

State of Wisconsin



2013 Senate Bill 497

Date of enactment: **April 16, 2014**
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2013 WISCONSIN ACT 296

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

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

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

227.04 (1) In this section, “small;

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

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

227.04 (1) (a) “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.

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

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

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

SECTION 5. 227.04 (2) (b) of the statutes is repealed.

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

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

1. The difficulty and cost of compliance with the rule by the small business.

2. The financial capacity of the small business, including the ability of the small business to pay the amount of any penalty that may be imposed.

3. The compliance options available, including options for achieving voluntary compliance with the rule.

4. The level of public interest and concern.

5. The opportunities available to the small business to understand and comply with the rule.

6. Fairness to the small business and to other persons, including competitors and the public.

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

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. “Every act and every portion of an act enacted by the legislature over the governor’s partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication.”

227.04 (2m) (d) A rule promulgated under this subsection applies to minor violations committed after the effective date of the rule.

SECTION 7g. 227.04 (4) of the statutes is created to read:

227.04 (4) Each agency shall fully document every instance in which it made the decision to utilize discretion in penalizing businesses as provided in this section, including the reasons for its decision, and shall keep records of those instances on file for not fewer than 5 years.

SECTION 8. 895.59 (1) of the statutes is repealed.

SECTION 9. 895.59 (2) (intro.) of the statutes is renumbered 227.04 (2m) (a) and amended to read:

227.04 (2m) (a) Each agency shall promulgate a rule that requires the agency to disclose in advance the discretion that the agency will follow in the enforcement of rules and guidelines against a small business that has committed a minor violation. The rule promulgated under this subsection shall may include the reduction or waiver of penalties for a voluntary disclosure, by a small business, of actual or potential violations of rules or

~~guidelines. The rule promulgated under this subsection may include the consideration of the violator's ability to pay when determining the amount of any monetary penalty, or assessment, or surcharge.~~

(c) The rule promulgated under this subsection shall specify when the situations in which the agency will not allow discretion in the enforcement of a rule ~~or guideline~~ against small businesses that have committed minor violations and shall include all of the following situations in which discretion is not allowed:

SECTION 10. 895.59 (2) (a) to (c) of the statutes are repealed.

SECTION 11. 895.59 (2) (d) of the statutes is renumbered 227.04 (2m) (c) 1.

SECTION 12g. 895.59 (2) (e) of the statutes is renumbered 227.04 (2m) (c) 2. and amended to read:

227.04 (2m) (c) 2. The small business has ~~repeatedly~~ violated the same rule or guideline more than 3 times in the past 5 years.

SECTION 13. 895.59 (2) (f) of the statutes is renumbered 227.04 (2m) (c) 3.