



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-1559/P5
MED&AJM:kjf

DOA:.....Kirschbaum, BB0227 - Eliminate LIRC

FOR 2017-2019 BUDGET -- NOT READY FOR INTRODUCTION

AN ACT ...; **relating to:** the budget.

Analysis by the Legislative Reference Bureau

EMPLOYMENT

Under current law, the Labor and Industry Review Commission (LIRC) reviews administrative decisions of DWD relating to unemployment insurance (UI) and discrimination in employment or in equal enjoyment of places of public accommodation (discrimination) and reviews administrative decisions of the Division of Hearings and Appeals relating to worker's compensation.

This bill eliminates LIRC and instead provides for administrative review of administrative decisions relating to worker's compensation by the administrator of the Division of Hearings and Appeals and provides for administrative review of administrative decisions prior to judicial review relating to UI and discrimination by the respective administrator of the division in DWD that administers the law in question.

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:

SECTION 1. 15.06 (2) (a) of the statutes is amended to read:

15.06 (2) (a) Except as provided in par. (b), each commission may annually elect officers other than a chairperson from among its members as its work requires. Any officer may be reappointed or reelected. At the time of making new nominations to commissions, the governor shall designate a member or nominee of each commission, other than the public service commission, and except as provided in par. (b), to serve as the commission's chairperson for a 2-year term expiring on March 1 of the odd-numbered year ~~except that the labor and industry review commission shall elect one of its members to serve as the commission's chairperson for a 2-year term expiring on March 1 of the odd-numbered year.~~

SECTION 2. 15.105 (15) of the statutes is repealed.

SECTION 3. 20.427 of the statutes is repealed.

***NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

SECTION 4. 20.445 (1) (n) of the statutes is amended to read:

20.445 (1) (n) *Employment assistance and unemployment insurance administration; federal moneys.* All federal moneys received, as authorized by the governor under s. 16.54, for the administration of employment assistance and unemployment insurance programs of the department, for the performance of the department's other functions under subch. I of ch. 106 and ch. 108, and to pay the compensation and expenses of appeal tribunals and of employment councils appointed under s. 108.14, to be used for such purposes, except as provided in s. 108.161 (3e), and, from the moneys received by this state under section 903 (d) of the federal Social Security Act, as amended, to transfer to the appropriation account under par. (nb) an amount determined by the treasurer of the unemployment reserve fund not exceeding the lesser of the amount specified in s. 108.161 (4) (d) or the

amounts in the schedule under par. (nb), to transfer to the appropriation account under par. (nd) an amount determined by the treasurer of the unemployment reserve fund not exceeding the lesser of the amount specified in s. 108.161 (4) (d) or the amounts in the schedule under par. (nd), and to transfer to the appropriation account under par. (ne) an amount not exceeding the lesser of the amount specified in s. 108.161 (4) (d) or the sum of the amounts in the schedule under par. (ne) and the amount determined by the treasurer of the unemployment reserve fund that is required to pay for the cost of banking services incurred by the unemployment reserve fund, ~~and to transfer to the appropriation account under s. 20.427 (1) (k) an amount determined by the treasurer of the unemployment reserve fund.~~

SECTION 5. 20.445 (1) (o) of the statutes is amended to read:

20.445 (1) (o) *Equal rights; federal moneys.* All federal moneys received for the activities of the division of equal rights in the department, to be used for those purposes, ~~and to transfer to the appropriation account under s. 20.427 (1) (km).~~

SECTION 6. 20.445 (1) (ra) of the statutes is amended to read:

20.445 (1) (ra) *Worker's compensation operations fund; administration.* From the worker's compensation operations fund, the amounts in the schedule for the administration of the worker's compensation program by the department, for assistance to the department of justice in investigating and prosecuting fraudulent activity related to worker's compensation, for transfer to the uninsured employers fund under s. 102.81 (1) (c), and for transfer to the appropriation ~~accounts~~ account under par. (rp) ~~and s. 20.427 (1) (ra).~~ All moneys received under ss. 102.28 (2) (b) and 102.75 shall be credited to this appropriation account. From this appropriation, an amount not to exceed \$5,000 may be expended each fiscal year for payment of expenses for travel and research by the council on worker's compensation, an amount

not to exceed \$500,000 may be transferred in each fiscal year to the uninsured employers fund under s. 102.81 (1) (c), and the amount in the schedule under par. (rp) shall be transferred to the appropriation account under par. (rp), ~~and the amount in the schedule under s. 20.427 (1) (ra) shall be transferred to the appropriation account under s. 20.427 (1) (ra).~~

SECTION 7. 20.923 (4) (e) 4. of the statutes is repealed.

SECTION 8. 40.65 (2) (a) of the statutes is repealed.

SECTION 9. 40.65 (2) (b) 1. of the statutes is repealed.

SECTION 10. 40.65 (2) (b) 2. of the statutes is renumbered 40.65 (2) (am).

SECTION 11. 40.65 (2) (b) 3. of the statutes is renumbered 40.65 (2) (bm) and amended to read:

40.65 (2) (bm) The department shall determine whether or not the applicant is eligible for benefits under this section on the basis of the evidence in ~~subd. 2 par. (am)~~. An applicant may appeal a determination under this ~~subdivision~~ paragraph to the division of hearings and appeals in the department of administration.

SECTION 12. 40.65 (2) (b) 4. of the statutes is renumbered 40.65 (2) (cm) and amended to read:

40.65 (2) (cm) In hearing an appeal under ~~subd. 3. par. (bm)~~, the division of hearings and appeals in the department of administration shall follow the procedures under ss. 102.16 to 102.26.

SECTION 13. 40.65 (2) (b) 5. of the statutes is renumbered 40.65 (2) (dm) and amended to read:

40.65 (2) (dm) The department shall be an interested party in an appeal under ~~subd. 3. par. (bm)~~, and the department shall receive legal assistance from the department of justice, as provided under s. 165.25 (4).

SECTION 14. 102.01 (2) (af) of the statutes is repealed.

SECTION 15. 102.01 (2) (ag) of the statutes is repealed.

SECTION 16. 102.15 (1) of the statutes is amended to read:

102.15 (1) Subject to this chapter, the division may ~~adopt its own~~ promulgate rules of procedure and ~~may change the same from time to time as necessary for the division and the administrator to perform their duties and functions under this chapter.~~

SECTION 17. 102.18 (3) of the statutes is amended to read:

102.18 (3) A party in interest may petition the ~~commission~~ administrator for review of an examiner's decision awarding or denying compensation if the ~~department, the division, or the commission~~ receives the petition within 21 days after the ~~department or the division~~ mailed a copy of the examiner's findings and order is mailed to the last-known addresses of the parties in interest. The ~~commission~~ administrator shall dismiss a petition that is not filed within those 21 days unless the petitioner shows that the petition was filed late for a reason that was beyond the petitioner's control. If no petition is filed within those 21 days, the findings or order shall be considered final unless set aside, reversed, or modified by the examiner within that time. If the findings or order are set aside by the examiner, the status shall be the same as prior to the ~~setting aside of the findings or order~~ that was set aside. If the findings or order are reversed or modified by the examiner, the time for filing a petition commences on the date on which notice of the reversal or modification is mailed to the last-known addresses of the parties in interest. The ~~commission~~ administrator shall either affirm, ~~reverse~~ remand, set aside, or modify the findings or order, in whole or in part, or direct the taking of additional evidence.

The ~~commission's~~ administrator's action shall be based on a review of the evidence submitted.

SECTION 18. 102.18 (4) (b) of the statutes is amended to read:

102.18 (4) (b) Within 28 days after the date of a decision of the ~~commission administrator~~, the ~~commission~~ administrator may, on its own motion, set aside the decision for further consideration.

SECTION 19. 102.18 (4) (c) (intro.) of the statutes is amended to read:

102.18 (4) (c) (intro.) On its own motion, for reasons it deems sufficient, the ~~commission administrator~~ may set aside any final order or award of the ~~commission administrator~~ or examiner within one year after the date of the order or award, upon grounds of mistake or newly discovered evidence, and may, after further consideration, do any of the following:

SECTION 20. 102.18 (4) (d) of the statutes is amended to read:

102.18 (4) (d) While a petition for review by the ~~commission administrator~~ is pending or after entry of an order or award by the ~~commission administrator~~ but before commencement of an action for judicial review or expiration of the period in which to commence an action for judicial review, the ~~commission administrator~~ shall remand any compromise presented to it to the department or the division for consideration and approval or rejection under s. 102.16 (1). Presentation of a compromise does not affect the period in which to commence an action for judicial review.

