

## **BILL ANALYSIS**

S.B. 424  
By: Hinojosa  
State Affairs  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

The Small Business Assistance Advisory Task Force within the Texas Economic Development and Tourism Office regularly produces reports highlighting issues facing small businesses in Texas and providing recommendations for addressing those issues and improving the climate for small businesses. The task force's 2019 biennial report focused on the high indirect costs and burdens that small businesses are often faced with under newly passed regulations. Many of these small businesses are unlikely to have compliance teams or resources to ensure compliance, which can result in costly penalties and fines. Consequently, many small businesses feel forced to hire additional staff and attorneys to navigate the complicated rules and keep up with the ensuing administrative burden. In response to this issue and to provide small businesses with relief from future regulation, the task force recommended an implementation of a right to cure policy that would allow a small business in violation of a regulation the ability to remedy the issue within a reasonable time before a penalty is imposed if it is the business's first violation. S.B. 424 seeks to require each applicable state agency to adopt such a policy.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

S.B. 424 amends the Government Code to 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 provides the business written notice of the violation and an opportunity to remedy the violation within a reasonable time after receiving the notice. The bill requires each such agency, not later than January 1, 2022, to adopt a policy consistent with that requirement to provide notice and an opportunity to remedy and requires that the policy provide that the agency will not attempt to recover an administrative penalty during the reasonable time the business is attempting in good faith to remedy the violation. The bill establishes that a violation is not considered to be a continuing violation during the reasonable time in which the small business attempts in good faith to remedy the violation.

For purposes of the bill's provisions, small business means a for-profit legal entity that is independently owned and operated and has fewer than 100 employees or less than \$6 million in annual gross receipts. The bill does not apply to an action taken by any of the following:

- a state agency to protect public health and safety or the environment;

- the securities commissioner, the banking commissioner, the savings and mortgage lending commissioner, the consumer credit commissioner, or the credit union commissioner in connection with the regulation of financial services; or
- the Texas Workforce Commission, if the action is required to conform to or comply with federal law.

Implementation of a provision of the bill by an applicable state agency is mandatory only if a specific appropriation is made for that purpose.

**EFFECTIVE DATE**

September 1, 2021.