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Chapter No. 454

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IN 17B/EC

***SENATE BILL NO. 2398***

Originated in Senate

*L. K. Welch*

Secretary

SENATE BILL NO. 2398

AN ACT TO CREATE THE "MISSISSIPPI SMALL BUSINESS REGULATORY FLEXIBILITY ACT"; TO DEFINE CERTAIN TERMS AS USED IN THE ACT; TO ESTABLISH A SMALL BUSINESS REGULATORY REVIEW COMMITTEE; TO IMPROVE STATE RULEMAKING BY CREATING PROCEDURES TO ANALYZE THE ECONOMIC IMPACT ON AND AVAILABILITY OF MORE FLEXIBLE APPROACHES FOR SMALL BUSINESS; TO AMEND SECTION 25-43-3.105, MISSISSIPPI CODE OF 1972, TO REQUIRE THAT EACH AGENCY PROPOSING ANY AMENDMENT TO A RULE UNDER THE ADMINISTRATIVE PROCEDURES LAW TO CONSIDER THE ECONOMIC IMPACT OF THE AMENDMENT; TO PROVIDE THAT THE REQUIRED WRITTEN REPORT PROVIDING AN ECONOMIC IMPACT STATEMENT FOR THE ADOPTION OF A RULE SHALL INCLUDE THE SPECIFIC LEGAL AUTHORITY FOR THE ADOPTION OF THE RULE AND A STATEMENT OF THE EFFECT THE PROPOSED ACTION WILL HAVE ON THE PUBLIC HEALTH, SAFETY AND WELFARE; TO PROVIDE THAT THE FULL TEXT OF THE ECONOMIC IMPACT STATEMENT MUST BE FILED WITH THE SECRETARY OF STATE FOR PUBLICATION IN THE ADMINISTRATIVE BULLETIN AND TO REMOVE CERTAIN EXEMPTIONS FROM THE REQUIREMENTS OF THIS SECTION; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** The following shall be codified as Section 25-43-4.101, Mississippi Code of 1972:

25-43-4.101. This act may be cited as the "Mississippi Small Business Regulatory Flexibility Act."

**SECTION 2.** The following shall be codified as Section 25-43-4.102, Mississippi Code of 1972:

25-43-4.102. As used in this act:

- (a) "Agency" is defined in Section 25-43-1.102.
- (b) "Department" means the Mississippi Development Authority.
- (c) "Committee" means the Small Business Regulatory Review Committee.
- (d) "Rule" is defined in Section 25-43-1.102, except that the term "rule" shall not include emergency or preemptive rules.

(e) "Small business" means a for-profit business entity employing fewer than one hundred (100) full-time employees or having gross annual sales or revenues of less than Ten Million Dollars (\$10,000,000.00).

**SECTION 3.** The following shall be codified as Section 25-43-4.103, Mississippi Code of 1972:

25-43-4.103. (1) There is established a Small Business Regulatory Review Committee.

(2) The duties of the committee shall be to:

(a) Provide agencies with input regarding proposed permanent rules which may have an economic impact upon small business and for which a notice of intended action is published by the Secretary of State on or after July 1, 2012;

(b) Review any rule promulgated by a state agency for which notice has been given by the agency to the committee that the proposed rule has or may have an economic effect upon small business and make recommendations to the agency and or the Legislature regarding the need for a rule or legislation;

(c) Petition an agency to amend, revise, or revoke an existing regulation based on an economic impact on small business; and

(d) Advise and assist agencies in complying with the provisions of and perform any and all acts and duties set forth and authorized in the Mississippi Small Business Regulatory Flexibility Act.

(3) The committee is assigned to the Mississippi Development Authority for administrative purposes only. The department shall act as a coordinator for the committee, and shall not be required to provide legal counsel for the committee.

(4) The committee shall consist of twelve (12) members, appointed as follows:

(a) Four (4) members to be appointed by the Governor;

(b) Four (4) members to be appointed by the Lieutenant Governor; and

(c) Four (4) members to be appointed by the Speaker of the House of Representatives.

(5) The appointing authorities shall appoint members of the committee from:

(a) Lists of nominees submitted by the following business organizations:

(i) National Federation of Independent Business;

(ii) Mississippi Manufacturers Association;

(iii) Mississippi Retail Association;

(iv) Mississippi Petroleum Marketers and Convenience Stores Association;

(v) Mississippi Minority Contractors Association;

(vi) Mississippi Economic Council;

(vii) Mississippi Farm Bureau Federation; and

(viii) Any local chamber of commerce; and/or

(b) Small business owners or operators not affiliated with the business organizations listed in paragraph (a) of this subsection.

