

SECOND REGULAR SESSION

# HOUSE BILL NO. 2664

98TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE MCGAUGH.

6687H.011

D. ADAM CRUMBLISS, Chief Clerk

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## AN ACT

To repeal sections 536.025, 536.200, and 536.205, RSMo, and to enact in lieu thereof three new sections relating to emergency rules.

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

Section A. Sections 536.025, 536.200, and 536.205, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 536.025, 536.200, and 536.205, to read as follows:

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 A rule may be made, amended or rescinded by a state agency without following the provisions of section 536.021, only if the state agency:

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

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

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

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

2. At the time of or prior to the adoption of such rule, the agency shall file with the secretary of state and the joint committee on administrative rules the text of the rule **and the fiscal note required by sections 536.200 and 536.205** together with the specific facts, reasons, and findings which support the agency's conclusion that the agency has fully complied with the requirements of subsection 1 of this section. If an agency finds that a rule is necessary to

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.

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] **As soon as  
22 practicable after a filing by an agency of materials under subsection 2 of this section, the  
23 secretary of state shall:**

24 **(1) Publish such materials in the Missouri Register;**

25 **(2) Email such materials to persons who have registered to be notified of the  
26 agency's actions through the secretary of state's administrative rules notification system;  
27 and**

28 **(3) Publish such materials on the official website of the secretary of state.**  
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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 days after [the filing thereof in the office of] the secretary of state **complies with the provisions**  
59 **of subdivisions (2) and (3) of section 3 of this section**, or at such later date as may be specified  
60 in the rule, and may be terminated at any time by the state agency by filing an order with the  
61 secretary of state fixing the date of such termination, which order shall be published by the  
62 secretary of state in the Missouri Register as soon as practicable after the filing 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.

536.200. 1. Any state agency filing a notice of proposed rulemaking, as required by  
2 section 536.021, **or any 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 by the director of the department to which the agency belongs that  
12 in the director's opinion the estimate is reasonably accurate. If no fiscal note is filed, the director  
13 of the department to which the agency belongs shall file an affidavit which states that the  
14 proposed change will cost less than five hundred dollars in the aggregate to all such agencies and  
15 political subdivisions.

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

24 3. The estimated cost in the aggregate shall be published in the Missouri Register  
25 contemporary with and adjacent to the notice of proposed rulemaking, and failure to do so shall  
26 render any rule promulgated thereunder void and of no force or effect.

27 4. Any challenge to a rule based on failure to meet the requirements of this section shall  
28 be commenced within five years after the effective date of the rule.

29 5. In the event that any rule published prior to June 3, 1994, shall have failed to provide  
30 a fiscal note as required by this section, such agency shall publish the required fiscal note  
31 cross-referenced to the applicable rule prior to August 28, 1995, and in that event the rule shall  
32 not be void. Any such rule shall be deemed to have met the requirements of this section until  
33 that date.

536.205. 1. Any state agency filing a notice of proposed rulemaking, as required by  
2 section 536.021, **or any emergency rule, as required by section 536.025**, whereby the  
3 adoption, amendment, or rescission of the rule would require an expenditure of money by or a  
4 reduction in income for any person, firm, corporation, association, partnership, proprietorship  
5 or business entity of any kind or character which is estimated to cost more than five hundred  
6 dollars in the aggregate, shall at the time of filing the notice with the secretary of state file a  
7 fiscal note 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. The fiscal note shall be published in the Missouri Register contemporary with and  
17 adjacent to the notice of proposed rulemaking, and failure to do so shall render any rule  
18 promulgated thereunder void and of no force and effect.

19 3. Any challenge to a rule based on failure to meet the requirements of this section shall  
20 be commenced no later than five years after the effective date of the rule.

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

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