

SECTION 19. Chapter 335 of the statutes is repealed.

SECTION 20. 351.66 of the statutes is repealed.

Approved May 21, 1943.

No. 219, S.]

[Published May 22, 1943.

CHAPTER 180.

AN ACT to repeal 256.02 (2) (a), (b) and (c) of the statutes, relating to justices and judges.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

256.02 (2) (a), (b) and (c) of the statutes are repealed.

Approved May 21, 1943.

No. 232, S.]

[Published May 22, 1943.

CHAPTER 181.

AN ACT to repeal 108.02 (3m) and 108.04 (5) (b) and (d); to renumber 108.04 (5) (g), (h) and (i) to be 108.04 (5) (d), (g) and (b), respectively; to amend 108.01 (introductory paragraph), 108.02 (5) (a), (11) and (19), 108.04 (1) (a), 108.05 (1) (schedule, from line 14 on) and (1m) (a), 108.06 (4) (a) and (c), 108.07 (1) and 108.18 (4); to repeal and recreate 108.02 (3) and (4) (c) and 108.03 (2); to create 20.573 (3), 108.04 (9), 108.06 (4) (f), 108.14 (8n), (9m), (14) and (15), 108.16 (6) (h) and (13), 108.18 (7), (8) and (9) and 108.19 (3) and (4) of the statutes, constituting recommendations made to the 1943 legislature by the state advisory committee, pursuant to 108.14 (5m), relating to unemployment compensation, and making appropriations.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 20.573 (3) of the statutes is created to read:

20.573 (3) So much of the moneys specified in subsection (2) as the industrial commission may from time to time direct shall be invested in United States bonds, and the interest received

thereon and the proceeds therefrom shall be included in said moneys.

SECTION 2. 108.01 (introductory paragraph) is amended to read:

108.01 (intr. paragraph) *Without intending that this section shall supersede, alter or modify the specific provisions hereinafter contained in this chapter,* the public policy of this state is declared as follows:

SECTION 3. 108.02 (3) and (4) (c) of the statutes are repealed and recreated to read:

108.02 (3) Employee. (a) "Employee" means any individual who is or has been performing services for an employer, in an employment, whether or not he is paid directly by such employer; except as provided in paragraph (b). If a contractor performing services for an employer is an employe under this subsection and not an employer subject to the contribution provisions of this chapter, a person employed by the contractor in fulfilment of his contract with the employer shall be considered the employe of the employer.

(b) Paragraph (a) shall not apply to an individual performing services for an employer if the employer satisfies the commission as to both the following conditions:

1. That such individual has been and will continue to be free from the employer's control or direction over the performance of his services both under his contract and in fact; and

2. That such services have been performed in an independently established trade, business or profession in which the individual is customarily engaged.

(c) This subsection shall be used in determining an employer's liability under the contribution provisions of this chapter, and shall likewise be used in determining the status of claimants under the benefit provisions of this chapter.

(4) (c) Any other employer shall become an "employer" subject hereto in case the "wages" paid or payable by him for "employment" exceed \$10,000 in any calendar quarter (starting after June 1943), as of the beginning of that calendar year in which such quarter occurs.

SECTION 4. 108.02 (3m) of the statutes is repealed.

SECTION 5. 108.02 (5) (a), (11) and (19) of the statutes are amended to read:

108.02 (5) (a) "Employment", subject to the other provisions of this subsection means any service, including service in interstate commerce, performed by an individual * * * for pay.

(11) "Reserve percentage" shall for contribution purposes refer to the status of an employer's account, as determined finally by the commissioner as of the close of the most recent "computation date". In calculating an employer's net reserve as of any 1943 or later computation date, his account shall be charged with benefits * * * for weeks ending on or before said date, if paid by the close of the month which follows said date, and shall be credited with contributions, on * * * his payroll through said date, if paid by the close of said month, consistently with section 108.16. The employer's "reserve percentage" shall mean his net reserve as of the computation date, stated as a percentage of the highest one of the following amounts: (a) his "payroll" for the year ending on such date, or (b) his average annual payroll for the 3 years ending on such date, or (c) 60 per cent of his largest payroll for any one of those 3 years.

