

GOVERNMENT CODE

TITLE 10. GENERAL GOVERNMENT

SUBTITLE A. ADMINISTRATIVE PROCEDURE AND PRACTICE

CHAPTER 2006. AGENCY ACTIONS AFFECTING SMALL BUSINESSES AND RURAL
COMMUNITIES

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.

(1-a) "Rural community" means a municipality with a population of less than 25,000.

(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 \$6 million in annual gross receipts.

(3) "State agency" means a department, board, bureau, commission, division, office, council, or other agency of the state and includes an officer who is authorized by law to determine contested cases.

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.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1270 (H.B. 3430), Sec. 2, eff. October 1, 2007.

Acts 2017, 85th Leg., R.S., Ch. 898 (H.B. 3433), Sec. 2, eff. September 1, 2017.

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, micro-businesses, or rural communities 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 and rural communities, as applicable, an agency may:

(1) establish separate compliance or reporting requirements for small businesses and rural communities;

(2) use performance standards in place of design standards for small businesses and rural communities; or

(3) exempt small businesses and rural communities from all or part of the rule.

(c) Before adopting a rule that may have an adverse economic effect on small businesses or rural communities, as applicable, a state agency shall prepare:

(1) an economic impact statement that estimates the number of small businesses or rural communities subject to the proposed rule, projects the economic impact of the rule on small businesses or rural communities, and describes alternative methods of achieving the purpose of the proposed rule; and

(2) a regulatory flexibility analysis that includes the agency's consideration of alternative methods of achieving the purpose of the proposed rule.

(c-1) The analysis under Subsection (c) shall consider, if consistent with the health, safety, and environmental and economic welfare of the state, using regulatory methods that will accomplish the objectives of applicable rules while minimizing adverse impacts on small businesses or rural communities, as applicable. The state agency must include in the analysis several proposed methods of reducing the adverse impact of a proposed rule on a small business or rural community.

(d) The agency shall include the economic impact statement and regulatory flexibility analysis as part of the notice of the proposed rule that the agency files with the secretary of state for publication in the Texas Register and shall provide copies to:

(1) the standing committee of each house of the legislature that is charged with reviewing the proposed rule; and

(2) if feasible, each member of the legislature who represents a rural community adversely impacted by the proposed rule.

(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.

(g) The attorney general, in consultation with the comptroller, shall prepare guidelines to assist a state agency:

(1) in determining a proposed rule's potential adverse economic effects on small businesses and rural communities, as applicable; and

(2) in identifying and evaluating alternative methods of achieving the purpose of a proposed rule.

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.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1270 (H.B. [3430](#)), Sec. 3, eff. October 1, 2007.

Acts 2017, 85th Leg., R.S., Ch. 898 (H.B. [3433](#)), Sec. 3, eff. September 1, 2017.

Sec. 2006.003. OPPORTUNITY TO REMEDY VIOLATION; POLICY.

(a) This section applies only to a state agency with regulatory authority over a small business.

(b) A state agency may not impose 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 small business written notice of the violation and an opportunity to remedy the violation within a reasonable time after receiving the notice. Notwithstanding any other law, 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.

(c) Each state agency subject to this section shall adopt a policy consistent with the requirements of Subsection (b). The policy must provide that the agency will not attempt to recover an administrative penalty during the reasonable time the small business is attempting in good faith to remedy the violation.

(d) This section does not apply to an action taken by:

(1) a state agency to protect public health and safety or the environment;

(2) an officer listed in Section 411.0765(b)(18) in connection with the regulation of financial services; or

(3) the Texas Workforce Commission if the action is required to conform to or comply with federal law.

Added by Acts 2021, 87th Leg., R.S., Ch. 563 (S.B. 424), Sec. 1, eff. September 1, 2021.

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.