

# HOUSE BILL 1124

P1  
HB 855/18 – HGO & APP

9lr1724

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By: Delegates Brooks, D. Barnes, Branch, Bromwell, D.E. Davis, Dumais, Fennell, Gaines, Glenn, Hettleman, Jones, R. Lewis, Luedtke, Mosby, Patterson, Proctor, Qi, Queen, Sample-Hughes, Stein, Valderrama, Walker, C. Watson, R. Watson, ~~and P. Young~~ P. Young, Bagnall, Barron, Carr, Charles, Chisholm, Cullison, Hill, Johnson, Kelly, Kerr, Kipke, Krebs, Metzgar, Morgan, Pena-Melnyk, Pendergrass, Rosenberg, Saab, Szeliga, and K. Young

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Assigned to: Health and Government Operations and Appropriations

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 12, 2019

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **State Government – Regulations Impacting Small Businesses – Economic**  
3 **Impact Analyses**

4 FOR the purpose of requiring certain units to make a certain certification regarding certain  
5 local regulations; requiring that the units must include a certain statement in  
6 certain proposed regulations; requiring the Department of Budget and Management  
7 to provide certain training regarding economic impact analyses to certain units;  
8 altering the period before a proposed regulation is submitted to the Maryland  
9 Register and to the Joint Committee on Administrative, Executive, and Legislative  
10 Review; requiring certain promulgating units to establish a certain electronic  
11 registry for certain purposes; requiring a promulgating unit to post a proposed  
12 regulation or the scope of a proposed regulation on the registry if the proposed  
13 regulation has a significant small business impact; requiring a certain unit to notify  
14 certain parties when a proposed regulation or the scope of a proposed regulation  
15 is posted on a certain electronic registry; requiring a certain unit to post a proposed  
16 regulation on a certain electronic registry by a certain date; requiring a certain unit  
17 to create a certain compliance guide to assist small businesses in complying with a  
18 certain proposed regulation; establishing certain conditions that must be considered  
19 and certain actions that may be taken by a State unit in assessing a civil penalty

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 against a small business for a violation of a State statute or regulation; requiring the  
2 Governor to designate a certain unit to study certain matters and to submit a report  
3 to certain committees of the General Assembly on or before a certain date; and  
4 generally relating to regulations and small businesses in the State.

5 BY repealing and reenacting, without amendments,  
6 Article – State Government  
7 Section 2–1505.2(a), (b), and (f) through (j) and 10–224(a)  
8 Annotated Code of Maryland  
9 (2014 Replacement Volume and 2018 Supplement)

10 BY repealing and reenacting, with amendments,  
11 Article – State Government  
12 Section 2–1505.2(d) and (e), 10–110, 10–224(b), and 10–1001  
13 Annotated Code of Maryland  
14 (2014 Replacement Volume and 2018 Supplement)

15 BY adding to  
16 Article – State Government  
17 Section 2–1505.2(k)  
18 Annotated Code of Maryland  
19 (2014 Replacement Volume and 2018 Supplement)

20 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
21 That the Laws of Maryland read as follows:

22 **Article – State Government**

23 2–1505.2.

24 (a) (1) In this section the following words have the meanings indicated.

25 (2) “Committee” means the Joint Committee on Administrative, Executive,  
26 and Legislative Review.

27 (3) “Economic impact analysis” means an estimate of the cost or the  
28 economic benefit to small businesses that may be affected by a regulation proposed by an  
29 agency pursuant to Title 10, Subtitle 1 of this article.

30 (4) “Economic impact analysis rating” means an estimate that a proposed  
31 regulation will have:

32 (i) minimal or no economic impact on small businesses; or

33 (ii) meaningful economic impact on small businesses.

1           (5) “Small business” means a corporation, partnership, sole proprietorship,  
2 or other business entity, including its affiliates, that:

3                   (i) is independently owned and operated;

4                   (ii) is not dominant in its field; and

5                   (iii) employs 50 or fewer full-time employees.

