

1999 DRAFTING REQUEST

Bill

Received: 09/9/98

Received By: malaigm

Wanted: As time permits

Identical to LRB:

For: Timothy Carpenter (608) 266-1707

By/Representing: Rex Loehe

This file may be shown to any legislator: NO

Drafter: malaigm

May Contact:

Alt. Drafters:

Subject: Employ Priv - miscellaneous

Extra Copies:

Topic:

Health care benefits notification requirement; time of notification

Instructions:

See Attached--amend 60-day notification period to 120 days

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	malaigm 09/24/98	gilfokm 10/8/98	ismith 10/8/98	_____	lrb_docadmin 10/8/98	lrb_docadminState 10/15/98	
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FE Sent For:

02-11-99

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1/?	malaigm	1-10-7 Kmg	IS 10/8	IS/JF 10/8			

FE Sent For:

<END>



STATE REPRESENTATIVE  
**Timothy W. Carpenter**

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N I N T H   A S S E M B L Y   D I S T R I C T

MEMO

**TO:** Legislative Reference Bureau

**FROM:** Representative Tim Carpenter

**RE:** Bill Drafting Requests for the 1999 - 2000 Legislative Biennium

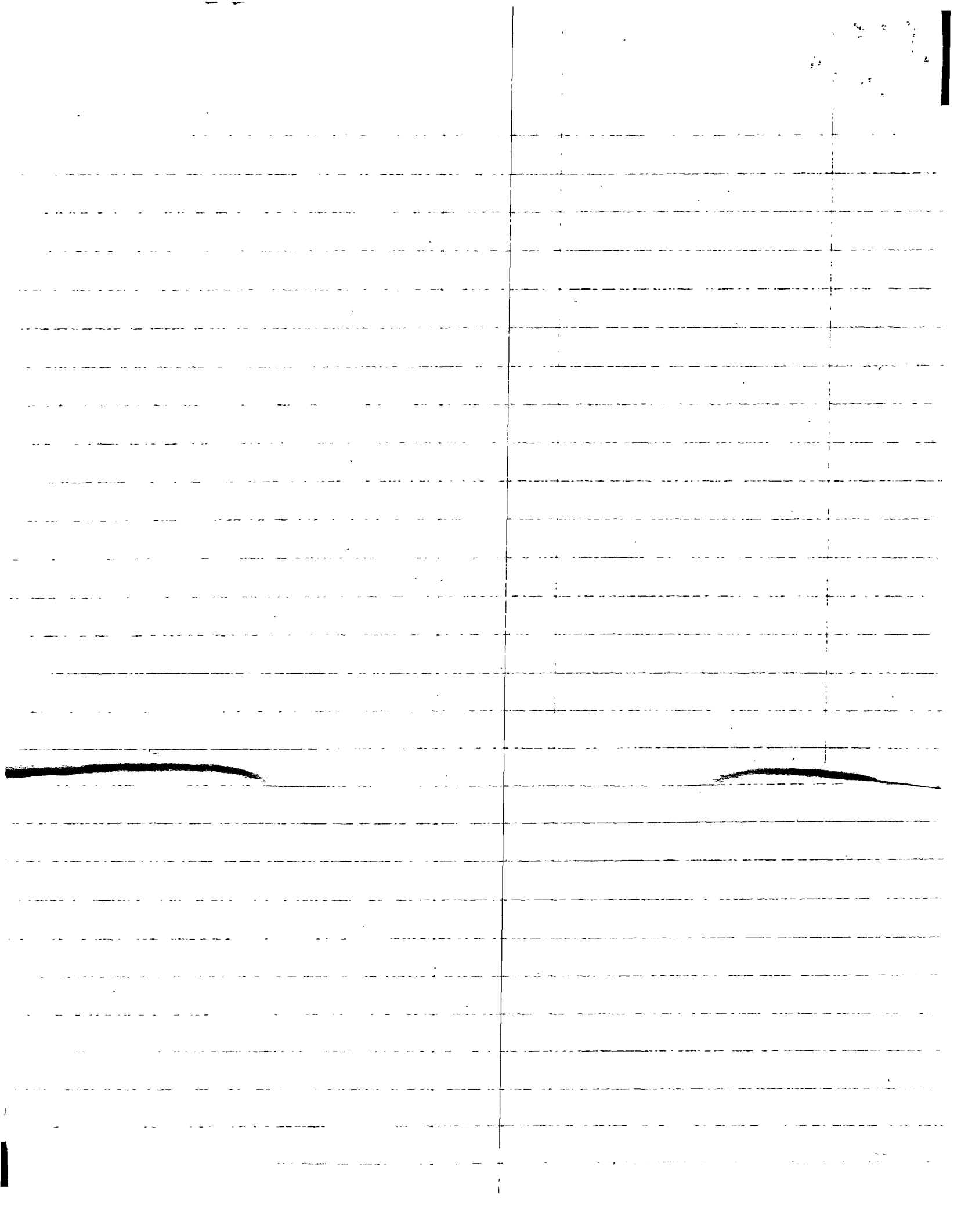
**DATE:** September 1, 1998

I would like to have the following bills from the 1998-1999 legislative session redrafted for the 1999-2000 biennium (*copies enclosed*):

- **AB 148:** Health care benefits no longer provided by employer: notification requirements created. Amend from 60 day notification to 120 day notification.

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Thank you for your assistance with this request. If you have any questions or concerns, please contact Rex Loehe in my office at 6-1707.





## 1997 ASSEMBLY BILL 148

March 4, 1997 - Introduced by Representatives CARPENTER, KRUSICK, KUNICKI, BOCK, WILLIAMS, MUSSER, LA FAVE, PLALE, HASENOHRL, NOTESTEIN, HANSON, GRONEMUS, BLACK, R. YOUNG, BOYLE, J. LEHMAN, STASKUNAS, ROBSON, PLOUFF, KAUFERT and DUEHOLM, cosponsored by Senators PLACHE, BURKE, GROBSCHMIDT, BUETTNER and CLAUSING. Referred to Committee on Labor and Employment.

1     **AN ACT to amend** 109.01 (2), 109.12 (1) (a), 109.12 (1) (b), 109.12 (2), 109.12 (3),  
2             111.322 (2m) (a) and 111.322 (2m) (b); and **to create** 109.075 and 893.98 of the  
