

By: Representative Brown

To: Ways and Means

HOUSE BILL NO. 1472

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

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

8 **SECTION 1.** The Mississippi State Legislature finds that:

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

11 (b) Small businesses bear a disproportionate share of
12 regulatory costs and burdens; fundamental changes that are needed
13 in the regulatory and enforcement culture of state agencies to
14 make them more responsive to small business can be made without
15 compromising the statutory missions of the agencies;

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

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

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

28 (f) Unnecessary regulations create entry barriers in
29 many industries and discourage potential entrepreneurs from
30 introducing beneficial products and processes;

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

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

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

45 **SECTION 2.** This act may be cited as the "Mississippi Small
46 Business Regulatory Flexibility Act."

47 **SECTION 3.** As used in this act, the following terms shall
48 have the definitions set forth below:

49 (a) "Agency" is defined as provided by Section
50 25-43-1.102(a).

51 (b) "Department" means the Mississippi Development
52 Authority.

53 (c) "Committee" means the Small Business Regulatory
54 Review Committee.

55 (d) "Rule" is defined as provided by Section
56 25-43-1.102(i) except that the definition shall not include
57 emergency or preemptive rules.

58 (e) "Small business" means a for-profit business entity
59 consisting of fewer than one hundred (100) full-time employees or

60 having gross annual sales or revenues of less than Five Million
61 Dollars (\$5,000,000.00).

62 **SECTION 4.** (1) (a) The Small Business Regulatory Review
63 Committee is established.

64 (b) The duties of the committee shall be to:

65 (i) Provide agencies with input regarding proposed
66 permanent rules which may have an adverse economic impact upon
67 small business and for which a notice of intended action is
68 published by the Secretary of State on or after July 1, 2005.

69 (ii) Review any rule promulgated by a state agency
70 for which notice has been given by the agency to the committee
71 that the proposed rule has or may have an adverse economic effect
72 upon small business and make recommendations to the agency and/or
73 the Mississippi State Legislature regarding the need for a rule or
74 legislation.

75 (iii) Petition an agency to amend, revise, or
76 revoke an existing regulation based on an adverse economic impact
77 on small business.

78 (iv) Advise and assist agencies in complying with
79 the provisions of and perform any and all acts and duties set
80 forth and authorized in this act.

81 (c) The committee is assigned to the Mississippi
82 Development Authority for administrative purposes only. The
83 authority shall act as a coordinator for the committee, and shall
84 not be required to provide legal counsel for the committee.

85 (2) The Small Business Regulatory Review Committee shall
86 consist of thirteen (13) members, who shall be appointed as
87 follows:

88 (a) Three (3) members to be appointed by the Governor;

89 (b) Three (3) members to be appointed by the Lieutenant
90 Governor;

91 (c) Three (3) members to be appointed by the Speaker of
92 the House of Representatives; and

93 (d) Four (4) members to include one (1) small business
94 representative member from each of the following business
95 associations, as designated by each respective association:

96 (i) National Federation of Independent Business;

97 (ii) Mississippi Manufacturer's Association;

98 (iii) Mississippi Retail Association; and

99 (iv) Mississippi Petroleum Marketers and

100 Convenience Stores Association.

101 (3) Appointments to the committee shall be representative of
102 a variety of small businesses in this state. All appointed
103 members shall be either current or former owners or officers of a
104 small business.

105 (4) The initial appointments to the committee shall be made
106 within sixty (60) days from the effective date of this act. The
107 Mississippi Development Authority shall provide the name and
108 address of each appointee to the Governor, Lieutenant Governor,
109 the President Pro Tempore of the Senate, the Speaker of the House
110 of Representatives and the Secretary of State.

111 (5) (a) Members initially appointed to the committee shall
112 serve for terms ending December 31, 2006. Thereafter, appointed
113 members shall serve two (2) year terms that expire on December 31
114 of the second year.

