

SENATE BILL 219 (LRB -3063)

An Act to repeal 108.04 (8) (b), 108.04 (13) (cm), 108.05 (3) (b) and 108.09 (4r); to renumber 108.065 (1) and 108.065 (1m) and (2); to renumber and amend 108.05 (3) (c); to amend 20.445 (1) (gd), 20.445 (1) (gg), 108.04 (2) (a) 3. (intro.), 108.04 (11) (a) and (b), 108.04 (11) (bm), 108.05 (3) (a), 108.09 (2) (b), 108.09 (3) (a) 1., 108.09 (8) (b), 108.16 (6) (f), 108.16 (6) (L), 108.16 (6) (m), 108.16 (6m) (g), 108.16 (8) (h), 108.16 (10), 108.19 (title), 108.19 (1m), 108.22 (1m), 108.22 (8) (b) 1. d., 108.225 (1) (b), 108.225 (16) (am) 1. (intro.), 108.225 (17) and 108.24 (1); to repeal and recreate 108.04 (11) (be); and to create 20.445 (1) (u), 20.445 (1) (v), 25.17 (1) (xe), 25.17 (1) (xf), 108.04 (2) (bm), 108.04 (11) (bh), 108.05 (3) (c) 1. to 3., 108.05 (3) (dm), 108.065 (1e), 108.065 (3), 108.19 (1q), 108.19 (1s) and 108.22 (8) (bh) of the statutes; relating to: various changes in the unemployment insurance law, providing a penalty, and making appropriations. (FE)

2011

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|--------|----|--|-----|
| 10-06. | S. | Introduced by Senator Wanggaard ; cosponsored by Representative Ballweg . | |
| 10-06. | S. | Read first time and referred to committee on Labor, Public Safety, and Urban Affairs | 485 |
| 10-13. | S. | Public hearing held. | |
| 10-21. | S. | Fiscal estimate received. | |
| 10-24. | S. | Executive action taken. | |
| 10-24. | S. | Report passage recommended by committee on Labor, Public Safety, and Urban Affairs, Ayes 5, Noes 0 ... | 527 |
| 10-24. | S. | Available for scheduling. | |
| 10-24. | S. | Referred to joint committee on Finance by committee on Senate Organization, pursuant to Senate Rule 41 (1)(e), Ayes 5, Noes 0 | 526 |
| 10-24. | S. | Withdrawn from joint committee on Finance and made Available for Scheduling by committee on Senate Organization, pursuant to Senate Rule 41 (1)(e), Ayes 5, Noes 0 | 526 |
| 10-24. | S. | Placed on calendar 10-25-2011 pursuant to Senate Rule 18(1) | 526 |
| 10-25. | S. | Read a second time | 534 |
| 10-25. | S. | Ordered to a third reading | 534 |
| 10-25. | S. | Rules suspended | 534 |
| 10-25. | S. | Read a third time | 534 |
| 10-25. | S. | Referred to committee on Senate Organization, Ayes 17, Noes 16 | 534 |
| 10-25. | S. | Refused to suspend rules to withdraw from committee on Senate Organization and take up, Ayes 16, Noes 17 | 536 |
| 11-01. | S. | Placed on calendar 11-2-2011 pursuant to Senate Rule 18(1) | 562 |
| 11-02. | S. | Read a second time | 571 |
| 11-02. | S. | Ordered to a third reading | 571 |
| 11-02. | S. | Rules suspended | 571 |
| 11-02. | S. | Read a third time and passed , Ayes 29, Noes 3 | 571 |
| 11-02. | S. | Ordered immediately messaged | 571 |
| 11-07. | A. | Received from Senate | 676 |
| 12-20. | A. | Read first time and referred to joint committee on Finance | 723 |

2012

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|--------|----|--|-----|
| 03-06. | A. | Withdrawn from joint committee on Finance and referred to committee on Rules pursuant to Assembly Rule 42 (3)(c) | 879 |
| 03-06. | A. | Made a special order of business at 11:53 A.M. on 3-13-2012 pursuant to Assembly Resolution 22 | 896 |
| 03-15. | A. | Read a second time. | |
| 03-15. | A. | Assembly amendment 1 offered by Representative Ballweg (LRB a2961) . | |
| 03-15. | A. | Assembly amendment 1 adopted. | |
| 03-15. | A. | Ordered to a third reading. | |
| 03-15. | A. | Rules suspended. | |
| 03-15. | A. | Read a third time and concurred in as amended, Ayes 80, Noes 12. | |
| 03-15. | A. | Ordered immediately messaged. | |
| 03-14. | S. | Received from Assembly amended and concurred in as amended, Assembly amendment 1 adopted. | |
| 03-14. | S. | Available for scheduling. | |
| 03-14. | S. | Rules suspended and taken up. | |
| 03-14. | S. | Assembly amendment 1 concurred in . | |
| 03-14. | S. | Action ordered immediately messaged. | |

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**2011
ENROLLED BILL**

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ADOPTED DOCUMENTS:

Orig Engr SubAmdt 11-3063/1

Amendments to above (if none, write "NONE"): AA1 - a2961/1

Corrections - show date (if none, write "NONE"): ~~None~~ ^{WLJ} ccc to

AA1-a2961 in enrolling 3/23/12

Topic Rel

3-16-12 *J. Smith*
Date Enrolling Drafter



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-3063/1

JTK:cjs:ph

2011 SENATE BILL 219

October 6, 2011 - Introduced by Senator WANGGAARD, cosponsored by Representative BALLWEG. Referred to Committee on Labor, Public Safety, and Urban Affairs.

