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Summary: Small Business Regulatory Freedom Act

**HISTORY OF LEGISLATIVE ACTIONS**

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**VERSIONS OF THIS BILL**

[01/21/2025](https://www.scstatehouse.gov/sess126_2025-2026/prever/254_20250121.docx)

A bill

TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY ENACTING THE “SMALL BUSINESS REGULATORY FREEDOM ACT” BY ADDING SECTION 1‑23‑285 SO AS TO PROVIDE THE SMALL BUSINESS REGULATORY REVIEW COMMITTEE SHALL CONDUCT AN INITIAL REVIEW OF REGULATIONS PENDING REAUTHORIZATION AND MAKE RECOMMENDATIONS TO THE GENERAL ASSEMBLY FOR RETAINING OR REMOVING REGULATIONS, TO PROVIDE IT IS THE DUTY OF THE COMMITTEE WHEN REVIEWING REGULATIONS TO REDUCE THE OVERALL REGULATORY BURDEN ON BUSINESSES BY REDUCING THE NUMBER OF REGULATORY REQUIREMENTS BY TWENTY‑FIVE PERCENT, AND TO PROVIDE THE COMMITTEE MAY REQUEST ANY NECESSARY INFORMATION FROM STATE AGENCIES AND TO REQUIRE THE COMPLIANCE OF AGENCIES WITH THESE REQUESTS, AMONG OTHER THINGS; BY AMENDING SECTION 1‑23‑110, RELATING TO THE PROCESS FOR PROMULGATING REGULATIONS UNDER THE ADMINISTRATIVE PROCEDURES ACT SO AS TO PROVIDE AGENCIES MAY NOT PROMULGATE REGULATIONS ABSENT EXPRESS STATUTORY AUTHORITY AND CITATION TO THE SPECIFIC STATUTORY AUTHORITY, TO PROVIDE FOR EVERY REGULATION AN AGENCY PROPOSES, IT MUST IDENTIFY AND PROPOSE TWO OF ITS REGULATIONS TO REMOVE, TO PROVIDE PERSONS AGGRIEVED BY A REGULATION MAY CHALLENGE THE VALIDITY OF THE REGULATION IN A COURT OF COMPETENT JURISDICTION, AND TO PROVIDE COURTS MAY DECLARE REGULATIONS INVALID UPON FINDING AN ABSENCE OF EXPRESS STATUTORY AUTHORITY TO PROMULGATE; BY AMENDING SECTION 1‑23‑115, RELATING TO ASSESSMENT REPORTS FOR REGULATIONS SUBMITTED FOR PROMULGATION, SO AS TO PROVIDE ALL REGULATIONS SUBMITTED FOR PROMULGATION MUST INCLUDE ASSESSMENT REPORTS, TO ALLOW LONGER REVIEW PERIODS IN CERTAIN CIRCUMSTANCES, TO PROVIDE DISCOUNT RATES MUST BE JUSTIFIED IF APPLIED IN AN ANALYSIS REPORT, TO PROVIDE PROMULGATING AGENCIES MUST CONDUCT RETROSPECTIVE ASSESSMENT REPORTS IN CERTAIN CIRCUMSTANCES, TO PROVIDE ASSESSMENT CONTENTS MUST BE MADE PUBLICLY AVAILABLE IN A CERTAIN MANNER, TO PROVIDE CERTAIN STANDARDIZED ANALYTIC METHODS AND METRICS MUST BE APPLIED TO ALL REGULATIONS, TO REQUIRE RETROSPECTIVE ASSESSMENT REPORTS BE CONDUCTED WHEN REGULATIONS ARE REVIEWED FOR RENEWAL, AMONG OTHER THINGS; BY AMENDING SECTION 1‑23‑120, RELATING TO DOCUMENTS REQUIRED TO BE FILED TO INITIATE THE REVIEW PROCESS FOR A REGULATION, SO AS TO REQUIRE THE DOCUMENTS INCLUDE AN AUTOMATIC EXPIRATION DATE, AND TO PROVIDE FOR THE AUTOMATIC EXPIRATION AND PERIODIC REVIEW OF REGULATIONS; AND BY AMENDING SECTION 1‑23‑380, RELATING TO JUDICIAL REVIEW UPON EXHAUSTION OF ADMINISTRATIVE REMEDIES, SO AS TO PROVIDE REQUIREMENTS FOR JUDICIAL REVIEW OF AGENCY INTERPRETATIONS OF REGULATIONS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act may be cited as the “Small Business Regulatory Freedom Act.”

