

# SENATE BILL 173

P3, C8

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CF HB 157

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By: **The President (By Request – Administration) and Senators Bailey, Carozza, Cassilly, Eckardt, Edwards, Gallion, Hershey, Hough, Jennings, Ready, Salling, Serafini, Simonaire, and West**

Introduced and read first time: January 21, 2019

Assigned to: Education, Health, and Environmental Affairs and Finance

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 15, 2019

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## CHAPTER \_\_\_\_\_

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

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 conforming changes; providing for the delayed effective date of certain provisions of  
2 this Act; and generally relating to regulations and small businesses in the State.

3 BY repealing and reenacting, without amendments,  
4 Article – State Government  
5 Section 2–1505.2(a) and (b) and 10–224(a)  
6 Annotated Code of Maryland  
7 (2014 Replacement Volume and 2018 Supplement)

8 BY adding to  
9 Article – State Government  
10 Section 2–1505.2(k)  
11 Annotated Code of Maryland  
12 (2014 Replacement Volume and 2018 Supplement)

13 BY repealing and reenacting, with amendments,  
14 Article – State Government  
15 Section 10–101, 10–110(d), and 10–224(b), ~~and 10–1001~~  
16 Annotated Code of Maryland  
17 (2014 Replacement Volume and 2018 Supplement)

18 BY repealing and reenacting, with amendments,  
19 Article – State Government  
20 Section 10–110  
21 Annotated Code of Maryland  
22 (2014 Replacement Volume and 2018 Supplement)  
23 (As enacted by Section 1 of this Act)

24 BY repealing  
25 Article – Economic Development  
26 Section 3–501 through 3–508 and the subtitle “Subtitle 5. Advisory Council on the  
27 Impact of Regulations on Small Businesses”  
28 Annotated Code of Maryland  
29 (2018 Replacement Volume)

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

32 **Article – State Government**

33 2–1505.2.

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

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

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

4 (4) "Economic impact analysis rating" means an estimate that a proposed  
5 regulation will have:

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

7 (ii) meaningful economic impact on small businesses.

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

10 (i) is independently owned and operated;

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

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

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

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

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

22 (ii) to the Committee at the time the agency submits the regulation  
23 to the Committee.

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

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

30 10-110.

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

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

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

14 1. the amount of money needed by the promulgating unit to  
15 operate effectively or to eliminate an imbalance between the revenues and expenditures of  
16 the unit;

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

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

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

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

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

32 7. actions taken by the promulgating unit to elicit the  
33 opinions of the individuals who are licensed by the promulgating unit and the members of  
34 the public as to the effectiveness and performance of the promulgating unit.

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

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

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

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

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

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

12 **(VI) ESTABLISH AN ELECTRONIC REGISTRY THAT ALLOWS ANY  
13 SMALL BUSINESS, NONPROFIT ORGANIZATION, OR OTHER INTERESTED PARTY TO  
14 REGISTER TO RECEIVE AN ELECTRONIC NOTIFICATION WHEN THE PROPOSED  
15 REGULATION OR THE SCOPE OF THE PROPOSED REGULATION IS POSTED ON THE  
16 UNIT'S WEBSITE IN ACCORDANCE WITH ITEM (VII) OF THIS PARAGRAPH;**

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

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

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

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

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

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

4 (3) "Nonprofit organization" means an organization that is exempt or  
5 eligible for exemption from taxation under § 501(c)(3) of the Internal Revenue Code.

6 (b) This section applies only to:

7 (1) an agency operating statewide;

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

10 (i) is independently owned and operated; and

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

14 (3) a nonprofit organization.

15 ~~10-1001.~~

16 ~~(a) In this section, "unit" means an officer or other entity in the Executive Branch.~~

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

21 ~~[(1)] (I) the severity of the violation for which the penalty is to be~~  
22 ~~assessed;~~

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

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

25 ~~(IV) IF THE VIOLATOR MEETS THE DEFINITION OF A SMALL~~  
26 ~~BUSINESS UNDER § 2-1505.2 OF THIS ARTICLE, SHALL ADDITIONALLY CONSIDER:~~

27 ~~1. WAIVING THE PENALTY IF THE VIOLATOR CORRECTS~~  
28 ~~THE VIOLATION WITHIN 30 DAYS OF THE FINDING OF THE VIOLATION;~~

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

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

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

~~(I) INVOLVE WILLFUL OR CRIMINAL CONDUCT; OR~~

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

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

#### Article – State Government

10–101.

