

State of Wisconsin



2003 Senate Bill 100

Date of enactment: **March 15, 2004**
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2003 WISCONSIN ACT 145

AN ACT *to repeal* 227.114 (1) (b); *to renumber and amend* 227.114 (1) (a); *to amend* 227.114 (2) (intro.), 227.485 (2) (c), 814.245 (2) (b) and 814.245 (5) (a) 2.; and *to create* 15.155 (5), 227.114 (6m), 227.114 (7m), 227.135 (1) (e), 227.14 (2g), 227.14 (2m), 227.15 (1m), 227.17 (3) (i), 227.22 (2) (e), 227.24 (3m), 227.30, 227.40 (2) (f) and 895.59 of the statutes; **relating to:** administrative rule making regarding small businesses, data used by administrative agencies in preparing proposed rules, increasing attorney fees, creating an Internet site for proposed rules, and creating a Small Business Regulatory Review Board.

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

SECTION 1. 15.155 (5) of the statutes is created to read:

15.155 (5) SMALL BUSINESS REGULATORY REVIEW BOARD. There is created a small business regulatory review board, attached to the department of commerce under s. 15.03. The board shall consist of a representative of the department of administration; a representative of the department of agriculture, trade and consumer protection; a representative of the department of commerce; a representative of the department of health and family services; a representative of the department of natural resources; a representative of the department of regulation and licensing; a representative of the department of revenue; a representative of the department of workforce development; 6 representatives of small businesses, as defined in s. 227.114 (1), who shall be appointed for 3-year terms; and the chairpersons of one senate and one assembly committee concerned with small businesses, appointed as are members of standing

committees. The representatives of the departments shall be selected by the secretary of that department.

SECTION 2. 227.114 (1) (a) of the statutes is renumbered 227.114 (1) and amended to read:

227.114 (1) In this section, "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 than ~~25~~ full-time employees or which has gross annual sales of less than \$2,500,000. ~~For purposes of a specific rule, an agency may define small business to include more employees or greater gross annual sales if necessary to adapt the rule to the needs and problems of small businesses. A "small business" may also be defined in accordance with other standards established by an agency by rule \$5,000,000.~~

SECTION 3. 227.114 (1) (b) of the statutes is repealed.

SECTION 4. 227.114 (2) (intro.) of the statutes is amended to read:

227.114 (2) (intro.) When an agency proposes or revises a rule that may have an effect on small businesses, the agency shall consider each of the following methods for reducing the impact of the rule on small businesses:

* Section 991.11, WISCONSIN STATUTES 2001-02 : 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 as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

SECTION 5. 227.114 (6m) of the statutes is created to read:

227.114 (6m) (a) Notwithstanding sub. (1), in this subsection, “small business” does not include an entity, as defined in s. 48.685 (1) (b) or 50.065 (1) (c).

(b) A small business may commence an action against an agency for injunctive relief to prevent the imposition of a penalty if the small business is subject to the penalty as the result of any of the following:

1. The small business acted or failed to act 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.

2. The small business acted or failed to act in response to inaccurate advice given to the small business by the agency’s employee, officer, or agent with regulatory responsibility for that legal requirement.

(c) The small business may commence the action in the circuit court for the county where the property affected is located or, if no property is affected, in the circuit court for the county where the dispute arose.

(d) The circuit court may issue an order enjoining the imposition of the penalty if the court determines that par.

(b) 1. or 2. applies.

SECTION 6. 227.114 (7m) of the statutes is created to read:

227.114 (7m) The agency shall designate a small business regulatory coordinator to act as a contact person for small business regulatory issues and shall publicize that person’s electronic mail address and telephone number.

SECTION 7. 227.135 (1) (e) of the statutes is created to read:

227.135 (1) (e) A description of all of the entities that will be affected by the rule.

