# State of Wisconsin

**LEGISLATIVE REFERENCE BUREAU**

# ☞Appendix A

**LRB BILL HISTORY RESEARCH APPENDIX**

☞ The drafting file for 2013 LRB–3221/1 (For: DWD)

has been copied/added to the drafting file for

**2013 LRB–3571** (AB 516) (For: DWD)

☞ Are These "Companion Bills" ?? ... Yes

# RESEARCH APPENDIX -

***PLEASE KEEP WITH THE DRAFTING FILE***

Date Transfer Requested: 11/04/2013 (Per: GMM)

☞ The attached draft was incorporated into the new draft listed above. For research purposes the attached materials were added, as a appendix, to the new drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

# *2013 DRAFTING REQUEST*

## Bill

| | | | |
|---|---|---|---|
| Received: | **9/23/2013** | Received By: | **gmalaise** |
| Wanted: | **As time permits** | Same as LRB: | |
| For: | **Workforce Development 6-9427** | By/Representing: | **Howard Bernstein** |
| May Contact: | | Drafter: | **gmalaise** |
| Subject: | **Administrative Law**<br>**Employ Priv - health and safety** | Addl. Drafters: | |
| | | Extra Copies: | |

Submit via email: **YES**
Requester's email: **howard.bernstein@dwd.wisconsin.gov**
Carbon copy (CC) to:

**Pre Topic:**

No specific pre topic given

**Topic:**

Changes to DWD rules governing traveling sales crews; rule-making procedures

**Instructions:**

See attached

**Drafting History:**

| Vers. | Drafted | Reviewed | Typed | Proofed | Submitted | Jacketed | Required |
|---|---|---|---|---|---|---|---|
| /? | gmalaise<br>9/24/2013 | csicilia<br>10/11/2013 | jfrantze<br>10/11/2013 | _____<br>_____ | | | |
| /1 | | | | _____<br>_____ | sbasford<br>10/11/2013 | lparisi<br>10/29/2013 | |

FE Sent For:

**<END>**

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| /1 | | | | _____<br>_____ | sbasford<br>10/11/2013 | | |

FE Sent For:

**<END>**

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See attached

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| Vers. | Drafted | Reviewed | Typed | Proofed | Submitted | Jacketed | Required |
|---|---|---|---|---|---|---|---|
| /? | gmalaise | /1 stc 10/08/2013 | | 10/11 | | | |

FE Sent For: /1 gs 10/10/13 **<END>**

## Malaise, Gordon

**From:** Hanaman, Cathlene
**Sent:** Thursday, September 12, 2013 3:06 PM
**To:** Malaise, Gordon
**Subject:** FW: "Right the Rules" draft proposals from DWD

Gordon:

Should someone else get these as well as you?

---

**From:** Bernstein, Howard I - DWD [mailto:Howard.Bernstein@dwd.wisconsin.gov]
**Sent:** Thursday, September 12, 2013 2:52 PM
**To:** Hanaman, Cathlene
**Cc:** Schulze, Connie R - DWD
**Subject:** "Right the Rules" draft proposals from DWD

To: Cathlene Hanaman, Deputy Chief
Legislative Reference Bureau

Hello Cathlene,

As I mentioned when I talked to you yesterday, DWD has been working with Representative Loudenbeck on the introduction of "Right the Rules" legislation to repeal and amend certain DWD administrative rules. We would like to request a bill draft for the proposals attached below:

Thank you for your assistance. Please contact me for any questions on these drafts.

Howard Bernstein, Legal Counsel
Wisconsin Department of Workforce Development
(608) 266-9427
Howard.Bernstein@dwd.wisconsin.gov

# DWD Chapter 273

Traveling Sales Crews

The following pages contain drafting changes to:

- Align with statute
- Obtaining identification card

**Sections and paragraphs with modifications made to them are indicated by grey highlight.**

**Proposed changes are indicated using the standard format of ~~strikeouts~~ to indicate deletions and <u>underlining</u> to indicate additions.**

**Prepared by: Handrick, Joe**

# Chapter DWD 273
## TRAVELING SALES CREWS


DWD 273.01 Authority and purpose.
DWD 273.02 Applicability.
DWD 273.03 Definitions.
DWD 273.04 Certificate of registration.
DWD 273.05 Fingerprint cards.
DWD 273.06 Change of status.
DWD 273.07 Suspension or revocation of registration.
DWD 273.08 Payment and compensation.
DWD 273.09 Worker safety.
DWD 273.10 Insurance.
DWD 273.11 Traveling sales crew worker permits.
DWD 273.12 Wage claims.


**DWD 273.01 Authority and purpose.** This rule is adopted in accordance with s. 103.34, Stats., to provide rules for the administration of the laws relating to traveling sales crews.

**DWD 273.02 Applicability.** This chapter applies to any employer of traveling sales crew workers, and to any individuals who are employed or who have applied to be employed as traveling sales crew workers, to whom the requirements of s. 103.34, Stats., apply.

**DWD 273.03 Definitions.** Unless otherwise provided, in this chapter:

**(1)** "Department" means the Department of Workforce Development.

**(2)** "Employee" means an individual who is recruited in Wisconsin to be a traveling sales crew worker or who is working in Wisconsin as a traveling sales crew worker.

