



(DRAFT)  
State of Wisconsin  
2001 - 2002 LEGISLATURE

36821  
PI  
LRB-3540/A  
JTK:king:rs  
...

*wanted by wed 8/26*

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

*(regenerate)*

1 AN ACT ~~to renumber and amend 108.09 (3) (a); to amend 108.02 (15) (j) 4. and~~  
 2 ~~5., 108.04 (7) (h), 108.04 (8) (c), 108.20 (3), 108.205 (2) and 108.22 (1) (am); and~~  
 3 ~~to create 108.02 (15) (j) 6., 108.09 (3) (a) 2., 108.17 (2e), 108.205 (3) and 108.22~~  
 4 ~~(1) (ad) of the statutes; relating to: various changes in the unemployment~~  
 5 ~~insurance law and making an appropriation~~

**Analysis by the Legislative Reference Bureau**

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

**OTHER BENEFIT CHANGES**

WS  
IA

**Charging of certain benefits**

Currently, with certain exceptions, if an employee is unable to work or unavailable for work, has not registered for work, or is not seeking suitable work, or with certain exceptions, if an employee terminates his or her work with an employer or fails, without good cause, to accept suitable work when offered or to return to work when recalled by his or her employer, the employee is ineligible to receive benefits until the employee requalifies by working in certain employment for a specified period. One exception permits an employee to receive benefits without requalifying if the employee enrolls in or leaves work to participate in training approved under the federal Trade Readjustment Act. Currently, the cost of benefits paid to an employee under this exception is generally charged to the employer or employers

that employed the employee during his or her base period (recent work period during which benefit rights accrue). Under this bill, the cost of benefits is charged to the balancing account of the unemployment reserve fund, which is financed from contributions (taxes) of all employers that are subject to a requirement to pay contributions, unless the employee's employer or employers do not pay contributions, in which case the cost of benefits is generally chargeable to the employee's employer or employers.

Currently, if an employee fails, without good cause, to return to work with a former employer that recalls the employee within 52 weeks after the employee last worked for the employer, the employee is ineligible to receive benefits until the employee requalifies by working in certain employment for a specified period. Currently, the cost of benefits paid to an employee who fails, without good cause, to return to work with an employer after the employee requalifies is generally charged to the employer or employers that employed the employee during his or her base period. Under this bill, the cost of benefits is charged to the balancing account of the unemployment reserve fund, unless the employee's employer or employers do not pay contributions, in which case the cost of benefits is generally chargeable to the employee's employer or employers.

→  
**OTHER CHANGES**

ws  
2A  
***Coverage of certain nonresident aliens***

Currently, the services of nonresident aliens who are lawfully admitted to the United States are potentially subject to contribution requirements (taxes) under the state unemployment insurance law and employees who are lawfully admitted, nonresident aliens are potentially eligible to claim benefits. This bill eliminates coverage of services performed by certain kinds of nonresident aliens who are lawfully admitted to the United States under certain specified visas, thereby eliminating contribution requirements for services performed by these individuals and precluding these individuals from claiming benefits.

***Contribution and wage report format***

Currently, each employer that is subject to the unemployment insurance law must file with the department of workforce development (DWD) periodic reports of contributions (taxes) and wages paid to each of its employees and certain other information. Employers of 100 or more employees must file the wage reports electronically. This bill provides that, if an employer retains an agent to file contribution or wage reports and the agent files contribution or wage reports on behalf of 25 or more employers, the agent must file the contribution or wage reports electronically, regardless of the number of employees employed by an employer on behalf of which the agent files reports. Under the bill, employer agents that are subject to this requirement and that fail to file their reports electronically may be assessed a penalty of \$25 for each employer whose report is not filed electronically.

***Temporary reserve appeal tribunals***

Currently, DWD employs individuals to serve as "appeal tribunals," who hear and decide appeals of initial determinations made by employees of DWD with respect to unemployment insurance matters. With limited exceptions, these individuals

*The individual must be an attorney who is licensed to practice in this state.*

*JWS  
3A*

must be permanent employees of DWD. This bill permits DWD to employ an individual who formerly served as an appeal tribunal, and who retired from state service as a permanent employee, to serve as a temporary reserve appeal tribunal. Under the bill, these individuals are compensated on a per diem basis.

*space*

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:*

*JWS  
3-1*

**SECTION 1.** 108.02 (15) (j) 4. and 5. of the statutes are amended to read:

108.02 (15) (j) 4. In the employ of a hospital by a patient of such hospital; or

5. In any quarter in the employ of any organization exempt from federal income tax under section 501 (a) of the internal revenue code, other than an organization described in section 401 (a) or 501 (c) (3) of such code, or under section 521 of the internal revenue code, if the remuneration for such service is less than \$50.; or

**SECTION 2.** 108.02 (15) (j) 6. of the statutes is created to read:

108.02 (15) (j) 6. By a nonresident alien for the period that he or she is temporarily present in the United States as a nonimmigrant under 8 USC 1101 (a) (15) (F), (J), (M), or (Q), if the service is performed to carry out the purpose for which the alien is admitted to the United States, as provided in 8 USC 1101 (a) (15) (F), (J), (M), or (Q), or by the spouse or minor child of such an alien if the spouse or child was also admitted to the United States under 8 USC 1101 (a) (15) (F), (J), (M), or (Q) for the same purpose.

**SECTION 3.** 108.04 (7) (h) of the statutes is amended to read:

108.04 (7) (h) The department shall charge to the fund's balancing account benefits paid to an employee that are otherwise chargeable to the account of an employer that is subject to the contribution requirements of ss. 108.17 and 108.18

1 if the employee voluntarily terminates employment with that employer and par. (a),  
2 (c), (d), (e), (k), (L), (o), (p), (q) or (s) or sub. (16) (b) applies.

3 **SECTION 4.** 108.04 (8) (c) of the statutes is amended to read:

4 108.04 (8) (c) If an employee fails, without good cause, to return to work with  
5 a former employer that recalls the employee within 52 weeks after the employee last  
6 worked for that employer, the employee is ineligible to receive benefits until 4 weeks  
7 have elapsed since the end of the week in which the failure occurs and the employee  
8 earns wages after the week in which the failure occurs equal to at least 4 times the  
9 employee's weekly benefit rate under s. 108.05 (1) in employment or other work  
10 covered by the unemployment insurance law of any state or the federal government.  
11 For purposes of requalification, the employee's weekly benefit rate shall be that rate  
12 which would have been paid had the failure not occurred. This paragraph does not  
13 preclude an employee from establishing a benefit year during a period in which the  
14 employee is ineligible to receive benefits under this paragraph if the employee  
15 qualifies to establish a benefit year under s. 108.06 (2) (a). The department shall  
16 charge to the fund's balancing account any benefits otherwise chargeable to the  
17 account of any employer that is subject to the contribution requirements under ss.  
18 108.17 and 108.18 whenever an employee of that employer fails, without good cause,  
19 to return to suitable work with that employer. If an employee receives actual notice  
20 of a recall to work, par. (a) applies in lieu of this paragraph.

21 **SECTION 5.** 108.09 (3) (a) of the statutes is renumbered 108.09 (3) (a) 1. and  
22 amended to read:

23 108.09 (3) (a) 1. To hear and decide disputed claims, the department shall  
24 establish appeal tribunals. Except as authorized in this paragraph, each of which

20

INS

21

4-20

22

23

24

1 tribunal shall consist of an individual who is a permanent employee of the  
2 department.

3 3. Upon request of a party to an appeal or upon its own motion, the department  
4 may appoint an individual who is not a permanent employee of the department to  
5 hear an appeal in which the department or an employee or former employee of the  
6 department is an interested party. No individual may hear any appeal in which the  
7 individual is a directly interested party.

8 SECTION 6. 108.09 (3) (a) 2. of the statutes is created to read:

9 108.09 (3) (a) 2. The department may appoint an individual who is not a  
10 permanent employee of the department to serve as a temporary reserve appeal

11 tribunal if the individual formerly served as an appeal tribunal while employed by  
*An individual who is appointed to serve as a temporary reserve appeal tribunal shall be an attorney who is licensed to practice in this state.*  
12 the department and retired from state service as a permanent employee.

13 temporary reserve appeal tribunal shall be paid on a per diem basis.

14 SECTION 7. 108.17 (2e) of the statutes is created to read:

15 108.17 (2e) An employer agent that files reports under sub. (2) on behalf of 25  
16 or more employers shall file those reports using an electronic medium and format

17 approved by the department. An employer agent that becomes subject to the  
18 reporting requirement under this subsection shall file its initial report under this  
19 subsection for the 2nd reporting period beginning after the quarter in which the  
20 employer agent becomes subject to the reporting requirement. Once an employer  
21 agent becomes subject to the reporting requirement under this subsection, the  
22 employer agent shall continue to file its reports under this subsection unless that  
23 requirement is waived by the department.

SECTION 8. 108.20 (3) of the statutes is amended to read:

*JWS  
5-15*

*JWS  
5-23-24*

1           108.20 (3) There shall be included in the moneys governed by sub. (2m) any  
2 amounts collected by the department under ss. 108.04 (11) (c) and (cm) and 108.22  
3 (1) (a) ~~and, (ac), and (ad)~~ as tardy filing fees, forfeitures, interest on delinquent  
4 payments or other penalties and any excess moneys collected under s. 108.19 (1m).

5           **SECTION 9.** 108.205 (2) of the statutes is amended to read:

6           108.205 (2) ~~All employers~~ An employer of 100 or more employees, as  
7 determined under s. 108.22 (1) (ae), shall file the quarterly report under sub. (1)  
8 using an electronic medium approved by the department ~~for such employers, unless~~  
9 the employer retains an employer agent that is subject to the reporting requirement  
10 under sub. (3).

11           (4) An employer that becomes subject to the reporting requirement under this  
12 subsection ~~sub. (2)~~ shall file its initial report under ~~this that~~ subsection for the 4th  
13 quarter beginning after the quarter in which the employer becomes subject to the  
14 reporting requirement. An employer agent that becomes subject to the reporting  
15 requirement under sub. (3) shall file its initial report under that subsection for the  
16 2nd quarter beginning after the quarter in which the employer agent becomes  
17 subject to the reporting requirement. Once an employer or employer agent becomes  
18 subject to ~~the a~~ reporting requirement under ~~this subsection sub. (2) or (3), the~~  
19 employer or employer agent shall continue to file its quarterly reports under ~~this~~  
20 subsection sub. (2) or (3) unless that requirement is waived by the department.

21           **SECTION 10.** 108.205 (3) of the statutes is created to read:

22           108.205 (3) An employer agent that files reports under sub. (1) on behalf of 25  
23 or more employers shall file those reports using an electronic medium and format  
24 approved by the department.

25           **SECTION 11.** 108.22 (1) (ad) of the statutes is created to read:

1           108.22 (1) (ad) An employer agent that is subject to the reporting requirements  
 2 under ss. 108.17 (2e) and 108.205 (3) and that fails to file a contribution report in  
 3 accordance with s. 108.17 (2e) or a wage report in accordance with s. 108.205 (3) may  
 4 be assessed a penalty by the department in the amount of \$25 for each employer  
 5 whose report is not filed using an electronic format and medium approved by the  
 6 department.

