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SENATE BILL 6132

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State of Washington

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By Senators Anderson, Amondson, McDonald, Oke, Nelson, Morton, Bluechel, L. Smith, Hochstatter, Moyer, Erwin, Sellar, Schow, Prince, Winsley, Roach, Ludwig, Quigley, Cantu, A. Smith and Haugen

Read first time 01/13/94. Referred to Committee on Labor & Commerce.

1 AN ACT Relating to business regulations; adding a new section to  
2 chapter 82.02 RCW; adding a new section to chapter 50.12 RCW; adding a  
3 new section to chapter 43.21A RCW; adding a new section to chapter  
4 43.22 RCW; adding a new section to chapter 43.70 RCW; adding a new  
5 section to chapter 43.24 RCW; adding a new section to chapter 77.04  
6 RCW; adding a new chapter to Title 43 RCW; creating new sections; and  
7 providing an expiration date.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

9 NEW SECTION. **Sec. 1.** The legislature recognizes that the current  
10 volume of regulations small businesses are required to comply with are  
11 so voluminous and complex that it is generally impossible for small  
12 business owners to keep abreast of the various requirements and to  
13 continually monitor to assure compliance, and still have time to  
14 operate a profitable business.

15 The legislature recognizes the success of joint programs between  
16 business and government that aim for cooperation to achieve compliance  
17 and find that these programs are effective in gaining compliance with  
18 various regulations. Examples of these programs include the department  
19 of ecology's hazardous waste program and the department of labor and

1 industries' Washington industrial safety and health act voluntary  
2 services and industrial insurance educational audits programs.

3 Therefore, the legislature directs the state agencies named in this  
4 act to engage in a cooperative compliance partnership pilot project to  
5 assist businesses that demonstrate a good faith effort of compliance,  
6 to correct minor issues of noncompliance through education rather than  
7 through citations, penalties, and fines.

8 NEW SECTION. **Sec. 2.** (1) The following agencies shall implement  
9 by January 1, 1995, a cooperative compliance partnership program:

- 10 (a) Department of revenue;
- 11 (b) Employment security department;
- 12 (c) Department of ecology;
- 13 (d) Department of labor and industries;
- 14 (e) Department of health;
- 15 (f) Department of licensing; and
- 16 (g) Department of fish and wildlife.

17 (2) A cooperative compliance partnership program shall include:

18 (a) An agency-established set of criteria, based on the following  
19 guidelines, that shall be used to determine whether a business is  
20 making a good faith effort to comply with specific regulations.

21 (i) If the regulations require the payment of taxes or fees, good  
22 faith compliance shall be determined as follows:

23 (A) If the business was paying some of the tax or fee.

24 (B) The amount paid by the business was either:

25 (I) Seventy-five percent of the amount of the tax or fee that  
26 should have been paid; or

27 (II) An amount of the tax or fee that a reasonable person would  
28 have understood to be the proper amount according to the regulations as  
29 interpreted by the business and the business can justify its method of  
30 computing the tax or fee.

31 (ii) If the regulation requires actions to protect worker safety  
32 and health, customer safety and health, the public's safety and health,  
33 or the environment, and the good faith compliance shall be determined  
34 as follows:

35 (A) The actions of the business are sufficient so that there is no  
36 probability that death or serious physical harm could result due to  
37 conditions that exist; (B) the actions of the business protect the

1 environment and do not pose a substantial present or potential hazard  
2 to human health, wildlife, or the environment.

3 (iii) Good faith compliance is presumed whenever a business is in  
4 compliance with federal law controlling the same activity or situation.

5 NEW SECTION. **Sec. 3.** (1) A business that has met the good faith  
6 criteria for compliance shall be given a reasonable time by the agency  
7 to correct deficiencies without the agency taking enforcement action.

8 (a) In the case of deficiencies that pose an immediate and serious  
9 threat to the safety, health, or welfare of workers or citizens, or  
10 that pose immediate threats to the environment, the agency shall direct  
11 the business to discontinue the activity posing the immediate risk  
12 until appropriate corrections are taken. Failure of a business to  
13 correct deficiencies within the reasonable period of time set by the  
14 agency, or failure of a business to immediately discontinue an activity  
15 that poses an immediate and serious threat shall be subject to  
16 enforcement actions by the agency.

17 (b) In the case of tax or fee issues, the corrections shall be made  
18 immediately, and for all future business activities, the agency shall  
19 advise the business in writing of the correct method of reporting and  
20 the records the business is required to maintain.

21 (2)(a) A business found to have met the good faith criteria for  
22 compliance shall be provided a written report by the agency as to  
23 deficiencies identified, the statutory or Washington Administrative  
24 Code reference that is the basis for the deficiency, the corrections  
25 needed, the sources at the agency available to provide the business  
26 technical assistance in making the corrections, and the reasonable  
27 period of time granted by the agency to make the corrections.