3             statutes; **relating to:** notice to employes, retirees and dependents of cessation  
4             of health care benefits, granting rule-making authority and providing a  
5             penalty.

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### ***Analysis by the Legislative Reference Bureau***

Under current law, any employer employing 50 or more person in this state who decides upon a business closing or mass layoff must notify the department of industry, labor and job development (DILJD), any employe who might be expected to lose his or her job as a result of the business closing or mass layoff (affected employe), any affected employe's collective bargaining representative and the highest official of the municipality in which the affected employment site is located of the business closing or mass layoff no later than 60 days before that action is to take place. Currently, if an employer fails to give timely notice to an affected employe, the affected employe may recover pay and the value of any benefits, including the cost of any medical treatment incurred, that the affected employe would have received for the period beginning on the day on which the employer was required to give notice and ending on the day on which the employer actually gave notice or the day on which the business closing or mass layoff occurred, whichever occurs first (recovery period). Current law also permits DILJD to access a business closing surcharge of not more than \$500 per day for each day of the recovery period

**ASSEMBLY BILL 148**

on an employer who fails to give timely notice to the highest official of the affected municipality. In addition, current law provides various exceptions to the business closing or mass layoff notification law under which an employer is not liable for failure to provide notice if DILJD determines that certain conditions apply, including any of the following:

1. That the employer was actively seeking capital or business to enable the employer to avoid or postpone indefinitely the business closing or mass layoff and that the employer reasonably and in good faith believed that providing the notice would have prevented the employer from obtaining the capital or business.

