2009 DRAFTING REQUEST

Bill

Received: **01/14/2009**

Received By: **gmalaise**

Wanted: **Soon**

Identical to LRB:

For: **Sondy Pope-Roberts (608) 266-3520**

By/Representing: **Tom McCarthy**

This file may be shown to any legislator: **NO**

Drafter: **gmalaise**

May Contact:

Addl. Drafters:

Subject: **Employ Priv - health and safety**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Pope-Roberts@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Travelling sales crews

Instructions:

Draft companion to 09-1149/1

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	gmalaise 01/14/2009	wjackson 01/14/2009		_____ _____			State Crime
/1			rschluet 01/15/2009	_____ _____	cduerst 01/15/2009	lparisi 01/15/2009	

FE Sent For: "/1" @ intro. 2/2/09

<END>

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1506 /1

2009 – 2010 LEGISLATURE

LRB-H49/1
GMM:wlj:md

stays

IN 1/14

2009 BILL

(p 22 only changes)

Soon

DRAFT

Regen

AN ACT ***to amend*** 49.857 (1) (d) 10., 73.0301 (1) (d) 3m., 103.005 (10), 111.322 (2m) (a), 111.322 (2m) (b) and 321.60 (1) (a) 10.; and ***to create*** 103.34 of the statutes; **relating to:** the regulation of traveling sales crews, requiring the exercise of rule–making authority, and providing penalties.

Analysis by the Legislative Reference Bureau

CURRENT LAW

HOUSE–TO–HOUSE EMPLOYMENT OF MINORS

Under current law, no person may employ, offer to employ, or recruit a minor to sell goods or services from house–to–house (house–to–house street trades) without obtaining a house–to–house employer certificate from the Department of Workforce Development (DWD). A person may obtain a house–to–house employer certificate by submitting an application to DWD that contains certain information required under current law, including documentation proving that the person has the ability to pay any compensation owed to a minor employee, which proof may be in the form of a bond, certificate of deposit, escrow account, or irrevocable letter of credit in an amount of at least $5,000 (proof of financial responsibility). If the applicant establishes proof of financial responsibility and if DWD is satisfied that the applicant will comply with the laws relating to house–to–house street trades, DWD must issue a house–to–house employer certificate, which is valid for a 12–month period.

When a minor applies for a job in house–to–house street trades, the house–to–house employer must inform the minor in writing of the terms and

conditions of employment, including the compensation to be paid, the time and manner of payment of compensation, the number of days per week and hours per day that the minor would be required to conduct house–to–house street trades, the nature and frequency of required employment–related meetings and how compensation is paid for attendance at those meetings, whether and how the employer provides transportation, and the expenses that the minor would be required to pay. A house–to–house employer may change those terms and conditions by a supplemental document in writing, if the change applies prospectively only.

DWD may suspend or revoke a house–to–house employer certificate if the employer submits false information in the application, fails to notify DWD of any change in that information within 30 days after the change occurs, fails to comply with the terms and conditions of a written disclosure statement, fails to maintain proof of financial responsibility, or fails to comply with the laws relating to house–to–house street trades.

THE BILL

TRAVELING SALES CREWS

Certificate of registration

This bill regulates traveling sales crews, which the bill defines as two or more individuals who are employed as salespersons or in related support work, who travel together in a group, and who are absent overnight from their permanent residences for the purpose of selling goods or services to consumers from house to house, on any street, or in any other place that is open to the public.

Specifically, under the bill, a person may not employ, offer to employ, or otherwise recruit an individual to work as a traveling sales crew worker without first obtaining a certificate of registration from DWD. A person may obtain a certificate of registration by completing an application, meeting the minimum requirements under the bill and under rules promulgated by DWD for issuance of a certificate of registration, and paying a registration fee determined by DWD by rule. The application must contain certain information specified in the bill, including all of the following:

1. The name, address, and telephone number of the applicant and, if the applicant is engaged in sales activities on behalf of a principal, the name, address, and telephone number of the principal.

2. The names and permanent home addresses of all proprietors, managing partners, managers, or principal officers of the applicant, proof of identification of those individuals, information relating to the conviction records of those individuals, and information relating to any false advertising, unfair billing, unfair competition, or unfair trade practices violations by any of those individuals.

3. The names, permanent home addresses, motor vehicle operator's license numbers, and dates of birth of all employees, agents, or representatives of the applicant who supervise or transport traveling sales crews, proof of identification of those individuals, information relating to the conviction records of those individuals, and information relating to any false advertising, unfair billing, unfair competition, or unfair trade practices violations by any of those individuals.

4. The type of sales activities to be performed and the nature of the goods or services to be sold.

5. A statement identifying each motor vehicle that will be used to transport traveling sales crew workers and documentation showing that each motor vehicle complies with all state and federal safety standards applicable to the motor vehicle.

6. A statement indicating whether the duties of the traveling sales crew workers of the applicant will include the storage, handling, or transportation of hazardous materials or may result in any other exposure of the traveling sales crew workers to hazardous materials and, if so, documentation showing that the applicant is in compliance with all state and federal safety standards applicable to the storage, handling, and transportation of the hazardous materials.

7. Documentation that the applicant has complied with the proof of financial responsibility, written disclosure statement, and proof of insurance requirements under the bill.