SECTION 2. Article 2, Chapter 23, Title 1 of the S.C. Code is amended by adding:

Section 1‑23‑285. (A) The Small Business Regulatory Review Committee shall conduct an initial review of regulations pending reauthorization and make recommendations to the House and Senate as to whether reauthorization is appropriate. In determining the appropriateness of a reauthorization, the committee shall thoroughly evaluate and consider the impact of the regulation on:

(1) small business;

(2) economic development; and

(3) the agency itself, including the financial impact on the agency.

(B) It is the duty of the committee when reviewing regulations pursuant to subsection (A) to reduce the overall regulatory burden on businesses by reducing the number of regulatory requirements by twenty‑five percent.

(C) The House of Representatives and Senate shall provide staff support to the committee as needed to carry out its obligations under this section.

(D) The committee may request additional information from agencies as the committee considers necessary to carry out its obligations under this section. An agency that receives such a request shall respond with the requested information in a timely manner.

SECTION 3. Section 1‑23‑110 of the S.C. Code is amended by adding:

(E) An agency may not promulgate any regulation unless the agency has been expressly granted the power to do so by a statutory delegation. The regulation must be within the scope of authority specifically granted by the statute, and the agency must cite the specific statutory provision authorizing the regulation. If a statute authorizes promulgation of a regulation, that authority expires three years after the regulation is promulgated and takes effect. After that time, existing regulations may still be updated, in accordance with the Administrative Procedures Act, to conform with enacted legislation or federal law or regulation changes; however, new regulations may not be promulgated pursuant to that statute.

(F) When an agency proposes a regulation for promulgation, the agency also shall identify and propose the removal of two existing regulations for each regulation the agency proposes to add.

(G) Any person aggrieved by a regulation may challenge the validity of the regulation on the grounds that the agency lacked express statutory authority to promulgate the regulation. The challenge may be brought in a court of competent jurisdiction, and the court has the power to declare the regulation invalid if it finds that the agency lacked express statutory authority to be promulgated.

SECTION 4. Section 1‑23‑115 of the S.C. Code is amended to read:

Section 1‑23‑115. (A) All regulations submitted for promulgation must include an assessment report prepared in accordance with the procedures in this article. The assessment report must contain a cost‑benefit analysis that clearly demonstrates that the projected benefits of the regulation exceed its projected costs. The assessment report and all documentation, assumptions, methods, and data used must be made publicly available, transparent, replicable, and data‑driven. If the cost estimate exceeds one million dollars over five years, then a statement of economic impact provided by the Office of Revenue and Fiscal Affairs also must be submitted concurrent with the proposed regulation. Additionally, upon written request by two members of the General Assembly, made before submission of a promulgated regulation to the General Assembly for legislative review, a regulation that has a substantial economic impact must have an assessment report prepared pursuant to this section and in accordance with the procedures contained in this article. In addition to any other method as may be provided by the General Assembly, the legislative committee to which the promulgated regulation has been referred, by majority vote, may send a written notification to the promulgating agency informing the agency that the committee cannot approve the promulgated regulation unless an assessment report is prepared and provided to the committee. The written notification tolls the running of the one hundred‑twenty‑day legislative review period, and the period does not begin to run again until an assessment report prepared in accordance with this article is submitted to the committee. Upon receipt of the assessment report, additional days must be added to the days remaining in the one hundred‑twenty‑day review period, if less than twenty days, to equal twenty days. A copy of the assessment report must be provided to each member of the committee.

(B) A state agency must submit to the Office of Research and Statistics of Revenue and Fiscal Affairs Office, a preliminary assessment report on regulations which have a substantial economic impactprepare a preliminary assessment report for each proposed regulation in accordance with an Economic Impact Manual published by the Office of Research and Statistics of the Revenue and Fiscal Affairs Office.

