



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2003 Wisconsin Act 145 [2003 Senate Bill 100]	Small Business Regulatory Review
2003 Acts: www.legis.state.wi.us/2003/data/acts/	Act Memos: www.legis.state.wi.us/lc/act_memo/act_memo.htm

2003 Wisconsin Act 145 relates to administrative rule-making regarding small businesses.

Small Business Regulatory Review Board

The Act creates a Small Business Regulatory Review Board, consisting of representatives of eight state agencies, six representatives of small business, and the chairpersons of one Senate and one Assembly committee concerned with small businesses.

Under the Act, when an agency publishes a proposed rule that may have a significant impact on small businesses, the agency must also submit the rule to the Small Business Regulatory Review Board. If the board determines that the rule does not include an enforcement provision or that the agency has failed to comply with specified statutory requirements, the board is required to notify the agency of that determination and ask the agency to comply. The board may submit suggested changes in the proposed rule to the agency, including proposals to reduce the use cross-references. A report must also be sent to the Legislative Council staff. The notification to the agency may include a request that the agency: (1) verify that the proposed rule does not conflict with, overlap, or duplicate other rules or federal regulations; or (2) require the inclusion of fee information and fee schedules in the rule's analysis, including why fees are necessary and for what purpose the fees will be used.

The Act also includes similar provisions for review by the Small Business Regulatory Review Board of emergency rules that may have a significant economic impact on small businesses.

In addition, the Small Business Regulatory Review Board may review the rules and guidelines of any state agency to determine whether they place an unnecessary burden on the ability of small businesses to conduct their affairs. If the board determines that a rule or guideline does so, it is required to submit a report and recommendations to the Joint Committee for Review of Administrative Rules (JCRAR). When reviewing the report, JCRAR must consider several statutorily specified criteria.

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents.

Agency Advice

The Act provides that a small business may commence an action in circuit court against an agency for injunctive relief to prevent the imposition of a penalty if the business acted or failed to act: (1) due to the failure by the agency's employee, officer, or agent with regulatory responsibility for that legal requirement to respond to a specific question in a reasonable time; or (2) in response to inaccurate advice given to the business by the agency's employee, officer, or agent with regulatory responsibility for that legal requirement. For purposes of this provision, "small business" does not include an entity that is subject to the caregiver background check law that is administered by the Department of Health and Family Services (DHFS).

The Act also modifies the statute that lists judicial proceedings in which the validity of a rule may be determined to include the court actions for injunctions described above and to include determinations by the Small Business Regulatory Review Board with respect to an agency's compliance with statutory provisions and inclusion of enforcement provisions regarding proposed rules.

Rules Regarding Agency Discretion in Enforcement

The Act requires each agency to promulgate a rule that requires the agency to disclose the discretion that the agency will follow in enforcement of rules and guidelines against a small business. The rule must include the reduction or waiver of penalties for voluntary disclosure, by a small business, of actual or potential violations of rules or guidelines. The rule may include consideration of ability to pay when determining the amount of any monetary penalty, assessment, or surcharge. The rule must specify when the agency will not allow discretion in the enforcement of a rule or guideline against small businesses and must include statutorily specified situations in which discretion is not allowed. For purposes of this provision, "small business" does not include an entity that is subject to the caregiver background check law that is administered by DHFS.

Other Provisions

The Act also: (1) modifies various statutory definitions of "small business" to mean a business entity that employs 25 or fewer full-time employees or that has gross annual sales of less than \$5 million (previously fewer than 25 full-time employees or gross annual sales of less than \$2.5 million); (2) requires agencies to consider specified methods for reducing the impact of a rule on small businesses when modifying a rule; (3) requires agencies to designate a small business regulatory coordinator; (4) requires agencies to include in their statement of scope on proposed rules a description of all entities that will be affected; (5) requires agencies to ensure the accuracy, integrity, objectivity, and consistency of the data that is used in preparing a proposed rule; (6) requires the Joint Legislative Council to create and maintain an Internet site that includes proposed rules and other specified information; (7) provides that if a rule has a significant economic impact on small businesses, the rule applies to small businesses on the first day of the third month after the rule's publication; and (8) increases from \$75 per hour to \$150 per hour the maximum attorney fees that generally are to be paid to an individual, small nonprofit corporation, or small business that is the prevailing party in an action brought by a state agency (unless the court finds that the agency was substantially justified in taking its position or that special circumstances make the award of costs unjust).

Effective Date: The Act takes effect on July 1, 2004.

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