

**SENATE BILL REPORT**

**SB 5794**

**AS REPORTED BY COMMITTEE ON LABOR & COMMERCE, FEBRUARY 26, 1993**

**Brief Description:** Forbidding an agency from adopting a rule that will infringe on a business right unless specific guidelines are met.

**SPONSORS:** Senators Moore, Amondson and Jesernig

**SENATE COMMITTEE ON LABOR & COMMERCE**

**Majority Report:** That Substitute Senate Bill No. 5794 be substituted therefor, and the substitute bill do pass.

Signed by Senators Moore, Chairman; Amondson, Cantu, Fraser, McAuliffe, Newhouse, Pelz, Prince, and Vognild.

**Staff:** Jonathan Seib (786-7427)

**Hearing Dates:** February 19, 1993; February 26, 1993

**BACKGROUND:**

The state Administrative Procedure Act (APA) imposes certain procedural and substantive requirements on state agencies in their adoption of administrative rules. Procedurally, among other things, the act requires public notice and participation and agency maintenance of a rule-making file. Substantively, the act requires that a rule not violate constitutional provisions, not exceed the statutory authority of the agency, and that it be conceivably the product of a rational decision-maker.

One means established to encourage agency compliance with APA requirements is the Legislature's Joint Administrative Rules Review Committee (JARRC). The committee, consisting of two members from each legislative caucus, is authorized to review agency rules for consistency with legislative intent and compliance with proper rule-making procedures. It may vote to recommend to the Governor that a rule be suspended, but that vote does not serve to establish a presumption as to the validity of a rule upon judicial review.

**SUMMARY:**

In addition to other requirements, an agency may not adopt a rule that establishes, alters, or revokes a qualification or standard for the issuance, suspension, or revocation of a license to pursue a commercial activity, trade or profession unless certain conditions are met.

The conditions include: (1) that there be a written record providing clear and convincing evidence that the law is needed, that its benefits are greater than its costs, that

there was reasonable justification for rejecting other less intrusive laws which were also considered, and that any fee imposed is reasonable; (2) that the law be clearly and simply stated; (3) that the law not conflict with, duplicate, or overlap any other law; (4) that there be a written plan to inform and educate affected parties, to promote voluntary compliance, and to evaluate whether the law achieved its purpose.

**EFFECT OF PROPOSED SUBSTITUTE:**

Agencies are prohibited from adopting rules, the violation of which subjects a person to a penalty or administrative sanction, or any regarding licensing or product standard, unless certain criteria are met. These include, among others things, substantial evidence in the rule-making file that the rule is needed and that the agency considered its probable benefits and costs. The rule must also be clearly written and understandable.

Absent specific statutory authority, the rule may also not conflict with, overlap, or duplicate any other provision of law. If such authority is given, the agency must provide a list referencing the laws that the rule conflicts with, overlaps or duplicates, coordinate enforcement of the rule with the appropriate federal, state or local entities, and request legislation to further facilitate such coordination.

Neither may a rule, absent specific statutory authority, exceed any federal law. If such authority is given, the agency must, to the extent practicable, coordinate enforcement with the appropriate federal entities.

The Joint Administrative Rules Review Committee (JARRC) is directed to also review for agency compliance with this list of criteria. An election by JARRC to recommend suspension of a rule, regardless of whether the suspension is approved by the Governor, establishes a presumption in any subsequent judicial review of the rule that it is invalid, with the burden of demonstrating the rule's validity on the adopting agency.

**Appropriation:** none

**Revenue:** none

**Fiscal Note:** requested February 17, 1993

**TESTIMONY FOR:** None

**TESTIMONY AGAINST:** None

**TESTIFIED:** No one