

2015 DRAFTING REQUEST

Bill

Received: **12/19/2014** Received By: **mduchek**
Wanted: **As time permits** Same as LRB:
For: **Administration-Budget 266-8219** By/Representing: **Kirschbaum**
May Contact: Drafter: **mduchek**
Subject: **Unemployment Insurance** Addl. Drafters:
Extra Copies:

Submit via email: **YES**
Requester's email:
Carbon copy (CC) to: **sbostatlanguage@webapps.wi.gov**

Pre Topic:

DOA:.....Kirschbaum, BB0321 -

Topic:

UI Fraud Penalties

Instructions:

See attached

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>
/?	mduchek 12/29/2014			_____			
/P1		csicilia 1/2/2015	rschluet 1/5/2015	_____	sbasford 1/5/2015		State Crime

FE Sent For:

<END>

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Plgjs 1/2 / 15 *Plgjs 1/2 / 15* *[Signature]*
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jm

FE Sent For:

<END>

Duchek, Michael

From: Hanaman, Cathlene
Sent: Friday, December 19, 2014 2:04 PM
To: Duchek, Michael
Subject: FW: Statutory Language Drafting Request - BB0321

From: Bryan.Kirschbaum@wisconsin.gov [mailto:Bryan.Kirschbaum@wisconsin.gov]
Sent: Friday, December 19, 2014 1:55 PM
To: Hanaman, Cathlene
Cc: Hynek, Sara - DOA; Kirschbaum, Bryan W - DOA; Connor, Christopher B - DOA
Subject: Statutory Language Drafting Request - BB0321

Biennial Budget: 2015-17

DOA Tracking Code: BB0321

Topic: UI Fraud Penalties

SBO Team: EWD

SBO Analyst: Kirschbaum, Bryan
Phone: 608-266-8219
E-mail: Bryan.Kirschbaum@wisconsin.gov

Agency Acronym: DWD

Agency Number: 445

Priority: High

Intent:

1. Synchronize UI theft/fraud penalties to align with current state penalties for theft (see reference 943.20). Match so the UI theft is the same as general theft in 943.20.
2. Increase the maximum penalty for UI fraud to be 40% (originally 15%)

Attachments: False

Please send completed drafts to SBOSatlanguage@webapps.wi.gov



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State of Wisconsin
2015 - 2016 LEGISLATURE



LRB-0998/P1

MED:...

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DOA:.....Kirschbaum, BB0321 - UI Fraud Penalties

FOR 2015-2017 BUDGET -- NOT READY FOR INTRODUCTION

D-note

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1 AN ACT ...; relating to: the budget.

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EMPLOYMENT

Analysis by the Legislative Reference Bureau

Current law establishes penalties for certain violations under the unemployment insurance (UI) law, including for knowingly making a false statement or representation to obtain any UI benefit payment, for which the penalty is a fine of not less than \$100 nor more than \$500 or imprisonment, not more than 90 days, or both. Current law provides that each such false statement or representation constitutes a separate offense.

This bill instead provides that a person who knowingly makes a false statement or representation to obtain any UI benefit payment may be penalized as follows: 1) if the value of any benefits obtained does not exceed \$2,500, a fine not to exceed \$10,000 or imprisonment not to exceed 9 months, or both; 2) if the value of any benefits obtained exceeds \$2,500 but does not exceed \$5,000, a Class I felony; 3) if the value of any benefits obtained exceeds \$5,000 but does not exceed \$10,000, a Class H felony; or 4) if the value of any benefits obtained exceeds \$10,000, a Class G felony.

Separate from the criminal penalties described above, under current law, if a claimant for UI benefits conceals any material fact relating to his or her eligibility for benefits or conceals any of his or her wages or hours worked (act of concealment), the claimant is ineligible for benefits in an amount ranging from two to eight times the claimant's weekly benefit rate, depending on the number of acts of concealment committed, for each single act of concealment, and is liable for an additional administrative penalty in an amount equal to 15 percent of the benefit payments erroneously paid to the claimant.

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This bill raises the administrative penalty described above to an amount equal to 40 percent of the benefit payments erroneously paid to the claimant.

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

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

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

1 SECTION 1. 108.04 (11) (bh) of the statutes is amended to read:

2 108.04 (11) (bh) In addition to ineligibility for benefits resulting from
3 concealment as provided in par. (be), the department shall assess a penalty against
4 the claimant in an amount equal to ~~15~~ 40 percent of the benefit payments erroneously
5 paid to the claimant as a result of one or more acts of concealment described in pars.
6 (a) and (b).

History: 1971 c. 40, 42, 53, 211; 1973 c. 247; 1975 c. 24, 343; 1977 c. 127, 133, 286, 418; 1979 c. 52, 176; 1981 c. 28, 36, 315, 391; 1983 a. 8, 27, 99, 168; 1983 a. 189 s. 329 (28); 1983 a. 337, 384, 468, 538; 1985 a. 17, 29, 40; 1987 a. 38 ss. 23 to 59, 107, 136; 1987 a. 255, 287, 403; 1989 a. 77; 1991 a. 89; 1993 a. 112, 122, 373, 492; 1995 a. 118, 417, 448; 1997 a. 35, 39; 1999 a. 9, 15, 83; 2001 a. 35; 2003 a. 197; 2005 a. 86; 2007 a. 59; 2009 a. 11, 287; 2011 a. 32, 123, 198, 236; 2013 a. 173 ss. 13, 33; 2013 a. 276; s. 13.92 (2) (i); s. 35.17 correction in (13) (d) 3. a.

