

HOUSE BILL No. 5048

September 28, 2017, Introduced by Reps. LaFave, Noble, Marino, Glenn, Runestad, Kelly, Allor, Wentworth, Hoitenga, Johnson, Miller, McCready, Tedder, Barrett, Frederick, Webber and Reilly and referred to the Committee on Michigan Competitiveness.

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

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 provided by
10 statute. A rule ~~shall~~**MUST** not make an act or omission to act a

1 crime or prescribe a criminal penalty for violation of a rule.

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

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

1 (6) ~~Where~~ **IF** a statute provides that an agency may proceed by
2 rule-making or by order and an agency proceeds by order ~~in lieu~~
3 **INSTEAD** of rule-making, the order ~~shall~~ **MUST** not be given general
4 applicability to persons who were not parties to the proceeding or
5 contested case before the issuance of the order, unless the order
6 was issued after public notice and a public hearing.

7 (7) **AN AGENCY SHALL NOT PROCEED WITH RULE-MAKING UNLESS THE**
8 **AUTHORITY FOR THE RULE-MAKING IS EXPLICITLY AND UNEQUIVOCALLY**
9 **GRANTED IN STATUTE.**

10 (8) ~~(7)~~ A rule ~~shall~~ **MUST** not exceed the rule-making
11 delegation contained in the statute authorizing the rule-making.