

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 66

(Chair, Finance Committee)(By Request - Departmental -
Labor, Licensing and Regulation)

Finance

**Labor and Employment - Occupational Safety and Health - Enforcement of
Regulations**

This departmental bill authorizes the Commissioner of Labor and Industry to suspend, delay, or alter enforcing an occupational safety and health regulation if the federal government has suspended, delayed, enjoined, or altered enforcing the corresponding federal regulation. **The bill takes effect June 1, 2019.**

Fiscal Summary

State Effect: None. The change is procedural in nature and does not directly affect governmental finances, although it creates operational efficiencies by not requiring the Commissioner of Labor and Industry to enforce occupational safety and health regulations that the federal government is not currently enforcing.

Local Effect: The bill is not expected to materially affect local finances, although local jurisdictions may experience operational efficiencies from having greater clarity on occupational safety and health regulations applicable in the State.

Small Business Effect: The Department of Labor, Licensing, and Regulation (DLLR) has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment.

Analysis

Current Law: The Division of Labor and Industry within DLLR administers the Maryland Occupational Safety and Health (MOSH) program. The requirements of the

MOSH program are codified by the MOSH Act. In general, these requirements parallel the safety standards established by the federal Occupational Safety and Health Administration (OSHA) within the U.S. Department of Labor. OSHA specifies that states may elect to assume the responsibility for development and management of a state occupational safety and health program as long as the standards under the state program are “at least as effective as” OSHA standards.

The MOSH Advisory Board must advise, consult with, and recommend to the Commissioner of Labor and Industry reasonable regulations related to protecting and improving the safety and health of employees and preventing conditions that are detrimental to safety and health in employment. The board must propose or recommend occupational safety and health standards that are or will be at least as effective in providing safe and healthful employment and places of employment as any standard adopted under OSHA and does not put an undue burden on interstate commerce under specified conditions.

OSHA requires states with their own occupational safety and health program to adopt standards that are as stringent as federal standards within six months of a new federal standard being promulgated. OSHA may permit a longer time period if a state has good cause for extending the time limitation.

Background: OSHA has recently delayed, suspended, and/or altered enforcement of several newly published federal standards. For example, OSHA published the final Beryllium Exposure Rule in January 2017 but then issued a notice revoking parts while repeatedly extending compliance dates. When OSHA delays enforcement by policy or directive, Maryland is unable to follow suit, as there is no legal mechanism to delay, suspend, or augment enforcement of a regulation adopted under the MOSH program without utilizing the regulatory promulgation process. Thus, DLLR is obligated to enforce a regulation that is otherwise under an enforcement delay in the surrounding federally controlled states. DLLR’s solution has been to delay adoption of MOSH standards until the federal standards are actively enforced. DLLR advises that this typically results in confusion for employers and OSHA audit findings for not adopting federally required standards within the six-month timeframe.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Labor, Licensing, and Regulation;
U.S. Department of Labor; Department of Legislative Services

Fiscal Note History: First Reader - January 16, 2019
mm/mcr

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Occupational Safety and Health – Adoption of Regulations

BILL NUMBER: SB 66

PREPARED BY: Mischelle Vanreusel for Matthew Helminiak, Commissioner Labor & Industry

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

X WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

 WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

Small businesses are subject to regulation for employee occupational safety and health. The federal Occupational Safety and Health Administration (OSHA) has authority to set minimum standards nationwide. Maryland operates and enforces its own Occupational Safety and Health program (MOSH) with federal oversight. Maryland must adopt federal standards at least as strict as the federal standards within six months of promulgation. When OSHA delays enforcement by policy or directive, Maryland is unable to follow suit as there is no legal mechanism to delay, suspend, or augment enforcement of a regulation adopted by the Division without utilizing the regulatory promulgation process. This results in employers potentially needing to come into compliance with adopted federal regulations that are under legal challenge, revisions, or delayed enforcement, while neighboring states do not. Additionally, if the state delays adoption until fully in effect and free from delays or adjustments, it is confusing for employers as to when exactly they would need to follow the new standards. Employers may needlessly expend funds to come into compliance with standards that are ultimately changed and must expend resources tracking when regulations become effective in Maryland versus neighboring states. There is no anticipated cost to employers, just clarity and potential cost savings.