(19) An employe's "waiting period" means any period of time (for which no *total or part-total* benefits are payable) required of the employe pursuant to * * * section 108.04 (3), as a condition precedent to his receipt of *such* benefits.

SECTION 6. 108.03 (2) of the statutes, subject to the timing specified in section 23 of this act, is repealed and recreated to read:

108.03 (2) (a) The benefit liability of each employer's account shall begin to accrue under section 108.06 in the first week completed on or after the first day of that calendar year within which his contributions first began to accrue under this chapter.

(b) Benefits shall become payable from each employer's account beginning with the first week completed 12 months after the first day of that calendar year within which his contributions first began to accrue under this chapter.

SECTION 7. 108.04 (1) (a) of the statutes is amended, subject to the timing specified in section 24 of this act, to read:

108.04 (1) (a) An employe shall be ineligible for benefits * * * for any week in which he is with due notice called on by * * * his *current* employer to report for work actually available within such week and is unavailable for work or physically unable to do his work.

SECTION 8. Subject to the timing specified in section 24 of this act, 108.04 (5) (b) and (d) of the statutes are repealed.

SECTION 9. 108.04 (5) (g), (h) and (i) of the statutes are renumbered respectively 108.04 (5) (d), (g) and (b).

SECTION 10. 108.04 (9) of the statutes is created to read:

108.04 (9) If the commission finds that the official wartime manpower policies of the United States are or may be materially hampered, in any clearly definable class of cases, by any application of subsection (4) (b) or (6), so as to interfere with the effective wartime use of civilian manpower in Wisconsin, the commission may by general rule, after public hearing, modify or suspend such application accordingly.

SECTION 11. 108.05 (1) (schedule, from line 14 on) and (1m) (a) of the statutes are amended, subject to the timing specified in sections 24 and 25 of this act, to read:

108.05 (1) (schedule, from line 14 on)

Line	Average Weekly Wage Class	Weekly Benefit Rate
14.	27.01 to * * *	29.50 15
15.	* * * 29.51 to * * *	32.00 16
16.	* * * 32.01 to 34.50	17
17.	34.51 to 37.00	18
18.	37.01 to 40.00	19
19.	40.01 or more	20

(1m) (a) An eligible employe whose weekly benefit rate from a given employer is less than * * * \$8 shall (despite the provisions of subsection (1) * * * be paid benefits from that employer's account for his weeks of total or part-total unemployment as if his weekly benefit rate with respect to such employer were * * * \$8 or (in case that minimum weekly payment will not permit the charging of full credit weeks) the next higher minimum weekly payment which will permit such charging, as specified by commission rule. The minimum payment thus applicable shall be used in determining whether the employe is part-totally unemployed as to such employer. The benefits thus paid shall be charged against the employe's credit weeks under section 108.06 as if they had been paid at the weekly benefit rate applicable under subsection (1) * * *.

SECTION 12. 108.06 (4) (a) and (c) of the statutes are amended to read:

108.06 (4) (a) As used in this subsection, the term "military service" means active service in the armed forces of the United States; and the term "trainee" means an individual who has entered or been inducted into military service *either* for a period of less than 3 years *or for the duration of the war emergency*, whose entry or induction occurred between September 1940 and * * * *the close of hostilities*, and whose military service has terminated.

(c) As to any trainee who claims benefits for unemployment following his military service, his benefit rights shall be determined *upon receipt of his claim* under the provisions of this chapter which are then applicable to benefit claimants generally, *except as hereinafter provided in this subsection*.

