



2011 SENATE BILL 417

January 31, 2012 - Introduced by Senator WANGGAARD, cosponsored by Representative BALLWEG. Referred to Committee on Labor, Public Safety, and Urban Affairs.

1 **AN ACT to amend** 108.09 (2) (b), 108.09 (3) (a) 1., 108.09 (3) (a) 2., 108.09 (3) (b),
2 108.09 (8) (b), 108.22 (1) (a), 108.225 (1) (b), 108.225 (16) (am) 1. (intro.), 108.225
3 (17) and 108.24 (1); and **to create** 108.04 (2) (ae), 108.04 (11) (bh), 108.16 (6)
4 (n) and 108.22 (8) (bh) of the statutes; **relating to:** concealment of benefit claim
5 information, availability for work, interest on delinquent payments, and the
6 composition and authority of appeal tribunals under the unemployment
7 insurance law.

Analysis by the Legislative Reference Bureau

This bill makes changes in concealment of benefit claim information, the requirement to maintain availability for work, interest on delinquent payments, and the composition and authority of appeal tribunals under the unemployment insurance (UI) law.

Concealment of benefit claim information

Currently, if a claimant conceals any material fact relating to his or her eligibility for UI benefits or conceals any wages earned in or paid or payable for a given week, the claimant is subject to graduated monetary penalties that increase in severity with the number of determinations of concealment by the claimant. In addition, if a claimant conceals any wages for a given week, the claimant is ineligible to receive any benefits for that week.

SENATE BILL 417

This bill provides instead that claimant who is found guilty of concealment is subject to a penalty equal to 15 percent of the benefit payments erroneously paid to the claimant as a result of any acts of concealment. Under the bill, revenues collected from the penalties are deposited in the unemployment reserve fund, which is used to pay benefits.

Availability for work

Currently, with certain exceptions, a claimant is eligible for UI benefits for any week in which the claimant earns no wages only if the claimant is available for work during that week. This bill provides specifically that a claimant is not considered to be available for work in any week in which he or she is in a country other than the United States or Canada for more than 48 hours unless the claimant has authorization to work in that other country and there is a reciprocal agreement concerning the payment of benefits between that other country and the United States.

Interest on delinquent payments

Currently, if an employer does not make a payment required under the UI law to the Department of Workforce Development (DWD) by the due date, the employer must pay interest on the amount owed equal to one percent per month or fraction thereof from the date that the payment became due. This bill changes the interest rate on delinquent payments to that monthly rate that annualized is equal to 9 percent or to 2 percent more than the prime rate as published in the Wall Street Journal as of September 30 of the preceding year, whichever is greater, for each month or fraction thereof that the employer is delinquent.

Composition and authority of appeal tribunals

Currently, DWD is directed by law to appoint appeal tribunals to administratively hear and decide disputed UI claims and other matters arising under the UI law. An individual who is appointed to serve as an appeal tribunal must be a permanent employee of DWD except that DWD may appoint a person to serve as a temporary appeal tribunal if the individual was formerly appointed to serve as a tribunal while employed by DWD and retired from state service as a permanent employee. This bill permits DWD to appoint any attorney who is licensed to practice in this state to serve as a temporary appeal tribunal. The bill also provides that the actions of appeal tribunals must be consistent with applicable state and federal law.

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 (2) (ae) of the statutes is created to read:

SENATE BILL 417

1 108.04 (2) (ae) A claimant is not available for work under par. (a) 1. in any week
2 in which he or she is located in a country other than the United States, as defined
3 in s. 108.02 (15) (do) 2., or Canada for more than 48 hours unless the claimant has
4 authorization to work in that other country and there is a reciprocal agreement
5 concerning the payment of unemployment insurance benefits between that other
6 country and the United States.

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

8 108.04 (11) (bh) In addition to the forfeiture resulting from concealment as
9 provided in par. (be), the department shall assess a penalty against the claimant in
10 an amount equal to 15 percent of the benefit payments erroneously paid to the
11 claimant as a result of one or more acts of concealment described in pars. (a) and (b).

12 **SECTION 3.** 108.09 (2) (b) of the statutes is amended to read:

13 108.09 (2) (b) The department shall issue determinations whenever necessary
14 to resolve any matters ~~which~~ that may bar, suspend, terminate or otherwise affect
15 the employee's eligibility for benefits or to resolve any liability for penalties under
16 s. 108.04 (11) (bh).

