

SENATE BILL REPORT

SB 5230

As Reported by Senate Committee On:
Commerce, Labor & Sports, January 26, 2017

Title: An act relating to the licensing and regulatory requirements of small business owners.

Brief Description: Concerning licensing and regulatory requirements of small business owners.

Sponsors: Senators Wilson, Palumbo, Braun, Mullet, Baumgartner, Takko, Brown, Keiser, King, Miloscia, Chase, Walsh, Warnick, Hobbs, Angel, Becker, Hasegawa, Hawkins, Padden, O'Ban, Sheldon and Bailey.

Brief History:

Committee Activity: Commerce, Labor & Sports: 1/26/17, 1/26/17 [DP-WM].

Brief Summary of Bill

- Requires the Attorney General (AG) to review the Administrative Procedure Act and certain other laws to identify the rights and protections for small business owners subject to agency audits, inspections, and other enforcement actions.
- Requires certain agencies to review agency statutes, rules, and other documents to identify the rights and protections for small business owners and provide information to the AG.
- Requires the AG to report and make recommendations to the relevant committees of the Legislature.

SENATE COMMITTEE ON COMMERCE, LABOR & SPORTS

Majority Report: Do pass and be referred to Committee on Ways & Means.

Signed by Senators Baumgartner, Chair; Braun, Vice Chair; Keiser, Ranking Minority Member; Hasegawa, Saldaña and Wilson.

Staff: Susan Jones (786-7404)

Background: There are laws and regulations (rules) that apply to businesses and professions in Washington State.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The Legislature made findings that:

- administrative rules adopted by state agencies can have a disproportionate impact on the state's small businesses because of the size of those businesses; and
- this disproportionate impact reduces competition, innovation, employment, and new employment opportunities, and threatens the very existence of some small businesses.

Therefore, the Legislature enacted the Regulatory Fairness Act (RFA) with the intent of reducing the disproportionate impact. The RFA requires an agency to prepare a small business economic impact statement with respect to new rules in certain situations.

Under the Administrative Procedure Act (APA), agencies must provide a small business with a copy of the state law or agency rule that a small business is violating and at least seven calendar days to correct the violation before the agency may impose any fines, civil penalties, or administrative sanctions for the violation. There are exceptions.

Agencies must waive any fines, civil penalties, or administrative sanctions for first-time paperwork violations by a small business. If waived, the small business is generally required to correct the violation within a reasonable period of time. The waiver rule does not apply for first-time paper work violations if:

- the agency determines that the effect of the violation or waiver presents a direct danger to the public health, results in a loss of income or benefits to an employee, poses a potentially significant threat to human health or the environment, or causes serious harm to the public interest;
- the violation involves a knowing or willful violation;
- the violation is of a requirement concerning certain tax matters;
- the waiver is in conflict with federal law or a prescribed condition to the allocation of federal funds to the state, or the requirements for eligibility of employers in this state for federal unemployment tax credits; or
- there was a previous violation of a substantially similar requirement by the small business or related entity.

Any waived amount may be reinstated and imposed in addition to any additional fines, penalties, or administrative sanctions associated with a subsequent violation for noncompliance with a substantially similar paperwork requirement, or the failure to correct the previous violation as required by the agency.

Small business means a business with 250 or fewer employees or a gross revenue of less than \$7 million annually.

Summary of Bill: Legislative findings are made regarding the effects of regulatory requirements and costs related to enforcement actions for small business owners and that greater agency coordination promotes economic vitality and increases state program efficiency. An intent section is also provided.

The AG must review the APA and certain other laws to identify the rights and protections for small business owners subject to agency enforcement actions including, inspections, audits, site visits, or records review.

The Departments of Agriculture, Ecology, Labor and Industries, and Revenue, the Employment Security Department, and the State Fire Marshal must each review their statutes, rules, other policies, guidance, and directives (agency documents) to identify the rights and protections for small business owners. By August 31, 2017, each agency must provide the AG with:

- a list of agency documents identified as sources for rights or protections, with a copy or electronic link; and
- a copy or link to any statement of rights provided by the agency to small business owners: (1) before or at an audit, inspection, or other enforcement action; and (2) about the agency's adjudicative proceedings, administrative review, or appeal process.

The AG must report to the relevant committees of the Legislature by November 30, 2017. The report must include:

- the information received from the agencies;
- an identification of the information provided by agencies to small business owners selected for an enforcement action, the type of enforcement action for which the information is provided, and the stage of the process at which the information is provided to the owner; and
- recommendations for statutory, rule, and other changes.

The AG must provide a copy of the recommendations by October 30, 2017, to the agencies who provide written comments by November 13, 2017.

The Act expires December 31, 2017.

Appropriation: None.

Fiscal Note: Requested on January 23, 2017.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: In Washington State, we have over 200,000 businesses which employ over 50 percent of our private sector employees. These businesses are likely those with less than 50 employees. There are thousands of rules on the books here in Washington State that impact all businesses, large and small. Especially when the business is an employer, the number of regulations, federal and state, that the owner has to comply with grows exponentially. The regulations vary greatly depending on which agency shows up at the time.

Large businesses usually have the opportunity and means to hire staff that with expertise to go through all these mountains of regulations to understand what their rights might be. Generally, small businesses do not. They have usually less than 50 employees. They don't have the time to go through the ever changing regulations or the money to hire experts. The small business owner has to do it all often working at night or on the weekends. This puts

small businesses at a competitive disadvantage. The small business owners just want a fair opportunity to be successful or fail on their own merits.

Businesses do whatever they can to understand the regulations and abide by them. When the agency shows up at a small business' door for an inspection, the first thing that the owner thinks is did I comply with the regulations. The owner feels apprehension; wondering why are they here; what are they looking for; and who do I contact to find out.

The bill will require a select number of agencies to review their laws, rules, and internal policy documents to identify the rights of small business owners. The six agencies that are in the bill are 60 percent of the state agencies that conduct inspections on businesses. Small businesses would appreciate agencies helping them comply with the rules; be good citizens; protect their employees; pay their fair share of taxes; and be successful. This bill is not asking for new rights, just to know what the rights are. There are patient and airline passenger bills of rights. It is time to have a small business bill of rights. This bill is the first step. This is a small step in being supportive of small businesses.

Persons Testifying: PRO: Senator Lynda Wilson, Prime Sponsor; Senator Guy Palumbo, Sponsor; Mark Johnson, Washington Retail Association; Patrick Connor, National Federation of Independent Business.

Persons Signed In To Testify But Not Testifying: No one.