

2020 Regular Session

SENATE BILL NO. 237

BY SENATOR WARD

ECONOMIC DEVELOPMENT. Provides for notice requirements related to the Small Business Protection Act. (8/1/20)

1 AN ACT

2 To amend and reenact R.S. 49:953(A)(1)(a)(x), (E)(3), and (I)(1), 978.3(3), (4), and (5),

3 978.4 and to enact R.S. 49:978.3(6), relative to the Small Business Protection Act;

4 to provide for the small business impact statement; to provide procedures regarding

5 administrative rules; to provide for definitions; to provide for notifications; to

6 provide for the electronic transfer of certain information; and to provide for related

7 matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 49:953(A)(1)(a)(x), (E)(3), and (I)(1), 978.3(3), (4), and (5), 978.4
10 are hereby amended and reenacted and R.S. 49:978.3(6) is enacted to read as follows:

11 §953. Procedure for adoption of rules; agency rule review

12 A. Prior to the adoption, amendment, or repeal of any rule, the agency shall:

13 (1)(a) Give notice of its intended action and a copy of the proposed rules at
14 least ninety days prior to taking action on the rule. The notice shall include:

15 * * *

16 (x) A **separate** statement concerning the ~~economic~~ impact on ~~small~~
17 businesses, **known as the "small business impact statement"**, as set forth in R.S.

1 ~~(4)~~(5) "Rule" means each agency statement, guide, or requirement for
 2 conduct or action, exclusive of those regulating only the internal management of the
 3 agency and those purporting to adopt, increase, or decrease any fees imposed on the
 4 affairs, actions, or persons regulated by the agency, which has general applicability
 5 and the effect of implementing or interpreting substantive law or policy, or which
 6 prescribes the procedure or practice requirements of the agency. "Rule" includes but
 7 is not limited to any provision for fines, prices or penalties, the attainment or loss of
 8 preferential status, and the criteria or qualifications for licensure or certification by
 9 an agency. A rule may be of general applicability even though it may not apply to
 10 the entire state, provided its form is general and it is capable of being applied to
 11 every member of an identifiable class. The term includes the amendment or repeal
 12 of an existing rule but does not include declaratory rulings or orders or any fees.

13 ~~(5)~~(6) "Small business" means a business which is either for profit or
 14 nonprofit, that is domiciled or doing business in this state, and employs ~~one~~ fifteen
 15 hundred or fewer full-time employees or the number of employs which meet the
 16 definition of a "small business" by the United States Small Business
 17 Administration, whichever is greater., ~~and meets at least one of the following~~
 18 conditions:

19 (a) ~~Gross annual sales are less than ten million dollars.~~

20 (b) ~~Total net worth of the business is less than two million dollars.~~

21 §978.4. Small business ~~economic~~ impact statements; potpourri notices

22 A.~~(1)~~ Prior to the adoption of any proposed rule ~~that may have an adverse~~
 23 ~~impact on small businesses~~, each agency shall prepare a small business ~~economic~~
 24 impact statement, that includes the following:

25 ~~(a)~~(1) ~~An identification and estimate of the number of the small businesses~~
 26 ~~subject to the proposed rule.~~ The name, address, and phone number of the agency
 27 proposing the rule.

28 ~~(b)~~(2) ~~The projected reporting, record keeping, and other administrative costs~~
 29 ~~required for compliance with the proposed rule, including the type of professional~~

1 skills necessary for preparation of the report or record. The title of the rule, the date
2 of first publication of the rule, and the effective date of the rule.

3 ~~(e)(3)~~ (3) A brief summary statement of the probable effect on impacted small
4 businesses. content of the proposed rule if the rule is proposed for adoption or
5 repeal. A brief summary statement of the change to an existing rule if the
6 proposed rule is for an amendment to an existing rule. The same brief summary
7 statement that is used for the fiscal and economic impact statement required in
8 R.S. 49:974 may be used for the small business impact statement.

9 ~~(d)(4)~~ A description of any less intrusive or less costly alternative methods
10 of achieving the purpose of the proposed rule. A summary of the circumstances
11 which require the proposed rule. If the proposed rule is required by federal
12 regulation, the federal statute or regulation cited.

13 (5)(a) A description as to whether business or individuals are reasonably
14 expected to be impacted by the proposed rule:

15 (i) Businesses located in Louisiana.

16 (ii) Individual citizens of Louisiana.

17 (iii) Both businesses and individual citizens of Louisiana.

18 (iv) Neither businesses and individual citizens of Louisiana.

19 (b) If the agency determines that the proposed rule will not have any
20 impact on businesses in Louisiana, the agency shall give a brief statement as to
21 why the proposed rule does not impact businesses and which individuals are
22 expected to be impacted by the proposed rule.

23 (6) If the agency determines that the proposed rule is reasonably
24 expected to impact businesses in any manner, the agency will identify one of the
25 following:

26 (a) Small businesses are expected to be impacted.

27 (b) Large businesses are expected to be impacted.

28 (c) Both small and large businesses are expected to be impacted.

