

SECOND REGULAR SESSION

HOUSE BILL NO. 2129

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES BAKER (123) (Sponsor), ERVIN, FLOOK,
WASSON AND SCAVUZZO (Co-sponsors).

Read 1st time February 13, 2008 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

5040L.01I

AN ACT

To repeal sections 536.300 and 536.305, RSMo, and to enact in lieu thereof two new sections relating to the Missouri small business regulatory fairness board.

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

Section A. Sections 536.300 and 536.305, RSMo, are repealed and two new sections
2 enacted in lieu thereof, to be known as sections 536.300 and 536.305, to read as follows:

536.300. 1. Prior to submitting proposed rules for adoption, amendment, revision, or
2 repeal, under this chapter the state agency shall determine whether the proposed rulemaking
3 affects small businesses and, if so, the availability and practicability of less-restrictive
4 alternatives that could be implemented to achieve the same results of the proposed rulemaking.
5 This requirement shall not apply to emergency rulemaking pursuant to section 536.025 [or to
6 constitutionally authorized rulemaking pursuant to article IV, section 45 of the Missouri
7 Constitution]. This requirement shall be in addition to the fiscal note requirement of sections
8 536.200 to 536.210.

9 2. If the proposed rules affect small businesses, the state agency shall consider creative,
10 innovative, or flexible methods of compliance for small business and prepare a small business
11 impact statement to be submitted to the secretary of state and the joint committee on
12 administrative rules with the proposed rules. A copy of the proposed rules and the small
13 business impact statement shall also be filed with the board on the same date as they are filed
14 with the secretary of state. Such business impact statement and proposed rules shall be

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 submitted to the board prior to providing notice for a public hearing. The statement shall provide
16 a reasonable determination of the following:

17 (1) The methods the agency considered or used to reduce the impact on small businesses
18 such as consolidation, simplification, differing compliance, or reporting requirements, less
19 stringent deadlines, performance rather than design standards, exemption, or any other mitigating
20 techniques;

21 (2) How the agency involved small businesses in the development of the proposed rules;

22 (3) The probable monetary costs and benefits to the implementing agency and other
23 agencies directly affected, including the estimated total amount the agency expects to collect
24 from any additionally imposed fees and the manner in which the moneys will be used, if such
25 costs are capable of determination;

26 (4) A description of the small businesses that will be required to comply with the
27 proposed rules and how they may be adversely affected, except in cases where the state agency
28 has filed a fiscal note that complies with all of the provisions of section 536.205;

29 (5) In dollar amounts, the increase in the level of direct costs, such as fees or
30 administrative penalties, and indirect costs, such as reporting, record keeping, equipment,
31 construction, labor, professional services, revenue loss, or other costs associated with compliance
32 if such costs are capable of determination, except in cases where the state agency has filed a
33 fiscal note that complies with all of the provisions of section 536.205;

34 (6) The business that will be directly affected by, bear the cost of, or directly benefit
35 from the proposed rules;

36 (7) Whether the proposed rules include provisions that are more stringent than those
37 mandated by any comparable or related federal, state, or county standards, with an explanation
38 of the reason for imposing the more-stringent standard.

39 3. Any proposed rule that is required to have a small business impact statement but does
40 not include such a statement shall be invalid and the secretary of state should not publish the rule
41 until such time as the statement is provided. If the state agency determines that its proposed rule
42 does not affect small business, the state agency shall so certify this finding in the transmittal
43 letter to the secretary of state, stating that it has determined that such proposed rule will not have
44 an economic impact on small businesses and the secretary of state shall publish the rule.

45 4. Sections 536.300 to 536.310 shall not apply where the proposed rule is being
46 promulgated on an emergency basis, where the rule is federally mandated, or where the rule
47 substantially codifies existing federal or state law. Notwithstanding the provisions of this
48 section, federally mandated regulations are subject to the federal Regulatory Flexibility Act as
49 amended by the Small Business Regulatory and Enforcement Fairness Act of 1996, P.L. 96-354,

50 as amended by P.L. 104.121. Any federally mandated regulations that do not comply with these
51 acts shall be subject to this section.

536.305. 1. There is hereby established the "Small Business Regulatory Fairness Board".
2 The department of economic development shall provide staff support for the board. **The**
3 **department shall provide at least one full-time employee for a professional position, one-**
4 **half full-time employee for clerical support, and an adequate budget to meet the**
5 **responsibilities for the board.**

6 2. The board shall be composed of nine members appointed in the following manner:

7 (1) One member who is the chair of the minority business advocacy commission;

8 (2) One member appointed by the president pro tempore of the senate;

9 (3) One member appointed by the minority leader of the senate;

10 (4) One member appointed by the speaker of the house of representatives;

11 (5) One member appointed by the minority leader of the house of representatives; and

12 (6) Four members appointed by the governor.

13 3. Each member of the board, except for the public members and the chair of the
14 minority business advocacy commission, shall be a current or former owner or officer of a small
15 business. All members of the board shall represent a variety of small businesses, both rural and
16 urban, and be from a variety of geographical areas of this state, provided that no more than two
17 members shall represent the same type of small business.

18 4. Members of the board shall serve a term of three years and may be reappointed at the
19 conclusion of the term. No member shall serve more than three consecutive terms.
20 Appointments shall be made so that one-third of the membership of the board shall terminate
21 each year. The governor shall appoint the initial chairperson of the board and a majority of the
22 board shall elect subsequent chairpersons. The chairperson shall serve as chair for a term of not
23 more than two years.

24 5. Members of the board shall serve without compensation, but may be reimbursed for
25 reasonable and necessary expenses relating to their performance of duties, according to the rules
26 and regulations of travel issued by the office of administration. Members will be required to
27 submit an expense account form in order to obtain reimbursement for expenses incurred.

28 6. The board shall meet as often as necessary, as determined by the chairperson of the
29 board. All meetings of the board will be conducted in accordance with the governmental bodies
30 and records act, chapter 610, RSMo, including closed sessions. Notice will be posted and will
31 be provided to the joint committee on administrative rules. Minutes of the meetings shall be
32 provided to all members, the office of the governor, and the joint committee on administrative
33 rules.

34 7. In addition to any other powers provided by sections 536.300 to 536.328, the board
35 may adopt any rules necessary to implement sections 536.300 to 536.328 and take any action
36 necessary to effectuate the purposes of sections 536.300 to 536.328. Any rule or portion of a
37 rule, as that term is defined in section 536.010, that is created under the authority delegated in
38 this section shall become effective only if it complies with and is subject to all of the provisions
39 of this chapter and, if applicable, section 536.028. This section and this chapter are nonseverable
40 and if any of the powers vested with the general assembly pursuant to this chapter to review, to
41 delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional,
42 then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2005,
43 shall be invalid and void.

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