

Appendixes



Forms

The following forms are included for the use of agencies filing rulemakings. They may be reproduced as needed. They may also be found online at www.sos.mo.gov/adrules/forms.asp.

Rule Transmittal6.01B
Affidavit (Public Cost)6.01C
Affidavit (Public No Cost)6.01D
Fiscal Note Public Cost Instructions6.01E
Fiscal Note Public Cost6.01F
Fiscal Note Private Cost Instructions6.01G
Fiscal Note Private Cost6.01H
Delegation of Authority6.01I
Certification Letter6.01J

State Agency Small Business Impact Statement Form can be obtained at www.sbrfb.ded.mo.gov/info.htm or our link above.

Administrative Rules Stamp

ROBIN CARNAHAN
Secretary of State
Administrative Rules Division
RULE TRANSMITTAL

Rule Number _____

Use a "SEPARATE" rule transmittal sheet for EACH individual rulemaking.

Name of person to call with questions about this rule:

Content _____ Phone _____ FAX _____

E-mail address _____

Data entry _____ Phone _____ FAX _____

E-mail address _____

Interagency mailing address _____

TYPE OF RULEMAKING ACTION TO BE TAKEN

- Emergency rulemaking, include effective date _____
 - Proposed Rulemaking
 - Withdrawal Rule Action Notice In Addition Rule Under Consideration
 - Order of Rulemaking
- Effective Date for the Order
 Statutory 30 days OR Specific date _____
- Does the Order of Rulemaking contain changes to the rule text? NO
 YES— LIST THE SECTIONS WITH CHANGES, including any deleted rule text:

Small Business Regulatory
Fairness Board (DED) Stamp

JCAR Stamp

AFFIDAVIT
(PUBLIC COST)

STATE OF MISSOURI)
) ss.
COUNTY OF (Name))

I, *name of person with authority, name of department, board or commission*, first being duly sworn on my oath, state that it is my opinion that the attached fiscal note for the proposed rule/proposed amendment or proposed rescission (whichever is applicable) of (*Rule No.* _____) is a reasonably accurate estimate.

signature of person with authority
Name of proper authority
Title of proper authority
Name of department , board or commission

Subscribed and sworn to before me this _____ day of *month, year*. I am commissioned as a notary public within the County of *name of county*, State of Missouri, and my commission expires on *date*.

Notary Public

AFFIDAVIT
(PUBLIC NO COST)

STATE OF MISSOURI)
) ss.
COUNTY OF (Name))

I, *name of person with authority, name of department, board or commission*, first being duly sworn on my oath, state that it is my opinion that the cost of (proposed rule/proposed amendment or proposed rescission, whichever is applicable) of (*Rule No.* _____) is less than five hundred dollars in the aggregate to this agency, any other agency of state government or any political subdivision thereof.

signature of person with authority
Name of proper authority
Title of proper authority
Name of department , board or commission

Subscribed and sworn to before me this _____ day of *month, year*. I am commissioned as a notary public within the County of *name of county*, State of Missouri, and my commission expires on *date*.

Notary Public

**FISCAL NOTE
PUBLIC COST
INSTRUCTIONS**

01/07

Section 536.200, RSMo 2000 requires a public fiscal note to provide the following information:

[An estimate of] the cost to each affected agency or to each class of the various political subdivisions to be affected. The fiscal note shall contain a detailed estimated cost of compliance and shall be supported with an affidavit by the director of the department to which the agency belongs that in the director's opinion the estimate is reasonably accurate.

The form provided by the Office of the Secretary of State is designed to help members of the public see this information in a consistent format. There are four (4) parts to the form: part I identifies the rule associated with the fiscal note, part II is a summary of fiscal impact, part III is reserved for more detailed fiscal information, and part IV describes the assumptions and methodology employed by the agency in completing the fiscal note. Instructions for completing the form follow.

Part I

Rule Number and Name: fill in the proposed rule number and name exactly as it appears in the proposed rulemaking.

Type of Rulemaking: fill in Proposed Rule, Proposed Amendment or Proposed Rescission as appropriate.

Part II

The Summary of Fiscal Impact section is designed to present a summary of the fiscal impact of proposed rulemakings consistently. If you have found that the proposed rulemaking will effect more than one (1) agency or political subdivision, use one (1) row for each agency or political subdivision. In the first column, fill in the name of the affected agency or political subdivision. In the second column, fill in the estimated cost of compliance in the aggregate (over the life of the rule).

Part III

The Worksheet area is designed for the agency to present more detailed fiscal information in a format of the agency's choosing.

Part IV

The Assumptions area is designed to present the agency's assumptions, references and methods of acquiring information that underlie the conclusions in the fiscal note. Examples of information that might be included here are the sources of information presented in the fiscal note, why you chose those sources, and eventualities that might cause the actual fiscal impact to be different from your estimate.

6.01E

**FISCAL NOTE
PUBLIC COST**

I. Department Title:

Division Title:

Chapter Title:

Rule Number and Name:	
Type of Rulemaking:	

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate

6.01F

III. WORKSHEET

IV. ASSUMPTIONS

**FISCAL NOTE
PRIVATE COST
INSTRUCTIONS**

Section 536.203, RSMo 2000 requires a private fiscal note to provide the following information:

- (1) An estimate of the number of persons, firms, corporations, associations, partnerships, proprietorships or business entities of any kind or character by class which would likely be affected by the adoption of the proposed rule, amendment or rescission of a rule;
- (2) A classification by types of the business entities in such manner as to give reasonable notice of the number and kind of businesses which would likely be affected;
- (3) An estimate in the aggregate as to the cost of compliance with the rule, amendment or rescission of a rule by the affected persons, firms, corporations, associations, partnerships, proprietorships or business entities of any kind or character.

The form provided by the Office of the Secretary of State is designed to help members of the public see this information in a consistent format. There are four (4) parts to the form: part I identifies the rule associated with the fiscal note, part II is a summary of fiscal impact, part III is reserved for more detailed fiscal information, and part IV describes the assumptions and methodology employed by the agency in completing the fiscal note. Instructions for completing the form follow.

Part I

Rule Number and Name: fill in the proposed rule number and name exactly as it appears in the proposed rulemaking.

Type of Rulemaking: fill in Proposed Rule, Proposed Amendment or Proposed Rescission as appropriate.

Part II

The Summary of Fiscal Impact section is designed to present a summary of the fiscal impact of proposed rulemakings cohesively. If you have found that the proposed rulemaking will affect more than one (1) category of businesses, use one (1) row for each category. In the first column, fill in the estimated number of businesses in the first category. In the second column, fill in the type of businesses in the category (i.e., what is the category?). In the third column, fill in the aggregate cost (over the life of the rule) to all businesses in this category. Complete one row for each category of businesses affected by the proposed rulemaking.

Part III

The Worksheet area is designed for the agency to present more detailed fiscal information in a format of the agency's choosing.

Part IV

The Assumptions area is designed to present the agency's assumptions, references and methods of acquiring information that underlie the conclusions in the fiscal note. Examples of information that might be included here are the sources of information presented in the fiscal note, why you chose those sources, and eventualities that might cause the actual fiscal impact to be different from your estimate.

**FISCAL NOTE
PRIVATE COST**

- I. Department Title:**
Division Title:
Chapter Title:

Rule Number and Title:	
Type of Rulemaking:	

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:

III. WORKSHEET

IV. ASSUMPTIONS

DELEGATION OF AUTHORITY

I hereby authorize the following individuals to sign **any** document on behalf of the (insert agency name). This delegation extends to all phases of the normal and emergency rulemaking process, as set out in Chapter 536, RSMo. The signature of one of the below designated individuals will serve as an authorized signature for our Department for **all** phases of the rulemaking process.

Name

Signature

Name

Signature

Name

Signature

This Delegation of Authority is effective immediately and may be amended or rescinded at any time by filing a written amendment or rescission with the Secretary of State.

Date

Director/Chairman

Date

01/10

Robin Carnahan
Secretary of State
Administrative Rules Division
600 West Main Street
Jefferson City, Missouri 65101

Re: *Rule Number and Title*

Dear Secretary Carnahan,

CERTIFICATION OF ADMINISTRATIVE RULE

I do hereby certify that the attached is an accurate and complete copy of the proposed rulemaking lawfully submitted by *name of your department, board, or commission*.

The *name of your department, board, or commission* has determined and hereby certifies that this proposed rulemaking will not have an economic impact on small businesses. The *name of your department, board, or commission* further certifies that it has conducted an analysis of whether or not there has been a taking of real property pursuant to section 536.017, RSMo 2000, that the proposed rulemaking does not constitute a taking of real property under relevant state and federal law, and that the proposed rulemaking conforms to the requirements of section 1.310, RSMo Supp. 2009, regarding user fees.

The *name of your department, board, or commission* has determined and hereby also certifies that this proposed rulemaking complies with the small business requirements of section 1.310, RSMo Supp. 2009, in that it does not have an adverse impact on small

businesses consisting of fewer than twenty-five full or part-time employees or it is necessary to protect the life, health, or safety of the public, or that this rulemaking complies with section 1.310, RSMo Supp. 2009, by exempting any small business consisting of fewer than twenty-five full or part-time employees from its coverage, by implementing a federal mandate, or by implementing a federal program administered by the state or an act of the general assembly.

Statutory Authority: sections *your agency's statute for rulemaking*.

If there are any questions regarding the content of this proposed rulemaking, please contact:

Name

Address

Phone Number

Email

Signature of proper authority

Name and title of proper authority

Name of department, board, or commission

6.01J

EXECUTIVE ORDERS

EXECUTIVE ORDER 02-05

WHEREAS, maintaining an clean environment, a safe and reliable food supply, a vibrant economy, and a high quality of life for all Missourians is a high priority of state government; and

WHEREAS, the authority to implement federal regulations, legislative mandates, and administrative priorities is often delegated to state agencies through the promulgation of rules; and

WHEREAS, often the mandate of one state agency to take regulatory or administrative action can have consequences for the missions of other agencies; and

WHEREAS, to ensure the protection of the public health and economic well-being of all citizens, while simultaneously ensuring the health of the state's economy and ecology, coordination between agencies in the development of rules is a high priority.

NOW, THEREFORE, I, Bob Holden, Governor of the State of Missouri, by virtue of the authority vested in me by the Laws and Constitution of the State of Missouri, do hereby direct the following state agencies to coordinate rule development: the Department of Natural Resources, the Department of Economic Development, the Department of Agriculture, the Department of Health and Senior Services, and the Department of Conservation. Such coordination shall include, but is not limited to, organized discussion of plans and actions and dissemination of scientific data and analysis.

To facilitate such interagency coordination, I further establish an executive team to review proposed rules and offer analysis of impacts across departments upon Missouri's citizens and entities, both public and private. Specific emphasis should be placed on regulations that would have a significant impact on the missions of other state agencies.

The team shall be composed of the following Department Directors and members of the executive branch or their designated representative:

The Director of the Department of Natural Resources;
The Director of the Department of Economic Development;
The Director of the Department of Agriculture;
Director of the Department of Health and Senior Services;
Director of the Department of Conservation;
A member of the Governor's staff.

As soon as possible after completing a draft of a proposed rule, but in any case no less than 30 days before a proposed regulation regarding environmental quality, human health, or economic and rural development is filed by one of the agencies of state government represented on the

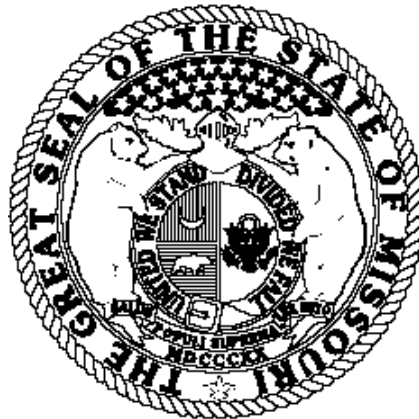
EXECUTIVE ORDERS

team, the initiating department shall provide copies of the proposed rule to all other executive team members. Team members shall review the proposed rules and may provide comments, questions, or suggestions relating to the rule to the proposing department within 30 days of being provided the proposed rule. Rules proposed as an emergency meeting the requirements of Section 536.025 RSMo 2000 (as amended) shall be exempt from review by the executive team. Nothing in this executive order shall prohibit the state agencies represented on the executive team from filing non-emergency rules without following the procedures described above when following such procedures would be impractical, provided that the agency informs the other executive team members of its actions to the greatest practical extent.

Team members shall also strive to coordinate policy development on issues that have a direct impact on the missions of other state agencies represented on the team. The team shall develop procedures for facilitating such coordination.

This executive order shall not prevent the aforementioned departments and other state governmental entities from continuing to work cooperatively while coordinating their rulemaking efforts with both public and private groups through stakeholder and informal advisory meetings.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri, in the City of Jefferson, on this 19th day of March 2002.



