

SENATE SUBSTITUTE

FOR

HOUSE SUBSTITUTE

FOR

HOUSE COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 978

AN ACT

To repeal section 536.010, RSMo, and to enact in lieu thereof six new sections relating to small businesses.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,
AS FOLLOWS:

1 Section A. Section 536.010, RSMo, is repealed and six new
2 sections enacted in lieu thereof, to be known as sections
3 536.010, 536.300, 536.305, 536.310, 536.315, and 536.325, to read
4 as follows:

5 536.010. For the purpose of this chapter:

6 (1) "Affects small business", any requirement imposed upon
7 a small business through a state agency's proposed or adopted
8 rule that will cause direct and significant economic burden upon
9 a small business;

10 (2) "Agency" means any administrative officer or body
11 existing under the constitution or by law and authorized by law
12 or the constitution to make rules or to adjudicate contested
13 cases;

14 (3) "Board", the small business regulatory fairness board;

15 [(2)] (4) "Contested case" means a proceeding before an
16 agency in which legal rights, duties or privileges of specific

1 parties are required by law to be determined after hearing;

2 [(3)] (5) The term "decision" includes decisions and
3 orders whether negative or affirmative in form;

4 [(4)] (6) "Rule" means each agency statement of general
5 applicability that implements, interprets, or prescribes law or
6 policy, or that describes the organization, procedure, or
7 practice requirements of any agency. The term includes the
8 amendment or repeal of an existing rule, but does not include:

9 (a) A statement concerning only the internal management of
10 an agency and which does not substantially affect the legal
11 rights of, or procedures available to, the public or any segment
12 thereof;

13 (b) A declaratory ruling issued pursuant to section
14 536.050, or an interpretation issued by an agency with respect to
15 a specific set of facts and intended to apply only to that
16 specific set of facts;

17 (c) An intergovernmental, interagency, or intraagency
18 memorandum, directive, manual or other communication which does
19 not substantially affect the legal rights of, or procedures
20 available to, the public or any segment thereof;

21 (d) A determination, decision, or order in a contested
22 case;

23 (e) An opinion of the attorney general;

24 (f) Those portions of staff manuals, instructions or other
25 statements issued by an agency which set forth criteria or
26 guidelines to be used by its staff in auditing, in making
27 inspections, in settling commercial disputes or negotiating
28 commercial arrangements, or in the selection or handling of

1 cases, such as operational tactics or allowable tolerances or
2 criteria for the defense, prosecution, or settlement of cases,
3 when the disclosure of such statements would enable law violators
4 to avoid detection, facilitate disregard of requirements imposed
5 by law, or give a clearly improper advantage to persons who are
6 in an adverse position to the state;

7 (g) A specification of the prices to be charged for goods
8 or services sold by an agency as distinguished from a license
9 fee, or other fees;

10 (h) A statement concerning only the physical servicing,
11 maintenance or care of publicly owned or operated facilities or
12 property;

13 (i) A statement relating to the use of a particular
14 publicly owned or operated facility or property, the substance of
15 which is indicated to the public by means of signs or signals;

16 (j) A decision by an agency not to exercise a discretionary
17 power;

18 (k) A statement concerning only inmates of an institution
19 under the control of the department of corrections and human
20 resources or the division of youth services, students enrolled in
21 an educational institution, or clients of a health care facility,
22 when issued by such an agency;

23 (l) Statements or requirements establishing the conditions
24 under which persons may participate in exhibitions, fairs or
25 similar activities, managed by the state or an agency of the
26 state;

27 (m) Income tax or sales forms, returns and instruction
28 booklets prepared by the state department of revenue for

1 distribution to taxpayers for use in preparing tax returns[.];

2 (7) "Small business", a for-profit enterprise consisting of
3 fewer than fifty full or part-time employees;

4 [(5)] (8) "State agency" means each board, commission,
5 department, officer or other administrative office or unit of the
6 state other than the general assembly, the courts, the governor,
7 or a political subdivision of the state, existing under the
8 constitution or statute, and authorized by the constitution or
9 statute to make rules or to adjudicate contested cases.

10 536.300. 1. Prior to submitting proposed rules for
11 adoption, amendment, revision, or repeal, the state agency shall
12 determine whether the proposed rulemaking affects small
13 businesses and, if so, the availability and practicability of
14 less restrictive alternatives that could be implemented to
15 achieve the same results of the proposed rulemaking. This
16 requirement shall not apply to emergency rulemaking pursuant to
17 section 536.025 or to constitutionally authorized rulemaking
18 pursuant to Article IV, Section 45 of the Missouri Constitution.
19 This requirement shall be in addition to the fiscal note
20 requirement of sections 536.200 to 536.210.

