



(DWIE)
State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-3121/PS P7
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TODAY

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

CAV

(regenerate)

1 AN ACT ~~to repeal 108.16 (8) (c) 4., 108.16 (8) (e) 4. and 108.225 (1) (d); to~~
2 ~~renumber 108.225 (16) (intro.) (except 108.225 (16) (title)) and 108.225 (16) (b);~~
3 ~~to renumber and amend 108.04 (2) (a) 3., 108.225 (16) (a) and 108.225 (16)~~
4 ~~(c); to amend 20.445 (1) (gg) (title), 20.445 (1) (n), 20.445 (1) (nb), 108.02 (12)~~
5 ~~(a), 108.02 (12) (b) (intro.), 108.02 (12) (bm) (intro.), 108.02 (15) (L), 108.02~~
6 ~~(15m) (a) and (b), 108.025 (title) and (1), 108.025 (2) and (6), 108.04 (1) (gm) 1.,~~
7 ~~2., 3. and 4. (intro.), 108.04 (7) (h), 108.04 (7) (r), 108.04 (11) (cm), 108.04 (16)~~
8 ~~(a) (intro.), 108.04 (17) (a) 1. and 2., (b) 1. and 2., (c) 1. and 2., (d), (e), (f), (g), (h),~~
9 ~~(i) and (k) (intro.), 108.05 (7) (a) 1., 108.05 (7) (c), 108.05 (7) (d) 1. (intro.), 108.05~~
10 ~~(7) (f) (intro.), 108.09 (4) (c), 108.14 (8s) (a) and (b), 108.16 (3) (a), 108.16 (6m)~~
11 ~~(a), 108.16 (6m) (e), 108.16 (8) (b) (intro.), 108.16 (8) (b) 2., 108.16 (8) (f), 108.161~~
12 ~~(4) (c), 108.161 (8), 108.162 (3), 108.19 (1e) (a) and (d), 108.22 (2) (b), 108.22 (8)~~
13 ~~(b), 108.225 (1) (b) and 108.225 (15); to repeal and recreate 108.04 (16) (a) 1.~~
14 ~~to 4. and 108.04 (16) (b) and (c); to create 20.445 (1) (ne), 108.02 (6m), 108.02~~
15 ~~(12) (dm) and (dn), 108.02 (20r), 108.02 (25s), 108.025 (1) (b), 108.04 (2) (a) 3.~~

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~~a. to c., 108.04 (16) (a) 5., 108.04 (16) (d) and (e), 108.05 (7) (cm), 108.068, 108.16 (12), 108.225 (16) (bm) and 108.225 (16) (cm) of the statutes, and to affect 2001 Wisconsin Act 35, section 72 (2) (a) 2. and 3.; relating to: various changes in the unemployment insurance law and making appropriations.~~

granting rule-making authority

Analysis by the Legislative Reference Bureau

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

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 or a basic education course

that is a prerequisite to such training ("approved training") under certain conditions. 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 expands the types of approved training programs for which a participating claimant retains benefit eligibility to include certain programs administered by the Department of Workforce Development (DWD) and job readiness training. The bill expands the types of disqualifications from and suspensions of benefits that do not apply as a result of a claimant's participation in approved training and also specifies certain disqualifications from and suspensions of benefits that do not apply to a claimant who is enrolled in an approved training course even if the course does not directly preclude the claimant from adhering to benefit qualification and requalification requirements. The bill provides that the current exemptions do not apply to a claimant who fails to provide to DWD a social security number or who provides a false social security number. The bill also limits a current benefit disqualification 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.

Currently, if a claimant is paid benefits for which the claimant would otherwise be ineligible because the claimant terminates his or her work or fails accept suitable work or recall to work for a former employer as a result of enrollment in approved training, the costs of benefits that could otherwise be chargeable to the claimant's employer or employers are charged to the balancing account of the unemployment reserve fund (which is financed from contributions of all employers that are subject to a requirement to pay contributions) instead of to the account or accounts of each of the claimant's employers. This bill provides that if a claimant is paid benefits for which the claimant would otherwise be eligible *for any reason* as a result of the claimant's enrollment in approved training, the costs of those benefits are charged in the same manner.

Search for work

Currently, in order to remain eligible to receive benefits for a week in which a claimant earns no wages, a claimant is required, among other things, to seek suitable work within that week.

This bill provides instead that, in order to remain eligible to receive benefits for a week in which a claimant earns no wages, the claimant must conduct a reasonable search for suitable work within that week. The bill also provides that the requirement does not apply to an individual if DWD determines that the individual is currently laid off from work with an employer but there is a reasonable expectation of reemployment of the individual by that employer.

Exemption of wages from levies

Currently, DWD may administratively levy against property held by a third party who holds the property of a person who is indebted to DWD for the purpose of enforcing collection of the debt. If the levy is to collect a benefit overpayment or a

forfeiture (civil penalty) imposed upon an employer, an individual debtor is entitled to an exemption of the greater of: 1) 75 percent of the debtor's earnings (excluding amounts withheld by law, insurance premiums, union dues, child support payments, and prior garnishments) then due and owing; or 2) an amount equal to 30 times the federal minimum wage per week or a proportionate amount for any partial week of earnings received.

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~~This bill provides instead that 80 percent of the debtor's earnings (excluding deductions for social security and federal and state income taxes) are exempt from levy unless the debtor's household income (including unearned income and the income of dependents but excluding family support payments) is below the federal poverty line or the levy would cause that result, in which case the debtor's earnings are totally exempt from levy. The bill also provides that no exemption applies if there is an unresolved adjudication that the debtor made a false statement or representation in order to obtain benefits.~~

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

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 2004 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. DWD must reduce the solvency rate that an employer must pay in each year prior to 2004 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 2004 through 2007. The bill also permits DWD to use the revenue generated by the assessments to upgrade unemployment insurance information technology systems.

Duration of levies

Currently, an administrative 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 percent 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 limited liability companies

Currently, limited liability companies are generally covered under the unemployment insurance system. Current law does not expressly treat the issue of whether members of a limited liability company are considered to be employees of the company and therefore whether they are eligible to receive benefits. Currently, a corporation may, under certain conditions, elect to exclude its principal officers from unemployment insurance coverage, with the result that the corporation pays no contributions based on their services and the officers are not eligible to receive benefits. Currently, if a business has one owner or if a business is organized as a partnership, the owner or partners pay no contributions based on their services and they are not eligible to receive benefits.

