

SENATE BILL 340 (LRB -3666)

An Act to repeal 108.04 (1) (g) 1L., 108.16 (8) (c) 4. and 108.16 (8) (e) 4.; to renumber 108.225 (16) (b); to renumber and amend 108.04 (2) (a) 3., 108.225 (16) (intro.), 108.225 (16) (a) and 108.225 (16) (c); to amend 20.445 (1) (gg), 20.445 (1) (gh), 20.445 (1) (n), 20.445 (1) (nb), 20.445 (1) (nd), 108.02 (12) (a), 108.02 (12) (b) (intro.), 108.02 (12) (bm) (intro.), 108.02 (15) (L), 108.02 (15m) (a) and (b), 108.025 (title) and (1), 108.025 (2) and (6), 108.04 (1) (g) 1., 108.04 (1) (g) 2. and 3., 108.04 (1) (gm) 1., 2., 3. and 4. (intro.), 108.04 (7) (h), 108.04 (7) (r), 108.04 (11) (cm), 108.04 (16) (a) (intro.), 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) (b), 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), 108.16 (3) (a), 108.16 (6m) (a), 108.16 (6m) (e), 108.16 (8) (b) (intro.), 108.16 (8) (b) 2., 108.16 (8) (f), 108.161 (4) (c), 108.161 (8), 108.162 (3), 108.19 (1e) (a) and (d), 108.22 (2) (b), 108.22 (8) (b), 108.225 (1) (b) and 108.225 (15); to repeal and recreate 108.04 (16) (a) 1. to 4. and 108.04 (16) (b) and (c); to create 20.445 (1) (ne), 108.02 (6m), 108.02 (12) (dm) and (dn), 108.02 (20r), 108.02 (25s), 108.025 (1) (b), 108.04 (2) (a) 3. a. to c., 108.04 (16) (a) 5., 108.04 (16) (d) and (e), 108.05 (7) (cm), 108.068, 108.16 (12) and 108.225 (16) (am) 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, granting rule-making authority, and making appropriations. (FE)

2003

- 12-09. S. Introduced by committee on **LABOR, SMALL BUSINESS DEVELOPMENT AND CONSUMER AFFAIRS**.
 12-05. S. Read first time and referred to committee on Labor, Small Business Development and Consumer Affairs ... 508
 12-08. S. Public hearing held.
 12-09. S. Fiscal estimate received.

2004

- 03-03. S. Executive action taken.
 03-03. S. Report passage recommended by committee on Labor, Small Business Development and Consumer Affairs, Ayes 4, Noes 1 660
 03-03. S. Available for scheduling.
 03-03. S. Placed on calendar 3-4-2004 by committee on Senate Organization.
 03-04. S. Read a second time 668
 03-04. S. Referred to joint committee on Finance 668
 03-04. S. Withdrawn from joint committee on Finance and taken up 668
 03-04. S. Senate amendment 1 offered by Senators Reynolds, Panzer and A. Lasec (**LRB a2184**) 668
 03-04. S. Senate amendment 1 **adopted** 668
 03-04. S. Ordered to a third reading 668
 03-04. S. Rules suspended 668
 03-04. S. Read a third time and **passed**, Ayes 33, Noes 0 668
 03-04. S. Ordered immediately messaged 670
 03-09. A. Received from Senate.
 03-09. A. Read first time and referred to committee on Rules.
 03-09. A. Made a special order of business at 11:14 A.M. on 3-10-2004 pursuant to Assembly Resolution 38 817
 03-10. A. Read a second time 828
 03-10. A. Ordered to a third reading 828
 03-10. A. Rules suspended 828
 03-10. A. Read a third time and **concurred in**, Ayes 99, Noes 0 828
 03-10. A. Ordered immediately messaged 828
 03-10. S. Received from Assembly concurred in.

**2003
ENROLLED BILL**

03en S B-340

ADOPTED DOCUMENTS:

Orig Engr SubAmdt

03-3666 / 1

Amendments to above (if none, write "NONE"): SA1

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2003 SENATE BILL 340

December 5, 2003 - Introduced by COMMITTEE ON LABOR, SMALL BUSINESS DEVELOPMENT AND CONSUMER AFFAIRS. Referred to Committee on Labor, Small Business Development and Consumer Affairs.

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

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1 and (c); **to create** 20.445 (1) (ne), 108.02 (6m), 108.02 (12) (dm) and (dn), 108.02
2 (20r), 108.02 (25s), 108.025 (1) (b), 108.04 (2) (a) 3. a. to c., 108.04 (16) (a) 5.,
3 108.04 (16) (d) and (e), 108.05 (7) (cm), 108.068, 108.16 (12) and 108.225 (16)
4 (am) of the statutes; and **to affect** 2001 Wisconsin Act 35, section 72 (2) (a) 2.
5 and 3.; **relating to:** various changes in the unemployment insurance law,
6 granting rule-making authority, and making appropriations.

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 unemployment insurance 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.

Prior to the year 2000, in order to qualify as an independent contractor, an individual, other than a logger or trucker performing services for an employer other than a governmental or nonprofit employer, was required to meet at least one of two conditions (having a federal employer identification number or having filed federal business or self-employment tax returns based on services performed as an independent contractor), plus at least six of eight other conditions relating to the individual’s relationship to or control over his or her business or the services that he or she performs. During the four-year period beginning in the year 2000 (the specific date varies in different situations), an individual, other than a logger or trucker performing services for an employer other than a governmental or nonprofit employer, must meet at least seven of these ten conditions in order to qualify as an independent contractor.

