

By: Representative Brown

To: Ways and Means

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1113

1 AN ACT TO CREATE THE "MISSISSIPPI SMALL BUSINESS REGULATORY
2 FLEXIBILITY ACT"; TO MAKE LEGISLATIVE FINDINGS; TO DEFINE CERTAIN
3 TERMS AS USED IN THE ACT; TO ESTABLISH A SMALL BUSINESS REGULATORY
4 REVIEW COMMITTEE; TO IMPROVE STATE RULEMAKING BY CREATING
5 PROCEDURES TO ANALYZE THE ECONOMIC IMPACT ON AND AVAILABILITY OF
6 MORE FLEXIBLE APPROACHES FOR SMALL BUSINESS; AND FOR RELATED
7 PURPOSES.

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

9 **SECTION 1.** The Mississippi Legislature finds that:

10 (a) A vibrant and growing small business sector is
11 critical to creating jobs in a dynamic economy;

12 (b) Small businesses bear a disproportionate share of
13 regulatory costs and burdens;

14 (c) Fundamental changes that are needed in the
15 regulatory and enforcement culture of state agencies to make them
16 more responsive to small business can be made without compromising
17 the statutory missions of the agencies;

18 (d) When adopting regulations to protect the health,
19 safety and economic welfare of Mississippi, state agencies should
20 seek to achieve statutory goals as effectively and efficiently as
21 possible without imposing unnecessary burdens on small employers;

22 (e) Uniform regulatory and reporting requirements can
23 impose unnecessary and disproportionately burdensome demands
24 including legal, accounting and consulting costs upon small
25 businesses with limited resources;

26 (f) The failure to recognize differences in the scale
27 and resources of regulated businesses can adversely affect
28 competition in the marketplace, discourage innovations and
29 restrict improvements in productivity;

30 (g) Unnecessary regulations create entry barriers in
31 many industries and discourage potential entrepreneurs from
32 introducing beneficial products and processes;

33 (h) The practice of treating all regulated businesses
34 as equivalent may lead to inefficient use of regulatory agency
35 resources, enforcement problems, and, in some cases, to actions
36 inconsistent with the legislative intent of health, safety,
37 environmental and economic welfare legislation;

38 (i) Alternative regulatory approaches which do not
39 conflict with the stated objective of applicable statutes may be
40 available to minimize the significant economic impact of rules on
41 small businesses; and

42 (j) The process by which state regulations are
43 developed and adopted should be reformed to encourage agencies to
44 solicit the ideas and comments of small businesses, to examine the
45 impact of proposed and existing rules on such businesses, and to
46 review the continued need for existing rules.

47 **SECTION 2.** The following shall be codified as Section
48 25-43-4.101, Mississippi Code of 1972:

49 25-43-4.101. This act may be cited as the "Mississippi Small
50 Business Regulatory Flexibility Act."

51 **SECTION 3.** The following shall be codified as Section
52 25-43-4.102, Mississippi Code of 1972:

53 25-43-4.102. As used in this act:

54 (a) "Agency" is defined in Section 25-43-1.102;

55 (b) "Department" means the Mississippi Development
56 Authority;

57 (c) "Committee" means the Small Business Regulatory
58 Review Committee;

59 (d) "Rule" is defined in Section 25-43-1.102, except
60 that the term "rule" shall not include emergency or preemptive
61 rules; and

62 (e) "Small business" means a for-profit business entity
63 employing fewer than one hundred (100) full-time employees or
64 having gross annual sales or revenues of less than Five Million
65 Dollars (\$5,000,000.00).

66 **SECTION 4.** The following shall be codified as Section
67 25-43-4.103, Mississippi Code of 1972:

68 25-43-4.103. (1) (a) There is established a Small Business
69 Regulatory Review Committee.

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

71 (a) Provide agencies with input regarding proposed
72 permanent rules which may have an adverse economic impact upon
73 small business and for which a notice of intended action is
74 published by the Secretary of State on or after July 1, 2006;

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

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

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

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

91 (4) The committee shall consist of thirteen (13) members,
92 who shall be appointed as follows:

93 (a) Five (5) members to be appointed by the Governor;

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

96 (c) Four (4) members to be appointed by the Speaker of
97 the House of Representatives; and

98 (d) Members of the committee shall be appointed from
99 small business owners or operators not affiliated with the
100 following business organizations and from lists of nominees
101 submitted by the following business organizations:

102 (i) National Federation of Independent Business;

103 (ii) Mississippi Manufacturer's Association;

104 (iii) Mississippi Retail Association;

105 (iv) Mississippi Petroleum Marketers and
106 Convenience Stores Association;

107 (v) Mississippi Economic Counsel; and

108 (vi) Any local chamber of commerce.

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

113 (6) The initial appointments to the committee shall be made
114 within sixty (60) days from July 1, 2006. The Mississippi
115 Development Authority shall provide the name and address of each
116 appointee to the Governor, Lieutenant Governor, the President Pro
117 Tempore of the Senate, the Speaker of the House of Representatives
118 and the Secretary of State.

