

AMENDED IN ASSEMBLY APRIL 6, 2021

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL

No. 1571

**Introduced by Committee on Jobs, Economic Development, and
the Economy**

March 4, 2021

An act to amend Sections 11346.2 and 11346.3 of the Government Code, relating to small businesses, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1571, as amended, Committee on Jobs, Economic Development, and the Economy. Administrative Procedure Act: small businesses.

Existing law, the Administrative Procedure Act, in part, sets forth the requirements for the adoption, publication, review, and implementation of regulations by state agencies, and for review of those regulatory actions by the Office of Administrative Law. Existing law requires a state agency subject to the act, prior to submitting a proposal to adopt, amend, or repeal an administrative regulation, to determine the potential for adverse economic impact on California business enterprises and individuals, as provided, and for the state agency to comply with specified requirements for those regulations. Existing law also requires a state agency subject to the act to prepare, submit as provided, and make available to the public upon request specified information, including an initial statement of reasons for proposing the adoption, amendment, or repeal of a regulation, as specified.

This bill would require, in complying with specified requirements related to adverse economic impacts on California business enterprises and as related to the proposed adoption, amendment, or repeal of a

regulation that applies to a small business, as defined, located within an area in which the Governor has declared a state of emergency, the regulation to either include (1) a postponement in the application of the regulation on small businesses until the state of emergency is terminated or a finding terminated; (2) findings that postponement is not appropriate, that the administrative regulation is necessary to address the state of emergency, as specified. The bill would require confirmed by the Office of Emergency Services to confirm the necessity of the regulation to address the state of emergency. Services, and that the regulation provides sufficient time to provide reasonable notice to affected small businesses as to the content of the regulation and the time to meet the new requirements; or (3) findings that postponement is not appropriate, that the administrative regulation is necessary to address a serious and immediate health and safety issue, as confirmed by the State Department of Public Health or the Labor and Workforce Development Agency, and that the regulation provides sufficient time to provide reasonable notice to affected small businesses as to the content of the regulation and the time to meet the new requirements. The bill would also require a state agency subject to the act to include, in its initial statement of reasons, specified information relating to proposed regulations applicable to a small business located within an area in which the Governor has declared a state of emergency and that do not have a postponement of the regulation for those small businesses.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares both of the
- 2 following:
- 3 (a) Small businesses, especially women- and BIPOC-owned
- 4 businesses, must be a priority in the state’s recovery efforts. Data
- 5 continues to suggest these businesses are having the greatest
- 6 challenges in accessing technical and financial assistance.
- 7 (b) Small businesses face many challenges in accessing
- 8 sufficient amounts of personal protective equipment and in paying
- 9 for higher and ongoing additional costs of operation during the
- 10 pandemic.

1 SEC. 2. Section 11346.2 of the Government Code is amended
2 to read:

3 11346.2. Every agency subject to this chapter shall prepare,
4 submit to the office with the notice of the proposed action as
5 described in Section 11346.5, and make available to the public
6 upon request, all of the following:

7 (a) A copy of the express terms of the proposed regulation.

8 (1) The agency shall draft the regulation in plain, straightforward
9 language, avoiding technical terms as much as possible, and using
10 a coherent and easily readable style. The agency shall draft the
11 regulation in plain English.

12 (2) The agency shall include a notation following the express
13 terms of each California Code of Regulations section, listing the
14 specific statutes or other provisions of law authorizing the adoption
15 of the regulation and listing the specific statutes or other provisions
16 of law being implemented, interpreted, or made specific by that
17 section in the California Code of Regulations.

18 (3) The agency shall use underline or italics to indicate additions
19 to, and strikeout to indicate deletions from, the California Code
20 of Regulations.

21 (b) An initial statement of reasons for proposing the adoption,
22 amendment, or repeal of a regulation. This statement of reasons
23 shall include, but not be limited to, all of the following:

24 (1) A statement of the specific purpose of each adoption,
25 amendment, or repeal, the problem the agency intends to address,
26 and the rationale for the determination by the agency that each
27 adoption, amendment, or repeal is reasonably necessary to carry
28 out the purpose and address the problem for which it is proposed.
29 The statement shall enumerate the benefits anticipated from the
30 regulatory action, including the benefits or goals provided in the
31 authorizing statute. These benefits may include, to the extent
32 applicable, nonmonetary benefits such as the protection of public
33 health and safety, worker safety, or the environment, the prevention
34 of discrimination, the promotion of fairness or social equity, and
35 the increase in openness and transparency in business and
36 government, among other things. Where the adoption or
37 amendment of a regulation would mandate the use of specific
38 technologies or equipment, a statement of the reasons why the
39 agency believes these mandates or prescriptive standards are
40 required.

