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HOUSE BILL 2093

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State of Washington

66th Legislature

2019 Regular Session

**By** Representatives Barkis, Chapman, Chambers, Jenkins, McCaslin, Walsh, Van Werven, Shea, Smith, Caldier, Orcutt, Irwin, Kirby, Schmick, Stokesbary, Blake, Kraft, Hoff, Harris, Dye, Corry, Cody, Tarleton, Maycumber, and Reeves

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

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

4 NEW SECTION. **Sec. 1.** The legislature reaffirms its findings  
5 that the licensing and regulation of businesses and professions  
6 requires periodic inspections, audits, interviews, site visits, or  
7 other oversight measures to verify that licensing, permit, and other  
8 regulatory requirements are met, and that unnecessary costs and  
9 delays may occur when small business owners must seek outside counsel  
10 or other professional assistance to prepare for and participate in  
11 review and enforcement actions such as audits and inspections of  
12 their records, facilities, or job sites.

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

1 protections available to the entities they regulate, including small  
2 businesses.

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

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

16 NEW SECTION. **Sec. 2.** A new section is added to chapter 34.05  
17 RCW to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

37 (b) The written notice must describe the reason for the visit and  
38 identify, so far as practical, the areas where access is requested,  
39 documents or other records to be inspected, and individuals to be

1 interviewed in addition to the owner or the owner's designated  
2 representative.

3 (c) Upon prior request, written materials must be made available  
4 in the small business owner's primary language. If needed, the agency  
5 must provide an interpreter or interpretation services during a  
6 scheduled visit, including during witness interviews. A means of  
7 requesting translation or interpreter services should be included in  
8 the visit notice.

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

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

20 (i) Emergency situations;

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

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

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

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

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

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

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

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

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

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

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

39 (o) Agency personnel must notify the small business owner or  
40 owner's representative of the opportunity to correct violations

1 within the time period allowed in RCW 34.05.110, or as authorized by  
2 other agency-specific statutes or rules, to avoid or mitigate  
3 penalties.

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

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

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

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

26 (t) The small business owner or owner's representative must be  
27 given contact information for the agency small business liaison,  
28 ombuds, or other staff authorized to review, investigate, answer, or  
29 otherwise assist regulated entities with questions or concerns about  
30 the visit or other matters within the agency's jurisdiction.

31 NEW SECTION. **Sec. 3.** A new section is added to chapter 34.05  
32 RCW to read as follows:

33 Agencies with one thousand or more full-time equivalent employees  
34 must complete and post online a small business bill of rights  
35 required by this act by December 31, 2019. Agencies with five hundred  
36 to nine hundred ninety-nine full-time equivalent employees must  
37 complete and post online a small business bill of rights required by  
38 this act by July 1, 2020. Agencies with fewer than five hundred full-  
39 time equivalent employees must complete and post online a small

1 business bill of rights required by this act by December 31, 2020.  
2 New agencies or programs established after the effective date of this  
3 section must complete and post online a small business bill of rights  
4 required by this act within twelve months of their creation.

5 NEW SECTION. **Sec. 4.** This act may be known and cited as the  
6 small business bill of rights.

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