

Vernon's Annotated Missouri Statutes

Title XXXVI. Statutory Actions and Torts

Chapter 536. Administrative Procedure and Review (Refs & Annos)

V.A.M.S. 536.073

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

Currentness

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 secretary 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.

Credits

(L.1957, p. 748, § 1. Amended by L.1985, S.B. Nos. 5, 269, 270, 271, 276, 277 & 322, § A; [L.1989, H.B. No. 143, § A](#); [L.1995, S.B. No. 3, § A](#).)

[Notes of Decisions \(14\)](#)

V. A. M. S. 536.073, MO ST 536.073

Statutes are current with emergency legislation approved through May 30, 2012, of the 2012 Second Regular Session of the 96th General Assembly. Constitution is current through the November 2, 2010 General Election.

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