

## 2013 DRAFTING REQUEST

### Senate Amendment (SA-SB200)

Received: 6/11/2013 Received By: jkuesel  
Wanted: As time permits Same as LRB:  
For: Workforce Development 6-1639 By/Representing: Janell Knutson  
May Contact: Drafter: jkuesel  
Subject: Unemployment Insurance Addl. Drafters: mduchek

Extra Copies:

Submit via email: YES  
Requester's email: Janell.Knutson@dwd.wisconsin.gov  
Carbon copy (CC) to: Scott.Sussman@dwd.wisconsin.gov

---

#### Pre Topic:

No specific pre topic given

---

#### Topic:

Financial records matching and collection of erroneous payments

---

#### Instructions:

Draft language to satisfy federal objections.

---

#### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	jkuesel 6/11/2013	csicilia 6/11/2013	jfrantze 6/11/2013	_____			
/1	jkuesel 6/11/2013			_____	mbarman 6/11/2013	mbarman 6/11/2013	
/2		csicilia 6/11/2013	jfrantze 6/11/2013	_____	srose 6/11/2013	srose 6/11/2013	

FE Sent For:

**<END>**

**2013 DRAFTING REQUEST**

**Senate Amendment (SA-SB200)**

Received: **6/11/2013** Received By: **jkuesel**  
Wanted: **As time permits** Same as LRB:  
For: **Workforce Development 6-1639** By/Representing: **Janell Knutson**  
May Contact: Drafter: **jkuesel**  
Subject: **Unemployment Insurance** Addl. Drafters: **mduchek**

Extra Copies:

Submit via email: **YES**  
Requester's email: **Janell.Knutson@dwd.wisconsin.gov**  
Carbon copy (CC) to: **Scott.Sussman@dwd.wisconsin.gov**

**Pre Topic:**

No specific pre topic given

*fixed*

**Topic:**

Financial records matching and collection of erroneous payments

**Instructions:**

Draft language to satisfy federal objections.

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	jkuesel 6/11/2013	csicilia 6/11/2013	jfrantze 6/11/2013	_____			
/1	<i>jkuesel</i> 6/11/13	<i>1/2 ejs</i> 6/11/13	<i>[Signature]</i> 6/11/13	<i>[Signature]</i> 6/11/13	mbarman 6/11/2013	mbarman 6/11/2013	

FE Sent For:

<END>

**2013 DRAFTING REQUEST**

**Senate Amendment (SA-SB200)**

Received: **6/11/2013** Received By: **jkuesel**  
Wanted: **As time permits** Same as LRB:  
For: **Workforce Development 6-1639** By/Representing: **Janell Knutson**  
May Contact: Drafter: **jkuesel**  
Subject: **Unemployment Insurance** Addl. Drafters: **mduchek**  
Extra Copies:

Submit via email: **YES**  
Requester's email: **Janell.Knutson@dwd.wisconsin.gov**  
Carbon copy (CC) to: **Scott.Sussman@dwd.wisconsin.gov**

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Financial records matching and collection of erroneous payments

---

**Instructions:**

Draft language to satisfy federal objections.

---

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	jkuesel 6/11/2013	csicilia 6/11/2013	jfrantze 6/11/2013	_____			
/1				_____	mbarman 6/11/2013	mbarman 6/11/2013	

FE Sent For:

<END>

**2013 DRAFTING REQUEST**

**Senate Amendment (SA-SB200)**

Received: 6/11/2013 Received By: jkuesel  
Wanted: As time permits Same as LRB:  
For: Workforce Development 6-1639 By/Representing: Janell Knutson  
May Contact: Drafter: jkuesel  
Subject: Unemployment Insurance Addl. Drafters: mduchek

Extra Copies:

Submit via email: YES  
Requester's email: Janell.Knutson@dwd.wisconsin.gov  
Carbon copy (CC) to: Scott.Sussman@dwd.wisconsin.gov

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Financial records matching and collection of erroneous payments

---

**Instructions:**

Draft language to satisfy federal objections.