SECTION 21. 102.22 (2) of the statutes is amended to read:

102.22 (2) If any sum that the department or the division orders to be paid is not paid when due, that sum shall bear interest at the rate of 10 percent per year. The state is liable for interest on awards issued against it under this chapter. The

department or the division has jurisdiction to issue an award for payment of interest under this subsection at any time within one year after the date of its order or, if the order is appealed, within one year after final court determination. Interest awarded under this subsection becomes due from the date the examiner's order becomes final or from the date of a decision by the ~~commission~~ administrator, whichever is later.

SECTION 22. 102.22 (3) of the statutes is amended to read:

102.22 (3) If upon petition for review the ~~commission~~ administrator affirms an examiner's order, interest at the rate of 7 percent per year on the amount ordered by the examiner shall be due for the period beginning on the 21st day after the date of the examiner's order and ending on the date paid under the ~~commission's~~ administrator's decision. If upon petition for judicial review under s. 102.23 the court affirms the ~~commission's~~ administrator's decision, interest at the rate of 7 percent per year on the amount ordered by the examiner shall be due up to the date of the ~~commission's~~ administrator's decision, and thereafter interest shall be computed under sub. (2).

SECTION 23. 102.23 (1) (a) 1. of the statutes is amended to read:

102.23 (1) (a) 1. The findings of fact made by ~~the commission~~ an examiner acting within its his or her powers shall, in the absence of fraud, be conclusive. ~~The~~ An order or award of the administrator granting or denying compensation, either interlocutory or final, whether judgment has been rendered on the order or award or not, is subject to review only as provided in this section and not under ch. 227 or s. 801.02. The ~~commission~~ administrator shall identify in the order or award the persons that must be made parties to an action for review of the order or award.

SECTION 24. 102.23 (1) (a) 2. of the statutes is amended to read:

102.23 (1) (a) 2. Within 30 days after the date of an order or award made by the ~~commission administrator~~, any party aggrieved by the order or award may commence an action in circuit court for review of the order or award by serving a complaint as provided in par. (b) and filing the summons and complaint with the clerk of the circuit court. The summons and complaint shall name the party commencing the action as the plaintiff and shall name as defendants the ~~commission division~~ and all persons identified by the ~~commission administrator~~ under subd. 1. If the circuit court determines that any other person is necessary for the proper resolution of the action, the circuit court may join that person as a party to the action, unless joinder of the person would unduly delay the resolution of the action. If the circuit court is satisfied that a party in interest has been prejudiced because of an exceptional delay in the receipt of a copy of any finding or order, the circuit court may extend the time within which an action may be commenced by an additional 30 days.

SECTION 25. 102.23 (1) (b) of the statutes is amended to read:

102.23 (1) (b) In such an action a complaint shall be served with an authenticated copy of the summons. The complaint need not be verified, but shall state the grounds upon which a review is sought. Service upon ~~a commissioner~~ the division or agent authorized by the ~~commission division~~ to accept service constitutes complete service on all parties, but there shall be left with the person so served as many copies of the summons and complaint as there are defendants, and the ~~commission division~~ shall mail one copy to each other defendant.

SECTION 26. 102.23 (1) (c) of the statutes is amended to read:

102.23 (1) (c) The ~~commission division~~ shall serve its answer to the complaint within 20 days after the service of the complaint. Except as provided in par. (cm), any other defendant may serve an answer to the complaint within 20 days after the

service of the complaint, which answer may, by way of counterclaim or cross complaint, ask for the review of the order or award referred to in the complaint, with the same effect as if the defendant had commenced a separate action for the review of the order or award.

SECTION 27. 102.23 (1) (d) of the statutes is amended to read:

102.23 (1) (d) The ~~commission~~ division shall make return to the court of all documents and papers on file in the matter, all testimony that has been taken, and the ~~commission's~~ administrator's order, findings, and award. Such return of the ~~commission~~ division when filed in the office of the clerk of the circuit court shall, together with the papers specified in s. 809.15, constitute a judgment roll in the action; and it shall not be necessary to have a transcript approved. The action may thereupon be brought on for hearing before the court upon the record by any party on 10 days' notice to the other; subject, however, to the provisions of law for a change of the place of trial or the ~~calling in~~ substitution of another judge.

SECTION 28. 102.23 (1) (e) 1. of the statutes is amended to read:

102.23 (1) (e) 1. That the ~~commission~~ administrator or the examiner acted without or in excess of its his or her powers.

SECTION 29. 102.23 (1) (e) 3. of the statutes is amended to read:

102.23 (1) (e) 3. That the findings of fact by the ~~commission~~ examiner do not support the order or award.

SECTION 30. 102.23 (2) of the statutes is amended to read:

102.23 (2) ~~Upon the trial of an action for review of an order or award the~~ The court shall disregard any irregularity or error of the ~~commission~~ administrator, the department, or the division unless it is made to affirmatively appear that the plaintiff was damaged by that irregularity or error.

SECTION 31. 102.23 (5) of the statutes is amended to read:

102.23 (5) When an action for review involves only the question of liability as between the employer and one or more insurance companies or as between several insurance companies, a party that has been ordered by the department, the division, the ~~commission~~ administrator, or a court to pay compensation is not relieved from paying compensation as ordered.

SECTION 32. 102.23 (6) of the statutes is amended to read:

102.23 (6) If ~~the commission's~~ an order or award depends on any fact found by ~~the commission~~ an examiner, the court shall not substitute its judgment for that of the ~~commission~~ examiner as to the weight or credibility of the evidence on any finding of fact. The court may, however, set aside ~~the commission's~~ an order or award and remand the case ~~to the commission~~ if the ~~commission's~~ order or award depends on any material and controverted finding of fact that is not supported by credible and substantial evidence.

SECTION 33. 102.24 (1) of the statutes is amended to read:

102.24 (1) Upon ~~the~~ setting aside of any order or award, the court may recommit the controversy and remand the record in the case ~~to the commission~~ for further hearing or proceedings, or it the court may enter the proper judgment upon the findings of the ~~commission~~ administrator, as the nature of the case ~~shall~~ may demand. An abstract of the judgment entered by the trial court upon the review of any order or award shall be made by the clerk of circuit court upon the judgment and lien docket entry of any judgment which may have been rendered upon the order or award. Transcripts of the abstract may be obtained for like entry upon the judgment and lien dockets of the courts of other counties.

SECTION 34. 102.24 (2) of the statutes is amended to read:

102.24 (2) After the commencement of an action to review any order or award of the ~~commission~~ administrator, the parties may have the record remanded by the court for such time and under such condition as the parties may provide, for the purpose of having the department or the division act upon the question of approving or disapproving any settlement or compromise that the parties may desire to have so approved. If approved, the action shall be at an end and judgment may be entered upon the approval as upon an award. If not approved, the department or the division shall immediately return the record to the circuit court and the action shall proceed as if no remand had been made.

SECTION 35. 102.25 (1) of the statutes is amended to read:

102.25 (1) Any party aggrieved by a judgment entered upon the review of any order or award may appeal the judgment within the period specified in s. 808.04 (1). A trial court may not require the ~~commission~~ division or any party to the action to execute, serve, or file an undertaking under s. 808.07 or to serve, or secure approval of, a transcript of the notes of the stenographic reporter or the ~~tape of the recording machine~~. The state is a party aggrieved under this subsection if a judgment is entered upon the review confirming any order or award against the state. At any time before the case is set down for hearing in the court of appeals or the supreme court, the parties may have the record remanded by the court to the department or the division in the same manner and for the same purposes as provided for remanding from the circuit court to the department or the division under s. 102.24 (2).

SECTION 36. 102.25 (2) of the statutes is amended to read:

102.25 (2) ~~It shall be the duty of the~~ The clerk of any court rendering a decision affecting an award of the ~~commission to~~ administrator shall promptly furnish the ~~commission~~ division with a copy of such ~~the~~ decision without charge.

SECTION 37. 102.26 (1) of the statutes is amended to read:

102.26 (1) ~~No fees may be charged by the~~ The clerk of any circuit court may not charge a fee for the performance of any service required by this chapter, except fees for the entry of judgments and certified transcripts of judgments. In proceedings to review an order or award, costs as between the parties shall be in the discretion of the court, but no costs may be taxed against the ~~commission~~ division.

SECTION 38. 102.33 (2) (a) of the statutes is amended to read:

102.33 (2) (a) Except as provided in pars. (b) and (c), the records of the department, and the division, ~~and the commission,~~ related to the administration of this chapter are subject to inspection and copying under s. 19.35 (1).

