

2005 ASSEMBLY BILL 1148

March 27, 2006 – Introduced by Representatives BERCEAU, NELSON, SEIDEL, POCAN, PARISI, SHERIDAN, HEBL, SCHNEIDER, TRAVIS, MOLEPSKE, COLON, POPE-ROBERTS, SINICKI, YOUNG, VRUWINK, SHERMAN, TURNER, RICHARDS, KREUSER, BLACK, GRIGSBY and FIELDS, cosponsored by Senator MILLER. Referred to Committee on Insurance.

1 **AN ACT** *to create* 25.77 (8), 49.665 (4) (a) 3r., 49.665 (4) (am) 3r., 49.667 and
2 106.54 (8) of the statutes; **relating to:** an assessment on large employers that
3 reduce or eliminate health care coverage, providing an exemption from
4 emergency rule procedures, requiring the exercise of rule-making authority,
5 and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, the Department of Health and Family Services (DHFS) administers the Badger Care health care program under which DHFS provides comprehensive health care coverage to eligible children and families (BadgerCare). Generally, a child or a family whose income does not exceed 185 percent of the federal poverty line and that does not have access to employer-subsidized health care coverage for which the employer subsidizes at least 80 percent of the cost is eligible for BadgerCare.

This bill prohibits a for-profit employer employing 10,000 or more full-time or part-time employees in this state (large employer) from reducing or eliminating the health care coverage provided to its employees if the large employer knows or should know that the reduction or elimination will or may result in enrollment of the child or the family of an employee in BadgerCare. The bill permits DHFS to impose on any large employer that reduces or eliminates the health care coverage provided to its employees in violation of the bill an assessment of not more than \$250,000 and requires DHFS to deposit any assessments collected under the bill in the Medical

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Assistance trust fund. The bill requires DHFS, in determining whether an assessment is to be imposed and, if so, in fixing the amount of the assessment, to consider the gravity of the violation, any previous violations committed by the large employer, the financial benefit to the large employer of committing or continuing the violation, and any other factors that are relevant to determining whether an assessment should be imposed and, if so, to fixing the amount of the assessment.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

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.** 25.77 (8) of the statutes is created to read:

2 25.77 **(8)** All moneys received under s. 49.667 (2) (f).

3 **SECTION 2.** 49.665 (4) (a) 3r. of the statutes is created to read:

4 49.665 **(4)** (a) 3r. Each member of the family who is employed by a large
5 employer, as defined in s. 49.667 (1) (c), states whether within the time period
6 specified in subd. 3. the large employer has reduced or eliminated the health care
7 coverage, as defined in s. 49.667 (1) (b), offered to that family member.

8 **SECTION 3.** 49.665 (4) (am) 3r. of the statutes is created to read:

9 49.665 **(4)** (am) 3r. Each parent of the child who is employed by a large
10 employer, as defined in s. 49.667 (1) (c), states whether within the time period
11 specified in subd. 3. the large employer has reduced or eliminated the health care
12 coverage, as defined in s. 49.667 (1) (b), offered to that parent.

13 **SECTION 4.** 49.667 of the statutes is created to read:

14 **49.667 Large employer health care assessment. (1) DEFINITIONS.** In this
15 section:

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1 (a) “Employee” means any individual employed full time or part time in this
2 state by a large employer.

3 (b) “Health care coverage” means surgical, medical, hospital, major medical,
4 or other health care coverage offered by a large employer.

5 (c) “Large employer” means any person engaging in any activity, enterprise, or
6 business for profit that employs 10,000 or more employees in this state.

7 **(2) REDUCTION OR ELIMINATION OF HEALTH CARE COVERAGE PROHIBITED.** (a) Except
8 as provided in sub. (3), no large employer may reduce or eliminate the health care
9 coverage provided to its employees if the large employer knows or should know that
10 the reduction or elimination will or may result in enrollment of the child or the family
11 of an employee in the Badger Care health care program under s. 49.665.

12 (b) Any large employer that violates par. (a) or a rule promulgated by the
13 department under sub. (5) may be required to pay to the department an assessment
14 of not more than \$250,000. All violations arising out of the same incident or
15 occurrence shall be counted as a single violation.

16 (c) In determining whether an assessment is to be imposed and, if so, in fixing
17 the amount of the assessment, the department shall consider all of the following
18 factors:

19 1. The gravity of the violation, including the number of employees, children,
20 and other family members affected by the reduction or elimination of health care
21 coverage, the degree to which those employees, children, and other family members
22 are affected by that reduction or elimination, and the cost of increased enrollment
23 in the Badger Care health care program under s. 49.665 as a result of that reduction
24 or elimination.

25 2. Any previous violations committed by the large employer.

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1 3. The financial benefit to the large employer of committing or continuing the
2 violation.

3 4. Any other factors that are relevant to determining whether an assessment
4 should be imposed and, if so, to fixing the amount of the assessment.

5 (d) The department may directly impose an assessment provided for under par.

6 (a). If the department determines that an assessment should be imposed for a
7 violation, the department shall send a notice of assessment to the large employer.
8 The notice shall specify the amount of the assessment imposed, the violation, and the
9 statute or rule alleged to have been violated, and shall inform the large employer of
10 the right to a hearing under par. (e).

