

Act No. 513
Public Acts of 2016
Approved by the Governor
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**STATE OF MICHIGAN
98TH LEGISLATURE
REGULAR SESSION OF 2016**

Introduced by Senator Stamas

ENROLLED SENATE BILL No. 962

AN ACT to amend 1969 PA 306, entitled “An act to provide for the effect, processing, promulgation, publication, and inspection of state agency rules, determinations, and other matters; to provide for the printing, publishing, and distribution of certain publications; to provide for state agency administrative procedures and contested cases and appeals from contested cases in licensing and other matters; to create and establish certain committees and offices; to provide for declaratory judgments as to rules; to repeal certain acts and parts of acts; and to repeal certain parts of this act on a specific date,” by amending sections 5, 44, 45, and 45a (MCL 24.205, 24.244, 24.245, and 24.245a), section 5 as amended by 2006 PA 460, section 44 as amended by 2004 PA 23, section 45 as amended by 2013 PA 200, and section 45a as amended by 2011 PA 245, and by adding section 45c.

The People of the State of Michigan enact:

Sec. 5. As used in this act:

(a) “License” includes the whole or part of an agency permit, certificate, approval, registration, charter, or similar form of permission required by law. License does not include a license required solely for revenue purposes or a license or registration issued under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923.

(b) “Licensing” includes agency activity involving the grant, denial, renewal, suspension, revocation, annulment, withdrawal, recall, cancellation, or amendment of a license.

(c) “Michigan register” means the publication described in section 8.

(d) “Notice” means a written or electronic record that informs a person of past or future action of the person generating the record.

(e) “Notice of objection” means the record adopted by the committee that indicates the committee’s formal objection to a proposed rule.

(f) “Office” means, unless expressly stated otherwise, the office of performance and transformation.

(g) “Office of regulatory reform”, “state office of administrative hearings and rules”, and “office of regulatory reinvention” mean the office.

(h) “Party” means a person or agency named, admitted, or properly seeking and entitled of right to be admitted, as a party in a contested case. In a contested case regarding an application for a license, party includes the applicant for the license.

(i) “Person” means an individual, partnership, association, corporation, limited liability company, limited liability partnership, governmental subdivision, or public or private organization of any kind other than the agency engaged in the particular processing of a rule, declaratory ruling, or contested case.

(j) “Processing of a rule” means the action required or authorized by this act regarding a rule that is to be promulgated, including the rule’s adoption, and ending with the rule’s promulgation.

(k) “Promulgation of a rule” means that step in the processing of a rule consisting of the filing of the rule with the secretary of state.

(l) "Record" means information that is inscribed on a paper or electronic medium.

Sec. 44. (1) Sections 41 and 42 do not apply to an amendment or rescission of a rule that is obsolete or superseded, or that is required to make obviously needed corrections to make the rule conform to an amended or new statute or to accomplish any other solely formal purpose, if a statement to that effect is included in the legislative service bureau certificate of approval of the rule.

(2) Sections 41 and 42 do not apply to a rule that is promulgated under the Michigan occupational safety and health act, 1974 PA 154, MCL 408.1001 to 408.1094, that is substantially similar to an existing federal standard that has been adopted or promulgated under the occupational safety and health act of 1970, Public Law 91-596. However, notice of the proposed rule must be published in the Michigan register at least 35 days before the submission of the rule to the secretary of state under section 46(1). A reasonable period, not to exceed 21 days, must be provided for the submission of written or electronic comments and views following publication in the Michigan register.

(3) Sections 41 and 42 do not apply to a change to a proposed rule by an agency during processing of the rule if the office determines under section 45c(3) that the regulatory impact and impact on small businesses of the changed proposed rule are not more burdensome than the regulatory impact and impact on small businesses of the original proposed rule.

(4) For purposes of subsection (2), "substantially similar" means identical, with the exception of style or format differences needed to conform to this or other state laws, as determined by the office.