6           (b) (1) An economic impact analysis rating and an economic impact analysis,  
7 as appropriate, shall be prepared by the appropriate Executive Branch agency for each  
8 regulation that the agency proposes for adoption pursuant to Title 10, Subtitle 1 of this  
9 article.

10           (2) A copy of the economic impact analysis rating and the economic impact  
11 analysis required under this subsection shall be submitted by the appropriate agency:

12                   (i) to the Department of Legislative Services no later than the time  
13 the agency submits the regulation to the Committee to allow the Department to comment  
14 on the economic impact analysis rating and the economic impact analysis; and

15                   (ii) to the Committee at the time the agency submits the regulation  
16 to the Committee.

17           (d) The economic impact analysis rating and the economic impact analysis  
18 required under this section shall include:

19                   **(1)** estimates directly relating to the following factors, as appropriate:

20                   **[(1)] (I)** cost of providing goods and services;

21                   **[(2)] (II)** effect on the workforce;

22                   **[(3)] (III)** effect on the cost of housing;

23                   **[(4)] (IV)** efficiency in production and marketing;

24                   **[(5)] (V)** capital investment, taxation, competition, and economic  
25 development; and

26                   **[(6)] (VI)** consumer choice; **AND**

27                   **(2) A CERTIFICATION STATING WHETHER ANY EXISTING REGULATION**  
28 **OF A COMPARABLE NATURE THAT IS AT LEAST AS STRINGENT AS THE PROPOSED**  
29 **REGULATION HAS BEEN ADOPTED BY A UNIT OF A LOCAL GOVERNMENT.**

1 (e) (1) The Executive Branch agency or the Department of Legislative Services  
2 preparing the economic impact analysis rating and the economic impact analysis required  
3 under this section shall consult with, as appropriate:

4 (i) other units of State government;

5 (ii) units of local government; and

6 (iii) business, trade, consumer, labor, and other groups impacted by  
7 or having an interest in the regulation.

8 (2) On request of the Executive Director of the Department of Legislative  
9 Services, a unit of the State or a local government shall provide the Department with  
10 assistance or information in the preparation of an economic impact analysis rating and  
11 economic impact analysis.

12 **(3) IF THE PROMULGATING UNIT CERTIFIES THAT AN EXISTING**  
13 **REGULATION OF A COMPARABLE NATURE THAT IS AT LEAST AS STRINGENT AS THE**  
14 **PROPOSED REGULATION HAS BEEN ADOPTED BY A UNIT OF A LOCAL GOVERNMENT,**  
15 **THE UNIT MAY INCLUDE IN ITS PROPOSED REGULATION A STATEMENT THAT**  
16 **COMPLIANCE WITH THE LOCAL REGULATION WILL CONSTITUTE COMPLIANCE WITH**  
17 **THE PROPOSED REGULATION.**

18 (f) The Department of Legislative Services shall:

19 (1) comment on the economic impact analysis rating and economic impact  
20 analysis prepared by the appropriate Executive Branch agency; and

21 (2) transmit its comment to the Committee.

22 (g) The Department of Legislative Services shall revise the economic impact  
23 analysis rating and economic impact analysis consistent with an amended version of a  
24 regulation.

25 (h) (1) The Department of Legislative Services shall keep a copy of each  
26 economic impact analysis rating and economic impact analysis for 3 years after preparation  
27 of the rating or the analysis.

28 (2) The copies shall be reasonably available for public inspection.

29 (i) Economic impact analysis ratings and economic impact analyses shall be  
30 published in the Maryland Register at the same time as:

31 (1) a notice of proposed adoption of a regulation is published in the  
32 Maryland Register; or

1           (2) a notice of emergency adoption for a regulation is published in the  
2 Maryland Register.

3           (j) The validity of an enactment of a regulation is not affected by the presence,  
4 absence, or content of an economic impact analysis rating or an economic impact analysis.

