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Details:

(FORM UPDATED: 08/11/2010)

**WISCONSIN STATE LEGISLATURE ...  
PUBLIC HEARING - COMMITTEE RECORDS**

**2009-10**

(session year)

**Senate**

(Assembly, Senate or Joint)

**Committee on ... Labor, Elections, and Urban  
Affairs (SC-LEUA)**

**COMMITTEE NOTICES ...**

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

**INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL**

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
  - (**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)
  - (**sb** = Senate Bill)                              (**sr** = Senate Resolution)                              (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

## Senate

### Record of Committee Proceedings

#### **Committee on Labor, Elections and Urban Affairs**

##### **Senate Bill 366**

Relating to: various changes in the unemployment insurance law and providing a penalty.

By Senator Coggs; cosponsored by Representative Sinicki.

October 23, 2009      Referred to Committee on Labor, Elections and Urban Affairs.

October 29, 2009      **PUBLIC HEARING HELD**

Present:    (5)      Senators Coggs, Wirsch, Lehman, A. Lasee and Grothman.

Absent:    (0)      None.

##### Appearances For

- Spencer Coggs — Senator
- Hal Bergan — DWD
- John Metcalf — Wisconsin Manufacturers & Commerce

##### Appearances Against

- None.

##### Appearances for Information Only

- None.

##### Registrations For

- Christine Sinicki — Representative

##### Registrations Against

- None.

##### Registrations for Information Only

- None.

November 2, 2009      **EXECUTIVE SESSION HELD**

Present:    (0)      None.

Absent:    (0)      None.

Moved by Senator Coggs that **Senate Bill 366** be recommended for passage.

Ayes: (5) Senators Coggs, Wirch, Lehman, A. Lasee  
and Grothman.

Noes: (0) None.

PASSAGE RECOMMENDED, Ayes 5, Noes 0



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Adam Plotkin  
Committee Clerk



## Senate

### Record of Committee Proceedings

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##### Appearances For

- Spencer Coggs — Senator
- Hal Bergan — DWD
- John Metcalf — Wisconsin Manufacturers & Commerce

##### Appearances Against

- None.

##### Appearances for Information Only

- None.

##### Registrations For

- Christine Sinicki — Representative

##### Registrations Against

- None.

##### Registrations for Information Only

- None.

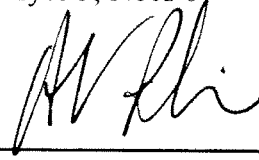
November 2, 2009      **EXECUTIVE ACTION TAKEN BY BALLOT**

Moved by Senator Coggs that **Senate Bill 366** be recommended for passage.

Ayes: (5) Senators Coggs, Wirch, Lehman, A. Lasee  
and Grothman.

Noes: (0) None.

PASSAGE RECOMMENDED, Ayes 5, Noes 0



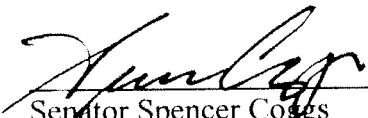
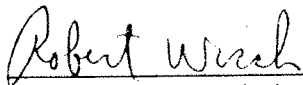
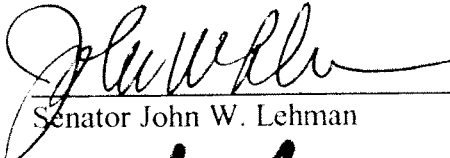

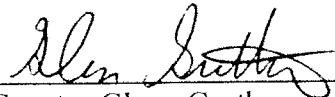
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Adam Plotkin  
Committee Clerk


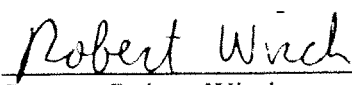
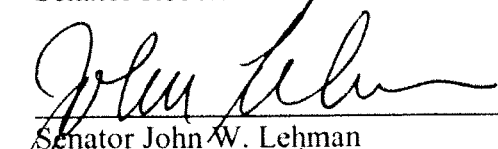


TO: Members of the Senate Committee on Labor, Elections, and Urban Affairs  
FROM: Senator Spencer Coggs Chair  
DATE: November 2, 2009  
SUBJECT: Committee ballot on Senate Bills 183, 349 and 366.

Pursuant to Senate Rule 25 (4) (am), the committee on Labor, Elections, and Urban Affairs will vote by ballot on the motions stated below. Please review the motions and record your vote below by signing your name, inserting the date, and circling "aye" or "no." By circling "aye" you indicate your approval of the motion. Please forward this ballot to the next office listed. Thank you.

**[MOTION 1]** *To recommend passage of Senate Bill 183 by the committee on Labor, Elections, and Urban Affairs.*

 _____ Senator Spencer Coggs	11/2/09 _____ Date	<input checked="" type="radio"/> AYE	NO
 _____ Senator Robert Wirch	11/2/09 _____ Date	<input checked="" type="radio"/> AYE	NO
 _____ Senator John W. Lehman	11/3/09 _____ Date	<input checked="" type="radio"/> AYE	NO
 _____ Senator Alan J. Lasee	11/3/09 _____ Date	<input checked="" type="radio"/> AYE	NO
 _____ Senator Glenn Grothman	11/3/09 _____ Date	<input checked="" type="radio"/> AYE	NO

[MOTION 4] To recommend passage of Senate Bill 366 by the committee on Labor, Elections, and Urban Affairs.

 _____ Senator Spencer Coggs	11/2/09 _____ Date	<input checked="" type="radio"/> AYE	NO
 _____ Senator Robert Wirch	11/2/09 _____ Date	<input checked="" type="radio"/> AYE	NO
 _____ Senator John W. Lehman	11/3/9 _____ Date	<input checked="" type="radio"/> AYE	NO
 _____ Senator Alan J. Lasee	11/3/09 _____ Date	<input checked="" type="radio"/> AYE	NO
 _____ Senator Glenn Grothman	11/3/09 _____ Date	<input checked="" type="radio"/> AYE	NO

**Plotkin, Adam**

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**From:** Rep. Sinicki  
**Sent:** Monday, October 05, 2009 2:25 PM  
**Subject:** Labor Committee Hearing and Exec Dates

SB 360?

Labor Committee Members,

Please hold your calendars open for a public hearing the morning of Wednesday, Oct. 14<sup>th</sup>, and for an exec. session the morning of the following Wednesday, Oct. 21<sup>st</sup>.

In addition, please note that on one of these two dates we will also hold an informational briefing by DWD staff, U.I. Division, regarding the difficult prospects of the U.I. Fund, and related legislation coming to the Legislature in the next few months. I will know shortly whether this briefing will be held jointly with the Senate Labor Committee.

