
HOUSE BILL 2232

State of Washington 54th Legislature 1996 Regular Session

By Representatives Mastin, Dyer and Thompson

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

1 AN ACT Relating to rule-making authority; amending RCW 43.12.045,
2 43.20A.075, 43.21A.080, 43.23.025, 43.70.040, 82.01.060, 43.24.023,
3 46.01.110, 77.04.090, 70.94.145, 34.05.322, 76.09.040, 48.02.060,
4 48.30.010, 48.44.050, and 48.46.200; amending 1995 c 403 s 1102
5 (uncodified); adding a new section to chapter 43.22 RCW; adding a new
6 section to chapter 34.05 RCW; creating a new section; and providing an
7 effective date.

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

9 NEW SECTION. **Sec. 1.** The legislature finds that many state
10 agencies have adopted rules based on intent sections or enabling
11 provisions. In order to allow time for more specific rule-making
12 authority, the legislature intends to delay implementation of this act
13 until January 1, 1999.

14 **Sec. 2.** RCW 43.12.045 and 1995 c 403 s 101 are each amended to
15 read as follows:

16 (~~For rules adopted after July 23, 1995,~~) The commissioner of
17 public lands may not rely solely on a section of law stating a
18 statute's intent or purpose, on the enabling provisions of the statute

1 establishing the agency, or on any combination of such provisions, for
2 statutory authority to adopt any rule.

3 **Sec. 3.** RCW 43.20A.075 and 1995 c 403 s 102 are each amended to
4 read as follows:

5 (~~For rules adopted after July 23, 1995,~~) The secretary may not
6 rely solely on a section of law stating a statute's intent or purpose,
7 on the enabling provisions of the statute establishing the agency, or
8 on any combination of such provisions, for statutory authority to adopt
9 any rule.

10 **Sec. 4.** RCW 43.21A.080 and 1995 c 403 s 103 are each amended to
11 read as follows:

12 The director of the department of ecology is authorized to adopt
13 such rules and regulations as are necessary and appropriate to carry
14 out the provisions of this chapter: PROVIDED, That the director may
15 not adopt rules (~~after July 23, 1995,~~) that are based solely on a
16 section of law stating a statute's intent or purpose, on the enabling
17 provisions of the statute establishing the agency, or on any
18 combination of such provisions, for statutory authority to adopt the
19 rule.

20 **Sec. 5.** RCW 43.23.025 and 1995 c 403 s 104 are each amended to
21 read as follows:

22 (~~For rules adopted after July 23, 1995,~~) The director of
23 agriculture may not rely solely on a section of law stating a statute's
24 intent or purpose, on the enabling provisions of the statute
25 establishing the agency, or on any combination of such provisions, for
26 statutory authority to adopt any rule.

27 **Sec. 6.** RCW 43.70.040 and 1995 c 403 s 105 are each amended to
28 read as follows:

29 In addition to any other powers granted the secretary, the
30 secretary may:

31 (1) Adopt, in accordance with chapter 34.05 RCW, rules necessary to
32 carry out the provisions of chapter 9, Laws of 1989 1st ex. sess.:
33 PROVIDED, That (~~for rules adopted after July 23, 1995,~~) the secretary
34 may not rely solely on a section of law stating a statute's intent or
35 purpose, on the enabling provisions of the statute establishing the

1 agency, or on any combination of such provisions, for statutory
2 authority to adopt any rule;

3 (2) Appoint such advisory committees as may be necessary to carry
4 out the provisions of chapter 9, Laws of 1989 1st ex. sess. Members of
5 such advisory committees are authorized to receive travel expenses in
6 accordance with RCW 43.03.050 and 43.03.060. The secretary and the
7 board of health shall review each advisory committee within their
8 jurisdiction and each statutory advisory committee on a biennial basis
9 to determine if such advisory committee is needed. The criteria
10 specified in RCW 43.131.070 shall be used to determine whether or not
11 each advisory committee shall be continued;

12 (3) Undertake studies, research, and analysis necessary to carry
13 out the provisions of chapter 9, Laws of 1989 1st ex. sess. in
14 accordance with RCW 43.70.050;

15 (4) Delegate powers, duties, and functions of the department to
16 employees of the department as the secretary deems necessary to carry
17 out the provisions of chapter 9, Laws of 1989 1st ex. sess.;

18 (5) Enter into contracts on behalf of the department to carry out
19 the purposes of chapter 9, Laws of 1989 1st ex. sess.;

20 (6) Act for the state in the initiation of, or the participation
21 in, any intergovernmental program to the purposes of chapter 9, Laws of
22 1989 1st ex. sess.; or

23 (7) Accept gifts, grants, or other funds.