[Bob Holden's signature]
BOB HOLDEN
GOVERNOR

ATTEST:

[Matt Blunt's signature]
SECRETARY OF STATE

Chapter 536

ADMINISTRATIVE PROCEDURE AND REVIEW

- Sec.
- 536.010. Definitions.
 - 536.014. Rules invalid, when.
 - 536.015. Missouri Register published at least monthly.
 - 536.016. Requirements for rulemaking.
 - 536.017. Taking of private property defined—proposed rules require takings analysis, when, purpose, procedure—rule invalid, when—exceptions.
 - 536.018. “Agency” and “state agency” not to include institutions of higher education if sufficient safeguards for contested cases provided by institutions.
 - 536.019. Effective date of rules—contingent effective date.
 - 536.021. Rules, procedure for making, amending or rescinding—notice of—rules effective when, exception—effective date to be printed in code of state regulations—failure of agencies to promulgate a required rule—effect—exception—letter ruling authorized for department of revenue, effect.
 - 536.022. Suspension or termination of rules—procedure.
 - 536.023. Procedures for numbering, indexing and publishing to be prescribed by secretary of state.
 - 536.024. Validity of rules promulgated by state agency dependent on compliance with procedural requirements—powers and duties of joint committee.
 - 536.025. Emergency rule powers—procedure—definitions.
 - 536.026. Comments on proposed rules—committees for comment.
 - 536.027. Written comments to be retained as public record for three years.
 - 536.028. Contingent delegation of rulemaking power—effective date of rules —notice to be filed with joint committee—committee’s powers —disapproval or annulment of rules, grounds, procedure, effect —publishing of rules, when—nonseverable—contingent effective date.
 - 536.031. Code to be published—to be revised monthly—incorporation by reference authorized, courts to take judicial notice—incorporation by reference of certain rules, how.
 - 536.033. Sale of register and code of state regulations, cost, how established—correction of clerical errors authorized.
 - 536.035. Rules and orders to be permanent public record—executive orders to be published in the Missouri Register.
 - 536.037. Committee on administrative rules, members, meetings, duties—reports —expenses.
 - 536.041. Any person may petition agency concerning rules, agency must furnish copy to committee on administrative rules and commissioner of administration together with its action.
 - 536.043. Director of social services not required to but may promulgate rules.
 - 536.046. Public rulemaking docket, contents, publication.
 - 536.050. Declaratory judgments respecting the validity of rules—fees and expenses—standing, intervention by general assembly.
 - 536.053. Standing to challenge rule.
 - 536.055. Correspondence from state agencies, information required—must be printed or typed.
 - 536.060. Informal disposition of case by stipulation—summary action—waiver.
 - 536.063. Contested case, how instituted—pleadings—copies sent parties.
 - 536.067. Notice in contested case—mailing—contents—notice of hearing—time for.

- 536.068. Responsive pleadings to petitioner's complaint or petition to be filed, when—extension—content—bench ruling or memorandum decision on request, when.
- 536.070. Evidence—witnesses—objections—judicial notice—affidavits as evidence—transcript.
- 536.073. Depositions, use of—how taken—discovery, when available—enforcement—administrative hearing commission to make rules for depositions by stipulation—rules subject to suspension by joint committee on administrative rules.
- 536.075. Discovery rule violations, sanctions.
- 536.077. Subpoenas, issuance—form—how served—how enforced.
- 536.080. Parties may file briefs—officials to hear or read evidence.
- 536.083. Hearing officer not to conduct rehearing or appeal involving same issues and parties.
- 536.085. Definitions.
- 536.087. Reasonable fees and expenses awarded prevailing party in civil action or agency proceeding—application, content, filed with court or agency where party appeared—appeal by state, effect—power of court or agency to reduce requested amount or deny, when—form of award—judicial review, when.
- 536.090. Decisions in writing—notice.
- 536.095. Contempt—procedure for punishment.
- 536.100. Party aggrieved entitled to judicial review—waiver of independent review, when.
- 536.110. Petition, when filed—process—venue.
- 536.120. Suspension of decisions or orders.
- 536.130. Record on judicial review.
- 536.140. Scope of judicial review—judgment—appeals.
- 536.150. Review by injunction or original writ, when—scope.
- 536.160. Refund of funds paid into court, when.

FISCAL NOTES

- 536.200. Fiscal note for proposed rules affecting public funds, required when, where filed, contents—failure to file, procedure—publication—effect of failure to publish—first year evaluation, publication—challenges to rule for failure to meet requirement, time limitations.
- 536.205. Fiscal notes for proposed rules affecting private persons or entities, required, when, where filed, contents—publication—effect of failure to publish—challenges to rule for failure to comply, time limitation.
- 536.210. Fiscal note forms.
- 536.215. Revised fiscal notes required, when—rejection, when.

SMALL BUSINESS IMPACT STATEMENTS

- 536.300. Proposed rules, effect on small business to be determined, exceptions—impact statement to be prepared, when, contents.
- 536.303. Small business statement required for certain proposed rules, content.
- 536.305. Small business regulatory fairness board established, members, terms, expenses, meetings—rulemaking authority.
- 536.310. Authority of board.
- 536.315. State agencies to consider board recommendations, response.
- 536.320. Waiver or reduction of administrative penalties, when—inapplicability, when.
- 536.323. Small business objection to rules, petition may be filed, grounds—procedure for petition.
- 536.325. Rules affecting small business, list submitted to general assembly and board—availability of list—testimony may be solicited.

536.328. Judicial review for small businesses adversely affected or aggrieved by an agency action, procedure.

536.010. Definitions. — For the purpose of this chapter:

(1) **“Affected small business”** or **“affects small business”** means any potential or actual requirement imposed upon a small business or minority small business through a state agency’s proposed or adopted rule that will cause direct and significant economic burden upon a small business or minority small business, or that is directly related to the formation, operation, or expansion of a small business;

(2) **“Agency”** means any administrative officer or body existing under the constitution or by law and authorized by law or the constitution to make rules or to adjudicate contested cases, except those in the legislative or judicial branches;

(3) **“Board”** means the small business regulatory fairness board, except when the word is used in section 536.100;

(4) **“Contested case”** means a proceeding before an agency in which legal rights, duties or privileges of specific parties are required by law to be determined after hearing;

(5) The term **“decision”** includes decisions and orders whether negative or affirmative in form;

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

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

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

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

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

(e) An opinion of the attorney general;

(f) Those portions of staff manuals, instructions or other statements issued by an agency which set forth criteria or guidelines to be used by its staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution, or settlement of cases, when the disclosure of such statements would enable law violators to avoid detection, facilitate disregard of requirements imposed by law, or give a clearly improper advantage to persons who are in an adverse position to the state;

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

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

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

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

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

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

(m) Income tax or sales forms, returns and instruction booklets prepared by the state department of revenue for distribution to taxpayers for use in preparing tax returns;

(7) **“Small business”** means a for-profit enterprise consisting of fewer than one hundred full- or part-time employees;

(8) **“State agency”** means each board, commission, department, officer or other administrative office or unit of the state other than the general assembly, the courts, the governor, or a political subdivision of the state, existing under the constitution or statute, and authorized by the constitution or statute to make rules or to adjudicate contested cases.

(L. 1945 p. 1504 § 1, A.L. 1957 p. 748, A.L. 1976 S.B. 478, A.L. 2004 H.B. 978, A.L. 2005 H.B. 576, A.L. 2006 S.B. 1146)

(1977) Held, director of revenue must hold hearing on question as to reasonable possibility of judgment being rendered against a person, requires a hearing under § 303.290, RSMo, and is a “contested case” coming under the provision of Chap. 536, RSMo. *Randle et al. v. Spradling (Mo.)*, 556 S.W.2d 10.

(1979) Mandamus was remedy when city council denied a liquor license under a municipal code when all conditions were met and was not a “contested” case. *State ex rel. Keeven v. City of Hazelwood, et al. (A.)*, 585 S.W.2d 557.

(1995) Local school boards qualify as agencies under this definition. If a hearing is required by substantive law, it must be conducted according to contested case procedures. *State ex rel. Clint Yarber v. McHenry*, 915 S.W.2d 325 (Mo.banc).

(2000) Fire protection district had the power to hire and fire employees and thus was an “agency” under the section’s definition. *Krentz v. Robertson*, 228 F.3d 897 (8th Cir.).

536.014. Rules invalid, when. — 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 so arbitrary and capricious as to create such substantial inequity as to be unreasonably burdensome on persons affected.

(L. 1997 H.B. 850)
Effective 6-27-97

536.015. Missouri Register published at least monthly. — There is established a publication to be known as the “Missouri Register”, which shall be published in a format and medium as prescribed by the secretary of state and in writing upon request no less frequently than monthly by the secretary of state.

(L. 1975 S.B. 58, A.L. 1994 S.B. 558, A.L. 2004 H.B. 1616 merged with S.B. 1100)

536.016. Requirements for rulemaking. — 1. Any state agency shall propose rules based upon substantial evidence on the record and a finding by the agency that the rule is necessary to carry out the purposes of the statute that granted such rulemaking authority.

2. Each state agency shall adopt procedures by which it will determine whether a rule is necessary to carry out the purposes of the statute authorizing the rule. Such criteria and rulemaking shall be based upon reasonably available empirical data and shall include an assessment of the effectiveness and the cost of rules both to the state and to any private or public person or entity affected by such rules.

(L. 1997 H.B. 850, A.L. 1999 S.B. 176)

536.017. Taking of private property defined—proposed rules require takings analysis, when, purpose, procedure—rule invalid, when—exceptions. — For purposes of this section, “taking of private property” shall mean an activity wherein private property is taken such that compensation to the owner of the property is required by the fifth and fourteenth amendments to the Constitution of the United States or any other similar or applicable law of this state. No department or agency shall transmit a proposed rule or regulation which limits or affects the use of real property to the secretary of state until a takings analysis has occurred. The takings analysis shall evaluate whether the proposed rule or regulation on its

face constitutes a taking of real property under relevant state and federal law. The department or agency shall certify in the transmittal letter to the secretary of state that a takings analysis has occurred. Any rule that does not comply with this section shall be invalid and the secretary of state shall not publish the rule. A takings analysis shall not be necessary where the rule or regulation is being promulgated on an emergency basis, where the rule or regulation is federally mandated, or where the rule or regulation substantially codifies existing federal or state law.

(L. 1994 H.B. 1099 §§ 536.017, B merged with S.B. 558, A.L. 1997 H.B. 88, A.L. 1998 S.B. 900)

536.018. “Agency” and “state agency” not to include institutions of higher education if sufficient safeguards for contested cases provided by institutions. — The term “agency” and the term “state agency” as defined by section 536.010 shall not include an institution of higher education, supported in whole or in part from state funds, if such institution has established written procedures to assure that constitutionally required due process safeguards exist and apply to a proceeding that would otherwise constitute a “contested case” as defined in section 536.010.

(L. 1994 H.B. 1099 merged with S.B. 558 § 1)
Effective 6-3-94 (S.B. 558)
8-28-94 (H.B. 1099)

***536.019. Effective date of rules—contingent effective date.** — 1. Notwithstanding other provisions of this chapter to the contrary, a final order of rulemaking shall not take effect prior to the expiration of thirty legislative days of a regular session after such order of rulemaking has been filed with the general assembly by providing a copy thereof to the joint committee on administrative rules and the secretary of state.

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

- (1) Failure of the executive to sign executive order number 97-97; or
- (2) Modification, amendment or rescission of executive order number 97-97; or
- (3) An agency’s failure to hold the rule in abeyance as required by executive order number 97-97; or
- (4) Declaration by a court with jurisdiction that section 536.024 or any portion of executive order number 97-97 is unconstitutional or invalid for any reason.

Notwithstanding the provisions of this subsection to the contrary, no modification, amendment or rescission of executive order number 97-97 or failure to hold the rule in abeyance shall make this section effective if the modification, amendment or rescission of the executive order or failure to hold the rule in abeyance is approved by the general assembly by concurrent resolution.

(L. 1997 H.B. 850)
*Contingent effective date, see subsection 2 of this section.

536.021. Rules, procedure for making, amending or rescinding—notice of—rules effective when, exception—effective date to be printed in code of state regulations—failure of agencies to promulgate a required rule—effect—exception—letter ruling authorized for department of revenue, effect. — 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.

(L. 1975 S.B. 58 § 536.020, A.L. 1976 S.B. 478, A.L. 1989 H.B. 143, A.L. 1992 H.B. 1849, A.L. 1993 S.B. 347, A.L. 1994 S.B. 558, A.L. 1997 H.B. 850, A.L. 2004 H.B. 1616 merged with S.B. 1100)

536.022. Suspension or termination of rules—procedure. — 1. If any rule or portion of a rule of a state agency is suspended or terminated by action of the governor, a court or other authority, the state agency shall immediately file a notice of such action with the secretary of state.

2. The notice, in a format for publication designed by the secretary of state, shall contain the title and number of the rule; shall describe briefly the action taken with regard to the rule and the parties affected by the suspension or termination; shall state the effective date of the suspension or termination; shall state the duration of the suspension; and shall contain such other information deemed necessary by the secretary of state to provide adequate public information.

3. If any action has the effect of changing the information in the initial notice, the state agency shall immediately file a new notice with the secretary of state in the same manner as the original notice.

4. Notices shall be printed by the secretary of state in the Missouri Register as soon as practicable. The secretary of state shall insert in the code of state regulations material regarding the suspension or termination of rules, and the secretary of state may remove rules which have terminated.

(L. 1979 S.B. 204, A.L. 1997 H.B. 850)
Effective 6-27-97

536.023. Procedures for numbering, indexing and publishing to be prescribed by secretary of state. — 1. The secretary of state shall prescribe in a format and medium as prescribed by the secretary of state and in writing upon request uniform procedures for the numbering, indexing, form and publication of all rules, notices of proposed rulemaking and orders of rulemaking. Copies of the procedures shall be furnished by the secretary of state to each state agency and copies thereof shall be permanently maintained in the office of the secretary of state and shall be available for public inspection at all reasonable times.