2. That the business closing or mass layoff is the result of any of the following:

a. The sale of the employer's business, if the purchaser agrees to hire substantially all of the affected employees with not more than a 6-month break in employment.

b. Unforeseen business circumstances.

c. A natural or man-made disaster beyond the control of the employer.

d. A temporary cessation in business operations, if the employer recalls the affected employees within 60 days.

This bill creates a similar notification requirement for employees who decide to cease providing health care benefits. Specifically, the bill requires any employer employing 50 or more persons in this state who decides to cease providing health care benefits to notify any employe, retired employe or surviving covered dependent of an employe or retired employe who loses, or who may reasonably be expected to lose, his or her health care benefits provided by the employer (affected employe, retiree or dependent) of the cessation of the health care benefits no later than 60 days before that action is to take place. Under the bill, if an employer fails to give timely notice to an affected employe, retiree or dependent, the affected employe, retiree or dependent may recover the value of any health care benefits, including the cost of any medical treatment incurred that would have been covered but for the cessation of health care benefits, that the employe, retiree or dependent would have received for the period beginning on the day on which the employer was required to give notice and ending on the day on which the employer actually gave notice or the day on which the cessation of health care benefits occurred, whichever occurs first. The bill also provides for certain exceptions to the requirement that an employer provide notification if the employer decides to cease providing health care benefits. Under the bill, an employer is not liable for failure to provide notice if DILJD determines that any of the following conditions applies:

1. That the employer was actively seeking capital or business to enable the employer to avoid or postpone indefinitely the cessation of health care benefits and that the employer reasonably and in good faith believed that providing the notice would have prevented the employer from obtaining the capital or business.

2. That the cessation of health care benefits is the result of any of the following:

a. The sale of the employer's business, if the purchaser agrees to provide health care benefits for all of the affected employees, retirees and dependents with not more than a 60-day break in coverage.

b. Unforeseen business circumstances.

**ASSEMBLY BILL 148**

c. A natural or man-made disaster beyond the control of the employer.

d. A temporary cessation in providing health care benefits, if the employer renews providing health care benefits within 60 days.

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

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

1           **SECTION 1.** 109.01 (2) of the statutes is amended to read:

2           109.01 (2) Except as provided in s. ss. 109.07 (1) (d) and 109.075 (1) (c),

3           “employer” means any person engaged in any activity, enterprise or business

4           employing one or more persons within the state, including the state and its political

5           subdivisions and charitable, nonprofit or tax-exempt organizations and institutions.

6           **SECTION 2.** 109.075 of the statutes is created to read:

7           **109.075 Cessation of health care benefits affecting employes, retirees**

8           **and dependents; advance notice required.** (1) In this section:

9           (a) “Affected employe, retiree or dependent” means an employe, retired

10          employe or a surviving covered dependent of an employe or retired employe who

11          loses, or may reasonably be expected to lose, his or her health care benefits provided

12          by an employer who is required to give notice under sub. (2) because the employer

13          has decided to cease providing health care benefits.

14          (b) “Employe benefit plan” means a plan as defined in 29 USC 1002 (3).

15          (c) “Employer” means any business enterprise that employs 50 or more persons

16          in this state.

17          (d) “Health care benefits” means coverage of health care expenses under an

18          employe benefit plan.



**ASSEMBLY BILL 148**

1           (2) Subject to sub. (5) or (6), an employer who has decided to cease providing  
2 health care benefits in this state shall promptly notify any affected employe, retiree  
3 or dependent and any collective bargaining representative of any affected employe,  
4 retiree or dependent in writing of such action no later than 60 days prior to the date  
5 that the cessation of health care benefits takes place. This subsection does not apply  
6 to a cessation of health care benefits that is caused by a strike or lockout.

7           (3) (a) If an employer fails to give timely notice to an affected employe, retiree  
8 or dependent as required under sub. (2), the affected employe, retiree or dependent  
9 may recover, as provided under sub. (4), the value of any health care benefits that the  
10 affected employe, retiree or dependent would have received during the recovery  
11 period described under par. (c), but did not receive because of the cessation of health  
12 care benefits, including the cost of any medical treatment incurred that would have  
13 been covered but for the cessation of health care benefits.

