

RÉSUMÉ DIGEST

ACT 204 (SB 241)

2019 Regular Session

Riser

Prior law provided that, prior to the adoption, amendment, or repeal of any rule or regulation by a state agency, the agency will notify the public of the change by sending a notice of intent to make the rule or regulation change to the office of the state register for publication in the *La. Register*.

Prior law provided for the Regulatory Flexibility Act, which required state agencies to conduct a review of each proposed rule or regulation change and to prepare an economic impact statement and a regulatory flexibility analysis as it relates to impact that the proposed rule would have on small businesses prior to sending the proposed rule or regulation change to the office of the state register for publication in the *La. Register*.

New law retains prior law but changes the name of the Act from the Regulatory Flexibility Act to the Small Business Protection Act.

Prior law stated that the legislature, as it relates to the regulation of small businesses, makes the following legislative findings:

- (1) A vibrant and growing small business sector is critical to creating jobs in a dynamic economy.
- (2) Small businesses bear a disproportionate share of regulatory costs and burdens.
- (3) Fundamental changes that are needed in the regulatory and enforcement culture of state agencies to make them more responsive to small business can be made without compromising the statutory missions of the agencies.
- (4) When adopting rules to protect the health, safety, and economic welfare of Louisiana, state agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on small employers.
- (5) Uniform regulatory and reporting requirements can impose unnecessary and disproportionately burdensome demands, including legal, accounting, and consulting costs upon small businesses with limited resources.
- (6) The failure to recognize differences in the scale and resources of regulated businesses can adversely affect competition in the marketplace, discourage innovation, and restrict improvements in productivity.
- (7) Unnecessary regulations create entry barriers in many industries and discourage potential entrepreneurs from introducing beneficial products and processes.
- (8) The practice of treating all regulated businesses as equivalent may lead to inefficient use of regulatory agency resources, enforcement problems, and, in some cases, to actions inconsistent with the legislative intent of health, safety, environmental, and economic welfare legislation.
- (9) Alternative regulatory approaches which do not conflict with the stated objective of applicable statutes may be available to minimize the significant economic impact of rules on small businesses.
- (10) The process by which state regulations are developed and adopted should be reformed to require agencies to solicit the ideas and comments of small businesses, to examine the impact of proposed and existing rules on such businesses, and to review the continued need for existing rules.

New law retains prior law and adds the following:

- (1) Increased hiring in Louisiana's small businesses creates higher wages and better outcomes for Louisiana's citizens and families.

- (2) Before adopting regulations, it is helpful if agencies solicit the ideas and comments of small businesses to examine the impact of proposed and existing rules on small businesses.
- (3) Regulations affect small businesses differently than their larger counterparts. According to the U.S. Small Business Administration, evidence indicates that regulatory requirements at the federal and state level tend to create disproportionately heavier burdens for small businesses, putting them at a disadvantage relative to their larger competitors. Some of the reasons that small businesses are at a disadvantage include all of the following:
 - (a) The cost of regulations is higher relative to available resources. In other words, the cost of regulations per employee is higher for businesses with fewer employees.
 - (b) The cost per employee at the smallest businesses is typically one or more times greater than the equivalent cost at the largest businesses.
- (4) Making small businesses aware of proposed state regulations before they are implemented is the key to creating an effective partnership between state agencies and small businesses.

Prior law provided that prior to the adoption of any proposed rule that may have an adverse impact on small businesses, each agency shall prepare an economic impact statement that identifies an estimate of the number of the small businesses subject to the proposed rule, the costs of compliance, the probable effect on impacted small businesses, and a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule.

New law retains prior law and requires that the economic impact statement will be filed with the office of the state register for publication in the *La. Register* along with the notice of intent to implement the new regulation.

Prior law provided that, prior to the adoption of any proposed rule, each agency shall prepare a regulatory flexibility analysis in which the agency will consider utilizing regulatory methods for small businesses that establish less stringent compliance or reporting requirements, establish less stringent deadlines for compliance, consolidate or simplify the reporting requirements, establish performance standards to replace operational standards required in the proposed rule, and exempt small businesses from all or any part of the requirements contained in the proposed rule.

New law retains prior law and requires that the regulatory flexibility analysis will be filed with the office of the state register for publication in the *La. Register* along with the notice of intent to implement the new regulation.

New law defines "potpourri notice" to mean a notice sent by an agency to the office of the state register announcing that the agency may implement a future regulation change and that the agency is seeking public comment and will conduct a public hearing, if one is requested, prior to officially proposing the regulation change. New law provides that, when an agency determines in its own judgment that the input of small businesses and the public would serve the interest of small business or the public, the agency may issue a potpourri notice. New law provides that the potpourri notice will be filed with the office of the state register for publication in the *La. Register*.

Prior law required that, when an agency intends to adopt, amend, or repeal any rule or regulation, the notice of intent which is filed with the office of the state register for publication in the *La. Register* shall include a fiscal impact statement approved by the legislative fiscal office indicating that the proposed rule or regulation change would not result in any increase in the expenditure of state funds, unless at least one of the following occurs:

- (1) The proposed rule or regulation is adopted as an emergency rule pursuant to the requirements of prior law.

- (2) The legislature has specifically appropriated the monies necessary for the expenditures associated with the intended rule or regulation change.

New law retains prior law and requires that the fiscal impact statement be summarized by the agency as to the estimated costs and/or economic benefits to directly affected persons, small businesses, or nongovernmental groups and that the summary shall be published in the *La. Register*.

New law requires that, no later than the 10th day of the month, the office of the state register shall electronically transmit all of the small business economic impact statements, the small business regulatory flexibility analyses, and the fiscal impact statement approved by the legislative fiscal office to the secretary of state's commercial division. Further provides that, if the agency has filed a potpourri notice, that the notice will also be sent to the secretary of state's commercial division. Further requires that the electronic transfer of information from the office of the state register to the secretary of state's commercial division is to be divided into categories by the name of the agency which is filing the proposed rule change or sending the potpourri notice.

New law provides that, upon receiving the electronic transfer of information from the office of the state register, to the secretary of state's commercial division will do all of the following:

- (1) On the 15th day of the month, post the information on the commercial division's internet page under the heading of "proposed state rules and regulations that may affect your business."
- (2) No later than the 16th day of the month, electronically transfer the information to the Louisiana Association of Business and Industry and the Louisiana Chapter of the National Federation of Independent Business, and to each person who has made a timely request of the department for such notices.

New law provides that the secretary of state shall designate a small business advocate from the existing staff of the secretary of state's commercial division to implement and maintain the notification duties and functions pursuant to new law and to administer the Small Business Protection Act. New law provides that the small business advocate shall coordinate the implementation and maintenance on the website of the secretary of state's commercial division, as it relates to the receipt of information from the office of the state register. Provides that the secretary of state's commercial division will enter into an agreement with the office of the state register to arrange for the receipt of such information on an ongoing basis.

Effective February 1, 2020.

(Amends R.S. 49:953(E), 965.2, 965.3(A), (B)(1), (2), and (10), and (C), 965.4, 965.5, 965.6(A)(intro para), 965.7, and 965.8; adds R.S. 953(A)(1)(a)(x) and (I), R.S. 49:965.3(B)(11) and (12), 965.6(C), and 965.9)