If you have questions or know of scheduling conflicts, please let my committee clerk know (Mary Beth George, 6-8588).

Thank you.

Rep. Christine Sinicki, Chair  
Assembly Committee on Labor  
608-266-8588





## Plotkin, Adam

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**From:** George, Mary Beth  
**Sent:** Wednesday, October 07, 2009 10:02 AM  
**To:** Plotkin, Adam  
**Subject:** RE: ?

SB 300?

Hi --

Chris wants to schedule this soon (though the date doesn't necessarily have to be immediately). Part of the reason is that word is starting to leak out about the dire situation we're in, e.g., the NPR report from WUWM. DWD's preference is a joint hearing. They'd probably do a Power Point, etc., and so would want to have it in one of the fancy rooms with electronic stuff in it. As you and I talked about, it could be a publicly noticed info briefing; we'll get Wisc Eye there, start letting it sink in inside and outside the building that the Fund looks bad, and we're going to have to take a tough vote on it.

We told them last week we don't want to see a bill on the Reserve Fund (raising business taxes and probably a hit on the Labor side too), any later than Dec. 15<sup>th</sup> (but a true drop dead date of Jan 15<sup>th</sup>). We also told them we won't touch that bill after March 4<sup>th</sup>, and even that is late and will make members very nervous. So it has to be passed, concurred in in our house by March 4<sup>th</sup> at the latest, though we'd strongly prefer it much earlier.

Our floor dates are: October 20<sup>th</sup>, 27<sup>th</sup>, 29<sup>th</sup>, and probably November 3<sup>rd</sup> and 5<sup>th</sup>. Don't know what your floor dates are, but other suggestions:

Wednesday, Nov. 4<sup>th</sup> (Chris's next first choice after the 28<sup>th</sup>);  
afternoon of Monday, Oct. 26<sup>th</sup> (much kvetching from our members);  
afternoon of Monday, Nov. 2<sup>nd</sup>, (same kvetching);  
Wed., November 11<sup>th</sup>;  
Wed, November 18<sup>th</sup> (last two are getting late).

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**From:** Plotkin, Adam  
**Sent:** Wednesday, October 07, 2009 9:42 AM  
**To:** George, Mary Beth  
**Subject:** RE: ?

Nope, she hasn't called. The 28<sup>th</sup> probably wouldn't work for Spencer. Did you hear the piece on actual NPR, not WPR, this morning on the state of WI's UI fund?

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**From:** George, Mary Beth  
**Sent:** Wednesday, October 07, 2009 9:41 AM  
**To:** Plotkin, Adam  
**Subject:** ?

Did Jessica Erickson reach you regarding having the joint hearing on the 28<sup>th</sup>?

The next UI Council meeting is on the 21<sup>st</sup>, turns out.

Mary Beth





WISCONSIN'S BUSINESS VOICE SINCE 1911

TO: The Senate Labor Committee: Senator Spencer Coggs (Chair), Senator Robert Wirsch, Senator John Lehman, Senator Alan Lasee, Senator Glenn Grothman

FROM: James A. Buchen, Vice President of Government Relations

DATE: October 29, 2009

RE: Support for Senate Bill 366 —Recommendations of the Wisconsin Unemployment Insurance Advisory Council

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### **Background**

The Wisconsin Unemployment Insurance Advisory Council (UIAC), of which I am a member, unanimously recommends Senate Bill 366 (SB 366) for passage. The UIAC recommended several policy changes earlier this year in response to the American Recovery and Reinvestment Act that were acted upon favorably by this Committee and enacted into law as 2009 Act 11.

### **Senate Bill 366**

Since then the UIAC has considered a range of additional changes to Chapter 108 that are before you today. For the most part, these changes are technical in nature and are designed to streamline the administration of the Wisconsin Unemployment Insurance Program. Please see the attached list of provisions in the bill.

### **UI Trust Fund Solvency**

The UIAC continues to deliberate on measures to address the solvency of Wisconsin's UI Trust Fund. To date, the Trust Fund has borrowed in excess of \$600 million from the federal government in order to continue to pay benefits to Wisconsin's unemployed workers. If borrowing continues as projected, Wisconsin could have a debt to the federal government in excess of \$2 billion.

Before the Legislature adjourns next year the members of the UIAC intend to make further recommendations to the Legislature on steps that can be taken to reduce the need for continued borrowing from the federal government. However, these steps will likely need to be implemented over the longer term in order to avoid a devastating blow to the economic recovery as Wisconsin emerges from this recession.

However, the ultimate solution to Wisconsin's UI Trust Fund's solvency lies in job creation and higher wages. Retuning unemployed workers to employment will have the immediate benefit of fewer benefits being charged to the trust fund and more unemployment insurance taxes being paid into the Trust Fund.

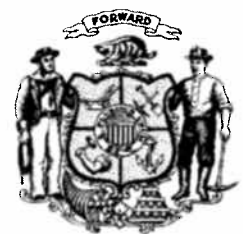
WMC strongly encourages this committee and the entire Legislature to begin focusing on measures that will improve Wisconsin's economy so that we can attract new businesses to the state and encourage existing employers to expand and grow their workforce here in Wisconsin.

### **Support for Senate Bill 366**

WMC supports SB 366 and Senate Amendment One to the Bill and urges your vote in favor of this legislation.



WISCONSIN STATE LEGISLATURE



**Plotkin, Adam**

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**From:** Phil Neuenfeldt [pneuenfeldt@wisafclcio.org]  
**Sent:** Thursday, October 29, 2009 11:20 AM  
**Subject:** Support for Senate Bill 366  
**Attachments:** image001.png



**Wisconsin State AFL-CIO** ...the voice for working families.

David Newby, President • Sara L. Rogers, Exec. Vice President • Phillip L. Neuenfeldt, Secretary-Treasurer

**To:** Senate Labor, Elections & Urban Affairs Committee  
**From:** Phil Neuenfeldt, Secretary-Treasurer  
**Date:** October 29, 2009

**Re: Support for Senate Bill 366 & Senate Amendment 1  
Unemployment Insurance Changes**

Unfortunately, I will not be able to testify at today's hearing but want to urge your support for Senate Bill 366 which includes some routine changes to the UI system. We also support an amendment that will delay until July 3, 2011, the effective date of one specific provision of the bill relating to the hours threshold for qualifying for UI.

This package of changes and the amendment have been negotiated and agreed to by labor and management representatives on the UI Advisory Council.