7           **SECTION 12.** 108.22 (1) (am) of the statutes is amended to read:

8           108.22 (1) (am) The interest and the tardy filing fees levied under par. (a), (ac)  
 9 and (ad) shall be paid to the department and credited to the administrative account.

*ANS*  
*7-9*

10           **SECTION 13. Initial applicability.**

11           (1) The treatment of section 108.02 (15) (j) 4., 5., and 6. of the statutes first  
 12 applies to services performed after December 31, 2001.

13           (2) The treatment of section 108.04 (7) (h) of the statutes first applies with  
 14 respect to terminations occurring on January 7, 2001.

15           (3) The treatment of section 108.04 (8) (c) of the statutes first applies with  
 16 respect to determinations issued under section 108.10 of the statutes on April 2,  
 17 2000.

*ANS*  
*7-17*

18           (4) The treatment of sections 108.17 (2e), 108.20 (3), 108.205 (2) and (3), and  
 19 108.22 (1) (ad) and (am) of the statutes first applies with respect to reports due for  
 the reporting period or calendar quarter that includes March 31, 2002. *2003*

*ANS*  
*7-20*

20           **SECTION 14. Effective date.**

21           (1) This act takes effect on the first Sunday after publication.  
 22

23

(END)

INS 1A:

***Offset of social security benefits***

Currently, with certain exceptions, if benefits are payable to a claimant for any week for which the claimant receives a pension payment from a governmental or other retirement system (including the social security system) maintained or contributed to by an employer for which the claimant worked during his or her base period (recent work period during which benefit rights accrue), the benefits received by the claimant for each week are reduced by the amount of the pension payment received for that week, except that if the payment is received under the social security act, the benefits received by the claimant for each week are reduced by 50% of the amount of the payment received for that week. This bill provides that all payments received by a claimant under the social security act are not included in determining the amount of any required unemployment insurance benefit reduction.

INS 3A:

***Electronic submissions***

Under current state law, unless otherwise provided, any document that may be submitted in writing to a state agency and that requires a signature may, with the consent of the agency, be submitted in electronic format. Federal law may also require or permit state agencies to accept certain documents electronically. This bill specifically permits DWD to provide a secure means of electronic interchange between itself and employing units, claimants, and other customers which, upon request of a customer, may be used to submit electronically any document that is used in the administration of the unemployment insurance law in lieu of any other means of submission. The bill also provides that if a due date is established by law ~~for~~ the submission of any document that is submitted electronically, that due date is the end of the last day permitted for personal delivery of that document.

***Liens for unpaid reimbursements and certain forfeitures***

\* Currently, if an employer owes any contributions (taxes), interest, or fees to DWD, DWD has a lien on the employer's real and personal property located in this state at the time that DWD issues any initial determinations of liability, unless the lien is temporarily barred or stayed under bankruptcy or other insolvency law. This bill provides that DWD has a lien under the same conditions for any unpaid forfeitures (civil penalties) imposed by DWD for aiding and abetting unemployment insurance fraud and for unpaid reimbursements of benefits payable by an employer that has elected to reimburse the unemployment reserve fund for benefits paid on its behalf instead of making contributions to the fund.

***Administrative levies to collect certain liabilities***

Currently, a governmental or nonprofit employer is generally permitted to elect to finance benefit payments by reimbursing the unemployment reserve fund for the

cost of benefits charged to its account instead of by paying regular contributions (taxes) to finance these benefits. If a reimbursement is not paid when due, DWD may collect the reimbursement by bringing a lawsuit against the debtor in circuit court. This bill permits DWD to administratively levy against any property other than realty of a person who fails to pay a reimbursement when due. Under the levy procedure, the person in possession of property that is subject to levy must surrender the property to DWD and DWD applies the property to offset the amount owed by the owner, plus the expenses of the levy.

Currently, DWD may proceed against any third party that has in its possession property that is subject to levy for payment of delinquent contributions or penalties administratively assessed by DWD, or for repayment of benefit overpayments. A third party is not liable for more than 25% of the debt owed by the original debtor. This bill permits DWD to use the levy procedure to recover property owed to DWD by third parties, subject to the current limitations, for unpaid contributions and penalties and benefit overpayments that have not been repaid, as well as for unpaid reimbursements.

***Partial successorship***

Currently, if at least 25% of a business is transferred from one employer to another employer and the transferee requests DWD to treat it as a successor to the transferor for purposes of unemployment insurance experience, including contribution and benefit liability, DWD must treat the transferee as a successor, instead of treating it as a new employer, under certain conditions. This bill precludes a transferee from requesting that it be treated as a successor to a transferor unless 100% of the transferor's business is transferred to the transferee. The bill also requires that a transferee be treated as a successor under certain conditions, even if less than 100% of a transferor's business is transferred to the transferee, if the transferee's unemployment insurance account is overdrawn on the date of the transfer.

***Funding and position changes***

This bill authorizes 15 federally funded project positions for DWD to carry out unemployment insurance information technology system redesign projects. The bill \*also appropriates \$250,000 from revenue received by DWD for interest, penalties, and fees for unemployment insurance purposes to be used to pay for employment service expenses that were disallowed as federally aided costs.

TAX CHANGES

**Solvency rate adjustment**

Currently, all employers that engage employees in work that is covered under the unemployment insurance law, other than governmental and nonprofit employers that elect to pay directly for the cost of benefits, must pay contributions (taxes) to finance unemployment insurance benefits. The total contribution rate of an employer is equal to the sum of the employer's contribution rate and the employer's solvency rate, each of which vary with the employment stability of the employer and the solvency of the unemployment reserve fund, from which benefits are paid. An employer's contributions payable as a result of its contribution rate are credited to the employer's account, while an employer's contributions payable as a result of its solvency rate are credited to the fund's balancing account, which is used to fund benefits not payable from any employer's account. This bill decreases the solvency rate payable by employers having a taxable annual payroll for unemployment insurance purposes of less than \$500,000 when the unemployment insurance fund has a balance of at least \$900,000,000 from 0.02% of an employer's payroll to 0.00% of an employer's payroll.

**Special assessments payable by certain new employers**

Currently, if a new employer is required to pay contributions (taxes) to the unemployment reserve fund and the employer's account is overdrawn as of January 31 or June 30 following any of the first three calendar years that the employer is subject to a contribution requirement because the total benefits charged to the account exceed the total contributions credited to the account as of one of those dates, the employer must pay a special assessment to the unemployment reserve fund in the amount of 1.3% of the employer's annual taxable payroll for unemployment insurance purposes for the calendar year preceding the year in which the account is overdrawn. This bill repeals the requirement to pay this assessment.

**Special assessments for information technology systems**

Currently, each employer that is subject to a contribution requirement must pay an annual special assessment for each year prior to 2000 in an amount that may not exceed the lesser of 0.01% of the employer's annual taxable payroll for unemployment insurance purposes or the employer's solvency contribution for that year for the purpose of financing the design or development of unemployment insurance information technology systems. The department of workforce development (DWD) must reduce the solvency rate that an employer must pay in each year prior to 2000 by the special assessment rate applicable to that employer for that year. (The solvency rate is the portion of an employer's contribution rate that is used to maintain the solvency of the unemployment reserve fund.) This bill makes the special assessment requirement and solvency rate offset applicable to calendar years 2000 and 2001. The bill also permits DWD to use the revenue generated by the assessments only for renovation and modernization of the unemployment insurance tax and accounting system.

renovation and modernization of the

2002 and 2003

2002

tax and accounting system

design, or development of

information technology systems including the

2002

INS VA

Sub

**2001-2002 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-3540/P2ins  
JTK.....

INS 3-1:

**SECTION 1.** 20.445 (1) (nb) (title) of the statutes is amended to read:

**20.445 (1) (nb) (title)** *Unemployment tax and accounting system information technology systems; federal moneys.*

**History:** 1971 c. 125 ss. 156, 522 (1); 1971 c. 211, 215; 1971 c. 228 s. 44; 1971 c. 259; 1973 c. 90, 180, 243, 333; 1975 c. 39, 147, 224, 274, 344; 1975 c. 404 ss. 3, 10 (1); 1975 c. 405 ss. 3, 11 (1); 1977 c. 29, 48, 203, 418; 1979 c. 34 ss. 512 to 522, 2102 (25) (a); 1979 c. 189, 221, 309; 1979 c. 329 s. 25 (1); 1979 c. 350 ss. 3, 27 (6); 1979 c. 353, 355; 1981 c. 20, 36, 92, 93, 317, 325, 364; 1983 a. 8; 1983 a. 27 ss. 411 to 425; 1983 a. 98 ss. 1, 31; 1983 a. 192, 384, 388, 410; 1985 a. 17, 29, 153, 313, 332; 1987 a. 27; 1987 a. 38 ss. 2 to 4, 136; 1987 a. 399, 403; 1989 a. 31, 44, 64, 77, 254, 284, 359; 1991 a. 39 ss. 372c, 545r, 545t, 545v, 547, 548, 548g, 548m, 549, 549b, 549g, 549p; 1991 a. 85, 89, 269, 315; 1993 a. 16, 126, 243, 437, 491; 1995 a. 27 ss. 772mm, 772mn, 776p to 778b, 778L, 778n, 778q, 778v, 778z to 780m, 781m to 782p, 782u, 841, 842, 849, 850, 854, 855, 858c, 873 to 876, 878, 880, 890 to 896, 962 to 1014c, 9126 (19), 9130 (4); 1995 a. 113 s. 2t; 1995 a. 117, 201, 216, 225, 289; 1995 a. 404 ss. 4, 6 to 8, 10 to 17; 1997 a. 3; 1997 a. 27 ss. 610 to 642m, 722; 1997 a. 35, 38, 39, 105, 112, 191, 235, 236, 237, 252; 1999 a. 9 ss. 270, 458 to 478; 1999 a. 15, 32.

INS 4-20:

**SECTION 2.** 108.05 (7) (a) 1. of the statutes is amended to read:

**108.05 (7) (a) 1.** "Pension payment" means a pension, retirement, annuity or other similar payment made to a claimant, based on the previous work of that claimant, whether or not payable on a periodic basis, from a governmental or other retirement system maintained or contributed to by an employer from which that claimant has base period wages, other than a payment received under the social security act (42 USC 301 et seq.).

**History:** 1971 c. 53; 1973 c. 247; 1975 c. 343; 1977 c. 29; 1979 c. 52; 1981 c. 28, 36; 1983 a. 8, 168, 384; 1985 a. 17, 40; 1987 a. 38 ss. 60 to 66, 136; 1987 a. 255; 1989 a. 77; 1991 a. 89; 1993 a. 373; 1995 a. 118; 1997 a. 39; 1999 a. 15, 56, 185, 186.

**SECTION 3.** 108.05 (7) (f) 1. of the statutes is amended to read:

**108.05 (7) (f) 1.** If the pension payment is received under the ~~social security act (42 USC 301 et seq.)~~ or railroad retirement act (45 USC 231 et seq.), the department shall reduce the weekly benefits payable for a week of partial or total unemployment by 50% of the weekly pension amount.