On receipt of an application, DWD must investigate to determine whether the applicant is qualified to receive a certificate of registration. That investigation must include a criminal history search of all proprietors, managing partners, managers, or principal officers of the applicant and of all employees, agents, or representatives of the applicant who supervise or transport traveling sales crew workers and a search to determine whether any of those individuals has committed a false advertising, unfair billing, unfair competition, or unfair trade practices violation. After completing the investigation, DWD must issue a certificate of registration, which is valid for a 12–month period, if the applicant meets the minimum requirements for issuance of a certificate of registration and DWD is satisfied that the applicant will comply with the bill and rules promulgated under the bill.

DWD may deny, suspend, revoke, restrict, or refuse to renew a certificate of registration if any of the following apply:

1. The applicant or registrant is not the real party in interest with respect to the application or certificate of registration, and the real party in interest has been denied issuance or renewal of a certificate of registration, has had a certificate of registration suspended, revoked, or restricted, or is not qualified to receive a certificate of registration.

2. A proprietor, managing partner, manager, or principal officer of the applicant or an employee, agent, or representative of the applicant who supervises or transports traveling sales crew workers has been convicted of a disqualifying offense, as defined in the bill, within the five years preceding the date of the application. Generally, a disqualifying offense under the bill includes certain offenses relating to drugs or alcohol, if committed in connection with or incident to any traveling sales crew activities; certain crimes involving misappropriation of property, if the value of the property misappropriated is $2,500 or more; certain crimes against life or bodily security, such as homicide, assault, or sexual assault; certain crimes involving damage to or trespass against property, such as arson or burglary; certain crimes involving prostitution; certain crimes against children; and a false advertising, unfair billing, unfair competition, or unfair trade practices violation.

3. The applicant or registrant has made a material misrepresentation or false statement in the application.

4. The applicant or registrant has failed to notify DWD of any change in the information submitted in the application within 30 days after the change occurs.

5. The applicant or registrant has failed to maintain proof of financial responsibility as required under the bill, failed to comply with the written disclosure statement requirements under the bill, failed to pay wages as required under the bill, failed to maintain insurance coverage as required under the bill, engaged in a practice prohibited under the bill, employed a traveling sales crew worker without a permit, or otherwise failed to comply with the bill or any rules promulgated under the bill.

Employer requirements

The bill requires an applicant for a certificate of registration to establish proof of its ability to pay any compensation owed to a traveling sales crew worker, which proof may be in the form of a bond, certificate of deposit, escrow account, or irrevocable letter of credit in an amount approved by DWD, but not less than $10,000.

The bill requires an employer to provide an individual who is offered employment as a traveling sales crew worker with a written disclosure statement of the terms of employment. The written disclosure statement must include all of the following information:

1. The place or places of employment, stated with as much specificity as possible.

2. The compensation to be paid.

3. The type or types of work on which the individual may be employed.

4. The pay period and the manner in which compensation will be paid.

5. The number of days per week and hours per day that the individual may be required to engage in sales activities or related support work.

6. The nature and frequency of any employment–related meetings that the individual may be required to attend, the time of day of those meetings, and how compensation is paid for attendance at those meetings.

7. The period of employment, including the approximate beginning and ending dates of employment.

8. A description of the board, lodging, and other facilities to be provided and any costs to be charged to the individual for those facilities.

9. A description of the transportation to be provided and, if the employment will involve the storage, handling, or transportation of a hazardous material or may result in any other exposure to hazardous materials, a description of the hazardous materials.

10. Whether worker's compensation is provided.

The bill also requires an employer of a traveling sales crew worker to do all of the following:

1. Pay all compensation earned by the worker in U.S. currency or by check or draft on regular paydays designated in advance, but in no case less often than semimonthly; to provide with each payment a written statement itemizing gross pay, net pay, and the amount of and reason for each deduction from gross pay; and to keep

records of that information for three years after the worker leaves the employ of the employer.

2. Maintain and operate any motor vehicle used to transport traveling sales crews in compliance with all state and federal safety standards that are applicable to the motor vehicle, including any additional safety standards relating specifically to the transportation of sales crews prescribed by DWD by rule.

3. If the duties of a traveling sales crew worker will involve the storage, handling, or transportation of hazardous materials or might otherwise result in exposure of the traveling sales crew worker to hazardous materials, ensure that the hazardous materials are stored, handled, and transported, and that the worker is trained in the storage, handling, and transportation of hazardous materials, in compliance with all state and federal safety standards that are applicable to the hazardous materials, including any additional safety standards relating specifically to the storage, handling, and transportation of hazardous materials by traveling sales crews prescribed by DWD by rule.

4. Have in force a motor vehicle liability insurance policy and an insurance policy covering the negligent acts or omissions of the employer and the employer's employees, agents, and representatives and, if required to do so under the worker's compensation law, provide worker's compensation coverage. (Generally, an employer is required to provide worker's compensation coverage if the employer employs three or more employees or pays wages of $500 or more in any calendar quarter.)

Prohibited practices

The bill prohibits an employer and any employee, agent, or representative of an employer who supervises or transports traveling sales crew workers from doing any of the following:

1. Employing as a traveling sales crew worker a minor or employing as a traveling sales crew worker an adult who has been adjudged incompetent without the permission of the person's guardian.

2. Requiring a traveling sales crew worker to engage in any in–person sales or solicitation activities before 9:00 a.m. or after 9:00 p.m.

3. Considering a traveling sales crew worker to be an independent contractor rather than an employee.

4. Requiring a traveling sales crew worker to purchase any goods or services solely from the employer or to pay any of the employer's business expenses, except that an employer may deduct from a worker's compensation the cost of furnishing board, lodging, or other facilities if those facilities are customarily furnished to the employer's traveling sales crew workers; the amount deducted does not exceed the fair market value of those facilities and does not include any profit to the employer; and the traveling sales crew worker has previously authorized the deduction in the written disclosure statement.

