

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 709

Introduced by White, 8.

Read first time January 06, 2010

Committee: Business and Labor

A BILL

- 1 FOR AN ACT relating to rules and regulations; to adopt the Small
- 2 Business Regulatory Flexibility Act.
- 3 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 6 of this act shall be known and
2 may be cited as the Small Business Regulatory Flexibility Act.

3 Sec. 2. For purposes of the Small Business Regulatory
4 Flexibility Act:

5 (1) Agency means any board, commission, department,
6 officer, division, or other administrative office or unit of
7 state government authorized by law to adopt and promulgate rules or
8 regulations or to determine contested cases;

9 (2) Board means the Small Business Regulatory Review
10 Board;

11 (3) Proposed rule or regulation means a proposal by an
12 agency for a new rule or regulation or for a change in, addition
13 to, or repeal of an existing rule or regulation;

14 (4) Rule or regulation means an agency statement of
15 general applicability, without regard to its designation, that
16 implements, interprets, or prescribes law or policy or describes
17 the organization, procedure, or practice requirements of any
18 agency. Rule or regulation includes any rule or regulation that has
19 been amended or repealed. Rule or regulation does not include (a)
20 statements concerning only the internal management of any agency
21 and not affecting private rights or procedures available to the
22 public, (b) declaratory rulings, or (c) interagency or intra-agency
23 memoranda; and

24 (5) Small business means a business entity, including its
25 affiliates, that (a) is independently owned and operated and (b) (i)

1 employs fewer than five hundred full-time employees or (ii) has
2 gross annual sales of less than six million dollars.

3 Sec. 3. Prior to the adoption of any proposed rule
4 or regulation that may have an adverse economic impact on small
5 businesses, the agency proposing the rule or regulation shall,
6 in accordance with the notice and public comment provisions of
7 the Administrative Procedure Act, solicit public comment from any
8 such small business by giving notice of the proposed adoption by
9 publication in a newspaper of general circulation in the State of
10 Nebraska. Such notice shall contain the subject matter of the rule
11 or regulation, the potential adverse economic impact of the rule
12 or regulation on small businesses, and a designation of the time
13 and place for public comment and the method by which such comment
14 may be submitted. If the agency has reasonable certainty that a
15 specific small business may be adversely affected by the proposed
16 rule or regulation, it shall provide notification of such to the
17 small business. The notification shall be in written or electronic
18 form.

19 Sec. 4. (1) Prior to the adoption of any proposed rule
20 or regulation that may have an adverse economic impact on small
21 businesses, the agency proposing such rule or regulation shall take
22 into account any public comment from small businesses that was
23 solicited pursuant to section 3 of this act and shall consider, but
24 need not be limited to, each of the following methods of reducing
25 the adverse economic impact of the proposed rule or regulation on

1 small businesses:

2 (a) The establishment of less stringent compliance or
3 reporting requirements for small businesses;

4 (b) The establishment of less stringent schedules or
5 deadlines for compliance or reporting requirements for small
6 businesses;

7 (c) The consolidation or simplification of compliance or
8 reporting requirements for small businesses;

9 (d) The establishment of performance standards for small
10 businesses to replace design or operational standards required in
11 the proposed rule or regulation; and

12 (e) The exemption of small businesses for all or any part
13 of the requirements contained in the proposed rule or regulation.

14 (2) Prior to the adoption of any proposed rule or
15 regulation that may have an adverse economic impact on small
16 businesses, the agency proposing the rule or regulation shall
17 notify the board of its intent to adopt the proposed rule or
18 regulation. The board shall advise and assist agencies in complying
19 with the requirements of this section.

20 Sec. 5. (1) For any rule or regulation subject to the
21 Small Business Regulatory Flexibility Act, a small business that
22 is adversely affected or aggrieved by adoption of such rule or
23 regulation is entitled to judicial review of agency compliance with
24 the requirements of the act.

25 (2) A small business may seek such judicial review during

1 the period beginning with the date the rule or regulation becomes
2 effective pursuant to the Administrative Procedure Act and ending
3 one year after such date.

4 Sec. 6. (1) Not later than four years after the effective
5 date of this act, each agency shall review all rules and
6 regulations issued by it which are in effect on the effective date
7 of this act to determine whether such rules and regulations should
8 be continued in effect without amendment or should be amended or
9 repealed to minimize adverse economic impact on small businesses in
10 a manner consistent with the Small Business Regulatory Flexibility
11 Act. If the director or other chief executive officer of an agency
12 determines that such review cannot be completed within four years
13 after the effective date of this act, the agency shall publish
14 a statement certifying such determination and shall submit such
15 statement to the board. The agency may extend the time permitted
16 for completion of such review by one year at a time for a total
17 extension period of not more than five years.

18 (2) Rules and regulations adopted by an agency after the
19 effective date of this act shall be reviewed within five years
20 after final publication pursuant to the Administrative Procedure
21 Act and every five years thereafter to ensure that such rules and
22 regulations minimize adverse economic impact on small businesses in
23 a manner consistent with the Small Business Regulatory Flexibility
24 Act.

25 (3) In reviewing rules and regulations pursuant to

1 subsection (2) of this section, the agency shall consider the
2 following factors:

3 (a) The continued need for the rule or regulation;

4 (b) The nature of complaints or comments received from
5 the public concerning the rule or regulation;

6 (c) The complexity of the rule or regulation;

7 (d) The extent to which rules or regulations overlap,
8 duplicate, or conflict with other rules or regulations or with
9 other federal or local governmental regulatory requirements; and

10 (e) The length of time since the rule or regulation
11 has been evaluated or the degree to which technology, economic
12 conditions, or other factors related to the subject matter of the
13 rule or regulation have changed.

14 Sec. 7. (1) The Small Business Regulatory Review Board is
15 created within the Department of Labor. The board shall consist of
16 the following nine members:

17 (a) The Commissioner of Labor;

18 (b) The Director of Economic Development;

19 (c) The Tax Commissioner;

20 (d) Five public members appointed by the Governor
21 pursuant to subsection (2) of this section and subject to the
22 approval of the Legislature; and

23 (e) The chairperson of the Business and Labor Committee
24 of the Legislature, who shall serve as a nonvoting, ex officio
25 member of the board.

1 (2) The five public members appointed to the board
2 pursuant to subdivision (1)(d) of this section shall be small
3 business owners or former small business owners or officers
4 or former officers of a small business at the time of their
5 appointment. At least one such member shall represent urban
6 interests, at least one such member shall represent rural
7 interests, and at least one such member shall represent suburban
8 interests.

9 (3) Of the initial public members, two shall be appointed
10 for one-year terms, two for two-year terms, and one for a
11 three-year term. All public members thereafter shall be appointed
12 for three-year terms. Each member shall hold office after the
13 expiration of his or her term until his or her successor is
14 duly appointed and qualified. Vacancies in the membership of the
15 board, however created, shall be filled for the unexpired term by
16 appointment of the Governor. The appointment of the initial public
17 members shall be completed no later than sixty days after the
18 effective date of this act.

19 (4) The board shall elect a chairperson from the members
20 of the board by majority vote. The board shall meet at the call of
21 such chairperson.

22 (5) The duties of the board shall include the review of
23 any proposed rule or regulation submitted by an agency pursuant to
24 the Small Business Regulatory Flexibility Act and the submission
25 of recommendations to the agency and the Legislature regarding the

1 need for such rule or regulation.

2 (6) Each member of the board shall be reimbursed for
3 his or her actual and necessary expenses as provided in sections
4 81-1174 to 81-1177.