SECTION 39. 102.33 (2) (b) (intro.) of the statutes is amended to read:

102.33 (2) (b) (intro.) Except as provided in this paragraph and par. (d), a record maintained by the department, or the division, ~~or the commission~~ that reveals the identity of an employee who claims worker's compensation benefits, the nature of the employee's claimed injury, the employee's past or present medical condition, the extent of the employee's disability, or the amount, type, or duration of benefits paid to the employee and a record maintained by the department that reveals any financial information provided to the department by a self-insured employer or by an applicant for exemption under s. 102.28 (2) (b) are confidential and not open to public inspection or copying under s. 19.35 (1). The department, or the division, ~~or the commission~~ may deny a request made under s. 19.35 (1) or, subject to s. 102.17 (2m) and (2s), refuse to honor a subpoena issued by an attorney of record in a civil

or criminal action or special proceeding to inspect and copy a record that is confidential under this paragraph, unless one of the following applies:

SECTION 40. 102.33 (2) (b) 1. of the statutes is amended to read:

102.33 (2) (b) 1. The requester is the employee who is the subject of the record or an attorney or authorized agent of that employee. An attorney or authorized agent of an employee who is the subject of a record shall provide a written authorization for inspection and copying from the employee if requested by the department, or the division, ~~or the commission.~~

SECTION 41. 102.33 (2) (b) 2. of the statutes is amended to read:

102.33 (2) (b) 2. The record that is requested contains confidential information concerning a worker's compensation claim and the requester is an insurance carrier or employer that is a party to any worker's compensation claim involving the same employee or an attorney or authorized agent of that insurance carrier or employer, except that the department, or the division, ~~or the commission~~ is not required to do a random search of its records and may require the requester to provide the approximate date of the injury and any other relevant information that would assist the department, or the division, ~~or the commission~~ in finding the record requested. An attorney or authorized agent of an insurance carrier or employer that is a party to an employee's worker's compensation claim shall provide a written authorization for inspection and copying from the insurance carrier or employer if requested by the department, or the division, ~~or the commission.~~

SECTION 42. 102.33 (2) (b) 4. of the statutes is amended to read:

102.33 (2) (b) 4. A court of competent jurisdiction in this state orders the department, or the division, ~~or the commission~~ to release the record.

SECTION 43. 102.33 (2) (c) of the statutes is amended to read:

102.33 (2) (c) A record maintained by the department, or the division, ~~or the commission~~ that contains employer or insurer information obtained from the Wisconsin compensation rating bureau under s. 102.31 (8) or 626.32 (1) (a) is confidential and not open to public inspection or copying under s. 19.35 (1) unless the Wisconsin compensation rating bureau authorizes public inspection or copying of that information.

SECTION 44. 102.33 (2) (d) 2. of the statutes is amended to read:

102.33 (2) (d) 2. The department, or the division, ~~or the commission~~ may release information that is confidential under par. (b) to a government unit, an institution of higher education, or a nonprofit research organization for purposes of research and may release information that is confidential under par. (c) to those persons for that purpose if the Wisconsin compensation rating bureau authorizes that release. A government unit, institution of higher education, or nonprofit research organization may not permit inspection or disclosure of any information released to it under this subdivision that is confidential under par. (b) unless the department, or the division, ~~or the commission~~ authorizes that inspection or disclosure and may not permit inspection or disclosure of any information released to it under this subdivision that is confidential under par. (c) unless the department, or the division, ~~or the commission~~, and the Wisconsin compensation rating bureau, authorize the inspection or disclosure. A government unit, institution of higher education, or nonprofit research organization that obtains any confidential information under this subdivision for purposes of research shall provide the results of that research free of charge to the person that released or authorized the release of that information.

SECTION 45. 102.565 (3) of the statutes is amended to read:

102.565 (3) If after direction by ~~the commission, or any member of the commission,~~ the department, the division, or an examiner, an employee refuses to submit to an examination or in any way obstructs the examination, the employee's right to compensation under this section shall be barred.

SECTION 46. 102.61 (2) of the statutes is amended to read:

102.61 (2) The division, the ~~commission~~ administrator, and the courts shall determine the rights and liabilities of the parties under this section in like manner and with like effect as the division, the ~~commission~~ administrator, and the courts determine other issues under this chapter. A determination under this subsection may include a determination based on the evidence regarding the cost or scope of the services provided by a private rehabilitation counselor under sub. (1m) (a) or the cost or reasonableness of a rehabilitative training program developed under sub. (1m) (a).

SECTION 47. 102.64 (title) of the statutes is amended to read:

102.64 (title) Attorney general shall represent state and ~~commission~~.

SECTION 48. 102.64 (3) of the statutes is amended to read:

102.64 (3) In any action to review an order or award of the ~~commission~~ administrator, and upon any appeal therein to the court of appeals, the attorney general shall appear on behalf of the ~~commission~~ division, whether any other party defendant ~~shall be~~ is represented or not, except that in actions brought by the state the governor shall appoint an attorney to appear on behalf of the ~~commission~~ division.

SECTION 49. 102.75 (1) of the statutes is amended to read:

102.75 (1) The department shall assess upon and collect from each licensed worker's compensation insurance carrier and from each employer exempted under s. 102.28 (2) (b) or (bm) from the duty to carry insurance under s. 102.28 (2) (a) the

proportion of total costs and expenses incurred by the council on worker's compensation for travel and research and by the department, and the division, ~~and the commission~~ in the administration of this chapter for the current fiscal year, plus any deficiencies in collections and anticipated costs from the previous fiscal year, that the total indemnity paid or payable under this chapter by each such carrier and exempt employer in worker's compensation cases initially closed during the preceding calendar year, other than for increased, double, or treble compensation, bore to the total indemnity paid in cases closed the previous calendar year under this chapter by all carriers and exempt employers, other than for increased, double, or treble compensation. The council on worker's compensation, and the division, ~~and the commission~~ shall annually certify any costs and expenses for worker's compensation activities to the department at such time as the secretary requires.

SECTION 50. 102.75 (1m) of the statutes is amended to read:

102.75 (1m) The moneys collected under subs. (1) and (1g) and under ss. 102.28 (2) and 102.31 (7), together with all accrued interest, shall constitute a separate nonlapsible fund designated as the worker's compensation operations fund. Moneys in the fund may be expended only as provided in ~~ss. 20.427 (1) (ra) and s. 20.445 (1) (ra), (rb), and (rp)~~ and may not be used for any other purpose of the state.

SECTION 51. 103.001 (1) of the statutes is repealed.

SECTION 52. 103.001 (2) of the statutes is repealed.

SECTION 53. 103.005 (14) (c) of the statutes is amended to read:

103.005 (14) (c) ~~Any commissioner, the~~ The secretary or any deputy of the ~~department~~ may enter any place of employment or public building for the purpose of collecting facts and statistics and bringing to the attention of every employer or owner any law relating to the regulation of employment or any order of the

department and any failure on the part of such ~~the~~ employer or owner to comply with that law or order. No employer or owner may refuse to admit ~~any commissioner,~~ the secretary or any deputy ~~of the department~~ to his or her place of employment or public building.

SECTION 54. 103.005 (16) of the statutes is amended to read:

103.005 (16) ~~Each of the commissioners, the~~ The secretary or any deputy secretary may certify to official acts, and take testimony.

SECTION 55. 103.04 of the statutes is repealed.

SECTION 56. 103.06 (1) (a) of the statutes is renumbered 103.06 (1) (ar).

SECTION 57. 103.06 (1) (ag) of the statutes is created to read:

103.06 (1) (ag) “Administrator” means the administrator of the division of the department that is responsible for administering this section.

SECTION 58. 103.06 (6) (c) of the statutes is amended to read:

103.06 (6) (c) The employer or the department may request a review of an appeal tribunal’s decision by ~~petitioning the commission~~ filing, within 21 days after the decision was electronically delivered to the employer or mailed to the employer’s last-known address, a petition with the department for review of the decision ~~within 21 days after the decision was mailed to the employer’s last-known address. The commission~~ by the administrator. The administrator shall conduct the review in the manner described in s. 108.09 (6). An order to stop work that is in effect under par. (b) 3. shall remain in effect as provided in par. (b) 3. during the pendency of a review under this paragraph. A decision of the ~~commission~~ administrator under this paragraph is final and the provisions of s. 108.10 (6) ~~and (7)~~ shall apply to the decision unless judicial review of the decision is requested under par. (d). A decision of the

~~commission administrator~~ under this paragraph is subject to judicial review only as provided in par. (d) and not as provided in ch. 227.

SECTION 59. 103.06 (6) (d) of the statutes is amended to read:

103.06 (6) (d) The employer or the department may commence an action for the judicial review of a decision of the ~~commission administrator~~ under par. (c) within 30 days after the administrator's decision was electronically delivered to the employer or mailed to the employer's last-known address. The scope of judicial review under this paragraph, and the manner of that review insofar as is applicable, shall be the same as that provided in s. 108.09 (7). An order to stop work that is in effect under par. (b) 3. shall remain in effect as provided in par. (b) 3. during the pendency of a review under this paragraph.

