

By: Representatives Turner, Arnold

To: Accountability,  
Efficiency, Transparency

COMMITTEE SUBSTITUTE  
FOR  
HOUSE BILL NO. 819

1 AN ACT TO REENACT SECTIONS 25-43-4.101 THROUGH 25-43-4.108,  
2 MISSISSIPPI CODE OF 1972, WHICH CREATE THE MISSISSIPPI SMALL  
3 BUSINESS REGULATORY FLEXIBILITY ACT; TO AMEND REENACTED SECTION  
4 25-43-4.103, MISSISSIPPI CODE OF 1972, TO REVISE THE MEMBERS THAT  
5 THE GOVERNOR, LIEUTENANT GOVERNOR AND SPEAKER OF THE HOUSE OF  
6 REPRESENTATIVES APPOINT TO THE SMALL BUSINESS REGULATORY REVIEW  
7 COMMITTEE; TO REVISE THE LIST OF NOMINEES SUBMITTED BY CERTAIN  
8 BUSINESS ORGANIZATIONS THAT THE APPOINTING AUTHORITIES MAY MAKE  
9 APPOINTMENTS FROM; TO REMOVE THE THREE-YEAR TERM LIMITATION FOR  
10 APPOINTED MEMBERS OF THE COMMITTEE; TO AMEND REENACTED SECTION  
11 25-43-4.104, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE COMMITTEE  
12 TO SUBMIT AN ECONOMIC IMPACT STATEMENT IN CERTAIN SITUATIONS; TO  
13 PROVIDE ADDITIONAL TIME FOR THE COMMITTEE TO SUBMIT THE ECONOMIC  
14 IMPACT STATEMENT IF AN AGENCY HAS NOT COMPLETED CERTAIN  
15 REQUIREMENTS; TO REPEAL SECTION 25-43-4.109, MISSISSIPPI CODE OF  
16 1972, WHICH IS THE REPEALER ON THE MISSISSIPPI SMALL BUSINESS  
17 REGULATORY FLEXIBILITY ACT; AND FOR RELATED PURPOSES.

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

19 **SECTION 1.** Section 25-43-4.101, Mississippi Code of 1972, is  
20 reenacted as follows:

21 25-43-4.101. This article may be cited as the "Mississippi  
22 Small Business Regulatory Flexibility Act."

23 **SECTION 2.** Section 25-43-4.102, Mississippi Code of 1972, is  
24 reenacted as follows:

25 25-43-4.102. As used in this article:



- 26 (a) "Agency" is defined in Section 25-43-1.102.
- 27 (b) "Department" means the Mississippi Development  
28 Authority.
- 29 (c) "Committee" means the Small Business Regulatory  
30 Review Committee.
- 31 (d) "Rule" is defined in Section 25-43-1.102, except  
32 that the term "rule" shall not include emergency or preemptive  
33 rules.
- 34 (e) "Small business" means a for-profit business entity  
35 employing fewer than one hundred (100) full-time employees or  
36 having gross annual sales or revenues of less than Ten Million  
37 Dollars (\$10,000,000.00).

38 **SECTION 3.** Section 25-43-4.103, Mississippi Code of 1972, is  
39 reenacted and amended as follows:

40 25-43-4.103. (1) There is established a Small Business  
41 Regulatory Review Committee.

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

43 (a) Provide agencies with input regarding proposed  
44 permanent rules which may have an economic impact upon small  
45 business and for which a notice of intended action is published by  
46 the Secretary of State on or after July 1, 2012;

47 (b) Review any rule promulgated by a state agency for  
48 which notice has been given by the agency to the committee that  
49 the proposed rule has or may have an economic effect upon small



50 business and make recommendations to the agency and or the  
51 Legislature regarding the need for a rule or legislation;

52 (c) Petition an agency to amend, revise, or revoke an  
53 existing regulation based on an economic impact on small business;  
54 and

55 (d) Advise and assist agencies in complying with the  
56 provisions of and perform any and all acts and duties set forth  
57 and authorized in the Mississippi Small Business Regulatory  
58 Flexibility Act.

