STATE OF NEW YORK

10492

IN ASSEMBLY

May 29, 2024

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Berger) -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law, in relation to minority and women-owned business enterprise certification

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

Section 1. Paragraph (e) of subdivision 7 of section 310 of the executive law, as amended by chapter 96 of the laws of 2019, is amended to read as follows:

(e) an enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certification, with a personal net worth that does not exceed fifteen million dollars, and such other amount as the director shall set forth in regulations, as adjusted annually on the first of January for inflation according to the consumer price index of the previous year**; provided, however, notwithstanding any other provision of law to the contrary, for purposes of certification of a minority-owned business enterprise under section three hundred fourteen of this article, the personal net worth limit of fifteen million dollars or more shall not apply to any small business enterprise that manufactures metal or vinyl windows and doors (NAICS codes 332321 and 326199) that is located in a city with a population of more than one million and where eighty percent or more of its employees that work at such location in such city are minority group members as defined in subdivision eight of this section**; and

§ 2. Subdivision 20 of section 310 of the executive law, as amended by chapter 44 of the laws of 2024, is amended to read as follows:

20. "Small business" as used in this section, unless otherwise indicated, shall mean a business which has a significant business presence in the state, is independently owned and operated, not dominant in its field and employs, based on its industry, a certain number of persons as determined by the director, but not to exceed three hundred, except during a declared state disaster emergency as defined pursuant to section twenty-eight of this chapter, not to exceed three hundred employees who work thirty or more hours per week over the period of

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

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fifty-two weeks for a total of one thousand five hundred sixty hours worked, taking into consideration factors which include, but are not limited to, federal small business administration standards pursuant to 13 CFR part 121 and any amendments thereto**; provided, however, notwithstanding any other provision of law to the contrary, for purposes of certification of a minority-owned business enterprise under section three hundred fourteen of this article, the small business employee limit of three hundred persons or more shall not apply to any small business enterprise that manufactures metal or vinyl windows and doors (NAICS codes 332321 and 326199) that is located in a city with a population of more than one million and where eighty percent or more of its employees that work at such location in such city are minority group members as defined in subdivision eight of this section**. The director may issue regulations on the construction of the terms in this definition. For purposes of this subdivision, an employee may break from employment for up to thirteen weeks without the fifty-two week lookback period resetting.

§ 3. Subdivision 1 of section 314 of the executive law, as amended by chapter 567 of the laws of 2022, is amended to read as follows:

1. The director shall promulgate rules and regulations providing for the establishment of a statewide certification program including rules and regulations governing the approval, denial or revocation of any such certification including revocations for convictions for fraudulently misrepresenting the status of minority or women-owned business enterprises. Such rules shall set forth the maximum personal net worth of a minority group member or woman who may be relied upon to certify a business as a minority-owned business enterprise or women-owned business enterprise with a minimum personal net worth threshold of fifteen million dollars, and may thereafter establish different maximum levels of personal net worth for minority group members and women on an industry-by-industry basis for such industries as the director shall determine. Such regulations relating to the classification of the industry-by-industry personal net worth thresholds above the fifteen million dollar threshold shall consider the personal net worth of the owners of both certified and non-certified businesses, including but not limited to, prime contractors and subcontractors, as well as any such other factors needed to establish such thresholds. Such rules and regulations shall include, but not be limited to, such matters as may be required to ensure that the established procedures thereunder shall at least be in compliance with the code of fair procedure set forth in section seventy-three of the civil rights law, and consistent with the provisions of article twenty-three-A of the correction law. **Notwithstanding any provision of this subdivision or any other provision of law to the contrary, for purposes of certification of a minority-owned business enterprise, the personal net worth limit of fifteen million dollars or more shall not apply to any small business enterprise that manufactures metal or vinyl windows and doors (NAICS codes 332321 and 326199) that is located in a city with a population of more than one million and where eighty percent or more of its employees that work at such location in such city are minority group members as defined in subdivision eight of section three hundred ten of this article.**

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

(vi) be owned by an individual or individuals, whose ownership, control and operation are relied upon for certification, with a personal

net worth that does not exceed fifteen million dollars and such other amount as the director shall set forth in regulations, as adjusted annually for inflation according to the consumer price index**; provided, however, notwithstanding any other provision of law to the contrary, for purposes of certification of a minority-owned business enterprise, the personal net worth limit of fifteen million dollars or more shall not apply to any small business enterprise that manufactures metal or vinyl windows and doors (NAICS codes 332321 and 326199) that is located in a city with a population of more than one million and where eighty percent or more of its employees that work at such location in such city are minority group members as defined in subdivision eight of section three hundred ten of this article**; and

§ 5. This act shall take effect immediately; provided the amendments to article 15-A of the executive law made by sections one, two, three and four of this act shall not affect the repeal of such article and shall be deemed repealed therewith.