

STATE OF NEW YORK

8951

IN ASSEMBLY

January 6, 2020

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

AN ACT to amend the executive law, in relation to regulatory fines for small businesses; and to amend a chapter of the laws of 2019, amending the executive law relating to regulatory fines for small businesses, in relation to the effectiveness thereof

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

Section 1. Section 170-c of the executive law, as added by a chapter of the laws of 2019, amending the executive law relating to regulatory fines for small businesses, as proposed in legislative bills numbers S. 5815-C and A. 7540-B, is amended to read as follows:

§ 170-c. Regulatory penalties for small businesses. 1. Unless explicitly exempted or excluded by any other law, rule or regulation, upon a first time violation of a state agency's rules or regulations related to paperwork submitted to a state agency or actions or omissions that are determined by such state agency to be de minimus, a small business, as defined in subdivision eight of section one hundred two of the state administrative procedure act, shall be afforded a cure period or other opportunity for ameliorative action if the violation can be corrected, the successful completion of which will prevent the imposition of penalties on the party or parties subject to enforcement of such de minimus violation. However, no waiver of penalties or cure period or other opportunity for ameliorative action may be given if the agency determines that the violation [~~resulted~~ may result] in a natural resource damage claim or serious actual harm, or may [~~have presented~~ present] an [~~imminent and substantial~~] endangerment to public safety, human health or the environment, is a violation of human or civil rights law, results in loss of employee wages or benefits, interferes with any remedy, review, or resolution related to harassment or discrimination claims, was or is a willful violation, [~~involved~~ involves] tax fraud, violates requirements related to federal funding to the state, relates to state funding or procurement, is similar to prior violations, is a penal law violation, [~~or~~] relates to a material or substantive portion of the

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

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business, or is in contravention of the public interest and/or policy reflected by the agency's mission. Upon such first violation, a state agency shall (a) provide the small business with a copy of ~~[any]~~ the applicable small business regulation guides pursuant to section one hundred two-a of the state administrative procedure act and any other helpful [compliance] guidance or information detailing the agency's rules and regulations, to the extent such materials exist, or (b) to the extent practicable, provide ~~[an opportunity for an in-person meeting, teleconference or videoconference with the small business to help assist]~~ such small business assistance with compliance with the agency's rules and regulations. The agency shall have the discretion to determine the appropriate period of time to allow ~~[for]~~ such small business to cure or take such other ameliorative action ~~[to occur]~~ to address such violation, which shall be reasonable but shall not be less than ~~[ninety]~~ fifteen business days unless a longer period is allowed pursuant to law or regulation.

2. As used in this section~~[(a) "Small business" shall mean a business which is resident in this state, independently owned and operated, not dominant in its field and employs one hundred or less persons.~~

~~(b)]~~ "[~~State~~] state agency" shall mean an agency as defined in subdivision one of section one hundred two of the state administrative procedure act; provided that "state agency" shall not include the department of taxation and finance ~~[but shall also mean]~~, the workers' compensation board nor the department of financial services.

3. Nothing herein shall prevent or preclude any other waivers of penalties that may be applicable by this or any other agency.

§ 2. Section 2 of a chapter of the laws of 2019, amending the executive law relating to regulatory fines for small businesses, as proposed in legislative bills numbers S. 5815-C and A. 7540-B, is amended to read as follows:

§ 2. This act shall take effect immediately and shall expire and be deemed repealed two years after such date.

§ 3. This act shall take effect immediately, provided, however, that section one of this act takes effect on the same date and in the same manner as a chapter of the laws of 2019, amending the executive law relating to regulatory fines for small businesses, as proposed in legislative bills numbers S. 5815-C and A. 7540-B, takes effect.