5. Abandoning a traveling sales crew worker who is unable to work due to illness or injury or who is discharged from employment for reasons other than misconduct without providing for the return of the traveling sales crew worker to his or her permanent place of residence.

6. Abandoning a traveling sales crew worker who has been arrested and is being held in custody in connection with a violation of the bill or a local ordinance regulating the conduct regulated by the bill.

7. Requiring a traveling sales crew worker to relinquish custody of any of his or her personal property to the employer, to any employee, agent, or representative of the employer who supervises or transports traveling sales crew workers, or to any other traveling sales crew worker of the employer.

8. Prohibiting or restricting a traveling sales crew worker from contacting any family member, friend, or other person while traveling with the traveling sales crew.

9. Intentionally inflicting or threatening to inflict any bodily harm on a traveling sales crew worker or damage to the property of a traveling sales crew worker as a means of discipline or motivation.

10. Advising or counseling a traveling sales crew worker to make false representations to a person to whom he or she is offering goods or services concerning his or her motivation for selling those goods or services.

11. Discharging or discriminating against any person for opposing any practice prohibited under the bill.

Traveling sales crew worker permits

The bill prohibits an individual from being employed or permitted to work as a traveling sales crew worker unless the employer of the individual first obtains from DWD a traveling sales crew worker permit (permit) for the individual and the individual first obtains from DWD an identification card. The bill requires the permit and identification card to include at a minimum the name and permanent home address of the traveling sales crew worker and the name, address, and phone number of his or her employer.

The bill also requires an employer of a traveling sales crew worker and all employees, agents, or representatives of that employer who supervise or transport traveling sales crew workers to carry at all times while engaged in traveling sales crew activities a copy of the permit obtained for each traveling sales crew worker of the employer and a traveling sales crew worker to carry at all times while engaged in traveling sales crew activities a copy of the identification card.

In addition, the bill requires a traveling sales crew employer to keep a copy of the permit for each traveling sales crew worker of the employer for at least three years after the traveling sales crew worker leaves the employ of the employer, to keep a list of the names of all cities, villages, or towns where traveling sales crew workers of the employer engaged in traveling sales crew activities within the last three years, and at the request of DWD, to provide a list of all cities, villages, or towns where the employer intends to employ traveling sales crews in traveling sales crew activities for the six–month period beginning on the date of the request.

Under the bill, before an employer may permit a traveling sales crew worker of the employer to engage in traveling sales crew activities in any city, village, or town, the employer must obtain from the clerk of the city, village, or town a stamp or endorsement on the permit of the traveling sales crew worker. The bill requires an employer who obtains that stamp or endorsement to provide notice to local law

enforcement authorities that traveling sales crew workers of the employer will be engaging in traveling sales crew activities in that city, village, or town.

The bill also requires law enforcement officers of counties, cities, villages, and towns to assist DWD in enforcing the bill by questioning individuals seen engaging in traveling sales crew activities and reporting to DWD all cases of individuals apparently engaging in traveling sales crew activities in violation of the bill.

Nonapplicability and nonpreemption

Finally, the bill does not apply to fund–raising sales by a nonprofit organization or school and does not preempt a county, city, village, or town from enacting a local ordinance regulating the sale of goods or services to consumers from house to house, on any street, or in any other place that is open to the public.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the ***state*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 49.857 (1) (d) 10. of the statutes is amended to read:

49.857 **(1)** (d) 10. A certificate issued under s. 103.275, 103.34, 103.91, or 103.92.

SECTION 2. 73.0301 (1) (d) 3m. of the statutes is amended to read:

73.0301 **(1)** (d) 3m. A license or certificate issued by the department of workforce development under s. 102.17 (1) (c), 103.275 (2) (b), 103.34 (3) (c), 103.91 (1), 103.92 (3), 104.07 (1) or (2), or 105.13 (1).

SECTION 3. 103.005 (10) of the statutes is amended to read:

103.005 **(10)** Except as provided in ss. 103.275 (2) (bm) and (br), 103.34 (10) (b) and (c), 103.91 (4) (b) and (c), 103.92 (6) and (7), 104.07 (5) and (6), and 105.13 (2) and (3), orders of the department under chs. 103 to 106 shall be subject to review in the manner provided in ch. 227.

SECTION 4. 103.34 of the statutes is created to read:

103.34 Regulation of traveling sales crews. (1) DEFINITIONS: In this section:

(a) "Certificate of registration" means a certificate of registration issued under this section authorizing a person to employ traveling sales crew workers.

(b) "Disqualifying offense" means any of the following:

1. A violation of s. 125.07 (1) (a), (2) (a) 1. or 2., or (4) (a) or (b), 125.085 (3) (a) or (b), 125.09 (2), 961.41 (1) or (1m), 961.573, 961.574, or 961.575, of a substantially similar federal law or law of another state, or of a local ordinance that strictly conforms to any of those statutes, if the violation was committed in connection with or incident to any traveling sales crew activities.

2. A violation of s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.07, 940.08. 940.09, 940.10, 940.19 (2), (4), (5), or (6), 940.21, 940.225 (1), (2), or (3), 940.23, 940.235, 940.24, 940.25, 940.30, 940.302, 940.305, 940.31, 943.02, 943.03, 943.04, 943.10, 943.30, 943.31, 943.32, 944.32, 944.33 (2), 944.34, 946.10, 948.02 (1) or (2), 948.025, 948.03 (2) or (3), 948.04, 948.05, 948.051, 948.055, 948.06, 948.07, 948.075, 948.08, 948.085, 948.11 (2) (a) or (am), 948.12, 948.13, 948.21 (1), or 948.30 or of a substantially similar federal law or law of another state.