**History:** 1971 c. 53; 1973 c. 247; 1975 c. 343; 1977 c. 29; 1979 c. 52; 1981 c. 28, 36; 1983 a. 8, 168, 384; 1985 a. 17, 40; 1987 a. 38 ss. 60 to 66, 136; 1987 a. 255; 1989 a. 77; 1991 a. 89; 1993 a. 373; 1995 a. 118; 1997 a. 39; 1999 a. 15, 56, 185, 186.

INS 5-13:

**SECTION 4.** 108.14 (2e) of the statutes is created to read:

108.14 (2e) The department may provide a secure means of electronic interchange between itself and employing units, claimants, and other customers which, upon request of a customer, may be used to submit electronically any document used in the administration of this chapter in lieu of any other means of submission. If a due date is established by law for the submission of any document that is submitted electronically under this subsection, that due date is the end of the last day permitted for personal delivery of the document.

**SECTION 5.** 108.16 (8) (b) (intro.) of the statutes is amended to read:

108.16 (8) (b) (intro.) If the business of any employer is transferred to a single transferee, the transferee is deemed a successor for purposes of this chapter, <sup>§ 5P</sup> if the department determines that all of the following conditions have been satisfied:

History: 1971 c. 53; 1973 c. 247; 1975 c. 343; 1977 c. 133; 1979 c. 52; 1979 c. 110 s. 60 (13); 1981 c. 36; 1983 a. 8, 99, 368; 1985 a. 17 ss. 39 to 56, 66; 1985 a. 29; 1987 a. 27; 1987 a. 38 ss. 107 to 111, 134; 1987 a. 255; 1989 a. 56 s. 259; 1989 a. 77, 359; 1991 a. 89, 221; 1993 a. 112, 373, 490, 492; 1995 a. 118, 225; 1997 a. 39; 1999 a. 15, 83.

**SECTION 6.** 108.16 (8) (b) 2. of the statutes is amended to read:

108.16 (8) (b) 2. The transfer included ~~at least 25%~~ 100% of the transferor's total business as ~~measured by comparing the payroll experience assignable to the portion of the business transferred with the transferor's total payroll experience for the last 4 completed quarters immediately preceding on~~ the date of transfer.

History: 1971 c. 53; 1973 c. 247; 1975 c. 343; 1977 c. 133; 1979 c. 52; 1979 c. 110 s. 60 (13); 1981 c. 36; 1983 a. 8, 99, 368; 1985 a. 17 ss. 39 to 56, 66; 1985 a. 29; 1987 a. 27; 1987 a. 38 ss. 107 to 111, 134; 1987 a. 255; 1989 a. 56 s. 259; 1989 a. 77, 359; 1991 a. 89, 221; 1993 a. 112, 373, 490, 492; 1995 a. 118, 225; 1997 a. 39; 1999 a. 15, 83.

**SECTION 7.** 108.16 (8) (c) (intro.) of the statutes is amended to read:

108.16 (8) (c) (intro.) Notwithstanding par. (b), if the business of an employer is transferred to a single transferee, the transferee is deemed a successor for

purposes of this chapter if the department determines that all of the following conditions have been satisfied:

History: 1971 c. 53; 1973 c. 247; 1975 c. 343; 1977 c. 133; 1979 c. 52; 1979 c. 110 s. 60 (13); 1981 c. 36; 1983 a. 8, 99, 368; 1985 a. 17 ss. 39 to 56, 66; 1985 a. 29; 1987 a. 27; 1987 a. 38 ss. 107 to 111, 134; 1987 a. 255; 1989 a. 56 s. 259; 1989 a. 77, 359; 1991 a. 89, 221; 1993 a. 112, 373, 490, 492; 1995 a. 118, 225; 1997 a. 39; 1999 a. 15, 83.

**SECTION 8. 108.16 (8) (e) 4. of the statutes is created to read:**

108.16 (8) (e) 4. The transferor's account was overdrawn on the date of the transfer, even if the transfer included less than 100% of the transferor's total business on the date of the transfer.

**SECTION 9. 108.16 (8) (f) of the statutes is amended to read:**

108.16 (8) (f) The successor shall take over and continue the transferor's account, including its positive or negative balance and all other aspects of its ~~experience~~ under this chapter; if the transfer included less than 100% of the transferor's total assets on the date of the transfer, the department shall allocate the transferor's experience to the transferee in proportion to the payroll assignable to the transferred business. ~~The~~ and the liability of the successor shall be proportioned to the extent of the transferred business. The transferor and the successor shall be jointly and severally liable for any amounts owed by the transferor to the fund and to the administrative account at the time of the transfer, but a successor under par. (c) is not liable for the debts of the transferor except in the case of fraud or malfeasance.

History: 1971 c. 53; 1973 c. 247; 1975 c. 343; 1977 c. 133; 1979 c. 52; 1979 c. 110 s. 60 (13); 1981 c. 36; 1983 a. 8, 99, 368; 1985 a. 17 ss. 39 to 56, 66; 1985 a. 29; 1987 a. 27; 1987 a. 38 ss. 107 to 111, 134; 1987 a. 255; 1989 a. 56 s. 259; 1989 a. 77, 359; 1991 a. 89, 221; 1993 a. 112, 373, 490, 492; 1995 a. 118, 225; 1997 a. 39; 1999 a. 15, 83.

INS 5-23:

**SECTION 10. 108.19 (1e) (a) and (d) of the statutes are amended to read:**

108.19 (1e) (a) Except as provided in par. (b), each employer, other than an employer ~~which~~ that finances benefits under s. 108.15 or 108.151 shall, in addition

to other contributions payable under s. 108.18 and this section, pay an assessment to the administrative account for each year prior to the year ~~2002~~ 2004 equal to the lesser of 0.01% of its payroll for that year or the solvency contribution that would otherwise be payable by the employer under s. 108.18 (9) for that year.

(d) The department may expend the moneys received from assessments levied under this subsection for the renovation and modernization of the unemployment insurance information technology systems, including the tax and accounting system, and specifically including development and implementation of a new system and reengineering of automated processes and manual business functions.

History: 1979 c. 34; 1979 c. 110 s. 60 (13); 1981 c. 315; 1983 a. 8, 27, 384; 1985 a. 29, 332; 1987 a. 27, 38, 403; 1991 a. 315; 1993 a. 490; 1997 a. 39; 1999 a. 15.

INS 7-9:

**SECTION 11.** 108.22 (1m) of the statutes is amended to read:

108.22 (1m) If an employer owes any contributions, reimbursements under s. 108.15 or 18.151, interest or fees<sup>Score 1</sup> or forfeitures imposed under s. 108.04 (11) (c) to the department under this chapter and fails to pay the amount owed, the department has a perfected lien upon the employer's right, title and interest in all of its real and personal property located in this state in the amount finally determined to be owed, plus costs. Except where creation of a lien is barred or stayed by bankruptcy or other insolvency law, the lien is effective when the department issues a determination of the amount owed under s. 108.10 (1) and shall continue until the amount owed, plus costs and interest to the date of payment, is paid. If a lien is initially barred or stayed by bankruptcy or other insolvency law, it shall become effective immediately upon expiration or removal of such bar or stay. The perfected lien does not give the department priority over lienholders, mortgagees, purchasers for value, judgment

creditors and pledges whose interests have been recorded before the department's lien is recorded.

History: 1973 c. 247; Sup. Ct. Order, 67 Wis. 2d 585, 774 (1975); 1975 c. 343; 1979 c. 52; 1981 c. 36; 1985 a. 17, 29; 1987 a. 38; 1989 a. 77; 1991 a. 89; 1993 a. 112, 373; 1995 a. 224; 1997 a. 39; 1999 a. 15.

**SECTION 12.** 108.225 (1) (a) to (c) of the statutes are amended to read:

108.225 (1) (a) ~~“Contributions” include~~ “Contribution” includes a reimbursement under s. 108.15 or 108.151, interest for a nontimely payment and any penalties payment due for a penalty assessed by the department under this chapter.

(b) “Debt” means a delinquent contribution or repayment of a benefit overpayment, or any liability of a 3rd party for failure to surrender to the department property or rights to property subject to levy after proceedings under sub. (4) (b) and s. 108.10 to determine that liability.

(c) “Debtor” means a person who owes the department delinquent  
~~\* contributions or a benefit overpayment a debt.~~

History: 1989 a. 77; 1997 a. 187, 283.

**SECTION 13.** 108.225 (16) (intro.) of the statutes is amended to read:

108.225 (16) **WAGES EXEMPT FROM LEVY.** (intro.) In the case of benefit overpayments, ~~the~~ and forfeitures imposed upon an employing unit under s. 108.04 (11) (c), an individual debtor is entitled to an exemption from levy of the greater of the following:

History: 1989 a. 77; 1997 a. 187, 283.

**SECTION 14. Nonstatutory provisions.**

(1) **POSITION AUTHORIZATIONS.** The authorized FTE positions for the department of workforce development are increased by 15.0 FED positions for the period ending on June 30, 2004, to be funded from the appropriation under section 20.445 (1) (n) of the statutes, for the purpose of assisting with unemployment insurance information technology projects.

**SECTION 15. Appropriation changes.**

(1) In the schedule under section 20.005 (3) of the statutes for the appropriation to the department of workforce development under section 20.445 (1) (gf) of the statutes, as affected by the acts of 2001, the dollar amount is increased by \$250,000 for fiscal year 2001-02 to pay employment service costs for which federal aid was disallowed.

(2) In the schedule under section 20.005 (3) of the statutes for the appropriation to the department of workforce development under section 20.445 (1) (nb) of the statutes, as affected by the acts of 2001, the dollar amount is increased by \$-0- for fiscal year 2001-02.

INS 7-17:

( ) The treatment of sections <sup>5</sup>108.05 (7) (a) 1. and (f) 1. of the statutes first applies to weeks of unemployment beginning on December 30, 2001.

INS 7-20:

( ) The treatment of section 108.16 (8) (b) (intro.) and 2., (c) (intro.) and 4. and (f) first applies to transfers of businesses occurring after December 31, 2001, and to transfers of businesses of which the department of workforce development receives notice after January 31, 2002. ✓

( ) The treatment of sections <sup>5</sup>108.22 (1m) of the statutes first applies with respect to liabilities that accrue on the effective date of this subsection.

( ) The treatment of section 108.225 (1) (a) to (c) and (16) (intro.) of the statutes first applies to with respect to determinations issued under section 108.10 of the statutes on the effective date of this subsection.

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-3540/P2dn  
JTK.....

