

FIRST REGULAR SESSION

HOUSE BILL NO. 964

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BAHR.

1277H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 536.014, 536.028, and 536.037, RSMo, and to enact in lieu thereof three 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Section A. Sections 536.014, 536.028, and 536.037, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 536.014, 536.028, and 536.037, to read as follows:

536.014. No department, agency, commission or board rule shall be valid in the event that:

- (1) There is an absence of statutory authority for the rule or any portion thereof; [or]
- (2) The rule is in conflict with state law; [or]
- (3) **The rule is contrary to the clear intent of the general assembly as demonstrated by legislative history; or**
- (4) The rule is so arbitrary and capricious as to create such substantial inequity as to be unreasonably burdensome on persons affected.

536.028. 1. Notwithstanding provisions of this chapter to the contrary, the delegation of authority to any state agency to propose to the general assembly rules as provided under this section is contingent upon the agency complying with the provisions of this chapter and this delegation of legislative power to the agency to propose a final order of rulemaking containing a rule or portion thereof that has the effect of substantive law, other than a rule relating to the agency's organization and internal management, is contingent and dependent upon the power of the general assembly to review such proposed order of rulemaking, to delay the effective date of such proposed order of rulemaking until the expiration of at least thirty legislative days of a

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.

9 regular session after such order is filed with the general assembly and the secretary of state, and
10 to disapprove and annul any rule or portion thereof contained in such order of rulemaking.

11 2. No rule or portion of a rule that has the effect of substantive law shall become
12 effective until the final order of rulemaking has been reviewed by the general assembly in
13 accordance with the procedures provided pursuant to this chapter. Any agency's authority to
14 propose an order of rulemaking is dependent upon the power of the general assembly to
15 disapprove and annul any such proposed rule or portion thereof.

16 3. In order for the general assembly to have an effective opportunity to be advised of
17 rules proposed by any state agency, an agency shall propose a rule or order of rulemaking by
18 complying with the procedures provided in this chapter, except that the notice of proposed
19 rulemaking shall first be filed with the general assembly by providing a copy thereof to the joint
20 committee on administrative rules, which may hold hearings upon any proposed rule, order of
21 rulemaking or portion thereof at any time. The agency shall cooperate with the joint committee
22 on administrative rules by providing any witnesses, documents or information within the control
23 of the agency as may be requested.

24 4. Such proposed order of rulemaking shall not become effective prior to the expiration
25 of thirty legislative days of a regular session after such order is filed with the secretary of state
26 and the joint committee on administrative rules.

27 5. The committee may, by majority vote of its members, recommend that the general
28 assembly disapprove and annul any rule or portion thereof contained in an order of rulemaking
29 after hearings thereon and upon a finding that such rule or portion thereof should be disapproved
30 and annulled. Grounds upon which the committee may recommend such action include, but are
31 not limited to:

32 (1) Such rule is substantive in nature in that it creates rights or liabilities or provides for
33 sanctions as to any person, corporation or other legal entity; and

34 (2) Such rule or portion thereof is not in the public interest or is not authorized by the
35 general assembly for one or more of the following grounds:

36 (a) An absence of statutory authority for the proposed rule;

37 (b) The proposed rule is in conflict with state law;

38 (c) Such proposed rule is likely to substantially endanger the public health, safety or
39 welfare;

40 (d) The rule exceeds the purpose, or is more restrictive than is necessary to carry out the
41 purpose, of the statute granting rulemaking authority;

42 (e) A substantial change in circumstance has occurred since enactment of the law upon
43 which the proposed rule is based as to result in a conflict between the purpose of the law and the
44 proposed rule, or as to create a substantial danger to public health and welfare; [or]

45 **(f) The proposed rule is not efficient as revealed by a cost benefit analysis;**
46 **(g) The proposed rule creates new classifications of persons, groups, or businesses**
47 **subject to varying outcomes and requirements if such goals are not explicitly authorized**
48 **by the enabling statute; or**

49 **(h)** The proposed rule is so arbitrary and capricious as to create such substantial
50 inequity as to be unreasonably burdensome on persons affected.

51 6. Any recommendation or report issued by the committee pursuant to subsection 5 of
52 this section shall be admissible as evidence in any judicial proceeding and entitled to judicial
53 notice without further proof.

54 7. The general assembly may adopt a concurrent resolution in accordance with the
55 provisions of article IV, section 8 of the Missouri Constitution to disapprove and annul any rule
56 or portion thereof.