3. A violation of s. 943.20, 943.201, 943.203, 943.21, 943.23, 943.24 (2), 943.34, 943.50, 943.61, 943.62, or 943.70 or of a substantially similar federal law or law of another state, if the value of the property misappropriated is $2,500 or more.

4. A violation of s. 100.18, 100.195, or 100.20, of a rule promulgated under any of those sections, or of a substantially similar federal law or law of another state.

(c) "Hazardous material" has the meaning given in 49 USC 5102 (2).

(d) "Traveling sales crew" means 2 or more individuals who are employed as salespersons or in related support work, who travel together in a group, and who are absent overnight from their permanent places of residence for the purpose of selling goods or services to consumers from house to house, on any street, or in any other place that is open to the public. "Traveling sales crew" does not include 2 or more individuals who are traveling together for the purpose of participating in a trade show or convention or 2 or more immediate family members who are traveling together for the purpose of selling goods or services.

(e) "Traveling sales crew activities" means the sale of goods or services to consumers from house to house, on any street, or in any other place that is open to the public or related support work.

(f) "Traveling sales crew worker" means a member of a traveling sales crew.

(2) REGISTRATION REQUIRED. No person may employ, offer to employ, or otherwise recruit an individual to work as a traveling sales crew worker without first obtaining a certificate of registration from the department. To obtain a certificate of registration, a person shall complete an application under sub. (3) (a), meet the minimum requirements specified in sub. (3) (c) for issuance of a certificate of registration, and pay a registration fee determined by the department by rule promulgated under sub. (13). A certificate of registration is valid for 12 months unless sooner suspended, restricted, or revoked and is nontransferable. A registrant may renew a certificate of registration by submitting an application under sub. (3) (a) and paying the registration fee not less than 30 days before the expiration date of the certificate of registration.

(3) APPLICATION FOR REGISTRATION. (a) To obtain a certificate of registration, a person shall complete an application that contains all of the following information:

1. The name of the applicant, the address and telephone number of the applicant's principal place of business, and, if the applicant is engaged in sales activities on behalf of a principal, the name, address, and telephone number of the principal.

2. If the applicant is a corporation, the date and place of the applicant's incorporation or, if the applicant is a limited liability company, the date and place of the applicant's organization.

3. The names and permanent home addresses of the proprietors, managing partners, managers, or principal officers of the applicant, together with proof of identification of those individuals, which may be in the form of a birth certificate, a valid operator's license issued under ch. 343 or under a comparable law of another state that contains a photograph of the license holder, or an identification card issued under s. 343.50 or under a comparable law of another state that contains a photograph of the person identified.

4. The names, permanent home addresses, motor vehicle operator's license numbers, and dates of birth of all employees, agents, or representatives of the applicant who supervise or transport traveling sales crew workers, together with proof of identification of those individuals, as provided under subd. 3.

5. Information regarding the conviction record of all proprietors, managing partners, managers, or principal officers of the applicant, and of all employees, agents, or representatives of the applicant who supervise or transport traveling sales crew workers, and information regarding any violation by any of those individuals of s. 100.18, 100.195, or 100.20, of a rule promulgate under any of those sections or of a substantially similar federal law or law of another state.

6. The social security number or federal employer identification number of the applicant as provided in sub. (10) (a).

7. The type of sales activities to be performed and the nature of the goods or services to be sold by the traveling sales crew workers of the applicant. If the goods to be sold are magazine subscriptions, the applicant shall provide the names, addresses, and telephone numbers of the publishers of those magazines.

8. A statement identifying each motor vehicle that will be used to transport the applicant's traveling sales crew workers, including the type and license number of each motor vehicle, and documentation showing that each motor vehicle is in compliance with all state and federal safety standards that are applicable to the motor vehicle as provided in sub. (7) (a).

9. A statement indicating whether the duties of the applicant's traveling sales crew workers will include the storage, handling, or transportation of hazardous materials or may result in any other exposure of those workers to hazardous materials and, if so, documentation showing that the applicant is in compliance with all state and federal safety standards that are applicable to the storage, handling, and transportation of the hazardous materials as provided in sub. (7) (b).

10. Any document required by the department to prove that the applicant has complied with the proof of financial responsibility requirement under sub. (4), the disclosure statement requirement under sub. (5), and the proof of insurance requirement under sub. (8).

11. Any other information that the department considers relevant to the protection of the health, safety, and welfare of the traveling sales crew workers employed by the applicant.

(b) 1. On receipt of an application under par. (a) and payment of the registration fee under sub. (2), the department of workforce development shall investigate the applicant to determine whether the applicant is qualified under par. (c) to receive a certificate of registration. That investigation shall include a criminal history search by the department of justice of all proprietors, managing partners, managers, or principal officers of the applicant, and of all employees, agents, or representatives of the applicant who supervise or transport traveling sales crew workers. That investigation shall also include a search by the department of workforce development to determine whether any of those individuals has committed a violation of s. 100.18, 100.195, or 100.20, of a rule promulgated under any of those sections, or of a substantially similar federal law or law of another state.