**(3)** "Employer" means an entity that is operating a traveling sales crew in Wisconsin or that recruits any traveling sales crew worker in Wisconsin.

**(4)** "Misconduct" for the purposes of s. 103.34 (9) (e), Stats., means conduct evincing such willful or wanton disregard of an employer's interests as is found in a deliberate violation or disregard of standards of behavior which the employer has the right to expect of his employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Mere inefficiency, unsatisfactory conduct, failure of good performance as the result of inability or incapacity, inadvertencies of ordinary negligence in isolated instances, or good-faith errors in judgment or discretion are not to be deemed "misconduct."

**(5)** "Operator" means a person, corporation, limited liability company or other entity that employs, offers to employ, or otherwise recruits an individual to work as a traveling sales crew worker, including a proprietor, managing partner, manager, principal officer, employee, agent or representative of the entity.

**(6)** "Traveling sales crew" has the same meaning as in s. 103.34 (1) (d), Stats.

**(7)** "Traveling sales crew activities" has the same meaning as in s. 103.34 (1) (e), Stats.

**(8)** "Traveling sales crew worker" has the same meaning as in s. 103.34 (1) (f), Stats.

**DWD 273.04 Certificate of registration.**

**(1)** APPLICATION. In order to apply for a 12 month original or renewal certificate of registration as a traveling sales crew employer under this chapter, the applicant shall fully complete a written application form furnished by the department and return it to the department.

**(2)** ITEMS REQUIRED. Along with the completed application form, the following items must be provided to the department:

**(a)** Two completed fingerprint cards for each person who is a proprietor, managing partner, manager, or principal officer of the applicant, and for each employee, agent or representative of the applicant who supervises or transports traveling sales crew workers.

**(b)** Evidence that the applicant has obtained, as confirmation of its ability to pay any compensation owed to an employee or any penalty imposed by the department, one of the following in the amount of at least $10,000: a surety bond, a certificate of deposit, an escrow account or an irrevocable letter of credit.

**(c)** A registration fee of $60.00 for each individual for whom the criminal background check under s. 103.34 (3) (b) 2., Stats., is required.

**(d)** Certification by a motor vehicle mechanic that all vehicles used by the applicant to transport traveling sales crews are in compliance with all applicable Wisconsin and federal safety standards as described in s. DWD 273.09 (2). The costs associated with any vehicle inspection are the responsibility of the applicant.

**(e)** A copy of the statement provided by the applicant to its employees, as required by s. 103.34 (5) (a) 9., Stats., which describes the transportation to be provided to the employee and which identifies any hazardous materials that the sales crews shall be storing, handling, transporting or having any exposure to, and a copy of any additional information concerning the storage, handling or transportation of hazardous materials which may be required by s. 103.34 (7) (b), Stats.

**(f)** Documentation showing that the applicant has in force insurance policies with minimum coverage for commercial automobile liability of $500,000 per person, $2,000,000 per accident and $500,000 of physical damage, and also has commercial general liability coverage of at least $500,000 per occurrence and $1,000,000 aggregate.

**(3)** ISSUANCE. The department shall process a certificate of registration application when all of the required application documents have been received by the department. The department shall request the criminal background check within 30 calendar days of receipt of the completed application materials. The department shall complete its processing of the registration application within 30 calendar days of its receipt of the results of the criminal background check.

**DWD 273.05 Fingerprint cards.** When it is necessary to complete the criminal background check required by s. 103.34 (3) (b) 2., Stats., the applicant shall provide two completed fingerprint cards for each individual identified in s. DWD 273.04 (2) (a). The fingerprinting on these cards shall be completed by a federal, state, or local law enforcement agency, or a private entity duly authorized to provide fingerprinting services. The applicant shall include, with the fingerprint cards submitted, documentation identifying the agency or business that administered the fingerprinting.

**DWD 273.06 Change of status.** If a change occurs in any of the information submitted to the department under s. 103.34 (3) (a), Stats., the registrant shall notify the department of that change within 30 calendar days after the change occurs. If the registrant hires any new individuals who are required to have a criminal background check involving fingerprint cards performed under s. 103.34 (3) (b) 2., Stats., the registrant shall submit to the department, for each new individual hired, an additional registration fee of $60.00 and two completed fingerprint cards.

**DWD 273.07 Suspension or revocation of registration.** The department may deny, suspend, revoke, restrict or refuse the certificate of registration if the department determines the applicant or registrant is not in compliance with s. 103.34, Stats.

**DWD 273.08 Payment and compensation.**

**(1)** PAYMENT AND RECORDS REQUIRED. The employer of a traveling sales crew shall provide payment to its employees on the regularly agreed upon pay dates which shall in no case be less often than semimonthly. The employer shall keep, for three years, the following records for all traveling sales crew workers:

**(a)** Name and address.

**(b)** Date of birth.

**(c)** Date of entering and leaving employment.

**(d)** Time of beginning and ending of work each day.

**(e)** Time of beginning and ending of meal periods, when the traveling sales crew worker's meal periods are required or when such meal periods are to be deducted from work time.

**(f)** Total number of hours worked per day and per week.

**(g)** Rate of pay and wages paid each payroll period.

**(h)** The amount of and reason for each deduction from the wages earned.

**(i)** Output of the traveling sales crew worker, if paid on other than time basis.

**(j)** Documentation that the traveling sales crew worker has been paid the applicable minimum wage for all hours worked each pay period.

