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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH SESSION

H. F. No. 3047

05/03/2012 Authored by Westrom
The bill was read for the first time and referred to the Committee on Civil Law

1.1 A bill for an act
1.2 relating to civil actions; regulating the imposition of certain civil penalties by
1.3 state agencies; awarding fees and expenses to prevailing parties in certain actions
1.4 involving state agencies; amending Minnesota Statutes 2010, sections 14.045,
1.5 subdivision 3; 15.471, subdivision 6, by adding a subdivision; 15.472.

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

1.7 Section 1. Minnesota Statutes 2010, section 14.045, subdivision 3, is amended to read:

1.8 Subd. 3. **Factors.** (a) If a statute or rule gives an agency discretion over the amount
1.9 of a fine or civil penalty, the agency must take the following factors into account in
1.10 determining the amount of the fine or penalty:

1.11 (1) the willfulness of the violation;
1.12 (2) the gravity of the violation, including damage to humans, animals, and the
1.13 natural resources of the state;

1.14 (3) the history of past violations;
1.15 (4) the number of violations;
1.16 (5) the economic benefit gained by the person by allowing or committing the
1.17 violation; ~~and~~

1.18 (6) fines or penalties that similarly situated persons have been assessed for similar
1.19 violations;

1.20 (7) the cooperation and responsiveness of the person, provided that a fine or penalty
1.21 shall not be imposed or enhanced because a person has contested an alleged violation or
1.22 asserted a right or defense provided for in law; and

1.23 ~~(6)~~ (8) other factors that justice may require.

1.24 (b) For a violation after an initial violation, the following factors must be considered
1.25 in addition to the factors in paragraph (a):

- 2.1 (1) similarity of recent previous violations to the current violation to be penalized;
- 2.2 (2) time elapsed since the last violation;
- 2.3 (3) number of previous violations; and
- 2.4 (4) response of the person to the most recent previous violation identified.

2.5 (c) In addition to stating the factual and legal basis for a violation, a state agency

2.6 shall, in its notice, demand, order, or complaint in an administrative or civil proceeding,

2.7 document the application of these considerations in determining the amount of any

2.8 proposed fine or penalty. The agency shall provide this documentation to the party subject

2.9 to the administrative or civil action at least 30 days prior to initiating the action, unless the

2.10 alleged violation imminently and substantially endangers public safety, public health, or

2.11 the environment. Nothing in this paragraph limits the ability of an agency, at any time, to

2.12 seek injunctive relief related to an alleged violation.

2.13 (d) A penalty or stipulation agreement may not include expenditures by the party

2.14 alleged to have committed a violation for purposes that are not reasonably related to efforts

2.15 to mitigate or remediate the specific violation, unless otherwise agreed to by the party.

2.16 (e) A party subject to a proposed fine or penalty under this section is entitled to offer

2.17 affirmative defenses including, but not limited to:

2.18 (1) the number of prior contacts where a state agency offered reasonable corrective

2.19 measures prior to issuing a fine or penalty;

2.20 (2) the ability of the party to pay the proposed fine or penalty; and

2.21 (3) other economic factors affecting the feasibility or practicality of compliance by

2.22 the party.

2.23 (f) As used in paragraphs (c) to (e), "party" has the meaning given in section 15.471,

2.24 subdivision 6.

2.25 (g) Paragraphs (c) to (e) do not apply to civil penalties assessed under chapter 10A

2.26 or 211B.

2.27 Sec. 2. Minnesota Statutes 2010, section 15.471, is amended by adding a subdivision

2.28 to read:

2.29 Subd. 3a. **Demand.** "Demand" means the express demand of the agency which led

2.30 to the civil action or contested case proceeding but does not include a recitation by the

2.31 agency of the maximum statutory penalty:

2.32 (1) in the administrative complaint; or

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

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

3.1 Subd. 6. **Party.** (a) Except as modified by paragraph (b), "party" means a person
 3.2 named or admitted as a party, or seeking and entitled to be admitted as a party, in a court
 3.3 action or contested case proceeding, or a person admitted by an administrative law judge
 3.4 for limited purposes, and who is:

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

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

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

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

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

3.19 **15.472 FEES AND EXPENSES; CIVIL ACTION OR CONTESTED CASE**
 3.20 **PROCEEDING INVOLVING STATE.**

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

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

3.34 ~~(b)~~ (c) A party seeking an award of fees and other expenses shall, within 30 days of
 3.35 final judgment in the action, submit to the court or administrative law judge an application

4.1 of fees and other expenses which shows that the party is a prevailing party and is eligible
4.2 to receive an award, and the amount sought, including an itemized statement from any
4.3 attorney or expert witness representing or appearing on behalf of the party stating the
4.4 actual time expended and the rate at which fees and other expenses were computed. The
4.5 party shall also allege that the position of the state was not substantially justified.

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

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

4.14 Sec. 5. **TITLE.**

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

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

4.18 This act is effective August 1, 2012, and applies to administrative or civil actions
4.19 commenced on or after that date.