(1) If the cost estimate is equal to or exceeds one million dollars over five years, then the preliminary assessment report must be submitted to the Office of Research and Statistics of the Revenue and Fiscal Affairs Office for review. Upon receiving this report, the office may require additional information from the promulgating agency, other state agencies, or other sources. A state agency shall cooperate and provide information to the office on requests made pursuant to this section. The office shall prepare and publish a final assessment report within sixty days after the public hearing held pursuant to Section 1‑23‑110. The office shall forward the final assessment report and a summary of the final report to the promulgating agency. The agency must publish this report, including its analysis and all backup documentation, on its website and provide its analysis, and provide the same information to the Small Business Regulatory Review Committee and the relevant House and Senate committees to whom the regulation is referred.

(2) If the cost estimate is less than one million over five years, the agency must publish its preliminary assessment report, including its analysis and all backup documentation, on its website and provide its analysis, and provide the same information to the Small Business Regulatory Review Committee and the relevant House and Senate committees to whom the regulation is referred.

(3) In addition to the requirements of item (1), if a cost estimate is equal to or exceeds one million dollars over five years, then a joint resolution approving the regulation by the House of Representatives and the Senate is required.

(C)(F) The preliminary and final assessment reports required by this section must disclose the effects of the proposed regulation on the public health and environmental welfare of the community and State and the effects of the economic activities arising out of the proposed regulation. Both the preliminary and final reports required by this section may include:

(1) a description of the regulation, the purpose of the regulation, the legal authority for the regulation, and the plan for implementing the regulation;

(2) a determination of the need for and reasonableness of the regulation as determined by the agency based on an analysis of the factors listed in this subsection and the expected benefit of the regulation;

(3) a determination of the costs and benefits associated with the regulation and an explanation of why the regulation is considered to be the most cost‑effective, efficient, and feasible means for allocating public and private resources and for achieving the stated purpose;

(4) the effect of the regulation on competition;

(5) the effect of the regulation on the cost of living and doing business in the geographical area in which the regulation would be implemented;

(6) the effect of the regulation on employment in the geographical area in which the regulation would be implemented;

(7) the source of revenue to be used for implementing and enforcing the regulation;

(8) a conclusion on the short‑term and long‑term economic impact upon all persons substantially affected by the regulation, including an analysis containing a description of which persons will bear the costs of the regulation and which persons will benefit directly and indirectly from the regulation;

(9) the uncertainties associated with the estimation of particular benefits and burdens and the difficulties involved in the comparison of qualitatively and quantitatively dissimilar benefits and burdens. A determination of the need for the regulation shall consider qualitative and quantitative benefits and burdens;

(10) the effect of the regulation on the environment and public health;

(11) the detrimental effect on the environment and public health if the regulation is not implemented. An assessment report must not consider benefits or burdens on out‑of‑state political bodies or businesses. The assessment of benefits and burdens which cannot be precisely quantified may be expressed in qualitative terms. This subsection must not be interpreted to require numerically precise cost‑benefit analysis. At no time is an agency required to include items (4) through (8) in a preliminary assessment report or statement of the need and reasonableness; however, these items may be included in the final assessment report prepared by the office.

(G) All documentation, assumptions, methods, and data for the assessment report must be published on a publicly accessible website and, where relevant, in a machine‑readable format made readily available to the public, including any supporting calculations, documents, data, databases, or data tables so that the results of the analysis can be replicated. Uncertainties pertaining to these estimates must be reported.

(1) Standardized analytic methods and measures must be applied to all regulations. These standards must be updated in accordance with best practices and predictive success. Updates to standards must be approved by the Office of Revenue and Fiscal Affairs. Analysis techniques and methods may not vary between rules. Any variation must be justified and approved by the Office of Revenue and Fiscal Affairs.

(2) An agency may include longer periods of review but must, at a minimum, provide a cost‑benefit analysis that projects the first five years after the regulation goes into effect.

(3) Use of a discount rate must be justified if applied to the analysis. If used, the agency must also provide an analysis without the use of discount rates.