Sec. 45. (1) Except as otherwise provided in this subsection, an agency shall electronically submit a proposed rule to the legislative service bureau for its formal certification. If requested by the legislative service bureau, the office shall also transmit up to 4 paper copies of the proposed rule. The legislative service bureau shall promptly issue a certificate of approval indicating whether the proposed rule is proper as to all matters of form, classification, and arrangement. If the legislative service bureau fails to issue a certificate of approval within 21 calendar days after receipt of the submission for formal certification, the office may issue a certificate of approval. If the legislative service bureau returns the submission to the agency before the expiration of the 21-calendar-day time period, the 21-calendar-day time period is tolled until the rule is resubmitted by the agency. After resubmission, the legislative service bureau has the remainder of the 21-calendar-day time period or 6 calendar days, whichever is longer, to consider the formal certification of the rule. The office may approve a proposed rule if it considers the proposed rule to be legal and appropriate.

(2) Except as provided in subsection (6), after notice is given as provided in this act and before the agency proposing the rule has formally adopted the rule, the agency shall prepare an agency report containing a synopsis of the comments contained in the public hearing record, a copy of the request for rule-making, and the regulatory impact statement required under subsection (3). In the report, the agency shall describe any changes in the proposed rules that were made by the agency after the public hearing. The office shall transmit by notice of transmittal to the committee copies of the rule, the agency reports containing the request for rule-making, a copy of the regulatory impact statement, and certificates of approval from the legislative service bureau and the office. The office shall also electronically submit to the committee a copy of the rule, any agency reports required under this subsection, any regulatory impact statements required under subsection (3), and any certificates of approval required under subsection (1). The agency shall electronically transmit to the committee the records described in this subsection within 1 year after the date of the last public hearing on the proposed rule.

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

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

(b) If requested by the office or the committee, a comparison of the proposed rule to standards in similarly situated states, based on geographic location, topography, natural resources, commonalities, or economic similarities.

(c) An identification of the behavior and frequency of behavior that the rule is designed to alter.

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

(e) An estimate of the change in the frequency of the targeted behavior expected from the rule.

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

(g) An identification of any reasonable alternatives to regulation pursuant to the proposed rule that would achieve the same or similar goals.

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

(i) An estimate of the cost of rule imposition on the agency promulgating the rule.

- (j) An estimate of the actual statewide compliance costs of the proposed rule on individuals.
- (k) A demonstration that the proposed rule is necessary and suitable to achieve its purpose in proportion to the burdens it places on individuals.
- (l) An estimate of the actual statewide compliance costs of the proposed rule on businesses and other groups.
- (m) An identification of any disproportionate impact the proposed rule may have on small businesses because of their size.
- (n) An identification of the nature of any report required and the estimated cost of its preparation by small businesses required to comply with the proposed rule.
- (o) An analysis of the costs of compliance for all small businesses affected by the proposed rule, including costs of equipment, supplies, labor, and increased administrative costs.
- (p) An identification of the nature and estimated cost of any legal consulting and accounting services that small businesses would incur in complying with the proposed rule.
- (q) An estimate of the ability of small businesses to absorb the costs estimated under subdivisions (n) to (p) without suffering economic harm and without adversely affecting competition in the marketplace.
- (r) An estimate of the cost, if any, to the agency of administering or enforcing a rule that exempts or sets lesser standards for compliance by small businesses.
- (s) An identification of the impact on the public interest of exempting or setting lesser standards of compliance for small businesses.
- (t) A statement describing the manner in which the agency reduced the economic impact of the rule on small businesses or a statement describing the reasons such a reduction was not feasible.
- (u) A statement describing how the agency has involved small businesses in the development of the rule.
- (v) An estimate of the primary and direct benefits of the rule.
- (w) An estimate of any cost reductions to businesses, individuals, groups of individuals, or governmental units as a result of the rule.
- (x) An estimate of any increase in revenues to state or local governmental units as a result of the rule.
- (y) An estimate of any secondary or indirect benefits of the rule.
- (z) An identification of the sources the agency relied on in compiling the regulatory impact statement, including the methodology utilized in determining the existence and extent of the impact of a proposed rule and a cost-benefit analysis of the proposed rule.
- (aa) A detailed recitation of the efforts of the agency to comply with the mandate to reduce the disproportionate impact of the rule upon small businesses as described in section 40(1)(a) to (d).
- (bb) Any other information required by the office.

