

SECOND REGULAR SESSION

# HOUSE BILL NO. 1458

## 100TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE SHAUL (113).

3116H.011

DANA RADEMAN MILLER, Chief Clerk

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### AN ACT

To repeal sections 536.300, 536.305, 536.310, and 536.315, RSMo, and to enact in lieu thereof four new sections relating to the small business regulatory fairness board.

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

Section A. Sections 536.300, 536.305, 536.310, and 536.315, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 536.300, 536.305, 536.310, and 536.315, to read as follows:

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

2. If the proposed rules affect small businesses, the state agency shall consider creative, innovative, or flexible methods of compliance for small business; **involve affected small businesses in the development of the rules**; and prepare a small business impact statement to be submitted to the secretary of state and the joint committee on administrative rules with the proposed rules. A copy of the proposed rules and the small business impact statement shall also be filed with the board on the same date as they are filed with the secretary of state. Such business impact statement and proposed rules shall be submitted to the board prior to providing

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 notice for a public hearing. The statement shall provide 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 **affected** small businesses in the development of the  
22 proposed rules;

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

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

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

35 (6) The ~~[business]~~ **businesses** that will be directly affected by, bear the cost of, or  
36 directly benefit from the proposed rules;

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

40 3. Any proposed rule that is required to have a small business impact statement but does  
41 not include such a statement shall be invalid and the secretary of state should not publish the rule  
42 until such time as the statement is provided. If the state agency determines that its proposed rule  
43 does not affect small business, the state agency shall so certify this finding in the transmittal  
44 letter to the secretary of state, stating that it has determined that such proposed rule will not have  
45 an economic impact on small businesses ~~[and the secretary of state shall publish the rule]~~. **Such**  
46 **certification shall be forwarded to the small business regulatory fairness board established**  
47 **under section 536.305 for verification prior to the agency filing the proposed rule with the**  
48 **secretary of state.**

49 4. Sections 536.300 to 536.310 shall not apply where the proposed rule is being  
50 promulgated on an emergency basis, where the rule is federally mandated, or where the rule  
51 substantially codifies existing federal or state law. Notwithstanding the provisions of this

52 section, federally mandated regulations are subject to the federal Regulatory Flexibility Act as  
53 amended by the Small Business Regulatory and Enforcement Fairness Act of 1996, P.L. 96-354,  
54 as amended by P.L. 104.121. Any federally mandated regulations that do not comply with these  
55 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.]~~ **Beginning**  
3 **July 1, 2021, the board shall be an autonomous entity in the secretary of state's office.**

4 2. The board shall be composed of ~~[nine]~~ **eight** members appointed in the following  
5 manner:

6 (1) ~~[One member who is the chair of the minority business advocacy commission;~~

7 ~~— (2)]~~ One member appointed by the president pro tempore of the senate;

8 ~~[(3)]~~ (2) One member appointed by the **ranking** minority ~~[leader]~~ **member** of the senate;

9 ~~[(4)]~~ (3) One member appointed by the speaker of the house of representatives;

10 ~~[(5)]~~ (4) One member appointed by the **ranking** minority ~~[leader]~~ **member** of the house  
11 of representatives; ~~[and~~

12 ~~— (6) Four]~~ (5) **Two** members appointed by the governor~~[-]~~ ; **and**

13 (6) **Two members appointed by the secretary of state.**

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

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

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

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

33 meetings shall be provided to all members, the office of the governor, and the joint committee  
34 on administrative rules.

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

536.310. 1. The board shall:

2 (1) Provide state agencies with input regarding rules that adversely affect small  
3 businesses;

4 (2) Solicit input and conduct hearings from small business owners and state agencies  
5 regarding any rules proposed, **adopted, or enforced** by a state agency; and

6 (3) Provide an evaluation report to the governor and the general assembly, including any  
7 recommendations and evaluations of state agencies regarding regulatory fairness for Missouri's  
8 small businesses. The report shall include comments from small businesses, state agency  
9 responses, and a summary of any public testimony on rules brought before the board for  
10 consideration.

11 2. In any inquiry conducted by the board [~~because of a request from a small business~~  
12 ~~owner~~], the board may make recommendations to the state agency. If the board makes  
13 recommendations, such recommendations shall be based on any of the following grounds:

14 (1) The rule creates an undue barrier to the formation, operation, and expansion of small  
15 businesses in a manner that significantly outweighs the rule's benefits to the public; or

16 (2) New or significant economic information indicates the proposed rule would create  
17 an undue impact on small businesses; or

18 (3) Technology, economic conditions, or other relevant factors justifying the purpose for  
19 the rule has changed or no longer exists; or

20 (4) [~~If the rule was adopted after August 28, 2004,~~] Whether the actual effect on small  
21 businesses was not reflected in or significantly exceeded the small business impact statement  
22 submitted prior to the adoption of the rules.

23 3. Subject to appropriations[~~, by a majority vote of the board~~] **received by the office of**  
24 **the secretary of state**, the board [~~may hire a one-half full-time equivalent employee for clerical~~]

25 ~~support and a full-time equivalent employee with total salaries funded from the department of~~  
26 ~~economic development appropriations up to one hundred fifty thousand dollars adjusted annually~~  
27 ~~for inflation for professional positions to:~~

28 ~~—— (1) Conduct internet website additions, corrections, and deletions;~~

29 ~~—— (2) Develop training programs for agencies;~~

30 ~~—— (3) Send regulatory alerts to interested small business subscribers;~~

31 ~~—— (4) Track small business comments regarding agencies and review and respond to the~~  
32 ~~agency and small business accordingly;~~

33 ~~—— (5) Prepare for board meetings and hearings, including outreach, travel, agendas, and~~  
34 ~~minutes;~~

35 ~~—— (6) Prepare member maintenance expense reports and appointments;~~

36 ~~—— (7) Analyze small business impact statements. After such analysis, the employee shall~~  
37 ~~review such statements, offer suggestions, and work with agencies to meet the statute~~  
38 ~~requirements;~~

39 ~~—— (8) Analyze biannual report reviews;~~

40 ~~—— (9) Conduct agency correspondence and training;~~

41 ~~—— (10) Conduct small business outreach by speaking at chamber and association events;~~

42 ~~—— (11) Review the Missouri Register and other sources to look for proposed rules that may~~  
43 ~~affect small business.~~

44 ~~—— 4. Subject to appropriations, the board may receive additional funds for:~~

45 ~~—— (1) Upkeep of its internet website;~~

46 ~~—— (2) Information technology;~~

47 ~~—— (3) Mileage for board members;~~

48 ~~—— (4) Publication, printing, and distribution of annual reports;~~

49 ~~—— (5) Outreach costs; and~~

50 ~~—— (6) Expenses and equipment for the one and one-half full-time equivalent employee of~~  
51 ~~the board] shall hire staff to carry out the purposes of the board.~~

52 [5.] 4. A majority vote of the board members shall be required for the hiring, retention,  
53 and termination of board employees. All duties of board employees shall be dedicated solely to  
54 the support of and for the furtherance of the purpose and mission of the board.

536.315. Any state agency receiving recommendations from the board shall promptly  
2 consider such recommendations and may file a response with the board within [sixty] thirty days  
3 of receiving the board's recommendations. If the state agency determines that no action shall be  
4 taken on the board's recommendations, the agency should explain its reasons for its  
5 determination. If the state agency determines that the board's recommendations merit adoption,  
6 amendment or repeal of a rule, the agency should indicate this in its response.