- Date -

Michelle Kho:

1. It seems to me that forfeitures imposed under s. 108.04 (11) (c), stats., should already be subject to collection by levy under s. 108.225, stats., because s. 108.225 (1) (a), stats., defines "contributions" to include "...penalties assessed by the department...", and under s. 108.225 (1) (b), stats., a "debt" includes contributions. Therefore, this draft does not address that issue. Concerning the levy procedure, in s. 108.225 (1) (a), stats., [definition of "contributions"], do you want to include a reference to fees?
2. Concerning the proposed elimination of the benefit offset for social security benefit payments under s. 108.05 (7), stats., the council may wish to consider treating railroad retirement benefit payments analogously because railroad employees who receive railroad retirement benefit payments are ineligible to receive social security benefit payments [42 USC 402 (1)].
3. Under proposed s. 108.19 (3) (a) 2. [temporary reserve appeal tribunals], I have added that any individual who is appointed to serve must be "an attorney who is licensed to practice in this state". I think this is the equivalent of a good standing requirement, because I assume that lack of good standing would mean that an attorney's license was suspended or revoked, or had lapsed. If you intended something more, please let me know.
4. Concerning proposed s. 108.14 (2e), relating to electronic interchange, I have inserted a sentence that clarifies the due date for an electronic submission. You can elect something different, but if you intend for this date and time to be anything other than the date and time that would apply to in-person delivery, you probably need to treat this issue in the law. In addition, you may wish to clarify whether this subsection covers payments. You will also probably need to address, either now or later by rule, the effect of a failure or alleged failure of transmission. This is in part a security issue, because with current technology, it is not feasible to make an electronic transmission completely hackproof; partly a technical issue, because of the substantial potential for breakdowns and outages; and partly a fairness issue, because of the potential for technical reasons to be cited as an excuse for an untimely submission. The federal E-Sign law does not treat this issue, but the proposed Uniform Electronic Transactions Act does treat it, albeit in a confusing way. One other issue that you don't need to deal with here but may need to deal with ultimately is that E-Sign contains some

restrictions on the powers of governments to require the use of or change to non-neutral technology. P.L. 106-229, sec. 104 (2) (C) (iii) and (3) (A).

4. In s. 108.16 (8) (f), stats., I retained language that treats situations in which less than 100% of a transferor's assets are transferred, because that situation can still arise under proposed s. 108.16 (8) (c) 4.

3. This draft includes a blank appropriation increase for the appropriation under s. 20.445 (1) (nb), stats., [Unemployment insurance IT systems development]. You will need to give me the dollar amount, if any, that we need to insert in the blank at some point before the drafting process concludes.

Jeffery T. Kuesel  
Managing Attorney  
Phone: (608) 266-6778

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-3682/P1dn  
JTK:....pg

August 28, 2001

Michelle Kho:

1. It seems to me that forfeitures imposed under s. 108.04 (11) (c), stats., should already be subject to collection by levy under s. 108.225, stats., because s. 108.225 (1) (a), stats., defines "contributions" to include "...penalties assessed by the department...", and under s. 108.225 (1) (b), stats., a "debt" includes contributions. Therefore, this draft does not address that issue. Concerning the levy procedure, in s. 108.225 (1) (a), stats., [definition of "contributions"], do you want to include a reference to fees?

2. Concerning the proposed elimination of the benefit offset for social security benefit payments under s. 108.05 (7), stats., the council may wish to consider treating railroad retirement benefit payments analogously because railroad employees who receive railroad retirement benefit payments are ineligible to receive social security benefit payments [42 USC 402 (1)].

3. Under proposed s. 108.19 (3) (a) 2. [temporary reserve appeal tribunals], I have added that any individual who is appointed to serve must be "an attorney who is licensed to practice in this state". I think this is the equivalent of a good standing requirement, because I assume that lack of good standing would mean that an attorney's license was suspended or revoked, or had lapsed. If you intended something more, please let me know.

4. Concerning proposed s. 108.14 (2e), relating to electronic interchange, I have inserted a sentence that clarifies the due date for an electronic submission. You can elect something different, but if you intend for this date and time to be anything other than the date and time that would apply to in-person delivery, you probably need to treat this issue in the law. In addition, you may wish to clarify whether this subsection covers payments. You will also probably need to address, either now or later by rule, the effect of a failure or alleged failure of transmission. This is in part a security issue, because with current technology, it is not feasible to make an electronic transmission completely hackproof; partly a technical issue, because of the substantial potential for breakdowns and outages; and partly a fairness issue, because of the potential for technical reasons to be cited as an excuse for an untimely submission. The federal E-Sign law does not treat this issue, but the proposed Uniform Electronic Transactions Act does treat it, albeit in a confusing way. One other issue that you don't need to deal with here but may need to deal with ultimately is that E-Sign contains some

restrictions on the powers of governments to require the use of or change to non-neutral technology. P.L. 106-229, sec. 104 (2) (C) (iii) and (3) (A).

5. In s. 108.16 (8) (f), stats., I retained language that treats situations in which less than 100% of a transferor's assets are transferred, because that situation can still arise under proposed s. 108.16 (8) (c) 4.

6. This draft includes a blank appropriation increase for the appropriation under s. 20.445 (1) (nb), stats., [Unemployment insurance IT systems development]. You will need to give me the dollar amount, if any, that we need to insert in the blank at some point before the drafting process concludes.

Jeffery T. Kuesel  
Managing Attorney  
Phone: (608) 266-6778

## Kuesel, Jeffery

---

**From:** Kho, Michelle  
**Sent:** Friday, August 31, 2001 4:25 PM  
**To:** Kuesel, Jeffery  
**Subject:** Responses to drafter's notes

Jeff, FYI, I am working on the first two drafter's notes and anticipate sending them to you no later than Wednesday. In the interim, I wanted to update you on a couple of things.

First, I have attached language for the UI Benefit Fraud Report law change. I don't know where the best place is for it to go -- perhaps somewhere in sec. 108.14 (administration).

Second, I sent you the most updated copy of the Agreement by the UI Advisory Council (dated 8/29/01) in a prior email. The council has expressed interest in including in the bill that the administrative rules that they agreed upon (provided in the 8/29/01 agreement) will be promulgated by the department. Is this doable, perhaps as a nonstatutory directive?



UI Benefit Fraud  
Report.doc

### UI Benefit Fraud Report

On or about February 15 of each year, the department shall prepare and furnish to the council on unemployment insurance an annual report summarizing its unemployment insurance fraud-related detection and prosecution activities.

Michelle Kho  
September 4, 2001

**Response to Drafter's Note  
(Dated 8/2/01)**

- ✓ 1. Okay, we can discuss – (conformity “new work” will not be in the bill and the audit thing we can discuss).
- ✓ 2. Yes, change “suitable work” to “work” per your suggestion.
- ✓ 3. Instead of 29 USC 1661, use 29 USC 2822 in § 108.04(16) (b).
4. Reserve ALJ provision: please call Greg w/ respect to any question you have on this (267-1406). He knows you have questions and is expecting your call. (Alternatively, I can set up a conference call at your convenience if you let me know when you're available (me: 266-6684).)
  
- ✓ 5. We do want to amend first part of sec. 108.22(1m): “If an employer owes any contributions, interest, penalties or fees. . .”  
  
Your decision to omit the term “fiscal agents” and just use “employer agents” is okay.
  
- ✓ 6. What you did to clarify that reports of employer agents continue to be employers' reports is okay.
  
- ✓ 7. Yes, in preliminary draft 1, p. 7, lns. 15-17, change to “. . . first applies with respect to terminations commencing on March 30, 2002”. Date may possibly change if I get the word from Benefits.
  
- ✓ 8. The only initial applicability provision we anticipate may be retroactive is the alien exclusion (visas). **These dates need to be changed**, but I am waiting for **our benefits section to determine which dates need to be moved** forward due to training and workload so that dates do not have to be changed repeatedly.

**Response to Drafter's Note  
(Dated 8/28/01)**

- ✓ 1. With respect to your comment that forfeitures imposed should already be subject to collection by levy, our response is we just want to leave it as was in the law change proposal. With respect to the question about whether we want to include a reference to fees, the answer is yes, we do want a reference to fees.
  
- ✓ 2. Okay (since nobody has brought up railroad retirement, we probably will not change it in the current bill).
  
- ✓ 3. Okay (no anticipated changes unless Greg brings any up in his conversation with you (see #4 under Response to DN (Dated 8/02/01) supra ).

- ✓ 4. On page 8, Section 10, lns. 14 –16, please change the last sentence beginning with “If a due date . . .” to read, “If there is a statutory due date for any document that is submitted under this subsection, then that document is timely only if submitted by midnight of that statutory due date.” We do not intend the three-day rule to apply because that only applies to documents that have been postmarked, i.e., those mailed through the post office.

We will not address the subsection that covers payments in this bill.

We will not address the effect of a failure or failure of an alleged transmission in this bill, even though we know it’s an important issue to address in the near future.

- ✓ 5. Transferor’s assets – We are still working on this  
✓ 6. IT systems development number – I will get it from Dick and give it to you once he has it.

CORRESPONDENCE/MEMORANDUM

State of Wisconsin  
Department of Workforce Development  
**Bureau of Legal Affairs**  
(608) 266-6684

Date: September 6, 2001  
To: Jeffery Kuesel  
From: Michelle Kho  
Bureau of Legal Affairs

**Subject: Changes to Preliminary Draft dated 8/28/01**  
(Not specifically in response to any drafter's note)

1. The PEO and Indian tribe provisions will be sent over to you either this afternoon or tomorrow. We are still waiting to hear from management members of the UIAC to develop our tax deferral statutory language.
2. With respect to social security offset, the bill draft should reflect the council's agreement that there is a reduction of the offset from 50% to 25% in 2002 and that there is a total elimination of the offset commencing in 2003.
3. In DN (8/28/01) at no. 6, you asked for the dollar amount for the appropriation of UI IT systems development. Here is the info I got from Dick Tillema:

The bill would continue a .01% surcharge on taxable payroll for 2002 and 2003. The revenue would be used to upgrade computer systems used to administer the unemployment insurance program. An estimated \$2.4 million would be collected from the assessment for 2002 and \$2.5 million from the assessment in 2003. Due to the timing of tax collections, it is anticipated that program revenue in appropriation 20.445(1)(gh) would increase by \$1,063,200 in 2001-2002, by \$2,444,300 in 2002-2003, and by \$1,392,500 in 2003-2004.

4. On first page of 8/28/01 draft, should analysis heading include "Other" in "Other Benefits Changes"? Seems like "other" is confusing since no benefits changes have been mentioned yet.
5. P. 2, line 5, change to "of the gross amount of the payment . . ."
6. P. 2, first two lines under "Charging of certain Benefits", remove:

~~Currently, with certain exceptions, if an employee is unable to work or unavailable for work, has not registered for work, or is not seeking suitable work, or with certain exceptions, . . .~~

Six lines down, change:

. . . until the employee requalifies by working in certain employment for and earns a specified amount of wages period.

Eleven lines down, add an "e" to "employe".

In second paragraph, fourth line, change:

... requalifies by working in certain employment ~~for~~ and earns a specified amount of wages period.

- ✓ 7. P. 3, fifth line from the top should say:  
... assessments, for the design, or development ...
- ✓ 8. P. 4, under Administrative levies to collect certain liabilities, in the last sentence of the first paragraph, the word "apples" should be "applies".
- ✓ 9. On p. 13, in section 26, is it okay to say department of workforce development gets 15 fed positions – or do we need to specify for the unemployment insurance division or program?