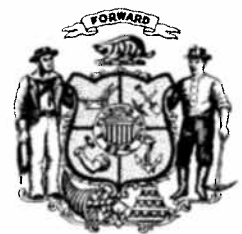
There still remains the substantial issue of the solvency of the UI Trust Fund given the unprecedented demands on this vital economic support system for Wisconsin's families. The UI Advisory Council members will continue discussions to address this issue.

PN/JR/mj:opeiu9.afl-cio.clc

10/29/2009



# WISCONSIN STATE LEGISLATURE



**Plotkin, Adam**

**From:** Karen Mahlkuch [KMahlkuch@wmc.org] on behalf of James Buchen [jbuchen@wmc.org]  
**Sent:** Thursday, October 29, 2009 10:14 AM  
**To:** Sen.Coggs; Sen.Wirch; Sen.Lehman; Sen.Lasee; Sen.Grothman  
**Cc:** John Metcalf; Karen Mahlkuch; James Buchen  
**Subject:** Support for Senate Bill 366-Recommendations of the Wisconsin Unemployment Insurance Advisory Council  
**Attachments:** image001.wmz

TO: The Senate Labor Committee: Senator Spencer Coggs (Chair), Senator Robert Wirch, Senator John Lehman, Senator Alan Lasee, Senator Glenn Grothman



FROM: James A. Buchen, Vice President of Government Relations

DATE: October 29, 2009

RE: Support for Senate Bill 366—Recommendations of the Wisconsin Unemployment Insurance Advisory Council

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However, the ultimate solution to Wisconsin's UI Trust Fund's solvency lies in job creation and higher wages. Retuning unemployed workers to employment will have the immediate benefit of fewer benefits being charged to the trust fund and more unemployment insurance taxes being paid into the Trust Fund.

WMC strongly encourages this committee and the entire Legislature to begin focusing on measures that will improve Wisconsin's economy so that we can attract new businesses to the state and encourage existing employers to expand and grow their workforce here in Wisconsin.

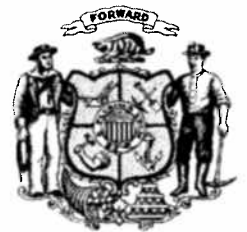
**Support for Senate Bill 366**

WMC supports SB 366 and urges your vote in favor of this legislation.





WISCONSIN STATE LEGISLATURE



**Plotkin, Adam**

SB 366?

**From:** Karls-Ruplinger, Jessica  
**Sent:** Thursday, October 29, 2009 7:55 AM  
**To:** George, Mary Beth  
**Cc:** Whitesel, Russ; Plotkin, Adam  
**Subject:** FW: Amendment to UI Bill

FYI ...

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**From:** Erickson, Jessica L - DWD [mailto:Jessica.Erickson@dwd.wisconsin.gov]  
**Sent:** Wednesday, October 28, 2009 7:10 PM  
**To:** Karls-Ruplinger, Jessica  
**Cc:** Richard, JoAnna - DWD  
**Subject:** RE: Amendment to UI Bill

Hi Jessica,

If the effective date of the provision is not changed, most state employees currently eligible for UI benefits on furlough days would become **ineligible on the effective date of the bill**. This outcome was not intended by DWD or the UI Advisory Council. By changing the effective date of the provision to July 3, 2011, state employees (and others) who have been eligible for benefits for the furlough days will continue to be eligible for the balance of the furlough period, which ends on June 30, 2011. The UI Advisory Council voted to recommend this friendly amendment to the bill at its last meeting.

Please let me know if you have further questions.

Thanks,  
Jess

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**From:** Karls-Ruplinger, Jessica [Jessica.Karls@legis.wisconsin.gov]  
**Sent:** Wednesday, October 28, 2009 3:49 PM  
**To:** Erickson, Jessica L - DWD  
**Subject:** Amendment to UI Bill

Jess,

Can you briefly explain how the amendment to the UI bill (i.e., the effective date of July 3, 2011) affects state employees who claim UI benefits because of a furlough? If the effective date were not changed, would more state employees be eligible for UI because of the change of "full-time work" to 32 hours? Thanks!

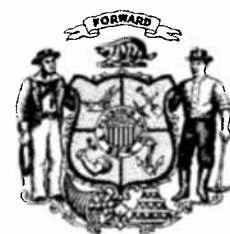
Jessica

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Jessica Karls-Ruplinger  
Staff Attorney  
Wisconsin Legislative Council  
(608) 266-2230  
Jessica.Karls@legis.wisconsin.gov



# WISCONSIN STATE LEGISLATURE



Department of Workforce Development  
Unemployment Insurance Division  
201 East Washington Avenue  
P.O. Box 7905  
Madison, WI 53707-7905



State of Wisconsin  
Department of Workforce Development  
Jim Doyle, Governor  
Roberta Gassman, Secretary  
Hal Bergan, Division Administrator

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**Testimony of Hal Bergan**  
**Administrator of the Unemployment Insurance Division**  
**On Senate Bill 366, relating to changes in**  
**Wisconsin's Unemployment Insurance Law**

Date?

Chairman Coggs and members of the Committee:

Thank you very much for the opportunity to appear in support of SB 366. This bill is the product of deliberations by the Unemployment Insurance Advisory Council. The Council consists of 10 members, five representing Wisconsin workers, and five representing Wisconsin employers. The non-voting chair of the Council is Daniel LaRocque, the director of the UI Division's Bureau of Legal Affairs. The Council has a long and distinguished history of serving our state. I particularly want to mention the role played by Phil Neuenfeldt on the labor side and James Buchen on the employer. They are outstanding public servants, deeply knowledgeable about the UI system, and they do an impressive job as Council leaders.

As you know, Wisconsin workers and employers have been hit hard by the deep national economic recession. Since October of 2008, claims for unemployment benefits have been higher than at any time in our history. Every week, we are mailing out over 185,000 checks. We are administering four federal UI benefit extension programs along with the regular UI program. We have taken extraordinary steps to meet these challenges -- hiring more staff, extending our hours, working overtime, improving our systems, and seeking ways to streamline and otherwise improve the administration of the program.

As unemployment has spiked, so has the demand for benefits. As a result, our Unemployment Insurance Reserve Fund finds itself borrowing from the federal government to meet its obligations. Twenty-three states are borrowing now and that number will continue to increase throughout 2009 and 2010. Unemployment Insurance systems in the industrial states of the East and Midwest are particularly challenged by this recession. The Advisory Council understands the importance of this issue and has begun its work to improve the solvency of our UI system. The Council expects to work on recommendations throughout the fall to present to the Legislature.