2. No rule, notice of proposed rulemaking or final order of rulemaking shall be accepted for filing with the secretary of state unless it conforms to said uniform procedures.

3. Each state agency shall adopt as a rule a description of its organization and general courses and methods of its operation and the methods and procedures whereby the public may obtain information or make submissions or requests. Substantial changes in any matter covered by the foregoing description shall be made only in accordance with the procedures set forth in this chapter.

(L. 1975 S.B. 58, A.L. 1976 S.B. 478, A.L. 1997 H.B. 850, A.L. 2004 H.B. 1616 merged with S.B. 1100)

536.024. Validity of rules promulgated by state agency dependent on compliance with procedural requirements—powers and duties of joint committee. — 1. When the general assembly authorizes any state agency to adopt administrative rules or regulations, the granting of such rule-making authority and the validity of such rules and regulations is contingent upon the agency complying with the provisions of this section in promulgating such rules after June 3, 1994.

2. Upon filing any proposed rule with the secretary of state, the filing agency shall concurrently submit such proposed rule to the joint committee on administrative rules, which may hold hearings upon any proposed rule or portion thereof at any time.

3. A final order of rulemaking shall not be filed with the secretary of state until thirty days after such final order of rulemaking has been received by the committee. The committee may hold one or more hearings upon such final order of rulemaking during the thirty-day period.

4. The committee may file with the secretary of state any comments or recommendations that the committee has concerning a proposed or final order of rulemaking. Such comments shall be published in the Missouri Register.

5. The committee may refer comments or recommendations concerning such rule to the appropriations and budget committees of the house of representatives and the appropriations committee of the senate for further action.

6. The provisions of this section shall not apply to rules adopted by the labor and industrial relations commission.

(L. 1994 S.B. 558 § 536.018, A.L. 1995 S.B. 3, A.L. 1997 H.B. 850, A.L. 1998 S.B. 900, A.L. 2005 S.B. 237)

CROSS REFERENCE:

Workers' compensation cases, this section not deemed to govern discovery between parties, RSMo 287.811

536.025. Emergency rule powers—procedure—definitions. — 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 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 preserve a compelling governmental interest that requires an early effective date, the agency shall certify in writing the reasons therefor.

3. Material filed with the secretary of state and the joint committee on administrative rules under the provisions of subsection 2 of this section shall be published in the Missouri Register by the secretary of state as soon as practicable after the filing thereof. Any rule adopted pursuant to this section shall be reviewed by the secretary of state to determine compliance with the requirements for its publication and adoption established in this section, and in the event that the secretary of state determines that such proposed material does not meet those requirements, the secretary of state shall not publish the rule. The secretary of state shall inform the agency of its determination, and offer the agency a chance to either withdraw the rule or to have it published as a proposed rule.

4. The committee may file with the secretary of state any comments or recommendations that the committee has concerning a proposed or final order of rulemaking. Such comments shall be published in the Missouri Register.

5. The committee may refer comments or recommendations concerning such rule to the appropriations and budget committee of the house of representatives and the appropriations committee of the senate for further action.

6. Rules adopted under the provisions of this section shall be known as “emergency rules” and shall, along with the findings and conclusions of the state agency in support of its employment of emergency procedures, be judicially reviewable under section 536.050 or other appropriate form of judicial review. The secretary of state and any employee thereof, acting in the scope of employment, shall be immune from suit in actions regarding the adoption of rules pursuant to this section.

7. A rule adopted under the provisions of this section shall clearly state the interval during which it will be in effect. Emergency rules shall not be in effect for a period exceeding one hundred eighty calendar days or thirty legislative days, whichever period is longer. For the purposes of this section, a “legislative day” is each Monday, Tuesday, Wednesday and Thursday beginning the first Wednesday after the first Monday in January and ending the first Friday after the second Monday in May, regardless of whether the legislature meets.

8. A rule adopted under the provisions of this section shall not be renewable, nor shall an agency adopt consecutive emergency rules that have substantially the same effect, although a state agency may, at any time, adopt an identical rule under normal rulemaking procedures.

9. A rule adopted under the provisions of this section may be effective not less than ten days after the filing thereof in the office of the secretary of state, or at such later date as may be specified in the rule, and may be terminated at any time by the state agency by filing an order with the secretary of state fixing the date of such termination, which order shall be published by the secretary of state in the Missouri Register as soon as practicable after the filing thereof.

10. If it is found in a contested case by an administrative or judicial fact finder that an agency rule should not have been adopted as an emergency rule as provided by subsection 1 of this section, then the administrative or judicial fact finder shall award the nonstate party who prevails, as defined in this section, its reasonable fees and expenses, as defined in this section. This award shall constitute a reviewable order. If a state agency in a contested case grants the relief sought by the party prior to a finding by an administrative or judicial fact finder that the state agency’s action was based on a statement of general applicability which should not have been adopted as an emergency rule, but was in fact adopted as an emergency rule pursuant to this section, then the affected party may bring an action in circuit court of Cole County for the nonstate party’s reasonable fees and expenses, as defined in this section.

11. For the purposes of this section, the following terms mean:

(1) “**Prevails**”, obtains a favorable order, decision, judgment or dismissal in a civil action or agency proceeding;

(2) “**Reasonable fees and expenses**” includes the reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, engineering report, test or project which is found by the court or agency to be necessary for the preparation of the party’s case, and reasonable attorney or agent fees.

(L. 1975 S.B. 58, A.L. 1976 S.B. 478, A.L. 1993 S.B. 52, A.L. 1995 S.B. 3, A.L. 1997 H.B. 850)

Effective 6-27-97

CROSS REFERENCE:

Workers’ compensation cases, this section not deemed to govern discovery between parties, RSMo 287.811

536.026. Comments on proposed rules—committees for comment. — 1. In addition to seeking information by other methods, an agency may

solicit comments from the public on the subject matter of a rule that the agency is considering proposing. The agency may file a notice of the rule under consideration as a proposed rulemaking with the secretary of state for publication in the Missouri Register as soon as practicable after the filing thereof in the secretary's office. The notice may contain the number and the subject matter of the rule as well as a statement indicating where, when, and how persons may comment.

2. Each agency may also appoint committees to comment on the subject matter of a rule that the agency is considering proposing. The membership of those committees must be published at least annually in the Missouri Register.

(L. 1997 H.B. 850 § 536.020)
Effective 6-27-97

536.027. Written comments to be retained as public record for three years. — Any written comment filed pursuant to section 536.021 in support of or opposition to a notice of proposed rulemaking and any written record of a public hearing in connection with a notice of proposed rulemaking shall be retained for a period of at least three years by the agency issuing the notice, and all such comments and other records shall be available for public inspection at all reasonable times.

(L. 1975 S.B. 58)
Effective 1-1-76

***536.028. Contingent delegation of rulemaking power—effective date of rules —notice to be filed with joint committee—committee's powers —disapproval or annulment of rules, grounds, procedure, effect —publishing of rules, when—nonseverable—contingent effective date.** — 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 regular session after such order is filed with the general assembly and the secretary of state, and to disapprove and annul any rule or portion thereof contained in such order of rulemaking.

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

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

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

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

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

- (2) Such rule or portion thereof is not in the public interest or is not authorized by the general assembly for one or more of the following grounds:
 - (a) An absence of statutory authority for the proposed rule;
 - (b) The proposed rule is in conflict with state law;
 - (c) Such proposed rule is likely to substantially endanger the public health, safety or welfare;
 - (d) The rule exceeds the purpose, or is more restrictive than is necessary to carry out the purpose, of the statute granting rulemaking authority;
 - (e) A substantial change in circumstance has occurred since enactment of the law upon which the proposed rule is based as to result in a conflict between the purpose of the law and the proposed rule, or as to create a substantial danger to public health and welfare; or
 - (f) The proposed rule is so arbitrary and capricious as to create such substantial inequity as to be unreasonably burdensome on persons affected.
6. Any recommendation or report issued by the committee pursuant to subsection 5 of this section shall be admissible as evidence in any judicial proceeding and entitled to judicial notice without further proof.
7. The general assembly may adopt a concurrent resolution in accordance with the provisions of article IV, section 8 of the Missouri Constitution to disapprove and annul any rule or portion thereof.
8. Any rule or portion thereof not disapproved within thirty legislative days of a regular session pursuant to subsection 7 of this section shall be deemed approved by the general assembly and the secretary of state may publish such final order of rulemaking as soon as practicable upon the expiration of thirty legislative days of a regular session after the final order of rulemaking was filed with the secretary of state and the joint committee on administrative rules.
9. Upon adoption of such concurrent resolution as provided in subsection 7 of this section, the secretary of state shall not publish the order of rulemaking until the expiration of time necessary for such resolution to be signed by the governor, or vetoed and subsequently acted upon by the general assembly pursuant to article III, section 32 of the Missouri Constitution. If such concurrent resolution is adopted and signed by the governor or otherwise reconsidered pursuant to article III, section 32, the secretary of state shall publish in the Missouri Register, as soon as practicable, the order of rulemaking along with notice of the proposed rules or portions thereof which are disapproved and annulled by the general assembly.
10. Notwithstanding the provisions of section 1.140, RSMo, the provisions of this section, section 536.021 and section 536.025 are nonseverable and the delegation of legislative authority to an agency to propose orders of rulemaking is essentially dependent upon the powers vested with the general assembly as provided herein. If any of the powers vested with the general assembly or the joint committee on administrative rules to review, to hold in abeyance the rule pending action by the general assembly, to delay the effective date or to disapprove and annul a rule or portion of a rule contained in an order of rulemaking, are held unconstitutional or invalid, the purported grant of rulemaking authority and any rule so proposed and contained in the order of rulemaking shall be revoked and shall be null, void and unenforceable.
11. Nothing in this section shall prevent the general assembly from adopting by concurrent resolution or bill within thirty legislative days of a regular session the rules or portions thereof, or as the same may be amended or annulled, as contained in a proposed order of rulemaking. In that event, the proposed order of rulemaking shall have been superseded and the order and any rule proposed therein shall be null, void and unenforceable. The secretary of state shall not publish a proposed order of rulemaking acted upon as described herein.
12. Upon adoption of any rule now or hereafter in effect, such rule or portion thereof may be revoked by the general assembly either by bill or by concurrent resolution pursuant to article IV, section 8 of the constitution on recommendation of the joint committee on administrative rules. The secretary of state shall publish in the Missouri Register, as soon as practicable, notice of the revocation.
13. This section shall become effective only upon the expiration of twenty calendar days following the:
 - (1) Failure of the executive to sign executive order number 97-97; or
 - (2) Modification, amendment or rescission of executive order number 97-97; or
 - (3) An agency's failure to hold the rule in abeyance as required by executive order number 97-97; or
 - (4) Declaration by a court with jurisdiction that section 536.024 or any portion of executive order number 97-97 is unconstitutional or invalid for any reason.

Notwithstanding the provisions of this subsection to the contrary, no modification, amendment or rescission of executive order number 97-97 or fail-

ure to hold a rule in abeyance shall make this section effective if the modification, amendment or rescission of the executive order or failure to hold the rule in abeyance is approved by the general assembly by concurrent resolution.

(L. 1997 H.B. 335, Repealed 1997 H.B. 600 & 388, A.L. 1997 H.B. 850)

*Contingent effective date, see subsection 13 of this section.

536.031. Code to be published—to be revised monthly—incorporation by reference authorized, courts to take judicial notice—incorporation by reference of certain rules, how. — 1. There is established a publication to be known as the “Code of State Regulations”, which shall be published in a format and medium as prescribed and in writing upon request by the secretary of state as soon as practicable after ninety days following January 1, 1976, and may be republished from time to time thereafter as determined by the secretary of state.

2. The code of state regulations shall contain the full text of all rules of state agencies in force and effect upon the effective date of the first publication thereof, and effective September 1, 1990, it shall be revised no less frequently than monthly thereafter so as to include all rules of state agencies subsequently made, amended or rescinded. The code may also include citations, references, or annotations, prepared by the state agency adopting the rule or by the secretary of state, to any intraagency ruling, attorney general’s opinion, determination, decisions, order, or other action of the administrative hearing commission, or any determination, decision, order, or other action of a court interpreting, applying, discussing, distinguishing, or otherwise affecting any rule published in the code.

3. The code of state regulations shall be published in looseleaf form in one or more volumes upon request and a format and medium as prescribed by the secretary of state with an appropriate index, and revisions in the text and index may be made by the secretary of state as necessary and provided in written format upon request.

4. An agency may incorporate by reference rules, regulations, standards, and guidelines of an agency of the United States or a nationally or state-recognized organization or association without publishing the material in full. The reference in the agency rules shall fully identify the incorporated material by publisher, address, and date in order to specify how a copy of the material may be obtained, and shall state that the referenced rule, regulation, standard, or guideline does not include any later amendments or additions. The agency adopting a rule, regulation, standard, or guideline under this section shall maintain a copy of the referenced rule, regulation, standard, or guideline at the headquarters of the agency and shall make it available to the public for inspection and copying at no more than the actual cost of reproduction. The secretary of state may omit from the code of state regulations such material incorporated by reference in any rule the publication of which would be unduly cumbersome or expensive.