1 (2) (A) For a regulation that is not a major regulation, the
2 economic impact assessment required by subdivision (b) of Section
3 11346.3.

4 (B) For a major regulation proposed on or after November 1,
5 2013, the standardized regulatory impact analysis required by
6 subdivision (c) of Section 11346.3.

7 (3) An identification of each technical, theoretical, and empirical
8 study, report, or similar document, if any, upon which the agency
9 relies in proposing the adoption, amendment, or repeal of a
10 regulation.

11 (4) (A) A description of reasonable alternatives to the regulation
12 and the agency's reasons for rejecting those alternatives.
13 Reasonable alternatives to be considered include, but are not
14 limited to, alternatives that are proposed as less burdensome and
15 equally effective in achieving the purposes of the regulation in a
16 manner that ensures full compliance with the authorizing statute
17 or other law being implemented or made specific by the proposed
18 regulation. In the case of a regulation that would mandate the use
19 of specific technologies or equipment or prescribe specific actions
20 or procedures, the imposition of performance standards shall be
21 considered as an alternative.

22 (B) A description of reasonable alternatives to the regulation
23 that would lessen any adverse impact on small business and the
24 agency's reasons for rejecting those alternatives.

25 (C) Notwithstanding subparagraph (A) or (B), an agency is not
26 required to artificially construct alternatives or describe
27 unreasonable alternatives.

28 (5) (A) (i) Facts, evidence, documents, testimony, or other
29 evidence on which the agency relies to support an initial
30 determination that the action will not have a significant adverse
31 economic impact on business.

32 (ii) If a proposed regulation applies to a small business, as
33 defined in subparagraph (B) of paragraph (4) of subdivision (b)
34 of Section 11346.3, located within an area in which the Governor
35 has declared, pursuant to Section 8625, a state of emergency and
36 if there is no postponement of the regulation, as described in
37 subparagraph (A) of paragraph (4) of subdivision (a) of Section
38 11346.3, the initial statement of reasons shall also include all of
39 the following:

1 (I) Facts, evidence, documents, testimony, or other evidence
2 the agency relies on to support the initial determination that the
3 postponement of the application of the administrative regulation
4 to the affected small businesses is not appropriate.

5 (II) The finding made pursuant to subparagraph ~~(A)~~ (A), (B),
6 or (C) of paragraph (4) of subdivision (a) of Section 11346.3.

7 (III) The confirmation by the Office of Emergency Services
8 required by subparagraph (B) of paragraph (4) of subdivision (a)
9 of Section ~~11346.3~~ 11346.3, or the confirmation by the State
10 Department of Public Health or the Labor and Workforce
11 Development Agency required by subparagraph (C) of paragraph
12 (4) of subdivision (a) of Section 11346.3.

13 (B) (i) If a proposed regulation is a building standard, the initial
14 statement of reasons shall include the estimated cost of compliance,
15 the estimated potential benefits, and the related assumptions used
16 to determine the estimates.

17 (ii) The model codes adopted pursuant to Section 18928 of the
18 Health and Safety Code shall be exempt from the requirements of
19 this subparagraph. However, if an interested party has made a
20 request in writing to the agency, at least 30 days before the
21 submittal of the initial statement of reasons, to examine a specific
22 section for purposes of estimating the cost of compliance and the
23 potential benefits for that section, and including the related
24 assumptions used to determine the estimates, then the agency shall
25 comply with the requirements of this subparagraph with regard to
26 that requested section.

27 (6) A department, board, or commission within the
28 Environmental Protection Agency, the Natural Resources Agency,
29 or the Office of the State Fire Marshal shall describe its efforts, in
30 connection with a proposed rulemaking action, to avoid
31 unnecessary duplication or conflicts with federal regulations
32 contained in the Code of Federal Regulations addressing the same
33 issues. These agencies may adopt regulations different from federal
34 regulations contained in the Code of Federal Regulations
35 addressing the same issues upon a finding of one or more of the
36 following justifications:

37 (A) The differing state regulations are authorized by law.

38 (B) The cost of differing state regulations is justified by the
39 benefit to human health, public safety, public welfare, or the
40 environment.