5           **(K) (1) THE DEPARTMENT OF BUDGET AND MANAGEMENT SHALL ENTER**  
6 **INTO AN AGREEMENT WITH AN APPROPRIATE ENTITY TO PROVIDE TRAINING TO**  
7 **PROMULGATING UNITS ON THE PREPARATION OF THE ECONOMIC ANALYSES**  
8 **REQUIRED UNDER THIS SECTION.**

9           **(2) THE TRAINING REQUIRED TO BE PROVIDED UNDER PARAGRAPH**  
10 **(1) OF THIS SUBSECTION SHALL BE PROVIDED AT LEAST ONCE EVERY 2 YEARS.**

11 10–110.

12           (a) Except for subsection (d) of this section, this section does not apply to a  
13 regulation adopted under § 10–111(b) of this subtitle.

14           (b) At least 15 days before the date a proposed regulation is submitted to the  
15 Maryland Register for publication under § 10–112 of this subtitle, the promulgating unit  
16 shall submit to the State Children’s Environmental Health and Protection Advisory  
17 Council established under § 13–1503 of the Health – General Article for review any  
18 proposed regulations identified by the promulgating unit as having an impact on  
19 environmental hazards affecting the health of children.

20           (c) At least [15] 30 days before the date a proposed regulation is submitted to the  
21 Maryland Register for publication under § 10–112 of this subtitle, the promulgating unit  
22 shall submit to the Advisory Council on the Impact of Regulations on Small Businesses  
23 established under § 3–502 of the Economic Development Article for review each proposed  
24 regulation and the estimated impact of the proposed regulation on small businesses  
25 identified by the promulgating unit.

26           (d) (1) At least [15] 30 days before the date a proposed regulation is submitted  
27 to the Maryland Register for publication under § 10–112 of this subtitle, the promulgating  
28 unit shall submit the proposed regulation to the Committee and the Department of  
29 Legislative Services.

30           (2) (i) If the proposed regulation, either in whole or in part, submitted  
31 to the Committee and the Department of Legislative Services in accordance with paragraph  
32 (1) of this subsection includes an increase or decrease in a fee for a license to practice any  
33 business activity, business or health occupation, or business or health profession licensed  
34 or otherwise regulated under State law, the promulgating unit shall include clearly written  
35 explanatory reasons that justify the increase or decrease in the fee.

1 (ii) If a regulation submitted under subparagraph (i) of this  
2 paragraph proposes an increase in a fee for a license, the written justification also shall  
3 include information about:

4 1. the amount of money needed by the promulgating unit to  
5 operate effectively or to eliminate an imbalance between the revenues and expenditures of  
6 the unit;

7 2. the most recent year in which the promulgating unit had  
8 last increased its fees;

9 3. the structure of the promulgating unit as to whether it is  
10 one that retains the license fees it receives or passes them through to a national  
11 organization or association that creates and administers a uniform licensing examination  
12 that is taken by anyone in the United States who is seeking a license to practice a particular  
13 occupation or profession or business activity issued by the promulgating unit;

14 4. measures taken by the promulgating unit to avoid or  
15 mitigate the necessity of a fee increase and the results of those measures;

16 5. special circumstances about the activities and  
17 responsibilities of the promulgating unit, including investigations of individuals licensed  
18 by the unit, that have had an adverse impact on the unit's operating expenses;

19 6. consideration given by the promulgating unit to the  
20 hardship a license fee increase may have on individuals and trainees licensed or regulated  
21 by the unit; and

22 7. actions taken by the promulgating unit to elicit the  
23 opinions of the individuals who are licensed by the promulgating unit and the members of  
24 the public as to the effectiveness and performance of the promulgating unit.

25 (3) If the promulgating unit estimates that the proposed regulation will  
26 have a significant small business impact, the unit shall:

27 (i) identify each provision in the proposed regulation that will have  
28 a significant small business impact;

29 (ii) quantify or describe the range of potential costs of the proposed  
30 regulation on small businesses in the State;

31 (iii) identify how many small businesses may be impacted by the  
32 proposed regulation;

33 (iv) identify any alternative provisions the unit considered that may  
34 have a less significant impact on small businesses in the State and the reason the  
35 alternative was not proposed;

1 (v) identify the beneficial impacts of the regulation, including to  
2 public health, safety, and welfare, or to the environment; [and]