This bill provides that a limited liability company shall be treated as a corporation for unemployment insurance purposes, including payment of contributions and eligibility of its members for benefits if it is so treated for federal unemployment tax purposes, beginning with the date it applies to DWD to be so treated or the date that it becomes so treated by the federal Internal Revenue Service, whichever is later. If a limited liability company does not apply to DWD to be treated as a corporation for unemployment insurance purposes or the company is not so treated for federal unemployment tax purposes, the company is treated as a partnership if it has more than one member or as a sole proprietorship (business owned by one individual) if it has only one member, except that, under the bill, DWD may in the interests of justice or to prevent fraud upon the unemployment insurance program determine a member of a limited liability company to be an employee of the company. In this case, the services performed by the member are subject to contributions and the member potentially qualifies to receive benefits.

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 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.

Partial successorship

Currently, if at least 25 percent 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. However, a transferee may not request that it be treated as a successor to a transferor unless 100 percent of the transferor's business is transferred to a single transferee. In addition, DWD must treat a transferee as a successor, under certain conditions, if 100 percent of the transferor's business is transferred to the transferee or if the transferor's unemployment insurance account is overdrawn on the date of the transfer. This bill deletes the restriction that precludes a transferee from requesting that it be treated as a successor unless 100 percent of the transferor's business is transferred to a single transferee and the requirement that DWD must treat a transferee as a successor under the conditions specified above.

Rule making

2001 Wisconsin Act 35 directed DWD to submit proposed rule changes to the legislative council staff no later than December 1, 2002, to:

1. 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.)

2. 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.

This bill repeals this requirement.

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.

Method of payment of certain court filing fees

Currently, DWD has a lien on the property of each employer for payment of contributions, 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.

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:

- 1 SECTION 1. 20.445 (1) (gg) (title) of the statutes is amended to read:
2 20.445 (1) (gg) (title) *Unemployment tax and accounting system information*
3 *technology systems; interest and penalties.*
4 SECTION 2. 20.445 (1) (n) of the statutes, as affected by 2003 Wisconsin Act 33,
5 is amended to read:

1 20.445 (1) (n) *Employment assistance and unemployment insurance*
2 *administration; federal moneys.* All federal moneys received, as authorized by the
3 governor under s. 16.54, for the administration of employment assistance and
4 unemployment insurance programs of the department, for the performance of the
5 department's other functions under subch. I of ch. 106 and ch. 108, except moneys
6 appropriated under par. (nc), and to pay the compensation and expenses of appeal
7 tribunals and of employment councils appointed under s. 108.14, to be used for such
8 purposes, except as provided in s. 108.161 (3e), to transfer to the appropriation
9 account under par. (nb) an amount determined by the treasurer of the unemployment
10 reserve fund not exceeding the lesser of the amount specified in s. 108.161 (4) (d) or
11 the amounts in the schedule under par. (nb), and to transfer to the appropriation
12 account under par. (nd) an amount determined by the treasurer of the
13 unemployment reserve fund not exceeding the lesser of the amount specified in s.
14 108.161 (4) (d) or the amounts in the schedule under par. (nd), and to transfer to the
15 appropriation account under par. (ne) an amount determined by the treasurer of the
16 unemployment reserve fund not exceeding the lesser of the amount specified in s.
17 108.161 (4) (d) or the amount required to pay for the cost of banking services incurred
18 by the unemployment reserve fund.

19 **SECTION 3.** 20.445 (1) (nb) of the statutes is amended to read:

20 20.445 (1) (nb) *Unemployment information technology systems; federal moneys.*
21 As a continuing appropriation, the amounts in the schedule, as authorized by the
22 governor under s. 16.54, for the purpose specified in s. 108.19 (1e) (d). All moneys
23 transferred from par. (n) for this purpose shall be credited to this appropriation
24 account. Notwithstanding s. 20.001 (3) (a), the treasurer of the unemployment
25 reserve fund shall transfer any unencumbered balance in this appropriation account

1 that is not needed or available to carry out the purpose of this appropriation to the
2 appropriation account under par. (n). No moneys may be expended from this
3 appropriation unless the treasurer of the unemployment reserve fund determines
4 that such expenditure is currently needed for the purpose specified in s. 108.19 (1e)
5 (d).

6 **SECTION 4.** 20.445 (1) (ne) of the statutes is created to read:

7 20.445 (1) (ne) *Unemployment administration; bank service costs.* All moneys
8 transferred from the appropriation account under par. (n) to be used for the payment
9 of the cost of banking services incurred by the unemployment reserve fund.

10 **SECTION 5.** 108.02 (6m) of the statutes is created to read:

11 108.02 (6m) CHILD. "Child" means a natural child, adopted child, or stepchild.

12 **SECTION 6.** 108.02 (12) (a) of the statutes is amended to read:

13 108.02 (12) (a) "Employee" means any individual who is or has been performing
14 services for an employing unit, in an employment, whether or not the individual is
15 paid directly by such employing unit; except as provided in par. (b), (bm), (c) ~~or~~, (d),
16 (dm) or (dn).

17 **SECTION 7.** 108.02 (12) (b) (intro.) of the statutes is amended to read:

18 108.02 (12) (b) (intro.) During the period beginning on January 1, 1996, and
19 ending on December 31, 1999, and ~~during the period beginning on January 1, 2004,~~
20 with respect to contribution requirements, and during the period beginning on
21 January 1, 1996, and ending on April 1, 2000, and ~~during the period beginning on~~
22 ~~April 4, 2004,~~ with respect to benefit eligibility, par. (a) does not apply to an individual
23 performing services for an employing unit other than a government unit or nonprofit
24 organization in a capacity other than as a logger or trucker, if the employing unit
25 satisfies the department that:

1 **SECTION 8.** 108.02 (12) (bm) (intro.) of the statutes is amended to read:

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

9 **SECTION 9.** 108.02 (12) (dm) and (dn) of the statutes are created to read:

10 108.02 (12) (dm) Paragraph (a) does not apply to an individual who owns a
11 business that operates as a sole proprietorship.

12 (dn) Paragraph (a) does not apply to a partner in a business that operates as
13 a partnership.

14 **SECTION 10.** 108.02 (15) (L) of the statutes is amended to read:

15 108.02 (15) (L) "Employment" includes an individual's service for an employer
16 organized as a corporation or a limited liability company that is treated as a
17 corporation under this chapter in which the individual is a principal officer and has
18 a direct or indirect ownership interest, except as provided in s. 108.025.

19 **SECTION 11.** 108.02 (15m) (a) and (b) of the statutes are amended to read:

20 108.02 (15m) (a) A corporation or a limited liability company that is treated
21 as a corporation under this chapter in which 50% or more of the ownership interest,
22 however designated or evidenced, is or during a claimant's employment was owned
23 or controlled, directly or indirectly, by the claimant or by the claimant's spouse or
24 child, or by the claimant's parent if the claimant is under the age of 18, or by a
25 combination of 2 or more of them; or

1 (b) Except where par. (a) applies, a corporation or a limited liability company
2 that is treated as a corporation under this chapter in which 25% or more of ownership
3 interest, however designated or evidenced, is or during a claimant's employment was
4 owned or controlled, directly or indirectly, by the claimant.

