



CHRIS KAPENGA

WISCONSIN STATE SENATOR

December 9, 2015

Ms. Janell Knutson, Chairman
Unemployment Insurance Advisory Council
Department of Workforce Development
201 East Washington Avenue
P.O. Box 8942
Madison, WI 53708

Dear Chairman Knutson,

I am writing to inform you of two bills that I have authored during the 2015-16 legislative session in regards to unemployment insurance (UI).

The first is Senate Bill 401, which relates to criminal penalties for fraud in obtaining unemployment insurance benefits. During a recent review of the UI laws here in Wisconsin, we noted that the penalties for someone who intentionally defrauds the UI system are substantially lower than the theft statutes. This bill seeks to remedy this situation by ensuring similar penalties for similar behavior. The penalties are as follows:

- If the value of any benefits obtained does not exceed \$2,500, is subject to a fine not to exceed \$10,000 or imprisonment not to exceed 9 months, or both;
- If the value of any benefits obtained exceeds \$2,500 but does not exceed \$5,000, is guilty of a Class I felony;
- If the value of any benefits obtained exceeds \$5,000 but does not exceed \$10,000, is guilty of a Class H felony;
- If the value of any benefits obtained exceeds \$10,000, is guilty of a Class G felony.

As with other changes to the UI system, increased criminal penalties for UI fraud will strengthen program integrity and ensure the system functions for its intended purpose.

The second is Senate Bill 422, which clarifies that a franchisor is not an employer of a franchise or of an employee of a franchise. The franchise business model, which is responsible for over 177,000 Wisconsin jobs and \$13.5 billion in economic output, is being interpreted broadly, and I feel incorrectly, by the National Labor Relations Board, who issued a decision in August that could have a far-reaching impact on franchisors, franchisees, and the employees of franchisees. The board's decision in *Browning-Ferris Industries of California, Inc.* deals with the "joint employer" standard and binds separate business entities together regardless of the amount of interaction that they may have when it comes to things such as setting and policing work schedules, tracking employee performance, calculating the labor needs of franchisees, and more.

when it comes to things such as setting and policing work schedules, tracking employee performance, calculating the labor needs of franchisees, and more.

This legislation makes it clear that a franchisor is not the employer of a franchisee's employees for regulatory purposes. However, this bill does not limit the franchisor's ability to be the employer of a franchisee's employees if they so choose, but rather it protects the franchisor from being forced to qualify as an employer if the arrangement is not requested. The franchise model encourages entrepreneurship, which leads to further economic growth, and allows individuals to pursue the American dream.

I look forward to speaking with the Unemployment Insurance Advisory Council at the Thursday, December 17 meeting to discuss these important pieces of legislation with you and the rest of the board. Thank you in advance for your attention to these important issues.

I look forward to your input on strengthening UI laws here in Wisconsin.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Kapenga", followed by a horizontal line extending to the right.

Chris Kapenga
State Senator
33rd Senate District



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-3240/1
MED:cjs&amn

2015 SENATE BILL 401

December 3, 2015 - Introduced by Senators KAPENGA, DARLING, GUDEX, MARKLEIN, NASS, STROEBEL and WANGGAARD, cosponsored by Representatives KERKMAN, ALLEN, BRANDTJEN, HORLACHER, KLEEFISCH, KNODL, KREMER, T. LARSON, SKOWRONSKI, SPIROS, TITTL and QUINN. Referred to Committee on Labor and Government Reform.

1 AN ACT *to renumber and amend* 108.24 (1); and *to create* 108.24 (1) (b) and
2 (c) of the statutes; **relating to:** criminal penalties for fraud in obtaining
3 unemployment insurance benefits and providing a criminal penalty.

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 for 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: 1) if the value of any benefits obtained does not exceed \$2,500, is subject to 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, is guilty of a Class I felony; 3) if the value of any benefits obtained exceeds \$5,000 but does not exceed \$10,000, is guilty of a Class H felony; or 4) if the value of any benefits obtained exceeds \$10,000, is guilty of a Class G felony. The bill provides that multiple violations may be prosecuted as a single crime.

SENATE BILL 401

For further information see the *state and local* 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.** 108.24 (1) of the statutes is renumbered 108.24 (1) (a) and amended
2 to read:

3 108.24 (1) (a) Any person who knowingly makes a false statement or
4 representation to obtain any benefit payment under this chapter, either for himself
5 or herself or for any other person, ~~shall be fined not less than \$100 nor more than~~
6 ~~\$500 or imprisoned not more than 90 days, or both; and each such false statement~~
7 ~~or representation constitutes a separate offense. This may be penalized as provided~~
8 in par. (b). Any penalty imposed under par. (b) is in addition to any penalty imposed
9 under s. 108.04 (11) (bh).

10 **SECTION 2.** 108.24 (1) (b) and (c) of the statutes are created to read:

11 108.24 (1) (b) Whoever violates par. (a):

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

14 2. If the value of any benefits obtained exceeds \$2,500 but does not exceed
15 \$5,000, is guilty of a Class I felony.

16 3. If the value of any benefits obtained exceeds \$5,000 but does not exceed
17 \$10,000, is guilty of a Class H felony.

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

20 (c) 1. In any case involving more than one violation of par. (a), all such violations
21 may be prosecuted as a single crime.

To: Unemployment Insurance Advisory Council
From: Andy Rubsam
Cc: Janell Knutson
Date: December 17, 2015
Re: Increased criminal penalties for unemployment benefit fraud (2015 SB 401 / 2015 AB 533)

Currently, a person may be convicted of a crime if they knowingly make a false statement or representation to obtain benefits. The criminal penalty is a fine of \$100 to \$500 and/or up to 90 days in jail for each false statement. The Legislature has introduced proposed legislation to increase the criminal penalties for unemployment insurance benefit fraud. The proposal increases the criminal penalties for unemployment benefit fraud based on the amount of the benefits that the person wrongfully obtains as follows:

If the value of UI benefits obtained is:	Claimant is guilty of:	Maximum criminal penalty:
\$2,500 or less	Class A Misdemeanor ¹	Up to \$10,000 or imprisonment up to 9 months, or both
More than \$2,500, up to \$5,000	Class I Felony	Up to \$10,000 or imprisonment up to 3.5 years, or both
More than \$5,000, up to \$10,000	Class H Felony	Up to \$10,000 or imprisonment up to 6 years, or both
More than \$10,000	Class G Felony	Up to \$25,000 or imprisonment up to 10 years, or both

¹ See Wis. Stat. § 939.51(3)(a).