This bill eliminates the expiration date for the test that is in effect prior to 2004 to determine “employee” status of individuals other than loggers and truckers performing services for an employer other than a governmental or nonprofit employer, thus making that test permanent.

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.

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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 expands a current benefit disqualification exemption that permits workers obtaining training under the federal Trade Adjustment Assistance Act to receive benefits during such training so that the exemption applies, in addition, to dislocated workers.

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, in addition, that if a claimant is paid benefits for which the claimant would otherwise be ineligible as a result of certain other benefit disqualification exemptions created by the bill because the claimant is enrolled in certain types of approved training, the costs of those benefits are also charged to the balancing account.

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, in addition, 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, which must include two actions that constitute a reasonable search as prescribed by rule of DWD. 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

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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.

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 wages are 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) DWD may decrease or eliminate the exemption under certain conditions if there is an outstanding 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 does not apply 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

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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 tax purposes, beginning on the date it becomes so treated by the federal Internal Revenue Service, if the company files proof of such treatment with DWD, except that for benefit purposes the treatment does not apply earlier than proof of such treatment is filed with DWD. If a limited liability company is not treated as a corporation for federal 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

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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 a business is transferred from one employer to another employer, the transferee may, under certain conditions, request that DWD treat it as a successor to the transferor for purposes of unemployment insurance experience, including contribution and benefit liability, if 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 both rule-making requirements.

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.

SENATE BILL 340***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.

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) of the statutes is amended to read:
2 20.445 (1) (gg) ~~*Unemployment tax and accounting system information*~~
3 ~~*technology systems; interest and penalties.*~~ From the moneys received as interest and
4 penalties collected under ss. 108.04 (11) (c) and (cm) and (13) (c) and 108.22, as a
5 continuing appropriation, the amounts in the schedule for the purpose specified in
6 s. 108.19 (1e) (d).

7 **SECTION 2.** 20.445 (1) (gh) of the statutes is amended to read:

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1 20.445 (1) (gh) *Unemployment information technology systems; assessments.*

2 All moneys received from assessments levied under s. 108.19 (1e) (a) and 1997
3 Wisconsin Act 39, section 164 (2), for the purpose specified in s. 108.19 (1e) (d). The
4 treasurer of the unemployment reserve fund may transfer moneys from this
5 appropriation account to the appropriation account under par. (gd).

6 **SECTION 3.** 20.445 (1) (n) of the statutes, as affected by 2003 Wisconsin Act 33,
7 is amended to read:

8 20.445 (1) (n) *Employment assistance and unemployment insurance*
9 *administration; federal moneys.* All federal moneys received, as authorized by the
10 governor under s. 16.54, for the administration of employment assistance and
11 unemployment insurance programs of the department, for the performance of the
12 department's other functions under subch. I of ch. 106 and ch. 108, except moneys
13 appropriated under par. (nc), and to pay the compensation and expenses of appeal
14 tribunals and of employment councils appointed under s. 108.14, to be used for such
15 purposes, except as provided in s. 108.161 (3e), and, from the moneys received by this
16 state under section 903 (d) of the federal Social Security Act, as amended, to transfer
17 to the appropriation account under par. (nb) an amount determined by the treasurer
18 of the unemployment reserve fund not exceeding the lesser of the amount specified
19 in s. 108.161 (4) (d) or the amounts in the schedule under par. (nb), and to transfer
20 to the appropriation account under par. (nd) an amount determined by the treasurer
21 of the unemployment reserve fund not exceeding the lesser of the amount specified
22 in s. 108.161 (4) (d) or the amounts in the schedule under par. (nd), and to transfer
23 to the appropriation account under par. (ne) an amount determined by the treasurer
24 of the unemployment reserve fund not exceeding the lesser of the amount specified

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1 in s. 108.161 (4) (d) or the amount required to pay for the cost of banking services
2 incurred by the unemployment reserve fund.

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

4 20.445 (1) (nb) *Unemployment information technology systems; federal moneys.*

5 ~~As From the moneys received from the federal government under section 903 (d) of~~
6 ~~the federal Social Security Act, as amended, as~~ a continuing appropriation, the
7 amounts in the schedule, as authorized by the governor under s. 16.54, for the
8 purpose specified in s. 108.19 (1e) (d). All moneys transferred from par. (n) for this
9 purpose shall be credited to this appropriation account. Notwithstanding s. 20.001
10 (3) (a), the treasurer of the unemployment reserve fund shall transfer any
11 unencumbered balance in this appropriation account that is not needed or available
12 to carry out the purpose of this appropriation to the appropriation account under par.
13 (n). No moneys may be expended from this appropriation unless the treasurer of the
14 unemployment reserve fund determines that such expenditure is currently needed
15 for the purpose specified in s. 108.19 (1e) (d).

16 SECTION 5. 20.445 (1) (nd) of the statutes, as created by 2003 Wisconsin Act 33,
17 is amended to read:

18 20.445 (1) (nd) *Unemployment insurance administration; apprenticeship.*
19 From the moneys received from the federal government under section 903 (d) of the
20 federal Social Security Act, as amended, the amounts in the schedule, as authorized
21 by the governor under s. 16.54, to be used for administration by the department of
22 apprenticeship programs under subch. I of ch. 106. All moneys transferred from par.
23 (n) for this purpose shall be credited to this appropriation account. Notwithstanding
24 s. 20.001 (3) (a), the treasurer of the unemployment reserve fund shall transfer any
25 unencumbered balance in this appropriation account that is not needed or available

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1 to carry out the purpose of this appropriation to the appropriation account under par.
2 (n). No moneys may be expended from this appropriation unless the treasurer of the
3 unemployment reserve fund determines that such expenditure is currently needed
4 for the purpose specified in this paragraph.