2. If the person being investigated is, or at any time within the 5 years preceding the date of the application has been, a nonresident or if the department of workforce development determines that any information obtained as a result of the investigation under subd. 1. provides a reasonable basis for further investigation, the department of workforce development may require the person being investigated to be fingerprinted on 2 fingerprint cards, each bearing a complete set of the person's fingerprints. The department of justice may provide for the submission of the fingerprint cards to the federal bureau of investigation for the purposes of verifying the identification of the person and obtaining the person's criminal conviction record. The department of workforce development shall keep confidential all information received from the department of justice and the federal bureau of investigation under this subdivision.

(c) Subject to par. (d) and sub. (10) (b) and (c), after completing the investigation under par. (b), the department shall issue a certificate of registration to the applicant

if the department determines that the applicant meets the minimum requirements under this section and rules promulgated under sub. (13) for issuance of a certificate of registration and is satisfied that the applicant will comply with this section and those rules.

(d) The department may deny, suspend, revoke, restrict, or refuse to renew a certificate of registration if the department determines that any of the following apply:

1. The applicant or registrant is not the real party in interest with respect to the application or certificate of registration, and the real party in interest has previously been denied issuance or renewal of a certificate of registration, has had a certificate of registration suspended, revoked, or restricted, or is not qualified to receive a certificate of registration under par. (c).

2. A proprietor, managing partner, manager, or principal officer of the applicant, or an employee, agent, or representative of the applicant who supervises or transports traveling sales crew workers has been convicted of a disqualifying offense within the 5 years preceding the date of the application.

3. The applicant or registrant has made a material misrepresentation or false statement in the application for the certificate of registration.

4. The applicant or registrant has failed to notify the department of any change in the information submitted in the application as required under par. (e).

5. The applicant or registrant has failed to maintain proof of financial responsibility as required under sub. (4); failed to comply with the written disclosure statement requirements under sub. (5) (b); failed to pay wages, provide a statement, or keep, preserve, or furnish records as required under sub. (6); violated a safety standard under sub. (7); failed to maintain insurance coverage as required under

sub. (8); engaged in a practice prohibited under sub. (9); employed a traveling sales crew worker in violation of sub. (11) (a) or (c) or failed to keep or furnish records as required under sub. (11) (b); failed to pay a penalty imposed under sub. (12) or to comply with an order of the department imposed as a result of a violation of this section or any rule promulgated under sub. (13); or otherwise failed to comply with this section or any rule promulgated under sub. (13).

(e) If any change occurs in any of the information submitted to the department under par. (a), the registrant shall notify the department of that change within 30 days after the change occurs.

(f) A registrant and all employees, agents, or representatives of a registrant who supervise or transport traveling sales crew workers shall carry at all times while engaging in traveling sales crew activities a copy of the registrant's certificate of registration and shall exhibit that copy upon the request of any deputy of the department, law enforcement officer, or person with whom the registrant, employee, agent, or representative is doing business. Failure to exhibit that copy upon that request is prima facie evidence of a violation of this section.

(4) FINANCIAL RESPONSIBILITY. (a) An applicant shall establish proof of its ability to pay any compensation owed to a traveling sales crew worker employed by the applicant and any penalties that may be imposed under sub. (12).

(b) An applicant shall prove its ability to pay under par. (a) by maintaining one of the following commitments in an amount approved by the department, but not less that $10,000, and in a form approved by the department:

1. A bond.

2. A certificate of deposit.

3. An escrow account.

4. An irrevocable letter of credit.

(c) The commitment described in par. (b) shall be established in favor of or made payable to the department, for the benefit of the state and any traveling sales crew worker who does not receive the compensation earned by the worker. The applicant shall file with the department any agreement, instrument, or other document necessary to enforce the commitment against the applicant or any relevant 3rd party, or both.

(5) DISCLOSURE STATEMENT. (a) At the time an individual is offered employment as a traveling sales crew worker or is otherwise recruited to work as a traveling sales crew worker, the employer shall provide the individual with a written disclosure statement of the terms of employment. If the individual accepts the offer of employment, the employer and the individual shall sign the written disclosure statement. A written disclosure statement shall include all of the following information:

1. The place or places of employment, stated with as much specificity as possible.

2. The compensation, including wage rates, commissions, bonuses, and contest awards, to be paid.

3. The type or types of work on which the individual may be employed.

4. The pay period and the manner in which compensation will be paid.

5. The number of days per week and hours per day that the individual may be required to engage in sales activities or related support work.

6. The nature and frequency of any employment–related meetings that the individual may be required to attend, the time of day of those meetings, and how compensation is paid for attendance at those meetings.

7. The period of employment, including the approximate beginning and ending dates of employment.

8. A description of the board, lodging, and other facilities to be provided by the employer to the individual and any costs to be charged to the individual for those facilities.

9. A description of the transportation to be provided by the employer to the individual and, if the employment will involve the storage, handling, or transportation of hazardous materials or may involve any other exposure to hazardous materials, a description of the hazardous materials.

10. Whether worker's compensation is provided and, if so, the name and telephone number of the employee, agent, or representative of the employer to whom notice of a claim for worker's compensation must be provided and the time period within which that notice must be provided.

(b) An employer of a traveling sales crew worker shall comply with the terms of a disclosure statement provided under par. (a). An employer may change the terms of a disclosure statement, but no change is effective until a supplemental disclosure statement is signed by the employer and the traveling sales crew worker. Any change to the terms of a disclosure statement may apply prospectively only.

(6) PAYMENT OF COMPENSATION; DEDUCTIONS; STATEMENTS; RECORDS. (a) An employer shall pay all compensation earned by a traveling sales crew worker on regular paydays designated in advance by the employer, but in no case less often than semimonthly. Compensation shall be paid in U.S. currency or by check or draft.