57 8. Any rule or portion thereof not disapproved within thirty legislative days of a regular
58 session pursuant to subsection 7 of this section shall be deemed approved by the general
59 assembly and the secretary of state may publish such final order of rulemaking as soon as
60 practicable upon the expiration of thirty legislative days of a regular session after the final order
61 of rulemaking was filed with the secretary of state and the joint committee on administrative
62 rules.

63 9. Upon adoption of such concurrent resolution as provided in subsection 7 of this
64 section, the secretary of state shall not publish the order of rulemaking until the expiration of
65 time necessary for such resolution to be signed by the governor, or vetoed and subsequently acted
66 upon by the general assembly pursuant to article III, section 32 of the Missouri Constitution. If
67 such concurrent resolution is adopted and signed by the governor or otherwise reconsidered
68 pursuant to article III, section 32, the secretary of state shall publish in the Missouri Register, as
69 soon as practicable, the order of rulemaking along with notice of the proposed rules or portions
70 thereof which are disapproved and annulled by the general assembly.

71 10. Notwithstanding the provisions of section 1.140, the provisions of this section,
72 section 536.021 and section 536.025 are nonseverable and the delegation of legislative authority
73 to an agency to propose orders of rulemaking is essentially dependent upon the powers vested
74 with the general assembly as provided herein. If any of the powers vested with the general
75 assembly or the joint committee on administrative rules to review, to hold in abeyance the rule
76 pending action by the general assembly, to delay the effective date or to disapprove and annul
77 a rule or portion of a rule contained in an order of rulemaking, are held unconstitutional or
78 invalid, the purported grant of rulemaking authority and any rule so proposed and contained in
79 the order of rulemaking shall be revoked and shall be null, void and unenforceable.

80 11. Nothing in this section shall prevent the general assembly from adopting by
81 concurrent resolution or bill within thirty legislative days of a regular session the rules or
82 portions thereof, or as the same may be amended or annulled, as contained in a proposed order
83 of rulemaking. In that event, the proposed order of rulemaking shall have been superseded and
84 the order and any rule proposed therein shall be null, void and unenforceable. The secretary of
85 state shall not publish a proposed order of rulemaking acted upon as described herein.

86 12. Upon adoption of any rule now or hereafter in effect, such rule or portion thereof
87 may be revoked by the general assembly either by bill or by concurrent resolution pursuant to
88 article IV, section 8 of the constitution on recommendation of the joint committee on
89 administrative rules. The secretary of state shall publish in the Missouri Register, as soon as
90 practicable, notice of the revocation.

91 13. This section shall become effective only upon the expiration of twenty calendar days
92 following the:

93 (1) Failure of the executive to sign executive order number 97-97; or

94 (2) Modification, amendment or rescission of executive order number 97-97; or

95 (3) An agency's failure to hold the rule in abeyance as required by executive order
96 number 97-97; or

97 (4) Declaration by a court with jurisdiction that section 536.024 or any portion of
98 executive order number 97-97 is unconstitutional or invalid for any reason. Notwithstanding the
99 provisions of this subsection to the contrary, no modification, amendment or rescission of
100 executive order number 97-97 or failure to hold a rule in abeyance shall make this section
101 effective if the modification, amendment or rescission of the executive order or failure to hold
102 the rule in abeyance is approved by the general assembly by concurrent resolution.

536.037. 1. There is established a permanent joint committee of the general assembly
2 to be known as the "Committee on Administrative Rules", which shall be composed of five
3 members of the senate and five members of the house of representatives. The senate members
4 of the committee shall be appointed by the president pro tem of the senate and the house
5 members by the speaker of the house. The appointment of each member shall continue during
6 his term of office as a member of the general assembly unless sooner removed. No major party
7 shall be represented by more than three appointed members from either house.

8 2. The committee on administrative rules shall meet within ten days after its creation and
9 organize by selecting a chairman and a vice chairman, one of whom shall be a member of the
10 senate and one of whom shall be a member of the house of representatives. A majority of the
11 members constitutes a quorum. Meetings of the committee may be called at such time and place
12 as the chairman designates.

13 3. The committee shall review all rules promulgated by any state agency after January
14 1, 1976[, except rules promulgated by the labor and industrial labor relations commission]. In
15 its review the committee may take such action as it deems necessary which may include holding
16 hearings.

17 4. The members of the committee shall receive no compensation in addition to their
18 salary as members of the general assembly, but may receive their necessary expenses while
19 attending the meetings of the committee, to be paid out of the joint contingent fund.

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