

# SENATE BILL 173

P3, C8

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CF 9lr0156

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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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## 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  
27 Section 2–1505.2(a) and (b) and 10–224(a)  
28 Annotated Code of Maryland

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



- 1 (2014 Replacement Volume and 2018 Supplement)
- 2 BY adding to
- 3 Article – State Government
- 4 Section 2–1505.2(k)
- 5 Annotated Code of Maryland
- 6 (2014 Replacement Volume and 2018 Supplement)
- 7 BY repealing and reenacting, with amendments,
- 8 Article – State Government
- 9 Section 10–101, 10–110(d), 10–224(b), and 10–1001
- 10 Annotated Code of Maryland
- 11 (2014 Replacement Volume and 2018 Supplement)
- 12 BY repealing and reenacting, with amendments,
- 13 Article – State Government
- 14 Section 10–110
- 15 Annotated Code of Maryland
- 16 (2014 Replacement Volume and 2018 Supplement)
- 17 (As enacted by Section 1 of this Act)
- 18 BY repealing
- 19 Article – Economic Development
- 20 Section 3–501 through 3–508 and the subtitle “Subtitle 5. Advisory Council on the
- 21 Impact of Regulations on Small Businesses”
- 22 Annotated Code of Maryland
- 23 (2018 Replacement Volume)
- 24 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
- 25 That the Laws of Maryland read as follows:
- 26 **Article – State Government**
- 27 2–1505.2.
- 28 (a) (1) In this section the following words have the meanings indicated.
- 29 (2) “Committee” means the Joint Committee on Administrative, Executive,
- 30 and Legislative Review.
- 31 (3) “Economic impact analysis” means an estimate of the cost or the
- 32 economic benefit to small businesses that may be affected by a regulation proposed by an
- 33 agency pursuant to Title 10, Subtitle 1 of this article.
- 34 (4) “Economic impact analysis rating” means an estimate that a proposed
- 35 regulation will have:

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

2 (ii) meaningful economic impact on small businesses.

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

5 (i) is independently owned and operated;

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

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

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

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

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

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

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

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

25 10-110.

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

30 (2) (i) If the proposed regulation, either in whole or in part, submitted  
31 to the Committee and the Department of Legislative Services in accordance with paragraph  
32 (1) of this subsection includes an increase or decrease in a fee for a license to practice any

1 business activity, business or health occupation, or business or health profession licensed  
2 or otherwise regulated under State law, the promulgating unit shall include clearly written  
3 explanatory reasons that justify the increase or decrease in the fee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 10-224.

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

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

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

1 (b) This section applies only to:

2 (1) an agency operating statewide;

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

5 (i) is independently owned and operated; and

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

9 (3) a nonprofit organization.

10 10-1001.

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

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

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

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

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

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

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

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

27 **3. CREDITING THE COSTS OF CORRECTING THE**  
28 **VIOLATION AGAINST THE PENALTY ASSESSED AGAINST THE VIOLATOR.**

29 **(2) PARAGRAPH (1)(IV) OF THIS SUBSECTION MAY NOT BE APPLIED**

1 TO A VIOLATOR THAT HAS BEEN THE SUBJECT OF MULTIPLE ENFORCEMENT  
2 ACTIONS BY A STATE OR LOCAL UNIT THAT:

3 (I) INVOLVE WILLFUL OR CRIMINAL CONDUCT; OR

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

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

8 **Article – State Government**

9 10–101.

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

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

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

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

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

17 (1) a county;

18 (2) a municipal corporation;

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

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

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

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

29 [(g) (F) “Register” means the Maryland Register.

- 1           **[(h)] (G)**   (1)   “Regulation” means a statement or an amendment or repeal of a  
2 statement that:
- 3                           (i)    has general application;
- 4                           (ii)   has future effect;
- 5                           (iii) is adopted by a unit to:
- 6                                 1.    detail or carry out a law that the unit administers;
- 7                                 2.    govern organization of the unit;
- 8                                 3.    govern the procedure of the unit; or
- 9                                 4.    govern practice before the unit; and
- 10                          (iv) is in any form, including:
- 11                                 1.    a guideline;
- 12                                 2.    a rule;
- 13                                 3.    a standard;
- 14                                 4.    a statement of interpretation; or
- 15                                 5.    a statement of policy.
- 16                          (2)   “Regulation” does not include:
- 17                           (i)    a statement that:
- 18                                 1.    concerns only internal management of the unit; and
- 19                                 2.    does not affect directly the rights of the public or the  
20 procedures available to the public;
- 21                           (ii)   a response of the unit to a petition for adoption of a regulation,  
22 under § 10–123 of this subtitle; or
- 23                           (iii) a declaratory ruling of the unit as to a regulation, order, or  
24 statute, under Subtitle 3 of this title.
- 25                          (3)   “Regulation”, as used in §§ 10–110 and 10–111.1 of this subtitle, means  
26 all or any portion of a regulation.

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

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

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

10           **[(k) (I)]** “Substantively” means in a manner substantially affecting the rights,  
11 duties, or obligations of:

12           **(1)** a member of a regulated group or profession; or

13           **(2)** a member of the public.

14           **[(l) (J)]** “Unit” means an officer or unit authorized by law to adopt regulations.  
15 10–110.

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

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

24           **[(c)]** 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 Advisory Council on the Impact of Regulations on Small Businesses  
27 established under § 3–502 of the Economic Development Article for review each proposed  
28 regulation and the estimated impact of the proposed regulation on small businesses  
29 identified by the promulgating unit.]

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

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

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

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

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

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

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

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

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

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

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

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

35                   (ii)   quantify or describe the range of potential costs of the proposed  
36 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;]

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

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

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

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

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

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

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

33 (3) During the preliminary review period, the Committee may take any  
34 action relating to the proposed regulation that the Committee is authorized to take under  
35 §§ 10–111.1 and 10–112 of this subtitle.

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

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

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

10                    1. shall hold a hearing; and

11                    2. may request that the promulgating unit delay adoption of  
12 the regulation.]

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

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

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

20            SECTION 3. AND BE IT FURTHER ENACTED, That Section(s) 3–501 through  
21 3–508 and the subtitle “Subtitle 5. Advisory Council on the Impact of Regulations on Small  
22 Businesses” of Article – Economic Development of the Annotated Code of Maryland be  
23 repealed.

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

26            SECTION 5. AND BE IT FURTHER ENACTED, That, except as provided in Section  
27 4 of this Act, this Act shall take effect July 1, 2019.