

FIRST REGULAR SESSION

# HOUSE BILL NO. 1142

## 98TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE HOSKINS.

2481H.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal sections 536.021, RSMo, and to enact in lieu thereof one new section relating to administrative procedures.

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

Section A. Section 536.021, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 536.021, to read as follows:

536.021. 1. No rule shall hereafter be proposed, adopted, amended or rescinded by any state agency unless such agency shall first file with the secretary of state a notice of proposed rulemaking and a subsequent final order of rulemaking, both of which shall be published in the Missouri Register by the secretary of state as soon as practicable after the filing thereof in that office; except that a notice of proposed rulemaking is not required for the establishment of hunting or fishing seasons and limits or for the establishment of state program plans required under federal education acts or regulations. The secretary of state shall not publish any proposed rulemaking or final order of rulemaking that has not fully complied with the provisions of section 536.024 or an executive order, whichever appropriately applies. If the joint committee on administrative rules disapproves any proposed order of rulemaking, final order of rulemaking or portion thereof, the committee shall report its finding to the house of representatives and the senate. No proposed order of rulemaking, final order of rulemaking or portion thereof shall take effect, or be published by the secretary of state, so long as the general assembly shall disapprove such by concurrent resolution pursuant to article IV, section 8 within thirty legislative days occurring during the same regular session of the general assembly. The secretary of state shall not publish any order, or portion thereof, that is the subject of a concurrent resolution until the expiration of time necessary to comply with the provisions of article III, section 32.

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.

18           2. A notice of proposed rulemaking shall contain:

19           (1) An explanation of any proposed rule or any change in an existing rule, and the  
20 reasons therefor;

21           (2) The legal authority upon which the proposed rule is based;

22           (3) The text of the entire proposed rule or the entire text of any affected section or  
23 subsection of an existing rule which is proposed to be amended, with all new matter printed in  
24 boldface type and with all deleted matter placed in brackets, except that when a proposed rule  
25 consists of material so extensive that the publication thereof would be unduly cumbersome or  
26 expensive, the secretary of state need publish only a summary and description of the substance  
27 of the proposed rule so long as a complete copy of the rule is made immediately available to any  
28 interested person upon application to the adopting state agency at a cost not to exceed the actual  
29 cost of reproduction. A proposed rule may incorporate by reference only if the material so  
30 incorporated is retained at the headquarters of the state agency and made available to any  
31 interested person at a cost not to exceed the actual cost of the reproduction of a copy. When a  
32 proposed amendment to an existing rule is to correct a typographical or printing error, or merely  
33 to make a technical change not affecting substantive matters, the amendment may be described  
34 in general terms without reprinting the entire existing rule, section or subsection;

35           (4) The number and general subject matter of any existing rule proposed to be rescinded;

36           (5) Notice that anyone may file a statement in support of or in opposition to the proposed  
37 rulemaking at a specified place and within a specified time not less than thirty days after  
38 publication of the notice of proposed rulemaking in the Missouri Register; and

39           (6) Notice of the time and place of a hearing on the proposed rulemaking if a hearing is  
40 ordered, which hearing shall be not less than thirty days after publication of the notice of  
41 proposed rulemaking in the Missouri Register; or a statement that no hearing has been ordered  
42 if such is the case.

43           3. Any state agency issuing a notice of proposed rulemaking may order a hearing  
44 thereon, but no such hearing shall be necessary unless otherwise required by law.

45           4. Any state agency which has issued in the Missouri Register a notice of proposed  
46 rulemaking to be made without a hearing, but which thereafter concludes that a hearing is  
47 desirable, shall withdraw the earlier notice and file a new notice of proposed rulemaking which  
48 fully complies with the provisions of subdivision (6) of subsection 2 of this section, and the state  
49 agency shall not schedule the hearing for a time less than thirty days following the publication  
50 of the new notice.