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

6 20.445 (1) (ne) *Unemployment administration; bank service costs.* From the
7 moneys received by this state under section 903 (d) of the federal Social Security Act,
8 as amended, all moneys transferred from the appropriation account under par. (n)
9 to be used for the payment of the cost of banking services incurred by the
10 unemployment reserve fund. Notwithstanding s. 20.001 (3) (c), the treasurer of the
11 unemployment reserve fund shall transfer any unencumbered balance in this
12 appropriation account that is not needed or available to carry out the purpose of this
13 appropriation to the appropriation account under par. (n). No moneys may be
14 expended from this appropriation unless the treasurer of the unemployment reserve
15 fund determines that such expenditure is currently needed for the purpose specified
16 in this paragraph.

17 **SECTION 7.** 108.02 (6m) of the statutes is created to read:

18 108.02 (6m) CHILD. “Child” means a natural child, adopted child, or stepchild.

19 **SECTION 8.** 108.02 (12) (a) of the statutes is amended to read:

20 108.02 (12) (a) “Employee” means any individual who is or has been performing
21 services for an employing unit, in an employment, whether or not the individual is
22 paid directly by such employing unit; except as provided in par. (b), (bm), (c) ~~or~~, (d),
23 (dm) or (dn).

24 **SECTION 9.** 108.02 (12) (b) (intro.) of the statutes is amended to read:

SENATE BILL 340**SECTION 9**

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

9 **SECTION 10.** 108.02 (12) (bm) (intro.) of the statutes is amended to read:

10 108.02 (12) (bm) (intro.) During the ~~4-year~~ period beginning on
11 January 1, 2000, with respect to contribution requirements, and during the period
12 beginning on April 2, 2000, ~~and ending on April 3, 2004,~~ with respect to benefit
13 eligibility, par. (a) does not apply to an individual performing services for an
14 employing unit other than a government unit or nonprofit organization in a capacity
15 other than as a logger or trucker, if the employing unit satisfies the department that
16 the individual meets 7 or more of the following conditions by contract and in fact:

17 **SECTION 11.** 108.02 (12) (dm) and (dn) of the statutes are created to read:

18 108.02 (12) (dm) Paragraph (a) does not apply to an individual who owns a
19 business that operates as a sole proprietorship.

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

22 **SECTION 12.** 108.02 (15) (L) of the statutes is amended to read:

23 108.02 (15) (L) "Employment" includes an individual's service for an employer
24 organized as a corporation or a limited liability company that is treated as a

SENATE BILL 340**SECTION 12**

1 corporation under this chapter in which the individual is a principal officer and has
2 a direct or indirect ownership interest, except as provided in s. 108.025.

3 **SECTION 13.** 108.02 (15m) (a) and (b) of the statutes are amended to read:

4 108.02 (15m) (a) A corporation or a limited liability company that is treated
5 as a corporation under this chapter in which 50% or more of the ownership interest,
6 however designated or evidenced, is or during a claimant's employment was owned
7 or controlled, directly or indirectly, by the claimant or by the claimant's spouse or
8 child, or by the claimant's parent if the claimant is under the age of 18, or by a
9 combination of 2 or more of them; or

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

14 **SECTION 14.** 108.02 (20r) of the statutes is created to read:

15 108.02 (20r) PARTNERSHIP. "Partnership" has the meaning given in s. 178.03.

16 **SECTION 15.** 108.02 (25s) of the statutes is created to read:

17 108.02 (25s) VOCATIONAL TRAINING. "Vocational training" includes technical,
18 skill-based, or job readiness training intended to pursue a career.

19 **SECTION 16.** 108.025 (title) and (1) of the statutes are amended to read:

20 **108.025 (title) Coverage of certain corporate officers and limited**
21 **liability company members.**

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

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

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

2 108.025 (1) (b) An individual named as a member of a limited liability company
3 that is treated as a corporation under this chapter in the records of the company
4 required to be kept under s. 183.0405 as of the date of an election under this section.

5 **SECTION 18.** 108.025 (2) and (6) of the statutes are amended to read:

6 108.025 (2) If an employer having is organized as a corporation or limited
7 liability company that is treated as a corporation under this chapter, the employer
8 has no annual payroll for the calendar year preceding an election or ~~an employer~~
9 ~~having~~ has an annual payroll of less than the amount specified in s. 108.18 (9) which
10 establishes separate solvency contribution rates for the calendar year preceding an
11 election, and the employer files a notice of election, in the manner prescribed by the
12 department, to exclude the service of all of its principal officers who have a direct or
13 indirect substantial ownership interest in the corporation or limited liability
14 company, employment does not include the service of those officers.

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

20 **SECTION 19.** 108.04 (1) (g) 1. of the statutes is amended to read:

21 108.04 (1) (g) 1. Employment by a partnership or limited liability company that
22 is treated as a partnership under this chapter, if a one-half or greater ownership
23 interest in the partnership or limited liability company is or during such employment
24 was owned or controlled, directly or indirectly, by the individual's spouse or child, or

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1 by the individual's parent if the individual is under age 18, or by a combination of 2
2 or more of them.

3 **SECTION 20.** 108.04 (1) (g) 1L. of the statutes is repealed.