---

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
--------------	----------------	-----------------	--------------	----------------	------------------	-----------------	-----------------

/? jkuesel

1 g/s

FE Sent For:

6/11  
13

<END>

**Kuesel, Jeffery**

---

**From:** Knutson, Janell - DWD <Janell.Knutson@dwd.wisconsin.gov>  
**Sent:** Monday, June 10, 2013 2:12 PM  
**To:** Duchek, Michael; Kuesel, Jeffery  
**Subject:** FW: WI AB 219 and SB 200

FYI

---

**From:** Belmonte, Steffanie - ETA [mailto:Belmonte.Steffanie@dol.gov]  
**Sent:** Monday, June 10, 2013 9:21 AM  
**To:** Sussman, Scott - DWD; Knutson, Janell - DWD  
**Cc:** Hernandez, Patricia - ETA  
**Subject:** FW: WI AB 219 and SB 200

The National Office has informally reviewed WI AB 219 and SB 200. See their response below.

*Steffanie Belmonte*

U.I. Program Specialist  
U.S. Department of Labor/ETA  
Chicago - Region 5  
(Ph) 312-596-5436 (Fx) 312-596-5401  
[belmonte.steffanie@dol.gov](mailto:belmonte.steffanie@dol.gov)

---

**From:** Massey, Steve - ETA  
**Sent:** Monday, June 10, 2013 8:44 AM  
**To:** Hernandez, Patricia - ETA  
**Cc:** Belmonte, Steffanie - ETA; Fiore, Lidia - ETA; Johnston, Robert - ETA  
**Subject:** WI AB 219 and SB 200

Pat

We have informally reviewed Assembly Bill 219 and Senate Bill 200 for conformity with Federal unemployment compensation (UC) law. These bills contain a provision that would permit disclosure of confidential UC information to financial institutions in a manner inconsistent with Federal law. Additionally, these bills contain a provision that would repeal the extended training benefit provision that was part of Wisconsin's approved application for an incentive payment for UC modernization. A detailed discussion follows.

**Confidentiality issues related to the financial matching option program.** These bills would establish a financial matching option program. Under the program, financial institutions doing business in this state must enter into agreements with the Department of Workforce Development (DWD) to participate in a financial institution matching option or a state matching option for the purpose of collecting UC debt.

Under the financial matching option, the DWD is required to disclose, at least once every calendar quarter, information to the financial institution, including names, addresses, and social security numbers, about UC debtors. The financial institution determines whether any UI debtor has an ownership interest in an account at

the financial institution and, if so, sends DWD information about the account, such as the type, number, and balance.

Under the state matching option, at least once every calendar quarter the financial institution sends DWD information about accounts maintained at the financial institution, including the name and social security number of each person having an ownership interest in each account. On the basis of that information, DWD determines whether any UC debtor has an ownership interest in an account at the financial institution and, if so, may request further information from the financial institution, including the person's address of record and the account balance.

For the purpose of this program, UC debt means a delinquent contribution or repayment of a benefit overpayment; a delinquent assessment for fraud; a delinquent assessment to the unemployment interest payment fund to pay interest due on advances from the federal unemployment account; the fifteen percent (15%) penalty imposed on individuals who commit fraud in connection with a claim; an erroneous payment that occurs from the fund not resulting from a departmental error, including any payment to which the recipient is not entitled, from any transferee or other person that receives, possesses, or retains such a payment or from any account, including an account at any financial institution or because the claimant or his authorized agent divulged the claimant's security credentials to another person or failed to take adequate measures to protect the credentials from being divulged to an unauthorized person; or any liability of a 3rd party for failure to surrender to the department property or rights to property subject to levy after an opportunity to appeal is provided.

Our informal review of this bill is that the financial matching option raises an issue because it authorizes the disclosure of confidential information in a manner inconsistent with Federal UC law. Our regulations on the confidentiality of UC information are found at 20 CFR Part 603. These regulations are based on Section 303(a)(1) of the Social Security Act (SSA), which provides that, for purposes of certification by the Secretary of Labor, state law must include provision for “[s]uch methods of administration . . . as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due; . . .” Section 603.4(b) of the regulation requires that states maintain “the confidentiality of any UC information which reveals the name or any identifying particular about any individual or any past or present employer or employing unit” and that states provide “for barring the disclosure of any such information. . . .” While there are exceptions to this requirement (such as information in the public domain and UC appeals records), there is no exception simply because a debt assessment has been issued. Thus, these bills raise an issue.

