



2013 SENATE BILL 494

January 15, 2014 - Introduced by Senator PETROWSKI, cosponsored by Representatives LOUDENBECK, RINGHAND, BALLWEG, BERCEAU, KNODL, KUGLITSCH, T. LARSON, LEMAHIEU, MURPHY, STRACHOTA, WILLIAMS and PETRYK. Referred to Committee on Workforce Development, Forestry, Mining, and Revenue.

1 **AN ACT** *to amend* 13.92 (4) (c), 13.92 (4) (d), 13.92 (4) (e), 13.92 (4) (f), 35.93 (2)
2 (b) 4., 35.93 (2) (c) 1., 35.93 (3), 35.93 (3) (e) (intro.), 35.93 (3) (e) 1., 227.01 (13)
3 (intro.), 227.11 (2) (intro.) and 227.27 (2); and **to create** 13.92 (4) (bm) and
4 227.265 of the statutes; **relating to:** rule-making procedures and modifying
5 certain rules promulgated by the Department of Workforce Development for
6 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.

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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:

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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) or (bm).

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) or (bm).

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) or (bm).

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) or (bm).

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

SENATE BILL 494**SECTION 6**

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

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

6 35.93 (2) (c) 1. Each chapter of the Wisconsin administrative code that has been
7 affected by rules filed with the legislative reference bureau under s. 227.20 (1) or
8 modified under s. 227.265, in accordance with sub. (3) (e) 1.

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

10 35.93 (3) The legislative reference bureau shall compile and deliver to the
11 department for printing copy for a register which shall contain all the rules filed
12 under s. 227.20 or modified under s. 227.265 since the compilation of rules for the
13 preceding issue of the register was made and those executive orders which are to be
14 in effect for more than 90 days or an informative summary thereof. The complete
15 register shall be compiled and published before the first day of each month and a
16 notice section of the register shall be compiled and published before the 15th day of
17 each month. Each issue of the register shall contain a title page with the name
18 “Wisconsin administrative register”, the number and date of the register, and a table
19 of contents. Each page of the register shall also contain the date and number of the
20 register of which it is a part in addition to the other necessary code titles and page
21 numbers. The legislative reference bureau may include in the register such
22 instructions or information as in the bureau’s judgment will help the user to correctly
23 make insertions and deletions in the code and to keep the code current.

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

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

6 **SECTION 10.** 35.93 (3) (e) 1. of the statutes, as affected by 2013 Wisconsin Act
7 20, is amended to read:

8 35.93 (3) (e) 1. Publish the chapter in the appropriate end-of-month register
9 in accordance with the filing deadline for publication established in the rules
10 procedures manual published under s. 227.15 (7) ~~or~~, in an end-of-month register
11 agreed to by the submitting agency and the legislative reference bureau, or, in the
12 case of a rule modified under s. 227.265, in the end-of-month register for the month
13 in which the bill modifying the rule is enacted.

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

15 227.01 (13) (intro.) “Rule” means a regulation, standard, statement of policy,
16 or general order of general application which has the effect of law and which is issued
17 by an agency to implement, interpret, ~~or~~ make specific legislation enforced or
18 administered by the agency or to govern the organization or procedure of the agency.
19 “Rule” includes a modification of a rule under s. 227.265. “Rule” does not include, and
20 s. 227.10 does not apply to, any action or inaction of an agency, whether it would
21 otherwise meet the definition under this subsection, which:

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

23 227.11 (2) (intro.) Rule-making authority is expressly conferred on an agency
24 as follows:

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

SENATE BILL 494**SECTION 13**

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

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

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

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

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

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

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

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

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

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

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