1 **AN ACT to repeal** 108.04 (8) (b), 108.04 (13) (cm), 108.05 (3) (b) and 108.09 (4r);
2 **to renumber** 108.065 (1) and 108.065 (1m) and (2); **to renumber and amend**
3 108.05 (3) (c); **to amend** 20.445 (1) (gd), 20.445 (1) (gg), 108.04 (2) (a) 3. (intro.),
4 108.04 (11) (a) and (b), 108.04 (11) (bm), 108.05 (3) (a), 108.09 (2) (b), 108.09 (3)
5 (a) 1., 108.09 (8) (b), 108.16 (6) (f), 108.16 (6) (L), 108.16 (6) (m), 108.16 (6m) (g),
6 108.16 (8) (h), 108.16 (10), 108.19 (title), 108.19 (1m), 108.22 (1m), 108.22 (8)
7 (b) 1. d., 108.225 (1) (b), 108.225 (16) (am) 1. (intro.), 108.225 (17) and 108.24
8 (1); **to repeal and recreate** 108.04 (11) (be); and **to create** 20.445 (1) (u),
9 20.445 (1) (v), 25.17 (1) (xe), 25.17 (1) (xf), 108.04 (2) (bm), 108.04 (11) (bh),
10 108.05 (3) (c) 1. to 3., 108.05 (3) (dm), 108.065 (1e), 108.065 (3), 108.19 (1q),
11 108.19 (1s) and 108.22 (8) (bh) of the statutes; **relating to:** various changes in

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1 the unemployment insurance law, providing a penalty, and making
2 appropriations.

Analysis by the Legislative Reference Bureau

This bill makes various changes in the unemployment insurance (UI) law. Significant provisions include:

BENEFIT CHANGES***Concealment and program integrity***

Currently, if a claimant conceals any material fact relating to his or her eligibility for benefits or conceals any wages earned in or paid or payable for a given week, the claimant is subject to graduated monetary penalties that increase in severity with the number of determinations of concealment by the claimant. In addition, if a claimant conceals any wages for a given week, the claimant is ineligible to receive any benefits for that week.

This bill provides instead that a claimant who conceals any material fact relating to his or her eligibility for benefits or conceals any wages is subject to a graduated forfeiture of benefit amounts equivalent to specified weeks of benefit eligibility that increases in severity with the number of determinations of concealment by the claimant. In addition, a claimant who is found guilty of concealment is subject to a penalty equal to 15 percent of the benefit payments paid to the claimant.

The bill also creates a segregated fund called the unemployment program integrity fund for deposit of all penalties collected under the above described penalty provision created by the bill. Under the bill, moneys in the fund are to be used for the payment of costs associated with program integrity (fraud detection and prevention) activities.

Partial unemployment

Currently, with certain exceptions, if an employee earns wages or certain other amounts treated as wages in a given week, the first \$30 of the wages or other amounts are disregarded and the claimant's weekly benefit payment is reduced by 67 percent of the remaining amount earned, but no employee is eligible to receive benefits for any week if the benefits would be less than \$5, and any wages that the employee would have earned in any week for work performed for his or her employer had the claimant accepted available work from that employer are treated as wages earned for that week.

This bill provides that an employee is ineligible to receive any benefits for a week if the employee receives from one or more employers 1) wages earned for work performed in that week of more than \$500; or 2) sick pay, holiday pay, vacation pay, or termination pay which, by itself or in combination with wages earned for work performed in that week, is equivalent to more than \$500.

SENATE BILL 219***Eligibility of claimants who engage in full-time work***

Currently, if a claimant receives wages or certain other amounts treated as wages from an employer who paid at least 80 percent of the claimant's wages in his or her base period (period preceding a claim during which benefit rights accrue) for any week, the claimant is not eligible to receive benefits for that week if the claimant works for at least 32 hours for that employer in that week and receives pay at not less than the rate of pay that the claimant received during the calendar quarter in his or her base period in which the claimant received his or her highest wages, or the claimant receives certain other payments from that employer for that week that alone or in combination with any paid wages equal at least the pay the claimant would have received for 32 hours per week.

This bill substitutes a rule which provides that a claimant is ineligible to receive any benefits for a week in which one or more of the following applies to the claimant for 32 or more hours in that week: 1) The claimant performs work; 2) The claimant receives certain amounts treated as wages for that week; or 3) The claimant receives holiday pay, vacation pay, termination pay, or sick pay that is treated as wages under current law.

Failure or refusal to take a test for illegal drugs

Currently, unless federal law otherwise provides, with certain exceptions, if an employee fails, without good cause, to accept suitable work when offered, the employee is ineligible to receive benefits until four weeks have elapsed since the end of the week in which the failure occurs and the employee earns wages, or certain other amounts treated as wages, equal to at least four times the employee's weekly benefit rate in employment covered by the unemployment insurance law of any state or the federal government. An employee's failure to accept an offer of work includes either a) the employee's refusal without good cause to take a test for illegal drugs conducted in a manner approved by the Department of Workforce Development (DWD) that is given on behalf of the employer as a condition of employment; or b) the employer's withdrawal of or failure to extend an offer of work due to a positive test result on such a test.

This bill deletes an employee's refusal to take a test for illegal drugs or a withdrawal or failure to extend an offer of employment due to a positive test result as an element of failure to accept suitable work.

