

H. B. 2819

(By Delegates Rowe, Miley, Guthrie, Lynch and Shott)

[Introduced February 19, 2015; referred to the

Committee on the Judiciary then Finance.]

**FISCAL
NOTE**

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §29A-5-6, relating generally to contested cases under the Administrative Procedures Act; providing authority to waive penalties for violations of administrative rules determined to be *de minimis*; providing for self-reporting; providing that self-reporting may obviate findings or mitigate penalties; providing for advance ruling by an agency to clarify whether a specific action would be considered a violation of a rule; providing immunity to the person in receipt of an advance ruling who relies on the ruling in good faith; defining "*de minimis*".

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §29A-5-6, to read as follows:

ARTICLE 5. CONTESTED CASES.

§29A-5-6. Findings and penalties may be waived for *de minimis* violations; *de minimis*

1 **defined.**

2 (a) The Legislature finds that the broad body of administrative rules administered by
3 numerous agencies pursuant to chapter twenty-nine-a of this code may lead to differing
4 interpretations by various enforcers and confusion in those attempting good faith compliance with
5 the rules. The Legislature also finds that the state's interests are best served when the rules provide
6 primarily for guidance toward uniformly administered rules and safe, efficient regulated activity.
7 To facilitate these interests the Legislature finds that persons attempting good faith compliance with
8 administrative rules should not suffer punishment for *de minimis* violations of the rules, and should
9 be provided with an opportunity to clarify in advance what is acceptable under the rules.

10 (b) A person who is subject to provisions of an administrative rule and is uncertain of the
11 interpretation of the administrative rule and who believes that an action planned to be taken or
12 already taken may violate or may have violated an administrative rule, may apply to the appropriate
13 agency for an advisory opinion on whether an action or proposed action violates the provisions of
14 the rule, and could expose the person to sanctions or criminal prosecution. The agency shall
15 respond within thirty days from receiving the request by issuing a written determination as to
16 whether the described action would be considered by the agency a violation, and if a violation,
17 whether the violation is or would be *de minimis*, as described in this section. Self-reporting may be
18 viewed by an agency, or a court reviewing pursuant to section four of this article, as evidence of lack
19 of intent to violate, and as a factor to obviate an adverse finding or to mitigate a penalty.

20 (c) A person subject to the provisions of an administrative rule may rely on an agency's
21 advance ruling that a certain activity would not violate a rule, and any person acting in good faith
22 reliance on the advance determination is immune from any later agency claim of violation of the rule

1 for that specific activity. If a rule is changed so that the activity in question would no longer be
2 permitted, the agency shall notify the person who received the advance ruling that immunity may no
3 longer be effective, and that a new request for determination or clarification may be submitted, if
4 desired. In order to rely on notice of a rule change that may affect continuing immunity, the person
5 operating under the advance ruling is responsible for keeping the agency advised of a current
6 address.

7 (d) For purposes of this section, "de minimis" means that the violation arising from the
8 activity in question is not so significant as to merit penalty, and does not pose a material threat to
9 employees or to public health and safety. In determining if an action is *de minimis*, an agency, or a
10 court reviewing pursuant to section four of this article, in examining the totality of circumstances,
11 may consider whether there is lack of intent to violate or whether there appears to be evidence of a
12 pattern of violation. Penalties shall be waived for any violation pursuant to the administrative rule
13 determined to be *de minimis*.

NOTE: The purpose of this bill is to provide authority to waive penalties for violations of administrative rules determined to be *de minimis*. The bill also provides for advance ruling by an agency to clarify whether a specific action would be considered a violation of a rule and would provide immunity to the person in receipt of an advance ruling who relies on the ruling in good faith.

§29A-5-6 is new; therefore, it has been completely underscored.