

104<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 1979

To protect the rights of small entities subject to investigative or enforcement action by agencies, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 30, 1995

Mr. DUNCAN (for himself and Mr. TALENT) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Small Business, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To protect the rights of small entities subject to investigative or enforcement action by agencies, and for other purposes.

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

3        **SECTION 1. SHORT TITLE.**

4        This Act may be cited as the “Small Business Regu-  
5        latory Bill of Rights Act”.

6        **SEC. 2. SMALL BUSINESS REGULATORY BILL OF RIGHTS.**

7        (a) IN GENERAL.—Chapter 5 of title 5, United  
8        States Code, is amended by adding at the end the follow-  
9        ing new subchapter:

1           “SUBCHAPTER VI—SMALL BUSINESS  
2                           REGULATORY BILL OF RIGHTS

3   **“§ 597. Definition**

4           “For purposes of this subchapter, the term ‘small en-  
5 tity’ has the same meaning given such term in section  
6 601(6).

7   **“§ 597a. Rights of small entities prior to enforcement  
8                           action**

9           “Except as provided in section 597d, each agency  
10 shall ensure that its regulatory enforcement program in-  
11 cludes—

12                   “(1) a no-fault compliance audit program in  
13 which no penalties may be assessed against a small  
14 entity upon voluntary application by the entity to  
15 the agency or a licensed private sector entity for a  
16 compliance audit;

17                   “(2) a publicized, coherent compliance assist-  
18 ance program available to regulated small entities  
19 under the agency’s jurisdiction that provides tech-  
20 nical and other compliance related assistance to  
21 small entities upon request of a small entity;

22                   “(3) a method to enforce regulations in a uni-  
23 form, consistent, and nonarbitrary manner nation-  
24 wide; and

1           “(4) an abatement period of not less than 60  
2           days to allow the small entity to correct any viola-  
3           tions before a penalty is assessed.

4   **“§ 597b. Rights during investigative or enforcement**  
5                                   **action**

6           “Except as provided in section 597d, each small en-  
7           tity that is the subject of a Federal investigative or en-  
8           forcement action shall, upon the initiation of an inspec-  
9           tion, investigation, or other official proceeding directed  
10          against the person, have the right—

11                   “(1) to be provided access to all information  
12                   gathered on the entity by Government officials on a  
13                   timely basis;

14                   “(2) to remain silent;

15                   “(3) to be advised as to whether the person or  
16                   entity has a right to a warrant;

17                   “(4) to be warned that statements can be used  
18                   against the small entity and representatives of the  
19                   small entity;

20                   “(5) to have an attorney or accountant present;

21                   “(6) to be informed as to the scope and purpose  
22                   of the agency action;

23                   “(7) to be present at the inspection, investiga-  
24                   tion, or proceeding; and

1           “(8) to be free of unreasonable seizures of prop-  
2           erty or assets.

3   **“§ 597c. Rights after investigative or enforcement**  
4           **action**

5           “Except as provided in section 597d, each small en-  
6           tity that has been found in violation of a regulation and  
7           was subject to an enforcement action or penalty shall have  
8           the right—

9           “(1) to be free from inspections for 180 days  
10          after the date on which the small entity obtains cer-  
11          tification from the agency that the small entity is in  
12          compliance with the regulation;

13          “(2) to have ability to pay factored into the as-  
14          sessment of penalties through flexible payment plans  
15          with reduced installments that reflect the entity’s  
16          long-term ability to pay (taking into account cash-  
17          flow and long-term profitability); and

18          “(3) to not have fines paid be used to finance  
19          the inspecting agency, but instead credited to the  
20          General Treasury of the United States, to be used  
21          for reduction of the Federal deficit.

22   **“§ 597d. Exceptions and limitation**

23          “(a) A provision of this subchapter shall not apply  
24          if compliance with such provision would—

1           “(1) substantially delay responding to an immi-  
2           nent danger to person or property; or

3           “(2) substantially or unreasonably impede a  
4           criminal investigation.

5           “(b) A small entity shall not be entitled to the benefit  
6 of a no-fault compliance audit program under section  
7 597a(1) regarding a particular enforcement issue for 60  
8 days after the entity has had an agency-initiated contact  
9 regarding such issue.”.

10          (b) TECHNICAL AMENDMENT.—The analysis for  
11 chapter 5 of title 5, United States Code, is amended by  
12 adding at the end the following:

“SUBCHAPTER VI—SMALL BUSINESS REGULATORY BILL OF  
RIGHTS

“597. Definition.

“597a. Rights of small entities prior to enforcement action.

“597b. Rights during investigative or enforcement action.

“597c. Rights after investigative or enforcement action.

“597d. Exceptions and limitation.”.

13 **SEC. 3. INSTRUCTIONS AND AGENCY RULES.**

14          (a) EFFECTIVE DATE.—The amendment made by  
15 section 2 shall take effect not later than January 1, 1999.

16          (b) REPORTS.—The Director of the Office of Man-  
17 agement and Budget shall submit an annual report to  
18 Congress on the progress of the agencies in complying  
19 with this Act and the amendments made by this Act.

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