SECTION 13. 108.06 (4) (f) of the statutes is created to read:
108.06 (4) (f) In determining what benefits are payable under this subsection to a trainee from an employer's account, the commission's deputy shall apply the schedule of weekly benefit rates which is then in effect under section 108.05 (1), to the trainee's most recent "average weekly wage" with that employer. If the trainee's most recent credit week with the employer ended before December 27, 1942, the deputy shall use, as such "average weekly wage", the highest amount which could yield the weekly benefit rate which formerly applied to the trainee as to such credit week with the employer. Where such former rate was the maximum rate then applicable, the trainee's new weekly benefit rate shall be \$2 more than such maximum rate, in view of the higher maximum rate applicable when the trainee's benefit rights are determined.

SECTION 14. 108.07 (1) of the statutes is amended, subject to the timing specified in section 24 of this act, to read:

108.07 (1) (a) In case an employe is totally or part-totally unemployed and eligible (and has uncharged credit weeks) with respect to 2 or more employers in the same week, and has claimed benefits, he shall, for the purposes of this subsection and * * * section 108.04 (8), be deemed to have claimed benefits from the account of each such employer; but his benefits for such unemployment in such week shall be paid only from the account of that one of such employers by whom he was most recently employed, except * * * *as provided in paragraph (b)*.

(b) *After an employe has become eligible to receive benefits from a given employer's account under a given determination*

for a week of total or part-total unemployment, his benefits for subsequent weeks of such unemployment shall be paid from such account unless and until:

- 1. All of his credit weeks with that employer have been fully charged under section 108.06; or*
- 2. The duration of that employer's liability has expired, under section 108.06 (3); or*
- 3. 10 or more weeks have elapsed since the close of the last week for which total or part-total unemployment benefits were or are payable to the employe.*

SECTION 15. 108.14 (8n), (9m), (14) and (15) of the statutes are created to read:

108.14 (8n) (a) The commission may enter into reciprocal arrangements, with any agency administering an unemployment compensation law, to provide more equitable benefit coverage for individuals whose recent work has been covered by the unemployment compensation laws of two or more jurisdictions.

(b) Such arrangements may provide, as to any individual whose employment has been covered by this chapter and by the unemployment compensation law of one or more other participating jurisdictions, for transfer by the commission to another agency of relevant records or information, and the acceptance and use thereof (in combination with similar data from other jurisdictions) by such other agency, as a basis for determining and paying benefits under the law administered by such other agency. Reciprocally, such arrangements may provide for similar acceptance, combination and use by the commission of data received from other jurisdictions to determine and pay benefits under this chapter.

(c) Such arrangements shall provide for mutual acceptance by the participating agencies of data thus supplied, including reasonable estimates of relevant data not otherwise available in the transferring agency.

(d) Such arrangements shall provide for full recognition, when transferring or using any such data, of the provisions of section 108.04 which cancel benefit credits under certain circumstances.

(e) Such arrangements shall specify an equitable basis for reimbursing the unemployment fund of each participating jurisdiction for any benefits paid therefrom on the basis of covered

employment in (and data supplied by the agency of) another such jurisdiction, out of the unemployment fund of such other jurisdiction.

(f) To facilitate the application of such arrangements to this chapter, the commission may make reasonable estimates to convert into weekly benefit rates and credit weeks the data received by it under such arrangements, and may determine and pay benefits accordingly.

(g) The commission, in each case where it transfers data to another agency under this subsection, shall determine the potential liability for benefits of each employer involved in such data, as if the individual had qualified for and would receive such potential benefits under this chapter. So much of the benefits paid to the individual by another agency as are reimbursable from the fund shall be charged to the accounts of such employers, in the same order as if paid under this chapter; but no employer's account shall be thus charged beyond the potential liability determined under this paragraph. Any reimbursable amount remaining after such charging shall be charged directly to the "balancing account" under section 108.16.

(9m) The commission may afford reasonable cooperation with any government agency charged with war-effort or post-war planning responsibilities or with the administration of any system of unemployment allowances or unemployment assistance or of any other program designed to prevent or relieve unemployment.

(14) The commission shall fully cooperate with the agencies of other states, and shall make every proper effort within its means, to oppose and prevent any further action which would in its judgment tend to effect complete or substantial federalization of state unemployment compensation funds or state employment security programs.