5 SECTION 12. 108.02 (20r) of the statutes is created to read:

6 108.02 (20r) PARTNERSHIP. "Partnership" has the meaning given in s. 178.03.

7 SECTION 13. 108.02 (25s) of the statutes is created to read:

8 108.02 (25s) VOCATIONAL TRAINING. "Vocational training" includes technical,
9 skill-based, or job readiness training intended to pursue a career.

10 SECTION 14. 108.025 (title) and (1) of the statutes are amended to read:

11 108.025 (title) Coverage of certain corporate officers and limited
12 liability company members.

13 (1) In this section, "principal officer" means an:

14 (a) An individual named as a principal officer in the a corporation's most recent
15 annual report or, if that information is not current, an individual holding an office
16 described in the corporation's most recent annual report as a principal officer; or

17 SECTION 15. 108.025 (1) (b) of the statutes is created to read:

18 108.025 (1) (b) An individual named as a member of a limited liability company
19 that is treated as a corporation under this chapter in the records of the company
20 required to be kept under s. 183.0405 as of the date of an election under this section.

21 SECTION 16. 108.025 (2) and (6) of the statutes are amended to read:

22 108.025 (2) If an employer having is organized as a corporation or limited
23 liability company that is treated as a corporation under this chapter, the employer
24 has no annual payroll for the calendar year preceding an election or an employer
25 having has an annual payroll of less than the amount specified in s. 108.18 (9) which

1 establishes separate solvency contribution rates for the calendar year preceding an
2 election, and the employer files a notice of election, in the manner prescribed by the
3 department, to exclude the service of all of its principal officers who have a direct or
4 indirect substantial ownership interest in the corporation or limited liability
5 company, employment does not include the service of those officers.

6 (6) A principal officer has a direct or indirect substantial ownership interest
7 in a corporation or limited liability company that is treated as a corporation under
8 this section if 25% or more of the ownership interest, however designated or
9 evidenced, in the corporation or limited liability company is owned or controlled,
10 directly or indirectly, by the officer.

11 SECTION 17. 108.04 (1) (gm) 1., 2., 3. and 4. (intro.) of the statutes are amended
12 to read:

13 108.04 (1) (gm) 1. Dissolution of the family corporation, due to economic
14 inviability, under ch. 180 or the analogous applicable laws of the jurisdiction in which
15 the corporation is incorporated or organized;

16 2. ~~Filing for corporate~~ of a petition in bankruptcy by the family corporation;

17 3. ~~Filing for personal~~ of a petition in bankruptcy by all owners who are
18 personally liable for any of the debts of the family corporation; or

19 108.04 (1) (gm) 4. (intro.) Disposition of a total of 75% or more of the assets of
20 the family corporation using one or more of the following methods:

21 SECTION 18. 108.04 (2) (a) 3. of the statutes is renumbered 108.04 (2) (a) 3.
22 (intro.) and amended to read:

23 108.04 (2) (a) 3. (intro.) The individual ~~is seeking suitable work during that~~
24 ~~week or, during the 156 week period beginning on January 2, 2000, the individual~~
25 conducts a reasonable search for suitable work during that week. The reasonable

1 search required during the period specified in this subdivision for suitable work must
2 include 2 actions that constitute a reasonable search as prescribed by rule of the
3 department. ~~The department shall, by rule, require claimants to conduct a~~
4 ~~reasonable search for suitable work during the period beginning after the 156-week~~
5 ~~period specified in this subdivision and shall, by rule, prescribe standards for the~~
6 ~~search to be considered reasonable. This subdivision does not apply to an individual~~
7 ~~if the department determines that the individual is currently laid off from~~
8 ~~employment with an employer but there is a reasonable expectation of~~
9 ~~reemployment of the individual by that employer. In determining whether the~~
10 ~~individual has a reasonable expectation of reemployment by an employer, the~~
11 ~~department shall request the employer to verify the individual's employment status~~
12 ~~and shall also consider other factors, including:~~

13 SECTION 19. 108.04 (2) (a) 3. a. to c. of the statutes are created to read:

14 108.04 (2) (a) 3. a. The history of layoffs and reemployments by the employer;

15 b. Any information that the employer furnished to the individual or the
16 department concerning the individual's anticipated reemployment date; and

17 c. Whether the individual has recall rights with the employer under the terms
18 of any applicable collective bargaining agreement.

19 SECTION 20. 108.04 (7) (h) of the statutes is amended to read:

20 108.04 (7) (h) The department shall charge to the fund's balancing account
21 benefits paid to an employee that are otherwise chargeable to the account of an
22 employer that is subject to the contribution requirements of ss. 108.17 and 108.18
23 if the employee voluntarily terminates employment with that employer and par. (a),
24 (c), (d), (e), (k), (L), (o), (p), (q), or (s) ~~or sub. (16) (b)~~ applies.

25 SECTION 21. 108.04 (7) (r) of the statutes is amended to read:

1 108.04 (7) (r) Paragraph (a) does not apply if the department determines that
2 the employee owns or controls, directly or indirectly, an ownership interest, however
3 designated or evidenced, in a family corporation and the employee's employment was
4 terminated by the employer because of an involuntary cessation of the business of
5 the corporation under one or more of the conditions specified in sub. (1) (gm). In this
6 paragraph, "family corporation" has the meaning given in s. 108.02 (15m) and also
7 includes a corporation or a limited liability company that is treated as a corporation
8 under this chapter in which 50% or more of the ownership interest is or was owned
9 or controlled, directly or indirectly, by one or more brothers or sisters of a claimant,
10 or by a combination of one or more brothers or sisters and one or more of the persons
11 specified in s. 108.02 (15m) (a).

12 SECTION 22. 108.04 (11) (cm) of the statutes is amended to read:

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

19 SECTION 23. 108.04 (16) (a) (intro.) of the statutes is amended to read:

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

1 **SECTION 24.** 108.04 (16) (a) 1. to 4. of the statutes are repealed and recreated
2 to read:

3 108.04 (16) (a) 1. The course is expected to increase the individual's
4 opportunities to obtain employment;

5 2. The training is given by a school established under s. 38.02 or other training
6 institution approved by the department;

7 3. The individual is enrolled full time as determined by the training institution;

8 4. The course does not grant substantial credit leading to a bachelor's or higher
9 degree; and

10 **SECTION 25.** 108.04 (16) (a) 5. of the statutes is created to read:

11 108.04 (16) (a) 5. The individual is attending regularly and making satisfactory
12 progress in the course. The department may require the training institution to file
13 a certification showing the individual's attendance and progress.