4 **SECTION 21.** 108.04 (1) (g) 2. and 3. of the statutes are amended to read:

5 108.04 (1) (g) 2. Employment by a corporation or limited liability company that
6 is treated as a corporation under this chapter, if one-half or more of the ownership
7 interest, however designated or evidenced, in the corporation or limited liability
8 company is or during such employment was owned or controlled, directly or
9 indirectly, by the individual or by the individual's spouse or child, or by the
10 individual's parent if the individual is under age 18, or by a combination of 2 or more
11 of them.

12 3. Except where subd. 2. applies, employment by a corporation or limited
13 liability company that is treated as a corporation under this chapter, if one-fourth
14 or more of the ownership interest, however designated or evidenced, in the
15 corporation or limited liability company is or during such employment was owned or
16 controlled, directly or indirectly, by the individual.

17 **SECTION 22.** 108.04 (1) (gm) 1., 2., 3. and 4. (intro.) of the statutes are amended
18 to read:

19 108.04 (1) (gm) 1. Dissolution of the family corporation, due to economic
20 inviability, under ch. 180 or the analogous applicable laws of the jurisdiction in which
21 the corporation is incorporated or organized;

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

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

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

3 **SECTION 23.** 108.04 (2) (a) 3. of the statutes is renumbered 108.04 (2) (a) 3.
4 (intro.) and amended to read:

5 108.04 (2) (a) 3. (intro.) The individual is ~~seeking suitable work during that~~
6 ~~week or, during the 156 week period beginning on January 2, 2000, the individual~~
7 conducts a reasonable search for suitable work during that week. The reasonable
8 search ~~required during the period specified in this subdivision for suitable work~~ must
9 include 2 actions that constitute a reasonable search as prescribed by rule of the
10 department. ~~The department shall, by rule, require claimants to conduct a~~
11 ~~reasonable search for suitable work during the period beginning after the 156 week~~
12 ~~period specified in this subdivision and shall, by rule, prescribe standards for the~~
13 ~~search to be considered reasonable. This subdivision does not apply to an individual~~
14 if the department determines that the individual is currently laid off from
15 employment with an employer but there is a reasonable expectation of
16 reemployment of the individual by that employer. In determining whether the
17 individual has a reasonable expectation of reemployment by an employer, the
18 department shall request the employer to verify the individual's employment status
19 and shall also consider other factors, including:

20 **SECTION 24.** 108.04 (2) (a) 3. a. to c. of the statutes are created to read:

21 108.04 (2) (a) 3. a. The history of layoffs and reemployments by the employer;

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

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

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1 **SECTION 25.** 108.04 (7) (h) of the statutes is amended to read:

2 108.04 (7) (h) The department shall charge to the fund's balancing account
3 benefits paid to an employee that are otherwise chargeable to the account of an
4 employer that is subject to the contribution requirements of ss. 108.17 and 108.18
5 if the employee voluntarily terminates employment with that employer and par. (a),
6 (c), (d), (e), (k), (L), (o), (p), (q), or (s) ~~or sub. (16) (b)~~ applies.

7 **SECTION 26.** 108.04 (7) (r) of the statutes is amended to read:

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

19 **SECTION 27.** 108.04 (11) (cm) of the statutes is amended to read:

20 108.04 (11) (cm) ~~Any~~ If any person who makes a false statement or
21 representation in order to obtain benefits in the name of another person, the benefits
22 received by that person constitute a benefit overpayment. Such person may, by a
23 determination or decision issued under s. 108.095, be required to repay the amount
24 of the benefits obtained and be assessed an administrative assessment in an
25 additional amount equal to not more than 50% of the amount of benefits obtained.

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1 **SECTION 28.** 108.04 (16) (a) (intro.) of the statutes is amended to read:

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

8 **SECTION 29.** 108.04 (16) (a) 1. to 4. of the statutes are repealed and recreated
9 to read:

10 108.04 (16) (a) 1. The course is expected to increase the individual's
11 opportunities to obtain employment;

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

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

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

17 **SECTION 30.** 108.04 (16) (a) 5. of the statutes is created to read:

18 108.04 (16) (a) 5. The individual is attending regularly and making satisfactory
19 progress in the course. The department may require the training institution to file
20 a certification showing the individual's attendance and progress.

21 **SECTION 31.** 108.04 (16) (b) and (c) of the statutes are repealed and recreated
22 to read:

23 108.04 (16) (b) The department shall not apply any benefit disqualification
24 under sub. (1) (b) 1., (2) (a) or (d), (7) (c), or (8) (e) or s. 108.141 (3g) that is not the

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1 result of training or basic education under par. (a) while an individual is enrolled in
2 a course of training or education that meets the standards specified in par. (a).

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

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

11 2. The department shall not apply benefit disqualifications under sub. (1) (b)
12 1., (2) (a) or (d), (7) (c), or (8) (e) or s. 108.141 (3g) that are not the result of the training
13 while the individual is enrolled in the training.

~~14 SECTION 32. 108.04 (16) (d) and (e) of the statutes are created to read:~~

15 108.04 (16) (d) If an individual is enrolled under the plan of any state for
16 training under 19 USC 2296 or a plan for training of dislocated workers approved
17 under 29 USC 2822:

18 1. The department shall not deny benefits under sub. (7) as a result of the
19 individual's leaving unsuitable work to enter or continue such training; and

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

~~22 (e) The department shall charge to the fund's balancing account the cost of
23 benefits paid to an individual that are otherwise chargeable to the account of an
24 employer that is subject to the contribution requirements of ss. 108.17 and 108.18
25 if the individual receives benefits based on the application of par. (b), (c) 2. or (d).~~

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SECTION 33. 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 any 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 any 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 any such ~~a~~ 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 any such ~~a~~ government unit, Indian tribe, or nonprofit organization in the 2nd such term.

