



2013 ASSEMBLY BILL 657

January 24, 2014 – Introduced by Representatives KAPENGA, BORN, CRAIG, HUTTON, KULP, LEMAHIEU, MURPHY, MURTHA, SCHRAA and TITTL, cosponsored by Senators GUDEX, PETROWSKI, L. TAYLOR, GROTHMAN and OLSEN. Referred to Committee on Small Business Development.

1 **AN ACT to repeal** 227.04 (2) (b), 895.59 (1) and 895.59 (2) (a) to (c); **to renumber**
2 227.04 (2) (a), (c) and (d), 895.59 (2) (d), 895.59 (2) (e) and 895.59 (2) (f); **to**
3 **renumber and amend** 227.04 (2) (intro.) and 895.59 (2) (intro.); **to amend**
4 227.04 (1); and **to create** 227.04 (1) (a), 227.04 (2m) (b) and 227.04 (2m) (d) of
5 the statutes; **relating to:** agency discretion in imposing penalties for minor
6 violations of rules by small businesses and granting rule-making authority.

Analysis by the Legislative Reference Bureau

Under current law, public agencies are required to provide assistance to small businesses to help those small businesses comply with the rules promulgated by those agencies. Public agencies are required under current law to establish a rule that creates reduced fines and enforcement mechanisms for minor violations of agency rules by small businesses. Current law requires public agencies to consider the appropriateness of a written warning, a reduced fine, or an alternative penalty if the small business violates a rule, that small business has made a good faith effort to comply with the rule, and the minor violation does not pose a threat to public health, safety, or welfare.

In addition, under current law, each public agency is required to promulgate a rule that discloses in advance the discretion that the agency will follow in the enforcement of rules against a small business. The rule promulgated shall include a reduction or waiver of a penalty if the small business voluntarily discloses a rule

ASSEMBLY BILL 657

violation, and may include consideration of the small business's ability to pay when determining the penalty. Current law prohibits any discretion in the enforcement of a rule if certain conditions apply, including if the agency discovers the violation first, the violation resulted in a substantial economic advantage to the small business, the small business has repeatedly violated the rule, or the violation may result in an imminent endangerment to public health or safety.

This bill continues to require public agencies to promulgate a rule that discloses in advance the discretion that the public agency will follow in the enforcement of rules against a small business that commits a minor violation of a rule, but limits the conditions when such discretion is not allowed to minor violations involving a small business that has repeatedly violated the rule, to minor violations that result in a substantial economic advantage for the small business, and to minor violations that may result in an imminent endangerment to public health or safety.

The bill also specifies that the public agency shall 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:

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

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 227.04 (1) of the statutes is amended to read:

2 227.04 (1) In this section, ~~“small:~~

3 (b) “Small business” has the meaning given in s. 227.114 (1).

4 **SECTION 2.** 227.04 (1) (a) of the statutes is created to read:

5 227.04 (1) (a) “Minor violation” means a rule violation that does not cause
6 serious harm to the public, is committed by a small business, and the violation is not
7 willful, the violation is not likely to be repeated, there is a history of compliance by
8 the violator, or the small business has voluntarily disclosed the violation.

ASSEMBLY BILL 657

1 **SECTION 3.** 227.04 (2) (intro.) of the statutes is renumbered 227.04 (3) (intro.)
2 and amended to read:

3 227.04 (3) (intro.) Consistent with the requirements under s. ~~895.59~~ sub. (2m)
4 and, to the extent possible, each agency shall do all of the following:

5 **SECTION 4.** 227.04 (2) (a), (c) and (d) of the statutes are renumbered 227.04 (3)
6 (a), (c) and (d).

7 **SECTION 5.** 227.04 (2) (b) of the statutes is repealed.

8 **SECTION 6.** 227.04 (2m) (b) of the statutes is created to read:

9 227.04 (2m) (b) The rule promulgated under this subsection shall specify the
10 situations in which the agency will allow discretion in the enforcement of a rule
11 against a small business that has committed a minor violation. The rule shall
12 consider the following criteria for allowing discretion in the enforcement of the rule
13 and the assessment of a penalty, including a forfeiture, fine, or interest:

- 14 1. The difficulty and cost of compliance with the rule by the small business.
- 15 2. The financial capacity of the small business, including the ability of the small
16 business to pay the amount of any penalty that may be imposed.
- 17 3. The compliance options available, including options for achieving voluntary
18 compliance with the rule.
- 19 4. The level of public interest and concern.
- 20 5. The opportunities available to the small business to understand and comply
21 with the rule.
- 22 6. Fairness to the small business and to other persons, including competitors
23 and the public.

24 **SECTION 7.** 227.04 (2m) (d) of the statutes is created to read:

