WISCONSIN STATE LEGISLATURE COMMITTEE HEARING RECORDS

2005-06
(session year)

Assembly
(Assembly, Senate or Joint)

Committee on Insurance (AC-In)

(Form Updated: 11/20/2008)

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Name:

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➢ *Miscellaneous* ... *Misc*
**

Testimony of State Representative Steve Wieckert

Assembly Bill 867 – Unemployment Insurance Modernization

Assembly Committee on Insurance
417 North – December 13, 2005, 9:00am

Good morning Chairwoman Ann Nischke and members of the Insurance Committee. Thank you for holding a hearing on this unemployment insurance legislation today, Assembly Bill 867.

This bill is a product of the combined efforts of businesses and labor unions around the state. It was approved unanimously by the Unemployment Insurance Council. Recently it passed out of Senate Committee with a unanimous vote. It also passed the full Senate by a large bipartisan margin.

While I am sure many business interests would like to increase the help this legislation would provide for business it would maybe make it a bit more difficult for labor. I suspect some unions may wish to increase the benefits to labor while decreasing the benefits to businesses. However, this legislation is now currently balanced and agreements of both business and labor have been obtained for this legislation saying that it is indeed balanced.

To unbalance this bill would be unfair to both business and labor, and I as author of the bill request that this bill receive a vote without amendment.

There is also some urgency to passing this bill. Federal law requires states to design their unemployment insurance program in a certain way to be in compliance. If after January 1, 2006 states are not in compliance, they could be subject to serious penalties.

A representative from both business and labor are present to answer any specific questions about the technical points of the bill. I would be happy to answer any questions as well.

Comments:
Bill Author

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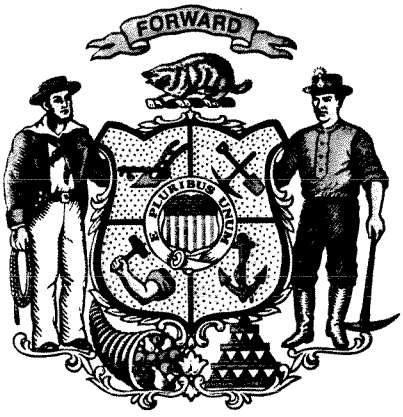
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Testimony on Assembly Bill 867 and Senate Bill 426
Assembly Committee on Insurance
December 13, 2005

Hal Bergan, Administrator
Unemployment Insurance Division
Department of Workforce Development

I want to thank Representative Nischke for scheduling this hearing and giving us the opportunity to discuss the Assembly Bill 867 and Senate Bill 426. My name is Hal Bergan. I am the administrator of the Division of Unemployment Insurance in the Department of Workforce Development. I am accompanied by Lutfi Shahrani, the Chief of the Benefit Operations Bureau, Brian Bradley, the Section Chief for Accounting and Finance and Dan LaRocque, the Director of the Bureau of Legal Affairs. Tom Smith, our Division's research attorney, is also here.

I am pleased to represent the Department of Workforce Development speaking in favor the Assembly Bill 867, which deals with changes to our state's Unemployment Insurance law. The bill is the culmination of many months of work by the members of the UI Advisory Council and the staff of the UI Division. In the two years that have passed since the Legislature last updated our law, the Advisory Council has listened to many hours of testimony from employers, individuals, legislators and other organizations vitally interested in the effective operation of our state's UI program. The bill before you represents a distillation of those hours of public testimony and of the Division staff's experience in administering the current law.

The passage of AB 867 will provide significant improvements in the fairness and administration of Wisconsin's nationally recognized UI program. I would like to take a few minutes to describe the most significant provisions of the bill and then I will be happy to answer any questions you might have. A plain language summary of the bill is attached to these remarks.

Increase in the maximum weekly benefit. AB 867 provides an increase in the maximum weekly benefits for UI recipients. In 2006 the maximum benefit would increase from $329 to $341. In 2007, benefits would increase an additional $14 to $355. Over the two year period, benefits would increase by 7.6%. It has been four years since the last benefit increase. During that time the cost of living has increased by 9.8%, so the proposed increase does not quite keep up with inflation.

A comparison of maximum weekly benefits within our region puts this increase into perspective. Currently, our $329 maximum benefit ranks us 6th of the six states in the region. Illinois, Michigan, Indiana, Minnesota and Iowa all pay more than we do, in some cases substantially more. Moreover, our exhaustion rate is the lowest in the region -- that means that UI claimants in Wisconsin are less

likely to receive benefits for a full 26 weeks. Our exhaustion rate is just 25.1%, which ranks Wisconsin 47th of 53 UI jurisdictions nationally. That means that only one-fourth of Wisconsin claimants draw all available benefits.

No-Fault Disqualification for Absences and/or Tardiness. AB 867 breaks new ground in addressing the often difficult problem faced by employers when their workers are absent or tardy without notice. These "no call, no show" attendance issues can be particularly problematic to smaller businesses or health care institutions where absences without notice can leave them short of legally prescribed staffing levels.

The bill adds a new "no fault" disqualification for UI benefits to the existing standard for disqualification under the misconduct provisions of the law. The new provisions do **not** affect the existing misconduct standard.

To provide some more specific information for the Legislature we sampled 200 of 16,451 decisions relating to misconduct. (The decisions were issued between August 14, 2005 and November 2, 2005.) Of the 200 misconduct decisions, 60 related to attendance. In 42 cases -- 70 per cent -- benefits were allowed. In 18 cases, -- 30 per cent -- benefits were denied. Disqualification for benefits because of misconduct requires that an employee's behavior demonstrate a "willful and wanton disregard" of an employer's interests. This standard was set in a Wisconsin Supreme Court case, Boynton Cab Co. vs. Walter Neubeck, in 1941. It can be a difficult standard to meet. Employers tend to be successful denying benefits when their attendance policies are well documented and absences or tardies clearly do harm to the employer.

In most of the cases in which benefits are allowed the adjudicators must decide whether or not the underlying reasons for the absences or tardiness are valid. In a typical case of this kind, absences are for a mix of valid and invalid reasons. AB 867 provides a "no-fault" system for denying benefits in the event of 5 absences or 6 instances of tardiness. "Valid reasons" are not an issue, since the new provision establishes a no-fault standard for absences or tardiness without notice. This is a change that reflects the experience of employers in the adjudication process.

Because this provision breaks new ground in our system, it has a four-year sunset. This will give the UI Advisory Council and the legislature an opportunity to assess its effectiveness before making it a permanent part of our law.

SUTA Dumping. SUTA dumping is a term which refers to the practice of employers seeking to reduce their UI tax rate by manipulating their experience rating. For example, a company with a 7% tax rate might buy an existing company with a 3% tax rate and move its employees to the purchased company with the intention of lowering its tax rate. In general, Wisconsin has done of good job of detecting and prohibiting these practices, but SUTA dumping is so

prevalent at the national level that a federal law was passed on the topic in 2004. The federal law requires the states to enact certain provisions aimed at SUTA dumping. Unless the SUTA dumping provisions are passed by December 31, 2005, our federal grant for administration will be in jeopardy.

The bill does the following things to combat SUTA dumping:

- Strengthens our successorship law by including companies who are owned, controlled, or managed by the same interests. The addition of the term *managed* broadens our already strong successorship provisions.
- Requires recomputation of tax rates at the beginning of the first quarter following the date of transfer.
- The bill provides for additional penalties, both criminal and civil, for employers who make false statements or representations during successorship investigations.
- Permits DWD to nullify a successorship transaction if it finds that it was undertaken primarily for purposes of avoiding or reducing UI tax obligations.

Employer Fault at Adjudication. Here is a scenario that happens all too often in our system. An employee is separated from his or her employment and files for unemployment compensation. The employer contests the claim, requiring that an adjudicator issue a decision as to whether benefits are payable. The employer or his agent fails to provide adequate or timely information during the adjudication process. The adjudicator, doing his or her best with the available information, awards benefits. The employer or agent then appeals. During the appeal process the employer supplies information that had not been provided during adjudication. The administrative law judge reverses the adjudicator's decision and assesses an overpayment against the claimant, requiring him or her to pay back the benefits received. The employer's account is credited with the amount of the benefits paid and it falls to the Department to collect the overpayment. This is a difficult and time consuming process and usually ends with the UI trust fund bearing the cost of at least some of the benefit payment.