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

6 2. During the period between 2 regular but not successive academic terms,
7 when an agreement between an employer and a school year employee provides for
8 such a period, if the school year employee performed such services for an any
9 educational service agency in the first such term and if there is reasonable assurance
10 that he or she will perform such services for an any educational service agency in the
11 2nd such term.

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

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

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1 is reasonable assurance that he or she will perform such services for any such -a
2 government unit, Indian tribe, or nonprofit organization in the 2nd such year or
3 term.

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

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

21 (h) A school year employee of a government unit, Indian tribe, or nonprofit
22 organization which provides services to or on behalf of an educational institution
23 who performs the services described in par. (b) or (e) is ineligible for benefits based
24 on such services for any week of unemployment which occurs during an established
25 and customary vacation period or holiday recess if the school year employee

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1 performed such services for any such ~~a~~ government unit, Indian tribe, or nonprofit
2 organization in the period immediately before the vacation period or holiday recess,
3 and there is reasonable assurance that the school year employee will perform the
4 services described in par. (b) or (e) for any such ~~a~~ government unit, Indian tribe, or
5 nonprofit organization in the period immediately following the vacation period or
6 holiday recess.

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

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

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1 108.05 (7) (cm) *Payments received under Social Security Act.* If a claimant
2 receives a pension payment under the federal Social Security Act (42 USC 301 et
3 seq.), the department shall not reduce the benefits otherwise payable to the claimant
4 because the claimant contributed to a portion of the pension payment received by the
5 claimant.

6 **SECTION 38.** 108.05 (7) (d) 1. (intro.) of the statutes is amended to read:

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

10 **SECTION 39.** 108.05 (7) (f) (intro.) of the statutes is amended to read:

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

16 **SECTION 40.** 108.068 of the statutes is created to read:

17 **108.068 Treatment of limited liability companies and members. (1)**

18 Subject to subs. (2) to (6) and (8), the department shall treat a multimember limited
19 liability company as a partnership and shall treat a single-member limited liability
20 company as a sole proprietorship under this chapter unless the company has filed an
21 election with the federal internal revenue service to be treated as a corporation for
22 federal tax purposes and files proof with the department that the internal revenue
23 service has agreed to treat the company as a corporation for such purposes.

24 **(2)** The department shall treat a limited liability company that files proof
25 under sub. (1) as a corporation under this chapter beginning on the same date that

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1 the federal internal revenue service treats the company as a corporation for federal
2 tax purposes, except that for benefit purposes the treatment shall apply on the same
3 date that the internal revenue service applies the treatment or the date that proof
4 is filed with the department, whichever is later.

5 (3) Subject to subs. (1), (2), and (6) to (8), a limited liability company that is
6 treated as a corporation for federal tax purposes shall be treated as a corporation
7 under this chapter, and each member of the limited liability company shall be treated
8 as a corporate officer for contribution and benefit purposes.

9 (4) Subject to subs. (2) and (6) to (8), a multimember limited liability company
10 that is not treated as a corporation for federal tax purposes shall be treated as a
11 partnership under this chapter, and the members of the limited liability company
12 shall be treated for contribution and benefit purposes as partners of that
13 partnership.

14 (5) Subject to subs. (2) and (6) to (8), a single-member limited liability company
15 that is not treated as a corporation for federal tax purposes shall be treated as a sole
16 proprietorship under this chapter, and the member shall be treated as a sole
17 proprietor for contribution and benefit purposes.

18 (6) The department may, in the interests of justice or to prevent fraud upon the
19 unemployment insurance program, determine that a member of a limited liability
20 company is an employee of that company.

21 (7) Subject to subs. (2) to (6), if a limited liability company is treated as a
22 corporation under this chapter the department shall treat the company as a
23 partnership under this chapter, if the company has multiple members or shall treat
24 the company as a sole proprietorship under this chapter if the company has a single
25 member if the company files proof with the department that the internal revenue

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1 service has agreed to treat the company as a partnership or sole proprietorship for
2 federal tax purposes.

3 (8) The department shall treat a limited liability company that files proof
4 under sub. (7) as a partnership or sole proprietorship under this chapter beginning
5 on the same date that the federal internal revenue service treats the company as a
6 partnership or sole proprietorship for federal tax purposes, except that for benefit
7 purposes the treatment shall apply on the same date that the internal revenue
8 service applies the treatment or the date that proof is filed with the department,
9 whichever is later.

10 SECTION 41. 108.09 (4) (c) of the statutes is amended to read:

11 108.09 (4) (c) *Late appeal.* If a party files an appeal which is not timely, an
12 appeal tribunal shall review the appellant's written reasons for filing the late appeal.
13 If those reasons, when taken as true and construed most favorably to the appellant,
14 do not constitute a reason beyond the appellant's control, the appeal tribunal may
15 dismiss the appeal without a hearing and issue a decision accordingly. Otherwise,
16 the department may schedule a hearing concerning the issue question of whether the
17 party's failure to timely file the appeal was filed late for a reason that was beyond
18 the party's appellant's control. The department may also provisionally schedule a
19 hearing concerning any matter in the determination. ~~If, after hearing testimony, the~~
20 ~~appeal tribunal finds that the party's failure to timely file the appeal was not for a~~
21 ~~reason beyond the party's control, the appeal tribunal shall issue a decision~~
22 ~~containing this finding and dismissing the appeal. If, after hearing testimony, the~~
23 ~~appeal tribunal finds that the party's failure to timely file an appeal was for a reason~~
24 ~~beyond the party's control, the appeal tribunal shall issue a decision containing this~~
25 ~~finding. The being appealed. After hearing testimony on the late appeal question,~~

