

HOUSE BILL 1124

P1
HB 855/18 – HGO & APP

9lr1724

By: **Delegates Brooks, D. Barnes, Branch, Bromwell, D.E. Davis, Dumais, Fennell, Gaines, Glenn, Hettleman, Jones, R. Lewis, Luedtke, Mosby, Patterson, Proctor, Qi, Queen, Sample–Hughes, Stein, Valderrama, Walker, C. Watson, R. Watson, and P. Young**

Introduced and read first time: February 8, 2019

Assigned to: Health and Government Operations and Appropriations

A BILL ENTITLED

1 AN ACT concerning

2 **State Government – Regulations Impacting Small Businesses – Economic**
3 **Impact Analyses**

4 FOR the purpose of requiring certain units to make a certain certification regarding certain
5 local regulations; requiring that the units must include a certain statement in
6 certain proposed regulations; requiring the Department of Budget and Management
7 to provide certain training regarding economic impact analyses to certain units;
8 altering the period before a proposed regulation is submitted to the Maryland
9 Register and to the Joint Committee on Administrative, Executive, and Legislative
10 Review; requiring certain promulgating units to establish a certain electronic
11 registry for certain purposes; requiring a promulgating unit to post a proposed
12 regulation on the registry if the proposed regulation has a significant small business
13 impact; requiring a certain unit to notify certain parties when a proposed regulation
14 is posted on a certain electronic registry; requiring a certain unit to post a proposed
15 regulation on a certain electronic registry by a certain date; requiring a certain unit
16 to create a certain compliance guide to assist small businesses in complying with a
17 certain proposed regulation; establishing certain conditions that must be considered
18 and certain actions that may be taken by a State unit in assessing a civil penalty
19 against a small business for a violation of a State statute or regulation; requiring the
20 Governor to designate a certain unit to study certain matters and to submit a report
21 to certain committees of the General Assembly on or before a certain date; and
22 generally relating to regulations and small businesses in the State.

23 BY repealing and reenacting, without amendments,
24 Article – State Government
25 Section 2–1505.2(a), (b), and (f) through (j) and 10–224(a)
26 Annotated Code of Maryland
27 (2014 Replacement Volume and 2018 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY repealing and reenacting, with amendments,
2 Article – State Government
3 Section 2–1505.2(d) and (e), 10–110, 10–224(b), and 10–1001
4 Annotated Code of Maryland
5 (2014 Replacement Volume and 2018 Supplement)

6 BY adding to
7 Article – State Government
8 Section 2–1505.2(k)
9 Annotated Code of Maryland
10 (2014 Replacement Volume and 2018 Supplement)

11 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
12 That the Laws of Maryland read as follows:

13 **Article – State Government**

14 2–1505.2.

15 (a) (1) In this section the following words have the meanings indicated.

16 (2) “Committee” means the Joint Committee on Administrative, Executive,
17 and Legislative Review.

18 (3) “Economic impact analysis” means an estimate of the cost or the
19 economic benefit to small businesses that may be affected by a regulation proposed by an
20 agency pursuant to Title 10, Subtitle 1 of this article.

21 (4) “Economic impact analysis rating” means an estimate that a proposed
22 regulation will have:

23 (i) minimal or no economic impact on small businesses; or

24 (ii) meaningful economic impact on small businesses.

25 (5) “Small business” means a corporation, partnership, sole proprietorship,
26 or other business entity, including its affiliates, that:

27 (i) is independently owned and operated;

28 (ii) is not dominant in its field; and

29 (iii) employs 50 or fewer full–time employees.

30 (b) (1) An economic impact analysis rating and an economic impact analysis,
31 as appropriate, shall be prepared by the appropriate Executive Branch agency for each

1 regulation that the agency proposes for adoption pursuant to Title 10, Subtitle 1 of this
2 article.

3 (2) A copy of the economic impact analysis rating and the economic impact
4 analysis required under this subsection shall be submitted by the appropriate agency:

5 (i) to the Department of Legislative Services no later than the time
6 the agency submits the regulation to the Committee to allow the Department to comment
7 on the economic impact analysis rating and the economic impact analysis; and

8 (ii) to the Committee at the time the agency submits the regulation
9 to the Committee.

10 (d) The economic impact analysis rating and the economic impact analysis
11 required under this section shall include:

12 (1) estimates directly relating to the following factors, as appropriate:

13 [(1)] (I) cost of providing goods and services;

14 [(2)] (II) effect on the workforce;

15 [(3)] (III) effect on the cost of housing;

16 [(4)] (IV) efficiency in production and marketing;

17 [(5)] (V) capital investment, taxation, competition, and economic
18 development; and

19 [(6)] (VI) consumer choice; AND

20 (2) **A CERTIFICATION STATING WHETHER ANY EXISTING REGULATION**
21 **OF A COMPARABLE NATURE THAT IS AT LEAST AS STRINGENT AS THE PROPOSED**
22 **REGULATION HAS BEEN ADOPTED BY A UNIT OF A LOCAL GOVERNMENT.**

23 (e) (1) The Executive Branch agency or the Department of Legislative Services
24 preparing the economic impact analysis rating and the economic impact analysis required
25 under this section shall consult with, as appropriate:

26 (i) other units of State government;

27 (ii) units of local government; and

28 (iii) business, trade, consumer, labor, and other groups impacted by
29 or having an interest in the regulation.