14 **SECTION 26.** 108.04 (16) (b) and (c) of the statutes are repealed and recreated
15 to read:

16 108.04 (16) (b) The department shall not apply any benefit disqualification
17 under sub. (1) (b) 1., (2) (a) or (d), (7) (c), or (8) (e) or s. 108.141 (3g) that is not the
18 result of training or basic education under par. (a) while an individual is enrolled in
19 a course of training or education that meets the standards specified in par. (a).

20 (c) If an individual is enrolled in an a program administered by the department
21 for the training of unemployed workers that was in existence on October 1, 2003,
22 other than the Youth Apprenticeship Program under s.106.13 or a plan for training
23 of youth approved under 29 USC 2822, then notwithstanding any failure of the
24 program to meet the standards specified in par. (a):

1 1. The department shall not reduce benefits under sub. (1) (a) or deny benefits
2 under sub. (2) (a) or (d) or (8) or s. 108.141 (3g) to an otherwise eligible individual as
3 a result of the individual's enrollment in such training; and

4 2. The department shall not apply benefit disqualifications under sub. (2) (a)
5 or (d), (7) (c), or (8) (e) or s. 108.141 (3g), and shall not apply any benefit
6 disqualification under sub. (1) (b) 1. that is not the result of training or basic
7 education under par. (a) while the individual is enrolled in a course of training or
8 education that meets the standards specified in par. (a).

9 **SECTION 27.** 108.04 (16) (d) and (e) of the statutes are created to read:

10 108.04 (16) (d) If an individual is enrolled under the plan of any state for
11 training under 19 USC 2296 or a plan for training of dislocated workers approved
12 under 29 USC 2822:

13 1. The department shall not deny benefits as a result of the individual's leaving
14 unsuitable work to enter or continue such training; and

15 2. The requalifying requirements under subs. (7) and (8) do not apply while the
16 individual is enrolled in such training.

17 (e) The department shall charge to the fund's balancing account the cost of
18 benefits paid to an individual that are otherwise chargeable to the account of an
19 employer that is subject to the contribution requirements of ss. 108.17 and 108.18
20 if the individual receives benefits based on the application of par. (b), (c) 2. or (d).

21 **SECTION 28.** 108.04 (17) (a) 1. and 2., (b) 1. and 2., (c) 1. and 2., (d), (e), (f), (g),
22 (h), (i) and (k) (intro.) of the statutes are amended to read:

23 108.04 (17) (a) 1. During the period between 2 successive academic years or
24 terms, if the school year employee performed such services for an any educational
25 institution in the first such year or term and if there is reasonable assurance that he

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

9 (b) 1. During the period between 2 successive academic years or terms, if the
10 school year employee performed such services for any such ~~a~~- government unit,
11 Indian tribe, or nonprofit organization in the first such year or term and if there is
12 reasonable assurance that he or she will perform such services for any such ~~a~~-
13 government unit, Indian tribe, or nonprofit organization in the 2nd such year or
14 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 any such ~~a~~-
18 government unit, Indian tribe, or nonprofit organization in the first such term and
19 if there is reasonable assurance that he or she will perform such services for any such
20 ~~a~~- government unit, Indian tribe, or nonprofit organization in the 2nd such term.

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

1 2. During the period between 2 regular but not successive academic terms,
2 when an agreement between an employer and a school year employee provides for
3 such a period, if the school year employee performed such services for an any
4 educational service agency in the first such term and if there is reasonable assurance
5 that he or she will perform such services for an any educational service agency in the
6 2nd such term.

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

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

24 (f) A school year employee of an educational service agency who performs
25 services other than in an instructional, research or principal administrative

1 capacity, and who provides such services in an educational institution or to or on
2 behalf of an educational institution, is ineligible for benefits based on such services
3 for any week of unemployment which occurs during a period between 2 successive
4 academic years or terms if the school year employee performed such services for an
5 any educational service agency in the first such year or term and there is reasonable
6 assurance that he or she will perform such services for an any educational service
7 agency in the 2nd such year or term.

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

16 (h) A school year employee of a government unit, Indian tribe, or nonprofit
17 organization which provides services to or on behalf of an educational institution
18 who performs the services described in par. (b) or (e) is ineligible for benefits based
19 on such services for any week of unemployment which occurs during an established
20 and customary vacation period or holiday recess if the school year employee
21 performed such services for any such -a- government unit, Indian tribe, or nonprofit
22 organization in the period immediately before the vacation period or holiday recess,
23 and there is reasonable assurance that the school year employee will perform the
24 services described in par. (b) or (e) for any such -a- government unit, Indian tribe, or

1 nonprofit organization in the period immediately following the vacation period or
2 holiday recess.

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

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

22 **SECTION 29.** 108.05 (7) (a) 1. of the statutes is amended to read:

23 108.05 (7) (a) 1. "Pension payment" means a pension, retirement, annuity, or
24 other similar payment made to a claimant, based on the previous work of that
25 claimant, whether or not payable on a periodic basis, from a governmental or other

1 retirement system maintained or contributed to by an employer from which that
2 claimant has base period wages, ~~other than a payment received under the federal~~
3 ~~Social Security Act (42 USC 301 et seq.) that is based in whole or in part upon taxes~~
4 ~~paid by the claimant.~~

5 SECTION 30. 108.05 (7) (c) of the statutes is amended to read:

6 108.05 (7) (c) *Required benefit reduction.* If Except as provided in par. (cm), if
7 a claimant actually or constructively receives a pension payment, the department
8 shall reduce benefits otherwise payable to the claimant for a week of partial or total
9 unemployment, but not below zero, if pars. (d) and (e) or if pars. (d) and (f) apply.

10 SECTION 31. 108.05 (7) (cm) of the statutes is created to read:

11 108.05 (7) (cm) *Payments received under Social Security Act.* If a claimant
12 receives a pension payment under the federal Social Security Act (42 USC 301 et
13 seq.), the department shall not reduce the benefits otherwise payable to the claimant
14 resulting from the claimant's receipt of the portion of the pension payment that is
15 based upon taxes paid by the claimant.

16 SECTION 32. 108.05 (7) (d) 1. (intro.) of the statutes is amended to read:

17 108.05 (7) (d) 1. (intro.) If a pension payment to which par. (c) applies is not paid
18 on a weekly basis, the department shall allocate and attribute the payment to
19 specific weeks if:

20 SECTION 33. 108.05 (7) (f) (intro.) of the statutes is amended to read:

21 108.05 (7) (f) *Partial or total employee funding.* (intro.) If any portion of a
22 pension payment to which par. (c) applies that is actually or constructively received
23 by a claimant under this subsection is funded by the claimant's contributions, the
24 department shall compute the benefits payable for a week of partial or total
25 unemployment as follows:

1 **SECTION 34.** 108.068 of the statutes is created to read:

2 **108.068 Treatment of limited liability companies and members. (1)**

3 Subject to subs. (3) to (7), the department shall treat a limited liability company as
4 a partnership under this chapter unless the company elects to be treated as a
5 corporation for contribution and benefit purposes and files proof with the
6 department that the company has applied to the federal internal revenue service to
7 be treated as a corporation for federal unemployment tax purposes and the internal
8 revenue service has agreed to treat the company as a corporation for such purposes.

