

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

SENATE BILL 765

By: Maddox

AS INTRODUCED

An Act relating to statutes and reports; enacting the Oklahoma Small Business Regulatory Flexibility Act; defining terms; creating Small Business Regulatory Review Board within Oklahoma Department of Commerce; stating purpose of Board; providing for membership, terms of office, qualifications for membership, conduct of proceedings and exercise of powers; prohibiting exercise of certain powers; requiring agencies comply with certain provisions for making certain determination; providing exemption; requiring agencies submit proposed rules affecting small business to Small Business Regulatory Review Board and provide for certain review and comment period; requiring Board submit certain request to agency; requiring notice for public hearing pursuant to certain provisions; providing exemption; requiring agency submit report to Board after period for public comment and hearing expires and prescribing content of statement; authorizing filing of certain petitions by small businesses; stating grounds for petition; requiring agency submit petition to board, take certain actions, and submit certain response to board; requiring review of petitions by board; prescribing procedures for board and basis for recommendations; requiring board submit certain report to Legislature under certain circumstances; authorizing agencies to waive or reduce administrative fines or penalties under certain circumstances; providing exceptions; providing for codification; providing an effective date; and declaring an emergency.

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 501 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 Small Business Regulatory Flexibility Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 502 of Title 75, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Affected small businesses" or "affects small business" means any potential or actual requirement imposed upon a small business through an agency's proposed or adopted rule that will cause a direct and significant economic burden upon a small business, or is directly related to the formation, operation, or expansion of a small business;

2. "Agency" means each state board, commission, department, or officer authorized by law to make rules, except those in the legislative or judicial branches;

3. "Board" means the Small Business Regulatory Review Board; and

4. "Small business" means a for-profit enterprise consisting of fifty (50) or fewer full-time or part-time employees.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 503 of Title 75, unless there is created a duplication in numbering, reads as follows:

A. 1. There shall be established a Small Business Regulatory Review Board within the Oklahoma Department of Commerce. The Board shall serve as an advisory body to state agencies and the Legislature.

2. The duties of the Board shall be to:

- a. provide input into the drafting of proposed rules which affect small business as described in Section 4 of this act, and
- b. review any rule which affects small business adopted by a state agency and make recommendations to the agency or the Legislature regarding the need for a rule or legislation.

Staff support for the Board shall be provided by the Department of Commerce.

B. The Small Business Regulatory Review Board shall consist of thirteen (13) members, who shall be appointed or serve by designation as follows:

1. Three members to be appointed by the Governor;
2. Two members to be appointed by the Lieutenant Governor;
3. The Chair of the Small Business Committee of the Oklahoma State Senate, *ex officio* and nonvoting;
4. One member to be appointed by the Chair of the Small Business Committee of the Oklahoma State Senate;
5. The Chair of the Small Business Committee of the Oklahoma House of Representatives, *ex officio* and nonvoting;
6. One member to be appointed by the Chair of the Small Business Committee of the Oklahoma House of Representatives;
7. Two members to be appointed by the President Pro Tempore of the Senate; and
8. Two members to be appointed by the Speaker of the House of Representatives.

C. 1. Appointments to the Small Business Regulatory Review Board shall be representative of a variety of small businesses in this state. All appointed members shall be either a current or former owner or officer of a small business and shall not be an officer or employee of federal, state, or county government.

2. The Governor and Lieutenant Governor shall appoint members from small businesses located in municipalities having a population of three hundred thousand (300,000) or more.

3. The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall appoint members from small businesses located in the four quadrants of this state, delineated by the intersection of Interstate 35 and Interstate 40, as follows:

- a. the President Pro Tempore of the Senate shall appoint one member from the northeast quadrant and one member from the southeast quadrant, and
- b. the Speaker of the House of Representatives shall appoint one member from the northwest quadrant and one member from the southwest quadrant.

The appointments by the President Pro Tempore of the Senate and the Speaker of the House of Representatives shall not be made from small businesses located in municipalities having a population of three hundred thousand (300,000) or more.

D. The initial appointments to the Board shall be made within thirty (30) days from the effective date of this act. The Oklahoma Department of Commerce 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 chairs of the House and Senate Small Business Committees.

E. 1. Members initially appointed to the Board shall serve for a term ending December 31, 2002. Thereafter, appointed members shall serve for two-year terms that expire on December 31 of the second year.

2. The Governor shall appoint the initial chair of the Board from the appointed members for a term ending December 31, 2002, and shall appoint subsequent chairs of the Board from the appointed members for two-year terms that expire on December 31 of the second year.

3. The Board shall meet at least semiannually or more often if necessary as determined by the chair of the Board.

4. A majority of the voting members of the Board shall constitute a quorum to do business and the concurrence of a majority of the members of the Board present and voting shall be necessary to make any action of the Board valid.

5. No Board member shall serve more than three consecutive terms.

F. The Small Business Regulatory Review Board may exercise only those powers expressly authorized by this act and shall not have the capacity to sue or to impose fees or charges of any kind in the performance of its duties or responsibilities.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 504 of Title 75, unless there is created a duplication in numbering, reads as follows:

A. Prior to submitting proposed rules for adoption, amendment, or repeal pursuant to the Oklahoma Administrative Procedures Act, the agency shall comply with the provisions of paragraph 4 of subsection A of Section 303 of Title 75 of the Oklahoma Statutes in order to determine whether the proposed rules affect small business. This section shall not apply to emergency rulemaking.

