

aBILL ANALYSIS

Senate Research Center

S.B. 424
By: Hinojosa
Business & Commerce
6/1/2021
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Office of Small Business Assistance Advisory Task Force, which is within the Office of the Governor's Economic Development and Tourism division, regularly produces reports highlighting issues that small businesses in Texas are facing, as well as recommendations for improvement. Their 2019 biennial report focused on the high indirect costs and burdens that small businesses are often faced with under newly passed regulations. Many of these small businesses are unlikely to have compliance teams or resources to ensure compliance, which can result in costly penalties and fines. Consequently, many small businesses feel forced to hire additional staff and attorneys to figure out the complicated rules and keep up with the neverending paperwork burden.

In response to this issue and to provide small businesses with relief from future regulation, the task force recommended an implementation of a right to cure policy, which would allow a small business in violation the ability to remedy the issue if it is a first offense.

S.B. 424 requires a state agency to allow a small business the opportunity to remedy a first violation of a statute or a rule administered by the agency before imposing an administrative penalty or requesting imposition of a civil penalty on the small business.

A violation is not considered to be a continuing violation during the time in which the small business attempts to remedy the violation.

(Original Author's / Sponsor's Statement of Intent)

S.B. 424 amends current law relating to state agency enforcement of laws regulating small businesses.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter A, Chapter 2006, Government Code, by adding Section 2006.003, as follows:

Sec. 2006.003. OPPORTUNITY TO REMEDY VIOLATION; POLICY. (a) Provides that this section applies only to a state agency with regulatory authority over a small business.

(b) Prohibits a state agency from imposing an administrative penalty against a small business for a first violation of a statute or a rule administered by the agency, other than a violation committed knowingly or intentionally, unless the agency first provides the small business written notice of the violation and an opportunity to remedy the violation within a reasonable time after receiving the notice. Provides that, notwithstanding any other law, a violation is not considered

to be a continuing violation during the reasonable time in which the small business attempts in good faith to remedy the violation.

(c) Requires each state agency subject to this section to adopt a policy consistent with the requirements of Subsection (b). Requires that the policy provide that the agency will not attempt to recover an administrative penalty during the reasonable time the small business is attempting in good faith to remedy the violation.

(d) Provides that this section does not apply to an action taken by a state agency to protect public health and safety or the environment; by an officer listed in Section 411.0765(b)(18) (relating to authorizing a criminal justice agency to disclose certain criminal history record information to the securities commissioner, the banking commissioner, the savings and mortgage lending commissioner, the consumer credit commissioner, or the credit union commissioner) in connection with the regulation of financial services; or by the Texas Workforce Commission if the action is required to conform to or comply with federal law.

SECTION 2. Requires each state agency, not later than January 1, 2022, to adopt and implement the policy required by Section 2006.003, Government Code, as added by this Act.

SECTION 3. Provides that a state agency with regulatory authority over a small business is required to implement Section 2006.003, Government Code, as added by this Act, only if the legislature appropriates money specifically for that purpose. Provides that if the legislature does not appropriate money specifically for that purpose, a state agency is authorized, but is not required, to implement Section 2006.003, Government Code, as added by this Act, using other appropriations available for the purpose.

SECTION 4. Effective date: September 1, 2021.