

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 931
100TH GENERAL ASSEMBLY

1990H.02C

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 536.015, 536.025, 536.031, 536.033, 536.200, and 536.205, RSMo, and to enact in lieu thereof six new sections relating to code of state regulations.

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

Section A. Sections 536.015, 536.025, 536.031, 536.033, 536.200, and 536.205, RSMo,
2 are repealed and six new sections enacted in lieu thereof, to be known as sections 536.015,
3 536.025, 536.031, 536.033, 536.200, and 536.205, 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 in~~
3 ~~writing upon request~~] no less frequently than monthly by the secretary of state.

536.025. 1. A rule may be made, amended or rescinded by a state agency without
2 following the provisions of section 536.021, only if the state agency:

3 (1) Finds that an immediate danger to the public health, safety or welfare requires
4 emergency action or the rule is necessary to preserve a compelling governmental interest that
5 requires an early effective date as permitted pursuant to this section;

6 (2) Follows procedures best calculated to assure fairness to all interested persons and
7 parties under the circumstances;

8 (3) Follows procedures which comply with the protections extended by the Missouri and
9 United States Constitutions; and

10 (4) Limits the scope of such rule to the circumstances creating an emergency and
11 requiring emergency action.

12 2. At the time of or prior to the adoption of such rule, the agency shall file with the
13 secretary of state and the joint committee on administrative rules the text of the rule **and the**
14 **fiscal note required by sections 536.200 and 536.205** together with the specific facts, reasons,

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 and findings which support the agency's conclusion that the agency has fully complied with the
16 requirements of subsection 1 of this section. If an agency finds that a rule is necessary to
17 preserve a compelling governmental interest that requires an early effective date, the agency shall
18 certify in writing the reasons therefor.

19 3. ~~[Material filed with the secretary of state and the joint committee on administrative~~
20 ~~rules under the provisions of subsection 2 of this section shall be published in the Missouri~~
21 ~~Register by the secretary of state as soon as practicable after the filing thereof]~~ **After a filing by**
22 **an agency of materials under subsection 2 of this section, the secretary of state shall:**

23 (1) **As soon as practicable, publish such materials in the Missouri Register;**

24 (2) **Within three business days, email such materials to persons who have registered**
25 **to be notified of the agency's actions through the secretary of state's administrative rules**
26 **notification system; and**

27 (3) **Within three business days, publish such materials on the official website of the**
28 **secretary of state.**

29

30 Any rule adopted pursuant to this section shall be reviewed by the secretary of state to determine
31 compliance with the requirements for its publication and adoption established in this section, and
32 in the event that the secretary of state determines that such proposed material does not meet those
33 requirements, the secretary of state shall not publish the rule. The secretary of state shall inform
34 the agency of its determination, and offer the agency a chance to either withdraw the rule or to
35 have it published as a proposed rule.

36 4. The committee may file with the secretary of state any comments or recommendations
37 that the committee has concerning a proposed or final order of rulemaking. Such comments shall
38 be published in the Missouri Register.

39 5. The committee may refer comments or recommendations concerning such rule to the
40 appropriations and budget committee of the house of representatives and the appropriations
41 committee of the senate for further action.

42 6. Rules adopted under the provisions of this section shall be known as "emergency
43 rules" and shall, along with the findings and conclusions of the state agency in support of its
44 employment of emergency procedures, be judicially reviewable under section 536.050 or other
45 appropriate form of judicial review. The secretary of state and any employee thereof, acting in
46 the scope of employment, shall be immune from suit in actions regarding the adoption of rules
47 pursuant to this section.

48 7. A rule adopted under the provisions of this section shall clearly state the interval
49 during which it will be in effect. Emergency rules shall not be in effect for a period exceeding
50 one hundred eighty calendar days or thirty legislative days, whichever period is longer. For the

51 purposes of this section, a "legislative day" is each Monday, Tuesday, Wednesday and Thursday
52 beginning the first Wednesday after the first Monday in January and ending the first Friday after
53 the second Monday in May, regardless of whether the legislature meets.

54 8. A rule adopted under the provisions of this section shall not be renewable, nor shall
55 an agency adopt consecutive emergency rules that have substantially the same effect, although
56 a state agency may, at any time, adopt an identical rule under normal rulemaking procedures.