(15) The commission may make, and may cooperate with other appropriate agencies in making, studies as to the practicality and probable cost of possible new state-administered social security programs, and the relative desirability of state (rather than national) action in any such field.

SECTION 16. 108.16 (6) (h) and (13) of the statutes are created to read:

108.16 (6) (h) All amounts transferred from the "post-war reserves" maintained under subsection (13).

(13) (a) There is hereby created in each employer's account a special "post-war reserve", to which the fund's treasurer shall credit the contributions paid by the employer under section 108.18 (8). Said reserve shall be taken into account, when calculating the employer's reserve percentage as of any computation date, only as hereinafter specified.

(b) Whenever an employer's account would otherwise be overdrawn, on any computation date or at any close-of-month as of which a transfer from post-war reserves will apparently be required under paragraph (c), his then available post-war reserve shall be used up, prior to any other adjustment or transfer affecting his account or the balancing account under this section, by including in his account, for all the purposes of this chapter, the entire amount then standing to his credit in said reserve.

(c) If and when the fund's balancing account, as of the close of any month, prior to the application of this paragraph, has a "net balance" of less than \$5,000,000, the fund's treasurer, after making a finding to that effect under this paragraph, to be published forthwith in the official state paper, shall, as of said close-of-month, transfer to the balancing account from each employer's post-war reserve one-half of the amount then standing to the credit of said reserve, unless such transfers would total less than \$2,000,000, in which event he shall transfer to the balancing account all amounts then standing to the credit of post-war reserves. No finding or transfer shall be made under subsection (12), unless and until all post-war reserves have been transferred under this subsection.

(d) Any amounts still credited to an employer's post-war reserve after the initial period of post-war readjustment shall remain within the fund, subject to such disposition (permitting the post-war use of such reserves to avoid post-war increases in contribution rates, so far as practicable) as may then be specified by amendment of this chapter.

SECTION 17. 108.18 (4) of the statutes is amended to read:

108.18 (4) Any employer may at any time make payments to his account, in excess of the other requirements of this section; and all such payments shall be considered as contributions required under this chapter * * * *Any such payment made within the twelve-month period starting on February 1 of a*

*given calendar year shall be considered as a contribution payable and paid * * * on his payroll for that calendar year * * *.*

SECTION 18. 108.18 (7), (8) and (9) of the statutes are created to read:

108.18 (7) WAR-RISK CONTRIBUTIONS, IN CERTAIN CASES. (a) Wartime expansion has increased the payrolls of some employers substantially over their 1940 payrolls, with a corresponding increase in the potential post-war benefit liabilities of their reserve accounts, but without a corresponding increase in the level of those accounts under this chapter. Unless corrected, this condition would endanger the post-war solvency of such accounts, and would require higher contribution rates to be collected from employers generally, during the post-war years. Therefore, such accounts should now be built up toward more nearly adequate post-war levels, to help avoid (or reduce) the post-war rate increases which would otherwise result, by collecting contributions from such employers at higher wartime rates, based on their payroll increases and the relative adequacy of their accounts.

(b) Accordingly, the provisions of this subsection shall, in lieu of preceding subsections, determine what contribution rates shall apply to the payroll of any such employer for the several contribution periods from July 1, 1943, through December 31, 1945.

(c) Initially, the commission shall determine as to each employer, as of the December 31, 1942 computation date, whether this subsection applies to him for the 6-month period starting July 1, 1943, and at what rate he shall contribute hereunder on his payroll for that contribution period. Thereafter, the commission shall determine as to each employer, as of each subsequent computation date, whether this subsection applies to him and at what rate he shall contribute hereunder on his payroll for the ensuing calendar year.

