Legislative Summit

Creating Jobs by Reducing State Regulations

Presented by

Tom Sullivan

Nelson Mullins Riley & Scarborough LLP

National Conference of State Legislatures  ❖  San Antonio, Texas
August 10, 2011
TOM SULLIVAN

- Red Sox Fan
- 1994 – 1998 U.S. Environmental Protection Agency
- 2002 – 2008 Senate-Confirmed Official at the U.S. Small Business Administration
- 2009 – 2011 Small Business Coalition for Regulatory Relief at Nelson Mullins law firm

SMALL BUSINESS REGULATORY REFORM

- Testimony before congressional and state legislative committees 30 times in 6-years
- State Regulatory Flexibility Model Legislation – 37 States
SMALL BUSINESS

- Total number of small businesses in U.S. = 27.3 million
- How many of you worked at a small business, or have relatives who worked for small employers? They represent ½ the employment in the United States
- Keeping our economy afloat / Small business = 43% of GDP
- Job creation machine / Small businesses created 65% of the net new jobs over the past 17-years
- Innovators / small businesses produce 15-17 more patents per employee than larger R&D firms
## Exhibit 1: 2010 small business profile for the states and territories

### Private sector businesses

<table>
<thead>
<tr>
<th>State Name</th>
<th>Estimated Number of Small Businesses</th>
<th>Percent of Employment by Small Firms</th>
</tr>
</thead>
<tbody>
<tr>
<td>United States</td>
<td>27.3 million</td>
<td>49.6</td>
</tr>
<tr>
<td>Alabama</td>
<td>77,465</td>
<td>49.3</td>
</tr>
<tr>
<td>Alaska</td>
<td>15,981</td>
<td>55.1</td>
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<tr>
<td>Arizona</td>
<td>106,803</td>
<td>47.3</td>
</tr>
<tr>
<td>Arkansas</td>
<td>51,035</td>
<td>48.6</td>
</tr>
<tr>
<td>California</td>
<td>3.4 million</td>
<td>51.6</td>
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<tr>
<td>Colorado</td>
<td>127,264</td>
<td>50.2</td>
</tr>
<tr>
<td>Connecticut</td>
<td>73,779</td>
<td>50.8</td>
</tr>
<tr>
<td>Delaware</td>
<td>18,922</td>
<td>45.8</td>
</tr>
<tr>
<td>District of Columbia</td>
<td>15,627</td>
<td>46.7</td>
</tr>
<tr>
<td>Florida</td>
<td>2.2 million</td>
<td>44.1</td>
</tr>
<tr>
<td>Georgia</td>
<td>175,574</td>
<td>45.7</td>
</tr>
<tr>
<td>Hawaii</td>
<td>25,478</td>
<td>55.5</td>
</tr>
<tr>
<td>Idaho</td>
<td>38,203</td>
<td>59.8</td>
</tr>
<tr>
<td>Illinois</td>
<td>1.1 million</td>
<td>48.4</td>
</tr>
<tr>
<td>Indiana</td>
<td>112,513</td>
<td>48.2</td>
</tr>
<tr>
<td>Iowa</td>
<td>63,234</td>
<td>51.3</td>
</tr>
<tr>
<td>Kansas</td>
<td>59,010</td>
<td>53.4</td>
</tr>
<tr>
<td>Kentucky</td>
<td>69,175</td>
<td>49.2</td>
</tr>
<tr>
<td>Louisiana</td>
<td>80,188</td>
<td>54.6</td>
</tr>
<tr>
<td>Maine</td>
<td>33,962</td>
<td>59.7</td>
</tr>
<tr>
<td>Maryland</td>
<td>109,693</td>
<td>52.4</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>138,846</td>
<td>47.8</td>
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<tr>
<td>Michigan</td>
<td>179,525</td>
<td>51.6</td>
</tr>
<tr>
<td>Minnesota</td>
<td>118,391</td>
<td>49.5</td>
</tr>
<tr>
<td>Mississippi</td>
<td>45,875</td>
<td>49.7</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>State Name</th>
<th>Estimated Number of Small Businesses</th>
<th>Percent of Employment by Small Firms</th>
</tr>
</thead>
<tbody>
<tr>
<td>Missouri</td>
<td>117,286</td>
<td>49.1</td>
</tr>
<tr>
<td>Montana</td>
<td>31,789</td>
<td>69.3</td>
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<tr>
<td>Nebraska</td>
<td>40,885</td>
<td>50.2</td>
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<tr>
<td>Nevada</td>
<td>47,772</td>
<td>42.8</td>
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<tr>
<td>New Hampshire</td>
<td>31,146</td>
<td>54.0</td>
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<tr>
<td>New Jersey</td>
<td>199,382</td>
<td>50.8</td>
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<tr>
<td>New Mexico</td>
<td>36,030</td>
<td>55.5</td>
</tr>
<tr>
<td>New York</td>
<td>2.0 million</td>
<td>51.5</td>
</tr>
<tr>
<td>North Carolina</td>
<td>172,732</td>
<td>47.9</td>
</tr>
<tr>
<td>North Dakota</td>
<td>17,215</td>
<td>59.5</td>
</tr>
<tr>
<td>Ohio</td>
<td>195,830</td>
<td>48.1</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>71,313</td>
<td>53.4</td>
</tr>
<tr>
<td>Oregon</td>
<td>90,239</td>
<td>56.9</td>
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<tr>
<td>Pennsylvania</td>
<td>233,072</td>
<td>49.3</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>24,824</td>
<td>55.9</td>
</tr>
<tr>
<td>South Carolina</td>
<td>81,063</td>
<td>49.4</td>
</tr>
<tr>
<td>South Dakota</td>
<td>21,057</td>
<td>61.9</td>
</tr>
<tr>
<td>Tennessee</td>
<td>99,339</td>
<td>45.0</td>
</tr>
<tr>
<td>Texas</td>
<td>2.2 million</td>
<td>45.9</td>
</tr>
<tr>
<td>Utah</td>
<td>58,412</td>
<td>48.9</td>
</tr>
<tr>
<td>Vermont</td>
<td>18,616</td>
<td>61.4</td>
</tr>
<tr>
<td>Virginia</td>
<td>151,505</td>
<td>48.3</td>
</tr>
<tr>
<td>Washington</td>
<td>148,178</td>
<td>54.6</td>
</tr>
<tr>
<td>West Virginia</td>
<td>29,697</td>
<td>53.0</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>112,558</td>
<td>52.3</td>
</tr>
<tr>
<td>Wyoming</td>
<td>17,461</td>
<td>65.6</td>
</tr>
</tbody>
</table>

