

HOUSE BILL No. 5731

August 27, 2014, Introduced by Reps. Haveman, Rogers, VerHeulen, Hooker, Leonard, Poleski and Denby and referred to the Committee on Regulatory Reform.

A bill to amend 1969 PA 306, entitled "Administrative procedures act of 1969," by amending sections 32 and 45 (MCL 24.232 and 24.245), section 32 as amended by 2011 PA 270 and section 45 as amended by 2013 PA 200.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 32. (1) Definitions of words and phrases and rules of
2 construction prescribed in any statute that are made applicable to
3 all statutes of this state also apply to rules unless clearly
4 indicated to the contrary.

5 (2) A rule or exception to a rule ~~shall~~**MUST** not discriminate
6 in favor of or against any person. A person affected by a rule is
7 entitled to the same benefits as any other person under the same or
8 similar circumstances.

9 (3) The violation of a rule is a crime ~~when so~~**IF** provided by

1 statute. ~~A UNLESS PROVIDED BY STATUTE, A~~ rule ~~shall~~ **MUST** not make
2 **DESIGNATE** an act or omission ~~to act~~ **AS** a crime or prescribe a
3 criminal penalty for violation of a rule.

4 (4) An agency may adopt ~~by~~ reference in its rules and
5 without publishing the adopted matter in full ~~all~~ or any part of
6 a code, standard, or regulation that has been adopted by an agency
7 of the United States or by a nationally recognized organization or
8 association. The reference ~~shall~~ **MUST** fully identify the adopted
9 matter by date and otherwise. The reference ~~shall~~ **MUST** not cover
10 any later amendments and editions of the adopted matter, but if the
11 agency wishes to incorporate them in its rule, it shall ~~amend~~ **DO SO**
12 **BY AMENDING** the rule or ~~promulgate~~ **PROMULGATING** a new rule.
13 ~~therefor.~~ The agency shall have available copies of the adopted
14 matter for inspection and distribution to the public at cost and
15 the rules ~~shall~~ **MUST** state where copies of the adopted matter are
16 available from the agency and the agency of the United States or
17 the national organization or association and the cost of a copy as
18 of the time the rule is adopted.

19 (5) A guideline, operational memorandum, bulletin,
20 interpretive statement, or form with instructions is not
21 enforceable by an agency, is considered merely advisory, and ~~shall~~
22 **MUST** not be given the force and effect of law. An agency shall not
23 rely upon a guideline, operational memorandum, bulletin,
24 interpretive statement, or form with instructions to support the
25 agency's decision to act or refuse to act if that decision is
26 subject to judicial review. A court shall not rely upon a
27 guideline, operational memorandum, bulletin, interpretive

1 statement, or form with instructions to uphold an agency decision
2 to act or refuse to act.

3 (6) ~~where~~ **IF** a statute provides that an agency may proceed by
4 rule-making or by order and an agency proceeds by order in lieu of
5 rule-making, the **AGENCY SHALL NOT GIVE THE** order ~~shall not be given~~
6 general applicability to persons who were not parties to the
7 proceeding or contested case before the issuance of the order,
8 unless the order was issued after public notice and a public
9 hearing.

10 (7) A rule ~~shall~~ **MUST** not exceed the rule-making delegation
11 contained in the statute authorizing the rule-making.

12 (8) **EXCEPT FOR AN EMERGENCY RULE PROMULGATED UNDER SECTION 48,**
13 **IF THE FEDERAL GOVERNMENT HAS MANDATED THAT THIS STATE PROMULGATE**
14 **RULES, AN AGENCY SHALL NOT ADOPT OR PROMULGATE A RULE MORE**
15 **STRINGENT THAN THE APPLICABLE FEDERALLY MANDATED STANDARD UNLESS**
16 **THE DIRECTOR OF THE AGENCY DETERMINES THAT THERE IS A CLEAR AND**
17 **CONVINCING NEED TO EXCEED THE APPLICABLE FEDERAL STANDARD.**

18 (9) **EXCEPT FOR AN EMERGENCY RULE PROMULGATED UNDER SECTION 48,**
19 **IF THE FEDERAL GOVERNMENT HAS NOT MANDATED THAT THIS STATE**
20 **PROMULGATE RULES, AN AGENCY SHALL NOT ADOPT OR PROMULGATE A RULE**
21 **MORE STRINGENT THAN AN APPLICABLE FEDERAL STANDARD UNLESS THE**
22 **DIRECTOR OF THE AGENCY DETERMINES THAT THERE IS A CLEAR AND**
23 **CONVINCING NEED TO EXCEED THE APPLICABLE FEDERAL STANDARD.**

24 Sec. 45. (1) Except as otherwise provided in this subsection,
25 an agency shall electronically submit a proposed rule to the
26 legislative service bureau for its formal certification. If
27 requested by the legislative service bureau, the office of