SECTION 8. 227.14 (2g) of the statutes is created to read:

227.14 (2g) FISCAL EFFECT OF RULE. On the same day that an agency publishes a proposed rule under this section that may have a significant economic impact on small businesses, the agency shall submit the proposed rule and the analysis required under sub. (2) to the small business regulatory review board. The board may use cost-benefit analysis to determine the fiscal effect of the rule on small businesses and shall determine whether the agency has complied with subs. (2) and (2m) and s. 227.114 (2) and (3). Except as provided in subs. (1m) and (1s), each proposed rule shall include provisions detailing how the rule will be enforced. If the board determines that the rule does not include an enforcement provision or that the agency failed to comply with sub. (2) or (2m) or s. 227.114 (2) or (3), the board shall notify the agency of that determination and ask the agency to comply with any of those requirements. In addition, the board may submit suggested changes in the proposed rule to the agency, including proposals to reduce the use of cross-

references in the rule. The board shall send a report of those suggestions and of any notice of failure to include enforcement provisions or to comply with sub. (2) or (2m) or s. 227.114 (2) or (3) to the legislative council staff. The notification to the agency may include a request that the agency do any of the following:

(a) Verify that the proposed rule does not conflict with, overlap, or duplicate other rules or federal regulations.

(b) Require the inclusion of fee information and fee schedules in the analysis under sub. (2), including why fees are necessary and for what purpose the fees will be used.

SECTION 9. 227.14 (2m) of the statutes is created to read:

227.14 (2m) QUALITY OF AGENCY DATA. Each agency shall, in cooperation with the department of administration, ensure the accuracy, integrity, objectivity, and consistency of the data that is used when preparing a proposed rule and when completing an analysis of the proposed rule under sub. (2). Each agency shall reduce the amount of cross-references to the statutes in proposed and final rules. A person affected by a proposed rule may submit comments to the agency regarding the accuracy, integrity, or consistency of that data.

SECTION 10. 227.15 (1m) of the statutes is created to read:

227.15 (1m) INTERNET ACCESS TO PROPOSED RULE. The joint legislative council shall create and maintain an Internet site that includes a copy of each proposed rule received under sub. (1) in a format that allows the site to be searched using keywords. Each agency shall provide the joint legislative council with the proposed rules and other information needed to comply with this subsection in the format required by the joint legislative council. The Internet site shall include a section devoted to proposed rules affecting small businesses, as defined in s. 227.114 (1). The Internet site shall also include all of the following:

(a) The electronic mail address and telephone number of an agency contact person for each proposed rule.

(b) The material required under s. 227.14 (2), (3), and (4).

(c) Any report submitted to the legislative council staff under s. 227.14 (2g).

(d) The written report of the legislative council staff review of the proposed rule prepared under sub. (2) and any agency comments regarding that report.

(e) The time, date, and place of any public hearing specified in the notice in s. 227.17 as soon as that notice is submitted to the revisor of statutes under s. 227.17 (1) (a).

(f) The place where comments on the proposed rule should be submitted and the deadline for submitting those comments.

SECTION 11. 227.17 (3) (i) of the statutes is created to read:

227.17 (3) (i) The electronic mail address and telephone number of the small business regulatory coordinator and a link to an Internet site that allows a person to review the rule and make comments regarding the rule.

SECTION 12. 227.22 (2) (e) of the statutes is created to read:

227.22 (2) (e) The rule has a significant economic impact on small businesses, as defined in s. 227.114 (1), in which case the rule applies to small businesses on the first day of the 3rd month commencing after the date of publication of the rule.

SECTION 13. 227.24 (3m) of the statutes is created to read:

227.24 (3m) **REVIEW BY THE SMALL BUSINESS REGULATORY REVIEW BOARD.** On the same day that the agency files a rule under sub. (3) that may have a significant economic impact on small businesses, as defined in s. 227.114 (1), the agency shall submit a copy of the rule to the small business regulatory review board. The board may use cost-benefit analysis to determine the fiscal effect of the emergency rule on small businesses and shall determine whether the agency complied with ss. 227.114 (2) and (3) and 227.14 (2m). If the board determines that the agency failed to comply with s. 227.114 (2) or (3) or 227.14 (2m), the board shall notify the agency of that determination and ask the agency to comply with any of those provisions. In addition, the board may submit suggested changes in the proposed rule to the agency and may include a request that the agency do any of the following:

(a) Explain how the agency has responded to comments received from small businesses regarding the emergency rule.