24 **Sec. 7.** RCW 82.01.060 and 1995 c 403 s 106 are each amended to
25 read as follows:

26 The director of revenue, hereinafter in chapter 26, Laws of 1967
27 ex. sess. referred to as the director, through the department of
28 revenue, hereinafter in chapter 26, Laws of 1967 ex. sess. referred to
29 as the department, shall:

30 (1) Assess and collect all taxes and administer all programs
31 relating to taxes which are the responsibility of the tax commission at
32 the time chapter 26, Laws of 1967 ex. sess. takes effect or which the
33 legislature may hereafter make the responsibility of the director or of
34 the department;

35 (2) Make, adopt and publish such rules as he or she may deem
36 necessary or desirable to carry out the powers and duties imposed upon
37 him or her or the department by the legislature: PROVIDED, That the
38 director may not adopt rules ((after July 23, 1995,)) that are based

1 solely on a section of law stating a statute's intent or purpose, on
2 the enabling provisions of the statute establishing the agency, or on
3 any combination of such provisions, for statutory authority to adopt
4 any rule;

5 ~~(3) ((Rules adopted by the tax commission before July 23, 1995,~~
6 ~~shall remain in force until such time as they may be revised or~~
7 ~~rescinded by the director;~~

8 ~~(4))~~ Provide by general regulations for an adequate system of
9 departmental review of the actions of the department or of its officers
10 and employees in the assessment or collection of taxes;

11 ~~((5))~~ (4) Maintain a tax research section with sufficient
12 technical, clerical and other employees to conduct constant observation
13 and investigation of the effectiveness and adequacy of the revenue laws
14 of this state and of the sister states in order to assist the governor,
15 the legislature and the director in estimation of revenue, analysis of
16 tax measures, and determination of the administrative feasibility of
17 proposed tax legislation and allied problems;

18 ~~((6))~~ (5) Recommend to the governor such amendments, changes in,
19 and modifications of the revenue laws as seem proper and requisite to
20 remedy injustice and irregularities in taxation, and to facilitate the
21 assessment and collection of taxes in the most economical manner.

22 **Sec. 8.** RCW 43.24.023 and 1995 c 403 s 107 are each amended to
23 read as follows:

24 ~~((For rules adopted after July 23, 1995,))~~ The director of the
25 department of licensing may not rely solely on a section of law stating
26 a statute's intent or purpose, on the enabling provisions of the
27 statute establishing the agency, or on any combination of such
28 provisions, for statutory authority to adopt any rule, except rules
29 defining or clarifying terms in, or procedures necessary to the
30 implementation of, a statute.

31 **Sec. 9.** RCW 46.01.110 and 1995 c 403 s 108 are each amended to
32 read as follows:

33 The director of licensing is hereby authorized to adopt and enforce
34 such reasonable rules as may be consistent with and necessary to carry
35 out the provisions relating to vehicle licenses, certificates of
36 ownership and license registration and drivers' licenses not in
37 conflict with the provisions of Title 46 RCW: PROVIDED, That the

1 director of licensing may not adopt rules (~~((after July 23, 1995,))~~) that
2 are based solely on a section of law stating a statute's intent or
3 purpose, on the enabling provisions of the statute establishing the
4 agency, or on any combination of such provisions, for statutory
5 authority to adopt any rule.

6 **Sec. 10.** RCW 77.04.090 and 1995 c 403 s 111 are each amended to
7 read as follows:

8 The commission shall adopt permanent rules and amendments to or
9 repeals of existing rules by approval of four members by resolution,
10 entered and recorded in the minutes of the commission: PROVIDED, That
11 the commission may not adopt rules (~~((after July 23, 1995,))~~) that are
12 based solely on a section of law stating a statute's intent or purpose,
13 on the enabling provisions of the statute establishing the agency, or
14 on any combination of such provisions, for statutory authority to adopt
15 any rule. The commission shall adopt emergency rules by approval of
16 four members. The commission or the director, when adopting emergency
17 rules under RCW 77.12.150, shall adopt rules in conformance with
18 chapter 34.05 RCW. Judicial notice shall be taken of the rules filed
19 and published as provided in RCW 34.05.380 and 34.05.210.

20 A copy of an emergency rule, certified as a true copy by a member
21 of the commission, the director, or by a person authorized in writing
22 by the director to make the certification, is admissible in court as
23 prima facie evidence of the adoption and validity of the rule.

24 **Sec. 11.** RCW 70.94.145 and 1995 c 403 s 117 are each amended to
25 read as follows:

26 (1) (~~((After July 23, 1995,))~~) The department may adopt or amend a
27 rule under the authority of this chapter that exceeds the requirements
28 of the federal clean air act or regulations adopted under it or that
29 imposes burdens or obligations before the scheduled adoption of federal
30 regulations addressing similar subject matter only after compliance
31 with the procedures established in RCW 34.05.328.

32 (2) In fulfilling the requirements of RCW 34.05.328(1)(g)(ii), the
33 department shall consider: (a) The differences between the proposed
34 rule and the corresponding provisions of the federal clean air act; (b)
35 the air quality problem that the proposed rule would address, including
36 the sources of the problem and any factors that make the problem
37 different in the state or in a part of the state than in other parts of

1 the United States; and (c) the effect of the proposed rule in
2 eliminating the problem or reducing its severity. This section shall
3 not be interpreted to impede efforts to streamline or simplify federal
4 air regulations that are developed with participation of the public and
5 regulated entities.

6 (3) This section shall expire July 1, 1999.

