

CHAPTER 375

H.B. No. 5

AN ACT

relating to the licensing of businesses and to regulatory relief for small businesses.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. LEGISLATIVE FINDING AND INTENT. The legislature finds that:

(1) current administrative practices often result in unnecessary delays in the process of obtaining permits and other forms of authorizations from state agencies, and that those delays hamper small businesses and other enterprises and hinder economic development; and

(2) it would benefit small businesses, other enterprises, and the economy of the state, for state agency rules affecting small businesses to be established in a manner that has the least possible adverse economic effect on small businesses and other enterprises.

SECTION 2. DEFINITIONS. In this Act:

(1) "Permit" means any license, certificate, registration, permit, or other form of authorization, required by law or by state agency rules, that must be obtained by a person in order to engage in a particular business.

(2) "Person" means any individual, proprietorship, partnership, association, cooperative, corporation, nonprofit organization, or any other organization required to obtain one or more permits.

(3) "Small business" means a corporation, partnership, sole proprietorship, or other legal entity that is formed for the purpose of making a profit, that is independently owned and operated, and that has either fewer than 100 employees or less than \$1 million in annual gross receipts.

(4) "State agency" means any department, board, bureau, commission, division, office, council, or agency of the state.

SECTION 3. AGENCY RULES. (a) Each state agency that issues permits shall adopt rules regarding the procedures by which the agency processes applications for and issues permits. An agency may establish separate rules under this section for contested and uncontested cases. The rules must specify:

(1) a period, beginning on the date of receipt of a permit application, within which the agency must issue a written notice informing the applicant that the application is complete and accepted for filing, or that the application is deficient and set out the specific additional information that is required; and

(2) a period, beginning on the date the filing of a complete application is received, within which the agency must reach a permit decision to either deny or approve the permit application.

(b) The agency shall publish with the proposed rules a statement of the agency's minimum, maximum, and median times for processing a permit, from the date the initial application was received to the date of the final permit decision, based on the agency's actual performance during the 12 months preceding publication of the proposed rules, and a justification of the periods proposed.

(c) An agency may amend its rules under this section from time to time.

(d) An agency is considered to have good cause for exceeding the period established for processing a permit if:

(1) the number of permits to be processed exceeds by 15 percent or more the number of permits processed in the same calendar quarter the preceding year;

(2) the agency must rely on another public or private entity for all or part of its permit processing, and the delay is caused by the other entity; or

(3) any other conditions exist giving the agency good cause for exceeding the period established for processing a permit.

SECTION 4. EXEMPTIONS. (a) This Act does not apply to a permit for which the issuing agency can demonstrate that the median time for processing an application, from receipt of the initial application to the final permit decision, did not exceed seven days, based on the agency's actual performance during the preceding calendar year.

(b) This Act does not apply to a permit or license issued:

- (1) in connection with any form of gaming or gambling; or
- (2) under the Alcoholic Beverage Code.

SECTION 5. RESPONSIBILITIES OF AGENCY HEADS. (a) The head of each state agency subject to this Act shall ensure that the agency complies with this Act. The agency shall adopt rules establishing an appeal process through which an applicant can appeal directly to the agency head for a timely resolution of any dispute arising from a violation of the periods required by this Act. The rules must provide for the full reimbursement of all filing fees paid by a permit applicant whose application was not processed within the period adopted by the agency, and whose appeal to the agency head was decided in the applicant's favor. An appeal shall be decided in the applicant's favor if the agency exceeded its established period for issuance or denial of the permit and the agency failed to establish good cause for exceeding the period.

(b) Information regarding the appeal process shall be included in the permit application forms issued by the agency.

(c) Each agency biennially shall submit to the governor and legislature a report including the information required by Subsection (d) of this section. Each agency shall also include the information required by Subsection (d) of this section in each semiannual performance report the agency submits to the Legislative Budget Board.

(d) A report under Subsection (c) of this section must include:

(1) a statement of the periods required by this Act for each permit issued by the agency, specifying any modifications or additions made during the period since the last report;

(2) a statement of the minimum, maximum, and median times for processing permits during the period since the last report, from the date of receipt of the initial application to the final permit decision, for each permit issued by the agency;

(3) a description of the appeal process required by this Act and a summary of the number and disposition of appeals received by the agency during the period since the last report; and

(4) a description of specific actions taken by the agency during the period since the last report to simplify, reduce, and otherwise improve its permit application, processing, and paperwork requirements.

SECTION 6. ADOPTION OF RULES WITH ADVERSE EFFECT ON SMALL BUSINESSES. (a) A state agency considering adoption of a rule that would have an adverse economic effect on small businesses shall reduce that effect if doing so is legal and feasible considering the purpose of the statute under which the rule is to be adopted. To reduce the adverse effect on small businesses the agency may:

(1) establish separate compliance or reporting requirements for small businesses;

(2) use performance standards in place of design standards for small businesses; or

(3) exempt small businesses from all or part of the rule.

(b) Before adopting a rule governed by this section an agency shall prepare a statement of the effect of the rule on small businesses. The statement must include:

(1) an analysis of the cost of compliance with the rule for small businesses; and

(2) a comparison of the cost of compliance for small businesses with the cost of compliance for the largest businesses affected by the rule, based on at least one of the following standards:

(A) cost per employee;

(B) cost per hour of labor; or

(C) cost per \$100 of sales.

(c) The agency shall include the statement of effect as part of the notice of the proposed rule that it files with the secretary of state for publication in the Texas Register.

(d) This section does not apply to a rule adopted under Title 2, Tax Code.

SECTION 7. INITIAL RULES. Each state agency required to adopt rules under Section 3 of this Act shall adopt the rules before January 1, 1988. In determining whether an exemption exists under Section 4 of this Act before January 1, 1988, and in adopting the initial rules under Section 3 of this Act, an agency shall base its demonstration of minimum, maximum, and median processing times on applications received and for which final permit decisions were made during the period beginning June 1, 1987, and ending August 31, 1987.

SECTION 8. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on April 8, 1987, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 5 on May 20, 1987, by a non-record vote. Passed by the Senate, with amendments, on May 14, 1987, by a viva-voce vote.

Approved June 16, 1987.

Effective Aug. 31, 1987, 90 days after date of adjournment.