

**First Regular Session
Seventy-first General Assembly
STATE OF COLORADO**

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 17-0823.01 Debbie Haskins x2045

HOUSE BILL 17-1270

HOUSE SPONSORSHIP

Kraft-Tharp and Lawrence, Duran, Gray, Landgraf

SENATE SPONSORSHIP

Williams A. and Coram,

House Committees
Business Affairs and Labor

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING AGENCY DISCRETION IN ENFORCEMENT PROCEDURES**
102 **FOR MINOR VIOLATIONS OF CERTAIN STATE RULES BY SMALL**
103 **BUSINESSES EMPLOYING NO MORE THAN FIFTY EMPLOYEES.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill contains a legislative declaration about the difficulties small businesses encounter when attempting to stay current with changing rules and new rules that affect their businesses. The bill identifies 4 specific actions that the executive branch could take to inform small businesses about proposed and new rules.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

HOUSE
Amended 2nd Reading
March 31, 2017

The bill creates a system that gives state agencies discretion in imposing fines upon a business for a first-time offense of a minor violation. The agency's discretion applies to small businesses with 50 or fewer employees (business).

Unless specifically stated otherwise in statute, a state agency has discretion to give the business an opportunity to cure the violation and then waive the fine if the minor violation is cured or to reduce the penalties or fine.

The opportunity to cure a minor violation does not apply in cases where an agency is required by statute to assess a fine for noncompliance.

The bill defines "minor violation" as a violation that:

- ! Relates to operational or administrative matters such as record keeping, retention of data, or failing to file reports or forms; and
- ! Relates to a rule promulgated within the 12 months immediately preceding the alleged violation; and
- ! Is enforced by a fine, either in total or in the aggregate, of \$500 or less.

"Minor violation" does not include:

- ! Any matter that places the safety of employees; other persons; or the public health, safety, or environment at risk; or
- ! Violations relating to:
 - ! The issuance of or denial of benefits or compensation to employees; or
 - ! Activities required by federal law.

Each state agency shall conduct an analysis of noncompliance with its rules to identify rules with the greatest frequency of noncompliance, rules that generate the greatest amount of fines, how many first-time offenders were given the opportunity to cure a minor violation, and what factors contribute to noncompliance by regulated businesses. The agency shall consider and review what actions should be taken to address the issues identified.

Each principal department containing agencies that issue fines for violations of new rules shall prepare an annual report for the general assembly summarizing the results of its analysis of noncompliance. The principal department shall absorb the costs of preparing the annual reports within existing resources.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 finds and declares that:

1 (a) Businesses in Colorado, especially small businesses that
2 employ fifty employees or fewer, find it challenging to stay current with
3 changing rules and new rules that affect their businesses; and

4 (b) State agencies should engage in collaborative efforts to make
5 it easier for small businesses to find out about proposed and new rules
6 that might affect their businesses so that they can provide input on
7 proposed rules and so that they are better equipped to comply with new
8 rules.

9 (2) The general assembly declares that the executive branch
10 should undertake coordinated efforts to implement the following
11 measures to assist small businesses:

12 (a) Instead of multiple and disjointed notification systems, the
13 executive branch should create a single point of entry for businesses and
14 the public to sign up for notification of proposed rules and newly adopted
15 rules and that such entry point must be user-friendly, easily accessible on
16 a state website, and well-advertised;

17 (b) Each principal department should issue an online quarterly
18 digest that describes new, significant rule changes that impact businesses
19 regulated by its department;

20 (c) The executive branch should create a "one-stop shop" feature
21 that enables businesses to access a searchable online tool to conveniently
22 identify and track proposed new rules; and

23 (d) The executive director of each principal department that
24 exercises rule-making authority should designate an employee to serve as
25 a navigator or contact person to assist businesses with obtaining
26 information about rules and regulatory compliance.

27 **SECTION 2.** In Colorado Revised Statutes, **add** 24-4-104.6 as

1 follows:

2 **24-4-104.6. Impact on small businesses - agency discretion -**
3 **opportunity to cure a violation before imposition of a fine - definition**
4 **- exceptions - analysis.** (1) THIS SECTION APPLIES ONLY TO A SMALL

5 BUSINESS OF FIFTY OR FEWER EMPLOYEES.

6 (2) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
7 REQUIRES:

8 (a) "MINOR VIOLATION" MEANS A VIOLATION THAT:

9 (I) RELATES TO OPERATIONAL OR ADMINISTRATIVE MATTERS SUCH
10 AS RECORD KEEPING, RETENTION OF DATA, OR FAILURE TO FILE REPORTS
11 OR FORMS; AND

12 (II) IS ENFORCED BY A FINE, EITHER IN TOTAL OR IN THE
13 AGGREGATE, OF FIVE HUNDRED DOLLARS OR LESS; AND

14 (III) MEETS ONE OF THE FOLLOWING CONDITIONS:

15 (A) THE VIOLATION RELATES TO A RULE PROMULGATED WITHIN
16 THE TWELVE MONTHS IMMEDIATELY PRECEDING THE ALLEGED VIOLATION;
17 OR

18 (B) THE VIOLATION RELATES TO ANY RULE AND THE BUSINESS
19 THAT HAS COMMITTED THE MINOR VIOLATION HAS BEEN OPERATING AS A
20 BUSINESS FOR LESS THAN ONE YEAR PRIOR TO THE COMMISSION OF THE
21 VIOLATION.

