

# SENATE BILL REPORT

## SB 5042

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As Reported by Senate Committee On:  
Economic Development, Trade & Innovation, January 29, 2009

**Title:** An act relating to first-time paperwork violations by small businesses.

**Brief Description:** Providing a waiver of penalties for first-time paperwork violations by small businesses.

**Sponsors:** Senators Kilmer, Holmquist, Berkey, Schoesler, Kauffman, Marr, Rockefeller, Haugen, Eide, Kastama, Hatfield, Swecker, Tom, McAuliffe, Benton, Parlette and Roach.

**Brief History:**

**Committee Activity:** Economic Development, Trade & Innovation: 1/14/09, 1/29/09 [DPS].

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### SENATE COMMITTEE ON ECONOMIC DEVELOPMENT, TRADE & INNOVATION

**Majority Report:** That Substitute Senate Bill No. 5042 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kastama, Chair; Shin, Vice Chair; Zarelli, Ranking Minority Member; Delvin, Eide, Kilmer and McCaslin.

**Staff:** Philip Brady (786-7460)

**Background:** The Technical Assistance Act was passed in 1995 and requires agencies to provide technical assistance to businesses in complying with state regulatory programs. It also provides that agencies cannot issue civil penalties to businesses for first-time violations discovered during a technical assistance visit, provided such violations are corrected within a reasonable period of time. Unless otherwise prohibited, agencies are allowed to issue civil penalties for first-time violations discovered outside of technical assistance visits.

**Summary of Bill (Recommended Substitute):** Agencies must waive fines, civil penalties, or administrative sanctions for first-time paperwork violations by small businesses. A paperwork violation is defined as failure to comply with any statute or regulation requiring an agency to collect data or a business to collect, post, or retain data. In the event of a second violation or failure to correct the first violation, the agency may reinstate the previously waived penalty and impose any new penalty stemming from the second violation. The waiver is not available to a small business whose owner or operator has previously

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committed a paperwork violation, and cannot reduce a requirement to apply for a permit or license.

The waiver requirement does not apply where the violation: 1) presents a direct danger to the public health, results in a loss of income or benefits to an employee, poses a potentially significant threat to human health or the environment, or causes serious harm to the public interest; 2) involves knowing or willful conduct that may result in a felony conviction; 3) concerns assessment or collection of any tax, debt, revenue, or receipt; or 4) conflicts with federal law or programs.

**EFFECT OF CHANGES MADE BY ECONOMIC DEVELOPMENT, TRADE & INNOVATION COMMITTEE (Recommended Substitute):** Technical corrections are made. Correction of a violation is not required where it is impossible. Violations must cause serious harm to the public interest to qualify for an exemption rather than having the potential to cause serious harm. The definition of "paperwork violation" is expanded to include regulations that require businesses to collect, post, or retain records.

**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on January 28, 2009.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Original Bill:** PRO: Excessive regulations discourage business. This bill focuses agencies on desired outcomes rather than technical violations. It would send a message that the state doesn't want to be punitive in this struggling economy. The waiver should apply to annual research and development surveys for the Department of Revenue.

OTHER: This bill is a good concept, but might be unnecessary as few paperwork violations are presently penalized. Also, sometimes paperwork is important, particularly for underground storage tanks or hazardous waste tracking. Removing first-time penalties would increase the economic benefits of non-compliance.

This might apply to uniformed officers making traffic stops, and would be difficult to administer.

**Persons Testifying:** PRO: Senator Kilmer, prime sponsor; Troy Nichols, National Federation of Independent Business/Washington; Gary Smith, Independent Business Association of Washington.; Jim King, Washington State Heating, Ventilation and Air Conditioning Association; Amber Carter, Association of Washington Business; Amy Brackenburg, Building Industry Association of Washington.

OTHER: Darin Rice, Department of Ecology, Jeff DeVere, Washington State Patrol.