SMALL BUSINESS & REGULATION

- Total cost of federal regulation = $1.75 trillion
- Small firms shoulder a 36% higher cost to comply with regulations than larger business competitors
- Per employee cost for firms with under 20 employees is $10,585 (more than a new car)
- Cost of complying with federal rules rose faster than the per-household cost of medical care
- State rules equally as challenging – $134,000 annual cost for small businesses in California
STATE SMALL BUSINESS REGULATORY FLEXIBILITY LEGISLATION

- Small business definition consistent with state practices and permitting authorities
- State agencies perform an economy impact analysis on the effect of a rule on small firms before they regulate
- State agencies consider less burdensome alternatives for small businesses and still meet the agency’s regulatory goal
- Judicial review to give the law “teeth”
- Periodic review of existing regulations to minimize impact on small business
## State Regulatory Flexibility Model Legislative Initiative

**Current Status**

18 States and 1 Territory have active regulatory flexibility statutes

- Arizona
- Colorado
- Connecticut
- Florida
- Hawaii
- Indiana
- Maine
- Missouri
- Nevada
- New York
- North Dakota
- Oklahoma
- Oregon
- Puerto Rico
- Rhode Island
- South Carolina
- Tennessee
- Virginia
- Wisconsin

26 States have a partial or partially used regulatory flexibility statute or EO

- Alaska
- Arkansas
- California
- Delaware
- Georgia (EO)
- Illinois
- Iowa
- Kansas
- Kentucky
- Louisiana
- Maryland
- Massachusetts (EO)
- Michigan
- Minnesota
- Mississippi
- New Hampshire
- New Jersey
- New Mexico
- Ohio
- Pennsylvania
- South Dakota
- Texas
- Utah
- Vermont
- Washington
- West Virginia (EO)

6 States, 2 Territories and the District of Columbia have no regulatory flexibility statutes

- Alabama
- District of Columbia
- Guam
- Idaho
- Montana
- Nebraska
- North Carolina
- Virgin Islands
- Wyoming

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*This information may not reflect updates from the past two legislative sessions. The Office of Advocacy’s Regional Advocate positions, which provide an important link to the headquarters office on the State Regulatory Flexibility Initiative updates, remain mostly vacant.*
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Larger businesses are more capable of understanding the regulations and complying with them and handling. I don’t know how real small businesses do it - I really don’t know how they even know what the regulations are...

WATCH THE VIDEO >>

A project of NFIB, Small Businesses for Sensible Regulations is a broad coalition of small business owners, farmers, manufacturers and associations committed to ensuring federal regulations do not harm jobs and stifle economic growth.

Learn More »
REGULATORY REFORM THAT WORKS

- Starting out, the closer to the governor the better
- Institutionalize process of small business input to withstand political change
- Follow-up is key to the success of regulatory relief initiatives
- Transparent and publicized examples of how small business input can improve final regulation
PUERTO RICO – ICE BAG

- Dept. of Health requirement for clear ice bags – to allow for complete visual inspection
- Small ice producers and distributors could not print logo on ice bags
- Puerto Rico’s Office of the Small Business Advocate/Ombudsman met with small employers
- Modified rule to allow printing on one side of a transparent plastic bag
- Result was victory for small business and victory for Puerto Rico’s Department of Health
VIRGINIA – BODY PIERCING

- Regulations to ensure that ear piercing and body piercing conducted in a safe and sanitary manner

- Proposed requirement of pre-licensing condition for 1,500 hours of instruction

- 770 jewelry stores and 260 department stores offered ear piercing services

- Small business regulatory flexibility analysis proposed less burdensome alternative of “ear only” piercing exempt from 1,500 hours of instruction
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