5. The courts of this state shall take judicial notice, without proof, of the contents of the code of state regulations.

(L. 1975 S.B. 58 § 536.030, A.L. 1976 S.B. 478, A.L. 1989 H.B. 143, A.L. 2004 H.B. 1616 merged with S.B. 1100)

536.033. Sale of register and code of state regulations, cost, how established—correction of clerical errors authorized. — 1. Copies or subscription of the register or code shall be made available to the public by the secretary of state upon request for a reasonable charge to be established by him, said charge not to exceed the actual cost of publishing and delivery.

2. All costs of printing and mailing the Missouri Register and the code of state regulations shall be paid by the office of the secretary of state from funds appropriated for this purpose and all fees collected from the sale thereof by the secretary of state shall be deposited to general revenue.

3. The secretary of state may correct typographical or spelling errors in the publication of any rule, notice of proposed rulemaking, or order of rulemaking.

(L. 1975 S.B. 58, A.L. 1976 S.B. 478, A.L. 1981 S.B. 101)

536.035. Rules and orders to be permanent public record—executive orders to be published in the Missouri Register. — 1. All rules or executive orders filed with the secretary of state pursuant to sections 536.015 to 536.043 shall be retained permanently and shall be open to public

inspection at all reasonable times.

2. Beginning January 1, 2003, all executive orders issued after said date shall be published in the Missouri Register.

(L. 1975 S.B. 58, A.L. 2002 S.B. 812)

536.037. Committee on administrative rules, members, meetings, duties—reports —expenses. — 1. There is established a permanent joint committee of the general assembly to be known as the “Committee on Administrative Rules”, which shall be composed of five members of the senate and five members of the house of representatives. The senate members of the committee shall be appointed by the president pro tem of the senate and the house members by the speaker of the house. The appointment of each member shall continue during his term of office as a member of the general assembly unless sooner removed. No major party shall be represented by more than three appointed members from either house.

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

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

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

(L. 1975 S.B. 58, A.L. 1994 S.B. 558, A.L. 1995 S.B. 3, A.L. 2005 S.B. 237)

CROSS REFERENCE:

Workers’ compensation cases, this section not deemed to govern discovery between parties, RSMo 287.811

536.041. Any person may petition agency concerning rules, agency must furnish copy to committee on administrative rules and commissioner of administration together with its action. — Any person may petition an agency requesting the adoption, amendment or repeal of any rule. Any agency receiving such a petition or other request in writing to adopt, amend or repeal any rule shall forthwith furnish a copy thereof to the joint committee on administrative rules and to the commissioner of administration, together with the action, if any, taken or contemplated by the agency as a result of such petition or request, and the agency’s reasons therefor.

(L. 1975 S.B. 58 § 536.040, A.L. 1976 S.B. 728, A.L. 1997 H.B. 850)

Effective 6-27-97

536.043. Director of social services not required to but may promulgate rules. — Notwithstanding the provisions of section 189.060, the director of social services shall not be required to promulgate rules provided for in said section, although he may elect to do so as therein provided.

(L. 1975 S.B. 58 § 2)

Effective 1-1-76

536.046. Public rulemaking docket, contents, publication. — Each agency may maintain a public rulemaking docket. The rulemaking docket may contain a listing of the precise subject matter of each rule that the agency is considering proposing. The docket may also contain the name and address of agency personnel with whom persons may communicate with respect to the matter and an indication of the present status within the agency of the rule the agency is considering proposing. The secretary of state may publish such rulemaking dockets.

(L. 1997 H.B. 850)

Effective 6-27-97

536.050. Declaratory judgments respecting the validity of rules—fees and expenses—standing, intervention by general assembly. — 1. The power of the courts of this state to render declaratory judgments shall extend to declaratory judgments respecting the validity of rules, or of threatened applications thereof, and such suits may be maintained against agencies whether or not the plaintiff has first requested the agency to pass upon the question presented. The venue of such suits against agencies shall, at the option of the plaintiff, be in the circuit court of Cole County, or in the county of the plaintiff's residence, or if the plaintiff is a corporation, domestic or foreign, having a registered office or business office in this state, in the county of such registered office or business office. Nothing herein contained shall be construed as a limitation on the declaratory or other relief which the courts might grant in the absence of this section.

2. Any person bringing an action under subsection 1 of this section shall not be required to exhaust any administrative remedy if the court determines that:

- (1) The administrative agency has no authority to grant the relief sought or the administrative remedy is otherwise inadequate; or
- (2) The only issue presented for adjudication is a constitutional issue or other question of law; or
- (3) Requiring the person to exhaust any administrative remedy would result in undue prejudice because the person may suffer irreparable harm if unable to secure immediate judicial consideration of the claim. Provided, however, that the provisions of this subsection shall not apply to any matter covered by chapters 288, 302, and 303, RSMo; or
- (4) The party bringing the action is a small business claiming a material violation of section 536.300 or 536.303 by the state agency requiring the small business impact statement for the amendment or rule.

3. A nonstate party who prevails in an action brought pursuant to subsection 1 of this section shall be awarded reasonable fees and expenses, as defined in section 536.085, incurred by that party in the action.

4. A nonstate party seeking an award of fees and other expenses shall, within thirty days of a final disposition of an action brought pursuant to subsection 1 of this section, submit to the court which rendered the final disposition or judgment an application which shows that the party is a prevailing party and is eligible to receive an award pursuant to this section, and the amount sought, including an itemized statement from any attorney or expert witness representing or appearing in behalf of the party stating the actual time expended and the rate at which fees and other expenses are computed.

5. A prevailing nonstate party in an agency proceeding shall submit an application for fees and expenses to the court before which the party prevailed. The filing of an application shall not stay the time for appealing the merits of a case. When the state appeals the underlying merits of an adversary proceeding, no decision on the application for fees and other expenses in connection with that adversary proceeding shall be made pursuant to this section until a final and unreviewable decision is rendered by the court on the appeal or until the underlying merits of the case have been finally determined pursuant to the appeal.

6. The court may either reduce the amount to be awarded or deny any award, to the extent that the prevailing nonstate party during the course of the proceedings engaged in conduct which unduly and unreasonably protracted the final resolution of the matter in controversy.

7. The decision of a court on the application for reasonable fees and expenses shall be in writing, separate from the judgment or order of the court which determined the prevailing party, and shall include written findings and conclusions and the reason or basis therefor. The decision of a court on the application for fees and other expenses shall be final, subject respectively to appeal or judicial review.

8. If a party or the state is dissatisfied with a determination of fees and other expenses made in an action brought pursuant to subsection 1 of this section, that party or the state may, within the time permitted by law, appeal that order or judgment to the appellate court having jurisdiction to review the merits of that order or judgment. The appellate court's determination shall be based solely on the record made before the court below. The court may modify, reverse or reverse and remand the determination of fees and other expenses if the court finds that the award or failure to make an award of fees and other expenses, or the calculation of the amount of the award, was arbitrary and capricious, was unreasonable, was unsupported by competent and substantial evidence, or was made contrary to law or in excess of the court's jurisdiction. Awards made pursuant to this section shall be payable from amounts appropriated therefor. The state agency against which the award was made shall request an appropriation to pay for the award.

9. The general assembly or its designee shall have standing, in law or equity, to intervene in any existing action involving such challenge to agency action. Unless otherwise provided by resolution, the general assembly's designee is the joint committee on administrative rules who may, upon a con-

currence of a majority of the committee's members, intervene in the name of the members of the committee in their representative capacity. Nothing in this section shall confer upon the committee any duty to so act or intervene.

(L. 1945 p. 1504 § 5, A.L. 1978 S.B. 661, A.L. 1996 S.B. 720, A.L. 1997 H.B. 850, A.L. 2005 H.B. 576)

(1982) Statutory provisions which purport to authorize the Administrative Hearing Commission to render declaratory judgments are unconstitutional as violative of Section 1, Article V of the Missouri Constitution. *State Tax Commission v. Administrative Hearing Commission* (Mo.banc), 641 S.W.2d 69.

(1993) Where action is based on specific facts involving named entities and is a challenge to an agency decision, jurisdiction to challenged decision is vested in the administrative hearing commission under section 208.156, RSMo. Because action challenged an agency decision and not an agency rule, this section does not allow a declaratory judgment action to be brought in the circuit court. *Missouri Health Care Association, EBG III, Inc. v. Missouri Department of Social Services*, 851 S.W.2d 567 (Mo. App. W.D.).

536.053. Standing to challenge rule. — Any person who is or may be aggrieved by any rule promulgated by a state agency shall have standing to challenge any rule promulgated by a state agency and may bring such an action pursuant to the provisions of section 536.050. Such person shall not be required to exhaust any administrative remedy and shall be considered a nonstate party.

(L. 1999 S.B. 1, et al.)

536.055. Correspondence from state agencies, information required—must be printed or typed. — All correspondence sent from any state agency shall contain the name, address and phone number of the person or agency responsible for sending the correspondence. The name, address and phone number may be printed or typed.

(L. 1989 H.B. 143 § 2)

536.060. Informal disposition of case by stipulation—summary action—waiver. — Contested cases and other matters involving licensees and licensing agencies described in section 621.045, RSMo, may be informally resolved by consent agreement or agreed settlement or may be resolved by stipulation, consent order, or default, or by agreed settlement where such settlement is permitted by law. Nothing contained in sections 536.060 to 536.095 shall be construed (1) to impair the power of any agency to take lawful summary action in those matters where a contested case is not required by law, or (2) to prevent any agency authorized to do so from assisting claimants or other parties in any proper manner, or (3) to prevent the waiver by the parties (including, in a proper case, the agency) of procedural requirements which would otherwise be necessary before final decision, or (4) to prevent stipulations or agreements among the parties (including, in a proper case, the agency).

(L. 1945 p. 1504 § 6, A.L. 1957 p. 748 § 536.090, A.L. 1995 S.B. 3)

CROSS REFERENCE:

Workers' compensation cases, this section not deemed to govern discovery between parties, RSMo 287.811

536.063. Contested case, how instituted—pleadings—copies sent parties. — In any contested case:

(1) The contested case shall be commenced by the filing of a writing by which the party or agency instituting the proceeding seeks such action as by law can be taken by the agency only after opportunity for hearing, or seeks a hearing for the purpose of obtaining a decision reviewable upon the record of the proceedings and evidence at such hearing, or upon such record and additional evidence, either by a court or by another agency.

Answering, intervening and amendatory writings and motions may be filed in any case and shall be filed where required by rule of the agency, except that no answering instrument shall be required unless the notice of institution of the case states such requirement. Entries of appearance shall be permitted.

(2) Any writing filed whereby affirmative relief is sought shall state what relief is sought or proposed and the reason for granting it, and shall not consist merely of statements or charges phrased in the language of a statute or rule; provided, however, that this subdivision shall not apply when the writing is a notice of appeal as authorized by law.

(3) Reasonable opportunity shall be given for the preparation and presentation of evidence bearing on any issue raised or decided or relief sought or granted. Where issues are tried without objection or by consent, such issues shall be deemed to have been properly before the agency. Any formality of procedure may be waived by mutual consent.

(4) Every writing seeking relief or answering any other writing, and any motion shall state the name and address of the attorney, if any, filing it; otherwise the name and address of the party filing it.

(5) By rule the agency may require any party filing such a writing to furnish, in addition to the original of such writing, the number of copies required for the agency's own use and the number of copies necessary to enable the agency to comply with the provisions of this subdivision hereinafter set forth. The agency shall, without charge therefor, mail one copy of each such writing, as promptly as possible after it is filed, to every party or his attorney who has filed a writing or who has entered his appearance in the case, and who has not theretofore been furnished with a copy of such writing and shall have requested copies of the writings; provided that in any case where the parties are so numerous that the requirements of this subdivision would be unduly onerous, the agency may in lieu thereof (a) notify all parties of the fact of the filing of such writing, and (b) permit any party to copy such writing.

(L. 1957 p. 748 § 536.060)

536.067. Notice in contested case—mailing—contents—notice of hearing—time for. — In any contested case:

(1) The agency shall promptly mail a notice of institution of the case to all necessary parties, if any, and to all persons designated by the moving party and to any other persons to whom the agency may determine that notice should be given. The agency or its clerk or secretary shall keep a permanent record of the persons to whom such notice was sent and of the addresses to which sent and the time when sent. Where a contested case would affect the rights, privileges or duties of a large number of persons whose interests are sufficiently similar that they may be considered as a class, notice may in a proper case be given to a reasonable number thereof as representatives of such class. In any case where the name or address of any proper or designated party or person is not known to the agency, and where notice by publication is permitted by law, then notice by publication may be given in accordance with any rule or regulation of the agency or if there is no such rule or regulation, then, in a proper case, the agency may by a special order fix the time and manner of such publication.

(2) The notice of institution of the case to be mailed as provided in this section shall state in substance:

- (a) The caption and number of the case;
- (b) That a writing seeking relief has been filed in such case, the date it was filed, and the name of the party filing the same;
- (c) A brief statement of the matter involved in the case unless a copy of the writing accompanies said notice;
- (d) Whether an answer to the writing is required, and if so the date when it must be filed;
- (e) That a copy of the writing may be obtained from the agency, giving the address to which application for such a copy may be made. This may be omitted if the notice is accompanied by a copy of such writing;
- (f) The location in the Code of State Regulations of any rules of the agency regarding discovery or a statement that the agency shall send a copy of such rules on request;

(3) Unless the notice of hearing hereinafter provided for shall have been included in the notice of institution of the case, the agency shall, as promptly as possible after the time and place of hearing have been determined, mail a notice of hearing to the moving party and to all persons and parties to whom a notice of institution of the case was required to be or was mailed, and also to any other persons who may thereafter have become

or have been made parties to the proceeding. The notice of hearing shall state:

- (a) The caption and number of the case;
- (b) The time and place of hearing;

(4) No hearing in a contested case shall be had, except by consent, until a notice of hearing shall have been given substantially as provided in this section, and such notice shall in every case be given a reasonable time before the hearing. Such reasonable time shall be at least ten days except in cases where the public morals, health, safety or interest may make a shorter time reasonable; provided that when a longer time than ten days is prescribed by statute, no time shorter than that so prescribed shall be deemed reasonable.