SECTION 60. 103.06 (6) (e) of the statutes is amended to read:

103.06 (6) (e) In addition to any forfeiture for which the employer may be liable under sub. (5) (c) and any other penalty for which the employer may be liable for a violation of a requirement specified in sub. (3) (a), any employer that violates a final order to stop work of the department under sub. (5) (b) or final decision of an appeal tribunal, the ~~commission administrator~~, or a court affirming such an order under par. (b), (c), or (d) is subject to a forfeiture of \$1,000 for each day of violation. An employer may seek review of a forfeiture imposed under this paragraph in the same manner as an order to stop work is reviewed under pars. (a) to (d).

SECTION 61. 103.545 (6) of the statutes is amended to read:

103.545 (6) Upon complaint of an affected employer, labor organization, or employee, the department may investigate violations and issue orders to enforce this section. The investigations and orders shall be made as provided under s. 103.005. Orders are subject to review as provided in ch. 227. The department of justice may,

upon request of the ~~commission~~ department, prosecute violations of this section in any court of competent jurisdiction.

SECTION 62. 106.52 (1) (a) of the statutes is renumbered 106.52 (1) (ar).

SECTION 63. 106.52 (1) (ag) of the statutes is created to read:

106.52 (1) (ag) “Administrator” means the administrator of the division of equal rights.

SECTION 64. 106.52 (4) (a) 4. of the statutes is amended to read:

106.52 (4) (a) 4. If the department finds probable cause to believe that any act prohibited under sub. (3) has been or is being committed, the department may endeavor to eliminate the act by conference, conciliation, and persuasion. If the department determines that such conference, conciliation, and persuasion has not eliminated the alleged act prohibited under sub. (3), the department shall issue and serve a written notice of hearing, specifying the nature and acts prohibited under sub. (3) ~~which~~ that appear to have been committed, and requiring the person named, in this subsection called the “respondent”, to answer the complaint at a hearing before an examiner. The notice shall specify a time of hearing, not less than 10 days after service of the complaint, and a place of hearing within the county in which the violation of sub. (3) is alleged to have occurred. The attorney of record for any party may issue a subpoena to compel the attendance of a witness or the production of evidence. A subpoena issued by an attorney must be in substantially the same form as provided in s. 805.07 (4) and must be served in the manner provided in s. 805.07 (5). The attorney shall, at the time of issuance, send a copy of the subpoena to the ~~appeal tribunal~~ examiner or other representative of the department responsible for conducting the proceeding. The testimony at the hearing shall be recorded by the department. In all hearings before an examiner, except those for determining

probable cause, the burden of proof is on the party alleging an act prohibited under sub. (3). If, after the hearing, the examiner finds by a fair preponderance of the evidence that the respondent has violated sub. (3), the examiner shall make written findings and order such action by the respondent as will effectuate the purpose of this subsection and sub. (3). The department shall serve a certified copy of the examiner's findings and order on the respondent and complainant. The order shall have the same force as other orders of the department and shall be enforced as provided in this subsection, except that the enforcement of the order is automatically stayed upon the filing of a petition for review ~~with the commission~~ by the administrator under par. (b). If the examiner finds that the respondent has not engaged in an act prohibited under sub. (3) as alleged in the complaint, the department shall serve a certified copy of the examiner's findings on the complainant and the respondent together with an order dismissing the complaint. If the complaint is dismissed, costs in an amount not to exceed \$100 plus actual disbursements for the attendance of witnesses may be assessed against the department in the discretion of the department.

SECTION 65. 106.52 (4) (b) 1. of the statutes is amended to read:

106.52 (4) (b) 1. A respondent or complainant who is dissatisfied with the findings and order of the examiner under par. (a) may file a written petition with the department for review ~~by the commission~~ of the findings and order by the administrator.

SECTION 66. 106.52 (4) (b) 2. of the statutes is amended to read:

106.52 (4) (b) 2. The ~~commission~~ administrator shall either reverse, modify, set aside, or affirm the findings and order in whole or in part, or direct the taking of additional evidence. Such action shall be based on a review of the evidence submitted. If the ~~commission~~ department is satisfied that a respondent or

complainant has been prejudiced because of exceptional delay in the receipt of a copy of any findings and order it may extend the time another 21 days for filing the petition with the department.

SECTION 67. 106.52 (4) (b) 3. of the statutes is amended to read:

106.52 (4) (b) 3. On motion, the ~~commission~~ administrator may set aside, modify, or change any decision made by the ~~commission~~ administrator, at any time within 28 days from the date thereof if it discovers any mistake therein, or upon the grounds of newly discovered evidence. The ~~commission~~ administrator may on its own motion, for reasons it deems sufficient, set aside any final decision of the ~~commission~~ administrator within one year from the date thereof upon grounds of mistake or newly discovered evidence, and remand the case to the department for further proceedings.

SECTION 68. 106.52 (4) (c) of the statutes is amended to read:

106.52 (4) (c) *Judicial review.* Within 30 days after service upon all parties of ~~an order of the commission~~ a decision of the administrator under par. (b), the respondent or complainant may appeal the order to the circuit court for the county in which the alleged act prohibited under sub. (3) took place by the filing of a petition for review. The respondent or complainant shall receive a new trial on all issues relating to any alleged act prohibited under sub. (3) and a further right to a trial by jury, if so desired. The department of justice shall represent the ~~commission~~ department. In any such trial the burden shall be to prove an act prohibited under sub. (3) by a fair preponderance of the evidence. Costs in an amount not to exceed \$100 plus actual disbursements for the attendance of witnesses may be taxed to the prevailing party on the appeal.

SECTION 69. 106.56 (4) (a) of the statutes is amended to read:

106.56 (4) (a) The department shall receive and investigate complaints charging discrimination or discriminatory practices in particular cases, and publicize its findings with respect thereto to those complaints. The department has all powers provided under s. 111.39 with respect to the disposition of such complaints. The findings and orders of examiners may be reviewed by the administrator as provided under s. 106.52 (4) (b).

SECTION 70. 106.56 (4) (b) of the statutes is amended to read:

106.56 (4) (b) ~~Findings~~ Following review by the administrator under s. 106.52 (4) (b), findings and orders of the ~~commission~~ under this section are subject to judicial review under ch. 227. Upon such review, the department of justice shall represent the ~~commission~~ department.

SECTION 71. 108.02 (1m) of the statutes is created to read:

108.02 (1m) ADMINISTRATOR. "Administrator" means the administrator of the division of the department that is responsible for administering this chapter.

SECTION 72. 108.02 (7) of the statutes is repealed.

SECTION 73. 108.04 (13) (f) of the statutes is amended to read:

108.04 (13) (f) If benefits are erroneously paid because the employer fails to file a report required by this chapter, the employer fails to provide correct and complete information on the report, the employer fails to object to the benefit claim under s. 108.09 (1), the employer fails to provide correct and complete information requested by the department during a fact-finding investigation, unless an appeal tribunal, the ~~commission~~ administrator, or a court of competent jurisdiction finds that the employer had good cause for the failure to provide the information, or the employer aids and abets the claimant in an act of concealment as provided in sub. (11), the employer is at fault. If benefits are erroneously paid because an employee commits

an act of concealment as provided in sub. (11) or fails to provide correct and complete information to the department, the employee is at fault.

SECTION 74. 108.09 (4) (f) 2. (intro.) of the statutes is amended to read:

108.09 (4) (f) 2. (intro.) Unless a party or the department has filed a timely petition for review of the appeal tribunal decision by the ~~commission~~ administrator under sub. (6), the appeal tribunal may set aside or amend an appeal tribunal decision, or portion thereof, at any time if the appeal tribunal finds that:

SECTION 75. 108.09 (4) (f) 3. of the statutes is amended to read:

108.09 (4) (f) 3. Unless a party or the department has filed a timely petition for review of the appeal tribunal decision by the ~~commission~~ administrator under sub. (6), the appeal tribunal may, within 2 years after the date of the decision, reopen its decision if it has reason to believe that a party offered false evidence or a witness gave false testimony on an issue material to its decision. Thereafter, and after receiving additional evidence or taking additional testimony, the same or another appeal tribunal may set aside its original decision, make new findings, and issue a decision.

SECTION 76. 108.09 (5) (b) of the statutes is amended to read:

108.09 (5) (b) All testimony at any hearing under this section shall be recorded by electronic means, but need not be transcribed unless either of the parties requests a transcript before expiration of that party's right to further appeal under this section and pays a fee to the ~~commission~~ department in advance, the amount of which shall be established by rule of the ~~commission~~ department. When the ~~commission~~ department provides a transcript to one of the parties upon request, the ~~commission~~ department shall also provide a copy of the transcript to all other parties free of charge. The transcript fee collected shall be paid to the administrative account.