(6) Appointments to the committee shall be representative of a variety of small businesses in this state. All appointed members shall be either current or former owners or officers of a small business.

(7) The initial appointments to the committee shall be made within sixty (60) days from July 1, 2012. The Mississippi Development Authority shall provide the name and address of each appointee to the Governor, Lieutenant Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives and the Secretary of State.

(8) (a) Members initially appointed to the committee shall serve for terms ending December 31, 2014. Thereafter, appointed

members shall serve two-year terms that expire on December 31 of the second year.

(b) The Governor shall appoint the initial chair of the committee from the appointed members for a term ending December 31, 2014. Subsequent chairs of the committee shall be elected by the committee from the appointed members for two-year terms that expire on December 31 of the second year.

(9) Members of the committee shall not receive any compensation.

(10) The committee shall meet as determined by the chair of the committee.

(11) A majority of the voting members of the committee shall constitute a quorum to do business. The concurrence of a majority of the members of the committee present and voting shall be necessary to make any action of the committee valid.

(12) No appointed committee member shall serve more than three (3) consecutive terms.

**SECTION 4.** The following shall be codified as Section 25-43-4.104, Mississippi Code of 1972:

25-43-4.104. (1) Prior to submitting proposed permanent rules for adoption, amendment, revision or revocation pursuant to the Mississippi Administrative Procedures Law, the agency shall comply with Section 25-43-3.105(2)(d) in order to determine whether the proposed rules affect small business by preparing an economic impact statement that includes the following:

(a) An identification and estimate of the number of small businesses subject to the proposed regulation;

(b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record;

(c) A statement of the probable effect on impacted small businesses;

(d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation, including the following regulatory flexibility analysis:

(i) The establishment of less stringent compliance or reporting requirements for small businesses;

(ii) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;

(iii) The consolidation or simplification of compliance or reporting requirements for small businesses;

(iv) The establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and

(v) The exemption of some or all small businesses from all or any part of the requirements contained in the proposed regulations.

(2) If the economic impact statement reflects that a proposed rule may have an economic effect upon small business, the agency shall submit a copy of the proposed rules and the economic impact statement to the committee for its review and comment pursuant to the review and comment provisions of the Mississippi Administrative Procedures Law. During the committee review process, the director or the director's designee of the promulgating agency shall be available at the request of the committee for comment on the proposed regulation.

(3) Within the review and comment period, if the committee determines that the proposed rules may have an economic effect upon small business, the committee may submit to the agency its comments concerning the proposed regulation including its specific recommendations.

(4) A small business that is affected or aggrieved by final agency action to enforce a rule or regulation is entitled to review of agency compliance with the requirements of this act.

(5) To ensure that any final rule continues to minimize economic impact on small businesses in a manner consistent with the stated objectives of applicable statutes, each agency shall, during any periodic review required by this chapter, consider the following factors:

- (a) The continued need for the rule;
- (b) The nature of complaints or comments received concerning the rule from the public;
- (c) The complexity of the rule;
- (d) The extent to which the rule overlaps, duplicates, or conflicts with other federal, state and local governmental law or rules; and
- (e) The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

**SECTION 5.** The following shall be codified as Section 25-43-4.105, Mississippi Code of 1972:

25-43-4.105. (1) For promulgated regulations, the committee may file a written petition with the agency that has promulgated the regulations opposing all or part of a regulation that has an impact on small business. In addition to distinctly setting forth how the regulation has had an impact on small business, the committee's petition shall address the following factors:

- (a) The continued need for the rule;
- (b) The nature of complaints or comments received concerning the rule from the public;
- (c) The complexity of the rule;
- (d) The extent to which the rule overlaps, duplicates or conflicts with other federal, state and local governmental laws or rules; and

(e) The length of time since the rule has been evaluated or the degree to which technology, economic conditions or other factors have changed in the area affected by the rule.

The petition may also renew any earlier comments made by the committee when the regulation was first promulgated, as provided by Section 25-43-4.104(3). Furthermore, the committee's petition shall make a specific recommendation concerning the regulation, including, but not limited to, whether the regulation should be amended, revised or revoked.

