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SENATE BILL 5766

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State of Washington                      58th Legislature                      2003 Regular Session

By Senators Roach, Reardon, Kastama, Stevens, McCaslin, Esser, McAuliffe, Rasmussen and Hale

Read first time 02/11/2003.      Referred to Committee on Government Operations & Elections.

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:

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

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

7 (b) To assist interested persons dealing with it, each agency shall  
8 adopt as a rule a description of its organization, stating the general  
9 course and method of its operations and the methods whereby the public  
10 may obtain information and make submissions or requests.

11 (c) The departments of employment security, labor and industries,  
12 ecology, and revenue shall develop and use a notification process to  
13 communicate information to the public regarding the postadoption notice  
14 required by section 3 of this act. No person may be required to comply  
15 with agency procedure not adopted as a rule as herein required.

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

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

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

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

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

3        Within two hundred days of the effective date of an adopted rule  
4 that imposes additional requirements on businesses the violation of  
5 which subjects the business to a penalty, assessment, or administrative  
6 sanction, an agency identified in RCW 34.05.220(1)(c) shall notify  
7 businesses affected by the rule of the requirements of the rule and how  
8 to obtain technical assistance to comply.    Notification must be  
9 provided by e-mail, if possible, to every person identified to receive  
10 the postadoption notice under RCW 34.05.220(1)(c).

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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