(4) The agency shall electronically transmit the regulatory impact statement required under subsection (3) to the office at least 28 days before the public hearing required under section 41. The agency shall not hold the public hearing until the regulatory impact statement has been reviewed and approved by the office. The agency shall also electronically transmit a copy of the regulatory impact statement to the committee before the public hearing and the agency shall make copies available to the public at the public hearing. The agency shall publish the regulatory impact statement on its website at least 10 days before the date of the public hearing.

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

(6) Subsections (2), (3), and (4) do not apply to a rule that is promulgated under section 33 or 48 or a rule to which sections 41 and 42 do not apply as provided in section 44.

Sec. 45a. (1) Except as otherwise provided in subsections (10) to (12), after the committee has received a notice of transmittal under section 45(2), the committee has 15 session days in which to consider the rule and do 1 of the following:

- (a) Object to the rule by approving a notice of objection under subsection (2) and filing the notice with the office.
- (b) Propose that the rule be changed. If the committee proposes that a rule be changed under this subdivision, section 45c applies.
- (c) Decide to introduce bills under subsection (5) to enact the subject of the rule into law.
- (d) Waive any remaining session days. If the committee waives the remaining session days, the clerk of the committee shall promptly notify the office of the waiver by electronic transmission.

(2) To approve a notice of objection under subsection (1)(a), a concurrent majority of the committee, as provided in section 35, must affirmatively determine that 1 or more of the following conditions exist:

(a) The agency lacks statutory authority for the rule.

(b) The agency is exceeding the statutory scope of its rule-making authority.

(c) There exists an emergency relating to the public health, safety, and welfare that would warrant disapproval of the rule.

(d) The rule conflicts with state law.

(e) A substantial change in circumstances has occurred since enactment of the law on which the proposed rule is based.

(f) The rule is arbitrary or capricious.

(g) The rule is unduly burdensome to the public or to a licensee licensed under the rule.

(3) If the committee does not approve a notice of objection, propose that the rule be changed, or decide to introduce bills under subsection (5) within the time period prescribed in subsection (1), or if the committee waives the remaining session days under subsection (1), the office may immediately file the rule, with the certificate of approval required under section 45(1), with the secretary of state. The rule takes effect immediately on being filed with the secretary of state unless a later date is indicated in the rule.

(4) If the committee files a notice of objection under subsection (1)(a), the committee chair, the alternate chair, or any member of the committee shall introduce bills in both houses of the legislature, simultaneously to the extent practicable. Each house shall place the bill or bills directly on its calendar. The bills must contain 1 or more of the following:

(a) A rescission of a rule upon its effective date.

(b) A repeal of the statutory provision under which the rule was authorized.

(c) A bill staying the effective date of the proposed rule for up to 1 year.

(5) If the committee decides to proceed under this subsection as provided in subsection (1)(c), the committee chair and the alternate chair shall, as soon as the bills have been prepared, introduce or cause to be introduced in both houses of the legislature bills to enact into law the subject of the proposed rule. The language of a bill introduced under this subsection is not required to be identical to the language of the proposed rule. The legislative service bureau shall give priority to the preparation of the bills.

(6) The office shall not file with the secretary of state a rule as to which the committee has filed a notice of objection under subsection (1)(a) until after whichever of the following applies:

(a) Unless subdivision (b) applies, 15 session days after the date the notice is filed.

(b) The date of a rescission of the notice of objection as provided in this subdivision. The committee may rescind a notice of objection filed under subsection (1)(a). If the committee rescinds a notice of objection under this subdivision, the clerk of the committee shall promptly notify the office by electronic transmission of the rescission.

(7) If the committee decides to introduce bills under subsection (5) with respect to the subject of a rule, the office shall not file the rule with the secretary of state until 270 days after the bills were introduced.

(8) If legislation introduced under subsection (4) or (5) is defeated in either house and if the vote by which the legislation failed to pass is not reconsidered in compliance with the rules of that house, or if legislation introduced under subsection (4) or (5) is not adopted by both houses within the applicable period specified in subsection (6) or (7), the office may file the rule with the secretary of state. The rule takes effect immediately on being filed with the secretary of state unless a later date is specified in the rule.

