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**SUBSTITUTE SENATE BILL 5948**

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**State of Washington 66th Legislature 2019 Regular Session**

**By** Senate Financial Institutions, Economic Development & Trade (originally sponsored by Senators Palumbo, Wilson, L., Becker, Brown, Warnick, Rolfes, Bailey, Mullet, Braun, Honeyford, Van De Wege, and Short)

AN ACT Relating to creating a small business bill of rights; adding new sections to chapter 34.05 RCW; and creating new sections.

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

NEW SECTION. **Sec.**  The legislature reaffirms its findings that the licensing and regulation of businesses and professions requires periodic inspections, audits, interviews, site visits, or other oversight measures to verify that licensing, permit, and other regulatory requirements are met, and that unnecessary costs and delays may occur when small business owners must seek outside counsel or other professional assistance to prepare for and participate in review and enforcement actions such as audits and inspections of their records, facilities, or job sites.

The legislature finds that some state agencies and programs already inform regulated entities of their rights and protections in conjunction with licensing, permitting, audits, inspections, and other regulatory and enforcement related interactions, but this is not consistent among agencies or programs, nor are these rights or protections easily identified by regulated entities, including small businesses. The legislature commends those agencies and programs that have taken a proactive approach to communicating the rights and protections available to the entities they regulate, including small businesses.

The legislature further finds that while there are well defined constitutional and statutory provisions limiting state action and protecting the rights of regulated entities, including small businesses, to challenge unlawful or unauthorized state action, these rights are not clearly defined or listed in statute or rule.

Therefore, the legislature intends to codify a partial list of rights and protections guaranteed to small business owners when interacting with state agencies, boards, commissions, or other entities with regulatory authority over small businesses. The legislature further intends that state regulators communicate these rights and protections to small business owners in advance or at the time of any audit, inspection, interview, site visit, or similar oversight or enforcement activity.

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

(1) Each state agency, board, commission, or other entity that conducts audits, inspections, or other enforcement actions within its regulatory authority over small businesses must create and clearly post on its web site a small business bill of rights.

(a) The agency shall create the small business bill of rights utilizing the rights listed in subsection (2) of this section, as well as any other applicable agency-specific statutes and rules.

(b) Agencies may modify or omit rights listed in subsection (2) of this section that would create a conflict with federal or state law, such as prior notice for industrial health and safety inspections, unreasonably limit or prevent an agency from performing its statutorily authorized duties, or that do not apply to that agency's scope of work. In cases where such a conflict with other laws would occur, agencies should first attempt to modify the listed right to avoid the conflict, omitting a right only when modification to avoid the conflict is not possible.

(c) These rights may not apply in emergency situations where environmental quality, or worker or public safety and health are in imminent danger.

(d) These rights do not apply in any criminal investigations or proceedings, or to an agency's undercover, surveillance, or seizure activities.

(e) Any omitted rights from the list in subsection (2) of this section must be identified, along with a reference to the federal or state law creating the conflict or short statement that the right does not apply to the agency's scope of work, in a document maintained by the agency or entity's small business liaison, public records officer, director, or equivalent executive officer. The document must be made available for public review. Posting the document online or making a paper copy available during normal business hours satisfies this requirement.

(f) Agencies may create a small business bill of rights specific to certain divisions or programs within the agency, such as the department of labor and industries' division of occupational safety and health, that may differ from other divisions or programs within the same agency.

(g) The agency must include an electronic link to or printed copy of the small business bill of rights in its notice of an audit, inspection, interview, or other site visit.

(h) For the purposes of this section, "agency personnel" includes any auditor, inspector, employee, agent, contractor, or other person authorized to conduct or participate in an agency regulatory or enforcement action involving a small business.

(i) For the purposes of this section, "small business" has the same meaning as in RCW 34.05.110(9)(a).

(2) The state of Washington provides small business owners with a bill of rights relating to their interactions with state agencies, boards, commissions, and other entities with authority to license, permit, register, inspect, or otherwise regulate the activities of small businesses. These rights and protections include, but are not limited to:

(a) Written notice of an audit, inspection, interview, or other site visit must be provided at least three business days in advance, whenever possible. This notice should be followed by a telephone call or email twenty-four hours in advance of the visit, or on the business day preceding the visit in the case of holidays or Monday appointments. This notice requirement does not apply for visits made at the request of the small business owner or owner's representative.

(b) The written notice must describe the reason for the visit and identify, so far as practical, the areas where access is requested, documents or other records to be inspected, and individuals to be interviewed in addition to the owner or the owner's designated representative.