The bill before you today does not deal with solvency issues. Rather, it consists of a series of changes that will strengthen the program and streamline its administration. These changes will produce a program that is easier to understand for workers and employers and less complex to administer for the UI staff.

## Provisions of SB 366

### Law Changes Relating to Unemployment Insurance Benefits and Recoveries

#### **Amend Allocation of Benefits for Lump Sum Pension Distributions**

Certain types of income received by unemployment benefit claimants will reduce the amount of their benefits. Some types of income do not reduce benefits -- for example, interest on savings, or gains on the sale of stock or real estate.

Unemployment benefits are reduced based on very specific statutory provisions, for receipt of wages earned during a week of unemployment and for severance pay "allocated" to a week of unemployment. Unemployment benefits are reduced also in certain cases of employer-funded pensions -- those in which the base period employer has contributed to or managed the pension and the employee earned pension credits with that employer during the base period.

The bill amends the reduction of benefits for a claimant's receipt of pension payments in §108.05 (7). Current law provides that pension payments reduce benefits in each week the pension payment is received. A lump sum pension distribution is *allocated* to (treated as received in) a series of weeks, rather than just the single week in which the lump sum was received. The bill provides that a lump sum pension payment (or, in the words of the statute, a pension payment that is "other than periodic") will be allocated to just the week in which it is paid. The receipt of the pension payment will affect unemployment benefits, if at all, for that week only. The lump sum pension payment will no longer be allocated to a series of weeks.

The proposal to alter the lump sum pension offset for unemployment insurance benefits arose from a proposal to the Unemployment Insurance Advisory Council by Representative Terry Van Akkeren. His concern related to a worker who had taken a loan from his 401(k) retirement plan prior to losing his job. The worker was in financial distress and defaulted on his loan. The pension loan default was satisfied

by his pension plan administrator's "distribution" of funds from his 401(k) account ("receipt of a pension payment" in the unemployment law).

The estimated cost to the reserve fund for the additional benefits paid because of this change is \$200,000 per year.

### **Treat Bonus Payments as "Earned" When Paid**

As mentioned above, wages earned in certain amounts by a claimant while eligible for unemployment insurance benefits may reduce the benefits the claimant receives. Bonus payments are wages. The bill amends the treatment of bonuses (also §108.05) to provide that for purposes of calculating unemployment insurance benefits, a bonus payment is considered "earned" in the week in which the bonus is paid by the employer.

The decision by an employer to pay a bonus is often contingent on various matters. Because of the contingent nature of the employer's decision to pay a bonus, in most cases we find that the week in which a bonus is paid is the same as the week in which the department determines the bonus is finally "earned." However, case law has been inconsistent in applying the concept of "earned." Recent decisions seemed to leave open the possibility of some very difficult challenges for the department in administering the reduction for bonus payments, in some cases at least, and potentially anomalous results to claimants. For example, if the reduction of benefits were required to be made retroactively, as though the bonus paid in one year were considered earned in a prior year or years, benefit reductions might have to be recalculated many weeks or months after payment.

The bill simplifies and clarifies the treatment of bonus payments. It limits the adverse impact on the claimant to one week of benefits, at most. No significant fiscal effect is expected.

### **Amend Disqualification for Full-Time Work with 80% Liable Employer: Reduce "full-time" from 35 to 32 Hours**

When a claimant receives wages from an employer that paid at least 80% of the wages in his or her base period §108.05(3)(b) disqualifies the claimant from receiving benefits in any week that the wages are for full-time work at a rate of pay that meets certain criteria. The bill provides that "full-time" in §108.05(3) (b) means 32 hours. The intent of this change is to streamline training of staff and claims administration by using a definition of full-time work that is common to other provisions of Chapter 108. No significant fiscal effect is expected.

This proposal was developed and first considered by the Council early this year, before state employee furloughs were required. When the Council approved it a few weeks ago they were not aware that it may disqualify employees who are furloughed for one day of a week from receiving UI benefits. It was neither the Council's nor the Department's intention to foreclose this possibility during the current state furlough period. Therefore the Council is seeking an amendment to the bill to delay the effective date of this provision until July 3, 2011, at which time state furlough days will have run their course. There are relatively few state employees filing for UI benefits so the cost of this amendment is quite small.

### **Amend Exceptions to Quit Disqualifications: Change Thresholds to 32 Hours**

A worker who quits a job is, in general, disqualified for unemployment insurance benefits until the meet certain requalification requirements. There are exceptions. Two of the quit exceptions, §§108.04(7) (k) and 108.04(7) (o), apply where a claimant works two jobs concurrently. Section 108.04(7)(k) allows a claimant to quit a job of up to 30 hours per week without disqualification where a claimant has lost a full-time job and it is "economically unfeasible" to continue the 30-hour per week work. Section 108.04(7)(o) allows a claimant to quit one job where the claimant quits before receiving notice of termination from a job consisting of at least 30 hours per week. The intent of this provision is to provide an exception to the quit disqualification penalty when a worker quits a job with no knowledge that he or she would be laid off or discharged from the 30-hour per week position. The bill would replace "30-hour" with "full-time" and define full time as 32 hours for both provisions, §§108.04(7) (k) and 108.04(7) (o). The intent of this change is to streamline training of staff and claims administration by using a definition of full-time work that is common to other provisions of Chapter 108. No significant fiscal effect is expected.

### **Clarify Exceptions for Exclusions from Employment for Indian Tribes**

The bill amends two subdivisions of §108.02(15)(f) to clarify that the option for tribes to exclude certain tribal elected officials and policymakers and advisors from coverage is made under tribal not state law, and that tribal legislative bodies and judiciaries are not political subdivisions of the state. The bill also amends §108.02(15) (g) 1 to clarify that individuals receiving work relief or work training from programs that are funded wholly by tribes are excluded from employment unless a tribe elects otherwise. These are clarifications of existing law and are not expected to change department practices.

### **Correct Forfeiture Language to Reflect Statutory Penalties**

There are three levels of penalties in the statute for unemployment benefit fraud by concealment of material facts by a claimant. The penalty levels were established by 2007 Wis. Act 59. This bill amends §108.04(11) (be) to remove the risk of incorrect interpretations of the provision. Section 108.04(11) (be) provides that: "A claimant shall forfeit benefits *and be disqualified from receiving benefits* for acts of concealment [under the conditions provided in that law.]" Some administrative law judges exhibited confusion as to whether claimants are to be disqualified from receiving benefits even though the three, newly-enacted penalty levels no longer disqualified claimants from benefits. This is a technical change consistent with the intent of 2007 Act 59.

