



(DW 15)  
State of Wisconsin  
2003 - 2004 LEGISLATURE

LRB-3121/Pt 2  
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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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AN ACT *to amend* 108.02 (12) (b) (intro.), 108.02 (12) (bm) (intro.), 108.04 (11) (cm), 108.04 (16) (a) (intro.), (b) and (c), 108.04 (17) (a) 1. and 2., (b) 1. and 2., (c) 1. and 2., (d), (e), (f), (g), (h), (i) and (k) (intro.), 108.05 (7) (a) 1., 108.05 (7) (c), 108.05 (7) (d) 1. (intro.), 108.05 (7) (f) (intro.), 108.09 (4) (c), 108.14 (8s) (a) and (b), 108.22 (8) (b) and 108.225 (15); and *to create* 108.02 (6m) and 108.05 (7) (cm) of the statutes; relating to: various changes in the unemployment insurance law.

*LPS: put in the title as indicated - there will be material under it in future version.*

**Analysis by the Legislative Reference Bureau**

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

*(SUB)* BENEFIT CHANGES  
OTHER BENEFIT CHANGES *(SPEC)*

**Employee status**

Currently, in order to be eligible to claim benefits, an individual must, in addition to other requirements, be an "employee" as defined in the unemployment insurance law. Generally, an "employee" is an individual who performs services for an employer in employment covered under the unemployment insurance law, whether or not the individual is directly paid by the employer. However, an individual is not an "employee" if the individual performs services as an independent contractor.

Currently, during the four-year period beginning in the year 2000 (the specific date varies in different situations), an independent contractor, other than a logger or trucker performing services for an employer other than a governmental or nonprofit employer, must meet at least seven of ten conditions concerning the individual's relationship to or control over his or her business or the services that he or she performs. Two of the conditions that an individual may use to qualify as an independent contractor require the individual to have a federal employer identification number or to have filed business or self-employment income tax returns with the federal internal revenue service based on the services performed as an independent contractor. The other eight conditions are the same eight conditions that an individual may use to qualify as an independent contractor under current law.

was added to

Beginning in 2004, in order to be considered an independent contractor, an individual must hold or have applied for an employer identification number with the federal internal revenue service or must have filed business or self-employment income tax returns with the federal internal revenue service in the previous year, and must meet at least six of eight other conditions concerning the individual's relationship to or direction or control over his or her business or the services that he or she performs. This bill makes permanent the current test for determination of "employee" status.

relationship to or direction or control over his or her business or the services that he or she performs

the

that is in effect prior to 2004

**Approved training**

Currently, benefits may not be denied to an otherwise eligible claimant because the claimant is enrolled in a vocational training course under certain conditions. This bill provides that this exception does not apply to a claimant who fails to provide to the Department of Workforce Development (DWD) with his or her social security number or who provides a false social security number. Current law also provides that a claimant is not subject to certain requirements to requalify for benefits by obtaining new work after voluntarily terminating work or failing, without good cause, to accept suitable work or recall to work for a former employer if the failure occurs as a result of participation in a federal training program or the claimant leaves work to enter or continue in such a program. This bill provides that this exemption does not apply to a claimant who fails to provide a social security number or who provides a false social security number. However, the bill extends the current exemption so that a claimant who participates in such a program is not subject to requirements to be able to work and remain available for work, and makes such a claimant exempt from disqualifications or benefit reductions for taking a voluntary leave of absence from work, working in self-employment, failing to maintain a license, being employed by a family-owned business, or failing to provide certain information. However, the bill limits the current exemption so that it applies only to dislocated workers and workers obtaining training under the federal Trade Adjustment Assistance Act, rather than to all workers, who participate in certain federal training programs.

**Recovery of benefit overpayments**

Currently, DWD may offset any benefits that are overpaid to a claimant against benefits that the claimant would otherwise be eligible to receive. This bill provides

for DWD to recoup any overpayment instead of offsetting it. The change facilitates collection of overpayments during bankruptcy proceedings.

#### TAX CHANGES

##### *Duration of levies*

Currently, DWD may administratively levy against the property of a third party who holds the property of a person who is indebted to DWD for the purpose of enforcing collection of the debt. No levy applies for more than one year after the date of service. This bill removes that limitation. Under the bill, a levy is effective until the debt is satisfied or until DWD releases the levy, whichever occurs first.

##### *Enforcement of assessments against imposters*

Currently, if any person makes a false statement or representation in order to obtain benefits in the name of another person, DWD may, by administrative action or by decision in an administrative proceeding, require the person to repay the benefits and may also penalize the person by levying an assessment against him or her in an amount not greater than 50% of the benefits wrongfully obtained. The assessment may be enforced by obtaining a judgment against the person in court and then by levying against the nonexempt property of the person to enforce the judgment. This bill provides, in addition, that DWD may ~~offset~~ <sup>recoup</sup> the amount due ~~against~~ <sup>from</sup> other benefits that the person would otherwise be eligible to receive or may issue an administrative levy against the property of the person without a court proceeding.

#### OTHER CHANGES

##### *Treatment of stepchildren*

Currently, stepchildren are not treated as children for purposes of the unemployment insurance law. This bill treats stepchildren as children for that purpose. Among other effects, the change means that: a) unless an employer otherwise elects, with the approval of DWD, the wages of the stepchildren of a nonresident alien who has nonimmigrant status are not subject to contribution requirements (taxes) and these stepchildren may not claim benefits based on their employment; b) ownership of a business by the stepchild of a claimant may result in a limitation of benefit availability based on employment with that business; c) the need to obtain child care for a stepchild or domestic abuse involving a stepchild may serve to permit a claimant to obtain benefits after voluntarily terminating work without requalifying by engaging in new work, under certain conditions; and d) ownership of a business by a stepchild of another owner may result in treatment of the business as the successor of the previous business rather than treatment of the business as a new business, under certain conditions.

##### *Late appeals*

Currently, if a party in an unemployment insurance determination files an appeal that is not timely, DWD may schedule a hearing concerning whether the party's failure to file the appeal on a timely basis was for a reason that was beyond the party's control. This bill provides that if a party files an appeal that is not timely, an appeal tribunal (attorney employed by DWD) must review the reasons given by the party for not filing a timely appeal and if those reasons, taken as true and

construed most favorably to the party, do not constitute a reason that was beyond the party's control, the tribunal may dismiss the appeal without a hearing and issue a decision finding that the appeal was not filed on a timely basis. If the tribunal finds that the appeal may have been filed late for a reason that was beyond the party's control, the department may schedule a hearing on that issue.

**Reporting of social security benefit information**

Currently, claimants and their employers and retirement systems are required to report to DWD any information specified by DWD relating to the portion of social security benefits received by a claimant that is not based upon taxes paid by a claimant. This bill makes the reporting requirement applicable to all social security benefits received.

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

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

**SECTION 1.** 108.02 (6m) of the statutes is created to read:

108.02 (6m) CHILD. "Child" means a natural child, adopted child, or stepchild.

**SECTION 2.** 108.02 (12) (b) (intro.) of the statutes is amended to read:

108.02 (12) (b) (intro.) During the period beginning on January 1, 1996, and ending on December 31, 1999, ~~and during the period beginning on January 1, 2004,~~ with respect to contribution requirements, and during the period beginning on January 1, 1996, and ending on April 1, 2000, ~~and during the period beginning on April 4, 2004,~~ with respect to benefit eligibility, par. (a) does not apply to an individual performing services for an employing unit other than a government unit or nonprofit organization in a capacity other than as a logger or trucker, if the employing unit satisfies the department that:

**SECTION 3.** 108.02 (12) (bm) (intro.) of the statutes is amended to read:

108.02 (12) (bm) (intro.) During the ~~4-year~~ period beginning on January 1, 2000, with respect to contribution requirements, and during the period

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beginning on April 2, 2000, and ending on April 3, 2004, with respect to benefit eligibility, par. (a) does not apply to an individual performing services for an employing unit other than a government unit or nonprofit organization in a capacity other than as a logger or trucker, if the employing unit satisfies the department that the individual meets 7 or more of the following conditions by contract and in fact:

**SECTION 4.** 108.04 (11) (cm) of the statutes is amended to read:

108.04 (11) (cm) ~~Any~~ If any person who makes a false statement or representation in order to obtain benefits in the name of another person, the benefits received by that person constitute a benefit overpayment. Such person may, by a determination or decision issued under s. 108.095, be required to repay the amount of the benefits obtained and be assessed an administrative assessment in an additional amount equal to not more than 50% of the amount of benefits obtained.