The new provision provides that if an administrative law judge finds that an employer was at fault in failing to provide the information at the adjudication phase without good cause, the benefits "stand as paid" up until the time of the reversal. No overpayment is assessed.

This problem is particularly acute as it relates to large "third party agents", firms who contract with employers to handle their unemployment insurance claims. Generally, employers who deal with us directly do a good job of providing timely and complete information at the adjudication stage. Large, multi-state employers who contract out their UI transactions to agents are much more likely to fail to provide sufficient information at the adjudication stage and thereby start the overpayment cycle described above.

Reed Act Funds for UI Administration. The bill provides the authority for the UI Division to utilize as much as $1 million in Reed Act funds for UI administration in Fiscal Year 2007. Using the funds in this way is subject to approval by the Council. We are hopeful that we will not have to use the Reed Act funds for this purpose, but it is important to have this option available to us should we need it. Last month the U.S. House of Representatives passed a spending reduction bill which would reduce the federal funding for UI grants by $99 million next year. If that provision stands in the final spending reduction bill that comes from the Congress, it will increase the likelihood that we would have to tap this money.

Bad Debt Assessment for Reimbursement Employers. Some employers in the UI system -- specifically non-profit organizations and local governments -- have the option of reimbursing the UI trust funds for benefits paid to their employees. This is in contrast to most employers who pay taxes into the UI system. In recent years some of the non-profit reimbursable employers have gone out of existence and did not have the resources or sufficient "assurance of reimbursement" to pay for their outstanding claims. When this happens the burden of the bad debts is transferred to taxable employers. The bill sets up a "bad debt assessment" process which relies on other non-profit reimbursable employers to repay uncollectible debts. The maximum amount assessed in any year is $200,000.

Technical Changes. There are a few more technical changes to the UI law which are spelled out in the plain language summary that is attached to this testimony. For the most part these changes are designed to improve the administration of the program by making our procedures more consistent from issue to issue. Taken together, these changes represent a small step forward in improving the administration of the UI program and making it more easily understood.

I'm happy to respond to any questions you may have about the bill.

PLAIN LANGUAGE SUMMARY OF THE UNEMPLOYMENT INSURANCE ADVISORY COUNCIL AGREED UPON BILL, 2005

Statute Section	**BENEFIT PROVISIONS**
Benefits	
108.04(1)(c)	Harmonize "Partial-week" and "Family and Medical Leave" Provisions Adds language to apply the partial-week disqualification to partial weeks of a family and medical leave, to partial weeks of a disqualification for a suspension if it affects only a portion of a week and to the week a termination occurs if it affects only a portion of a week. **REASON:** This change creates a consistent and equitable method for determining benefits payable for partial weeks under the related statutes.
108.04(1)(e)	Modify Work Search Requirements for Self-Employed Repeals the requirement that a self-employed individual make a bona fide search for employment each week to be eligible for benefits regardless of whether the individual is eligible for a waiver of the requirement.. **REASON:** Due to prior law changes, this subsection required any self-employed person, regardless of the nature or purpose of the business, to search for work each week even if one of the waivers would apply. There are a number of situations where the outside business does not limit the claimant's attachment to other work in the labor market and where the individual should be given a waiver, like any other claimant, if qualified. Likewise, when a self-employed individual is not available for suitable work as a result of the self-employment, a disqualification under the able and available provisions would be imposed.
108.04(5g)	Disqualification for Failure to Give Notice of Absence This statute creates a specific disqualification relating only to absences and tardiness without notice. Employers are required to have a written policy which is to include what constitutes a "tardy", the process for giving notice,

verification that the employee received the policy, one warning before discharge and uniform application. 6 tardies or 5 absences without notice within a twelve month period will result in disqualification. To requalify, the individual must wait 6 weeks and have earned 6 times the employee's weekly benefit rate.. This statute has a four year sunset.

REASON: Employers desired an attendance based disqualification with a lower standard of proof than that for misconduct. This change creates a standard for requalification which is less than that for misconduct and there is no loss of wage credits.

108.04(13)

Employer Fault and Benefit Charging

Redefines employer fault to include an employer's failure to respond to an adjudicator's request for information during a fact-finding interview. Any benefits paid until a new decision is made will "stand as paid" unless an ALJ finds that the failure is with good cause.

REASON: The department has encountered a lot of difficulty with employers who fail to respond to requests for information at the initial adjudication level but then provide the necessary information at the appeal level. This failure to respond has resulted in numerous overpayments if the initial determination is overturned. The department then encounters numerous problems and the high administrative costs when trying to collect the overpayments. Also many of the appeal hearings could be avoided if the employer or their agent responded at the adjudication level. The department has tried unsuccessfully to work with the employers/agents to resolve this problem. The law change will provide consequences for the employer/agent's failure to respond.

108.04(16)(e)

Technical Correction

Removed reference to sections 108.04(2)(a) or (d) to prevent an interpretation that would noncharge employers when an able & available disqualification is not imposed because the claimant is enrolled in approved training.

REASON: Sections 108.04(2)(a) or (d) were included in error during the last bill cycle. The Council did not intend to provide a relief of charges to all liable employers for benefits paid while an individual is enrolled in approved

training simply because the individual has restrictions other than the schooling. The relief from charges was only intended for situations involving a separation of employment or job refusal with a specific employer.

108.05(1)(o) and (p)

Benefit Rate Increase

These statutes provide for an increase in the maximum weekly benefit rate. The increase beginning January 1, 2006 is $12 and the increase beginning January 1, 2007 will be $14.

REASON: The last benefit rate increase was in December 2002.

108.05(3)(a)

Benefits for Partial Unemployment

Repealed the wage disregard to volunteer firefighters, volunteer emergency medical technician or volunteer "first responder".

REASON: Virtually all individuals who provide services to our communities as a volunteer firefighter, volunteer emergency medical technician or volunteer "first responder" receive some type of compensation for their services. This makes it difficult to clearly define the types of services that would be considered truly "volunteer". This change would make the treatment of the benefit year and base period wages earned by performing these services more equitable for claimants and employers.

108.068(2)

Technical Correction

Amended language to fix conflicting effective dates for benefits and tax issues when the department recognizes the federal election of an LLC to be treated as a corporation for tax purposes.

REASON: The intent of the department when creating this provision was to avoid payment of retroactive benefits and to avoid retroactive adjustment of benefit eligibility when recognizing the federal tax status of an LLC. However, the language that was used has led to problems in application the department did not anticipate. This change would eliminate the problems while still minimizing the retroactive adjustment of benefit claims.

108.105(2)

Revocation of employer agent right to represent employer

Allows for revocation of the right of an employer agent to represent employers for continued failure to provide information during a fact finding investigation. If an appeal tribunal reverses and denies benefits in 5% or more of the cases appealed by an agent within a 12-month period and the ALJ finds the agent's failure to provide information is without good cause, the agent's privilege to act as an employer agent may be suspended for up to one year.

REASON: The reason for this change is the same as for 108.04(13) above.

Tax

108.151(7)(a)

Bad Debt Assessment for Reimbursement Employers
This amendment will require all non-profit employers who have elected reimbursement financing to pay an assessment into a newly created account when there is a balance of unpaid and uncollectible benefit reimbursements. The assessment is equitable to the size of the organization. The maximum total amount assessed in any year is $200,000. If this is not enough to cover the outstanding bad debts the remaining balance will be carried over to the next year.

REASON: Employers who have elected reimbursement financing do not pay state or federal UI taxes but rather reimburse the fund for any benefits paid to their employees. Reimbursement employers are required to file an assurance of reimbursement to guarantee payment of the required reimbursement along with any interest and tardy filing fees. The assurance must be equal to or greater than 4% of the employer's taxable payroll and when such an employer goes out of business, the assurance is not always sufficient to cover the benefit charges.

When a reimbursement receivable is declared uncollectible it is charged to the UI fund's balancing account which is funded by employers who pay state UI taxes. The new assessment will eliminate the unpaid reimbursement charges to the balancing account.

