

## 2003 SENATE BILL 396

January 16, 2004 - Introduced by Senators CARPENTER, ERPENBACH and CHVALA, cosponsored by Representatives J. LEHMAN, MUSSER, ZEPNICK, BERCEAU, POCAN, SINICKI, YOUNG, TURNER, BOYLE, MILLER, PLOUFF and MORRIS. Referred to Committee on Labor, Small Business Development and Consumer Affairs.

1     **AN ACT** *to renumber* 105.01 (1) (a), 105.01 (1) (c), 105.01 (1) (d) and 105.01 (1)  
2           (e); *to renumber and amend* 105.01 (1) (intro.), 105.01 (1) (b) (intro.), 105.01  
3           (1) (b) 1., 105.01 (1) (b) 2. and 105.01 (1) (f); *to amend* 105.05 (1), 105.06 (2) and  
4           105.15; and *to create* 105.01 (1r) (f), 105.01 (3) (intro.) and 105.115 of the  
5           statutes; **relating to:** limiting the amount that a temporary help service,  
6           employment agent, employer-paid employment agent, or employer may charge  
7           an employee for transportation and providing a penalty.

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### ***Analysis by the Legislative Reference Bureau***

Under current law, an employment agent may not charge an applicant for employment any fee for services rendered that is greater than the maximum fee for the applicable classification of employment fixed by the Department of Workforce Development (DWD) by rule. Currently, DWD rules require an employment agent to clearly advise an applicant for employment as to who is liable for transportation expenses when the applicant is referred to a position outside the city where the employment agent is located. These requirements, however, do not apply to a person whose fees are paid entirely by an employer (employer-paid employment agent) or to a temporary help service, which is a service that employs individuals to render temporary or part-time services to third persons.

This bill provides that if a temporary help service, employment agent, employer-paid employment agent (collectively, "staffing agency"), or employer that

**SENATE BILL 396**

has procured the services of an employee from a staffing agency (third-party employer) offers the employee transportation to and from the third-party employer's workplace, the staffing agency or third-party employer may not charge the employee more than the actual cost of the transportation or 3 percent of the employee's total daily earnings, whichever is less, except that the transportation fee may not reduce the employee's total daily earnings to below the minimum wage. The bill also prohibits a staffing agency or third-party employer that requires an employee to use transportation provided by the staffing agency or third-party employer from charging the employee for the transportation. Finally, the bill prohibits a staffing agency or third-party employer from deducting the cost of transportation provided by the staffing agency or third-party employer from the employee's pay without the express written authorization of the employee and requires the staffing agency or third-party employer to furnish a signed copy of the authorization to the employee.

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

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

1           **SECTION 1.** 105.01 (1) (intro.) of the statutes is renumbered 105.01 (1r) (intro.)  
2 and amended to read:

3           105.01 (1r) (intro.) "Employment agent" means ~~all persons who furnish a~~  
4 person that furnishes to persons seeking employment, information enabling or  
5 tending to enable such those persons to secure ~~the same, or who furnish employment,~~  
6 that furnishes employers seeking laborers or other help of any kind, information  
7 enabling or tending to enable such those employers to secure such that help, or who  
8 ~~keep that keeps~~ a register of persons seeking employment or help as ~~aforsaid,~~  
9 ~~whether such agents conduct their~~ the person conducts its operations at a fixed place  
10 of business, on the streets, or as ~~transients~~ a transient, and also whether such those  
11 operations constitute the principal business of ~~such agents~~ the person or only a  
12 sideline or an incident to another business. "Employment agent" does not include  
13 any of the following:

14           **SECTION 2.** 105.01 (1) (a) of the statutes is renumbered 105.01 (1r) (a).

**SENATE BILL 396**

1           **SECTION 3.** 105.01 (1) (b) (intro.) of the statutes is renumbered 105.01 (1r) (b)  
2 and amended to read:

3           105.01 **(1r)** (b) Any temporary help service ~~defined as any person employing~~  
4 ~~individuals to render part-time or temporary services to, for or under the direction~~  
5 ~~of a 3rd person, if:~~

6           **SECTION 4.** 105.01 (1) (b) 1. of the statutes is renumbered 105.01 (3) (a) and  
7 amended to read:

8           105.01 **(3)** (a) The person ~~employing the individuals in addition to~~ pays the  
9 wages or salaries ~~pays,~~ federal social security taxes, and state and federal  
10 unemployment contributions or taxes of those individuals, carries worker's  
11 compensation insurance covering those individuals as required by state law, and  
12 maintains liability insurance covering the acts of ~~its employees~~ those individuals  
13 while rendering services to, for, or under the direction of, a 3rd person; ~~and.~~

14           **SECTION 5.** 105.01 (1) (b) 2. of the statutes is renumbered 105.01 (3) (b) and  
15 amended to read:

16           105.01 **(3)** (b) The employer's ~~person's~~ contracts with its employees those  
17 individuals do not contain any provision requiring the forfeiture or payment of any  
18 amount by the employee individual as liquidated damages upon the acceptance of  
19 permanent employment by ~~an employee~~ the individual with a 3rd person who has  
20 received the employee's individual's part-time or temporary services.

21           **SECTION 6.** 105.01 (1) (c) of the statutes is renumbered 105.01 (1r) (c).

22           **SECTION 7.** 105.01 (1) (d) of the statutes is renumbered 105.01 (1r) (d).

23           **SECTION 8.** 105.01 (1) (e) of the statutes is renumbered 105.01 (1r) (e).

24           **SECTION 9.** 105.01 (1) (f) of the statutes is renumbered 105.01 (1g) and amended  
25 to read:

**SENATE BILL 396**

1           105.01 **(1g)** —A person “Employer-paid employment agent” means an  
2 employment agent whose fees or charges are paid entirely by an employer.