3 (VI) ESTABLISH AN ELECTRONIC REGISTRY THAT ALLOWS ANY  
4 SMALL BUSINESS OR OTHER INTERESTED PARTY TO REGISTER TO RECEIVE AN  
5 ELECTRONIC NOTIFICATION WHEN THE PROPOSED REGULATION OR THE SCOPE OF  
6 THE PROPOSED REGULATION IS POSTED ON THE UNIT'S WEBSITE IN ACCORDANCE  
7 WITH ITEM (VII) OF THIS PARAGRAPH;

8 (VII) POST THE PROPOSED REGULATION OR THE SCOPE OF THE  
9 PROPOSED REGULATION AND THE REGULATION'S ESTIMATED SMALL BUSINESS  
10 IMPACT ON THE UNIT'S WEBSITE AT LEAST 15 DAYS BEFORE THE DATE THE  
11 PROPOSED REGULATION IS SUBMITTED TO THE COMMITTEE, THE DEPARTMENT OF  
12 LEGISLATIVE SERVICES, AND THE ADVISORY COUNCIL IN ACCORDANCE WITH THIS  
13 SECTION, AND PROVIDE AN OPPORTUNITY FOR COMMENTS ON THE UNIT'S  
14 PROPOSAL;

15 (VIII) ON POSTING A PROPOSED REGULATION OR THE SCOPE OF A  
16 PROPOSED REGULATION ON THE UNIT'S WEBSITE IN ACCORDANCE WITH ITEM (VII)  
17 OF THIS PARAGRAPH, NOTIFY THE PARTIES REGISTERED IN THE ELECTRONIC  
18 REGISTRY ESTABLISHED UNDER ITEM (VI) OF THIS PARAGRAPH THAT THE  
19 PROPOSED REGULATION OR THE SCOPE OF THE PROPOSED REGULATION HAS BEEN  
20 POSTED;

21 (IX) PREPARE A COMPLIANCE GUIDE WRITTEN IN CLEAR, PLAIN  
22 ENGLISH TO ASSIST SMALL BUSINESSES IN COMPLYING WITH THE PROPOSED  
23 REGULATION, UPDATE THE GUIDE AS NEEDED UNTIL THE REGULATION IS FINAL,  
24 AND POST THE GUIDE ON THE UNIT'S WEBSITE; AND

25 [(vi)] (X) coordinate with the Advisory Council not later than the  
26 date the proposed regulation is submitted to the Committee, the Department of Legislative  
27 Services, and the Advisory Council in accordance with this section.

28 (e) (1) The Committee is not required to take any action with respect to a  
29 proposed regulation submitted to it pursuant to subsection (d) of this section.

30 (2) Failure by the Committee to approve or disapprove the proposed  
31 regulation during the period of preliminary review provided by subsection (d) of this section  
32 may not be construed to mean that the Committee approves or disapproves the proposed  
33 regulation.

34 (3) During the preliminary review period, the Committee may take any  
35 action relating to the proposed regulation that the Committee is authorized to take under  
36 §§ 10–111.1 and 10–112 of this subtitle.

1 (4) (i) If the Advisory Council submits to the Committee and the  
2 Department of Legislative Services a written statement of its findings that a proposed  
3 regulation will have a significant small business impact as required by § 3–505 of the  
4 Economic Development Article, the Committee and the Department of Legislative Services  
5 shall review the findings.

6 (ii) After notification that a proposed regulation will have a  
7 significant small business impact, any member of the Committee may request a hearing on  
8 the proposed regulation.

9 (iii) If a member requests a hearing, the Committee:

10 1. shall hold a hearing; and

11 2. may request that the promulgating unit delay adoption of  
12 the regulation.

13 (f) Prior to the date specified in subsection (d) of this section, the promulgating  
14 unit is encouraged to:

15 (1) submit the proposed regulation to the Committee and to consult with  
16 the Committee concerning the form and content of that regulation; and

17 (2) submit the proposed regulation to the Advisory Council and to consult  
18 with the Advisory Council concerning the estimated small business impact of the regulation  
19 and ways to reduce the small business impact.

20 10–224.

21 (a) (1) In this section the following words have the meanings indicated.