(4) When a regulation is reviewed for renewal, a retrospective assessment report must be conducted and a comparison made between the initial projected assessment report and the retrospective assessment report. When the projected results approximate the actual results, the assumptions and methods of the projected assessment report must be incorporated into the standards for assessment reports and used for similar regulations.

(D)(H) If information required to be included in the assessment report materially changes at any time before the regulation is approved or disapproved by the General Assembly, the agency must submit the corrected information to the office which must forward a revised assessment report to the Legislative Council for submission to the committees to which the regulation was referred during General Assembly review.

(E) An assessment report is not required on:

(1) regulations specifically exempt from General Assembly review by Section 1‑23‑120; however, if any portion of a regulation promulgated to maintain compliance with federal law is more stringent than federal law, then that portion is not exempt from this section;

(2) emergency regulations filed in accordance with Section 1‑23‑130; however, before an emergency regulation may be refiled pursuant to Section 1‑23‑130, an assessment report must be prepared in accordance with this section;

(3) regulations which control the hunting or taking of wildlife including fish or setting times, methods, or conditions under which wildlife may be taken, hunted, or caught by the public, or opening public lands for hunting and fishing.

SECTION 5. Section 1‑23‑120 of the S.C. Code is amended to read:

Section 1‑23‑120. (A) All regulations except those specifically exempted pursuant to subsection (H) must be filed with Legislative Council for submission to the General Assembly for review in accordance with this article;. However, a regulation mustmay not be filed with Legislative Council for submission to the General Assembly more than:

(1) one year after publication of the drafting notice initiating the regulation pursuant to Section 1‑23‑110, except those regulations requiring a final assessment report as provided in Sections 1‑23‑270 and 1‑23‑280; or

(2) three years after the effective date of the statute that specifically authorized the regulation.

(B) To initiate the process of review, the agency shall file with the Legislative Council for submission to the President of the Senate and the Speaker of the House of Representatives a document containing:

(1) a copy of the regulations promulgated;

(2) in the case of regulations proposing to amend an existing regulation or any clearly identifiable subdivision or portion of a regulation, the full text of the existing regulation or the text of the identifiable portion of the regulation; text that is proposed to be deleted must be stricken through, and text that is proposed to be added must be underlined;

(3) a request for review;

(4) a brief synopsis of the regulations submitted which explains the content and any changes in existing regulations resulting from the submitted regulations;

(5) a copy of the final assessment report and the summary of the final report prepared by the office pursuant to Section 1‑23‑115. A regulation that does not require an assessment report because the regulation does not have a substantial economic impact must include a statement to that effect. A regulation exempt from filing an assessment report pursuant to Section 1‑23‑115(E) must include an explanation of the exemption;

(6) a copy of the fiscal impact statementpreliminary assessment report prepared by the agency as required by Section 1‑23‑110;

(7) a detailed statement of rationale which states the basis for the regulation, including the scientific or technical basis, if any, and identifies any studies, reports, policies, or statements of professional judgment or administrative need relied upon in developing the regulation;

(8) a copy of the economic impact statement, as provided in Section 1‑23‑270(C)(1)(a); and

(9) a copy of the regulatory flexibility analysis, as provided in Section 1‑23‑270(C)(1)(b); and

(10) a schedule for the automatic expiration of the regulation in accordance with subsection (J).

(C) Upon receipt of the regulation, the President and Speaker shall refer the regulation for review to the standing committees of the Senate and House which are most concerned with the function of the promulgating agency. A copy of the regulation or a synopsis of the regulation must be given to each member of the committee, and Legislative Council shall notify all members of the General Assembly when regulations are submitted for review either through electronic means or by addition of this information to the website maintained by the Legislative Services Agency, or both. The committees to which regulations are referred have one hundred twenty days from the date regulations are submitted to the General Assembly to consider and take action on these regulations. However, if a regulation is referred to a committee and no action occurs in that committee on the regulation within sixty calendar days of receipt of the regulation, the regulation must be placed on the agenda of the full committee beginning with the next scheduled full committee meeting.