21 2. If the proposed rules affect small businesses, the state
22 agency shall prepare a small business impact statement to be
23 submitted to the secretary of state and the joint committee on
24 administrative rules with the proposed rules. A copy of the
25 proposed rules and the small business impact statement shall also
26 be filed with the board on the same date as they are filed with
27 the secretary of state. The statement shall provide a reasonable
28 determination of the following:

1 (1) The methods the agency considered or used to reduce the
2 impact on small businesses such as consolidation, simplification,
3 differing compliance, or reporting requirements, less stringent
4 deadlines, performance rather than design standards, exemption,
5 or any other mitigating techniques;

6 (2) How the agency involved small businesses in the
7 development of the proposed rules;

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

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

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

27 3. Any proposed rule that is required to have a small
28 business impact statement but does not include such a statement

1 shall be invalid and the secretary of state should not publish
2 the rule until such time as the statement is provided. If the
3 state agency determines that its proposed rule does not affect
4 small business, the state agency shall so certify this finding in
5 the transmittal letter to the secretary of state, stating that it
6 has determined that such proposed rule will not have an economic
7 impact on small businesses and the secretary of state shall
8 publish the rule.

9 4. Sections 536.300 to 536.310 shall not apply where the
10 proposed rule is being promulgated on an emergency basis, where
11 the rule is federally mandated, or where the rule substantially
12 codifies existing federal or state law. Notwithstanding the
13 provisions of this section, federally mandated regulations are
14 subject to the federal Regulatory Flexibility Act as amended by
15 the Small Business Regulatory and Enforcement Fairness Act of
16 1996, P.L. 96-354, as amended by P.L. 104.121. Any federally
17 mandated regulations that do not comply with these acts shall be
18 subject to this section.

19 536.305. 1. There is hereby established the "Small
20 Business Regulatory Fairness Board". The department of economic
21 development shall provide staff support for the board.

22 2. The board shall be composed of nine members appointed in
23 the following manner:

24 (1) One member who is the chair of the minority business
25 advocacy commission;

26 (2) One member appointed by the president pro tempore of
27 the senate;

28 (3) One member appointed by the minority leader of the

1 senate;

2 (4) One member appointed by the speaker of the house of
3 representatives;

4 (5) One member appointed by the minority leader of the
5 house of representatives; and

6 (6) Four members appointed by the governor.

7 3. Each member of the board, except for the public members
8 and the chair of the minority business advocacy commission, shall
9 be a current or former owner or officer of a small business. All
10 members of the board shall represent a variety of small
11 businesses, both rural and urban, and from a variety of
12 geographical areas of this state, provided that no more than two
13 members shall represent the same type of small business.

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

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

28 6. The board shall meet as often as necessary, as

1 determined by the chairperson of the board. All meetings of the
2 board will be conducted in accordance with the governmental
3 bodies and records act, chapter 610, RSMo, including closed
4 sessions. Notice will be posted and will be provided to the
5 joint committee on administrative rules. Minutes of the meetings
6 shall be provided to all members, the office of the governor, and
7 the joint committee on administrative rules.

8 536.310. 1. The board may:

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

11 (2) Solicit input and conduct hearings from small business
12 owners and state agencies regarding any rules proposed by a state
13 agency; and

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

20 2. In any inquiry conducted by the board because of a
21 request from a small business owner, the board may make
22 recommendations to the state agency. If the board makes
23 recommendations, such recommendations shall be based on any of
24 the following grounds:

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

28 (2) New or significant economic information indicates the

1 proposed rule would create an undue impact on small businesses;
2 or

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

6 (4) If the rule was adopted after August 28, 2004, whether
7 the actual effect on small businesses was not reflected in or
8 significantly exceeded the small business impact statement
9 submitted prior to the adoption of the rules.

10 536.315. Any state agency receiving recommendations from
11 the board shall promptly consider such recommendations and may
12 file a response with the board within sixty days of receiving the
13 board's recommendations. If the state agency determines that no
14 action shall be taken on the board's recommendations, the agency
15 should explain its reasons for its determination. If the state
16 agency determines that the board's recommendations merit
17 adoption, amendment or repeal of a rule, the agency should
18 indicate this in its response.

19 536.325. 1. Any state agency authorized to assess
20 administrative penalties or administrative fines upon a small
21 business may consider waiving or reducing any administrative
22 penalty or administrative fine for a violation of any statute,
23 ordinance, or rules by a small business under the following
24 conditions:

25 (1) The small business corrects the violation within thirty
26 days after receipt of a notice of violation or citation;

27 (2) The violation was unintentional or the result of
28 excusable neglect;

1 (3) The violation was the result of an excusable
2 misunderstanding of a state agency's interpretation of a rule; or

3 (4) The small business self-identifies the violation.

4 2. Subsection 1 of this section shall not apply when:

5 (1) A small business fails to exercise good faith in
6 complying with the statute, ordinance, or rule;

7 (2) A violation involves willful or criminal conduct;

8 (3) The violation is deemed by the state agency to be
9 egregious;

10 (4) A violation results in serious health, safety, or
11 environmental impact;

12 (5) The penalty or fine is assessed pursuant to a federal
13 law or regulation for which no waiver or reduction is authorized
14 by the federal law or regulation; or

15 (6) There is a continuing pattern of similar violations by
16 the small business.