115 (b) The Governor shall appoint the initial chair of the
116 committee from the appointed members for a term ending December
117 31, 2006, and shall appoint subsequent chairs of the committee
118 from the appointed members for two (2) year terms that expire on
119 December 31 of the second year.

120 (c) Members shall not receive any compensation.

121 (d) The committee shall meet as determined by the chair
122 of the committee.

123 (e) A majority of the voting members of the committee
124 shall constitute a quorum to do business. The concurrence of a

125 majority of the members of the committee present and voting shall
126 be necessary to make any action of the committee valid.

127 (f) No appointed committee member shall serve more than
128 three (3) consecutive terms.

129 **SECTION 5.** (1) Before submitting proposed permanent rules
130 for adoption, amendment, revision or revocation under the
131 Mississippi Administrative Procedures Law, the agency shall comply
132 with the provisions of Section 25-43-3.105(2)(d) in order to
133 determine whether the proposed rules adversely affect small
134 businesses by preparing an economic impact statement that includes
135 the following:

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

138 (b) The projected reporting, recordkeeping and other
139 administrative costs required for compliance with the proposed
140 regulation, including the type of professional skills necessary
141 for preparation of the report or record;

142 (c) A statement of the probable effect on impacted
143 small businesses;

144 (d) A description of any less intrusive or less costly
145 alternative methods of achieving the purpose of the proposed
146 regulation.

147 (2) If the proposed rules may have an adverse economic
148 effect upon small business, the agency shall submit a copy of the
149 proposed rules and the economic impact statement to the committee
150 for its review and comment under the review and comment provisions
151 of the Mississippi Administrative Procedures Law. During the
152 committee review process, the director, or his designee, of the
153 promulgating agency shall be available at the request of the
154 committee for comment on the proposed regulation.

155 (3) Within the review and comment period, if the committee
156 determines that the proposed rules may have an adverse economic
157 effect upon small businesses, the committee shall submit to the

158 agency a request to prepare a regulatory flexibility analysis in
159 which the agency, where consistent with health, safety, and
160 environmental and economic welfare, shall consider utilizing
161 regulatory methods that will accomplish the objectives of
162 applicable statutes while minimizing adverse impact on small
163 businesses. Such request shall be made no later than the end of
164 the public comment period that follows the notice of proposed
165 regulation, as provided in Section 25-43-3.104. The promulgating
166 agency shall have sixty (60) days from the date of such request to
167 complete a regulatory flexibility analysis and deliver same to the
168 committee. The regulatory flexibility analysis shall consider the
169 availability and practicability of less restrictive alternatives
170 that could be implemented and creative, innovative, or flexible
171 methods of compliance for small businesses. In preparing the
172 analysis, the agency shall consider, without limitation, each of
173 the following methods of reducing the impact of the proposed
174 regulation on small businesses:

175 (a) The establishment of less stringent compliance or
176 reporting requirements for small businesses.

177 (b) The establishment of less stringent schedules or
178 deadlines for compliance or reporting requirements for small
179 businesses.

180 (c) The consolidation or simplification of compliance
181 or reporting requirements for small businesses.

182 (d) The establishment of performance standards for
183 small businesses to replace design or operational standards
184 required in the proposed regulation.

185 (f) The exemption of small businesses from all or any
186 part of the requirements contained in the proposed regulations.

187 (4) The committee, if applicable, shall submit to the
188 promulgating agency, no later than thirty (30) days after the
189 receipt of the regulatory flexibility analysis prepared by the
190 promulgating agency, a written statement advising the agency that

191 a proposed permanent regulation has significant adverse impact on
192 small business.

193 (5) A small business that is adversely affected or aggrieved
194 by final agency action is entitled to judicial review of agency
195 compliance with the requirements of this act. A small business
196 may seek such review during the period beginning on the date of
197 final agency action.