(c) To the extent allowed by law, a small business owner may request a warrant be issued, and reasonable opportunity for legal counsel to review the warrant, before granting entry to the premises. If federal or state law permits entry without a warrant, the agency shall provide the small business owner with an electronic link to or printed copy of the relevant law.

(d) Visits should occur during normal business hours Monday through Friday, unless otherwise requested by the business owner or owner's representative, or at such other times the business is open to the public. Visits will not be scheduled on federal holidays. This does not apply to:

(i) Emergency situations;

(ii) Special or one-time events such as, but not limited to, sporting events, concerts, or trade shows occurring on weekends or holidays; or

(iii) Instances where work is occurring outside normal business hours and agency personnel have reason to believe a violation may be occurring.

(e) The small business owner may request the visit occur on a particular day or date, and at a particular start time. They may also request an alternative date if the visit would otherwise occur on a religious holiday the small business owner or owner's representative observes.

(f) If agency personnel must cancel or change a scheduled visit, notice of the cancellation or change must be provided with as much advance notice to the small business owner as possible.

(g) If emergency entry to a small business or its premises is required, agency personnel must make reasonable efforts to promptly notify the small business owner or owner's representative of the entry, and disclose what actions agency personnel expect to take based on the information available at the time.

(h) The small business owner may designate one or more individuals as official company representatives and have legal, accounting, safety, or other technical professionals participate in any agency visits.

(i) On arrival, agency personnel will provide agency-issued photo identification and contact information, disclose any inspection fees, and ask for the small business owner, or owner's representative if one has been designated by the owner. Unless previously provided in accordance with subsection (1)(g) of this section, a copy of the small business bill of rights must be presented to the owner or owner's representative at the time of the visit.

(j) The small business owner or owner's representative may accompany the inspector or other agency personnel during the visit, except during confidential interviews. Agency personnel must obtain the small business owner's consent before making any audio or video recordings. If agency personnel make audio or video recordings, the small business owner or owner's representative may either request a copy of those recordings or record the same activities, except confidential interviews. If confidential interviews are to be recorded, agency personnel must obtain consent from the individuals interviewed.

(k) Unless the purpose or result of the visit is to revoke business registrations or seize property, agency personnel must take reasonable precautions to avoid disrupting ongoing operations, and must comply with all applicable federal and state safety and health requirements.

(l) Agency personnel must review and consider any relevant written advice or other materials previously provided to the small business owner or owner's representative, and notes or other records of telephone or in-person conversations with agency staff, in the small business owner's possession, on which the small business owner relied in his or her efforts to implement and comply with state laws or rules applicable to the inspection, audit, or other purpose of the visit.

(m) The small business owner, owner's representative, employee, or agent may immediately correct any deficiencies identified during the visit, and have those corrections noted by the agency personnel in the inspection report, audit, notice, or other finding.

(n) Agency personnel must notify the small business owner or owner's representative of the opportunity to correct violations within the time period allowed in RCW 34.05.110, or as authorized by other agency-specific statutes or rules, to avoid or mitigate penalties.

(o) If agency personnel collect samples for laboratory analysis during the visit, a split sample must be immediately provided on request to the small business owner or owner's representative for independent testing or analysis. Copies of analysis performed by or for the agency on samples taken during the visit must be provided to the small business owner or owner's representative as soon as the results are available.

(p) The agency shall provide the small business owner or owner's representative a copy of the inspection report either at the time of inspection, or within thirty business days. The agency shall provide a list of any documents or other materials relied upon in determining compliance or issuing a citation, notice, assessment, or other finding, if applicable. The agency shall provide a copy of those documents to the small business owner or owner's representative upon request.

(q) The agency shall update the small business owner or owner's representative at least monthly about the status of any action resulting from the visit. If no action is to be taken, the agency is not required to provide additional notification.

(r) If applicable, the small business owner or owner's representative must be provided information about the agency's appeal process.

(s) The small business owner or owner's representative must be given contact information for the agency small business liaison, ombuds, or other staff authorized to review, investigate, answer, or otherwise assist regulated entities with questions or concerns about the visit or other matters within the agency's jurisdiction.

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

Agencies with one thousand or more full-time equivalent employees must complete and post online a small business bill of rights required by this act by December 31, 2019. Agencies with five hundred to nine hundred ninety-nine full-time equivalent employees must complete and post online a small business bill of rights required by this act by July 1, 2020. Agencies with fewer than five hundred full-time equivalent employees must complete and post online a small business bill of rights required by this act by December 31, 2020. New agencies or programs established after the effective date of this section must complete and post online a small business bill of rights required by this act within twelve months of their creation.

NEW SECTION. **Sec.**  This act may be known and cited as the small business bill of rights.

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