(2) The agency shall submit a written response of its determination to the committee within sixty (60) days after receipt of the petition. If the agency determines that the petition merits the amendment, revision, or revocation of a regulation, the agency may initiate proceedings in accordance with the applicable requirements of the Mississippi Administrative Procedures Law. If the agency determines that the petition is without merit, the committee may submit within thirty (30) days additional data in support of its petition.

**SECTION 6.** The following shall be codified as Section 25-43-4.106, Mississippi Code of 1972:

25-43-4.106. The committee shall make an annual report by January 15 of each year to the Governor, the Lieutenant Governor and the Speaker of the House of Representatives and provide detailed information on the committee's activities during the previous calendar year.

**SECTION 7.** The following shall be codified as Section 25-43-4.107, Mississippi Code of 1972:

25-43-4.107. (1) Notwithstanding any other law of this state, any agency authorized to assess administrative penalties or administrative fines upon a business may waive or reduce any administrative penalty or administrative fine for a violation of any statute, ordinance, or rules by a small business under the following conditions:

(a) The small business corrects the violation within thirty (30) days or less after receipt of a notice of violation or citation;

(b) The violation was the result of an excusable misunderstanding of an agency's interpretation of a rule; or

(c) The agency determines that the small business is making a good-faith effort to comply with the statute, ordinance or rule.

(2) Subsection (1) of this section shall not apply when:

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

(b) A violation involves criminal conduct;

(c) A violation results in serious health, safety or environmental impact; or

(d) The penalty or fine is assessed pursuant to a federal law or regulation and for which no waiver or reduction is authorized by the federal law or regulation.

**SECTION 8.** The following shall be codified as Section 25-43-4.108, Mississippi Code of 1972:

25-43-4.108. The Mississippi Small Business Regulatory Flexibility Act shall not apply to proposed permanent rules by an agency to implement a statute or ordinance that does not require an agency to interpret or describe the requirements of the statute or ordinance, such as state legislative or federally mandated provisions which afford the agency no discretion to consider less restrictive alternatives.

**SECTION 9.** Sections 1 through 9 of this act shall be repealed from and after July 1, 2016.

**SECTION 10.** Section 25-43-3.105, Mississippi Code of 1972, is amended as follows:

**[Through June 30, 2016, this section shall read as follows:]**

25-43-3.105. (1) Prior to giving the notice required in Section 25-43-3.103, each agency proposing the adoption of a rule

or \* \* \* amendment of an existing rule imposing a duty, responsibility or requirement on any person shall consider the economic impact the rule will have on the citizens of our state and the benefits the rule will cause to accrue to those citizens. \* \* \*

(2) Each agency shall prepare a written report providing an economic impact statement for the adoption of a rule or \* \* \* amendment to an existing rule imposing a duty, responsibility or requirement on any person \* \* \*. The economic impact statement shall include the following:

(a) The specific legal authority authorizing the promulgation of the rule.

(b) A description of:

(i) The need for the proposed action;

(ii) The benefits which will likely accrue as the result of the proposed action; and

(iii) The effect the proposed action will have on the public health, safety and welfare.

(c) An estimate of the cost to the agency, and to any other state or local government entities, of implementing and enforcing the proposed action, including the estimated amount of paperwork, and any anticipated effect on state or local revenues;

(d) An estimate of the cost or economic benefit to all persons directly affected by the proposed action;

(e) An analysis of the impact of the proposed rule on small business;

(f) A comparison of the costs and benefits of the proposed rule to the probable costs and benefits of not adopting the proposed rule or significantly amending an existing rule;

(g) A determination of whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rule where reasonable alternative methods exist which are not precluded by law;

(h) A description of reasonable alternative methods, where applicable, for achieving the purpose of the proposed action which were considered by the agency and a statement of reasons for rejecting those alternatives in favor of the proposed rule; and

(i) A detailed statement of the data and methodology used in making estimates required by this subsection.

(3) No rule or regulation shall be declared invalid based on a challenge to the economic impact statement for the rule unless the issue is raised in the agency proceeding. No person shall have standing to challenge a rule, based upon the economic impact statement or lack thereof, unless that person provided the agency with information sufficient to make the agency aware of specific concerns regarding the statement in an oral proceeding or in written comments regarding the rule. The grounds for invalidation of an agency action, based upon the economic impact statement, are limited to the agency's failure to adhere to the procedure for preparation of the economic impact statement as provided in this section, or the agency's failure to consider information submitted to the agency regarding specific concerns about the statement, if that failure substantially impairs the fairness of the rule-making proceeding.