1 (c) A state agency that adopts or amends a regulation mandated
2 by federal law or regulations, the provisions of which are identical
3 to a previously adopted or amended federal regulation, shall be
4 deemed to have complied with subdivision (b) if a statement to
5 the effect that a federally mandated regulation or amendment to a
6 regulation is being proposed, together with a citation to where an
7 explanation of the regulation can be found, is included in the notice
8 of proposed adoption or amendment prepared pursuant to Section
9 11346.5. However, the agency shall comply fully with this chapter
10 with respect to any provisions in the regulation that the agency
11 proposes to adopt or amend that are different from the
12 corresponding provisions of the federal regulation.

13 (d) This section shall be inoperative from January 1, 2012, until
14 January 1, 2014.

15 SEC. 3. Section 11346.3 of the Government Code is amended
16 to read:

17 11346.3. (a) A state agency proposing to adopt, amend, or
18 repeal any administrative regulation shall assess the potential for
19 adverse economic impact on California business enterprises and
20 individuals, avoiding the imposition of unnecessary or unreasonable
21 regulations or reporting, recordkeeping, or compliance
22 requirements. For purposes of this subdivision, assessing the
23 potential for adverse economic impact shall require agencies, when
24 proposing to adopt, amend, or repeal a regulation, to adhere to the
25 following requirements, to the extent that these requirements do
26 not conflict with other state or federal laws:

27 (1) The proposed adoption, amendment, or repeal of a regulation
28 shall be based on adequate information concerning the need for,
29 and consequences of, proposed governmental action.

30 (2) The state agency, prior to submitting a proposal to adopt,
31 amend, or repeal a regulation to the office, shall consider the
32 proposal's impact on business, with consideration of industries
33 affected including the ability of California businesses to compete
34 with businesses in other states. For purposes of evaluating the
35 impact on the ability of California businesses to compete with
36 businesses in other states, an agency shall consider, but not be
37 limited to, information supplied by interested parties.

38 (3) An economic impact assessment prepared pursuant to this
39 subdivision for a proposed regulation that is not a major regulation
40 or that is a major regulation proposed prior to November 1, 2013,

1 shall be prepared in accordance with subdivision (b), and shall be
2 included in the initial statement of reasons as required by Section
3 11346.2. An economic assessment prepared pursuant to this
4 subdivision for a major regulation proposed on or after November
5 1, 2013, shall be prepared in accordance with subdivision (c), and
6 shall be included in the initial statement of reasons as required by
7 Section 11346.2.

8 (4) The proposed adoption, amendment, or repeal of a regulation
9 that applies to a small business, as defined in subparagraph (B) of
10 paragraph (4) of subdivision (b), located within an area in which
11 the Governor has declared, pursuant to Section 8625, a state of
12 emergency shall include one of the following:

13 (A) A postponement in the application of the regulation on small
14 businesses until the state of emergency is terminated by the
15 Governor.

16 (B) ~~A finding~~ *Findings* that the *postponement in subparagraph*
17 *(A) is not appropriate, that the administrative regulation is*
18 *necessary to address the state of ~~emergency~~ emergency, and that*
19 *the regulation provides sufficient time to provide reasonable notice*
20 *to affected small businesses as to the content of the regulation and*
21 *the time to meet the new requirements. The Office of Emergency*
22 *Services shall confirm the necessity of the regulation to address*
23 *the state of emergency.*

24 (C) *Findings that the postponement in subparagraph (A) is not*
25 *appropriate, that the administrative regulation is necessary to*
26 *address a serious and immediate health and safety issue, and that*
27 *the regulation provides sufficient time to provide reasonable notice*
28 *to affected small businesses as to the content of the regulation and*
29 *the time to meet the new requirements. The State Department of*
30 *Public Health or the Labor and Workforce Development Agency*
31 *shall confirm the necessity of the regulation to address a serious*
32 *health and safety issue.*

33 (b) (1) A state agency proposing to adopt, amend, or repeal a
34 regulation that is not a major regulation or that is a major regulation
35 proposed prior to November 1, 2013, shall prepare an economic
36 impact assessment that assesses whether and to what extent it will
37 affect the following:

38 (A) The creation or elimination of jobs within the state.

39 (B) The creation of new businesses or the elimination of existing
40 businesses within the state.