Ineligibility for failure to perform work searches

Currently, a claimant must conduct a reasonable search for suitable work during each week that the claimant receives benefits unless DWD waives the work search requirement by general rule under stated conditions. This bill provides that a claimant is ineligible to receive benefits for any week for which there is a determination that the claimant failed to conduct a reasonable search for suitable work and DWD has not waived the work search requirement. If benefits have been paid to a claimant for such a week, the bill permits DWD to recover the benefits in the same manner as other overpayments are recovered.

SENATE BILL 219**TAX CHANGES*****Contribution liability of successor employers***

Currently, when a business is transferred from one employer to another employer, DWD must treat the transferee as the successor employer to the transferor if the the transferee and the transferor are owned, controlled, or managed by the same interests. DWD redetermines the contribution (tax) rate of a successor employer as of the first quarter beginning after the effective date of the transfer. This bill provides instead that DWD shall redetermine the contribution rate of a successor employer as of the beginning of the first calendar year beginning after the effective date of the transfer.

OTHER CHANGES***Determining who is the employer of certain employees***

Currently, when an employee has some relationship with more than one employer in the course of performing a job, DWD must determines which employer is considered to be the employee's employer for purposes of the UI law. Except in certain limited circumstances, current statutes do not address the issue of how employment status and employer responsibility for a particular employee is determined. This bill provides that, except with respect to providers of home health care and personal care services for medical assistance recipients, DWD must consider nine factors concerning an employer's relationship to an employee and three other factors concerning the beneficiary of an employee's services, maintenance of a staff of employees to perform the employee's services, and responsibility for employee compliance with regulatory laws in determining who is the employer of a particular employee. The bill also provides that notwithstanding these factors, a provider of home health care and personal care services for medical assistance recipients may elect to be the employer of employees providing those services, if the provider notifies in writing the recipient of the services of its election and the provider is treated by the federal Internal Revenue Service as an employer for purposes of compliance with federal unemployment tax laws.

Treatment of interest assessments and assessment-related revenue

Currently, when there are insufficient moneys in the unemployment reserve fund to make full payment of benefit claims, DWD is authorized to borrow moneys from the federal government sufficient to make full payment of claims. DWD then levies an annual assessment against employers that engage employees in employment covered by the UI law sufficient to pay the interest due on the federal advances to the fund. Any interest earned on the assessments pending transfer to the federal government is credited to the state general fund, and any amount remaining after an interest payment is made is retained for the purpose of making future interest payments or for certain other authorized uses relating to the UI program. This bill creates a segregated fund called the unemployment interest payment fund for deposit of all unencumbered moneys collected on interest assessments and all moneys to be collected on assessments previously made. Under the bill, any interest earned on the assessments pending transfer to the federal government and any interest or penalties collected from employers who are

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delinquent in paying their assessments is credited to this segregated fund. The bill provides that DWD shall use the moneys in the fund to make interest payments due to the federal government on advances made to the unemployment reserve fund. The bill directs DWD to use excess moneys in the fund to pay interest due in future years, or if DWD determines that additional interest obligations are unlikely, the bill directs DWD to use the excess moneys to pay benefits. The bill also makes delinquent assessments subject to a simplified collection procedure that is currently used by DWD for collection of other UI liabilities.

Recovery of UI liabilities resulting from incorrect earnings reports

Currently, DWD may utilize procedures available under state and federal laws to set off adjudicated UI liabilities against refunds or other payments that may be payable to a liable individual under state law or to offset adjudicated UI liabilities for fraudulent practices against refunds that may be payable to a liable individual under federal tax laws. This bill permits DWD to offset adjudicated UI liabilities for failure to report earnings in the same manner.

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.** 20.445 (1) (gd) of the statutes is amended to read:

2 20.445 (1) (gd) *Unemployment interest and penalty payments.* All moneys
3 received as interest and penalties collected under ss. 108.04 (11) (c) and (cm) and (13)
4 (c) and 108.22, ~~assessments under s. 108.19 (1m)~~ except interest and penalties
5 deposited under s. 108.19 (1q), and forfeitures under s. 103.05 (5), all moneys not
6 appropriated under par. (gg) and all moneys transferred to this appropriation
7 account from the appropriation account under par. (gh) for the payment of benefits
8 specified in s. 108.07 (5) and 1987 Wisconsin Act 38, section 132 (1) (c), for the
9 payment of interest to employers under s. 108.17 (3m), for research relating to the
10 condition of the unemployment reserve fund under s. 108.14 (6), for administration
11 of the unemployment insurance program and federal or state unemployment
12 insurance programs authorized by the governor under s. 16.54, for satisfaction of any

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SECTION 1

1 federal audit exception concerning a payment from the unemployment reserve fund
2 or any federal aid disallowance concerning the unemployment insurance program,
3 for assistance to the department of justice in the enforcement of ch. 108, for the
4 payment of interest due on advances from the federal unemployment account under
5 title XII of the social security act to the unemployment reserve fund, and for
6 payments made to the unemployment reserve fund to obtain a lower interest rate or
7 deferral of interest payments on these advances, except as otherwise provided in s.
8 108.20.

9 SECTION 2. 20.445 (1) (gg) of the statutes is amended to read:

10 20.445 (1) (gg) *Unemployment information technology systems; interest and*
11 *penalties.* From the moneys received as interest and penalties collected under ss.
12 108.04 (11) (c) and (cm) and (13) (c) and 108.22 except interest and penalties
13 deposited under s. 108.19 (1q), as a continuing appropriation, the amounts in the
14 schedule for the purpose specified in s. 108.19 (1e) (d).