1 (2) On request of the Executive Director of the Department of Legislative
2 Services, a unit of the State or a local government shall provide the Department with
3 assistance or information in the preparation of an economic impact analysis rating and
4 economic impact analysis.

5 **(3) IF THE PROMULGATING UNIT CERTIFIES THAT AN EXISTING**
6 **REGULATION OF A COMPARABLE NATURE THAT IS AT LEAST AS STRINGENT AS THE**
7 **PROPOSED REGULATION HAS BEEN ADOPTED BY A UNIT OF A LOCAL GOVERNMENT,**
8 **THE UNIT MAY INCLUDE IN ITS PROPOSED REGULATION A STATEMENT THAT**
9 **COMPLIANCE WITH THE LOCAL REGULATION WILL CONSTITUTE COMPLIANCE WITH**
10 **THE PROPOSED REGULATION.**

11 (f) The Department of Legislative Services shall:

12 (1) comment on the economic impact analysis rating and economic impact
13 analysis prepared by the appropriate Executive Branch agency; and

14 (2) transmit its comment to the Committee.

15 (g) The Department of Legislative Services shall revise the economic impact
16 analysis rating and economic impact analysis consistent with an amended version of a
17 regulation.

18 (h) (1) The Department of Legislative Services shall keep a copy of each
19 economic impact analysis rating and economic impact analysis for 3 years after preparation
20 of the rating or the analysis.

21 (2) The copies shall be reasonably available for public inspection.

22 (i) Economic impact analysis ratings and economic impact analyses shall be
23 published in the Maryland Register at the same time as:

24 (1) a notice of proposed adoption of a regulation is published in the
25 Maryland Register; or

26 (2) a notice of emergency adoption for a regulation is published in the
27 Maryland Register.

28 (j) The validity of an enactment of a regulation is not affected by the presence,
29 absence, or content of an economic impact analysis rating or an economic impact analysis.

30 **(K) (1) THE DEPARTMENT OF BUDGET AND MANAGEMENT SHALL ENTER**
31 **INTO AN AGREEMENT WITH AN APPROPRIATE ENTITY TO PROVIDE TRAINING TO**
32 **PROMULGATING UNITS ON THE PREPARATION OF THE ECONOMIC ANALYSES**
33 **REQUIRED UNDER THIS SECTION.**

1 **(2) THE TRAINING REQUIRED TO BE PROVIDED UNDER PARAGRAPH**
2 **(1) OF THIS SUBSECTION SHALL BE PROVIDED AT LEAST ONCE EVERY 2 YEARS.**

3 10–110.

4 (a) Except for subsection (d) of this section, this section does not apply to a
5 regulation adopted under § 10–111(b) of this subtitle.

6 (b) At least 15 days before the date a proposed regulation is submitted to the
7 Maryland Register for publication under § 10–112 of this subtitle, the promulgating unit
8 shall submit to the State Children’s Environmental Health and Protection Advisory
9 Council established under § 13–1503 of the Health – General Article for review any
10 proposed regulations identified by the promulgating unit as having an impact on
11 environmental hazards affecting the health of children.

12 (c) At least ~~[15]~~ **30** days before the date a proposed regulation is submitted to the
13 Maryland Register for publication under § 10–112 of this subtitle, the promulgating unit
14 shall submit to the Advisory Council on the Impact of Regulations on Small Businesses
15 established under § 3–502 of the Economic Development Article for review each proposed
16 regulation and the estimated impact of the proposed regulation on small businesses
17 identified by the promulgating unit.

18 (d) (1) At least ~~[15]~~ **30** days before the date a proposed regulation is submitted
19 to the Maryland Register for publication under § 10–112 of this subtitle, the promulgating
20 unit shall submit the proposed regulation to the Committee and the Department of
21 Legislative Services.

22 (2) (i) If the proposed regulation, either in whole or in part, submitted
23 to the Committee and the Department of Legislative Services in accordance with paragraph
24 (1) of this subsection includes an increase or decrease in a fee for a license to practice any
25 business activity, business or health occupation, or business or health profession licensed
26 or otherwise regulated under State law, the promulgating unit shall include clearly written
27 explanatory reasons that justify the increase or decrease in the fee.

