
**SENATE COMMITTEE ON
BUSINESS, PROFESSIONS AND ECONOMIC DEVELOPMENT**
Senator Richard Roth, Chair
2021 - 2022 Regular

Bill No:	SB 430	Hearing Date:	March 22, 2021
Author:	Borgeas		
Version:	February 12, 2021		
Urgency:	No	Fiscal:	Yes
Consultant:	Sarah Mason		

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

SUMMARY: Establishes the California Small Business Regulatory Fairness Act, which requires a state agency to establish a policy to provide to reduce or waive civil penalties for small businesses that violate certain regulatory or statutory requirements, under certain circumstances. Requires a state agency that establishes a policy to report to the Office of Small Business Advocate and list certain data about the numbers of small businesses that qualified for reductions or waivers on the agency's website.

NOTE: *This measure was heard in the Senate Committee on Governmental Organization on March 9, 2021 and passed with a vote of 14-0.*

Existing law:

- 1) Establishes the GO-Biz within the Governor's Office for the purpose of serving as the lead state agency for economic strategy and marketing of California on issues relating to business development, private sector investment, and economic growth. (Government Code (GOV) §§ 12096-12098.5)
- 2) Establishes the Office of the Small Business Advocate (OSBA) within the GO-Biz and outlines the duties and functions of the Director of OSBA including representing the views and interests of small businesses before other state agencies whose policies and activities may affect small businesses. (GOV §§ 12098-12098.9)
- 3) Requires, by the Administrative Procedure Act, that a state agency make available to the public facts, evidence, documents, testimony, or other evidence on which the state agency relied to support the agency's determination that the proposed action will not have a significant adverse impact on business. (GOV §§ 11346–11348)
- 4) Directs a state agency that significantly regulates or impacts small business and as a result is required under current law to designate at least one person as a small business liaison, to prominently display the name and contact information of that agency's small business liaison on the agency's website. Requires a state agency required to have a designated small business liaison to notify OSBA, as well as the Department of General Services, of the name and contact information of the person or persons who have been designated as the agency's small business liaison, on or before March 1, 2018.

- 5) Requires, under the federal Small Business Regulatory Enforcement Fairness Act, that federal agencies must have a penalty reduction policy for small businesses, involve small businesses in the development of some proposed rules through Small Business Advocacy Review Panels, produce Small Entity Compliance Guides for some rules, and be responsive to small business inquiries about compliance with the agency's regulations. (Title 5 U.S.C. Ch. 6 §§ 601-612)

This bill:

- 1) Establishes the California Small Business Regulatory Fairness Act, which requires a state agency (other than the Franchise Tax Board, California Department of Tax and Fee Administration, or the State Board of Equalization) by January 1, 2023, to establish a policy to provide to reduce or waive civil penalties for small businesses that violate certain regulatory or statutory requirements. Specifies that "Small business" is a business that is independently owned and operated, not dominant in its field of operation, has fewer than 100 employees, and has average annual gross receipts of \$15 million or less over the previous three years.
- 2) Specifies that a state agency's civil penalty waiver or reduction policy shall be applied to a small business according to 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
 - c) The policy includes factors that the state agency uses to determine if, and to what extent, the civil penalties shall be reduced or waived.
- 3) Specifies that the policy is 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 also apply conditions to the penalty reduction or waiver including, but not limited to, requiring the small business to take corrective action or attend training.

- 5) Authorizes a state agency to update the policy from time to time to reflect current issues and conditions affecting small businesses and the state agency. Requires a state agency to post a current copy of the policy on its website within 30 days of adoption or amendment of the policy. Requires a state agency to annually post a report on its website that includes the number and category of enforcement actions that were reviewed, 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.
- 6) Requires a state agency to notify OSBA within 15 working days when a policy is adopted or amended, when a report in 5) above is posted to the agency's website, and when the policy or report are removed from the agency's website.
- 7) Makes the California Small Business Regulatory Fairness Act operative only upon the Legislature making an appropriation to implement the provisions of this chapter.

FISCAL EFFECT: Unknown. This bill is keyed fiscal by Legislative Counsel.

COMMENTS:

1. **Purpose.** The Author is the sponsor of this bill. According to the Author, "Small businesses play a major role in California's three trillion dollar economy. Businesses with less than 20 employees make up almost 90% of businesses and those with less than 100 employees represent 97.3% of all businesses in the state. Small businesses as defined in this legislation employ 35.8% of California's workforce and are a driving force in job creation and tax revenues. The U.S. Small Business Administration also notes that there are 4 million small businesses in California and that 2.1 million of those are minority owned.

"However, California is continually ranked one of the worst states in the country for attracting and retaining businesses. Overregulation is one of the driving factors behind California's poor climate for small businesses. SB 430 proposes a method used in federal law since the 1990s for mediating fines and penalties when a small business has taken the corrective action and the violation was not willful, criminal, or posed an imminent health, safety, or environmental threat."

2. **Background.**

The Role of Small Businesses within the California Economy. California's dominance in many economic areas is based, in part, on the significant role small businesses play in the state's \$2.7 trillion economy. Two separate studies, one by the U.S. 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 an important means for dispersing the positive economic impacts of trade within the California economy.

Excluding sole proprietorships, businesses with less than 20 employees comprise over 88% of all businesses and employ approximately 18% of all workers. Businesses with less than 100 employees represent 97% of all businesses and

employ 35 % of the workforce. These non-employer and small employer firms create jobs, generate taxes, support important industry sectors, and revitalize communities. Since the recession, these businesses have become increasingly important because they are more flexible and well-suited to meet niche foreign and domestic market needs.

