

State of Wisconsin



2003 Assembly Bill 267

Date of enactment:
Date of publication*:

2003 WISCONSIN ACT

AN ACT to amend 227.114 (1) (a), 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 (2m), 227.14 (2t), 227.15 (1m), 227.19 (3r), 227.22 (2) (e), 227.24 (3m), 227.30, 227.40 (2) (f) and 895.59 of the statutes; relating to: administrative rules and guidelines 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, 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. The representatives of the departments shall be selected by the secretary of that department.

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

227.114 (1) (a) 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 (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 4. 227.114 (6m) of the statutes is created to read:

227.114 (6m) If a small business is subject to a penalty from an administrative agency as the result of an action or omission by the small business due to the failure by the agency to provide requested advice or in response to inaccurate or inconsistent advice given to the small

* 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].

business by an employee, officer, or agent of the agency, the small business may commence an action in the circuit court for Dane County for injunctive relief. The circuit court may issue an order enjoining the imposition of the penalty if the court determines that the action or omission of the small business that resulted in the penalty was in response to the agency's inaccurate or inconsistent advice or failure of the agency to provide requested advice. Notwithstanding sub. (1) (a), in this subsection, "small business" does not include an entity, as defined in s. 48.685 (1) (b) or 50.065 (1) (c).

SECTION 5. 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. The agency shall include in the notice under s. 227.17 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 6. 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 7. 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, 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 the proposed rule may submit comments to the agency regarding the accuracy, integrity, or consistency of that data.

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

227.14 (2t) **ENFORCEMENT PROVISIONS.** Except as provided in subs. (1m) and (1s), each proposed rule shall include provisions detailing how the rule will be enforced. If a proposed rule does not include enforcement provisions, the small business regulatory review board may return the rule to the submitting agency for an appropriate enforcement provision.

SECTION 9. 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) The written report of the legislative council staff review of the proposed rule prepared under sub. (2) and any agency comments regarding that report.

(d) 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).

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

SECTION 10. 227.19 (3r) of the statutes is created to read:

227.19 (3r) **FISCAL EFFECT OF RULE.** On the same day that an agency submits a notice under sub. (2) regarding a proposed rule that may have a significant economic impact on small businesses, the agency shall submit the proposed rule and the report required under sub. (3) 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 sub. (3) (e) or s. 227.114. If the board determines that the agency failed to comply with sub. (3) (e) or s. 227.114, the board shall notify the agency of that determination and ask the agency to comply with those provisions. 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 copy of any suggestions and of any notice of failure to comply with sub. (3) (e) or s. 227.114 to each committee to which the proposed rule was referred under sub. (2). The notification of noncompliance may include a request that the agency do any of the following:

(a) Explain why the agency has not incorporated comments received from small businesses regarding the proposed rule.

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

(c) Require the inclusion of fee information and fee schedules in the regulatory flexibility analysis, including why fees are necessary and for what purpose the fees will be used.

SECTION 11. 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.

SECTION 12. 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 s. 227.114 or 227.19 (3) (e). If the board determines that the agency failed to comply with s. 227.114 or 227.19 (3) (e), the board shall notify the agency of that determination and ask the agency to comply with those provisions. In addition, the board may submit suggested changes in the proposed rule to the agency. The notification of noncompliance may include a request that the agency do any of the following:

(a) Explain why the agency has not incorporated 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 13. 227.30 of the statutes is created to read:

227.30 Review of administrative rules or guidelines. (1) Each agency shall, during the 5-year period beginning on the effective date of this subsection ... [revisor inserts date], review the rules and guidelines of the 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 an agency determines that a rule or guideline places an unnecessary burden on the ability of a small business to conduct its affairs, the agency shall repeal the rule or guideline or amend the rule or guideline to remove the unnecessary burden.

(2) In reviewing a rule or guideline under this section, the agency 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 or established.

(3) The agency shall annually, on the first day of the 12th month beginning after the effective date of this subsection ... [revisor inserts date], for the 5-year period, submit a report to the legislature under s. 13.172 (2) describing the agency's review of its rules and guidelines and any actions taken regarding those rules or guidelines during the previous year. The agency shall send a copy of that report to the small business regulatory review board.

SECTION 14. 227.40 (2) (f) of the statutes is created to read:

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

SECTION 15. 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 15t. 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 16. 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 17. 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) A small business that voluntarily discloses information to the appropriate agency about an actual or potential violation of an administrative rule shall be immune from the imposition of a civil or criminal penalty that could be imposed for the violation if all of the following apply.

(a) The voluntary disclosure is made within 45 days after the small business knew that an actual or potential violation occurred.

(b) The small business making the disclosure initiates an appropriate and good faith effort to achieve compliance with the administrative rule, pursues compliance with due diligence and promptly corrects the noncompliance after discovery of the violation.

(c) The small business cooperates with any reasonable request by the agency in any investigation that results from the disclosure.

(3) A penalty may be imposed for the violation of an administrative rule notwithstanding sub. (2) if any of the following applies:

(a) The violation resulted in serious harm or endangerment to public health, safety, or welfare.

(b) The violation resulted in a substantial economic benefit that gave the violator a clear advantage over its business competitors.

(c) The small business that committed the violation has a pattern of continuous or repeated violations of administrative rules.

SECTION 18. 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 19. Effective date.

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