(b) Verify that the emergency rule does not conflict with, overlap, or duplicate other rules or federal regulations.

SECTION 14. 227.30 of the statutes is created to read:

227.30 Review of administrative rules or guidelines. (1) The small business regulatory review board may review the rules and guidelines of any state agency to determine whether any of those rules or guidelines place an unnecessary burden on the ability of small businesses, as defined in s. 227.114 (1), to conduct their affairs. If the board determines that a rule or guideline places an unnecessary burden on the ability of a small business to conduct its affairs, the board shall submit a report and recommendations regarding the rule or guideline to the joint committee for review of administrative rules.

(2) When reviewing the report, the joint committee for review of administrative rules shall consider all of the following:

(a) The continued need for the rule or guideline.

(b) The nature of the complaints and comments received from the public regarding the rule or guideline.

(c) The complexity of the rule or guideline.

(d) The extent to which the rule or guideline overlaps, duplicates, or conflicts with federal regulations, other state rules, or local ordinances.

(e) The length of time since the rule or guideline has been evaluated.

(f) The degree to which technology, economic conditions, or other factors have changed in the subject area affected by the rule or guideline since the rule or guideline was promulgated.

(3) The joint committee for review of administrative rules may refer the report regarding the rule or guideline to the presiding officer of each house of the legislature for referral to a committee under s. 227.19 (2) or may review the rule or guideline as provided under s. 227.19 (5).

SECTION 15. 227.40 (2) (f) of the statutes is created to read:

227.40 (2) (f) Proceedings under s. 227.114 (6m) or 227.14 (2g).

SECTION 16. 227.485 (2) (c) of the statutes is amended to read:

227.485 (2) (c) “Small business” means a business entity, including its affiliates, which is independently owned and operated, and which employs 25 or fewer than 25 full-time employees or which has gross annual sales of less than ~~\$2,500,000~~ \$5,000,000.

SECTION 17. 814.245 (2) (b) of the statutes is amended to read:

814.245 (2) (b) “Small business” means a business entity, including its affiliates, which is independently owned and operated, and which employs 25 or fewer than 25 full-time employees or which has gross annual sales of less than ~~\$2,500,000~~ \$5,000,000.

SECTION 18. 814.245 (5) (a) 2. of the statutes is amended to read:

814.245 (5) (a) 2. Attorney or agent fees may not be awarded in excess of ~~\$75~~ \$150 per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys or agents, justifies a higher fee.

SECTION 19. 895.59 of the statutes is created to read:

895.59 Liability exemption; disclosure of rule violations. (1) In this section:

(a) “Agency” has the meaning given in s. 227.01 (1).

(b) “Small business” has the meaning given in s. 227.114 (1), but does not include an entity, as defined in s. 48.685 (1) (b) or 50.065 (1) (c).

(2) 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. The rule promulgated under this subsection shall 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, assessment, or surcharge. The rule promulgated under this subsection shall specify when the agency will not allow discretion in the enforcement of a rule or guideline against small businesses and shall include all of the following situations in which discretion is not allowed:

- (a) The agency discovers the violation before the small business discloses the violation.
- (b) The violation is disclosed after an agency audit or inspection of the small business has been scheduled.
- (c) The violation was identified as part of the monitoring or sampling requirements that are consistent with the requirements under an existing permit.
- (d) The violation results in a substantial economic advantage for the small business.

(e) The small business has repeatedly violated the same rule or guideline.

(f) The violation may result in an imminent endangerment to the environment, or to public health or safety.

SECTION 20. Nonstatutory provisions.

(1) Notwithstanding the length of terms specified for the representatives of small businesses of the small business regulatory review board under section 15.155 (5) of the statutes, as created by this act, 3 of the initial representatives of small businesses shall be appointed for terms expiring on May 1, 2005, and the other 3 initial representatives of small businesses shall be appointed for terms expiring on May 1, 2006.

SECTION 21. Effective date.

(1) This act takes effect on the first day of the 4th month beginning after publication.
