

## SENATE COMMITTEE SUBSTITUTE

FOR

SENATE BILL NO. 180

AN ACT

To repeal sections 536.021 and 536.175, RSMo, and to enact in lieu thereof two new sections relating to administrative rules.

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

Section A. Sections 536.021 and 536.175, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 536.021 and 536.175, to read as follows: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 No rule shall hereafter be proposed, adopted, amended or rescinded by any state agency unless such agency shall first file with the secretary of state a notice of proposed rulemaking and a subsequent final order of rulemaking,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.

2. A notice of proposed rulemaking shall contain:

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

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

(3) The text of the entire proposed rule or the entire text of any affected section or subsection of an existing rule which is proposed to be amended, with all new matter printed in boldface type and with all deleted matter placed in brackets, except that when a proposed rule consists of material so extensive that the publication thereof would be unduly cumbersome or expensive, the secretary of state need publish only a summary and description of the substance of the proposed rule so long as a complete copy of the rule is made immediately available to any interested person upon application to the adopting state agency at a cost not to exceed the actual cost of reproduction. A proposed rule may incorporate by reference only if the material so incorporated is retained at the headquarters of the state agency and made available to any interested person at a cost not to exceed the actual cost of the reproduction of a copy. When a proposed amendment to an existing rule is to correct a typographical or printing error, or merely to make a technical change not affecting substantive matters, the

amendment may be described in general terms without reprinting the entire existing rule, section or subsection;

(4) The number and general subject matter of any existing rule proposed to be rescinded;

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

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

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

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

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

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

6. The final order of rulemaking shall contain:

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

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

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

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

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

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

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

9. If it is found in a contested case by an administrative or judicial fact finder that a state agency's action was based upon a statement of general applicability which should have been adopted as a rule, as required by sections 536.010 to 536.050, and that agency was put on notice in writing of such deficiency prior to the administrative or judicial hearing on such matter, then the administrative or judicial fact finder shall award the prevailing nonstate agency party its reasonable attorney's fees incurred prior to the award, not to exceed the amount in controversy in the original action. This award shall constitute a reviewable order. If a state agency in a contested case grants the relief sought by the nonstate party prior to a finding by an administrative or judicial

fact finder that the agency's action was based on a statement of general applicability which should have been adopted as a rule, but was not, then the affected party may bring an action in the circuit court of Cole County for the nonstate party's reasonable attorney's fees incurred prior to the relief being granted, not to exceed the amount in controversy in the original action.

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

11. No rule shall be adopted or amended by any state agency pursuant to this section unless such agency rescinds a rule that is unnecessary, obsolete, or burdensome. Pursuant to subdivision (4) of subsection 2 of this section, the rule to be rescinded shall be listed in the notice of proposed rulemaking. The joint committee on administrative rules may grant an exception to the requirement of this subsection upon application by the state agency for good cause. This subsection shall not apply to the following:

(1) A proposed amendment to an existing rule for a correction of typographical or printing errors;

(2) A proposed rule or proposed amendment to an existing rule in which the rule or amendment does not:

(a) Affect substantive matters; and

(b) Impose new burdens or requirements on individuals, businesses, or political subdivisions; or

(3) A proposed rule or proposed amendment to an existing rule was necessitated and created pursuant to rulemaking authority newly delegated by an act of the general assembly to the agency.

12. All rules adopted by any state agency pursuant to this section shall expire on January 1 of the fifth year after the year in which the rule takes effect, unless the rule contains an earlier expiration date. All rules in effect on January 1, 2022 shall expire on January 1, 2027. The expiration date of a rule shall be extended each time that a rule amending an unexpired rule takes effect. The provisions of subsection 11 of this section shall not apply to an order of rulemaking reauthorizing a rule set to expire or an expired rule.

13. The provisions of subsections 11 and 12 of this section shall not apply to any proposed or existing rules promulgated by a board, commission, committee, council, or office assigned to the division of professional registration.