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

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

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

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

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

(1) a county;

(2) a municipal corporation;

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

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

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

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

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

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

10                           (i)     has general application;

11                           (ii)    has future effect;

12                           (iii) is adopted by a unit to:

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

14                                   2.     govern organization of the unit;

15                                   3.     govern the procedure of the unit; or

16                                   4.     govern practice before the unit; and

17                           (iv) is in any form, including:

18                                   1.     a guideline;

19                                   2.     a rule;

20                                   3.     a standard;

21                                   4.     a statement of interpretation; or

22                                   5.     a statement of policy.

23                   (2)     “Regulation” does not include:

24                           (i)     a statement that:

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

26                                   2.     does not affect directly the rights of the public or the  
27 procedures available to the public;



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

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

5 (3) “Regulation”, as used in §§ 10–110 and 10–111.1 of this subtitle, means  
6 all or any portion of a regulation.

7 [(i) (1) “Significant small business impact” means a determination by the  
8 Advisory Council that a proposed regulation is likely to have a meaningful effect on the  
9 revenues or profits of a significant number of small businesses or a significant percentage  
10 of small businesses within a single industry in the State.

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

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

16 [(k) (I) “Substantively” means in a manner substantially affecting the rights,  
17 duties, or obligations of:

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

19 (2) a member of the public.

20 [(l) (J) “Unit” means an officer or unit authorized by law to adopt regulations.  
21 10–110.

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

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

30 [(c) At least 15 days before the date a proposed regulation is submitted to the  
31 Maryland Register for publication under § 10–112 of this subtitle, the promulgating unit  
32 shall submit to the Advisory Council on the Impact of Regulations on Small Businesses

1 established under § 3–502 of the Economic Development Article for review each proposed  
2 regulation and the estimated impact of the proposed regulation on small businesses  
3 identified by the promulgating unit.]

4 [(d)] (C) (1) At least 15 days before the date a proposed regulation is  
5 submitted to the Maryland Register for publication under § 10–112 of this subtitle, the  
6 promulgating unit shall submit the proposed regulation to the Committee and the  
7 Department of Legislative Services.

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

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

17 1. the amount of money needed by the promulgating unit to  
18 operate effectively or to eliminate an imbalance between the revenues and expenditures of  
19 the unit;

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

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

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

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

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

35 7. actions taken by the promulgating unit to elicit the  
36 opinions of the individuals who are licensed by the promulgating unit and the members of  
37 the public as to the effectiveness and performance of the promulgating unit.

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (3) During the preliminary review period, the Committee may take any  
6 action relating to the proposed regulation that the Committee is authorized to take under  
7 §§ 10–111.1 and 10–112 of this subtitle.

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

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

16 (iii) If a member requests a hearing, the Committee:  
17 1. shall hold a hearing; and  
18 2. may request that the promulgating unit delay adoption of  
19 the regulation.]

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

22 (1)] submit the proposed regulation to the Committee and to consult with  
23 the Committee concerning the form and content of that regulation[; and

24 (2) submit the proposed regulation to the Advisory Council and to consult  
25 with the Advisory Council concerning the estimated small business impact of the regulation  
26 and ways to reduce the small business impact].

27 SECTION 3. AND BE IT FURTHER ENACTED, That Section(s) 3–501 through  
28 3–508 and the subtitle “Subtitle 5. Advisory Council on the Impact of Regulations on Small  
29 Businesses” of Article – Economic Development of the Annotated Code of Maryland be  
30 repealed.

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

1 SECTION 5. AND BE IT FURTHER ENACTED, That, except as provided in Section  
2 4 of this Act, this Act shall take effect July 1, 2019.

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.