

unauthorized

INS 12A:

will

protect

The bill also provides that if a claimant who creates security credentials or the claimant's authorized agent divulges the credentials to another person, or fails to take adequate measures to ~~prevent~~ the credentials from being divulged to an ~~other~~ person, and DWD pays benefits to an unauthorized person because of the claimant's action or inaction, DWD may recover from the claimant the benefits that were paid to the unauthorized person.

INS 18A:

will

protect

The bill permits DWD to bring a legal action to recover from any claimant the amount of any benefits that were erroneously paid to another person who was not entitled to receive the benefits because the claimant or the claimant's authorized agent divulged the claimant's security credentials to another person or failed to take adequate measures to ~~prevent~~ the credentials from being divulged to an unauthorized person.

51-12
INS ~~12A~~

will

If a claimant who created security credentials^s or the claimant's authorized agent divulges the credentials to another person, or fails to take adequate measures to ~~prevent~~ ^{protect} the credentials from being divulged to an unauthorized person, and the department pays benefits to an unauthorized person because of the claimant's action or inaction, the department may recover from the claimant the benefits that were paid to the unauthorized person under s. 108.22 (8) or ^s 108.245.

111-17
INS ~~12A~~

in the same manner as provided for overpayments to claimants

under

will

The department may also commence an action to recover from a claimant the amount of any benefits that were erroneously paid to another person who was not

entitled to receive the benefits because the claimant or the claimant's authorized agent divulged the claimant's security credentials to another person or failed to take adequate measures to ~~prevent~~ the credentials from being divulged to an unauthorized person.

protect

Wis 101-21



Section #. 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, a delinquent 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.

an erroneous payment from the fund recovered

NOTE: Par. (b) is shown as affected by 2011 Wis. Acts 198 and 236 and as merged by the legislative reference bureau under s. 13.92 (2) (i). The comma following "108.19 (1m)" is inserted under s. 35.17.

under

S.
108.245

History: 1989 a. 77; 1997 a. 187, 283; 2001 a. 35, 109; 2003 a. 197; 2005 a. 86, 442; 2011 a. 198, 236; s. 13.92

(2) (i); s. 35.17 correction in (1) (b).

SENATE BILL 426

SECTION 73

JWS 150-1

1 (9) The treatment of section 108.04 (13) (c), (e), and (g) of the statutes first
2 applies with respect to redeterminations issued under section 108.09 of the statutes
3 on the effective date of this subsection or, with respect to matters in which no
4 redetermination is issued, with respect to decisions issued under section 108.09 of
5 the statutes on the effective date of this subsection.

6 ~~(10) The treatment of section 108.04 (16) (b) and (c) 2. of the statutes first~~
7 ~~applies with respect to~~ determinations issued under section 108.09 of the statutes on
8 the effective date of this subsection or, with respect to determinations that are
9 appealed, to decisions issued under section 108.09 of the statutes on the effective
10 date of this subsection.

11 ~~(11) The treatment of section 108.05 (3) (a) of the statutes first applies with~~
12 ~~respect to weeks of unemployment beginning on the effective date of this subsection.~~

13 (12) The treatment of section 108.09 (4n) of the statutes first applies with
14 respect to appeals filed on the effective date of this subsection.

15 (13) The treatment of section 108.105 (2) of the statutes first applies with
16 respect to suspensions resulting from appeal tribunal hearings held on the effective
17 date of this subsection.

18 (14) The treatment of sections 108.151 (4) (b) and (7), 108.16 (6w) and (6x),
19 108.22 (1) (b) and (c) and (1m), and 108.225 (1) (a) of the statutes first applies with
20 respect to payrolls for the 2005 calendar year.

21 (15) The treatment of sections 108.16 (8) (e) 1., (em), (h), (im), (m), and (n),
22 108.18 (1) (a) and (2) (d), and 108.24 (2) of the statutes first applies with respect to
23 transfers of businesses occurring after December 31, 2005.

