

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 69
92ND GENERAL ASSEMBLY

Reported from the Committee on Small Business, April 24, 2003, with recommendation that the House Committee Substitute for Senate Committee Substitute for Senate Bill No. 69 Do Pass.

STEPHEN S. DAVIS, Chief Clerk

0450L.06C

AN ACT

To amend chapter 620, RSMo, by adding thereto eight new sections relating to small businesses.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 620, RSMo, is amended by adding thereto eight new sections, to be known as sections 620.050, 620.052, 620.054, 620.056, 620.058, 620.060, 620.062, and 620.064, to read as follows:

620.050. As used in sections 620.050 to 620.064, unless the context clearly indicates otherwise the following terms mean:

(1) "Affected small business" or "affects small business", any requirement imposed upon a small business through an agency's proposed or adopted rule that will cause direct and significant economic burden upon a small business, or is directly related to the formation, operation, or expansion of a small business;

(2) "Agency", each state board, commission, department, or officer authorized by law to make rules, except those in the legislative or judicial branches;

(3) "Board", the small business regulatory fairness board;

(4) "Small business", a for-profit enterprise consisting of fewer than one hundred full or part-time employees.

620.052. 1. Prior to submitting proposed rules for adoption, amendment, revision, or repeal pursuant to chapter 536, RSMo, the agency shall determine whether the proposed rules affect small business and, if so, the availability and practicability of less restrictive alternatives

that could be implemented to achieve the same results of the proposed rule. This section shall not apply to emergency rulemaking pursuant to section 536.025, RSMo. This section shall be in addition to the fiscal note requirement of sections 536.200 to 536.210, RSMo.

2. If the proposed rules affect small business, the agency shall consider creative, innovative, or flexible methods of compliance for small businesses and prepare a small business impact statement to be submitted with the proposed rules to the board prior to providing notice for a public hearing. The statement shall provide a reasonable determination of the following:

(1) The type of businesses that will be directly affected by, bear the cost of, or directly benefit from the proposed rules;

(2) A description of the small businesses that will be required to comply with the proposed rules and how they may be adversely affected;

(3) In dollar amounts, the increase in the level of direct costs, such as fees or administrative penalties, and indirect costs, such as reporting, record keeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance;

(4) The probable monetary costs and benefits to the implementing agency and other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used;

(5) The methods the agency considered or used to reduce the impact on small business such as consolidation, simplification, differing compliance or reporting requirements, less stringent deadlines, performance rather than design standards, exemption, or any other mitigating techniques;

(6) How the agency involved small business in the development of the proposed rules; and

(7) Whether the proposed rules include provisions that are more stringent than those mandated by any comparable or related federal, state, or county standards, with an explanation of the reason for imposing the more stringent standard.

3. This section shall not apply to proposed rules adopted by an agency to implement a statute that does not require an agency to interpret or describe the requirements of the statute such as federally mandated regulations which afford the agency no discretion to consider less restrictive alternatives. Notwithstanding such provision, federally mandated regulations are subject to the federal Regulatory Flexibility Act as amended by the Small Business Regulatory and Enforcement Fairness Act of 1996, P.L. 96-354, as amended by P.L. 104-121. Any federally mandated regulations that do not comply with these acts shall be subject to this section.

620.054. 1. For any proposed rules that affect small business, the agency shall also submit a small business statement to the board after a public hearing is held. This section shall not apply to emergency rules. The small business statement required by sections 620.050 to

620.064 shall provide the following information:

- (1) A description of how the opinions or comments from affected small businesses were solicited;
- (2) A summary of the public and small business comments;
- (3) A summary of the agency's response to those comments; and
- (4) The number of persons who attended the public hearing, the names of individuals who testified at the public hearing, the business or organization for which they testified, and whether said individual testified in support, opposition, or neutral position to the proposed rule, and submitted written comments.

2. If a request to change the proposed rule was made at the hearing in a way that affected small business, a statement of the reasons for adopting the proposed rule without the requested change shall be included in the small business statement.

620.056. 1. There is hereby established within the department of economic development the "Small Business Regulatory Fairness Board". The department of economic development shall provide staff support for the board. The board shall be a type I agency within the department of economic development under the Omnibus State Reorganization Act of 1974.