(4) A concise summary and the full text of the economic impact statement must be properly filed with the Secretary of State for publication in the administrative bulletin and the period during which persons may make written submissions on the proposed rule shall not expire until at least twenty (20) days after the date of such proper filing.

(5) The properly filed summary of the economic impact statement must also indicate \* \* \* where, when and how persons may present their views on the proposed rule and demand an oral proceeding on the proposed rule if one is not already provided.

\* \* \*

[From and after July 1, 2016, this section shall read as follows:]

25-43-3.105. (1) Prior to giving the notice required in Section 25-43-3.103, each agency proposing the adoption of a rule or significant amendment of an existing rule imposing a duty, responsibility or requirement on any person shall consider the economic impact the rule will have on the citizens of our state and the benefits the rule will cause to accrue to those citizens. For purposes of this section, a "significant amendment" means any amendment to a rule for which the total aggregate cost to all persons required to comply with that rule exceeds One Hundred Thousand Dollars (\$100,000.00).

(2) Each agency shall prepare a written report providing an economic impact statement for the adoption of a rule or significant amendment to an existing rule imposing a duty, responsibility or requirement on any person, except as provided in subsection (7) of this section. The economic impact statement shall include the following:

(a) A description of the need for and the benefits which will likely accrue as the result of the proposed action;

(b) An estimate of the cost to the agency, and to any other state or local government entities, of implementing and enforcing the proposed action, including the estimated amount of paperwork, and any anticipated effect on state or local revenues;

(c) An estimate of the cost or economic benefit to all persons directly affected by the proposed action;

(d) An analysis of the impact of the proposed rule on small business;

(e) A comparison of the costs and benefits of the proposed rule to the probable costs and benefits of not adopting the proposed rule or significantly amending an existing rule;

(f) A determination of whether less costly methods or less intrusive methods exist for achieving the purpose of the

proposed rule where reasonable alternative methods exist which are not precluded by law;

(g) A description of reasonable alternative methods, where applicable, for achieving the purpose of the proposed action which were considered by the agency and a statement of reasons for rejecting those alternatives in favor of the proposed rule; and

(h) A detailed statement of the data and methodology used in making estimates required by this subsection.

(3) No rule or regulation shall be declared invalid based on a challenge to the economic impact statement for the rule unless the issue is raised in the agency proceeding. No person shall have standing to challenge a rule, based upon the economic impact statement or lack thereof, unless that person provided the agency with information sufficient to make the agency aware of specific concerns regarding the statement in an oral proceeding or in written comments regarding the rule. The grounds for invalidation of an agency action, based upon the economic impact statement, are limited to the agency's failure to adhere to the procedure for preparation of the economic impact statement as provided in this section, or the agency's failure to consider information submitted to the agency regarding specific concerns about the statement, if that failure substantially impairs the fairness of the rule-making proceeding.

(4) A concise summary of the economic impact statement must be properly filed with the Secretary of State for publication in the administrative bulletin and the period during which persons may make written submissions on the proposed rule shall not expire until at least twenty (20) days after the date of such proper filing.

(5) The properly filed summary of the economic impact statement must also indicate where persons may obtain copies of the full text of the economic impact statement and where, when and how persons may present their views on the proposed rule and

demand an oral proceeding on the proposed rule if one is not already provided.

(6) If the agency has made a good-faith effort to comply with the requirements of subsections (1) and (2) of this section, the rule may not be invalidated on the ground that the contents of the economic impact statement are insufficient or inaccurate.

(7) This section does not apply to the adoption of:

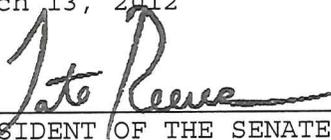
(a) Any rule which is required by the federal government pursuant to a state/federal program delegation agreement or contract;

(b) Any rule which is expressly required by state law; and

(c) A temporary rule adopted pursuant to Section 25-43-3.108.

**SECTION 11.** This act shall take effect and be in force from and after July 1, 2012.

PASSED BY THE SENATE  
March 13, 2012



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PRESIDENT OF THE SENATE

PASSED BY THE HOUSE OF REPRESENTATIVES  
April 11, 2012



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SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR



3:15 pm

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GOVERNOR