2011 SENATE BILL 417

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

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

Analysis by the Legislative Reference Bureau

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

Concealment of benefit claim information

Currently, if a claimant conceals any material fact relating to his or her eligibility for UI benefits or conceals any wages earned in or paid or payable for a given week, the claimant is subject to graduated monetary penalties that increase in severity with the number of determinations of concealment by the claimant. In addition, if a claimant conceals any wages for a given week, the claimant is ineligible to receive any benefits for that week.
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This bill provides instead that claimant who is found guilty of concealment is subject to a penalty equal to 15 percent of the benefit payments erroneously paid to the claimant as a result of any acts of concealment. Under the bill, revenues collected from the penalties are deposited in the unemployment reserve fund, which is used to pay benefits.

Availability for work

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

Interest on delinquent payments

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

Composition and authority of appeal tribunals

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

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

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

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

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

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

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

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

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

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

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

108.09 (3) (a) 2. The department may appoint an individual who is not a permanent employee of the department to serve as a temporary reserve appeal tribunal if the individual formerly served as an appeal tribunal while employed by
the department and retired from state service as a permanent employee. An individual who is appointed to serve as a temporary reserve appeal tribunal shall be an attorney who is licensed to practice in this state.

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

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

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

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

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

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

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

108.22 (1) (a) If any employer, other than an employer which has ceased business and has not paid or incurred a liability to pay wages in any quarter following the cessation of business, is delinquent in making by the assigned due date any payment to the department required of it under this chapter, the employer shall
pay interest on the delinquent payment at the rate of one percent per month that monthly rate that annualized is equal to 9 percent or to 2 percent more than the prime rate as published in the Wall Street Journal as of September 30 of the preceding year, whichever is greater, for each month or fraction thereof that the employer is delinquent from the date such payment became due. If any such employer is delinquent in making any quarterly report under s. 108.205 (1) by the assigned due date, the employer shall pay a tardy filing fee of $50 for each delinquent quarterly report.

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

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

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

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

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

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

SECTION 13. 108.225 (17) of the statutes is amended to read:
108.225 (17) Exemptions. The first $1,000 of an account in a depository institution is exempt from any levy to recover a benefit overpayment or penalty imposed under s. 108.04 (11) (bh). No other property is exempt from levy except as provided in sub. (16).

**SECTION 14.** 108.24 (1) of the statutes is amended to read:

108.24 (1) Any person who knowingly makes a false statement or representation to obtain any benefit payment under this chapter, either for himself or herself or for any other person, shall be fined not less than $100 nor more than $500 or imprisoned not more than 90 days, or both; and each such false statement or representation constitutes a separate offense. **This penalty is in addition to any penalty imposed under s. 108.04 (11) (bh).**

**SECTION 15. Initial applicability.**

(1) The treatment of sections 108.04 (11) (bh), 108.09 (2) (b), (3) (a) 1., and (8) (b), 108.16 (6) (n), 108.22 (8) (bh), 108.225 (1) (b) (with respect to liabilities incurred under section 108.04 (11) (bh) of the statutes), (16) (am) 1. (intro.), and (17) and 108.24 (1) of the statutes first applies with respect to overpayments established by the department of workforce development after October 21, 2013.

(2) The treatment of section 108.04 (2) (ae) of the statutes first applies with respect to weeks of unemployment beginning on the effective date of this subsection.

(3) The treatment of section 108.22 (1) (a) of the statutes first applies with respect to accrual of interest for the first quarter beginning after the effective date of this subsection.

**SECTION 16. Effective date.**

(1) This act takes effect on the first Sunday after publication.