



# State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

## Appendix H

### LRB BILL HISTORY RESEARCH APPENDIX

 The drafting file for 2015 LRB-4479/P2 (For: DWD)

has been copied/added to the drafting file for


**2015 LRB-2020** (For: DWD)

 Are These “Companion Bills” ?? ... No



**RESEARCH APPENDIX -**  
**PLEASE KEEP WITH THE DRAFTING FILE**

Date Transfer Requested: 01/19/2016 (Per: MED)

 The attached draft was incorporated into the new draft listed above. For research purposes the attached materials were added, as a appendix, to the new drafting file. If introduced this section will be scanned and added, as a separate appendix, to the digital drafting file.

**2015 DRAFTING REQUEST**

**Bill**

Received: **1/16/2016** Received By: **mduchek**  
For: **Workforce Development** Same as LRB:  
May Contact: By/Representing: **Janell Knutson**  
Subject: **Unemployment Insurance** Drafter: **mduchek**  
Addl. Drafters:  
Extra Copies:

Submit via email: **YES**  
Requester's email: **Janell.Knutson@dwd.wisconsin.gov**  
Carbon copy (CC) to: **Andrew.Rubsam@dwd.wisconsin.gov**  
**LiliB.Crane@dwd.wisconsin.gov**

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Labor and management proposals

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**Instructions:**

See attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mduchek 1/16/2016	wjackson 1/17/2016	_____			
/P1	mduchek 1/18/2016	jdye 1/18/2016	_____	wjackson 1/17/2016		
/P2			_____	mbarman 1/18/2016		

**LRB-4479**

1/18/2016 2:33:38 PM

Page 2

FE Sent For:

<END>



State of Wisconsin  
2015 - 2016 LEGISLATURE

LRB-4479 P1  
MED...  
emw

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

S.A. ✓  
KCF ✓  
1

AN ACT <sup>Gen.</sup> relating to: various changes to the unemployment insurance law <sup>and providing a penalty</sup> ✓

*Analysis by the Legislative Reference Bureau*

**Misclassification; assessments and penalties**

Under current law, an employer engaged in construction projects or in the painting or drywall finishing of buildings or other structures who willfully provides false information to DWD for the purpose of misclassifying or attempting to misclassify an individual who is an employee of the employer as a nonemployee under the UI law is subject to a criminal fine of \$25,000 for each violation. Similar penalties apply to such employers who so act with the intent to evade any requirement of the worker's compensation law or the fair employment law. DWD is required to promulgate rules defining what constitutes a willful misclassification of an employee as a nonemployee for purposes of each of these provisions. ✓

This bill does the following with respect to these provisions:

1. Repeals the prohibitions that apply with respect to the worker's compensation law and the fair employment law, as well as the requirement that DWD promulgate rules defining what constitutes a willful misclassification of an employee as a nonemployee for purposes of these provisions. ✓

2. Requires DWD to assess an administrative penalty against <sup>such</sup> an employer who knowingly and intentionally provides false information to DWD for the purpose of misclassifying or attempting to misclassify an individual who is an employee of the employer as a nonemployee under the UI law. The bill provides for a penalty of \$500 for each employee who is misclassified, not to exceed \$7,500 per incident, and requires DWD to consider certain factors in determining whether an employer committed a violation. ✓

the bill 1

\*  
 WJS  
 3. Revises the current prohibition regarding such employers who provide false information to misclassify an individual under the UI law so that a) changes the standard from "willfully" providing such false information to "knowingly and intentionally" doing so; b) requires, as an element of the crime, that the employer have been previously assessed a penalty by DWD for providing such false information; and 3) revises the penalty to be \$1,000 for each employee who is misclassified, subject to a maximum fine of \$25,000 for each violation. ✓

In addition, the bill requires DWD to assess an administrative penalty against such an employer who, through coercion, requires an individual to adopt the status of a nonemployee in the amount of \$1,000 for each individual so coerced, but not to exceed \$10,000 per year. ✓

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

1           **SECTION 1.** 102.07 (8) (d) of the statutes is repealed. ✓

2           **SECTION 2.** 108.19 (1s) (a) 4. of the statutes is created to read: ✓

3           108.19 (1s) (a) 4. Assessments under s. 108.221 (1) and (2). ✓

\*\*\*\*NOTE: LRB-2020 establishes a list of amounts that are to be deposited in the program integrity fund numbered s. 108.19 (1s) (a) 1. to 3. ✓

4           **SECTION 3.** 108.221 of the statutes is created to read: ✓

5           **108.221 Misclassification; administrative assessments.** (1) (a) Any  
 6 employer described in s. 108.18 (2) (c) or engaged in the painting or drywall finishing  
 7 of buildings or other structures who knowingly and intentionally provides false  
 8 information to the department for the purpose of misclassifying or attempting to  
 9 misclassify an individual who is an employee of the employer as a nonemployee shall,  
 10 for each incident, be assessed a penalty by the department in the amount of \$500 for  
 11 each employee who is misclassified, but not to exceed \$7,500 per incident.