29 (d) Agency is unsure whether the expected impact to businesses will be

- 1 **born by small businesses, large businesses, or both.**
- 2 **(7) If the agency determines that the proposed rule is reasonably**
- 3 **expected to impact businesses in any manner, the agency will identify one of the**
- 4 **following business sectors which is reasonably expected to be impacted:**
- 5 **(a) Accommodations and Hospitality.**
- 6 **(b) Accounting.**
- 7 **(c) Agriculture and Farming.**
- 8 **(d) Automobiles.**
- 9 **(e) Chemical Industry.**
- 10 **(f) Communications.**
- 11 **(g) Construction.**
- 12 **(h) Education Services or Contractors.**
- 13 **(i) Engineering.**
- 14 **(j) Environmental Services.**
- 15 **(k) Entertainment.**
- 16 **(l) Fishing and Aquaculture.**
- 17 **(m) Food Services.**
- 18 **(n) Funeral Homes, Mortuaries, and Internment Services.**
- 19 **(o) Healthcare or Medical Services.**
- 20 **(p) Information Technology.**
- 21 **(q) Insurance.**
- 22 **(r) Manufacturing.**
- 23 **(s) Oil or Petroleum.**
- 24 **(t) Real Estate.**
- 25 **(u) Retail Establishments.**
- 26 **(v) Timber and Forestry.**
- 27 **(w) Transportation.**
- 28 **(x) Other businesses or industries not listed.**
- 29 ~~(2)~~**B.** The small business economic impact statement shall be submitted to

1 the office of the state register pursuant to R.S. 49:953, **after the statement has been**
2 **approved by the legislative fiscal office.**

3 **BC.** If an agency determines, in its own judgment, that the input of small
4 businesses and the public would be helpful in drafting a new proposed rule, the
5 agency may issue a potpourri notice. If the agency issues a potpourri notice, it shall
6 be submitted with the office of the state register.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Carla S. Roberts.

DIGEST

SB 237 Original

2020 Regular Session

Ward

Present law provides that, prior to the adoption, amendment, or repeal of any rule or regulation by a state agency, the agency will notify the public of the change by sending a notice of intent to make the rule or regulation change to the office of the state register for publication in the *La. Register*.

Present law provides that, before a rule or regulation can be implemented, the agency must provide a statement, which is approved by the legislative fiscal office, regarding the fiscal impact and the economic impact of the intended action. Present law further provides that, if the agency determines that there is an economic impact on small business, the agency must prepare an economic impact statement as it relates to the impact that the proposed rule would have on small businesses prior to sending the proposed rule or regulation change to the office of the state register for publication in the *La. Register*.

Present law requires that the fiscal impact statement be summarized by the agency as to the estimated costs and/or economic benefits to directly affected persons, small businesses, or nongovernmental groups and that the summary shall be published in the *La. Register*.

Proposed law retains present law but separates the fiscal and economic impact statement from the small business impact statement.

Proposed law deletes the requirements that the agency determine if there is an economic impact to small business exclusive from the impact to the economy as a whole. Proposed law instead provides a notice to small business, via the small business impact statement, which requires the agency to report the following:

- (1) The name, address, and phone number of the agency proposing the rule.
- (2) The title of the rule, the date of first publication of the rule, and the effective date of the rule.
- (3) A brief summary statement of the content of the proposed rule if the rule is proposed for adoption or repeal. A brief summary statement of the change to an existing rule if the proposed rule is for an amendment to an existing rule. The same brief summary statement that is used for the fiscal and economic impact statement required in present law may be used for the small business impact statement.
- (4) A summary of the circumstances which require the proposed rule. If the proposed rule is required by federal regulation, the federal statute or regulation cited.

- (5) A designation as to all of which persons or entities that are reasonably expected to be impacted by the proposed rule:
- (a) Businesses located in Louisiana.
 - (b) Individual citizens of Louisiana.
 - (d) Both citizens and businesses.
 - (e) Neither citizens or businesses.

If the agency determines that the proposed rule will not have any impact on businesses in Louisiana, the agency shall give a brief statement as to why the proposed rule does not impact businesses and which individuals are expected to be impacted by the proposed rule.

- (6) If the agency determines that the proposed rule is reasonably expected to impact businesses in any manner, the agency will identify one of the following:
- (a) Small businesses are expected to be impacted.
 - (b) Large businesses are expected to be impacted.
 - (c) Both small and large businesses are expected to be impacted.
 - (d) Agency is unsure whether the expected impact to businesses will be born by small businesses, large businesses, or both.
- (7) If the agency determines that the proposed rule is reasonably expected to impact businesses in any manner, the agency will identify one of the following business sectors which is reasonably expected to be impacted:
- (a) Accommodations and Hospitality.
 - (b) Accounting.
 - (c) Agriculture and Farming.
 - (d) Automobiles.
 - (e) Chemical Industry.
 - (f) Communications.
 - (g) Construction.
 - (h) Education Services or Contractors.
 - (i) Engineering.
 - (j) Environmental Services.
 - (k) Entertainment.
 - (l) Fishing and Aquaculture.
 - (m) Food Services.

- (n) Funeral Homes, Mortuaries, and Internment Services.
- (o) Healthcare or Medical Services.
- (p) Information Technology.
- (q) Insurance.
- (r) Manufacturing.
- (s) Oil or Petroleum.
- (t) Real Estate.
- (u) Retail Establishments.
- (v) Timber and Forestry.
- (w) Transportation.
- (x) Other Businesses or Industries not listed.

Present law requires that, no later than the 10th day of the month, the office of the state register shall electronically transmit all of the small business economic impact statements, the small business regulatory flexibility analyses, and the fiscal impact statement approved by the legislative fiscal office to the secretary of state's commercial division. Present law provides that, upon receiving the electronic transfer of information from the office of the state register, the secretary of state's commercial division will do all of the following:

- (1) On the 15th day of the month, post the information on the commercial division's internet page under the heading of "proposed state rules and regulations that may affect your business".
- (2) No later than the 16th day of the month, electronically transfer the information to the Louisiana Association of Business and Industry and the Louisiana Chapter of the National Federation of Independent Business, and to each person who has made a timely request of the department for such notices.

Proposed law retains present law but only requires that the small business impact statement be electronically transferred from the office of the state register to the office secretary of state's commercial division.

Effective August 1, 2020.

(Amends R.S. 49:953(A)(1)(a)(x), (E)(3), and (I)(1), 978.3(3), (4), and (5), 978.4; adds R.S. 49:978.3(6))