9 (2) Subject to subs. (3) to (7), a limited liability company that elects to be treated
10 as a corporation under this chapter may file an election to again be treated as a
11 partnership for contribution and benefit purposes and the department shall
12 thereafter treat the company as a partnership for contribution and benefit purposes
13 if the company files proof with the department that the company has applied to the
14 federal internal revenue service to be treated as a partnership for federal
15 unemployment tax purposes and the internal revenue service has agreed to treat the
16 company as a partnership for such purposes.

17 (3) The department shall treat a limited liability company that files a valid
18 election under sub. (1) or (2) in accordance with that election beginning on the same
19 date that the federal internal revenue service treats the company in accordance with
20 that election for federal unemployment tax purposes, or on the date that the company
21 files a valid election under sub. (1) or (2), whichever is later.

22 (4) Subject to subs. (1), (3), and (7), a limited liability company that is treated
23 as a corporation for federal unemployment tax purposes shall be treated as a
24 corporation under this chapter, and each member of the limited liability company
25 shall be treated as a corporate officer for contribution and benefit purposes.

1 (5) Subject to sub. (7), a limited liability company with at least 2 members that
2 is not treated as a corporation for federal unemployment tax purposes shall be
3 treated as a partnership under this chapter, and the members of the limited liability
4 company shall be treated for contribution and benefit purposes as partners of that
5 partnership.

6 (6) Subject to sub. (7), a limited liability company with a single member that
7 is not treated as a corporation for federal unemployment tax purposes shall be
8 treated as a sole proprietorship under this chapter, and the member shall be treated
9 as a sole proprietor for contribution and benefit purposes.

10 (7) The department may, in the interests of justice or to prevent fraud upon the
11 unemployment insurance program, determine that a member of a limited liability
12 company is an employee of that company.

13 SECTION 35. 108.09 (4) (c) of the statutes is amended to read:

14 108.09 (4) (c) *Late appeal.* If a party files an appeal which is not timely, an
15 appeal tribunal shall review the appellant's written reasons for filing the late appeal.
16 If those reasons, when taken as true and construed most favorably to the appellant,
17 do not constitute a reason beyond the appellant's control, the appeal tribunal may
18 dismiss the appeal without a hearing and issue a decision accordingly. Otherwise,
19 the department may schedule a hearing concerning the issue question of whether the
20 party's failure to timely file the appeal was filed late for a reason that was beyond
21 the party's appellant's control. The department may also provisionally schedule a
22 hearing concerning any matter in the determination. ~~If, after hearing testimony, the~~
23 ~~appeal tribunal finds that the party's failure to timely file the appeal was not for a~~
24 ~~reason beyond the party's control, the appeal tribunal shall issue a decision~~
25 ~~containing this finding and dismissing the appeal. If, after hearing testimony, the~~

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

12 SECTION 36. 108.14 (8s) (a) and (b) of the statutes are amended to read:

13 108.14 (8s) (a) Overpayments of unemployment insurance benefits as
14 determined under this chapter may be recovered ~~by offset~~ recouped from
15 unemployment insurance benefits otherwise payable under the unemployment
16 insurance law of another state, and overpayments of unemployment insurance
17 benefits as determined under the unemployment insurance law of that other state
18 may be ~~recovered by offset~~ recouped from unemployment insurance benefits
19 otherwise payable under this chapter; and

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

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

12 **SECTION 37.** 108.16 (3) (a) of the statutes is amended to read:

13 108.16 (3) (a) Any overpayment for which the claimant's liability to reimburse
14 the fund is established under s. 108.22 (8) or any assessment under s. 108.04 (11) (cm)
15 for which a final determination has been issued under s. 108.09 upon receipt of
16 certification by the department that reasonable efforts have been made to recover the
17 overpayment or the amount of the assessment and that ~~it~~ the amount due is
18 uncollectible.

19 **SECTION 38.** 108.16 (6m) (a) of the statutes is amended to read:

20 108.16 (6m) (a) The benefits thus chargeable under s. 108.04 (1) (f), (5), (7) (h),
21 (8) (a), ~~or~~, (13) (c) or (d) or (16) (e), 108.07 (3), (3r), (5) (b), (5m), (6), or (8), 108.14 (8n)
22 (e), 108.141, 108.151, or 108.152 or sub. (6) (e) or (7) (a) and (b).

23 **SECTION 39.** 108.16 (6m) (e) of the statutes is amended to read:

1 108.16 (6m) (e) Any overpayment of benefits or assessment that is written off
2 under sub. (3), unless except, in the case of an overpayment, if it is chargeable to an
3 employer's account under s. 108.04 (13).

4 **SECTION 40.** 108.16 (8) (b) (intro.) of the statutes is amended to read:

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

8 **SECTION 41.** 108.16 (8) (b) 2. of the statutes is amended to read:

9 108.16 (8) (b) 2. The transfer included 100% at least 25% of the transferor's
10 total business on as measured by comparing the payroll experience assignable to the
11 the portion of the business transferred with the transferor's total payroll experience
12 for the last 4 completed quarters immediately preceding the date of the transfer.

13 **SECTION 42.** 108.16 (8) (c) 4. of the statutes is repealed.

14 **SECTION 43.** 108.16 (8) (e) 4. of the statutes is repealed.

15 **SECTION 44.** 108.16 (8) (f) of the statutes is amended to read:

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

1 **SECTION 45.** 108.16 (12) of the statutes is created to read:

2 108.16 (12) The fund's treasurer shall estimate at the end of each calendar
3 quarter the earnings rate payable on the fund's bank balances and the earnings rate
4 payable by the federal unemployment account under title XII of the Social Security
5 Act (42 USC 1321 to 1324) for the following quarter. Based on these estimates, the
6 treasurer shall pay for the cost of banking services incurred by the fund in the
7 following quarter either by maintaining compensating bank balances or by payment
8 for the services from the appropriation under s. 20.445 (1) (ne), whichever payment
9 method is estimated to yield the highest net earnings for the fund.

10 **SECTION 46.** 108.161 (4) (c) of the statutes, as affected by 2003 Wisconsin Act
11 33, is amended to read:

12 108.161 (4) (c) Specifying that the appropriated amounts are available for
13 obligation solely within the 2 years beginning on the appropriation law's date of
14 enactment. This paragraph does not apply to the ~~appropriation~~ appropriations
15 under s. 20.445 (1) (nd) and (ne) or to any amounts expended from the appropriation
16 under s. 20.445 (1) (nb) from moneys transferred to this state on March 13, 2002,
17 pursuant to section 903 (d) of the federal Social Security Act.

