

A bill for an act
relating to civil actions; regulating the imposition of certain civil penalties by
state agencies; awarding fees and expenses to prevailing parties in certain actions
involving state agencies; amending Minnesota Statutes 2010, sections 15.471,
subdivision 6, by adding a subdivision; 15.472; proposing coding for new law in
Minnesota Statutes, chapter 15.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **[15.062] PENALTY FACTORS.**

(a) In determining the amount of civil penalty to be proposed or assessed in an
administrative or civil action by any state agency, where there is an allegation of a
violation of statute, regulation, term, condition, or any enforceable standard, the following
factors shall be considered by the state agency, delegated county administering state
authority, administrative law judge, or court:

(1) the willfulness of the violation;

(2) the gravity of the violation, including irreparable damage to humans, animals,
air, water, land, or other natural resources of the state;

(3) the number of prior contacts with the person where the state agency offered
reasonable corrective measures prior to issuing the fine;

(4) the history of past violations;

(5) the number of violations;

(6) the economic benefit gained by the person by allowing or committing the
violation;

(7) the costs incurred to correct the violation or otherwise comply;

(8) the person's ability to pay;

(9) other economic factors affecting the feasibility or practicality of compliance;

(10) penalties that similarly situated persons have paid to the state for similar violations;

(11) the cooperation and responsiveness of the person, provided that a penalty shall not be imposed or enhanced because a person has contested a violation or asserted their rights or defenses; and

(12) other factors as justice or other law may require.

(b) For a violation after an initial violation, the state agency, delegated county administering state authority, administrative law judge, or court shall, in determining the amount of a penalty, also consider the following factors:

(1) similarity of the most recent previous violation and the violation to be penalized;

(2) time elapsed since the last violation;

(3) number of previous violations; and

(4) response of the person to the most recent previous violation identified.

(c) In addition to stating the factual and legal basis for each violation, the state agency shall, in its notice, demand, order, or complaint in an administrative or civil proceeding, document the application of these considerations in determining any proposed penalty. The state agency shall provide this documentation to the person subject to the administrative or civil action 30 days before initiating any such action, unless the alleged violation presents an imminent and substantial endangerment to public safety, public health, or the environment.

(d) A penalty or stipulation agreement resulting from a violation of chapters 84, 103G, 115, 115A, or 116, that pollutes, impairs, or destroys the environment may not include expenditures by the violator for purposes that are not directly related to efforts to mitigate or remediate the specific violation.

Sec. 2. Minnesota Statutes 2010, section 15.471, is amended by adding a subdivision to read:

Subd. 3a. **Demand.** "Demand" means the express demand of the agency which led to the civil action or contested case proceeding but does not include a recitation by the agency of the maximum statutory penalty:

(1) in the administrative complaint; or

(2) elsewhere when accompanied by an express demand for a lesser amount.

Sec. 3. Minnesota Statutes 2010, section 15.471, subdivision 6, is amended to read:

Subd. 6. **Party.** (a) Except as modified by paragraph (b), "party" means a person named or admitted as a party, or seeking and entitled to be admitted as a party, in a court

action or contested case proceeding, or a person admitted by an administrative law judge for limited purposes, and who is:

(1) an unincorporated business, partnership, corporation, association, or organization, having not more than 500 employees at the time the civil action was filed or the contested case proceeding was initiated; and

(2) an unincorporated business, partnership, corporation, association, or organization whose annual revenues did not exceed ~~\$7,000,000~~ \$30,000,000 at the time the civil action was filed or the contested case proceeding was initiated.

(b) "Party" also includes a partner, officer, shareholder, member, or owner of an entity described in paragraph (a), clauses (1) and (2).

(c) "Party" does not include a person providing services pursuant to licensure or reimbursement on a cost basis by the Department of Health or the Department of Human Services, when that person is named or admitted or seeking to be admitted as a party in a matter which involves the licensing or reimbursement rates, procedures, or methodology applicable to those services.

Sec. 4. Minnesota Statutes 2010, section 15.472, is amended to read:

15.472 FEES AND EXPENSES; CIVIL ACTION OR CONTESTED CASE PROCEEDING INVOLVING STATE.

(a) If a prevailing party other than the state, in a civil action or contested case proceeding other than a tort action, brought by or against the state, shows that the position of the state was not substantially justified, the court or administrative law judge shall award fees and other expenses to the party unless special circumstances make an award unjust.

(b) If, in a civil action or contested case proceeding arising from an agency action to enforce a party's compliance with a statutory or regulatory requirement, the demand by the agency is substantially in excess of the decision of the administrative law judge or court and is unreasonable when compared with such decision under the facts and circumstances of the case, the administrative law judge or court shall award to the party the fees and other expenses related to defending against the excessive demand, unless the party has committed a willful violation of law or engaged in conduct that unduly and unreasonably protracted the final resolution of the matter in controversy, or special circumstances make an award unjust.

~~(b)~~ (c) A party seeking an award of fees and other expenses shall, within 30 days of final judgment in the action, submit to the court or administrative law judge an application of fees and other expenses which shows that the party is a prevailing party and is eligible to receive an award, and the amount sought, including an itemized statement from any

attorney or expert witness representing or appearing on behalf of the party stating the actual time expended and the rate at which fees and other expenses were computed. The party shall also allege that the position of the state was not substantially justified.

~~(e)~~ (d) The court or administrative law judge may reduce the amount to be awarded under this section, or deny an award, to the extent that the prevailing party during the proceedings engaged in conduct that unduly and unreasonably protracted the final resolution of the matter in controversy. The decision of an administrative law judge under this section must be made a part of the record containing the final decision of the agency and must include written findings and conclusions.

~~(d)~~ (e) This section does not preclude a party from recovering costs, disbursements, fees, and expenses under other applicable law.

Sec. 5. **TITLE.**

This act may be cited as the "Small Business Bill of Rights - Regulatory Fairness Act."

Sec. 6. **EFFECTIVE DATE; APPLICATION.**

This act is effective August 1, 2011, and applies to administrative or civil actions commenced on or after that date.