

SECOND REGULAR SESSION

HOUSE BILL NO. 1737

97TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES BURLISON (Sponsor), RIZZO, CRAWFORD, DUGGER,
SPENCER, FRANKLIN, COLONA, WIELAND, BAHR, KIRKTON,
HOUGH AND ELLINGER (Co-sponsors).

5843L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 536.010 and 546.720, RSMo, and to enact in lieu thereof two new sections relating to the joint committee on administrative rules.

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

Section A. Sections 536.010 and 546.720, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 536.010 and 546.720, to read as follows: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;
- (4) "Contested case" means a proceeding before an agency in which legal rights, duties or privileges of specific parties are required by law to be determined after hearing;
- (5) The term "decision" includes decisions and orders whether negative or affirmative in form;

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.

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

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

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

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

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

30 (e) An opinion of the attorney general;

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

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

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

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

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

45 (k) **Except for statements concerning the execution of inmates,** a statement
46 concerning only inmates of an institution under the control of the department of corrections and
47 human resources or the division of youth services, students enrolled in an educational institution,
48 or clients of a health care facility, when issued by such an agency;

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

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

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

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

546.720. 1. The manner of inflicting the punishment of death shall be by the
2 administration of lethal gas or by means of the administration of lethal injection. And for such
3 purpose the director of the department of corrections is hereby authorized and directed to provide
4 a suitable and efficient room or place, enclosed from public view, within the walls of a
5 correctional facility of the department of corrections, and the necessary appliances for carrying
6 into execution the death penalty by means of the administration of lethal gas or by means of the
7 administration of lethal injection.

8 2. The director of the department of corrections shall select an execution team which
9 shall consist of those persons who administer lethal gas or lethal chemicals and those persons,
10 such as medical personnel, who provide direct support for the administration of lethal gas or
11 lethal chemicals. The identities of members of the execution team, as defined in the execution
12 protocol of the department of corrections, shall be kept confidential. Notwithstanding any
13 provision of law to the contrary, any portion of a record that could identify a person as being a
14 current or former member of an execution team shall be privileged and shall not be subject to
15 discovery, subpoena, or other means of legal compulsion for disclosure to any person or entity,
16 the remainder of such record shall not be privileged or closed unless protected from disclosure
17 by law. The section of an execution protocol that directly relates to the administration of lethal
18 gas or lethal chemicals is an open record, the remainder of any execution protocol of the
19 department of corrections is a closed record.

20 3. A person may not, without the approval of the director of the department of
21 corrections, knowingly disclose the identity of a current or former member of an execution team
22 or disclose a record knowing that it could identify a person as being a current or former member
23 of an execution team. Any person whose identity is disclosed in violation of this section shall:

24 (1) Have a civil cause of action against a person who violates this section;

25 (2) Be entitled to recover from any such person:

26 (a) Actual damages; and

27 (b) Punitive damages on a showing of a willful violation of this section.

28 4. Notwithstanding any provision of law to the contrary, if a member of the execution
29 team is licensed by a board or department, the licensing board or department shall not censure,
30 reprimand, suspend, revoke, or take any other disciplinary action against the person's license
31 because of his or her participation in a lawful execution. All members of the execution team are
32 entitled to coverage under the state legal expense fund established by section 105.711 for
33 conduct of such execution team member arising out of and performed in connection with his or
34 her official duties on behalf of the state or any agency of the state, provided that moneys in this
35 fund shall not be available for payment of claims under chapter 287.

36 **5. The department of corrections shall promulgate rules to administer the**
37 **provisions of this section. Any rule or portion of a rule, as that term is defined in section**
38 **536.010, that is created under the authority delegated in this section shall become effective**
39 **only if it complies with and is subject to all of the provisions of chapter 536 and, if**
40 **applicable, section 536.028. This section and chapter 536 are nonseverable and if any of**
41 **the powers vested with the general assembly under chapter 536 to review, to delay the**
42 **effective date, or to disapprove and annul a rule are subsequently held unconstitutional,**
43 **then the grant of rulemaking authority and any rule proposed or adopted after August 28,**
44 **2014, shall be invalid and void.**

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