18 **SECTION 47.** 108.161 (8) of the statutes is amended to read:

19 108.161 (8) If any sums are appropriated and spent hereunder to buy land and
20 to build a suitable employment security building thereon, or to purchase information
21 technology hardware and software, then any federal moneys thereafter credited to
22 the fund or paid to the department by way of gradual reimbursement of such
23 employment security capital expenditures, or in lieu of the estimated periodic
24 amounts which would otherwise (in the absence of such expenditures) be federally
25 granted for the rental of substantially equivalent quarters, shall be credited to the

1 account created by sub. (1), consistently with any federal requirements applicable to
2 the handling and crediting of such moneys.

3 SECTION 48. 108.162 (3) of the statutes, as affected by 2003 Wisconsin Act 33,
4 is amended to read:

5 108.162 (3) The amount obligated under this section during any fiscal year may
6 not exceed the aggregate of all amounts credited under s. 108.161 (1), including
7 amounts credited under s. 108.161 (8), reduced by the amount obligated under s.
8 20.445 (1) (nb) ~~and~~, (nd) and (ne) and further reduced at the time of any obligation
9 by the sum of the moneys obligated and charged against any of the amounts thus
10 credited.

11 SECTION 49. 108.19 (1e) (a) and (d) of the statutes are amended to read:

12 108.19 (1e) (a) Except as provided in par. (b), each employer, other than an
13 employer that finances benefits by reimbursement in lieu of contributions under s.
14 108.15, 108.151, or 108.152 shall, in addition to other contributions payable under
15 s. 108.18 and this section, pay an assessment to the administrative account for each
16 year prior to the year ~~2004~~ 2008 equal to the lesser of 0.01% of its payroll for that year
17 or the solvency contribution that would otherwise be payable by the employer under
18 s. 108.18 (9) for that year.

19 (d) The department may expend the moneys received from assessments levied
20 under this subsection in the amounts authorized under s. 20.445 (1) (nb) for the
21 renovation and modernization of unemployment insurance information technology
22 systems, ~~including the tax and accounting system, and specifically including~~
23 development and implementation of a new system and reengineering of automated
24 processes and manual business functions.

25 SECTION 50. 108.22 (2) (b) of the statutes is amended to read:

1 108.22 (2) (b) The clerk of circuit court shall accept, file and enter the each
2 warrant under par. (a) and each satisfaction, release, or withdrawal under subs. (5),
3 (6), and (8m) in the judgment and lien docket without prepayment of any fee, but the
4 clerk of circuit court shall submit a statement of the proper fee semiannually to the
5 department covering the periods from January 1 to June 30 and July 1 to December
6 31 unless a different billing period is agreed to between the clerk of circuit court and
7 the department. The fees shall then be paid by the department, but the fees provided
8 by s. 814.61 (5) for entering the warrants shall be added to the amount of the warrant
9 and collected from the employing unit when satisfaction or release is presented for
10 entry.

11 SECTION 51. 108.22 (8) (b) of the statutes is amended to read:

12 108.22 (8) (b) To recover any overpayment which is not otherwise repaid or
13 recovery of which has not been waived, or any assessment under s. 108.04 (11) (cm),
14 the department may offset recoup the amount of the overpayment against from
15 benefits the individual would otherwise be eligible to receive, or file a warrant
16 against the liable individual in the same manner as is provided in this section for
17 collecting delinquent payments from employers, or both, but only to the extent of
18 recovering the actual amount of the overpayment and any costs and disbursements,
19 without interest.

20 SECTION 52. 108.225 (1) (b) of the statutes is amended to read:

21 108.225 (1) (b) “Debt” means a delinquent contribution or repayment of a
22 benefit overpayment, an assessment under s. 108.04 (11) (cm), or any liability of a
23 3rd party for failure to surrender to the department property or rights to property
24 subject to levy after proceedings under sub. (4) (b) and s. 108.10 to determine that
25 liability.

1 SECTION 53. 108.225 (1) (d) of the statutes is repealed.

2 SECTION 54. 108.225 (15) of the statutes is amended to read:

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

7 *Pr \$*
8 *30-6* SECTION 55. 108.225 (16) (intro.) (except 108.225 (16) (title)) of the statutes is
renumbered 108.225 (16) (a) (intro.).

9 SECTION 56. 108.225 (16) (a) of the statutes is renumbered 108.225 (16) (a) 1.
10 and amended to read:

11 108.225 (16) (a) 1. A subsistence allowance ~~of 75% of the debtor's disposable~~
12 ~~earnings then due and owing~~ equal to the amount that the debtor could claim as
13 exempt under s. 812.34 (2) if the amount owed were subject to garnishment, but
14 without respect to the exception specified in s. 812.34 (1), the exemption provided in
15 s. 812.34 (2) (b) 2., or any adjustment permitted under s. 812.38 (2);

16 SECTION 57. 108.225 (16) (b) of the statutes is renumbered 108.225 (16) (a) 2.

17 SECTION 58. 108.225 (16) (bm) of the statutes is created to read:

18 108.225 (16) (bm) No exemptions from levy apply under this subsection if a
19 final determination has been issued under s. 108.09 or a judgment has been entered
20 under s. 108.24 (1) in which the debtor has been found guilty of making a false
21 statement or representation to obtain benefits and the benefits and any assessment
22 under s. 108.04 (11) (cm) have not been reimbursed or paid at the time that the levy
23 is issued, unless the fund's treasurer has written off the debt under s. 108.16 (3) (a).

24 SECTION 59. 108.225 (16) (c) of the statutes is renumbered 108.225 (16) (a) 3.
25 and amended to read:

1 108.225 (16) (a) 3. In the case of earnings for a period other than a week, a
2 subsistence allowance computed so that it is equivalent to that provided in ~~par. (b)~~
3 subd. 2. using a multiple of the federal minimum hourly wage prescribed by rule of
4 the department.

5 SECTION 60. 108.225 (16) (cm) of the statutes is created to read:

6 108.225 (16) (cm) For purposes of par. (a) 1., reference in s. 812.34 (2) to
7 garnishment means a levy upon the property of a debtor under this section and
8 ~~service upon the garnishee means service of the levy under sub. (13).~~

9 SECTION 61. 2001 Wisconsin Act 35, section 72 (2) (a) 2. and 3. are repealed.

10 SECTION 62. Nonstatutory provisions.

11 (1) PAYMENT OF OUTSTANDING BANK SERVICE CHARGES. Notwithstanding the
12 treatment of sections 20.445 (1) (n) and (ne), 108.16 (12) and 108.161 (4) (c) of the
13 statutes by this act, the treasurer of the unemployment reserve fund may transfer
14 moneys from the appropriation account under section 20.445 (1) (n) of the statutes,
15 as affected by this act, to the appropriation account under section 20.445 (1) (ne) of
16 the statutes, as created by this act, and may thereafter pay any banking service costs
17 incurred by the fund that are outstanding on the effective date of this subsection from
18 the appropriation under section 20.445 (1) (ne) of the statutes, as created by this act,
19 if the treasurer determines that the fund would realize higher net earnings by taking
20 such action.