**SECTION 5.** 108.04 (16) (a) (intro.), (b) and (c) of the statutes are amended to read:

108.04 (16) (a) (intro.) Benefits shall not be reduced under sub. (1) (a), or denied under sub. (2) (a) or (d) or (8) or s. 108.141 (3g) to any otherwise eligible individual for any week because the individual is enrolled in a full-time course of vocational training or basic education which is a prerequisite to such training, provided it is determined that:

(b) The requalifying employment requirement under subs. (7) and (8) and the general qualifying requirements under ~~sub.~~ subs. (1) and (2) (a) and (d) 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 in accordance with the plan of any state under 19 USC 2296 or a plan for training of dislocated workers approved under 29 USC 2822.

(c) Benefits may not be denied to an otherwise eligible individual under par. (a) who is enrolled in a program under the plan of any state for training under 19 USC 2296 or a plan for training of dislocated workers approved under 29 USC 2822, notwithstanding the failure of such training to meet any of the requirements of par. (a) 1. to 4.

**SECTION 6.** 108.04 (17) (a) 1. and 2., (b) 1. and 2., (c) 1. and 2., (d), (e), (f), (g), (h), (i) and (k) (intro.) of the statutes are amended to read:

108.04 (17) (a) 1. During the period between 2 successive academic years or terms, if the school year employee performed such services for an any educational institution in the first such year or term and if there is reasonable assurance that he or she will perform such services for ~~an~~ <sup>any</sup> educational institution in the 2nd such year or term; or

2. During the period between 2 regular but not successive academic terms, when an agreement between an employer and a school year employee provides for such a period, if the school year employee performed such services for an any educational institution in the first such term and if there is reasonable assurance that he or she will perform such services for ~~an~~ <sup>any</sup> educational institution in the 2nd such term.

(b) 1. During the period between 2 successive academic years or terms, if the school year employee performed such services for any such a government unit, Indian tribe, or nonprofit organization in the first such year or term and if there is reasonable assurance that he or she will perform such services for ~~such a~~ <sup>any</sup> government unit, Indian tribe, or nonprofit organization in the 2nd such year or term; or

2. During the period between 2 regular but not successive academic terms, when an agreement between an employer and a school year employee provides for

such a period, if the school year employee performed such services for any such a government unit, Indian tribe, or nonprofit organization in the first such term and if there is reasonable assurance that he or she will perform such services for ~~such a~~<sup>any</sup> government unit, Indian tribe, or nonprofit organization in the 2nd such term.

(c) 1. During the period between 2 successive academic years or terms, if the school year employee performed such services for ~~an~~ any educational service agency in the first such year or term and if there is reasonable assurance that he or she will perform such services for ~~an~~<sup>any</sup> educational service agency in the 2nd such year or term; or

2. During the period between 2 regular but not successive academic terms, when an agreement between an employer and a school year employee provides for such a period, if the school year employee performed such services for ~~an~~ any educational service agency in the first such term and if there is reasonable assurance that he or she will perform such services for ~~an~~<sup>any</sup> educational service agency in the 2nd such term.

(d) A school year employee of an educational institution who performs services other than in an instructional, research or principal administrative capacity is ineligible for benefits based on such services for any week of unemployment which occurs during a period between 2 successive academic years or terms if the school year employee performed such services for ~~an~~<sup>any</sup> educational institution in the first such year or term and there is reasonable assurance that he or she will perform such services for ~~an~~ any educational institution in the 2nd such year or term.

(e) A school year employee of a government unit, Indian tribe, or nonprofit organization which provides services to or on behalf of ~~an~~<sup>any</sup> educational institution who performs services other than in an instructional, research or principal

administrative capacity is ineligible for benefits based on such services for any week of unemployment which occurs during a period between 2 successive academic years or terms if the school year employee performed such services for ~~such a~~<sup>any</sup> government unit or nonprofit organization in the first such year or term and there is reasonable assurance that he or she will perform such services for any such a government unit, Indian tribe, or nonprofit organization in the 2nd such year or term.

(f) A school year employee of an educational service agency who performs services other than in an instructional, research or principal administrative capacity, and who provides such services in an educational institution or to or on behalf of an educational institution, is ineligible for benefits based on such services for any week of unemployment which occurs during a period between 2 successive academic years or terms if the school year employee performed such services for ~~an~~<sup>any</sup> educational service agency in the first such year or term and there is reasonable assurance that he or she will perform such services for ~~an~~<sup>any</sup> educational service agency in the 2nd such year or term.

(g) A school year employee of an educational institution who performs services as described in par. (a) or (d) is ineligible for benefits based on such services for any week of unemployment which occurs during an established and customary vacation period or holiday recess if the school year employee performed such services for ~~an~~<sup>any</sup> educational institution in the period immediately before the vacation period or holiday recess, and there is reasonable assurance that he or she will perform the services described in par. (a) or (d) for ~~an~~<sup>any</sup> educational institution in the period immediately following the vacation period or holiday recess.

(h) A school year employee of a government unit, Indian tribe, or nonprofit organization which provides services to or on behalf of an educational institution

who performs the services described in par. (b) or (e) is ineligible for benefits based on such services for any week of unemployment which occurs during an established and customary vacation period or holiday recess if the school year employee performed such services for <sup>any</sup> ~~such a~~ government unit, Indian tribe, or nonprofit organization in the period immediately before the vacation period or holiday recess, and there is reasonable assurance that the school year employee will perform the services described in par. (b) or (e) for any such a government unit, Indian tribe, or nonprofit organization in the period immediately following the vacation period or holiday recess.

(i) A school year employee of an educational service agency who performs the services described in par. (c) or (f), and who provides such services in an educational institution or to or on behalf of an educational institution, is ineligible for benefits based on such services for any week of unemployment which occurs during an established and customary vacation period or holiday recess if the school year employee performed such services for ~~an~~ any educational service agency in the period immediately before the vacation period or holiday recess, and there is reasonable assurance that the school year employee will perform the services described in par. (c) or (f) for <sup>any</sup> ~~an~~ educational service agency in the period immediately following the vacation period or holiday recess.

(k) (intro.) If benefits are reduced or denied to a school year employee who performed services other than in an instructional, research or principal administrative capacity under pars. (d) to (f), and the department later determines that the school year employee was not offered an opportunity to perform such services for ~~the~~ an applicable employer under pars. (d) to (f) in the 2nd academic year or term, the department shall recompute the school year employee's base period

wages under sub. (4) (a) and ss. 108.05 (1) and 108.06 (1) and shall make retroactive payment of benefits for each week of such reduction or denial if the school year employee:

**SECTION 7.** 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, <sup>strike comma</sup> ~~other than a payment received under the federal~~ ~~Social Security Act (42 USC 301 et seq.) that is based in whole or in part upon taxes~~ ~~paid by the claimant.~~ <sup>plain period</sup>

**SECTION 8.** 108.05 (7) (c) of the statutes is amended to read:

108.05 (7) (c) *Required benefit reduction.* If Except as provided in par. (cm), if a claimant actually or constructively receives a pension payment, the department shall reduce benefits otherwise payable to the claimant for a week of partial or total unemployment, but not below zero, if pars. (d) and (e) or if pars. (d) and (f) apply.

**SECTION 9.** 108.05 (7) (cm) of the statutes is created to read:

108.05 (7) (cm) *Payments received under Social Security Act.* If a claimant receives a pension payment under the federal Social Security Act (42 USC 301 et seq.), the department shall not reduce the benefits otherwise payable to the claimant resulting from the claimant's receipt of the portion of the pension payment that is based upon taxes paid by the claimant.

