
HOUSE BILL 2338

State of Washington 63rd Legislature 2014 Regular Session

By Representatives Cody, Jinkins, Green, and Morrell

Read first time 01/15/14. Referred to Committee on Health Care & Wellness.

1 AN ACT Relating to requiring a rule-making process to change the
2 scope of practice of a health care profession; reenacting and amending
3 RCW 34.05.328; adding a new section to chapter 18.130 RCW; and creating
4 a new section.

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

6 NEW SECTION. **Sec. 1.** (1) The legislature finds:

7 (a) A health care profession's scope of practice must be carefully
8 regulated to prevent a practitioner from performing procedures, tasks,
9 or other acts that exceed his or her level of training and education;

10 (b) When questions arise regarding the competency and authority of
11 a health care profession to perform a particular act, the disciplining
12 authority is authorized to adopt a rule interpreting the scope of
13 practice;

14 (c) Recently, however, disciplining authorities have begun
15 expanding scopes of practice without using a rule-making process; and

16 (d) Changing a scope of practice without a rule-making process
17 deprives practitioners and other interested parties of notice and an
18 opportunity for comment.

1 (2) Therefore, to protect the public health, safety, and welfare,
2 the legislature intends to require disciplining authorities to engage
3 in a rule-making process when expanding, modifying, or interpreting the
4 scope of practice of a health care profession.

5 NEW SECTION. **Sec. 2.** A new section is added to chapter 18.130 RCW
6 to read as follows:

7 (1) Beginning January 1, 2014, a disciplining authority may not
8 expand, modify, or interpret the scope of practice of a health care
9 profession except by a rule adopted under chapter 34.05 RCW. Any
10 expansion, modification, or interpretation of a scope of practice by a
11 disciplining authority on or after January 1, 2014, other than by rule,
12 is void.

13 (2) A health care professional is not subject to disciplinary
14 action for performing an act, task, or procedure between January 1,
15 2014, and the effective date of this section if the disciplining
16 authority interpreted the scope of practice to include the act, task,
17 or procedure.

18 **Sec. 3.** RCW 34.05.328 and 2011 c 298 s 21 and 2011 c 149 s 1 are
19 each reenacted and amended to read as follows:

20 (1) Before adopting a rule described in subsection (5) of this
21 section, an agency must:

22 (a) Clearly state in detail the general goals and specific
23 objectives of the statute that the rule implements;

24 (b) Determine that the rule is needed to achieve the general goals
25 and specific objectives stated under (a) of this subsection, and
26 analyze alternatives to rule making and the consequences of not
27 adopting the rule;

28 (c) Provide notification in the notice of proposed rule making
29 under RCW 34.05.320 that a preliminary cost-benefit analysis is
30 available. The preliminary cost-benefit analysis must fulfill the
31 requirements of the cost-benefit analysis under (d) of this subsection.
32 If the agency files a supplemental notice under RCW 34.05.340, the
33 supplemental notice must include notification that a revised
34 preliminary cost-benefit analysis is available. A final cost-benefit
35 analysis must be available when the rule is adopted under RCW
36 34.05.360;

1 (d) Determine that the probable benefits of the rule are greater
2 than its probable costs, taking into account both the qualitative and
3 quantitative benefits and costs and the specific directives of the
4 statute being implemented;

5 (e) Determine, after considering alternative versions of the rule
6 and the analysis required under (b), (c), and (d) of this subsection,
7 that the rule being adopted is the least burdensome alternative for
8 those required to comply with it that will achieve the general goals
9 and specific objectives stated under (a) of this subsection;

10 (f) Determine that the rule does not require those to whom it
11 applies to take an action that violates requirements of another federal
12 or state law;

13 (g) Determine that the rule does not impose more stringent
14 performance requirements on private entities than on public entities
15 unless required to do so by federal or state law;

16 (h) Determine if the rule differs from any federal regulation or
17 statute applicable to the same activity or subject matter and, if so,
18 determine that the difference is justified by the following:

19 (i) A state statute that explicitly allows the agency to differ
20 from federal standards; or

21 (ii) Substantial evidence that the difference is necessary to
22 achieve the general goals and specific objectives stated under (a) of
23 this subsection; and

24 (i) Coordinate the rule, to the maximum extent practicable, with
25 other federal, state, and local laws applicable to the same activity or
26 subject matter.

27 (2) In making its determinations pursuant to subsection (1)(b)
28 through (h) of this section, the agency must place in the rule-making
29 file documentation of sufficient quantity and quality so as to persuade
30 a reasonable person that the determinations are justified.

31 (3) Before adopting rules described in subsection (5) of this
32 section, an agency must place in the rule-making file a rule
33 implementation plan for rules filed under each adopting order. The
34 plan must describe how the agency intends to:

35 (a) Implement and enforce the rule, including a description of the
36 resources the agency intends to use;

37 (b) Inform and educate affected persons about the rule;

38 (c) Promote and assist voluntary compliance; and

1 (d) Evaluate whether the rule achieves the purpose for which it was
2 adopted, including, to the maximum extent practicable, the use of
3 interim milestones to assess progress and the use of objectively
4 measurable outcomes.