15 SECTION 3. 20.445 (1) (u) of the statutes is created to read:

16 20.445 (1) (u) *Unemployment interest payments and transfers.* From the
17 unemployment interest payment fund, a sum sufficient to make the payments and
18 transfers authorized under s. 108.19 (1m).

19 SECTION 4. 20.445 (1) (v) of the statutes is created to read:

20 20.445 (1) (v) *Unemployment program integrity.* From the unemployment
21 program integrity fund, a sum sufficient to make the payments authorized under s.

22 108.19 (1s).

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23 SECTION 5. 25.17 (1) (xe) of the statutes is created to read:

24 25.17 (1) (xe) Unemployment interest payment fund (s. 108.19 (1q));

25 SECTION 6. 25.17 (1) (xf) of the statutes is created to read:

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25.17 (1) (xf) Unemployment program integrity fund (s. 108.19 (1s));

SECTION 7. 108.04 (2) (a) 3. (intro.) of the statutes is amended to read:

108.04 (2) (a) 3. (intro.) The individual conducts a reasonable search for suitable work during that week, unless the search requirement is waived under par. (b). The search for suitable work must include 2 actions that constitute a reasonable search as prescribed by rule of the department. This subdivision does not apply to an individual if the department determines that the individual is currently laid off from employment with an employer but there is a reasonable expectation of reemployment of the individual by that employer. In determining whether the individual has a reasonable expectation of reemployment by an employer, the department shall request the employer to verify the individual's employment status and shall also consider other factors, including:

SECTION 8. 108.04 (2) (bm) of the statutes is created to read:

108.04 (2) (bm) A claimant is ineligible to receive benefits for any week for which there is a determination that the claimant failed to conduct a reasonable search for suitable work and the department has not waived the search requirement under par. (b). If the department has paid benefits to a claimant for any such week, the department may recover the overpayment under s. 108.22 (8).

SECTION 9. 108.04 (8) (b) of the statutes, as created by 2011 Wisconsin Act 32, is repealed.

SECTION 10. 108.04 (11) (a) and (b) of the statutes are amended to read:

108.04 (11) (a) If a claimant, in filing his or her application for benefits or claim for any week, conceals any material fact relating to his or her eligibility for benefits, the claimant ~~shall forfeit benefits in accordance with~~ is ineligible for benefits as provided in par. (be).

25

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SECTION 10

1 (b) If a claimant, in filing a claim for any week, conceals any of his or her wages
 2 earned in or paid or payable for that week, the claimant ~~shall forfeit benefits in~~
 3 ~~accordance with par. (be).~~ In addition, the claimant shall be denied benefits for that
 4 week is ineligible for benefits as provided in par. (be).

5 SECTION 11. 108.04 (11) (be) of the statutes is repealed and recreated to read:

6 108.04 (11) (be) A claimant is ineligible for benefits for acts of concealment
 7 described in pars. (a) and (b) as follows:

8 1. For each single act of concealment occurring before the date of the first
 9 determination of concealment under par. (a) or (b), the claimant is ineligible for
 10 benefits for which he or she would otherwise be eligible in an amount equivalent to
 11 2 times the claimant's weekly benefit rate under s. 108.05 (1) for the week in which
 12 the claim is made.

13 2. For each single act of concealment occurring after the date of the first
 14 determination of concealment under par. (a) or (b), the claimant is ineligible for
 15 benefits for which he or she would otherwise be eligible in an amount equivalent to
 16 4 times the claimant's weekly benefit rate under s. 108.05 (1) for the week in which
 17 the claim is made.

18 3. For each single act of concealment occurring after the date of a 2nd or
 19 subsequent determination of concealment under par. (a) or (b), the claimant is
 20 ineligible for benefits for which he or she would otherwise be eligible in an amount
 21 equivalent to 8 times the claimant's weekly benefit rate under s. 108.05 (1) for the
 22 week in which the claim is made.

23

SECTION 12. 108.04 (11) (bh) of the statutes is created to read:

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24 108.04 (11) (bh) In addition to ineligibility for benefits resulting from
 25 concealment as provided in par. (be), the department shall assess a penalty against

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1 the claimant in an amount equal to 15 percent of the benefit payments paid to the
2 claimant as a result of one or more acts of concealment described in pars. (a) and (b).

3 SECTION 13. 108.04 (11) (bm) of the statutes is amended to read:

4 108.04 (11) (bm) ~~The forfeiture established~~ The department shall apply any
5 ineligibility under par. (be) ~~may be applied~~ against benefits and weeks of eligibility
6 for which the claimant would otherwise become payable to the claimant for weeks
7 ~~of unemployment occurring~~ be eligible after the week of concealment and within 6
8 years after the date of an initial determination issued under s. 108.09 finding that
9 a concealment occurred. The claimant shall not receive waiting period credit under
10 s. 108.04 (3) for the period of ineligibility applied under par. (be). If no benefit rate
11 applies to the week for which the claim is made, the department shall use the
12 claimant's benefit rate for the claimant's next benefit year beginning after the week
13 of concealment to determine the ~~forfeiture amount.~~ ~~If the benefits forfeited would~~
14 ~~otherwise be chargeable to an employer's account, the department shall charge the~~
15 ~~amount of benefits forfeited to the employer's account and shall credit the fund's~~
16 ~~balancing account for that amount~~ of the benefit reduction.

