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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

#### CLEARINGHOUSE RULE **02-108**

AN ORDER to amend Adm 30.05 (11), relating to payroll deductions for charitable purposes

Submitted by **DEPARTMENT OF ADMINISTRATION**

07-24-2002 RECEIVED BY LEGISLATIVE COUNCIL.

08-20-2002 REPORT SENT TO AGENCY.

RNS:RJC

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES  NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES  NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES  NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

Comment Attached YES  NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES  NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES  NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES  NO



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### CLEARINGHOUSE RULE 02-108

#### Comments

**[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]**

#### I. Statutory Authority

The rule indicates that s. Adm 30.05 (11) (a) is being amended to comply with s. 227.10 (3) (a), Stats., which prohibits a rule from discriminating, either by its terms or in its application, based on various personal characteristics or attributes. However, that compliance appears to be at least partially undone by the creation of s. Adm 30.05 (11) (b). A fair reading of proposed par. (b) would indicate that, under the new provision, a charitable organization voluntarily participating in the payroll deduction program need not have a nondiscrimination policy in place if having one would effectively change the organization's practices in a manner which would impair the organization's right to engage in expressive activity protected by the First Amendment. Is that the rule's intent? If it is the rule's intent, it is noted that s. 227.10 (3) (a), Stats., does not expressly contemplate such an exception. The Legislature, in s. 227.10 (3) (a), Stats., has provided that administrative rules, which necessarily includes ch. Adm 30, may not discriminate in their application by reason of the characteristics identified therein.

In light of s. 227.10 (3) (a), Stats., under what statutory authority may the rule allow the discrimination contemplated in the creation of s. Adm 30.05 (11) (b)? Additionally, who will make the determination that taking a certain action or changing its current practices will impair an organization's First Amendment rights? Is this something merely to be alleged by the organization and accepted by the Department of Administration (DOA)? Or will DOA conduct some form of inquiry to determine whether the organization's First Amendment rights are impaired? If the latter is the case, what standards will be used to make that determination?

In any event, the meaning and application of par. (b) should be clarified and its statutory authority should be identified.

**2. Form, Style and Placement in Administrative Code**

The rule-making order should be divided into the following two SECTIONS:

SECTION 1. Adm 30.05 (11) is renumbered Adm 30.05 (11) (a) and amended to read:

...

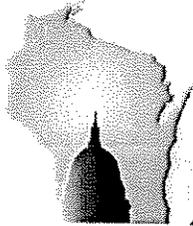
SECTION 2. Adm 30.05 (11) (b) is created to read:

...

The underscoring should be deleted from par. (b). [See s. 1.06 (1), Manual.]

**4. Adequacy of References to Related Statutes, Rules and Forms**

In s. Adm 30.05 (11) (b), the phrase "This provision shall" should instead refer to "Paragraph (a) does."



**WISCONSIN DEPARTMENT OF  
ADMINISTRATION**

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**PROPOSED ORDER OF THE  
DEPARTMENT OF ADMINISTRATION**

The Department of Administration proposes an order to amend Chapter Adm 30 of the Wisconsin Administrative Code.

**Analysis Prepared by the Department of Administration:**

**Statutory Authority:** Sections 16.004(1) and 20.921(1)(a) 4., Stats.

**Statute Interpreted:** Section 20.921, Stats.

Chapter Adm 30 was created in 1980 to implement payroll deductions for charitable purposes as provided in s. 20.921(1)(a)4, Stats. The current s. Adm 30.05(11), does not include a requirement of nondiscrimination in terms of sexual orientation, which is required by s. 227.10(3)(a), Stats. The Department proposes amending the rule to conform to existing statutory provisions. In addition, the Department proposes the rule should recognize that charities participating in the Combined Charities Campaign retain their First Amendment rights. This latter change relates to the issue that has been raised regarding the continued participation of certain charities in the Combined Charities Campaign.

**Initial Regulatory Flexibility Analysis:**

Pursuant to s. 227.114, Stats., the rule herein is not expected to negatively impact on small businesses.

**TEXT OF RULE**

**Section 1:** Adm 30.05(11), is amended to read:

**Adm 30.05(11) NONDISCRIMINATION.** (a) The charitable organization shall have a policy and procedure of nondiscrimination in regard to race, color, religion, national origin, handicap, age, sexual orientation as defined in s. 111.32(13m), Stats., or sex applicable to persons served by the charitable organization, applicable to charitable organization staff employment, and applicable to membership on the charitable organization's governing board.

(b) This provision shall not require a charitable organization to take any action or to change its current practices in a manner which would impair the charitable organization's rights under the United States Constitution including the charitable organization's right to engage in any expressive activity protected by the first amendment.

This rule shall take effect on the first day of the month commencing after the date of publication in the Wisconsin Administrative Register as provided in s. 227.22(2)(intro.), Stats.

Dated: July 15, 2002

  
George Lightbourn, Secretary  
Department of Administration

**Fiscal Estimate — 2001 Session**

- Original       Updated  
 Corrected       Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number Adm 30

Subject  
 Payroll Deduction for Charitable Purposes

**Fiscal Effect**

State:  No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation       Increase Existing Revenues  
 Decrease Existing Appropriation       Decrease Existing Revenues  
 Create New Appropriation

- Increase Costs — May be possible to absorb within agency's budget.  
 Yes       No  
 Decrease Costs

Local:  No Local Government Costs

1.  Increase Costs  
 Permissive       Mandatory  
 2.  Decrease Costs  
 Permissive       Mandatory

3.  Increase Revenues  
 Permissive       Mandatory  
 4.  Decrease Revenues  
 Permissive       Mandatory

5. Types of Local Governmental Units Affected:  
 Towns       Villages       Cities  
 Counties       Others  
 School Districts       WTCS Districts

**Fund Sources Affected**

- GPR       FED       PRO       PRS       SEG       SEG-S

**Affected Chapter 20 Appropriations**

**Assumptions Used in Arriving at Fiscal Estimate**

The current rule is being amended in order to comply with nondiscrimination provisions relating to sexual orientation contained in s. 227.10(3)(a), Stats. of the Wisconsin Statutes. This provision was enacted after the rule was originally promulgated. The proposed amendment will bring eligibility requirements for charitable organizations into compliance with state statutes, while also recognizing the rights that organizations retain under the U.S. Supreme Court determinations. The rule amendment will not cause any change in the cost of administering the rule.

**Long-Range Fiscal Implications**

None

Prepared By: Donna Sorenson	Telephone No. 266-2887	Agency Administration
Authorized Signature 	Telephone No. 266-1359	Date (mm/dd/ccyy) 7/10/02