State of Wisconsin
2013 – 2014 LEGISLATURE

LRB-3571/1
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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.

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:

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) <u>or modified under s. 227.265</u> 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<u>, 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</u>.

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<u>,</u> or general order of general application which has the effect of law and which is issued by an agency to implement, interpret<u>,</u> or make specific legislation enforced or administered by the agency or to govern the organization or procedure of the agency. <u>"Rule" includes a modification of a rule under s. 227.265.</u> "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 <u>on an agency</u> 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.

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

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

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

DWD 273.08 **(1)** PAYMENT AND RECORDS REQUIRED. (intro.) 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:

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

DWD 273.08 **(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~~ 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 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)**