24 (16) The treatment of section 108.17 (2b) of the statutes first applies to
25 employers of 75 or more employees with respect to reports required under section

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1975/P10ins
MED:.....

~~INS A~~

no 11 The bill also specifies that the requirement to contact a temporary help company about available assignments applies regardless of whether any available assignment constitutes suitable work ~~for the claimant~~ that a claimant must accept in order to avoid being subject to the requalification requirements for claimants who fail to accept suitable work when offered.

INS B

no 9 Finally, the bill provides that, if an employer that provides such a notice to DWD will not or does not actually undergo a complete business shutdown on a state or federal holiday as designated in the notice, the employer must, no later than the first business day following the week in which the state or federal holiday occurs, notify DWD in writing of that fact.

~~INSERT 52-24~~

4. The requirement under subd. 1. b. to contact a temporary help company about available assignments applies regardless of whether any available assignment constitutes suitable work for the claimant for purposes of sub. (8) (a).

INSERT 79-6

no 11 and underwent a complete business shutdown on that day.

9 5 2 4. If an employer that provides a notice under subd. 2. will not or does not undergo a complete business shutdown on a state or federal holiday as designated in the notice, the employer shall, no later than the first business day following the week in which the state or federal holiday occurs, provide the department with a written notice indicating that the complete business shutdown will not or did not occur.

INSERT X (USE MULTIPLE TIMES)

no 9 determinations issued under section 108.09 of the statutes on the effective date of this subsection or, with respect to determinations that are appealed, to decisions issued under section 108.09 of the statutes on the effective date of this subsection.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1975/P00dn
JTK&MED:cjs:ph

P10dn

May 14, 2013

Representative Knodl:

12-15, 12-27, and 12-28

1. This draft is the initial draft of your items 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 14 (all components), 15 (~~all components~~), 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 30, 31, 32, and 33 (Sussman memo to UIAC, 4/22/13). ~~We are working on other items at this time and will be reviewing them with the DWD legal staff. Several items have been revised based upon your instructions on April 25. The other items will be added in successive redrafts when we have all the information we need to reduce them to draft format.~~

DN?

Jeffery T. Kuesel
Managing Attorney
Phone: (608) 266-6778

Michael Duchek
Legislative Attorney
Phone: (608) 266-0130
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**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1975/P10dni
JTK.....

DNI

2. This draft specifies in proposed s. 108.04 (2) (g) 2. that when the department wants to recover benefits from a claimant who divulged or failed to protect his or her security credentials, it may use either the existing procedure for recovery under s. 108.22 (8), stats. or the procedure created by this draft in proposed s. 108.245 (1). The draft also adds a sentence to proposed s. 108.245 (1) to specifically authorize this kind of legal action to be brought. If this is not what you intend or if you want to use some other means of recovery, please let us know.
3. With regard to the change in the maximum duration of regular benefits for total unemployment (proposed s. 108.06 (1m) and other provisions), the draft requires a revised definition of the statewide unemployment rate. The department is reviewing the matter and will advise regarding an appropriate definition for incorporation into a future version.
4. At our next meeting, we need to review the initial applicability of all items. Some of the items reflect specific instructions or discussions but other items must still be regarded as placeholders at this point until we have specific confirmation that they are appropriate to the circumstances.

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1975/P10ins2
MED:.....