**(2)** DEDUCTIONS. The employer may make deductions from pay as allowed under s. 103.34 (6) (b), Stats. The employer shall state clearly on the traveling sales crew worker's paycheck, pay envelope, ~~or~~ paper accompanying the wage payment, pay stub, or simultaneously issued electronic statement corresponding to the paycheck, the number of hours worked, the rate of pay and the amount of and reason for each deduction from the wages due or earned by the traveling sales crew worker, except such miscellaneous deductions as may have been authorized by request of the individual traveling sales crew worker for reasons personal to himself or herself. The employer may use a reasonable coding system.

**DWD 273.09 Worker safety.**

**(1)** VEHICLES. The vehicle used to transport traveling sales crews shall be used for its intended use. The vehicle shall have all safety equipment required under state and federal laws. The safety equipment shall be operational as defined in these laws.

**(2)** TRANSPORTATION OF MATERIALS. If any motor vehicle is used by the operator of a traveling sales crew to carry the products or samples of the products that the traveling sales crew is selling, the following requirements apply:

**(a)** If the product may pose any hazard to health due to contact with skin, or the breathing of fumes, or for any other reason, the operator shall obtain written information from the manufacturer or an equivalent source on the potential health hazards. The operator shall provide this information to all traveling sales crew workers and shall include the information provided in its application for a certificate of registration.

**(b)** The operator shall prepare a plan for the storage of products that are carried with the traveling sales crew which specifies how the products are to be stored in the vehicle, and during any temporary storage outside of the vehicle, to minimize the risk of injury to traveling sales crew workers. The operator shall provide this information to all traveling sales crew workers and shall include the information provided in its application for a certificate of registration.

**DWD 273.10 Insurance.** The registered operator of a traveling sales crew shall maintain in force the following insurance policies:

**(1)** Commercial automobile liability that provides minimum coverage limits of $500,000 per person, $2,000,000 per accident and $500,000 of physical damage.

**(2)** Commercial general liability that provides minimum coverage limits of $500,000 per occurrence and $1,000,000 aggregate.

**DWD 273.11 Traveling sales crew worker permits/identification cards.**

**(1)** REQUIREMENT. The operator of a traveling sales crew shall obtain a permit /identification card for each traveling sales crew worker who works in Wisconsin or who is recruited from Wisconsin before the traveling sales crew worker begins work.

**(2)** APPLICATION. In order to obtain a traveling sales crew worker permit/identification card from the department, the traveling sales crew operator shall submit to the department a government-issued picture ID, which shall include date of birth and permanent home address for each worker. Accompanying the government picture ID, a letter from the operator of the traveling sales crew shall be submitted which identifies the following:

**(a)** The location where the traveling sales crew worker was recruited.

**(b)** The locations where the traveling sales crew worker shall be working.

**(c)** A description of the traveling sales crew worker's general duties and responsibilities.

**(d)** A description of the products being sold.

**(e)** A statement verifying that the required disclosure statement has been provided to the traveling sales crew worker.

**(3)** PROCESSING. Within ten calendar days of receipt of the completed application materials, the department shall complete its processing of the application and issue the permit /identification card.

**(4)** OPERATOR REQUIREMENT TO CARRY PERMIT / IDENTIFICATION CARD. The operator of a traveling sales crew and anyone supervising or transporting a traveling sales crew worker shall carry at all times, while engaged in traveling sales crew activities, a copy of each permit /identification card. An operator shall provide a traveling sales crew worker's permit /identification card upon the request of a deputy of the department, a law enforcement officer, or a person with whom the employer, traveling sales crew worker, agent or representative is doing business.

**(5)** TRAVELING SALES CREW WORKER REQUIREMENT TO CARRY PERMIT/ IDENTIFICATION CARD. While engaged in traveling sales crew activities, a traveling sales crew worker shall carry at all times his or her original traveling sales crew worker permit, his or her identification card and his or her government-issued picture ID. A traveling sales crew worker shall provide any one or more of these documents upon the request of a deputy of the department, a law enforcement officer, or a person with whom the traveling sales crew worker is doing business.

**DWD 273.12 Wage claims.** A person for whom an operator is required to obtain a traveling sales crew worker permit is entitled to file an unpaid wage complaint with the department under s. 109.09, Stats.

# State of Wisconsin
## 2013 – 2014 LEGISLATURE

LRB–3221/?
GMM/...:...

SN 9/24

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AN ACT ..., **relating to:** rule–making procedures and modifying certain rules promulgated by the Department of Workforce Development for the administration of the laws governing traveling sales crews.

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### *Analysis by the Legislative Reference Bureau*

STATUTORY TREATMENTS

***Rule–making procedures***

Current law sets forth a procedure for the promulgation of administrative rules (rules). Generally, that procedure consists of the following steps:

1. The agency planning to promulgate the rule prepares a statement of the scope of the proposed rule, which the governor and the agency head must approve before any state employee or official may perform any activity in connection with the drafting of the proposed rule.

2. The agency drafts the proposed rule, together with an economic impact analysis, plain language analysis, and fiscal estimate for the proposed rule, and submits those materials to the Legislative Council Staff for review.