2. The board shall:

- (1) Provide agencies with input regarding proposed rules which adversely affect small business;
- (2) Consider any request from small business owners for review of any rule adopted by a state agency;
- (3) Review any rule promulgated by a state agency, which affects small business and make recommendations to the agency and the general assembly regarding the need for a rule or legislation;
- (4) Conduct hearings and solicit input from regulated small businesses regarding enforcement of regulations by state regulatory agencies. The identity of small businesses providing any such input shall be kept confidential at such small business' request;
- (5) Annually provide an evaluation report to the governor and the general assembly including any recommendations and evaluating state agencies regarding regulatory fairness for Missouri's small businesses.

3. The board shall consist of:

- (1) Two members appointed by the governor;
- (2) One member appointed by the lieutenant governor;
- (3) One member who is the chair of the minority business advocacy commission;
- (4) Two members appointed by the chairman of the committee of the house of representatives having jurisdiction over matters concerning small business;

(5) Two members appointed by the chairman of the committee of the senate having jurisdiction over matters concerning small business;

(6) One member appointed by the president pro tempore of the senate; and

(7) One member appointed by the speaker of the house of representatives.

4. The appointments to the board shall be representative of a variety of small businesses, both rural and urban, and from a variety of geographical areas of this state provided that no more than two members shall be representatives from the same type of small business. A term shall be three years. No member shall serve more than three consecutive terms.

5. All members of the board shall be a current or former owner or officer of a small business. All nonlegislative members shall not be an officer or an employee of the federal, state, or county government. The governor shall appoint the initial chairperson of the board and a majority of the board shall elect subsequent chairpersons. The chairperson shall serve a term of not more than one year, unless removed earlier by a two-thirds vote of all members of the board.

6. A majority of all the members of the board shall constitute a quorum to do business and the concurrence of a majority of all the members of the board present and voting shall be necessary to make any action of the board valid.

7. Members shall not receive any compensation but shall be eligible for reimbursement for necessary expenses, except for legislators who shall be reimbursed by the legislative body in which they serve.

8. The board shall meet at least semiannually or more often if necessary, as determined by the chairperson of the board.

9. In addition to any other powers provided by sections 620.050 to 620.064, the board may adopt any rules necessary to implement sections 620.050 to 620.064 and take any action necessary to effectuate the purposes of sections 620.050 to 620.064.

10. The board shall not have the authority to:

(1) Interfere with, modify, prevent, or delay an agency or administrative enforcement action;

(2) Intervene in legal actions involving small business and an agency; or

(3) Subpoena witnesses to testify, or to produce documents, in hearings conducted by the boards.

620.058. 1. In addition to the basis for filing a petition provided in section 536.041, RSMo, any affected small business may file a written petition with the agency that has adopted rules objecting to all or part of any rule affecting small business on any of the following grounds:

(1) The actual effect on small business was not reflected in or significantly exceeded the small business impact statement submitted prior to the adoption of the rules;

(2) The small business impact statement did not consider new or significant economic information that reveals an undue impact on small business; or

(3) The impacts were not previously considered at the public hearing on the rules.

2. For any rule adopted prior to August 28, 2003, an affected small business may file a written petition with the agency that adopted the rule objecting to all or part of any rule affecting small business on any of the following grounds:

(1) The rule creates an undue barrier to the formation, operation, and expansion of small businesses in a manner that significantly outweighs the rule's benefit to the public;

(2) The rule duplicates, overlaps, or conflicts with rules adopted by the agency or any other agency or violates the substantive authority under which the rule was adopted; or

(3) The technology, economic conditions, or other relevant factors justifying the purpose for the rule has changed or no longer exist.

3. Upon submission of the petition, the agency shall forward a copy of the petition to the board and the joint committee on administrative rules, as required by section 536.041, RSMo, as notification of a petition filed under sections 620.050 to 620.064. The agency shall promptly consider the petition and may seek advice and counsel regarding the petition. Within sixty days after the receipt of the petition, the agency shall determine whether the impact statement or public hearing addressed the actual and significant impact on small business. The agency shall submit a written response of the agency's determination to the board within sixty days of the receipt of the petition. If the agency determines that the petition merits the adoption, amendment, or repeal of a rule, it may initiate proceedings in accordance with the applicable requirements of chapter 536, RSMo.

