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# JEDE AMENDMENTS

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**SB 1457 (Borgeas): Amended Senate 6/18/20**  
**Submitted by: Toni Symonds, JEDE Committee Staff**

## **Item 1. SB 1457 (Borgeas) California Small Business Regulatory Fairness Act**

**Summary:** SB 1457 requires a state agency, as defined, to assist small businesses in complying with statutes and regulations and to establish a policy that sets the parameters under which the agency can reduce or waive certain civil penalties conferred on a small business, as defined.

### **Summary of Proposed Amendments**

1. Delete the requirement for state agencies to assist small businesses during an enforcement action.
2. Clarify that the civil penalties eligible to be reduced or waived are only those penalties in which the state agency has the discretion to set the financial value or penalty.
3. Replace the word “imminent” with the word “serious” in the provision relating to health, safety, and environmental threats.
4. Clarify that a state agency is authorized to adopt guidelines, regulations, directives, or other administrative documents appropriate to implement the bill.
5. Authorize a state agency to apply conditions to the reduction or waiver of penalties, such as requiring the small business to take certain corrective actions or attend specified training.
6. Delete the provision that required the state agency to determine whether the small business had a “low degree of culpability when its conduct is judged in light of its size, length of operation, and the sophistication of its owners or managers.” This amendment is based on feedback from state agencies that this determination may be difficult to make.
7. Include “negligence” in the list of factors the state agency is required to consider when determining a reduction in fines.
8. Make other clarifying changes consistent with the intent of the bill.

### **Mock-up of Proposed Amendments Appears on the Following Page**

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# Mock-up of Proposed Amendments to SB 1457

**SECTION 1.** This act shall be known, and may be cited, as the California Small Business Regulatory Fairness Act.

**SEC. 2.** Chapter 3.7 (commencing with Section 11367) is added to Part 1 of Division 3 of Title 2 of the Government Code, to read:

## **CHAPTER 3.7.** California Small Business Regulatory Fairness Act

**11367.** The following terms shall have the following meanings for purposes of this chapter:

(a) “Small business” means a business that is all of the following:

- (1) Independently owned and operated.
- (2) Not dominant in its field of operation.
- (3) Has fewer than 100 employees.

(4) Has average annual gross receipts of fifteen million dollars (\$15,000,000) or less over the previous three years.

(b) “State agency” means any state agency, department, board, or commission that has significant rulemaking authority over small businesses, except the Franchise Tax Board, the California Department of Tax and Fee Administration, or the State Board of Equalization.

**11367.1.** (a) A state agency shall ~~do all of the following:~~

~~(1) Assist a small business in achieving compliance with statutes and regulations administered by the state agency. This requirement may be met through the implementation of the requirements in Section 11148.5.~~

~~(2) Assist a small business during an enforcement action by the state agency.~~

~~(3) (A) By~~ **by** January 1, 2022, establish a **specific** policy to provide for the reduction or waiver of civil penalties for violations of regulatory or statutory requirements by a small business under ~~appropriate~~ **certain** circumstances. **These civil penalties shall be those penalties that the state agency has the discretion to set the financial value or condition.**

~~(B) (1)~~ **(1)** The policy **established pursuant to this chapter** shall ~~exclusively~~ be applied to **a** small ~~businesses~~ **business** that ~~meet~~ **meets** all of the following criteria:

(i) The violation by the small business did not involve willful or criminal conduct.

(ii) The violation by the small business did not pose **a serious** ~~an imminent~~ health, safety, or environmental threat.

~~(iii) The small business has a low degree of culpability when its conduct is judged in light of its size, length of operation, and the sophistication of its owners or managers.~~

~~(C) (2)~~ **(2)** The policy shall include the factors that shall be considered when the agency determines if, and to what extent, the civil penalties shall be reduced or waived. The policy shall be designed to result in a waiver or a range of reductions, based upon all of the following factors, which include, but are not limited to:

(i) The degree to which the small business cooperated during any investigation by the state agency.

(ii) The degree to which the small business engaged in subsequent action to correct the violation, as appropriate.

(iii) The prior history of the small business in meeting regulatory requirements of the agency.

(iv) The degree to which the level of the penalty would impede the small business from continuing to conduct business.

**(v) The degree to which the small business's actions were negligent.**

**(b) The state agency may apply conditions to the reduction or waiver of penalties, including, but not limited to, the small business taking certain corrective action or attending specified training.**

**(c) The state agency may adopt guidelines, regulations, directives, or other administrative documents appropriate to implement the policy adopted pursuant to this chapter.**

**(d)** The state agency may update the policy from time to time to reflect current issues and conditions affecting small businesses and the state agency.

**(e)** ~~(e)~~ (1) The state agency shall post a current copy of the policy on the state agency's internet website within 30 days of adoption or amendment of the policy.

(2) The state agency shall annually post information on the state agency's internet website as to the aggregate number and category of enforcement actions that were reviewed pursuant to this section, the total number of small businesses and actions that qualified for civil penalty reductions or waivers in the report period, and the total dollar amount of reductions and waivers issued.

~~**(f)** (d) The notice shall include a link to where the policy and annual utilization report pursuant to paragraph (2) of subdivision (c) is posted on the state agency's internet website. [This language is inserted under subparagraph (2) below]~~ **(1)** The state agency shall notify the Office of Small Business Advocate within 15 working days of any the following situations occurring:

~~(1)~~ **(A)** The policy is adopted or amended.

~~(2)~~ **(B)** The annual utilization report is posted.

~~(3)~~ **(C)** The policy or the annual utilization report is relocated from the state agency's internet website. The notice shall include a link to the new internet website location.

~~(4)~~ **(D)** The policy or the annual utilization report is removed from the state agency's internet website. The notice shall include an explanation as to why the information was removed.

**(2) The notice shall include a link to where the policy and annual utilization report pursuant to paragraph (2) of subdivision (c) is posted on the state agency's internet website.** [This is the same language as struck from (d)]

**11367.2.** This chapter shall become operative only upon the Legislature making an appropriation **to the state agency** to implement the provisions of this chapter. **The state agency shall post notice of the appropriation to the homepage of its internet webpage and send notice of the appropriation to the Secretary of State and Legislative Counsel.** [This is a fiscal amendment and will be offered by the Author when the bill is in the Assembly Appropriations Committee. The amendment is shown in this mock-up for transparency.]