

1989 Senate Bill 262

Date of enactment: **December 7, 1989**
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1989 WISCONSIN ACT 113

AN ACT to amend 62.03 (1), 103.25 (3), 103.29 (2) and 109.09 (1); and to create 60.33 (8m), 61.25 (6m), 62.09 (11) (k), 103.21 (1g) and (1r), 103.25 (3m), 103.275, 103.28 (3) and 109.10 of the statutes, relating to: regulation of door-to-door street trades, prosecution of street trade laws generally and enforcement of wage claims.

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

SECTION 1. 60.33 (8m) of the statutes is created to read:

60.33 (8m) STREET TRADE PERMITS. Stamp or endorse street trade permits at the request of an employer under s. 103.25 (3m) (b).

SECTION 2. 61.25 (6m) of the statutes is created to read:

61.25 (6m) To stamp or endorse street trade permits at the request of an employer under s. 103.25 (3m) (b).

SECTION 3. 62.03 (1) of the statutes is amended to read:

62.03 (1) This subchapter, except ss. 62.071, 62.08 (1), 62.09 (1) (e) and (11) (j) and (k), 62.175 and 62.23 (7) (em), does not apply to 1st class cities under special charter.

SECTION 4. 62.09 (11) (k) of the statutes is created to read:

62.09 (11) (k) The clerk shall stamp or endorse street trade permits at the request of an employer under s. 103.25 (3m) (b).

SECTION 5. 103.21 (1g) and (1r) of the statutes are created to read:

103.21 (1g) "House-to-house employer" means an employer who employs minors, either directly or through an agent who need not be an employe of the employer, to conduct street trades from house to house through personal contact with prospective customers.

(1r) "Municipality" means a city, village or town.

SECTION 6. 103.25 (3) of the statutes is amended to read:

103.25 (3) The form and requisites of street trade permits shall be the same as those specified for child labor permits in s. 103.73, except as provided in sub. (3m) and except that the permits may be issued on special street trade permit blanks of a form determined by the department. Each minor for whom a street trade permit is issued shall be provided by the department or the permit officer issuing the permit with a street trade identification card of a form determined by the department. He or she shall carry the identification card while engaged in street trade employment and shall not transfer it to any other person.

SECTION 7. 103.25 (3m) of the statutes is created to read:

103.25 (3m) (a) In addition to the information required for a street trade permit under sub. (3), a street trade permit obtained by a house-to-house employer shall contain the minor's permanent home address and social security number.

(b) A house-to-house employer shall have a copy of the street trade permit issued for the minor stamped or endorsed by the clerk of any municipality where the minor conducts a street trade from house to house.

(c) This subsection does not apply to employment of a minor by a newspaper publisher or in a fund-raising sale for a nonprofit organization, a public school or a private school.

SECTION 8. 103.275 of the statutes is created to read:

103.275 Duties of employers in house-to-house street trades. (1) CERTIFICATION REQUIRED. No person

may do any of the following [without obtaining a] certificate under sub. (2):

(a) Act as a house-to-house employer.

(b) Recruit or offer employment to a minor to conduct street trades from house to house.

(2) APPLICATION AND ISSUANCE OF CERTIFICATE. (a) A person shall apply to the department for a house-to-house employer certificate by submitting an application to the department. The department shall furnish applications upon request and applications shall contain all of the following:

1. The name of the applicant and the address and telephone of its principal place of business.

2. If the applicant is a corporation, the date and place of its incorporation.

3. The name and permanent home address of the sole proprietor, managing partner or principal officers of the applicant.

4. The names, permanent home addresses and dates of birth of any of the applicant's employes, agents or representatives who supervise minor employes conducting street trades from house to house.

5. The employer identification numbers assigned to the applicant by the internal revenue service and the department of revenue.

6. Any documents required by the department to prove that the applicant has complied with sub. (3).

7. Any other information that the department considers relevant.

(b) Upon receipt of a properly completed application, the department shall issue a house-to-house employer certificate if all of the following apply:

1. The department is satisfied that the applicant will comply with ss. 103.21 to 103.31.

2. The applicant has established proof of ability to pay under sub. (3).

3. If the application is for a new certificate after revocation under sub. (7), the revocation occurred at least 12 months before issuance of the new certificate.