21 (2) NOTICE OF LEVY FOR YEAR 2004.

22 (a) In this subsection, “employer” has the meaning given in section 108.02 (13)
23 of the statutes.

24 (b) Notwithstanding section 108.19 (1e) (b) of the statutes, the department of
25 workforce development may, no later than the 60th day commencing after the

1 effective date of this subsection, publish a notice under that paragraph of an
2 assessment to be levied against employers under section 108.19 (1e) of the statutes,
3 as affected by this act, in the year 2004.

4 **SECTION 63. Appropriation changes.**

5 (1) In the schedule under section 20.005 (3) of the statutes for the appropriation
6 to the department of workforce development under section 20.445 (1) (gg) of the
7 statutes, as affected by the acts of 2003, the dollar amount is increased by \$430,200
8 for fiscal year 2003–04 and the dollar amount is increased by \$430,200 for fiscal year
9 2004–05 to provide funding to upgrade unemployment insurance information
10 technology systems.

11 (2) In the schedule under section 20.005 (3) of the statutes for the appropriation
12 to the department of workforce development under section 20.445 (1) (nb) of the
13 statutes, as affected by the acts of 2003, the dollar amount is increased by \$2,500,000
14 for fiscal year 2003–04 and the dollar amount is increased by \$2,500,000 for fiscal
15 year 2004–05 to provide funding to upgrade unemployment insurance information
16 technology systems.

17 **SECTION 64. Initial applicability.**

18 (1) The treatment of sections 20.445 (1) (n) and (ne), 108.16 (12) and 108.161
19 (4) (c) (with respect to the reference to section 20.445 (1) (ne) of the statutes) of the
20 statutes first applies with respect to the first calendar quarter beginning after the
21 effective date of this subsection.

22 (2) The renumbering and amendment of section 108.04 (2) (a) 3. of the statutes
23 and the creation of section 108.04 (2) (a) 3. a. to c. of the statutes first apply with
24 respect to determinations issued under section 108.09 of the statutes on the effective
25 date of this subsection.

1 (3) The treatment of sections 108.02 (25s), 108.04 (7) (h) and (16) (a) (intro.),
2 1. to 4., and 5., (b), (c), (d), and (e), and 108.16 (6m) (a) of the statutes first applies
3 with respect to weeks of unemployment beginning on the effective date of this
4 subsection.

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

8 (5) The treatment of sections 108.04 (11) (cm), 108.14 (8s) (a) and (b) and 108.22
9 (8) (b) of the statutes first applies with respect to determinations issued under
10 section 108.09 of the statutes on the effective date of this subsection.

11 ~~(6)~~ (6) The treatment of section 108.16 (8) (b) (intro.) and 2., (c) 4., (e) 4., and (f) of
12 the statutes first applies with respect to partial transfers of businesses occurring
13 after December 31, 2003, and to transfers of businesses of which the department of
14 workforce development receives notice after January 31, 2004.

15 ~~(7)~~ (7) The treatment of section 108.22 (2) (b) of the statutes first applies with
16 respect to satisfactions, releases, and withdrawals of warrants issued on the effective
17 date of this subsection.

18 ~~(8)~~ (8) The treatment of sections 108.16 (3) (a) and (6m) (e) and 108.225 (1) (b) and
19 (d), (15), (16) (intro.), (a), ~~(b)~~, ~~(c)~~, and ~~(cm)~~ of the statutes first applies with
20 respect to levies issued on the effective date of this subsection.

21 **SECTION 65. Effective dates.** This act takes effect on the first Sunday after
22 publication, except as follows:

23 (END)

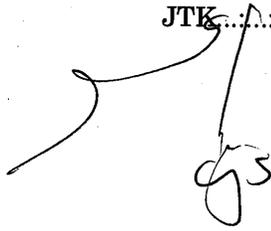
use auto numbers
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**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3121/P7dn

JTK.....



Tom Smith:

This draft incorporates changes to the item concerning exemption of wages from levies.

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

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3121/P7ins
JTK.....

PLS 30-6:1

SECTION 1. 108.225 (16) (intro.) of the statutes is renumbered 108.225 (16) (a) (intro.) and amended to read:

108.225 (16) (a) **WAGES EXEMPT FROM LEVY.** (intro.) In the case of benefit overpayments 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; 2001 a. 35, 109.

SECTION 2. 108.225 (16) (a) of the statutes is renumbered 108.225 (16) (a) 1. and amended to read:

108.225 (16) (a) 1. A subsistence allowance of 75% of the debtor's disposable earnings ~~then due and owing~~;

History: 1989 a. 77; 1997 a. 187, 283; 2001 a. 35, 109.

SECTION 3. 108.225 (16) (am) of the statutes is created to read:

108.225 (16) (am) 1. In the case of benefit overpayments, an individual debtor is entitled to an exemption from levy of 80% of the debtor's disposable earnings, except that:

a. A debtor's disposable earnings are totally exempt from levy if the debtor's household income is below the federal income guideline established under 42 USC 9902 (2) for a household of the debtor's size or the levy would cause that result.

b. Upon petition by a debtor demonstrating hardship, the department may increase the portion of the debtor's disposable earnings that are exempt from levy.

c. The department may decrease or eliminate the exemption from levy under this paragraph if a final determination has been issued under s. 108.09 or a judgment has been entered under s. 108.24 (1) in which the debtor has been found guilty of making a false statement or representation to obtain benefits and the benefits and

ANS 30-6:2

off

any assessment under s. 108.04 (11) (cm) have not been paid or reimbursed at the time that the levy is issued, unless the fund's treasurer has written off the debt under s. 108.16 (3) (a).

2. The department shall by rule prescribe a methodology for ~~determining the~~ *application* weekly amount of the exemption applicable to a levy under subd. 1. a. at the time that the levy is issued.

SECTION 4. 108.225 (16) (b) of the statutes is renumbered 108.225 (16) (a) 2.

SECTION 5. 108.225 (16) (c) of the statutes is renumbered 108.225 (16) (a) 3. and amended to read:

108.225 (16) (a) 3. In the case of earnings for a period other than a week, a subsistence allowance computed so that it is equivalent to that provided in ~~par. (b)~~ *subd. 2.* using a multiple of the federal minimum hourly wage prescribed by rule of the department.