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

9 **SECTION 42.** 108.14 (8s) (a) and (b) of the statutes are amended to read:

10 108.14 (8s) (a) Overpayments of unemployment insurance benefits as
11 determined under this chapter may be ~~recovered by offset~~ recouped from
12 unemployment insurance benefits otherwise payable under the unemployment
13 insurance law of another state, and overpayments of unemployment insurance
14 benefits as determined under the unemployment insurance law of that other state
15 may be ~~recovered by offset~~ recouped from unemployment insurance benefits
16 otherwise payable under this chapter; and

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

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

9 **SECTION 43.** 108.16 (3) (a) of the statutes is amended to read:

10 108.16 (3) (a) Any overpayment for which the claimant's liability to reimburse
11 the fund is established under s. 108.22 (8) or any assessment under s. 108.04 (11) (cm)
12 for which a final determination has been issued under s. 108.09 upon receipt of
13 certification by the department that reasonable efforts have been made to recover the
14 overpayment or the amount of the assessment and that it the amount due is
15 uncollectible.

16 **SECTION 44.** 108.16 (6m) (a) of the statutes is amended to read:

17 108.16 (6m) (a) The benefits thus chargeable under s. 108.04 (1) (f), (5), (7) (h),
18 (8) (a), ~~or~~ (13) (c) or (d) or (16) (e), 108.07 (3), (3r), (5) (b), (5m), (6), or (8), 108.14 (8n)
19 (e), 108.141, 108.151, or 108.152 or sub. (6) (e) or (7) (a) and (b).

20 **SECTION 45.** 108.16 (6m) (e) of the statutes is amended to read:

21 108.16 (6m) (e) Any overpayment of benefits or assessment that is written off
22 under sub. (3), unless except, in the case of an overpayment, if it is chargeable to an
23 employer's account under s. 108.04 (13).

24 **SECTION 46.** 108.16 (8) (b) (intro.) of the statutes is amended to read:

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1 108.16 (8) (b) (intro.) If the business of any employer is transferred to a single
2 transferee, the transferee is deemed a successor for purposes of this chapter if the
3 department determines that all of the following conditions have been satisfied:

4 **SECTION 47.** 108.16 (8) (b) 2. of the statutes is amended to read:

5 108.16 (8) (b) 2. The transfer included 100% at least 25% of the transferor's
6 total business ~~on~~ as measured by comparing the payroll experience assignable to the
7 the portion of the business transferred with the transferor's total payroll experience
8 for the last 4 completed quarters immediately preceding the date of the transfer.

9 **SECTION 48.** 108.16 (8) (c) 4. of the statutes is repealed.

10 **SECTION 49.** 108.16 (8) (e) 4. of the statutes is repealed.

11 **SECTION 50.** 108.16 (8) (f) of the statutes is amended to read:

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

22 **SECTION 51.** 108.16 (12) of the statutes is created to read:

23 108.16 (12) The fund's treasurer shall estimate at the end of each calendar
24 quarter the earnings rate payable on the fund's bank balances and the earnings rate
25 payable by the federal unemployment account under title XII of the Social Security

SENATE BILL 340**SECTION 51**

1 Act (42 USC 1321 to 1324) for the following quarter. Based on these estimates, the
2 treasurer shall pay for the cost of banking services incurred by the fund in the
3 following quarter either by maintaining compensating bank balances or by payment
4 for the services from the appropriation under s. 20.445 (1) (ne), whichever payment
5 method is estimated to yield the highest net earnings for the fund.

6 **SECTION 52.** 108.161 (4) (c) of the statutes, as affected by 2003 Wisconsin Act
7 33, is amended to read:

8 108.161 (4) (c) Specifying that the appropriated amounts are available for
9 obligation solely within the 2 years beginning on the appropriation law's date of
10 enactment. This paragraph does not apply to the ~~appropriation~~ appropriations
11 under s. 20.445 (1) (nd) and (ne) or to any amounts expended from the appropriation
12 under s. 20.445 (1) (nb) from moneys transferred to this state on March 13, 2002,
13 pursuant to section 903 (d) of the federal Social Security Act.

14 **SECTION 53.** 108.161 (8) of the statutes is amended to read:

15 108.161 (8) If any sums are appropriated and spent hereunder to buy land and
16 to build a suitable employment security building thereon, or to purchase information
17 technology hardware and software, then any federal moneys thereafter credited to
18 the fund or paid to the department by way of gradual reimbursement of such
19 employment security capital expenditures, or in lieu of the estimated periodic
20 amounts which would otherwise (in the absence of such expenditures) be federally
21 granted for the rental of substantially equivalent quarters, shall be credited to the
22 account created by sub. (1), consistently with any federal requirements applicable to
23 the handling and crediting of such moneys.

24 **SECTION 54.** 108.162 (3) of the statutes, as affected by 2003 Wisconsin Act 33,
25 is amended to read:

SENATE BILL 340

1 108.162 (3) The amount obligated under this section during any fiscal year may
2 not exceed the aggregate of all amounts credited under s. 108.161 (1), including
3 amounts credited under s. 108.161 (8), reduced by the amount obligated under s.
4 20.445 (1) (nb) ~~and, (nd) and (ne)~~ and further reduced at the time of any obligation
5 by the sum of the moneys obligated and charged against any of the amounts thus
6 credited.