(d) Each such employer's contribution rate under this subsection, on his payroll for the relevant contribution period, shall, subject to the requirements of subsection (3), be the rate shown by the following schedule on that line which includes the reserve percentage his account had on the relevant computation date and in that column which includes the percentage by which his payroll for the year ending on the relevant computation date ex-

ceeded his payroll for the calendar year 1940; provided, however, that the maximum contribution rate under the following schedule shall, for the 6-month period starting July 1, 1943, be 4 per cent.

SCHEDULE

Line	Reserve Percentage (as of "computation date")	Percent of Increase in Payroll, for Year Ending on "Computation Date", over 1940 payroll					
		50% but less than 100%	100% but less than 150%	150% but less than 200%	200% but less than 300%	300% but less than 400%	400% or more
		Contribution Rate, under this subsection.					
1.	less than 4%	4.0%	4.5%	5.0%	5.0%	5.0%	5.0%
2.	4 but less than 6	3.5	4.0	4.5	5.0	5.0	5.0
3.	6 but less than 7.5	3.0	3.5	4.0	4.5	5.0	5.0
4.	7.5 but less than 8	2.0	2.5	3.0	3.5	4.0	4.5
5.	8 but less than 9	1.5	2.0	2.5	3.0	3.5	4.0
6.	9 but less than 10	1.0	1.5	2.0	2.5	3.0	3.5
7.	10 but less than 11	.5	1.0	1.5	2.0	2.5	3.0
8.	11 but less than 12	.0	.5	1.0	1.5	2.0	2.5
9.	12 but less than 13	.0	.0	.5	1.0	1.5	2.0
10.	13 but less than 14	.0	.0	.0	.5	1.0	1.5
11.	14 but less than 15	.0	.0	.0	.0	.5	1.0
12.	15 or more	.0	.0	.0	.0	.0	.0

(e) In case an employer's contribution rate for any period would, under the above schedule, be less than the "standard rate" of 2.7 per cent, he shall nevertheless pay said standard rate (in lieu of the schedule rate) unless his account, as of the relevant computation date, met all the conditions specified in subsection (3).

(f) This subsection shall apply, for the relevant contribution period, to each employer whose payroll for the year ending on the relevant computation date exceeded by 50 per cent or more his payroll for the calendar year 1940, except as hereinafter specified.

(g) This subsection shall also apply, in the case of any employer who becomes newly subject to this chapter after 1942, to his first year of coverage under this chapter, except as hereinafter specified.

(h) In applying this subsection to any employer who had no payroll (covered by this chapter) in the calendar year 1940, his contribution rate shall be determined by the last column in the above schedule.

(i) This subsection shall not apply, for the relevant contribution period, to any employer who was subject to this chapter on the relevant computation date but whose payroll for the year ending on that date was below \$30,000, nor to any other employer (not thus subject) whose payroll for his first year of coverage under this chapter is below \$30,000, unless it is finally determined that the application of this paragraph would invalidate this subsection.

(8) **POST-WAR RESERVES.** (a) To help assure post-war solvency of the fund and payment of all benefits due under this chapter, and to avoid (or reduce) both the post-war transfers from employer accounts to the fund's "balancing account" which would otherwise be required under section 108.16 (12) and the post-war rate increases which would otherwise result from such transfers, by building added reserves in the fund for post-war use, each employer shall, in addition to any other contribution required of him under this chapter, contribute to the fund at the rate of one-half of one per cent on his payroll for the period specified in paragraph (c).

(b) The additional contributions paid by each employer under this subsection shall be held in suspense, as a special "post-war reserve" in the employer's account, for possible transfer to the fund's balancing account if needed, as specified in section 108.16 (13).

(c) The additional contributions required by this subsection shall apply to each employer's payroll for the period starting on July 1, 1943, and ending on the earlier one of the 2 following dates:

1. December 31, 1945; or
2. The close of the third month following the first calendar quarter for which the total of all payrolls then covered by this chapter is less than \$200,000,000, as determined by the commission in a finding of fact to be published in the official state paper.

(9) An employer shall not, for the purposes of section 108.02 (8), be deemed to be contributing "at more than the standard rate" in case his reserve percentage was 4 per cent or more, so that his contribution rate exceeds 2.7 per cent solely by reason of subsections (7) and (8).