3. Subject to certain exceptions, a public hearing is held on the proposed rule.

4. The final draft of the proposed rule is submitted to the governor for approval.

5. The final draft of the proposed rule, together with an economic impact analysis, plain language analysis, and fiscal estimate for the proposed rule, are submitted to the legislature for review by one standing committee in each house and by the Joint Committee for Review of Administrative Rules.

6. The proposed rule is filed with the Legislative Reference Bureau (LRB) for publication in the Wisconsin Administrative Code (code) and the Wisconsin Administrative Register (register), and, subject to certain exceptions, the rule becomes effective on the first day of the first month beginning after publication.

Under this bill, if a bill that repeals or modifies a rule is enacted, the ordinary rule–making procedures under current law do not apply. Instead, the LRB must publish the repeal or modification, in the code and the register, and the repeal or modification, subject to certain exceptions, takes effect on the first day of the first month beginning after publication.

**TREATMENTS OF ADMINISTRATIVE RULES**

Under current law, DWD has promulgated rules for the administration of the laws governing traveling sales crews, which are defined under current law 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 places of residence for the purpose of selling consumer goods or services from house to house, on any street, or in any other place that is open to the public.

Those rules include: 1) a rule requiring the employer of a traveling sales crew worker (worker) to provide payment to its employees on regularly agreed upon pay dates and to state clearly on a worker's paycheck, pay envelope, or paper accompanying the wage payment the number of hours worked, the rate of pay, and the amount of and reason for each deduction from the wages earned by the worker; and 2) a rule requiring a traveling sales crew operator (operator) to obtain a permit for each worker who works in this state and an operator and worker to carry the permit at all times while engaging in traveling sales crew activities.

This bill modifies those rules to require: 1) the employer of a worker to provide payment to its employees on regularly agreed upon pay dates, *which shall be no less often than semimonthly,* and to state clearly on a worker's paycheck, pay envelope, *pay stub, other* paper accompanying the wage payment, *or simultaneously issued electronic statement corresponding to the wage payment* the number of hours worked, the rate of pay, and the amount of and reason for each deduction from the wages earned by the worker; and 2) an operator to obtain a permit *and identification card* for each worker who works in this state and an operator and worker to carry the permit *and identification card* at all times while engaging in traveling sales crew activities.

---

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

1 **SECTION 1.** 13.92 (4) (bm) of the statutes is created to read:

2 13.92 **(4)** (bm) If 2 or more rules filed under s. 227.20 or modified under s.
3 227.265 affect the same unit of the Wisconsin administrative code without taking
4 cognizance of the effect thereon of the other rules and if the legislative reference
5 bureau finds that there is no mutual inconsistency in the changes made by each such
6 rule, the legislative reference bureau shall incorporate the changes made by each

rule into the text of the unit and document the incorporation in a note to the unit. For each such incorporation, the legislative reference bureau shall include in a correction bill a provision formally validating the incorporation. Section 227.27 (2) is not affected by printing decisions made by the legislative reference bureau under this paragraph.

**SECTION 2.** 13.92 (4) (c) of the statutes is amended to read:

13.92 **(4)** (c) The legislative reference bureau may insert in the Wisconsin administrative code a note explaining any change made under par. (b) <u>or (bm)</u>.

**SECTION 3.** 13.92 (4) (d) of the statutes is amended to read:

13.92 **(4)** (d) Sections 227.114, 227.116, 227.135, and 227.14 to 227.24 do not apply to any change made by the legislative reference bureau under par. (b) <u>or (bm)</u>.

**SECTION 4.** 13.92 (4) (e) of the statutes is amended to read:

13.92 **(4)** (e) The legislative reference bureau shall prepare and keep on file a record of each change made under par. (b) <u>or (bm)</u>.

**SECTION 5.** 13.92 (4) (f) of the statutes is amended to read:

13.92 **(4)** (f) The legislative reference bureau shall notify the agency involved of each change made under par. (b) <u>or (bm)</u>.

**SECTION 6.** 35.93 (2) (b) 4. of the statutes, as affected by 2013 Wisconsin Act 20, is amended to read:

35.93 **(2)** (b) 4. Copies of all rules filed with the legislative reference bureau under s. 227.20 (1) <u>or modified under s. 227.265</u> since the compilation of the preceding register, including emergency rules filed under s. 227.24 (3).

**SECTION 7.** 35.93 (2) (c) 1. of the statutes, as affected by 2013 Wisconsin Act 20, is amended to read:

the

35.93 **(2)** (c) 1. Each chapter of the Wisconsin administrative code that has been affected by rules filed with legislative reference bureau under s. 227.20 (1) or modified under s. 227.265, in accordance with sub. (3) (e) 1.

**SECTION 8.** 35.93 (3) of the statutes is amended to read:

35.93 **(3)** The legislative reference bureau shall compile and deliver to the department for printing copy for a register which shall contain all the rules filed under s. 227.20 or modified under s. 227.265 since the compilation of rules for the preceding issue of the register was made and those executive orders which are to be in effect for more than 90 days or an informative summary thereof. The complete register shall be compiled and published before the first day of each month and a notice section of the register shall be compiled and published before the 15th day of each month. Each issue of the register shall contain a title page with the name "Wisconsin administrative register", the number and date of the register, and a table of contents. Each page of the register shall also contain the date and number of the register of which it is a part in addition to the other necessary code titles and page numbers. The legislative reference bureau may include in the register such instructions or information as in the bureau's judgment will help the user to correctly make insertions and deletions in the code and to keep the code current.