28 (b) In setting the reasonable period of time to make corrections,  
29 the agency shall take into consideration the size of the business, the  
30 economic capacity of the business to pay for the corrections required,  
31 and the degree of risk the deficiency poses to the public, to workers,  
32 or to the environment.

33 (3)(a) A business may appeal the reasonable time period set by an  
34 agency. The business must show in its appeal how the reasonable time  
35 period will impose an undue hardship on the business and must recommend  
36 a reasonable time period in which it can make the correction.

37 (b) A showing of undue hardship includes, but is not limited to,  
38 one or more of the following: (i) The insufficient financial capacity

1 of the business to effect the corrections within the time period  
2 allowed; (ii) the inability of the business to secure needed financing,  
3 authorizations, or permits to effect the corrections within the time  
4 period allowed; and (iii) the inability of the business to remain  
5 competitive in its market due to the costs incurred in making the  
6 corrections within the time period allowed.

7 (4) Businesses that do not meet the good faith criteria for  
8 compliance as provided in sections 2 and 3 of this act, shall be  
9 subject to immediate enforcement action by the agency.

10 (5) The cooperative compliance partnership program provided in this  
11 section shall not apply to the following types of inspections:

12 (a) Inspections to verify the compliance of a business that has  
13 previously received a written compliance notice, infraction notice,  
14 agency order, or other written agency directive issued prior to the  
15 agency implementing the cooperative compliance partnership program.

16 (b) Inspections to verify compliance of the business with a  
17 specific permit issued by the agency to that specific business.

18 NEW SECTION. **Sec. 4.** Agencies identified in section 2(1) of this  
19 act shall:

20 (1) Adopt under chapter 34.05 RCW good faith criteria by September  
21 1, 1994.

22 (2) Conduct the necessary inspection, employee education, and  
23 prepare needed materials in order to implement the provisions of  
24 sections 2 and 3 of this act by January 1, 1995, for all inspections  
25 made by the agency.

26 (3) In inspection programs that include the delegation of authority  
27 to the state of Washington to enforce federal rules, an agency shall:

28 (a) By June 1, 1994, submit a written petition to the federal  
29 agency for authorization to implement the cooperative compliance  
30 partnership program for all inspections while retaining the state's  
31 federal delegation; and

32 (b) If the federal agency fails to provide the authorization by  
33 November 1, 1995, the agency shall apply the cooperative compliance  
34 partnership program to all inspections except the minimum number of  
35 inspections required by the federal government for the program  
36 delegated to the state of Washington for enforcement.

37 (4) Report to the office of financial management by November 1,  
38 1995, and November 1, 1996, the agency's experience with the

1 cooperative compliance partnership program and make recommendations to  
2 improve the program.

3 NEW SECTION. **Sec. 5.** The office of financial management shall  
4 provide a report to the legislature by December 31, 1995, and December  
5 31, 1996, detailing the experience of the agencies with the cooperative  
6 compliance partnership program and recommendations to improve the  
7 program.

8 NEW SECTION. **Sec. 6.** A new section is added to chapter 82.02 RCW  
9 to read as follows:

10 The director of the department of revenue shall ensure that  
11 sections 2 through 4 of this act are enforced within the department of  
12 revenue.

13 NEW SECTION. **Sec. 7.** A new section is added to chapter 50.12 RCW  
14 to read as follows:

15 The commissioner of the employment security department shall ensure  
16 that sections 2 through 4 of this act are enforced within the  
17 employment security department.

18 NEW SECTION. **Sec. 8.** A new section is added to chapter 43.21A RCW  
19 to read as follows:

20 The director of the department of ecology shall ensure that  
21 sections 2 through 4 of this act are enforced within the department of  
22 ecology.

23 NEW SECTION. **Sec. 9.** A new section is added to chapter 43.22 RCW  
24 to read as follows:

25 The director of the department of labor and industries shall ensure  
26 that sections 2 through 4 of this act are enforced within the  
27 department of labor and industries.

28 NEW SECTION. **Sec. 10.** A new section is added to chapter 43.70 RCW  
29 to read as follows:

30 The secretary of the department of health shall ensure that  
31 sections 2 through 4 of this act are enforced within the department of  
32 health.

1        NEW SECTION.   **Sec. 11.**   A new section is added to chapter 43.24 RCW  
2 to read as follows:

3        The director of the department of licensing shall ensure that  
4 sections 2 through 4 of this act are enforced within the department of  
5 licensing.

6        NEW SECTION.   **Sec. 12.**   A new section is added to chapter 77.04 RCW  
7 to read as follows:

8        The director of the department of fish and wildlife shall ensure  
9 that sections 2 through 4 of this act are enforced within the  
10 department of fish and wildlife.

11        NEW SECTION.   **Sec. 13.**   Sections 2 through 12 of this act shall  
12 expire July 1, 1997.

13        NEW SECTION.   **Sec. 14.**   Sections 2 through 4 of this act shall  
14 constitute a new chapter in Title 43 RCW.

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