CORRESPONDENCE/MEMORANDUM

State of Wisconsin  
Department of Workforce Development  
**UI Bureau of Legal Affairs**  
(608) 266-6684

Date: **September 11, 2001**

To: Jeffery Kuesel

From: Michelle Kho  
Bureau of Legal Affairs

**Subject: More Changes to Preliminary Draft Dated 8/28/01**  
(Not specifically in response to any drafter's note)

- 1. Benefit rate tables will be ready by Monday, 9/17/01. I will put them on a disk and walk them over to LRB. Initial applicability dates:

By \$11

Weekly benefit rate increases for each week of total unemployment that commences on or after December 30, 2001, and before December 29, 2002.

By \$5

Weekly benefit rate increases for each week of total unemployment that commences on or after December 29, 2002, and before December 27, 2003.

- 2. I talked to Greg about moving the date to introduce the bill at the joint hearing of labor committees. He wants to try to keep it at the 9/26 date, though he acknowledged we might not make it. In any case, I did alert Jason Rostan in Rep. Hundertmark's office to let him know that it's going to be tight. We are scheduling a UIAC meeting to vote on the bill – meeting will be at 10 a.m. on 9/19/01.

3. Under section 28. Initial applicability:

- ✓ (1) The treatment of section 108.02(15)(j)4., 5., and 6., of the statutes first applies to services performed after December 31, ~~2001~~ 2000.

[Note: we want to make this one retroactive to the first of this year.]

- ✓ (2) The treatment of section 108.04(7)(h) of the statutes first applies with respect to ~~terminations occurring on January 7, 2001~~ determinations issued during the week of December 30, 2001.

(3) The treatment of section 108.04(8)(c) of the statutes first applies with respect to ~~determinations issued under section 108.10 of the statutes on April 2, 2000.~~ determinations issued during the week of December 30, 2001.

✓ 4. With respect to the law change that service companies for 25 or more employers must file tax and wage info electronically, we wish to give the companies that become subject to the reporting requirement four quarters to first file, similar to what we did in 1999 Act 15 w/ section 108.205(2).

[for educational purposes, i.e., to educate the service companies].

✓ 5. Section 28, p. 14, ln. 23, "first applies to with respect to" – shouldn't this state EITHER "first applies to" or "first applies with respect to" but not "to" AND "with respect to"?

✓ 6. On p. 9, section 13, line 3, remove "to a single transferee", i.e., we do not want to amend 108.16(8)(c)(intro.) after all.

✓ 7. Two new subsections should be created as 108.16(8)(c)4. and 108.16(8)(e)4. Both new subsections should have identical wording as follows:

"The transferor has transferred 100% of the business on the date of transfer or the transferor has transferred less than 100% of the business on the date of transfer and the transferor's reserve fund balance is overdrawn as of the transfer date."

✓ 8. On p.10, ln. 1, should be "initial reports".



(DRAFT)  
State of Wisconsin  
2001 - 2002 LEGISLATURE

LRB-3682/P1  
JTK  
↓  
leave as is

WANTED by MON 9/17 - 2PM

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

(regenerate)

1 AN ACT ~~to renumber and amend 108.09 (3)(a); to amend 20.445 (1) (nb) (title),~~  
2 ~~108.02 (15) (j) 4. and 5., 108.04 (7) (h), 108.04 (8) (c), 108.05 (7) (a) 1., 108.05 (7)~~  
3 ~~(f) 1., 108.16 (8) (b) (intro.), 108.16 (8) (b) 2., 108.16 (8) (c) (intro.), 108.16 (8) (f),~~  
4 ~~108.19 (1e) (a) and (d), 108.20 (3), 108.205 (2), 108.22 (1) (am), 108.22 (1m),~~  
5 ~~108.225 (1) (a) to (c) and 108.225 (16) (intro.); and to create 108.02 (15) (j) 6.,~~  
6 ~~108.09 (3) (a) 2., 108.14 (2e), 108.16 (8) (e) 4., 108.17 (2e), 108.205 (3) and 108.22~~  
7 ~~(1) (ad) of the statutes; relating to: various changes in the unemployment~~  
8 insurance law <sup>requiring the exercise of rule-making authority</sup> and making an appropriation.

**Analysis by the Legislative Reference Bureau**

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

**OTHER BENEFIT CHANGES**

**Offset of social security benefits**

Currently, with certain exceptions, if benefits are payable to a claimant for any week for which the claimant receives a pension payment from a governmental or other retirement system (including the social security system) maintained or contributed to by an employer for which the claimant worked during his or her base

receiving a specified amount of wages  
This bill also permits an employee to receive benefits without requalifying if the employee enrolls in or leaves work to participate in training under a state plan approved under the Federal Workforce Investment Act.

social security

period (recent work period during which benefit rights accrue), the benefits received by the claimant for each week are reduced by the amount of the pension payment received for that week, except that if the payment is received under the social security act, the benefits received by the claimant for each week are reduced by 60% of the amount of the payment received for that week. This bill provides that all payments received by a claimant under the social security act are not included in determining the amount of any required unemployment insurance benefit reduction.

gross

beginning with the first full week of 2003

**Charging of certain benefits** Requalification for employees receiving certain training

Currently, with certain exceptions, if an employee is unable to work or unavailable for work, has not registered for work, or is not seeking suitable work, or with certain exceptions, if an employee terminates his or her work with an employer or fails, without good cause, to accept suitable work when offered or to return to work when recalled by his or her employer, the employee is ineligible to receive benefits until the employee requalifies by working in certain employment for a specified period. One exception permits an employee to receive benefits without requalifying if the employee enrolls in or leaves work to participate in training approved under the federal Trade Readjustment Act. Currently, the cost of benefits paid to an employee under this exception is generally charged to the employer or employers that employed the employee during his or her base period (recent work period during which benefit rights accrue). Under this bill, the cost of benefits is charged to the balancing account of the unemployment reserve fund, which is financed from contributions (taxes) of all employers that are subject to a requirement to pay contributions, unless the employee's employer or employers do not pay contributions, in which case the cost of benefits is generally chargeable to the employee's employer or employers.

Sub 2 A

for the next 4 full weeks and

the employer's benefits are reduced of the employee is ineligible to receive benefits. Also currently

tax current

employee

resulting from the current exception and the proposed exception

Charging of certain benefits paid after recall  
Currently, if an employee fails, without good cause, to return to work with a former employer that recalls the employee within 52 weeks after the employee last worked for the employer, the employee is ineligible to receive benefits until the employee requalifies by working in certain employment for a specified period. Currently, the cost of benefits paid to an employee who fails, without good cause, to return to work with an employer after the employee requalifies is generally charged to the employer or employers that employed the employee during his or her base period. Under this bill, the cost of benefits is charged to the balancing account of the unemployment reserve fund, unless the employee's employer or employers do not pay contributions, in which case the cost of benefits is generally chargeable to the employee's employer or employers.

receiving a specified amount of wages in certain employment

for the next 4 full weeks and

**Special assessments for information technology systems**

CHANGES - Sub (5+3)

Currently, each employer that is subject to a contribution requirement must pay an annual special assessment for each year prior to 2002 in an amount that may not exceed the lesser of 0.01% of the employer's annual taxable payroll for unemployment insurance purposes or the employer's solvency contribution for that year for the purpose of financing the renovation and modernization of the unemployment insurance tax and accounting system. The department of workforce development (DWD) must reduce the solvency rate that an employer must pay in each year prior to 2002 by the special assessment rate applicable to that employer

for that year. (The solvency rate is the portion of an employer's contribution rate that is used to maintain the solvency of the unemployment reserve fund.) This bill makes the special assessment requirement and solvency rate offset applicable to calendar years 2002 and 2003. The bill also permits DWD to use the revenue generated by the assessments for the design, or development of unemployment insurance information technology systems generally, including the tax and accounting system.

#### OTHER CHANGES

##### *Coverage of certain nonresident aliens*

Currently, the services of nonresident aliens who are lawfully admitted to the United States are potentially subject to contribution requirements (taxes) under the state unemployment insurance law and employees who are lawfully admitted nonresident aliens are potentially eligible to claim benefits. This bill eliminates coverage of services performed by certain kinds of nonresident aliens who are lawfully admitted to the United States under certain specified visas, thereby eliminating contribution requirements for services performed by these individuals and precluding these individuals from claiming benefits. *Rechange applies*

##### *Contribution and wage report format* *retroactively to January 1, 2001.*

Currently, each employer that is subject to the unemployment insurance law must file with ~~the department of workforce development (DWD)~~ periodic reports of contributions (taxes) and wages paid to each of its employees and certain other information. Employers of 100 or more employees must file the wage reports electronically. This bill provides that, if an employer retains an agent to file contribution or wage reports and the agent files contribution or wage reports on behalf of 25 or more employers, the agent must file the contribution or wage reports electronically, regardless of the number of employees employed by an employer on behalf of which the agent files reports. Under the bill, employer agents that are subject to this requirement and that fail to file their reports electronically may be assessed a penalty of \$25 for each employer whose report is not filed electronically.

##### *Temporary reserve appeal tribunals*

Currently, DWD employs individuals to serve as "appeal tribunals," who hear and decide appeals of initial determinations made by employees of DWD with respect to unemployment insurance matters. With limited exceptions, these individuals must be permanent employees of DWD. This bill permits DWD to employ an individual who formerly served as an appeal tribunal, and who retired from state service as a permanent employee, to serve as a temporary reserve appeal tribunal. The individual must be an attorney who is licensed to practice in this state. Under the bill, these individuals are compensated on a per diem basis.

##### *Electronic submissions*

Under current state law, unless otherwise provided, any document that may be submitted in writing to a state agency and that requires a signature may, with the consent of the agency, be submitted in electronic format. Federal law may also require or permit state agencies to accept certain documents electronically. This bill specifically permits DWD to provide a secure means of electronic interchange between itself and employing units, claimants, and other customers which, upon

RWS  
3A

not  
sup

request of a customer, may be used to submit electronically any document that is used in the administration of the unemployment insurance law in lieu of any other means of submission. The bill also provides that if a due date is established by law for the submission of any document that is submitted electronically, that due date is the end of the last day permitted for personal delivery of that document.

statute  
then that submission is timely only if the document is submitted by midnight of that due date

**Liens for unpaid reimbursements and certain forfeitures**

Currently, if an employer owes any contributions (taxes), interest, or fees to DWD, DWD has a lien on the employer's real and personal property located in this state at the time that DWD issues any initial determinations of liability, unless the lien is temporarily barred or stayed under bankruptcy or other insolvency law. This bill provides that DWD has a lien under the same conditions for any unpaid forfeitures (civil penalties) imposed by DWD for aiding and abetting unemployment insurance fraud and for unpaid reimbursements of benefits payable by an employer that has elected to reimburse the unemployment reserve fund for benefits paid on its behalf instead of making contributions to the fund.

law  
Under the

**Administrative levies to collect certain liabilities**

Currently, a governmental or nonprofit employer is generally permitted to elect to finance benefit payments by reimbursing the unemployment reserve fund for the cost of benefits charged to its account instead of by paying regular contributions (taxes) to finance these benefits. If a reimbursement is not paid when due, DWD may collect the reimbursement by bringing a lawsuit against the debtor in circuit court. This bill permits DWD to administratively levy against any property other than realty of a person who fails to pay a reimbursement when due. Under the levy procedure, the person in possession of property that is subject to levy must surrender the property to DWD and DWD applies the property to offset the amount owed by the owner, plus the expenses of the levy.

applies

Currently, DWD may proceed against any third party that has in its possession property that is subject to levy for payment of delinquent contributions or penalties administratively assessed by DWD, or for repayment of benefit overpayments. A third party is not liable for more than 25% of the debt owed by the original debtor. This bill permits DWD to use the levy procedure to recover property owed to DWD by third parties, subject to the current limitations, for unpaid contributions and penalties and benefit overpayments that have not been repaid, as well as for unpaid reimbursements.