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

108.05 (7) (d) 1. (intro.) If a pension payment to which par. (c) applies is not paid on a weekly basis, the department shall allocate and attribute the payment to specific weeks if:

SECTION 11. 108.05 (7) (f) (intro.) of the statutes is amended to read:

(X) 108.05 (7) (f) *Partial or total employee funding.* (intro.) If any portion of a pension payment to which par. (c) applies ~~and that is~~ actually or constructively received by a claimant under this subsection is funded by the claimant's contributions, the department shall compute the benefits payable for a week of partial or total unemployment as follows:

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SECTION 12. 108.09 (4) (c) of the statutes is amended to read:

108.09 (4) (c) *Late appeal.* If a party files an appeal which is not timely, an appeal tribunal shall review the appellant's written reasons for filing the late appeal. If those reasons, when taken as true and construed most favorably to the appellant, do not constitute a reason beyond the appellant's control, the appeal tribunal may dismiss the appeal without a hearing and issue a decision accordingly. Otherwise, the department may schedule a hearing concerning the issue question of whether the party's failure to timely file the appeal was filed late for a reason that was beyond the party's appellant's control. The department may also provisionally schedule a hearing concerning any matter in the determination. If, after hearing testimony, the appeal tribunal finds that the party's failure to timely file the appeal was not for a reason beyond the party's control, the appeal tribunal shall issue a decision containing this finding and dismissing the appeal. If, after hearing testimony, the appeal tribunal finds that the party's failure to timely file an appeal was for a reason beyond the party's control, the appeal tribunal shall issue a decision containing this finding. The being appealed. After hearing testimony on the late appeal question,

the appeal tribunal shall issue a decision which makes ultimate findings of fact and conclusions of law concerning whether the the appellant's appeal was filed late for a reason that was beyond the appellant's control and which, in accordance with those findings and conclusions, either dismisses the appeal or determines that the appeal was filed late for a reason that was beyond the appellant's control. If the appeal is not dismissed, the same or another appeal tribunal established by the department for this purpose, after conducting a hearing, shall then issue a decision under sub. (3) (b) after conducting a hearing concerning any matter in the determination.

SECTION 13. 108.14 (8s) (a) and (b) of the statutes are amended to read:

108.14 (8s) (a) Overpayments of unemployment insurance benefits as determined under this chapter may be ~~recovered by offset~~ recouped from unemployment insurance benefits otherwise payable under the unemployment insurance law of another state, and overpayments of unemployment insurance benefits as determined under the unemployment insurance law of that other state may be ~~recovered by offset~~ recouped from unemployment insurance benefits otherwise payable under this chapter; and

(b) Overpayments of unemployment insurance benefits as determined under applicable federal law, with respect to benefits or allowances for unemployment provided under a federal program administered by this state under an agreement with the U.S. secretary of labor, may be ~~recovered by offset~~ recouped from unemployment insurance benefits otherwise payable under that program, or under the unemployment insurance law of this state or of another state or any such federal unemployment benefit or allowance program administered by the other state under an agreement with the U.S. secretary of labor if the other state has in effect a reciprocal agreement with the U.S. secretary of labor as authorized by 42 USC 503

(g) (2), if the United States agrees, as provided in the reciprocal agreement with this state entered into under 42 USC 503 (g) (2), that overpayments of unemployment insurance benefits as determined under this chapter, and overpayments as determined under the unemployment insurance law of another state which has in effect a reciprocal agreement with the U.S. secretary of labor as authorized by 42 USC 503 (g) (2), may be ~~recovered by offset~~ recouped from benefits or allowances for unemployment otherwise payable under a federal program administered by this state or the other state under an agreement with the U.S. secretary of labor.

**SECTION 14.** 108.22 (8) (b) of the statutes is amended to read:

108.22 (8) (b) To recover any overpayment which is not otherwise repaid or recovery of which has not been waived, the department may ~~offset~~ recoup the amount of the overpayment ~~against~~ from benefits the individual would otherwise be eligible to receive, or file a warrant against the liable individual in the same manner as is provided in this section for collecting delinquent payments from employers, or both, but only to the extent of recovering the actual amount of the overpayment and any costs and disbursements, without interest.

**SECTION 15.** 108.225 (15) of the statutes is amended to read:

108.225 (15) DURATION OF LEVY. A levy is effective from the date on which the levy is first served on the 3rd party until the liability out of which the levy arose is satisfied, or until the levy is released ~~or until one year from the date of service,~~ whichever occurs first.

**SECTION 16. Initial applicability.**

(1) The treatment of section 108.04 (16) (a) (intro.), (b), and (c) of the statutes first applies with respect to weeks of unemployment beginning on the effective date of this subsection.

(2) The treatment of section 108.09 (4) (c) of the statutes first applies with respect to determinations issued under sections 108.09, 108.095, and 108.10 of the statutes on December 29, 2003.

(3) The treatment of sections 108.14 (8s) (a) and (b) and 108.22 (8) (b) of the statutes first applies with respect to determinations issued under section 108.09 of the statutes on the effective date of this subsection.

(4) The treatment of section 108.225 (15) of the statutes first applies with respect to levies issued on the effective date of this subsection.

**SECTION 17. Effective date.**

(1) This act takes effect on the first Sunday after publication, *except as follows:*

(END)

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*LPS: fix components and make changes as indicated. Effective date subsections will be added in a later version.*

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

LRB-3121/P2dn

JTK:.....

Handwritten signature and initials, including a large 'J' and 'K' and the initials 'js' below.

Tom Smith:

This draft incorporates corrections resulting from editing. ✓

1. Concerning the treatment of s. 108.02 (12) (b) (intro.) and (bm) (intro.), stats., relating to employee status, if the bill resulting from this draft does not become law by January 1, 2004, there will be a period during which the former definition of "employee" is revived. If that scenario seems likely, we will need to redraft or amend this draft in order to account for that situation. ✓

2. Concerning the treatment of s. 108.09 (4) (c), stats., relating to late appeals, the initial applicability will need to be changed if the bill resulting from this draft does not become law by December 29, 2003. ✓

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

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

LRB-3121/P2dn  
JTK:cjs:rs

September 5, 2003

Tom Smith:

This draft incorporates corrections resulting from editing.

1. Concerning the treatment of s. 108.02 (12) (b) (intro.) and (bm) (intro.), stats., relating to employee status, if the bill resulting from this draft does not become law by January 1, 2004, there will be a period during which the former definition of "employee" is revived. If that scenario seems likely, we will need to redraft or amend this draft in order to account for that situation.
2. Concerning the treatment of s. 108.09 (4) (c), stats., relating to late appeals, the initial applicability will need to be changed if the bill resulting from this draft does not become law by December 29, 2003.

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

April 2003  
Proposed by: Mary Pertzborn  
Analysis written by: Nadine Konrath

**ANALYSIS OF PROPOSED UI LAW CHANGE**  
***Efficiently pay counties for satisfaction of warrants***

**INTRODUCTION**

The clerk of circuit courts accept and file warrants without prepayment of any fee. The fees may be paid semiannually unless a different billing period is agreed between the clerk of circuit court and the department. The fees for satisfaction or release of the warrant are paid on a different timeline. These fees are paid at the time of filing the satisfaction or release to the clerk of circuit courts.

**DESCRIPTION OF PROPOSED CHANGE**

Current law requires the department when issuing satisfactions or release of warrants to the clerk to submit payment of the fee with the filing of the release or satisfaction.

This change would allow the department to pay all fees associated to the clerk of circuit courts in the same billing cycles.

**PROPOSED STATUTORY LANGUAGE**

108.22 (2)(b) The clerk of circuit court shall accept, file and enter the warrant, void warrant, satisfactions and releases in the judgment and lien docket without prepayment of any fee, but the clerk of circuit court shall submit a statement of the proper fee semiannually to the department covering the periods from January 1 to June 30 and July 1 to December 31 unless a different billing period is agreed to between the clerk of circuit court and the department.

