
SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION

Senator Bill Dodd

Chair

2021 - 2022 Regular

Bill No:	SB 430	Hearing Date:	3/9/2021
Author:	Borgeas, et al.		
Version:	2/12/2021 Introduced		
Urgency:	No	Fiscal:	Yes
Consultant:	Brian Duke		

SUBJECT: Small businesses: reduction or waiver of civil penalties for violation of regulations or statutes

DIGEST: This bill requires state agencies to establish a policy to provide for the reduction or waiver of civil penalties for violations of regulatory or statutory requirements by a small business under certain circumstances, as specified.

ANALYSIS:

Existing law:

- 1) Establishes the California Office of Small Business Advocate (CalOSBA), 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, and advocacy on state policy and programs related to small businesses.
- 2) Requires CalOSBA to seek the assistance and cooperation of all state agencies and departments providing services to, or affecting, small businesses, as specified.
- 3) Requires CalOSBA to counsel small businesses on how to resolve questions and problems concerning the relationship of small business to state government.
- 4) Requires any state agency that significantly regulates small business or that significantly impacts small businesses to designate at least one person to serve as a small business liaison, as specified.

- 5) Prohibits any small business liaison from advocating for or against the adoption, amendment, or repeal of any regulation or intervening in any pending investigation or enforcement action.
- 6) Establishes the California Small Business COVID-19 Relief Grant Program within CalOSBA to assist qualified small businesses, as defined, affected by COVID-19 through the administration of grants.

This bill:

- 1) The California Small Business Regulatory Fairness Act requires a state agency, by January 1, 2023, to establish a policy to provide for the reduction or waiver of civil penalties for violations of regulatory or statutory requirements by a small business under certain circumstances. This bill is limited to civil penalties for which a state agency has discretion as to the amount, type, or imposition of the penalty.
- 2) Requires that the policy be applied to a violation by a small business that meets the following criteria:
 - a. The violation did not involve willful or criminal conduct.
 - b. The violation did not pose a serious health, safety, or environmental threat.
- 3) Requires that the policy include the factors that the state agency shall use to determine if, and to what extent, the civil penalties shall be reduced or waived. The policy shall be designed to result in a waiver or a range of reductions, based upon factors that include, but are not limited to:
 - a. The degree to which the small business cooperated during any investigation by the state agency.
 - b. The degree to which the small business engaged in subsequent action to correct the violation, as appropriate.
 - c. The prior history of the small business in meeting regulatory requirements of the agency.
 - d. The degree to which the level of the penalty would impede the small business from continuing to conduct business.
 - e. The degree to which the small business actions were negligent.
- 4) Authorizes a state agency to apply conditions to the reduction or waiver of penalties, including, but not limited to, requiring the small business to take corrective action or attend training; to adopt regulations or other administrative

documents appropriate to implement this bill; and, to update the policy from time to time to reflect current issues and conditions affecting small businesses and the state agency.

- 5) Requires a state agency to post a current copy of the policy on the state agency's internet website within 30 days of adoption or amendment of the policy.
- 6) Requires a state agency to annually post a utilization report on its internet website that includes the aggregate number and category of enforcement actions that were reviewed pursuant to this bill, the total number of small businesses and actions that qualified for civil penalty reductions or waivers in the report period, and the total dollar amount of reductions and waivers issued.
- 7) Requires a state agency to notify CalOSBA, including a link to the policy and utilization report, within 15 working days of any of the following situations occurring:
 - a. The policy is adopted or amended.
 - b. The annual utilization report is posted.
 - c. The policy or the annual utilization report is relocated from the state agency's internet website. The notice shall include a link to the new internet website location.
 - d. The policy or the annual utilization report is removed from the state agency's website. The notice shall include an explanation as to why the information was removed.
- 8) Specifies that the California Small Business Regulatory Fairness Act shall only become operative upon the Legislature making an appropriation to implement the provisions of the bill.
- 9) Defines a "small business" to mean a business that is all of the following:
 - a. Independently owned and operated.
 - b. Not dominant in its field of operation.
 - c. Has fewer than 100 employees.
 - d. Has average annual gross receipts of \$15 million or less over the previous three years.
- 10) Defines "state agency" to mean any state agency, department, board, or commission that has significant rulemaking authority over small businesses,

except the Franchise Tax Board, the California Department of Tax and Fee Administration, or the State Board of Equalization.