**Partial successorship**

Currently, if at least 25% of a business is transferred from one employer to another employer and the transferee requests DWD to treat it as a successor to the transferor for purposes of unemployment insurance experience, including contribution and benefit liability, DWD must treat the transferee as a successor, instead of treating it as a new employer, under certain conditions. This bill precludes a transferee from requesting that it be treated as a successor to a transferor unless 100% of the transferor's business is transferred to the transferee. The bill also requires that a transferee be treated as a successor under certain conditions, even if less than 100% of a transferor's business is transferred to the transferee.

a single

except that the bill

The bill also permits DWD to administratively levy against the property of any person who fails to pay fees assessed by DWD under the unemployment insurance law.

<sup>transferor's</sup>  
transferee's unemployment insurance account is overdrawn on the date of the transfer.

Mr S  
SA

**Funding and position changes**

This bill authorizes 15 federally funded project positions for DWD to carry out unemployment insurance information technology system redesign projects. The bill also appropriates \$250,000 from revenue received by DWD for interest, penalties, and fees for unemployment insurance purposes to be used to pay for employment service expenses that were disallowed as federally aided costs.

Del  
notice

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

---

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

- 1           **SECTION 1.** 20.445 (1) (nb) (title) of the statutes is amended to read:
- 2           20.445 (1) (nb) (title) ~~Unemployment tax and accounting system~~ information
- 3           technology systems; federal moneys.
- 4           **SECTION 2.** 108.02 (15) (j) 4. and 5. of the statutes are amended to read:
- 5           108.02 (15) (j) 4. In the employ of a hospital by a patient of such hospital; or
- 6           5. In any quarter in the employ of any organization exempt from federal income
- 7           tax under section 501 (a) of the internal revenue code, other than an organization
- 8           described in section 401 (a) or 501 (c) (3) of such code, or under section 521 of the
- 9           internal revenue code, if the remuneration for such service is less than \$50.; or
- 10          **SECTION 3.** 108.02 (15) (j) 6. of the statutes is created to read:
- 11          108.02 (15) (j) 6. By a nonresident alien for the period that he or she is
- 12          temporarily present in the United States as a nonimmigrant under 8 USC 1101 (a)
- 13          (15) (F), (J), (M), or (Q), if the service is performed to carry out the purpose for which
- 14          the alien is admitted to the United States, as provided in 8 USC 1101 (a) (15) (F), (J),
- 15          (M), or (Q), or by the spouse or minor child of such an alien if the spouse or child was

1 also admitted to the United States under 8 USC 1101 (a) (15) (F), (J), (M), or (Q) for  
2 the same purpose.

3 SECTION 4. 108.04 (7) (h) of the statutes is amended to read:

4 108.04 (7) (h) The department shall charge to the fund's balancing account  
5 benefits paid to an employee that are otherwise chargeable to the account of an  
6 employer that is subject to the contribution requirements of ss. 108.17 and 108.18  
7 if the employee voluntarily terminates employment with that employer and par. (a),  
8 (c), (d), (e), (k), (L), (o), (p), (q) or (s) or sub. (16) (b) applies.

9 SECTION 5. 108.04 (8) (c) of the statutes is amended to read:

10 108.04 (8) (c) If an employee fails, without good cause, to return to work with  
11 a former employer that recalls the employee within 52 weeks after the employee last  
12 worked for that employer, the employee is ineligible to receive benefits until 4 weeks  
13 have elapsed since the end of the week in which the failure occurs and the employee  
14 earns wages after the week in which the failure occurs equal to at least 4 times the  
15 employee's weekly benefit rate under s. 108.05 (1) in employment or other work  
16 covered by the unemployment insurance law of any state or the federal government.  
17 For purposes of requalification, the employee's weekly benefit rate shall be that rate  
18 which would have been paid had the failure not occurred. This paragraph does not  
19 preclude an employee from establishing a benefit year during a period in which the  
20 employee is ineligible to receive benefits under this paragraph if the employee  
21 qualifies to establish a benefit year under s. 108.06 (2) (a). The department shall  
22 charge to the fund's balancing account any benefits otherwise chargeable to the  
23 account of any employer that is subject to the contribution requirements under ss.  
24 108.17 and 108.18 whenever an employee of that employer fails, without good cause,

1 to return to suitable work with that employer. If an employee receives actual notice  
2 of a recall to work, par. (a) applies in lieu of this paragraph.

SwS  
7-2

3 SECTION 6. 108.05 (7) (a) 1. of the statutes is amended to read:

4 108.05 (7) (a) 1. "Pension payment" means a pension, retirement, annuity or  
5 other similar payment made to a claimant, based on the previous work of that  
6 claimant, whether or not payable on a periodic basis, from a governmental or other  
7 retirement system maintained or contributed to by an employer from which that  
8 claimant has base period wages, other than a payment received under the social  
9 security act (42 USC 301 et seq.).

10 SECTION 7. 108.05 (7) (f) 1. of the statutes is amended to read:

11 108.05 (7) (f) 1. If the pension payment is received under the ~~social security act~~  
12 ~~(42 USC 301 et seq.)~~ or railroad retirement act (45 USC 231 et seq.), the department  
13 shall reduce the weekly benefits payable for a week of partial or total unemployment  
14 by 50% of the weekly pension amount.

15 SECTION 8. 108.09 (3) (a) of the statutes is renumbered 108.09 (3) (a) 1. and  
16 amended to read:

17 108.09 (3) (a) 1. To hear and decide disputed claims, the department shall  
18 establish appeal tribunals. Except as authorized in this paragraph, each of which  
19 tribunal shall consist of an individual who is a permanent employee of the  
20 department.

21 3. Upon request of a party to an appeal or upon its own motion, the department  
22 may appoint an individual who is not a permanent employee of the department to  
23 hear an appeal in which the department or an employee or former employee of the  
24 department is an interested party. No individual may hear any appeal in which the  
25 individual is a directly interested party.

1 SECTION 9. 108.09 (3) (a) 2. of the statutes is created to read:

2 108.09 (3) (a) 2. The department may appoint an individual who is not a  
3 permanent employee of the department to serve as a temporary reserve appeal  
4 tribunal if the individual formerly served as an appeal tribunal while employed by  
5 the department and retired from state service as a permanent employee. An  
6 individual who is appointed to serve as a temporary reserve appeal tribunal shall be  
7 an attorney who is licensed to practice in this state. A temporary reserve appeal  
8 tribunal shall be paid on a per diem basis.

9 SECTION 10. 108.14 (2e) of the statutes is created to read:

10 108.14 (2e) The department may provide a secure means of electronic  
11 interchange between itself and employing units, claimants, and other customers  
12 which, upon request of a customer, may be used to submit electronically any  
13 document used in the administration of this chapter in lieu of any other means of

14 submission. <sup>statute</sup> If a due date is established by law for the submission of any document  
15 that is submitted electronically under this subsection, <sup>then that submission is</sup> that due date is the end of the  
16 ~~last day permitted for personal delivery of the document.~~ <sup>timely only if the document is submitted by midnight at the statutory due date</sup>

*ANS*  
*8-16*

17 SECTION 11. 108.16 (8) (b) (intro.) of the statutes is amended to read:

18 108.16 (8) (b) (intro.) If the business of any employer is transferred to a single  
19 transferee, the transferee is deemed a successor for purposes of this chapter, if the  
20 department determines that all of the following conditions have been satisfied:

21 SECTION 12. 108.16 (8) (b) 2. of the statutes is amended to read:

22 108.16 (8) (b) 2. The transfer included ~~at least 25%~~ 100% of the transferor's  
23 total business as measured by comparing the payroll experience assignable to the  
24 portion of the business transferred with the transferor's total payroll experience for  
25 ~~the last 4 completed quarters immediately preceding on~~ the date of transfer.

*ANS 9-1*

1 **SECTION 13.** 108.16 (8) (c) (intro.) of the statutes is amended to read:

2 108.16 (8) (c) (intro.) Notwithstanding par. (b), if the business of an employer  
3 is transferred to a single transferee, the transferee is deemed a successor for  
4 purposes of this chapter if the department determines that all of the following  
5 conditions have been satisfied:

6 **SECTION 14.** 108.16 (8) (e) 4. of the statutes is created to read:

7 108.16 (8) (e) 4. *The transferor transfers 100% of the transferor's total business*  
8 ~~The transferor's account was overdrawn on the date of the~~ *on the*  
9 ~~transfer, even if the transfer included less than 100% of the transferor's total~~ *date*  
~~business on the date of the transfer.~~ *of the transfer or the*

10 **SECTION 15.** 108.16 (8) (f) of the statutes is amended to read:

11 108.16 (8) (f) The successor shall take over and continue the transferor's  
12 account, including its positive or negative balance and all other aspects of its  
13 experience under this chapter. If the transfer included less than 100% of the  
14 transferor's total assets on the date of the transfer, the department shall allocate the  
15 transferor's experience to the transferee in proportion to the payroll assignable to the  
16 transferred business. The and the liability of the successor shall be proportioned to  
17 the extent of the transferred business. The transferor and the successor shall be  
18 jointly and severally liable for any amounts owed by the transferor to the fund and  
19 to the administrative account at the time of the transfer, but a successor under par.  
20 (c) is not liable for the debts of the transferor except in the case of fraud or  
21 malfeasance.

22 **SECTION 16.** 108.17 (2e) of the statutes is created to read:

23 108.17 (2e) An employer agent that files reports under sub. (2) on behalf of 25  
24 or more employers shall file those reports using an electronic medium and format  
25 approved by the department. An employer agent that becomes subject to the

1 reporting requirement under this subsection shall file its initial <sup>reports</sup> report under this  
2 subsection for the 2nd reporting period beginning after the quarter in which the  
3 employer agent becomes subject to the reporting requirement. Once an employer  
4 agent becomes subject to the reporting requirement under this subsection, the  
5 employer agent shall continue to file its reports under this subsection unless that  
6 requirement is waived by the department.