14           (b) The amount that an affected employe may recover under par. (a) shall be  
15 reduced by any cost that the affected employer incurs by crediting the affected  
16 employe, under an employe benefit plan, for time not actually served because of a  
17 business closing, as defined in s. 109.07 (1) (b), or mass layoff, as defined in s. 109.07  
18 (1) (f).

19           (c) The recovery period under par. (a) begins on the day that the cessation of  
20 health care benefits occurs. The recovery period equals the number of days in the  
21 period beginning on the day on which an employer is required to give notice under  
22 sub. (2) and ending on whichever of the following occurs first:

23           1. The day that the employer actually gave the notice to the affected employe,  
24 retiree or dependent.

25           2. The day that the cessation of health care benefits occurred.

## ASSEMBLY BILL 148

1           (4) (a) An affected employe, retiree or dependent whose employer or former  
2 employer, or whose spouse's or parent's employer or former employer, fails to notify  
3 timely the affected employe, retiree or dependent under sub. (2) may file a claim with  
4 the department. If the affected employe, retiree or dependent files a claim with the  
5 department no later than 300 days after the cessation of health care benefits  
6 occurred, the department shall, in the manner provided in s. 109.09, investigate the  
7 claim, determine the number of days that the employer or former employer was late  
8 in providing notice and, on behalf of the affected employe, retiree or dependent,  
9 attempt to recover from the employer or former employer the payment under sub. (3).

10           (b) If the department does not recover payment within 180 days after a claim  
11 is filed or within 30 days after it notifies the affected employe, retiree or dependent  
12 of its determination under par. (a), whichever is first, the department shall refer the  
13 claim to the department of justice. The department of justice may bring an action  
14 in circuit court on behalf of the affected employe, retiree or dependent to recover the  
15 payment under sub. (3).

16           (c) If the department of justice does not bring an action under par. (b) within  
17 120 days after the claim is referred to it, the affected employe, retiree or dependent  
18 may bring an action in circuit court to recover the payment under sub. (3). If the  
19 affected employe, retiree or dependent prevails in the action, he or she shall also  
20 recover costs under ch. 814 and, notwithstanding s. 814.04 (1), reasonable attorney  
21 fees.

22           (d) An action under this section shall be begun within one year after the  
23 department refers the claim to the department of justice under par. (b), or be barred.

24           (5) (a) An employer is not liable under this section for a failure to give notice  
25 to any person under sub. (2), if the department determines all of the following:

## ASSEMBLY BILL 148

1           1. When the notice under sub. (2) would have been timely given, that the  
2 employer was actively seeking capital or business to enable the employer to avoid or  
3 postpone indefinitely the cessation of health care benefits.

4           2. That the employer reasonably and in good faith believed that giving the  
5 notice required under sub. (2) would have prevented the employer from obtaining the  
6 capital or business.

7           (b) The department may not determine that an employer was actively seeking  
8 capital or business under par. (a) 1. unless the employer has a written record, made  
9 while the employer was seeking capital or business, of those activities. The record  
10 shall consist of the documents and other material specified by the department by rule  
11 under s. 109.12 (1) (b). The employer shall have individual documents in the record  
12 notarized, as required by the department's rules. The employer shall provide the  
13 department with an affidavit verifying the content of the notarized documents.

14           (6) An employer is not liable under this section for a failure to give notice to any  
15 person under sub. (2), if the department determines that the cessation of health care  
16 benefits is the result of any of the following:

17           (a) The sale of part or all of the employer's business, if the purchaser agrees in  
18 writing, as part of the purchase agreement, to provide health care benefits for all of  
19 the affected employes, retirees and dependents with not more than a 60-day break  
20 in coverage.

21           (b) Business circumstances that were not foreseeable when the notice would  
22 have been timely given.

23           (c) A natural or man-made disaster beyond the control of the employer.