### **Enable Intercept of Federal Tax Refunds for Unemployment Insurance Fraud**

Benefits are overpaid to claimants for various reasons, including fraud in some cases. Various mechanisms are utilized in the process of recovering the overpaid benefits from the claimant. One mechanism is the interception of state tax refunds by the Department of Revenue. This process is used to recover overpayments, whether due to fraud or, more commonly, without fraud.

Recent federal legislation allows states to intercept **federal** tax refunds to recover overpaid benefits. The intercept of federal tax refunds is limited to overpayments due to **fraud**. The bill amends §108.22(8) to enable the intercept of federal tax refunds to collect unemployment insurance benefit overpayments in fraud cases. It will also permit the U.S. Department of Treasury to deduct fees from intercepted amounts to cover the administrative costs of the intercept program. The department estimates it will collect an additional \$1.3 million annually from claimants with this provision.

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assessment from employers to pay the interest to the federal government. If there are unused amounts in the special assessment account after repaying federal loans, the current law provides that those funds may be used for unemployment insurance administration. This bill provides that any unused funds in that account would revert to the Reserve Fund (specifically, the balancing account) and will be used to pay benefits.

### **Incorporate Requirement that Professional Employer Organizations (PEOs) Register with Department of Regulation & Licensing**

Chapter 461 was enacted in 2007 Wis. Act 189 to regulate the industry known as professional employer organizations ("PEOs"). One requirement of Chapter 461 is to require PEOs to register with the Department of Regulation and Licensing. The requirements for licensing a PEO include maintaining working capital of at least \$100,000, a bond or other commitment in the same amount, and to provide an audited financial statement. These requirements are intended to secure the payment of wages and other amounts including unemployment contributions that are payable by the PEO as an employer.

This bill amends §108.02(21e) to include in the definition of "professional employer organization" for unemployment insurance purposes the requirement that the PEO be registered with the Department of Regulation and Licensing. Registration as a "PEO," and the requirements associated with that registration, tend to show that such an entity is truly a responsible employer for purposes of the unemployment program. No fiscal effect is expected.

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The bill amends Wis. Stat. §108.18(7) (d) to make the timely payment of voluntary contributions provision consistent with the timeliness provision for other employer reports and payments. The bill is geared for administrative efficiency; it eliminates the grace period and the need to maintain envelopes and proof of mailing. The volume of voluntary contributions is quite small; thus, no significant fiscal effect (interest earnings) is expected from this proposal.

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technical dismissal of their cases. This will also ensure that the department will be afforded notice of the lawsuit by the employer. (Otherwise, such lawsuits have in some cases proceeded against the Commission alone without notice to the Department.) The Department needs an opportunity to defend its determination and affect the judicial development of the unemployment insurance law. This is merely a clarification of a purely procedural matter and will not have any fiscal effect.

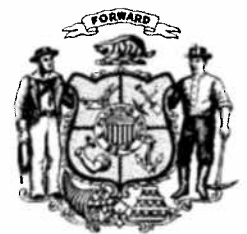
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This bill strengthens the protection of claimants and creates protection of witnesses in unemployment insurance cases from retaliation by employers for asserting their rights or appearing as a witness in an unemployment hearing. Under the current law, employers may be penalized for various actions, including attempts to "induce an employee to refrain from claiming or accepting benefits or to waive any other right" under the unemployment law. Current law also penalizes discrimination in rehiring, where rehiring is denied based on a claim for benefits. However, **an employer is not prohibited from discharging an employee or otherwise retaliating against an employee for claiming benefits.** **There are no protections for witnesses, some of whom are employees of the employer.** Some witnesses are subpoenaed to testify on the claimant's behalf and may not be voluntary participants. An employer's threats or retaliatory conduct may deter individuals, particularly employees, from willingly participating in unemployment audits, investigations and hearings. The department has received complaints from employees and witnesses who claim to have been discharged from their employment for claiming benefits or testifying. Section 108.24(3), Stats, makes it unlawful to threaten an employee with discharge but does not penalize the act of discharging an employee for claiming benefits. The absence of protection against discharge and other discriminatory or retaliatory action is difficult to reconcile with provisions of current criminal penalties for "attempting to induce" an employee to waive rights. The bill expands the protection of claimants and witnesses to prohibit retaliatory conduct by employers.

The bill increases the maximum fine for violations from \$500 to \$1,000. No significant fiscal effect is expected.



# WISCONSIN STATE LEGISLATURE



Brief Statement on SB 366

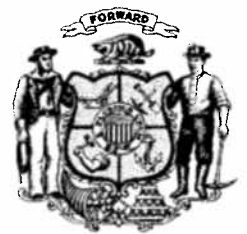
Date?

Members,

I just want to say a few words as author of SB 366. As you are aware, procedurally, the Unemployment Insurance Advisory Council usually recommends one bill per session to make various changes to the Unemployment Insurance system. Given the difficult economic situation, the technical changes to UI are ready this session in the form of SB 366 before the major changes that will be needed to begin to stabilize the Unemployment Insurance Reserve Fund while continuing to provide benefits. SB 366 addresses only the technical changes to unemployment. Rather than attempt to go through them in depth, I will ask Hal Bergan, the Unemployment Insurance Division Administrator to go through the bill for the committee.



WISCONSIN STATE LEGISLATURE





Date?

## Provisions of SB 366

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The bill amends the reduction of benefits for a claimant's receipt of pension payments in §108.05 (7). Current law provides that pension payments reduce benefits in each week the pension payment is received. A lump sum pension distribution is **allocated** to (treated as received in) a series of weeks, rather than just the single week in which the lump sum was received. The bill provides that a lump sum pension payment (or, in the words of the statute, a pension payment that is "other than periodic") will be allocated to just the week in which it is paid. The receipt of the pension payment will affect unemployment benefits, if at all, for that week only. The lump sum pension payment will no longer be allocated to a series of weeks.