51           5. Within ninety days after the expiration of the time for filing statements in support of  
52 or in opposition to the proposed rulemaking, or within ninety days after the hearing on such  
53 proposed rulemaking if a hearing is held thereon, the state agency proposing the rule shall file

54 with the secretary of state a final order of rulemaking either adopting the proposed rule, with or  
55 without further changes, or withdrawing the proposed rule, which order of rulemaking shall be  
56 published in the Missouri Register. Such ninety days shall be tolled for the time period any rule  
57 is held under abeyance pursuant to an executive order. If the state agency fails to file the order  
58 of rulemaking as indicated in this subsection, the proposed rule shall lapse and shall be null, void  
59 and unenforceable.

60 6. The final order of rulemaking shall contain:

61 (1) Reference to the date and page or pages where the notice of proposed rulemaking was  
62 published in the Missouri Register;

63 (2) An explanation of any change between the text of the rule as contained in the notice  
64 of proposed rulemaking and the text of the rule as finally adopted, together with the reason for  
65 any such change;

66 (3) The full text of any section or subsection of the rule as adopted which has been  
67 changed from that contained in the notice of proposed rulemaking;

68 (4) A brief summary of the general nature and extent of comments submitted in support  
69 of or in opposition to the proposed rule and a concise summary of the testimony presented at the  
70 hearing, if any, held in connection with said rulemaking, together with a concise summary of the  
71 state agency's findings with respect to the merits of any such testimony or comments which are  
72 opposed in whole or in part to the proposed rule; and

73 (5) The legal authority upon which the order of rulemaking is based.

74 7. Except as provided in section 536.025, any rule, or amendment or rescission thereof,  
75 shall be null, void and unenforceable unless made in accordance with the provisions of this  
76 section.

77 8. Except as provided in subsection 1 of this section and subsection 4 of section 536.031,  
78 after the final order of rulemaking has been published in the Missouri Register, the text of the  
79 entire rule shall be published in full in the Missouri code of state regulations. No rule, except  
80 an emergency rule, shall become effective prior to the thirtieth day after the date of publication  
81 of the revision to the Missouri code of state regulations. The secretary of state shall distribute  
82 revisions of the Missouri code of state regulations to all subscribers of the Missouri code of state  
83 regulations on or before the date of publication of such revision. The publication date of each  
84 rule shall be printed below the rule in the Missouri code of state regulations, provided further,  
85 that rules pertaining to changes in hunting or fishing seasons and limits that must comply with  
86 federal requirements or that are necessary because of documented changes in fish and game  
87 populations may become effective no earlier than on the tenth day after the filing of the final  
88 order of rulemaking.

89           9. If it is found in a contested case by an administrative or judicial fact finder that a state  
90 agency's action was based upon a statement of general applicability which should have been  
91 adopted as a rule, as required by sections 536.010 to 536.050, and that agency was put on notice  
92 in writing of such deficiency prior to the administrative or judicial hearing on such matter, then  
93 the administrative or judicial fact finder shall award the prevailing nonstate agency party its  
94 reasonable attorney's fees incurred prior to the award, not to exceed the amount in controversy  
95 in the original action. This award shall constitute a reviewable order. If a state agency in a  
96 contested case grants the relief sought by the nonstate party prior to a finding by an  
97 administrative or judicial fact finder that the agency's action was based on a statement of general  
98 applicability which should have been adopted as a rule, but was not, then the affected party may  
99 bring an action in the circuit court of Cole County for the nonstate party's reasonable attorney's  
100 fees incurred prior to the relief being granted, not to exceed the amount in controversy in the  
101 original action.

102           10. The actions authorized by subsection 9 of this section shall [not] apply to the  
103 department of revenue if that department implements the authorization hereby granted to the  
104 director or the director's duly authorized agents to issue letter rulings which shall bind the  
105 director or the director's agents and their successors for a minimum of three years, subject to the  
106 terms and conditions set forth in properly published regulations. An unfavorable letter ruling  
107 shall not bind the applicant and shall not be appealable to any forum. Subject to appropriations,  
108 letter rulings shall be published periodically with information identifying the taxpayer deleted.  
109 For the purposes of this subsection, the term "letter ruling" means a written interpretation of law  
110 by the director to a specific set of facts provided by a nonstate party.

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