108.16

SUTA Dumping
Congress passed and the President signed the Federal SUTA Dumping Prevention Act of 2004. All states are required to amend their UI laws to remain in compliance

with federal laws. SUTA dumping is manipulation of business transfers to obtain artificially low UI tax rates.

REASON: The federal law requires that state laws mandate the transfer of UI account experience when the seller and buyer of a business are owned, controlled or managed by the same interests. It also requires that states prohibit transfer of account experience to a new business where the primary purpose of the purchase is to obtain a lower rate than would otherwise apply. Criminal penalties are also required by federal law.

The determination or redetermination of the contribution rate for the successor will be effective at the beginning of the first quarter after the transfer of the business. The department will also have the authority to undo a transfer of UI account experience under certain other circumstances which evince a primary purpose to obtain a lower tax rate.

108.17

Expansion of Employer Electronic Reporting

This change would require employer agents who prepare reports for less than 25 employers to use the department's internet reporting application. This change would also require employers reporting 50 or more employees to use any electronic media to file their wage reports and the internet to file their tax report.

REASON: Currently about 50,000 tax reports and 383,000 wage records are submitted on paper. Information received on paper reports has to be manually keyed or scanned into the systems. Significant savings would be realized if more information was submitted electronically.

108.22(2)(a)1

Individual Liability for Corporate Tax Debt

Specifically allows department to file a lien against an individual who has been found personally liable for a corporate tax debt.

REASON: While the statute could have been interpreted to include implicit authority to issue warrants against individuals held personally liable, it would be better to make the authority specific.

108.225(20) Changes to Levy Fees

Changes levy statute to provide that the levy fee is in addition to the levy amount so that the fee is not deducted from the amount sent to the Department. Also increases the levy fee to $15 for multiple-payment levies.

REASON: This change clarifies that the levy fee that is charged is in addition to the expenses of the levy incurred by the department. The change to $15 for multiple levies creates a single fee where under prior law, there could be an unlimited number of $5 levy fees.

Other

108.02(12)

Technical Change

Changes the statute to define employee as someone who performs services for pay subject to the exclusions of 108.02(12)(b). Also clarifies that a sole owner or partner is not an employee only with respect to those services performed for their own business.

REASON: This change codifies the department's practice to define an employee to mean an individual who performs services and to agree with 108.02(15)(a) which defines "employment" as the performance of services for pay.

Also clarifies that a sole proprietor or partner who provides services to their own sole proprietorship or partnership are not considered employees of that sole proprietorship or partnership. However they would be considered employees if services are provided for pay to a business which they do not own or are not a partner.

108.02(5)(k)14

Repeal Food Processing Exclusion

Repealed this exclusion that applies to the employment of certain employees who worked in the process of fresh fruits an vegetables solely during the active processing seasons.

REASON: Currently this statute excludes wages paid to certain individuals who work for employers processing fresh fruits or vegetables. Conditions have changed that now it is not uncommon for claimants to work for a single employer or multiple employers in more than one active season which can overlap. The work performed by active processing season employees is basically factory work not agricultural work. As such, these individuals should not

have to meet higher eligibility criteria than other factory workers.

108.02(21e)

Changes to PEO Statute

Changes the definition of professional employer organization to those organizations that are in the business on an ongoing basis of providing staffing services as stated in the professional employer organization statute. Also allows PEO and client to share responsibility for setting wages.

REASON: The statute was originally enacted to benefit companies that routinely act as a professional employer organization. The change would still protect the PEO but close the gap that allowed parent organizations to act as a PEO to one of its subsidiaries. Instances were found where the parent organization took part in this activity because the parent organization had a much lower unemployment insurance tax rate or to simplify reporting.

108.09(4n)

Admissibility of labor Market Reports (COED)

Creates a statutory provision which makes the department COED reports admissible as prima facie evidence in UI hearings without need for certification by an expert. These reports are used to determine benefit eligibility when labor market and occupational data is necessary.

REASON: The reason for the change is to provide for the admissibility of COED reports under a statute specific to that document rather than under a statute not intended for that purpose and which requires the department to rely on the fiction of "expert" certification.

108.22(8)(b)

Eliminate Offset to Collect Imposter Penalties

Changed to remove the department's authority to offset benefit payments in order to recover administrative assessments levies against imposters.

REASON: This change is necessary to be in compliance with federal law. Money withdrawn from the unemployment fund is to be used solely for the payment of unemployment compensation and refunds of money erroneously paid into the fund. Recovery of administrative assessments against imposters from unemployment funds is

not allowed under federal law. The U.S. Department of Labor has notified the DWD that this change is required for Wisconsin's continued conformity with federal law.

20.445(1)(nb) Permits use of up to $1 million in Reed Act funds for UI administration, if needed, in SFY 07. The department will consult with the UI Advisory Council before any expenditure.

REASON: Reed Act funds are grants to the states by the U.S. Department of Labor which may be used to pay unemployment benefits or for administration of the UI and Employment Service programs. Based on current knowledge of the funding situation for Wisconsin UI, there is a small possibility that the UI Division may need to use such funds during SFY 07.

Nonstatutory Provisions

Benefit Claiming Procedures

Directs the department to amend administrative rule DWD 12901(1). The change will increase the time period in which a claimant can file a timely initial claim application for a given week. Currently the claimant has 7 days after the week being claimed to file the application. The proposal would give the claimant 14 days after the week being claimed to file the application.

REASON: When a claimant files an untimely claim often it is due to a misunderstanding about when the claim must be filed. Currently initial claim applications must be filed within 7 days after the week being claimed but a claimant is allowed 2 weeks after the close of the week being claimed to timely file a weekly claim certification. When a claimant files an untimely initial claim application, the claim must be adjudicated prior to issuing a monetary computation.

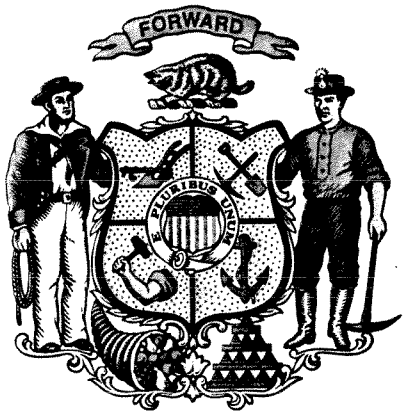
The change would reduce the confusion by making the timeliness requirement for initial claim applications and weekly claim certifications consistent. It would also avoid the delays involved with adjudicating these issues at the beginning of the claim.

Study of Unemployment Insurance Fund
The department and the Unemployment Insurance Advisory Council agree to complete a study regarding the financing and viability of the unemployment reserve fund.

REASON: This study is to determine the long-term stability of the unemployment fund. Based on this information the department and the advisory council on unemployment insurance will determine what measures are needed to maintain that stability. The findings and recommendations from this study will be reported to the governor and the chief clerk of each house of the legislature for referral to the appropriate standing committees no later than July 1, 2007.

Authorized Position in the Department of Justice
Creates and appropriates funding for a half-time position in the Department of Justice.

REASON: The person in this position would be responsible for enforcing those statutes relating to unemployment that provide for criminal penalties. This will allow increased prosecution of benefit and tax fraud.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REPRESENTING WISCONSIN BUSINESS

Wisconsin Manufacturers & Commerce

Memo

TO: Members of the Wisconsin State Assembly Insurance Committee

FROM: James A. Buchen, Vice President, Government Relations

DATE: December 13, 2005

RE: **Support SB 426/AB 867** – Unemployment Insurance Reform Legislation

The Wisconsin Unemployment Insurance Advisory Council (UIAC) recently proposed SB 426/AB 867, legislation making various modifications to Wisconsin's unemployment insurance program under Chapter 108 of the Wisconsin statutes. Wisconsin Manufacturers & Commerce strongly supports the package of reforms recommended by the UIAC embodied in Senate Bill 426 and Assembly Bill 867.