11 (e) A large employer may contest an assessment imposed under par. (b) by
12 sending, within 10 days after receipt of notice under par. (d), a written request for
13 hearing under s. 227.44 to the division of hearings and appeals in the department
14 of administration. The administrator of the division may designate a hearing
15 examiner to preside over the case and recommend a decision to the administrator
16 under s. 227.46. The decision of the administrator of the division shall be the final
17 administrative decision. The division shall commence the hearing within 30 days
18 after receipt of the request for hearing and shall issue a final decision within 15 days
19 after the close of the hearing. Proceedings before the division are governed by ch.
20 227. In any petition for judicial review of a decision by the division, the party, other
21 than the petitioner, who was in the proceeding before the division shall be the named
22 respondent.

23 (f) All assessments shall be paid to the department within 10 days after receipt
24 of notice of assessment or, if the assessment is contested under par. (e), within 10
25 days after receipt of the final decision after exhaustion of administrative review,

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1 unless the final decision is appealed and the order is stayed by court order under s.
2 227.54. A large employer may not deduct any part of an assessment paid under this
3 subsection from the wages of an employee. The department shall deposit any
4 assessments received under this subsection in the Medical Assistance trust fund.

5 (g) The attorney general may bring an action in the name of the state to collect
6 any assessment imposed under this section if the assessment has not been paid
7 following the exhaustion of all administrative and judicial reviews. The only issue
8 to be contested in any such action shall be whether the assessment has been paid.

9 **(3) EXCEPTIONS.** A large employer is not liable under sub. (2) (b) for reducing
10 or eliminating an employee's health care coverage, if the department determines
11 that the reduction or elimination of health care coverage is the result of any of the
12 following:

13 (a) The sale of part or all of the large employer's business, if health care
14 coverage is continued for all employees who received that coverage before the sale
15 with no reduction or break in coverage, whether before or after the sale.

16 (b) A natural or man-made disaster beyond the control of the large employer.

17 **(4) RETALIATION PROHIBITED.** (a) A large employer may not do any of the
18 following:

19 1. Discharge or otherwise retaliate or discriminate against any employee for
20 contacting, providing information to, or otherwise cooperating with the department
21 concerning an alleged violation of sub. (2) (a) or for participating, testifying, or
22 assisting in any proceeding under sub. (2) (b) to (g).

23 2. Discharge or otherwise retaliate or discriminate against any employee on
24 whose behalf another person contacted, provided information to, or otherwise
25 cooperated with the department concerning an alleged violation of sub. (2) (a) or on

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1 whose behalf another person participated, testified, or assisted in any proceeding
2 under sub. (2) (b) to (g).

3 (b) Any employee who is discharged or otherwise retaliated or discriminated
4 against in violation of par. (a) 1. or 2. may file a complaint with the department of
5 workforce development under s. 106.54 (8).

6 (c) Any large employer that violates par. (a) 1. or 2. may be fined not more than
7 \$1,000 or imprisoned for not more than 6 months or both.

8 **(5) RULES.** The department of health and family services shall promulgate
9 rules to implement this section, including rules establishing criteria for determining
10 what constitutes a reduction or elimination of health care coverage and what
11 constitutes an incident or occurrence of health care coverage reduction or
12 elimination. The department of health and family services shall consult with the
13 department of commerce and the department of revenue in promulgating those
14 rules.

15 **(6) ANNUAL REPORT.** In January of each year, the department shall submit a
16 report to the governor and to the appropriate standing committees of the legislature
17 under s. 13.172 (3) on the department's activities during the previous year relating
18 to the implementation, enforcement, and administration of this section. The report
19 shall specify for the previous year the number of violations of sub. (2) (a) alleged to
20 have been committed and the disposition of those alleged violations, including for
21 each alleged violation whether an assessment was imposed and, if so, the amount of
22 the assessment.

23 **SECTION 5.** 106.54 (8) of the statutes is created to read:

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1 106.54 **(8)** The division shall receive complaints of discharge, retaliation, or
2 discrimination under s. 49.667 (4) (b) and shall process those complaints in the same
3 manner that employment discrimination complaints are processed under s. 111.39.

SECTION 6. Nonstatutory provisions.

4 **(1) LARGE EMPLOYER HEALTH CARE ASSESSMENT; RULES.**

5 (a) The department of health and family services shall submit in proposed form
6 the rules required under section 46.667 (5) of the statutes, as created by this act, to
7 the legislative council staff under section 227.15 (1) of the statutes no later than the
8 first day of the 6th month beginning after the effective date of this paragraph.
9

10 (b) Using the procedure under section 227.24 of the statutes, the department
11 of health and family services may promulgate as emergency rules the rules required
12 under section 46.667 (5) of the statutes, as created by this act, for the period before
13 the effective date of the rules submitted under paragraph (a). Notwithstanding
14 section 227.24 (1) (c) and (2) of the statutes, emergency rules promulgated under this
15 paragraph remain in effect until the date on which the rules submitted under
16 paragraph (a) take effect. Notwithstanding section 227.24 (1) (a) and (3) of the
17 statutes, the department of health and family services is not required to provide
18 evidence that promulgating a rule under this paragraph as an emergency rule is
19 necessary for the preservation of public peace, health, safety, or welfare and is not
20 required to provide a finding of emergency for a rule promulgated under this
21 paragraph.

SECTION 7. Initial applicability.