**REASON FOR THE CHANGE**

The current process for payment to the clerk of circuit courts for satisfactions, releases and voids is cumbersome, costly and inefficient. The proposed change would combine the payment processes for warrants, satisfactions and releases. It is simply a technical change in the way we provide payment to clerk of circuit courts.

UI will begin exchanging information electronically with Consolidated Court Automation Programs (CCAP). CCAP eliminates manual re-entry of shared data and enhances the clerk of circuit courts billing and payment procedures. The electronic interfaces streamline record keeping and improve the timeliness and accuracy of information for the agencies involved. This change is concert with the automation to CCAP and benefits all clerk of circuit courts as well as the department.

## **BRIEF HISTORY AND BACKGROUND OF CURRENT PROVISION**

Current provision requires the department and the clerk of circuit courts to maintain two processes for billing and payment of warrants, and satisfactions and releases respectively. Approximately 700 satisfactions and releases annually are handled in a different manner than the warrants. These two processes become cumbersome for the clerk of circuit courts and complicates financial reconciliation.

Clerk of circuit courts were contacted concerning this proposed change. Of those contacted there was favorable response.

## **EFFECTS OF THE PROPOSED CHANGE**

Administrative Impact:

There is no impact on employers or claimants. No impact on the reserve fund./

UI Division and Clerk of Circuit Courts benefits:

Cost saving

Decreases paperwork, reduces the number of checks produced

Promotes efficiency and accuracy

Ease transition to CCAP and CCAP billing

## **STATE AND FEDERAL ISSUES**

Chapter 108: potential change to 108.22(6)

Rules: No administrative rules are necessary of changes to administrative rules are required.

Conformity: No conformity issues arise from this change.

## **PROPOSED EFFECTIVE/APPLICABILITY DATE**

Normal effective date: All satisfactions and releases issued after effective date would be paid in accordance with change or as agreed by the department.

**PROPOSED LAW CHANGE FOR FUNDING UNEMPLOYMENT RESERVE  
FUND BANK COSTS WITH REED ACT FUNDS**

**1. DESCRIPTION OF PROPOSED CHANGE**

This proposed change would grant the Department authority to use Reed Act funds for the payment of Unemployment Reserve Fund banking costs. The change also gives the Department the option to pay for bank costs with either Reed Act funds or by maintaining compensating balances in its working bank accounts. The option used will depend on the difference in earnings rates and the resulting additional interest earnings for the Reserve Fund. On a quarterly basis the department will estimate earnings rates for the following quarter and pay for bank costs according to the option that is estimated to result in the highest interest earnings for the Fund. For accounting and banking purposes the Reserve Fund operates totally outside the State of Wisconsin central accounting system. All reserves are required under federal law to be held in the federal Unemployment Trust Fund and all banking accounts are maintained under a separate contract with US Bank. Banking services are re-bid every six years using a request for proposal procurement process. Services are currently paid for by maintaining Reserve Fund balances in bank accounts at US Bank. If the services were paid for with Reed Act funds, these balances would instead be maintained in the federal Unemployment Trust Fund. Reed Act funds are excess federal unemployment taxes collected from employers and allocated to states for the purpose of either administering unemployment insurance and employment service programs or paying unemployment benefits to laid-off workers. Wisconsin recently received a \$166 million Reed Act allocation which was credited to the Unemployment Reserve Fund and is available for either paying benefits or administration of the program.

**2. PROPOSED STATUTORY LANGUAGE**

Create section 20.445(x)(xx) Unemployment Reserve Fund bank service costs. From the moneys received under section 903 of the federal social security act, as amended and in accordance with ss. 108.161, a sum sufficient to pay the costs of banking services attributed to the Unemployment Reserve Fund.

Create section 108.16(x)(xx) The funds treasurer shall estimate at the end of each calendar quarter, the earnings rate paid on its bank balances and the earnings rate paid by the federal Unemployment Trust Fund for the following quarter. Based on these estimates, the treasurer shall pay for the cost of bank services with either compensating bank balances or from the appropriation under ss 20.445(x)(xx), whichever payment method will yield the highest net earnings for the Unemployment Reserve Fund.

**3. REASON FOR PROPOSED CHANGE**

Currently there is a significant difference between the bank contract compensating balance rate and the federal Unemployment Trust Fund earnings rate. The bank rate for June, which is based on the 90-day treasury bill rate, was 1.2%. The Trust Fund earnings rate for second quarter 2003, which is based on the average US debt, was 5.98%. Maintaining required balances in our bank accounts at 1.12% is resulting in a substantial loss in interest earnings for the Reserve Fund. If the service costs were paid for with Reed Act funds, the bank balances could be maintained in the federal Trust fund earning interest at 5.98%. (See Fiscal Effects for estimated interest loss).

**4. BRIEF HISTORY AND BACKGROUND OF CURRENT PROVISION**

There currently is no statutory provision regarding how Reserve Fund banking services should be funded. Prior to the mid 1970's, the federal government maintained compensating balances in our working bank to pay for bank service costs. When those balances were withdrawn, the Department adopted a policy of maintaining an adequate amount of Unemployment Reserve Fund balances in our banking accounts to fund the costs. Since the federal government did not increase our administrative grants to pay for these services, we had no other funding alternatives. Reed Act funds adequate to cover these costs were not available until recently.

**5. EFFECTS OF PROPOSED CHANGE**

The proposed change will allow the Department to maximize earnings for the Unemployment Reserve Fund. Although the Reed Act funds used to pay for bank services would no longer be available for paying benefits or administrative costs, they will be replaced by substantially more in interest earnings. The interest earnings however are only available to pay benefits and cannot be used for administrative purposes.

**6. FISCAL EFFECTS**

Based on the current difference in interest rates and the current level of banking costs, we estimate the Reserve Fund could increase by a net \$3.5 million annually if Reed Act funds were used to pay bank costs. As a result of the current high claim load, bank service costs are running about \$800,000 annually. At a 1.12% earnings rate, a daily compensating bank balance of \$71.5 million is required to cover these costs. If this balance were instead maintained in the federal Unemployment Trust Fund, interest earnings would increase by \$4.3 million annually (\$71.5 million at 5.98%). The net gain to the UI Reserve Fund is \$3.5 million (\$4.3 million less \$800,000).

**7. STATE & FEDERAL ISSUES**

The proposed change is consistent with federal law which requires all unemployment receipts to be deposited immediately into the federal Trust Fund. It is also consistent with the federal Reed Act law which requires these funds to only be used to administer unemployment and employment service programs or to pay unemployment benefits. This change also complies with a federal Reed Act provision which requires a state appropriation for funds used for administrative purposes.

**8. PROPOSED EFFECTIVE/APPLICABILITY DATE**

Use of Reed Act Funds to pay for bank services should be effective upon enactment of the legislation. It should cover any future bank costs and any bank earnings deficit that is outstanding as of the date of enactment. An earnings deficit results from past bank service costs which have not yet been paid off with compensating balance earnings and have been carried forward from month to month. The current deficit is approximately \$260,000.



State of Wisconsin  
2003 - 2004 LEGISLATURE

LRB-3121/P2

JTK:cjs:rs

stays

Wanted Tue 9/16

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SA ✓  
Stat compare ✓  
new CRs ✓

Gen cat.

1 AN ACT to amend 108.02 (12) (b) (intro.), 108.02 (12) (bm) (intro.), 108.04 (11)  
2 (cm), 108.04 (16) (a) (intro.), (b) and (c), 108.04 (17) (a) 1. and 2., (b) 1. and 2.,  
3 (c) 1. and 2., (d), (e), (f), (g), (h), (i) and (k) (intro.), 108.05 (7) (a) 1., 108.05 (7)  
4 (c), 108.05 (7) (d) 1. (intro.), 108.05 (7) (f) (intro.), 108.09 (4) (c), 108.14 (8s) (a)  
5 and (b), 108.22 (8) (b) and 108.225 (15); and to create 108.02 (6m) and 108.05  
6 (7) (cm) of the statutes; relating to: various changes in the unemployment  
7 insurance law.

