

SECOND REGULAR SESSION

HOUSE BILL NO. 2022

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE FLOOK .

Read 1st time March 16, 2006 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

5277L.03I

AN ACT

To repeal sections 536.010 and 536.100, RSMo, and to enact in lieu thereof two new sections relating to judicial review of agency decisions.

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

Section A. Sections 536.010 and 536.100, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 536.010 and 536.100, to read as follows:

536.010. For the purpose of this chapter:

(1) "Affected small business" or "affects small business" means any potential or actual requirement imposed upon a small business or minority small business through a state agency's proposed or adopted rule that will cause direct and significant economic burden upon a small business or minority small business, or that is directly related to the formation, operation, or expansion of a small business;

(2) "Agency" means any administrative officer or body existing under the constitution or by law and authorized by law or the constitution to make rules or to adjudicate contested cases, except those in the legislative or judicial branches;

(3) "Board" means the small business regulatory fairness board **except when the word is used in section 536.100 where board shall mean any board which reviews the decisions of an agency, department, or division, authorized to promulgate rules and regulations under this chapter, or any board which reviews any agency decisions and whose review may be subject to de novo review by the circuit court under the Missouri Revised Statutes;**

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

15 (4) "Contested case" means a proceeding before an agency in which legal rights, duties
16 or privileges of specific parties are required by law to be determined after hearing;

17 (5) The term "decision" includes decisions and orders whether negative or affirmative
18 in form;

19 (6) "Rule" means each agency statement of general applicability that implements,
20 interprets, or prescribes law or policy, or that describes the organization, procedure, or practice
21 requirements of any agency. The term includes the amendment or repeal of an existing rule, but
22 does not include:

23 (a) A statement concerning only the internal management of an agency and which does
24 not substantially affect the legal rights of, or procedures available to, the public or any segment
25 thereof;

26 (b) A declaratory ruling issued pursuant to section 536.050, or an interpretation issued
27 by an agency with respect to a specific set of facts and intended to apply only to that specific set
28 of facts;

29 (c) An intergovernmental, interagency, or intraagency memorandum, directive, manual
30 or other communication which does not substantially affect the legal rights of, or procedures
31 available to, the public or any segment thereof;

32 (d) A determination, decision, or order in a contested case;

33 (e) An opinion of the attorney general;

34 (f) Those portions of staff manuals, instructions or other statements issued by an agency
35 which set forth criteria or guidelines to be used by its staff in auditing, in making inspections,
36 in settling commercial disputes or negotiating commercial arrangements, or in the selection or
37 handling of cases, such as operational tactics or allowable tolerances or criteria for the defense,
38 prosecution, or settlement of cases, when the disclosure of such statements would enable law
39 violators to avoid detection, facilitate disregard of requirements imposed by law, or give a clearly
40 improper advantage to persons who are in an adverse position to the state;

41 (g) A specification of the prices to be charged for goods or services sold by an agency
42 as distinguished from a license fee, or other fees;

43 (h) A statement concerning only the physical servicing, maintenance or care of publicly
44 owned or operated facilities or property;

45 (i) A statement relating to the use of a particular publicly owned or operated facility or
46 property, the substance of which is indicated to the public by means of signs or signals;

47 (j) A decision by an agency not to exercise a discretionary power;

48 (k) A statement concerning only inmates of an institution under the control of the
49 department of corrections and human resources or the division of youth services, students

50 enrolled in an educational institution, or clients of a health care facility, when issued by such an
51 agency;

52 (l) Statements or requirements establishing the conditions under which persons may
53 participate in exhibitions, fairs or similar activities, managed by the state or an agency of the
54 state;

55 (m) Income tax or sales forms, returns and instruction booklets prepared by the state
56 department of revenue for distribution to taxpayers for use in preparing tax returns;

57 (7) "Small business" means a for-profit enterprise consisting of fewer than one hundred
58 full- or part-time employees;

59 (8) "State agency" means each board, commission, department, officer or other
60 administrative office or unit of the state other than the general assembly, the courts, the governor,
61 or a political subdivision of the state, existing under the constitution or statute, and authorized
62 by the constitution or statute to make rules or to adjudicate contested cases.

536.100. Any person who has exhausted all administrative remedies provided by law and
2 who is aggrieved by a final decision in a contested case, whether such decision is affirmative or
3 negative in form, shall be entitled to judicial review thereof, as provided in sections 536.100 to
4 536.140, unless some other provision for judicial review is provided by statute; provided,
5 however, that nothing in this chapter contained shall prevent any person from attacking any void
6 order of an agency at any time or in any manner that would be proper in the absence of this
7 section. If [the] **an** agency[, other than] **or** the administrative hearing commission or any board
8 [established to provide independent review of the decisions of a department or division that is
9 authorized to promulgate rules and regulations under this chapter,] fails to issue a final decision
10 in a contested case within the earlier of:

11 (1) Sixty days after the conclusion of a hearing on the contested case; or

12 (2) One hundred eighty days after the receipt by the agency of a written request for the
13 issuance of a final decision,

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15 then the person shall be considered to have exhausted all administrative remedies and shall be
16 considered to have received a final decision in favor of the agency and shall be entitled to
17 immediate judicial review as provided in sections 536.100 to 536.140 or other provision for
18 judicial review provided by statute.

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