Background on the UIAC

The proposed legislation was developed over the last 18 months by the UIAC. The Council has 10 members, 5 representing large and small employers, and 5 representing labor. The Council was created in 1932 when Wisconsin first established an unemployment insurance system. The idea underlying the UIAC is to have the parties directly affected – employees who may be eligible to receive UI benefits, and employers who pay UI taxes – develop jointly any proposed reforms to the Wisconsin UI program. Over the last 70 years, the Legislature has adopted the recommendations of the Council without substantive amendment, recognizing that the bill is the product of a great deal of research, analysis, negotiation and compromise.

We strongly believe that over the long term, this Council has proven to be a very successful method of public policy making in the complex area of unemployment insurance. The program has avoided wide policy swings that result in other states from the changing political make-up of the Legislature or the Governor's office. The predictable and stable policy making environment within the UIAC has produced one of the most efficient and effective unemployment insurance programs in the country – one that is widely regarded as a model for the nation.

SIGNIFICANT PROVISIONS IN SB 426/AB 867

1. Absenteeism Disqualification

At the Council's hearings preceding the development of SB 426/AB 867, no topic generated more public comment than that of attendance. We heard from many employers – large and small – regarding the importance of strengthening the Wisconsin unemployment insurance law as it relates to "no call, no show" attendance and tardiness.

Therefore, the employer representatives on the Council worked hard to develop and include a "bright line" test under the unemployment law that employers can apply to deny unemployment insurance benefits after a person has been discharged for repeated absences or tardiness without notice. This new approach to disqualifying a claimant from benefits for absenteeism will

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now be available to employers in addition to the existing penalty based upon employee misconduct.

2. **Benefit Rate Increase**

The bill provides for two increases in the maximum weekly benefit rate. The first increase beginning January 1, 2006, is $12 from the current $329 to $341. The second increase beginning January 1, 2007, will be $14, from $341 to $355.

The most recent increase in the maximum weekly benefit rate occurred in 2000. Therefore, Labor Representatives on the UIAC strongly advocated for the increases recommended in this legislation.

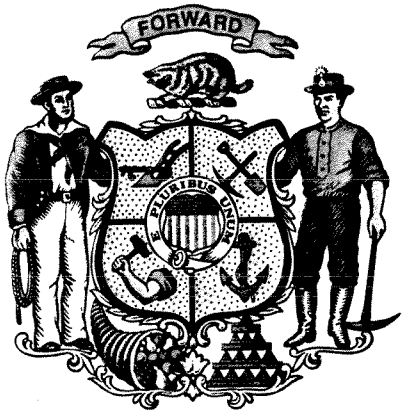
3. **SUTA Dumping**

Congress passed and the President signed the Federal State Unemployment Tax Act (SUTA) Dumping Prevention Act of 2004. Under this legislation, all states are required to amend their UI laws to remain in compliance with federal law. SUTA dumping is defined as manipulation of business transfers to obtain artificially low UI tax rates.

This federal law requires that state laws mandate the transfer of UI account experience when the seller and buyer of a business are owned, controlled or managed by the same interests. It also requires that states prohibit transfer of account experience to a new business where the primary purpose of the purchase is to obtain a lower rate than would otherwise apply. Criminal penalties for violations of these provisions are required by federal law. The department will have the authority to undo a transfer of UI account experience under certain other circumstances which evince a primary purpose to obtain a lower tax rate.

Wisconsin Manufacturers & Commerce Strongly Supports the UIAC Process on SB 426/AB 867

Wisconsin Manufacturers & Commerce strongly supports the UIAC process as well as the package of changes recommended by the UIAC embodied in Senate Bill 426 and Assembly Bill 867.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Stephen L. Nass
Wisconsin State Representative

Testimony on 2005 Senate Bill 426/Assembly Bill 867
Unemployment Insurance Biennial Bill
December 13, 2005
Representative Steve Nass

I am providing written testimony to express my ***opposition*** to SB 426/AB 867. The bill before the Assembly Insurance Committee is composed of recommendations from the Unemployment Insurance (UI) Advisory Council. The council is equally made up of business representatives, primarily lobbyists, and union leaders.

As Chairman of the Assembly Labor Committee, I am deeply saddened that it has become necessary to fight this year's UI bill. However, in my opinion, it contains one of the worst examples of bad policy becoming bad law as a direct result of a deal cut amongst special interests.

Absenteeism or Tardiness

The offensive provision (starting on line 12 of page 17 and continuing through line 6 of page 19) is entitled "Discharge for Failure to Notify Employer of Absenteeism or Tardiness." There is probably no other UI issue that most employers, especially small business owners, find troubling than when they are forced to pay UI benefits for an employee dismissed for excessive absenteeism (no call-no show) or tardiness.

Under current law, the decision to provide UI benefits in such cases is regulated by the "Discharge for Misconduct" provisions of UI Law (ss. 108.04 (5)). For years, employers have complained that UI benefits shouldn't be paid to an individual fired for reasons of absenteeism and tardiness. These benefits have been paid out in many cases because the misconduct rule sets a very high standard for dismissal, before benefits can be denied.

The new provision in SB 426/AB 867 penalizes employers by requiring that any employee dismissed solely for absenteeism (no call-no show) or tardiness of less than six tardies or five absences over a 12 month period will most assuredly receive unemployment insurance benefits.

Yes, an employer can technically still dismiss an employee for a lower number of tardies or absences, but the employer will be assessed the cost of those benefits through the UI system. Additionally, even if an employer reaches the six tardies and five absences (no call-no show) standard, an employee would still receive benefits if the employer fails to meet the following bureaucratic requirements:

(1) A specific written policy that defines a tardy and absence;

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(2) The employer must have verification that every employee has received the written policy;

(3) The employer must provide one warning for violation of the policy; and

(4) The ability to prove that the employer's policy has been uniformly applied to every employee.

These burdensome paperwork requirements may be minor to a large employer with a staff of human resources professionals, but these hurdles demanded by the union leaders on the advisory council will be a certain stumbling block for small business owners. This whole mess is just another example of why Wisconsin is a difficult place to operate a profitable small business.

Further, it is a guarantee that unions and lawyers will cite this new UI law as a precedent for other purposes such as grievance claims, discrimination claims and lawsuits. In my discussions with small business owners and attorneys that represent small employers in these matters, it has been a universal answer that the new proposal would only make the situation worse and serve as a discouragement for employers to challenge UI benefit claims from dismissed employees.

Nonstatutory Provision – Study of UI Fund

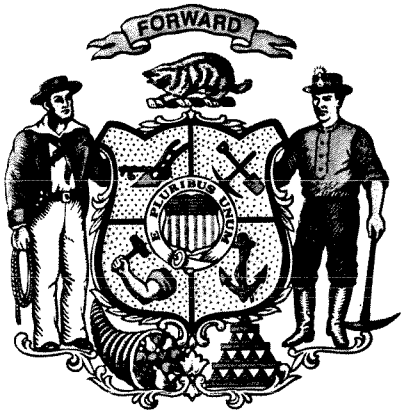
This nonstatutory provision (page 66, lines 19-23) requires that the Department of Workforce Development complete a study of the long-term fiscal stability of the UI reserve fund. The agency must also "determine what measures, if any, are required to maintain that stability." The study and recommendations must be submitted by the agency to the UI Advisory Council by July 1, 2007.

It is interesting to note that DWD and the advisory council can already commence such a fiscal study and prepare recommendations without this nonstatutory requirement. In a meeting with DWD staff to discuss this bill, I asked if a UI tax increase on employers could be one of the recommendations and how would the list of recommendations be handled by the advisory council.

The answer from DWD staff was that a tax increase was certainly on the table as a method to stabilize the reserve fund. The staff also expected that the advisory council would include the recommendations from the study in the next UI biennial bill due to the legislature in fall 2007.

Conclusion

It appears that the process controlled by special interests under which this bill was developed is more important than the right of legislators to apply some common sense and remove this offensive provision. I would hope that the committee will slow down and consider necessary changes to SB 426/AB 867.


FORWARD
E PLURIBUS UNUM

Wisconsin State AFL-CIO ...the voice for working families.

