

SENATE BILL NO. 241 (Substitute of Senate Bill No. 208 by Senator Riser)

BY SENATOR RISER AND REPRESENTATIVE COUSSAN

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AN ACT

To amend and reenact R.S. 49:953(E), 965.2, 965.3(A), (B)(1), (2), and (10), and (C), 965.4, 965.5, the introductory paragraph of R.S. 49:965.6(A), 965.7, and 965.8 and to enact R.S. 953(A)(1)(a)(x) and (I), R.S. 49:965.3(B)(11) and (12), 965.6(C), and 965.9, relative to small business development; to enact the Small Business Protection Act; to provide procedures regarding administrative rules; to provide for legislative intent; to provide for definitions; to provide for notifications; to provide for the electronic transfer of certain information; to provide for a small business advocate; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 49:953(E), 965.2, 965.3(A), (B)(1), (2), and (10), and (C), 965.4, 965.5, the introductory paragraph of R.S. 49:965.6(A), 965.7, and 965.8 are hereby amended and reenacted and R.S. 953(A)(1)(a)(x) and (I), R.S. 49:965.3(B)(11) and (12), 965.6(C) and 965.9 are hereby enacted to read as follows:

§953. Procedure for adoption of rules; agency rule review

A. Prior to the adoption, amendment, or repeal of any rule, the agency shall:

(1)(a) Give notice of its intended action and a copy of the proposed rules at least ninety days prior to taking action on the rule. The notice shall include:

\* \* \*

**(x) A statement concerning the economic impact on small businesses, as set forth in R.S. 49:965.5, and the small business regulatory flexibility analysis,**

1 as set forth in R.S. 49:965.6.

2 \* \* \*

3 E.~~(1)~~ Beginning January 1, 1987, no ~~No~~ agency shall adopt, amend, or repeal  
4 any rule if the accompanying fiscal and economic impact statement approved by the  
5 Legislative Fiscal Office indicates that ~~said~~ the rule change would result in any  
6 increase in the expenditure of state funds, unless ~~said~~ the rule is adopted as an  
7 emergency rule pursuant to the requirements of this Section or unless the legislature  
8 has specifically appropriated the funds necessary for the expenditures associated with  
9 ~~said~~ the rule change.

10 (2) The fiscal and economic impact statement shall be summarized by the  
11 agency as to the estimated costs or economic benefits or both, to directly  
12 affected persons, small businesses, or nongovernmental groups and the  
13 summary shall be published in the *Louisiana Register*.

14 (3) No later than the tenth day of the month, the office of the state  
15 register shall electronically transmit to the commercial division of the  
16 Department of State, the summary of the fiscal and economic impact statement.

17 \* \* \*

18 I.(1) No later than the tenth day of the month, the office of the state  
19 register shall electronically transmit to the commercial division of the  
20 Department of State, all of the following information:

21 (a) The small business economic impact statement prepared by the  
22 agency pursuant to R.S. 49:965.5 and the small business regulatory flexibility  
23 analysis prepared pursuant to R.S. 49:965.6.

24 (b) The summary of the estimated costs to small businesses, citizens, and  
25 nongovernmental groups as is provided in Subsection E of this Section.

26 (c) Any potpourri notices which are submitted to the office of the state  
27 register pursuant to R.S. 49:965.5.

28 (2) Prior to electronically sending the information required in this  
29 Subsection and Subsection E of this Section to the commercial division of the  
30 Department of State, the office of the state register shall divide the information

1 by agency.

2 \* \* \*

3 §965.2. Short title

4 R.S. 49:965.2 through 965.9 may be cited as the ~~Regulatory Flexibility~~ Small  
5 Business Protection Act and are referred to therein as "this Act".

6 §965.3. Intent; legislative findings

7 A. It is the legislative intent and purpose of ~~this~~ the Small Business  
8 Protection Act to improve state rulemaking by creating procedures to analyze the  
9 availability of more flexible regulatory approaches for small businesses.

10 B. The legislature finds that:

11 (1) A vibrant and growing small business sector is critical to creating jobs in  
12 a dynamic economy. Increased hiring in Louisiana's small businesses creates  
13 higher wages and better outcomes for Louisiana's citizens and families.

14 (2) Small businesses bear a disproportionate share of regulatory costs and  
15 burdens. Increased regulatory costs decrease the amount of capital that small  
16 businesses have to create new jobs.