28 (ii) If a regulation submitted under subparagraph (i) of this
29 paragraph proposes an increase in a fee for a license, the written justification also shall
30 include information about:

31 1. the amount of money needed by the promulgating unit to
32 operate effectively or to eliminate an imbalance between the revenues and expenditures of
33 the unit;

34 2. the most recent year in which the promulgating unit had
35 last increased its fees;

36 3. the structure of the promulgating unit as to whether it is
37 one that retains the license fees it receives or passes them through to a national

1 organization or association that creates and administers a uniform licensing examination
2 that is taken by anyone in the United States who is seeking a license to practice a particular
3 occupation or profession or business activity issued by the promulgating unit;

4 4. measures taken by the promulgating unit to avoid or
5 mitigate the necessity of a fee increase and the results of those measures;

6 5. special circumstances about the activities and
7 responsibilities of the promulgating unit, including investigations of individuals licensed
8 by the unit, that have had an adverse impact on the unit's operating expenses;

9 6. consideration given by the promulgating unit to the
10 hardship a license fee increase may have on individuals and trainees licensed or regulated
11 by the unit; and

12 7. actions taken by the promulgating unit to elicit the
13 opinions of the individuals who are licensed by the promulgating unit and the members of
14 the public as to the effectiveness and performance of the promulgating unit.

15 (3) If the promulgating unit estimates that the proposed regulation will
16 have a significant small business impact, the unit shall:

17 (i) identify each provision in the proposed regulation that will have
18 a significant small business impact;

19 (ii) quantify or describe the range of potential costs of the proposed
20 regulation on small businesses in the State;

21 (iii) identify how many small businesses may be impacted by the
22 proposed regulation;

23 (iv) identify any alternative provisions the unit considered that may
24 have a less significant impact on small businesses in the State and the reason the
25 alternative was not proposed;

26 (v) identify the beneficial impacts of the regulation, including to
27 public health, safety, and welfare, or to the environment; [and]

28 **(VI) ESTABLISH AN ELECTRONIC REGISTRY THAT ALLOWS ANY**
29 **SMALL BUSINESS OR OTHER INTERESTED PARTY TO REGISTER TO RECEIVE AN**
30 **ELECTRONIC NOTIFICATION WHEN THE PROPOSED REGULATION IS POSTED ON THE**
31 **UNIT'S WEBSITE IN ACCORDANCE WITH ITEM (VII) OF THIS PARAGRAPH;**

32 **(VII) POST THE PROPOSED REGULATION AND THE REGULATION'S**
33 **ESTIMATED SMALL BUSINESS IMPACT ON THE UNIT'S WEBSITE AT LEAST 15 DAYS**
34 **BEFORE THE DATE THE PROPOSED REGULATION IS SUBMITTED TO THE**

1 COMMITTEE, THE DEPARTMENT OF LEGISLATIVE SERVICES, AND THE ADVISORY
2 COUNCIL IN ACCORDANCE WITH THIS SECTION, AND PROVIDE AN OPPORTUNITY
3 FOR COMMENTS ON THE UNIT'S PROPOSAL;

4 (VIII) ON POSTING A PROPOSED REGULATION ON THE UNIT'S
5 WEBSITE IN ACCORDANCE WITH ITEM (VII) OF THIS PARAGRAPH, NOTIFY THE
6 PARTIES REGISTERED IN THE ELECTRONIC REGISTRY ESTABLISHED UNDER ITEM
7 (VI) OF THIS PARAGRAPH THAT THE PROPOSED REGULATION HAS BEEN POSTED;

8 (IX) PREPARE A COMPLIANCE GUIDE WRITTEN IN CLEAR, PLAIN
9 ENGLISH TO ASSIST SMALL BUSINESSES IN COMPLYING WITH THE PROPOSED
10 REGULATION, UPDATE THE GUIDE AS NEEDED UNTIL THE REGULATION IS FINAL,
11 AND POST THE GUIDE ON THE UNIT'S WEBSITE; AND

12 [(vi)] (X) coordinate with the Advisory Council not later than the
13 date the proposed regulation is submitted to the Committee, the Department of Legislative
14 Services, and the Advisory Council in accordance with this section.

15 (e) (1) The Committee is not required to take any action with respect to a
16 proposed regulation submitted to it pursuant to subsection (d) of this section.

17 (2) Failure by the Committee to approve or disapprove the proposed
18 regulation during the period of preliminary review provided by subsection (d) of this section
19 may not be construed to mean that the Committee approves or disapproves the proposed
20 regulation.

21 (3) During the preliminary review period, the Committee may take any
22 action relating to the proposed regulation that the Committee is authorized to take under
23 §§ 10-111.1 and 10-112 of this subtitle.

24 (4) (i) If the Advisory Council submits to the Committee and the
25 Department of Legislative Services a written statement of its findings that a proposed
26 regulation will have a significant small business impact as required by § 3-505 of the
27 Economic Development Article, the Committee and the Department of Legislative Services
28 shall review the findings.