David Newby, President • Sara J. Rogers, Exec. Vice President • Phillip L. Neuenfeldt, Secretary-Treasurer

TO: Assembly Insurance Committee Members
FROM: Phil Neuenfeldt, Secretary-Treasurer
DATE: December 13, 2005

RE: **Support for Senate Bill 426 / Assembly Bill 867**
Unemployment Insurance Law Changes

The Wisconsin State AFL-CIO strongly supports this agreed-upon package of changes to the benefits and procedures under Wisconsin's Unemployment Insurance Law. It provides for an increase to $341 in the maximum weekly benefit rate as of January 2006 (currently, $329) and to $355 in January 2007, plus other changes. Through the mutual efforts of labor and management representatives on the Unemployment Insurance Advisory Council, SB 426/AB 867 includes changes to current UI law that are of benefit to both employers and employees. This is a classic case of labor and management working together to craft legislation that keeps stability in our vital unemployment insurance system as our economy changes.

While we realize that some might prefer changes to the bill to benefit either employers or workers, we urge that SB 426/AB 867 be supported as presented so that the delicate balance in the bill will be preserved and the integrity of the Advisory Council process will be maintained. For over 70 years Wisconsin has used the Unemployment Insurance Advisory Council as a proven means for revising our UI law. The Advisory Council, with expert representation from both labor and business, has been able to present to the Legislature *balanced* packages of revisions based on many months of bargaining. Any amendment to the package, whether it benefits employers or workers, upsets the balance by making one change in the law in isolation from all other considerations. Even if an amendment would benefit workers, the Wisconsin State AFL-CIO would strongly oppose it.

Neither labor nor management achieves all we hope for in an agreed-upon bill, but each does benefit and that is what makes Wisconsin's UI Advisory Council process the envy of many other states. It is far superior to states where there is no advisory council and legislators have to analyze the impact of many individual, competing UI bills that are introduced by various interests. UI changes become part of a partisan political debate which consumes huge amounts of time that could be spent more productively, and it also results in fragmented and poorly conceived UI law that benefits neither employers nor employees.

Our Unemployment Insurance system is essential in order to reduce individual hardship and stabilize our communities as we move through periods of economic contraction and expansion. We urge support for SB 426/AB 867 and the effective, proven UI Advisory Council process.

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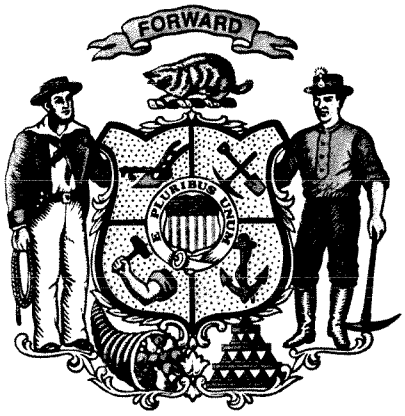
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STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

PEGGY A. LAUTENSCHLAGER
ATTORNEY GENERAL

Daniel P. Bach
Deputy Attorney General

114 East, State Capitol
P.O. Box 7857
Madison, WI 53707-7857
608/266-1221
TTY 1-800-947-3529

December 13, 2005

TO: Members, Assembly Insurance Committee

FR: Attorney General Peg Lautenschlager

RE: 2005 Senate Bill 426

Dear committee members:

I am writing to you today regarding Senate Bill 426, relating to various changes in the unemployment insurance law.

Senate Bill 426 contains several provisions aimed at improving Wisconsin's unemployment insurance law. The bill's proposed benefit rate, tax, and other changes should make the law more workable for both employees and employers.

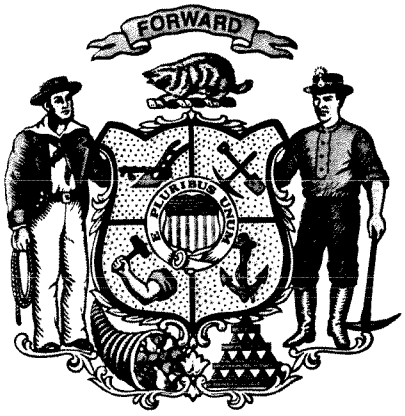
Senate Bill 426 also provides authorization and funding for unemployment insurance law enforcement by the Department of Justice. However, while the department supports this effort to enforce compliance with state laws governing the unemployment insurance program, we are concerned about funding for the 1.0 FTE assistant attorney general position contemplated. We anticipate the need to recruit an attorney to fill the position, and that that attorney's time will be allocated to this work. The bill as drafted ensures funding for only .5 FTE. This level of funding will allow the department to offer approximately $26,000 in salary and $10,000 in fringe for a half-time assistant attorney general position. It may be difficult finding an attorney with the training and skills to prosecute unemployment insurance cases under those circumstances.

The Department of Justice supports being authorized to prosecute violations of the unemployment insurance law, but has concerns that SB 426 does not provide the resources to adequately carry out that enforcement.

Very truly yours,

Peggy A. Lautenschlager
Attorney General

PAL:mwr


FORWARD

From: Edward J. Lump
President & CEO Wisconsin Restaurant Association
Small Business Representative Unemployment Insurance Council

To: The Assembly Committee on Insurance, Representative Nischke, Chair
Re: AB 867 & **SB** 426- The Unemployment Insurance Council Advisory Council Agreed Upon Bill, 2005

The Wisconsin Restaurant Association (WRA) strongly supports the "Agreed Upon" bill. The emphasis is "agreed upon". Agreed upon implies compromise. As there are equal members of management and labor on the council this bill is bargained. Neither side will claim that it is perfect.

The bill is the product of two years of bargaining that saw numerous public hearings and many presentations from interest groups and individuals. Many legislators and/or staff attended various meetings and provided input on important issues. This is particularly true of the staff of the Assembly Labor Committee Chair who attended most meetings of the UI Council and very frequently expressed the views of the Labor Chair. Those views were always taken into consideration by the Council and many times resulted in changes to the then proposed bill.

We need to add that, as the "small business representative," we frequently report to and receive input from many associations that represent small business interests. The major provisions of this bill have also been vetted with the 40 member WRA Board of Directors. Most of the WRA Board own or operate small businesses.

To illustrate the process, we wish to comment on two sections of the bill.

1. 108.17 Expansion of Employer Electronic Reporting: This change would require employer agents who prepare reports for less than 25 employers to use the department internet reporting application. This change would also require employers reporting 50 or more employees to use any electronic media to file their wage reports and the internet to file their tax reports.

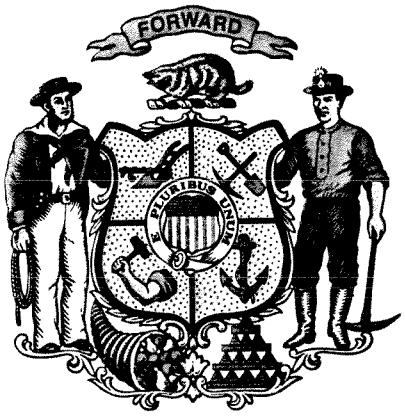
   The current requirement for employers reporting is 100 or more employees. The original department proposal was to take this down to 25 or more. We felt that many employers with 25 employees would not have the capability to file electronically. Therefore, we asked for input form the association members of the Wisconsin Tourism Federation (WTF) and the Conference of Retail Associations (CORA). After receiving input we amended the department proposal to the proposed 108.17

2. 108.04(5g) Disqualification for Failure to Give Notice of Absence: **This was the number one priority of the business side of the Council.** It was the result of very hard bargaining. Again, this was vetted with big and small business. It gives employers a way that they can count on to terminate employees for chronic

absence or tardiness without UI consequences. However, it does not prevent an employer from having a different standard. They may still contest a UI claim; it is just that the result is not as certain.

We could go through virtually all provisions of the UI bill the same way and we believe that it would show that the process is open, thorough and fair. As we said earlier, the bill is not perfect but it is a good bill. It deserves passage and it is vital that it be passed intact to preserve the "bargaining" process.

Thank you for your consideration.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Issues with Proposed WI SB 426 Section 39[1] - Suspension of Agents

- The "failed to provide complete and accurate information" standard is vague. The Department acknowledges this and agrees that it will be necessary for to provide detailed guidance.

- The proposal will create substantial new workload for the Department. Agents will feel compelled to seek formal acknowledgement that, for each decision made, the information provided was correct and complete, or there was good cause.