536.175. 1. Each state agency shall periodically review all of its rules according to the following review schedule:

(1) Rules contained in titles 1 through 6 of the code of state regulations shall begin the review process no later than July 1, 2015, and every five years thereafter;

(2) Rules contained in titles 7 through 10 of the code of state regulations shall begin the review process no later than July 1, 2016, and every five years thereafter;

(3) Rules contained in titles 11 through 14 of the code of state regulations shall begin the review process no later than July 1, 2017, and every five years thereafter;

(4) Rules contained in titles 15 through 19 of the code of state regulations shall begin the review process no later than July 1, 2018, and every five years thereafter; and

(5) Rules contained in titles 20 and higher of the code of state regulations shall begin the review process no later than July 1, 2019, and every five years thereafter.

2. The joint committee on administrative rules shall cause a notification of agency review to be published in the Missouri Register indicating rules being reviewed under this section and shall contain:

(1) Which titles of the code of state regulations will be under review;

(2) A notice that anyone may file comments concerning the rules being reviewed no later than sixty days after publication of the notice in the Missouri Register;

(3) A notice that all comments must identify the commenter, must specify the rule being commented upon, and must contain comments directly associated to that rule;

(4) A listing of agency designee assigned to receive comments on rules under review.

3. State agencies shall provide the joint committee on administrative rules contact information for the agency designee assigned to receive comments under subsection 2 of this section.

4. Each agency with rules being reviewed shall prepare a report containing the results of its periodic rule review. The report shall consider and include the following:

(1) Whether the rule continues to be necessary, taking into consideration the purpose, scope, and intent of the statute under which the rule was adopted;

(2) Whether the rule is obsolete, taking into consideration the length of time since the rule was modified and the degree to which technology, economic conditions, or other relevant factors have changed in the subject area affected by the rule;

(3) Whether the rule overlaps, duplicates, or conflicts with other state rules, and to the extent feasible, with federal and local governmental rules;

(4) Whether a less restrictive, more narrowly tailored, or alternative rule could adequately protect the public or accomplish the same statutory purpose;

(5) Whether the rule needs amendment or rescission to reduce regulatory burdens on individuals, businesses, or political subdivisions or eliminate unnecessary paperwork;

(6) Whether the rule incorporates a text or other material by reference and, if so, whether the text or other material incorporated by reference meets the requirements of section 536.031;

(7) For rules that affect small business, the specific public purpose or interest for adopting the rules and any other reasons to justify its continued existence; and

(8) The nature of the comments received by the agency under subsection 2 of this section, a summary of which shall be attached to the report as an appendix and shall include the agency's responses thereto.

5. Each agency with rules subject to review shall cause their report to be filed electronically with the joint committee on administrative rules and the small business regulatory fairness board no later than June thirtieth of the year after publication of agency review in the Missouri Register under subsection 2 of this section. The reports shall also be made available on the state agency's website. If the state agency fails to file the report as required by

this section for any rule and has not received an extension for good cause from the joint committee on administrative rules, the joint committee on administrative rules shall notify the secretary of state to publish a notice as soon as practicable in the Missouri Register as to which rules the delinquency exists. The rule shall be void and of no further effect after the first sixty legislative days of the next regular session of the general assembly unless the state agency corrects the delinquency by providing the required review within ninety days after publication. Upon determination that the agency has complied with the requirements of this section regarding any delinquency that resulted in notice being published, the joint committee on administrative rules shall notify the secretary of state to remove the rule from the notice of rules scheduled to become null and void.

6. Any rules identified in the report as unnecessary, obsolete, overlapping, duplicating, or conflicting with other state rules, accomplished by a less restrictive rule, or burdensome shall be amended or rescinded pursuant to section 536.021 no later than a year after the report is submitted to the joint committee on administrative rules, unless the state agency provides good cause to the joint committee on administrative rules as to why the rule shall not be amended or rescinded to address the considerations listed in subdivisions (1) to (5) of subsection 4 of this section.