119 (7) (a) Members initially appointed to the committee shall
120 serve for terms ending December 31, 2008. Thereafter, appointed
121 members shall serve two-year terms that expire on December 31 of
122 the second year.

123 (b) The Governor shall appoint the initial chair of the
124 committee from the appointed members for a term ending December
125 31, 2008, and shall appoint subsequent chairs of the committee

126 from the appointed members for two-year terms that expire on
127 December 31 of the second year.

128 (8) Members shall not receive any compensation.

129 (9) The committee shall meet as determined by the chair of
130 the committee.

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

135 (11) No appointed committee member shall serve more than
136 three (3) consecutive terms.

137 **SECTION 5.** The following shall be codified as Section
138 25-43-4.104, Mississippi Code of 1972:

139 25-43-4.104. (1) Prior to submitting proposed permanent
140 rules for adoption, amendment, revision or revocation pursuant to
141 the Mississippi Administrative Procedures Law, the agency shall
142 comply with Section 25-43-3.105(2)(d) in order to determine
143 whether the proposed rules adversely affect small business by
144 preparing an economic impact statement that includes the
145 following:

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

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

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

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

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

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

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

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

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

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

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

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

188 (5) To ensure that any final rule continues to minimize
189 economic impact on small businesses in a manner consistent with
190 the stated objectives of applicable statutes, each agency shall,

191 during any periodic review required by this chapter, consider the
192 following factors:

193 (a) The continued need for the rule;

194 (b) The nature of complaints or comments received
195 concerning the rule from the public;

196 (c) The complexity of the rule;

197 (d) The extent to which the rule overlaps, duplicates,
198 or conflicts with other federal, state and local governmental
199 rules; and

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

203 **SECTION 6.** The following shall be codified as Section
204 25-43-4.105, Mississippi Code of 1972:

205 25-43-4.105. (1) For promulgated regulations, the
206 committee may file a written petition with the agency that has
207 promulgated the regulations opposing all or part of a regulation
208 that has a significant adverse impact on small business. In
209 addition to distinctly setting forth how the regulation has had a
210 significant adverse impact on small business, the committee's
211 petition shall address the following factors:

212 (a) The continued need for the rule;

213 (b) The nature of complaints or comments received
214 concerning the rule from the public;

215 (c) The complexity of the rule;

216 (d) The extent to which the rule overlaps, duplicates
217 or conflicts with other federal, state and local governmental
218 rules; and

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

222 The petition may also renew any earlier comments made by the
223 committee when the regulation was first promulgated, as provided

224 by Section 25-43-4.104(3). Furthermore, the committee's petition
225 shall make a specific recommendation concerning the regulation,
226 including, but not limited to, whether the regulation should be
227 amended, revised or revoked.

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

237 **SECTION 7.** The following shall be codified as Section
238 25-43-4.106, Mississippi Code of 1972:

239 25-43-4.106. The committee shall make an annual report by
240 January 15 of each year to the Governor, the Lieutenant Governor
241 and the Speaker of the House of Representatives and provide
242 detailed information on the committee's activities during the
243 previous calendar year.

244 **SECTION 8.** The following shall be codified as Section
245 25-43-4.107, Mississippi Code of 1972:

246 25-43-4.107. (1) Notwithstanding any other law of this
247 state, any agency authorized to assess administrative penalties or
248 administrative fines upon a business may waive or reduce any
249 administrative penalty or administrative fine for a violation of
250 any statute, ordinance, or rules by a small business under the
251 following conditions:

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

255 (b) The violation was the result of an excusable
256 misunderstanding of an agency's interpretation of a rule.

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

258 (a) A small business has been notified of the violation
259 of a statute, ordinance, or rule by the agency pursuant to this
260 section and has been given an opportunity to correct the violation
261 on a prior occasion;

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

264 (c) A violation involves willful or criminal conduct;

265 (d) A violation results in serious health, safety or
266 environmental impact; or

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

270 **SECTION 9.** The following shall be codified as Section
271 25-43-4.108, Mississippi Code of 1972:

272 25-43-4.108. The Mississippi Small Business Regulatory
273 Flexibility Act shall not apply to:

274 (a) Proposed permanent rules by an agency to implement
275 a statute or ordinance that does not require an agency to
276 interpret or describe the requirements of the statute or
277 ordinance, such as state legislative or federally mandated
278 provisions which afford the agency no discretion to consider less
279 restrictive alternatives.

280 (b) Any rule required by the federal government
281 pursuant to a state/federal program delegation agreement or
282 contract.

283 (c) Any rule expressly required by state law.

284 (d) A temporary rule adopted pursuant to Section
285 25-43-3.108.

286 **SECTION 10.** This act shall take effect and be in force from
287 and after July 1, 2006.