As noted, there is an exception for information in the public domain. Information contained in a public record, such as a court record or as a lien filed against the individual or employer, may be disclosed. As a result, you are free to disclose such public information to financial institutions for the purpose of collection of the debt that is already a matter of public record. However, until a determination that a debt becomes part of a public record, it is subject to the confidentiality requirements of 20 CFR Part 603.

**No requirement that determination of indebtedness be final.** Section 108.245(3) of the proposed law provides that “[t]he existence of an administrative or other legal remedy for recovery of a payment under sub. (1) or the failure of the department to exhaust any such remedy is not a defense to an action under sub. 1.” It is not clear as to the meaning and intent of this provision. If this means that an agency appeal to the court or second level agency appeals, or a successful appeal by a claimant or employer from an initial determination of overpayment of contribution deficiency, need not have reached resolution, such an interpretation would raise an issue. Until a determination has become final – and it is not final so long as an appeal is pending – the agency may not take steps to collect an overpayment or deficiency.

Section 303(a)(3), SSA, requires an opportunity for fair hearing before an impartial tribunal to all individuals whose claim for benefits have been denied. In Unemployment Insurance Program Letter 05-13, the Department

noted that there can be no offset of UC benefits or other recovery of an overpayment until certain procedures are followed or when an appeal is pending.

Section 2103 did not amend the section 303(g)(1), SSA, requirement that the amount deducted “shall be made only in accordance with the same procedures relating to notice and opportunity for a hearing as apply to the recovery of overpayments of regular compensation” paid by a state. Therefore, all of the state’s applicable notice and hearing procedures, including provision of information on applying for a waiver of recovery of the overpayment, if provided for in state law, must be followed before a state may begin offsetting overpayments from an individual’s current or future UC payments. States must provide individuals with a determination of the overpayment and an opportunity to appeal before the state initiates overpayment recovery (whether through offset from current UC payments or otherwise).

The state matching option does not raise an issue because the financial institution is not receiving any confidential UC information provided that there is no intercept until normal recovery procedures are followed or until the debt is final.

**The repeal of the extended training benefit.** Congress encouraged states to provide expanded eligibility for UC as part of UC modernization that offered states the opportunity to apply for an incentive payment for UC modernization as part of the American Recovery and Reinvestment Act of 2009 (ARRA).

One of the expanded eligibility provisions that an application for an incentive payment for UC modernization could be based was a state providing an extended training benefit for individuals that enter a Workforce Investment Act or other approved job training programs for which training benefits are paid. The extended training benefit may be limited offers individuals an opportunity to prepare the individual for entry into a high-demand occupation if the individual was separated from a declining occupation, or involuntarily and indefinitely separated from employment as a result of a permanent reduction of operations at the individual’s place of employment.

Wisconsin’s application for a “two-third” UC modernization incentive payment (that the Department of Labor approved) included the provision of the extended training benefit. It is concerning that Wisconsin is considering repealing this UC modernization provision. Of the total incentive payment of \$133,934,079 made to Wisconsin for UC modernization under ARRA, an \$89,289,386 incentive payment was made to Wisconsin based upon expanded eligibility of individuals who were separated for compelling family reasons and for adopting of the extended training benefit. The Secretary of the Department of Workforce Development certified that the application was made in good faith that the provisions were not subject to discontinuation, with the intention of providing benefits to unemployed workers who met the eligibility provisions on which the application was based.

In providing the incentive payments, Congress clearly intended to support states that had already adopted certain eligibility provisions and to expand eligibility to additional beneficiaries by encouraging other states to adopt these provisions. By specifying that the provisions must be in effect as permanent law, Congress also made clear its intention that the benefit expansions not be transitory. However, Congress did not prohibit repeal of the provisions on which modernization payments were based subsequent to receipt of incentive payments. Congress and the Department relied on states’ good faith in adopting the eligibility criteria. Thus, while it is not a conformity issue to repeal the provision, and the Department will not ask Wisconsin to return any portion of the incentive payment, it is somewhat disconcerting that repeal is being contemplated at this time.