SECTION 19. 108.19 (3) and (4) of the statutes are created to read:

108.19 (3) If the Federal Unemployment Tax Act is amended to permit a maximum rate of credit against said federal tax higher than the 90 per cent maximum rate of credit now permitted under section 1601 (c) of the Internal Revenue Code, to an employer with respect to any state unemployment compensation law whose standard contribution rate on payroll under said law is more than 2.7 per cent, in that event the standard contribution rate as to all employers under this chapter shall, by a commission rule to be issued with the governor's approval, be increased from 2.7 per cent on payroll to that percentage on payroll which corresponds to the higher maximum rate of credit thus permitted against the federal unemployment tax; and such increase shall become effective on the same date as such higher maximum rate of credit becomes permissible under such federal amendment.

(4) If section 303 (a) (5) of Title III of the Social Security Act and section 1603 (a) (4) of the Internal Revenue Code are amended to permit a state agency to use, in financing administrative expenditures incurred in carrying out its employment security functions, some part of the monies collected or to be collected under the state unemployment compensation law, in partial or complete substitution for grants under said Title III, in that event this chapter shall, by a commission rule to be issued with the governor's approval, be modified in the manner and to the extent and within the limits necessary to permit such use by the commission under this chapter; and such modifications shall become effective on the same date as such use becomes permissible under such federal amendments.

SECTION 20. 108.14 (13) of the statutes shall apply to all changes, in Chapter 108 of the statutes, effected by this act.

SECTION 21. The reference in 108.04 (8) (b) of the statutes, to 108.04 (5) (i), shall be corrected to refer to 108.04 (5) (b), in accordance with the renumbering of said 108.04 (5) (i) by this act.

SECTION 22. The reference in chapter 108 of the statutes to chapter 102 means chapter 102 of the 1935 statutes.

SECTION 23. The changes effected by this act in 108.03 (2) of the statutes shall apply only to those employers whose contributions under chapter 108 begin to accrue after 1942.

SECTION 24. The changes effected by this act in 108.04 (1) (a), (5) (b) and (d), 108.05 (1m) (a) and 108.07 (1) of the statutes

shall apply only to benefit determinations issued after June 30, 1943.

SECTION 25. The changes effected by this act in 108.05 (1) of the statutes, relating to weekly benefit rates, shall apply to benefits payable from an employer's account for any week of unemployment completed after December 25, 1943, as follows: Said changes shall apply to all "trainees" as specified in 108.06 (4) (f); but shall not apply to any other employe until his first credit week from the employer completed after December 25, 1943.

Approved May 21, 1943.

No. 282, S.]

[Published May 22, 1943.]

CHAPTER 182.

AN ACT to repeal and recreate 97.025 of the statutes, relating to imitation ice cream or ices and providing penalties.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

97.025 of the statutes is repealed and recreated to read:

97.025 IMITATION ICE CREAM OR ICES. (1) No person shall manufacture, sell or offer or expose for sale, or have in his possession with intent to sell for use or consumption in this state any article, product or compound made wholly or partly out of milk, cream, sugar, flavoring, with or without coloring or eggs, which shall be in imitation of ice cream, sherbet or ices as defined by section 97.02.

(2) No person shall manufacture, sell or offer or expose for sale, or have in his possession with intent to sell any form of ice cream mixed with any ice or sherbet so that the milk fat content of the mixture is less than that prescribed in section 97.02 (10).

(3) No person shall manufacture, sell or offer to sell any beverage similar to malted milk beverage, milk shake or dairy shake in which ice or sherbet is used with or instead of ice cream; but this section shall not be construed as prohibiting the manufacture and sale of such beverages containing ices or sherbets and no ice cream if the same are represented and sold under some adequately descriptive name such as "sherbet whip."

(4) No person shall manufacture, sell, or offer for sale any ice cream soda or ice cream sundae in which ice or sherbet is used