(b) An employer may deduct from a traveling sales crew worker's compensation the cost to the employer of furnishing board, lodging, or other facilities to the worker if the board, lodging, or other facilities are customarily furnished by the employer to

the traveling sales crew workers of the employer; the amount deducted does not exceed the fair market value of the board, lodging, or other facilities and does not include any profit to the employer; and the traveling sales crew worker has previously authorized the deduction by signing a written disclosure statement under sub. (5) (a) that includes a description of the board, lodging, and other facilities to be provided and any costs to be charged to the worker for those facilities.

(c) An employer shall provide with each payment of compensation to a traveling sales crew worker a written statement itemizing the amount of gross and net compensation paid to the worker and the amount of and reason for each deduction from the amount of gross compensation. An employer shall keep records of the information specified in this paragraph with respect to each traveling sales crew worker of the employer, shall preserve those records for 3 years after the worker leaves the employ of the employer, and shall furnish those records to the department on request.

(d) A traveling sales crew worker who is owed compensation may file a wage claim with the department under s. 109.09 (1) or may bring an action under s. 109.03 (5) without first filing a wage claim with the department.

(7) WORKER SAFETY. (a) An employer of a traveling sales crew worker shall maintain and operate, or cause to be maintained and operated, any motor vehicle used to transport a traveling sales crew worker in compliance with all state and federal safety standards that are applicable to the maintenance and operation of the motor vehicle, including any additional safety standards relating specifically to the transportation of traveling sales crew workers prescribed by the department by rule promulgated under sub. (13). In prescribing those additional safety standards, the department shall consider all of the following:

1. The types of motor vehicles that are commonly used to transport traveling sales crew workers.

2. The safe passenger–carrying capacity of those motor vehicles.

3. The extent to which a proposed safety standard would cause an undue burden to traveling sales crew employers.

4. Any safety standards prescribed by the federal secretary of transportation under 49 USC 13101 to 14915, 49 USC 30101 to 30170, and 49 USC 31101 to 31504 and any other chapter of title 49 of the United States Code that are applicable to the maintenance and operation of a motor vehicle that is commonly used to transport traveling sales crew workers.

(b) If the duties of a traveling sales crew worker include the storage, handling, or transportation of hazardous materials or may result in any other exposure of a traveling sales crew worker to hazardous materials, the employer shall ensure that the hazardous materials are stored, handled, and transported, and that the traveling sales crew worker is trained in the safe storage, handling, and transportation of hazardous materials, in accordance with all state and federal safety standards that are applicable to the storage, handling, and transportation of hazardous materials or to exposure to hazardous materials, including any additional safety standards relating specifically to the storage, handling, and transportation of hazardous materials by traveling sales crew workers or to the exposure of traveling sales crews to hazardous materials prescribed by the department by rule promulgated under sub. (13). In prescribing those additional safety standards, the department shall consider all of the following:

1. The types of hazardous materials that are included in products commonly sold by traveling sales crews.

2. The extent to which a proposed safety standard would cause an undue burden to traveling sales crew employers.

3. Any safety standards prescribed by the federal secretary of transportation under 49 USC 5101 to 5128 or by the federal occupational safety and health administration under 29 USC 651 to 678 that are applicable to the storage, handling, and transportation of hazardous materials by a traveling sales crew worker or to any other exposure of a traveling sales crew worker to hazardous materials.

(8) INSURANCE COVERAGE. The employer of a traveling sales crew worker shall have in force a policy of insurance that insures the employer, in an amount prescribed by the department by rule promulgated under sub. (13), against liability for damages to persons and property arising out of the ownership or operation by the employer or by any employee, agent, or representative of the employer of a motor vehicle that is used to transport a traveling sales crew worker and a policy of insurance that insures the employer, in an amount prescribed by the department by rule promulgated under sub. (13), against liability for damages to persons and property arising out of any negligent act or omission of the employer or of any employee, agent, or representative of the employer. If the employer is required under s. 102.28 (2) to provide worker's compensation coverage for its employees, the employer shall also provide that coverage.

(9) PROHIBITED PRACTICES. No employer of a traveling sales crew worker and no employee, agent, or representative of that employer who supervises or transports traveling sales crew workers may do any of the following:

(a) Employ or permit to work as a traveling sales crew worker a person under 18 years of age or employ or permit to work as a traveling sales crew worker a person

18 years of age or over who has been adjudged incompetent under ch. 54 without the permission of the person's guardian.

(b) Require a traveling sales crew worker to engage in any in–person sales or solicitation activities before 9 a.m. or after 9 p.m.

(c) Consider a traveling sales crew worker to be an independent contractor rather than an employee.

(d) Require a traveling sales crew worker to purchase any goods or services solely from the employer or to pay any of the employer's business expenses, except as permitted under sub. (6) (b).

(e) Abandon a traveling sales crew worker who is unable to work due to illness or injury or who is discharged from employment for reasons other than misconduct without providing for the return of the traveling sales crew worker to his or her permanent place of residence.

(f) Abandon a traveling sales crew worker who has been arrested and is being held in custody in connection with a violation of sub. (11) (a) 3. or a local ordinance regulating that conduct.

(g) Require a traveling sales crew worker to relinquish custody of any of his or her personal property to the employer, to any employee, agent, or representative of the employer who supervises or transports traveling sales crew workers, or to any other traveling sales crew worker of the employer.

