
Senate Committee on Labor and the Government Reform

Testimony on Senate Bill 684

Joe Handrick, Division Administrator, Unemployment Insurance

Chairperson Nass and members of the Senate Committee:

I am Joe Handrick, the Division Administrator for Unemployment Insurance (Division) and with me today is Janell Knutson, Director of the Bureau of Legal Affairs who serves as the Chair of the Unemployment Insurance Advisory Council (Council). On behalf of the Council I would like to thank you for hearing the Council's agreed upon bill.

The Unemployment Insurance Advisory Council was created by the Legislature in 1932 to advise the Department and Legislature on policy matters concerning the development and administration of unemployment insurance law. This process has acted as a vehicle for labor and management representatives to work together on ensuring stability in the system while also recommending positive changes to ensure the health of the system and the Unemployment Trust Fund.

The legislation before you today is the result of the Council's work over the last year. The language in Senate Bill 684 was developed by the Council based on input and recommendations from numerous sources including employer representatives, labor representatives, the Legislature, and the Department of Workforce Development. The Council also received input from the public during a statewide public hearing held in November of 2014, through correspondence and through a dedicated email box.

In the months that followed, the Council met regularly with staff from the Division and unanimously approved the language of the agreed bill at their January 19th meeting.

I will defer talking about the specifics of the bill to the two representatives from Management and Labor, but Janell and I would be happy to answer any technical questions you may have. Thank you again for your time and for the opportunity to testify today.



WISCONSIN MANUFACTURERS & COMMERCE

TO: Senate Committee on Labor and Government Reform
FROM: Scott Manley, Senior Vice President of Government Relations
DATE: February 10, 2016
RE: Support for Senate Bill 684

Thank you Chairman Nass and members of the Committee for the opportunity to express our support for Senate Bill 684 (SB 684), the agreed bill between labor and management members of the Unemployment Insurance Advisory Council (UIAC).

WMC is the state's largest general business association, representing nearly 4,000 members spanning every sector of our economy. Our mission is to make Wisconsin the most competitive state in the nation to do business, and our members have a strong interest in fair and transparent employment regulations, including unemployment insurance (UI) laws.

We strongly support SB 684 and urge you to pass this legislation without amendment. We believe the legislation will improve the ability of the Department of Workforce Development (DWD) to more efficiently administer the UI program, and to ensure the integrity of the program is maintained by greater enforcement against employees and employers who misuse the system. We also believe this legislation addresses matters of law that have been misinterpreted by the Labor and Industry Review Commission (LIRC) by further clarifying the Legislature's intent, and thereby prevent LIRC from continuing to thwart the will of lawmakers.

WMC believes fundamental fairness dictates that employees and employers be allowed a clear understanding of UI eligibility requirements through transparent standards that apply to benefit eligibility determinations. As such, we strongly support provisions in the bill that clearly define "suitable work" and the elements of "good cause" that allow employees to refuse suitable work while continuing to be eligible for UI benefits. Bringing clarity to these definitions will provide greater certainty and predictability to all stakeholders in the UI system.

We would also like to call your attention to the provision in the bill that disqualifies a former employee from receiving UI benefits while they are simultaneously receiving replacement income from Worker's Compensation through permanent total disability benefits. WMC supports this policy change to ensure that employees are not collecting replacement income from two programs at the same time.

Finally, I would like to address an issue raised by a LIRC Commissioner with respect to changes to the appeals process. Those concerns were brought to the attention of the UIAC during our deliberations on this legislation. After receiving legal analysis from DWD staff attorneys, we concluded that the concerns brought by LIRC did not have merit. We fundamentally disagree with LIRC's legal reasoning, and their unsupported contention that employees and employers risk default judgments by not seeking party status to circuit court appeals of LIRC decisions.

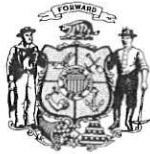
Thank you for your consideration of our support for SB 684, and please feel free to contact me if you have any question.

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Founded in 1911, WMC is Wisconsin's chamber of commerce and largest business trade association.

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State of Wisconsin
Labor and Industry Review Commission

February 4, 2016

**Comments to the Senate Committee on Labor and Government Reform
Senate Bill 684; Sections 54 and 55**

William Jordahl, Commissioner
Labor and Industry Review Commission

Thank you, Chairman Nass and Members of the Senate Committee on Labor and Government Reform, for allowing me to speak regarding Senate Bill 684. I am Bill Jordahl, one of three commissioners at the Labor and Industry Review Commission, or LIRC. With me is one of our senior attorneys, Jeff Shampo, who is here to assist in answering any questions you may have regarding our comments on the bill. Jeff is one of the staff attorneys who represents LIRC in UI court proceedings.

Let me state up front that the commission respects the work of the UI Advisory Council and appreciates the time and effort that goes into negotiating a Council bill such as Senate Bill 684. LIRC makes no comment and takes no position on any of the provisions of the bill except for Sections 54 and 55, which significantly change the way LIRC UI decisions are appealed to court, and have the potential to increase LIRC's workload and budget. These proposed changes deal with the UI appeals process in court, and do not affect UI policy issues.

Background

LIRC is a separate, independent review agency that takes appeals of decisions made by Administrative Law Judges in Unemployment Insurance disputes. Appointed by the Governor, the Commissioners serve as a publicly accountable check and balance upon the 28 ALJs who make thousands of decisions a year affecting employers and employees across Wisconsin on matters affecting unemployment eligibility. LIRC does not make UI law. It rather seeks to maintain uniformity and consistency in the application of the law, following statutes and decades of precedents. If a party (employer or employee) disagrees with a LIRC decision, that party can appeal it to circuit court. Also, if the Department of Workforce Development, or DWD, disagrees with a commission decision, *it* can appeal LIRC's decision to circuit court as well, even if they were not a party before LIRC. When a case is appealed, LIRC represents itself in court. Courts typically view our opinions with a high degree of deference, given our long history with deciding the law and our familiarity with that law. Our attorneys have represented the commission in court for decades and have significant expertise in this area.