57 9. A rule adopted under the provisions of this section may be effective not less than ten
58 **business** days after the filing thereof in the office of the secretary of state, or at such later date
59 as may be specified in the rule, and may be terminated at any time by the state agency by filing
60 an order with the secretary of state fixing the date of such termination, which order shall be
61 published by the secretary of state in the Missouri Register as soon as practicable after the filing
62 thereof.

63 10. If it is found in a contested case by an administrative or judicial fact finder that an
64 agency rule should not have been adopted as an emergency rule as provided by subsection 1 of
65 this section, then the administrative or judicial fact finder shall award the nonstate party who
66 prevails, as defined in this section, its reasonable fees and expenses, as defined in this section.
67 This award shall constitute a reviewable order. If a state agency in a contested case grants the
68 relief sought by the party prior to a finding by an administrative or judicial fact finder that the
69 state agency's action was based on a statement of general applicability which should not have
70 been adopted as an emergency rule, but was in fact adopted as an emergency rule pursuant to this
71 section, then the affected party may bring an action in circuit court of Cole County for the
72 nonstate party's reasonable fees and expenses, as defined in this section.

73 11. For the purposes of this section, the following terms mean:

74 (1) "Prevails", obtains a favorable order, decision, judgment or dismissal in a civil action
75 or agency proceeding;

76 (2) "Reasonable fees and expenses" includes the reasonable expenses of expert
77 witnesses, the reasonable cost of any study, analysis, engineering report, test or project which is
78 found by the court or agency to be necessary for the preparation of the party's case, and
79 reasonable attorney or agent fees.

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
5 of 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 an~~
17 ~~appropriate index, and revisions in the text and index may be made by the secretary of state as~~
18 ~~necessary and provided in written format upon request]~~.

19 4. An agency may incorporate by reference rules, regulations, standards, and guidelines
20 of an agency of the United States or a nationally or state-recognized organization or association
21 without publishing the material in full. The reference in the agency rules shall fully identify the
22 incorporated material by publisher, address, and date in order to specify how a copy of the
23 material may be obtained, and shall state that the referenced rule, regulation, standard, or
24 guideline does not include any later amendments or additions, except that:

25 (1) Hospital licensure regulations promulgated under this chapter and chapter 197 may
26 incorporate by reference Medicare conditions of participation, as defined in section 197.005, and
27 later additions or amendments to such conditions of participation; and

28 (2) Hospital licensure regulations governing life safety code standards promulgated
29 under this chapter and chapter 197 to implement section 197.065 may incorporate, by reference,
30 later additions or amendments to such rules, regulations, standards, or guidelines as needed to
31 consistently apply current standards of safety and practice.

32 5. The agency adopting a rule, regulation, standard, or guideline under this section shall
33 maintain a copy of the referenced rule, regulation, standard, or guideline at the headquarters of
34 the agency and shall make it available to the public for inspection and copying at no more than
35 the actual cost of reproduction. The secretary of state may omit from the code of state
36 regulations such material incorporated by reference in any rule the publication of which would
37 be unduly cumbersome or expensive.

38 6. The courts of this state shall take judicial notice, without proof, of the contents of the
39 code of state regulations.

536.033. 1. Copies or subscription of the register or code shall be made available to the
2 public by the secretary of state upon request for a reasonable charge to be established by ~~[him]~~
3 **the secretary of state, [said charge]** not to exceed the actual cost of publishing and delivery.

4 2. All ~~[costs of printing and mailing the Missouri Register and the code of state~~
5 ~~regulations shall be paid by the office of the secretary of state from funds appropriated for this~~
6 ~~purpose and all]~~ fees collected from the sale ~~[thereof]~~ **of the Missouri Register or the code of**
7 **state regulations** by the secretary of state shall be deposited to general revenue.

8 3. The secretary of state may correct typographical or spelling errors in the publication
9 of any rule, notice of proposed rulemaking, or order of rulemaking.

