
ENGROSSED SUBSTITUTE SENATE BILL 5766

State of Washington

58th Legislature

2003 Regular Session

By Senate Committee on Government Operations & Elections (originally sponsored by Senators Roach, Reardon, Kastama, Stevens, McCaslin, Esser, McAuliffe, Rasmussen and Hale)

READ FIRST TIME 02/20/03.

1 AN ACT Relating to providing businesses with notice of
2 administrative rules; amending RCW 34.05.220 and 34.05.312; adding a
3 new section to chapter 34.05 RCW; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that many businesses
6 in the state are frustrated by the complexity of the regulatory system.
7 The Washington Administrative Code containing agency rules now fills
8 twelve volumes, and appears to be growing each year. While the vast
9 majority of businesses make a good faith attempt to comply with
10 applicable laws and rules, many find it extremely difficult to keep up
11 with agencies' issuance of new rules and requirements. Therefore,
12 state agencies are directed to make a good faith attempt to notify
13 businesses affected by rule changes that may subject noncomplying
14 businesses to penalties.

15 **Sec. 2.** RCW 34.05.220 and 1994 c 249 s 24 are each amended to read
16 as follows:

1 (1) In addition to other rule-making requirements imposed by law:

2 (a) Each agency may adopt rules governing the formal and informal
3 procedures prescribed or authorized by this chapter and rules of
4 practice before the agency, together with forms and instructions. If
5 an agency has not adopted procedural rules under this section, the
6 model rules adopted by the chief administrative law judge under RCW
7 34.05.250 govern procedures before the agency.

8 (b) To assist interested persons dealing with it, each agency shall
9 adopt as a rule a description of its organization, stating the general
10 course and method of its operations and the methods whereby the public
11 may obtain information and make submissions or requests. No person may
12 be required to comply with agency procedure not adopted as a rule as
13 herein required.

14 (2) To the extent not prohibited by federal law or regulation, nor
15 prohibited for reasons of confidentiality by state law, each agency
16 shall keep on file for public inspection all final orders, decisions,
17 and opinions in adjudicative proceedings, interpretive statements,
18 policy statements, and any digest or index to those orders, decisions,
19 opinions, or statements prepared by or for the agency.

20 (3) No agency order, decision, or opinion is valid or effective
21 against any person, nor may it be invoked by the agency for any
22 purpose, unless it is available for public inspection. This subsection
23 is not applicable in favor of any person who has actual knowledge of
24 the order, decision, or opinion. The agency has the burden of proving
25 that knowledge, but may meet that burden by proving that the person has
26 been properly served with a copy of the order.

27 (4) Each agency that is authorized by law to exercise discretion in
28 deciding individual cases is encouraged to formalize the general
29 principles that may evolve from these decisions by adopting the
30 principles as rules that the agency will follow until they are amended
31 or repealed.

32 (5) To the extent practicable, any rule proposed or adopted by an
33 agency should be clearly and simply stated, so that it can be
34 understood by those required to comply.

35 (6) The departments of employment security, labor and industries,
36 ecology, and revenue shall develop and use a notification process to
37 communicate information to the public regarding the postadoption notice
38 required by section 3 of this act.

1 NEW SECTION. **Sec. 3.** A new section is added to chapter 34.05 RCW
2 to read as follows:

3 Either before or within two hundred days after the effective date
4 of an adopted rule that imposes additional requirements on businesses
5 the violation of which subjects the business to a penalty, assessment,
6 or administrative sanction, an agency identified in RCW 34.05.220(6)
7 shall notify businesses affected by the rule of the requirements of the
8 rule and how to obtain technical assistance to comply. Notification
9 must be provided by e-mail, if possible, to every person identified to
10 receive the postadoption notice under RCW 34.05.220(6).

11 The notification must announce the rule change, briefly summarize
12 the rule change, refer to appeal procedures under RCW 34.05.330, and
13 include a contact for more information. Failure to notify a specific
14 business under this section does not invalidate a rule or waive the
15 requirement to comply with the rule. The requirements of this section
16 do not apply to emergency rules adopted under RCW 34.05.350.

17 **Sec. 4.** RCW 34.05.312 and 1993 c 202 s 3 are each amended to read
18 as follows:

19 Each agency shall designate a rules coordinator, who shall have
20 knowledge of the subjects of rules being proposed or prepared within
21 the agency for proposal, maintain the records of any such action, and
22 respond to public inquiries about possible (~~or~~), proposed, or adopted
23 rules and the identity of agency personnel working, reviewing, or
24 commenting on them. The office and mailing address of the rules
25 coordinator shall be published in the state register at the time of
26 designation and in the first issue of each calendar year thereafter for
27 the duration of the designation. The rules coordinator may be an
28 employee of another agency.

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