3           **SECTION 10.** 105.01 (1r) (f) of the statutes is created to read:

4           105.01 **(1r)** (f) An employer-paid employment agent.

5           **SECTION 11.** 105.01 (3) (intro.) of the statutes is created to read:

6           105.01 **(3)** (intro.) “Temporary help service” means a person employing  
7 individuals to render part-time or temporary services to, for, or under the direction  
8 of, a 3rd person if all of the following apply:

9           **SECTION 12.** 105.05 (1) of the statutes is amended to read:

10           105.05 **(1)** No person, including a modeling agency that secures work for  
11 persons to act as live models or to model for photography, may engage in the business  
12 of an employment agent for profit, or receive any fee, charge, commission, or other  
13 compensation, directly or indirectly, for services as an employment agent, including  
14 modeling agencies which secure work for persons to act as live models or to model for  
15 photography, without first having obtained a license from the department and  
16 executing a bond under s. 105.06 (1). No person whose fees or charges are paid  
17 directly by employers employer-paid employment agent may engage in the business  
18 specified in s. 105.01 (1) ~~(1r)~~ (intro.) without first registering under s. 105.06 (2). The  
19 license constitutes permission from this state to operate as an employment agent for  
20 compensation. ~~It~~ The license is not transferable to or for the benefit of any person  
21 other than the licensee. A person licensed under this section shall subsection may  
22 not transact business as an employment agent at more than one office location or  
23 place of business without having first obtained from the department a separate  
24 license for each additional office ~~in accordance with~~ as provided in this chapter.

25           **SECTION 13.** 105.06 (2) of the statutes is amended to read:

**SENATE BILL 396**

1           105.06 ~~(2) Persons whose fees or charges are paid directly by employers~~ An  
2           employer-paid employment agent shall register annually with the department to  
3           engage in the business specified in s. 105.01 ~~(1)~~ (1r) (intro.). The fee to register under  
4           this subsection is \$5.

5           **SECTION 14.** 105.115 of the statutes is created to read:

6           **105.115 Transportation fees. (1)** If an employer procures the services of an  
7           employee from a temporary help service, employment agent, or employer-paid  
8           employment agent and the employer, temporary help service, employment agent, or  
9           employer-paid employment agent offers to the employee transportation to and from  
10          the employer's workplace, the employer, temporary help service, employment agent,  
11          or employer-paid employment agent may charge the employee no more than the  
12          actual cost of that transportation or 3 percent of the employee's total daily earnings,  
13          whichever is less, except that the transportation fee, when subtracted from the  
14          employee's total daily earnings, may not reduce those daily earnings to below the  
15          minimum amount that the employee is required to be paid for the day under ch. 104  
16          or 29 USC 210 to 219, whichever is applicable.

17          **(2)** If an employer procures the services of an employee from a temporary help  
18          service, employment agent, or employer-paid employment agent and the employer,  
19          temporary help service, employment agent, or employer-paid employment agent  
20          requires the employee to use transportation to and from the employer's workplace  
21          provided by the employer, temporary help service, employment agent, or  
22          employer-paid employment agent, the employer, temporary help service,  
23          employment agent, or employer-paid employment agent may not charge the  
24          employee for that transportation.

**SENATE BILL 396**

1           **(3)** If an employer procures the services of an employee from a temporary help  
2 service, employment agent, or employer-paid employment agent and the employer,  
3 temporary help service, employment agent, or employer-paid employment agent  
4 provides to the employee transportation to and from the employer's workplace, the  
5 employer, temporary help service, employment agent, or employer-paid  
6 employment agent may not deduct the cost of the transportation from the pay of the  
7 employee without the express written authorization of the employee. The employer,  
8 temporary help service, employment agent, or employer-paid employment agent  
9 shall furnish to the employee a signed copy of the authorization in English or, if the  
10 employee has difficulty understanding English, in the customary language of the  
11 employee.

12           **(4)** If the department receives a complaint and determines that there is  
13 probable cause to believe that an employer, temporary help service, employment  
14 agent, or employer-paid employment agent has charged an employee more than the  
15 amount permitted under sub. (1) for transportation to and from the employer's  
16 workplace, has charged an employee for transportation to and from the employer's  
17 workplace in violation of sub. (2), or has deducted the cost of transportation to and  
18 from the employer's workplace without authorization or without furnishing a copy  
19 of the authorization to the employee in violation of sub. (3), the department shall  
20 have the right of entry and audit under ss. 105.08 and 105.09 as to the employer,  
21 temporary help service, employment agent, or employer-paid employment agent  
22 with respect to the complaint and may, under s. 109.09 (1), recover the amount of the  
23 overcharge, charge, or deduction, plus a penalty equal to the overcharge, charge, or  
24 deduction.

25           **SECTION 15.** 105.15 of the statutes is amended to read:

**SENATE BILL 396**

1           **105.15 General powers of department applicable; penalties.** Such  
2 investigations, classifications, and orders shall be made as provided in s. 103.005 and  
3 the penalties specified in s. 103.005 (12) shall apply to and be imposed for any  
4 violation of ss. 105.01 to ~~105.11~~ 105.115 or 105.13 to 105.15. The department may  
5 also order a person who operates an employment agency in violation of s. 105.05 (1)  
6 to make refunds as provided under s. 105.16 (2). Orders issued under this section  
7 are subject to review in the manner provided in ch. 227.

8           **SECTION 16. Initial applicability.**

9           (1) TRANSPORTATION CONTRACTS. This act first applies to a contract for the  
10 transportation of an employee to and from the employer's workplace that is entered  
11 into, or extended, modified, or renewed, on the effective date of this subsection.

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(END)