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DELAWARE STATE SENATE  
148th GENERAL ASSEMBLY

SENATE BILL NO. 113

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO THE REGULATORY TRANSPARENCY AND ACCOUNTABILITY ACT OF 2015.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 10403, Title 29, Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating the remaining subsections accordingly:

§ 10403 Definitions.

As used in this chapter:

(2) “Agency regulatory statement” means any analysis or statement required to be submitted for publication by an agency to the Registrar of Regulations in accordance with this chapter.

~~(3)~~(4) “Small business” means any not-for-profit enterprise, sheltered workshop or business enterprise which is engaged in any phase of manufacturing, agricultural production or personal service, regardless of the form of its organization, when such enterprise or workshop employs fewer than 20 50 persons, has gross receipts of less than \$4,000,000 \$10,000,000 and is not owned, operated or controlled by another business enterprise.

Section 2. Amend § 10404, Title 29, Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 10404 ~~Consideration of possible exemptions.~~ [Deleted.]

~~(a) Prior to the issuance of any rule or regulation an agency shall consider whether it is lawful, feasible and desirable for the agency to exempt individuals and small businesses from the effect of the rule or regulation or whether the agency may and should promulgate a rule or regulation which sets less stringent standards for compliance by individuals and/or small businesses.~~

(b) The agency's consideration should include the following factors:

(1) The nature of any reports and the estimated cost of their preparation by individuals and/or small businesses which would be required to comply with a new rule;

(2) The nature and estimated costs of other measures or investments that would be required by individuals and/or small businesses in complying with a rule;

(3) The nature and estimated cost of any legal, consulting and accounting services which individuals and/or small businesses would incur in complying with a rule;

(4) The ability of individuals and/or small businesses to absorb the costs estimated under paragraphs (1), (2) and (3) of this subsection without suffering economic harm and without adversely affecting competition in the marketplace;

(5) The additional cost, if any, to the agency of administering or enforcing a rule which exempts or sets lesser standards for compliance by individuals and/or small businesses; and

(6) The impact on the public interest of exempting or setting lesser standards of compliance for individuals and/or small businesses.

Section 3. Amend Chapter 104, Title 29, Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 10404A Regulatory impact statements.

(a) Any agency that proposes to adopt or amend any regulation under the Administrative Procedures Act, 29 Del.C. §§ 10101 *et seq.*, that is substantially likely to impose additional costs or burdens upon individuals and/or small businesses shall submit a regulatory impact statement to be published by the Registrar of Regulations as part of the notice requirements set forth in § 10115 of this title. Each regulatory impact statement shall include:

(1) A specific reference to the statutory provision which allows for the adoption or amendment of the rule or regulation and the statutory provisions which address the subject matter of the rule or regulation;

(2) A description of the purpose of the regulation;

(3) An identification of the individuals and/or small businesses that would be subject to compliance under the regulation;

(4) A good-faith estimate by the agency of the potential cost of compliance for individuals and/or small businesses, which at minimum shall include the projected reporting, recordkeeping, and other administrative costs required to comply with the proposed regulation; and

(5) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation, to the extent such methods are not otherwise described herein.

(b) The following regulations are exempt from this section:

(1) Regulations that are not substantially likely to impose additional costs or burdens upon individuals and/or small businesses; provided, however, that any agency making such a determination shall include a statement to that effect as part of the notice requirements set forth in § 10115 of this title;

(2) Emergency regulations adopted pursuant to § 10119 of this title;

(3) Regulations that are exempt from the procedural requirements of the Administrative Procedures Act, 29 Del.C. §§ 10101 et seq., pursuant to § 10113(b) of this title;

(4) Regulations that define standards of conduct or qualifications of individuals applying for licensure or as licensed professionals;

(5) Regulations that are required by federal law and have already complied with the federal Regulatory Flexibility Act; and

(6) Such other regulations as may be determined from time to time in accordance with this chapter.

Section 4. Amend § 10405, Title 29, Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 10405 Transmission of ~~rule~~ notice of proposed regulation to General Assembly standing committees; comments.

~~The agency prescribing such rule~~ Upon receipt of a notice from an agency pursuant to § 10115 of this title that includes an agency regulatory statement, the Registrar of Regulations shall forthwith transmit such rule notice and agency regulatory statement to, and obtain the comments, if any, of, the appropriate standing committees of the General Assembly with oversight responsibilities for legislation affecting that agency with respect to the potential impact of such proposed regulation upon individuals and/or small businesses ~~resulting from implementation of such rules~~. Nothing in this section shall require any standing committee to meet, to consider any notice hereunder, or to provide any comments in connection herewith.

Section 5. Amend Chapter 104, Title 29, Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 10409. Guidelines.

(a) No later than November 15, 2015, the Registrar of Regulations, the Office of Management and Budget (OMB), and the Department of State, in consultation with such regulatory agencies, boards, and commissions as may be necessary or desirable, shall submit for final publication guidelines to assist state agencies in preparing the agency regulatory statements required pursuant to this chapter. The adoption of such guidelines shall be subject to the Administrative Procedures Act, 29 Del.C. §§ 10101 et seq., with OMB serving as the adopting agency.

78           (b) The guidelines shall include, but are not limited to:

79                   (1) Determining when, and under what circumstances, a proposed regulation is substantially likely to  
80 impose additional costs or burdens on individuals and/or small businesses;

81                   (2) Identifying and evaluating alternative methods of achieving the purpose of a proposed regulation;

82                   (3) Determining the potential cost of complying with a proposed regulation, including projected  
83 reporting, recordkeeping, and other administrative costs; and

84                   (4) Evaluating and adopting such additional exemptions from the requirements applicable to agency  
85 regulatory statements as may be necessary or desirable.

86           Section 6. This Act shall be known as “The Regulatory Transparency and Accountability Act of 2015”.

87           Section 7. This Act shall become effective for all new or amended regulations submitted to the Registrar of  
88 Regulations on or after January 1, 2016.

#### SYNOPSIS

The Regulatory Transparency and Accountability Act of 2015 improves Delaware’s regulatory environment for individuals and small businesses in several significant ways. First, the Act improves transparency by requiring each agency to submit a “regulatory impact statement” to the Registrar of Regulations whenever it proposes to adopt or amend certain regulations affecting individuals and/or small businesses. Among other things, each regulatory impact statement must (1) describe the purpose of the regulation; (2) identify the individuals and/or small businesses subject to it; (3) provide an estimate of the potential costs of compliance; and (4) describe any less intrusive or less costly alternative methods of achieving the purpose of the regulation.

In addition, the Act further enhances transparency by requiring the Registrar of Regulations to transmit regulatory impact statements to the appropriate standing committee of the General Assembly. Further, the Act expands the definition of “small business” for purposes of the chapter of the Delaware Code relating to regulatory flexibility (Title 29, Chapter 104). The practical effect of this change is that many more small businesses will enjoy the benefits of this chapter because the “universe” of small businesses will be larger. Finally, the Act requires the adoption of Guidelines to assist agencies in fulfilling their obligations under the Act. The Guidelines must be submitted for final publication by November 15, 2015.

When enacted, the Regulatory Accountability and Transparency Act is effective for all new or amended regulations submitted to the Registrar of Regulations on or after January 1, 2016.

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