LIRC Was Not Consulted by DWD

The first concern I want to raise is the way in which Sections 54 and 55 were developed. Despite LIRC's sole responsibility to defend its decisions in court, and its considerable expertise in this area, LIRC was not consulted *at all* by DWD when it proceeded to develop the proposals that became Sections 54 and 55 of SB 684. This is not the normal way of proceeding with UI changes that would directly affect LIRC. Indeed, until relatively recently LIRC has always been consulted when changes would directly affect it. And in an area like this, where LIRC has sole expertise and knowledge, it obviously makes no sense *not* to involve us. We only became aware of the proposed changes after DWD had presented them to the Advisory Council, and by the time we sent a letter to the Advisory Council identifying our concerns, the Council had already approved the proposal, unaware that we had not been consulted.

Second, our attorneys have identified a number of legal concerns with Sections 54 and 55, and these concerns raise serious implications for employers and employees. Employers may now be required to file answers and appear in court in order to have a say in where a case is brought or to participate in the litigation. They now rely on LIRC to defend its decision, but if the changes go into effect and as a result they become required to file an answer, they will need to hire an attorney to do so. And with the proposed changes, both employers and employees will be caught in a trap, having their cases dismissed if they fail to name DWD as a defendant in every case. These are just a few examples of the unnecessary complications to litigation that will affect both employers and employees.

Unnecessary Expense

The third issue I want to alert you to is the concern that these changes in Sections 54 and 55 will create duplicative attorney costs in all of these cases. If DWD decides it has an actual disagreement with a LIRC opinion, it is already able under current law to file an appeal; it is highly unusual for DWD to seek to become a *defendant* in every case – especially since LIRC's opinions already are received with such high deference by the trial courts. LIRC is aware that UI funding is tight, and now does not seem the time for DWD to expand unnecessary court and attorney time and costs.

LIRC Provides Stability and Integrity to the UI Program

As I've noted, the Legislature created LIRC (and its historic predecessors) as a higher review authority over DWD interpretations of the UI law. As a result LIRC provides a fair and impartial review of cases, and gives consistency, stability, and an added measure of public accountability to the UI program. LIRC is assigned the task of ensuring uniformity and fairness in the state's UI laws. The changes proposed in Sections 54 and 55, and the manner in which they were created, thwart the system that the Legislature has carefully enacted to preserve the

integrity of the UI program and serve to undermine the consistency of legal interpretations.

Summary

In sum, the provisions in Sections 54 and 55 improperly impede the commission's review authority; they waste the state's resources; and it's unnecessary to rush to such drastic changes without thorough and collaborative review.

I would urge the committee to delete Sections 54 and 55 of SB 684. I would commit to the Committee, Mr. Chair, to bring LIRC and DWD together to see what, if any, changes are truly needed to the court appeals process, and perhaps bring something back to the Legislature and your committee in the future. A delay like this does not seem unreasonable since the changes are not sponsored by either the employer or employee members of the Advisory Council, since LIRC was not consulted at all to begin with, and since there is no compelling urgency to accomplishing the statutory changes. We have made numerous attempts to get DWD to withdraw these provisions, but they have been unwilling to do so, and that is why I am here today at this stage in the process.

If you have any questions, I hope that Jeff or I can answer them. If not, we will promptly respond with any further information you need. If you think of a question after the meeting and need to get in touch with me, I will give you, Mr. Chair, my contact information. I would be happy to discuss this with any of you further.

Thank you.

over-payments assessed

	2011	2012	2013	2014
Total UI paid	\$2,094,416,632	\$1,612,616,543	\$1,270,761,600	\$732,327,104
Fraud over-payments assessed	\$41,607,913	\$31,505,810	\$24,796,194	\$20,455,759
Non-fraud over-payments assessed	\$46,396,840	\$31,924,842	\$26,736,198	\$16,891,298
Total over-payments assessed	\$88,004,753	\$63,430,652	\$51,532,392	\$37,347,057
Ratio of fraud over-payment to total UI paid	1.99%	1.95%	1.95%	2.79%
Ratio of fraud over-payment to total over-payments	47.28%	49.67%	48.12%	54.77%
Ratio of non-fraud over-payments to total over-payments	52.72%	50.33%	51.88%	45.23%

From Detection and Prevention of Fraud in the Unemployment Insurance Program: Annual Report to the Unemployment Insurance Advisory Council for the Calendar Year 2014 (15 March 2015) at 8.

concealment collected

	2012	2013	2014	YTD 10/31/2015
Over-payment collections (fraud + non-fraud)	\$48,740,491.27	\$47,826,601.13	\$39,761,920.41	\$30,992,197.97
Forfeitures (old law)	\$8,449,159.97	\$7,898,496.82	\$2,915,467.20	\$1,386,185.37
Benefit concealment income (new law) (15%)	\$0.00	\$23,471.73	\$991,705.06	\$1,753,517.72
Penalty-Program Integrity (25%)				\$132,331.13
Totals	\$57,189,651.24	\$55,748,569.68	\$43,669,092.67	\$34,264,232.19

Est. 2015 overpayment amount included as concealment \$11,690,118.13
 Est. 2015 non-concealment over-payments \$19,302,079.84
 Est. percentage of concealment to non-concealment over-payment collections 60.6%

From financial reports prepared for the UI Advisory Council