**Analysis by the Legislative Reference Bureau**

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

**BENEFIT CHANGES**

**OTHER BENEFIT CHANGES**

**Employee status**

Currently, in order to be eligible to claim benefits, an individual must, in addition to other requirements, be an "employee" as defined in the unemployment insurance law. Generally, an "employee" is an individual who performs services for an employer in employment covered under the unemployment insurance law, whether or not the individual is directly paid by the employer. However, an

individual is not an “employee” if the individual performs services as an independent contractor.

Currently, during the four-year period beginning in the year 2000 (the specific date varies in different situations), an independent contractor, other than a logger or trucker performing services for an employer other than a governmental or nonprofit employer, must meet at least seven of ten conditions concerning the individual’s relationship to or control over his or her business or the services that he or she performs. Two of the conditions that an individual may use to qualify as an independent contractor require the individual to have a federal employer identification number or to have filed business or self-employment income tax returns with the federal internal revenue service based on the services performed as an independent contractor. The other eight conditions are the same eight conditions that an individual was able to use to qualify as an independent contractor prior to the year 2000. These conditions relate to the individual’s relationship to or direction or control over his or her business or the services that he or she performs.

Beginning in 2004, in order to be considered an independent contractor, an individual must hold or have applied for an employer identification number with the federal internal revenue service or must have filed business or self-employment income tax returns with the federal internal revenue service in the previous year, and must meet at least six of the eight other conditions concerning the individual’s relationship to or direction or control over his or her business or the services that he or she performs. This bill makes permanent the test for determination of “employee” status that is in effect prior to 2004.

### ***Approved training***

Currently, benefits may not be denied to an otherwise eligible claimant because the claimant is enrolled in a vocational training course under certain conditions. This bill provides that this exception does not apply to a claimant who fails to provide to the Department of Workforce Development (DWD) with his or her social security number or who provides a false social security number. Current law also provides that a claimant is not subject to certain requirements to requalify for benefits by obtaining new work after voluntarily terminating work or failing, without good cause, to accept suitable work or recall to work for a former employer if the failure occurs as a result of participation in a federal training program or the claimant leaves work to enter or continue in such a program. This bill provides that this exemption does not apply to a claimant who fails to provide a social security number or who provides a false social security number. However, the bill extends the current exemption so that a claimant who participates in such a program is not subject to requirements to be able to work and remain available for work, and makes such a claimant exempt from disqualifications or benefit reductions for taking a voluntary leave of absence from work, working in self-employment, failing to maintain a license, being employed by a family-owned business, or failing to provide certain information. However, the bill limits the current exemption so that it applies only to dislocated workers and workers obtaining training under the federal Trade Adjustment Assistance Act, rather than to all workers, who participate in certain federal training programs.

***Recovery of benefit overpayments***

Currently, DWD may offset any benefits that are overpaid to a claimant against benefits that the claimant would otherwise be eligible to receive. This bill provides for DWD to recoup any overpayment instead of offsetting it. The change facilitates collection of overpayments during bankruptcy proceedings.

**TAX CHANGES*****Duration of levies***

Currently, DWD may administratively levy against the property of a third party who holds the property of a person who is indebted to DWD for the purpose of enforcing collection of the debt. No levy applies for more than one year after the date of service. This bill removes that limitation. Under the bill, a levy is effective until the debt is satisfied or until DWD releases the levy, whichever occurs first.

***Enforcement of assessments against imposters***

Currently, if any person makes a false statement or representation in order to obtain benefits in the name of another person, DWD may, by administrative action or by decision in an administrative proceeding, require the person to repay the benefits and may also penalize the person by levying an assessment against him or her in an amount not greater than 50% of the benefits wrongfully obtained. The assessment may be enforced by obtaining a judgment against the person in court and then by levying against the nonexempt property of the person to enforce the judgment. This bill provides, in addition, that DWD may recoup the amount due from other benefits that the person would otherwise be eligible to receive or may issue an administrative levy against the property of the person without a court proceeding.

**OTHER CHANGES*****Treatment of stepchildren***

Currently, stepchildren are not treated as children for purposes of the unemployment insurance law. This bill treats stepchildren as children for that purpose. Among other effects, the change means that: a) unless an employer otherwise elects, with the approval of DWD, the wages of the stepchildren of a nonresident alien who has nonimmigrant status are not subject to contribution requirements (taxes) and these stepchildren may not claim benefits based on their employment; b) ownership of a business by the stepchild of a claimant may result in a limitation of benefit availability based on employment with that business; c) the need to obtain child care for a stepchild or domestic abuse involving a stepchild may serve to permit a claimant to obtain benefits after voluntarily terminating work without requalifying by engaging in new work, under certain conditions; and d) ownership of a business by a stepchild of another owner may result in treatment of the business as the successor of the previous business rather than treatment of the business as a new business, under certain conditions.

***Late appeals***

Currently, if a party in an unemployment insurance determination files an appeal that is not timely, DWD may schedule a hearing concerning whether the

party's failure to file the appeal on a timely basis was for a reason that was beyond the party's control. This bill provides that if a party files an appeal that is not timely, an appeal tribunal (attorney employed by DWD) must review the reasons given by the party for not filing a timely appeal and if those reasons, taken as true and construed most favorably to the party, do not constitute a reason that was beyond the party's control, the tribunal may dismiss the appeal without a hearing and issue a decision finding that the appeal was not filed on a timely basis. If the tribunal finds that the appeal may have been filed late for a reason that was beyond the party's control, the department may schedule a hearing on that issue.

**Reporting of social security benefit information**

Currently, claimants and their employers and retirement systems are required to report to DWD any information specified by DWD relating to the portion of social security benefits received by a claimant that is not based upon taxes paid by a claimant. This bill makes the reporting requirement applicable to all social security benefits received.

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

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

**SECTION 1.** 108.02 (6m) of the statutes is created to read:

108.02 (6m) CHILD. "Child" means a natural child, adopted child, or stepchild.

**SECTION 2.** 108.02 (12) (b) (intro.) of the statutes is amended to read:

108.02 (12) (b) (intro.) During the period beginning on January 1, 1996, and ending on December 31, 1999, and during the period beginning on January 1, 2004, with respect to contribution requirements, and during the period beginning on January 1, 1996, and ending on April 1, 2000, and during the period beginning on April 4, 2004, with respect to benefit eligibility, par. (a) does not apply to an individual performing services for an employing unit other than a government unit or nonprofit organization in a capacity other than as a logger or trucker, if the employing unit satisfies the department that:

**SECTION 3.** 108.02 (12) (bm) (intro.) of the statutes is amended to read:

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1           108.02 (12) (bm) (intro.) During the 4-year period beginning on  
2           January 1, 2000, with respect to contribution requirements, and during the period  
3           beginning on April 2, 2000, and ending on April 3, 2004, with respect to benefit  
4           eligibility, par. (a) does not apply to an individual performing services for an  
5           employing unit other than a government unit or nonprofit organization in a capacity  
6           other than as a logger or trucker, if the employing unit satisfies the department that  
7           the individual meets 7 or more of the following conditions by contract and in fact:

8           **SECTION 4.** 108.04 (11) (cm) of the statutes is amended to read:

9           108.04 (11) (cm) ~~Any~~ If any person who makes a false statement or  
10          representation in order to obtain benefits in the name of another person, the benefits  
11          received by that person constitute a benefit overpayment. Such person may, by a  
12          determination or decision issued under s. 108.095, be required to repay the amount  
13          of the benefits obtained and be assessed an administrative assessment in an  
14          additional amount equal to not more than 50% of the amount of benefits obtained.