59 (3) The committee is assigned to the Mississippi Development  
60 Authority for administrative purposes only. The department shall  
61 act as a coordinator for the committee, and shall not be required  
62 to provide legal counsel for the committee.

63 (4) The committee shall consist of twelve (12) members,  
64 appointed as follows:

65 (a) Four (4) members to be appointed by the Governor,  
66 one (1) of whom shall be the Executive Director of the Mississippi  
67 Development Authority, or his or her designee;

68 (b) Four (4) members to be appointed by the Lieutenant  
69 Governor, two (2) of whom may be State Senators who own small  
70 businesses; and

71 (c) Four (4) members to be appointed by the Speaker of  
72 the House of Representatives, two (2) of whom may be State  
73 Representatives who own small businesses.



74 (5) The appointing authorities shall appoint members of the  
75 committee for which no qualifications are specified under  
76 subsection (4) from:

77 (a) Lists of nominees, which may include small business  
78 owners, association representatives and small business regulatory  
79 advisors who have legal or accounting experience, submitted by the  
80 following business organizations:

81 (i) National Federation of Independent Business;

82 (ii) Mississippi Manufacturers Association;

83 (iii) Mississippi Retail Association;

84 (iv) Mississippi Petroleum Marketers and

85 Convenience Stores Association;

86 (v) Mississippi Minority Contractors Association;

87 (vi) Mississippi Economic Council;

88 (vii) Mississippi Farm Bureau Federation; and

89 (viii) Any local chamber of commerce; and/or

90 (b) Small business owners or operators not affiliated  
91 with or nominated by the business organizations listed in  
92 paragraph (a) of this subsection.

93 (6) Appointments to the committee shall be representative of  
94 a variety of small businesses in this state. \* \* \* Except as  
95 otherwise provided in this section, appointed members shall be  
96 either current or former owners or principal officers of a small  
97 business.



98           (7) The initial appointments to the committee shall be made  
99 within sixty (60) days from July 1, 2012. The Mississippi  
100 Development Authority shall provide the name and address of each  
101 appointee to the Governor, Lieutenant Governor, the President Pro  
102 Tempore of the Senate, the Speaker of the House of Representatives  
103 and the Secretary of State.

104           (8) (a) Members initially appointed to the committee shall  
105 serve for terms ending December 31, 2014. Thereafter, appointed  
106 members shall serve two-year terms that expire on December 31 of  
107 the second year.

108           (b) The Governor shall appoint the initial chair of the  
109 committee from the appointed members for a term ending December  
110 31, 2014. Subsequent chairs of the committee shall be elected by  
111 the committee from the appointed members for two-year terms that  
112 expire on December 31 of the second year.

113           (9) Members of the committee shall not receive any  
114 compensation.

115           (10) The committee shall meet as determined by the chair of  
116 the committee.

117           (11) A majority of the voting members of the committee shall  
118 constitute a quorum to do business. The concurrence of a majority  
119 of the members of the committee present and voting shall be  
120 necessary to make any action of the committee valid.

121       \* \* \*



122           **SECTION 4.** Section 25-43-4.104, Mississippi Code of 1972, is  
123 reenacted and amended as follows:

124           25-43-4.104. (1) Prior to submitting proposed permanent  
125 rules for adoption, amendment, revision or revocation pursuant to  
126 the Mississippi Administrative Procedures Law, the agency shall  
127 comply with Section 25-43-3.105(2) (d) in order to determine  
128 whether the proposed rules affect small business by preparing an  
129 economic impact statement that includes the following:

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

132                   (b) The projected reporting, recordkeeping and other  
133 administrative costs required for compliance with the proposed  
134 regulation, including the type of professional skills necessary  
135 for preparation of the report or record;

136                   (c) A statement of the probable effect on impacted  
137 small businesses;

138                   (d) A description of any less intrusive or less costly  
139 alternative methods of achieving the purpose of the proposed  
140 regulation, including the following regulatory flexibility  
141 analysis:

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

144                           (ii) The establishment of less stringent schedules  
145 or deadlines for compliance or reporting requirements for small  
146 businesses;



147 (iii) The consolidation or simplification of  
148 compliance or reporting requirements for small businesses;

149 (iv) The establishment of performance standards  
150 for small businesses to replace design or operational standards  
151 required in the proposed regulation; and

152 (v) The exemption of some or all small businesses  
153 from all or any part of the requirements contained in the proposed  
154 regulations.