INS MD DN

5.
1 With regards to the item about contacting temporary help companies, DWD expressed the concern that a claimant who was required to contact a temporary help company may not, under federal law, be required to accept an assignment offered to the claimant unless the assignment constituted suitable work for that claimant. We therefore changed references in the bill to contacting the temporary help company "for an assignment" to contacting the temporary help company "about available assignments" to make it clear that the requirement would only be to contact the company to see if assignments are available, and not to take any assignment offered.

fix
quotation
mark

fix
quotation
mark

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1975/P10dn
JTK&MED:cjs:jf

May 17, 2013

Representative Knodl:

1. This draft is the initial draft of your items 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 14 (all components), 15 (12-15, 12-27, and 12-28), 16, 18, 19, 20, 21, 22, 24, 25, 26, 27, 30, 31, 32, and 33 (Sussman memo to UIAC, 4/22/13).
2. This draft specifies in proposed s. 108.04 (2) (g) 2. that when the department wants to recover benefits from a claimant who divulged or failed to protect his or her security credentials, it may use either the existing procedure for recovery under s. 108.22 (8), stats., or the procedure created by this draft in proposed s. 108.245 (1). The draft also adds a sentence to proposed s. 108.245 (1) to specifically authorize this kind of legal action to be brought. If this is not what you intend or if you want to use some other means of recovery, please let us know.
3. With regard to the change in the maximum duration of regular benefits for total unemployment (proposed s. 108.06 (1m) and other provisions), the draft requires a revised definition of the statewide unemployment rate. The department is reviewing the matter and will advise regarding an appropriate definition for incorporation into a future version.
4. At our next meeting, we need to review the initial applicability of all items. Some of the items reflect specific instructions or discussions but other items must still be regarded as placeholders at this point until we have specific confirmation that they are appropriate to the circumstances.
5. With regard to the item about contacting temporary help companies, DWD expressed the concern that a claimant who was required to contact a temporary help company may not, under federal law, be required to accept an assignment offered to the claimant unless the assignment constituted suitable work for that claimant. We therefore changed references in the bill to contacting the temporary help company "for an assignment" to contacting the temporary help company "about available assignments" to make it clear that the requirement would be only to contact the company to see if assignments are available, and not to take any assignment offered

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Kuesel, Jeffery


From: Dernbach, BJ
Sent: Monday, May 20, 2013 10:14 PM
To: Duchek, Michael; Kuesel, Jeffery
Subject: RE: LRB-1975/10

By the draft /11, I meant the final word on the effective dates.

Also, can you revise the sliding scale language to the following for the /11?

Unemployment Rate	Weeks of Eligibility
8% or higher	26 week max
7.50% - 7.99%	25 week max
7% - 7.49%	24 week max
6.50% - 6.99%	23 week max
6% - 6.49%	22 week max
5.50% - 5.99%	21 week max
5.49 or less%	20 week max

BJ Dernbach
Office of Representative Dan Knodl
24th Assembly District
(608) 266-3796
<http://legis.wisconsin.gov/assembly/knodl/>

 /Rep. Knodl


From: Dernbach, BJ
Sent: Monday, May 20, 2013 10:08 PM
To: Duchek, Michael; Kuesel, Jeffery
Subject: RE: LRB-1975/10

Jeff and Mike,

What time do you need to have the language to get me a /11 by the end of business tomorrow?

Also, did DWD get you the information regarding the correct indicator language to use to calculate the unemployment rate for the sliding scale?

BJ Dernbach
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<http://legis.wisconsin.gov/assembly/knodl/>

 /Rep. Knodl

From: Duchek, Michael
Sent: Monday, May 20, 2013 2:28 PM


To: Dernbach, BJ; Kuesel, Jeffery
Subject: RE: LRB-1975/10

Not yet, but Scott did email today that they're going through effective dates and initial apps.

From: Dernbach, BJ
Sent: Monday, May 20, 2013 2:21 PM
To: Duchek, Michael; Kuesel, Jeffery
Subject: RE: LRB-1975/10

Wanted to check in to see if DWD got you any additional information

BJ Dernbach
Office of Representative Dan Knodl
24th Assembly District
(608) 266-3796
<http://legis.wisconsin.gov/assembly/knodl/>

 /Rep. Knodl

From: Duchek, Michael
Sent: Monday, May 20, 2013 7:33 AM
To: Kuesel, Jeffery; Dernbach, BJ
Subject: RE: LRB-1975/10

BJ,

The other thing I just remembered was the definition of unemployment rate for purposes of the sliding scale of benefits. They're supposed to get back to us on that as someone there had expressed concerns that the one we had put was incorrect. But we haven't heard back yet on how to define it.