SECTION 77. 108.09 (5) (d) of the statutes is renumbered 108.09 (6) (bm) and amended to read:

108.09 (6) (bm) In its review of the decision of an appeal tribunal, the ~~commission~~ administrator shall use the electronic recording of the hearing or a written synopsis of the testimony or shall use a transcript of the hearing prepared under the direction of the department ~~or commission~~ and shall also use any other evidence taken at the hearing.

SECTION 78. 108.09 (6) of the statutes is amended to read:

108.09 (6) ~~COMMISSION REVIEW~~ REVIEW BY DIVISION ADMINISTRATOR. (a) The department or any party may petition ~~the commission~~ for review of an appeal tribunal decision by the administrator, pursuant to rules promulgated by the ~~commission~~ department under par. (e), if the petition is received by the ~~commission~~ department or postmarked within 21 days after the appeal tribunal decision was electronically delivered to the party or mailed to the party's last-known address. ~~The commission shall dismiss any~~ A petition shall be dismissed if not timely filed unless the petitioner shows good cause that the reason for having failed to file the petition timely was beyond the control of the petitioner. If the petition is not dismissed, the ~~commission~~ administrator may take action under par. (d).

(b) Within 28 days after a decision of the ~~commission~~ administrator is electronically delivered or mailed to the parties, the ~~commission~~ administrator may, on its own motion, set aside the decision for further consideration and take action under par. (d).

(c) On its own motion, for reasons it deems sufficient, the ~~commission~~ administrator may set aside any final determination of the department or appeal tribunal or commission decision within 2 years after the date thereof upon grounds

of mistake or newly discovered evidence, and take action under par. (d). The ~~commission~~ administrator may set aside any final determination of the department or any decision of an appeal tribunal or of the ~~commission~~ administrator at any time, and take action under par. (d), if the benefits paid or payable to a claimant have been affected by wages earned by the claimant that have not been paid, and the commission is provided with notice from the appropriate state or federal court or agency that a wage claim for those wages will not be paid in whole or in part.

(d) In any case before the ~~commission~~ administrator for action under this subsection, the ~~commission~~ administrator may affirm, reverse, modify, or set aside the decision on the basis of the evidence previously submitted; order the taking of additional evidence as to such matters as it may direct; or remand the matter to the department for further proceedings.

SECTION 79. 108.09 (6) (e) of the statutes is created to read:

108.09 (6) (e) The department may promulgate any rules necessary to provide for reviews of appeal tribunal decisions by the administrator under this subsection.

SECTION 80. 108.09 (7) (a), (b), (c), (dm), (e) and (f) of the statutes are amended to read:

108.09 (7) (a) Any party that is not the department may commence an action for the judicial review of a decision of the ~~commission~~ administrator under this chapter after exhausting the remedies provided under this section. The department may commence an action for the judicial review of a ~~commission~~ decision of the administrator under this section, but the department is not required to have been a party to the ~~proceedings before the commission~~ review by the administrator or to have exhausted the remedies provided under this section. In an action commenced under this section by a party that is not the department, the department shall be a

defendant and shall be named as a party in the complaint commencing the action. If a plaintiff fails to name either name the department ~~or the commission~~ as ~~defendants and a defendant~~ or serve the ~~commission~~ department as required by this subsection, the court shall dismiss the action.

(b) Any judicial review under this chapter shall be confined to questions of law and shall be in accordance with this subsection. In any such judicial action, the ~~commission~~ department may appear by any licensed attorney who is a salaried employee of the ~~commission~~ department and has been designated by it for that purpose, or, at the ~~commission's~~ department's request, by the department of justice. ~~In any such judicial action, the department may appear by any licensed attorney who is a salaried employee of the department and has been designated by it for that purpose.~~

(c) 1. The findings of fact made by ~~the commission~~ an appeal tribunal acting within its powers shall, in the absence of fraud, be conclusive. The order of the ~~commission~~ administrator is subject to review only as provided in this subsection and not under ch. 227 or s. 801.02. Within 30 days after the date of an order made by the ~~commission~~ administrator, any party or the department may, by serving a complaint as provided in subd. 3. and filing the summons and complaint with the clerk of the circuit court, commence an action ~~against the commission~~ for judicial review of the order. In an action for judicial review of ~~a commission~~ an order of the administrator, every other party to the proceedings before the ~~commission~~ administrator shall be made a defendant. The department shall also be made a defendant if the department is not the plaintiff. If the circuit court is satisfied that a party in interest has been prejudiced because of an exceptional delay in the receipt of a copy of any order, the

circuit court may extend the time in which an action may be commenced by an additional 30 days.

2. Except as provided in this subdivision, the proceedings shall be in the circuit court of the county where the plaintiff resides, except that if the plaintiff is the department, the proceedings shall be in the circuit court of the county where a defendant ~~other than the commission~~ resides if there is such a county. The proceedings may be brought in any circuit court if all parties appearing in the case agree or if the court, after notice and a hearing, so orders. Commencing an action in a county in which no defendant resides does not deprive the court of competency to proceed to judgment on the merits of the case.

3. In such an action, a complaint shall be served with an authenticated copy of the summons. The complaint need not be verified, but shall state the grounds upon which a review is sought. Service upon the ~~commission~~ department or an agent authorized by the ~~commission~~ department to accept service constitutes complete service on all parties, but there shall be left with the person so served as many copies of the summons and complaint as there are defendants, and the ~~commission~~ department shall mail one copy to each other defendant.

4. Each defendant shall serve its answer within 20 days after the service upon the ~~commission~~ department under subd. 3., which answer may, by way of counterclaim or cross complaint, ask for the review of the order referred to in the complaint, with the same effect as if the defendant had commenced a separate action for the review of the order.

5. Within 60 days after appearing in an action for judicial review, the ~~commission~~ department shall make return to the court of all documents and materials on file in the matter, all testimony that has been taken, and the

~~commission's~~ administrator's order and findings. Such return of the ~~commission~~ department, when filed in the office of the clerk of the circuit court, shall constitute a judgment roll in the action, and it shall not be necessary to have a transcript approved. After the ~~commission~~ department makes return of the ~~judgment roll~~ to the court, the court shall schedule briefing by the parties. Any party may request oral argument before the court, subject to the provisions of law for a change of the place of trial or the ~~calling in~~ substitution of another judge.

6. The court may confirm or set aside the ~~commission's~~ administrator's order, but may set aside the order only upon one or more of the following grounds:

a. That the ~~commission~~ appeal tribunal or the administrator acted without or in excess of its powers.

b. That the ~~order~~ decision was procured by fraud.

c. That the findings of fact by the ~~commission~~ appeal tribunal do not support the order.

(dm) The court shall disregard any irregularity or error of the ~~commission~~ appeal tribunal, the administrator, or the department unless it is made to affirmatively appear that a party was damaged by that irregularity or error.

(e) The record in any case shall be transmitted to the ~~commission~~ department within 5 days after expiration of the time for appeal from the order or judgment of the court, unless an appeal is taken from the order or judgment.

(f) ~~If the commission's order depends on any fact found by the commission, the~~ The court shall not substitute its judgment for that of the ~~commission~~ appeal tribunal as to the weight or credibility of the evidence on any finding of fact. The court may, however, set aside the ~~commission's~~ administrator's order and remand the case ~~to the commission~~ if the ~~commission's~~ order depends on any material and

controverted finding of fact that is not supported by credible and substantial evidence.

SECTION 81. 108.09 (7) (h) and (i) of the statutes are amended to read:

108.09 (7) (h) The clerk of any court rendering a decision ~~affecting a decision of the commission~~ under this section shall promptly furnish all parties a copy of the decision without charge.

(i) No fees may be charged by the clerk of any circuit court for the performance of any service required by this chapter, except for the entry of judgments and for certified transcripts of judgments. In proceedings to review an order under this section, costs as between the parties shall be in the discretion of the court. Notwithstanding s. 814.245, no costs may be taxed against the ~~commission or the~~ department.

SECTION 82. 108.09 (9) (a) of the statutes is amended to read:

108.09 (9) (a) Benefits shall be paid promptly in accordance with the department's determination or the decision of an appeal tribunal, the ~~commission administrator~~, or a reviewing court, notwithstanding the pendency of the period to request a hearing, to file a petition for ~~commission~~ review by the administrator, or to commence judicial action or the pendency of any such hearing, review, or action.

