

Calendar No. 628116TH CONGRESS
2^D SESSION**S. 2757****[Report No. 116–326]**

To waive the imposition of a civil fine for certain first-time paperwork violations by small business concerns.

IN THE SENATE OF THE UNITED STATES

OCTOBER 31, 2019

Mr. LANKFORD (for himself, Ms. HASSAN, Mr. RUBIO, and Mr. INHOFE) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

DECEMBER 15, 2020

Reported by Mr. JOHNSON, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]**A BILL**

To waive the imposition of a civil fine for certain first-time paperwork violations by small business concerns.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Harmless Error Lesser
3 Penalty for Small Businesses Act” or the “HELP for
4 Small Businesses Act”.

5 **SEC. 2. PAPERWORK VIOLATIONS BY SMALL BUSINESSES.**

6 (a) **IN GENERAL.**—Section 3512 of title 44, United
7 States Code, is amended by adding at the end the fol-
8 lowing:

9 “(c) **SMALL BUSINESSES.**—

10 “(1) **DEFINITIONS.**—In this subsection:

11 “(A) **FIRST-TIME VIOLATION.**—The term
12 ‘first-time violation’ means a violation by a
13 small business concern of a requirement regard-
14 ing collection of information by an agency,
15 where the small business concern has not pre-
16 viously violated any similar requirement regard-
17 ing collection of information by that agency.

18 “(B) **SMALL BUSINESS CONCERN.**—The
19 term ‘small business concern’ has the meaning
20 given the term in section 3 of the Small Busi-
21 ness Act (15 U.S.C. 632).

22 “(2) **FIRST-TIME VIOLATION.**—

23 “(A) **IN GENERAL.**—Except as provided in
24 subparagraph (C), in the case of a first-time
25 violation by a small business concern of a re-
26 quirement regarding the collection of informa-

1 tion by an agency, the head of the agency shall
2 not impose a civil fine on the small business
3 concern.

4 “(B) DETERMINATION.—For purposes of
5 determining whether to impose a civil fine on a
6 small business concern under subparagraph (A),
7 the head of an agency shall not take into ac-
8 count any violation by the small business con-
9 cern of a requirement regarding collection of in-
10 formation by another agency.

11 “(C) EXCEPTION.—The head of an agency
12 may impose a civil fine on a small business con-
13 cern for a first-time violation if the head of the
14 agency determines that—

15 “(i) the violation has the potential to
16 impede or interfere with the detection of
17 criminal activity;

18 “(ii) the violation is a violation of an
19 internal revenue law or a law concerning
20 the assessment or collection of any tax,
21 debt, revenue, or receipt;

22 “(iii) the violation was not corrected
23 on or before the date that is 180 days
24 after the date on which the head of the
25 agency provided the small business concern

1 with actual notice of the violation in writ-
 2 ing; or

3 “(iv) except as provided in paragraph
 4 (3), the violation—

5 “(I) presents a danger to the
 6 public health or safety; or

7 “(II) has the potential to cause
 8 serious harm to the public interest.

9 “(3) DANGER TO PUBLIC HEALTH OR SAFETY
 10 OR POTENTIAL HARM TO PUBLIC INTEREST.—

11 “(A) IN GENERAL.—In any case in which
 12 the head of an agency determines under para-
 13 graph (2)(C)(iv) that a violation presents a
 14 danger to the public health or safety or has the
 15 potential to cause serious harm to the public in-
 16 terest, the head of the agency may determine
 17 not to impose a civil fine on the small business
 18 concern if the violation is corrected not later
 19 than 24 hours after the head of the agency pro-
 20 vides the owner of the small business concern
 21 with actual notice of the violation in writing.

22 “(B) CONSIDERATIONS.—In determining
 23 whether to impose a civil fine under subpara-
 24 graph (A), the head of an agency shall take into

1 account the nature and seriousness of the viola-
 2 tion, including—

3 “(i) whether the violation is technical
 4 or inadvertent or involves willful or crimi-
 5 nal conduct; and

6 “(ii) whether the small business con-
 7 cern had made a good faith effort to com-
 8 ply with applicable laws and to remedy the
 9 violation within the 24-hour time period
 10 described in that subparagraph.”.

11 (b) **TECHNICAL AND CONFORMING AMENDMENT.**—
 12 Section 3512(b) of title 44, United States Code, is amend-
 13 ed by striking “this section” and inserting “subsection
 14 (a)”.