17 \* \* \*

18 (10) ~~The~~ Prior to the adoption of regulations, the process by which state  
19 regulations are developed and adopted should be reformed to require agencies to  
20 solicit the ideas and comments of small businesses, to examine the impact of  
21 proposed and existing rules on such businesses, and to review the continued need for  
22 existing rules.

23 (11) Regulations affect small businesses differently than their larger  
24 counterparts. According to the United States Small Business Administration,  
25 evidence indicates that regulatory requirements at the federal and state level  
26 tend to create disproportionately heavier burdens for small businesses, putting  
27 them at a disadvantage relative to their larger competitors. Reasons that small  
28 businesses are at a disadvantage include the following:

29 (a) The cost of regulations is higher relative to available resources. The  
30 cost of regulations per employee is higher for businesses with fewer employees.

1                   **(b) The cost per employee for the smallest businesses is typically one or**  
 2                   **more times greater than the equivalent cost for the largest businesses.**

3                   **(12) Making small businesses aware of proposed state regulations prior**  
 4                   **to implementation is key to creating an effective partnership between state**  
 5                   **agencies and small businesses.**

6                   C. Nothing in the Regulatory Flexibility **Small Business Protection** Act shall  
 7                   be interpreted or construed to limit the ability of an agency to propose rules.

8                   §965.4. Definitions

9                   The following words or terms as used in this Act shall have the following  
 10                  meanings unless a different meaning appears from the context:

11                  (1) "Agency" means each state board, commission, department, agency,  
 12                  officer, or other entity which makes rules, regulations, or policy, or formulates, or  
 13                  issues decisions or orders pursuant to, or as directed by, or in implementation, of the  
 14                  constitution or laws of the United States or the constitution and statutes of  
 15                  Louisiana; ~~except~~ **The term "agency" shall not include any of the following**  
 16                  **entities:**

17                         ~~(a) the~~ **The** legislature or any branch, committee, or officer thereof;

18                         **(b) any** ~~Any~~ political subdivision, as defined in Article VI, Section 44 of the  
 19                  Constitution of Louisiana, and any board, commission, department, agency, officer,  
 20                  or other entity thereof;

21                         ~~(c) and the~~ **The** courts.

22                  (2) **"Potpourri notice" means a notice sent by an agency to the office of**  
 23                  **the state register indicating all of the following items:**

24                         **(a) That the agency may implement a rule change at some future date.**

25                         **(b) That the agency is seeking public comment and plans to conduct a**  
 26                  **public hearing, if one is requested prior to giving a notice of intent to implement**  
 27                  **the rule change.**

28                         **(c) The deadline for receiving public comments and requests for a public**  
 29                  **hearing, which deadline is to occur prior to the date that the notice of intent to**  
 30                  **adopt the rule change, shall be sent to the office of the state register.**

1           (3) "Proposed rule" means a proposal by an agency for a new rule or for a  
2 change in, addition to, or repeal of an existing rule.

3           ~~(3)~~(4) "Rule" means each agency statement, guide, or requirement for  
4 conduct or action, exclusive of those regulating only the internal management of the  
5 agency and those purporting to adopt, increase, or decrease any fees imposed on the  
6 affairs, actions, or persons regulated by the agency, which has general applicability  
7 and the effect of implementing or interpreting substantive law or policy, or which  
8 prescribes the procedure or practice requirements of the agency. "Rule" includes but  
9 is not limited to any provision for fines, prices or penalties, the attainment or loss of  
10 preferential status, and the criteria or qualifications for licensure or certification by  
11 an agency. A rule may be of general applicability even though it may not apply to  
12 the entire state, provided its form is general and it is capable of being applied to  
13 every member of an identifiable class. The term includes the amendment or repeal  
14 of an existing rule but does not include declaratory rulings or orders or any fees.

15           ~~(4)~~(5) "Small business" means a business that is domiciled in this state,  
16 employs one hundred or fewer full-time employees, and meets at least one of the  
17 following conditions:

18           (a) Gross annual sales are less than ten million dollars.

19           (b) Total net worth of the business is less than two million dollars.

20 §965.5. Economic **Small business economic** impact statements; **potpourri notices**

21           **A.(1)** Prior to the adoption of any proposed rule ~~on or after July 1, 2009~~, that  
22 may have an adverse impact on small businesses, each agency shall prepare ~~an~~ **a**  
23 **small business** economic impact statement, that includes the following:

24           ~~(1)~~(a) An identification and estimate of the number of the small businesses  
25 subject to the proposed rule.

26           ~~(2)~~(b) The projected reporting, record keeping, and other administrative  
27 costs required for compliance with the proposed rule, including the type of  
28 professional skills necessary for preparation of the report or record.

