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S.B. 818 and S.B. 128 – Limitation of agency enforcement

Commerce Committee public hearing – February 23, 2017

Testimony of Raphael L. Podolsky

Recommended Committee action: NO ACTION ON THE BILLS

S.B. 818 prohibits state agencies from imposing civil penalties, with some exceptions, on a business entity for a first violation of a regulation if the business “takes measures that remedy the condition” within 30 days. S.B. 128 exempts Connecticut-based start-up companies from all state regulations for the first two years of their operations. We think that both of these bills unduly restrict the discretion and undermine the authority of state agencies to take reasonable enforcement actions and therefore urge the Committee to take no action on either of these bills.

S.B. 128 – AA exempting new businesses from state regulations: This is simply not a good proposal, at least as drafted. Would the Committee really want to exempt a new business from the State Fire Safety Code or State Building Code for two years? If a new business sells consumer products, should it be exempted from the Plain Language Act or regulatory prohibitions on deceptive advertising? Should it be exempted from the Banking Department’s regulations on unfair debt collection practices so that it can harass debtors? There are numerous regulations that it is very important to apply to all businesses. This bill requires a great deal more thought.

S.B. 818 – AA authorizing the suspension of civil penalties imposed on certain business entities pursuant to state regulations: Notwithstanding its title, this bill prohibits – not authorizes – state agencies from imposing civil penalties for a “first violation,” with certain exceptions, on any business if they are corrected within 30 days after the penalty is assessed. In reality, an agency is unlikely to assess civil penalties for minor violations or for violations that are quickly corrected. The bill, however, fails to recognize that (a) the agency almost surely imposed a civil penalty only after extensive effort to get the business to comply with the regulation voluntarily, (b) the violation may well be major, not minor, and (c) a “first violation” does not mean “the first time the conduct has occurred” but rather “the first time the agency has caught the business engaging in the conduct.” Agencies need to have the discretion to impose civil penalties in appropriate cases, and this bill unduly restricts that discretion.