

**§75-501. Short title.**

Sections 1 through 6 of this act shall be known and may be cited as the “Oklahoma Small Business Regulatory Flexibility Act”.

*Added by Laws 2002, c. 495, § 1, eff. July 1, 2002.*

**§75-502. Definitions.**

As used in the Oklahoma Small Business Regulatory Flexibility Act:

1. “Agency” is defined as provided by paragraph 3 of Section 250.3 of Title 75 of the Oklahoma Statutes, except that agencies established by Title 59 of the Oklahoma Statutes that license and regulate or discipline professions and occupations shall be exempt from the definition of agency in the Oklahoma Small Business Regulatory Flexibility Act;
2. “Committee” means the Small Business Regulatory Review Committee;
3. "Rule" is defined as provided by paragraph 15 of Section 250.3 of Title 75 of the Oklahoma Statutes, provided that the definition shall not include emergency or preemptive rules; and
4. “Small business” means a for-profit enterprise consisting of fifty or fewer full-time or part-time employees.

*Added by Laws 2002, c. 495, § 2, eff. July 1, 2002.*

**§75-503. Small Business Regulatory Review Committee.**

A. 1. There shall be established a Small Business Regulatory Review Committee within the Oklahoma Department of Commerce.

2. The duties of the Committee shall be to:

- a. provide agencies with input regarding proposed permanent rules which may have an adverse economic effect upon small business and for which the notice of intended action is published by “The Oklahoma Register” on or after July 1, 2002, and
- b. review any rule promulgated by a state agency for which notice has been given by the agency to the Committee that the proposed rule has an adverse economic effect upon small business and make recommendations to the agency and the Legislature regarding the need for a rule or legislation as provided in Section 505 of this title.

3. Staff support for the Committee shall be provided by the Oklahoma Department of Commerce. The Department shall act only as a coordinator for the Committee within the budgeted amount appropriated by the Legislature, not to exceed Seventy-five Thousand Dollars (\$75,000.00) per annum, to provide such services. The Department shall not be required to provide legal counsel for the Committee.

B. The Small Business Regulatory Review Committee shall consist of thirteen (13) members, who shall be appointed as follows:

1. Five members to be appointed by the Governor;
2. Two members to be appointed by the Lieutenant Governor;
3. Three members to be appointed by the President Pro Tempore of the Senate; and
4. Three members to be appointed by the Speaker of the House of Representatives.

In addition, the Chair of the Small Business Committee of the Oklahoma Senate and the Chair of the Small Business Committee of the Oklahoma House of Representatives shall serve as nonvoting, ex officio members of the Committee.

C. 1. Appointments to the Small Business Regulatory Review Committee shall be representative of a variety of small businesses in this state. All appointed members shall be either current or former owners or officers of a small business.

2. The Governor and Lieutenant Governor shall each appoint at least one member from small businesses located in municipalities having a population of three hundred thousand (300,000) or more.

3. The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each appoint at least one member from small businesses located in municipalities having a population of less than three hundred thousand (300,000).

D. The initial appointments to the Committee shall be made within thirty (30) days from the effective date of this act. The Oklahoma Department of Commerce shall provide the name and address of each appointee to the Governor, Lieutenant Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Chairs of the House and Senate Small Business Committees.

E. 1. Except as otherwise provided by this subsection, members initially appointed to the Committee shall serve for terms ending December 31, 2004. Those initially appointed by the Lieutenant Governor shall serve for terms ending December 31, 2006. Those initially appointed by the President Pro Tempore of the Senate shall serve for terms ending December 31, 2006. Thereafter, appointed members shall serve for two-year terms that expire on December 31 of the second year.

2. The Governor shall appoint the initial chair of the Committee from the appointed members for a term ending December 31, 2006, and shall appoint subsequent chairs of the Committee from the appointed members for two-year terms that expire on December 31 of the second year.

3. Members shall not receive any compensation but shall be eligible for reimbursement by the Oklahoma Department of Commerce for necessary expenses in accordance with the State Travel Reimbursement Act; provided, however, legislative members shall be reimbursed by the legislative body in which they serve pursuant to Section 456 of Title 74 of the Oklahoma Statutes.

4. The Committee shall meet at least semiannually or more often if necessary as determined by the chair of the Committee.

5. A majority of the voting members of the Committee shall constitute a quorum to do business. The concurrence of a majority of the members of the Committee present and voting shall be necessary to make any action of the Committee valid.

6. No appointed Committee member shall serve more than three consecutive terms.

*Added by Laws 2002, c. 495, § 3, eff. July 1, 2002. Amended by Laws 2003, c. 75, § 1, eff. July 1, 2003.*

Comment [1]: BDERIV

#### **§75-504. Proposed permanent rules - Determination of impact on small business.**

A. Prior to submitting proposed permanent rules for adoption, amendment, revision or revocation pursuant to the Administrative Procedures Act, the agency shall comply with the provisions of paragraph 4 of subsection A of Section 303 of this title in order to determine whether the proposed rules adversely affect small business.

