

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 541

FISCAL
NOTE

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WILLIAMS AND PLYMALE

[Introduced February 6, 2016;

Referred to the Committee on Government Organization.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §29A-3C-1, §29A-3C-2, 29A-3C-3, §29A-3C-4, §29A-3C-5, §29A-3C-6 and
 3 §29A-3C-7, all relating to regulatory flexibility; and providing procedures to analyze
 4 availability of more flexible regulatory approaches for small businesses.

Be it enacted by the Legislature of West Virginia:

1 That the code of West Virginia, 1931, as amended, be amended by adding thereto a new
 2 article, designated §29A-3C-1; §29A-3C-2; §29A-3C-3; §29A-3C-4; §29A-3C-5; §29A-3C-6 and
 3 §29A-3C-7, all to read as follows:

ARTICLE 3C. REGULATORY FLEXIBILITY.

§29A-3C-1. Findings.

1 The Legislature makes the following findings:

2 (1) That a vibrant and growing small business sector is critical to creating jobs in a dynamic
 3 economy;

4 (2) That small businesses sustain a heavy financial burden due to high fixed costs of
 5 complying with uniform regulations that pertain to businesses of all sizes;

6 (3) That it is important that the State seek to achieve statutory goals as effectively and
 7 efficiently as possible without imposing unnecessary burdens on small businesses;

8 (4) That failing to recognize differences in the scale and resources of regulated businesses
 9 can adversely affect competition in the marketplace, discourage innovation, and restrict
 10 improvements in productivity;

11 (5) That unnecessary regulations create entry barriers in many industries and discourage
 12 potential entrepreneurs from introducing beneficial products and processes;

13 (6) That the practice of treating all regulated businesses as equivalent may lead to
 14 inefficient use of regulatory agency resources, enforcement problems, and, in some cases, to
 15 actions inconsistent with the legislative intent of health, safety, environmental, and economic
 16 welfare legislation;

17 (7) That alternative regulatory approaches which do not conflict with the stated objective
 18 of applicable statutes may be available to minimize the significant economic impact of rules on
 19 small businesses; and

20 (8) That when developing and reforming their regulations, it is important that state entities
 21 solicit the ideas and comments of small businesses, examine the impact of proposed and existing
 22 rules on the businesses, and review the continued need for existing rules.

§29A-3C-2. Short Title.

1 This act may be cited as the Regulatory Flexibility Act of 2016.

§29A-3C-3. Definitions

1 As used in this section:

2 (1) "Agency" means each state board, commission, department, or officer authorized by
 3 law to make regulations or to determine contested cases;

4 (2) "Proposed regulation" means a proposal by an agency for a new regulation or for a
 5 change in, addition to, or repeal of an existing regulation;

6 (3) "Regulation" means each agency statement of general applicability, without regard to
 7 its designation, that implements, interprets, or prescribes law or policy, or describes the
 8 organization, procedure, or practice requirements of any agency. The term includes the
 9 amendment or repeal of a prior regulation, but does not include (A) statements concerning only
 10 the internal management of any agency and not affecting private rights or procedures available
 11 to the public, (B) declaratory rulings, or (C) intra-agency or interagency memoranda;

12 (4) "Small business" means a business entity, including its affiliates, that (A) is
 13 independently owned and operated and (B) employs fewer than five hundred full-time employees
 14 or has gross annual sales of less than \$6 million.

§29A-3C-4. Economic impact statements.

1 Prior to the adoption of any proposed regulation that may have an adverse impact on small
 2 businesses, each agency shall prepare and deliver to the executive director of the West Virginia

3 Development Office, an economic impact statement that includes the following:

4 (1) An identification and estimate of the number of the small businesses subject to the
5 proposed regulation;

6 (2) The projected reporting, recordkeeping, and other administrative costs required for
7 compliance with the proposed regulation, including the type of professional skills necessary for
8 preparation of the report or record;

9 (3) A statement of the probable effect on impacted small businesses;

10 (4) A description of any less intrusive or less costly alternative methods of achieving the
11 purpose of the proposed regulation.

§29A-3C-5. Regulatory flexibility analysis.

1 (a) Prior to the adoption of any proposed regulation on and after January 1, 2017, each
2 agency shall prepare a regulatory flexibility analysis in which the agency shall, where consistent
3 with health, safety, environmental, and economic welfare, consider using regulatory methods that
4 will accomplish the objectives of applicable statutes while minimizing adverse impact on small
5 businesses. The agency shall consider, without limitation, each of the following methods of
6 reducing the impact of the proposed regulation on small businesses:

7 (1) The establishment of less stringent compliance or reporting requirements for small
8 businesses;

9 (2) The establishment of less stringent schedules or deadlines for compliance or reporting
10 requirements for small businesses;

11 (3) The consolidation or simplification of compliance or reporting requirements for small
12 businesses;

13 (4) The establishment of performance standards for small businesses to replace design
14 or operational standards required in the proposed regulation; and

15 (5) The exemption of small businesses from all or any part of the requirements contained
16 in the proposed regulation.

17 (b) Prior to the adoption of any proposed regulation that may have an adverse impact on
18 small businesses, each agency shall notify the executive director of the West Virginia
19 Development Office of its intent to adopt the proposed regulation. The executive director shall
20 advise and assist agencies in complying with the provisions of this section.

§29A-3C-6. Judicial review.

1 (a) For any regulation subject to this section, a small business that is adversely affected
2 or aggrieved by final agency action is entitled to judicial review of agency compliance with the
3 requirements of this section.

4 (b) A small business may seek review during the period beginning on the date of final
5 agency action and ending one year later.

§29A-3c-7. Periodic review of rules.

1 (a) Within four years of the enactment of this law, each agency shall review all agency
2 rules existing at the time of enactment to determine whether the rules should be continued without
3 change, or should be amended or rescinded, consistent with the stated objectives of those
4 statutes, to minimize economic impact of the regulations on small businesses in a manner
5 consistent with the stated objective of applicable statutes. If the head of the agency determines
6 that completion of the review of existing rules is not feasible by the established date, the agency
7 shall publish a statement certifying that determination. The agency may extend the completion
8 date by one year at a time for a total of not more than five years.

9 (b) Rules adopted after the enactment of this law shall be reviewed every five years from
10 the publication of the rules as the final rule to ensure that they minimize economic impact on small
11 businesses in a manner consistent with the stated objectives of applicable statutes.

12 (c) In reviewing rules to minimize economic impact of the regulation on small businesses,
13 the agency shall consider the following factors:

14 (1) The continued need for the rule;

15 (2) The nature of complaints or comments received concerning the rule from the public;

- 16 (3) The complexity of the rule;
- 17 (4) The extent to which the rule overlaps, duplicates, or conflicts with other Federal, State,
- 18 and local governmental rules;
- 19 (5) The length of time since the rule has been evaluated or the degree to which technology,
- 20 economic conditions, or other factors have changed in the area affected by the rule; and
- 21 (6) The rule’s impact on business and industry by considering the following criteria:
- 22 (A) Job Creation;
- 23 (B) Economic growth;
- 24 (C) Investment;
- 25 (D) Competitiveness;
- 26 (E) Entrepreneurial activity; and
- 27 (F) Innovation.

NOTE: The purpose of this bill is to require agencies to analyze the impact of proposed and existing regulations on small businesses, with the intent of reducing negative impact of regulations on the state’s small businesses, where suitable.

Strike-throughs indicate language that would be stricken from the present law and underscoring indicates new language that would be added.