17 SECTION 14. 108.04 (13) (cm) of the statutes, as created by 2011 Wisconsin Act
18 32, is repealed.

19 SECTION 15. 108.05 (3) (a) of the statutes is amended to read:

20 108.05 (3) (a) Except as provided in pars. (b), (c), ~~and (d),~~ and (dm) if an eligible
21 employee earns wages in a given week, the first \$30 of the wages shall be disregarded
22 and the employee's applicable weekly benefit payment shall be reduced by 67% of the
23 remaining amount, except that no such employee is eligible for benefits if the
24 employee's benefit payment would be less than \$5 for any week. For purposes of this
25 paragraph, "wages" includes any salary reduction amounts earned that are not

SENATE BILL 219**SECTION 15**

1 wages and that are deducted from the salary of a claimant by an employer pursuant
2 to a salary reduction agreement under a cafeteria plan, within the meaning of 26
3 USC 125, and any amount that a claimant would have earned in available work
4 under s. 108.04 (1) (a) which is treated as wages under s. 108.04 (1) (bm), but excludes
5 any amount that a claimant earns for services performed as a volunteer fire fighter,
6 volunteer emergency medical technician, or volunteer first responder. In applying
7 this paragraph, the department shall disregard discrepancies of less than \$2
8 between wages reported by employees and employers.

9 **SECTION 16.** 108.05 (3) (b) of the statutes is repealed.

10 **SECTION 17.** 108.05 (3) (c) of the statutes is renumbered 108.05 (3) (c) (intro.)
11 and amended to read:

12 108.05 (3) (c) (intro.) A claimant is ineligible to receive any benefits for a week
13 in which ~~the claimant works a total of 40 or more hours for one or more employing~~
14 ~~units.~~ one or more of the following applies to the claimant for 32 or more hours in that
15 week:

16 **SECTION 18.** 108.05 (3) (c) 1. to 3. of the statutes are created to read:

17 108.05 (3) (c) 1. The claimant performs works; or

18 2. The claimant has wages ascribed under s. 108.04 (1) (bm); or

19 3. The claimant receives holiday pay, vacation pay, termination pay, or sick pay
20 under circumstances satisfying the requirements of subs. (4), (5), or (5m) for
21 treatment as wages in that week.

22 **SECTION 19.** 108.05 (3) (dm) of the statutes is created to read:

23 108.05 (3) (dm) A claimant is ineligible to receive any benefits for a week if the
24 claimant receives from one or more employers: 1. Wages earned for work performed
25 in that week of more than \$500; or

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1 2. Sick pay, holiday pay, vacation pay, or termination pay which, by itself or in
2 combination with wages earned for work performed in that week, is equivalent to
3 more than \$500.

4 **SECTION 20.** 108.065 (1) of the statutes is renumbered 108.065 (2) (a) 1.

5 **SECTION 21.** 108.065 (1e) of the statutes is created to read:

6 108.065 (1e) Except as provided in subs. (2) and (3), if there is more than one
7 employing unit that has a relationship to an employee, the department shall
8 determine which of the employing units is the employer of the employee by
9 considering the following:

10 (a) An employing unit's right by contract and in fact to:

11 1. Determine a prospective employee's qualifications to perform the services in
12 question and to hire or discharge the employee.

13 2. Determine the details of the employee's pay including the amount of, method
14 of, and frequency of changes in that pay.

15 3. Train the employee and exercise direction and control over the performance
16 of services by the employee and when and how they are to be performed.

17 4. Impose discipline upon the employee for rule or policy infractions or
18 unsatisfactory performance.

19 5. Remove the employee from one job or assign the employee to a different job.

20 6. Require oral or written reports from the employee.

21 7. Evaluate the quantity and quality of the services provided by the employee.

22 8. Assign a substitute employee to perform the services of an employee if the
23 employee is unavailable for work or is terminated from work.

24 9. Assign alternative work to the employee if the employee is removed from a
25 particular job.

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SECTION 21

1 (b) Which employing unit:

2 1. Benefits directly or indirectly from the services performed by the employee.

3 2. Maintains a pool of workers who are available to perform the services in
4 question.

5 3. Is responsible for employee compliance with applicable regulatory laws and
6 for enforcement of such compliance.

7 SECTION 22. 108.065 (1m) and (2) of the statutes are renumbered 108.065 (2)
8 (b) and (c).

9 SECTION 23. 108.065 (3) of the statutes is created to read:

10 108.065 (3) A provider of home health care and personal care services for
11 medical assistance recipients under ch. 49 may elect to be the employer of one or more
12 employees providing those services. As a condition of eligibility for election to be the
13 employer of one or more employees providing those services, the provider shall notify
14 in writing the recipient of any such services of its election, for purposes of the
15 unemployment insurance law, to be the employer of any worker providing such
16 services to the recipient, and must be treated as the employer by the federal internal
17 revenue service for purposes of federal unemployment taxes on the worker's services.

AAI-4 18 SECTION 24. 108.09 (2) (b) of the statutes is amended to read:

19 108.09 (2) (b) The department shall issue determinations whenever necessary
20 to resolve any matters ~~which that~~ may bar, suspend, terminate or otherwise affect
21 the employee's eligibility for benefits or to resolve any liability for penalties under
22 s. 108.04 (11) (bh).

