



## WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

**2013 Wisconsin Act 296**  
[2013 Senate Bill 497]

**Agency Discretion in Imposing  
Penalties for Minor Rule Violations**

2013 Wisconsin Act 296 requires state agencies to promulgate a rule that discloses in advance the discretion that the state agency will follow in the enforcement of rules against a small business that commits a minor violation of a rule. Under the Act, “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 full-time employees or which has gross annual sales of less than \$5,000,000. “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.

A rule promulgated under the Act must specify the situations in which discretion in enforcement will be allowed. In promulgating the rule, the state agency must 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:

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

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This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature’s Web site at: <http://www.legis.wisconsin.gov>.

Under the Act, each state agency must document every instance that it utilizes discretion in penalizing a business for a minor rule violation. Furthermore, each state agency must maintain records of those instances for at least five years.

The Act also specifies that a state agency may not exercise discretion in enforcing the following types of rule violations:

- Minor violations involving a small business that has violated the same rule more than three times in the past five years.
- Minor violations that result in a substantial economic advantage for the small business.
- Minor violations that may result in an imminent endangerment to public health or safety.

*Effective date:* The Act took effect on April 18, 2014.

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