  The state would need to keep records in a central location of all appeals determinations involving an agent, with appropriate coding and supporting documentation as to the completeness and accuracy of the information provided. The agency has no automated system to track appeals by agent, and would need to develop such systems and train all adjudicators and other state staff to use it.

- The DWD Administrator has said that "it seems reasonable to me to hold the agent accountable for the performance of the employer." However, agents are hired and paid by clients, and can not influence them to provide perfectly complete and accurate information. An agent's only recourse is to stop doing business with a client. But by the time a client has demonstrated a pattern of incomplete information, an agent's ability to provide services for all other clients in Wisconsin could be jeopardized. Agents act in good faith to present information on behalf of clients, and at times the content and timing of information is beyond the agents' control.

- The '5%' target is problematic for agents with few Wisconsin clients, who might exceed the 5% threshold with a very few adverse determinations. On the other hand, it would be unfair to permit small agents to be held to a different standard while well established agents are held to 5%.

- Section 39 is unnecessary. DWD already has the authority to suspend the privilege of any agent to participate in UI hearings if DWD finds that the agent has engaged in an act of fraud or misrepresentation or has repeatedly failed to comply with rules of DWD.

As written, DWD would have the authority to arbitrarily disbar any agent for reasons that are undefined and over which they have no control. Our members are understandably not comfortable putting themselves in this position. It would be inappropriate to establish section 39 in law before such substantive issues are worked out.

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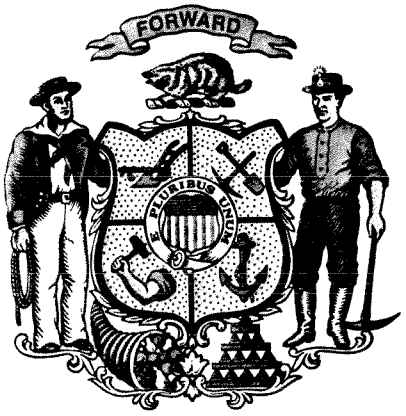
[1] **SB 426 SECTION 39.** 108.105 (2) of the statutes is created to read:

108.105 **(2)** The department may suspend the privilege of an agent to act as an employer's representative under this chapter for up to one year *if, during any12–month period, in 5 percent or more of all appeal tribunal hearings held in which employers represented by the agent are appellants there is a final appeal tribunal decision finding that the employer represented by the agent failed to provide correct and complete information requested by the department during a fact–finding investigation and there is no finding that the employer had good cause for that failure.*


FORWARD
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Assembly Republican Majority
Bill Summary

Contact: Adam Peer, Office of Representative Nischke

AB 867/SB 426: Unemployment Insurance Law
Relating to: various changes in the unemployment insurance law, authorized positions for the department of justice, making appropriations, and providing penalties.
By Representatives Wieckert, Nischke and Underheim; cosponsored by Senator Zien.

Date: December 15, 2005

BACKGROUND

This bill makes various changes in the unemployment insurance law.

Significant provisions include:

BENEFIT RATE CHANGES

Currently, weekly unemployment insurance benefit rates for total unemployment range from $49 for an employee who earns wages (or certain other amounts treated as wages) of at least $1,225 during at least one quarter of the employee's base period (period preceding a claim during which benefit rights accrue) to $329 for an employee who earns wages (or certain other amounts treated as wages) of at least $8,225 during any such quarter. This bill adjusts weekly benefit rates for weeks of unemployment beginning on or after January 1, 2006, and before January 7, 2007, to rates ranging from $51 for an employee who earns wages (or certain other amounts treated as wages) of at least $1,275 during at least one quarter of the mployee's base period to $341 for an employee who earns wages (or certain other amounts treated as wages) of at least $8,525 during any such quarter; and beginning on or after January 7, 2007, to rates ranging from $53 for an employee who earns wages (or certain other amounts treated as wages) of at least $1,325 during at least one quarter of the employee's base period to $355 for an employee who earns wages (or certain other amounts treated as wages) of at least $8,875 during any such quarter.

OTHER BENEFIT CHANGES

Failure to provide notification of absenteeism or tardiness

Currently, if an employee is discharged for misconduct connected with his or her work — interpreted by the courts to include only misconduct that evinces willful or wanton disregard of the employer's interests or carelessness or negligence in the performance of duties to such degree or recurrence as to manifest culpability or wrongful intent or exhibit such behavior as to endanger the physical safety of persons on the work site — the employee is ineligible to receive benefits until seven weeks have elapsed since the end of the week in which the discharge occurs and the employee earns wages (or certain other amounts treated as wages) after the week in which the discharge occurs equal to at least 14 times the employee's weekly benefit rate in employment covered by the unemployment insurance law of any state or the federal government. In addition, all wages earned with the employer that discharges the employee are excluded in determining the amount of any future benefits to which the employee is entitled.

This bill provides that if an employee is discharged for failing to notify an employer of tardiness or absenteeism that becomes excessive, as defined in the bill, and the employer complies with requirements specified in the bill to provide notice to the employee, the employee is ineligible to receive benefits until six weeks have elapsed since the end of the week in which the discharge occurs, and the employee earns wages (or certain other amounts treated as wages) after the week in which the discharge occurs equal to at least six times the

employee's weekly benefit rate in work covered by the unemployment insurance law of any state or the federal government. The disqualification created by the bill applies in lieu of the current law governing eligibility for benefits after discharges in the situations to which the disqualification applies. The provisions apply only to discharges occurring during the four–year period beginning on the first Sunday that follows the 90th day beginning after the day the bill becomes law.

Determination of wages for purposes of partial unemployment benefits

Under current law, with certain exceptions, if a claimant earns wages in a given week in employment covered by the unemployment insurance law, the first $30 of the wages are disregarded and the claimant's weekly benefit payment is reduced by 67 percent of the remaining amount of wages earned. However, any amount that a claimant earns for services performed as a volunteer fire fighter, volunteer emergency medical technician, or volunteer first responder in any week does not reduce the claimant's benefit payment for that week. This bill discontinues the exclusion of amounts earned for volunteer fire fighter, volunteer emergency medical technician, and volunteer first responder services from partial unemployment benefit calculation. The bill also provides that wages earned in work not covered by the unemployment insurance law are included with other wages in calculating benefit reductions for partial unemployment benefits.

Benefit reductions due to certain suspensions, terminations, and leaves

Currently, if an employee is suspended from his or her employment, an employee is terminated by his or her employer because the employee is unable to perform or unavailable for suitable work otherwise available with the employee's employer, or an employee is granted family or medical leave, and the employee is unable to perform work or unavailable for suitable work after the suspension or termination, the employee is ineligible to receive benefits beginning with the week in which the suspension or termination occurs or the leave begins and for so long as the employee remains unable to perform work or unavailable for suitable work. This bill provides instead that an employee who is suspended or terminated due to inability to perform work or unavailability for work or an employee who is granted family or medical leave is ineligible to receive benefits as of the first full week affected by a suspension, termination, or leave. In addition, for any week in which a suspension, termination, or leave occurs after the beginning of the week or any week in which a suspension or leave ends after the beginning of the week, an employee is treated as partially unemployed for purposes of benefit computation. For any week after the week in which a termination occurs, a terminated employee is eligible to receive benefits if the employee is able to perform work and available for suitable work and meets other qualifying requirements.

Self–employment disqualification

Currently, an individual who is self–employed is not eligible for benefits for any week in which the individual has worked at the self–employment unless the individual establishes to the satisfaction of the Department of Workforce Development (DWD) that he or she has made an active and bona fide search for employment. DWD must prescribe work–search requirements by rule, and may waive those requirements under certain conditions. This bill deletes the self–employment disqualification, thereby making individuals who work at their elf–employment subject to work–search requirements and waivers on the same basis as other claimants.

