

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 288

Introduced by Mello, 5.

Read first time January 12, 2011

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 5 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) Adverse economic impact means a financial impact on a
6 small business that a reasonable owner of a small business would
7 determine negatively affects his or her ability to maintain or
8 promote the growth of the small business;

9 (2) Agency means any board, commission, department,
10 officer, division, or other administrative office or unit of state
11 government authorized by law to adopt and promulgate rules or
12 regulations or to determine contested cases;

13 (3) Rule or regulation means any rule, regulation, or
14 standard issued by an agency, including the amendment or repeal
15 thereof whether with or without prior hearing and designed to
16 implement, interpret, or make specific the law enforced or
17 administered by it or governing its organization or procedure. Rule
18 or regulation does not include (a) rules and regulations concerning
19 the internal management of the agency not affecting private rights,
20 private interests, or procedures available to the public, (b)
21 permits, certificates of public convenience and necessity,
22 franchises, rate orders, and rate tariffs and any rules of
23 interpretation thereof, (c) declaratory rulings, (d) interagency or
24 intra-agency memoranda, or (e) rules and regulations necessary to
25 implement federal law. For purposes of the act, every rule or

1 regulation which prescribes a penalty shall be presumed to have
2 general applicability or to affect private rights and interests; and
3 (4) Small business means a business entity, including its
4 affiliates, that (a) is independently owned and operated and (b)(i)
5 employs fewer than five hundred full-time employees or (ii) has gross
6 annual sales of less than six million dollars.

7 Sec. 3. Prior to the adoption of any proposed rule or
8 regulation that may have an adverse economic impact on small
9 businesses, the agency proposing the rule or regulation shall, in
10 accordance with the notice and public comment provisions of the
11 Administrative Procedure Act, solicit public comment from any such
12 small business by posting notice of the proposed adoption on the
13 agency's web site. Such notice shall contain the subject matter of
14 the rule or regulation, the potential adverse economic impact of the
15 rule or regulation on small businesses, and a designation of the time
16 and place for public comment and the method by which such comment may
17 be submitted. If the agency has reasonable certainty that a specific
18 small business may be adversely affected by the proposed rule or
19 regulation, it shall provide notification of such to the small
20 business in electronic form, if available, and shall post such
21 notification on the agency's web site.

22 Sec. 4. Prior to the adoption of any proposed rule or
23 regulation that may have an adverse economic impact on small
24 businesses, the agency proposing such rule or regulation shall take
25 into account any public comment from small businesses that was

1 solicited pursuant to section 3 of this act and shall consider, but
2 need not be limited to, each of the following methods of reducing the
3 adverse economic impact of the proposed rule or regulation on small
4 businesses:

5 (1) The establishment of less stringent compliance or
6 reporting requirements for small businesses;

7 (2) The establishment of less stringent schedules or
8 deadlines for compliance or reporting requirements for small
9 businesses;

10 (3) The consolidation or simplification of compliance or
11 reporting requirements for small businesses;

12 (4) The establishment of performance standards for small
13 businesses to replace design or operational standards required in the
14 proposed rule or regulation; and

15 (5) The exemption of small businesses for all or any part
16 of the requirements contained in the proposed rule or regulation.

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

23 (2) A small business may seek such judicial review during
24 the period beginning with the date the rule or regulation becomes
25 effective pursuant to the Administrative Procedure Act and ending one

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1 year after such date.