12           (b) The department shall consider all of the following factors in determining  
 13 whether an employer described under par. (a) knowingly and intentionally provided  
 14 false information to the department for the purpose of misclassifying or attempting  
 15 to misclassify an individual who is an employee of the employer as a nonemployee:

1           1. Whether the employer was previously found to have misclassified an  
2 employee in the same or a substantially similar position.

3           2. Whether the employer received an opinion or decision from a federal or state  
4 court or agency that the subject position or a substantially similar position should  
5 be classified as an employee.

6           (2) Any employer described in s. 108.18 (2) (c) or engaged in the painting or  
7 drywall finishing of buildings or other structures who, through coercion, requires an  
8 individual to adopt the status of a nonemployee shall be assessed a penalty by the  
9 department in the amount of \$1,000 for each individual so coerced, but not to exceed  
10 \$10,000 per year.

11           (3) Assessments under subs. (1) and (2) shall be deposited in the  
12 unemployment program integrity fund.

13           **SECTION 4.** 108.24 (2m) of the statutes is amended to read:

14           108.24 (2m) Any employer described in s. 108.18 (2) (c) or engaged in the  
15 painting or drywall finishing of buildings or other structures who ~~willfully~~, after  
16 having previously (been) assessed an administrative penalty by the department under  
17 s. 108.221 (1), knowingly and intentionally provides false information to the  
18 department for the purpose of misclassifying or attempting to misclassify an  
19 individual who is an employee of the employer as a nonemployee shall be fined \$1,000  
20 for each employee who is misclassified, subject to a maximum fine of \$25,000 for each  
21 violation. The department may refer violations of this subsection for prosecution by  
22 the department of justice or the district attorney for the county in which the violation  
23 occurred.

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

**SECTION 5.** 111.327 of the statutes is repealed.





State of Wisconsin  
2015 - 2016 LEGISLATURE

In 1-18  
TODAY

LRB-4479/RA  
MED:emw

P2  
+ jld

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

✓

Repeal

1 AN ACT *to repeal* 102.07 (8) (d) and 111.327; *to amend* 108.24 (2m); and *to*  
2 *create* 108.19 (1s) (a) 4. and 108.221 of the statutes; **relating to:** various  
3 changes to the unemployment insurance law and providing a penalty.

***Analysis by the Legislative Reference Bureau***

***Misclassification; assessments and penalties***

Under current law, an employer engaged in construction projects or in the painting or drywall finishing of buildings or other structures who willfully provides false information to DWD for the purpose of misclassifying or attempting to misclassify an individual who is an employee of the employer as a nonemployee under the UI law is subject to a criminal fine of \$25,000 for each violation. Similar penalties apply to such employers who so act with the intent to evade any requirement of the worker's compensation law or the fair employment law. DWD is required to promulgate rules defining what constitutes a willful misclassification of an employee as a nonemployee for purposes of each of these provisions.

This bill does the following with respect to these provisions:

1. Repeals the prohibitions that apply with respect to the worker's compensation law and the fair employment law, as well as the requirement that DWD promulgate rules defining what constitutes a willful misclassification of an employee as a nonemployee for purposes of these provisions.
2. Requires DWD to assess an administrative penalty against such an employer who knowingly and intentionally provides false information to DWD for the purpose of misclassifying or attempting to misclassify an individual who is an



employee of the employer as a nonemployee under the UI law. The bill provides for a penalty of \$500 for each employee who is misclassified, not to exceed \$7,500 per incident, and requires DWD to consider certain factors in determining whether an employer committed a violation.

3. Revises the current prohibition regarding such employers who provide false information to misclassify an individual under the UI law so that the bill 1) changes the standard from “willfully” providing such false information to “knowingly and intentionally” doing so; 2) requires, as an element of the crime, that the employer was previously assessed a penalty by DWD for providing such false information; and 3) revises the penalty to be \$1,000 for each employee who is misclassified, subject to a maximum fine of \$25,000 for each violation.

In addition, the bill requires DWD to assess an administrative penalty against such an employer who, through coercion, requires an individual to adopt the status of a nonemployee in the amount of \$1,000 for each individual so coerced, but not to exceed \$10,000 per year. *calendar* ✓

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7           of buildings or other structures who knowingly and intentionally provides false  
8           information to the department for the purpose of misclassifying or attempting to  
9           misclassify an individual who is an employee of the employer as a nonemployee shall,  
10          for each incident, be assessed a penalty by the department in the amount of \$500 for  
11          each employee who is misclassified, but not to exceed \$7,500 per incident. ✓

12          (b) The department shall consider all of the following <sup>nonexclusive</sup> factors in determining  
13          whether an employer described under par. (a) knowingly and intentionally provided

*was the subject of litigation or a governmental investigation relating to worker misclassification and the employer as a result of that litigation or investigation;*

1 false information to the department for the purpose of misclassifying or attempting  
2 to misclassify an individual who is an employee of the employer as a nonemployee:

3 1. Whether the employer was previously found to have misclassified an  
4 employee in the same or a substantially similar position.