17 **SECTION 4.** 108.09 (3) (a) 1. of the statutes is amended to read:

18 108.09 (3) (a) 1. To hear and decide disputed claims or to resolve liabilities
19 under sub. (2) (b), the department shall establish appeal tribunals. Except as
20 authorized in this paragraph, each tribunal shall consist of an individual who is a
21 permanent employee of the department.

22 **SECTION 5.** 108.09 (3) (a) 2. of the statutes is amended to read:

23 108.09 (3) (a) 2. The department may appoint an individual who is not a
24 permanent employee of the department to serve as a temporary reserve appeal
25 tribunal ~~if the individual formerly served as an appeal tribunal while employed by~~

SENATE BILL 417**SECTION 5**

1 ~~the department and retired from state service as a permanent employee.~~ An
2 individual who is appointed to serve as a temporary reserve appeal tribunal shall be
3 an attorney who is licensed to practice in this state.

4 **SECTION 6.** 108.09 (3) (b) of the statutes is amended to read:

5 108.09 (3) (b) The Consistently with applicable state and federal law, the
6 appeal tribunal may affirm, reverse or modify the initial determination of the
7 department or set aside the determination and remand the matter to the department
8 for further proceedings, or may remand to the department for consideration of any
9 issue not previously investigated by the department.

10 **SECTION 7.** 108.09 (8) (b) of the statutes is amended to read:

11 108.09 (8) (b) Any party in a dispute concerning benefit eligibility or liability
12 for overpayment of benefits or a penalty imposed under s. 108.04 (11) (bh), or in any
13 administrative proceeding under this chapter concerning such a dispute, may be
14 represented by counsel or another agent; but no such counsel or agent may together
15 charge or receive from an employee for all such representation in connection with
16 such a dispute a fee which, in the aggregate, exceeds 10% of the maximum benefits
17 at issue unless the department has first approved a specified higher fee. This
18 paragraph does not apply to any fee charged for representation before a court of law.

19 **SECTION 8.** 108.16 (6) (n) of the statutes is created to read:

20 108.16 (6) (n) Any penalty collected under s. 108.04 (11) (bh).

21 **SECTION 9.** 108.22 (1) (a) of the statutes is amended to read:

22 108.22 (1) (a) If any employer, other than an employer which has ceased
23 business and has not paid or incurred a liability to pay wages in any quarter
24 following the cessation of business, is delinquent in making by the assigned due date
25 any payment to the department required of it under this chapter, the employer shall

SENATE BILL 417

1 pay interest on the delinquent payment at ~~the rate of one percent per~~ that monthly
2 rate that annualized is equal to 9 percent or to 2 percent more than the prime rate
3 as published in the Wall Street Journal as of September 30 of the preceding year,
4 whichever is greater, for each month or fraction thereof that the employer is
5 delinquent from the date such payment became due. If any such employer is
6 delinquent in making any quarterly report under s. 108.205 (1) by the assigned due
7 date, the employer shall pay a tardy filing fee of \$50 for each delinquent quarterly
8 report.

9 **SECTION 10.** 108.22 (8) (bh) of the statutes is created to read:

10 108.22 (8) (bh) To recover any penalty under s. 108.04 (11) (bh), the department
11 may recoup the amount of the penalty by filing a warrant against a liable individual
12 in the same manner as is provided in this section for collecting delinquent payments
13 from employers.

14 **SECTION 11.** 108.225 (1) (b) of the statutes is amended to read:

15 108.225 (1) (b) "Debt" means a delinquent contribution or repayment of a
16 benefit overpayment, an assessment under s. 108.04 (11) (cm) or 108.19 (1m), a
17 liability incurred under s. 108.04 (11) (bh), or any liability of a 3rd party for failure
18 to surrender to the department property or rights to property subject to levy after
19 proceedings under sub. (4) (b) and s. 108.10 to determine that liability.

20 **SECTION 12.** 108.225 (16) (am) 1. (intro.) of the statutes is amended to read:

21 108.225 (16) (am) 1. (intro.) In the case of benefit overpayments or a penalty
22 imposed under s. 108.04 (11) (bh), an individual debtor is entitled to an exemption
23 from levy of 80% of the debtor's disposable earnings, except that:

24 **SECTION 13.** 108.225 (17) of the statutes is amended to read:

