



State Senator
Rick Gudex

District 18

January 30, 2014

To: The Senate Committee on Agriculture, Small Business, and Tourism
From: Sen. Rick Gudex
Re: Senate Bill 497

Mr. Chairman, members of the committee, thank you for the opportunity to present this pro-business, good government bill to you today.

Senate Bill 497 is intended to increase cooperation between our small businesses and state agencies by expanding the flexibility state agencies have in dealing with small businesses that commit a minor violation of the rules.

The bill does three things. First, the bill defines a “minor violation.”

Second, the bill specifies the situations in which an agency must consider using discretion. Note that it doesn't **require** discretion or lower penalties in these cases: it simply allows the agency to **consider using** discretion.

And third, the bill specifies those times in which an agency **cannot** allow discretion. These include when a small business has repeatedly violated a rule, when the violation gives the small business a substantial advantage over competitors, and when the violation could result in the endangerment of public health or safety.

These changes haven't been chosen in a vacuum. They are modeled after rules already in place at the Department of Agriculture, Trade, and Consumer Protection. DATCP promulgated those rules in response to 2011 Act 46, a bill passed over 2 years ago with bipartisan support. 2011 Act 46 required all agencies to promulgate similar rules.

To date, only DATCP has done so, which ought to be a problem for all of us. It's been over two years, and only one state agency has followed the will of the Legislature. But, here's where we turn lemons into lemonade. The agencies' slowness to comply with state statute is giving us a chance to make sure these rules are uniform across state government, that there aren't multiple definitions and multiple sets of criteria out there to further confuse our small business owners. That's what we're doing here today.

Mr. Chairman, members of the committee, this is a simple bill that encourages cooperation between our small businesses and the agencies which regulate them. We all want Wisconsin to be a more business friendly state. Please help us take a step in that direction by supporting this bill.



CHRIS KAPENGA

STATE REPRESENTATIVE • 99TH ASSEMBLY DISTRICT



January 30, 2014

To: The Senate Committee on Agriculture, Small Business, and Tourism

From: Rep. Chris Kapenga

Re: Senate Bill 497 – Small Business Discretion

Good morning Chairman Moulton and Committee members, I would like to thank you for giving me the opportunity to testify in favor of Senate Bill 497 with Senator Gudex today.

This bill stems from our review of the rules in the Assembly Committee on Financial Institutions and builds on the small business reforms in 2011 Act 46.

SB497 does three things:

1. Expands agency flexibility when dealing with small businesses (defined as 25 employees or less and revenues of \$5 million or less) that may have unintentionally committed a minor violation of state rules. It provides agencies with uniform common sense discretion of enforcement. There still remain instances where discretionary enforcement is forfeited. These include:
 - a. The violation results in a substantial economic advantage for the small business
 - b. The small business has repeatedly violated the same rule or guideline
 - c. The violation may result in an imminent endangerment to the environment, or to public health or safety.
2. Creates a uniform definition of what is a “minor violation” as follows:
 - a. No serious harm to public
 - b. Violation is not willful or has repeat offenses
 - c. Voluntary disclosure
3. Specifies criteria for when an agency is considering discretionary enforcement:
 - a. Consider difficulty and cost of compliance
 - b. Violators financial ability to pay a penalty
 - c. Options for achieving voluntary compliance
 - d. The level of public interest and concern
 - e. Fairness to other interested parties

With over 12,000 pages of Administrative code and another 6,000 pages in state statute it can be difficult for small businesses to keep up with the day to day changes in state government. This bill will be another tool that allows state government to be friendlier towards small business, and is a commonsense way for government to operate.

Thank you for your consideration of this bill.



Wisconsin

**Statement Before the
Senate Committee on Agriculture, Small Business and Tourism**

By

**Bill G. Smith
State Director
National Federation of Independent Business
Wisconsin Chapter**

Thursday, January 30, 2014

Senate Bill 497

Thank you Mr. Chairman, and members of the Committee, for allowing me the opportunity to testify in support of Senate Bill 497.

NFIB members consistently point to regulations – state and federal – as one of the top issues holding them back from hiring workers and taking the necessary steps toward growth.

According to a 2013 survey study (Wisconsin Regulatory Review Report), 41% of the respondents said state regulations discourage hiring and prevent expansion; 29% said state regulations make it more difficult to start a business; while 70% indicated compliance with state regulations is a significant costly burden on their businesses.

That's why, Mr. Chairman, we encourage the Legislature to utilize whatever ways and means available to create a regulatory environment favorable for business creation and small business growth.

NFIB has led the small business regulatory reform movement, working closely with elected officials regardless of political affiliation, beginning with the 1983 Small Business Regulatory Flexibility Act, followed by the 2003 Small Business Regulatory Bill of Rights, then the 2011 Small Business Regulatory Fairness Act, and this session the introduction of the 2014 Small Business Regulatory Improvement proposal.

The intent of these regulatory reform laws were to improve the regulatory review process, increase regulatory compliance, promote more cost effective regulatory enforcement, and strengthen Wisconsin's economy by reducing the negative impact of regulations on small business.

These laws call for the involvement of small business owners themselves in the regulatory process, working with state agencies to carry out the objectives of regulatory flexibility, and to reduce the burden of regulations on small business whenever possible.

This legislation, Senate Bill 497, will clarify and define the conditions that must be present to allow an agency to use discretion in the enforcement of rules, and it will establish criteria consistent with every state agency.

In short, Senate Bill 497 clarifies when agencies may not use discretion in the enforcement of rules that impact small business, but the legislation also defines the criteria agencies must follow when discretion is allowed in the enforcement of a rule or assessment of penalties for minor violations. Importantly, it eliminates confusing and even contradictory language between Act 46 and earlier statutes relating to small business regulatory reform.

We are pleased to see Senate Bill 497 introduced with bipartisan support, and are grateful to Senator Gudex, Representative Kapenga, and the co-authors, and appreciate the promptness of scheduling this hearing for an important small business-backed proposal.

Thank you.