
HOUSE BILL 2228

State of Washington 54th Legislature 1996 Regular Session

By Representatives Mastin, Chandler, Dyer, D. Schmidt, Thompson and
McMorris

Read first time 01/08/96. Referred to Committee on Government
Operations.

1 AN ACT Relating to regulatory reform; amending RCW 76.09.040,
2 48.02.060, 48.30.010, 48.44.050, 48.46.200, and 34.05.660; and adding
3 a new section to chapter 43.22 RCW.

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

5 **Sec. 1.** RCW 76.09.040 and 1994 c 264 s 48 are each amended to read
6 as follows:

7 (1) Where necessary to accomplish the purposes and policies stated
8 in RCW 76.09.010, and to implement the provisions of this chapter, the
9 board shall (~~promulgate~~) adopt forest practices (~~regulations~~) rules
10 pursuant to chapter 34.05 RCW and in accordance with the procedures
11 enumerated in this section: PROVIDED, That the board may not adopt
12 rules after the effective date of this section that are based solely on
13 a section of law stating a statute's intent or purpose, on the enabling
14 provisions of the statute establishing the agency, or on any
15 combination of such provisions, for statutory authority to adopt any
16 rule.

17 (2) The board shall adopt rules that:

18 (a) Establish minimum standards for forest practices;

1 (b) Provide procedures for the voluntary development of resource
2 management plans which may be adopted as an alternative to the minimum
3 standards in (a) of this subsection if the plan is consistent with the
4 purposes and policies stated in RCW 76.09.010 and the plan meets or
5 exceeds the objectives of the minimum standards;

6 (c) Set forth necessary administrative provisions; and

7 (d) Establish procedures for the collection and administration of
8 forest practice fees as set forth by this chapter.

9 Forest practices (~~((regulations))~~) rules pertaining to water quality
10 protection shall be (~~((promulgated))~~) adopted individually by the board
11 and by the department of ecology after they have reached agreement with
12 respect thereto. All other forest practices (~~((regulations))~~) rules
13 shall be (~~((promulgated))~~) adopted by the board.

14 Forest practices (~~((regulations))~~) rules shall be administered and
15 enforced by the department except as otherwise provided in this
16 chapter. Such (~~((regulations))~~) rules shall be (~~((promulgated))~~) adopted
17 and administered so as to give consideration to all purposes and
18 policies set forth in RCW 76.09.010.

19 (~~((+2))~~) (3) The board shall prepare proposed forest practices
20 (~~((regulations))~~) rules. In addition to any forest practices
21 (~~((regulations))~~) rules relating to water quality protection proposed by
22 the board, the department of ecology shall prepare proposed forest
23 practices (~~((regulations))~~) rules relating to water quality protection.

24 Prior to initiating the rule making process, the proposed
25 (~~((regulations))~~) rules shall be submitted for review and comments to the
26 department of fish and wildlife and to the counties of the state.
27 After receipt of the proposed forest practices (~~((regulations))~~) rules,
28 the department of fish and wildlife and the counties of the state shall
29 have thirty days in which to review and submit comments to the board,
30 and to the department of ecology with respect to its proposed
31 (~~((regulations))~~) rules relating to water quality protection. After the
32 expiration of such thirty day period the board and the department of
33 ecology shall jointly hold one or more hearings on the proposed
34 (~~((regulations))~~) rules pursuant to chapter 34.05 RCW. At such
35 hearing(s) any county may propose specific forest practices
36 (~~((regulations))~~) rules relating to problems existing within such county.
37 The board and the department of ecology may adopt such proposals if
38 they find the proposals are consistent with the purposes and policies
39 of this chapter.

1 NEW SECTION. Sec. 2. A new section is added to chapter 43.22 RCW
2 to read as follows:

3 For rules adopted after the effective date of this section, the
4 director of the department of labor and industries may not rely solely
5 on a statute's statement of intent or purpose, on the enabling
6 provisions of the statute establishing the agency, or on any
7 combination of such provisions, for statutory authority to adopt any
8 rule: PROVIDED, That this section shall not apply to rules adopted
9 pursuant to chapter 39.12 RCW. It is the intent of the legislature to
10 retain the status quo and that the provisions of chapter . . ., Laws of
11 1996 (this act) shall neither explicitly or impliedly diminish nor
12 expand the rule-making authority of the department under chapter 39.12
13 RCW.

14 **Sec. 3.** RCW 48.02.060 and 1947 c 79 s .02.06 are each amended to
15 read as follows:

16 (1) The commissioner shall have the authority expressly conferred
17 upon him or her by or reasonably implied from the provisions of this
18 code.

19 (2) The commissioner shall execute his or her duties and shall
20 enforce the provisions of this code.

21 (3) The commissioner may:

22 (a) Make reasonable rules and regulations for effectuating any
23 provision of this code, except those relating to his or her election,
24 qualifications, or compensation: PROVIDED, That the commissioner may
25 not adopt rules after the effective date of this section that are based
26 solely on this statute, or on a statute's statement of intent or
27 purpose, or on the enabling provisions of the statute establishing the
28 agency, or any combination of such provisions, for statutory authority
29 to adopt any rule, except rules defining or clarifying terms in, or
30 procedures necessary to the implementation of a statute. No such rules
31 and regulations shall be effective prior to their being filed for
32 public inspection in the commissioner's office.