22 (2) “Business” means a trade, professional activity, or other business that  
23 is conducted for profit.

24 (3) “Nonprofit organization” means an organization that is exempt or  
25 eligible for exemption from taxation under § 501(c)(3) of the Internal Revenue Code.

26 (b) This section applies only to:

27 (1) an agency operating statewide;

28 (2) a business that, on the date when the contested case or civil action is  
29 initiated[:

30 (i) is independently owned and operated; and



1 (ii) has less than 50 employees, including, if a corporation owns 50%  
2 or more of the stock of the business, each employee of the corporation], **MEETS THE**  
3 **DEFINITION OF A SMALL BUSINESS UNDER § 2-1505.2 OF THIS ARTICLE;** and

4 (3) a nonprofit organization.

5 10-1001.

6 (a) In this section, “unit” means an officer or other entity in the Executive Branch.

7 (b) **(1)** Unless otherwise provided by statute or regulation, a unit of State  
8 government authorized by law to impose a civil penalty up to a specific dollar amount for  
9 violation of any statute or regulation shall consider the following in setting the amount of  
10 the penalty:

11 **[(1)] (I)** the severity of the violation for which the penalty is to be  
12 assessed;

13 **[(2)] (II)** the good faith of the violator; **[and]**

14 **[(3)] (III)** any history of prior violations; **AND**

15 **(IV) IF THE VIOLATOR MEETS THE DEFINITION OF A SMALL**  
16 **BUSINESS UNDER § 2-1505.2 OF THIS ARTICLE, ADDITIONALLY CONSIDER:**

17 **1. WAIVING THE PENALTY IF THE VIOLATOR CORRECTS**  
18 **THE VIOLATION WITHIN 30 DAYS AFTER THE FINDING OF THE VIOLATION;**

19 **2. DEPENDING ON THE VIOLATOR’S FINANCIAL**  
20 **CAPACITY, IMPOSING A LESSER PENALTY THAN WOULD BE IMPOSED ON A LARGER**  
21 **BUSINESS ENTITY IN A COMPARABLE INDUSTRY; OR**

22 **3. CREDITING THE COSTS OF CORRECTING THE**  
23 **VIOLATION AGAINST THE PENALTY ASSESSED AGAINST THE VIOLATOR.**

24 **(2) PARAGRAPH (1)(IV) OF THIS SUBSECTION MAY NOT APPLY TO A**  
25 **VIOLATOR THAT HAS BEEN THE SUBJECT OF MULTIPLE ENFORCEMENT ACTIONS BY**  
26 **A STATE OR LOCAL UNIT THAT:**

27 **(I) INVOLVE WILLFUL OR CRIMINAL CONDUCT; OR**

28 **(II) POSE SERIOUS HEALTH, SAFETY, OR ENVIRONMENTAL**  
29 **THREATS.**

30 SECTION 2. AND BE IT FURTHER ENACTED, That:

1 (a) The Governor shall designate an appropriate department, office, or other unit  
2 to study:

3 (1) the feasibility, methods, and costs of requiring all State units to allow  
4 small businesses to submit by electronic means any payments, forms, reports, or other  
5 documentation required by regulation; and

6 (2) the ability of State agencies to collect and share information regarding  
7 the impact of regulations on small businesses.

8 (b) The study shall include:

9 (1) assessing data currently collected by State agencies to determine if  
10 necessary and appropriate information is being collected;

11 (2) analyzing the capabilities of State information technology systems to  
12 provide aggregate data;

13 (3) reviewing and recommending appropriate amendments to State  
14 statutes and regulations to identify legal limitations that may prevent State units from  
15 sharing relevant information with other State units;

16 (4) providing recommendations for data-sharing agreements among State  
17 units; and

18 (5) providing recommendations for adequate security measures for sharing  
19 data among State units.

20 (c) On or before June 30, 2020, the designated unit shall report to the Governor  
21 and, in accordance with § 2-1246 of the State Government Article, the Senate Finance  
22 Committee and the House Economic Matters Committee on the results of the study and the  
23 implementation of this Act.

24 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July  
25 1, 2019.