History: 1989 a. 77; 1997 a. 187, 283; 2001 a. 35, 109.

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3121/P7ins2
JTK.....

INS 4A:



This bill applies the current exemption only to forfeitures imposed upon an employer. The bill also provides that if the levy is to collect a benefit overpayment, an individual debtor is entitled to an exemption of 80% of the debtor's disposable earnings, except that (1) a debtor's disposable earnings are totally exempt from levy if the debtor's household income is below the federal poverty line for a household of the debtor's size or the levy would cause that result; 2) DWD may allow a greater exemption upon a showing of hardship; and 3) no

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

LRB-3121/P7dn
JTK:cjs:rs

October 24, 2003

Tom Smith:

This draft incorporates changes to the item concerning exemption of wages from levies.

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

Kuesel, Jeffery

From: Smith, Thomas E - DWD UI
Sent: Tuesday, October 28, 2003 10:58 AM
To: Kuesel, Jeffery
Subject: Comments re: LRB 3121

Jeff - Here are comments from UI-Legal Affairs. I have not yet heard anything from Tax, Benefits or Budget and will be checking with them forthwith.

Greg has asked if we can hold a UIAC meeting on Thursday, 10/30. That means we would need a new draft by tomorrow. Does that seem feasible?



Comments re LRB
3121 P6 and P7...

InterOffice Memo

Department of Workforce Development

Date: October 28, 2003

File Ref: comments re lrb 3121 p6 and p7 drafts.doc

To: Jeff Kuesel

From: Tom Smith

Subject: **Comments re: LRB 3121 P7**

The following are my suggestions for revision of the above draft.

- ✓ With respect to sec 108.04(1)(g)2. and 3., I believe we need to keep the inclusion of LLCs that was in our draft language in the D8-03 Analysis. This is because there are two separate conditions which can limit benefit eligibility of corporate employees whereas there is only one such condition for LLCs in sec 108.04(1)(g)1L. If an LLC elects to be treated as a corporation for tax and benefit purposes, then both conditions should apply to the employees.
- ✓ With respect to proposed 108.068, we don't intend for there to be an election process at the state level. Our intent is to automatically give an LLC the same treatment it has for federal tax purposes. The LLC merely has to notify us of their federal status and provide proof of the federal treatment. In that light, we have rewritten as follows:
- ✓ **108.068 Treatment of limited liability companies and members.** (1) Subject to subs. (2) to (6), the department shall treat a multimember limited liability company as a partnership and a single member limited liability company as a sole proprietorship for contribution and benefit purposes unless the company has filed an election with the federal internal revenue service to be treated as a corporation for federal tax purposes and files proof with the department that the internal revenue service has agreed to treat the company as a corporation for such purposes.
- ✓ Renumber (2) to (7).
- ✓ Renumber (3) to (2) and change as follows: The department shall treat a limited liability company that files the proof required in sub. (1) of an election with the federal internal revenue service to be treated as a corporation for federal tax purposes in accordance with that election beginning on the same date that the federal internal revenue service treats the company in accordance with the election for federal tax purposes.

Renumber (4) to (3)

Renumber (5) to (4)

Renumber (6) to (5)

Renumber (7) to (6)

- ✓ (7) Subject to subs. (2) to (6), a limited liability company that is treated as a corporation under this chapter will be treated as a partnership if it has multiple members or a sole proprietorship if it has a single member if the company has elected with the federal internal revenue service to so change its treatment for federal tax purposes and files proof of such change with the department. Such change under this chapter will be effective beginning on the same date that it is effective for federal tax purposes.
- ✓ With respect to 108.225(1)(d), it should not be repealed. The definition of "disposable earnings" will be needed because there will be no reference to ch. 812 based on the P7 language.

Kuesel, Jeffery

From: Smith, Thomas E - DWD UI
Sent: Tuesday, October 28, 2003 4:53 PM
To: Kuesel, Jeffery
Subject: FW: Comments on UIAC draft bill

Jeff - Here is another comment from our budget analyst.

-----Original Message-----

From: Sterr, Troy
Sent: Tuesday, October 28, 2003 3:41 PM
To: Frigo, Greg; Smith, Thomas E - DWD UI
Cc: VanEtten, Bob; Smith, Thomas K - DWD BUDGET
Subject: RE: Comments on UIAC draft bill

One additional comment. In Section 49, s. 108.19(1e)(d) has been amended so that the department may expend moneys received from assessments levied under the subsection "in the amounts authorized under s. 20.445 (1)(nb)." However, the authority for using the assessment is under s. 20.445 (1)(gh). Please change 20.445 (1)(nb) to 20.445 (1)(gh).

-----Original Message-----

From: Sterr, Troy
Sent: Tuesday, October 28, 2003 3:27 PM
To: Frigo, Greg; Smith, Thomas E - DWD UI
Cc: VanEtten, Bob; Smith, Thomas K - DWD BUDGET
Subject: Comments on UIAC draft bill

1. Identification of Reed Act funds. According to TEGl #18-01, Question 21, care should be taken in crafting state appropriation bills to assure that the source of the Reed Act money is clear. There should not be any doubt about which Reed Act funding is being used. To clarify which Reed Act funding is being used, appropriation s. 20.445 (1)(nb) [Section 3 of the bill] and s. 20.445 (1)(ne) [Section 4 of the bill] need to reference Section 903 (d) of the Social Security Act and/or reference the specific date on which the transfer was made to the state (March 13, 2002). Perhaps the language used in Section 46 of the bill can be used - "moneys transferred to this state on March 13, 2002, pursuant to section 903 (d) of the federal Social Security Act."

2. Language for bank service fees - Section 4. Since s. 20.445 (1)(ne) is a Reed Act appropriation, I think there may need to be the following language added to the appropriation language to meet Reed Act requirements:

Notwithstanding s. 20.001 (3) (a), the treasurer of the unemployment reserve fund shall transfer any unencumbered balance in this appropriation account that is not needed or available to carry out the purpose of this appropriation to the appropriation account under par. (n). No moneys may be expended from this appropriation unless the treasurer of the unemployment reserve fund determines that such expenditure is currently needed for the purpose specified in this paragraph.

3. Appropriation changes. Section 63 specifies the dollar amount for budget authority for ss. 20.445 (1)(gg) and (1)(nb). I think we also want to specify a dollar amount for s. 20.445 (1)(ne), which is for bank service costs, in Section 63 as well. The language should also specify that this new appropriation is a program revenue-federal, continuing appropriation.

4. Addition to appropriation language in 20.445 (1)(gg) and 20.445 (1)(gh). Current language in these appropriations state that funds may be used for purposes specified in s. 108.19 (1e). We may want to be more specific and change 108.19(1e) to 108.19(1e)(d).