(c) A person who receives a house-to-house employer certificate shall notify the department of any changes in the information required in the application submitted under par. (a) within 30 days after the change occurs.

(d) A house-to-house employer certificate is valid for a 12-month period. A house-to-house employer may renew a certificate by submitting an application under par. (a), subject to the conditions under par. (b).

(3) FINANCIAL RESPONSIBILITY. (a) A house-to-house employer shall establish proof of its ability to pay any compensation owed to minor employes and any penalties that may be imposed under s. 103.29.

(b) A house-to-house employer shall prove its ability to pay under par. (a) by maintaining one of the following commitments, in an amount of at least \$5,000 and in a form approved by the department:

1. A bond.

2. A certificate of deposit.

3. An established 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 minor employe who does not receive the compensation earned by the minor employe. The house-to-house employer shall file with the department any agreement, instrument or other document necessary to enforce the commitment against the house-to-house employer or any relevant 3rd party, or both.

(4) DISCLOSURE TO MINOR EMPLOYES. (a) When a minor applies for a job to conduct street trades from house to house, the house-to-house employer shall inform the minor in writing of the terms and conditions of employment including all of the following:

1. Compensation, including commissions, bonuses or contest awards.

2. The time and manner of the payment of compensation.

3. The number of days per week and of hours per day that the minor would be required to conduct street trades from house to house.

4. The nature and frequency of required employment-related meetings and how compensation is paid for attendance at the meetings.

5. Whether and how the house-to-house employer provides transportation.

6. The expenses related to employment that the applicant would be required to pay.

(b) No house-to-house employer may fail to comply with the terms of the written disclosure statement required under par. (a). A house-to-house employer may change the terms of a disclosure statement by a supplemental document in writing, if the change applies only prospectively.

(5) RECORDS AND INSPECTION. A door-to-door employer shall do all of the following:

(a) Keep a copy of the street trade permit obtained for an employe under s. 103.25 for at least 3 years after the employe attains the age of 18 or leaves the employment of the employer, whichever occurs first.

(b) Keep a list of the names of all municipalities where minor employes of the house-to-house employer conducted street trades from house to house within the last 3 years.

(c) At the department's request, do any of the following:

1. Allow the department to inspect the certificate issued under sub. (2) or any street trade permits obtained under s. 103.25.

2. Provide a list of the municipalities where the house-to-house employer intends to employ minors to

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conduct street trades from house to house within 6 months after the date of the request.

(6) NOTIFICATION TO POLICE OR SHERIFF. (a) When a house-to-house employer obtains a stamp from a municipal clerk under s. 103.25 (3m) (b), the house-to-house employer shall provide notice that a minor is or will be conducting a street trade for the house-to-house employer in the municipality to the following:

1. The local police department, if the municipality has a police department and a population of 2,500 or more.

2. To the office of the sheriff of the county where the municipality is located, if the municipality has no police department.

3. To the local police department or the office of the sheriff of the county where the municipality is located, if the municipality has a police department or a population greater than 2,500.

(7) SUSPENSION OR REVOCATION OF CERTIFICATE. (a) The department may investigate and hold hearings in connection with certificates issued under sub. (2).

(b) After providing at least 10 days' notice to a house-to-house employer, the department may, on its own or upon a written and signed complaint, suspend the house-to-house employer's certificate. The department shall serve a copy of the complaint with notice of a suspension of the certificate on the person complained against, and the person shall file an answer to the complaint with the department and the complainant within 10 days after service. After receiving the answer, the department shall set the matter for hearing as promptly as possible and within 30 days after the date of filing the complaint. Either party may appear at the hearing in person or by attorney or agent. The department shall make its findings and determination concerning the suspension within 90 days after the date that the hearing is concluded and send a copy to each interested party.

(c) The department may revoke a certificate issued under sub. (2) after holding a public hearing at a place designated by the department. At least 10 days prior to the revocation hearing, the department shall send written notice of the time and place of the revocation hearing to the person holding the certificate and to the person's attorney or agent of record by mailing the notice to their last-known address. The testimony presented and proceedings at the revocation hearing shall be recorded and preserved as the records of the department. The department shall, as soon after the hearing as possible, make its findings and determination concerning revocation and send a copy to each interested party.

