

By: Representative Brown

To: Ways and Means

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 One Million
65 Dollars (\$1,000,000.00).

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 lists of nominees submitted by the following business
100 organizations:

101 (i) National Federation of Independent Business;

102 (ii) Mississippi Manufacturer's Association;

103 (iii) Mississippi Retail Association;

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

106 (v) Mississippi Economic Counsel; and

107 (vi) Any local chamber of commerce.

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

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

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

122 (b) The Governor shall appoint the initial chair of the
123 committee from the appointed members for a term ending December
124 31, 2008, and shall appoint subsequent chairs of the committee
125 from the appointed members for two-year terms that expire on
126 December 31 of the second year.

127 (8) Members shall not receive any compensation.

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

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

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

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

138 25-43-4.104. (1) Prior to submitting proposed permanent
139 rules for adoption, amendment, revision or revocation pursuant to
140 the Mississippi Administrative Procedures Law, the agency shall
141 comply with Section 25-43-3.105(2)(d) in order to determine
142 whether the proposed rules adversely affect small business by
143 preparing an economic impact statement that includes the
144 following:

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

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

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

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

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

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

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

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

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

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

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

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

187 (5) To ensure that any final rule continues to minimize
188 economic impact on small businesses in a manner consistent with
189 the stated objectives of applicable statutes, each agency shall,
190 during any periodic review required by this chapter, consider the
191 following factors:

- 192 (a) The continued need for the rule;
- 193 (b) The nature of complaints or comments received
194 concerning the rule from the public;
- 195 (c) The complexity of the rule;
- 196 (d) The extent to which the rule overlaps, duplicates,
197 or conflicts with other federal, state and local governmental
198 rules; and
- 199 (e) The length of time since the rule has been
200 evaluated or the degree to which technology, economic conditions,
201 or other factors have changed in the area affected by the rule.

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

204 25-43-4.105. (1) For promulgated regulations, the
205 committee may file a written petition with the agency that has
206 promulgated the regulations opposing all or part of a regulation
207 that has a significant adverse impact on small business. In
208 addition to distinctly setting forth how the regulation has had a
209 significant adverse impact on small business, the committee's
210 petition shall address the following factors:

- 211 (a) The continued need for the rule;
- 212 (b) The nature of complaints or comments received
213 concerning the rule from the public;
- 214 (c) The complexity of the rule;
- 215 (d) The extent to which the rule overlaps, duplicates
216 or conflicts with other federal, state and local governmental
217 rules; and
- 218 (e) The length of time since the rule has been
219 evaluated or the degree to which technology, economic conditions
220 or other factors have changed in the area affected by the rule.

221 The petition may also renew any earlier comments made by the
222 committee when the regulation was first promulgated, as provided
223 by Section 25-43-4.104(3). Furthermore, the committee's petition
224 shall make a specific recommendation concerning the regulation,

225 including, but not limited to, whether the regulation should be
226 amended, revised or revoked.

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

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

238 25-43-4.106. The committee shall make an annual report by
239 January 15 of each year to the Governor, the Lieutenant Governor
240 and the Speaker of the House of Representatives and provide
241 detailed information on the committee's activities during the
242 previous calendar year.

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

245 25-43-4.107. (1) Notwithstanding any other law of this
246 state, any agency authorized to assess administrative penalties or
247 administrative fines upon a business may waive or reduce any
248 administrative penalty or administrative fine for a violation of
249 any statute, ordinance, or rules by a small business under the
250 following conditions:

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

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

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

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

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

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

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

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

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

271 25-43-4.108. The Mississippi Small Business Regulatory
272 Flexibility Act shall not apply to:

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

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

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

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

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