7 SECTION 2. 108.24 (1) of the statutes is renumbered 108.24 (1) (a) and amended
8 to read:

9 108.24 (1) (a) Any person who knowingly makes a false statement or
10 representation to obtain any benefit payment under this chapter, either for himself
11 or herself or for any other person, ~~shall be fined not less than \$100 nor more than~~
12 ~~\$500 or imprisoned not more than 90 days, or both; and each such false statement~~
13 ~~or representation constitutes a separate offense. This may be penalized as provided~~
14 in par. (b). Any penalty imposed under par. (b) is in addition to any penalty imposed
15 under s. 108.04 (11) (bh).

History: 1973 c. 247; 1983 a. 8; 1991 a. 89; 2005 a. 86; 2009 a. 28, 287, 288; 2011 a. 236; 2013 a. 20.

16 SECTION 3. 108.24 (1) (b) of the statutes is created to read:

Whoever violates

1 108.24 (1) (b) The penalties for a violation of par. (a) are as follows:

2 1. If the value of any benefits obtained does not exceed \$2,500, *is subject to*
3 exceed \$10,000 or imprisonment not to exceed 9 months, or both.

4 2. If the value of any benefits obtained exceeds \$2,500 but does not exceed
5 \$5,000, *is guilty of* a Class I felony.

6 3. If the value of any benefits obtained exceeds \$5,000 but does not exceed
7 \$10,000, *is guilty of* a Class H felony.

8 4. If the value of any benefits obtained exceeds \$10,000, *is guilty of* a Class G felony.

9 **SECTION 9351. Initial applicability; Workforce Development.**

10 (1) UNEMPLOYMENT INSURANCE; CRIMINAL PENALTIES FOR BENEFIT FRAUD. The
11 renumbering and amendment of section 108.24 (1) of the statutes and the creation
12 of section 108.24 (1) (b) of the statutes first applies to a violation of section 108.24 (1)
13 (a) of the statutes, as affected by this act, committed on the effective date of this
14 subsection.

15 (2) UNEMPLOYMENT INSURANCE; ADMINISTRATIVE PENALTIES FOR ACTS OF
16 CONCEALMENT. The treatment of section 108.04 (11) (bh) of the statutes first applies
17 to overpayments established by the department of workforce development on the
18 effective date of this subsection.

19 **SECTION 9451. Effective dates; Workforce Development.**

20 (1) UNEMPLOYMENT INSURANCE; CRIMINAL PENALTIES FOR BENEFIT FRAUD. The
21 renumbering and amendment of section 108.24 (1) of the statutes *and* the creation
22 of section 108.24 (1) (a) of the statutes take effect on the first Sunday after
23 publication.

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9351

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0998/P1dn

MED:.....
Ljs

→ Date

Bryan, please note the following:

1. As requested, this draft attempts to make the criminal penalties for UI benefit fraud match the penalties for theft under s. 943.20, which contains escalating penalties based on the value of the property taken. I mirrored this approach and provided that the penalties would escalate based on the value of the benefits obtained. Note, however, that I *only* amended s. 108.24 (1), which generally applies to benefit fraud by claimants. I did not amend other provisions under s. 108.24, which include various penalties for other kinds of offenses, which would likely largely be offenses committed by employers. With the changes in this bill, therefore, the penalties for fraud by claimants will be more harsh than those for fraud by employers. Let me know if you would like me to modify other penalties in s. 108.24, but if so I will need further instruction because the graduated penalty scheme in s. 943.20 won't translate very easily to violations such as those committed by employers because they aren't obtaining benefits. ✓

2. Assuming I made the changes intended by your request, note that, with the penalties escalating based upon the value of the benefits obtained, it didn't seem to make sense to retain language in s. 108.24 (1) providing that each false statement or representation constitutes a separate offense, so I struck that language. If this language was retained, it could suggest that individual offenses *must* be prosecuted separately. For example, if a person was concealing wages, that language could suggest that there must be one charge for each week of fraudulently obtained benefits, which would undermine the purpose of having a graduated penalty structure. Without this language, I believe the inference is greater that a prosecutor may either charge one continuous offense in which the cumulative value of benefits obtained over a period of time is aggregated, or may charge multiple offenses as described above. If you would like, we could also add language to specifically allow for multiple instances of fraudulently obtaining benefits to be aggregated and prosecuted as one continuous crime, based somewhat upon what is in s. 971.36. Based upon my reading of the recent case *State v. Jacobsen*, 2014 WI App 13, however, I believe that such language is probably not needed in order for a prosecutor to charge such a continuous crime. ✓

Michael Duchek
Legislative Attorney
(608) 266-0130
michael.duchek@legis.wisconsin.gov

for individual false
statements

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0998/P1dn

MED:cjs:rs

January 5, 2015

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State of Wisconsin
2015 - 2016 LEGISLATURE



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DOA:.....Kirschbaum, BB0321 - UI Fraud Penalties

FOR 2015-2017 BUDGET — NOT READY FOR INTRODUCTION

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23 section 108.24 (1) (b) of the statutes, and SECTION 9351 (1) of this act take effect on
24 the first Sunday after publication.