23 SECTION 25. 108.09 (3) (a) 1. of the statutes is amended to read:

24 108.09 (3) (a) 1. To hear and decide disputed claims or to resolve liabilities
25 under sub. (2) (b), the department shall establish appeal tribunals. Except as

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1 authorized in this paragraph, each tribunal shall consist of an individual who is a
2 permanent employee of the department.

3 SECTION 26. 108.09 (4r) of the statutes, as created by 2011 Wisconsin Act 32,
4 is repealed.

5 SECTION 27. 108.09 (8) (b) of the statutes is amended to read:

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6 108.09 (8) (b) Any party in a dispute concerning benefit eligibility or liability
7 for overpayment of benefits or a penalty imposed under s. 108.04 (11) (bh), or in any
8 administrative proceeding under this chapter concerning such a dispute, may be
9 represented by counsel or another agent; but no such counsel or agent may together
10 charge or receive from an employee for all such representation in connection with
11 such a dispute a fee which, in the aggregate, exceeds 10% of the maximum benefits
12 at issue unless the department has first approved a specified higher fee. This
13 paragraph does not apply to any fee charged for representation before a court of law.

14 SECTION 28. 108.16 (6) (f) of the statutes is amended to read:

15 108.16 (6) (f) Any amount available for such crediting under s. ~~108.04 (11) (be)~~,
16 108.14 (8n) (e) or 108.141.

17 SECTION 29. 108.16 (6) (L) of the statutes is amended to read:

18 108.16 (6) (L) The amount of any overpayments that are recovered by the
19 department by setoff pursuant to s. 71.93 or the amount of any overpayments
20 resulting from fraud or failure to report earnings that are recovered by the
21 department by offset pursuant to section 6402 (f) of the federal Internal Revenue
22 Code in effect on June 1, 2009, ~~or a similar federal program.~~

23 SECTION 30. 108.16 (6) (m) of the statutes is amended to read:

24 108.16 (6) (m) Any amounts ~~collected from assessments levied under s. 108.19~~
25 ~~(1m) exceeding the amounts needed to pay interest due on advances from the federal~~

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SECTION 30

1 ~~unemployment account under title XII of the Social Security Act (42 USC 1321 to~~
2 ~~1324) transferred to the balancing account from the unemployment interest~~
3 ~~payment fund.~~

4 SECTION 31. 108.16 (6m) (g) of the statutes is amended to read:

5 108.16 (6m) (g) Any payments of fees or expenses assessed by the U.S.
6 secretary of the treasury under section 6402 (f) of the federal Internal Revenue Code
7 in effect on June 1, 2009, ~~or a similar federal program.~~

8 SECTION 32. 108.16 (8) (h) of the statutes is amended to read:

9 108.16 (8) (h) The department shall ~~determine or~~ redetermine the contribution
10 rate ~~for the~~ of a successor effective that is subject to this chapter immediately prior
11 to the effective date of a transfer as of the applicable computation date effective for
12 contributions payable beginning of in the first quarter calendar year following the
13 date of the transfer of the business. The department shall thereafter redetermine
14 the contribution rate whenever required by s. 108.18. For the purposes of s. 108.18,
15 the department shall determine the experience under this chapter of the successor's
16 account by allocating to the successor's account for each period in question the
17 respective proportions of the transferor's payroll and benefits which the department
18 determines to be properly assignable to the business transferred.

19 SECTION 33. 108.16 (10) of the statutes is amended to read:

20 108.16 (10) All money withdrawn from the fund shall be used solely in the
21 payment of benefits, exclusive of expenses of administration, and for refunds of sums
22 erroneously paid into the fund, for refund of a positive net balance in an employer's
23 reimbursement account under ss. 108.15 (4) and 108.151 (5) on request by the
24 employer, for expenditures made pursuant to s. 108.161 and consistently with the
25 federal limitations applicable to s. 108.161, and for payment of fees and expenses for

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1 collection of overpayments resulting from fraud or failure to report earnings that are
2 assessed by the U.S. secretary of the treasury under section 6402 (f) of the federal
3 Internal Revenue Code in effect on June 1, 2009, ~~or a similar federal program.~~

4 **SECTION 34.** 108.19 (title) of the statutes is amended to read:

5 **108.19** (title) **Contributions to the administrative account and the**
6 **unemployment interest payment fund.**

7 **SECTION 35.** 108.19 (1m) of the statutes is amended to read:

8 108.19 (1m) Each employer subject to this chapter as of the date a rate is
9 established under this subsection shall pay an assessment to the ~~administrative~~
10 ~~account~~ unemployment interest payment fund at a rate established by the
11 department sufficient to pay interest due on advances from the federal
12 unemployment account under title XII of the social security act (42 USC 1321 to
13 1324). The rate established by the department for employers who finance benefits
14 under s. 108.15 (2), 108.151 (2), or 108.152 (1) shall be 75% of the rate established
15 for other employers. The amount of any employer's assessment shall be the product
16 of the rate established for that employer multiplied by the employer's payroll of the
17 previous calendar year as taken from quarterly employment and wage reports filed
18 by the employer under s. 108.205 (1) or, in the absence of the filing of such reports,
19 estimates made by the department. Each assessment made under this subsection
20 is due on the 30th day commencing after the date on which notice of the assessment
21 is mailed by the department. If the amounts collected under this subsection are in
22 excess of the amounts needed to pay interest due, the department shall use any
23 excess shall be credited to pay interest owed in subsequent years on advances from
24 the federal unemployment account. If the department determines that additional

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SECTION 35

1 interest obligations are unlikely, the department shall transfer the excess to the
2 balancing account of the fund.

