

HOUSE BILL 157

P3, C8

9lr0156
CF SB 173

By: **The Speaker (By Request – Administration) and Delegates Adams, Anderton, Arentz, Arikan, Beitzel, Buckel, Chisholm, Ciliberti, Clark, Corderman, Cox, M. Fisher, Grammer, Hartman, Hornberger, Jacobs, Kipke, Kittleman, Krebs, Mangione, Mautz, McComas, McKay, Metzgar, Morgan, Otto, Parrott, Pippy, Reilly, Rose, Saab, Shoemaker, and Szeliga**

Introduced and read first time: January 23, 2019

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **State Government – Regulations Impacting Small Businesses**

3 FOR the purpose of requiring the Department of Budget and Management to provide
4 certain training regarding economic impact analyses to certain units; requiring a
5 certain promulgating unit to establish a certain electronic registry for certain
6 purposes; requiring a promulgating unit to post a proposed regulation or the scope
7 of a proposed regulation on the unit's website by a certain date and provide an
8 opportunity for certain comments if the promulgating unit estimates that the
9 proposed regulation will have a certain significant small business impact; requiring
10 a promulgating unit to notify certain parties when a proposed regulation or the scope
11 of a proposed regulation is posted on the unit's website; requiring a promulgating
12 unit to prepare, update, and post on the unit's website a certain compliance guide to
13 assist small businesses in complying with a certain proposed regulation; requiring a
14 certain State unit to consider certain conditions and actions in assessing a civil
15 penalty against a small business for a violation of a State statute or regulation;
16 repealing provisions of law relating to the Advisory Council on the Impact of
17 Regulations on Small Businesses; repealing a requirement that a promulgating unit
18 take certain actions if the promulgating unit estimates that a proposed regulation
19 will have a certain significant small business impact; repealing provisions
20 establishing the Advisory Council and its purpose; repealing provisions relating to
21 the membership, chair, staffing, meetings, and duties of the Advisory Council;
22 repealing certain reporting requirements; repealing certain definitions; making
23 conforming changes; providing for the delayed effective date of certain provisions of
24 this Act; and generally relating to regulations and small businesses in the State.

25 BY repealing and reenacting, without amendments,
26 Article – State Government

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 2–1505.2(a) and (b) and 10–224(a)
2 Annotated Code of Maryland
3 (2014 Replacement Volume and 2018 Supplement)

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

9 BY repealing and reenacting, with amendments,
10 Article – State Government
11 Section 10–101, 10–110(d), 10–224(b), and 10–1001
12 Annotated Code of Maryland
13 (2014 Replacement Volume and 2018 Supplement)

14 BY repealing and reenacting, with amendments,
15 Article – State Government
16 Section 10–110
17 Annotated Code of Maryland
18 (2014 Replacement Volume and 2018 Supplement)
19 (As enacted by Section 1 of this Act)

20 BY repealing
21 Article – Economic Development
22 Section 3–501 through 3–508 and the subtitle “Subtitle 5. Advisory Council on the
23 Impact of Regulations on Small Businesses”
24 Annotated Code of Maryland
25 (2018 Replacement Volume)

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

28 **Article – State Government**

29 2–1505.2.

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

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

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

36 (4) “Economic impact analysis rating” means an estimate that a proposed

1 regulation will have:

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

3 (ii) meaningful economic impact on small businesses.

4 (5) "Small business" means a corporation, partnership, sole proprietorship,
5 or other business entity, including its affiliates, that:

6 (i) is independently owned and operated;

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

8 (iii) employs 50 or fewer full-time employees.

9 (b) (1) An economic impact analysis rating and an economic impact analysis,
10 as appropriate, shall be prepared by the appropriate Executive Branch agency for each
11 regulation that the agency proposes for adoption pursuant to Title 10, Subtitle 1 of this
12 article.

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

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

18 (ii) to the Committee at the time the agency submits the regulation
19 to the Committee.

20 **(K) (1) THE DEPARTMENT OF BUDGET AND MANAGEMENT SHALL ENTER**
21 **INTO AN AGREEMENT WITH AN APPROPRIATE ENTITY TO PROVIDE TRAINING TO**
22 **PROMULGATING EXECUTIVE BRANCH AGENCIES ON THE PREPARATION OF THE**
23 **ECONOMIC IMPACT ANALYSES REQUIRED UNDER THIS SECTION.**

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

26 10-110.

