

To: Unemployment Insurance Advisory Council
From: Andy Rubsam
Cc: Janell Knutson
Date: September 17, 2015
Re: **2015 SB 140 / 2015 AB 212**
Seven-year ineligibility period for multiple concealment acts

Currently, Wisconsin law provides for a period of ineligibility for future unemployment insurance benefits if the Department determines that the claimant engaged in concealment. If a claimant commits unemployment insurance benefit fraud, the Department assesses a period of ineligibility for future benefits based on the claimant's weekly benefit rate, the number of acts of concealment and the number of previous determinations of concealment. The period of future ineligibility is an amount of benefits equivalent to 2, 4 or 8 times the claimant's weekly benefit rate for each single act of concealment for a first, second and third or higher determination of concealment, respectively.¹ The period of ineligibility ends after the claimant claims benefits in the total amount of the ineligibility or six years after the Department's determination of concealment, whichever comes first.²

For example, consider a claimant who conceals work and wages on his weekly benefit claims for 10 consecutive weeks. Suppose that the claimant's weekly benefit rate is \$370 per week and that this is the third time that the Department found that the claimant committed unemployment fraud. The claimant would be ineligible for future benefits in the amount of \$29,600 for the six-year period after the Department determines concealment, whichever comes first. (\$370 weekly benefit rate x 10 acts of concealment x 8 because this was the third

¹ Wis. Stat. § 108.04(11)(be).

² Wis. Stat. § 108.04(11)(bm).

determination of concealment.) If the benefits for the claimant's benefit year total \$9,620,³ the claimant would not receive benefits for at least his next three benefit years or until six years after the Department issues the determination of concealment, whichever comes first.

In 2014, the Department issued 12,112 determinations that claimants concealed work or a material fact on their claims.⁴ Of those determinations, 11,466 were the Department's first determination that the claimant concealed, 613 were the Department's second determination that the claimant concealed and 33 were the Department's third or higher determination that the claimant concealed. The average amount of future ineligibility assessed is as follows:

Incidence of finding of concealment for claimant	Determinations of concealment issued in 2014	Total amount of future ineligibility	Average amount of future ineligibility
First	11,466	\$39,895,920	\$3,479.50
Second	613	\$2,230,557	\$3,638.76
Third or more	33	\$137,364	\$4,162.55
Total	12,112	\$42,263,841	\$3,489.42

The Legislature introduced 2015 SB 140 and 2015 AB 212, which propose to create an additional period of ineligibility for unemployment insurance benefit claimants who engage in fraud. Under the proposal, a claimant will be ineligible for benefits for 364 weeks (e.g. 7 years) if they commit a second act of concealment in subsequent benefit years.

Current law also provides that a person who impersonates a claimant in order to receive benefits in the name of the claimant must repay the benefits and pay an administrative assessment in the amount of the benefits that the imposter received.⁵ Senate Bill 140 and

³ \$370 * 26 weeks.

⁴ The figures in this paragraph and in the chart following this paragraph are for determinations issued in calendar year 2014, which include cases where the concealment was committed in past years. The figures do not include appealed or set aside decisions.

⁵ Wis. Stat. § 108.04(11)(cm).

Assembly Bill 212 propose that, in addition to repaying the benefits and paying the administrative assessment, a person who engages in a second act of impersonation shall also be ineligible for benefits for 364 weeks.

In the case of an individual concealing work or material facts or an individual engaging in impersonation, only acts of concealment or impersonation that an individual commits after the effective date of the law will be “counted” for the purposes of imposing the 364-week period of ineligibility.

Fiscal Effect

The fiscal estimate is attached.

Update

The Assembly held a hearing on AB 212 on August 18, 2015. The Senate held a hearing on SB 140 on September 8, 2015.

Conformity

A state’s unemployment insurance law must conform with, and the administration of its law must substantially comply with, applicable federal requirements. The U.S. Department Labor indicates, in an informal opinion, that SB 140/AB 212 conforms to federal requirements.



