6408-S AMH APP H5352.1

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SSB 6408 - H COMM AMD By Committee on Appropriations

- Strike everything after the enacting clause and insert the 1 2 following:
- "NEW SECTION. Sec. 1. The legislature reaffirms its findings 3 that the licensing and regulation of businesses and professions 4 requires periodic inspections, audits, interviews, site visits, or 5 other oversight measures to verify that licensing, permit, and other 6 7 regulatory requirements are met, and that unnecessary costs and delays may occur when business owners, particularly small business 8 9 owners, must seek outside counsel or other professional assistance to prepare for and participate in review and enforcement actions such as 10 11 audits, inspections, or examinations of their records, facilities, or 12 job sites.
- The legislature finds that agencies have a responsibility to provide a clear description of their audit, inspection, or examination processes to businesses and professions they regulate. 15 This information must be clear, concise, and sufficient to provide 16 regulated businesses and professions with an understanding of what they may expect before, during, and after an audit, inspection, or examination. 19
- 20 The legislature intends to improve and enhance communications 21 between agencies and regulated businesses during audits, inspections, 22 and examinations, but it does not intend to alter or limit existing 23 regulatory requirements, obligations, or responsibilities 24 businesses.
- 25 NEW SECTION. **Sec. 2.** (1) By December 31, 2020, each state regulatory agency that conducts audits, inspections, or examinations 26 27 within its regulatory authority over businesses and professions must provide, or provide references to, the following information at each 28 29 audit, inspection, or examination:
- 30 (a) The purpose and legal authority for conducting the audit, 31 inspection, or examination;

1 (b) If advance notice for an audit, inspection, or examination 2 will not be provided, the basis for not providing advance notice;

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- (c) The auditor, inspector, or examiner must present identification at the start of an audit, inspection, or examination;
- (d) The auditor, inspector, or examiner must provide contact information for a staff person who is available to answer questions regarding the audit, inspection, or examination;
- (e) If existing procedures provide for a cure or correction, how the business may cure or correct a potential or actual violation during or after an audit, inspection, or examination to avoid or mitigate an administrative sanction, if any;
- (f) How the business may provide past written agency advice or interpretations it relied upon for consideration in agency decisions;
- (g) Whether the business may designate one or more individuals as official company representatives and have legal, accounting, safety, or other technical professionals participate in any audit, inspection, or examination; and
- (h) What the next steps are in the process and a good faith estimate for future communication. Outcomes could include agency reports, findings, orders, or other documentation about the audit, inspection, or examination.
- 22 (2) The requirements specified in subsection (1) of this section 23 do not apply:
 - (a) In emergency situations where environmental quality or worker or public safety, health, or welfare are in imminent danger;
 - (b) In emergency situations where there is imminent financial harm to a consumer or the public;
 - (c) In any criminal investigations or proceedings, including when a criminal justice agency as defined in RCW 10.97.030 exercises its law enforcement authority, or to an agency's undercover, surveillance, or seizure activities;
- 32 (d) To site visits conducted by employees, vendors, or 33 contractors of a state regulatory agency if the purpose of the site 34 visit is not related to verifying compliance with licensing or other 35 regulatory requirements; or
- 36 (e) If they would create a conflict with federal or state law or 37 unreasonably limit, delay, or prevent an agency from performing its 38 statutorily authorized duties.

- 1 <u>NEW SECTION.</u> **Sec. 3.** For the purposes of this chapter,
- 2 "regulatory agency" means one of the agencies listed in RCW 19.02.050
- 3 (1) through (24).
- 4 <u>NEW SECTION.</u> **Sec. 4.** Nothing contained in this chapter shall be
- 5 construed to affect the validity of any report, finding, order, or
- 6 any other lawful agency action taken in connection with an audit,
- 7 inspection, or examination. Nothing contained in this chapter shall
- 8 constitute a defense to a prosecution of, or preclude an agency
- 9 enforcement action against, a business for a violation of law or rule
- 10 related to an audit, inspection, or examination.
- 11 <u>NEW SECTION.</u> **Sec. 5.** State regulatory agencies must post a
- 12 general description about the responsibilities specified in section 2
- 13 of this act on their web site. The posting does not have to include
- 14 specifics for each audit, inspection, or examination program, but
- 15 must indicate that the information will be provided at an audit,
- 16 inspection, or examination.
- NEW SECTION. Sec. 6. (1) The joint legislative audit and review
- 18 committee shall review agencies' performance and compliance with this
- 19 act by December 31, 2023. The review must include surveying regulated
- 20 businesses to obtain their views on agency implementation and
- 21 identifying how views compare for small and large businesses.
- 22 (2) This section expires July 1, 2024.
- 23 <u>NEW SECTION.</u> **Sec. 7.** Sections 2 through 5 of this act
- 24 constitute a new chapter in Title 18 RCW."
- 25 Correct the title.

EFFECT: Makes the following changes to the underlying bill:

- (1) Provides that the requirements in the chapter may not affect the validity of certain agency outcomes and actions that may result from an audit, inspection, or examination.
- (2) Provides that the chapter's requirements may not be used as a defense to a prosecution of or preclude agency action against a business for violations of laws and rules.
- (3) Specifies that businesses may provide past written agency advice or interpretations they relied on to regulatory agencies, rather than any past agency advice and interpretations.
- (4) Specifies that agencies may provide information about how a business may cure or correct a violation during an audit, inspection, or examination, if procedures provide for such a cure or correction.

- (5) Removes the requirement that agencies must provide information on how a business may respond to the outcome of an audit, inspection, or examination.
- (6) Adds that the agency requirements are not applicable to emergency situations where there is imminent financial harm to a consumer or the public.
- (7) Adds new language to the intent section clarifying that the legislature seeks to promote improved communication but not alter or limit existing regulatory requirements, obligations, or responsibilities of businesses.
- (8) Specifies that "regulatory agencies" are the agencies listed in RCW 19.02.050 (1) through (24).

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