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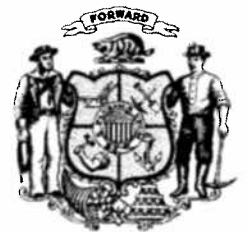
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# WISCONSIN STATE LEGISLATURE



# LEUA Exec. & Hearing - 10/29/09

## Exec

SB 366

- Russ reads changes from Sub 2-73

## Hearing

SB 183

- Kreitlow testimony

## AB 142

- Shilling & Risser testimony
  - will send written testimony later today
  - Risser brief remarks & map handout
    - 45 states license landscape architects
- GG - usually agrees on fence me out
  - has grandfather clause
  - can't still do work
    - there are many exemptions for individual use
- Shawn Kelly
  - has extensive written testimony, but doesn't read it
  - follows student progress after graduating
  - why take so long?
    - had to build support and not fence people out
- Rasheen Skoczinski
- Sam Dennis, Michael Seaman (prof, teacher)
  - UN becoming net exporter of L.A.'s
  - protect welfare of citizens

1

(2)

-Pam Linn

-has written testimony

-Brian Swingle

-was not easy to come to agreement

-understand need for level playing field w/ other states

-availability for jobs is reason for problem

-may ask to revisit bill ~~word~~ if any unintended consequences

SB 366

-St short statement

-Hal Bergen summarizes technical aspects from testimony

-still goes through memo at length

-John Metcalf

-UI has borne brunt of economic downturn

-theme of bill is simplifying law

-fraud collection aspect is important

-big issue coming is system solvency

-expect movement in next couple of months

SB 340

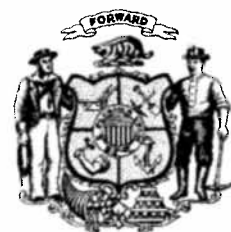
-Plak has written testimony, but doesn't read it

-narrowly crafted bill

-heard in Assembly w/o objections



# WISCONSIN STATE LEGISLATURE



**AB 487 (REG Session)**

**SB 366 (Reg Session)**

**Nickname** **Unemployment Insurance Law Changes**

**Asm Author:** sinicki

**Sen Author:** coggs

**Bill Description** AB 487 and SB 366 are this session's Agreed-Upon Legislation from the Unemployment Insurance (U.I.) Advisory Council (staffed by the Dept. of Workforce Development).

As it does every biennial session, this legislation makes various changes to U.I. statutes that the UI Council deems necessary.

(PLEASE NOTE: A second UI bill, coming early next year from the UI Council, will deal directly with the solvency of the UI Fund itself.)

AB 487/SB 366 make the following changes to the overall UI statutes:

\* makes sure DWD reduces only one week's UI benefits for unemployed workers who receive lump-sum pay-outs such as pensions, profit-sharing and bonuses;

(Rep. Van Akkeren spurred the UI Council to make this change as a result of his constituent's difficulties with current rules);

\* in certain employment situations, for UI purposes, defines "full-time work" as 32 or more hours a week, and "part-time work" as less than 32 hours a week;

\* says excess revenues from employer assessments (for WI interest payments on federal UI loans) shall be placed in the UI Fund to help pay benefits;

\* makes it unlawful for employers to harass or threaten to fire workers for:

- 1) claiming UI benefits
- 2) responding to DWD inquiries
- 3) participating in the UI process.

\* allows DWD to intercept federal tax returns (per federal law) to recover fraudulently-obtained UI benefits (forecast to net \$1.3 million for the UI Fund);

\* sets a firm due date for voluntary contributions from employers to the UI Fund;

\* exempts certain tribal jobs from coverage;

\* clarifies penalties for workers if they conceal info pertinent to UI claims;

\* clarifies DWD's legal role in employers' appeals to Circuit Court from decisions by the Labor and Industry Review Commission (LIRC);

\*says that professional employer organizations (PEOs) must register with the Dept. of Reg. and Licensing in order to act on behalf of an employer in administering its UI obligations.

**Committee Action** *Assembly:* Labor: passed unanimously.

*Senate:*

**Supporting Arguments** The provisions of this bill have been debated, negotiated and finally agreed upon over a period of many months by the Unemployment Insurance Advisory Council, which is made up of equal numbers of representatives from labor and management, including WMC, the Restaurant Association and the AFL-CIO.

**Opposing Arguments** None.

**Important Amendments** AA 1 will make a technical change regarding an effective date in the bill.

**Governor's Public Position** None

**Vocal Legislative Support:**

**Legislator Support**

honadel	Support
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**Interest Groups**

<b>Interest Group</b>	<b>Support</b>
WMC	Support







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*amendment  
topic*

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Since February 2009, the Wisconsin Unemployment Reserve Fund has borrowed from the federal government in order to pay benefits. Over the same period of time, the 2009 Recovery Act provided relief to the states (including Wisconsin) in the form of interest forgiveness on the federal loan. Under the Recovery Act, no interest will accrue on the borrowed funds until after December 2010.

Federal law prohibits the State's use of Reserve Fund dollars to pay interest on federal loans used to pay benefits. The interest payments to the federal government must come from an alternative funding source. Section 108.19(1m) of the Wisconsin statutes authorizes the department to collect a special assessment from employers to pay the interest to the federal government. If there are unused amounts in the special assessment account after repaying federal loans, the current law provides that those funds may be used for unemployment insurance administration. This bill provides that any unused

funds in that account would revert to the Reserve Fund (specifically, the balancing account) and will be used to pay benefits.

### **Incorporate Requirement that Professional Employer Organizations (PEOs) Register with Department of Regulation & Licensing**

Chapter 461 was enacted in 2007 Wis. Act 189 to regulate the industry known as professional employer organizations ("PEOs"). One requirement of Chapter 461 is to require PEOs to register with the Department of Regulation and Licensing. The requirements for licensing a PEO include maintaining working capital of at least \$100,000, a bond or other commitment in the same amount, and to provide an audited financial statement. These requirements are intended to secure the payment of wages and other amounts including unemployment contributions that are payable by the PEO as an employer.

This bill amends §108.02(21e) to include in the definition of "professional employer organization" for unemployment insurance purposes the requirement that the PEO be registered with the Department of Regulation and Licensing. Registration as a "PEO," and the requirements associated with that registration, tend to show that such an entity is truly a responsible employer for purposes of the unemployment program. No fiscal effect is expected.

### **Establish Firm Deadline for Voluntary Contributions**

The bill amends Wis. Stat. §108.18(7) (d) to make the timely payment of voluntary contributions provision consistent with the timeliness provision for other employer reports and payments. The bill is geared for administrative efficiency; it eliminates the grace period and the need to maintain envelopes and proof of mailing. The volume of voluntary contributions is quite small; thus, no significant fiscal effect (interest earnings) is expected from this proposal.