A study of the impact of regulations on small businesses found that the total cost of regulation was \$134,122.48 per small business in California in 2007, labor income not created or lost was \$4,359.55 per small business, indirect business taxes not generated or lost were \$57,260.15 per small business, and finally roughly one job lost per small business.

COVID-19 and State Support for Small Businesses. In response to the COVID-19 pandemic, the state began taking action to support small businesses in several ways, particularly in terms of small business grants and programs. First, Governor Newsom provided \$125 million in small business loans. The California Infrastructure Economic Development Bank (IBank) provided \$100 million in loan guarantees for small businesses that may not be eligible for federal relief. Then, in November 2020 Governor Newsom announced the California Rebuilding Fund, a public-private partnership that drives capital from private, philanthropic and public sector resources – including a \$25 million anchor commitment and \$50 million guarantee allocation from the California Infrastructure and Economic Development Bank (IBank) – to Community Development Financial Institutions (CDFIs). Second, the Governor added \$12.5 million to the Fund in late November so that it could be fully capitalized, saying this money will “help the 3rd party administrator of the fund raise \$125 million to make more low-interest loans to small businesses with less access to loans from traditional banking institutions.” Third, the state secured \$30 billion in federal small business relief. California secured an SBA disaster declaration early on March 17, 2020 to open up the Economic Injury Disaster Loans (EIDL) program for California small businesses and private non-profit organizations. Fourth, the state provided micro-grants to immigrant social entrepreneurs, allocating \$10 million in the 2020-21 budget for Social Entrepreneurs for Economic Development (SEED) to provide micro-grants to immigrant social entrepreneurs. Fifth, the state provided \$500 million via the OSBA in late November 2020 for small businesses impacted by the pandemic and the health and safety restrictions. Funds were awarded in early 2021 via Community Development Financial Institutions to distribute relief through grants of up to \$25,000 to underserved micro and small businesses throughout the state. An additional almost \$2.1 billion was added for small business grants of up to \$25,000 with the passage of SB 87 (Caballero, Chapter 7, Statutes of 2021) in February 2021, with provisions that specified the recent OSBA grants would not be included in overall gross income tax calculations.

The state also provided support in the form of tax credits and tax relief. The Legislature passed and Governor Newsom signed: 1) AB 1577 (Burke, Chapter 39, Statutes of 2020), which allows small businesses to exclude PPP loans from state taxes; and 2) SB 1447 (Bradford, Caballero, Cervantes, Chapter 41, Statutes of 2020), which created a Main Street hiring tax credit that authorized a \$100 million hiring tax credit program for qualified small businesses. The Governor also provided a 90-day extension to small businesses in state and local taxes and an extension of all licensing deadlines and requirements for several industries. The Governor

waived the \$800 minimum franchise tax for new businesses in their first year of business creation. Fourth, the Governor authorized sales tax relief by providing a 12-month interest-free payment plan for up to \$50,000 of sales and use tax liability through the California Department of Tax and Fee Administration (CDTFA). SB 94 (Skinner, Chapter 9, Statutes of 2021), provided economic relief to licensees most severely impacted by the COVID-19 pandemic, waived licensing fees for barbering and cosmetology professionals and Alcoholic Beverage Control licensees.

3. **Prior Similar Efforts.** SB 1457 of 2020 also by the Author, AB 1545 (Obernolte) of 2019 and AB 912 (Obernolte) of 2017 were all substantially similar to this bill. (Status: *The measures were held under submission in the Assembly Committee on Appropriations.*)

SB 1228 (Runner) of 2016 was also substantially similar to these efforts. (Status: *The measure were held under submission in the Senate Committee on Appropriations.*)

4. **Arguments in Support.** The California Association of Licensed Investigators notes the impacts COVID-19 have had on small businesses in writing in support of this measure.

According to the California Manufacturers and Technology Association, “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...SB 430 seeks to provide that extra level of support that can ensure a better outcome for smaller companies.”

The California Retailers Association supports this measure and says that it “provides important guidance to state regulators, that they take a broader perspective and consider some of the other factors weighing on small businesses before assessing fines and penalties. It also sends a message that the Legislature values the important role of small business in our communities and our economy.”

5. **Arguments in Opposition.** A coalition including Consumer Attorneys of California, California Employment Lawyers Association, California Labor Federation, California Nurses Association, California Rural Legal Assistance Foundation, INC., California Teamsters Public Affairs Council, Consumer Attorneys of California, Service Employees International Union (SEIU), and United Food and Commercial Workers Western States Council are opposed to this bill, writing that it will allow businesses to evade penalties for violating health, safety, or environmental statutes and regulations. According to the opponents, the measure “could even potentially make millions of businesses immune to worker health and safety violations, while we are in the midst of a global health pandemic, and would take away any incentive for those businesses to follow the law. Such a policy would make the regulations critical

to workplace safety essentially voluntary as there would be no applicable penalty for violations...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.” According to the coalition, “Businesses with fewer than 100 employees comprise 97% of all businesses in California. California small businesses employ about 7 million Californians – approximately half of California’s private workforce. Those workers depend on state agencies to enforce health, safety, and environmental statutes and regulations to ensure a safe workplace and result in workers’ lives being saved. The vast majority of the underground economy is made up of small businesses. Industries like construction, janitorial, and agriculture, mostly comprised of small businesses, are recognized as among those industries with the highest rate of violations. In addition, these workers are often the most vulnerable and subject to abuse. These are industries that need greater enforcement of basic labor laws, not less.”

SUPPORT AND OPPOSITION:Support:

California Association of Licensed Investigators
California Manufacturers and Technology Association
California Retailers Association

Opposition:

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

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