

Date of Hearing: April 26, 2017

ASSEMBLY COMMITTEE ON ACCOUNTABILITY AND ADMINISTRATIVE REVIEW

Susan Talamantes Eggman, Chair

AB 912 (Obernolte) – As Amended April 19, 2017

SUBJECT: Small business: California Small Business Regulatory Fairness Act

SUMMARY: Requires a state agency to assist small businesses in complying with statutes and regulations and to establish policies to reduce, in certain circumstances, civil penalties for noncompliance. Specifically, **this bill:**

- 1) Requires a state agency to assist small businesses in complying with statutes and regulations by the agency.
- 2) Requires the agency to assist a small business during an enforcement action by the agency.
- 3) Requires the agency to establish a policy to provide for the reduction of civil penalties for violations or regulatory or statutory requirements by a small business if specified conditions exist.
 - a) Requires public posting of the policies and annual reports about civil penalty reductions.
 - b) Requires specified notifications to the Office of Small Business Advocate (OSBA) about the policies and annual reports.
- 4) Defines "state agency" to include any state agency, department, board, or commission that has significant rulemaking authority over small businesses while excluding the Franchise Tax Board and the State Board of Equalization.
- 5) Defines "small business" as a business that is independently owned and operated, not dominant in its field, has fewer than 100 employees, and has average annual gross receipts of \$10 million or less over the previous three years.

EXISTING LAW:

- 1) Establishes the OSBA within the Governor's Office of Business and Economic Development (GO-Biz), to serve, among other things, as the principal advocate in the state on behalf of small businesses, including, but not limited to, advisory participation in the consideration of all legislation and administrative regulations that affect small businesses.
- 2) Establishes the position of the small business liaison within each state agency that significantly regulates or significantly impacts small business.

FISCAL EFFECT: Unknown

COMMENTS: This bill requires a state agency to assist small businesses in complying with statutes and regulations, including during an enforcement action by the agency. Existing law establishes that each state agency that significantly regulates or significantly impacts small business must designate at least one person to serve as a small business liaison (liaison).

The liaison must, among other duties, provide technical advice and help small businesses in resolving problems and questions regarding compliance with the agency's regulations and relevant statutes. Current law prohibits the liaison from advocating for or against the adoption, amendment, or repeal of any regulation or intervening in any pending investigation or enforcement action.

In addition to specifying that an agency must provide assistance to small businesses in complying with statutes and regulations, this bill requires an agency to develop a policy to provide for reductions in civil penalties for violations of regulatory or statutory requirements if certain conditions exist.

Specifically, an agency must establish a policy by December 31, 2018 to be applied if the violation did not involve willful or criminal conduct; did not pose an imminent health, safety, or environmental threat; and the small business has a low degree of culpability when its conduct is judged in light of its size, length of operation, and sophistication of its owners or managers.

The policy must specify factors to consider when the agency determines if and to what extent the fine should be reduced. A range of reductions should be based on factors that include the degree to which a small business took corrective actions, prior history in meeting regulatory requirements, and the degree to which the penalty would impede the business from continuing to operate.

This bill allows for the update of the policy as necessary and requires an agency to post the policy on its web site within 30 days of adoption or amendment.

Additionally, this bill includes a reporting requirement. Specifically, a state agency must annually post on its website information with the aggregate number and category of enforcement actions that were reviewed, total number of small businesses and actions that qualified for civil penalty reductions, and total amount of reductions issued. When this report is posted or when a policy is adopted or amended, the agency would be required to notify the OSBA.

According to the author, "It is reasonable to allow some flexibility to small business owners who struggle to comply with our complex regulatory system. . . AB 912 simply allows state agencies flexibility when enforcing regulatory compliance based on factors such as being a first-time offender. This is a reasonable approach to supporting our small businesses."

Supporters of this bill state that it will help small businesses comply with regulations and help prevent excessive penalties. Opponents of this bill state that it will take away incentives for businesses to follow the law and is unfair to law-abiding businesses.

PRIOR LEGISLATION: SB 1228 (Runner) of 2016 would have required a state agency to assist small businesses in complying with statutes and regulation and would have required an agency to create a policy for the reduction or waiver of civil penalties related to the violations if they did not pose an imminent health, safety, or environmental threat. This bill was held on the Senate Appropriations Committee's Suspense File.

DOUBLE REFERRAL: This bill was heard in the Assembly Committee on Jobs, Economic Development, and the Economy on March 28, 2017, with a vote of 6-0.

REGISTERED SUPPORT / OPPOSITION:

Support

Association of Compost Producers
California Apartment Association
California Association for Health Services At Home
California Business Properties Association
California Chamber of Commerce
California Farm Bureau Federation
California Independent Oil Marketers Association
California Independent Petroleum Association
California Lodging Industry Association
California Manufacturers and Technology Association
California Restaurant Association
California Trucking Association
Camarillo Chamber of Commerce
County of San Bernardino
El Centro Chamber of Commerce
Family Business Association of California
Fresno Chamber of Commerce
Greater Irvine Chamber of Commerce
Greater Riverside Chamber of Commerce
Hesperia Chamber of Commerce
Independent Lodging Industry Association.
Industrial Environmental Association
Lodi Chamber of Commerce
Murrieta Chamber of Commerce
National Federation of Independent Business
National Shooting Sports Foundation, Inc.
North Orange County Community College District
Rancho Cordova Chamber of Commerce
San Gabriel Valley Economic Partnership
Santa Barbara Regional Chamber of Commerce
Southwest California Legislative Council
Torrance Area Chamber of Commerce
Vacaville Chamber of Commerce
Western Wood Preservers Institute
Wine Institute
Yuba Sutter Chamber Of Commerce

Opposition

California Labor Federation, AFL-CIO
California Nurses Association
Consumer Attorneys of California
National Nurses United
Service Employees International Union California
State Building & Construction Trades Council of California

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