



## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

<b>2005 Senate Bill 251</b>	<b>Senate Amendment 1 and Assembly Amendment 1</b>
<i>Memo published:</i> April 24, 2006	<i>Contact:</i> Laura Rose, Deputy Director (266-9791); Mary Matthias, Senior Staff Attorney (266-0932); and Philip G. Cardis, Staff Attorney (267-0683)

### **Senate Bill 251**

2005 Senate Bill 251 creates new regulations for traveling sales crews. Among other provisions, the bill specifies that the Department of Workforce Development (DWD) may deny, suspend, revoke, restrict, or not renew a traveling sales crew certificate of registration if the DWD determines that a proprietor, managing partner, manager, principal officer, employee, agent, or representative of the applicant for registration has been convicted of a disqualifying offense within the five years preceding the date of the application for the certificate of registration. The bill defines a disqualifying offense as including a violation of a rule promulgated under s. 100.20 (2) (a), Stats., or of a substantially similar federal or other state law. Section 100.20 (2) (a) relates to methods of competition in business or trade practices in business which are determined by the department to be unfair.

### **Senate Amendment 1**

Senate Amendment 1 defines a disqualifying offense as including not only a violation of a rule promulgated under s. 100.20 (2) (a), Stats., but also as a violation of s. 100.18 or 100.20, of a rule promulgated under either of those sections, or of a substantially similar federal or other state law. Section 100.20 enumerates several different types of unfair methods of competition and unfair trade practices. Section 100.18 relates to fraudulent representations.

### **Assembly Amendment 1**

Assembly Amendment 1 creates a system of regulation of “independent temporary resident direct sellers” that is different from the system of regulation of traveling sales crews that is created by the bill. The amendment defines “independent temporary resident direct seller” as an individual who:

- Is 18 years of age or over.
- Works as an independent contractor.

- Is absent overnight from his or her permanent place of residence for the purpose of engaging in independent temporary resident direct seller activities.
- Has established a temporary residence with the intent of residing in that residence for not less than 31 days.

“Independent temporary resident direct seller 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.

The amendment provides that no individual may work as an independent temporary resident direct seller unless the individual first obtains a permit from the municipality in which the individual intends to engage in those activities and pays a fee determined by DWD. The permit application must include, among other things, the following:

- A copy of a written lodging agreement signed by the applicant and the person providing the lodging, showing the address of the temporary residence of the applicant and the dates on which the agreement begins and ends, which may not be less than 31 days apart.
- Proof that the applicant has established an account with an office of a financial institution that is located not more than 30 miles from the applicant’s temporary residence.
- Proof of the applicant’s age and identity.

If the municipality finds that all the requirements have been met, the municipality must issue a permit to the applicant. A permit holder must also comply with any municipal ordinance that requires the permit holder to obtain a solicitor’s license.

A municipality may suspend, revoke, restrict, or refuse to renew a permit if it finds that the permit holder has done any of the following:

- Made a material misrepresentation or false statement in the application for the permit.
- Failed to notify the municipality of any change in the information submitted in the application.
- Failed to maintain a temporary residence as required.
- Failed to maintain an account with a financial institution as required.
- Has had a solicitor’s license suspended, revoked, restricted, or nonrenewed.
- Failed to pay a penalty imposed for a violation related to temporary resident direct selling activities.
- Has otherwise failed to comply with any law or rule pertaining to temporary resident direct selling.

A temporary resident direct seller must carry a copy of their permit with them whenever they are engaged in temporary resident direct selling activities.

Before an independent temporary resident direct seller may engage in any independent temporary resident direct seller activities in any city, village, or town, he or she must obtain from the clerk of the city, village, or town a stamp or endorsement on his or her permit. When an independent temporary resident direct seller obtains that stamp or endorsement, he or she must provide notice that he or she will be engaging in independent temporary resident direct seller activities in that city, village, or town to the following:

- The local police department, if the city, village, or town has a police department.
- The sheriff of the county in which the city, village, or town is located, if the city, village, or town does not have a police department.

The amendment requires law enforcement officers of municipalities to assist DWD in enforcing laws pertaining to temporary resident direct sellers by questioning individuals seen engaging in independent temporary resident direct seller activities and reporting to the department all cases of individuals apparently engaged in those activities in violation of the law.

A principal, defined as a person who contracts with an individual to work as an independent temporary resident direct seller, must provide the individual with a copy of the laws and rules relating to 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. On receipt of the copy of those laws and rules, the individual must sign a statement acknowledging receipt of that copy. The principal must file with the Department of Agriculture, Trade and Consumer Protection the name of the individual and a copy of the statement signed by the individual.

A principal that is not a resident of this state or is not authorized to do business in this state shall designate an agent upon whom service of process may be made in this state.

A person who violates any of the provisions created in the amendment may be required to forfeit not less than \$25 nor more than \$1,000 for each day of a first offense and, for a second or subsequent offense within five years, as measured from the dates on which the violations initially occurred, may be fined not less than \$250 nor more than \$5,000 for each day of the second or subsequent offense or imprisoned not more than 30 days, or both.

DWD may refer violations of the provisions created in the amendment for prosecution by the Department of Justice or the district attorney of the county in which the violation occurred.

The provisions created by the amendment do not apply to an individual who is engaged in a fund-raising sale for a nonprofit organization or a public or private school.

The amendment does not preempt a municipality from enacting a local ordinance regulating independent temporary resident direct seller activities but the local ordinance must be at least as strict as the provisions created by the amendment.

**Legislative History**

On September 7, 2005, the Senate Committee on Job Creation, Economic Development and Consumer Affairs recommended introduction and adoption of Senate Amendment 1 by a vote of Ayes, 4; Noes, 1; and recommended passage of the bill, as amended, by a vote of Ayes, 3; Noes, 2. On December 6, 2005, the Senate adopted Senate Amendment 1 on a voice vote, and passed the bill, as amended, on a voice vote.

On April 18, 2006, the Assembly Committee on Senate Business recommended introduction and adoption of Assembly Amendment 1 on a vote of Ayes, 5; Noes, 3. The committee recommended concurrence with the bill, as amended, on a vote of Ayes, 7; Noes, 1.

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