

SUBJECT: Modifying state agency enforcement of laws regulating small businesses

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 11 ayes — Paddie, Hernandez, Deshotel, Harless, Howard, Hunter, P. King, Metcalf, Shaheen, Slawson, Smithee

0 nays

2 absent — Lucio, Raymond

SENATE VOTE: On final passage, April 8 — 30-0

WITNESSES: For — (*Registered, but did not testify:* Rod Bordelon, Texas Public Policy Foundation; Annie Spilman, NFIB; Kelsey Streufert, Texas Restaurant Association)

Against — None

BACKGROUND: Concerns have been raised that certain current regulations impose a significant administrative burden on small businesses that may lack compliance teams or other resources to ensure compliance. There have been calls to provide more flexibility for small businesses to remedy a first instance of a regulatory violation.

DIGEST: SB 424 would prohibit a state agency with regulatory authority over a small business 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 provided the business written notice of the violation and an opportunity to remedy the violation within a reasonable time after receiving the notice. A violation would not be considered a continuing violation during the reasonable time in which the small business attempted in good faith to remedy it.

By January 1, 2022, each state agency subject to the bill would have to

adopt a policy consistent with the bill's requirements that provided that the agency would not attempt to recover an administrative penalty during the reasonable time the small business was attempting to remedy the violation.

The bill's requirements would not apply to an action taken by:

- a state agency to protect public health and safety or the environment;
- an officer listed in statute governing criminal history record disclosure in connection with financial services; or
- the Texas Workforce Commission if the action was required to conform to or comply with federal law.

A state agency would be required to implement the bill's provisions only if the Legislature appropriated money specifically for that purpose.

Otherwise the state agency could, but would not be required to, implement the bill's provisions using other available appropriations.

The bill would take effect September 1, 2021.

NOTES:

According to the Legislative Budget Board, the fiscal implications of the bill are indeterminate. The costs associated with implementing the provisions of the bill would depend on the number of first time violations of statute or rule by small businesses and the number of those small businesses that are able to remedy the violation. The number of small businesses that would be allowed the opportunity to remedy a first violation of a statute or of a rule administered by a state agency before any penalties are imposed is unknown.