27 (d) (1) At least 15 days before the date a proposed regulation is submitted to
28 the Maryland Register for publication under § 10-112 of this subtitle, the promulgating
29 unit shall submit the proposed regulation to the Committee and the Department of
30 Legislative Services.

31 (2) (i) If the proposed regulation, either in whole or in part, submitted

1 to the Committee and the Department of Legislative Services in accordance with paragraph
2 (1) of this subsection includes an increase or decrease in a fee for a license to practice any
3 business activity, business or health occupation, or business or health profession licensed
4 or otherwise regulated under State law, the promulgating unit shall include clearly written
5 explanatory reasons that justify the increase or decrease in the fee.

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

9 1. the amount of money needed by the promulgating unit to
10 operate effectively or to eliminate an imbalance between the revenues and expenditures of
11 the unit;

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

14 3. the structure of the promulgating unit as to whether it is
15 one that retains the license fees it receives or passes them through to a national
16 organization or association that creates and administers a uniform licensing examination
17 that is taken by anyone in the United States who is seeking a license to practice a particular
18 occupation or profession or business activity issued by the promulgating unit;

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

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

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

27 7. actions taken by the promulgating unit to elicit the
28 opinions of the individuals who are licensed by the promulgating unit and the members of
29 the public as to the effectiveness and performance of the promulgating unit.

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

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

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

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

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

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

8 (VI) ESTABLISH AN ELECTRONIC REGISTRY THAT ALLOWS ANY
9 SMALL BUSINESS OR OTHER INTERESTED PARTY TO REGISTER TO RECEIVE AN
10 ELECTRONIC NOTIFICATION WHEN THE PROPOSED REGULATION OR THE SCOPE OF
11 THE PROPOSED REGULATION IS POSTED ON THE UNIT'S WEBSITE IN ACCORDANCE
12 WITH ITEM (VII) OF THIS PARAGRAPH;

13 (VII) POST THE PROPOSED REGULATION OR THE SCOPE OF THE
14 PROPOSED REGULATION ON THE UNIT'S WEBSITE AT LEAST 15 DAYS BEFORE THE
15 DATE THE PROPOSED REGULATION IS SUBMITTED TO THE COMMITTEE AND THE
16 DEPARTMENT OF LEGISLATIVE SERVICES IN ACCORDANCE WITH THIS SECTION AND
17 PROVIDE AN OPPORTUNITY FOR COMMENTS ON THE UNIT'S PROPOSAL;

18 (VIII) ON POSTING A PROPOSED REGULATION OR THE SCOPE OF
19 THE PROPOSED REGULATION ON THE UNIT'S WEBSITE IN ACCORDANCE WITH ITEM
20 (VII) OF THIS PARAGRAPH, NOTIFY THE PARTIES REGISTERED IN THE ELECTRONIC
21 REGISTRY ESTABLISHED UNDER ITEM (VI) OF THIS PARAGRAPH THAT THE
22 PROPOSED REGULATION OR THE SCOPE OF THE PROPOSED REGULATION HAS BEEN
23 POSTED;

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

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

31 10-224.

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

33 (2) "Business" means a trade, professional activity, or other business that
34 is conducted for profit.

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

3 (b) This section applies only to:

4 (1) an agency operating statewide;

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

7 (i) is independently owned and operated; and

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

11 (3) a nonprofit organization.

12 10–1001.

