



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2003 Assembly Bill 267

**Assembly
Amendments 1, 2, 3, and 7**

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2003 Assembly Bill 267 relates to administrative rule making that affects small businesses. Among other provisions, the bill redefines “small business” and creates a Small Business Regulatory Review Board (the Board) consisting of four representatives of specified government departments, five representatives of small businesses, and the chairpersons of one Senate and one Assembly committee concerned with small businesses.

Assembly Amendment 1 adds two representatives to the Board created by the bill:

- A representative of the Department of Health and Family Services, thus increasing to five the number of representatives of specified government departments on the Board.
- An additional representative of small business, thus increasing to six the number of representatives of small businesses on the Board.

Assembly Amendment 2 removes the word “emergency” before the word “rule” on page 5, line 24 and page 6, line 3 of the bill, so that the amended bill requires an agency to submit *any* proposed rule (not just an emergency rule) that may have a significant economic impact on small businesses to the Board created by the bill. In addition, the amendment makes consistent throughout the bill the redefinition of “small business” to include a business which employs 25 or fewer full-time employees or which has gross annual sales of less than \$5,000,000.

Assembly Amendment 3 modifies the bill in the following manner:

- Includes, as grounds to seek injunctive relief from a penalty from an agency, an agency’s failure to provide requested advice to a small business.
- Includes “guidelines” with the review of administrative rules. Under the bill as amended, each agency shall during a 5-year period (beginning on the effective date) review the administrative

rules or *guidelines* to determine whether any of those rules or *guidelines* places an unnecessary burden on the ability of small businesses to conduct their affairs.

- Deletes “in imminent and substantial” on page 9, line 22 of the bill, so that the amended bill provides that a penalty may be imposed (the liability exemption would not apply) for a violation of an administrative rule that results in serious harm or endangerment to public health, safety, or welfare. Under the original bill, serious harm or “*imminent and substantial* endangerment to public health, safety, or welfare” was required.
- Deletes the initial applicability provision from the bill.

Assembly Amendment 7 provides that for purposes of injunctive relief and immunity from liability under the bill, the term “small business” does not include an entity as defined in s. 48.685 (1) (b) or 50.065 (1) (c), Stats. Those two statutes define the term “entity” for purposes of the laws that require caregiver background checks for licensees, employees, and other specified persons. Under s. 48.685 (1) (b), Stats., the term “entity” is defined to mean a licensed child welfare agency, a foster home or treatment foster home, a group home, a shelter care facility, a day care center or provider, or a temporary employment agency that provides caregivers to another entity. Under s. 50.065 (1) (c), Stats., the term “entity” is defined as a facility, organization, or service that is licensed or certified by or registered with the Department of Health and Family Services (DHFS) to provide direct care or treatment services to clients. In addition, the definition specifically includes certain enumerated types of facilities and excludes others. Examples of types of facilities that are included in the ch. 50 definition of “entity” are hospitals, nursing homes, adult family homes, and community-based residential facilities.

In summary, under the amendment, those programs or facilities that are defined as entities under s. 48.685 (1) (b) or 50.065 (1) (c), Stats., would not be considered to be small businesses under those provisions of the bills that deal with injunctive relief and immunity from liability.

LEGISLATIVE HISTORY

On June 3, 2003, the Assembly Committee on Small Business introduced and recommended for adoption Assembly Amendments 1, 2, and 3. Assembly Amendments 1 and 2 were introduced and recommended for adoption by unanimous consent. Assembly Amendment 3 was introduced by a vote of Ayes, 10; Noes, 0; and recommended for adoption by unanimous consent.

On October 23, 2003, Assembly Amendment 7 was adopted by the Assembly on a voice vote.

The Assembly passed the bill, as amended, by a vote of Ayes, 64; Noes, 33.

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