15          **SECTION 5.** 108.04 (16) (a) (intro.), (b) and (c) of the statutes are amended to  
16          read:

17          108.04 (16) (a) (intro.) Benefits shall not be reduced under sub. (1) (a), or denied  
18          under sub. (2) (a) or (d) or (8) or s. 108.141 (3g) to any otherwise eligible individual  
19          for any week because the individual is enrolled in a full-time course of vocational  
20          training or basic education which is a prerequisite to such training, provided it is  
21          determined that:

22          (b) The requalifying ~~employment~~ requirement under subs. (7) and (8) and the  
23          general qualifying requirements under ~~sub.~~ subs. (1) and (2) (a) and (d) do not apply  
24          to an individual as a result of the individual's enrollment in training or leaving  
25          unsuitable work to enter or continue training in accordance with the plan of any state

1 under 19 USC 2296 or a plan for training of dislocated workers approved under 29  
2 USC 2822.

3 (c) Benefits may not be denied to an otherwise eligible individual under par. (a)  
4 who is enrolled in a program under the plan of any state for training under 19 USC  
5 2296 or a plan for training of dislocated workers approved under 29 USC 2822,  
6 notwithstanding the failure of such training to meet any of the requirements of par.  
7 (a) 1. to 4.

8 SECTION 6. 108.04 (17) (a) 1. and 2., (b) 1. and 2., (c) 1. and 2., (d), (e), (f), (g),  
9 (h), (i) and (k) (intro.) of the statutes are amended to read:

10 108.04 (17) (a) 1. During the period between 2 successive academic years or  
11 terms, if the school year employee performed such services for ~~an~~ any educational  
12 institution in the first such year or term and if there is reasonable assurance that he  
13 or she will perform such services for ~~an~~ any educational institution in the 2nd such  
14 year or term; or

15 2. During the period between 2 regular but not successive academic terms,  
16 when an agreement between an employer and a school year employee provides for  
17 such a period, if the school year employee performed such services for ~~an~~ any  
18 educational institution in the first such term and if there is reasonable assurance  
19 that he or she will perform such services for ~~an~~ any educational institution in the 2nd  
20 such term.

21 (b) 1. During the period between 2 successive academic years or terms, if the  
22 school year employee performed such services for any such ~~a~~ government unit,  
23 Indian tribe, or nonprofit organization in the first such year or term and if there is  
24 reasonable assurance that he or she will perform such services for any such ~~a~~

1 government unit, Indian tribe, or nonprofit organization in the 2nd such year or  
2 term; or

3 2. During the period between 2 regular but not successive academic terms,  
4 when an agreement between an employer and a school year employee provides for  
5 such a period, if the school year employee performed such services for any such -a  
6 government unit, Indian tribe, or nonprofit organization in the first such term and  
7 if there is reasonable assurance that he or she will perform such services for any such  
8 -a government unit, Indian tribe, or nonprofit organization in the 2nd such term.

9 (c) 1. During the period between 2 successive academic years or terms, if the  
10 school year employee performed such services for ~~an~~ any educational service agency  
11 in the first such year or term and if there is reasonable assurance that he or she will  
12 perform such services for ~~an~~ any educational service agency in the 2nd such year or  
13 term; or

14 2. During the period between 2 regular but not successive academic terms,  
15 when an agreement between an employer and a school year employee provides for  
16 such a period, if the school year employee performed such services for ~~an~~ any  
17 educational service agency in the first such term and if there is reasonable assurance  
18 that he or she will perform such services for ~~an~~ any educational service agency in the  
19 2nd such term.

20 (d) A school year employee of an educational institution who performs services  
21 other than in an instructional, research or principal administrative capacity is  
22 ineligible for benefits based on such services for any week of unemployment which  
23 occurs during a period between 2 successive academic years or terms if the school  
24 year employee performed such services for ~~an~~ any educational institution in the first

1 such year or term and there is reasonable assurance that he or she will perform such  
2 services for ~~an~~ any educational institution in the 2nd such year or term.

3 (e) A school year employee of a government unit, Indian tribe, or nonprofit  
4 organization which provides services to or on behalf of ~~an~~ any educational institution  
5 who performs services other than in an instructional, research or principal  
6 administrative capacity is ineligible for benefits based on such services for any week  
7 of unemployment which occurs during a period between 2 successive academic years  
8 or terms if the school year employee performed such services for any such ~~a~~  
9 government unit or nonprofit organization in the first such year or term and there  
10 is reasonable assurance that he or she will perform such services for any such ~~a~~  
11 government unit, Indian tribe, or nonprofit organization in the 2nd such year or  
12 term.

13 (f) A school year employee of an educational service agency who performs  
14 services other than in an instructional, research or principal administrative  
15 capacity, and who provides such services in an educational institution or to or on  
16 behalf of an educational institution, is ineligible for benefits based on such services  
17 for any week of unemployment which occurs during a period between 2 successive  
18 academic years or terms if the school year employee performed such services for ~~an~~  
19 any educational service agency in the first such year or term and there is reasonable  
20 assurance that he or she will perform such services for ~~an~~ any educational service  
21 agency in the 2nd such year or term.

22 (g) A school year employee of an educational institution who performs services  
23 as described in par. (a) or (d) is ineligible for benefits based on such services for any  
24 week of unemployment which occurs during an established and customary vacation  
25 period or holiday recess if the school year employee performed such services for ~~an~~

1 any educational institution in the period immediately before the vacation period or  
2 holiday recess, and there is reasonable assurance that he or she will perform the  
3 services described in par. (a) or (d) for ~~an~~ any educational institution in the period  
4 immediately following the vacation period or holiday recess.

5 (h) A school year employee of a government unit, Indian tribe, or nonprofit  
6 organization which provides services to or on behalf of an educational institution  
7 who performs the services described in par. (b) or (e) is ineligible for benefits based  
8 on such services for any week of unemployment which occurs during an established  
9 and customary vacation period or holiday recess if the school year employee  
10 performed such services for any such ~~a~~ government unit, Indian tribe, or nonprofit  
11 organization in the period immediately before the vacation period or holiday recess,  
12 and there is reasonable assurance that the school year employee will perform the  
13 services described in par. (b) or (e) for any such ~~a~~ government unit, Indian tribe, or  
14 nonprofit organization in the period immediately following the vacation period or  
15 holiday recess.

16 (i) A school year employee of an educational service agency who performs the  
17 services described in par. (c) or (f), and who provides such services in an educational  
18 institution or to or on behalf of an educational institution, is ineligible for benefits  
19 based on such services for any week of unemployment which occurs during an  
20 established and customary vacation period or holiday recess if the school year  
21 employee performed such services for ~~an~~ any educational service agency in the period  
22 immediately before the vacation period or holiday recess, and there is reasonable  
23 assurance that the school year employee will perform the services described in par.  
24 (c) or (f) for ~~an~~ any educational service agency in the period immediately following  
25 the vacation period or holiday recess.

1 (k) (intro.) If benefits are reduced or denied to a school year employee who  
2 performed services other than in an instructional, research or principal  
3 administrative capacity under pars. (d) to (f), and the department later determines  
4 that the school year employee was not offered an opportunity to perform such  
5 services for ~~the~~ an applicable employer under pars. (d) to (f) in the 2nd academic year  
6 or term, the department shall recompute the school year employee's base period  
7 wages under sub. (4) (a) and ss. 108.05 (1) and 108.06 (1) and shall make retroactive  
8 payment of benefits for each week of such reduction or denial if the school year  
9 employee:

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

11 108.05 (7) (a) 1. "Pension payment" means a pension, retirement, annuity, or  
12 other similar payment made to a claimant, based on the previous work of that  
13 claimant, whether or not payable on a periodic basis, from a governmental or other  
14 retirement system maintained or contributed to by an employer from which that  
15 claimant has base period wages, ~~other than a payment received under the federal~~  
16 ~~Social Security Act (42 USC 301 et seq.) that is based in whole or in part upon taxes~~  
17 ~~paid by the claimant.~~

18 SECTION 8. 108.05 (7) (c) of the statutes is amended to read:

19 108.05 (7) (c) *Required benefit reduction.* If Except as provided in par. (cm), if  
20 a claimant actually or constructively receives a pension payment, the department  
21 shall reduce benefits otherwise payable to the claimant for a week of partial or total  
22 unemployment, but not below zero, if pars. (d) and (e) or if pars. (d) and (f) apply.

