

Senate

Record of Committee Proceedings

Committee on Job Creation, Economic Development and Consumer Affairs

Senate Bill 251

Relating to: the regulation of traveling sales crews, requiring the exercise of rule-making authority, and providing penalties.

By Senators Erpenbach, Hansen, Robson, Risser and Carpenter; cosponsored by Representatives Pope-Roberts, Ainsworth, Gronemus, Hahn, Sheridan, Lehman, Jeskewitz, Travis, Pocan, Ott, Gunderson, Van Akkeren and Berceau.

June 30, 2005 Referred to Committee on Job Creation, Economic Development and Consumer Affairs.

August 23, 2005 **PUBLIC HEARING HELD**

Present: (5) Senators Kanavas, Zien, Reynolds, Lassa and Decker.

Absent: (0) None.

Appearances For

- Jon Erpenbach, Madison — Senator
- Mr. Phil Ellenbecker, Verona
- Sgt. John Conger, Milton — Milton Police Department
- Mr. James Olson, Madison
- Ms. Janet Jenkins, Madison — Department of Ag, Trade and Consumer Protection
- Mr. Jim Rabbitt, Madison — Department of Ag, Trade and Consumer Protection

Appearances Against

- None.

Appearances for Information Only

- None.

Registrations For

- Mr. Jim Chiolino, Madison — Department of Workforce Development
- Ms. Lucia Nunez, Madison — Department of Workforce Development
- Ms. Linda Kleinschmidt, Madison — Wisconsin Council on Children and Families

STATE OF WISCONSIN LEGISLATURE
BEFORE THE
SENATE JOB CREATION, ECONOMIC DEVELOPMENT AND CONSUMER
AFFAIRS COMMITTEE

WRITTEN TESTIMONY OF
WISCONSIN ATTORNEY GENERAL PEG LAUTENSCHLAGER
IN THE MATTER OF SENATE BILL 251

AUGUST 23, 2005

Thank you for the opportunity to submit written testimony on 2005 Senate Bill 251, relating to the regulation of traveling sales crews. My testimony today is in favor of Senate Bill 251, also known as "Malinda's Traveling Sales Crew Regulation Act".

This year marks the 6th anniversary of the van crash near Janesville in 1999, that took the lives of 7 young people, all of whom were younger than 20 years old, who were part of an unregistered magazine sales crew. The accident also permanently paralyzed a 15 year-old crewmember and injured several other members. This senseless tragedy exposed the need for more oversight of these types of operations, as well as the need for increased penalties to deter future violations of the law.

Wisconsin has a long and proud history of being a leader in protecting the welfare of our hard working people. Nearly 100 years ago, Wisconsin was the first state to establish a worker's compensation program. In 1931, Wisconsin was the first state to authorize payments for unemployed workers. Wisconsin was also one of the first states to pass child labor laws to protect our children from being exploited, and our system of social services on behalf of children ranks among the best in the nation.

Senate Bill 251 will continue our state's tradition of progressive worker protections by helping to prevent the exploitation of our young people by unscrupulous employers, who often subject their teenage employees to long hours at low pay with inadequate adult supervision. Passage of this legislation will give the state additional vital tools with which to both regulate these types of operations and prosecute those who choose to violate the law.

Evidence of the need for increased oversight of this practice is further illustrated by a recent case in Pierce County, in which a young man with a criminal background who was hired by a traveling magazine sales crew sexually assaulted a woman in her home after visiting the residence in his door-to-door sales route.

The lack of adequate adult oversight and the use of numerous minor employees, many as young as 15, simply creates situations that are disasters waiting to happen. When they do, as we have seen, the consequences can be very tragic.

I encourage the Legislature to act quickly on this matter to increase the protection of our young people. This is a non-partisan issue that should be of concern to all Wisconsin citizens, regardless of political ideology.

I'd like to thank Chairman Kanavas for holding a hearing on this important matter and I urge the committee to pass Senate Bill 251. I would also like to thank Phil Ellenbecker, Malinda's father, for his tireless advocacy in support of this legislation. He has dedicated his efforts to this cause so that others will not experience the tragic loss that he has suffered. The best tribute we can pay to Malinda and the other members of her crew would be to enact this legislation to protect our young people from future tragedies that might otherwise occur.



State of Wisconsin
Jim Doyle, Governor

Department of Agriculture, Trade and Consumer Protection
Rod Nilsestuen, Secretary

August 23, 2005

The Honorable Ted Kanavas, Chair
Committee on Job Creation, Economic Development and Consumer Affairs

Regarding SB 251, Traveling Sales Crews

The Bureau of Consumer Protection supports the concepts behind Senate Bill 251. The Department respectfully submits comments regarding one issue:

The addition of violations of Fraudulent Representations §100.18 and Unfair Trade Practices §100.20 to the list of "disqualifying offense" in 103.34(1)(b).