(L. 1957 p. 748 §§ 536.063, 536.066, A.L. 1995 S.B. 3)

CROSS REFERENCE:

Workers' compensation cases, this section not deemed to govern discovery between parties, RSMo 287.811

536.068. Responsive pleadings to petitioner's complaint or petition to be filed, when—extension—content—bench ruling or memorandum decision on request, when. — 1. In any proceeding before the administrative hearing commission, any responsive pleading to the petitioner's complaint or petition shall be filed within the time limits specified for filing an answer under the rules governing civil practice in circuit courts in Missouri, unless the administrative hearing commission grants an extension of time for the filing of a responsive pleading. Such responsive pleadings may include, but shall not be limited to, answers, motions to dismiss, motions for a more definite statement or to make more definite and certain, or any combination of these pleadings.

2. The administrative hearing commission shall upon the request of all parties involved and waiver of the provisions of section 536.090 issue a bench ruling or render a memorandum decision on any case within one week of the conclusion of the hearing or within one week of the request, whichever is later.

(L. 1989 H.B. 143 § 1)

536.070. Evidence—witnesses—objections—judicial notice—affidavits as evidence—transcript. — In any contested case:

(1) Oral evidence shall be taken only on oath or affirmation.

(2) Each party shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not the subject of the direct examination, to impeach any witness regardless of which party first called him to testify, and to rebut the evidence against him.

(3) A party who does not testify in his own behalf may be called and examined as if under cross-examination.

(4) Each agency shall cause all proceedings in hearings before it to be suitably recorded and preserved. A copy of the transcript of such a proceeding shall be made available to any interested person upon the payment of a fee which shall in no case exceed the reasonable cost of preparation and supply.

(5) Records and documents of the agency which are to be considered in the case shall be offered in evidence so as to become a part of the record, the same as any other evidence, but the records and documents may be considered as a part of the record by reference thereto when so offered.

(6) Agencies shall take official notice of all matters of which the courts take judicial notice. They may also take official notice of technical or scientific facts, not judicially cognizable, within their competence, if they notify the parties, either during a hearing or in writing before a hearing, or before findings are made after hearing, of the facts of which they propose to take such notice and give the parties reasonable opportunity to contest such facts or otherwise show that it would not be proper for the agency to take such notice of them.

(7) Evidence to which an objection is sustained shall, at the request of the party seeking to introduce the same, or at the instance of the agency, nevertheless be heard and preserved in the record, together with any cross-examination with respect thereto and any rebuttal thereof, unless it is wholly irrelevant, repetitious, privileged, or unduly long.

(8) Any evidence received without objection which has probative value shall be considered by the agency along with the other evidence in the case. The rules of privilege shall be effective to the same extent that they are now or may hereafter be in civil actions. Irrelevant and unduly repetitious evidence shall be excluded.

(9) Copies of writings, documents and records shall be admissible without proof that the originals thereof cannot be produced, if it shall appear by testimony or otherwise that the copy offered is a true copy of the original, but the agency may, nevertheless, if it believes the interests of justice so require, sustain any objection to such evidence which would be sustained were the proffered evidence offered in a civil action in the circuit court, but if it does sustain such an objection, it shall give the party offering such evidence reasonable opportunity and, if necessary, opportunity at a later date, to establish by evidence the facts sought to be proved by the evidence to which such objection is sustained.

(10) Any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of an act, transaction, occurrence or event, shall be admissible as evidence of the act, transaction, occurrence or event, if it shall appear that it was made in the regular course of any business, and that it was the regular course of such business to make such memorandum or record at the time of such act, transaction, occurrence, or event or within a reasonable time thereafter. All other circumstances of the making of such writing or record, including lack of personal knowledge by the entrant or maker, may be shown to affect the weight of such evidence, but such showing shall not affect its admissibility. The term **“business”** shall include business, profession, occupation and calling of every kind.

(11) The results of statistical examinations or studies, or of audits, compilations of figures, or surveys, involving interviews with many persons, or examination of many records, or of long or complicated accounts, or of a large number of figures, or involving the ascertainment of many related facts, shall be admissible as evidence of such results, if it shall appear that such examination, study, audit, compilation of figures, or survey was made by or under the supervision of a witness, who is present at the hearing, who testifies to the accuracy of such results, and who is subject to cross-examination, and if it shall further appear by evidence adduced that the witness making or under whose supervision such examination, study, audit, compilation of figures, or survey was made was basically qualified to make it. All the circumstances relating to the making of such an examination, study, audit, compilation of figures or survey, including the nature and extent of the qualifications of the maker, may be shown to affect the weight of such evidence but such showing shall not affect its admissibility.

(12) Any party or the agency desiring to introduce an affidavit in evidence at a hearing in a contested case may serve on all other parties (including, in a proper case, the agency) copies of such affidavit in the manner hereinafter provided, at any time before the hearing, or at such later time as may be stipulated. Not later than seven days after such service, or at such later time as may be stipulated, any other party (or, in a proper case, the agency) may serve on the party or the agency who served such affidavit an objection to the use of the affidavit or some designated portion or portions thereof on the ground that it is in the form of an affidavit; provided, however, that if such affidavit shall have been served less than eight days before the hearing such objection may be served at any time before the hearing or may be made orally at the hearing. If such objection is so served, the affidavit or the part thereof to which objection was made, may not be used except in ways that would have been permissible in the absence of this subdivision; provided, however, that such objection may be waived by the party or the agency making the same. Failure to serve an objection as aforesaid, based on the ground aforesaid, shall constitute a waiver of all objections to the introduction of such affidavit, or of the parts thereof with respect to which no such objection was so served, on the ground that it is in the form of an affidavit, or that it constitutes or contains hearsay evidence, or that it is not, or contains matters which are not, the best evidence, but any and all other objections may be made at the hearing. Nothing herein contained shall prevent the cross-examination of the affiant if he is present in obedience to a subpoena or otherwise and if he is present, he may be called for cross-examination during the case of the party who introduced the affidavit in evidence. If the affidavit is admissible in part only it shall be admitted as to such part, without the necessity of preparing a new affidavit. The manner of service of such affidavit and of such objection shall be by delivering or mailing copies thereof to the attorneys of record of the parties being served, if any, otherwise, to such parties, and service shall be deemed complete upon mailing; provided, however, that when the parties are so numerous as to make service of copies of the affidavit on all of them unduly onerous, the agency may make an order specifying on what parties service of copies of such affidavit shall be made, and in that case a copy of such affidavit shall be filed with the agency and kept available for inspection and copying. Nothing in this subdivision shall prevent any use of affidavits that would be proper in the absence of this subdivision.

(L. 1945 p. 1504 §§ 7, 8, A.L. 1957 p. 748 § 536.080, A.L. 1978 S.B. 661)

536.073. Depositions, use of—how taken—discovery, when available—enforcement —administrative hearing commission to make rules for depositions by stipulation—rules subject to suspension by joint committee on administrative rules. — 1. In any contested case before an agency created by the constitution or state statute, any party may take and use depositions in the same manner, upon and under the same conditions, and upon the same notice, as is or may hereafter be provided for with respect to the taking and using of depositions in civil actions in the circuit court; provided, that any commission which may be required shall be sued out of the circuit court or the office of the clerk thereof, within and for the county where the headquarters of the agency is located or where the hearing is to be held; and provided further, that no commissioner shall be appointed for the taking in this state of depositions.

2. In addition to the powers granted in subsection 1 of this section, any agency authorized to hear a contested case may make rules to provide that the parties may obtain all or any designated part of the same discovery that any Missouri supreme court rule provides for civil actions in circuit court. The agency may enforce discovery by the same methods, terms and conditions as provided by supreme court rule in civil actions in the circuit court. Except as otherwise provided by law, no agency discovery order which:

- (1) Requires a physical or mental examination;
- (2) Permits entrance upon land or inspection of property without permission of the owner; or
- (3) Purports to hold any person in contempt;

shall be enforceable except upon order of the circuit court of the county in which the hearing will be held or the circuit court of Cole County at the option of the person seeking enforcement, after notice and hearing.

3. The administrative hearing commission shall adopt rules providing for informal disposition of a contested case by stipulation, consent order, agreed settlement or by disposition in the nature of default judgment, judgment on the pleadings, or summary judgment. No such rules shall be made by the administrative hearing commission under this provision except in accordance with section 536.021 and after a public hearing.

4. No rule or portion of a rule promulgated under the authority of this chapter shall become effective until it has been approved by the joint committee on administrative rules in accordance with the procedures provided herein, and the delegation of the legislative authority to enact law by the adoption of such rules is dependent upon the power of the joint committee on administrative rules to review and suspend rules pending ratification by the senate and the house of representatives as provided herein.

5. Upon filing any proposed rule with the secretary of state, the filing agency shall concurrently submit such proposed rule to the committee, which may hold hearings upon any proposed rule or portion thereof at any time.

6. A final order of rulemaking shall not be filed with the secretary of state until thirty days after such final order of rulemaking has been received by the committee except as provided in this subsection. The committee may hold one or more hearings upon such final order of rulemaking during the thirty-day period. If the committee does not disapprove such order of rulemaking within the thirty-day period, the filing agency may file such order of rulemaking with the secretary of state and the order of rulemaking shall be deemed approved. Contrary provisions of the law notwithstanding, if the committee approves a proposed rule prior to the expiration of the period for review, it shall notify the filing agency and the secretary of state at which point the final order of rulemaking may be filed.

7. The committee may, by majority vote of the members, suspend the order of rulemaking or portion thereof by action taken prior to the filing of the final order of rulemaking only for one or more of the following grounds:

- (1) An absence of statutory authority for the proposed rule;
- (2) An emergency relating to public health, safety or welfare;
- (3) The proposed rule is in conflict with state law;
- (4) A substantial change in circumstance since enactment of the law upon which the proposed rule is based;
- (5) The proposed rule is arbitrary and capricious.

8. If the committee disapproves any rule or portion thereof, the filing agency shall not file such disapproved portion of any rule with the secre-

tary of state and the secretary of state shall not publish in the Missouri Register any final order of rulemaking containing the disapproved portion.

9. If the committee disapproves any rule or portion thereof, the committee shall report its findings to the senate and the house of representatives. No rule or portion thereof disapproved by the committee shall take effect so long as the senate and the house of representatives ratify the act of the joint committee by resolution adopted in each house within thirty legislative days after such rule or portion thereof has been disapproved by the joint committee.

10. Upon adoption of a rule as provided herein, any such rule or portion thereof may be suspended or revoked by the general assembly either by bill or, pursuant to section 8, article IV of the constitution, by concurrent resolution upon recommendation of the joint committee on administrative rules. The committee shall be authorized to hold hearings and make recommendations pursuant to the provisions of section 536.037. The secretary of state shall publish in the Missouri Register, as soon as practicable, notice of the suspension or revocation.

(L. 1957 p. 748, A.L. 1985 S.B. 5, et al., A.L. 1989 H.B. 143, A.L. 1995 S.B. 3)

CROSS REFERENCE:

Workers' compensation cases, this section not deemed to govern discovery between parties, RSMo 287.811

(1998) Administrative agencies created by home rule charter cities are not agencies created by the constitution or statute and the administrative procedure act does not apply. State ex rel. Young v. City of St. Charles, 977 S.W.2d 503 (Mo.banc).

536.075. Discovery rule violations, sanctions. — In any proceeding before the administrative hearing commission, where a party to the proceeding moves for sanctions for an alleged violation of any discovery rule, the moving party shall in the motion certify that reasonable efforts were made to resolve the dispute informally with the opposing party.

(L. 1989 S.B. 127, et al. § 3)

536.077. Subpoenas, issuance—form—how served—how enforced. — In any contested case before an agency created by the constitution or state statute, such agency shall upon request of any party issue subpoenas and shall in a proper case issue subpoenas duces tecum. Subpoenas other than subpoenas duces tecum shall on request of any party be issued with the caption and number of the case, the name of the witness, and the date for appearance in blank, but such caption, number, name and date shall be filled in by such party before service. Subpoenas shall extend to all parts of the state, and shall be served and returned as in civil actions in the circuit court. The witness shall be entitled to the same fees and, if compelled to travel more than forty miles from his place of residence, shall be entitled to the same tender of fees for travel and attendance, and at the same time, as is now or may hereafter be provided for witnesses in civil actions in the circuit court, such fees to be paid by the party or agency subpoenaing him, except where the payment of such fees is otherwise provided for by law. The agency or the party at whose request the subpoena is issued shall enforce subpoenas by applying to a judge of the circuit court of the county of the hearing or of any county where the witness resides or may be found for an order upon any witness who shall fail to obey a subpoena to show cause why such subpoena should not be enforced, which said order and a copy of the application therefor shall be served upon the witness in the same manner as a summons in a civil action, and if the said circuit court shall, after a hearing, determine that the subpoena should be sustained and enforced, said court shall proceed to enforce said subpoena in the same manner as though said subpoena had been issued in a civil case in the circuit court. The court shall permit the agency and any party to intervene in the enforcement action. Any such agency may delegate to any member, officer, or employee thereof the power to issue subpoenas in contested cases; provided that, except where otherwise authorized by law, subpoenas duces tecum shall be issued only by order of the agency or a member thereof.