23 SECTION 9. 108.05 (7) (cm) of the statutes is created to read:

24 108.05 (7) (cm) *Payments received under Social Security Act.* If a claimant  
25 receives a pension payment under the federal Social Security Act (42 USC 301 et

1 seq.), the department shall not reduce the benefits otherwise payable to the claimant  
2 resulting from the claimant's receipt of the portion of the pension payment that is  
3 based upon taxes paid by the claimant.

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

5 108.05 (7) (d) 1. (intro.) If a pension payment to which par. (c) applies is not paid  
6 on a weekly basis, the department shall allocate and attribute the payment to  
7 specific weeks if:

8 SECTION 11. 108.05 (7) (f) (intro.) of the statutes is amended to read:

9 108.05 (7) (f) *Partial or total employee funding.* (intro.) If any portion of a  
10 pension payment to which par. (c) applies that is actually or constructively received  
11 by a claimant under this subsection is funded by the claimant's contributions, the  
12 department shall compute the benefits payable for a week of partial or total  
13 unemployment as follows:

14 SECTION 12. 108.09 (4) (c) of the statutes is amended to read:

15 108.09 (4) (c) *Late appeal.* If a party files an appeal which is not timely, an  
16 appeal tribunal shall review the appellant's written reasons for filing the late appeal.  
17 If those reasons, when taken as true and construed most favorably to the appellant,  
18 do not constitute a reason beyond the appellant's control, the appeal tribunal may  
19 dismiss the appeal without a hearing and issue a decision accordingly. Otherwise,  
20 the department may schedule a hearing concerning the issue question of whether the  
21 party's failure to timely file the appeal was filed late for a reason that was beyond  
22 the party's appellant's control. The department may also provisionally schedule a  
23 hearing concerning any matter in the determination. ~~If, after hearing testimony, the~~  
24 ~~appeal tribunal finds that the party's failure to timely file the appeal was not for a~~  
25 ~~reason beyond the party's control, the appeal tribunal shall issue a decision~~

1 ~~containing this finding and dismissing the appeal. If, after hearing testimony, the~~  
2 ~~appeal tribunal finds that the party's failure to timely file an appeal was for a reason~~  
3 ~~beyond the party's control, the appeal tribunal shall issue a decision containing this~~  
4 ~~finding. The being appealed. After hearing testimony on the late appeal question,~~  
5 ~~the appeal tribunal shall issue a decision which makes ultimate findings of fact and~~  
6 ~~conclusions of law concerning whether the the appellant's appeal was filed late for~~  
7 ~~a reason that was beyond the appellant's control and which, in accordance with those~~  
8 ~~findings and conclusions, either dismisses the appeal or determines that the appeal~~  
9 ~~was filed late for a reason that was beyond the appellant's control. If the appeal is~~  
10 ~~not dismissed, the same or another appeal tribunal established by the department~~  
11 ~~for this purpose, after conducting a hearing, shall then issue a decision under sub.~~  
12 ~~(3) (b) after conducting a hearing concerning any matter in the determination.~~

13 **SECTION 13.** 108.14 (8s) (a) and (b) of the statutes are amended to read:

14 **108.14 (8s) (a)** Overpayments of unemployment insurance benefits as  
15 determined under this chapter may be ~~recovered by offset~~ recouped from  
16 unemployment insurance benefits otherwise payable under the unemployment  
17 insurance law of another state, and overpayments of unemployment insurance  
18 benefits as determined under the unemployment insurance law of that other state  
19 may be ~~recovered by offset~~ recouped from unemployment insurance benefits  
20 otherwise payable under this chapter; and

21 (b) Overpayments of unemployment insurance benefits as determined under  
22 applicable federal law, with respect to benefits or allowances for unemployment  
23 provided under a federal program administered by this state under an agreement  
24 with the U.S. secretary of labor, may be ~~recovered by offset~~ recouped from  
25 unemployment insurance benefits otherwise payable under that program, or under

1 the unemployment insurance law of this state or of another state or any such federal  
 2 unemployment benefit or allowance program administered by the other state under  
 3 an agreement with the U.S. secretary of labor if the other state has in effect a  
 4 reciprocal agreement with the U.S. secretary of labor as authorized by 42 USC 503  
 5 (g) (2), if the United States agrees, as provided in the reciprocal agreement with this  
 6 state entered into under 42 USC 503 (g) (2), that overpayments of unemployment  
 7 insurance benefits as determined under this chapter, and overpayments as  
 8 determined under the unemployment insurance law of another state which has in  
 9 effect a reciprocal agreement with the U.S. secretary of labor as authorized by 42  
 10 USC 503 (g) (2), may be ~~recovered by offset~~ recouped from benefits or allowances for  
 11 unemployment otherwise payable under a federal program administered by this  
 12 state or the other state under an agreement with the U.S. secretary of labor.

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**SECTION 14.** 108.22 (8) (b) of the statutes is amended to read:

108.22 (8) (b) To recover any overpayment which is not otherwise repaid or  
 15 recovery of which has not been waived, the department may ~~offset~~ recoup the amount  
 16 of the overpayment ~~against~~ from benefits the individual would otherwise be eligible  
 17 to receive, or file a warrant against the liable individual in the same manner as is  
 18 provided in this section for collecting delinquent payments from employers, or both,  
 19 but only to the extent of recovering the actual amount of the overpayment and any  
 20 costs and disbursements, without interest.

**SECTION 15.** 108.225 (15) of the statutes is amended to read:

108.225 (15) DURATION OF LEVY. A levy is effective from the date on which the  
 23 levy is first served on the 3rd party until the liability out of which the levy arose is  
 24 satisfied, or until the levy is released ~~or until one year from the date of service,~~  
 25 whichever occurs first.

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**SECTION 16. Initial applicability.**

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(1) The treatment of section 108.04 (16) (a) (intro.), (b), and (c) of the statutes first applies with respect to weeks of unemployment beginning on the effective date of this subsection.

(2) The treatment of section 108.09 (4) (c) of the statutes first applies with respect to determinations issued under sections 108.09, 108.095, and 108.10 of the statutes on December 29, 2003.

(3) The treatment of sections 108.14 (8s) (a) and (b) and 108.22 (8) (b) of the statutes first applies with respect to determinations issued under section 108.09 of the statutes on the effective date of this subsection.

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~~(4)~~ The treatment of section 108.225 (15) of the statutes first applies with respect to levies issued on the effective date of this subsection.

**SECTION 17. Effective dates.** This act takes effect on the first Sunday after publication, except as follows:

(END)

INS 4A:

***Method of payment of certain court filing fees***

Currently, DWD has a lien on the property of each employer for payment of contributions (taxes), together with any interest, fees, and forfeitures owed by the employer. DWD may issue a warrant and record the warrant with the clerk of circuit court to secure payment of the amounts due. DWD need not pay the filing fee with each warrant that is recorded, but instead pays semiannually or at another interval that is agreed to by the clerk of circuit court. This bill provides that DWD need not pay the filing fee for any satisfaction of a warrant or release or withdrawal of a warrant at the time it is recorded, but instead may pay the clerk of circuit court periodically in the same manner that fees for recording of warrants are paid currently.

***Payment of banking service costs***

Currently, the cost of banking services incurred by the unemployment reserve fund is paid by maintaining compensating balances in the bank accounts that are used to make daily transactions. This bill provides for the treasurer of the fund to make estimates, prior to the beginning of each calendar quarter, of the earnings that the fund could anticipate in that quarter if compensating balances are maintained to cover service costs and, alternatively, if the moneys that would otherwise be maintained in bank accounts to cover service costs were instead retained in the federal unemployment trust account and the banking service costs were paid from that account. The treasurer is directed to pay banking service costs using the method that the treasurer determines will permit the fund to realize the greatest net earnings in that quarter.