## ASSEMBLY BILL 148

1 (d) A temporary cessation in providing health care benefits, if the employer  
2 renews providing health care benefits for the affected employes, retirees and  
3 dependents on or before the 60th day beginning after the cessation.

4 (7) Each employer shall post, in one or more conspicuous places where notices  
5 to employes are customarily posted, a notice in a form approved by the department  
6 setting forth the rights of employes, retirees and dependents under this section. Any  
7 employer who violates this subsection shall forfeit not more than \$100.

8 (8) Section 111.322 (2m) applies to discharge and other discriminatory acts  
9 arising in connection with any proceeding under this section.

10 **SECTION 3.** 109.12 (1) (a) of the statutes is amended to read:

11 109.12 (1) (a) Aid the administration of this chapter, including the enforcement  
12 of ~~s. ss.~~ ss. 109.07 and 109.075 and criteria for exceptions under ~~s. ss.~~ ss. 109.07 (5) and (6)  
13 and 109.075 (5) and (6).

14 **SECTION 4.** 109.12 (1) (b) of the statutes is amended to read:

15 109.12 (1) (b) Establish the form and content of the record required under s.  
16 109.07 (5) (b) and the record required under s. 109.075 (5) (b) and specify the  
17 documents that must contain notarized signatures.

18 **SECTION 5.** 109.12 (2) of the statutes is amended to read:

19 109.12 (2) Not later than March 1 annually, ~~beginning with 1990~~, submit a  
20 written report on its activities in the preceding calendar year related to the  
21 enforcement and administration of ~~s. ss.~~ ss. 109.07 and 109.075 to the chief clerk of each  
22 house of the legislature for distribution under s. 13.172 (3) to the standing  
23 committees with jurisdiction over labor.

24 **SECTION 6.** 109.12 (3) of the statutes is amended to read:





# 1999 BILL

*Print Line #5*  
*Don Cat*  
AN ACT *Don Cat*; relating to: notice to employes, retirees and dependents of cessation of health care benefits.

retiree or

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### *Analysis by the Legislative Reference Bureau*

Under current law, any employer employing 50 or more persons in this state that decides to cease providing health care benefits is required to notify any employe, ~~retired employe or surviving covered dependent of an employe or retired employe~~ who may be reasonably expected to lose his or her health care benefits provided by the employer of that action no later than 60 days before the cessation of health care benefits takes place. This bill extends that notification period to 120 days before the cessation of health care benefits takes place.

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

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

**SECTION 1.** 109.075 (2) of the statutes is amended to read:

109.075 (2) Subject to sub. (5) or (6), an employer who has decided to cease providing health care benefits in this state shall promptly notify any affected employe, retiree or dependent and any collective bargaining representative of any

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**BILL**

affected employe, retiree or dependent in writing of such action no later than ~~60~~ 120 days prior to the date that the cessation of health care benefits takes place. This subsection does not apply to a cessation of health care benefits that is caused by a strike or lockout.

**SECTION 2. Initial applicability.**

*\** (1) NOTICE OF CESSATION OF HEALTH CARE BENEFITS. This act first applies to notices that are required under section 109.075 (2), as affected by this act, to be given on the effective date of this subsection.

(END)

*of the statutes*



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**SUBMITTAL  
FORM**

**LEGISLATIVE REFERENCE BUREAU  
Legal Section Telephone: 266-3561  
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and **sign** on the appropriate line(s) below.

**Date:** 10/8/98

**To:** Representative Carpenter

**Relating to LRB drafting number:** LRB-0079

**Topic**

Health care benefits notification requirement; time of notification

**Subject(s)**

Employ Priv - miscellaneous

1. **JACKET** the draft for introduction Carpenter  
in the **Senate** \_\_\_\_ or the **Assembly**  (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached \_\_\_\_\_.  
A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction \_\_\_\_\_.  
If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Gordon M. Malaise, Senior Legislative Attorney  
Telephone: (608) 266-9738