

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

HOUSE BILL NO. 2120

By: Hilliard

AS INTRODUCED

An Act relating to statutes and reports; enacting the Oklahoma Regulatory Reform Act; making statement of findings; defining terms; limiting rules and regulations to certain purposes; imposing requirements upon state agencies with respect to rules and regulations; requiring action by agencies with respect to rules and regulations; requiring reports; authorizing certain administrative proceedings; requiring action by agencies; authorizing certain civil actions; prescribing burden of proof; prescribing remedies for prevailing party; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 401 of Title 75, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Regulatory Reform Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 402 of Title 75, unless there is created a duplication in numbering, reads as follows:

A. Statement of Findings and Purpose.

The Oklahoma Legislature hereby finds and declares that in recent years, many rules and regulations imposed on businesses and professions have exceeded legitimate public purposes and have had the effect of arbitrarily limiting the success of such businesses and professions. It is therefore in the public interest to ensure that rules and regulations imposed on businesses and professions are demonstrably necessary and carefully tailored to fulfill legitimate health, safety and welfare objectives.

B. Definitions.

1. "Agency" shall be broadly construed to include the state and all units of state government and shall exclude no entity established under the constitution or laws of the State of Oklahoma, or established by any entity which was itself established under the constitution or laws of the State of Oklahoma;

2. "Rule" or "regulation" shall include any law, ordinance, regulation, rule, policy, fee, condition, test, permit, administrative practice or other provision the effect of which is to arbitrarily limit the success of businesses or professions;

3. "Welfare" for purposes of this act, shall be narrowly construed to encompass protection of members of the public against fraud or harm. The term shall not encompass the protection of existing businesses or agencies, whether publicly or privately owned, against competition;

4. "Person" for purposes of this act shall mean an individual, business or corporation.

C. All rules and regulations with respect to businesses or professions shall be limited to those demonstrably necessary and

carefully tailored to fulfill specific legitimate public health, safety or welfare objectives.

D. Within one (1) year following enactment, every agency shall conduct a comprehensive review of all rules and regulations within their jurisdiction, and for each such rule or regulation, it shall:

1. Articulate with specificity the public health, safety, or welfare objectives served by the rule or regulation; and

2. Articulate the reasons why the rule or regulation is necessary to serve the specified objectives.

E. To the extent that the agency finds any rule or regulation that does not satisfy the standard set forth in subsection C of this section, it shall:

1. Repeal the rule or regulation, or modify it so as to conform with the standard of subsection C of this section, if such action is within the agency's authority to do so; or

2. Recommend to the state Legislature actions necessary to repeal or modify the rule or regulation so as to conform with the standard of subsection C of this section, if such action is not within the agency's authority.

F. Within fifteen (15) months following enactment, each agency shall report to the Legislature on all actions taken to conform with this act.

G. Administrative Proceedings.

1. Any time after two (2) years subsequent to the enactment of this act, any person may petition in writing any agency to repeal or modify any rule or regulation affecting a business or profession within that agency's jurisdiction.

2. Within ninety (90) days of a petition being filed pursuant to paragraph 1 of this subsection, the agency shall either repeal the rule or regulation, modify it so as to conform with the standard of subsection C of this section, or state the basis on which the

agency concludes the rule or regulation conforms with the standard of subsection C of this section.

3. Any time after ninety (90) days following a written petition being filed pursuant to paragraph 1 of this subsection that has not been acted upon by the agency, the person filing such petition challenging any rule or regulation may file an action to repeal or modify the rule or regulation in any district court in the state.

4. With respect to the challenging of any such rule or regulation, the plaintiff shall prevail if the court finds by a preponderance of the evidence that the challenged rule or regulation on its face or in its effect burdens a business or profession and either:

- a. that the challenged rule or regulation is not demonstrably necessary and carefully tailored to fulfill specific legitimate public health, safety, or welfare objectives, or
- b. where the challenged rule or regulation is necessary to the legitimate public health, safety, or welfare objectives, such objectives can be effectively served by rules or regulations less burdensome to economic opportunity.

5. Upon a finding for the plaintiff, the court shall enjoin further enforcement of the challenged rule or regulation, and shall award reasonable attorney fees and costs to the plaintiff.

SECTION 3. This act shall become effective November 1, 1997.

46-1-5352

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