SECTION 83. 108.095 (6) of the statutes is amended to read:

108.095 (6) Any party may petition ~~the commission~~ for review of the decision of the an appeal tribunal under s. 108.09 (6). ~~The commission's~~ by the administrator. The administrator's authority to take action concerning any issue or proceeding under this section is the same as that provided in s. 108.09 (6).

SECTION 84. 108.095 (7) of the statutes is amended to read:

108.095 (7) Any party may commence an action for judicial review of a decision of the ~~commission~~ administrator under this section, after exhausting the remedies provided under this section, by commencing the action within 30 days after the administrator's decision ~~of the commission~~ is delivered electronically or mailed to the department and is delivered electronically to, or mailed to the last-known address of, each other party. The scope and manner of judicial review is the same as that provided in s. 108.09 (7).

SECTION 85. 108.10 (2) of the statutes is amended to read:

108.10 (2) Any hearing duly requested shall be held before an appeal tribunal established as provided by s. 108.09 (3), and s. 108.09 (4) and (5) shall be applicable to the proceedings before such the tribunal. The department may be a party in any proceedings before an appeal tribunal. The employing unit or the department may petition ~~the commission~~ for review of the appeal tribunal's decision by the administrator under s. 108.09 (6).

SECTION 86. 108.10 (3) of the statutes is amended to read:

108.10 (3) The ~~commission's~~ administrator's authority to take action as to any issue or proceeding under this section is the same as that specified in s. 108.09 (6).

SECTION 87. 108.10 (4) of the statutes is amended to read:

108.10 (4) The employing unit may commence an action for the judicial review of a ~~commission~~ decision of the administrator under this section, provided the employing unit has exhausted the remedies provided under this section. The department may commence an action for the judicial review of a ~~commission~~ decision of the administrator under this section, but the department is not required to have been a party to the ~~proceedings before the commission~~ review by the administrator or to have exhausted the remedies provided under this section. In an action

commenced under this section by a party that is not the department, the department shall be a defendant and shall be named as a party in the complaint commencing the action. If a plaintiff fails to name either name the department ~~or the commission~~ as ~~defendants~~ and a defendant or serve them the department as required under s. 108.09 (7), the court shall dismiss the action. The scope of judicial review, and the manner thereof insofar as applicable, shall be the same as that provided in s. 108.09 (7). ~~a defendant~~ ~~defendant summons and~~

SECTION 88. 108.10 (6) of the statutes is amended to read:

108.10 (6) Any determination by the department or any decision by an appeal tribunal or by the ~~commission~~ administrator is conclusive with respect to an employing unit unless the department or the employing unit files a timely request for a hearing or petition for review as provided in this section. A determination or decision is binding upon the department only insofar as the relevant facts were included in the record that was before the department at the time the determination was issued, or before the appeal tribunal or ~~commission~~ the administrator at the time the decision was issued.

SECTION 89. 108.10 (7) of the statutes is repealed.

SECTION 90. 108.14 (2m) of the statutes is amended to read:

108.14 (2m) In the discharge of their duties under this chapter an appeal tribunal, ~~commissioner~~ or other another authorized representative of the department ~~or commission~~ may administer oaths to persons appearing before them, take depositions, certify to official acts, and by subpoenas, served in the manner in which circuit court subpoenas are served, compel attendance of witnesses and the production of books, papers, documents, and records necessary or convenient to be used by them in connection with any investigation, hearing, or other proceeding

under this chapter. A party's attorney of record may issue a subpoena to compel the attendance of a witness or the production of evidence. A subpoena issued by an attorney must be in substantially the same form as provided in s. 805.07 (4) and must be served in the manner provided in s. 805.07 (5). The attorney shall, at the time of issuance, send a copy of the subpoena to the appeal tribunal or other representative of the department responsible for conducting the proceeding. However, in any investigation, hearing, or other proceeding involving the administration of oaths or the use of subpoenas under this subsection due notice shall be given to any interested party involved, who shall be given an opportunity to appear and be heard at any such proceeding and to examine witnesses and otherwise participate therein. Witness fees and travel expenses involved in proceedings under this chapter may be allowed by the appeal tribunal or representative of the department at rates specified by department rules, and shall be paid from the administrative account.

SECTION 91. 108.14 (3m) of the statutes is amended to read:

108.14 (3m) In any court action to enforce this chapter the department, the ~~commission~~, and the state may be represented by any licensed attorney who is an employee of the department ~~or the commission~~ and is designated by either of them the department for this purpose or ~~at the, upon~~ request of either of them by the department, by the department of justice. If the governor designates special counsel to defend, in behalf of the state, the validity of this chapter or of any provision of Title IX of the social security act, the expenses and compensation of the special counsel and of any experts employed by the department in connection with that proceeding may be charged to the administrative account. If the compensation is being determined on a contingent fee basis, the contract is subject to s. 20.9305.

SECTION 92. 108.14 (7) (a) of the statutes is amended to read:

108.14 (7) (a) The records made or maintained by the department ~~or commission~~ in connection with the administration of this chapter are confidential and shall be open to public inspection or disclosure only to the extent that the department ~~or commission~~ permits in the interest of the unemployment insurance program. No person may permit inspection or disclosure of any record provided to it by the department ~~or commission~~ unless the department ~~or commission~~ authorizes the inspection or disclosure.

SECTION 93. 108.14 (22) of the statutes is amended to read:

108.14 (22) The ~~commission~~ department shall maintain a searchable, electronic database of significant decisions made by ~~the commission~~ appeal tribunals and the administrator on matters under this chapter for the use of attorneys employed by ~~the department and the commission~~ and other individuals employed by the department ~~and the commission~~ whose duties necessitate use of the database. The department may also include in the database decisions of the labor and industrial review commission that were required to be maintained in the database under s. 108.14 (22), 2015 stats.

SECTION 94. 108.17 (3m) of the statutes is amended to read:

108.17 (3m) If an appeal tribunal or the ~~commission~~ administrator issues a decision under s. 108.10 (2), or a court issues a decision on review under s. 108.10 (4), in which it is determined that an amount has been erroneously paid by an employer, the department shall, from the administrative account, credit the employer with interest at the rate of 0.75 percent per month or fraction thereof on the amount of the erroneous payment. Interest shall accrue from the month which the erroneous payment was made until the month in which it is either used as a credit against future contributions or refunded to the employer.

SECTION 95. 108.22 (8) (a) of the statutes is amended to read:

108.22 (8) (a) If benefits are erroneously paid to an individual, the individual's liability to reimburse the fund for the overpayment may be set forth in a determination or decision issued under s. 108.09. Any determination which establishes or increases an overpayment shall include a finding concerning whether waiver of benefit recovery is required under par. (c). If any decision of an appeal tribunal, the ~~commission~~ administrator, or any court establishes or increases an overpayment and the decision does not include a finding concerning whether waiver of benefit recovery is required under par. (c), the appeal tribunal, ~~commission administrator~~, or court shall remand the issue to the department for a determination.

SECTION 96. 108.22 (8) (c) 2. of the statutes is amended to read:

108.22 (8) (c) 2. If a determination or decision issued under s. 108.09 is amended, modified, or reversed by an appeal tribunal, the ~~commission administrator~~, or any court, that action shall not be treated as establishing a departmental error for purposes of subd. 1. a.

SECTION 97. 108.24 (4) of the statutes is amended to read:

108.24 (4) Any person who, without authorization of the department, permits inspection or disclosure of any record relating to the administration of this chapter that is provided to the person by the department under s. 108.14 (7) (a), (b), or (bm) ~~and any person who, without authorization of the commission, permits inspection or disclosure of any record relating to the administration of this chapter that is provided to the person by the commission under s. 108.14 (7) (a),~~ shall be fined not less than \$25 nor more than \$500 or may be imprisoned in the county jail for not more than

one year or both. Each such unauthorized inspection or disclosure constitutes a separate offense.

SECTION 98. 111.32 (1) of the statutes is renumbered 111.32 (1r).

SECTION 99. 111.32 (1g) of the statutes is created to read:

111.32 (1g) “Administrator” means the administrator of the division of the department that is responsible for administering this subchapter.

SECTION 100. 111.32 (2) of the statutes is repealed.

SECTION 101. 111.375 (1) of the statutes is amended to read:

111.375 (1) This subchapter shall be administered by the department. The department may ~~make, amend and rescind such~~ promulgate rules as are necessary to carry out this subchapter. The department ~~or the commission~~ may, by such agents or agencies as it designates, conduct in any part of this state any proceeding, hearing, investigation, or inquiry necessary to the performance of its functions. The department shall preserve the anonymity of any employee who is the aggrieved party in a complaint of discrimination in promotion, compensation, or terms and conditions of employment, of unfair honesty testing, or of unfair genetic testing against his or her present employer until a determination as to probable cause has been made, unless the department determines that the anonymity will substantially impede the investigation.