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-2096/1
MED:cjs:cs

2015 ASSEMBLY BILL 212

May 12, 2015 - Introduced by Representatives KERKMAN, JACQUE, ALLEN, BRANDTJEN, EDMING, GANNON, HEATON, HORLACHER, JAGLER, JARCHOW, KAPENGA, KITCHENS, KNODL, KNUDSON, KREMER, KULP, T. LARSON, MACCO, MURPHY, A. OTT, QUINN, RIPP, ROHRKASTE, SANFELIPPO, STEFFEN and TRANEL, cosponsored by Senators COWLES, GUDEX, NASS, OLSEN, PETROWSKI, WANGGAARD and MARKLEIN. Referred to Committee on Public Benefit Reform.

1 **AN ACT to create** 108.04 (11) (br) and 108.04 (11) (cr) of the statutes; **relating**
2 **to:** acts of concealment and misrepresentations in filing for or claiming
3 unemployment insurance benefits.

Analysis by the Legislative Reference Bureau

Under current law, if a claimant for unemployment insurance (UI) benefits conceals any material fact relating to his or her eligibility for benefits or conceals any of his or her wages or hours worked (act of concealment), the claimant is ineligible for benefits in an amount ranging from two to eight times the claimant's weekly benefit rate, depending on the number of acts of concealment committed, for each single act of concealment, and is liable for an additional penalty. This bill provides that, in addition to being ineligible for benefits and liable for penalties, a claimant who commits an act of concealment is ineligible for UI benefits for a period of seven years if he or she commits another act of concealment with respect to a subsequent benefit year.

In addition, under current law, if any person makes a false statement or representation in order to obtain UI benefits in the name of another person (act of impersonation), the person may be required to repay the amount of benefits obtained and also pay an administrative assessment. This bill provides that, in addition to being required to repay those UI benefits and pay an administrative assessment, an individual who commits an act of impersonation is ineligible for UI benefits for a period of seven years if the individual commits another, distinct act of impersonation.

ASSEMBLY BILL 212

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 108.04 (11) (br) of the statutes is created to read:

2 108.04 (11) (br) In addition to any ineligibility for benefits resulting from
3 concealment as provided in par. (be) and any penalty assessed under par. (bh), if a
4 claimant commits an act of concealment described in par. (a) or (b) and subsequently
5 commits an act of concealment described in par. (a) or (b) with respect to a subsequent
6 benefit year, the claimant shall be ineligible for benefits under this chapter for a
7 period of 364 weeks, beginning with the week in which any determination is made
8 that the claimant committed an act of concealment with respect to a subsequent
9 benefit year. The acts of concealment need not be of the same type for this paragraph
10 to apply. For purposes of this paragraph, only acts of concealment committed after
11 the effective date of this paragraph [LRB inserts date], shall be counted.

12 **SECTION 2.** 108.04 (11) (cr) of the statutes is created to read:

13 108.04 (11) (cr) In addition to any requirement to repay benefits or an
14 assessment under par. (cm), if an individual commits a violation of par. (cm) and
15 subsequently commits another violation of par. (cm), the individual shall be
16 ineligible for benefits under this chapter for a period of 364 weeks, beginning with
17 the week in which any determination is made that the individual committed such a
18 subsequent violation. For purposes of this paragraph, only violations committed
19 after the effective date of this paragraph [LRB inserts date], shall be counted.

20

(END)

Fiscal Estimate - 2015 Session

Original
 Updated
 Corrected
 Supplemental

LRB Number 15-2096/1	Introduction Number AB-0212
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Description
 Acts of concealment and misrepresentations in filing for or claiming unemployment insurance benefits

Fiscal Effect

State:

<input type="checkbox"/> No State Fiscal Effect	<input type="checkbox"/> Increase Existing Revenues	<input checked="" type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<input type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Existing Revenues	
<input type="checkbox"/> Increase Existing Appropriations		<input type="checkbox"/> Decrease Costs
<input type="checkbox"/> Decrease Existing Appropriations		
<input type="checkbox"/> Create New Appropriations		

Local:

<input type="checkbox"/> No Local Government Costs		5. Types of Local Government Units Affected <input type="checkbox"/> Towns <input type="checkbox"/> Village <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts
<input type="checkbox"/> Indeterminate		
1. <input type="checkbox"/> Increase Costs	3. <input type="checkbox"/> Increase Revenue	
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	
2. <input type="checkbox"/> Decrease Costs	4. <input type="checkbox"/> Decrease Revenue	
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	