(L. 1957 p. 748 § 536.070, A.L. 2003 H.B. 141 merged with H.B. 613)

536.080. Parties may file briefs—officials to hear or read evidence. — 1. In contested cases each party shall be entitled to present oral argu-

ments or written briefs at or after the hearing which shall be heard or read by each official of the agency who renders or joins in rendering the final decision.

2. In contested cases, each official of an agency who renders or joins in rendering a final decision shall, prior to such final decision, either hear all the evidence, read the full record including all the evidence, or personally consider the portions of the record cited or referred to in the arguments or briefs. The parties to a contested case may by written stipulation or by oral stipulation in the record at a hearing waive compliance with the provisions of this section.

(L. 1945 p. 1504 § 8, A.L. 1957 p. 748 § 536.083)

(1976) Where member of commission had assumed office after conclusion of all hearings and did not participate in the decision which was certified by the participating members, but did participate in order denying application for rehearing to which no certification was attached, trial court was directed to modify its "order of remand" to allow the commissioner ten days to certify that he had complied with this section at the time of denial of the motion for rehearing. Absent such certification, remand for reconsideration should follow. State ex rel. Jackson County v. Public Service Commission (Mo.), 532 S.W.2d 20.

536.083. Hearing officer not to conduct rehearing or appeal involving same issues and parties. — Notwithstanding any other provision of law to the contrary, in any administrative hearing conducted under the procedures established in this chapter, and in any other administrative hearing conducted under authority granted any state agency, no person who acted as a hearing officer or who otherwise conducted the first administrative hearing involving any single issue shall conduct any subsequent administrative rehearing or appeal involving the same issue and same parties.

(L. 1989 H.B. 143 § 3)

536.085. Definitions. — As used in section 536.087, the following terms mean:

(1) **"Agency proceeding"**, an adversary proceeding in a contested case pursuant to this chapter in which the state is represented by counsel, but does not include proceedings for determining the eligibility or entitlement of an individual to a monetary benefit or its equivalent, child custody proceedings, eminent domain proceedings, driver's license proceedings, vehicle registration proceedings, proceedings to establish or fix a rate, or proceedings before the state tax commission;

(2) **"Party"**:

(a) An individual whose net worth did not exceed two million dollars at the time the civil action or agency proceeding was initiated; or

(b) Any owner of an unincorporated business or any partnership, corporation, association, unit of local government or organization, the net worth of which did not exceed seven million dollars at the time the civil action or agency proceeding was initiated, and which had not more than five hundred employees at the time the civil action or agency proceeding was initiated;

(3) **"Prevails"**, obtains a favorable order, decision, judgment, or dismissal in a civil action or agency proceeding;

(4) **"Reasonable fees and expenses"** includes the reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, engineering report, test, or project which is found by the court or agency to be necessary for the preparation of the party's case, and reasonable attorney or agent fees. The amount of fees awarded as reasonable fees and expenses shall be based upon prevailing market rates for the kind and quality of the services furnished, except that no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the state in the type of civil action or agency proceeding, and attorney fees shall not be awarded in excess of seventy-five dollars per hour unless the court determines that a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee;

(5) **"State"**, the state of Missouri, its officers and its agencies, but shall not include political subdivisions of the state.

(L. 1989 H.B. 143 § 4)

536.087. Reasonable fees and expenses awarded prevailing party in civil action or agency proceeding—application, content, filed with court or agency where party appeared—appeal by state, effect—power of court or agency to reduce requested amount or deny, when—form of award —judicial review, when. —

1. A party who prevails in an agency proceeding or civil action arising therefrom, brought by or against the state, shall be awarded those reasonable fees and expenses incurred by that party in the civil action or agency proceeding, unless the court or agency finds that the position of the state was substantially justified or that special circumstances make an award unjust.

2. In awarding reasonable fees and expenses under this section to a party who prevails in any action for judicial review of an agency proceeding, the court shall include in that award reasonable fees and expenses incurred during such agency proceeding unless the court finds that during such agency proceeding the position of the state was substantially justified, or that special circumstances make an award unjust.

3. A party seeking an award of fees and other expenses shall, within thirty days of a final disposition in an agency proceeding or final judgment in a civil action, submit to the court, agency or commission which rendered the final disposition or judgment an application which shows that the party is a prevailing party and is eligible to receive an award under this section, and the amount sought, including an itemized statement from any attorney or expert witness representing or appearing in behalf of the party stating the actual time expended and the rate at which fees and other expenses are computed. The party shall also allege that the position of the state was not substantially justified. The fact that the state has lost the agency proceeding or civil action creates no legal presumption that its position was not substantially justified. Whether or not the position of the state was substantially justified shall be determined on the basis of the record (including the record with respect to the action or failure to act by an agency upon which a civil action is based) which is made in the agency proceeding or civil action for which fees and other expenses are sought, and on the basis of the record of any hearing the court or agency deems appropriate to determine whether an award of reasonable fees and expenses should be made, provided that any such hearing shall be limited to consideration of matters which affected the agency's decision leading to the position at issue in the fee application.

4. A prevailing party in an agency proceeding shall submit an application for fees and expenses to the administrative body before which the party prevailed. A prevailing party in a civil action on appeal from an agency proceeding shall submit an application for fees and expenses to the court. The filing of an application shall not stay the time for appealing the merits of a case. When the state appeals the underlying merits of an adversary proceeding, no decision on the application for fees and other expenses in connection with that adversary proceeding shall be made under this section until a final and unreviewable decision is rendered by the court on the appeal or until the underlying merits of the case have been finally determined pursuant to the appeal.

5. The court or agency may either reduce the amount to be awarded or deny any award, to the extent that the prevailing party during the course of the proceedings engaged in conduct which unduly and unreasonably protracted the final resolution of the matter in controversy.

6. The decision of a court or an agency on the application for reasonable fees and expenses shall be in writing, separate from the judgment or order of the court or the administrative decision which determined the prevailing party, and shall include written findings and conclusions and the reason or basis therefor. The decision of a court or an agency on the application for fees and other expenses shall be final, subject respectively to appeal or judicial review.

7. If a party or the state is dissatisfied with a determination of fees and other expenses made in an agency proceeding, that party or the state may within thirty days after the determination is made, seek judicial review of that determination from the court having jurisdiction to review the merits of the underlying decision of the agency adversary proceeding. If a party or the state is dissatisfied with a determination of fees and other expenses made in a civil action arising from an agency proceeding, that party or the state may, within the time permitted by law, appeal that order or judgment to the appellate court having jurisdiction to review the merits of that order or judgment. The reviewing or appellate court's determination on any judicial review or appeal heard under this subsection shall be based solely on the record made before the agency or court below. The court may modify, reverse or reverse and remand the determination of fees and other expenses if the court finds that the award or failure to make an award of fees and other expenses, or the calculation of the amount of the award, was arbitrary and capricious, was unreasonable, was unsupported by competent and substantial evidence, or was made contrary to law or in excess of the court's or agency's jurisdiction. Awards made pursuant to this act* shall be payable from amounts appropriated therefor. The state agency against which the award was made shall request an appropriation to pay the award.

(L. 1989 H.B. 143 § 5)

*“This act” (H.B. 143, 1989) contains numerous sections. Consult Disposition of Sections table for definitive listing.

(1998) This section supersedes prior case law whereby wrongfully dismissed state employees could increase back pay awards by amount of attorney fees and expenses incurred in obtaining reinstatement in certain cases. *McGhee v. Dixon*, 973 S.W.2d 847 (Mo.banc).

(1999) Application of section granting Supreme Court original appellate jurisdiction over appeal from administrative denial of taxpayer’s request for fees and expenses in state tax proceeding was unconstitutional. *Greenbriar Hills Country Club v. Director of Revenue*, 2 S.W.3d 798 (Mo.banc).

536.090. Decisions in writing—notice. — Every decision and order in a contested case shall be in writing, and, except in default cases or cases disposed of by stipulation, consent order or agreed settlement, the decision, including orders refusing licenses, shall include or be accompanied by findings of fact and conclusions of law. The findings of fact shall be stated separately from the conclusions of law and shall include a concise statement of the findings on which the agency bases its order. Immediately upon deciding any contested case the agency shall give written notice of its decision by delivering or mailing such notice to each party, or his attorney of record, and shall upon request furnish him with a copy of the decision, order, and findings of fact and conclusions of law.

(L. 1945 p. 1504 § 9, A.L. 1957 p. 748 § 536.086)

(1969) Specific procedures for notice under the liquor control law supersede the procedures in the general administrative procedure law where a violation of the liquor control law is alleged. *State ex rel. Zimmerman v. Moran* (Mo.), 439 S.W.2d 503.

(1972) Where the tax commission’s findings of fact was a mere statement of the chronology of events that transpired and did not advise the parties or the court of the factual basis upon which the commission reached its conclusion and order, it did not provide basis for review and circuit court’s order remanding case for appropriate findings was proper and was not a final appealable order. *Iron County v. State Tax Commission* (Mo.), 480 S.W.2d 65.

536.095. Contempt—procedure for punishment. — In any hearing in a contested case before an agency created by the constitution or state statute if any person acts or refuses to act in such manner that a contempt of court would have been committed if the case were a civil action before a circuit court, the agency in addition to any other powers it may have by law may apply to a judge of the circuit court of the county of the hearing or of any county where such person resides or may be found, for an order on any such person to show cause why he should not be punished as for contempt, which order and copy of the application therefor shall be served upon the person in the same manner as a summons in a civil action. Thereafter the same proceedings shall be had in such court as in cases of contempt of a circuit court.

(L. 1957 p. 748 § 536.076)

536.100. Party aggrieved entitled to judicial review—waiver of independent review, when. — Any person who has exhausted all administrative remedies provided by law and who is aggrieved by a final decision in a contested case, whether such decision is affirmative or negative in form, shall be entitled to judicial review thereof, as provided in sections 536.100 to 536.140, unless some other provision for judicial review is provided by statute; provided, however, that nothing in this chapter contained shall prevent any person from attacking any void order of an agency at any time or in any manner that would be proper in the absence of this section. If the agency or any board, other than the administrative hearing commission, established to provide independent review of the decisions of a department or division that is authorized to promulgate rules and regulations under this chapter fails to issue a final decision in a contested case within the earlier of:

- (1) Sixty days after the conclusion of a hearing on the contested case; or
- (2) One hundred eighty days after the receipt by the agency of a written request for the issuance of a final decision,

then the person shall be considered to have exhausted all administrative remedies and shall be considered to have received a final decision in favor of the agency and shall be entitled to immediate judicial review as provided in sections 536.100 to 536.140 or other provision for judicial review provided by statute. In cases, whether contested or not, where the law provides for an independent review of an agency's decision by a board other than the administrative hearing commission and further provides for a de novo review of the board's decision by the circuit court, a party aggrieved by the agency's decision may, within thirty days after it receives notice of that decision, waive independent review by the board and instead file a petition in the circuit court for the de novo review of the agency's decision. The party filing the petition under this section shall be considered to have exhausted all administrative remedies.

(L. 1945 p. 1504 § 10, A.L. 2005 H.B. 576, A.L. 2006 S.B. 1146)

(1972) Petitioners who alleged only that they were tenants in the building complex and that their interests would be injured if certain of the buildings were secured with steelplating and fencing as ordered by Board of Building Appeals but did not allege they, or any they represented, actually lived in the affected buildings, or would be evicted if the board's decision were carried out, were not "aggrieved" within the meaning of this section. *State ex rel. Pruitt-Igoe District Community Corp. v. Burks (A.)*, 482 S.W.2d 75.

(1980) Order of State Tax Commission that county board of equalization implement plans for equal division of real property assessment in county was not reviewable as contested case under statute governing entitlement of party aggrieved to judicial review. *State ex rel. Commissioners v. Schneider (Mo.)*, 609 S.W.2d 149.

(1980) Sales tax law established mandatory procedure for the assessment of sales tax and state has no right to commence an action for taxes due and payable until this procedure is exhausted, including administrative and judicial review. *Excel Drug Co. Inc. v. Mo. Dept. of Revenue (Mo.)*, 609 S.W.2d 404.

536.110. Petition, when filed—process—venue. — 1. Proceedings for review may be instituted by filing a petition in the circuit court of the county of proper venue within thirty days after the mailing or delivery of the notice of the agency's final decision.

2. Such petition may be filed without first seeking a rehearing, but in cases where agencies have authority to entertain motions for rehearing and such a motion is duly filed, the thirty-day period aforesaid shall run from the date of the delivery or mailing of notice of the agency's decision on such motion. No summons shall issue in such case, but copies of the petition shall be delivered to the agency and to each party of record in the proceedings before the agency or to his attorney of record, or shall be mailed to the agency and to such party or his said attorney by registered mail, and proof of such delivery or mailing shall be filed in the case.

3. The venue of such cases shall, at the option of the plaintiff, be in the circuit court of Cole County or in the county of the plaintiff or of one of the plaintiff's residence or if any plaintiff is a corporation, domestic or foreign, having a registered office or business office in this state, in the county of such registered office or business office, except that, in cases involving real property or improvements thereto, the venue shall be the circuit court of the county where such real property is located. The court in its discretion may permit other interested persons to intervene.