155 (2) If the economic impact statement reflects that a  
156 proposed rule may have an economic effect upon small business, the  
157 agency shall submit a copy of the proposed rules and the economic  
158 impact statement to the committee for its review and comment  
159 pursuant to the review and comment provisions of the Mississippi  
160 Administrative Procedures Law. During the committee review  
161 process, the director or the director's designee of the  
162 promulgating agency shall be available at the request of the  
163 committee for comment on the proposed regulation.

164 (3) Within the review and comment period, if the committee  
165 determines that the proposed rules may have an economic effect  
166 upon small business, the committee may submit to the agency its  
167 comments concerning the proposed regulation including its specific  
168 recommendations.

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



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

177 (a) The continued need for the rule;

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

180 (c) The complexity of the rule;

181 (d) The extent to which the rule overlaps, duplicates,  
182 or conflicts with other federal, state and local governmental law  
183 or rules; and

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

187 (6) If an agency's economic impact statement reflects that a  
188 proposed rule will have no economic impact upon a small business,  
189 or if an agency fails to file an economic impact statement and the  
190 committee otherwise determines that the agency's proposed rule  
191 will have an economic impact, then the committee may file its own  
192 economic impact statement for the agency's proposed rule with the  
193 Secretary of State and notify the appropriate agency that the  
194 economic impact statement was filed. When the committee files its  
195 economic impact statement, if an agency has not completed the  
196 regulatory process that is required for the applicable proposed





197 rule to become final, the committee shall have an additional sixty  
198 (60) days from the date of filing its economic impact statement  
199 with the Secretary of State to submit its comments concerning the  
200 proposed regulation and any specific recommendations to the  
201 agency, for its consideration. During the additional sixty (60)  
202 days committee review process, the director of the promulgating  
203 agency, or his or her designee, shall be available at the request  
204 of the committee to comment on the proposed regulation.

205       **SECTION 5.** Section 25-43-4.105, Mississippi Code of 1972, is  
206 reenacted as follows:

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

213               (a) The continued need for the rule;

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

216               (c) The complexity of the rule;

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



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

223 The petition may also renew any earlier comments made by the  
224 committee when the regulation was first promulgated, as provided  
225 by Section 25-43-4.104(3). Furthermore, the committee's petition  
226 shall make a specific recommendation concerning the regulation,  
227 including, but not limited to, whether the regulation should be  
228 amended, revised or revoked.

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

238 **SECTION 6.** Section 25-43-4.106, Mississippi Code of 1972, is  
239 reenacted as follows:

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



245           **SECTION 7.** Section 25-43-4.107, Mississippi Code of 1972, is  
246 reenacted as follows:

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

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

256           (b) The violation was the result of an excusable  
257 misunderstanding of an agency's interpretation of a rule; or

258           (c) The agency determines that the small business is  
259 making a good-faith effort to comply with the statute, ordinance  
260 or rule.

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

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

264           (b) A violation involves criminal conduct;

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

267           (d) 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 8.** Section 25-43-4.108, Mississippi Code of 1972, is  
271 reenacted as follows:

272           25-43-4.108. The Mississippi Small Business Regulatory  
273 Flexibility Act shall not apply to proposed permanent rules by an  
274 agency to implement a statute or ordinance that does not require  
275 an agency to interpret or describe the requirements of the statute  
276 or ordinance, such as state legislative or federally mandated  
277 provisions which afford the agency no discretion to consider less  
278 restrictive alternatives.

279           **SECTION 9.** Section 25-43-4.109, Mississippi Code of 1972,  
280 which is the repealer on the Mississippi Small Business Regulatory  
281 Flexibility Act, is repealed.

282           **SECTION 10.** This act shall take effect and be in force from  
283 and after July 1, 2016.