Fund Sources Affected	Affected Ch. 20 Appropriations
<input checked="" type="checkbox"/> GPR <input checked="" type="checkbox"/> FED <input checked="" type="checkbox"/> PRO <input checked="" type="checkbox"/> PRS <input checked="" type="checkbox"/> SEG <input checked="" type="checkbox"/> SEGS 20.445 (1) (n)	

Agency/Prepared By DWD/ Richard Chao (608) 266-7713	Authorized Signature David Anderson (608) 266-2284	Date 6/4/2015
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Fiscal Estimate Narratives

DWD 6/4/2015

LRB Number	15-2096/1	Introduction Number	AB-0212	Estimate Type	Original
Description Acts of concealment and misrepresentations in filing for or claiming unemployment insurance benefits					

Assumptions Used in Arriving at Fiscal Estimate

After the effective date of this legislation, a claimant who is found by DWD to have committed two acts of concealment, as defined in Wis. Stats. 108.04(11)(a) and 108.04(11)(b), will be ineligible for UI benefits for 364 weeks beginning the week DWD issues a determination finding an act of concealment. This is in addition to all other existing penalties and requalification requirements.

Also, two violations by an individual of Wis. Stats. 108.04 (11)(cm), which establishes a penalty for impersonation of another person to obtain UI benefits, would result in ineligibility for UI benefits for 364 weeks beginning the week DWD issues a determination finding a violation. This is also in addition to all other required penalties.

This law change is expected to result in an increase in the number of overall appeals handled by the UI division. Assuming a 30% percent increase in first and second level fraud appeals, an additional 1.0 FTE and \$145,100 would be required annually to process the increased appeals.

In the first year after the new law is in effect, there would be no decrease in benefits paid from the UI trust fund. A decrease in benefits payments in the second year would result in an estimated savings of \$465,000 to the UI trust fund. The savings to the UI trust fund will increase each subsequent year and is expected to stabilize in the 7th and subsequent years after the legislation takes effect at approximately \$1,898,300 annually. These savings are a combination of decreased payments to claimants as well as decreased tax revenue because of decreased employer tax rates. Under federal law, these savings remain in the state's UI Trust fund for the sole purpose of payment of benefits.

As an employer, the State of Wisconsin would expect to see an approximate decrease of \$18,000 in benefit payments annually to former employees who are otherwise potentially eligible for UI benefits.

DWD estimates that approximately \$3,400 in one-time IT and administration changes are needed to comply with the law change.

This estimate assumes that the United States Department of Labor concludes that the law change is compliant with Federal law and guidance.

Long-Range Fiscal Implications

Fiscal Estimate Worksheet - 2015 Session

Detailed Estimate of Annual Fiscal Effect

Original
 Updated
 Corrected
 Supplemental

LRB Number 15-2096/1		Introduction Number AB-0212	
Description Acts of concealment and misrepresentations in filing for or claiming unemployment insurance benefits			
I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect): One-time mainframe system changes are needed to comply with the law change. The change is estimated to cost of \$3,452.			
II. Annualized Costs:		Annualized Fiscal Impact on funds from:	
		Increased Costs	Decreased Costs
A. State Costs by Category			
State Operations - Salaries and Fringes	\$145,100		\$
(FTE Position Changes)	(1.0 FTE)		
State Operations - Other Costs			-18,000
Local Assistance			
Aids to Individuals or Organizations			
TOTAL State Costs by Category	\$145,100		\$-18,000
B. State Costs by Source of Funds			
GPR			-10,400
FED	145,100		-1,800
PRO/PRS			-4,000
SEG/SEG-S			-1,800
III. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, ets.)			
	Increased Rev	Decreased Rev	
GPR Taxes	\$	\$	
GPR Earned			
FED			
PRO/PRS			
SEG/SEG-S			
TOTAL State Revenues	\$	\$	
NET ANNUALIZED FISCAL IMPACT			
	<u>State</u>	<u>Local</u>	
NET CHANGE IN COSTS	\$127,100	\$	
NET CHANGE IN REVENUE	\$	\$	
Agency/Prepared By		Authorized Signature	Date
DWD/ Richard Chao (608) 266-7713		David Anderson (608) 266-2284	6/4/2015