

ACT No. 820

HOUSE BILL NO. 368

BY REPRESENTATIVES NOWLIN, ABRAMSON, BALDONE, BURFORD, HENRY BURNS, CHANDLER, CORTEZ, DOWNS, FANNIN, GISCLAIR, HARDY, HARRISON, HINES, HOFFMANN, GIROD JACKSON, SAM JONES, KATZ, KLECKLEY, LABRUZZO, LIGI, MILLS, RITCHIE, SMILEY, GARY SMITH, JANE SMITH, PATRICIA SMITH, TEMPLET, TRAHAN, AND WADDELL

1 AN ACT

2 To enact R.S. 49:965.2 through 965.8, relative to the Regulatory Flexibility Act; to create
3 the Regulatory Flexibility Act; to set forth legislative intent and findings; to provide
4 for definitions; to require the preparation of an economic impact statement prior to
5 the adoption of a proposed administrative rule affecting small businesses; to require
6 the preparation of a regulatory flexibility analysis prior to the adoption of a proposed
7 administrative rule affecting small businesses; to require an agency to notify the
8 Department of Economic Development; to provide for conflicts; to provide for
9 certain notification; to provide for the duties of certain agencies relative to such
10 notification; and to provide for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. R.S. 49:965.2 through 965.8 are hereby enacted to read as follows:

13 §965.2. Short title

14 R.S. 49:965.2 through 965.8 may be cited as the Regulatory Flexibility Act
15 and are referred to therein as "this Act".

16 §965.3. Intent; legislative findings

17 A. It is the legislative intent and purpose of this Act to improve state
18 rulemaking by creating procedures to analyze the availability of more flexible
19 regulatory approaches for small businesses.

20 B. The legislature finds that:

21 (1) A vibrant and growing small business sector is critical to creating jobs
22 in a dynamic economy.

1 (2) Small businesses bear a disproportionate share of regulatory costs and
2 burdens.

3 (3) Fundamental changes that are needed in the regulatory and enforcement
4 culture of state agencies to make them more responsive to small business can be
5 made without compromising the statutory missions of the agencies.

6 (4) When adopting rules to protect the health, safety, and economic welfare
7 of Louisiana, state agencies should seek to achieve statutory goals as effectively and
8 efficiently as possible without imposing unnecessary burdens on small employers.

9 (5) Uniform regulatory and reporting requirements can impose unnecessary
10 and disproportionately burdensome demands, including legal, accounting, and
11 consulting costs upon small businesses with limited resources.

12 (6) The failure to recognize differences in the scale and resources of
13 regulated businesses can adversely affect competition in the marketplace, discourage
14 innovation, and restrict improvements in productivity.

15 (7) Unnecessary regulations create entry barriers in many industries and
16 discourage potential entrepreneurs from introducing beneficial products and
17 processes.

18 (8) The practice of treating all regulated businesses as equivalent may lead
19 to inefficient use of regulatory agency resources, enforcement problems, and, in
20 some cases, to actions inconsistent with the legislative intent of health, safety,
21 environmental, and economic welfare legislation.

22 (9) Alternative regulatory approaches which do not conflict with the stated
23 objective of applicable statutes may be available to minimize the significant
24 economic impact of rules on small businesses.

25 (10) The process by which state regulations are developed and adopted
26 should be reformed to require agencies to solicit the ideas and comments of small
27 businesses, to examine the impact of proposed and existing rules on such businesses,
28 and to review the continued need for existing rules.

29 C. Nothing in the Regulatory Flexibility Act shall be interpreted or construed
30 to limit the ability of an agency to propose rules.

1 §965.4. Definitions

2 The following words or terms as used in this Act shall have the following
3 meanings unless a different meaning appears from the context:

4 (1) "Agency" means each state board, commission, department, agency,
5 officer, or other entity which makes rules, regulations, or policy, or formulates, or
6 issues decisions or orders pursuant to, or as directed by, or in implementation, of the
7 constitution or laws of the United States or the constitution and statutes of Louisiana,
8 except the legislature or any branch, committee, or officer thereof, any political
9 subdivision, as defined in Article VI, Section 44 of the Constitution of Louisiana,
10 and any board, commission, department, agency, officer, or other entity thereof, and
11 the courts.

12 (2) "Proposed rule" means a proposal by an agency for a new rule or for a
13 change in, addition to, or repeal of an existing rule.

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

26 (4) "Small business" means a small business that is domiciled in this state,
27 employs one hundred or fewer full-time employees, and meets at least one of the
28 following conditions:

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

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

1 §965.5. Economic impact statements

2 Prior to the adoption of any proposed rule on or after July 1, 2009, that may
3 have an adverse impact on small businesses, each agency shall prepare an economic
4 impact statement that includes the following:

5 (1) An identification and estimate of the number of the small businesses
6 subject to the proposed rule.

7 (2) The projected reporting, record keeping, and other administrative costs
8 required for compliance with the proposed rule, including the type of professional
9 skills necessary for preparation of the report or record.

10 (3) A statement of the probable effect on impacted small businesses.

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

13 §965.6. Regulatory flexibility analysis

14 A. Prior to the adoption of any proposed rule on or after July 1, 2009, each
15 agency shall prepare a regulatory flexibility analysis in which the agency shall,
16 where consistent with health, safety, environmental, and economic welfare, consider
17 utilizing regulatory methods that will accomplish the objectives of applicable statutes
18 while minimizing adverse impact on small businesses. The agency shall consider,
19 without limitation, each of the following methods of reducing the impact of the
20 proposed rule on small businesses:

21 (1) The establishment of less stringent compliance or reporting requirements
22 for small businesses.

23 (2) The establishment of less stringent schedules or deadlines for compliance
24 or reporting requirements for small businesses.

25 (3) The consolidation or simplification of compliance or reporting
26 requirements for small businesses.

27 (4) The establishment of performance standards for small businesses to
28 replace design or operational standards required in the proposed rule.

29 (5) The exemption of small businesses from all or any part of the
30 requirements contained in the proposed rule.

1 B. Prior to the adoption of any proposed rule by an agency which according
 2 to the economic impact statement required by R.S. 49:965.5 and the results of the
 3 regulatory flexibility analysis required by R.S. 49:965.6 would have an adverse
 4 impact on small businesses, the agency shall notify the Department of Economic
 5 Development of its intent to adopt the proposed rule.

6 §965.7. Conflicts of law

7 Nothing in the Regulatory Flexibility Act shall be construed to conflict with
 8 or supersede any applicable federal law, rule, or regulation.

9 §965.8. Notification

10 The Department of Economic Development shall send notification of the
 11 intent of an agency to adopt, amend, or repeal any rule which would affect small
 12 businesses as indicated by the economic impact statement or regulatory flexibility
 13 analysis required by this Act to each person who has made a timely request of the
 14 department for such notice. The notification shall be sent at the earliest possible
 15 date, and in no case later than ten days after the date an agency notifies the
 16 Department of Economic Development of such a proposed rule as required by R.S.
 17 49:965.6.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____