7 **Sec. 12.** RCW 34.05.322 and 1995 c 403 s 118 are each amended to
8 read as follows:

9 (~~For rules implementing statutes enacted after July 23, 1995,~~) An
10 agency may not rely solely on the section of law stating a statute's
11 intent or purpose, or on the enabling provisions of the statute
12 establishing the agency, or on any combination of such provisions, for
13 its statutory authority to adopt the rule. An agency may use the
14 statement of intent or purpose or the agency enabling provisions to
15 interpret ambiguities in a statute's other provisions.

16 **Sec. 13.** 1995 c 403 s 1102 (uncodified) is amended to read as
17 follows:

18 Sections 201, 301 through 305, 401 through 405, and 801 of this act
19 shall apply to all rule making (~~for which a statement of proposed rule~~
20 ~~making under RCW 34.05.320 is filed after July 23, 1995~~)).

21 **Sec. 14.** RCW 76.09.040 and 1994 c 264 s 48 are each amended to
22 read as follows:

23 (1) Where necessary to accomplish the purposes and policies stated
24 in RCW 76.09.010, and to implement the provisions of this chapter, the
25 board shall (~~promulgate~~) adopt forest practices (~~regulations~~) rules
26 pursuant to chapter 34.05 RCW and in accordance with the procedures
27 enumerated in this section: PROVIDED, That the board may not adopt
28 rules that are based solely on a section of law stating a statute's
29 intent or purpose, on the enabling provisions of the statute
30 establishing the agency, or on any combination of such provisions, for
31 statutory authority to adopt any rule.

32 (2) The board shall adopt rules that:

33 (a) Establish minimum standards for forest practices;

34 (b) Provide procedures for the voluntary development of resource
35 management plans which may be adopted as an alternative to the minimum
36 standards in (a) of this subsection if the plan is consistent with the

1 purposes and policies stated in RCW 76.09.010 and the plan meets or
2 exceeds the objectives of the minimum standards;

3 (c) Set forth necessary administrative provisions; and

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

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

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

16 (~~((+2))~~) (3) The board shall prepare proposed forest practices
17 (~~((regulations))~~) rules. In addition to any forest practices
18 (~~((regulations))~~) rules relating to water quality protection proposed by
19 the board, the department of ecology shall prepare proposed forest
20 practices (~~((regulations))~~) rules relating to water quality protection.

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

37 NEW SECTION. Sec. 15. A new section is added to chapter 43.22 RCW
38 to read as follows:

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

11 **Sec. 16.** RCW 48.02.060 and 1947 c 79 s .02.06 are each amended to
12 read as follows:

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

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

18 (3) The commissioner may:

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

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

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

35 **Sec. 17.** RCW 48.30.010 and 1985 c 264 s 13 are each amended to
36 read as follows:

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

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

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

14 ~~((+4))~~ (2) If the commissioner has cause to believe that any
15 person is violating any such ((regulation)) rule or prohibition of this
16 code, the commissioner may order such person to cease and desist
17 therefrom. The commissioner shall deliver such order to such person
18 direct or mail it to the person by registered mail with return receipt
19 requested. If the person violates the order after expiration of ten
20 days after the cease and desist order has been received by him or her,
21 he or she may be fined by the commissioner a sum not to exceed two
22 hundred and fifty dollars for each violation committed thereafter.

23 ~~((+5))~~ (3) If any such ((regulation)) rule or prohibition of this
24 code is violated, the commissioner may take such other or additional
25 action as is permitted under the insurance code for violation of a
26 ((regulation)) rule or that prohibition.

27 (4) Any permanent rule that was adopted by the commissioner under
28 the authority of this section as it existed before the effective date
29 of this section, and that was in effect as of the effective date of
30 this section, shall be repealed or amended by the commissioner to
31 comply with the law.

32 **Sec. 18.** RCW 48.44.050 and 1947 c 268 s 5 are each amended to read
33 as follows:

34 The insurance commissioner shall make reasonable regulations in aid
35 of the administration of this chapter which may include, but shall not
36 be limited to regulations concerning the maintenance of adequate
37 insurance, bonds, or cash deposits, information required of
38 registrants, and methods of expediting speedy and fair payments to

1 claimants: PROVIDED, That the commissioner may not adopt rules that
2 are based solely on this section, a statute's statement of intent or
3 purpose, or on the enabling provisions of the statute establishing the
4 agency, or any combination of such provisions, for statutory authority
5 to adopt any rule, except rules defining or clarifying terms in, or
6 procedures necessary to the implementation of a statute.

7 **Sec. 19.** RCW 48.46.200 and 1975 1st ex.s. c 290 s 21 are each
8 amended to read as follows:

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

21 NEW SECTION. **Sec. 20.** A new section is added to chapter 34.05 RCW
22 under the subchapter heading Part III to read as follows:

23 RCW 34.05.322 does not apply to: The commissioner of public lands,
24 the department of social and health services, the department of
25 ecology, the department of agriculture, the department of health, the
26 department of revenue, the department of licensing, the department of
27 labor and industries, the employment security department, the forest
28 practices board, the fish and wildlife commission, and the office of
29 the insurance commissioner.

30 NEW SECTION. **Sec. 21.** This act shall take effect January 1, 1999.

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