22 (b) "MINOR VIOLATION" DOES NOT INCLUDE:

23 (I) ANY MATTER THAT PLACES THE EMPLOYEES; OTHER PERSONS;
24 OR THE PUBLIC HEALTH, SAFETY, OR ENVIRONMENT AT RISK; OR

25 (II) VIOLATIONS RELATING TO:

26 (A) THE ISSUANCE OF OR DENIAL OF BENEFITS OR COMPENSATION
27 TO EMPLOYEES; OR

1 (B) ACTIVITIES REQUIRED BY FEDERAL LAW.

2 (3) UNLESS SPECIFICALLY STATED OTHERWISE IN STATUTE, AN
3 AGENCY HAS DISCRETION IN IMPOSING A FINE UPON A BUSINESS DESCRIBED
4 IN SUBSECTION (1) OF THIS SECTION FOR A FIRST-TIME OFFENSE OF A MINOR
5 VIOLATION OF AN AGENCY RULE. WHEN AN AGENCY DETERMINES THAT A
6 BUSINESS HAS COMMITTED A FIRST-TIME MINOR VIOLATION OF A RULE, THE
7 AGENCY SHALL IDENTIFY THE RULE VIOLATED, STATE THE AMOUNT OF THE
8 FINE OR FINES THAT ARE DUE, AND INDICATE WHAT STEPS THE BUSINESS
9 NEEDS TO TAKE TO CURE THE VIOLATION. THE AGENCY HAS DISCRETION
10 TO GIVE THE BUSINESS A CURE PERIOD OF THIRTY BUSINESS DAYS FROM
11 THE DATE THE BUSINESS RECEIVES THE NOTICE OF VIOLATION TO CURE THE
12 VIOLATION AND TO WAIVE THE PENALTIES OR FINE IF THE MINOR
13 VIOLATION IS CURED. IF THE BUSINESS:

14 (a) CURES THE MINOR VIOLATION WITHIN THIRTY DAYS, THE
15 AGENCY SHALL WAIVE THE PENALTIES OR FINE, OR BOTH; OR

16 (b) CURES THE MINOR VIOLATION AFTER THE THIRTY-DAY CURE
17 PERIOD HAS RUN, THE AGENCY MAY REDUCE THE PENALTIES OR FINE IN
18 FULL OR IN PART.

19 (4) THIS SECTION DOES NOT APPLY IN CASES WHERE AN AGENCY
20 HAS NO DISCRETION WITH REGARD TO IMPOSING A FINE BUT IS REQUIRED
21 BY STATUTE TO ASSESS A FINE FOR NONCOMPLIANCE WITH A STATUTE OR
22 AN AGENCY RULE.

23 (5) **Analysis.** (a) EACH AGENCY SHALL CONDUCT AN ANALYSIS OF
24 NONCOMPLIANCE WITH ITS RULES TO IDENTIFY RULES WITH THE GREATEST
25 FREQUENCY OF NONCOMPLIANCE, RULES THAT GENERATE THE GREATEST
26 AMOUNT OF FINES, HOW MANY FIRST-TIME OFFENDERS WERE GIVEN THE
27 OPPORTUNITY TO CURE A MINOR VIOLATION, AND THOSE FACTORS THAT

1 CONTRIBUTE TO NONCOMPLIANCE WITH RULES BY REGULATED
2 BUSINESSES. THE ANALYSIS WILL GUIDE EACH DEPARTMENT ON HOW TO
3 IMPROVE ITS EDUCATION AND OUTREACH TO REGULATED BUSINESSES ON
4 COMPLIANCE WITH THE DEPARTMENT'S RULES. THE AGENCY SHALL
5 CONSIDER AND REVIEW:

6 (I) WHETHER THE RULE IS UNCLEAR AND SHOULD BE REWRITTEN;
7 AND

8 (II) WHETHER MORE EDUCATION OR TRAINING OF THE REGULATED
9 BUSINESSES WOULD BE LIKELY TO ACHIEVE BETTER COMPLIANCE WITH THE
10 RULE.

11 (b) ANY PRINCIPAL DEPARTMENT THAT CONDUCTS AN ANALYSIS
12 OF NONCOMPLIANCE WITH RULES ADOPTED BY AGENCIES WITHIN ITS
13 DEPARTMENT PURSUANT TO SUBSECTION (5)(a) OF THIS SECTION SHALL
14 FORWARD THAT ANALYSIS TO THE DEPARTMENT OF REGULATORY
15 AGENCIES, WHO SHALL COMPILE AND SUMMARIZE THOSE ANALYSES INTO
16 ONE COMBINED ANALYSIS OF NONCOMPLIANCE WITH RULES. THE
17 DEPARTMENT OF REGULATORY AGENCIES SHALL INCLUDE THAT COMPILED
18 ANALYSIS IN ITS DEPARTMENTAL PRESENTATION TO ITS OVERSIGHT
19 LEGISLATIVE COMMITTEE OF REFERENCE MADE PURSUANT TO SECTION
20 2-7-203 OF THE "STATE MEASUREMENT FOR ACCOUNTABLE, RESPONSIVE,
21 AND TRANSPARENT (SMART) GOVERNMENT ACT".

22 **SECTION 3. Safety clause.** The general assembly hereby finds,
23 determines, and declares that this act is necessary for the immediate
24 preservation of the public peace, health, and safety.