(D) If a joint resolution to approve a regulation is not enacted within one hundred twenty days after the regulation is submitted to the General Assembly or if a joint resolution to disapprove a regulation has not been introduced by a standing committee to which the regulation was referred for review, the regulation is effective upon publication in the State Register. Upon introduction of the first joint resolution disapproving a regulation by a standing committee to which the regulation was referred for review, the one‑hundred‑twenty‑day period for automatic approval is tolled. A regulation may not be filed under the emergency provisions of Section 1‑23‑130 if a joint resolution to disapprove the regulation has been introduced by a standing committee to which the regulation was referred. Upon a negative vote by either the Senate or House of Representatives on the resolution disapproving the regulation and the notification in writing of the negative vote to the Speaker of the House of Representatives and the President of the Senate by the Clerk of the House in which the negative vote occurred, the remainder of the period begins to run. If the remainder of the period is less than ninety days, additional days must be added to the remainder to equal ninety days. The introduction of a joint resolution by the committee of either house does not prevent the introduction of a joint resolution by the committee of the other house to either approve or disapprove the regulations concerned. A joint resolution approving or disapproving a regulation must include:

(1) the synopsis of the regulation as required by subsection (B)(4);

(2) the summary of the final assessment report prepared by the office pursuant to Section 1‑23‑115 or, as required by subsection (B)(5), the statement or explanation that an assessment report is not required or is exempt.

(E) The one‑hundred‑twenty‑day period of review begins on the date the regulation is filed with the President and Speaker. Sine die adjournment of the General Assembly tolls the running of the period of review, and the remainder of the period begins to run upon the next convening of the General Assembly excluding special sessions called by the Governor.

(F) Any member of the General Assembly may introduce a joint resolution approving or disapproving a regulation thirty days following the date the regulations concerned are referred to a standing committee for review and no committee joint resolution approving or disapproving the regulations has been introduced and the regulations concerned have not been withdrawn by the promulgating agency pursuant to Section 1‑23‑125, but the introduction does not toll the one‑hundred‑twenty‑day period of automatic approval.

(G) A regulation is deemed withdrawn if it has not become effective, as provided in this article, by the date of publication of the next State Register published after the end of the two‑year session in which the regulation was submitted to the President and Speaker for review. Other provisions of this article notwithstanding, a regulation deemed withdrawn pursuant to this subsection may be resubmitted by the agency for legislative review during the next legislative session without repeating the requirements of Section 1‑23‑110, 1‑23‑111, or 1‑23‑115 if the resubmitted regulation contains no substantive changes for the previously submitted version.

(H) General Assembly review is not required for regulations promulgated:

(1) to maintain compliance with federal law including, but not limited to, grant programs; however, the synopsis of the regulation required to be submitted by subsection (B)(4) must include citations to federal law, if any, mandating the promulgation of or changes in the regulation justifying this exemption. If the underlying federal law which constituted the basis for the exemption of a regulation from General Assembly review pursuant to this item is vacated, repealed, or otherwise does not have the force and effect of law, the state regulation is deemed repealed and without legal force and effect as of the date the promulgating state agency publishes notice in the State Register that the regulation is deemed repealed. The agency must publish the notice in the State Register no later than sixty days from the effective date the underlying federal law was rendered without legal force and effect. Upon publication of the notice, the prior version of the state regulation, if any, is reinstated and effective as a matter of law. The notice published in the State Register shall identify the specific provisions of the state regulation that are repealed as a result of the invalidity of the underlying federal law and shall provide the text of the prior regulation, if any, which is reinstated. The agency may promulgate additional amendments to the regulation by complying with the applicable requirements of this chapter;

(2) by the state Board of Financial Institutions in order to authorize state‑chartered banks, state‑chartered savings and loan associations, and state‑chartered credit unions to engage in activities that are authorized pursuant to Section 34‑1‑110;

(3) by the South Carolina Department of Revenue to adopt regulations, revenue rulings, revenue procedures, and technical advice memoranda of the Internal Revenue Service so as to maintain conformity with the Internal Revenue Code as defined in Section 12‑6‑40;

(4) as emergency regulations under Section 1‑23‑130;

(5) regulations exempt under subsection (J)(6).