(L. 1945 p. 1504 § 10, A.L. 1953 p. 679, A.L. 1978 H.B. 1634, A.L. 2003 S.B. 357)

(1969) Sections 64.660, 536.100, and this section are in pari materia. *State ex rel. Day v. County Court of Platte County (A.)*, 442 S.W.2d 178.

(1970) This section does not apply to agencies which have their own separate review provision in their own special statute. *Brogoto v. Wiggins (Mo.)*, 458 S.W.2d 317.

(1971) Circuit court of city of St. Louis had jurisdiction of appeal from order of air pollution appeal board of St. Louis County where counsel of appeal board waived any objection as to venue and plaintiff appellant corporation's registered business office was in St. Louis City and county ordinance provided that decision of the board could be appealed to the circuit court under the provisions of chapter 536, RSMo. State ex rel. Union Electric Co. v. Scott (A.), 470 S.W.2d 1.

(1977) Held, court rule 100.04 does not conflict with this section and appeal from personnel advisory board may properly be taken to the circuit court of Cole County. Mills v. Federal Soldiers' Home (Mo.), 549 S.W.2d 862.

(1979) Mandamus was remedy when city council denied a liquor license under a municipal code when all conditions were met and was not a "contested" case. State ex rel. Keeven v. City of Hazelwood, et al. (A.), 585 S.W.2d 557.

(1980) Time limits for seeking judicial review of an agency's final decision where service is by mail may not be extended under civil rule allowing three additional days where service is by mail; statutory time period is jurisdictional. R.B. Industries, Inc. v. Goldberg (Mo.), 601 S.W.2d 5.

(1980) Thirty-day period for seeking judicial review of decision of director of revenue issuing additional rules and use tax assessment began to run on date of mailing of order and period not extended under civil rule adding three additional days to length of prescribed period if notice is served by mail. R.B. Industries, Inc. v. Goldberg (Mo.), 601 S.W.2d 5.

(1984) Medicaid disallowance by department, petition filed in circuit court not designated by statute. Subject-matter jurisdiction cannot be conferred or waived by parties. (Mo.App.E.D.) Health Enterprises v. Dept. of Soc. Services, 668 S.W.2d 185.

536.120. Suspension of decisions or orders. — Pending the filing and final disposition of proceedings for review under sections 536.100 to 536.140, the agency may stay the enforcement of its order and may temporarily grant or extend relief denied or withheld. Any court in which such proceedings for review may be pending may issue all necessary and appropriate process to stay or require the agency to stay the enforcement of its order or temporarily to grant or extend or require the agency temporarily to grant or extend relief denied or withheld, pending the final disposition of such proceedings for review. Such stay or other temporary relief by a reviewing court may be conditioned upon such terms as shall appear to the court to be proper. No such stay or temporary relief shall be granted by a reviewing court without notice, except in cases of threatened irreparable injury; and when in any case a stay or other temporary relief is granted without notice the court shall then make an order, of which due notice shall be given, setting the matter down for hearing as promptly as possible on the question whether such stay or other temporary relief shall be continued in effect. No such stay or other temporary relief shall be granted or continued unless the court is satisfied that the public interest will not be prejudiced thereby.

(L. 1945 p. 1504 § 10)

536.130. Record on judicial review. — 1. Within thirty days after the filing of the petition or within such further time as the court may allow, the record before the agency shall be filed in the reviewing court. Such record shall consist of any one of the following:

- (1) Such parts of the record, proceedings and evidence before the agency as the parties by written stipulation may agree upon;
- (2) An agreed statement of the case, agreed to by all parties and approved as correct by the agency;
- (3) A complete transcript of the entire record, proceedings and evidence before the agency. Evidence may be stated in either question and answer or narrative form. Documents may be abridged by omitting irrelevant and formal parts thereof. Any matter not essential to the decision of the questions presented by the petition may be omitted. The decision, order and findings of fact and conclusions of law shall in every case be included.

2. The record filed in the reviewing court shall be properly certified by the agency, and shall be typewritten, mimeographed, printed, or otherwise

suitably reproduced. In any case where papers, documents or exhibits are to be made a part of the record in the reviewing court, the originals of all or any part thereof, or photostatic or other copies which may have been substituted therefor, may, if the agency permits, be sent to the reviewing court instead of having the same copied into the record.

3. In any case where any party fails or refuses to agree to the correctness of a record, the agency shall decide as to its correctness and certify the record accordingly. If any party shall be put to additional expense by reason of the failure of another party to agree to a proper shortening of the record, the court may tax the amount of such additional expense against the offending party as costs.

4. The record to be filed in the reviewing court shall be filed by the plaintiff, or at the request of the plaintiff shall be transmitted by the agency directly to the clerk of the reviewing court and by him filed; provided, that when original documents are to be sent to the reviewing court they shall be transmitted by the agency directly, as aforesaid. The court may require or permit subsequent corrections of or additions to the record.

(L. 1945 p. 1504 § 10)

536.140. Scope of judicial review—judgment—appeals. — 1. The court shall hear the case without a jury and, except as otherwise provided in subsection 4 of this section, shall hear it upon the petition and record filed as aforesaid.

2. The inquiry may extend to a determination of whether the action of the agency

- (1) Is in violation of constitutional provisions;
- (2) Is in excess of the statutory authority or jurisdiction of the agency;
- (3) Is unsupported by competent and substantial evidence upon the whole record;
- (4) Is, for any other reason, unauthorized by law;
- (5) Is made upon unlawful procedure or without a fair trial;
- (6) Is arbitrary, capricious or unreasonable;
- (7) Involves an abuse of discretion.

The scope of judicial review in all contested cases, whether or not subject to judicial review pursuant to sections 536.100 to 536.140, and in all cases in which judicial review of decisions of administrative officers or bodies, whether state or local, is now or may hereafter be provided by law, shall in all cases be at least as broad as the scope of judicial review provided for in this subsection; provided, however, that nothing herein contained shall in any way change or affect the provisions of sections 311.690* and 311.700*, RSMo.

3. Whenever the action of the agency being reviewed does not involve the exercise by the agency of administrative discretion in the light of the facts, but involves only the application by the agency of the law to the facts, the court may upon application of any party conduct a de novo review of the agency decision.

4. Wherever under subsection 3 of this section or otherwise the court is entitled to weigh the evidence and determine the facts for itself, the court may hear and consider additional evidence if the court finds that such evidence in the exercise of reasonable diligence could not have been produced or was improperly excluded at the hearing before the agency. Wherever the court is not entitled to weigh the evidence and determine the facts for itself, if the court finds that there is competent and material evidence which, in the exercise of reasonable diligence, could not have been produced or was improperly excluded at the hearing before the agency, the court may remand the case to the agency with directions to reconsider the same in the light of such evidence. The court may in any case hear and consider evidence of alleged irregularities in procedure or of unfairness by the agency, not shown in the record.

5. The court shall render judgment affirming, reversing, or modifying the agency's order, and may order the reconsideration of the case in the light of the court's opinion and judgment, and may order the agency to take such further action as it may be proper to require; but the court shall not substitute its discretion for discretion legally vested in the agency, unless the court determines that the agency decision was arbitrary or capricious.

6. Appeals may be taken from the judgment of the court as in other civil cases.

(L. 1945 p. 1504 § 10, A.L. 1953 p. 679, A.L. 2005 H.B. 576)

*Sections 311.690 and 311.700 were repealed by S.B. 661, 1978.

(1974) Duty of reviewing court set out in detail. *Hanebrink v. Parker (A.)*, 506 S.W.2d 455.

(1999) Given lack of authority of Administrative Hearing Commission to determine constitutionality of liquor control regulation, review by the Supreme Court is only of the circuit court's judgment. *Cocktail Fortune, Inc. v. Supervisor of Liquor Control*, 994 S.W.2d 955 (Mo.banc).

(2004) Reviewing court must look to the whole record involving an administrative agency's decision, and not merely that evidence supporting its decision. *Lagud v. Kansas City Board of Police Commissioners*, 136 S.W.3d 786 (Mo.banc).

536.150. Review by injunction or original writ, when—scope. — 1. When any administrative officer or body existing under the constitution or by statute or by municipal charter or ordinance shall have rendered a decision which is not subject to administrative review, determining the legal rights, duties or privileges of any person, including the denial or revocation of a license, and there is no other provision for judicial inquiry into or review of such decision, such decision may be reviewed by suit for injunction, certiorari, mandamus, prohibition or other appropriate action, and in any such review proceeding the court may determine the facts relevant to the question whether such person at the time of such decision was subject to such legal duty, or had such right, or was entitled to such privilege, and may hear such evidence on such question as may be properly adduced, and the court may determine whether such decision, in view of the facts as they appear to the court, is unconstitutional, unlawful, unreasonable, arbitrary, or capricious or involves an abuse of discretion; and the court shall render judgment accordingly, and may order the administrative officer or body to take such further action as it may be proper to require; but the court shall not substitute its discretion for discretion legally vested in such administrative officer or body, and in cases where the granting or withholding of a privilege is committed by law to the sole discretion of such administrative officer or body, such discretion lawfully exercised shall not be disturbed.

2. Nothing in this section shall apply to contested cases reviewable pursuant to sections 536.100 to 536.140.

3. Nothing in this section shall be construed to impair any power to take summary action lawfully vested in any such administrative officer or body, or to limit the jurisdiction of any court or the scope of any remedy available in the absence of this section.

(L. 1953 p. 678 §§ 1, 2, 3)

(1972) Where county ordinance provided no appeal from ruling of Board of Building Appeals, relator was entitled to writ of certiorari to compel the board to certify a sufficiently complete record of proceedings of basis leading to board's decision including name and identity of witnesses and at least a summary of their testimony. *State ex rel. Walmar Investment Co. v. Armstrong (A.)*, 477 S.W.2d 730.

(1975) School district has no right to appeal decision of county board of equalization. *State ex rel. St. Francois County School Dist. R-III v. Lalumondier (Mo.)*, 518 S.W.2d 638.

(1979) Mandamus was remedy when city council denied a liquor license under a municipal code when all conditions were met and was not a "contested" case. *State ex rel. Keeven v. City of Hazelwood, et al. (A.)*, 585 S.W.2d 557.

536.160. Refund of funds paid into court, when. — In the event a reviewing court reverses a decision of a state agency, remands the matter to the agency for further proceedings and orders the payment into court of any increase in funds authorized by said decision, and thereafter, on remand, the state agency reaches the same result, reaffirms or ratifies its prior decision, then the entity which paid such funds into court shall be entitled to a refund of such funds, including all interest accrued thereon. This provision is enacted in part to clarify and specify the law in existence prior to August 28, 2001.

(L. 2001 S.B. 267)

FISCAL NOTES

536.200. Fiscal note for proposed rules affecting public funds, required when, where filed, contents—failure to file, procedure—publication—effect of failure to publish—first year evaluation, publication —challenges to rule for failure to meet requirement, time limitations. —

1. Any state agency filing a notice of proposed rulemaking, as required by section 536.021, wherein the adoption, amendment, or rescission of the rule would require or result in an expenditure of public funds by or a reduction of public revenues for that agency or any other state agency of the state government or any political subdivision thereof including counties, cities, towns, and villages, and school, road, drainage, sewer, water, levee, or any other special purpose district which is estimated to cost more than five hundred dollars in the aggregate to any such agency or political subdivision, shall at the time of filing the notice with the secretary of state file a fiscal note estimating the cost to each affected agency or to each class of the various political subdivisions to be affected. The fiscal note shall contain a detailed estimated cost of compliance and shall be supported with an affidavit by the director of the department to which the agency belongs that in the director's opinion the estimate is reasonably accurate. If no fiscal note is filed, the director of the department to which the agency belongs shall file an affidavit which states that the proposed change will cost less than five hundred dollars in the aggregate to all such agencies and political subdivisions.

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

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

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

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

(L. 1978 S.B. 721 § 1, A.L. 1989 H.B. 143, A.L. 1994 S.B. 558)
Effective 6-3-94

536.205. Fiscal notes for proposed rules affecting private persons or entities, required, when, where filed, contents—publication—effect of failure to publish—challenges to rule for failure to comply, time limitation. — 1. Any state agency filing a notice of proposed rulemaking, as required by section 536.021, whereby the adoption, amendment, or rescission of the rule would require an expenditure of money by or a reduction in income for any person, firm, corporation, association, partnership, proprietorship or business entity of any kind or character which is estimated to cost more than five hundred dollars in the aggregate, shall at the time of filing the notice with the secretary of state file a fiscal note containing the following information and estimates of cost:

(1) An estimate of the number of persons, firms, corporations, associations, partnerships, proprietorships or business entities of any kind or character by class which would likely be affected by the adoption of the proposed rule, amendment or rescission of a rule;

(2) A classification by types of the business entities in such manner as to give reasonable notice of the number and kind of businesses which would likely be affected;

(3) An estimate in the aggregate as to the cost of compliance with the rule, amendment or rescission of a rule by the affected persons, firms, corporations, associations, partnerships, proprietorships or business entities of any kind or character.

2. The fiscal note shall be published in the Missouri Register contemporary with and adjacent to the notice of proposed rulemaking, and failure to do so shall render any rule promulgated thereunder void and of no force and effect.