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

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

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

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

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

22 **(IV) IF THE VIOLATOR MEETS THE DEFINITION OF A SMALL**
23 **BUSINESS UNDER § 2–1505.2 OF THIS ARTICLE, SHALL ADDITIONALLY CONSIDER:**

24 **1. WAIVING THE PENALTY IF THE VIOLATOR CORRECTS**
25 **THE VIOLATION WITHIN 30 DAYS OF THE FINDING OF THE VIOLATION;**

26 **2. DEPENDING ON THE VIOLATOR’S FINANCIAL**
27 **CAPACITY, IMPOSING A LESSER PENALTY THAN WOULD BE IMPOSED ON A LARGER**
28 **BUSINESS ENTITY IN A COMPARABLE INDUSTRY; OR**

29 **3. CREDITING THE COSTS OF CORRECTING THE**
30 **VIOLATION AGAINST THE PENALTY ASSESSED AGAINST THE VIOLATOR.**

1 **(2) PARAGRAPH (1)(IV) OF THIS SUBSECTION MAY NOT BE APPLIED**
 2 **TO A VIOLATOR THAT HAS BEEN THE SUBJECT OF MULTIPLE ENFORCEMENT**
 3 **ACTIONS BY A STATE OR LOCAL UNIT THAT:**

4 **(I) INVOLVE WILLFUL OR CRIMINAL CONDUCT; OR**

5 **(II) POSE SERIOUS HEALTH, SAFETY, OR ENVIRONMENTAL**
 6 **THREATS.**

7 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read
 8 as follows:

9 **Article – State Government**

10 10–101.

11 (a) In this subtitle the following words have the meanings indicated.

12 (b) “Administrator” means the Administrator of the Division of State Documents.

13 [(c) “Advisory Council” means the Advisory Council on the Impact of Regulations
 14 on Small Businesses established under § 3–502 of the Economic Development Article.]

15 [(d) **(C)** “Committee” means the Joint Committee on Administrative, Executive,
 16 and Legislative Review.

17 [(e) **(D)** “Local government unit” means:

18 (1) a county;

19 (2) a municipal corporation;

20 (3) a special district that is established by State law and that operates
 21 within a single county;

22 (4) a special district that is established by a county pursuant to public
 23 general law; or

24 (5) an office, board, or department that is established in each county under
 25 State law and that is funded, pursuant to State law, at least in part by the county governing
 26 body.

27 [(f) **(E)** “Mandate” means a directive in a regulation that requires a local
 28 government unit to perform a task or assume a responsibility that has a discernible fiscal
 29 impact on the local government unit.

1 **[(g)] (F)** “Register” means the Maryland Register.

2 **[(h)] (G)** (1) “Regulation” means a statement or an amendment or repeal of a
3 statement that:

4 (i) has general application;

5 (ii) has future effect;

6 (iii) is adopted by a unit to:

7 1. detail or carry out a law that the unit administers;

8 2. govern organization of the unit;

9 3. govern the procedure of the unit; or

10 4. govern practice before the unit; and

11 (iv) is in any form, including:

12 1. a guideline;

13 2. a rule;

14 3. a standard;

15 4. a statement of interpretation; or

16 5. a statement of policy.

17 (2) “Regulation” does not include:

18 (i) a statement that:

19 1. concerns only internal management of the unit; and

20 2. does not affect directly the rights of the public or the
21 procedures available to the public;

22 (ii) a response of the unit to a petition for adoption of a regulation,
23 under § 10–123 of this subtitle; or

24 (iii) a declaratory ruling of the unit as to a regulation, order, or
25 statute, under Subtitle 3 of this title.

1 (3) "Regulation", as used in §§ 10–110 and 10–111.1 of this subtitle, means
2 all or any portion of a regulation.

3 [(i) (1) "Significant small business impact" means a determination by the
4 Advisory Council that a proposed regulation is likely to have a meaningful effect on the
5 revenues or profits of a significant number of small businesses or a significant percentage
6 of small businesses within a single industry in the State.

7 (2) "Significant small business impact" does not include an impact
8 resulting from a proposed regulation that is necessary to comply with federal law, unless
9 the Advisory Council determines that the regulation is more stringent than federal law, in
10 accordance with § 3–505 of the Economic Development Article.]

11 [(j) (H) "Small business" has the meaning stated in § 2–1505.2 of this article.

12 [(k) (I) "Substantively" means in a manner substantially affecting the rights,
13 duties, or obligations of:

14 (1) a member of a regulated group or profession; or

15 (2) a member of the public.

16 [(l) (J) "Unit" means an officer or unit authorized by law to adopt regulations.

17 10–110.