5 (4) After adopting a rule described in subsection (5) of this
6 section regulating the same activity or subject matter as another
7 provision of federal or state law, an agency must do all of the
8 following:

9 (a) Coordinate implementation and enforcement of the rule with the
10 other federal and state entities regulating the same activity or
11 subject matter by making every effort to do one or more of the
12 following:

- 13 (i) Deferring to the other entity;
- 14 (ii) Designating a lead agency; or
- 15 (iii) Entering into an agreement with the other entities specifying
16 how the agency and entities will coordinate implementation and
17 enforcement.

18 If the agency is unable to comply with this subsection (4)(a), the
19 agency must report to the legislature pursuant to (b) of this
20 subsection;

21 (b) Report to the joint administrative rules review committee:

- 22 (i) The existence of any overlap or duplication of other federal or
23 state laws, any differences from federal law, and any known overlap,
24 duplication, or conflict with local laws; and
- 25 (ii) Make recommendations for any legislation that may be necessary
26 to eliminate or mitigate any adverse effects of such overlap,
27 duplication, or difference.

28 (5)(a) Except as provided in (b) of this subsection, this section
29 applies to:

30 (i) Significant legislative rules of the departments of ecology,
31 labor and industries, health, revenue, social and health services, and
32 natural resources, the employment security department, the forest
33 practices board, the office of the insurance commissioner, and to the
34 legislative rules of the department of fish and wildlife implementing
35 chapter 77.55 RCW; (~~and~~)

36 (ii) A rule of a disciplining authority that expands, modifies, or
37 interprets the scope of practice of a health care profession under
38 section 2 of this act; and

1 (iii) Any rule of any agency, if this section is voluntarily made
2 applicable to the rule by the agency, or is made applicable to the rule
3 by a majority vote of the joint administrative rules review committee
4 within forty-five days of receiving the notice of proposed rule making
5 under RCW 34.05.320.

6 (b) This section does not apply to:

7 (i) Emergency rules adopted under RCW 34.05.350;

8 (ii) Rules relating only to internal governmental operations that
9 are not subject to violation by a nongovernment party;

10 (iii) Rules adopting or incorporating by reference without material
11 change federal statutes or regulations, Washington state statutes,
12 rules of other Washington state agencies, shoreline master programs
13 other than those programs governing shorelines of statewide
14 significance, or, as referenced by Washington state law, national
15 consensus codes that generally establish industry standards, if the
16 material adopted or incorporated regulates the same subject matter and
17 conduct as the adopting or incorporating rule;

18 (iv) Rules that only correct typographical errors, make address or
19 name changes, or clarify language of a rule without changing its
20 effect;

21 (v) Rules the content of which is explicitly and specifically
22 dictated by statute;

23 (vi) Rules that set or adjust fees under the authority of RCW
24 19.02.075 or that set or adjust fees or rates pursuant to legislative
25 standards, including fees set or adjusted under the authority of RCW
26 19.80.045;

27 (vii) Rules of the department of social and health services
28 relating only to client medical or financial eligibility and rules
29 concerning liability for care of dependents; or

30 (viii) Rules of the department of revenue that adopt a uniform
31 expiration date for reseller permits as authorized in RCW 82.32.780 and
32 82.32.783.

33 (c) For purposes of this subsection:

34 (i) A "procedural rule" is a rule that adopts, amends, or repeals
35 (A) any procedure, practice, or requirement relating to any agency
36 hearings; (B) any filing or related process requirement for making
37 application to an agency for a license or permit; or (C) any policy

1 statement pertaining to the consistent internal operations of an
2 agency.

3 (ii) An "interpretive rule" is a rule, the violation of which does
4 not subject a person to a penalty or sanction, that sets forth the
5 agency's interpretation of statutory provisions it administers.

6 (iii) A "significant legislative rule" is a rule other than a
7 procedural or interpretive rule that (A) adopts substantive provisions
8 of law pursuant to delegated legislative authority, the violation of
9 which subjects a violator of such rule to a penalty or sanction; (B)
10 establishes, alters, or revokes any qualification or standard for the
11 issuance, suspension, or revocation of a license or permit; or (C)
12 adopts a new, or makes significant amendments to, a policy or
13 regulatory program.

14 (d) In the notice of proposed rule making under RCW 34.05.320, an
15 agency must state whether this section applies to the proposed rule
16 pursuant to (a)(i) or (ii) of this subsection, or if the agency will
17 apply this section voluntarily.

18 (6) By January 31, 1996, and by January 31st of each even-numbered
19 year thereafter, the office of regulatory assistance, after consulting
20 with state agencies, counties, and cities, and business, labor, and
21 environmental organizations, must report to the governor and the
22 legislature regarding the effects of this section on the regulatory
23 system in this state. The report must document:

24 (a) The rules proposed to which this section applied and to the
25 extent possible, how compliance with this section affected the
26 substance of the rule, if any, that the agency ultimately adopted;

27 (b) The costs incurred by state agencies in complying with this
28 section;

29 (c) Any legal action maintained based upon the alleged failure of
30 any agency to comply with this section, the costs to the state of such
31 action, and the result;

32 (d) The extent to which this section has adversely affected the
33 capacity of agencies to fulfill their legislatively prescribed mission;

34 (e) The extent to which this section has improved the acceptability
35 of state rules to those regulated; and

36 (f) Any other information considered by the office of financial
37 management to be useful in evaluating the effect of this section.

1 NEW SECTION. **Sec. 4.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

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