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DELAWARE STATE SENATE
148th GENERAL ASSEMBLY

SENATE BILL NO. 120

AN ACT TO AMEND TITLE 29, CHAPTERS 101 AND 104 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 of the 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 of the 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 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 10404B. Regulatory flexibility analyses.

(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 flexibility analysis to be published by the Registrar of Regulations as part of the notice requirements set forth in § 10115 of this title. In connection herewith, agencies shall consider, where applicable, lawful, feasible and desirable, the following methods of reducing the additional costs and burdens of proposed regulations on individuals and small businesses:

(1) The establishment of less stringent compliance or reporting requirements;

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

(3) The consolidation or simplification of compliance or reporting requirements;

(4) The establishment of performance standards to replace design or operational standards required in the proposed regulation;

(5) The exemption of certain individuals or small businesses from all or part of the requirements contained in the proposed regulation; and

(6) Such other alternative regulatory methods that will accomplish the objectives of the proposed regulation while minimizing the adverse impact upon individuals and small businesses.

(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 Chapter 104, Title 29 of the 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.

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

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

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

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

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

77 Section 5. Amend § 10115, Title 29 of the Delaware Code by making deletions as shown by strike through and
78 insertions as shown by underline as follows:

79 (a) Whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text
80 of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar
81 for publication, in full or as a summary, in the Register of Regulations pursuant to § 1134 of this title. Any submission to
82 the Registrar hereunder shall include, to the extent applicable, any agency regulatory statement required to be submitted by
83 the agency pursuant to chapter 104 of this title.

84 Section 6. Amend § 10115, Title 29 of the Delaware Code by making deletions as shown by strike through and
85 insertions as shown by underline as follows:

86 (d) No regulation being proposed to be formulated, adopted, amended or repealed shall be published if the
87 requisite notice prescribed in subsection (a) of this section is not submitted with the proposed regulation to the Registrar of
88 Regulations.

89 Section 7. This Act shall be known as “The Regulatory Transparency and Accountability Act of 2015.”

90 Section 8. This Act shall become effective for all new or amended regulations submitted to the Registrar of
91 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, it requires each agency to submit a “regulatory flexibility analysis” (or “RFA”) to the Registrar of Regulations whenever it proposes to adopt or amend certain regulations affecting individuals and/or small businesses. In each RFA, an agency must consider, where applicable, lawful, feasible and desirable, specific methods of reducing the burdens of the regulation on individuals and/or small businesses, including: (1) establishing less stringent requirements and deadlines; (2) establishing performance standards to replace design standards; (3) exempting individuals and small businesses from all or part of the regulation; and (4) examining other ways to accomplish the regulation’s purpose, while minimizing the impact upon individuals and/or small businesses.

In addition, the Act provides that no proposed regulatory change may be published in the Register of Regulations unless the proposing agency submits an RFA (if applicable) and any other required information to the Registrar. The Act also amends the Administrative Procedures Act (“APA”) to specifically require agencies to submit RFAs to the Registrar for publication. Both of these provisions are important steps to enhance accountability in Delaware’s regulatory process.

The Act also requires the adoption of Guidelines, which must be submitted for final publication by November 15, 2015, to assist agencies in fulfilling their obligations under the Act. Finally, 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).

If enacted, the Regulatory Accountability and Transparency Act would become effective for all new or amended regulations submitted to the Registrar on or after January 1, 2016.

Author: Senator Marshall & Senator Hocker