(I) For purposes of this section, only those calendar days occurring during a session of the General Assembly, excluding special sessions, are included in computing the days elapsed.

(J) Each state agency, which promulgates regulations or to which the responsibility for administering regulations has been transferred, shall by July 1, 1997, and every five years thereafter, conduct a formal review of all regulations which it has promulgated or for which it has been transferred the responsibility of administering, except that those regulations described in subsection (H) are not subject to this review. Upon completion of the review, the agency shall submit to the Code Commissioner a report which identifies those regulations:

(1) for which the agency intends to begin the process of repeal in accordance with this article;

(2) for which the agency intends to begin the process of amendment in accordance with this article; and

(3) which do not require repeal or amendment.Automatic Expiration and Periodic Review of Regulations:

(1) All administrative regulations expire on January first of the eighth calendar year after their effective date unless readopted pursuant to this section, except as detailed in item (6).

(2) Prior to expiration, an agency with authority over the regulation that desires to maintain the regulation must readopt the regulation pursuant to the process specified in Section 1‑23‑110, except for regulations subject to item (6). The readoption process cannot begin more than two years prior to the regulation’s expiration.

(3) An amendment to a regulation through subsequent rulemaking does not affect the regulation’s expiration date, unless the amendment completely eliminates and readopts the regulation. In such cases, the regulation’s new expiration date becomes January first of the fifth calendar year after its effective date.

(4) When conducting analyses required under Section 1‑23‑110 during the readoption of a regulation, the agency must use actual impacts and costs as the basis for any calculation rather than estimated impacts and costs.

(5) Exemptions:

(a) The following regulations are not subject to automatic expiration:

(i) regulations required to comply with federal law or receive federal funding;

(ii) regulations created with grants of rulemaking authority under the South Carolina Constitution;

(iii) regulations created by an agency that is directly managed by an elected official;

(b) A regulation exempt from automatic expiration under subitem (a) must still undergo the review as required for nonexempt regulations under the readoption process, but its renewal is not a subject for consideration because of its exempt status. For an exempt regulation being reviewed, the agency shall provide documentation to the Small Business Regulatory Review Committee and the relevant House and Senate committees just as it would for regulations submitted for the readoption process, including a retrospective assessment, its analysis and all backup documentation, and a statement of economic impact received from the Office of Revenue and Fiscal Affairs, if applicable.

(c) regulations for which an agency is seeking an exemption pursuant to this item must have been adopted by joint resolution of the House and Senate and this exemption must be clearly delineated in the regulation.

(6) By joint resolution, the House and Senate may grant extensions totaling no more than 365 days postponing the expiration date upon a written request by the agency. In the agency’s written request, the agency must explain why it cannot readopt the regulation under the time allotted and why the expiration of the regulation would harm the public health, safety, or welfare. Extensions do not affect subsequent expiration dates. Reviews under item (5) cannot be granted extensions.

(7) A regulation is deemed repealed if it has not been readopted pursuant to this section by its expiration date, excluding regulations exempt from automatic expiration.

(8) The initial expiration dates for existing regulations shall be set by the Small Business Regulatory Review Panel and shall occur between the second and eighth calendar years after the effective date of this section.

(K) Nothing in this subsection (J) may be construed to prevent an agency from repealing or amending a regulation in accordance with this article before or after it is identified in the report to the Code Commissioner.

SECTION 6. Section 1‑23‑380(5) of the S.C. Code is amended to read:

(5)(a) The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, interpretations, inferences, conclusions, or decisions are:

(a)(i) in violation of constitutional or statutory provisions;

(b)(ii) in excess of the statutory authority of the agency;

(c)(iii) made upon unlawful procedure;

(d)(iv) affected by other error of law;

(e)(v) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

(f)(vi) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(b) In interpreting a state agency regulation, the court shall not defer to the agency’s interpretation of the statute or rule and instead shall interpret the statute or rule de novo. After applying all customary tools of interpretation, the court shall resolve any remaining ambiguity against increased agency authority.

SECTION 7. This act takes effect on July 1, 2026.

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