

Memorandum

To: Unemployment Insurance Advisory Council

From: Scott Sussman

Cc: Janell Knutson

Date: March 19, 2015

**Re: 2015 Senate Bill 21/Assembly Bill 21 (Budget Bill) –
Increased Penalties for Acts of Concealment**

The Budget Bill increases the criminal and civil penalties for a claimant fraudulently filing for unemployment insurance (UI) benefits by concealing any material facts relating to UI benefit eligibility.

A survey of other states illustrates that states impose a wide range of civil and criminal penalties for UI fraud.

Increased Civil Penalties:

Federal law requires states to assess a minimum civil penalty against claimants who commit fraud in connection with state or federal UI programs. The minimum penalty is 15% of the amount of benefits obtained by fraud. Pursuant to the federal mandate, Wisconsin enacted 2011 Act 236, which imposed a 15% civil penalty on claimants who commit unemployment insurance fraud. *See* Wis. Stat. § 108.04(11)(bh). The penalty applies if the claimant conceals any material fact relating to the claimant's eligibility for benefits or wages earned, paid or payable wages, or hours worked in that week.

The Budget Bill increases the monetary penalty from 15% to 40% of UI benefit payments erroneously paid to a claimant as a result of one or more acts of concealment.

Increased Criminal Penalties:

In addition to the increased civil penalties, the Budget Bill increases the criminal penalties associated with acts of fraud to obtain UI benefits.

Current law provides a criminal penalty for certain violations under UI law, including knowingly making a false statement or representation to obtain any UI benefit payment. The

penalty is a fine of not less than \$100, nor more than \$500, or imprisonment for not more than 90 days, or both. Each such false statement or representation constitutes a separate offense.

The Budget Bill increases the criminal penalties for a person who knowingly makes a false statement or representation to obtain any UI benefit payment to mirror existing penalties contained in the criminal statutes (§943.20 and §939.51).

If the value of UI benefits obtained:	Guilty of	Maximum Criminal Punishment
Does not exceed \$2,500	i	Not to exceed \$10,000 or imprisonment not to exceed 9 months, or both
Exceeds \$2,500 but does not exceed \$5,000	Class I Felony	Up to \$10,000 or imprisonment up to 3.5 years, or both
Exceeds \$5,000 but does not exceed \$10,000	Class H Felony	Up to \$10,000 or imprisonment up to 6 years, or both
Exceeds \$10,000	Class G Felony	Up to \$25,000 or imprisonment up to 10 years, or both

Fiscal Analysis Prepared by the Legislative Fiscal Bureau:

Workforce Development	2015-2016	2016-2017	Fund Source
Unemployment Insurance Fraud Surcharge. Increase from 15% to 40%, the surcharge on the benefit payments erroneously paid to unemployment insurance claimants relating to fraudulent information provided or withheld (concealment) beginning on the day after publication of the budget act.	\$470,000	\$980,000	SEG

Conformity:

A state's UI law must conform to, and the administration of its law must substantially comply with, applicable federal requirements.

The department is not aware of any federal conformity issues with the increased penalties directed by Budget Bill.

It is recommended that the provisions within the Budget Bill pertaining to increasing penalties be sent to the U.S. Department of Labor for review.

¹ While not stated in the Budget Bill, this penalty is the equivalent of a Class A misdemeanor. *See* Wis. Stat. § 939.51(3)(a).