Background

Purpose of the bill. According to the author's office, "owning and operating a small business in California is often accompanied with many challenges including complex and expansive regulations. It is difficult for small business owners to keep up with the ever-changing regulatory process all while trying to manage numerous aspects of running a business. Unfortunately, this can lead small business owners to face unexpected fines. In some cases, these fines can make or break a small business."

Further, the author's office states that, "extraordinary recent events have demonstrated small businesses are an indispensable part of our state. Many have stepped up to continue providing employment opportunities, essential services, supplies, and food even if it falls outside of the scope of their experience. Yet, so many have faced devastating financial losses. Now more than ever, California should take this step to provide regulatory relief and allow state agencies to waive or reduce civil penalties."

Impact of COVID-19 on small businesses. Small businesses have been disproportionately affected by the COVID-19 pandemic and the related health and safety restrictions, with hundreds of thousands of businesses permanently shuttered and many more on unstable financial footing. Compared to this time last year, small business revenue in California is down more than 30%, with the hardest hit sector, leisure and hospitality, down over 70%.

California's dominance in many economic areas is based, in part, on the significant role small businesses play in the state's \$3.1 trillion economy. Two separate studies prior to COVID-19, one by the US Census Bureau and another by the Kaufman Foundation; found that net job growth was strongest among businesses with less than 20 employees. Among other advantages, small businesses are crucial in the state's international competitiveness and are important means for dispersing the economic positive impacts of trade within the California economy.

Help for small businesses during COVID-19. The primary source of federal small business aid is the Paycheck Protection Program (PPP), which provides forgivable, low-interest loans to businesses with fewer than 500 employees. Additionally, SB 87 (Caballero, Chapter 7, Statutes of 2021) established the California Small Business COVID-19 Relief Grant Program within CalOSBA to assist qualified

small businesses affected by COVID-19 through the administration of grants. The bill appropriated \$2.075 billion to fund the program.

Cost of regulations on businesses. There are two major sources of data on the cost of regulatory compliance on businesses: the federal Small Business Administration (SBA) and CalOSBA. While their work was conducted several years ago, the information is still illustrative of the financial disparities regulations place on small versus large businesses. The federal SBA has conducted a number of peer-reviewed studies analyzing the cost of federal government regulations on businesses of different sizes. This research consistently shows that small businesses continue to bear a disproportionate share of the federal regulatory burden. On a per employee basis, it costs about \$2,400, or 45% more, for small businesses to comply with federal regulations than their larger counterparts. The first and only study on the impact of California regulations on small businesses was released by CalOSBA in 2009. This first-in-the-nation study found that the total cost of regulations to small businesses averaged about \$134,000 per business in 2007.

This bill requires state agencies to establish and publish a policy that provides for the reduction or waiver of civil penalties for violations of regulatory or statutory requirements by a small business under certain circumstances. The bill specifies that any violations considered for a penalty waiver or reduction did not involve willful or criminal conduct, and that the violation did not pose a serious health, safety, or environmental threat.

California Small Business Liaisons. Existing law requires that each state agency that significantly regulates or affects small businesses to designate a small business liaison, who is responsible for receiving and responding to complaints submitted by small businesses, providing technical assistance, and assisting small businesses in resolving problems and questions regarding compliance with the agency's regulations.

Small business liaisons are prohibited from intervening or assisting a small business during a pending investigation or enforcement action. Once an enforcement action is initiated by an agency, the small business is left to their own devices to successfully navigate the process, which includes accessing or requesting any special small business provisions the agency may have included within its enforcement framework.

This bill specifies that in determining a waiver or reduction of civil penalties against a small business, a state agency must consider, among other things, the degree to which the small business cooperated during any investigation by the state

agency, the degree to which the small business engaged in subsequent action to correct the violation, the prior history of the small business in meeting regulatory requirements, the degree to which the level of the penalty would impede the small business from continuing to conduct business, and the degree to which the small business's actions were negligent.

Different approaches to regulatory reform. In general, the Legislature's engagement on regulatory streamlining has taken two basic approaches. One set of policies have addressed specific regulatory challenges on a case-by-case basis. The second approach calls for systemic change to the way in which rules are adopted. Until now, the first approach has been the most successful. Addressing regulatory impacts on a case-by-case basis, however, has had very limited overall impact on California's regulatory business climate. Due to their potential implementation costs, a majority of the bills advancing the systemic approach to regulatory reform have failed to move from the fiscal committees.