(9) If legislation introduced under subsection (4) or (5) is enacted by the legislature and presented to the governor within the 15-session-day period under subsection (6) or before the expiration of 270 days under subsection (7), the rule does not take effect unless the legislation is vetoed by the governor as provided by law. If the governor vetoes the legislation, the office may file the rule with the secretary of state immediately. The rule takes effect 7 days after the date it is filed with the secretary of state unless a later effective date is indicated in the rule.

(10) An agency may withdraw a proposed rule under the following conditions:

(a) With permission of the committee chair and alternate chair, the agency may withdraw the rule to change the rule and resubmit it as changed. If permission to withdraw is granted, the 15-session-day period described in subsection (1) is tolled until the rule is resubmitted. However, the committee must have at least 6 session days after resubmission to consider the resubmitted rule, and if necessary, the period under subsection (1) is extended to give the committee the 6 days.

(b) Without permission of the committee chair and alternate chair, the agency may withdraw the rule to change the rule and resubmit it as changed. If permission to withdraw is not granted, a new and untolled 15-session-day time period described in subsection (1) begins on resubmission of the rule to the committee for consideration.

(11) This section does not apply to rules adopted under section 33 or 48 or a rule to which sections 41 and 42 do not apply as provided in section 44(1) or (2).

(12) An agency shall withdraw any rule pending before the committee at the final adjournment of a regular session held in an even-numbered year and resubmit the rule. A new and untolled 15-session-day period described in subsection (1) begins on resubmission of the rule to the committee for consideration.

(13) As used in this section only, "session day" means a day in which both the house of representatives and the senate convene in session and a quorum is recorded.

Sec. 45c. (1) If the committee proposes that a proposed rule be changed under section 45a(1), the agency shall, within 30 days, do 1 of the following:

(a) Decide to change the rule and, within the 30 days, resubmit the rule, as changed, to the committee. If the agency decides to change the rule, subsections (2) to (5) apply.

(b) Decide to not change the rule. If the agency decides to not change the rule, subsection (6) applies.

(2) If an agency decides to change a proposed rule under subsection (1), the agency shall withdraw the rule. A withdrawal under this subsection is a withdrawal with permission under section 45a(10). After withdrawing the rule under this subsection, the agency shall give notice to the office for publication of the proposed rule, as changed, under section 8. The notice must include the text of the rule as changed.

(3) After receiving the text of a proposed rule as changed under subsection (2), the office shall review the rule as changed and determine whether the regulatory impact or the impact on small businesses of the rule as changed would be more burdensome than the regulatory impact or the impact on small businesses of the rule as originally proposed. If the language of the rule as changed is identical to the language of the corresponding rule promulgated and in effect at the time of the review, the regulatory impact and impact on small businesses of the rule as changed are not more burdensome. The office shall notify the agency of its determination under this subsection.

(4) If the office's determination under subsection (3) is that the regulatory impact and the impact on small businesses of the rule as changed would not be more burdensome, the agency is not required to prepare a new agency report under section 45(2) or conduct a new public hearing on the rule as changed. If the determination is that the regulatory impact and the impact on small businesses of the rule as changed would be more burdensome, the agency shall prepare a new agency report under section 45(2) and conduct a new public hearing.

(5) After receiving the office's determination under subsection (3), the agency shall submit a supplement to the agency report under section 45(2) that includes all of the following:

(a) A statement of the determination of the office under subsection (3) and whether a new agency report under section 45(2) and public hearing are required.

(b) An explanation for the proposed changed rule.

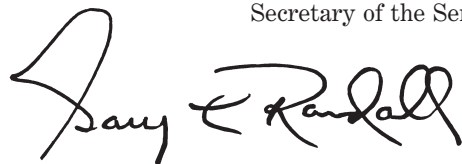
(6) If an agency decides to not change a rule under subsection (1), the agency shall within the 30-day period under subsection (1) notify the committee of the decision and the reasons for the decision and file the notice with the office. After the notice is filed, the committee has 15 session days in which to consider the agency's decision and take 1 of the actions listed in section 45a(1).

Enacting section 1. This amendatory act takes effect January 1, 2017.

This act is ordered to take immediate effect.



Secretary of the Senate



Clerk of the House of Representatives

Approved

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Governor