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2003-2004 DRAFTING INSERT  
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INS 4-1:

SECTION 1. 20.445 (1) (n) of the statutes, as affected by 2003 Wisconsin Act 33,  
is amended to read:

20.445 (1) (n) *Employment assistance and unemployment insurance administration; federal moneys.* All federal moneys received, as authorized by the governor under s. 16.54, for the administration of employment assistance and unemployment insurance programs of the department, for the performance of the department's other functions under subch. I of ch. 106 and ch. 108, except moneys appropriated under par. (nc), and to pay the compensation and expenses of appeal tribunals and of employment councils appointed under s. 108.14, to be used for such purposes, except as provided in s. 108.161 (3e), to transfer to the appropriation account under par. (nb) an amount determined by the treasurer of the unemployment reserve fund not exceeding the lesser of the amount specified in s. 108.161 (4) (d) or the amounts in the schedule under par. (nb), and to transfer to the appropriation account under par. (nd) an amount determined by the treasurer of the unemployment reserve fund not exceeding the lesser of the amount specified in s. 108.161 (4) (d) or the amounts in the schedule under par. (nd), and to transfer to the appropriation account under par. (ne) <sup>an</sup> the amount <sup>equal to any amount required</sup> ~~determined by the treasurer of the~~ ~~to pay for the cost of banking services incurred by the~~ ~~unemployment reserve fund~~ ~~under s. 108.161 (4) (d)~~.

**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; 2001 a. 16, 35, 43, 104, 109; 2003 a. 33.

SECTION 2. 20.445 (1) (ne) of the statutes is created to read:

20.445 (1) (ne) *Unemployment administration; bank service costs.* All moneys transferred from the appropriation account under par. (n) ~~for the ~~20.445(1)(ne)~~ payment~~ of the cost of banking services incurred by the unemployment reserve fund.

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INS 13-12:

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**SECTION 3.** 108.16 (12) of the statutes is created to read:

108.16 (12) The fund's treasurer shall estimate at the end of each calendar quarter the earnings rate payable on the fund's bank balances and the earnings rate payable by the federal unemployment account under title XII of the social security act (42 USC 1321 <sup>to</sup> (40)1324) for the following quarter. Based on these estimates, the treasurer shall pay for the cost of banking services incurred by the fund in the following quarter either by maintaining compensating bank balances or by payment for the services from the appropriation under s. 20.445 (1) (ne), whichever payment method is estimated to yield the highest net earnings for the fund.

**SECTION 4.** 108.161 (4) (c) of the statutes, as affected by 2003 Wisconsin Act 33, is amended to read:

108.161 (4) (c) Specifying that the appropriated amounts are available for obligation solely within the 2 years beginning on the appropriation law's date of enactment. This paragraph does not apply to the ~~appropriation~~ appropriations under s. 20.445 (1) (nd) and (ne).

History: 1971 c. 259; 1983 a. 8, 27; 1985 a. 29; 1991 a. 39; 1994 a. 492; 1995 a. 225; 1997 a. 39; 1999 a. 15; 2001 a. 43; 2003 a. 33.

**SECTION 5.** 108.22 (2) (b) of the statutes is amended to read:

108.22 (2) (b) The clerk of circuit court shall accept, file and enter the each warrant under par. (a) and each satisfaction, release or withdrawal under subs. (5), (6) and (8m) in the judgment and lien docket without prepayment of any fee, but the

clerk of circuit court shall submit a statement of the proper fee semiannually to the department covering the periods from January 1 to June 30 and July 1 to December 31 unless a different billing period is agreed to between the clerk of circuit court and the department. The fees shall then be paid by the department, but the fees provided by s. 814.61 (5) for entering the warrants shall be added to the amount of the warrant and collected from the employing unit when satisfaction or release is presented for entry.

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; 2001 a. 35.

INS 13-25:

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**SECTION 6. Nonstatutory provisions.**

(1) Notwithstanding the effective date of the treatment of sections 20.445 (1) (n) and (ne), 108.16 (b) and 108.161 (4) (c) of the statutes by this act, the treasurer of the unemployment reserve fund may pay any banking service costs incurred by the fund that are outstanding on the effective date of this subsection from the appropriation under section 20.445 (1) (ne) of the statutes, as created by this act, if the treasurer determines that the fund would realize higher net earnings by taking such action.

*transfer moneys from the appropriation under section 20.445 (1) (n) of the statutes, as affected by this act to the appropriation account under section 20.445 (1) (ne) of the statutes, as created by this act, and may thereafter*

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INS 14-1:

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(#) The treatment of sections 20.445 (1) (n) and (ne), 108.16 (b) and 108.161 (4) (c) of the statutes first applies with respect to the first calendar quarter beginning after the effective date of this subsection.

*12*

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INS 14-10:

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(F) The treatment of section 108.22 (1) (b) of the statutes first applies with respect to satisfactions, releases and withdrawals of warrants issued on the effective date of this subsection.

2

LBR 6. Remove work search requirements from workers on temporary layoffs.

The labor proposal would routinely provide for a waiver of the standard requirements to search for work if a worker has a history of returning to work after temporary layoffs but no specific date for returning to work. Although current policy permits the outcome that is requested, administrative procedures are not in effect to assure that the desired result occurs routinely. As a result, claimants who do not know of the exception processing that is permitted may have a frustrating search for work from employers who are disinclined to hire them when knowing that such workers are likely to return to their former employer. The automated voice response system and/or adjudication procedures would need change to result in granting a waiver and following up on it when return to work did not occur within some reasonable time. The changes in procedure could eliminate an irritant to both claimants and employers. No fiscal effect is anticipated from the proposal as claimants now avoid disqualification by searching for work or obtaining the waiver on an exceptional basis.

108. 225(16)

LBR 10. (Revised July 30) Adapt Wis. Stat. 812.34(2) for purposes of exempting wages from levy in Unemployment Insurance benefit overpayment cases.

The proposal uses certain features of the present garnishment statute as a basis for determining how much income would be exempt from levy when used to collect benefit overpayments. A debtor's wages would be totally exempt if the debtor's wages provide income below the federal administrative poverty guideline for a household equal in size to that of the debtor or if the levy would cause such a result. In all other cases eighty per cent of the debtor's disposable earnings would be exempt from the levy except as otherwise directed by court order. The department would retain the discretion to impose a higher levy in cases of fraud.

Another way of stating the exemption would be to say that it is the greater of a subsistence allowance equal to eighty percent of the debtor's disposable earnings or an amount equal to the federal administrative poverty guideline for a household equal in size to that of the debtor. The department would determine the applicable guideline amount and notify the employer of the amount at the time of imposing the levy. The poverty amount would not change during the duration of a given levy. New levies imposed ninety days after publication in the Federal Register of new administrative poverty guidelines (usually each February) would use the new guidelines in setting the related exempt amount. As occurs under current law, the exempt amount could be increased by the department upon petition by the debtor regarding specific hardship incurred due to changed circumstances.

According to chapter 108 of current Wisconsin Statutes, the amount of earnings exempt from levy is the greater of seventy-five percent of wages or 30 times the minimum wage of \$5.15. The latter amounts to \$154.50. As a matter of practice, the Division does not start the process that could lead to imposition of a levy unless a person has \$3000 in quarterly wages. Seventy-five percent of \$3000 in quarterly wages would result in weekly exempt earnings of \$173.08.

If the poverty level for one person were substituted for \$154.50, the person owing money due to a benefit overpayment would be allowed to keep a minimum of \$172.69 a week beginning January 1, 2004. The poverty guideline for a household of two equals \$233.08, slightly higher than the \$230.77 (\$3000 quarterly) amount used to determine whether it is worthwhile to start administrative processes that could lead to imposition of a levy.

It can be estimated that we are now collecting an insignificant amount annually from all households in poverty. The more general effect of the proposal is to allow households not in poverty to keep a little more each week and pay us back more slowly.