198 (6) To ensure that any final rule continues to minimize
199 economic impact on small businesses in a manner consistent with
200 the stated objectives of applicable statutes, each agency, during
201 any periodic review required by this chapter, shall consider the
202 following factors:

203 (a) The continued need for the rule.

204 (b) The nature of complaints or comments received
205 concerning the rule from the public.

206 (c) The complexity of the rule.

207 (d) The extent to which the rule overlaps, duplicates,
208 or conflicts with other federal, state, and local governmental
209 rules.

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

213 **SECTION 6.** (1) For promulgated regulations, the committee
214 may file a written petition with the agency that has promulgated
215 the regulations opposing all or part of a regulation that has a
216 significant adverse impact on small business.

217 (2) Within sixty (60) days after the receipt of the
218 petition, the agency shall determine whether the impact statement
219 or the public hearing addressed the actual and significant impact
220 on small business or if conditions justifying the regulation have
221 changed. The agency shall submit a written response of its
222 determination to the committee within sixty (60) days after
223 receipt of the petition. If the agency determines that the

224 petition merits the amendment, revision, or revocation of a
225 regulation, the agency may initiate proceedings in accordance with
226 the applicable requirements of the Mississippi Administrative
227 Procedures Law.

228 (3) If the agency determines that the petition does not
229 merit the amendment or repeal of a regulation, the committee
230 promptly shall convene a meeting for the purpose of determining
231 whether to recommend that the agency initiate proceedings to amend
232 or repeal the regulation in accordance with the Mississippi
233 Administrative Procedures Law. The review must be based upon the
234 actual record presented to the agency. The committee shall base
235 its recommendation on any of the following reasons:

236 (a) The actual impact on small business was not
237 reflected in, or significantly exceeded, the economic impact
238 statement formulated by the promulgating agency, under Section
239 25-43-3.105 or 25-43-4.104; or

240 (b) The actual impact was not previously considered by
241 the agency in its economic impact statement formulated under
242 Section 25-43-3.105 or 25-43-4.104 or its regulatory flexibility
243 analysis formulated under Section 25-43-4.104; or

244 (c) The technology, economic conditions, or other
245 relevant factors justifying the purpose for the regulations have
246 changed or no longer exist.

247 (4) If the committee recommends that any agency initiate
248 regulation proceedings for a reason provided in subsection (3),
249 the committee shall submit to the Speaker of the House of
250 Representatives and the President Pro Tempore of the Senate an
251 evaluation report and the agency's response as provided in
252 subsection (2) of this section. The Mississippi State Legislature
253 may take action in response to the evaluation report and the
254 agency's response as it finds appropriate.

255 **SECTION 7.** (1) Notwithstanding any other law of this state,
256 any agency authorized to assess administrative penalties or

257 administrative fines upon a business may waive or reduce any
258 administrative penalty or administrative fine for a violation of
259 any statute, ordinance, or rules by a small business under the
260 following conditions:

261 (a) The small business corrects the violation within
262 thirty (30) days or less after receipt of a notice of violation or
263 citation; or

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

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

267 (a) A small business has been notified of the violation
268 of a statute, ordinance, or rule by the agency under subsection
269 (1)(a) of this section and has been given a prior opportunity to
270 correct the violation on a prior occasion;

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

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

274 (d) A violation results in serious health, safety, or
275 environmental impact; or

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

279 **SECTION 8.** The provisions of this act shall not apply to:

280 (a) Proposed permanent rules by an agency to implement
281 a statute or ordinance that does not require an agency to
282 interpret or describe the requirements of the statute or
283 ordinance, such as state legislative or federally mandated
284 provisions which afford the agency no discretion to consider less
285 restrictive alternatives.

286 (b) Any rule which is required by the federal
287 government under a state/federal program delegation agreement or
288 contract.

289 (c) Any rule which is expressly required by state law.

290 (d) A temporary rule adopted under Section 25-43-3.108.

291 **SECTION 9.** This act shall take effect and be in force from

292 and after July 1, 2005.