29           ~~(3)~~(c) A statement of the probable effect on impacted small businesses.

30           ~~(4)~~(d) A description of any less intrusive or less costly alternative methods

1 of achieving the purpose of the proposed rule.

2 **(2) The small business economic impact statement shall be submitted to**  
 3 **the office of the state register, pursuant to R.S. 49:953.**

4 **B. If an agency determines, in its own judgment, that the input of small**  
 5 **businesses and the public would be helpful in drafting a new proposed rule, the**  
 6 **agency may issue a potpourri notice. If the agency issues a potpourri notice, it**  
 7 **shall be submitted with the office of the state register.**

8 §965.6. ~~Regulatory~~ **Small business regulatory** flexibility analysis

9 A. Prior to the adoption of any proposed rule ~~on or after July 1, 2009~~, each  
 10 agency shall prepare a regulatory flexibility analysis in which the agency shall,  
 11 where consistent with health, safety, environmental, and economic welfare, consider  
 12 utilizing regulatory methods that will accomplish the objectives of applicable statutes  
 13 while minimizing adverse impact on small businesses. The agency shall consider,  
 14 without limitation, each of the following methods of reducing the impact of the  
 15 proposed rule on small businesses:

16 \* \* \*

17 **C. The agency shall submit the small business flexibility analysis with the**  
 18 **office of the state register, pursuant to R.S. 49:953.**

19 §965.7. Conflicts of law

20 Nothing in the ~~Regulatory Flexibility~~ **Small Business Protection** Act shall  
 21 be construed to conflict with or supersede any applicable federal law, rule, or  
 22 regulation.

23 §965.8. Notification

24 ~~The Department of Economic Development shall send notification of the~~  
 25 ~~intent of an agency to adopt, amend, or repeal any rule which would affect small~~  
 26 ~~businesses as indicated by the economic impact statement or regulatory flexibility~~  
 27 ~~analysis required by this Act to each person who has made a timely request of the~~  
 28 ~~department for such notice. The notification shall be sent at the earliest possible date,~~  
 29 ~~and in no case later than ten days after the date an agency notifies the Department of~~  
 30 ~~Economic Development of such a proposed rule as required by R.S. 49:965.6.~~

1            Upon receiving the electronic transfer of information from the office of  
2            the state register, as provided in R.S. 49:953, the commercial division of the  
3            Department of State shall perform all of the following items:

4            (1) By the fifteenth day of the month, the commercial division shall post  
5            information on the internet page of the commercial division under the heading  
6            of "Proposed State Rules and Regulations that May Affect Your Business".

7            (2) No later than the sixteenth day of the month, the division shall  
8            electronically transfer the information to the Louisiana Association of Business  
9            and Industry, the Louisiana Chapter of the National Federation of Independent  
10           Business, and to each person who has made a timely request of the department  
11           for this information.

12           §965.9. Small business advocate; posting of rules

13           A. The secretary of state shall designate a small business advocate from  
14           the existing staff of the commercial division of the Department of State to  
15           implement and maintain the notification duties and functions required of the  
16           Department of State pursuant to R.S. 49:965.8.

17           B. The small business advocate shall coordinate the implementation and  
18           maintenance of the website of the commercial division of the Department of  
19           State relative to the receipt of information from the office of the state register,  
20           pursuant to R.S. 49:953. The department shall enter into an agreement with the  
21           office of the state register to arrange for the electronic receipt of the  
22           information on an ongoing basis.

23           C. The small business advocate shall administer the Small Business  
24           Protection Act.

25           Section 2. (A) The Louisiana State Law Institute, pursuant to its statutory authority,  
26           is hereby directed to designate the provisions contained in Chapter 13 of Title 49 of the  
27           Louisiana Revised Statutes of 1950 as "Part A. General Provisions" and to pre-designate and  
28           renumber the provisions of R.S. 49:965.2 through 965.8 as "Part B. Small Business  
29           Protection Act" in Chapter 13 of Title 49 of the Louisiana Revised Statutes of 1950 to be  
30           comprised of R.S. 49:978.1 through 978.7.

1 (B) The Louisiana State Law Institute is hereby directed to change any references  
2 in the Codes or Louisiana Revised Statutes of 1950 to reflect the citation changes contained  
3 in this Act.

4 Section 3. This Act shall become effective on February 1, 2020.

\_\_\_\_\_  
PRESIDENT OF THE SENATE

\_\_\_\_\_  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_