4. If the agency determines that the petition does not merit the adoption, amendment, or repeal of a rule, any affected small business may seek a review of the decision by the board. The board may convene a hearing or by other means solicit testimony that will assist in its determination of whether to recommend that the agency initiate proceedings in accordance with chapter 536, RSMo. For rules adopted after August 28, 2003, the board shall base its recommendations on any of the following reasons:

(1) The actual effect on small business was not reflected in or significantly exceeded the impact statement submitted prior to the adoption of the rule;

(2) The impact statement did not consider new or significant economic information that reveals an undue impact on small business;

(3) Such impacts were not previously considered by the agency; or

(4) Such impacts were not previously considered at the public hearing on the rules.

5. For rules adopted prior to August 28, 2003, the board shall base its recommendations on any of the following reasons:

- (1) The rules created an undue barrier to the formation, operation, and expansion of small businesses in a manner that significantly outweighs its benefit to the public;
- (2) The rules duplicate, overlap, or conflict with rules adopted by the agency or any other agency or violate the substantive authority under which the rules were adopted; or
- (3) The technology, economic conditions, or other relevant factors justifying the purpose for the rules have changed or no longer exist.

6. The board shall make an evaluation report to the governor and the general assembly on rulemaking proceedings, comments from small business, and agency response as provided in this section. The governor or general assembly may subsequently take such action in response to the evaluation report and agency response as they find appropriate.

620.060. 1. Each agency with rules that affect small business shall submit by June thirteenth of each odd-numbered year a list of such rules to the general assembly and the board. The agency shall also submit a report describing the specific public purpose or interest for adopting the respective rules and any other reasons to justify its continued existence. The general assembly may subsequently take such action in response to the report as it finds appropriate.

2. The board shall provide to the head of each agency a list of any rules adopted by the agency that affect small business and have generated complaints or concerns, including any rules that the board determines may duplicate, overlap, or conflict with other rules or exceed statutory authority. Within forty-five days after being notified by the board the list of rules adopted, the agency shall submit a written report to the board in response to the complaints or concerns. The agency shall also state whether the agency has considered the continued need for the rules and the degree to which technology, economic conditions, and other relevant factors may have diminished or eliminated the need for maintaining the rules.

3. The board may solicit testimony from the public at a public meeting regarding any report submitted by the agency under this section. The board shall submit an evaluation report to the governor and the general assembly regarding small business comments, agency response, and public testimony on rules in this section. The governor and the general assembly may take such action in response to the report as they find appropriate.

620.062. 1. Any agency authorized to assess administrative penalties or administrative fines upon a business shall waive or reduce any administrative penalty or administrative fine for a violation of any statute, ordinance, or rules by a small business under the following conditions:

- (1) The small business corrects the violation within thirty days after receipt of a notice of violation or citation;
- (2) The violation was unintentional or the result of excusable neglect;
- (3) The violation was the result of an excusable misunderstanding of an agency's

interpretation of a rule;

- (4) The small business self-identifies the violation; or
- (5) The agency takes into account the size of the small business.

2. Subsection 1 of this section shall not apply when:

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

- (2) A violation involves willful or criminal conduct;
- (3) The violation is deemed by the agency to be egregious;
- (4) A violation results in serious health, safety, or environmental impact; or
- (5) The penalty or fine is assessed pursuant to a federal law or regulation for which no waiver or reduction is authorized by the federal law or regulation.

620.064. For any regulation subject to sections 620.050 to 620.064, a small business that is adversely affected or aggrieved by final agency action is entitled to judicial review of agency compliance with the requirements of sections 620.050 to 620.064. Judicial review shall be commenced in the circuit court of the county in which the small business has its primary place of business, or in Cole County. If the small business does not have a primary place of business in the state, proper venue shall be in Cole County. Notwithstanding any provisions of chapter 536, RSMo, to the contrary, an affected small business may seek such judicial review during the period beginning on the date the proposed rule becomes final and ending one year later.

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