The Bureau of Consumer Protection enforces rules such as Chapter ATCP 127, Wisconsin's Direct Marketing and ATCP 139, Consumer Product Safety. The Bureau receives frequent contacts from local law enforcement agencies, the media, and consumers regarding itinerant sales crews and has taken a lead role in many high-profile investigations of these practices in recent years. The agency partners with representatives from DOJ and local authorities and other state agencies in order to provide responses to problems in this industry. Often, our toll-free hotline or regional offices receive the first indications of unscrupulous house-to-house sales activities and our field staff interact with the crews operating in the state.

Under the proposed legislation an employer may be denied, or suffer revocation of a certificate of registration for violations enumerated as disqualifying offenses under §103.34(1)(b). When testifying last year we respectfully recommended the addition of §100.18, 100.20, or any order or regulation adopted under the authority of §100.20(2) as disqualifying offenses. **While §100.20(2)(a) was added, we believe it was an oversight that §§100.18 and 100.20 were not added and again respectfully request they be added to the list of disqualifying offenses.** This would allow inclusion of fraudulent representations and unfair trade practices, in general, to be considered by DWD when determining whether a certificate of registration is appropriate.

Since DATCP currently investigates unfair trade practices and fraudulent representations under the authority of §§100.20 and 100.18, Wis. Stat., particularly in the area of Direct Marketing fact-to-face solicitations, we anticipate no additional fiscal impact to DATCP to implement these changes to the proposed legislation.

We thank the Committee for the opportunity to provide an input to the proposed bill.

Sincerely,

Janet Jenkins, Administrator
Division of Trade & Consumer Protection

Agriculture generates \$51.5 billion for Wisconsin



***Testimony of Lucía Nuñez, Division Administrator,
in support of SB 251***

Door-to-door sales crews have represented a major employment problem in this country for many years. These employers tend to recruit minors and young adults from low-income families with promises of high wages (commissions) and an exciting job.

Employers of door-to-door crews frequently move from state to state, hire vulnerable young workers, work them long hours, and then leave without paying promised wages. In other cases, the crew chiefs like to take the workers far away from home and withhold pay to ensure the workers are dependent upon the crew chief for the daily food and lodging. There have been instance of crew chiefs withholding food and lodging as a means of controlling crew workers. Some have even physically and sexually harassed workers to intimidate them.

In 1985 the Legislature passed legislation designed to limit and severely regulate the use of minors in Wisconsin in door-to-door sales. This legislation has proved quite successful in discouraging the use of minors in door-to-door sales since that time. As a matter of record there have only been three businesses registered in Wisconsin to conduct door-to-door sales using minors. Obviously no legislation can ensure the complete elimination of prohibited activities. Nevertheless it appears within the past nineteen years there has been a significant reduction in the use of minors in Wisconsin for door-to-door sales while other states have not noticed similar reductions.

The proposed legislation attempts to take the model of the 1985 legislation and apply similar registration requirements to employers seeking to use traveling sales crews in Wisconsin or crews that originate in Wisconsin. **One of the principal differences in this legislation from the 1985 legislation is that the 1985 legislation only protected persons under 18 years of age. This legislation attempts to protect any individual working on a traveling sales crew and totally prohibits minors from working on a traveling sales crew.**

Perhaps the most compelling argument for this legislation was the van accident that occurred in 1999 outside the city of Janesville. A traveling sales crew of 15 was traveling in a van on I-90 when it passed through a radar speed measurement.

Since the driver was traveling in excess of 85 in a 65 mph zone, didn't have a valid driver's license and was driving a van that didn't meet state safety regulations the driver chose to flee the police officer until he could switch positions with someone else in the van. The end result was the van rolled over several times and most of the van occupants were strewn across the highway. A number of the passengers were killed and several severely injured. All but two of the individuals on the crew were adults.

The Legislature in other legislation has clearly stated its intent to ensure that employers provide a safe working environment for employees, that employers pay their employees, and that employers disclose the conditions of employment to workers. **This legislation pursues those same protections for employees of traveling sales crews by creating unique requirements designed to fit the nature of the business.** For example, this bill contains a provision requiring employers of traveling sales crews to maintain a surety bond. This bond covers workers' wages when the employer doesn't pay them. Since the employer may no longer be located in Wisconsin the department can't simply use normal collection methods we use with employers with firm roots in Wisconsin. The bond allows the department to place a claim against the bond for any unpaid wages.

As the incident with the 1999 van crash clearly showed, unethical employers of traveling sales crews frequently ignore state laws. This legislation will not totally solve that problem. It will, however, provide a number of tools for the department to use to lessen the likelihood those employers will choose to do business in this state and will assist the department in dealing with employers who do business in this state and choose to violate.