1 regulatory reinvention shall also transmit up to 4 paper copies of
2 the proposed rule. The legislative service bureau shall promptly
3 issue a certificate of approval indicating whether the proposed
4 rule is proper as to all matters of form, classification, and
5 arrangement. If the legislative service bureau fails to issue a
6 certificate of approval within 21 calendar days after receipt of
7 the submission for formal certification, the office of regulatory
8 reinvention may issue a certificate of approval. If the legislative
9 service bureau returns the submission to the agency before the
10 expiration of the 21-calendar-day time period, the 21-calendar-day
11 time period is tolled until the rule is resubmitted by the agency.
12 The legislative service bureau shall have the remainder of the 21-
13 calendar-day time period or 6 calendar days, whichever is longer,
14 to consider the formal certification of the rule. The office of
15 regulatory reinvention may approve a proposed rule if it considers
16 the proposed rule to be legal and appropriate.

17 (2) Except as provided in subsection (6), after notice is
18 given as provided in this act and before the agency proposing the
19 rule has formally adopted the rule, the agency shall prepare an
20 agency report containing a synopsis of the comments contained in
21 the public hearing record, a copy of the request for rule-making,
22 and the regulatory impact statement required under subsection (3).
23 In the report, the agency shall describe any changes in the
24 proposed rules that were made by the agency after the public
25 hearing. The office of regulatory reinvention shall transmit by
26 notice of transmittal to the committee copies of the rule, the
27 agency reports containing the request for rule-making, a copy of

1 the regulatory impact statement, and certificates of approval from
2 the legislative service bureau and the office of regulatory
3 reinvention. The office of regulatory reinvention shall also
4 electronically submit to the committee a copy of the rule, any
5 agency reports required under this subsection, any regulatory
6 impact statements required under subsection (3), and any
7 certificates of approval required under subsection (1). The agency
8 shall electronically transmit to the committee the records
9 described in this subsection within 1 year after the date of the
10 last public hearing on the proposed rule unless the proposed rule
11 is a resubmission under section 45a(7).

12 (3) Except as provided in subsection (6), an agency shall
13 prepare and include with a notice of transmittal under subsection
14 (2) the request for rule-making and the response from the office of
15 regulatory reinvention, a small business impact statement prepared
16 under section 40(1), and a regulatory impact statement. The
17 regulatory impact statement shall contain all of the following
18 information:

19 (a) A comparison of the proposed rule to parallel federal
20 rules or standards set by a state or national licensing agency or
21 accreditation association, if any exist.

22 **(B) IF SECTION 32(8) APPLIES AND THE PROPOSED RULE IS MORE**
23 **STRINGENT THAN THE APPLICABLE FEDERALLY MANDATED STANDARD, A**
24 **STATEMENT OF THE SPECIFIC FACTS THAT ESTABLISH THE CLEAR AND**
25 **CONVINCING NEED TO ADOPT THE MORE STRINGENT RULE AND AN EXPLANATION**
26 **OF THE UNIQUE CHARACTERISTICS OF THIS STATE THAT NECESSITATE THE**
27 **MORE STRINGENT STANDARD.**

1 (C) IF SECTION 32(9) APPLIES AND THE PROPOSED RULE IS MORE
2 STRINGENT THAN THE APPLICABLE FEDERAL STANDARD, A STATEMENT OF THE
3 SPECIFIC FACTS THAT ESTABLISH THE CLEAR AND CONVINCING NEED TO
4 ADOPT THE MORE STRINGENT RULE AND AN EXPLANATION OF THE UNIQUE
5 CHARACTERISTICS OF THIS STATE THAT NECESSITATE THE MORE STRINGENT
6 STANDARD.

7 (D) ~~(b)~~—If requested by the office of regulatory reinvention
8 or the committee, a comparison of the proposed rule to standards in
9 similarly situated states, based on geographic location,
10 topography, natural resources, commonalities, or economic
11 similarities.

12 (E) ~~(e)~~—An identification of the behavior and frequency of
13 behavior that the rule is designed to alter.

14 (F) ~~(d)~~—An identification of the harm resulting from the
15 behavior that the rule is designed to alter and the likelihood that
16 the harm will occur in the absence of the rule.

17 (G) ~~(e)~~—An estimate of the change in the frequency of the
18 targeted behavior expected from the rule.

19 (H) ~~(f)~~—An identification of the businesses, groups, or
20 individuals who will be directly affected by, bear the cost of, or
21 directly benefit from the rule.

22 (I) ~~(g)~~—An identification of any reasonable alternatives to
23 regulation pursuant to the proposed rule that would achieve the
24 same or similar goals.