5 2. Whether the employer received an opinion or decision from a federal or state  
6 court or agency that the subject position or a substantially similar position should  
7 be classified as an employee.

8 (2) Any employer described in s. 108.18 (2) (c) or engaged in the painting or  
9 drywall finishing of buildings or other structures who, through coercion, requires an  
10 individual to adopt the status of a nonemployee shall be assessed a penalty by the  
11 department in the amount of \$1,000 for each individual so coerced, but not to exceed  
12 \$10,000 <sup>calendar</sup> per year.

13 (3) Assessments under subs. (1) and (2) shall be deposited in the  
14 unemployment program integrity fund.

15 SECTION 4. 108.24 (2m) of the statutes is amended to read:

16 108.24 (2m) Any employer described in s. 108.18 (2) (c) or engaged in the  
17 painting or drywall finishing of buildings or other structures who willfully, after  
18 having previously been assessed an administrative penalty by the department under  
19 s. 108.221 (1), knowingly and intentionally provides false information to the  
20 department for the purpose of misclassifying or attempting to misclassify an  
21 individual who is an employee of the employer as a nonemployee shall be fined \$1,000  
22 for each employee who is misclassified, subject to a maximum fine of \$25,000 for each  
23 violation. The department may refer violations of this subsection for prosecution by  
24 the department of justice or the district attorney for the county in which the violation  
25 occurred.

✓  
[ns  
3-2] (5)

✓  
[ns  
3-7]

✓  
[ns  
3-12]

✓  
[ns  
3-25]

1           **SECTION 5.** 111.327 of the statutes is repealed.

2           **SECTION 6. Initial applicability.**

3           (1) ~~MISCLASSIFICATION; ASSESSMENTS AND PENALTIES.~~ The treatment of sections  
4           102.07 (8) (d), 108.221, 108.24 (2m), and 111.327 of the statutes first applies to  
5           violations committed on the effective date of this subsection.

6           **SECTION 7. Effective dates.** This act takes effect on the first Sunday after  
7           publication, except as follows:

8           (1) ~~MISCLASSIFICATION; ASSESSMENTS AND PENALTIES.~~ The treatment of sections  
9           102.07 (8) (d), 108.19 (1s) (a) 4., 108.221, 108.24 (2m), and 111.327 of the statutes and  
10          SECTION 6 (1) of this act take effect on the first Sunday of the 7th month beginning  
11          after publication.

(END)

12

Ins 4-11 ✓

**2015-2016 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-4479/P2ins  
MED:...

**INSERT 3-2**

\*\*\*NOTE: The word "nonexclusive" was added here per DWD to make it clear that other factors could be considered.

**INSERT 3-7**

\*\*\*NOTE: A requested clarification to the language was made here.

**INSERT 3-12**

\*\*\*NOTE: The instructions provided for a maximum penalty of \$10,000 "per year." A change was made here to clarify that this would be measured on a calendar year basis.

**INSERT 3-25**

\*\*\*NOTE: This language provides specific authority for cases to be referred to DOJ (DOJ also already has authority to enforce UI laws under s. 165.60, stats.), but also provides that DWD may refer cases to local DAs as well.

**INSERT 4-11**

\*\*\*NOTE: A six-month delayed effective date was requested by DWD to allow for training and implementation time.



State of Wisconsin  
2015 - 2016 LEGISLATURE

LRB-4479/P2  
MED:emw&jld

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

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11          each employee who is misclassified, but not to exceed \$7,500 per incident.

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3 employer as a nonemployee:

\*\*\*\*NOTE: The word “nonexclusive” was added here per DWD to make it clear that  
other factors could be considered.

4 1. Whether the employer was previously found to have misclassified an  
5 employee in the same or a substantially similar position.

6 2. Whether the employer was the subject of litigation or a governmental  
7 investigation relating to worker misclassification and the employer, as a result of  
8 that litigation or investigation, received an opinion or decision from a federal or state  
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10 be classified as an employee.

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11 (2) Any employer described in s. 108.18 (2) (c) or engaged in the painting or  
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8 **SECTION 6. Initial applicability.**

9 (1) MISCLASSIFICATION; ASSESSMENTS AND PENALTIES. The treatment of sections  
10 102.07 (8) (d), 108.221, 108.24 (2m), and 111.327 of the statutes first applies to  
11 violations committed on the effective date of this subsection.

12 **SECTION 7. Effective dates.** This act takes effect on the first Sunday after  
13 publication, except as follows:

14 (1) MISCLASSIFICATION; ASSESSMENTS AND PENALTIES. The treatment of sections  
15 102.07 (8) (d), 108.19 (1s) (a) 4., 108.221, 108.24 (2m), and 111.327 of the statutes and  
16 SECTION 6 (1) of this act take effect on the first Sunday of the 7th month beginning  
17 after publication.

\*\*\*NOTE: A six-month delayed effective date was requested by DWD to allow for  
training and implementation time.

18

(END)