**SECTION 9.** 35.93 (3) (e) (intro.) of the statutes, as affected by 2013 Wisconsin Act 20, is amended to read:

35.93 **(3)** (e) (intro.) The legislative reference bureau shall incorporate into the appropriate chapters of the Wisconsin administrative code each permanent rule filed with the legislative reference bureau under s. 227.20 (1) or modified under s. 227.265 and, for each chapter of the administrative code affected by a rule, do all of the following:

**SECTION 10.** 35.93 (3) (e) 1. of the statutes, as affected by 2013 Wisconsin Act 20, is amended to read:

35.93 **(3)** (e) 1. Publish the chapter in the appropriate end–of–month register in accordance with the filing deadline for publication established in the rules procedures manual published under s. 227.15 (7) ~~or~~, in an end–of–month register agreed to by the submitting agency and the legislative reference bureau, or, in the case of a rule modified under s. 227.265, in the end–of–month register for the month in which the bill modifying the rule is enacted.

**SECTION 11.** 227.01 (13) (intro.) of the statutes is amended to read:

227.01 **(13)** (intro.) "Rule" means a regulation, standard, statement of policy, or general order of general application which has the effect of law and which is issued by an agency to implement, interpret, or make specific legislation enforced or administered by the agency or to govern the organization or procedure of the agency. "Rule" includes a modification of a rule under s. 227.265. "Rule" does not include, and s. 227.10 does not apply to, any action or inaction of an agency, whether it would otherwise meet the definition under this subsection, which:

**SECTION 12.** 227.11 (2) (intro.) of the statutes is amended to read:

227.11 **(2)** (intro.) Rule–making authority is expressly conferred on an agency as follows:

**SECTION 13.** 227.265 of the statutes is created to read:

**227.265 Repeal or modification of rules.** If a bill to repeal or modify a rule is enacted, the procedures under ss. 227.114 to 227.21 and 227.26 do not apply. Instead, the legislative reference bureau shall publish the repeal or modification in the Wisconsin administrative code and register as required under s. 35.93, and the repeal or modification shall take effect as provided in s. 227.22.

1 **SECTION 14.** 227.27 (2) of the statutes is amended to read:

2 227.27 **(2)** The code shall be prima facie evidence in all courts and proceedings
3 as provided by s. 889.01, but this does not preclude reference to or, in case of a
4 discrepancy, control over a rule filed with the legislative reference bureau ~~or the~~
5 ~~secretary of state~~ under s. 227.20 or modified under s. 227.265, and the certified copy
6 of a rule shall also and in the same degree be prima facie evidence in all courts and
7 proceedings.

8 **SECTION 15.** DWD 273.08 (1) (intro.) of the administrative code is amended to
9 read:

10 DWD 273.08 **(1)** PAYMENT AND RECORDS REQUIRED. (intro.) The employer of a
11 traveling sales crew shall provide payment to its employees on the regularly agreed
12 upon pay dates, which shall in no case be less often than semimonthly. The employer
13 shall keep, for three years, the following records for all traveling sales crew workers:

14 **SECTION 16.** DWD 273.08 (2) of the administrative code is amended to read:

15 DWD 273.08 **(2)** DEDUCTIONS. The employer may make deductions from pay as
16 allowed under s. 103.34 (6) (b), Stats. The employer shall state clearly on the
17 traveling sales crew worker's paycheck, pay envelope, ~~or~~ pay stub, other paper
18 accompanying the wage payment, or simultaneously issued electronic statement
19 corresponding to the wage payment, the number of hours worked, the rate of pay, and
20 the amount of and reason for each deduction from the wages due or earned by the
21 traveling sales crew worker, except such miscellaneous deductions as may have been
22 authorized by request of the individual traveling sales crew worker for reasons
23 personal to himself or herself. The employer may use a reasonable coding system.

24 **SECTION 17.** DWD 273.11 (title) of the administrative code is amended to read:

**DWD 273.11** (title) **Traveling sales crew worker permits and identification cards.**

**SECTION 18.** DWD 273.11 (1) of the administrative code is amended to read:

DWD 273.11 **(1)** REQUIREMENT. The operator of a traveling sales crew shall obtain a permit and identification card for each traveling sales crew worker who works in Wisconsin or who is recruited from Wisconsin before the traveling sales crew worker begins work.

**SECTION 19.** DWD 273.11 (2) (intro.) of the administrative code is amended to read:

DWD 273.11 **(2)** APPLICATION. (intro.) In order to obtain a traveling sales crew worker permit and identification card from the department, the traveling sales crew operator shall submit to the department a government–issued picture ID, which shall include date of birth and permanent home address for each worker. Accompanying the government picture ID, a letter from the operator of the traveling sales crew shall be submitted which identifies the following:

**SECTION 20.** DWD 273.11 (3) of the administrative code is amended to read:

DWD 273.11 **(3)** PROCESSING. Within ten calendar days ~~of~~ after receipt of the completed application materials, the department shall complete its processing of the application and issue the permit and identification card.

