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State of Wisconsin
Department of Workforce Development

Rule Analysis for Legislative Review

April 13, 2010
Proposed Rule in Final Draft Form

Traveling Sales Crews

DWD 273

CR 09-110

Basis and Purpose of the Proposed Rules

Section 103.34, Stats., created by 2009 Wisconsin Act 3, provides for the regulation of traveling sales crews, which involve the employment of groups of persons as salespersons who travel to a variety of locations and sell consumer goods or services door to door. Section 103.34(13), Stats., provides the authority for rules interpreting the statute, establishing fees, and setting requirements for registration and safety.

A detailed description of the proposed rule provisions is included with the text of the proposed rule.

Public Hearing Summary

A public hearing was held in Madison on January 20, 2010.

Attorney Peter C. Christianson appeared on behalf of The Southwestern Company and presented a statement from the company which questioned the constitutionality of sec. 103.34, Stats., and the proposed rule on the grounds that the regulatory burdens of the statute and rule would fall on out-of-state businesses and not on similar Wisconsin businesses. The company also objected to the application of the statutory definition of "traveling sales crew" to the individuals who sell its books, and suggested that the rule be redrafted to narrow the definition. The company also stated that, contrary to the terms of the statute, the individuals who sell its books are independent contractors and not employees.

The Department has decided not to make the changes suggested by The Southwestern Company. It is not clear that a genuine constitutional issue exists, because it appears that the statute does not automatically favor Wisconsin businesses. The definition of “traveling sales crew” makes no explicit reference to the home state of either the business owner or the sales staff, and there are clearly potential situations in which a Wisconsin business could operate traveling sales crews that stay overnight temporarily in another part of the state, and thus become covered by the law, or in which an Illinois or Minnesota business could bring sales staff into border communities during the day and bring them home at night, thereby avoiding coverage by the law.

The Department has also declined the suggestion that it adopt a narrower version of the definition of “traveling sales crew” by rule. This does not appear to be an area in which the Legislature expected the Department to exercise its rulemaking authority.

Response to Legislative Council Staff Recommendations

All comments were accepted.

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