Please let me know if you have any questions or comments or if I may be of any further assistance.

Steve Massey



UC Program Specialist

Please note: The information included in this e-mail represents the informal, staff level opinion of the Division of Legislation, Office of Unemployment Insurance in the Department of Labor. If you would like a formal opinion, please request such an opinion in writing from Gay Gilbert, Administrator, Office of Unemployment Insurance, 200 Constitution Ave. NW, Room S-4254, Washington, DC 20210.

**Proposed amendments to address federal government's concerns with  
AB219/SB200**

108.223 (2) MATCHING PROGRAM AND AGREEMENTS. (a) The department shall operate a financial record matching program under this section for the purpose of identifying the assets of debtors. The program shall only operate consistent with all applicable federal requirements so as to permit continued certification of this chapter for grants to this state under Title III of the federal social security act and for maximum credit allowances to employers under the federal unemployment tax act.

108.223 (3) (a) At least once each calendar quarter, the department shall provide to the financial institution, in the manner specified in the agreement under sub. (2) (b), information regarding debtors whose debt has become final and a part of the public record. The information shall include names and social security or other taxpayer identification numbers.

108.223 (4) (b) The department shall take actions necessary to determine whether any debtor whose debt has become final and a part of the public record and who has an ownership interest in an account maintained at the financial institution providing information under par. (a). Upon the request of the department, the financial institution shall provide to the department, for each debtor whose debt has become final and a part of the public record and who matches information provided by the financial institution under par. (a), the address of record, the account number and account type, and the balance of the account.

108.245 (3) With respect to an individual, entity or transferee who received a payment to which that individual, entity or transferee was not entitled, the The existence of an administrative or other legal remedy for recovery of a payment under sub. (1) or the ~~the~~ failure of the department to exhaust any such remedy is not a defense to an action under sub. (1). A judgment entered by a court under this section may be recovered and satisfied under s. 108.225.



Now

cjs

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

SENATE AMENDMENT,  
TO SENATE BILL 200

forrest

1 At the locations indicated, amend the bill as follows:

2 1. Page 69, line 12: delete that line and substitute:

3 "(bg) "Debt" has the meaning given in s. 108.225 (1) (b). ✓

4 (br) "Debtor" means a debtor, as defined in s. 108.225 (1) (c), whose debt has  
5 been finally determined under this chapter and is not subject to further appeal or for  
6 whom, with respect to a debt, a warrant has been issued under s. 108.22 (2) or (3)". ✓

7 2. Page 83, line 12: after that line insert:

8 "(2m) No action may be commenced under this section asserting any claim  
9 against a claimant unless the claimant has first been afforded his or her right to  
10 contest the claim under s. 108.09." ✓

11 (A) Page 83, line 13: delete (END) ✓  
the and substitute ✓ Except as  
provided in sub. (2m) ↑ the ✓



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRBa0606/12  
MED&JTK:cjs:jf

*Now*

**SENATE AMENDMENT ,  
TO SENATE BILL 200**

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 69, line 12: delete that line and substitute:

3 “(bg) “Debt” has the meaning given in s. 108.225 (1) (b).

4 (br) “Debtor” means a debtor, as defined in s. 108.225 (1) (c), whose debt has

5 been finally determined under this chapter and is not subject to further appeal *and* for  
6 whom, with respect to a debt, a warrant has been issued under s. 108.22 (2) *or* (3). *or (g)*

7 **2.** Page 83, line 12: after that line insert:

8 “(2m) No action may be commenced under this section asserting any claim  
9 against a claimant unless the claimant has first been afforded his or her rights to  
10 contest the claim under s. 108.09.”

11 **3.** Page 83, line 13: delete “The” and substitute “Except as provided in sub.  
12 (2m), the”.

13 (END)