ANALYSIS OF PROPOSED UI LAW CHANGE
SUTA Dumping Penalty

1. Description of Proposed Change

A transferee of a business transfer is a mandatory successor to the unemployment insurance account of a transferor if: (1) the transferor and transferee are owned, managed, or controlled by the same interests; (2) the transferee continues the transferor’s business or employs the same employees; and (3) the same unemployment financing provisions apply to the transferor and transferee.1 Assessing mandatory successor status to a transferee dissuades employers from closing down a business with a high unemployment insurance tax rate and opening a “new” business to obtain a lower tax rate. This is known as “SUTA dumping.”

If a substantial purpose of a business transfer is to obtain a reduced contribution rate, the transferee will not receive the lower contribution rate.2

The federal SUTA Dumping Prevention Act3 requires states to enact “meaningful civil and criminal penalties” for knowingly violating or attempting to violate state laws regarding mandatory successor requirements. The Act also requires penalties for advising others to “dump” their unemployment insurance experience.

Current law penalizes for making false statements to the Department regarding a mandatory successor investigation and for advising others to do so.4 If the person making the false

---

1 Wis. Stat. § 108.16(8)(e).
2 Wis. Stat. §§ 108.16(8)(em) and (im).
3 42 U.S.C. § 503(k).
4 Wis. Stat. § 108.16(8)(m).
statement or the person who advised the person to make the false statement are not employers, the person forfeits up to $5,000.

The Department recommends a $10,000 civil penalty and a class A misdemeanor criminal penalty for knowingly violating or attempting to violate mandatory successor requirements in amounts that the Council chooses.

The Department also proposes to modify the $5,000 forfeiture for making false statements or advising someone to make false statements to be a penalty of $5,000 that will be deposited into the program integrity fund. This will make the treatment of the existing forfeiture provision consistent with the new proposed penalty.

2. Proposed Statutory Changes

Section 108.16 (8) (m) 2. of the statutes is amended to read:

2. If the person is not an employer, the person may be required to forfeit not more than the department shall assess the person a penalty of $5,000 in a determination under s. 108.10, which shall be deposited in the unemployment program integrity fund.

Section 108.16 (8) (mm) of the statutes is created to read:

1. Any person identified under pars. (em) or (im), or any person that knowingly advises another person to transfer a business asset or activity solely or primarily for the purpose of obtaining a lower contribution rate, including by willful evasion, nondisclosure, or misrepresentation, is subject to the following penalties:

   a. If the person is an employer, the department shall assess the employer a penalty in the amount of $10,000.

   b. If the person is not an employer, the department shall assess the person a penalty of $10,000 in a determination under s. 108.10.
c. The person is guilty of a class A misdemeanor.

2. Assessments under a. and b. shall be deposited in the unemployment program integrity fund.

3. For the purposes of this paragraph and par. (m), “knowingly” means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the statute violated.

Section 108.16 (8) (o) of the statutes is amended to read:

Paragraphs (e) 1., (em), (h), (im), and (m), and (mm) shall be interpreted and applied, insofar as possible, to meet the minimum requirements of any guidance issued by or regulations promulgated by the U.S. department of labor.

Section 108.18 (1) (a) of the statutes is amended to read:

Unless a penalty applies under s. 108.16 (8) (m), each employer shall pay contributions to the fund for each calendar year at whatever rate on the employer’s payroll for that year duly applies to the employer pursuant to under this section.

Section 108.19 (1s) (a) 7. of the statutes is created to read:

Assessments under ss. 108.16 (8) (m) 2. and (mm).

3. Effects of Proposed Change

a. Policy: The proposed is expected to deter employers from attempting to “dump” their unemployment insurance experience rating and delinquent taxes.

b. Administrative: This proposal will require training of Department staff.

c. Fiscal: A fiscal estimate is attached based on 2017 data.

4. State and Federal Issues

There are no known federal conformity issues with this proposal. All changes to the unemployment insurance law should be sent to the U.S. Department of Labor for conformity
review. The SUTA Dumping Prevention Act requires states to enact “meaningful civil and criminal penalties” for knowingly violating or attempting to violate state laws regarding mandatory successor requirements. The Act also requires penalties for advising others to “dump” their unemployment insurance experience.

5. **Proposed Effective/Applicability Date**

   This proposal would be effective for transfers of business occurring on or after the effective date of the law change.
FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Prepared by: Technical Services Section

Trust Fund Impact:

This law change proposal would save the Trust Fund up to $7,000 annually in increased taxes, which is considered a positive but negligible impact on the Trust Fund.

IT and Administrative Impact:

The one-time IT impact would be approximately 250 hours or $22,000. The one-time administrative impact would be approximately 30% of the IT impact or $6,600. The total one-time impact is estimated at $28,600.

Any penalties would flow to the UI Program Integrity Fund.

Summary of Proposal:

This law change proposal would create meaningful civil and criminal penalties for knowingly violating or attempting to violate mandatory successor requirements. The penalty will be deposited into the UI Program Integrity Fund. Criminal penalties will be created. This law change proposal would also modify the forfeiture for making false statements or advising someone to make false statements to be a penalty of $5,000 that will be deposited into the UI Program Integrity Fund.

Trust Fund Methodology:

Based on 2017 data, the Trust Fund impact would be up to $7,000 annually in increased tax revenue, if SUTA dumping is eliminated based on incentivized compliance.

IT and Administrative Impact Methodology:

Based on subject matter expert assessment, the one-time IT impact would be approximately 250 hours or $22,000. This estimate is based on changes required to SUITES. The one-time administrative impact would be approximately 30% of the IT impact or $6,600. The total one-time impact is estimated at $28,600.

Any penalties would flow to the UI Program Integrity Fund. Based on 2017 data, approximately 7 employers during that timeframe could have been subject to the civil penalty, none of which included false statements that would be subject to the $5,000 penalty. This penalty is intended to enforce tax compliance.