

GOVERNMENT CODE

CHAPTER 2006. AGENCY ACTIONS AFFECTING SMALL BUSINESSES

SUBCHAPTER A. ADOPTION OF RULES

Sec. 2006.001. DEFINITIONS. In this subchapter:

(1) "Micro-business" means a legal entity, including a corporation, partnership, or sole proprietorship, that:

- (A) is formed for the purpose of making a profit;
- (B) is independently owned and operated; and
- (C) has not more than 20 employees.

(2) "Small business" means a legal entity, including a corporation, partnership, or sole proprietorship, that:

- (A) is formed for the purpose of making a profit;
- (B) is independently owned and operated; and
- (C) has fewer than 100 employees or less than \$1 million in annual gross receipts.

(3) "State agency" means a department, board, bureau, commission, division, office, council, or other agency of the state.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 558, Sec. 5, eff. Sept. 1, 1999.

Sec. 2006.002. ADOPTION OF RULES WITH ADVERSE ECONOMIC EFFECT. (a) A state agency considering adoption of a rule that would have an adverse economic effect on small businesses or micro-businesses shall reduce that effect if doing so is legal and feasible considering the purpose of the statute under which the rule is to be adopted.

(b) To reduce an adverse effect on small businesses, an agency may:

- (1) establish separate compliance or reporting requirements for small businesses;
- (2) use performance standards in place of design standards for small businesses; or
- (3) exempt small businesses from all or part of the rule.

(c) Before adopting a rule that would have an adverse economic effect on small businesses, a state agency shall prepare a statement of the effect of the rule on small businesses. The statement must include:

- (1) an analysis of the cost of compliance with the rule for small businesses; and

- (2) a comparison of the cost of compliance for small businesses with the cost of compliance for the largest businesses affected by the rule, using at least one of the following standards:

- (A) cost for each employee;
- (B) cost for each hour of labor; or
- (C) cost for each \$100 of sales.

(d) The agency shall include the statement of effect as part of the notice of the proposed rule that the agency files with the secretary of state for publication in the Texas Register.

(e) This section does not apply to a rule adopted under Title 2, Tax Code.

(f) To reduce an adverse effect of rules on micro-businesses, a state agency shall adopt provisions concerning micro-businesses that are uniform with those outlined in Subsections (b)-(d) for small businesses.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1041, Sec. 50, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 558, Sec. 6, eff. Sept. 1, 1999.

SUBCHAPTER B. RECOVERY OF COURT COSTS AND ATTORNEY FEES

Sec. 2006.011. DEFINITIONS. In this subchapter:

(1) "Groundless" means having no basis in law or fact.

(2) "Small business" means a legal entity, including a corporation, partnership, or sole proprietorship that:

- (A) is formed for the purpose of making a profit;
- (B) is independently owned and operated;
- (C) is not a publicly held corporation; and
- (D) has fewer than 100 employees or less than \$1 million in annual gross receipts at the end of the fiscal year preceding the year of the filing of an administrative adjudicatory proceeding or civil action in which the entity is seeking recovery under this subchapter.

(3) "State agency" means a board, commission, department, or office that:

- (A) is in the executive branch of state

government;

(B) was created by the constitution or a statute of this state; and

(C) has statewide jurisdiction.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2006.012. EXCEPTIONS. This subchapter does not apply to a proceeding or action that is:

(1) filed before September 1, 1987; or

(2) brought under:

(A) Subchapter E, Chapter 17, Business & Commerce Code (Deceptive Trade Practices-Consumer Protection Act); or

(B) Chapter 21, Insurance Code.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2006.013. REQUIREMENTS FOR RECOVERY. (a) In an administrative adjudicatory proceeding or a civil action resulting from a complaint issued by a state agency against a small business under the agency's administrative or regulatory functions, the small business may be awarded reasonable attorney fees and court costs if:

(1) it is a small business at the time it becomes a party to the proceeding or action;

(2) it prevails in the proceeding or action; and

(3) the proceeding or action was groundless and brought:

(A) in bad faith; or

(B) for purposes of harassment.

(b) For purposes of this section, a small business prevails in a proceeding or action if there is not:

(1) an adjudication, stipulation, or acceptance of liability; or

(2) a determination of noncompliance, violation, infringement, deficiency, or breach on the part of the small business.

(c) A small business may not recover under this subchapter if the parties have executed a settlement agreement that, while not stipulating liability or violation, requires the small business to take corrective action or pay a monetary sum.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2006.014. MOTION FOR RECOVERY. (a) To recover under this subchapter, a small business, not later than the 30th day after the date of the filing of the administrative adjudicatory proceeding or civil action, must file a written motion that:

(1) alleges that the proceeding or action was groundless and brought:

(A) in bad faith; or

(B) for purposes of harassment;

(2) states the facts that justify the small business's claim; and

(3) states that if the claim is dismissed or judgment is awarded to the small business, the small business will seek recovery of attorney fees and court costs.

(b) A small business may not recover attorney fees and court costs under this subchapter if, not later than the 30th day after the date the small business gives notice that it has filed a motion under Subsection (a), the state agency:

(1) amends the pleadings so that the small business that has filed the motion is no longer a party to the proceeding or action; or

(2) dismisses the proceeding or action.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2006.015. DETERMINATION OF CLAIM. (a) The hearings officer in an administrative adjudicatory proceeding or the court in a civil action shall determine whether the proceeding or action is groundless and brought:

(1) in bad faith; or

(2) for purposes of harassment.

(b) In making the determination, the hearings officer or court shall consider:

(1) the multiplicity of parties;

(2) the complexity of the claims and defenses;

(3) the length of time available to the agency to investigate and conduct discovery; and

(4) affidavits, depositions, and any other relevant matters.

(c) In making a determination, a hearings officer or a court

may not consider the amount of damages, civil penalties, fines, taxes, or other monetary recovery sought by the state agency.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2006.016. EFFECT OF DETERMINATION OR ORDER. A determination made or order issued under this subchapter is not grounds for any liability, sanction, or grievance except as provided by this subchapter.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.