7 **SECTION 55.** 108.19 (1e) (a) and (d) of the statutes are amended to read:

8 108.19 (1e) (a) Except as provided in par. (b), each employer, other than an
9 employer that finances benefits by reimbursement in lieu of contributions under s.
10 108.15, 108.151, or 108.152 shall, in addition to other contributions payable under
11 s. 108.18 and this section, pay an assessment to the administrative account for each
12 year prior to the year ~~2004~~ 2008 equal to the lesser of 0.01% of its payroll for that year
13 or the solvency contribution that would otherwise be payable by the employer under
14 s. 108.18 (9) for that year.

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

21 **SECTION 56.** 108.22 (2) (b) of the statutes is amended to read:

22 108.22 (2) (b) The clerk of circuit court shall accept, file and enter ~~the each~~
23 warrant under par. (a) and each satisfaction, release, or withdrawal under subs. (5),
24 (6), and (8m) in the judgment and lien docket without prepayment of any fee, but the
25 clerk of circuit court shall submit a statement of the proper fee semiannually to the

SENATE BILL 340**SECTION 56**

1 department covering the periods from January 1 to June 30 and July 1 to December
2 31 unless a different billing period is agreed to between the clerk of circuit court and
3 the department. The fees shall then be paid by the department, but the fees provided
4 by s. 814.61 (5) for entering the warrants shall be added to the amount of the warrant
5 and collected from the employing unit when satisfaction or release is presented for
6 entry.

7 **SECTION 57.** 108.22 (8) (b) of the statutes is amended to read:

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

16 **SECTION 58.** 108.225 (1) (b) of the statutes is amended to read:

17 108.225 (1) (b) “Debt” means a delinquent contribution or repayment of a
18 benefit overpayment, an assessment under s. 108.04 (11) (cm), or any liability of a
19 3rd party for failure to surrender to the department property or rights to property
20 subject to levy after proceedings under sub. (4) (b) and s. 108.10 to determine that
21 liability.

22 **SECTION 59.** 108.225 (15) of the statutes is amended to read:

23 108.225 (15) DURATION OF LEVY. A levy is effective from the date on which the
24 levy is first served on the 3rd party until the liability out of which the levy arose is

SENATE BILL 340

1 satisfied, or until the levy is released ~~or until one year from the date of service,~~
2 whichever occurs first.

3 **SECTION 60.** 108.225 (16) (intro.) of the statutes is renumbered 108.225 (16) (a)
4 (intro.) and amended to read:

5 108.225 (16) (a) (intro.) In the case of ~~benefit overpayments and forfeitures~~
6 imposed upon an employing unit under s. 108.04 (11) (c), an individual debtor is
7 entitled to an exemption from levy of the greater of the following:

8 **SECTION 61.** 108.225 (16) (a) of the statutes is renumbered 108.225 (16) (a) 1.
9 and amended to read:

10 108.225 (16) (a) 1. A subsistence allowance of 75% of the debtor's disposable
11 earnings ~~then due and owing~~;

12 **SECTION 62.** 108.225 (16) (am) of the statutes is created to read:

13 108.225 (16) (am) 1. In the case of benefit overpayments, an individual debtor
14 is entitled to an exemption from levy of 80% of the debtor's disposable earnings,
15 except that:

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

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

21 c. The department may decrease or eliminate the exemption from levy under
22 this paragraph if a final determination has been issued under s. 108.09 or a judgment
23 has been entered under s. 108.24 (1) in which the debtor has been found guilty of
24 making a false statement or representation to obtain benefits and the benefits and
25 any assessment under s. 108.04 (11) (cm) have not been paid or reimbursed at the

SENATE BILL 340**SECTION 62**

1 time that the levy is issued, unless the fund's treasurer has written off the debt under
2 s. 108.16 (3) (a).

3 2. The department shall by rule prescribe a methodology for application of the
4 exemption applicable to a levy under subd. 1. a. at the time that the levy is issued.

5 **SECTION 63.** 108.225 (16) (b) of the statutes is renumbered 108.225 (16) (a) 2.

6 **SECTION 64.** 108.225 (16) (c) of the statutes is renumbered 108.225 (16) (a) 3.

7 and amended to read:

8 108.225 (16) (a) 3. In the case of earnings for a period other than a week, a
9 subsistence allowance computed so that it is equivalent to that provided in ~~par. (b)~~
10 subd. 2. using a multiple of the federal minimum hourly wage prescribed by rule of
11 the department.

12 **SECTION 65.** 2001 Wisconsin Act 35, section 72 (2) (a) 2. and 3. are repealed.

13 **SECTION 66. Nonstatutory provisions.**

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

24 (2) **NOTICE OF LEVY FOR YEAR 2004.**

SENATE BILL 340

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

3 (b) Notwithstanding section 108.19 (1e) (b) of the statutes, the department of
4 workforce development may, no later than the 60th day commencing after the
5 effective date of this subsection, publish a notice under that paragraph of an
6 assessment to be levied against employers under section 108.19 (1e) of the statutes,
7 as affected by this act, in the year 2004.

8 **SECTION 67. Appropriation changes.**

9 (1) In the schedule under section 20.005 (3) of the statutes for the appropriation
10 to the department of workforce development under section 20.445 (1) (gg) of the
11 statutes, as affected by the acts of 2003, the dollar amount is increased by \$430,200
12 for fiscal year 2003–04 and the dollar amount is increased by \$430,200 for fiscal year
13 2004–05 to provide funding to upgrade unemployment insurance information
14 technology systems.