7 SECTION 17. 108.19 (1e) (a) and (d) of the statutes are amended to read:

8 108.19 (1e) (a) Except as provided in par. (b), each employer, other than an  
9 employer ~~which~~ that finances benefits under s. 108.15 or 108.151 shall, in addition  
10 to other contributions payable under s. 108.18 and this section, pay an assessment  
11 to the administrative account for each year prior to the year ~~2002~~ 2004 equal to the  
12 lesser of 0.01% of its payroll for that year or the solvency contribution that would  
13 otherwise be payable by the employer under s. 108.18 (9) for that year.

14 (d) The department may expend the moneys received from assessments levied  
15 under this subsection for the renovation and modernization of the unemployment  
16 insurance information technology systems, including the tax and accounting system,  
17 and specifically including development and implementation of a new system and  
18 reengineering of automated processes and manual business functions.

19 SECTION 18. 108.20 (3) of the statutes is amended to read:

20 108.20 (3) There shall be included in the moneys governed by sub. (2m) any  
21 amounts collected by the department under ss. 108.04 (11) (c) and (cm) and 108.22  
22 (1) (a) ~~and~~, (ac), and (ad) as tardy filing fees, forfeitures, interest on delinquent  
23 payments or other penalties and any excess moneys collected under s. 108.19 (1m).

24 SECTION 19. 108.205 (2) of the statutes is amended to read:

1       108.205 (2) ~~All employers~~ An employer of 100 or more employees, as  
2 determined under s. 108.22 (1) (ae), shall file the quarterly report under sub. (1)  
3 using an electronic medium approved by the department ~~for such employers, unless~~  
4 ~~the employer retains an employer agent that is subject to the reporting requirement~~  
5 ~~under sub. (3).~~

6       (4) An employer <sup>or employer agent</sup> that becomes subject to the reporting requirement under this  
7 subsection ~~sub. (2)~~ <sup>or (3)</sup> shall file its initial report under this ~~that~~ subsection for the 4th  
8 quarter beginning after the quarter in which the employer <sup>or employer agent</sup> becomes subject to the  
9 reporting requirement. An employer agent that becomes subject to the reporting  
10 requirement under sub. (3) shall file its initial report under that subsection for the  
11 2nd quarter beginning after the quarter in which the employer agent becomes  
12 subject to the reporting requirement. Once an employer or employer agent becomes  
13 subject to the a reporting requirement under this subsection ~~sub. (2) or (3)~~, the  
14 employer or employer agent shall continue to file its quarterly reports under this  
15 subsection ~~sub. (2) or (3)~~ unless that requirement is waived by the department.

16       SECTION 20. 108.205 (3) of the statutes is created to read:

17       108.205 (3) An employer agent that files reports under sub. (1) on behalf of 25  
18 or more employers shall file those reports using an electronic medium and format  
19 approved by the department.

20       SECTION 21. 108.22 (1) (ad) of the statutes is created to read:

21       108.22 (1) (ad) An employer agent that is subject to the reporting requirements  
22 under ss. 108.17 (2e) and 108.205 (3) and that fails to file a contribution report in  
23 accordance with s. 108.17 (2e) or a wage report in accordance with s. 108.205 (3) may  
24 be assessed a penalty by the department in the amount of \$25 for each employer

1 whose report is not filed using an electronic format and medium approved by the  
2 department.

3 SECTION 22. 108.22 (1) (am) of the statutes is amended to read:

4 108.22 (1) (am) The interest <sup>penalties</sup> and the tardy filing fees levied under par. (a), <sup>(ac)</sup> ~~(ac)~~, <sup>(comma)</sup> and (ad) shall be paid to the department and credited to the administrative account.

6 SECTION 23. 108.22 (1m) of the statutes is amended to read:

7 108.22 (1m) If an employer owes any contributions, reimbursements under s.  
8 108.15 or 18.151, interest or fees, or <sup>payments for forfeitures or other penalties</sup> ~~forfeitures imposed under s. 108.22(1)(a)~~ to  
9 the department under this chapter and fails to pay the amount owed, the department  
10 has a perfected lien upon the employer's right, title and interest in all of its real and  
11 personal property located in this state in the amount finally determined to be owed,  
12 plus costs. Except where creation of a lien is barred or stayed by bankruptcy or other  
13 insolvency law, the lien is effective when the department issues a determination of  
14 the amount owed under s. 108.10 (1) and shall continue until the amount owed, plus  
15 costs and interest to the date of payment, is paid. If a lien is initially barred or stayed  
16 by bankruptcy or other insolvency law, it shall become effective immediately upon  
17 expiration or removal of such bar or stay. The perfected lien does not give the  
18 department priority over lienholders, mortgagees, purchasers for value, judgment  
19 creditors and pledges whose interests have been recorded before the department's  
20 lien is recorded.

21 SECTION 24. 108.225 (1) (a) to (c) of the statutes are amended to read:

22 108.225 (1) (a) ~~"Contributions" include~~ "Contribution" includes a  
23 reimbursement under s. 108.15 or 108.151, interest for a nontimely payment, <sup>fees</sup> and any  
24 penalties <sup>forfeiture or other</sup> payment due for a ~~penalty~~ assessed by the department under this chapter.

1 (b) "Debt" means a delinquent contribution or repayment of a benefit  
2 overpayment, or any liability of a 3rd party for failure to surrender to the department  
3 property or rights to property subject to levy after proceedings under sub. (4) (b) and  
4 s. 108.10 to determine that liability.

5 (c) "Debtor" means a person who owes the department ~~delinquent contributions~~  
6 ~~or a benefit overpayment a debt.~~

7 SECTION 25. 108.225 (16) (intro.) of the statutes is amended to read:

8 108.225 (16) WAGES EXEMPT FROM LEVY. (intro.) In the case of benefit  
9 overpayments, the and forfeitures imposed upon an employing unit under s. 108.04  
10 (11) (c), an individual debtor is entitled to an exemption from levy of the greater of  
11 the following:

12 **SECTION 26. Nonstatutory provisions.**

FWS  
13-1213

13 ~~(1) POSITION AUTHORIZATIONS. The authorized FTE positions for the department~~  
14 ~~of workforce development are increased by 15.0 FED positions for the period ending~~  
15 ~~on June 30, 2004, to be funded from the appropriation under section 20.445 (1) (n)~~  
16 ~~of the statutes, for the purpose of assisting with unemployment insurance~~  
17 ~~information technology projects.~~

18 **SECTION 27. Appropriation changes.**

19 (1) In the schedule under section 20.005 (3) of the statutes for the appropriation  
20 to the department of workforce development under section 20.445 (1) (gf) of the  
21 statutes, as affected by the acts of 2001, the dollar amount is increased by \$250,000  
22 for fiscal year 2001-02 to pay employment service costs for which federal aid was  
23 disallowed.

24 (2) In the schedule under section 20.005 (3) of the statutes for the appropriation  
25 to the department of workforce development under section 20.445 (1) (nb) of the

1 statutes, as affected by the acts of 2001, the dollar amount is increased by \$- for  
2 fiscal year 2001-02.

3 **SECTION 28. Initial applicability.**

4 (1) The treatment of section 108.02 (15) (j) 4., 5., and 6. of the statutes first  
5 applies to services performed after December 31, 2001.

6 (2) The treatment of sections 108.04 (7) (h) of the statutes first applies with  
7 determinations issued under section 108.09 or 108.10 of the statutes on December 30, 2001  
respect to terminations occurring on January 7, 2001.

8 (3) The treatment of section 108.04 (9) (e) of the statutes first applies with  
9 respect to determinations issued under section 108.10 of the statutes on April 2,  
10 2000.

4NS  
11  
14-10

11 (4) The treatment of section 108.05 (7) (a) 1. and (f) 1. of the statutes first  
12 applies to weeks of unemployment beginning on January 5, 2003  
December 30, 2001.

13 (5) The treatment of sections 108.17 (2e), 108.20 (3), 108.205 (2) and (3), and  
14 108.22 (1) (ad) and (am) of the statutes first applies with respect to reports due for  
15 the reporting period or calendar quarter that includes March 31, 2000.

16 (6) The treatment of section 108.16 (8) (b) (intro.) and 2., (c) (intro.) and 4. and  
17 (f) first applies to transfers of businesses occurring after December 31, 2001, and to  
18 transfers of businesses of which the department of workforce development receives  
19 notice after January 31, 2002.

20 (7) The treatment of section 108.22 (1m) of the statutes first applies with  
21 respect to liabilities that accrue on the effective date of this subsection.

22 (8) The treatment of section 108.225 (1) (a) to (c) and (16) (intro.) of the statutes  
23 first applies to with respect to determinations issued under section 108.10 of the  
24 statutes on the effective date of this subsection.

25 **SECTION 29. Effective date.**



2001-2002 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-3682/P2ins2  
JTK.....

INS 2A:

The bill also provides that for all weeks beginning in 2002, the benefits received by a claimant for each week in which the claimant receives a payment under the social security act are reduced by only 25% of the gross amount of the social security payment received by the claimant for that week.

INS 3A:

***Rule making***

The bill directs DWD to submit proposed rule changes to the legislative council staff no later than the first day of the 11th month after the day the bill becomes law to:

1. Decrease the number of hours per week that a claimant must remain available for work in order to receive benefits from 35 to 32.

*obj*  
2. Establish a specified level of repeated absenteeism or repeated tardiness that will permit an employer to terminate an employee without being required to pay the cost of any benefits for which the employee may qualify resulting from the base period applicable to the date of termination, and that will preclude the employee from receiving benefits without requalifying by working for a specified period and receiving a specified amount. (Currently, the degree of absenteeism or tardiness that permits such action varies depending upon the facts of each case.)

3. Specify, in accordance with applicable administrative and judicial interpretations, what constitutes an "establishment" for purposes of a current disqualification from receipt of benefits because of a labor dispute in the establishment in which an employee is or was employed.

The bill also directs DWD to promulgate an emergency rule no later than the 90th day after the bill becomes law to extend the current deadline for filing an initial claim for benefits from the end of the initial week for which benefits are payable to the end of the following week. Currently, emergency rules are generally effective for no more than 150 days. Under the bill, this emergency rule is effective until the first day of the 11th month after the day the bill becomes law or the day on which a permanent rule relating to this subject matter becomes effective, whichever is sooner, and no finding of emergency is required to promulgate the emergency rule.

INS 5A:

***Fraud detection and prosecution***

This bill requires DWD to annually furnish to the council on unemployment insurance a report summarizing DWD's activities related to detection and prosecution of unemployment insurance fraud. Currently, so such report is required.

2001-2002 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-3682/P2ins  
LRB.....

INS 7-2:

**SECTION 1.** 108.04 (16) (b) of the statutes is amended to read:

108.04 (16) (b) The requalifying employment requirement under subs. (7) and (8) and the general qualifying requirements under sub. (2) do not apply to an individual as a result of the individual's enrollment in training or leaving unsuitable work to enter or continue training under 19 USC 2296 or a plan approved under 29 USC 2822.