3 SECTION 36. 108.19 (1q) of the statutes is created to read:

4 108.19 (1q) There is created a separate, nonlapsible trust fund designated as
5 the unemployment interest payment fund consisting of all amounts collected under
6 sub. (1m) and all interest and penalties on those amounts collected under s. 108.22.

7 SECTION 37. 108.19 (1s) of the statutes is created to read:

8 108.19 (1s) (a) There is created a separate, nonlapsible trust fund designated
9 as the unemployment program integrity fund consisting of all amounts collected
10 under s. 108.04 (11) (bh).

11 (b) The department shall use the moneys in the unemployment program
12 integrity fund for payment of costs associated with program integrity activities.

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13 SECTION 38. 108.22 (1m) of the statutes is amended to read:

14 108.22 (1m) If an employer owes any contributions, reimbursements or
15 assessments under s. 108.15 ~~or~~, 108.151, or 108.19 (1m), interest, fees, or payments
16 for forfeitures or other penalties to the department under this chapter and fails to
17 pay the amount owed, the department has a perfected lien upon the employer's right,
18 title, and interest in all of its real and personal property located in this state in the
19 amount finally determined to be owed, plus costs. Except where creation of a lien is
20 barred or stayed by bankruptcy or other insolvency law, the lien is effective when the
21 department issues a determination of the amount owed under s. 108.10 (1) and shall
22 continue until the amount owed, plus costs and interest to the date of payment, is
23 paid. If a lien is initially barred or stayed by bankruptcy or other insolvency law, it
24 shall become effective immediately upon expiration or removal of such bar or stay.
25 The perfected lien does not give the department priority over lienholders,

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1 mortgagees, purchasers for value, judgment creditors, and pledges whose interests
2 have been recorded before the department's lien is recorded.

3 SECTION 39. 108.22 (8) (b) 1. d. of the statutes is amended to read:

4 108.22 (8) (b) 1. d. If the overpayment results from fraud or failure to report
5 earnings, offsetting the amount of the overpayment against a federal tax refund as
6 provided in section 6402 (f) of the federal Internal Revenue Code in effect on June
7 1, 2009, ~~or a similar federal program.~~

8 SECTION 40. 108.22 (8) (bh) of the statutes is created to read:

9 108.22 (8) (bh) To recover any penalty under s. 108.04 (11) (bh), the department
10 may recoup the amount of the penalty by filing a warrant against the liable
11 individual in the same manner as is provided in this section for collecting delinquent
12 payments from employers.

13 SECTION 41. 108.225 (1) (b) of the statutes is amended to read:

14 108.225 (1) (b) "Debt" means a delinquent contribution or repayment of a
15 benefit overpayment, ~~an a delinquent~~ assessment under s. 108.04 (11) (cm) or 108.19
16 (1m), a liability incurred under s. 108.04 (11) (bh), or any liability of a 3rd party for
17 failure to surrender to the department property or rights to property subject to levy
18 after proceedings under sub. (4) (b) and s. 108.10 to determine that liability.

19 SECTION 42. 108.225 (16) (am) 1. (intro.) of the statutes is amended to read:

20 108.225 (16) (am) 1. (intro.) In the case of benefit overpayments or a penalty
21 imposed under s. 108.04 (11) (bh), an individual debtor is entitled to an exemption
22 from levy of 80% of the debtor's disposable earnings, except that:

23 SECTION 43. 108.225 (17) of the statutes is amended to read:

24 108.225 (17) EXEMPTIONS. The first \$1,000 of an account in a depository
25 institution is exempt from any levy to recover a benefit overpayment or penalty

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1-9

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SECTION 43

1 imposed under s. 108.04 (11) (bh). No other property is exempt from levy except as
2 provided in sub. (16).

3 **SECTION 44.** 108.24 (1) of the statutes is amended to read:

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

10 **SECTION 45. Fiscal changes.**

11 (1) There is transferred from the appropriation under section 20.445 (1) (gd)
12 of the statutes, as affected by this act, to the unemployment interest payment fund,
13 as created by this act, all unencumbered moneys paid to the department of workforce
14 development under section 108.19 (1m) of the statutes for assessments made prior
15 to the effective date of this subsection and all interest and penalties on those moneys
16 collected under section 108.22 of the statutes.

17 (2) Notwithstanding section 20.445 (1) (gd) of the statutes, as affected by this
18 act, there shall be deposited into the unemployment interest payment fund, as
19 created by this act, all moneys payable to the department of workforce development
20 under section 108.19 (1m) of the statutes for assessments made prior to the effective
21 date of this subsection and all interest and penalties on those moneys collected under
22 section 108.22 of the statutes.

23 **SECTION 46. Initial applicability.**

24 (1) The treatment of sections 20.445 (1) (v), 25.17 (1) (xf), 108.04 (11) (a), (b),
25 (be), (bh), and (bm), 108.09 (2) (b), (3) (a) 1., and (8) (b), 108.16 (6) (f), 108.19 (1s),

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1 108.22 (8) (bh), 108.225 (1) (b) (with respect to liabilities incurred under section
2 108.04 (11) (bh) of the statutes), (16) (am) 1. (intro.), and (17) and 108.24 (1) of the
3 statutes first applies with respect to weeks of employment beginning with the first
4 Sunday that follows the 180th day beginning after the effective date of this
5 subsection.