***NOTE: This is reconciled s. 111.375 (1). This SECTION has been affected by drafts with the following LRB numbers: -1559/P4 and -0520/P6. However, the treatment from -0520 is purely technical and need not be removed from this draft if -0520 is removed from the bill.

SECTION 102. 111.39 (5) of the statutes is amended to read:

111.39 (5) (a) Any respondent or complainant who is dissatisfied with the findings and order of the examiner may file a written petition with the department for review ~~by the commission~~ of the findings and order by the administrator.

(b) If no petition is filed within 21 days from the date that a copy of the findings and order of the examiner is mailed to the last-known address of the respondent the findings and order shall be considered final for purposes of enforcement under sub. (4) (d). If a timely petition is filed, the ~~commission~~ administrator, on review, may either affirm, reverse, or modify the findings or order in whole or in part, or set aside the findings and order and remand to the department for further proceedings. Such actions shall be based on a review of the evidence submitted. If the ~~commission~~ department is satisfied that a respondent or complainant has been prejudiced because of exceptional delay in the receipt of a copy of any findings and order it may extend the time another 21 days for filing the petition with the department.

(c) On motion, the ~~commission~~ administrator may set aside, modify, or change any decision made by the ~~commission~~ administrator, at any time within 28 days from the date thereof if it discovers any mistake therein, or upon the grounds of newly discovered evidence. The ~~commission~~ administrator may on its own motion, for reasons it deems sufficient, set aside any final decision of the ~~commission~~ administrator within one year from the date thereof upon grounds of mistake or newly discovered evidence, and remand the case to the department for further proceedings.

SECTION 103. 111.395 of the statutes is amended to read:

111.395 Judicial review. Findings and orders of the ~~commission~~ administrator under this subchapter are subject to judicial review under ch. 227. ~~Orders of the commission shall have the same force as orders of the department under chs. 103 to 106 and may be enforced as provided in s. 103.005 (11) and (12) or specifically by a suit in equity. In any enforcement action the merits of any order of the commission are not subject to judicial review. Upon such review, or in any~~

enforcement action, the department of justice shall represent the ~~commission~~
department.

SECTION 104. 227.52 (7) of the statutes is amended to read:

227.52 (7) Those decisions of the department of workforce development ~~which~~
~~that~~ are subject to administrative review, prior to any judicial review, ~~by the labor~~
~~and industry review commission~~.

SECTION 105. 227.59 of the statutes is amended to read:

227.59 Certification of certain cases from the circuit court of Dane County to other circuits. Any action or proceeding for the review of any order of an administrative officer, commission, department, or other administrative tribunal of the state required by law to be instituted in or taken to the circuit court of Dane County except an action or appeal for the review of any order of the department of workforce development or the department of safety and professional services ~~or findings and orders of the labor and industry review commission which~~ that is instituted or taken and is not called for trial or hearing within 6 months after the proceeding or action is instituted, and the trial or hearing of which is not continued by stipulation of the parties or by order of the court for cause shown, shall on the application of either party on 5 days' written notice to the other be certified and transmitted for trial to the circuit court of the county of the residence or principal place of business of the plaintiff or petitioner, where the action or proceeding shall be given preference. Unless written objection is filed within the 5-day period, the order certifying and transmitting the proceeding shall be entered without hearing. The plaintiff or petitioner shall pay to the clerk of the circuit court of Dane County a fee of \$2 for transmitting the record.

SECTION 106. 230.08 (2) (xc) of the statutes is repealed.

SECTION 9101. Nonstatutory provisions; Administration.

(1) ELIMINATION OF LABOR AND INDUSTRY REVIEW COMMISSION; PENDING MATTERS.

(a) *Matters before commission on effective date.* Notwithstanding the treatment of sections 102.01 (2) (af) and (ag), 102.18 (3) and (4) (b), (c) (intro.), and (d), 102.22 (2) and (3), 102.23 (1) (a) 1. and 2., (b), (c), (d), and (e) 1. and 3., (2), (5), and (6), 102.24 (1) and (2), 102.25 (1) and (2), 102.26 (1), 102.33 (2) (a), (b) (intro.), 1., 2., and 4., (c), and (d) 2., 102.565 (3), 102.61 (2), 102.64 (title) and (3), 102.75 (1), 103.001 (1) and (2), 103.005 (14) (c) and (16), 103.04, 103.06 (1) (a) and (ag) and (6) (c), (d), and (e), 103.545 (6), 106.52 (4) (a) 4., (b) 1., 2., and 3., and (c), 106.56 (4) (a) and (b), 108.02 (1m) and (7), 108.04 (13) (f), 108.09 (4) (f) 2. (intro.) and 3., (5) (b) and (d), (6), (7) (a), (b), (c), (dm), (e), (f), (h), and (i), and (9) (a), 108.095 (6) and (7), 108.10 (2), (3), (4), (6), and (7), 108.14 (2m) and (3m), 108.14 (7) (a) and (22), 108.17 (3m), 108.22 (8) (a) and (c) 2., 108.24 (4), 111.32 (1), (1g), and (2), 111.375 (1), 111.39 (5), 111.395, and 227.52 (7) of the statutes, a review that is before the labor and industry review commission on the effective date of this paragraph shall remain with the labor and industry review commission for disposition as provided in the 2015 statutes until the date on which the commission is eliminated as provided in SECTION 9401 (1) of this act.

(b) *Matters subject to review by the commission on effective date; unemployment insurance.*

1. This paragraph applies to an appeal tribunal decision issued under section 103.06, 2015 stats., or under chapter 108, 2015 stats., to which all of the following apply:

a. No petition for review of the appeal tribunal decision has been filed with the labor and industry review commission prior to the effective date of this subdivision

1. a.

b. The period for filing a petition for review of the appeal tribunal decision by the labor and industry review commission under section 103.06 (6) (c), 2015 stats., or under section 108.09 (6) (a), 2015 stats., has not expired as of the effective date of this subdivision 1. b.

2. Beginning on the effective date of this subdivision, a person may not file a petition for review by the labor and industry review commission of an appeal tribunal decision described in subdivision 1. Such a person may instead file a petition for review with respect to the matter as provided in section 103.06, as affected by this act, or chapter 108 of the statutes, as affected by this act, except that, notwithstanding sections 103.06 (6) (c) and 108.09 (6) (a) of the statutes, as affected by this act, a petition for review of an appeal tribunal decision described in subdivision 1. may be filed within 21 days after the effective date of this subdivision.

(c) Matters subject to judicial review on effective date; unemployment insurance.

1. This paragraph applies to a decision of the labor and industry review commission issued under section 103.06, 2015 stats., or under chapter 108, 2015 stats., to which all of the following apply:

a. No action for judicial review of the decision has been commenced as of the effective date of this subdivision 1. a.

b. The period for commencing an action for judicial review of the decision of the labor and industry review commission under section 103.06 (6) (d), 2015 stats., or section 108.09 (7) (c) 1., 2015 stats., has not expired as of the effective date of this subdivision 1. b.

2. Notwithstanding the treatment of section 103.06 and chapter 108 of the statutes by this act, a person may file an action for judicial review of a decision of the labor and industry review commission described in subdivision 1. as provided under section 103.06, 2015 stats., or chapter 108., 2015 stats., whichever is applicable.

(d) *Matters subject to review by the commission on effective date; worker's compensation.*

1. This paragraph applies to a decision issued by a hearing examiner in the division of hearings and appeals under chapter 102, 2015 stats., to which all of the following apply:

a. No petition for review of the decision has been filed with the labor and industry review commission prior to the effective date of this subdivision 1. a.

b. The period for filing a petition for review of the decision by the labor and industry review commission under section 102.18 (3), 2015 stats., has not expired as of the effective date of this subdivision 1. b.

2. Beginning on the effective date of this subdivision, a person may not file a petition for review by the labor and industry review commission of a decision described in subdivision 1. Such a person may instead file a petition for review with respect to the matter as provided in chapter 102 of the statutes, as affected by this act, except that, notwithstanding section 102.18 (3) of the statutes, as affected by this act, a petition for review of a decision described in subdivision 1. may be filed within 21 days after the effective date of this subdivision.

(e) *Matters subject to judicial review on effective date; worker's compensation.*

1. This paragraph applies to a decision of the labor and industry review commission issued under chapter 102, 2015 stats., to which all of the following apply:

a. No action for judicial review of the decision has been commenced as of the effective date of this subdivision 1. a.

b. The period for commencing an action for judicial review of the decision of the labor and industry review commission under section 102.23 (1) (a) 2., 2015 stats., has not expired as of the effective date of this subdivision 1. b.