Voluntary termination of work

Currently, if an employee voluntarily terminates his or her work with an employer, the employee is generally ineligible to receive benefits until four weeks have elapsed since the end of the week in which the termination occurs and the employee earns wages after the week in which the termination occurs equal to at least four times the employee's weekly benefit rate in employment covered by the unemployment insurance law of any state or the federal government. However, an employee may terminate his or her work and receive benefits without requalifying under this provision if the employee terminates his or her work with good cause

attributable to his or her employer. In addition, an employee may voluntarily terminate his or her work and receive benefits without requalifying under this provision if the employee is transferred by his or her employer to work paying less than two–thirds of his or her immediately preceding wage rate with that employer, except that the employee is ineligible to receive benefits for the week of termination and the four next following weeks. This bill deletes the latter exception. Under the bill, if an employee's wages are substantially reduced by his or her employer, the employee may still be able to voluntarily terminate his or her employment and claim benefits without requalifying or waiting, if it is determined that the wage reduction constitutes good cause attributable to the employee's employer.

Employee status

Currently, to be eligible to claim benefits, an individual must, in addition to other requirements, be an "employee," as defined in the unemployment insurance law. Generally, an "employee" is an individual who performs services for an employer covered by the unemployment insurance law, whether or not the employer directly pays the individual. However, an individual is not an "employee" if the individual owns a business that operates as a sole proprietorship or if the individual is a partner in a business that operates as a partnership. This bill provides that these exclusions apply only with respect to services the individual performs for the sole proprietorship or partnership.

TAX CHANGES

Uncollectible reimbursable benefits

Currently, an employer that is a nonprofit organization may, in lieu of paying regular contributions (taxes) to the unemployment reserve fund, elect to reimburse the fund for the cost of benefits charged to its account. If a nonprofit organization that has elected reimbursement financing fails to reimburse the fund for the cost of benefits charged to its account and DWD is unable to collect the amount due, together with any interest and penalties, the fund must absorb these costs. Employers that elect reimbursement financing do not contribute to the payment of these costs. This bill provides that if, as of June 30 of any year, there is a total of at least $5,000 due from nonprofit organizations for reimbursements of benefits paid on their behalf that DWD has determined to be uncollectible, DWD must assess all employers that are nonprofit organizations and that have elected reimbursement financing, except Indian tribes, for these costs, but shall not assess more than a total of $200,000 in any single year. Under the bill, assessments are applied by DWD to each employer's gross payroll at a rate determined by DWD to be sufficient to reimburse the fund for uncollectible reimbursements paid on behalf of employers that are nonprofit organizations. The bill provides that no assessments are payable based on reimbursements that DWD determined to be uncollectible prior to January 1, 2004.

Treatment of professional employer organizations

Currently, an employer is generally liable for contributions (taxes) or benefit reimbursements based on an individual's employment if the individual is subject to the employer's direction or control over the performance of the individual's services. However, if an individual performs services for a client of a professional employer organization under a contract, the organization is liable for contributions or benefit reimbursements based on those services under certain specified conditions. Currently, a "professional employer organization" is an organization that contracts to provide the nontemporary, ongoing workforce of a client. Under this bill, an organization may qualify as a "professional employer organization" only if it contracts to provide the nontemporary, ongoing workforce of more than one client, and the majority of the organization's clients are not under the same ownership, management, or control as the organization, other than through the terms of the contract.

OTHER CHANGES

Electronic reporting

Currently, employers must file separate quarterly reports of contributions and wages with DWD. Employer agents that file contribution reports on behalf of 25 or more employers must file the reports using an electronic medium approved by DWD. Employers that employ 100 or more employees must also file quarterly wage reports using an electronic medium approved by DWD. This bill requires each employer of 50 or more employees that does not use an employer agent to file its contribution reports to file those contribution reports electronically using the Internet on a form prescribed by DWD. The bill requires each employer agent that prepares contribution reports on behalf of less than 25 employers to file those reports electronically using the Internet on a form prescribed by DWD. The bill requires all employer agents to file all wage reports electronically in the form prescribed by DWD. The bill also requires employers of 50 or more employees to file wage reports using an electronic medium approved by DWD. In addition, the bill makes an employer that is required to file its contribution reports electronically liable for a penalty of $25 for each report that is not filed electronically in the form prescribed by DWD.

Successorship

Currently, if a business is transferred from one employer to another employer, the transferee may, under certain conditions, request that DWD treat it as a successor to the transferor for purposes of unemployment insurance experience, including contribution (tax) and benefit liability. DWD must treat the transferee as the successor to the transferor if the transferor and transferee are owned or controlled by the same interests. When a transferee is treated as a successor to a transferor, the contribution rates of the transferor and transferee are recomputed effective on January 1 of the year following the transfer. This bill requires DWD to treat the transferee as the successor to the transferor if the transferor and transferee are owned, controlled, *or managed* by the same interests. The bill also requires recomputation of the transferor's and transferee's contribution rates effective as of the beginning of the first quarter following the date of the transfer. The bill permits DWD to nullify a successorship if it finds that a substantial purpose of a business transfer was to obtain a reduced contribution rate for the transferee. In addition, the bill provides for punitive increases in contribution rates for employers, and creates both civil and criminal misdemeanor penalties for other persons, who knowingly make or attempt to make a false statement or representation to DWD in connection with an investigation to determine whether an employer qualifies to be considered a successor to the transferor of a business.

Coverage of certain employees engaged in food processing

Currently, an employee who is engaged in the processing of fresh fruits or vegetables is not entitled to receive benefits based upon that employment within the active processing season for the fruit or vegetable being processed, as defined by rule of DWD, unless 1) the employee earns sufficient wages to qualify for benefits based solely on work performed for the processing employer; or 2) in the four most recently completed quarters preceding the week in which the employee begins work for the processing employer, the employee earned at least $200 for work covered by the unemployment insurance law of any state or the federal government that was performed for another employer. However, employers that provide food processing services are subject to contribution requirements (the requirement to pay taxes) based upon these services. This bill deletes this coverage exclusion. Under the bill, claimants are eligible to claim benefits based upon the performance of food processing services.

Coverage of certain AmeriCorps employees

Currently, employees performing services for the federal AmeriCorps program are generally covered under the unemployment insurance law. This bill eliminates coverage for those services when the services are funded under certain special federal grants to governmental, nonprofit, or educational entities, except for services performed as a part of a professional corps program in which a public or private nonprofit employer pays the entire salaries of the employees or services performed under an education award program established administratively by the federal government. Under the bill, employers that provide these services are no longer

subject to contribution or reimbursement requirements based upon these services, and claimants are no longer eligible to claim benefits based upon the performance of these services.

Failure of employers to provide information

Currently, if benefits are erroneously paid because an employer fails to provide correct and complete information on a report to DWD, any benefits that DWD recovers do not affect charges to the employer's account for the cost of those benefits. The bill provides, in addition, that during the period beginning on January 1, 2006, and ending on June 28, 2008, if benefits are erroneously paid because an employer fails to provide correct and complete information requested by DWD during a fact–finding investigation, but the employer later provides the requested information, then charges to the employer's account for the cost of benefits paid before the end of the week in which a redetermination or a decision of an appeal tribunal (hearing examiner) is issued regarding the matter are not affected by the redetermination or decision unless an appeal tribunal, the labor and industry review commission, or a court finds that the employer had good cause for failing to provide the information.

Suspension of agents

Currently, DWD may suspend the privilege of any agent to appear before DWD at hearings under the unemployment insurance law for a specified period if DWD finds that the agent has engaged in an act of fraud or misrepresentation, has repeatedly failed to comply with rules of DWD, or has engaged in solicitation of a claimant solely for the purpose of appearing at a hearing as the claimant's representative for pay. This bill permits DWD also to suspend the privilege of an agent to act as an employer's representative under the unemployment insurance law for up to one year if, during any 12–month period, in 5 percent or more of all hearings held in which employers represented by the agent are appellants there is a final decision finding that the employer represented by the agent failed to provide correct and complete information requested by DWD during a fact–finding investigation and there is no finding that the employer had good cause for that failure.

Issuance of warrants against certain individuals

Currently, under certain conditions, an individual who holds at least 20 percent of the ownership interest in a corporation or limited liability company may be found to be personally liable for unemployment insurance liabilities of the corporation or company. Currently, if an employer has delinquent unemployment insurance liabilities, DWD may issue a warrant and file it with the clerk of circuit court for any county where real or personal property of the employer is found. The warrant constitutes a lien upon the property and is subject to execution through sale of the property. This bill provides that DWD may issue a warrant for the collection of any unemployment insurance liabilities for which an individual is found to be personally liable.

