

SENATE
STATE OF MINNESOTA
EIGHTY-SEVENTH LEGISLATURE

S.F. No. 1298

(SENATE AUTHORS: THOMPSON)

DATE	D-PG	OFFICIAL STATUS
04/26/2011	1409	Introduction and first reading Referred to Judiciary and Public Safety
02/27/2012	3952a	Comm report: To pass as amended and re-refer to State Government Innovation and Veterans
03/23/2012		Comm report: To pass as amended and re-refer to Finance

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 14.045,
subdivision 3; 15.471, subdivision 6, by adding a subdivision; 15.472.

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

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

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

(1) the willfulness of the violation;

(2) the gravity of the violation, including damage to humans, animals, and the
natural resources of the state;

(3) the history of past violations;

(4) the number of violations;

(5) the economic benefit gained by the person by allowing or committing the
violation; ~~and~~

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

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

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

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

- (1) similarity of recent previous violations to the current 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 a violation, a state agency shall, as part of its notice, demand, order, or complaint in an administrative or civil proceeding, include documentation of the application of the factors under paragraphs (a) and (b) in determining the amount of any proposed fine or penalty. This paragraph does not limit the ability of an agency, at any time, to seek injunctive relief related to an alleged violation.

(d) A party subject to a proposed fine or penalty under this section is entitled to offer affirmative defenses including, but not limited to:

(1) the number of prior contacts where a state agency offered reasonable corrective measures before issuing a fine or penalty;

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

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

(e) As used in paragraphs (c) and (d), "party" has the meaning given in section 15.471, subdivision 6.

(f) Paragraphs (c) and (d) do not apply to civil penalties assessed under chapter 10A or 211B.

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 that led to the civil action or contested case proceeding.

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 a state 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 final decision of the administrative law judge or court and is unreasonable when compared with that 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.

~~(c)~~ (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. **CITATION.**

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, 2012, and applies to administrative proceedings or civil actions commenced on or after that date.