

SENATE BILL NO. 175

INTRODUCED BY SQUIRES

BY REQUEST OF THE STATE ADMINISTRATION AND VETERANS' AFFAIRS INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT EXPRESSLY PROVIDING THAT AN AGENCY MAY NOT ENFORCE, IMPLEMENT, OR OTHERWISE TREAT AN ADMINISTRATIVE RULE AS EFFECTIVE UNTIL THE EFFECTIVE DATE OF THE RULE; AMENDING SECTION 2-4-306, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, section 2-4-306(4), MCA, now provides that a rule is not effective until after publication in the Montana Administrative Register or until a different effective date as stated by the agency in the rule; and

WHEREAS, during the 2005-2006 interim, the State Administration and Veterans' Affairs Interim Committee dealt with a state agency that treated a not-yet-effective administrative rule as if that rule was effective as law.

WHEREAS, the State Administration and Veterans' Affairs Interim Committee believes that an agency may not under existing law implement a rule before the rule is effective and that the amendment of section 2-4-306, MCA, contained in this legislation does not alter the existing law.

THEREFORE, it is the intent of the State Administration and Veterans' Affairs Interim Committee to provide a short and clear statement in law that an agency may not implement a rule before the rule is effective as law.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-4-306, MCA, is amended to read:

"2-4-306. Filing, format, and adoption and effective dates -- dissemination of emergency rules.

(1) Each agency shall file with the secretary of state a copy of each rule adopted by it or a reference to the rule as contained in the proposal notice. A rule is adopted on the date that the adoption notice is filed with the secretary of state and is effective on the date referred to in subsection (4), except that if the secretary of state requests corrections to the adoption notice, the rule is adopted on the date that the revised notice is filed with the secretary of state.

(2) Pursuant to 2-15-401, the secretary of state may prescribe rules to effectively administer this chapter,

including rules regarding the format, style, and arrangement for notices and rules that are filed pursuant to this chapter, and may refuse to accept the filing of any notice or rule that is not in compliance with this chapter. The secretary of state shall keep and maintain a permanent register of all notices and rules filed, including superseded and repealed rules, that must be open to public inspection and shall provide copies of any notice or rule upon request of any person. Unless otherwise provided by statute, the secretary of state may require the payment of the cost of providing copies.

(3) If the appropriate administrative rule review committee has conducted a poll of the legislature in accordance with 2-4-403, the results of the poll must be published with the rule.

(4) Each rule is effective after publication in the register, as provided in 2-4-312, except that:

(a) if a later date is required by statute or specified in the rule, the later date is the effective date;

(b) subject to applicable constitutional or statutory provisions:

(i) a temporary rule is effective immediately upon filing with the secretary of state or at a stated date following publication in the register; and

(ii) an emergency rule is effective at a stated date following publication in the register or immediately upon filing with the secretary of state if the agency finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare. The agency's finding and a brief statement of reasons for the finding must be filed with the rule. The agency shall, in addition to the required publication in the register, take appropriate and extraordinary measures to make emergency rules known to each person who may be affected by them.

(c) if, following written administrative rule review committee notification to an agency under 2-4-305(9), the committee meets and under 2-4-406(1) objects to all or some portion of a proposed rule before the rule is adopted, the rule or portion of the rule objected to is not effective until the day after final adjournment of the regular session of the legislature that begins after the notice proposing the rule was published by the secretary of state, unless, following the committee's objection under 2-4-406(1):

(i) the committee withdraws its objection under 2-4-406 before the rule is adopted; or

(ii) the rule or portion of a rule objected to is adopted with changes that in the opinion of a majority of the committee members, as communicated in writing to the committee presiding officer and staff, make it comply with the committee's objection and concerns.

(5) An agency may not enforce, implement, or otherwise treat as effective a rule proposed or adopted by the agency until the effective date of the rule as provided in this section. NOTHING IN THIS SUBSECTION PROHIBITS AN AGENCY FROM ENFORCING AN ESTABLISHED POLICY OR PRACTICE OF THE AGENCY THAT EXISTED PRIOR TO THE PROPOSAL OR ADOPTION OF THE RULE AS LONG AS THE POLICY OR PRACTICE IS WITHIN THE SCOPE OF THE AGENCY'S

LAWFUL AUTHORITY."

NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.

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