**SECTION 21.** DWD 273.11 (4) of the administrative code is amended to read:

DWD 273.11 **(4)** OPERATOR REQUIREMENT TO CARRY PERMIT AND IDENTIFICATION CARD. The operator of a traveling sales crew and anyone supervising or transporting a traveling sales crew worker shall carry at all times, while engaged in traveling sales crew activities, a copy of each permit and identification card. An operator shall provide a traveling sales crew worker's permit and identification card upon the

1 request of a deputy of the department, a law enforcement officer, or a person with
2 whom the employer, traveling sales crew worker, agent, or representative is doing
3 business.

4 **SECTION 22.** DWD 273.11 (5) of the administrative code is amended to read:

5 DWD 273.11 **(5)** TRAVELING SALES CREW WORKER REQUIREMENT TO CARRY PERMIT
6 AND IDENTIFICATION CARD. While engaged in traveling sales crew activities, a traveling
7 sales crew worker shall carry at all times his or her original traveling sales crew
8 worker permit~~, his or her~~ and identification card and his or her government–issued
9 picture ID. A traveling sales crew worker shall provide any one or more of these
10 documents upon the request of a deputy of the department, a law enforcement officer,
11 or a person with whom the traveling sales crew worker is doing business.

12 **SECTION 23. Effective dates.** This act takes effect on the day after publication,
13 except as follows:

14 (1) The treatment of section 35.93 (2) (b) 4. and (c) 1. and (3) (e) (intro.) and 1.
15 of the statutes takes effect on January 1, 2015.

16 **(END)**

## Parisi, Lori

**From:** Tichenor, Tyler L - DWD <Tyler.Tichenor@dwd.wisconsin.gov>
**Sent:** Tuesday, October 29, 2013 8:45 AM
**To:** LRB.Legal
**Cc:** Tichenor, Tyler L - DWD
**Subject:** Draft Review: LRB -3221/1 Topic: Changes to DWD rules governing traveling sales crews; rule-making procedures
**Attachments:** 13-3221_1.pdf

Please Jacket LRB -3221/1 for the SENATE. When complete please return to me. Thanks,

Tyler

Tyler L. Tichenor
Executive Staff Assistant
Office of the Secretary
Department of Workforce Development
201 E. Washington Avenue
Madison, WI 53707
*Wisconsin is Open for Business!!*

State of Wisconsin
2013 - 2014 LEGISLATURE

LRB-3221/1
GMM:cjs:jf

# 2013 BILL

AN ACT ***to amend*** 13.92 (4) (c), 13.92 (4) (d), 13.92 (4) (e), 13.92 (4) (f), 35.93 (2) (b) 4., 35.93 (2) (c) 1., 35.93 (3), 35.93 (3) (e) (intro.), 35.93 (3) (e) 1., 227.01 (13) (intro.), 227.11 (2) (intro.) and 227.27 (2); and ***to create*** 13.92 (4) (bm) and 227.265 of the statutes; **relating to:** rule-making procedures and modifying certain rules promulgated by the Department of Workforce Development for the administration of the laws governing traveling sales crews.

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## *Analysis by the Legislative Reference Bureau*

### STATUTORY TREATMENTS

***Rule-making procedures***

Current law sets forth a procedure for the promulgation of administrative rules (rules). Generally, that procedure consists of the following steps:

1. The agency planning to promulgate the rule prepares a statement of the scope of the proposed rule, which the governor and the agency head must approve before any state employee or official may perform any activity in connection with the drafting of the proposed rule.

2. The agency drafts the proposed rule, together with an economic impact analysis, plain language analysis, and fiscal estimate for the proposed rule, and submits those materials to the Legislative Council Staff for review.

3. Subject to certain exceptions, a public hearing is held on the proposed rule.

4. The final draft of the proposed rule is submitted to the governor for approval.

5. The final draft of the proposed rule, together with an economic impact analysis, plain language analysis, and fiscal estimate for the proposed rule, are submitted to the legislature for review by one standing committee in each house and by the Joint Committee for Review of Administrative Rules.

6. The proposed rule is filed with the Legislative Reference Bureau (LRB) for publication in the Wisconsin Administrative Code (code) and the Wisconsin Administrative Register (register), and, subject to certain exceptions, the rule becomes effective on the first day of the first month beginning after publication.

Under this bill, if a bill that repeals or modifies a rule is enacted, the ordinary rule–making procedures under current law do not apply. Instead, the LRB must publish the repeal or modification, in the code and the register, and the repeal or modification, subject to certain exceptions, takes effect on the first day of the first month beginning after publication.

### TREATMENTS OF ADMINISTRATIVE RULES

Under current law, DWD has promulgated rules for the administration of the laws governing traveling sales crews, which are defined under current law 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 places of residence for the purpose of selling consumer goods or services from house to house, on any street, or in any other place that is open to the public.

Those rules include: 1) a rule requiring the employer of a traveling sales crew worker (worker) to provide payment to its employees on regularly agreed upon pay dates and to state clearly on a worker's paycheck, pay envelope, or paper accompanying the wage payment the number of hours worked, the rate of pay, and the amount of and reason for each deduction from the wages earned by the worker; and 2) a rule requiring a traveling sales crew operator (operator) to obtain a permit for each worker who works in this state and an operator and worker to carry the permit at all times while engaging in traveling sales crew activities.