B. If the proposed rules affect small business, the agency shall submit a copy of the proposed rules to the Small Business Regulatory Review Board and provide a thirty-day review and comment period pursuant to the provisions of paragraph 2 of subsection A and paragraph 6 of subsection B of Section 303 of Title 75 of the Oklahoma Statutes.

C. Within the thirty-day review and comment period, if the Small Business Regulatory Review Board determines the proposed rules place a significant economic burden on small business, the Board shall submit to the agency a request to consider:

1. The availability and practicability of less restrictive alternatives that could be implemented; and

2. Creative, innovative, or flexible methods of compliance for small businesses.

D. Upon completion of the thirty-day review and comment period, the agency shall schedule a public hearing as provided for in subsection C of Section 303 of Title 75 of the Oklahoma Statutes.

E. This act shall not apply to proposed rules adopted 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 federally mandated regulations which afford the agency no discretion to consider less restrictive alternatives.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 505 of Title 75, unless there is created a duplication in numbering, reads as follows:

For any proposed rules that affect small business, the agency shall submit a report to the Small Business Regulatory Review Board after the period for public comment and hearing, as provided for in Section 4 of this act, has expired. This section shall not apply to emergency rules. The report required by this section shall provide the following information:

1. A description of how opinions or comments from affected small business were solicited, a summary of the public and small business comments, a summary of the agency's response to those comments, and a summary of the small business impact statement formulated by the agency pursuant to the provisions of paragraph 4 of subsection A and paragraph 6 of subsection B of Section 303 of Title 75 of the Oklahoma Statutes;

2. The number of persons who:

- a. attended the public hearing,
- b. testified at the hearing, and
- c. submitted written comments; and

3. If there was a request to change the proposed rule at the hearing in a way that affected small business, a statement of the reasons for adopting the proposed rule without the requested change.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 506 of Title 75, unless there is created a duplication in numbering, reads as follows:

A. For rules adopted on or after the effective date of this act, any affected small business may file a written petition with the agency that has adopted the 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 formulated by the agency pursuant to the provisions of paragraph 4 of subsection A and paragraph 6 of subsection B of Section 303 of Title 75 of the Oklahoma Statutes prior to the adoption of the rules; or

2. These impacts were either not previously considered at the public hearing on the rules or there was no public hearing on the rules.

B. For rules adopted prior to the effective date of this act, any affected small business may file a written petition with the agency that adopted the rules objecting to all or part of any rules affecting small business on any of the following grounds:

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 another 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.

C. Upon submission of the petition, the agency shall forward a copy of the petition to the Small Business Regulatory Review Board as notification of a petition filed under this act. The agency shall promptly consider the petition and may seek advice and counsel regarding the petition. Within sixty (60) days after the submission of the petition, the agency shall determine whether the impact

statement or the public hearing addressed the actual and significant impact on small business. The agency shall submit a written response of its determination to the Small Business Regulatory Review Board within sixty (60) days after 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 the Administrative Procedures Act.

D. If the agency determines that the petition does not merit the adoption, amendment, or repeal of any rule, any affected small business may seek a review of the decision by the Small Business Regulatory Review Board. The Board shall promptly convene a meeting for the purpose of soliciting testimony that will assist in its determination whether to recommend that the agency initiate proceedings in accordance with the Administrative Procedures Act. For rules adopted after the effective date of this act, the Board may base its recommendation on any of the following reasons:

1. The actual effect on small business was not reflected in, or significantly exceeded, the small business impact statement formulated by the agency pursuant to the provisions of paragraph 4 of subsection A and paragraph 6 of subsection B of Section 303 of Title 75 of the Oklahoma Statutes prior to the adoption of the rules; or

2. These impacts were not previously considered at a public hearing on the rules.

E. For rules adopted prior to the effective date of this act, the Small Business Regulatory Review Board may base its recommendation to the agency on any of the following reasons:

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

2. The rules duplicate, overlap, or conflict with rules adopted by another 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.

F. If the Small Business Regulatory Review Board recommends that an agency initiate rulemaking proceedings for any reason provided in subsection D or E of this section, it shall submit to the Legislature an evaluation report and the agency's response as provided in subsection C of this section. The Legislature may subsequently take such action in response to the evaluation report and the agency's response as it finds appropriate.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 507 of Title 75, unless there is created a duplication in numbering, reads as follows:

A. Notwithstanding any other law of this state, any agency authorized to assess administrative penalties or fines upon a business may waive or reduce any penalty or 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 (30) days or less after receipt of a notice of violation or citation; or

2. The violation was the result of an excusable misunderstanding of an agency's interpretation of a rule.

B. Subsection A of this section shall not apply when:

1. A small business has been notified of the violation of a statute, ordinance, or rule by the agency pursuant to paragraph 1 of subsection A of this section and has been given a prior opportunity to correct the violation on a prior occasion;

2. A small business fails to exercise good faith in complying with the statute, ordinance, or rule;

3. A violation involves willful or criminal conduct;

4. A violation results in serious health, safety, or environmental impact; or

5. 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.

C. An agency may adopt rules to implement the requirements of this section.

SECTION 8. This act shall become effective July 1, 2001.

SECTION 9. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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