29 (ii) After notification that a proposed regulation will have a
30 significant small business impact, any member of the Committee may request a hearing on
31 the proposed regulation.

32 (iii) If a member requests a hearing, the Committee:

33 1. shall hold a hearing; and

34 2. may request that the promulgating unit delay adoption of
35 the regulation.

1 (f) Prior to the date specified in subsection (d) of this section, the promulgating
2 unit is encouraged to:

3 (1) submit the proposed regulation to the Committee and to consult with
4 the Committee concerning the form and content of that regulation; and

5 (2) submit the proposed regulation to the Advisory Council and to consult
6 with the Advisory Council concerning the estimated small business impact of the regulation
7 and ways to reduce the small business impact.

8 10–224.

9 (a) (1) In this section the following words have the meanings indicated.

10 (2) “Business” means a trade, professional activity, or other business that
11 is conducted for profit.

12 (3) “Nonprofit organization” means an organization that is exempt or
13 eligible for exemption from taxation under § 501(c)(3) of the Internal Revenue Code.

14 (b) This section applies only to:

15 (1) an agency operating statewide;

16 (2) a business that, on the date when the contested case or civil action is
17 initiated[:

18 (i) is independently owned and operated; and

19 (ii) has less than 50 employees, including, if a corporation owns 50%
20 or more of the stock of the business, each employee of the corporation], **MEETS THE**
21 **DEFINITION OF A SMALL BUSINESS UNDER § 2–1505.2 OF THIS ARTICLE;** and

22 (3) a nonprofit organization.

23 10–1001.

24 (a) In this section, “unit” means an officer or other entity in the Executive Branch.

25 (b) **(1)** Unless otherwise provided by statute or regulation, a unit of State
26 government authorized by law to impose a civil penalty up to a specific dollar amount for
27 violation of any statute or regulation shall consider the following in setting the amount of
28 the penalty:

29 **[(1)] (I)** the severity of the violation for which the penalty is to be
30 assessed;

1 [(2)] (II) the good faith of the violator; [and]

2 [(3)] (III) any history of prior violations; AND

3 (IV) IF THE VIOLATOR MEETS THE DEFINITION OF A SMALL
4 BUSINESS UNDER § 2-1505.2 OF THIS ARTICLE, ADDITIONALLY CONSIDER:

5 1. WAIVING THE PENALTY IF THE VIOLATOR CORRECTS
6 THE VIOLATION WITHIN 30 DAYS AFTER THE FINDING OF THE VIOLATION;

7 2. DEPENDING ON THE VIOLATOR'S FINANCIAL
8 CAPACITY, IMPOSING A LESSER PENALTY THAN WOULD BE IMPOSED ON A LARGER
9 BUSINESS ENTITY IN A COMPARABLE INDUSTRY; OR

10 3. CREDITING THE COSTS OF CORRECTING THE
11 VIOLATION AGAINST THE PENALTY ASSESSED AGAINST THE VIOLATOR.

12 (2) PARAGRAPH (1)(IV) OF THIS SUBSECTION MAY NOT APPLY TO A
13 VIOLATOR THAT HAS BEEN THE SUBJECT OF MULTIPLE ENFORCEMENT ACTIONS BY
14 A STATE OR LOCAL UNIT THAT:

15 (I) INVOLVE WILLFUL OR CRIMINAL CONDUCT; OR

16 (II) POSE SERIOUS HEALTH, SAFETY, OR ENVIRONMENTAL
17 THREATS.

18 SECTION 2. AND BE IT FURTHER ENACTED, That:

19 (a) The Governor shall designate an appropriate department, office, or other unit
20 to study:

21 (1) the feasibility, methods, and costs of requiring all State units to allow
22 small businesses to submit by electronic means any payments, forms, reports, or other
23 documentation required by regulation; and

24 (2) the ability of State agencies to collect and share information regarding
25 the impact of regulations on small businesses.

26 (b) The study shall include:

27 (1) assessing data currently collected by State agencies to determine if
28 necessary and appropriate information is being collected;

29 (2) analyzing the capabilities of State information technology systems to
30 provide aggregate data;

1 (3) reviewing and recommending appropriate amendments to State
2 statutes and regulations to identify legal limitations that may prevent State units from
3 sharing relevant information with other State units;

4 (4) providing recommendations for data-sharing agreements among State
5 units; and

6 (5) providing recommendations for adequate security measures for sharing
7 data among State units.

8 (c) On or before June 30, 2020, the designated unit shall report to the Governor
9 and, in accordance with § 2-1246 of the State Government Article, the Senate Finance
10 Committee and the House Economic Matters Committee on the results of the study and the
11 implementation of this Act.

12 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July
13 1, 2019.