This bill modifies those rules to require: 1) the employer of a worker to provide payment to its employees on regularly agreed upon pay dates, *which shall be no less often than semimonthly*, and to state clearly on a worker's paycheck, pay envelope, *pay stub, other* paper accompanying the wage payment, *or simultaneously issued electronic statement corresponding to the wage payment* the number of hours worked, the rate of pay, and the amount of and reason for each deduction from the wages earned by the worker; and 2) an operator to obtain a permit *and identification card* for each worker who works in this state and an operator and worker to carry the permit *and identification card* at all times while engaging in traveling sales crew activities.

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

1 **SECTION 1.** 13.92 (4) (bm) of the statutes is created to read:

1 13.92 **(4)** (bm) If 2 or more rules filed under s. 227.20 or modified under s.
2 227.265 affect the same unit of the Wisconsin administrative code without taking
3 cognizance of the effect thereon of the other rules and if the legislative reference
4 bureau finds that there is no mutual inconsistency in the changes made by each such
5 rule, the legislative reference bureau shall incorporate the changes made by each
6 rule into the text of the unit and document the incorporation in a note to the unit.
7 For each such incorporation, the legislative reference bureau shall include in a
8 correction bill a provision formally validating the incorporation. Section 227.27 (2)
9 is not affected by printing decisions made by the legislative reference bureau under
10 this paragraph.

11 **SECTION 2.** 13.92 (4) (c) of the statutes is amended to read:

12 13.92 **(4)** (c) The legislative reference bureau may insert in the Wisconsin
13 administrative code a note explaining any change made under par. (b) <u>or (bm)</u>.

14 **SECTION 3.** 13.92 (4) (d) of the statutes is amended to read:

15 13.92 **(4)** (d) Sections 227.114, 227.116, 227.135, and 227.14 to 227.24 do not
16 apply to any change made by the legislative reference bureau under par. (b) <u>or (bm)</u>.

17 **SECTION 4.** 13.92 (4) (e) of the statutes is amended to read:

18 13.92 **(4)** (e) The legislative reference bureau shall prepare and keep on file a
19 record of each change made under par. (b) <u>or (bm)</u>.

20 **SECTION 5.** 13.92 (4) (f) of the statutes is amended to read:

21 13.92 **(4)** (f) The legislative reference bureau shall notify the agency involved
22 of each change made under par. (b) <u>or (bm)</u>.

23 **SECTION 6.** 35.93 (2) (b) 4. of the statutes, as affected by 2013 Wisconsin Act 20,
24 is amended to read:

35.93 **(2)** (b) 4. Copies of all rules filed with the legislative reference bureau under s. 227.20 (1) <u>or modified under s. 227.265</u> since the compilation of the preceding register, including emergency rules filed under s. 227.24 (3).

**SECTION 7.** 35.93 (2) (c) 1. of the statutes, as affected by 2013 Wisconsin Act 20, is amended to read:

35.93 **(2)** (c) 1. Each chapter of the Wisconsin administrative code that has been affected by rules filed with <u>the</u> legislative reference bureau under s. 227.20 (1) <u>or modified under s. 227.265</u>, in accordance with sub. (3) (e) 1.

**SECTION 8.** 35.93 (3) of the statutes is amended to read:

35.93 **(3)** The legislative reference bureau shall compile and deliver to the department for printing copy for a register which shall contain all the rules filed <u>under s. 227.20 or modified under s. 227.265</u> since the compilation of rules for the preceding issue of the register was made and those executive orders which are to be in effect for more than 90 days or an informative summary thereof. The complete register shall be compiled and published before the first day of each month and a notice section of the register shall be compiled and published before the 15th day of each month. Each issue of the register shall contain a title page with the name "Wisconsin administrative register", the number and date of the register, and a table of contents. Each page of the register shall also contain the date and number of the register of which it is a part in addition to the other necessary code titles and page numbers. The legislative reference bureau may include in the register such instructions or information as in the bureau's judgment will help the user to correctly make insertions and deletions in the code and to keep the code current.

**SECTION 9.** 35.93 (3) (e) (intro.) of the statutes, as affected by 2013 Wisconsin Act 20, is amended to read:

35.93 **(3)** (e) (intro.) The legislative reference bureau shall incorporate into the appropriate chapters of the Wisconsin administrative code each permanent rule filed with the legislative reference bureau under s. 227.20 (1) or modified under s. 227.265 and, for each chapter of the administrative code affected by a rule, do all of the following:

**SECTION 10.** 35.93 (3) (e) 1. of the statutes, as affected by 2013 Wisconsin Act 20, is amended to read:

35.93 **(3)** (e) 1. Publish the chapter in the appropriate end–of–month register in accordance with the filing deadline for publication established in the rules procedures manual published under s. 227.15 (7) ~~or~~, in an end–of–month register agreed to by the submitting agency and the legislative reference bureau, or, in the case of a rule modified under s. 227.265, in the end–of–month register for the month in which the bill modifying the rule is enacted.