### **Clarify that the Department is an "Adverse Party" in Employers' Circuit Court Actions to Review Tax Decisions**

The bill amends §108.10(4) to state that the department is an "adverse party" when an employer seeks review in the circuit court of a Labor and Industry Review Commission decision under §108.10(4). This will reduce confusion by employers as to which entity must be named as a party and reduce the risk of technical dismissal of their cases. This will also ensure that the department will be afforded notice of the lawsuit by the employer. (Otherwise, such lawsuits have in some cases proceeded against the Commission alone without notice to the Department.) The Department needs an opportunity to defend

its determination and affect the judicial development of the unemployment insurance law. This is merely a clarification of a purely procedural matter and will not have any fiscal effect.

### **Protect Claimants and Witnesses in Unemployment Insurance Cases from Retaliation**

This bill strengthens the protection of claimants and creates protection of witnesses in unemployment insurance cases from retaliation by employers for asserting their rights or appearing as a witness in an unemployment hearing. Under the current law, employers may be penalized for various actions, including attempts to "induce an employee to refrain from claiming or accepting benefits or to waive any other right" under the unemployment law. Current law also penalizes discrimination in rehiring, where rehiring is denied based on a claim for benefits. However, **an employer is not prohibited from discharging an employee or otherwise retaliating against an employee for claiming benefits.** **There are no protections for witnesses, some of whom are employees of the employer.** Some witnesses are subpoenaed to testify on the claimant's behalf and may not be voluntary participants. An employer's threats or retaliatory conduct may deter individuals, particularly employees, from willingly participating in unemployment audits, investigations and hearings. The department has received complaints from employees and witnesses who claim to have been discharged from their employment for claiming benefits or testifying. Section 108.24(3), Stats, makes it unlawful to threaten an employee with discharge but does not penalize the act of discharging an employee for claiming benefits. The absence of protection against discharge and other discriminatory or retaliatory action is difficult to reconcile with provisions of current criminal penalties for "attempting to induce" an employee to waive rights. The bill expands the protection of claimants and witnesses to prohibit retaliatory conduct by employers.

The bill increases the maximum fine for violations from \$500 to \$1,000. No significant fiscal effect is expected.





**AB 487 (REG Session)**

**SB 366 (Reg Session)**

**Nickname** Unemployment Insurance Law Changes

**Asm Author:** sinicki

**Sen Author:** coggs

**Bill Description** AB 487 and SB 366 are this session's Agreed-Upon Legislation from the Unemployment Insurance (U.I.) Advisory Council (staffed by the Dept. of Workforce Development).

As it does every biennial session, this legislation makes various changes to U.I. statutes that the UI Council deems necessary.

(PLEASE NOTE: A second UI bill, coming early next year from the UI Council, will deal directly with the solvency of the UI Fund itself.)

AB 487/SB 366 make the following changes to the overall UI statutes:

\* makes sure DWD reduces only one week's UI benefits for unemployed workers who receive lump-sum pay-outs such as pensions, profit-sharing and bonuses;

(Rep. Van Akkeren spurred the UI Council to make this change as a result of his constituent's difficulties with current rules);

\* in certain employment situations, for UI purposes, defines "full-time work" as 32 or more hours a week, and "part-time work" as less than 32 hours a week;

\* says excess revenues from employer assessments (for WI interest payments on federal UI loans) shall be placed in the UI Fund to help pay benefits;

\* makes it unlawful for employers to harass or threaten to fire workers for:

- 1) claiming UI benefits
- 2) responding to DWD inquiries
- 3) participating in the UI process.

\* allows DWD to intercept federal tax returns (per federal law) to recover fraudulently-obtained UI benefits (forecast to net \$1.3 million for the UI Fund);

\* sets a firm due date for voluntary contributions from employers to the UI Fund;

\* exempts certain tribal jobs from coverage;

\* clarifies penalties for workers if they conceal info pertinent to UI claims;

\* clarifies DWD's legal role in employers' appeals to Circuit Court from decisions by the Labor and Industry Review Commission (LIRC);

\*says that professional employer organizations (PEOs) must register with the Dept. of Reg. and Licensing in order to act on behalf of an employer in administering its UI obligations.

**Committee Action**

*Assembly:* Labor: passed unanimously.

*Senate:*

**Supporting Arguments**

The provisions of this bill have been debated, negotiated and finally agreed upon over a period of many months by the Unemployment Insurance Advisory Council, which is made up of equal numbers of representatives from labor and management, including WMC, the Restaurant Association and the AFL-CIO.

**Opposing Arguments**

None.

**Important Amendments**

AA 1 will make a technical change regarding an effective date in the bill.

**Governor's Public Position**

None

**Vocal Legislative Support:**

**Legislator Support**

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**Interest Groups**

Interest Group	Support
WMC	Support



**Committee Proposals**  
**Items in committee**  
**Committee on Labor, Elections and Urban Affairs**

- 05/04/2009 **Assembly Bill 142** **HEARING**  
relating to: requiring a license to engage in the practice of landscape architecture.
- By Representatives Shilling, Lothian, Clark, Parisi, Davis, Vruwink, Berceau, Benedict, Montgomery, A. Ott, Townsend, Turner, Molepske Jr., Mursau and Spanbauer; cosponsored by Senators Risser, Taylor and Lehman.
- 05/18/2009 ~~Assembly Bill 165~~ **wait**  
relating to: expanding the types of property that may be specially assessed by a neighborhood improvement district.
- By Representatives Richards, Zepnick, Colon, Grigsby, Berceau, Turner and Fields; cosponsored by Senators Plale, Carpenter and Taylor.
- 01/21/2009 ~~Senate Bill 11~~ **wait**  
relating to: a requirement that all employers in this state grant a paid leave of absence on Veterans Day to employees who are veterans.
- By Senators Hansen and Erpenbach; cosponsored by Representatives Turner, Sinicki, Berceau, Grigsby, Hilgenberg and Young.
- 04/14/2009 **Senate Bill 168** **HEARING**  
relating to: supervision of barber or cosmetologist apprentices.
- By Senators Taylor, Cogg and Grothman; cosponsored by Representatives Molepske Jr., Brooks, Turner, Young and A. Williams, by request of Department of Regulation and Licensing.
- 04/23/2009 **Senate Bill 172**  
relating to: limiting a city's and village's use of direct annexation and authorizing limited town challenges to an annexation.
- By Senators Holperin, A. Lasee and Schultz; cosponsored by Representatives Jorgensen, Clark, Danou, Hilgenberg, Bies, Brooks, Gunderson, Kerkman, LeMahieu, A. Ott, Petersen, Ripp, Roth, Townsend and Vos.
- 04/24/2009 ~~Senate Bill 179~~ **WAIT**  
relating to: deceptive election practices; voter intimidation, suppression, and protection; granting rule-making authority; and providing penalties.
- By Senators Cogg, Risser, Taylor and Hansen; cosponsored by Representatives Young, Grigsby, A. Williams, Richards, Black, Roys, Jorgensen, Pasch, Mason, Pope-Roberts and Toles.
- 05/04/2009 **Senate Bill 183** **HEARING**  
relating to: the provision of support services information to employees who are affected by a business closing or mass layoff and providing a penalty.