(h) Prohibit or restrict a traveling sales crew worker from contacting any family member, friend, or other person while traveling with a traveling sales crew.

(i) Intentionally inflict or threaten to inflict any bodily harm on a traveling sales crew worker or damage to the property of a traveling sales crew worker as a means of discipline or motivation.

(j) Advise or counsel a traveling sales crew worker to make false representations to a person to whom he or she is offering goods or services concerning his or her motivation for selling those goods or services.

(k) Discharge or discriminate against any person for opposing a practice prohibited under this section. Section 111.322 (2m) applies to discharge and other discriminatory acts arising in connection with any proceeding under this section.

(10) CHILD SUPPORT; DELINQUENT TAXES. (a) 1. Except as provided in subd. 3., the department shall require each applicant for a certificate of registration who is an individual to provide the department with the applicant's social security number, and shall require each applicant for a certificate of registration who is not an individual to provide the department with the applicant's federal employer identification number, when initially applying for or applying to renew the certificate of registration.

2. If an applicant who is an individual fails to provide the applicant's social security number to the department or if an applicant who is not an individual fails to provide the applicant's federal employer identification number to the department, the department may not issue or renew a certificate of registration to or for the applicant unless the applicant is an individual who does not have a social security number and the applicant submits a statement made or subscribed under oath or affirmation as required under subd. 3.

3. If an applicant who is an individual does not have a social security number, the applicant shall submit a statement made or subscribed under oath or affirmation to the department that the applicant does not have a social security number. The form of the statement shall be prescribed by the department. A certificate of

registration issued in reliance upon a false statement submitted under this subdivision is invalid. may not disclose any information received under sub. (b)

4. The ~~submit of the~~ department of workforce development ~~that obtains a social security number or a federal employer identification number under subd. 1.~~ may not disclose ~~the social security number or the federal employer identification number~~ to any person except to the department of revenue for the sole purpose of requesting certifications under s. 73.0301 or on the request of the department of children and families under s. 49.22 (2m).

(b) The department of workforce development shall deny, suspend, restrict, refuse to renew, or otherwise withhold a certificate of registration for failure of the applicant or registrant to pay court–ordered payments of child or family support, maintenance, birth expenses, medical expenses, or other expenses related to the support of a child or former spouse or for failure of the applicant or registrant to comply, after appropriate notice, with a subpoena or warrant issued by the department of children and families or a county child support agency under s. 59.53 (5) and related to paternity or child support proceedings, as provided in a memorandum of understanding entered into under s. 49.857. Notwithstanding s. 103.005 (10), an action taken under this paragraph is subject to review only as provided in the memorandum of understanding entered into under s. 49.857 and not as provided in ch. 227.

(c) The department of workforce development shall deny an application for the issuance or renewal of a certificate of registration, or revoke a certificate of registration already issued, if the department of revenue certifies under s. 73.0301 that the applicant or registrant is liable for delinquent taxes. Notwithstanding s.

103.005 (10), an action taken under this paragraph is subject to review only as provided under s. 73.0301 (5) and not as provided in ch. 227.

(11) TRAVELING SALES CREW WORKER PERMITS. (a) 1. No individual may be employed or permitted to work as a traveling sales crew worker unless the employer of the individual first obtains from the department a traveling sales crew worker permit for the individual as provided in this subdivision, and the individual first obtains from the department an identification card as provided in this subdivision. The traveling sales crew worker permit and identification card shall be in a form prescribed by the department, which form shall include at a minimum the name and permanent home address of the traveling sales crew worker and the name, address, and phone number of his or her employer.

2. An employer of a traveling sales crew worker and all employees, agents, or representatives of that employer who supervise or transport traveling sales crew workers shall carry at all times while engaged in traveling sales crew activities a copy of the permit obtained under subd. 1. for each traveling sales crew worker of the employer and shall exhibit that copy upon the request of any deputy of the department, law enforcement officer, or person with whom the employer, employee, agent, or representative is doing business.

3. A traveling sales crew worker shall carry at all times while engaged in traveling sales crew activities the identification card obtained under subd. 1. and shall exhibit that card upon the request of any deputy of the department, law enforcement officer, or person with whom the traveling sales crew worker is doing business.

4. Failure to exhibit a copy of a permit upon request under subd. 2. or an identification card upon request under subd. 3. is prima facie evidence of a violation of this section.

(b) A traveling sales crew employer shall do all of the following:

1. Keep a copy of the permit obtained under par. (a) 1. for each traveling sales crew worker of the employer for at least 3 years after the traveling sales crew worker leaves the employ of the employer and allow the department to inspect those permits upon request.

2. Keep a list of the names of all cities, villages, or towns where traveling sales crew workers of the employer engaged in traveling sales crew activities within the last 3 years and allow the department to inspect that list upon request.

3. At the request of the department, provide a list of all cities, villages, or towns where the employer intends to employ traveling sales crew workers in traveling sales crew activities for the 6–month period beginning on the date of the request.

(c) Before an employer may permit a traveling sales crew worker of the employer to engage in traveling sales crew activities in any city, village, or town, the employer shall obtain from the clerk of the city, village, or town a stamp or endorsement on the permit obtained under par. (a) 1. of the traveling sales crew worker. When an employer obtains that stamp or endorsement, the employer shall provide notice that traveling sales crew workers of the employer will be engaging in traveling sales crew activities in that city, village, or town to the following:

1. The local police department, if the city, village, or town has a police department.

2. To the sheriff of the county where the city, village, or town is located, if the city, village, or town does not have a police department.