-Mike

From: Kuesel, Jeffery
Sent: Sunday, May 19, 2013 11:53 AM
To: Dernbach, BJ
Cc: Duchek, Michael
Subject: RE: LRB-1975/10

BJ,

We don't have another meeting scheduled right now. We have asked and reminded DWD to give us Initial App and Effective date information and they have given us some of it. Some of it may be fine as is. But there are many employees who have input into this and when there are many changes that must be programmed at the same time by the same people, something must go first and something else second. Sometimes in the past we have tried things on for size and then made changes. I'm just advising you that this is a fluid, interactive process and I can't say at what point it will have jelled completely. But unless we hear something major from US DOL, we are basically good to go on the major substance of all of your items. We will let you know if and when we receive requests for changes, which I expect will be progressively minor.

Jeff Kuesel

From: Dernbach, BJ
Sent: Sunday, May 19, 2013 11:35 AM

To: Kuesel, Jeffery
Subject: Re: LRB-1975/10

Thank you. Can you call me after your meeting with dwd to ensure effective dates were addressed?

BJ Dernbach
Office of Representative Dan Knodl
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Facebook.com/Rep.Knodl

----- Reply message -----

From: "Kuesel, Jeffery" <Jeffery.Kuesel@legis.wisconsin.gov>
To: "Dernbach, BJ" <BJ.Dernbach@legis.wisconsin.gov>
Cc: "Duchek, Michael" <Michael.Duchek@legis.wisconsin.gov>
Subject: LRB-1975/10
Date: Sat, May 18, 2013 3:38 pm

BJ,

Based on history, we are not finished with technical revisions at this point. They never come all at once because as the revised language is discussed and digested there can be new issues uncovered. However, each redraft is progressively more minor and it's very possible that it would not affect the wording of a motion. If we don't get in all of the technical changes, we will address them at some later stage or in trailer legislation.


Jeff Kuesel

From: Dernbach, BJ
Sent: Friday, May 17, 2013 4:42 PM
To: Kuesel, Jeffery; Duchek, Michael
Subject: /10
Importance: High

Jeff and Mike,

What is left outstanding that is going to be in the P/11?

I need to know, as I need a clean draft by Tuesday (barring any changes from DOL).

BJ Dernbach
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24th Assembly District
(608) 266-3796
<http://legis.wisconsin.gov/assembly/knodl/>
 /Rep. Knodl

- CURRENTLY THE PROPOSED LANGUAGE FOR SECTION 74 READS:

SECTION 74. 108.04 (2) (i) of the statutes is created to read:

d. The temporary help company submits a notice to the department within 10 business days after the end of that week reporting that the claimant did not contact the company about available assignments.

Change this to read:

d. The temporary help company submits a written notice to the department within 10 business days after the end of that week reporting that the claimant did not contact the company about available assignments.

- CURRENTLY THE PROPOSED LANGUAGE FOR SECTION 99 READS:

Section 99. 108.06 (1m) of the statutes is created to read:

108.06 (1m) (a) The department shall determine the maximum number of weeks of regular benefits under sub. (1) by calculating the average Wisconsin rate of insured unemployment, as defined in s. 108.141 (1) (i), for each 12-month period ending on March 31 and September 30 of each year. For benefit years beginning after the next June 30 or December 31 following each calculation, the maximum number of weeks of regular benefits is as follows:

Amend this to read:

Section 99. 108.06 (1m) of the statutes is created to read:

108.06 (1m) (a) The department shall determine the maximum number of weeks of regular benefits under sub. (1) by using the seasonally adjusted statewide average of the unemployment rate for the appropriate calendar quarter as published by the Division of Employment and Training within the Department of Workforce Development:

- (a) For claimants whose benefit year begins after December 31 of a calendar year through June 29 of the next year, the Department shall use the third calendar quarter prior to the December 31 date;
- (b) For claimants whose benefit year begins after June 30 through December 30 of a calendar year, the Department shall use the first calendar quarter of that calendar year

For benefit years beginning after the next June 30 or December 31 following each determination, the maximum number of weeks of regular benefits is as follows: [See Figure 108.06 (1m) (a) following]

Definition of Unemployment Rate:

The Unemployment Rate, also known as the Total Unemployment Rate, is the Seasonally Adjusted Rate of Unemployment for the State of Wisconsin as determined monthly by the United States Department of Labor, Bureau of Labor Statistics.

Questions for the LRB:

- 1) Is this sufficient or is a definition that defines how BLS calculates the unemployment rate required?

- 2) Do we need to define how we calculate the average used? IE is the average of the rates used or is the number of employed and the labor force over the period used?

Proposed changes to Legislative Item #30 linking Maximum Weeks of Benefit Eligibility to the Unemployment Rate

Under the current proposal, the maximum number of weeks of regular benefits is updated twice a year (March 31 and Sept 30) by averaging the Wisconsin Insured Unemployment Rate for the past 12 months and becomes effective for benefit years beginning after the next June 30th or December 31st.

For example, the maximum weeks of benefits available for a claimant filing on December 20th of 2014, will be determined by average unemployment rate for the period of April 2013 through March 2014. That means her maximum weeks will be determined by data that reflects economic conditions from 21 months ago. Given that the purpose of the proposal is to more closely tie weeks of unemployment to current economic conditions, the long look back is counter to that purpose.

The Department is proposing two changes. The first change is basing the maximum weeks of benefits scale upon the Seasonally Adjusted Unemployment Rate, also known as the Total Unemployment Rate, rather than Insured Unemployment Rate. This Total Unemployment Rate reflects the current understanding of the proposal and matches what has been done in other states.

The second change is to use a 3 month average rather than a 12 month average. For the claimant filing in December 2014, her claim will now be based upon averaging data from January 2014 through March 2014. This reduces the time frame of the look back from 21 months down to 12 months and provides a better representation of current economic activity. In addition, the look at one quarter's worth of data is consistent with what the Department of Labor uses when determining the triggers for extended UI programs like EB and EUC.

By using the seasonally adjusted Total Unemployment Rate to calculate the average, concerns about the seasonality of Wisconsin's unemployment can be avoided.

Kuesel, Jeffery

From: Sussman, Scott - DWD <Scott.Sussman@dwd.wisconsin.gov>
Sent: Tuesday, May 21, 2013 9:47 AM
To: Duchek, Michael
Cc: Kuesel, Jeffery; Sterr, Troy - DWD; James, Pamela - DWD
Subject: RE: Questions about effective date for LRB- 1975/P10

Mike - to follow-up on your email below:

- With respect the Department's responsibility to provide information to employers concerning the financing of the unemployment insurance system that is created by Section 112 and creates s. 108.14 (24) (Item #21 on the legislators' letter entitled "Reporting of Individual Business Reserve Fund Balance), you stated that you didn't see a need to have any special provisions for implementation. The Department is concerned that this will take some work on our to implement it and would like to recommend that the implementation date for this item be tied to the creation of the handbook for employers as provided in Section 273 or available no later than one year after the effective date of the legislation.
- Similarly, with respect to the Department's responsibility to conduct random audits on claimants for benefits to assess compliance with the work search requirements that is created by Section 109 and creates s. 108.14 (20) (Item #22 on the legislators' letter entitled "Random UI Search Audits), you stated that you didn't see a need to have any special provisions for implementation. Unfortunately, we currently do not have any staff to implement this, however, the random audits with respect to EUC claimants is scheduled pursuant to federal law to end as of the end of this year. Therefore, we would like to have an implementation date of January 5, 2014 to begin conduct random audits for regular UI.