15 **SECTION 1. SHORT TITLE.**

16 *This Act may be cited as the “Harmless Error Lesser*
 17 *Penalty for Small Businesses Act” or the “HELP for Small*
 18 *Businesses Act”.*

19 **SEC. 2. PAPERWORK VIOLATIONS BY SMALL BUSINESSES.**

20 (a) *IN GENERAL.*—Section 3512 of title 44, United
 21 States Code, is amended by adding at the end the following:

22 “(c) *SMALL BUSINESSES.*—

23 “(1) *DEFINITIONS.*—In this subsection:

24 “(A) *FIRST-TIME VIOLATION.*—The term
 25 ‘first-time violation’ means a violation by a

1 *small business concern of a requirement regard-*
2 *ing collection of information by an agency,*
3 *where the small business concern has not pre-*
4 *viously violated any similar requirement regard-*
5 *ing collection of information by that agency.*

6 “(B) *SMALL BUSINESS CONCERN.*—*The*
7 *term ‘small business concern’, with respect to a*
8 *calendar year, means a business concern that*
9 *employed an average of not more than 50 full-*
10 *time employees on business days during the pre-*
11 *ceding calendar year.*

12 “(2) *FIRST-TIME VIOLATION.*—

13 “(A) *IN GENERAL.*—*Except as provided in*
14 *subparagraph (C), in the case of a first-time vio-*
15 *lation by a small business concern of a require-*
16 *ment regarding the collection of information by*
17 *an agency, the agency shall not impose a civil*
18 *fine on the small business concern.*

19 “(B) *DETERMINATION.*—*For purposes of de-*
20 *termining whether to impose a civil fine on a*
21 *small business concern under subparagraph (A),*
22 *an agency shall not take into account any viola-*
23 *tion by the small business concern of a require-*
24 *ment regarding collection of information by an-*
25 *other agency.*

1 “(C) *EXCEPTION.*—An agency may impose
2 a civil fine on a small business concern for a
3 first-time violation if the agency determines
4 that—

5 “(i) the violation has the potential to
6 impede or interfere with the detection of
7 criminal activity;

8 “(ii) the violation is a violation of an
9 internal revenue law or a law concerning
10 the assessment or collection of any tax, debt,
11 revenue, or receipt;

12 “(iii) the violation was not corrected
13 on or before the date that is 30 days after
14 the date on which the agency provided the
15 small business concern with actual notice of
16 the violation in writing;

17 “(iv) the violation presents, or has the
18 potential to present—

19 “(I) a danger to public health;

20 “(II) a danger to safety; or

21 “(III) a danger, or risk of harm,
22 to the environment; or

23 “(v) the violation has the potential to
24 cause serious harm, injury, or death.

1 “(3) *AGENCY TRACKING OF FIRST-TIME VIOLA-*
2 *TIONS.—*

3 “(A) *IN GENERAL.—The Director shall pro-*
4 *mulgate regulations requiring an agency to track*
5 *each first-time violation of a requirement regard-*
6 *ing the collection of information by the agency.*

7 “(B) *REQUIREMENTS.—In promulgating*
8 *regulations under subparagraph (A), the Direc-*
9 *tor shall ensure that an agency—*

10 “(i) *does not make data compiled*
11 *under the regulations available to the pub-*
12 *lic; and*

13 “(ii) *maintains the data described in*
14 *clause (i) in a format that is consistent*
15 *across agencies.*

16 “(4) *ANNUAL REPORT.—Each year, any agency*
17 *that waived a civil fine under paragraph (2)(A) of*
18 *this subsection during the preceding year and any*
19 *agency (as defined in section 221 of the Small Busi-*
20 *ness Regulatory Enforcement Fairness Act of 1996 (5*
21 *U.S.C. 601 note; Public Law 104–121)) that waived*
22 *or reduced a civil penalty under section 223 of that*
23 *Act during the preceding year shall submit a report*
24 *to Congress that describes, for each such waiver or re-*
25 *duction—*

1 “(A) the specific requirement that was vio-
2 lated, including the provision of law that author-
3 izes the agency to impose the civil fine or civil
4 penalty for the violation;

5 “(B) the amount of the civil fine or civil
6 penalty that the agency could have imposed; and

7 “(C) the industry in which the small busi-
8 ness concern or small entity that committed the
9 violation operates.

10 “(5) *RELATION TO OTHER LAWS.*—In the event
11 of a conflict between section 223 of the Small Busi-
12 ness Regulatory Enforcement Fairness Act of 1996 (5
13 U.S.C. 601 note; Public Law 104–121) and this sub-
14 section, this subsection shall control.

15 “(6) *RULE OF CONSTRUCTION.*—Nothing in this
16 subsection shall be construed to relieve a small busi-
17 ness concern from the obligation to comply with all
18 legal requirements.”.

19 (b) *TECHNICAL AND CONFORMING AMENDMENTS.*—

20 (1) Section 3512(b) of title 44, United States
21 Code, is amended by striking “this section” and in-
22 serting “subsection (a)”.

23 (2) Section 223(c) of the Small Business Regu-
24 latory Enforcement Fairness Act of 1996 (5 U.S.C.
25 601 note; Public Law 104–121) is amended—

1 (A) by striking “Agencies shall” and insert-
2 ing the following:

3 “(1) INITIAL REPORT.—Agencies shall”; and

4 (B) by adding at the end the following:

5 “(2) ANNUAL REPORT.—Agencies shall submit
6 annual reports to Congress in accordance with section
7 3512(c)(4) of title 44, United States Code.”.

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