(d) Law enforcement officers of counties, cities, villages, and towns shall assist the department in enforcing this section by questioning individuals seen engaging in traveling sales crew activities and reporting to the department all cases of individuals apparently engaging in traveling sales crew activities in violation of this section.

(12) PENALTIES; ENFORCEMENT. (a) Any person that engages in traveling sales crew activities in violation of this section, any rule promulgated under sub. (13), or any order issued under this section, that employs or permits the employment of any individual as a traveling sales crew worker in violation of this section, any rule promulgated under sub. (13), or any order issued under this section, or that hinders or delays the department or any law enforcement officer in the performance of their duties under this section, may be required to forfeit not less than $25 nor more than $1,000 for each day of a first offense and, for a 2nd or subsequent offense within 5 years, as measured from the dates the violations initially occurred, may be fined not less than $250 nor more than $5,000 for each day of the 2nd or subsequent offense or imprisoned not more than 30 days or both.

(b) In addition to the penalties under par. (a), any person that employs or permits the employment of any individual as a traveling sales crew worker in violation of sub. (2), (5) (b), (9) (b), or (11) (a) or (c) shall be liable, in addition to the wages paid, to pay to each individual affected, an amount equal to twice the regular rate of pay as liquidated damages for all hours worked in violation per day or per week, whichever is greater.

(c) The department of workforce development may refer violations of this section or of any rules promulgated under sub. (13) for prosecution by the

department of justice or the district attorney of the county in which the violation occurred.

(13) RULES. The department shall promulgate rules to implement this section. Those rules shall include all of the following:

(a) A fee for obtaining a certificate of registration. The department shall determine the fee based on the cost of issuing certificates of registration.

(b) Minimum requirements for the issuance of a certificate of registration.

(c) Safety standards relating to the transportation of traveling sales crew workers, the storage, handling, and transportation of hazardous materials by traveling sales crews and any other exposure of a traveling sales crew worker to hazardous materials, and the training of traveling sales crews in the storage, handling, and transportation of hazardous materials.

(d) The amount of liability insurance that an employer of a traveling sales crew worker shall have in force under sub. (8).

(14) NONAPPLICABILITY; NONPREEMPTION. (a) This section does not apply to the employment of a person in a fund–raising sale for a nonprofit organization, as defined in s. 103.21 (2), a public school, as defined in s. 103.21 (5), or a private school, as defined in s. 103.21 (4).

(b) This section does not preempt a county, city, village, or town from enacting a local ordinance regulating traveling sales crew activities. To the extent that a local ordinance regulates conduct that is regulated under this section, the local ordinance shall be at least as strict as the regulation of that conduct under this section.

SECTION 5. 111.322 (2m) (a) of the statutes is amended to read:

111.322 **(2m)** (a) The individual files a complaint or attempts to enforce any right under s. 103.02, 103.10, 103.13, 103.28, 103.32, 103.34, 103.455, 103.50,

104.12, 109.03, 109.07, 109.075, or 146.997 or ss. 101.58 to 101.599 or 103.64 to 103.82.

SECTION 6. 111.322 (2m) (b) of the statutes is amended to read:

111.322 **(2m)** (b) The individual testifies or assists in any action or proceeding held under or to enforce any right under s. 103.02, 103.10, 103.13, 103.28, 103.32, 103.34, 103.455, 103.50, 104.12, 109.03, 109.07, 109.075, or 146.997 or ss. 101.58 to 101.599 or 103.64 to 103.82.

SECTION 7. 321.60 (1) (a) 10. of the statutes is amended to read:

321.60 **(1)** (a) 10. A certificate issued under s. 103.275, 103.34, 103.91, or 103.92.

SECTION 8. Nonstatutory provisions.

(1) RULE MAKING. The department of workforce development shall submit in proposed form the rules required under section 103.34 (13) of the statutes, as created by this act, to the legislative council staff under section 227.15 (1) of the statutes no later than the first day of the 6th month beginning after the effective date of this subsection. Notwithstanding section 227.137 (2) of the statutes, the secretary of administration may not require the department of workforce development to prepare an economic impact report for those rules.

SECTION 9. Effective dates. This act takes effect on the first day of the 12th month beginning after publication, except as follows:

(1) RULE MAKING. SECTION 8 (1) of this act takes effect on the day after publication.

(END)

15-06/1dn

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1149/1dn
GMM:wlj:md

stays

January 6, 2009

Date

Representative Pope Robertson

~~Senator Erpenbach:~~

This redraft also includes as disqualifying offenses three new crimes that were created by the 2007 legislature. Those new crimes are strangulation and suffocation under s. 940.235, human trafficking under s. 940.302, and trafficking of a child under s. 948.051.

Gordon M. Malaise
Senior Legislative Attorney
Phone: (608) 266-9738
E-mail: gordon.malaise@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1506/1dn
GMM:wlj:rs

January 15, 2009

Representative Pope-Roberts:

This redraft also includes as disqualifying offenses three new crimes that were created by the 2007 legislature. Those new crimes are strangulation and suffocation under s. 940.235, human trafficking under s. 940.302, and trafficking of a child under s. 948.051.

Gordon M. Malaise
Senior Legislative Attorney
Phone: (608) 266-9738
E-mail: gordon.malaise@legis.wisconsin.gov

Duerst, Christina

From: McCarthy, Tom
Sent: Thursday, January 15, 2009 1:30 PM
To: LRB.Legal
Subject: Draft Review: LRB 09-1506/1 Topic: Travelling sales crews

Please Jacket LRB 09-1506/1 for the ASSEMBLY.