

# STATE OF NEW YORK

6159

2023-2024 Regular Sessions

## IN ASSEMBLY

April 3, 2023

Introduced by M. of A. McDONALD -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law, in relation to certification of a business enterprise as a minority or women-owned business enterprise

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision 7 of section 310 of the executive law, as  
2 amended by chapter 22 of the laws of 2014, paragraph (e) as amended by  
3 chapter 96 of the laws of 2019, is amended to read as follows:

4 7. "Minority-owned business enterprise" shall mean a business enter-  
5 prise, including a sole proprietorship, partnership, limited liability  
6 company or corporation that is:

7 (a) at least fifty-one percent owned by one or more minority group  
8 members;

9 (b) an enterprise in which such minority ownership is real, substan-  
10 tial and continuing, in accordance with clear standards which shall be  
11 developed by the director for the purposes of compliance with this para-  
12 graph, and subject to the following:

13 (i) an inherited ownership stake in the enterprise shall not be  
14 grounds for prohibition from certification of such enterprise as a  
15 minority-owned business enterprise; and

16 (ii) an enterprise shall be permitted to demonstrate proof of owner-  
17 ship qualifying such enterprise as a minority-owned business enterprise  
18 through tax records, deeds, certified business records, or any other  
19 evidence accepted by state and federal agencies;

20 (c) an enterprise in which such minority ownership has and exercises  
21 the authority to control independently the day-to-day business decisions  
22 of the enterprise, except that such minority ownership may delegate  
23 day-to-day business decision-making authority to designated managers  
24 within the enterprise so long as the minority ownership holds the  
25 authority to manage, supervise, hire and fire such managers and ulti-

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 mately controls the long-term decision-making authority for the enter-  
2 prise;

3 (d) an enterprise authorized to do business in this state and inde-  
4 pendently owned and operated;

5 (e) an enterprise owned by an individual or individuals, whose owner-  
6 ship, control and operation are relied upon for certification, with a  
7 personal net worth that does not exceed fifteen million dollars, and  
8 such other amount as the director shall set forth in regulations, as  
9 adjusted annually on the first of January for inflation according to the  
10 consumer price index of the previous year; and

11 (f) an enterprise that is a small business pursuant to subdivision  
12 twenty of this section.

13 § 2. Subdivision 15 of section 310 of the executive law, as amended by  
14 chapter 22 of the laws of 2014, paragraph (a) as amended by chapter 669  
15 of the laws of 2022 and paragraph (e) as amended by chapter 96 of the  
16 laws of 2019, is amended to read as follows:

17 15. "Women-owned business enterprise" shall mean a business enter-  
18 prise, including a sole proprietorship, partnership, limited liability  
19 company or corporation that is:

20 (a) at least fifty-one percent owned by one or more United States  
21 citizens or permanent resident noncitizens who are women;

22 (b) an enterprise in which the ownership interest of such women is  
23 real, substantial and continuing, in accordance with clear standards  
24 which shall be developed by the director for the purposes of compliance  
25 with this paragraph, and subject to the following:

26 (i) an inherited ownership stake in an enterprise shall not be grounds  
27 for prohibition from certification of such enterprise as a women-owned  
28 business enterprise; and

29 (ii) an enterprise shall be permitted to demonstrate proof of owner-  
30 ship qualifying such enterprise as a women-owned business enterprise  
31 through tax records, deeds, certified business records, or any other  
32 evidence accepted by state and federal agencies;

33 (c) an enterprise in which such women ownership has and exercises the  
34 authority to control independently the day-to-day business decisions of  
35 the enterprise, except that such women ownership may delegate day-to-day  
36 business decision-making authority to designated managers within the  
37 enterprise so long as the women ownership holds the authority to manage,  
38 supervise, hire and fire such managers and ultimately controls the long-  
39 term decision-making authority for the enterprise;

40 (d) an enterprise authorized to do business in this state and inde-  
41 pendently owned and operated;

42 (e) an enterprise owned by an individual or individuals, whose owner-  
43 ship, control and operation are relied upon for certification, with a  
44 personal net worth that does not exceed fifteen million dollars, and  
45 such other amount as the director shall set forth in regulations, as  
46 adjusted annually on the first of January for inflation according to the  
47 consumer price index of the previous year; and

48 (f) an enterprise that is a small business pursuant to subdivision  
49 twenty of this section.