The most significant systemic change in recent years was approved in SB 617 (Calderon, Chapter 496, Statutes of 2011) which required an enhanced economic impact analysis for regulations anticipated to have an impact of \$50 million or more. The SB 617 process follows some elements of the federal regulatory model. It should be noted, however, that the state process has resulted in few regulatory accommodations for size of business.

Prior/Related Legislation

SB 49 (Umberg, 2021) among other things, prohibits any state agency from collecting any regulatory license fee imposed on a business that meets certain criteria, including that the business has temporarily ceased operations in response to a COVID-19 stay-at-home order, as specified. (Pending in the Senate Business, Professions and Economic Development Committee)

SB 87 (Caballero, Chapter 7, Statutes of 2021) established the California Small Business COVID-19 Relief Grant Program within CalOSBA to assist qualified small businesses, as defined, affected by COVID-19 through the administration of grants. The bill appropriated \$2.075 billion to fund the program.

SB 94 (Skinner, Chapter 9, Statutes of 2021) provides that the State Board of Barbering and Cosmetology is prohibited from seeking to collect, and exempts licensees from paying, renewal fees for licenses expiring on or after January 1, 2021, and before January 1, 2023. Authorizes the Department of Alcoholic Beverage Control to waive license renewal fees for licenses that expire between March 1, 2021, and February 28, 2023.

SB 1457 (Borgeas, 2020) was substantially similar to this bill, and would have required a state agency to establish a policy that provides for the reduction or waiver of civil penalties for a violation of a regulatory or statutory requirement by a small business if the violation did not involve willful or criminal conduct and did not pose a serious health, safety, or environmental threat, as specified. (Never heard in the Assembly Appropriations Committee)

AB 1545 (Obernolte, 2019) would have required a state agency, department, board, or commission that has significant rulemaking authority over small businesses to assist small businesses in complying with statutes and regulations and to establish policies to reduce, in certain circumstances, civil penalties for noncompliance. (Held on the Assembly Appropriations Committee Suspense File)

AB 912 (Obernolte, 2017) would have required a state agency, department, board, or commission that has significant rulemaking authority over small businesses to assist small businesses in complying with statutes and regulations and to establish policies to reduce, in certain circumstances, civil penalties for noncompliance. (Held on the Assembly Appropriations Committee Suspense File)

SB 617 (Calderon, Chapter 496, Statutes of 2011) required an enhanced economic impact analysis for regulations anticipated to have an impact of 50 million or more.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

SUPPORT:

California Manufacturers & Technology Association (CMTA)

OPPOSITION:

California Employment Lawyers Association
California Labor Federation
California Nurses Association
California Rural Legal Assistance Foundation
California Teamsters Public Affairs Council
Consumer Attorneys of California
Service Employees International Union (SIEU)
United Food and Commercial Workers Western States Council

ARGUMENTS IN SUPPORT: In support of the bill, the CMTA writes that this “public emergency has reminded us of the difficulties small companies face in

accessing governmental assistance and support to enable compliance and promote investment. The challenge that many small manufacturers specifically face is the lack of personnel and extended infrastructure to continuously keep up with the intricacies of the dynamic regulatory environment of the state. When a small manufacturer is working actively to ensure health and safety standards and makes a minor mistake that does not threaten those standards, this bill encourages and assists in the proactive correction of the mistake, rather than looking at that mistake through a strictly punitive frame.”

ARGUMENTS IN OPPOSITION: The opponents to the bill write that, “[o]ur labor laws are designed to incentivize proactive compliance, based on a fundamental understanding that workers can be injured or harmed even when the employer does not act “willfully” in violation of a worker’s rights. Take for instance an employer who simply decides not to provide a worker with a wage statement. That employer may not be acting willfully, it may not pose “imminent threat,” and the employer may be less experienced and sophisticated as a business owner. Nevertheless, by not keeping adequate records of time worked and wages owed, the employer could be underpaying the worker and both the worker and employer may not even realize it for months or years. Not only would that impact the worker losing money that they earned, without time and pay records, the worker would have a very difficult time enforcing their claim for unpaid wages and determining just how *much* they are owed. A system where employers can first ignore the law and then potentially be immune from penalties if they are caught puts workers and the public in jeopardy. It would also create an unfair playing field for businesses that follow the rules. Good, law abiding businesses will be disadvantaged against businesses that try to reduce costs by ignoring health, safety, and environmental laws.”

DUAL-REFERRAL: Governmental Organization & Business, Professions and Economic Development