536.200. 1. Any state agency filing a notice of proposed rulemaking, as required by
2 section 536.021, **or an emergency rule, as required by section 536.025**, wherein the adoption,
3 amendment, or rescission of the rule would require or result in an expenditure of public funds
4 by or a reduction of public revenues for that agency or any other state agency of the state
5 government or any political subdivision thereof including counties, cities, towns, and villages,
6 and school, road, drainage, sewer, water, levee, or any other special purpose district which is
7 estimated to cost more than five hundred dollars in the aggregate to any such agency or political
8 subdivision, shall at the time of filing the notice with the secretary of state file a fiscal note
9 estimating the cost to each affected agency or to each class of the various political subdivisions
10 to be affected. The fiscal note shall contain a detailed estimated cost of compliance and shall be
11 supported with ~~[an affidavit]~~ **a declaration subject to the requirements of section 575.060** by
12 the director of the department to which the agency belongs that in the director's opinion the
13 estimate is reasonably accurate. If no fiscal note is filed, the director of the department to which
14 the agency belongs shall file ~~[an affidavit]~~ **a declaration subject to the requirements of section**
15 **575.060** which states that the proposed change will cost less than five hundred dollars in the
16 aggregate to all such agencies and political subdivisions.

17 2. **A fiscal note for an emergency rule filed under section 536.025 shall only reflect**
18 **the fiscal costs for the duration of the emergency rule.**

19 3. If at the end of the first full fiscal year after the implementation of the rule,
20 amendment, or rescission the cost to all affected entities has exceeded by ten percent or more the
21 estimated cost in the fiscal note or has exceeded five hundred dollars if ~~[an affidavit]~~ **a**
22 **declaration** has been filed stating the proposed change will cost less than five hundred dollars,
23 the original estimated cost together with the actual cost during the first fiscal year shall be
24 published by the adopting agency in the Missouri Register within ninety days after the close of
25 the fiscal year. Such costs shall be determined by the adopting agency. If the adopting agency
26 fails to publish such costs as required by this section, the rule, amendment, or rescission shall
27 be void and of no further force or effect.

28 ~~[3.]~~ 4. The estimated cost in the aggregate shall be published in the Missouri Register
29 contemporary with and adjacent to the notice of ~~[proposed]~~ rulemaking, and failure to do so shall
30 render any rule promulgated thereunder void and of no force or effect.

31 ~~[4:]~~ **5.** Any challenge to a rule based on failure to meet the requirements of this section
32 shall be commenced within five years after the effective date of the rule.

33 ~~[5:]~~ **6.** In the event that any rule published prior to June 3, 1994, shall have failed to
34 provide a fiscal note as required by this section, such agency shall publish the required fiscal note
35 cross-referenced to the applicable rule prior to August 28, 1995, and in that event the rule shall
36 not be void. Any such rule shall be deemed to have met the requirements of this section until
37 that date.

 536.205. 1. Any state agency filing a notice of proposed rulemaking, as required by
2 section 536.021, **or an emergency rule, as required by section 536.025**, whereby the adoption,
3 amendment, or rescission of the rule would require an expenditure of money by or a reduction
4 in income for any person, firm, corporation, association, partnership, proprietorship or business
5 entity of any kind or character which is estimated to cost more than five hundred dollars in the
6 aggregate, shall at the time of filing the notice with the secretary of state file a fiscal note
7 containing the following information and estimates of cost:

8 (1) An estimate of the number of persons, firms, corporations, associations, partnerships,
9 proprietorships or business entities of any kind or character by class which would likely be
10 affected by the adoption of the proposed rule, amendment or rescission of a rule;

11 (2) A classification by types of the business entities in such manner as to give reasonable
12 notice of the number and kind of businesses which would likely be affected;

13 (3) An estimate in the aggregate as to the cost of compliance with the rule, amendment
14 or rescission of a rule by the affected persons, firms, corporations, associations, partnerships,
15 proprietorships or business entities of any kind or character.

16 **2. A fiscal note for an emergency rule filed under section 536.025 shall only reflect**
17 **the fiscal costs for the duration of the emergency rule.**

18 **3.** The fiscal note shall be published in the Missouri Register contemporary with and
19 adjacent to the notice of ~~[proposed]~~ rulemaking, and failure to do so shall render any rule
20 promulgated thereunder void and of no force and effect.

21 ~~[3:]~~ **4.** Any challenge to a rule based on failure to meet the requirements of this section
22 shall be commenced no later than five years after the effective date of the rule.

23 ~~[4:]~~ **5.** In the event that any rule published prior to June 3, 1994, shall have failed to
24 provide a fiscal note as required by this section, such agency shall publish the required fiscal note
25 prior to August 28, 1995, and in that event the rule shall not be void. Any such rule shall be
26 deemed to have met the requirements of this section until that date.

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