By Senators Kreitlow, Sullivan, Lehman, Miller and Taylor; cosponsored by Representatives Dexter, Bernard Schaber, Berceau, Davis, Hebl, Hintz, Jorgensen, A. Ott, Seidel, Sinicki, Toles, Vruwink, A. Williams and Zepnick.

05/07/2009

~~Senate Bill 199~~

relating to: requiring certain identification in order to vote at a polling place or obtain an absentee ballot, verification of the addresses of electors, absentee voting procedure in certain residential care apartment complexes and adult family homes, and the fee for an identification card issued by the Department of Transportation.

By Senators Leibham, Lazich, Carpenter, Darling, Grothman, Harsdorf, Hopper, Kanavas, Kedzie, A. Lasee, Olsen, Plale, Schultz and Sullivan; cosponsored by Representatives Stone, Vukmir, Bies, Brooks, Davis, Gundrum, Honadel, Huebsch, Kaufert, Kerkman, Kestell, Kramer, LeMahieu, Lothian, Meyer, Montgomery, Murtha, Nass, A. Ott, J. Ott, Petersen, Pridemore, Spanbauer, Strachota, Suder, Tauchen, Townsend, Van Roy, Vos, Zipperer and Petrowski.

07/21/2009

Senate Bill 240

EXEC?  
relating to: restoring the right to vote to certain persons barred from voting as a result of a felony conviction and changing the information required on voter registration forms.

By Senators Taylor, Miller, Coggs and Risser; cosponsored by Representatives Grigsby, Schneider, Parisi, Young, Pasch, Roys, Hilgenberg, Black, Pocan, Turner, Fields, Kessler, Berceau, A. Williams, Toles and Sinicki.

08/21/2009

Senate Bill 272

relating to: challenging the ballots of electors at polling places.

By Senators Coggs, Hansen and Kreitlow; cosponsored by Representatives Kessler, Berceau and Pasch.

08/26/2009

Senate Bill 275

relating to: employment discrimination based on credit history.

By Senators Taylor and Coggs; cosponsored by Representatives Hixson, Berceau, Grigsby, Toles, Hintz, Zepnick, Pope-Roberts, Schneider, Parisi, Pasch, A. Williams, Turner, Fields and Hilgenberg.

09/16/2009

Senate Bill 290

EXEC  
relating to: changes in the regulation of boxing contests, regulating mixed martial arts fighting contests, granting rule-making authority, making an appropriation, and providing a penalty.

By Senators Hansen, Lehman, Plale, Cowles, Lassa, Taylor and Sullivan; cosponsored by Representatives Colon, Pocan, Zepnick, Hintz, Zigmunt, Kleefisch, Vruwink, Richards, Cullen, Staskunas, Honadel and Seidel.

09/30/2009

Senate Bill 322

relating to: information concerning independent candidates for partisan office that appears on the ballot at elections.

By Senators Taylor, Lehman and Kedzie; cosponsored by Representatives Smith, Stone, Hilgenberg, A. Williams, Jorgensen and Vruwink.

04/15/2009

~~Senate Joint Resolution 30~~

Relating to: memorializing Congress to not enact the Employee Free Choice Act.

By Senators Grothman, Olsen, Darling, S. Fitzgerald and Schultz; cosponsored by Representatives Townsend, Strachota, Brooks, LeMahieu, Nass, Vukmir, Bies, Gottlieb and Vos.

05/26/2009

~~Senate Joint Resolution 36~~

relating to: secret ballot for employee representation elections (first consideration).

By Senators S. Fitzgerald, Kanavas, Darling, Schultz, Grothman and A. Lasee; cosponsored by Representatives Vukmir, Vos, Kleefisch, Petersen, Tauchen, M. Williams, Kramer, Brooks, J. Ott, Nygren, Meyer, Strachota, Pridemore, Lothian, Roth, Townsend, Bies, Newcomer, Suder, LeMahieu, Ballweg, Knodl, Gunderson and Stone.

10/02/2009

~~Senate Joint Resolution 49~~

relating to: eliminating the spring election (first consideration).

By Senators Carpenter, Holperin, Jauch and Taylor; cosponsored by Representatives Sherman, Vruwink and Soletski.

02/18/2009

~~Senate Resolution 5~~

Relating to: memorializing Congress to enact the Employee Free Choice Act.

By Senators Coggs, Decker, Hansen, Wirch, Lehman, Miller, Sullivan, Taylor, Vinehout, Lassa, Erpenbach and Kreitlow.



- In 2006 the legislature, at the advice of the Council, reduced the eligibility criteria for receiving UI benefits by redefining “full-time” work from 35 hours to 32 hours.
- This had the effect of broadening eligibility for UI. It reflects the reality that for many people in jobs of less than 40 hours per week are highly dependent on them.
- When the 2006 change was made, it created some inconsistencies in other parts of the law, which had different definitions of “full time work”.
- The bill deals with those inconsistencies by making the 32 hour definition the standard.
- One of the provisions deals with “disqualifications”. When it was drafted it applied to just a very limited set of circumstances. Its intent was to disqualify a disqualifying a small number of workers from eligibility. Those who worked between 35 and 32 hours.
- Currently, there are a small number of state employees on furlough who are eligible for a small benefit during their furlough week. Just over 700 state employees filed for benefits during the furlough weeks. Some of them were eligible for benefits on an ongoing basis because of a traditional layoff. Some sought a benefit for the furlough week only. Of those who filed for the furlough week only some were eligible.
- The cost to the fund is very small, since benefits are small...in the range of 10 to 50 dollars...and because the payment is for one week only.
- The provision of the bill was not aimed at state employees, but has the effect of making many of them ineligible for a furlough payment. The effect of the amendment is to delay the effective date of the provision until July 3, 2011, after the state furloughs have run their course.
- The amendment is consistent with the intent of the Council and DWD – the provision was not aimed at state employees.
- The amendment has the support of both the labor and employer members of the Council.