2. Notwithstanding the treatment of chapter 102 of the statutes by this act, a person may file an action for judicial review of a decision of the labor and industry review commission described in subdivision 1. as provided under chapter 102, 2015 stats.

(f) *Matters subject to review by the commission on effective date; equal rights.*

1. This paragraph applies to a decision issued by a hearing examiner in the department of workforce development under section 106.52, 2015 stats., section 106.56, 2015 stats., or section 111.39, 2015 stats., to which all of the following apply:

a. No petition for review of the decision has been filed with the labor and industry review commission prior to the effective date of this subdivision 1. a.

b. The period for filing a petition for review of the decision by the labor and industry review commission under section 106.52 (4) (b), 2015 stats., or section 111.39 (5), 2015 stats., has not expired as of the effective date of this subdivision 1. b.

2. Beginning on the effective date of this subdivision, a person may not file a petition for review by the labor and industry review commission of a decision described in subdivision 1. Such a person may instead file a petition for review with respect to the matter as provided in section 106.52, 106.56, or 111.395 of the statutes, as affected by this act, except that, notwithstanding section 106.52 (4) (b) 4. of the statutes and section 111.39 (5) (b) of the statutes, as affected by this act, a petition

for review of a decision described in subdivision 1. may be filed within 21 days after the effective date of this subdivision.

(g) *Matters subject to judicial review on effective date; equal rights.*

1. This paragraph applies to a decision of the labor and industry review commission issued under section 106.52 (4) (b), 2015 stats., or section 111.39 (5), 2015 stats., to which all of the following apply:

a. No action for judicial review of the decision has been commenced as of the effective date of this subdivision 1. a.

b. The period for commencing an action for judicial review of the decision of the labor and industry review commission under section 106.52 (4) (c) of the statutes, as affected by this act, or section 227.53 (1) (a) of the statutes, has not expired as of the effective date of this subdivision 1. b.

2. Notwithstanding the treatment of sections 106.52, 106.56, and 111.39 of the statutes by this act, a person may file an action for judicial review of a decision of the labor and industry review commission described in subdivision 1. as provided under section 106.52, 2015 stats., section 106.56, 2015 stats., or section 111.39, 2015 stats., whichever is applicable.

(h) *Emergency rules; department of workforce development.* Using the procedure under section 227.24 of the statutes, the department of workforce development may promulgate emergency rules under sections 106.52 (2), 108.09 (6) (e), and 111.375 (1) of the statutes as needed to provide for review of administrative decisions under sections 103.06, 106.52, and 106.54 and subchapter II of chapter 111 and chapter 108 of the statutes, as affected by this act. Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department is not required to provide evidence that promulgating a rule under this paragraph as an emergency rule is

necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this paragraph. Notwithstanding section 227.24 (1) (c) and (2) of the statutes, emergency rules promulgated under this paragraph remain in effect for 2 years after the date they become effective, or until the date on which permanent rules take effect, whichever is sooner, and the effective period may not be further extended under section 227.24 (2) of the statutes.

(i) *Emergency rules; division of hearings and appeals.* Using the procedure under section 227.24 of the statutes, the division of hearings and appeals may promulgate emergency rules under section 102.15 (1) of the statutes as needed to provide for review of administrative decisions under chapter 102 of the statutes, as affected by this act. Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the division is not required to provide evidence that promulgating a rule under this paragraph as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this paragraph. Notwithstanding section 227.24 (1) (c) and (2) of the statutes, emergency rules promulgated under this paragraph remain in effect for 2 years after the date they become effective, or until the date on which permanent rules take effect, whichever is sooner, and the effective period may not be further extended under section 227.24 (2) of the statutes.

(2) ELIMINATION OF LABOR AND INDUSTRY REVIEW COMMISSION; TRANSFERS AND OTHER MATTERS.

(a) *Unemployment insurance.*

1. 'Assets and liabilities.' On the effective date of this subdivision, the assets and liabilities of the labor and industry review commission primarily related to

matters under section 103.06 or chapter 108 of the statutes, as determined by the secretary of administration, become assets and liabilities of the department of workforce development.

2. 'Tangible personal property.' On the effective date of this subdivision, all tangible personal property, including records, of the labor and industry review commission that is primarily related to matters under section 103.06 or chapter 108 of the statutes, as determined by the secretary of administration, is transferred to the department of workforce development.

3. 'Contracts.' All contracts entered into by the labor and industry review commission in effect on the effective date of this subdivision that are primarily related to matters under section 103.06 or chapter 108 of the statutes remain in effect and are transferred to the department of workforce development. The department of workforce development shall carry out any obligations under such a contract until the contract is modified or rescinded by the department of workforce development to the extent allowed under the contract.

4. 'Orders.' All orders issued by the labor and industry review commission related to matters under section 103.06 or chapter 108 of the statutes that are in effect on the effective date of this subdivision remain in effect until their specified expiration date or until modified or rescinded by the department of workforce development.

5. 'Pending matters.' Any matter pending with the labor and industry review commission on the effective date of this subdivision related to matters under section 103.06 or chapter 108 of the statutes is transferred to the department of workforce development for assignment to the appropriate division administrator and all materials submitted to or actions taken by the labor and industry review commission

with respect to the pending matter are considered as having been submitted to or taken by that division administrator.

(b) *Worker's compensation.*

1. 'Assets and liabilities.' On the effective date of this subdivision, the assets and liabilities of the labor and industry review commission primarily related to matters under chapter 102 of the statutes, as determined by the secretary of administration, become assets and liabilities of the department of administration.

2. 'Tangible personal property.' On the effective date of this subdivision, all tangible personal property, including records, of the labor and industry review commission that is primarily related to matters under chapter 102 of the statutes, as determined by the secretary of administration, is transferred to the department of administration.

3. 'Contracts.' All contracts entered into by the labor and industry review commission in effect on the effective date of this subdivision that are primarily related to matters under chapter 102 of the statutes remain in effect and are transferred to the department of administration. The department of administration shall carry out any obligations under such a contract until the contract is modified or rescinded by the department of administration to the extent allowed under the contract.

4. 'Orders.' All orders issued by the labor and industry review commission that are in effect on the effective date of this subdivision remain in effect until their specified expiration date or until modified or rescinded by the department of administration.

5. 'Pending matters.' Any matter pending with the labor and industry review commission on the effective date of this subdivision related to matters under chapter

102 of the statutes is transferred to the administrator of the division of hearings and appeals and all materials submitted to or actions taken by the labor and industry review commission with respect to the pending matter are considered as having been submitted to or taken by the administrator of the division of hearings and appeals.

(c) *Equal rights.*

1. 'Assets and liabilities.' On the effective date of this subdivision, the assets and liabilities of the labor and industry review commission primarily related to matters under subchapter III of chapter 106 of the statutes and subchapter II of chapter 111 of the statutes, as determined by the secretary of administration, become assets and liabilities of the department of workforce development.

2. 'Tangible personal property.' On the effective date of this subdivision, all tangible personal property, including records, of the labor and industry review commission that is primarily related to matters under subchapter III of chapter 106 of the statutes and subchapter II of chapter 111 of the statutes, as determined by the secretary of administration, is transferred to the department of workforce development.

3. 'Contracts.' All contracts entered into by the labor and industry review commission in effect on the effective date of this subdivision that are primarily related to matters under subchapter III of chapter 106 of the statutes and subchapter II of chapter 111 of the statutes remain in effect and are transferred to the department of workforce development. The department of workforce development shall carry out any obligations under such a contract until the contract is modified or rescinded by the department of workforce development to the extent allowed under the contract.

4. 'Orders.' All orders issued by the labor and industry review commission that are in effect on the effective date of this subdivision remain in effect until their specified expiration date or until modified or rescinded by the department of workforce development.

5. 'Pending matters.' Any matter pending with the labor and industry review commission on the effective date of this subdivision related to matters under subchapter III of chapter 106 of the statutes and subchapter II of chapter 111 of the statutes is transferred to the department of workforce development for assignment to the appropriate division administrator and all materials submitted to or actions taken by the labor and industry review commission with respect to the pending matter are considered as having been submitted to or taken by that division administrator.

SECTION 9401. Effective dates; Administration.

(1) **ELIMINATION OF LABOR AND INDUSTRY REVIEW COMMISSION.** The treatment of sections 15.06 (2) (a), 15.105 (15), 20.427, 20.445 (1) (n), (o), and (ra), 20.923 (4) (e) 4., 102.75 (1m), and 230.08 (2) (xc) of the statutes and SECTION 9101 (2) of this act take effect on January 1, 2018, or on the first day of the 6th month beginning after publication, whichever is later.

(END)