**SECTION 11.** 227.01 (13) (intro.) of the statutes is amended to read:

227.01 **(13)** (intro.) "Rule" means a regulation, standard, statement of policy, or general order of general application which has the effect of law and which is issued by an agency to implement, interpret, or make specific legislation enforced or administered by the agency or to govern the organization or procedure of the agency. "Rule" includes a modification of a rule under s. 227.265. "Rule" does not include, and s. 227.10 does not apply to, any action or inaction of an agency, whether it would otherwise meet the definition under this subsection, which:

**SECTION 12.** 227.11 (2) (intro.) of the statutes is amended to read:

227.11 **(2)** (intro.) Rule–making authority is expressly conferred on an agency as follows:

**SECTION 13.** 227.265 of the statutes is created to read:

1 **227.265 Repeal or modification of rules.** If a bill to repeal or modify a rule
2 is enacted, the procedures under ss. 227.114 to 227.21 and 227.26 do not apply.
3 Instead, the legislative reference bureau shall publish the repeal or modification in
4 the Wisconsin administrative code and register as required under s. 35.93, and the
5 repeal or modification shall take effect as provided in s. 227.22.

6 **SECTION 14.** 227.27 (2) of the statutes is amended to read:

7 227.27 **(2)** The code shall be prima facie evidence in all courts and proceedings
8 as provided by s. 889.01, but this does not preclude reference to or, in case of a
9 discrepancy, control over a rule filed with the legislative reference bureau ~~or the~~
10 ~~secretary of state~~ under s. 227.20 or modified under s. 227.265, and the certified copy
11 of a rule shall also and in the same degree be prima facie evidence in all courts and
12 proceedings.

13 **SECTION 15.** DWD 273.08 (1) (intro.) of the administrative code is amended to
14 read:

15 DWD 273.08 **(1)** PAYMENT AND RECORDS REQUIRED. (intro.) The employer of a
16 traveling sales crew shall provide payment to its employees on the regularly agreed
17 upon pay dates, which shall in no case be less often than semimonthly. The employer
18 shall keep, for three years, the following records for all traveling sales crew workers:

19 **SECTION 16.** DWD 273.08 (2) of the administrative code is amended to read:

20 DWD 273.08 **(2)** DEDUCTIONS. The employer may make deductions from pay as
21 allowed under s. 103.34 (6) (b), Stats. The employer shall state clearly on the
22 traveling sales crew worker's paycheck, pay envelope, ~~or~~ pay stub, other paper
23 accompanying the wage payment, or simultaneously issued electronic statement
24 corresponding to the wage payment, the number of hours worked, the rate of pay, and
25 the amount of and reason for each deduction from the wages due or earned by the

traveling sales crew worker, except such miscellaneous deductions as may have been authorized by request of the individual traveling sales crew worker for reasons personal to himself or herself. The employer may use a reasonable coding system.

**SECTION 17.** DWD 273.11 (title) of the administrative code is amended to read:

**DWD 273.11** (title) **Traveling sales crew worker permits and identification cards.**

**SECTION 18.** DWD 273.11 (1) of the administrative code is amended to read:

DWD 273.11 **(1)** REQUIREMENT. The operator of a traveling sales crew shall obtain a permit and identification card for each traveling sales crew worker who works in Wisconsin or who is recruited from Wisconsin before the traveling sales crew worker begins work.

**SECTION 19.** DWD 273.11 (2) (intro.) of the administrative code is amended to read:

DWD 273.11 **(2)** APPLICATION. (intro.) In order to obtain a traveling sales crew worker permit and identification card from the department, the traveling sales crew operator shall submit to the department a government–issued picture ID, which shall include date of birth and permanent home address for each worker. Accompanying the government picture ID, a letter from the operator of the traveling sales crew shall be submitted which identifies the following:

**SECTION 20.** DWD 273.11 (3) of the administrative code is amended to read:

DWD 273.11 **(3)** PROCESSING. Within ten calendar days ~~of~~ after receipt of the completed application materials, the department shall complete its processing of the application and issue the permit and identification card.

**SECTION 21.** DWD 273.11 (4) of the administrative code is amended to read:

1 DWD 273.11 **(4)** OPERATOR REQUIREMENT TO CARRY PERMIT AND IDENTIFICATION
2 CARD. The operator of a traveling sales crew and anyone supervising or transporting
3 a traveling sales crew worker shall carry at all times, while engaged in traveling
4 sales crew activities, a copy of each permit and identification card. An operator shall
5 provide a traveling sales crew worker's permit and identification card upon the
6 request of a deputy of the department, a law enforcement officer, or a person with
7 whom the employer, traveling sales crew worker, agent, or representative is doing
8 business.

9 **SECTION 22.** DWD 273.11 (5) of the administrative code is amended to read:

10 DWD 273.11 **(5)** TRAVELING SALES CREW WORKER REQUIREMENT TO CARRY PERMIT
11 AND IDENTIFICATION CARD. While engaged in traveling sales crew activities, a traveling
12 sales crew worker shall carry at all times his or her original traveling sales crew
13 worker permit~~, his or her~~ and identification card and his or her government–issued
14 picture ID. A traveling sales crew worker shall provide any one or more of these
15 documents upon the request of a deputy of the department, a law enforcement officer,
16 or a person with whom the traveling sales crew worker is doing business.

17 **SECTION 23. Effective dates.** This act takes effect on the day after publication,
18 except as follows:

19 (1) The treatment of section 35.93 (2) (b) 4. and (c) 1. and (3) (e) (intro.) and 1.
20 of the statutes takes effect on January 1, 2015.

21 **(END)**