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

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

(L. 1978 S.B. 721 § 2, A.L. 1994 S.B. 558)
Effective 6-3-94

(1994) Administrative rules adopted by air conservation commission which did not comply with statute's requirements for fiscal notes, estimating cost of compliance to private entities, to be published in Missouri Register contemporarily with, and adjacent to, notices of proposed rulemaking were void. *Mo. Hosp. Assn. v. Air Conservation Commission*, 874 S.W.2d 380 (Mo. App. W.D.).

536.210. Fiscal note forms. — The secretary of state shall establish a form which each state agency shall use in compiling the fiscal note and affidavit required by sections 536.200, 536.205 and 536.215, and failure of the agency to use said forms shall result in rejection by the secretary of state.

(L. 1978 S.B. 721 § 3)

536.215. Revised fiscal notes required, when—rejection, when. — If before the effective date, such rule, amendment or rescission is altered to the extent that the cost or reduction in income is changed by more than ten percent, then a new fiscal note and affidavit shall be filed with the order of rulemaking and the new estimated cost shall be published in the Missouri Register.

(L. 1978 S.B. 721 § 4)

SMALL BUSINESS IMPACT STATEMENTS

536.300. Proposed rules, effect on small business to be determined, exceptions—impact statement to be prepared, when, contents. — 1. Prior to submitting proposed rules for adoption, amendment, revision, or repeal, under this chapter the state agency shall determine whether the proposed rulemaking affects small businesses and, if so, the availability and practicability of less-restrictive alternatives that could be implemented to achieve the same results of the proposed rulemaking. This requirement shall not apply to emergency rulemaking pursuant to section 536.025 or to constitutionally authorized rulemaking pursuant to article IV, section 45 of the Missouri Constitution. This requirement shall be in addition to the fiscal note requirement of sections 536.200 to 536.210.

2. If the proposed rules affect small businesses, the state agency shall consider creative, innovative, or flexible methods of compliance for small business and prepare a small business impact statement to be submitted to the secretary of state and the joint committee on administrative rules with the proposed rules. A copy of the proposed rules and the small business impact statement shall also be filed with the board on the same date as they are filed with the secretary of state. Such business impact statement and proposed rules shall be submitted to the board prior to providing notice for a public hearing. The statement shall provide a reasonable determination of the following:

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

- (2) How the agency involved small businesses in the development of the proposed rules;
 - (3) The probable monetary costs and benefits to the implementing agency and other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used, if such costs are capable of determination;
 - (4) A description of the small businesses that will be required to comply with the proposed rules and how they may be adversely affected, except in cases where the state agency has filed a fiscal note that complies with all of the provisions of section 536.205;
 - (5) In dollar amounts, the increase in the level of direct costs, such as fees or administrative penalties, and indirect costs, such as reporting, record keeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance if such costs are capable of determination, except in cases where the state agency has filed a fiscal note that complies with all of the provisions of section 536.205;
 - (6) The business that will be directly affected by, bear the cost of, or directly benefit from the proposed rules;
 - (7) Whether the proposed rules include provisions that are more stringent than those mandated by any comparable or related federal, state, or county standards, with an explanation of the reason for imposing the more-stringent standard.
3. Any proposed rule that is required to have a small business impact statement but does not include such a statement shall be invalid and the secretary of state should not publish the rule until such time as the statement is provided. If the state agency determines that its proposed rule does not affect small business, the state agency shall so certify this finding in the transmittal letter to the secretary of state, stating that it has determined that such proposed rule will not have an economic impact on small businesses and the secretary of state shall publish the rule.
4. Sections 536.300 to 536.310 shall not apply where the proposed rule is being promulgated on an emergency basis, where the rule is federally mandated, or where the rule substantially codifies existing federal or state law. Notwithstanding the provisions of this section, federally mandated regulations are subject to the federal Regulatory Flexibility Act as amended by the Small Business Regulatory and Enforcement Fairness Act of 1996, P.L. 96-354, as amended by P.L. 104.121. Any federally mandated regulations that do not comply with these acts shall be subject to this section.

(L. 2004 H.B. 978, A.L. 2005 H.B. 576)

536.303. Small business statement required for certain proposed rules, content. — 1. For any proposed rules that affect small business, the agency shall also submit a small business statement to the board after a public hearing is held. This section shall not apply to emergency rules. The small business statement required by this section shall provide the following information:

- (1) A description of how the opinions or comments from affected small businesses were solicited;
 - (2) A summary of the public and small business comments;
 - (3) A summary of the agency's response to those comments; and
 - (4) The number of persons who attended the public hearing, testified at the hearing, and submitted written comments.
2. If a request to change the proposed rule was made at the hearing in a way that affected small business, a statement of the reasons for adopting the proposed rule without the requested change shall be included in the small business statement.

(L. 2005 H.B. 576)

536.305. Small business regulatory fairness board established, members, terms, expenses, meetings—rulemaking authority. — 1. There is hereby established the "Small Business Regulatory Fairness Board". The department of economic development shall provide staff support for the board.

2. The board shall be composed of nine members appointed in the following manner:
 - (1) One member who is the chair of the minority business advocacy commission;
 - (2) One member appointed by the president pro tempore of the senate;
 - (3) One member appointed by the minority leader of the senate;

- (4) One member appointed by the speaker of the house of representatives;
- (5) One member appointed by the minority leader of the house of representatives; and
- (6) Four members appointed by the governor.

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

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

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

6. The board shall meet as often as necessary, as determined by the chairperson of the board. All meetings of the board will be conducted in accordance with the governmental bodies and records act, chapter 610, RSMo, including closed sessions. Notice will be posted and will be provided to the joint committee on administrative rules. Minutes of the meetings shall be provided to all members, the office of the governor, and the joint committee on administrative rules.

7. In addition to any other powers provided by sections 536.300 to 536.328, the board may adopt any rules necessary to implement sections 536.300 to 536.328 and take any action necessary to effectuate the purposes of sections 536.300 to 536.328. Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of this chapter and, if applicable, section 536.028. This section and this chapter are nonseverable and if any of the powers vested with the general assembly pursuant to this chapter to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2005, shall be invalid and void.

(L. 2004 H.B. 978, A.L. 2005 H.B. 576)

536.310. Authority of board. — 1. The board shall:

- (1) Provide state agencies with input regarding rules that adversely affect small businesses;
- (2) Solicit input and conduct hearings from small business owners and state agencies regarding any rules proposed by a state agency; and
- (3) Provide an evaluation report to the governor and the general assembly, including any recommendations and evaluations of state agencies regarding regulatory fairness for Missouri's small businesses. The report shall include comments from small businesses, state agency responses, and a summary of any public testimony on rules brought before the board for consideration.

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

- (1) The rule creates an undue barrier to the formation, operation, and expansion of small businesses in a manner that significantly outweighs the rule's benefits to the public; or
- (2) New or significant economic information indicates the proposed rule would create an undue impact on small businesses; or
- (3) Technology, economic conditions, or other relevant factors justifying the purpose for the rule has changed or no longer exists; or
- (4) If the rule was adopted after August 28, 2004, whether the actual effect on small businesses was not reflected in or significantly exceeded the small business impact statement submitted prior to the adoption of the rules.

(L. 2004 H.B. 978, A.L. 2005 H.B. 576)

536.315. State agencies to consider board recommendations, response. — Any state agency receiving recommendations from the board shall promptly consider such recommendations and may file a response with the board within sixty days of receiving the board's recommendations. If the state agency determines that no action shall be taken on the board's recommendations, the agency should explain its reasons for its determination. If the state agency determines that the board's recommendations merit adoption, amendment or repeal of a rule, the agency should indicate this in its response.

(L. 2004 H.B. 978)

536.320. Waiver or reduction of administrative penalties, when—inapplicability, when. — 1. Any state agency authorized to assess administrative penalties or administrative fines upon a small business may consider waiving or reducing any administrative penalty or administrative fine for a violation of any statute, ordinance, or rules by a small business under the following conditions:

- (1) The small business corrects the violation within thirty days after receipt of a notice of violation or citation;
- (2) The violation was unintentional or the result of excusable neglect;
- (3) The violation was the result of an excusable misunderstanding of a state agency's interpretation of a rule; or
- (4) The small business self-identifies the violation.

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

- (1) A small business fails to exercise good faith in complying with the statute, ordinance, or rule;
- (2) A violation involves willful or criminal conduct;
- (3) The violation is deemed by the state agency to be egregious;
- (4) A violation results in serious health, safety, or environmental impact;
- (5) The penalty or fine is assessed pursuant to a federal law or regulation for which no waiver or reduction is authorized by the federal law or regulation; or
- (6) There is a continuing pattern of similar violations by the small business.

(L. 2004 H.B. 978 § 536.325)

536.323. Small business objection to rules, petition may be filed, grounds—procedure for petition. — 1. In addition to the basis for filing a petition provided in section 536.041, any affected small business may file a written petition with the agency that has adopted rules objecting to all or part of any rule affecting small business on any of the following grounds:

- (1) The actual effect on small business was not reflected in or significantly exceeded the small business impact statement submitted prior to the adoption of the rules;
- (2) The small business impact statement did not consider new or significant economic information that reveals an undue impact on small business; or
- (3) The impacts were not previously considered at the public hearing on the rules.

2. For any rule adopted prior to August 28, 2005, an affected small business may file a written petition with the agency that adopted the rule objecting to all or part of any rule affecting small business on any of the following grounds:

- (1) The rule creates an undue barrier to the formation, operation, and expansion of small businesses in a manner that significantly outweighs the rule's benefit to the public;
- (2) The rule duplicates, overlaps, or conflicts with rules adopted by the agency or any other agency or violates the substantive authority under which the rule was adopted; or
- (3) The technology, economic conditions, or other relevant factors justifying the purpose for the rule has changed or no longer exist.

3. Upon submission of the petition, the agency shall forward a copy of the petition to the board and the joint committee on administrative rules,

as required by section 536.041, as notification of a petition filed under sections 536.300 to 536.328. The agency shall promptly consider the petition and may seek advice and counsel regarding the petition. Within sixty days after the receipt of the petition, the agency shall determine whether the impact statement or public hearing addressed the actual and significant impact on small business. The agency shall submit a written response of the agency's determination to the board within sixty days of the receipt of the petition. If the agency determines that the petition merits the adoption, amendment, or repeal of a rule, it may initiate proceedings in accordance with the applicable requirements of this chapter.

4. If the agency determines that the petition does not merit the adoption, amendment, or repeal of a rule, any affected small business may seek a review of the decision by the board. The board may convene a hearing or by other means solicit testimony that will assist in its determination of whether to recommend that the agency initiate proceedings in accordance with this chapter. For rules adopted after August 28, 2005, the board shall base its recommendations on any of the following reasons:

(1) The actual effect on small business was not reflected in or significantly exceeded the impact statement submitted prior to the adoption of the rule;

(2) The impact statement did not consider new or significant economic information that reveals an undue impact on small business;

(3) Such impacts were not previously considered by the agency; or

(4) Such impacts were not previously considered at the public hearing on the rules.

5. For rules adopted prior to August 28, 2005, the board shall base its recommendations on any of the following reasons:

(1) The rules created an undue barrier to the formation, operation, and expansion of small businesses in a manner that significantly outweighs its benefit to the public;

(2) The rules duplicate, overlap, or conflict with rules adopted by the agency or any other agency or violate the substantive authority under which the rules were adopted; or

(3) The technology, economic conditions, or other relevant factors justifying the purpose for the rules have changed or no longer exist.

6. The board shall make an evaluation report to the governor and the general assembly on rulemaking proceedings, comments from small business, and agency response as provided in this section. The governor or general assembly may subsequently take such action in response to the evaluation report and agency response as they find appropriate.

(L. 2005 H.B. 576)

536.325. Rules affecting small business, list submitted to general assembly and board—availability of list—testimony may be solicited. —

1. Each agency with rules that affect small business shall submit by June thirteenth of each odd-numbered year a list of such rules to the general assembly and the board. The agency shall also submit a report describing the specific public purpose or interest for adopting the respective rules and any other reasons to justify its continued existence. The general assembly may subsequently take such action in response to the report as it finds appropriate.

2. The board shall provide to the head of each agency a list of any rules adopted by the agency that affect small business and have generated complaints or concerns, including any rules that the board determines may duplicate, overlap, or conflict with other rules or exceed statutory authority. Within forty-five days after being notified by the board the list of rules adopted, the agency shall submit a written report to the board in response to the complaints or concerns. The agency shall also state whether the agency has considered the continued need for the rules and the degree to which technology, economic conditions, and other relevant factors may have diminished or eliminated the need for maintaining the rules.

3. The board may solicit testimony from the public at a public meeting regarding any report submitted by the agency under this section. The board shall submit an evaluation report to the governor and the general assembly regarding small business comments, agency response, and public testimony on rules in this section. The governor and the general assembly may take such action in response to the report as they find appropriate.

(L. 2005 H.B. 576)

536.328. Judicial review for small businesses adversely affected or aggrieved by an agency action, procedure. — For any regulation sub-

ject to sections 536.300 to 536.328, a small business that is adversely affected or aggrieved by final agency action is entitled to judicial review of agency compliance with the requirements of sections 536.300 to 536.328. Judicial review shall be commenced in the circuit court of the county in which the small business has its primary place of business, or in Cole County. If the small business does not have a primary place of business in the state, proper venue shall be in Cole County. Notwithstanding any provisions of this chapter to the contrary, an affected small business may seek such judicial review during the period beginning on the date the proposed rule becomes final and ending one year later.

(L. 2005 H.B. 576)