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6 (2) The treatment of section 108.04 (2) (a) 3. (intro.) and (bm) of the statutes
7 first applies with respect to determinations issued under section 108.09 of the
8 statutes in the first week beginning after the effective date of this subsection or, in
9 relation to determinations that are appealed, to decisions issued under section
10 108.09 of the statutes in the first week beginning after the effective date of this
11 subsection.

12 (3) The treatment of sections 108.04 (8) (b) and (13) (cm) and 108.09 (4r) of the
13 statutes first applies with respect to weeks of unemployment beginning after the
14 effective date of this subsection.

15 (4) The treatment of section 108.05 (3) (a) (with respect to the reference to
16 section 108.05 (3) (b) of the statutes) and (b) of the statutes, the renumbering and
17 amendment of section 108.05 (3) (c) of the statutes, and the creation of section 108.05
18 (3) (c) 1. to 3. of the statutes first apply with respect to weeks of unemployment
19 beginning on the first Sunday that follows the 180th day beginning after the effective
20 date of this subsection.

21 (5) The treatment of section 108.05 (3) (a) (with respect to the reference to
22 section 108.05 (3) (dm) of the statutes) and (dm) of the statutes first applies with
23 respect to weeks of unemployment beginning on the first Sunday that follows the
24 180th day beginning after the effective date of this subsection.

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SECTION 46

1 (6) The treatment of section 108.065 (1), (1e), (1m), (2), and (3) of the statutes
2 first applies with respect to services performed after December 31, 2011.

3 (7) The treatment of sections 108.16 (6) (L), (6m) (g), and (10) and 108.22 (8)
4 (b) 1. d. of the statutes first applies with respect to satisfaction of liabilities
5 outstanding on the effective date of this subsection.

6 (8) The treatment of section 108.16 (8) (h) of the statutes first applies with
7 respect to transfers of business occurring after December 31, 2011.

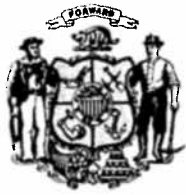
8 (9) The treatment of sections 108.22 (1m) and 108.225 (1) (b) (with respect to
9 assessments under section 108.19 (1m) of the statutes) of the statutes first applies
10 with respect to liabilities on assessments under section 108.19 (1m) of the statutes
11 made on and after January 1, 2011.

SECTION 47. Effective date.

(1) This act takes effect on the first Sunday after publication.

(END)

INS. AA1-13



State of Wisconsin
2011-2012 LEGISLATURE

CORRECTIONS IN:

**ASSEMBLY AMENDMENT 1,
TO 2011 SENATE BILL 219**

Prepared by the Legislative Reference Bureau
(March 23, 2012)

In enrolling, the following correction was made:

1. Page 2, line 21: before "line" insert "on".

(END)



State of Wisconsin
2011 - 2012 LEGISLATURE



LRBa2961/1

JTK:cjs:rs

ASSEMBLY AMENDMENT,
TO 2011 SENATE BILL 219

1 At the locations indicated, amend the bill as follows:

2 1. Page 6, line 22: after that line insert:

3 SECTION 4m. 20.445 (1) (v) of the statutes, as created by 2011 Wisconsin Act
4 (this act), is repealed." AAI-1

5 2. Page 7, line 1: after that line insert:

6 SECTION 6m. 25.17 (1) (xf) of the statutes, as created by 2011 Wisconsin Act....
7 (this act), is repealed." AAI-2

8 3. Page 8, line 23: delete the material beginning with that line and ending with
9 page 9, line 2.

10 4. Page 12, line 18: delete the material beginning with that line and ending
11 with page 13, line 2.

12 5. Page 13, line 5: delete lines 5 to 13.

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1 **6.** Page 16, line 12: after that line insert:

2 "SECTION 37m. 108.19 (1s) of the statutes, as created by 2011 Wisconsin Act ...
3 (this act), is repealed."

4 **7.** Page 17, line 8: delete lines 8 to 12.

AA1-8

5 **8.** Page 17, line 16: delete "a liability incurred under s. 108.04 (11) (bh)".

6 **9.** Page 17, line 19: delete the material beginning with that line and ending
7 with page 18, line 9.

8 **10.** Page 18, line 24: delete the material beginning with that line and ending
9 with page 19, line 2, and substitute:

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10 "(1) The treatment of sections 20.445 (1) (v) (by SECTION 4), 25.17 (1) (xf) (by
11 SECTION 6), 108.04 (11) (a), (b), (be), and (bm), 108.16 (6) (f), and 108.19 (1s) (by
12 SECTION 37) of the".

13 **11.** Page 19, line 5: after that line insert:

AA1-11

14 "(1g) The creation of sections 20.445 (1) (v), 25.17 (1) (xf), and 108.19 (1s) of the
15 statutes first applies with respect to overpayments established by the department
16 of workforce development after the effective date of this subsection.

17 (1r) The repeal of sections 20.445 (1) (v), 25.17 (1) (xf), and 108.19 (1s) of the
18 statutes first applies with respect to overpayments established by the department
19 of workforce development after October 21, 2013".

20 **12.** Page 20, line 8: delete the material beginning with "(with" and ending
21 with "statutes)" line 9.

22 **13.** Page 20, line 12: delete lines 12 and 13 and substitute:

AAI-13

1
2
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SECTION 47m. Effective dates. This act takes effect on the first Sunday after publication, except as follows:

(1) The repeal of sections 20.445 (1) (v), 25.17 (1) (xf), and 108.19 (1s) of the statutes takes effect on January 1, 2014.

(END)