



MARK BORN

STATE REPRESENTATIVE • 39TH ASSEMBLY DISTRICT

Rep. Mark Born Testimony on Senate Bill 320

Senate Committee on Judiciary and Labor

October 9, 2013

Thank you Mr. Chairman.

Senate Bill 320 and its companion bill, Assembly Bill 412 would exempt outside salespersons from the state minimum wage law. Under the bill, an outside salesperson is defined as an individual whose primary duties include sales, exchanges, or the selling of contracts, consignments, shipments or other dispositions. Federal law currently exempts outside salespersons from the minimum wage requirement and this bill seeks to do the same at the state level.

According to the Department of Workforce Development, many other states already simply follow federal exemptions as they relate to the minimum wage. This bill would provide greater clarity to Wisconsin employers and bring us into line with the practices of many other states.

This issue was brought to the attention of Senator Fitzgerald and me by a company in our district. Steve Foerster and Steve Nepstad, of Richards Insurance in Beaver Dam, will now provide more information on the bill and answer any questions that members of the committee may have.

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October 9, 2013

To: Senate Committee on Judiciary and Labor
From: Steve Foerster, Managing Member, Richards Benefits and Financial Services, LLC
Steve Nepstad, Human Resources Director, Richards Benefits and Financial Services, LLC
Re: Support for Senate Bill 320

We are pleased to provide testimony in support of Senate Bill 320, which would exempt commissioned outside sales employees, insurance agents in our case, from the current minimum wage requirement.

Many companies rely on outside sales for their success. They contract with their outside sales force as independent contractors and do not hire them. Independent contractors are not eligible for the employer's sponsored benefits and they relieve the employer of Wisconsin employment requirements like timekeeping and meeting minimum wage levels every pay period.

Our firm has always chosen to include all our outside sales personnel as eligible fulltime employees. We do this for the following reasons: 1) It is good for our customers. As employees, our outside sales people are required to adhere to our high level service standards; 2) It is good for our agents. They are entitled to our comprehensive benefits package; 3) It allows us to bring in new talent and compensate them with training pay while they learn the business and build their commission base; and, 4) It is good for our business as it helps create loyalty and long term relationships with our customers, our outside sales staff, and our new hires.

Our outside sales force does not have required hours to work, they take vacation time as they please and generally operate as independent contractors but are provided the benefits of an employee. Their income is generated based on their personal work efforts as a percentage of the revenue generated by them. Their compensation is often times not steady and consistent. Large amounts are earned some months and minimal amounts are earned in others. By way of example we have listed the actual month-to-month income of one of our outside sales people, who has earned nearly \$63,000 through the first eight months of 2013:

Jan	683.20	(below minimum wage threshold)
Feb	2,129.35	
Mar	5,287.01	
Apr	26,848.49	
May	22,419.54	
Jun	1,035.00	(below minimum wage threshold)
Jul	1,464.65	(below minimum wage threshold)
Aug	2,950.22	

In each pay period in which an agent falls below the minimum wage threshold, current Wisconsin law requires us to supplement earnings to bring him/her up to 1 ½ times the minimum wage for that pay period. This is an accounting nightmare, and does not provide significant benefit to our agents, as they repay those "minimum wage bumps" out of future commissions. Our agents have expressed pride that they are successful in our longstanding "reap what you sow" culture. They do not live paycheck to paycheck and they understand and accept the up-and-down nature of their compensation. Many have

expressed general distaste for the “minimum wage bumps” that they receive in their paychecks at times and some find it to be a disincentive.

It has been our experience that even the low-performing sales person is not well served by the minimum wage requirement. We see a direct correlation between commission income and how well our customers are being served and supported. An outside sales person who is not able to earn commissions that well-exceed the minimum wage threshold after an adequate period of training is usually not a fit for the sales position. We find that the employee (who is often miserable), the customer and the employer are usually best served by putting a better-suited individual into that position. Buoying the underperforming employee’s income to the minimum wage threshold often only prolongs an undesirable and unsustainable situation.

The insurance industry is experiencing the aging of its sales force and is not having good success in attracting young sales people. A key ingredient to attracting the sales force of tomorrow is to offer a true employment relationship, with benefits, training pay and the backing of an established business. We hope to continue our on-going practice of employing our sale people, but believe that the existing minimum wage requirement, and its inherent administrative burden, creates a disincentive to do so. Wisconsin should track with the Federal minimum wage laws and exempt outside sales.