



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2013 Senate Bill 497

Assembly Amendments 6 and 7

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Senate Bill 497 requires state agencies to promulgate a rule that discloses in advance the discretion that the state agency will follow in the enforcement of rules against a small business that commits a minor violation of a rule. Under the bill, “small business” means a business entity, including its affiliates, which is independently owned and operated and not dominant in its field, and which employs 25 or fewer full-time employees or which has gross annual sales of less than \$5,000,000. “Minor violation” means a rule violation that does not cause serious harm to the public, is committed by a small business, and the violation is not willful, the violation is not likely to be repeated, there is a history of compliance by the violator, or the small business has voluntarily disclosed the violation.

The bill provides that a state agency must consider a number of criteria for allowing discretion in the enforcement of a rule or assessment of a penalty for a minor violation, including the following:

- The difficulty and cost to a small business of complying with a rule.
- The financial capacity of the small business, including the ability of the small business to pay the amount of the possible penalty.
- The compliance options available.
- The level of public interest and concern.
- The opportunities available to the small business to understand and comply with a rule.
- Fairness to the small business and to others, including competitors and the public.

The bill also specifies that a state agency may not exercise discretion in enforcing the following types of rule violations:

- Minor violations involving a small business that has repeatedly violated the rule.
- Minor violations that result in a substantial economic advantage for the small business.
- Minor violations that may result in an imminent endangerment to public health or safety.

Assembly Amendment 6

Assembly Amendment 6 repeals the provision that prohibits a state agency from exercising discretion in enforcing a minor violation that involves a small business that has “repeatedly” violated the same rule or guideline. Instead, Assembly Amendment 6 provides that a state agency may not exercise discretion in enforcing a minor rule violation if the small business has violated the same rule or guideline more than three times in the past five years.

Assembly Amendment 7

Assembly Amendment 7 requires each state agency to document every instance that it utilizes discretion in penalizing a business, as provided by the statute affected by the bill, including the reasons for its decision. Assembly Amendment 7 also requires each state agency to maintain records of those instances for at least five years.

Bill History

Assembly Amendments 6 and 7 were offered by Representative Jorgenson. On February 20, 2014, the Assembly adopted Assembly Amendments 6 and 7 on a voice vote and concurred in Senate Bill 497, as amended, on a vote of Ayes, 95; Noes, 0.

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