error,
33 or merely to make a technical change not affecting substantive matters, the amendment may be
34 described in general terms without reprinting the entire existing rule, section or subsection;

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

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

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

43 3. Any state agency issuing a notice of proposed rulemaking may order a hearing

44 thereon, but no such hearing shall be necessary unless otherwise required by law.

45 4. Any state agency which has issued in the Missouri Register a notice of proposed
46 rulemaking to be made without a hearing, but which thereafter concludes that a hearing is
47 desirable, shall withdraw the earlier notice and file a new notice of proposed rulemaking which
48 fully complies with the provisions of subdivision (6) of subsection 2 of this section, and the state
49 agency shall not schedule the hearing for a time less than thirty days following the publication
50 of the new notice.

51 5. Within ninety days after the expiration of the time for filing statements in support of
52 or in opposition to the proposed rulemaking, or within ninety days after the hearing on such
53 proposed rulemaking if a hearing is held thereon, the state agency proposing the rule shall file
54 with the secretary of state a final order of rulemaking either adopting the proposed rule, with or
55 without further changes, or withdrawing the proposed rule, which order of rulemaking shall be
56 published in the Missouri Register. Such ninety days shall be tolled for the time period any rule
57 is held under abeyance pursuant to an executive order. If the state agency fails to file the order
58 of rulemaking as indicated in this subsection, the proposed rule shall lapse and shall be null, void
59 and unenforceable.

60 6. The final order of rulemaking shall contain:

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

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

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

68 (4) A brief summary of the general nature and extent of comments submitted in support
69 of or in opposition to the proposed rule and a concise summary of the testimony presented at the
70 hearing, if any, held in connection with said rulemaking, together with a concise summary of the
71 state agency's findings with respect to the merits of any such testimony or comments which are
72 opposed in whole or in part to the proposed rule; and

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

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

77 8. Except as provided in subsection 1 of this section[, all orders of rulemaking] **and**
78 **subsection 4 of section 536.031, after the final order of rulemaking has been published in**
79 **the Missouri Register, the text of the entire rule** shall be published in full in the Missouri code

80 of state regulations. No rule, except an emergency rule, shall become effective prior to the
81 thirtieth day after the date of publication of the revision to the Missouri code of state regulations.
82 The secretary of state shall distribute revisions of the Missouri code of state regulations to all
83 subscribers of the Missouri code of state regulations on or before the date of publication of such
84 revision. The publication date of each rule shall be printed below the rule in the Missouri code
85 of state regulations, provided further, that rules pertaining to changes in hunting or fishing
86 seasons and limits that must comply with federal requirements or that are necessary because of
87 documented changes in fish and game populations may become effective no earlier than on the
88 tenth day after the filing of the final order of rulemaking.

89 9. If it is found in a contested case by an administrative or judicial fact finder that a state
90 agency's action was based upon a statement of general applicability which should have been
91 adopted as a rule, as required by sections 536.010 to 536.050, and that agency was put on notice
92 in writing of such deficiency prior to the administrative or judicial hearing on such matter, then
93 the administrative or judicial fact finder shall award the prevailing nonstate agency party its
94 reasonable attorney's fees incurred prior to the award, not to exceed the amount in controversy
95 in the original action. This award shall constitute a reviewable order. If a state agency in a
96 contested case grants the relief sought by the nonstate party prior to a finding by an
97 administrative or judicial fact finder that the agency's action was based on a statement of general
98 applicability which should have been adopted as a rule, but was not, then the affected party may
99 bring an action in the circuit court of Cole County for the nonstate party's reasonable attorney's
100 fees incurred prior to the relief being granted, not to exceed the amount in controversy in the
101 original action.

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

536.023. 1. The secretary of state shall prescribe in [writing] **a format and medium as**
2 **prescribed by the secretary of state and in writing upon request** uniform procedures for the
3 numbering, indexing, form and publication of all rules, notices of proposed rulemaking and
4 orders of rulemaking. Copies of the procedures shall be furnished by the secretary of state to
5 each state agency and copies thereof shall be permanently maintained in the office of the

6 secretary of state and shall be available for public inspection at all reasonable times.

7 2. No rule, notice of proposed rulemaking or final order of rulemaking shall be accepted
8 for filing with the secretary of state unless it conforms to said uniform procedures.

9 3. Each state agency shall adopt as a rule a description of its organization and general
10 courses and methods of its operation and the methods and procedures whereby the public may
11 obtain information or make submissions or requests. Substantial changes in any matter covered
12 by the foregoing description shall be made only in accordance with the procedures set forth in
13 this chapter.

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

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

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

20 4. **An agency may incorporate by reference rules, regulations, standards, and**
21 **guidelines of an agency of the United States or a nationally or state recognized organization**
22 **or association without publishing the material in full. The reference in the agency rules**
23 **shall fully identify the incorporated material by publisher, address, and date in order to**
24 **specify how a copy of the material may be obtained, and shall state that the referenced**
25 **rule, regulation, standard, or guideline does not include any later amendments or**
26 **additions. The agency adopting a rule, regulation, standard, or guideline under this section**
27 **shall maintain a copy of the referenced rule, regulation, standard, or guideline at the**
28 **headquarters of the agency and shall make it available to the public for inspection and**

29 **copying at no more than the actual cost of reproduction.** The secretary of state may omit
30 from the code of state regulations [such rules and] such material incorporated by reference in any
31 rule the publication of which would be unduly cumbersome or expensive[, provided that the full
32 text of such rule or the full text of the material incorporated by reference is made available to any
33 interested person at both the office of the secretary of state and the office of the adopting state
34 agency, and copies thereof made available to any interested party at a cost not to exceed the
35 actual cost of copy reproduction].

36 5. The courts of this state shall take judicial notice, without proof, of the contents of the
37 code of state regulations.