B. If the proposed rules may have an adverse economic effect upon small business, the agency shall submit a copy of the proposed rules and a rule impact statement to the Small Business Regulatory Review Committee for its review and comment pursuant to the review and comment provisions of paragraph 2 of subsection A and paragraph 6 of subsection B of Section 303 of this title.

C. Within the review and comment period, if the Small Business Regulatory Review Committee determines that the proposed rules may have an adverse economic effect upon small business, the Committee shall submit to the agency a request to consider:

1. The availability and practicability of less restrictive alternatives that could be implemented; and

2. Creative, innovative, or flexible methods of compliance for small businesses.

D. The Oklahoma Small Business Regulatory Flexibility Act shall not apply to proposed permanent rules by an agency to implement a statute or ordinance that does not require an agency to interpret or describe the requirements of the statute or ordinance, such as state legislative or federally mandated provisions which afford the agency no discretion to consider less restrictive alternatives.

*Added by Laws 2002, c. 495, § 4, eff. July 1, 2002. Amended by Laws 2003, c. 75, § 2, eff. July 1, 2003.*

Comment [2]: BDERIV

**§75-505. Promulgated rules - Petition objecting to adverse effect on small business - Review of committee decision.**

A. For promulgated rules, any adversely affected small business may file a written petition with the agency that has promulgated the rules objecting to all or part of any rule adversely affecting small business on any of the following grounds:

1. The actual effect on small business was not reflected in, or significantly exceeded, the small business impact statement formulated by the agency pursuant to the provisions of paragraph 4 of subsection A and paragraph 6 of subsection B of Section 303 of Title 75 of the Oklahoma Statutes prior to the adoption of the rules;

2. These impacts were either not previously considered at the public hearing on the rules or there was no public hearing on the rules; or

3. The technology, economic conditions, or other relevant factors justifying the purpose for the rules have changed or no longer exist.

B. Upon submission of the petition, the agency shall forward a copy of the petition to the Small Business Regulatory Review Committee as notification of a petition filed under the Oklahoma Small Business Regulatory Flexibility Act. The agency shall promptly consider the petition and may seek advice and counsel regarding the petition. Within sixty (60) days after the submission of the petition, the agency shall determine whether the impact statement or the public hearing addressed the actual and significant impact on small business or if conditions justifying the rule have changed. The agency shall submit a written response of its determination to the Small Business Regulatory Review Committee within sixty (60) days after receipt of the petition. If the agency determines that the petition merits the amendment, revision, or revocation of a rule, it may initiate proceedings in accordance with the applicable requirements of the Administrative Procedures Act.

C. If the agency determines that the petition does not merit the amendment, revision, or revocation of any rule, any adversely affected small business may seek a review of the decision by the Small Business Regulatory Review Committee. The Committee shall promptly convene a meeting for the purpose of determining whether to recommend that the agency initiate

proceedings in accordance with the Administrative Procedures Act. Such review shall not be de novo but shall be based upon the actual record presented to the agency. The Committee may base its recommendation on any of the following reasons:

1. The actual effect on small business was not reflected in, or significantly exceeded, the small business impact statement formulated by the agency pursuant to the provisions of paragraph 4 of subsection A and paragraph 6 of subsection B of Section 303 of Title 75 of the Oklahoma Statutes prior to the promulgation of the rules;

2. These impacts were not previously considered by the agency; or

3. The technology, economic conditions, or other relevant factors justifying the purpose for the rules have changed or no longer exist.

D. If the Small Business Regulatory Review Committee recommends that an agency initiate rulemaking proceedings for any reason provided in subsection C of this section, the Committee shall submit to the Speaker of the House of Representatives and the President Pro Tempore of the Senate an evaluation report and the agency's response as provided in subsection B of this section. The Legislature may subsequently take such action in response to the evaluation report and the agency's response as the Legislature finds appropriate.

*Added by Laws 2002, c. 495, § 5, eff. July 1, 2002.*

#### **§75-506. Waiver of administrative penalties or fines.**

A. Notwithstanding any other law of this state, any agency authorized to assess administrative penalties or administrative fines upon a business may waive or reduce any administrative penalty or administrative fine for a violation of any statute, ordinance, or rules by a small business under the following conditions:

1. The small business corrects the violation within thirty (30) days or less after receipt of a notice of violation or citation; or

2. The violation was the result of an excusable misunderstanding of an agency's interpretation of a rule.

B. Subsection A of this section shall not apply when:

1. A small business has been notified of the violation of a statute, ordinance, or rule by the agency pursuant to paragraph 1 of subsection A of this section and has been given a prior opportunity to correct the violation on a prior occasion;

2. A small business fails to exercise good faith in complying with the statute, ordinance, or rule;

3. A violation involves willful or criminal conduct;

4. A violation results in serious health, safety, or environmental impact; or

5. The penalty or fine is assessed pursuant to a federal law or regulation and for which no waiver or reduction is authorized by the federal law or regulation.

C. An agency shall promulgate rules pursuant to the Administrative Procedures Act to implement the requirements of this section.

*Added by Laws 2002, c. 495, § 6, eff. July 1, 2002.*

Comment [3]: EDERIV