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

21 **SECTION 68. Initial applicability.**

22 (1) The treatment of sections 20.445 (1) (n) and (ne), 108.16 (12), 108.161 (4)
23 (c) (with respect to the reference to section 20.445 (1) (ne) of the statutes), and
24 108.162 (3) of the statutes first applies with respect to the first calendar quarter
25 beginning after the effective date of this subsection

of 2004. ✓

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SENATE BILL 340**SECTION 68**

1 (2) The renumbering and amendment of section 108.04 (2) (a) 3. of the statutes
2 and the creation of section 108.04 (2) (a) 3. a. to c. of the statutes first apply with
3 respect to weeks of unemployment beginning on the effective date of this subsection.

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

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

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

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

17 (7) The treatment of section 108.16 (8) (b) (intro.) and 2., (c) 4., (e) 4., and (f) of
18 the statutes first applies with respect to transfers of businesses occurring after
19 December 31, 2003.

20 (8) The treatment of section 108.22 (2) (b) of the statutes first applies with
21 respect to satisfactions, releases, and withdrawals of warrants issued on the effective
22 date of this subsection.

SECTION 69. Effective date.

23
24 (1) This act takes effect on the first Sunday after publication.

25 (END)

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**SENATE AMENDMENT 1,
TO 2003 SENATE BILL 340**

March 4, 2004 - Offered by Senators REYNOLDS, PANZER and A. LASEE.

1 At the locations indicated, amend the bill as follows:

2 ✓ 1. Page 18, line 14: delete that line and substitute:

3 ~~"SECTION 32c. 108.04 (16) (d) of the statutes is created to read:"~~

4 ✓ 2. Page 18, line 22: delete lines 22 to 25 and substitute:

5 ~~"SECTION 32g. 108.04 (16) (e) of the statutes is created to read:~~

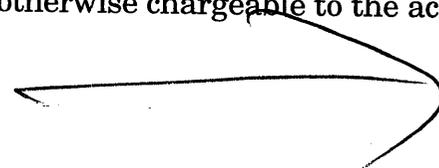
6 108.04 (16) (e) The department shall charge to the fund's balancing account the
7 cost of benefits paid to an individual that are otherwise chargeable to the account of
8 an employer that is subject to the contribution requirements of ss. 108.17 and 108.18
9 if the individual receives benefits based on the application of par. (d).

10 SECTION 32r. 108.04 (16) (e) of the statutes, as affected by 2003 Wisconsin Act
11 ... (this act), is amended to read:

12 108.04 (16) (e) The department shall charge to the fund's balancing account the
13 cost of benefits paid to an individual that are otherwise chargeable to the account of

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1 an employer that is subject to the contribution requirements of ss. 108.17 and 108.18
2 if the individual receives benefits based on the application of par. (b), (c) 2., or (d).?

3 ✓3. Page 23, line 1: delete lines 1 to 18.

4 ✓4. Page 24, line 6: delete lines 6 to 15.

5 ✓5. Page 35, line 7: after that line insert:

6 ~~“(3x) CLAIMS BY CLAIMANTS ENROLLED IN CERTAIN TRAINING PLANS. Section 108.04~~

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7 (16) (d) of the statutes, as created by this act, and SECTION 68 (3x) of this act apply
8 notwithstanding section 108.04 (16) (b) and (c), 2001 stats.”.

9 ✓6. Page 35, line 25: delete that line and substitute “of 2004.”.

10 ✓7. Page 36, line 1: delete lines 1 to 24 and substitute:

11 ~~“(2x) The renumbering and amendment of section 108.04 (2) (a) 3. of the~~
12 statutes and the creation of section 108.04 (2) (a) 3. a. to c. of the statutes first apply
13 with respect to weeks of unemployment beginning on June 27, 2004.

14 (3x) The creation of section 108.04 (16) (e) of the statutes first applies with
15 respect to weeks of unemployment beginning on December 30, 2001.

16 (4x) The treatment of sections 108.02 (25s) and 108.04 (7) (h) and (16) (a)
17 (intro.), 1. to 4., and 5., (b), (c), and (d) of the statutes and the amendment of section
18 108.04 (16) (e) of the statutes first apply with respect to weeks of unemployment
19 beginning on the effective date of this subsection.

20 (5x) The treatment of section 108.09 (4) (c) of the statutes first applies with
21 respect to determinations issued under sections 108.09, 108.095, and 108.10 of the
22 statutes on the effective date of this subsection.

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1 (6x) The treatment of sections 108.16 (3) (a) and (6m) (e) and 108.225 (1) (b),
2 (15), and (16) (intro.), (a), (am), (b), and (c) of the statutes first applies with respect
3 to levies issued on the effective date of this subsection.

4 (7x) The treatment of section 108.16 (8) (b) (intro.) and 2., (c) 4., (e) 4., and (f)
5 of the statutes first applies with respect to transfers of businesses occurring after
6 December 31, 2003.

7 (8x) The treatment of section 108.22 (2) (b) of the statutes first applies with
8 respect to satisfactions, releases, and withdrawals of warrants issued on the effective
9 date of this subsection.

10 **SECTION 69m. Effective dates.** This act takes effect on the first Sunday after
11 publication, except as follows:

12 (1x) The treatment of section 108.16 (6m) (a) of the statutes and the creation
13 of section 108.04 (16) (e) of the statutes take effect retroactively to December 30,
14 2001.

15

(END)