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

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

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

32 [(d) (C) (1) At least 15 days before the date a proposed regulation is
33 submitted to the Maryland Register for publication under § 10–112 of this subtitle, the
34 promulgating unit shall submit the proposed regulation to the Committee and the

1 Department of Legislative Services.

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

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

11 1. the amount of money needed by the promulgating unit to
12 operate effectively or to eliminate an imbalance between the revenues and expenditures of
13 the unit;

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

16 3. the structure of the promulgating unit as to whether it is
17 one that retains the license fees it receives or passes them through to a national
18 organization or association that creates and administers a uniform licensing examination
19 that is taken by anyone in the United States who is seeking a license to practice a particular
20 occupation or profession or business activity issued by the promulgating unit;

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

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

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

29 7. actions taken by the promulgating unit to elicit the
30 opinions of the individuals who are licensed by the promulgating unit and the members of
31 the public as to the effectiveness and performance of the promulgating unit.

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

34 [(i) identify each provision in the proposed regulation that will have
35 a significant small business impact;

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

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

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

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

10 [(vi)] (I) establish an electronic registry that allows any small
11 business or other interested party to register to receive an electronic notification when the
12 proposed regulation or the scope of the proposed regulation is posted on the unit's website
13 in accordance with item [(vii)] (II) of this paragraph;

14 [(vii)] (II) post the proposed regulation or the scope of the proposed
15 regulation on the unit's website at least 15 days before the date the proposed regulation is
16 submitted to the Committee and the Department of Legislative Services in accordance with
17 this section and provide an opportunity for comments on the unit's proposal;

18 [(viii)] (III) on posting a proposed regulation or the scope of the
19 proposed regulation on the unit's website in accordance with item [(vii)] (II) of this
20 paragraph, notify the parties registered in the electronic registry established under item
21 [(vi)] (I) of this paragraph that the proposed regulation or the scope of the proposed
22 regulation has been posted; AND

23 [(ix)] (IV) prepare a compliance guide written in clear, plain English
24 to assist small businesses in complying with the proposed regulation, update the guide as
25 needed until the regulation is final, and post the guide on the unit's website[; and

26 (x) coordinate with the Advisory Council not later than the date the
27 proposed regulation is submitted to the Committee, the Department of Legislative Services,
28 and the Advisory Council in accordance with this section].

29 [(e)] (D) (1) The Committee is not required to take any action with respect to
30 a proposed regulation submitted to it pursuant to subsection [(d)] (C) of this section.

31 (2) Failure by the Committee to approve or disapprove the proposed
32 regulation during the period of preliminary review provided by subsection [(d)] (C) of this
33 section may not be construed to mean that the Committee approves or disapproves the
34 proposed regulation.

35 (3) During the preliminary review period, the Committee may take any

1 action relating to the proposed regulation that the Committee is authorized to take under
2 §§ 10–111.1 and 10–112 of this subtitle.

3 [(4) (i) If the Advisory Council submits to the Committee and the
4 Department of Legislative Services a written statement of its findings that a proposed
5 regulation will have a significant small business impact as required by § 3–505 of the
6 Economic Development Article, the Committee and the Department of Legislative Services
7 shall review the findings.

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

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

12 1. shall hold a hearing; and

13 2. may request that the promulgating unit delay adoption of
14 the regulation.]

15 [(f) (E) Prior to the date specified in subsection [(d) (C) of this section, the
16 promulgating unit is encouraged to[:

17 (1) submit the proposed regulation to the Committee and to consult with
18 the Committee concerning the form and content of that regulation[; and

19 (2) submit the proposed regulation to the Advisory Council and to consult
20 with the Advisory Council concerning the estimated small business impact of the regulation
21 and ways to reduce the small business impact].

22 SECTION 3. AND BE IT FURTHER ENACTED, That Section(s) 3–501 through
23 3–508 and the subtitle “Subtitle 5. Advisory Council on the Impact of Regulations on Small
24 Businesses” of Article – Economic Development of the Annotated Code of Maryland be
25 repealed.

26 SECTION 4. AND BE IT FURTHER ENACTED, That Sections 2 and 3 of this Act
27 shall take effect October 1, 2021.

28 SECTION 5. AND BE IT FURTHER ENACTED, That, except as provided in Section
29 4 of this Act, this Act shall take effect July 1, 2019.