Unemployment insurance law enforcement

This bill provides funding for 0.5 FTE assistant attorney general position in the Department of Justice (DOJ), funded from revenues received by DWD as interest and penalties for violations of the unemployment insurance law, to assist in the investigation and prosecution of noncompliance with the unemployment insurance law. The bill also authorizes DOJ to prosecute violations of the unemployment insurance law. Currently, the law is enforced by DWD and the district attorneys.

Administration funding

Currently, the federal government provides regular grants to this state for the purpose of financing the cost of unemployment insurance administration. In addition, the federal government provides special grants to this state that may be used for the purpose of unemployment insurance administration, for the payment of unemployment insurance benefits, or for certain other purposes. Currently, only the first $2,389,107 of the moneys in a special grant for federal fiscal year 2002 may be used for unemployment insurance administration. This bill permits an additional $1,000,000 of the moneys received in the special grant for federal fiscal year 2002 to be used for

unemployment insurance administration. The bill further provides that none of the moneys in any special federal grant for federal fiscal years 2000, 2001, or 2002 may be encumbered or expended after September 30, 2007. The changes potentially increase the liability of employers to finance unemployment insurance benefits through contributions (taxes).

Use of special federal grants

Currently, from the special grants received by this state from the federal government for unemployment insurance purposes, special sum certain appropriations are made for information technology systems development, the apprenticeship program, and payment of bank service costs. If the treasurer of the unemployment reserve fund determines that these moneys are more than sufficient for these purposes, the treasurer must transfer any excess moneys in these appropriation accounts to the main account to which federal unemployment insurance revenues are credited. This bill eliminates the requirement for the treasurer to make these transfers.

Treatment of limited liability companies

Currently, DWD treats a limited liability company as a corporation if the company files an election with the Internal Revenue Service to be so treated for federal tax purposes and files proof with DWD that the Internal Revenue Service has agreed to so treat the company. The treatment may affect the taxation of the wages paid to principal officers of the company and their eligibility for benefits. For benefit purposes, a change is effective on the same date that the Internal Revenue Service agrees to treat the company as a corporation or the date that proof of such treatment is filed with DWD, whichever is later. Under this bill, a change applies to benefit years (periods during which benefits are potentially payable) in existence on or beginning on or after the date that the Internal Revenue Service treats the company as a corporation for federal tax purposes if the benefit year to which the treatment is to be applied has not ended on the date that DWD first receives notice of a benefit eligibility issue that relates to treatment of that limited liability company. The bill also makes a corresponding change to the treatment of a limited liability company that is treated as a corporation if the company elects, instead, to be treated as a partnership or sole proprietorship and the company files the appropriate election and proof of federal treatment.

Administrative levy fees

Currently, DWD may proceed against any third party that has in its possession property that is subject to levy for payment of delinquent contributions or penalties administratively assessed by DWD, or for repayment of benefit overpayments. The third party may deduct and retain a fee of $5 from the amount collected in payment of the fee. This bill entitles a third party to collect and retain a levy fee of $5 for each levy in which a debt is satisfied by means of a single payment and $15 for each levy in which a debt is satisfied by means of more than one payment. Under the bill, the fee is payable from the property levied against and is in addition to the amount of the levy.

Enforcement of assessments against imposters

Currently, if any person makes a false statement or representation to obtain benefits in the name of another person, DWD may, by administrative action or by decision in an administrative proceeding, require the person to repay the benefits and may also penalize the person by levying an assessment against him or her in an amount not greater than 50 percent of the benefits wrongfully obtained. One of the ways by which DWD may collect such an assessment is to offset the amount of the assessment against any benefits that would otherwise be payable to the person. This process is called recoupment. This bill deletes the authority of DWD to collect these assessments by means of recoupment.

Wage reports by nonprofit organizations and Indian tribes

Currently, all employers except nonprofit organizations and Indian tribes are required to submit periodic reports to DWD containing certain employment and wage information. This bill applies the same requirement to nonprofit organizations and Indian tribes.

Admission of employment data system reports

Currently, the contents of a verified or certified report by a qualified expert presented by a party or DWD at an administrative hearing in a benefit claim case is prima facie evidence of the matter contained in the report if the report is otherwise competent and relevant, subject to rules as DWD prescribes. If a report is accepted as prima facie evidence of the matter contained in the report, it is not necessary to present testimony of the expert who created the report in order to admit the report into evidence. This bill provides that if DWD maintains a database system consisting of occupational information and employment conditions data and an employee of DWD creates a report from the system, the report also constitutes prima facie evidence as to the matters contained in the report in an administrative hearing on a benefit claim if DWD first provides to the parties an explanation of the system, the parties have an opportunity to review and object to the report, and the report sets forth all information used in creating the report.

Charging of certain benefits for claimants enrolled in approved training

Under current law, if a claimant who is enrolled in employment–related training approved by DWD is paid benefits for which the claimant would otherwise be ineligible because the claimant has terminated his or her work or failed to accept suitable work or recall to work and is unable to work or unavailable for work or has failed to meet work search requirements, the costs of the benefits is charged to the balancing account of the unemployment reserve fund (which is financed from contributions of all employers that are subject to a requirement to pay contributions) instead of to the account or accounts of the claimant's employer or employers. This bill specifically applies this noncharging procedure only with respect to an employer from which the claimant terminated his or her work or refused to accept a recall to work.

Study of unemployment reserve fund

This bill directs DWD to study the long–term fiscal stability of the unemployment reserve fund. The bill directs DWD to report the results of its study to the Council on Unemployment Insurance no later than July 1, 2007.

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.

SUMMARY OF AB 867

Assembly Bill 867 incorporates the recommendations of the Unemployment Insurance Advisory Council which composed of representatives from labor, management, and other interests. In general, it makes various changes to absenteeism disqualifications, benefit rates (increase), and updates unemployment insurance law to reflect the Federal-State Unemployment Tax Act.

FISCAL EFFECT

Generally, the UI program is funded by the UI tax and federal dollars. The increase in benefits and other modifications would be funded with a combination of these funding sources. There may be indirect cost that arise from the increase in benefits that state and local government would be responsible for like any other employor.

PROS

1. Creates a "bright line" for employers when it comes to terminating a worker for absenteeism.

2. Increases the benefit rate paid to persons qualifying for the insurance.

3. Updates UI to reflect changes in federal law.

4. Supported by both labor and management representatives.

CONS

1. The "bright line" creates extra bureaucratic requirements for an employer, especially a small business, to comply with.

2. The non statutory provision relating to a study of the UI fund may already be initiated by the department or council.

SUPPORTERS

Steve Wieckert — Representative, Wisconsin State Assembly, James Buchen, Madison — Wisconsin Manufacurers & Commerce, Phil Neuenfeldt — Mr., Wisconsin AFL-CIO, Ed Lump — Mr., Wisconsin Resturant Association, Hal Bergan — Mr., Department of Workforce Development, Lutfi Shahrani — Mr., Department of Workforce Development, Brain Bradley — Mr., Department of Workforce Development
Janet Swandby — Ms., Outdoor Advertising Association of Wisconsin, Andrew Franken — Mr., Wisconsin Association of Convention & Visitors Bureaus, Kathi Kilgore — Ms., Wisconsin Innkeepers Association
Bill G. Smith, Madison — Mr., National Federation of Independent Business (NFIB), Brandon Schultz — Mr., Wisconsin Grocers Association, Linda Kleinschmidt — Ms., Wisconsin Council on Children & Families
Doug Johnson — Mr., Wisconsin Merchants Federation

OPPOSITION

Peter Isberg, Mr., Association of Unemployment Tax Organizations; Mike Mikalsen, Representative Steve Nass.

HISTORY

Assembly Bill 867 was introduced on December 9, 2005, and referred to the Assembly Committee on Insurance. A public hearing was held on December 13, 2005. On December 13, 2005, the Committee voted 15-0-0 [Ayes: Representatives Nischke, Wieckert, Underheim, Montgomery, McCormick, Gielow, Van Roy, Ballweg, Moulton, Cullen, Lehman, Staskunas, Berceau, Nelson and Sheridan. Noes: none] to recommend passage of AB 867.