Scott Sussman
Attorney, Bureau of Legal Affairs
Division of Unemployment Insurance
State of Wisconsin Department of Workforce Development
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(608) 266-8271(landline)

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Thank you very much.

From: Duchek, Michael [mailto:Michael.Duchek@legis.wisconsin.gov]
Sent: Tuesday, May 21, 2013 7:27 AM
To: Sussman, Scott - DWD
Cc: Kuesel, Jeffery - LEGIS
Subject: RE: Questions about effective date for LRB- 1975/P10

Scott,

Jeff drafted the first one below, so I will see if he has any further thoughts, but these two are just things that DWD has to do. They aren't changes to existing benefits or procedures or anything that are going to affect people. Therefore, we didn't see a need to have any special provisions for implementation and there is no need for an initial applicability. However, if you feel like you need these to be delayed, then we could add delayed effective dates so DWD's duties to do these won't officially kick in until later. Does that make sense?

-Mike

From: Sussman, Scott - DWD [mailto:Scott.Sussman@dwd.wisconsin.gov]
Sent: Monday, May 20, 2013 9:09 PM
To: Duchek, Michael
Subject: RE: Questions about effective date for LRB- 1975/P10

Mike - Thanks for the answers. We had similar questions for two other provisions within the bill:

- The first is the creation of the Department's responsibility to provide information to employers concerning the financing of the unemployment insurance system that is created by Section 112 and creates s. 108.14 (24). I do not see s. 108.14 (24) listed in the initial applicability section of the bill. Does this also mean that its initial applicability will correspond to the effective date of the legislation or the first Sunday after publication?
- Similarly, the creation of the Department's responsibility to conduct random audits on claimants for benefits to assess compliance with the work search requirements that is created by Section 109 and creates s. 108.14 (20). I do not see s. 108.14 (2) listed in the initial applicability section of bill. Does this also mean that this provisions initial applicability will correspond to the effective date of the legislation or the first Sunday after publication?

Thanks again.

From: Duchek, Michael [mailto:Michael.Duchek@legis.wisconsin.gov]
Sent: Monday, May 20, 2013 12:35 PM
To: Sussman, Scott - DWD
Subject: RE: Questions about effective date for LRB- 1975/P10

Yes so there are two concepts. One is effective date, which is when the statutory changes actually take effect. The second is initial applicability, which is to deal with to what the statutory changes first apply. So for question a, you are correct. The bill's general effective date is on page 148, line 23, which is the first Sunday after publication, which is essentially two days after enactment. For question b, you are correct as well, it would first apply to payrolls beginning on Jan 1, 2015.

From: Sussman, Scott - DWD [mailto:Scott.Sussman@dwd.wisconsin.gov]
Sent: Monday, May 20, 2013 12:22 PM
To: Duchek, Michael
Subject: Questions about effective date for LRB- 1975/P10

Mike - We have been having some internal discussion about the effective dates for the proposals contained in LRB - 1975/P10 (which is Representative Knodl's legislation). Two of the items that there have been questions on were with respect to:

(a) The \$30m to avoid employers being charged a SAFI in order to pay off interest owed to the feds. With respect to this proposal I see at the very end of the legislation it states "(2) The treatment of section 108.19 (1m) (by SECTION 135) of the statutes and the repeal of section 20.445 (1) (fx) of the statutes take effect on July 1,

2015." Yet I do not seem to find within the legislation any specific language to make section 134 effective. Does this mean that these changes are effective the first Sunday after publication?

(b) Also the changes to the tax rates within his set of proposals. Within the proposal I see that the changes to the tax schedules begins with payrolls after January 1, 2015. Is that correct?

Thanks.

Scott Sussman

Attorney, Bureau of Legal Affairs

Division of Unemployment Insurance

State of Wisconsin Department of Workforce Development

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Thank you very much.