50 A firm owned by a minority group member who is also a woman may be  
51 certified as a minority-owned business enterprise, a women-owned busi-  
52 ness enterprise, or both, and may be counted towards either a minority-  
53 owned business enterprise goal or a women-owned business enterprise  
54 goal, in regard to any contract or any goal, set by an agency or author-  
55 ity, but such participation may not be counted towards both such goals.  
56 Such an enterprise's participation in a contract may not be divided

1 between the minority-owned business enterprise goal and the women-owned  
2 business enterprise goal.

3 § 3. Subparagraph (iii) of paragraph (a) of subdivision 2-a of section  
4 314 of the executive law, as amended by chapter 96 of the laws of 2019,  
5 is amended to read as follows:

6 (iii) be an enterprise in which the minority and/or women-ownership  
7 has and exercises the authority to control independently the day-to-day  
8 business decisions of the enterprise, except that such minority and/or  
9 women ownership may delegate day-to-day business decision-making author-  
10 ity to designated managers within the enterprise so long as the minority  
11 and/or women ownership holds the authority to manage, supervise, hire  
12 and fire such managers and ultimately controls the long-term decision-  
13 making authority for the enterprise;

14 § 4. Subdivision 3 of section 314 of the executive law, as amended by  
15 chapter 96 of the laws of 2019, is amended to read as follows:

16 3. Following application for certification pursuant to this section,  
17 the director shall provide the applicant with written notice of the  
18 status of the application, including notice of any outstanding deficien-  
19 cies, within twenty-one days. Within forty-five days of submission of a  
20 final completed application, ~~[the]~~ such applicant shall be granted  
21 certification as a minority or women-owned business enterprise unless  
22 the director seeks to deny such application based upon the preponderance  
23 of the evidence provided or obtained through the initial application  
24 process. The director shall make all such evidence available in writing  
25 setting forth the reasons for such denial to the applicant for review  
26 and comment. Such applicant shall be eligible for a provisional MWBE  
27 certification for a period of six months. During the provisional MWBE  
28 certification time period, such applicant shall have the ability to cure  
29 any deficiencies as noted by the director in the original application.  
30 After the provisional MWBE certification period, the director shall  
31 grant full minority or women-owned business enterprise certification  
32 unless a preponderance of the evidence provided or obtained through the  
33 application process and provisional MWBE certification process shows  
34 cause not to grant such status. The director shall provide the applicant  
35 with written notice of a determination by the office approving or deny-  
36 ing such certification [and, in the event of a]. Any denial of an appli-  
37 cation shall be based upon the preponderance of the evidence provided or  
38 obtained through the application process and such denial shall include a  
39 statement setting forth the reasons for such denial. Upon a determi-  
40 nation denying or revoking certification, the business enterprise for  
41 which certification has been so denied or revoked shall, upon written  
42 request made within thirty days from receipt of notice of such determi-  
43 nation, be entitled to a hearing before an independent hearing officer  
44 designated for such purpose by the director. The standard of review by  
45 any hearing officer in relation to a written request made pursuant to  
46 this section shall be a preponderance of the evidence. In the event that  
47 a request for a hearing is not made within such thirty day period, such  
48 determination shall be deemed to be final. The independent hearing offi-  
49 cer shall conduct a hearing ~~[and upon]~~ within sixty days from receipt of  
50 such written request for a hearing and no later than sixty days after  
51 the conclusion of such hearing, shall issue a written recommendation to  
52 the director to affirm, reverse or modify such determination of the  
53 director and shall simultaneously provide a copy of the written recom-  
54 mendation to the minority or women-owned business enterprise. Such writ-  
55 ten recommendation shall be issued to the parties. The director, within  
56 thirty days, by order, must accept, reject or modify such recommendation

1 of the hearing officer and set forth in writing the reasons therefor.  
2 The director shall serve a copy of such order and reasons therefor upon  
3 the business enterprise by personal service or by certified mail return  
4 receipt requested. The order of the director shall be subject to review  
5 pursuant to article seventy-eight of the civil practice law and rules.  
6 § 5. This act shall take effect immediately, provided, however, that  
7 the amendments to sections 310 and 314 of the executive law made by  
8 sections one, two, three and four of this act shall not affect the  
9 repeal of such sections and shall be deemed repealed therewith.