25 (J) ~~(h)~~—A discussion of the feasibility of establishing a
26 regulatory program similar to that proposed in the rule that would
27 operate through market-based mechanisms.

1 **(K)** ~~(i)~~—An estimate of the cost of rule imposition on the
2 agency promulgating the rule.

3 **(L)** ~~(j)~~—An estimate of the actual statewide compliance costs of
4 the proposed rule on individuals.

5 **(M)** ~~(k)~~—A demonstration that the proposed rule is necessary
6 and suitable to achieve its purpose in proportion to the burdens it
7 places on individuals.

8 **(N)** ~~(l)~~—An estimate of the actual statewide compliance costs of
9 the proposed rule on businesses and other groups.

10 **(O)** ~~(m)~~—An identification of any disproportionate impact the
11 proposed rule may have on small businesses because of their size.

12 **(P)** ~~(n)~~—An identification of the nature of any report required
13 and the estimated cost of its preparation by small businesses
14 required to comply with the proposed rule.

15 **(Q)** ~~(o)~~—An analysis of the costs of compliance for all small
16 businesses affected by the proposed rule, including costs of
17 equipment, supplies, labor, and increased administrative costs.

18 **(R)** ~~(p)~~—An identification of the nature and estimated cost of
19 any legal consulting and accounting services that small businesses
20 would incur in complying with the proposed rule.

21 **(S)** ~~(q)~~—An estimate of the ability of small businesses to
22 absorb the costs estimated under subdivisions ~~(n) to (p)~~ **TO (R)**
23 without suffering economic harm and without adversely affecting
24 competition in the marketplace.

25 **(T)** ~~(r)~~—An estimate of the cost, if any, to the agency of
26 administering or enforcing a rule that exempts or sets lesser
27 standards for compliance by small businesses.

1 **(U)** ~~(s)~~—An identification of the impact on the public interest
2 of exempting or setting lesser standards of compliance for small
3 businesses.

4 **(V)** ~~(t)~~—A statement describing the manner in which the agency
5 reduced the economic impact of the rule on small businesses or a
6 statement describing the reasons such a reduction was not feasible.

7 **(W)** ~~(u)~~—A statement describing how the agency has involved
8 small businesses in the development of the rule.

9 **(X)** ~~(v)~~—An estimate of the primary and direct benefits of the
10 rule.

11 **(Y)** ~~(w)~~—An estimate of any cost reductions to businesses,
12 individuals, groups of individuals, or governmental units as a
13 result of the rule.

14 **(Z)** ~~(x)~~—An estimate of any increase in revenues to state or
15 local governmental units as a result of the rule.

16 **(AA)** ~~(y)~~—An estimate of any secondary or indirect benefits of
17 the rule.

18 **(BB)** ~~(z)~~—An identification of the sources the agency relied
19 upon in compiling the regulatory impact statement, including the
20 methodology utilized in determining the existence and extent of the
21 impact of a proposed rule and a cost-benefit analysis of the
22 proposed rule.

23 **(CC)** ~~(aa)~~—A detailed recitation of the efforts of the agency
24 to comply with the mandate to reduce the disproportionate impact of
25 the rule upon small businesses as described in section 40(1)(a) to
26 (d).

27 **(DD)** ~~(bb)~~—Any other information required by the office of

1 regulatory reinvention.

2 (4) The agency shall electronically transmit the regulatory
3 impact statement required under subsection (3) to the office of
4 regulatory reinvention at least 28 days before the public hearing
5 required under section ~~42~~41. Before the public hearing can be
6 held, the regulatory impact statement must be reviewed and approved
7 by the office of regulatory reinvention. The agency shall also
8 electronically transmit a copy of the regulatory impact statement
9 to the committee before the public hearing and the agency shall
10 make copies available to the public at the public hearing. The
11 agency shall publish the regulatory impact statement on its website
12 at least 10 days before the date of the public hearing.

13 (5) The committee shall electronically transmit to the senate
14 fiscal agency and the house fiscal agency a copy of each rule and
15 regulatory impact statement filed with the committee and a copy of
16 the agenda identifying the proposed rules to be considered by the
17 committee. The senate fiscal agency and the house fiscal agency
18 shall analyze each proposed rule for possible fiscal implications
19 that, if the rule were adopted, would result in additional
20 appropriations in the current fiscal year or commit the legislature
21 to an appropriation in a future fiscal year. The senate fiscal
22 agency and the house fiscal agency shall electronically report
23 their findings to the senate and house appropriations committees
24 and to the committee before the date of consideration of the
25 proposed rule by the committee.

26 (6) Subsections (2), (3), and (4) do not apply to a rule that
27 is promulgated under section 33, 44, or 48.

1 Enacting section 1. This amendatory act takes effect February
2 1, 2015.