History: 1971 c. 40, 42, 53, 211; 1973 c. 247; 1975 c. 24, 343; 1977 c. 127, 133, 286, 418; 1979 c. 52, 176; 1981 c. 28, 36, 315, 391; 1983 a. 8, 27, 99, 168; 1983 a. 189, s. 329 (28); 1983 a. 237, 384, 468, 538; 1985 a. 17, 29, 40; 1987 a. 38 ss. 23 to 59; 107, 136; 1987 a. 253, 287, 403; 1989 a. 77; 1991 a. 89; 1993 a. 112, 122, 373, 492; 1995 a. 118, 417, 448; 1997 a. 35, 39; 1999 a. 9, 15, 83.

INS 8-16:

**SECTION 2.** 108.14 (19) of the statutes is created to read:

108.14 (19) <sup>∇</sup>On or about February 15 of each year, the department shall prepare and furnish to the council on unemployment insurance a report summarizing its activities related to detection and prosecution of unemployment insurance fraud in the preceding year.

INS 9-1:

**SECTION 3.** 108.16 (8) (c) 4. of the statutes is created to read:

108.16 (8) (c) 4. <sup>∇</sup>The transferor transfers 100% of the transferor's total business on the date of the transfer or the transferor's account was overdrawn on the date of the transfer.

INS 13-12:

(1) OFFSET OF SOCIAL SECURITY BENEFITS. <sup>§</sup>(a) In this section:

1. "Base period wages" has the meaning given in section 108.02 (4m) of the statutes.

2. "Employer" has the meaning given in section 108.02 (13) of the statutes.

(b) Notwithstanding section 108.04 (7), 1999 stats., for each week of unemployment beginning in 2002, if a claimant receives a payment under the social security act (42 USC 301 et seq.) that is contributed to by an employer from which the claimant has base period wages, the reduction that applies to the benefits payable to the claimant for that week is 50% of the amount that would otherwise apply for that week under section 108.04 (7), 1999 stats.

<sup>Section</sup> (2) RULE MAKING. <sup>§</sup>(a) The department of workforce development shall submit in proposed form rule changes to the legislative council staff under section 227.15 (1) of the statutes no later than the first day of the 11th month beginning after the effective date of this paragraph:

1. To amend Wis. Adm. Code section DWD 100.02 (28) for the purpose of decreasing the number of hours per week for work to be considered full time to 32.

2. To establish a specified level of repeated absenteeism or repeated tardiness that constitutes misconduct for purposes of section 108.04 (5) of the statutes.

3. To specify, in accordance with applicable administrative and judicial interpretations, what constitutes an "establishment" for purposes of the disqualification from receipt of unemployment insurance benefits because of a labor dispute in an establishment in which an employe<sup>e</sup> is or was employed under section 108.04 (10) of the statutes.

(b) The department of workforce development shall promulgate an emergency rule under section 227.24 of the statutes to amend Wis. Adm. Code section DWD 129.01 (1) for the purpose of extending the deadline for filing an initial claim for unemployment insurance benefits by 7 days. Notwithstanding section 227.24 (1) (c) and (2) of the statutes, the emergency rule may remain in effect until the first day of the 11th month beginning after the effective date of this paragraph or until the date on which a permanent rule relating to the same subject matter takes effect, whichever is sooner. 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.

INS 14-10:

(3) The treatment of sections 108.04 (16) (b) of the statutes first applies with respect to weeks of unemployment or voluntary terminations occurring on January 7, 2001.

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-3682/P2dn  
JTK.....

Michelle Kho:

1. To confirm what you may already have surmised, LRB-3540 was destroyed due to a defect in the LRB computer system. LRB-3540/P2 then became LRB-3682/P1 and this draft, LRB-3682/P2, is actually our 3rd draft.
2. This draft should include all the items you have given me as of this date except the changes related to coverage of Indian tribes and contribution and wage report format, I am still working on these items.
3. Please review the initial applicability for the treatment of s. 108.04 (16) (b), stats., (requalification exemption for employees receiving certain training). This is a little unusual in that the change applies both to employees who are working and to employees who specifically terminate their work to receive training. Also please confirm that the retroactive date is still appropriate.
4. Concerning ss. 108.22 (1m) and 108.225 (1) (a), stats., I am reluctant to assume for purposes of these statutes that a forfeiture is not a penalty, because other statutes [for example, ss. 20.445 (1) (gd), (ge), (gf) and (gg) and 108.20 (2m)] assume the opposite. I have therefore used the terminology "forfeiture or other penalty" in s. 108.225 (1) (a), stats. I also added a reference to fees in this statute. I think the current language in s. 108.22 (1m) and 108.225 (1) (a), stats., hangs together and conforms to your intent as I understand it. I would note, however, that the existing law does not follow recommended drafting practice in defining "contributions" to include things that are not normally swept within that term in ch. 108, stats. This confuses the reader and creates the urge to clarify other provisions of the law to reiterate that "contributions" are not limited only to the things we normally associate with that term. Although it would involve some work, it would actually be my preference to use the term "contributions" in the normal sense here, as we do elsewhere, and substitute a new term like "liability" which would encompass contributions in the normal sense, as well as unpaid reimbursements, interest, fees, and penalties. We can discuss this further if you wish.
5. Concerning funding for IT systems development, the appropriation under s. 20.445 (1) (gh), stats., is a state-funded revolving PR appropriation and is nonlapsing. Expenditures from this appropriation are limited only by the revenue it receives. However, the appropriation under s. 20.445 (1) (nb), stats., is a federal appropriation

and is limited to the amounts in the schedule. This is the appropriation <sup>needed</sup> that presumably needs to be increased. I would need only any amount that is ~~needs~~ for fiscal years 2001-02 and 2003-04. I would not need any amount for the 2003-04 fiscal year, since that is beyond our reach at this point.

6. Concerning the project positions, we only keep position counts by revenue source and by agency, not within subunits of an agency. Therefore, the form of the authorization is correct as drafted. The specified funding source and purpose statement should ensure that these positions are used for the purpose that you intend.

7. The instructions for the initial applicability in relation to the treatment of s. 108.04 (8) (c), stats, that were included in your memo of 9/4/01 on page 1, point 7. conflicted with the instructions for the initial applicability in relation to the same treatment that were included in your memo of 9/11/01, point 3. This draft incorporates the latter treatment.

8. In the analysis headings, the heading "TAX CHANGES" was dropped in typing. This draft restores it.

9. In the analysis under "Requalification..." the first sentence was mangled in the previous draft and I have now revised it and split it apart. This sentence is intended to reflect s. 108.04 (16) (a) (int.), stats. I have made parallel changes under "Charging of certain benefits...".

Jeffery T. Kuesel  
Managing Attorney  
Phone: (608) 266-6778

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-3682/P2dn  
JTK:...jf

September 14, 2001

Michelle Kho:

1. To confirm what you may already have surmised, LRB-3540 was destroyed due to a defect in the LRB computer system. LRB-3540/P2 then became LRB-3682/P1 and this draft, LRB-3682/P2, is actually our 3rd draft.
2. This draft should include all the items you have given me as of this date except the changes related to coverage of Indian tribes and contribution and wage report format, I am still working on these items.
3. Please review the initial applicability for the treatment of s. 108.04 (16) (b), stats., (requalification exemption for employees receiving certain training). This is a little unusual in that the change applies both to employees who are working and to employees who specifically terminate their work to receive training. Also please confirm that the retroactive date is still appropriate.
4. Concerning ss. 108.22 (1m) and 108.225 (1) (a), stats., I am reluctant to assume for purposes of these statutes that a forfeiture is not a penalty, because other statutes [for example, ss. 20.445 (1) (gd), (ge), (gf), and (gg) and 108.20 (2m)] assume the opposite. I have therefore used the terminology "forfeiture or other penalty" in s. 108.225 (1) (a), stats. I also added a reference to fees in this statute. I think the current language in s. 108.22 (1m) and 108.225 (1) (a), stats., hangs together and conforms to your intent as I understand it. I would note, however, that the existing law does not follow recommended drafting practice in defining "contributions" to include things that are not normally swept within that term in ch. 108, stats. This confuses the reader and creates the urge to clarify other provisions of the law to reiterate that "contributions" are not limited only to the things we normally associate with that term. Although it would involve some work, it would actually be my preference to use the term "contributions" in the normal sense here, as we do elsewhere, and substitute a new term like "liability" which would encompass contributions in the normal sense, as well as unpaid reimbursements, interest, fees, and penalties. We can discuss this further if you wish.
5. Concerning funding for IT systems development, the appropriation under s. 20.445 (1) (gh), stats., is a state-funded revolving PR appropriation and is nonlapsing. Expenditures from this appropriation are limited only by the revenue it receives. However, the appropriation under s. 20.445 (1) (nb), stats., is a federal appropriation

and is limited to the amounts in the schedule. This is the appropriation that presumably needs to be increased. I would need only any amount that is needed for fiscal years 2001-02 and 2003-04. I would not need any amount for the 2003-04 fiscal year, since that is beyond our reach at this point.

6. Concerning the project positions, we only keep position counts by revenue source and by agency, not within subunits of an agency. Therefore, the form of the authorization is correct as drafted. The specified funding source and purpose statement should ensure that these positions are used for the purpose that you intend.

7. The instructions for the initial applicability in relation to the treatment of s. 108.04 (8) (c), stats., that were included in your memo of 9/4/01 on page 1, point 7. conflicted with the instructions for the initial applicability in relation to the same treatment that were included in your memo of 9/11/01, point 3. This draft incorporates the latter treatment.

8. In the analysis headings, the heading "TAX CHANGES" was dropped in typing. This draft restores it.

9. In the analysis under "Requalification..." the first sentence was mangled in the previous draft and I have now revised it and split it apart. This sentence is intended to reflect s. 108.04 (16) (a) (int.), stats., I have made parallel changes under "Charging of certain benefits...".

Jeffery T. Kuesel  
Managing Attorney  
Phone: (608) 266-6778

**CORRESPONDENCE/MEMORANDUM**

State of Wisconsin  
Department of Workforce Development  
**UI Bureau of Legal Affairs**  
(608) 266-6684

Date: **September 12, 2001**  
To: Jeffery Kuesel  
  
From: Michelle Kho  
Bureau of Legal Affairs

**Subject: Notes on UI Bill Draft**  
(Not specifically in response to any drafter's note)

- ✓ 1. With respect to the nonstatutory directive stating when the administrative rules will be completed, we have determined the following:
  - We intend to do the part-time work rule by emergency rule, so it can have a 90-day period from the effective date of the bill. (*perm rule*)
  - Absenteeism and tardiness rules – both can have an 11-month period from the effective date of the bill.
  - Extension of time period for filing an initial claim – we expect to do this by emergency rule also, 90 days from the effective date of the bill.
  - Labor disputes rule – can be completed 11 months from the effective date of the bill.
  
- ✓ 2. Electronic Reporting by Employer Agents - We did not intend to make any changes to the current wage record electronic reporting requirements and the \$10 penalties assessed against the employer. Our intent was to only penalize the employer agent for failing to file the contribution report electronically. The employer would still be penalized for not filing the employee wage information electronically. This means that no changes would be made to 108.205(2) or (4) (Section 19). 108.205(3) (Section 20) would not have to be created. 108.22(1)(ad) (Section 21) would not have to reference 108.205(3).