- 1 (C) The expansion of businesses currently doing business within
- 2 the state.
- 3 (D) The benefits of the regulation to the health and welfare of
- 4 California residents, worker safety, and the state’s environment.
- 5 (2) This subdivision does not apply to the University of
- 6 California, the Hastings College of the Law, or the Fair Political
- 7 Practices Commission.
- 8 (3) Information required from a state agency for the purpose of
- 9 completing the assessment may come from existing state
- 10 publications.
- 11 (4) (A) For purposes of conducting the economic impact
- 12 assessment pursuant to this subdivision, a state agency may use
- 13 the consolidated definition of small business in subparagraph (B)
- 14 in order to determine the number of small businesses within the
- 15 economy, a specific industry sector, or geographic region. The
- 16 state agency shall clearly identify the use of the consolidated small
- 17 business definition in its rulemaking package.
- 18 (B) For the exclusive purpose of undertaking the economic
- 19 impact assessment, a “small business” means a business that is all
- 20 of the following:
- 21 (i) Independently owned and operated.
- 22 (ii) Not dominant in its field of operation.
- 23 (iii) Has fewer than 100 employees.
- 24 (C) Subparagraph (A) shall not apply to a regulation adopted
- 25 by the Department of Insurance that applies to an insurance
- 26 company.
- 27 (c) (1) Each state agency proposing to adopt, amend, or repeal
- 28 a major regulation on or after November 1, 2013, shall prepare a
- 29 standardized regulatory impact analysis in the manner prescribed
- 30 by the Department of Finance pursuant to Section 11346.36. The
- 31 standardized regulatory impact analysis shall address all of the
- 32 following:
- 33 (A) The creation or elimination of jobs within the state.
- 34 (B) The creation of new businesses or the elimination of existing
- 35 businesses within the state.
- 36 (C) The competitive advantages or disadvantages for businesses
- 37 currently doing business within the state.
- 38 (D) The increase or decrease of investment in the state.
- 39 (E) The incentives for innovation in products, materials, or
- 40 processes.

1 (F) The benefits of the regulations, including, but not limited
2 to, benefits to the health, safety, and welfare of California residents,
3 worker safety, and the state’s environment and quality of life,
4 among any other benefits identified by the agency.

5 (2) This subdivision shall not apply to the University of
6 California, the Hastings College of the Law, or the Fair Political
7 Practices Commission.

8 (3) Information required from state agencies for the purpose of
9 completing the analysis may be derived from existing state, federal,
10 or academic publications.

11 (d) Any administrative regulation adopted on or after January
12 1, 1993, that requires a report shall not apply to businesses, unless
13 the state agency adopting the regulation makes a finding that it is
14 necessary for the health, safety, or welfare of the people of the
15 state that the regulation apply to businesses.

16 (e) Analyses conducted pursuant to this section are intended to
17 provide agencies and the public with tools to determine whether
18 the regulatory proposal is an efficient and effective means of
19 implementing the policy decisions enacted in statute or by other
20 provisions of law in the least burdensome manner. Regulatory
21 impact analyses shall inform the agencies and the public of the
22 economic consequences of regulatory choices, not reassess
23 statutory policy. The baseline for the regulatory analysis shall be
24 the most cost-effective set of regulatory measures that are equally
25 effective in achieving the purpose of the regulation in a manner
26 that ensures full compliance with the authorizing statute or other
27 law being implemented or made specific by the proposed
28 regulation.

29 (f) Each state agency proposing to adopt, amend, or repeal a
30 major regulation on or after November 1, 2013, and that has
31 prepared a standardized regulatory impact analysis pursuant to
32 subdivision (c), shall submit that analysis to the Department of
33 Finance upon completion. The department shall comment, within
34 30 days of receiving that analysis, on the extent to which the
35 analysis adheres to the regulations adopted pursuant to Section
36 11346.36. Upon receiving the comments from the department, the
37 agency may update its analysis to reflect any comments received
38 from the department and shall summarize the comments and the
39 response of the agency along with a statement of the results of the

1 updated analysis for the statement required by paragraph (10) of
2 subdivision (a) of Section 11346.5.

3 SEC. 4. This act is an urgency statute necessary for the
4 immediate preservation of the public peace, health, or safety within
5 the meaning of Article IV of the California Constitution and shall
6 go into immediate effect. The facts constituting the necessity are:

7 In order to immediately readdress the potential economic impacts
8 caused by government actions necessary to protect the health and
9 safety needs of persons at risk of being infected by the COVID-19
10 virus by postponing the implementation of new regulatory
11 requirements that are not directly required to address the
12 COVID-19 emergency, it is necessary that this act go into
13 immediate effect.