33 (b) Conduct investigations to determine whether any person has
34 violated any provision of this code.

35 (c) Conduct examinations, investigations, hearings, in addition to
36 those specifically provided for, useful and proper for the efficient
37 administration of any provision of this code.

1 **Sec. 4.** RCW 48.30.010 and 1985 c 264 s 13 are each amended to read
2 as follows:

3 (1) No person engaged in the business of insurance shall engage in
4 unfair methods of competition or in unfair or deceptive acts or
5 practices in the conduct of such business as such methods, acts, or
6 practices (~~((are defined pursuant to subsection (2) of this section.~~

7 ~~(2) In addition to such unfair methods and unfair or deceptive acts~~
8 ~~or practices)) as are expressly defined and prohibited by this code((~~
9 ~~the commissioner may from time to time by regulation promulgated~~
10 ~~pursuant to chapter 34.05 RCW, define other methods of competition and~~
11 ~~other acts and practices in the conduct of such business reasonably~~
12 ~~found by the commissioner to be unfair or deceptive.~~

13 ~~(3) No such regulation shall be made effective prior to the~~
14 ~~expiration of thirty days after the date of the order by which it is~~
15 ~~promulgated)).~~

16 ~~((+4))~~ (2) If the commissioner has cause to believe that any
17 person is violating any such ~~((regulation))~~ rule or prohibition of this
18 code, the commissioner may order such person to cease and desist
19 therefrom. The commissioner shall deliver such order to such person
20 direct or mail it to the person by registered mail with return receipt
21 requested. If the person violates the order after expiration of ten
22 days after the cease and desist order has been received by him or her,
23 he or she may be fined by the commissioner a sum not to exceed two
24 hundred and fifty dollars for each violation committed thereafter.

25 ~~((+5))~~ (3) If any such ~~((regulation))~~ rule or prohibition of this
26 code is violated, the commissioner may take such other or additional
27 action as is permitted under the insurance code for violation of a
28 ~~((regulation))~~ rule or that prohibition.

29 (4) Any permanent rule that was adopted by the commissioner under
30 the authority of this section as it existed before the effective date
31 of this section, and that was in effect as of the effective date of
32 this section, shall, if otherwise valid, remain in effect until and
33 unless it is repealed by the commissioner, who shall retain the
34 authority to repeal any such rule, or is effectively repealed by an act
35 of the legislature.

36 **Sec. 5.** RCW 48.44.050 and 1947 c 268 s 5 are each amended to read
37 as follows:

1 The insurance commissioner shall make reasonable regulations in aid
2 of the administration of this chapter which may include, but shall not
3 be limited to regulations concerning the maintenance of adequate
4 insurance, bonds, or cash deposits, information required of
5 registrants, and methods of expediting speedy and fair payments to
6 claimants: PROVIDED, That the commissioner may not adopt rules after
7 the effective date of this section that are based solely on this
8 section, a statute's statement of intent or purpose, or on the enabling
9 provisions of the statute establishing the agency, or any combination
10 of such provisions, for statutory authority to adopt any rule, except
11 rules defining or clarifying terms in, or procedures necessary to the
12 implementation of a statute.

13 **Sec. 6.** RCW 48.46.200 and 1975 1st ex.s. c 290 s 21 are each
14 amended to read as follows:

15 The commissioner may adopt, in accordance with the provisions of
16 the administrative procedure act, chapter 34.05 RCW, (~~promulgate~~)
17 rules and regulations as necessary or proper to carry out the
18 provisions of this chapter: PROVIDED, That the commissioner may not
19 adopt rules after the effective date of this section that are based
20 solely on this section, a statute's statement of intent or purpose, or
21 on the enabling provisions of the statute establishing the agency, or
22 any combination of such provisions, for statutory authority to adopt
23 any rule, except rules defining or clarifying terms in, or procedures
24 necessary to the implementation of a statute. Nothing in this chapter
25 shall be construed to prohibit the commissioner from requiring changes
26 in procedures previously approved by (~~him~~) the commissioner.

27 **Sec. 7.** RCW 34.05.660 and 1988 c 288 s 606 are each amended to
28 read as follows:

29 (1) Except as provided in subsection (2) of this section, it is the
30 express policy of the legislature that establishment of procedures for
31 review of administrative rules by the legislature and the notice of
32 objection required by RCW 34.05.630(2) and 34.05.640(2) in no way
33 serves to establish a presumption as to the legality or
34 constitutionality of a rule in any subsequent judicial proceedings
35 interpreting such rules.

36 (2) If the joint administrative rules review committee recommends
37 to the governor that an existing rule be suspended because it does not

1 conform with the intent of the legislature, the recommendation shall
2 establish a rebuttable presumption in any proceeding challenging the
3 validity of the rule that the rule is invalid. The burden of
4 demonstrating the rule's validity is then on the adopting agency.

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