(d) The department may suspend a certificate under par. (b) only if it has reason to believe, or may revoke a certificate under par. (c) only if it finds, that the house-to-house employer has done any of the following:

1. Submitted false information to the department in an application under sub. (2) (a), if the information

caused the department to issue the certificate when it would otherwise not have done so.

2. Failed to notify the department of a change in information under sub. (2) (c).

3. Failed to comply with the terms of a written disclosure statement under sub. (4).

4. Failed to maintain proof of ability to pay under sub. (3).

5. Failed to comply with s. 103.23, 103.24, 103.25 or 103.27 or the rules of the department.

(8) EXCEPTION. This section does not apply to the employment of a minor by a newspaper publisher or in a fund-raising sale for a nonprofit organization, a public school or a private school.

SECTION 9. 103.28 (3) of the statutes is created to read:

103.28 (3) The department may refer violations of ss. 103.21 to 103.275 for prosecution by the department of justice or the district attorney for the county in which the violation occurred.

SECTION 10. 103.29 (2) of the statutes is amended to read:

103.29 (2) In addition to the penalties under sub. (1), any employer who employs any minor in violation of s. 103.24 or 103.275 (1) or (4) (b) or rules of the department shall be liable, in addition to the wages paid, to pay to each minor 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.

SECTION 11. 109.09 (1) of the statutes is amended to read:

109.09 (1) The department shall investigate and attempt equitably to adjust controversies between employers and employes as to alleged wage claims. The department may receive and investigate any wage claim which is filed with the department, or assigned to the department under s. 109.10 (4), no later than 2 years after the date the wages are due. The department may, after receiving a wage claim, investigate any wages due from the employer against whom the claim is filed to any employe during the period commencing 2 years before the date the claim is filed. The department shall enforce this chapter and ss. 66.293, 103.02, 103.49, 103.82 and 104.12. In pursuance of this duty, it may take an assignment in trust for the assigning employe of any wage claim that it deems considers to be valid or any wage deficiency, such assignment to run to the department. The department may sue the employer on any wage claim or wage deficiency so assigned and ss. 109.03 (6) and 109.11 shall apply to such actions. The Except for actions under s. 109.10, the department may refer such an action to the district attorney of the county in which the violation occurs for prosecution and collection and the district attorney shall commence an action in the circuit court having appropriate jurisdiction. Any number of wage claims or wage deficiencies against the same employer

may be joined in a single proceeding, but the court may order separate trials or hearings. In such cases the taxable costs recovered shall be paid into the general fund.

SECTION 12. 109.10 of the statutes is created to read:

109.10 Reciprocal agreements. (1) In this section, “responsible agency” means a state officer, agency or other body that is responsible for the collection of wage claims or wage deficiencies.

(2) The secretary and the responsible agency of another state may enter into a reciprocal agreement governing the collection, under the laws of the other state, of wage claims and wage deficiencies assigned to the department.

(3) Consistent with the terms of a reciprocal agreement entered into with a responsible agency of another state under sub. (2), the department may do any of the following:

(a) Bring an action, through the department of justice, in any court of competent jurisdiction in the other state to collect wage claims and wage deficiencies assigned to the department.

(b) Through the department of justice, enforce a judgment in the other state on wage claims or wage deficiencies assigned to the department.

(c) If permitted under the laws of the other state, assign wage claims or wage deficiencies to the responsible agency for collection in the other state.

(4) (a) Subject to par. (b), the department, through the department of justice, may bring an action under s. 109.09 on wage claims or wage deficiencies assigned to the department by a responsible agency of another state.

(b) Actions under par. (a) may only be brought if the other state by law or reciprocal agreement permits similar actions in that state on wage claims or wage deficiencies arising in this state.

SECTION 13. Effective dates. This act takes effect on the day after publication, except as follows:

(1) The treatment of sections 103.25 (3) and (3m), 103.275 (1), (3), (4), (6) and (7) and 103.29 (2) of the statutes takes effect on the first day of the 5th month beginning after publication.